

# REDRESS

*Ending Torture. Seeking Justice for Survivors*

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## **SUBMISSION TO FOREIGN AFFAIRS COMMITTEE FOR ITS ANNUAL INQUIRY INTO THE FOREIGN AND COMMONWEALTH OFFICE'S HUMAN RIGHTS WORK IN 2013**

**12 MAY 2014**

### **SUMMARY OF SUBMISSIONS**

- Matters relating to counter-terrorism and human rights continue to cause concern, including the UK's ongoing failure to fully investigate allegations of UK complicity in torture abroad; the continued detention of a UK resident in Guantanamo Bay; the use of Deportations With Assurances;
- The FCO's continued commitment to its *Preventing Sexual Violence Initiative* (PSVI) and the G8 Foreign Ministers' Declaration are welcome; it is important to develop a strategy to monitor implementation, action and progress to reduce sexual violence, including in target States;
- Improvements in policies to better protect UK nationals abroad from torture are welcome; it is important to ensure these policies are implemented in practice and that diplomatic protection – espousal of claims – is exercised to obtain reparation when necessary;
- An urgent need remains for the UK to ensure that it is not a safe haven for international crimes suspects, by taking more intensive steps to investigate and prosecute suspects within the UK's jurisdiction; REDRESS is concerned that HMG's commitment is waning, and that the growing use of 'Special Mission Immunities' is illustrative of a negative trend;
- The FCO could better interact with local human rights NGOs in countries of concern/case study countries; it needs to continually scrutinise all States, including its allies such as Bahrain and Saudi Arabia, to deal with torture in a principled and consistent way.

### **INTRODUCTION**

1. REDRESS is an international non-governmental human rights organisation with a mandate to assist torture survivors to obtain justice and reparation for their suffering. Since its establishment in December 1992, REDRESS has accumulated wide expertise on the rights of victims of torture both within the United Kingdom and internationally. It has previously made written submissions to the Committee in relation to human rights matters.<sup>1</sup>

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<sup>1</sup> See e.g. REDRESS, *Submission to the Foreign Affairs Committee Annual Inquiry into the FCO's Human Rights Work in 2012*, 24 May 2013, available at: <http://www.redress.org/downloads/publications/130626%20FAC.pdf>; REDRESS, *Submission to Foreign*

2. This submission is in response to the Foreign Affairs Committee’s (“the Committee”) invitation for submissions of evidence in respect of its inquiry announced on 9 April 2014 into “*Human Rights and Democracy: The 2013 Foreign and Commonwealth Office Report*” (“the Annual Report”).<sup>2</sup>

## SUBMISSIONS

### A. Counter Terrorism

3. Section VI of the Annual Report deals with *Human Rights in Safeguarding the United Kingdom’s National Security*.<sup>3</sup> Several issues which REDRESS raised in 2013<sup>4</sup> and previously continue to be of concern. In general terms REDRESS considers that HMG’s human rights policy and national security policy are not sufficiently aligned.

4. Regarding the *Detainee Inquiry*,<sup>5</sup> some of the allegations of UK complicity in mistreatment (including renditions) of detainees held by other countries abroad are now being examined by the Intelligence and Security Committee (ISC).<sup>6</sup> REDRESS and others have expressed disquiet about this process,<sup>7</sup> given HMG’s prior commitment to hold an independent, judge-led inquiry and given our belief that a judge-led inquiry is required to fulfil HMG’s commitments under international law. Furthermore, we submit that the ISC is unsuited to the task of carrying out a proper investigation of the issues given that the membership and activities of the ISC remain under the control of the Prime Minister, who holds an absolute veto over who sits in the committee and what information it is allowed to see and publish, and HMG retains the right to withhold information considered to be “sensitive” or on the grounds of national security. In addition, an investigation by the ISC is unlikely to arrive at the truth given that one of the issues which should be subject to investigation is the effectiveness of the oversight of the security agencies during the relevant period, which would therefore presumably include the failure of the ISC itself to act effectively and transparently.<sup>8</sup>

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*Affairs Committee Inquiry into UK’s Relations with Saudi Arabia and Bahrain*, 19 November 2012, available at:

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

REDRESS, *Submission to the UK Foreign Affairs Committee’s Inquiry on Consular Assistance*, 24 January 2014, available at:

<http://www.redress.org/downloads/publications/REDRESS%20submission%20to%20Consular%20Inquiry.pdf>.

<sup>2</sup> Foreign and Commonwealth Office, “*Human Rights and Democracy: The 2013 Foreign and Commonwealth Office Report*”, 10 April 2014, available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/302421/18049\\_TSO\\_Cover\\_amp\\_Print\\_Text\\_with\\_trims\\_1.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/302421/18049_TSO_Cover_amp_Print_Text_with_trims_1.pdf).

<sup>3</sup> Above, n.2, pp.93 -111.

<sup>4</sup> Above, n.1, pp. 2-5.

