



Freedom from Torture

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Submission of Freedom from Torture to the Home Affairs Committee Inquiry into Asylum

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1. **Executive Summary**

- 1.1. Freedom from Torture is a UK-based human rights organisation and one of the world's largest torture treatment centres. Our centres in London, Manchester, Newcastle, Birmingham and Glasgow provide a range of clinical and therapeutic services to survivors of torture and organised violence, ninety-five per cent of whom are, or have been, refugees or asylum seekers.
- 1.2. Freedom from Torture welcomes the Committee's Inquiry into asylum and particularly its focus on ensuring that the right decision is taken first time. This is imperative for ensuring protection needs are recognised at an early stage without protracted appeals and intense distress to vulnerable applicants.
- 1.3. We welcome UKBA initiatives to improve screening processes and the commitment on the part of senior managers to preventing routing of torture survivors to the Detained Fast Track (DFT) system. Ongoing successful referrals to Freedom from Torture from the DFT demonstrate a need for further reforms including a policy change to reduce the high evidential threshold before a suspected torture survivor is deemed unsuitable for DFT and ongoing learning and development initiatives for staff. However, it is also essential to recognise that the timing, format and nature of screening interviews makes this a fundamentally inappropriate stage at which to expect torture disclosures such that eligibility for the DFT can be safely assessed and the right decisions taken under UKBA's new 'triage' processes. This and other problems make the DFT a fundamentally untenable system that is incompatible with fundamental human rights guarantees and Freedom from Torture believes it should be abolished. Whilst it remains in place, safeguards should be strengthened to ensure that no torture survivor is placed within it.
- 1.4. The assessment of credibility in asylum claims involving allegations of torture continues to be a significant problem, with too little attention given to the impact of trauma on memory and disclosure, and inadequate weight given to medico-legal evidence documenting torture and addressing these issues. We are pleased to report that UKBA responded to concerns raised by Freedom from Torture through the development and piloting of new guidance supported with training. Ensuring the speedy rollout of this guidance, amended as necessary to reflect learning from the pilot and accompanied by facilitated training for all case owners, is now a major priority in order to address poor quality asylum decision-making involving allegations of torture which persists across asylum casework teams.
- 1.5. Research conducted by Freedom from Torture raises serious concerns about the safety of UKBA's removals policy for Sri Lanka. Despite our efforts to engage with UKBA and the Foreign and Commonwealth Office about this matter, the government has persistently refused to revise its policy position to reflect the overwhelming evidence from Freedom from Torture and other NGOs that certain categories of Sri Lankan Tamils are suffering torture and ill-treatment following forcible or voluntary return from the UK. This flawed policy continues to be used as a basis for both asylum decision-making and resisting injunction applications when removals are directed. Despite an ongoing country guidance exploring the risk to Sri Lankan Tamils, the government has continued with efforts to effect mass removals via charter flights, halted only by the courts.

- 1.6. On account of the gravity of these issues in terms of the UK's international legal obligations and the leading role played by Freedom from Torture in raising the alarm about this issue, we have set out in some detail evidence regarding the prevalence of torture of Sri Lankan Tamils following return from the UK. For the first time, we are able to disclose to the Committee a particularly troubling case involving ill-treatment on arrival at Colombo airport of a Freedom from Torture client who was forcibly returned to Sri Lanka on a scheduled flight in February 2012. Freedom from Torture invites the Committee to closely scrutinise the government's conduct in relation to forced returns of Tamils to Sri Lanka to ensure that any poor practice is not replicated in relation to asylum claimants at risk of torture in other countries.
- 1.7. High-quality legal advice is an essential safeguard against poor quality decision-making so Freedom from Torture welcomes a mechanism by which concerns may be raised in relation to poor quality legal advisers. We stress, however, that measures must also be put in place to address the chronic shortage of high quality advice provision, the incentives for poor practice created by current funding arrangements and the need for improved implementation and monitoring of quality standards by the regulatory bodies.
- 1.8. We also recommend that applicants recognised as refugees are immediately granted Indefinite Leave to Remain in light of our experience of the negative impact of the five-year active review system on the rehabilitation of many torture survivors.
- 1.9. On account of its importance to the issues scrutinised by the Committee, Freedom from Torture has also released in this submission new and early findings from a major research study due to be published later this year on the poverty experienced by torture survivors and the impact this has on their rehabilitation from torture. The level of asylum support is insufficient to meet basic living needs, an issue exacerbated for applicants receiving cashless section 4 support, and the accommodation provided is unsuitable for torture survivors in a significant number of cases leading to health complications. Destitution results from administrative failures across the asylum support system, including transition to the mainstream welfare system following a grant of refugee status. Destitution was experienced most commonly and for prolonged periods by applicants with fresh claims for asylum, with continuing negative effects on their rehabilitation from torture in the long term.

2. Introduction

- 2.1. Freedom from Torture, formerly known as 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.
- 2.2. 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. We have centres in London, Manchester, Newcastle, Birmingham and Glasgow and provide services including counselling, psychotherapy, clinical psychology, psychiatry, family therapy, group therapy, music, art and horticultural therapy. Ninety-five percent of Freedom from Torture's clients are, or have been, refugees or asylum seekers.
- 2.3. Freedom from Torture welcomes the Committee's inquiry into asylum and particularly its focus on ensuring that '*the right decision is taken first time*'. Our submission draws on:
 - ⌚ Our extensive experience of providing clinical services to survivors of torture who are passing through or who have completed their passage through the UK's asylum system;
 - ⌚ Engagement over many years with the UK Border Agency (UKBA) in relation to many areas of asylum policy and practice affecting survivors of torture who are asylum-seekers in the UK;
 - ⌚ Participatory research conducted into poverty faced by our clients in the UK and the impact of these experiences on their clinical rehabilitation. This research will not be published until mid-2013 however, in view of the importance of this inquiry, we have previewed for the Committee key findings relevant to the terms of reference;
 - ⌚ Research from our Country Reporting Programme, and in particular our work on post-conflict torture practices in Sri Lanka, relevant to the Committee's interest in country of origin information and country specific asylum policy, and the prevalence of post-removal torture and arrangements for monitoring this.
- 2.4. This Inquiry takes place against the backdrop of the Home Secretary's announcement on 26 March 2013 that the UKBA is to be abolished and its functions re-absorbed into the Home Office. References and recommendations made to UKBA in this submission should be read as applicable to the Home Office. As no information has yet been provided to us about the implications for the asylum system of the changes, we have not addressed these matters directly in this submission, however we trust that the Committee will explore the opportunities that this development creates for addressing the long-standing failure to prioritise high quality and sustainable decision-making and ensure that those at risk of torture and persecution are able to access protection at an early stage without the need for protracted appeals and claims.
- 2.5. We have also supported the Survivors Speak OUT network to respond to the Committee directly. This network, which is affiliated to Freedom from Torture, was set up by former clients of Freedom from Torture's clinical treatment services to

advocate for change based on their lived experience of surviving torture and of seeking protection. Our submission and the submission of the Survivors Speak OUT network should be read together.

- 2.6. Our submission addresses most but not all of the issues listed in the inquiry's terms of reference. We would be pleased to provide further information if called to give oral evidence.

3. **The effectiveness of the UK Border Agency screening process, including the method of determining eligibility for the 'Detained Fast Track' procedure**

- 3.1. Freedom from Torture welcomes the improvements implemented by UKBA under the Asylum Screening Reform Programme following sustained criticism of its asylum screening facilities and processes. We also commend the commitment on the part of Asylum Screening Unit (ASU) management to promote initiatives aimed at building the capacity of screening staff in their interactions with vulnerable and traumatised people. However, it is also essential to recognise that **the timing, format and nature of screening interviews makes this a fundamentally inappropriate stage at which to expect torture disclosures such that eligibility for the DFT can be safely assessed and the right decisions taken under UKBA's new 'triage' processes.**
- 3.2. We consider that this and other problems make the DFT a fundamentally untenable system that is incompatible with fundamental human rights guarantees and that it should be abolished. While UKBA continues to uphold the use of DFT, the agency shares our view that torture survivors should not be routed into this system on account of the serious risk of their re-traumatisation in the detained setting. It is important therefore that safeguards are strengthened to ensure survivors are not placed within the DFT whilst it remains in place.

Reforms of the screening process

- 3.3. Freedom from Torture welcomes the measures implemented under the Asylum Screening Reform Programme to improve screening processes and acknowledges the resources that have been committed to the refurbishment of the Asylum Screening Unit (ASU) to, among other things, remove the glass partitions separating applicants from interviewers and interpreters and to increase the level of privacy and comfort of applicants during screening interviews.
- 3.4. We also commend the willingness of ASU management to engage with Freedom from Torture and the Survivors Speak OUT network as part of efforts to improve awareness of the impact of torture and trauma on their working practices and recognise the vulnerabilities of applicants using their service.
- 3.5. In July 2011, Freedom from Torture and Survivors Speak OUT network were invited to participate in an away day for ASU staff to *'provide an insight into the customers that ASU serve and their experiences prior to applying for asylum in order to create an understanding of the vulnerabilities of the customer as a direct result of the trauma experienced in their home country'*. The value attached by ASU staff to experiential learning opportunities emerged clearly at this session and we subsequently agreed to conduct a series of three study visits in 2012 to our facilities in London for a small group of ASU staff. We have a meeting scheduled with the Deputy Director of the ASU (and we hope a representative of the Learning and Development Team) on 1 May 2013 to discuss how to effectively and appropriately cascade learning from this program across the ASU, including the specialist children's team which has expressed an interest in working with us. There remains a need to ensure that all staff who come into contact with asylum applicants during the screening process, including screening officers as well as security personnel and administrative staff, receive appropriate and regular training in order to improve their responses to vulnerable applicants. It is important that such training is

conducted on an ongoing and regular basis, its impact monitored, and associated quality measures developed and integrated into staff appraisal systems.

- 3.6. As the Independent Chief Inspector of Borders and Immigration pointed out in his 2011 inspection of the DFT, the majority of asylum applicants are not screened at the ASU but at other locations including immigration removal centres and police stations.¹ Despite his emphasis on the need for screening improvements to be applied across all screening locations², it is not clear to Freedom from Torture what plans there are to improve identification of torture survivors during screening interviews undertaken outside of the ASU and we consider that scrutiny of this by the Committee would be helpful.
- 3.7. It is of considerable concern to Freedom from Torture that decisions to route into the DFT are not taken by screening officers but by staff in the Fast-track Intake Unit who, because they have neither participated in the screening interview nor even met the applicant, may lack important information, including from non-verbal cues, indicating vulnerability. This is a matter which the Committee may wish to reflect upon. Further, in recent years UKBA managers have developed a feedback loop so that decision-makers in this Intake Unit are aware of any case which is subsequently released from the DFT and the reasons for this release. It is our understanding that relevant staff in the ASU are not included in this feedback loop which again bears some consideration.

Timing, format and nature of screening processes are inappropriate for routing decisions

- 3.8. Alongside the considerable challenges that remain in ensuring that asylum applicants are treated with dignity and respect during screening and that victims of torture are identified at an early stage, it is essential to recognise that the timing, format and nature of screening processes make these inappropriate for facilitating disclosure and therefore for decisions on routing into the DFT and for 'triage' of cases otherwise as provided for in the processes taking force from April 2013.
- 3.9. The screening interview is usually an applicant's first contact with the UKBA, occurring often on arrival at port or shortly afterwards at the ASU. There are real barriers to disclosure of torture by applicants at this stage of the process including: (i) lack of access to legal advice prior to the screening interview; (ii) lack of knowledge that disclosure of torture at this stage could and should prevent detention, particularly as questions are not asked about this; and *most fundamentally*, (iii) lack of trust, a fear of state officials and/or intense feelings of shame about their torture.³ Disclosure of sensitive information relating to torture

1 Independent Chief Inspector of the UK Border Agency (2011), *Asylum: A thematic inspection of the Detained Fast Track*, p.12.

2 *Ibid*, p.17.

