



## United Kingdom

### Amnesty International submission to the UN Universal Periodic Review 13<sup>th</sup> session of the UPR Working Group, May-June 2012

#### Follow up to the previous review

At the time of its first UPR in April 2008, the UK accepted a number of recommendations made by other States including on issues related to counter-terrorism,<sup>1</sup> violence against women<sup>2</sup> and human rights obligations in armed conflict.<sup>3</sup>

Some positive steps have been taken by the government with respect to these recommendations, for example as regards violence against women. An action plan has been developed entitled *Action Plan: Call to End Violence Against Women and Girls*, and there has been a change to the “no recourse to public funds rule” which made it almost impossible for women subject to immigration control who had experienced violence in the UK, to access income and housing support.<sup>4</sup> From April 2012, a change in policy will mean that women who apply for leave to remain in the UK using the Domestic Violence Rule will be allowed to access benefits necessary to fund emergency accommodation.<sup>5</sup> However, regrettably there has been no progress on setting up an observatory or strategic oversight body, independent of the government, to ensure more effective protection of women and girls from violence. There is also widespread concern about the failure of central government to ensure that all women and girls who experience violence have access to specialised support in the community to help them escape abuse and rebuild their lives.

With respect to recommendations made in the context of counter-terrorism and human rights, a move in the right direction has been the reduction in the number of days an individual suspected of terrorism-related offences can be detained before charge. However, several counter-terrorism policies continue to give rise to concern, including plans to further expand the deportation with assurances programme (see below).

Finally, in Amnesty International’s view the 2008 UPR did not adequately address some key human rights concerns in the UK, or result in adequate recommendations. Many of the human rights concerns raised by Amnesty International at the time remain and are therefore included in this submission with recommendations for action by the government to address them.

## Normative and institutional framework of the State

### *Domestic legal framework*

Amnesty International is concerned about statements by UK government ministers about their intention to “scrap” the Human Rights Act, which gives effect to rights in the European Convention for the Protection of Human Rights and Fundamental Freedoms in domestic law.<sup>6</sup> A Commission has been set up to explore the creation of a Bill of Rights which would incorporate and build on the UK’s obligations under the Convention. However, the Commission operates within a political environment that is openly hostile to human rights, and Amnesty International fears that the process may lead to a reduction in their promotion and protection by weakening the framework for enforcing those rights.

There has also been no significant progress in creating a Bill of Rights for Northern Ireland tailored to its particular circumstances and history. Amnesty International considers that this must be separate from the broader discussion of a Bill of Rights for the UK.

While the Human Rights Act protects civil and political rights, the UK has not taken adequate measures to ensure that victims are able to access appropriate means of redress for violations of rights protected by the International Covenant on Economic, Social and Cultural Rights.

### *Extraterritorial applicability of human rights protection*

The UK continues to take a narrow view of the extraterritorial application of international and regional human rights treaties, thereby undermining human rights protection and obstructing efforts by victims to obtain remedies and reparation for human rights violations. For example, with respect to military operations overseas, the UK has emphasized that although its armed forces are required to comply with the absolute prohibition against torture as set out in the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, it has denied that the broader obligations and protections under the Convention, such as those in Article 2 to prevent acts of torture, apply extraterritorially.<sup>7</sup> Similarly, the UK has attempted to limit the extent to which the European Convention on Human Rights applies to the actions of its armed forces abroad, arguing strenuously in two cases heard by the European Court of Human Rights – namely *Al-Skeini* and *Al-Jedda* - that protections of the Convention should not apply to UK forces in Iraq. These arguments were rejected by the Court, which in both cases found that the individuals concerned were within the UK’s jurisdiction under Article 1 (obligation to respect human rights).<sup>8</sup>

A restrictive interpretation of the extraterritorial application of human rights protections under international law is also reflected in the UK’s stance with respect to its obligations to regulate UK-based companies operating overseas. For example, a Business and Human Rights Toolkit published by the UK Government in 2009 states that “the UK does not owe legal obligations to ensure that UK companies comply with UK human rights standards overseas”.<sup>9</sup> It appears that the UK neither recognises nor intends to observe its duties to ensure UK companies and members of UK-based corporate groups respect human rights when operating abroad. In September 2011 the Committee on the Elimination of Racial Discrimination 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.”<sup>10</sup>

