House of Commons

Foreign Affairs Committee

# The FCO's human rights work in 2011

## Third Report of Session 2012–13

*Report, together with formal minutes, oral and written evidence*

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## The Foreign Affairs Committee

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The Reports of the Committee, the formal minutes relating to that report, oral evidence taken and some or all written evidence are available in a printed volume.

### Committee staff

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## Report

# Summary

We welcome the considerable effort which has gone into the preparation of the Foreign and Commonwealth Office's 2011 Human Rights and Democracy Report, which is seen as authoritative and comprehensive. Our only substantial criticism of the report itself is the absence of any systematic evaluation of the Department's human rights policies and initiatives, and we recommend that the FCO experiment in the next report with introducing accountability measures for some of its human rights programmes, for instance by setting benchmarks, targets and indicators.

## *Countries of concern*

The FCO has extended the list of 'countries of concern', where human rights failings are serious and to which the FCO wants to draw particular attention. While we believe that the designation of 'countries of concern' serves a useful purpose in stating in a very public fashion that the UK believes that human rights in those countries fall well short of what is deemed acceptable internationally, the criteria for designation remain vague, and the practice can appear inconsistent and restrictive. We recommend that decisions on designation should be based purely on assessments of human rights standards and should not be coloured by external factors, such as strategic considerations or the UK's ability to influence developments. Given the Bahraini authorities' brutal repression of demonstrators in February and March 2011, we believe that Bahrain should have been designated as a country of concern in the FCO's 2011 report on human rights and democracy.

It is inevitable that the UK will have strategic, commercial or security-related interests which have the potential to conflict with its human rights values. In our view, it would be in the Government's interest for it to be more transparent in acknowledging that there will be contradictions in pursuing these interests while promoting human rights values. The Government's role should be publicly to set out and explain its judgments on how far to balance the two in particular cases, having taken into account the need to adapt policy according to local circumstances and developments.

## *Removal and deportation*

The UK is committed, as a state party to the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, not to return a person to another state where there are substantial grounds for believing that they would be placed at risk of torture on their return. Yet there are persistent allegations that asylum-seekers who have been returned to Sri Lanka by the UK have suffered torture and ill-treatment. When we tried to explore the issue, the Government was not particularly forthcoming about its efforts—in general and in specific cases—to assess the level of risk to the safety of those who are removed from the UK. We found this unsatisfactory. We encourage the FCO to be energetic in evaluating reports by non-governmental organisations and media sources of torture of deportees from the UK. The Government should also clarify the division between the roles of the FCO and of the UK Border Agency's Country of Origin Information Service in gathering the intelligence needed to make accurate assessments of risk.

### *Deportation with assurances*

We share the unease held by others with the Government's deportation with assurances (DWA) policy, and we conclude that DWA arrangements would command greater confidence if both parties to the agreement were to have signed the Optional Protocol to the UN Convention Against Torture (OPCAT), which would signify that the states concerned permitted regular independent monitoring of places and conditions of detention. We recommend that Parliament should be informed of the names of those responsible for monitoring conditions, and the arrangements made for follow-up monitoring. We also believe that DWA arrangements are of such significance that the text of each future arrangement should be laid before Parliament and should not come into force before 14 sitting days have elapsed, during which time Members may signify any objection.

### *Burma*

The EU's decision in April partially to suspend sanctions against Burma, in recognition of the more reformist approach adopted by the Burmese authorities in 2011, needed to be finely judged, given continuing evidence of human rights abuses in Kachin and Rakhine States and the continued detention of political prisoners. However, we are satisfied that enough progress towards reform has been made in Burma to justify some relaxation of the EU's sanctions regime, although we are in no doubt that Burma's human rights record remains seriously blemished. The UK can and should build on the current climate of goodwill to press for wider reform, including access to those still held in detention as political prisoners or for political offences or for politically-motivated reasons. We also recommend that the UK urge the Burmese authorities to permit independent observers to visit Rakhine State, to gather objective evidence on the extent to which the rights of the Rohingya minority are being respected.

### *Boycotts of international events*

We find it difficult to discern any consistency of logic behind the Government's policy in not taking a public stance on whether sponsors, drivers or the media should boycott the Bahrain Grand Prix, but implementing at least a partial boycott of 2012 UEFA European Football Championship matches played in Ukraine.

### *Denial of visas for entry to the UK*

The Government does not routinely publicise the identity of individuals denied a visa to enter the UK, and it has resisted calls to make public any denial of visas to enter the UK for those who held responsibility in the chain of events which led to the death of Mr Sergei Magnitsky in pre-trial detention in Russia in 2009. However, we believe that, when used sparingly, publicising the names of those denied entry on human rights grounds could be a valuable tool in drawing attention to the UK's determination to uphold high standards of human rights, and we recommend that the Government make use of it.

### *Business and human rights*

We welcome the Government's intention to develop a Business and Human Rights Strategy. It appears, however, that the Strategy will be couched exclusively in terms of guidance and voluntary initiatives, which do not on their own meet the spirit of the UN Guiding Principles on Business and Human Rights, which envisage a mix of policies, legislation, regulation and adjudication. We recommend that the Government should not dismiss out of hand the extension of extra-territorial jurisdiction to cover actions overseas by businesses based in the UK, or by firms operating under contract to the UK Government, which have an impact on human rights. We recommend that the Government should consider linking provision of Government procurement opportunities, investment support and export credit guarantees to UK businesses' human rights records overseas.

### *Arms trade and human rights*

We were surprised to discover that the FCO Minister responsible for human rights appeared not to have been consulted by the Department for Business, Innovation and Skills on the list of priority markets for forthcoming arms exports, and that the overlap between priority market countries and 'countries of concern' was not brought to his attention. We believe that it should have been, and steps should be taken to prevent such lapses in the sharing of information on arms exports between Ministers.

# Conclusions and recommendations

## The FCO's 2011 Human Rights and Democracy Report

1. We congratulate the FCO's Human Rights Department on the considerable effort which has gone into the 2011 Human Rights and Democracy Report. We strongly welcome the FCO's decision to continue publication of the report in printed form. (Paragraph 6)

2. We believe that the value of the FCO's annual report on human rights and democracy would be enhanced considerably if it were to provide some form of assessment of the FCO's work. We recommend that the FCO, in next year's report, experiment with accountability measures for some of its human rights programmes, for instance by setting benchmarks, targets and indicators. (Paragraph 7)

3. We support the approach being taken by the Government in negotiations on EU accession to the European Convention on Human Rights. (Paragraph 13)

## Women's human rights

4. We ask the FCO to indicate what steps it is taking to safeguard the rights of women and girls in Afghanistan from 2014. (Paragraph 16)

5. We request that the FCO inform the Committee what steps it is taking to encourage the Iraqi government to ban female genital mutilation across Iraq and to have this practice banned world-wide. (Paragraph 17)

6. We ask the FCO to indicate what steps it is taking to safeguard the rights of women and girls in Pakistan and world-wide. (Paragraph 18)

7. We commend the Government for signing the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, although we are concerned that the delay in signature—and the failure to explain publicly the reasons for the delay—may have damaged perceptions of the UK's commitment to women's human rights. (Paragraph 20)

## Children's human rights

8. We recommend that the FCO undertake urgent work to address negative perceptions among voluntary sector groups of its commitment to children's human rights abroad. (Paragraph 23)

## FCO policy development and staffing

9. We recommend that the Secretary of State's Advisory Group adopt a more consultative format for its meetings and that specific draft policy proposals be put regularly to the Group for comment and advice. (Paragraph 27)

**10.** We request that the FCO inform us what training on human rights and on relevant strategy documents is provided for FCO staff during their careers, how the FCO's human rights objectives are reflected in staff job descriptions, and how individual performance in pursuit of those objectives is evaluated**.** (Paragraph 31)

## Countries of concern

**11.** We recommend that, despite the difficulties inherent in the concept, the FCO should continue to designate "countries of concern". (Paragraph 42)

**12.** We believe that Bahrain should have been designated as a country of concern in the FCO's 2011 report on human rights and democracy. (Paragraph 43)

**13.** It is inevitable that the UK will have interests which have the potential to conflict with its human rights values: these interests might, for instance, be strategic, commercial or security-related. In pursuing these alongside its human rights work overseas, the UK runs the risk of operating double standards, and our view is that it would be in the Government's interest for it to be more transparent in this respect and for Ministers to be bolder in acknowledging that there will be contradictions. Rather than trying to assert that the two can co-exist freely, part of the Government's role should be publicly to set out and explain its judgments on how far to balance them in particular cases, having taken into account the need to adapt policy according to local circumstances and developments. (Paragraph 45)

**14.** We recommend that the FCO revise its criteria for designating "countries of concern". Decisions on designation, if they are to have maximum credibility, should be based purely upon assessments of human rights standards and should stand up to objective comparison. External factors, such as strategic considerations or the UK's ability to influence developments, should not be allowed to colour those decisions, although they might usefully guide decisions on where to concentrate funding for human rights programmes. If, despite our recommendations, the FCO chooses to continue to use existing criteria, we recommend that the Department uses more flexibility in allocating funds from human rights programme budgets to countries which are not "countries of concern" and where human rights failings are less severe, but where the chances of a lasting beneficial impact are reasonably high. (Paragraph 46)

## Torture

**15.** We strongly welcome the publication by the FCO of the Strategy for the Prevention of Torture 2011-15. We believe that there is merit in keeping a tight focus to the Strategy, and we do not support suggestions that its scope should be widened to cover policy on reparations for victims of torture, as this needs to be considered on a case by case basis. (Paragraph 52)

**16.** We find it unsatisfactory that the Government has not been more forthcoming to Parliament about its efforts—in general and in specific cases—to assess the level of risk to the safety of those who are removed from the UK. (Paragraph 56)

**17.** We welcome the new channel of communication established between FCO officials, non-governmental organisations and the UK Border Agency to discuss the assessment of risk to those who are removed from the UK. We encourage the FCO to be energetic in evaluating reports by non-governmental organisations and media sources of torture of deportees from the UK, including in Sri Lanka, and in spelling out the risk to the UK Border Agency. We also request that the Government clarify the division between the roles of the FCO and of the UK Border Agency's Country of Origin Information Service in gathering the intelligence needed to make accurate assessments of the risk to deportees upon their return to their country of origin. (Paragraph 58)

**18.** We conclude that arrangements for deportation with assurances would command greater confidence if both parties to the agreement were to have signed the Optional Protocol to the UN Convention Against Torture (OPCAT) which would signify that the states concerned permitted regular independent monitoring of places and conditions of detention. We also recommend that the Government should inform Parliament of the names of the individuals or bodies responsible for monitoring the conditions under which those deported are being held, and the arrangements made for follow-up monitoring. (Paragraph 64)

**19.** We acknowledge the efforts made by the Government to keep Parliament informed of new arrangements for deportation with assurances. However, these are matters of such significance within Parliament that we believe that a greater degree of accountability is warranted. We recommend that texts of memoranda of understanding between the UK and foreign states relating to arrangements for deportation with assurances should be laid before Parliament. We further recommend that such memoranda of understanding should not come into force before 14 sitting days have elapsed, during which time Members may signify any objection. (Paragraph 66)

**20.** We welcome the forthcoming independent review of deportation with assurances (DWA) arrangements announced in the FCO's 2011 Human Rights and Democracy report. We request that the Government indicate what exactly will be reviewed, by whom, and to whom the results of the review will be made available. (Paragraph 67)

**21.** The long drawn-out nature of police investigations into cases of alleged rendition has had an unacceptable impact on the work of the Detainee Inquiry and of this Committee and others. We request that the Government explain to us why the investigations by the Metropolitan Police into claims made by Abdel Hakim Belhaj and Sami al-Saadi are expected to take so long to conclude. (Paragraph 73)

**22.** We recommend that the Government and human rights organisations should start to explore ways of finding a mutually acceptable basis on which the successor inquiry to the Detainee Inquiry can proceed. However, while we value transparency in principle, we question whether total transparency could be applied to all proceedings of the successor inquiry without hindering, rather than assisting, the inquiry team in getting to the truth of the matter. (Paragraph 74)

**23.** We make no comment at this stage on developments in allegations of UK complicity in rendition. We reiterate, however, that we would be deeply disturbed if assurances given by Ministers over many years to this Committee's predecessors that the UK had not been involved in rendition were shown to be inaccurate. We expect to return to this issue. (Paragraph 75)

## Applying public pressure

**24.** We are satisfied that enough progress towards reform has been made in Burma to justify some relaxation of the EU's sanctions regime, although we are in no doubt that Burma's human rights record remains seriously blemished. We believe that the UK can and should build on the current climate of goodwill to press for wider reform, including access to those still held in detention as political prisoners or for political offences or for politically-motivated reasons. We recommend that the UK urge the Burmese authorities to permit independent observers to visit Rakhine State, to gather objective evidence on the extent to which the rights of the Rohingya minority are being respected. (Paragraph 85)

**25.** We find it difficult to discern any consistency of logic behind the Government's policy in not taking a public stance on the Bahrain Grand Prix but implementing at least a partial boycott of the 2012 UEFA European Football Championship matches played in Ukraine. (Paragraph 91)

**26.** We ask the Department to confirm that the presumption against the granting of visas to enter the UK on human rights grounds would only apply to people against whom there was evidence that they had abused human rights. (Paragraph 92)

**27.** We conclude that publicising the names of those who are denied visas to enter the UK on human rights grounds could be a valuable tool, when used sparingly, in drawing attention to the UK's determination to uphold high standards of human rights, and we recommend that the Government make use of it. (Paragraph 96)

## Business and human rights

**28.** We welcome the FCO's intention to develop a Business and Human Rights Strategy, which may give some unity of form to the various initiatives and resources already in place to promote responsible business practice. However, it appears that the Strategy will be couched exclusively in terms of guidance and voluntary initiatives. While these are undoubtedly worthwhile, we believe that they do not on their own meet the spirit of the UN Guiding Principles on Business and Human Rights, which envisage that states will take "appropriate steps to prevent, investigate, punish and redress abuse through effective policies, legislation, regulations and adjudication". (Paragraph 109)

**29.** We recommend that the Government should not dismiss out of hand the extension of extra-territorial jurisdiction to cover actions overseas by businesses based in the UK, or by firms operating under contract to the UK Government, which have an impact on human rights. Relying on local administration of justice may not be

enough to preserve the international reputation of the UK for upholding high standards of human rights. (Paragraph 110)

**30.** We recommend that the Government should consider linking provision of Government procurement opportunities, investment support and export credit guarantees to UK businesses' human rights records overseas. (Paragraph 111)

**31.** We accept the FCO's assurances that its human rights department is consulted on all arms export decisions. We are surprised, however, that the FCO Minister responsible for human rights appears not to have been consulted by the Department for Business, Innovation and Skills on the list of priority markets for forthcoming arms exports, and that the overlap between priority market countries and "countries of concern" was not brought to his attention. We believe that it should have been, and we recommend that BIS and FCO officials take steps to prevent such lapses in the sharing of information on arms exports between ministers, and explain how this will be done. (Paragraph 115)

**32.** We recommend that the Government, in its response to this Report, set out the scope for controlling the supply by UK nationals, or by companies based in the UK, of telecommunications equipment for which there is a reasonable expectation that it might be used to restrict freedom of expression on the internet. (Paragraph 117)

## Conclusion

**33.** The UK has a strong record in upholding human rights across the world, and the FCO's 2011 Report on Human Rights and Democracy provides ample evidence of its work in promoting higher standards of human rights abroad, sometimes under difficult circumstances. That work is widely recognised within the sector, and we applaud it. We hope that the constructive criticism in this Report will enable the FCO and indeed the Government, collectively, to improve upon that performance. (Paragraph 118)

# 1 Introduction

1. This Report is about the work of the Foreign and Commonwealth Office in promoting higher standards of human rights overseas in 2011-12. It takes as a starting point the FCO's own report on human rights and democracy in 2011, published on 30 April 2012.[1] We look briefly at the report itself and at some of the initiatives which the FCO has pursued. We also take the opportunity to comment on aspects of the FCO's human rights staffing and policy formation process.

2. In the remainder of our Report, rather than try to cover exhaustively such a vast field, we have been selective. We have dwelt upon issues where political considerations are particularly prominent, such as:

- The designation of "countries of concern", where human rights failings are serious and to which the FCO wants to draw particular attention;
- Torture prevention, and in particular its implications for the Government's policy on deportation and rendition;
- When and how the FCO judges that more public pressure should be applied, for instance through economic sanctions or sporting boycotts; and
- FCO policy on the promotion of responsible business practice abroad by UK firms.

Our inquiry ranged beyond the territory covered by the FCO's Report to cover matters which were current in the first half of 2012. The inquiry has also illustrated the connections between the FCO's human rights work and the work of other Departments, notably the Home Office, the Department for Business, Innovation and Skills, and the Ministry of Justice.

3. Written submissions to the inquiry are listed on page 56. As in 2011, we took oral evidence from two human rights organisations (Amnesty International and Human Rights Watch) and from the FCO Minister with responsibility at the time for human rights (Jeremy Browne MP). We are pleased to acknowledge these contributions and to present our findings.

1 Human Rights and Democracy: the 2011 Foreign & Commonwealth Office Report, Cm 8339

# 2 The FCO's 2011 Human Rights and Democracy Report

## Format and content

4. The format of the Foreign and Commonwealth Office's 2011 Human Rights and Democracy report is similar to that of previous years, consisting of a thematic update on the Department's work and strategies, followed by a detailed survey of developments in countries about which the FCO has wide-ranging human rights concerns and which it terms 'countries of concern'.[2] The report opens, however, with a section on the Arab Spring, setting out the UK's response to events both during and since the uprisings and the human rights implications of those events. The prominence given in the report to the Arab Spring is welcome and addresses our recommendation last year that the FCO should dedicate a section of its 2011 human rights report to reporting in detail on the human rights work which it is undertaking in the Middle East and North Africa region.[3] However, the value of this section would have been greater still had the FCO taken the opportunity to analyse its past policy on human rights in the region and to identify lessons that could be learnt.

5. We welcome the FCO's decision to include in the Report a statement of its human rights priorities: this statement, likewise, responds to a recommendation by the Committee in its report last year.[4]

6. The FCO's report continues to increase in size, partly because of an increase in the number of countries designated as being "of concern". For those who commented on the format of the FCO's report in their written submissions to our inquiry, this was a positive change. The Church of England's Mission and Public Affairs Council described the FCO's report as "authoritative" and as "more comprehensive than in previous years".[5] Amnesty International agreed and described some of the country-specific sections as "probably the best" for several years.[6] Both Amnesty International and Human Rights Watch valued the FCO's decision to continue publishing the report in hard copy format as well as online.[7] **We congratulate the FCO's Human Rights Department on the considerable effort which has gone into the 2011 Human Rights and Democracy Report. We strongly welcome the FCO's decision to continue publication of the report in printed form.**

2 Human Rights and Democracy: The 2011 FCO Report, page 159

3 The FCO's Human Rights Work 2010-11, Eighth Report from the Foreign Affairs Committee, HC 964, Session 2010-12, paragraph 170

4 The FCO's Human Rights Work 2010-11, Eighth Report from the Foreign Affairs Committee, HC 964, Session 2010-12, paragraph 42. See also written submission from the Church of England Mission and Public Affairs Council, Ev 60

5 Ev 60, para 6

6 Mr Croft Q2; Amnesty written submission, paragraph 4, Ev 35

7 Qq 4 and 5

## Evaluation

7. One aspect of the report which seems to us to be comparatively weak is the absence of any systematic evaluation of the Department's human rights policies and initiatives. Amnesty International told us that, while there was "ample detail" on outputs in the report, insufficient attention was paid to outcomes.[8] Mr David Mepham, representing Human Rights Watch, also pointed out that the report was "a bit of a list of activities rather than benchmarks against change objectives for which [the FCO] can be held accountable".[9] We appreciate the difficulty of measuring cause and effect in an environment where so many other factors outside the FCO's control come into play; but **we believe that the value of the FCO's annual report on human rights and democracy would be enhanced considerably if it were to provide some form of assessment of the FCO's work. We recommend that the FCO, in next year's report, experiment with accountability measures for some of its human rights programmes, for instance by setting benchmarks, targets and indicators.**

## Main events of 2011

### *Development and publication of strategy documents*

8. Besides responding to the "Arab Spring" and assessing the implications for the Department's human rights policy, the FCO has been active in publishing new and updated guidance and strategies. For instance, the Department's Strategy for Abolition of the Death Penalty was updated in October 2011; a Strategy for the Prevention of Torture 2011-15 was similarly published in October 2011 (we return to this Strategy in Section 4 of this Report); guidance for FCO staff on reporting information or concerns about torture was updated and reissued in March 2011; and guidance for UK Government staff on assessing human rights implications of the UK's security and justice work overseas was published in December. A business and human rights strategy is in preparation, to guide businesses on the Government's expectations of their behaviour overseas (we cover this in Section 6 of the Report).

### *United Nations Human Rights Council*

9. The FCO describes 2011 as having been "an unprecedented year for action to promote and protect human rights at the UN Human Rights Council and UN General Assembly",[10] and its account of progress in achieving the UK's aims within the Council is noticeably more upbeat than in previous years. Clear signals have been sent on the standards expected of Human Rights Council members: Libya, when still led by Colonel Gaddafi, was suspended from the Council by the UN General Assembly in March 2011; and Syria withdrew its candidacy for the Council in May, following a Special Session at which a resolution criticising the Syrian Government's actions was adopted.[11] A subsequent Special Session in December 2011 led to a resolution on Syria which the FCO saw as "one of the

8 Para 5, Ev 35

9 Q 3. See also Human Rights Watch submission, para 5, Ev 71

10 Human Rights and Democracy: The 2011 FCO Report, page 130

11 See resolution of the Sixteenth Special Session of the Human Rights Council, 29 April 2011: http://www2.ohchr.org/english/bodies/hrcouncil/docs/specialsession/16/Draft_report_16th_special_session.pdf

toughest ever passed by the Council": this gave strong support to the work of the Arab League and created a new post of Special Rapporteur on Human Rights in Syria.[12] As we noted in our report last year on the FCO's human rights work, the UK remained a member of the UN Human Rights Council until June 2011, having served the maximum permitted two consecutive terms, and it plans to seek membership once again in 2013.[13]

### *Chairmanship of the Council of Europe Committee of Ministers*

10. In November last year, the UK assumed the Chairmanship of the Committee of Ministers at the Council of Europe. In a speech at the official handover ceremony in Strasbourg on 7 November, the Secretary of State said that "we will make the promotion and protection of human rights the overarching theme of our Chairmanship" and he listed his priorities for the six-month term. These were:

- Reform of the European Court of Human Rights;
- Internal reform in the Council of Europe;
- A more effective and efficient role for the Council of Europe in supporting local and regional democracy;
- Support for strengthening the rule of law in Council of Europe member states;
- Promotion of an open internet, not only on access and content but also on freedom of expression;
- Combating discrimination on grounds of sexual orientation or gender identity across Europe.[14]

11. Mr Mepham noted that the UK's chairmanship had been dominated by the initiative for reform of the European Court of Human Rights, [15] which had led to agreement on what the Secretary of State for Justice termed "a substantial package of reform" at talks held in Brighton in April 2012.[16] The reforms set out in the final Declaration included commitments to:

- Amend the Convention to include the principles of subsidiarity and the margin of appreciation
- Amend the Convention to tighten the admissibility criteria so that trivial cases can be thrown out and the focus of the Court can be serious abuses
- Reduce the time limit for claims from six months to four

12 Human Rights and Democracy: The 2011 FCO Report, page 131

13 Human Rights and Democracy: The 2011 FCO Report, page 134

14 FCO press release 7 November 2011

15 Q 67

16 http://www.justice.gov.uk/news/features/brighton-declaration-on-echr-reform-adopted

- Improve the selection process for judges.[17]

We did not examine this reform package during the inquiry, but we note the important work of both the Court and the Parliamentary Assembly of the Council of Europe in holding Council of Europe member states to account for human rights failings.

### *European Convention on Human Rights*

12. Talks on EU accession to the European Convention on Human Rights began in July 2010. The FCO's 2010 Human Rights Report pointed out that successful completion of negotiations would meet a commitment in the Treaty of Lisbon and said that "this process will ensure that the institutions of the EU are covered by the same human rights standards under the Convention as all Council of Europe member states".[18] As a result, the EU would be able to defend itself before the European Court of Human Rights against alleged breaches of the Convention and could be held to account for any violations upheld.[19] Amnesty told us that EU accession to the Convention "could and should improve protection of fundamental rights for individuals in Europe, by ensuring that individuals can directly challenge the human rights consequences of EU law and the actions of EU institutions".[20]

13. The FCO's 2011 Human Rights Report says very little on the issue, noting merely that EU accession "remains on the table" and that "the UK will keep working to make sure that the terms of accession are right".[21] However, we are aware that the UK's approach is not seen universally as a positive one. The European Parliament's Foreign Affairs Committee, in a report on the EU's human rights policy published on 30 March 2012, raised the question of EU accession to the Convention and said that it "deplores the obstructionist attitude of some Member States, notably France and the United Kingdom".[22] We invited the FCO to confirm that the Government was still in favour of EU accession. It gave a slightly oblique reply, saying that the UK remained committed to fulfilling the obligation under the Treaty of Lisbon and that it was "playing a full and constructive part" in negotiations.[23] It summarised the various complexities (also noted by the then Secretary of State for Justice in evidence to the European Scrutiny Committee and to a House of Lords Committee last September)[24] and stressed the importance of getting the terms of accession and the accompanying EU internal rules correct from the outset, as they would be "extremely difficult to amend".[25] **We support the approach being taken by the**

17 http://www.justice.gov.uk/news/press-releases/moj/uk-delivers-european-court-reform

18 Human Rights and Democracy: The 2010 FCO Report, page 110

19 FCO supplementary written evidence, Ev 108

20 Amnesty written submission para 35, Ev 40

21 Human Rights and Democracy: the 2011 FCO Report, page 152

22 Report on the Annual Report on Human Rights in the World and the European Union's policy on the matter, Committee on Foreign Affairs, European Parliament A7-0086/2012

23 Supplementary written evidence from the FCO, Ev 108

24 Evidence given on 14 September 2011 by the Secretary of State for Justice to the House of Lords European Union Sub-Committee E, on Justice and Institutions: see http://www.parliament.uk/documents/lords-committees/eu-sub-com-e/euaccessiononHR/cEUE-110914-KennethClarkeMP.pdf. Evidence given on 7 September 2011 by the Secretary of State for Justice to the House of Commons European Scrutiny Committee: see http://www.publications.parliament.uk/pa/cm201012/cmselect/cmeuleg/1492/contents.htm

25 Supplementary written evidence from the FCO, Ev 108

**Government in negotiations on EU accession to the European Convention on Human Rights.** We will continue to monitor developments, while noting that the Ministry of Justice is taking the lead in negotiations.

## Thematic issues

### *Women's human rights*

14. In March 2011, the Government launched a cross-departmental action plan to tackle violence against women and girls.[26] Although the plan is chiefly for implementation within the UK, it includes a role for the FCO, alongside the Ministry of Defence and the Department for International Development, in tackling violence against women and girls in conflict and post-conflict countries through the implementation of the UK National Action Plan on UN Security Council Resolution 1325, on women, peace and security. A Written Ministerial Statement was made to Parliament in October 2011 on the annual review of progress under the National Action Plan, and a revised Plan was published in February 2012.[27]

15. We note fears that, although the FCO states that gender equality and women's empowerment is a priority,[28] its commitment to women's human rights might take second place to the desire for stability in conflict-affected areas, and hard-won gains in women's human rights might be "traded away" in deals to achieve reconciliation, for instance with the Taliban.[29] We also note suggestions that the Government's Ministerial Champion for Tackling Violence against Women and Girls was constrained by a lack of budget and authority within government.[30] The Home Office (as the Department within which the Ministerial Champion was located until September 2012) has allocated £28 million over four years for specialist services to address violence against women and girls.[31]

16. The poor state of women's rights in certain countries continues to give serious cause for concern. The FCO concludes that despite commitments by the Afghan government to promote and protect women's rights, implementation of those commitments is weak.[32] Allegations of repression by Taliban groups, including attacks on women, 'honour killings' and acts designed to deny education to girls persist,[33] and prospects for women and girls' rights following the withdrawal of the International Security and Assistance Force (ISAF) by 2014 are uncertain, to say the least. **We ask the FCO to indicate what steps it is taking to safeguard the rights of women and girls in Afghanistan from 2014.**

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26 Human Rights and Democracy: The 2011 FCO Report, page 62

27 Human Rights and Democracy: The 2011 FCO Report, page 106

28 Human Rights and Democracy: The 2011 FCO Report, page 62

29 Amnesty International written submission paras 17 and 18, Ev 37

30 Amnesty International para 19, Ev 37; see also submission from World Vision UK and others, Ev 104

31 http://www.homeoffice.gov.uk/crime/violence-against-women-girls/vawg-funding/

32 Human Rights and Democracy: The 2011 FCO Report, page 168

33 See for instance Daily Telegraph 26 June 2012, http://www.telegraph.co.uk/news/worldnews/asia/afghanistan/9356291/The-war-on-women-being-waged-in-Afghanistan.html; also Human Rights Watch, at http://www.hrw.org/asia/afghanistan

17. The FCO's human rights report also records evidence that women in Iraq continue to suffer significant human rights abuses, including "unacceptably high" numbers of 'honour killings'; and it notes claims by Human Rights Watch that women's rights have suffered from "a rise in tribal customs and religiously influenced political extremism".[34] In a positive development, the Kurdistan Regional Government has passed a law outlawing domestic violence, including female genital mutilation. We note that an FCO-funded project may have helped to pave the way for this legislation, and **we request that the FCO inform the Committee what steps it is taking to encourage the Iraqi government to ban female genital mutilation across Iraq and to have this practice banned world-wide.**

18. **We ask the FCO to indicate what steps it is taking to safeguard the rights of women and girls in Pakistan and world-wide.**

### *Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence*

19. The UK was criticised in evidence for the delay in signing the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, despite its claims to have played an "active part" in its negotiation.[35] The same issue arose last year, and the Government, in its response to our previous report on the FCO's human rights work, while it maintained that it "broadly" supported the Convention, said that it had difficulties (not specified) with certain articles which would require changes in policy and/or legislative reform. It said that it had written to Government departments to ask for information on the implications of signing the Convention, and it hoped to be in a position to announce a final decision by the end of 2011.[36] Little progress seemed to have been made by April 2012, when the FCO published its 2011 Human Rights and Democracy report, in which it reiterated that it was "generally supportive" of the principles underpinning the Convention but that areas had been identified that needed further consideration before a final decisions could be made on whether to sign the Convention.[37] Once again, it said nothing about what those areas might be.

20. In its submission to our inquiry in May 2012, Human Rights Watch said that the Government appeared to have "gone backwards" on the issue, and it argued that the UK's credibility was being undermined by its failure to sign.[38] Shortly afterwards, however, on 8 June 2012, the Government finally announced that the UK had indeed signed the Convention.[39] **We commend the Government for signing the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, although we are concerned that the delay in signature—and the failure to explain publicly the reasons for the delay—may have damaged perceptions of the UK's commitment to women's human rights.**

34 Human Rights and Democracy: The 2011 FCO Report, page 267

35 Human Rights and Democracy: The 2011 FCO Report, page 152

36 Government response to the Eighth Report from the Foreign Affairs Committee of Session 2010-12,Cm 8169 para 114

37 Human Rights and Democracy: The 2011 FCO Report, page 64

38 Human Rights Watch submission para 13, Ev 73

39 FCO press release 8 June 2012

## *Children's human rights*

21. We noted in our report last year on the FCO's human rights work a sense among children's rights organisations that the FCO was according a lower priority than in the past to children's human rights. That sense persists: written submissions to this year's inquiry from UNICEF, BOND Child Rights Group,[40] and a group of organisations principally concerned with improving the lives of children affected by armed conflict[41] all argued in favour of placing children more centrally in the FCO's activities and in the Human Rights Report itself. Some believed strongly that the FCO was "deprioritising" children's rights:

> Despite the inclusion of the additional section relating to safeguarding children, the overall discussion of child rights in the 2011 Report is limited, comprising only four sub-sections. This shows that children's rights are not a serious consideration or concern for the FCO, and certainly not a priority.[42]

A number of suggestions were made for enhancing the profile of children's rights within the FCO, including:

- The inclusion in next year's report of details of activities to support child victims of armed conflict;
- Ensuring that the Ministerial Champion for Tackling Violence against Women and Girls has the resources to promote effective initiatives;
- The inclusion of a member on the Secretary of State's Advisory Group who has expertise in child rights; and
- Production of a new child rights strategy.[43]

22. Some of these proposals were aired last year, and the FCO acknowledged in its response to our report last year that it had no plans to draw up a new child rights strategy, although it said that "our embassies and high commissions do pursue work on child rights where this is of particular local concern". It also said that members of the Secretary of State's Advisory Group on Human Rights[44] had been identified "because of their ability to contribute across the range of human rights issues", and it told us that "while there is no representative from a child rights-specific organisation, many if not all of the Group's members are familiar with child rights issues".[45]

23. We asked the Minister what the FCO was doing to address the impression among children's rights organisations that the FCO had set a lower priority for children's rights in its work. In reply, he said that he had "never heard that accusation made".[46] Given that the

40 A network of over 20 NGOs and research organisations concerned with child rights: see Ev 48

41 World Vision UK, Save the Children UK, Child Soldiers International, and War Child UK

42 BOND Child Rights Group, para 4.8, Ev 49

43 Ev 48 and 102

44 See paragraph 24 below

45 Government response to the Eighth Report from the Foreign Affairs Committee, Session 2010-12, Cm 8169, para 117

46 Q 162

matter was raised by the Committee last year,[47] we find this difficult to accept. While we question whether the FCO has in fact downgraded children's rights within its work, **we recommend that the FCO undertake urgent work to address negative perceptions among voluntary sector groups of its commitment to children's human rights abroad.**

## FCO policy development and staffing

### *Secretary of State's Advisory Group*

24. As we noted in our report last year on the FCO's human rights work in 2010-11, the Secretary of State has established an Advisory Group on Human Rights. When announcing the formation of the advisory group in November 2010, he said that it "will ensure that I have the best possible information about the human rights situation in different countries, and can benefit from outside advice on the conduct of our policy".[48] The Group meets twice a year and is chaired by the Secretary of State. Three sub-groups have been formed, on the death penalty, torture, and freedom of expression on the internet respectively; these have been chaired by Jeremy Browne MP, as the then FCO Minister with responsibility for human rights.

25. We asked witnesses from Amnesty International and Human Rights Watch—both of them organisations which are represented on the Advisory Group—for an assessment of the Group's work so far. David Mepham, UK Director of Human Rights Watch, told us that meetings lasted for two hours and that Group members "have an opportunity to raise issues of concern, to raise questions and to make points to the Foreign Secretary", and he believed that the Foreign Secretary had been genuinely interested and engaged. However, while he saw it as "very nice to have two hours to make your case to the Foreign Secretary", he told us that he was not clear whether the Group was there to voice its concerns or to act as a sounding board, or to serve as a forum for new ideas.[49] He also described proceedings as "a fairly wide-ranging 'whatever we want to put on the table, we can put on the table' discussion".[50]

26. We asked both Mr Mepham and Mr Croft (representing Amnesty International) for examples of a clear impact of the Advisory Group's work on FCO policy. Mr Mepham suggested that the inclusion of case studies in the 2011 FCO Report might have resulted from collective pressure at Group meetings; and Mr Croft believed that the FCO's policy on freedom of religion and belief had been strengthened because of dialogue within the Advisory Group on the impact of religious views on women and lesbian, gay, bisexual and transgender (LGBT) communities.[51] Mr Croft also believed that holding the discussions in the presence of the Secretary of State had probably enhanced the status of human rights strategies within the FCO.[52]

47 The FCO's Human Rights Work 2010-11, Eighth Report from the Committee, Session 2010-12, paragraphs 142-3

48 HC Deb 11 November 2010, col 23-24 WS

49 Q 6

50 Q 9

51 Q 7

52 Q 6

27. Clearly there is value in treating the meetings of the Advisory Group as a chance for members to air their concerns, and it displays a welcome openness on the part of the Foreign Secretary. However, a more constructive approach might be to devote more time to inviting comment on specific policy areas or—even better—FCO draft policy documents, so that Group members have a chance to offer genuine advice and to influence policy development directly. Some work of this nature already occurs at sub-group level: the work of the Sub-group on Torture Prevention on the draft torture prevention strategy is a good example.[53] **We recommend that the Secretary of State's Advisory Group adopt a more consultative format for its meetings and that specific draft policy proposals be put regularly to the Group for comment and advice.**

### *Staffing on human rights*

28. The Committee has conducted a long discussion with the FCO over the years about the numbers of full-time human rights staff employed at overseas posts. The FCO, while saying that human rights is a top priority for all policy staff at all locations, has maintained that "for operational and security reasons we cannot give further details of staff deployments and activity levels".[54] When questioned during a debate in Westminster Hall about why the FCO was reluctant to release these figures, when the Ministry of Defence had supplied lists of defence attachés in overseas posts, broken down by rank, the Minister replied that:

> "the matter of the defence attachés is different because it involves a different department. Our caution is not designed to obscure a commitment to human rights. Our commitment is demonstrated by the work that we do and the fact that everybody is imbued with this sense of commitment, as opposed to numbers".[55]

29. However, in a letter to the Committee Chairman on 25 January 2012, the Secretary of State said that he had asked the Department "to do further work on estimating the scale of resource devoted to human rights work across the network".[56] The fruits of that work appeared in the FCO's 2011 Human Rights and Democracy report, which said that:

> The amount of staff resource devoted varies over time because these responsibilities are carried out at different levels of seniority, in response to developments. For individual staff this work is normally one part of a broader role. We estimate that we have approximately 240 full-time employees equivalent (FTEs) working on human rights across the network, both in the UK and overseas. This includes 25 permanent staff, plus one contracted Human Rights Adviser within the Human Rights and Democracy Department in London".[57]

53 See Human Rights and Democracy 2011, page 49

54 Correspondence between the FCO and the Rt Hon Ann Clwyd MP: see debate on human rights in Westminster Hall, 26 January 2012, col 170WH

55 HC Deb, 26 January 2012, col 188WH

56 Not published

57 Human Rights and Democracy: the 2011 FCO Report, page 27

To place these figures in context, we observe that the total number of FCO whole-time equivalent staff during 2011-12 averaged 13,694, of which 4,530 were UK-based, 8,685 were locally engaged, and 479 were non-permanent staff.[58]

30. We invited Mr Browne, as the Minister then responsible for human rights, to tell us how many embassies or High Commissions had a UK-based officer working full-time on human rights. Mr Browne could not supply a precise answer, although he noted that there were "a few in countries that are of particularly grave concern and where we have big embassies", such as China. When pressed, he pointed out that human rights would be an element in the work of many Embassy staff, for instance those working on commercial or environmental matters, and that it would be a "bizarre" form of measurement which excluded (for instance) an ambassador who spent 95% of his time on human rights. Mr Browne stressed that the FCO had already gone to considerable effort to provide figures for full-time equivalents.[59]

31. While we were grateful for the effort which had been made, and while we accepted the various provisos which would attach to any figure, we continued to have difficulty in understanding why the FCO could not supply, as a matter of fact, a number for staff working full-time on human rights, however small. Eventually, having been pressed further during oral evidence, the FCO did offer a figure in subsequent correspondence:

> A survey of our posts covering multilateral work with international organisations, our twenty-eight countries of concern and four case study countries shows the number [of staff working full-time on human rights] for these countries is 14. This is made up of eight UK-based staff and six locally-engaged staff.

The FCO reiterated that there were many posts where there were staff for whom human rights was a "key priority" and for whom human rights work took up the majority but not all of their time, and it observed once again that "taking the full-time figures in isolation does not therefore represent an accurate reflection of the importance we attach to human rights work across our overseas network".[60] We accept this explanation and are grateful for the information provided. **However, we request that the FCO inform us what training on human rights and on relevant strategy documents is provided for FCO staff during their careers, how the FCO's human rights objectives are reflected in staff job descriptions, and how individual performance in pursuit of those objectives is evaluated.**

58 Foreign and Commonwealth Office Annual Report and Accounts 2011-12, HC 59, page 92. Figure excludes employees of Wilton Park and of "other designated bodies".

59 Qq 146 to 161

60 Ev 107-8

# 3 "Countries of concern"

## *The size of the list*

32. The number of "countries of concern" identified by the FCO has increased from 26 in the 2010 report to 28 in the 2011 report. The new additions are Fiji and South Sudan: Fiji is included because of restrictions on the right of assembly and on freedom of expression, the minimal progress towards implementation of the recommendations accepted following the 2010 UN Universal Periodic Review of human rights in Fiji, the failure to make significant headway in meeting commitments agreed with the EU, and the very limited progress towards constitutional dialogue or democratic elections.[61] South Sudan, which gained independence on 9 July 2011, has inherited instability and an underdeveloped framework for the protection of human rights.

33. Identifying a country as being "of concern" sends a signal to the country concerned and to non-governmental organisations in the human rights field that the Government regards failings in human rights standards as grave enough to warrant a prominent statement of disapproval. There is also a link between designation and FCO funding: Dr Vijay Rangarajan, Director of Multilateral Policy at the FCO, told us that countries of concern received the £5 million available in dedicated human rights funding, so that when a country was added to the list, it became eligible and the FCO focused resources upon it.[62] If the steady increase in the number of countries of concern were to continue, therefore, and the link with eligibility for funding from the human rights and democracy programme were to remain in place, the programme would come under increasing pressure and the amounts available for each "country of concern" could diminish. We note that other funding streams are available for human rights work.

34. Jeremy Browne MP, the then FCO Minister with responsibility for human rights, told us that, over time, "we should be looking, where we can, to take countries off the list" and that "it would be depressing if we felt that no country of concern ever improved enough to be removed from the country of concern list".[63] Yet it is proving rather harder to drop countries than to add them: as we noted last year, only Indonesia and Nepal have ever been removed.[64] We can see the difficulty for the FCO, in that the binary nature of the system—a country is either 'of concern' or not 'of concern'—makes it difficult to reward steady improvement other than by removing a country from the list entirely, which signals that the FCO no longer has significant reservations, when in practice the situation is likely to be rather muddier.

35. The FCO has gone some way towards removing the inflexibility of annual designation by publishing online quarterly updates on the FCO website, which allow it to react more quickly to developments (good or bad) and, conceivably, to move countries on or off the list mid-year. The FCO has also included in the 2011 report, for the first time, "case

61 Human Rights and Democracy: The 2011 FCO Report, pages 242-3

62 Q 75

63 Q 74

64 Eighth Report from the Foreign Affairs Committee, Session 2010-12, HC 964, paragraph 50

studies" of countries where conditions are not thought to be so serious as to merit the "country of concern" designation but where the FCO nonetheless judges that close analysis and reporting are required. The four case studies in the 2011 Report are Egypt, Bahrain, Ethiopia and Rwanda.

36. As we noted last year, the choice of "countries of concern" generates controversy, normally about omissions rather than inclusions. This year, Human Rights Watch challenged the omission of all four of the countries identified as "case studies", noting serious human rights concerns in each one.[65] REDRESS argued that Nepal should have been included, both because of continuing violations of human rights and because of "consistent impunity for violations committed during the country's 10-year conflict".[66] The Church of England Mission and Public Affairs Council questioned the omission of Nigeria, where it noted attacks and killings of Christians and a growing threat of Islamist militancy. It also regretted that the report did not cover every country in depth, unlike the equivalent report published by the US State Department.[67] Others disagreed on this point: Mr Croft, representing Amnesty International, argued that it would be "ridiculous" to try to emulate the American example, and he thought it better that the UK should retain a strong focus on countries where there were "real issues of concern".[68]

### *Criteria for inclusion*

37. In our report on the FCO's human rights work in 2010-11, we asked the FCO to explain more clearly the criteria adopted and the decision-making process employed in arriving at the annual selection of 'countries of concern'. In reply, the FCO said that "countries of concern" were selected by the Foreign Secretary at the end of each calendar year, and that the selection was based on "a range of internal and external human rights reporting, and after consultation with the FCO's ambassadors and high commissioners". The FCO added that it was "difficult to set out the criteria for selection in much greater detail … because of the sensitive nature of much of the material used in the assessment process", but it agreed to try to report on the process as clearly as possible in future.[69] In this year's report, the FCO said that embassies, high commissions and FCO country desks were consulted, and that "along with a country's overall human rights performance during 2011, we considered whether the UK had been particularly active on human rights issues in each country and whether its inclusion in the report might be beneficial in stimulating debate and potential change".[70]

38. In evidence to this year's inquiry, Human Rights Watch described the rationale for selection as "vague and unconvincing", and it suggested that a strong criterion would be whether the UK had real influence with the country concerned, as a result of aid, trade,

65 Q 2

66 Para 29, Ev 88

67 Paras 18 and 19, Ev 61. The State Department's 2011 Country Reports on Human Rights Practices provided detailed commentary on human rights in almost 200 countries: see http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper

68 Q 10

69 Government response to the Eighth Report from the Foreign Affairs Committee, Session 2010-12, Cm 8169, para 39

70 Human Rights and Democracy: The 2011 FCO Report, page 159

security or close diplomatic ties. Mr Mepham gave Ethiopia as an example, pointing out that the UK gave the country more than £300 million each year in development aid and had a substantial staff presence in the country. He reasoned that the UK had potentially "huge amounts of leverage" in Ethiopia and he questioned why the capacity to influence was not regarded by the FCO as a criterion.[71] We question however whether using the measure of the UK's leverage and influence within a country would not in fact distort a decision which should be based on hard facts only.

### *Bahrain*

39. The case of Bahrain illustrates many of our misgivings about the system for designating "countries of concern". In our report last year on the FCO's human rights work, we criticised the FCO for not designating Bahrain as a "country of concern" in its 2010 report, published in April 2011. Our criticism was made in the light of the brutal repression by the authorities of demonstrations against the regime in February and March 2011, in which at least 35 people are known to have died and some 2,000 people were arrested. Military courts were used to try civilians, and medical staff who treated the injured were brought to trial and sentenced to long periods of imprisonment.[72] In July 2011, the King of Bahrain established the Bahrain Independent Commission of Inquiry (BICI) to examine allegations of human rights abuses during the unrest. The Commission, which published a substantial and respected report in November, found evidence of torture and of physical and psychological abuse of detainees. It recommended, amongst other things, that:

- An independent and impartial national commission should follow up and implement the recommendations of the BICI;
- The National Security Authority should become an intelligence-gathering agency without powers of law enforcement or arrest;
- There should be a requirement upon the Attorney-General to investigate claims of torture and other forms of cruel, inhuman or degrading treatment or punishment, and independent forensic experts should be used in such investigations; and
- All convictions and sentences by the National Security Courts where fundamental principles of a fair trial had not been respected should be subject to review in civilian courts.[73]

40. The FCO claimed in its 2011 human rights report that steps had been taken to implement reforms based on the Independent Commission of Inquiry's recommendations,[74] but witnesses to our inquiry believed that there was little evidence of this. They did not accept that the national commission which is to oversee the implementation of the BICI's recommendations was independent, as members had been

71 Q 11

72 Human Rights Watch has reported that charges included calling for a change of government, leading "illegal" demonstrations, "spreading false news" and "harming the reputation of the country". See http://www.hrw.org/world-report-2012/world-report-2012-bahrain

73 http://www.bici.org.bh/BICIreportEN.pdf

74 Human Rights and Democracy: the FCO 2011 Report, page 18

selected by the King; there was little or no sign that the national Human Rights Commission announced by the authorities in Bahrain had begun work; and there was limited confidence in the standards of the civilian courts, to which many cases had been transferred.[75] Human Rights Watch described the case study on Bahrain in the FCO's 2011 Report as "very weak" and told us that the FCO continued to "talk up" progress when in fact there had been none.[76] In recent months, the FCO itself has shown signs of frustration: in July, Lord Howell described progress over the previous four months as having been "frankly, minimal" and he acknowledged that the government in Bahrain had to "go further and implement meaningful political reforms".[77]

### *Conclusions on "countries of concern"*

41. The practice of designating countries of concern can appear inconsistent and restrictive. Distinctions become fine: Saudi Arabia is a "country of concern", despite the FCO's view that there have been "incremental improvements" in human rights (which we observe would be from a very low base) and a "proportionate" policing response to protests;[78] yet Bahrain, where significant numbers died in 2011 and where there was found to be widespread use of torture on those detained after the demonstrations, is not. The designation is restrictive in that it becomes hard for the FCO to remove a country from the list: conditions might improve in some respects (as in Colombia and Cuba) but not sufficiently for the FCO to feel able to defend a decision to remove them from the list.

42. Despite these drawbacks, however, the designation of "countries of concern" serves a useful purpose. It states in a very public fashion that the UK believes that human rights standards in those countries fall well short of what is deemed acceptable internationally. **We recommend that, despite the difficulties inherent in the concept, the FCO should continue to designate "countries of concern".**

43. The process becomes devalued, however, if political and strategic factors are allowed to colour decisions, as we believe has happened with regard to Bahrain. Mr Croft, representing Amnesty International, spoke of "other considerations" that came into play in Bahrain and indeed other countries, which served as a disincentive to listing them as countries of concern.[79] Mr Mepham agreed, noting "the whole geopolitics of the region", which made the FCO "more inhibited about saying what they ought to say".[80] **We believe that Bahrain should have been designated as a country of concern in the FCO's 2011 report on human rights and democracy.** PLATFORM argued that similar considerations, this time related to strategic energy considerations, had made the UK reluctant to criticise what PLATFORM saw as the excessive use of force by the Nigerian government.[81]

75 Qq 13 and 14

76 Para 17, Ev 74

77 HL Deb 13 July 2012, col 1348

78 Human Rights and Democracy: The 2011 FCO Report, page 306

79 Q 11

80 Q 13

81 Ev 82

44. Even if countries are designated as being "of concern", the approach taken by the FCO in the relevant country-specific sections of the human rights report sometimes appears low-key. The section on Saudi Arabia, for instance, cites a recent report by Amnesty International which lists multiple examples of alleged torture of detainees,[82] but the FCO observes that allegations of the use of torture are "common" but "difficult to verify", and it states merely that it will "seek to verify such allegations".[83]

45. **It is inevitable that the UK will have interests which have the potential to conflict with its human rights values: these interests might, for instance, be strategic, commercial or security-related. In pursuing these alongside its human rights work overseas, the UK runs the risk of operating double standards, and our view is that it would be in the Government's interest for it to be more transparent in this respect and for Ministers to be bolder in acknowledging that there will be contradictions. Rather than trying to assert that the two can co-exist freely, part of the Government's role should be publicly to set out and explain its judgments on how far to balance them in particular cases, having taken into account the need to adapt policy according to local circumstances and developments.**

46. **We recommend that the FCO revise its criteria for designating "countries of concern". Decisions on designation, if they are to have maximum credibility, should be based purely upon assessments of human rights standards and should stand up to objective comparison. External factors, such as strategic considerations or the UK's ability to influence developments, should not be allowed to colour those decisions, although they might usefully guide decisions on where to concentrate funding for human rights programmes. If, despite our recommendations, the FCO chooses to continue to use existing criteria, we recommend that the Department uses more flexibility in allocating funds from human rights programme budgets to countries which are not "countries of concern" and where human rights failings are less severe, but where the chances of a lasting beneficial impact are reasonably high**.

82 Saudi Arabia: Repression in the name of security, Amnesty International, December 2011

83 Human Rights and Democracy: The 2011 FCO Report, page 311

# 4 Torture

## Torture prevention

47. The Government says that it consistently and unreservedly condemns torture.[84] The UK was an early signatory to the 1984 UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Unlike China, Russia, the US, India, Pakistan, Japan and the majority of countries in the MENA[85] region, the UK has signed the Optional Protocol to the 1984 Convention (OPCAT), which requires states party to the Protocol to set up or designate at a domestic level independent bodies to monitor places of detention, and to allow visits to such places by representatives of the UN Subcommittee for the Prevention of Torture.[86] The UK is active in encouraging states to sign both the Convention and the Optional Protocol.[87]

48. The FCO's policy on torture prevention was visibly strengthened in two ways during 2011:

- Guidance for FCO staff on reporting information or concerns about torture and mistreatment overseas was updated and reissued;[88]
- A Torture Prevention Strategy was published in October, setting out three aims: that legal frameworks to prevent and prohibit torture should exist and should be enforced; that states should have the political will and capacity to prevent and prohibit torture; and that organisations on the ground should have the expertise and training to prevent torture.[89]

A checklist of activities which FCO posts might use in order to meet these goals is set out at the end of the Guidance.

49. Publication of the Strategy for the Prevention of Torture was generally welcomed in evidence to our inquiry. Mr Mepham said that the Strategy was "fairly comprehensive and touches all the right bases",[90] and Mr Croft described the Strategy and guidance as "very welcome".[91] REDRESS, an organisation which assists survivors of torture in obtaining redress for their suffering, likewise welcomed the Strategy, although it proposed that the Strategy should be expanded, to provide clarity about the right to redress and compensation enshrined under Article 14 of the UN Convention Against Torture:

84 Human Rights and Democracy: the FCO 2011 Report, page 49

85 Middle East and North Africa

86 See http://www2.ohchr.org/english/law/cat-one.htm

87 Human Rights and Democracy: the FCO 2011 Report, page 50

88 Human Rights and Democracy: the FCO 2011 Report, page 49

89 FCO Strategy for the Prevention of Torture 2011-15

90 Q 21

91 Q 25

> Each State Party shall ensure in its legal system that the victim of an act of torture obtain redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.[92]

REDRESS said that it understood that the UK's obligations under the UN Convention Against Torture included enabling redress and compensation for victims to apply not just to victims of torture perpetrated in the UK or by UK agents operating overseas, but also to those who suffered when the UK was complicit in acts of torture perpetrated principally by others, and to UK nationals and others tortured abroad but now present in the UK.[93]

50. We invited the Government to respond on the extent of application, asking specifically whether the responsibility under Article 14 was deemed to extend to

- Non-UK nationals or non-UK residents who had been victims of torture perpetrated in the UK or by UK agents operating overseas;
- victims of acts of torture perpetrated principally by non-UK nationals but in which it was established that the UK was in some way complicit;
- UK nationals tortured abroad.

The Government replied that, in its view, the obligation under Article 14 was owed to anyone to whom Article 2 of the Convention applies, which it deems to include "anyone within the borders of the United Kingdom, as well as any person outside the UK who is nonetheless considered to fall within territory under UK jurisdiction".[94] This would indicate a rather narrower application than that suggested by REDRESS.

51. Domestic implementation of the Convention Against Torture (and of the Optional Protocol) is a matter for the Ministry of Justice, and we note that there is work under way and discussion at an international level on reparations.[95] We have not explored this issue in detail and we therefore make no comment here, except to voice our concern that the Government's policy on reparations to victims of torture, and on eligibility, seems as yet imperfectly defined.

52. **We strongly welcome the publication by the FCO of the Strategy for the Prevention of Torture 2011-15. We believe that there is merit in keeping a tight focus to the Strategy, and we do not support suggestions that its scope should be widened to cover policy on reparations for victims of torture, as this needs to be considered on a case by case basis.**

92 http://www2.ohchr.org/english/law/cat.htm

93 HR 07 para 4

94 Ev 106. The latter category "is determined in light of all the circumstances of a given case".

95 Qq 91-97

## Removal and deportation

### *Removal of asylum seekers*

53. Under Article 3 of the UN Convention Against Torture, signed by the UK in 1985, no state party to the Convention "shall expel, return ('refouler') or extradite a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture." In 2011, 52,526 people subject to immigration controls (i.e. they were not EEA nationals) departed the UK either voluntarily or because they were removed. 8,869 of those (nearly 17%) had sought asylum or were dependants of asylum-seekers.[96] A small proportion of departures are as a result of deportation orders, enforced either following a criminal conviction or when it is judged that a person's removal from the UK is conducive to the public good.[97]

54. *The Guardian* reported on 6 June that a former member of the Tamil Tigers intelligence service claimed to have been tortured after having been deported from the UK to Sri Lanka in June 2011. According to *The Guardian,* his claims were supported by medical evidence. This is not an isolated example: Human Rights Watch told us that it had "documented many cases of torture and ill-treatment (including rape) of failed asylum-seekers at the hands of security forces".[98] The FCO's 2011 Human Rights and Democracy report referred to the open session held by the UN Committee against Torture in November 2011 and to the UN Committee's subsequent report, which noted allegations of widespread torture, secret detention centres, enforced disappearances and deaths in detention in Sri Lanka.[99] We note that concerns about human rights abuses in Sri Lanka have led the Prime Minister of Canada to indicate that he would not attend the Commonwealth Heads of Government Meeting in Colombo in 2013 unless he saw evidence of progress.[100]

55. *The Guardian* reported that the Home Office was still "insisting" that it was safe to return Tamils to Sri Lanka, and it added that several other Sri Lankans had been forcibly deported in late May. Immigration statistics show that a total of 481 asylum seekers were removed or departed voluntarily to Sri Lanka in 2011.[101] Human Rights Watch told us that the UK High Commission in Colombo had examined recent allegations of torture and ill-treatment of failed Tamil asylum-seekers on their return to Sri Lanka and had concluded that the allegations were untrue.[102] When we raised the case cited by *The Guardian* with Mr Browne and FCO officials, they said that "there is certainly a substantial amount of maltreatment and torture in Sri Lanka, but we do not yet have substantiated evidence that the people whom we have returned … have been maltreated".[103] However, the FCO could

96 See http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/immigration-tabs-q1-2012/removals1-q1-2012-tabs

97 See HC Deb 12 July 2012 col 292W

98 Para 29, Ev 76

99 Human Rights and Democracy: the FCO 2011 Report, page 325

100 See http://www.bbc.co.uk/sinhala/news/story/2011/09/110912_canada_commonwealth.shtml

101 HC Deb 30 Apr 2012 col. 1085W

102 Para 29, Ev 76

103 Q 123

not tell us during the evidence session whether there had been any attempt to speak to the person cited by *The Guardian*;[104] and when we pursued this in writing, the Government initially replied that it did not comment on individual cases, that it took allegations seriously, and that asylum and human rights applications from Sri Lankans were "carefully considered on their individual merits in accordance with our international obligations against the background of the latest available country information".[105] Subsequent enquiries elicited a statement that a UK Border Agency representative had indeed spoken to the individual concerned; but the FCO said that it was unable to provide further details of the case as they were confidential, and some information was subject to the Data Protection Act 1998.[106]

56. In addition, the Government failed to give a direct answer to our request for an assurance that it was content that its policy on deportation of Sri Lankans was not putting people at risk of torture.[107] **We find it unsatisfactory that the Government has not been more forthcoming to Parliament about its efforts—in general and in specific cases—to assess the level of risk to the safety of those who are removed from the UK.**

57. We note that the Home Affairs Committee has also voiced disquiet about the return of Sri Lankan asylum seekers to their country of origin and that it raised the matter with the Chief Executive of the UK Border Agency, Mr Rob Whiteman, in December last year. He acknowledged concerns about returns both to the Democratic Republic of Congo and to Sri Lanka, and he accepted that "we clearly do need to look at the conditions of what happens when we make returns".[108] We also note the conclusions of the Independent Chief Inspector of the UK Border Agency in his Annual Report for 2010-11, in which he cited evidence that country information supplied by the UK Border Agency's Country of Origin Information Service had on occasion been used selectively or otherwise inappropriately.[109]

58. We do not have the information necessary to judge whether or not recent claims by Sri Lankan Tamils of torture in Sri Lanka following their deportation from the UK are accurate or fabricated. However, the routine air of the FCO's initial responses to our questions has not given us particular confidence that the FCO is being as energetic as it might in impressing upon the UK Border Agency the degree of risk. We note the institution of a dialogue at official level with Human Rights Watch, Freedom from Torture and the UK Border Agency on the process and information used to assess cases.[110] **We welcome the new channel of communication established between FCO officials, non-governmental organisations and the UK Border Agency to discuss the assessment of risk to those who are removed from the UK. We encourage the FCO to be energetic in evaluating reports by non-governmental organisations and media sources of torture of deportees from the UK, including in Sri Lanka, and in spelling out the risk to the UK**

104 Q 124

105 Ev 106

106 Further supplementary memorandum from the Foreign and Commonwealth Office, Ev 108-9

107 Ev 106

108 Work of the UK Border Agency (August – December 2011), 21st Report from the Home Affairs Committee, HC 1722, Session 2010-12, paragraph 28

109 Independent Chief Inspector of the UK Border Agency, Annual Report 2010-11, page 12

110 Further supplementary memorandum from the FCO, Ev 108

**Border Agency. We also request that the Government clarify the division between the roles of the FCO and of the UK Border Agency's Country of Origin Information Service in gathering the intelligence needed to make accurate assessments of the risk to deportees upon their return to their country of origin.**

### *Deportation with assurances*

59. The Government continues to operate a policy of deportation with assurances (DWA). The FCO's 2011 Human Rights and Democracy report describes deportation with assurances as "an alternative action available to us when our preferred option of prosecution is not possible for foreign nationals who threaten our national security". Under DWA arrangements, the UK is provided with assurances from the receiving country that the human rights of the deportee will be respected upon their return, and monitoring arrangements are put in place. The effect is to enable the UK to deport people to countries where there are substantial grounds for believing that detainees might otherwise be subjected to torture, without infringing the terms of Article 3 of the UN Convention on Torture and Other Cruel, Inhuman or Degrading Acts.[111] Arrangements are already in place with Jordan, Algeria, Lebanon and Ethiopia; a further agreement was signed with Morocco in September 2011, although negotiations over the monitoring arrangement were still in train when the FCO's report was published in April 2012.[112] The most high-profile case under the DWA regime is that of Abu Qatada, who the Government believes to be a threat to the UK's national security and who it seeks to deport to Jordan, where he faces charges of plotting bomb attacks.

60. Human rights groups remain opposed to the use of arrangements for deportation with assurances. Amnesty International said that it did not consider that promises of humane treatment given by governments that practise torture and cruel, inhuman or degrading treatment were reliable,[113] and Human Rights Watch agreed. Mr Mepham told us that a "paper promise" from such governments "does not really stack up" and "is not really worth the paper that it is written on".[114] The Government, for its part, points out that its approach on deportation with assurances was endorsed by Lord Macdonald in his review of counter-terrorism powers, and that individuals are able to challenge deportation in the UK courts.[115]

61. The Government's approach has often been upheld by the courts. In 2005, the Special Immigration Appeals Commission (SIAC) ruled against a person who the Home Secretary wished to deport to Algeria in the interests of national security: the Commission concluded that the parties to the verbal assurances were acting in good faith and that it was "not conceivable" that they had been given "deceitfully" or that the Algerian Government's attitude would change when the person in question was returned.[116] An appeal against

111 See para 53 above

112 Human Rights and Democracy: the 2011 FCO Report, page 87

113 Para 50, Ev 42

114 Q 21 and submission from Human Rights Watch, para 9, Ev 72

115 Human Rights and Democracy: the 2011 FCO Report, page 87

116 Y v Secretary of State for Home Department, Appeal No: SC/36/2005, 24 August 2006. See also House of Commons Library Standard Note SN 04151, Deportation of individuals who may face a risk of torture, http://www.parliament.uk/briefing-papers/SN04151

deportation by an Ethiopian terrorist suspect was likewise dismissed at SIAC in September 2010, and the Court of Appeal rejected an appeal against that judgment in June 2012.[117] A ruling by the Court of Appeal that Abu Qatada could not be removed from the UK because there was a risk that evidence obtained through torture might be used in a trial in Jordan was overturned in February 2009 by the then House of Lords. Although the European Court of Human Rights has since ruled that Abu Qatada could not be returned to Jordan (on the basis that evidence potentially obtained under torture might be admitted at the claimant's re-trial), it nonetheless held that the Memorandum of Understanding between the UK and Jordan underpinning the arrangements for deportation with assurances would not violate Abu Qatada's rights under Article 3 of the European Convention on Human Rights.[118]

62. The FCO says that it "will continue to seek new DWA arrangements in 2012, including considering DWA cases without an overarching framework arrangement, and conduct an independent review".[119] We invited the FCO to clarify the meaning of "without an overarching framework agreement". Mr Vijay Rangarajan, Director of Multilateral Policy at the FCO, told us that overarching frameworks were negotiated when there was a "substantial number of people" who might need to be deported, and when the country concerned was willing to conclude an overarching framework. [120] When fewer people are concerned, an *ad hoc* arrangement without an overarching framework could be sufficient and could be reached more quickly.

63. If arrangements for deportation with assurances are to be trusted, then verification of compliance will be essential. When asked who would do the verification, Mr Rangarajan told us that it would vary from one to state another, depending on whether the organs of state could be trusted.[121] The memoranda of understanding with Jordan, Lebanon and Ethiopia each refer to an independent monitoring body to be nominated jointly by the two countries concerned. There is no such reference in the exchange of letters which underpins the DWA arrangement between the UK and Algeria.

64. We share the unease held by others with the practice of deportation with assurances, although we acknowledge that those threatened with deportation have the right to challenge a deportation order in the UK courts. However, we believe that arrangements for monitoring and verification should be strengthened and made public. We note that Lebanon is currently the only one of the countries with which the UK has agreed arrangements for deportation with assurances to have signed the Optional Protocol to the UN Convention Against Torture (OPCAT), under which states party undertake to permit regular independent monitoring of places and conditions of detention. **We conclude that arrangements for deportation with assurances would command greater confidence if both parties to the agreement were to have signed the Optional Protocol to the UN Convention Against Torture (OPCAT) which would signify that the states concerned**

117 The case concerned is XX v Secretary of State for the Home Department [2010] UKSIAC 61/2007.

118 House of Commons Library Standard Note SN 04151, Deportation of individuals who may face a risk of torture, http://www.parliament.uk/briefing-papers/SN04151

119 Human Rights and Democracy: the 2011 FCO Report, page 88

120 Q 112

121 Qq 121-122

**permitted regular independent monitoring of places and conditions of detention. We also recommend that the Government should inform Parliament of the names of the individuals or bodies responsible for monitoring the conditions under which those deported are being held, and the arrangements made for follow-up monitoring.**

65. Memoranda of Understanding relating to existing DWA arrangements are public documents and are available on the FCO website.[122] We note the undertaking by the Secretary of State to notify Parliament and the Committee if and when new DWA arrangements are agreed.[123] The House was informed of the most recent agreement, concluded with Morocco, by means of a Written Ministerial Statement on 8 November 2011; and copies of the Memorandum of Understanding were placed in the Library of the House and on the FCO website. However, none of the memoranda of understanding concluded so far have been subject to any Parliamentary procedure. A more stringent process applies to comparable instruments, such as:

- Statements of Changes to Immigration Rules, which may be "disapproved" by a resolution of either House of Parliament;[124]
- Treaties, which are laid before Parliament and which may, in many cases, be challenged by Parliament.[125]

We also note that Parliament may question a Department's intention to take on a contingent liability or to make a gift in excess of £250,000: a Minute is laid before Parliament and Government approval is withheld for 14 sitting days, during which a Member may signify objection.[126] Treasury guidance states that any such indemnity "should not normally go live until the objection has been answered".[127]

66. **We acknowledge the efforts made by the Government to keep Parliament informed of new arrangements for deportation with assurances. However, these are matters of such significance within Parliament that we believe that a greater degree of accountability is warranted. We recommend that texts of memoranda of understanding between the UK and foreign states relating to arrangements for deportation with assurances should be laid before Parliament. We further recommend that such memoranda of understanding should not come into force before 14 sitting days have elapsed, during which time Members may signify any objection.**

67. **We welcome the forthcoming independent review of deportation with assurances (DWA) arrangements announced in the FCO's 2011 Human Rights and Democracy**

122 Ev 106

123 Government response to the Committee's Eighth Report of Session 2010-12, Cm 8169, response to recommendation 20

124 If a Statement of Changes to Immigration Rules laid before either House of Parliament is disapproved by resolution of either House within 40 sitting days, the Secretary of State "shall, as soon as may be, make changes in the rules … as appear to him to be necessary". See section 3(2) of the Immigration Act 1971.

125 Under section 20 of the Constitutional Reform and Governance Act 2010, a treaty subject to the Act is not to be ratified before 21 sitting days have passed, during which either House of Parliament may resolve that the treaty should not be ratified. If either House does agree such a resolution, and if the Government wishes to proceed with ratification, a Minister must lay before Parliament a statement indicating why the treaty should be ratified.

126 See Erskine May, 24th edition, pages 134-5

127 Managing Public Money, HM Treasury, Annex 5.5.26

**report. We request that the Government indicate what exactly will be reviewed, by whom, and to whom the results of the review will be made available.**

## Rendition

68. The practice of extraordinary rendition has been a running concern for this Committee and its predecessors over the years. Our recent report on British foreign policy and the 'Arab Spring' included an annex collating the statements made by Ministers to the Committee on the subject.[128]

69. Our report last year on the FCO's human rights work in 2010-11 set out the chronology of events since the Prime Minister's announcement to the House on 6 July 2010 that an independent inquiry, led by a judge, would "look at whether Britain was implicated in the improper treatment of detainees, held by other countries, that may have occurred in the aftermath of 9/11".[129] Sir Peter Gibson was appointed to lead the inquiry, which became known as the Detainee Inquiry.

