REDRESS

Seeking Reparation for Torture Survivors

Torture (Damages) Bill 2007-08

A Private Member's Bill

to Provide a Remedy for Torture Survivors in the United Kingdom

Compilation of Evidence Received following the

Call for Evidence launched by Lord Archer of Sandwell QC

Compiled by The Redress Trust (REDRESS)

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1. Introduction

If enacted, the Torture (Damages) Bill would enable torture survivors in the UK to bring a civil claim for compensation in the courts of England and Wales against the foreign officials and States responsible for their torture, where no adequate or effective remedy exists in the courts of the state where they were tortured. To date, state immunity rules have prevented torture survivors from accessing the courts of England and Wales, leaving them without a remedy.

Since torture is most often committed by state officials, the Bill seeks to address this problem by proposing a new exception to the State Immunity Act 1978. Under the State Immunity Act, as a general rule, foreign states are immune from the jurisdiction of the English courts. The Bill seeks to remove this state immunity rule where torture is alleged. The State Immunity Act already has exceptions, for example, for breaches of commercial contracts, and for torts committed in the UK. Under the Bill, a person who commits torture, wherever in the world, would be liable to a civil claim for damages.

The Torture (Damages) Bill was introduced in the House of Lords on 5 February 2008 by Lord Archer of Sandwell QC. It successfully passed its Second Reading in the House of Lords on 16 May 2008, and was committed to a Committee of the Whole House.

Twelve peers spoke at the Second Reading and REDRESS was greatly encouraged by the wide and diverse support expressed for the Bill. It also appreciated the willingness indicated by the Government at the debate to discuss its concerns, paving the way for constructive dialogue on the way forward. At the time of writing, a Committee hearing has not been scheduled. The Bill must successfully complete all required stages in both Houses by the end of this parliamentary session; otherwise it will lapse and must be re-introduced in the next session.

There was a public call for evidence by Lord Archer of Sandwell QC on 26 June 2007 (coinciding with the annual United Nations International Day in Support of Victims of Torture).

This Report collects together the evidence and submissions, which were received in support of the Torture (Damages) Bill. The testimony of torture survivors proved vital to this process, with many being cited at the Second Reading. The submissions of medical, refugee and other non-governmental organisations also informed the debate.

We are extremely grateful to all those who contributed to this Report, in particular Sulaiman Al-Adsani, Jafaar Alhasabi, Keith Carmichael, James Cottle, Fasil Eshetu Demsash, Abdelbagi A. Elrayah, Lady Fox CMG QC, Patson Muzuwa, Les Walker, Amnesty International, Fair Trials International, JUSTICE, Liberty, the Medical Foundation for the Care of Victims of Torture, the Parker Institute, Prisoners Abroad, the Refugee Council, the Refugee Therapy Centre, and the Traumatic Stress Clinic.

2. Statements of Torture Survivors

2.1. Statement of Sulaiman Al-Adsani

Interviewed 6 December 2007.

I was born in the United Kingdom and have dual Kuwaiti and British nationality. In 1991 I was tortured by the Kuwaiti authorities. I was beaten, nearly forcibly drowned in a swimming pool containing corpses, and placed in a small room containing a mattress that was set on fire, as a result of which I was seriously burned. I returned to the UK shortly afterwards and I have remained in this country since then. When I was hospitalised in the UK I received threatening phone calls as a result of the media attention on my case. When I decided to pursue a claim for compensation against Kuwait, I received further death threats. I have been told that I will be killed if I ever return to Kuwait.

I sought compensation for the torture I suffered in Kuwait. I wanted to succeed in my case for both moral and financial reasons; morally in the sense that I wanted an acknowledgement that the Government of Kuwait was in the wrong and thus I would obtain a small victory over them. Financially, a victory would have been important as my future was completely destroyed by the torture I endured. Before I was tortured I was a wealthy man in Kuwait. I worked as a pilot and had a house, a car and a yacht. The Kuwaiti government took all my assets and tried to destroy me financially after torturing me. I have not worked since my treatment at the hands of the Kuwaiti officials and my life has been completely destroyed.

Great Britain takes a backward view on the subject of torture, when in fact it should be the first to set standards on the issue. I am very disappointed with the UK government. I believed so much in justice here and had very high hopes of obtaining compensation. Then I discovered the existence of concepts such as immunity which is used to protect those who torture. Before and after the decision in the ECHR, my lawyer tried to challenge the UK Government to intervene and speak to the Kuwaitis on my behalf but the UK Government did nothing. When the judgment in Strasbourg was made[*] I felt completely lost. It was the end of the road for me and it was a terrible feeling.

I do not understand why the United Kingdom does not have the guts to stand up to torture. There should be a law that if you torture, you will be held to account. The Torture Bill should become law. The UK Government should have changed the law years ago to allow claims for torture; there should never have been any need for a member to attempt to introduce this law to the UK. The UK is guilty of old thinking, old mentalities.

The Lords should have the guts to change the law. The criminal law has been changed to allow prosecutions for torture, now the civil law should be changed. If this is not done then there will be a continuation of torture throughout the world since torturers will continue to have the opportunity to hide behind the veil of immunity. We live in modern times – we know what is going on in other parts of the world and we know that many States are engaging in torture. The UK should not have financial relations with these countries which come at the expense of human flesh. The UK

[*] Holding by majority that there was no violation of my right to a court hearing in the determination of my claim against Kuwait, in violation of Article 6.

should stand up and tell these countries that torture is not acceptable and that they will be held to account. The UK should be taking the lead in this issue and it should be for other European countries to follow.

2.2. Statement of Jafaar Al Hasabi

Jafaar Al Hasabi (Bahraini, tortured in Bahrain).

“My concern is that the torturers are getting away from justice. The time which it takes to get any form of justice is so long, and there is a lot of procrastination. What is happening [things like the Torture (Damages) Bill] are good insofar as they concern guilty people, but the punishment is so soft that the guilty don't care about it, and because it takes so long as well. I think it would bring justice to the victim to see their attackers punished. If these matters were treated more seriously it would help to prevent other torture taking place.”

Jafaar’s Story

“In 1994 I was a computer technician with my own business. I was politically active against the Sunni government, printing small booklets and distributing them to people through the mosque. This was illegal in Bahrain.

“They called me in to the Al-Q ala’a to be interrogated. Oh my god you can’t believe it. For two hours one guard is slapping, one is kicking, one is punching me. I fall down twice but I am picked up. They say if you don’t confess we will put you in a water tank with a stone on your leg and nobody would know. I knew that anyone who went into that place might never come out again.

“They released me after three days and put a spy on me. We carried on publishing. After three months they knew who was in our group and I knew I had to leave. I got some clothes and my uncle took me to the airport. Thank god they did not put my name on the border. They took more than seven of our group, put them in jail and tortured them very badly.

“Ten years later when I see a police man I still shake. The torturers are still there. The king has given them immunity. Nobody can touch them.

“I will continue to be politically active until my people are free from this dictatorial regime. Here we are free. We can do what we want and practice what we want – this is human. If you are repressed you are not human. You work, maybe you have a family but you don’t feel human. Because we are here and we can do whatever we want, we must give light to the people who live in the dark.”

Taken from: REDRESS, Torture: Stories of Survival’ (June 2005)

2.3. Statement of Keith Carmichael

Statement 4 February 2008.

I am Keith Carmichael, aged 74 and British. I was educated at Westminster School and at the Universities of Oxford and London. Called up for National Service I joined the Scots Guards and was commissioned as a Second Lieutenant. Later I became a Territorial Army Officer at the HQ of the Independent Parachute Brigade Group. I am a former businessman and survivor of torture who became instrumental in helping other survivors obtain justice and reparation.

From 2 November 1981 until 7 March 1984 I was imprisoned unlawfully, without charge or a single court hearing in the Kingdom of Saudi Arabia. After 857 days of arbitrary detention the late King Fahd ordered my release. During my imprisonment I was kept in inhuman prison conditions and subjected to brutal torture by the Saudi secret and civil police. I suffered grave bodily injuries and psychiatric trauma. Seven weeks before I was released, in a conference with the British Ambassador Prince Salman, Governor of Riyadh acknowledged that my imprisonment had been a mistake. The British Ambassador described his conversation with Prince Salman in a memorandum to me: "*I pointed out that you had not been sentenced-- indeed had not even been charged though you had been kept in prison for over two years and in a bad s/ate of health. Prince Salman said that that was a mistake*".

On my return to the UK on 13 March 1984 it was confirmed that I had suffered severe injuries including a compressed fracture of the spine and permanent damage to my knees and feet which would drastically reduce my mobility. I was given intensive physiotherapy and hydrotherapy treatment for the pain, and weakness in my back and lower limbs. In 1990 my Consultant in Spinal Injuries considered me to be severely and permanently disabled and informed me that my condition would only deteriorate over time. He said that I would continue to need physiotherapy just to keep my back mobile. In addition the EMG studies showed denervation of the muscles of the lower limbs.

Over the next years my general physical condition worsened. I couldn't afford the Consultant's prescribed physiotherapy programme. The National Health Service would not provide the treatment which my doctors prescribed. I was limited to what exercises had been recommended to me. I went through phases of my left leg collapsing. I suffered from acute pain and bouts of arthritis. Worse still I had blackouts. I continue to be frequently struck down and paralysed by pain and arthritis. I regularly see my Medical General Practitioner. I am now medically classified as disabled.

I also suffer from an acute form of Post Traumatic Stress Disorder (PTSD). This is manifested by regular nightmares, black melancholia, hopeless and suicidal feelings. I have a fear of small spaces and crowds. The Psychiatrist said that the effects of my imprisonment and torture will haunt me for the rest of my life. I continue to this day to suffer from most symptoms of PTSD.

Since 1984 I have resolutely pursued a claim to compensate for the permanent injuries which I suffered at the hands of my Saudi gaolers. These include seeking a remedy in the courts of Saudi Arabia, suing the aiders and abettors of torture and false imprisonment under the United States Alien Tort Statute, opening negotiations with the Saudi Arabian Ambassador in Washington DC, petitioning the late King Fahd and seeking espousal of my claim by the Foreign and Commonwealth Office (FCO). All the avenues I have pursued to seek justice and to realise my right to reparation have been unsuccessful.

I feel let down by the British Government and the FCO. The FCO repeatedly demanded that I return to Saudi Arabia to pursue a local remedy before they would assist me. They did this knowing that I would have been at a real risk of further torture or death if I had set foot in the country. I spoke to lawyers in Saudi Arabia about bringing a claim against those responsible for my torture but it became clear that this would be a futile exercise. Even after this the FCO failed to take all reasonable steps to espouse my claim and provide me with a remedy for torture.

Over 23 years I have not received one penny for the bodily injuries, let alone for the psychiatric trauma, to which I am entitled under international law. I also have a right to the means for as full rehabilitation as possible. I have only received from the NHS the minimal treatment for the permanent injuries to my health. The legal costs of seeking redress, apart from the enormous medical expenses which I have had to bear, have exhausted my finite financial resources. It is the UK Government's moral and legal responsibility to provide British and foreign nationals who have been tortured with the means for as full rehabilitation as possible.

The process of obtaining justice and reparation is challenging and draining of energy and life. For many of us, and I am one survivor of torture who has met many others, the goal is for States to admit that we have been tortured. Importantly, we would like to receive an apology. We would like to see the torturers punished. We need to prove that they did not succeed in destroying us as human beings. We need financial compensation for medical treatment, to enable us to reclaim our lives and again become contributing members of society.

Hiding behind the barrier of *State Immunity*, the States have never had to dispute the substantive evidence of alleged heinous crimes. Nor have they ever had to admit to a blatant breach of international treaties outlawing torture. *State Immunity* incites travesties of justice. Worse still, foreign states have 'paid millions' to their lawyers to fight their cause on the technicality, *State Immunity* to avoid a full trial. Instead they could have used these substantial funds to recompense the victims, their families and contribute to necessary medical expenses.

Most States are failing in the international obligations by not adopting legislation to bring domestic law into conformity with international law. This is exacerbated by the failure to provide an express right to claim compensation for survivors of torture who suffered abroad. The UK is no exception, but now has a timely opportunity to comply with international treaties. The obstacle of *State Immunity* needs to be knocked down to enable torture survivors to bring civil claims against the torturers, foreign states or officials. The purpose of the *Torture (Damages) Bill* is to ensure that torture survivors in the UK have access to the courts to enforce their rights and obtain justice.

Another reason to be borne in mind is that law bypasses humanity, until the Bill is enacted. The 'healing' process of the victim of torture needs to be taken into consideration. Successful attempts at pursuing a civil claim for redress would play a vital part in the healing and re-empowerment of torture survivors. Success leaves a feeling that some sort of justice has been achieved, that the truth of the heinous crimes of torture have been revealed and also witnessed in court, the fact that torturers have been punished.

The *Torture (Damages) Bill* will deter States and their officials from torturing, particularly those States which have signed the *UN Convention against Torture*, but evidently as no more than a cynical gesture and an opportunistic pretence.

Moreover, the enactment of the Bill will send a signal of deterrence to 'princes' and 'princesses' of Royal Families and Diplomats visiting or residing in the UK who deliberately torture and brutalise their staff and servants. These hapless victims of torture will have access to justice and be able to obtain redress.

2.4. Statement of James Cottle

Statement April 2008.

Before I was tortured in Saudi Arabia my health was fine, I led an active life. I was always used to manual work as well as organising a company. I was outgoing and used to play guitar and often sang in a band both in UK and Saudi as a recreation. I enjoyed the company of my friends and was always active in any sport.

I suffered severe physical injuries whilst in prison. My front bottom teeth were knocked out and some back teeth as well due to the heavy leather sandal they used to constantly hit me around the head with. After each interrogation I spat them out and my mouth was always full of blood. The soles of my feet were lumpy and green after my first beating yet the torturers still night after night beat them over the bruising. The pain was horrendous. They would bleed and then the pain would last until the next night of beatings. The guards knew they were already sore.

On my release in 2003 I had lost half my body weight and my immune system was low. I find it hard walking as my feet got painful and still do, especially in the cold weather. My neck is always stiff now and painful. I think this is due to the constant hitting around the head with the large leather sandal.

After I was released I also suffered badly with Post Traumatic Stress Disorder. I could not remember things and as described by my family, I was 'in another world'. I would sit all day and look withdrawn from life. I suffered nightmares and still do. I was full of hate and wanted revenge so bad. My head seemed to be spinning constantly and I felt as if it was going to explode. Mary, my ex-wife, made me seek medical attention as I had refused to see anyone. I was going crazy sat in the house day in, day out. I still take medication for severe depression and see a counsellor at the Prestwich hospital. I am unable to talk to strangers as I find it overwhelming.

These days I help a friend out at a concrete yard as I have known him 30 years. It is a kind of rehabilitation, and is the only one I have as the Government offered no help except for sending me to the Parker Institute in Copenhagen to confirm that I had been tortured. I am only now able to go out to socialise once every fortnight. Things are not the same any more.

I have no money - I lost everything, I was owed wages from Riyadh, the sum of £10,000. I never received this as I was locked up. In fact it was when I was tricked into meeting my boss in Bahrain for money owing to me that I was apprehended by the Saudis and kidnapped from Bahrain airport.

I have been let down by the British Government who should have banished the red tape in circumstances where torture survivors seek reparation, and should have dragged the Saudi Ambassador to number 10 and made demands that we be compensated otherwise cut off diplomatic ties. I would like the law to be changed to protect Britons abroad as this could easily happen again. After all who is going to do anything about it? Human rights should come before arms and trade.

If I were to get a judgment in my favour, it would enable me to put a closure on this for myself and my family. As it stands I cannot even afford to get my teeth fixed that were so painfully smashed out by the Saudi torturers. It would also give me

satisfaction that some day the torture may stop and those poor souls at the hands of those barbarians may have a voice.

It would be a victory if the Torture (Damages) Bill goes through and these countries that use torture as the norm were brought to justice. I would then feel that we have done something constructive to change peoples' lives and to save lives. Other countries would follow and human rights would be more of an issue for Governments as opposed to being swept under the carpet.

If we condemn those regimes for torture and human degradation, others will think twice before using torture as a method of obtaining confessions in order to clear the crime rate. Countries should not be allowed to feel as though they can get away with torture, but this is the message sent by the House of Lords [in the judgment Jones et al. v Kingdom of Saudi Arabia, [2006] UKHL 26].

2.5. Statement of Fasil Eshetu Demsash

My Personal Experience of Torture

Statement of Fasil Eshetu Demsash (July 2008).

Torture is a deliberate and ruthless act aimed at overriding an individual's personality, identity and humanness. Torturers treat people as non-human objects in order to gain total supremacy and control over them. Torture is a conscious decision of one individual to damage another person with the most unbearable punishment that human nature can endure.

I became a victim of torture in Ethiopia while I was a third year student at Addis Ababa University in 2001. It destroyed all my life dreams forever. I was a completely different and happy person before this crime was committed against me by the Ethiopian authorities, who remain in power today. Being a third year student meant for me a time of hope for graduation and for future success in employment; being able to help my poor parents and to contribute to society. It was also a time for planning future happiness with a soul mate and for family life.

Most university students in Ethiopia have to make major sacrifices to go to university. This is because further education for mature students is rare and has become very much politicised by the government. When I decided to join the Faculty of Education in October 1998 to study educational administration, I had to abandon my teaching job in a remote high school, where I had been working for more than six years. I also had to sell all my personal belongings to help me finance my studies, and to leave my poor parents (especially my grandmom) without the financial support I had been giving them when I was working.

Despite these difficulties and challenges, completing my study program had always had a big place in my mind. But, on 11 April 2001, all of my hopes and life dreams were shattered when I was detained because of my involvement in student-led demonstrations.

As a senior member of the student union and spokesperson for the demonstrating students, I wrote and presented a statement of our demands to the authorities in the

Addis Ababa University, the Ministry of Education and the Office of the Prime Minister. However, on the first day of our demonstration, police broke into the university compound and shot at students demonstrating in front of the university administration office. They later detained some students in a cell near to the university compound. I denounced the brutal action of police in storming the university compound and killing students – they even killed those students who had been running to their dormitories to save their lives. I denounced these actions to the international media (BBC, Reuters and Voice of America). This made me a target for the authorities. I was kidnapped, arrested, beaten and tortured by the Ethiopian police.

While I was in custody, I was beaten with sticks, immersed in water so that I couldn't breathe, and tortured with electric shocks. I was also interrogated by government officials who wanted to force me to name opposition political parties who supported the student movement. I was asked to denounce the student movement I was involved with and to call on university students to stop the demonstrations and resume classes. I told them that I had no political motives and that the demonstration was all about students' academic rights and freedom of expression. I also explained that I didn't have the power to call off the demonstrations without the consent of the student community. Even though I expressed my true feelings and thoughts to these government officials, my suffering continued.

After 9 days in custody, they finally forced me to make a statement denouncing the student movement and expressing my regret at having discussed and revealed government actions in the international media. I was released under strict conditions - to bring university students back to the university compound and end their demands. I escaped from this horrible life experience and managed to flee, leaving my country of birth and the family I love, only to face another unbearable version of human life, which was refugee life in Kenya. In Kenya, I used to sleep rough in the streets in front of the UNHCR main office in Nairobi. While I was in a refugee centre, I received some counselling sessions, which provided me with some effective techniques to try to overcome the influence of the hardship and torture I had gone through in Ethiopia.

After several months of hardship, I was lucky enough to be sponsored by the Canadian High Commissioner in Nairobi and resettled in Canada in 2002. This great humanitarian help gave me back the life and dreams I had lost in Ethiopia and allowed me to focus on my new life ahead.

Bearing all these unbearable life experiences and pains in my mind, I started going back to university again in 2003. I completed my undergraduate degree at the University of Manitoba in 2005 and my graduate degree in 2007. However, I was still seriously suffering with emotional, psychological and material problems throughout my study period as a result of the torture and refugee life I had gone through in Africa. I experienced a lack of concentration, flashbacks, trauma, loneliness, and a lack of emotional and psychological support. Unlike some other torture survivors, at least I was lucky that I didn't also have physical health problems.

While I was studying at the University of Manitoba, I found it helpful to have discussions with other people from countries such as Rwanda and DRC who had similar life experiences. I felt empathy for other people who had suffered even worse things than I, especially those who have seen family members killed. I refused to be a victim. Instead, I tried to develop several strategies to overcome the wide and vast impact of torture on my life. Sharing my story is one of these strategies. I shared my torture experience with various student groups, the University of Manitoba Faculty of Education (as part of its summer session on education and democracy) and with others such as the Canadian Women's Association Conference and Social Science and Humanities Conferences. I even did a television interview on Global TV. Moreover, I was also involved in a research project on the challenges faced by, and the transformation of, people from war-affected societies who come to Canada. I received support and sympathy from many people about my experience. I also read a lot of relevant materials – developing an intellectual understanding of torture and its effects is another strategy for dealing with it.

In 2007, I moved to the United Kingdom, where I now live with my wife and daughter. Since I have moved to the UK, I carry on with the strategies I used in Canada to minimise the effect of torture on my day-to-day life.

In general, I choose to focus on what survivors can contribute to the society they live in and the international community at large, rather than dwelling on the worst experiences I have been through. I strongly believe that this mindset is helpful for survivors in the long run. Even though I feel I have achieved a large degree of healing in my own life, I still see the need for justice for torture survivors. I am delighted to support this campaign by REDRESS, not only on my own behalf but also for those voiceless people who suffer under dictatorial governments all over the world.

It is not because we want monetary compensation, but because we want torture to stop. Financial compensation cannot cure the pain and suffering that we have undergone: the damage has already been done. But, I am supporting the Torture (Damages) Bill as I hope that it will address the various pains and sufferings of other innocent people who have been tortured. In fact, for many victims of torture, getting justice for what has happened to them is very important. It recognises that the treatment they suffered is wrong. We need all the tools we can get in this fight against torture, including education, the sharing of values, and access to justice.

2.6. Statement of Abdelbagi A. Elrayah

Statement May 2008.

On the 8 December 1989, security men armed with Kalashnikovs charged into my home and arrested me at 2:30am whilst I was asleep. I was blindfolded and forced into the back of a boxcar with a fellow detainee. We were transported to a five-floor building in central Khartoum.

Ten days later, I was taken to another cell in a secret detention centre where I was forced to stand for three hours a day in a barrel of ice after the Isha Prayer. I was subjected to this severe kind of torture from the 1st to the 3rd January 1990. At that time there was a very cold winter. Other methods of torture used were both physical, such as being beaten by the security men, denied access to medication and denied the right to sleep. Also used were psychological methods, where verbal abuse was used to degrade the detainees.

At the time of my arrest, I was a successful lawyer and had recently got married. I was a member of the Sudan Bar Association, which was banned shortly after the military coup on 30 June 1989 since their objectives were to defend democracy and justice for the Sudanese people.

As a result of torture, I am currently suffering from Buerger's Disease and severe rest pain in my right leg, which has made daily tasks difficult and has caused me to uncompromisingly adjust my lifestyle. In 1991, I had five major operations. The last operation had resulted in the amputation of my left leg below the knee.

If I managed to bring those responsible for my torture to justice, I would feel content and my confidence in the justice system would be restored. Furthermore, if I were rewarded compensation for the loss of my health and potential financial earnings, it would create a more secure future for me as well as my family.

I strongly believe that the Torture (Damages) Bill can and will help survivors of torture. The Bill may also prevent further acts of torture, acting as a disincentive for governments recognised for committing human rights abuses to torture any citizen because of their beliefs and values.

2.7. Statement of Patson Muzuwa

Patson Muzuwa (Zimbabwean, tortured in Zimbabwe).

"If this Torture (Damages) Bill becomes law it will be one of the best developments because it will make people accountable, and this has happened to very few so far. It is the way forward to protect people in future from abuse in their own countries. Some aspects of international law [like State Immunity for torture States] are out of date, and unfair to victims. The law needs to change to bring it into shape for the reality facing torture victims, including refugees, who have a right to justice after they have been forced to flee from their own nations."

Patson's Story

"I left Zimbabwe in November 2001. I had been arrested 9 times by the police on special instructions from the government to stop me campaigning against them. I was reporting to the police for a year. I was not even allowed even to go to a funeral with out telling members of the intelligence. Whatever I was doing was monitored by this regime.

"I was tortured three times. I was electrified, put in a drum of cold water and beaten under the foot uncountable times. On the last incident I was taken from the house at 2am by the militias. They beat me because I didn't want to get into their truck. A British journalist booked me a ticket to come here when I had a broken arm and stitches in the head and had been beaten with rubber baton sticks.

"When I arrived in the UK I phoned up and said I'm very sorry I'm no longer coming to Zimbabwe. They were quite shocked. They said we'll get you from the UK. I said that's fine this is my address and I'll be protesting outside the Zimbabwe Embassy on Saturday. They saw me on CNN and ABC talking about my experiences.

"I always demonstrate wherever possible against what the government is doing. This is my life in the UK – to put Zimbabwe in the spotlight. I am deeply embarrassed when I meet people who think asylum seekers like me are just people who need some money. I'm not here to study, I'm not here to make a fortune, I'm not in this country to steal any benefits from anyone, I pay my own taxes. I want to be seen as a refugee and not as a thief."

Taken from: REDRESS, Torture: Stories of Survival' (June 2005)

2.8. Statement of Les Walker

Statement January 2008.

Before I was tortured in Saudi Arabia, I was in a good state of health. This was despite having suffered a heart attack in 1995, which I had recovered from. I took care of my health, closely monitoring my blood pressure and controlling it with medication. I kept myself reasonably fit by walking my dog twice daily for an hour and walking around 3 to 4 kilometers daily related to my work.

I had a very good job as project manager in Saudi Arabia, responsible for the running and maintenance of a large housing and hotels complex for a Saudi company who leased the complete complex to BAE Systems for the housing of their European staff. I had a lovely rented house on a small compound in the middle of Riyadh complete with swimming pool, sauna, and large gardens, with my wife Aida: we were looking forward to a long and happy period of employment and to remain in Riyadh until retirement.

