

**The right to protection for British nationals arbitrarily detained abroad and facing serious violations of their rights: *Moving from discretion to default***

Briefing for Members of Parliament

***September 2017***

**I. Introduction**

1. This briefing for Members of Parliament has been prepared by REDRESS, an international human rights organisation based in London and The Hague which assists survivors of torture and other ill-treatment and their families to obtain justice, including reparation.[[1]](#footnote-1) The briefing has been prepared ahead of the upcoming Westminster Hall debate on consular support for British citizens, taking place on 6 September 2017.
2. It lays out the key concerns of REDRESS regarding the UK Government’s approach to protecting British nationals arbitrarily detained abroad and who face serious violations of their rights, including torture and ill-treatment. The briefing also includes recommendations on how the approach should be strengthened.
3. For those who are at risk of abuse, the provision of effective consular assistance[[2]](#footnote-2) and vigorous government intervention is crucial to prevent abuse or put an end to it where it has already occurred. In cases of arrest and detention, effective consular assistance helps to ensure that all British citizens are treated in line with international obligations and standards. Through diplomatic protection, the UK may additionally secure reparation for injury to British nationals, including injuries suffered as a result of and/ or during arbitrary detention.
4. **Andargachew (Andy) Tsege**[[3]](#footnote-3) and **Nazanin Zaghari-Ratcliffe**,[[4]](#footnote-4) are two prominent cases of British nationals who remain imprisoned abroad having suffered (and continuing to suffer) serious human rights violations. They remain at risk of further abuse for as long as they remain in detention. The UN has them both to be arbitrarily detained and has called for their immediate release,[[5]](#footnote-5) as has also the African Commission on Human and Peoples’ Rights, in the case of Andy. In both cases, the UN has tasked the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to carry out further investigations. The European Parliament has also called for their immediate release.[[6]](#footnote-6) In March 2017, 219 MPs and 42 peers co-signed a letter seeking the release of Nazanin and two other British citizens currently detained in Iran.
5. The families of Andy and Nazanin, amongst others, including NGOs REDRESS, Reprieve and Amnesty International, have criticised the UK Government for failing to take all possible steps to fully protect their rights and secure their release. In none of the three cases, has the UK Government publicly called for their release, or publicly criticised their treatment.

**II. International law**

1. The right of a state to intervene in matters concerning its nationals overseas is a customary right in international law codified in the 1963 Vienna Convention on Consular Relations (Vienna Convention), to which the UK is a party.[[7]](#footnote-7)
2. The Vienna Convention additionally sets out the rights of consular officers to:[[8]](#footnote-8)
	* Freely communicate with and have access to nationals of the sending state.
	* Be informed when a national is arrested, in custody pending trial or is detained in any other matter, if the individual so requests. A national must be informed of their right to notify consular officials.
	* Visit a national in prison, custody or detention and arrange for their legal representation.
3. The ability to provide consular assistance as prescribed by the Vienna Convention is crucial to prevent such abuse or put an end to it where it has already occurred. Violations of the Vienna Convention can form the basis of diplomatic action and can result in the matter being taken to the International Court of Justice.

