



Introduction

Freedom from Torture makes this submission to the Ministry of Defence (MoD) on proposals for measures to provide legal protections for armed forces personnel and veterans serving in operations outside the United Kingdom (UK).

Freedom from Torture is dedicated to healing and protecting people who have survived torture. We provide therapies to improve physical and mental health, we medically document torture, and we provide legal and welfare help. We expose torture globally, we fight to hold torturing states to account and we campaign for fairer treatment of torture survivors in the UK.

This submission focuses on the application of the proposals to cases involving allegations of torture, or cruel, inhuman or degrading treatment (other ill-treatment).

Summary

Freedom from Torture opposes the proposal for a presumption against prosecution for any offences involving torture or other ill-treatment on the bases that this would:

1. risk creating impunity for torture in breach of the UK's obligations under a number of international treaties, including the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT), the European Convention on Human Rights (ECHR), and customary international law;
2. further undermine the absolute prohibition on torture by encouraging other states to follow suit in creating similar measures to shield alleged perpetrators of torture and other ill-treatment from prosecution;
3. contradict the UK's ambitions to end sexual violence (including sexual torture) in conflict through measures including increased prosecutions; and
4. expose UK Armed Forces personnel to prosecution by international courts or tribunals which would undermine the UK's reputation for leadership in the field of criminal justice.

This is particularly relevant to questions 11 to 13 of the Consultation Document, which ask consultees whether they agree with the proposal that the presumption against prosecution should apply to all offences or whether there are any offences that should be excluded from the measure.

We also oppose the proposed partial defence, if applied to cases where the excessive force resulting in death involved torture or other ill-treatment, on the basis that this would likely breach the UK's international obligations. This is particularly relevant to questions 19 to 21 of the Consultation Document, which ask consultees whether they support the proposed partial defence.

We oppose any civil litigation "longstop" that would prevent a potential victim of torture or other ill-treatment from pursuing any civil cause of action on the basis that this would breach the UK's obligations under the right to redress enshrined in Article 14 of the CAT. Even if drafted in a way that preserved a right of claim under the Human Rights Act 1998 (HRA), such a "longstop" would potentially fall foul of

Article 14 of the CAT. This is particularly relevant to questions 24 to 26 of the Consultation Document, which ask consultees whether it would be appropriate to impose a civil litigation “longstop”.

In her Foreword to the Consultation Document, Former Secretary of State for Defence, Penny Mordaunt, stated, “The Government is clear that the Armed Forces are not above the law”. Freedom from Torture strongly welcomes those words. We consider however that any or all of these new measures proposed would undermine the UK’s international legitimacy generally, and on human rights matters specifically. The Foreign Secretary, Dominic Raab, in his speech to the Conservative Party Conference in September 2019 elucidated the government’s vision stating, “Our vision of Global Britain means being a force for good in the world, A Global Good Citizen.”¹ In order to deliver this vision, it is vital that the UK be a global leader in upholding and promoting the rules-based international system. In order to retain its own legitimacy to speak out on human rights matters, including violations by other states, the UK must abide by its obligations under international law.

Background

The proposals contained in the Consultation Document cannot be assessed properly without full recognition of the strength and significance of the prohibition on torture and other ill-treatment, and of the obligations that flow from it. The following factors are of particular relevance to our submission:

