

## A LEGAL RIGHT TO CONSULAR ASSISTANCE

### Briefing for Westminster Hall Debate: Consular services for cases involving human rights April 2024

*[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.*

#### SUMMARY

Consular assistance is a vital tool that enables the UK Government to offer protections to its nationals detained overseas. However, the discretionary nature of consular assistance stands at odds with the UK's international obligations and falls short of the protection its nationals deserve. Establishing a legal right to consular assistance for those suffering (or at risk of) human rights violations would provide benefits not only to British nationals facing dire circumstances abroad, but also to the British State, showing that British values do not stop at our borders. Transforming consular assistance from a mere discretion into a legal obligation would ensure more robust safeguards for British nationals at risk of human rights abuses abroad and solidify the State's responsibility to secure the rights and wellbeing of its most vulnerable citizens.

Consular assistance – founded on freedom of communication and access between consular officials and a detained person – enables the UK Government to provide three key protections to its nationals abroad: preventing human rights abuses in the first place; providing redress for human rights abuses when they do occur; and ensuring procedural safeguards to prevent further violations.

#### WHY A LEGAL RIGHT IS VITAL

A legal right to consular assistance in cases of human rights violations would have the following benefits for British nationals:

1. It would be an unequivocal commitment to the human rights of British nationals abroad, giving these rights primacy over other foreign policy and trade considerations.
2. It would recognise the crucial role of consular assistance in international law and its role in preventing human rights violations and solidify the UK's prevention obligations under human rights treaties (such as the UN Convention against Torture).
3. It would change the culture among Foreign, Commonwealth and Development Office (FCDO) and consular staff, as they would be responding to some consular assistance requests within a legal and not a discretionary framework.
4. It would enable British nationals and their families to understand the level of support that they and their families can expect, providing much-needed transparency, consistency and certainty (which could be enhanced by the full publication of any related policy matters).
5. It would provide British nationals with a much clearer route to accountability when things do go wrong, given that it is virtually impossible for challenges to UK Government practice in this area to be made in the UK courts.

## PREVENTION OF TORTURE

The UK Government's own figures show that around 100 British nationals are tortured or ill-treated abroad each year.

The Foreign Affairs Committee has highlighted that arbitrary detention is a growing phenomenon, increasing the likelihood that citizens become pawns in State-to-State relations.

**Jagtar Singh Johal** is a British human rights defender from Dumbarton, Scotland, who has been arbitrarily detained since 2017 in India. He faces a possible death sentence following charges in which the primary evidence against him is a confession extracted under torture. The FCDO was made aware of his detention immediately by his family members. Consular officials did not see Jagtar until 16 November, almost two weeks after his detention. The UN Working Group on Arbitrary Detention (UN WGAD) [found](#) in May 2022 that, under international law, Jagtar's detention is arbitrary

The provision of consular assistance by the UK Government can provide a crucial – and sometimes the only – link between a detained British national and the outside world, and it is a vital safeguard against human rights violations. Considering the rights inherent in citizenship, consular assistance is a logical extension of the government's responsibility to protect its citizens.

Under international law, consular assistance – founded on freedom of communication and access between consular officials and a detained person – enables the UK Government to provide three key protections to its nationals abroad:

- **Preventing human rights abuses**, by identifying and acting on warning signs of potential violations (including, for example, signs of torture) or an imminent risk of such violations.
- **Ensuring redress**, including reparation, for any human rights abuses that do occur.
- **Ensuring other procedural safeguards** are in place to mitigate the risk of further violations – for example, access to a lawyer.

Given the protections it provides, consular assistance is particularly important to prevent and respond to cases of serious human rights abuses, such as torture, arbitrary detention, or state hostage taking. Yet the government currently accepts no legal responsibility to support its nationals even when they face such extreme threats to their wellbeing. REDRESS's report [Beyond Discretion: The Protection of British National Abroad](#) outlines how a discretionary approach fails survivors of torture.

Given our increasingly globalised world, the evolving nature of travel worldwide, and the growing complexity of international relations which poses increased risks to travellers, a new approach is needed.

## DUAL NATIONALS

Dual nationality has become a particular issue in the provision of consular assistance. Dual nationals have UK nationality and should be treated as full citizens, entitled to the same legal rights and protections as any other British citizen. Predominant nationality (the nationality with stronger ties based on residence, time spent in country, employment, and finances etc) should not be a factor.

A legal right to consular assistance would ensure that dual nationals are aware of their rights and don't have to fear that their dual nationality puts them at a disadvantage. It is especially pertinent if the individual faces discrimination in the country where they are detained due to their other nationality.

**Nazanin Zaghari-Ratcliffe** is a British-Iranian charity worker who was arbitrarily detained in Iran from 3 April 2016 until 16 March 2022. It was not until almost eighteen months after her initial arrest that the UK Government began publicly stating that they consider her to be a British citizen, rather than defaulting to Iran's position on her dual nationality status.

For an outline of what a legal framework for a right to consular assistance should look like, please see REDRESS's briefing ['Protecting British nationals abroad from human rights violations: Principles for a legal right to consular assistance'](#).

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Ending torture, seeking justice for survivors