70. When the terms of reference and the protocol for how the Inquiry would operate were published, on 6 July last year, there were widespread criticisms of the process by human rights groups; and on 4 August 2011, lawyers representing Britons detained in Guantánamo Bay, and 10 NGOs (including Amnesty, Liberty, Justice and Human Rights Watch) wrote to the Inquiry saying that they could not co-operate in a process where evidence would be heard largely in secret, where the Government would decide what would be published, and the victims would not be able to question, or even identify, witnesses from MI5, MI6, or other agencies.[130] Human Rights Watch reiterated that view to us, describing the remit and powers of the Inquiry team as "seriously deficient".[131]

71. On 12 January this year, the Director of Public Prosecutions and the Metropolitan Police Service announced that allegations made in two specific cases, concerning the alleged rendition to Libya of Abdel Hakim Belhaj and Sami al-Saadi and the alleged ill-treatment of them in Libya, were so serious that it was in the public interest for them to be investigated immediately. Given that investigations may take many months if not years, the Justice Secretary announced to the House on 18 January 2012 that the Detainee Inquiry would cease its work. The Justice Secretary said that "the Government fully intend to hold an independent, judge-led inquiry, once all police investigations have concluded, to establish the full facts and draw a line under these issues".[132] In the meantime, it has been announced that the Detainee Inquiry team has supplied to the Prime Minister a report on its preparatory work, and the Government has said that it remains committed to publishing as much of this 'interim' report as possible.[133]

128 British foreign policy and the 'Arab Spring', Second Report from the Foreign Affairs Committee of Session 2012-13, HC 80, Annex 2

129 HC Deb, 6 July 2010, col 176

130 http://www.guardian.co.uk/law/2011/aug/04/torture-inquiry-boycotted-human-rights

131 Para 8, Ev 72

132 HC Deb 18 January 2012, col 752

133 HC Deb 17 July 2012, col 132WS

72. On 27 January this year, the two Libyans who alleged British involvement in their rendition to Libya in 2004—Abdel Hakim Belhaj and Sami al-Saadi—instructed Leigh Day & Co to serve papers on Sir Mark Allen, a former MI6 officer who is alleged to have been complicit in the operation. The papers represent a first step in bringing a civil action for damages. On 17 April, following publication of an article in the *Sunday Times* which quoted sources as alleging that the Rt Hon Jack Straw MP, when Foreign Secretary, had personally authorised rendition of the two Libyans, Leigh Day & Co served papers on Mr Straw. We note that the Intelligence and Security Committee has suspended an inquiry into the allegations made by Mr Belhaj and Mr al-Saadi pending police investigations. It plans to resume its investigations, however, as soon as it is able to do so.[134] We note that although the issue does not at present fall within the scope of the House's *sub judice* resolution (as it is not currently active in a UK court), the Government has no intention of entering into any public discussion on the matter while it is the subject of litigation.[135] For reasons of both practicality and propriety, therefore, we have similarly refrained from examining the issue in any detail.

73. The decision to bring the Detainee Inquiry to a premature end was disappointing but understandable, given the difficulty of proceeding in parallel with police investigations and, potentially, court proceedings. However it is not clear to us why the police investigations should be so protracted. **The long drawn-out nature of police investigations into cases of alleged rendition has had an unacceptable impact on the work of the Detainee Inquiry and of this Committee and others. We request that the Government explain to us why the investigations by the Metropolitan Police into claims made by Abdel Hakim Belhaj and Sami al-Saadi are expected to take so long to conclude**.

74. The next step should be to try to reach agreement with interested parties—including human rights groups—on a future inquiry format which is trusted by all concerned. Representatives of Amnesty International and Human Rights Watch told us that they had not yet had discussions with the FCO about the future inquiry, although Mr Croft envisaged that the Government might once again propose a format which fell short of their requirements.[136] **We recommend that the Government and human rights organisations should start to explore ways of finding a mutually acceptable basis on which the successor inquiry to the Detainee Inquiry can proceed. However, while we value transparency in principle, we question whether total transparency could be applied to all proceedings of the successor inquiry without hindering, rather than assisting, the inquiry team in getting to the truth of the matter**.

75. **We make no comment at this stage on developments in allegations of UK complicity in rendition. We reiterate, however, that we would be deeply disturbed if assurances given by Ministers over many years to this Committee's predecessors that the UK had not been involved in rendition were shown to be inaccurate. We expect to return to this issue.**

134 Intelligence and Security Committee Annual Report 2011-12, Cm 8403, paragraph 143

135 See Q 193 of oral evidence given by Mr Alistair Burt MP on 18 April 2012, and letter from the Secretary of State to the Committee, dated 10 May 2012, Ev 126, British foreign policy and the 'Arab Spring', HC 80, Session 2012-13. See also paragraph 72 of Departmental Evidence and Response to Select Committees, Cabinet Office, July 2005.

136 Q 48

# 5 Applying public pressure

76. As part of its "active and activist foreign policy", the FCO seeks to promote British values, including human rights, and to contribute to the welfare of developing countries and their citizens.[137] Much of that work will be carried out through specific projects, fostering the development of media freedom or of women's rights, for example; or it may occur through the quiet but steady exercise of influence at a personal level by staff at FCO missions overseas. Occasionally, the UK Government will judge that some sort of public pressure is the best means of indicating the UK's disapproval of a foreign state's human rights policy or standards. Economic sanctions and boycotts of international events are examples of such pressure.

## Economic sanctions

77. As the FCO notes in its 2011 Annual Report on human rights and democracy, multilateral sanctions are not intended to punish: rather, they are designed to coerce and constrain those they target with the aim of changing their behaviour, and to send a political signal.[138] Much academic effort has been expended on trying to determine whether economic sanctions are effective in achieving their aim. Even if the desired outcome appears to have occurred, establishing a causal link with the enforcement of sanctions is difficult.

78. Furthermore, achieving watertight sanctions when there are multiple, competing trading interests can be almost impossible. When giving evidence to the Committee last year, Jeremy Browne MP (the then FCO Minister with responsibility for human rights) appeared to question the value of sanctions, noting that "that model is becoming harder to sustain—in fact, it may already be past its peak—when other countries in the world that do not, or do not appear to, or whose Governments do not, share those values supply the country that we have sanctions against". He concluded that "a bit of a rethink about the tools that we have at our disposal" was required.[139] The Foreign Secretary reiterated this view in a speech at the Dutch Ministry of Foreign Affairs on 9 July 2012, when he said that "we have to adapt to the fact that some of our traditional diplomatic measures, including EU sanctions, will have a weaker impact as the EU's share of global GDP declines relative to the rest of the world".[140] However, despite the cautionary note sounded by the Foreign Secretary, we note that an FCO Minister felt able to state on 25 June that sanctions were "a key reason" why Iran had agreed to talks with the E3+3[141] on the use of nuclear material.[142] We also note the widespread belief that the effects of the sanctions regime on Libyan oil companies in 2011 contributed to the downfall of Colonel Gaddafi's regime.

137 FCO Annual Report and Accounts 2011-12, Statement of Priorities, p13: "Our Purpose".

138 Human Rights and Democracy: the 2011 FCO Report, page 137

139 Evidence given on 23 May 2011, Q 97, HC 964 (Session 2010-12)

140 http://www.fco.gov.uk/en/news/latest-news/?view=Speech&id=785973682

141 UK, France, Germany, China, Russia and the US

142 Alistair Burt MP, HC Deb, 25 June 2012, col 90W

### *Burma*

79. Recent events in Burma, which has long been subject to economic sanctions, provide a good case study. The EU's sanctions regime against Burma dates back to the mid-1990s, and concerns about the absence of progress towards democracy in Burma and at the continuing violation of human rights led the EU Council to adopt a Common Position in October 1996 which has provided the basis for subsequent measures. The sanctions regime has encompassed dealings with the Burmese timber, mining and precious minerals industries, visa restrictions for named individuals, an arms embargo, asset freezes on individuals and businesses, and the suspension of all but humanitarian aid.

80. Burma has been one of the FCO's "countries of concern" since 2005, when the designation was first conceived; and it had been listed since 1999 in the FCO's annual Human Rights reports as a country posing a "challenge". However, after a long period of isolation from the West, a change of direction became evident in Burma during 2011. As the FCO noted in its annual report on its human rights work in 2011, the Burmese government opened up a process of dialogue with the most prominent opposition figure, Aung San Suu Kyi; media and internet restrictions were relaxed to some extent; laws permitting the establishment of independent trade unions were passed; and political prisoners were released. In response, the FCO has "moved to a new level of engagement" with the Burmese government, and the Foreign Secretary visited Burma in January this year—the first British Foreign Secretary to do so since 1955.[143]

81. Evidence of reform prompted Western countries to review the sanctions regime in force. At the EU Foreign Affairs Council in Luxembourg on 23 April, which was attended by the Foreign Secretary, the Council decided to suspend all sanctions against Burma for twelve months, excepting the arms embargo and the supply of equipment that could be used for internal repression. The US had already lifted travel and certain financial restrictions; Canada suspended most sanctions on 24 April; and Australia lifted all remaining travel and financial sanctions on 7 June.[144]

82. The Rt Hon David Lidington MP, as Minister for Europe, wrote to the Committee Chairman on 9 May with a summary of the discussion and conclusions of the EU Foreign Affairs Council on 23 April. He reported that "the Foreign Secretary stressed [to the Council] that sanctions had given the EU significant leverage"; and he also argued in a blog on the FCO website that EU sanctions had been "part of the mix of international pressure" which had led to the decision on the part of the Burmese government to initiate reforms.[145] However, the FCO's 2011 report on human rights steers clear of drawing any conclusions on the effectiveness of sanctions in Burma, and the reasons are understandable. The Burmese economy had been sustained by investment from China and Thailand and was on an upward rather than a downward trend, having grown by 5.5% from 2010 to 2011. At least one NGO has questioned whether sanctions had the opposite effect to that which was desired:

143 Human Rights and Democracy: the 2011 FCO Report, page 178-9

144 The Age (Melbourne), 7 June 2012

145 http://blogs.fco.gov.uk/davidlidington/2012/04/25/what-has-been-the-effect-of-eu-sanctions-on-burma

> "The sanctions were counter-productive and reinforced suspicions against the West … It gave them a justification for maintaining power and perversely, it helped to maintain military rule … The generals have learnt to survive within the sanctions".[146]

83. The EU's decision partially to suspend sanctions needed to be finely judged. Although there is clear evidence of a positive approach by the Burmese Government to reform in certain areas, serious infringements of human rights continue. The FCO's 2011 annual report on human rights cites reports of gender-based violence by the military, and censorship and denial of rights to ethnic minorities. There was serious conflict with ethnic armed forces in Kachin State in 2011, and by the end of the year, nearly 50,000 people had been internally displaced from the State.[147] Violence has also flared in Rakhine State in western Burma, where the Muslim Rohingya minority has been subjected to serious discrimination.[148] The Government has registered with the Burmese President and the Burmese Minister for Foreign Affairs its deep concern at the violence in Rakhine State.[149] We note that the Burmese Government announced in August that it would establish an independent Investigative Commission to examine the violence in Rakhine State.[150]

84. There is also uncertainty about the extent to which political prisoners have been released. In a letter to the Committee Chair following a debate on human rights in Westminster Hall in January this year, Alistair Burt MP, as the FCO Minister responding to the debate, listed "the release of all political prisoners [in Burma] in time for the by-elections on 1 April" as one of the preconditions for supporting the lifting of EU sanctions. Yet, although the EU agreed in April to suspend sanctions, there is doubt about whether all political prisoners had in fact been released. Some 200 had been released in October 2011; but a newspaper report in May 2012 quoted the National League for Democracy[151] as suggesting that there remained "about 330" political prisoners, and the Assistance Association for Political Prisoners (based in Thailand) cited a figure of "more than 900".[152] The Secretary of State told the House in May, during the Queen's Speech debate on foreign affairs, that there were still prisoners who the Burmese opposition argued were political prisoners. He added then that "we are now at the stage of definitions of what constitutes a political prisoner. We and the opposition in Burma may have a differing view from the Government there".[153] In June, he confirmed that he believed that there were still political prisoners in Burma;[154] and an FCO Minister reported that a further 25 political prisoners had been released in July this year.[155] It should be borne in mind that the release of a prisoner may be only temporary: Amnesty International warned that those released might

146 Jim Della-Giacomo, South East Asia project director, International Crisis Group, quoted on the BBC website: http://www.bbc.co.uk/news/world-asia-pacific-17781745

147 Human Rights and Democracy: The 2011 FCO Report, page 183

148 See HC Deb 4 July 2012, col 661W

149 HC Deb 17 July 2012, col 722W

150 See FCO press release 20 August 2012

151 The Burmese political party led by Aung San Suu Kyi

152 The Nation, Bangkok, 6 May

153 HC Deb 15 May 2012, col 422

154 HC Deb 19 June 2012 col 740

155 Lord Howell, HL Deb 13 July 2012, col WA 282

be on long-term parole and were liable to have their freedom revoked for minor offences which could be trumped up easily.[156]

85. We have not undertaken an in-depth assessment of whether the economic sanctions imposed multilaterally upon Burma achieved their desired effect. However, **we are satisfied that enough progress towards reform has been made in Burma to justify some relaxation of the EU's sanctions regime, although we are in no doubt that Burma's human rights record remains seriously blemished. We believe that the UK can and should build on the current climate of goodwill to press for wider reform, including access to those still held in detention as political prisoners or for political offences or for politically-motivated reasons.** Developments in Rakhine State, however, appear grim. **We recommend that the UK urge the Burmese authorities to permit independent observers to visit Rakhine State, to gather objective evidence on the extent to which the rights of the Rohingya minority are being respected.**

## Boycotts of international events

86. On at least three occasions this year, major international events have taken place in countries widely recognised as having flawed records on human rights: the Formula One Grand Prix in Bahrain in April, the Eurovision Song Contest in Azerbaijan, and the 2012 UEFA European Football Championship (Euro 2012), partly hosted by Ukraine. In each case, there were suggestions that the event should be boycotted in protest.[157]

87. There were no plans for the UK Government to be officially represented at the Bahrain Grand Prix. There was pressure, however, on Formula 1 sponsors, drivers and the media to boycott the race, and some suggested that the UK Government should lend its support to such calls. The Prime Minister, however, said:

> It's a matter for Formula 1, but let me be clear, we always stand up for human rights and it's important that peaceful protests are allowed to go ahead … I think we should be clear that Bahrain is not Syria, there is a process of reform underway and this government backs that reform and wants to help promote that reform.[158]

Mr Burt, giving evidence to us on 18 April on the Arab Spring, took the same line.[159]

88. It emerged on 7 June that no UK Government ministers would attend England's three group games in the first stage of the Euro 2012 football championship in Ukraine, and that attendance at later stages of the tournament was being kept "under review in the light of ministers' busy schedules ahead of the Olympics and widespread concerns about selective justice and the rule of law in Ukraine".[160] The FCO's 2011 report on human rights noted that 2011 was a "year in which Ukraine's respect for democratic principles and the rule of

156 Mr Croft Q 57

157 See for example http://www.guardian.co.uk/world/2012/mar/11/azerbaijan-eurovision-song-contest-boycott and http://www.bbc.co.uk/news/uk-politics-17782601

158 http://www.bbc.co.uk/news/uk-politics-17782601

159 British foreign policy and the 'Arab Spring', Second Report from the Foreign Affairs Committee, Session 2012-13, HC 80, evidence given on 18 April 2012, Q 226.

160 http://m.bbc.co.uk/news/uk-politics-18351326

law had been called into question, principally over the detention, trial and convictions of opposition political leaders".[161] The FCO pointed to evidence that trials had been seriously flawed and politically motivated, and the Rt Hon David Lidington MP, as Minister for Europe, registered dismay at the physical abuse by prison staff of the former Prime Minister, Yulia Tymoshenko.[162] Senior European Commission figures, including the President and Viviane Reding (Justice Commissioner) announced that they would not attend Euro 2012 events in Ukraine, and Chancellor Merkel also said that no-one from her Cabinet would attend games played by Germany in Ukraine.[163]

89. We questioned the Minister on the Government's policy, noting that there appeared to be inconsistencies both in its approach to the different stages of Euro 2012 and between the official lines taken with regard to the Bahrain Grand Prix and to Euro 2012. He accepted that the FCO was open to such charges, while saying that "it is very difficult to have absolute consistency in these matters"; and he pointed out that he had seen no comment in the media in favour of a boycott of the Chinese Grand Prix held in Shanghai, despite China's record of serious human rights abuses. He sought to justify the decision to impose at least a partial boycott of Euro 2012 events in Ukraine on the basis that "it was felt … important that the British Government demonstrated the concerns that exist here in Parliament about human rights in Ukraine. That was what was thought to be an appropriate signal of disapproval".[164]

90. Witnesses representing human rights groups took a different view. Jeremy Croft, representing Amnesty International, said that Amnesty did not call for boycotts of sporting events because "we just do not believe that will achieve human rights change". Human Rights Watch also had a policy of not calling generally for boycotts of sporting or cultural events. Indeed, Mr Mepham observed that "we use the opportunity of those events to bring pressure to bear and to draw public attention to the abuses that are taking place there".[165] He referred to the "huge amount of advocacy and media work" which Human Rights Watch had undertaken to try to expose human rights abuses in Bahrain, and he noted that the issue had "got a lot of coverage" because of the Formula One Grand Prix. He also anticipated that the intense media coverage of the Eurovision Song Contest in Azerbaijan would present opportunities to draw attention to human rights abuses in the country.

91. **We find it difficult to discern any consistency of logic behind the Government's policy in not taking a public stance on the Bahrain Grand Prix but implementing at least a partial boycott of the 2012 UEFA European Football Championship matches played in Ukraine.**

161 Human Rights and Democracy: The 2011 FCO Report, page 146

162 http://www.fco.gov.uk/en/news/latest-news/?view=News&id=758774282

163 http://www.guardian.co.uk/world/2012/jun/07/euro-2012-boycott-ukraine-uk-government

164 Q 135

165 Q 55

## Denial of visas for entry to the UK

92. The FCO's 2011 report on human rights states that

> Britain welcomes visitors from around the world … but not those who have perpetrated human rights abuses. Foreign nationals from outside the European Economic Area may only come to the United Kingdom if they satisfy the requirements of the Immigration Rules. Where there is independent, reliable and credible evidence that an individual has committed human rights abuses, the individual will not normally be permitted to enter the United Kingdom.[166]

The Minister with responsibility for human rights confirmed, in correspondence with the Committee, that there had been a change in presumption, designed to leave human rights abusers "in no doubt where we stand".[167] However, that message is not particularly visible, as the Government does not routinely comment on individual cases and does not normally publicise the fact that an entry visa has been denied.[168] We also query the statement by the Minister that there exists a power to deny entry to the UK to those who are *implicated* in human rights abuses:[169] in theory that might extend to people who are guilty of nothing and are merely the subject of unfounded allegations. **We ask the Department to confirm that the presumption against the granting of visas to enter the UK on human rights grounds would only apply to people against whom there was evidence that they had abused human rights.**

93. The exercise of the power to deny entry to non-EEA nationals on human rights grounds became a high-profile issue as a result of the case of Mr Sergei Magnitsky, a Russian lawyer who was arrested in November 2008 while investigating an alleged tax fraud against the Russian state by law enforcement officials, and who was taken into pre-trial detention, where he died nearly a year later. In July 2011 the Russian Presidential Council for Civil Society and Human Rights found that Mr Magnitsky had been denied medical treatment while in detention, and that there was "reasonable suspicion to believe that the death was triggered by beating".[170] We note that Mr Magnitsky's case is not an isolated one: according to the FCO, between 50 and 60 people die in pre-trial detention facilities in Russia every year.[171] According to the Russian Federal Penitentiary Service, 107,800 people were held in pre-trial detention in Russia on 1 October 2011.[172] Delays and a lack of progress in investigating deaths of human rights activists, lawyers and journalists continue, and prominent figures who fall foul of the Russian authorities face detention for long periods on dubious grounds (Mikhail Khodorkovsky being just one example). We also note the constraints on freedom of expression, as illustrated most recently by the

166 Human Rights and Democracy, the 2011 FCO Report, page 55

167 Ev 106

168 See HC Deb 7 March 2012, col 935

169 Ev 109

170 http://russian-untouchables.com/rus/docs/Civil-Right-Council-conclusion-report-Executive-summary-ENG.pdf

171 Human Rights and Democracy: The 2011 FCO Annual Report, page 302

172 See http://www.rbcdaily.ru/2011/11/01/focus/562949981927754

imposition of a sentence of two years' imprisonment on members of the Russian punk band Pussy Riot, for having "crudely undermined social order".[173]

94. Hermitage Capital Management, the firm for which Mr Magnitsky worked, sent us a written submission recommending the public denial of visas and asset freezes for individuals who held responsibility in the chain of events which led to his death. Motions proposing such a course have been agreed to in the Dutch Parliament (but not taken up by the executive) and in the European Parliament. Legislation is proceeding through the US Congress which would introduce targeted visa bans and asset freezes for individuals held responsible not just for Mr Magnitsky's death but also for any extrajudicial killings, torture, or other gross violations of internationally recognised human rights in Russia.

95. Even though the Government maintains that it does not routinely publicise the identity of banned individuals, it may well be that visas are already being refused to those linked to Mr Magnitsky's death.[174] The question which we have considered is whether the benefit to the Government and the UK in signalling publicly its insistence on human rights values could justify making public the denial of entry to those believed to be in serious breach of them. When we asked the Minister to explain why such decisions were not routinely made public, he told us that

> If you get into justifying each individual case, you could make the case for justifying all kinds of new categories, and you could then make the case for legal appeals against the individual cases and we would end up with a hugely complicated system. For some people, for reasons of confidentiality or sensitivity, I think it would probably be regarded as reasonable not to release the details that underlie the decision. The position has been taken by successive Governments that it is better policy to have an overall policy that people understand, but not to comment on individual cases.[175]

Mr Browne accepted that publicising the refusal of a visa on human rights grounds "would send out a powerful message", but he suggested that there might be other, "less glorious" considerations which needed to be weighed against such an approach. Examples of such considerations might include the danger of prejudicing a trial in the country of origin, or the danger of retaliation against British nationals.[176] In further correspondence, the Government referred to the general duty of confidentiality "which means that it would not normally be appropriate to discuss details of individual immigration cases". The Government added that

> it is also unhelpful to the effective operation of this policy to enter into a public debate about who should and should not be banned from the UK. Such decisions are by their nature emotive but need to be taken on the basis of objective and verifiable evidence available to Ministers.[177]

173 http://www.bbc.co.uk/news/world-europe-19297373

174 See HC Deb 7 March 2012, col 937

175 Q 130

176 Q 131

177 Ev 107

96. Entry clearance policy is of course a Home Office responsibility, but the Foreign and Commonwealth Office retains a strong policy interest, and we are anxious that this should not be sidelined. We accept that routine disclosure of the fact that an entry visa had been denied might be inappropriate; but we detect an element of dogma and inflexibility in the Government's defence of its policy. **We conclude that publicising the names of those who are denied visas to enter the UK on human rights grounds could be a valuable tool, when used sparingly, in drawing attention to the UK's determination to uphold high standards of human rights, and we recommend that the Government make use of it.**

# 6 Business and human rights

97. We noted in our report last year on the FCO's human rights work the greater emphasis placed by this Government on the FCO's role in supporting the UK's commercial interests. One of the Department's three "overarching priorities" is "building Britain's prosperity by increasing exports and investment, opening markets, ensuring access to resources, and promoting sustainable global growth".[178] Ambitious targets have been set for boosting trade with emerging markets, and the Department has undertaken to move resources in order to ensure that "we have the staff on the ground to exploit the potential of these high growth markets and to engage with them on global issues including international trade and development, energy and environmental issues".[179]

## Promoting responsible business practice

98. There is an unresolved debate about the extent to which vigorous promotion of trading opportunities for the UK can co-exist with the UK's drive to promote its human rights values around the world. The Prime Minister himself acknowledged the strains that can exist, during a speech to the Kuwait National Parliament in February 2011:

> For decades, some have argued that stability required highly controlling regimes, and that reform and openness would put that stability at risk. So, the argument went, countries like Britain faced a choice between our interests and values. And to be honest, we should acknowledge that sometimes we have made such calculations in the past.[180]

The FCO maintains that support for business interests and for human rights can be mutually supportive, arguing that "it is in the UK's interests to work towards a world that is prosperous, fair and stable, and our ability to promote human rights effectively rests on our economic strength as a nation". The Department does not deny that the UK trades with countries with "less than perfect" records in terms of human rights; but it takes the view that it is in the UK's national interest—and that of the people of such countries—that the UK should "continue to engage with them at all levels, including through trade and investment links". The FCO manages risk through an export licensing system designed to ensure that goods are not exported if they might be used for internal repression; and it is committed to raising concerns about human rights "wherever and whenever they arise, including with countries with whom we are seeking closer commercial ties".[181]

99. We queried the Department's somewhat optimistic view in our report last year on the FCO's human rights work, concluding that "we are not as confident as the FCO that there is little conflict between its pursuit of both UK commercial interests and improved human rights standards overseas". We invited the Department to provide examples from recent years of "countries of concern" in which a significant UK international commercial

178 Foreign and Commonwealth Office Annual Report 2011-12, HC 59, page 3

179 Foreign and Commonwealth Office Annual Report 2011-12, HC 59, page 9

180 Full text of speech on Number Ten website (www.numberten.gov.uk)

181 Human Rights and Democracy: the FCO 2011 Report, page 111

relationship or presence was associated with improved human rights standards. The Department declined, in its response, to comment on the performance of specific companies, although it drew attention to the work of the UK National Contact Point in sponsoring conciliation and mediation in relation to complaints against British companies in the Democratic Republic of Congo, Pakistan and Uzbekistan.

100. The FCO, in co-operation with other UK Government departments, offers or promotes a wide range of support structures to encourage responsible business practice, such as:

- The OECD Guidelines for Multinational Companies, setting out recommendations for responsible business conduct, for governments of adherent states (not exclusively OECD Member States) to promote amongst firms based in those countries.[182] The Department for Business, Innovation and Skills hosts the UK "National Contact Point", which raises awareness of the Guidelines and is responsible for administering the complaints mechanism;[183]

- Voluntary Principles for Security and Human Rights, concluded between the US and UK Governments, to guide companies (chiefly those in the energy and extractive sectors) "in maintaining the safety and security of their operations within an operating framework that ensures respect for human rights and fundamental freedoms";[184]

- The FCO's Charter for Business, setting out seven commitments through which the FCO will support UK businesses abroad;[185]

- The Overseas Business Risk Service, a joint FCO and UK Trade and Investment (UKTI) website, which provides UK businesses with information on political, economic, and business security-related risks, and advice on markets and issues in relation to those risks;[186]

- The Business and Human Rights Toolkit,[187] which aims to give guidance to political, economic, commercial and development officers in UK overseas missions on how to promote good conduct by UK companies operating overseas.

101. The UN has also played a major part in the development of guidance for responsible business practice. In July 2005, the Secretary-General appointed Professor John Ruggie as Special Representative on Business and Human Rights, charged with identifying and

182 See http://www.oecd.org/document/18/0,3343,en_2649_34889_2397532_1_1_1_1,00.html

183 The UK National Contact Point considered four complaints in 2011, two relating to labour and human rights issues in Uzbekistan, one relating to environmental issues in Azerbaijan, Georgia and Turkey, and one relating to labour rights in Malaysia. The Uzbekistan cases were resolved through mediation sponsored by the UK National Contact Point. In the other cases, the National Contact Point concluded that the companies concerned had not acted within the OECD Guidelines, and the companies took steps to strengthen procedures to ensure that they complied in future. See Human Rights and Democracy: The 2011 FCO Report, pages 114-5

184 See http://www.voluntaryprinciples.org/files/voluntary_principles_english.pdf

185 http://www.fco.gov.uk/resources/en/pdf/global-issues/prosperity/business-charter

186 http://www.ukti.gov.uk/export/howwehelp/overseasbusinessrisk/aboutus.html

187 Produced jointly by the FCO, the Department for International Development, the Department for Business, Innovation and Skills, and the UK Trade and Investment. See http://www.fco.gov.uk/resources/en/pdf/3849543/bus-human-rights-tool.pdf

clarifying standards of corporate responsibility and accountability with regard to human rights. Professor Ruggie drew up Guiding Principles for the Implementation of the UN "Protect, Respect and Remedy" Framework, which were endorsed at the UN Human Rights Council in June 2011. The three "pillars" of the Framework are the state duty to protect human rights, the corporate responsibility to respect human rights, and access to remedy. The Guiding Principles set out how governments and businesses should act in order to implement the Framework and are designed to "be understood as a coherent whole and … be read, individually and collectively, in terms of their objective of enhancing standards".[188] The FCO states that the UK was a strong supporter of Professor Ruggie in his work, [189] and the Foreign Secretary announced on 30 April this year that implementation of the Guiding Principles would be one of the two particular focuses of an additional £1.5 million funding for human rights programme work in 2012.[190] Bids for project work to support implementation of the Guiding Principles are assessed against a published strategy and specified criteria, including impact, sustainability and value for money.

### *The FCO's proposed Business and Human Rights Strategy*

102. Once the UN Guiding Principles had been endorsed, the FCO announced that it would develop a UK business and human rights strategy, to be launched in mid-2012. The Strategy would "provide clear guidelines to British businesses about the Government's expectations of their behaviour overseas in respect of the human rights of people who contribute to or are affected by their operations". As part of the strategy, the FCO will reinforce training on business and human rights for Government staff, relaunch the Business and Human Rights Toolkit, update the Overseas Business Risk Service, and signpost businesses to other voluntary initiatives, guidance and best practice.[191]

103. Witnesses welcomed the intention to draw up a Business and Human Rights Strategy. UNICEF UK, for instance, believed that the Strategy would have "the potential to provide much-needed clarity across Whitehall departments";[192] but the Catholic Agency for Overseas Development (CAFOD) pointed out that the FCO appeared to be working towards a strategy which was based entirely on guidance, training and other voluntary initiatives, whereas the UN Guiding Principles called for a "smart mix" of measures – policy, soft law and hard law. CAFOD argued that the FCO's approach would be insufficient and would effectively merely re-badge the status quo.[193]

104. Others were more explicit in identifying the limits of the FCO's approach. Amnesty International (and others) said that the UK should accept that the human rights impacts of UK companies' actions abroad engaged the UK's international human rights obligations:

> We are in different places here with the Government on this one. We would argue that they have concrete obligations for the way in which British companies function

188 See http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

189 Human Rights and Democracy: the 2011 FCO Report, page 113

190 HC Deb, 30 April 2012, col 54WS

191 Human Rights and Democracy: the 2011 FCO Report, page 114

192 Para 3.2, Ev 101. See also submission from Pavel Khodorkovsky, para 4.6, Ev 79

193 CAFOD recommendations 2 and 4, Ev 55. See also Amnesty International submission, para 53, Ev 43

> abroad. They would say that they do not and that they only have those obligations within their own territory.[194]

Human Rights Watch made a similar point, arguing that the UK's domestic legislation should ensure that UK companies operating internationally respected human rights standards.[195] The Government, however, maintains that "under international human rights law, states retain the primary responsibility for the protection and promotion of human rights within their jurisdictions".[196]

105. Mr Croft (representing Amnesty International) also suggested that there should be some form of controls or disincentives for companies with a poorer record in respecting human rights abroad, for instance in terms of access to Government procurement opportunities or investment support.[197] Export credit guarantees would also be a possible lever. We note that guidance for applicants published by UK Export Finance[198] makes clear that an assessment will be made of the environmental, social and human rights impacts of any project for which a guarantee is sought; but there is no explicit statement that the human rights impact of recent activity by the business concerned would be taken into account.[199] More stringent forms of accountability were proposed by PLATFORM[200] and by Human Rights Watch, both of which advocate a requirement on UK companies to report on the human rights implications of their work abroad.[201]

### *Extra-territorial jurisdiction*

106. We invited the Government to explain what it saw as the obstacles to making UK firms (or firms contracted by the UK Government) subject to UK law for their actions overseas. The Government replied that

> As a general rule the criminal law of England and Wales is territorial in scope … which reflects the principle that crimes are best addressed by the criminal justice system of the state in which they occurred. Conduct that amounts to an offence in the United Kingdom will not amount to an offence if it occurs outside the United Kingdom, unless there is specific statutory provision to the contrary.[202]

However, the Government went on to say that there was now a "growing body of provisions creating exceptions to the general rule", providing extraterritorial jurisdiction in

194 Mr Croft Q 59

195 Human Rights Watch submission, para 11, Ev 73. PLATFORM made the same point in Recommendation 5 of its submission, Ev 84.

196 Human Rights and Democracy: The 2011 FCO Report, page 112

197 Q 60

198 Formally known as the Export Credits Guarantee Department

199 See http://www.ukexportfinance.gov.uk/assets/ecgd/files/prods-servs/guidance-on-processes-and-factors.pdf

200 PLATFORM is an organisation which "monitors the social, economic, environmental and human rights impacts of the British oil and gas industry". See Ev 80

201 PLATFORM submission, Recommendation 2, Ev 84; Human Rights Watch submission para 12, Ev 73. See also UNICEF submission para 3.12, Ev 102

202 Ev 107

a range of criminal offences, including genocide and torture, homicide, sex offences against children, and bribery. The Government said that

> These exceptions stem from the pursuit of domestic policy objectives, and from the United Kingdom's ratification of internationally agreed instruments, reflecting a consensus between nations that certain crimes need to be addressed by a concerted international response that includes the assumption of extraterritorial jurisdiction by participating states.[203]

107. Companies can already, in some circumstances, be held liable under UK law for offences committed outside the United Kingdom. The Bribery Act 2010 is one example. The Government, again, provided useful detail:

> An offence is committed by a corporate body when it can be proved that, although the offending conduct may have been undertaken by, for example, an employee of the body, a person who is righty identified as a 'directing mind' of the body was possessed of the necessary state of mind for the offence.[204]

108. The application of extra-territorial jurisdiction has been a significant issue for the Committees on Arms Export Controls, which have called for extra-territorial jurisdiction to apply to a wider range of goods subject to arms export controls.[205] We note that, in 2007, there were twenty-nine types of offence committed overseas for which a British citizen could be prosecuted in the UK.[206] A Home Office Steering Committee undertook a review of extra-territorial jurisdiction in 1996 and drew up criteria to be taken into account when deciding whether extra-territorial jurisdiction should be taken in respect of particular offences. One of these criteria was "Where it appears to be in the interest of the standing and reputation of the UK in the international community". In our view, this might be taken to include actions by businesses based in the UK.

### *Conclusions on business and human rights*

109. **We welcome the FCO's intention to develop a Business and Human Rights Strategy, which may give some unity of form to the various initiatives and resources already in place to promote responsible business practice. However, it appears that the Strategy will be couched exclusively in terms of guidance and voluntary initiatives. While these are undoubtedly worthwhile, we believe that they do not on their own meet the spirit of the UN Guiding Principles on Business and Human Rights, which envisage that states will take "appropriate steps to prevent, investigate, punish and redress abuse through effective policies, legislation, regulations and adjudication".**

110. One way to give more weight to the Government's promotion of responsible business practice overseas would be to extend extra-territorial jurisdiction to cover, for instance,

203 Ev 107

204 Ev 107

205 First Joint Report of Session 2012-13 from the Committees on Arms Export Controls, HC 419-I, paragraphs 22ff.

206 See Annex 2 to the First Joint Report of Session 2012-13 from the Committees on Arms Export Controls, HC 419-I. Information based upon Archbold Criminal Pleading, Evidence and Practice 2007; information supplied by House of Commons Library.

rights relating to working conditions, or environmental impacts upon living conditions. However, we acknowledge that this would represent a major change, with significant consequences for businesses in terms of compliance. We have not taken enough evidence to come to a fully informed view, but **we recommend that the Government should not dismiss out of hand the extension of extra-territorial jurisdiction to cover actions overseas by businesses based in the UK, or by firms operating under contract to the UK Government, which have an impact on human rights. Relying on local administration of justice may not be enough to preserve the international reputation of the UK for upholding high standards of human rights.**

111. **We recommend that the Government should consider linking provision of Government procurement opportunities, investment support and export credit guarantees to UK businesses' human rights records overseas.**

## Controlling the supply of goods for potential use in repression

### *Arms*

112. The value of defence and security exports by UK firms in 2011 was £8 billion, representing over 15% of the world defence market, a higher percentage than that achieved by either France or Russia.[207] The operation in 2010-11 of the licensing system designed to mitigate the risk that material supplied by UK firms might be used in internal repression or territorial expansion was examined in detail by the Committees on Arms Export Controls in their First Joint Report of this Session, published in July.[208] That Report dwelt at length on the lessons to be drawn, in the light of the 'Arab Spring' uprisings, from the UK's policy in authorising sales of arms to repressive regimes in the region; and the Committees concluded that there was demonstrable evidence that the initial judgements to approve the applications were flawed.[209]

113. On 6 February 2012, the Department for Business, Innovation and Skills wrote to the Chair of the Committees on Arms Export Controls to inform him of the 18 countries which were to be the priority markets for arms exports.[210] Two of these countries—Libya and Saudi Arabia—are also designated as "countries of concern" in the Foreign and Commonwealth Office's 2011 report on human rights. The Campaign Against Arms Trade was highly critical of this overlap. It pointed out that the value of goods for which licences for export to Saudi Arabia were granted in 2011 was £1.735 billion, greater than the value of licences for export to any other single country. It also described the reinstatement of Libya in the list of priority markets, despite signs of continuing instability in the country, as "amazing".[211]

207 UKTI press release PN 34, issued on 30 April 2012

208 First Joint Report of Session 2012-13 from the Committees on Arms Export Controls, HC 419-I. The Committees on Arms Export Controls are the Business, Innovation and Skills Committee, the Defence Committee, the Foreign Affairs Committee and the International Development Committee.

209 First Joint Report of Session 2012-13 from the Committees on Arms Export Controls, HC 419-I, paragraph 208. See also submission from the Campaign Against Arms Trade, paragraph 5, Ev 56

210 Australia, Brazil, Canada, Europe/NATO/EU (as a collective market), India, Indonesia, Japan, Saudi Arabia, Kuwait, Libya, Malaysia, Oman, Qatar, South Korea, Thailand, Turkey, United Arab Emirates and the USA. See First Joint Report of Session 2012-13 from the Committees on Arms Export Controls, HC 419-I, paragraph 93

211 Campaign Against Arms Trade submission paragraphs 7 and 9, Ev 56-7

114. The Rt Hon Vince Cable MP, Secretary of State for Business, Innovation and Skills, told the Committees on Arms Export Controls that the presence of two countries on both lists did not indicate an absence of "joined-up government"; and he said that, in countries where there were human rights issues, the Government applied controls "selectively".[212] However, when we asked Mr Browne, as the then FCO Minister with responsibility for human rights, whether he had personally been consulted on the proposed list of priority markets, he could not recall having had a conversation on the issue. Nor was he able to tell us which countries appeared on both lists.[213] He and his officials did, however, assure us that the FCO would have been consulted on the proposed list of priority markets and that the FCO's human rights department was consulted on all arms exports decisions.[214] Mr Browne also observed that featuring on the two lists was not necessarily incompatible: while a particular country might use some types of arms for internal repression, it might have acceptable purposes in mind for other defence or security material, such as disrupting drug smuggling operations.[215]

115. **We accept the FCO's assurances that its human rights department is consulted on all arms export decisions. We are surprised, however, that the FCO Minister responsible for human rights appears not to have been consulted by the Department for Business, Innovation and Skills on the list of priority markets for forthcoming arms exports, and that the overlap between priority market countries and "countries of concern" was not brought to his attention. We believe that it should have been, and we recommend that BIS and FCO officials take steps to prevent such lapses in the sharing of information on arms exports between ministers, and explain how this will be done.**

### *Export of telecommunications technology*

116. Amnesty International drew our attention to "credible allegations" that businesses (not necessarily ones based in the UK) were supplying telecommunications technology to certain countries despite "convincing" reports that it was being used to violate freedom of expression on the internet. It cited Libya, Egypt, China and Iran as examples of countries where this was thought to have occurred.[216]

117. We raised this with the Minister, who agreed that it was "a very good point", although we were surprised to hear him say that the issue had not been discussed in the Secretary of State's Advisory Sub-group on Freedom of Expression on the Internet.[217] He warned that it might be difficult to put in place a framework which would prevent companies from exporting such technology, and that companies from other countries might soon step in to fill any void.[218] We accept that these are difficulties which might arise; but they seem to us to be equally applicable to arms exports, for which the UK has nonetheless acknowledged the need for a licensing system. Similar issues arise in relation to surveillance technology, as

212 Q 63, HC 419-II, Session 2012-13

213 Qq 84-5

214 Qq 84 and 87

215 Q 86

216 Amnesty submission paragraph 33, Ev 39

217 Q 166. See paragraph 24 on the Secretary of State's Advisory Group

218 Q 166

the Committees on Arms Export Controls observed in their recent Joint Report.[219] **We recommend that the Government, in its response to this Report, set out the scope for controlling the supply by UK nationals, or by companies based in the UK, of telecommunications equipment for which there is a reasonable expectation that it might be used to restrict freedom of expression on the internet.**

# 7 Conclusion

118. **The UK has a strong record in upholding human rights across the world, and the FCO's 2011 Report on Human Rights and Democracy provides ample evidence of its work in promoting higher standards of human rights abroad, sometimes under difficult circumstances. That work is widely recognised within the sector, and we applaud it. We hope that the constructive criticism in this Report will enable the FCO and indeed the Government, collectively, to improve upon that performance.**

219 First Joint Report of Session 2012-13 from the Committees on Arms Export Controls, HC 419-I, paragraphs 182-3

# Formal Minutes

## Tuesday 11 September 2012

Members present:

Richard Ottaway, in the Chair

Mr Bob Ainsworth
Mr John Baron
Sir Menzies Campbell
Ann Clwyd
Mr Frank Roy
Sir John Stanley
Rory Stewart

Draft Report (*The FCO's human rights work in 2011*), proposed by the Chair, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 and 2 read and agreed to.

Paragraph 3 read, amended and agreed to.

Paragraphs 4 to 15 read and agreed to.

Paragraph 16 read, amended and agreed to.

Paragraph 17 read, amended and agreed to.

Paragraph—(*Sir John Stanley*)—brought up, read the first and second time, and inserted (now paragraph 18).

Paragraphs 18 to 37 (now paragraphs 19 to 38) read and agreed to.

Paragraph 38 (now paragraph 39) read, amended and agreed to.

Paragraphs 39 and 40 (now paragraphs 40 and 41) read and agreed to.

Paragraph 41 (now paragraph 42) read, amended and agreed to.

Paragraphs 42 and 43 (now paragraphs 43 and 44) read and agreed to.

Paragraph 44 (now paragraph 45) read, amended and agreed to.

Paragraphs 45 to 50 (now paragraphs 46 to 51) read and agreed to.

Paragraph 51 (now paragraph 52) read, amended and agreed to.

Paragraphs 52 to 63 (now paragraphs 53 to 64) read and agreed to.

Paragraph 64 (now paragraph 65) read, amended and agreed to.

Paragraph 65 (now paragraph 66) read and agreed to.

Paragraph 66 (now paragraph 67) read, amended and agreed to.

Paragraphs 67 to 81 (now paragraphs 68 to 82) read and agreed to.

Paragraph 82 (now paragraph 83) read, amended and agreed to.

Paragraphs 83 to 89 (now paragraphs 84 to 90) read and agreed to.

Paragraph 90 (now paragraph 91) read, amended and agreed to.

Paragraph 91 (now paragraph 92) read, amended and agreed to.

Paragraph 92 (now paragraph 93) read, amended and agreed to.

Paragraph 93 (now paragraph 94) read, amended and agreed to.

Paragraphs 94 to 99 (now paragraphs 95 to 100) read and agreed to.

Paragraph 100 (now paragraph 101) read, amended and agreed to.

Paragraphs 101 to 117 (now paragraphs 102 to 118) read and agreed to.

Summary read, amended and agreed to.

*Resolved*, That the Report, as amended, be the Third Report of the Committee to the House.

*Ordered*, That the Chair make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for printing with the Report, together with written evidence reported and ordered to be published on 12 June.

[Adjourned till Tuesday 18 September at 10.00 am.

# Witnesses



# List of printed written evidence

# Oral evidence

## Taken before the Foreign Affairs Committee

## on Tuesday 22 May 2012

Members present:

Richard Ottaway (Chair)

Mr Bob Ainsworth
Sir Menzies Campbell
Ann Clwyd
Mr Frank Roy
Sir John Stanley

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**Examination of Witnesses**

*Witnesses:* **Jeremy Croft**, Head of Policy and Government Affairs, Amnesty International UK, and **David Mepham**, UK Director, Human Rights Watch, gave evidence.

**Q1 Chair:** I welcome members of the public to this session of the Foreign Affairs Select Committee. It is the first of two evidence sessions for the Committee's inquiry into the FCO's human rights work in 2011. I am delighted to welcome our two witnesses today. Mr Jeremy Croft is Head of Policy and Government Affairs at Amnesty International UK, and Mr David Mepham is the UK Director of Human Rights Watch. I welcome you both. Would you like to say anything by way of opening statements?

***David Mepham:*** I am happy to kick off.

**Chair:** In these sessions, just bounce off each other. There is no formal routine for answering questions.

***David Mepham:*** Thank you, Mr Chairman, for this opportunity to address the Committee and to have a dialogue with you about human rights policy. All I want to say by way of introduction is that Human Rights Watch and, no doubt, Amnesty welcome the fact that this Government, like its predecessor, produces an annual report on human rights and democracy. We think that is a positive contribution to the debate about what this country is doing around the world to better protect and promote human rights.

I am responsible for Human Rights Watch's work on human rights here in the UK. I have equivalents to me in Paris, Berlin and many other capitals around the world, and there is genuine envy about the level of parliamentary interest in human rights in this country, as opposed to that in some other countries around the world. It is very much to the credit of this Government, its predecessor and you and your Committee that you have taken time to have a serious discussion about what this Government is doing to protect and promote human rights around the world. Although we disagree with some of the things contained in the report—no doubt, we will come to those in the session—we have a basis for a very good dialogue and discussion.

**Chair:** Thank you. We take it very seriously on this Committee.

***Jeremy Croft:*** I certainly echo what David has said in relation to the reporting process. I suppose my opening comment would be to say that this is an opportunity to look at human rights in their entirety across the world. One of the things that are apparent at the moment is that a lot of the old certainties have been swept away, but we do not know what will take their place. That is an opportunity, but it is also a threat. Certainly, one of the things that we are looking for is how the UK Government will approach those opportunities, use them and ward off the threat.

**Q2 Chair:** Thank you. You will have seen the report. It seems to be getting bigger and bigger; does that mean it is getting any better? Do you have any general observations about the way in which the Foreign Office is presenting this?

***Jeremy Croft:*** Yes. It's a very comprehensive report. It is longer than the last one, and that is good. I find that, in parts, the treatment is uneven. Some sections are extremely strong. Some of the country sections are probably the best I have seen in four or five years of looking at these documents.

We said last year that the issue that was uppermost in our minds was the fact this was a report of activities, not outcomes. We see evidence now that it is trying to set objectives in each area, but they are very general objectives that can be strengthened. We would keep pushing, as the Committee did last year, for more evidence of what your activities are achieving. Where that comes through in the report, the report will be that much more useful for all of us.

***David Mepham:*** I think we had three comments on the content and format of the report that would be useful to share with the Committee. The first is on the very important section of the report that is about countries of concern. It seems to us that the question of the criterion for which countries are included and excluded remains pretty vague and unconvincing. The report does set out in a paragraph the kinds of things that are taken into account when making decisions about who is included and excluded. Interestingly, it says that if it will help to stimulate a debate in the country concerned, that might be a reason for including it.

This year, we have seen Fiji added, so it pushes up the numbers a little bit, but we at Human Rights Watch are still very concerned that countries like Ethiopia, Rwanda, Bahrain and Egypt—countries in which the UK has a significant presence and over which it has some real potential leverage—are not designated as being countries of concern. The Foreign Office has made some concession, possibly in response to pressure that we have brought to bear over

the past 12 months, and it has little case study boxes on Bahrain, Ethiopian and Rwanda. You could say that that is an improvement, but they are still not described as being countries of concern, despite the fact that there are serious human rights concerns in relation to each of them.

**Q3 Chair:** We will come to countries of concern shortly, but we just want your general overview.
***David Mepham:*** Can I make one other comment about the format of the report? To echo what Jeremy said, I still think there is a tendency in the report to be pretty discursive and to say, "We did X. We met the Foreign Minister. We supported this particular project." Some of that information is useful, but what we and, no doubt, the Committee want to know in terms of real accountability is: what were you trying to change in Uzbekistan, China, Ethiopia, or wherever it may have been, and how much progress did you make against your change objectives? It still tends to be a bit of a list of activities rather than benchmarks against change objectives for which it can be held accountable.

**Q4 Chair:** Do you think that the report should still have been published in hard copy, or would you be happy if it were just on the internet?
***David Mepham:*** Personally, I quite like the hard copy, but perhaps I am a bit of a Luddite—I like something to hold and read. It is also useful to have the online reporting. That is an innovation, and they are updating it on a quarterly basis, which is useful.

**Q5 Chair:** Online?
***David Mepham:*** Yes.
***Jeremy Croft:*** I would echo the point. It is important that it is available as a hard copy, but the one improvement they have made is making it available online and doing the quarterly updates. It is more of a living document now than it was. Obviously, this is a report on activities in 2011, but now you can trace through how those things progress as the year goes on.

**Q6 Ann Clwyd:** The last time you gave evidence, I suggested that the Advisory Group might be yet another talking shop. Kate Allen, who was giving evidence at the time, said that it would be possible to give an answer one year on. Well, we are one year on. Has the Advisory Group worked? How often does it meet? What Ministers do you meet? Can you give us some assessment?
***David Mepham:*** Shall I kick off on that, because I have attended two of the group's meetings? I joined Human Rights Watch just over a year ago. In fact, I attended this Committee about three weeks into my job, so it was a bit of a baptism of fire. I have attended two meetings of the Foreign Secretary's Advisory Group on Human Rights. It meets twice a year—every six months. I don't want to give away too much of what happens; but, basically, it is a two-hour session with the Foreign Secretary, and senior advisers are present. The 15—I think it is—members of the Advisory Group, including me and Kate Allen from Amnesty International, have an opportunity to raise issues of concern, to raise questions and to make points to the Foreign Secretary, and he has been genuinely, I think, very interested and engaged when we have had that opportunity to meet with him.
I think in a sense it is almost a question to put back to the Minister or to the Foreign Office in terms of what they want to get out of it. Certainly, from my perspective as a representative of a human rights NGO, it is very nice to have two hours to make your case to the Foreign Secretary. I suspect there are many other people, other organisations, that would be very jealous of that opportunity. But it is a good question to ask two years into this Government: is it time for a stocktake in terms of what this group is for? Is it a sounding board? Is it a place where they hear concerns? Is it a place where they try out new ideas? I have to say I'm not entirely clear on what, from their perspective, they think the point of the group is, but certainly for me and no doubt for Amnesty, it is a very good opportunity to make our concerns known to the Foreign Secretary.
***Jeremy Croft:*** Obviously, Kate Allen is a member, and she's a member because she's the director of Amnesty International UK, but she is not Amnesty International UK's representative on the Advisory Group, so there is a slight difference in role there and therefore a slight distance between the work that the organisation does with the Foreign Office and her participation in the Advisory Group. Therefore, we do not look on this as an operational forum where we might be pursuing our agenda. The Foreign Secretary and the Foreign Office keep quite a tight rein on the agenda—I think that is fair to say—but it is also quite useful to have that more discursive moment as they are developing some of their longer-term plans and strategies. Some of the discussions that take place, because they happen in the presence of the Foreign Secretary, probably give some of those human rights strategies more status within the Foreign Office than they might have otherwise. That is to be welcomed.
The group is underpinned, of course, by three sub-groups, two of which previously existed and all of which we participate in at a more expert level. You get more hands-on activity there, an opportunity to pursue in more detail and depth proper plans and, in some cases, a lot of working together—for example, on the death penalty, where our interests definitely coincide and we have the same objective, which is to eradicate the death penalty across the world.

**Q7 Ann Clwyd:** Can you point to any concrete example of where the discussions in the Advisory Group have had an impact on Foreign Office thinking or human rights policy? Although I accept it is very nice to be able to talk to the Foreign Secretary, what impact is your presence there having?
***David Mepham:*** I don't know whether it is because we have had these two-hour meetings with the Foreign Secretary, but I certainly think that this report—the fact that they have made this concession and have these boxes now on Bahrain, Ethiopia, Rwanda and Egypt—is probably a result of the pressure that we have brought to bear collectively over the last 12 months. I think that is an example of advocacy impact. We have said, "Look, it is not acceptable for Britain, which has such a close

relationship with these countries, not to say anything about their human rights performance in your annual report." They have kind of made a concession on that. Whether that was a result of the meetings that we had with the Foreign Secretary in his Advisory Group, I don't know, but it is obviously one opportunity to make those arguments. That is a concrete example that I would give of where I think our advocacy through that channel—but through other channels, too—appears to have had some impact on what they say in this report and also on policy.

***Jeremy Croft:*** And of course I think I can give you one concrete example. When they were discussing drafts of the strategy on freedom of religion and belief, certainly a point that Amnesty was making in that context was to point out they were not looking at the issue of freedom of religion and competing claims—the impact that religious views can have on women and LGBT communities. I feel that the final version of the strategy was strengthened because of that dialogue we had in the Advisory Group and outside that.

**Q8 Ann Clwyd:** Does the Foreign Secretary attend each of the meetings?

***David Mepham:*** He attends his Advisory Group, but as Jeremy was saying, there are these sub-groups, which are normally attended—I think I'm right in saying—by Jeremy Browne, the Minister for Human Rights. He tends to be in attendance at the sub-groups, and the Foreign Secretary at the main Advisory Group meeting.

**Q9 Ann Clwyd:** So is twice a year enough for an Advisory Group, or should it meet more often?

***David Mepham:*** I'd like to spend as much time as possible in front of Ministers to make my case and the case for the organisation that I represent, but there might be a case for having some more focused discussion on a particular country or set of countries or on a particular issue, as opposed to what we have at the moment, which is a fairly wide-ranging "whatever we want to put on the table, we can put on the table" discussion. For example, we might come in the course of this morning's session to the torture inquiry and what ought to happen with that post-Gibson. There might be an argument for saying, "Let's have some serious time with some people who know about these issues and with the Foreign Secretary to work that through, put our point across, and offer our perspective."

**Q10 Sir John Stanley:** Mr Croft, you heard Mr Mepham in his opening statement refer to four countries that, in his view, should have been included among the countries of concern. He referred to Ethiopia, Rwanda, Bahrain and Egypt. Do you have any additional countries that you believe the Foreign Office should have included in the countries of concern?

***Jeremy Croft:*** I think we would agree with David and what Human Rights Watch have said in relation to those four countries. I am not actually looking to expand the range of countries of concern unnecessarily. To be realistic, it is probably better that the UK has a strong focus on countries where there are real issues of concern and where the UK has an opportunity and the means to influence them. It cannot do what Amnesty does. We will publish an annual report shortly that will cover 155 countries and territories. That would be ridiculous; you can't emulate the US State Department's approach. I don't think we would advocate that on the part of the UK Government. I would certainly endorse the four that David has mentioned, but I would not be looking to add others. That is a big pool of countries, and we may well come to discuss some of them today, where we know there are issues. Whether they need to be identified as a country of concern on a sort of annual basis and then tracked through on that arrangement I am not sure.

**Q11 Sir John Stanley:** In the preliminary paragraphs to listing the countries of concern, that is as far as the Foreign Office goes in indicating the criteria that it is using. Are there any specific ways in which you would like to see those preliminary paragraphs expanded or made more specific? Do you have any specific criteria that you think should be stated in the text of this report, making it clearer as to the basis on which the Foreign Office selects individual countries to be included as a country of concern?

***David Mepham:*** I've got a suggestion on that. Arguably the most important criterion will not just be the gravity or seriousness of the human rights abuse that is taking place in the country—perhaps that's No. 1. The second criterion is whether the UK is in a position to influence that. Do we have leverage? It is curious that the question of our leverage, linked to our diplomatic, development and security relationships, which we have with Bahrain, Ethiopia, Rwanda and so on, is not listed as part of the criteria. There are three criteria that are given—I don't have them in front of me—and that is not one of them. It strikes me to be quite sensible that one of the factors you ought to take into account is, are we in a position as a country to exert some leverage over this country whose human rights situation we are concerned about? Interestingly, Chad is one of the countries listed among the 28, and I think in paragraph 3 of the Chad section, it kind of acknowledges that Britain doesn't have very much interest in Chad, and hence we don't have very much leverage there. It might beg the question, why have we included Chad then, if we do not have the interest or any leverage, but excluded Ethiopia, where potentially we have huge amounts of leverage? We give Ethiopia more than £300 million of development aid every year, and there are hundreds of British embassy and DFID staff on the ground and military attachés and everything else, no doubt, in Addis Ababa, talking to the Ethiopians on a daily basis. Why is that not regarded as a relevant criterion for inclusion?

***Jeremy Croft:*** It is not entirely clear to us the criteria that the Foreign Office is using. It is a question that we would be very happy if the Committee was to put to the Minister. Certainly, it seems to be a more formal process than under the previous Government. It seems to be very much linked in to treating these countries in a different way that human rights will figure more

prominently in their considerations of issues relating to those countries, which is all to the good.

I think there is a disincentive to listing some countries as countries of concern, and Bahrain might be the best example of that, where other considerations come into play. It is perhaps where they want a more all-embracing relationship with that country that human rights becomes an additional problem in relation to what may be the main agenda that the Foreign Office has been pursuing up to that point. That seems to be why there is this drag factor and why they are quite reluctant. We get this situation where Bahrain is not a country of concern, but now it is a case study and it is on a path to becoming a country of concern. Why it was not a country of concern from the outset is a question that only they can answer.

**Q12 Sir John Stanley:** Just one last question: I will just come back to what Mr Mepham said. I read it rather differently from how you read it. There are two specific references in these introductory paragraphs that make it clear that one of the criteria being used for selecting a country of concern was the ability of the UK to take specific action. The second paragraph reads: "we considered whether the UK had been particularly active on human rights issues in each country". Down at the bottom of the same page, it states: "This year we have aimed to make clearer which countries are a particular focus of UK action". To me that seems to suggest that the Foreign Office is doing what I think you were saying should be done.

***David Mepham:*** I read it slightly differently. Where it says, "Along with a country's overall human rights performance during 2011, we considered whether the UK had been particularly active", why were they not more active in Bahrain, Ethiopia and Rwanda? Why were those not included? It is sort of a justification for why they have chosen the countries that they have, as opposed to saying, "There are some countries with some serious human rights concerns, like Ethiopia and Bahrain, and we have some leverage over them, because we have long-standing diplomatic, trade, development and security relations. As a result of that, we ought to include them, because we are better placed to effect change in Ethiopia than we are in Cuba, which is also listed." I am not sure how much leverage the UK Government has over Cuba or Chad, which are both listed. I agree with Jeremy: it is worth going back to the Minister and saying, "What is the rationale for who is in and who is out, because it does not appear to be very coherent?"

**Q13 Ann Clwyd:** Some of us have been very concerned about what has been going on in Bahrain since last year. We have had several meetings with the then ambassador and the new ambassador, as well as Sir Nigel Rodley, who was a member of the commission and who gave us some useful details. While everyone welcomed the King setting up the commission, the implementation of the recommendations has been so slow that it will take about 20 years to implement them. I wonder why you think that the FCO is dragging its feet on this. I am sure that we all have some answers, but I am sure that you will have, too.

***David Mepham:*** I am happy to kick off. I think it is for the reasons that Jeremy gave a moment or two ago, which is that there are lots of other interests in play when it comes to Bahrain. There is the Saudi factor and the whole geopolitics of the region, which makes them more inhibited about saying what they ought to say, which is to be quite outspoken about the serious human rights situation in Bahrain. We, like Amnesty no doubt, are very concerned about the human rights abuses that have taken place in Bahrain over the past 15 months. There were some before that, too. You are right.

You drew attention to the Bahrain Independent Commission of Inquiry, which included people such as Nigel Rodley, who is a distinguished human rights expert. It wrote a very good report, which documented lots of abuses that had happened in Bahrain, particularly in the early part of last year, but the problem has been that the Bahraini royal family is not implementing those recommendations. We continue, as Human Rights Watch, to document abuses that are taking place. There are a very large number of people being held in detention. The trials on which people were being sentenced for long periods, sometimes for life sentences, were profoundly flawed.

If you read the section on Bahrain—I say section, but it is a box of about five paragraphs—it is incredibly upbeat about what is going on in Bahrain. It says that things are changing and that we are supporting the Bahrainis in implementing this, but we see very little evidence that Bahrain is implementing what the BICI called for. Indeed, there are two specific references in the box. One is to this independent national commission that was set up, which is supposed to be ensuring that the recommendations of the international commission inquiry are implemented. It is not independent, because King Hamad picked everybody who is on it, so I do not know on what basis it is described as independent. Then it talks about that National Human Rights Commission—again, in favourable terms—but to the best of our knowledge that body has done nothing since it was established. The tone is upbeat and wants to describe progress, which of course we all want to see, but there is little evidence for it. Sadly, things remain pretty bad in Bahrain.

***Jeremy Croft:*** I think I would agree with everything David just said. Our positions are very similar. For me, I feel that the Foreign Office are very quick to emphasise the progress that has been made in relation to Bahrain and slower to take account of the enormity of what is going on there. Obviously, the inquiry was a good thing to have established, but it is not being seen through. That is one of the biggest problems.

Even now, of course, you are still seeing the protests and the crackdown on protests. You have trials of health professionals coming up next month. They are being charged with—apparently—terrorism offences, but basically for speaking out against the impact of the protests and for the people they treated. They could face excessively long jail sentences. That is a continuing process. Obviously, it is good that they see that the Foreign Office is recognising that now, to some degree, in the reporting process. Okay, it is a case study—it will now be reported on online—and

you feel they are stepping up their attention, but there seems to be a drag factor, and I am sure it is because of those other considerations that David mentioned.

**Q14 Ann Clwyd:** Physicians for Human Rights brought out a very good report on Bahrain. They gave me a copy of it. It details, in extraordinary detail, what has happened in particular to the health professionals and what is continuing to happen to them. They have now been transferred from a military to a civil court. In fact, most people believe that the charges against them should have been dropped altogether and they should have been released.

***David Mepham:*** I haven't seen that particular report by Physicians for Human Rights, but I will look out for it. They are a strong organisation with a good track record. We similarly did a report in February or March of last year—perhaps it was a bit later—on attacks on the medical profession in Bahrain, which, as you have just described, were really pretty gruesome. People who were going to tend the sick and the injured from the demonstrations were then attacked themselves. The Bahraini military went into the Salmaniya medical complex in the middle of the capital and arrested people and dragged them off. People were held incommunicado in detention for weeks and sometimes months.

You referred to the military court. A lot of people were tried by the military courts. They have now transitioned to so-called civilian courts, but their civilian courts rarely meet any kind of international standard. People do not have opportunities for legal defence, or some of the evidence produced against them in a court process is tainted evidence, because it has been obtained through torture. Like you, we are very concerned both by the attacks on the medical profession, but more generally about the situation there.

***Jeremy Croft:*** I would agree with that. There have been credible allegations of torture in these cases. If they are convicted, Amnesty has an "urgent action" saying that we would treat them as prisoners of conscience.

**Q15 Chair:** In our report last year, we recommended that Bahrain should be on the list of countries of concern. Do you think that there is a specific reason why that advice was not accepted?

***David Mepham:*** I don't know. It is a really good question to ask the Minister when you see him in a few weeks' time. He would say, "We've got a box now." In addition to the box, there are various places throughout the 450-page report where Bahrain is mentioned. It is interesting; I was looking at it again yesterday. There is also some incoherence in tone. Sometimes, it is quite upbeat, and on other occasions, it says there is a lot more to do. It is almost as if they cannot quite get the story about Bahrain consistent even in the report. Is the glass half empty or half full? How much change is actually happening? That is a real question to put to them.

We would like Bahrain to be included. We would also very strongly make the case for Rwanda, Ethiopia and Egypt to be included, and I hope that we might be able to talk about those. I think it is about geopolitics. It is just too embarrassing to be critical of the Bahraini royal family when we need the Bahrainis for what is going on in Saudi Arabia or the Middle East, or in terms of the security relationship. I think it is a question to put to them, because we obviously very much want it to be included.

***Jeremy Croft:*** I have nothing to add.

**Q16 Chair:** Going back to your criteria, we do have strong contacts with Bahrain.

***David Mepham:*** Of course. We meet the King and the King comes to the palace and all the rest of it.

**Q17 Sir Menzies Campbell:** Just arising out of that exchange in the last moment or two, let me make it clear that I am as critical of what has happened in Bahrain as anyone. There may well be occasions when you have to make a strategic judgment as to whether you are more likely to achieve progress by being critical or by being encouraging. You may persuade a regime to advance along the course that we would all support. It is difficult to lay down criteria for that, but in the end I suppose it is a question for the judgment of the Foreign Office and the Foreign Secretary in particular. Would you agree with that? Can you think of any cases where the issue of encouragement is in the debate? Myanmar is an interesting illustration. Are we more likely to get progress by continuing sanctions and being critical, or by welcoming even those marginal changes that have been made?

***David Mepham:*** It is interesting the way you have put the question, and I will come to that. The question is often put in terms of private as opposed to public pressure. I think the question came up at a session a year ago. People were saying, "Shouldn't you just be quiet about it, rather than broadcasting it from the rooftops?"

Your point is very valid about the balance between encouragement and pressure. Our response would be that you should be doing both and there are opportunities to do both. In the case of Bahrain, I have no problem; in fact, I am strongly supportive of the UK Government offering practical assistance to the Government of Bahrain, to say, "If you want to reform your legal system, we can help you do that." That can't surely mean that we turn a blind eye if these abuses continue. I think it is possible to do both: to be supportive and offer practical capacity-building assistance or whatever it may be, to try to address some of these issues, but that has to be linked to, and to some extent conditional on, a serious intent on the part of the Government in question—of Bahrain—to address these problems.

If they are just going through the motions and saying that they are serious about implementing the BICI when they are not, that puts the UK Government and the Foreign Office in a very difficult position, because you are offering capacity support, but they are not changing anything; they are continuing to abuse people. This is obviously what diplomacy is all about, but there is a way to balance those two things, between support and pressure. Our view in relation to Bahrain is that there have been quite a lot of offers of support but not enough pressure, given that, on the

ground, things are not really improving to an appreciable extent.

**Q18 Sir Menzies Campbell:** Well, we'll ask the Minister to give us chapter and verse in that regard.
***Jeremy Croft:*** I would say the point is that there is a need to be consistent. The human rights violation is the same wherever it occurs, whether it is in a country you have a multiplicity of relationships with or you are just focused on that issue. It is very much then a matter of where do human rights sit in the conception of foreign policy.
Obviously, British foreign policy is predicated on national interest, security, prosperity. Those are things that come through very strongly, and human rights as values underpinning them, in part with them. But there are clearly times and places in the world where you feel that policy is being driven by the agenda in the first two cases: security and prosperity, and less so by human rights. Maybe Bahrain falls in that category. Burma is perhaps an example of a country where it was entirely public condemnation and that was the only element you might say that was in there. Then there has clearly been something very carefully choreographed involving the UK and a host of other countries and regional powers that has seen some progress being made. Whether that was made because of the public pressure or the private discussion, we are not privy to. I would say that it is very wary if you start to make judgment calls on the human rights issue by the nature of the relationship you have with the country. Obviously, for an organisation such as Amnesty International, we could not work that way.

**Q19 Sir Menzies Campbell:** Well, that is not part of your constitution. It is without fear or favour, isn't it, when it comes to these issues?
***Jeremy Croft:*** Absolutely.

**Q20 Ann Clwyd:** May I just ask a question on the back of that? We are still selling arms to Bahrain. Do you have any evidence that any of the arms previously sold to the country were used in suppressing the protests?
***Jeremy Croft:*** I don't have information; I can go back and check on that. We certainly were concerned about when Saudi Arabia supported Bahrain. Certainly, some of the equipment that they seemed to be using we thought could be traced back to licences issued under the UK. I will have to check about Bahrain itself and come back to you.
***David Mepham:*** I don't know anything about that.

**Q21 Sir Menzies Campbell:** Perhaps we could move on to the question of torture. I think you are well aware of the FCO 16-page strategy for the prevention of torture. I have no doubt you have studied that strategy with great care. Do you think there are any significant omissions from the list of what are described as torture-prevention activities that ought to be part of the strategy?
***David Mepham:*** I think it is less about omissions from the strategy. To some extent, the strategy is fairly comprehensive and touches all the right bases. Our concerns about the Foreign Office's policy on torture are threefold. The first is that it is clear to us and many other people that over the past decade there have been instances where some people working for the UK Government in the security services and so on have, to varying degrees, been complicit in and involved in torture. We think that there needs to be a very thorough investigation into that. There was the criminal investigation that is now under way into these cases in Libya, where people may have been rendered back to Libya and subsequently tortured by Gaddafi. To have a torture strategy on the one hand that says all the right things, but then to have this big problem here that has not been properly resolved strikes us as a problem. After the criminal investigation into these two Libyan cases, we are very strongly in favour of there being a new inquiry—a kind of post-Gibson inquiry—that looks into the policy failures that may have led to some people working for the UK Government thinking it was okay to be involved to some extent in people being rendered to Colonel Gaddafi's Libya and other abuses that may have taken place elsewhere. We may come back to that later.
The other thing that we are very concerned about is deportation with assurances, which is a policy that the UK Government not only pursues itself, but actively promotes around the world, as you know. This is the idea that if you have a terrorism suspect and you want to send him back to country X, but country X is known to practise torture or has a record for practising torture, like Jordan, you get an assurance from that Government on a bit of paper saying, "We won't torture him when he comes back." It is on that basis that you are prepared to send them back to that country, and, of course, we have the Abu Qatada case that we are all very familiar with. Human Rights Watch and Amnesty are very concerned about deportation with assurances, because we think taking a paper promise from a Government known to practise torture does not really stack up and is not really worth the paper that it is written on. I think that that was an expression that you used at the time, Sir Ming, when it was introduced some years back. We remain concerned about deportation with assurances.
The third issue that we think is not really addressed in the torture strategy, but ought to be, is whether the behaviour of the British armed forces outside of Europe is bound by the European convention on human rights. There have been instances, as we all know, and the most high-profile case is that of Baha Mousa, who was terribly beaten and died as a result of his beating in Iraq. There has been a big debate about whether international humanitarian law and the European convention on human rights apply to the operations of the British armed forces in this instance. We would argue strongly that they should, and UK Government lawyers—it is perhaps more the MOD and Foreign Office lawyers—have argued with us about that, but we strongly believe that everybody who acts on the behalf of the British Government overseas ought to be bound by the European convention on human rights. That is not really reflected in the torture strategy in the way that we think it ought to be.