As the result of being tortured, my blood pressure became very unstable resulting in numerous periods of hospitalisation. I had dental problems, broken teeth, and problems with my feet due to the beatings. Mentally I was very unstable and used to be very morbid especially during the period of solitary confinement and the period of total isolation from mental stimulation (first four months, no books nor anything to occupy the mind) even considering for a while suicide. I was diagnosed with type 2 diabetes on my return to UK. I received counseling for a period of 1 year upon my release and have monthly check-ups with my GP for my heart and diabetes.

Since I have returned to the UK I find it difficult to mix with people and hard to make friends. I like to spend most of my time on my own, my ability to concentrate on one thing for more than a few minutes is bad. I am now dependant on State benefits for my daily needs and live in a small 1-bed council flat. I don't have the mental ability to learn new skills due to this lack of concentration, and find that I panic in situations where I am surrounded by people. I do still have flash backs and nightmares.

I have received little support from the British Government: They funded me to travel to Copenhagen to attend the Parker Institute where it was established that the injuries to my feet are probably caused by beating the soles of the feet as found in torture victims. Other than receipt of sickness benefit £119 and housing benefit I have not had any other financial support from the government. In fact the British Government even used their own Office of constitutional affairs to fight against us in the House Lords in our case against those who were responsible for our torture; and I believed at the time of our defeat in the House of Lords that the decision was politically and financially driven and did say this to the media at the time. Nothing has changed my mind. However I have strengthened my views on this when hearing the former P.M. say that the enquiry into the BAE slush fund would have upset the Saudis, so he stopped the enquiry in the interests of the nation. To the British Government MONEY, ARMS, PLANES & OIL mean more than the rights and lives of this country's citizens.

Any financial benefits which may result from a successful claim against my torturers would be very nice and would assist in living a life I was striving to achieve prior to my arrest. More importantly, and the main reason for pursuing my claim, was to STOP TORTURE and to bring to justice those responsible for the act along with

others who did not try to stop it, or inform world bodies that torture was being undertaken within their country. If we had obtained a judgment against the torturers then I believe this would have helped to prevent torture occurring in the future. However, we were not given the opportunity to make this claim.

A law in any country that outlaws torture in another country and allows the tortured person a way of seeking redress can only be good for mankind. I think laws that allow the torture of persons by a state or its officers to go unpunished are wrong, and immunity from prosecution should not be allowed. Torture is evil and should be outlawed worldwide.

If the torturers and their cohorts in my case could be brought to justice at the European Court of Human Rights then I will be a happy man, as I do not want to see anybody have to suffer the cruelty of these evil people.

3. Submissions by Medical and Refugee Organisations

3.1. Medical Foundation for the Care of Victims of Torture

MEDICAL FOUNDATION
for the care of victims of torture

Medical Foundation Statement in Support of the Torture Damages Bill

"Justice is telling the world. Everyone should know.
I want to look at them [perpetrators]
in the eye and say what you did was wrong,
find your conscience.
The shame is not mine, it is yours."
[Medical Foundation client]

The Medical Foundation for the Care of Victims of Torture (the Medical Foundation) is the world's largest torture treatment centre, and the only human rights organisation in the UK dedicated solely to the treatment and rehabilitation of survivors of torture and organised violence.

The Medical Foundation offers medical consultation, examination and forensic documentation of injuries, psychological treatment and support, and practical assistance to torture survivors. Its clinical services include psychiatry, clinical psychology, counselling, individual and group psychotherapy, physiotherapy and specialist child and family therapies. Since its inception in 1985, some 45,000 people have been referred to the Medical Foundation for help.

In addition to its clinical work, the Medical Foundation seeks to raise awareness of torture. Its substantial archive of reports documents the systematic use of torture and the consequences for those who survive.

Accountability for torture is a key component in torture prevention, and it is therefore essential that survivors of torture, or the families of those who were tortured and have now died, are able to obtain justice in respect of the abuses they or their loved ones have suffered.

The effects of torture

Torture impacts on the individual and beyond, to their family, community and society.

At an individual level, psychological consequences of torture include a loss of bodily or psychosocial control, typically leading to a profound sense of helplessness and powerlessness, a loss of trust, isolation (including complete withdrawal from or diminished communications, which in turn impacts on the ability to form or maintain personal relationships – including within marriage, with children and within the community more widely), grief at the loss not only of others but also of the self, a sense of guilt, shame or humiliation, anxiety, depression (which can include suicidal leanings), intrusive phenomena such as hearing voices, flashbacks and nightmares, difficulties in recollection, emotional numbness and avoidance of any place or situation which might trigger memories of their torture.

At a physical level, consequences of torture can include injuries, illness, disability, chronic pain and the contraction of life-threatening diseases as a result of torture, such as HIV/AIDS.

Torture and its clinical consequences can lead to an inability to function in everyday life, including the inability of a survivor to work and meet their own or their family's economic needs, to participate in family life or social networks, to fulfil daily roles and activities such as cooking for themselves, or to undertake roles as parents in looking after children. This loss of function can therefore affect livelihood, self-esteem and the individual's relationships. The consequent isolation this engenders can by exacerbated by rejection in some cases by family, friends and community as a result of disclosure of abuse, particularly in the case of sexual torture.

Finally, torture attacks one's core identity and integrity and produces a profound loss of meaning in life. As one of our clients put it:

> "Who am I? What am I? Not a man, not a husband, not an animal, but not human – I am zero. I am already dead, life has no meaning, what is the point of living".

In addition to the personal impact of torture, family members may experience harassment, intimidation and deep distress as a result of the torture, including unresolved grief in cases where the victim's body is never found. Families can also experience strain in caring for the victim or their dependants.

The potential impact of torture on adults and minors can be long-term, and for some, in addition to past suffering and damage, the losses of future potential are permanent due, for example, to disability, illness or severe psychological distress or inability to form relationships or inability to conceive as a result of torture. In the case of a child, healthy emotional development can be severely affected by torture, sometimes leading to enduring psychological difficulties in adulthood.

The various consequences of torture require recourse to a broad array of healthcare services, including psychiatry, clinical psychology, psychotherapy, counselling, individual, family and group work, physiotherapy and other physical therapies.

The benefits of justice

Many clients of the Medical Foundation fled their countries after experiencing torture precisely because of their attempts to expose the injustices perpetrated by oppressive regimes and to hold them to account. For them, any avenues to seek reparation could provide recourse to justice they were denied. By contrast, denial of reparation can be experienced as a double injustice.

Psychologically, justice and reparation can play a significant role in the recovery process of torture survivors. The potential benefits of justice can be threefold:

(i) The prospect of redress – For many torture survivors it is essential to know that they have a choice - the possibility to seek justice and reparation. The availability of accessible mechanisms itself can be experienced as acknowledgment and commitment by the State to uphold the right to reparation.

(ii) The process of seeking redress *per se* can be therapeutic. The process can afford the victim control in initiating the complaint, taking responsibility in directing the strategy of the procedure and seeing the perpetrator as a defendant having to answer for their actions.

(iii) Obtaining justice – holding perpetrators accountable can enable not only access to other reparation measures, but also challenges impunity. Compensation can provide victims of torture public acknowledgment of their survival, facilitating the re-establishment of their dignity, self-esteem, trust in others and belief in the world as just. For some, money can also alleviate poverty and help those suffering hardship, disability and impaired functioning as a result of the violation.

A public and official recognition of harm done and the condemnation of perpetrators contribute to a sense that events are unmasked, the truth is told and a legacy of the past is acknowledged and remembered. This is particularly important to survivors who experience torture as secretive, their pain and suffering as invisible or hidden – something no one can bear to listen to, no one wants to believe and something the world turns a blind eye to.

The value of justice is summed up by one of our clients:

> "It would mean that they did not win, they did not destroy me, they will be the ones who have to answer – so the world will know what they did – we are human beings, not ants that can be crushed like we are nothing. . ."

Reparation and the law

International law indicates that States must provide justice, reparation and rehabilitation in respect of acts of torture for which it is responsible. Despite this, access to justice can be problematic or illusory. The Medical Foundation's clients are very often unable to seek redress in their own countries for a number of reasons. In many cases, those responsible for investigating allegations of torture are also the abusers, with the prospect not only that the complaint will not be properly investigated, but also that the individual will experience further abuse as a result of making the complaint.

In many cases the country's judiciary does not enjoy independence from the Executive or is subject to interference or abuse from law enforcement or security personnel. In addition, the country's legal system may lack the appropriate remedies and mechanisms to ensure the proper functioning of an action, or is otherwise unable to guarantee the safety of those bringing the action. Physicians operating in detention facilities and charged with recording injuries may not be able to act freely and independently, with the result that physical evidence of torture will not be forthcoming. In many other cases still, torture survivors have fled their country in order to protect their own lives, and so are simply not in a position to make a complaint to the appropriate authorities even where such a complaint would be properly investigated.

In the words of one of our clients:

> "You don't know what it is like in my country – justice? [laughs]. This means nothing when there is a corrupt government, no law, police are criminals, there is nowhere safe – who do you go to? You have to just run."

Access to justice through regional and international judicial bodies can also be difficult for many survivors of torture.

The remit of the International Criminal Court in respect of torture is limited to conflict-type scenarios, encompassing war crimes, where a grave breach of the Geneva Conventions must be shown to have taken place, or a crime against humanity, involving a "widespread or systematic attack directed against any civilian population". As a result, many Medical Foundation clients who have suffered torture in detention at the hands of a repressive regime will never have recourse to this or similar criminal tribunals. Even where a torture survivor's claim falls within the Court's remit, prosecutorial investigations tend to be aimed at leaders rather than individual, low-level perpetrators, with the effect that many torturers will remain unaccountable for their actions. Finally, criminal processes are aimed at the success of the prosecution, and although some models facilitate a degree of victim participation, the process itself is not victim-centred. As a result, many torture survivors will be left feeling sidelined or "used" by a process that did not fulfil their hopes or sense of justice.

In addition, although regional human rights Courts are able to hear actions for torture, such bodies are of limited capacity, issue awards of damages which may be nominal only, and permit actions only against signatory States, not specific perpetrators.

Finally, the right of an individual to make a complaint to international human rights treaty bodies such as the UN Committee Against Torture, the Human Rights Committee, the Committee on the Elimination of Discrimination Against Women, the Committee on the Rights of the Child and the Committee on the Elimination of Racial Discrimination is dependent on whether the State itself has agreed that the respective treaty bodies can consider complaints relating to the treatment of an individual. While the treaty bodies are an important element of the international human rights system, even where the State has accepted the right of individual petition, such bodies are unable to impose a tangible or enforceable penalty over and above public sanction.

Concluding comments

Civil action for damages is one aspect of reparative remedies which States can provide to survivors of torture or their families. It is not for everyone. For a vast majority of our clients their health, severe trauma and vulnerability following torture prevent them from considering or seeking-out avenues of complaint. Many are struggling to survive – just to regain a sense of self and dignity. A small minority, at certain stages in their recovery, may be emotionally robust enough to consider seeking redress, but most fear further emotional setbacks by having to relive their memories and going through legal procedures. For those clients who may consider seeking redress, many fear further reprisals and remain intensely preoccupied with the lack of safety for themselves and family members, many of whom remain in the country of origin and have endured harassment, torture and ill-treatment because the client has fled.

For those survivors of torture who want to and are able to pursue an action, however, the enactment of the Torture Damages Bill would be of enormous value in recognising and upholding the inherent dignity and humanity of the individual, whilst at the same time sending out a strong message that torture is wrong and that torturers cannot act with impunity.

It is therefore vital in the fight for accountability that the international framework be supplemented by domestic legislation such as the Torture Damages Bill, and that survivors of torture be able to bring an action for redress in the UK where justice in their country of origin is not accessible or achievable.

For these reasons, the Medical Foundation supports the adoption of the Torture Damages Bill.

May 2008

3.2. Parker Institute (Copenhagen, Denmark)

The need for reparation for torture survivors from a health perspective

The Parker Institut, Frederiksberg Hospital, Denmark

Despite the prohibition of torture contained in the Universal Declaration of Human Rights, the world is far from seeing an end to this practice – a practice that can be stopped only by breaching impunity. Torture is directed against individuals and against their communities. Challenging torture therefore entails not only reparation of the individual but also challenging the perpetrators and bringing them to justice. Health professionals have a role in both of these tasks, an obligation spelt out in international declarations for doctors, psychologists, nurses, and physiotherapists, largely endorsed by their national and/or international professional bodies.

Forms of torture

There are several purposes, which torture can serve, but the broad objective includes the maintenance of social control, the defence of ruling values and the suppression and prosecution of political opponents and criminals. Where torture has become institutionalised or where law enforcement personnel can act with complete impunity, the threshold at which torture is seen as an appropriate tool can decrease.

The methods of torture have been described in several publications and are usually somewhat arbitrarily divided into physical and psychological methods. In most cases, however, the victim is exposed to a combination of forms of torture – physical as well as psychological. The psychological methods often include induced exhaustion and debility through food, water and sleep deprivation, isolation, monopolisation of perception through e.g. movement restriction and high pitch sounds. In many cases, the victims and their families are threatened with death, experience mock executions, or they witness or are forced to participate in the torture and maltreatment of other prisoners or of family members.

Physical torture is in most instances directed towards the musculoskeletal system, aiming at producing soft tissue lesions and pain and usually at leaving no visible or non-specific findings after the acute stage. Random beatings, systematic beating of specific body parts (head, palms, soles, and lumbar region), strapping/binding, and suspension by the extremities, forced positions for extended periods of time, and electrical torture is frequent. Other physical torture methods include asphyxiation, near drowning, stabbing, cutting, burning, and sexual assaults including hetero- and homosexual rape.

National and regional variations in torture practices are reported including geographical differences in the use of specific torture methods. Such knowledge is of value in documenting alleged torture adding to the validity of the statement.

Long-term health related consequences of torture

It is empirically well documented that survivors of torture referred to treatment have a broad range of mental, physical, and social problems.

Psychologically, torture survivors often develop symptoms of major depression, generalised anxiety and traumatic stress. Other frequent mental reactions are cognitive disturbances with impaired memory, loss of concentration, irritability, sleep disturbances, nightmares and a negative sense of self, characterised by shame, feelings of guilt, and loss of self-esteem.

Pain and pain-related disability is the dominant physical symptom in the chronic phase. Studies indicate a high prevalence of persistent pain in survivors of torture, with overall estimates as high as 83%. Chronic pain has a serious impact on the functioning of individuals and is a barrier to overall rehabilitation. It is strongly associated with incapacity for normal employment, poor social participation and progressive functional loss in persons disabled with pain. Poor coping may lead to chronic anxiety, depression and problems interacting with health care, which are often associated with chronic pain conditions. Torture survivors are probably highly vulnerable to the secondary psychological disadvantages of chronic pain due to their prolonged history of violent trauma and stress.

Clinically, the picture is one of regional or widespread muscle pain, joint pain, pain related to the spine and pelvic girdle, and neurological complaints, mainly irradiating pain in the extremities and sensory disturbances. Visceral symptoms (cardiovascular, respiratory, intestinal and urological and genital complaints) and headache also prevail. Only a few systematic studies have addressed the association between specific long-term physical sequela and the use of identified torture methods. Associations between exposure to falanga (beating of the soles) and pain in the lower legs and feet, with impairment of walking; between severe beating of the head and headaches; between suspension in the upper extremities and pain in the shoulder girdle and reduced shoulder function; and between sexual assaults and low back pain/pelvic pain and urological and genital symptoms have been described.

The impact of torture on ‘social health’ is described in terms of impairment of interpersonal interactions and of social participation leading to social isolation and stigmatisation, poverty, family and marital problems, all factors of which may have a negative influence on symptoms and outcome of health care, thereby impeding trauma recovery. Flight in to exile; displacement and settlement in a new country are additional events that aggravate the social and economic consequences of torture.

Knowledge about the health-related consequences of torture arises from studies of torture survivors, mainly in specialised documentation and/or treatment centres. In primary or secondary care, however, many go unrecognised: estimates of up to 41% in the UK and USA. Disclosure of torture is difficult for many reasons, including fear and distrust of anyone in a position of authority, anticipation of adverse judgment, and avoidance of thinking or speaking about it. Identification of torture survivors in the clinical setting therefore often relies on the clinician. The situation, where both the health professional and the torture survivor are silent about the trauma, usually results in lack of understanding and failure to make sense of the patient’s presentation. This leaves the torture survivor isolated and uncertain of the appropriateness of treatment based on partial understanding. Disclosure of the torture history is often felt as a relief for the torture survivor, and as a sign that s/he is likely to be believed and treated with concern.

Assessment and rehabilitation of torture survivors

Clinical assessment of torture survivors can be used to document findings consistent with allegation of torture or to plan treatment and rehabilitation.

In documenting torture, the focus will be on the description of symptoms and signs, which provide evidence to support the account of torture. Medical documentation of alleged exposure to torture is based on the reporting of the degree of consistency between: 1) the torture history, 2) symptoms as described by the victim and 3) possible findings at medical examination. Expert documentation of torture is well established in medical work against torture and international guidelines on assessment of torture survivors for medico-legal purposes are described in the "*Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*" (the Istanbul Protocol), drafted in 1999.

When assessment is for the purpose of treatment or rehabilitation, the aim is to identify targets for intervention within the various domains of health that may produce maximum improvement. There is now a broad agreement that the concept of positive health is more than mere absence of disease or disability and implies completeness and full functioning of mind and body as well as social adjustment. Consequently there are complementary approaches applied by professionals in understanding and addressing the impact of torture on the overall concept of health.

Recognising the multifaceted problems of torture survivors referred for treatment and acknowledging the relation between rehabilitation and prevention have led to a significant broadening of the efforts, skills and methodologies needed for what is now increasingly labelled reparation of torture survivors. So far a multidisciplinary treatment study involving individualised physiotherapy and psychotherapy showed a significant effect on musculoskeletal complaints in torture victims. However, there is a need for further clinical studies in that field.

After all it is obvious that the concept of reparation includes medical and psychosocial rehabilitation of the individual, including rehabilitation as societal and political actor. It also includes public recognition of the criminal atrocity committed – and ideally punishment of the perpetrators. It is a commonly held view among health professionals working with survivors of torture that impunity for perpetrators contributes to social and psychological problems and impedes healing processes.

The right to reparation is part of international legal standards as described in the United Nations Declaration of Human Rights where article 14 of the convention states that "each State party shall ensure redress and adequate compensation, including rehabilitation".

The Parker Institute

The Parker Institute is Frederiksberg Hospital's rheumatological research unit inaugurated in 1999 as a result of financial grants from the OAK Foundation, the Health Insurance Foundation and the Copenhagen Hospital Corporation (H:S). The aim of the Parker Institute is to conduct clinical research on musculoskeletal disorders in order to create an improved platform for their diagnosis, treatment and prevention.

The Parker Institutes mandate does not call for it to provide direct clinical care to torture survivors. However, the institute have long-standing expertise in the assessment of torture survivors and have throughout the years been engaged in research related to: 1) the musculoskeletal consequences of torture and 2) development of validated assessment methods, including diagnostic imaging for documentation purposes. A research area of particular interest has been magnetic resonance imaging (MRI) and ultrasound examination applied in the documentation of falanga torture.

Based on this expertise the Parker Institute has been consulted on documentation of selected cases of alleged torture, e.g. the cases of five British citizens alleging exposure to torture and ill treatment during detention and imprisonment in Saudi Arabia. In all of the cases there was a high degree of consistency between the allegations of psychological and physical abuse and the history of acute and chronic symptoms and disabilities described by these five men. The alleged torture methods were all well known and their after-effects well described consequences. Likewise there was a high degree of consistency between allegations of abuse and the findings at medical examination, which included ultrasound imaging supportive of the allegations of exposure to falanga torture.

The medical examinations thus demonstrated, that all five cases only could be labelled as torture as defined in UN Convention against torture article 1. In spite of this evidence the men have unsuccessfully attempted to sue Saudi Arabian officials responsible for their false accusations and human rights abuses after their homecoming. Further, all of the men have only been offered limited assistance in their country of origin; none has been offered specialised rehabilitation and care or financial compensation.

The Parker Institute supports any initiative aiming at ensuring survivors of torture their right to adequate medical and psychosocial rehabilitation and effective prosecution of perpetrators responsible for torture. Tolerating impunity is legalizing torture and the struggle against impunity should be considered a major priority in the fight for restoring human rights.

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3.3. Refugee Council

refugee council
parliamentary briefing

REFUGEE COUNCIL

Torture Damages Bill

Summary

The Refugee Council is the largest organisation in the United Kingdom working with asylum seekers and refugees. We give people help and support, and work with them to ensure their needs and concerns are addressed by decision-makers.

Many refugees have fled to the UK following persecution including torture. The Refugee Council supports the Torture (Damages) Bill, and believes that the law should be changed to allow torture survivors in the UK to seek justice. This change in the law would allow people, including refugees, who have been tortured to seek redress and help them to rebuild their lives. In time, this provision would help to address the impunity enjoyed by state agents who perpetrate torture. Holding torturers to account would help to prevent torture and address the causes of refugee flight.

Introduction

The Torture (Damages) Bill was introduced to the House of Lords by Lord Peter Archer of Sandwell QC on Tuesday 5th February 2008.[1]

The purpose of the Bill is to enable torture survivors in the UK to have access to the courts to bring a civil claim against those responsible for the torture. This means people will have the right to seek compensation and other redress in the British courts if they become victims of torture abroad and cannot obtain redress in foreign courts. The present law does not allow survivors in the UK a forum to seek justice for the suffering they have endured.

The Bill sets out an exception to the State Immunity Act 1978 in order to enable clearly civil claims for damages for torture or death caused by torture to proceed

[1] http://services.parliament.uk/bills/2007-08/torturedamages.html

without being barred by claims of State immunity made by any foreign State of government.

Refugees' Experience of Torture

This briefing highlights the prevalence of experience of torture among refugees who have settled in the UK and argues that a legal route to seek justice would help people to rebuild their lives, and challenge the impunity of perpetrators of torture.

In our experience of working with torture survivors who have sought asylum, the trauma, shame, distress and physical and psychological scars of torture affect people's lives for many years.

Statistics from the Refugee Council's Therapeutic Casework Unit (TCU) in South London illustrate the experiences of torture survivors from among our clients.

Over an eight month period (between the 1st February 2007 and the 31st August 2007), the TCU saw a total of 153 clients (89 men – 58%- and 63 women)

Of these clients, 74 (48%) disclosed that they had been tortured in detention in the country from which they fled.

Methods of torture reported by clients included:

Electric shocks to genitals
Cigarette burns to the body.
Rape
Anal rape with glass bottles
Being kept in a dark room then having "hot lights" thrust in front of eyes
Forced labour
Being hung upside down
Having cold water poured onto the body
Being kept in solitary confinement

Clients described the impact on their lives of their experiences in their home country. These impacts included;

Aggression / Agitation	9
Physical health issues	12
Physical injuries	32
Disturbed sleep	50
Distress	29
Post-traumatic symptoms (Nightmares, flashbacks)	49
Depressive symptoms (low mood)	32
Psychiatric needs	12
Anxiety	17
Suicidal thoughts	5
Suicide attempts	11
Deliberate self harm	2
Substance Misuse	6
Memory issues	4

Poor concentration	2

The majority of clients were from Sri Lanka, Iran, Iraq, Somalia and Ivory Coast, with Sri Lankan clients being the highest number. Sri Lankan clients were all Tamils and reported the highest rates of torture.[2]

The evidence from this small group of people accessing services at the Refugee Council is consistent with the experiences of Refugee Council offices around the country. Between 5 and 30 per cent of asylum seekers have been tortured.[3] The physical effects of torture include fractures and crushed bones, head injuries which may lead to epilepsy, deafness through ear damage and keloid scars from burns and cuts (Burnett and Peel; 2001). Both women and men suffer sexual violence, in particular rape (Peel: 2004). Violence of this nature triggers feelings of shame and grief, but also brings potential risk of infection with HIV and other sexually transmitted diseases. Torture survivors can also suffer from physical symptoms brought about by psychological stress, including abdominal, neck and back pain, weakness and headaches (BMA; 2001, Burnett and Peel; 2001). They are often unwilling or unable to discuss past traumas due to their magnitude, and many survivors prefer "active forgetting" to re-living these acutely distressing experiences.[4] However, others may seek redress as an important step in rebuilding their lives. People may also wish to pursue justice as a way of tackling impunity and preventing further torture of others.

Conclusion

Refugees are hindered from rebuilding their lives because of the experiences they have suffered which forced them to flee. Those who are granted protection in the UK, and who have sufficient strength to disclose and discuss their experiences, would benefit from these provisions to enable them to seek redress through the courts and move on with their lives. The UK government should support this Bill as an important step towards stamping out torture, in line with our internationally agreed human rights obligations.

FURTHER INFORMATION:

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Other Refugee Council publications are available at www.refugeecouncil.org.uk
Registered charity no. 1014576 Registered company no. 2727514 Registered address: 240-250 Ferndale Road London SW9 8B

[2] During this period, clients were seen from the following countries of origin: Afghanistan, Bosnia, Burma, Chechnya, DRC, Eritrea, Ethiopia, Guinea, Iran, Iraq, Israel, Ivory Coast, Kosovo, Nigeria, People's Republic of China, Russia, Sierra Leone, Somalia, Sri Lanka, Tanzania, Turkey

[3] Burnett, A. Peel, M. (2001). "The health of survivors of torture and organised violence." BMJ, 322, pp.606-609.

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3.4. Refugee Therapy Centre

The Refugee Therapy Centre's Response to the Torture (Damages) Bill [HL]
Call for Evidence, reported by: Aida Alayarian, Clinical Director (June 2008)

Every year war and conflict, together with ethnic, religious and cultural persecution, forces millions of people to flee their homelands. According to the United Nation High Commissioner for Refugees (UNHCR) Statistic 2007 the numbers of refugees are 11.4 million, and there are approximately 11.4 million refugees; there are 26 million persons displaced internally within the borders of their own countries. For those who have tortured, fleeing their homes to a life of uncertainty is not a choice but a matter of survival.

I will give a brief background of the Centre and respond to the questions raised where relevant to our remit (we are not qualified to comment on legal issues). Further details about the Centre can be obtained on our website at www.refugeetherapy.org.uk.