## Promotion and protection of human rights on the ground

### *Human rights protection and counter-terrorism measures*

During the last cycle of the UPR the UK accepted a recommendation to “continue to review all counter-terrorism legislation and ensure it complies with the highest human rights standards”. Though reviews have been conducted,<sup>11</sup> counter-terrorism legislation and policy still fails to comply with the highest human rights standards in a number of contexts including:

- **Control orders:** In January 2011 the government announced its intention to end the control order regime.<sup>12</sup> However, it will be replaced with “Terrorism Prevention and Investigation Measures” (TPIMs),<sup>13</sup> a regime that retains the basic concept of control orders, albeit with some minor changes. The renamed regime allows administratively-ordered restrictions – which are slightly narrower than, but similar to, the restrictions under the previous regime - to be placed on individuals suspected of involvement in terrorism-related activity.<sup>14</sup> As with control order restrictions, TPIMs can amount to deprivation of liberty or constitute restrictions on the rights to privacy, expression, association and movement.<sup>15</sup> The procedure for challenging the imposition of these measures still allows the government to rely on secret material which is not disclosed to the individual concerned or their lawyer of choice. The government has also prepared draft legislation, to be introduced in an undefined emergency situation, which would provide for “enhanced” TPIMs.<sup>16</sup> If enacted, such enhanced measures would allow the imposition of the most severe restrictions previously available under the control orders regime.
- **Deportations with assurances:** The government has reaffirmed its intention to extend its deportations with assurances programme in order to facilitate the return of individuals, alleged to pose a threat to national security, to states where they face a real risk of torture and other ill-treatment.<sup>17</sup> Amnesty International considers that such unenforceable promises of humane treatment, given by governments that torture, cannot reliably, effectively and sufficiently eliminate real risks of torture and ill-treatment of the individual upon return. Consequently, any expansion of their use would be inconsistent with the UK government’s human rights obligations.<sup>18</sup> The UK government has posited that the provision of post-return monitoring will ensure safety on return. However, no system of post-return monitoring of individuals will render assurances an acceptable alternative to rigorous respect for the absolute prohibition of transfers of individuals to states where they are at real risk of torture or other ill-treatment.
- **Pre-charge detention:** The number of days that an individual suspected of terrorism-related offences can be held in pre-charge detention was recently reduced from 28 to 14 days.<sup>19</sup> Whilst this represents a step in the right direction, Amnesty International considers that the current 14 day limit is itself too long a period to detain individuals suspected of criminal offences without charge. The government has also published draft legislation which would allow the maximum period of pre-charge detention to be raised back to 28 days in response to an unspecified future “urgent situation”.

### *Failures of accountability*

In the context of the 2008 UPR, Amnesty International raised concern over failures of accountability by the UK.<sup>20</sup> Regrettably, serious problems remain in this area, particularly in respect to allegations of UK complicity in torture and other human rights violations of individuals detained abroad in the context of counter-terrorism operations.<sup>21</sup> In July 2010 the government announced the establishment of the Detainee Inquiry to look into these allegations. However, the Protocol of the

Detainee Inquiry falls short of human rights standards regarding the requirement to carry out effective, independent, impartial and thorough investigations into alleged human rights violations. Amnesty International is particularly concerned that the government retains the final say regarding the disclosure of information by the Detainee Inquiry. Such control undermines the independence of the Detainee Inquiry, as well as its effectiveness in offering some aspect of redress to alleged victims.<sup>22</sup>

