

REDRESS

Ending Torture. Seeking Justice for Survivors

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FOREIGN AFFAIRS COMMITTEE: INQUIRY INTO BRITISH FOREIGN POLICY AND THE 'ARAB SPRING'

SUBMISSIONS OF THE REDRESS TRUST (REDRESS)

14 SEPTEMBER 2011

SUMMARY OF SUBMISSIONS

- Torture is a striking feature of what the previous regimes in the Middle East used and an integral part of what the uprisings were and are seeking to end; UK foreign policy should reflect a principled understanding of this in the context of the UK's international anti-torture obligations.
- The UK's foreign policy should be based on scrupulous adherence to international human rights standards; it must avoid in any way condoning or being seen to condone torture by breaching its non-refoulement obligations, by being complicit in torture, or by allowing the UK to be a safe-haven for torture suspects.
- Particular attention must be paid to protecting UK nationals and others who can claim UK-protection from torture abroad; there should be a clear policy to protect such persons from torture and the risk of torture and to assist victims in obtaining reparation, both in the context of counter-terrorism and in all other circumstances.
- The UK should play a constructive role to assist states in the process of addressing legacies of torture in times of transition by supporting civil society and helping institutions to function within states' clear obligations contained in the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT).

INTRODUCTION

1. The Redress Trust (REDRESS) is an international human rights organisation whose mandate is to seek justice for torture survivors. REDRESS' work has included making written submissions to United Kingdom parliamentary committees, including recently¹ to the Foreign

¹ Submission to the Committee from REDRESS' Chairman, Sir Emyr Jones Parry, dated 20 June 2011, available at <http://www.redress.org/downloads/LettertoFAC20June2011.pdf>.

Affairs Committee (the Committee) for the Committee's July 2011 report² on *Human Rights and Democracy: The 2010 Foreign and Commonwealth Office Report*,³ on matters concerning torture.

2. REDRESS has an ongoing interest in seeing, in the states and region under review, the effective strengthening of the absolute prohibition against torture, the prevention of torture, its proper investigation when it occurs, accountability for perpetrators, and reparations for victims.

3. The UK has clear obligations, particularly under UNCAT, which should inform its foreign policy towards Arab Spring states. Its foreign policy should be principled and coherent. It should avoid engaging in practices that may be incompatible with its international obligations and undermine the UK's legitimacy as a state seen to be committed to human rights and the rule of law.

4. Torture⁴ is a striking feature of the uprisings in the Middle East, and reflects a close causal relationship between torture and the demand for change. Torture had become a symbol of repression and humiliation whose exposure acted as a rallying cry for protestors. Responses to the uprisings were in most countries characterised by the reported use of excessive force and widespread torture. This increased people's determination to demand real changes, and to make whatever sacrifices are necessary to achieve them.⁵

5. The UK's foreign policy should include effective support for these brave individuals, communities and populations. To this end, it should reflect UK values of respect for human rights and the rule of law and should be based on principles consistently applied and not compromised because of counter-terrorism and/or other policies, so that "Britain speaks clearly and acts effectively against torture, and on behalf of its victims, wherever they are in the world".⁶

6. The submission is made under three headings or themes set out in paragraphs 7 to 18 below, and we make conclusions and recommendations at paragraph 19. It covers the following questions raised by the Committee:

- What specific assistance can the British Government give to help Egypt, Tunisia and other Arab countries build the institutions of democracy and civil society, and revive their economies? How can the British Government best work with allies and through international institutions to support reform in Egypt and Tunisia?
- Was policy overly dominated by considerations of regional stability and counter-terrorist co-operation?

² House of Commons Foreign Affairs Committee, *The FCO's Human Rights Work 2010–11, Eighth Report of Session 2010–12* published 20 July 2011, available at <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmfa/964/964.pdf>.

³ United Kingdom Foreign & Commonwealth Office, March 2011, available at

<http://centralcontent.fco.gov.uk/resources/en/pdf/human-rights-reports/accessible-hrd-report-2010>.

⁴ For a recent report raising torture in Egypt see *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, Mission to Egypt, A/HRC/13/37/Add.2*, 14 October 2009 (paragraphs 27-30, 41-43, 49, 55-56, 58-60) available at

<http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-37-Add2.pdf>. On Tunisia, see *Concluding Observations of the Human Rights Committee*, CCPR/C/TUN/CO/5, 23 April 2008 (paragraphs 9, 11-14, 16), available at <http://www.unhcr.org/refworld/country,,HRC,,TUN,,4885cf95d,0.html>.

