**REPRIEVE SUBMISSION TO THE HUMAN RIGHTS COMMITTEE IN ADVANCE OF THE LIST OF ISSUES PRIOR TO REPORTING IN RELATION TO THE UNITED KINGDOM AND NORTHERN IRELAND**

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This document provides information for the Human Rights Committee (the Committee) in relation to the United Kingdom of Great Britain and Northern Ireland (the UK), in advance of its preparations to draw up a list of issues prior to reporting (LoIPR) at the 128th session of the Committee in Geneva. In this submission, Reprieve highlights a number of issues with the UK’s implementation of the International Covenant on Civil and Political Rights (ICCPR) that have prevailed or emerged since the last review. Reprieve will provide further information to assist the Committee in advance of the State Report under the LoIPR in 2021.

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## Implementation of Article 6 in light of General Comment 36

Recommended question:

1. **With reference to the Committee’s clarification of the scope of application of the Right to Life in General Comment 36[[1]](#footnote-1), please confirm the State Party’s position on the concept of jurisdiction and circumstances inviting the extrajudicial application of Article 6 of the Covenant with respect to its military, diplomatic and consular operations overseas, as well as decisions taken in the UK.**

## Provision of training or mutual assistance to retentionist states – Articles 6 and 7

In August 2015, the Committee reiterated its concern that the UK’s policy of deporting foreign nationals to retentionist states with assurances that they will not face the death penalty or torture ‘may not ensure that the individuals will not be subject to treatment contrary to articles 6 and 7’ of the Covenant. The Committee urged the UK to ‘strictly apply the prohibition of *non-refoulement’*.[[2]](#footnote-2) In October 2018, General Comment 36 clarified the scope of negative extra-territorial right to life obligations. The Committee urged States Parties not to ‘aid or assist activities undertaken by other States and non-State actors that violate the right to life’.[[3]](#footnote-3) In so doing, the Committee suggested that the provision of ‘aid and assistance’ could be considered analogous to extradition, and therefore its provision without assurances akin to what the Committee has described as ‘expos[ing] a person to the real risk’ of the application of the death penalty.[[4]](#footnote-4)

In 2011, the UK introduced the Overseas Security and Justice Assistance Guidelines (OSJA) to prevent UK involvement in the use of the death penalty and torture overseas, among other human rights violations.[[5]](#footnote-5) The OSJA guidelines cover ‘all departmental and agency project/programme officers and HMG officials making policy decisions on UK engagement in justice and security assistance overseas, including where the actual engagement will be undertaken by external agencies on behalf of HMG and/or with HMG funding’.[[6]](#footnote-6) In 2017, in response to a consultation process, the Foreign and Commonwealth Office (FCO) made changes to the policy to ‘ensure that the skills and expertise [the UK] impart are not used to cause harm’.[[7]](#footnote-7)

Reprieve has uncovered examples where OSJA assessments have not prevented UK complicity in the violation of the right to life or the prohibition on torture overseas.

Between 2011 and 2013, the Metropolitan Police service and the FCO provided extensive assistance to an investigation and prosecution resulting in the imposition of the mandatory death penalty in Kenya.[[8]](#footnote-8) In 2014, the force refused to provide disclosure of the documents and evidence in its possession until finally compelled to do so by the High Court of England and Wales.[[9]](#footnote-9) Upon review, it was found that the evidence in question contained material which had not been disclosed to the Kenyan courts and which undermined key elements of the prosecution case, and supported the account of the defendant. Eight years later, the Metropolitan Police continues to defend its actions and has refused all calls to assist with the appeal.

In 2017, the High Court of England and Wales again found that the UK National Crime Agency (NCA) had acted unlawfully in failing to follow the OSJA policy before assisting the Thai police in an investigation which led to the death sentences of two young Burmese migrant workers following an investigation marred by allegations and evidence of torture, mishandling of forensic evidence, corruption and incompetence.[[10]](#footnote-10) The young men convicted are widely considered to be innocent scapegoats. Similarly, in June 2018, the Home Secretary authorized UK officials to share information with the United States of America to aid the prosecution of two individuals accused of terrorism offences without first requesting death penalty assurances from the USA.[[11]](#footnote-11). The Supreme Court of England and Wales is currently reviewing the lawfulness of this decision in the case of *Elgizouli v Secretary of State for the Home Department.[[12]](#footnote-12)*

In addition to concerns around the effectiveness of OSJA assessments in preventing complicity in grave human rights violations, parliamentary oversight bodies have called for a revision of the OSJA policy in light of its opacity and inconsistent application across government departments.