***Justice and Security Green Paper:*** In October 2011, the government put forward a number of proposals in a Green Paper on Justice and Security, which give rise to concern.<sup>23</sup> Firstly, it proposes to expand the use of closed material procedures in civil proceedings, including in civil claims for damages where the state is accused of human rights violations. These procedures essentially allow the relevant court or tribunal to consider secret material presented by UK authorities in closed hearings. Such material is withheld from the other party, their lawyer of choice, and the public, none of whom has access to the closed hearing. Instead a Special Advocate is appointed to represent the interests of the excluded party in the closed part of the hearing. Amnesty International considers that the proposed measures would threaten fair trial rights in the UK and could result in victims of human rights violations being deprived of effective access to a judicial remedy. Amnesty International is also concerned that, if implemented, some of the proposals would allow the government to avoid scrutiny and criticism of its human rights record by severely limiting the ability of victims of human rights violations to seek disclosure of material pertaining to those violations in domestic courts on national security grounds.<sup>24</sup>

#### *Protection of asylum-seekers and migrants*

Amnesty International is concerned by reports of dangerous and unsuitable control and restraint techniques used by private security companies contracted by the authorities during enforced removals from the UK.<sup>25</sup> In at least one case, these techniques appear to have resulted in the death of an individual.<sup>26</sup> Credible evidence indicates serious failings in the training of private contractors enforcing removals.<sup>27</sup>

Amnesty International is also concerned that in many cases detention solely for immigration purposes does not comply with relevant international refugee and human rights law and standards.

Amnesty International is concerned at the government's proposal to abolish the migrant domestic workers visa enabling holders to change employers and still continue to work lawfully in the UK. The visa was originally introduced to address concern that many migrant domestic workers - the majority of whom are women – were becoming trapped in exploitative and abusive working relationships because their continued lawful stay in the UK was contingent on their continued employment by that employer.<sup>28</sup> In light of this, the abolition of visa is likely to lead to an increase in the numbers of foreign workers subjected to exploitation and/or abuse.

Finally, Amnesty International is concerned that proposed cuts to publicly-funded legal representation (legal aid) will exacerbate the lack of legal aid for asylum and immigration legal advice, which is already limited or absent in some parts of the country.

## **Recommendations for action by the State under review**

## **Amnesty International calls on the government of the United Kingdom:**

### *Follow-up to recommendations made in the 2008 UPR:*

- To ensure the full and effective implementation of the *Action Plan: Call to End Violence Against Women and Girls*, including by guaranteeing appropriate resources and funding for its effective implementation;
- To establish an independent observatory or strategic oversight body, including relevant experts, to ensure more effective protection against violence for women and girls;
- To ensure that all women and girls who experience violence have access to specialized community support.

### *National human rights protection mechanisms:*

- To reaffirm its commitment to the protection of all human rights in the UK and ensure that standards for their protection and means of enforcement under national law are the subject of progressive development, not regression;
- To ensure the legal protection of all economic, social and cultural rights, including access to appropriate means of redress for the violation of these rights;
- To establish a specific Bill of Rights or other human rights legislation for Northern Ireland which builds upon the rights enshrined in the Human Rights Act and takes into account the particular circumstances of Northern Ireland.

### *Extraterritorial application of human rights treaties:*

- To fully recognize the extraterritorial application of human rights obligations under international and regional law and standards;
- To fully respect the implications of the decision of the Grand Chamber of the European Court of Human Rights in *Al-Skeini* on the interpretation of the term "jurisdiction" in Article 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, both in relation to the specific issues addressed in that judgment and with respect to the broader applicability of the Convention to the actions of its armed forces and other state agents outside the UK's ordinary territory;
- To recognize the extraterritorial application of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in line with the jurisprudence of the UN Committee Against Torture;
- To take appropriate legislative and administrative measures to ensure that transnational corporations registered in the UK are required to exercise due diligence to avoid causing or contributing to human rights abuses in other countries, including as recommended by the Committee on the Elimination of Racial Discrimination, and to hold them accountable if they are found to have committed or contributed to human rights abuses in other countries, and to ensure access to remedy for the victims.