⁵ This was most succinctly put by a young poet, Ayat Al Khurmsi, who was detained and tortured in Bahrain earlier this year, who said on her release: "I went inside and I was in opposition and I came out and I was more serious in opposition. More of an opponent" – see transcript dated 25 August 2011 of meeting chaired by Lord Eric Avebury on 23 August in the House of Lords, available at <http://www.vob.org/en/index.php?show=news&action=article&id=797>.

⁶ Speech of the then Foreign Secretary, Mr Robin Cook, to the Amnesty International Human Rights Festival 16 October 1998, available at: <http://collections.europarchive.org/tna/20080205132101/http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029391629&a=kArticle&aid=1013618394614>.

- How well did the FCO perform in providing consular assistance to British citizens at the time of the political upheavals in Egypt and Tunisia?
- Do recent events in Egypt and Tunisia, and in the ‘Arab Spring’ generally, necessitate a radical reappraisal of UK policy towards the Middle East and North Africa (bearing in mind the Prime Minister’s comments in Kuwait in February 2011 about potential conflict between British “interests” and “values”)?

SUBMISSION

A. The UK’s obligations not to condone torture, and the importance of the UK not being perceived to be in any way doing so

7. Torture is absolutely prohibited at all times and in all circumstances, and for more than two decades it has been a specific crime under UK domestic law, irrespective of where the torture took place.⁷ In formulating and implementing its foreign policy on torture and human rights in the Middle East it is imperative for the UK be consistent⁸ in abiding by its obligations both at home and abroad, so that its foreign policy and the effect of this policy in other states does not conflict with international standards.

8. One such area of concern is the use of “Deportations With Assurances” (DWAs),⁹ to deport terrorist suspects to states where the individuals face a real risk of torture, which breaches the UK’s non-refoulement obligations.¹⁰ The UK currently has DWA arrangements with five countries - Algeria, Jordan, Lebanon, Libya and Ethiopia¹¹ - and the FCO has said that “*the Government is committed to concluding such arrangements with more countries in 2011*”.¹²

9. Egypt is a clear example of a country where persons who have been sent from European states, such as Sweden, have suffered torture.¹³ REDRESS is pleased to note that the Committee recently recognised the need for the Government to be more transparent on this

⁷ The UK ratified the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 8 December 1988; torture is a crime under UK law pursuant to section 134 of the Criminal Justice Act, 1988.

⁸ See in this context Concurring Opinion of Judge Bonello of the European Court on Human Rights (ECtHR), who said: “I am unwilling to endorse *à la carte* respect for human rights. I think poorly of an esteem for human rights that turns casual and approximate depending on geographical coordinates. Any State that worships fundamental rights on its own territory but then feels free to make a mockery of them anywhere else does not, as far as I am concerned, belong to that comity of nations for which the supremacy of human rights is both mission and clarion call” - *Case of Al Skeini and Others v. The United Kingdom* (Application no. 55721/07), Judgment of the Grand Chamber, 7 July 2011, para. 18 available at <http://www.unhcr.org/refworld/pdfid/4e2545502.pdf>.

⁹ Also known as “Diplomatic Assurances” or “Memoranda of Understanding.”

¹⁰ See, for example, REDRESS, *The United Kingdom, torture and anti-terrorism: Where the problems lie*, December 2008, at page 52 et seq, available at

<http://www.redress.org/downloads/publications/Where%20the%20ProblemsLie%2010%20Dec%2008A4.pdf>
The current Government intends to expand the use of DWAs, following a report made to Parliament in January 2011 by the Secretary of State for the Home Department, which recommended that the Government should “*actively pursue deportation arrangements with more countries, prioritising those whose nationals have engaged in terrorist related activity here or are judged most likely to do so in future*” – see HM Government *Review of Counter- Terrorism and Security Powers: Review Findings and Recommendations*, Cm 8004, presented to Parliament by the Secretary of State for the Home Department, January 2011, at page 35, paragraph 17. i. available at <http://www.homeoffice.gov.uk/publications/counter-terrorism/review-of-ct-security-powers/review-findings-and-rec?view=Binary>.

¹¹ HM Government *Review of Counter- Terrorism and Security Powers: Review Findings and Recommendations*, Loc cit, page 33, paragraph 3.