The Refugee Therapy Centre (RTC) was established in 1999 in response to the growing need for a specialist therapeutic service for refugees and asylum-seekers that take into consideration individuals' cultural and linguistic needs. The people we serve have endured debilitating human rights abuses including persecution, torture, imprisonment, sexual assault, multiple losses and bereavements which have resulted in immeasurable psychological stress. The Centre provides a safe space in which people can feel empowered to deal with their psychological difficulties as the consequence of torture, rediscover their abilities and rebuild their confidence to become active members of the society in which they live.

The centre provides psychotherapy, counselling and associated treatments in 21 languages, giving priority to children and young people. We believe giving people the choice to speak and be heard in their own language is important. The Centre is the only torture rehabilitation centre in the UK to be accredited by the International Rehabilitation Council for Torture 'Victims' (IRCT).

In our experience, people who have experienced torture are not a homogeneous group. Providing torture rehabilitation services we work with clients from many countries, including: Afghanistan, Algeria, Angola, the Balkans, Colombia, Congo, Eritrea, Ethiopia, Turkey, Iran, Iraq, Palestine, Sudan, Uganda and Zimbabwe. We provide services to men, women and children of all ages, including children as young as eight years old who have been tortured. Our clients come from many different backgrounds and walks of life. Some were poor in their own countries; others were professionals such as lawyers, teachers, doctors, nurses and many other professions. Some have been to university and may hold several degrees; others have had little or no formal education. The effects of torture are immense in people's life. Some clients' especially children of those who have been tortured are "indirectly" affected. This was the case for Zara, one example of many[1]:

Zara works at the Refugee therapy Centre with people who've endured torture and displacement. She understands her clients because ten years ago she too was bewildered by a new life in Britain. Zara's father's involvement in politics led to his imprisonment and torture in Iran; after his release, the family came to Britain when Zara was 14. Her father died two years later and with this loss she became extremely depressed. She says:

> *I didn't know what it meant to be a refugee. I felt lonely, I didn't speak any English. I was getting bullied at school for being an outsider. It was very hard for all of us to adjust to our new life. My mum was always crying. I was very worried about her and wanted to help her, but I felt helpless*.

Zara came to the Centre for help. She had nightmares about the soldiers who'd arrested and tortured her father. First, she received individual therapy, and then she was encouraged to join a group. Zara realized she was not alone - other young people had had similar experiences. She was also given a mentor to help her with her English and her schoolwork. The centre supported Zara for a number of years as this type of work takes time. The end result is an intelligent, positive and professional young woman - a far cry from that bewildered child.

[1] names and details in all case studies have been changed in order to protect the identity of individuals

Zara wrote:

> *The centre has given me so much that I cannot even put it into words. It gave me hope for a better future, and something to look forward to. It helped me to understand and make sense of my life.*

In what follows, I hope to respond to the questions posed to me with regard to our work, which is originally from clinical perspectives.

1) Challenges in Efforts to Overcome the Experience of Torture

Many of the refugees and asylum seekers we help have endured debilitating torture and human rights violations including imprisonment, rape and have often witnessed the torture of loved ones. In our work, we have identified core areas that represent challenges to refugees and asylum seekers struggling in overcoming their experiences and moving on with their lives.

Trauma, as a result of torture, plays a significant role in the psychogenesis, or development of psychological difficulties, and may blur distinctions between internal and external realities. Furthermore, the distinction between internal and external realities may not be universal and indeed may be culturally defined. After suffering multiple traumas during their lives, individuals in general will develop some psychological difficulties, and for refugees specifically, such difficulties can hinder the processes of adaptation and integration in the host country. One of the main challenges is therefore to develop mechanisms to identify the mental health needs of refugees. Such mechanisms should take into account effective mental health prevention, treatment and support for those who have been tortured. Implementing the Torture Bill may help individuals to redress the consequences of torture, ease the process of integration and resettlement and promote community cohesion.

2) Mental Health Problems Related to Trauma and Loss

Psychological stress of torture often manifests as posttraumatic stress disorder (PTSD), which includes symptoms such as flashbacks (or intrusive thoughts), severe anxiety, insomnia, nightmares, depression, memory lapses, excessive anger, sleep

deprivation, thoughts of suicide, lack of concentration and psychosomatic symptoms such as headaches or back pain. These types of mental health problems can act as major barriers to successful resettlement and reintegration to the society. These difficulties can often have a negative impact on relationships, employability, household income, access to services, education and social networks, thereby leading to severe economic deprivation and social isolation.

Common Presenting Problems:

Depression
Stress and tension
Anxiety
Difficulties in relationships, especially with immediate family
Difficulties in sexual relationships
Physical complaints e.g. chronic pain, sleeplessness, headaches
Inability to cope with past experiences (flashbacks, nightmares)
Difficulty adjusting to a new environment
Feelings of helplessness and hopelessness
Problems with concentration and memory
Recurrent feelings of mistrust and paranoia
PTSD

Younger generations may also experience:

Personality changes
Hyperactivity
Conduct Disorder
Juvenile Delinquency
Suicide and deliberate self-harm
Attachment disorder
Psychosomatic presentations
Maltreatment or abuse – neglect, physical, emotional, sexual
Identity problems
Substance use
Eating problems – anorexia nervosa, bulimia

Working with refugees and specifically with people who endured torture, it is necessary to look at culture and patterns of mental illness:

Relative Attitudes, Family Structures, Sex & Gender Roles
Ability or privilege to chose healer
Prognosis – individual, cultural, societal
Migration and Cultural Shock
Immigration status, housing, education, welfare and employment circumstances
Individuals' feeling of Racial Prejudice
Sick Role, Illness Behaviour, Cultural Bound Syndrome
Syndrome Choice (psychosomatic)
Presenting Symptom & Content, Personality, Culture & Society, Language & Belief

3) Problems Accessing Appropriate and Effective Treatment

Those who have experienced torture face a number of barriers in accessing appropriate and effective treatments. Amongst many factors, this is largely due to cultural and language barriers.

A poor level of support is a strong predicator of Post-Traumatic Stress Disorder (PTSD) and Major Depressive Disorder (MDD) in survivors of torture, affecting their ability, and the ability of their families, to move on with their lives. Traumatic memories are easily aggravated and can cause seemingly inexplicable outbursts of anger, ill-will, melancholy or incapacitating anxiety and depression. Therapeutic interventions help people to deal with, and leave their haunting memories of torture behind as the past experience, enabling them to move on and resume an active role in the society they have joined.

There are a number of specialist and mainstream services that aim to support refugees and asylum seekers who have been tortured and as the result developed mental health problems. In spite of their availability, some services may not always be effectively organized around their needs. Language and culture differences mean that many remain excluded from mainstream mental health services. Although interpreters can be used in therapy, some people do not feel comfortable with this: they may find their ability to talk freely and feel understood is inhibited by the presence of a third person. In addition, many refugees who have been tortured are coming from cultures in which the idea of counselling and psychotherapy is unknown or strongly stigmatised, and therefore may not wish to engage with mental health services.

However, there is no legal definition of appropriate or effective treatment for those who have experienced torture. In our view, an effective treatment involves providing a readily available, culturally and linguistically appropriate service. This means offering people the choice of receiving treatment in their own language or, if an interpreter has to be used, ensuring that the interpreter is properly trained, receive regular supervision and has a full understanding of confidentiality. An effective treatment should also include treatment without delay, as waiting several weeks or

months and in some cases a year to receive a service can exacerbate the problems experienced, and can lead to more serious and long-term problems.

What has arisen in our experience in working with people who have been tortured and in our evaluations of our practice – is that, in some cases, when people first arrive, immediate practical concerns, such as issues relating to asylum claims, housing or education may override persons' concern for their mental health. These practical difficulties therefore make it difficult for them to make use of the therapeutic intervention to deal with their traumatic experiences. An effective treatment must therefore also involve support and guidance for these individuals' most urgent needs in conjunction with therapeutic treatment.

Additionally, the dispersal of asylum seekers to other parts of the UK during treatment is extremely damaging. It is therefore helpful to include a provision to ensure that asylum seekers in ongoing treatment are not dispersed until the treatment has ended.

4) Practical Difficulties Related to Resettlement and the UK Asylum System

Migration and post-migration factors contribute significantly to the emotional burden of refugees who have experienced torture. For asylum-seekers, mental health problems often co-exist with other problems such as, homelessness, poverty, housing, welfare problems, and poor physical health. The constant insecurity of the asylum process also represents a significant barrier to resettlement. In addition, some asylum seekers who have been tortured face detention in the UK without any indication of when they will be released. Hopelessness, helplessness, despondency and anxiety are therefore normal responses to such abnormal situations, which clearly impeding individuals' resettlement. Those make it difficult for people who have been tortured to move on and rebuild their lives. The following case illustrates some of the challenges faced by those who have experienced torture and highlights the need for more provision of appropriate rehabilitation treatment.

Malek came to the United Kingdom from a Middle-Eastern country as an asylum-seeker, and has since acquired refugee status. He is a highly intelligent, trained

professional and who previously held a good job. He was first been arrested in 1993 but was released from prison after three months. He was arrested again 18 months later, and was severely tortured over the span of five years. The degrading and dehumanizing treatment he experienced included being severely beaten with sticks, kicked and punched. He was forced to drink urine and electrical shocks were applied to various parts of his body, including his genitals, he was also burned with cigarettes in a number of places all over his body. He reported that he frequently lost consciousness, and described how the pain was often so unbearable that he would have preferred to die. Malek was on and off held in solitary confinement for long periods.

Malek was referred to us with diagnosis of PTST to receive therapeutic support. Initially, Malek find it difficult to talk, but as therapy progressed he felt more at ease to talk about his traumatic experiences, he disclosed with great difficulty that his guards had tied his arms and legs to the bed and proceeded to rape him. They further abused him with bottles, and pieces of wood and metal. Malek recounted one episode in which guards beat him whilst inserting objects into his body. He told of how despite the severe torture that had already inflicted on him, this particular incident had the most profoundly horrifying impact on him. Not only was it excruciatingly painful, but this experience in particular was deeply humiliating. Such terrifying moments mark his memory for life. Malek expressed how his torture affected his confidence, self-esteem and life in general. Upon release from prison, Malek decided along with friends and family to escape further persecution and torture by paying an agent to smuggle him out of the country

On arrival, Malek unfortunatly was arrested at Heathrow Airport for bearing false documents. He told officials that he was a political refugee and wished to claim asylum. He was incarcerated for entering the UK with false documents and detained for four months without being able to understand the reasons for his detention.

Malek suffered from severe post-traumatic stress disorder, presenting with classical features, including, exaggerated reactions, nightmares and intrusive recollections of trauma, efforts to avoid thoughts, feelings or conversations associated with the trauma, and diminished interest in participating in significant activities. Malek also

had feelings of detachment or estrangement from others, difficulty falling and staying asleep, and outbursts of anger. He had marked depressive symptoms characterized by poor sleep, low mood, ideas of helplessness and hopelessness. These symptoms resulted from Malek's traumatic experiences of detention in his own country, and were exacerbated by the uncertainty of his escape, separation from his community, concerns for the safety of his family, and guilt over his own survival. His symptoms developed further after his expectation of freedom was disappointed when he was arrested and put into detention in the United Kingdom. Malek reported to be healthy before his detention and torture, and there was no history of mental illness or disorder in his family.

Malek requested therapeutic help after he began to suffer from consistent and debilitating flashbacks and nightmares. He has attended weekly psychotherapy sessions at the Centre for over two years. Coming to terms with what he has been through has been a long and painful process for him which continues to be his painful memories. Although what happened to him continues to affect many aspects of his life, Malek has gained some control over the past. He become able to talk about his experiences and finally has gain hopes for the future again.

Though stories such as Zara, her family and Malek's remind us of the resilience and perseverance of many individuals who have experienced torture, the campaign to prevent and redress torture is far from won. We are still a long way from a world free from torture. To reach this requires the active support and contribution of governments and for everyone to commit to respecting human rights and condemning torture and other forms of degrading and ill-treatment. Part of this process also includes providing redress and necessary rehabilitations for those who have had their rights violated.

The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) defines the obligations of governments to prevent, prosecute those responsible for crimes, provide training and education, and ensure generous redress and rehabilitation. Prohibition against torture is absolute and the Convention clearly states that no 'exceptional circumstances',

including a state of emergency, war, or an order from a public authority, can justify torture.

The challenge for us today lies in creating the psychological climate of opinion - to develop a common mentality – that rejects torture, war, genocide, ethnic cleansing and terrorism as viable solutions both to internal and external conflicts. We need both individually and collectively to learn to challenge the way in which those States using and defending torture and attempt to influence our responses according to their own political and economical interests. Those justifications for crimes against humanity such as torture may influence even those who have respect for human right and influence individuals' subjectivity. Learning to acknowledge and displace the violence in a harmless manner can help to address fears and anxieties of others and of difference by allowing people to relate and identify with each other. This can create a real desire to live together in harmony rather than despair.

What seems to be needed is ensuring an intact, integrated object world, a world in which people are able to contain their fears, hatred, and anxieties, without the need for acting out and hurting/torturing others. We must learn to link our internal and external worlds so as to contain our own and others' fears and anxieties, thus encouraging an ethics of mutual containment of our fears and hatred.

If we accept that torture represents cultural formations that represent objectifications of violence of the individual and of the State, then it is possible to reformulate these psychic social mechanisms of aggression. Understanding torture as an act of violence will liberate people from the history of a collective traumatic past and the imperatives it has imposed on them, not as a means of damaging and destroying, but as a means of empathy, of containing and in turn being contained.

For these reasons, we support the Torture (Damages) Bill which represents one element of support for those who have experienced torture. As a potential mechanism for greater accountability, the Bill can provide a sense of justice for individuals who have experienced torture. In so doing the Bill can help those who have been tortured to move on from their experiences and regain their dignity.

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3.5. Traumatic Stress Clinic

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Role of reparation in contributing to recovery and healing.

According to Van Boven (in Redress, 2001) victims of gross human rights violations such as torture have a right to remedy which encompasses: access to justice, reparation for the harm suffered and access to factual information concerning the violations. The concept of reparation is broad and includes restitution, compensation, rehabilitation and satisfaction to survivors through the disclosure of the truth after an official investigation of the facts. He recognises that "Reparation for certain gross human rights violations of human rights that amount to crimes under the international law includes a duty to prosecute and punish perpetrators. Impunity is in conflict with this principle." (Redress, 2001)

The right to remedy as outlined by Van Boven, can contribute to healing in the following ways:

Acknowledgement of injustice.

Torture is usually carried out in a culture of impunity and the perpetrators (individuals and the state) seldom acknowledge the fact that this has happened. Weschler (in Cohen, 2001) distinguishes acknowledgement from the truth. He sees acknowledgement as the process by which knowledge becomes officially sanctioned and enters the public discourse. This recognises the reality of the torture, and recognises the individual' suffering. It also recognises that what happened to the individual was wrong and that their emotions are legitimate. In my clinical experience, a sole focus on individual treatment of the torture survivor can ignore the reality of the social injustice that has taken place. Where there is the possibility of a public process of vindication, this can impact on the individual's capacity to make sense of their experience and to locate the cause of their suffering outside of themselves. Having the opportunity to tell their story and have the truth recognised by wider society can help the individual reclaim their dignity and legitimise their suffering. Responses of recognition and restitution are necessary to rebuild the survivor's sense of order, justice and a meaningful world.

Assignation of blame.

The psychological sequelea of torture can include feelings of shame, guilt and self-blame. By publicly recognising the role of the perpetrator in deliberately inflicting pain and suffering on the torture victim, the responsibility and blame gets located with the perpetrator rather than with the victim. Reparations can therefore help the survivor redirect blame and responsibility outside of themselves and free them of the burden of shame and guilt. This helps to reaffirm their integrity and to restore self esteem.

Restitution of a sense moral and social order.

Janoff-Bulman (1985) identified core beliefs, which are shattered with trauma. These include the view of the world as a meaningful and just place; the view of others as kind and trustworthy and the view of the self as invulnerable and having some control. The experience of torture in which there is the deliberate infliction of cruelty by another human being can leave the survivor with a distorted sense of humanity. The betrayal of the safety typically provided by government carries psychological ramifications that are different from other forms of trauma (Fabri, 2001). This challenges the survivor's world- view as this cannot be reconciled with previously held assumptions. The public acknowledgment of these atrocities can help to restore some sense of social meaning and moral order for the survivor. Reparations can concretise the state's acknowledgement of wrongdoing and in so doing can help to restore the survivor's dignity and beliefs in the world and other people.

Restoring a sense of control.

One of the hallmarks of the torture experience is disempowerment. As Tizon, a torture survivor himself stated, "One of the main objectives of inflicting torture is the total control of another human being – therefore empowerment must be central to the therapy process" (Tizon, 2001). The very act of torture creates a power imbalance as the torturer dictates every aspect of the victim's life stripping them of their personal integrity and agency. This can leave the individual with an ongoing vulnerability to feel disempowered and controlled by others. (Fabri, 2001). As already mentioned the healing process is not only restricted to the privacy of the therapeutic encounter.

Being able to speak the truth and having this truth heard and acknowledged helps to restore a sense of control and personal agency to the survivor. This can help the survivor to overcome feelings of worthlessness and weakness arising out of the torture experience which can help to reaffirm their integrity and identity as a survivor.

Re establishing trust and restoring bonds.

As mentioned earlier, torture aims at instilling terror, helplessness and destroying the victim's sense of self in relation to others. The capacity for trust is a prerequisite for all relationships. In the process of torture trust is violated in many ways. Those in power have abused their position of trust bestowed

upon them by their position. Under the duress of torture the victim may betray the trust of family and friends. The terror instilled within communities in which community members have been tortured can lead to a break down of trust within the community. The very nature of trauma can disorient and damage the individual to such an extent that the capacity to trust oneself is ruptured. It has been noted that the core experiences of psychological trauma are disempowerment and disconnection from others (Herman, 1992).

Because traumatic events invariably cause damage to relationships, people in the survivor's social world have the power to influence the eventual outcome of the trauma. In order to facilitate healing the torture survivor needs to re-establish attachments and a sense of safety. The reparative process in which the individual's experience is publicly validated and understood can play an important role in restoring a sense of trust and can help to restore the capacity to develop attachments to others.

Emotional Processing.

Recovery from trauma requires some form of emotional processing. This involves creating a detailed and coherent narrative of the events and integrating these memories in a meaningful way. Another aspect of the process involves working through feelings of guilt, shame and humiliation so that the survivor can see himself or herself in a more realistic way. The end point of this process is to reduce negative affect by restoring a sense of safety and control and by making appropriate adjustments to expectations about the self and the world. (Brewin et al, 1996).

One of the features of trauma is a wish to expose the truth and deal with it coupled with a desire to repress and avoid the memories. A failure to confront and work through the memories can leave the survivor feeling isolated and misunderstood. Psychological restoration and healing can only occur in a space where survivors are able to relate the details of their torture in a safe and containing environment.

The process of recovering the truth helps to break the isolation and secrecy associated with torture. Being able to disclose the truth and having the facts investigated in a thorough and official way as suggested by Van Boven, can help the individual construct a detailed narrative and build a context of meaning which are essential to recovery. At both an individual and collective level the importance of the event and the enormity of its impact can be acknowledged.

Facilitation of grieving.

Reparation can also play an important role in helping an individual grieve. Torture involves many losses, both physical and psychological. One of the tasks of grieving is to be able to acknowledge and come to terms with the loss. The reparative process can help the individual to focus on and share their grief and anger about what has happened to them and to have these

feelings publicly recognised. The process of reparations can help to facilitate a process of coming to terms with these losses.

Facilitating closure.

Reparations can serve to symbolically mark the point of moving onto a new phase, which can help the survivor feel some sense of mastery over the past (Hamber, 1995). This can allow the individual to move on with their lives.

Deterrent value.

An adequate process of reparation as defined by Van Boven can give an important message to the broader community. Through this process there is an official recognition of state responsibility for violating the rights of the individual. In addition the process recognises the rights and needs of the survivor. This can help to raise public awareness and knowing that others have been punished may have some deterrent value. This is particularly important in view of the fact that torturers usually act within a culture of impunity (Hamber, 2000).

Reparations and truth telling alone may not be sufficient to facilitate healing and recovery. While it enables some individuals to move on with their lives, others may remain stuck. Recovery depends on a range of factors including psychological treatment and social support as well as redress. Financial compensation can only nominally reflect the psychological damage inflicted by the torture experience. As Danieli (in Hamber, 1995) stated “Monetary value can never address the social and moral breach caused by extreme levels of trauma and abuse”. However symbolic and financial reparations serve an important process of concretely recognising and acknowledging that atrocities have been perpetrated which has an important restorative psychological function.

There are various forms of reparation as outlined by Van Boven. Since the needs of victims vary reparations need to be appropriate to the individual’s circumstances. Some individuals may simply want to know the truth and for others the greatest compensation may be to see the victim brought to justice. For some reparations without truth telling may be seen as a government strategy to buy their silence (Cohen,2001; Hamber, 2000).

Summary

In summary, the process of truth recovery and successful vindication has many elements similar to a therapeutic process. Having the truth recognised and properly acknowledged through some form of redress, can play an integral role in the survivor’s journey to recovery. Conversely if the truth remains hidden and the perpetrators walk free, this can compound the survivor’s sense of helplessness and struggle to create meaning and obtain closure.

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4. Submissions by Non-Governmental Organisations

4.1. Amnesty International

amnesty international

United Kingdom

Providing reparations through the Torture (Damages) Bill

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INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 0DW, UNITED KINGDOM

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Providing reparations through the Torture (Damages) Bill

Introduction

Amnesty International strongly supports the enactment by the United Kingdom (UK) of the Torture (Damages) Bill (the Bill), introduced by Lord Archer of Sandwell, Q.C. in the House of Lords on 5 February 2008. The Bill is scheduled to receive its second reading on 16 May 2008.[1]

As explained below, the Bill, if enacted, would be an important step for the UK in implementing its obligations under Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), which it ratified two decades ago on 8 December 1988, and other international law and standards recognizing the right of victims and their families to seek and obtain reparations for torture. The Bill would be in line with the practice of a number of other states that permit victims of torture and their families, whatever their nationality, to recover civil reparations for the crime of torture, wherever the crime was committed and whatever the nationality of the perpetrators, either by civil suits or through criminal proceedings. The Bill would also make clear that the contrary interpretations by the Appellate Committee of the House of Lords (Law Lords) – the UK's highest court– in its 2006 judgment in *Jones*[2] and the Ontario Court of Appeal in its 2005 judgment in *Bouzari*[3] were incorrect as a matter of law.

Nevertheless, the Bill does not fulfill all of the United Kingdom's obligations and it could be strengthened on the second reading. The following commentary and recommendations should, therefore, be seen as of a preliminary nature.

1. The right to reparations for torture and other crimes under international law

The right of victims and their families to recover reparations for crimes under international law, whether during peace or armed conflict, has been confirmed in provisions of a number of international instruments adopted over the two decades since the Convention against Torture was adopted in 1984 (see discussion in the following section). These instruments, none of which were mentioned by the Law Lords in *Jones* or by the Ontario Court of Appeal in *Bouzari*, do not restrict this right geographically or abrogate it by state or official immunities.

They include the 1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,[4] the 1998 Rome Statute of the International Criminal Court[5] and two instruments co-sponsored by the United Kingdom and adopted in April 2005 by the United Nations (UN) Commission on Human Rights. The first of these, which was adopted in December 2005 by the UN General Assembly, is the UN Basic Principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and international humanitarian law (Van Boven-Bassiouni Principles).[6] The second is the UN Updated set of principles for the protection and promotion of human rights through action to combat impunity (Joinet-Orentlicher Principles).[7] Both instruments, which were designed to reflect international law obligations, have been cited by Pre-Trial Chamber I of the International Criminal Court in its determination that the harm suffered by victims of crimes under international law includes emotional suffering and economic loss.[8] Most recently, the UN Human Rights Council adopted by consensus the International Convention for the Protection of All Persons from Enforced Disappearances, containing a very broad definition of the right to reparations, and referred it to the UN General Assembly, which adopted it at its 61st session in 2006.[9]

The right to reparations is inherent in the right to a remedy, as guaranteed in Article 2 of the International Covenant on Civil and Political Rights (ICCPR), adopted four decades ago in 1966, and ratified by the United Kingdom on 20 May 1976.[10] Indeed, the international community recognized the rights of victims to civil recovery directly against foreign states for war crimes a century ago in Article 3 of the 1907 Hague Convention IV Respecting the Laws and Customs of War on Land, ratified by the United Kingdom on 27 November 1909.[11]

2. The specific obligations of the United Kingdom under Article 14 of the Convention against Torture

The right of victims and their families to seek and obtain reparations is specifically guaranteed by Article 14 of the Convention against Torture. Recent scholarship has confirmed the accuracy of the authoritative interpretation by the Committee against Torture that each state party to the Convention against Torture is required under this provision to provide a procedure for victims to obtain reparations from states and their officials for torture committed abroad, even if neither the victim nor the torturer is a national of the state party.[12] A number of recent law journal articles demonstrate why the conclusions of the House of Lords in *Jones* and the Court of Appeal of Ontario in *Bouzari* to the contrary are fundamentally flawed.[13]

Of course, such provisions in national law must ensure that victims and their families can recover for all acts of torture listed in Article 4 of the Convention against Torture

and for all conduct constituting torture within the definition of Article 1. It is undisputed that torture, as defined in Art. 1(1) of the Convention against Torture, which reflects customary international law, contains four crucial requirements, or elements:

- The element of intention: the act (causing pain and suffering) was intentional;
- The element of severe pain or suffering: the act caused the victim severe[14] pain or suffering, whether physical or mental;
- The element of purpose: the act was performed for a certain purpose – such as obtaining information or a confession, intimidation, coercion and punishment, or else for any reason based on discrimination;
- The element of official involvement: the act was performed or instigated by officials, or at least with official consent or acquiescence.