The FCO consistently refuses to disclose any assessments carried out under the OSJA policy, except when compelled to do so through litigation (as has been the case in all examples above). In a 2016 inquiry covering UK assistance to foreign policing bodies, Parliament’s Home Affairs Committee questioned ‘whether the OSJA guidance is fit for purpose’ in light of the non-disclosure, which the chair described as ‘unacceptable’.[[13]](#footnote-13) Further, the OSJA policy maintains significant scope for Government bodies to act independently and even states that they may “tailor the OSJA process to suit their own requirements”.[[14]](#footnote-14) Although the FCO intended to introduce a robust training programme across all departments, Reprieve has seen no evidence that this has been effective or, indeed, that implementation has ever taken place. In June 2018, Parliament’s Intelligence and Security Committee noted that the range of UK government bodies applying the policy “raises questions about the consistency of decisions being taken”.[[15]](#footnote-15)

**As such, Reprieve recommends that the Committee make the following requests of the UK:**

1. **Please provide information on measures taken by the UK government to prevent UK complicity in grave human rights violations overseas, including the arbitrary imposition of the death penalty and torture or other inhumane or degrading treatment and grave violations of the right to a fair trial.**
2. **Please explain how the refusal to disclose assessments completed under the OSJA guidelines is compatible with the UK’s obligations under the Covenant.**
3. **Please explain how the previous Home Secretary’s decision not to seek a Death Penalty assurance when deciding to provide information to support a death penalty prosecution in the US, departing from the UK’s previous policy of seeking such assurances, is consistent with the UK’s obligations under the Covenant, particularly with reference to General Comment 36.**

## Failure to launch a judge-led inquiry into allegations of UK involvement in Torture and Rendition – Articles 2 and 7.

Despite credible evidence of UK involvement in torture and ill-treatment in the course of the “war-on-terror”, the UK Government has reneged on a promise it made upon taking office to establish an independent, judge-led inquiry to fully investigate the allegations and provide redress to the victims

As a result of extensive evidence of UK involvement in torture and other mistreatment, in July 2010, then-Prime Minister David Cameron promised to launch an independent, judge-led inquiry to consider “whether the UK is implicated in the improper treatment of detainees, held by other countries, that may have occurred in the aftermath of 9/11”. However, the Government then established an investigation that fell well short of the independent inquiry that was promised (the Gibson Inquiry).[[16]](#footnote-16) Torture victims and their representatives widely boycotted the Gibson Inquiry on the basis that evidence would largely be heard in secret and that the Government would retain control of what information would be published.[[17]](#footnote-17) The Government prematurely closed the Gibson Inquiry in 2013, citing criminal investigations ongoing at the time, before it could properly investigate and report.[[18]](#footnote-18) No criminal investigations into this activity are known to have resulted in any charges being brought.

In 2013, the UK Government commissioned another circumscribed investigation which fell short of the independent inquiry it had promised, this time under the auspices of Parliament’s Intelligence and Security Committee (ISC), whose activities are far from independent in that they are subject to significant control by Downing Street.[[19]](#footnote-19) Following these concerns, the Human Rights Committee, in its concluding observations to the review of the UK in 2015, asked that the UK “ensure that the proceedings before the Intelligence and Security Committee of Parliament meet the requirements of the Covenant, including an adequate balance between security interests and the need for accountability for human rights violations, and consider initiating a full judicial investigation in all relevant detainee cases”.[[20]](#footnote-20)

On 28 June 2018, the ISC released its report into UK complicity in torture and rendition, but while it acknowledged systemic levels of UK support for torture and rendition operations[[21]](#footnote-21), it also conceded that the terms and conditions ‘imposed’ by the State Party left it ‘unable to conduct an authoritative inquiry’ or ‘produce a credible report’. This led the Committee to describe its own conclusions as ‘provisional’, and said that its report ‘is not, and must not be taken to be, a comprehensive account’.[[22]](#footnote-22)

Despite neither the Gibson nor ISC inquiries delivering on the Government’s promise to establish an independent, judge-led inquiry, on the 18 July 2019, the Government announced that it no longer intended to fulfil this commitment, claiming that changes to existing policies and procedures rendered an inquiry unnecessary.[[23]](#footnote-23) This leaves victims of UK involvement in mistreatment over this period with little chance of redress. In October 2019, Reprieve, along with Members of Parliament the Rt Hon David Davis MP and Dan Jarvis OBE MP, initiated judicial review proceedings in the High Court of England and Wales to challenge the Government’s refusal to establish a full judge-led inquiry into UK complicity in torture and rendition.[[24]](#footnote-24)