¹² *Human Rights and Democracy: The 2010 Foreign and Commonwealth Office Report*, United Kingdom Foreign & Commonwealth Office, March 2011, page 49, available at <http://centralcontent.fco.gov.uk/resources/en/pdf/human-rights-reports/accessible-hrd-report-2010>.

¹³ See the well-documented cases of Ahmed Hussein Mustafa Kamil Agiza and Mohammed Alzery, available at <http://www.redress.org/case-docket/ahmed-hussein-mustafa-kamil-agiza-mohammed-alzery>. Although no persons facing the real risk of torture have been deported to Egypt from the UK there was an attempt by the Government to do so in 1999, which didn’t reach the UK courts because the Government abandoned its attempt. This emerged in *Hany El Sayed Sadaei Youssef, v The Home Office*, [2004] EWHC 1884 (QB); a full discussion of the case can be found at REDRESS, *The United Kingdom, torture and anti-terrorism: Where the problems lie*, December 2008, at pages 52-54, available at <http://www.redress.org/downloads/publications/Where%20the%20ProblemsLie%2010%20Dec%2008A4.pdf>.

whole issue of DWAs.¹⁴ A review of the UK's foreign policy in the region must consider the adverse impact that DWAs have, both for the individuals concerned and for perceptions of the UK's position on human rights.

10. Another key area of concern is allegations of complicity in torture: this has included two cases relating to Egypt and the role of the UK's security services with UK men allegedly detained and tortured there.¹⁵ There have also been allegations coming out of Libya very recently on the close collaboration between the UK's security services and the Gaddafi regime¹⁶ - this is an unfolding story and there are possibly going to be more revelations from the region. There is a growing body of evidence that the UK condoned torture in these and other states with which the Committee is concerned. This is clearly contrary to UNCAT's objective "to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world".¹⁷

11. A further issue is the UK's obligation to investigate and then either prosecute or extradite torture suspects who come within the UK's jurisdiction, which ought to be an integral principle and part of a coherent anti-torture policy. Here it is significant, for example, that Gaddafi's former intelligence chief, Musa Kusa, defected to the UK in March 2011 but was then allowed to leave, apparently for Doha, where he remains. There is a reasonable possibility that other suspects from states which have undergone or are in the process of undergoing transition will come within the UK's jurisdiction in the foreseeable future: if so, the UK needs to apply s.134 of the Criminal Justice Act which mirrors the obligation to extradite or prosecute torture suspects, set out in UNCAT.

12. The UK cannot become a safe haven, or simply allow such individuals to enter and then leave for other safe havens; this is clearly incompatible with the Government's obligations. Impending legislative changes to what are termed private arrest warrants will not be conducive to strengthening the prospect for such prosecutions, and illustrate the lack of a concerted approach aimed at effectively ending impunity for suspects of international crimes located in the UK.¹⁸

B. Steps the UK should take in relation to UK nationals facing, experiencing or alleging torture in countries of the 'Arab Spring' region

¹⁴ House of Commons Foreign Affairs Committee, *The FCO's Human Rights Work 2010–11, Eighth Report of Session 2010–12* published 20 July 2011, recommendation at page 8, paragraph 20, available at

<http://www.publications.parliament.uk/pa/cm201012/cmselect/cmfa/964/964.pdf>.

¹⁵ Azhar Khan was detained in July 2008 on arrival (he said that he had informed both the FCO and UK security officers of his plan to travel to Egypt) and later allegedly questioned under torture only about friends, associates and events in the UK; he said that the questions were based on information "that must have been supplied by the UK authorities" - Joint Committee on Human Rights (JCHR), 4 August 2009, *Allegations of UK Complicity in Torture*, Evidence page 51, Supplementary memorandum submitted by Ian Cobain, Guardian newspaper; the report is available at <http://www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/152/152.pdf>.

In answer to a subsequent parliamentary question the FCO said that "[w]e have no records of any British Nationals being detained on suspicion of terrorist offences in Egypt over this period" - Ibid, Evidence 52. However, the FCO later told a UK newspaper that "we are aware that a British citizen was detained in Egypt on 9 July 2008 on suspicion of links with extremist activities", leading the newspaper to report that the FCO "went through a series of twists and turns when asked about the allegations made by Azhar Khan..." - Guardian, 16 March 2009, *Under pressure: the FCO explanation*, available at <http://www.guardian.co.uk/politics/2009/mar/16/foreign-office-explanation-allegations>.

The same Guardian report also referred to another UK man as follows: "... MI5 had an interest in another person who was in detention in Egypt at the same time as Khan, and that the security service knew that there was every possibility that this individual would be tortured" - JCHR, loc.cit. Evidence 54.

