REDRESS

Ending Torture. Seeking Justice for Survivors

UK EXTRADITION POLICY

Submission to the Joint Committee on Human Rights (JCHR)

27 January 2011

INTRODUCTION

1. The Redress Trust (REDRESS) is an international human rights organisation whose mandate is to seek justice for torture survivors. REDRESS' work has included making written submissions to United Kingdom parliamentary committees, including the JCHR, on matters concerning torture and other international law crimes in recent years.[1] REDRESS has also given oral evidence to the JCHR.[2]

2. REDRESS has an ongoing interest in seeing that those suspected of perpetrating torture and related international crimes are brought to justice. Trials can take place in the country where the offences were allegedly committed or in another state on the basis of universal jurisdiction or related forms of extraterritorial jurisdiction. Universal jurisdiction is premised on the notion that the crimes are so heinous that they offend the sensibilities of the international community as a whole – they are in their nature international crimes which all states have an interest and at times an obligation to prosecute. Universal jurisdiction is also based on the need to combat impunity: nowhere, including the UK ought to be a safe haven for those accused of torture or related international crimes.

3. This current submission is focussed on the following issue raised by the JCHR: ***"Should there be an expectation that where possible trials are held and sentences served within the United Kingdom? How would such an expectation be implemented in practice?"***

4. REDRESS believes that when suspects of international crimes allegedly committed abroad such as genocide, crimes against humanity, war crimes and torture are found within the UK's jurisdiction, effective steps must be taken to bring them to trial. Extradition is one such mechanism but should not preclude thorough police investigations with a view to a UK prosecution. To rely solely on extradition is wrong both in principle and practice, and can lead to serious anomalies where known suspects

---

[1] See our website www.redress.org and in particular http://www.redress.org/smartweb/reports/reports.

[2] For example, on 1 July 2009 in regard to the Torture (Damages) Bill - see JCHR Report *"Closing the Impunity Gap"*, published 11 August 2009, available at

www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/153/153.pdf.

live here for years without being held accountable anywhere, even when the UK has jurisdiction over the alleged offence(s).

5. The significance of this issue is highlighted by the case of four Rwandan genocide suspects whose extradition to Rwanda failed almost two years ago. Despite the fact that UK courts have found that the suspects have *prima facie* cases to answer, they are believed to be living here freely without being investigated or potentially prosecuted in the UK. This submission therefore examines the relationship between extraditions from the UK to other states and the need to investigate allegations when there is a possibility of a UK prosecution for the same alleged crimes.

SUMMARY

6. Legislation exists in the UK for the prosecution of international crimes committed abroad where the suspects are in the UK. Jurisdiction over crimes such as genocide, crimes against humanity, war crimes and torture are firmly established in a range of laws as is discussed further in this submission. The UK has specifically improved its legislative framework to fill "impunity gaps" to make it possible to prosecute crimes which took place abroad as long as twenty years ago in respect of genocide, crimes against humanity and war crimes and even longer in the case of torture, pursuant to the principle of universal jurisdiction.

7. Despite these laws and the apparent considerable number of suspects in the UK there have been very few prosecutions. Where suspects have been identified and there are no legal impediments to investigate allegations with a view to prosecute in the UK, the apparent policy (as evidenced by the very limited practice) is to leave cases in limbo in the hope of a successful extradition even where an attempt to extradite has already failed.

8. REDRESS believes such an approach is not only wrong in principle; it is also at variance with the UK's obligations under international law. Where there are suspects present in the UK, timely investigations should be conducted with a view to bringing them to trial in the UK. Extradition should be a component within a holistic policy aimed at ensuring accountability for the most egregious crimes within our jurisdiction.

SUBMISSION

I. Recent reforms to UK law[3] demonstrate parliamentary intention to end safe havens for the most serious crimes under International Law

9. The JCHR has previously examined in some detail legislation governing the UK's jurisdiction over international crimes committed abroad when a suspect is in the UK.[4] Although there are disparate domestic laws governing genocide, crimes against humanity, war crimes, torture and other international crimes (as well as different international law treaties and rules concerning these crimes) the UK has taken a definitive stance ensuring that such suspects found within its borders can be brought to trial here.