### *Human rights protection and counter-terrorism measures:*

- To ensure that counter-terrorism legislation and policy fully comply with international human rights law and standards and undergo adequate and timely public consultation;
- To commit to investigate individuals suspected of involvement in terrorism-related activities and, where sufficient evidence exists, to prosecute them in the ordinary criminal courts, in conformity with international fair trial standards, rather than establish and use procedures such as control orders and Terrorism Prevention and Investigation Measures that circumvent and undermine the ordinary criminal justice process;
- To further reduce the length of time that people suspected of terrorism-related activity can be detained prior to charge;
- To abandon the policy of relying on diplomatic assurances against torture and other ill-treatment as a means of circumventing the prohibition on exposing individuals to the risk of such human rights violations through any form of involuntary transfer to the territory or custody of another state.

*Failures of accountability:*

- To ensure that allegations of UK involvement in human rights violations are investigated in a manner that is effective, impartial, independent and thorough, in line with international human rights standards;
- To make immediate changes to the Protocol to the Detainee Inquiry to ensure that it is compliant with international human rights standards, including by establishing an independent mechanism to determine what material may legitimately be withheld from the public;<sup>29</sup>
- To ensure individuals who claim to have been subjected to human rights violations can seek access to an effective remedy and reparation, and to reject those proposals in the Justice and Security Green Paper that would restrict disclosure of material pertaining to human rights violations.

*Protection of migrants and asylum-seekers:*

- To ensure all allegations of harm on removal from the UK are subject to effective investigation by an impartial and independent body;
- To ensure all removals from the UK are independently monitored by a competent independent body who should accompany, monitor and report on all stages of the removal process;
- To take concrete measures to reduce the resort to detention of individuals solely for immigration purposes, in line with relevant international refugee and human rights law and standards;
- To ensure that foreign workers are not trapped in exploitative and abusive working relationships in the UK.

---

<sup>1</sup> Report of the Working Group on the Universal Periodic Review on the United Kingdom of Great Britain and Northern Ireland, 23 May 2008 (A/HRC/8/25), paragraphs 56.6 (Cuba, Ghana, the Netherlands), 56.10 (Russian Federation) and 56.8 (Russian Federation).

<sup>2</sup> A/HRC/8/25, paragraph 56.1 (India).

<sup>3</sup> A/HRC/8/25, paragraph 56.12 (Egypt).

---

<sup>4</sup> “‘No recourse’ No safety: The Government’s failure to protect women from violence”, published March 2008 by Amnesty International UK and Southall Black Sisters, available at: [http://www.refuge.org.uk/cms\\_content\\_refuge/attachments/o803-No%20Recourse-No%20Safety.pdf](http://www.refuge.org.uk/cms_content_refuge/attachments/o803-No%20Recourse-No%20Safety.pdf) (accessed 21 November 2011).

<sup>5</sup> This follows a pilot project, begun in December 2009 by the Home Office, providing funding to enable some of the most vulnerable women in the UK on spousal visas to access refuge accommodation for a fixed period of time, and giving them the safety to make applications for leave to remain.

<sup>6</sup> See most recently, comments made by the Home Secretary, Theresa May, to *The Sunday Telegraph* on 01 October 2011, available at: <http://www.telegraph.co.uk/news/politics/8801651/Home-Secretary-scrap-the-Human-Rights-Act.html> (accessed 21 November 2011) and a speech by the Home Secretary at the Conservative Party Conference on 04 October 2011, stating that she is of the view “that the Human Rights Act needs to go”, available at: [http://www.conservatives.com/News/Speeches/2011/10/May\\_Conservative\\_values\\_to\\_fight\\_crime\\_and\\_cut\\_immigration.aspx](http://www.conservatives.com/News/Speeches/2011/10/May_Conservative_values_to_fight_crime_and_cut_immigration.aspx) (accessed 21 November 2011).

<sup>7</sup> In its report to the Committee Against Torture, received by the Committee on 6 September 2011, the UK explicitly stated in reference to the application of Articles 2 and/or 3 to transfers of a detainee within UK custody to the custody (whether de facto or de jure) of any other State that it “does not consider that the Convention Against Torture applies extra-territorially” (CAT/C/GBR/5, page 37 para 119).