<sup>5</sup> *The Detainee Inquiry* is dealt with in the annual Report at p. 95 – see above, n.2.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Joint Letter to the Rt Hon William Hague MP from REDRESS and other NGOs on the Detainee Inquiry and the Intelligence and Security Committee (ISC)*, 25 March 2014, available at:

<http://www.redress.org/downloads/publications/1404%20Joint%20letter%20on%20ISC%20investigation.pdf>. The letter was also sent to the Chairman of the ISC.

<sup>8</sup> *Ibid.*

5. HMG has left open the possibility of a future judge-led inquiry if it “remains necessary to add any further information of value.”<sup>9</sup> However, this does not address the concerns raised regarding the ISC investigation.

6. Prior to HMG passing the inquiry to the ISC, the United Nations Committee Against Torture (CAT) had recommended (in its Concluding Observations<sup>10</sup> on the UK’s 5<sup>th</sup> State Party Report to the CAT) that the UK “should ensure that the new inquiry is designed to satisfactorily address the shortcomings of the Detainee Inquiry, identified by a broad range of actors.”<sup>11</sup> For the reasons set out above the ISC inquiry is *not* so designed. The CAT also requested the UK “to provide, by 31 May 2014, follow-up information in response to the Committee’s recommendations relating to ... inquiries into allegations of torture overseas.”<sup>12</sup> REDRESS submits that the FAC should consider the CAT request and HMG’s eventual response as part of its inquiry.

7. Regarding *Guantanamo Bay*,<sup>13</sup> the FCO has set out what it has done regarding the continued detention of UK resident Shaker Aamer.<sup>14</sup> Another year has passed since REDRESS asked the Committee to encourage the FCO to urgently strengthen its call for Mr Aamer’s release and return.<sup>15</sup> No progress has been made. He has been in detention for over twelve years and is currently again on hunger-strike: according to his lawyer he is “gradually dying in Guantanamo.”<sup>16</sup> REDRESS encourages the Committee to question the FCO on why the USA is not responding effectively to HMG’s diplomatic requests for his release and return to the UK, and to recommend that it steps up its diplomatic representations.

8. Regarding *Deportation with Assurances*,<sup>17</sup> REDRESS opposes their use as a method of deporting or extraditing persons to States known to practice torture.<sup>18</sup> It is noteworthy that *after* the European Court of Human Rights decision in *Othman*,<sup>19</sup> the CAT said in its Concluding Observations on the UK’s Fifth State Party Report that it “considers that diplomatic assurances are unreliable and ineffective and should not be used as an instrument to modify the determination of the Convention.”<sup>20</sup>

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<sup>9</sup> Above, n.2, p. 95.

<sup>10</sup> *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland*, adopted by the Committee at its fiftieth session (6-31 May 2013), CAT/C/GBR/CO/5, 24 June 2013, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGBR%2fCO%2f5&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGBR%2fCO%2f5&Lang=en).

<sup>11</sup> *Ibid.*, para 15.

<sup>12</sup> *Ibid.*, para 38.

<sup>13</sup> *Guantanamo Bay* is dealt with in the annual Report at p. 96. – see above, n.2.

<sup>14</sup> *Ibid.*

<sup>15</sup> Above n.1, p 4.

<sup>16</sup> *Save Shaker Aamer Campaign Letter to William Hague*, 9 April 2014, available at: <http://saveshaker.org/ssac-letter-to-william-hague/512>.

<sup>17</sup> *Deportation with Assurances* is dealt with in the annual Report at p. 94, see above, n.2.

<sup>18</sup> See REDRESS, *The United Kingdom, Torture and Terrorism: Where The Problems Lie*, December 2008, pp. 50-73, available at: <http://www.redress.org/downloads/publications/Where%20the%20ProblemsLie%2010%20Dec%2008A4.pdf>. See also REDRESS letter to the Foreign Affairs Committee, 20 June 2011, p. 3, available at: <http://www.redress.org/downloads/publications/Letter%20to%20F%20A%20C%2020%20June%202011.pdf>.

<sup>19</sup> *Case of Othman (Abu Qatada) v. The United Kingdom*, ECtHR, Application no. 8139/09, Judgment of 17 January 2012 (FINAL 09/05/2012), available at: [http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"fulltext":\["Othman"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-108629"\]}](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{).

<sup>20</sup> Above, n.10, para. 18.

9. In this regard, and for example, Ethiopia is listed in the Annual Report as one of the States with which HMG currently has “functioning DWA arrangements”;<sup>21</sup> however, in another section of the annual Report (*Country Case Study: Ethiopia-Justice and treatment in Detention*<sup>22</sup>) the FCO refers to “generally poor detention conditions, with some incidents of human rights abuses and unlawful interrogation tactics.”<sup>23</sup> This re-enforces REDRESS’ continued concern about the use of DWAs.

