REDRESS

Ending Torture. Seeking Justice for Survivors

87 Vauxhall Walk, London SE11 5HJ, United Kingdom
Tel: + 44 (0) 20 7793 1777 Fax: + 44 (0) 20 7793 1719
Email: info@redress.org Web URL: www.redress.org

UNIVERSAL PERIODIC REVIEW, UNITED KINGDOM, 13TH SESSION MAY- JUNE 2012

SUBMISSION BY THE REDRESS TRUST (REDRESS)

REDRESS

1. The Redress Trust (REDRESS) is an international human rights non-governmental organisation formed in 1992, based in London, with a mandate to assist torture survivors to seek justice and reparation. Its programmes include casework, law reform, research and advocacy. It has wide expertise and experience on the right to reparation for victims of torture under international law and takes cases on behalf of torture victims before national, regional and international human rights mechanisms, courts and tribunals.

2. REDRESS' involvement and interest in the United Kingdom (UK) is ongoing. In the period covered by the review, REDRESS' UK work has included making interventions in several cases relating to torture issues, making written and oral submissions to parliamentary committees, making written submissions to the Baha Mousa Public Inquiry, advocating for the Torture (Damages) Bill, advocating for an effective public inquiry into allegations of complicity in torture, and advocating for the investigation and prosecution of international criminal law suspects within the UK's jurisdiction.

COUNTER-TERRORISM AND TORTURE

A. Allegations of UK complicity in torture abroad

Detainee Inquiry

3. Consistent allegations of UK intelligence services having been complicit in torture abroad have been made in recent years, for example, by the Joint Parliamentary Committee on Human Rights (JCHR). In the JCHR's published report *Allegations of UK Complicity in Torture*[1] on 4 August 2009 it said that there was no other way to restore public confidence in the intelligence services than by setting up an independent inquiry into the numerous allegations about the UK's complicity in torture. The Foreign Affairs Committee (FAC) released its report *Human Rights Annual Report 2008*[2] a week later, also expressing concern about the allegations of UK complicity in torture.

4. In July 2010 Prime Minister David Cameron announced that a judge-led inquiry (known as the Detainee Inquiry) would examine whether the UK was implicated in the improper treatment of detainees held by other countries that may have happened after 11 September 2001.[3] The Terms of Reference[4] and Protocol[5] governing the Detainee Inquiry were published in August 2011. REDRESS and other NGOs,[6] and the lawyers

[1] Available at http://www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/152/152.pdf.
[2] Available at http://www.publications.parliament.uk/pa/cm200809/cmselect/cmfaff/557/557.pdf.
[3] See the Detainee Inquiry website at http://www.detaineeinquiry.org.uk/.
[4] Available at http://detaineeinquiry.s3.amazonaws.com/wp-content/uploads/2011/06/20110706-The-Detainee-Inquiry-and-HM-Government-Terms-of-reference.pdf.
[5] Available at http://detaineeinquiry.s3.amazonaws.com/wp-content/uploads/2011/06/20110706-The-Detainee-Inquiry-and-HM-Government-Protocol.pdf.
[6] REDRESS has been part of a group of ten human rights NGOs who have declined to give evidence to or attend further meetings with the Detainee Inquiry team: the other NGOs are Amnesty International, Human Rights Watch, Freedom from Torture, Reprieve, Justice, British Irish Rights Watch, Cage Prisoners, Liberty, and the Aire Centre. See the joint letter to the Detainee Inquiry dated 3 August 2011 available at http://www.redress.org/downloads/publications/Joint_NGO_letter_3-8-11.pdf.

representing detainees who have alleged ill-treatment, have declined to give evidence to, or have further meetings with, the Detainee Inquiry team due to concerns that the Detainee Inquiry would neither have, nor be seen to have, sufficient ability and credibility to establish the truth about the allegations.

