

Select Committee on Foreign Affairs [First Report](#)

### 3 War against Terrorism

33. The Human Rights Annual Report explicitly states: "Our experience in counter-terrorism tells us that respect for human rights is vital for long term success in the fight against terrorism".<sup>[38]</sup> However, both Amnesty and Human Rights Watch contend that the war against terrorism has led to a large number of human rights abuses and both identify the behaviour of the United States over the past year as a significant challenge to the international consensus on human rights. Pointing to this contradiction, the Council for Arab-British Understanding wrote: "It is our belief that in the war on terrorism, it is vital that we uphold the standards of the rule of international law and demonstrate fairness in application. A failure to do so serves only the interests of the extremists who will highlight this in their propaganda."<sup>[39]</sup>

34. The Government has made clear its opposition to the use of torture. Jack Straw told the Committee in December 2005: "Plainly torture is illegal, complicity in torture is also illegal—it is illegal under our law and under international law."<sup>[40]</sup> Moreover, a growing number of issues linked to the war against terrorism have raised concerns about the widening gulf between the rhetoric of freedom and the implementation of extrajudicial detentions and other human rights abuses. Human Rights Watch commented on the United Kingdom's softening position on the use of torture and its silence on the USA's abuses. "In effect, torture has become a relative matter—to be condemned in all circumstance, except where toleration of torture may appear useful in the war on terror. There appears to be a creeping belief that human rights and security should be treated as alternatives. They are not."

#### Guantánamo Bay

- The FCO Report
- In January 2005 the remaining four detainees returned to the United Kingdom. Five came back in March 2004. However, since the Australian detainee David Hicks won a legal judgement to award him UK citizenship which is subject to appeal by the Government. been awarded UK citizenship. Six non-UK citizens, formerly resident in the United Kingdom, are also in the camp.
- "The UK position has always been clear. The Government believe that [the British detainees] should either be tried fairly in accordance with international standards or be returned to the UK."
- "British detainees have made a number of allegations about their treatment at Guantánamo Bay. The Government has pursued the allegations with the US government."
- The Government argues that the information given by the detainees "has helped to protect the international community from further Al Qaida and related terrorist attacks."
- The Government welcomes the US talks with UN Special Rapporteurs on Torture seeking access to Guantánamo, in the hope that engagement will lead to agreement.

35. Amnesty International has attacked the system of detentions at Guantánamo Bay, saying:

The detention camp at the US Naval Base in Guantánamo Bay in Cuba has become a symbol of the US administration's refusal to put human rights and the rule of law at the heart of its response to the atrocities of 11

September 2001. Hundreds of people of around 35 different nationalities remain held in effect in a legal black hole, many without access to any court, legal counsel or family visits. As evidence of torture and widespread cruel, inhuman and degrading treatment mounts, it is more urgent than ever that the US Government bring the Guantánamo Bay detention camp and any other facilities it is operating outside the USA into full compliance with international law and standards. The only alternative is to close them down.[41]

According to Human Rights Watch, detainees in Guantánamo are subjected to sleep deprivation, loud music, dietary manipulation, isolation, 'hooding', sensory deprivation, exposure to extremes of temperature, and 'water boarding', which involves the simulation of drowning.[42] However, the US government has issued strong denials of mistreatment at the facility.[43] The USA has also made clear that it will continue to hold detainees at Guantánamo Bay, and the US Supreme Court ruled in June 2004 that detainees had a right to appeal their detention, but that they can also be held without charge or trial. The House of Representatives Armed Services Committee has also heard evidence on the Guantánamo Bay complex, but has not opposed the prison complex's existence.[44] In its Report last year, the Committee called on the Government to make strong representations about the abuses committed at Guantánamo Bay. The Government responded both by saying that the US authorities were familiar with the UK position and by expressing support for the negotiations between the UN Rapporteurs on Torture and the US government.[45]

36. However, Human Rights Watch contend that "the UK government chooses to praise the US government even while it remains in blatant defiance of international law. As far as we are aware, the British government has not expressed its concerns about the US failure to provide the conditions in which rapporteurs can do their work. Instead, it has publicly 'welcomed' the alleged 'engagement', which has so far proved worthless." [46]

