

REDRESS SUBMISSION FOR THE REVIEW OF THE UK BY THE HUMAN RIGHTS COMMITTEE

FEBRUARY 2023

Stakeholder response to the United Nations Human Rights Committee’s List of Issues on the Covenant on Civil and Political Rights (ICCPR) dated May 2020.

By REDRESS

REDRESS is an NGO that pursues legal claims on behalf of survivors of torture in the UK and around the world to obtain justice and reparation for the violation of their human rights.¹

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¹ See [redress.org](https://www.redress.org)

SUMMARY AND KEY RECOMMENDATIONS

1. This submission to the Human Rights Committee focuses on three key issues raised in the UN's List of Issues prior to the submission of the eighth periodic report,² related to the UK's compliance with the International Covenant on Civil and Political Rights (ICCPR). The first addresses the criminalisation of torture (para.11), emphasizing the need for universal jurisdiction. The second highlights the UK's involvement in torture and rendition (para.13), urging a prompt and impartial investigation into allegations of collusion. The third underscores the importance of non-refoulement (para.18), expressing grave concerns about recent legislative developments, particularly the Illegal Migration Act 2023 and the proposed Safety of Rwanda (Asylum and Immigration) Bill.
2. We urge the Committee to make the following recommendations to the UK in its concluding observations, for the UK to fully comply with the ICCPR:
3. **The UK should review its legal framework in relation to universal jurisdiction and close loopholes that prevent accountability for perpetrators of international crimes who come to the UK.**
4. **The UK should ensure that there are prompt, effective and impartial investigations into allegations of collusion in torture/rendition, and cooperate fully with any investigations in relation to these matters, ensuring that there is accountability for any UK officials found to have been responsible.**
5. **The UK Government must adhere to its international legal obligations including the absolute prohibition on torture: the Safety of Rwanda (Asylum and Immigration) Bill (if enacted) will cause these obligations to be breached.**

1. CRIMINALISATION OF TORTURE

Summary: The legal framework for universal jurisdiction in England and Wales is limited, meaning that it is rarely used to hold suspects of international crimes – including torture – accountable in UK courts. The UK should reform its legal framework and stop granting special mission immunity to individuals suspected of committing torture from prosecution in the UK.

6. In relation to the prohibition of torture and cruel, inhuman, or degrading treatment or punishment and the right to an effective remedy (ICCPR, art. 2), we note the UK's response to the Committee's List of issues that "the UK Government has no plans to reform the offence of torture under s.134 Criminal Justice Act 1988."
7. At present, English and Welsh law includes a limited form of universal jurisdiction. English courts can exercise universal jurisdiction over the crimes of torture, hostage-taking, and a small number of war crimes known as "grave breaches" of the Geneva Conventions³ if the perpetrator is present in the UK. English courts also have jurisdiction over genocide, crimes against humanity, and war crimes⁴ but only if the perpetrator is present in the UK and is either a UK national or a legal resident.⁵ This means that non-citizens and non-residents can come to London without fear of prosecution, even if they

² CCPR/C/GBR/QPR/8, 5 May 2020.

³ On torture, see Criminal Justice Act 1988; on hostage-taking, see Taking of Hostages Act 1982; on breaches of the Geneva Conventions, see Geneva Conventions Act 1957.

⁴ See International Criminal Court Act 2001, which gives effect to the Rome Statute in the UK.

⁵ International Criminal Court Act 2001, s 51(2)(b).

are reasonably suspected of committing genocide. There is no principled reason that UK courts should be able to prosecute non-citizens and non-residents for torture but not crimes against humanity, or war crimes and genocide – which can all be committed through torture when other elements are present.

