



Freedom from Torture

Medical Foundation for the Care of Victims of Torture

Freedom from Torture submission to the UN Committee Against Torture - List of Issues for the 5th periodic review of the United Kingdom

Freedom from Torture (formerly the Medical Foundation for the Care of Victims of Torture) is a UK-based human rights organisation and one of the world's largest torture treatment centres. We are the only organisation in the UK dedicated solely to the care and treatment of survivors of torture and organised violence. Since our foundation 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. We have centres in London, Manchester, Newcastle, Birmingham and Glasgow.

We would like to draw the following issues to the Committee's attention when preparing the List of Issues for the 5th periodic review of the United Kingdom (UK). These issues reflect areas of concern arising from Freedom from Torture's recent work.

Accountability for allegations of complicity in torture

Very soon after the new Government was formed in 2010, Prime Minister David Cameron announced an inquiry into allegations that the UK was complicit in torture committed abroad in the context of the 'War on Terror'.¹ The Prime Minister acknowledged that the allegations were a 'stain' on the UK's reputation as 'a country that believes in freedom, fairness and human rights' and stated that the inquiry's purpose was 'to clear this matter up once and for all'.² This announcement was warmly welcomed by Freedom from Torture and other human rights organisations which called for the inquiry to be prompt, independent, thorough, capable of leading to the identification and prosecution of persons responsible, and provide for public scrutiny and victim participation.³

Despite 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 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.⁴ On 13 November 2011, the UN Special Rapporteur on

¹ 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/>

² HC deb, 6 July 2010, c175-6.

³ The NGO concerns 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 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 signed by the ten organisations and eminent international legal experts including Silvia Casale, former President of the European

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'.⁵

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 warranted,⁶ the Government announced that the inquiry would be wound up since there was no longer any prospect of it being able to commence promptly. Freedom from Torture and other human rights NGOs welcomed this news on account of the systemic flaws of the process.⁷

When announcing the news to Parliament, the Justice Secretary indicated 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'.⁸ However Freedom from Torture understands that cross-government work to prepare for such an inquiry has not commenced and is unlikely to begin until the police conclude their investigations.

Freedom from Torture believes that the UK government should use the breathing space afforded by the ongoing police investigations to begin thinking about how to structure a further inquiry that is human rights compliant and therefore credible in the eyes of the survivors and others, both in the UK and abroad, seeking accountability for this episode. Moreover, there appears to be a sense among relevant government officials that NGO opposition to the inquiry was more a result of 'poor handling' by the government than a principled disagreement about the standards that ought to govern such a process.

The Committee is urged to ask the UK government what steps it has taken to prepare the groundwork for a further inquiry and how it intends to remedy the structural shortcomings which undermined the legitimacy of the Detainee Inquiry in the eyes of the survivors and those working with them. In particular the government should be asked how it intends to ensure meaningful participation of the survivors and an independent mechanism for taking decisions on disclosure of evidence. The government should be encouraged to follow the guidance in the UN Special Rapporteur on Torture's recent report on commissions of inquiry into torture and other forms of ill-treatment.⁹

The very serious allegations at the heart of this inquiry are a reminder that the UK must never be complacent about its international human rights obligations and that robust accountability mechanisms are needed. Freedom from Torture considers that this is an ideal moment for the UK to finally permit individuals to take complaints to the UN Committee against Torture so that there may be accountability *at the international level* for any *future* victims of torture involving the UK.

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 Taylor, Secretary-General of the International Commission of Jurists and member of the UN Sub-Committee on the Prevention of Torture.

⁵ BBC 'Torture inquiry: UN's Juan Mendez calls for openness'. Available at <http://www.bbc.co.uk/news/uk-15711317>

⁶ 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/.

⁷ See for example Freedom from Torture 'Justice Secretary announces the Detainee Inquiry will not proceed' available at <http://www.freedomfromtorture.org/news-blogs/6010>.