3 This is a well understood phenomenon clinically. See for example, Juliet Cohen (2001), 'Errors of Recall and Credibility: Can Omissions and Discrepancies in Successive Statements Reasonably be Said to Undermine Credibility of Testimony' *Medico-Legal Journal* 69(1), 25-34; Diane Bögner, Chris Brewin, Jane Herlihy (2010), 'Refugees' Experiences of Home Office Interviews: A Qualitative Study on the Disclosure of Sensitive Personal Information,' *Journal of Ethnic and Migration Studies* 36:3, 519-535.

and other forms of abuse is a process which usually requires time and the development of a relationship of trust.

- 3.10. It would be potentially re-traumatising and dangerous for screening staff to ask intrusive questions about torture or abuse at this stage and so Freedom from Torture recommends that registration of asylum claims take place at an early stage of the process with applicants having access to legal advice and an appointment with an independent clinician prior to an initial interview held at a later stage of the process at which routing decisions are made.

Continued routing of torture survivors into the DFT

- 3.11. Freedom from Torture continues to receive a significant number of referrals from the DFT for medico-legal reports (MLRs) in accordance with a long-standing policy under which successful referral to Freedom from Torture leads to release from both the DFT and from detention.⁴
- 3.12. In 2012, we accepted 37 referrals from the DFT - an average of 3 referrals per month – for asylum applicants identified by their legal representatives as having *prima facie* evidence of torture and requiring an MLR.
- 3.13. We would like to draw the Committee's particular attention to the fact that we continue to receive referrals for children who were wrongly routed into the DFT despite advising UKBA at screening that they were children. UKBA's own policy is that only those applicants whose physical appearance or demeanour '**very strongly** indicates that they are **significantly** over 18 years' (emphasis in the original) should be age disputed.⁵
- 3.14. The numbers of referrals from DFT that we have both received and accepted has declined over the last 1-2 years. Whilst it is *possible* that this reflects improved practice by screening officers and the Intake Unit in identifying and excluding from the DFT those who are suspected to be survivors of torture, there are other factors that must be considered before conclusions are reached on this point including concerns that it is becoming harder for applicants in the DFT to access quality legal advice at an early enough stage for torture to be disclosed and a referral made to us or the Helen Bamber Foundation.⁶ We have certainly identified a decline in the quality of referrals we receive in relation to applicants in the DFT; our MLR service estimates that in at least one additional referral per month, we do not receive sufficient information from the legal representative in order to make an initial assessment.

Irrational policy requiring 'independent evidence' of torture at the screening stage

- 3.15. A key reason survivors of torture continue to be routed into the DFT is that UKBA policy against their inclusion is not sufficiently robust. The Suitability Exclusion

⁴ The policy was set out by the then Minister of State for the Home Office to Parliament on 06/11/2006. See HL Deb, 2 November 2006, c47W. By agreement this policy also applies to referrals to the Helen Bamber Foundation.

⁵ UKBA (2012) *Enforcement Instructions and Guidance: Detained Fast Track Processes* at 2.4; UKBA (2011) *Asylum Process Guidance: Assessing Age* at 2.2.

⁶ See for example, Detention Action (2011) *Fast Track to Despair – The unnecessary detention of asylum seekers*, pp. 26-7.

Criteria for the DFT do not state that those suspected to have suffered torture must be excluded from this system. Instead, they specify that those with '*independent evidence*' of torture are '*unlikely*' to be suitable for entry or continued management in the DFT or Detained Non-Suspensive Appeal processes.⁷

- 3.16. **This requirement for '*independent evidence*' of torture is irrational because survivors rarely have such evidence at the point at which decisions are made to allocate to the DFT** – the vast majority have not received legal advice at this stage and therefore referrals will not have been made either to Freedom from Torture or the Helen Bamber Foundation. Moreover, very few, if any torture survivors will appreciate at this stage that independent evidence of their torture is required either for the purposes of establishing their protection claim or, more urgently, in order to avoid being routed into the DFT.
- 3.17. UKBA's specific policy against routing torture survivors into the DFT is therefore deficient from the perspectives both of the torture survivor and of UKBA decision-makers trying to select suitable cases for the DFT. An undertaking made in 2011 by the Immigration Minister to review this policy remains outstanding.

Inadequate safeguards for correcting decisions routing torture survivors into the DFT

- 3.18. When considering these matters the Committee is urged to bear in mind the chronic dysfunction of the Rule 35 process requiring detention centre 'medical practitioners' to notify UKBA of any detained person who (s)he is concerned may have been a victim of torture.⁸ Rule 35 is a key safeguard meant to correct inappropriate decisions to detain suspected torture survivors, including in the DFT, and as the Committee knows from years of close attention to this issue, its operation remains deeply problematic.⁹
- 3.19. While the revised Asylum Process Guidance¹⁰ and Detention Services Order¹¹ respond to many of the concerns expressed for years by Freedom from Torture and Medical Justice (for example by reinforcing the purpose of Rule 35 reports, the need for these to be completed by medical practitioners, and cautioning against some of the typical examples of bad practice in decision-making which we have drawn attention to over many years), there is still disagreement on a number of fundamental issues that are now the subject of litigation and the UKBA has

⁷ UKBA (2012) *Enforcement Instructions and Guidance: Detained Fast Track Processes* at 2.3.

⁸ See Rule 35 (3) of the Detention Centre Rules.

⁹ The operation of Rule 35 has also been a source of persistent criticism from Her Majesty's Inspector of Prisons (including in the joint inspection report issued with the Independent Chief Inspector of Borders and Immigration, *The effectiveness and impact of immigration detention casework* (December 2012)), and the Independent Monitoring Boards for various immigration removal centres (IRC) including those with DFT facilities. See for example the Independent Monitoring Board for Harmondsworth IRC, *Annual report 2012* (March 2013), at sections 4.2.1.6, 4.3 and 5.3.1.

¹⁰ Detention Rule 35 Process available at <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/detention/guidance/rule35reports.pdf?view=Binary>.

¹¹ Detention Services Order 17/2012 available at <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/detention-services-orders/detention-rule35?view=Binary>.

effectively shut down the forum at which these issues were discussed with NGOs.¹² In the meantime, there is no evidence that the problems have been resolved in practice. Data reported by UKBA to the Committee confirms that only a small fraction of Rule 35 reports (6% in quarter 3, 2012¹³) lead to release, and the UKBA's efforts to explain these statistics have been less than satisfactory.¹⁴ Freedom from Torture has continued to receive referrals for MLRs from legal practitioners representing applicants in the DFT whose paperwork indicates that torture concerns expressed by medical practitioners at immigration removals centres have not led to release.

3.20. **Recommendations**

- ⌚ The DFT should be abolished. If it remains in place, processes should be changed to ensure there is no routing to the DFT until after an applicant has had access to legal advice and a medical appointment with an independent clinician so that vulnerabilities may be better identified and factored into routing decisions.
- ⌚ The Suitability Exclusion Criteria for the DFT should be amended to reduce the evidential threshold before someone is rendered 'unsuitable' for the DFT on account of torture experiences.
- ⌚ UKBA should continue its programme to reform the asylum screening process and report to the Committee on how reforms are being extended to staff and facilities involved in screening beyond the Asylum Screening Unit.
- ⌚ All staff who come into contact with asylum applicants, including those conducting screening interviews, security officers and administrative staff, should receive facilitated experiential training, with input from specialist organisations, in order to improve awareness of the impact of torture and trauma on victims and the implications of this for UKBA processes and their working practices. Training should be conducted on an ongoing and regular basis, its impact monitored, and associated quality measures developed and integrated into staff appraisal systems.
- ⌚ Appropriate mechanisms should be put in place to ensure that age disputed children are treated as children and are not put through an 'age assessment' process at port or at the screening unit.¹⁵

12 UKBA has repeatedly postponed or cancelled meetings of the Medical Sub-Group of the Detention User Group which are the main forum for addressing these and other healthcare issues relating to immigration removal centres.

13 Home Affairs Committee, Fourteenth Report of Session 2012-13, *The work of the UK Border Agency (July – September 2012)*, HC 792, para 59.

14 For example, the Chief Executive of UKBA advised the Committee that detainees could self-refer or be referred by their legal representatives to UKBA under Rule 35 which is, as the Committee pointed out, inconsistent with UKBA's own guidance, *Ibid*, p.29.

15 Note that an emergency social services welfare assessment at port or at the screening unit is not compliant with the *Merton* guidelines. These guidelines are drawn from the judgment of the High Court in *B v London Borough of Merton* [2003] EWHC 1689 (Admin).

- ⌚ Feedback mechanisms relating to cases removed from the DFT process should be extended to include the staff who conducted the screening interview and their managers.
- ⌚ The Committee should reiterate its recommendation for UKBA to carry out an immediate independent review of the application of Rule 35 in immigration detention.

4. The use of Country of Origin Information and Operational Guidance Notes in determining the outcome of asylum applications

4.1. Freedom from Torture has an important interface with UKBA in relation to country of origin information (COI) and country specific asylum policies (including Operational Guidance Notes) through our recently re-launched Country Reporting Programme which aims to contribute evidence drawn from our medico legal reports to international accountability processes for torturing states. Since the beginning of 2011, our engagement in relation to these country products has focused on our evidence of post-conflict torture in Sri Lanka and we provide evidence below based on this experience.

Case study: refusal by UKBA to revise its Sri Lanka removals policy to reflect evidence of torture risks

4.2. The UKBA's COI service has generally been responsive in incorporating Freedom from Torture's evidence of post-conflict torture in Sri Lanka into relevant *COI reports and bulletins* and our bilateral dialogue has led to improvements. For example, self-serving verbal claims by unnamed Sri Lankan intelligence officials that many Sri Lankan asylum seekers were having wounds inflicted upon them in order to bolster their asylum claims were removed from the COI report for Sri Lanka after we lodged objections based on the lack of any medical evidence.¹⁶

4.3. Our engagement in relation to UKBA's *OGNs and associated country specific policy products* on Sri Lanka has been less satisfactory. We have particular concerns about a Country Policy Bulletin on Sri Lanka, first issued in October 2012. This Bulletin has been used by UKBA as a vehicle to affirm its removals policy for Sri Lanka despite evidence from Freedom from Torture and other NGOs (including Human Rights Watch and Tamils Against Genocide) concerning torture of certain categories of Tamils returning to Sri Lanka. The Bulletin was issued after many months of unsuccessful efforts by NGOs to secure a review of this policy based on patterns emerging from our research.¹⁷

4.4. The Bulletin has been highly controversial. It has to date been revised twice owing to material inaccuracies in the presentation and interpretation of the NGO evidence. The second version involved corrections to the manner in which the Bulletin addressed evidence from Tamils Against Genocide. Because these changes were

¹⁶ These claims, said to have been corroborated by an unnamed NGO source but not supported by any medical evidence, were contained in a letter from the British High Commission dated 11 May 2011 which was cited in the COI report on Sri Lanka dated 4 July 2011 at para 8.35. The reports were removed from the next edition of the report which was published on 7 March 2012. In correspondence to Freedom from Torture on 7 March 2012 concerning our objections to this evidence, a member of the COI service advised us that a decision had been taken to remove the letter.

¹⁷ Freedom from Torture and Human Rights Watch sought over many months to explore with UKBA and the Foreign and Commonwealth Office the *patterns* emerging from our research and to discuss their *policy implications*. However, Ministers and officials resisted engagement with us on a policy level, asking us instead to disclose to UKBA the Home Office case references for the cases in our respective data sets so that they could look into the *individual cases* for themselves. Freedom from Torture has repeatedly explained that we are not in a position to disclose identifying details because this would breach our confidentiality and data protection obligations and, in any case, as an expert witness, or potential expert witness, in adversarial proceedings against the Secretary of State for the Home Department involving the individuals profiled in these publications, it would not be appropriate for us to directly discuss case details with the UKBA. A wider point, which has been made by our trustee Professor Sir Nigel Rodley in evidence to the Upper Tribunal for its current country guidance case on risk on return for Sri Lankan Tamils (*MP & Others (Sri Lanka)*), is the danger that this request for case details could be construed as supportive of efforts by other governments to undermine human rights research by challenging methods of presenting research, including anonymisation and aggregation, aimed at protecting the identities of human rights victims and highlighting patterns of abuse.

notified to the Administrative Court at very short notice before a charter flight to Sri Lanka on 23 October 2012, the Immigration Law Practitioners' Association sent a letter that day to the Lead Judge of the Administrative Court protesting against the UKBA's actions and questioning the reliability of the other information contained in the Bulletin.