37. Kate Allen of Amnesty International told the Committee, in relation to the Annual Report: "I think we have moved from commenting in that report on Guantánamo to an attempt to offer an explanation as to why Guantánamo might be necessary." [47] She added that Amnesty International saw the Government's record on Guantánamo as "lamentable and not improving". [48] Amnesty International also brought forward their concerns about the 210 men on hunger strike in Guantánamo Bay, and said that if diplomatic routes are not working, then the United Kingdom should take a more publicly critical stance against the detention facility. [49]

38. The Minister for Human Rights was quick to reject these suggestions. He told us: "We made clear to the US authorities on many occasions and at every level that we regard the circumstances under which detainees are held in Guantánamo Bay as unacceptable, and the US Government knows our view on this." [50]

**39. We conclude that the continued use of Guantánamo Bay as a detention centre outside all legal regimes diminishes the USA's moral authority and is a hindrance to the effective pursuit of the war against terrorism. We recommend that the Government make loud and public its objections to the existence of such a prison regime.**

### **Extraordinary or irregular rendition**

40. As part of its efforts in the war against terrorism, the US government has made use of extraordinary rendition, a procedure whereby criminal suspects are sent to other countries for interrogation. That interrogation may involve the use of torture by the recipient state. Detainees have no access to lawyers and details of their detention may not be passed to the relevant consulates; they may be sent to Egypt, but other destinations may include Jordan, Morocco, Uzbekistan and Pakistan. Accusations have also emerged suggesting that the USA sends or renders terrorism suspects to a system of prisons across Eastern Europe, possibly in Poland and Romania, and Asia, known to the CIA as "black sites". This policy is known as "extraordinary rendition". An article by Dana Priest in the Washington Post referred to a Soviet era compound in Eastern Europe: "The secret facility is part of a covert prison system set up by the CIA nearly four years ago that at various times has included sites in eight countries, including Thailand, Afghanistan and several democracies in Eastern Europe, as well as a small centre at the Guantánamo Bay prison in Cuba... The hidden global network is a central element in the CIA's unconventional war on terrorism." [51]

41. Other evidence of extraordinary rendition includes details Amnesty International outlined to us of "ghost detainees". This was referred to in the report by Major General Taguba into the scandal at Abu Ghraib prison in Iraq, and described by Amnesty International as the "clear documentation that these are the practices that the US administration is using."<sup>[52]</sup> The Intelligence and Security Committee also quoted the Security Service in a report of March 2005 saying: "Clearly the US is holding some Al Qaida members in detention, other than at Guantánamo, but we do not know the locations or terms of their detention and do not have access to them. The US authorities are under no obligation to disclose to us details of all their detainees and there would be no reason for them to do so unless there is a clear link to the UK."<sup>[53]</sup> Additionally, Kate Allen of Amnesty International pointed in her testimony to the cases of two men, Muhammed Bashmilah and Salah Salim Ali, from Yemen; they were arrested in Jordan in 2003, and then held incommunicado for more than a year, were transported between detention facilities and interrogated by guards they said were from the USA.<sup>[54]</sup> Steve Crawshaw of Human Rights Watch referred to a series of investigations carried out by Human Rights Watch into airplane logs, and flights between Afghanistan and Romania and Poland.<sup>[55]</sup>

42. These accusations raise serious concerns about the scale of the USA's extrajudicial detentions. Critics have suggested this policy amounts to torture by proxy and argued that it is in breach of international law since the Convention against Torture and other Degrading or Inhuman Treatment (CAT) prohibits sending people to destinations where they may be in danger of torture. The Convention states in Article 2(2): "No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture."<sup>[56]</sup> Article 3(1) states: "No State party 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."<sup>[57]</sup>

43. An element of debate revolved around differences in definition of torture between the USA and the UK, which may have given the US wider leeway to carry out these activities. However, the Foreign Secretary Jack Straw was quick to emphasise that while US law differed from that in the United Kingdom, both states adhered to the CAT.