**Q22 Sir Menzies Campbell:** That could be an issue if you are operating in joint operations with other countries that aren't signatories.
***David Mepham:*** Yes.

**Q23 Sir Menzies Campbell:** But that, I suppose, is a tactical, rather than strategic, consideration.
You referred with some favour to the fact that access to the Foreign Secretary, for example, was better in this country than it was in others. Can we just take that comparison a little further? How far do you think the UK's torture prevention work compares to that of any other European state, particularly those who are signatories to the European convention on human rights?
***David Mepham:*** I am not sure that I can give you a comparative perspective as to how the UK fares as opposed to France or Germany.
**Sir Menzies Campbell:** By the pricking of your thumbs.
***David Mepham:*** The UK has been a strong supporter of OPCAT—the optional protocol to the convention against torture—and it is the centrepiece of its strategy of what it says in here. The UK is pushing that and says that one of the most important things that it is doing to try to prevent torture around the world is to encourage countries to sign up to and ratify it. As Committee members may know, one of the things that countries are obliged to do if they ratify OPCAT is actually allow independent external investigation of their detention facilities. It is very good that the UK is doing that, and a number of other countries around Europe are also supporters of OPCAT, but there is a bit of conflict between, on the one hand, pushing that in such a high-profile way, while being such a champion, as the UK and the Foreign Office are, of deportation with assurances, which means sending people back to countries that do not sign up to OPCAT and that are known to practise torture. There is a serious incoherence and inconsistency there that undermines the UK's standing on torture.

**Q24 Sir Menzies Campbell:** Do you have a solution to that inconsistency?
***David Mepham:*** Jeremy may want to come in, but if people are guilty of terrorism offences, they ought to be prosecuted through UK courts. The argument that comes back is that sometimes we do not have enough evidence to prosecute, but if you believe in a society governed by the rule of law and if you do not have enough evidence to prosecute somebody, maybe that is a reason for not prosecuting them and not sending them to prison.
However, there may be ways that you could bring about a successful prosecution through the use of intercept evidence. I think I am right in saying that the UK and Ireland are the only countries in western Europe that do not allow the use of intercept evidence in court cases. The United States also uses intercept evidence. This perhaps goes beyond the boundaries of this Committee, but that is perhaps something that the UK Government need to look at as a way of addressing some of these problems, rather than continuing with this line of pushing people back to countries that are known to practise torture on the basis of a bit of paper that says "We won't torture them."

**Q25 Sir Menzies Campbell:** It is an issue that the Chairman and I have some small acquaintance with.
***Jeremy Croft:*** I will not reiterate all the points David has made in relation to things such as diplomatic assurances. These are common ground for both organisations. I would just like to focus a little bit on the torture prevention strategy and the guidance that they are producing about torture, and to say that it is very welcome that this is being done. We do have technical disagreements with them in terms of whether they are using the right definition of torture, and whether it is the one that you will find in the convention against torture. We certainly have questions in our mind because we can see a process here whereby civil servants and officers will take action—what they should do if they suspect that something is going wrong in whatever they are dealing with—and then it comes to ministerial decision and then these documents go silent on what happens. That would certainly be an area on which we would be very interested to hear from the Minister how that discretion will be exercised. What does the Minister do if he receives this sort of information? The guidance and the strategy are silent on that.
The other point I would like to make is that these documents are being produced because of a set of circumstances of what has gone before. Certainly, the coalition Government, when they came in, said, "Very well, we will investigate and we will have accountability for what has happened before. We will get to the bottom of that and, more to the point, it will not happen—if it has happened—in future." That is what these documents are trying to set up: processes whereby there would be no reoccurrence and no suspicion of what has gone before. That is to be welcomed—but it does seem that, little by little, that very firm commitment that was made in 2010 is being whittled away by the continuation of the diplomatic assurance policy, by the problems they have hit trying to run the detainee inquiry and by allegations that rendition may still be occurring post-2010 under the new system. There is an awful lot here that has not yet been resolved, which is why it is such a big focus for both our organisations.

**Q26 Sir Menzies Campbell:** To turn to something a little more factual, rather than philosophical or judgmental, can you tell us a little bit more about the circumstances in which the documents were found in Musa Kusa's office in Tripoli? What was the attitude of the Libyans towards these discoveries?
***David Mepham:*** To describe the context, Human Rights Watch has had people in Libya for many years; we have been documenting human rights abuses committed by Gaddafi. We had people there, obviously, at the start of the conflict and we followed the conflict very closely. We monitored abuses committed by Gaddafi's people but also by the anti-Gaddafi forces.
The circumstances in which those documents were found were literally that one of my colleagues was walking around Tripoli with a group of journalists,

and they came across—it is probably hard to miss—the intelligence agency building in Tripoli, which was abandoned. There was no security around it and the doors were open and, as journalists and human rights activists do, they wandered in and had a look. Pretty easily—it did not require a great deal of searching—they discovered a whole series of documents, including ones that related to the relationship between MI6, the CIA and the Libyan intelligence agency. My colleague photographed some of them, and the journalists were also in there looking at them. Nothing was removed from the scene, because that would not have been appropriate.

This obviously got quite a lot of media pick-up because of the suggestion from those documents that there was a very close, intimate—we would say improperly close—relationship between MI6 and the Libyan intelligence agency. They also seem to suggest—this is the basis of the criminal investigation—that Britain was involved to some extent in the rendition of two Libyan guys, Sami al-Saadi and Abdel Hakim Belhaj, and their families back to Libya, where they claim that they were tortured by Gaddafi's people. We basically found the documents and we photographed them. The journalists were there. It became a media story because of the closeness it revealed between MI6 and the Libyan intelligence agencies.

This is relevant to the post-Gibson inquiry, which we might come to, because I am pretty convinced that had we not discovered those documents and had the media not covered them in the way that it did, it is not at all clear that those documents would have gone to the Gibson inquiry, as it then was. The Government were forced on the defensive and it was all very embarrassing, and the Prime Minister came to the House and said, "Of course these documents will be looked at by the Gibson inquiry." One of the concerns that we had about Gibson was whether he was getting all the documents and whether he would be able to access all the material that was relevant. The documents that were discovered in the Libyan intelligence agency building are very relevant in describing the relationship that existed 10 years ago between British intelligence and the Libyan intelligence agencies, which we think gives grave grounds for concern.

**Q27 Sir Menzies Campbell:** If you talk informally to any of the people who were members of the Gibson inquiry as it was originally constituted, they will tell you that there was no shortage of documents. Your point about which documents they were going to get, of course, is not affected by that.

**Q28 Chair:** Can I come back to your answer to Sir Menzies about how this document was found? Someone was wandering along and said, "Ah, here's the intelligence office. Oh, the door is open. Ah, this must be Musa Kusa's office. Oh, it's unlocked. There's a filing cabinet inside. My, it's unlocked." It is slightly straining credibility to say that your people just stumbled across these documents.

***David Mepham:*** I assure you, Mr Chairman, nobody broke in.

**Q29 Chair:** I was just wondering if someone was led to the documents.

***David Mepham:*** No. I do not believe that was the case. No. No one was led to the documents.

**Q30 Chair:** So of all the documents that could have been found in Tripoli, your guys just stumbled across the one that revealed that apparent rendition—

***David Mepham:*** I am happy to check, but to the best of my knowledge it was an extraordinarily well structured and organised filing system. It was actually relatively easy to find correspondence between different countries and different Departments. They did not spend a huge amount of time in there, but they managed to discover these—

**Q31 Chair:** The building was empty?

***David Mepham:*** The building was empty, yes. There was no Libyan officialdom in place at the time. These guys had abandoned. This was the middle—the height—of the conflict. We are talking about August-September last year. The Libyan officials had left the building. It was deserted. There was no security on the door and so on.

**Q32 Chair:** Did you say that your people were accompanied by journalists?

***David Mepham:*** There were some journalists there as well. Yes.

**Q33 Chair:** Just by chance?

***David Mepham:*** The journalists were covering the conflict, as you would expect, and the human rights researchers were trying to investigate what was happening in terms of human rights abuses. They were on the scene in this particular instance and discovered these documents. I think there is a public interest in bringing to the attention of the public that this is the relationship that existed between MI6 and the Libyan intelligence agencies.

**Q34 Chair:** I think that there is a huge interest and Human Rights Watch is to be congratulated for getting them out. I am just slightly probing the extraordinary set of coincidences that led to them being in the public domain.

***David Mepham:*** On your specific point about whether they were led to the documents, I have no reason to believe that they were led by anybody to the documents and someone said, "You need to have a look at these. They're just round the corner." I have no reason to believe that that was the case.

**Q35 Chair:** If you photographed that document, presumably the entire records of the Libyan intelligence agencies are there. Have they been photographed as well?

***David Mepham:*** We certainly did not photograph that. I cannot speak for what the other journalists did. I very much doubt that they managed to photograph all of it, because there are thousands and thousands of documents. We managed to photograph some of the documents that related to the relationship between MI6, the CIA, which was also of interest, and Libyan intelligence. Some of those documents were

photographed, but obviously there are a vast number of documents that were not recorded or photographed in any way.

**Q36 Chair:** Were your people looking for the Belhaj file?
***David Mepham:*** Not particularly, no.

**Q37 Chair:** Did they know about Belhaj?
***David Mepham:*** To the best of my knowledge, I do not think that at that point we had an inkling that—We did not know that MI6 was as closely involved as it appears to have been in the rendition of Mr Belhaj to Libya as now appears to be the case as a result of those documents.

**Q38 Chair:** If you did not know about it, you must have discovered it by reading it.
***David Mepham:*** Yes, it was in the documents.

**Q39 Chair:** Fine, but you must have had to read—How long were your people in there for? How much time did they spend reading all these documents?
***David Mepham:*** Most of them were photographed and then read later, so it was not as if they were sitting, perusing a library and saying, "Oh, that sounds interesting, I'll take a picture of that." They copied some documents that we thought were relevant and important. I do not know the precise number of hours that they were in there. It was a matter of hours, clearly not days. They were in the building for several hours.

**Q40 Chair:** Have you discussed these documents with the current Government?
***David Mepham:*** As you know, a criminal investigation is about to start—it has not yet started—into this.

**Q41 Chair:** Not the UK Government; the Libyan Government.
***David Mepham:*** Have we discussed these documents? I believe that we have, yes.

**Q42 Chair:** And what is their reaction?
***David Mepham:*** I think that they would—Are you talking about Mr Belhaj specifically?
**Chair:** Yes.
***David Mepham:*** He is obviously part of the Government. Mr Belhaj, as you know—and this goes a bit beyond what I ought to be saying—is taking a civil case against the British Government, as well as there being a criminal investigation, so it is very much for him and his lawyers to explain why he is doing that and so on. I sense that they will be quite interested in public transparency about what the relationship was between the British Government at the time and the Libyan Government at the time of Gaddafi.
**Chair:** That is very helpful.
**Sir Menzies Campbell:** I am glad you mentioned the legal involvement. I think we must all accept, must we not, that although there is a criminal investigation taking place, one of the pillars of our democracy and our human rights is the presumption of innocence until sufficient proof can be achieved beyond reasonable doubt? On the question of civil action, there is an onus based on the balance of probabilities.

**Q43 Chair:** Ann, did you want to come in on this point?
**Ann Clwyd:** I just wanted to say that something very similar happened in Iraq.
**Chair:** They just found a file by chance?
**Ann Clwyd:** They went into the intelligence agency headquarters. They found lots of documents. Many people abandoned buildings in a hurry, and I don't find this remarkable at all.
**Sir Menzies Campbell:** It is as well there were no shredding machines.
**Chair:** It is a remarkable story.

**Q44 Mr Roy:** On a more general issue, in relation to the Gibson inquiry, why did your organisations boycott it? Do you think your boycott helped the inquiry get to the truth?
***Jeremy Croft:*** We certainly spent a long time engaging with the secretariat in terms of the form of inquiry we would like to see. We brought over international experts to assist in that process, and there was a very clear dialogue going on, but the terms under which the inquiry was set up quite clearly fell short of international standards. The inquiry lacked powers; the Government control over public disclosure of information—that it would be in the hands of a Minister, not in the hands of a judge—was wrong; and the inquiry did not allow for meaningful participation by those people most directly affected. Without their participation, you would say, "What would the inquiry be able to deliver or achieve?" So on that basis, we had many discussions—not just Amnesty and Human Rights Watch but many other organisations. The time came when we took the collective decision—

**Q45 Mr Roy:** The question was do you think that helped them get to the truth—the fact that you decided to boycott it. Did it help?
***David Mepham:*** I think the concern is, for the reasons that Jeremy has given, that we did not think—not just Amnesty and Human Rights Watch, but a wide range of organisations—that the way that the Gibson inquiry had been set up would actually get to the truth. If you are going to have an inquiry and spend an awful lot of money on it and invest time in it, it should make sense to have an inquiry that is sufficiently empowered and sufficiently independent that it is going to get to the truth. Our genuine view was that the inquiry, in the way it had been established, would not do that. Hence we did not feel it was appropriate for us to participate.

**Q46 Mr Roy:** So, to return to my original question, did the boycott help it get to the truth?
***David Mepham:*** I think the boycott helped the Government to reach the conclusion that this thing needed to be scrapped, and to be replaced with something else, so we are fairly positive about the fact that an inquiry that was seriously deficient, in our judgment, has now been abandoned, and that the Government have said—in this document and

elsewhere—that once the criminal investigations into the Libyan cases are concluded, they will then hold a new inquiry that will look at the policy failures and the broader context that relate to Britain's potential involvement in rendition, torture and so on. We welcome that, but what is incredibly important is that the next time round—the next time they establish an inquiry—they get it right. They clearly didn't last time. I hope they will listen rather more than they have done in the past.

**Q47 Mr Roy:** What discussions have you had in relation to the next inquiry?
***David Mepham:*** We have not had discussions. We have not been asked—I certainly haven't.
***Jeremy Croft:*** No, we have had no discussions in relation to a future inquiry, and I doubt very much that our unwillingness to co-operate with the inquiry was the reason why it was stopped. That, very clearly, was because of the criminal investigations and the time that they will take. I think they thought it through and realised that they would probably be two years down the road before they could reconstitute an inquiry.

**Q48 Mr Roy:** Do you expect to have discussions?
***Jeremy Croft:*** Yes. Once the criminal investigation process has played itself out, we would expect, again, to resume our discussions; and we will probably be in a very similar position—the Government not proposing to set up an inquiry that we feel will fully meet the requirements.

**Q49 Mr Roy:** Do you accept the statement in the report that the FCO's approach on deportation with assurances has been endorsed by UK courts and has been compliant with the European convention on human rights?
***David Mepham:*** Which bit are you referring to? Page 85?
**Mr Roy:** Page 87.
***David Mepham:*** I cannot quite see the bit you are referring to, but obviously I heard your point. What is the case is that fairly recently the European Court, in the case of Abu Qatada, said that the deportation with assurances policy that had been reached with the Government of Jordan was not a reason for not sending him back to Jordan, but it blocked his deportation on the grounds that some of the material that might have been used against him in a court case was obtained under torture. Those were the grounds on which it was refused.
Human Rights Watch and, I suspect, Amnesty, are in disagreement on that. For the reasons I gave earlier, we continue to oppose the deportation with assurances policy strongly.

**Q50 Sir Menzies Campbell:** In all circumstances?
***David Mepham:*** I think this is relevant—if I may say this in response to this question, and then come back to you. There is a very interesting paragraph on the top of page 86 that says, after dealing with the DWA arrangements more generally: "We will continue to seek new DWA arrangements in 2012, including considering DWA cases without an overarching framework arrangement". That is both very ambiguous and very concerning. What does that mean? Even beyond the existing DWA arrangements they have with places like Ethiopia and Jordan, they are now suggesting that, in 2012, they will be having new deportation agreements with countries outside of any kind of overarching framework. Then curiously, after the comma, is tagged on: "and conduct an independent review." We would be in favour of that, but an independent review of what—how it has worked to date? That is a very ambiguous sentence that it would be worth while to raise with the Minister when you see him in a few weeks.
***Jeremy Croft:*** And—usefully, perhaps—I could provide the answer to that question, because the reference to not having an overarching framework is the reference to probably the next set of cases that will be brought forward in relation to seven Algerians. I think that those cases will come to the Supreme Court this year. In terms of returning people to Algeria, it is Government practice not to have a written agreement in that sense—they are negotiated case by case. So, yes, there is this sort of extension. Amnesty does not in any way condone or argue for the use of diplomatic assurances, but it is actually worse to try to negotiate without them. "Don't do it, but don't even do it in this way," I suppose, is what we would be saying.

**Q51 Mr Roy:** Do you two differ on that at all?
***David Mepham:*** No.

**Q52 Sir Menzies Campbell:** Forgive my intervention, but are you opposed to the policy of DWA in all circumstances, or are there any circumstances in which you would regard it as a legitimate exercise by the Government?
***David Mepham:*** We certainly do not necessarily have a problem with terrorism suspects in the UK being sent back to a country to stand trial. The question is: where are they sent back to? If it is to countries that are known to practise torture and that have a systemic problem of torture, as is the case in Jordan, we have big concerns about that. The whole DWA policy has been designed to deal with that problem. It has been designed to say, "We know these guys torture, but we'll get an agreement with them that they won't torture this particular individual, if we send him back." We just do not think—I think for the reasons that you made some years ago when this policy was first introduced—that that stands up. To take the assurance of a Government who are known to torture that they will not torture is an incoherent position.
It would be far better to invest some of that resource, time and effort into really trying to work with Jordan to reform its legal system and to improve its practice. Countries do change, and countries have. Tunisia is a very interesting example. Just in the past year or so, it has markedly and measurably improved its performance in relation to torture issues. There was a problem with torture in the past; things have changed a lot. This is not a static situation where countries never develop, reform or improve. We should be spending our time and effort actually trying to help countries to reform their legal systems and their practice, rather than concocting an elaborate

arrangement to send people back to torturing countries on the basis that they will not torture the individual we send back.

***Jeremy Croft:*** And you could get into incredibly convoluted relationships. You wonder why the UK Government would venture on to such a dangerous policy in some ways, with the risks of things going wrong. In the Abu Qatada case, they are negotiating additional assurances against the point that witnesses who were producing evidence in his trial were tortured. They are now seeking assurances from Jordan that, basically, what is being offered is that they will pardon those witnesses and then interview them again to give fresh evidence—this time not obtained under torture—and that there will be a constitutional change in Jordanian law to bar the use of torture evidence. This is not the first time that that will have been said. Yes, they will give the guarantees that there will be civilian trials. All those things are very hard for the UK to guarantee will happen.

To come back to the original point, of course you may deport someone who poses a risk or threat to this country, but when that person goes to a country where there is a real, direct risk of torture, the UK's obligations kick in and clearly the thing to do is to put them on trial here, where you have the fair trial guarantees.

**Q53 Mr Ainsworth:** Can we move on to the issue of sanctions? Are you both aware of a statement made to us by Jeremy Browne last year about sanctions? He effectively said that, as a tool for exerting pressure on countries with poor human rights records, they were getting harder to sustain and may well be past their peak. What are your views on that statement, and on the efficacy of sanctions?

***Jeremy Croft:*** We are probably both in the same position on this one. It is very unusual for Amnesty International to endorse or to call for sanctions, but we retain the right to do so. We also retain the right to oppose sanctions in many cases, so this is not something that we often advocate. If sanctions are pursued, clearly we would say that they must be effective, and that we would like them to be targeted, so we would not favour anything in the indiscriminate bracket.

Are sanctions effective? That is highly questionable. Are there areas that you can point to and say that something was delivered because we took out an asset freeze, or brought in other measures—particularly travel bans and things like that? They are part of a graduated response, and one of the tools in the inventory of Governments to signify their displeasure, and to add weight to issues. When they are done collectively—obviously, through the United Nations Security Council—they can carry real weight. If you include arms embargoes within the bracket of sanctions, you can see that they will have a direct benefit—that is really strong.

It is very rare that we would advocate something like that, so I understand where the Minister is coming from. Although there have been EU sanctions against Burma for quite some time, as part of the process that has been going on in the last few months, those sanctions were frozen. They were a tool within that process. Certainly, at the moment, Amnesty is calling for, among other measures in relation to Syria, an asset freeze on members of the Assad regime. Again, that would signify—not through one measure alone, but with referral to the International Criminal Court thrown in with other much more powerful measures—that there is something wrong there. I understand why the Minister might be saying that, by themselves, they are not an effective tool, but I would not rule them out altogether.

***David Mepham:*** I agree with a lot of that. I reread what the Minister said last year in the session with you, and I looked at what was said about sanctions in the report. Again, there seems to be a bit of a disconnect, because the report is positive-ish about sanctions—as Jeremy described, it says that sanctions are one of the policy instruments that Governments should use—but the Minister seemed to be saying last year that he was less convinced of that.

We take the view that there are circumstances in which sanctions are a useful policy instrument, and it is obviously incredibly important that they are targeted and smart. Many of the sanction regimes of the past were a bit too blunt, and had big humanitarian consequences. In places like Syria, and Libya previously, we are interested in getting to the people who are responsible for the abuse through travel bans, asset freezes, financial sanctions and so on. There are circumstances in which that is entirely appropriate as a way of trying to bring pressure to bear on rights abusers to get them to change their policy.

**Q54 Mr Ainsworth:** There is a real dilemma, isn't there? It is easy to accept in principle that because some other countries, some of whom are members of the Security Council, do not necessarily share our values or our desire to put sanction regimes in place, they will not be effective. But that can lead to an excuse for doing nothing, and the attitude that if we, and we alone, are prepared to take action it will not be effective, so let's just roll along with the Chinese and Russian view. How can we square that off? We surely cannot abandon sanctions. I accept what you say about smart sanctions as a tool for bringing pressure to bear on such regimes, but we really must find new ways of justifying them, and arguing for them.

***David Mepham:*** I agree with what you are saying, and I think one of the things we need to do is to persuade countries such as Russia and China, which tend to be obstacles to the imposition of sanctions, why they are appropriate. Syria is obviously a case that we are all familiar with and where Russia particularly, and to a lesser extent China, have blocked international action through the Security Council, including sanctions, but other measures that were called for in relation to the ICC. I am not suggesting it is easy, but we must keep making the argument to Russia and China.

We are straying a little bit into Syria, but Russia is isolating itself hugely in the Middle East. The Arab League is coming out in favour of sanctions, and actually has announced some sanctions on Syria, most of which, to the best of our knowledge, have not been implemented. They have been announced with a great

fanfare, but the implementation problem is still there, and Russia is sort of standing out, along with China, and refusing to sign up to that. It is a wider political, diplomatic argument about their isolation in the region, but I think sanctions, as you say, are one instrument which is sometimes appropriate for bringing pressure to bear on rights-abusing Governments, and we should not exclude that or ignore it. If that is what Jeremy Browne was suggesting last year, we disagree with him, but maybe he has a more elaborate position that he will share with you in two weeks' time.

**Q55 Mr Ainsworth:** What about sports boycotts? That is very topical at the moment. We have just had the grand prix in Bahrain. We have already talked about the intractable problem that we have there—our seeming lack of desire to bring pressure to bear.

***David Mepham:*** I think Jeremy and I are probably in a similar position on this one. Human Rights Watch does not have a policy; we have a policy of not calling, generally, for cultural and sporting boycotts. We generally do not say that the Formula 1 should not happen or the football championship should not happen in Ukraine. The reason for that is that we, basically, use the opportunity of those events to bring pressure to bear and to draw public attention to the abuses that are taking place there.

In the context of the Formula 1 in Bahrain a few weeks ago, we did a huge amount of advocacy and media work to try to expose the ongoing human rights abuses in Bahrain that we talked about earlier on this morning. Actually, the issue got a lot of coverage because the Formula 1 was there. Similarly, in the case of Ukraine, we are very concerned about the treatment of Miss Yulia Tymoshenko and so on. The fact that the football championships may or may not happen in that country draws attention to her plight and the wider human rights situation in the country.

The other example which, again, we have all become quite familiar with in terms of media coverage in the last few weeks, is the Azerbaijan Eurovision. Azerbaijan is a country which has a very poor record on human rights, particularly on freedom of expression. The contest is not my cup of tea, but I think it is happening in a couple of days' time. We will get a huge amount of interest and coverage and actually, perhaps for the first time, in a very sustained way the media spotlight is on Azerbaijan and allows organisations such as Human Rights Watch and Amnesty to say, "Yes, but some very serious human rights abuses are happening here and Governments ought to take more notice of them."

***Jeremy Croft:*** I agree with that entirely. We do not call for boycotts of sporting events or other events, because we just do not believe that will achieve human rights change. In a way, we probably had this internal discussion most thoroughly at the time of the China Olympics, in which case you looked at it and thought, "This is obviously a very big, substantial decision to make". But we thought that the additional attention being brought then on China was actually more important. The fact that China did have to make some concessions to improve its human rights record, and that some of those moves have stuck, is really important.

In the same way, we do not call for a boycott of the London Olympics, but we will use it as an opportunity to highlight some issues. For example, in relation to Dow, which is sponsoring the wrap around the stadium, it is obviously a moment when we can say, "Well, that's a very interesting choice that you have made, given its responsibilities that it's inherited from taking over Union Carbide and what happened in Bhopal." Again, there is a very clear moment when you can raise the profile of an issue and, as a campaigning organisation, we will do that. On actually calling for a boycott—no, we do not think that that will actually produce what we are seeking: a genuine change in human rights.

**Q56 Mr Ainsworth:** That sounded pretty close to an absolute. We all remember—for some of us it was our formative years—the apartheid regime and the sanctions that were wanted and, surely, brought change in that country. This attitude towards sporting boycotts and sanctions cannot be absolute, can it?

***David Mepham:*** We have just articulated the position that the two organisations have taken. Whether it is an absolute or not is a good question. You are right about South Africa. An awful lot of people thought that sporting boycotts, cultural boycotts and sanctions were the way to bring about change in South Africa, and I suspect that they played a part in bringing about that change.

But, for the reasons that Jeremy and I have touched on, we do not generally—there may be exceptions—call for sporting and cultural boycotts, not least because it gives you an opportunity to engage with those countries and to exploit the moment when the media spotlight is on a particular country to bring public pressure to bear. That, if you like, is the tactic that we have adopted. It is not a philosophical issue; it is actually about saying, "We can use the opportunity of this media spotlight really to bring interest and public engagement into the human rights situation in this country."

**Chair:** A successful boycott would be self-defeating.

**Q57 Ann Clwyd:** Let me ask you about Burma, because there is some dispute over the levers of political prisoners who still remain in jail. The Minister told us in January that the lifting of EU sanctions was dependent on the release of political prisoners, and yet the National League for Democracy says that there are 330 still in jail and the Assistance Association for Political Prisoners cites a figure of more than 900, but the Secretary of State told us that we are now at the stage of definitions of what constitutes a political prisoner. We and the opposition in the Burma may have a differing view from the Government there. Have you got any view on that?

***David Mepham:*** I think it is very hard to get accurate numbers about how many political prisoners are still being detained in Burma. It is interesting, you talked about the criteria, and the British Government's position is that they have given three reasons for the suspension of sanctions. First, political prisoners should be released. Secondly, there should be a fair

by-election process, which we had a few weeks ago. Thirdly, there should be an end to the crackdown in Kachin state.

The by-elections did seem to go successfully, so we can give them a tick for that one, but actually the violence continues in Kachin state and certainly, despite the release of many hundreds of political prisoners, the best estimate that we have is that probably many hundreds are still being detained. Of course everyone welcomes the change that appears to be under way in Burma, but I think that there is a slight danger—as I said in the Human Rights Watch submission—that we can overstate it and let them say, "We have now made this wonderful transition and everything is fine." Actually, there are still some big—huge—human rights concerns in Burma, not least the political prisoners and the violence in places such as Kachin state. I am slightly worried that the EU and the UK have rushed a bit too quickly to say, "All the sanctions are now suspended and we are resuming normal relations," when there might be an argument for being a little bit more cautious. Let us set some benchmarks and let us see some progress before we lift all the leverage that we have over the military Government there.

***Jeremy Croft:*** Clearly, the release has been very good news, and many of the people who Amnesty has worked for over the years have now been released, but a large number of people are still being held in Burma. There is a debate over whether they should or should not be released, and that is certainly ongoing. The Burmese authorities will be arguing that there are reasons of security, immigration or whatever that they should be held, and we will probably be arguing differently. There needs to be some process to resolve this, and that should be one of the things that is negotiated through now. It cannot be just domestic or just international; it should be a combination of both, and I would certainly like to see UN involvement in that process. Therefore, you will get a credible deliberation at the end of it, assuming that we are on a continuum of progress.

Once released, however, that is not the end of the story either. It is very easy for people who have been released then to find themselves back in jail for a whole range of apparent offences. One of the things that we would like to see to make some of this reform credible and lasting is repeal of something like section 401 of the Criminal Procedure Code, which basically provides for long-term parole and under which you can have your freedom revoked for all manner of minor offences, which can be trumped up very easily. So it is a case of people not only being released but, once released, being able to resume and conduct the normal affairs of society, whether political or whatever.

**Q58 Mr Frank Roy:** May I ask you about the balance between trade and commerce and human rights, and about the emphasis of the FCO? Is there a case for it becoming a little less complacent about the possible conflict between the two sides?

***Jeremy Croft:*** Perhaps the most obvious concrete example of where this comes into play is China, where there is this network shift that they talk about—the movement of staffing resources within the Foreign Office—and this is very much within that box, that pursuit of prosperity. The Foreign Office is quite happy to say that it is increasing the number of people in China by 50 posts, and that these will be pursuing a prosperity agenda and improving relationships with China. It is quite clear that, at the moment, one of the most significant drivers of the way in which the Foreign Office is approaching foreign policy is the pursuit of prosperity—trading relationships with other countries. That is quite unavowed. It is fascinating to hear the statement, if I can find it, that the Foreign Secretary gave in his speech to the CBI recently. He had the mandatory human rights sentence at the beginning: "Support for human rights is in our core national interest and deep in our DNA as a nation. But our ability to promote freedom and democracy is strengthened by a strong economy and a global role." I do not understand why that is a "but" and not an "and," because it just seems to suggest that, even from where they sit, there is some sort of tension here that they are recognising between their ability to conduct business and still to maintain the values of human rights that they say are central to foreign policy. So, the two are in tension.

**Q59 Mr Roy:** So what's the new strategy there for? Is it a new build or just a new paint job?

***David Mepham:*** Are you talking about the new business and human rights strategy?

**Mr Roy:** Yes.

***Jeremy Croft:*** That's more than a paint job, because the driver there is a recognition of the fact that British business abroad still carries some human rights with it. It's the question of what is the UK Government's responsibility for the actions of its companies abroad. This is not about how they can pursue profit as such; it is about where they get involved in their relationships. We are in different places here with the Government on this one. We would argue that they have concrete obligations for the way in which British companies function abroad. They would say that they do not and that they only have those obligations within their own territory.

**Q60 Mr Roy:** So what would you put in the new strategy?

***Jeremy Croft:*** We are happy to see the fact that they are building on the UN principles that John Ruggie has obviously developed over time. They are very strong supporters of that. We would want to see a very credible sort of system. We are building towards wanting to see credible controls over the way in which business conducts itself. We are a long way from that yet, but we need a system whereby companies are made to be aware that they are accountable for how they act.

There could be controls or disincentives for companies of concern—I use the phrase because we can have countries of concern—in terms of their access to Government procurement opportunities and the investment support they might receive. If their actions are seen to constitute human rights violations—for example, the actions of someone like Vedanta in Orissa or somewhere like that—such an

approach basically builds up into a sort of body of regulation over time. So we are talking about a combination. At the moment we are in guidance, but in future can we be in regulation? Can this be done through multi-stakeholder fora, rather than, as at the moment, a discussion somewhere within the building? Obviously, as prosperity is high on the agenda, that discourse outweighs this one. I do not think that it is window-dressing. I think it is sincere, but it is in its place. It is in a small box and there is a much bigger box somewhere else.

**Q61 Ann Clwyd:** 36 out of 58 countries that retain the death penalty are Commonwealth countries. Do you think that the FCO should have made more effort to reduce that number by now, given its influence in the Commonwealth?

***David Mepham:*** I will talk very briefly on that because I know it has been a feature of your submission. Yes is the short answer. Obviously, we have an important role in the Commonwealth and if 36 out of 58 countries have retained the death penalty, that is obviously a big concern for a Government and a Foreign Office that have said that the death penalty is a big and high priority for them. So, yes, they should be more energetic about trying to raise these concerns—although, to their credit, they have a strong position and policy on the death penalty.

The only other thing I would say about the death penalty goes a bit beyond the Commonwealth but is relevant to the concerns of this Committee. I wonder whether the UK should be doing a bit more to raise death penalty issues in relation to some of the transition countries in the Middle East and north Africa. When people are crafting new constitutions, you have a moment to raise that issue more assertively. That goes a bit beyond the Commonwealth, but it is something else that we could be doing on the death penalty.

***Jeremy Croft:*** Obviously, the Foreign Office has a new death penalty strategy. On balance, we are very comfortable and happy with that strategy. It is one we have worked with them on, and much of the work we do with the Foreign Office is collaborative. Certainly, they have been very, very strong supporters of the cause of eliminating the death penalty. Within that strategy, in a way, we are quite comfortable with our identified priority, which is to go after the countries that use executions most—China and Iran. The Commonwealth Caribbean countries also feature, which is very important because they do have direct influence there. Finally, there is the US and Belarus, which is obviously the last country in Europe still to use the death penalty.

We do not have problems with those priorities as such, but you are quite right that an awful lot of Commonwealth countries still maintain the right to use the death penalty. I think that three conducted executions last year—Singapore, Malaysia and Bangladesh—so, yes, this is an area where they do need to step up their game. They have laid out a fair number of measures in the report where they do that. They refer to raising the issue at the Commonwealth Heads of Government meeting and, as far as I am aware, that did not happen last year, so that is one thing they could certainly do. We would welcome it if the issue were elevated to that level.

**Q62 Ann Clwyd:** A question has been continually asked of the Foreign Office about the number of human rights officers who staff overseas posts. The Foreign Office has been very reluctant to give an answer, but page 27 of the Foreign Office's report says that there are "approximately 240 full-time equivalent employees…working on human rights…in the UK and overseas." That does not answer the question, either.

I wonder whether you have any views on why they are so reluctant to answer the question, given that you can get exact data on how many defence attachés there are in each of our overseas posts. A colleague who asked a question along those lines got detailed answers about where they are positioned, but we cannot get that answer for these posts. Why do you think that is?

***David Mepham:*** I remember you raised a similar question last year, and I think the Foreign Office at the time were quite reluctant to come up with a figure. As you have said, they come up with a figure on page 27 of the report. That the figure is 240 full-time equivalent employees is intriguing. It would be worth asking the Minister what proportion of their time is spent on human rights and how that is defined, because it could be a slight repackaging of what they are already doing. Obviously, my sense is that there are probably quite a lot of people in the Foreign Office, both in London and elsewhere, who have human rights work as part of their job to some extent. I think it would be worth while to tease out of the Minister, the Foreign Secretary or the Foreign Office what that means and what amounts of time we are talking about. That figure does not tell us very much. The figure sounds large, and it might comfort us to think, "Okay, there is a very large cohort of people who are spending all their time thinking about human rights," but I am not sure whether that is necessarily the case. I do not know why the Foreign Office are reluctant, but you could certainly probe the Minister on what exactly that figure means and how much of a priority it is for certain people's jobs.

***Jeremy Croft:*** I agree. The figure is very hard to pin down. Those 240 full-time equivalents are spread across I have no idea how many people. You will not find dedicated human rights people in embassies, or whatever. I would compare that with the point I made earlier that they will add 50 posts in China to exploit commercial opportunities. That tells you where the Government's priorities lie.

On a smaller scale, they have a well resourced, very dedicated human rights department here in London, but their second human rights adviser post has now been vacant for a year. We do not know whether that post will be filled. There are economies all across the board. We understand that, but human rights are clearly not immune from some of the cuts that have to be made.

***David Mepham:*** Could I add two very quick points? To some extent everyone who works in the Foreign Office is exposed to human rights training, principles and so on, but we would hope that might happen more

consistently. Some of that has happened—indeed, Amnesty has been involved with some of the training—but it would be good to press the Minister on whether all new people coming into the Foreign Office are subject to human rights training and have opportunities to get on top of the issues.

Alongside that, is there a case—I think you and I would agree on this—for sometimes deploying a human rights specialist, someone who has spent many years and has a real understanding of justice issues, women's issues, or whatever it may be, to a particular country where the issue is very big? I am not clear from this whether they do that or whether the work is just added to someone's existing job. There are certain occasions when it is an entirely appropriate response to say, "In the DRC embassy we need somebody who really understands sexual violence, because it is such a big issue in this country." Is that person in the embassy or not? At this point, I am not aware that they are.

**Q63 Ann Clwyd:** Would you say that there is a point in having a designated human rights officer in particular countries?

***David Mepham:*** There may be a case in particular countries. I also take the point that if you have a designated person who does human rights, what do the rest of them do? It is a balance. We want everybody to have an understanding of human rights and for that to be an important part of their job, right up to the ambassador, who should also feel that his or her job is about human rights promotion. However, I think that some specialist expertise and skills on particular aspects of human rights may well be appropriate in particular cases, so I would be very supportive of that and I think it is worth raising with the Minister.

***Jeremy Croft:*** And to see this awareness of human rights in all areas of the Foreign Office would be marvellous, yes, and really important. Amnesty was quite disturbed, in the context of the work that we do on Afghanistan and women's rights, to find that in London, they have drafted an extremely good, revised national action plan for Security Council Resolution 1325 on women and armed conflict. That embraces a vast amount of work in Afghanistan in relation to women, but you could talk to people dealing with Afghanistan here in London, and in Afghanistan, and they have not heard of it. They are not aware of it and are not using it, so it is a paper strategy. It is not actually having an impact on the ground, and clearly you would want to see that improve.

**Q64 Chair:** The Lisbon Treaty provides that the EU should join the European convention on human rights. What are the implications of that? Talks have been going on for a couple of years now, but have you looked at the impact that this might have?

***Jeremy Croft:*** I am very aware that the Government are looking at the impact that it might have. You are quite right that it is a requirement following the Lisbon Treaty, and the process has been under way now for some time. Two Governments stand out: one is France, although that may have changed since the election, and the other is the United Kingdom. The reasons that they are dragging their heels are quite hard to pin down; it depends on who you are talking to. Here, if you talk to Foreign Office officials, the inference is that if the European Union accedes, it will become a bloc and that will in some way be found awkward to other countries—maybe Russia, or other countries in eastern Europe. Talking to my colleagues who deal with these matters in Europe, they say that the concern of the UK seems to be most centred in the attitude it has to the convention at the moment, which obviously, for other reasons on the domestic agenda, has been quite negative.

Looking at how it would impact on the European Union, there seems to be a concern that somehow the European Court of Human Rights could rule on a matter of EU primary law and by doing so, require treaty change, which obviously would be quite a significant issue for them. I cannot give you an example of an issue, but it would be extraordinarily significant for them. Similarly, there is unease that, in the sense that the European Union conducts a common foreign policy—clearly, that is not yet entirely the case—those issues of extraterritoriality that have been argued out in relation to the United Kingdom and the actions of its forces in Iraq might somehow then extend. It seems that this is causing quite a stalling moment in negotiations in which the accession is being discussed and debated.

**Q65 Chair:** That is a fairly legitimate point if it is true, about the primacy of the convention over EU law and treaty change. It would be quite a substantial issue—do you think it is a fair point?

***Jeremy Croft:*** I can see how it would be a substantial point for the Government, certainly.

**Q66 Chair:** On freedom of expression on the internet, Amnesty has expressed concern that businesses are supplying technology to certain countries that will inhibit that freedom of expression. Do you think that we should be exercising any leverage over those companies?

***Jeremy Croft:*** Yes. I am not saying that these are British companies, but clearly, if you accept the importance of freedom of expression as a gateway right—and one of the places in which it is expressed most clearly now is in the digital world—this is a classic one where the law has to catch up with the technology, and the conception of how human rights should be realised has to catch up. Therefore we are quite pleased to see this as a feature and one of the issues that Jeremy Browne, the Minister for Human Rights, is focused on. He has set up his sub-group within the Advisory Group to look at this. That group is looking at some of the really tricky issues, which are basically about how you govern the internet, for example.

The strategy that they agreed under the UK's chairmanship of the Council of Europe, bringing on board a significant bloc in the world in that regard, was really important. But if you then compare and contrast that to what is happening in other parts of the world, then clearly it is one of the biggest threats out there, because repressive regimes want to control the ability of their populations to receive, impart, seek information and share views, and so on.

If the companies that produce the technology become involved in the processes of how that technology is controlled, then you are on this extraordinarily slippery slope, and we have seen that with companies—mainly American companies—and their actions in China, and the fact that Google eventually chose to pull out of China on account of the fact that it found its position not tenable. So it is a big emerging issue.

**Q67 Chair:** I agree. I think we are going to hear more about this one.

Finally, we have just finished our time as chair of the Committee of Ministers at the Council of Europe. How have we done, as far as human rights are concerned?

***David Mepham:*** The UK has used its chairmanship almost exclusively, although not entirely, to push for reforms to the European Court of Human Rights. That is its big issue; it has dominated what it has done during its six months. Human Rights Watch and, I think, Amnesty similarly, had concerns. We are sympathetic to some of the proposals that came forward for trying to ensure implementation of previous judgments, but we had concerns about two of the big reform proposals that the UK was pushing, which were not accepted at the meeting in Brighton: they were in a sense giving more leeway to Governments and reducing the number of incidences in which it was appropriate to bring cases to the Court. We think they were not necessary. We think there was already a prioritisation process within the Court, which allowed the Court to make judgments about what were the most important cases for it to look at.

We are more generally concerned about the extent to which some Government Ministers and some elements of the press seek every opportunity to kind of knock the European Court of Human Rights and denigrate it in a way that is unhelpful to the Court. This is an institution that the UK, some decades ago, was very involved in setting up; it is an important instrument for justice for people across Europe.

The only two European countries that are not members of it are Belarus and one other. Most European countries are in this and most European Governments see the value of this as a way of advancing human rights. Actually, the backlog that is often talked about—those 150,000 cases—are primarily in places like Russia, Azerbaijan and Turkey. The backlog is not a whole load of cases against the UK. It is probably fair to say—we could give you the figures or you could ask the Minister for them—that only a handful of cases have gone against the UK in the last couple of years. Yet it is built up as this institution that is constantly attacking the UK or overruling it.

I thought Ken Clarke put it quite well on the "Today" programme a few weeks ago, when he said that if you want to live in the kind of country where the courts never rule against the Government of the day, then you should move to Belarus. As part of the balance of power, occasionally judges come to conclusions that elected politicians don't like, and that's the price you pay for living in a society governed by the rule of law. In general, although we occasionally disagree with those judgments, the European Court of Human Rights has been very good for human rights across Europe.

**Q68 Chair:** It works both ways. Sometimes the courts don't like decisions that politicians make.

***David Mepham:*** Of course. Indeed.

**Q69 Chair:** Thank you both very much indeed. It has been a really helpful session. We covered a lot of ground and heard a lot of useful information and evidence.

## Tuesday 19 June 2012

Members present:

Richard Ottaway (Chair)

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| Mr Bob Ainsworth | Mr Frank Roy |
| Mr John Baron | Sir John Stanley |
| Sir Menzies Campbell | Rory Stewart |
| Ann Clwyd | |

### Examination of Witnesses

*Witnesses:* **Mr Jeremy Browne MP**, Minister of State, Foreign and Commonwealth Office, **Vijay Rangarajan**, Director of Multilateral Policy, Foreign and Commonwealth Office and **Irfan Siddiq**, Head of Arab Partnership Department, Foreign and Commonwealth Office gave evidence.

**Q70 Chair:** I welcome members of the public to this second evidence session of the Committee's inquiry into the FCO's human rights work in 2011. I also welcome Mr Jeremy Browne, the Minister of State in the Foreign Office with responsibility for this area.
Minister, when you open I would be grateful if you could introduce your two colleagues. Do you want to make an opening statement or go straight into questions?
***Mr Browne:*** I have not prepared an opening statement, because I did not anticipate you asking me to make one. I could improvise one, or shall we go straight into questions?
**Chair:** Let us get on with it.
***Mr Browne:*** Why don't my colleagues introduce themselves?
***Vijay Rangarajan:*** I am Vijay Rangarajan. I am director for multilateral policy in the Foreign Office. I am responsible for the UN, international organisations, human rights and conflict.
***Irfan Siddiq:*** I am Irfan Siddiq, head of the Arab Partnership Department in the Foreign Office. I am here to cover Middle East and north Africa issues.
**Chair:** I give a warm welcome to both of you.
Minister, the report is longer than it has been in the past. Is it any better?
***Mr Browne:*** I hope so. We do not measure the value or the quality of the report merely by the number of pages it contains, but it is certainly an extremely comprehensive document. Producing it is hugely time consuming within the Department. It is worth drawing the Committee's attention to just how many hours of work go into compiling the report not only in the relevant Department in London but in our posts around the world which draw intelligence and submit their ideas. It is a very substantial body of work. I am sure that it is capable of being improved upon, but it is a gold-standard piece of work and it is regarded as such by Foreign Affairs Departments in other countries.

**Q71 Chair:** Are there any substantial changes from last year in its format or presentation?
***Mr Browne:*** There are some minor changes, I think. We are constantly keeping under review the content, and two countries have been added to the countries of concern—Fiji and South Sudan. It is an evolutionary rather than a revolutionary process of change. We have also introduced a significant change beyond the actual physical document. As you rightly said, this is an overview of the calendar year 2011, but we have also introduced a mechanism for quarterly updates, which gives us a bit more flexibility. Otherwise the criticism that people sometimes make is that here we are halfway through 2012, and in the last few months there have been particular concerns about country x, but they do not appear to feature prominently in the most recent report. We would respond, "Well, obviously the report would not cover the last few months. It covers the calendar year 2011." We are trying to have that extra flexibility so that when situations become of greater concern, we do not have to wait until the following year's report before we have a formal mechanism for drawing people's attention to them. Also, if I am being positive about it, if there is improvement in one of the countries of concern we want to have an ability to reflect that improvement in our quarterly report as well.

**Q72 Chair:** I agree and I welcome that—it is one of the joys of modern technology.
In the process of preparing the report you receive the advice of an advisory group. Could you tell us more about the function of the group? Is it to allow them to make the points that they want, or is it to answer your questions?
***Mr Browne:*** For the avoidance of confusion, let me say that the report is not really the product of the meetings of the advisory group. Everything we do is informed by the advisory group, but the report is compiled by the relevant section of the Foreign Office, drawing on the insights of our missions around the world, regardless of the advisory group. So it is not a compilation of the conversations we have had in that forum.
The advisory group offers extra firepower to our knowledge and consideration about human rights. It has many different valuable aspects. One is that we can draw on the insights and knowledge of people who take a keen interest in human rights issues; but it is also a good opportunity for them. Chief executives of significant NGOs have the opportunity to sit for an extended period with the Foreign Secretary and bring to his attention their areas of greatest concern. We can draw on their knowledge and insights, but they can inform us at the same time.

**Q73 Chair:** Can they offer advice at any time? Do they have to meet in a formal setting, or do they drop in? What are the mechanics?

***Mr Browne:*** We have the main advisory group, which the Foreign Secretary chairs and which meets every six months, and three sub-groups to the advisory group—one on torture, one on the death penalty and one on internet freedom—which meet periodically as well. There is a general understanding that if members of the advisory group—I always say this, because I chair the sub-groups and attend the main meeting that the Foreign Secretary chairs—have a particular area of concern or interest or an insight to impart, they should not feel that they have to wait until the next formal opportunity to raise it with us. We have a department within the Foreign Office which I hope is alert to new ideas and new thinking—I am sure that they are—and people should feel free to phone or e-mail them in order to draw issues to their attention.

**Q74 Sir Menzies Campbell:** I wonder if I might press you a little on the question of countries of concern. What is the purpose of identifying a country as being a country of concern? Is it simply to name and shame, or does doing so trigger a different kind of response from the Foreign Office towards that country—for example, more resources being expended here in London; additional staff in the post abroad; the use of leverage, perhaps, through military or development assistance? That is a question of two halves, I suppose, but it seems to me that they are quite obviously linked. Putting it colloquially, what's the point?

***Mr Browne:*** It is all of those things. Part of the purpose is to name and shame, as you put it—to demonstrate our disapproval—but it also provides a framework for the priorities of the Department, for Ministers. Of course, there is a judgment call to be made. It is difficult, because there are some countries that any reasonable person would include—the China and Iran end of the scale. At the other end of the scale are countries that you very obviously would not include—the Scandinavians, for example, are pretty good—but the question is how many you do include. There are judgment calls in the middle. You could have 35, 40 or 45 countries, but you would then dilute the impact of being included—that is the tension. The other difficulty is that over time we should be looking, where we can, to take countries off the list. It would be depressing if we felt that no country ever improved enough to be removed from the country of concern list, although of course that would require mature political debate because it is unlikely that a country will go from being a country of concern to an enlightened and benign liberal democracy in one step. The question is whether concern about them has sufficiently lessened so that they no longer need to be on the list even though there are still concerns about them. The quarterly process gives us the opportunity perhaps to indicate where progress is being made and where a country could, if it makes further progress, come off the list. It does inform the priorities that we give to those countries.

***Vijay Rangarajan:*** I want to add two things. First, in addition in the report is an innovation, a series of four case studies, so there is a category of countries in between those formerly of concern where there is a problem and we are flagging it for analysis and reporting during the year. Secondly, to return to your question, countries of concern are the priority for the Human Rights and Democracy Programme funding that we have, so they take precedence in the allocation of funding and we seek out projects in those particular countries too.

**Q75 Sir Menzies Campbell:** Does that result in reallocation of resources within the Foreign Office here in London?

***Vijay Rangarajan:*** The countries of concern are the ones that receive the £5 million of dedicated human rights funding, so when a country is added to that list they then become eligible and we focus resources upon them.

**Sir Menzies Campbell:** Forgive me; I asked an imprecise question. I was thinking of the resources of the Foreign Office in the sense of particular people being transferred from one section to another, or something of that kind. If there is a desk that deals with the country concerned, does that desk get reinforced in terms of personnel?

***Vijay Rangarajan:*** It does not necessarily get reinforced in terms of people, but it does gain several structural changes. We look for much better human rights reporting from those countries. In the Human Rights and Democracy department especially, we will be looking for a particular stream of reporting and to see more of a country strategy reflected there. The place from which the resources will come is the project funding, which will probably mean they get extra people, if needed, to run the funding.

**Sir Menzies Campbell:** Do Ministers have the final say as to whether a country should be so described?

***Vijay Rangarajan:*** Yes.

**Sir Menzies Campbell:** We are going to hear some evidence later today on the issue of the Commonwealth. How frequent is it for a Commonwealth country to be regarded as a country of concern and what efforts are taken through the mechanism of the Commonwealth to first identify such a country and secondly try to persuade it to mend its ways?

***Jeremy Browne:*** Well, you can see the list of countries of concern. I had not thought of it in those terms. There are one or two Commonwealth countries, but they do not feature heavily. In the case of Zimbabwe, for example, the very reason it is not a Commonwealth country is that it is a country of concern. We would use whatever means we have. There is only one country of concern in Europe, depending on how you define it. Belarus is in the main geographic body of Europe, so we might feel that the European Union had some scope to bring about change there. The Commonwealth may be a good mechanism for trying to bring about positive changes in countries such as Sri Lanka, Pakistan or Fiji, and our strong partnership with Australia, New Zealand and other Pacific island countries is an opportunity to bring pressure to bear there. The Commonwealth is a mechanism, but it is one of many.

**Q76 Sir Menzies Campbell:** Is there a crossroads between the interests of the United Kingdom—financial or military, for example—and conduct by the Government of such a country that would justify its being described as a country of concern? Who balances these issues in reaching a final ministerial decision?

***Jeremy Browne:*** Ultimately the decision is made by the Foreign Secretary, but I am not sure that a balance is calibrated in the way you suggest. For example, China is the second biggest economy in the world. It is continuing to grow strongly and it is a permanent member of the UN Security Council, so in every way it is a hugely influential country, economically and politically. Yet I did not hear any discussion suggesting that it should no longer be a country of concern just because we have many other diplomatic, commercial, cultural interests with the Chinese. I think the exercise is conducted on its own merits, and if we feel that a country such as China, which has widespread human rights abuses, warrants being a country of concern, then it is made a country of concern regardless of other considerations.

**Q77 Sir Menzies Campbell:** What considerations have been given to Bahrain and whether it should be identified as a country of concern?

***Jeremy Browne:*** As Vijay was just saying, in addition to the 28 countries of concern, we have the four case study countries, which are, if you like, in a waiting room for potentially being added to the list countries of concern if we feel that that is warranted over the course of 2012. Bahrain is one of those four. Maybe I should defer to others, because I am not the Minister who covers the Gulf and the Middle East, so I do not travel in that part of the world or devote specific time to it, beyond the human rights brief. My understanding of the situation in Bahrain is, however, that it is materially different from, say, Syria. We have more traction with the Government in Bahrain and there are reasons to believe that our engagement and the engagement of others can bring about positive changes in Bahrain in a way that we have less hope for in some other countries in the Gulf and the Middle East. At the same time, we are concerned about the human rights situation there, and its sort of indeterminate status reflects that assessment.

***Irfan Siddiq:*** There were two major developments in Bahrain last year. First, the uprisings, and the way they were dealt with by the authorities, were a huge cause of concern. Also there was the unprecedented step of the establishment of the Bahrain independent commission of inquiry, which for the region was a huge breakthrough. This is a credible, independent panel which works directly to the King, stressing and laying out all the key human rights concerns and violations that had occurred, and asking him to deal with those, which he accepted, and some of which have been implemented. Last year was a mixed one, with some negative developments and some positive ones, which is why it has not graduated onto the list of countries of concern.

**Q78 Sir Menzies Campbell:** One last question: did we make any representations about the treatment of doctors and nurses whose only fault appears to have been a willingness to give medical attention to people who have been injured?

***Jeremy Browne:*** In Bahrain? Irfan, could you remind us?

***Irfan Siddiq:*** Yes. Especially during the period of the uprising itself there were huge concerns about how peaceful protests were being repressed, and the way in which medical professionals who were trying to do their job in providing medical support to protesters were also being punished by the regime for that. We were very disappointed with the military trials that took place and were pleased that the trials were re-run through civilian courts, recently.

**Q79 Ann Clwyd:** I just want to look at the description of the Bahrain commission of inquiry as independent. I do not think it can in any way be considered to be independent. It was set up by the King. It is just not independent.

***Jeremy Browne:*** As I was saying before, if you wanted an in-depth conversation with a Minister about what we are doing in the Gulf and Middle East, then Alistair Burt is the relevant Minister, and is better placed to have that conversation than I am. But in terms of the human rights report, we are not—I hope I was reassuring in the previous answer, when I gave China as the example—looking to exclude countries from the list of countries of concern because of wider considerations. There is no hidden agenda. If we judge that human rights offences in Bahrain are sufficiently grave that it warrants being included, then it will be included. However, I go back to my earlier point. I can probably cite 50 or more countries in the world where there are human rights issues of concern. The danger is that if you put in every single country, you dilute the impact of being one of the countries that is included. I hope we are doing this in good faith. The best way to guard against accusations that we are giving people a free pass would be to include over 100 countries. For example, we could include every country that has the death penalty.

**Ann Clwyd:** I did not ask that question.

***Mr Browne:*** Sorry, but sometimes we beat ourselves up a bit too much. In my two years' experience as a Minister—

**Chair:** Minister, Ms Clwyd has asked a perfectly straightforward question.

**Q80 Ann Clwyd:** I was just making that point and moving on. I think the point has been made.

In our report last year, it was suggested that you should have an index to the report. Several outside organisations made that point as well. If it is to be a useful reference book, then it should have an index, but you have not reinstated it. Are you thinking about that again?

***Mr Browne:*** I have not had this conversation. It seems quite easy to navigate, but given the amount of work that goes into it, it seems a shame if people cannot find the sections of greatest interest to them, so we will seek to do that.

**Q81 Ann Clwyd:** If it is to be a proper reference book, it should have an index. That is the point this

Committee made last year and no doubt it will be making it again.

***Vijay Rangarajan:*** It has a contents section. The online version is fully searchable and people said to us that that was as useful. To put in a complete index, which was properly comprehensive, would both have delayed it and added quite a lot to the cost. We were also trying to keep this as cheap as possible.

**Q82 Ann Clwyd:** Yes, we know the argument about cost, because you made it last time, but outside organisations have made the point to us that if it is to be a useful reference book, it should have an index. I will leave it at that.

Looking at the report, which is pretty large, my feeling is that it is too self-promotional—Foreign Office self-promotional. There seems to be no analysis or evaluation of what worked, what has not worked and what could be done better. Do you accept that?

***Mr Browne:*** The danger is that if the Foreign office does not tell people what it is doing, people assume that we are not doing things; but if we do tell people what we are doing, we run the risk of appearing self-promotional.

**Q83 Ann Clwyd:** My point is that there is no evaluation of policies. I remember from my days on the International Development Committee that whenever there were programmes, for instance, in certain countries, there would then be outside evaluations of the success or otherwise of those programmes. That was always quite useful when deciding whether policies were good, bad or indifferent.

***Mr Browne:*** Sometimes the difficulty with human rights evaluation is that if these countries on the list shared all our values and were readily responsive to being persuaded by us, then they probably would not be on the list in the first place. We are very active on human rights work in—I will cite again probably the biggest example—China. I was in China about a month ago and my programme included quite a lot of human rights activity. However, it is quite hard to evaluate a causal link between what we are doing in the embassy or in ministerial visits, and outcomes in China. Certainly I would imagine that the Chinese Government would be very reluctant to acknowledge a causal link, even if one existed. Yes, where you can demonstrate that connection in our activity, it is a good idea to demonstrate it. However, I would caution against thinking that we could end up having a document with a scientific demonstration; that if you put in *x* amount of time and *x* amount of money, you get out *x* amount of human rights progress. It is quite a long haul in some of these countries and it is hard to do.

**Q84 Sir John Stanley:** Minister, in February, your colleague the Secretary of State for Business, Innovation and Skills published the Government's list of countries that were going to be its top arms export markets for this year. A few weeks later, in April, you and your Department published a list of countries of concern for human rights. Were you personally consulted by Dr Cable as to which countries should feature in what is called the priority of markets list—the list of countries that will receive top arms export attention from the British Government?

***Mr Browne:*** The Foreign Office would certainly be consulted. I cannot recall having a conversation, or substantive conversation, on that issue, but we have the ability to make representations throughout Government about foreign policy aspects of the work of other Departments, and we do so.

**Q85 Sir John Stanley:** I am surprised and disappointed that you were not personally consulted. For the record, could you tell us which countries feature both on the Department for Business list of top arms export markets and on your list of countries of concern for human rights?

***Mr Browne:*** I cannot. I do not have the Business Department's list, so I cannot cross-reference.

**Q86 Sir John Stanley:** Again, I find it disappointing that you are not familiar with the content of the two lists, particularly the countries that appear on both. Saudi Arabia and Libya appear both on the top priority markets list and, of course, on your countries of concern list. Do you not think it is highly detrimental to the credibility of the Government's human rights policy that countries that feature as countries of concern as far as human rights are concerned also feature on the official Government list of countries for top arms export attention?

***Mr Browne:*** The others may wish to contribute, but I would make the observation that a country that buys arms may not necessarily use those arms to perpetrate human rights abuses. You could, for example—this is a hypothetical example—have a country that has human rights abuses but also faces a threat from a neighbouring country that is an even worse offender and have no reason to believe that certain categories of armaments would be used for any other purpose than to repel the threat from the aggressive neighbour, rather than to perpetrate abuses within their own country. As I said, that is a hypothetical example. Certainly, where licences are being granted, there is a thorough mechanism for checking whether we feel that there is any credible reason to believe that those weapons will be used for the suppression of human rights.

I will give you an example of a country within my geographic remit: Colombia. There is not an absolute embargo on all military equipment being sold to Colombia, but if we made an assessment that it may reasonably be believed that that equipment might be used to abuse human rights, the licence would not be granted. If, on the other hand, the licence was for a particular type of night-vision binoculars used by naval patrol vessels to stop drug smuggling in Colombia, for example, the licence may be granted, even though it comes under a category of military equipment.

Do you understand the point I am making? I would not automatically assume that there is an incompatibility. I know that that may appear to be the case, but I would not automatically assume there is an incompatibility between featuring on the two lists.

**Q87 Sir John Stanley:** Minister, I fully appreciate the point you are making that, say, a complex air defence system would not necessarily relate to internal repression of human rights. Would you like to tell the Committee whether you consider that these items, which the Government have approved quite recently by way of arms exports to Saudi Arabia, fall within your category of defence systems: components for sniper rifles; gun silencers; small arms ammunition; sniper rifles; technology for sniper rifles; assault rifles; components for assault rifles; general purpose machine guns; and components for machine pistols? I could go on.

***Mr Browne:*** Let me draw on the others because they will help to inform the Committee better. My experience of when required ministerial approval is needed for export of the type of equipment that you have said is when we have reason to believe that that equipment will be used for the suppression of human rights. To put it bluntly, there are all kinds of items that could be used to suppress human rights. A knife could be used to suppress human rights. We have to have reason to believe that the military in a given country has a history of, or an intention of, using the weapons that are being exported for the suppression of human rights rather than for what we would regard as legitimate means. If we are confident that the usage is legitimate, then a licence could be granted even if, in other ways, that country abuses human rights, but it must not contribute to the human rights abuse.

***Vijay Rangarajan:*** May I add one process issue? On all of the arms exports decisions, the human rights department is consulted and will challenge those on the grounds that the Minister just described. It is not an absolute case of a country of concern having a blanket ban on exports. We go through in detail to look at whether there are concerns about particular types of arms, their use and, again, consult more broadly outside Government on that as well. It does come, in some cases, to a ministerial decision about the likelihood of future risk.

**Q88 Chair:** Let us come back to the questions about the countries of concern. I agree that if you have 50 countries of concern, it effectively devalues the system. In our last report, we identified just one country that we were concerned about and that we thought should be a country of concern, and that was Bahrain. You have not accepted that. Mr Siddiq has partially answered the question, but we still need a good explanation as to why, say, Vietnam is on the list with concerns about freedom of expression, yet Bahrain is not, even though 35 people have died on its streets. You have to justify why you have rejected our recommendation.

***Mr Browne:*** As I say, it comes to a judgment. As you acknowledged yourself, there are lots of countries in which human rights abuses exist in different forms. One could make a pretty compelling case for including that country on the list. We have put two more countries on the list, and I personally would be keen not to have a sense that every year we had to add two to show that we were remaining vigilant about human rights to the point that we got up to the 50s and 60s. Your representations were appreciated and understood and I hope to a degree—perhaps not as much as you would have liked—have been reflected in the fact that Bahrain has been added in this additional category. As I say, if they warrant inclusion in the judgment of the Department and, ultimately, the Foreign Secretary, they will be included. They feature prominently on our radar, so I can reassure you that what is happening in that country is not going unnoticed.

**Q89 Mr Roy:** On that point, does not the fact that more than 40 people were murdered during the uprising and that there was an unprecedented amount of arrests, make it slightly worse than other countries in their abuse of human rights? Is not that the ultimate abuse of human rights when so many people were murdered on the streets?

***Mr Browne:*** I have not received, as far as I can recall, a single representation from any pressure group arguing that any of the 28 countries of concern should cease to be a country of concern. Your point about whether it is worse implies that some of the other countries would be taken off the list or excluded from the list. If we feel that the reasons for inclusion are compelling we will include them. It is not an exhaustive list; we do not claim that every single country in the world where human rights abuses take place is on the list. We are trying to make a judgment about where we can mostly likely have an effect and where we can target our resources. That does not mean, to come back to the earlier question from Sir Menzies Campbell, that our embassies in countries that are not on the list are not devoting their energies to trying to improve the human rights situation.

***Irfan Siddiq:*** Can I just add to that? The situation in Bahrain last year was amazingly complex, in terms of both what happened and the nature of the decision making around the royal family, with some elements being much more hard-line than others. We have a huge amount of influence with Bahrain due to our long history, and I think the judgment was that we are in a process whereby the Bahrainis are trying to implement some reforms and there is a dynamic internally where there are different groups trying to push in different ways. Our judgment was that we should engage with those who are trying to effect change in a positive way, and that this measured new category of a case study was a balanced position where we signalled enough concern but did not alienate the Bahrainis in terms of our ability to influence them and send tough messages about what we would like to see change, which we continue to do. If we judge that that process is not going anywhere positive, it may be that next year we decide to change the situation, but while it is still fluid it is reasonable for us to try to maintain our influence and influence the situation in a positive way.

**Q90 Mr Roy:** It is fair to say that a lot of people's perception is that it is too fluid. The reason why they are not a country of concern is because there was such a lot of business between the United Kingdom and Bahrain, and maybe it was very uncomfortable to put them as a country of concern. That is the perception.

***Mr Browne:*** That would be a more valid claim if it were not for the fact that there are quite a lot of countries on the list where there is also a substantial amount of business. China, for example—total British trade with China is on a sharp upward trajectory. I do not want to prejudge next year's report, but I anticipate that China would still be a country of concern.

**Q91 Mr Roy:** I dare say it will be brought up again. May I take you to the strategy on the prevention of torture in relation to widening the scope, especially in relation to UK policy on reparations for victims of torture? Could those people be brought under the scope of the prevention of torture strategy?
***Vijay Rangarajan:*** There is currently quite a lot of international discussion of reparations. As you know, the UN special representative on torture has brought forward various ideas about an international convention for reparation. On the torture strategy itself, I am not sure we are anticipating that going wider into reparation issues. At the moment, that is primarily focused on the countries where we think we can make a real difference. It is largely on financial prioritisation and where exactly we can run the programmes.

**Q92 Mr Roy:** Why wouldn't you consider expanding the scope? That is the question.
***Vijay Rangarajan:*** To include reparation for victims of torture?
**Mr Roy:** Yes.
***Vijay Rangarajan:*** Partly it is under discussion internationally at the moment, and partly because where, in countries particularly, we can work on reparation issues—often through the rule of law parts of the strategy—we are working on them, but at the moment we are primarily focused on prevention and the accountability parts that follow after that. A lot of our judgments, country by country, on torture prevention are primarily finding the places where it is possible to work with—usually—the criminal justice system concerned.

**Q93 Mr Roy:** May I move on? How do the Government interpret their responsibilities under the United Nations convention against torture to ensure that victims obtain redress, and fair and adequate compensation? Who is eligible for such support in the United Kingdom?
***Jeremy Browne:*** Sorry. We will have to let you know in writing if we have that information.

**Q94 Chair:** Is that the answer to both parts of the question?
***Jeremy Browne:*** Yes.

**Q95 Chair:** You don't know about the UN convention against torture.
***Jeremy Browne:*** There was a specific point about compensation to British victims of torture.

**Q96 Mr Roy:** How do the Government interpret their responsibility under the United Nations convention against torture to ensure that victims obtain redress, and fair and adequate compensation? Who is eligible for such support in the United Kingdom?
***Jeremy Browne:*** I don't know the answer, and I think the Ministry of Justice would lead on that issue rather than the Foreign Office, so I would rather not hazard an imprecise answer. To be frank with the Committee, the reason I am hesitating is that this is not an area that I have been exposed to, and I think that is because it is a Ministry of Justice lead, rather than a Foreign Office lead. In many of these areas, there is obviously overlap between Departments, but that sounds as if it is quite heavily in the Ministry of Justice field, rather than the Foreign Office field.
***Vijay Rangarajan:*** On the domestic application of UN international conventions, the convention against torture is an obvious one, and it is an MOJ lead. We have been working with it in the past on exactly how to do it, and UK prisons were a recent area of work, and on establishing a reporting mechanism so that people who think they have been tortured or maltreated in some way have a mechanism through which the credible allegation gets to the prosecutors in this country. Once that is in place, this country's criminal justice system then takes over.

**Q97 Mr Roy:** Surely you interpret whose responsibility the United Nations charter is. Surely the Foreign Office must do that in the first instance—or are you saying you do not?
***Vijay Rangarajan:*** We work with the Ministry of Justice. The obligation to implement OPCAT and the other conventions in legislation falls first on the domestic Department. There is a monitoring mechanism for most of those conventions. The MOJ and the FCO together seek to justify our implementation in each case, and have done so on all the UN and other conventions, but then the domestic processes that allow for things such as redress are the responsibility of the domestic Department.
If we think that we are not fulfilling our international obligations—this comes up sometimes during universal periodic review—we do indeed have a discussion, including of course with the Attorney-General's office about the legality of how we have implemented various conventions.

**Q98 Mr Roy:** Okay. So you will write to us, Minister.
***Jeremy Browne:*** Yes, I will.

**Q99 Mr Roy:** In relation to Sir Peter Gibson's detainee inquiry, the Prime Minister announced in July 2010 that the inquiry had been set up. It is now two years later. Has it been set up? Has it started? If not, why not?
***Jeremy Browne:*** Yes, but it has been suspended due to a police investigation, but it will be continued when it is suitable to continue it and conclude it.