## **B. The impact of the FCO’s ongoing Preventing Sexual Violence Initiative (PSVI)**

13. REDRESS commends the FCO on the continued efforts made under the PSVI in 2013.<sup>24</sup> We welcome the issuing of two international declarations on sexual violence in conflict which were produced under the leadership of the FCO, namely the historic *G8 Declaration on Prevention of Sexual Violence in Conflict* dated 11 April 2013<sup>25</sup> and the equally important *Declaration of Commitment to End Sexual Violence in Conflict* endorsed by 140 United Nations (UN) member states.<sup>26</sup> Both documents reiterate essential state responsibilities listed in the UN Security Council Resolution 1325 (2000),<sup>27</sup> such as women’s increased participation in decision-making for conflict prevention, resolution and peace-building and the fight against impunity for perpetrators of sexual violence in conflict.

14. Such documents are a first step in eliciting action from governments worldwide. The PSVI should not stop at producing commitments from states but should follow up on the realisation of these promises. The forthcoming Global Summit on Ending Sexual Violence in Conflict intends “turning the political commitments secured so far into concrete actions on the ground”<sup>28</sup> (including greater support and assistance and reparation for survivors<sup>29</sup>), but the FCO report does not present strategy on how to monitor and further push for actions by the signatory states. The Committee should recommend the development of a follow-up strategy to be presented in the next Annual Report.

15. REDRESS welcomes the FCO’s and DFID’s on-the-ground interventions in the target countries, including the deployment of the UK Expert Team and the funding of civil society initiatives. The report, however, lacks information on the impact of these measures on the prevention of sexual violence in

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<sup>21</sup> Above, n.2, p.94.

<sup>22</sup> Ibid., p. 43.

<sup>23</sup> Ibid.

<sup>24</sup> Above, n.2, pp.12-20.

<sup>25</sup> FCO, *G8 Declaration on Preventing Sexual Violence in Conflict*, 11 April 2013, available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/185008/G8\\_PSVI\\_Declaration\\_-\\_FINAL.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/185008/G8_PSVI_Declaration_-_FINAL.pdf).

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

[http://www.redress.org/downloads/12042013\\_PR\\_G8-grave-breaches-declaration\\_AIUK\\_REDRESS\\_TRIAL\\_OK.pdf](http://www.redress.org/downloads/12042013_PR_G8-grave-breaches-declaration_AIUK_REDRESS_TRIAL_OK.pdf).

<sup>26</sup> FCO press release, *113 countries pledge action to end sexual violence in conflict*, 24 September 2013, available at:

<https://www.gov.uk/government/news/113-countries-pledge-action-to-end-sexual-violence-in-conflict-timetoact>.

<sup>27</sup> Resolution 1325 (2000), adopted by the Security Council at its 4213th meeting, S/RES/1325 (2000), 31 October 2000, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N00/720/18/PDF/N0072018.pdf?OpenElement>.

<sup>28</sup> Above, n.2, p. 20.

<sup>29</sup> Ibid.

conflict and on the survivors of such violence. In order to evaluate the effectiveness of such interventions, the Committee should request additional data on the results.

### **C. Other issues arising from the Annual Report**

#### **a) Human rights for British nationals tortured or mistreated abroad**

16. The number of allegations of ill-treatment of British nationals overseas continues to be significant; in 2013 there were more than 80 new cases of such alleged torture and mistreatment in prisons overseas.<sup>30</sup> The number of British nationals known to be detained overseas remains over 2600, in over 110 countries.<sup>31</sup>

17. REDRESS welcomes the new guidance for consular staff on how to handle and manage mistreatment and torture allegations, which seek to ensure that they are dealt with in accordance with international law.<sup>32</sup> The Committee's inquiry into FCO consular services is ongoing and REDRESS welcomed the opportunity to present oral and written evidence to it.<sup>33</sup> REDRESS has argued before the Committee, *inter alia*, that HMG's public policy still reflects too great a concern with limiting expectations, as well as too great an emphasis on *assistance* at the cost of *protection*. If the revised guidelines were made public and consistently applied this would openly indicate a positive and necessary shift in direction. British nationals at their most vulnerable - as those facing torture are - deserve to know what HMG will do to intervene.

18. REDRESS has also submitted<sup>34</sup> that it is not sufficient for the FCO to exercise consular assistance without also taking effective diplomatic action where necessary, including espousing a claim for reparation when diplomatic protection becomes the only realistic prospect for justice. The FCO is currently reviewing the Rules on "international claims" including diplomatic protection in torture cases, and it is to be hoped the outcome of the review will make diplomatic protection more than a theoretical avenue for justice. It is submitted that the Committee should ask the FCO for information on this review which commenced six months ago.

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

22. The Annual Report in its section *Criminal Justice and the Rule of Law*<sup>35</sup> does not contain a subsection dealing with *Human rights offenders and entry to the UK*. This is a departure from last year and

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<sup>30</sup> Above, n.2, p.123. It needs to be noted that torture of British nationals abroad can and does also take place outside of prisons – see REDRESS, *Complaint against the FCO concerning consular assistance: rape by a soldier in Egypt*, available at: <http://www.redress.org/case-docket/complaint-against-the-foreign--commonwealth-office>.

