

2022

GUIDE TO JUSTICE, ACCOUNTABILITY AND REPARATIONS FOR SURVIVORS OF TORTURE

**Information for UK-based survivors
of torture seeking justice**



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PART 1: INTRODUCTION

WHO THIS GUIDE IS FOR?

This Guide is for survivors of torture, their families, friends, and front-line service providers who are based in the United Kingdom.

It is estimated that approximately 27% to 44% of refugees and asylum seekers in countries like the UK will have experienced torture. According to our report, *Whose Justice?* the UK is home to between 60,000 and 100,000 survivors of torture in the forced migration population alone.

Those who suffer torture come from all walks of life. Some may have been working abroad or on holiday. Others are victims of political repression or conflict. Others were simply in the wrong place at the wrong time.

If you have experienced torture, we hope this Guide will provide you with the information you need to consider the options available to seek justice, reparation, and accountability for what happened to you. If you are related to or support a survivor of torture, we hope to increase your awareness of the rights of survivors of torture in the UK and internationally.

We refer in this Guide to ‘survivors’ rather than to ‘victims’. We realise that some people who have suffered torture or ill-treatment prefer to refer to themselves as ‘victims’, however, we will generally utilise the term ‘survivors’ as it emphasises the possibility of healing and rehabilitation.

WHAT INFORMATION IS IN THIS GUIDE?

This Guide includes information about rights to justice, reparation, and accountability for survivors of torture and ill-treatment:

- ▶ **Justice** – this means different things to different people, but it is about fairness and righting past wrongs. In the context of torture, it usually involves prosecutions, ‘complaints’ or other ‘legal proceedings’ before a court or tribunal. There is more information about what justice means in **Part 2**.
- ▶ **Reparation** – this aims to provide healing for survivors; restoring dignity, humanity and trust; helping survivors to come to terms with what has happened and the consequences of trauma/injuries; and breaking the cycle of violence. There is more information about what reparation means in **Part 2** below.
- ▶ **Accountability** – this means holding people or governments responsible for their actions.

The Guide also provides some basic information about where to find further support.

REDRESS does not have the expertise or the authorisation to offer advice on immigration and asylum issues. The law surrounding these claims is complex and requires expert advice based on the specific circumstances of the survivor.

Those approved to provide such advice can be found via the following links:

- ▶ [Government-approved immigration advisors directory](#)
- ▶ [Immigration Law Practitioners Association \(ILPA\) members directory](#)
- ▶ [The Law Society directory](#)

Information and resources on other relevant topics can be found on the [Help for Survivors](#) section on our website. This includes:

- ▶ [Health, trauma, medical support and treatment](#)
- ▶ [Finances, housing, employment and practical support](#)

WHAT IS TORTURE?

Torture is the intentional infliction of severe pain or suffering, whether physical or mental. It aims to dehumanise and terrorise individuals through calculated acts of cruelty to remove their dignity and make them powerless.

It is a very serious human rights violation and an international crime. It is also a crime under UK national law, no matter where the torture was committed. Torture is forbidden under all circumstances.

The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) defines torture as:

- ▶ severe **pain** or **suffering** (physical or psychological), which
- ▶ is caused **intentionally**, and which
- ▶ is done for a **purpose**, and which somehow involves a **State official**.

Usually, the infliction of pain or suffering must be carried out by or on behalf of a public official (such as the police, security forces, soldiers). Sometimes, this can be extended, for example, to a private security or military company that is performing public functions. If the acts are committed by a private person but the authorities fail to prevent the torture and punish the perpetrators, the State where the crimes took place can sometimes be legally responsible for the acts.

Not all ill-treatment is defined as 'torture'. 'Ill-treatment' is cruel, inhuman, or degrading treatment or punishment. Ill-treatment differs from torture in two ways. Firstly, the pain and suffering caused will be less severe (this can depend on the duration of the treatment, its physical and mental effects, as well as the sex, age, and health of the individual). Secondly, unlike torture, ill-treatment does not need to be inflicted for a specific purpose (such as obtaining information or a confession, punishment, intimidation, coercion, or discrimination).

International law does not specify exactly what treatment amounts to 'torture' or 'ill-treatment'. Common methods of torture and ill-treatment include: beating, rape and sexual assault or molestation, electric shocks, stretching or suspension, submersion in water, waterboarding, sleep deprivation, starvation, suffocation, prolonged solitary confinement, burns, hooding and other sensory deprivation, constant noise, extremes of hot or cold, humiliation (including mocking a person's religious beliefs), mock executions, threats to the person's life or the lives of others (such as friends or family), extremely poor conditions of detention (such as gross overcrowding) and witnessing the torture of others.

Torture can leave prolonged physical and psychological scars, including difficulties trusting others or relaxing, even in a safe environment. Many survivors divide their lives into two time periods: before and after torture. Although the impact of torture can last a lifetime, there are countless stories of resilience in the aftermath of torture. It takes immense strength

to escape the context in which someone has suffered human rights violations, and it also requires huge courage to rebuild one's life and seek justice, despite economic, cultural, or linguistic barriers.