**As such, Reprieve recommends that the Committee make the following request of the UK:**

1. **Please explain how the UK’s decision not to launch a judge-led inquiry into allegations of UK involvement in torture and rendition between 2001 and 2010 is compatible with the UK’s obligations under the Covenant.**

## Continuing serious flaws in UK Government’s policy on intelligence-sharing where there is a risk of torture – Articles 2 and 7

As the UN Special Rapporteur on Torture stated in his 2014 report, the ‘exclusionary rule’ of international law prohibiting use of evidence obtained via torture and CIDT in legal proceedings also covers use of this evidence by the executive branch of government, ‘otherwise the purpose of preventing and discouraging torture and other ill-treatment is negated’.[[25]](#footnote-25)

On 18 July 2019, following criticism of its policy on sharing and receiving intelligence where there is a risk of torture or cruel, inhuman, or degrading treatment (CIDT), the ‘Consolidated Guidance’[[26]](#footnote-26), the UK Government introduced a new policy, the ‘Principles relating to the detention and interviewing of detainees overseas and the passing and receipt of intelligence relating to detainees’ (‘The Principles’).[[27]](#footnote-27) Reprieve has serious concerns that this new policy continues to create a real risk that UK intelligence officers become involved in serious human rights abuses, and that victims of torture and CIDT remain without any avenues of redress for UK involvement in their mistreatment.

The Principles fail to prohibit Ministers from authorising UK action where there is a real risk of torture. The Principles suggest that it is only a ‘presumption’ that action will not proceed on the basis of intelligence shared or received where there is a real risk of torture or CIDT. This purports to leave Ministers free to authorise action despite this risk and the unlawfulness of doing so.

The UK Government also failed to take forward the recommendation by the UK’s Investigatory Powers Commissioner that the Government amend the Investigatory Powers Act 2016 to provide for a process whereby victims of torture would be proactively notified if the UK has played a role in their mistreatment.[[28]](#footnote-28) Reprieve remains seriously concerned that survivors of torture and rendition lack effective mechanisms to give them access to justice.

The UK Government has also refused to publish any internal guidance or policies held by the intelligence and security agencies as to intelligence-sharing where there is a risk of torture or CIDT. Where documents have been released – including through Freedom of Information Act requests – serious concerns have been raised that these policies may purport to authorise Ministers and officials to unlawfully permit UK involvement in torture or CIDT.

For example, a secret Ministry of Defence policy was revealed last year which suggested that Ministers might be able to break the law and authorise action carrying a real risk of mistreatment. This policy also introduced a secret new process whereby Ministers may pre-approve lists of individuals about whom intelligence might be shared despite the risk of mistreatment.[[29]](#footnote-29) This prompted widespread concern about the agencies’ internal policies, and whether they too created a risk UK officials could become unlawfully involved in mistreatment. However, despite the publication of this document neither the Ministry of Defence nor the UK’s intelligence agencies have published their own internal policies, nor offered any reassurance that these documents do not suggest that Ministers may authorise action carrying a serious risk of torture or mistreatment.

**As such, Reprieve recommends that the Committee make the following requests of the UK:**

1. **Please explain how the lack of an absolute prohibition on Ministers authorising action which may lead to torture or cruel, inhuman, or degrading treatment in the ‘Principles’ is compatible with the UK’s obligations under the Covenant.**
2. **Please explain how the lack of a legal requirement to notify victims of torture or CIDT of the UK’s role in their mistreatment is compatible with the UK’s obligations under the Covenant.**
3. **Please explain whether you will publish the UK intelligence and security agencies’ internal guidance and policies on intelligence-sharing where there is a risk of torture or CIDT.**

## Serious concerns that secret MI5 guidance on agent participation in criminality risks severe human rights abuses – Articles 2, 6, 7, 9, 14, and 17

Reprieve has serious concerns that a recently-revealed Government policy governing the use of state agents who participate in crime is both unlawful and risks UK involvement in severe human rights breaches.