¹⁶ Guardian 4 September 2011, *Libyan papers show UK worked with Gaddafi in rendition operation*, available at <http://www.guardian.co.uk/world/2011/sep/04/libyan-papers-show-uk-rendition>; Guardian 5 September 2011, *MI6 knew I was tortured, says Libyan rebel leader*, available at <http://www.guardian.co.uk/world/2011/sep/05/abdul-hakim-belhaj-libya-mi6-torture>.

¹⁷ Preamble to UNCAT, available at <http://www2.ohchr.org/english/law/cat.htm>.

¹⁸ See *Police Reform and Social Responsibility Bill: Joint briefing for House of Lords Committee stage: 14 June 2011: Clause 154 – Changes to arrest procedure for international crimes*, available at http://www.redress.org/downloads/publications/Joint_briefing_HLCS.pdf

13. UK nationals have suffered torture in countries such as Saudi Arabia,¹⁹ Bahrain²⁰ and Egypt,²¹ prior to and after the Arab Spring. Our concern is that the UK's response to these kinds of cases has not been adequate.²² The FCO needs to have a clear and explicit policy that the UK will not accept the torture of its nationals abroad, nor torture of those non-nationals who can legitimately claim UK protection; that if the real risk of torture occurs the UK will take timely, vigorous and effective steps for it to end; and that in all cases of torture of such persons it will espouse their claims for reparations.

14. In the absence of such a clear policy and effective action, there remains a serious deficiency in the UK's anti-torture programme in an area where it ought to be most obvious that something can and should be done: the protection of UK nationals and the non-nationals described. The UK's policy and practice of exercising consular assistance and diplomatic protection in torture cases should therefore be articulated and developed, with the aim of leaving other states in no doubt that they cannot torture UK nationals with impunity. In all cases where they 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.²³

C. Steps the UK should take to strengthen institutions and systems, to assist with reforms and to monitor developments

15. The states concerned are (or will in due course hopefully be) in the process of what is termed "transitional justice".²⁴ These will be periods during which strenuous efforts will need to be made so that the many victims of serious human rights violations are not marginalised, that suspects are held accountable and that torture survivors and other victims of human rights abuses receive reparations. The UK needs to have a clear strategy on how to support these processes, both bi-laterally and within international institutions such as the United Nations and the European Union.

16. Organs such as the Office of the United Nations High Commissioner for Human Rights (OHCHR) have already begun to analyse priorities such as the importance of fair trials and ending military court trials of civilians in Egypt²⁵; concerns relating to the trial of civilians by the military have been made in relation to Tunisia too.²⁶ Fair trial concerns also relate to

¹⁹ For example, the cases of Ron Jones, William Sampson, Les Walker and Sandy Mitchell tortured in Saudi Arabia 2001 - 2002: see REDRESS website at <http://www.redress.org/case-docket/r-jones-v-saudi-ministry-of-the-interior-et-al> and at http://www.redress.org/Jones%20v%20UK%20Mitchell_and_Others_v_UK24%20February_2010.pdf

²⁰ For example the case of Jaafar Al Hasabi tortured in Bahrain in 2010-2011: see submission to the Committee from REDRESS' Chairman, Sir Emyr Jones Parry, dated 20 June 2011, at page 2, available at <http://www.redress.org/downloads/LettertoFAC20June2011.pdf>

²¹ REDRESS is currently assisting a UK woman allegedly raped in Egypt by a soldier at a check-point in May 2011; she has raised serious concerns about the failure of the FCO to deal with the matter properly, both while she was still in Egypt at the time immediately following the alleged rape and after she left that country.

²² There does not appear to be a clear and consistent policy in practice.

²³ REDRESS made several requests to the FCO under the Freedom of Information Act during the period 2008-2010, and also met with FCO officials, in an attempt to ascertain the number of torture cases which the UK has espoused since 8 December 1988, the date when the UK ratified UNCAT. In answer to whether "the Government has received compensation from foreign governments following allegations of torture of British citizens, including details of the foreign governments and amounts involved in each case since December 1988", the answer "was as far as we're aware the FCO has not received any such payments". It also emerged that the UK does not have centralised records concerning espousal before 2005. At a meeting it was said that the FCO had raised concerns of mistreatment of detainees in 183 cases since 2005. In answer to the question "How many claims of torture has the British government espoused since 2005 to the best of your recollection", the answer was "To the best of our recollection, since 2005 we have espoused no claims of torture".