8. Official data shows that between 2013 and 2015, 135 individuals were refused citizenship in the UK by the Home Office due to their alleged involvement in war crimes, crimes against humanity, genocide, or torture.⁶ Yet none of these cases were referred to the Metropolitan Police. Under existing guidelines, the police cannot begin investigations until they have a suspect, and that suspect is in the UK. As a result of this, and practical challenges in gathering evidence of crimes committed abroad, there have only been three successful prosecutions of international crimes in English courts, ever.⁷ The last successful prosecution took place well over a decade ago.⁸ This record stands in stark contrast to jurisdictions such as Germany, France, Belgium and Sweden, whose domestic courts have seen a surge in the number of prosecutions initiated under universal jurisdiction laws in recent years.
9. In our recent report, *Global Britain, Global Justice: Strengthening Accountability for International Crimes in England and Wales*, REDRESS and the Clooney Foundation for Justice highlighted the need for the UK to reform the offence of torture under the Criminal Justice Act to include additional modes of liability.⁹ Under the CJA, a superior or commander whose subordinates have committed isolated acts of torture not constituting crimes against humanity or war crimes (which would be covered under the International Criminal Court Act 2001) cannot be held responsible under current UK legislation. Section 134 of the CJA does not provide for command or superior responsibility. While commanders could be tried under other theories of liability,¹⁰ such modes may not capture the responsibility of architects or orchestrators of these crimes for acts that they should have prevented or punished. By requiring superiors to take affirmative, pro-active measures to curb the behaviour of their subordinates, command responsibility acts as a deterrent for grave crimes.
10. In addition to legislative challenges in prosecuting torture, the recurrent use of special mission immunity continues to obstruct the ability to prosecute individuals suspected of international crimes, including torture.¹¹ For example, in 2016 the UK police refused to arrest an Egyptian General alleged to be responsible for torture after a violent coup despite its obligation under the UN Convention against Torture to prosecute acts of torture occurring abroad when the alleged perpetrators are in the UK.¹²

⁶ Freedom of Information Request held in REDRESS' files.

⁷ R v. Sawoniuk [2000] Court of Appeal (Criminal Division), Crim. L. R. 506; R v Payne [2006] Military Court, H DEP 2007/411; R v Zardad [2007] Court of Appeal (Criminal Division), Crim. 279.

⁸ R v Payne [2006] Military Court, H DEP 2007/411 (a guilty plea before a court martial).

⁹ REDRESS and Clooney Foundation for Justice (2023), *Global Justice: Strengthening Accountability for International Crimes in England and Wales*, available at: [Global Britain, Global Justice: Strengthening Accountability for International Crimes in England and Wales | Redress](#)

¹⁰ For example, conspiracy to commit an offence outside England and Wales under Section 1A of the Criminal Law Act 1977, aiding and abetting under the Accessories and Abettors Act 1861, or encouraging and assisting an offence under Sections 44-45 of the Serious Crime Act 2007.

¹¹ See: *Global Britain, Global Justice*, p. 50.

¹² REDRESS, *Special mission immunity and General Hegazy Case*, available at: [Special mission immunity and General Hegazy case | Redress](#)

11. In addition to this case, special mission immunity has prevented steps to prosecute people in at least three other cases: a) the Minister for Commerce and International Trade of the People's Republic of China, Bo Xilai, who was accused of "conspiracy to torture committed in Liao Ning Province since July 1999";¹³ b) the then-Israeli Defence Minister, Ehud Barak, accused of war crimes and breaches of the Geneva Conventions in Gaza;¹⁴ and c) the former head of State of the USSR, Mikhail Gorbachev, accused of giving orders to troops to disperse peaceful demonstrations in 1989 in Georgia and 1991 in Lithuania, and for ordering an attack on the city of Baku in Azerbaijan on 20 January 1990, allegedly resulting in deaths.¹⁵ There is a clear tension between the conferral of special mission immunity and several of the UK's international legal obligations. The UK should therefore codify its approach to special mission immunity, including its scope under customary international law. The UK should refuse to accept an individual as being on a special mission, and potentially entitled to immunity, when there are reasonable grounds to suspect that the individual has been involved in or associated with international crimes including torture, war crimes, crimes against humanity or genocide.¹⁶ Reasonable grounds include instances when the individual is identified as a suspect by the International Criminal Court, the UK authorities or a UN investigative mechanism.¹⁷
12. The UK should review its legal framework in relation to universal jurisdiction and close loopholes that prevent accountability for perpetrators of international crimes who come to the UK.

¹³ Re Bo Xilai (2005) 128 ILR 713.

¹⁴ Re Ehud Barak, City of Westminster Magistrates' Court, 16 June 2008 (unreported).

¹⁵ Re Mikhail Gorbachev, City of Westminster Magistrates' Court, 30 March 2011 (unreported).