5. REDRESS' serious concerns include the failure of the Detainee Inquiry:

- to explicitly address systemic problems (the allegations do not relate to isolated incidents) and achieve truth for victims;
- to be sufficiently independent, open and transparent to comply with human rights obligations and to be able to properly investigate allegations relating to complicity in torture;
- to function within a realistic timeframe to achieve these objectives, bearing in mind that the Government's one-year target during which to investigate and report may not be sufficient;
- to have adequate powers to compel the production of documents and the attendance of witnesses;
- to hear all evidence in public unless there are legitimate national security reasons for doing otherwise;
- to make use of tried and tested mechanisms (when legitimately necessary) such as shielded witnesses, so that junior security personal give evidence in open sessions, instead of all security service evidence being led in secret, apart from that by the heads of agencies, as set out in the Protocol;
- to have an independent mechanism to deal with challenges by interested parties for disclosure of documents, instead of the Protocol provision for the Government to have the final decision in such cases.

Safeguards

6. In July 2010 the Government published *Consolidated Guidance to Intelligence Officers and Service Personnel on the Detention and Interviewing of Detainees Overseas, and on the Passing and Receipt of Intelligence Relating to Detainees.*[7] REDRESS submits that the requirement that UK security services must not proceed where they "know or believe" that torture will occur (table in paragraph 11 of the *Guidance*) is too narrow, and is not consistent with its obligations under the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). Specifically, article 2 of UNCAT prohibits torture absolutely and article 4 obliges state parties to criminalise torture and complicity in torture. The *Guidance* should explicitly prohibit an officer from proceeding where there is a serious or real risk of torture.

7. Where an officer knows or believes that torture will take place, he or she must report it, but under the *Guidance* may, with authorisation, continue to co-operate with the

[7] Available at https://update.cabinetoffice.gov.uk/sites/default/files/resources/consolidated-guidance-iosp.pdf.

foreign agencies responsible under the apparent discretionary power given to Ministers (paragraph 14 of the *Guidance*). REDRESS is concerned that this could lead to complicity in torture contrary to article 4 of UNCAT. The guidance also allows officers to rely on assurance that detainees will not be tortured (paragraph 17 of the *Guidance*), but such assurances may not be reliable and cannot provide protection from regimes which are known to authorise torture.

Other concerns

8. Following a number of cases brought by former detainees suing the UK for the alleged involvement of its security services in their ill-treatment abroad, in October 2011 the Government published the *Justice and Security Green Paper.*[8] This Green Paper contains proposals aimed, it is said "to improve our courts' ability to handle intelligence and other sensitive material".[9] The Government is considering legislation to extend the use of Special Advocates to civil cases, where sensitive "national security" evidence is involved. Special Advocates are already used in certain cases such as those concerning control orders and the deportation of terrorist suspects. They involve the use of security-cleared lawyers who in closed proceedings are engaged to represent the interests of persons but are not allowed to consult with them on the normal lawyer-client basis. This significantly increases the difficulties in challenging evidence led in these closed proceedings that may have been obtained by torture, for example, evidence obtained from agencies in third counties known to practice torture.

9. REDRESS' concern is that if these legislative changes are pursued, this will further restrict access to relevant facts and information in cases where torture is alleged, the disclosure of which could be crucial for survivors seeking to enforce their human rights in civil cases, that is, when seeking their right to a remedy and reparation based on allegations of UK involvement in torture.

B. Deportations with Assurances

10. "Deportations with Assurances" (DWAs) (also known as "Diplomatic Assurances" or "Memoranda of Understanding)" have continued, mainly in the context of counter-terrorism when for evidential reasons it has been decided that terrorist suspects present or resident in the UK cannot be prosecuted. To deport terrorist suspects to states where the individuals face a real risk of torture breaches the UK's non-refoulement obligations.[10] In March 2011 the UK stated it had DWA arrangements with five countries - Algeria, Jordan, Lebanon, Libya and Ethiopia.[11] The UK was committed to concluding

[8] Available at http://www.official-documents.gov.uk/document/cm81/8194/8194.pdf.
[9] Ibid, Forward, page vii.
[10] The absolute principle of non-refoulement is set out in Article 3(1) of the UNCAT.
[11] Foreign & Commonwealth Office, *Human Rights and Democracy: The 2010 Foreign and Commonwealth Office Report*, March 2011, page 49, available at http://centralcontent.fco.gov.uk/resources/en/pdf/human-rights-reports/accessible-hrd-report-2010.

such arrangements with more countries in 2011.[12] The arrangement with Libya was subsequently abandoned at some point during the UN-sanctioned intervention, as revealed when a Government minister said "I think Libya was on the list, but for obvious reasons it no longer is."[13]