**Q100 Mr Roy:** But you don't know when.
***Jeremy Browne:*** I think it will be when the police investigation has run its course, and it is appropriate.

**Q101 Mr Roy:** So it has actually been set up, and has started running. That was not my understanding.

Are you saying it has been set up and has started, but it was stopped?

***Vijay Rangarajan:*** The Gibson inquiry was set up and ran, and then there was a pause. I think there was a statement in the House pausing it because of the discovery of additional evidence in, I think, Libya, which then led to police investigations that I believe are currently under way.

**Q102 Mr Roy:** But nothing is happening just now.

***Jeremy Browne:*** I think that continuation of the inquiry at the same time as police investigations were taking place was thought to be improper, so the inquiry has been frozen, or suspended, until the police investigations have run their course. It will then be possible to continue the inquiry. The commitment remains to conclude the inquiry to maturity, but it is impossible, given the police investigation, to put a precise date on when that will happen.

**Q103 Mr Roy:** We have heard concerns from other witnesses about the transparency of the process. Will the whole process indeed be transparent?

***Vijay Rangarajan:*** If memory serves me right, the Prime Minister asked Sir Peter Gibson to publish an interim report, which we expect fairly soon. That would say what the inquiry has been doing. As you say, it has been 18 months since it was set up. We are now in the process of police inquiries; it would then restart once there is no risk of damaging any potential prosecutions.

**Q104 Mr Roy:** Yes, but as I just said, human rights witnesses raised concerns about the transparency of that process. Have those concerns been taken on board?

***Mr Browne:*** The instincts of the Government would be to make it as transparent as possible, consistent with legitimate national security concerns.

**Q105 Sir John Stanley:** As the Foreign Office's human rights Minister, were you involved in and consulted upon, or possibly did you approve, the British Government's submission to the EU on its current review of the EU torture goods regulation?

***Mr Browne:*** I do not have specific recollection. I might have been consulted by having a piece of paper put before me. I do not routinely have a heavy involvement in EU issues, because I am not the Europe Minister.

**Q106 Sir John Stanley:** You are the human rights Minister. I find it surprising and disappointing that the human rights Minister, on an issue as important as the current review of the EU torture goods regulation, was apparently left unsighted. Is that not a matter of concern to you?

***Mr Browne:*** I am sort of confident that the Department has a clear sense of the Government's priorities on human rights. I have a close involvement with human rights issues. When decisions are to be made that are appropriately taken at ministerial level, I am satisfied that Ministers are leading that process. I do not think there is any institutional doubt within the Foreign Office about the priority we attach as a Government to human rights or the particular issues that we wish the Department to prioritise. I hope they are doing that and I have no reason to believe they are not.

**Q107 Sir John Stanley:** We are talking about torture and goods that can be used for torture, and the EU's policy as to the availability and possible shipment of those goods. Are you able to tell us the British Government's objectives, aims and expectations as to what they can achieve by the outcome of the EU's review of the EU torture goods regulation?

***Mr Browne:*** My experience in my two years as a Minister, and before then as a Member of Parliament, is that the British Government are as vigilant about trying to protect human rights as any country in the world. Where we can find forums of like-minded countries that will assist us in improving human rights, we will do so, and would be right to do so. The EU is an obvious forum, because there is a high degree of compatibility between the values of member states. We are keen to use that advice.

I was asked earlier about the Commonwealth; that would apply to the Commonwealth as well. It would apply to a whole web of relations we have with different parts of the world.

**Q108 Sir John Stanley:** I asked you a specific question, Minister, and you have given me an empty generalisation. If you cannot answer that specific question today, will you please give us an answer in writing? What are the objectives of the British Government as far as the outcome of the EU's review of the EU torture goods regulation?

***Vijay Rangarajan:*** I will just add one point. This goes rather to the heart of how the human rights department works, which is that human rights are, in the jargon, "mainstreamed" through pretty much all the work of certainly the Foreign Office, but also of other Departments, so not everything that has a human rights component necessarily comes to Mr Browne. Most judgments on foreign policy have a human rights component of some kind. Pretty much every speaking note of every Minister talking to every other Government has an element of it. What tends to happen is that they consult the human rights department, and we then set out an overall policy on, say, that country or that theme.

In the case of torture equipment and its export, the UK has a fairly clear policy and set of procedures. While we can write on the detail of exactly what we are pursuing on the technical detail of the EU regulation that will follow, we certainly advised on what the UK's overall policy is on the export of goods that could be used for torture. The decisions on each of these negotiations or contacts with others are taken by the relevant Ministers, all of whom have a responsibility for human rights within their countries or their themes. We do not bring them all to Mr Browne for a decision in every case.

**Q109 Sir John Stanley:** Given that the British Government have made a submission to the EU Commission as to what they wish to achieve as a result of the EU's review of the torture goods

regulation, can I, Minister, have an assurance that we will have an answer in writing to my question as to what the British Government wish to achieve as a result of the review, please?
***Mr Browne:*** Yes.

**Q110 Chair:** May I remind you of something? Sir John Stanley is talking about the EU convention. A few minutes ago, Frank Roy was talking about the UN convention, which you seemed a bit vague on. In October last year, you published a 16-page guidance document for foreign posts overseas about your torture strategy, including a covering statement from yourself in which you spoke about the importance of "working in partnership with other countries and organisations". I hope that when you do reply to Sir John you bear it in mind that you have set a benchmark, and we hope that we can get some detailed answers on these points.
***Mr Browne:*** Yes.
**Sir Menzies Campbell:** The Chairman would quite rightly not allow me to reopen the question of countries of concern, but it occurs to me, having considered your evidence in that respect and having considered the more recent evidence in relation to torture, that what we are really getting at is whether, in the application of its policies in these matters, the Foreign Office is able to exercise a degree of consistency. If the perception is that inconsistent decisions are being made, that necessarily undermines the quality of the policy decisions. Can you assure us that consistency lies at the forefront of these matters? What steps are being taken to ensure an across-the-board consistency in decision making?
***Mr Browne:*** Yes, I can give you that assurance and for the reason that Vijay said, which is that the Government, and the Foreign Office specifically, have a clear policy stance on torture and torture and that is well understood by officials in the Department. That stance is communicated and applied consistently whether in discussions in one part of the world or in another. By necessity, different Ministers or ambassadors will be leading on the details of some of those conversations in any given circumstance. The task for the Minister—to come back to earlier points made by Sir John and others—is to be satisfied that the overall policy is the right policy, and not necessarily to micro-manage the details of the application of that policy if the Minister is satisfied that the policy is being adhered to. I am satisfied that that is the case, and I am satisfied it is consistently applied.

**Q111 Mr Ainsworth:** Minister, your report says that you will continue to seek new deportation with assurance arrangements in 2012, but you won't say with which countries you are having those discussions. Surely if Parliament knew and other organisations knew and were able to comment on the pitfalls to such arrangements, that might lead to better decision making. Why will you not say which countries you are having those discussions with?
***Mr Browne:*** I do not know which countries we are having the discussions with. I do not know of an exhaustive list. I am sure that, at particular occasions, a country—*[Interruption.]* I think it would be a Home Office lead, but obviously they would be informed by the Foreign Office and other Departments, as and when there were insights that we could provide. The Jordanian example has been the most high profile. It is the Home Secretary who has taken the lead on that process, but obviously we can provide insights through our embassy in Amman, through our knowledge of the political system in Jordan.
We are informing those processes and we have an absolute position that people will not be deported if we believe that they will be subjected to torture. As you know very well, Mr Ainsworth, from observing the political debate and from your time in government, there is an understandable political pressure to deport people who ought not to be in this country and whom we have good reason to believe are a threat to national security. If we have suitable assurances about their treatment, I think most people would regard that as a reasonable process.

**Q112 Mr Ainsworth:** Your report goes on to say that you are thinking about including cases—we are talking about deportation with assurances—"without an overarching framework". Amnesty International, Human Rights Watch and others have expressed particular concern about deportations without an overarching framework. What exactly does this mean? What are you referring to? What assurances will there be? In what circumstances will you seek deportation to a country without an overarching framework?
***Mr Browne:*** I am just looking at the note in front of me. It does not add to what I was going to say, which is that my understanding is that there is an assessment made in the case of each individual. We have an overarching belief that no one should be deported if we think they will be subjected to torture, but we also have to satisfy ourselves on the individual case as well, so the safeguards are in place to try to make sure that we achieve our objectives.
***Vijay Rangarajan:*** We are negotiating overarching frameworks where there are a substantial number of people who might need to be deported to that country, and where the Government concerned is willing to have an overarching framework. It does take work on both sides and can take a very long time, as we have seen with Jordan. In some cases, there may be only one person whom we wish to deport to that country, or they may not want to have an overarching framework, but we still need to seek the individualised guarantees about the treatment of that person within that country's judicial or police system after their return.
Those guarantees—those assurances—are of course tested in our own courts, and in many cases up to the European Court of Human Rights, as to whether they are sufficient to guarantee that person against ill treatment or torture. It is not quite the case that without an overarching framework we would not have any assurances; we would still have a whole lot of assurances. It is just that sometimes we can negotiate blanket assurances to cover all people who are returned. In almost all cases, we will need that, and some individual ones, like the use of a specific witness

in a specific case or specific evidence that our courts are unhappy is used.

**Q113 Mr Ainsworth:** Do you believe that organisations are justified in having particular concerns where there is no overarching framework available and we are seeking deportation to a country that is not prepared or able to give us one?
***Mr Browne:*** I would expect them to be vigilant in seeking out areas of concern and expressing them, because that is their role. That is what the NGOs exist to do—in this case, to be aware of potential abuses of human rights. We, I hope, can reassure them that we are taking the necessary measures to safeguard against abuses that they fear might otherwise take place. Governments have to try and make a balanced assessment. I could find a group of people who would say that we should never deport with assurances at all. I could find another group of people who would express very strong concerns to me about people who potentially posed a severe threat to national security, and had no right to be in the country in the first place, remaining in the country. We are making a judgment consistent with the values and procedures that I have detailed.

**Q114 Mr Ainsworth:** You said you would notify Parliament where you have made a new arrangement. Will you give us the detailed texts of those arrangements when they have been agreed?
***Mr Browne:*** That is not a commitment that I feel able to make to this Committee, simply because I do not know whether there are good reasons in the Home Office for having reservations about going down that path. I have not been party to a discussion of that sort, so I feel unable to give you a definitive answer.

**Q115 Mr Ainsworth:** Okay. Let us move on to a particular instance. We have deported individuals to Sri Lanka. There was a report in *The Guardian* on 5 June that claimed that a former member of the Tamil Tigers had been deported, and there was good intelligence that this individual had been tortured. That report also said that the Foreign Office felt that it was safe to continue deportations to Sri Lanka. Is that so?
***Mr Browne:*** I do not recall having read the individual report in *The Guardian*, but for all the countries where we consider deportation we are looking at a framework agreement. We are making a case-by-case study, so it is not in any way a cavalier procedure. We have to be satisfied that our expectations will be met for any person who is deported in future. That is what we continue to try and achieve.

**Q116 Mr Ainsworth:** Would you come back to us and tell us what the present position is on whether or not the Foreign Office believes that it is still safe to deport people to Sri Lanka?
***Mr Browne:*** We can, yes. The point I am making is that where there are grounds to deport people, we are looking to deport them if they have no basis for being in the country and there are all kinds of potential risks that they pose, but it is not an absolute commitment. Where we feel that the risks of deportation override the benefits, we will stop those procedures taking place. That safeguard exists. If we thought that it was—

**Q117 Mr Ainsworth:** But you have had a report that states there is a risk of torture in Sri Lanka. You must surely have done an evaluation of whether that report has foundation. You must surely have a view on whether, from the point of view of the risk of torture, it is safe to deport people to Sri Lanka.
***Mr Browne:*** But with nearly every country that we would deport to with assurances there is some risk. That is why we seek to have the assurances. Were we to say that nobody would be deported with assurances to any country where there was a risk—again it is a circular argument. Sure, the problem is that we have people we wish to deport who do not originate from benign, liberal, tolerant countries. That is why we have to put these extra safeguards in place. Yes we are deporting people to countries where we have grounds for concern about what is happening. That is precisely the reason for seeking assurances, but if we think that the assurances are not being honoured or that the overall situation in the country is so insecure or badly administered that the assurances are not worth the paper they are written on, then obviously we would discontinue the process.

**Q118 Mr Ainsworth:** But that is precisely the question. You have had allegations that people who have been deported have been tortured. I want to know whether you still think that those assurances from that particular country are valid.
***Mr Browne:*** If the allegations are substantiated then that would be a reason to discontinue. We cannot discontinue every time there is a newspaper article.

**Q119 Mr Ainsworth:** I understand that, which is why I am asking the question.
***Mr Browne:*** The point I am making is that if we discontinued deportation with assurances to every country where there was a newspaper article saying that bad things had happened in that country we would never deport anybody. The whole reason why we seek assurances is precisely because there are bad things happening in those countries. We have to have assurances that those bad things won't happen to the particular individual we are deporting. The fact that a newspaper has managed to find that there are abuses of human rights happening in countries where deportation with assurances take place—well, exactly. That is why we need the assurances. That does not strike me as a particularly dramatic media revelation.

**Q120 Mr Ainsworth:** I am not asking you about a media revelation. I am asking you about your assessment of those reports.
***Mr Browne:*** My understanding is that we have not had substantiated reasons to believe that deportation with assurances is in all circumstances inappropriate to Sri Lanka. If we did have those fears substantiated then we would stop the deportation, in this case to Sri Lanka, but if we judge it possible to deport people with the assurances and we feel confident that those

assurances will be honoured then we would continue to look at opportunities where they were appropriate.

**Q121 Ann Clwyd:** You have talked a lot about assurances. How do you monitor compliance with assurances?
***Vijay Rangarajan:*** For example, in the case of Jordan—it depends a bit country by country whether we trust various organs of the state—there will be an NGO or an independent person appointed to monitor the assurances and to monitor the treatment.

**Q122 Ann Clwyd:** An NGO appointed by whom?
***Vijay Rangarajan:*** This would be somebody appointed by the British Government. We would be choosing somebody who is independent of the Government and independent of the host Government to stay in contact. It could be a lawyer, it could be an NGO. Our embassy in that country usually also has a role in monitoring the condition of the people who are then returned afterwards.

**Q123 Ann Clwyd:** A lot of NGOs have monitored what is happening in Sri Lanka. They are very clear what has happened there and what is happening there, so what assurances have they given to you that the assurances that have been given to you by the country are being complied with in the case of Sri Lanka?
***Vijay Rangarajan:*** We have tried to substantiate some of these. We do not have substantiated evidence that Sri Lanka has broken the assurances. There is certainly a substantial amount of maltreatment and torture in Sri Lanka, but we do not yet have substantiated evidence that the people whom we have returned through the assurances have been maltreated.

**Q124 Ann Clwyd:** In the case that has been reported, the member of the Tamil Tigers intelligence service was deported from the UK in June 2011. Has anyone talked to him or her?
***Vijay Rangarajan:*** We do not know the details of who has talked to him or her, but we will certainly find out if we can.

**Q125 Sir Menzies Campbell:** Sanctions, generally, are in use as a means of expressing displeasure about the conduct of Governments. To what extent do you think that the apparent progressive changes in Myanmar, or Burma, resulted from the application of sanctions?
***Mr Browne:*** That is very interesting. One could write an entire thesis on that very question. My view is that sanctions can and in many cases do have a substantial effect on the politics of a given country. The fact that the Government in Burma are keen for sanctions to be progressively lifted suggests that they see that as part of their passage back to mainstream respectability, so having the sanctions was indicative of their not having that status. I think they can work at a number of different levels, oil sanctions in Iran being a perfect case in point. They can have a more direct painful economic effect, which can bring pressure to bear on a Government. They can also have a wider, symbolic effect on how that country's Government is viewed. As I said, when countries come to be more responsive or sensitive to international opinion, they can see that symbolic mark of disapproval as something they wish to reverse.

**Q126 Sir Menzies Campbell:** There is some evidence in history of countries that learned, at least for a while, to live within sanctions regimes, isn't there? I am thinking, for example, of Ian Smith in Southern Rhodesia. There is also a certain amount of support for the view that the generals in Burma learned to live within the sanctions, not least, of course, because quite a bit of sanction breaking was going on in parallel to the efforts to use sanctions as a means of exerting pressure on them. How far is that taken into account when our Government, our Foreign Office, consider whether to impose sanctions? What assessment do they then make of the success of the sanctions?
***Mr Browne:*** I remember going to live in what was just transitioning from Rhodesia to Zimbabwe in 1980. You are right—every shop had entirely home-produced products, some of which were better than others, but they managed to adapt to the environment in which they found themselves politically.
I think sanctions are a useful tool in our armoury, if you like. I remember saying—a year ago, I think—in front of the Committee that this use may diminish over time. If Britain is the only country that produces product x and we impose sanctions on another country, we cut off 100% supply of that product, but if 10 countries produce product x and some of them are not keen to comply with the sanctions regime for political reasons, we are no longer able to cut off its supply—in fact, we may not even be able to diminish it if other countries step up their supplies to make up our shortfall. We find that situation with Iran, with oil sanctions, where we have an EU sanction on oil, but we are trying to encourage Japanese, South Koreans, and others—Indians, most obviously—not to buy more to offset the reductions in the purchases being made by EU countries. They are an imprecise, imperfect method for bringing pressure to bear, but if you take the topical example of Iran, I think most people think that the British Government should be looking to try to find ways to put pressure on Iran, and this is clearly a way we can, through sanctions.

**Q127 Sir Menzies Campbell:** You will be familiar with the false foreign policy doctrine which is reflected in the words, "Something must be done". I wonder if the imprecision of sanctions falls within that policy: something has to be done, but there is no appetite for military action or other political activity, so sanctions are the only arrow left in the quiver.
***Jeremy Browne:*** I do not think we should do something just for the sake of doing something.

**Q128 Sir Menzies Campbell:** Symbolism is important—
***Jeremy Browne:*** Symbolism has something. A lot of people say—in a given scenario, let's not have a specific case—that we strongly disapprove of what has been happening in country X. In fact, in the last hour, we have been talking about all kinds of countries where we strongly disapprove of what has been

happening. We certainly don't wish to have military conflict with those countries. We think that is a step too far. We need to somehow signal our disapproval of what is happening in that country by means short of warfare. Sanctions are a means short of warfare.

I only observe that the countries that are subjected to sanctions appear not to wish to be subjected to sanctions. It must have some effect. Even in conversations I have with the Chinese, they would rather not be subject to an EU arms embargo, as they are. That is a form of sanctions. To test the proposition, if it did not matter, then they wouldn't care, but they do appear to care, so one assumes it must matter.

**Q129 Sir Menzies Campbell:** Aung San Suu Kyi has arrived in Britain and indeed will address both Houses of Parliament later this week. We received communication from your colleague Alistair Burt in February to the effect that for consideration to be given to the raising of EU sanctions against Burma there had to be a release of all political prisoners by 1 April. Have you been monitoring that from the standpoint of human rights, and if so, are you satisfied that that condition has been met?

***Mr Jeremy Browne:*** We are very pleased she is coming to Britain. I think it is her birthday today as well. She has a very full programme here, and lots of people who care deeply about the progress of human rights in Burma, and Burma more generally, will welcome her presence.

The situation in Burma is a finely calibrated one. The Prime Minister has been there recently. The Foreign Secretary went earlier this year. They both went because the assessment of the Government is that significant progress is being made in Burma, in the direction that we would wish. The balance is the degree to which you encourage that progress without anticipating progress that doesn't exist. That is always the political calibration.

Aung San Suu Kyi does not set British Government policy, but she clearly informs it. She has been keen to make the case that she thinks the changes are genuine, and that countries like Britain should show goodwill and encourage those changes rather than being a sort of backmarker which requires emphatic proof of changes before being willing to change our position ourselves. We are trying to coax further change along, and to reflect that in our overall political approach, rather than saying that we will wait until we have something that represents an entirely satisfactory picture before we consider making any changes.

We are trying to move in tandem with the changes that are taking place in Burma, but we are always open either to the charge that we have got ahead of ourselves slightly and are anticipating changes that are yet to materialise fully, or to the counter-charge that we are dragging our feet, that we are backmarkers and that, if only we could show a little more imagination, we could coax more rapid change out of the regime in Burma. It will be interesting to hear what she says this week in Parliament, but I hope that we are getting that balance right.

**Q130 Sir Menzies Campbell:** On a slightly different topic, it is the policy of Her Majesty's Government not to publicise the names of individuals who are denied a visa for entry to the United Kingdom on the grounds that they are suspected of violations of human rights. Why is that policy adhered to? What would be the disadvantage to the United Kingdom's interests were we to publish the names of people to whom visas were refused simply because of their human rights records?

***Mr Browne:*** With your indulgence, Mr Chairman, I will come on to that, but I will give a slightly wider answer initially. The Government have made a significant change since I last appeared before the Committee, namely to introduce the explicit presumption that, where we have credible evidence, people who abused human rights would not normally be permitted to have visas to come into this country. The reason why I say that it is a significant change is that that is even if we have no reason to believe that they will do anything untoward in this country. That sends out a strong, values-based message to people who are responsible for undesirable behaviour that coming here is a privilege, not a right, and that our visa regime is not informed purely by security considerations within the United Kingdom; it is also informed by wider values.

I suspect that, were you to ask the relevant Home Office Minister, the concern would be that, if you get into justifying each individual case, you could make the case for justifying all kinds of new categories, and you could then make the case for legal appeals against the individual cases and we would end up with a hugely complicated system. For some people, for reasons of confidentiality or sensitivity, I think it would probably be regarded as reasonable not to release the details that underlie the decision. The position has been taken by successive Governments that it is better policy to have an overall policy that people understand, but not to comment on individual cases.

**Q131 Sir Menzies Campbell:** But if the policy is to some extent—indeed, I think it is to a substantial extent, as your earlier answer indicated—based on a values approach, would it not be a good advertisement for those values if it was pointed out that someone who may have been associated with the disgraceful treatment of a prisoner in detention had been refused a visa simply because they were known to have participated in something wholly contrary to all acceptable standards of human behaviour? Would that not be a very good advertisement for the United Kingdom?

***Mr Browne:*** First, it is worth noting that the presumption now is that they would not be allowed to come in, whereas that presumption did not previously exist. I agree with the underlying point that it would send out a powerful message. All I am saying is that there may be other, less glorious considerations that need to be weighed against it, such as whether it would be prejudicial to a trial in that other country if the British Government had publicly stated that intention, and whether it would lead to greater retaliation from that country against British nationals

being allowed to go there for what we would regard as reasons in the interest of the United Kingdom. One can think of other reasons, too. The current position of the Government is that they would not wish to make the reasons public in all cases. If they did, they would then have to justify why they were making some public and not others, which would lead to the position where the Government have the position that they have.

**Q132 Sir Menzies Campbell:** We might pursue that with the Home Office.

**Q133 Chair:** One last question on this area—sporting boycotts. As you know, we are engaged in a partial boycott of the European football championship that is on at the moment, but we chose not to boycott the Bahrain Grand Prix. Can you set out the criteria by which you reached those decisions? Do you think there is an inconsistency between the two positions?
***Mr Browne:*** It is very difficult to have absolute consistency in these matters. I was quite struck when a lot of concern was expressed in the media about the Bahrain Grand Prix taking place, whereas the previous week's Grand Prix had happened in Shanghai, which is emphatically in a country where serious human rights abuses take place and I did not read a single media comment saying that the Grand Prix should not have happened in China. That, in a way, answers my point, which is that I think it is very hard to apply these issues with absolute consistency. I observe that the media and the public do not regard these matters with consistency either. We try where we think it is appropriate to take the right course of action, but everybody is vulnerable in such circumstances to the charge that they could have done more or they should not have done anything.

**Q134 Chair:** You were utterly consistent between the Chinese Grand Prix and the Bahrain Grand Prix; you did not call for a boycott of either. Why are you boycotting the Ukrainian event?
***Mr Browne:*** But a lot of critics of the Government were entirely inconsistent.

**Q135 Chair:** I just want the Government's position, not the critics' position or the commentators' position. I want to know why you are boycotting one and not the other.
***Mr Browne:*** All I am saying is that we are managing to be more consistent than anyone else I know, but I am sure we are open to the charge of inconsistency. I am not the Minister who covers Ukraine, and I have sadly never been there in my life, but I will try to explain the human rights perspective. There are concerns about human rights in the Ukraine, and it was felt—I have heard this view expressed by members of all political parties in the House of Commons—that it was important that the British Government demonstrated the concerns that exist here in Parliament about human rights in Ukraine. That was what was thought to be an appropriate signal of disapproval. I think that the British ambassador in Kiev has attended matches, and some people may feel that he should not have done. Other people may feel that Ministers are giving insufficient support to the England football team; I have heard that view expressed as well.

**Q136 Mr Roy:** We all hope that England go all the way to the Euro finals—
***Mr Browne:*** Do you really?
**Mr Roy:**—it says here. From the outside, I see a total inconsistency. The Government refused to go to the game in Donetsk against France, the game against Sweden in Kiev, and the game tonight in Donetsk. They will refuse to go to the quarter finals, which will be either in Donetsk or Kiev, but on July 1, if England get there, they will change their mind. What was good enough at the start in relation to the group—saying "we have grave concerns about the way the opposition was treated in Ukraine and therefore we are boycotting"—will only be a wee boycott. In other words, if we get to the final, we will all queue up as the Chancellor did at the Champions League final.
***Mr Browne:*** Let me say two things. One is that, sadly, by the time the final arrives I will be travelling in another part of the world, so I have no personal interest to impart. My other observation is that the only time that England have ever reached an international tournament final was when it was held in England, so these difficulties did not arise. I am delighted that you think they may do in two weeks' time, but history suggests that we are dealing in hypotheticals here.

**Q137 Mr Roy:** The point is, Minister, the Government have said "There is a problem in the Ukraine and we are going to boycott." It seems to me that if you boycott the first couple of games, you have to be consistent and boycott all the way through including the final.
***Mr Browne:*** A powerfully expressed point by Mr Roy.
**Chair:** Ann Clwyd wants to take you back to Burma.

**Q138 Ann Clwyd:** Aung San Suu Kyi, in her acceptance of the Nobel peace prize, urged caution in dealing with the Burmese regime. I think that everybody realises there are green shoots, but not to be over-optimistic. The Foreign Secretary told us during the Queen's Speech debate that there were still "prisoners whom the Burmese Opposition argue are political prisoners. We are now at the stage of definitions of what constitutes a political prisoner." Have we got that definition yet?
***Mr Browne:*** The short answer is that we are, inasmuch as we can through our embassy, trying to make assessments about the different statuses of different prisoners, and Amnesty International and others are very active in this field. Of course, you can get to a position where there is no definitive answer to that question, in some cases. One person's political prisoner may be another person's criminal, depending on how you view matters.
In terms of our overall approach—Aung San Suu Kyi can obviously speak for herself, but the general message that she has been keen to convey to our embassy and Government is that we should engage in this process, that we should regard the Burmese

leadership as acting with a degree of good faith, and that we should not be a back marker. As I said, it is difficult, because we do not want to overreach ourselves. I think it is a source of great pride for people in all political parties in Parliament that Britain has been the outstanding country in the international arena in pushing the case for the restoration of democracy to Burma. That has been my experience on all occasions that it has come up, but we do not want to be so stuck on a narrative that when change takes place, we refuse to acknowledge it. It is difficult to have a right or wrong answer.

**Q139 Ann Clwyd:** Is the ICRC still denied access to detainees in Burmese prisons?
***Vijay Rangarajan:*** No, they are not completely denied access now. They were denied access to all political prisoners for a substantial amount of time. Our assessment is that all the prominent political prisoners who featured on a sort of "A list" in Burma have now been released. The discussion is now—this is work that we are doing in Burma, including, particularly, with US colleagues who I have discussed this with, and obviously with the NLD and other opposition groups—on several hundred other prisoners who some people classify as political and other groups, who are often quite linked to them, do not. The ICRC access overall is still not as complete as we would like. I think they do have some access now.

**Q140 Ann Clwyd:** Some access—I do not understand. Can you tell us precisely what access they have?
***Vijay Rangarajan:*** I do not have the detail on that, I am afraid.

**Q141 Ann Clwyd:** Could you let us know?
***Vijay Rangarajan:*** Of course.

**Q142 Chair:** Turning to business interests, Minister, Sir John Stanley has dealt with those in some depth. May I just pick up on one point though? Human Rights Watch expressed concern to us that the UK jurisdiction on abuses overseas is somewhat limited, because of issues of jurisdiction—for example, child labour in a foreign country. Is there any consideration of having a look at that jurisdiction point, or is it an insuperable problem?
***Mr Browne:*** There are difficulties that you alluded to in your question. We can have a look—or we do look. There is public concern, and often, consumers are very effective themselves at bringing about change that Governments may have more difficulty achieving, but there are difficulties that you alluded to.

**Q143 Chair:** Is there any way that British firms can be held accountable for their activities overseas? Is there any other dimension here?
***Mr Browne:*** I am not an international lawyer, but my understanding is that there is quite a lot of concern about whether businesses can be prosecuted in one jurisdiction for offences, if you want to put it in those terms, that have happened within another jurisdiction. They could even be prosecuted in a third location: they could be headquartered in one place, commit the alleged offence in a second place and be prosecuted in a third place, but I am nervous about getting into a complex field of international law.
***Vijay Rangarajan:*** We have recently intervened in an amicus curiae brief in the US Supreme Court on exactly this point, which may be the issue that Liberty has raised. It is the specific issue of extraterritoriality, where the US takes a more expansive view than we would like to. We would prefer to hold companies, particularly British ones, to account in this country or to see them held to account in the country where they are committing what under local law may be a human rights violation or an abuse of some kind. It is a matter for the criminal or civil law to hold that company accountable. Where we have difficulties—this is a much wider issue than the accountability of companies—is the extraterritorial application of domestic law in the US cases. The Alien Tort Statute is an old piece of legislation, which might be applied to everyone else's companies, rather than just US ones.

**Q144 Sir Menzies Campbell:** But the position is that neither of the two legal systems in Britain are particularly moved with the notion of extraterritorial jurisdiction, except in very limited respects, such as murder. Of course it arises, does it not, in a very acute respect in relation to the controversy around extradition and whether American courts are entitled to take jurisdiction in relation to acts that are caused in the United Kingdom. The question that I wanted to ask was on whether that was under consideration in the general review of extradition that has taken place—or is that review confined only to the Home Office?
***Vijay Rangarajan:*** At the moment I am not aware, although I think that it is confined entirely to the Home Office and extradition currently.

**Q145 Sir John Stanley:** Minister, is it not the case that Governments have tended to try to hide behind the supposed difficulties of extraterritorial legislation, when in fact there are a total of 29 pieces of UK legislation on the statute book—I have the list in front of me—under which British residents can be prosecuted in the UK for offences committed overseas?
***Mr Browne:*** I am sorry. Is the question whether, given that that is the case, we are duplicitous or in some way misleading in stressing that we—
**Chair:** A lack of political will, I think is being referred to.
***Mr Browne:*** The concerns have just been expanded upon in the previous set of questions and answers. Our presumption is that British businesses should be subject to British law or, when they act in other countries, subject to the law of the countries in which they act. You have some exceptions, which I would assume apply to businesses.
**Sir John Stanley:** Sorry.
***Mr Browne:*** Some of your 29 pieces of legislation, I assume, apply to individual contact.

**Sir John Stanley:** No, absolutely not. There are offences under the Civil Aviation Act 1982, for example.

**Chair:** Minister, you are writing to us on a couple of other issues, so could I invite you to have a word with your lawyers in the Department? I accept that it is a difficult technical area, but if you could address some of the points that have been raised, that would be helpful.

**Q146 Rory Stewart:** Minister, how many embassies abroad have a UK-based officer working full time on human rights?

***Mr Browne:*** I don't know the answer to the question, but I have an answer that I hope will inform you and which I hope will satisfy the line of questioning. I think it was Ms Clwyd who raised with me a year ago the issue of how many dedicated human rights staff we have around the world, which is a slightly different question from how many embassies have human rights staff. I said that I thought it was impossible to give an answer, but we have tried to give an answer, which is 240 full-time equivalents.

**Q147 Rory Stewart:** It is quite a straightforward question. In an embassy organogram, do any of your embassies worldwide have a UK-based office working full time on human rights?

***Mr Browne:*** With respect—

**Q148 Rory Stewart:** Is there anyone called a human rights officer? An American embassy has a human rights officer sitting in their embassy. Do you have any such people?

***Mr Browne:*** There are a few in countries that are of particularly grave concern and where we have big embassies—China, for example. The reason that it is not quite so straightforward is that it slightly assumes that human rights are something that a person in the embassy does, whereas actually it is the objective of the embassy to project British Government policy, which in any given country may include a large component of human rights. If the ambassador never raised human rights because a junior employee was responsible for human rights, we would not regard that as a satisfactory model, even though I had an individual who I could display in front of the Committee.

Our 240 figure is full-time equivalents. We asked every employee what proportion of time they spent on human rights. If they said less than 10%, we excluded them. If they said more than 10%, we included them, and the 240 is the aggregate of all of those who spend more than 10% of their time on human rights. So if, for the sake of argument, they spend a third of their time on human rights, three of those equals one full-time equivalent. Even that is a rather imprecise measurement.

**Rory Stewart:** Minister—

***Mr Browne:*** No, I was taken to task last time round for not giving detailed figures, so we have spent hours and hours working to try and help your Committee. Your assumption was that we were not doing this to your satisfaction and so we have spent hours and hours trying to demonstrate to you that we are. You might at least give me the courtesy of letting me explain it. What we cannot do, unless you want the added complication of a weighting system, is that under this measurement system, our ambassador to China counts the same as the most junior employee. Unless you can give me a mathematical formula whereby different grades are weighted at different levels—

**Q149 Rory Stewart:** With respect, that was not the question that I asked. The ambassador is responsible for many things: for political work, management work, the budget of the embassy and human rights. My question is straightforward. Can you please tell us how many officers you have worldwide who are UK-based in embassies who are working full-time on human rights?

***Mr Browne:*** Solely devoted to human rights?

**Rory Stewart:** Solely devoted to human rights.

***Mr Browne:*** No responsibility for any other issue, such as evacuating the building if a fire alarm goes off? Nothing? Seriously?

**Q150 Rory Stewart:** Minister, that is not a serious response. Your political officers and your economic officers are also responsible for evacuating the building. You could answer the question: how many human rights officers do you have?

***Mr Browne:*** If you go to as many embassies as I do, you might see it. We have embassies with, say, a dozen British members of staff who are heavily working on the area of human rights. All of them are. The one who is responsible for business is concerned about business human rights. The one responsible for environmentalism is concerned about environmental human rights. If I was sitting in front of the Environment Committee, they would say that you cannot count that person as a dedicated environmental person because they also have a concern about human rights. You say that they are campaigning in Brazil about deforestation but they are also taking an interest in the effect that deforestation is having on indigenous people. The point I am making is that people across the board are delivering the Government's human rights agenda. We have tried, with considerable effort, to give you a sense of the magnitude of this endeavour. Thinking that in a given week, an ambassador spends 95% of his time on human rights but it does not count strikes me as a bizarre measurement.

**Q151 Rory Stewart:** I am very happy to accept that a very large number of embassy staff are engaged in human rights and that human rights is, as Dr Rangarajan says, mainstream through the system. So human rights work, like political work and economic work and a whole series of other forms of activities in embassies, is mainstream through the system and a number of different staff are engaged in it. Could you please answer the question on how many people are designated as human rights officers who are UK-based staff in foreign embassies and have that as their primary responsibility and role within that embassy?

***Mr Browne:*** I can't, today. I do not know what the number is.

**Q152 Rory Stewart:** Could you please get a number for us?
***Mr Browne:*** If we have a definitive number. My fear is that next time around, the conversation will revert to why there are embassies where we do not do any human rights, and I will end up having to try to explain again that just because we do not have a dedicated human rights officer it does not mean that we do not do human rights.

**Q153 Chair:** This, Minister, is because we take human rights very seriously here. We just want to know exactly what the focus of the Foreign Office is.
***Mr Browne:*** But some embassies that I go to have only two UK staff—some of our smaller embassies.

**Q154 Chair:** In which case, the answer would be zero.
***Mr Browne:*** The answer would be zero.
**Chair:** There is nothing wrong in saying that.
***Mr Browne:*** Sure, but then I fear a whole series of letters and parliamentary questions about why we do not have anyone doing human rights in that country, and I will then have to try to explain, as I have tried to do for the past five or 10 minutes, that we do have people doing human rights in that country but they do not go around with a name badge on indicating their area of responsibility because they have multiple responsibilities. Apart from in our very big embassies—I cited Beijing as a case in point—the levels of responsibility are not so atomised.
You count only UK-based staff in your question. For example, I was in Beijing a few weeks ago and went to a human rights event to promote human rights in Beijing. One of the people who had organised it was a British national who was a locally engaged member of staff. She was a British person living in Beijing who had been employed by our embassy to help us work on, among other things, human rights. So, she would not count in your category, because she is not a UK-based member of staff, and yet I went, as the Minister, to a human rights event in Beijing that she had helped to organise. I could bring her to meet you.

**Q155 Rory Stewart:** Nevertheless, the transparency in measurement is very helpful—
***Mr Browne:*** It would be misleading to release a figure that did not include her, because that would understate the amount of human rights work that we are doing in Beijing.

**Q156 Rory Stewart:** The more information we can have the better, so that we are able to hold you to account.
***Mr Browne:*** But do you want the non-UK-based staff?

**Q157 Rory Stewart:** Certainly, the more context and the more statistics you can provide on the detail of Foreign Office staffing worldwide and the individual roles, helps us to assess how many resources—how many officials—you are dedicating in a particular place to a particular issue, and we would like that on political and economic work as well, so that we can see how you determine your priorities. I am sure that there will be many things that you need to explain in terms of putting those statistics in context, but the statistics are very useful for us.
***Mr Browne:*** How would you categorise it to capture the woman I just mentioned?

**Q158 Rory Stewart:** I have asked my question; it is very straightforward. It is about UK-based staff.
***Mr Browne:*** I don't think it is very straightforward; that is the whole point, and that is why we have worked so exhaustively to try to give you a figure that can help here.

**Q159 Chair:** Minister, may I help here? Just to reflect on the concerns, an effort has been made to give us more information, and that is appreciated, but you can see that we are still trying to pin down greater detail, and perhaps you and your colleagues would like to—
***Mr Browne:*** There is one other point that I would make briefly, which is that there are good reasons, which I am sure members of the Committee will appreciate, why we cannot categorise every single person and every hour they spend on every work task in every embassy. Do you want me to spell it out even more?

**Q160 Chair:** We are aware of that explanation.
***Mr Browne:*** But Mr Stewart is very keen for us to provide an exhaustive list. He went on to say that not only is human rights not enough but that we should try and do it on commercial and environmental categories. Of course, by a process of elimination, if you do every single category, what is left is what you do not wish necessarily to reveal. So there are reasons why some of these decisions are made.

**Q161 Chair:** We are not asking for every single category.
***Mr Browne:*** You are not, but if every Committee asked for every category we would be in that position, wouldn't we?
**Chair:** Rory, have you finished your questions?

**Q162 Rory Stewart:** No. Whether or not the FCO has actually set a lower priority for children's rights, would you accept that a number of organisations have the belief that you have done so, and if so, what are you doing to address that?
***Mr Browne:*** I have never heard that accusation made.

**Q163 Rory Stewart:** Okay, there is UNICEF, Bond Child Rights Group, Save the Children UK. Bond Child Rights Group says that "despite the inclusion of the additional section relating to safeguarding children, the overall discussion of child rights in the 2011 Report is limited, comprising only four sub-sections. This shows that children's rights are not a serious consideration or concern for the FCO, and certainly not a priority." It makes five different recommendations, ranging from support for child victims of armed conflicts through to the production of a new child rights strategy.
***Mr Browne:*** We are concerned about human rights in the round. A lot of those would apply to children as

much as to adults, even if it does not specify that they are to do with children. We are keen to be vigilant about human rights. If you feel that there are particularly strong examples of human rights abuses against any particular grouping, whether it is children or women or ethnic minorities—the group I went to see in Beijing was a lesbian, gay and bisexual group; I am sure you could find pressure groups who would say that we should be looking to do more in every single category—or if you think there are good reasons why we are falling short in one area, then we are open to suggestions.

**Chair:** Minister, I hope you can help me. I have the Commonwealth Secretary-General coming in nine minutes' time, and we have just got one more set of questions from Bob Ainsworth.

**Q164 Mr Ainsworth:** Can you tell us what you have been discussing in the expert group on Freedom of Expression on the Internet?

***Mr Browne:*** Sorry, this is a slightly long answer; I am conscious of your meetings, Chairman. This is an area where everybody is feeling their way a little bit—not just the Government; the public as a whole—about the power of the internet to bring about behavioural change. We are increasingly of the view that if you look at a given country in—I don't know—the Middle East, for example, to avoid naming a particular country, a transition from a repressive Government to a more liberal, enlightened, participative society is as likely or more likely to be brought about by peoples sharing their ambitions through modern communications—in other words, a sort of grass-roots-up transition—than through conventional means, which is by treaties being signed and solemn declarations being made at the UN or with the United States or others.

The question for us is how we try to understand and, if we can, encourage this process. The problem is that everyone recognises freedom of expression on the internet if it is put before them, but it is quite hard to codify. For example, Germany, as I understand it, has a ban on the internet on holocaust denial, which many other broadly liberal countries would regard as an unreasonable restriction on freedom of speech. But I do not think that people really regard Germany as a country which does not fall into the category of liberal, enlightened countries, so it is difficult absolutely to codify what does and what does not constitute an appropriate level of policing of the internet.

It was on that basis that we organised a cyber-conference, which was held in the Queen Elizabeth centre about six months ago or so, to encourage further discussion in this area. I think the Hungarians and then the South Koreans have now undertaken to organise another cyber-conference this year and the following year. The sub-group inevitably talks in more conceptual terms than the other groups about how we can inform Government policy and thinking and feel our way through what is a comparatively new area for diplomacy. That is a sort of long, imprecise answer.

**Q165 Mr Ainsworth:** Is there any evidence that British companies are providing the wherewithal to block freedom of expression on the internet in other countries? As you know, this is a concern in many countries, such as China—the systematic denial of the ability of people to communicate. Is there any evidence that British companies are doing that, and is there anything that we can and should and are—

***Mr Browne:*** Did you say British companies or the British Government?

**Q166 Mr Ainsworth:** British companies. There are technical necessities in order to do this. Some of these countries are well aware of providing them themselves, but others are availing themselves of outside expertise.

***Mr Browne:*** That is a very good point and isn't one that we have discussed in our sub-group. The reality is that it may be difficult to put in place a framework which would prevent companies from doing that and it may be that companies from other countries would step into the void in any case. However, I understand completely the point that you're driving at. I am conscious that Governments are not necessarily at the cutting edge of the developments in these areas, but what we as a Government have tried to do is take the entire conversation at governmental level towards more freedom on the internet, fewer restrictions and more citizens' rights, if you like. So if British businesses were trying to restrict that in oppressive countries, then that would go against the grain of British Government policy. In practical terms I'm definitely happy to look at it, but I would not want to commit to what we would be definitely able to do to bring about a satisfactory change.

**Chair:** Minister, thank you very much for your time. A lot of ground has been covered and we appreciate you making yourself available. Thank you to your two colleagues as well and we look forward to hearing from you on the points that we've raised. It is necessary to adjourn the Committee for five minutes so I would be grateful if members of the public could leave the room and wait outside. Then you can come back in five minutes' time.

# Written evidence

**Written evidence from Amnesty International**

SUMMARY OF RECOMMENDATIONS

*Content and format of the FCO's report*

- We again recommend that the index to the report is reinstated.
- We recommend that the report should set out and report on change achieved rather than just activities undertaken.
- We recommend that the FCO improve reporting and updating on the human rights situation in those countries not specified as "countries of concern" but where there are nonetheless human rights problems.
- Relationship between human rights and other FCO priorities: We urge the UK Government to ensure human rights considerations are at the heart of their trade, diplomatic and security deliberations
- Cross-departmental working: we recommend that the FCO report clarifies its role in projects under joint-government initiatives, and that it should also report on other projects that may have human rights implications (notably work carried out under the prosperity and security priorities). We further recommend that human rights reporting by other departments (eg DfID, MoD) are covered in their relevant reporting processes.
- MENA: We recommend that the UK put human rights at the heart of its engagement in the region and takes a consistent approach to raising human rights issues. The FCO must engage more with civil society, especially women's organisations. We recommend that the FAC ask the FCO about specific work to support economic, social and cultural rights.
- The Government should do everything possible to secure a global Arms Trade Treaty that:
  - Requires that states shall not authorise any transfer of arms where there is a substantial risk that they will used to commit or facilitate serious violations of international human rights law or humanitarian law.
  - Covers a comprehensive scope of equipment to control.
  - Regulates all types of international trade, transfers, and transactions.
  - Create common international standards to incorporate into national arms transfer control systems.
  - Requires that all states keep records of authorised transfers for at least 20 years and ensures transparency.
- Women's human rights: We recommend that the Government back up its commitment to women's human rights by demanding the meaningful participation of women at all levels of discussion on conflict including post-conflict planning processes. There should be a properly resourced and sufficiently senior Ministerial position with responsibility for women, peace and security, who should attend the National Security Council and ensure gender perspectives are taken into account in all discussions and mainstreamed across government.
- Security and human rights: We recommend that the future inquiry into UK involvement in torture, rendition and secret detention must comply with international human rights standards. The Government must also reconsider the proposals in the Justice and Security Green paper which could prevent victims of human rights violations finding the truth.

*The Government's achievements as Chair-in-office of the Council of Europe Committee of Ministers, in Terms of support for human rights overseas*

- We recommend that the FAC ask the Government to clarify the timetable for signature and ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.
- Reform of the European Court of Human Rights: We recommend that the previous reforms to the Court which are now taking effect and reducing the courts backlog, are given time to bed down before yet more discussions are commenced on Court reform. Any further discussions on reform of the Court must include civil society and any amendments to the Convention must not curtail the right of individual petition to the Court.
- Internet governance, including freedom of expression on the internet:
  - We recommend that the Government is asked to clarify its role in implementing the Council of Europe Internet Governance Strategy across Europe and how it will implement the Strategy nationally (including with regard to UK companies).

- We further recommend that the UK Government also sets out how it will promote the standards under the Strategy globally, including through international forums but particularly in bilateral discussions with third countries (such as China, Vietnam, Azerbaijan and across the Middle East and North Africa) who have or are developing legislation and practice that threatens freedom of expression online.
- Amnesty International UK urges the Government to ensure that human rights are put at the core of domestic and international approaches to freedom of expression.

— The accession of the European Union to the European Convention on Human Rights: We recommend that the FAC asks the Government to explain what its objections are to EU accession to the ECHR and urges it to progress these negotiations.

*The likely impact of new and updated government strategy and guidance documents published during 2011*

— We recommend that the FAC ask about the process for consulting with human rights defenders and organisations in country when developing and implementing human rights strategies. How will they ensure that these consultations are effective and take place as a matter of course?

— Effective processes for implementation/application: We recommend that the various human rights guidance and strategy documents are properly embedded in country plans, through the inclusion of measurable strategic goals and indicators as well as in the work plan of Ambassadors and High Commissioners who must also receive sufficient and compulsory training on human rights issues.

— Private military and security contractors (PMSCs): We urge the Government to ensure that standards are binding through UK legislation and regulation that will enable effective accountability and decision making, including enabling PMSCs to be brought to justice in the UK for crimes committed abroad. The Government should also ensure that PMSCs contracted by the Government (whether from the UK or elsewhere) are subject to adequate legal control and regulatory oversight.

— Monitoring and evaluation: We recommend that the FAC ask for more detail about the reporting and scrutiny processes in the Building Overseas Security Strategy and whether they will be similarly applied to other strategies.

— Death Penalty strategy: We urge the UK Government to continue to push for immediate moratorium in countries that retain the death penalty, with a view to complete abolition of the death penalty.

— The gender gap: We recommend that the UK Government should measure progress on women's participation by using indicators including the number of women taking part in peace talks, the gender content of peace agreements and the extent to which post-conflict reparations, economic recovery programmes and disarmament, demobilisation and reintegration processes benefit women.

— We also recommend that the FAC ask the UKG about the Joint Analysis of Conflict and Stability (JACS) guidance (a product of BSOS) and how it has addressed concerns that have been raised about the virtual omission of gender in draft versions of JACS.

— The Ministerial authorisation gap: We recommend that the FAC seeks assurances that ministers will refrain from authorising activities which risk contributing to human rights violations.

— Reliance on assurances: We recommend that the Government end its programme of deportation with assurances.

*The forthcoming cross-government strategy on business and human rights*

— We recommend that the strategy:
- Emphasises all three pillars of the UN Framework: Protect, Respect and Remedy.
- Focus on preventing adverse impacts of companies by requiring human rights due diligence as set out in the UN Guiding Principles.
- Continue to adopt a cross-departmental approach, including agencies such as UKEF, UKTI and CDC.
- Map out all departmental interfaces with the business and human rights agenda.
- Set up an expert monitoring body (multi-stakeholder) to review progress and to make recommendations on implementation of the strategy.
- Adopt a "smart mix" of incentives to be embodied in policy, soft law and hard law.
- Assess all proposed policy and legislative measures affecting business at a formative stage, in so far as these might have implications for implementation of the UN Guiding Principles.
- Address the need for special measures to hold laggard companies accountable.
- Ensure greater commitment, clarity and transparency of UK's role in promoting higher standards on business and human rights at multilateral level.

— We recommend that the Government withdraw its intervention in Kiobel v Shell and that the FAC asks the FCO the reasons behind this intervention.

## Amnesty International UK

1. Amnesty International UK is a national section of a global movement of over three million supporters, members and activists. We represent more than 230,000 supporters in the United Kingdom. Collectively, our vision is of a world in which every person enjoys all of the human rights enshrined in the Universal Declaration of Human Rights and other international human rights instruments. Our mission is to undertake research and action focused on preventing and ending grave abuses of these rights. We are independent of any government, political ideology, economic interest or religion.

## Introduction

2. Amnesty International UK welcomes both the Foreign and Commonwealth Office (the FCO)'s continued commitment to the publication of the Human Rights and Democracy report (the report) and the Foreign Affairs Committee (the FAC)'s inquiry into the FCO's human rights record. The annual publication of the report and its scrutiny by Parliament presents a key opportunity for a frank and holistic analysis of the FCO's approach to human rights and their role in foreign policy; the FCO's own perception of the human rights situation in certain countries; the priority given by the FCO to specific human rights issues; and an assessment of the effectiveness of the FCO's human rights work.

3. This submission addresses the questions asked by the FAC and does not include all of Amnesty International UK's observations and recommendations regarding the work of the UK Government on human rights or the FCO's report. We therefore welcome the opportunity to provide oral evidence before the FAC and would be happy to submit any additional information should the FAC find it of assistance.

### 1. *The Content and format of the FCO's report on "Human Rights and Democracy"*

4. The 2011 report is lengthy and comprehensive and includes more countries of concern than ever before. It is welcome that the report continues to explain the Government's policy priorities and addresses thematic issues as well as providing a narrative of the human rights situation in particular countries. The format has improved slightly since last year with the use of boxed "case studies" but despite the previous recommendation made by the FAC, the report still does not contain an index or a glossary. If the report is to be a useful reference document an index is essential.

*We again recommend that the index to the report is reinstated.*

5. We appreciate how difficult it is to measure cause and effect in the process of political change, but as in previous years of reporting to the FAC on the report, our major concern regarding content remains. This is that whilst ample detail is provided on "outputs", insufficient attention is paid to "outcomes". Impact in the form of quantifiable change is what is important. In our view, this cannot be measured without setting benchmarks and indicators. Nor can it be sustainable without proper monitoring and evaluation. We appreciate that the FCO is attempting just such an exercise partly by way of publishing the report, and that also much good practice (for example on the death penalty) does exist. Overall, however, without a more disciplined approach, its reporting will be incomplete.

*We recommend that the report should set out and report on change achieved rather than just activities undertaken.*

6. The willingness of the FCO and the Foreign Secretary to engage with the public through digital means such as its website, Facebook and twitter is an example of governmental good practice. Amnesty International UK welcomes the FCO's commitment to updating the countries of concern on its website quarterly. This provides the flexibility to add new countries (such as the recent online addition of Ethiopia and Bahrain) and ensures that public reporting on human rights issues is not just an annual tick-box exercise. Online coverage of human rights issues in the FCO's broader "country profiles" is improving but inconsistent. For example, the FCO country profile on Jordan does not give an assessment of the country's human rights record, but instead provides links to the relevant Amnesty International and Human Rights Watch web pages. This is disappointing, given that Jordan is at the forefront of government attempts to deport individuals on the basis of assurances against torture.

*We recommend that the FCO improve reporting and updating on the human rights situation in those countries not specified as "countries of concern" but where there are nonetheless human rights problems.*

7. One of the main advantages of the FAC's annual scrutiny of the FCO's human rights work is the opportunity to ensure that this work continually improves. In essence we can use this to track change. In this regard, we would like to address some of the recommendations made during last year's inquiry.

#### (a) The relationship between human rights and other FCO priorities

8. In his introduction to the report, the Foreign Secretary states that "the promotion and protection of human rights is at the heart of UK foreign policy" and that the Government is "determined to pursue every opportunity to promote human rights and political and economic freedom around the world". However, the FCO's stated priorities overall are to protect national security, promote national prosperity and provide services to British citizens overseas. We have long held concerns that these interests, particularly those of national security and

national prosperity, are in fact pursued in some cases at the expense of human rights. This conflict is, for example, evident in the Government's approach to the Middle East and North African (MENA) region. Here we would argue that the priority given to counter-terrorism cooperation over human rights is demonstrated by the pursuance of the policy of "deportations with assurances". We also believe that the Government's focus on arms sales to the region both now and in recent years is completely at odds with its stated aim of upholding human rights. Trade policy more generally also seems to be being pursued in parallel to human rights policy, as opposed to in conjunction with it. We will wait to examine what impact the FCO's "shift in network" towards emerging economies has on their willingness to promote human rights in those countries consistently. The Government asserted in its response to the FAC last year that there was no conflict between its interests and its values. Amnesty International UK continues to disagree.

*We urge the UK Government to ensure human rights considerations are at the heart of their trade, diplomatic and security deliberations.*

9. Amnesty International UK believes that cross-departmental working is essential for ensuring coherence across the Government's policies and practices. Whilst we would not call upon the FCO to report on all human rights work undertaken by the Government, we do recommend that there is more clarity in the report (and by the FCO more generally) regarding its human rights work under joint-departmental initiatives (such as the Building Stability Overseas Strategy or the UK's National Action Plan on women, peace and security). Notably, the report cites several examples of human rights work (particularly within country reports) that is carried out by the Department for International Development (DfID) and it is unclear what role the FCO played in these projects. Furthermore, we have concerns that where several government departments are operating in the same country, they do not share the same strategic approach to human rights and their work is not "joined up". For example, DfID leads UK Government engagement in Ethiopia but is unable to adequately pursue the human rights agenda in line with FCO strategy, as it is constrained by Ethiopian civil society legislation that effectively prevents human rights work. However, the FCO should nonetheless ensure that DfID projects take into account its human rights goals.

*We recommend that the FCO report clarifies its role in projects under joint-departmental initiatives, and that it should also report on other projects that may have human rights implications (notably work carried out under the prosperity and security priorities).*

*We further recommend that human rights reporting by other departments such as DfID or the Ministry of Defence (MoD) are covered in their relevant accountability processes.*

(b) The MENA uprisings

10. Last year, publication of the FCO's report and the FAC's human rights inquiry both took place at the height of the uprisings in the Middle East and North Africa. The significance of those events and their human rights implications and opportunities are keenly demonstrated by the attention given to them in this year's FCO report and the inquiries already conducted by the FAC in the past year. More FCO and DfID resources are now being invested in the region with the establishment of the Arab Partnership Strategy and Fund.

11. Last year the FAC recommended that the FCO take a more robust and consistent position on human rights violations in the region. Whilst the UK Government has increased its emphasis on human rights in its "values based" response to protests across the region, this still varies significantly between countries. Amnesty International UK remains concerned that the UK does not prioritise human rights issues to the same extent in countries where the UK has significant trade and security interests, such as Saudi Arabia and Bahrain.

12. Whilst British Embassies in the region are engaging with new and transitional governments, more can be done to establish new partnerships with civil society and human rights organisations, in particular women's civil society, rather than confining contact to government actors and elites. Women's rights and participation must be central to the FCO's approach to the region and they must work in partnership and consultation with women's rights organisations, both in identification of priorities and the development and implementation of the Government's MENA plan on women, peace and security.

13. The FCO report notes that their support for human rights in the region has included both socio-economic and political human rights concerns. However, there is little evidence provided on the FCO's work on socio-economic rights such as rights to healthcare and housing, the lack of which were key drivers for the uprisings and act as barriers to women's equality.

*We recommend that the UK put human rights at the heart of its engagement in the region and takes a consistent approach to raising human rights issues. The FCO must engage more with civil society, especially women's organisations. We recommend that the FAC ask the FCO about specific work to support economic, social and cultural rights.*

(c) The Arms Trade Treaty

14. Last year, when examining the UK's export control system, the FAC acknowledged the impact that poorly regulated arms sales have on human rights. We raised in written and oral evidence the need for UK leadership on the negotiations for an Arms Trade Treaty (ATT). The past year has seen the completion of the Preparatory Negotiations, and the final negotiating conference for the treaty will take place in July 2012.

15. The UK Government has championed the ATT on the world stage for a number of years and we welcome the Government's recent commitment to ensuring the ATT will be a human rights centered treaty. The FCO report makes clear that the ATT is a priority for the Government and recognises that there are challenges ahead. It is therefore essential that the Government continues to demonstrate strong leadership, not just support, in the lead up to the July conference. The ATT should be prioritised by the Government in all relevant bilateral and multilateral discussions in order to encourage other states to join the call for an effective treaty. Sufficient resources should be available to support engagement and expertise across all relevant departments (ie the FCO, DfID, the MoD, the Department for Business, Innovation and Skills, and HMRC) to ensure the final ATT is robust and based on the best international practice. It is also imperative that the UK Government is prepared to support additional commitments that do not as yet form part of our own national export control system which have emerged during the negotiation phases to date as key elements for an effective ATT for a number of states. Including, for example, import controls, re-export provisions and enhanced controls on licensed production overseas. The Government should signal that it will provide the necessary resources and capacity to implement any additional regulatory commitments required by the ATT.

16. Most importantly, for the treaty to save lives it must be human rights centered, comprehensive and robust. So now more than ever UK leadership is crucial in pressing for strong human rights protections in the ATT. This means, on human rights, there can be no compromise.

The Government should do everything possible to secure a global ATT that:

- Requires that states shall not authorise any transfer of arms where there is a substantial risk that they will used to commit or facilitate serious violations of international human rights law or humanitarian law, including gender-based violence, such as rape and other forms of sexual violence or divert an unreasonable level of resources from sustainable development.
- Covers a comprehensive scope of equipment to control: All conventional weapons, related articles, and equipment used in military and internal security operations; parts and components, technologies, technical expertise and equipment for making, developing and maintaining those articles.
- Regulates all types of international trade, transfers, and transactions, including imports, exports, re-exports, transits, transhipments, commercial sales, state to state transfers, loans and gifts and key support activities to facilitate these transfers including brokering, transport, and finance.
- Create common international standards to incorporate into national arms transfer control systems, including the necessary legal and regulatory frameworks to ensure effective implementation and to provide for clear criminal offences for all for activities not authorised in accordance with the treaty.
- Requires that all states keep records of authorised transfers for at least 20 years and ensures transparency through annual public reports by states on all transfers and on how they have implemented their obligations under the treaty.

(d) Women's human rights

17. The FCO report states that gender equality and women's empowerment is a human rights priority for the FCO. Amnesty International UK welcomes this prioritisation and FCO support for work on women, peace and security but our practical experience is that women's human rights are still not sufficiently mainstreamed within the FCO or across government. Particularly in conflict-affected states, we are concerned that gender equality and women's empowerment continue to be seen as secondary to stability and building peace, and as something that can be addressed at a later stage. It is vital that women's rights are central to the UK Government's conceptualisation of stability, security and preventing conflict.

18. Afghanistan remains a key foreign policy priority of the UK Government and, as a major international partner and donor, it is able to exert significant diplomatic influence on the Afghan Government and transitional process. Women's security continues to be extremely fragile in Afghanistan and Amnesty International UK is deeply concerned that the hard fought for gains for women's rights in Afghanistan will be "traded away" in favour of reconciliation with the Taliban and other insurgent groups. As NATO member states prepare to transfer responsibility for security to the Afghan National Security Force (ANSF), they must ensure that the conduct of ANSF forces—particularly with reference to women—is improved and accountability mechanisms are adequate and accessible. Specifically, female recruitment at all levels of the ANSF should be accelerated and funding should be assigned to provide gender awareness training for the Afghan military and police.

19. The overarching governmental responsibility for Women's Human Rights has been delegated to Lynne Featherstone MP, the Government's Ministerial Champion for tackling violence against women and girls. However this role is severely hampered by lack of budget, authority within government, and other governmental

responsibilities. We are not clear what the concrete achievements of this role have been. For example, although the report highlights Lynn Featherstone's attendance at the Bonn Conference on Afghanistan, this was only at a side meeting and she had no official role within the delegation.

*We recommend that the Government back up its commitment to women's human rights by demanding the meaningful participation of women at all levels of discussion on conflict, including post-conflict planning processes. There should be a properly resourced and sufficiently senior Ministerial position with responsibility for women, peace and security, who should attend the National Security Council and ensure gender perspectives are taken into account in all discussions and mainstreamed across government.*

(e) Security and human rights

20. The Government has previously recognised that the UK's approach to national security had resulted in allegations of serious human rights violations. The FCO report recognises the need for human rights considerations to be a key part of national security work. Last year, Amnesty International UK, other NGOs and the former detainees withdrew from the now defunct Detainee Inquiry—set up to look into UK involvement in torture, rendition and secret detention—because its procedures fell short of international standards for investigations into such allegations. The Government has promised to establish a new judge-led inquiry once on-going police investigations have been concluded. We believe that this is an important opportunity to establish an inquiry which is sufficiently thorough and transparent to discharge the UK's international obligations to investigate the allegations which have been made. We would also like to draw the FAC's attention to allegations of UK involvement in renditions from Kenya to Uganda in 2010. We believe that proposals in last year's Justice and Security Green Paper will prevent victims of unlawful treatment and the public from discovering the truth about UK involvement in human rights violations.

*We recommend that the future inquiry into UK involvement in torture, rendition and secret detention must comply with international human rights standards. The Government must also reconsider the proposals in the Justice and Security Green paper which could prevent victims of human rights violations finding the truth.*

2. *The Government's achievements as Chair-in-office of the Council of Europe Committee of Ministers, in terms of support for human rights overseas*

21. The UK assumed the rotating six-month Chairmanship of the Council of Europe (CoE) in November 2011. The Chairmanship provides an opportunity for each member state to steer the direction of the CoE. However, in practice, very little concrete change can be achieved in six months and processes for most initiatives started long before the UK assumed the Chair.

22. The CoE plays an important role in advancing human rights in its 47 member states through standard setting, technical assistance and ultimately the European Convention and Court of Human Rights. It also has a neighbourhood policy which facilitates and promotes democracy, human rights and co-operation with neighbouring countries.

23. Whilst the UK can be supportive of many of the CoE's initiatives, it has also acted to undermine processes such as in the drafting of the CoE Convention on Preventing and Combating Violence against Women and Domestic Violence (CAHVIO). The FCO's 2011 report claims that the UK played an "active part" in the negotiation of the instrument, which adds "*significantly to international regulation*". However, as Amnesty International UK raised in last year's FAC human rights inquiry, the UK tabled amendments during the final negotiation stages that—if they had been accepted—could have considerably weakened CAHVIO and were also inconsistent with the approach the Government takes to violence against women domestically. Whilst we welcomed the UK's announcement on 8 March 2012 to sign CAHVIO, the Government has still not signed or ratified it, nor made any announcements regarding when it intends to do so.

*We recommend that the FAC ask the Government to clarify the timetable for signature and ratification of the CoE Convention on Preventing and Combating Violence Against Women and Domestic Violence.*

24. The UK set out six priorities for its chairmanship: reform of the European Court of Human Rights; strengthening the rule of law; reform of the Council of Europe system; internet governance, including freedom of expression on the internet; combatting discrimination on the grounds of sexual orientation and gender identity and streamlining the Council of Europe's activities in support of local and regional democracy. The clear priority for the Government was reform of the European Court of Human Rights and this was where most of the "diplomatic capital" around the chairmanship was spent. We would like to make a few remarks about those chairmanship priorities which we have followed.

(a) Reform of the European Court of Human Rights

25. Discussions on reform of the European Court of Human Rights (the Court) have been on-going for many years but the UK sought to use its chairmanship to achieve consensus (or eliminate) some long-standing proposals, as well as investing significant time and diplomatic capital in pushing forward a number of its own new proposals.

26. Amnesty International UK and other organisations were deeply critical of the two main proposals made by the UK which aimed to amend the European Convention on Human Rights (the Convention) to incorporate the principles of "subsidiarity" and the "margin of appreciation": principles developed by the Court which gives primary responsibility for protecting human rights to the state. Although these were expressed as measures intended to reduce the backlog of cases faced by the Court, we believed that these actually sought to address domestic criticisms from the media and some parliamentarians of the perceived interference of the Court in cases from the UK.

27. The UK proposals would have amended the Convention to provide that cases which had been considered by domestic courts, applying the Court's case law, should be inadmissible before the Court unless the domestic courts had "manifestly erred" in the interpretation of the Convention or the case raised an important issue of interpretation. This plan to remove the ability of the Court to consider cases already considered by domestic courts would be a fundamental change in the right of individual petition to the Court, which is the cornerstone of the Convention system. The proposal would not have made a big difference to the backlog of cases pending before the Court, over half of which come from Russia, Turkey, Ukraine, Romania and Poland.

28. The final version of the Brighton Declaration agreed on reforms of the Court that did not weaken the fundamental principle of individual petition to the court. But this was in spite of attempts by the UK to push forward reforms which would make it harder for individuals to have their cases considered. The compromise position was to include the principles of subsidiarity and the margin of appreciation in the preamble to the Convention and to make a political statement that cases that had been properly considered at the national level should be considered inadmissible by the Court within the existing admissibility criteria. Although this result is preferable to amending the convention, Amnesty International UK still has grave concerns about the appropriateness of putting political pressure on a judicial body.

29. Whilst Amnesty International UK is critical of the UK's particular stance on this issue, we welcome the rejection of earlier proposals such as fees for applicants, sanctions in futile cases, compulsory legal representation and an automatic rejection of cases not considered within a certain time-frame. The Brighton Declaration also contains positive reinforcements regarding the need for states to properly implement the Convention in their domestic legal systems, which is the only real way to reduce the Court's backlog. The UK should continue to support efforts to ensure that states implement the Convention comply with judgements of the Court, and set an example by implementing outstanding judgments against the UK.

*We recommend that the previous reforms to the Court which are now taking effect and reducing the courts backlog, are given time to bed down before yet more discussions are commenced on Court reform. Any further discussions on reform of the Court must include civil society and any amendments to the Convention must not curtail the right of individual petition to the Court.*

(b) Internet governance, including freedom of expression on the internet

30. Freedom of expression on the internet has been a particular focus for the UK in 2011. Under the UK Chairmanship, in March 2012, all 47 CoE member states adopted the Internet Governance Strategy 2012–15 (the Strategy) to "*protect and promote human rights, the rule of law and democracy online*".

31. Amnesty International UK welcomes the priority the Strategy places on human rights, particularly freedom of expression and information as: "*an overarching requirement because it acts as a catalyst for the exercise of other rights*". We also welcome the user-centred approach of the Strategy and the commitment to maximise rights and freedoms of internet users as well as the maximisation of the internet's potential to promote democracy and cultural diversity and the protection and empowering of children and youth.

32. The Strategy includes the need for action on "promoting Council of Europe human rights standards globally and, in this respect, encouraging member states to bear these in mind in their bilateral discussions with third countries, and, where necessary, consider the introduction of suitable export controls to prevent the misuse of technology to undermine those standards".

33. Credible allegations exist that businesses are supplying telecommunications technology to the authorities in some countries despite convincing reports by human rights organisations that it is being used by those authorities to violate freedom of expression on the internet or to further the commission of other human rights violations. Recent events have revealed instances of companies having sold technology to Colonel Mu'ammar al-Gaddafi's Libya, Iran, China and other governments which were then used to restrict the use of the internet or to track down Internet users in connection with their involvement in peaceful protests and other activities in violation of their human rights. Amnesty International UK was deeply disturbed by British telecom provider Vodafone's willingness to help the Mubarak regime by shutting down services and sending pro-government messages in early 2011.

*We recommend that the Government is asked to clarify its role in implementing the CoE Internet Governance Strategy across Europe and how it will implement the Strategy nationally (including with regard to UK companies).*

*We further recommend that the UK Government also sets out how it will promote CoE human rights standards under the Strategy globally, including through international forums, but particularly in bilateral*

*discussions with third countries (such as China, Vietnam, Azerbaijan and across the Middle East and North Africa) who have or are developing legislation and practice that threatens freedom of expression online.*

*We urge the Government to ensure that human rights are put at the core of domestic and international approaches to freedom of expression.*

(c) Combatting discrimination on the grounds of sexual orientation and gender identity

34. As part of its Chairmanship, the UK organised a conference on "combating discrimination on the grounds of sexual orientation or gender identity across Europe: sharing knowledge and moving forward" in Strasbourg on 27 March 2012, to which they invited Ministers, other state officials and LGBT NGOs. Although Amnesty International UK was not invited to this "closed" event, we understand that the LGBT organisations who attended were satisfied with it. This is the first time that LGBT rights have been given such a high profile in the CoE. The UK has also made substantial financial contributions to the recently created LGBT unit in the Council of Europe (which depends on voluntary contributions only, since some member states oppose the use of the ordinary budget to cover LGBT activities). In general, the UK's work and leadership on LGBT rights in the CoE and elsewhere is very positive.