After lengthy legal proceedings, in March 2018 the UK Government admitted the existence of a hitherto-secret policy that governs the Security Service (‘MI5’) on the use of agents who participate in crime.[[30]](#footnote-30) In October 2018, with no details as to either the legal basis of the policy or applicable safeguards to ensure human rights are protected, Reprieve, along with Privacy International, the Pat Finucane Centre, and the Committee on the Administration of Justice, brought proceedings challenging the policy.[[31]](#footnote-31)

The policy purports to provide a process by which MI5 officers authorise the participation in crime by agents, thereby giving them effective immunity from prosecution. The policy does not requires MI5 to inform the prosecution authorities of the commission of the crime or of MI5’s involvement, and there appear to be no limits on the crimes that UK state agents may commit. Reprieve and its co-claimants are arguing that the policy has no basis in law and that it risks Government involvement in severe human rights abuses committed by state agents.

The Government was required to publish a heavily-redacted version of the policy as part of legal proceedings, but this document does not provide information as to what safeguards, if any, are in the policy.[[32]](#footnote-32) When asked in interview about whether limitations on the policy existed to prevent abuses, Lord Evans, a former Director General of MI5, appeared to suggest that there were none. When asked whether the policy would permit MI5 agents to engage in ‘punishment beatings’, for example, he stated “It’s not possible for that happen without…[pause]…there are no specific rules on exactly which crimes”.[[33]](#footnote-33)

The policy had operated for more than two decades without any oversight until, in 2012, then-Prime Minister David Cameron tasked the Intelligence Services Commissioner with its monitoring. However, the then-Prime Minister made clear in his instructions to the Commissioner that ‘such oversight would not provide endorsement of the legality of the policy’, strongly implying the lawful basis for the policy remained open to potential challenge.[[34]](#footnote-34)

Recent history provides deeply concerning examples in which torture and murder have taken place with evidence of state involvement. For example, police have reportedly recommended that more than 20 people, including senior officials, should be prosecuted for murder, kidnap, torture, and perverting the course of justice following an investigation by Operation Kenova into the handling of agents inside the IRA during ‘the Troubles’ in Northern Ireland.[[35]](#footnote-35) This followed the emergence of allegations that the head of the IRA’s internal security unit had been involved in serious crimes, including multiple murders, while also a British army agent.[[36]](#footnote-36)

In late 2018, five judges of the UK’s Investigatory Powers Tribunal gave a divided ruling on the lawfulness of the policy.[[37]](#footnote-37) The judges decided 3-2 that MI5’s policy was lawful, but the Tribunal issued its first published dissenting opinion in its 20 year history and after almost two thousand decisions.[[38]](#footnote-38)

In their dissenting opinions, the two judges found that there was no legal basis for the policy. One such judge warned that the Government’s claimed basis for the policy amounts to a “dangerous precedent”, potentially allowing for a vast range of intelligence agency activity to be implied into sections 1 and 2 of the Security Service Act 1989 (MI5’s statute).[[39]](#footnote-39) As he asked, “Can this possibly be correct? Where does it end? What other powers does MI5 have as a result of the section?”.[[40]](#footnote-40)

Reprieve and its co-claimants are now seeking permission to appeal.

**As such, Reprieve recommends that the Committee make the following request of the UK:**

1. **Please explain the legal basis for the policy and its compatibility with the UK’s obligations under the Covenant.**
2. **Please explain the limits on criminality in which agents can participate in the Guidance and how these render the policy compatible with the UK’s obligations under the Covenant.**

## Provision of Consular Assistance in death penalty cases – Articles 6 and 7

Since 2015, there is growing consensus that Article 6 of the Covenant obliges states to provide adequate consular assistance to their nationals facing the death penalty overseas.[[41]](#footnote-41) This obligation is stronger in relation to abolitionist States Parties to the Second Optional Protocol to the Covenant such as the UK.[[42]](#footnote-42)

The Foreign and Commonwealth Office (FCO) are responsible for the UK’s consular assistance policy. The FCO estimates that there are 90 British nationals facing the death penalty worldwide.[[43]](#footnote-43) FCO consular assistance policy aims to ‘avoid[ing] the imposition of the death sentence [on British nationals] and have it commuted to a term of imprisonment’.[[44]](#footnote-44) Reprieve supports the FCO to ensure that British nationals facing death sentences overseas have their sentences commuted to a term of imprisonment.

