

21 November 2011

Dear OHCHR colleagues,

Please find attached a submission from Freedom from Torture for the forthcoming Universal Periodic Review of the United Kingdom, scheduled for the 13<sup>th</sup> UPR session in 2012.

Freedom from Torture (formerly the Medical Foundation for the Care of Victims of Torture) is a UK-based human rights organisation and one of the world's largest torture treatment centres. We are the only organisation in the UK dedicated solely to the care and treatment of survivors of torture and organised violence. Since our foundation 25 years ago, more than 50,000 people have been referred to us for rehabilitation and other forms of care and practical assistance. Our clinicians also use forensic methods to document physical and psychological evidence of torture via medico-legal reports which are used in connection with survivors' protection claims. We have centres in London, Manchester, Newcastle, Birmingham and Glasgow.

Our submission focuses on four areas:

- The UK's domestic human rights architecture and access to justice;
- Accountability for complicity in torture;
- Torture survivors within the UK's asylum system; and
- Poverty among torture survivors.

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1. Freedom from Torture is pleased to make this submission in connection with the second Universal Periodic Review of the United Kingdom.

### **The UK's domestic human rights architecture and access to justice**

2. Freedom from Torture is highly concerned that a debate about whether the UK needs a (new) Bill of Rights<sup>1</sup> is driven by a political agenda within parts of government to repeal or amend the Human Rights Act 1998 as a means of curtailing the protection of human rights in the UK.
3. The Home Secretary made clear her desire to restrict the protections afforded by the Act during a recent speech in which she argued that the Human Rights Act 'has to go' before announcing changes to the Immigration Rules designed to limit application of the right to respect for private and family life in the immigration context.<sup>2</sup> Earlier this year she told Parliament that she finds it 'incredible' that the Act may prevent deportations of terror suspects where there is a risk of torture on return.<sup>3</sup>
4. The Human Rights Act includes a highly innovative and internationally acclaimed mechanism for dividing up responsibility between Parliament, the executive and the courts for ensuring effective protection of human rights in the UK. Freedom from Torture is concerned that there is a political agenda to redefine these responsibilities with a view to diluting the role of the courts.
5. Recommendation 1: there must be no repeal or weakening in any way of the Human Rights Act.
6. A Bill to reform the legal aid system is currently passing through Parliament.<sup>4</sup> We discuss our specific concerns with this Bill further below, however it is important to stress that, if enacted, this legislation would make it more difficult for people to claim their human rights by severely restricting access to legal advice for those who cannot afford to pay for it.

### **Accountability for complicity in torture**

7. Very soon after the new Government was formed in 2010, Prime Minister David Cameron announced an inquiry into allegations that the UK was complicit in torture committed abroad in the context of the 'War on Terror'. The Prime Minister acknowledged that the allegations were a 'stain' on the UK's reputation as 'a country that believes in freedom, fairness and human rights' and stated that the inquiry's purpose was 'to clear this matter up once and for all'.<sup>5</sup> This announcement was

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1 Freedom from Torture considers that the UK's existing Human Rights Act is a Bill of Rights because it satisfies the key features of a Bill of Rights: it is a legal instrument, binding on government, that enshrines a set of fundamental human rights and provides a right to redress for victims in the event of violations.

2 See the Home Secretary Theresa May's speech to the Conservative Party conference on 4 October 2011. Available at: <http://www.politics.co.uk/comment-analysis/2011/10/04/theresa-may-speech-in-full>.

3 *Hansard*. HC, 16 February 2011, col. 963.

4 The Legal Aid, Sentencing and Punishment of Offenders Bill 2011.

5 *Hansard*. HC, 6 July 2010, col. 175-6.

warmly welcomed by Freedom from Torture and other human rights organisations which called for the inquiry to be prompt, independent, thorough, capable of leading to the identification and prosecution of persons responsible, and provide for public scrutiny and victim participation.