Although there has in the past been some dispute as to what distinguishes torture from "cruel, inhuman or degrading treatment or punishment", or "inhuman or degrading treatment or punishment" in Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms,[15] it is undisputed that acts belonging to the latter category involve the infliction of pain or suffering which, however, does not meet all of the first three requirements, or elements, of torture above.[16]

Nothing in the Convention against Torture limits the prohibition of torture temporally. States should provide for victims and their families to recover reparations for torture no matter when it occurred.

Nothing in Article 14 of the Convention against Torture requires victims and their families to exhaust remedies in the countries where they were tortured by or at the instigation of or with the consent or acquiescence of that country's public officials or other persons acting in an official capacity.

Article 14 of the Convention against Torture does not contain a statute of limitations. Any limitation on a criminal prosecution or a civil suit would be inconsistent with the absolute and unqualified obligations under the Convention. Such a limitation could also lead to injustice, since victims and their families often reach the United Kingdom long after the torture was committed, and are rarely able to seek and obtain reparations in their own countries. They may well be unaware of their rights in the United Kingdom and may fear taking any action to assert their rights there unless they had adequate guarantees for their security.

Article 14 is not limited to damages. It expressly states that "[e]ach State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible."

3. Examples of other countries that enable victims and their families to obtain reparations for torture committed abroad

At least 25 countries in both the common law and civil law traditions guarantee the right of victims and their families who are not nationals of those countries to recover reparations for crimes under international law committed abroad by individuals who are also not nationals of those countries.[17]

For example, the United States of America has long authorized non-nationals to recover reparations for such crimes committed abroad under the Alien Tort Statute and the Torture Victim Protection Act.

In addition, it is common for civil law countries which authorize their courts to exercise universal criminal jurisdiction to permit victims and their families, regardless of nationality, to recover, in the course of criminal proceedings, civil reparations for crimes committed abroad by non-nationals. Such countries include, for example: Argentina, Austria, Belgium, Bolivia, Bulgaria, China, Colombia, Costa Rica, Denmark, Finland, France, Germany, Greece, Italy, Luxembourg, Myanmar, the Netherlands, Panama, Poland, Portugal, Romania, Senegal, Spain, Sweden and Venezuela.[18]

4. Recommendations for strengthening the Bill

In the light of the above, Amnesty International makes the following preliminary recommendations for strengthening the Bill at this stage. The organization intends to provide further and more detailed recommendations concerning the Bill after it receives a second reading.

- The definition in Section 5, which omits the crucial elements of the crime of torture of purpose or discrimination, should be amended to conform to the definition in Article 1 of the Convention against Torture, which reflects customary international law.
- Section 1 (1) should include attempt to commit torture and acts which constitute complicity or participation in torture, as in Article 4 of the Convention against Torture. This amendment would ensure that torturers such as Farayadi Sawar Zardad, the Afghan commander who was convicted in the United Kingdom on 18 July 2005 of conspiracy to commit torture, would be liable to provide their victims with reparations.

- Section 7 of the Bill should be amended to make clear that any act of torture committed since it was recognized as a crime under international law is included.
- If Section 1 (2) is not deleted as an unnecessary burden for victims and their families, it should be amended to place the burden on the defendant to demonstrate that there was an effective and adequate remedy for damages in the country where the victims were tortured by or at the instigation of or with the consent or acquiescence of that country's public officials or other persons acting in an official capacity.
- Section 2, if it is not deleted, should be amended to place the burden on the defendant to demonstrate that the victim or his or her family could have reasonably been expected to bring an action.
- The Bill should be amended to include Northern Ireland, Scotland and all overseas dependencies of the United Kingdom.
- Section 1 (1), (3) and (4), although they provide for a broad range of damages for torture, should provide that victims can seek and obtain other reparations, as set forth in Article 14 of the Convention against Torture.

Conclusion

Amnesty International strongly supports the enactment of the Bill. If enacted in its current form, it would be an important step for the United Kingdom in fulfilling its obligations under Article 14 of the Convention against Torture and other international law and standards. However, as indicated above in the organization's preliminary comments, the Bill could be considerably strengthened to provide better protection of the rights of victims of torture and their families and be a model for other countries around the world.

[1] The current text of the Bill can be found at: http://www.publications.parliament.uk/pa/ld200708/ldbills/030/08030.i-i.html.
[2] *Jones v. Ministry of Interior Al-Mamlaka A-Arabiya AS Saudiya (the Kingdom of Saudi Arabia)* [2006] UKHL 26.
[3] *Bouzari v. Islamic Republic of Iran*, 2002 A.C.W.S.J. LEXIS 2293; 2002 A.C.W.S.J. 3390; 114 A.C.W.S. (3d), 1 May 2002, para. 57; *Ibid.*, 122 C.R.R. (2d) 26; 2004 C.R.R. LEXIS 167, 30 June 2004; *appeal dismissed*, 122 C.R.R. (2d) 376; 2005 C.R.R. LEXIS 2, 27 January 2005.
[4] GA Res. 40/34, 29 Nov 1985.
[5] Rome Statute of the International Criminal Court, adopted by the United Nations Diplomatic Conference on the Establishment of an International Criminal Court, Rome UN Doc A/CONF.183/9*, 17 July 1998, as corrected by the *process-verbaux* UN Doc C.N.577.1998.TREATIES-8, 10 November 1998, and UN Doc C.N.604.1999.TREATIES-18, 12 July 1999, Art. 75. Its reach is potentially universal as the Security Council can refer a situation involving crimes in any state to the Prosecutor.
[6] UN Comm'n Hum. Rts Res. E/CN.4/2005/35, 13 April 2005; GA Res. A/RES/60/147, 16 Dec 2005.
[7] UN Comm'n Hum Rts Res E/CN.4/2005/81, 15 April 2005.
[8] *Situation of the Democratic Republic of the Congo*, Decision on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6, Case No. ICC-01/04, Pre-Trial Chamber I, 17 January 2006, para. 115.
[9] UN Human Rights Council Res. A/HRC/1/L.2, 29 June 2006, Art. 24. GA Res. 61/177, 20 December 2006.
[10] See Human Rights Committee, General Comment No. 31, UN Doc. CCPR/C/21/Rev.1/Add.13 (no suggestion that the right to a remedy under the ICCPR is geographically restricted).
[11] 1907 Hague Convention IV Respecting the Laws and Customs of War on Land, *reprinted in* Adam Roberts & Richard Guelff, *Documents on the Laws of War* 67 (Oxford: Oxford University Press 3rd ed. 2000); Hisakazu Fujita, Isomi Suzuki and Kantato Nagano, *War and the Rights of Individuals, Renaissance of Individual Compensation*, Nippon Hyoron-sha Co. Ltd. Publishers (1999), expert opinions by Frits Kalshoven 31; Eric David 49; Christopher Greenwood 59.
[12] Committee against Torture, Conclusions and recommendations (Canada), 34th Sess., 2-20 May 2005, UN Doc CAT/C/CR/34/CAN, 7 July 2005, paras. 4 (g); 5 (f).
[13] Lorna McGregor, *Torture and State Immunity: Deflecting Impunity, Distorting Sovereignty*, 18 Eur. J. Int'l Law 903 (2007); Alexander Orakhelashvili, *State Immunity and Hierarchy of Norms: Why the House of Lords Got It Wrong*, 18 Eur. J. Int'l Law 955 (2007); Noah Benjamin Novogrodsky, *Immunity for Torture: Lessons from* Bouzari v. Iran, 18 Eur. J. Int'l Law 939 (2007); Christopher Keith Hall, *The Duty of States Parties to the Convention against Torture to Provide Procedures Permitting Victims to Recover Reparations for Torture Committed Abroad*, 18 Eur. J. Int'l Law 921 (2007).
[14] All relevant international and regional treaties which define torture require that the pain or suffering be "severe" in order to constitute torture, with the exception of the definition of torture in Art. 2 of the Inter-American Convention to Prevent and Punish Torture, O.A.S. Treaty Series No. 67, adopted at Cartagena, Columbia, on 9 December 1985, entered into force 28 February, 1987.
[15] Adopted 4 November 1950, entered into force 3 September 1953.
[16] See, for example, Sir Nigel S. Rodley, *The Definition(s) of Torture in International Law*, 55 Curr. Leg. Probs. 467 (2002); Malcolm D. Evans, *Getting to Grips with Torture*, 51 ICLQ 365 (2002); Manfred Nowak, *Challenges to the Absolute Nature of the Prohibition on Torture and Ill-treatment*, 23 Neth. Q. Hum. Rts. 674 (2005).
[17] This information is of a preliminary nature; the number is likely to be substantially higher. Amnesty International is conducting a global survey of the law concerning civil and criminal universal jurisdiction in the 192 member states of the United Nations as part of its updating and revision of the organization's

memorandum, *Universal jurisdiction: The duty of states to enact and implement legislation*, AI Index: IOR 53/002 – 018/2001, September 2001.

[18] The scope of these provisions is discussed in more detail in Amnesty International's paper, *Universal jurisdiction: The scope of civil universal jurisdiction*, AI Index: IOR 53/008/2007, July 2007.

4.2. Fair Trials International

FAIR TRIALS INTERNATIONAL

Submission to REDRESS

Statement of Support for the Torture (Damages) Act 2008

February 2008

1. Fair Trials International (FTI) is a UK-based NGO that works for fair trials according to international standards of justice and defends the rights of those facing charges in a country other than their own.

2. FTI pursues its mission by providing individual legal assistance through its expert casework practice and networks of defence lawyers throughout the world. FTI also addresses the root causes of injustice through broader research and campaigning and builds local legal capacity through targeted training, mentoring and network activities. As such we have a keen interest in criminal justice and fair trial rights issues more generally.

3. FTI works with clients who are victims of a miscarriage of justice, or where we have concerns about potential fair trial rights violations. Some of our clients have suffered torture or abuse by the police or judicial authorities.

4. FTI believes that the use of torture is both illegal and immoral. Freedom from torture is one of the fundamental elements of a defendant's fair trial rights, and violations of that right result in grave miscarriages of justice as well as extreme human suffering.

5. FTI supports efforts to ensure that torture survivors receive proper redress, and welcomes the Torture (Damages) Act 2008 which would allow torture survivors in the UK to bring a civil claim for damages against those responsible for the torture by providing a legislative exception to state immunity in the UK.

6. FTI also calls upon the Foreign and Commonwealth Office to intervene in a more consistent manner in cases where British nationals detained in foreign countries allege torture or mistreatment. Timely and effective consular assistance can play a critical role in preventing incidents of torture from occurring, or in recording the effects of torture and providing necessary evidence for any civil claim brought under this Act.

7. FTI pays tribute to the individual consular officers who work in difficult circumstances to protect British nationals in distress overseas, often going above and beyond the call of duty to provide excellent care. However, FTI regrets that British citizens have no legal right to receive consular assistance, even when they are the victims of gross human rights violations such as torture. Consular assistance is provided on a discretionary basis leading to unjustifiable inconsistencies in the level of protection available to British nationals in different parts of the world.

8. FTI is disappointed that decisions over the provision of consular assistance in individual cases remain non-justiciable. FTI would welcome the extension of the Torture (Damages) Act to allow British nationals to bring similar claims against the British government for failure to protect them from torture while detained overseas.

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4.3. JUSTICE

Torture (Damages) Bill

Briefing for House of Lords Second Reading

May 2008

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Introduction

1. Founded in 1957, JUSTICE is a UK-based human rights and law reform organisation. Its mission is to advance justice, human rights and the rule of law. It is also the British section of the International Commission of Jurists.

2. JUSTICE is pleased to support the Torture (Damages) Bill, a Private Members' Bill introduced in the House of Lords by Lord Archer of Sandwell QC on 5 February 2008. JUSTICE was one of a group of NGOs, together with REDRESS, INTERIGHTS and Amnesty International, that intervened in the case of *Jones v Interior Ministry of Saudi Arabia*[1] in 2006 to argue that the doctrine of state immunity should not prevent individuals from bringing suit against foreign government officials for acts of torture.

3. In *Jones*, the Appellate Committee of the House of Lords held unanimously that the terms of the State Immunity Act 1978 meant that UK courts had no jurisdiction to hear a civil claim against a foreign government in respect of torture committed outside territory under UK control. As Lord Hoffman noted in his judgment in *Jones*:[2]

> The short answer is that an exception for acts jure gestionis is recognised by international law and an exception for torture is neither recognised by international law nor required by article 14 [of the Torture Convention]. ***Whether it should be is another matter. [This] committee has no legislative powers.***

4. Whether or not the Committee was in fact correct in its analysis of the relevant international law, it nonetheless falls to Parliament to amend the terms of the 1978 Act to enable victims of torture abroad to obtain justice in British courts. Just as the United States Torture Victim Protection Act 1992 allows individuals in the US to sue foreign governments responsible for torture, so too would this Bill allow UK victims to seek redress here. In our view, such a step would not only be a just and proportionate exception to the general rule of state immunity

[1] [2006] UKHL 26.
[2] Ibid, paragraph 57. Emphasis added.

but – by holding governments that torture to account for their actions – it would also prove to be among the most effective weapons in the fight to abolish the practice of torture at the international level. The 2007 FCO Annual Human Rights Report describes torture as 'one of the worst violations of human rights and human dignity', and proclaims that the UK 'continue[s] to be one of the most active countries in the world in the fight to eradicate it'.[3] If the UK is to show true leadership in this fight, however, Parliament must not allow those responsible for torture to shelter behind the doctrine of state immunity in British courts any longer.

Article 14 of the Torture Convention

5. Article 14(1) of the UN Convention Against Torture provides:[4]

> Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible.

6. On its face, this obligation is unqualified and unrestricted, whether or not the torture took place in the state's own territory or was carried out by its agents. Nor has the UN Committee Against Torture, the authoritative body under international law charged with monitoring States parties compliance with Convention, ever concluded otherwise.

The experience of other common law and civil law jurisdictions

7. For more than 218 years, US law has afforded US federal courts jurisdiction over torts committed by foreign nationals 'committed in violation of the law of nations or a treaty of the United States'.[5] This long-standing domestic exception to the doctrine of state immunity, allowing foreign victims of torture to gain redress against foreign torturers in US courts,[6] was strengthened by the Torture Victim Protection Act 1992. The 1992 Act explicitly provides that any person,

[3] FCO, *Human Rights Annual Report 2007* (March 2008: Cm 7340), pp 15, 120.
[4] Convention Against Torture And Other Cruel, Inhuman Or Degrading Treatment Or Punishment, 1985.
[5] The Alien Torts Statute, 28 USC, § 1350.
[6] See the decision of the Second Circuit of the US Court of Appeals in *Filártiga v. Peña-Irala* 630 F.2d 876 (2d Cir. 1980).

whether US citizen or not, may bring a claim against a foreign official for torture in US federal courts, irrespective of where the alleged acts occurred.

8. There is no evidence to show that this exception has proved unworkable for the US courts, nor that it has caused any appreciable harm to US diplomatic relations with other states, or indeed the comity of nations as a whole. More generally, we note that civil law jurisdictions such as France, Germany, Italy and Spain allow for the recovery of damages for foreign victims of torture as part of criminal proceedings brought under universal jurisdiction for torture. Those who would argue against the creation of a similar exception in UK must first explain why the positive experience of foreign jurisdictions is somehow inapplicable. It is difficult to see how the skies would fall here when they have not fallen abroad.

The experience of British criminal courts

9. UK criminal law already recognises universal jurisdiction for torture.[7] In 2005, Faryadi Zardad, an Afghani warlord, was successfully prosecuted in the Old Bailey by the then-Attorney General Lord Goldsmith QC for acts of torture committed in Afghanistan against Afghani nationals.[8]

10. If British courts can be used to prosecute foreign nationals for acts of torture committed abroad, we can see no principled case for resisting the coextensive application of civil liability for such acts.

The 1978 Act and the doctrine of state immunity in civil cases

11. Section 1(1) of the State Immunity Act 1978 provides that:

> A State is immune from the jurisdiction of the courts of the United Kingdom except as provided in the following provisions of this Part of this Act.

[7] Section 134 of the Criminal Justice Act 1988.
[8] See e.g. CPS press release, 'CPS Secures Historic Torture Conviction', 18 July 2005; BBC News, 'Afghan Warlord guilty of torture', 18 July 2005.

12. The 1978 Act sets out a number of exceptions to the state immunity rule, including the following:

    - commercial transactions entered into by the foreign state;[9]
    - actions relating to a contract of employment with a UK resident;[10] and
    - any interest in moveable or immoveable property.[11]

13. It is plain that the state immunity rule is hardly unqualified. On the contrary, a number of exceptions already exist. The question is not whether the state immunity rule can be qualified. Obviously it can and it is. In JUSTICE's view, the question is whether torture is sufficiently serious to qualify as an exception, alongside claims for employment and interests in moveable or immoveable property. If certain commercial interests are deemed to be sufficiently weighty to count as exceptions, it is hard to understand why responsibility for acts of torture could not also qualify.

The mechanism of the Bill

14. Clause 1 of the Bill establishes that UK courts shall have civil jurisdiction for acts of torture committed both in the UK and abroad, while clause 3 explicitly amends the terms of the 1978 State Immunity Act.

15. However, clause 1(2) qualifies the scope of the UK jurisdiction, providing that:[12]

> Where the torture occurs in a State outside of the United Kingdom, this Act shall apply **only when no adequate and effective remedy for damages is available in the State in which the torture is alleged to have been committed**

[9] Section 3(1)(a).
[10] Section 4.
[11] Section 6.
[12] Emphasis added.

16. This follows the well-established rule in international law that a claimant must first exhaust their remedies in the state where the act was allegedly committed, unless it is apparent that there is no adequate or effective remedy available, whether because the courts there are not sufficiently independent of the state, are powerless to act, or are otherwise incapable of providing a proper remedy.

17. In JUSTICE's view, this qualification is a proportionate limitation, and follows closely the terms of the US legislation. Clause 2 establishes a six-year time limit within which claims must be brought, while clause 7 establishes a cut-off date of 29 September 1988 (i.e. when universal jurisdiction for torture was established under the Criminal Justice Act 1988). This means that the universal jurisdiction of UK courts in civil and criminal law will be coextensive.

ERIC METCALFE
Director of Human Rights Policy
JUSTICE
14 May 2008

4.4. Liberty, Fair Trials International and REDRESS joint parliamentary briefing

REDRESS
Seeking Reparation for Torture Survivors

FAIR TRIALS INTERNATIONAL

LIBERTY
PROTECTING CIVIL LIBERTIES
PROMOTING HUMAN RIGHTS

Parliamentary Briefing

Torture (Damages) Bill

Introduction

1. The Redress Trust (REDRESS) is an international human rights organisation based in London with a mandate to assist torture survivors to obtain justice and reparation. The organisation works worldwide in support of torture survivors; it brings claims to court to obtain justice for survivors and regularly intervenes in national and international courts on issues relating to torture and survivors' rights. It was founded by torture survivor Keith Carmichael, a UK national who was imprisoned and tortured in Saudi Arabia for two and a half years without any formal charge or court appearance. On his return to the UK Keith found that he was unable to seek a remedy for his ordeal. He founded REDRESS with the view to helping torture survivors gain access to justice. REDRESS was registered as a UK charity in December 1992.

2. Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research. Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. It also submits evidence to Select Committees, Inquiries and other policy fora, and undertakes independent funded research.

3. Fair Trials International (FTI) is a specialist UK-based human rights charity. It works for fair trials according to international standards of justice and defends the rights of those facing charges in a country other than their own. FTI pursues its mission by providing individual legal assistance through its expert casework practice. It also addresses the root causes of injustice through broader research and campaigning and builds local legal capacity in countries around the world through targeted training, mentoring and network activities.

4. The Torture (Damages) Bill is a private member's bill which was introduced in the House of Lords by Lord Archer of Sandwell Q.C. on 5th February 2008. If enacted, the Bill would enable torture survivors in the UK to bring a civil claim for compensation in the courts of England and Wales against the officials and States responsible for their torture.

The challenges facing survivors of torture

5. There are many torture survivors who live in the UK who face enormous challenges and significant hardship as a result of having been tortured. Many have a broad range of mental, physical and social problems.

6. Many survivors require counselling and psychological treatment by trauma specialists for a range of symptoms, including post-traumatic stress disorder, depression and anxiety. In addition, some continue to experience pain, which impacts on their day to day functioning and is a barrier to their overall rehabilitation. In a number of cases, they will require prolonged medical treatment for their physical and psychological injuries. Torture impairs the individual's ability to sustain existing relationships and to form new ones which can lead to social isolation, poverty, family and marital problems. In the case of non-UK nationals, this exacerbates the isolation and loneliness inherent for individuals who leave their country of origin to seek international protection.

7. As the result of their physical and psychological scars, many individuals have had periods where they have been unable to work, either due to the recovery process or by fleeing to safety. Others are now unable to work at all and survive on State benefits. This increases their suffering and feeling of marginalisation.

8. To compound all these problems, the regimes responsible for torture rarely apologise or even acknowledge that they have violated the individual in such a horrible way. Bringing the events into the open is important to restoring the individual's sense of identity and dignity. Further, redress, and the validation it engenders, has a positive therapeutic benefit on the recovery of torture survivors.

Victims' right to remedies and access to justice

9. The United Nations' Convention Against Torture, ratified by the UK, provides that each State Party must ensure in its legal system that the victim of torture "has an enforceable right to fair and adequate compensation."[1] In December 2005 the UN General Assembly adopted without a vote the Basic Principles on victims' right to a remedy[2] which provides that victims of gross violations of international human rights law, such as torture, are entitled to effective access to justice including adequate reparation for the harm suffered.

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[1] Art 14 UN Convention Against Torture. Available at http://www2.ohchr.org/english/law/cat.htm

[2] Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law. Available at http://www2.ohchr.org/english/law/remedy.htm

10. Under the present law, individuals who have suffered torture may only seek compensation by pursuing a claim in the court of the State where the torture took place. In many cases this will be an appropriate forum for an individual to seek justice from the responsible State. However, this may not always be the case. For example, the national legal system may be undermined by long delays, lack of affordable and trustworthy legal representation and it may be too closely related to the Government regime which was responsible for the torture to allow a fair trial to take place.

Reparation in the United Kingdom

11. Under these circumstances, a British national or resident is left without a remedy as they are prevented from initiating proceedings in the UK as a result of the provisions of the State Immunity Act 1978 (SIA).

12. The SIA provides as a general rule that a foreign State is immune from the jurisdiction of UK courts. It does however recognise several exceptions, designed, for instance, to allow commercial enterprises to sue foreign States for breaching business contracts. There is no exception for torture, even if the torture survivor has no other forum in which to bring a claim. The Torture (Damages) Bill addresses this denial of access to justice.

Les Walker – case study

13. Les Walker, from Liverpool, was imprisoned in Saudi Arabia in February 2001 for more than 900 days without recourse to any legal remedy. For four months he was kept in total isolation and he was systematically tortured over 10 weeks. He was sentenced to serve 18 years in prison after a secret trial.

14. Prior to his detention, Les worked as a project manager in Saudi Arabia, responsible for the running and maintenance of a large housing and hotel complex.

15. On returning to the UK Les found his life completely turned around. As the result of being tortured, his blood pressure became very unstable resulting in numerous periods of hospitalisation. He suffered broken teeth and serious problems with his feet as the result of beatings.

16. His experiences have left him unable to function as before – he says he tends to panic in situations where he is surrounded by people. He has flashbacks and nightmares of his ordeal. He spends a lot of time on his own and is unable to concentrate for more than short periods.

17. Les is unable to work and consequently is dependant on State benefits for his daily needs. He lives in a small 1 bedroom council flat and says he does not have the mental ability to learn new skills due to his lack of concentration.

18. Les has not received any apology or compensation for what happened to him[3]. If Les were to succeed in bringing a claim against his torturers, he says this would allow him a greater chance to live the life he hoped to have previously.

Questions and Answers

Q. If individuals can initiate cases against officials and a State for torture, will this not threaten international relations?

A. States tend to raise a threat to international relations to avoid legal proceedings against them. This applies to both criminal and civil cases[4]. However, for crimes such as torture which command a peremptory status under international law and the practice of which the majority of states have committed to combating, the threat to international relations reflects a risk that states must be prepared to take in cases where impunity would otherwise result.

Q. Will the Bill not cause a flood of litigation before the Courts of England and Wales?

A. The Bill is only intended to apply in the narrow circumstances where there is no adequate and effective remedy available in the country where the torture took place. In addition, and notwithstanding any alternative regimes in English law, there is a limitation period of six years from when it became reasonably practicable for a person to bring an action.

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[3] The House of Lords found that the national court had no jurisdiction to hear his claim against Saudi Arabia as state immunity was applicable, *Jones et al v. Saudi Arabia* [2006 UKHL 26].
[4] For example, in the Pinochet case, the then Chilean Foreign Minister, Jose Miguel Insulza, warned that relations between the UK Government and Chile would be threatened if the case proceeded, "Chile says Pinochet case could damage UK ties," *CBC News* (28 November 1998).

4.5. Prisoners Abroad

POSITION PAPER ON THE TORTURE (DAMAGES) BILL [HL]

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Charity Number 1093710

1. Prisoners Abroad (formerly the National Council for the Welfare of Prisoners Abroad) was established in 1978, and seeks to safeguard the welfare and basic human rights of British citizens detained abroad.

2. Our vision is twofold; the day when no British citizen detained abroad is subject to torture, inhuman or degrading treatment, and a society where prisoners and their families are free from undue hardship arising from overseas imprisonment.

3. In light of our vision, we fully support Lord Archer of Sandwell's private members bill, the Torture (Damages) Bill. Prisoners remain some of the most marginalised and ostracised members of society, and are particularly vulnerable to acts of torture. For those that have served sentences abroad, the prospect of returning to the UK can be daunting, especially where they have had little or no connection with the country previously. There is no statutory provision that provides a specific service for returning prisoners, making reintegration and rehabilitation all the more difficult. Those who have been subjected to torture undoubtedly face further challenges in this regard.

4. Whilst the prohibition on torture is protected under a number of international human rights treaties[1], and equates a norm of customary international law[2], civil remedies for a breach overseas remains absent from the statute books. We believe the Torture (Damages) Bill is the key to plugging this gap, and providing an effective remedy for victims of torture. We hope that such a remedy will go some way to securing justice for victims, and bring those responsible to account.