1. The prohibition against torture is recognised as a norm of *jus cogens* (or a “peremptory norm”) and cannot be derogated from even in times of war or public emergency.
2. The prohibition contained in Article 3 of the ECHR pertains to torture, inhuman treatment and punishment, and degrading treatment and punishment without distinction.
3. The United Nations Committee Against Torture has confirmed that the imposition of a limitation period for the offence of torture is inconsistent with a State Party’s obligations under the CAT. The UK is a State Party to the CAT.
4. Article 7 of the CAT obliges a State Party to submit cases of alleged torture by individuals in territory under its jurisdiction to its competent authorities for the purpose of prosecution or to extradite the individual concerned (the obligation of *aut dedere aut judicare*). Decisions on prosecutions are to be made in the same manner as in the case of any ordinary offence of a serious nature under the law of that State.
5. Torture and other intentional ill treatment will also constitute a war crime if they are committed during armed conflict, or a crime against humanity if they are committed as part of a widespread and systematic attack on a civilian population: see the 1949 Geneva Conventions and Articles 7 and 8 of the 1998 Rome Statute of the International Criminal Court (Rome Statute). Both war crimes and crimes against humanity are crimes that fall under the jurisdiction of the International Criminal Court (ICC). Article 29 of the Rome Statute, to which the UK is a State Party, states that crimes within the jurisdiction of the ICC shall not be subject to any statute of limitation. Any failure to prosecute a current or former member of the UK Armed Forces for such crimes would expose them to the risk of prosecution at the ICC, on the basis that the UK is “unwilling or unable genuinely to carry out the investigation or prosecution” (Article 17 of the Rome Statute).

¹ See Speech of Rt Hon Dominic Raab MP, Foreign Secretary and First Secretary of State, Conservative Party Conference, 29 September 2019. Available at <https://press.conservatives.com/post/18802277340/raab-a-good-global-citizen/embed> Accessed 09.10.2019

A. THREAT TO UK'S INTERNATIONAL STANDING

For centuries the United Kingdom led the way in the evolution of an absolute ban on torture. Torture was ruled out by the English common law, and proscribed by Magna Carta, as far back as the 13th century. The Crown practice of issuing torture warrants was finally ended in 1640. It was not until the 18th and 19th centuries that Continental Europe followed suit. Eventually the British stance prevailed in international law. The UK played a central role in the drafting of the European Convention on Human Rights, the International Covenant on Civil and Political Rights (ICCPR) and the United Nations Convention Against Torture (CAT).

As a major military player on the global stage and permanent member of the UN Security Council, the UK plays an important role in the continued promotion of the international rules-based system that it helped to build. The Armed Forces have a responsibility for upholding this global leadership, including by setting an example in relation to accountability for any torture or other ill-treatment committed by our personnel on the battlefield. If Britain is to deliver on what Foreign Secretary Dominic Raab described as a foreign policy guided by “a clear moral compass”,² it must demonstrate in both deeds and words the importance to peace and security of justice for victims of international crimes and serious human rights abuses.

In this moment when the rules-based international system is under great strain from states ignoring the norms and structures created to promote a safe and peaceful world, it is all the more important that the UK is not seen to be willing to regress from its obligations under international law.

The UK's reputation for human-rights compliance is of enormous importance to our standing and contributes to our soft power on the global stage. The FCO-led Preventing Sexual Violence Initiative (PSVI), launched in 2012 to combat the scourge of sexual violence in conflict, is just one example of the UK's global leadership. The new MoD proposals risk being interpreted as a signal that the UK supports impunity for rape and sexual torture committed by its armed forces during conflict, thereby undermining the PSVI and leaving the UK vulnerable to criticisms of hypocrisy.

Adherence to the rule of law also provides a form of protection for members of the Armed Forces in the event of their capture during hostilities. It is difficult for the UK to demand compliance with international norms against torture and other ill-treatment from other parties to armed conflicts if it does not model the same behaviour, including by pursuing justice for any victims of breaches by the UK Armed Forces.

Any resiling from our international obligations also carries the serious risk of “copycat” action by other states. Survivors of torture in therapy with Freedom from Torture often warn that any failure by states such as the UK to deliver accountability for torture gives encouragement to torturers in the repressive countries they have fled that they can carry on without fear of consequences.