In August 2019 UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions published a guide as to what constitutes good consular assistance in death penalty cases.[[45]](#footnote-45) Adherence to these guidelines contributes to prevention of an arbitrary deprivation of the right to life in a death penalty case. Whilst UK consular practice meets the standards set in this guide in many ways, some of the areas, such as paying for lawyers, are specifically excluded from UK consular policy.[[46]](#footnote-46)

**As such, Reprieve recommends that the Committee make the following requests of the UK:**

1. **Please provide a report on the UK’s compliance with the Second Optional Protocol to the Covenant, in accordance with Article 3 of the Second Optional Protocol read in line with Article 40 of the Covenant.**
2. **Please explain how the UK’s absolute refusal to fund lawyers for nationals facing the death penalty overseas is compatible with the UK’s obligations under the Covenant.**

## Failure to repatriate British Citizens from North East Syria – Articles 2, 6, 7, 9 and 26

In 2018, the Committee clarified that the extra-territorial Article 6 obligation to protect the right to life ‘extends to reasonably foreseeable threats and life-threatening situations’ and warned that ‘state parties may be in violation of Article 6 even if these situations do not result in loss of life’.[[47]](#footnote-47) In 2019, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions clarified that the decision by an abolitionist state party ‘not to provide adequate consular assistance to their nationals detained abroad and facing a **possible** death sentence (…) amounts to a violation of their obligation to respect the right to life’[emphasis added].[[48]](#footnote-48) Further, the Special Rapporteur went on to say that a refusal to provide consular assistance to an individual in such a situation ‘on the grounds of their purported crime’ would be in violation of the right to life and the prohibition of discrimination.[[49]](#footnote-49)

Nevertheless, the UK has refused to repatriate a small number of British women and children detained in ‘deplorable’ conditions by the Kurdish forces in camps in North-East Syria.[[50]](#footnote-50) They face continued indefinite detention in these camps (where they are exposed to torture and cruel, inhuman or degrading treatment), rendition or deportation to the Syrian Arab Republic where they risk unlawful summary execution, or to the Republic of Iraq, where judges may hand down the death penalty for terrorist offences in trials where torture evidence is known to be frequently deployed and which do not meet international standards.[[51]](#footnote-51)

Reprieve is concerned that this failure to repatriate these individuals breaches Article 6 in two ways. Firstly, the combination of life-threatening sanitary and security conditions in camps such as Al-Hol and the precarity of the geo-political situation in North-East Syria increases the risk to life inherent to remaining in these camps. Secondly, if British nationals are taken from North-East Syria to the Republic of Iraq or the Syrian Arab Republic and extra-judicially executed or sentenced to death in trials which do not meet international standards, the UK will be complicit in an arbitrary deprivation of life. The UK would also be complicit in torture and other cruel, inhumane or degrading treatment.

The UK demonstrated that is in a position to conform to its obligations under Article 6 by repatriating its nationals when, on 21 November 2019, the UK FCO repatriated a number of British orphaned and unaccompanied children from camps in North-East Syria.[[52]](#footnote-52) However, in January 2020, the UK reportedly offered to repatriate children who are detained with their mothers in North-East Syria on the condition that they return alone.[[53]](#footnote-53) Scientific literature demonstrates that separating a child from their primary care giver amounts to cruel and inhumane treatment for the parent and the child which may violate of Article 7 of the Covenant.[[54]](#footnote-54) Prominent child rights organisations including UNICEF[[55]](#footnote-55), as well as the ICRC[[56]](#footnote-56), have publically stated that separation from the primary care-giver should be avoided, is not in the best interests of the child and contributes to suffering.

In addition to the failure to repatriate their nationals from North-East Syria, the UK appears to have adopted a policy of citizenship-stripping in relation to nationals detained in North-East Syria, despite warnings from the Committee that such a policy would contravene the covenant.

In August 2015, the Committee raised concerns about ‘the use of citizenship deprivation orders in the terrorism context’ and ‘the possibility of persons being rendered stateless as a result of such measures’ in the UK. The Committee asked that the UK ‘review its laws to ensure that restrictions on re-entry, and denial of citizenship, on terrorism grounds, include appropriate procedural protections and are consistent with the principles of legality, necessity and proportionality. The State Party should also ensure that appropriate standards and procedures are in place to avoid rendering an individual stateless’. [[57]](#footnote-57)

Section 41(1) to the British Nationality Act empowers the Home Secretary to deprive dual nationals of their British Citizenship if she believes this to be conducive to the public good.[[58]](#footnote-58) The Home Secretary deprived 128 dual nationals of their British Citizenship under Section 41(1) between 1 January 2016 and 31 December 2017.[[59]](#footnote-59) Human rights organisations, including Reprieve, are concerned that this section has been applied to individuals who do not in practice benefit from dual nationality, and therefore these decisions are rendering certain individuals *de facto* stateless.[[60]](#footnote-60)