- 4.5. The treatment of Freedom from Torture evidence in the Bulletin was also highly problematic. On 26 November, our legal representatives sent the Treasury Solicitor's Department a six-page letter of complaint outlining numerous ways in which our evidence had been misrepresented and asking that appropriate steps be taken *'to address the objections raised in an updated version of the [policy bulletin] and to clarify these changes with the courts before any further removals to Sri Lanka take place'*.
- 4.6. Most importantly, the Bulletin misrepresented the conclusions drawn in our 13 September 2012 briefing entitled 'Sri Lankan Tamils tortured on return from the UK' about which categories of Tamils were at risk.¹⁸ Whereas we had made clear in the briefing our view that the risk attached to Tamils with a real or perceived association with the Liberation Tigers of Tamil Eelam (LTTE) 'at any level' who were returning from the UK, the Bulletin stated that *'FFT alleged that Tamils would be at risk of return to Sri Lanka because of ethnicity and the fact they had been resident in the UK'* thereby omitting our crucial emphasis on LTTE links. This error is surprising given (i) the focus of this Bulletin on the precise issue of which returnees to Sri Lanka are at risk of mistreatment; and (ii) a judgment of the High Court on 18 September 2012 ordering numerous injunctions against removal on the basis of the risk category we set out and noting that our briefing had been *'very careful not to say that everyone being returned from the UK to Sri Lanka is at risk, but it describes those who are at risk as being, specifically: Sri Lankan Tamils who in the past had an actual or perceived association at any level with the LTTE, but were able to leave Sri Lanka safely'*.¹⁹ The authors of the Bulletin were familiar with this judgment because they cited it elsewhere in the document (and again misrepresented our position).
- 4.7. Although UKBA was on notice of this and many other inaccuracies relating to our evidence, and our legal representatives sent two further written requests for a response, the Bulletin was not withdrawn or corrected and continued to be used as a basis for asylum decision-making and resisting injunction applications. Further charter flights including refused Tamil asylum seekers took place on 6 December 2012 and 28 February 2013. On 28 February 2013, the High Court issued a general injunction against the removal of any refused Tamil asylum seekers²⁰ and it was not until after this injunction had been granted, almost four months after our original complaint letter, that a substantive reply to our complaints was issued. In this reply the UKBA accepted some but not all of our criticisms and the Bulletin was corrected in some respects.

18 This briefing is available at http://www.freedomfromtorture.org/sites/default/files/documents/Freedom%20from%20Torture%20briefing%20-%20Sri%20Lankan%20Tamils%20tortured%20on%20return%20from%20the%20UK_0.pdf.

19 *R (on the application of Qubert) v Secretary of State for the Home Department* [2012] EWHC 3052 (Admin).

20 The order is available at <http://www.freemovement.org.uk/2013/02/27/suspension-ordered-on-removal-of-tamil-asylum-seekers/>.

- 4.8. This third version of the Bulletin is still problematic in its presentation of Freedom from Torture's evidence and in many other material respects, including its failure to acknowledge the UKBA's response to a Freedom of Information Act response dated 6 February 2013 confirming that since the end of the civil war, refugee status has been awarded to up to 15 Sri Lankans all of whom alleged torture following forcible removal from the UK (we have attached this response for the Committee at Appendix 1 and discuss its implications below in our evidence on the prevalence of torture on return to Sri Lanka of refused asylum seekers)²¹. We are also concerned that the new version of the Bulletin has not been clearly identified as such for case owners or legal representatives²², and we are not aware of any communication to the courts advising of the revisions.
- 4.9. The most troubling aspect of the Bulletin is, however, its conclusion that evidence of post-return torture of Tamils from Freedom from Torture, Human Rights Watch and Tamils Against Genocide does not warrant a change in the UKBA's policy on returns to Sri Lanka. The Committee is invited to assess the appropriateness of this in light of the overwhelming evidence from NGOs and the gravity of flawed processes for assessing torture risks in any given country, as well as:
- ⌚ The Foreign Affairs Committee's criticisms in October 2012 that the government had not been sufficiently '*forthcoming*' about '*its efforts – in general and in specific cases – to assess the level of risk*' to the safety of removed Tamils and its calls for the Foreign and Commonwealth Office (FCO) to be '*energetic*' in evaluating reports and '*in spelling out the risk to the UK Border Agency*'²³, and
 - ⌚ This Committee's own calls for the UKBA to engage in dialogue with Freedom from Torture and Human Rights Watch '*to promote a thorough evaluation of risks to Tamil asylum seekers being returned to Sri Lanka*'.²⁴
- 4.10. **It appears to Freedom from Torture that in this particular matter the government has (a) eschewed an evidence-based approach to policy and instead sought to twist the evidence to fit a policy that is preferred for other unknown reasons, and (b) been motivated by an overriding objective to stop our evidence being successfully relied on to stop individual removals or derail the charter flights.** This has been manifested in a failure to engage seriously with both our evidence and our complaints about its misrepresentation in the Bulletin with the practical consequence that decisions in Tamil asylum claims

21 The Freedom of Information Act response and Freedom from Torture's statement in response is available on our website at <http://www.freedomfromtorture.org/news-blogs/7104>.

22 There is no indication on the landing page for these products on the UKBA website that the Bulletin has been revised (the document is still listed as 'Sri Lanka Policy Bulletin – October 2012', see <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificpolicybulletins/>), and when the document itself is opened, it is still identified in the header as the second version, albeit 're issued March 2013' (see <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificpolicybulletins/srilanka-polbulletin?view=Binary>). There is no other warning in the document that the substantive content has been amended.

23 Foreign Affairs Committee, Third Report of Session 2012-13, The FCO's human rights work in 2011, HC 116, paras 56 and 58.

24 Home Affairs Committee, Eighth Report of Session 2012-13, The work of the UK Border Agency (April – June 2012), HC 603, para 65.

continue to be based on a deeply flawed policy.²⁵ It is difficult to reconcile this with the Immigration Minister's desire to get '*decisions right, every single case, the first time*'.²⁶

- 4.11. We would welcome close scrutiny by the Committee of the government's conduct in this area so that this poor practice in relation to the country specific policy for Sri Lanka is not replicated for asylum policies concerning other countries. We have made a number of specific recommendations relating to these matters in the section below on the prevalence of refused asylum seekers who are tortured upon return to their country of origin and how the UK Government can monitor this.

²⁵ In recent months the government has sought to deflect discussions by pointing to an ongoing country guidance case on these issues, but this masks an important point that the government does not require instruction from the judiciary before revising a policy in light of new evidence. In this and any other area of public policy, litigation should be regarded by government as a last resort.

²⁶ Home Affairs Committee, Fourteenth Report of Session 2012-13, The work of the UK Border Agency (July – September 2012), HC 792, Ev 23.

5. The assessment of the credibility of women, the mentally ill, victims of torture and specific nationalities within the decision-making process and whether this is reflected in appeal outcomes

- 5.1. Failure by asylum case owners to take proper account of the impact of trauma on memory difficulties, discrepancies in testimony and the delayed disclosure of degrading experiences of torture and sexual violence – effects which have been documented both by Freedom from Torture clinicians and in a wide research literature²⁷ – remains a major problem in the assessment of credibility of victims of torture and other forms of abuse. These problems are compounded by the increased difficulties for survivors in accessing good quality and early legal advice to ensure their complex claims are appropriately assembled. As a consequence of these two problems – poor practice by decision-makers and poor legal representation – accounts of persecution provided by victims of torture are too readily disbelieved and dismissed, with the risk that they are put through highly stressful and unnecessary appeal processes and, in the most tragic cases, removed to situations where they face further harm.
- 5.2. In this context, there is a crucial role for expert evidence documenting the physical and psychological consequences of torture and placing these in the context of an individual's particular history. Freedom from Torture's medico-legal report (MLR) service (still known as the Medical Foundation Medico Legal Report Service) prepares 300-600 MLRs each year, for use mainly in UK asylum proceedings. The reports are prepared by specialist clinicians according to their duties to the court and the standards set out in the UN Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (known as the Istanbul Protocol). Each MLR is subject to a detailed clinical and legal review process.
- 5.3. Freedom from Torture examined how MLRs were treated by UKBA case owners and Immigration Judges in research conducted in 2011.²⁸ We found that the rate of allowed appeals in cases where UKBA refused asylum claims in which an MLR had been submitted prior to the decision was 69%²⁹ compared with the average appeal allowal rate of 28%³⁰, indicating serious problems in the way asylum cases involving allegations of torture are handled. The research also found a lack of consistency across the Tribunal in handling the asylum cases of survivors of torture, with Judges failing to follow the appropriate guidance from the Istanbul Protocol and case law in a significant number of cases. Specific problems highlighted include:

²⁷For example, Juliet Cohen (2001) 'Errors of recall and credibility: can omissions and discrepancies reasonably be said to undermine credibility of testimony?' *Medico-Legal Journal* 69 (1) pp.25-34; D.Bögner, J. Herlihy and C.Brewin (2007), 'Impact of sexual violence on disclosure during Home Office interviews' *British Journal of Psychiatry* 191, p.75-8; J. Herlihy & S. Turner (2006) 'Should discrepant accounts given by asylum seekers be taken as proof of deceit?' *Torture: Journal on Rehabilitation of Torture Victims and Prevention of Torture* 16(2), pp.81-92.

²⁸Freedom from Torture (2011) *Body of Evidence: Treatment of Medico-Legal Reports for Survivors of Torture in the UK Asylum Tribunal* (London, Freedom from Torture) at: <http://www.freedomfromtorture.org/sites/default/files/documents/body-of-evidence.pdf>

²⁹*Ibid*, p.22.

³⁰*Ibid*, p.23.

- ⌚ An unwillingness to accept medical opinion based on research into the effect of trauma on both memory and recall, and the ability to disclose information;
- ⌚ Clinical judgments made by decision-makers without being medically qualified;
- ⌚ Failure to properly evaluate credibility taking account of the evidence in the MLR;
- ⌚ The application of a higher standard of proof than is legally appropriate for asylum cases;
- ⌚ Challenges to the expertise of our doctors, including denial of their ability to make psychiatric diagnoses despite their qualifications and experience, and the specific training, guidelines and quality assurance procedures in place at Freedom From Torture; and
- ⌚ Assumptions that our doctors uncritically accept the veracity of a client's testimony when preparing an MLR, despite their medical training and the requirements both of the Istanbul Protocol and their duties as an independent expert witness.

5.4. Since publication of this report, Freedom from Torture has opened a productive dialogue with both UKBA and the immigration judiciary (and HM Court and Tribunals Service) with a view to supporting ongoing initiatives aimed at addressing the problems identified. However, we continue to see numerous decisions involving the poor practice outlined above. These unnecessarily protracted legal processes obviously have serious resource and efficiency implications. They also have a deleterious impact on vulnerable individuals who are subjected to a legal process in which their integrity and credibility are repeatedly questioned and doubted, which compromises their ability to engage effectively in rehabilitation services.

Promising practice

- 5.5. We are pleased to report that UKBA responded to this research by accepting all the recommendations addressed to it and by collaborating with both Freedom from Torture and the Helen Bamber Foundation to develop a new asylum instruction on handling claims involving allegations of torture and serious harm.
- 5.6. This best practice approach resulted in the drafting of high quality guidance which addresses the problems identified and directs case owners to give appropriate consideration to MLRs, adopt the correct approach to assessing credibility and avoid making clinical judgments falling outside their expertise. This guidance was released as an interim asylum instruction and piloted in two areas between July 2011 and December 2012³¹ alongside a facilitated training session for case owners designed by UKBA's quality assurance team with specialist input of Freedom from Torture and the Helen Bamber Foundation. The delivery of facilitated training that enabled opportunities to better understand our work and methodologies for preparing MLRs, a practical understanding of the standards of the Istanbul Protocol and relevant case law and the application of the new instruction to casework was strongly welcomed by case owners.

³¹ UKBA (2011) *Asylum Policy Instruction: Handling claims involving allegations of torture or serious harm: Interim Casework Instruction (Non Detained Pilot)* (London, UKBA) at: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apis/handlingtorture.pdf?view=Binary>.