⁸ 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/>.

⁹ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, A/HRC/19/61.

Such a step would send a powerful signal about the UK's renewed commitment to the torture ban.

The Committee should ask the UK government whether, in light of the shortcomings of domestic accountability processes to date, it is prepared to accept the Committee's previous recommendation to enter a declaration under Article 22 of the UN Convention against Torture ('Convention') accepting the competence of the Committee to hear individual complaints.

Failure of government policy to recognise the risk of torture facing Tamils returning to Sri Lanka following the conflict

Freedom from Torture is highly concerned that Tamils returning to Sri Lanka from the UK face a serious risk of torture. We were first alerted to this risk when compiling evidence of 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. Since this time we have become involved in three cases of torture or serious ill-treatment following forcible return from the UK in the post-conflict period (one of these cases is now the subject of proceedings in the European Court of Human Rights¹⁰), and a further 18 cases following voluntary return from the UK, usually for family reasons.

On the basis of these 30 cases of harm following return from the UK, Freedom from Torture is now convinced that return from the UK, whether voluntary or forcible, is a torture risk factor, especially for Tamils with a real or perceived LTTE profile. In February this year we joined calls by Human Rights Watch¹¹ for a halt to forced removals of Tamils to Sri Lanka.¹²

The Immigration Minister has faced repeated calls from Members of Parliament (MPs) to stop removals of Sri Lankan Tamils and undertake a review.¹³ The Minister usually responds by claiming that there are no 'substantiated' allegations of abuse on return,¹⁴ or by indicating, without explaining what this has entailed, that the policy is kept 'constantly under review'.¹⁵ More recently, he has suggested that removals will continue until the courts say they must stop.¹⁶

The Minister's claim that there are no substantiated allegations of abuse following forcible return is inaccurate. For example, we have been alerted to at least one case from 2010 in which the 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.¹⁷ It appears that the British High Commission in Colombo remains unaware of this case because it is continuing to echo these false claims to the Sri Lankan media.¹⁸

The Minister's suggestion that he will wait for the courts to signal that removals must stop is also

¹⁰ *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>.

¹¹ <http://www.hrw.org/news/2012/02/24/uk-halt-deportations-tamils-sri-lanka>.

¹² Freedom from Torture, 'UK must stop removals of Tamils to Sri Lanka after damning new evidence of torture on return' available at <http://www.freedomfromtorture.org/news-blogs/6133>.

¹³ See for example HC Deb, 4 July 2012, c962.

¹⁴ See for example HC Deb, 1 March 2012, c461W.

¹⁵ See for example HC Deb, 19 June 2012, c866W.

¹⁶ The 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.'

¹⁷ The case is referred to in the following press report: <http://www.guardian.co.uk/world/2012/may/31/sri-lanka-deportation-torture>.

¹⁸ 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. The same claims are made by the FCO in 'Human Rights and Democracy: 2011 Foreign and Commonwealth Office Report' which states '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.

unsatisfactory since the existing country guidance case law on Sri Lanka is undeniably stale. The Tribunal which hears appeals of asylum decisions has not delivered country guidance on Sri Lanka since 2009¹⁹ and the last European Court of Human Rights case²⁰ also predates the evidence from Freedom from Torture and Human Rights Watch of torture for those returning to Sri Lanka as well as serious concerns expressed by the Committee about reports of ongoing torture in the post-conflict period.²¹

Moreover, it will take many months *at least* to identify, hear and conclude a new country guidance case and in the meantime removals are continuing via regular mass removal charter flights and scheduled flights. The torture risks we have identified via the clinical services we provide to survivors are simply being brushed aside, as the UK Border Agency's (UKBA) latest Operational Guidance Note on Sri Lanka demonstrates.²²

Freedom from Torture has also learned that there is a discrepancy in reception arrangements in Colombo depending on whether the returnee is removed via a charter or scheduled flight. While those removed on charter flights are, among other things, met at the airport by British High Commission officials, those on scheduled flights are left to fend for themselves.²³ Freedom from Torture is highly concerned about the safety of these returnees given the interrogations of returnees that are known to occur on arrival at the airport. We are aware of a number of cases in which returnees were picked up by Sri Lankan authorities from the airport and subsequently tortured or ill-treated.