<sup>8</sup> In the case of *Al-Skeini and Others v the United Kingdom*, the Grand Chamber of the European Court of Human Rights ruled that the UK was required by the European Convention on Human Rights to conduct independent and effective investigations into the killing of six civilians during security operations carried out by UK soldiers in Iraq in 2003 and 2004. The Court found the UK had failed to ensure such investigations in five of the six cases, in violation of Article 2 (right to life) of the Convention. The Court rejected arguments by the UK that the European Convention did not apply to the UK’s operations because they occurred outside the UK’s ordinary territory. The Court held that the fact the UK was an occupying force over the territory in question and therefore exercised public powers there meant the European Convention applied. Such a situation, the Court held, was one among a range of scenarios where the Convention applies outside the ordinary territory of European states. In the case of *Al-Jedda* the Court found that the detention of Hilal Al-Jedda for over three years by UK armed forces without charge or trial was in violation of the Article 5 (right to liberty and security) of the European Convention on Human Rights. The European Court of Human Rights determined that the UK was legally responsible for the internment, even though UK forces at the time of the arrest were acting as part of the Multi-National Forces in Iraq, and that nothing in the UN Security Council Resolution 1546 disentitled him to the protections of the ECHR.

<sup>9</sup> The Foreign and Commonwealth Office’s *Business and Human Rights Toolkit: How UK overseas missions can promote good conduct by UK companies*, October 2009, page 4, states that: “The UK takes a more nuanced view than John Ruggie about the State’s duty to ensure that companies act compatibly with the States’ human rights obligations. The UK’s view is that this is not a blanket obligation but depends on the wording of the treaty obligation in question. To the extent that there is a legal duty to protect, it only applies in respect of a States’ own inhabitants. The UK does not owe legal obligations to ensure that UK companies comply with UK human rights standards overseas”. See also the UK’s comments on Ruggie’s Guiding Principles published in January 2011, page 3, General Point C, available at: <http://www.business-humanrights.org/media/documents/uk-comments-guiding-principles-2011.pdf> (accessed 21 November 2011).

<sup>10</sup> See paragraph 29 of the concluding observations of the Committee on the Elimination of Racial Discrimination (UN Doc: CERD/C/GBR/CO/18-20) in which the Committee notes its concern at “reports of adverse effects of operations by transnational corporations registered in the State party but conducted outside the territory of the State party that affect the rights of indigenous peoples to land, health, environment and an adequate standard of living” and “the introduction of a legislative bill in the State party which, if passed, will restrict the rights of foreign claimants seeking redress in the State party’s courts against such transnational corporations (arts. 2, 5 and 6)”.

<sup>11</sup> Most significantly, the Home Office’s “Review of Counter-Terrorism and Security Powers”, which considered six key powers: control orders (including alternatives); section 44 of the Terrorism Act 2000 regarding stop and search powers; the Regulation of Investigatory Powers Act 2000 and access to communications data more generally; extending the use of deportations with assurances; measures to deal with organisations that promote hatred or violence and the detention of terrorist suspects before charge. To access the review: <http://www.homeoffice.gov.uk/publications/counter-terrorism/review-of-ct-security-powers/review-findings-and-rec?view=Binary> (accessed 21 November 2011).

<sup>12</sup> The system of control orders created by the Prevention of Terrorism Act 2005 has been used by the UK as an alternative to prosecution or deportation of individuals suspected of involvement in terrorism-related activity, but who have not been charged with any criminal offence. The orders place severe restrictions on, and sometimes violate, individuals’ rights to liberty, freedom of movement, expression, association, and privacy.

<sup>13</sup> The Terrorism Prevention and Investigation Measures Bill is expected to come into force by the end of 2011. The latest draft of the Bill can be accessed here [http://www.publications.parliament.uk/pa/bills/lbill/2010-2012/0111/lbill\\_2010-20120111\\_en\\_1.htm](http://www.publications.parliament.uk/pa/bills/lbill/2010-2012/0111/lbill_2010-20120111_en_1.htm) (accessed 21 November 2011).