On the question of definitions [of torture], the United Kingdom understands the term "torture" to have the meaning set out in Article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Article 1 CAT defines torture as 'any act by which severe pain or suffering whether physical or mental is intentionally inflicted...'. It does not, however, give specific examples of what constitutes torture. The understanding of the definition of torture made by the US on ratifying CAT specifies the meaning of "mental pain or suffering" in more detail than Article 1 CAT. The UK made no reservations or understandings on ratification and has not adopted a formal definition of what constitutes mental pain or suffering for the purposes of Article 1. Section 134 of the Criminal Justice Act 1988 provides that a public official commits torture if he intentionally inflicts severe pain or suffering on another in the performance of his duties, and does not define "severe pain or suffering".... On the question of definitions, I would also note that, under US legislation, the term 'cruel, inhuman or degrading treatment' is to be interpreted according to the US Constitution. But the essential fact is that "cruel, inhuman or degrading treatment" of any detainees held by the US Government anywhere is legally banned under US law.<sup>[58]</sup>

Nonetheless, a range of investigations into extraordinary rendition and black sites have been launched across Europe, driven by concerns about the use of torture. The Council of Europe has launched an investigation and invoked Article 52 of the European Convention on Human Rights, formally requesting information from forty-five governments.<sup>[59]</sup> Investigations are also under way at a judicial level in Germany, Italy and Spain into extraordinary renditions.

44. The US Secretary of State, Condoleezza Rice has denied the use of torture, in response to a letter written by Foreign Secretary Jack Straw on behalf of the United Kingdom as Presidency of the European Union. On 5 December 2005 she said:

Rendition is a vital tool in combating trans-national terrorism. Its use is not unique to the United States, or to the

current administration...[However] the United States does not permit, tolerate or condone torture under any circumstances.

- The United States has respected—and will continue to respect—the sovereignty of other countries.
- The United States does not transport, and has not transported, detainees from one country to another for the purpose of interrogation under torture.
- The United States does not use the airspace or the airports of any country for the purpose of transporting a detainee to a country where he or she will be tortured.
- The United States has not transported anyone, and will not transport anyone, to a country when we believe he will be tortured. Where appropriate, the United States seeks assurances that transferred people will not be tortured.[60]

45. Although the Annual Report makes no mention of the British stance on rendition, allegations have also surfaced that the United Kingdom may be playing a role in the process of extraordinary rendition by turning a blind eye to the USA's activities. Reports in the Guardian newspaper in September 2005 said: "Aircraft involved in the operations have flown into the UK at least 210 times since 9/11, an average of one flight a week. The 26-strong fleet run by the CIA have used 19 British airports and RAF bases, including Heathrow, Gatwick, Birmingham, Luton, Bournemouth and Belfast. The favourite destination is Prestwick, which CIA aircraft have flown into and out from more than 75 times. Glasgow has seen 74 flights, and RAF Northolt 33." [61] The Government outlined what obligations flights passing through the United Kingdom had to disclose passenger lists:

Official permission (ie diplomatic clearance) is not needed for non-scheduled, non-commercial civil aircraft, including VIP flights over-flying or landing at civilian airports in the UK. In such cases the flight operator simply files the aircraft flight plan to the central Integrated Flight Plans Systems (IFPS). In the case of military or State aircraft landing at military airfields, clearance is sought from the MOD. Certain countries have a block clearance on a yearly renewable basis in a quid pro quo agreement (US, Germany, Italy and many others). Otherwise all nations must formally request permission to land or transit. However, neither international nor national aviation regulations require the provision of passenger information when transiting UK territory or airspace.[62]

46. A range of instruments to which the United Kingdom is a signatory prohibit torture, including the European Convention on Human Rights, and prohibition of torture is considered a customary international law in some circles.[63] While the evidence at present is circumstantial, the United Kingdom has an obligation to investigate these allegations, according to Professor James Crawford of Cambridge University. He wrote in an opinion for the All Party Group on Extraordinary Rendition, chaired by Andrew Tyrie MP: "Regardless of the United States' position, the United Kingdom has an independent obligation to ensure that its territory is not used to send any person to a country where there is a real risk that he may be tortured." He went on to describe how international law requires that torture be guarded against by active measures, pointing particularly to the duty to enquire. "The duty to investigate arises where a prima facie case exists that the Convention has been breached. Credible information suggesting that foreign nationals are being transported by officials of another state, via the United Kingdom, to detention facilities for interrogation under torture, would imply a breach of the Convention and must be investigated." [64] Steve Crawshaw agreed with this point of view when he told us: "I think merely to say, "Oh we did not know", is a most inappropriate response...If they did not know, why are they not asking the questions?" [65]