CAN REDRESS OFFER SPECIALIST ADVICE?

If you or a family member have been tortured, and you need help to obtain justice and reparations, we may be able to help you. REDRESS offers its services free of charge.

However, we are a small organisation, and we must make sure that we can continue to support our existing clients. This means that we can only accept a very small number of new cases every year. To assess your case, we will need to confirm that:

- ▶ what happened to you falls within our areas of work
- ▶ there is something we can do to help, which is within our expertise
- ▶ we have the time and resources to assist you.

If you want us to consider taking on your case, please send an email to info@redress.org marked "New Case Enquiry", providing very brief details of the case, including:

- ▶ Your (1) full name, (2) nationality, and (3) gender
- ▶ A short summary of (4) who tortured/ill-treated you, (5) when it happened, and (6) the nature of the treatment you suffered

If, for whatever reason, you cannot email us, call us on +44 (0) 20 7793 1777 and leave brief details, including your name and contact number and we will get back to you as soon as possible.

If we are unable to take on your case ourselves, we will do our best to provide practical advice and/or suggest other alternatives.

PART 2: SEEKING JUSTICE.

OBTAINING LEGAL ADVICE AND MOVING FORWARD

WHAT DOES JUSTICE MEAN?

Despite the absolute prohibition of torture, in many countries public officials and others working in positions of authority commonly abuse their positions and commit this international crime. Survivors of torture, or their relatives, may wish to seek justice for what has happened. Justice is about fairness and righting past wrongs. There are different forms of justice and depending on what happened and the survivor's particular goals, some of these forms of justice may be more appropriate than others.

A survivor (or their family members) may want to **find out and expose the truth** about what happened to them, and to honour the **memory** of those that have been killed. They may want to obtain **formal court recognition** of the harm experienced or for the torturer to face **trial and punishment** (prosecution) for what they did.

A survivor might have several aims in bringing a case. For instance, to:

- ▶ see perpetrators prosecuted (held accountable) and be punished
- ▶ be acknowledged and recognised as a survivor of torture
- ▶ to be cleared of false accusations
- ▶ raise awareness about human rights issues in the country where the torture took place
- ▶ locate a missing relative
- ▶ receive funds for rehabilitation

- ▶ receive compensation
- ▶ obtain formal apologies from those responsible for committing the torture and ill-treatment
- ▶ obtain recommendations for the development and implementation of specific steps that will be taken to ensure that others will not experience the treatment the survivor endured ('non-repetition measures').

These are all forms of **reparation**.

Some find the pursuit of justice to be rewarding and empowering, as well as a crucial component of healing that helps to deal with the trauma of torture. Others find legal proceedings to be stressful, as a survivor will need to describe their experiences in detail to a lawyer, and possibly to doctors and other medical professionals.

Depending on the route taken, a survivor may also need to give a statement to the police; if the complaint reaches trial, the survivor could be questioned in a court. It is important for the survivor (and their family) to have a community of support during the legal process.

Seeking accountability, reparations and justice is not an easy path. Sometimes there are no available legal mechanisms, but even where legal routes to justice do exist, these processes usually take several years. Unfortunately, even after a long legal process, there are no guarantees that a survivor will reach their objectives. Furthermore, in some circumstances,

seeking justice may put the survivor's security at risk (or that of their family). Despite these difficulties, many survivors who have embarked on the process of seeking justice have found that it can be an empowering way to heal.

Before making the decision to seek justice, the survivor should consider the following:

- ▶ whether there is still a risk they will be returned to the country in which they were tortured (for example, because they have an outstanding asylum claim that has not reached a final decision)
- ▶ the risks of reprisals against family members or friends still in the country where they were tortured
- ▶ the likely length of any legal process, and the possibility that there will be setbacks during the process, and the impact of this on their mental and physical health.

MAKING A CRIMINAL COMPLAINT AGAINST PERPETRATORS OF TORTURE OR ILL-TREATMENT

A survivor may want to make a criminal complaint so that the person(s) who committed the torture is investigated by the proper authorities, and where there is enough evidence, prosecuted and punished. Although legal processes vary, normally some kind of criminal complaint needs to be drafted and then filed. In many cases, it is possible to file a criminal complaint in writing with the law enforcement authorities of the country in which the survivor was tortured. Often this can be done from the UK, without the presence of the survivor in the country concerned, but often a local lawyer is required (based in the country where the torture or ill-treatment took place).

Law enforcement authorities should then conduct an investigation. Complaints can be made against

public officials, including an individual or group of perpetrators, as well as against a person who did not commit the torture or ill-treatment themselves but may have ordered it, assisted in it, or did nothing to stop it.

Investigations, prosecutions and trials

It is usually up to the authorities (police, prosecutors, or an investigating judge) in the country where the torture or ill-treatment occurred to undertake an investigation. The police, prosecutor, or an investigating judge will examine a complaint, consider the evidence that has been provided, and identify what further information or evidence is needed. The authorities may then request a full investigation or even bring charges against the alleged perpetrator of torture.

