REDRESS

Seeking Reparation for Torture Survivors

Joint Committee on Human Rights'
Inquiry into UK Compliance with the UN Convention Against Torture (UNCAT)

Submissions of the Redress Trust
30 September 2005

Introduction

1. These submissions are put forward in response to the call for evidence issued by the Joint Committee on Human Rights in respect of its inquiry into the implementation of the United Nations Convention against Torture and other forms of Cruel, Inhuman or Degrading Treatment or Punishment (Convention Against Torture) in the UK.

2. The Redress Trust (REDRESS) is an international non-governmental organisation with a mandate to ensure respect for the principle that survivors of torture and cruel, inhuman or degrading treatment and punishment, and their family members, have access to adequate and effective remedies and reparation for their suffering.

3. Since its establishment in December 1992, it has accumulated a wide expertise on the rights of victims of torture both within the United Kingdom and internationally. REDRESS' recent comparative study on reparation for torture in 31 countries worldwide has been presented for consideration by the United Nations Special Rapporteur on Torture to the United Nations General Assembly. Further it has a successful track record of interventions before regional human rights courts, international criminal courts and human rights treaty mechanisms as well as national courts, in which its expertise on issues relating to the prohibition of torture has been duly recognised.[1]

4. REDRESS continues to follow closely the UK Government's commitment to the principles enshrined in the Convention against Torture and submitted comments to the United Nations Committee against Torture on the occasion of its review of the UK's 4th periodic report.[2] All of the issues set out in that submission remain of concern to REDRESS, though they will not be reproduced below.

Summary of these submissions

5. These submissions will focus on three points stemming from the recommendations that the UN Committee against Torture made in response to the UK's 4th periodic report:

    1) The consistency of UK statute and common law with the obligations imposed by the Convention (Example: the UK Government's stance in the Case of A);

    2) The sufficiency of investigations into alleged conduct by UK forces, particularly those that reveal possible actions in breach of the Convention, and provide for independent review of the conclusions where appropriate; and

    3) The failure to make the declaration under article 22 of the Convention.

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[1] More information on REDRESS' most recent case submissions can be found on its website at : http://www.redress.org/case_submissions.html.

[2] These comments are appended to this submission. They are also available on REDRESS' website at : http://www.redress.org/publications/CATRepOct2004.pdf.

The consistency of UK statute and common law with the obligations imposed by the Convention; Example: the UK Government's stance in the Case of A

6. REDRESS remains concerned that the UK Government has not taken active steps to fully incorporate the Convention against Torture into domestic law. This *laissez-faire* position continues to result in ambiguity at the domestic level. The continued 'confusion' would appear to be a convenient excuse to sidestep international obligations stemming from the Convention against Torture.[3]

7. The UN Committee against Torture recommended to the UK Government to reflect formally, "such as legislative incorporation or by undertaking to Parliament," its intention not to rely on or present in any proceeding evidence where there is a knowledge or belief that it has been obtained by torture. REDRESS is not aware of any such formal reflection by the Government. To the contrary, even though any ambiguity that may exist between international treaty obligations and domestic law must be interpreted consistently with the treaty obligations, the UK Government in its policy statements and submissions in the ***Case of A*** appears to use this 'ambiguity' to argue against the need for it to comply with the international treaty obligation. This is all the more the case when the norms involved have been recognised as *jus cogens*.

8. It is a well-established principle of international law that:

> "A state cannot plead provisions of its own law or deficiencies in that law in answer to a claim against it for an alleged breach of its obligations under international law."[4]

9. This principle was first recognized by the Permanent Court of International Justice and since then, it has been upheld by international jurisprudence.[5] The rule clearly establishes that a State may not rely on domestic law to avoid its international obligations. The principle was codified by the International Law Commission in its 1949 Draft Declaration on the Rights and Duties of States.[6]

   Article 13 provides:

> Every State has the duty to carry out in good faith its obligations arising from treaties and other sources of international law, and it may not invoke provisions in its constitution or its law as an excuse for failure to perform this duty. [emphasis added]

10. The rule has been given further expression in articles 26 and 27 of the Vienna Convention on the Law of Treaties,[7] which stipulate that:

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[3] *A & Others v Secretary of State for Home Department* [2004] EWCA 1123.

[4] I. Brownlie, *Principles of Public International Law*, 5th edition, Oxford University Press, Oxford, 1998, p. 34.

