

REDRESS

Ending Torture. Seeking Justice for Survivors

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SUBMISSION TO THE FOREIGN AFFAIRS COMMITTEE FOR ITS ANNUAL INQUIRY INTO THE FOREIGN AND COMMONWEALTH OFFICE'S HUMAN RIGHTS WORK IN 2012

24 MAY 2013

SUMMARY OF SUBMISSIONS

- The FCO's policy to strengthen the ability of States to counter terrorism whilst working to protect human rights in those States is welcomed; however, concerns remain about human rights violations in which the UK was allegedly involved abroad, and these concerns need to be urgently addressed to make the policy's human rights component effective;
- The FCO's *Preventing Sexual Violence Initiative* (PSVI) and the G8 Foreign Ministers' Declaration are both welcomed. For these to have an impact in practice the UK needs to make a concerted effort to contribute to their effective implementation including financially, and further promote the objectives of, and rights inherent in these initiatives;
- The FCO should urgently address the marked increase in the numbers of British nationals reporting torture and other ill-treatment each year, taking into account the Committee against Torture's General Comment 3 regarding article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- There is an urgent need for the UK to ensure that it is not a safe haven for anyone suspected of having committed international crimes by taking more effective steps to investigate and prosecute suspects within the UK's jurisdiction;
- Where UK forces or officials are found to have committed torture abroad, such as in Kenya during the time of the Mau-Mau insurrection, it should accept full responsibility and provide adequate reparation without any further delay;
- The FCO should consistently take a strong stance on allegations of torture in its diplomacy, including with its closest allies, and needs to develop a clear, precise and multi-faceted strategy to address torture in States where this practice is entrenched.

INTRODUCTION

1. This submission is in response to the Foreign Affairs Committee's ("the Committee") invitation for submissions of evidence in respect of its inquiry announced on 17 April 2013 into "*Human Rights and Democracy: The 2012 Foreign and Commonwealth Office Report*" ("the annual Report").¹
2. REDRESS is an international non-governmental human rights organisation with a mandate to assist torture survivors to obtain justice and reparation for their suffering. Since its establishment in December 1992, REDRESS has accumulated wide expertise on the rights of victims of torture both within the United Kingdom and internationally. It has previously made written submissions to the Committee in relation to human rights matters.²
3. We note that the Committee would particularly welcome submissions which address, *inter alia*,³ the FCO's efforts to strengthen the ability of states to counter terrorism whilst working to protect human rights in those states; the declaration by G8 Foreign Ministers on the prevention of sexual violence in conflict, and the impact of the FCO's Preventing Sexual Violence Initiative. We shall therefore address these two issues, and other aspects arising from the annual Report, including human rights for British nationals tortured abroad; the UK as a safe haven for suspected perpetrators of human rights abuses; torture prevention and reparation; and countries of concern.

SUBMISSIONS

A. The FCO's efforts to strengthen the ability of states to counter terrorism whilst working to protect human rights in those states - Secretary of State's speech February 2013

4. REDRESS has noted the key points the Secretary of State made on 14 February 2013.⁴ These key points are re-iterated in the annual Report under *Working in Partnership to Counter Terrorism Overseas*,⁵ where the following issues are also dealt with: *Deportation with Assurances*; *The Detainee Inquiry*; and *Guantanamo Bay*.⁶ We note too that in the *FCO's Strategy for the Prevention of Torture 2011-15* ("the Strategy")⁷ it is stated that "[t]he work that we do to contribute to preventing torture globally is underpinned by... our domestic reputation and practices..."⁸

¹ Foreign and Commonwealth Office, "*Human Rights and Democracy: The 2012 Foreign and Commonwealth Office Report*", 15 April 2013, available at:

<http://www.hrdreport.fco.gov.uk/wp-content/uploads/2011/01/2012-Human-Rights-and-Democracy.pdf>.

² See e.g. REDRESS, *Submission to the Foreign Affairs Committee's Annual Inquiry into the FCO's Human Rights Work in 2011*, 25 May 2012, available at: <http://www.redress.org/downloads/publications/121017FACsubmission.pdf>. See also REDRESS, *Submission to Foreign Affairs Committee Inquiry into UK's Relations with Saudi Arabia and Bahrain*, 19 November 2012, available at:

<http://www.redress.org/downloads/publications/130123%20Submission%20on%20Saudi%20Arabia%20and%20Bahrain.pdf>.

³ Foreign Affairs Commons Select Committee, 17 April 2013, available at:

<http://www.parliament.uk/business/committees/committees-a-z/commons-select/foreign-affairs-committee/inquiries1/parliament-2010/human-rights1/>.

⁴ The Rt Hon William Hague MP, FCO, *Countering terrorism overseas*, 14 February 2013, available at:

<https://www.gov.uk/government/speeches/countering-terrorism-overseas>.

⁵ Above, n.1, pp. 75-78.

⁶ *Ibid.*, pp.76-78.

⁷ FCO, *Strategy for the Prevention of Torture 2011-15*, 27 October 2011, available at:

<http://www.fco.gov.uk/resources/en/pdf/fcostrategy-tortureprevention>. The Committee will recall it looked closely at the Strategy last year in its inquiry into the FCO's 2011 *Human Rights and Democracy Report* – see REDRESS, *Submission to the*

5. In this context, REDRESS welcomes the Secretary of State stating in his speech that “[w]e must also strengthen the ability of states to counter terrorism, while protecting human rights, as called for by the UN.”⁹ REDRESS submits that the FCO should acknowledge the crucial role played by the *UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*¹⁰ and urgently implement his recommendation to the UK set out in the paragraph immediately below.