**III. Current UK law and policy on consular assistance**

1. The Vienna Convention was partially incorporated into UK law by the Consular Relations Act 1968, allowing it to be used as the basis of international consular relations. However, the UK is under no general obligation under domestic or international law to provide consular assistance to its nationals abroad, though UK courts have recognised that in certain circumstances, individuals may have a legitimate expectation that certain actions are taken by the State.
2. The UK Government currently uses a **policy of discretion** in order to determine whether assistance should be provided and to assess the level of action it takes, even in the most extreme cases.
3. Under current policy, dual nationals in the country of their other nationality are only assisted by the UK Government as an exception if they are considered to be particularly vulnerable.[[9]](#footnote-9) The UK does not have a policy of providing assistance to permanent residents or other non-British nationals, irrespective of how long they have lived in the UK or their connections to the country.
4. One of the FCO’s key roles in providing assistance to its nationals in distress abroad is to help ensure that international standards and obligations – for instance regarding fair trial, humane treatment in detention, absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment – are respected in all cases where a UK national has been detained. Where international standards have not been met with regards to the treatment of a British national, the UK Government is entitled to intervene, as set out by the Vienna Convention and under its own guidelines.
5. Current policy is set out in two public documents: *Support for British nationals abroad: A guide[[10]](#footnote-10)* and *In Prison Abroad.[[11]](#footnote-11)* Where the UK Government is concerned for instance that a British national might be subjected to torture or ill-treatment, it “will follow up with action appropriate to the circumstances of the case.”[[12]](#footnote-12)
6. The public guide states: **“Generally, there is no legal right to consular assistance. All assistance provided is at our discretion.”** Under its internal guidelines for its consular officials, the UK government may consider intervening when there are legitimate concerns for the health, welfare and human rights of a national (including dual nationals) abroad, or concerns that they are being held unlawfully or being discriminated against. The guidelines were revised in 2013 and now include an extensive chapter on allegations of torture and mistreatment, a development that REDRESS welcomed at the time. However, the revised guidelines were not published and are only available as partially disclosed documents. This contributes to the current lack of transparency and accountability of the UK Government’s approach to consular assistance in any given case.
7. In addition, there are no rules regarding the guidelines’ application. This means that the UK Government has faced criticism from some families and NGOs that foreign policy considerations may override taking action for British nationals whose fundamental rights have been violated. It also means that it is unclear to what extent consular officials receive specialised training so as to apply the guidelines and, for instance, to identify signs of torture and ill-treatment during a consular visit of a British national in detention and how to respond to relevant allegations.
8. It also appears that the UK Government’s approach to aid and assistance to, and trade with countries worldwide, has not been predicated upon or mitigated by whether UK nationals are arbitrarily detained in a particular country and face risks of human rights abuses.

**IV. What needs to change?**

1. It is REDRESS’ view that the UK Government should adopt a ‘default position’ regarding internationally wrongful acts and make it known that any violation of the rights of its nationals abroad will always have consequences. In such cases, the Government should be obligated to provide protection for the individuals concerned to ensure international minimum standards are met. A legal right to consular assistance which recognises the rights of allBritish nationals would introduce a form of accountability for the UK Government’s decisions.
2. The UK Government should ensure that its consular assistance policy is transparent so that individuals and their families know what they can expect from their Government. This would mean that for British nationals whose rights have been violated, such as with **Mr Tsege** and **Ms Zaghari-Ratcliffe,** the Government should employ a strategy aimed to bring about an end to the human rights violations of its nationals; our view is that nothing less than increasingly intensified representations and other actions that are clearly documented and communicated to the individual and their families are required, until the human rights violations end.
3. In supporting families whose loved ones are detained abroad and UK nationals who have been tortured and ill-treated abroad REDRESS has found that the UK Government does not always clearly communicate what action it will take to assist those in need. While the UK Government may underline that it ‘raises’ concerns in a specific case, it does not provide clarity as to what this entailed and what change, if any, resulted. In addition, there seems to be a reluctance to act proactively on behalf of an individual without significant pressure from the individual or the family, including pressure from media attention. This is counter-productive, and results in an approach where families with the loudest voices receive the most attention.
4. **There is little parliamentary oversight** on the decision to provide (or not to provide) assistance and what level of action is ultimately taken. The FCO’s annual human rights report for instance no longer provides information about specific action taken in relation to cases involving British nationals overseas.

**V. Conclusion and Recommendations**:

1. The UK Government maintains that its current approach to consular assistance allows it to provide tailored assistance to British people according to their individual circumstances.[[13]](#footnote-13) However, the recognition of a legal right to consular assistance (as has been recognised by some other countries) and a “default position” to protect British nationals who face serious violations of their rights would not remove the flexibility found in the current policy of discretion.
2. REDRESS therefore recommends that the UK Government:
* Introduce the right to consular assistance for UK nationals arbitrarily detained abroad and at risk of torture and ill-treatment and other grave human rights violations.
* Introduce a “default position” with regards to these cases and state unequivocally that the principle of effective assistance and support of UK nationals is paramount and that there should be no exception to taking vigorous and clearly documented action on behalf of UK nationals who face or have suffered torture and other breaches of their human rights.
* Commit to taking a more proactive approach to identifying and intervening in cases where a British national is facing serious human rights violations. All breaches of international human rights law should result in vigorous complaints using a strategy of increasingly intensified representations until the issues are resolved.
* Introduce stronger oversight for exercise of discretion by the FCO as to what consular and other diplomatic steps are taken.
* Commit to making vigorous complaints with regards to all breaches of the Vienna Convention on Consular Relations and consider bringing cases before the International Court of Justice and other relevant fora if they continue.
* Commit to working towards the implementation of findings concerning UK nationals from the United Nations human rights monitoring bodies.
* Carry out a review of UK consular policy to ensure that it works in the interest of all nationals that are facing or have faced serious violations of their human rights.
* Publish in full the internal guidelines for consular officials.
* Commit to publishing detailed information on action taken to uphold the human rights of its nationals detained abroad in the annual Human Rights and Democracy report.

