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

THE REDRESS TRUST

3rd Floor, 87 Vauxhall Walk, London SE11 5HJ

Tel: +44 (0)20 7793 1777 Fax: +44 (0)20 7793 1719

Registered Charity Number 1015787, A Limited Company in England Number 2274071

info@redress.org (general correspondence)

URL: www.redress.org

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)

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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.)*

(article 39); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) (article 14), and the 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

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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).

(through judicial and/or non-judicial remedies)[9] and the substantive right to reparations (such as restitution, compensation and rehabilitation).[10]

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

[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.

[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.

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]

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

[14] Joint Dissenting Opinion of Judges Rozakis et. al, *Al Adsani v. United Kingdom* above at para. 3.
[15] *Jones v. Ministry of Interior Al-Mamlaka Al-Arabiya as Saudiya and others* [2006] UKHL 26.

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.

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

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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.

> 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,

> "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

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[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.

[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).

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.

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.

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[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).

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. 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]

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[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.

[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).

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 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.

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[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.

[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.

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 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.