[5] Permanent Court of International Justice (PCIJ): The S. S. *Wimbledon* (1923), PCIJ, Ser. A, no. 1, p. 29; *Mavrommatis*, Ser, no. 5; *German Interests in Polish Upper Silesia* (1926), Ser. A, no. 7, p. 19; *Chorzów Factory* (Merits); (1928), Ser. A, no. 17, pp. 33-34; *Jurisdiction of the Courts of Danzig* (1928), Ser. B, no. 15, pp. 26-27; Advisory Opinion in the *Greco-Bulgarian Communities* case (1930) Ser. B, no. 17, p. 32; *Free Zones of Upper Savoy and the District of Gex* (1932) Ser. A, no. 24, p. 12 and Ser. A/B, no. 46, p. 167, *Treatment of polish nationals and other persons of Polish origin or speech in the Danzig territory*, (1932) Ser. A/B, no. 44, p. 24. International Court of Justice (ICJ): *Fisheries case*, ICJ Reports (1951), p. 132; *Nottebohm*, ICJ Reports (1955), p. 20-21. Arbitral Tribunals: *Montijo*, Moore, *Arbitration*, p. 1850; Commission d'arbitrage pour la Commission d'arbitrage pour la Yougoslavie, avis no. 1, 29 November 1991, R.G.D.I.P. 1992, p. 264. See also International Criminal Tribunal for the former Yugoslavia (ICTY), *Prosecutor v. Blaskic*, IT-95-14-1, para. 7. *Alabama Claims* arbitration (1872), Moore, *Arbitrations*, i. 653.

[6] G.A. Res. 375 (IV), G.A.O.R., 4th session, Resolutions, p. 66 (1949), available at http://www.un.org/law/ilc/texts/decfra.htm D.J. Harris, *Cases and materials on International Law*, Sweet and Maxwell, 5th edition, p. 71. See also *Treatment of Polish nationals and other persons of Polish origin or speech in the Dantzig territory*, *supra,* p. 24; *Montijo*, *supra*, p. 1850.

[7] *Vienna Convention on the Law of Treaties,* adopted on 22 May 1969, in force 27 January 1980, available at http://www.un.org/law/ilc/texts/treaties.htm. The VCLT codified the customary international law relating to treaties (see the *Programme of Work adopted in 1949* by the International Law Commission, available at http://www.un.org/law/ilc/progfra.htm were the Law of Treaties was among the fourteen topics selected for *codification*).

> 26. Every treaty in force is binding upon the parties to it and must be performed by them in good faith (pacta sunt servanda)"

and

> "27. [a] party may not invoke the provisions of its internal law as a justification for its failure to perform a treaty".[8]

11. More recently, the principle has been included in Article 32 of the *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, elaborated and adopted by the International Law Commission (the "ILC Articles").[9]

12. A treaty may also expressly require States to ensure that the treaty provisions have domestic legal effect. Failure to take the necessary steps to do so may in such circumstances constitute an independent breach of the treaty.[10]

13. For example, in addition to setting out the specific substantive rights, and after expressly establishing that every State Party must respect and ensure the enshrined rights, the International Covenant on Civil and Political Rights (ICCPR) expressly requires each State Party "to take the necessary steps […] to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant".[11] The Human Rights Committee, the body primarily charged with interpreting the ICCPR and reviewing State compliance with its provisions, in its General Comment 31 further underlines that

> [w]here there are inconsistencies between domestic law and the Covenant, article 2 requires that the domestic law or practice be changed to meet the standards imposed by the Covenant's substantive guarantees.[12]

14. This is a requirement of substance rather and not just form: what is important is that the domestic legal framework be consistent with, and give effect to, the rights and requirements of the Covenant. [13]

15. Article 2 of the UN Convention against Torture similarly expressly requires States Parties to adopt all effective legislative, administrative, judicial or other measures necessary to prevent torture.[14]

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[8] Article 27 admits the limited exception of article 46 VCLT relating to the procedure of ratification. The fact that this is the only exception expressly provided would indicate that once a treaty is ratified, the rule knows of no further exception.

[9] Draft articles on the Responsibility of States for Internationally Wrongful Acts, Report of the International Law Commission on the work of its Fifty-third session, Official Records of the General Assembly, Fifty-sixth session, Supplement No. 10 (A/56/10), chapter IV.E.1, available at http://www.un.org/law/ilc/texts/State_responsibility/responsibilityfra.htm .