*For further information on the right to protection for British nationals at risk or on any of the cases mentioned in this briefing, please contact Josie Fathers, Advocacy Officer at REDRESS, Tel. 020 7793 1777 or* *josie@redress.org**.*

1. REDRESS has long been engaged in supporting British nationals detained abroad, including through efforts to strengthen consular assistance, see for instance, REDRESS, Submission to Foreign Affairs Committee Annual Inquiry, May 2014, at <http://www.redress.org/downloads/publications/redress-submission-to-consular-inquiry.pdf>, and Torture Abroad: The UK’s obligations to British Nationals and Residents, September 2012, at <http://www.redress.org/downloads/publications/121001tortured_abroad.pdf>. [↑](#footnote-ref-1)
2. The UK Government uses the term ‘consular assistance’ in law and policy rather than ‘consular protection.’ Consular assistance includes assistance in cases of death, serious accident or illness, arrest or detention, victims of violent crime, and the relief and repatriation of distressed citizens. It is different to *consular services*, which can include passport issuance, notarial services and visa applications. [↑](#footnote-ref-2)
3. For more information , please see: <http://www.redress.org/case-docket/andargachew-tsege> [↑](#footnote-ref-3)
4. For more information, please see: <http://www.redress.org/international-jurisdictions/nazanin-zaghari-ratcliffe> [↑](#footnote-ref-4)
5. UN WGAD Opinion No. 28/2016 concerning Nazanin Zaghari-Ratcliffe (Islamic Republic of Iran), UN Doc. A/HRC/WGAD/2016/28, 7 September 2016, at: <http://www.redress.org/downloads/wgad-opinion-7-september-2016.pdf>; UN WGAD Opinion No. 2/2015 concerning Andargachew Tsege (Ethiopia and Yemen), UN Doc. A/HRC/WGAD/2015/2, 8 May 2015, at <http://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/WGAD/2015/2>. [↑](#footnote-ref-5)
6. European Parliament resolution of 21 January 2016 on the situation in Ethiopia and European Parliament Resolution of 25 October 2016 on EU strategy towards Iran after the nuclear agreement. [↑](#footnote-ref-6)
7. The UK signed the Vienna Convention on 27 March 1964 and ratified it on 9 May 1974. There are presently 173 state parties, including Iran. [↑](#footnote-ref-7)
8. Vienna Convention, Article 36 (1) [↑](#footnote-ref-8)
9. Foreign and Commonwealth Office, Support for British nationals abroad: A guide, at [https://www.gov.uk/government/uploads/system/uploads/attachment\_data/file/584047/FCO\_Brits\_Abroad\_web130117.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/584047/FCO_Brits_Abroad_web130117.pdf%20) “If you are a dual British national in the country of your other nationality (for example, a dual US-British national in the US), we would not normally offer you support or get involved in dealings between you and the authorities of that state. We may make an exception to this rule if, having looked at the circumstances of the case, we consider that you are particularly vulnerable. These circumstances might include cases involving a murder or manslaughter, children, forced marriages or an offence which carries the death penalty. However, the help we can provide will depend on the circumstances and the country of your other nationality agreeing to it.” [↑](#footnote-ref-9)
10. Ibid [↑](#footnote-ref-10)
11. Foreign and Commonwealth Office, In prison abroad, 2012, at, <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/35521/in-prison-abroad.pdf>. [↑](#footnote-ref-11)
12. Including increasing the frequency of visits, pushing for medical access, supporting a transfer to different facilities, and formally raising allegations with the local authorities demanding an end to the mistreatment and calling for an independent investigation. [↑](#footnote-ref-12)
13. FCO Guidance, Helping British people overseas: consular services 2016-2020, at: <https://www.gov.uk/government/publications/helping-british-people-overseas-consular-services-2016-2020/helping-british-people-overseas-consular-services-2016-2020>. [↑](#footnote-ref-13)