



Freedom from Torture

Medical Foundation for the Care of Victims of Torture

Freedom from Torture submission to the UN Committee Against Torture – examination of the 5th periodic report of the United Kingdom in May 2013

Introduction

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. Since our foundation over 25 years ago, more than 50,000 people have been referred to us for rehabilitation and other forms of care and practical assistance. Our clinicians also use forensic methods to document physical and psychological evidence of torture via medico legal reports which are used in connection with survivors' protection claims and other legal proceedings. We have centres in London, Manchester, Newcastle, Birmingham and Glasgow.

We welcome this opportunity to contribute to the Committee Against Torture's 5th periodic review of the United Kingdom (UK) under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ('Convention') and would like to draw the following issues to the Committee's attention based on Freedom from Torture's work to assist and promote the rights of torture survivors in the UK:

- Accountability for allegations of complicity in torture;
- Evidence that the UK's flawed asylum policy for Sri Lanka has led to violations of Article 3 of the Convention;
- Detention of torture survivors for immigration purposes;
- Poverty as a barrier to the right to rehabilitation under Article 14 of the Convention;
- The UK's Bill of Rights debate; and
- Data on asylum claims involving past torture or a risk of future torture on return.

Accountability for allegations of complicity in torture

References: Articles 12-13 and 22 of the Convention; paragraphs 23-4, 42 of the Committee's List of Issues

During the period covered by this review, a number of controversies have tested the UK's commitment to the absolute prohibition of torture and compromised its credibility as a leader among states in upholding and promoting this ban internationally. Chief among these are the allegations of UK complicity in torture committed abroad in the context of the 'War on Terror'. Freedom from Torture welcomes the government's candid acknowledgement in its 5th periodic report that the 'seriousness' of these allegations 'has resulted in an erosion of public confidence in

the UK's intelligence services and a tarnishing of the UK's reputation as a country that upholds human rights, justice, fairness and the rule of law' and its commitment to 'clearing the stain on the UK's reputation and getting to the bottom of what happened, so that the UK intelligence services are able to get on with their important work with their reputation restored'.¹

i. Torture complicity inquiry

Very soon after the new Government was formed in 2010, the Prime Minister announced an inquiry into these allegations.² Freedom from Torture applauded this announcement and alongside other human rights organisations called for the inquiry to be prompt, independent, thorough, capable of leading to the identification and prosecution of persons responsible, and provide for public scrutiny and victim participation.³ Together with other NGOs we sought to engage with the team led by Sir Peter Gibson, appointed by the Prime Minister to chair the inquiry, to ensure that the process would be human rights compliant and thus effective and legitimate in the eyes of the survivors and all those who shared the Prime Minister's ambition for the process to '*clear this matter up once and for all*'.⁴

It is regrettable that despite the detailed advice from lawyers acting for the survivors and from NGOs, **the government agreed a protocol for the inquiry which was clearly non-compliant with basic human rights standards**. Serious problems included a denial of meaningful participation to survivors and their legal representatives and a mechanism for dealing with evidence which gave the final say on disclosure to the government. As a consequence, the survivors announced through their lawyers that they would boycott the inquiry and ten human rights NGOs including Freedom from Torture also announced that they would not participate.⁵ On 13 November 2011, the UN Special Rapporteur on Torture, Juan Méndez, noted the inquiry's limitations and warned that '*[a] less than open and transparent inquiry would only serve to cover up abuses and encourage recurrence*'.⁶

Following further revelations of UK complicity in renditions to Libya and an announcement by the Metropolitan Police that these allegations were '*so serious*' that an immediate police investigation was warranted⁷, the Government announced that the inquiry would be wound up since there was

¹ CAT/C/GRB5 at para 16.

² The Prime Minister stated that the Detainee Inquiry would 'look at whether Britain was implicated in the improper treatment of detainees, held by other countries, that may have occurred in the aftermath of 9/11'. See statement available at <http://www.number10.gov.uk/news/statement-on-detainees/>.

³ The NGO views were outlined in two letters to the Secretary of the Inquiry dated 8 February and 17 February 2012 available at <http://www.freedomfromtorture.org/news-blogs/3430>.

⁴ HC deb, 6 July 2010, c175-6.

⁵ The other NGOs were The AIRE Centre, Amnesty International, British Irish RIGHTS WATCH, CagePrisoners, Human Rights Watch, JUSTICE, Liberty, REDRESS and Reprieve. See for example BBC, 'Campaigners to shun UK inquiry into detainee 'torture'' 4 August 2011 available at <http://www.bbc.co.uk/news/uk-14397601> and Guardian, 'Lawyers to boycott UK torture inquiry as rights groups label it a sham' 6 July 2011 available at <http://www.guardian.co.uk/world/2011/jul/06/uk-torture-inquiry>. See also an open letter available at <http://www.freedomfromtorture.org/news-blogs/5963> signed by the ten organisations and eminent international legal experts including Silvia Casale, former President of the European Committee for the Prevention of Torture and former Chairperson of the UN Sub-Committee on the Prevention of Torture, Malcolm Evans OBE, Professor of International Law at the University of Bristol and Chair of the UN Sub-committee on the Prevention of Torture, Professor Manfred Nowak, Professor of International Law and Human Rights at the University of Vienna and former UN Special Rapporteur on Torture, Professor Sir Nigel Rodley, Professor of Law and Chair of the Human Rights Centre at the University of Essex and former UN Special Rapporteur on Torture, Professor Martin Scheinin, Professor of Public International Law at the European University Institute, Florence, and Wilder Tayler, Secretary-General of the International Commission of Jurists and member of the UN Sub-Committee on the Prevention of Torture.