However, when they look at the complaint, authorities will also consider barriers to the case. For example: if key witnesses are abroad, whether they can protect witnesses, how long it has been since the torture or ill-treatment occurred (this may impact upon the evidence now available), and whether they think the perpetrator is immune from prosecution. Not all these considerations need stop law enforcement agents from pursuing a prosecution. For example, witnesses – and even survivors – can provide evidence by video-link if they are unable to travel to the country that is investigating the allegations of torture.

Prosecutors or courts may decide that there is not enough evidence, or that other barriers are too great to bring charges against a suspected torturer. It may be possible to challenge this decision in court.

If local authorities decide that there is enough evidence and they do bring charges against the suspected torturer, the matter, usually after some time, could proceed to trial. The alleged perpetrator must have a fair trial. The trial may be lengthy and may not result in a conviction. This can be traumatising. It is important

to be mentally prepared for such possibilities and seek psychological support as needed.

Survivors are often unable to provide evidence in person, and may find it difficult to face their suspected torturer. In these circumstances, it may be possible to present evidence via video-link.

Starting the complaint process

Torture can lead to a deep mistrust with State institutions. Survivors may feel unable to make a complaint to the very people or authorities that were supposed to protect them in the first place or were in fact responsible for their torture. This feeling of distrust is completely understandable.

In some countries, especially where corruption and torture are very common and widespread, there may be no realistic prospect of police, prosecutors, or investigating judges carrying out independent investigations to bring torturers to justice. Nevertheless, some survivors of torture feel that it is important to make a complaint regardless of the outcome of an investigation. The failure of police, prosecutors, or judges to investigate can also open up the country to a human rights complaint, for the failure of the State to properly investigate the matter. **Making a complaint nationally** is also often a **necessary first step** to “exhausting domestic remedies” so that a complaint can eventually be brought to a regional or international human rights body.

Once a complaint is filed, the person making the complaint should get a **written acknowledgement** of the complaint, **updates** on the progress of the complaint, and **contact details** to allow follow up with authorities about the case. If the authorities decide to prosecute the suspected torturer, the survivor should receive details of the charges against the accused and the time and place of the trial. If the authorities decide not to prosecute or to close the investigation, a survivor should be told of the

reasons for that decision. A survivor should have a right to complain formally about a decision not to prosecute, although often this must be done within a tight deadline after which it may be difficult or impossible to challenge the decision domestically.

Complaints against non-State entities

In some countries, it may be possible – in limited circumstances – to make complaints against others such as a company or other organisation that was involved in the torture or ill-treatment, for example, by providing equipment or funding. This could include complaints against arms manufacturers or private security companies. These types of claims can be difficult and require specialist legal advice.

Universal Jurisdiction

Law enforcement authorities in many States have powers to investigate and prosecute international crimes committed in other countries, under a principle known as “**universal**” or “**extraterritorial**” **jurisdiction**. This means that where torture is carried out in some other country, but the suspected torturer is found in the UK (for example, on holiday or business), the UK can prosecute him or her here even though the alleged torture took place elsewhere.

The crime of torture is one of a limited category of crimes in international law in which all countries have an obligation to see that perpetrators do not escape justice. This means that if someone who commits torture is found in another country, that country has an obligation to bring the perpetrator to justice using its own courts.

States often apply exceptions to Heads of State, Foreign Ministers, and some diplomats, claiming they have immunity from prosecution. However, this immunity tends to be applied whilst the person is

in office. For example, in 2016, Hissène Habré, the former president of Chad was convicted in Senegal, where he had been living in exile, for crimes against humanity, sexual slavery and war crimes. This was the first universal jurisdiction case to proceed to trial in Africa and was supported by the international community. On appeal in 2017, the conviction was confirmed and a total of 7,396 victims were awarded reparations for the crimes they suffered during Habré's 8-year rule.

It is important to be aware that the UK's policy on exercising 'universal jurisdiction' is quite restrictive, and the number of cases which have been prosecuted is very small in comparison to other countries such as Germany and France. Note that, in the UK, the consent of the Director of Public Prosecutions (DPP) is required to bring such a case, or to issue a warrant for arrest in such circumstances. The DPP will only consent if they believe that there is sufficient evidence against the suspected torturer, and a reasonable prospect of convicting the suspect.

If someone knows that a torturer is in the UK, they can report this – either directly to the police, to a lawyer, or to a human rights organisation who may be able to provide advice and help with contacting the police.

International tribunals

International criminal courts and tribunals may be involved in prosecuting international crimes such as:

- ▶ genocide
- ▶ crimes against humanity (widespread or systematic attacks against civilians, including torture and enforced disappearances, with no requirement that the acts were perpetrated by a public official for a specific purpose)

- ▶ war crimes (crimes committed against protected groups such as civilians, injured persons or prisoners of war during armed conflict or military occupation)

The International Criminal Court (ICC)

The ICC is an independent, international Court supported by more than 123 countries around the world. It has the authority to prosecute persons that are believed to be responsible for some of the worst possible crimes: genocide, crimes against humanity, and war crimes. It is a permanent Court that, within various rules and restrictions, can investigate crimes committed worldwide.