6. Regarding the *Detainee Inquiry*,¹¹ the Special Rapporteur said recently:¹²

The [Gibson] Inquiry lacked the power to compel the attendance of witnesses or the production of documents. Nor did the inquiry have any power to request the production of evidence from other States, or their personnel. Moreover, under the protocol established for the inquiry, the final decision as to whether any document or finding could be released to the public was vested in the Cabinet Secretary (a senior civil servant)... On 18 January 2012 the Justice Secretary announced...the Government had...decided to terminate [the Inquiry]. He indicated however that the Inquiry would provide an interim report, which was delivered to the Prime Minister on 27 June 2012. Despite Government assurances of transparency, the interim report has not so far [been] published...The Special Rapporteur calls upon the United Kingdom to publish the interim report of the Gibson Inquiry without further delay... *He further invites the United Kingdom to make a public statement setting out a timetable for the start of the proposed judge-led inquiry, indicating what its powers and terms of reference will be. The Special Rapporteur recommends that the shortcomings in the terms of reference for, and the powers of, the Gibson Inquiry should be remedied in the resumed inquiry, and commends to the attention of the United Kingdom...best practice for commissions of inquiry into allegations of this nature.* [Emphasis added]

7. The UN Committee against Torture (CAT) has also expressed concern about “the structural shortcomings of the [Gibson] inquiry”.¹³ In an April 2013 submission to CAT¹⁴ REDRESS noted that “the

Foreign Affairs Committee’s Annual Inquiry into the FCO’s Human Rights Work in 2011, 25 May 2012, available at:

<http://www.redress.org/downloads/publications/121017FACsubmission.pdf>.

⁸ Above, n.7, p. 10. The Strategy also states, at pp. 4-5: “... HMG must have a good record itself. As the Foreign Secretary has said, where problems have arisen that have affected the UK’s moral standing we will act on the lessons learnt and tackle the difficult issues head on... The position of the Government is clear: the prohibition on torture applies to all individuals. The Prime Minister has said, ‘I think torture is wrong ... there is ... a moral reason for being opposed to torture – and Britain doesn’t sanction torture... I would say if you look at the effect of Guantánamo Bay and other things like that, long term that has actually helped to radicalise people and make our country and our world less safe’. Our reputation on torture prevention worldwide is boosted by showing how the UK achieves compliance with our legal obligations to prevent, prohibit and punish torture.”

⁹ Above, n.4.

¹⁰ The current Special Rapporteur is Mr Ben Emmerson QC, see:

<http://www.ohchr.org/EN/Issues/Terrorism/Pages/SRTerrorismIndex.aspx>.

¹¹ *The Detainee Inquiry* is dealt with in the annual Report at pp.77-78 – see above, n.1.

¹² *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, Ben Emmerson, Second Annual Report, 1 March 2013, UN Doc. A/HRC/22/52, pp.16-17, available at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-52_en.pdf.

¹³ Committee Against Torture, *List of issues in connection with the consideration of the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, adopted by the Committee at its forty-ninth session (29 October-23 November 2012)*, UN Doc. CAT/C/GBR/Q/5, 17 January 2013, para. 24, p. 5, available at:

<http://www2.ohchr.org/english/bodies/cat/cats50.htm>.

¹⁴ The submission was for CAT’s consideration of the UK’s Fifth Periodic Report under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, held in Geneva on 7-8 May 2013. For a news release on the

Government has not used the *interregnum* to develop any mechanisms for a new inquiry, and/or to deal with the structural shortcomings [of the Gibson Inquiry]...¹⁵ REDRESS therefore asks the Committee to ascertain why nothing is being done, and to challenge the Government's delay and apparent willingness to remain passive while the police investigation takes place.

8. Regarding *Guantanamo Bay*,¹⁶ the FCO maintains that "UK efforts continue to secure the release and return of the last former legal UK resident, Shaker Aamer."¹⁷ Mr Aamer is currently on hunger-strike, along with the majority of detainees in Guantanamo Bay, at the time of this submission. It cannot be predicted what the outcome will be, given the seriousness of the current situation, but there can be little doubt of the on-going intense suffering being experienced by men who have been detained for over ten years and with no end to their ordeal in sight.¹⁸ Those representing Mr Aamer have criticised in detail the UK's handling of his case from the time of his rendition in 2002 to date.¹⁹ This raises serious questions about the UK's willingness to try to influence its closest ally where terrorism concerns and human rights intersect, and REDRESS asks the Committee to call on the FCO to urgently strengthen its call for Mr Aamer's release and return.

9. Regarding *Deportation with Assurances*,²⁰ REDRESS submits that there remain fundamental problems with the use of diplomatic assurances in the context of the UK's non-refoulement obligations, and it continues to oppose their use as a method of deporting or extraditing persons to States known to practice torture.²¹ The UK policy is to use bilateral diplomatic agreements with detailed factual assessments (as far as the UK is concerned) of the likelihood of the State involved abiding by such agreements, on a case by case basis. However, where a State has a long record of failing to meet its obligations under the UN Convention against Torture ("the Convention"), using use bilateral diplomatic agreements with such assessments "fundamentally undermines the coherence and credibility of the Convention and ultimately the international legal framework."²²

10. Since the FCO has said the UK is committed to working within and strengthening the UN framework, we ask the Committee to question why the FCO disagrees with the previous and current UN Special

consideration, see United Nations Office at Geneva, *Committee against Torture examines report of the United Kingdom*, 8 May 2013, available at:

[http://www.unog.ch/unog/website/news_media.nsf/\(httpNewsByYear_en\)/300B16959AACC877C1257B650056C4AA?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/300B16959AACC877C1257B650056C4AA?OpenDocument).

¹⁵ REDRESS, *Submission to the Committee Against Torture on its List of Issues for Consideration of the UK'S 5th State Party Report*, 19 April 2013, p. 2, available at:

<http://www.redress.org/downloads/publications/REDRESS%20SUBMISSION%20TO%20CAT%20ON%20UK%20%20%2019%2004.pdf>.

¹⁶ *Guantanamo Bay* is dealt with in the annual Report at p. 78 – see above, n.1.

¹⁷ *Ibid.*

¹⁸ See for example The Guardian, *Guantánamo hunger strikers subject to harsh new method of force feeding*, 13 May 2013, available at: <http://www.guardian.co.uk/world/2013/may/13/guantanamo-bay-hunger-strike-forced-feeding>.

¹⁹ See Birnberg Pierce submission on Mr Aamer to CAT dated 17 April 2013, available at:

http://www2.ohchr.org/english/bodies/cat/docs/ngos/BirnbergPeircePartners_UK_CAT50-Submission.pdf

²⁰ *Deportation with Assurances* is dealt with in the annual Report at p. 76-77, see above, n.1.