[3] Coroners and Justice Act, 2009.

[4] *Ibid.*

10. The UK legal framework has recently been considerably strengthened, largely as a result of the failed extradition case of the Rwandan suspects referred to in this submission and the JCHR's own analysis of impunity gaps.[5] UK Courts now have jurisdiction over genocide, war crimes and crimes against humanity committed abroad after 1991.[6]

11. The Coalition Government has recently restated the UK's commitment to universal jurisdiction, as expressed by Justice Secretary Kenneth Clark:[7]

> *Our commitment to our international obligations and to ensuring that there is no impunity for those accused of crimes of universal jurisdiction is unwavering.*

II. Practice of UK Police and Prosecution Services undermines parliamentary intention to end safe havens

12. There remains a large gap between the legislation, which allows for prosecutions where a suspect is in the UK, and implementation of such legislation, in the form of actual investigations and prosecutions.

13. Only two suspects have ever been successfully prosecuted in the UK.[8] This is despite figures indicating that there are a considerable number of possible perpetrators here. In this regard the Joint Committee on Human Rights has indicated that:

> *We [...] asked for information on the number of suspected perpetrators of genocide, war crimes and crimes against humanity present in the UK who cannot be prosecuted [because of the existing legislation's lack of retrospective jurisdiction]. In its memorandum, the Government said it could not estimate the number of suspects living in the UK but said that in the four years between 2004 and 2008, there were 138 adverse immigration decisions (such as refusal of entry, indefinite leave to remain and naturalisation, and exclusions from refugee protection), and that "these individuals may no longer be in the UK." In the same four years, 22 cases were referred to the Metropolitan Police. In its memoranda, Aegis quoted figures provided to Parliament: the UK Borders Agency (UKBA) has investigated 1,863 individuals in the UK for genocide, war crimes or crimes against humanity.*[9]

---

[5] *Ibid.*

[6] The ICC Act 2001 was amended in terms of section 70 of the Coroners and Justice Act 2009. The effect of this amendment, which came into force on 6 April 2010, is to now give UK court's jurisdiction over genocide (and war crimes and crimes against humanity) committed abroad after 1 January 1991 where the suspect is resident in the UK.

[7] Ministry of Justice news release: *"New rules on universal jurisdiction"*, 22 July 2010, available at http://www.justice.gov.uk/news/newsrelease220710b.htm

[8] Afghan Faryadi Zardad was convicted of torture and hostage taking in 2005 and sentenced to 20 years imprisonment. There is an unreported High Court judgment of 19 July 2005 in *R v. Zardad* which relates to certain legal aspects of the case. An appeal was denied 17 February 2007. On 1 April 1999, Anthony (Andrzej) Sawoniuk was sentenced under the War Crimes Act 1991 to life imprisonment for the murder of two civilians. The Court of Appeal upheld his conviction on 10 February 2000 - *R. v. Sawoniuk, Court of Appeal (Criminal Division), [2000] Crim. L. R. 506*. The House of Lords denied leave to appeal on 20 June 2000 - "War Criminal Refused New Hearing," Financial Times, 20 June 2000.

[9] *Op. Cit.* JCHR 2009 Report at paragraph 34.

14. Of note, the UK Border Agency's "investigations" are not criminal investigations. Within their mandate, they identify potential suspects for immigration purposes only. Given the stark contrast between the number of possible suspects (1,863) and the number of prosecuted cases (2), there would appear to be a impunity gap that requires attention by the JCHR and the competent investigative bodies.