The ICC can usually only prosecute individuals that are citizens of States that have signed up to the Rome Statute establishing the ICC, or persons who committed crimes on the territory of States that have signed up to the Rome Statute.

Survivors who have suffered harm or witnessed one of the three international crimes in any of these countries may be able to provide information or participate in any of the ongoing ICC proceedings. Survivors who have suffered harm or witnessed one of these crimes in another country may also be able to provide the information to the Prosecutor, who will consider whether it has the authority to investigate. The ICC Statute and Rules of Procedure and Evidence recognise the right of survivors, under certain circumstances, to participate in its proceedings.

Survivors and witnesses living in the UK should note that the UK has joined the ICC Statute. This places the UK under an obligation to cooperate with the Court and assist its work.

BRINGING COMPLAINTS AGAINST THE STATE FOR ITS ROLE IN SERIOUS HUMAN RIGHTS ABUSES

A human rights complaint can be made against a State for failing to uphold the right not to be tortured. This can be done when someone has been tortured or ill-treated by public officials or with the tolerance or acquiescence of a public official, where they have failed to protect someone from torture, or failed properly to investigate allegations of torture and provide redress.

National Authorities

In a case of torture or ill-treatment, the State should always open a criminal investigation so that those responsible can be identified and held to account.

In addition to the criminal investigation mentioned above, all States should have procedures within their legal systems that allow someone to complain about human rights violations.

In many States there are mechanisms allowing someone to file human rights complaints against public authorities. These procedures commonly require someone to write a letter, setting out details of the torture or ill-treatment and the complaint.

Such a letter could be sent to a:

- a. **complaints commission** or other official contact point in the police where people can file complaints if they are unhappy with how police have acted

Case Example

The Independent Office for Police Conduct (IOPC) is the public body in England and Wales responsible for overseeing the system for handling complaints made against police forces in the country. It also conducts investigations when someone has been assaulted, seriously injured or has died in police custody. The IOPC then makes recommendations to the police, or police and crime commissioners.

- b. **national Ombudsperson** who investigates complaints into actions by State bodies

Case Example

The Ecuadorian Ombudsman "*Defensor del Pueblo*" seeks to help citizens exercise their human rights. Individuals can make complaints directly to the Ombudsman's office. The Ombudsman's office researches the complaint and may make interventions in cases where rights have not been protected, for example, they may call upon a judge to respect the right to liberty and security when a person has been held in pre-trial detention for more than six months.

- c. **national human rights commission** which monitors State compliance with human rights standards

Case Example

The South African Human Rights Commission is the national institution responsible for promoting human rights in South Africa. It can investigate and report on allegations of human rights violations and take steps and secure appropriate redress where human rights have been violated.

In some States, survivors can bring a human rights complaint in a Constitutional or Administrative Court. In such a case, the Court will hear the survivors' evidence, review the decisions or actions of the State or its officials, and decide if they were lawful and made in compliance with international and human rights law.

In the UK, judges can be asked to review official decisions if they are thought to be unlawful or unreasonable. This is called "Judicial review". Cases have to be brought as soon as possible after the decision and in any event within 3 months of the decision being challenged. A successful case, for example against the Home Office regarding unlawful immigration detention, would usually result in the Home Office having to go back and make a new decision.

Sometimes, national human rights processes will not be independent or impartial, or it may be impossible to use them once a survivor has fled the country in which the ill-treatment or torture occurred. It is important to be aware of the limitations and consider in each individual case whether regional or international human rights bodies may be available to deal with the case if domestic legal processes cannot be used.

British Nationals suffering torture abroad

Under UK law, UK officials have discretion as to whether to assist British nationals in trouble abroad, and what kind of assistance to provide. This includes those in detention or suffering torture or ill-treatment. Because the assistance provided is at the discretion of the UK Government, taking legal action on such cases is usually not possible.

Any complaints about the assistance and support provided can be made to the UK Government's Foreign, Commonwealth and Development Office (FCDO) (by way of a process set out [here](#)). Assistance

may also be obtained from a local [Member of Parliament \(MP\)](#), who may be able to encourage the FCDO to provide support, or ultimately facilitate a further complaint to the Parliamentary and Health Services Ombudsman.

International human rights bodies

If a survivor is unhappy about the result of a domestic investigation or human rights process, or the local authorities have been unwilling to open an investigation, it may be possible to bring a complaint about torture or ill-treatment to a regional or international human rights mechanism.

This might be appropriate where someone has been tortured by a public official, or if **public officials did not do enough to prevent the torture** from happening, when they had an obligation to prevent it. For example, when an individual makes numerous complaints of abuse and domestic violence and the police fail to take any steps to investigate and protect them from continued violence.

If public officials **failed to investigate** following a complaint that a public official has been involved in torture, the State can be found to have failed their 'procedural obligations' under the prohibition against torture. Therefore it is important to first make a **criminal complaint** in the country where the torture occurred. If the authorities fail to take this seriously, it may be possible to escalate the complaint to a regional or international human rights mechanism.