Section 41(2) to the British Nationality Act permits the Home Secretary to render naturalized British citizens stateless if she has a reasonable belief that they have a claim to citizenship in another state.[[61]](#footnote-61) The Immigration Act 2014 established a review procedure for deprivations under Section 40(2) of the British Nationality Act 1981, by which the Independent Reviewer of Terrorism Legislation would submit a report on the operation of the power.[[62]](#footnote-62) Despite the provision that subsequent reviews be conducted every three years, only one review has been carried out in April 2016.[[63]](#footnote-63) This raises serious concerns around the effectiveness of the appropriate standards and procedures protecting individuals from statelessness.

There are broader concerns that the mechanisms for citizenship deprivation are not covered by procedural protections permitting appeals of the decisions. Individuals stripped of their citizenship may only appeal this decision in the Special Immigration Appeals Tribunal, in which individuals and their legal representatives may not be able to hear the evidence on which the Home Office relied when deciding to strip citizenship. Instead, the Tribunal may appoint a ‘Special Advocate’ to hear this evidence under ‘closed material proceedings’.[[64]](#footnote-64) In 2015, the Committee found that this system infringed due process rights, including equality of arms, and asked the UK to ‘ensure that any restrictions or limitations on fair trial guarantees that are based on national security grounds, including the use of closed material procedures, are fully compliant with its obligations under the Covenant’.[[65]](#footnote-65)

**As such, we recommend that the Committee make the following requests of the UK:**

1. **Please explain how the failure to repatriate British nationals from camps in North East Syria is compatible with the UK’s obligations under the Covenant.**
2. **Please explain how the UK’s refusal to provide consular assistance to certain individuals on the basis of their purported crime complies with the Covenant.**
3. **Please explain how the decision to offer to repatriate British children only if they return alone, without their primary care givers, is compatible with the UK’s obligations under the covenant.**
4. **Please explain how the operation and effect of Section 41(1) of the British Nationality Act is compatible with the UK’s obligations under the Covenant.**
5. **Please explain how the operation and effect of Section 41(2) of the British Nationality Act is compatible with the UK’s obligations under the Covenant.**
6. **Please explain how the use of Special Immigration Appeals Commissions as an avenue of appealing decisions taken under the act is compatible with the UK’s obligations under the Covenant.**

## Use of Force outside Armed Conflict – Articles 6 and 2

UK policy on the use of drones and Special Forces continues to raise serious concerns around the State Party’s compliance with Article 6. The UK’s actions potentially violate the Covenant in two ways: by assisting partners, in particular the US, with extrajudicial killings and assassinations through drone strikes and the use of special forces; and through its own program of drones and Special Forces.

The UK assists the US in three ways: by sharing intelligence, providing bases on UK soil, and embedding personnel in US military units overseas. This assistance is especially troubling because of the ever-increasing gap between international legal norms and the position of the Trump administration on the use of lethal force outside of armed conflict. President Trump has overseen a massive expansion in targeted killing outside areas of armed conflict,[[66]](#footnote-66) and has simultaneously removed crucial safeguards around transparency and targeted killing.[[67]](#footnote-67) Reprieve has reported the devastating effects of this policy on civilians and is concerned about the precedents that this is setting internationally.[[68]](#footnote-68) Reprieve believes that UK assistance might amount to complicity in US-perpetrated violations of, *inter alia,* article 6 of the Covenant. In 2018, the UK All-Party Parliamentary Group on Drones (APPG) described the lack of parliamentary oversight of this assistance as ‘deeply problematic’,[[69]](#footnote-69) concerns shared by the Parliamentary Joint Committee on Human Rights.[[70]](#footnote-70)

First, the UK maintains intelligence sharing practices with the US that raise serious concerns about the depth of British involvement in unlawful targeted killings overseas. Reprieve notes reports that the UK provides ‘locational intelligence’ to the US for use in targeted killings in Pakistan and Yemen.[[71]](#footnote-71) There are no specific statutory provisions preventing the routine transfer of UK intelligence for use by the US authorities in drone strikes,[[72]](#footnote-72) nor is there publically available guidance for intelligence personnel.