(d) The accession of the European Union to the European Convention on Human Rights

35. Amnesty International UK is disappointed in the role that the UK has played in stalling the negotiations around the European Union's accession to the European Convention on Human Rights. Accession of the EU to the Convention could and should improve protection of fundamental rights for individuals in Europe, by ensuring that individuals can directly challenge the human rights consequences of EU law and the actions of EU institutions. The Government has stated that it is in favour of EU accession but has raised a number of legal and technical issues about the internal rules of the EU.

*We recommend that the FAC asks the Government to explain what its objections are to EU accession to the Convention and urges it to progress these negotiations.*

3. *The likely impact of new and updated government strategy and guidance documents published during 2011*

36. The development and publication of new FCO strategies and staff guidance on human rights issues is a welcome initiative as is the transparency shown in publishing these documents and subjecting them to scrutiny (which has not always been the case). Guidance documents on issues such as Overseas Security and Justice Assistance (OSJA) and torture reporting demonstrate an important acknowledgement that FCO activities and cooperation with other countries in a range of fields, in particular relating to security and counter-terrorism, engage human rights concerns and obligations. The inclusion of human rights in cross-government strategies such as the Building Stability Overseas Strategy (BSOS) is also welcome. Many of these good initiatives come from the FCO's Human Rights and Democracy (HRD) Department but we are concerned that their efforts are not being adopted across other departments. HRD also seem to have had a human rights adviser post cut.

37. The consultation process with experts and NGOs which surrounds the development of human rights strategies is improving but the FCO must make more effort to systematically consult with organisations and individuals who act as human rights defenders in the countries where the strategies and guidance will be implemented. This is particularly the case with the National Action Plan on Women, Peace and Security (NAP) which is explicitly required to include civil society consultation. Our understanding is that consultation with women's groups in Egypt have been limited and civil society consultations commissioned in Afghanistan were not attended by FCO representatives. In some circumstances human rights defenders have been consulted but with no information or context about what they were being consulted on.

*We recommend that the FAC ask about the process for consulting with human rights defenders and organisations in country when developing and implementing human rights strategies. How will they ensure that these consultations are effective and take place as a matter of course?*

(a) Effective processes for implementation/application

38. The ultimate test of the utility and impact of these guidance and strategy documents is in their application, dissemination, support within the FCO and government, and provision of adequate training for staff, who must be able to identify human rights violations and take the appropriate action. Our experience is that knowledge of human rights guidelines and strategies is often limited to a small number of junior officials who have direct responsibility for human rights or implementing the strategy. Work around the strategies is rarely built into the work plans for other, and often more senior members of staff. For example, we have met senior officials working on Afghanistan who had never heard of the NAP, which contains a specific plan on Afghanistan. To be effective, the strategies must have support from the highest level and FCO staff must have sufficient training to enable them to be able to identify human rights violations.

39. Amnesty International UK's experience of observing the implementation of a variety of human rights guidance and strategies, for example on the EU Guidelines on Human Rights Defenders, is that the effectiveness and consistency of their implementation is often down to the willingness of individual Embassies or High Commissions to prioritise human rights.

40. Many of the guidance documents provide a broad list of human rights violations which staff are required to look out for. But without proper training they will not necessarily be able to identify the range of issues which might amount to *inter alia* "cruel, inhuman or degrading treatment", an unfair trial or arbitrary detention.

*We recommend that the various human rights guidance and strategy documents are properly embedded in country plans, through the inclusion of measurable strategic goals and indicators as well as in the work plan of Ambassadors and High Commissioners who must also receive sufficient and compulsory training on human rights issues.*

41. Whilst Amnesty International UK is relatively positive about many of the new strategies, they should not take the place of proper regulatory systems. For example, whilst we welcome the Government's commitment in the report to develop "*standards and the transparent regulation of UK-based private security companies*", we have made clear our strong belief that UK based private military and security companies should be regulated via a legal regulatory framework, including a licensing system and not solely via a non-binding industry led Code of Conduct. It is unclear the extent to which the OSJA will be applied to services provided by non-governmental security companies. As such, a proper regulatory and legal oversight mechanism is necessary to ensure that private military and security companies comply with international human rights standards.

*We urge the Government to ensure that standards are binding through UK legislation and regulation that will enable effective accountability and decision making, including enabling private military and security contractors to be brought to justice in the UK for crimes committed abroad. The Government should also ensure that private military and security contractors contracted by the Government (whether from the UK or elsewhere) are subject to adequate legal control and regulatory oversight.*

(b) Monitoring and evaluation

42. As with the report, the FCO strategies tend to focus on "activities", rather than "outcomes". For example, "activities" under the torture prevention strategy includes training and support for organisations on the ground to prevent torture. We recognise that the specific requirements will have to be worked out on a country-by-country basis but it is hard to evaluate the success or impact of the strategy without more clarity or detail on the specific changes the Government is seeking to achieve within the broad goal of empowering organisations to prevent torture.

43. In BSOS, the Government commits to "ensuring that our investments deliver real results on the ground, are transparent and provide value for money for the UK taxpayer… We will implement a systematic cross-government reporting framework that is consistent across Posts conducting activity supported by the Conflict Pool so that we can measure our impact across regions". Amnesty International UK welcomes this commitment to transparency and measuring the impact of the strategy.

*We recommend that the FAC ask for more detail about the reporting and scrutiny processes in the Building Overseas Security Strategy and whether they will be similarly applied to other strategies.*

(c) Evaluation of specific strategies and guidance documents

44. Amnesty International UK has worked with the FCO on the death penalty for many years and the updated death penalty strategy is welcome. It mirrors our goal of global abolition of the death penalty and stance of opposing all executions unconditionally. Usefully, this strategy also has clearly defined priority countries and has enabled the UK Government to make useful and necessary interventions in individual death penalty cases for British Nationals and through the EU for third-country nationals. These interventions should not be limited to countries which are targeted as "priorities". This strategy has also seen the Government take an active role in the UN General Assembly vote calling for a global moratorium on executions, which in 2010 attracted record support. We hope that the UK Government will continue its work in the run up to the next General Assembly vote on the Death Penalty later this year.

*We urge the UK Government to continue to push for immediate moratorium in countries that retain the death penalty, with a view to complete abolition of the death penalty.*

(d) The gender gap

45. The UK's new National Action Plan on women, peace and security (the NAP) is a great improvement on the original 12-point plan and we are pleased the Government has developed a more sophisticated structure for the NAP. Yet we are concerned that fundamental institutional barriers remain and will hinder the implementation and effectiveness of the National Action Plan and implementing UN Security Council Resolution 1325 on women, peace and security. These are: lack of understanding of the importance of gender equality and women's human rights across key government departments tasked with delivering aspects of the NAP notably, the FCO, MoD and DfID; a lack of clear accountability lines as to who is responsible at senior level in government for the NAP as a whole; and a lack of budget to ensure the projects can have both short term and long term impact. To ensure the Plan is successfully implemented there needs to be clearly allocated funding, cross-government co-ordination and leadership.

46. The OSJA guidance, FCO guidance on reporting torture and mistreatment, and the Consolidated Guidance to Intelligence Officers[1] rely on FCO staff and intelligence officers to identify human rights violations. The documents set out a list of forms of treatment which could constitute human rights violations. However none adequately addresses human rights violations or forms of torture/mistreatment which are particularly suffered by women. We are particularly concerned that the Consolidated Guidance refers to sexual violence rather than sexual embarrassment because this downplays an abuse that is a clear human rights violation and in some circumstances amounts to torture.

47. Amnesty International UK welcomes BSOS's recognition that "*conflict and violence have a particularly negative impact on women"* and the emphasis of the role of women in building stability. We are concerned by the limited gender integration throughout BSOS and the few concrete commitments to women's participation in building peace. Amnesty International UK believes that BSOS would be strengthened by promoting government coordination through, for example, clear links with the Home Office led cross-government strategy and assigning a National Security Council member explicit responsibility for women, peace and security. We also believe that gender should be mainstreamed throughout BSOS and not limited to sections on UN Security Council Resolution 1325.

48. It is vital that women's rights are central to the UK Government's conceptualisation of stability and security.

*We recommend that the UK Government should measure progress on women's participation by using indicators including the number of women taking part in peace talks, the gender content of peace agreements and the extent to which post-conflict reparations, economic recovery programmes and disarmament, demobilisation and reintegration processes benefit women.*

*We also recommend that the FAC ask the UKG about the Joint Analysis of Conflict and Stability (JACS) guidance (a product of BSOS) and how it has addressed concerns that have been raised about the virtual omission of gender in draft versions of JACS. We would have liked to have seen a more open and inclusive consultation process for JACS.*

(e) The Ministerial authorisation gap

49. The OSJA guidance and Consolidated Guidance to Intelligence Officers both cover the situation where the UK has an interest in cooperating with or providing assistance to co-operating with overseas bodies or agencies may result in government or individual officials being complicit in human rights violations. Both documents provide a framework for officials to assess whether their actions might contribute to human rights violations and consult senior colleagues or Ministers as necessary. However, the guidance says little about how the Ministerial discretion or authority to stop or proceed work will be exercised. This guidance document seems to allow for the possibility that Ministers could authorise cooperation or assistance which could contribute or lead to human rights violations. The guidance also does not indicate what personnel should do if they continue to believe, for instance, that action on their part will result in human rights violations, but ministers instruct them to proceed.

*We recommend that the FAC seeks assurances that ministers will refrain from authorising activities which risk contributing to human rights violations.*

(f) The reliance on assurances

50. The OSJA guidance and Consolidated Guidance to Intelligence Officers also both address the possibility of seeking assurances from the host government or institution or agency with which they are cooperating, that they will comply with relevant standards. Amnesty International UK has previously raised serious concerns about the use of such assurances in relation to torture and ill-treatment and the ability of such bilateral agreements to mitigate a serious risk of mistreatment which would otherwise exist in those countries which routinely sue torture. Based on decades of research and experience about torture and other ill-treatment, we do not consider that promises of humane treatment given by governments that practice torture and cruel, inhuman or degrading treatment is reliable. If there is a serious risk that cooperation or assistance from UK officials will result in torture or ill-treatment, this co-operation should be withdrawn.

*We recommend that the Government end its programme of deportation with assurances.*

4. *The forthcoming cross-government strategy on business and human rights*

51. Amnesty International UK has previously been critical of the UK's approach to business and human rights. At the heart of their failings has been a refusal to accept that the human rights impacts of UK companies abroad engages the UK's international human rights obligations. A direct result of this interpretation of international law is the unwillingness of the UK Government to address the different ways it might be able to use its jurisdiction over parent companies registered in the UK to improve the human rights performance of UK-based multinational corporations when operating abroad. This "light-touch" approach to regulating the human rights impact of business is reflected in the 2011 report which focuses on "*promoting responsible*

[1] Consolidated Guidance to Intelligence Officers and Service Personnel on the Detention and Interviewing of Detainees Overseas, and on the Passing and Receipt of Intelligence Relating to Detainees.

*business practice*" and emphasises the Government's support for the Voluntary Principles on Security and Human Rights. This is an initiative that has shown very modest progress in 12 years: its process has weak governance and accountability structures and there is little evidence of the ability of the Voluntary Principles to address these widely perceived weaknesses. Much more evidence needs to be provided of the effectiveness of the initiatives that the FCO champions to improve standards of conduct of business.

52. The UK's approach has been challenged by the UN Committee that monitors compliance with the International Convention on the Elimination of Racial Discrimination (CERD) to which UK is a signatory. The CERD Committee in a Concluding Observation in September 2011 called on the UK "*to take appropriate legislative and administrative measures to ensure that acts of transnational corporations registered in the State party comply with the provisions of the convention*".

53. The UK has shown commendable support for the development of the UN Guiding Principles on Business and Human Rights which were developed by Professor John Ruggie and endorsed by the Human Rights Council in June 2011. Amnesty International UK welcomes the commitment made to the development and implementation of a cross-departmental strategy which is intended to reflect these Guiding Principles. However, this commitment will require the Government to go much further than their previous position. One of the three pillars of the Guiding Principles: the "Duty to Protect" requires States, inter alia, to "*enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps*".

54. The establishment of a cross-departmental steering group on business and human rights to develop the strategy is a positive step towards gaining traction for the strategy and ensuring greater coherence across the many functions of government that influence business impacts on human rights. Agencies of government such as UK Export Finance (UKEF) and UK Trade and Industry (UKTI) have been drawn into the business and human rights fold for the first time which augurs well for the future, in so far as there is now the prospect of human rights becoming a part of their modus operandi. The Government has shown foresight in adopting a multi-stakeholder approach to developing this strategy, including both business and civil society organisations, which will help draw on wider expertise and bring about a greater consensus than would otherwise be possible.

55. Amnesty International UK has made a number of recommendations for the strategy which will be necessary to ensure that it is effective and fits within the framework set by the UN Guidelines.

We recommend that the strategy should:

- Emphasise all three pillars of the UN Framework: Protect, Respect and Remedy.
- Focus on preventing adverse impacts of companies by requiring human rights due diligence as set out in the UN Guiding Principles.
- Continue to adopt a cross-departmental approach, including agencies such as UKEF, UKTI and CDC.
- Map out all departmental interfaces with the business and human rights agenda.
- Set up an expert monitoring body (multi-stakeholder) to review progress and to make recommendations on implementation of the strategy.
- Adopt a "smart mix" of incentives to be embodied in policy, soft law and hard law.
- Assess all proposed policy and legislative measures affecting business at a formative stage, in so far as these might have implications for implementation of the UN Guiding Principles.
- Address the need for special measures to hold laggard companies accountable.
- Ensure greater commitment, clarity and transparency of UK's role in promoting higher standards on business and human rights at multilateral level.

### The Legal Aid Sentencing and Punishment of Offenders Bill and UK intervention in Kiobel v. Shell

56. The positive development of a cross-government strategy on business and human rights has been undermined by the Government's legislative programme in the current session of Parliament, and by an intervention in a US civil litigation case that runs completely counter to some of the key elements of the UN Framework and Guiding Principles that the UK has endorsed.

57. The Legal Aid, Sentencing and Punishment of Offenders Bill contains provisions that will deny access to justice to victims of the activities of UK multinational corporations (MNCs) operating overseas. In some cases of concern to Amnesty International UK, such as Shell in the Niger Delta, Trafigura in the Ivory Coast, and Vedanta in India, human rights abuses have been committed by UK companies against some of the world's poorest and most vulnerable individuals. To restrict access to justice in these kind of cases will serve not only to limit the victim's right to remedy, but will give the green light to MNCs with irresponsible business practices to continue acting with impunity.

58. In February 2012, the FCO and the Dutch Foreign Ministry co-authored an amicus brief supporting Royal Dutch Petroleum/Shell and urging the rejection of a human rights case that is currently in front of the US Supreme Court. Amnesty International UK believes that this position is wrong and deeply troubling. In

intervening in this way, the UK has chosen to champion corporate interests over human rights accountability, purporting to use neutrally applicable arguments about the reach of international law. In practice it has intervened only to defend a UK corporation accused of complicity in gross human rights violations.

59. The UK has developed its position in secret, without consulting affected groups and in isolation from any cross-cutting approach to business and human rights. While the UK Government claims to support the UN Guiding Principles as a matter of policy, it undermines that support by attempting to block judicial remedies for human rights abuses committed by a UK company in another country. The Government argues that the US may not legitimately exercise jurisdiction in this case but ignores the possibility that universal jurisdiction for gross human rights abuses committed by corporations is an important element of an international solution to holding companies accountable for their human rights impacts.

*We recommend that the Government withdraw its intervention in Kiobel v Shell and that the FAC ask the FCO the reasons behind this intervention.*

*15 May 2012*

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**Written evidence from the Bahá'í Community of the UK**

A. Summary


— The Bahá'í community of the United Kingdom actively engages with the Foreign and Commonwealth Office in a number of areas of human rights concern.

— These include countries of particular concern, notably Iran, as well as thematic issues, such as religious freedom and the rights of minorities.

— We welcome and value the content and tone of the 2011 Annual Human Rights and Democracy report by the FCO.

— British Ministers and civil servants make a significant contribution towards international efforts to hold human rights violators to account at the international level, specifically at the United Nations General Assembly and at sessions of the UN Human Rights Council.

— We would, however, welcome greater visibility of British positions on the situation of the Bahá'í community in Iran through public statements at inter-governmental fora under the aegis of the United Nations.

— We welcome the inclusion of the issue of freedom of religion or belief as a key issue for the Foreign Secretary's Advisory Group on Human Rights and encourage the FCO to continue its reflection on how best to promote this fundamental human right.


B. Introduction

This memorandum of evidence is offered by the Office of Public Affairs of the Bahá'í Community of the UK.

The Bahá'í Faith is the youngest of the world's independent religions. Today there are approximately 6,000 Bahá'ís across the United Kingdom, who follow the teachings of Bahá'ú'llah, Prophet-Founder of the Bahá'í Faith. The central theme of Bahá'ú'llah's writings is that humanity is one single race and that the day has come for its unification in one global society.

The Office of Public Affairs is an agency of the National Spiritual Assembly of the Bahá'ís of the UK, the national governing body of the UK Bahá'í community, and seeks to contribute to the life of society on the national stage.

C. Main Body of Report

*Geographic areas of interest*

C.1 Iran

The Bahá'í community of Iran is believed to be at least 300,000 strong, making it the largest non-Islamic religious minority in the country. As a post-Mohammedan religion the Bahá'í Faith is not accorded the status of *Ahl al Kitáb (people of the book),* a recognition granted to Christianity, Judaism, and by historical precedence to Zorostrianism , in the 1979 constitution of the Islamic Republic of Iran.

The Bahá'í community therefore have no constitutional rights and may be referred to as "unprotected infidels". The Bahá'í community has faced systematic state persecution for their faith since the inception of the 1979 Revolution. Innocent Bahá'ís have faced a range of abuses from execution, torture and imprisonment to seizure of properties, denial of access to education and even the desecration of the graves of their deceased loved ones.

Reports in the years since 2004 point to a steady increase in the rate of arbitrary detentions and imprisonments. The imprisonment of seven Bahá'í leaders in 2010 marked another significant stepping up of

the pressure on the Bahá'í community. Developments in the first months of 2012 illustrate a further and worrying deterioration.

The Bahá'í community of the UK therefore welcomes the content of the annual Human Rights and Democracy report that accurately reflects the overall situation of human rights in Iran as well as the specific problems facing the Bahá'í community.

We agree with the wider assessment of the FCO that, "*There has been no improvement in the human rights situation in Iran, and in some areas there has been deterioration*" and note the observation that; "*Ethnic and religious minorities faced systematic crackdowns.*"

We are concerned at the pattern of growing pressure on the right of freedom of religion or belief in Iran as evidenced by the sections of the report detailing the arbitrary arrests of over 400 Christians associated with the "house church" movement. Greater cause for disquiet is found in the report of apostasy charges against Pastor Youcef Nadarkhani, who may face execution.

The report also details the specifics of the persecution of the Bahá'í community in Iran, and gives concrete information on the imprisonment of the Bahá'í leaders; the pressures that deny Bahá'ís access to higher education and recent reports that the authorities in the city of Sanadaj are trying to dissuade the Bahá'is there from attending their regular religious gathering, known as the Nineteen Day Feast.

We welcome the attention of the FCO to these details. The support given by the Minister of State, who has met Bahá'í representatives, and the Foreign Secretary, who has made two principled statements on the plight of the Bahá'í leaders is regarded as being of the most significant value.

Information received during the past year indicates that the trends of targeting Iranian Bahá'is for detention and imprisonment continue to rise. At the date of this memorandum's drafting, 109 Bahá'ís are reported to be imprisoned and some 556 have been arrested since August 2004. In addition to the pressures that face Bahá'í students at higher education institutions, a separate and deeply disturbing trend of the persecution continues to see Bahá'í school children at all school levels monitored and slandered and bullied by school officials.

At the global level we welcome and commend the successful efforts of the FCO in working alongside international partners to maintain scrutiny of Iran's human rights record as manifested in the resolution adopted at the United Nations General Assembly in December of 2011 by an increased majority, and in a further resolution at the United Nations in March of 2012, again by an increased majority, that extended the mandate of the Special Rapporteur on the Situation of Human Rights in Iran, Dr Ahmed Shaheed.

The overwhelming margin of the vote in favour of the re-appointment of the Special Rapporteur—by 22 votes to five with 20 abstentions—represents a growing international consensus on the abysmal nature of Iran's human rights situation. Concern remains that Iran's government continues to fail to cooperate with the mandate of the Special Rapporteur and deny Dr Shaheed a visa to visit the country.

We would offer these recommendations for how the efforts of the FCO to defend the Bahá'í community in Iran:

1. Public statements made by the Foreign Secretary and Ministers at the FCO have significant impact. We believe it is of particular value to have Ministers raise named cases of individuals who are unjustly imprisoned for their beliefs, and encourage the Foreign Secretary and his Ministers to regularly raise named cases, including Bahá'ís who have been imprisoned on account of their faith in Iran.
2. The FCO should seek to capitalise upon the extension of the mandate of the Special Rapporteur on Iran by engaging international partners, particularly governments from within the Organisation of the Islamic Conference, as well as African, Asian and Latin American governments, to bring influence to bear on the Iranian government to cooperate with the Special Rapporteur and to grant Dr Shaheed a visa, without conditions and limitations, and to allow Dr Shaheed the widest possible scope to fulfil his mandate.
3. The Bahá'í community in Iran is not recognised as a religious community by those who in authority there. Any discussion on the human rights of religious minorities in Iran will not relate to the Bahá'í community from the perspective of the Iranian government. It is therefore important for the FCO to continue to specifically raise the situation of the Bahá'í community in Iran as a separate and significant element within the broader spectrum of human rights concerns in Iran.

C.2 Egypt

We note with concern the issues of freedom of religion or belief highlighted by the report in relation to Egypt such the attack on a Coptic Church in Aswan province resulting in 25 deaths. Bahá'ís in Egypt have also suffered from decades of discrimination and persecution which has included physical attacks on Bahá'ís and their property, restrictions on registration of marriages, obstruction of funerals, arbitrary detentions, confiscation of Bahá'í literature and inflammatory anti- Bahá'í propaganda and incitement to violence. There remains in place a 1960 Presidential Decree banning all national and local Bahá'í institutions and community activities. This has had the effect of criminalising Bahá'í activities punishable by a minimum of six months

imprisonment. Our office also continues to monitor the ongoing issue of the provision of identification cards to Egyptian Bahá'ís.

This period of transition in Egypt provides a unique opportunity for the fundamental right of freedom of religion or belief to be safeguarded and guaranteed as an integral building block of constructing an open and just democratic society. Any scrutiny of the Foreign Office's work with Egypt should include serious reflection on what practical steps can be taken to ensure that freedom of religion or belief for all Egyptians is meaningfully respected and robustly protected.

*Thematic issues of interest*

D. Freedom of Religion or Belief

We note the section in the FCO Annual Democracy and Human Rights report on Freedom of Religion or Belief, and we warmly welcome the commitment of the UK government to *"…protecting religious freedoms and preventing discrimination on grounds of religion or belief…"*

We share the assessment of the FCO that the treatment of religious minorities—whereever they may occur—may be seen not only as distinct human rights concerns, but in fact as a *"valuable litmus test"* of the wider human rights situation in any given country.

It is therefore to be greatly welcomed that at the first meeting of the Foreign Secretary's Advisory Group on Human Rights in December 2010 *"freedom of religion or belief was identified as a key human rights issue."* Commitment to the policy was developed in 2011 when Parliamentary-Under-Secretary of State Alistair Burt "*…hosted a Wilton Park conference on 'Promoting religious freedom around the world' to discuss how the international community can strengthen its ability to protect religious freedom."* A representative of the Bahá'í community of the UK was able to attend this important conference and offer our thinking on this vital issue.

We welcome the efforts of the FCO to engage with religious leaders to defend publicly the religious freedom of all groups with a view to promoting greater tolerance and respect. Bahá'í representatives remain in contact with Ministers and civil servants on this issue, and we look forward to offering our assistance and participation in this important area of work.

The Bahá'í community of the UK views this period of renewed scrutiny on freedom of religion or belief as an important opportunity for a deeper reflection on the global discourse on this topic. A great deal of thinking is taking place about aspects of freedom of religion or belief but it is taking place in disconnected and disparate fora.

Any deeper examination of freedom of religion or belief requires some reflection on the nature of religion itself. It is common to view religion as a welter of competing sects and denominations, each with its own set of personal beliefs, particular customs and prescribed practices. It is also possible, however, to understand religion as a continually evolving system of knowledge and practice representing the spiritual experience of the human race.

Central to Bahá'í belief is the conviction that social progress relies to a significant degree on the freedom of people to independently search after truth. Belief itself finds expression through culture, community life and collective initiatives dedicated to the common good. Religious freedom is therefore central to human and societal development; denial of religious freedom or religious intolerance—often directed against women and religious minorities—is injurious not only to the individual and his or her family, but ultimately to the fabric of society and the prosperity of the nation.

Protecting religious freedom helps to create the public space for diverse views, whether arising from religious, atheist or agnostic standpoints. Freedom of religion has a bearing on the broader human rights culture of any society.

We welcome the commitment of the FCO to *"lobby for changes in discriminatory practices and laws"* and its vigilance on concerns raised about *"the impact on religious diversity"* in the wake of the Arab Spring. It is encouraging to read of the emerging level of international consensus represented in the resolution against religious intolerance adopted at the UN Human Rights Council in March 2011.

One notable omission in the 2011 report is the lack of any reference to the worrying trend of so-called "anti-conversion laws". Several states, including one listed by the FCO as a "country of concern", have proposed draft legislation to prevent their citizens from changing their religion. Such legislation has been advanced under the aegis of valid concerns over forced conversion where individuals may change their religious affiliation under duress or through financial and other inducements.

We believe that the FCO should add the issues of anti-conversion or forced conversion laws to its wider work on freedom of religion or belief, and that the UK should maintain scrutiny on such legislation anywhere in the world to ensure that any such law does not undermine the fundamental right of any individual to have, adopt or change to a religion of his or her choice, as provided for in the UN Declaration of Human Rights.

The Bahá'í Community of the UK has offered its thinking to the FCO on a range of ideas towards greater policy coherence in the area of freedom of religion or belief. It is suggested the FCO might consider the following steps:

1. The establishment of an Office of Religious Freedom, to be located within the FCO. Such an office, analogous to similar resources established by the United States government, could serve as a knowledge and policy resource.
2. The FCO might also review the 2009 "diplomatic toolkit" on freedom of religion or belief in light of recent developments since the Arab Spring to assist diplomats working on this issue throughout the world.
3. We suggest that the FCO would benefit from an external advisory group with specific expertise in freedom of religion or belief. This body could offer sound knowledge and a familiarity with religion and issues of concern to religious communities to Ministers, diplomats and civil servants for their analysis of incidences, causes and consequences of religious intolerance.
4. We would welcome a separate publication on the state of freedom of religion or belief around the world to provide detailed reporting and analysis of such issues as apostasy, anti-conversion, and blasphemy laws, as well as the broader issues of the persecution of religious minority communities.

### E. Concluding Comments

The Bahá'í community of the UK is grateful to the Foreign and Commonwealth Office and for the professionalism, commitment and integrity of its Ministers and civil servants. The 2011 Foreign and Commonwealth Office report on Democracy and Human Rights reflects the UK commitment to human rights in a changing world, as most notably demonstrated in the events of the Arab Spring.

We are greatly encouraged to see the Foreign and Commonwealth Office giving greater attention to the right of freedom of religion or belief at a time of an increasing incidence of religious discrimination and persecution throughout the world. The Bahá'í community of the UK stands ready to offer its insights, experience and ideas towards a wider effort to advance universal principle of religious freedom.

*30 May 2012*

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## Written evidence from BOND Child Rights Group

### 1. Executive Summary

1.1 The Bond Child Rights Group welcomes the "Human Rights and Democracy: The 2011 Foreign & Commonwealth Office Report" (the Report), particularly several positive aspects that relate to children and children's rights. This includes sections on addressing the issues of women and girls, child abduction, children and armed conflict.

1.2 However, we are concerned that the 2011 Report does not cover the full spectrum of children's rights issues and does not adequately incorporate children's rights in general into the analysis of the Foreign and Commonwealth Office's (FCO) human rights work or the human rights situation in the countries covered by the report.

1.3 A key example of this is the Report's spotlight on the Arab Spring. Despite the dramatic impact that conflict can have on child development and future opportunities, and the instrumental role children can play in developing and maintaining security and stability, children's rights receive too little attention in this section of the report.

1.4 The Report seemingly reflects the FCO's de-prioritisation of children's rights. This worrying trend has already/also previously been evidenced by:

- — the lack of a child rights-focused member of the FCO's Human Rights Advisory Panel;
- — the expiration of the FCO's child rights strategy and the decision not to renew or replace it;
- — the lapse of the Child Rights Panel; and
- — the FCO's position that its "centrally-driven human rights priorities do not include child rights."[2]

### 2. Summary of Recommendations

2.1 The FCO should accord greater priority to child rights within its work to promote human rights overseas.

2.2 When assessing the human rights challenges in specific countries, the FCO must consistently analyse children's rights to inform their strategies and priorities within different countries, and their work with national governments.

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[2] FCO response to the Foreign Affairs Committee Inquiry into the FCO's human rights work in 2010–11.

2.3 The FCO should work with civil society and children and young people to produce a new Child Rights Strategy, objectives for promoting child rights and to identify how child rights will be incorporated broadly and effectively into its work.

2.4 The FCO should re-constitute a Child Rights Panel, giving it a strategic role in developing, implementing, monitoring and evaluating a new child rights strategy.

2.5 The FCO should ensure that child protection policies and procedures are required components of grant programmes.

2.6 The FCO should invite a child rights organisation or representative with particular child rights expertise to join its Human Rights Advisory Group.

2.7 The FCO should ensure that all staff receive training on child rights and child protection policies and procedures.

2.8 Future Reports should address more directly and more fully HMG's obligations under international child rights standards, including the United Nations Convention on the Rights of the Child (UNCRC) and its Optional Protocols, and address a broader spectrum of child rights issues.

2.9 Future Reports should also include a child rights analysis section for every country listed in the "Countries of Concern" chapter.

## 3. Introduction

3.1 The Bond Child Rights Group is a network of over 20 NGOs, research organisations and other key actors concerned with children's rights worldwide.[3] Our goal is to see children and their rights accorded greater priority in the UK government's international development and foreign policies and practice, in line with HMG's obligations in this area. We commit to a rights-based approach that sees children as rights-holders. We recognize that children have distinct needs and interests and require special protection and support, and are committed to lobbying for adequate resource allocation in order to meet their needs. We are guided by international standards and norms, including the UNCRC and are committed to highlighting ways in which HMG can better meet its international obligations.

3.2 Our vision is for a world free of poverty, disease and injustice, in which children are empowered as equal partners in promoting development, democracy, peace and social justice. We believe that children have the right to participate in decisions that affect them, their families, communities and nations. Furthermore, we believe that children are a catalyst for transforming societies and an essential asset for all efforts to address urgent global development and foreign affairs issues and challenges.

3.3 In accordance with the UNCRC, the UK is required to develop and undertake all actions and policies (including international development and foreign affairs) in light of the best interests of the child[4] and to "undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention."[5] Crucially, this includes the work of the FCO. Therefore, in line with our interest in encouraging HMG to meet its obligations under the UNCRC, the Group welcomes the opportunity to submit evidence to the Foreign Affairs Committee's inquiry into this 2011 Report.

3.4 This submission focuses on the Report in relation to the FCO's obligations, as part of the UK Government, under the UNCRC. It considers whether and how, in light of the Report and other evidence, the FCO is meeting its obligations and recommends ways in which the FCO could better prioritise children's rights.

## 4. The Content and Format of "Human Rights and Democracy: The 2011 Foreign & Commonwealth Office Report"

4.1 Children are entitled to all the human rights to which adults are entitled but, due to their vulnerability and specific needs, children are granted additional protections under international law. Having ratified the UNCRC, HMG is obliged to develop and undertake all actions and policies (including international development and foreign policies) in light of the best interests of the child[6] and to *"undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention"*.[7]

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[3] Members of the Bond Child Rights Group: UNICEF UK (Co-Chairs), Coram Children's Legal Centre (Co-Chairs), AbleChildAfrica, Absolute Return for Kids, Anti-Slavery International, ChildHope, Children's Rights Alliance for England, Childreach International, Children in Crisis, Consortium for Street Children, EveryChild, Hope and Homes for Children, International Children's Trust, Jubilee Action, Keeping Children Safe Coalition, Leonard Cheshire Disability, Medical Aid for Palestinians, Dr Caroline Harper—Head of Social Development Programme—Overseas Development Institute, PhotoVoice, Plan UK, Railway Children, Right To Play, Save the Children, StreetInvest, Tearfund UK, War Child, World Vision UK, Young Lives. Bond is the UK membership body of international development NGOs and has several thematic Bond Groups. For more information on Bond see www.bond.org.uk.

[4] Article 3 of the UNCRC http://www2.ohchr.org/english/law/crc.htm.

[5] Article 4 of UNCRC http://www2.ohchr.org/english/law/crc.htm

[6] Article 3 of the UNCRC http://www2.ohchr.org/english/law/crc.htm

[7] Article 4 of UNCRC

4.2 Children constitute around half the population in many developing countries and around a third of the global population. Children and young people are the overwhelming majority of people affected by poverty, but they have the least capacity to support or protect themselves. Children's rights are increasingly being threatened by cross-cutting issues such as climate change, the food and financial crises, humanitarian crises and conflicts, high levels of youth unemployment, rapid urbanisation, and increased fiscal austerity.

4.3 The Group welcomes the inclusion of a number of specific sections relating to children's rights within the 2011 Report. These are: "Children's rights" (under Equality and Non-discrimination); "Child abduction" (under Human Rights for British Nationals Overseas); "Children and armed conflict" (under Reducing Conflict and Building Stability Overseas) and "Safeguarding children" (under promoting human rights in the overseas territories). In particular, we welcome the new inclusion of a specific topic covering "Safeguarding children" which was not included in the 2010 report. Furthermore, the 2011 Report includes subsections relating to children's rights in the majority of its detailed reports on "Countries of Concern".

4.4 The Bond Child Rights Group welcomes the focus on specific child rights issues in the report (children and armed conflict, child abduction, safeguarding children). However, these issues should be considered alongside the UK's broader international child rights obligations, including to support the general measures of implementation of children's rights in partner countries.[8]

4.5 We are pleased to note that, in the subsection on Equality and Non-discrimination, the 2011 Report mentions the FCO's work "through international institutions, including in Europe and the UN, to promote and protect the rights of children."[9] This is a welcome inclusion as, within this section, the Report explicitly mentions several of the UK's obligations under international law, including its reporting obligations under the UNCRC's Optional Protocols, and the International Labour Organisation Convention 182, relating to the worst forms of child labour. However, the Report does not explicitly affirm the FCO's continuing obligations under the UNCRC. We recommend that future reports include such an affirmation, to demonstrate more fully the FCO's commitment to children's rights within its work.

4.6 We welcome the section on children and armed conflict and the attention given to the issue in a number of the country profiles. In particular, we welcome the identification of countries where children are recruited and/or deployed as soldiers. In order to better inform the FCO's wider work in relation to security sector reform and military assistance, we would recommend that a consolidated list of these countries be included in the section on children and armed conflict for ease of reference.

4.7 We particularly welcome the addition of a section on safeguarding children, the "SCOT" programme. This reflects an important dimension of the FCO's work in overseas territories—ensuring the use of child protection policies and procedures in overseas territories. However, this also reflects an inconsistency as similar interventions are not pursued elsewhere. The Report notes that the SCOT programme ended in March 2012 but highlights several "gaps" that need to be filled to secure the safety and welfare of children and their rights. The FCO should provide information regarding its intended future actions to this end in overseas territories and elsewhere. We recommend that the FCO seek support of external child rights agencies in these actions.

4.8 Overall, despite the inclusion of the additional section relating to safeguarding children, the overall discussion of child rights in the 2011 Report is limited, comprising only four sub-sections. This shows that children's rights are not a serious consideration or concern for the FCO, and certainly not a priority. Children's rights should be accorded greater priority within the FCO's work, and that this should be reflected by child rights being addressed much more broadly in future reports.

4.9 "Children's rights" is not included as a separate section under Section I: The Arab Spring. This is a glaring omission considering the impact of the Arab Spring upon children, eg the raised risk of detention and reduced participation,[10] and given that the Section includes other thematic sections, including on women's rights and the rights of people with disabilities. Where the Report contains sections that are topical and a focal point of activity, it is imperative that the FCO demonstrate how it has taken children's rights into account. Child rights should be routinely included in such sections in future reports.

4.10 Although, as mentioned, the Report contains information regarding children's rights for most of the priority countries of concern listed at the end of the Report (16 of 28), in future, there should be a section on children's rights for each country report. Of the two "Countries of Concern" the Foreign Secretary mentions in his foreword, Syria contains a separate section on children's rights, while Libya does not. Given the circumstances in these two countries, children's rights should have been included in both case studies.

4.11 The Report includes several sections relating to women's rights, which contain information about girls. The focus on girls is emphasised in the Minister of State's foreword, which mentions "a cross-government approach to tackling violence against women and girls overseas and increasing women's political participation." Although this commitment to gender equality and ending violence against women and girls is extremely positive and welcome, the FCO should strengthen sections on women's rights in future reports by emphasising

[8] CRC General Comment 5: http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CRC.GC.2003.5.En

[9] Page 65 FCO 2011 report.

[10] UNICEF regional media forum highlights impact of Arab Spring on children, 28 September 2011, http://www.unicef.org/sudan/UNICEF_MFRegionalPressRelease2011English.pdf. See also Humanitarian Action for Children, UNICEF 2012, http://www.unicef.org/hac2012/files/HAC2012_LOW__WEB_Final.pdf.

links between women's and children's rights in general. Women's rights and protection from violence are connected to the development, survival and welfare of girls and boys. Future reports should explicitly make this link.

## 5. General Comments and Recommendations on the FCO's Child Rights Work

5.1 The report sends mixed messages about the place of child rights in the FCO's work. Although the previous Government "identified the rights of the child as a key human rights theme to prioritise,"[11] the current administration has de-prioritised child rights. In 2011, the FCO stated that its "centrally-driven human rights priorities do not include child rights".[12] This statement, made in response to the FAC's inquiry into the FCO's human rights work in 2010–11, is worrying, both in terms of HMG's obligations under the UNCRC, but also because of the potential benefits of according greater priority to children and their rights in overseas development and foreign affairs. The statement is also at odds with FCO claims that the "implementation of the Convention (CRC) forms the main focus of our bilateral child rights work."[13] The Report's case studies that discuss the FCO's work relating to children, indicate that the FCO views child rights activities as part of its remit and as important for illustrating its human rights work more broadly. In light of this, we urge the FCO to provide clarity on their role and mandate in supporting children's rights through foreign policy.

5.2 Under the previous Government, the FCO acknowledged its duty to children by establishing a Child Rights Panel. This Panel helped to design the FCO's 2007 Child Rights Strategy, which ended in 2010 and which has not been extended, reviewed or replaced. At present there is no active Child Rights Panel or strategy.[14] We recommend the FCO reconstitutes a Child Rights Panel drawn from child rights agencies and specialists.

5.3 The FCO's Human Rights Advisory Panel does not include a member with a child rights focus. To ensure that children's rights are mainstreamed within the FCO's human rights activities, and to support the UK Government in meeting its international child rights obligations, *the FCO should* invite a child rights organisation or representative with child rights expertise to join its Human Rights Advisory Group.

5.4 The Human Rights and Democracy Programme (HRDP), which was launched in 2011 and which is mentioned repeatedly in the 2011 Report, does not include a focus on children's rights. This is a backwards step from the Global Opportunities Fund (HRDP's precursor) which included the promotion of child rights as a core objective and child rights as a focus for project funding. This is another indication of the FCO's de-prioritisation of child rights and lack of action to meet HMG's child rights obligations overseas, and should be rectified. Child protection policies should be a requirement and a child rights-based impact assessment should be encouraged for all projects funded by HMG overseas. The FCO should insert a strand into the Human Rights and Democracy Programme that specifically supports programmes that contribute to creating and supporting enabling environments for children's rights in priority countries.

5.5 At present, the Equalities Team within the FCO has the central responsibility for child rights and this is reflected within the structure of the 2011 Report, which places "children's rights" under the Equalities section. However, we are concerned that there is no longer a Children and Armed Conflict focal point, and that there is no FCO Desk Officer with primary responsibility for children's rights who engages regularly and meaningfully with NGOs. These gaps must be addressed and the FCO should increase its dialogue with civil society.

5.5 It is currently unclear whether the FCO has a child protection strategy in place for all of its work overseas. The FCO's 2010 Human Rights Report stated: "Many of the projects we finance on security sector reform or disarmament, demobilisation and reintegration contain child protection elements, as it is important that the specific needs of children are recognised and understood."[15] However, there is no similar statement in the 2011 Report. The FCO should explicitly state the importance of child protection within its work, ensure that all its activities are conducted in line with child protection policies and procedures, and ensure all staff are trained in implementing these policies and procedures.

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[11] FCO Strategy on Child Rights (2007)

[12] FCO response to the Foreign Affairs Committee Inquiry into the FCO's human rights work in 2010–2011

[13] FCO, "Child rights", http://www.fco.gov.uk/en/global-issues/human-rights/equality/child-rights/

[14] The Foreign Affairs Committee recommended in its Eight report of Session 2010–12 ("The FCO's Human Rights Work") that "the FCO inform us what expertise on children's rights is available within the Foreign Secretary's Advisory Group on Human Rights. We further recommend that the FCO inform us whether it plans to draw up a new child rights strategy; and if not, why not"—http://www.publications.parliament.uk/pa/cm201012/cmselect/cmfaff/964/964.pdf. In its response the FCO said: "In choosing the members of his Advisory Group on Human Rights the Foreign Secretary was determined to ensure an appropriate balance of expertise, diversity and experience. At the same time, it was important that the Group remained of limited membership to allow for focussed and in-depth discussion. Members of the group were therefore identified because of their ability to contribute across the range of human rights issues and while there is no representative from a child rights-specific organisation, many—if not all—of the group's members are familiar with child rights issues. 118. As reflected in the 2010 human rights report, promoting and protecting the rights of the child, including those in armed conflict or at risk of abduction, remains an important part of the Government's wider human rights work overseas. While our centrally-driven human rights priorities do not include child rights and, as such, we have no current plans to draw up a new child rights strategy, our embassies and high commissions do pursue work on child rights where this is of particular local concern. We will also continue to work through the United Nations and other multilateral fora to encourage other countries to uphold universal standards on child rights"—http://www.official-documents.gov.uk/document/cm81/8169/8169.pdf.

[15] FCO, Human Rights and Democracy: The 2010 Foreign & Commonwealth Office Report, http://centralcontent.fco.gov.uk/resources/en/pdf/human-rights-reports/accessible-hrd-report-2010

6. The Likely Impact of New and Updated Government Strategy and Guidance Documents Published During 2011

6.1 The three strategic and guidance documents mentioned in the call for evidence all have direct bearing upon the realisation of children's rights. In particular, the Overseas Security and Justice Assistance Human Rights Guidance sets out as one of its potential "risks" "violations of the rights of the child including ensuring that soldiers under the age of 18 take no direct part in hostilities" and requires that "vetting" activities take into account whether or not the proposed in-country operative has been involved in the use of child soldiers. This could help to raise awareness of the problem of child soldiers, as well as prevent the use of child soldiers.

6.2 HMG's Strategy for the Prevention of Torture 2011–15 mentions the importance of peace and security for women, but fails to mention the importance of protecting children. Children must be considered within the context of the prevention of torture, especially with regard to concerns about forced confessions and fair trial as they are the most vulnerable to such techniques and practices. The guidance should contribute to the prevention of the torture of children, however, the Strategy only mentions children once as a vulnerable group that should be made aware of their rights via in-country posts.

6.3 The updated Strategy for Abolition of the Death Penalty targets two countries that retain the death penalty for children: China and Iran. Part of HMG's approach to the death penalty is to ensure prohibition of death sentences for prohibited groups, including those under 18.[16] This guidance could prove beneficial in helping to reduce the death penalty for children, although further work should be done to encourage alternative sentencing and more effective juvenile justice programmes.

7. Children's Rights and the Cross-Government Strategy on Business and Human Rights

7.1 In developing a cross-Government strategy on business and human rights, the Government has an opportunity to demonstrate its commitment to protecting and promoting children's rights through compliance with its international child rights obligations. In developing this strategy, we recommend that the Government pay particular attention to the Children's Rights and Business Principles, published in 2012 by the Global Compact, UNICEF and Save the Children. These 10 principles set out in detail the appropriate actions businesses and Governments must take in order to secure that business respects and promotes the rights of children in all aspects of business operations.[17] The cross-Government strategy should include clear mechanisms for supporting, monitoring and holding businesses to account for respecting child rights in all operations.

*25 May 2012*

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**Written evidence from The British Parliamentary Committee for Iran Freedom**

The fundamentalist regime of Iran has murdered 120,000 members and supporters of the main Iranian opposition group People's Mojahedin Organisation of Iran (PMOI).

The regime shows no mercy to PMOI supporters, knowing the group is a well-organised resistance movement. PMOI activists played a prominent role in the 2009 uprising. It was the PMOI that revealed the Iranian regime's clandestine nuclear programme to the world.

For the same reason, Tehran wants to wipe out the PMOI supporters who are currently split between two camps in Iraq: Camp Ashraf and Camp Liberty. The Iraqi Government is to a large extent under Tehran's sway.

The FCO report referred in part to the abysmal situation of some 3,400 members of the PMOI in Camp Ashraf and Camp Liberty in Iraq.

The FCO said: "On 8 April, according to the UN Assistance Mission for Iraq, 36 residents were killed and many more injured in an attack on the camp by the Iraqi government. Subsequently, the Iraqi government announced its intention to close Camp Ashraf by the end of 2011. The UK publicly condemned the actions of the Iraqi government and continued throughout 2011 to urge them to ensure that the residents of Camp Ashraf are treated in accordance with the rights and protections they enjoy under international human rights and domestic Iraqi law."

This committee believes that the government here did too little to pressure Iraq to stop its continuous abuse of the residents' human rights. We had urged the Foreign Secretary to personally appeal to the government of Iraq not to use force against the unarmed and defenceless Iranian refugees residing in the camp, but there is no suggestion that the Foreign Secretary took such a course of action. Indeed, in the days leading to the 8 April massacre, our committee wrote to the FCO warning of an extraordinary build-up of Iraqi military forces around the camp, but our warnings fell on deaf ears. The UK government, as a leading member of the Coalition which brought the current Iraqi government to power, could have for instance threatened Iraq with action at the UN Security Council if it attacked the civilian population at Ashraf with arms. Instead the government failed to act pro-actively and its subsequent reaction was little more than a public statement by a junior minister.

[16] Page 23 of the 2011 FCO Human Rights Report.

[17] UNICEF, Save the Children and the Global Compact 2011 Child Rights and business principles http://www.unglobalcompact.org/docs/issues_doc/human_rights/CRBP/Childrens_Rights_and_Business_Principles.pdf

As a leading Coalition partner, clearly the UK has legal and moral obligations to ensure that Iraq does not transform into a dictatorship. It also must ensure that the Ashraf civilians are not further harmed by the government of Iraq at the Iranian regime's behest.

The UK has done extremely little to encourage EU member states to accept to host refugees from Ashraf. We would expect to see the UK raise the appalling human rights situation at Camp Ashraf and Camp Liberty at the UN Security Council. Camp Liberty has erroneously been called a Temporary Transit Location (TTL) while 3 months since the first group of refugees were transferred from Ashraf to Liberty has passed and no one has been moved to a safe third country. It is quite clear from the pace of the UNHCR proceedings that this is going to be a rather long process. Hence the UK has to raise issue with the UN refugee agency to recognise Camp Liberty as a refugee camp under UN supervision to prevent further pain and suffering of defenceless refugees at this location in the hands of Iraqi government under pressure from Iran.

The UK has also been extremely unvocal on the death sentences handed down to PMOI supporters and Ashraf residents' relatives inside Iran.

In May, the regime's Supreme Court confirmed a death sentence for political prisoner Gholamreza Khosrawi, 47, for providing financial aid to the PMOI. He was charged with "Moharebeh", or enmity with God. Mr Khosrawi had spent five years in the regime's prisons in the 1980's in Kazeroun. He was again arrested in 2007 in Rafsanjan and was condemned to six years imprisonment. In 2010, he was taken to the notorious Evin Prison and tried for providing financial support to the Mojahedin and condemned to death. He has spent more than 40 months in solitary confinement, according to the National Council of Resistance of Iran.

The death sentence for Abdolreza Ghanbari, 45, has been confirmed by the Supreme Court for his links to the PMOI. Mr Ghanbari, a university professor, was first arrested in 2007 because of his support for the PMOI and was expelled from the university. After his expulsion, he worked as a teacher in Pakdasht, Varamin. On 27 December 2009, on the day of the nationwide Ashura uprising, he was once again arrested and condemned to death for his contacts with the PMOI under the charge of Moharebeh.

The wardens in Evin Prison deny medical treatment to Ali Moezzi, 63, who is suffering from cancer, kidney failure and severe arthritis, in order to inflict a slow death on him. He had been a political prisoner in the 80s and was arrested again in November 2008 in Tehran for visiting his two children in Ashraf. He was arrested for the third time on 15 June 2011, while he had just undergone a surgery and was in terrible condition, and subsequently transferred to solitary confinement in Ward 209 of Evin. The reason for his arrest was his participation in the funeral of Mohsen Dokmehchi, a PMOI prisoner who died a slow death in prison due to denial of medical treatment.

Mashallah Haeri, 61, a relative of Ashraf residents who was hospitalised for treatment outside the prison hospital, was again arrested with his wife and taken to Ward 209 of Evin. He is a political prisoner of the 80s who suffers from various diseases including heart disease and internal bleeding and has so far had two strokes. In December 2009, while hospitalised, he was arrested and taken to Evin Prison. The regime's judiciary condemned him to 15 years prison for visiting his son in Ashraf.

Political prisoner Ms. Kobra Banazadeh Amirkhizi lost her vision under torture and is on the verge of total blindness due to denial of treatment by the regime. In 2008, she was arrested and sentenced to five years in prison simply because she intended to travel and visit her relatives in Ashraf.

The UK government has remained eerily silent on their cases despite receiving information about their case from the NCRI.
Another tragic political execution is regrettably imminent in Tehran. This time the potential victim is 44-year-old Hamid Ghassemi-Shall, who has dual Canadian-Iranian nationality.

Hamid returned to Iran from Canada in May 2008 to visit his elderly mother. He was detained on arrival on suspicion of gathering information for the PMOI. He spent 18 months in solitary confinement at Evin, with no access to his family or legal representation. In 2009, he was convicted and handed a death sentence in a kangaroo court trial that lasted no more than a few minutes.

In a statement issued on 15 April, the Canadian Foreign Minister, John Baird, said Canada was gravely concerned by signs that Hamid Ghassemi-Shall's execution day was approaching. The Canadian Government called upon Iran to spare Hamid's life.

If he is executed, he will sadly not be the first member of his family to pay the ultimate price. Hamid's brother, Alborz, was also a political prisoner. A former commander of the Centre for Expert Naval Training in the city of Rasht and an instructor at one of the Naval Forces universities, Alborz died on 19 January 2010 after spending 20 months in the mullahs' medieval prisons. He was subjected to the most brutal forms of torture.

The UK must bring Iran's appalling human rights record, and especially its treatment of supporters of the PMOI, to the Security Council for the adoption of binding measures to immediately stop the regime's inhumane actions. We also urge the UK government to adapt measures to accept asylum seekers form Camp Ashraf (or Camp Liberty) in Iraq and to take action to stop the Iraqi government harassing them.

*25 May 2012*

**Written evidence from the Catholic Agency for Overseas Development (CAFOD)**

SUMMARY

— The UK Government's focus on business and human rights is timely.
— The value of the UN Framework and the Guiding Principles will be the extent to which they change the behaviour of states and companies.
— How the UK implements the Guiding Principles will influence the response of other states.
— The Government risks making it almost impossible for victims of corporate abuses abroad to access justice in the UK.

RECOMMENDATIONS FOR THE CROSS-GOVERNMENT STRATEGY ON BUSINESS AND HUMAN RIGHTS

— Focus on preventing adverse impacts by companies by requiring human rights due diligence as set out in the Guiding Principles.
— Consider the rights-holders as well as governments and companies.
— Include concrete measures to make policy coherence a reality.
— The UK should stick to the "smart mix" of policy, guidance and appropriate regulation set out in the Guiding Principles, not water it down.
— Evaluation and monitoring need to be built into the strategy.

1. CAFOD welcomes this opportunity to submit evidence to the Foreign Affairs Committee's inquiry into the Foreign and Commonwealth Office's human rights work in 2011. As the official development and humanitarian agency of the Catholic Bishops Conference of England and Wales, we work with over 500 partners in more than 40 countries across the world to tackle injustice and bring hope to poor communities. CAFOD works with people of all faiths and none to reduce poverty and bring about a safer, more sustainable and more peaceful world.

2. From 2005 to June 2011 CAFOD and the CIDSE family of Catholic development agencies participated in the UN level process led by then Special Representative Professor John Ruggie which resulted in the Protect, Respect, Remedy Framework and the Guiding Principles on Business and Human rights.[18]

3. This submission will therefore focus on the UK's cross-Government strategy on business and human rights, expected to be published later in 2012, and how it should define the relationship between the FCO's human rights work and the promotion of UK economic and commercial interests in UK foreign policy.

## THE UK GOVERNMENT'S FOCUS ON BUSINESS AND HUMAN RIGHTS IS TIMELY

4. The private sector plays an essential role in development and is at the heart of the UK government's approach to development.[19] Businesses have the potential to impact on almost all human rights, including the right to water, land rights, rights in the workplace, and the rights of indigenous communities. Clearly businesses can have both positive and negative impacts on human rights.

5. The number of companies operating internationally is growing steadily. Globally there are now over 100,000 transnational companies with almost 900,000 foreign affiliates.[20] As the operations of multinational companies come into contact with some of the poorest people in the world, there is a clear imbalance in terms of political influence, economic clout, access to information and to legal expertise. John Ruggie identified the "governance gaps" which now exist because international human rights law has not yet caught up with investment agreements and globalised markets.[21] This means that in those situations where business–related abuses do occur, it can be very difficult for citizens to defend their rights and bring successful legal actions against multinational companies. The Protect, Respect, Remedy Framework and the Guiding Principles adopted by the UN Human Rights Council on 16 June 2011 represent John Ruggie's response to this challenge.

## THE VALUE OF THE UN FRAMEWORK AND THE GUIDING PRINCIPLES WILL BE THE EXTENT TO WHICH THEY CHANGE THE BEHAVIOUR OF STATES AND COMPANIES

6. The Protect, Respect, Remedy Framework is based on three principles: 1) the state duty to protect citizens, 2) the corporate responsibility to respect human rights and 3) access for remedy for victims of corporate human rights abuses. The Framework is a helpful concept but does not have any binding status in international law—it is up to individual states to adopt appropriate national laws and policies to implement it.

7. CAFOD's main concern is whether this UN process will drive improvements for the communities and groups on the ground. Will implementing the Guiding Principles lead to changes in the behaviour of states and companies? This is a question raised by partner organisations in Zambia and Mexico. It is an urgent issue for

[18] See for example CIDSE Protect Respect Remedy: keys for implementation and follow up of the mandate, October 2012 http://www.cidse.org/content/publications/business-a-human-rights/bahr-in-the-united-nations/protect-respect-remedy-framework.html

[19] DFID The Engine of Development: The Private Sector and Prosperity for Poor People, May 2011

[20] UNCTAD World Investment Report 2011, Table 34

[21] See for example http://198.170.85.29/Ruggie-statement-to-UN-Human-Rights-Council-2-Jun-2009.pdf

many of the communities with which our partner organisations work. After six years of discussion and development at UN level, communities affected by mining in Peru, the Philippines, Honduras, the Democratic Republic of Congo and Colombia and human rights defenders who have already received death threats need to see concrete results. The Guiding Principles are a useful starting point but much remains to be done to ensure the work to date delivers improvements on the ground. It is important that their actual impact is evaluated and there is scope to develop them further if needed.

### How the UK Implements the Guiding Principles will Influence the Response of other States

8. The UK Government has consistently supported the UN Protect, Respect and Remedy Framework on Business and Human Rights and the Guiding Principles developed by Professor John Ruggie and adopted by the UN in June 2011.[22] In November 2011, the Prime Minister reaffirmed: *"As we deepen commercial links between the UK and Colombia we acknowledge the importance of working with the private sector on human rights issues. We are committed to implementing the UN Guiding Principles on Business and Human Rights."*[23]

9. In December 2011 the UK submission to the UN Working Group on Business and Human Rights stated:

> *"The United Kingdom has placed human rights as central to and indivisible from the core values of British foreign policy. We believe the potential of business to impact on the human rights of individuals worldwide has only been fully recognised in recent years. The endorsement by the Human Rights Council of the UN Guiding Principles on business and human rights in June 2011 marks a high point of international consensus on the issue. The Guiding Principles send out a clear message to governments and businesses, with comprehensive guidance on how to ensure that human rights are respected in the corporate context."*[24]

10. This clear statement is very welcome. Since the UK's strategy is due to be published this summer, it will be one of the first Government responses on implementation and a reference point for other states. The EU is asking Member States to produce Action Plans on Implementation of the Guiding Principles by the end of 2012. As an influential first mover, the UK has an opportunity to show leadership. However equally if the UK strategy is not particularly strong, this could risk undermining implementation of the Guiding Principles by other states and by companies.

11. CAFOD commends the cross-governmental process begun by the FCO to develop the UK strategy. This joined-up approach will also be helpful for UK-based businesses. While the FCO is the lead department with regard to the UN Framework and Guiding Principles, policies of BIS, Ministry of Justice, DFID and the Treasury all impact on companies' operations. However CAFOD is concerned that even while the cross-departmental strategy is being developed, other actions taken by the Government in relation to the financing regime for civil legal cases are actively undermining the third pillar of the framework, access to remedy.

### The Government Risks Making it almost Impossible for Victims of Corporate Abuses Abroad to Access Justice in the UK

12. Access to justice is a key element of the UN Framework and Guiding Principle 26 explicitly states:

> (a) "States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing human rights-related claims against business, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy."

13. While the Government supports access to remedy in the Guiding Principles, on 22 June 2011 it put a bill before parliament which could make this almost impossible in practice in the UK. CAFOD is very concerned that changes to cost regimes for civil litigation in the Legal Aid, Sentencing and Punishment of Offenders Bill will mean that it is very hard for victims of human rights abuses by transnational companies to bring cases against businesses in the UK.

14. This is because claimants and their lawyers could find it impossible to recover the full costs of researching and bringing these complex cases to court. For example the well known toxic waste case brought in 2006 by Leigh Day as a group action on behalf 30,000 citizens in Cote d'Ivoire against Trafigura Ltd is the kind of case that would be very difficult to finance in future. With other NGOs in the CORE coalition, CAFOD asked the Ministry of Justice in February 2011 to amend its proposals to create a special exemption for cases brought against transnational companies. CORE also lobbied parliament to amend the Bill to create an exception for the small number of human rights cases brought against TNCs. Because of EC regulation Rome II, foreign victims receive much lower damages awarded in line with the local rates in the particular developing country where the abuse occurred. In these types of cases, shifting the burden of payment for success fees and insurance costs from the losing company to the victims risks substantially reducing or even wiping out the damages that the victims receive. In such situations, it may not be financially viable to bring the case in first place.

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[22] http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf

[23] "UK and Colombia agree Joint Declaration on Human Rights" 21 November 2011 available at http://www.fco.gov.uk/en/news/latest-news/?view=PressS&id=695253482

[24] Submission on behalf of the Government of the United Kingdom of Great Britain and Northern Ireland available at http://www.ohchr.org/Documents/Issues/TransCorporations/Submissions/States/UnitedKingdom.pdf

15. The MOJ has dismissed this concern, claiming that it will still be possible for poor victims of corporate environmental or human rights harm to bring legal cases however it has not shown how these cases will be financed under the new regime.

16. This development is extremely concerning. Actual changes to the law contradict the positive statements of support for the Guiding Principles. If the access to justice impacts of the Legal Aid, Sentencing and Punishment of Offenders Bill are not addressed, this will undermine the UK's international credibility in terms of implementing the Guiding Principles.

RECOMMENDATIONS

CAFOD has welcomed the opportunity to take part in discussions about the development of the cross-departmental strategy. In our view, the following principles are essential if the UK's strategy is to be effective in improving business impacts on human rights and providing a good practice example of how to implement the Guiding Principles.

1. *Focus on preventing adverse impacts by companies by requiring human rights due diligence as set out in the Guiding Principles*

The purpose of the strategy should be to improve business impacts on human rights, reduce instances of corporate abuses and ensure that where they do occur, affected communities can access remedy. Clearly for all parties it makes sense to try to prevent human rights abuses from happening in the first place. By requiring human rights due diligence along the lines clearly set out in the Guiding Principles, the Government can ensure that companies are aware of the possible risks linked to their business operations and supply chains and can take steps to avoid adverse impacts.

2. *Consider the rights-holders as well as governments and companies*

The principle of the corporate responsibility to respect human rights and the concept of human rights due diligence are helpful aspects of the UN Guiding Principles. It is important however that the strategy emphasises all three pillars of the Framework—the state duty to protect, the corporate responsibility to respect and access to remedy. Professor John Ruggie, who designed the framework, has frequently emphasised that the three pillars are interlinked and interdependent. Therefore to be effective, the UK's strategy for implementation needs to address all three.

For example, it is important that the views and experiences of rights-holders, including those directly affected by business operations, are taken on board in evaluating the impact of the strategy, as well as in designing the pilot projects on how the Guiding Principles can be implemented in business environment in China, Burma and Colombia.

3. *Include concrete measures to make policy coherence a reality*

CAFOD has identified a number of concrete measures that the Government can now take to make sure that all the different departments that deal with businesses support implementation of the Framework. It is important to ensure that that other laws and policies do not inadvertently make it harder for enterprises to respect human rights.

For example, by including a stage within the impact assessment of legislative proposals, the Government can ensure that new laws support and do not undermine the UK's implementation of the Protect, Respect, Remedy framework and Guiding Principles. This will support policy coherence between different Government departments and make sure that consistent messages are sent to companies. Such a step could have identified and avoided the problems caused by the MOJ's Legal Aid bill early on.

BIS is currently reviewing the aspects of the 2006 Companies Act which deal with environmental and social reporting by companies. This is part of the Coalition agreement. A consultation document with a proposal for companies to report specifically on human rights impacts was published in September 2011. Research by the CORE coalition shows that many companies are currently not reporting on their human rights impacts. This review is the ideal opportunity to make sure that companies know that reporting on relevant human rights impacts and risks linked to their operations is explicitly required. This opportunity should not be missed.

Evidence of human rights due diligence can also be integrated into criteria for access to export credit, insurance support and included within DFID's approach to development partnerships with the private sector.

4. *The UK should stick to the "smart mix" of policy, guidance and appropriate regulation set out in the Guiding Principles, not water it down*

The Guiding Principles recognise that a "smart mix" of measures—including policy, soft law and hard law—will be needed to achieve tangible results for affected individuals and communities. However in the section on the Guiding Principles in its Human Rights and Democracy Report 2011, the FCO only references guidance and training as well as signposting to "other voluntary initiatives."[25] CAFOD recognises that it is important

[25] FCO Human Rights and Democracy Report 2011, p.112

that businesses know how to access expertise on human rights impacts and can make use of work that has already been done. For example, signposting to work done by the Ethical Trading Initiative will enable companies to look at how to support freedom of association and avoid exploitation in their supply chains.[26] However, adopting an approach based purely on guidance and voluntary initiatives will not be sufficient. This is effectively re-badging the existing status quo. As well as a missed opportunity, it would be a fundamental misinterpretation of the Framework and the Guiding Principles.

If the UK waters down the approach set out in the Guiding Principles, it is hard to see how it can expect other states to take their duty to protect human rights seriously.

5. *Evaluation and monitoring need to be built into the strategy*

It is important to include information about how the impact of the strategy will be measured and evaluated. The strategy will need to be reviewed and updated at regular intervals. The Government should set up an independent expert group, possibly multi-stakeholder, to monitor progress and make recommendations.

Ultimately we think that there would be value in setting up a robust independent UK Commission on Business, Human Rights and the Environment as proposed by the CORE campaign.[27] This would enhance accountability and be a source of expert advice and reference for UK companies keen to address their impact on human rights and the environment.

*25 May 2012*

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**Written evidence from the Campaign Against Arms Trade**

1. The Campaign Against Arms Trade (CAAT) in the UK works to end the international arms trade, which has a devastating impact on human rights and security, and damages economic development. CAAT believes that large scale military procurement and arms exports only reinforce a militaristic approach to international problems. Established in 1974, CAAT receives around 80% of its funding from its individual supporters.

2. Your Committee's call for submissions addressing "the cross-Government strategy on business and human rights ... and how it should define the relationship between the FCO's human rights work and the promotion of UK economic and commercial interests in UK foreign policy" is particularly welcome.

3. The use made by successive UK governments of military force and intervention in an attempt to solve problems has had high human and monetary costs. The enthusiastic espousal by UK governments of arms exports, including to extremely repressive governments, undermines the FCO's human rights work as well as leaving the UK open, correctly, to charges of hypocrisy.

4. War, instability and repression undermine economic growth. However, a shift of resources from military goods to sustainable production could bring benefits to the economy, and remove an obstacle to human rights.

ARMS EXPORTS UNDERMINE HUMAN RIGHTS

5. The aggressive promotion of arms sales is incompatible with human rights. The dire consequences of the export of military equipment has been highlighted by the Arab Spring. The Government reacted by revoking export licences to Bahrain, Egypt, Libya and Tunisia where it felt the equipment licensed could directly be used for human rights violations. However, it was demoed that there had been a failure of judgment, let alone of the overall policy, when the licences were granted.

6. The indirect consequences of the sale of UK arms can, however, be just as devastating as they increase general military capacity and convey a message of international acceptance and approval. Saudi Arabia is identified by the FCO as a country of major human rights concern. It is ranked at 161, where the worst country is 167, on the Economist Intelligence Unit's "Democracy Index 2011", the latest published, which reflected the situation in December 2011. Additionally, in 2011 Saudi Arabia used UK-supplied armoured vehicles to guard infrastructure in Bahrain which freed up the latter's military forces to brutally repress its people.

7. In 2011, however, Saudi Arabia was once again the biggest recipient of UK arms sales; export licences for goods totalling over £1,735 million were granted. The desire to sell arms meant muted criticism of the repressive Saudi regime, as senior UK government figures courted the abusers to promote arms sales. The human rights of the Saudi people, as well as of others in the Gulf, are accorded less importance than the desire to sell military equipment.

8. Libya stands as a very potent recent example of what goes wrong when arms sales trump human rights concerns. Immediately after the arms embargo was lifted in 2004 Libya was a focus for UK government and company marketing efforts, including a visit by then Prime Minister Tony Blair. In 2010 Libya was included in the priority market list of the government's arms sales unit, UK Trade & Investment Defence and Security Organisation (UKTI DSO), which was in Tripoli exhibiting at the LibDex arms fair in November 2010.

[26] Eg http://www.ethicaltrade.org/sites/default/files/resources/ETI%20workbook%202nd%20edition.pdf
[27] http://corporate-responsibility.org/campaigns/uk-commissions-proposal/

9. Sales to Libya continued right up until February 2011. A month later the new arms embargo was imposed and the bombing began. The UK found itself taking military action against a country it had armed immediately before. Yet amazingly, a year later, in February 2012 with Gaddafi dead but with a still unstable situation, Libya is back on UKTI DSO's list of priority markets. There is no sign that the obvious lesson has been learned.

10. Sometimes the military equipment sold to repressive regimes is not even paid for. In the mid-1990's British Aerospace Hawk aircraft, as well as tanks and armoured personnel carriers, were sold to Indonesia's President Suharto. He used some of the equipment against his own people as well as those in East Timor and West Papua. In 1998, Indonesia suffered a financial crisis and defaulted on its payments. Today, the Indonesian people are repaying hundreds of millions of pounds in debt to the UK government for this 1990's equipment. Despite this, in April 2012, Prime Minister David Cameron led a new arms sales delegation to the country.

11. While arms companies may make money, the economic interests of very few people are served by conflict and instability which so often follows from repression and human rights abuse.

Government support for arms exports

12. Their negative consequences notwithstanding, arms exports have received Government support and backing for decades; since 1966 there has been a dedicated department helping sell military equipment overseas. This support is now co-ordinated by the Defence and Security Organisation within UKTI, with resources are greater than those providing specific support to all other sectors of industry put together. This is despite military sales making up only 1.5% of total UK exports, and the fact that even then, 40% of their components are imported.

13. UKTI DSO liaises with the companies they are selling the arms for, builds relationships with overseas governments and military officials, arranges political assistance for arms deals, ensures that members of the UK armed forces are on hand to help the companies' sales efforts, and assists with arms fairs.