²¹ For a detailed criticism of diplomatic assurance see REDRESS, *The United Kingdom, Torture and Terrorism: Where The Problems Lie*, December 2008, pp. 50-73, available at:

<http://www.redress.org/downloads/publications/Where%20the%20ProblemsLie%2010%20Dec%2008A4.pdf>. See also

REDRESS letter to the Foreign Affairs Committee, 20 June 2011, p. 3, available at:

<http://www.redress.org/downloads/publications/Letter%20to%20FAC%20%20June%202011.pdf>.

²² JUSTICE, *UN Convention Against Torture (UNCAT): United Kingdom Fifth Periodic Review (May 2013) JUSTICE Written Submission*, para. 9, p.5, available at: http://www2.ohchr.org/english/bodies/cat/docs/ngos/JUSTICE_UNCAT_UK_CAT50.pdf.

Rapporteur on Torture who have both said that the practice of diplomatic assurances is “an attempt to circumvent the absolute prohibition of torture and non-refoulement.”²³

11. In sum, REDRESS is concerned that the UK’s policy on counter-terrorism and human rights will not translate into any meaningful change, unless and until there is a genuine resolution of the above-mentioned serious issues arising from the UK’s counter-terrorism work with States overseas. The Committee should raise these concerns with the FCO, given the serious human rights challenges the UK has already faced when working with democratic States such as the USA in relation to counter terrorism policies, and given further that “the threat from terrorism is greatest in the countries where the rule of law and human rights are weakest.”²⁴

B. Impact of FCO’s Preventing Sexual Violence Initiative launched in May 2012, and the April 2013 declaration by G8 Foreign Ministers on prevention of sexual violence in conflict

12. REDRESS welcomes the FCO’s *Preventing Sexual Violence Initiative* (PSVI) launched on 29 May 2012 by the Foreign Secretary.²⁵ In particular, it welcomes the intended goals to increase the number of perpetrators brought to justice both internationally and nationally; to strengthen international efforts and coordination; and to support States to build their national capacity to prosecute acts of sexual violence committed during conflict.

13. The deployment of the UK Team of Experts to several countries including post-conflict countries is to be commended as a way to support local efforts to investigate allegations of sexual violence and gather evidence. While criminal investigation and prosecutions are prerequisite for survivors of sexual violence to obtain justice, the Committee should ask the FCO to ensure that victims’ rights to participation and reparation form an integral and equally important part of the PSVI efforts.

14. The PSVI rightly highlights the need to overcome numerous obstacles which hamper effective investigations and prosecutions. Countries affected by armed conflict where crimes of sexual violence occur are commonly characterised by weak State institutions. Their domestic justice systems lack capacity, resources and independence to investigate and prosecute crimes of sexual violence, resulting in widespread impunity for alleged perpetrators. Protection of victims and witnesses, as well as assistance and support services for victims, such as medical care, psychosocial support and other rehabilitation services are also lacking. Structural inequalities between men and women before the law, and social attitudes and stigma associated with sexual violence, constitute additional hurdles.

15. REDRESS also welcomes the initiative to draft a new, non-legally binding, International Protocol on the Investigation and Documentation of Sexual Violence in Conflict as a component of the PSVI. REDRESS stresses the importance of documenting information related to the harm suffered by survivors individually and collectively and to the consequences of sexual violence to adequately implement victims’ right to reparation. This Protocol should draw from existing common standards in the field of

²³ Human Rights Council, *Report submitted by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez*, UN Doc. A/HRC/16/52, 3 February 2011, para.63, p. 14, available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.16.52.pdf>.

²⁵ The Rt Hon William Hague MP, FCO, *Foreign Secretary launches new Government initiative to prevent sexual violence in conflict*, 29 May 2012, available at: <https://www.gov.uk/government/speeches/foreign-secretary-launches-new-government-initiative-to-prevent-sexual-violence-in-conflict>.

human rights and tailor standards adapted to the particular nature of crimes of sexual violence and the specific needs of survivors. This is important as criminal procedures (crucial as they are) are not always adequate avenues to fully address the specific needs of survivors of sexual violence. In doing so, the Protocol should adopt a gender sensitive approach as well as measures for the protection of children.

16. Within PSVI, the UK donation of £1 million over two years to the International Criminal Court's (ICC) Trust Fund for Victims is also to be commended. The Committee should ask the FCO to ensure that victims' rights are effectively guaranteed in the current discussions surrounding ICC reform.

17. Further, REDRESS welcomes the G8 Declaration on 11 April 2013²⁶ reaffirming the existing status of rape and other serious sexual violence committed in times of armed conflict as acts that amount to war crimes and also grave breaches of the Geneva Conventions and Additional Protocol I. While *per se* not creating new legal obligations, the G8 Declaration is a clear expression of commitment by G8 States to prevent and respond to sexual violence, and their willingness to take action. The Committee should ask the FCO what steps it has taken and considers to take so as to develop a consistent practice of exercising universal jurisdiction over alleged perpetrators of sexual violence, including cases that amount to torture under the UN Convention against Torture, and other international crimes in the UK.

C. Other issues arising from the annual Report

a) Human rights for British nationals tortured or mistreated abroad

18. The number of allegations of ill-treatment of British nationals overseas has increased considerably, and REDRESS asks the Committee to inquire as to what the FCO is doing to deal with this growing problem.²⁷ The number of British nationals known to be detained overseas has also increased since the last annual Report from 2572 in 2011²⁸ to over 2600 in 2012,²⁹ as has the number of States in which they are held from 87 to 95. To combat torture abroad, the UK has developed a commendable foreign policy document, the *FCO's Strategy for the Prevention of Torture 2011-15*,³⁰ and yet, its approach to protecting and assisting its own nationals and residents ill-treated abroad is still flawed.³¹ There are also

²⁶ FCO, *G8 Declaration on Preventing Sexual Violence in Conflict*, 11 April 2013, available at

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/185008/G8_PSVI_Declaration_-_FINAL.pdf.

See also REDRESS News Release, *G8 commitment to tackle impunity for rape in conflict welcomed by human rights groups*, 12 April 2013, available at:

http://www.redress.org/downloads/12042013_PR_G8-grave-breaches-declaration_AIUK_REDRESS_TRIAL_OK.pdf.