<sup>31</sup> Above, n.2, p.122.

<sup>32</sup> *Ibid.*, p. 123.

<sup>33</sup> REDRESS, *Foreign Affairs Committee: inquiry into FCO consular services: submissions of the Redress Trust (REDRESS)*, 24 January 2014, available at:

<http://www.redress.org/downloads/publications/REDRESS%20submission%20to%20Consular%20Inquiry.pdf>.

<sup>34</sup> *Ibid.*, p. 12-13. Diplomatic protection (espousal of the tortured individual's claim on a State-to-State basis) cannot be entirely separated from consular assistance, although they are different processes.

<sup>35</sup> Above, n.2, pp.48-60.

previous years and REDRESS asks the Committee to query why this important aspect of the Annual Report and HMG's policy of "no safe haven"<sup>36</sup> for torturers does not feature in the most recent Report.

23. As REDRESS has submitted previously,<sup>37</sup> an important aspect of the "no safe haven" policy is to respond effectively to suspects present *in* the UK; it is not only a matter of keeping *out* those against whom there is credible evidence of having perpetrated heinous international crimes such as torture. All relevant ministries/agencies should work together to ensure that the UK is not a *de facto* safe haven, including proper screening of foreign diplomats appointed, working and visiting the UK to ensure none are suspected of having perpetrated international crimes.

24. The FCO is using and apparently intending to make more use of a Special Mission Immunity (SMI) process which effectively bars criminal proceedings against persons who have SMI, and which could include torture suspects. This new policy on using SMIs was set out in a statement by the Foreign Secretary to Parliament last year.<sup>38</sup> REDRESS submits that the Committee should ask the FCO how it will ensure that the SMI process does not further undermine the "no safe haven" policy, given its potential for protecting those with serious allegations existing against them.<sup>39</sup>

### **c) Human rights in countries of concern**

25. REDRESS welcomes the continued emphasis the FCO places on States where human rights abuses are gravest. The list of countries of concern has expanded, along with the incorporation of more case studies on other States; these two approaches highlight many States where the practice of torture continues to be a major problem. REDRESS comments below on a number of these States mentioned in the Annual Report as well as some others.

26. Given the limitations of time and space, as well as the FCO's own recognition that its Annual Report cannot cover every State in the world, REDRESS asks the Committee to clarify the extent to which and how the FCO liaises with local human rights NGOs, both to compile this part of the Annual Report (i.e. countries of concern and case studies) as well as to give local NGOs an opportunity to comment on the FCO's annual position. While it is of course open to anyone with an interest, including local NGOs, to make submissions to the Committee's annual inquiry, this is not necessarily the most feasible or

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<sup>36</sup> See FCO, *Strategy for the Prevention of Torture 2011-15*, 27 October 2011, available at:

<http://www.fco.gov.uk/resources/en/pdf/fcostrategy-tortureprevention>. In the *Strategy* reference to this obligation under the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is made at p.6:

" - ensure that all acts of torture are offences under their national criminal law and ensure that there is no safe haven for individuals accused of committing acts of torture by, for example, requiring States Parties to take an alleged torturer into custody, to extradite him or her or to submit the case to their competent prosecuting authorities." The Committee will recall it looked closely at the *Strategy* in 2012 in its inquiry into the FCO's 2011 *Human Rights and Democracy Report* – see REDRESS, *Submission to the Foreign Affairs Committee's Annual Inquiry into the FCO's Human Rights Work in 2011*, 25 May 2012, available at: <http://www.redress.org/downloads/publications/121017FACsubmission.pdf>.

<sup>37</sup> Above, n.1, pp. 7-8.

<sup>38</sup> Hansard, 4 March 2013: Column 55-56WS, available at:

<http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm130304/wmstext/130304m0001.htm>.

<sup>39</sup> See also Hansard 10 Feb 2014: Column 508W: Immunity from Prosecution: Foreign Nationals: *Dr Huppert*: To ask the Secretary of State for Foreign and Commonwealth Affairs what the requirements are for special mission immunity to be given. [186970] *Mark Simmonds*: The Secretary of State for Foreign and Commonwealth Affairs, my right hon. Friend the Member for Richmond (Yorks) (Mr Hague) on 4 March 2013, Official Report, columns 55-56, announced a new process by which we would be informed of visits that may qualify for special mission status. Under customary international law a special mission is a temporary mission, representing a state, which is sent by one state to another with the consent of the latter, in order to carry out official business. In this context, "official business" will normally involve contacts with authorities of the United Kingdom, such as meeting officials of Her Majesty's Government, or attendance at a ceremonial occasion, for example a royal wedding.

efficient way for local human rights organisations to critique HMG's policies in relation to their countries.

