REDRESS

*Ending Torture. Seeking Justice for Survivors*

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Mr Richard Ottaway MP
Chairman
Foreign Affairs Committee
House of Commons
London SW1A OAA

Dear Mr. Ottaway,

Thank you for inviting me to submit comments to the Foreign Affairs Committee (FAC) for its annual inquiry into the FCO's human right work. I am delighted to do so in my capacity as Chairman of the Board of Trustees of REDRESS.

I shall focus on some aspects of the recently published *Human Rights and Democracy: The 2010 Foreign and Commonwealth Office Report* ("the Report"). It is heartening to read that the Coalition Government, in the words of the Foreign Secretary in his Forward to the Report, *"is determined to strengthen the human rights work of the Foreign and Commonwealth Office, as part of our commitment to a foreign policy that has the practical promotion of human rights as part of its irreducible core."*[1]

During the last few years it has repeatedly been brought home to me that while torture is something we all instinctively abhor, and which is absolutely prohibited at all times and in all places, it continues to be widely practiced. It is right, therefore, for the scourge of torture to inform important sections of the Report, including an examination of twenty-six states *"where we have the most serious wide-ranging human rights concerns."*[2]

Saudi Arabia is rightly highlighted as one of those states, and here I believe it is important for the FCO to take a more robust and consistent approach when drawing attention to torture abroad, including when it concerns our allies. While the Report covers the period January-December 2010, when applicable the problem of torture should be considered in the context of it being a long-standing problem in some states, as it is in Saudi Arabia. Thus in the case of Zimbabwe this aspect is clearly recognised, it being stated "*The use of torture **remains** endemic*

[1] Page 4
[2] Page 119





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*across Zimbabwe...*"[3] [emphasis added]. The section on torture in Saudi Arabia, on the other hand, is muted and not contextualised: *"There were a number of cases of individuals alleging mistreatment at the hands of Saudi authorities."*[4] Regrettably, many torture related issues in Saudi Arabia are of serious and long-standing concern as emerges, for example, from the Committee Against Torture's July 2009 "List of issues" for that country.[5]

For several years REDRESS has had a specific interest in Saudi Arabia as there are a number of British citizens who have suffered torture there, including Ron Jones, Les Walker, Sandy Mitchell and Bill Sampson; we have intervened in their case pending before the European Court of Human Rights.[6] The failure of Saudi Arabia to acknowledge having tortured these (and other) UK nationals, or to offer reparations to survivors, or to bring the officials responsible to justice, illustrates how important it is for the FCO to continue to put pressure on Saudi Arabia to come to grips with this issue. REDRESS' founder, Keith Carmichael, who was tortured in Saudi Arabia in the early 1980s, has never been compensated.

I also note that Bahrain is not one of the states singled out. While the Report makes clear that the list is not exhaustive, the fact of its omission is unfortunate, given the history of torture there and the close links between Bahrain and the UK. Even before the current uprising which commenced earlier this year, torture was once more revealed as a serious problem in August 2010 when 24 persons were detained and then put on trial in October for political reasons, almost all of whom showed symptoms of torture, including a dual UK-Bahraini national Jaffar Al-Hasabi, another long-standing client of REDRESS.

These two states, only examples, do create the unfortunate impression that less vigorous criticism is made of torture when committed by our allies. Formulating British policy towards such states is not easy, and of course there are complex factors to be taken into account. But if we are to be consistent on our support for human rights and our opposition to torture, then we should not dilute the principle for pragmatic reasons. Egypt has demonstrated how the West failed to be sufficiently robust on values and rights, and tolerated policies and practices which it has taken the courage of the people of Egypt to bring us closer to ending them. Silence, defended by discrete diplomatic pressure to make clear British opposition to torture, fails to put us publicly on the right side of the argument and has demonstrably not produced improvements within the countries concerned. (Incidentally, Egypt is another state which is not specifically listed, although torture has been a serious problem there for decades).

Turning to some thematic aspects of the Report, the UK is rightly proud of the leading role it is playing in strengthening the Optional Protocol (OPCAT) to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). In this way the UK is

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[3] Page 351
[4] Page 267
[5] Available at http://tb.ohchr.org/default.aspx?country=sa
[6] See http://www.redress.org/Jones%20v%20UK_%20Mitchell_and_Others_v_UK24%20February_2010.pdf

making an important contribution to Torture Prevention:[7] here we are a good example to other states.

Nevertheless, more could be done, and were the UK to accept the individual petitions procedure under article 22 of UNCAT itself, this would send an important further message in the international campaign against torture. The UK should therefore be a good example here too, and by accepting the right of individual petition help to strengthen the Committee Against Torture as the institution created to develop international standards. Such a step could positively impact on domestic jurisprudence abroad and provide much needed acknowledgment of the harm suffered by individual complainants.

Deportations with Assurances[8] has arisen in the context of counter-terrorism when for evidential reasons it has been decided that terrorist suspects present or resident in the UK could not be brought to trial here. Dealing with threats to our national security is essential but difficult, and there are no easy solutions. However, enhancing the collection of admissible evidence for prosecutions in terrorist-suspect cases, for example through statutory changes relating to the use of intercept evidence and/or post-charge questioning, could be viable alternatives to "deportations with assurances." The Report does not deal with such arguments.

