

Sir,

Detainees in Saudi Arabia

In *Jones v. Ministry of Interior of the Kingdom of Saudi Arabia and others*,* a case brought in the High Court of Justice in London, four British citizens who had been living and working in Riyadh, were arrested by the Saudi secret police in late 2000 and 2001. They were falsely accused of involvement in a bombing campaign in the country and were detained in Saudi jails for periods of up to nearly three years. They all allege that they were repeatedly tortured and there is compelling medical evidence to support their claims as pointed out in TORTURE 2007,¹ All continue to endure severe psychological and physical harm as a result of torture. They sought to bring a claim against Saudi Arabia and the officials who tortured them but were denied this opportunity by the House of Lords which found the State Immunity Act 1978 to be applicable. The Redress Trust (REDRESS) intervened, along with other organisations, on behalf of the survivors.

REDRESS is an international human rights organisation based in London with a mandate to assist torture survivors to obtain

justice and reparation. It was founded by Keith Carmichael, a UK national who was imprisoned and tortured in Saudi Arabia for two and a half years without any formal charge or court appearance. Since he was released in 1984 Keith has been trying to pursue a claim for compensation for his arbitrary detention and torture. He has petitioned King Fahd and sought espousal of his claim by the Foreign and Commonwealth Office. He has pursued a remedy in the courts of Saudi Arabia and in the United States. All his attempts at seeking a remedy have been unsuccessful. He founded REDRESS over fifteen years ago with the objective of helping torture survivors to gain access to justice.

REDRESS pursues its mission through a combination of casework, research, advocacy and capacity building. One of its advocacy projects is the promotion of the Torture (Damages) Bill through the British Parliamentary system. The Bill is a private member's bill which, if enacted, would enable victims of torture to access the courts of England and Wales to bring a civil claim for compensation against the state and the officials responsible for their torture. This route to justice would only be available when effective redress is not possible in the courts of the state where the torture took place. The Bill was introduced in the House of Lords

*) [2006] UKHL 26.

on 5th February 2008 by Lord Archer of Sandwell Q.C., the former Solicitor General, and has the support of many human rights, medical, psychosocial and refugee organisations both in UK and around the world. It received its Second Reading on 16 May 2008.*

Torture victims in the UK

There are many torture survivors who live in the UK and face enormous challenges as a result of having been tortured. They usually require extensive medical treatment for their physical injuries for the rest of their lives. For example, a British man tortured in Saudi Arabia with no previous heart conditions collapsed with a heart attack during interrogation, required heart surgery (throughout the hospital stay he was chained to the bed) and continues to suffer serious heart problems today.

Many torture survivors also require counselling and psychological treatment by trauma specialists for post traumatic stress disorder. They find it difficult to reintegrate into society and to be around groups of people.

As a result of their physical and psychological scars, a large proportion of individuals, who prior to their ordeal had successful professional careers, are now unable to work and are only able to survive on state benefits. A survivor tortured in Ecuador, and another tortured in Bahrain, became homeless on their return to the UK. This increases torture survivors' suffering and feeling of marginalisation.

*) A transcript of the debate can be obtained through the REDRESS website: www.redress.org/torture_bill.html.

Access to justice for torture survivors

For torture survivors, moving on with their lives is never easy, but obtaining justice is very often a crucial factor in their rehabilitation. Justice is as much about the process as it is about obtaining a successful result. For victims, having the opportunity to tell their story and for the truth to be recognised by an impartial court and wider society can help them reclaim their dignity and legitimise their suffering. The validation of their experience can help victims restore a sense of trust and re-establish relationships with others. It can provide victims with a sense of closure over past events and allow them to move on with their lives.

The financial elements of a civil award can help assist survivors with their day-to-day needs, and prevent torture survivors from living on the streets or on state benefits.