47. Last year the Committee examined the issue of extraordinary rendition and concluded in its Report on Foreign Policy Aspects of the War against Terrorism: "If the government believes that extraordinary rendition is a valid tool in the war against terrorism, it should say so openly and transparently so that it may be held accountable. We recommend that the Government end its policy of obfuscation and that it give straight answers to the Committee's questions of 25 February." [66]

48. The Government responded by claiming that its response had given a clear explanation of its policy towards rendition, saying that its "policy is not to deport or extradite any person to another state where there are substantial grounds to believe that the person will be subject to torture...The British Government is not aware of the use of its

territory or airspace for the purposes of 'extraordinary rendition'." [67] The Foreign Secretary also issued a long statement on extraordinary rendition on 20 January 2006, in which he made reference to a leaked document which appeared to demonstrate the Government's determination to limit debate on rendition; in the statement, Jack Straw said again that the United Kingdom had no knowledge of the transfer of people through British airspace for the purposes of extraordinary rendition, and that the FCO had completed a search for any requests from the USA. [68]

49. The Government is sticking to this line. The Foreign Secretary told us on 24 October 2005 that its position in respect of extraordinary rendition "has not changed. We are not aware of the use of our territory or air space for the purpose of extraordinary rendition. We have not received any requests or granted any permissions for use of UK territory or air space for such purposes. It is perfectly possible that there have been two hundred movements of United States aircraft in and out of the United Kingdom and I would have thought it was many more; but that is because we have a number of US air force bases here, which, under the Visiting Forces Act and other arrangements they are entitled to use under certain conditions." [69] On 12 December 2005 the Foreign Secretary issued a written answer stating that research by Government officials had failed to identify any occasion since 11 September 2005 when the USA had requested permission for a rendition from or through the United Kingdom. [70]

50. Ian Pearson, the Minister of State, echoed this stance, saying: "We have not received any requests and we have not granted any permission for the use of UK territory or airspace for such purposes, so we can be very clear on that. The issue, however, arises because under UK and international law carriers are not obliged to provide a passenger list or to obtain permission from the Government to refuel." [71] He also rejected suggestions that officials had kept the information from Ministers, and made clear that the Government, which included officials and ministers, was "not aware" of the use of British airspace for extraordinary rendition, although the Government was "very aware of the allegations." [72] Kim Howells, Secretary of State for Foreign and Commonwealth Affairs, said on 10 January 2006: "If we were requested to assist another state in a rendition operation and such assistance were lawful, we would decide whether or not to do so, taking into account all the circumstances. We would not assist in any case if doing so put us in breach of UK law or our international obligations, including those under the UN convention against torture." [73]

51. While we welcome the decision to ask for more information at the EU level, we seriously regret that the Government failed to request information at a bilateral level and that only after prodding by European Union member states has the Government made any effort to investigate serious allegations.

**52. We conclude that the Government has a duty to enquire into the allegations of extraordinary rendition and black sites under the Convention against Torture, and to make clear to the USA that any extraordinary rendition to states where suspects may be tortured is completely unacceptable.**

53. In December 2005 Foreign Secretary Jack Straw told us: "At the same time we have to take account of our suspicions as to where [intelligence] has come from and not ever either to authorise the use of torture in the obtaining of intelligence or to suggest that we are somehow complicit or accommodating to this, because we are not, and I am not. I am against it." [74] However, a number of allegations about extraordinary rendition have continued to arise, such as that involving Benyam Mohammed al-Habashi who claims that he was subject to rendition, [75] and the Committee has requested additional information from the Foreign and Commonwealth Office. We intend to pursue the matter of extraordinary rendition further in our ongoing inquiry into Foreign Policy Aspects of the War against Terrorism.