⁶ BBC 'Torture inquiry: UN's Juan Mendez calls for openness' 13 November 2011. Available at <http://www.bbc.co.uk/news/uk-15711317>.

⁷ See 'Joint statement by the Director of Public Prosecutions and the Metropolitan Police Service' 12 January 2012 available at http://www.cps.gov.uk/news/press_statements/joint_statement_by_the_director_of_public_prosecutions_and_the_metropolitan_police_service/.

no longer any prospect of it being able to commence promptly. Freedom from Torture publicly welcomed this news on account of the systemic flaws of the process. We warned that it was *'imperative that this is not the end'* and suggested that *'The government now has the time to design such a process that will secure the support of the survivors of torture - while the criminal investigations into rendition to Libya run their course'*.⁸

When announcing the news to Parliament, the Justice Secretary stated that the Government still *'fully intend to hold a judge-led inquiry into these issues, once it is possible to do so and all related police investigations have been concluded'*.⁹ It appears, however, that **work across government to prepare for a second inquiry has ground to a halt** despite the Committee's request for the UK to explain how it *'intends to remedy the shortcomings of the inquiry'*.¹⁰ Certainly there have been no efforts to engage with NGOs despite a recommendation by Parliament's Foreign Affairs Committee in October 2012 that *'the Government and human rights organisations should start to explore ways of finding a mutually acceptable basis on which the successor inquiry to the Detainee Inquiry can proceed'*¹¹ and the UK's recent statement to the Committee that the Government *'will continue to engage with [NGOs] over their concerns prior to any new inquiry being established'*.¹²

Moreover, the Government is yet to publish the interim report by Sir Peter Gibson which covers the preparatory work undertaken by his inquiry prior to it being wound up. On 17 July 2012, the Justice Secretary advised Parliament that this report had been submitted on 27 June 2012 and that the Government *'remain committed to publishing as much of this interim report as possible'*.¹³ This commitment does not appear in the UK's response to the Committee's List of Issues.¹⁴

ii. New mechanism for suppressing torture complicity evidence in civil trials

In the meantime, the Government has directed considerable political energy at securing the passage of statutory provisions extending the use of 'closed material procedures' ('CMP') to ordinary civil proceedings. These procedures allow for one party to the proceedings to be excluded entirely, with a security vetted 'special advocate' appointed to represent their interests, but unable to take instructions. This includes allowing the court to consider evidence only seen by one side, withholding of pleadings and ultimately, secret judgments not open to all. The **statutory provisions**, adopted in the Justice and Security Bill (currently awaiting royal assent), **will strengthen the government's ability to withhold disclosure to victim litigants of torture evidence drawn from intelligence** where this is deemed threatening to national security. They will also enable the government to present evidence on allegations of torture behind closed doors and without significant challenge, to the significant detriment of transparency and accountability.

Amendments to the Bill designed to ensure that such procedures would only be used as a method of last resort and requiring the judiciary to balance national security interests against the principle of fairness were ultimately rejected by Parliament. In light of the fundamental importance of these issues and the Committee's keen interest in ensuring accountability for any UK complicity in torture, Freedom from Torture was surprised to see these developments described by the UK in its

⁸ See for example Freedom from Torture 'Justice Secretary announces the Detainee Inquiry will not proceed' 18 January 2012 available at <http://www.freedomfromtorture.org/news-blogs/6010>.

⁹ See the Justice Secretary's Statement on the Detainee Inquiry 18 January 2012 available at <http://www.parliament.uk/business/news/2012/january/statement-on-the-detainee-inquiry/>.

¹⁰ CAT/C/GRB/Q/5 at para 24.

¹¹ House of Commons Foreign Affairs Committee, *The FCO's Human Rights Work in 2011*, Third Report of Session 2012-13, HC 116, published on 17 October 2012, para 74.

¹² Ministry of Justice, *United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment – Response to the list of issues adopted by the Committee during its 49th session by the United by [sic] the United Kingdom of Great Britain and Northern Ireland* (hereafter 'UK response to the Committee's List of Issues'), para 24.2.

¹³ HC Deb, 17 July 2012, c132WS.

¹⁴ UK response to the Committee's List of Issues, para 23.4.

response to the Committee's List of Issues as '*improving the courts' ability to handle intelligence and other sensitive material*¹⁵, with no discussion of the broader implications for open justice, equality of arms and the capacity of torture victims to use the UK courts to pursue accountability for any UK involvement in their torture.