14. In 2012 UKTI DSO's priority markets are Australia, Brazil, Canada, Europe/NATO/EU (as a collective market), India, Indonesia, Japan, Kuwait, Libya, Malaysia, Qatar, Oman, Saudi Arabia, South Korea, Thailand, Turkey, United Arab Emirates, and the United States. UKTI DSO has already been represented at, among others, arms fairs in Jordan, Kazakhstan and Saudi Arabia.

15. This is government assistance for commercial companies. Just how intensive this support can be was shown from information obtained as a result of a Freedom of Information (FoI) request. The UKTI DSO Regional Director covering the Middle East, Central and South West Asia, and Africa had over 90 meetings with arms company BAE Systems' personnel in the eighteen months between August 2010 and January 2012.

16. For many years support for arms sales accounted for between a third and a half of all government export insurance through what was then the Export Credits Guarantee Department (ECDG), now UK Export Finance. A massive drop in this proportion, to just 1%, occurred in 2008 when BAE stopped the cover on its arms deals with Saudi Arabia. Documents obtained from the National Archive and through FoI requests show the Treasury, the ECGD itself and the Bank of England all had reservations about this cover. The drop in cover for military exports could, however, prove to be temporary unless the conditions for export credit support change.

17. A disproportionate amount of UK government political and financial support goes to an industry whose products are both damaging to human rights and a drain on the UK economy.

## Commercial Interests or Economic Benefits to the UK?

18. Arms exports obviously benefit one commercial sector—the arms companies—but there is no evidence that they benefit the UK economy as a whole. It would be wrong to confuse the commercial interests of companies with the UK's economic interests. Companies aim to maximise shareholder profits, and the consequences for their employees or the UK economy as a whole, or, indeed, for UK security, are subsidiary to this. Sometimes the interests may coincide, but this is not universally true and certainly not in the case of companies involved in military equipment production or projects.

19. Today, military industry is global with most equipment containing components and sub-systems from a variety of companies and countries. The companies often have their headquarters in one country, but subsidiaries in several others. BAE, for example, is thought of as a UK company, but its United States' businesses contributed 47% of the company's sales in 2011, far the largest proportion globally. Less than 40% of the company's employees are based in the UK.

20. Despite this, analysis carried out for CAAT in 2011 by the Stockholm International Peace Research Institute suggested that military sales are subsidised by the UK taxpayer at around £700 million a year.

21. Even the MoD has questioned the economic benefits of military exports. In its Defence Industrial Strategy (December 2005) the MoD said: "Arguments for supporting defence exports in terms of wider economic costs and benefits eg the balance of payments, are sometimes also advanced. A group of independent and MoD economists (M Chalmers, N Davies, K Hartley and C Wilkinson—*The Economic Costs and Benefits of UK Defence Export*s. York University Centre for Defence Economics, 2001) examined these by considering the implications of a 50% reduction in UK defence exports. They concluded that the "economic costs of reducing

defence exports are relatively small and largely one off...as a consequence the balance of argument about defence exports should depend mainly on non-economic considerations."

22. Authoritative, independent statistics on employment in military industry are hard to find. After 2007–08, the Government's Defence Analytical Services and Advice stopped producing employment statistics because "the data do not directly support MOD policy making and operations." In that year, however, the 65,000 jobs supported by arms exports accounted for 0.2% of the UK workforce and 2.24% of manufacturing employment.

23. In a globalised industry there is a trend for the goods to be produced in the buying country. For example, under the £700 million BAE Hawk aircraft deal signed signed in July 2010 during Prime Minister David Cameron's visit to India most of the planes are being under licence there by Hindustan Aeronautics Limited. In both this deal, and that obtained by BAE for Hawk jets to Saudi Arabia in May 2012, the number of jobs reported to be "saved" was around 250.

24. Jobs figures for military projects are frequently acclaimed without any consideration of the costs of the relevant equipment to the taxpayer or the opportunities forgone because that money was not spent elsewhere. Though, naturally, arms industry workers are protective of their existing jobs, the evidence suggests that many have skills that could be used more productively in other industries and that a redirection of investment would provide as many, if not more, jobs overall.

25. The *Financial Times*, for example, pointed out on 2 September 2009 that: "Spending on defence is no better at creating jobs than support for other sectors. Defence R&D may produce spin-offs, but so too may R&D with civilian applications." In the same newspaper, on 10 August 2010 International Economics Editor Alan Beattie reiterated: "You can have as many arms export jobs as you are prepared to waste public money subsidising." As Robin Southwell, president of A|D|S, the UK arms industry's trade association, told The Observer on 15 April 2012: "We are an industry that is flatlining at best." Exports are no way out for UK companies he continued: "The trouble is, everybody is exporting." Continuing government support for arms exports cannot be seen an efficient way of boosting the UK economy or employment.

### New Opportunities

26. Talking of military equipment spending generally, the introductory paragraph for a Jane's conference on Energy, Environment, Defence and Security that took place in May 2011 explained: "The defense market worldwide is worth a trillion dollars annually. The energy and environmental market is worth at least eight times this amount. The former is set to contract as governments address the economic realities of the coming decade; the latter is set to expand exponentially, especially in the renewables arena."

27. The European Commission agreed. In April 2012 its "Towards a job-rich recovery" identified the green economy as an area where there is strong job growth potential as European economies recover from the economic crisis and restructure in a changing global economy.

28. Barry Warburton, the Chief Executive Officer of the West of England Aerospace Forum, said of MoD budget cuts: "This is a perfect opportunity for diversification and renewable energy presents a massive new market ... A turbine blade is not dissimilar to a helicopter blade. It's electrical and mechanical engineering... What is an aircraft made of? What are components of a vehicle made of? When you think about it the technology in the defence industry is very value added and is very flexible." (Insider, 1 November 2010)

29. CAAT is not best placed to explore the new opportunities in detail, but it is clear that the skills required for renewable technology are extremely similar to those in the arms sector, and there is an engineering skills shortage.

30. According to reports in *The Guardian* and *Financial Times* on 16 May 2012, Foreign Secretary William Hague is frustrated that more help is not being given to the green industries to boost economic growth. He is said to written to the Cabinet saying: "The low carbon economy is at the leading edge of a structural shift now taking place globally ... we need to stay abreast of this, given our need for an export-led recovery ..."

31. The choice today is which industries the UK government subsidies and supports, rather than between the UK's economic interests and human rights. A move from military to more sustainable production would be a win-win situation with the UK backing human rights and growth.

### Arms Trade Treaty

32. The UK government is giving support to an international arms trade treaty, showing itself willing to advocate restraint from others, but unwilling to address its own practices as it approves licences which would be refused under any commonsense guidelines.

33. A treaty will be worthwhile only if it stops arms sales, from the UK as well as elsewhere, to areas of conflict and to human rights violators such as Saudi Arabia and Bahrain. It is unclear how a treaty would actually stop weaponry going to the likes of Gaddafi's Libya when, at the time the weapons were sold, it was a UK priority market. CAAT is sceptical that a treaty will do much to prevent the devastating consequences of

the arms trade. It could even be used to legitimise arms exports as governments and arms companies claim that sales are in accordance with it.

### Export Licensing Transparency

34. Although it is a very limited response to the arms export issues highlighted by the Arab Spring, CAAT welcomes the consultation the Department for Business, Innovation ans Skills is currently undertaking on greater transparency regarding export licensing. CAAT hopes that it will result in more information being made available about export licence applications, not least regarding the supplying company and the end-user. This will facilitate a more informed debate on the UK's arms sales.

*25 May 2012*

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## Written evidence from the Church of England's Mission and Public Affairs Council

### Summary of Main Points

- We are encouraged that the Government has maintained its practice of publishing an annual human rights report rather than only producing an on-line report as previously suggested.
- This is an authoritative report, and it is certainly more comprehensive than previous years. We find, however, that the government's narrative of its response to the Arab Spring is incomplete.
- We do not hold that human rights should always trump trade, but there needs to be greater clarity in the relationship between these two different strands of policy. The current strategy of using trade visits to engage in "dialogue at all levels, including human rights," is confusing and needs revisiting.
- We welcome Section II of this year's report that sets out the Foreign and Commonwealth's Offices' Human Rights Priorities. We look forward to next year's human rights' report using this Section as its starting point and hope it will provide a frank assessment of how successful the Government believes it has been in meeting its priorities.
- We remain concerned by the availability of overall resources for the government's human rights work and the risks that areas like defending religious freedom around the world will be squeezed in the annual spending round. We continue to hold that a legitimate case exists for appointing, either at the national or European level an ambassador at large for religious freedom.
- We welcome the detailed analysis of "countries of concern" included in the report, but we are surprised and alarmed to see Nigeria omitted from the list.

### Introduction

*About the Mission and Public Affairs Council*

1. The Church of England's Mission and Public affairs Council welcomes the opportunity to respond to the House of Commons' Foreign Affairs Select Committee's inquiry into the Foreign and Commonwealth Offices' human rights work, including the department's 2010 human rights report, Human Rights and Democracy.

2. The Mission and Public Affairs Council is the body responsible for overseeing research and comment on social and political issues on behalf of the Church. The Council comprises a representative group of bishops, clergy and lay people with interest and expertise in the relevant areas, and reports to the General Synod through the Archbishops' Council.

*About the Church's approach to human rights*

3. The Church works proactively to ensure that human rights are not overlooked or forgotten in Britain's foreign policy and development cooperation. It does this by constructive dialogue with the British government and the EU institutions. Internationally the Church works with and through the Office of the Anglican Observer to the United Nations.

4. As part of a wider Communion of churches, the Church of England is alert to those instances where human rights and human dignity is infringed. Its mission and development agencies try where possible to provide faithful support to those who find their human rights under stress. This involves providing both pastoral support and also challenging those unjust structures of society that impair human dignity.

*About this submission*

5. This submission draws on these global relationships. In so doing it builds on many of the same themes that the Church' Mission and Public Affairs Council expressed in its submission to the Foreign Affairs Committee's inquiry last year.

## The Content and Format of Human Rights and Democracy: The 2011 Foreign & Commonwealth Office Report

6. This is an authoritative report, and it is certainly more comprehensive than previous years. We very much welcome the section specifically devoted to the Arab Spring as well as the inclusion of a statement of the Government's priorities in the field of human rights. The inclusion of a set of case studies to complement the detailed analysis of countries of concern is also welcomed.

### *Report's publication*

7. We are encouraged that the Government has maintained its practice of publishing in hard copy an annual human rights report rather than only producing an on-line report as previously suggested. The report usefully documents much of the work that the government has done in this over the last year. Although an annual report can only look backwards it is a valuable tool in ensuring that there is public accountability and oversight at a time when human rights abuses across the world require Britain and others to show international leadership. We very much hope that this practice will continue in subsequent years.

### *The Arab Spring*

8. However, we find though the government's narrative of its response to the Arab Spring incomplete. The Report, for instance, makes much of the Prime Minister's speech to the National Assembly in Kuwait on 22 February 2011 setting out the parameters of the UK's approach to the Arab Spring. It omits, however, any mention that the Prime Minister was in Kuwait heading up a trade delegation to the Middle East primarily made up of arms exporters. How this fits in with the UK's active support of a UN backed Arms Trade Treaty is far from clear.

9. This is not to imply that human rights should always trump trade, but there does need to be greater clarity in the relationship between these two different strands of policy. The current strategy of using trade visits to also engage in "dialogue at all levels, including human rights," is confusing and needs revisiting. Separating out these strands of Britain's foreign policy would allow a more structured dialogue on human rights and as well as on trade, which would be doubly advantageous.

### *Business and Human Rights*

10. We very much hope that the cross-Government strategy on business and human rights, expected to be published later in 2012, will tackle this issue in greater depth. The government is rightly placing a heavy emphasis in its foreign policy on boosting prosperity by promoting British business overseas, but such a move should not come at the expense of human rights or the values underpinning Britain's foreign policy. Without such underpinning values policy is at the mercy of circumstance and opportunism. That will mean a constant risk that policy will be driven by short-term factors and that governments will be tempted to seek narrow economic advantage for the United Kingdom at the expense of our wider interests and values.

### *A statement of HMG's Priorities*

11. In our submission to last year to the Foreign Affairs Committee we expressed our disappointment that the 2010 Human Rights Report did not provide a clearer strategic framework setting out the aim and objectives of Britain's foreign policy in this area. We suggested that the absence of such a framework makes it that much harder to measure the effectiveness of the Foreign and Commonwealth Office's human rights work.

12. We therefore very much welcome Section II of this year's report that sets out the Foreign and Commonwealth's Offices' Human Rights Priorities. This section provides a helpful framework within which to evaluate progress in this area. We particularly welcome the Section's attention to thematic concerns, such as freedom of religion or belief, and the inclusion within each of these sub-sections on material setting out the objectives for 2012.

13. The inclusion of this Section will make it easier to make sense of the on-line three monthly updates to the human rights report envisaged by the Foreign Secretary. We recommend, however, that next year's human rights report uses this Section as its starting point and provides a frank assessment of how successful the Government believes it has been in meeting its priorities.

### *Freedom of religion or belief*

14. We are heartened by the report's attention to the question of freedom or religion and belief and recognise that this underlines the importance that the Government gives to this particular human right. For the Church promoting and protecting religious freedom is not simply a matter of self-interest.

15. As well as the intrinsic importance of the freedom to practice religion, a lack of religious freedom creates socio-economic discrimination and reduces citizens' ability to come together and become agents for peaceful change. This can fuel intercommunal tension and extremism. Where religious freedom is denied human development and flourishing is impaired. For the Church promoting and defending religious freedom is an important element in the process of democratisation and poverty reduction.

16. We remain concerned though by the availability of resources for the government's human rights work and the risks that areas like defending religious freedom around the world will invariably be squeezed in the annual spending round. We continue to hold that a legitimate case exists for appointing either at the national or European level an ambassador at large for religious freedom.

### Countries of Concern

17. We welcome the detailed analysis of "countries of concern" included in the report, even if we find depressing that the list includes a total of 28 countries—the highest ever with the inclusion of South Sudan and Fiji. We recognise the complexity of the challenges facing different countries and the importance of not fixating too much on the simple characterisation of whether a country is of concern or not.

18. We were surprised, however, to see Nigeria omitted from the list. Deeply entrenched human rights problems, as well as the growing threat posed by a militant Islamist group, underscore the pressing human rights situation in Nigeria and the need for President Goodluck Jonathan to strengthen and reform the institutions that ensure security and the rule of law. In recent months we have witnessed Christian groups being attacked, churches burned and a large number of people killed, often with the most savagery. The importance of a secure and stable Nigeria for regional peace and prosperity cannot be underestimated and has often been noted by FCO Ministers.

### *Comprehensiveness of the report*

19. Despite the comprehensive nature of this report we very much regret that unlike its American version, the report still does not cover every country. That is regrettable, particularly as much of the information provided in the report is drawn from reports provided by national embassies. We recommend that the government should look again at whether the report's scope can be broadened yet further.

*18 May 2012*

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## Written evidence from Fair Trials

### About Fair Trials International

Fair Trials International (FTI) is a UK-based NGO that works for fair trials according to internationally recognised standards of justice and defends the rights of those facing charges in a country other than their own. Our vision is a world where every person's right to a fair trial is respected, whatever their nationality, wherever they are accused.

FTI pursues its mission by providing individual legal assistance through its expert casework practice. It also addresses the root causes of injustice through broader research and campaigning and builds local legal capacity through targeted training, mentoring and network activities.

Although FTI usually works on behalf of people facing criminal trials outside of their own country, we have a keen interest in criminal justice and fair trial rights issues more generally. We are active in the field of EU Criminal Justice policy and, through our expert casework practice we are uniquely placed to provide evidence on how policy initiatives affect defendants throughout the EU.

### Executive Summary

- This paper focuses on four areas:
  - UK policy with regard to European Union justice measures, specifically, the procedural rights "Roadmap" and its importance for ensuring consular protection for British citizens detained in other EU countries;
  - Action needed at EU level to end the abuse of pre-trial detention;
  - The need to reform the UK's extradition arrangements; and
  - The abuse of Interpol's systems for issuing "red notices" and the risks this poses to human rights and the rule of law.
- EU justice and procedural defence rights: The first two measures of the EU procedural defence rights "Roadmap" have now been adopted, with UK participation: the first guaranteeing the right to interpretation and translation and the second the right to information during criminal proceedings. These will provide valuable protection for the rights of suspects and defendants. It is regrettable that the Government chose not to participate in the third measure, on the right of access to a lawyer in criminal proceedings and on the right to communicate on arrest with consular officials, family members and others. In many parts of Europe, these rights are routinely infringed. Without a strong EU measure to safeguard these rights, the millions of British people who travel to European countries each year may not have adequate protection in the event of their arrest.

— Pre-trial detention in the EU: Pre-trial detention provides an important way to ensure defendants attend trial and to protect witnesses and safeguard evidence during investigations. However, the over-use of pre-trial detention and the varying standards in how it is applied and reviewed adversely affect fair trial and other fundamental rights and waste billions of Euros in prison costs each year. FTI has called for action at EU level to address this, including a set of enforceable minimum standards for the use of pre-trial detention and for the effective and regular judicial review of decisions to remand in custody.

— Extradition reform: FTI accepts the need for an effective system of extradition both within the European Union and globally. However, to address the widely recognised flaws in the European Arrest Warrant system, the UK needs to work with EU institutions and other Member States to introduce much-needed reforms to the system, including a "proportionality test" and stronger safeguards to prevent human rights infringements. In respect of non-EU countries, a series of simple reforms are required in order to safeguard fundamental rights. The UK also needs to reconsider the designation of certain countries under the provisions of section 84 of the Extradition Act 2003, where those states are recognised by the FCO as "countries of concern".

— Interpol and "red notice" reform: Injustice is being caused by this powerful international police cooperation tool. Stronger safeguards are required against abuse of the system by which "red notices" are issued and circulated. These global "wanted" notices can have immense and lasting human impact, leading to arrest, detention, asylum refusal and other consequences. Yet individuals affected have no independent body to hear complaints or provide redress in cases of injustice: for example, where a notice was issued for politically motivated reasons.

## Introduction

1. Fair Trials International (FTI) welcomes this opportunity to present evidence and recommendations to the Foreign Affairs Committee for its inquiry into the Foreign and Commonwealth Office's human rights work. As a charity focusing on protecting the fair trial rights of those arrested in a country that is not their own, our observations refer to those aspects of our work where we consider that action taken or policy developed by the Foreign and Commonwealth Office (FCO) could help to improve the protection of human rights.

## European Union Justice Measures

2. We are delighted that the FCO continues to express its commitment to supporting the work of the EU to promote human rights, both within its 27 member countries and in its external relations. As over half of all the requests for assistance FTI receives each year come from people arrested or charged in other EU countries, EU justice policy has been a central focus for FTI in recent years. Our clients' cases leave us in no doubt that far more needs to be done to raise standards of defence rights protection within the EU.

3. The last decade has seen the EU place unprecedented emphasis on increasing and improving the cooperation between EU Member States in criminal justice matters. It is a sad truth that, for most of this period, the fundamental rights of suspects and defendants have been largely ignored. Insufficient weight is given to the serious work still needed to raise fair trial standards within the Member States. We hope that in the coming year the FCO will work with other Government departments to ensure that all opportunities to raise fair trial standards are taken, in order to ensure that the rights of UK citizens arrested and detained in other EU countries are protected.

4. The mutual cooperation introduced in an effort to streamline procedure in the fight against cross-border crime and create an "area of justice, freedom and security" within Europe is based on the principle of "mutual recognition". Mutual recognition means that if one EU country makes a decision (for example that a person must be extradited to face a criminal trial or serve a sentence), that decision will be respected and applied throughout the EU, no questions asked. However, given the unacceptable differences in protections for defence rights across the EU, there is not (yet) a sound basis for such trust.

5. The European Arrest Warrant (EAW), the procedure for fast-track extradition between EU countries, was the flagship mutual recognition measure. We accept the need for effective measures to tackle serious cross-border crime and ensure that those wanted by prosecutors cannot evade justice by exploiting open borders. This means an effective, simple extradition system and a speedy and safe system of cross-border investigations. Equally important, but until recently neglected by legislators, are laws needed to ensure fair trials and investigation procedures throughout the EU, including in cross-border cases.

## The Procedural Rights "Roadmap" and its Importance for Ensuring Consular Protection for British Citizens Detained in other EU Countries

6. The "Roadmap" for strengthening the procedural rights of suspected or accused persons in criminal proceedings (the Roadmap)[28] is a set of procedural safeguards for accused persons intended to ensure that fair trial rights are protected across the EU. FTI sees numerous cases of people who are arrested in a foreign country, unable to speak the language, with inadequate access to a lawyer and limited knowledge of the charges

[28] Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings, (2009/C 295/01), 30 November 2009.

being brought against them. Once implemented, the Roadmap will represent an important step towards ensuring that the rights enshrined in the ECHR are respected in practice and in a consistent way across all Member States.

7. Due to its right to "opt in" to new EU laws on police and judicial cooperation since the Lisbon Treaty entered into force, the UK is only bound by these laws if it first agrees to take part in them. The Government approaches forthcoming EU legislation in the area of criminal justice on a case-by-case basis with a view to: maximising our country's security; protecting Britain's civil liberties; and preserving the integrity of our criminal justice system.[29] For the reasons explained below, we believe that the Government should opt in to EU measures necessary to protect fair trial rights, and that a failure to do so will adversely affect UK nationals involved in criminal proceedings in other Member States.

8. Despite recent progress under the Roadmap, we are still a long way from an EU where every Member State offers sufficient fundamental rights protections for suspects and defendants. For example, the right to legal advice at the early investigative stage of a case is still not respected in many countries. In several EU states there is also no adequate legal aid provision for accused persons unable to afford a lawyer.

9. FTI's view is that the Government should opt in to the Roadmap measures and use its influence as a participating state to negotiate for strong and enforceable minimum defence standards. These laws will help avoid the potential injustice that will otherwise result from continued participation in mutual recognition instruments such as the EAW. A failure to opt in and give backing to strong measures could have a detrimental effect on the rights and protections afforded to British nationals who are arrested abroad.

### Directive on the Right to Interpretation and Translation in Criminal Proceedings and Directive on the Right to Information in Criminal Proceedings

10. FTI welcomed the Government's decision to opt in to these Directives which, when transposed into the domestic systems of all EU countries, will help ensure that nobody is denied a fair trial due to a lack of understanding of the language in the country in which they are arrested[30] or through a lack of timely information about the charges against them, enabling them to prepare effectively for trial.[31]

### Draft Directive on the Right of Access to a Lawyer in Criminal Proceedings and on the Right to Communicate upon Arrest[32]

11. Standards of access to early and confidential legal advice and consular access vary across the EU. Even when the right to legal assistance exists in theory in a country's legal system, it is sometimes not provided in practice. FTI sees cases on a regular basis that demonstrate the detrimental impact that failure to provide legal advice or early communication with consular or diplomatic authorities can have on fair trial rights. The Government has decided not to opt in to the draft directive but has stated that it is participating in the negotiations on the text in the hope that a draft directive will emerge that the Government finds acceptable, enabling it to opt in later.

12. The directive has the potential to address the serious inequality of arms that characterises so many criminal cases across the EU, often to the detriment of British nationals. The directive would enshrine the right to contact consular officials on arrest. This would provide a lifeline to Britons arrested in other EU countries as well as to their loved ones at home. It will also enable ministries of foreign affairs across Europe to comply with their obligation to safeguard the basic rights of their own nationals and to challenge grave violations of those rights as soon as they occur.

### Special Safeguards for Vulnerable Suspects or Accused Persons

13. The Roadmap also envisages a measure introducing special safeguards for suspected or accused persons who are vulnerable, such as juveniles or the mentally ill. While this directive is at an early stage of consultation and no draft text has yet been published, FTI hopes that the UK will opt in to this measure and take the lead in the negotiations on its content, in order to ensure that adequate safeguards are implemented for vulnerable suspects. FTI's casework in various European jurisdictions shows that vulnerable suspects are not sufficiently protected in some EU countries.

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[29] *The Coalition: our programme for government*, p.19.

[30] The Directive requires all member states to implement legislation by July 2013 to ensure that a suspected or accused person who does not understand or speak the language of the criminal proceedings is provided with interpretation during criminal proceedings. Fair Trials International's submission to the Ministry of Justice regarding the draft Directive is available at http://www.fairtrials.net/documents/FTI_submission_on_the_right_of_access_to_a_lawyer_in_criminal_proceedings_and_on_the_right_to_communicate_upon_arrest.pdf.

[31] A directive to ensure that everyone arrested in any EU country gets key information about basic legal rights and the charges against them was recently approved by the Committee of Permanent Representatives of the Council of the European Union.

[32] Proposal for a Directive of the European Parliament and of the Council on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest, COM(2011) 326 final, 8 June 2011. Currently in negotiation.

### Pre-trial Detention and the need for EU Action

14. Pre-trial detention offers important safeguards in tackling and punishing serious crime, but depriving people of their liberty in the period before trial should be an exceptional measure, only to be used where absolutely necessary. Pre-trial detention in many parts of Europe is often excessive in length and imposed without proper justification. FTI is concerned about overuse of pre-trial detention in the EU and the insufficient use of more humane and cost-efficient alternatives. Under the Roadmap, the European Commission published a Green Paper on detention in June 2011.[33] The consultation closed in November 2011 but the Commission has yet to announce its next steps. Our report "Detained without trial: Fair Trials International's response to the European Commission's Green Paper on detention" contained case studies of 11 FTI clients, a comparative analysis of the use of pre-trial detention in 15 Member States and recommended legislation at EU level to reduce the use of excessive pre-trial detention.[34]

15. Key findings in FTI's report were that:

- approximately 21% of the total EU prison population is in pre-trial detention and over a quarter of those detainees are foreign nationals;
- across the EU, people who have not been convicted of any crime are being detained without good reason for months or even years, often in appalling conditions that make trial preparation impossible;
- some countries' laws allow people to be detained for years before trial, others have no maximum period at all;
- few countries have an adequate review system;
- non-nationals are far more likely than nationals to suffer the injustice of arbitrary and/or excessive pre-trial detention and be deprived of key fair trial protections;
- growing numbers are being extradited under the EAW, only to be held for months in prison, hundreds of miles from home, waiting for trial; and
- Europe's over-use of pre-trial detention costs EU countries approximately €5 billion every year (not including wider costs to society when jobs are lost and children are taken into care).

16. The FCO's important work in supporting British nationals following arrest and detention at the early stage of criminal proceedings represents a crucial safeguard for these individuals and will leave consular officials in little doubt of the scale of misuse of detention before trial or the excessive periods for which many are held. In FTI's view, EU legislation is needed to end the abuse of pre-trial detention, which has harsh effects on the lives of many British nationals and their families.

### The need to Reform the UK's Extradition Arrangements

17. The Government has rightly stated that our extradition laws need to be both fair and effective. After debates in Parliament, in-depth inquiries[35] and many high-profile cases, it is clear that there are a number of flaws in the UK's current extradition arrangements. On 5 December 2011, MPs from across the political spectrum voted for reform of the UK's extradition laws. The Government has yet to clarify how it will respond to these calls for reform, or to the recommendations made by the various review bodies.

18. FTI has identified six simple reforms capable of being achieved by UK legislation, without treaty renegotiation, which would significantly improve the fairness of the current system, as well as reducing costs and increasing efficiency. These six key reforms are:

- No extradition until a case is trial ready, to prevent the many cases of premature extradition currently blighting the system;
- Allow courts to seek further information from the requesting state before extradition (for example, when it needs to satisfy itself on identity or fundamental rights questions);
- Give courts a back-stop power to refuse extradition where it would not be in the interests of justice because the requesting state is clearly not the appropriate forum;
- Abolish means-testing for legal aid in all extradition cases, to prevent the delays, wasted costs and injustices caused by the current system;
- Extend the fixed one-week deadline to appeal against extradition under a European Arrest Warrant, so that injustices caused by inflexibility in the current system are avoided; and
- Allow British nationals or residents who are wanted under "conviction EAWs" to serve their sentence in the UK, to avoid the pointless expense of extradition followed by transfer back to a UK prison.

[33] Strengthening mutual trust in the European judicial area—A Green Paper on the application of EU criminal justice legislation in the field of detention, COM (2011) 327, Brussels 14 June 2011.

[34] Detained without trial: Fair Trials International's response to the European Commission's Green Paper on detention, October 2011. See also the recent European Commission publication Strengthening mutual trust in the European judicial area—A Green Paper on the application of EU criminal justice legislation in the field of detention, COM(2011) 327, Brussels 14 June 2011.

[35] The Scott Baker Review reported October 2011; the Joint Committee on Human Rights reported in June 2011. The Home Affairs Committee is expected to report in February or March 2012.

19. These relatively simple and uncontroversial changes could have a major impact. Alongside these, we have argued that the Government should: i) call for amendment of the EU Framework Decision on the EAW to ensure that proportionality and respect for fundamental rights are adequately and consistently protected;[36] ii) continue to work with the EU to raise standards of justice across Europe and to address the excessive use of pre-trial detention; and iii) engage with its US counterparts to address the perceived imbalance in the US-UK Extradition Treaty, something that is achievable through a simple letter of understanding between the two countries.

### Should FCO "Countries of Concern" be Designated Territories for Simpler Extradition Procedures?

20. FTI welcomes the work the FCO has done to highlight its serious concerns over human rights abuses in the countries discussed in Section IX of its Report. We would question the appropriateness of countries on this list also being designated as states that no longer need to produce prima facie evidence in support of an extradition request, according to section 84 of the Extradition Act 2003.

21. Russia and Israel are two such countries and have been criticised in the FCO's 2011 Human Rights report and in several previous annual reports. In Russia, the FCO has found government support of human rights to be "ambivalent" and respect for the rule of law weak. Death in pre-trial detention has been described as a "systemic issue" with 50–60 deaths per year. Concern has been raised over the Russian government's handling of the Magnitsky and Khodorkovsky cases. In Israel, the widespread use of administrative detention and the routine use of secret evidence and military courts have been identified by the FCO as matters of concern. The mistreatment of Palestinian pre-trial detainees and the lack of access to lawyers have similarly been highlighted.

22. In FTI's view it is not appropriate as a matter of principle that extradition requests from these states or others where the FCO has highlighted systemic human rights abuses in the context of criminal justice, should be subject to weaker evidential tests than requests from other countries listed in part 2 of the Extradition Act. We recommend that the system by which countries are designated under section 84 of the Act be reviewed.

### Interpol and "Red Notices"

23. FTI applauds the FCO report's emphasis on the clear links between human rights, the rule of law and proper systems of accountability in the context of criminal justice. We agree that these elements of democratic government are crucial to the safeguarding of human rights, ensuring that individuals are treated equally before the law, and preventing those in power from acting in an unfettered or arbitrary way. In this context, we wish to bring to the Committee's attention our concerns with regard to Interpol and the use of "red notices".

24. In late 2011, FTI highlighted the case of Benny Wenda, who was given asylum in the UK after he fled Indonesia, where he had suffered persecution and death threats as a result of his peaceful activism for West Papuan independence. In 2011 Benny discovered that Interpol had published a "red notice" against him, seeking his arrest and extradition. Requested by Indonesia, the red notice relates to the same politically motivated charges from which Benny fled 10 years ago. The notice means he is no longer safe to travel to attend campaign meetings and meet other West Papuan refugees overseas. Since highlighting Benny's case, FTI has become aware of other cases involving apparent abuses of red notices. FTI is in discussion with Interpol about ways to insulate this important crime-fighting organisation against abuse of its systems.

25. Interpol is the second largest international organisation after the United Nations, with 190 member countries and an annual budget of nearly 60 million Euros. It issues thousands of "red notices" each year, each carrying the potential to deprive people of their liberty and reputation. In 2010, over 6,000 of these global "wanted" posters were disseminated. Many of Interpol's member countries are known human rights abusers and notoriously corrupt. Indeed all but two[37] of "countries of concern" listed in Section IX of the FCO's Report are members of Interpol, some of them states requesting high numbers of public red notices each year (ie notices published on Interpol's public website, as distinct from those simply circulated among national police bodies via Interpol's secure communications system).

26. Interpol has insufficiently robust mechanisms to prevent countries, or individual prosecutors, from abusing the red notice system. As a result, even though most red notices may be perfectly valid, abuses of Interpol are taking place, affecting human rights campaigners, journalists, refugees and businessmen, in countries all over the world. Those affected have no independent court they can turn to for redress. They can only request a review by a Commission for the Control of Interpol's Files, which is effectively part of the Interpol organisation. There is no right to a hearing before the Commission and no reasons given for the decision reached. Even if the Commission concludes that a red notice is inaccurate or abusive, it cannot require its removal or amendment in Interpol's databases. It can only make non-binding recommendations to Interpol.

27. Interpol itself recognises that, if it is to remain credible, it must respect human rights and maintain its neutrality. It is prohibited by its constitution from undertaking any activities of a political, military, religious

[36] The Scott Baker Review and the Joint Committee on Human Rights acknowledged that action was needed at EU level as well as domestically.

[37] North Korea and South Sudan are not Interpol member countries, though Sudan is.

or racial character, and it is required to act within the spirit of the Universal Declaration of Human Rights. At present, however, there are no effective mechanisms to enforce and uphold these rules.

28. FTI believes that it is possible to protect against abuse and allow redress without undermining Interpol's effectiveness:

— First, changes can be made to how Interpol operates so that it can identify red notices requested by countries that would be abusive, incomplete or inaccurate. In recent years Interpol has, sadly, made it easier for countries to avoid its limited internal controls; and

— Secondly, an effective and independent body must be created to give people a fair chance to challenge red notices against them. This body must follow basic rules of due process, be transparent and give reasons for its decisions. These decisions must also be binding on Interpol.

CONCLUSION

29. The FCO's own figures on the numbers of Britons travelling to other countries (both in the EU and beyond) speak for themselves. Many of these people will come into contact with police and prosecutors when they are overseas. For their future protection, the Government should opt into and otherwise support any and all legal measures necessary to raise basic standards to an acceptable level and ensure the rule of law is followed in all criminal justice systems in which the UK participates.

30. The EU's Roadmap for strengthening procedural rights envisages vital safeguards which, once fully implemented and transposed into the domestic law of Member States, will help ensure fundamental rights do not continue to be sidelined in the push for ever-increasing cooperation among law enforcement authorities. The Government should re-visit its decision not to opt in to the legal advice and consular access directive. It should also take a leading role in relation to protecting defence rights for vulnerable suspects or accused persons.

31. EU legislation is needed on the use of pre-trial detention. This will help ensure that people are not held in unnecessary pre-trial detention for excessive periods of time. We hope the Government will press for action at EU level to end the misuse and overuse of pre-trial detention in the EU, which has harsh effects on the lives of many British nationals and their families.

32. The introduction of the European Arrest Warrant for all EU countries, founded on the principle of mutual recognition, was the start of an EU-wide criminal justice system. Reform of the EAW is essential to ensure that mutual recognition is based on mutual trust rather than "blind faith" that other EU countries will respect fair trial and other human rights. Beyond the EU, our extradition arrangements require simple reforms in a few key areas, to ensure the rule of law is protected and fundamental rights are upheld. The way in which states are designated as not requiring to provide prima facie evidence when making extradition requests should be reviewed.

33. Abuses of Interpol's "red notice" system are taking place, affecting human rights campaigners, journalists, refugees and businessmen, in countries all over the world. Those affected have no independent court they can turn to for redress. Reform of this system is required to ensure that Interpol's crucial role in tackling serious cross-border crime is not undermined.

*7 June 2012*

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**Written evidence from Hermitage Capital Management**

Specifically addressing the cross-Government strategy on business and human rights, expected to be published later in 2012, and how it should define the relationship between the FCO's human rights work and the promotion of UK economic and commercial interests in UK foreign policy.

SHORT SUMMARY

— British businesses should be able to invest in all countries knowing that they are fully supported by the UK government should they experience business and human rights problems.

— At present there is an apparent conflict between the British government's promotion of business and its professed support for human rights. Based on our experience, the desire to promote British business takes precedence at the expense of any serious practical promotion of human rights. While this may appear to be the rational strategy at a time of economic recession, upholding human rights actually protects British businesses operating abroad as the Hermitage Capital case demonstrates.

There are a number of measures which the British government could take which would give it the leverage to protect international commerce and at the same time promote human rights:

— The British government should impose visa bans and asset freezes on all individuals involved in human rights abuses and high level corruption affecting British businesses.

— It should conspicuously publish a list "naming and shaming" those individuals banned from entering the UK based on their involvement in such activities.

— UK businesses should be warned against investing in countries with dubious human rights records and with a history of economic aggression—such as Russia—in the same way that the FCO offers travel warnings to British tourists.

### Brief Introduction

William Browder, CEO Hermitage Capital and the Sergei Magnitsky Case.

1. William Browder is the founder and CEO of Hermitage Capital Management, which was at one time the largest foreign investor in Russia with US$4.5 billion invested in the Russian economy.
2. Mr Browder was expelled from Russia in November 2005 after exposing corruption at the Russian enterprises in which he was investing. He was denied entry to the country and declared "a threat to national security" by the Russian government.
3. In 2008, Mr Browder's lawyer, Sergei Magnitsky, uncovered a massive fraud committed by Russian government officials involving the theft of US$230 million of state taxes which Hermitage had paid in 2006. After testifying against the officials involved, Mr Magnitsky was arrested and imprisoned—without trial—at the instigation of those same government officials. He was tortured in an attempt to force him to retract his testimony and to falsely incriminate himself and his client. He refused to do so—notwithstanding extreme physical and psychological pressure. Magnitsky's incarceration for almost a year was spent in appalling and insanitary conditions. When this led to a drastic deterioration in his health, he was denied any medical attention despite over twenty requests for assistance. He died on 16 November 2009 at the age of 37, leaving a widow and two young children.
4. Since Mr Magnitsky's death, Mr Browder has been leading a worldwide media, legal and legislative campaign to get justice for Sergei Magnitsky. His efforts have included the introduction of legislation in the US Congress and the Canadian Parliament aimed at the implementation of visa bans and asset freezes on those responsible for perpetrating criminal and abusive activities contrary to the principles of the European Convention on Human Rights. Parliamentary initiatives have also been introduced in the European Parliament, the Parliamentary Assembly of the Council of Europe (PACE), the OSCE Parliamentary Assembly and in the Parliaments of the UK, Sweden, Holland, Italy, Poland, Germany and Norway.

### Some Key Facts from which the Committee can Draw Conclusions and put to other Witnesses

The mistreatment of Hermitage Capital and its staff leading to the death of Sergei Magnitsky is principally a British matter because William Browder is a British citizen and Hermitage is an English company.

However, in comparison to other less directly involved nations, Britain is very much taking a back seat in dealing with this case. Other countries have taken a series of political and economic initiatives supporting visa bans and asset freezes as a means of punishing human rights abusers from Russia whenever that country fails or refuses to take appropriate judicial action against such perpetrators.

1. United States—The United States Government has already banned the Russian government officials involved in the Magnitsky case from entering the US, and the US Congress is now actively considering legislation which would publically name those people, deny them visas and freeze their assets.
2. The "Sergei Magnitsky Rule of Law Accountability Act", currently in front of both Houses of Congress, was widened so that any other gross violators of human rights could also be denied visas. This differs from traditional international sanctions which generally affect an entire population, by targeting specific individuals from enjoying the fruits of their corrupt labour.
3. Netherlands—In July 2011, the Dutch parliament, by unanimous vote of 150 to 0, passed a resolution demanding that the Dutch government impose visa and economic sanctions on the Russian officials who were responsible for the false arrest, torture and death of Sergei Magnitsky. The Sergei Magnitsky motion in the Dutch parliament was supported by politicians from both ruling and opposition parties.
4. Switzerland—In May 2011, the Swiss General Prosecutor froze the bank accounts and assets of up to US$11 million belonging to some of the Russian government officials exposed for their role in carrying out the illegal tax refund uncovered by Magnitsky. The asset freezing was taken as an emergency measure by the Swiss General Prosecutor as part of a criminal investigation opened on 7 March 2011 in response to a complaint filed by Hermitage Capital against the Russian officials involved in the $230 million theft.
5. Poland—In December 2010, a vote was held in the Justice and Human Rights Committee of the Polish Sejm, condemning the lack of proper investigation into Magnitsky's death. The motion was passed unanimously.
6. Sweden—In February 2012, 59 Swedish members of the Parliament from seven of the eight political parties signed a parliamentary petition to Swedish Prime Minister, Fredrik Reinfeldt, calling on him to impose visa sanctions on corrupt Russian officials involved in the Magnitsky

case. The parliamentarians stressed that it is a matter of international importance and concern given Russia's membership in the Council of Europe and WTO.

7. Council of Europe—In February 2012, 53 representatives at the Parliamentary Assembly of the Council of Europe (PACE) from 29 countries co-signed Written Declaration No.49, "The Sergei Magnitsky Case", which urges Russia to immediately prosecute the killers of Sergei Magnitsky. In the Written Declaration, PACE representatives call upon the Russian authorities to cease the intimidation of Magnitsky's family and to grant the family an independent medical evaluation, which Russian investigators and courts have so far refused to do.
8. In March 2012, 69 PACE delegates from 29 countries signed a motion entitled: *"Refusing impunity for the killers of Sergei Magnitsky"*. The motion calls for a "dedicated report" to investigate the death of Sergei Magnitsky and return the findings to the Assembly later this year. This comes after repeated motions and resolutions have had no effect in persuading the Russian Government to properly and thoroughly investigate Magnitsky's death in pre-trial detention and the crimes he exposed.
9. European Parliament—The European Parliament has twice passed resolutions on the Magnitsky case, (December 2010 & December 2011) calling on all EU member states to impose visa sanctions and asset freezes on the Russian government officials involved in the false arrest, torture and death of Magnitsky.
10. In March 2012, a similar motion was passed in the EU-Russia Parliamentary Cooperation Committee of the European Parliament, which held an extraordinary meeting on the case of Sergei Magnitsky. This resulted in the unanimous adoption of a statement calling for immediate EU travel bans and asset freezes on the Russian officials responsible for the torture and death of Sergei Magnitsky.

Significantly, the European Parliament has already banned government officials from Belarus and Syria and their relatives, from entering the EU. As a member of the EU, the UK should similarly impose such targeted visa bans on government officials who act in a criminal fashion against the interests of British businesses and employees.

11. United Kingdom—In March 2012, Dominic Raab MP submitted a Backbench Committee Motion entitled: *"Debate on Human Rights and the death of Sergei Magnitsky"*. This debate was co-sponsored by five former Foreign Office Ministers, including three former Secretaries of State (Sir Malcolm Rifkin PC QC MP, The Rt Hon. Jack Straw and The Rt Hon. David Miliband). Following the debate, the motion was unanimously passed in the House of Commons. The motion calls on HMG to impose visa sanctions and asset freezes on the Russian officials to whom this paper has previously referred.
12. During an adjournment debate in January 2012 entitled: *"Human Rights and case of Sergei Magnitsky"* led by The Rt Hon. Denis MacShane MP, the British Government was called upon to act on the Magnitsky case, in the same way that the European Parliament and USA have done. During the debate Mr MacShane also demanded that those individuals banned from entering the UK be publically named.

The UK has a confusing and inconsistent policy regarding visa bans. There is clearly no consensus between the UKBA, the Home Office and FCO on whether or not visa bans are desirable and how to implement them.

The UK has already banned individuals from Zimbabwe, Pakistan, the US, Syria, etc, with wide parliamentary and public support. The Magnitsky visa ban initiative would ban persons implicated in Russian corruption and human rights abuses. There should be no false distinctions when selecting whom to exclude from entering the UK if the offence relates to corruption and human rights abuses.

### Public Naming of People Banned from Entering the UK

There is a lack of consistency regarding the public identification of banned individuals.

1. Hermitage Capital have regularly been told by the FCO and Home Office, in numerous letters and in response to written and oral questions tabled in the House of Commons and the House of Lords, that the UK Government does not publish the identity of banned individuals.
2. However, in May 2009, Home Secretary Jacqui Smith publically presented a list of persons she had banned from entering the UK between October 2008 and March 2009. In all, 22 people had been banned from the UK. A list of names can be found in the Appendix (Chart 1).
3. As well as those involved in hate crimes and terrorist activities, famous personalities such as US singer Chris Brown; US TV personality Martha Stewart; former Prime Minister of Thailand, Thaksin Shinawatra; Chilean Noble Prize winner Pablo Neruda; US "shock-jock" Michael Savage and US Rapper Snoop Dogg have all, at some point, been banned from entering the UK. (See Appendix Chart 2.)
4. In May 2012, Home Secretary Theresa May announced that martial arts instructor Tim Larkin was denied a visa to the UK on the grounds of his promotion of violence through his self defense classes. The UK Border Agency stated that he had been excluded from Britain because

his presence was not "conducive to the public good". A Home Office statement said: "We can confirm that the individual in question is subject to an exclusion order."

5. Decisions as to whether or not to name excluded persons keeps changing. All persons banned from entering the UK should be "named and shamed", with relevant details available to the public.

RECOMMENDATIONS FOR ACTION BY THE BRITISH GOVERNMENT WHICH WE WOULD LIKE THE COMMITTEE TO CONSIDER FOR INCLUSION IN ITS REPORT TO THE HOUSE

1. Legislate in favour of visa bans for proven human rights abusers.
2. Legislate in favour of freezing the assets of any person—especially government officials—proven to be involved in corruption.
3. The identity of excluded individuals should be made public and published on the UKBA and FCO websites.
4. FCO and UKBA should co-ordinate better in developing a policy pursuant to which visa bans are imposed and enforced. The identities of those who are barred from the UK should be flagged to all Embassies and border staff so that they are denied visas before departing for the UK and/or denied entry to the UK on arrival.
5. "Health" warnings should be made for British companies investing in Russia and other countries with perceived high risk of corruption and weak "rule of law" and judicial systems. This action should be carried out and co-ordinated between by the FCO, the Financial Services Authority, UKTI, British Chambers of Commerce and other government and business bodies dealing with British investment into foreign markets.
6. Make use of the high regard in which the UK is held by Russians and its general attractiveness to foreigners as leverage and not shy away from facing political conflict with Russia. The reason corrupt government officials from countries such as Russia deposit their money in British banks, buy properties and send their families here is because they are protected by our rule of law, a healthy judiciary and codes of ethics of business practice. The UK should not be backing away from imposing restrictions on persons who would seek to use this country as a means to "launder and hide" their stolen and illegally gained wealth.

## APPENDIX

CHART 1

| *Nationality* | *Individual* | *Official Reason for Ban* |
|---|---|---|
| Saudi Arabia/ Yemen | Abdullah Qadri Al Ahdal | "Considered to be engaging in unacceptable behaviour by seeking to foment, justify or glorify terrorist violence in furtherance of particular beliefs and fostering hatred that might lead to inter-community violence". |
| Palestine | Yunis Al Astal | "Considered to be engaging in unacceptable behaviour by seeking to foment, justify or glorify terrorist violence in furtherance of particular beliefs and to provoke others to terrorist acts". |
| United States | Stephen Donald Black | "Considered to be engaging in unacceptable behaviour by promoting serious criminal activity and fostering hatred, which might lead to inter-community violence in the United Kingdom". |
| Egypt | Wadgy Abd El Hamied Mohamed Ghoneim | "Considered to be engaging in unacceptable behaviour by seeking to foment, justify or glory terrorist violence in furtherance of particular beliefs and to provoke others to commit terrorist acts". |
| United States | Erich Gliebe | "Considered to be engaging in unacceptable behaviour by justifying terrorist violence, provoking others to commit serious crime and fostering racial hatred". |
| United States/Israel | Mike Guzovsky | "Considered to be engaging in unacceptable behaviour by seeking to foment, justify or glorify terrorist violence in furtherance of particular beliefs and to provoke others to terrorist acts". |
| Egypt | Safwat Hijazi | "Considered to be engaging in unacceptable behaviour by glorifying terrorist violence". |
| Pakistan | Nasr Javed | "Considered to be engaging in unacceptable behaviour by seeking to foment, justify or glorify terrorist violence in furtherance of particular beliefs". |
| Lebanon | Samir Kuntar | "Considered to be engaging in unacceptable behaviour by seeking to foment, justify or glorify terrorist violence in furtherance of particular beliefs and to provoke others to terrorist acts". |
| United States | Abdul Alim Musa | "Considered to be engaging in unacceptable behaviour by fomenting and glorifying terrorist violence in furtherance of his particular beliefs and seeking to provoke others to terrorist acts". |

| *Nationality* | *Individual* | *Official Reason for Ban* |
|---|---|---|
| United States | Fred Waldron Phelps | "Considered to be engaging in unacceptable behaviour by fostering hatred which might lead to inter-community violence in the United Kingdom". |
| United States | Shirley Phelps-Roper | "Considered to be engaging in unacceptable behaviour by fostering hatred which might lead to inter-community violence in the United Kingdom". |
| Russia | Artur Ryno | "Considered to be engaging in unacceptable behaviour by fomenting serious criminal activity and seeking to provoke others to serious criminal acts". |
| Pakistan | Amir Siddique | "Considered to be engaging in unacceptable behaviour by fomenting terrorist violence in furtherance of particular beliefs". |
| Russia | Pavel Skachevsky | "Considered to be engaging in unacceptable behaviour by fomenting serious criminal activity and seeking to provoke others to serious criminal acts". |
| United States | Michael Savage | "Considered to be engaging in unacceptable behaviour by seeking to provoke others to serious criminal acts and fostering hatred which might lead to inter-community violence". |

CHART 2

| *Nationality* | *Individual* |
|---|---|
| Iran | Gholam Reza Aghazadeh |
| Jamaica | Siccatune Alcock (aka Jah Cure) |
| Uzbekistan | Zakirjon Almatov |
| Iraq | Mohammed Al Deeni |
| Egypt/Qatar | Yusuf al-Qaradawi |
| Syria | Omar Bakri |
| Belize | Moshe Levi Ben-David (aka Shyne) |
| Saudi Arabia | Omar bin Laden |
| United States | Chris Brown |
| Zimbabwe | Peter Chingoka |
| United States | Louis Farrakhan |
| Israel | Moshe Feiglin |
| India | Zakir Naik |
| United States | Don Francisco |
| Argentina | Esteban Fuertes |
| Zimbabwe | Gideon Gono |
| Dominican Republic | Joan Guzmán |
| Iran | Mohammad Ali Jafari |
| United States | Terry Jones |
| Zimbabwe | Thomas Mapfumo |
| Lebanon | Ibrahim Mousawi |
| Zimbabwe | Grace Mugabe |
| Zimbabwe | Robert Mugabe |
| Turkey | Remzi Kartal |
| Kenya | Abo Obama (aka Samson Obama) |
| Jamaica | Rodney Basil Price (aka Bounty Killer) |
| United States | Terrance Quaites (aka TQ) |
| Thailand | Thaksin Shinawatra |
| United States | Trevor Smith (aka Busta Rhymes) |
| United States | Martha Stewart (see ImClone stock trading case) |
| United States | Jerry Vlasak |
| United States | Gary Yourofsky |
| Serbia and Montenegro/ Montenegro | Momir Bulatović |
| United States | Cordozar Calvin Broadus, Jr (aka Snoop Dogg) |
| United States | L. Ron Hubbard (deceased) |
| Belarus | Alexander Lukashenko |

| *Nationality* | *Individual* |
|---|---|
| Serbia and Montenegro/Serbia | Mirjana Marković |
| Serbia and Montenegro/Serbia | Slobodan Milošević (deceased) |
| South Korea | Sun Myung Moon |
| Chile | Pablo Neruda (deceased) |
| Australia | Philip Nitschke |
| India | Bhagwan Shree Rajneesh (aka Osho; deceased) |
| United States | George Raft (deceased) |
| Soviet Union | Dmitri Shostakovich (deceased) |
| Germany | Albert Speer (deceased) |
| Netherlands | Geert Wilders |

*29 May 2012*

## Written evidence from Human Rights Watch

1. Human Rights Watch welcomes the publication of the Foreign Office annual report on human rights and democracy. As in previous years, we note the clear language set out in the Foreign Secretary's Foreword and in Section II on the FCO's Human Rights Priorities. This includes the assertion that "the promotion and protection of human rights is at the heart of UK foreign policy," the statement that "we are determined to pursue every opportunity to promote human rights and political and economic freedom around the world," and the pledge to raise "human rights violations wherever and whenever they occur." These words set a high standard against which Human Rights Watch and others can and will measure the UK government's actions and performance. As described in this submission, we believe there are a number of significant areas in which the FCO and wider UK government falls short of its declared policy commitments on human rights and of its international human rights obligations. Given space constraints, we mainly focus on these issues as opposed to areas where we agree with UK policy.

2. The Foreign Affairs Committee has encouraged submissions to focus on the content and format of the FCO's report, the UK government's achievements as Chair-in-office of the Council of Europe Committee of Ministers, on the likely impact of new and updated government strategy and guidance documents on issues like torture and the death penalty, and on the cross-government strategy on business and human rights, expected to be published later in the year. This Human Rights Watch submission addresses these four areas. It also looks at FCO and wider UK government policy on women's rights and UK policy on human rights towards particular countries.

### The Content and Format of the FCO Report

3. Human Rights Watch has three overall comments on the content and format of the report. Firstly, the rationale for why countries are included or excluded from the important section entitled "countries of concern" is vague and unconvincing. The report lists a number of factors that are taken into account, including the views of embassies, high commissions and FCO country desks, whether the UK has been particularly active on human rights issues in that country and, most intriguingly, "whether its inclusion in the report might be beneficial in stimulating debate and political change." A stronger criterion for inclusion would be whether the UK government has real influence with the country concerned, as a result of aid, trade, security or close diplomatic ties. On this basis, we propose that Bahrain, Ethiopia, Rwanda and Ethiopia should definitely be included, given the gravity of the human rights issues in these countries and the potential for the UK to exert influence over developments there. We note that the FCO has made some changes in respect of these countries. It is welcome that this year's report includes a limited amount of material on all four countries in the form of short case studies, and that the FCO will start producing on-line reports on them as part of its quarterly human rights updates on the FCO website.

4. Secondly, the report gives insufficient attention to the human rights implications of the work of other UK government departments, especially the Department for International Development, the Ministry of Defence, the Home Office, the Justice Department and the Department for Business, Innovation and Skills. While the FCO is the lead department for the UK government on human rights, many of Human Rights Watch's concerns about UK performance on human rights relate to the work of other UK departments, for example the lack of priority given to human rights by the Department for International Development or the fact that the UK asylum system sends Tamils back to Sri Lanka, although Human Rights Watch's research shows that some have been subsequently tortured. Yet the FCO's human rights policy is presumably meant to bind the whole government. This also applies to this country's obligations under international human rights law. At the very least, the annual report on human rights and democracy should address more explicitly and in greater detail the way in which some of these issues are handled across Whitehall, and how the FCO ensures that this country's human rights obligations are reflected in the work of the government as a whole.

5. Thirdly, the report could benefit from a clearer statement or summary, at the beginning of each thematic and country section, which highlights the specific changes that the FCO is seeking to bring about. While many of the country sections do have a paragraph that says "the UK's human rights objectives in country X for 2011

were...", what follows is often fairly general, and could benefit from greater specificity or some concrete benchmarks. Many of the sections are still written in an overly discursive style, describing events that have happened over the course of the year that impacted negatively on the human rights situation or listing instances in which UK Ministers raised human rights concerns or met with local civil society. This information can be useful. But what would be more valuable, in terms of FCO accountability to parliament and UK civil society, is a sense of what the UK is trying to achieve on human rights in, say, Uzbekistan or the Congo, and how much progress they have made in the course of the year against these objectives (recognising, of course, that change can be very difficult, that the UK is only one player and that many factors may affect the human rights situation in a country).

### Council of Europe

6. The government continues to have a highly problematic attitude towards the European Court of Human Rights, as evidenced by its agenda as Chair-in Office of the Council of Europe Committee of Ministers. Some of the government's proposals to reform the European Court of Human Rights, presented in several drafts prior to the Brighton summit, were sensible, particularly to improve implementation of court rulings by governments. But two of the proposals—to limit the jurisdiction of the court and give greater deference to governments—were problematic and would have limited access to the court, a particularly worrying development for Council of Europe countries like Turkey, Azerbaijan and Russia, where the national courts have a poor record of protecting human rights.

7. These proposals were thankfully rejected by other Council of Europe governments, but the UK's influential role in the Council of Europe means that this kind of political pressure on the court is only likely to increase. Moreover, the frequent criticism of the Court by UK government ministers, including the Prime Minister, especially when combined with the repeated attacks on it in the British media (with The Times on the day of the Brightonsummit describing its judges in a front-page headline as "Europe's Court Jesters") is deeply damaging to the court and emboldens abusive governments who wish to ignore its rulings.

### Torture Prevention

8. The FAC encouraged submissions to comment on new and updated government strategies, including the Strategy for the Prevention of Torture (2011–15). While Human Rights Watch welcomes some of the work the FCO has done on torture prevention, there are three important areas where UK policy falls short. Firstly, despite compelling evidence that some people working for the UK government have been involved in illegal rendition and torture over the last decade, no one has yet been held accountable for this. Human Rights Watch's own research has documented evidence of UK complicity in torture by the ISI in Pakistan in 2009. Just last year, Human Rights Watch uncovered documents suggesting that MI6 was involved in the rendition of two Libyan opposition figures and their families back to Colonel Gaddafi's Libya, where they were then tortured. The Libyan cases are now appropriately the subject of a criminal investigation. But a broader investigation into the UK policy failures that led to these actions has been put on hold, with the decision to halt the Gibson Inquiry. Human Rights Watch supported the decision to disband Gibson. The remit and powers given to that body were seriously deficient, with members of the security services giving evidence in secret and with no meaningful way for that evidence to be tested by those with the greatest knowledge of the abuses. In addition, decisions about the disclosure of secret material were to be made by the Cabinet Office rather than by an independent judge. However, the reference to the Inquiry in the annual report does not suggest that the FCO and the government have fully appreciated the substantive concerns expressed by NGOs, lawyers for the detainees and international human rights experts. Once the criminal investigation into the Libyan cases has been concluded, the government should move quickly to establish a genuinely independent judicial inquiry, equipped and empowered to get to all the facts and to hold those responsible for abuses to account.

9. Secondly, Human Rights Watch is concerned that the FCO and the government are still pursuing and promoting internationally the policy of "deportation with assurances"—ie sending foreign terrorism suspects to countries known to practice torture, on the basis of paper commitments from those governments that these individuals will not be tortured on return. Human Rights Watch believes that such assurances are inherently unreliable, even when coupled with post-return monitoring. Rather than seeking to extend the policy, the UK government should instead be looking to prosecute terrorism suspects like Abu Qatada in British courts, while working with countries that have poor records on torture, for example Jordan, to help bring about systematic reforms to end torture that would genuinely facilitate the safe removal of terrorism suspects.

10. Thirdly, the UK government is still apparently denying that international human rights law should apply to cases of abuse or torture by members of the British army outside of the EU. The UK's global standing on human rights is seriously damaged by such abuses. Perhaps the most notorious recent case is that of Baha Mousa who died while in the custody of the British army in Basra, Iraq in 2003. While healthy when taken into custody, Baha Mousa died there with multiple injuries from beatings. To prevent future cases, the UK Government needs to acknowledge that this was not an isolated case (later this year, another inquiry will look into the alleged torture and killing of up to 20 people in British detention in 2004, and lawyers for Mousa's family have applied for a general public inquiry into the treatment of 140 people in Iraq, offering detailed allegations of abuse). The UK government should take steps to ensure that British soldiers always operate within the framework of international human rights law and hold account those responsible for abuses.

## Business and Human Rights

11. The FCO's approach to business and human rights issues puts a lot of emphasis on encouraging companies to do the right thing and on the idea that respecting human rights can be good for business. Human Rights Watch believes that it places too little emphasis on the state's clear obligation under human rights law to protect against human rights abuses, including those involving business. To uphold this duty, the UK government should put in place appropriate measures, including laws and regulations, to ensure that UK business practice fully respects human rights standards. The report says that it will "encourage other countries—in their domestic legislation—to pursue higher standards of business accountability and responsibility". But this should also apply to the UK, not least in respect of those UK companies that operate internationally, especially in countries where human rights abuses are widespread.

12. Human Rights Watch would like the forthcoming UK strategy on human rights and business to recognise some of the limitations of voluntary initiatives on corporate social responsibility and to strengthen the legal and regulatory dimensions of its approach to business and human rights. Specifically, we favour a mandatory requirement on companies to undertake robust due diligence processes to prevent, address, and, where needed, provide remedy for any negative impacts. Alongside this, we favour a requirement on companies to monitor and publicly report on their human rights impact, including through their relations with suppliers, contractors, security forces and business partners.

## Women's Rights

13. Although the annual report says that gender equality and women's empowerment is a human rights priority for the FCO, the UK has yet to decide on whether it will sign the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, opened for signature since May last year. Indeed, in a very worrying development, the government appears to have moved backwards on this issue. In an article in the Huffington Post on 12 May, David Cameron said "today we can confirm we are working towards signing the Convention, before ratifying the Treaty and so incorporating it into UK law". He also described it as a "landmark agreement". Yet the relevant part of the FCO annual report now says that a cross-government consultation has identified a number of areas that need further consideration before a final decision can be made on whether to sign the "convention". No detail is provided as to the nature of these concerns. Human Rights Watch believes that this convention has the potential to make a real contribution to reducing violence against women across Europe, through promoting shelters, prevention mechanisms, protection orders and access to justice. UK credibility on these issues is very greatly undermined by its failure to move swiftly to sign this convention. Eighteen other countries have so far signed it.

14. Human Rights Watch is also disappointed that the UK government has indicated that it has no intention of signing the International Labour Organisation (ILO) Convention on the Rights of Domestic Workers. The vast majority of domestic workers—cooks, cleaners and nannies—are women; and in many parts of the world they enjoy few rights and are subject to considerable discrimination and abuse. Even though it is one of the most important human rights developments of the year for women, the FCO fails to even mention the Convention in its report.

## Countries of Concern

### *The Middle East and North Africa*

15. Human Rights Watch agrees with the statement in the annual report that the Arab Spring has brought an historic opportunity, created and led by the people of the region, to build more open, prosperous societies in "the Middle East and North Africa". We believe that the UK has an important role to play in supporting local efforts—and in encouraging and pressing new governments in places like Libya and Egypt—to advance genuine democratic reforms and human rights. The UK can also be commended for some of its policy positions towards the region over the last year, for example its generally strong stand on human rights violations in Syria and Iran. But there are other instances in which the FCO and the UK government as a whole have displayed a lack of consistency or vigour in promoting human rights.

16. On Libya, for example, we were disappointed that at the UN Human Rights Council in March, the UK did not push harder for a strong resolution, including the appointment of an independent expert to monitor human rights violations and report back to the Council. We would like the UK to press the new Libyan authorities to cooperate fully with the International Criminal Court, which has continuing jurisdiction over war crimes and crimes against humanity in Libya since February 2011. Recent developments in Libya are also of concern, including new laws that will restrict free speech, grant amnesties for crimes committed by anti-Gaddafi forces, and limit political participation based on vague terms. The FCO should be raising these issues at the highest levels with the Libyan government, as well as pressing the government to investigate rights abuses by the anti-Gaddafi militias. Human Rights Watch is disappointed that there was no reference in the Libya section to civilian casualties caused by NATO air strikes. Human Rights Watch's research found that at least 72 civilians were killed as a result of these strikes. But NATO countries, including the UK, have not acknowledged these deaths, properly investigated them or provided compensation to the families of the victims.

17. Human Rights Watch has been particularly critical of UK policy towards Bahrain over the last year. The section on Bahrain in the report is very weak; it continues to talk up progress, when in reality there has been almost none. The Bahrain Independent Commission of Inquiry (BICI) is mentioned, but there is no reference to its conclusion that torture by the Bahraini authorities was systematic or to the existence of a "culture of impunity". The FCO report does not mention that the Bahraini authorities have failed to date to investigate or prosecute more than a small number of low-ranking officers for rights abuses. Nor is there any reference to the key BICI recommendation to review military court sentences and free those convicted purely for calling for political reform—a category that includes the 14 protest leaders sentenced to lengthy prison terms. There is reference to "an independent National Commission to oversee implementation of the BICI report" and to the National Human Rights Commission. The members of the first were handpicked by the King, so it is hardly independent, and the second has done almost nothing since it was established. The report's claim that "Bahrain's human rights performance has shown improvements" is not accurate, given continuing abuses documented by Human Rights Watch and others and given the failure to bring those responsible for grave abuses to account.

18. In view of its importance in the Arab world and the seriousness of the human rights situation there, Egypt is another country that should have been included as a "country of concern". The short case study on Egypt touches on the major rights issues in the country. However, Human Rights Watch would like the UK to press these concerns more proactively, including the criminal investigation being carried out into the work of Egyptian human rights organisations (which threatens to emasculate their work), ongoing torture and ill-treatment in detention, restrictions on and repression of journalists, bloggers and activists, and the complete failure so far to hold rights abusers accountable for their crimes.

19. Human Rights Watch also urges the UK to raise human rights concerns more assertively and publicly with the government of Saudi Arabia, especially on women's rights, its use of anti-terrorism courts to try peaceful opponents and human rights activists, as well as its treatment of minorities. The section on Saudi Arabia in the report mentions these issues, but there is little sense from this text or any other source that human rights are a high priority in UK government relations with Saudi Arabia. Yet the rights abuses there are systematic and widespread. Women in Saudi Arabia are second-class citizens. Under the "male guardianship system", they need the permission of a male relative—husband, father or brother—if they are to travel, open a bank account, access medical care or work. The UK's general reluctance to forcefully (and publicly) press Saudi Arabia on human rights issues reveals a serious double standard and weakens its overall credibility in pushing for reform across the Middle East.

20. Human Rights Watch is critical of UK policy towards Yemen over the last year, especially the failure to assert publicly that the immunity deal for former President Ali Abdullah Saleh, his relatives, and many members of his government does not put them beyond the reach of international law, in respect of accountability for crimes against humanity, war crimes and other serious abuses. These issues are not addressed adequately in the report.

*Sub-Saharan Africa*

21. Human Rights Watch Rights Watch is very concerned by UK Government policy towards Ethiopia and Rwanda. While it is welcome that the annual report has a short case study on each, the serious and continuing rights abuses in both countries are deserving of more in-depth coverage, and the UK should be pressing human rights concerns at the very highest levels and across all UK departments. One of the apparent barriers to greater UK pressure is the sense that these are development "success stories" and that to voice concerns about human rights abuses is to put public support for development at risk. The opposite is the case. While these countries have made significant and welcome progress against some important development indicators, for example in respect of access to health and education, this cannot excuse rights violations or the denial of civil and political freedoms, and support for development is put at risk where aid is misused or supports authoritarianism.

22. The short Ethiopia case study draws attention to Ethiopia's misuse of its antiterrorism proclamation. But the wording and tone of the section is very timid. The fact is that the Anti-Terrorism Proclamation has been used to justify arbitrary arrests of dozens of journalists and members of the political opposition. Ethiopia's highly restrictive Charities and Societies Proclamation is also seriously hampering the work of human rights organisations like the Ethiopian Women's Lawyers Association and the Human Rights Council. The case study also makes no mention of the Ethiopian government's "villagization" programme. Human Rights Watch has documented serious abuses associated with this programme and we have called on the Department for International Development—as a provider of over £300 million per annum of budget support to the Ethiopian government—to carry out a truly independent investigation into the rights abuses linked to it. Further, the routine arbitrary arrest, detention and torture of people suspected of belonging to insurgent groups in the restive provinces of Somali region and Oromia is entirely absent despite featuring prominently in other human rights reports, such as that of the US State Department.

23. Human Rights Watch is very disappointed that Rwanda is again not regarded as a "country of concern", and that the short case study in the report is insufficiently critical of the poor human rights situation there. The report describes some recent decisions relating to freedom of expression and freedom of association, for example the transfer of responsibility for registration of political parties from the Ministry of Local Government to the independent (my emphasis) Rwanda Governance Board and reform of the Media High Council. The

inference here is that these are positive developments, leading to greater political and media freedom. Human Rights Watch sees no evidence to support this, and these reforms will have little impact without political will on the part of the government. In terms of political space, nothing has changed since 2010, and opposition parties are unable to function. Similarly, repression of journalists continues, with long sentences given to those who write critical articles and with most independent journalists now living in exile.

24. On Somalia, we were disappointed that there was not more emphasis in the report on the link between tackling impunity for serious rights abuses and greater protection for civilians. While the report rightly gives priority to developing the rule of law in Somalia, it fails to emphasise that the Transitional Federal Government (TFG) security forces are also responsible for grave human rights abuses in areas under its control. We also urge the UK to promote a more substantial UN human rights monitoring presence in Somalia, and to press all sides to hold perpetrators of human rights abuses to account, measures that would help deter future abuses. We regret that the London conference on Somalia did not reach agreement on expansion of the UN human rights monitoring presence and that the UK did not push harder for this.

25. There is a striking and worrying omission in the otherwise comprehensive section on the Democratic Republic of Congo. Bosco Ntaganda, wanted on an arrest warrant from the ICC for war crimes, is not mentioned, although he remains at large in eastern Congo and is a major factor in the instability affecting that region. Since the report was written, there have been some important developments in relation to Ntaganda, who has mutinied along with several hundred fighters, following statements from the Congolese government suggesting an intention to arrest him. Consistent with the FC0's strong statements on international justice elsewhere in the document, the UK should be encouraging and pressing the Congolese government to follow through on this.

*Asia*

26. The Afghanistan section of the report could have benefited from greater detail in three specific areas. Firstly, on the issue of torture, the UK should acknowledge that this is not primarily about capacity building. Fundamentally it is about accountability, whether President Hamid Karzai and others will speak out unequivocally to condemn torture and prosecute those responsible for it. Secondly, regarding abuses associated with the paramilitary Afghan Local Police, we remain concerned about poor vetting of recruits and ineffective systems of accountability and urge the UK to push this issue harder with the Afghan authorities. Thirdly, while appreciating the strong statements in the report on women's rights, Human Rights Watch would like the UK to commit to provide substantial ongoing support in this area, well after the withdrawal of UK forces.