These proposals would therefore create a risk of impunity for torture or ill-treatment committed by UK personnel and thereby damage the UK's international standing, in relation to human rights and the rules-based international system more generally, undermine the global torture ban and the UK's flagship Preventing Sexual Violence Initiative, expose current or former members of the UK Armed Forces to greater risk of prosecution abroad, including at the ICC, and erode norms that protect UK personnel from torture or ill-treatment in the event of their own capture during hostilities.

² See Speech of Rt Hon Dominic Raab MP, Foreign Secretary and First Secretary of State, Conservative Party Conference, 29 September 2019.

B. THE PRESUMPTION AGAINST PROSECUTION

In Freedom from Torture's view, if applied to offences involving torture or other ill-treatment, the presumption would be inconsistent with the UK's international legal obligations and may expose Armed Forces personnel to prosecution in other States or before international courts or tribunals.

I. The practical effect of the presumption

We note at the outset that there is some doubt as to how the presumption against prosecution would function in practice. Presumably, the presumption against prosecution is intended to preclude prosecution, in at least some cases where these criteria are met. Otherwise, it would serve no purpose. However, this is not self-evident on consideration of the two specific options identified in the Consultation Document.

1. The first option is that, where a member of the Armed Forces has been investigated and charges have not been brought, that position will be treated as final in the absence of "compelling reasons" (such as the emergence of new evidence). No further explanation is given of why this is necessary as a matter of practice (for example, by reference to the number of allegedly unfair prosecutions). Nor does the Consultation Document consider why there would not be "compelling reasons" for initiating a prosecution for alleged historic offences in circumstances where the full code test is met.³ In Freedom from Torture's view, "compelling reasons" are highly likely to exist if there is sufficient evidence for a realistic prospect of conviction and a prosecution is in the public interest; if this were the case, the proposed presumption would add little if anything to the current criteria.
2. The second option is that the presumption would apply irrespective of whether there had been a prior police investigation into the alleged offence, and would be overridden "wherever a prosecutor considered it genuinely in the public interest for a prosecution to be brought." The Consultation Document then sets out possible factors for consideration including (a) the seriousness of the alleged offence; (b) the passage of time since the alleged offence; (c) whether the alleged wrongdoing has been the subject of a previous police investigation; (d) whether any compelling new evidence has emerged which was not considered as part of a previous investigation; and (e) whether a decision not to prosecute might undermine public confidence in the criminal justice system. This proposal clearly mirrors the second stage of the full code test. In consequence, the second option would not appear to add anything substantive to the current criteria for prosecution.⁴

³ In relation to England and Wales, the CPS Code for Crown Prosecutors, which is issued by the Director of Public Prosecutions (DPP) pursuant to s 10 of the Prosecution of Offences Act 1985, provides that prosecutors must only start or continue a prosecution when both stages of what is referred to as the "full code test" are met. 1) The first stage is the evidential stage, at which point prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. 2) The second stage is the public interest stage, at which point prosecutors must consider, for every case where there is sufficient evidence to justify a prosecution, whether a prosecution is required in the public interest. The Code sets out a non-exhaustive list of factors to be considered at the public interest stage, including: (a) the seriousness of the offence committed; (b) the level of culpability of the suspect; (c) the circumstances of and the harm caused to the victim; (d) the suspect's age and maturity at the time of the offence; (e) the impact on the community; (f) whether prosecution is a proportionate response; and (g) whether sources of information require protecting.

⁴ Further, if the DPP considered that it was necessary for prosecutors to take into account additional factors in determining the public interest stage of the full code test in relation to allegations of historic offences against specifically armed forces personnel, he has the power to alter the Code under s 10 POA 1985. He has, to date, chosen not to do so, and the proposals in the Consultation Document do not suggest that he will do so.

This said, if the presumption did add substantively to the current criteria – for example, by requiring “exceptional circumstances” for a prosecution to proceed – the necessary result would be that some cases involving alleged torture or other ill-treatment would not be prosecuted due to the passage of time, despite the fact time had not resulted in insurmountable evidentiary barriers to prosecution and that it was in the public interest to proceed. In our view, this is intrinsically concerning in light of the strength and significance of the prohibition on torture and other ill-treatment. These concerns are borne out when the presumption against prosecution is considered in light of the UK’s specific international legal obligations.