It appears, therefore, that despite the UK's stated commitment to '*acknowledging where problems have arisen that have affected the UK's moral standing, tackling difficult issues head on, and acting on lessons learnt*¹⁶, the Government has lost its initial enthusiasm for exposing the truth about UK complicity in torture, is moving to suppress the truth about such issues from emerging via civil litigation and is missing the opportunity afforded by the ongoing police investigations in the Libyan cases to return to the drawing board with NGOs and the lawyers acting for the survivors in a bid to structure a replacement inquiry that is human rights compliant and therefore credible to the survivors and others, both in the UK and abroad, seeking accountability for any torture complicity that occurred.

iii. Ongoing failure to permit the Committee to hear individual complaints

Especially in light of the current assault on the UN human rights treaty body system by a range of States seeking to dilute scrutiny of their human rights records, Freedom from Torture was disappointed to see in the UK's response to the Committee's List of Issues a statement that the UK is undecided on '*the value*' of the individual complaints mechanism under the Convention.¹⁷

The very serious torture complicity allegations that remain unaddressed by the UK are a reminder that the UK must never be complacent about its international human rights obligations and that robust accountability mechanisms are needed. Freedom from Torture considers that this is an ideal moment for the UK finally to permit individuals to take complaints to the UN Committee against Torture, thereby matching its stated readiness to be judged '*against the highest international standards and to work hard to embed respect for international law and respect for human rights*¹⁸ with concrete action demonstrating this. Such a step would not only ensure accountability *at the international level* for any *future* victims of torture involving the UK, it would also send a powerful signal about the UK's renewed commitment to the torture ban and the value it attaches to the Committee as a helpful international oversight body.

Recommendations

Freedom from Torture considers that the Committee should:

- Ask the UK why more than 9 months after it was submitted to the Government, the interim report by Sir Peter Gibson has still not been made public, and recommend publication without further delay of '*as much of this interim report as possible*' as promised by the Justice Secretary;
- Seek assurances from the UK that the replacement inquiry into allegations of UK complicity in torture will be human rights compliant and that, in particular, meaningful participation of the survivors and an independent mechanism for taking decisions on disclosure of evidence will be guaranteed, and recommend that the UK follow the guidance in the UN Special Rapporteur on Torture's recent report on commissions of inquiry into torture and

¹⁵ See UK response to the Committee's List of Issues, para 23.4.

¹⁶ CAT/C/GRB/5, para 15.

¹⁷ UK response to the Committee's List of Issues, para 42.4.

¹⁸ CAT/C/GRB/5, para 15.

other forms of ill-treatment;¹⁹

- Recommend that the UK begin now the preparatory work on the replacement inquiry for the torture complicity allegations in consultation with NGOs and the lawyers representing the survivors; and
- Repeat its earlier recommendations that the UK enter a declaration under Article 22 of the Convention accepting the competence of the Committee to hear individual complaints.

Evidence that the UK's flawed asylum policy for Sri Lanka has led to violations of Article 3 of the Convention

References: Article 3 of the Convention; paragraph 15 of the Committee's List of Issues

i. Freedom from Torture evidence of torture or ill-treatment on return of Sri Lankan Tamils

Freedom from Torture has evidence drawn from our clinical work that certain categories of Tamils returning to Sri Lanka from the UK are '*in danger of being subjected to torture*' for the purposes of Article 3 of the Convention and that the UK's obligations under Article 3 may have been breached in some cases.

We were first alerted to this risk when compiling evidence of post-conflict torture in Sri Lanka for the Committee's examination of Sri Lanka in November 2011. Of the 35 cases profiled in the forensic evidence we presented to the Committee, nine involved torture following *voluntary* return from the UK.²⁰ In six of these cases, the individual had returned from the UK after the end of the civil war (four in 2009, one in 2010 and 1 in 2011), and in the remaining three cases the individual had returned earlier. In a briefing published on 13 September 2012 ('September briefing'), we published further details about these six cases alongside 18 new cases involving torture following voluntary return from the UK since the civil war ended, usually for family reasons.²¹ Since publication of this briefing, a minimum of 6 other similar cases have been referred to us for treatment services.

In at least 12 of the 24 cases covered in our September briefing, ten of which were forensically documented by our Medico Legal Report 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.²²

¹⁹ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, A/HRC/19/61.

²⁰ 'Freedom from Torture submission to the Committee against Torture for its examination of Sri Lanka in November 2011', page 4, available at http://www2.ohchr.org/english/bodies/cat/docs/ngos/FFT_SriLanka47.pdf.

²¹ Note that six of the new cases presented in this briefing were documented via our medico legal report service and twelve were referred to us, mainly by health and social care professionals in the UK's National Health Service or voluntary sector, for clinical treatment services. See 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.

²² 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)

We appreciate that these 30 *voluntary* return cases do not themselves involve any violation of the UK's obligations under Article 3 of the Convention but they reveal a *pattern with respect to risk* which should be reflected in the UK's asylum policy to ensure individuals falling within the scope of the demonstrated risk are not *forcibly returned to Sri Lanka in breach of these obligations*. After careful analysis of these cases, we described this risk in our September briefing as follows:

*'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.'*²³

In addition to these 30 voluntary return cases, **Freedom from Torture is also involved in three cases of torture or ill-treatment of Tamils following *forcible* return to Sri Lanka from the UK in the post-conflict period.** One of these cases is now the subject of proceedings in the European Court of Human Rights.²⁴ For the first time, we are now able to disclose to the Committee details of another of these cases presented as a case study below.