- 5.7. **Ensuring the speedy rollout of this asylum policy instruction**, amended as necessary to reflect learning from the pilot and accompanied by facilitated training for all case owners, **is a major priority for Freedom from Torture in order to address poor quality asylum decision-making involving allegations of torture across UKBA asylum casework teams.**

Addressing vicarious traumatising

- 5.8. Freedom from Torture considers that too little attention has been given to preventing and addressing the risk of secondary or vicarious traumatising among asylum case owners and Immigration Judges and other officials who are regularly exposed to traumatic accounts of torture and persecution. The incidence of vicarious traumatising following repeated exposure to traumatic material without appropriate preventative and support mechanisms is well-documented in a wide research literature and may lead to subconscious psychological defence mechanisms to avoid hearing about abuse or disbelieving that it could have taken place.
- 5.9. Through our interactions with UKBA staff, we have gained an understanding of the challenges that their work presents and have seen evidence of problematic coping mechanisms in our clients' asylum case papers. For example, it is quite common to read records of asylum interviews where case owners have failed to ask follow up questions about an applicant's experience of torture and moved on to a different subject, with the consequent risk to the applicant that any further information provided later is held to be a discrepancy or embellishment. Recent academic research examining the treatment of asylum claims involving disclosures of rape similarly identified strategies of detachment or denial deployed by UKBA case owners, presenting officers and Immigration Judges as a way of managing the emotionally difficult, draining and challenging task of listening to accounts of violence and the responsibility of adjudicating on them.³² It is important, therefore, that structures and training within UKBA and the immigration judiciary are available to support safe practice in relation to vicarious trauma to prevent harm both to staff and applicants.
- 5.10. **Recommendations**

- 🕒 The interim asylum instruction on handling claims involving allegations of torture or serious harm should be rolled out across UKBA as a matter of priority with facilitated training delivered for all case owners.
- 🕒 A monitoring system should be put in place to measure the impact of initiatives designed to improve handling of expert medical evidence and the assessment of credibility in torture-related claims.
- 🕒 Improved measures to prevent vicarious traumatising should be integrated into UKBA work systems and training, including monitoring and management of the levels of exposure of case owners to traumatic material within their individual case loads.

³² H.Baillot, S. Cowan, V.Munro (2010) *Research Briefing: Rape narratives and credibility assessment (of female claimants) at the AIT* (London, Nuffield Foundation).

6. The effectiveness of the 5 year review system introduced in 2005

- 6.1. Torture has devastating consequences for victims which give rise to complex and enduring psychological and physical health problems. Full rehabilitation after torture may take years and Freedom from Torture considers that this process is lengthened by the practice of requiring survivors to apply for Indefinite Leave to Remain (ILR) five years after refugee status is granted. This ongoing uncertainty lengthens the recovery process and causes unnecessary additional anxiety and distress to the survivor. It also increases government expense through both the administration by UKBA of an unnecessary review process (we understand that denial of ILR is very rare) and, in many cases where the process impedes a survivor's recovery from trauma, additional demand on NHS mental health and primary care services.
- 6.2. The NICE Guidelines³³ for the treatment of Post-Traumatic Stress Disorder advise that therapeutic work may be limited before there is safety from persecution and recommends a treatment model which begins with 'stabilisation' aimed at making the survivor stable and safe enough to engage with the in-depth treatment which will address their actual trauma. This is followed by therapeutic work then finally 'integration' into the community. Though the threat of removal is not immediate when leave to remain is granted for 5 years, the limited nature of this period does not provide sufficient stability and safety to enable many survivors to address their trauma therapeutically. This slows the recovery process for many and causes unnecessary distress and anxiety for others.
- 6.3. Integration may also be hampered by the grant of limited leave to remain, further undermining recovery for survivors of torture. Survivors have suffered many losses, for example of family, friends, their culture, the position they held in their society before having to flee persecution, that the absence of security and safety can prevent survivors from investing fully in their life and local community in the UK for fear that such relationships could be lost once again if the survivor is removed. We have also seen examples of discrimination against refugees with five years leave to remain by employers and colleges who assume they will not be present in the UK in the long term.
- 6.4. The process of reapplying for leave to remain after 5 years can also trigger powerful memories of the earlier asylum application process as well as memories of the original torture raised by the possibility of return. This can set the survivor's recovery back significantly, sometimes to the extent that further therapeutic work is required, increasing the burden on public and voluntary sector service providers since the nightmares, flashbacks, intrusive thoughts and other distressing symptoms can start again and require various types of care.
- 6.5. Freedom from Torture considers that this 5 year review process cannot be justified in light of the detrimental impact on refugees, especially those who are attempting to recover from trauma, and the costs both to UKBA, in a context where it is beset by decision backlogs (at least 11,000 of which are Active Review cases involving

³³National Institute of Clinical Evidence (2005), *Clinical Guideline 26. Post-traumatic stress disorder (PTSD): the management of PTSD in adults and children in primary and secondary care* (London, National Institute of Clinical Evidence) at: <http://www.nice.org.uk/nicemedia/live/10966/29769/29769.pdf>.

applications to extend limited leave to remain³⁴) and to NHS primary care and mental health services.

6.6. Recommendations

- ⌚ Indefinite Leave to Remain should be granted when refugee status is awarded and the 5-year active review system brought to an end.

³⁴ Home Affairs Committee, Fourteenth Report of Session 2012-13, *The work of the UK Border Agency (July – September 2012)*, HC 792 at para 40.

7. Whether the system of support to asylum applicants (including section 4 support) is sufficient and effective and possible improvements

- 7.1. Freedom from Torture is due to publish a major research study later this year examining the impact of poverty in the UK on survivors of torture and their capacity to engage effectively in rehabilitation. Over 100 survivors of torture participated in the research, including 28 survivors who were receiving UKBA support at the time (either under section 95 or section 4) and 19 survivors who were receiving no government support within the asylum process. Interviews were also conducted with 18 clinical staff providing direct therapeutic care to survivors at Freedom from Torture.
- 7.2. **The research paints an alarming picture of poverty experienced by torture survivors**, many of whom have moved through section 95 support, section 4 support and destitution at different stages of the asylum process, with poverty often becoming more deeply entrenched and continuing to have an impact even after refugee status is granted. **The findings raise concerns about compliance by the UK with its obligations under the European Convention on Human Rights and also the right to rehabilitation for survivors of torture protected under Article 14 of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.**

UKBA support is insufficient to meet basic living needs

- 7.3. For a single adult over the age of 25 years, the current level of section 95 asylum support is £36.62 per week³⁵, approximately half the comparable Income Support rate of £71.70.³⁶ Asylum applicants supported under section 4 receive no cash support but are either provided meals in their accommodation or must use an 'Azure' card to buy food and essential items to the value of £35.39 in a restricted number of shops.
- 7.4. The majority (82%) of torture survivors currently receiving UKBA support reported that they were unable to afford sufficient food of reasonable quality on a regular basis, with similar numbers indicating that they were unable to afford fresh fruit as often as once a week or protein sources such as pulses or beans, all relying on bread as a cheap, filling substitute, that also requires no cooking if facilities are inadequate in this regard. Approximately 40% of UKBA-supported clients stated they were hungry all or most of the time, with clinicians reporting negative effects on their mental and physical health and their ability to engage fully in therapy and counselling sessions.
- 7.5. Nearly a third of survivors of torture supported by UKBA reported being unable to attend essential appointments with doctors (32%) and likewise appointments with counsellors or therapists (31%) due to an inability to fund the travel costs. Most survivors (79%) were unable to buy essential items such as 'over the counter' painkillers or remedies, nappies for babies, sanitary protection or other toiletries

35 <http://www.ukba.homeoffice.gov.uk/asylum/support/cashsupport/currentsupportamounts/>.

36 <https://www.gov.uk/income-support/what-youll-get>.

some or all of the time. Single adults receiving section 4 support faced particular difficulties obtaining more expensive essential items as it was impossible to save for these when only £5 credit on the Azure card may be carried over from one week to the next. Adequate clothing to stay warm, clean or dry was also out of reach of most applicants (71%), with some respondents only owning one set of clothes. Social isolation, through being unable to remain in touch with friends, family or participate in community activities, was also a feature of the poverty experienced by survivors of torture, exacerbating mental health difficulties suffered as a result of torture.

UKBA support levels may undermine the ability of torture survivors to properly present their asylum claims

- 7.6. The level and nature of UKBA support also created insurmountable barriers to pursuing an asylum claim. A significant number (19%) of respondents supported by UKBA failed to meet reporting requirements due to being unable to cover travel costs, with the risk of punitive measures, such as fines or increased reporting, being imposed by UKBA staff who lacked sympathy or interest in explanations given. Most applicants (82%) were unable to make phone calls, fax or post documents or other correspondence relevant to their claim some or all of the time. Respondents described difficult choices in prioritising their resources, for example going without food in order to fax documents required urgently by their solicitor.

The poor administration of UKBA support exacerbates poverty and creates destitution

- 7.7. Problems in the administration of UKBA support exacerbate the level of poverty experienced by survivors of torture, with periods of destitution experienced during delays and errors in processing section 95 support, failures in the support delivery system, and problems receiving emergency support tokens. Clients supported under section 4 reported frequent difficulties with Azure cards failing to work correctly and payment being denied at checkouts to their intense humiliation.

Poor policy and administration of transition between welfare systems creates destitution

- 7.8. When a grant of refugee status or other leave is made, UKBA support and accommodation is terminated within 28 days, even when applicants have not yet received from UKBA the status papers required to apply for mainstream welfare provision, which were delayed by over a month in most cases (60%) and up to 6 months in some cases. Difficulties are compounded by delays in obtaining a National Insurance number, navigating the complexities of the benefits system without sufficient English language skills, ineligibility for local authority housing due to frequent changes of address whilst supported by UKBA, lack of deposit for private accommodation and a vicious circle where accommodation cannot be rented without benefits and national insurance being in place which similarly cannot be issued without a fixed address.
- 7.9. Most clinicians interviewed (61%) reported that destitution and homelessness '*frequently*' occurs for clients of Freedom from Torture during this period, with some clients being left destitute with no support for periods from 6 weeks to 4 months. Three clients granted leave to remain were destitute at the time of the research.
- 7.10. Though recognition as a refugee brings legal status and security, it is often also a time of psychological difficulty for our clients as they have to confront more directly the impact of the torture they have suffered and the losses they have experienced. A key finding of our research is that the experience of homelessness and destitution has a particularly harmful impact on the psychological vulnerability of survivors of torture at this transition stage.

Accommodation is unsuitable for torture survivors

- 7.11. The accommodation provided to torture survivors by UKBA is also an issue of major concern to Freedom from Torture. Accommodation is offered on a no-choice basis and nearly half of respondents (45%) reported 4 or more accommodation moves in the last year with one torture survivor reporting 9 such moves. Not only do accommodation moves disrupt the safe recovery environment required for clients to address experiences of torture, but they are frequently combined with gaps in support provision due to administrative difficulties caused by changes in address.
- 7.12. Accommodation is frequently situated far from refugee communities (50%), shops and services (33%) and 50% of torture survivors supported by UKBA were placed in accommodation over an hour away from a Freedom from Torture treatment centre, with 3 clients travelling for 2 or more hours to access therapeutic support.
- 7.13. The nature of accommodation provision is unsuitable for torture survivors in a significant number of cases. All 15 single applicants in the sample accommodated by UKBA were placed in shared accommodation housing as many as 18 people in one case, more than 10 people in three cases and an average of seven people overall, with insufficient facilities for all those accommodated. A third of single applicants were additionally forced to share a bedroom with someone they did not know, a particular problem for torture survivors who may suffer from insomnia, disrupted sleep, nightmares and flashbacks on account of their torture experiences or be disturbed by others experiencing the same. Hostels where there are frequently significant difficulties with drug dealing and/or prostitution are often used to house torture survivors for extended periods of time with some clients choosing destitution rather than remaining. A third of clients did not feel safe in their accommodation due to those sharing it or its location. A place of safety as a 'home' is vital to enable torture survivors to begin to process their experiences of torture.
- 7.14. The quality of UKBA accommodation was extremely mixed, with torture survivors (including families with children) reporting issues such as pest infestation (38%), lack of heating or hot water due to system breakdown (33%), windows and external doors that could not be locked (21%), broken windows or glass (17%) and absence of smoke or fire alarms (13%) in the last year. Survivors reported that problems were persistent, occurred repeatedly and/or remained unresolved for lengthy periods with half of those reporting to accommodation providers receiving unhelpful or very unhelpful responses, with the issues being unresolved in most cases. These research findings indicate that UKBA may not be receiving adequate value for money from privately contracted accommodation providers or providing sufficient oversight of their provision.