II. Breach of obligations under CAT / customary international law

In Freedom from Torture’s view, the effect of the proposed presumption is akin to a statute of limitations. This is because the presumption would result in situations where an alleged offender could not be prosecuted due to the passage of time, despite the existence of a case against them, which met the usual threshold for prosecution. **In consequence, in our view, the presumption would – like a statute of limitations – be incompatible with the UK’s obligations under the CAT and at customary international law. As a result, the presumption against prosecution could have the effect of exposing Armed Forces personnel to prosecution in other international courts and tribunals, such as the ICC.**

(i) Application to offences of torture generally

As noted above, under Article 7 of the CAT the UK is obliged either to submit alleged cases of torture to its competent authorities for the purposes of prosecution, or to extradite the individual concerned to face prosecution elsewhere. This obligation, which is found in a number of international instruments, is known as *aut dedere aut judicare* (“extradite or prosecute”). In *Questions relating to the Obligation to Prosecute or Extradite (Belgium v Senegal)*, the International Court of Justice observed that the obligation under Article 7 of the CAT is to submit the case to the competent authorities but leaves it to those authorities to decide whether to initiate proceedings, thus respecting the independence of States’ Parties judicial systems: §§90 & 94. However, the Court confirmed that “prosecution is an international obligation under the [CAT], the violation of which is a wrongful act engaging the responsibility of the State” and that the obligation on a State to prosecute is intended to allow the fulfilment of the Convention’s object and purpose, which is to make more effective the struggle against torture: §§94 & 115.

The UN Committee Against Torture has repeatedly confirmed that the imposition of any limitation period for offences involving torture is inconsistent with States Parties’ obligations under the CAT. For example, the Committee explained, in the context of a five-year statute of limitations for offences amounting to torture in Liechtenstein, that “no justification for imposing time limits on the obligation of the State party to investigate and prosecute crimes of torture... is acceptable.”⁵

In its guidance to States with respect to the rights of victims of crimes, the United Nations General Assembly has also concluded that statutes of limitations shall not apply to gross violations of

⁵ Report of the Committee Against Torture, Official Records of the General Assembly, Sixty-Fifth Session, Supplement No. 44 (A/65/44), chap. III, consideration of reports by States parties under article 19 of the Convention, Liechtenstein, §61(9).

international human rights law and serious violations of international humanitarian law, which constitute crimes under international law.⁶

In *Prosecutor v Furundzija*, the International Criminal Tribunal for the former Yugoslavia (ICTY) suggested that this is also the position at customary international law. In discussing the significance of the prohibition on torture having the status of *jus cogens*, the ICTY noted that “[i]t would seem that other consequences include the fact that torture may not be covered by a statute of limitations”: §157. The Tribunal also made it clear that legislation which ran contrary to the prohibition “would not be accorded international legal recognition”, and that “[p]roceedings could be initiated by potential victims if they had locus standi before a competent international or national judicial body with a view to asking it to hold the national measure to be internationally unlawful”: §55.

In Freedom from Torture’s view, this would equally be the consequence of the proposed presumption against prosecution, which would have the effect of undermining the UK’s obligation to prosecute as outlined in the CAT.

(ii) Application to offences amounting to war crimes or crimes against humanity

The imposition of anything akin to a statute of limitations is particularly problematic where applied to offences involving torture or other ill-treatment that amount to war crimes or crimes against humanity.