Case study – Ill-treatment of a Freedom from Torture client after forcible return to Sri Lanka from the UK in February 2012

This case involves a Freedom from Torture treatment client who was removed from the UK in February 2012 after an unsuccessful asylum claim.²⁵

Our client, who was removed on an ordinary *scheduled flight*, 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 in Colombo. Following requests from us, a member of staff from the British High Commission 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.

This case was central to Freedom from Torture's decision on Saturday 25 February to issue a

Suspicious 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.

²³ Freedom from Torture, 'Sri Lankan Tamils tortured on return from the UK' (13 September 2012) at page 2, 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.

²⁴ *N and Others v UK* lodged 15 March 2012. Statement of Facts and Questions to the Parties available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-112188>. As of 19 April 2013, judgment in this case is still awaited.

²⁵ No medical evidence had been presented as part of his appeal and when a medico legal report was finally prepared for him in detention prior to his removal, the UK Border Agency declined to consider this as part of a fresh asylum claim and removal was enforced.

public statement joining calls by Human Rights Watch, following publication of their own evidence,²⁶ for a suspension of removals of Sri Lankan Tamils from the UK.²⁷ 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.

On Monday 27 February we were surprised to learn that the Treasury Solicitor's Department had in legal proceedings relating to a mass removal *charter flight* to Sri Lanka 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 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*', 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*'.

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.²⁸ Our fears were realised when a version of the Treasury Solicitor's Department letter with only our client's 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*'.²⁹

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 mass removal charter flight on 28 February.

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 (UKBA).

In a judgment dated 5 October 2012, which has only recently been made publicly available, the High Court found that '*the use of the letter in the Tribunal with no attempt to maintain confidentiality made it inevitable that it would come to the attention of the Sri Lankan authorities*', that our client was placed at '*serious risk*' as a result, and that '*the lack of safeguards in the disclosure was not only in all probability a breach of confidence*' having regard to the basis on which Freedom from Torture shared information with the British High Commission about our client and his treatment at the airport '*but failure of good administration*'.³⁰

²⁶ 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>.

²⁷ 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>.

²⁸ Our Chief Executive complained about this in writing on 28 February 2012 to the Attorney-General, the Immigration Minister, and the Foreign and Commonwealth Office Minister for South Asia.

²⁹ '*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.

³⁰ *S v Secretary of State for the Home Department* [2012] EWHC 2638 at paras 28, 42.

It is unclear to Freedom from Torture whether any steps have been taken by the government to ensure lessons from this case are learned.³¹

ii. Refusal by the UK to revise its Sri Lanka asylum policy to reflect evidence of torture risks

In its response to the List of Issues, the UK has advised the Committee of the general injunction ordered by the High Court on 28 February 2013 against the removal of any refused Tamil asylum seekers.³² Despite this injunction as well as previous individual injunctions granted on the basis of evidence contained in Freedom from Torture's September briefing³³, and repeated calls from Members of Parliament (MPs) for a review to be undertaken, the Government has refused to revise the UK's asylum policy to reflect the risks identified by Freedom from Torture and other NGOs including Human Rights Watch and Tamils Against Genocide.

In October 2012, after many months of unsuccessful efforts by NGOs to secure a review of the UK's asylum policy on Sri Lanka based on our evidence that certain categories of Tamils were facing torture or ill-treatment on return from the UK, the UKBA issued a new Country Policy Bulletin on Sri Lanka affirming its existing policy.³⁴ The Bulletin has been highly controversial. To date it has been revised twice owing to material inaccuracies in the presentation and interpretation of the NGO evidence, leading to a formal complaint to the courts by the Immigration Law Practitioners' Association given reliance by the UKBA on this inaccurate Bulletin when defending injunction applications in removal cases. On 26 November 2012, Freedom from Torture filed a 6 page letter of complaint and no substantive response was received for almost four months until after the High Court issued the general injunction on 28 February 2013. Many key concerns about the misrepresentation of Freedom from Torture's evidence in this Bulletin have still not been addressed and the Bulletin continues to be used as a basis for decision-making in asylum claims by Sri Lankan Tamils.

The UK has also stated to the Committee that '*it does not follow*' from evidence of ongoing torture in Sri Lanka '*that all Tamil asylum seekers are in need of international protection*', however this is not what Freedom from Torture has argued. As the High Court recognised when ordering numerous injunctions prior to a mass removal charter flight on 18 September 2012, Freedom from Torture had in our September briefing 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,*

³¹ There are many problematic features of this case some of which have been the subject of judicial criticism as indicated above. The case also exposed a discrepancy in reception arrangements between those removed from the UK on scheduled and charter flights. Whereas charter flights returnees are routinely met at the airport by British High Commission officials, those on scheduled flights are left to fend for themselves. This is highly concerning to Freedom from Torture in light of the experience of our client and given evidence in other cases we are involved in that voluntary and forcible Tamils returnees from the UK have been picked up at the airport by the Sri Lankan authorities and taken to detention facilities for interrogation and torture. When the discrepancy was drawn to the attention of the Foreign and Commonwealth Minister for South Asia, he promised a review but no change ensued. The government has consistently failed to answer parliamentary questions regarding the number of refused asylum seekers who have been removed to Sri Lanka via scheduled flights.