### **Use of information derived by torture**

54. Another related concern is the use of information derived from states which practise torture. Former British Ambassador to Uzbekistan Craig Murray has contacted the Committee to allege the Government's use of information provided by states which practise torture. He has drawn the Committee's attention to certain documents which he feels demonstrate that the UK has used information acquired by torture, and the Committee has written to the FCO requesting the documents, which are classified.

55. Human rights organisations have concerns about the use of information derived from states which practise torture. The Campaign Against Criminalising Communities (CAMPACC) contend that the "UK cooperates with governments who regularly practise torture against detainees, thus acting in complicity in those acts. This liaison provides an incentive for such countries to torture their detainees." [76] Steve Crawshaw from Human Rights Watch also told the Committee that when she was questioned on the use of information acquired by torture to the House of Lords, "Eliza Manningham-Buller in one of her submissions said as much as [this]: 'We're not going to ask, because that would make things difficult.'" [77] Human Rights Watch condemned the Government's use of information derived from states which use torture, saying that this "cannot simply be portrayed, as ministers are sometimes inclined to do, as a one-off example about when a government receives a key piece of information about an imminent attack. The policy cloaks a clear long-term relationship between the torturing regimes and recipients of the torturer's information... It is regrettable if the UK government fails to understand the extent to which such a relationship gives comfort and encouragement to the torturers." [78] The submission adds that often if the Government does not know about torture, "that is because it chooses not to know." [79] Additionally, in a ruling by the House of Lords against the admissibility of evidence derived from torture on 8 December 2005, Lord Hofman stated: "The use of torture is dishonourable. It corrupts and degrades the state which uses it and the legal system which accepts it." [80]

56. In our Report Last year, we concluded that "we find it surprising and unsettling that the Government has twice failed to answer our specific question on whether or not the UK receives or acts upon information extracted under torture by a third country." [81] In response the Government told us that it evaluates all information, and takes its origins into account, but contended that this approach "is not the same as operating a general policy of use of information extracted under torture." [82]

57. We welcome the Minister of State Ian Pearson's comments to us on 23 November 2005, when he told us that the United Kingdom had "extensive safeguards in regard to evidence that may be obtained by torture." [83] However, we note that he added that when "we get to the situation where there is evidence that might prevent a future suicide bombing and we have suspicions that that evidence might have been obtained through torture, well, I think we have to use the evidence. I do not think that you can take a purist approach and completely ignore what might turn out to be vital evidence that will save the lives of UK citizens." [84] He went on to say that if "we could save British lives by using some information which has been obtained by horrible means then I think we probably do have to do that." [85]

**58. We welcome the Government's new frankness on the question of the use of information derived by other states from torture. We recommend that a policy of greater transparency be maintained. However, we conclude that the use of such information presents serious ethical dilemmas in terms of complicity, especially in the wake of a ruling by the House of Lords which described the use of torture as "dishonourable". We recommend that the Government clearly set out its policy on the use of information derived by other states through torture in its response to this Report and that it encourage a public debate on the ethical dilemmas it faces.**

### **Diplomatic Assurances**

59. The Government wrote in its response to the Committee's latest report on Foreign Policy Aspects of the War against Terrorism, that its "policy is not to deport or extradite any person to another state where there are substantial grounds to believe that the person will be subject to torture or where there is a real risk that the death penalty be applied." [86] However, the Government has also sought measures to expel people suspected of engaging in terrorism or terrorism sponsoring activities. Part of this effort has included obtaining Memoranda of Understanding from a number of states including Jordan, Egypt, Libya and Algeria which offer diplomatic assurances that the extradited people will not suffer torture or ill treatment. [87] Libya for instance signed a Memorandum of Understanding with the UK on 18 October 2005. [88]

60. There are however some doubts about the system of monitoring. Manfred Nowak, the UN Special Rapporteur on

Torture, has expressed opposition to the use of diplomatic assurances by the United Kingdom.<sup>[89]</sup>