<sup>14</sup> Schedule 1 of the TPIMs Bill sets out the measures which can be imposed by the Home Secretary on an individual suspected of terrorism-related activity, most of which are similar to the measures permitted under the control order regime PTA. Some measures that the Home Secretary has described as the “most restrictive” in the PTA, however, are not included in the Bill. In comparison with

---

the PTA regime, which permits the Home Secretary to impose a relatively open-ended array of obligations and restrictions on an individual, the list of possible Terrorism Prevention and Investigation Measures is shorter and exhaustive. For further information see United Kingdom: Terrorism Prevention and Investigation Measures Bill: Control orders redux (Index: 45/007/2011) 20 June 2011.

<sup>15</sup> As has been the case for control orders, the TPIMs would continue to rely on sweeping definitions of “terrorism” in UK law. Amnesty International has longstanding serious concerns about the definition of terrorism in UK domestic law, particularly as set out in the Terrorism Act 2000 and Terrorism Act 2006. The definition of “terrorism” and “terrorism-related activity”, for instance categories of “giving encouragement” or “support and assistance”, is so broad and vague that it infringes the principle of legal certainty. Amnesty International has expressed concern about the definition of “terrorism” in the Terrorism Act 2000 since that Act was first introduced in Parliament; see, for instance, *UK: Briefing on the Terrorism Bill* (Index: EUR 45/043/2000) published in April 2000.

<sup>16</sup> The draft bill is available here: <http://www.official-documents.gov.uk/document/cm81/8166/8166.pdf> (accessed 21 November 2011).

<sup>17</sup> See for example, “The Coalition: our programme for government”, published May 2010, accessible at [http://www.cabinetoffice.gov.uk/sites/default/files/resources/coalition\\_programme\\_for\\_government.pdf](http://www.cabinetoffice.gov.uk/sites/default/files/resources/coalition_programme_for_government.pdf) (accessed 21 November 2011). See also the Home Secretary’s statement before Parliament announcing the outcome of the Home Office’s Review of Counter-Terrorism and Security Powers, on 26 January 2011, available at: <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110126/debtext/110126-0001.htm#11012654000005> (accessed 21 November 2011).

<sup>18</sup> Amnesty International also considers that appeal proceedings against orders for deportation on “national security” grounds, which take place before the Special Immigration and Appeals Commission (SIAC), are unfair due to the government’s frequent reliance on material kept secret from the individual and their legal counsel, not only in relation to the government’s claim that they pose a threat to national security, but also with respect to the issue of whether they would face a risk of torture or other ill-treatment on return.

<sup>19</sup> This step by the UK to reduce the number of days of pre-charge detention of individuals suspected of terrorism-related offences should also be viewed as a step towards implementing recommendations made by a number of States in the previous UPR with respect to pre-charge detention. See A/HRC/8/25, paragraphs 56.7-56.10 (Algeria, Russian Federation and Switzerland).

<sup>20</sup> During the previous review Amnesty International raised a number of cases where there had been a failure on the part of the UK government to effectively, independently, impartially and thoroughly investigate serious allegations of human rights violations, including with respect to allegations of UK involvement in the US-led programmes of secret detentions and renditions. See *United Kingdom: Submission to the UN Universal Periodic Review: First Session of HRC UPR Working Group 7-18 April 2008* (Index: EUR 45/020/2007) 21 November 2007. It should be noted that although this issue was not dealt with in great detail during the previous review, the UK did accept one recommendation on this issue, namely to “provide information about so-called ‘secret flights’”, A/HRC/8/25, paragraph 56.10 (Russian Federation).

<sup>21</sup> Evidence of UK involvement in human rights violations committed in the name of countering-terrorism has continued to mount since the previous UPR, most recently with respect to the discovery of documents indicating that the UK was involved in the unlawful transfer of two individuals to Libya, despite the real risk of torture and other ill-treatment those individuals would face upon return. The documents were discovered in Tripoli, Libya, by Human Rights Watch and concern the cases of Sami Mustafa al-Saadi and Abdel Hakim Belhaj, for further detail see: <http://www.hrw.org/news/2011/09/08/usuk-documents-reveal-libya-rendition-details> (accessed 21 November 2011).