³² The order of the High Court, which was granted just before a mass removal charter flight, is available at <http://www.freemovement.org.uk/2013/02/27/suspension-ordered-on-removal-of-tamil-asylum-seekers/>.

³³ See for example *R (on the application of Qubert) v Secretary of State for the Home Department* [2012] EWHC 3052 (Admin). Freedom from Torture intervened in these proceedings as a third party.

³⁴ The Bulletin is available at <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificpolicybulletins/srilanka-polbulletin?view=Binary>.

but were able to leave Sri Lanka safely.³⁵

In recent months the government has sought to deflect discussions about the safety of its policy by pointing to ongoing litigation on these issues³⁶, but clearly it does not require instruction from the judiciary before revising its policy to reflect the overwhelming evidence before it.

Moreover, Ministers have repeatedly responded to concerns voiced by MPs and journalists by insisting that there are '*no substantiated allegations*' of abuse on return.³⁷ These claims are inaccurate, as demonstrated by the case described above involving our client and medical evidence obtained in that case by the British High Commission in Colombo.³⁸ On 31 May 2012, Human Rights Watch publicised a case from 2010 in which the domestic Tribunal that hears appeals of asylum decisions accepted that a Tamil removed from the UK on a post-conflict charter flight was tortured on return.³⁹

Freedom from Torture would also like to draw to the Committee's attention **UKBA's disclosure** (provided at Appendix 1) on 6 February 2013, in response to a Freedom of Information (FOI) Act request filed by Freedom from Torture, **that between May 2009 and September 2012, numerous Sri Lankan nationals were granted protection by the UKBA or Tribunal after previously being refused and removed from the UK**.⁴⁰ Although the UKBA's letter identifies 15 such cases, the Treasury Solicitor's Department has since clarified that the precise number is 13, two of which were returns to a third country under the Dublin Convention and two of which were voluntary returns.⁴¹ 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.⁴²

The Treasury Solicitor's Department has also 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*'.⁴³ 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

³⁵ *R (on the application of Qubert) v Secretary of State for the Home Department* [2012] EWHC 3052 (Admin).

³⁶ For example, the then Immigration Minister told Freedom from Torture at a National Asylum Stakeholder Forum meeting on 5 July 2012 that 'Country guidance will tell us if we can't return, so we have to be guided by the courts.' See also UK response to the Committee's List of Issues, para 15.1.

³⁷ These statements have been made by various ministers in the Home Office and Foreign and Commonwealth Office. See for example HC Deb, 22 February 2012, c293WH; HC Deb, 1 March 2012, c461W; HC Deb, 30 April 2012, c1359W; HC Deb, 15 October 2012, c75W.

³⁸ In the months following this case, the British High Commission in Colombo continued to echo false claims by Ministers that there were '*no substantiated allegations of abuse*' to the Sri Lankan media. See for example, The Island Online, 'British HC denies claims of deportee abuse' 20 June 2012 available at http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=54899. Similarly, the Foreign and Commonwealth Office in its 'Human Rights and Democracy: 2011 Foreign and Commonwealth Office Report' (published in April 2012) stated that '*There have been allegations in the media of returning migrants and refugees being abused. All such allegations in respect of returnees from the UK were investigated by our High Commission and no evidence was found to substantiate them*', p. 326.

³⁹ See Guardian, 'Stop Sri Lanka deportation flights, says Human Rights Watch' 31 May 2012 available at <http://www.guardian.co.uk/world/2012/may/31/sri-lanka-deportation-torture?INTCMP=SRCH>.

⁴⁰ Freedom from Torture's statement in response is available at <http://www.freedomfromtorture.org/news-blogs/7104>.

⁴¹ 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).

⁴² Presumably, explicit findings on this point would have been made by the Tribunal in all of the cases (up to 10) granted protection following an allowed appeal.

⁴³ 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).

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 has still been no disclosure of the number of these cases in which the post-return torture or ill-treatment allegations were found to be credible.**

Recommendations

Freedom from Torture considers that the Committee should:

- Recommend that the UK urgently update its asylum policy for Sri Lanka to reflect the evidence from Freedom from Torture and other NGOs that Tamils returning from the UK with a real or perceived association with the LTTE at any level face a real risk of torture or ill-treatment on return;
- Ask the UK to (a) disclose to the Committee: (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 (b) correct any misleading statements that there are no 'substantiated allegations' of abuse following forced removal from the UK; and
- Ask the UK what steps it is taking to ensure there is a feedback loop for policy purposes in relation to cases in which allegations of torture or ill-treatment following forcible return from the UK to any country are found credible by the UKBA or Tribunal.