Case Examples

The European Court of Human Rights decided in 2004 that the French Government had not done enough to prosecute Rwandan nationals living in France for crimes they committed during the Rwandan genocide.

The European Court of Human Rights decided in 2021 that Spain had failed to properly investigate a complaint of torture. This was the sixth time the Court had decided that Spain had failed to uphold human rights obligations to investigate claims of torture.

These regional or international bodies accept complaints only if someone has **already tried and failed to obtain justice** at the national level. This is commonly described as a requirement to have 'exhausted domestic remedies'.

Exceptions can be made if it can be shown that it was impossible to pursue such a claim in the country in which the torture took place. Such exceptions arise when there are no available effective justice mechanisms in the country where the torture occurred. This could be the case even where mechanisms are theoretically or technically available but inaccessible because, for example, the authorities threaten survivors or witnesses to withdraw complaints and regularly delay decisions or investigations so that years go by without anything happening.

Three regional courts have powers to make binding orders:

- ▶ African Court on Human and Peoples' Rights
- ▶ European Court of Human Rights
- ▶ Inter-American Court of Human Rights

In torture cases, the following bodies can make non-binding recommendations to States,

which States still must comply with in good faith based on their international obligations:

- ▶ African Commission on Human and Peoples' Rights
- ▶ the Inter-American Commission on Human Rights
- ▶ UN Human Rights Committee
- ▶ UN Committee on Torture
- ▶ UN Committee on the Rights of the Child
- ▶ UN Committee on the Elimination of All Forms of Discrimination Against Women
- ▶ UN Committee on Enforced Disappearances
- ▶ UN Working Group on Arbitrary Detention.

Regional or international mechanisms can only be used if the country responsible for the violation has signed up and ratified the relevant treaty in advance. It is important to note that complaints can only be made to one such body.

Unfortunately, it is not always possible to bring a complaint to one of these international or regional mechanisms. It is important to check, for example, whether the State involved has ratified the relevant regional or international treaties (and when they did it), or whether a regional mechanism exists at all for the State where the torture occurred. This will help clarify the options available. For example:

- ▶ some regions do not yet have regional human rights courts or commissions (like Asia and the Middle East);
- ▶ even if the torture or ill-treatment occurred in a country that has no regional human rights court or commission (such as Sri Lanka or Nepal), it may be possible to bring a complaint to a UN Treaty Body, such as the UN Human Rights Committee or the UN Committee against Torture;
- ▶ some States do not permit individuals to bring complaints to certain UN Treaty Bodies, even when

the State has ratified the main treaty - for example, the UK does not allow complaints to be brought against it before the UN Committee against Torture, or the UN Human Rights Committee;

- ▶ the torture or ill-treatment may have occurred before the country responsible gave its permission to allow individuals to make complaints to the body in question.

Each of the international mechanisms will have different procedures. Usually, the survivor makes an initial submission, and the body will decide whether the complaint is admissible. If it is, the body will then ask the survivor for further information. The State concerned will have a chance to respond before a final decision is made.

Anyone considering using a specific international human rights body should consider the following issues:

- ▶ the aim of bringing the case
- ▶ whether the procedure is public and its findings are public
- ▶ whether sensitive information can be removed before it is sent to the State concerned (if the survivor or witnesses require this for safety reasons)
- ▶ how long it has been since attempts were made to obtain justice nationally
- ▶ whether there are specific procedural issues that need to be followed (for instance, in relation to the language used, or the timing of the submission)
- ▶ the types of evidence available
- ▶ whether specific remedies will be awarded directly by the human rights body, or whether it

will be up to the State responsible to implement the body's recommendations nationally

- ▶ whether the mechanism has a follow-up procedure to ensure that States abide by its decision
- ▶ whether there is a way of bringing sanctions against the responsible State where it doesn't comply
- ▶ whether urgent measures are available

Time limits

Survivors can seek justice for torture that took place many years ago. However, some legal processes have strict time limits. For example, once the survivor has obtained a final decision from a court at the national level, there will be a strict time limit (which varies for the different mechanisms) within which the international or regional complaint must be made. This is usually at least a few months from the final national court decision but should be checked carefully.

If, for whatever reason, no international bodies can deal with the complaint, there may be alternative advocacy options, and these are described in more detail below under "Alternatives to legal proceedings".

SUING TORTURERS (CIVIL CLAIMS)

Civil claims for damages can sometimes be brought in court against persons, companies, or organisations if they are responsible for or involved in (for example, by their negligence) torture or ill-treatment.

What are civil claims?

Civil proceedings differ from a criminal complaint in that the complaint is not investigated by police, and there is no prosecutor. Instead, the survivor and their lawyer must gather the necessary evidence and bring it to court. The court does not find the defendant “guilty” of any crime and does not have the power to impose a prison sentence. Rather, the proceedings are a way of getting official recognition for a wrongdoing and trying to undo the harm that was suffered — for example, by returning money or property which was lost as a result of the torture or ill-treatment, or providing medical or psychological care to help heal injuries.