The Immigration Minister has consistently failed to answer questions from MPs regarding the number of refused asylum seekers who have been removed to Sri Lanka via scheduled flights,²⁴ thus the number of returnees left to fend for themselves at the airport is unknown.

The Committee is urged to ask the UK government what steps it is taking to ensure its removals policy relating to Sri Lanka properly reflects the evidence provided by Freedom from Torture and Human Rights Watch to ensure compliance by the UK with its obligations under Article 3 of the Convention. The government should also be asked what steps it is taking to ensure that the UK's embassies and high commissions are aware of all cases of harm following forcible removal, including those substantiated by independent medical evidence, UKBA asylum decisions or the Tribunal. Moreover, the government should be asked to disclose to the Committee how many refused asylum seekers have been: (a) removed and (b) deported to Sri Lanka on (i) chartered and (ii) scheduled flights (A) in total and (B) in each month since May 2010.

Detention of torture survivors

It is well known that significant numbers of torture survivors are detained by the UK Border Agency (UKBA) despite its policy that this is only permissible in 'very exceptional circumstances'²⁵. For

¹⁹ TK (Tamils – LP updated) Sri Lanka CG [2009] UKAI 00049.

²⁰ E.G v United Kingdom Sri Lanka [2011] 41178/08 [2011] ECHR 846 (31 May 2011).

²¹ See concluding observations from the Committee's examination of Sri Lanka:

<http://www2.ohchr.org/english/bodies/cat/cats47.htm>.

²² The UKBA's latest Operational Guidance Note (OGN) on Sri Lanka acknowledges but fails to engage with the concerns of Freedom from Torture and Human Rights Watch, asserting simply that '*following current case law... at present it is safe in general to return failed asylum seekers, including Tamils, to Sri Lanka*'. In its commentary on this OGN, Still Human Still Here is highly critical of the disconnect between the evidence presented and the conclusion reached by UKBA on this issue. See Still Human Still Here, 'A commentary on the April 2012 Sri Lanka Operational Guidance Note' (3 May 2012) 11 available at <http://stillhumanstillhere.files.wordpress.com/2009/01/shsh-commentary-on-the-april-2012-sri-lanka-ogn.pdf>.

²³ HC deb 22 Feb 2012, c293WH.

²⁴ See for HC 30 April 2012, c1085W.

²⁵ See 55.10 of UKBA's Enforcement Instructions and Guidance available at <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/enforcement/>

example, the Independent Chief Inspector of the UK Border Agency recently expressed concern about UKBA's failure to stop survivors being allocated to the Detained Fast Track system.²⁶

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.²⁷

Without detracting from this opposition, Freedom from Torture remains committed to working with UKBA to reduce the number of torture survivors who are routed into the DFT and we are pleased to recognise UKBA's genuine efforts in this area including plans to refurbish the Asylum Screening Unit to tackle the lack of privacy and engagement with us on how to improve identification of torture survivors.

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 and a commitment made by the Immigration Minister at a fringe meeting at last year's Conservative Party Conference to review this policy remains unfulfilled.²⁸ A lower threshold is essential because at this early stage in the process survivors tend not to have such evidence – they have rarely had access to legal advice at this point and therefore are highly unlikely to have been referred to Freedom from Torture, the Helen Bamber Foundation 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 effectively ended 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 is chronically dysfunctional and rarely leads to release, as a recent audit of the process by the UKBA demonstrated.²⁹

Following heavy criticism from Parliament's Home Affairs Committee and the commencement of legal proceedings, the UKBA is now working with Freedom from Torture and other stakeholders to improve the Rule 35 system, however revised guidance is still not in place and as a consequence Rule 35 remains a wholly ineffective safeguard. Key barriers to progress include UKBA's refusals to (a) recognise that Rule 35 is about fitness for detention and *not* whether to grant asylum and accordingly sets out a far lower standard of proof (the process applies to anyone whom the medical practitioner is 'concerned' 'may' be a torture victim); and (b) develop joint training for case

²⁶ 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.