[10] Human Rights Committee, Concluding Observations, Dominican Republic, 8 April 1993, CCPR/C/79/Add. 18, para. 4; Human Rights Committee, Concluding Observations, Ireland, 28 July 1993, CCPR/C/78/Add. 21, para. 10; para. 137; Human Rights Committee, Concluding Observations, New Zealand, 5 April 1995, CCPR/C/79/Add. 47, para. 11; Committee against Torture, Summary record of the 265th meeting, Russian Federation, 27 January 1997, CAT/C/SR.265, para. 37 (Chairman); Human Rights Committee, Concluding Observations, New Zealand, 17 July 2002, CCPR/CO/75/NZL, para. 8; Human Rights Committee, Concluding Observations, Ireland, 21 July 2000, CCPR/CO/69/IRL, para. 432; Human Rights Committee, Concluding Observations, Canada, 6 April 1999, CCPR/C/79/Add. 105, para.10; Human Rights Committee, Concluding Observations, Guatemala, 26 July 2001, CCPR/C/GTM/99/2, para. 10; Human Rights Committee, Concluding Observations, Australia, 24 July 2000, A/55/40; Human Rights Committee, Concluding Observations, Kenya, 24 March 2005, CCPR/CO/83/KEN; Committee on Economic, Social and Cultural Rights, Report on the Twenty-Eight and Twenty-ninth Session, Ireland, 17 May 2000, para. 137 and United Kingdom, 17 May 2002, para. 227, E/2003/22, E/C.12/2002/13; Committee against Torture, Concluding Observations, Canada, 6 May 2005, CAT/C/CR/34/CAN, para. 5.

[11] *International Covenant on Civil and Political Rights* (ICCPR), adopted G.A. Res. 2200A(XXI),16 Dec. 1966, in force 23 Mar. 1976, article 2(2).

[12] Human Rights Committee, General Comment 31, adopted on 29 March 2004, CCPR/C/21/Rev.1/Add.13, para. 13.

[13] Human Rights Committee, General Comment No 31, *supra*, para. 13. However, direct enforcement by Courts is obviously an acceptable, even preferred, method of giving real domestic effect to international rights, and a number of recent declarations and works call upon or encourage national courts to enforce international human rights standards directly through their decisions: See The Institute of International Law, Resolution on The Activities of National Judges and the International Relations of their State, Session of Milan, 1993, available at http://www.idi-iil.org/idiE/resolutionsE/1993_mil_01_en.PDF/; Bangalore Principles, Developing Human Rights Jurisprudence, available at http://www.thecommonwealth.org/shared_asp_files/uploadedfiles/%7BA2407AAC-A477-491D-ABA4-A2CADF227E2B%7D_BANGALORE%20PRINCIPLES.pdf ; International Law Association, Final Report on the Impact of findings of the United Nations Human Rights Treaty Bodies, available at http://www.ila-hq.org/html/layout_committee.htm.

16. Further, where a treaty or covenant embodies rules that are also rules of customary international law (as is the case with the prohibition of torture), the rules themselves are binding on States as a matter of general international law irrespective of treaty ratification. When such customary international law rules are *jus cogens* norms, recognized to be of an overriding and non-derogable nature, such as the prohibition of torture, then treaty obligations contrary to these norms are considered null and void. In other words, the only limit to the pact sunt servanda principle stipulating that treaties are binding and must be performed in good faith, are jus cogens norms.

17. Irrespective of the eventual outcome of the House of Lords in the ***Case of A*** regarding the status under international law of certain rules contained in the Convention against Torture, it is appropriate for the Government to proceed with the Committee against Torture's recommendation and to eliminate any 'ambiguity' in domestic law with a view to complying fully with the Convention against Torture.

The sufficiency of investigations into alleged conduct by UK forces, particularly those that reveal possible actions in breach of the Convention against Torture, and provide for independent review of the conclusions where appropriate

18. REDRESS followed the Osnabrueck courts martial of soldiers from the 1st Battalion The Royal Regiment of Fusiliers that considered evidence of ill treatment of Iraqi detainees.