27. Human Rights Watch broadly welcomes the Burma section of the report, and recognises that some of the most important developments occurred in the early part of 2012 and are therefore not captured here. While Human Rights Watch appreciates the changes occurring in Burma, we urge the UK not to overstate them or to confuse statements of good intent with real improvements on the ground. While Aung San Suu Kyi and 42 colleagues from the National League for Democracy have entered Parliament, the national, state and regional assemblies remain dominated by military officers and the military-backed party. Although more than 800 political prisoners have been released since May 2011, many remain incarcerated, possibly in the hundreds. Despite ceasefires being agreed in various parts of the country, an ongoing military offensive in Kachin state has resulted in major abuses by the Burmese military against Kachin civilians. Human Rights Watch has documented forced labour, attacks on villages, unlawful killings and sexual violence. The UK should press the Burmese government on all of these issues.

28. The section on China in the report is commendably comprehensive. It provides a generally fair description of the main human rights developments affecting the country in 2011 and it references occasions in which UK ministers and officials have raised human rights concerns with their Chinese counterparts. But Human Rights Watch remains concerned about the level of priority that the UK government gives to human rights in its relations with China. Although the report says that human rights concerns are "consistently raised" with the Chinese government, this is not always the case. Very disappointingly, on 11 January 2012, William Hague wrote a 1,500-word article for Caixin Online, describing almost every aspect of the UK/China relationship, especially the economic and business opportunities, without referencing a single concern about human rights violations. The report talks about the UK-China human rights dialogue and describes this as "our main bilateral channel for raising the full range of our concerns at senior levels". But Human Rights Watch has seen little evidence that these dialogues have much impact in shifting Chinese policy on human rights and no specific evidence for their efficacy is presented in the report. While the report says that "we speak out when we disagree, both in public and private", the UK appears to generally prefer the latter. While public and private diplomacy both have their place, Human Rights Watch is told consistently by China's human rights and civil society activists that the public spotlight is often the most helpful way to strengthen their hand in their struggle against government repression. We urge the UK government to be more vocal about rights abuses in China.

29. In the section on Sri Lanka, the FCO says that it will concentrate in 2012 on making sure that Sri Lanka implements the recommendations of the Lessons Learnt and Reconciliation CommisSion (LLRC). Human Rights Watch believes that the LLRC's findings and recommendations are seriously deficient and it is a mistake for the FCO to put too much faith in this process. Instead, we urge the UK to press for an independent international mechanism to properly investigate credible allegations of war crimes by both sides during the final months of the Sri Lankan civil war in 2009, in which as many as 40,000 civilians were killed. This was

recommended by the UN Secretary-General's Panel of Experts report and is the best hope for bringing those responsible for these abuses to account. The report also says that the High Commission in Colombo has looked into recent allegations of torture and ill-treatment of failed Tamil asylum seekers on their return to Sri Lanka and has found these allegations not to be true, although very little information is provided as to the scope of its investigation. Human Rights Watch's research, backed by medical documentation, indicates differently. We have documented many cases of torture and ill-treatment (including rape) of failed asylum seekers at the hands of government security forces. We urge the UK not to return Tamils to Sri Lanka pending an in-depth review of these cases.

*Central Asia*

30. The Uzbekistan section is stronger than in previous years, covering most of the major areas of human rights concern and appropriately critical of the most egregious abuses. An exception to this is the treatment of the issue of child labour, where the tone is overly positive. Research by Human Rights Watch suggests that the problem remains very serious, with the government forcing 1.5 to 2 million schoolchildren, some as young as nine-years-old, to help with the cotton harvest for 2 months a year. They live in filthy conditions, get sick, miss school and work daily from early morning to late evening.

31. Beyond the section in the report, Human Rights Watch is concerned about how much priority the UK government is prepared to give to rights abuses in Uzbekistan, particularly in a context where it is seeking Uzbek cooperation in the withdrawal of UK military equipment from Afghanistan. In April, comments were attributed in the Times to an unnamed FCO Minister, saying that "we are just going to have to hold our nose". Human Rights Watch expects more from a government that says that human rights are at the heart of its foreign policy. UK Ministers should be pressing human rights concerns at the highest levels—for example Uzbekistan's appalling record on torture—and using the prospect of enhanced EU economic and trade links for Uzbekistan (something that Tashkent needs and wants) as leverage to secure progress on human rights. Given the ample evidence that the human rights situation remains abysmal and in some respects is getting worse, the UK government should urgently place Uzbekistan on the agenda of EU foreign ministers and set concrete timelines by which Tashkent should fulfil key rights demands, such as the release of imprisoned rights defenders and registration of local and international NGOs. The UK should also support the establishment of a special mechanism on Uzbekistan's rights situation at the UN Human Rights Council.

32. The Turkmenistan section of the FCO report does not convey the gravity of the human rights situation there. As in previous years, there appears to be a conscious effort to word things as neutrally as possible and to talk up examples of progress (when they usually amount to very little). For example, the decision of the government to share information about two political prisoners is held up as a positive development and the result of coordinated lobbying, although these individuals remain wrongfully imprisoned. The report also highlights as positive that "we were still able to take forward important work in areas such as media reform, the rule of law, and transparency and openness," but without specifying what exactly was achieved by this work. A key area of concern not mentioned in the report is the informal arbitrary travel bans imposed by the Turkmenistan government on certain individuals, including relatives of activists and political opponents. Nor does the report adequately emphasise that the country remains utterly closed to any independent human rights scrutiny.

*17 May 2005*

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## Written evidence from Pavel Khodorkovsky

### 1. Summary

1.1 I welcome the Select Committee investigation into the FCO's human rights work in 2011 along with the content of the FCO's report "Human Rights and Democracy".

- *I agree with its observations on Russia and recommend that future in-country reports provide a translation into the respective national languages to aid understanding and distribution.*
- *I support a cross-government strategy on business and human rights and recommend that all Ministers travelling abroad are briefed on human rights abuses in the destination country and encouraged to raise them with their official interlocutors in that country.*
- *I welcome the creation by UKTI/FCO of an Overseas Business Risk Service with a view to providing country-specific guidance on human rights issues in overseas markets.*

1.2 This evidence is submitted by Pavel Khodorkovsky, son of Mikhail Khodorkovsky the former Head of Yukos and Amnesty International declared "Prisoner of Conscience".[38]

[38] http://www.khodorkovskycenter.com/

## 2. Background to the Khodorkovsky Case

### 2.1 *Prosecution of Khodorkovsky*

2.11 My father, the Russian businessman and philanthropist, Mikhail Khodorkovsky, was declared a "Prisoner of Conscience" by Amnesty International[39] following two politically motivated trials against him. His prosecution and imprisonment have been seen as a watershed event demonstrating the limits of freedom and democracy in Russia today.

2.12 As the Chief Executive of Yukos Oil, Khodorkovsky was heavily involved in public philanthropy and civic society; among his many projects were the creation of Open Russia, dedicated to promoting civil society values and running educational projects for Russian youth, including building a school for underprivileged orphans which continues to operate to this day.

2.13 In October 2003 he was travelling across Russia's regions delivering speeches on democracy and calling on Russian youth to become politically engaged when he was arrested on politically motivated charges that retroactively asserted violations of tax and privatisation laws.[40]

2.14 There were two widely-accepted central motives behind his prosecution: to eliminate him as a political opponent and to seize control of Yukos—increasing the Kremlin's power and enriching certain state officials.

2.15 Khodorkovsky and his business partner Platon Lebedev were found guilty on 31 May 2005 and were sent to Siberia to serve eight-year prison sentences. By October 2007, both Khodorkovsky and Lebedev would have been eligible for release on parole, but in February 2007, new charges emerged of embezzling the entire oil production of Yukos and laundering the proceeds, directly contradicting the existing court ruling of 2005 against the two men.[41]

2.16 In December 2010, days before the verdict in the second trial, Prime Minister Vladimir Putin said on television, (in reply to a question about Khodorkovsky), that "*a thief should sit in jail*".[42] Later that month, Khodorkovsky was found guilty and sentenced to a total of 14 years, triggering widespread condemnation in Russia and the West, most notably, from the US, UK, EU, France and Germany.[43] The sentence was reduced on appeal by one year, pushing his release date to 2016.

2.17 The European Court of Human Rights (ECHR) currently has before it several outstanding applications from Khodorkovsky.[44] In a first judgment, concerning his initial arrest in 2003,[45] the Court found numerous violations of the European Convention on Human Rights. In addition, former President Medvedev's own Council of the Russian Federation for Civil Society and Human Rights found that the "miscarriage of justice" in the second Khodorkovsky-Lebedev case was so grave and so obvious that the verdict should be "annulled through appropriate legal channels".[46] Since June 2011, Khodorkovsky has been imprisoned in Penal Colony No. 7 in the region of Karelia, near the Finnish border.

### 2.2 *Seizure of Yukos*

2.21 At the same time as Khodorkovsky was imprisoned, the Russian authorities set about expropriating the assets of his Yukos Oil Company. In December 2003, the Tax Ministry launched the first of what would become a series of extraordinary audits of Yukos's tax payments, resulting in the company's assets being sold at knockdown prices. As a result, the state controlled company Rosneft transformed itself from a company worth just $6 billion, into Russia's biggest oil producer, with a market capitalisation of $90 billion—having spent a mere net $2 billion in the process.[47]

2.22 Yukos shareholders received no benefit—as all Yukos's liabilities were manufactured to match the fire sale prices. American investors lost nearly $7 billion[48] and the illegal expropriation of Yukos is now the subject of numerous legal proceedings around the world.

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[39] Russia: Khodorkovsky & Lebedev are Prisoners of Conscience, Amnesty International, http://www.amnesty.org.uk/news_details.asp?NewsID=19477

[40] New York Times, The President and the prisoner, http://www.nytimes.com/2008/05/02/opinion/02iht-edvonklaeden.4.12527934.html?_r=3

[41] http://www.khodorkovskycenter.com/legal-persecution/2007–2011-trial

[42] Economist, The Khodorkovsky trial underlines Putin's power in 2011, http://www.economist.com/blogs/theworldin2011/2010/12/khodorkovsky_trial_underlines_putins_power_2011

[43] http://www.khodorkovskycenter.com/news-resources/stories/leaders-around-world-react-moscow-city-court-rejection-khodorkovsky-lebedev-v

[44] ECHR application numbers 11082/06, http://www.khodorkovskycenter.com/legal-persecution/european-court-human-rights-cases

[45] ECHR application number 5829/04, http://www.khodorkovskycenter.com/legal-persecution/european-court-human-rights-cases

[46] Presidential Council of the Russian Federation for the Development of Civil Society and Human Rights, http://www.khodorkovskycenter.com/sites/khodorkovskycenter.com/files/Presidential%20Human%20Rights%20Council%20Report%20-%20Feb%202012%20SUMMARY.pdf

[47] Financial Times, Yukos finally expires, victim of its battle with the Kremlin, http://www.ft.com/cms/s/0/641d7936-ff5b-11db-aff2–000b5df10621.html#axzz1vEq7WBqY

[48] Committee On Financial Services, U.S. House Of Representatives, U.S-Russia Economic Relationship: Implications Of The Yukos Affair, http://www.gpo.gov/fdsys/pkg/CHRG-110hhrg39909/pdf/CHRG-110hhrg39909.pdf

2.23 Khodorkovsky and his family are not involved in any litigation to secure the restoration of or damages for the expropriated Yukos assets having publicly declared that he waived any of his personal interest in the company.

## 3. Content and Format of the FCO's Human Rights and Democracy Report

3.1 I very much welcome the publication of the FCO's Human Rights and Democracy Report and the greater emphasis being placed within the FCO on the importance of human rights in the formulation and execution of foreign policy. The report provides critical support for the work of human rights organisations in Russia and has the capacity to highlight violations beyond what is possible for domestic NGOs.

### 3.2 *Impact in Russia*

3.21 I particularly welcome the section on Russia and the documented reference to the UK Prime Minister discussing the Magnitsky and Khodorkovsky cases with President Medvedev and Mr Cameron's speech at Moscow State University in which he pointed out that the strengthening of the rule of law was essential to Russia's future stability and prosperity.

3.22 The report's observations on Russia were condemned by official Kremlin sources in Moscow, with Konstantin Dolgov, the Russian foreign ministry's Ombudsman for human rights saying: "*Britain's approach to assessing the real situation in the human rights sphere in our country is not impartial and open minded. The authenticity of the information and sources used raises serious doubts*".[49]

3.23 But this view was countered by Dmitry Oreshkin, a former member of the independent Russian Presidential Council on Human Rights and political scientist who said: "*The Russian paragraph of the UK Human Rights Report appears to be competent and close enough to the Russian Human Rights Council members' judgment*".[50] According to Mr. Oreshkin, at the meeting between ex-President Medvedev and the Russian Presidential Council on Human Rights held on 28 April 2012, members brought up the same issues raised in the FCO Report. In this way, the FCO report was able to help draw attention to the concerns of Russian human rights campaigners.

> *Recommendation:* Much of the opposition and reform movement in Russia, including NGOs, have limited resources and therefore I recommend that the country sections of the report should be translated into the respective national languages to aid understanding and distribution. This would also allow information within the FCO report to bypass state-controlled media and reach citizens directly via social media networks.

## 4. Cross Government Strategy on Business and Human Rights

4.1 I look forward to the publication of this cross-government strategy later this year. I expect that a lack of a joined up space in which the impact of business decisions on human rights issues can be assessed has been a challenge for the Government and is likely to be a growing one. For example, when BP and Rosneft announced a share swap in January 2011, the then Secretary of State for Energy and Climate Change attended the event—despite the fact that only weeks before the Foreign Secretary had condemned human rights violations in the second trial of Mikhail Khodorkovsky; and that Yukos shareholders still had an application before the ECHR concerning the illegal expropriation of their property.[51] An FOI request revealed that the British Embassy in Moscow had provided substantial support for the deal and that the Embassy was instrumental in arranging for the Energy Secretary to attend the ceremony.[52] A UK Government presence on such an occasion constitutes a propaganda coup for Rosneft keen to use any opportunity to claim that their take-over of Yukos assets was legitimate.[53]

4.2 The Norwegian company Statoil has just announced a deal with Rosneft to drill for oil in Russian Arctic waters, following similar deals between Rosneft and Italy's Eni and Exxon Mobil in the US. Having just recently returned from Oslo, I am aware that the deal has caused consternation in some quarters. Amnesty International's political advisor, Beate Ekeløve-Slydal said: *"There is reason to question whether Rosneft's ethical standards are in accordance with Statoil's, given Rosneft's history and how it was able to secure ownership of what was once Yukos under Mikhail Khodorkovsky's ownership."* She added: *"An important element here is zero acceptance of corruption. Statoil has stressed that they make risk assessments of human rights when it comes to choosing countries, partners and projects and they expect their partners to have ethical standards that are consistent with their own….. Amnesty International is committed to holding Statoil responsible for the ethical standards it has always maintained it stands for, and these must be complied with in practice if they are to have any value"*. It is quite clear that the Norwegian Government has concerns that the Statoil deal may suffer the same fate as the BP deal outlined above. But further consideration should be

[49] RIA Novosti, British Report on Human Rights Non-Objective—Russian FM, http://en.rian.ru/world/20120505/173251137.html
[50] http://www.kommersant.ru/doc/1927298/print
[51] Financial Times, Will Chris Huhne regret attending BP's Russian signing ceremony?, http://blogs.ft.com/westminster/2011/01/will-chris-huhne-regret-attending-bps-russian-signing-ceremony/#axzz1vEwx1bvM
[52] Daily Telegraph, Foreign Office "backed BP in Rosneft talks", http://www.telegraph.co.uk/finance/newsbysector/energy/oilandgas/8410043/Foreign-Office-backed-BP-in-Rosneft-talks.html
[53] Reuters, BP deal amplifies Kremlin's business message, http://www.reuters.com/article/2011/01/18/us-bp-rosneft-russia-analysis-idUSTRE70H46S20110118

given to the scrutiny attached to deals between companies that give rise to human rights issues—perhaps by encouraging greater shareholder activism.

4.3 I also have concerns about the need to give UK businesses clear and balanced advice about the risks run by investing and doing business in Russia. The campaign against Khodorkovsky was a seminal event from which it became clear that in today's Russia the authorities could and would act with impunity outside the law, even in full public view. An alarming string of cases of murder, torture and arbitrary detention of perceived enemies of the regime followed. Meanwhile, state-assisted raiding of businesses that refuse to pay bribes—or that become too successful for predators to resist expropriating them—is now commonplace. Corruption levels are high, with Russia scoring 2.4 out of 10 on Transparency International's Worldwide Corruption Perception index—worse than Iran, Syria, Sierra Leone and Pakistan.[54] One in six[55] Russian businessmen has been on trial and approximately one-fourth of the 900,000 inmates in Russian jails in 2010 were entrepreneurs, accountants, legal advisers, and mid-level managers—many of whom were victims of abuse of the criminal justice system through fabricated cases.

4.4 The front page of the UKTI website on Russia starts with the following description:

> *"Russia is the UK's fastest-growing major export market, and the third-largest export market outside Europe and North America, with favourable cross-sector opportunities, some unique in scale. The government's economy modernisation and infrastructure development agenda, underpinned by 140 million consumers' appetite for quality services and goods produces a need for international expertise and products".*[56]

4.5 The same front page offers no warning about the pitfalls of doing business in Russia and the possibility that some business activities in Russia could cause companies to fall foul of the requirements of the UK's Bribery Act, a criminal infraction, punishable with a prison term in the UK. Corruption is mentioned in the "Overseas Business Risk" section, but little prominence is given to the siren warnings that the assessment includes, such as that "*corruption is endemic in Russia*" and a "*major barrier to business*".[57]

4.6 I am aware that the FCO is soon to re-launch its "Business and Human Rights Toolkit" which is aimed at offices and officials overseas and gives advice on how to encourage businesses to meet their responsibilities in this regard.[58] The FCO also publicly endorses the UN Special Representative on Business and Human Rights.[59] I further welcome the imminent launch of the cross-governmental strategy on business and human rights, focusing on advice to businesses.[60]

4.7 However, given the example of the endorsement of the BP-Rosneft deal I have concerns that the strategy will resolve the problem of co-ordinating human rights policy between different government departments, as was expressed in the report of the Joint Human Rights Committee of 2010.[61]

> *Recommendation:* All UK Ministers travelling abroad should be provided with a specific briefing of human rights violations in countries identified by the FCO as problematic and given explicit instructions to raise concerns with their official interlocutors in those countries. When the Prime Minister or the Foreign Secretary visit Russia, it is often left to media scrutiny to compel ministers to tackle human rights abuses. The Government should institutionalise arrangements so that all Ministers are raising the issue from the perspective of their own department, such as the Trade Minister and the impact on foreign investment and DECC Ministers with regard to the expropriation of Yukos when dealing with energy companies and deals. I also welcome the creation by UKTI and the FCO of an Overseas Business Risk Service with a view to providing country-specific guidance on human rights issues in overseas markets.

*25 May 2012*

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[54] http://cpi.transparency.org/cpi2011/results/

[55] http://www.usatoday.com/video/study-1-in-6-russian-businessmen-have-faced-prison/1550819075001

[56] http://www.ukti.gov.uk/export/countries/europe/easterneurope/russia.html

[57] http://www.ukti.gov.uk/export/countries/europe/easterneurope/russia/overseasbusinessrisk.html

[58] Business and Human Rights Toolkit, p112—Human Rights and Democracy: The 2011 Foreign & Commonwealth Office Report (2012), HMSO

[59] Special Representative for Business and Human Rights, p111—Human Rights and Democracy: The 2011 Foreign & Commonwealth Office Report (2012), HMSO

[60] Protect, Respect and Remedy: a Framework for Business and Human Rights—Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, (2008)

[61] Joint Committee on Human Rights, Any of our business? Human rights and the UK private sector: Government Response to the Committee's First Report of Session 2009–10, http://www.publications.parliament.uk/pa/jt200910/jtselect/jtrights/66/66.pdf

## Written evidence from PLATFORM

### Summary

1. British business interests promoted by the FCO often contradict democracy and human rights concerns.

2. Fossil fuel extraction frequently leads to increased human rights abuses, escalating conflict and repression.

3. When the FCO lobbies on behalf of British energy companies, it is often undermining and weakening human rights and democracy abroad.

4. The case studies of Nigeria, Egypt and the Arctic highlight the negative impact that FCO support for British oil interests can have on local human rights.

5. The cross government strategy on business and human rights should address this contradiction by implementing enforcement mechanisms that uphold best practice or international standards on business and human rights.

### Background

1. Platform is a London-based research organisation that has monitored the social, economic, environmental and human rights impacts of the British oil and gas industry for over fifteen years. Our work is regularly published and cited by governments, academia, media and corporations. We are consulted for expertise by human rights defenders, parliamentarians and journalists. We have in-depth knowledge on British oil companies operating in Nigeria, Iraq, the Caspian and North Africa.

### Factual Information

1. The FCO Human Rights Report 2011 states that the government sees "trade promotion and human rights work as mutually supportive".[62]

2. However, in May 2011 the Minister of State for Foreign and Commonwealth affairs, Jeremy Browne, acknowledged potential "short term tensions" between commercial and human rights objectives.[63]

3. In addition, when requested by the Foreign Affairs Committee to set out examples of "a significant UK international commercial relationship or presence being associated with improved human rights standards in recent years" the FCO did not do so, stating they did not "consider it appropriate for the Government to comment on the performance of specific companies".[64]

4. Platform's research shows how, in reality, commercial and human rights interests are frequently opposed. For example in Nigeria, the Arctic and the Middle East and North Africa.

5. Conflicts between British business and human rights interests are common in the fossil fuel industry.

6. Oil extraction in countries where the potential for repression exists tends to contribute to increased human rights abuses because (a) such strategically important resources are closely controlled by and linked to the regime; (b) sites of extraction are then militarised by forces already connected with human rights violations; (c) oil extraction provides vast revenues, which are comparatively easy to siphon off and steal; (d) even when used "legitimately" in the budget, revenues are directed towards entrenching regimes, through arming militaries, police forces and short-term patronage.

7. Paul Stevens, former BP Professor of Petroleum Policy at the Centre for Energy, Petroleum and Mineral Law and Policy in Dundee described how "The revenues support existing regimes simply because they allow low tax rates and large patronage. They also allow large spending on internal security further entrenching regimes."[65]

8. Commercial interests in oil and gas not only weakened the UK's willingness to raise human rights concerns but have also seen the FCO actively promoting and protecting companies whose activities violate human rights (see below).

9. British external energy policy prioritises the guaranteed supplies of energy resources and access to profitable contracts and oil fields, over international human rights issues. This happened in Libya after 2005, in Algeria, in Nigeria. It is currently the case in Azerbaijan, Turkmenistan, Congo (DRC), Oman and elsewhere.

### The UK Strategy on Business and Human Rights

1. The FCO Human Rights Report 2011 claims: "The UK played a leading role in supporting development of the UN Guiding Principles on Business and Human Rights, which were endorsed by the UN Human Rights

[62] http://centralcontent.fco.gov.uk/pdf/pdf1/hrd-report-2011
[63] http://www.publications.parliament.uk/pa/cm201012/cmselect/cmfaff/964/96407.htm
[64] http://centralcontent.fco.gov.uk/pdf/pdf1/fac-human-rights-response
[65] "Resource Curse and Investment in Oil and Gas Projects: The New Challenge", Professor Paul Stevens, June 2002

Council in June. The Government is committed to working with business and civil society to implement these principles and to promote them overseas."[66]

2. In June 2011 Arvind Ganesan of Human Rights Watch commented that in endorsing the principles, the UN Human Rights Council "endorsed the status quo: a world where companies are encouraged, but not obliged, to respect human rights. Guidance isn't enough—we need a mechanism to scrutinise how companies and governments apply these principles".[67]The UK government encourages companies to respect human rights but does not adequately regulate or monitor companies operating abroad to ensure they are not violating human rights.

3. This is demonstrated by the Government's support for extractive companies operating in Nigeria, the Arctic, Egypt and elsewhere.

4. The UK strategy on business and human rights, to be launched in mid-2012, proposes to create guidelines for British businesses about the Government's expectations of their behaviour overseas in respect of the human rights of people who contribute to or are affected by their operations.

5. However, without adequate regulatory enforcement and monitoring, such guidelines are an insufficient means of compelling corporations to respect human rights. The UK should play a more constructive role in enabling access to justice for victims of violations linked to the overseas activities of our companies.

## NIGERIA

1. On 28 February 2012, the US Supreme Court heard arguments in *Kiobel v Shell*. The case alleges that Shell aided and abetted human rights violations and crimes against humanity committed by the Nigerian military against the minority Ogoni people of the Niger Delta from 1992 onwards.

2. The UK and the Netherlands, Shell's two home governments, submitted a joint *amicus* brief to the Supreme Court urging the rejection of the *Kiobel* lawsuit. In short, they argued that corporations should not be held liable for violations of international law.[68] In contrast, the Obama government submitted a brief in support of the claimants.

3. If the UK's arguments in *Kiobel* were accepted, this would remove one of the few judicial remedies available to the victims of corporate human rights abuses and grant global impunity to companies who commit such wrongs. Global campaign groups are calling on the UK to retract its *Kiobel* brief.

4. The UK's intervention is made more inappropriate as Shell continues to rely heavily on government forces in Nigeria who have perpetrated systematic human rights abuses and extrajudicial killing. Shell has made routine payments to armed youth groups responsible for inter-communal conflict, as documented in Platform's report, "Counting the Cost" (2011).[69] The FCO should be seeking to curb these practices rather than defending business interests at the expense of human rights.

### *The UNEP report on Ogoniland*

5. In August 2011, the UN Environment Programme (UNEP) published an assessment of oil spills in the Ogoni region of the Niger Delta. The report provides over 256-pages of scientific evidence on the impact of oil pollution in Ogoni. The environmental damage has severe implications for the basic human rights, livelihoods and health of half a million local residents.

6. The UN found that oil companies such as Shell and the Nigerian state oil company (NNPC) have fallen below industry standards and have not followed remediation procedures.[70] UNEP estimates that it will take 25 to 30 years to clean up the pollution in Ogoni and recommends an initial fund of $1 billion to kick-start the process.

7. Government and corporate responses have failed to reflect the urgency and scale of the problem. There is a lack of clarity on how and when the UNEP recommendations will be implemented and by whom. The process lacks independent monitoring.

8. It is unclear what the FCO has done to aid the implementation of the UNEP's urgent recommendations. The UK government, in line with its stated commitment to responsible business practices, could play a key role by compelling stakeholders to address the problem.

### *UK military aid to Nigeria*

1. In 2010 to 2011, the UK increased its level of military aid to the Nigerian government, with the stated intention of addressing insecurity in the oil region of the Niger Delta.[71] In 2011, UKTI, hosted in Nigeria by

[66] http://centralcontent.fco.gov.uk/pdf/pdf1/hrd-report-2011, p110.
[67] http://www.hrw.org/news/2011/06/16/un-human-rights-council-weak-stance-business-standards
[68] See AMICI CURIAE IN SUPPORT OF THE RESPONDENTS: http://ccrjustice.org/files/2012.02%20UK%20Govt%20et%20al%20Amicus%20Brief%20.pdf, p 7.
[69] http://blog.platformlondon.org/2011/10/03/counting-the-cost-corporations-and-human-rights-abuses-in-the-niger-delta/
[70] UNEP, *Environmental Assessment of Ogoniland*, http://postconflict.unep.ch/publications/OEA/UNEP_OEA.pdf, p12.
[71] Human Rights Watch World Report 2011, http://www.hrw.org/sites/default/files/related_material/nigeria_2012.pdf

the FCO, published a briefing to promote opportunities to UK businesses that included "re-equipping the police force in the Niger-Delta region".[72] In Platform's view, military aid and security trade are inadequate means of addressing the complex political, environmental and human rights issues in the Delta and have instead exacerbated conflict in the past.

2. Strategic energy interests have made the UK government reluctant to criticise the excessive use of force by the Nigerian government.[73] The extrajudicial killing of several protestors at a demonstration against Shell in November 2011 in Uzere occurred without any international public condemnation.[74]

3. As the Nigerian government increases military spending and deploys more forces in the Delta and across Nigeria,[75] Western military aid combined with a lack of criticism from international actors effectively endorses Nigeria's heavy-handed tactics. This policy is counter-productive, since Nigerian forces have failed to bring security to the region and cannot adequately protect UK energy interests.

## Egypt

1. Since assuming power in Egypt, the Supreme Council of the Armed Forces (SCAF) has not only failed to address serious human rights problems in the country but in many cases has exacerbated them.[76]

2. To defend its power, the Supreme Council of the Armed Forces (SCAF) is using political repression against its critics. Twelve thousand civilians have faced military tribunals with few due process protections, including bloggers, journalists and activists charged with defaming or insulting the military. This totals more than the number of civilians tried by military courts during Mubarak's 30 year presidency.[77]The torture of prisoners remains normalised, alongside impunity for the police and military forces.[78]

3. High profile attacks such as the Maspero massacre, where 28 civilians were killed in Cairo in October 2011, have weakened civil society. The military prosecutor charged some of the victims of the massacre—including one of those killed by the army—for causing the violence.[79]

4. The FCO states that "In our values-based approach to the Arab Spring, human rights are indivisible from our foreign policy. Our ministers and officials have consistently raised human rights issues with their counterparts."[80]

5. In February 2011, only weeks into the Egyptian Revolution and in the middle of ongoing crackdowns, the UK Prime Minister made a high-profile visit to Egypt during a tour of the Middle East. The stated aim of the tour was to encourage political reform and push UK commercial interests, in particular the sale of arms. David Cameron was accompanied by eight of Britain's defence manufacturers, including BAE systems and Rolls Royce.[81]

6. Moreover, during this visit, Cameron made a point to meet with both the SCAF military junta leader Hussein Tantawi and Prime Minister Ahmed Shafik. The last premier appointed by Mubarak and a military insider, Shafik was regularly tipped to be the military elite's preferred successor to Hosni Mubarak even before the revolution.

7. At a critical moment during the Arab Spring the UK was promoting the sales of weapons in undemocratic countries and putting commercial interests over human rights concerns. This generated controversy in Britain,[82] while many of those involved in the Egyptian revolution considered Cameron's visit wholly inappropriate, and as a result continue to doubt British's intentions towards Egypt.

### *BP In Egypt*

1. BP is the largest foreign investor in Egypt and responsible for almost half of Egypt's entire oil production.[83]

2. During its forty years in Egypt BP worked closely with the Mubarak regime. In January 2011as Egyptian protesters were being violently repressed, Hesham Mekawi, Chairman of BP Egypt, spoke of "the stability of the country" and insisted that British oil investors would have sustainable business in Egypt for years to come.

[72] See UKTI, http://bit.ly/JFXma3, 2011.
[73] Human Rights Watch World Report 2011, http://www.hrw.org/sites/default/files/related_material/nigeria_2012.pdf
[74] See http://nationalmirroronline.net/sunday-mirror/sm-extra/30537.html, 5 February 2012 and http://www.vanguardngr.com/2011/11/3-dead-100-injured-as-delta-community-shell-clash-over-gmou/, 29 November 2011.
[75] Reuters reports that "More than a quarter of Nigeria's 2012 budget has been allocated to security spending." http://graphics.thomsonreuters.com/12/01/Nigeria.pdf
[76] http://www.hrw.org/news/2012/03/13/statement-human-rights-council-human-rights-situation-egypt
[77] http://www.hrw.org/news/2012/03/13/statement-human-rights-council-human-rights-situation-egypt
[78] http://bankwatch.org/publications/bankwatch-mail-50#Egypt
[79] http://bankwatch.org/publications/bankwatch-mail-50#Egypt
[80] http://centralcontent.fco.gov.uk/pdf/pdf1/hrd-report-2011
[81] http://www.guardian.co.uk/politics/2011/feb/21/david-cameron-visits-egypt?INTCMP=ILCNETTXT3487
[82] http://www.channel4.com/news/british-arms-sales-defending-the-indefensible
[83] http://blog.platformlondon.org/2011/02/25/bp-support-for-mubarak-dictatorship-revealed/

3. Prior to that in September 2010, the US Congress drafted a resolution demanding that Mubarak "hold fair elections, allow international monitoring of elections, and respect democracy and human rights". BP allowed the American Chamber of Commerce in Egypt, in which it is a primary player, to successfully lobby the US Congress to drop the resolution.[84]

4. BP's past relationship with the Egyptian regime reveals that the company was repeatedly willing to ignore human rights concerns to push its commercial interests. This continues with BP contracting to companies belonging to the Egyptian military.

5. Since the revolution, BP has repeatedly pushed for a change in the contractual regime governing its licenses from the current joint venture "production sharing agreement" structure to a tax/royalties structure.[85] In a political context where Egyptian governmental structures remain marked by a clear lack of accountable decision-making, public oversight, or democratic process, this pressure from BP by-passes democracy and the rights of Egyptians.

6. British Foreign Policy currently prioritises the needs and demands of BP and Shell in Egypt, recognising BP's importance as Egypt's largest foreign investor, including through high-profile meetings with British political leaders. For example, in October 2011, Deputy Prime Minister Nick Clegg met with BP and Shell in Cairo only days after the Maspero massacre.[86]

### The Arctic

1. Platform's report "Arctic anxiety" shows that imminent exploration for oil and gas in Arctic waters poses enormous risks both to the natural environment and the rights and livelihoods of some of the region's one million-strong Indigenous population.

2. Extracting oil in the Arctic is extremely risky. Existing spill containment methods are ineffective in icy waters, while darkness and storms make drilling sites inaccessible for months on end. Adequate safety infrastructure and oversight is non-existent. These environmental and technical concerns (but not their human rights implications) have been discussed at length in the recent Environmental Audit Committee inquiry "Protecting the Arctic".[87]

3. "Free, prior, and informed consent" of local communities to industrial development is the cornerstone of the UN Declaration of the Rights of Indigenous Peoples. This is threatened by Arctic oil extraction.

4. On the Kola Peninsula attempts to institute an Indigenous representative institution are being ignored by the local administration. Land used by a reindeer collective was reclassified by the local administration, making it available for pipeline construction for gas extracting consortium Shtokman Development AG without consultation with the Saami community. Lukoil (the country's second largest oil company) is accused of denying multiple oil pipeline leaks occurring around River Pechora, and attempting to "hide" them from the regulators and the Indigenous population.[88]

5. Six Indigenous People's organisations are Permanent Observers on the Arctic Council, however this representation does not give these organisations voting power in this international forum, or ensure consent of particular Indigenous communities to extraction projects that will affect their environment and livelihoods.

#### *UK Support for Arctic Oil*

1. In January 2011 BP attempted to sign a deal with Russian oil company Rosneft to explore for oil in the Russian Arctic. The deal collapsed in a legal dispute with TNK-BP.[89]Documents obtained by Platform under FOI reveal eighteen months of close interaction between BP and the UK embassy in Moscow.[90] BP first briefed Downing Street about its Rosneft deal on Tuesday 11 January, expecting that either Deputy Prime Minister Nick Clegg or then Energy and Climate Change Minister Chris Huhne would attend a signing ceremony three days later. Chris Huhne put aside four hours of his time for the event.

2. Ministers including Lord Howell (Foreign Office), Chris Huhne (Energy & Climate Change), Charles Hendry (Energy), as well as senior civil servants and dedicated FCO Energy Teams in Arctic countries have all been enrolled in supporting UK extractive business interests in the region.

3. Energy Minister Hendry stated the support for BP was a "purely commercial matter".[91] This is a tacit admission that human rights and environmental impacts of Arctic oil extraction were not considered, and that the decision to support was commercially driven, not a balance of business and human rights interests.

[84] http://pomed.org/blog/2010/10/egypt-senate-resolution-success-in-question.html/#.T7qdFlF0WRY
[85] Witnessed by Platform at Egypt Oil & Gas's conference on "The Future of Oil & Gas Agreements in Egypt"
[86] http://ukinegypt.fco.gov.uk/en/news/?view=PressR&id=672272582
[87] http://www.parliament.uk/business/committees/committees-a-z/commons-select/environmental-audit-committee/inquiries/parliament-2010/protecting-the-arctic/
[88] http://platformlondon.org/aa.pdf
[89] http://www.telegraph.co.uk/finance/newsbysector/energy/oilandgas/9249667/BP-may-get-second-chance-in-Arctic-through-Rosneft-tie-up-with-TNK-BP.html
[90] http://blog.platformlondon.org/2011/03/25/arctic-anxiety-new-report-on-bps-attempts-to-drill-in-the-arctic/
[91] http://blog.platformlondon.org/2011/03/28/bps-botched-arctic-deal-and-the-extent-of-the-foreign-offices-support/

RECOMMENDATIONS

*The UK strategy on business and human rights should:*

Set out effective enforcement mechanisms to put an end to corporate human rights abuses.

1. Include a clear commitment that human rights will not be deprioritised or overridden by business interests. Increase the oversight and accountability of the FCO's work by ensuring specific embassies report on their websites as to the work they are conducting that relates to business and human rights.
2. Introduce mandatory corporate human rights reporting, accompanied by independent monitoring. Proper consultation and engagement with local communities should be key.
3. Recognise that oil and gas projects pose a particular risk to human rights by a) commissioning an independent human rights impact assessment before the FCO commits itself to supporting particular companies or major projects. This should lay out the current human rights context, and likely changes resulting from the project and mitigation measures. The human rights impact assessment should be made available both in Britain and the partner country. And b) not supporting fossil fuel projects that will contribute to human rights abuses, increased repression or conflict.
4. Require that any British company seeking government support operate with clear standards, procedures and track-records on human rights. Transparency on these issues should also be an essential requirement.
5. Improve access to justice by increasing the range of judicial mechanisms through which British companies can be held legally responsible in Britain for their role in human rights violations abroad. Ensure that the legal responsibility covers the use of contractors who abuse human rights.

*24 May 2012*

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## Written evidence from REDRESS

SUMMARY OF SUBMISSION

— The FCO's Strategy for the Prevention of Torture 2011–15 is welcomed, but *accountability* and *reparation* must be included to address torture eradication effectively;

— The FCO must work with other departments and agencies to uphold its commitment to "calling for accountability where there are credible allegations of torture" for suspects present in the UK;

— The FCO should report on its revision of internal consular guidance on reporting torture and review its practice and policies on calling for accountability in this context;

— The FCO should consistently take a tough stance on allegations of torture in its diplomacy, including its allies, and needs to develop a multi-faceted strategy to address torture in countries where the practices are entrenched.

INTRODUCTION

1. This submission is made in response to the Foreign Affairs Committee (FAC)'s call for submissions in respect of its inquiry announced on 25 April 2012 into the Foreign and Commonwealth Office's (FCO's) human rights work in 2011.

2. REDRESS is an international non-governmental human rights organisation with a mandate to assist torture survivors to obtain justice and reparation for their suffering. Since its establishment in December 1992, REDRESS has accumulated wide expertise on the rights of victims of torture both within the United Kingdom and internationally. It has previously made written submissions to the FAC in relation to human rights matters.[92]

3. We note that the inquiry takes as its starting point the 2011 FCO Report "*Human Rights and Democracy*" published on 30 April 2012[93] (the "Report"). REDRESS provides evidence on select issues of most concern to its work, responding to matters raised or omitted in the Report. The FAC is also seeking submissions relating to the likely impact of the "*FCO's Strategy for the Prevention of Torture 2011–15*"[94] (the "Strategy"). In response, REDRESS comments on the Detainee Inquiry, the Green Paper on Justice and Security, and the UK as a "safe haven", emphasising the need for a comprehensive approach to torture eradication across HMG for the Strategy to have a real impact.

[92] See eg REDRESS, *FOREIGN AFFAIRS COMMITTEE: HUMAN RIGHTS INQUIRY: Submissions of The Redress Trust*, 24 April 2009 at http://www.redress.org/downloads/publications/Submission_to_FAC_24_April_2009.pdf. See also REDRESS' evidence to the FAC on the Arab Spring in September 2011: http://www.redress.org/downloads/publications/1109%20Arab%20Spring%20FAC.pdf.

[93] Human Rights and Democracy: The 2011 Foreign & Commonwealth Office Report.

[94] FCO, Strategy for the Prevention of Torture 2011–15, published 27 October 2011, at: http://www.fco.gov.uk/resources/en/pdf/fcostrategy-tortureprevention.

SUBMISSIONS

A. *The FCO's Strategy for the Prevention of Torture 2011–15 (the "Strategy")*

4. REDRESS welcomes the *FCO's Strategy for the Prevention of Torture 2011–15* (the "Strategy").[95] It notes that the Strategy focuses on *prevention,* and does not address the importance of *accountability* and *reparation*, as integral to the eradication of torture. The UK's obligations under the Torture Convention (CAT)[96] require it to promptly investigate allegations and grant survivors full redress including an enforceable right to fair and adequate compensation. In line with the obligations in CAT Article 14, the UK's anti-torture strategy should therefore clearly acknowledge the right to reparation, including rehabilitation. REDRESS understands this obligation to apply not only to torture perpetrated in the UK and/or by UK agents operating overseas, but also to any instances in which it can be said that the UK was complicit in acts of torture perpetrated principally by others. Furthermore, we understand it to apply to torture survivors present in the UK—both UK nationals and persons with substantive links to the UK—tortured abroad.

5. The Strategy also should include policy approaches for dealing with the most entrenched practices of torture around the world.

The Detainee/Gibson Inquiry (the "Inquiry")

6. The Strategy acknowledges that for the FCO to achieve its prevention objectives, "HMG must have a good record itself" and "where problems have arisen that have affected the UK's moral standing we will act on the lessons learnt and tackle the difficult issues head on."[97] The Strategy then refers to the establishment of the *Detainee/Gibson Inquiry* (the "Inquiry") into the UK's alleged role in the torture and rendition of detainees.[98] However, as is dealt with in the FCO's current *Human Rights and Democracy Report* (the "Report"), the Inquiry was terminated due to the announcement of "further police investigations of new allegations of ill-treatment".[99]

7. REDRESS was one of the NGOs that was highly critical of the terms of reference and protocol of the Inquiry.[100] However, there is serious concern at the lack of visible progress to "tackle the difficult issues head on". Concrete steps must now be taken to establish an adequately mandated inquiry into allegations of complicity of torture, which should explicitly include achieving truth and justice for victims in line with international standards. This is a fundamental point which the Government has still not accepted. Instead, the Report refers to a future inquiry "establish[ing] the full facts and drawing[ing] a line under these matters."[101] Public information on "further police investigations" and progress made is also needed.

The Green Paper on Justice and Security (the "Green Paper")

8. The Strategy was published in October 2011, the same month as the Ministry of Justice published its *Green Paper on Justice and Security* (the "Green Paper"). The Green Paper's proposals to introduce "Closed Material Procedures" in civil cases, whereby litigants could be excluded from their own cases and government (rather than an independent judge) would decide whether disclosing evidence is "contrary to the public interest" are wholly inconsistent with fundamental principles of fair trial and open justice. REDRESS, amongst many other organisations,[102] has publicly criticised the proposals in the public consultation which ended in January 2012, submitting that "[e]xtending the already controversial procedure is wrong."[103] The recent announcement that HMG is nonetheless planning to introduce the proposals,[104] goes against the FCO's priority of "Promoting British Values," and claims that "as the FCO we are proud of our long tradition of staunchly and transparently defending and promoting human rights."[105]

9. While this legislation would be the product of the Ministry of Justice it is significant that the FCO Strategy emphasises "consistency", claiming that "All this work should be mutually reinforcing and we will co-ordinate with the Ministry of Justice and other government departments."[106] There is a regrettable lack of consistency and lack of co-ordination between these two arms of HMG, and indeed a basic contradiction.

[95] Ibid.
[96] UN Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, 1984.
[97] Human Rights and Democracy: The 2011 Foreign & Commonwealth Office Report., page 4.
[98] *Ibid*., page 5.
[99] *Ibid.*, page 86.
[100] REDRESS was part of a coalition of nine human rights NGOs which engaged with the Government and the Inquiry from September 2010 to January 2012 to advocate for a proper independent and effective process.
[101] Human Rights and Democracy: The 2011 Foreign & Commonwealth Office Report, page 87.
[102] The Responses are on the Ministry of Justice website, at http://consultation.cabinetoffice.gov.uk/justiceandsecurity/responses-to-the-consultation.
[103] REDRESS, *Submission to UK Ministry of Justice on "Justice and Security" Green Paper, 6* January 2012, p. 17, at http://www.redress.org/downloads/publications/Justice%20and%20Security%20Green%20Paper%20Consultation%20REDRESS%20submission%20-%20Copy.pdf.
[104] Hansard, 9 May 2012, column 3, at http://www.publications.parliament.uk/pa/ld201213/ldhansrd/text/120509–0001.htm.
[105] FCO, Strategy for the Prevention of Torture 2011–15, page 28.
[106] Ibid, page 10.

The UK as a safe haven for suspected perpetrators of human rights abuses

10. While the FCO Annual Report addresses "human rights offenders and entry to the UK,"[107] there is no reference to the law, practice or policy concerning suspected perpetrators of torture who are already present in the UK. The Strategy refers to the obligations under the Torture Convention to ensure that there are no safe havens for individuals accused of torture.[108] It needs to go further and establish a clear policy of coordinated engagement between the FCO, the Crown Prosecution Service (Counter Terrorism Division); Metropolitan Police Service (War Crimes Unit); Home Office (Extradition) and UK Border Agency (War Crimes Team) to either extradite or prosecute cases.

11. While UK law has criminalised torture since 1988[109] and the legal framework to fill "impunity gaps" for torture and other international crimes has since been significantly reinforced,[110] there is still a resistance to actual investigations and prosecutions and informing the public about progress. Only two suspects have ever been successfully prosecuted in the UK.[111] This is despite figures indicating that there are a considerable number of possible perpetrators present or residing in the UK. For example, in 2009 the Joint Committee on Human Rights said that it had information that the UK Borders Agency (UKBA) had investigated 1,863 individuals in the UK for genocide, war crimes or crimes against humanity.[112]

12. A recent report based on figures obtained following a Freedom of Information request, stated: "more than 200 suspected war criminals [...] recently [...] identified by UK immigration officials with most continuing to live freely in the country [...]".[113] The report went on to state: "it was previously revealed that a further 495 suspected war criminals had been identified by the Home Office in the five years to June 2010."[114]Further, the report provided that:

> Michael McCann MP, Chairman of the All-Party Group for the Prevention of Genocide and Crimes Against Humanity, has criticised the UKBA for not acting quickly enough when suspicions came to light. He also expressed frustration at his inability to obtain answers from the UKBA about the full scale of the problem. "We need a frank exchange between the UKBA and police and we need Ministers to provide straight answers to straight questions."

13. It is imperative that the FCO and other Government ministries/agencies work together to tackle the UK being a *de facto* safe haven. Building on the Strategy, a government-wide approach to address *accountability* and *redress* for torture is necessary. Such an approach must also include diplomacy surrounding the appointment of foreign diplomats to High Commissions and Embassies in the UK, including adequate screening to ensure that foreign diplomats working in the UK are not suspected of having perpetrated international crimes, and further that swift action is taken to declare persona non grata any foreign diplomat for which there are credible allegations relating to their involvement in such crimes.[115]

B. *Human Rights and Democracy: The 2011 Foreign & Commonwealth Office Report*

(a) The Arab Spring[116]

14. We note the references in the Report to serious human rights violations in Bahrain last year and reforms to implement the Bahrain Independent Commission of Inquiry recommendations.[117] Nonetheless, prominent

[107] The FCO Report states that "[w]here there is independent, reliable and credible evidence that an individual has committed human rights abuses, the individual will not normally be permitted to enter the United Kingdom." See p. 53.

[108] Ibid, p. 6.

[109] Criminal Justice Act 1988, Section 134(1).

[110] The ICC Act 2001 was amended by section 70 of the Coroners and Justice Act 2009. The effect of this amendment, which came into force on 6 April 2010, is to give UK court's jurisdiction over genocide (and war crimes and crimes against humanity) committed abroad after 1 January 1991 where the suspect is resident in the UK.

[111] Afghan Faryadi Zardad was convicted of torture and hostage taking in 2005 and sentenced to 20 years imprisonment. There is an unreported High Court judgment of 19 July 2005 in *R v. Zardad* which relates to certain legal aspects of the case. An appeal was denied 17 February 2007. On 1 April 1999, Anthony (Andrzej) Sawoniuk was sentenced under the War Crimes Act 1991 to life imprisonment for the murder of two civilians. The Court of Appeal upheld his conviction on 10 February 2000—*R. v. Sawoniuk,* Court of Appeal (Criminal Division), [2000] Crim. L. R. 506. The House of Lords denied leave to appeal on 20 June 2000—*War Criminal Refused New Hearing,* Financial Times, 20 June 2000.

[112] JCHR Report *"Closing the Impunity Gap"*, published 11 August 2009, para. 34, at http://www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/153/153.pdf. More fully, the JCHR said here: "We [...] asked for information on the number of suspected perpetrators of genocide, war crimes and crimes against humanity present in the UK who cannot be prosecuted [because of the existing legislation's lack of retrospective jurisdiction]. In its memorandum, the Government said it could not estimate the number of suspects living in the UK but said that in the four years between 2004 and 2008, there were 138 adverse immigration decisions (such as refusal of entry, indefinite leave to remain and naturalisation, and exclusions from refugee protection), and that "these individuals may no longer be in the UK." In the same four years, 22 cases were referred to the Metropolitan Police. In its memoranda, Aegis quoted figures provided to Parliament: the UK Borders Agency (UKBA) has investigated 1,863 individuals in the UK for genocide, war crimes or crimes against humanity."

[113] *Yorkshire Post*, *UK "safe haven" for war crimes suspects as 200 remain at large, 8 May 2012,* at http://www.yorkshirepost.co.uk/news/at-a-glance/main-section/uk-safe-haven-for-war-crimes-suspects-as-200-remain-at-large-1–4524193.

[114] *Ibid.*

[115] *The Guardian*, *Sri Lankan diplomat may avoid questioning on war crimes claims*, 5 April 2012, at http://www.guardian.co.uk/politics/2012/apr/05/sri-lankan-diplomat-war-crimes-allegations.

[116] REDRESS provided evidence to the FAC on the FCO's role in relation to the Arab Spring in September 2011, See: http://www.redress.org/downloads/publications/1109%20Arab%20Spring%20FAC.pdf.

[117] Human Rights and Democracy: The 2011 Foreign & Commonwealth Office Report, p. 18.

prisoners of conscience remain imprisoned. Other individuals who allege torture have been convicted in unfair military trials and to date, only a very small number of low-ranking police officers have been charged with offences that do not appear to reflect the gravity of the crimes alleged.[118]

15. Since the implementation of reforms, there have been allegations supported by independent forensic evidence of police torture and cover-up.[119] There is also evidence of continued use of torture and mistreatment by police officers outside detention settings. Although the Report refers to "violent clashes" between protestors and police, REDRESS has recently visited Bahrain where it saw evidence, supporting allegations of police beatings, which could not be justified as legitimate use of force. REDRESS heard many accounts of the use of tear gas in villages and its harmful effects on citizens in their homes. It also heard first-hand accounts of police failures to respond to requests for protection, and refusals to register complaints against police officers. Further, in the past two months two prominent human rights defenders, Zainab Al-Kahawja and Nabeel Rajab, have been arrested and held on what seem to be freedom of expression charges.

16. Although the FCO counts Bahrain as a partial success story, it is clear that many survivors of torture and members of civil society, including prominent lawyers, have little faith in the reforms. As a close ally of Britain, the FCO must take a stronger role in publicly raising concerns about allegations of ongoing violations in Bahrain, calling for the use of independent forensic expertise in the investigation of complaints, calling for the release of individuals and be consistent in supporting calls for democratic reform as it has in other countries in the region. The FCO should also call for the suspension of security officials pending prompt investigation and prosecution where sufficient evidence exists.

17. In spite of efforts of the transitional government to move away from the practices of the old regime, increasing reports from Libya are that torture is still widely practiced. REDRESS would welcome HMG efforts to support sustainable training to help document past as well as on-going violations.

18. With respect to Syria, it is important that the FCO provides a constructive role in relation to future accountability for widespread or systematic violations, torture and war crimes committed in the context of the current conflict. It is critical that the UK promotes transparent and independent efforts to build capacities to properly document human rights violations.

(b) Human Rights for British Nationals Overseas

19. The FCO Human Rights Report states that:

> Supporting British nationals in difficulty around the world sits at the heart of FCO activity […]. An integral part of the support provided […] is promoting and protecting the human rights of British nationals overseas.[120]

20. However, a matter of concern is the level of support provided to British victims of torture and mistreatment abroad. The experience of some REDRESS clients is that FCO support and protection has been lacking. REDRESS was involved in filing a complaint to the Parliamentary Ombudsman against the FCO for failure to provide adequate assistance to a British national raped by a military officer in Egypt.[121]

21. Torture and mistreatment, as crimes committed by or with the consent of state officials, require specific and additional protective responses towards the victims. Although the FCO has committed to revising its internal consular guidance on reporting torture to ensure it covers torture and mistreatment outside formal places of detention, it should review its commitments to "calling for accountability when there are credible allegations of torture" in this specific context.[122]

(c) Justice and the Rule of Law

22. While REDRESS congratulates the FCO for its welcomed contribution to the International Criminal Court's (ICC) Trust Fund for Victims and its commitment to ensuring high quality judicial capacity amongst the Court's judges, the UK has taken a detrimental lead in pushing to cut the Court's budget.

[118] REDRESS is only aware of the prosecution of five low-ranking police officers on charges of accidentally killing civilians, the charging of three police officers with failing to report a crime, and the charging of one police woman with assault in relation to alleged torture by multiple police officers committed against a France 24 journalist. On 9 May 2012 REDRESS asked for further information on any additional prosecutions from the Public Prosecutor's office, but is yet to receive a response.

[119] In particular, see the case of Yousef Mowali, who after claims of torture and death in police custody were raised, was said to have died by accidental drowning. An independent autopsy performed by an international doctor from the International Council for the Rehabilitation of Victims of Torture shows evidence of electrical torture and that he was unconscious when drowned. See: http://me.aljazeera.net/?name=aj_standard_en&i=8888&section_name=in_depth_features&guid=2012515155335968439&showonly=1).

[120] Page 120.

[121] J Shenker, "Foreign Office Admits Failings in Case of Briton Allegedly Raped in Egypt", *Guardian*, 17 November 2011, available at: http://www.guardian.co.uk/world/2011/nov/17/foreign-office-admits-mistakes-alleged-rape-egypt.

[122] FCO Torture Prevention Strategy, Page 8.

23. Following a round of proposed cuts by the Assembly of States Parties Budgetary Committee and despite concerns expressed by REDRESS and others as to the impact of such cuts,[123] the UK and four other States circulated a document ahead of the annual budgetary meetings, calling for cuts over and above those recommended. In response, the Court emphasised that "if the Court were faced with additional reductions of [the] order [suggested by the document], a number of operations would have to be halted or ceased altogether; measures such as the postponement of the commencement of trials, the discontinuation of investigations […] would have to be envisaged." NGOs following the meetings deplored this approach.[124]

24. The Report notes that the UK supports the work of the *International Criminal Tribunal for Rwanda (ICTR)*. While the ICTR undoubtedly contributed to the accountability of those most responsible for the 1994 genocide in Rwanda, REDRESS has received complaints from survivors of the genocide that the ICTR failed to provide reparation and thereby meaningful justice to survivors. REDRESS has written an in-depth report on survivors' perceptions of justice so far.[125]

25. As the ICTR transfers cases to *Rwanda*, it is critical that the FCO engages with the domestic justice processes to ensure that survivors are finally granted reparation (in particular restitution and compensation) in accordance with their rights. REDRESS has been working with survivors of the genocide throughout Rwanda in recent years. Without addressing survivors' right to reparation, efforts to deliver justice will be meaningless to survivors, and continue to fail to contribute to reconciliation within Rwanda.[126]

26. In contrast to the FCO's commitment to Rwanda, there is open impunity for genocide suspects residing in the UK. Four suspects whose extradition to Rwanda was denied by the High Court in April 2009, have yet to be prosecuted. Where extradition fails, the UK must ensure that suspects are prosecuted before its own courts on the basis of the legal framework which exists for this purpose.[127]

(d) Human Rights in Countries of Concern

27. Following deterioration in the political and human rights situation in the *Maldives* since February 2012, the Maldives should also be a country of concern to the FCO going forward. REDRESS has received many complaints of violence and ill-treatment by police at peaceful protests, and the use of torture against detainees in prison in the immediate aftermath of the change in government. A particular issue of concern is a number of reports of the use of sexual abuse by police, including sexual touching, strip searches, and abusive language, against women taking part in or being found near protests.

28. In recent years, REDRESS had been working with victims of systematic torture carried out before the democratic transition who were seeking justice and reparation for the crimes committed against them. If police abuses reported since February 2012 are allowed to go unchecked, there is the significant danger of security institutions continuing to revert to serious patterns of violations carried out in the past.

29. Nepal should also be considered a country of concern, both because of ongoing violations and because of consistent impunity for violations committed during the country's 10 year conflict. In 2011 an official taskforce established by the government determined that the conflict had resulted in at least 17,265 deaths and 1,327 disappearances.[128] Many of the casualties were civilians, but not one person has been prosecuted, and major political parties have reached an agreement that there should be a general amnesty allowed for such crimes. In the meantime, serious human rights violations including torture and extrajudicial killings by state actors and non-state armed groups continue.

30. The FCO should uphold its commitment "calling for accountability where there are credible allegations of torture" both at home and abroad. It must continue to put pressure on *Saudi Arabia* in a strategic and consistent manner. UK nationals, including Keith Carmichael (Founder of REDRESS) and the Jones group[129] have still to date never received redress for their suffering in Saudi Arabia.

31. While the situation in Sudan makes documenting torture difficult, it is not impossible. As part of REDRESS' law reform programme implemented with partners in Sudan, we have brought or contributed to a

[123] Coalition for the ICC Budget and Finance Team Submission to the Committee on Budget and Finance at its seventeenth session on 22 to 30 August 2011, 17 August 2011, http://iccnow.org/documents/Commentary_on_2012_Budget_17_August_2011.pdf.

[124] Issues and Concerns Presented by the Victims' Rights Working Group on the occasion of the 10th Session of the Assembly of States Parties 12–21 December 2011, available at: http://www.vrwg.org/VRWG_DOC/2011_VRWG_ASP10.pdf

[125] See in particular REDRESS, Experiences, Perspectives and Hopes: Survivors and Post-Genocide Justice in Rwanda, November 2008, http://www.redress.org/downloads/publications/Rwanda%20Survivors%2031%20Oct%2008.pdf.

[126] See REDRESS' work on Rwanda here: http://www.redress.org/smartweb/reports/reports.

[127] See eg REDRESS' Submission to the Joint Committee on Human Rights on UK EXTRADITION POLICY (2011) http://www.redress.org/downloads/publications/JCHR%20Submission%2027%20January%202011.pdf and an open letter sent by REDRESS and African Rights to the UK Government on Rwanda Genocide Suspects, 8 May 2009, at http://www.redress.org/downloads/publications/09–05–07%20Rwanda%20Suspects%20UK%20-%20Open%20letter.pdf.

[128] As reported by the Ministry for Peace and Reconstruction on 29 March 2011, using figures compiled by an official taskforce responsible for ascertaining the loss of life and property during the conflict: see report by "Nepal Monitor" at http://www.nepalmonitor.com/2011/07/recording_nepal_conf.html.

[129] REDRESS intervened in the cases brought by of Ron Jones, Les Walker, Sandy Mitchell and Dr Bill Sampson through the British Court system, and has also intervened in their case against the UK at the European Court of Human Rights. See: http://www.redress.org/case-docket/r-jones-v-saudi-ministry-of-the-interior-et-al.

number of case against the security services as well as military personnel, inter alia before the African Commission on Human and People's Rights.[130] The FCO should make further commitments to raise allegations with officials.

32. REDRESS welcomes the actions taken by the FCO with regards to accountability for violations in Sri Lanka. However, we would like to see a tougher stance on the establishment of an independent international mechanism to ensure justice and accountability for war-time abuses. While the FCO should backcalls for a comprehensive action plan to implement the recommendations of Sri Lanka's Lessons Learnt and Reconciliation Commission (LLRC),[131] this should not be indefinite. If no visible progress is made by Sri Lanka in the lead-up to the Periodic Review in September 2012, the FCO should call for an independent investigative mechanism.

33. REDRESS welcomes the FCO's commitment to continued assistance to torture survivors from/in Zimbabwe and would welcome further details in order to evaluate it against victims' rights to redress in Article 14 of the Torture Convention. In light of media reports that the UK is a safe haven for alleged torture suspects from Zimbabwe, we reiterate our call on the UK Government to take all necessary steps to ensure adequate investigations and, where necessary, prosecutions before British courts on the basis of universal jurisdiction.[132]

(e) Recommendations

The FAC should:

- Call for the FCO's Anti-Torture Strategy to address accountability and reparation, and for the FCO to explain how it will work with others in HMG to achieve this;
- Call for the FCO to report on its review of internal consular guidance on reporting torture to ensure it meets its commitment to "calling for accountability when there are credible allegations of torture";
- Call for the FCO to review its approach to justice for survivors of genocide and other international crimes, ensuring that accountability is integral to its strategies;
- Call on the FCO to consistently take a tough stance and raise concerns regarding alleged torture, and to develop a multi-faceted strategy to address torture where the practices are entrenched.

*25 May 2012*

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## Written evidence from Stonewall

1. Stonewall is a UK based organisation that has campaigned for equality for lesbian, gay and bisexual (LGB) people across Britain since 1989. Stonewall has worked for a number of years on lesbian, gay and bisexual people's immigration and asylum issues. In 2010 we published the ground breaking research "No Going Back" into the experiences of LGB asylum seekers and have subsequently worked with the UK Border Agency and the Ministry of Justice to implement the report's recommendations.

2. Stonewall made a strategic decision to build on its UK based asylum work and begin to work to promote the human rights of lesbian, gay and bisexual people internationally. We amended our charitable objectives to allow us to do so in October 2011.

SUMMARY

3. This paper sets out Stonewall's response to the Foreign and Commonwealth Office's (FCO) 2011 Report on Human Rights and Democracy.

- Overall Stonewall welcomes the focus on the human rights of LGB people in the report and the work carried out by many missions. In particular we welcome that the FCO has located human rights for gay people within the international human rights frameworks.
- Stonewall commends the FCO for working for gay equality in many areas where homosexuality is criminalised and where there are the most serious human rights abuses against gay people. However, we strongly encourage missions to also work in countries, including Commonwealth and EU candidate countries, that are not included in the report but have a poor track record on gay equality.
- Stonewall calls for a systematic, transparent and accountable process to be used by all missions when deciding if and how to work on gay equality, along with training for diplomats to improve their understanding of LGB human rights and how to address them.

[130] See for instance: http://www.redress.org/case-docket/international-jurisdictions.
[131] Such as the Human Rights Council resolution adopted in March 2012. See http://www.hrw.org/news/2012/03/22/un-rights-council-sri-lanka-vote-strong-message-justice.
[132] http://www.dailymail.co.uk/news/article-2002340/Philip-Machemedze-enjoyed-Mugabes-torturer—judge-says-human-right-stay-taxpayers-expense.html.

— Stonewall believes the FCO should also work to ensure LGB British tourists are well supported and should work with UK business based abroad to assist them to achieve workplace equality. Both the needs of British tourists and business overseas should be explored as potential diplomatic levers to advance gay equality worldwide.

— Stonewall encourages the UK Government to continue to play an instrumental role in the relevant multilateral agencies and to strengthen work in partnership with other bilateral actors, non-governmental organisations (NGOs) and civil society.

— Stonewall expresses its willingness for a closer working relationship with the FCO in its work for LGB equality globally.

*The content and format of the FCO's report, Human Rights and Democracy: The 2011 Foreign and Commonwealth Office Report.*

### Equality and Non Discrimination Section

4. Stonewall welcomes the specific inclusion of the lesbian, gay, bisexual and transgender section in the report as it underlines that LGB human rights are not special rights but universal human rights. We also welcome the clear statement that to render same-sex relations illegal is incompatible with international human rights law, including the International Covenant on Civil and Political Rights (ICCPR). Situating the issues in the context of universally agreed human rights helps challenge the false argument made by some states that homosexuality is a western invention. Stonewall believes this approach is essential to advancing human rights for gay people globally.

5. Critical to furthering LGB human rights is the work of UK missions overseas. The report highlights useful and often creative bilateral initiatives taken by different embassies. There are clear examples of good practice where initiatives were taken with the full consultation and involvement of local LGB groups and the wider civil society. Stonewall particularly welcomes the financial support given for local LGB activities, for example the film festival in Russia. Initiatives like this help to engage a wider group and create awareness and understanding which can complement more traditional diplomatic work to call for legal and policy changes.

6. Stonewall has some cause for concern, however, over how individual missions decide to work on gay equality issues. The report explains that the decision to work on LGB human rights is delegated to individual Ambassadors. While Stonewall respects the role of the Ambassador we are anxious that only Ambassadors who have a personal commitment to it will work on advancing LGB equality. Stonewall would strongly support a more robust system of deciding whether and how to work on gay equality.

7. Stonewall believes that decriminalisation is a critical objective to secure and as has been clearly demonstrated in the UK, it is often a first step towards achieving full equality for LGB people. The diplomatic action taken by the FCO to try and prevent further anti-gay laws from being enacted in Uganda and Nigeria is therefore commendable. However, as with women's rights globally a change in one or two key laws does not immediately translate into a fair legal environment, effective policy or non-discriminatory attitudes. Stonewall does have concerns therefore that not enough attention appears to be given to states where same-sex sexual relations have been legalised but where discrimination and human rights abuses against LGB people still exist. For example, there is no mention of how the FCO plans to build on progress in Brazil or the Seychelles, in both of which gay people face discrimination and violence on a daily basis.

8. The apparent instrumental British role in multilateral initiatives, for example building international support for the UN statement on "Ending acts of violence and related human rights violations based on sexual orientation and gender identity" in March, is also commendable. There are also some good examples in the report on how the UK Government uses multilateral instruments in different country contexts. Stonewall appreciates the work the UK Government undertook to ensure the EU Human Rights Dialogue with the Government of Cameroon contained concerns on gay rights.

9. Given the need to lever existing human rights mechanisms in support of gay equality it would be useful to have more information on how the FCO has done so. In particular it would be useful for the FCO to outline how it engages in human rights dialogues in relation to trade agreements and the Universal Periodic Review process.

### Case Studies

10. Stonewall believes that the addition of the case studies in the report is useful as it will allow for countries that may not be on the list of countries of concern to be profiled for LGB rights issues. It is also a useful way to showcase examples of effective diplomatic practice. It would be good to make use of this section to profile the LGB rights work of the UK government in more depth.

### Countries of Concern Reports

11. Stonewall welcomes that many reports on specific countries of concern feature examples of violations of the human rights of LGB people alongside other human rights issues. It is helpful that many of the profiles give clear examples of how the UK Government has pursued gay rights.

12. There is a notable absence of information of the human rights of LGB in countries listed by the FCO as countries of concern. This includes Chad, Eritrea, Fiji, Saudi Arabia and Turkmenistan where there are known violations of the human rights of gay people. Stonewall is concerned that the human rights of gay people are not being addressed by the FCO in these countries.

13. Stonewall recognises that the human rights violations are many and varied in these contexts, placing a considerable pressure on diplomatic relations as British Ambassadors continually need to challenge governments on many difficult issues. However, Stonewall maintains that the human rights of LGB people must take their rightful place in the work of missions alongside the rights of women and other minorities.

14. There are many countries of concern to Stonewall which are not included in either the FCO's countries of concern list or under the section on gay equality. These include Mauritania, Sierra Leone, Bangladesh, Barbados and Guyana. We would welcome clarity on what the FCO has done and plans to do in these countries.

### British Nationals Overseas

15. Stonewall believes that lesbian, gay and bisexual UK nationals who are either working overseas or visiting as tourists should be afforded full human dignity but often face real threats to their safety and well-being. We are concerned therefore that there is no mention of the human rights of LGB people in the section on British Nationals Overseas.

16. UK firms operating overseas may require support from the FCO to ensure their staff and business interests are not adversely affected by the poor human rights protections for lesbian, gay and bisexual people. Furthermore Stonewall believes that in countries where British tourists make a significant contribution to the local economy there may be a diplomatic opportunity to call for protections for LGB tourists and nationals alike.

### The Government's Achievements as Chair-in-office of the Council of Europe Committee of Ministers, in terms of Support for Human Rights Overseas

17. Stonewall welcomes the focus on LGB equality the UK has brought to the Council of Europe and the 27 March Strasbourg Conference to assess progress on the implementation of CM/Rec(2010)5. We would be grateful to receive more information on the outcomes of the conference. Stonewall believes it is important to ensure momentum is sustained under the Albanian and subsequent Chairs.

### Gay Equality and the Commonwealth

18. Stonewall welcomes the UK Government's role in encouraging the Commonwealth Heads of Government Meeting (CHOGM) to focus on gay equality. We are however concerned to note that the continued criminalisation of homosexuality in 30 Commonwealth countries is not a focus in the report. It would be of considerable concern to Stonewall if efforts within the CHOGM were not mirrored by individual High Commissions in these countries.

*The cross-Government strategy on business and human rights, expected to be published later in 2012, and how it should define the relationship between the FCO's human rights work and the promotion of UK economic and commercial interests in UK foreign policy*

19. Stonewall sees this strategy as an opportunity to progress LGB equality. There exists a diplomatic opportunity to promote LGB equality to foreign Governments as an important requisite for UK business operating in their countries. UK business operating overseas should be supported to aim for the high levels of equality they are able to aspire to in the UK. Current guidance by the OECD and ILO offers some support to multi-nationals on preventing discrimination in the workplace; this should be fully utilised.

