

REDRESS

Ending torture, seeking justice for survivors

THE UK AND IRAN

Evidence Submitted by REDRESS to UK Foreign Affairs Committee Inquiry, 30 April 2020

1. REDRESS is an international human rights organisation that represents victims of torture in obtaining justice and reparations. We bring legal cases on behalf of individual survivors and advocate for better laws to provide effective reparations. REDRESS has acted for Nazanin Zaghari-Ratcliffe, a British-Iranian mother detained in Iran, since 2016. We have taken her case to the United Nations Working Group on Arbitrary Detention and have successfully persuaded the UK Foreign & Commonwealth Office to grant Mrs Zaghari-Ratcliffe diplomatic protection, the first time the UK has ever done so in a human rights case.
2. The following submission relates to Iran's unlawful detention of foreign and dual nationals, and the UK's response. The submission outlines the problem and proposes recommendations for improving the UK Government's approach to protecting British nationals detained in Iran. In summary, REDRESS recommends that:
 - a) The UK should exercise diplomatic protection on behalf of British nationals unlawfully detained in Iran, and do so through a series of diplomatic and legal steps that escalate in severity over time as necessary.
 - b) UK law should be amended to introduce a right to consular assistance for all British nationals, including dual nationals.
 - c) The UK should immediately discharge the outstanding IMS Debt through payment in kind of humanitarian supplies to Iran or through issuing a licence to make payment to the Central Bank of Iran.
 - d) The UK should impose travel bans and asset freezes on the individuals in Iran responsible for the unlawful detention and mistreatment of dual and foreign nationals using its human rights sanctions powers under Section 1(2)(f) of the Sanctions and Anti-Money Laundering Act 2018.
 - e) The UK should collaborate with other states to devise a coordinated strategy for addressing Iran's unlawful detention of foreign and dual nationals, including sponsoring an Arria Formula meeting at the UN Security Council.

Iran's unlawful detention of foreign and dual nationals

3. Recent years have seen an increasing trend of foreign and dual nationals being unlawfully detained in Iran. The UN Special Rapporteur on Iran has noted that there are approximately thirty known cases of foreign or dual nationals detained in Iran since 2015,¹ and there are likely to be others whose families have chosen not to make the detentions public. The UN Working Group on Arbitrary Detention "has repeatedly found

¹ UN Special Rapporteur on Iran, UN Doc A/HRC/37/68, 5 March 2018, para. 57.

a practice in the Islamic Republic of Iran of targeting foreign nationals, dual nationals and Iranian nationals with permanent residence in another country for prosecution.”²

4. REDRESS acts on behalf of Mrs Zaghari-Ratcliffe, a British-Iranian mother and charity worker who has been unlawfully imprisoned in Iran for over four years. Mrs Zaghari-Ratcliffe was arrested on 3 April 2016 by the Iranian Revolutionary Guards while on holiday visiting family. Following a secret and unfair trial she was imprisoned on unspecified charges. She has been separated from her husband Richard and her daughter Gabriella, who was one year old when Mrs Zaghari-Ratcliffe was arrested.
5. The Iranian authorities have forced Mrs Zaghari-Ratcliffe to spend eight and a half months in solitary confinement and have repeatedly denied her critical medical treatment, including testing for possible contraction of COVID-19. They have subjected Mrs Zaghari-Ratcliffe to inhuman conditions of detention and have repeatedly made further threats to her safety and that of her family.
6. The United Nations Working Group on Arbitrary Detention ruled, in September 2016, that Mrs Zaghari-Ratcliffe’s imprisonment was contrary to international law and called for Iran to release her.³ Iran’s treatment of Mrs Zaghari-Ratcliffe constitutes torture under international law,⁴ and a group of UN human rights experts have confirmed that Iran’s denial of medical treatment to Mrs Zaghari-Ratcliffe may amount to torture.⁵ The UK Government in March 2019 took the exceptional step of escalating Mrs Zaghari-Ratcliffe’s case to an inter-state dispute with Iran, through granting her diplomatic protection.⁶ In doing so the then UK Foreign Secretary, Jeremy Hunt, recognised that Mrs Zaghari-Ratcliffe was being used by Iran as a “pawn ... for diplomatic leverage”.⁷ However, Iran continues to ignore its international obligations and refuses to release Mrs Zaghari-Ratcliffe.
7. Following the outbreak of COVID-19 in Iran, Mrs Zaghari-Ratcliffe has been granted temporary release from prison, most recently extended to 20 May 2020. She has been allowed to stay at her parents’ house in Tehran but is made to wear an ankle bracelet that keeps her within 300 metres of her parents’ home. If Mrs Zaghari-Ratcliffe is forced to return to prison at the end of this period it would have a serious detrimental impact on her mental and physical wellbeing. It is an equally unacceptable prospect for Mrs