Civil claims can take place *instead of* criminal proceedings, for example if a criminal trial has not taken place because the prosecutor has decided not to pursue charges due to a lack of sufficient evidence, or because of legal barriers. Civil claims also can take place *in addition to* criminal proceedings. Or, in some countries, the civil and criminal processes may be combined and survivors may be able to join criminal proceedings as *civil parties*.

Case Example

In 2022, a federal Judge in the US ordered a Libyan military chief, Field Marshal Khalifa Haftar, head of the eastern-based Libyan National Army, to compensate the families of a bombing attack on civilians in his 2019 campaign to take Tripoli.

How Survivors Can Bring Civil Claims

Civil claims must usually be brought in the country where the torture took place. In some countries, it will be possible to seek compensation only once there is a criminal conviction of the perpetrator. However,

other countries may require a separate civil claim for compensation, regardless of whether the suspected torturer has been convicted and punished.

Civil claims can involve complicated and expensive legal proceedings requiring a detailed understanding of legal arguments, evidence, and other rules. The survivor should not begin these proceedings unless they have the assistance of a local lawyer who can file a claim on their behalf and represent them in court.

In some countries, the rules allow civil claims to be brought in the country most closely connected to the survivor or the defendant, even if this is not the country where the torture took place. However, it is important to note that it is currently virtually impossible to bring civil claims in the UK against defendants who are State officials in a foreign country, because of rules relating to State immunity. National laws or court rules may prevent civil claims from being brought if the crimes were committed a long time ago, although courts have recognised exceptions.

Sometimes, the act of bringing a civil case will encourage a State, company, corporation, or organisation to settle the matter out of court. Some survivors are happy with a settlement. However, settlements are often subject to confidentiality orders, which may mean that the terms of the settlement cannot be disclosed to the public. On rare occasions States, companies, corporations, or organisations may agree to settle out of court and not impose a confidentiality order.

Immigration detention

If pain and suffering is caused to an immigration detainee in the UK by the actions of the Home Office, it may be possible to bring a civil claim for damages against the Home Office. It is possible that a claim could also be made against private providers of immigration detention services. A specialist solicitor would have to be involved in these kinds of cases.

Case Examples

R (Abulbaker) v Secretary of State for the Home Department

In 2022, a detainee was awarded £17,500 for 40 days of unlawful detention during the COVID pandemic.

Mohammed v Home Office

In 2017, a detainee who had previously survived torture in Somalia, was awarded a total of £78,500 for over 400 days of unlawful detention, which he argued had exacerbated his PTSD (post-traumatic stress disorder).

Companies

If companies have a connection to the UK, successful civil litigation proceedings *could potentially* be brought against them in the UK, even if the crimes were committed in another country.

Case Example

Complaints of violations of international human rights law may be able to proceed in the USA under the federal Alien Tort Statute and the Torture Victim Protection Act where there is a strong connection to the United States (U.S.).

Al Shimari v. CACI

Four Iraqi detainees at Abu Ghraib who allegedly suffered torture by the U.S. military and civilian defence contractors employed by CACI International brought legal action against the business in 2008, involving claims under the Alien Tort Statute. On 30 June 2014, the Fourth Circuit Court of Appeals said that the claim did fall within the remit of the Alien Tort Statute. However, as of 2022, the litigation continues, demonstrating the challenges involved in bringing such claims.

EVIDENCE

After a decision is taken on which justice avenue to pursue, a survivor and their legal advisers will need to consider what types of evidence will be needed to start the claim.

In a criminal case, whilst a survivor might provide some initial information or evidence to alert the authorities to the case, the State will usually have the responsibility to undertake a full investigation in order to obtain other evidence of the torture.

However, in other types of cases, the burden may fall on the survivor to obtain evidence themselves. Survivors should always aim to obtain the best possible evidence and good quality information. The most useful information will be detailed, with few contradictions and have supporting evidence from several different sources. Types of evidence include:

- ▶ Survivor statement
- ▶ Statements from others (including witnesses)
- ▶ Medico-legal reports (medical reports which are designed for use in legal claims)
- ▶ Other expert reports
- ▶ Secondary sources (for example, photos/videos, media reports, NGO reports)

Survivor Statement

The survivor's statement is an important form of evidence. It should include:

- ▶ information that helps the authorities identify who the survivor is (name and address, for example)
- ▶ descriptions of the torturer (if available)
- ▶ how the survivor came to be in the control of the authorities or perpetrators
- ▶ where the survivor was taken or held
- ▶ forms of torture and ill-treatment that were suffered

- ▶ descriptions of any torture outside a detention setting or the conditions of detention if the survivor was detained
- ▶ how officials failed to prevent the survivor from suffering foreseeable harm
- ▶ and any official responses to complaints made about the ill-treatment or torture

When lawyers take a statement, the survivor deserves to feel comfortable. A survivor should normally be able to ask to speak to a lawyer of the same or a different gender and request an interpreter if necessary. It may take more than one session to finish compiling a statement.