20. Stonewall has received requests from many of the UK based multinationals we work with on how they can support and protect LGB staff based overseas. Stonewall has therefore developed good practice guidance which provides practical examples of how they can support their staff. This guidance includes case studies from several UK head quartered multinationals. As an employer of many lesbian, gay and bisexual staff worldwide, the FCO also plays a valuable role in sharing knowledge and good practice with other multilateral organisations on how to support and protect LGB staff worldwide.

21. Stonewall is keen to work with the FCO to support UK head-quartered multinational companies to champion diversity. Initiatives such as the promotion of diversity in the workplace conference held by the mission in Sri Lanka should become common for missions.

### Recommendations

*A systematic, transparent and accountable process of where and how to work on LGB equality needs to be developed*

22. One of Stonewall's main concerns is that there does not seem to be a systematic, transparent and fully accountable process in place to support Ambassadors and High Commissioners when deciding whether and

how to work on gay equality. Stonewall believes such a process is required so that missions are supported to fully analyse the situation for local LGB people in their country and assess what potential there is for diplomatic action. It will also allow the Ambassadors' decisions to withstand external scrutiny and enable others who are working for gay equality to effectively align their work with the UK Government.

23. Stonewall believes the process needs to be joined up with DFID. Legal, social, policy and economic opportunities should be identified and used. These different elements will ensure that the UK government's approach is multifaceted and sensitive.

*Better resourcing for the LGB work of the FCO*

24. Stonewall appreciates that work on gay equality needs to be context specific. The toolkit developed by the FCO provides practical ways in which LGB equality can be advanced. The toolkit should be regularly updated to ensure the most effective diplomatic tools and approaches to further gay equality are used.

25. Stonewall believes that diplomats should be trained on LGB equality work. It should not be assumed that diplomats have an understanding of the issues, or feel comfortable talking about them to hostile audiences. To complement training there should be systematic sharing of lessons learned and good practice within the FCO, across Whitehall and with allied countries. This will help the UK government to remain at the forefront of global work on gay equality.

26. Stonewall believes that local LGB groups and international NGOs are critical actors in the FCO's work for gay equality. Funding mechanisms such as the Ambassador's small or discretionary funds and the Human Rights and Democracy Fund should prioritise support for such civil society actors.

*To work more with bilateral allies and multilateral organisations*

27. It is clear that the UK Government's current call for global LGB equality is echoed by many other bilateral and multilateral organisations. Stonewall believes that bilateral actors must continue to work closely together in order to maximise efforts and complement multilateral processes.

28. The FCO should make sure that discussions take place with bilateral allies on a post by post basis on how to further LGB equality locally. In addition Stonewall would encourage the FCO to cultivate new global LGB equality allies, especially outside of Western Europe and North America, and to maintain consistent pressure on the Commonwealth and Council of Europe member states.

*Work with local and international NGOs*

29. The role of national NGO movements is obviously critical to work on gay equality. National NGOs or community based groups are often marginalised by their Governments and isolated from movements in other countries. A core element of the FCO's strategy should be to empower national movements and work with them in country wherever possible.

30. Effective communication between the FCO and international NGOs such as Stonewall is also critical to success. Stonewall would welcome closer communication with the FCO to help ensure strategic alignment on key decriminalisation campaigns, the Commonwealth, Council of Europe and other focus areas.

31. Stonewall is the leading lesbian, gay and bisexual campaigning organisation in Britain and has a wealth of expertise on advancing legal protections for gay people and changing social attitudes. We would therefore be very keen to work with the FCO, and its partners, to identify how our experience can be utilised in an effective and sensitive way. In particular we would be keen to discuss how we can help support diplomats improve their understanding of LGB human rights issues; further develop the FCO's toolkit; support UK business to advance gay equality worldwide; and ensure LGB human rights continue to be raised in international fora.

*25 May 2012*

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## Written evidence from Sujit Sen

### Introduction

In 1971, during the liberation war of Bangladesh, there were widespread killings of the civilians and other atrocities were carried out by the occupying Pakistani forces and their local collaborators. Towards the end of the war, sections of the intellectual community were murdered, allegedly by the local collaborators of the Pakistani army.

### Military Crackdown, Torture & Violations Attributed to Pakistani Forces and the Local Bengali Collaborators

Following 25 March "crack-down" on the Bengali political opposition. The army targeted students and university professors. During the Bangladesh War a number of local Islamist groups, namely Jamaat-e-Islam,

Nezam-e-Islam and the Muslim League, collaborated with the Pakistani military junta opposing the independence of Bangladesh.

In the final days of the war between 3–16 December, the Pakistani army and the local collaborating auxiliary forces, in particular the Al Badr group, reportedly tortured and killed hundreds of members of the Bengali intelligentsia, particularly university teachers and journalists.

The Pakistani military used a wide range of torture methods. Victims' and eye-witness' accounts refer to both mental and physical torture including severe beatings, often with objects, such as bamboo sticks or iron rods; hanging from the ceiling upside down; electric shocks on all parts of the body including the genitals; piercing needles into the nail or uprooting nails; forcing victims to lie on slabs of ice and burning the skin with cigarettes. In a number of cases, the torture was so severe that it resulted in the death of the victims.

Many women were raped by Pakistani armed forces and auxiliary forces under cover of military operations, and indeed, several high-ranking officers were accused of rape and other sexual crimes. Despite the widespread practice, it appears that the army took no effective steps to stop it.[133]

The UN Human Rights Commission in its 1981 report on the occasion of the 33rd anniversary of the Universal Declaration of Human Rights (UNHRC) stated that the genocide committed in Bangladesh in 1971 was the worst in history. The UNHRC report said even if a lower range of 1.5 million deaths was taken killings took place at a rate of between 6,000–12,000 per day, through the 267 days of genocide.

### Accountability

The trial of alleged collaborators and the perpetrators responsible for murder, rape, loot and arson during the War of Liberation was started by the first government of the country, headed by Bangabandhu Sheikh Mujibur Rahman.

After the surrender of Pakistani forces, Bangladesh's independence leader Sheikh Mujibur Rahman, on release from Pakistani prison, flew back to Dhaka on 10 January 1972. On the issue of war crimes Sheikh Mujib stated on American Broadcasting Corporation (ABC), "I will definitely put them on trial. Can any country free those who have killed three million people?" More than 37,000 people were arrested for the atrocities, most belonged to the fundamentalist groups like the Jamaat-e-Islam, under the Bangladesh Collaborators (Special Tribunal) Act, 1972 (enacted on 24 January 1972).

The first amendment to the constitution in 1973 provided further legal backing for the introduction of special laws allowing the trial of persons charged with genocide, crimes against humanity, war crimes, and other crimes under the International Crimes (Tribunals) Act, 1973.

After the assassination of Bangladesh's founder Sheikh Mujibur Rahman in 1975, various governments since then were unwilling or were unable to prosecute or punish perpetrators of war crimes, though recently (2008) the caretaker government arrested Nizami, the chief of Jamaat-e-Islam on charges of corruption, not war crimes.[134]

In addition to political unwillingness the reluctance to prosecute war criminals could relate to the fact that the civil administration has been infiltrated by the Islamists. According to Prof Abul Barakat of Dhaka University, amongst the the recent appointments of 375 judges, 211 were activists of Shibir, the youth wing of Jammat-e-Islami and one third of 300 university lecturers were Islamists. It is also said the Jamaat-e-Islami have infiltrated the army, police and other law enforcing agencies. They have set up their own NGOs providing social service similar to Hamas and Hezbollah operating in Palestine and Lebanon. Furthermore, Jamaat-e-Islami also has powerful allies in the Middle East.

### Recent Developments

Irene Khan, Secretary General of Amnesty International on a visit to Bangladesh in 2008 mentioned the possibility of war criminals from the 1971 conflict being tried. Irene Khan believes the chances are good, because there's been an international movement, an anti-impunity movement happening in Yugoslavia, Rwanda and Sierra Leone. Amnesty International proposed to the Bangladesh government to ask for UN assistance to set up a commission of inquiry.[135]

Following that in April 2008 Bangladesh's Foreign Adviser Iftekhar Ahmed Chowdhury informed UN Secretary General Ban Ki-moon of a "popular sentiment" for involving the UN in the process for trying war criminals of Bangladesh's Liberation War in 1971. Calling on the UN secretary general at the UN Headquarters in New York Iftekhar informed the Secretary General that there is a growing demand for the trial of the war criminals. The Army Chief and the Caretaker Government's Chief Adviser also expressed the need for the trials to begin.

[133] Redress Report: TORTURE IN BANGLADESH 1971–2004 MAKING INTERNATIONAL COMMITMENTS A REALITY AND PROVIDING JUSTICE AND REPARATIONS TO VICTIMS AUGUST 2004 http://www.redress.org/reports.html

[134] http://www.thedailystar.net/story.php?nid=37378

[135] http://www.amnesty.org.uk/news_details.asp?NewsID=17594

The issue of trying the war criminals had been discussed in various international forums including the UN Human Rights Commission but this is the first time in 37 years since Bangladesh's independence that the government officially informed the top UN official of the demand. Sheikh Hasina's government has already sought and got the assistance of four UN experts and is moving as per a resolution passed by parliament in February 2009.[136]

The United Nations said that some of its top war crimes experts would advise Bangladesh on how to try those accused of murder and rape during its bloody 1971 liberation struggle. "We have suggested the names of some top international experts who have experience in how war crimes tribunals operate across the globe," head of the United Nations in Bangladesh, Renata Lok Dessallien, told AFP. "This is the first time Bangladesh is conducting war crimes tribunals and it is important it understands how other countries have held them. There are some countries where mistakes were made and we don't want Bangladesh to repeat those mistakes." Bangladesh's Law Minister Shafiq Ahmed welcomed the move, and said, "The UN will advise us so that the process is transparent and does not create any questions."

On hearing UN's assistance to the current Bangladesh government effort to investigate & prosecute crimes against humanity and other serious violations of human rights and humanitarian law committed in 1971 Irene Khan said, "I hope that the initiative to seek UN assistance to address the 1971 war crimes marks the beginning of a process to heal the wounds of this war in the national psyche."[137]

### European Parliament Resolution on Bangladesh

Furthermore, prior to this the European Parliament passed a resolution on Bangladesh on 13 April 2005 expressing its support for the demand of the trial of secular and Muslim political forces in Bangladesh known to have participated in the massacre of Bangladeshi citizens and other war crimes during the Bangladeshi liberation war of 1971.[138]

On 7 July 2008 another resolution was adopted by the European Union tabled by Jean Lambert on behalf of the Green/EFA group which stated, "applauds the Bangladesh government for banning former war criminals from standing in elections and calls on it to follow up on this positive step by forming an independent inquiry commission so as to initiate the trial of war criminals".

The present Bangladesh government is seeking European Union's assistance in its effort to initiate war crimes trials.[139]

### UK Connection

The Bangladeshi Islamists Jamaati-e-Islami in the UK, Germany, Italy & France have been operating under various charities and religious organisations such as the YMO (founded in 1975), Dawatul Islam (formed in 1978), Islamic Forum Europe (IFE) founded in 1989, MCB, Muslim Aid, and the East London Mosque with its new extension, the London Muslim Centre.

Soon after the independence of Bangladesh in 1971 some of the alleged Jamaati war criminals fled Bangladesh and took refuge in various Arab countries, Pakistan and the UK. A Channel 4 Dispatches programme aired on 1995 exposed such three alleged war criminals. These alleged war criminals can be tried in the UK under the jurisdiction of 1957 Geneva Convention and under the 1988 Criminal Justice Act as the alleged are UK residents. Article 146 of the UK's Geneva Conventions Act 1957 provides that, "…enact any legislation necessary to provide effective penal sanctions for persons committing … any of the grave breaches of the present convention…" Article 1 of the Geneva Conventions Act 1957 complies with this obligation. Grave breaches defined in Article 147 includes: "wilful killing, torture or inhuman treatment...causing … suffering or serious injury to body or health…" The allegations made against Bangladeshi war criminals residing in the UK, which include abducting and killing a number of persons, fall within this definition.

Article 146 further provides: "…High Contracting Party shall be under obligation to …bring such persons, regardless of their nationality, before its own courts". This obligation to act in response to grave allegations as a duty is on the UK government.

Furthermore, Britain's Home Secretary has powers to deprive acquired British citizenship under paragraph 4 of the Nationality, Immigration and Asylum Act 2002 if he is "satisfied that the person has done anything seriously prejudicial to the vital interests of the UK…". In it White Paper "Secure Borders, Safe Haven: Integration with Diversity in Modern Britain", the UK Government stated that it wished to strengthen legislative powers under section 40 of British Nationality Act 1981 with the provisions set out in paragraph 4(2) and (3) of the Nationality, Immigration and Asylum Act "so that action can be taken in appropriate cases to deprive a suspected war criminal of British citizenship" in order to ensure that "the UK should not provide a safe haven for war criminals".

[136] http://silverscorpio.com/bangladesh-wants-to-try-pakistani-soldiers-for-1971-war-crimes/
[137] States News Service, 7 April 2009
[138] http://www.europarl.europa.eu/sides/getDoc.do?objRefId=95306&language=ES
[139] http://www.thedailystar.net/newDesign/news-details.php?nid=83075

### One such Alleged War Criminal in the UK

In March 1971, one such alleged "Operation in Charge" of killings of intellectuals, was an active member of the Islami Chaatra Sangha (ICS)—the student wing of the Jammat-e-Islami which actively opposed Bangladesh liberation war and aided the Pakistani military. In August 1971, the Jamaat-e-Islami, according to its own newspaper, set up the Al-Badr Squad comprising members of the ICS to violently combat the Bengali freedom fighters. The alleged became a member of the Al-Badr.

After the war the alleged fled Bangladesh and took refuge in Britain in 1972. He was involved in setting up of East London Jamaat-e-Islami front organisation called Dawatul Islam (recently one of its NGO in Sylhet came under police surveillance). This organisation took control of one of biggest mosques in East London.

A dispute within Dawatul Islam resulted in the emergence of a new organisation called the Islamic Forum Europe (IFE)—which the alleged led, and which itself took over control of the mosque from Dawatul Islam.

The alleged is currently the Vice Chair of the mosque, a trustee of Muslim Aid and the Vice Chair of the Islamic Foundation and runs Islamic Forum Europe.

### Recent Initiatives in the UK

In the month of June, 2009 two seminars took place at the British House of Lords both stating the importance of trial to stop the culture of impunity and to seek justice for the victims of war. The first one was held on 19 June, organised by BanglaCarta21, a London based forum of young progressive Bangladeshi lawyers, at the British House of Lords, to discuss the legal aspect of trials of the war criminals of Bangladesh of 1971, titled "Let Justice Prevail: Law and War Crimes in Bangladesh," chaired by Baroness Pola Uddin.

Speakers at the seminar said to establish rule of law and to end culture of impunity justice has to be sought for the victims under Bangladesh's most unique comprehensive law, the International Crimes (Tribunal) Act 1973.

The second seminar took place on 22 June and was chaired by Lord Avebury, Vice Chair of UK All-Party Parliamentary Human Rights Group & Chairman of International Bangladesh Foundation.

Amnesty International researcher Abbas Faiz who had visited Bangladesh in April—May 2009 reported on his findings at the seminar. He said, that no one, in Bangladesh including all the political parties, disagreed on the issue of war crimes trial, but the process must fair and accountable. And as a first instance a Commission of Enquiry needs to be set up to ensure the evidence compiled supports the allegation made, that no one involved in the war crimes slips through the net and, equally important, no one is victimised under the pretext of war crimes trial.

Lord Avebury said, the process shouldn't be speeded up at the expense of legitimacy, and the government should consult international experts on war crimes before deciding what amendments are necessary. Bangladesh's Deputy High Commissioner to the UK, Mr. Allama Siddiki said Bangladesh government was committed to human rights of all its citizens and was determined to complete the trial in a transparent and accountable way to seek justice for the victims of Bangladesh War of 1971. The Deputy High Commissioner also said his government had already sought assistance from the UN and were seeking further assistance from the international community including the US and the UK.

In his final remarks Lord Avebury acknowledged the Bangladesh Government's initiatives and said, "The new government has formidable tasks in their hand, which may need substantial help from the international community. As friends of Bangladesh we would be pleased to help".

### Conclusion

Since 1992 and soon after the War Crimes File TV documentary screened on Channel 4 the UK Bengali community have been campaigning and lobbying UK government to hold trial of the alleged in the UK under Geneva Convention.

Ignoring the issued of war crimes has encouraged a culture of impunity for which as a nation Bangladesh is still paying the price.

This immunity has led to the rise of Jamaat-e-Islam and other extremist Islamist groups. It has also led to institutionalizing of violence. In fact Redress in its 2004 report stated that, torture by public officials date back to the period immediately following independence, and they have become a regular feature in Bangladesh since then. It appears that torture has become institutionalised, a practice that is perpetrated regardless of the government in power. The prevalence of torture in Bangladesh has been highlighted repeatedly by various international monitoring bodies. The United Nations Special Rapporteur on Torture has on several occasions expressed concern about the practice of torture in Bangladesh, and in two instances, jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions. The ratification of the UN Convention against Torture in 1998 has not ended the practice of torture, in fact recent reports indicate a substantial rise in torture cases. In October 2002, the crackdown on criminals known as "Operation Clean Heart" was characterised by excessive use of force, torture and beatings during interrogations. Moreover, deaths in custody, apparently as a result of torture, continue to be a frequent occurrence.

It is not possible to establish rule of law without holding the perpetrators accountable for their crime committed at the very beginning of Bangladesh. The fact that Bangladesh as a nation has so far not provided satisfactory reparation has left many victims of the war, and their families seeking justice for the last 40 years.

*25 May 2012*

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**Written evidence from Survivors Fund (SURF)**

Survivors Fund (SURF) is rebuilding the lives of survivors of the Rwandan genocide.

The vision of SURF is a world in which the rights and dignity of survivors are respected.

SUMMARY OF SUBMISSIONS

- Survivors Fund (SURF) applauds the fact that "the UK is increasing its aid to Rwanda", though we call on the FCO to support the Government of Rwanda in assisting genocide survivors, a particularly vulnerable and marginalised population in Rwanda, in particular in enforcing their right to reparation;
- Survivors Fund (SURF) challenges the assertion that the UN International Criminal Tribunal for Rwanda (ICTR) is "bringing justice to the Rwandan people." The survivor's organisations we represent, assert that the ICTR has failed resolutely to deliver restorative justice to survivors of the genocide in the form of reparation and we call on the FCO to work to address this shortcoming;
- The FCO's failure to extradite suspected perpetrators of human rights abuses during the genocide living in the UK, or to prosecute them through UK Courts, is undermining the goal of ensuring that the UK is not a safe haven for such suspects; and
- These failures detract from and undermine the FCO's positive work.

INTRODUCTION

1. This submission is made in response to the Foreign Affairs Committee (FAC) call for submissions in respect of its inquiry announced on 25 April 2012 into the Foreign and Commonwealth Office's (FCO's) human rights work in 2011.

2. Survivors Fund (SURF) is the principal international organisation representing and supporting survivors of the genocide in Rwanda. Its support extends back to 1994, helping the first survivors to establish themselves into registered organisations in Rwanda, such as AVEGA (Association of Widows of the Genocide). Today, SURF partners with nine survivor's organisations to deliver support to over 300,000 vulnerable survivors of the genocide in Rwanda. SURF advocates, fundraises and helps to develop, manage, monitor and evaluate programmes for these partner organisations, across all areas of need of their membership, from house building to healthcare, education to employment, even burying the dead with dignity. Our funders include Comic Relief and the UK Department for International Development.

3. All of the work is unified by a fundamental belief in the right of survivors of the genocide in Rwanda to restorative justice, to rebuild their lives. SURF recognises that it cannot deliver all this work alone, and as such leverages partnerships with an array of mission-aligned organisations, such as REDRESS. Together we are working to coordinate the advocacy of survivor's organisations in Rwanda, most recently securing the amendment of draft legislation on compensation for survivors.[140] Our current future focus is on securing reparation for survivor of the genocide from the international community by the time of the closure of the ICTR branch of the International Residual Mechanism for Criminal Tribunals (IRMCT) in December 2014.

4. We note that the inquiry takes as its starting point the 2011 FCO Report "Human Rights and Democracy" (the "FCO Human Rights Report") published on 30 April 2012. This submission relates specifically to the content of the report, in particular as it pertains to omissions relating to issues of justice for survivors of the genocide in Rwanda. Our comments related to three specific sections on the Case Study on Rwanda (page 35), the International Criminal Tribunals for the former Yugoslavia and Rwanda (page 51) and Human Rights offenders and entry to the UK (page 53).

*Case study: Rwanda (Page 35)*

5. Survivors Fund (SURF) applauds the fact that "the UK is increasing its aid to Rwanda", though we call on the UK Government to support the Government of Rwanda in assisting the 300,000 survivors of the genocide,[141] a particularly vulnerable and marginalised population in Rwanda, in particular in enforcing their right to reparation.

6. More than 18 years have passed since the start of the Rwandan genocide in April 1994 in which an estimated one million mainly Tutsi women, men and children, as well as a number of Hutu and Twa opposing

[140] See IBUKA, SURF, REDRESS "Submission to Parliament of Rwanda on Draft Organic Law Terminating Gacaca Courts Charged with Prosecuting and Trying the Perpetrators of the Crime of Genocide and Other Crimes against Humanity, Committed Between October 1, 1990 and December 31, 1994", March 2012: http://bit.ly/JQZvTR

[141] The number of genocide survivors in Rwanda documented in the first official census of survivors in 2007 amounted to 309,368, though IBUKA estimates the number to be nearer to 400,000. http://bit.ly/JQQsSQ

the genocidal regime, were massacred in only 100 days. The genocide left behind orphans, widows and severely handicapped and traumatised individuals. Aside from immense personal losses and physical and psychological suffering, the genocide also caused severe material damage to survivors, who have lost houses, livestock, farmland and other personal property. Many were displaced due to the genocide, widows lost their livelihoods and the education of orphans was severely disrupted. This has left many survivors today both vulnerable and marginalised.

7. The Government of Rwanda faced enormous challenges in the aftermath of the genocide, tasked with rebuilding a deeply divided country with a destroyed political and legal infrastructure. Faced with hundreds of thousands of potential perpetrators accused of crimes committed during the genocide, and an even higher number of victims, the majority demanding justice and accountability, the Government of Rwanda sought to hold as many perpetrators of genocide-related crimes to account as possible. Specialised chambers were established within ordinary courts that tried more than 10,000 persons accused of genocide. Following concerns about the increasing numbers of people imprisoned without trial, the Government introduced *gacaca* jurisdictions to handle the majority of genocide-related cases in a more swift and prompt manner. In that way, nearly two million cases have been handled by *gacaca* in some sort of judicial process.

8. On the international level, the United Nations (UN) Security Council established the International Criminal Tribunal for Rwanda (ICTR) in the immediate aftermath of the genocide, in November 1994, to try those most responsible for the genocide. The ICTR has since heard 65 cases and convicted and sentenced 38 perpetrators.[142] Furthermore, genocide suspects found abroad have been brought to justice in Switzerland, Belgium, Canada, The Netherlands and Finland.[143]

9. These efforts are ongoing, and do reflect the need and indeed the obligation to ensure accountability for serious human rights violations and international crimes such as genocide, crimes against humanity, war crimes and torture. Accountability can be an important form of reparation for survivors, as it helps to establish the truth and acknowledges the crimes committed. However, concerns remain about survivors' lack of agency in the discourse on justice and their lack of access to adequate reparation.

10. Aside from initiating a process to hold perpetrators accountable, the Government of Rwanda has sought to address survivors' right to reparation, in particular in providing access to assistance and rehabilitation. However, in contrast to its far reaching accountability efforts, these steps have fallen short of expectations of survivors, and indeed, of Rwanda's obligations under international law.

11. Whilst the Government of Rwanda has established the FARG ("Fonds National pour l'Assistance aux Rescapés du Génocide") which seeks to provide the most vulnerable survivors with access to medical care, housing and education, it has failed to address survivors' demands for the restitution of their property and compensation for their losses. This is particularly frustrating for survivors as the Government had promised as early as 1996 that a specific law on compensation would be adopted with a view to establishing a compensation fund, though it has yet to deliver on that promise.[144]

12. It was, however, not only the Government of Rwanda that disappointed survivors' hopes for reparation. The international community has established the ICTR, yet survivors cannot participate in proceedings and claim reparation before the ICTR. Despite proposals made by ICTR judges to the UN Security Council, as well as the interventions of IBUKA (a principal partner of SURF, and the umbrella association of survivor's organisations in Rwanda) before the UN General Assembly, no compensation fund has been created by the UN.

13. For the past two years, Survivors Fund (SURF) and REDRESS, in collaboration with Rwandan civil society, have examined survivors' perspectives and experiences in seeking to obtain reparation. The work has been shaped by the closure of *gacaca* in June 2012, as well as the ICTR in July 2012, and serious concerns among survivors that with the closure of both mechanisms, avenues for reparations would be closed, too, and their right to reparation would never be met. The need to "turn the page" and to look to the future was emphasized publicly by a variety of officials, yet for the majority of survivors, this was considered to be problematic if not impossible without reparation, in particular compensation and restitution of their property. Justice, according to some survivors, was only seen to be done if reparation formed part of the process, and to date, despite all efforts of the Government of Rwanda and the international community, that has yet to happen.

*International Criminal Tribunals for the former Yugoslavia and Rwanda (Page 51)*

14. The Report notes that the "UK supports the work of the ICTR in tackling impunity and bringing justice to the Rwandan people."[145] However, Survivors Fund (SURF) and the survivor's organisations we represent, assert that the ICTR has failed resolutely to deliver restorative justice to survivors of the genocide in the form of reparation.

[142] At the time of writing, the Tribunal has convicted 38 perpetrators of the genocide, 19 convictions were pending before the Appeal Chamber, and eight persons had been acquitted, see website of the Tribunal at http://www.unictr.org/Cases/tabid/204/Default.aspx

[143] See for more details African Rights & REDRESS, "Extraditing Genocide Suspects from Europe to Rwanda—Issues and Challenges", September 2008, at pp.52–60: http://www.redress.org/downloads/publications/Extradition_Report_Final_Version_Sept_08.pdf

[144] See **Heidy Rombouts, "**Victim Organisations and the Politics of Reparation: A Case-Study on Rwanda", 2004, pp 411–449

[145] Report, page 51

15. The establishment of the ICTR in November 1994, significant as it recognises the gravity and the scale of the human rights violations committed in Rwanda in 1994, had relatively little impact on survivors.[146] The limited mandate of the ICTR does not include a right to reparation and survivors are not entitled to participate in proceedings in their own right. Its statute and rules allow ICTR judges to order the return of any property and proceeds acquired by the criminal conduct of the individual perpetrator, to their rightful owners. While 38 perpetrators have been convicted to date, the Tribunal has not relied upon its authority to order such restitution.[147]

16. Rule 106 of the ICTR's Rules of Procedure and Evidence stipulates that survivors seeking compensation against a perpetrator convicted by the ICTR must apply to a court in Rwanda or "other competent body", and that they may rely on judgments of the ICTR in such proceedings. The judgments of the ICTR are to be considered final and binding as to the criminal responsibility of the convicted person for such injury.[148] In the absence of funds available to enforce any compensation awards, however, this has so far not assisted survivors in Rwanda.

17. The then President of the ICTR in her address to the UN Security Council in October 2002 reminded the Council that "compensation for victims is essential if Rwanda is to recover from the genocidal experience" and that a proposal had been submitted by the ICTR to the Secretary General that victims of the genocide should be compensated.[149] According to the proposal, ICTR judges agreed "with the principle of compensation for victims", yet believed that the responsibility for addressing claims for compensation should lie with other agencies within the UN system.

18. It was feared that for the ICTR to handle compensation claims would severely hamper the everyday work of the Tribunal and would be "highly destructive" to the mandate of the Tribunal, also taking into account that the resources available to the Tribunal would not allow it to properly handle claims for compensation in a timely fashion.[150] The Judges of the ICTR therefore proposed to consider other options, including a specialised agency set up the United Nations "to administer a compensation scheme or trust fund that can be based upon individual application, or community need or some group based qualification".[151]

19. Subsequently, neither the proposal nor the ICTR's judges' call for a greater role of the UN in providing compensation to victims of the genocide were addressed, and no steps were taken at UN level to assist survivors in obtaining compensation. A resolution adopted by the General Assembly on 10 December 2004 on the *"[A]ssistance to survivors of the 1994 genocide in Rwanda, particularly orphans, widows and victims of sexual violence"* does not address the right to compensation and restitution. Though even that resolution, which has been adopted at consecutive General Assemblies ever since, most recently at the 66th General Assembly in 2011, has never been meaningfully honoured.

20. The cumulative annual funding from UN agencies, funds and programmes for survivor's organisations in Rwanda amounts to less than $250,000 annually (less than $1 of aid for each survivor). In contrast, the appropriation of UN funds for the ICTR for the biennium of 2012–13 is $174 million.[152] In total, expenditure on the ICTR has amounted to over $1 billion[153] (equivalent to almost $30 million per suspect convicted). The total sum of support for restorative justice programmes for survivors in Rwanda has amounted to less than one-half of one% of the ICTR budget.

21. In comparison to the ICTR, Article 75 of the Rome Statute (1998) for the International Criminal Court (ICC) allows for enforcement of restorative justice for survivors of human rights violations. The Trust Fund for Victims (TFV) is the main mechanism for doing so, along with the ICC's legal mandate to require convicted individuals to compensate victims with their own assets which it does in DRC and Uganda.[154]

22. The Trust Fund is an historic institution essential for the realization of the ICC's progressive mandate towards victims and is an acknowledgment that justice for genocide, crimes against humanity and war crimes cannot be met by retribution alone. It works alongside the Court's reparative function to benefit victims. It acquires its assets from donations made by States and non-State entities.

23. As the Statute does not apply retrospectively, there is no such fund for victims of crimes heard at the ICTR. However there is a mandate for one to be established, as declared in the Rwanda Constitution and UN Resolution A/RES/66/228. Judge Pillay and Judge Byron, both former Presidents of the ICTR, have stated that the lack of reparation for genocide survivors is a serious shortcoming of the ICTR.

[146] See African Rights and REDRESS, "Survivors and Post-Genocide Justice in Rwanda", November 2008, pp.55–72: http://www.redress.org/downloads/publications/Rwanda%20Survivors%2031%20Oct%2008.pdf

[147] See Article 23 (3) of the ICTR statute and Rule 105 of the Rules of Procedure and Evidence

[148] Rule 106 of the ICTR's Rules of Procedure and Evidence: http://www1.umn.edu/humanrts/africa/RWANDA1.htm

[149] Statement by Judge Navanethem Pillay, President of the ICTR, to the United Nations Security Council, 29 October 2002, at http://www.unictr.org/tabid/155/Default.aspx?id=1086

[150] Letter dated 9 November from the President of the International Criminal Tribunal for Rwanda addressed to the Secretary-General, U.N. Doc. S/2000/1198, 15 December 2000, ANNEX.

[151] Ibid, page.5.

[152] See Financing of the International Criminal Tribunal for Rwanda, December 2011: http://bit.ly/JH6VbA

[153] How Rwanda judged its genocide, Phil Clark, Africa Research Institute, April 2012, page 7

[154] See Trust Fund for Victims: http://www.trustfundforvictims.org/two-roles-tfv

24. In March 2004, the UN Secretary General Kofi Annan, who was head of the UN peacekeeping agency at the time of the genocide, acknowledged institutional as well as personal blame for the genocide. Under general rules of international law, the UN as an entity benefits from extensive immunities, which will make it virtually impossible for it to be successfully sued. Yet, the acceptance of institutional failure of the UN in 2004, the proposals made by the ICTR judges, as well as the recognition of moral responsibility by the UN inquiry on the Rwanda genocide, has not resulted in reparation for survivors.

25. In contrast, the UK Government has never accepted any responsibility for the extent of the genocide, nor apologized for its role in limiting intervention, unlike the UN, or the US under President Clinton.[155] The genocide occurred under a Conservative Party Government,[156] and it was under instruction of the Government that the UK Permanent Representative to the United Nations, David Hannay, supported Resolution 912, passed on 21 April 1994, which reduced the UN Assistance Mission for Rwanda (UNAMIR) from 2,500 troops to just 270.[157] Lt-Gen Romeo Dallaire, who led the mission, has always held that a troop presence of only 5,000 could have prevented the genocide, a conviction backed up by the 2005 Report of the Commission for Africa, which noted "Just 5,500 troops with robust peace enforcement capabilities could have saved half a million lives in Rwanda."[158]

26. Apportioning blame though will achieve nothing in rebuilding the lives of survivors of the genocide, which requires aid. Ultimately survivors of the genocide in Rwanda want to be independent and self-sufficient. However, to return them to their socio-economic position before the genocide (and in so doing, deliver restorative justice) requires access to funding to rebuild their houses destroyed during the genocide, to complete education interrupted during the genocide, to re-establish livelihoods lost in the genocide and to ensure access to medical treatment to treat ailments resulting from the genocide.

27. 2014 is the 20th anniversary of the genocide, and will mark the closure of the ICTR branch of the IRMCT. This presents a unique opportunity to deliver the restorative justice for which the Government of Rwanda does not have the resources, and that the ICTR does not have the mandate. Though it would be of symbolic importance for the UK Government to follow the UN and the US in issuing an apology for its inaction during the genocide, there is a more important gesture possible. As such, we call on the UK Government to support the call for reparation for survivors of the genocide in Rwanda, which truly will deliver justice for the Rwandan people largely denied to them through the limited mandate of the ICTR.

*The UK as a safe haven for suspected perpetrators of human rights abuses (Page 530*

28. The Report raises an important aspect of the campaign against torture and other international crimes such as genocide, crimes against humanity and war crimes, under the heading "Human rights offenders and entry to the UK" where it is said: "Where there is independent, reliable and credible evidence that an individual has committed human rights abuses, the individual will not normally be permitted to enter the United Kingdom."[159] There is no reference to the law, practice or policy concerning suspects who are present or residing here.

29. There are outstanding warrants for the arrests of four suspected Rwandan genocidaires living freely in Britain, namely:

- Vincent Bajinya.
- Celestin Ugirashebuja.
- Charles Munyaneza.
- Emmanuel Nteziryayo.

30. Survivors Fund (SURF) is appealing for justice for survivors by the simple act of allowing the extradition of these four men to face the charges levied against them by their countrymen, in Rwanda. A similar request was made to the previous government who agreed to extradite them but this was overturned by the High Court in 2009 on the grounds that they would not receive a fair trial in Rwanda.

31. Rwanda has made leaps forward in bringing itself in line with international standards of justice, not least in terms of its rule of law as the Report attests, and these men would receive as fair a trial there as they would anywhere else.

32. In fact, the ICTR has begun transferring cases from Arusha, as well as other jurisdictions such as Canada, to Rwanda on the grounds that that suspected genocidaires can now and will receive a fair trial. The UK should now follow suit.

[155] See *New York Times*, 26 March 1998: http://nyti.ms/JHbpir

[156] For further exposition see Linda Melvern in Genocide Studies and Prevention, "The UK Government and the 1994 Genocide in Rwanda", Winter 2007, http://utpjournals.metapress.com/content/k465197778m14430/fulltext.pdf

[157] See Adam LeBor, "'Complicity with Evil': The United Nations in the Age of Modern Genocide", 2006, pp 172–181

[158] See 2005 Report of the Commission for Africa, http://www.commissionforafrica.info/2005-report, page 39

[159] Report, page 53.

33. However, if their cases are not extradited to Rwanda, then the Crown Prosecution Service has a responsibility to prosecute to ensure that their cases are heard in UK courts. The worst case scenario is as present, when neither alternative is pursued. As such, the four of them are allowed to remain in Britain and continue to live in impunity, while there are strong cases against them that they are not being required to answer.

34. Apart from the need for justice for the Rwandese, the UK should not be seen as a safe-haven for suspected perpetrators of human rights abuses.

RECOMMENDATIONS

The FAC should:

- call on the FCO to support the Government of Rwanda in assisting the survivors of the genocide in Rwanda through increase aid for this most vulnerable and marginalised target population, and foster the legislative and fiduciary environment for the enforcement of the rights of genocide survivors to reparation;
- call on the FCO to support the delivery of the UN General Assembly resolution requesting the Secretary General to encourage relevant United Nations agencies, funds and programmes to provide assistance in the areas of education, medical care, skills training and microcredit programmes aimed at promoting self-sufficiency for survivors of the genocide in Rwanda, which will deliver restorative justice for the Rwandan people denied to them through the limited mandate of the ICTR; and
- call on the FCO to actively support the extradition of the suspected genocide suspects back to Rwanda, or else call on the Crown Prosecution Service to open prosecutions to ensure that their cases are heard in UK courts, and in so doing making the UK a non-safe haven for suspected perpetrators of human rights abusers.

*23 May 2012*

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## Written evidence from UNICEF

1. SUMMARY OF RECOMMENDATIONS

1.1 The FCO should accord greater priority to child rights within its work to promote human rights overseas.

1.2 The Government must ensure that its new strategy on Business and Human Rights pays particular attention to child rights because of the potential for irreversible harm to be done during childhood.

1.3 The strategy on Business and Human Rights should reference key tools for businesses to use in assessing their impact on child rights, such as the Children's Rights and Business Principles (CRBP).

1.4 Government departments should actively press their corporate partners, contractors and suppliers to demonstrate evidence of compliance with international human rights regulations and standards, including those relating to child rights.

2. INTRODUCTION

2.1 UNICEF, the United Nations Children's Fund, is mandated by the UN General Assembly to advocate for the protection of children's rights, to help meet their basic needs and to expand their opportunities to reach their full potential. UNICEF is guided by the UN Convention on the Rights of the Child (CRC) and strives to establish children's rights as enduring ethical principles and international standards of behaviour towards children.

2.2 The UK National Committee for UNICEF (UNICEF UK) welcomes the opportunity to submit evidence to the Foreign Affairs Committee's (FAC) inquiry into the human rights work of the Foreign Commonwealth Officer (FCO).

2.3 This submission focuses on how the Government's new strategy on Business and Human Rights should define the relationship between the FCO's human rights work and the promotion of UK economic and commercial interests in UK foreign policy.

2.4 However, we fully support and endorse the evidence and recommendations laid out in the Bond Child Rights Group's submission to the FAC's inquiry. In particular we are concerned that the 2011 Report does not cover the full spectrum of children's rights issues and does not adequately incorporate children's rights in general into the analysis of the FCO's human rights work or the human rights situation in the countries covered by the report.

2.5 We are further concerned that the 2011 Report reflects the FCO's de-prioritisation of children's rights. This worrying trend has already/also previously been evidenced by:

- the lack of a child rights-focused member of the FCO's Human Rights Advisory Panel;
- the expiration of the FCO's child rights strategy and the decision not to renew or replace it;

— the lapse of the Child Rights Panel; and

— the FCO's position that its "centrally-driven human rights priorities do not include child rights."[160]

2.6 As stated in the Bond Child Rights Group's submission, these factors must be addressed, and greater priority should be accorded to child rights within the FCO's human rights work.

## 3. Business and Child Rights

3.1 UNICEF UK welcomes the information on business and human rights provided in the FCO's 2011 Report on Human Rights and Democracy. UNICEF UK looks forward to hearing how the UK Government intends to implement the UN Guiding Principles on Business and Human Rights in its forthcoming UK strategy on Business and Human Rights.

3.2 The strategy has the potential to provide much needed clarity across Whitehall departments. It is vital that all government departments take the same approach in ensuring a high regard for human rights is upheld no matter what economic and commercial interests are being promoted. While recognising the limitations of voluntary initiatives. UNICEF UK hopes that the strategy will signpost key tools and initiatives which can assist companies in respecting human rights.

3.3 The UN Guiding Principles set out that businesses should respect the rights of people belonging to "specific groups or populations that require particular attention".[161] They direct businesses to address their most severe human rights impacts as well as those impacts where the harm will be irreversible if action is delayed.[162]

3.4 In this context, UNICEF UK urges the UK Government to pay full attention to the rights of children in relation to the UK's implementation of the UN Guiding Principles. We were disappointed to see that the FCO's 2011 Human Rights and Democracy Report does not reference child rights within its section on "Promoting Responsible Business Practice". We would like to draw the Committee's attention to the importance of recognising child rights as distinct from "human rights" more broadly.

3.5 Proper consideration of child rights as they relate to business involves recognising children (at home and abroad) as stakeholders of business across the full spectrum of a company's operations—from their products, services and marketing, through to their relationship with employees and governments, their investment in local communities and their impact on the environment in which children live.

3.6 It is vital for businesses to consider how their operations impact on children because childhood is a period when children's physical, mental and emotional well-being can be permanently influenced, with consequences for the future economic development of developing countries. To give some examples, poor nutrition at an early age can impede a child's growth, health and behavioural development for the rest of their lives. Missing a period of education because of disruption to their community or environment can be critical to a child's long term educational achievements. Exposure to a pollutant can be far more harmful to a child than to an adult, owing to children's developing immune systems and higher skin surface area in relation to their body weight.

3.7 It is also important for the UK Government to understand the linkages between business and child rights if further progress is to be made towards the UN Millennium Development Goals. In many developing and low-income countries, children constitute around half of the population. Children and young people also make up the overwhelming majority of those affected by poverty, yet they have the least capacity to support or protect themselves. While governments have the ultimate duty to protect, respect and fulfil children's rights, the private sector has enormous potential to affect children's lives, positively and negatively, at home and abroad.

3.8 Until now, corporate responsibility towards children has too often focused only on child labour. UNICEF UK would like to draw the attention of the Committee to the recently released Children's Rights & Business Principles (CRBP).[163] The CRBP takes a more comprehensive approach to business and child rights than previous initiatives. It sets out ten guiding principles to enable businesses to understand and address their impacts on the rights and well-being of children, and calls on businesses to give explicit consideration to children's rights across the full spectrum of their corporate functions. It is precisely the sort of tool which could be promoted to UK businesses to ensure that a child rights perspective is taken on board in their human rights assessments.

3.9 The FCO's 2011 Report on Human Rights and Democracy ("Case Study: The UN Guiding Principles on Business and Human Rights") says that as part of the forthcoming strategy the FCO will carry out training on business and human rights for relevant staff, re-launch the FCO Business and Human Rights Toolkit and

[160] FCO response to the Foreign Affairs Committee Inquiry into the FCO's human rights work in 2010–2011.

[161] Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, Commentary on Principle 12, http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf

[162] Ibid, Principle 24

[163] See http://www.unicef.org.uk/csr The CRBP is the result of a joint initiative by UNICEF, the UN Global Compact and Save the Children, and were developed in active and detailed consultation with business experts, child rights experts, civil society, governments and children.

update its Overseas Business Risk service. It also states that it will signpost "other voluntary initiatives, guidance and best practice" to businesses.[164]

3.10 UNICEF UK welcomes the range of actions which the FCO plans to carry out, but notes the lack of any reference to child rights. This suggests a lack of understanding of how businesses have the potential to cause lasting damage to children's rights and wellbeing if they do not make a comprehensive assessment of how their operations impact on child rights. The UK Government must ensure that its new strategy on Business and Human Rights pays particular attention to child rights because of the potential for irreversible harm during childhood.

3.11 UNICEF UK also believes that the new strategy on Business and Human Rights should reference key tools for businesses to use in assessing their impact on child rights, such as the CRBP.

3.12 UNICEF UK notes that the FCO's 2011 Democracy and Human Rights Report refers to "business" without distinguishing between companies which work directly with government and those which do not. At a time when both the FCO and the Department for International Development (DFID) are strategically scaling up their work with corporate partners,[165] it seems reasonable that government departments should explicitly require, rather than simply "encourage", good corporate behaviour from their partners. Government departments should actively press their corporate partners, contractors and suppliers to demonstrate evidence of compliance with international human rights regulations and standards, including those relating to child rights.

3.13 For example, companies should be required to show how a child rights perspective is being included in their human rights assessments (using the framework of the CRBP).

3.14 We also note that the Foreign Secretary has announced an additional £1.5 million in funding this year to support the FCO's human rights work, and that the implementation of the UN Guiding Principles on Business and Human Rights will be one of two specific areas to benefit from this increased budget.[166] We hope that in due course the FCO will set out further details about how this additional budget will be spent.

3.15 The way in which the new strategy will be monitored and reviewed will be critical to its effectiveness. An independent body with expertise on business and human rights, including child rights, should be established as part of the implementation of the strategy, with the authority to monitor how the strategy is being implemented across all government departments, and to publish its findings at set intervals.

*25 May 2012*

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**Written evidence from: World Vision UK, Save the Children UK, Child Soldiers International and War Child UK**

SUMMARY AND RECOMMENDATIONS

Guided by international standards and norms, the UK Government must meet its international legal and moral obligations to protect children from the negative impacts of conflict. These obligations include the importance of international cooperation to improve children's lives and consider the potential impact on children of all foreign policies.

Placing children more centrally into the FCO Human Rights and Democracy report and within the activities of the FCO will help the UK government meet its responsibilities to children affected by armed conflict. Specific recommendations to improve the impact of the FCO's work include:

- The FCO should include details of activities to support victims of armed conflict in next year's report. We also recommend that the FCO collaborate with NGOs already engaged in victim support to maximise the results of programmes to reintegrate children, support reconciliation and rebuild lives.
- The implementation of the Action Plan for "Call to End Violence Against Women and Girls" and the UK National Action Plan (NAP) for the implementation of UN Security Council Resolution 1325 (UNSCR 1325) on Women, Peace and Security should include tailored interventions and advocacy to address the specific needs of girls. Additionally, the action plan should include age disaggregated indicators for the impact of the initiatives and activities to be carried out and for the annual reporting on the Action Plan to include these measurements.
- The UK Government should ensure that the Ministerial Champion for Tackling Violence Against Women and Girls Overseas has the resources and support to promote effective initiatives to tackle violence against women and girls in fragile and conflict affected countries.

[164] 2011 Democracy and Human Rights Report: Case Study: The UN Guiding Principles on Business and Human Rights' within section on "Promoting Responsible Business Practice".

[165] According to their 2011–15 business plans. The FCO's business plan states its aim to "achieve a more commercially minded FCO" while DFID has set out its thinking in "The engine of development: The private sector and prosperity for poor people", DFID paper, May 2011.

[166] Written Ministerial Statement, 30 April 2012—http://www.parliament.uk/documents/commons-vote-office/April_2012/30–04–12/5.FCO-Promoting-and-protecting-human-rights-FCO-Command-Paper.pdf

— The FCO should amend the Overseas Security and Justice Assistance (OSJA) Human Rights Guidance to define child soldiers in accordance with the Optional Protocol to the UN Convention on the Rights of the Child (UNCRC) on the involvement of children in armed conflict, to include recruitment and use both by armed forces and by armed groups in other countries.

— In order to further develop a child sensitive approach to the implementation of the Building Stability Overseas Strategy, the FCO should hold a one-day workshop to further identify concrete opportunities for the implementation of BSOS to be child-sensitive and identify solid, practical methodologies and tools that could be adapted and used by the UK Government to ensure greater child-sensitive implementation of BSOS.

— The UK Government must continue its active membership on the United Nations Security Council Working Group and support to the Special Representative of the Secretary-General for Children and Armed Conflict (SRSG-CAAC) to address the grave violations against children in armed conflict. The FCO should also increase coordination between its work aimed at holding perpetrators to account and the work of DFID to help those impacted by conflict rebuild their lives.

— In the 2012 report, the FCO should expand the section on children and armed conflict to include further evidence of activities on this agenda. In particular, the report should include progress made and support by the UK Government in those countries identified as recruiting and using child soldiers. The FCO should also work with the Ministry of Defence to ensure that assistance under the Defence Assistance Fund for the Conflict Pool is not used to support the use of child soldiers in foreign militaries.

— The FCO should work with the Ministry of Defence to withdraw the UK Government's interpretative declaration to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, as an indication of its leadership in protecting the rights of children in conflict-affected areas.

## 1. Introduction

1.1 World Vision, Save the Children, Child Soldiers International and War Child collectively work in more than 120 countries to help eradicate poverty and injustice and create a better world for children to live and thrive in. Together, we are committed to using our vast global experience to address the impacts of armed conflict on children by strengthening the protective environment around children and advocating for the UK Government to do the same.

1.2 Our overarching goal is to see children accorded greater priority in the UK's overseas peace-building and stability policies. We recognize that children have the power to transform societies and, without an explicit focus on their role in development and peace-building, long-term sustainable stability and security will never be achieved.

1.3 We welcome this opportunity to provide written evidence to the Foreign Affairs Select Committee on the Foreign & Commonwealth Office Human Rights Report 2011 for which we have focused on activities related to the impact of armed conflict on children.

## 2. Overview

2.1 This evidence considers the extent to which the FCO is meeting its obligations and recommends ways in which the FCO, alone and as part of the Conflict Pool, could better prioritise children in its peacemaking, stability and security agenda. It also highlights where the inclusion of additional information in future reports could promote greater understanding and coherence around the role of children's rights in the UK Government's work on peace-building, stability and security overseas.

2.2 Guided by international standards and norms including the UN Convention on the Rights of the Child and its Optional Protocol on Children in Armed Conflict as well as UN Security Council Resolutions (1325, 1612, 1882 and 1998), the UK Government must meet its international legal and moral obligations to protect children from the negative impacts of armed conflict. These obligations include the importance of international cooperation to improve children's lives and the obligation to consider all policies and practices in the light of the best interests of the child.[167]

2.3 Placing children more central to the FCO Human Rights and Democracy report and within the activities of the FCO will help the UK government meet its responsibilities to children affected by armed conflict.

[167] Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), *entered into force* 2September1990, Preamble and Article 3.

## 3. Criminal Justice and the Rule of Law

*International Criminal Court (pages 49–51)*

3.1 We welcome the support the UK Government has given to the ICC over the past year. The UK Government has taken a leading role in promoting and supporting the work of the ICC, and it should continue to use its influence to ensure that the Court enables children or their representatives to seek remedies for violations against them and receive appropriate reparations by the Court. Accountability is only one step in the process of access to justice for victims. However, programming to promote reintegration and community reconciliation are also keys to justice.

3.2 For this reason, we value the FCO's donation to the International Criminal Court's (ICC's) Trust Fund for Victims. In light of the first verdict of the court in the trial of Thomas Dyalo Lubanga, the court's capacity to support victims is at a critical stage. The international community also has an obligation to assist efforts in conflict affected countries. We welcome the FCO's commitment to explore opportunities to provide further support for victims and for developing national capacity and action to combat impunity and hope to see evidence of these efforts in the next report.

3.3 *Recommendation:* The FCO should include details of activities to support victims of armed conflict in next year's report. We also recommend that the FCO collaborate with NGOs already engaged in victim support to maximise the results of programmes to reintegrate children, support reconciliation and rebuild lives.

## 4. Equality and Non-discrimination

*Women's Rights (pages 60–64)*

4.1 We welcome the UK Government's recognition of the affect discrimination and gender based violence can have both on women and girls. The cross-government strategy "Call to End Violence Against Women and Girls" provides a strong opportunity to improve the lives of girls and women around the world. However, we are disappointed that the strategy's implementation lacks a focus on children and recognition of their specific needs. Our experience shows that the interventions and advocacy directed at promoting equality for women and protecting them from violence are not equally appropriate for children and inclusive of their concerns.

4.2 *Recommendation:* The implementation of Action Plan for "Call to End Violence Against Women and Girls" should include tailored interventions and advocacy to address the specific needs of girls. Additionally, the action plan should include age disaggregated indicators for the impact of the initiatives and activities to be carried out and for the annual reporting on the Action Plan to measure include these measurements.

4.3 We also welcome the commitment of the Government to having a Ministerial Champion for Tackling Violence Against Women and Girls Overseas. It is vital that the individual responsible is given the necessary resources and support to be able to champion appropriate measures to tackle this important issue around the globe.

4.4 *Recommendation:* The UK Government should ensure that the Ministerial Champion for Tackling Violence Against Women and Girls Overseas has the resources and support to promote effective initiatives to tackle violence against women and girls in fragile and conflict affected countries.

## 5. Countering Terrorism

*Overseas Security and Justice Assistance (OSJA) Human Rights Guidance (pages 82–83)*

5.1 We welcome the guidance for UK government staff on assessing the human rights implications of security and justice work overseas and the inclusion of "violations of the rights of the child" amongst the human rights risks to be considered. However, we believe that the example of "ensuring that soldiers under the age of 18 take no direct part in hostilities" is misleading in that it may be interpreted too narrowly.

5.2 *Recommendation:* The FCO should replace the phrase "ensuring that soldiers under the age of 18 take no direct part in hostilities" with "including unlawful recruitment of children and their use in hostilities" in the OSJA Human Rights Guidance, with an explanatory footnote defining the term according to the Optional Protocol to the UNCRC on the involvement of children in armed conflict (Optional Protocol), to include recruitment and use both by armed forces and by armed groups.

## 6. Reducing Conflict and Building Stability Overseas

*Building Stability Overseas Strategy (pages 94–95)*

6.1 We welcome the UK Government's commitment to working collaboratively across the FCO, DfID and the Ministry of Defence to address instability and conflict overseas through the Building Stability Overseas Strategy (BSOS) and the three pillars under this strategy: early warning, rapid crisis prevention and response and investing in upstream prevention.

6.2 The strategy recognizes that "conflict and violence have a particularly negative impact on women, children and young people" and that violence against children is a consequence of bad governance. Despite

this, and without an implementation plan of activities, the BSOS remains a strategy that fails to address the long term impacts of conflict on children or to approach stability in a child sensitive manner.

6.3 Our global experience has shown that investing in children is a key component to initiatives that seek to break the cycle of conflict and violence, not least because children comprise the majority, and the future, of societies affected by conflict. Only by focusing on rebuilding the lives of children and giving them opportunities and hope for the future can cycles of conflict be effectively broken.

6.4 We also believe that children and youth offer the most powerful resource that countries in conflict have for achieving long term reconciliation and reconstruction. Children also have a key role to play in conflict prevention and peace-building and this must be recognised and supported in reintegration and recovery efforts.

6.5 World Vision has been actively working with the FCO Conflict Group to pursue a child-focused approach to BSOS implementation and we are all looking forward to continued collaboration in this area.

6.6 *Recommendation:* As discussed favourably in our ongoing dialogue with FCO to further develop a child sensitive approach to BSOS implementation, we reiterate our recommendation to the FCO that they should hold a one-day workshop to:

- further identify concrete opportunities for the implementation of BSOS to be child-sensitive; and
- identify solid, practical methodologies and tools that could be adapted and used by the UK Government to ensure greater child-sensitive implementation of BSOS.

*Women, peace and security (pages 103–105)*

6.7 We welcome the cross-government commitment to delivering the UK's National Action Plan on UN Security Council Resolution 1325, dealing with women, peace and security (1325 NAP). However, we are concerned that the approaches used do not sufficiently reflect the specific situation and needs of children. As with the "Call to End Violence Against Women and Girls" strategy, the specific needs of girls are not clearly addressed in the implementation of the 1325 NAP. The UK Government must recognise that responding to the situation of children early will, in the long run, support the situation of women.

6.8 *Recommendation:* The implementation of the 1325 NAP should include tailored interventions and advocacy to address the specific needs of girls. Additionally, the Action Plan should include age disaggregated indicators for the impact of the initiatives and activities to be carried out and for the annual reporting on the Action Plan to include these measurements.

*Children and Armed Conflict (pages 105–106)*

6.9 We welcome the inclusion of a specific section on children and armed conflict in the FCO 2011 Human Rights and Democracy Report and the on-going commitment the FCO has shown to supporting this agenda, through participation in the UN Security Council Working Group on Children and Armed Conflict (UNSC Working Group), support to the Special Representative of the Secretary-General on Children and Armed Conflict (SRSG-CAAC) and active participation in the March 2012 Wilton Park World Vision conference on children and armed conflict. We hope to see this section of the report expanded upon in the next report as a reflection of increased commitment to supporting this agenda and pursuing the outcomes of the Wilton Park conference. We particularly believe that this commitment must help to address the impacts of conflict on *all* children—including separated children, child soldiers and other children who have been traumatized or physically injured as a result of the conflict.

6.10 *Recommendation:* The UK Government must continue its active membership on the UNSC Working Group and support to the SRSG-CAAC to address the grave violations against children in armed conflict. The FCO should also increase coordination between its work aimed at holding perpetrators to account and the work of DFID to help those impacted by conflict rebuild their lives.

6.11 *Recommendation:* In the 2012 report, the FCO should expand the section on children and armed conflict to include further evidence of activities on this agenda. In particular, the report should include progress made and support by the UK Government in those countries identified as recruiting and using child soldiers. The FCO should also work with the Ministry of Defence to ensure that assistance under the Defence Assistance Fund for the Conflict Pool is not used to support the use of child soldiers in foreign militaries.

6.12 We also welcome the UK Government's commitment to taking action to protect children in conflict zones, including by working to stop the recruitment and use of child soldiers and by funding rehabilitation and protection projects for children.

6.13 However, we are disappointed that the UK Government still fails to set an example of establishing high standards on the issue of children and armed conflict by failing to remove the interpretative declaration entered upon ratifying the Optional Protocol, which makes and exception to allow for the deployment of under-18s in certain circumstances. The UK Government therefore continues to permit a lower standard for children in the UK than that proposed by the international community.

6.14 *Recommendation:* The FCO should work with the Ministry of Defence to withdraw the UK Government's interpretative declaration to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, as an indication of its leadership in protecting the rights of children in conflict-affected areas.

## 7. Human Rights in Countries of Concern

7.1 We welcome the inclusion of "Children's rights" as an area covered within Section IX of the report. However, we feel that the situation and needs of children affected by armed conflict are not sufficiently reflected within the country-specific information). This shortcoming weakens the UK Government's evidence to address and support stability in the long run.

7.2 *Recommendation:* The FCO's work on conflict prevention and stability should take greater consideration of the impact of conflict and instability on children in countries of concern.

*25 May 2012*

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### Supplementary written evidence from the Foreign and Commonwealth Office

I am writing in response to the Clerk of the Committee's letter of 22 June to Barbara Pitts, the Foreign and Commonwealth Office's Select Committee Liaison Officer, following my evidence session with the Committee on the FCO's 2011 Annual Human Rights Report. I will respond to your questions in the order they were asked in the letter.

1. The Committee asked for which groups of people the UK government deems it has a responsibility to secure redress under the terms of Article 14 of the UN Convention against Torture. In the Government's view, the obligation under Article 14 is owed to anyone to whom Article 2 of the same convention applies. This includes anyone within the borders of the United Kingdom, as well as any person outside the UK who is nonetheless considered to fall within territory under UK jurisdiction. This latter category is determined in light of all the circumstances of a given case.
2. On the Government's objectives in relation to the European Commission's review of Regulation (EC) No 1236/2005 concerning trade in items which could be used for torture, we still await notification of the Commission's proposals for the review. But we look forward to engaging constructively with them on it. Key issues from the UK's perspective include an assessment of the effectiveness of the Regulation and its implementation across the EU; potential measures to strengthen controls on trade in equipment and material used for capital punishment or torture including a torture end-use control and new controls on brokering and transit of items listed in the annexes to the Regulation; and a review of the content of the annexes themselves. We would also want to ensure that any new controls did not impact unduly on legitimate trade or impose unnecessary administrative burdens.
3. You asked whether any new arrangements for deportation with assurances (DWA) will be laid before Parliament. Memoranda of Understanding (MoUs) relating to the Government's Deportation with Assurances arrangements are public documents and are all currently available on the FCO website. On 8 November 2011 the Home Secretary issued a Written Ministerial Statement to Parliament confirming that the Foreign Secretary had signed a DWA MoU with Morocco and that copies had been placed in the Library of both Houses. Ministers will similarly notify Parliament of any new DWA arrangements.
4. On whether the FCO is content that the UK Government's policy on deportation of Sri Lankans is not putting people at risk of torture, the UK has a proud record of offering sanctuary to those who need it, but people who do not have a genuine need for our protection must return to their home country. We only undertake returns to Sri Lanka when we and the courts are satisfied that the individual has no international protection needs. The European Court of Human Rights has ruled that not all Tamil asylum seekers require protection.
5. On whether any Government representative has spoken to the former member of the Tamil Tigers whose allegations of torture were reported in The Guardian, as the Committee is aware, we do not comment on individual cases. We take any allegations seriously and all asylum and human rights applications from Sri Lankan nationals—including those from Tamils—are carefully considered on their individual merits in accordance with our international obligations against the background of the latest available country information.
6. You asked when and how the presumption that human rights abusers would not normally be permitted visas to come to the UK was introduced. The necessary power already exists both in the form of the Home Secretary's power to exclude a person and in the Immigration Rules. What we have changed is to make it clear that where there is credible, independent and reliable evidence against such an individual, then they will not normally be permitted to enter the United Kingdom. This leaves human rights abusers in no doubt where we stand.

In the specific context of the Olympic Games, a rigorous process has been designed in partnership with LOCOG, the International Olympic Committee (IOC) and International Paralympic Committee (IPC) to consider all applications for Olympic and Paralympic accreditation and to ensure that decisions are in line with UK immigration law and policy.

7. On why Government policy is not to publicise the names of individuals denied entry to the UK on human rights grounds, it has been the policy of successive Governments not to comment on individual cases unless there is a substantial public interest in doing so. As you are aware, we have a general duty of confidentiality which means that it would not normally be appropriate to discuss details of individual immigration cases. It is also unhelpful to the effective operation of this policy to enter in to a public debate about who should and should not be banned from the UK. Such decisions are by their nature emotive but need to be taken on the basis of objective and verifiable evidence available to Ministers. Disclosing the details of those who are excluded from the UK can also have negative consequences, including for UK interests such as the safety of British nationals overseas and foreign policy objectives.

8. The Committee asked for further information on the level of access that the ICRC have to detainees in prisons in Burma. The ICRC conducts visits to places of detention always and only according to specific criteria, including for example the ability to interview any detainee in private, and with the agreement of the detaining authorities. The ICRC has not had access to detainees in Burma since 2006. The ICRC is seeking to resume substantive dialogue with the Burmese authorities on pressing humanitarian issues such as access to detainees as well as access to civilians in border areas.

   Last year, the ICRC was able to conduct technical assessments in three Burmese prisons concerning their water and sanitation infrastructure. Today, water supply and sanitation works have almost been completed in these places. The ICRC hopes to extend such programmes to other prisons in the country.

   The ICRC's family visit programme for detainees (organisation and funding of transport for the families to visit) was never discontinued and continues as normal.

9. On the circumstances under which UK residents can be prosecuted in the UK for offences committed overseas, and the obstacles the Government sees to making UK firms subject to UK law for their actions overseas, as a general rule the criminal law of England and Wales is territorial in scope, as is that of Scotland and Northern Ireland where criminal law is now devolved, which reflects the principle that crimes are best addressed by the criminal justice system of the state in which they occurred. Conduct that amounts to an offence in the United Kingdom will not amount to an offence if it occurs outside the United Kingdom, unless there is specific statutory provision to the contrary.

   There is now, however, a growing body of provision creating exceptions to the general rule. This body of law provides what is termed "extraterritorial jurisdiction" in respect of a wide range of criminal offences ranging from very serious crimes against humanity, such as genocide and torture, through more mainstream crime such as homicide, sex offences against children and bribery to esoteric areas of the criminal law such as that which serves to protect the integrity of civil nuclear sites. These exceptions stem from the pursuit of domestic policy objectives, and from the United Kingdom's ratification of internationally agreed instruments, reflecting a consensus between nations that certain crimes need to be addressed by a concerted international response that includes the assumption of extraterritorial jurisdiction by participating states.

   The most common exceptions to the general territoriality rule provide for conduct abroad on the part of United Kingdom nationals, and occasionally those that are ordinarily resident in the United Kingdom, to amount to an offence in the UK. The jurisdictional provision in the recently reformed Bribery Act 2010 is a good example. The extension of active nationality jurisdiction to embrace United Kingdom residents is not, however, as yet an automatic corollary of nationality extraterritorial jurisdiction.

   For criminal extraterritorial jurisdiction, nationality can often be defined to include bodies incorporated in the United Kingdom, thus making United Kingdom companies liable for offences committed by them outside the United Kingdom. An offence is committed by a corporate body when it can be proved that, although the offending conduct may have been undertaken by, for example, an employee of the body, a person who is rightly identified as a "directing mind" of the body was possessed of the necessary state of mind for the offence. Accordingly, United Kingdom companies can, for example, be convicted of bribery offences committed overseas on this basis.

10. Committee members asked how many UK and non-UK-based staff at UK Missions overseas work full time on human rights. A survey of our posts covering multilateral work with international organisations, our twenty eight countries of concern and four case study countries shows the number for these countries the figure is 14. This is made up of eight UK-based staff and six locally engaged staff. However, when compiling this data, several posts reported that although human rights is a key priority for them they do not have any staff who work exclusively on human rights. Instead, a high percentage of the time of a number of individuals

is spent on human rights-related work. This is particularly common at smaller posts where there are only a handful of staff, and therefore other areas of work are also part of their job description. In some of our smaller missions for example, 75 percent of an individual's time is spent on human rights work. Taking the full-time figures in isolation does not therefore represent an accurate reflection of the importance we attach to human rights work across our overseas network.

11. On whether the UK is in favour of EU accession to the European Convention on Human Rights, and what the Government's concerns about accession are, we remain committed to fulfilling the obligation arising from the Lisbon Treaty of EU accession to the Convention. The UK is playing a full and constructive part in the negotiations aimed at agreeing the terms of that accession.

EU accession will mean that the EU itself can defend itself before the Court where its own acts are alleged to breach the Convention, and be held to account if a violation is upheld. It will also help to ensure consistency of case-law relating to fundamental rights between the Strasbourg Court and the European Court of Justice.

At the same time, accession of a non-state entity to the Convention is unprecedented. The modalities of accession need to reflect the unique and special nature of the EU as a future contracting party to the Convention. In addition, the EU is not becoming a member of the Council of Europe, unlike all other parties to the Convention, which further complicates the arrangements needed.

We are concerned to get the terms of the Accession Agreement and the accompanying EU Internal Rules that will set out how accession will work internally within the EU right first time. In particular, we are looking at rules to determine how decisions should be made on how the EU participates in cases before the European Court of Human Rights. We believe it is important to consider these arrangements carefully and fully, as, once they have been agreed, it will be extremely difficult to amend the documents.

We share the concern of other parties to the Convention that the EU's accession should not compromise the Convention system, including the functioning of the Committee of Ministers. We need to ensure that accession does not affect the competences of the EU and its institutions. We are also concerned to ensure that the position of EU Member States in relation to the Convention is not affected by EU accession. These are matters to be addressed through the ongoing negotiations on which the Ministry of Justice is the lead Department.

*16 July 2012*

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**Supplementary written evidence from the Foreign and commonwealth Office**

Thank you for your letter of 18 July, seeking additional information on a number of the points covered in my correspondence to the committee of 11 July.

Firstly you asked whether the FCO was satisfied a) with the accuracy of individual assessments that Sri Lankan deportees had no international protection needs and b) that the assessment of risk in such cases had been consistently correct. The FCO works with the UK Border Agency (UKBA) and the Home Office to ensure that the human rights situation in Sri Lanka is monitored and reported on. All asylum and human rights applications from Sri Lankan nationals—including those from Tamils—are carefully considered by the UK BA on their individual merits in accordance with our international obligations, against the background of the latest available country information, which includes FCO input. Depending on the overall assessment of the evidence in each individual case, Individuals who face persecution and/or ill-treatment in Sri Lanka are granted protection. However, we do not accept that all Tamil asylum seekers are in need of international protection and this view has been endorsed by the European Court of Human Rights and the UK courts.

We are aware that the positions of some human rights NGOs differ from our own. We take their views seriously and want to be able to consider properly the evidence that they have. With this in mind, the FCO is facilitating at official level, a dialogue between Human Rights Watch, Freedom from Torture and the UK Border Agency to discuss their reporting and explain the process and information that UKBA use to assess cases. The first introductory meeting took place on 16 August and UKBA are following up with Human Rights Watch and Freedom from Torture seeking more information on the individual cases discussed at the meeting. We hope this new channel of communication will build on the long history of co-operation between the FCO, Human Rights Watch and Freedom from Torture and we were pleased that the parties agreed to a follow-up meeting in a few weeks time. My officials will stay in close contact with your committee staff to update you in due course.

Secondly, you asked the FCO to reconsider its decision not to comment on whether any representative of the UK Government had spoken to the person who was reported in The Guardian on 5 June 2012 to be claim asylum for the second time in the UK, after being deported in 2011. The report claims the individual was tortured after deportation to Sri Lanka. Whilst we are not in the position to comment on individual cases, we can confirm that, in line with standard immigration procedure, a representative of the UK Border Agency has

spoken to the individual concerned. We cannot however provide the details of this case as they are confidential and some information is also subject to the Data Protection Act.

Finally, you asked when the explicit presumption that people who have abused human rights would not normally be permitted to have visas to come to the UK was introduced, and whether this represented a change to the Immigration Rules. As I explained in my response of 11 July, the power to deny entry to the UK to those who are implicated in human rights abuses is already available through the Home Secretary's power to exclude a person from this country and through the existing provisions of the Immigration Rules. Therefore, no change has been or needs to be made to the existing legislation. What I referred to in my evidence session was to our position to make it clear that those who engage in human rights abuses can expect to be refused permission to come to the UK. This change was agreed in April 2012.

The FCO has an important role to play in identifying the individuals who should be refused entry to the UK on the basis of human rights abuses. Our Posts are aware of this and, where they are aware of human rights abuses will refer to the Home Office individuals who should be refused entry to the UK on those grounds. The UK Border Agency will then consider all the evidence and provide advice to Home Office Ministers as appropriate.

*3 September 2012*

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