The importance of not imposing a domestic statute of limitations on prosecutions for war crimes or crimes against humanity has been repeatedly emphasised. For example, in 1967 the General Assembly – in Resolution 2338 (XXII) on the punishment of war criminals and persons who have committed crimes against humanity – noted that “the application to war crimes and crimes against humanity of the rule of municipal law relating to the period of limitation for ordinary crimes is a serious concern to world public opinion, since it prevents the prosecution and punishment of persons responsible for those crimes.”⁷

In addition, war crimes and crimes against humanity are not subject to statutes of limitations in international courts or tribunals. For example:

1. No statute of limitations for “international crimes” was provided for in early instruments such as the Nuremberg or Tokyo Charters or the statutes of the ICTY, the International Criminal Tribunal for Rwanda, or the Special Court for Sierra Leone.⁸
2. Article 29 of the Rome Statute stipulates that crimes within the jurisdiction of the ICC “shall not be subject to any statute of limitations”.

In light of indications such as these, the International Committee of the Red Cross (ICRC) takes the view that customary international humanitarian law prohibits the application of statutes of limitation to war crimes.⁹ In the commentary to its Customary IHL Study, the ICRC notes in particular, “The operation of statutory limitations could prevent the investigation of war crimes and the prosecution of the

⁶ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, General Assembly resolution 60/147 of 16 December 2005, annex, §§6-7.

⁷ See also the 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity and the 1974 European Convention on the Non-Applicability of Statutory Limitation to War Crimes and Crimes against Humanity, though the UK is not a party to either Convention.

⁸ ILC Commentary to Draft Articles, §34.

⁹ ICRC Customary IHL Study, Rule 160, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule160.

suspects and would constitute a violation of the obligation to do so.” In our view, the same may properly be said of a presumption against prosecution.

(iii) Exposing Armed Forces personnel to prosecution

In light of the above, there is a real risk that – if applied to offences involving torture or other ill-treatment – the presumption against prosecution would not only breach the UK’s legal obligations under the CAT and at customary international law, but would expose members of the UK Armed Forces to prosecution abroad.

In general, if a member of the Armed Forces were alleged to have committed acts of torture or other ill-treatment in the context of armed conflict, there would be no question of their being prosecuted abroad, despite the fact that a growing number of States have domestic legislation providing for universal jurisdiction over war crimes and crimes against humanity.¹⁰ This is because the UK would discharge its obligations to investigate and prosecute, and no obligation to extradite would arise.

Nor would there be any question of prosecution by the ICC. This is because, under the Rome Statute, a case which would otherwise fall within the ICC’s jurisdiction is inadmissible where (emphasis added):

1. the case “is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution” (Article 17(1)(a)); or
2. the case “has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute” (Article 17(1)(b)).

In assessing “unwillingness” in a particular case, the ICC will consider whether the proceedings were undertaken or the decision was made “for the purpose of shielding the person concerned from criminal responsibility”: Article 7(2)(a).

The result is that, if an alleged offence by a member of the Armed Forces had been identified which involved torture or other ill-treatment and would amount to a war crime or a crime against humanity, but the UK declined to prosecute based on the application of the presumption against prosecution, it is possible that:

1. another State Party to the CAT could request the extradition of the alleged perpetrator (a request to which the UK would be obliged to accede under Article 7); or
2. the ICC may find that it had jurisdiction in respect of the alleged offence because the UK was unwilling to prosecute.

This would, of course, undermine the MoD’s objective of providing Armed Forces personnel with “protection” against prosecution, as well as exposing the UK to censure on the international stage.

III. Breach of obligations under Article 3 ECHR

The proposed presumption against prosecution may also place the UK in breach of its obligations under Article 3 ECHR. In *Cestaro v Italy* (App. No 6884/11), 7 April 2015, the European Court of Human Rights (ECtHR) held that in cases concerning torture or ill-treatment inflicted by State agents, criminal

¹⁰ This enables the prosecution of these offences within the relevant State irrespective of where the alleged offence was committed or the nationality of the suspect or victim(s).

proceedings ought not to be discontinued on account of a limitation period and that the manner in which the limitation period is applied must be compatible with the requirements of the Convention. As a result, it is “difficult to accept inflexible limitation periods admitting of no exceptions”: §208.