Unsuitable section 4 accommodation is a factor in creating destitution

- 7.15. The research identified cases where torture survivors became ineligible for UKBA support after breaching conditions not to leave without permission in cases where they felt threatened or intimidated by those with whom they shared a bedroom or the dwelling. In a few cases, torture survivors refused support available where they were too unwell to tolerate the accommodation offered or where accepting no-choice accommodation meant separation from family members including their children.

The experience of poverty prevents the rehabilitation of torture survivors

7.16. Freedom from Torture is particularly concerned about the impact that such high levels of poverty have on the rehabilitation process for our clients. The experience of poverty in the UK reinforces the lack of control, sense of worthlessness, powerlessness and low self-esteem that our clients suffered as victims of torture. Treatment is also delayed because torture survivors are unable to deal with or process past traumatic events while their survival in the present poses immediate and critical problems. The difficulties in navigating the support system and dealing with urgent problems generates considerable case work for Freedom from Torture clinicians who also raised concerns about the levels of suicide risk among some clients at these times. We have made a number of recommendations relating to these matters in the section below on the prevalence of destitution amongst asylum applicants and refused asylum seekers.

7.17.

8. The prevalence of destitution amongst asylum applicants and refused asylum seekers

- 8.1. Freedom from Torture's research described above reveals a high prevalence of destitution amongst torture survivors throughout the asylum process. As discussed above, many torture survivors experienced periods of destitution at various points during and immediately following the asylum process through problems in the administration of asylum support payments, difficulties faced in their UKBA accommodation or through the absence of support during the transition from asylum support to mainstream welfare provision or work.
- 8.2. In addition, at the time of the research, 40% (19) of the 47 clients in the sample who were asylum seekers or refused asylum seekers were receiving no support from the UK government and had not done so for extended periods of time. A small number of these applicants were awaiting a decision on their initial asylum claim (16%), but most were refused asylum seekers awaiting a decision on a fresh asylum application (63%) or preparing a fresh asylum application or trying to access legal advice to do so (21%).
- 8.3. Torture survivors report being unable to take up voluntary return options at the end of the asylum process because of their fear of torture on return, and Freedom of Torture is concerned that poor quality decision-making in cases involving torture and poor or absent legal representation make fresh claims necessary for protection and lead to protracted journeys through the asylum system and the risk of destitution, only for claims to be eventually accepted once evidence is assembled and given proper consideration.
- 8.4. Once applicants are in a situation of destitution, it is extremely difficult to tackle this, with torture survivors experiencing real difficulty in 'proving' their destitution in order to access the support to which they would otherwise be eligible. Support and accommodation was routinely refused where torture survivors had been accommodated by family or friends, even if this involved temporary arrangements in different places or if those accommodating them were no longer able to do so. This leaves survivors of torture entirely dependent on others to meet all their needs and places them at risk of exploitation.
- 8.5. Destitution had a devastating impact on torture survivors' ability to access sufficient food or meet their essential living needs. One Freedom from Torture clinician identified that street homelessness is now a more common occurrence. Similarly, survivors were unable to communicate or keep appointments with legal representatives or access basic healthcare. Clinicians reported that destitute survivors of torture may have particular difficulties accessing basic medical care as a result of having no fixed address and reach crisis point as they run out of anti-depressants or medication. Survivors are also exposed to extreme danger during destitution and incidents of violence, rape (including multiple rapes in one case) and sexual exploitation were disclosed.
- 8.6. Several clinicians observed that destitution led to an increased risk of suicide or poorer mental health, whilst also having a long term impact on their clients' ability to recover, even after they are no longer in destitute circumstances.

8.7. It is clear that six years after the Joint Committee on Human Rights warned that *'institutional failure to address operational inefficiencies and to protect asylum seekers from destitution amounts in many cases to a failure to protect them from inhuman and degrading treatment under Article 3 ECHR'*³⁷, the UKBA is still failing to comply with its human rights obligations for the vulnerable people for whose welfare they are responsible.

8.8. Recommendations

- ⌚ UKBA should urgently implement measures to improve the quality of decision-making in asylum applications involving allegations of torture to prevent the need for appeals or fresh claims by torture survivors and to reduce the risk of poverty, including destitution.
- ⌚ The Committee should endorse the previous recommendation of the Joint Committee on Human Rights that *'a coherent unified, simplified and accessible system of support for asylum seekers, from arrival until voluntary departure or compulsory removal from the UK'*³⁸ be introduced such that section 4 support is abolished and section 95 support is transformed into an 'end to end' support system.
- ⌚ Asylum support rates should be raised to provide a standard of living equivalent to mainstream support provision and which, if utilities are provided as part of the provision of accommodation, should be equivalent to at least 70% Income Support, as recommended by Still Human Still Here³⁹ and the report of the parliamentary inquiry into asylum support for children and young people⁴⁰.
- ⌚ Systems should be put in place to ensure that asylum applicants' cases are immediately transferred to the mainstream welfare benefits system upon grant of refugee status, without the need for further applications, and asylum support continued until these are in place.
- ⌚ An effective and responsive system of emergency payments and accommodation should be put in place to prevent destitution as a result of support system failings.

37 Joint Committee on Human Rights, Tenth Report of Session 2006-07, *The Treatment of Asylum Seekers*, HL Paper 81-1, HC 60-I, para 84. At para 120, the Committee stated its view that *'by refusing permission for most asylum seekers to work and operating a system of support which results in widespread destitution, the treatment of asylum seekers in a number of cases reaches the Article 3 ECHR threshold of inhuman and degrading treatment. This applies at all stages of the asylum process: when an individual is attempting to claim asylum, during the period of consideration of their claim and during the period after their claim is refused if they are unable to return to their country of origin'*.

38 Joint Committee on Human Rights, Tenth Report of Session 2006-07, *The Treatment of Asylum Seekers*, HL Paper 81-1, HC 60-I, para 121.

39 Freedom from Torture is a supporter of the Still Human Still Here campaign.

40 Report of the parliamentary inquiry into asylum support for children and young people, January 2013, available at: <http://www.childrensociety.org.uk/what-we-do/policy-and-lobbying/parliamentary-work/parliamentary-inquiry-asylum-support-children-an-1>

- ⌚ An independent inspectorate should be appointed to monitor asylum support and accommodation provision with the power to conduct proactive and unannounced investigations and require problems identified to be remedied.
- ⌚ Permission to work should be granted to asylum seekers who have not had their cases resolved in six months, or who have been refused but cannot be removed through no fault of their own.

9. Whether the UKBA or third sector organisations should be able to highlight concerns regarding legal practitioners to the Law Society

- 9.1. Freedom from Torture currently sees 2-3 clients each week for whom we have concerns that poor quality legal representation, combined with poor quality UKBA decision-making, creates a risk of removal to countries where they may face torture or ill-treatment.
- 9.2. Despite the damage that poor quality advice may have caused to their claim, our clients, who are extremely vulnerable, are for various reasons extremely reluctant to make complaints against legal representatives even with our assistance. In the last four years, we have only had consent to assist eight clients to lodge complaints, which represents a small fraction of the cases about which we had serious concerns. Against this backdrop, we would welcome enhanced mechanisms to better enable our organisation to highlight concerns about particular legal practitioners gained through the regular contact we have with torture survivors whose cases are poorly handled. Such mechanisms should apply to any body regulating advisors providing immigration advice. We would also welcome consideration of how to enhance mechanisms for raising concerns in relation to poor practice by UKBA and the Treasury Solicitor's Department.
- 9.3. However, it is not sufficient to rely on individuals or other organisations to make complaints where practice has fallen significantly below acceptable standards and any such complaint system must be accompanied by measures aimed at strengthening quality control as part of the processes for awarding and monitoring asylum contracts under the legal aid scheme. For example, we understand that the Legal Services Commission planned to raise the minimum competence rating required to retain a legal aid immigration contract and implement an evaluated system of peer reviews to monitor the quality of advice provision, but abandoned these plans.⁴¹
- 9.4. Further, Freedom from Torture stresses that **efforts must be made to address the underlying causes of poor quality legal practice provision which flourishes in a context where there is a chronic lack of funding for high-quality advice on asylum and where the system of fees for reimbursing legal aid advice and representation incentivises and rewards poor quality advice.**
- 9.5. Under the Graduated Fixed Fee scheme for funding advice and representation in asylum cases under Legal Aid, the fee for advice and representation until an initial decision is made is capped at £413⁴², on the basis that cost savings in more straightforward cases should offset those in more detailed cases. Whilst some complex cases, such as those of unaccompanied children are remunerated on an hourly basis according to the level of work required, those of survivors of torture are not. In practice, the fee system rewards those firms for 'cherry picking' more straightforward cases or for failing to undertake the more detailed work involved in

41 J. Gibbs & D. Hughes-Roberts (2013) *Justice at risk: quality and value for money in asylum legal aid* (London, Asylum Aid), p.24-26.

42 Legal Services Commission (2010), *2010 Standard Civil Contract Payment Annex 3 Oct 2011* (London, Legal Services Commission) at: http://ftp.legalservices.gov.uk/docs/civil_contracting/Civil_October_2011_Payment_Annex.pdf.

complex cases. The level of work involved in properly representing survivors of torture, who may be traumatised and require several appointments to build the time and trust needed to facilitate disclosure of abuse and give a statement and whose cases involve expert medical evidence, is complex and time-consuming and in most cases cannot be undertaken adequately within the fixed fee.

- 9.6. It is already increasingly difficult for Freedom from Torture's clients to secure legal representation from a quality provider prepared to undertake the additional case preparation required beyond that envisaged by the fixed fee in order to properly represent survivors of torture in their asylum cases. This is exacerbated by the fact that many high quality practitioners and firms – including the two largest providers in this sector, Refugee and Migrant Justice and Immigration Advisory Service – have been forced to leave the sector or close due to funding difficulties or payment problems in this area, a situation we expect to deteriorate significantly in the wake of the entry into force of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 on 1 April 2013.
- 9.7. Whilst these matters go beyond the specific terms of reference set for this inquiry, the Committee is urged to bear in mind that any proposed complaints mechanism will have a minimal impact on the quality of advice available to survivors of torture unless these vital concerns are addressed.

10. The prevalence of refused asylum seekers who are tortured upon return to their country of origin and how the UK Government can monitor this

- 10.1. There is arguably no more decisive indicator of the poor health of the UK asylum system than evidence of torture after forcible return of those denied protection. This is a fundamental issue given the UK's international legal obligations, including under the European Convention on Human Rights and the UN Convention Against Torture, but it is a difficult area to illuminate and Freedom from Torture commends the Committee for inquiring into the prevalence of such cases and the question of whether improved monitoring mechanisms are necessary.
- 10.2. The UKBA has previously revealed to the Committee that in the first two quarters of 2012, 13 people from nine countries were granted protection after previously being refused asylum and removed from the UK⁴³, and in the third quarter of that year four people from three countries were granted protection after previous removal from the UK.⁴⁴ The number of these cases in which allegations of post-removal torture were made and found credible by the UKBA or the Tribunal is unclear.
- 10.3. Freedom from Torture operates torture rehabilitation centres in the UK only and evidence we have of torture following forcible or voluntary return from the UK comes from survivors who have managed to flee and make their way back to the UK once again. As discussed above (see our evidence above in the section on the use of Country of Origin Information and Operational Guidance Notes in determining the outcome of asylum applications), we have particular concerns based on research from our Country Reporting Programme that certain categories of Tamils are facing torture on return to Sri Lanka from the UK. For this reason we share the Committee's '*particular concern*' about the inclusion of 2-5 Sri Lankan cases in the UKBA data referred to above.⁴⁵ We set out our concerns and the bases for these below as a case study.