[1] See for example*, The Convention Against Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment* (1984) 27 ILM 1027; *The International Covenant on Civil and Political Rights*, (1966) G.A Res. 2200 A (XXI) 999 UNTS 171; *The European Convention on Human Rights*, (1953) UNTS 221, ETS 5; *The American Convention on Human Rights,* (1978), 9 ILM 673.

[2] See for example *Filartiga v. Pena-Irala* 630 F. 2nd 876 (1980), United States Court of Appeals, Second Circuit.

4.6. REDRESS

REDRESS

Seeking Reparation for Torture Survivors

JUSTICE FOR TORTURE SURVIVORS IN THE UK:

SUBMISSION TO LORD ARCHER OF SANDWELL

IN SUPPORT OF

THE TORTURE (DAMAGES) BILL

MAY 2008

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I. INTRODUCTION

1. The Redress Trust (REDRESS) is an international human rights non-governmental organisation based in London with a mandate to assist torture survivors, to prevent their further torture, and to seek justice and other forms of reparation.

2. REDRESS was founded by Keith Carmichael, who was imprisoned unlawfully in Saudi Arabia from 2 November 1981 until 7 March 1984, without charge and without a single court hearing. During the 857 days of his arbitrary detention Mr. Carmichael was subjected to brutal torture, as a result of which he "suffered grave bodily injuries and psychiatric trauma".[1]

3. REDRESS has accumulated a wide expertise on the rights of victims of torture to gain both access to the courts and redress for their suffering, and has advocated on behalf of victims from all regions of the world. Since its establishment over 15 years ago, REDRESS has regularly taken up cases on behalf of individual torture survivors at the national and international level and provides assistance to representatives of torture survivors. REDRESS has extensive experience in interventions before national and international courts and tribunals, including the United Nations' Committee against Torture and Human Rights Committee, the European Court of Human Rights, the Inter-American Commission on Human Rights, the International Criminal Court, the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia.

II. THE RIGHT TO A REMEDY AND TO REPARATION UNDER INTERNATIONAL LAW

4. Torture survivors, and victims of other human rights and humanitarian law violations, have a right to a remedy and reparation under international law.[2] The right to a remedy is a basic human right, which derives from a fundamental principle of general international law, namely, international responsibility. The International Law Commission recently reaffirmed this principle in its 53rd Session when it adopted its Draft Articles on State Responsibility.[3]

5. The right to a remedy and reparation is enshrined in many international human rights treaties. For example, the Universal Declaration of Human Rights (1948) (article 8), the International Covenant on Civil and Political Rights (1966) (articles 2(3), 9(5) and 14(6)), the International Convention on the Elimination of All Forms of Racial Discrimination (1965) (article 6), the Convention of the Rights of the Child (1989) (article 39); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) (article 14), and the

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[1] Statement of Keith Carmichael in support of the Torture (Damages) Bill (4 February 2008), available at: http://www.redress.org/www.redress.org/documents/KEITH%20CARMICHAEL%20Statement.pdf.

[2] International law on this point is codified in the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (19 April 2005), C.H.R. res. 2005/35, U.N. Doc. E/CN.4/2005/ L.10/Add.11.

[3] Report of the International Law Commission on the work of its fifty-third session (23 April–1 June and 2 July–10 August 2001) Doc. No. A/56/10 (Initially distributed as *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10.)*

Rome Statute for an International Criminal Court (1998) (article 75).[4] The right has also been recognised and further developed in the jurisprudence of international and regional courts, as well as other treaty bodies and complaints mechanisms.[5]

6. Moreover, the right to a remedy and reparation is itself guaranteed and has been recognised as non-derogable. For example, the United Nations Human Rights Committee has stated,

> "Article 2, paragraph 3, of the Covenant requires a state party to the Covenant to provide remedies for any violation of the provisions of the Covenant. This clause is not mentioned in the list of non-derogable provisions in article 4, paragraph 2, but it constitutes a treaty obligation inherent in the Covenant as a whole. Even if a state party, during a state of emergency, and to the extent that such measures are strictly required by the exigencies of the situation, may introduce adjustments to the practical functioning of its procedures governing judicial or other remedies, the state party must comply with the fundamental obligation, under article 2, paragraph 3, of the Covenant to provide a remedy that is effective".[6]

7. This makes clear that there is an independent and continuing obligation to provide effective domestic remedies for victims of human rights violations, which applies at all times, during times of peace and war, and even in times of emergency.

8. Those human rights treaties that mention reparations require state parties to provide for this in domestic legislation. For example, the Universal Declaration of Human Rights (1948) (article 8), the International Covenant on Civil and Political Rights (1966) (article 2), the International Convention on the Elimination of All Forms of Racial Discrimination (1965) (article 6), the UN Convention against Torture (1984) (article 13) and the Declaration on the Protection of all Persons from Enforced Disappearance (1992)[7] (article 19).[8]

9. As to the content of the right to a remedy and reparation, the majority of human rights instruments guarantee both the procedural right to effective access to a fair hearing (through judicial and/or non-judicial remedies)[9] and the substantive right to reparations (such as restitution, compensation and rehabilitation).[10]

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[4] It has also figured in regional instruments, e.g. the European Convention on Human Rights (1950) (articles 5(5), 13 and 41); the American Convention on Human Rights (1969) (articles 25, 63(1) and 68); and the African Charter on Human and Peoples' Rights (1981) (article 21(2)).

[5] See, for example, ruling of the Inter-American Court of Human Rights in the *Velásquez Rodríguez Case*, (1989), Serial C, No 4 at para. 174. See also *Papamichalopoulos v. Greece (Art. 50)* (1995), E.C.H.R. Serial A, No 330-B at page 36.

[6] Human Rights Committee General Comment No. 29 on States of Emergency (Art. 4) (31 August 2001), CCPR/C/21/Rev.1/Add.11 at para. 14.

[7] General Assembly resolution 47/133 of 18 December 1992.

[8] At the regional level see also, the European Convention on Human Rights (1950) (article 13); the Charter of Fundamental Rights of the European Union (2000) (article 47); the American Convention on Human Rights (1969) (articles 24 and 25); the American Declaration of the Rights and Duties of Man (1948) (article XVIII); the Inter-American Convention on Forced Disappearance of Persons (1994) (article X); the Inter-American Convention to Prevent and Punish Torture (1985) (article 8); the African Charter of Human and Peoples' Rights (1981) (articles 3 and 7); and the Arab Charter on Human Rights (1994) (article 9).

[9] Some instruments explicitly call for judicial remedies for the breach of a guaranteed right, although non-judicial remedies may still be considered to be effective (see, for example, the International Covenant on Civil and Political Rights (1966) article 2(3)(b)).

[10] See Jeremy McBride, *'Access to Justice and Human Rights Treaties'* (1998) 17 Civil Justice Q. 235.

10. Not only do torture survivors have a right to a remedy and reparation under international law, access to justice forms a vital part of the healing process and of the re-empowerment of torture survivors. Obtaining judgment against the perpetrators of torture is an acknowledgement of the injustice the survivor has suffered. Having the opportunity to tell their story, and for the truth to be recognised by wider society and witnessed in court, can help the individual to reclaim their dignity and to legitimise their suffering. Access to justice can also provide a sense of closure to torture survivors and allow them to move on with their lives. As Professor van Boven has commented, reparation for violations of human rights has "the purpose of relieving the suffering of and affording justice to victims by removing or redressing to the extent possible the consequences of the wrongful acts and by preventing and deterring violations".[11] In contrast, if torture survivors are denied the right to a remedy or are denied access to justice, this can have a detrimental effect on their psychological wellbeing and recovery.

III. RECENT CASES IN WHICH STATE IMMUNITY HAS BARRED CIVIL CLAIMS IN THE ENGLISH COURTS

11. Despite their right to a remedy and reparation under international law as outlined above, in two key cases before the English courts, British nationals have been unable to bring a civil claim for damages against their alleged torturers. This has largely been as a result of the terms of the State Immunity Act 1978, which does not currently recognise an exception to the immunity of foreign states for torture committed abroad.

12. For example, Sulaiman Al-Adsani, a dual British and Kuwaiti national, brought a civil claim for damages in the English courts against the State of Kuwait and against individual state officials, for the torture he suffered in the Kuwaiti State Security Prison. Mr. Al-Adsani had been unable to bring a claim in Kuwait itself. The leading commentator on state immunity, Lady Fox, QC, noted in respect of his case that "local remedies may well be manifestly futile".[12] Ultimately however, by a narrow decision of 9-8, the European Court of Human Rights (the European Court)[13] upheld the English Court of Appeal's decision to grant immunity to Kuwait with blanket effect: therefore, as a general rule of international law, state immunity could be claimed even in respect of violations of *jus cogens* norms such as the absolute prohibition of torture. By contrast, the minority in the European Court were of the view that the "procedural bar of state immunity" is automatically lifted when it comes into conflict with the "hierarchically higher rule" of the absolute prohibition of torture.[14]

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[11] Final report submitted by Mr. Theo van Boven, Special Rapporteur, '*Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms'* (2 July 1993), E/CN.4/SUB.2/1993, at para. 137.

[12] Hazel Fox, '*The Law of State Immunity'* (2002) at 521. See also the following cases where the claimants had attempted to adjudicate their dispute in Germany but were refused access to the courts: *Ferrini v. Federal Republic of Germany* (Cass. Sez. Un. 5044/04) (reproduced in the original Italian text in 87 Rivista di diritto internazionale (2004) 539) in Italy; *Prefecture of Voiotia v. Federal Republic of Germany* Case No. 137/1997, Court of First Instance of Leivadia (October 30, 1997) in Greece; and *Princz v. Federal Republic of Germany* 26 F 3d 1166 (D.C. Cir. 1994) in the United States.

[13] *Al-Adsani v. United Kingdom* (35763/97) [2001] ECHR 752.

[14] Joint Dissenting Opinion of Judges Rozakis et. al, *Al Adsani v. United Kingdom* above at para. 3.

13. The obstacle of state immunity was again raised in the case of four British citizens, Ron Jones, Les Walker, Alexander Mitchell and William Sampson, who were tortured in Saudi Arabia. Similarly to Mr. Al-Adsani, they were unable to bring a claim for reparation in the courts of the foreign state where they were tortured, in this case Saudi Arabia. Mr. Jones then brought a civil claim for damages against the State of Saudi Arabia and all four men brought a claim against named individual officials in the English courts. As British nationals, the English courts presented the natural and most practical forum in which they could present a claim. In 2006, the House of Lords held that the terms of the State Immunity Act 1978 prevented the court from hearing the claim.[15] The torture survivors have lodged an application before the European Court and a decision on admissibility is pending.

IV. THE BILL CREATES A NEW EXCEPTION TO STATE IMMUNITY, WHICH WILL ASSIST IN COMBATING IMPUNITY FOR TORTURE

14. As seen in Part III above, the very reason that torture survivors, including UK nationals, may wish to seek redress in the English courts is because of the lack of access to justice in the foreign state where they were tortured. However, the principle of state immunity has to date prevented torture survivors from accessing the courts of England and Wales, leaving them without a remedy. As will be shown in this Part, diplomatic protection (where a state espouses a claim of a national who has been wronged abroad) is not an adequate and effective alternative for torture survivors. Therefore, granting state immunity to foreign states in such cases is not merely applying a procedural rule, but rather operates to totally remove any remaining possibility of a remedy.

15. The Torture (Damages) Bill seeks to address this problem, by proposing a new exception to the State Immunity Act 1978 for cases of torture. English law has long admitted exceptions to state immunity for torts committed in the UK and for commercial transactions. For example, as international trade increased, it was regarded as unfair to apply state immunity where the state was acting as a private party, rather than in its sovereign capacity. State immunity does not, therefore, apply to commercial dealings where the state acts as a "trader", in order to ensure a level playing field between commercial parties. Similarly, the exception for torts developed out of the distinction between acts *jure imperii* (acts of a public, governmental or sovereign nature) and acts *jure gestionis* (acts which are not exclusive to the sovereign and which could equally be performed by a private actor). The exception also developed in recognition of the illegality of the underlying tort.

16. Accordingly, REDRESS is in firm support of the Torture (Damages) Bill as a way in which to provide torture survivors with access to justice, where no adequate and effective remedy exists elsewhere.

[15] *Jones v. Ministry of Interior Al-Mamlaka Al-Arabiya as Saudiya and others* [2006] UKHL 26.

A. Immunity is not a procedural rule which has no impact upon impunity

17. Principle 1 of the United Nations' Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity provides that,

> "Impunity arises from a failure by States to meet their obligations to investigate violations; to take appropriate measures in respect of the perpetrators, particularly in the area of justice, by ensuring that those suspected of criminal responsibility are prosecuted, tried and duly punished; to provide victims with effective remedies and to ensure that they receive reparation for the injuries suffered; to ensure the inalienable right to know the truth about violations; and to take other necessary steps to prevent a recurrence of violations".[16]

18. As a result of the *Al-Adsani* and *Jones* cases, the question as to whether state immunity results in impunity for torture has been raised. Indeed, the Secretary-General of the Council of Europe recently stressed "the need to ensure that the rules on state immunity do not lead to impunity for perpetrators of serious human rights violations".[17]

19. Courts however, have often referred to immunity as a procedural rule which has no impact on impunity for torture. Rather, they argue, immunity simply redirects the claim to another forum. For example, the European Court held in *Al-Adsani v. United Kingdom* that, "[t]he grant of immunity is to be seen not as qualifying a substantive right but as a procedural bar on the national courts' power to determine the right."[18]

20. Similarly, the ICJ in the *Arrest Warrant* case stated,

> "*immunity* from jurisdiction enjoyed by incumbent Ministers for Foreign Affairs does not mean that they may enjoy *impunity* in respect of any crimes that they may have committed, irrespective of their gravity. Immunity from criminal jurisdiction and individual criminal responsibility are quite separate concepts. While jurisdictional immunity is procedural in nature, criminal responsibility is a question of substantive law. Jurisdictional immunity may well bar criminal prosecution for a certain period or for certain offences; it cannot exonerate the person to whom it applies from all criminal responsibility".[19]

21. Lastly, in *Jones v. Saudi Arabia* both Lord Bingham and Lord Hoffman (in his concurring opinion) held in the House of Lords that,

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[16] Economic and Social Council, '*Promotion and Protection of Human Rights: Impunity: Report of the Independent Expert to Update the Set of Principles to Combat Impunity, Diane Orentlicher: Addendum: Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity*', E/CN.4/2005/102/Add.1 (2005).

[17] Secretary-General, '*Follow-Up to the Secretary General's reports under Article 52 ECHR on the question of secret detention and transport of detainees suspected of terrorist acts, notably by or at the instigation of foreign agencies*' (SG/Inf (2006)5 and SG/Inf (2006)13) at para. 2.

[18] *Al-Adsani v. United Kingdom* above at para. 48.

[19] *Case Concerning the Arrest Warrant of 11 April 2000* (Democratic Republic of Congo v. Belgium) ICJ (2002) reprinted in 42 ILM 852 (2003) at para. 60.

> "State immunity is a procedural rule going to the jurisdiction of a national court. It does not go to substantive law; it does not contradict a prohibition contained in a *jus cogens* norm but merely diverts any breach of it to a different method of settlement. Arguably then, there is no substantive content in the procedural plea of state immunity upon which a *jus cogens* mandate can bite."[20]

22. However, immunity is not a procedural rule which has no impact upon impunity. As already discussed, the courts of the state where the torture is alleged to have taken place may not be available. Therefore, granting state immunity to foreign states in cases of torture very often does result in impunity for the perpetrators of torture, as no alternative forum exists to which the claim can be directed.

B. Diplomatic protection cannot be regarded as an alternative remedy

23. In *Al-Adsani v. Kuwait*, the English Court of Appeal recognised that Mr. Al-Adsani "had attempted to make use of diplomatic channels but the [UK] government refused to assist him".[21] However, despite this, the UK Government then sought to argue in the European Court that, "[t]here were other, traditional means of redress for wrongs of this kind available to the applicant, namely diplomatic representations or an inter-state claim."[22]

24. However, under English law, diplomatic protection remains a discretionary remedy of the state and not a right of the individual claimant. In reality, it cannot be regarded as an adequate, effective, available or predictable alternative. For example, the Court of Appeal in *Abbasi v. Secretary of State for Foreign and Commonwealth Affairs* held that, "[i]t is clear that international law has not yet recognised that a state is under a duty to intervene by diplomatic or other means to protect a citizen who is suffering or threatened with injury in a foreign state."[23] The Court continued: "where certain criteria are satisfied, the government will "consider" making representations. Whether to make any representations in a particular case, and if so in what form, is left entirely to the discretion of the Secretary of State".[24] In this regard, Amnesty International has noted that the state "will often sacrifice the legal rights of the victim to competing political considerations, such as maintaining friendly relations with the state responsible for the wrong".[25]

25. These considerations demonstrate the incompatibility of diplomatic protection with the right to a remedy and to reparation under international law, and its inability to present an alternative forum in which the torture survivor can bring a claim.

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[20] *Jones v. Ministry of Interior Al-Mamlaka Al-Arabiya as Saudiya and others*, above at para 44.

[21] *Al-Adsani v. Government of Kuwait and Others*, CA (12 March 1996) 107 ILR 536 at para. 51.

[22] *Al-Adsani v. United Kingdom* above at para. 50.

[23] *R (on the Application of Abbasi and another) v. Secretary of State for Foreign and Commonwealth Affairs and another* [2002] EWCA Civ 1598 (although the Court did note that a decision not to grant diplomatic protection could be judicially reviewed in certain circumstances without explaining what those circumstances might be, see paragraph 80 of the decision onwards).

[24] *Abbasi* above at para. 99.

[25] Amnesty International, '*Letter to the Foreign and Commonwealth Office on the UN Convention on the Jurisdictional Immunities of States and their Properties*' (5 May 2005) at 2 (footnote 2).

C. Concluding remarks on Part IV

26. Some seek to distinguish between procedural and substantive rules, suggesting that there are two separate legal regimes, with state immunity being insulated from wider rules of international law, such as the absolute prohibition of torture. Such reasoning allows the forum state to justify the grant of state immunity to foreign states while seemingly maintaining its commitment to the prohibition of torture. This allows deeper questions concerning the legitimacy of state immunity rules where torture is alleged to be evaded.

27. However, state immunity cannot be regarded as merely a procedural rule which has no impact on impunity. When combined with the lack of access to justice in the foreign state where the torture took place and with the discretionary nature of diplomatic protection, state immunity operates in practice to remove the remaining possibility of a remedy. In such cases, immunity results in impunity and it is these situations which the Bill seeks to address.

V. THE TORTURE (DAMAGES) BILL IS A PRACTICAL SOLUTION FOR TORTURE SURVIVORS IN THE UK TO ACCESS JUSTICE WITHOUT 'OPENING THE FLOODGATES'

28. Following on from Part III above, it is important to emphasise that the Torture (Damages) Bill seeks to address the specific and limited situation where torture survivors are left without a remedy. It is not aimed at encouraging 'forum shopping' but is designed to deal practically with the very real and immediate needs of torture survivors in the UK who are currently unable to access justice anywhere else.

29. For this reason, the Bill is tightly drafted, builds in a number of protections against the opening of a flood of litigation in the UK and offers a practical approach to dealing with this English law issue. We set out below some of the restrictions that limit the scope of the Bill, in order to allay any fears of a flood of litigation in the UK courts.

A. The bill tightly mirrors the definition of torture under section 134 of the Criminal Justice Act 1988

30. The definition of torture set out in Clause 5(2)(a) mirrors the criminal definition of torture as contained in section 134 of the Criminal Justice Act 1988. While broader definitions of torture are available under international law,[26] REDRESS acknowledges that the Bill seeks, from a practical perspective, to provide the civil equivalent to what is already contained in the English criminal law.

31. In a similar way, the Bill is limited to torture and does not extend to other international crimes, such as genocide, crimes against humanity and war crimes.

[26] For example, the Rome Statute of the International Criminal Court (1998) (articles 7 and 8). Part 5 of the International Criminal Court Act (2001) incorporates articles 6, 7 and 8 of the Rome Statute into English law.

However, victims of international crimes are equally entitled to reparation and a broader approach would be consistent with the UK's international commitments to combat impunity for such crimes.

32. Unlike the UN Convention against Torture the definition of torture in the Bill does not extend to "cruel, inhuman and degrading treatment and punishment" ("ill-treatment"). The inclusion of ill-treatment would reflect the coverage provided by the UN Convention against Torture and would be in line with international law. However, REDRESS concedes that the Bill is narrowly focused on torture in order to provide access to justice to a particular category of vulnerable individuals while stemming any concerns that the Bill could result in a flood of claims given the breadth of acts which could fall within the definition of ill-treatment.

B. Retrospective effect and limitation

33. Clause 7 of the Bill provides that an action can be brought under the Act in respect of any act of torture occurring on or after 29 September 1988, to reflect the date upon which section 134 of the Criminal Justice Act 1988 entered into force. This is justified on the basis that torture has been a crime under international law since at least 1984 (the date of the UN Convention against torture) and that torture survivors living in the UK would otherwise be left without a remedy or reparation.

34. In addition, any danger of stale claims or of a flood of litigation before the English courts is minimised by the inclusion of a limitation period in Clause 2. Clause 2 provides that an action for damages in respect of torture or a death caused by torture may be brought at any time within six years beginning with the date when it first became "reasonably practicable" for the person concerned to bring the action. Such an approach is in line with limitation periods for actions in tort in English law.[27]

35. Whilst the exclusion of a limitation period to the Bill would be in line with international law, which recognises that statutes of limitation do not apply to certain crimes under international law,[28] REDRESS recognises that such a limit may be necessary to allay fears of a flood of claims in the English courts. In addition, while we would favour the extension of the six-year period provided for in the Bill, on the basis of the seriousness of torture as a crime under international law, we accept its limitation in this way on similar grounds.[29]

C. Exhaustion of local remedies

36. Clause 1(2) of the Bill makes clear that it will only apply when no adequate and effective remedy for damages is available in the foreign state in which the torture is alleged to have been committed. As set out in Article 35(1) of the European

[27] See, for example, section 2 (time limit for actions founded on tort) and section 28 (extension of limitation period in case of disability) of the Limitation Act (1980).

[28] For example, the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity (1968); the Convention on lack of applicability of statutes of limitation in war crimes and crimes against humanity of the Council of Europe (Strasbourg, 1974); and the Rome Statute of the International Criminal Court (1998) (article 29).

[29] See, for example, the Torture Victims Protection Act (1991) in the United States which provides for a 10-year limitation period and the case *of Arce et al. v. Garcia and Casanova* (28 February 2005), also in the US, where the Court of Appeals for the 11th Circuit applied a 10-year limitation period to the Alien Tort Claims Act (1789), although this did not contain an express limitation clause.

Convention on Human Rights, the rationale behind an exhaustion of local remedies requirement, "is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Convention institutions".[30]

D. Doctrine of *forum non conveniens*

37. An additional limit on the scope of the Torture (Damages) Bill is that the doctrine of *forum non conveniens* would operate to stay proceedings, "…where the court is satisfied that there is some other available forum, having competent jurisdiction, which is the appropriate forum for trial of the action, i.e. in which the case may be tried more suitably for the interests of all parties and the ends of justice".[31] This should minimise concerns about a flood of claims before the English courts.

VI. CONCLUSION: A NEW EXCEPTION TO STATE IMMUNITY IS CONSISTENT WITH CONTEMPORARY NOTIONS OF STATE SOVEREIGNTY, DIGNITY AND COMITY

38. The preservation of state immunity is usually justified on the basis of state sovereignty, dignity and comity. For example, it is often argued that state immunity is granted on the basis of the principle of *par in parem non habet jurisdictionem* ("legal persons of equal standing cannot have their disputes settled in the courts of one of them");[32] and that states should not intervene in the internal affairs of other states. State immunity thus developed in order to protect the sovereignty of states.

39. However, the concept of state sovereignty is not fixed, but rather evolves with time. If state immunity is understood as deriving from state sovereignty, it follows that it too must develop and be informed by wider public international law. So, for example, serious violations of international law such as the prohibition of torture are no longer regarded as falling within the sole domain of the state. Rather, the absolute prohibition of torture imposes obligations *erga omnes*, meaning that the international community as a whole has a legal interest in protecting such rights. The offending state cannot, therefore, assert state sovereignty to avoid responsibility for torture and the forum state is thus permitted to inquire into allegations of torture by foreign states. Therefore, notions of state sovereignty have changed and, in the case of the prohibition of torture, an exception to state immunity would actually be consistent with state sovereignty rather than harmful to it.

40. Nor will arguments based on the dignity, comity and international relations be sufficient. For example, in *A and Ors. v. Secretary of State for the Home Department* in the House of Lords, Lord Bingham stated, "I am not impressed by

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[30] *Selmouni v. France* (28 July 1999) (25803/94) at para. 74.

[31] *Spiliada Maritime Corporation v. Cansulex Ltd* [1987] AC 460 at 478. See also section 49 of the English Civil Jurisdiction and Judgments Act (1982).

[32] Ian Brownlie, 'Principles of Public International Law' (Sixth Edition) (Oxford University Press, 2003) at 321.

the argument based on the practical undesirability of upsetting foreign regimes which may resort to torture".[33]

41. For the reasons outlined above, REDRESS strongly supports the enactment of the Torture (Damages) Bill. We believe that this is a unique and timely opportunity for the UK to reaffirm its commitment to enforcing the absolute prohibition of torture and to ensuring torture survivors in the UK can obtain justice

[33] *A v. Secretary of State for the Home Department (No 2)* [2005] UKHL 71, [2005] 3 WLR 1249 at para. 50.

5. Additional Submissions

5.1. Written Comments of Lady Fox CMG QC[*]

Torture (Damages) Bill [HL], version of June 2007
Written Comments of Lady Fox CMG QC

1. My comments are solely directed to the international law aspects of the Bill and in particular as it relates to the law of State immunity.