Detention of torture survivors for immigration purposes

References: Articles 3 and 11 of the Convention; paragraphs 16, 17 of the Committee's List of Issues

It is well known that significant numbers of torture survivors are detained by the UKBA despite its policy that this is only permissible in 'very exceptional circumstances'.⁴⁴ For example, the Independent Chief Inspector of the UK Borders and Immigration expressed concern in 2011 about UKBA's failure to stop survivors being allocated to the Detained Fast Track system.⁴⁵

Freedom from Torture is opposed in principle to the Detained Fast Track (DFT) system because (a) it is flawed by design – it is simply not possible to assess accurately the complexity of an asylum claim before the applicant has had a chance to present his or her claim following legal advice; and (b) no matter how screening processes are improved, some torture survivors will inevitably slip through the net for a range of reasons including a very deep reluctance to disclose their torture.⁴⁶

Without detracting from this opposition, Freedom from Torture welcomes UKBA's recent measures

⁴⁴ See 55.10 of UKBA's Enforcement Instructions and Guidance available at <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/enforcement/>.

⁴⁵ Independent Chief Inspector of the UKBA, 'Asylum: a thematic inspection of the Detained Fast Track', pp. 2, 3, 13, 17 available at http://icinspector.independent.gov.uk/wp-content/uploads/2012/02/Asylum_A-thematic-inspection-of-Detained-Fast-Track.pdf. Note that the title of the Chief Inspector has changed to Chief Inspector of Borders and Immigration since this inspection was completed.

⁴⁶ The reluctance to disclose torture is a well understood phenomenon clinically. See for example Dr Juliet Cohen, '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, 2001, available at <http://www.freedomfromtorture.org/sites/default/files/documents/JulietCohenRecallandCredibility.pdf>; Diane Bögner, Chris Brewin, Jane Herlihy, '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, 2010.

aimed at refurbishing the Asylum Screening Unit to tackle the lack of privacy for applicants during screening interviews and recent engagement with us to build the capacity of screening staff in their interactions with vulnerable and traumatised people.

However, UKBA continues to resist our calls to amend its irrational policy requiring '*independent evidence of torture*' before someone is recognised as unsuitable for the DFT.⁴⁷ As its response to the Committee's List of Issues makes clear⁴⁸, the UK has not accepted the Council of Europe Commissioner for Human Rights' recommendation that it should introduce '*special legislation*' to '*expressly proscribe DFT in relation to particularly vulnerable persons, such as... persons with regard to whom there are reasonable grounds to believe that they are victims of torture*' (emphasis added).⁴⁹ A lower threshold, as suggested by the Commissioner for Human Rights, is essential because at this early stage in the process survivors very rarely have '*independent evidence*' of their torture – most have not had access to legal advice at this point and therefore are highly unlikely to have been referred to Freedom from Torture or other independent health specialists capable of documenting physical and/or psychological evidence of their torture.

Moreover, it is difficult to secure release of torture survivors who have been wrongly detained because safeguards designed to correct these mistakes are failing or have otherwise been eroded by the UKBA. For example, a facility to escort suspected torture survivors to Freedom from Torture for the purposes of assessment was ended effectively in March 2009 and Rule 35 of the Detention Centre Rules requiring 'medical practitioners' to notify UKBA of any detained person who they are concerned may be a victim of torture remains chronically dysfunctional. Despite new guidance⁵⁰, Rule 35 rarely leads to release as demonstrated by the latest statistics released to Parliament's Home Affairs Committee confirming that in quarter 3 of 2012 only 6% of Rule 35 reports led to release.⁵¹ Calls from various inspectorates and from the Home Affairs Committee for an independent review of the application of Rule 35 continue to be resisted by UKBA.⁵²

Recommendations

Freedom from Torture considers that the Committee should:

- Recommend that the UK (a) revise its policy to lower the evidential threshold before someone is considered unsuitable for the Detained Fast Track process on account of torture experiences; and (b) comply with the Home Affairs Committee's recommendation for an immediate independent review to be carried out of the application of Rule 35 in immigration detention.

Poverty as a barrier to the right to rehabilitation under Article 14 of the Convention

References: Article 14 of the Convention; paragraph 29 of the Committee's List of Issues

Freedom from Torture strongly welcomes General Comment 3 on Article 14 of the Convention

⁴⁷ UKBA (2012) *Enforcement Instructions and Guidance: Detained Fast Track Processes* at 2.3.

⁴⁸ See paragraphs 16.1-16.3 of the UK's response to the Committee's List of Issues.

⁴⁹ *Memorandum by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visits to the United Kingdom on 5-8 February and 31 March-2 April 2008*, at para 26. Available at <https://wcd.coe.int/ViewDoc.jsp?id=1339037>.

⁵⁰ See paragraph 17.1 of the UK's response to the Committee's List of Issues.

⁵¹ Home Affairs Committee, Fourteenth Report of Session 2012-13, *The work of the UK Border Agency (July – September 2012)*, HC 792, para 59.

⁵² See also paragraph 17.3 of the UK's response to the Committee's List of Issues.

adopted by the Committee at its 49th session in 2012. We endorse the Committee's holistic definition of rehabilitation as a form of redress, including '*medical and psychological care as well as legal and social services*', and its recognition that rehabilitation should enable '*the maximum possible self-sufficiency and function*' for survivors and be aimed at restoring their '*independence, physical, mental, social and vocational ability; and full inclusion and participation in society*'.⁵³ We also note and welcome the Committee's recognition that States parties to the Convention are required to ensure that '*effective*' rehabilitation services are '*accessible to all victims without discrimination and regardless of the victim's identity or status within a marginalized or vulnerable group... including asylum seekers and refugees*' and its acknowledgment of the role of NGOs in providing rehabilitative services.⁵⁴

Against this backdrop, Freedom from Torture has conducted a major study of poverty amongst torture survivors living in exile in the UK with a particular focus on the impact of poverty on their capacity to realise their right to rehabilitation following their torture experiences. Over 100 Freedom from Torture clients and 18 of our clinical staff participated in the research. Although the study will not be published until mid-2013, we have previewed below some findings below so they may be taken into account by the Committee as part of this examination process.