²⁷ This 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.

²⁸ At the National Asylum Stakeholder Forum meeting on 5 July 2012, officials stated that instead of changing the policy they would prefer to 'look at cases individually' which is problematic because of course policy sets the framework within which individual decisions must be taken and their legality assessed.

²⁹ <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/reports/detention-centre-rule-35-audit/det-centre-rule-35-audit?view=Binary>. Freedom from Torture's response to this audit is available at: <http://www.freedomfromtorture.org/news-events/news/3436>.

owners and doctors in the Immigration Removal Centres so there is a common understanding between them of what Rule 35 requires. The latter step is essential because a disconnect between what medical practitioners consider is required of them and what UKBA decision-makers expect causes detention to be maintained on the basis that the Rule 35 report is inadequate.

The Committee is urged to ask the UK government whether it will consider lowering the evidential threshold before someone is considered unsuitable for the Detained Fast Track process on account of torture experiences to ensure that this threshold can more readily be met by torture survivors and, in relation to Rule 35, whether (a) it will revise the guidance so that it properly reflects the precautionary principle enshrined by Rule 35; and (b) deliver joint training on the new guidance for case owners and doctors in the Immigration Removal Centres.

Poverty as a barrier to the right to rehabilitation

Freedom from Torture is currently conducting a major study of poverty amongst torture survivors in the UK with a particular focus on the impact of poverty on the capacity of survivors to rehabilitate following their torture experiences. Among other things, we are exploring the impact of poverty on the ability of torture survivors to realise their right to rehabilitation under Article 14 of the Convention, though other standards in the Convention including the prohibition of cruel, inhuman or degrading treatment are also relevant. Early findings from this project suggest that torture survivors in the UK experience high levels of poverty due to a range of factors including:

- Torture survivors are often wrongly denied mainstream support to which they are entitled because their needs, particularly their mental health needs, and their vulnerability are not properly assessed;
- A ban on working for the first year in which an asylum claim is pending and restrictions on the right to work thereafter;
- Incorrect decisions to deny asylum support and poor administration of this system including delays leading to destitution;
- Inadequate levels of asylum support so that most asylum seekers are forced to survive on a level of support which is insufficient to meet essential living needs;
- 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;
- Ineligibility for support of many who have been refused protection but are unable to return to their country of origin through no fault of their own, resulting in destitution;
- Difficulties accessing primary and secondary healthcare including because of misunderstandings by practitioners about entitlements and an entitlement gap for some refused asylum seekers in relation to secondary healthcare; and
- Diminishing sources of support in the voluntary sector as a consequence of the economic downturn.

The Committee is urged to ask the UK government what analysis it has conducted of UK policy and practice leading to poverty among torture survivors and the implications for their capacity to realise their right to rehabilitation under Article 14 of the Convention.

Bill of Rights debate

Freedom from Torture is highly concerned that a debate about whether the UK needs a (new) Bill of Rights³⁰ 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.

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' before announcing changes to the Immigration Rules designed to limit application of the right to respect for private and family life in the immigration context.³¹ In 2011 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.³²

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. Repeal of the Human Rights Act would also have implications for the availability of domestic remedies to victims of violations of the prohibition, which in turn would have implications for the UK's compliance with Article 14 of the UN Convention Against Torture.

The Committee is urged to ask the UK government whether it has any plans to weaken the scope or application in practice of the protection against 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.

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

³⁰ 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.

³¹ 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>.

³² *Hansard*. HC, 16 February 2011, col. 963.