The ECtHR has further held that – in respect of serious offences capable of breaching Article 3 – States have positive obligations to maintain criminal law provisions that effectively punish the offence in question, and to apply those provisions through effective investigation and prosecution. For example in *Beganovic v Croatia* (App. No. 46423/06), 25 September 2009, the ECtHR stated: “Article 3 requires States to put in place effective criminal-law provisions to deter the commission of offences against personal integrity, backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions”: §71.¹¹

Offences involving torture and other ill-treatment necessarily fall within the category of offences discussed in these cases. In Freedom from Torture’s view, a presumption against prosecution that effectively shielded alleged offenders from prosecution due solely to the passage of time – even where the usual criteria for prosecution were otherwise met – would be highly likely to result in breaches of the positive obligations outlined above.

The availability of a civil claim for breach of Article 3 (see further Section D below) would not affect this conclusion. The ECtHR has repeatedly held that the above obligations cannot be discharged solely by a civil compensation mechanism. As the Court put it in *Krastanov v Bulgaria* (App. No. 50222/99), 30 December 2004 at §60:

If the authorities could confine their reaction to incidents of intentional police ill-treatment to the mere payment of compensation, while remaining passive in the prosecution of those responsible, it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity and the general legal prohibition of torture and inhuman and degrading treatment and punishment, despite its fundamental importance, would be ineffective in practice.

C. THE PROPOSED PARTIAL DEFENCE TO MURDER

The Consultation Document envisages that the proposed partial defence would be available wherever death was caused by Armed Forces personnel in the course of duty outside the UK through using more force than strictly necessary for the purposes of self-defence, providing that the initial decision to use force was justified. If made out, the defence would reduce a case of murder to one of manslaughter.

In Freedom from Torture’s view, it would be deeply concerning if the partial defence were available in cases where the excessive force in question included torture or other ill-treatment. The necessary implication would be that breaches of one of the most fundamental prohibitions contained in international human rights and humanitarian law may be, at least to some extent, excused by (in the language of the Consultation Document) “the unique pressures faced by Armed Forces personnel in the course of their duties outside the UK”. This conflicts with the core proposition – reflected in the non-derogable nature of both the customary norm and the rights enshrined in Article 3 ECHR – that torture and other ill-treatment can never be justified. Indeed, the UN Committee Against Torture has already

¹¹ In *Beganovic*, the reason the prosecution of the alleged offence had become time-barred was “inactivity of the relevant State authorities” (at §85). In those circumstances, the proceedings did not have “a sufficient deterrent effect on the individuals concerned” and were not “capable of ensuring the effective prevention of unlawful acts such as those complained of”; the result was a breach of the State’s positive obligations under Article 3 (at §86).

expressed concern about the defences to the offence of torture set out in SS 134(4) and (5)(b)(iii) of the CJA 1988, which are available where a defendant proves “that he had lawful authority, justification or excuse” for his or her conduct. The Committee has described this defence as providing “an ‘escape clause’ to the absolute prohibition of torture” and has called on the UK to repeal it.¹²

In consequence, in Freedom from Torture’s view, the application of the proposed partial defence in cases involving conduct amounting to torture or other ill-treatment would also run contrary to the UK’s international obligations.

D. THE PROPOSED CIVIL LITIGATION “LONGSTOP”

In considering the legal issues arising from the proposed civil litigation “longstop”, it is important to recognise that a civil claim is often vital to the ability of victims of torture or other ill-treatment to obtain an effective remedy which is, in turn, important for their recovery from such traumatic incidents. The provision of such a remedy is a matter of obligation: in particular, Article 14 of the CAT requires States Parties to ensure in their legal systems that “the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation”, and Article 13 ECHR provides that “[e]veryone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority.”