Second, UK and US staff work across four Royal Air Force (RAF) bases in the UK,[[73]](#footnote-73) of which at least three hold operational significance for the US targeted killing program in countries such as Pakistan, Yemen and Somalia – RAF Menwith Hill[[74]](#footnote-74), RAF Croughton[[75]](#footnote-75) and RAF Molesworth.[[76]](#footnote-76) These bases house surveillance programmes that support drone operations; ‘tasking targets’ before assassinations are carried out[[77]](#footnote-77) and operating as communication links between the US and military bases in the target region.[[78]](#footnote-78) There are also reportedly an unknown number of personnel from the UK’s Government Communications Headquarters (GCHQ) working at RAF Menwith Hill with the US on its targeted killing programme.[[79]](#footnote-79) The UK has refused to answer repeated questions from both civil society and members of parliament as to the exact role these bases – and GCHQ personnel – are playing in the US targeted killing programme, raising concerns that UK personnel may be complicit in US covenant violations.

The 2019 German case of *Bin Ali Jaber v. Germany* is illustrative of the liability of states who assist the US’s targeted killing programme via the provision of bases.[[80]](#footnote-80) In 2014, Reprieve, in coordination with the European Centre for Constitutional Rights (ECCHR), brought a claim on behalf of Faisal bin Ali Jaber, an engineer who lost his brother-in-law, Salem, and nephew, Waleed, to a US drone strike in August 2012. The claim challenged the continued use by the US of Ramstein Air Base in Germany to facilitate drone strikes in Yemen, arguing that it violated the right to life of Yemenis. In March 2019 the Higher Administrative Court in Munster, Germany, found that ‘at least part of the US armed drone strikes…in Yemen are not compatible with international law’, and that Germany must do more to ensure its territory is not used to carry out unlawful strikes.[[81]](#footnote-81)

Third, British military personnel, including Special Forces and pilots, are embedded in the US armed forces where the exact nature of their role in the use of lethal force is unclear. In 2015, the UK Ministry of Defense admitted to the practice of embedding UK personnel with US forces, “allowing them to operate as if they were the host nation’s personnel, under that nation’s chain of command.”[[82]](#footnote-82) In 2017, Reprieve established that a Memorandum of Understanding exists between the UK and the US, governing the embedding of UK pilots in, *inter alia,* US drone squadrons at Creech Air Force Nevada, one of the main hubs for strikes against Iraq, Syria, Pakistan, Yemen and Afghanistan.[[83]](#footnote-83) The absence of transparency around this practice amplifies concerns that the covert engagement of UK personnel in the US drone and Special Forces program may be far more widespread, systematic and direct than is internationally acknowledged.

The UK has also itself begun to shift its legal frameworks closer to the controversial position of the US in relation to targeted killings, which raises concerns around the UK’s compliance with Article 6. Two elements of this change are particularly demonstrative of this norm-erosion; the UK’s own targeted killing programme, and the indications that the UK has adopted a definition of self-defense to align more closely with that of the US.

First, the UK’s use of drones to strike targets outside of armed conflict is shrouded in secrecy. On 21 August 2015, the UK used armed drones to kill two British nationals in Syria – Reyaad Khan and Rahul Amin – despite the UK parliament having expressly forbid military action in the country.[[84]](#footnote-84) In the parliamentary debates that followed, the government confirmed that it would follow convention and notify parliament before using lethal force – including Special Forces - outside of armed conflict 'except when such action is necessary in an emergency’.[[85]](#footnote-85)  In 2016, the Parliamentary Intelligence and Security Committee, in their review of the legality of the 21 August strikes, stated that the government had failed to provide them with ‘the full facts’ around the decision-making process preceding the strike.[[86]](#footnote-86)

In its 2016 report on this issue, Parliament’s Joint Committee on Human Rights (JCHR) highlighted how a lack of clarity around UK policy in this area could expose UK personnel to criminal liability for murder, either through involvement in ‘the deliberate killing of another person under the queen’s peace’*[[87]](#footnote-87)* or through the provision of assistance to a second state who uses lethal force outside armed conflict.[[88]](#footnote-88) The JCHR stressed the need for a transparent policy around the use of lethal force outside of armed conflict. The UK government refused to provide further clarity on this issue.