11. The Government has continued to argue that its "approach to Deportations with Assurances demonstrates a strong commitment to dealing with a vital security issue in a way that complies with our domestic and international human rights obligations."[14] REDRESS believes that there remain fundamental problems with deporting persons on the basis of assurances, that post-deportation monitoring is not an adequate safeguard in states where torture is known to be authorised, and that the real question remains as to whether detainees should be returned to such states at all. Instead, the UK should consider alternatives, such as enhancing the collection of admissible evidence for prosecutions in terrorist-suspect cases, for example through legislative changes relating to the use of intercept evidence and/or post-charge questioning, which could be viable alternatives to DWAs.

CONFLICT AND TORTURE

A. Extra-territorial reach

12. Numerous allegations have arisen of serious human rights violations including torture by UK armed forces abroad. Some of these incidents have been verified, for example, in the report of the Baha Mousa Public Inquiry,[15] while others are still the subject of other inquiries and litigation.

13. The UK does not consider that UNCAT applies extra-territorially, for example, in Iraq and/or Afghanistan, to UK armed force who were or are in those states. However, this is contrary to the jurisprudence of the UK's highest court in *Al Skeini*[16] that Article 3 of the European Convention on Human Rights (ECHR) does have extra-territorial application to detainees held in custody by UK personnel anywhere abroad. Furthermore, two 2011 decisions of the Grand Chamber of the European Court of Human Rights (ECtHR), in *Al-Skeini v United Kingdom*[17] and *Al-Jedda v United Kingdom*[18] confirm that the UK's human rights obligations are not limited to UK territory but can exceptionally extend overseas when its officials exercise "control and authority" over foreign nationals.

---

[12] Ibid.
[13] Mr Jeremy Browne, Minister of State (with responsibility for human rights in the Foreign Office) giving evidence to the Foreign Affairs Committee on 23 May 2011: see House of Commons Foreign Affairs Committee, *The FCO's Human Rights Work 2010–11, Eighth Report of Session 2010–12, Volume 1,* published 20 July 2011, Evidence page 20, Q69, available at http://www.publications.parliament.uk/pa/cm201012/cmselect/cmfaff/964/964.pdf.
[14] Foreign and Commonwealth Office, *FCO Strategy for the Prevention of Torture, 2011-2015,* October 2011, page 10, available at http://www.fco.gov.uk/resources/en/pdf/fcostrategy-tortureprevention.
[15] See the report published on 8 September 2011 available at http://www.bahamousainquiry.org/report/index.htm.
[16] *Al Skeini and Others v Secretary of State and Another*, [2007] UKHL 26.
[17] Application No. 55721/07.
[18] Application No. 27021/08.

14. On the same basis, REDRESS believes that the UK should accept the extra-territorial application of UNCAT and the International Covenant on Civil and Political Rights to the actions of its officials abroad.

B. Inquiries

15. As mentioned above there are other inquiries relating to allegations of abuses committed abroad, such as the Al-Sweady Public Inquiry,[19] as well as cases pending before UK courts such as in *Ali Zaki Mousa.*[20] REDRESS is concerned that there is an underlying inability on the part of the UK to deal with the absolute prohibition of torture when its armed forces are allegedly involved, reflected in the continued need for inquiries to be set up and litigation to be launched to establish the truth of allegations.

INVESTIGATION/PROSECUTION OF SUSPECTS WITHIN UK JURISDICTION

16. The UK is obliged to investigate and then either prosecute or extradite torture suspects who come within the UK's jurisdiction. The UK needs to apply Section 134 of the Criminal Justice Act 1988 which criminalises torture no matter where it was committed, as set out under UNCAT.

17. The UK should not be a safe haven, nor simply allow suspects to enter and then leave for other safe havens, such as the late Colonel Gaddafi's former intelligence chief, Musa Kusa, who defected to the UK in March 2011 but was then allowed to leave, apparently for Doha, where he remains. This is clearly incompatible with the UK's obligations as set out above. In 2011, Parliament was told[21] that the UK Border Agency War Crimes Team recommended that immigration action should be taken against 495 war crimes suspects; it is important to know how these suspected criminals have been identified and what is being done to hold them accountable.