In November 2004, the Committee against Torture, the body responsible for monitoring implementation of the [Convention Against Torture], the body responsible for monitoring implementation of the CAT, expressed concern at the UK's use of diplomatic assurances...in circumstances where its minimum standard for such assurances, including effective post-return monitoring arrangements and appropriate due process guarantees were not wholly clear. The Committee requested that within one year the United Kingdom provide it with details on how many cases of extradition or removal subject to receipt of diplomatic assurances or guarantees has occurred since 11 September 2001, what the State Party's minimum contents are for such assurances or guarantees and what measures of subsequent monitoring it has undertaken in such cases.<sup>[90]</sup>

61. The legality of the Memoranda of Understanding is also questionable. The UN Convention against Torture and other Cruel, Degrading or Inhuman Treatment (CAT) explicitly prohibits the transfer of a person to a state where they may be in danger of torture, and recent jurisprudence has raised serious doubts about the validity of diplomatic assurances as a guarantee against torture. A ruling in the case of *Chahal v United Kingdom* (1996) by the European Court of Human Rights also established that diplomatic assurances are an inadequate guarantee where torture is "endemic" or a "recalcitrant or enduring problem"; and more recently a UK court found against extradition in *Russia v Zakayev* (2003) because Akhmed Zakayev, a prominent Chechen exile in London, since his treatment in detention in Russia could prejudice the outcome of his trial.<sup>[91]</sup>

62. Steve Crawshaw of Human Rights Watch attacked the use of Memoranda of Understanding, saying that "these things absolutely do not work, and indeed, that they cannot work."<sup>[92]</sup> Evidence from Human Rights Watch to the Human Rights Committee outlined why they feel they cannot work:

The issue of post return monitoring is clearly the most contested area presently in the debate over the use of diplomatic assurances. I think it is important to begin by saying what these proposed post return monitoring mechanisms are not. What they are not is anything that is comparable to the kind of systematic institutional-wide monitoring that the International Committee of the Red Cross undertakes. The International Committee of the Red Cross will not undertake monitoring in a detention facility unless they have global access to all of the prisoners in that facility. There are a number of reasons for that. One of the reasons is a moral one, which is that it is not morally acceptable to be in a situation where you are monitoring a select group of detainees within a facility while allowing the other detainees in the facility to be subject to whatever treatment they may be subject...The second reason is a practical one, which is that if you are conducting interviews with detainees, assuming that you have confidential access to the detainees, you are monitoring the entire population, if reports of ill-treatment come to your attention and you have interviewed 100 prisoners, you can take those reports as the International Committee of the Red Cross to the prison authorities without fear that the person who provided that information to you will be clearly identified and will be subject to reprisals or, indeed, their family members will be subject to reprisals. That is not the case in respect of the kind of monitoring which is proposed under these diplomatic assurances, or these Memoranda of Understanding as the UK terms them.<sup>[93]</sup>

63. However, the Government claims the Memoranda of Understanding overcome any concerns, since they include a number of provisions for treatment in line with international standards, a prompt judicial process which would include a right to defence, and rights to meetings with an organisation nominated by both states as a monitor.<sup>[94]</sup> The Minister told us: "The wording of the MOUs makes clear that treatment is expected to be in accordance with international obligations...we will not send people back where there is a substantial risk that they will be tortured."<sup>[95]</sup>

64. The text of the Memorandum of Understanding with Jordan reads: "If a returned person is arrested, detained or imprisoned within 3 years of the date of his return, he will be entitled to contact, and then have prompt and regular visits from the representative of an independent body nominated jointly by the UK and Jordanian authorities. Such visits will be permitted at least once a fortnight, and whether or not the returned person has been convicted, and will include the opportunity for private interviews with the returned person. The nominated body will give a report of its

visits to the authorities of the sending state." [96] The Minister described the purpose of such wording: "Written into the memoranda of understanding is information about the monitoring requirements, and so the intention is that we would deport suspected terrorists and we would do so to countries who signed memoranda of understanding and who agreed to monitoring arrangements." [97] He added that the monitoring arrangements were still under discussion. [98]