8. Despite detailed advice from lawyers acting for the survivors and from NGOs, the government agreed a protocol for the inquiry which is clearly non-compliant with human rights standards. Serious problems include a denial of meaningful participation to survivors and their legal representatives and a mechanism for dealing with evidence which gives the final say on disclosure to the government. As a consequence, the survivors have announced through their lawyers that they are boycotting the inquiry and ten leading human rights NGOs including Freedom from Torture have also announced that they will not participate.<sup>6</sup> On 13 November 2011, the UN Special Rapporteur on Torture, Juan Méndez, noted the inquiry's limitations and warned that '[a] less than open and transparent inquiry would only serve to cover up abuses and encourage recurrence'.<sup>7</sup>
9. Recommendation 2: The protocol for the torture inquiry should be revised to ensure, among other things, meaningful participation of the survivors and that decisions on disclosure of evidence are taken by an independent mechanism.
10. The very serious allegations at the heart of this inquiry are a reminder that the UK must never be complacent about its international human rights obligations and that robust accountability mechanisms are needed. Freedom from Torture considers that this is an ideal moment for the UK to finally permit individuals to take complaints to the UN Committee against Torture so that there can be accountability *at the international level* for any *future* victims of torture involving the UK. Such a step would send a powerful signal about the UK's renewed commitment to the torture ban.
11. Recommendation 3: The UK should accept the Committee against Torture's recommendation to enter a declaration under Article 22 of the UN Convention against Torture accepting the competence of the Committee to hear individual complaints.

### **Torture survivors within the UK's asylum system**

12. The vast majority of Freedom from Torture's clients are asylum seekers or refugees who have sought protection in the UK after torture in other countries. We receive approximately 2000 referrals each year for clinical services including forensic documentation of physical and psychological evidence of torture, a wide range of therapies and practical support. In our experience, difficulties associated with the asylum system are a major impediment to rehabilitation.
13. Failure to identify torture survivors at a sufficiently early stage of the asylum process is a serious problem. This happens for a number of reasons including difficulties for most survivors of disclosing their torture experiences and insufficient training for UK

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6 The other NGOs are The AIRE Centre, Amnesty International, British Irish RIGHTS WATCH, CagePrisoners, Human Rights Watch, JUSTICE, Liberty, REDRESS and Reprieve.

7 'Torture inquiry: UN's Juan Mendez calls for openness'. Available at <http://www.bbc.co.uk/news/uk-15711317>

Border Agency staff and doctors within detention centres on how to identify survivors.

14. Where a survivor is not identified as such by the Agency, their asylum claim will not be assessed properly and may be refused, potentially resulting in detention and removal to the state where they were tortured. Special safeguards for torture survivors – including provision of accommodation nearby to specialist treatment facilities, a low frequency of reporting, and special interview techniques – are unlikely to be applied, and the survivor may not be referred to appropriate health and other services.
15. The Agency has recently launched a range of initiatives designed to improve early identification of torture survivors including major reforms to the asylum screening process aimed at encouraging early disclosure of torture through more private interviewing facilities and a more sensitive approach by screening officers. The Agency is actively engaging Freedom from Torture and other stakeholders in this work.
16. Like many human rights organisations, Freedom from Torture has serious concerns about the Detained Fast Track (DFT) system. This is an expedited system where the asylum seeker is detained while their claim is processed and is applied to cases which the Agency considers can be decided quickly. However, people are selected for this procedure during screening, a point at which few have had access to legal advice and when the Agency knows little about the nature of the asylum claim. Torture survivors are not supposed to be allocated to this system because of the complexity of their claims and the risk of retraumatisation, yet significant numbers are nonetheless routed in. Freedom from Torture receives an average of 25 referrals per month from the DFT and we accept roughly half of these.
17. The Agency's policy against inclusion of torture survivors in the DFT is not sufficiently robust. The Suitability Exclusion Criteria for the DFT specify that those with 'independent evidence' of torture are 'unlikely' to be suitable for the system. This requirement is irrational because the vast majority of survivors simply do not have such evidence at this stage – not least because very few will have had access to a legal advisor and so will not have been referred to us for a medico-legal report. Disclosure of torture is extremely difficult for most torture survivors and few will appreciate that independent evidence of their torture is required at this very early stage either for the purposes of establishing their protection claim or, more urgently, to avoid detention.
18. There are multiple other problems with the Detained Fast Track process including insufficient time for asylum seekers to prepare their case, inadequate legal advice, and poor quality decision-making.<sup>8</sup>