General

2. I recognise, and I suspect it is a strong motive for the Bill, the unfairness of English law at the present time in applying immunity of the State and its officials to civil proceedings for reparation for State torture, but, on one interpretation of Pinochet (No.3) [2000] 1 AC 147, removing immunity and allowing criminal proceedings to be brought in UK courts against a State official who commits such state torture.
3. In my view, the international law of State immunity requires modification but **only to a very limited extent**.
4. Any proposal must recognise that the abandonment of absolute immunity from civil proceedings for commercial transactions is very recent in most civil countries and that the restrictive doctrine has only been fully adopted in the US, UK, Australia, Netherlands, and Switzerland and more recently in Germany and France. On this account the adoption in 2004 by the United Nations of an international convention, The UN Convention on the Jurisdictional Immunities of Stares and their Property, setting out rules removing immunity from civil proceedings for commercial transactions is a great step forward. To date 28 States including China, India and Japan have signed it and 4 States have ratified it. Its ratification by 30 States to bring it into force is of prime importance.
5. Every effort should be made to bring this about. Without its recognition that international law permits restrictions to State immunity, the reform sought in Lord Archer's Bill will never get off the ground. Only secondly should any additional reduction of immunity, on the lines set out in the Bill be sought.
6. In addition to these general comments I have some more specific comments relating to the text of the Bill.

The Bill

7. I am of the view that the Bill does both too little and too much.

<u>Too Little</u>.

8. As I understand it, the Bill seeks to amend English law so as to remove immunity from civil proceedings relating to the international crime of torture incorporated into English law by the Criminal Justice Act 1988, s. 134. torture.
9.. But why restrict the Bill to torture when other equally heinous international crimes-genocide, war crimes, crimes against humanity as defined in the International criminal Court Act- are all made prosecutable crimes in English law and in respect of which a claim for damages against a State or its official is equally barred?
10. In my view, if the injustice of the situation requires reform, it should not be confined to the international crime of torture solely.

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[*] *These written comments of Lady Fox CMG QC were directed at earlier drafts of the Torture (Damages) Bill and of the Explanatory Notes.*

11. Therefore the present proposal attempts too little and will introduce an anomalous situation. Such a proposal should apply to all international crimes for which the UK and the foreign State against whom proceedings are to be brought have entered into obligations to prosecute in their national courts. But English law can only give effect to such a widened proposal after the necessary modification of international law by international conventions imposing obligations on State to exercise universal civil jurisdiction in respect of proceedings for reparation for the commission of international crimes.

Too much

12. Universal criminal jurisdiction in respect of international crimes referred to above is both a right to be exercised and an obligation on States to submit their officials to prosecution or extradition because they have entered into international agreements to that effect. There is a reciprocity of right and obligation.

13. Universal civil jurisdiction is not underwritten by an international treaty in the same way- true there is an ambiguity in the UN Torture Convention article 14 as to extraterritorial effect of the obligation to provide the victim with a remedy to obtain reparation, but the better view,(which the House of Lords in Jones v. Saudi Arabia,[2006]UKHL 26 [2006]2WLR 70 accepted and therefore, must be the legal position in England) is that any such obligation is confined to requiring a remedy to be provided by way of civil proceedings solely for torture committed within the UK.

14. To claim such a right for the UK court to entertain civil proceedings against a foreign State for torture committed outside the UK, without international agreement, would constitute a breach of private and public international law rules, be a non-justiciable matter and an intervention in the internal affairs of another State.

15. The standard of impracticability proposed for exhaustion of remedies in clause 1 is too low. The ILC Articles on State Responsibility adopted by the United Nations, article 44 provides that the responsibility of the State may not be invoked 'where any available and effective local remedy has not been exhausted.'

16. Immunity should be separated from the issue of responsibility and attribution of the act to the State. The regime proposed in the Bill takes no account of the international law rules of attribution provided in the ILC Articles of State responsibility (which by imputing an unauthorised act of an official to a State may be broader in some respects than the proposal). The Bill's regime introduces in Clause 3 an evidential presumption and rules of vicarious liability, including the reference to lawful sanctions in Clause 6 (7) which is in different terms from the defence set out in CJA 1988, 134 (4); nothing is said as to whether a criminal standard of proof applies and whether prior conviction of torture is a condition of such proceedings.

17. Reciprocity by which the UK as well as foreign States would be subject to the amended law proposed in the Bill is desirable but not achieved by inclusion of the UK within the definition of the State in clause 6. This suggests existing English law is inadequate and would have constitutional implications. This, and the risk, if the Bill is enacted, of it being cited as evidence of State practice in international law, renders false the assertions in the Explanatory Notes, paras 18 and 19 that the Bill makes no call on public funds and will not effect public service manpower. Unless the proposals in the Bill are regulated by international agreement, the unilateral grant of a civil remedy by the Bill would encourage other States to assume jurisdiction in their national courts in respect of terrorist suspects held in English prisons without trial, and of the methods of the police and secret services.

18. The acceptability in existing English law of the Bill's provisions as to the definition of a new tort of torture, aggravated damages, effect of death etc are outside my competence. But I draw attention to a number of conditions required for criminal proceedings which would be absent from civil proceedings and might properly undermine any comparison of the two proceedings.

19. They are:

the territorial link with the UK is necessarily much stricter than in the Bill's proposed civil proceedings: with a prosecution the accused is required to be present in the UK; service of process for torts is more restricted than the Clause 4 which contravenes in respect of torture the general rule of private international law for the exercise of jurisdiction and applicable law over torts committed abroad.. Service of proceedings out of the jurisdiction under the Civil Procedure Rules 1998 which are pursuant to the EC Regulation on Jurisdiction and Judgments is restricted by Rule 6.20 paragraph 8 to a claim in tort where (a) damage was sustained within the jurisdiction or (b) the damage resulted from an act committed within the jurisdiction.

20. The consequence of criminal conviction is a fine or imprisonment; for civil proceedings the State Immunity Act's rules relating to State immunity from execution would bar satisfaction of any judgment obtained.

21. Money damages forms a small part in the types of reparation which breach of human rights law requires a State to provide- rehabilitation, provision of housing, employment - none of which under present law apply against a foreign State without its cooperation.

Conclusion

22. The amendment proposed effects too little and would introduce an anomaly as regards compensation for State torture. It also goes too far; it is unsupported by international agreement as to the exercise of universal civil jurisdiction, contrary to international law as regards exhaustion of local remedies, the relevant rules of attribution for State's acts, and out of line with English private international law rules.

10.09.07/24.06.08

6. Transcript of the Second Reading, 16 May 2008

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House of Lords

Friday, 16 May 2008.

The House met at ten o'clock: the LORD SPEAKER on the Woolsack.

Prayers—Read by the Lord Bishop of Liverpool.

Torture (Damages) Bill [HL]

Lord Archer of Sandwell: My Lords, I beg to move that this Bill be now read a second time. Of all the ways in which one human being may mistreat another, there can be none which evokes greater loathing and greater condemnation than torture. That is reflected in a number of international instruments, particularly in the United Nations torture convention of 1985.

This is not the occasion to weary your Lordships with a debate about the construction of all the convention's provisions, but there can be no room for argument that all members of the United Nations have an obligation not merely to abstain from torture but actively to do what they can to prevent it.

Article 14 of the convention declares:

> "Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation".

There has been an ongoing dispute as to how widely that obligation extends, but it is not a debate which need trouble your Lordships for two reasons. First, the case for the Bill does not rest on any obligation in an international instrument. It is enough that most of us, I hope, recognise a moral obligation to extend what protection and relief we can to those who have suffered torture. Secondly, this country has already taken steps, in Section 134 of the Criminal Justice Act 1988, to provide that a person who commits torture anywhere—I emphasise, anywhere—is guilty of a criminal offence in English law and liable to imprisonment for life. So there is no doubt as to the view which the people of this country take on torture.

But there is a problem. The criminal courts of this country can impose an effective sentence only if the torturer is within the jurisdiction. The intention behind Section 134 was that a torturer should have nowhere to hide, but if he goes to earth in his own country and the Government there do not wish to see him answer for what he did, the international community may have to stand and watch the sneer on his face as he defies justice.

It is principally that problem which the Bill seeks to address—and there is a solution. Many torturers are agents of their Government, or the offender may be the Government themselves. States, senior Ministers and officials may well have assets in this country; indeed, they may have to maintain assets in this country for commercial reasons. The Bill provides the victim with a right to bring a civil action for damages in this country. If he obtains judgment, execution may be levied against any assets which the offender may have here.

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If we provide that right, it may achieve two things. First, it may afford the victim some reparation for what he or she has suffered and help in coming to terms with the suffering. Secondly, the knowledge that reparation may be exacted may help to serve as a deterrent to potential torturers.

That, simply, is the case for the Bill. So what may be said against it? I must be cautious in anticipating what my noble friend the Minister may wish to say at the close of the debate. Indeed, knowing him as I do, I recognise that accusing him of wishing to say it may not be fair, but it may be in his brief.

First, it may be said that the victim should seek reparation in the jurisdiction where the torture took place, but I credit my noble friend with a greater sense of realism. In countries where torture takes place, even if the law appears to provide a remedy, officials and Ministers there may do everything possible to ensure that the case does not proceed to judgment or, if it does, that the truth may disappear behind perjured evidence. To seek justice in the country where the offence took place, the victim may have to return there to pursue his remedy. And that is to invite a repetition of the experience.

Secondly, we may be warned that if this country offers a remedy to all who have suffered, our courts may be submerged under a flood of cases. That is an argument that we encounter whenever we seek to internationalise the rule of law. The first comment to be made on that is that the courts apply the doctrine which lawyers call forum non conveniens.

The first port of call for a remedy is usually the jurisdiction where the act took place, and if that jurisdiction provides a genuine and effective remedy, the courts of this country will normally decline to hear the case, leaving the aggrieved party to his remedy elsewhere. Indeed, that doctrine is written into the Bill, in Clause 1(2). But if there is no genuine remedy in the jurisdiction where the act took place, to refuse a remedy in this country would be to deny the victim any remedy. It would be to pass by on the other side. Indifference is not far from encouragement. To argue whose business it is to rectify so appalling a wrong is unworthy. There are some wrongs that

are the business of all humanity. In fact, there is little evidence that there would be a flood of cases out of proportion to the normal business of the courts, but even if there were, to deny any redress to a victim of torture would be a curious sense of priorities.

The third argument that could be advanced is that the proposal would be to legislate extraterritorially. I am not sure whether that is so. It would be legislating about what is to happen in this country in consequence of a wrong committed somewhere else. Of course, legislating about what happened in the territory of another state can be provocative, and may be resented, and can be justified only in exceptional circumstances. But there can be few circumstances more exceptional than torture. If, as I believe, it is condemned by the whole civilised world, and preventing it or affording redress for the victims calls for international co-operation, it is difficult to see which Government would resist measures across national boundaries to achieve that common purpose. A Government who announced

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that they wanted to see torture going unredressed and torturers defying justice would expose themselves to international contempt. I would not presume to offer that view on my own authority, but it represents an international consensus, embodied in Article 14 of the convention. This country has already done it, in Section 134 of the Criminal Justice Act 1988. I know of no relevant distinction for this purpose between criminal and civil proceedings. Article 14 makes no such distinction.

The final objection that I ought to mention is the doctrine of state immunity. It is a defence that a foreign state or agent of a state may raise if he or it is called on to face proceedings in the courts of this country. The State Immunity Act 1978 confers immunity from proceedings in the courts of this country on any foreign state, head of state, its Governments or departments of government. The Act then sets out certain proceedings to which the general exception does not apply. For example, there is no immunity from proceedings in commercial matters, yet, at present, claims for reparations for torture may be denied.

There has been a substantial amount of judicial guidance as to the present position, and if any noble Lord wishes to pursue the subject, probably the leading case is Jones v Saudi Arabia, reported in the United Kingdom House of Lords cases for 2006 at page 26. In that case, the Appellate Committee of your Lordships' House held that state immunity applies to proceedings for torture. Of course, it is not disputed that that represents the present law, but the purpose of legislation is to change the law and that is the purpose of the Bill.

The Bill would add one more category of case to the list of exceptions in the State Immunity Act. It would remove immunity from proceedings under the Bill. That may evoke some criticism from states that may wish to claim immunity from proceedings for torture, but the doctrine of state immunity was never designed as a shield for torturers. The proposal would send a signal about where this country stands on torture.

I must place on record my debt of gratitude to Redress, all of whose staff have been tirelessly generous with their time in offering me support, advice and research. I am grateful, too, for the help and advice of Amnesty International, Justice, Liberty, Fair

Trials International, the Medical Foundation for the Care of Victims of Torture, the Parker Institute, the medical refugee centre and Prisoners Abroad. I have been provided with statements from a number of victims of torture, who can speak of the ongoing effects on their lives.

We have had suggestions for improving the Bill, some from colleagues in your Lordships' House, and I am grateful. Those who know me will know that I make no claim to infallibility and I am happy to discuss ways of making the Bill more effective. Some suggestions are already incorporated in the text.

I have read many horrifying stories and they have reminded me that torture is not just a concept in a statute or a chapter in a textbook. It is something that actually happens to people and it cripples their bodies, leads to post-traumatic stress disorder and ruins their careers and sometimes their lives. That is the subject

matter of the Bill, and what matters is for us to help the victims recover from the past and try to protect potential victims in the future. I beg to move.

Moved, That the Bill be now read a second time.—(*Lord Archer of Sandwell*.)

10.19 am

Baroness D'Souza: My Lords, almost everyone abhors torture. In fact, so abhorrent is it that perhaps too few actually think about its impact on an individual and his or her family and community. I am afraid that I must draw your Lordships' attention to these unpleasant effects and, in so doing, declare an interest as a former director of REDRESS, the lead sponsor organisation for the Bill, having worked on it for several years.

Torture of whatever kind aims to dehumanise its victims, to humiliate and to break down personality and dignity. In this, and regardless of the physical pain involved, it is successful. To be kept in a dark but exposed cell without privacy or certainty, to be kept in a state of almost constant fear of what the day or night will hold, to feel wholly out of control of one's immediate environment and even of oneself is a traumatic experience. Many of us may still be haunted by small humiliations that we suffered as children, at school or in our first jobs. We may remember the fear that unpredictability engenders, whether due to an adult's behaviour or to daily events. We develop coping mechanisms to suppress the effects of these humiliations and fears, but it often takes a long time and often may be unsuccessful.

The testimonies of victims from all over the world who have survived torture repeatedly cite feelings of worthlessness and nothingness that overcame them while being detained. One says:

> "I still hear them yelling 'You're nothing, you're nothing'. I don't sleep because I hear the guard opening the door".

Another says:

> "Nobody knows where you are; you feel that the world has given up on you".

Another talks of,

> "unspeakable, degrading acts that you will never be able to forget and yet are ashamed to speak about".

Now consider this: the survivors—that is, the lucky ones who do not die under torture—return to their families and to their communities. But how can they share their experiences? How can they subject those closest to them, including children, to the pain of knowing what they have undergone? How can they admit to the truly awful humiliation to which they have been subjected? How can they re-enter family and community life with any kind of confidence, especially if they have given way under torture—that is, signed a false confession, betrayed a friend or denied fundamental beliefs? Depending on the conditions of the detention and torture, there may be severe personality disorders and, inevitably, there is depression, anxiety and sleeplessness with flashbacks and nightmares. Most persistent are the feelings of shame, guilt and loss of self-esteem. One survivor says:

> "Ten years later, when I see a policeman I still shake".

Another says:

> "I don't have the ... ability to learn new skills due to lack of concentration".

Or:

> "I want to try and get that terrible time out of my mind but I can't ... I wake up screaming".

The longer-term effect of torture is mental, psychological and emotional, areas that may not heal as the physical body does, if at all. We must ask ourselves what the extensive research reveals about what helps a torture survivor to deal effectively with this kind of trauma. First and foremost, the survivor needs to have his or her experience acknowledged. He—I use that pronoun for the sake of ease—needs the world to recognise that he has been through a terrible, singular episode and that the utter brutality and unfairness of his torture and detention have to be explicitly accepted. He or she needs to prove that the torturers failed to destroy them as human beings.

The second step is for some public acknowledgement in the form of redress. This is not necessarily about money; it is about the admission by the authorities that another Government have committed a crime against humanity. The judgment from a court that admits to this crime, which castigates in the strongest terms those Governments that allow torture, is in itself healing. It demonstrates to the survivor that his experience was not normal or acceptable, but heinous in the face of the world. Compensation in the form of a monetary award serves to underline to the survivor and to the wider community that justice has been done, that a chapter is on some level

closed and that the survivor can now focus on his own recovery. We should not underestimate the force of justice in helping recovery.

That, of course, brings us to the far wider legal implications of the Bill. If torture is to be taken seriously and treated as the crime that it is, Governments must be prepared to prosecute torturers, whether these be agents of the state or the state police. To do otherwise is to condone torture, however tacitly. In a case not so long ago, which REDRESS pursued to the end, the UK Government used every possible evasion tactic to prevent a case against the police in Harare in Zimbabwe for the torture of a British national. REDRESS was told that there was some doubt about the nationality of the victim, despite sworn affidavits and passport details. Letters were misdirected and/or left unanswered. The Attorney-General at the time refused to answer personally addressed letters.

The Bill opens the way for the UK Government to abide by its commitments as a signatory to the UN Convention Against Torture by enabling individuals to seek and gain a civil remedy and justice under the law. Every individual has a right to be free of torture but, until now, there has been no remedy if the responsible Government refuse to take action and claim immunity. If there is no remedy, there is no right. In this sense, to deny the Bill is to infringe the Convention Against Torture.

The Bill challenges state immunity in dealing with crimes such as torture and effectively urges that torture should become a listed exception to the State Immunity Act 1978. If passed, it will give Governments and torturers pause for thought. A crime acknowledged by a court of law, with the details widely accessible to the public, must in the end act as a deterrent. The Bill therefore also contributes to the prevention of torture

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because, if enacted, it will advertise to the international community that torture will not be tolerated.

Let me conclude with a few sentences from survivors, one a Sudanese lawyer and member of the Sudan Bar Association, whose torture resulted in the amputation of his leg:

> "If I managed to bring those responsible to justice, I would feel content and my confidence in the justice system would be restored".

A British project manager in Saudi Arabia said that,

> "a law in this country that outlaws torture in another country ... can only be good for mankind".

A Zimbabwean opposition politician said:

> "The law needs to change to bring it into shape for the reality facing torture victims ... if the Bill becomes law it will be one of the best developments because it will make people accountable".

Lastly, I quote a Bahraini businessman, who said that,

> "we must give light to people who live in the dark".

10.26 am

Lord Sheikh: My Lords, we are today being invited to confront a rather peculiar situation. The international community agrees that torture is unacceptable and should be eradicated, yet we all know that torture continues to be practised in many parts of the world, despite the established consensus. Although I am not a lawyer, I have always taken a keen interest in this issue on humanitarian grounds and completely abhor the distress caused to those who have been victims of this degrading abuse.

It is not good enough for us to agree that something should be done. We must be more proactive in challenging this vile activity. I congratulate the noble and learned Lord, Lord Archer of Sandwell, on the way in which he has presented the Bill to the House this morning. Experience demonstrates that, even if the moral imperative to outlaw this evil practice is put to one side, the activity does not work. Those who argue that vital information can be obtained or public protection secured through the use of torture are utterly wrong. I appreciate the need to obtain intelligence for national security, but that can be done by subtle means and suitable interrogation without the use of torture.

International law requires that states should provide access to justice for victims of torture, including reparation and rehabilitation. Experience demonstrates that this is often complex, problematic or even non-existent. Academic studies consistently prove that access to justice is a key component in rehabilitation for those subjected to such horrific abuse. We have a real duty to act.

Nor can we afford to ignore the social effect of torture. Apart from the degrading impact on general society, torture harms those in the victim's social circle: their family and friends. Inevitably, it affects relationships and causes enormous distress to those who happen to know individuals who have been subjected to acts of torture. The effect of torture is long term for the individual and for the people around them. Given the monumental distress caused as a result of this practice, I am happy to inform the House that I support in principle what the noble and learned Lord

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seeks to achieve through the introduction of the Bill, although I reserve the right to seek clarification on certain provisions as the Bill progresses through the House.

Victims of gross human rights violations such as torture should be able to achieve access to justice, reparation for the harm suffered and rehabilitation. In seeking to ensure that all victims of torture are able to access justice by having their case presented in court and a judgment considered, the Bill makes an important contribution towards recovery and healing for those affected.

The broad thrust contained in the proposals whereby a person responsible for the commission of torture is liable to damages in civil proceedings is fair. I am pleased

that the definition in Clause 5 includes a state as well as a person liable for proceedings. It is an established fact that torture is in many cases sanctioned or tolerated by high officials of a state.

One of the most important issues for any Bill of this nature is the definition of what constitutes torture. The decision to apply the definition used in the Criminal Justice Act 1988 is sensible, but the House needs to be reassured that Clause 5(5) clarifies sufficiently the definition of torture in subsections (1) and (2) of that clause. There is an obvious advantage in ensuring that the definition used for torture is consistent with that which is internationally recognised and applied universally.

Some victims of torture will seek little more than to have their day in court and to present their case. Sadly, in some countries around the globe it is not possible for victims of torture to achieve that. Indeed, where a mechanism for adequate and effective remedy already exists in foreign countries where torture has been committed, victims are able to progress their cases without the need for this Bill. The Bill provides a level playing field for those who are denied the chance to seek that redress because of the lack of adequate and effective remedy mechanisms in those countries. Torture sufferers have a right to legal remedy and reparation under international law and this access, where otherwise denied, can only be a good thing.

I am pleased that, should this Bill reach the statute book, the laws of England and Wales will apply. We should all be proud to exhibit the strength of our legal system in challenging and seeking to tackle this obnoxious behaviour committed in other places that do not afford that mechanism. By amending the State Immunity Act 1978, the Bill would provide an exception to disallow a state from claiming immunity from the proposal. The State Immunity Act already contains a number of exceptions, including for breaches of commercial contracts and for torts committed in this country. I do not have a problem with the proposal in the Bill to include a further exception.

I recognise the difficulties and frustrations that affect those who have been victims of torture and I am passionate in my determination to ensure that they have the access to justice that they have a right to expect. It must be of concern, however, that a court judgment passed in this country will not necessarily lead to a resolution for those victims of torture, particularly among rogue states that are likely to be most disposed

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towards the use of torture. Achieving adequate redress will require rather more than a well intentioned piece of legislation in this House. That, however, is no reason why the Bill should not receive a fair wind in this House and is certainly no basis on which to reject the proposal on Second Reading.

Some may argue that affording the courts the opportunity to become involved in passing judgment on the actions of foreign jurisdictions will weaken our strategic relationships with certain foreign Governments. I reject that suggestion. Torture is unacceptable in any country and anything that highlights those who fail to take the necessary action to eradicate it in their respective jurisdictions should be progressed. An example of how this might facilitate that development is clear from the Bill. Foreign states that wish to avoid the humiliating prospect of being sued in our civil

courts need only provide their own domestic legal arrangements to afford torture survivors the opportunity to challenge their treatment within those countries' legal systems.

My final point concerns the dreadful issue of complicity that is implied through the action of rendition. We need to be sure that all future concerns about rendition flights are asserted strongly and in the public domain. However, given the stance that we all take on torture, we have to acknowledge that rendition leading to torture is unacceptable. I would like to see a higher threshold for rendition to third countries and, particularly on the part of the United States, for it to reflect more closely international norms, which go beyond a matter of mere belief that the suspect will not be tortured. These differences of practice and definition are at the root of international concern and their satisfactory resolution would mean that, rather than permanent suspicion and occasional revelations, real trust might be restored for the future.

I wish the Bill well and look forward to taking an active interest during its passage.

10.36 am

Lord Thomas of Gresford: My Lords, I congratulate the noble and learned Lord, Lord Archer of Sandwell, on bringing forward this Bill. I pay tribute to him for his long career in defending human rights, which is much appreciated by those on these Benches. I also congratulate Redress, which backed the Bill. The noble Baroness, Lady D'Souza, is at the forefront of its activities but I am pleased to see at least three or four other patrons of that organisation in your Lordships' House today. Their continuing interest in this most important topic is very heartening.

As the noble and learned Lord, Lord Archer, said, we have accepted criminal responsibility in this country under Section 134 of the Criminal Justice Act 1988. In many civil jurisdictions, where civil law appertains, there is, coupled with criminal responsibility, a right for reparation so that in many common law countries and, indeed, in many civil jurisdictions throughout the world, there is the possibility of obtaining precisely the remedy for the individual victim that the Bill advances. It is perhaps one area where we can say that the common law has fallen behind, because the judgment of the House of Lords felt it necessary to put the principle of state immunity before that of dealing with torture.

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The problem can be illustrated in this way. Supposing an Iraqi civilian were to sue the British Government in an Iraqi court; one wonders whether the British Government would bother to turn up to contest that case. If the individual were successful, his case not having been challenged in an Iraqi court, would he then have a right to turn to British assets to recover an award that was made to him by that court? I put the reverse side so that it can be appreciated just how important it is that we in this country provide such a remedy but that we see it in the international context.

Turning to the Bill, as the noble Lord, Lord Sheikh, said a moment ago, torture is adequately defined in Clause 5. I am pleased to see that it covers those who are complicit in torture and not just those who actually carry out the act of torture. That

has been a matter of concern to some favourable critics of the Bill who seek to strengthen it. I believe that the definition in Clause 5 covers the position.

Clause 1(2) deals with the forum conveniens point, to which the noble and learned Lord, Lord Archer, referred. One of the fears that there may be in government circles, which may not give their full, wholehearted support to the Bill, is that the courts of this country would be clogged by people who had been in Guantanamo and who were suing the United States Government for torture that had been committed on them in that disgraceful prison. There is a remedy to be obtained in United States courts, and it would not take a moment for the court in this country to stay such an action, because the forum conveniens would undoubtedly be the United States.

That does not necessarily apply everywhere. It could be that a person who had been tortured in a state, with the entire complicity of that state, could never have an adequate remedy, and indeed he would risk his life to go to court in the state where he had been tortured to obtain that remedy. For that purpose, this provision is rightly in place. Amnesty International has a valid criticism in its suggestion that the argument of forum conveniens or forum non conveniens should rest with the defendant state; it would be for the state to prove that the forum chosen was not correct. Maybe that is implicit in the clause as drafted, but it could be made rather more explicit.