18. Legislative changes made in 2011 make it more difficult to obtain what are termed 'private arrest warrants' when victims seek to have arrested suspects of international crimes coming to the UK. The result of the changes require the consent of the Director of Public Prosecutions before such a warrant can be issued. The changes have not been conducive to strengthening the prospect for prosecutions. Instead of making such

[19] See http://www.alsweadyinquiry.org/index.htm.
[20] *Ali Zaki Mousa and Others v Secretary of State for Defence,* Court of Appeal, Case no. C1/2011/0524 B; for details of the case and REDRESs intervention see http://www.redress.org/downloads/_website_.pdf.
[21] See Hansard, Home Department Written Answers, 15 February 2011, 40826, available at http://services.parliament.uk/hansard/Commons/ByDate/20110215/writtenanswers/part006.htm.l

prosecutions more difficult, a concerted approach aimed at effectively ending impunity for suspects of international crimes who enter the UK is needed.[22]

19. REDRESS is also concerned about the UK's apparent policy that repeated extradition requests could be appropriate in genocide cases and for other international crimes over which the UK has universal jurisdiction. Such a practice undermines efforts to combat impunity. It means known suspects can live freely in the UK for years at a time without being brought to trial. This is illustrated by the case of four Rwandan genocide suspects resident in the UK who have remained un-investigated, despite a court ruling in April 2009 refusing to allow their extradition to Rwanda for trial on fair trial grounds. Instead of subsequently investigating them with a view to prosecuting them in the UK, which has jurisdiction, the UK has waited for Rwanda to make a second extradition request. REDRESS is concerned about the resultant delays in the delivery of justice,[23] as well as the general failure of the UK to implement its prosecute or extradite obligations.

ARTICLE 22 OF UNCAT AND THE SECOND OPTIONAL PROTOCOL OF THE ICCPR

20. The UK has not made a declaration under article 22 of UNCAT accepting the right of individual petition, nor has it ratified the Second Optional Protocol of the ICCPR. The procedures provides victims with an opportunity to raise allegations of specific or systemic violations under UNCAT with the Committee Against Torture and under the ICCPR with the Human Rights Committee, respectively. Individual petitions would constitute an important additional avenue that would give individuals a direct role in proceedings and would enable the committees to monitor the UK's compliance with its UNCAT and ICCPR obligations beyond periodic reporting.

21. The UK's acceptance of the individual petitions procedure would send an important message in the international campaign against torture, a campaign in which the UK has played a positive role. By making a declaration under article 22 and by ratifying the Second Optional Protocol to the ICCPR the UK would be an example to other states, and would help to strengthen the respective committees, which are recognised as the bodies specifically created to develop international standards, whose decisions in turn can positively impact on domestic jurisprudence and provide acknowledgment of the harm suffered by individual complainants.

---

[22] See *Police Reform and Social Responsibility Bill: Joint briefing for House of Lords Committee stage: 14 June 2011: Clause 154 – Changes to arrest procedure for international crimes,* available at http://www.redress.org/downloads/publications/Joint_briefing_HLCS.pdf.

[23] See REDRESS, *UK Extradition Policy: Submission to the Joint Committee on Human Rights (JCHR) 27 January 2011,* available at http://www.redress.org/downloads/publications/JCHR%20Submission%2027%20January%202011.pdf.

RECOMMENDATIONS

REDRESS makes the following recommendations to the UK:

- To ensure that the Detainee Inquiry is fully compliant with the UK's international human rights obligations
- To ensure that guidelines and legislation relating to the actions of officials abroad are always fully compliant with the absolute prohibition against torture
- To abandon proposals to extend closed material procedures to civil cases and thereby curtail the rights of civil litigants in cases where national security issues are involved
- To acknowledge that its obligations under UNCAT and by extension the ICCPR apply extra-territorially to all activities of its officials
- To cease making use of deportations with assurances for terrorist suspects
- To effectively investigate and prosecute suspects within the UK's jurisdiction so as to stop the UK being a safe haven for serious human rights violators
- To make a declaration under article 22 of UNCAT accepting the right of individual petition and to ratify the Second Optional Protocol to the ICCPR

21 November 2011

Kevin Laue, REDRESS UK Legal Advisor. Any inquiries should be directed to Kevin Laue at Kevin@redress.org or on +44 (0)20 7793 1777