15. What is therefore of concern is that where there is a real opportunity to bring a prosecution in the UK for an international crime such as genocide this is not being pursued because the policy appears to be to place excessive reliance on extradition, **even where an extradition request has already failed once.**

III. Failure to investigate in the 'hope' of a successful extradition fosters impunity: the Rwanda case

16. On 24 August 2006, Rwanda issued warrants for the arrest of four named genocide suspects. The men were arrested in the UK on 29 December 2006 and held in custody pending the outcome of the Rwandan Government's request for their extradition to face trial in Rwanda on allegations of genocide, conspiracy to commit genocide, complicity in genocide, crimes against humanity and other crimes relating to their alleged involvement in the 1994 genocide.[10]

17. As there are no general treaty arrangements between the UK and the Rwandan Government the extradition applications were made on the basis of a Memorandum of Understanding (MoU) entered into by Rwanda and the UK in respect of each suspect on 14 September 2006. This MoU engaged the statutory extradition machinery contained in the Extradition Act 2003.

18. The extradition request was considered in the City of Westminster Magistrates Court by District Judge Anthony Evans in lengthy proceedings during 2007 - 2008. On 6 June 2008 he referred the cases to the Secretary of State for her consideration and decision, after rejecting all the arguments raised by the defence in the hearing; these had included the argument that the men's extradition was incompatible with the European Convention on Human Rights (ECHR), particularly article 6, in that they would not receive a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. In the course of his ruling Judge Evans also said that it was "the correct course of action for the trials to take place in Rwanda."[11] The Home Secretary ordered their extradition on 1 August 2008.

19. The four men appealed to the High Court against the decisions of Judge Evans and the Home Secretary, and on 8 April 2009 the High Court upheld the appeal;[12] as a result the men were released from custody and as far as is known they remain in the UK to date. The issues on appeal were varied but a major theme common to all the appellants,

---

[10] See *Government of the Republic of Rwanda v Vincent Bajinya and three others,* City of Westminster Magistrates' Court, judgement of District Judge Anthony Evans, 6 June 2008, at paragraph 1.

[11] Ibid, paragraph 551.

[12] *Vincent Brown (aka Vincent Bajinya) v Government of Rwanda and the Secretary of State,* [2009] EWHC 770 (Admin), available at http://www.bailii.org/ew/cases/EWHC/Admin/2009/770.html.

and the focus of the appeal judgment, was the argument that the appellants would not receive a fair trial in Rwanda, and that therefore the UK would be in breach of its ECHR obligations if the men were surrendered for trial there. The High Court ruled that if they "were returned there would be a real risk that they would suffer a flagrant denial of justice."[13] It should be noted that Judge Evans had concluded that each of the four suspects had a case to answer, and the High Court on appeal found no fault with this conclusion.[14]

20. REDRESS has called upon the police to investigate, especially since the High Court decision of April 2009, with a view to a UK prosecution. The CPS has said that a fresh extradition request is expected from the Rwandan authorities and that it (the CPS) is working closely with Rwanda to overcome all the problems within the Rwandan justice system highlighted by the High Court. The police have said that the Rwandan authorities have declined a request for a copy of evidence in its possession and that without the full co-operation of the Rwandan authorities it will be extremely difficult to obtain the standard of evidence necessary to prosecute this case in the UK. Of note, Rwandan authorities have cooperated with the range of European investigators and prosecutors that have prosecuted genocide charges throughout Europe – the idea that they would refuse all cooperation with the UK is at the least, surprising.

21. In several other European states where extradition was denied once, the competent authorities in these countries decided to investigate and prosecute themselves, as they did not see an immediate prospect for a successful extradition, and the prospect of continuing to provide a safe haven for these suspects was untenable. Examples include Switzerland, The Netherlands, Germany, Denmark, Finland, Belgium and France, resulting in the conviction of eleven perpetrators involved in the 1994 genocide, with further investigations and prosecutions ongoing in some of these states.[15]

22. REDRESS is concerned about the resultant delays in the delivery of justice. These concerns do not only relate to the specific Rwandan case, but to the apparent policy reflected, namely, that "repeated" extradition requests could be appropriate in genocide cases and for other international crimes over which the UK exercises universal jurisdiction. Such a practice undermines efforts to combat impunity. It means known suspects can live freely here for years at a time without being brought to trial.

23. As an organisation which works directly with survivors of these most egregious of crimes, REDRESS reiterates the importance of justice, which if achieved can play an important part in restoring victims' rights and dignity and healing the trauma suffered. Conversely, a denial of justice can exacerbate the horrors which have been endured,

---

[13] *Ibid,* at paragraph 121.