65. Nonetheless, we retain strong concerns that the monitoring arrangements are not adequate. Steve Crawshaw of Human Rights Watch made an important point when he told us: "I think [the Government] feel that the British public perhaps does not mind so much because they assume that those people deserve to have whatever happens to them happening to them, and that is a quite different argument which I would like to hear rather more bluntly put by the British government. If that is what they are thinking, then they should say that and not pretend that the torture will not in fact take place." [99]

**66. We conclude that the Government should only use Memoranda of Understanding when it can be sure that the monitoring mechanisms in place are entirely effective, and that the Memoranda must not be used as a fig leaf to disguise the real risk of torture for deported terrorism suspects. We recommend that in its response to this Report the Government give full information on the monitoring arrangements which apply under existing Memoranda of Understanding, including where possible examples of how they work in practice.**

## **Iraq**

67. The Annual Report contains an extensive section on Iraq, which describes among other things the photographs taken in Abu Ghraib prison in 2004, and the subsequent investigation into abuses by the United States. It comments: "These enquiries concluded that the incidents of abuse were the result of the behaviour of a few sadistic individuals and a failure of oversight by commanders, rather than the result of US policy or procedures." [100]

68. However, some witnesses were critical of this part of the Annual Report. Kate Allen told the Committee that Amnesty "would question the broadly positive tone of that entry." In addition, the Council for Arab-British Understanding (CAABU) in its submission pointed to gaps in the report, saying: "The primary concern that CAABU has with regards to the Iraq section of the Human Rights Report is the startling lack of a response to the alleged human rights violations during the assault on Falluja in November 2004. Amnesty International reported a number of breaches in human rights law on the part of American and Iraqi forces as well as on the part of insurgents. For example, health workers and medical facilities appeared to be a direct target of American and Iraqi forces... We strongly recommend the Foreign Office to make efforts to improve its monitoring of human rights abuses on the part of occupying forces in Iraq." [101] Our Committee also has particular concerns about the revelations about the use of white phosphorous in the campaign in Falluja in 2004. [102]

69. The Jubilee Campaign also raised the lack of reference in the Report to some religious minorities in Iraq, saying: "The fact that the Iraq section of the FCO's annual report gave no specific attention to the desperate situation of Iraq's Christian community suggests that the Foreign Office has seriously underestimated the vulnerability of this community and the intensity of the pressures and attacks they are facing." [103] The discovery by US troops of 170 detainees held by Iraqi government forces in terrible conditions in November 2005 raised other concerns; the Human Rights Minister told us that the Government was taking a strong interest in the subsequent investigation. [104]

**70. We recommend that the 2006 edition of the Annual Report should incorporate more information about the human rights situation in Iraq, including the impact on civilians of intense military operations such as those in Falluja in 2004, the position of Christian and other religious minorities and the treatment of detainees by the Iraqi government.**

71. Another major human rights concern has been the treatment of detainees by US and UK troops, to which our predecessor committee gave serious attention last year. In response to our predecessor committee's report, the Government wrote: "The Government have made clear to the US Government our concerns about the treatment of detainees in Iraq, Guantánamo Bay and Afghanistan and will continue to do so, as necessary." [105]



72. The Annual Report contains a section on the abuses committed by coalition forces in Iraq, which states that "the UK condemns utterly all forms of abuse and take allegations of abuse extremely seriously."<sup>[106]</sup> It outlines the abuses committed by US personnel at Abu Ghraib and the subsequent investigations.<sup>[107]</sup> The report also describes the outcome of investigations of abuses committed by UK personnel, which resulted in a court martial in Osnabruck finding four men guilty of abuses. The Chief of General Staff Mike Jackson apologised and said that the British Army would examine the situation and implement measures to ensure they do not take place again.<sup>[108]</sup> However, a video of British soldiers abusing Iraqis in early 2004, which was revealed in February 2006, raises renewed concerns.<sup>[109]</sup> **We urge the Government to ensure that all appropriate measures are in place to curtail any possibility of abuses by coalition forces, and we recommend that the Government set out what it has done to prevent their re-occurrence.**