Case study: Freedom from Torture evidence of torture or ill-treatment on return of Sri Lankan Tamils

- 10.4. Freedom from Torture called for a suspension of removals of Sri Lankan Tamils on 25 February 2012, the same day Human Rights Watch published evidence that a number of refused Tamil asylum seekers removed from the UK had been subjected to arbitrary arrest and torture in Sri Lanka.⁴⁶ In our public statement, we cited the Human Rights Watch cases and their consistency with our own forensic evidence of

43 Home Affairs Committee, Eighth Report of Session 2012-13, *The work of the UK Border Agency (April – June 2012)*, HC 603, para 62.

44 Home Affairs Committee, Fourteenth Report of Session 2012-13, *The work of the UK Border Agency (July – September 2012)*, HC 792, para 51.

45 The Committee expressed this concern in relation to the data for the first two quarters of 2012 which included between 1-3 Sri Lankan nationals. See Home Affairs Committee, Eighth Report of Session 2012-13, *The work of the UK Border Agency (April – June 2012)*, HC 603, para 64. The UKBA declined the Committee's request for a detailed breakdown by nationality of this data on the basis that '*providing specific figures of less than three... could lead to an individual being identified and consequently breach data protection legislation*'. See email correspondence, *ibid.*, Ev 30. The data for the third quarter of 2012 includes 1-2 Sri Lankans.

46 See Human Rights Watch, 'UK: Halt Deportations of Tamils to Sri Lanka' (25 February 2012) available at <http://www.hrw.org/news/2012/02/24/uk-halt-deportations-tamils-sri-lanka>.

ongoing torture in Sri Lanka, as the basis for our position.⁴⁷ **Now, for the first time, we are able to disclose to the Committee our additional reasons for calling at this juncture for a moratorium on removals of Sri Lankan Tamils.**

February 2012: Ill-treatment at Colombo airport of a Freedom from Torture client forcibly returned to Sri Lanka on a scheduled flight

- 10.5. On 20 February 2012, just five days before publication of the Human Rights Watch evidence, a Tamil man in treatment with Freedom from Torture was forcibly removed to Sri Lanka on a *scheduled* flight. On the assumption that it was standard procedure for the British High Commission to meet all forcible returnees from the UK at the airport in Colombo⁴⁸, we obtained our client's consent to contact the British High Commission prior to the removal to warn them that our client was a survivor of torture and that we had particular concerns about his vulnerability and safety.
- 10.6. Our client was held for some 20 hours on arrival at Colombo airport. During this time, reports reached us that he was being held by Sri Lanka's Criminal Investigation Department, that he had been beaten and that he was bleeding from his nose. With the consent of the family, obtained on the express basis that this information would not be shared with the Sri Lankan authorities, we informed the British High Commission. Only at this point did it become clear to us that the British High Commission was not planning to meet our client at the airport. Following requests from us, a member of staff from the British High Commission finally travelled to the airport and was there with the family when our client was released. The British High Commission subsequently arranged for our client to see a doctor and accompanied him to the appointment on 24 February.
- 10.7. This case was central to our decision on Saturday 25 February to issue a public statement calling for a suspension of Tamil removals to Sri Lanka, however, because of our acute concerns about the safety of our client, we omitted any reference to the case and instructed our staff in writing not to discuss the case outside the organisation.
- 10.8. On Monday 27 February we were surprised to learn that the Treasury Solicitor's Department had in legal proceedings relating to a Sri Lanka *charter flight* the following day filed a letter containing information which obviously related to our client including the precise date and time of his arrival, his present whereabouts and details of the doctor who examined him. The letter, which was referred to in open court, was a clear violation of confidentiality and in our view the identifying information it contained exposed our client to serious risk.⁴⁹ Our fears were realised when a version of the Treasury Solicitor's Department letter with only our client's

⁴⁷ See Freedom from Torture, 'UK must stop removals of Tamils to Sri Lanka after damning new evidence of torture on return' (25 February 2012) available at <http://www.freedomfromtorture.org/news-blogs/6133>.

⁴⁸ In a response to a letter from our Chief Executive seeking details of the monitoring arrangements for those forcibly removed to Sri Lanka (a request which was not limited to those removed by charter flight), the FCO Minister for South Asia advised Freedom from Torture in writing on 23 January 2012 that the British High Commission 'maintains oversight of the returns process. For the recent charter flight operations, UK Government officials were present at the airport and provided contact details of our High Commission in Colombo'. We assumed that the same arrangements applied for those forcibly returned on scheduled flights.

⁴⁹ Our Chief Executive complained about this in writing the following day to the Attorney-General, the Immigration Minister, and the FCO Minister for South Asia.

name redacted entered the public domain and wound up on a Sri Lankan government website where it was used to denounce a *'well organized effort by pro-LTTE elements in the UK to prevent UKBA from carrying out deportation of Sri Lankans who have failed to qualify for asylum.'*⁵⁰

- 10.9. This framing of the case by the Sri Lankan government was founded on another regrettable feature of the Treasury Solicitor's Department letter, namely entirely false claims that Freedom from Torture had alleged *'torture'* of our client at the airport and that he had been seen with *'a head wound that was bleeding'*.⁵¹ Details of the medical examination arranged by the British High Commission were shared and the Treasury Solicitor's Department assured the Court in the letter that there was no evidence that our client had been *'beaten on the head'*. The letter reported evidence from the doctor of *'abrasions to the shins... consistent with his explanation that the officer interviewing him at the airport and facing him had kicked him'*⁵², however the conclusion reached at the end of the letter was that *'UKBA does not find the allegations as made by the passenger to be credible and therefore this does not demonstrate that returnees face a real risk of ill treatment upon return'*.
- 10.10. Freedom from Torture believes that a purpose of this letter was to ensure that information concerning the ill-treatment on arrival in Colombo of our client would not be used to disrupt the charter flight on 28 February and that our reports to the British High Commission about what had happened to our client were embellished to achieve this end.
- 10.11. Our Chief Executive wrote to the Immigration Minister on 28 February 2012 asking for steps to be taken to ensure the immediate return of our client to the UK. By letter dated 12 March 2012, the Minister declined this request. Following court action, our client was returned to the UK in late 2012. He has since been granted refugee status by the UK Border Agency. It is unclear to Freedom from Torture whether any steps have been taken by the UKBA, the British High Commission and/or the Treasury Solicitor's Department to ensure lessons from this case are learned.

Further Freedom from Torture evidence of torture or ill-treatment of Tamils returning (forcibly or voluntarily) to Sri Lanka

⁵⁰ *'False torture claims of failed UK asylum seekers exposed'* (29 February 2012) available at http://www.priu.gov.lk/news_update/Current_Affairs/ca201202/20120229false_claims_failed_uk_asylum_seekers.htm. On the same day, the Sri Lankan Ministry of Defence and Urban Development described Freedom from Torture as a *'proxy terror group'*. See *'UK rejects US based HRW's cynical claims over deportation of bogus asylum seekers'* (29 February 2012) available at http://www.defence.lk/new.asp?fname=20120229_04. Despite a written request from our Chief Executive to the FCO Minister for South Asia on 22 March 2012, this claim was only publicly refuted by the UK government on 15 October 2012 via an answer to a parliamentary question from the shadow Immigration Minister, Chris Bryant MP. See HC Deb, 15 October 2012, c107W.

⁵¹ Our Chief Executive pointed out these inaccuracies in his letters dated 28 February 2012 to the Attorney-General, the Immigration Minister, and the FCO Minister for South Asia. Note that the Treasury Solicitor's letter attributed similar claims to our client himself and his brother. Both deny ever having made these claims and certainly no such claims were made by either in any of their discussions with Freedom from Torture.

⁵² The letter failed to mention that, according to the notes of the medical examination which both we and the British High Commission had a copy of, the doctor appeared to have advised our client to see an ENT doctor which is consistent with claims his nose bled following a beating at the airport. Our Chief Executive drew attention to this in his correspondence to various ministers on 28 February 2012.

10.12. In addition to the case described above, Freedom from Torture is involved in two other cases of Tamils who allege torture or ill-treatment following *forcible return* from the UK on *charter flights* after the end of the conflict including one case that is the subject of proceedings in the European Court of Human Rights.⁵³

10.13. We are also aware of a high number of cases of torture of Tamils following *voluntary return* to Sri Lanka in the post-conflict period. On 13 September 2012 we published a briefing entitled '*Sri Lankan Tamils tortured on return from the UK*' detailing 24 such cases.⁵⁴ Twelve of these cases involved individuals for whom we had prepared forensic medico-legal reports (six of these cases had already been reported on with a different focus in previous Freedom from Torture publications about post-conflict torture in Sri Lanka and six were new), and the other twelve involved individuals referred to us, mainly by health and social care professionals in the NHS or voluntary sector, for clinical treatment services. Following close analysis of these 24 cases, we concluded that:

*'Sri Lankan Tamils who in the past had an actual or perceived association at any level with the LTTE but were able to leave Sri Lanka safely now face risk of torture on return. The cases demonstrate that the fact the individuals did not suffer adverse consequences because of this association in the past does not necessarily have a bearing on risk on return now. It is a combination of both residence in the UK and an actual or perceived association at any level with the LTTE which places individuals at risk of torture and inhuman and degrading treatment in Sri Lanka.'*⁵⁵

10.14. In at least 12 of the 24 cases, ten of which were forensically documented by our MLR service and for which we therefore had fuller information, the individual reported that they were interrogated about their own activities or the activities of other Tamils in the UK. For example, individuals were interrogated about LTTE contacts, fundraising and/or protest activities in London.⁵⁶

10.15. Based on this evidence, we repeated our calls in the briefing for the UK government to '*halt forcible removals of Tamils to Sri Lanka while the UK Border Agency's policy on removals to Sri Lanka is changed to properly reflect this mounting evidence.*'⁵⁷

53 *N and Others v the United Kingdom*, Application no. 16458/12. Freedom from Torture's involvement in this case is limited to expert evidence we have provided on the phenomenon of late disclosure of rape which is a central issue in the case.

54 Freedom from Torture, '*Sri Lankan Tamils tortured on return from the UK*' (13 September 2012) available at http://www.freedomfromtorture.org/sites/default/files/documents/Freedom%20from%20Torture%20briefing%20-%20Sri%20Lankan%20Tamils%20tortured%20on%20return%20from%20the%20UK_0.pdf.

55 *Ibid*, p.2

56 We suggested that this interest in Tamils returning from the UK could be attributable to: (i) Evidence obtained by the Sri Lankan authorities or assumptions or suspicions about the activities of the particular individual in the UK connected with the LTTE or otherwise considered to be subversive; and/or; (ii) An attempt by the Sri Lanka in authorities to acquire intelligence about the activities of the Tamil diaspora community in the UK, including any activities that could facilitate a resurgence of the LTTE or which the authorities consider to be in any other way subversive; and/or (iii) Suspicions on the part of the Sri Lankan authorities about the Tamil community in the UK in particular, giving rise to additional scrutiny of those who enter Sri Lanka from the UK during routine security screening conducted at the airport or thereafter and a risk of subsequent detention and interrogation about the activities of the individual or other Tamils in the UK; and/or (iv) An attempt by the Sri Lankan authorities to terrorise the Tamil diaspora community in the UK as a means of punishing it for any past support for the LTTE and/or to discourage it from any efforts to revitalise the LTTE from the UK or otherwise organise opposition to the Sri Lankan government.

57 Freedom from Torture, '*Sri Lankan Tamils tortured on return from the UK*', *op cit*.

10.16. Since publication of this briefing, at least 6 additional cases involving torture following *voluntary return* to Sri Lanka have been referred to us for clinical treatment services.