Then, on 12 September 2017, the Ministry of Defense (MoD) raised further cause for concern when it set out the UK’s policy on the use of armed drones in a document entitled ‘Joint Doctrine Publication 0-30.2 Unmanned Aircraft Systems’ (‘the Publication).’[[89]](#footnote-89) The publication included a reference to the UK’s ‘practice of targeting suspected terrorists outside of the armed conflict itself’, once again raising concerns about what the UK policy is on the use of lethal force outside of armed conflict and in areas where Parliament has not authorised UK military action. This apparent admission that the UK Government has a policy of using lethal force outside warzones remained in the publication until references to it were quietly removed on 22 December 2017. [[90]](#footnote-90) The removal came after concerns were raised by an MP in a letter to the MoD. When questioned about the removed language, the MoD claimed that the reference to the practice was a result of ‘erroneous drafting’.[[91]](#footnote-91)

In addition to the lack of clarity around its own drone programme and use of targeted killings, the UK has indicated that it has shifted its definition of self-defense (i.e. imminence) to align more closely with the US position. When taking a decision to use lethal force outside of armed conflict, the UK is legally bound by a test for self-defense established in the case of *The* *Caroline*, i.e. that a threat be “instant, overwhelming, leaving no choice of means, and no moment for deliberation” for lethal force to be justified.[[92]](#footnote-92) Despite legal obligations, statements of high-level officials in the UK Government, including the former Attorney General[[93]](#footnote-93) and Secretary of Defense,[[94]](#footnote-94) demonstrate that the UK supports the use of pre-emptive strikes to deal with distant threats. These statements, along with the targeted killing of Reyaad Khan and recent support for the assassination of Iranian general Qassem Suleimani[[95]](#footnote-95), show a clear pattern of invoking an unlawfully broad definition of imminence that directly contravenes the right to life.

In its 2016 report, Parliament’s Joint Committee on Human Rights (JCHR) criticized the Government’s refusal to “state its understanding of the law that applies to lethal drone strikes outside armed conflict”.[[96]](#footnote-96) In 2018, the APPG reiterated these concerns, stating that there was ‘a danger posed by the shift its (parliament’s) stance to an expanded notion of imminence’ and called for ‘clarity’.[[97]](#footnote-97) Reprieve is concerned that the UK has adopted a position of practiced ambiguity that allows the Government to co-opt the US’ ‘global war’ standard of lethal use of force while avoiding public and international scrutiny for potential contraventions of the right to life.

**As such, we recommend that the Committee make the following requests of the UK:**

**Please explain how UK support for US drone strikes and assassinations are consistent with its obligations under the Covenant when a) those drone strikes and assassinations are taking place outside of an armed conflict, and b) when those drone strikes and assassinations are justified as actions in self-defence.**

1. **Please explain what the UK’s current position is on the right to self-defence against an imminent threat, setting out how the UK defines imminence and how it sees that definition being compatible with Article 6.**
2. **What measures is the UK currently taking to ensure its territory and intelligence are not being used by its partners to carry out extrajudicial killings in contravention of Article 6?**

*Note on the author of this submission*

Reprieve is an international legal action charity which was founded in 1999 (UK charity registration no. 1114900). Reprieve provides support to some of the world's most vulnerable people, including people sentenced to death and those victimized by states’ abusive counter-terrorism policies. Reprieve has been an Organisation in Special Consultative Status with the United Nations Economic and Social Council since 2018.

For more details please contact [Catriona.Harris@Reprieve.org.uk](mailto:Catriona.Harris@Reprieve.org.uk)

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4. Judge v Canada, Communication No 829/1998, UN Doc CCPR/L/78//D/829/1998 (2003), available at: <https://www.refworld.org/cases,HRC,404887ef3.html>. See, for example, the analysis of the former Special Rapporteur on Summary, Arbitrary and Extrajudicial Killings: Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 9th August 2012 (A/67/275) paras. 79 & 81, available at: <https://www.icj.org/wp-content/uploads/2015/02/Report-SREJE-2012-eng.pdf> and Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 7th August 2015 (A/70/304), ) para. 95, available at:. <https://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/304>. [↑](#footnote-ref-4)
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8. During the trial, the FCO provided funding for a prosecution witness to attend but denied all requests for assistance to ensure that the defendant was able to present witnesses and secure a fair hearing on appeal. A senior police officer acted as a key prosecution witness, providing evidence in the Kenyan courts during a trial where the accused, an illiterate and indigent Kenyan national from a marginalized population, was unrepresented and denied an interpreter for his native language. The prosecution case was based largely on a statement which the accused has consistently and credibly alleged to have been obtained through torture. The Metropolitan Police officer relied heavily on this torture tainted statement in his own evidence. See Reprieve, *Case Study,* Ali Babitu Kololo, available at: <https://reprieve.org.uk/case-study/ali-babitu-kololo/>. [↑](#footnote-ref-8)
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