Statements from others (including witnesses)

It can be helpful to have a statement from someone (including friends or family members) who may have witnessed the torture (for example at a protest) or witnessed the person's arrest, or from someone who can confirm the state of the person's health and physical condition before and after being detained. There may also be co-detainees who can confirm when and where the person was detained or who can confirm that they witnessed the torture or ill-treatment.

Photographs or videos

Images and videos of the torture and the context can be helpful. Someone may have taken photographs or recorded a video of the arrest, the context of the arrest or ill-treatment, and the injuries inflicted. It is always helpful for pictures of injuries to show both the person's face (so that they can be clearly identified) and the specific injury or injuries. This may require multiple photographs.

Media and NGO reports

The press may have reported on the survivor's specific experience of torture, or they may have documented threats made publicly against them. News reports

may also be relevant to explain the context in which the crimes took place. For instance, a Ugandan newspaper article that lists the names of people perceived as homosexual who should be arrested or assaulted would be useful background evidence to help show the context involving an allegation that a Ugandan homosexual was subjected to torture or assault, particularly if his or her name appears on the list. This could be helpful in a complaint against Uganda (in a criminal or human rights case) and in an application for asylum in the UK.

Reports, press releases, urgent actions from local or international organisations are also helpful, for example a report on police brutality in a particular police station which describes events at the same time of the allegations of torture in the same police station, is helpful to show a consistency with the allegations made. These may be about the survivor's specific case or may reveal patterns of torture, ill-treatment, and other human rights abuses in the country in question.

Medical Evidence

Medical evidence can include a statement from a doctor confirming physical or psychological injuries and the state of someone's health before and after torture, or take the form of an official medico-legal report (often known as an 'MLR'), which is basically just a medical report designed for use in a legal claim.

In the UK, some solicitors or immigration caseworkers obtain MLRs for use in asylum applications.

SECURITY AND SAFETY CONCERNS

If a survivor has family or friends in the country where they were tortured, the survivor may be afraid that they will face reprisals, intimidation, violence, or harassment if they take part in legal proceedings regarding their torture. A survivor may

have concerns about their safety even if they and their family are in the UK.

These issues need to be considered carefully. Sometimes steps can be taken to minimise risks, or there may be protection measures available. Some legal mechanisms allow for some of the evidence to be provided confidentially or, at least for the information to be shielded from the public.

However, no one can ever completely guarantee a survivor's safety or that of their witnesses or family. Each survivor needs to make an informed decision about whether they may face any danger and which, if any, risks they are willing to take.

If a survivor is living in the UK and experiences threats, violence, or intimidation, this should be reported immediately to the local police. The police can investigate who is responsible for this behaviour; the persons responsible may be charged with a separate criminal offence, and authorities can take steps to address any security needs, as outlined above.

ALTERNATIVES TO LEGAL PROCEEDINGS

Sometimes no legal avenue is open because domestic courts in the country where the torture took place are weak or corrupt, and the country responsible for the torture has not signed up to the relevant treaties that would allow complaints to be made against it before an international body. In these circumstances, it still may be possible to undertake advocacy through UN or regional human rights mechanisms, to write to government officials, or put pressure on decision makers such as members of Parliament. Some of these options are explained below.

Advocacy

Advocacy means taking action to create change. Survivors of torture and ill-treatment, and NGOs

supporting them, may organise themselves so they can speak out about relevant issues, including their individual cases. Advocacy may include researching solutions, creating coalitions, and public campaigning.

UK Parliament

Members of Parliament (MPs) can offer advice and assistance on matters for which the UK Parliament is responsible, for example, immigration issues. They cannot interfere in court decisions or help with private disputes. MPs represent the interest of their constituents, and MPs for each area can be found using one of these links:

www.parliament.uk/findyourmp
www.writetothem.com

Members of the House of Lords can hold the Government to account in similar ways, although they do not have to represent constituency interests. Their contact details can be found here: <https://www.parliament.uk/mps-lords-and-offices/lords>

Some Lords have special interest in certain topics, and details of their interests can be found here: www.WriteToThem.com/lords

Lobbying is when an individual or a group tries to persuade someone in Parliament to support a particular policy or campaign. This may involve but is not limited to:

- ▶ Meetings in person
- ▶ Sending emails or letters
- ▶ Using social media
- ▶ Organising and presenting petitions or surveys
- ▶ Providing information or research
- ▶ Inviting MPs or Lords to meetings or events
- ▶ Conduct a mass lobby (when a large number of people contact their MPs and Lords in advance and arrange to meet with them at Parliament on the same day)

It may be possible to raise awareness about a survivor's situation through a UK **parliamentary human rights group** that focuses on issues relevant to the case, such as immigration and asylum, policing, or civil liberties, or which focuses on the State or region where the torture took place.