73. However, Human Rights Watch was very critical on the question of US abuses. "These sections are seriously misleading. They appear to be deliberately framed in order to avoid confronting the reality. The evasion is inexcusable... We find it difficult to reconcile the facts set forth in Human Rights Watch's reports on this subject with the conclusion in [the FCO Annual Report] report that 'five substantial inquiries' were conducted. In reality, the inquiries were not comprehensive, and were framed in a manner which ensured that senior military commanders and politicians would not be held accountable."<sup>[110]</sup>

74. Tim Hancock from Amnesty International echoed Human Rights Watch's concerns, saying: "We are still concerned about the way in which detainees are being treated. We do not think...that all the inquiries and all of the learning about Abu Ghraib has been done, particularly by the US government, and so in no way would we say we are comfortable with the US in particular continuing to hold detainees."<sup>[111]</sup>

75. The United Kingdom should play a particular role on this issue given its close alliance with the USA. Human Rights Watch said: "The voice of the UK is loudly heard in the United States. UK silence, in this context, is thus especially eloquent. In effect, the silence makes the United Kingdom complicit with US crimes. This silence, combined with misleading characterisations which actively seek to exculpate the US administration in its trampling of international commitments, should finally come to an end."<sup>[112]</sup>

**76. We conclude that the United Kingdom has a responsibility to engage its ally both privately and publicly on the question of abuses by US troops. We recommend that the Government make clear and public its condemnation of human rights abuses committed by any of the multinational forces in Iraq, and that its coverage in the human rights report should expand to include more detail of the USA's investigations into abuses committed by its soldiers and of the measures in place to prevent their recurrence.**

### **Trial of Saddam Hussein**

77. Another issue of the greatest interest for human rights in Iraq is the trial of Saddam Hussein which opened on 19 October. The only charges so far detailed against Saddam and seven associates relate to 143 executions in the Shia village of Dujail in 1982, which followed a failed assassination attempt on Saddam as his motorcade passed through the town. All eight men pleaded not guilty and after just over three hours, the trial was adjourned until 28 November. The trial has since reopened.

78. In its Report in July 2004, our predecessor committee assessed the role played by the United Kingdom in assisting the new Iraqi judiciary and Iraqi Special Tribunal (now known as the Supreme Iraqi Criminal Tribunal). The British assistance involved:

- a "significant contribution" in the area of human rights;
- developing the tribunal's investigations strategy;
- training judges for the tribunal;
- assisting the drafting of the Statute and Rules of Procedure for the tribunal; and

- assisting the redrafting of the Rules of Procedure and the drafting of Elements of Crime.[113]

79. However, a report by Human Rights Watch released on 16 October 2005 sets out a list of problems with the tribunal that it argues risk violating basic fair trial guarantees protected by international human rights law. These include:

- No requirement to prove guilt beyond reasonable doubt.
- Inadequate protections for the accused to mount a defence on conditions equal to those enjoyed by the prosecution.
- Disputes among Iraqi political factions over control of the court, jeopardising its appearance of impartiality.
- A draconian requirement that prohibits commutation of death sentences by any Iraqi official, including the president, and compels execution of the defendant within 30 days of a final judgment.[114]

In their submission, Human Rights Watch said that "it is wrong to think that judicial shortcuts—including, for example a lower threshold of guilt than the international norm—help to create a more stable Iraq." [115] Another problem raised in our evidence sessions was the question of security of lawyers and witnesses. Kate Allen said: "I think that the murder of some of the lawyers involved is deeply to be regretted and I think that the Court needs to consider what protection it needs to be able to restart this process." [116]

80. We asked the Minister for Human Rights about these problems and he told us: "We want to ensure that Saddam receives proper justice and a transparent and an open trial process... We have been encouraging the Iraqi government to make sure that all the necessary steps are taken to provide protection for the legal team and, indeed, all those others who are involved in the trial process." [117] The walk out of the indictees from the trial in February 2006 also raises issues about the efficacy of the process.

**81. We conclude that while the trial of Saddam Hussein is a matter for the Iraqi people, the Government should urge the Iraqi administration to ensure the trial fulfils the accepted norms of justice. We recommend that the Government set out in its response to this Report how the United Kingdom will do so, for instance by providing security for lawyers and witnesses at the trial and by offering support for the Iraqi authorities in ensuring the application of due process of law.**

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