¹⁶ See Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 5.2, Dec. 10, 1984, 1465 U.N.T.S. 85 ("Each State Party shall ... take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article."); Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the UN General Assembly, Res. 260 A (III), 9 December 1948, Article I ('The Contracting Parties confirm that genocide ... is a crime under international law which they undertake to prevent and to punish'); Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in the Armed Forces in the Field Article 50, Aug. 12 1949, 75 U.N.T.S. 31; Geneva Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea Article 51, Aug. 12 1949 75 U.N.T.S. 85; Geneva Convention Relative to the Treatment of Prisoners of War Article 129, Aug. 12 1949, 75 U.N.T.S. 135; Geneva Convention Relative to the Protection of Civilian Persons in the Time of War Article 146, Aug. 12 1949, 75 U.N.T.S. 287.

¹⁷ This is consistent with Home Office guidance, which provides that an individual will be refused citizenship if "there are reasonable grounds to suspect [that] they [...] have been involved in or associated with war crimes, crimes against humanity or genocide, terrorism, or other actions that are considered not to be conducive to the public good".

2. UK INVOLVEMENT IN TORTURE/RENDITION

Summary: The UK should ensure that there is a prompt, effective and impartial investigation into any allegations of collusion by its officials in torture and/or rendition.

13. In relation to the prohibition of torture and cruel, inhuman or degrading treatment or punishment, right to liberty and security of person, and counter-terrorism measures (ICCPR, arts. 2, 4, 7, 9, 10, 14 and 19), we note the request in the list of issues for the State to “provide updated information on the steps taken to effectively investigate the alleged involvement of the British authorities in rendition programmes and on follow-up measures taken”.¹⁸
14. The United Kingdom has, along with a number of other European States, long been accused of passive or active involvement in the US CIA’s secret detention programme, set up in the aftermath of the 9/11 attacks.¹⁹ Numerous international bodies (not least the European Court of Human Rights) have urged these European States to conduct effective investigations into allegations of torture and other ill-treatment, in line with their international legal obligations.²⁰
15. One such case is that of REDRESS’s client, Mr Mustafa al-Hawsawi, who was arbitrarily detained and ill-treated in Lithuania, after which he was transferred to Guantanamo, where he suffered further torture. The case has recently been the subject of a judgment by the European Court of Human Rights.²¹ Lithuanian’s investigation of Mr al-Hawsawi’s allegations has been the subject of previous Human Rights Committee concern,²² and the European Court of Human Rights’ judgment recently confirmed again that the investigation No. 01-2-00015-14 (which covers the cases of both al-Hawsawi and Abu Zubaydah) still remains pending.
16. The al-Hawsawi case is also particularly relevant to the UK, as in 2023 the Investigatory Powers Tribunal (IPT) – the judicial body which oversees the actions of the UK intelligence services – opened two separate investigations into allegations that UK agencies were involved in the ill-treatment of two prisoners detained by the US, Mr al-Hawsawi and Abd al-Rahim al-Nashiri.²³ There is evidence to suggest that UK intelligence agencies facilitated or conspired with US authorities in the torture and ill-treatment of

¹⁸ CCPR/C/GBR/QPR/8, 5 May 2020, para. 13.

¹⁹ See, for example: [Parliamentary Assembly Council of Europe, Committee on Legal Affairs and Human Rights \(Senator D. Marty\), Alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe member states, Doc. 10957, 12 June 2006.](#)

²⁰ See, for example: ECtHR, [Factsheet – Secret detention sites](#), March 2019; UN Committee against Torture, *Concluding observations on the fourth periodic report of Lithuania*, CAT/C/LTU/CO/4, 21 December 2021, paras. 19-20.

²¹ *Al-Hawsawi v Lithuania*, Appl. No: 6383/17, 16 January 2024.

²² For example, see *Concluding Observations on the Third Periodic Report of Lithuania*, CCPR/C/LTU/CO/4, 29 August 2018, paras. 23-24.

²³ *Mustafa Adam Ahmed Al-Hawsawi v (1) Security Service, (2) Secret Intelligence Service, (3) Government Communications Headquarters, (4) Ministry Of Defence [2023] UKIPTrib 5; Abd Al-Rahim Al Nashiri v (1) Security Service (2) Secret Intelligence Service (3) Government Communications Headquarters (4) Ministry of Defence [2023] UKIPTrib 9*, available at: [Abd Al-Rahim Al Nashiri v \(1\) Security Service \(2\) Secret Intelligence Service \(3\) Government Communications Headquarters \(4\) Ministry of Defence - The Investigatory Powers Tribunal.](#)

those 17 prisoners classed as ‘high-value detainees’ within the CIA programme (which included al-Hawsawi and al-Nashiri).