²⁷ The annual Report says there were **over 100 new reports** in 2012, see above, n.1 p.100. According to figures obtained under the Freedom of Information Act there were on average **about 50 cases** per year for the period 2005-2010, in 67 different states altogether, see REDRESS, *Tortured Abroad: The UK's obligations to British Nationals and Residents*, September 2012, pp. 47-48, Annex C, available at: http://www.redress.org/downloads/publications/121001tortured_abroad.pdf. The annual Report for 2011 did not give the number of new cases which had arisen that year.

²⁸ Last year the FCO said: "As of 30 September [2011], we were aware of 2,572 British nationals detained in 87 countries overseas" - United Kingdom Foreign & Commonwealth Office *Human Rights and Democracy: The 2011 Foreign & Commonwealth Office Report*, April 2012, p. 120, available at:

<http://centralcontent.fco.gov.uk/pdf/pdf1/hrd-report-2011>. During 2011-2012, 6,015 arrests were handled in 181 countries – see Guardian 28 June 2012 '*Britons arrested abroad mapped*', available at: <http://www.guardian.co.uk/news/datablog/interactive/2012/jun/28/britons-arrested-abroad-2012>.

²⁹ Above, n.1, p.100.

³⁰ Above, n.7.

³¹ REDRESS has recently published a comprehensive report on the UK law, practice and policy on consular assistance and diplomatic protection, analysing current shortcomings in respect of torture survivors falling within the above category, see REDRESS, *Tortured Abroad: The UK's obligations to British Nationals and Residents*, September 2012, available at: http://www.redress.org/downloads/publications/121001tortured_abroad.pdf.

serious barriers including state immunity facing such persons in obtaining compensation and other forms of reparation on their return to the UK, where there has been no allegation of UK complicity and the torture survivor wishes to proceed against the State alleged to be responsible.³²

19. The UK's policy ought to emphasise that it will, to the fullest extent possible and in all cases, take action to help obtain justice and reparation for its nationals and long term residents who allege to have suffered torture or ill-treatment, irrespective of where the violation is alleged to have been committed. Consular assistance needs to be more resolute and effective. Diplomatic protection (the espousal of claims) must become more than a theoretical possibility, as it is at present,³³ both to secure the rights of individual victims and to make a meaningful contribution to the eradication of torture on which the UN Convention against Torture is based.

20. Where a UK torture survivor has exhausted domestic remedies or there are none, the failure of the UK to espouse a claim means that in practice a survivor has no remedy. In 2006 the House of Lords (as it then was) ruled in *Jones*³⁴ that state immunity remains a bar to an action in the UK against a foreign state and individual state officials for torture committed in that State. *Jones* was decided on an interpretation of the UK's State Immunity Act 1978. A Private Members Bill (the Torture (Damages) Bill) was introduced to amend the said Act so that state immunity could no longer be raised in a claim based on torture when no adequate and effective remedy for damages is available in the State where the torture is alleged to have been committed. The said Torture (Damages) Bill passed in the House of Lords in 2008 but failed to proceed through the House of Commons because the Government opposed it.³⁵

21. In sum, survivors cannot obtain relief through diplomatic means *nor* can they sue a foreign State in UK courts. REDRESS asks the Committee to pursue this issue with the FCO by questioning how it can justify preventing civil claims *and* not espousing claims, particularly bearing in mind CAT's recent General Comment 3 which states *inter alia* that "[u]nder article 14 [of the Convention] a State party shall ensure that victims of any act of torture or ill-treatment under its jurisdiction obtain redress. States parties have an obligation to take all necessary and effective measures to ensure that all victims of such acts obtain redress."³⁶

b) The UK as a safe haven for suspected perpetrators of human rights abuses

22. The FCO's annual Report states that the "Government remains fully committed to the principle that there should be no impunity for the most serious international crimes"³⁷ and it also refers to the subject

³² *Ibid.*

³³ *Ibid.*, pp. 24-40.

³⁴ *Jones v. Ministry of Interior Al-Mamlaka Al-Arabiya AS Saudiya (the Kingdom of Saudi Arabia)*, 14 June 2006, [2006] UKHL 26, available at: <http://www.publications.parliament.uk/pa/ld200506/ldjudgmt/jd060614/jones-1.htm>. REDRESS intervened in the case. The case has subsequently been pending in the ECtHR since December 2006 in *Jones v. United Kingdom* (Application Number 34356/06) and *Mitchell and Others v. United Kingdom* (Application Number 40528/06) in which REDRESS has also intervened. See the intervention at <http://www.redress.org/case-docket/jones-v-uk-and-mitchell-and-others-v-uk>.

³⁵ Full details of the attempts to amend the State Immunity Act, in which REDRESS was very closely involved, can be accessed at <http://www.redress.org/the-torture-bill/the-torture-bill-in-parliament>. The Government says, effectively, that the UK would be out of step with State practice if it endorsed a human-rights exception to State immunity in civil claims. REDRESS has argued that without such an exception and where there is no other forum to bring a claim but in the UK, a survivor is left with no effective remedy.

³⁶ CAT, General Comment 3: *Implementation of article 14 by States parties*, UN Doc. CAT/C/GC/3, 13 December 2013, para. 27, available at:

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

³⁷ Above n.1, p. 49.

of “Human rights offenders and entry to the UK.”³⁸ The *Strategy* refers to the obligations under the Convention to ensure that there are no safe havens for individuals accused of torture.³⁹

23. However, there is no reference to the law, practice or policy concerning suspected perpetrators of torture who are already *in* the UK.