27. REDRESS is aware that many local anti-torture NGOs would welcome greater opportunities to interact directly with the FCO on its anti-torture work. In March 2014 some twenty of REDRESS' partners and anti-torture experts from Africa, the Americas, Asia and the Middle East, the Balkans and Russia met with REDRESS in London to discuss strategies for collaboration. This included a public roundtable convened in collaboration with the All Party Parliamentary Human Rights Group (PHRG) on '*Reducing vulnerability to torture: Challenges to UK's foreign policy*' at the House of Commons.<sup>40</sup>

32) **Afghanistan** is listed as a country of concern in the Annual Report,<sup>41</sup> and the FCO refers to different aspects of the problem of captured detainees, including their transfer to the Afghan authorities.<sup>42</sup> A recent High Court decision has found the UK to have acted unlawfully in detaining an Afghan national well beyond the 96 hour period allowed.<sup>43</sup> We ask the Committee to raise this case with the FCO, to ask it if there are similar unlawful detention cases, and to seek clarity as to precisely how HMG will deal with all the outstanding issues relating to transfer of captured detainees before the final withdrawal of UK forces this year, including post hand-over monitoring after the final withdrawal.

33) **Bahrain** is not listed as a country of concern in the Annual Report, but reference is made to it in a case study where it is said that "2013 saw positive developments for human rights in Bahrain, but a number of concerns remain."<sup>44</sup> Last year REDRESS submitted that the Committee should ask the FCO to state specifically and comprehensively what it is doing to convince Bahrain to stop torture, given it is the UK's close ally.<sup>45</sup> In its November 2013 report on the *UK's relations with Saudi Arabia and Bahrain*<sup>46</sup> the Committee said:

"The UK must press with greater urgency and force for Bahrain to implement the BICI reforms, engage seriously in dialogue and welcome UN mechanisms in order to re-establish good faith in its intentions. *If there is no significant progress by the start of 2014, the Government should designate Bahrain as a 'country of concern' in its Human Rights Report.*"<sup>47</sup> [Emphasis added]

It is not apparent from the Annual Report *how* HMG is engaging with Bahrain on the above issues, and we again ask the Committee to question the FCO closely on what it is actually doing. The FCO appears to believe significant progress has been made, but the basis for this belief is questionable; for example, it refers to the Ministry of Interior Ombudsman's Office having become operational in 2013 and having investigated a number of complaints of mistreatment and torture;<sup>48</sup> however, a leading international human rights NGO has very recently stated that "there is no evidence that post-BICI initiatives such as

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<sup>40</sup> The event took place on 12 March 2014, from 17:30 – 19:00, hosted by Ann Clwyd MP, Chair, PHRG. See also REDRESS, Global Sharing of Expertise – Experts Meeting & House of Commons Event, available at: <http://www.redress.org/events--conferences/events>.

<sup>41</sup> Above, n.2, p.151.

<sup>42</sup> Ibid., p. 155.

<sup>43</sup> *Serdar Mohammed V Ministry of Defence*, [2014] EWHC 1369 (QB), available at: <http://www.bailii.org/ew/cases/EWHC/QB/2014/1369.html>.

<sup>44</sup> Above, n.2, p. 55.

<sup>45</sup> Above, n.1, p.11.

<sup>46</sup> House of Commons Foreign Affairs Committee, Fifth Report of Session 2013-2014, available at: <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmcaff/88/88.pdf>.

<sup>47</sup> Ibid., para. 214, p. 94.

<sup>48</sup> Above, n.2, p.55.

the appointment of an Interior Ministry ombudsman, and creation of a Special Investigations Unit and a Commission on the Rights of Prisoners and Detainees have been effective in stopping torture and holding torturers criminally accountable for their actions.”<sup>49</sup> REDRESS is also most concerned at the recent statement in Parliament by the Senior Minister of State in the FCO the Rt Hon Baroness Warsi that “[t]he UK has not received any specific evidence of the use of torture to extract confessions” in Bahrain.<sup>50</sup> We have written to her seeking a correction and retraction as this statement does not stand up to scrutiny.<sup>51</sup>

34) **Libya** is listed as a country of concern in the Annual Report.<sup>52</sup> REDRESS welcomes HMG’s acknowledgement that torture and other ill-treatment of detainees in Libya continues. As noted in the Annual Report, Libya has made efforts to meet its international obligations, but its recent legislative definition of torture is too narrow to comply with article 1 of UNCAT to which Libya is a party.<sup>53</sup> The FCO should also take note that torture does not occur only in detention facilities or solely to detainees. A culture of impunity exists and it is important for efforts to be made to bring perpetrators to justice, for the survivor to know the truth and to receive redress for acts committed. Lack of accountability increases the mistrust of Libyans and survivors of torture in the justice system, and particularly affects the most vulnerable and marginalised groups.<sup>54</sup> There has also been a dramatic rise in the harassment, intimidation, threats and in some cases assassinations of those involved in the criminal justice system. Such attacks make it difficult for sensitive work on issues such as torture to take place, with the Libyan Government providing little or no protection.