17. Allegations of the UK intelligence services’ collusion in torture have also resurfaced in recent years in the case of Jagtar Singh Johal, a British national who has been arbitrarily detained in India since 2017.²⁴ UK intelligence agencies are accused of tipping off Indian authorities about him before his abduction and torture by Indian police.²⁵
18. The UK’s response to the UN Human Rights Committee’s List of Issues on the question of investigations into rendition and related matters²⁶ largely focuses on past events and improvements to its policies and procedures put in place since then. It refers to the evidence it gave to the Intelligence and Security Committee’s (ISC) inquiry which led to its 2018 report,²⁷ and its statement in Parliament on 18 July 2019²⁸ in which it stressed that “the ISC found no evidence to support allegations that UK personnel directly carried out physical mistreatment of detainees” and that “lessons have been learned from these challenging events”. It further states that “the UK Government investigates allegations against UK personnel and bring complaints to the attention of detaining authorities in other countries, except where to do so might itself lead to unacceptable treatment.”
19. The al-Hawsawi/al-Nashiri allegations, currently being investigated by the IPT, and the allegations of collusion that have been made in the Jagtar Singh Johal case, would suggest that the UK response to the List of Issues is insufficient to ensure that the UK is abiding by its obligations under the ICCPR. Specifically, there are (a) additional past events which require investigation (such as the allegations made by al-Hawsawi and al-Nashiri), and (b) emerging new allegations which require investigation (such as those in the case of Jagtar Singh Johal).
20. The UK should ensure that there are prompt, effective and impartial investigations into allegations of collusion in torture/rendition, and cooperate fully with any investigations in relation to these matters, ensuring that there is accountability for any UK officials found to have been responsible.

3. NON-REFOULEMENT

Summary: In the light of recent legislative developments, the UK Government must be urged to adhere to its international legal obligations including the absolute prohibition on torture, and the ban on refoulement.

21. In relation to the treatment of aliens, including migrants, refugees and asylum seekers (ICCPR, arts. 2, 9, 10, 13, 14 and 26), we are gravely concerned that the UK’s new

²⁴ UN Human Rights Council, Working Group on Arbitrary Detention, *Opinion No. 80/2021 concerning Jagtar Singh Johal (India)*, A/HRC/WGAD/2021/80, 4 May 2022.

²⁵ Frank Gardner, *Jagtar Sing Johal case: UK spy agencies accused of tip-off that led to torture*, BBC News, 22 August 2022, <https://www.bbc.co.uk/news/uk-62639233/>; JAGTAR SINGH JOHAL: ARBITRARILY DETAINED BRITISH BLOGGER FACING DEATH PENALTY, *Briefing by Reprieve and REDRESS for Backbench Business Committee debate on 19 January 2023*, available at: [2023_01_18_PUB-JSjohal-MP-briefing-January-2023-Backbench-Business-Debate.pdf](https://www.redress.org/publications/2023-01-18-PUB-JSjohal-MP-briefing-January-2023-Backbench-Business-Debate.pdf) (redress.org).

²⁶ *Supra*, para. 13.

²⁷ ISC, *Detainee Mistreatment and Rendition: 2001–2010*, 28 June 2018, available at: [HC 1113 Detainee Mistreatment and Rendition \(independent.gov.uk\)](https://www.independent.gov.uk/news/foreign-affairs/isc-detainee-mistreatment-and-rendition-2001-2010/).

²⁸ <https://hansard.parliament.uk/Commons/2019-07-18/debates/86F17839-026E-4F7A-9E1C-06C7219621E5/Detainees>

legislation in this area, most notably the Illegal Migration Act 2023²⁹ and the proposed Safety of Rwanda (Asylum and Immigration) Bill³⁰ currently passing through Parliament, together present a grave risk that the UK will breach its ICCPR obligations.