24. Only two foreign suspects of international crimes have been successfully prosecuted in the UK to date.⁴⁰ This is despite figures indicating that there are a considerable number of alleged perpetrators present or residing in the UK. According to a reply from the UK Border Agency to a 2012 Freedom of Information request from the press, there were “more than 200 suspected war criminals [...] recently [...] identified by UK immigration officials with most continuing to live freely in the country [...]”.⁴¹ The press report went on to state: “it was previously revealed that a further 495 suspected war criminals had been identified by the Home Office in the five years to June 2010.”⁴² An on-going issue of particular concern is that of four Rwandan genocide suspects. More than four years after their release from custody, following a failed attempt to extradite them to stand trial in Rwanda, these suspects continue to live freely in the UK. The Metropolitan Police during this time has not commenced any investigation into their alleged crimes with a view to a prosecution in the UK.⁴³

25. REDRESS submits that the FCO and other Government ministries/agencies should work together to ensure that the UK does not continue to be a *de facto* safe haven. Building on the *Strategy*, a Government-wide approach to address **accountability** and **redress** for torture is necessary, including adequate screening to ensure that foreign diplomats appointed and working in the UK are not suspected of having perpetrated international crimes. Swift action should be taken to declare any foreign diplomat for whom there are credible allegations relating to his or her involvement in such crimes a *persona non grata*.⁴⁴

³⁸ *Ibid.*, p. 52. The annual Report states that “[w]here there is independent, reliable and credible evidence that an individual has committed human rights abuses, the individual will not normally be permitted to enter the United Kingdom” – *ibid.*

³⁹ Above, n.7.

⁴⁰ Afghan Faryadi Zardad was convicted of torture and hostage taking in 2005 and sentenced to 20 years imprisonment. There is an unreported High Court judgment of 19 July 2005 in *R v. Zardad* which relates to certain legal aspects of the case. An appeal was denied 17 February 2007. On 1 April 1999, Anthony (Andrzej) Sawoniuk was sentenced under the War Crimes Act 1991 to life imprisonment for the murder of two civilians. The Court of Appeal upheld his conviction on 10 February 2000 – *R. v. Sawoniuk*, Court of Appeal (Criminal Division), [2000] Crim. L. R. 506. The House of Lords denied leave to appeal on 20 June 2000 – Financial Times, *War Criminal Refused New Hearing*, 20 June 2000. Currently, one criminal trial concerning acts of torture is pending involving an accused Nepalese citizen, Colonel Kumar Lama, arrested in the UK in January 2013. REDRESS Press Release, *REDRESS welcomes UK prosecution of Nepali torture suspect*, 7 January 2013, available at: http://www.redress.org/downloads/Nepalpressrelease_070113_final.pdf.

⁴¹ Yorkshire Post, *UK ‘safe haven’ for war crimes suspects as 200 remain at large*, 8 May 2012, available at: <http://www.yorkshirepost.co.uk/news/at-a-glance/general-news/uk-safe-haven-for-war-crimes-suspects-as-200-remain-at-large-1-4524193>

⁴² *Ibid.* Further, the report also said: “Michael McCann MP, chairman of the All-Party Group for the Prevention of Genocide and Crimes Against Humanity, has criticised the UKBA for not acting quickly enough when suspicions came to light. He also expressed frustration at his inability to obtain answers from the UKBA about the full scale of the problem. ‘We need a frank exchange between the UKBA and police and we need Ministers to provide straight answers to straight questions.’”

⁴³ See REDRESS, *UK Extradition Policy: Submission to the Joint Committee on Human Rights (JCHR)*, 27 January 2011, available at: <http://www.redress.org/downloads/publications/JCHR%20Submission%2027%20January%202011.pdf>. The UK has said it is awaiting a further extradition request, but it has not been forthcoming to date. The failed extradition hearing found that there was evidence that the men had a case to answer, and the reason the extradition was refused was based on fair trial considerations.

⁴⁴ See, for example, The Guardian, *Sri Lankan diplomat may avoid questioning on war crimes claims*, 5 April 2012, at <http://www.guardian.co.uk/politics/2012/apr/05/sri-lankan-diplomat-war-crimes-allegations>.

c) Torture prevention and reparation

26. It is clear from the annual Report⁴⁵ and the *Strategy*⁴⁶ that the FCO's primary approach to the scourge of torture is for UK policies to have an effective impact on the **prevention** of torture worldwide. However, and as referred to in the paragraph immediately above, **accountability** and **redress** cannot be separated from the other aspects of torture, and this also applies to prevention. If the UK is to have a credible and effective impact on the prevention of torture, it needs to have a consistent policy on torture as a whole including on how it deals with any claims brought relating to UK responsibility for torture.

27. This includes addressing past violations, such as the claims by torture survivors in 2009 arising from the Mau Mau uprising against British colonial power in Kenya in the 1950s and early 1960s. Although the UK accepts that the Kenyans seeking redress suffered appalling torture by British colonial officials (including castration, severe sexual abuse and systematic beatings), the FCO pursued various technical defences to block the claims raised.⁴⁷

28. Initially, the FCO argued that if atrocities were sanctioned by the then British Government they were legally acting as the Kenyan Government at the time, and therefore any liability for such atrocities was inherited by the Kenyan Republic as the successor to the Kenyan Colony. In July 2011, the High Court dismissed that argument on the grounds that the British Government had directly participated in the counterinsurgency in its own right.⁴⁸

29. The FCO then argued that the claims were time barred, and REDRESS intervened in this aspect of the case.⁴⁹ In October 2012, after a detailed review of the evidence, the High Court ruled in favour of the survivors and ordered the matter to trial.⁵⁰ Nevertheless, the FCO then sought leave from the Court of Appeal to appeal. Leave was granted, and the matter was listed to be heard in May 2013. REDRESS applied to intervene in the appeal; however, it has now been postponed pending discussions exploring the possibility of settling the claims.

30. In a recent open letter to the Prime Minister, human rights groups and others have stated:⁵¹

The response of the British Government to vulnerable and elderly victims of (acknowledged) British torture is shameful... Many victims have died since 2009 and will therefore never achieve justice and redress for their appalling, inhuman treatment at the hands of the British colony.

The stance the British Government has taken to these issues is entirely inconsistent with the spirit of the United Nations Convention Against Torture, its international legal obligations and the ethical values to which Government Ministers frequently lay claim. Britain's complete unwillingness to deal honourably with victims of its own breaches of human rights in Kenya undermines Britain's moral authority in the world.

⁴⁵ Above, n.1, pp. 46 – 47.

⁴⁶ Above, n.7.

⁴⁷ The first judgement in the case is *Mutua and Others v Foreign and Commonwealth Office*, 21 July 2011, [2011] EWHC 1913 (QB), available at: <http://www.judiciary.gov.uk/Resources/JCO/Documents/Judgments/mutua-v-ors-judgment.pdf>.