The limitation period is six years from the time when it first became reasonably practicable for the person concerned to bring an action. Again, Amnesty has suggested that the burden should be on a defendant state to establish that the limitation period has begun to run; in other words, to say when the six-year period began. It could be argued, frankly, that where torture is concerned there should be no limitation period.

Clause 5(5) deals with acts or omissions that do not constitute torture,

> "if the pain or suffering that is inflicted thereby arises only as a result of sanctions which are held lawful under international law".

The Baha Musa case is a case study of just such a situation. I declare an interest, as having defended one of the officers charged with neglect in the court martial in that case. It emerged that it was certainly agreed by authority that the shock of capture of an Iraqi person

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could be maintained by various methods, such as harsh interrogation, which was almost a term of art, and which permits the interrogator to shout and scream abuse and insults in the face of the person who has been captured.

Although it is no doubt proper in international law for a captured prisoner to be interrogated, that case demonstrated that it is very easy to slip into something that is much worse and where, outside the way in which the command has permitted activity to occur, further ill treatment occurs. It was never clear in that case, for example, whether hooding was permissible. It had been banned in Northern Ireland; but was it permitted in Iraq? The higher command did not seem to know. The question of

whether stress positions were acceptable also entered into it. It can, and did, degenerate to worse than that, where the unfortunate Baha Musa died with 93 marks of injury on his body. I congratulate the Government on finally acceding to the campaign by the solicitor, Mr Shiner, on behalf of Baha Musa's family, and instigating a public inquiry under a High Court judge, as was announced earlier this week. Let us not, when we are talking about torture, think that it is something that does not affect us. It can be something that we can be concerned about in this country.

The principle behind the Bill is clear cut; that reparation to the victim of torture should come far beyond the arid doctrine of state immunity, which may have commercial advantages and, for all I know, may have diplomatic advantages; and that human rights must be asserted ahead of arid doctrines of that nature.

10.46 am

Lord Judd: My Lords, I, too, start by paying a warm tribute to my noble and learned friend Lord Archer of Sandwell. He was a respected and distinguished law officer in a previous Government of whom I was a part. His outstanding legal ability and integrity have always been clear. As the noble Lord, Lord Thomas of Gresford, said, he has had a lifelong commitment to justice in its fullest sense and to human rights irrespective of national boundaries. He is a challenging, practical humanitarian.

The nature of torture cannot be overemphasised. It is so easy to retreat into arid, academic discussions about torture in a disembodied form. The physical, psychological and emotional damage can be unspeakable, and it can remain with the victim for life. Like other noble Lords, I imagine, I have received a good deal of briefing material from people concerned about the issues raised by the Bill. I do no disservice to the quality of all those representations if I pick out one that struck me very forcefully, which came from Redress, Fair Trials International and Liberty. It uses the example of the case of a mainstream British citizen to spell out the point. I hope that I will be forgiven if I quote from the briefing:

> "Les Walker, from Liverpool, was imprisoned in Saudi Arabia in February 2001 for more than 900 days without recourse to any legal remedy. For four months he was kept in total isolation and he was systematically tortured over 10 weeks. He was sentenced to serve 18 years in prison after a secret trial ... Prior to his detention, Les worked as a project manager in Saudi

> Arabia, responsible for the running and maintenance of a large housing and hotel complex ... On returning to the UK Les found his life completely turned around. As the result of being tortured, his blood pressure became very unstable resulting in numerous periods of hospitalisation. He suffered broken teeth and serious problems with his feet as the result of beatings ... His experiences have left him unable to function as before—he says he tends to panic in situations where he is surrounded by people. He has flashbacks and nightmares of his ordeal. He spends a lot of time on his own and is unable to concentrate for more than short periods ... Les is unable to work and consequently is dependant on State benefits for his daily needs. He lives in a

> small 1 bedroom council flat and says he does not have the mental ability to learn new skills due to his lack of concentration ... Les has not received any apology or compensation for what happened to him. If Les were to succeed in bringing a claim against his torturers, he says, this would allow him a greater chance to live the life he hoped to have previously".

That is an example of a Briton, but his story could be repeated even more tellingly countless times across the world.

Financial redress will bring some compensation but, more importantly, the public recognition of solidarity with the victim and, I hope, a deterrent to future use of torture will be the outcomes. There can be no doubt that the victims of torture deserve all possible support. However, while financial compensation can be an important part of this—although, as my noble friend has emphasised, there will always be the question of whether the judgments of a court will be enforced—it can never make good what has happened to the individual.

I wish to pay a strong tribute to the non-governmental organisations and individuals who have worked with victims of torture. It is a highly sensitive and demanding task. They, too, deserve all possible support. Unfortunately, too often, they do not get it.

All those involved in relevant social policy and its implementation at the face-to-face level of the individual and all those involved in the administration of our legal and immigration systems should be helped to understand and have constantly in mind the physical and mental realities of the effect of torture. All need to be alert to detect victims who may not easily speak out about their experiences. Clearly, the Home Office, police, immigration authorities, the Ministry of Justice, the Prison Service, work and pensions, housing administrators, education authorities and local authorities have lead responsibilities in this respect. How our society treats victims is one of the tests of our genuine commitment to the values that we constantly profess as fundamental to our society.

This Bill is focused. The present situation in which recompense can be sought only in a country where torture has happened is unacceptable. What standards can really be expected of the legal and governmental systems in countries where torture is condoned or even endemic? In this context, there is a great deal of perhaps wilfully self-deceptive thinking on the parts of Governments who strike intergovernmental deals supposedly guaranteeing that no torture will be applied to those who are compelled under security policy to return to their country of origin. One cannot help occasionally wondering how much real experience of such countries those involved in these deals have had. Significantly, such deals, by seeking

reassurance are tacit acceptance of the existence of torture and do little to isolate and condemn those who practise it.

Successful cases brought under this Bill would be not only a significant boost to the victim—although implementation of the findings would remain a challenge—but bring accumulating public pressure on the Governments and legal systems at fault.

Even where an accused Government are able to sustain a case that the torturer was acting independently of state authority, the very occasion of the court proceedings will bring pressure to tighten up on and eliminate such vile practices.

I have one anxiety about the Bill. We must all constantly beware, lest we inadvertently drift into a culture of de facto acceptance of the existence of torture and a hapless concentration on ameliorating its adverse effects upon the victims—although that is vital. Similarly, the Bill must not inadvertently play into the wishful argument that such things happen only abroad or at the hands of those who serve foreign Governments. Our values and standards within the authority of the United Kingdom must always be exemplary and a high-priority commitment. It is, therefore, disturbing that there have recently been too many indications that we need desperately to reassert those values and standards. What has been, in effect, ambivalence about the use of torture by other states to obtain so-called evidence of use to us is a matter of deep concern.

The greatest challenge is relentlessly to push forward to ensure that sadistic and cruel practice, with all its terrible effects on its victims, coupled with the brutalisation of its practitioners and of the values of their wider community, is globally abolished. Not to recommit ourselves to that struggle demeans us all; it undermines as the core value of our society a commitment to respect the inherent dignity of the individual for the sacrosanct nature of life and for the body as a vehicle for that life.

There has arguably been a weakening of resolve in parts of the world, from which I wish I could say with confidence that we in the United Kingdom have been totally immune. There has been—I must use the word again—ambivalence, let alone appalling official endorsement of waterboarding, so-called soft torture, backed up by totally illegal rendition and the sinister overt or, indeed, covert deals with other Governments and their public servants on interrogation techniques.

Post-Second World War statesmen and stateswomen had it right. With the vivid and grim experience of that war and what led up to it, they spelt it out. Torture is a barbaric and grave crime against civilisation which should be eliminated worldwide. I warmly support this Bill and hope that we shall all rededicate ourselves to this even greater challenge.

10.58 am

Lord Ramsbotham: My Lords, I congratulate the noble and learned Lord, Lord Archer of Sandwell, on his initiative in bringing forward this Bill and, perhaps I may humbly say, on the way that he presented it to the House. I particularly welcomed his remark that the Bill should send a signal on where this country stands

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in relation to torture. I declare an interest as a commissioner of the Independent Asylum Commission which, for the past almost two years, has been establishing evidence on the way that asylum seekers are treated in this country and has recently published its findings, from which I intend to quote. The report is called *Fit for Purpose Yet?* The question mark remains very strong.

As the noble and learned Lord, Lord Archer, said the principle of diplomatic immunity spelt out in the State Immunity Act 1978 is not aimed at protecting torturers. The aim of the Bill is very much to ensure that the victims of torture should have access to justice.

Therefore, I contend that it would ill become a Government who have declared their aim of rebalancing the scales of justice in favour of victims not to accept the Bill and, in doing so, to deny justice for those who seek sanctuary in this country from injustice, including torture, when the fact that they come here to seek sanctuary should be taken as a mark of their belief in what this country stands for. Yet the evidence shows that not only are they currently denied justice but in many ways they are treated disgracefully. We do not know how many people are affected, but I should like to quote some of the interim findings from the commission's report and then comment on the response that we have had to them. There were two key conclusions, one of which was:

> "The Commission has found that the UK asylum system is improved and improving, but ... The system still denies sanctuary to some who genuinely need it and ought to be entitled to it ... and is marred by inhumanity in its treatment of the vulnerable".

It goes on to say that,

> "a 'culture of disbelief' persists among decision-makers ... The adversarial nature of the asylum process stacks the odds against [asylum seekers], especially those who are emotionally vulnerable ... Some of those seeking sanctuary, particularly women, children and torture survivors, have additional vulnerabilities that are not being appropriately addressed".

The report goes on to explain in some detail:

> "Asylum seekers who may have been victims of torture are an additional category of people the Home Office states should only be detained in exceptional circumstances. However, research has shown that victims of torture are detained even in cases where the Home Office has prior information obtained during an asylum interview of an applicant's past torture. Critics believe that instead of providing special care for torture victims, the Home Office may be subjecting them to the very conditions that are likely to hinder recovery. In addition there is concern that the practice of detention discourages applications from asylum seekers who have experienced torture in their own countries and that the experience of being detained in the UK forces them to relive a painful past".

The commission then goes on to talk about being,

> "frequently dismayed by the apparent stance of the Home Office in assuming that ... clients are lying to gain asylum. Sometimes they look for inconsistencies as proof of this but we know from our understanding of the nature of trauma that memories can easily become fragmented, particularly when under pressure".

Finally, in summing up the treatment of torture survivors in the asylum system, the report states that they are frequently not identified and that they are being fast-tracked. It refers to,

> "a lack of understanding among Border and Immigration Agency decision-makers of the reasons why a torture survivor might fail to disclose their experiences",

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and,

> "the lack of recognition and understanding that expert medical reports may be slow to arrive, or be altogether absent".

Although those findings may appear to be some distance from the Bill, I have drawn attention to them because I believe that, rather than being looked at in isolation, the Bill should be looked at in the context of this country's behaviour towards those who seek sanctuary here and particularly towards those who come here having been victims of torture. The commission was therefore extremely distressed—I can put it no stronger than that—at the immediate response to the report by the Minister in the Home Office who, on "The World at One", said that he had not read it but he rejected every word in it. Had he bothered to read it, he would have seen that those consulted over the long period of 18 months included three former Home Secretaries, the Border and Immigration Agency, the chairman of the all-party group in this House and a vast number of other experts. We were interested in the fact that, despite all the mention of torture and torture victims in the report, the official response from the United Kingdom border agencies to the commission included absolutely no mention at all of the word "torture" or the treatment of any of those who had suffered it.

Yesterday, as the noble Lord, Lord Thomas, pointed out, the Ministry of Defence announced a public inquiry into what one can only say were regrettable incidents involving the British Army in Iraq. I, for one, welcome that. There are many former soldiers who I know do not share that view, but on public inquiries I have always taken the line that if you have nothing to hide, you have nothing to fear. In many ways, I think that the Ministry of Defence will come out the stronger for the fact that it has allowed a public inquiry into this issue. In that same spirit, I say to the Government that they have nothing to fear from sending a signal to the world that those who inflict torture have nowhere to hide from the long arm of the law, particularly in this great country of ours.

11.06 am

Lord Elystan-Morgan: My Lords, I, too, extend my warmest and sincerest congratulations to the noble and learned Lord, Lord Archer, on initiating and drafting the Bill and on the most splendid way in which he presented his case this morning.

Victor Hugo, in 1874, said that torture had virtually been abolished the world over. That was a supremely optimistic remark but most certainly there had been a diminishing curve of popularity in the incidence and use of torture. Even in Greek and Roman times, there were critics and, in the 18th century, Beccaria condemned torture

in his monumental work on crime and punishment. The liberal thinkers of France in the latter part of the18th century did likewise.

I mention those facts in order to point out the crushing irony that all that seemed to be reversed completely in the 20th century with the fascist regimes of Germany and Italy and with Stalin's USSR. Indeed, even in the 21st century, from Rwanda to Bosnia and from Beijing to Guantanamo Bay, we have torture again as a feature of policy and an instrument of terror.

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I appreciate the arguments that have been put forward by everyone who has spoken in the debate, which I regard as being irrefutable in support of the Bill. In the period immediately after the Second World War, international law made a great leap forward. Previously, it had been concerned with states and parties, with one exception, which was the law of piracy, when it had looked to the individual. Not only did international law then condemn torture but it looked at the situations of the torturer and the victim. That led to the torture convention of 1984 and, as we know, its incorporation into our law in the Criminal Justice Act 1988.

In those circumstances, I think that the ordinary, intelligent, fair-minded citizen in this land would be pardoned if he were to say that, as there is universality of approach in relation to the criminal situation, there must be a parallel approach equally universal and equally comprehensive in relation to the civil rights of a person who has suffered torture. That is a massive lacuna in the law and the House is deeply indebted to the noble and learned Lord, Lord Archer, to REDRESS and to similar bodies for their attempts to close that lacuna.

Section 1 of the State Immunity Act 1978 gives blanket immunity to all states. Sections 2 to 11 deal with specific exemptions, of which torture is not one. Although only 10 years separate the State Immunity Act 1978 and the Criminal Justice Act 1988, I believe that they represent two different watersheds. One could say the same of the 1978 Act and the torture convention of 1984.

In that context, we have to appreciate the importance of this Bill. I appreciate that the Government may not welcome it with incandescent enthusiasm and I appreciate that that may not be the personal view of the Minister who is to reply to this debate. However, I urge on him the following considerations. I believe that most countries have interpreted Article 14 of the convention as being of universal application and not just a precept with which a particular state should be concerned, although that has been the interpretation relied on by the United States of America. One can argue that there was essentially an international approach to the universal principle of the right of the tortured to be compensated or the right of his estate to be compensated. I have no doubt that the fact that some 130 countries have already ratified the 1984 convention has essentially, although not technically, established a basis for an international-law approach to this matter, so it would not be proper to argue that one is taking a step that goes beyond international thinking in this matter.

On the irony of this situation in relation to the position of the United Kingdom, it has been possible, since the Crown Proceedings Act 1947, to bring an action against the

state. Previous to that, it could be done only with the consent of the state. We all remember Terence Rattigan's play "The Winslow Boy", from the Archer-Shee case of 1902 or thereabouts, when of course a government department could be sued only if it consented to be sued. The year 1947 changed all that. If it is right that a Government and their agencies should have to stand in a court of law and be responsible for acts of negligence and remission, how much more

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necessary is it that they should be there if there has been a deliberate cold-blooded act of torture?

There can be no justification for rejecting the principle as a principle. I do not believe that it is open to massive abuse at all. However, the other side of the coin is that torture is obscene and reprehensible; it is the worst invasion possible of the human body and human dignity. In those circumstances, all manner of resolutions condemning torture become irrelevant unless the victim is in a situation to claim proper compensation. I believe that the failure to change that situation will make a mockery of all that has been achieved in relation to the universal criminalisation of torture.

I respectfully suggest to the Minister that it would be eternally to the credit of Britain, which has shown so much initiative in the field of justice and human liberty over the centuries, to say now that, whatever the minor difficulties might be, the principle is of such massive sovereignty that it has to be accepted. We should give every support to this legislation.

11.15 am

Lord Borrie: My Lords, it is probable that most people in this country and elsewhere regard torture as a criminal offence and that they follow my noble and learned friend Lord Archer of Sandwell in thinking it a most loathsome offence, condemned by the whole world. Of course, a conviction of a state or an individual for torture does not do the victim any good. Article 14 of the UN convention of 1988 valuably made the point that every signatory state should provide reparation and redress to a victim. That is what my noble and learned friend's concise and modest Bill seeks to effect.

One hundred and fifty-one countries signed the convention. The sheer number suggests that there is some point in the well known human rights lawyer, Clive Stafford Smith, describing the Governments of many of those 151 countries as ranging from sanctimonious to hypocritical. Many of them have records that demonstrate the truth of those rather rude comments. Mr Stafford Smith thought that countries signed because public officials felt that there was a need to condemn torture on the world stage. Did they really mean it?

I am happy to say that, as has been mentioned, the United Kingdom Government made torture a criminal offence in Section 134 of the Criminal Justice Act 1988. However, as others have pointed out, including the noble Lord, Lord Elystan-Morgan, the State Immunity Act 1978 and this House, in the decision to which my noble and learned friend referred that it made in its judicial capacity, make the point that

sovereign states have immunity from actions in respect of torture. This Bill will remove that exemption from liability.

Noble Lords will have noticed—I recall the remarks made by my noble friend Lord Judd—that, especially since the threat of terrorism has emerged on the international scene in the past few years, the incidence of torture carried out by servants of a state, including by the armed forces of more than one individual country, has escalated. There is a tendency to get a blanket wall of denial and obfuscation from Governments, some of whom may no doubt be shamed and some of whom may not be.

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I say to the noble Lord, Lord Ramsbotham, that the memoirs of distinguished generals do not tend to admit to any bad treatment by their troops towards prisoners of war or captured civilians. Ministers' memoirs are no better at being forthcoming on such matters. I think that soldiers on the ground, particularly those who have seen or endured savage physical and mental cruelty, would probably be saints if they did not sometimes engage in cruelty or act as willing instruments of their superiors who expect cruelty to be a more successful method of interrogation. However, I assure noble Lords that understanding the feelings of those who may engage in retributive cruelty on those who have cruelly used them or their comrades is not to excuse or justify.

Clause 4 gives the definition of torture, which is taken, quite appropriately, from the UN convention and the Criminal Justice Act 1988. I shall not read it again. It deals with perpetrators and instigators. The individuals who perpetrate the harsh treatment, cruelty or torture and superior officers or superior people, including sovereign states, are all covered. The noble Lord, Lord Thomas of Gresford, used the neat word "complicit". I hope that I am right in thinking, as I think he does, that a solider who uses unlawful physical or psychological restraints and techniques to interrogate prisoners entrusted to his care is guilty of torture, as are colleagues who stand by or watch what is going on, because they have surely consented or acquiesced, to use the words of the Bill, in the infliction of serious pain and suffering.

I have two questions for the Minister. First, and I do not think that this phrase has been used today, what is the position on superior orders? We all remember the attempt to use the defence of superior orders at Nuremberg. We know that, generally speaking, superior orders are not a good defence. It is many years since I did my national service. Half a century ago, my copy of the *Manual of Military Law*was well thumbed, although I have hardly opened it since. However, I opened it recently and saw that it takes the strong line that the belief—albeit reasonable—that orders are lawful is no defence. That view has not gone unchallenged, because a soldier is trained to obey orders not just casually but instantly. It may not be realistic to expect a soldier to consider whether the order given is lawful, even if it is not manifestly unlawful. To have him contemplate that in the urgency of the occasion is difficult. Secondly, Clause 3 states that, if a state is sued for compensation for torture, it is not immune from proceedings. Are the Government willing to go along with that, irrespective of what other Governments do? I wish the Bill good fortune.

11.24 am

Lord Woolf: My Lords, I am in the advantageous position of having heard the speeches that preceded mine. Much that I might have said has already been said, and I closely endorse what my noble colleagues have said. In particular, I express my appreciation for the contribution of the noble and learned Lord, Lord Archer of Sandwell, which has enabled us to debate his excellent initiative in the Bill.

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When one looks at its purpose as a lawyer, one can say that its task is a narrow one: to change one provision of legislation passed in 1978. However, I submit as forcefully as I can that the outcome of the Bill will send a signal to other parts of the world about how this country views the offence of torture. It is perhaps unfortunate that the State Immunity Act was passed in 1978 but that the convention on torture, to which reference has been made, dates from 1984. I wonder whether, if the order had been reversed and the number of states that would ratify the convention on torture had been known, the absence of torture as an exception to the State Immunity Act would have been rectified.

In the world today, there is much greater appreciation that we live within a world society where people are travelling from one country to other, where mishaps can occur to them in one state and where they will find themselves ending up in another state. Victims of torture in this country suffered their torture elsewhere. Can it be right in this day and age that our domestic legislation, which is this country's personal responsibility, does not cater for a situation where people find themselves in this country, perhaps contrary to their private desires, because of what has happened to them in another country, and are deprived of any redress from our courts, notwithstanding the fact that they cannot get redress elsewhere?

In the case of Jones, which is the case that gives rise to the Bill, their Lordships were faced with a conflict between two principles of international law—state immunity and abhorrence of torture—but with domestic legislation before them that did not, when it could have, make an exception for torture. The Bill would ensure that if a case such as Jones came before our courts in future there would not be, as there appears to be now, an immovable block to the progress of the law of this country. The courts would no longer be faced with a domestic law that creates state immunity. Instead, if a state wished to rely on state immunity, it would have to rely on the state immunity principles of international law at the time that the point arises. In that situation, I suggest and hope that there would be developments in international law that would make it clear that state immunity should no longer be a bar to proceedings in a country where it is appropriate for those proceedings to be brought.

If the Bill proceeds, as I earnestly hope it will, this House will send a signal to other jurisdictions where the views of this country on matters such as those to which I have referred still carry great weight. The right answer is that if a person has been tortured and has no other remedy and that person resides in a civilised country—which will therefore be the convenient jurisdiction—should be able to get civil redress, particularly where redress is available with regard to the criminal law.

11.30 am

Baroness Falkner of Margravine: My Lords, I, too, start by thanking the noble and learned Lord, Lord Archer of Sandwell, for his initiative in bringing forward the Bill. I have listened with admiration to the many noble and, not least, noble and learned, Lords who

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have spoken in its support. The noble and learned Lord, Lord Woolf, has just reminded us that the preservation of the doctrine of state immunity is the main argument to be used against the Bill, but we ought to recall that, in the final assessment, international law is based on consensus about the degree of interference there can be by the international community, or other state parties and actors, with the sovereignty of states. This has been accepted since the formation of the Westphalian system, but we also know that international law has grown and adapted through the centuries to reflect the changing nature of the international system.

The Vienna and Geneva conventions of the 19th century and the establishment of the United Nations and Bretton Woods institutions in the 20th century are examples of where countries have seen the benefits of giving up state sovereignty and their exceptions from state immunity in order to gain through international co-operation. Recently, we have seen the establishment of the International Criminal Court as another welcome manifestation of the expansion of international law. Even more recently, we have seen agreement on the United Nations duty to protect. Indeed, that is being currently debated, albeit in a contested manner, in relation to Burma.

My argument is that it is both in our pragmatic self-interest as a country and morally right for us to adopt the Bill. There are times when states need to open their protective mantle to reflect what is right, and the Bill has come at the right time for us to do so. In the United Kingdom, we carry a broader responsibility: that of our historical past, which has led to the adoption of our common law and judicial systems in so many parts of the world; in our leadership of the United Nations Security Council, where we currently preside—another reason why the Bill is so apposite; and in our membership of the European Union, the Commonwealth and other significant multilateral organisations. Despite recent history post-9/11, about which the noble Lords, Lord Borrie and Lord Judd, spoke, it is important for us now to be prepared to stand up for principles and to lead in this regard.

Let me start with pragmatic self-interest. We know that torture does not work. We know that it often involves extreme physical and psychological harm. Let me develop this argument to say that it carries the threat of coercion even when the torture itself does not involve inflicting physical pain. It is about total subordination and total control. The interrogator hopes through the use of torture that the victim, the enemy—the recipient has to be seen as the "other" and constitute the enemy in the mind of the interrogator so that they can be denied the status of a rights-bearing individual—believes that they are powerless to protect themselves from harm. They are often also led to believe that they are powerless to protect their loved ones from a similar threat. The threat of the infliction of physical pain and complete subordination is what results in the person subjected to torture providing information. We know from our

intelligence community as well as from many other states that have similar norms and standards to us that information obtained under torture is considered

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among the most unreliable. The very reason why most states do not use torture as an instrument of intelligence-gathering is precisely because they know that it will not work.

That is one of the many arguments against the contortions that have sought to justify Guantanamo and the many legal inventions that we have seen in the annals of the Pentagon and the Ministry of Justice in the United States. People know that those legal contortions have not been built on anything that we would consider by any means credible. That is why it is in our self-interest to speak out against torture in word and deed. My noble friend Lord Thomas of Gresford has spoken about the United States so I shall turn to other countries where the most recent allegations of torture by UK citizens and UK residents rest.

All three of the countries that I want to talk about—Saudi Arabia, Pakistan and Egypt—have a strong security apparatus and weak judicial checks and balances, even where there is an independent judiciary. In most other countries that face allegations of torture, there are authoritarian regimes, there is no political space to express dissent and human rights norms are non-existent. When people break the extensive prohibitions on freedom of expression, freedom of association or the most basic political activity, physical punishment is very much part of the methodology or toolkit of the so-called maintenance of law and order. In those societies, when you are a dissenter, it is extremely likely that you will face torture, especially in this post-9/11 world, where those states are facing internal dissenters, as is Saudi Arabia.

Public opinion within those countries is aware of all that. People are also aware of our legal instruments and norms. They know that here in the United Kingdom, the rule of law prevails and that we do not condone those sorts of practices for ourselves, although I take the warning in that regard of the noble Lord, Lord Judd, very much to heart. What is less clear to the man on Arab street is why we support their Governments in those practices. I am not talking here about our complicity in those practices abroad where our security services are alleged to have been complicit, whether in Iraq, Afghanistan or Pakistan. I am talking about the signal that we send when we do not act to provide redress for victims, even if it embarrasses our friends or allies.