Our research demonstrates that torture survivors in the UK experience high levels of poverty due to a range of factors including:

- Torture survivors who have been granted international protection by the UK are often wrongly denied mainstream support to which they are entitled owing to poor policy and administration relating to transition between the asylum support and mainstream welfare systems and/or because their needs, particularly their mental health needs, and their vulnerability are not properly assessed.

When a grant of refugee status or other leave to remain 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. Most clinicians interviewed (61%) reported that destitution and homelessness 'frequently' occurs for clients of Freedom from Torture at this stage, 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.

- A ban on working for the first year in which an asylum claim is pending and restrictions on

⁵³ CAT/C/CG/3, para 11.

⁵⁴ *Ibid.*, para 15. The principle of non-discrimination is also addressed in para 32. In para 22, the Committee recognises that the application of Article 14 including the right to rehabilitation as a form of redress '*is not limited to victims who were harmed in the territory of the State party or by or against nationals of the State party*' and that this is '*particularly important when a victim is unable to exercise the rights guaranteed under article 14 in the territory where the violation took place*'. Freedom from Torture strongly endorses this interpretation and notes that it is consistent with the drafting history for the Convention (a proposal to limit obligations under Article 14 to torture committed in any territory under the jurisdiction of the State party was dropped by States during the drafting process). As we pointed out in our response to the Committee's consultation on a draft version of the General Comment, this interpretation also makes sense from both practical and clinical perspectives. From a *practical* perspective, the Committee's view is sensible because otherwise many survivors of torture would be placed in the perverse situation of having to return to a risk of further torture in order to exercise their right to rehabilitation. From a *clinical* perspective, the Committee's view must be supported because (a) survivors of torture require rehabilitation services in whichever state they are living, including 'host' states of asylum; and (b) for many survivors of torture, the process of rehabilitation will be impossible in their country of origin, even if appropriate services are otherwise available.

the right to work thereafter.

- Incorrect decisions to deny asylum support and poor administration of this system including delays leading to destitution.

Problems in the administration of UKBA support (for both asylum seekers and refused asylum seekers) including delays and errors in processing asylum support applications, failures in the support delivery system, and problems receiving emergency support tokens led in many cases to destitution. Of the 19 clients in the sample who were destitute asylum seekers or refused asylum seekers, 16% were awaiting a decision on their initial asylum claim and 63% were refused asylum seekers awaiting a decision on their fresh asylum claim. Refused asylum seekers in receipt of cashless support including the Azure card for purchasing essential provisions reported frequent difficulties with these cards failing to work correctly and payment being denied at checkouts to their intense humiliation.

- Inadequate levels of asylum support so that most asylum seekers are forced to survive on a level of support which is insufficient to meet essential living needs.

The majority (82%) of torture survivors currently receiving asylum 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.

- Accommodation that is inadequate and/or inappropriate for reasons including pest infestations, dampness, poor security and, for survivors of torture suffering sleep disturbance and traumatic flashbacks, sharing a bedroom with strangers.

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.

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.

- Ineligibility for support of many who have been refused protection but are unable to return to their country of origin through no fault of their own, resulting in destitution.
- Difficulties accessing primary and secondary healthcare including because of misunderstandings by practitioners about entitlements and an entitlement gap for some refused asylum seekers in relation to secondary healthcare.
- Diminishing sources of support in the voluntary sector as a consequence of the economic downturn.

Our research found that 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. Freedom from Torture 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 danger during destitution and incidents of violence, rape (including multiple rapes in one case) and sexual exploitation were disclosed. 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.

Recommendations

Freedom from Torture considers that the Committee should:

- Ask the UK (a) what analysis it has conducted of UK policy and practice leading to poverty among torture survivors during and after they have passed through the asylum system and the implications of this for the capacity of survivors to realise their right to rehabilitation under Article 14 of the Convention; and (b) to report to the Committee on these matters in its next periodic report, bearing in mind the guidance in General Comment 3 on monitoring and reporting, particularly in relation to the 'accessibility' and 'effectiveness' of rehabilitation services.⁵⁵

The UK's Bill of Rights debate

References: Articles 1 and 4 of the Convention; paragraph 1-3 of the Committee's List of Issues

Freedom from Torture remains highly concerned that a debate about whether the UK needs a (new) Bill of Rights⁵⁶ is driven by a political agenda within parts of Government to repeal or amend the Human Rights Act 1998 as a means of curtailing the protection of human rights in the UK, including the prohibition of torture.

⁵⁵ CAT/C/GC/3, para 46 (c) and (d).

⁵⁶ Freedom from Torture considers that the UK's existing Human Rights Act is a Bill of Rights because it satisfies the key features of a Bill of Rights: it is a legal instrument, binding on government, that enshrines a set of fundamental human rights and provides a right to redress for victims in the event of violations.