19. The trial evidence showed that three soldiers were involved in acts of ill treatment such as beating a detainee, suspending a detainee blindfolded from the prongs of a forklift truck and being implicated in the forcing of two naked prisoners to simulate sexual acts. However, REDRESS notes that none of these soldiers were charged with the crime of torture under section 134 of the Criminal Justice Act 1988. Section 134 of the Criminal Justice Act 1988 defines torture as: "A public official or person acting in an official capacity whatever his nationality, commits the offence of torture if in the United Kingdom or elsewhere he intentionally inflicts severe pain or suffering on another in performance or purported performance of his official duties". This definition is read in light of the definition set out in UN Convention against Torture which defines torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as … punishing him for an act he or a third person has committed".[15] It would seem from the evidence given at trial that the abuses fall squarely within the definition of torture, and failure to address these abuses as torture not only is an affront to the victims, but also fails to absolve the Ministry of Defence of its responsibility under the UN Convention against Torture, to effectively investigate and prosecute all acts of torture.

20. Secondly, the Osnabrueck court martial revealed that a number of other soldiers may have been involved in further acts of ill treatment. Evidence given at the trial reveals that those caught looting were made to run 3 miles with boxes on their head, and were beaten with sticks as part of "Operation Ali Baba" in order to deter further looting. One of the convicted soldier's lawyers stated on behalf of his client that "a significant number of other soldiers, including many senior to him, some of whom have been promoted, were involved in the mistreatment of Iraqis that day".[16] To intentionally inflict mental or physical suffering or pain on an individual as part of a punishment amounts to torture and as a result, the UK is under an obligation under the UN Convention against Torture to carryout "a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction".[17] A similar obligation is also imposed by article 3 (prohibiting torture) and article 13 (right to a remedy) of the European Convention of Human Rights.[18]

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[14] UN *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT), adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984, entry into force 26 June 1987.

[15] Article 1 of the Convention.

[16] *Iraq abuse men 'are scapegoats' Lawyers for three British soldiers jailed for abusing Iraqis say the men believe they have been made scapegoats.* BBC news 2005/02/25 http://news.bbc.co.uk/go/pr/fr/-/1/hi/uk/4299593.stm

[17] Article 12

[18] The High Court has confirmed in the *Al-Skeini* case that the European Convention of Human Rights applies to British troops in relation to the detention of Iraqi nationals. [2004] EWHC 2911 (Admin)

21. Thirdly, the Osnabrueck court martial identifies the lack of training in the treatment of detainees by British service personnel. It appears from media reports of the trial, that training in the Geneva Conventions was deficient and that no reference was made to other international conventions or standards governing the treatment of detainees. The UK Government provided repeated assurances to the Committee against Torture that "All training programmes for law enforcement personnel, whether civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment continue to emphasize the need to treat everyone as an individual and with humanity and respect and to act within the law at all times" as required by article 10 of the UN Convention against Torture.[19] Such training should include not only general information about the prohibition of torture and the safeguards underpinning the prohibition as set out in the Convention against Torture but also the minimum international standards relating to the treatment of detainees such as the Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment. REDRESS strongly urges the Government to assess all current operation manuals and training curricula with a view to ensuring that they clearly set out these international standards.

22. On 19 July 2005, the Government announced that several British soldiers who were serving in Iraq are to stand trial under the International Criminal Court Act 2001 following allegations of inhuman treatment including the death of an Iraqi civilian. This follows the ruling of the High Court in December 2004, which recognised that the Government is obliged to conduct an effective investigation into the death of Baha Moussa, in line with European Convention standards. It may be appropriate for the JCHR to query further the extent to which these proceedings, which the Attorney General has stated are most appropriately heard by Courts Martial, are capable of providing justice to victims and their families in practice.

The failure to make the declaration under article 22 of the Convention

23. REDRESS wishes to refer to the written evidence it submitted to the JCHR last year, relating to the Government review of the UK's international human rights obligations. For the reasons stated in that submission, REDRESS maintains that the Government has failed to take into account the value of the Committee's decisions for torture victims, but also the important guidance such decisions can give in the absence of the incorporation of the Convention into domestic law, and encourages the Government to make the declaration under article 22.

All of which is respectfully submitted

The Redress Trust
30 September 2005

[19] Second periodic reports of States parties due in 1994 : United Kingdom of Great Britain and Northern Ireland. 26/06/96. CAT/C/25/Add.6.