UKBA FOI response confirming grants of refugee status to refused Sri Lankan asylum seekers previously removed from the UK

10.17. On 6 February 2013, UKBA responded to a Freedom of Information (FOI) Act request filed by Freedom from Torture on 15 November 2012 requesting details of Sri Lankan nationals granted protection by the UKBA or Tribunal after previously being refused and removed from the UK.⁵⁸ According to the response (provided at Appendix 1), there was a total of 15 such cases in the period between May 2009 and September 2012. The Treasury Solicitor's Department has since clarified that the precise number of these cases is 13, two of which were returns to a third country under the Dublin Convention and two of which were voluntary returns.⁵⁹ Notable features of the FOI response include:

- ⌚ Confirmation that all of these cases involved allegations of torture or ill-treatment on return to Sri Lanka; and
- ⌚ Failure, without explanation, to answer our specific question about the number of such cases in which allegations of post-removal torture or ill-treatment were found to be credible by either UKBA or the Tribunal.⁶⁰

10.18. In a letter to the Administrative Court prior to the charter flight on 28 February 2013, the Treasury Solicitor's Department provided further details about these cases in a bid to challenge arguments that there might be '*a direct link between UKBA return and their subsequent and later successful application for asylum*'.⁶¹ For example, evidence was shared about the length of time the individuals remained in Sri Lanka between their removal and return to the UK, but without disclosure of when and for how long the individual was detained by the Sri Lankan authorities such information is meaningless. Interestingly, however, and despite the additional analysis that had clearly been conducted of these cases, there was **still no disclosure of the number of these cases in which the post-return torture or ill-treatment allegations were found to be credible**. This important question, which is central

58 The FOI response and Freedom from Torture's statement in response to this are available at <http://www.freedomfromtorture.org/news-blogs/7104>.

59 Letter from the Treasury Solicitor's Department to the Administrative Court Office at the Royal Courts of Justice regarding 'Enforced returns to Sri Lanka by charter flight on Thursday 28 February 2013' (22 February 2013).

60 Presumably, explicit findings on this point would have been made in all of the cases (up to 10) granted protection following an allowed appeal.

61 Letter from the Treasury Solicitor's Department to the Administrative Court Office at the Royal Courts of Justice dated 22 February 2013 relating to '*Enforced returns to Sri Lanka by charter flight on Thursday 28 February 2013*'. Note that in light of all of the evidence in the public domain about the risk on return to certain categories of Tamils, the concerns voiced by Freedom from Torture, Human Rights Watch and others about the safety of the UKBA's Sri Lanka removals policy and the close scrutiny being given to these issues in the country guidance case, there are serious questions to be asked about the appropriateness of UKBA's decision to organise a further charter flight on 28 February with the intention of removing large numbers of Tamils among others. In the event, a general injunction was issued by the High Court against the removal of any refused Tamil asylum seekers, but it is concerning that the courts were compelled to restrain the government from proceeding with the removals.

to the issue of whether the UK has failed to comply with its obligations under international human rights and refugee law, remains unanswered to date.

Statements by Ministers and senior officials that there are no 'substantiated' allegations of torture or ill-treatment following forcible return to Sri Lanka

- 10.19. Ministers and senior officials in the Home Office and FCO have persistently assured Parliament and the general public that there are no 'substantiated' allegations of mistreatment of Tamils forcibly removed to Sri Lanka from the UK (see Appendix 2 for a selection of these statements together with commentary from Freedom from Torture). For example, on 1 March 2012, the Immigration Minister stated to Parliament that: *'The UK Border Agency has considered recent reports and at present has no substantiated evidence of mistreatment by the Sri Lankan authorities of enforced returnees from the UK'* (emphasis added).⁶² On 26 March 2013 the Committee posed the following question to Rob Whiteman, Chief Executive of the UKBA, in relation to the FOI response to Freedom from Torture: *'Do you now accept that there is in fact substantiated evidence that Tamils forcibly removed to Sri Lanka have been mistreated, as evidenced by the fact we have taken 13 of them and said, 'Yes, you can come here because you were tortured'?'.* Mr Whiteman failed to answer this question, stating only that, *'The Home Office will continue to look at information that comes to light'*.⁶³
- 10.20. **Freedom from Torture hopes that the Committee will use this inquiry to get to the bottom of what Ministers and senior officials in the Home Office and FCO knew about evidence of torture or ill-treatment of Tamils forcibly removed from the UK to Sri Lanka and why statements confirming that there was no 'substantiated' allegations continued to be made throughout 2012 and early 2013** despite the medical evidence obtained by the British High Commission regarding the ill-treatment of our client removed on a scheduled flight on 20 February 2012, a Tribunal determination which Human Rights Watch drew attention to in May 2012 confirming that the Tribunal had accepted post-removal torture allegations in the case of a woman who returned to the UK in 2010⁶⁴, and the strong suggestions in the FOI response dated 6 February 2013 that there are many other cases in which post-removal allegations of torture or ill-treatment of Sri Lankans have been accepted either by the UKBA or the Tribunal.

Monitoring the safety of forced returnees to Sri Lanka

- 10.21. For the reasons set out in this submission, Freedom from Torture strongly believes that there are certain categories of Tamils (those returning from the UK with a real or perceived LTTE association at any level) whose protection needs are not sufficiently addressed in the UKBA's country specific asylum policy on Sri Lanka and that the most appropriate means of ensuring their safety is to amend this policy to reflect the risks we have identified and for decisions on individual asylum claims to be taken accordingly.

62 HC Deb, 1 March 2012, c461W.

63 Home Affairs Committee, Uncorrected transcript of oral evidence to be published as HC 924-I available at <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmhaff/uc924-i/uc92401.htm>.

64 Guardian, 'Stop Sri Lanka deportation flights, says Human Rights Watch' available at <http://www.guardian.co.uk/world/2012/may/31/sri-lanka-deportation-torture?INTCMP=SRCH>.

- 10.22. However, in light of the dire human rights situation in Sri Lanka generally and the fact that Freedom from Torture only comes into contact with a small proportion of torture victims (those with the means and opportunity to flee to the UK who are successfully referred to us for clinical services), it is entirely possible that there are other groups of Sri Lankans, including other categories of Tamils, who are being denied protection according to current policy but who, in reality, face a real risk of torture on return. With this in mind, we accept the need for post-removal monitoring and support the Committee's consideration of whether the current monitoring arrangements are sufficient.
- 10.23. The government describes its position in relation to post-removal monitoring of refused asylum seekers as follows: '*They are, by definition, foreign nationals who have been found, as a matter of law, not to need the UK's protection, and it would be inconsistent with such a finding for the UK to assume an ongoing responsibility for them when they return to their own country.*'⁶⁵

Monitoring on arrival at the airport

- 10.24. We are now aware that **British High Commission officials attend the airport in Colombo for the arrival of UKBA charter flights but not for those forcibly returning on scheduled flights. Given the ill-treatment on arrival of our client removed on a scheduled flight in February 2012 (see above), this discrepancy in reception arrangements is a source of considerable concern to Freedom from Torture.**
- 10.25. During a Westminster Hall debate on 22 February 2012, the Minister for South Asia acknowledged this discrepancy and stated that he had '*asked colleagues in Colombo to see what we can do to meet scheduled flights as well, where that is practicable*'.⁶⁶ However, by email dated 20 July 2012, an FCO official in the Migration Directorate advised Freedom from Torture that:
- 'HMG's consistent policy, has been that meeting charter flights is an exceptional practice due to the large scale logistics of removing several returnees collectively. As this continues to be the case the review findings were to maintain the status quo. [British High Commission] staff will continue to facilitate returnees on charter flights through the airport to ensure a quick process once the flight lands and UKBA will continue to have the option to request assistance, on an exceptional basis, on schedule [sic] flights.'*
- 10.26. The FCO also confirmed in this communication that between January and June 2012 the UKBA had not asked the British High Commission to attend the airport to meet any forced returnees arriving by scheduled flight. It is not clear to Freedom from Torture how many refused asylum seekers are removed to Sri Lanka on scheduled flights, however the reluctance of the government to alter its procedures suggests that the numbers are not negligible.⁶⁷

65 HC Deb, 22 February 2012, c292WH.

66 HC Deb, 22 February 2012, c293WH.

67 Parliamentary questions designed to elicit this information have been unsuccessful. See for example HC Deb, 12 March 2012, c65W.

Proactive ongoing monitoring

10.27. Freedom from Torture's research on torture practices in Sri Lanka suggests that the risk of detention and torture may persist for many months after return to Sri Lanka.⁶⁸ In this context short- and long-term monitoring of the safety of forced returnees should be undertaken. As a torture treatment centre operating in the UK only, we are not well-placed to advise on effective methods of in-country monitoring in the longer term, however we consider that steps should be taken to confirm the safe arrival of each returnee at their final destination after leaving the airport; we are aware of cases in which both voluntary and forcible returnees were picked up at the airport by the Sri Lankan authorities and taken to detention facilities for interrogation and torture. Check-points, which some returnees may have to pass through *en route* from the airport, are another site at which people are vulnerable to arrest prior to detention and torture.

Reactive ongoing monitoring

10.28. We understand that all refused asylum seekers who are removed to Sri Lanka are given the contact details for the British High Commission and advised to make contact should they require assistance. It is unclear whether any victims of post-removal ill-treatment have attempted to contact the British High Commission but even those in a position to establish contact may not, following a forced removal, feel able to trust the British High Commission.⁶⁹ The handling of the case of our client who was ill-treated after removal on a scheduled flight in February 2012 suggests that the British High Commission may approach such investigations from a starting point of disbelief.

10.29. Ministers have confirmed that responsibility for investigating any allegation of ill-treatment on return to Sri Lanka rests with the Migration Delivery Officer at the British High Commission.⁷⁰ They have also confirmed that this post forms part of the overseas network of the FCO's Migration Directorate and that 97% of the funding⁷¹ and 46% of the staffing⁷² for this Directorate come from the UKBA.

10.30. Freedom from Torture believes that **it is inappropriate for Migration Delivery Officers, because of their close links to UKBA, to be tasked with investigating allegations of harm following forced removal.** We would strongly welcome scrutiny by the Committee of what appears to be a dual role for this post in

68 Fourteen of the 35 cases in our report *Out of the Silence: New Evidence of Ongoing Torture in Sri Lanka, 2009-2011*, involved torture following periods of residence or travel abroad. In five cases, the episode of detention and torture documented in our medico legal report occurred over a year and up to seven years after return. In the remaining nine cases, the individual was detained and tortured within days, weeks or a month of their return. See page 7 of the report which is available at http://www.freedomfromtorture.org/sites/default/files/documents/Sri%20Lanka%20Ongoing%20Torture%20Report_for%20release%208%20Nov%20-%20with%20cover.pdf.

69 Indeed it has been reported to us anecdotally that Tamil returnees are reluctant to contact the British High Commission.

70 HC Deb, 30 April 2012, c1359W.

71 HC Deb, 30 April 2012, c1348W.

72 HC Deb, 30 April 2012, c1349W.

arranging and ensuring the smooth operation of the charter flights and in investigating allegations of abuse on return and to consider whether this may give rise to a conflict of interest or perception of the same.

10.31. Recommendations

- ⌚ The Immigration Minister should immediately:
 - disclose (i) the number of Sri Lankan cases in which allegations of torture or ill-treatment following removal from the UK in the post-conflict period have been found credible by the UKBA or Tribunal; and (ii) the number of these cases involving Tamils; and
 - correct any misleading statements to Parliament or the public that there are no 'substantiated allegations' of abuse on return of refused Sri Lankan Tamil asylum seekers and ensure that the UKBA's COI report and country specific asylum policy on Sri Lanka are immediately revised accordingly.
- ⌚ Regardless of the outcome of the current country guidance, a **cross-departmental review** of the government's handling of evidence of torture of Tamils returning to Sri Lanka from the UK should be conducted jointly by the Home Office, the FCO and, because it is responsible for the conduct of the Treasury Solicitor's Department, the Attorney-General's Department. The review should be led at board management level in each department and should involve input from relevant NGOs. The terms of reference for this review should be agreed with the Home Affairs Committee and the Foreign Affairs Committee and the results delivered to these committees for scrutiny.
- ⌚ The Committee should continue to require quarterly updates on the number of individuals granted asylum after previous refusal and removal from the UK and should additionally require data on the number of such cases in which post-removal torture or ill-treatment allegations were found credible by the UKBA or Tribunal. The Committee should reiterate its previous recommendation for UKBA to advise '*what review processes they have in place to examine why the applications in question were initially refused*'⁷³ to ensure there is learning for the purposes both of country specific asylum policies and quality control processes for asylum decision-making.
- ⌚ British High Commission officials should be required to attend the airport in Colombo to meet all forced returnees arriving by scheduled flights and monitoring should be conducted to ensure that all returnees, whether arriving by scheduled or charter flight, arrive safely at their destination after leaving the airport. Long-term monitoring arrangements should also be put in place. Responsibility for investigating allegations of post-removal ill-treatment in Sri Lanka and elsewhere should be transferred from Migration Delivery Officers to a post or body that is wholly independent of the Home Office.