35) **Nepal** is not listed as a country of concern in the Annual Report, nor referred to in a case study.<sup>55</sup> Last year REDRESS highlighted worrying developments on impunity in Nepal.<sup>56</sup> At that time attempts had been made to establish a Truth and Reconciliation Commission (TRC) by Ordinance, to deal with crimes including torture, rape, enforced disappearance, international humanitarian law violations and possible crimes against humanity committed during the conflict in Nepal.<sup>57</sup> The Ordinance was not in line with international human rights standards and was struck down by Nepal’s Supreme Court as unconstitutional.<sup>58</sup> Despite this, a Bill with many of the same features, including the power to “reconcile

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<sup>49</sup> Human Rights Watch, *Dispatches: Bahrain Shooting the Messenger on Torture*, 25 April 2014, available at: <https://www.hrw.org/news/2014/04/25/dispatches-bahrain-shooting-messenger-torture>.

<sup>50</sup> Hansard, 27 March 2014: Column WA130, available at: [http://www.publications.parliament.uk/pa/ld201314/ldhansrd/text/140327w0001.htm#w\\_a\\_st\\_6](http://www.publications.parliament.uk/pa/ld201314/ldhansrd/text/140327w0001.htm#w_a_st_6).

<sup>51</sup> REDRESS, *Letter to the Rt Hon Baroness Warsi PC concerning torture in Bahrain*, 10 April 2014, available at: <http://www.redress.org/downloads/publications/10%20April%202014%20Letter%20to%20Baroness%20Warsi.pdf>.

<sup>52</sup> Above, n. 2, p. 232.

<sup>53</sup> Under the General National Congress’ Law Criminalising Torture, Enforced Disappearances and Discrimination of 9 April 2013, Article 2 defines the crime of torture as “anyone who personally inflicted or ordered another person to inflict pain or suffering whether physical or mental, on a detainee under his control for such purposes as obtaining from him a confession for an act he has or hasn’t committed, or for any reason based on discrimination of any kind or revenge for any cause”. This definition fails to provide a sound basis on which to build a comprehensive anti-torture framework. The new law also fails to enshrine the principle of non-refoulement.

<sup>54</sup> There have been signs of widespread torture in Libya towards minority groups. Sub-Saharan Africans and internally displaced peoples such as the Tawerghan population are amongst some of the minority groups most affected, and opportunities for them to seek redress is limited.

<sup>55</sup> However, there is brief reference to Nepal in other sections of the Report e.g. in relation to the FCO funding election observers- see above note 2, p. 30.

<sup>56</sup> Above, n.1, p.12.

<sup>57</sup> On the types of crimes committed see Office of the High Commissioner for Human Rights (OHCHR) (2012), ‘Nepal Conflict Report’, October 2012, available at: <http://www.ohchr.org/EN/Countries/AsiaRegion/Pages/NepalConflictReport.aspx>.

<sup>58</sup> Republica, ‘SC rejects TRC ordinance over blanket amnesty’, 3 January 2014, available at:

mutually” between perpetrator and victim without the victim’s consent<sup>59</sup> and to grant amnesties for crimes under international law,<sup>60</sup> was passed by the Parliament on 25 April 2014.<sup>61</sup> The Bill also envisages the use of (an as yet undefined) “Special Court” to try any alleged perpetrators who are recommended for prosecution.<sup>62</sup> The process was marked by a lack of transparency and no consultation with victims, and was met by strong criticism from victims’ groups and human rights groups.<sup>63</sup> Civil society has expressed concerns that, rather than a mechanism to achieve peace and justice, the transitional justice mechanisms are being used as a vehicle for amnesty for gross violations of human rights.<sup>64</sup> There is a significant danger that victims will boycott the process and that it will finally institutionalise impunity, rather than leading to truth, justice and reparation for victims. In turn this threatens Nepal’s future stability and undermines the rule of law and human rights in Nepal, where serious human rights violations, including the widespread use of torture and other ill-treatment by police, continue.<sup>65</sup> The UK has taken a strong position on the need for accountability for human rights violations in Nepal,<sup>66</sup> and should continue to do so. Given the developments which appear designed to entrench impunity, and their impact on the rule of law and ongoing violations, the Committee should ask the FCO if it has considered designating Nepal as a country of concern, as it fits the necessary criteria.