The Home Secretary made clear her desire to restrict the protections afforded by the Act during a speech in 2011 in which she argued that the Human Rights Act ‘has to go’⁵⁷ Earlier that year she told Parliament that she finds it ‘incredible’ that the Act may prevent deportations of terror suspects where there is a risk of torture on return.⁵⁸ An independent Commission on a Bill of Rights tasked by the government with investigating ‘*the creation of a UK Bill of Rights that incorporates and builds on all [the UK’s] obligations under the European Convention on Human Rights, ensures that these rights continue to be enshrined in UK law, and protects and extend our liberties*’ was unable to reach consensus.⁵⁹ It is likely that political parties will return to this issue while preparing their manifestos for the next general election expected to take place on 7 May 2015, although the issue may arise again in the context of the Scottish Independence Referendum on 18 September 2014.

The Human Rights Act includes a highly innovative and internationally acclaimed mechanism for dividing up responsibility between Parliament, the executive and the courts for ensuring effective protection of human rights in the UK. Freedom from Torture is concerned that there is a political agenda to redefine these responsibilities with a view to diluting the role of the courts and that this may have implications for the application in practice of the prohibition of torture and inhuman and degrading treatment or punishment set out in Article 3 of the European Convention on Human Rights.

Any decision to repeal the Human Rights Act would make it increasingly difficult for the UK to justify its refusal to incorporate formally the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment into domestic law. It would also have specific implications for the availability of domestic remedies to victims of violations of the prohibition against torture, which in turn would have implications for the UK’s obligations under Article 14 of the Convention.

Recommendations

Freedom from Torture considers that the Committee should:

- Seek assurances from the UK that the European Convention on Human Rights will remain incorporated into domestic law, that there will be no weakening of the scope of or enforcement mechanisms for the prohibition on torture and inhuman or degrading treatment or punishment provided by the Human Rights Act or the right of victims of violations of this prohibition to a remedy in UK law.

Data on asylum claims involving past torture or a risk of future torture on return

References: Article 3 of the Convention; paragraph 11 of the Committee’s List of Issues

Freedom from Torture is disappointed that the UK failed to meet the Committee’s request for data on ‘*the number of applicants whose requests were granted because they had been tortured in or because of a real personal risk of torture if they were to be returned to their country of origin*’.⁶⁰

⁵⁷ See the Home Secretary Theresa May’s speech to the Conservative Party conference on 4 October 2011. Available at: <http://www.politics.co.uk/comment-analysis/2011/10/04/theresa-may-speech-in-full>.

⁵⁸ HC Deb, 16 February 2011, c962.

⁵⁹ Commission on a Bill of Rights, *A UK Bill of Rights The Choice Before Us* (December 2012) available at <http://www.justice.gov.uk/about/cbr>.

⁶⁰ UK response to the Committee’s List of Issues, para 11.2.

Data in relation to the number of asylum claims involving allegations of past torture and the grant rate for these applications broken down by nationality would be immensely helpful for Freedom from Torture in its engagement with UKBA in relation to the quality of decision-making in asylum claims involving past torture. In 2011, we conducted research into the handling of medico legal reports by UKBA case owners and Immigration Judges.⁶¹ We found that the rate of allowed appeals in cases where UKBA refused asylum claims in which we had prepared a medico legal report had been submitted prior to the decision was 69%⁶² compared with the average appeal allowal rate of 28%⁶³, indicating serious problems in the way asylum cases involving torture evidence are handled.

We are pleased to report that UKBA responded to this research by accepting all the recommendations addressed to it and by collaborating with us (and the Helen Bamber Foundation) to develop a new asylum instruction on handling claims involving allegations of torture and serious harm.⁶⁴ This new guidance has not yet been rolled out and in the meantime problems including 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 remain a major problem in the assessment of credibility of asylum claims by Freedom from Torture clients and other victims of torture and ill-treatment.

Recommendations

Freedom from Torture considers that the Committee should:

- Recommend that the UK ensure that UKBA's interim asylum instruction on handling claims involving allegations of torture or serious harm is rolled out as a matter of priority with facilitated training delivered for all case owners and a monitoring system put in place to measure the impact of this guidance and other initiatives designed to improve handling of expert medical evidence and the assessment of credibility in torture-related asylum claims.

This submission was made to the Committee Against Torture on 19 April 2013.

For further information please contact Sonya Sceats, Policy & Advocacy Manager ssceats@freedomfromtorture.org or on + 44 207 697 7766 or + 44 7525 803483.

⁶¹ Freedom from Torture (2011) *Body of Evidence: Treatment of Medico-Legal Reports for Survivors of Torture in the UK Asylum Tribunal* available at: <http://www.freedomfromtorture.org/sites/default/files/documents/body-of-evidence.pdf>

⁶² *Ibid.*, p.22.

⁶³ *Ibid.*, p.23.

⁶⁴ UKBA (2011) *Asylum Policy Instruction: Handling claims involving allegations of torture or serious harm: Interim Casework Instruction (Non Detained Pilot)* available at: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apis/handlingtorture.pdf?view=Binary>.

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