22. The absolute prohibition of torture and ill-treatment is guaranteed by the United Kingdom by virtue of customary international law and the ratification of various international and regional human rights instruments, including, *inter alia*, the ICCPR.
23. The prohibition incorporates a ban on sending someone to a country where he or she is at risk of torture (refoulement), or where there is a possibility that they will be sent on to another third country where such a risk may exist.³¹ The absolute prohibition of refoulement to torture is even stronger under the ICCPR than in the Refugee Convention, as it means that individuals cannot be returned or expelled to torture even when they might not otherwise qualify for refugee status under the Refugee Convention.
24. However, the Bill which the UK Government is trying to pass seeks to transfer some asylum seekers to Rwanda rather than processing them in the UK, and relies on the following:
 - a. An assertion that international law (including the prohibition on torture) is irrelevant to decisions on these issues – the Bill states that “...the validity of an Act is unaffected by international law” (clause 1(4)(b)), and
 - b. An assertion that torture and ill-treatment does not exist in Rwanda, despite the existence of evidence to the contrary (see below) - “...every decision-maker must conclusively treat the Republic of Rwanda as a safe country” (clause 2(1)).
25. Recent reports confirm that torture persists in Rwanda, along with continued risks of refoulement to third countries. It is clear that Rwanda does not have in place safeguards against torture, or an effective process for responding to allegations of torture.³² The Bill seeks to assert that Rwanda is free of torture and ill-treatment when the evidence does not support this.
26. Non-refoulement requires a proper assessment of someone’s individual circumstances and the situation in their destination country. The combination of the impact of this Bill alongside the Illegal Immigration Act will mean that:
 - a. the UK is unlikely to be able to assess the risks of transferring someone to Rwanda, running the risk of refoulement on the part of the UK Government. The new UK-Rwanda Treaty does not require the UK to undertake such a comprehensive assessment before relocation to Rwanda. The Illegal Migration Act detains asylum-seekers, and requires them to challenge removal decisions within 8 days, during which time the vast majority will be unable to access a lawyer or obtain evidence about their own vulnerabilities or the likely impact on them of transfer to Rwanda); and

²⁹ Illegal Migration Act 2023 (UK), available at: [Illegal Migration Act 2023 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2023/11/section/1)

³⁰ Safety of Rwanda (Asylum and Immigration) Bill (UK), available at: [Safety of Rwanda \(Asylum and Immigration\) Bill - Parliamentary Bills - UK Parliament](https://www.parliament.uk/bills/2023/safety-of-rwanda-asylum-and-immigration)

³¹ Human Rights Committee, General Comment No. 31, para 12.

³² For details and examples, see: [REDRESS, TORTURE IN RWANDA: REDRESS Briefing on the Safety of Rwanda \(Asylum and Immigration\) Bill. December 2023.](#)

- b. refoulement from Rwanda to a third country is very likely if Rwanda’s asylum system is not working properly, since the system is unlikely to be able to undertake the required assessment or respect its outcome.
27. The recently signed bi-lateral treaty between the UK and Rwanda³³ expresses Rwanda’s intention to comply with international obligations, but effectively admits that there is no adequate system at present – for example:
 - a. Rwanda commits to future cooperation with the UK “to agree an effective system” to avoid refoulement (Article 10(3));
 - b. Rwanda commits to establishing an Appeal Body for rejected cases (Annex B, 4.2).
28. The Bill sends out a dangerous signal that the UK is willing to circumvent the rule of law, and so undermines the international rules-based order, including international treaties like the ICCPR.
29. Unfortunately, our concerns with regard to the UK’s obligations in this area now extend well beyond the issues highlighted in previous Concluding Observations, and the UK Government’s response.
30. The UK Government must be urged to adhere to its international legal obligations including the absolute prohibition on torture: the Bill (if enacted) will cause these obligations to be breached.

CONCLUSION

31. If accepted, the recommendations in this submission – to improve the framework for universal jurisdiction, to ensure impartial investigations into torture and rendition allegations, and to uphold the ban on refoulement – would significantly improve the UK’s compliance with the ICCPR. The lack of significant progress since the previous ICCPR review, as evident in the UK’s response to the List of Issues, necessitates robust scrutiny from the Human Rights Committee. The legislative changes, particularly the proposed Safety of Rwanda (Asylum and Immigration) Bill, raise alarming concerns about potential breaches of international obligations. The Committee is urged to include these pressing issues in its concluding observations.

³³ UK Home Office, UK-Rwanda treaty: provision of an asylum partnership, available at: [UK-Rwanda treaty: provision of an asylum partnership - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/uk-rwanda-treaty-provision-of-an-asylum-partnership).