² UN Working Group on Arbitrary Detention, ‘Opinion No. 32/2019 concerning Saeed Malekpour (Islamic Republic of Iran)’, 9 September 2019, para 39, available at: https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session85/A_HRC_WGAD_2019_32.pdf

³ Opinion No. 28/2016 concerning Nazanin Zaghari-Ratcliffe (Islamic Republic of Iran), 7 September 2016, A/HRC/WGAD/2016.

⁴ REDRESS, ‘Urgent Appeal to the UN Special Rapporteur on Torture’, 13 February 2018, available at: https://redress.org/wp-content/uploads/2018/02/Urgent-Appeal-to-Special-Rapporteur-on-Torture-Nazanin-Zaghari-Ratcliffe_13-February-2018.pdf

⁵ OHCHR, ‘Iran: Prisoners Nazanin Zaghari-Ratcliffe and Narges Mohammadi need appropriate health care urgently – UN experts’, 16 January 2019, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24073&LangID=E>

⁶ REDRESS, ‘Nazanin Zaghari-Ratcliffe granted diplomatic protection by the UK government’, 7 March 2019, available at: <https://redress.org/news/nazanin-zaghari-ratcliffe-granted-diplomatic-protection-by-the-uk-government/>

⁷ Foreign & Commonwealth Office, ‘Foreign Secretary affords Nazanin Zaghari Ratcliffe diplomatic protection’, 7 March 2019, available at: <https://www.gov.uk/government/news/foreign-secretary-affords-nazanin-zaghari-ratcliffe-diplomatic-protection>

Zaghari-Ratcliffe to remain on temporary release under house arrest in Iran for an indefinite period of time.

8. Other UK nationals whose detention is in the public domain include British-Australian national Kylie Moore-Gilbert; British-Iranian national Anousheh Ashouri; and British-American-Iranian national Morad Tahbaz,⁸ alongside Aras Amiri, an Iranian national with British permanent residence.⁹ Iran is reported to be detaining dual nationals from other countries including France, Sweden, Canada, Austria and the US.¹⁰ Like Mrs Zaghari-Ratcliffe, they have been subject to a number of serious human rights violations, including unlawful arrest, arbitrary detention, denial of fair trial rights, ill-treatment or torture, denial of consular access, solitary confinement, inhuman conditions of detention and denial of medical care.¹¹ In response to their treatment, the UN Working Group on Arbitrary Detention has noted that, “under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty, in violation of the rules of international law, may constitute crimes against humanity.”¹² Following the recent reported outbreaks of COVID-19 in Iranian prisons, while some have been temporarily released on furlough, such as Aras Amiri, many others remain in detention despite UN human rights experts urging for their release amid serious risk of COVID-19 infection.¹³

The UK’s response

9. The following section sets out recommendations for the UK Government’s response to Iran’s unlawful detention of foreign and dual nationals.