<sup>22</sup> Other concerns include that the Detainee Inquiry does not guarantee the full and effective participation of victims and the fact that it cannot compel the attendance of witnesses or the production of documentation. For further information regarding Amnesty International’s concerns see *United Kingdom: Detainee Inquiry terms of reference and protocol fall far short of human rights standards* (Index: EUR 45/011/2011) 04 August 2011.

<sup>23</sup> The Justice and Security Green Paper can be accessed here: <http://consultation.cabinetoffice.gov.uk/justiceandsecurity/> (accessed 21 November 2011). The Green Paper also puts forward a number of proposals to improve oversight of the security and intelligence agencies which are valuable.

<sup>24</sup> For example, see the proposals which would allow closed material procedures to be used in civil cases for damages where the government is alleged to have been involved in human rights violations. In addition, the proposals seek to limit the role of the courts in cases in which individuals are seeking disclosure of “sensitive” material, where the government is not otherwise a party, particularly into foreign legal proceedings (via so-called ‘Norwich Pharmacal’ applications). The Norwich Pharmacal jurisdiction enables a claimant to obtain disclosure of information from a defendant who is mixed up in arguable wrongdoing of a third party and was notably used in the Binyam Mohammed litigation. One of the proposals in the Green Paper is to introduce legislation which would remove the Norwich Pharmacal jurisdiction where disclosure of material “would cause damage to the public interest”. The proposals envisage that for material held by or originated from one of the Security and Intelligence Agencies there would be an absolute exemption from disclosure. If this were to be implemented it would effectively close down the possibility of victims of human rights violations relying on the Norwich Pharmacal jurisdiction to access material concerning those violations when the security and intelligence agencies are involved. In light of the allegations of UK involvement in human rights violations of individuals detained overseas in the context of counter-terrorism operations, in which the agencies are implicated, the attempt to further restrict legal avenues to access material concerning human rights violations becoming public gives rise to serious concern.

<sup>25</sup> For further information see “Out of Control: The case for a complete overhaul of enforced removals by private contractors”, a briefing by Amnesty International UK section, published 7 July 2011.



---

<sup>26</sup> On 12 October 2010, Jimmy Mubenga, an Angolan national, died during an attempt to deport him to Angola on a British Airways flight. Eye witnesses told the Guardian newspaper how the 46 year old man was heavily restrained by security guards and that Mr Mubenga had complained of difficulties in breathing prior to his collapse. On 15 October 2010, Scotland Yard's homicide unit took over the investigation into the death of Jimmy Mubenga. See reports by *The Guardian* on 22 October 2010, available at: <http://www.guardian.co.uk/uk/2010/oct/22/deportation-heathrow-kenya-flight-video?INTCMP=SRCH> (accessed 21 November 2011) and 15 October 2010, available at: <http://www.guardian.co.uk/uk/2010/oct/15/jimmy-mubenga-scotland-yard-investigates?INTCMP=LCNETTXT3487> (accessed 21 November 2011).

<sup>27</sup> See report to the United Kingdom Border Agency on "Outsourcing Abuse", by Baroness Nuala O'Loan DB, accessible at: <http://www.medicaljustice.org.uk/images/stories/reports/reportonoutsourcingabuse.pdf> (accessed 21 November 2011). See also HM Inspectorate of Prisons, "Detainee escorts and removals: A thematic review", August 2009, accessible at: [http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/Detainee\\_escorts\\_and\\_removals\\_2009\\_rps.pdf](http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/Detainee_escorts_and_removals_2009_rps.pdf) (accessed 21 November 2011).

<sup>28</sup> See Home Affairs Select Committee, "The trade in Human Beings: Human Trafficking in the UK", Sixth report of Session 2008-09, Volume I, House of Commons, page 26. See also briefing by Kalayaan and Oxfam on "The impact of proposals to abolish the Overseas Domestic Worker visa", available at: <http://www.kalayaan.org.uk/documents/domestic%20worker%20visa%20brief%20July%202011.pdf> (accessed 21 November 2011).

<sup>29</sup> This should be done on the basis of a test that requires the authorities to establish, based on specific evidence, that non-disclosure is necessary and proportionate to one or more strictly limited and precisely defined categories consistent with international human rights law.