The problem of access to justice in the country where the torture occurred and at the international level

Under the present law, individuals who have suffered torture must first pursue a claim in the national court where the torture took place. In many cases this will be an appropriate forum for the complaint. However, REDRESS has found that it can be very difficult for torture survivors to obtain justice at the national level; for example, criminal investigations into alleged acts of torture may not be carried out effectively, if at all, sometimes because the very official or department responsible for the torture is asked to carry out the investigation. This makes it difficult for an individual to substantiate the evidence required to bring a successful civil claim. Claimants can face other hurdles such as the existence of relatively short limitation periods to lodge claims, together with domestic immunities and amnesties for the

prosecution of serious human rights violations.

Sometimes the local judiciary is not independent and follows a policy of not pursuing torturers through the criminal justice system. This creates a culture of impunity where torture is not investigated and so becomes more commonly practiced. This has been the case with individuals whom REDRESS has spoken to.*

The problem of access to justice in the UK

Where it is not possible to make a claim in the country where the torture was committed, victims living in the UK have sought to bring a claim in the English courts. However, they are also denied a route to justice in the UK: they are prevented from initiating proceedings in the English courts as a result of the provisions of the State Immunity Act 1978. This provides as a general rule that a foreign state is immune from the jurisdiction of the UK courts. In this context, the principle of state immunity acts as a procedural bar to access to justice in the UK. Historically, the principle is borne out of customary international law on the basis of sovereign equality, non-intervention in the internal affairs of another state and international relations.

States used to enjoy *absolute immunity* before the courts of another state, but states have long since moved away from this practice in order, for example, to allow commer-

cial enterprises to sue foreign governments in respect of commercial transactions. This is reflected in exceptions to the general principle of immunity in the UK State Immunity Act and similar legislation in other countries. There is also a “tort” exception where a state commits an act of personal injury in the UK. This exception is also found in the legislation of most common law countries.

Particularly upsetting for the four above-mentioned British citizens arrested in Saudi Arabia was the fact that the UK Government actually intervened in their case, arguing that the application of state immunity was not inconsistent with the prohibition of torture. They had thought that as British nationals, the Government would be supportive of their case but the intervention suggested that it was more concerned with preserving the principle of state immunity and its relationship with Saudi Arabia. The case is currently on appeal to the European Court of Human Rights. However, whatever the outcome at the European Court, the law in the UK needs to be changed if victims of torture are to gain effective access to justice and reparation for the harm they have suffered.**

The Torture (Damages) Bill

The Torture (Damages) Bill seeks to address the problems outlined above, by providing an exception to the State Immunity Act to the effect that states and officials who perpetrate torture will no longer be immune from

*) For example, Sulaiman Al-Adsani, who was tortured in Kuwait in 1991, was informed that if he returned to Kuwait he would be killed. A Compilation of Evidence on the Torture (Damages) Bill 2007-08, received following the Call for Evidence launched by Lord Archer of Sandwell QC is available at: www.redress.org/reports.html.

**) This would be consistent with the wishes of the UN General Assembly, see Basic Principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law. Available: www2.ohchr.org/english/law/remedy.htm.

the jurisdiction of the English courts in civil claims for compensation for torture. Providing an exception to the State Immunity Act for torture is not an extraordinary measure, given the restricted immunity afforded states today. The principle of state immunity should be updated in light of the absolute prohibition of torture.

If the Bill were enacted, immunity from jurisdiction would no longer be a barrier to claimants, however, there would still be other procedural conditions to satisfy, such as demonstrating that the UK is the most appropriate forum for the claim. In addition, in order to be successful, the survivors will still have to prove through the court process that they had been tortured. All they seek is this opportunity.*

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References

1. Amris K, Danneskiold-Samsøe S, Søren Torp-Pedersen S, Genefke I, Danneskiold-Samsøe B. Producing medico-legal evidence: documentation of torture versus the Saudi Arabian State of denial. *Torture* 2007;17:181-95.

*) For more information on the Bill and how you can support the Bill: www.redress.org/torture_bill.html. You can follow the progress of the Bill at: <http://services.parliament.uk/bills/2007-08/torture-damages.html> (June 25th, 2008).

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