Diplomatic Protection

10. Diplomatic protection is a formal state-to-state process under international law in which a state may secure protection and obtain reparation for a legally wrongful act committed against one of its nationals. It is based on the assertion that the injury of an individual in a foreign state is an injury to the state of nationality. Diplomatic protection must invoke the legal responsibility of the accused state.

⁸ The Telegraph, ‘Iran’s ‘hostage diplomacy’: All the known detainees with British links’, 5 October 2019, available at: <https://www.telegraph.co.uk/news/2019/09/11/british-australian-women-latest-detainees-irans-hostage-diplomacy/>

⁹ Al-Monitor, ‘Iran releases jailed UK resident Aras Amiri on furlough’, 9 April 2020, available at: <https://www.al-monitor.com/pulse/originals/2020/04/iran-releases-jailed-uk-resident-aras-amiri-prison.html#ixzz6L0Qp8pmx>

¹⁰ BBC, ‘Iran’s jailed dual nationals and their uncertain fate’, 1 October 2019, available at: <https://www.bbc.com/news/uk-41974185>

¹¹ Universal Periodic Review: Submissions Concerning the Islamic Republic of Iran, ‘Joint Submission made by the Family Members of Arbitrarily Detained Foreign and Dual Nationals’, March 2019, available at: <http://en.cshr.org.uk/wp-content/uploads/sites/5/2019/04/CHSR-IHRDC-UPR-submission-detention-of-foreign-and-dual-nationals.pdf>

¹² UN Working Group on Arbitrary Detention, ‘Opinion No. 32/2019 concerning Saeed Malekpour (Islamic Republic of Iran)’, 9 September 2019, para 52, available at: https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session85/A_HRC_WGAD_2019_32.pdf

¹³ OHCHR, ‘Iran urged to immediately release prisoners of conscience and dual and foreign nationals at risk of COVID-19’, 17 March 2020, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25803&LangID=E>

11. Under international law, a state has the right to exercise diplomatic protection on behalf of a national, however, the decision to exercise diplomatic protection is discretionary.
12. In the United Kingdom, diplomatic protection is a matter of published policy, as stated in the FCO's internal guidelines on the matter, which were provided by the FCO as written evidence to the FAC for the 2014 report on support for British nationals abroad.¹⁴ Ministers are consulted when a response to a request for diplomatic protection is being considered.¹⁵
13. Diplomatic protection can take many forms. Steps that the UK can take under diplomatic protection include the following initial diplomatic and legal steps:
 - a) Formally requesting a private consular meeting with the detained individual based on Article 36 of the Vienna Convention on Consular Relations, and a medical examination by an independent doctor to ensure their welfare;
 - b) Issuing a formal protest to the detaining government, stating that the UK:
 - i) recognises the detained individual's predominant British nationality;
 - ii) considers their unlawful detention and mistreatment to be an internationally wrongful act;
 - iii) plans to take diplomatic action and use other means of peaceful settlement to secure their release and safe return to the UK;
 - c) Issuing a diplomatic summons to the detaining government's ambassador to the UK;
 - d) Proposing to the detaining government the immediate commencement of formal negotiations to resolve the dispute over the detained individual;
 - e) Sending to the detaining government a detailed legal memorandum outlining the breaches of international law arising from its detention and mistreatment of the UK national;
 - f) Imposing economic sanctions and trade measures on the detaining government.
14. REDRESS recommends that:

The UK should exercise diplomatic protection on behalf of British nationals unlawfully detained in Iran, and do so through a series of diplomatic and legal steps that escalate in severity over time as necessary.