My argument is that we will support the aspirations of many if we pass legislation such as this, which sends a powerful message that we not only oppose torture for our citizens but, in the space that is the United Kingdom, we will allow for redress and recompense for victims of torture, irrespective of where it happened. That is the moral backbone of the Bill and that is why we must support it. Some will say that it will provide only cold comfort, that suing Saudi Arabia, Egypt or Syria in our courts will not make them hand over damages. It is true that they may well not, but the victim will know that if the ruling goes in his favour, that is right there for all to see. The regime will have had an open judicial system transparently rule against it. It will be a moral victory

that will encourage even those who cannot benefit from the protection of our law. In time, the countries that look to and use our judicial decisions as guidance could, and I am sure will, follow our example.

Let me turn briefly to the fears about how this might result in large numbers of prosecutions here in the United Kingdom. Again, several noble and noble and learned Lords have pointed out that the Bill is limited in that victims of torture will be able to use this legislation only where, as Clause 1(2) says,

> "no adequate and effective remedy for damages",

exists.

This country has a proud tradition of giving political asylum; the noble Lord, Lord Ramsbotham, drew our attention to this. It is right that it should have done so in the past and it is right that it continues to do so today. It would be the logical extension of this most humane tradition for us to join some 25 other countries in providing redress in this cause. Fourteen of those 25 countries are European Union states, and it is only fitting for the United Kingdom to join their company.

The noble and learned Lord Archer of Sandwell, with his characteristic humility, spoke about his openness to amendments to improve the Bill. To an untrained eye such as mine, it seems to be eminently suited to its job, but we on these Benches will keep an open mind to the amendments that might improve it.

In conclusion, I turn to Philippe Sands QC, a redoubtable campaigner for international law, whose current book, *Torture Team*, is making the headlines at the moment. In his earlier book, *Lawless World*, he wrote of the impact across the world of the 1988 Pinochet extradition case. It undoubtedly had a great impact because it was the highest court in the United Kingdom, the Judicial Committee of the House of Lords, that led to the extradition of General Pinochet. It was a proud day for the United Kingdom.

It is fitting that the Bill, with its strong moral message, should start its passage in your Lordships' House. We on these Benches will support it wholeheartedly.

11.42 am

Lord Kingsland: My Lords, like so many other noble Lords who have taken part in this debate, I, too, pay tribute to the noble and learned Lord, Lord Archer of Sandwell. Many people, both in and out of public life, consistently and rightly express their repugnance at torture and all acts associated with it. However, what distinguishes the noble and learned Lord, as the noble Lord, Lord Judd, said so graphically in the opening phase of his speech, is that whether in government, in opposition or from the Back Benches of his party, the noble and learned Lord has consistently striven to do something practical about it. The Bill is only the latest example of what the noble and learned Lord has done, and the country owes him a great debt for having been so

persistent for I hesitate to mention how many years; I know that it is several decades since he held the great office of Solicitor-General. At any rate, I hope he will not mind my saying that it has been a very long innings and that he deserves all our congratulations.

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As the noble and learned Lords, Lord Archer and Lord Woolf, among others in your Lordships' House, have said, the origin of the Bill lies in the case of Jones v The Ministry of the Interior of Saudi Arabia, which was heard as recently as 2006. This case, as the noble and learned Lord, Lord Archer, has explained, concluded that the United Kingdom courts had no jurisdiction to hear a civil claim against a foreign Government with regard to acts of torture inflicted outside the United Kingdom jurisdiction. The core of the judgment was an analysis of the State Immunity Act 1978 and the exceptions to it, set out in Sections 3(1)(a), 4 and 6. The conclusion reached was that as torture was not one of the exceptions to that Act, there was no jurisdiction to hear such civil claims. The greatest merit of the Bill is that it reverses that decision in domestic law. That is wholly admirable.

The noble and learned Lord, Lord Archer, emphasised that his approach to the Bill, although influenced by the convention on torture, was not reliant on it. In fact, there are other important precedents around the world to support its clauses. It is particularly illustrative of the way in which the noble and learned Lord has approached the Bill that in the United States in 1992, the Torture Victim Protection Act was adopted, which permits individuals located in the United States to sue foreign Governments responsible for torture; so there is an important precedent for us across the Atlantic. France, Germany and Spain all have civil remedies that are attached to criminal provisions. We, too, as the noble and learned Lord has indicated, have, in Section 134 of the Criminal Justice Act 1988, adopted universal jurisdiction in criminal law in relation to torture, to which the prosecution of Faryadi Zardad in 2005 attests.

The interpretation of Article 14 of the convention, as I think the noble and learned Lord, Lord Woolf, suggested, is another matter. Once the state immunity inhibition is removed—if the Bill is passed—it is not, as the noble and learned Lord indicated, the end of the story, because there is still the international law on state immunity, which might continue to inhibit a private action in our own courts from succeeding. It would be wrong of your Lordships to think—I am sure that none of you does—that the mere passage of the Bill will necessarily achieve the objectives so eloquently expressed by, among others, the noble Baroness, Lady D'Souza. If the Bill is passed by Parliament, it will be the beginning of the journey, not the termination of it.

The noble and learned Lord, Lord Archer, at the outset, explained why he thought that the Bill was desirable. The three issues that he highlighted are fundamental to the Bill's merits. First, at the individual level, the physical and psychological injury done to the victims of torture, as so many of your Lordships have indicated, is likely to be irreparable. Compensation will help them to face up to lives that have been horrifically damaged. It can do no more than that. Nevertheless, it is right that that compensation is received. Secondly, it is morally wrong that individual states should be allowed to hide behind the State Immunity Act 1978 in relation to torture. Thirdly,

we all hope that it would act as a deterrent to states practising torture. All three of those arguments are irrefutable.

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A number of your Lordships have talked about the details of the Bill. I was delighted to hear my noble friend Lord Sheikh draw your Lordships' attention to the provision which draws in complicity, a point that the noble Lord, Lord Thomas of Gresford, also emphasised. It is right in a Bill of this sort that that should be one of the bases on which a civil action could be brought.

The 1992 United States Bill has a similar provision on the effectiveness of seeking some form of compensation in the alleged torturer's state. I know that the noble Lord, Lord Thomas of Gresford, has hesitations about that, as do one or two of the non-governmental organisations which support this legislation. However, it is right that such a matter should be thoroughly investigated by their own domestic courts before allowing an action to go ahead. If there is a proper set of domestic procedures in the state of the alleged torturer, it is to those that our own legal system should yield until the matter has been resolved. It is only if it has not been resolved that the provisions of the Bill introduced by the noble and learned Lord, Lord Archer, will begin to take effect and there subsequently will be a six-year limitation period. In my view, the noble and learned Lord has got the balance exactly right.

In conclusion, there is of course a range of difficulties connected with the appearance of the defendant and how the defendant is represented, and a raft of evidential issues which will have to be confronted and overcome before the Bill can have, if it were to become law, operational effect. But that should be no deterrent and certainly is not a deterrent as a matter of principle.

The noble and learned Lord, Lord Archer—I am repeating myself in saying this, but it cannot be too often repeated—has done Parliament a major service by bringing this Bill to your Lordships' House.

11.53 am

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Hunt of Kings Heath): My Lords, perhaps I may join the noble Lord, Lord Kingsland, and associate myself with the remarks particularly of my noble friend Lord Judd, in congratulating the noble and learned Lord, Lord Archer, on securing this Second Reading debate and in paying tribute to him for all that he has done in this very important and difficult area over many years. I know that he presented a similar Bill to Parliament in the previous Session and I am pleased that we now have an opportunity to debate this important issue. I also acknowledge the impressive array of speakers and speeches that have been made.

Clearly, this is a matter of great significance, but it also requires us to consider various principles of international law, as well as the United Kingdom's diplomatic and legal relations with other states. I shall draw attention to certain challenges and difficulties that would need to be faced. The Government, as is normal with Private Members'

Bills in your Lordships' House, will not seek to oppose the Bill, and I hope that I shall offer helpful comments on some of the technical details.

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The noble Baroness, Lady D'Souza, spoke eloquently and passionately about the awfulness of torture, of the experience of people who have been tortured and of their need for what she described as justice and closure. The noble Lord, Lord Sheikh, talked about the impact for someone who has been tortured on relationships and the effects of torture. We heard from my noble friend Lord Judd a specifically disturbing example.

The Government unreservedly condemn torture in all its forms, wherever it occurs in the world. We work hard with our international partners to eradicate this abhorrent practice, although, as the noble Lord, Lord Elystan-Morgan, suggested, we can never afford to be complacent. International action has been a priority for the Government since the launch of the 1998 UK anti-torture initiative. My colleagues in the Foreign and Commonwealth Office have intensified their efforts to combat torture, wherever it occurs, through diplomatic activity, practical projects and funding for research.

Between 2005 and 2007, we funded Penal Reform International to implement a project to strengthen national mechanisms to prevent torture and ill-treatment in Kazakhstan. It has established a network of public monitoring boards across the country, which were responsible for providing public control of prisons as well as helping victims of torture in pre-trial detention centres and police cells. As a result, in December 2006, three police officers were sentenced for torturing suspects in pre-trial detention centres. There are further examples of the UK's action and international action in supporting such initiatives and actions.

We abide by our commitments under international law and expect all countries to comply with their international legal obligations. We encourage other countries to adopt and to adhere to international standards in this area, particularly the United Nations Convention against Torture and the European Convention for the Prevention of Torture, which has been much spoken about in this debate. We also support the work of the Association for the Prevention of Torture, an NGO working for the ratification and implementation of the UN convention.

We have taken the lead internationally. In 2003, we ratified the optional protocol to the UN convention. We were the third country in the world and the first European Union country to do so. We are now close to completing the establishment of the national preventive mechanism that it requires, which will possess powers to visit unannounced any place of detention in the United Kingdom. At this stage, perhaps I should pause before I talk about the specific matters raised by my noble and learned friend's Bill.

I refer the noble Lord, Lord Borrie, who asked me about superior orders being a defence to torture, to Section 134 of the Criminal Justice Act 1988 where the only defence to a prosecution for torture is that the pain or suffering was inflicted with lawful authority, which gives effect to Article 1 of the UN torture convention. I also refer him to Article 2.3 of the convention, which clearly states:

"An order from a superior officer or a public authority may not be invoked as a justification of torture".

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I of course listened with a great deal of care to the speech of the noble Lord, Lord Ramsbotham. The report to which he referred will be carefully considered. We take seriously our obligation to give refuge to people fleeing persecution or torture, but it is important to ensure that our asylum system is fair and capable of distinguishing between legitimate and illegitimate claims.

Under the UN Convention Against Torture, states party to it are required to establish jurisdiction in their criminal law over the offence of torture wherever in the world that torture is alleged to have occurred. As my noble and learned friend Lord Archer said, Section 134 of the Criminal Justice Act 1988 fulfils this obligation in respect of the United Kingdom. It means that if a person who is alleged to have committed torture is present in our territory, they should either be extradited to face trial overseas or tried in our domestic courts. A number of noble Lords recalled the successful prosecution in 2005 of Faryadi Zardad for torture offences committed in Afghanistan. He is now serving 20 years' imprisonment. Noble Lords have also pointed out that while universal criminal jurisdiction over torture is mandated by our international obligations, universal civil jurisdiction is not so required.

The noble Lord, Lord Kingsland, the noble Baroness, Lady Falkner, and others referred to the case of Jones against Saudi Arabia. The issues in the case were, first, whether state immunity applies where civil compensation is being sought for torture and, secondly, whether officials should be able to rely on the immunity of the state. The Government of Saudi Arabia argued that they were entitled to immunity under the State Immunity Act 1978 and well established rules of international law. The two leading judgments were given by the noble and learned Lords, Lord Bingham and Lord Hoffmann, with the rest of their Lordships concurring, and they found that an English court does not have jurisdiction to entertain proceedings brought here by claimants against a foreign state and its officials in relation to alleged torture carried out in the territory of the foreign state.

The general principle of international law remains that one state is not subject to the jurisdiction of another except in certain recognised circumstances. I understand the argument that the exceptional nature of torture is one where such a recognised circumstance would come to the fore. However, the exercise of extraterritorial jurisdiction, even where states and state officials are not involved, remains at the least a difficult area. States have to respect the limits imposed by international law on the authority of an individual state to apply its laws beyond its territory.

On the question of civil jurisdiction, there is as yet no evidence that states have generally recognised or given effect to any obligation to exercise universal civil jurisdiction over claims arising from alleged torture. When the United Nations Convention Against Torture was negotiated, the option of creating an international civil course of action was accordingly not pursued. Furthermore, the United Nations adopted in 2004 the Convention on Jurisdictional Immunities of State and Their Property after a period of prolonged negotiation, which, as I have said, the United

Kingdom signed in

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2005. That convention also makes no exception in respect of civil actions for personal injury or death alleged to have occurred outside the territory of a state. Although the convention is not yet in force, I recall that the noble and learned Lord, Lord Bingham, described it as,

> "the most authoritative statement available on the current international understanding of the limits of state immunity in civil cases".

I turn now to the impact of my noble and learned friend's Bill. The noble and learned Lord, Lord Woolf, and the noble Lord, Lord Kingsland, suggested that its passage would mark the beginning of a journey rather than the end. While the Bill could make it possible for those who claim to have suffered torture to seek an award of damages, it would remain essentially impossible to enforce a judgment against a foreign state. I should also point out that any attempt to seize the property or assets of a state would be particularly controversial and liable to lead to potential retaliatory action against United Kingdom interests.

Perhaps I may paraphrase the concluding remarks of the noble Lord, Lord Thomas of Gresford, who, when he referred to potential issues regarding international relations, said that he would put human rights considerations at a higher level. I understand his point; indeed, the noble Lord, Lord Ramsbotham, and the noble and learned Lord, Lord Woolf, suggested that the importance of this Bill is that it sends a signal to the international community. I well understand that, but unilateral action in the manner proposed in the Bill might also be significantly damaging to the international relations of the United Kingdom. However, the Government are alert to the possibility that in the future a new international consensus may develop and prompt changes to the law in appropriate places. That is what happened in relation to universal criminal jurisdiction as reflected in the UN Convention Against Torture. Moreover, we will of course listen carefully to the debates on this Bill as it goes through your Lordships' House.

Obviously there are technical matters in the Bill to be considered. I shall be happy to write to my noble and learned friend with the Government's analysis of them and place a copy in the Library. No doubt at subsequent stages of our consideration we will discuss some of those technical issues. In the mean time, once again I congratulate my noble friend on bringing this important matter to your Lordships' House.

12.07 pm

Lord Archer of Sandwell: My Lords, at the end of a debate like this it is conventional to begin by thanking all noble Lords who have participated. I do so today, although not conventionally but from the bottom of my heart. I thank so many noble Lords for the support they have offered. I am bound to say that I agree with my noble friend Lord Hunt that this may go down in history as one of the debates most worthy of the traditions of this House. I am also very grateful to all those who have

made kind remarks about me personally. The fact that most of them are undeserved does not entail that they are unappreciated.

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I should explain that I have three pages of notes from the debate. If I do not elaborate on all of them, I hope that noble Lords will find it in their heart to forgive me. Perhaps I may pick up one or two comments briefly. The first is from the noble Lord, Lord Elystan-Morgan, who told us that at the beginning of the 20th century, it was thought that there was no longer a problem of torture. It had gone, and Victor Hugo elaborated on it in his usual style. We thought some time ago that we had got rid of tuberculosis, but the fact is that we cannot just sit back and forget about these matters because there is something about eternal vigilance.

The reasons that torture has become a problem again have been elaborated on by a number of noble Lords. The noble Lord, Lord Ramsbotham, pointed out that this country affords sanctuary to refugees, which in itself imposes on us an obligation to ensure that when they are here, we recognise their needs. The noble and learned Lord, Lord Woolf, said that now far more international travel is undertaken by a far larger number of people, while the noble Lord, Lord Sheikh, pointed out that this is a corollary to a number of our other policies, such as that which attempts to discourage extraordinary rendition.

As the noble Lords, Lord Thomas of Gresford and Lord Kingsland, pointed out, it is curious that there should be a need for this debate. There are jurisdictions where a right to reparation follows a criminal conviction and there is an almost artificial distinction in discussing whether we are talking about criminal or civil proceedings.

My noble friend Lord Judd, with his normal sensitivity, warned us against what he called turning human suffering into an arid academic disputation. I am sure that my noble friend will be the first to say that the word “academic” is not necessarily a term of abuse. There are matters we should discuss—such as where the burden of proof should be in relation to forum nonconveniens and limitation—and I am tempted to advert to them now, but I shall leave that to a later stage. The noble Baroness, Lady Falkner, properly pointed out that international law is not an inert body but a living organism. It develops, it reacts to new situations and new standards and, like all living organisms, it grows. That is something we have to recognise.

Ultimately, as the noble Baroness, Lady D’Souza, pointed out, the real purpose of this legislation is to assure victims that torture is not normal; as we would proclaim to the world, it is wicked and abominable. If the Bill achieves that, it will have been worthwhile. The noble Lord, Lord Kingsland, and the noble Baroness said that this is the beginning of a journey. It is a narrow Bill but, as the noble and learned Lord, Lord Woolf, indicated, perhaps it can punch above its weight.

On Question, Bill read a second time, and committed to a Committee of the Whole House.

7. The Torture (Damages) Bill and Explanatory Notes

7.1. The Torture (Damages) Bill[*]

The text of this Bill and the typographical arrangement of the text are Parliamentary Copyright.

Torture (Damages) Bill [HL]

CONTENTS

[*] *The Torture (Damages) Bill passed its Second Reading in the House of Lords on 16 May 2008 and was committed to a Committee of the Whole House.*

A

B I L L

TO

Make provision for actions for damages for torture; and for connected purposes.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Action for damages for torture

(1) A person who commits torture, wherever committed, shall be liable to an action for damages in civil proceedings.

(2) Where the torture occurs in a State outside of the United Kingdom, this Act shall apply only when no adequate and effective remedy for damages is available in the State in which the torture is alleged to have been committed.

(3) In this Act, references to damages shall include aggravated and exemplary damages and damages for loss of income.

(4) Notwithstanding section 1(2)(a)(i) and (ii) of the Law Reform (Miscellaneous Provisions) Act 1934 (c. 41) (effect of death on certain causes of action), the damages recoverable by virtue of that section for the benefit of the estate of a deceased person in respect of torture include aggravated and exemplary damages and damages for loss of income.

(5) In this Act references to a person shall include a State, meaning any foreign or commonwealth State (including the United Kingdom); and references to a State include references to—

(a) the sovereign or other head of that State in his public capacity;

(b) the government of that State;

(c) any department of that government; and

(d) where the act or omission constituting the torture is carried out by an entity which is distinct from the executive organs of the government and capable of suing and being sued, that entity which will be considered a State for the purposes of this Act where the act or omission in question is done by it in the exercise of sovereign authority.

(6) Where an action is commenced under this Act, a defendant shall not be entitled to claim immunity.

2 Limitation

Notwithstanding anything in the Limitation Act 1980 (c. 58), an action for damages under this Act in respect of torture or death caused by torture may be brought at any time within the period of six years beginning with the date when it first became reasonably practicable for the person concerned to bring an action.

3 Amendment of State Immunity Act 1978

In Part 1 of the State Immunity Act 1978 (c. 33), after section 5 insert—

"5A Liability for torture

A State is not immune in respect of proceedings instituted against it under the Torture (Damages) Act 2008."

4 Amendment of Civil Procedure Rules 1998

After paragraph 8 of Rule 6.20 of the Civil Procedure Rules 1998 (service out of the jurisdiction where permission of the court is required) insert—

"Claims in respect of torture

(8A) a claim is made in respect of torture (within the meaning of the Torture (Damages) Act 2008) or death caused by such torture."

5 Meaning of "torture"

(1) Subject to subsection (5) below, for the purposes of this Act a public official or person acting in an official capacity, whatever his nationality, commits torture if in the United Kingdom or elsewhere he intentionally inflicts severe pain or suffering on another in the performance or purported performance of his duties.

(2) Subject to subsection (5) below, for the purposes of this Act a person not falling within subsection (1) above commits torture, whatever his nationality, if—

(a) in the United Kingdom or elsewhere he intentionally inflicts severe pain or suffering on another at the instigation or with the consent or acquiescence of—

(i) a public official, or

(ii) a person acting in an official capacity; and

(b) the official or other person is performing or purporting to perform his official duties when he instigates the infliction of that pain or suffering or consents to or acquiesces in it.

(3) Subject to subsection (5) below, where a person commits torture in circumstances falling within subsection (2) above, the official or other person concerned, whatever his nationality, also commits torture for the purposes of this Act.

(4) It is immaterial whether the pain or suffering is—

(a) physical or psychological; or
(b) caused by an act or omission.

(5) An act or omission does not constitute torture for the purposes of this Act if the pain or suffering that is inflicted thereby arises only as a result of sanctions which are held lawful under international law.

(6) This section is without prejudice to any international instrument or legislation in England and Wales which contains provisions of wider application.

6 Choice of law

Wherever an act of torture is committed, the applicable law for all proceedings instituted under this Act shall be the laws of England and Wales

7 Retrospective effect

An action may be brought under this Act in respect of any act of torture occurring on or after 29th September 1988.

8 Short title, commencement and extent

(1) This Act may be cited as the Torture (Damages) Act 2008.

(2) This Act shall come into force on such day as the Lord Chancellor may by order made by statutory instrument appoint.

(3) This Act extends to England and Wales only.

Torture (Damages) Bill [HL]

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B I L L

To make provision for actions for damages for torture; and for connected purposes.

Lord Archer of Sandwell

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7.2. Explanatory Notes*

The text of these Explanatory Notes and the typographical arrangement of the text are Parliamentary Copyright.

These notes refer to the Torture (Damages) Bill [HL] as introduced in the House of Lords on 5th February 2008 [HL Bill 30]

Torture (Damages) Bill [HL]

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the *Torture (Damages) Bill [HL]*. They have been prepared in order to assist the reader of the Bill. They do not form part of the Bill.

2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause, subsection or paragraph does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3. The Bill provides an action in England and Wales in damages in respect of torture, or death caused by torture, wherever and by whoever committed as understood under international law and consistent with certain obligations of the United Kingdom under the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment (1984) and other international agreements.

4. Section 1(1) in Part 1 of the State Immunity Act 1978 provides:

> "A State is immune from the jurisdiction of the courts of the United Kingdom except as provided in the following provisions of this Part of this Act".

5. Unlike actions involving commercial transactions, personal injury in the forum state or other enumerated exceptions, actions for damages arising from torture or death from torture are not listed in the provisions that follow in the State Immunity Act 1978. The Appellate Committee of the House of Lords has held in *Jones v. Ministry of Interior of the Kingdom of Saudi Arabia and others* ([2006] UKHL 26) that torture did not fall within the "exceptional cases, specified in Part 1 of the 1978 Act, in which a State is not immune." It held that "In the ordinary way, the duty of the English Court is therefore to apply the plain terms of the domestic statute" (both at paragraph 13 of the judgment).

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* *These Explanatory Notes were drafted ahead of the Second Reading in the House of Lords on 16 May 2008.*

6. Existing provisions in the State Immunity Act 1978 will not suffice to enable torture survivors to have access to adequate and effective remedies in England and Wales particularly where there is no effective remedy in the place where the torture took place for the harm they have suffered.

7. To address this, the Torture (Damages) Bill sets out an exception to the State Immunity Act 1978 in order to clearly enable civil claims for damages for torture or death caused by torture to proceed without being barred by claims of state immunity made by any foreign state or government.

COMMENTARY ON CLAUSES

Clause 1: Action for damages for torture

8. Subsection (1) of Clause 1 sets out the purpose of the Bill, which is to render a person who commits torture liable to an action for damages in civil proceedings, wherever the torture was committed.

9. Subsection (2) of Clause 1 makes clear that the Bill will only apply when no adequate and effective remedy for damages is available in the foreign state in which the torture is alleged to have been committed.

10. Provision is made in subsections (3) and (4) of Clause 1 for the award of aggravated and exemplary damages, and damages for loss of income in a case of torture or death caused by torture, given the odious character of torture, which constitutes a particular affront to the dignity of the individual, and in order to deter torture occurring in future.

11. Subsection (5) of Clause 1 makes clear that references to a person in the Bill include a State, meaning any foreign or Commonwealth State (including the United Kingdom); and that references to a State shall include references to:

a) the sovereign or other head of that State in his public capacity;
b) the government of that State;
c) any department of that government; and
d) where the act or omission constituting the torture is carried out by an entity which is distinct from the executive organs of the government and capable of suing and being sued, that entity which will be considered a State for the purposes of this Bill where the act or omission in question is done by it in the exercise of sovereign authority.

12. Subsection (6) of Clause 1 makes clear that where an action is commenced under the Bill, a defendant will not be entitled to claim state immunity.

Clause 2: Limitation

13. Clause 2 provides that an action for damages under the Bill in respect of torture or death caused by torture may be brought at any time within six years beginning with the date when it first became reasonably practicable for the person concerned to bring the action.

Clause 3: Amendment of State Immunity Act 1978

14. Clause 3 amends the State Immunity Act 1978 so as to remove the immunity of a state in respect of an action for damages in respect of torture or death caused by torture.

Clause 4: Amendment of Civil Procedure Rules 1998

15. Clause 4 amends the Civil Procedure Rules 1998 so as to facilitate service out of the jurisdiction in the case of a claim in respect of torture or death caused by torture.

Clause 5: Meaning of "torture"

16. Clause 5 provides for interpretation.

Clause 6: Choice of law

17. Clause 6 provides that the applicable law for all proceedings under the Bill shall be the laws of England and Wales.

Clause 7: Retrospective effect

18. Clause 7 provides that an action may be brought under the Bill in respect of any act of torture occurring on or after 29th September 1988, to reflect the date upon which section 134 of the Criminal Justice Act 1988 entered into force.

Clause 8: Short title, commencement and extent

19. Clause 8 gives the Lord Chancellor power to determine the date of commencement of the Act.