REDRESS believes that there are fundamental problems with deporting persons on the basis of assurances. Post-deportation monitoring is not an adequate safeguard where torture is known to be authorised, and raises the question whether detainees should be returned to such regimes at all. Another related aspect of concern is that the use of special advocates in closed deportation proceedings also increases the difficulties in challenging evidence that may have been obtained by torture.

The Report raises further counter-terrorism issues under the rubrics Detainee package/The Detainee Inquiry/ Consolidated guidance to security personnel.[9] My comments and concerns here can be summarised as follows:

- The Detainee (Gibson) Inquiry should explicitly include addressing systemic problems and achieving truth and justice for victims.
- Is the Inquiry sufficiently independent, open and transparent to comply with human rights standards and obligations to properly investigate allegations relating to torture? REDRESS and other NGOs which have sought to clarify some of these issues are still waiting for responses from the Inquiry's advisers.
- The time frame of one year to investigate and report may not be sufficient.
- The Inquiry's lack of statutory powers to compel the production of documents and the attendance of witnesses, and the less than transparent process of drawing up the protocol between the Government and the Inquiry, are worrying; so too is the lack of clarity on what

[7] Torture prevention is dealt with at pages 20-21 of the Report.
[8] Pages 49-50
[9] Pages 51-53

will be heard in public and what will not be i.e. the processes to deal with challenges by interested parties for disclosure of documents and/or evidence led in secret.

- The requirement that UK security services must not proceed where they "know or believe" that torture will occur (table in paragraph 11 of the Guidance) is too narrow. It is not consistent with the UK's obligations under UNCAT to absolutely prohibit torture *and* not to be complicit in it; the Guidance should explicitly prohibit an officer from proceeding where there is a serious or real risk of torture.
- Where an officer knows or believes that torture will take place, he or she must report it but may, with authorisation, under the Guidelines continue to co-operate with the foreign agencies responsible under the apparent discretionary power given to Ministers (paragraph 14 of the Guidelines), which could lead to complicity in torture contrary to the UNCAT as already referred to above.
- The guidance also allow officers to rely on assurance that detainees will not be tortured (paragraph 17 of the Guidelines), but such assurances may not be reliable and cannot provide absolute protection from regimes which are known to authorise torture.
- There is concern that under s. 7 of the Intelligence Services Act 1994 the Home Secretary is empowered, by issuing authorisation warrants, to condone what would be unlawful if done in the UK when it is done abroad.
- The Green Paper will reportedly recommend that special advocates be used in *all* legal proceedings, including civil cases, where sensitive "national security" evidence is involved; our concern is that this will further restrict access to relevant facts and information in cases where torture is alleged, the disclosure of which could be crucial for survivors seeking to enforce their human rights in civil cases.

Another important section of the Report refers to Overseas Prisoners[10] as part of the FCOs central work of promoting and protecting the human rights of British national overseas. What is needed is an explicit policy to make clear to all states that the mistreatment of UK nationals in breach of international law will not be tolerated; such a policy should include vigorous follow-up on all such allegations even after the mistreatment ends and/or the victim is released and/or the person has returned to the UK, including the effective exercise of diplomatic protection.

Further, the UK's policy and practice of exercising diplomatic protection in torture cases should be explained and developed. Where UK nationals have been tortured abroad and have been unable to obtain reparation through local remedies, diplomatic protection should be more than a theoretical avenue for justice, and the FCO should provide annual relevant statistics about allegations of torture and ill-treatment abroad, the number of cases, action taken, and outcomes.

I would also like to raise some points regarding Afghanistan[11] and Iraq[12] :

- The UK continues to consider that the UNCAT does not apply extra-territorially; this is contradictory in both law and principle, at the very least to the extent which the UK's highest

[10] Pages 83-84
[11] Pages 120 et seq
[12] Pages 216 et seq

court found in *Al Skeini* that article 3 of the ECHR does have extra-territorial application to detainees held in custody by UK personnel anywhere abroad.

- Although UK detentions in Iraq ceased on 1 January 2009, issues arising from many alleged incidents in Iraq prior to that date have yet to be fully resolved; there are also issues still arising or pending from the *Al Skeini* case and other cases, and inquiries such as the Baha Mousa Public Inquiry.
- In Afghanistan the *refoulement* issues raised and decided in the *Evans* case concerning the transfer of detainees to the Afghan authorities should be mentioned, along with details of post-transfer visits and monitoring.

Finally, I wish to mention Lord Peter Archer's private member's Bill, the Torture (Damages) Bill passed in the Lords but not in the Commons. The Joint Committee on Human Rights in 2009 called on the previous Government to support it,[13] but it did not. The Bill was re-introduced in the Lords in November 2010 where it is awaiting its second reading.

In declining to support the Bill, the previous Government said "it remains of the opinion that the Torture Damages Bill would not be of practical assistance ... and would not live up to its promise of providing victims of torture with redress and rehabilitation."[14] I disagree, and REDRESS believes the Coalition Government should re-assess how this Bill could be a very significant and legitimate weapon in the arsenal of those such as the UK committed to the fight against torture on all fronts.

Thank you once more for inviting me to comment.

Yours sincerely

Emyr Jones Parry

Sir Emyr Jones Parry
Chair of REDRESS

[13] See *Closing the Impunity Gap*, 11 August 2009, available at http://www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/153/153.pdf

[14] *The Government's Response to the Joint Committee on Human Rights* , October 2009, at page 12, available at http://www.official-documents.gov.uk/document/cm77/7704/7704.pdf