[14] *Ibid,* paragraphs 124-136.

[15] See REDRESS and FIDH, *"EXTRATERRITORIAL JURISDICTION IN THE EUROPEAN UNION: A STUDY OF THE LAWS AND PRACTICE IN THE 27 MEMBER STATES OF THE EUROPEAN UNION",* December 2010, available at http://www.redress.org/downloads/publications/Extraterritorial_Jurisdiction_in_the_European_Union.pdf.

See also REDRESS and African Rights report *"Extraditing Genocide Suspects From Europe to Rwanda: Issues and Challenges - Report of a Conference Organised by REDRESS and African Rights at the Belgian Parliament, 1 July 2008",*September 2008, available at http://www.redress.org/downloads/publications/Extradition_Report_Final_Version_Sept_08.pdf.

and even more so when suspects have been identified and can be held accountable, but are seen to be going about their lives with impunity.

24. REDRESS has previously examined the impact of delays in these kinds of cases, and drawn attention to the need to expedite the justice procedure in the interests of survivors and victims. In our 2008 Report "Waiting for Justice", the following is outlined:

> *Delays are a persistent cause for concern in the administration of justice worldwide. The timely disposition of cases is seen as an elementary part of justice; conversely, unduly prolonged investigations and trials deny justice. Delays are detrimental to those seeking justice and the system of justice as a whole [...]. Delays may [...] result in cases being time barred, are likely to make evidence more difficult to obtain and/or less reliable to use and can undermine public confidence in the system of justice as a whole. This can jeopardise the peaceful resolution of disputes and make people seek justice on their own terms, and can lead to violence.*[16]

25. There is particular concern at the lack of a holistic policy to implement existing legislation aimed at giving effect to victims' right to a prompt and effective investigation for genocide (as well as other crimes under international law). As has been explained, UK legislation was amended in 2009, and came into force in 2010 *specifically* to deal with such crimes allegedly committed prior to 2001 when the ICC Act was promulgated. Prosecutions for torture committed abroad have been possible since 1988.[17]

26. REDRESS believes that where the UK has an obligation to prosecute, the competent authorities should proceed with investigations and decide whether prosecutions should be initiated on the basis of the strength of the available evidence.

27. The UK should be seeking to send a clear message through its practice, that it is not to be regarded as a safe haven for suspected perpetrators of the most heinous crimes.

RECOMMENDATIONS

The JCHR should:

- call on the UK Government to develop a coherent policy for Section 70 of the Coroners and Justice Act 2009. This should take into account existing legislation regarding international crimes and the relationship with extradition cases in light of the UK's international obligations;
- call on the UK Government to ensure that its policies and practice do not result in the UK becoming a *de facto* safe haven where suspects can continue living here for years without being brought to trial.

In respect of the Rwanda suspects the JCHR should:

[16] REDRESS, "*Waiting for Justice – the politics of delay in the administration of justice in torture cases,* May 2008, page 3, available at http://www.redress.org/downloads/publications/WAITING_FOR_JUSTICE_Mar%20O8%20Fin%20_2_.pdf

[17] Under section 134 of the Criminal Justice Act 1988

- call on the Foreign and Commonwealth Office to assist and intervene at the highest level necessary for the Metropolitan Police to have full access to whatever they need from the Rwandan authorities and from other potential sources of evidence to expedite a police investigation with a view to a UK prosecution;
- call on the Metropolitan Police to conduct investigations to the best of its ability;
- call on the CPS to assist the Metropolitan Police with investigations irrespective of any extradition request expected or made;
- call on both the Metropolitan Police and the CPS to recognise and acknowledge publically or otherwise that further extradition procedures should not preclude investigations with a view to UK prosecutions.

Kevin Laue
UK Legal Adviser

87 Vauxhall Walk
London SE11 5HJ
United Kingdom

Tel: + 44 (0) 20 7793 1777
Fax: + 44 (0) 20 7793 1719
Email: kevin@redress.org
Web: www.redress.org