²⁴ For an examination of transitional justice principles see *The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General*, S2004/616, 23 August 2004, available at <http://www.un.org/Docs/sc/sgrep04.html>

²⁵ Office of the United Nations High Commissioner for Human Rights, *Report of the OHCHR Mission to Egypt 27 March – 4 April 2011*, recommendation 5 at page 16, available at http://www.ohchr.org/Documents/Countries/EG/OHCHR_MissiontoEgypt27March_4April.pdf.

²⁶ Amnesty International, *Tunisia men detained in raids set to face military trials*, 11 August 2011, available at <http://www.amnesty.org/en/news-and-updates/tunisia-men-detained-raids-set-face-military-trials-2011-08-11>.

those involved with the previous regimes.²⁷ Specifically in relation to torture, the aim in each of these states should also be: the eradication through publically-stated policies by leaders that the use of torture and ill treatment will not be tolerated; prosecuting all suspects against whom there is credible evidence after independent investigation of all allegations; reviewing the definition of torture in national law to ensure consistency with the definition provided in the UNCAT; the establishment of independent monitoring of prisons and all places of detention; ensuring the availability of complaints mechanisms and effective remedies for torture victims.

17. Domestic state institutions, including the judiciary, will need to be reformed, and human-rights-compliant legislation implemented. The UK should work with state organs and civil society bodies²⁸ to help with human and financial resources to achieve these changes. As far as torture is concerned, implementation of the obligations under the UNCAT which both Egypt²⁹ and Tunisia³⁰ have ratified, should be the firm framework within which these tasks are approached.³¹

18. The UK, which has played a commendable and leading role in the Optional Protocol to the UN Convention Against Torture (OPCAT) which it ratified in December 2003, should seek to encourage Egypt to ratify the OPCAT.³²

CONCLUSION AND RECOMMENDATIONS

19. The United Kingdom has an important part to play in the states where processes have unfolded as a result of the Arab Spring. These processes provide numerous opportunities for the UK's critical and constructive engagement based on clear and principled policies. To this end the UK should:

- Revisit with a view to abandoning its reliance on Deportations With Assurances in its counter-terrorism policies
- Cease any activities in its counter-terrorism strategies which may result in it being complicit, or being seen to be complicit, in torture
- Properly investigate and where there is evidence prosecute torture suspects who come within its jurisdiction

²⁷ For example, on whether the health concerns relating to former Egyptian leader Hosni Mubarak preclude a fair trial, and whether the trial in absentia of former Tunisian leader Ben Ali complied with international standards.

²⁸ Such as the Cairo Institute for Human Rights, which recently made an important submission to the Human Rights Council: see *Written statement* submitted by the Cairo Institute for Human Rights Studies (CIHRS), a non-governmental organization in special consultative status, A/HRC/17/NGO/44*, 24 May 2011, available at

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/135/03/PDF/G1113503.pdf?OpenElement>. An example of a concern raised by CIHRS (at page 3) is as follows: "...[T]here are various reports of torture and ill-treatment inside military detention centers, which has included the use of electric batons, severe beatings, and conducting virginity tests for over 70 female protesters. Despite previous official declaration from SCAF [Supreme Council of the Armed Forces] stating that an investigation will be opened into these cases, no investigations have been conducted to date."

²⁹ Egypt acceded to UNCAT on 25 June 1986, see http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en.

³⁰ Tunisia ratified UNCAT on 23 September 1988, see

http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en.

³¹ International treaty and/or customary international law must be incorporated into the domestic legal orders in Egypt and Tunisia, to criminalise torture, prevent torture and refoulement, prohibit the use of evidence obtained by torture, ensure investigations of torture, and make reparations to victims – see REDRESS, *Bringing the international prohibition of torture home: national implementation guide for the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, January 2006, available at

<http://www.redress.org/downloads/publications/CAT%20Implementation%20paper%2013%20Feb%202006%203.pdf>.

³² Tunisia acceded to OPCAT on 29 June 2011, see

http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9-b&chapter=4&lang=en.

- Actively protect its nationals and others who can claim its protection from torture abroad, within a firm, well-publicised and effectively implemented policy of consular assistance and diplomatic protection
- Work bi-laterally and with other states and international and regional bodies to furnish material support and expertise in human rights to state institutions and civil society in the 'Arab Spring' states to help them prohibit, prevent and investigate torture, and to provide reparation for victims and survivors.

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