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8 UNHCR has noted major concerns with the quality of decision-making in the DFT. See for example, UNHCR, 'Quality Integration Project – Key Observations and Recommendations, August 2010' available at [http://www.unhcr.org.uk/fileadmin/user\\_upload/pdf/First\\_Quality\\_Integration\\_Project\\_Report\\_Key\\_Findings\\_and\\_Rec\\_01.pdf](http://www.unhcr.org.uk/fileadmin/user_upload/pdf/First_Quality_Integration_Project_Report_Key_Findings_and_Rec_01.pdf). On problems with the DFT generally, see Human Rights Watch, *Fast-Tracked Unfairness – Detention and Denial of Women Asylum Seekers in the UK* (February 2010),

19. Recommendation 4: The Detained Fast Track system should be abolished.
20. Recommendation 5: In the meantime, the Suitability Exclusion Criteria for the Detained Fast Track system should be amended to clarify that those reasonably suspected of being torture survivors must not be routed into this system.
21. It is difficult to secure release of torture survivors who have been wrongly detained because safeguards designed to correct these mistakes are failing or have otherwise been eroded by the Agency. For example, a facility to escort suspected torture survivors to Freedom from Torture for the purposes of assessment was effectively ended in March 2009 and Rule 35 of the Detention Centre Rules requiring 'medical practitioners' to notify the Agency of any detained person who (s)he is concerned may be a victim of torture is chronically dysfunctional and rarely leads to release, as a recent audit of the process by the Agency demonstrated.<sup>9</sup> Following heavy criticism from Parliament's Home Affairs Committee and the commencement of legal proceedings, the Agency is now working with Freedom from Torture and other stakeholders to improve the Rule 35 system.
22. During the UK's first Universal Periodic Review in 2008, the UK rejected a recommendation to withdraw its reservations to Articles 22 and 37(c) of the UN Convention on the Rights of the Child (UNCRC). The UK has since withdrawn these reservations which we welcome.
23. However, there are still many concerns about the rights of asylum-seeking children. The government claims it has ended detention of children for immigration purposes. However, the reality is that, despite intensified efforts to ensure this is a last resort and for the shortest possible period of time, children within families are still being detained on arrival for up to 24 hours. They may also be detained prior to removal from the UK in new 'pre-departure accommodation' which is still a secure facility. Special protections for torture surviving families in the new family returns process have been awaiting finalisation for many months now.
24. Recommendation 6: Immigration detention of children should be ended completely.
25. Freedom from Torture is particularly concerned about the UK's plans as part of the European Return Platform for Unaccompanied Minors to begin forcibly removing refused child asylum seekers to Afghanistan once they reach 16 years of age. We are also concerned about the lack of any independent mechanism for assessing reception conditions on return, including the availability of adequate rehabilitation services for torture survivors.
26. Recommendation 7: the UK should pull out of the European Return Platform for Unaccompanied Minors and continue to grant discretionary leave to child asylum seekers until they reach 18 years of age.

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and Detention Action, *Fast Track to Despair – The unnecessary detention of asylum-seekers* (May 2011).

<sup>9</sup> <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/reports/detention-centre-rule-35-audit/det-centre-rule-35-audit?view=Binary>. Freedom from Torture's response to this audit is available at: <http://www.freedomfromtorture.org/news-events/news/3436>