Engaging with MPs and Lords regarding **parliamentary debates and parliamentary questions** can be an effective way of raising an issue and asking specific questions. Details of upcoming debates can be found at <https://calendar.parliament.uk>

Some of these debates relate to new laws or changes to old laws, and MPs and Lords may be particularly interested to hear from survivors of ill-treatment and torture if the new laws are likely to impact survivors in some particular way (either positively or negatively). If a survivor is going to brief an MP or a Lord, it is important to remember the following tips:

- ▶ To be as concise as possible, if in writing include a maximum 2 pages.
- ▶ To provide suggested questions and solutions for the concerns raised.
- ▶ To ensure the person provides their contact information on every page of the briefing.

The UN

States who are parties to various human rights treaties have to provide **reports to UN treaty bodies** on a regular basis. The State reporting process is an important tool to review compliance with various treaties, including the UN Convention Against Torture, and to generate political will by offering technical guidance towards domestic anti-torture reforms. The reporting procedure is an important mechanism for civil society and survivors in raising concerns about systemic shortcomings, such as a lack of relevant legislation, or about specific practices which violate States' human rights obligations.

It may be possible to use **other UN procedures**. For example, the UN has a number of special experts who help to protect human rights, and these experts (called 'Special Rapporteurs', or sometimes 'Independent Experts') may be able to take some other steps on behalf of the survivor. There are such experts with a focus on each of the following areas:

- ▶ countries (for example, Belarus, Cambodia, Côte d'Ivoire, Eritrea, North Korea, Haiti, Iran, Myanmar (Burma), the Palestinian Territories, Somalia, Sudan, and Syria); and
- ▶ thematic issues (for example, torture and ill-treatment; freedom of assembly and association; freedom of opinion and expression; human rights and fundamental freedoms while countering terrorism; human rights defenders; extrajudicial, summary, or arbitrary executions; truth, justice, reparation, and guarantees of non-recurrence; violence against women; contemporary forms of racism, racial discrimination, xenophobia, and related intolerance; protection against violence and discrimination based on sexual orientation and gender identity; among others).

These Rapporteurs and Independent Experts document human rights violations. They may be able to raise individual cases with the government of the country concerned. Even if the government does not respond, a documented complaint can help the UN show widespread patterns of human rights abuses and thereby strengthen arguments that the situation demands the attention of the international community.

Sanctions

Another way to seek justice for human rights violations is to hold perpetrators accountable through targeted sanctions. In the UK the Foreign Secretary has the power to sanction individuals and/or entities for their involvement in human rights

violations, bribery, or misappropriation of state assets. The purpose of these sanctions is to deter and provide accountability for human rights abuses and to prevent serious corruption. When a perpetrator is sanctioned, they will usually be subject to an asset freeze on all property in the UK's jurisdiction and/or a travel ban blocking their entry to the UK's territory. Restricting finances and movement imposes a personal cost on perpetrators and provides a level of international accountability where domestic authorities are unwilling or unable to act.

Case Example

In 2021, the UK Foreign Secretary sanctioned 4 Chinese officials for gross human rights violations against Uyghurs and other minorities in Xinjiang. These sanctions formed part of a coordinated action by the international community to hold perpetrators of the atrocities in Xinjiang accountable.

Sanctions are most effective when used alongside other tools for accountability and are generally implemented alongside a broader package of measures. In comparison to more traditional forms of international justice (for example, individual complaints to the UN Special Procedures Mechanisms or UN Human Rights Committee), sanctions can usually be achieved more quickly if there is sufficient evidence and political will. Sanctions can also have a more immediate impact on the perpetrator where that person has close ties to the country imposing the sanctions.

Individual evidence-based submissions recommending sanctions against specific individuals can be submitted to the UK Foreign, Commonwealth and Development Office (FCDO) for their consideration. A submission would generally be done with the assistance of a human rights NGO.

PART 3: FINDING HELP

Although some of the legal processes and mechanisms we have described can be followed by a survivor without specialist legal help, it is often useful to have expert advice on the options. Ideally, it is good to have a lawyer or an expert human rights NGO who can represent the survivor, but this is not always possible.

GETTING HELP FROM REDRESS

If you or a family member have been tortured, and you need help to obtain justice and reparations, REDRESS may be able to help you. REDRESS offers its services free of charge. However, we are a small organisation, and we must make sure that we can continue to support our existing clients. This means that we can only accept a very small number of new cases every year.

If you want us to assess your case, please see our [website](#) for further details.

Information and resources on other relevant topics can be found on the [Help for Survivors](#) section on our website. This includes:

- ▶ [Health, trauma, medical support and treatment](#)
- ▶ [Finances, housing, employment and practical support](#)

GETTING HELP FROM OTHERS

The following can be found on our website:

- ▶ [Details of UK law firms \(solicitors\) specialising in human rights](#)
- ▶ [Details of relevant human rights organisations \(NGOs\) in the UK](#)



How was this Guide compiled?

REDRESS has supported survivors of torture in the UK and abroad since 1992.

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We thank all those who gave input, including our clients, staff and our interns for their work in updating this Guide. The updated Guide was edited and finalised by Camila Marin-Restrepo (Communities Officer) and Chris Esdaile (Legal Advisor).

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