This obligation does not necessarily entail a complete prohibition on the adoption and application of limitation periods for civil claims. However, in general these provisions seek to balance the need to encourage promptness in bringing claims with the rights of potential victims. Thus, for example, s 2 of the Limitation Act 1980 sets a limitation period of six years in respect of claims founded in tort. Section 33 allows for the discretionary exclusion of this time limit “if it appears to the court that it would be equitable to allow an action to proceed”, having regard to factors including the degree of prejudice to the defendant, the length of and reasons for the delay, the effect of that delay on the cogency of the available evidence, the conduct of the defendant after the cause of action arose, and the promptness with which the claimant acted.

An absolute “longstop” of the type proposed would represent a significant departure from this approach, and would be inconsistent with the UK’s obligation to provide victims with redress. For example, the UN Committee Against Torture, in its General Comment No. 3, affirmed the obligation of States Parties to the CAT to “ensure that the right to redress is effective” and identified statutes of limitations as potential “obstacles that impede the enjoyment of the right to redress and prevent effective implementation of article 14”: §38. The Committee went on to note, at §40, that:

On account of the continuous nature of the effects of torture, statutes of limitations should not be applicable as these deprive victims of the redress, compensation, and rehabilitation due to them. For many victims, passage of time does not attenuate the harm and in some cases, the harm may increase as a result of post-traumatic stress that requires medical, psychological and social support, which is often inaccessible to those who have not received redress. States parties shall ensure that all victims of torture or ill-treatment, regardless of when the violation occurred or whether it was carried out by or with the acquiescence of a former regime, are able to access their rights to remedy and to obtain redress.

¹² UN Committee Against Torture, *Concluding observations on the fifth periodic report of the United Kingdom adopted by the Committee at its fiftieth session*, 24 June 2013, CAT/C/GBR/CO/5.

We know from torture survivors in treatment with Freedom from Torture that the process of seeking redress can help survivors to recover by affirming the injustice of what they endured, restoring some measure of control which their torturers tried to take away and contribute to torture prevention efforts so that others are protected from the same suffering. On a practical level, holding perpetrators accountable can enable access to a wide range of reparation measures. Compensation can provide victims of torture public acknowledgment of their survival, facilitating the re-establishment of their dignity, self-esteem, trust in others and belief in the world as just. For some, money can also alleviate poverty and help those suffering hardship, disability and impaired functioning as a result of the violation.¹³

The Consultation Document states expressly that the proposed “longstop” is not intended to apply to “claims relating to human rights violations.” It does not, however, explain what is meant by this and why any exception would be applicable to human rights violations and not, particularly given the context, to violations of international humanitarian law.

In any given case, the violation of an individual’s human rights – here, in particular, of the right not to be subjected to torture or other ill-treatment – arises from a particular set of acts/omissions. Any civil claim that arises out of those acts/omissions is, in principle, a human rights claim in that it affords a victim redress for that violation and its consequences. If it placed an absolute bar on some causes of action but not others, a civil litigation “longstop” would, in Freedom from Torture’s view, arbitrarily limit the redress available to victims – particularly with respect to compensatory damages. In consequence, it would deny them an “enforceable right to fair and adequate compensation” for the purposes of Article 14 CAT.

In order to avoid such a breach, it would be necessary to ensure that any civil litigation “longstop” had no application to any claim involving allegations of torture or other ill-treatment. This could be achieved by ensuring that any exemption for human rights claims covered all causes of action based on an underlying violation of fundamental rights.

¹³ See Freedom from Torture Statement in Support of the Torture Damages Bill, published in Torture (Damages) Bill 2007-08 – A Private Member’s Bill to Provide a Remedy for Torture Survivors in the United Kingdom: Compilation of Evidence Received following the Call for Evidence launched by Lord Archer of Sandwell QC, compiled by the Redress Trust, July 2008. Available at <https://www.freedomfromtorture.org/sites/default/files/2019-10/MF%20Position%20paper.pdf>. Accessed 10 October 2019.