27. Decision-making regarding asylum claims by torture survivors is poor and the appeal overturn rate for these cases is high.<sup>10</sup> We are pleased to report that the Immigration Minister Damian Green accepted each of the recommendations directed to the Agency in our recent report on asylum appeals involving our medico-legal reports and the Agency has worked with us to strengthen its guidance and training for decision-makers on how to use expert medical evidence of torture when assessing an asylum claim. Both the guidance and training are being piloted currently with the involvement of Freedom from Torture.
28. Asylum claims involving torture are complex and survivors require access to specialist legal advice to ensure their claims are properly prepared. Torture survivors in the UK are now struggling to access quality advice following the collapse of the two major providers, Refugee and Migrant Justice and the Immigration Advisory Service, as a result of difficulties connected with the legal aid system. Further reforms being considered by Parliament would preserve legal aid for asylum claims, but remove it for most immigration matters and Freedom from Torture is worried that this will drive further providers from the asylum advice market.
29. Recommendation 8: the legal aid system for asylum and immigration cases must be strengthened to ensure it is viable for quality advice providers.

### **Poverty among torture survivors**

30. Freedom from Torture is currently conducting a major study of poverty amongst torture survivors in the UK with a particular focus on the impact of poverty on the capacity of survivors to rehabilitate following their torture experiences. Early findings from this project suggest that torture survivors in the UK experience high levels of poverty due to a range of factors including:
- Torture survivors are often wrongly denied mainstream support to which they are entitled because their needs, particularly their mental health needs, and their vulnerability are not properly assessed;
  - A ban on working for the first year in which an asylum claim is pending and restrictions on the right to work thereafter;
  - Incorrect decisions to deny asylum support and poor administration of this system including delays leading to destitution;
  - Inadequate levels of asylum support so that most asylum seekers are forced to survive on a level of support which is insufficient to meet essential living needs;<sup>11</sup>
  - Accommodation that is inadequate and/or inappropriate for reasons including pest infestations, dampness, poor security, and, for survivors of torture suffering

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<sup>10</sup> See Freedom from Torture, *Body of Evidence – Treatment of Medico-Legal Reports for Survivors of Torture in the UK Asylum Tribunal* (May 2011). For the sample of 37 cases in this study, the appeal overturn rate was 49%, a figure which climbed to 69% for those cases in which the UK Border Agency had access to our medico-legal report at the initial decision stage.

<sup>11</sup> See the submission relating to the second Universal Periodic Review of the UK from the Still Human Still Here coalition. Freedom from Torture is a member of this coalition.

sleep disturbance and traumatic flashbacks, sharing a bedroom with strangers;

- Ineligibility for support of many who have been refused protection but are unable to return to their country of origin through no fault of their own, resulting in destitution;
  - Difficulties accessing primary and secondary healthcare including because of misunderstandings by practitioners about entitlements and an entitlement gap for some refused asylum seekers in relation to secondary healthcare; and
  - Diminishing sources of support in the voluntary sector as a consequence of the economic downturn.
31. Recommendation 9: The UK should accept the Committee on Economic, Social and Cultural Rights' recommendation to remove restrictions on access by asylum seekers to the labour market while their claims for asylum are being processed.
  32. Recommendation 10: Asylum seekers who would otherwise be destitute should be provided with cash support equivalent to no less than 70% of mainstream income support levels until they have been given status in the UK or been returned to their country of origin.
  33. Recommendation 11: Processes for assessing entitlement to mainstream benefits such as Employment Support Allowance should be reviewed to ensure that serious mental health difficulties, including those associated with trauma, are properly taken into account.
  34. Recommendation 12: All asylum seekers, including all refused asylum seekers, in the UK should have free access to primary and secondary healthcare.
  35. Freedom from Torture is particularly worried about plans to cut legal aid for advice about welfare entitlements at a time when the welfare system is being radically overhauled and when increasing numbers of people are turning to it because of the economic downturn. Access to legal aid in this area is particularly important for torture survivors given difficulties they face in accessing their entitlements as they transition from the asylum system to mainstream benefits.
  36. Recommendation 13: Legal aid must remain available for advice about welfare entitlements.
  37. Failure by the government to give full legal effect in domestic law to the rights contained in the International Covenant on Economic, Social and Cultural Rights (ICESCR) is a major challenge when seeking to promote socio-economic rights in the UK.
  38. Recommendation 14: The UK should accept the Committee on Economic, Social and Cultural Rights' recommendation to incorporate into domestic law the rights protected by the ICESCR.