Consular Protection

15. Under international law, states have a right to provide consular protection (referred to as consular assistance in UK policy and practice) to their detained nationals, in order to ensure that basic needs are met and fundamental human rights are respected. Consular protection or assistance can act as a humanitarian safeguard and provide a crucial – and

¹⁴ FCO International Guidelines for Considering Claims for Diplomatic Protection, May 2014, available at: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/foreign-affairs-committee/fco-consular-services/written/15301.pdf>

¹⁵ For further information see REDRESS, 'Briefing: Diplomatic Protection of Nazanin Zaghari-Ratcliffe', January 2019, available at: <https://redress.org/wp-content/uploads/2017/11/Briefing-Diplomatic-Protection-of-Nazanin-Zaghari-Ratcliffe-13.1.19.pdf>

sometimes the only – link between the detainee and the outside world. It can help prevent human rights violations, including torture or other prohibited ill-treatment.

16. In the UK, a right to consular assistance is not enshrined in UK law but instead is regulated as a matter of policy. It is considered to be provided at the discretion of the Government. This wide discretion fails to recognise the important role of consular protection under international law and may undermine the protection of British nationals abroad. In its 2018 report, *Beyond Discretion: The Protection of British Nationals Abroad from Torture and Ill-treatment*,¹⁶ REDRESS set out a number of recommendations for improving the UK's response, including introducing a legal right to consular assistance.
17. The All Party Parliamentary Group on Deaths Abroad, Consular Services and Assistance has repeated this call for a right to consular protection in its 2019 report, *Why Families in the UK Deserve Better and What Can be Done*,¹⁷ and is pursuing the issue in Parliament.
18. REDRESS recommends that:

UK law should be amended to introduce a right to consular assistance for all British nationals, including dual nationals.

IMS Debt

19. There are strong indications that Mrs Zaghari-Ratcliffe's detention is linked to the ongoing dispute between Iran and the UK over the outstanding £400m payment by International Military Services to Iran (IMS Debt). Revolutionary Guard interrogators, judges and prosecutors have repeatedly told Mrs Zaghari-Ratcliffe and her family that her imprisonment is related to the UK's failure to pay the IMS Debt. In September 2019 Iran's foreign minister, Mohammad Javad Zarif, stated that he would have argued for Mrs Zaghari-Ratcliffe's release if the UK had paid the debt.¹⁸ Ambassador Baeidinejad also referred to bilateral talks to resolve the IMS Debt in his 15 March 2020 interview where he discussed Mrs Zaghari-Ratcliffe's case.¹⁹
20. The UK's failure to pay the debt is currently the subject of legal proceedings before the UK courts. While the UK Government denies any link between the debt and Iran's unlawful detention of British nationals, as a key issue in the relationship between the UK and Iran, the IMS Debt is inevitably relevant to resolving Mrs Zaghari-Ratcliffe's case and those of other British nationals unlawfully detained in Iran.

¹⁶ REDRESS, 'Beyond Discretion: The Protection of British Nationals Abroad from Torture and Ill-treatment', January 2018, available at: https://redress.org/wp-content/uploads/2018/01/3CADP-Report_FINAL.pdf

¹⁷ All Party Parliamentary Group on Deaths Abroad, Consular Service and Assistance, 'Report 2019: Why Families in the UK Deserve Better and What Can be Done', November 2019, available at: <http://hannahbardellmp.scot/wp-content/uploads/2019/11/The-All-Party-Parliamentary-Group-on-Deaths-Abroad-Consular-Services-and-Assistance-Report-2019.pdf?fbclid=IwAR1EOK1bKsEYYAbzmVrmqEijk2N8fCRwXWcONP7parBzXWxH3S1kFEIjkUw>

¹⁸ Julian Borger and Patrick Wintour, 'Iran says it considered exchanging Zaghari-Ratcliffe for £400m owed by UK', *The Guardian*, 23 September 2019, available at: <https://www.theguardian.com/news/2019/sep/23/zaghari-ratcliffe-case-iran-says-uk-offered-to-release-funds-if-minister-intervened>

¹⁹ Patrick Wintour, 'Iran's ambassador to UK reveals bilateral talks over £400m debt', *The Guardian*, 15 March 2020, available at: <https://www.theguardian.com/world/2020/mar/15/irans-ambassador-to-uk-reveals-bilateral-talks-over-400m-debt>