⁷³ Home Affairs Committee, Eighth Report of Session 2012-13, *The work of the UK Border Agency (April – June 2012)*, HC 603, para 66.

11. **Appendix 1: Freedom of Information Request 25159, UKBA Response**
06/02/2013



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6 February 2013

Our Ref: FOI 25159

Dear Ms Sceats,

Thank you for your email of 15 November 2012, which has been handled as a request for information under the Freedom of Information Act 2000.

In your email you asked for information about Sri Lankan nationals granted refugee status, who had previously returned to Sri Lanka. For ease of reference your questions are listed below with answers beneath.

- a) In how many cases was a Sri Lankan national granted refugee status by the UK having previously returned whether forcibly or voluntarily, to Sri Lanka from the UK from May 2009 onward.***

In the period from May 2009 to September 2012, a total of 15 Sri Lankan nationals were granted refugee status, who had previously been removed from the United Kingdom.

(1) All figures quoted have been derived from management information and are therefore provisional and subject to change.

This information has not been quality assured under National Statistics protocols.

(2) Figures relate to main applicants only.

(3) Figures relate to asylum applicants granted refugee status between 1 May 2009 and 30 September 2012.

(4) Figures rounded to the nearest 5.

Figures on asylum grants by nationality for the period 1 October to 31 December 2012, will be available from 28 February 2013. Consequently, I have decided not to communicate this information to you pursuant to the exemption under section 36(2)(c) of the Freedom of Information Act 2000. This allows us to exempt information if it constitutes a subset of data that are intended for future publication.

The use of this exemption requires consideration of whether it is:

- Reasonable in all the circumstances not to produce the information until on or after 28 February 2013, and
- Whether in all the circumstances of the case the public interest in maintaining the exemption stated above outweighs the public interest in disclosing the information.

This is a two stage test but the central issue is whether in all the circumstances it is reasonable and in accordance with the public interest to require you to wait until 28 February 2013.

We recognise there may be a public interest in producing this information for you now and that this may also weigh in favour of it being unreasonable to make you wait until 28 February 2013. We have considered the following:

- It is important that the public have access to immigration statistics. Home Office staff are required to handle requests made under the Freedom of Information Act 2000, not least to assure them that this legislation is being fully implemented.

But there are also public interest reasons for maintaining the exemption to the duty to communicate which weigh in favour of it being reasonable to require you to wait until 28 February 2013. We have considered the following:

- Publication would undermine Home Office established pre-publication procedures, which includes internal consultation about the final statistics being established on the Home Office website, and also being able to use its staff resources effectively in a planned way so that reasonable publication timetables are not affected.

After balancing these conflicting arguments, we have concluded not only that it is reasonable to require you to wait until 28 February 2013, but also that the balance of the public interests identified favours maintaining the exemption. This is not least because we believe that in this case the overall public interest lies in favour of ensuring that the Home Office is able to plan its publication of information in a managed and coherent way, and this would not be possible if immediate disclosure were made.

b) In how many of the cases in (a) was it alleged that the person suffered torture or inhuman or degrading treatment upon return to Sri Lanka from the UK.

Of the 15 Sri Lankan nationals granted refugee status, all 15 claim to have been subject to torture or inhuman / degrading treatment either following their return to Sri Lanka.

(1) All figures quoted have been derived from management information and are therefore provisional and subject to change. This information has not been quality assured under National Statistics protocols.

(2) Figures relate to main applicants only.

(3) Figures relate to asylum applicants granted refugee status between 1 May 2009 and 30 September 2012.

(4) Figures rounded to the nearest 5.

c) In how many of the cases in (b) was the allegation of torture or inhuman or degrading treatment found credible by the:

- i) UK Border Agency on initial consideration of the application;*
- ii) First Tier Tribunal and/or the Upper Tribunal.*

d) Of the cases in (b) was refugee status granted:

- i) On the basis of an initial application (upon their return to the UK)*
- ii) On the basis of a successful appeal;*
- iii) In response to further submissions following the refusal of an application or appeal.*

Of the 15 Sri Lankan nationals granted refugee status, 5 were granted asylum following the initial consideration of their asylum claim by the UK Border Agency, and 10 were granted following the successful determination of their appeal. Of the 10 granted at appeal, 5 were granted by the

Immigration and Asylum Chamber of the First-tier Tribunal (IAC), and the remaining 5 were granted by the Immigration and Asylum Chamber of the Upper Tribunal (IAC).

(1) All figures quoted have been derived from management information and are therefore provisional and subject to change.

This information has not been quality assured under National Statistics protocols.

(2) Figures relate to main applicants only.

(3) Figures relate to asylum applicants granted refugee status between 1 May 2009 and 30 September 2012.

(4) Figures rounded to the nearest 5.

If you are dissatisfied with this response you may request an independent internal review of our handling of your request by submitting a complaint within two months to the address below, quoting reference 25159. If you ask for an internal review, it would be helpful if you could say why you are dissatisfied with the response.

Information Access Team

Home Office

Ground Floor

Seacole Building

2 Marsham Street

London SW1P 4DF

Email: FOIRRequests@homeoffice.gsi.gov.uk

As part of any internal review the Department's handling of your information request will be reassessed by staff who were not involved in providing you with this response. If you remain dissatisfied after this internal review, you would have a right of complaint to the Information Commissioner as established by section 50 of the Freedom of Information Act.

Yours sincerely,

Fiona Larkin

Head of Central Performance Office

Performance & Compliance Unit

12. Appendix 2: Statements by Ministers and senior officials that there are no 'substantiated' allegations of torture or ill-treatment following forcible return to Sri Lanka

12.1. The following are examples of statements by Ministers and senior officials to the effect that there are no 'substantiated' allegations of torture or ill-treatment following forcible return to Sri Lanka from the UK, accompanied by commentary from Freedom from Torture.

12.2. 22 February 2012: Alistair Burt MP, Minister for South Asia, Foreign and Commonwealth Office: '*We are aware of media allegations that returnees are being abused. All have been investigated by the high commission, and no evidence has been found to substantiate any of them... I assure the hon. Gentleman and the House that the same information is given to everyone to allow people to contact us in private—not the Sri Lankan authorities—and so far we have not been able to substantiate allegations. However, we remain open to anything that would do that, because it is essential that those returned are safe*' (emphasis added).⁷⁴

This statement was made on the day following ill-treatment of a Freedom from Torture client at the airport in Colombo after forced return from the UK on a scheduled flight. As set out in the section of our submission on the prevalence of refused asylum seekers who are tortured upon return to their country of origin and how the UK Government can monitor this, the FCO was aware at this point of the ill-treatment allegations although the medical examination they arranged had not yet taken place.

12.3. 1 March 2012: Damian Green MP, then Immigration Minister: '*The UK Border Agency has considered recent reports and at present has no substantiated evidence of mistreatment by the Sri Lankan authorities of enforced returnees from the UK*' (emphasis added).⁷⁵

This statement was made almost a week after the medical examination of our client and three days after the Treasury Solicitor Department's letter to the Administrative Court detailing the medical examination and confirming '*abrasions to the shins... consistent with his explanation that the officer interviewing him at the airport and facing him had kicked him*'.⁷⁶

12.4. 30 April 2012: Jeremy Browne MP, then Minister of State, Foreign and Commonwealth Office: '*The Migration Delivery Officer (MDO) in Colombo is responsible for investigating any claims of ill-treatment of those forcibly returned to Sri Lanka. To date no allegation of mistreatment has been substantiated following these investigations*' (emphasis added).⁷⁷

74 HC Deb, 22 February 2012, c293WH.

75 HC Deb, 1 March 2012, c461W.

76 As pointed out above, the notes of the medical examination also indicate that the doctor advised our client to see an ENT doctor which is consistent with claims his nose bled following a beating at the airport.

77 HC Deb, 30 April 2012, c1359W.

This statement is surprising in light of the Migration Delivery Officer's direct responsibility for investigating the allegations of ill-treatment of our client and his role in procuring the medical evidence referred to above.

12.5. 19 June 2012: Vijay Rangarajan, Director of Multilateral Policy at the FCO in oral evidence to the Foreign Affairs Committee: *'There is certainly a substantial amount of maltreatment and torture in Sri Lanka, but we do not yet have substantiated evidence that the people whom we have returned through the assurances have been maltreated'* (emphasis added).⁷⁸

12.6. 16 October 2012: Alistair Burt MP, Minister for South Asia, Foreign and Commonwealth Office: *'We take all allegations of torture and mistreatment very seriously. However on the basis of allegations raised with the FCO we have not been able to identify any individuals as having been deported to Sri Lanka from the UK since 2010 and subsequently tortured'* (emphasis added).⁷⁹

This statement followed public disclosure by Human Rights Watch on 31 May 2012 that in one case in their research on torture following forcible return to Sri Lanka from the UK and elsewhere, the Tribunal had *accepted* evidence that a Tamil woman had been tortured following forcible return to Sri Lanka from the UK. Human Rights Watch had made clear that the woman had managed to return to the UK in late 2010.⁸⁰

12.7. 8 December 2012: Mark Harper MP, Immigration Minister: when asked in oral evidence by the Committee whether he stood by the statement made by his predecessor to the effect that *'there is no substantial evidence of mistreatment by the Sri Lankan authorities of those who have been forcibly returned by the UK authorities to Sri Lanka?'*, the Minister replied *'Yes'*.⁸¹

The Committee asked this question in connection with the data disclosed to it by UKBA confirming that between 1-3 Sri Lankans had been granted protection in quarters 1 and 2 2012 after previously having been removed from the UK.⁸²

12.8. 1 February 2013: Alistair Burt MP, Minister for South Asia, Foreign and Commonwealth Office in an interview with the BBC referring to allegations of 'torture or ill-treatment on return' to Sri Lanka: *'We do not have the direct evidence of which you speak. We are aware of the allegations and we have sought to get confirmation. And certainly we are open to any information about those who have been returned and what has happened to them. So far we have not had those allegations substantiated... We have looked at cases which have been brought to us, I have to tell you because I look into this extremely carefully, I have just not*

⁷⁸ Foreign Affairs Committee, Third Report of Session 2012-13, *The FCO's human rights work in 2011*, HC 116, Ev 26.

⁷⁹ HC Deb, 15 October 2012, c75W.

⁸⁰ Guardian, 'Stop Sri Lanka deportation flights, says Human Rights Watch' available at <http://www.guardian.co.uk/world/2012/may/31/sri-lanka-deportation-torture?INTCMP=SRCH>.

⁸¹ Home Affairs Committee, Fourteenth Report of Session 2012-13, *The work of the UK Border Agency (July – September 2012)*, HC 792, Ev 23.

⁸² Home Affairs Committee, Eighth Report of Session 2012-13, *The work of the UK Border Agency (April – June 2012)*, HC 603, para 62.

seen this'⁸³

This statement was made during the Minister's trip to Sri Lanka just five days before UKBA confirmed in a letter to Freedom from Torture that it had granted refugee status to up to 15 Sri Lankans who alleged that they had been tortured or ill-treated following forcible removal to Sri Lanka (see above).

- 12.9. On 26 March 2013 the Committee posed the following question to Rob Whitman, Chief Executive of the UKBA, in relation to his Agency's response to the Freedom of Information Act request filed by Freedom from Torture: *'Do you now accept that there is in fact substantiated evidence that Tamils forcibly removed to Sri Lanka have been mistreated, as evidenced by the fact we have taken 13 of them and said, 'Yes, you can come here because you were tortured'?'*. Mr Whiteman failed to answer this question, stating only that *'The Home Office will continue to look at information that comes to light'*.⁸⁴

83 The audio of this interview is available at <http://audioboo.fm/boos/1203963-alistair-burt-bbc-interview-in-sri-lanka-comments-on-torture-allegations#t=0m39s>.

84 Home Affairs Committee, Uncorrected transcript of oral evidence to be published as HC 924-I available at <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmhaff/uc924-i/uc92401.htm>.