35) **Rwanda** is not listed as a country of concern in the Annual Report, but reference is made to it in a case study,<sup>67</sup> mention is also made of UK support of the work of the International Criminal Tribunal for Rwanda (ICTR) “in tackling impunity and delivering justice to the victims of the Rwandan genocide.”<sup>68</sup> Since the last Annual Report, the ICTR has mandated the International Organisation of Migration (IOM) to carry out a study on reparation for survivors of the 1994 genocide, with the objective of providing technical and operational suggestions as regards possible ways of providing reparation to survivors, twenty years after the 1994 genocide. REDRESS, together with survivor organisations and the

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[http://www.myrepublica.com/portal/index.php?action=news\\_details&news\\_id=67287](http://www.myrepublica.com/portal/index.php?action=news_details&news_id=67287). See further OHCHR, ‘Pillay says Nepal commission must not grant amnesty for serious human rights violations’, 20 March 2013, available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=13163&LangID=E> and Asian Centre for Human Rights, Human Rights Watch, International Commission of Jurists and TRIAL, ‘Nepal: Truth & reconciliation law betrays victims’, 22 March 2013, available at: <http://www.hrw.org/node/114432>.

<sup>59</sup> Bill on Commission on Investigation of Disappeared Persons, Truth and Reconciliation 2071 (2014), Section 22.

<sup>60</sup> Ibid., Section 26.

<sup>61</sup> ‘Parliament Passes TRC Bill’, *Kathmandu Post*, 25 April 2014, <http://www.ekantipur.com/the-kathmandu-post/2014/04/25/top-story/parliament-passes-trc-bill/262074.html>.

<sup>62</sup> Bill on Commission on Investigation of Disappeared Persons, Truth and Reconciliation 2071 (2014), Section 29.

<sup>63</sup> See, e.g. International Commission of Jurists, Amnesty International and Human Rights Watch (2014), ‘Nepal: Reject draft Truth and Reconciliation Bill’, 17 April 2014, <http://www.ici.org/nepal-reject-draft-truth-and-reconciliation-bill/>.

<sup>64</sup> A concern is informed by the recent history of the failure of earlier commissions of inquiries, including the Mallik Commission and Rayamajhi Commission, to prosecute those responsible for human rights violations and other abuses, see further Advocacy Forum, ‘Nepal: Transitional Justice at the Crossroads’, January 2014, p. 3.

<sup>65</sup> Committee Against Torture, *Report on Nepal adopted by the Committee against Torture under article 20 of the Convention and comments and observations by the State party*, para. 108, available at:

<http://www2.ohchr.org/english/bodies/cat/docs/Art20/NepalAnnexXIII.pdf>. See also Advocacy Forum, ‘Nepal: Is the Government Unable or Unwilling to Prevent and Investigate Torture?’, 26 June 2013, available at: <http://advocacyforum.org/downloads/pdf/publications/torture/26-June-2013-english-version.pdf>.

<sup>66</sup> See, for example, Joint Statement on Nepal, (Costa Rica, Denmark, Finland, France, Germany, Norway, Switzerland and the United Kingdom), Human Rights Council 21<sup>st</sup> session, General Debate, 27 September 2012, available at:

<http://nepal.um.dk/en/about-us/news-from-nepal/newsdisplaypage/?newsID=7C7DB179-8173-415C-928C-7B51D551A9A7>.

<sup>67</sup> Above, n.2, p. 44.

<sup>68</sup> Ibid., p. 58.

Survivors' Fund, has called for the establishment of a taskforce on reparation to facilitate survivors' access to reparation.<sup>69</sup> As the IOM study is currently ongoing, it is critical that the FCO supports all relevant efforts to ensure that survivors are finally granted reparation, in accordance with their rights.

37) **Saudi Arabia** is listed as a country of concern in the Annual Report<sup>70</sup> and it is stated that "[a]llegations of torture continue to be made, but are difficult to investigate and impossible to verify."<sup>71</sup> Last year HMG accepted that torture allegations were credible and that the Saudi authorities needed to do more to address torture concerns.<sup>72</sup> We commend HMG for pressing Saudi Arabia to ratify the Optional Protocol to the UN Convention Against Torture,<sup>73</sup> but ask the Committee to clarify whether the FCO's comment on investigations and verification indicates a softened approach towards Saudi Arabia. We call for more public criticism of Saudi Arabia (including in the Annual Report) to reflect transparency in the UK's foreign policy towards its ally. REDRESS also again<sup>74</sup> asks the Committee to suggest to the FCO that it insist Saudi Arabia demonstrate its commitment to adhering to its international obligations by compensating UK nationals who have not received redress for their suffering.<sup>75</sup>