⁴⁸ *Ibid.*

⁴⁹ REDRESS interventions are available at: <http://www.judiciary.gov.uk/Resources/JCO/Documents/Judgments/mutua-v-ors-judgment.pdf>. and at <http://www.redress.org/downloads/Redressfurthersubmission-Mutuacase.pdf>.

⁵⁰ *Mutua and Others v Foreign and Commonwealth Office*, 5 October 2012, [2012] EWHC 2678 (QB), available at: <http://www.judiciary.gov.uk/Resources/JCO/Documents/Judgments/mutua-fco-judgment-05102012.pdf>.

⁵¹ The letter dated 27 March 2013 is available at: <http://www.liberty-human-rights.org.uk/materials/letter-to-the-rt-hon-david-cameron-mp-mau-mau-apr-2013-.pdf>.

31) Whatever the outcome of any settlement discussions are in this particular case, the UK needs to ensure that when it is liable to make reparations for torture this entails not only compensation but a proper public acknowledgement of the wrong done and the harm caused, along with an apology, and where still possible for those responsible to be held to account. This applies not only to those who suffered at the hands of British forces during Colonial times but thereafter, including in Iraq⁵² and Afghanistan. REDRESS also submits that in the instant case the UK should have enhanced its anti-torture policies by righting wrongs from the past at the earliest opportunity, and the Committee is asked to challenge the FCO on why it adopted a policy of raising several, ultimately unsuccessful defences against the claims made for more than three years and at least until very recently, instead of seeking to settle from the outset.

d) Human rights in countries of concern

32) **Afghanistan:** Listed as a country of concern in the annual Report, the FCO refers to the problem of the transfer of UK-captured detainees to the Afghan authorities.⁵³ There were 70 prisoners still apparently held in British military bases in Afghanistan as of the beginning of 2013.⁵⁴ On 29 November 2012, Defence Secretary Philip Hammond revealed to the High Court that “secret new information had persuaded him to abandon the transfers despite claims by British officials that the situation in Afghan jails had improved.”⁵⁵ He therefore implemented a further moratorium on detainee transfer,⁵⁶ currently still in force. REDRESS previously recommended,⁵⁷ *inter alia*, that the UK should accept full responsibility under international humanitarian law and international human rights law for all persons it detains in Afghanistan, and that it should retain custody of all detainees until Afghanistan has properly and effectively implemented mechanisms and safeguards in its detention and prison systems for the prohibition and prevention of torture and ill-treatment. The Committee should question the FCO on how the problem will be resolved by the time of the planned withdrawal of UK forces next year.

⁵² The importance of dealing properly with alleged abuses in Iraq has again been recognised in the decision on 24 May 2013 in *R (Ali Zaki Mousa and others) and Secretary of State for Defence*, [2013] EWHC 1412 (Admin), available at: <http://www.judiciary.gov.uk/media/judgments/2013/azm-others-v-sos-defence>.

⁵³ Above, n.1, p. 123.

⁵⁴ Open Society, *Fears for prisoners left behind after Afghan withdrawal*, 3 January 2013, available at:

<http://www.thebureauinvestigates.com/2013/01/03/fears-for-prisoners-left-behind-after-afghan-withdrawal/>.

⁵⁵ The Guardian, *Philip Hammond cites torture risk as he halts transfer of prisoners to Afghan jail*, 29 November 2012, available at: <http://www.guardian.co.uk/world/2012/nov/29/prisoner-transfer-to-afghan-jails-halted>.

⁵⁶ *Ibid.* On 6 November 2012 the High Court ordered that the UK government maintain a temporary moratorium on the transfer of detainees to Afghan authorities due to the risk of torture and ill-treatment. See BBC News, *High Court blocks UK detainee transfers in Afghanistan*, 2 November 2012, available at: <http://www.bbc.co.uk/news/uk-20185001>. The ruling was based upon a case brought by Serdar Mohammed, an Afghan national detained by the UK in Afghanistan in 2010, who was transferred to Afghan Intelligence, where it was alleged he was tortured and subjected to an unfair trial. Previously, the case of *Maya Evans* revealed serious concerns about the detainee transfer policy which applied to Afghans captured by British soldiers, following claims that the detainees were subject to torture after being handed to Afghan authorities: see *The Queen (on the application of Maya Evans) v. Secretary of State for Defence*, [2010] EWHC 1445 (Admin), available at: <http://www.judiciary.gov.uk/Resources/JCO/Documents/Judgments/r-evans-v-ssd-judgment.pdf>. The case was brought by a UK peace activist, alleging that the transfers were in breach of the UK's *non-refoulement* obligations. In the *Maya Evans* case, REDRESS submitted a witness statement in support of the claimant.

⁵⁷ REDRESS, *Foreign Affairs Committee: New Inquiry: Afghanistan: Submissions of the Redress Trust (REDRESS)*, 23 January 2009, p. 8, available at: http://www.redress.org/downloads/publications/Submission_to_FAC_23_January_2009.pdf. In addition, REDRESS recommended that the UK should properly investigate what has happened to all persons already transferred; where allegations of torture or ill-treatment arise these should be investigated promptly, impartially and effectively; and the UK should make full reparation to any person abused post-transfer. The UK should take full, comprehensive and effective steps to assist the Afghan authorities in building the rule of law, internationally acceptable prison and detention systems and a torture-free society; and it should take a lead in working with and within UN, EU, NATO and ISAF institutions to ensure the strengthening of and compliance with its *non-refoulement* principles and obligations.