21. COVID-19 has caused a serious humanitarian crisis in Iran. This presents the UK Government with a unique opportunity to discharge the IMS Debt in the form of desperately needed humanitarian and medical supplies for Iran. The Iranian Government has indicated that it would be amenable to such a solution. The Iranian Ambassador to the UK gave an interview in March 2020 in which he mentioned the possibility of receiving payment in this way.²⁰ And Minister Zarif and Foreign Secretary Raab discussed the approach in a call in March 2020.²¹ It is understood that the provision of humanitarian supplies to Iran would not contravene either US or EU sanctions.
22. Alternatively, the UK Government should instruct IMS to apply to the Office of Financial Sanctions Implementation (“OFSI”) for a licence allowing IMS to transfer the funds held in Court directly to the Central Bank of Iran (“CBI”). This could be achieved through Article 28 of EU Regulation 267/2012, which empowers the Treasury to issue a licence that authorises “the making available of certain funds or economic resources to the Central Bank of Iran, after having determined on a case-by-case basis that the funds or economic resources are necessary in connection with a specific trade contract [...]”.
23. REDRESS recommends that:

The UK should immediately discharge the outstanding IMS Debt through payment in kind of humanitarian supplies to Iran or through issuing a licence to make payment to the Central Bank of Iran.

Human Rights Sanctions

24. Human rights sanctions (often referred to as “Global Magnitsky sanctions”), a developing mechanism that gives states the ability to impose targeted sanctions on individuals who have committed gross human rights violations, can be a powerful tool for the protection of dual and foreign nationals detained abroad. Global Magnitsky sanctions are currently available in the US and Canada, and are expected to be available in the UK in coming months (under Section 1(2)(f) of the Sanctions and Anti-Money Laundering Act 2018) and in the EU in the near future.
25. The mechanisms vary in each jurisdiction but generally fall into two categories: (a) imposing travel restrictions and (b) imposing financial sanctions, including asset freezes. These may be imposed on direct perpetrators and potentially other beneficiaries, including family members. Such sanctions can be a means to hold individual human rights perpetrators to account and to exert pressure for policy changes in the countries where the violations are taking place.
26. REDRESS recommends that:

The UK should impose travel bans and asset freezes on the individuals in Iran responsible for the unlawful detention and mistreatment of dual and foreign nationals using its human rights sanctions powers under Section 1(2)(f) of the Sanctions and Anti-Money Laundering Act 2018.

²⁰ Patrick Wintour, ‘Iran’s ambassador to UK reveals bilateral talks over £400m debt’, The Guardian, 15 March 2020, available at: <https://www.theguardian.com/world/2020/mar/15/irans-ambassador-to-uk-reveals-bilateral-talks-over-400m-debt>

²¹ Patrick Wintour, ‘UK presses US to ease Iran sanctions to help fight coronavirus’, The Guardian, 18 March 2020, available at: <https://www.theguardian.com/world/2020/mar/18/uk-presses-us-to-ease-iran-sanctions-to-help-fight-coronavirus>

Closer collaboration with other affected states

27. In order to address properly Iran's unlawful detention of dual and foreign nationals there needs to be a coordinated approach by the states affected. At present, states are taking their own ad hoc and bilateral approaches, which fail to acknowledge the issue as a systematic one.
28. In addition to liaising directly with other governments through usual diplomatic channels, fora such as the UN Security Council and UN Human Rights Council provide opportunities for the UK to build a coalition of affected states, through activities such as sponsoring an Arria Formula meeting at the UN Security Council.
29. REDRESS recommends that:

The UK should collaborate with other states to devise a coordinated strategy for addressing Iran's unlawful detention of foreign and dual nationals, including sponsoring an Arria Formula meeting at the UN Security Council.

Further information

30. For further information please contact info@redress.org