39) **Sudan** is listed as a country of concern in the Annual Report.<sup>76</sup> The FCO highlights the deteriorating human rights situation in Sudan in 2013 and equally stresses its intention "to support national dialogue and a better environment for free and fair elections in the future."<sup>77</sup> For such a national dialogue to be genuine, and for there to be an environment conducive to free and fair elections, Sudan must address the multiple concerns reflected in the Annual Report. Any support for these processes should therefore be conditional on Sudan making tangible progress in relation to a series of key prerequisites for greater human rights protection and respect for the rule of law. This includes (i) a genuinely transparent and participatory constitutional review process aimed at ensuring the effective protection of human rights binding on Sudan under international law;<sup>78</sup> (ii) effective legislative reforms, including (a) the National Security Act whose provisions fall short of binding international standards and facilitate arbitrary arrest and detention as well as torture and ill-treatment; (b) immunity provisions contained in several laws that contribute to perpetuating a climate of impunity; (c) the rights of women, particularly effective protection against sexual violence and reform of discriminatory public order laws and personal status laws; and (d) other legislation that has been identified as giving rise to concerns concerning its compatibility with Sudan's international obligations;<sup>79</sup> (iii) effective institutional reforms, including reform the judiciary and the state security apparatus;<sup>80</sup> (iv) accountability and justice for human rights

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<sup>69</sup> REDRESS et al, *Recommendations for Reparation for Survivors of the 1994 Genocide Against Tutsi- Discussion Paper*, October 2012, available at: [http://www.redress.org/downloads/publications/121031right\\_to\\_rep.pdf](http://www.redress.org/downloads/publications/121031right_to_rep.pdf).

<sup>70</sup> Above, n.2, pp. 249-254.

<sup>71</sup> Ibid., p. 252.

<sup>72</sup> Above, n. 1, p. 12.

<sup>73</sup> Ibid.

<sup>74</sup> As we did last year – ibid.

<sup>75</sup> Including Keith Carmichael, REDRESS' founder who has been waiting more than 30 years for any form of justice. The UK should espouse his request for diplomatic protection.

<sup>76</sup> Above, n.2, pp.274-279.

<sup>77</sup> Ibid., p.274.

<sup>78</sup> See REDRESS, Faculty of Law-University of Khartoum, Sudanese Human Rights Monitor, *The Constitutional Protection of Human Rights in the Sudan: Challenges and Future Perspectives*, January 2014, available at:

<http://www.redress.org/downloads/publications/140127FINAL%20Sudan%20UoK%20Report.pdf>

<sup>79</sup> See in particular the compilation of key Recommendations made by regional and international human rights bodies to Sudan, contained in REDRESS and Sudanese Human Rights Monitor, *Human Rights Concerns and Barriers to Justice in Sudan: National, Regional and International Perspectives, A compilation of Sudan Law Reform Advocacy Briefings*, February 2014, pp.25 et seq., available at: <http://www.redress.org/downloads/publications/140228HumanRightsConcernFINAL.pdf>

<sup>80</sup> Ibid.

violations, both mass violations in the context of conflict and individual violations;<sup>81</sup> this also entails continuing to press the case of British nationals who allege that they have been subjected to torture and other violations, such as Magdy El-Baghdady, a REDRESS client who was referred to in the FCO's 2012 Annual Report;<sup>82</sup> and (v) taking effective measures to stop violations of international humanitarian law and international human rights law in South Kordofan, Blue Nile and Darfur.<sup>83</sup>

## RECOMMENDATIONS

The Committee should call for the FCO to:

- Address the human rights concerns arising from the Detainee Inquiry, Guantanamo Bay and Deportations with Assurances arising from its counter-terrorism policies;
- Ensure that its *Preventing Sexual Violence Initiative* develops a strategy to monitor implementation, action and progress to reduce sexual violence;
- Explain what it is doing to make the UK a place where torture suspects (including diplomats) are not welcome, and if they come here to ensure that they are properly investigated with a view to prosecution;
- Question the FCO on how it will implement its improved consular protection policies in practice, and whether it will espouse claims for diplomatic protection for torture;
- Explore ways of improving interaction with local human rights NGOs in developing its policies towards States where torture is a serious problem;
- Adopt a more principled, consistent and transparent policy on torture committed by its allies Bahrain and Saudi Arabia.

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<sup>81</sup> There are regular reports of human rights violations by national and international observers and organisations. See on torture, for example, REDRESS, Sudan Democracy First Group and African Centre for Justice and Peace Studies, *Comments to Sudan's 4th and 5th Periodic Report to the African Commission on Human and Peoples' Rights: Article 5 of the African Charter: Prohibition of torture, cruel, degrading or inhuman punishment and treatment*, available at: <http://www.redress.org/downloads/publications/1204%20Comments%20to%20Sudans%204th%20and%205th%20Periodic%20Report.pdf>

<sup>82</sup> REDRESS has brought a case on behalf of Magdy Moustafa El-Baghdady against Sudan, which was submitted to the African Commission on Human and Peoples' Rights on 25 October 2013, available at: <http://www.redress.org/downloads/casework/redress-magdy-communication-25-October-2013.pdf>.

<sup>83</sup> See in this regard also the case pending before the African Commission on Human and Peoples' Rights concerning alleged violations of the African Charter on Human and Peoples' Rights by Sudan in the conflict in South Kordofan and Blue Nile, available at: <http://www.redress.org/case-docket/redress-sdfg-hrw-and-interights-request-for-provisional-measures-in-regards-to-southern-kordofan-sta>.