33) **Bahrain:** Not listed as a country of concern in the annual Report, reference is made to Bahrain in a “Case study”⁵⁸ where it is said that “the overall trajectory on (*sic*) human rights in Bahrain is one of improvement over the long term.”⁵⁹ This sanguine analysis is contradicted by the findings of a recent report published by REDRESS and the International Rehabilitation Council for Torture Victims (IRCT), which highlighted a range of concerns over on-going torture and ill-treatment – which the “Case study” does not refer to; the REDRESS report also found that reforms have been inadequate, particularly failing to ensure accountability and justice for the victims of torture.⁶⁰ Concerns over the lack of external scrutiny were heightened on 22 April 2013 when, only a few weeks before the commencement of the UN Special Rapporteur on Torture Juan E. Méndez’s official visit, the Government of Bahrain unilaterally cancelled the mission, citing delays in “on-going national dialogue”. In light of these developments, the Committee should ask the FCO to state **specifically and comprehensively** what it is doing to convince Bahrain to stop torture, given the UK is a “long-standing friend of the people of Bahrain.”⁶¹

34) **Maldives:** Not listed as a country of concern in the annual Report, nor referred to in a “Case study,” REDRESS nevertheless welcomes the February 2013 visit of the FCO Minister for South Asia, Alastair Burt, to the Maldives; it is noted that he urged the Maldivian Government to investigate allegations of serious violations of human rights, including politically-motivated arrests and torture, by the police during and in the immediate aftermath of the change in Government in February 2012. In light of the upcoming presidential elections in September 2013, REDRESS is concerned that the already dire human rights crisis will continue to worsen. REDRESS has received numerous reports of police assaults on peaceful protesters and those considered political dissidents. However, no steps have been taken to remedy these violations and ensure justice and reparation for the victims. Despite the credible and widespread allegations of police using excessive force which are compounded by lack of investigations and prosecutions, the Maldives is not a country of concern for the FCO, and we ask the Committee to raise this state of affairs with the FCO.

35) **Rwanda:** Not listed as a country of concern in the annual Report, reference is made to Rwanda in a “Case study”⁶² and the UK’s support for the work of the International Criminal Tribunal for Rwanda (ICTR) “in tackling impunity and delivering justice to the victims of the Rwandan genocide and to secure its legacy.”⁶³ While the ICTR has undoubtedly contributed to the accountability of those most responsible for the 1994 genocide in Rwanda, REDRESS continues to receive complaints from survivors of the genocide that as the ICTR failed to provide reparation, it did not provide justice to survivors. These concerns are echoed in regards to domestic justice processes.⁶⁴ REDRESS, together with the Survivors’ Fund and several Rwandan survivor organisations, has urged the ICTR, as well as the Government of Rwanda, to put together a taskforce on reparation so as to facilitate the establishment of a reparation programme in Rwanda.⁶⁵ With the first two cases transferred from the ICTR to Rwanda, and the closure of the local Gacaca courts in June 2012, it is critical that the FCO emphasises the right of

⁵⁸ Above, n.1, pp. 48-49.

⁵⁹ *Ibid.*, p. 49.

⁶⁰ REDRESS, *Bahrain: Fundamental reform or torture without end?*, April 2013, available at: <http://www.redress.org/downloads/publications/Fundamentalreform.pdf>.

⁶¹ Above, n.1, p. 49.

⁶² Above, n.1, p. 38.

⁶³ *Ibid.*, p. 51.

⁶⁴ REDRESS and others, *Right to Reparation for Survivors- Recommendations for Reparation for Survivors of the 1994 Genocide against Tutsi, Discussion Paper*, October 2012, available at: <http://www.redress.org/downloads/publications/121031right to rep.pdf>.

⁶⁵ *Ibid.*

survivors to reparation in its support of Rwanda's domestic justice system and supports relevant efforts of civil society to ensure that survivors are finally granted reparation, in accordance with their rights.

36) **Nepal:** Not listed as a country of concern in the annual Report, nor referred to in a "Case study," REDRESS highlights Nepal's failure to deal with both past and on-going human rights violations. In relation to conflict-era crimes, on 14 March 2013 an Ordinance to set up a Commission on Disappeared Persons, Truth and Reconciliation (TRC) was signed by the President as part of a wider political deal and without consultation with victims. This Ordinance contains provisions likely to further entrench impunity and is contrary to international law as it allows amnesties for serious human rights violations.⁶⁶ The Government has also taken steps to thwart the criminal justice process even in the few cases that have proceeded to a limited extent.⁶⁷ The UK authorities should be commended for their prosecution of a Nepali army officer for crimes allegedly committed during this period,⁶⁸ and should continue to push for accountability at all levels and reparation for victims. Meanwhile, ongoing impunity allows violations to continue: for example last year CAT released its report on its examination of Nepal under Article 20 of the Convention, which found that torture is committed systematically in the country.⁶⁹ The FCO should call on Nepal to implement CAT's recommendations.

37) **Saudi Arabia:** Listed as a country of concern in the annual Report, the FCO states that it judges torture allegations "by virtue of their frequency and the variety of sources, to be credible."⁷⁰ The FCO also says that "more needs to be done" by the Saudi authorities to address concerns about torture.⁷¹ REDRESS asks the Committee to suggest to the FCO that it insist Saudi Arabia demonstrate its commitment to adhering to its international obligations by compensating UK nationals, including Keith Carmichael (who founded REDRESS) and the claimants in the *Jones* matter⁷² who have not received redress for their suffering. The UK should be ready to espouse diplomatic claims if Saudi Arabia refuses to provide compensation, given the apparent lack of any effective domestic remedies in Saudi Arabia.

38) **Sri Lanka:** Listed as a country of concern in the annual Report, the FCO highlighted concerns over access to justice, the rule of law and continued reports of torture. REDRESS, together with the Asian Human Rights Commission, has filed several cases before the UN Human Rights Committee that illustrate these concerns, including in the context of violence against women and discrimination of

⁶⁶ A point stressed by the UN High Commissioner for Human Rights on 20 March 2013, when she said that she "deeply regrets the passing of [the Ordinance] with power to recommend amnesties for serious human rights violations, and strongly urged the government to rectify this and other provisions which would contravene international standards" - OHCHR, *Pillay says Nepal commission must not grant amnesties for serious violation*, 20 March 2013, available at:

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=13163&LangID=E>. For a detailed analysis of the earlier version of the ordinance, see the International Centre for Transitional Justice, *Seeking Options for the Right to Truth in Nepal*, November 2012, available at: <http://ictj.org/sites/default/files/ICTJ-Briefing-Paper-Nepal-Ordinance-Dec-2012-ENG.pdf>; also OHCHR, *An OHCHR Analysis of the Nepal Ordinance on Investigation of Disappeared People, Truth and Reconciliation Commission 2012*, December 2012, available at:

http://www.ohchr.org/Documents/Press/Nepal_OHCHR_Analysis_TJ_Ordinance_Dec_2012.pdf.

⁶⁷ See Advocacy Forum and REDRESS, *Held to Account: Making the law work to fight impunity in Nepal*, December 2011, available at: <http://www.redress.org/downloads/publications/Nepal%20Impunity%20Report%20-%20English.pdf>.

⁶⁸ Above, n. 40.

⁶⁹ Committee Against Torture, *Report on Nepal adopted by the Committee against Torture under article 20 of the Convention and comments and observations by the State party*, para. 108, available at:

<http://www2.ohchr.org/english/bodies/cat/docs/Art20/NepalAnnexXIII.pdf>. See also Advocacy Forum and REDRESS, *Torture being systematically practiced in Nepal*, 21 November 2012, available at:

<http://www.redress.org/downloads/NepalPressrelease211112-Final.pdf>.

⁷⁰ Above, n.1, p. 211.

⁷¹ *Ibid.*, p. 212.

⁷² Above n.34.

minorities.⁷³ The Committee should ask the FCO to ensure that these concerns are shared with other UK agencies, particularly to ensure that Sri Lankan nationals in the UK are not subjected to refoulement in violation of UK's international obligations.⁷⁴ In co-sponsoring the UN Human Rights Council's 2013 resolution on Sri Lanka, the UK did as it promised in the FCO report.⁷⁵ The Committee should ask the FCO to take further steps with a view to ensuring the implementation of the recommendations made in that resolution.

39) **Sudan:** Listed as a country of concern in the annual Report, the FCO highlighted legislation facilitating torture such as the National Security Act, the targeting of human rights defenders, "widespread reports that security forces routinely carry out torture" and the use of corporal punishment and other violations of women's rights.⁷⁶ The annual report also mentions the case of REDRESS client Magdy El-Baghdady. We welcome the FCO's emphasis that it will "continue to press" for a prompt and impartial investigation be undertaken in his case.⁷⁷ Separately however, concerns have been raised over training being provided to Sudanese officials, including members of the intelligence and security forces. This training is being provided notwithstanding systemic and continuing concerns over the failure of these institutions to respect human rights, including the prohibition of torture.⁷⁸ The Committee should ask the FCO how it ensures that the officials chosen for training have a clear record, that any such training or courses provided are effective in promoting human rights and that they do not inadvertently provide a veneer of – unwarranted – legitimacy for attendees and institutions that are failing to protect human rights.

40) **Zimbabwe:** Listed as a country of concern in the annual Report, regular allegations of torture continue. Judging by experiences to date, there are serious concerns that announcements of reform, such as by the Minister for Justice Chinanamsa,⁷⁹ including his assertion that Zimbabwe will ratify the Convention, will not be followed up in practice. The Committee should ask the FCO what its **specific** policy is towards Zimbabwe in this regard, given that the *Strategy* places so much emphasis on

⁷³ See REDRESS, *Comments on Sri Lanka's Combined Third and Fourth Periodic Reports to the Committee Against Torture, September 2011*, available at:

<http://www.redress.org/downloads/publications/Redress%20submission%20to%20CAT%20September%202011.pdf>.

⁷⁴ See Freedom from Torture, *Submission to the Committee against Torture for its Follow-Up to the concluding observations from its examination of Sri Lanka in November 2011*, available at:

http://www2.ohchr.org/english/bodies/cat/docs/ngos/Freedom_from_Torture_SriLanka_CAT_followup.pdf.

⁷⁵ See UN General Assembly Resolution, Human Rights Council Resolution, 22nd Session (19th March 2013), Agenda item 2, Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, A/HRC/22/L.1/Rev.1 available at:

<http://daccess-dds-ny.un.org/doc/RESOLUTION/LTD/G13/122/61/PDF/G1312261.pdf?OpenElement>.

⁷⁶ Above, n. 1, pp. 227-232. See also ACHPR, Communication 402/2001: *REDRESS and others v Sudan, Submission on Admissibility*, 15 August 2102, available at:

http://www.redress.org/downloads/Communication402_2011_Admissibility_Submission_15Aug2012.pdf. See also REDRESS and others, *Comments to Sudan's 4th and 5th Periodic Report to the African Commission on Human and People's Rights: Article 5 of the African Charter: Prohibition of torture, cruel, degrading or inhuman punishment and treatment*, April 2012, available at: <http://www.redress.org/downloads/publications/1204%20Comments%20to%20Sudans%204th%20and%205th%20Periodic%20Report.pdf> and www.pclrs.org.

⁷⁷ Above, n.1, p. 229.

⁷⁸ Sudan, Question asked by Lord Avebury [HL3913], House of Lords, Hansard, 14 December 2012, Volume 741, Part No.85, Col W485-6, in particular the answer: "A condensed version of the wider security context course is also delivered in Khartoum, as is a Defence Academy-delivered course focused on strategic leadership. A small number of places on these courses are offered to students from military intelligence, national intelligence, the security forces and the Ministry of Foreign Affairs as part of a cross-government approach to encouraging improved governance and accountability within the Sudanese security sector" – available at: <http://www.publications.parliament.uk/pa/ld201213/ldhansrd/text/121214w0001.htm>.

⁷⁹ Above, n.1, p. 262.

persuading States to ratify,⁸⁰ and particularly in the light of the forthcoming election which yet again is giving so much cause for concern.

RECOMMENDATIONS

The Committee should call for the FCO to:

- urgently address the human rights concerns such as the Detainee Inquiry, Diplomatic Assurances and Guantanamo Bay still outstanding from its counter-terrorism policies;
- ensure that its *Preventing Sexual Violence Initiative* is taken forward on a firm and clear basis, adequately resourced, and involves close co-operation with other key States and international institutions;
- review its approach to the issue of British nationals and residents tortured or mistreated abroad with a view to making both torture prevention and reparation more effective in practice through more active consular assistance and the principled use of diplomatic protection;
- work more closely with other departments and institutions to make the “no-safe haven” policy a reality;
- consistently take a strong stance and raise concerns regarding alleged torture, and develop a multi-faceted strategy to address torture, particularly in States where the practices are entrenched.

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⁸⁰ Above, n.7.