



Parliamentary Briefing

Torture (Damages) Bill

Introduction

1. The Redress Trust (REDRESS) is an international human rights organisation based in London with a mandate to assist torture survivors to obtain justice and reparation. The organisation works worldwide in support of torture survivors; it brings claims to court to obtain justice for survivors and regularly intervenes in national and international courts on issues relating to torture and survivors' rights. It was founded by torture survivor 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. On his return to the UK Keith found that he was unable to seek a remedy for his ordeal. He founded REDRESS with the view to helping torture survivors gain access to justice. REDRESS was registered as a UK charity in December 1992.
2. Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research. Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. It also submits evidence to Select Committees, Inquiries and other policy fora, and undertakes independent funded research.
3. Fair Trials International (FTI) is a specialist UK-based human rights charity. It works for fair trials according to international standards of justice and defends the rights of those facing charges in a country other than their own. FTI pursues its mission by providing individual legal assistance through its expert casework practice. It also addresses the root causes of injustice through broader research and campaigning and builds local legal capacity in countries around the world through targeted training, mentoring and network activities.
4. The Torture (Damages) Bill is a private member's bill which was introduced in the House of Lords by Lord Archer of Sandwell Q.C. on 5th February 2008. If enacted, the Bill would enable torture survivors in the UK to bring a civil claim for compensation in the courts of England and Wales against the officials and States responsible for their torture.

The challenges facing survivors of torture

5. There are many torture survivors who live in the UK who face enormous challenges and significant hardship as a result of having been tortured. Many have a broad range of mental, physical and social problems.
6. Many survivors require counselling and psychological treatment by trauma specialists for a range of symptoms, including post-traumatic stress disorder, depression and anxiety. In addition, some continue to experience pain, which impacts on their day to day functioning and is a barrier to their overall rehabilitation. In a number of cases, they will require prolonged medical treatment for their physical and psychological injuries. Torture impairs the individual's ability to sustain existing relationships and to form new ones which can lead to social isolation, poverty, family and marital problems. In the case of non-UK nationals, this exacerbates the isolation and loneliness inherent for individuals who leave their country of origin to seek international protection.
7. As the result of their physical and psychological scars, many individuals have had periods where they have been unable to work, either due to the recovery process or by fleeing to safety. Others are now unable to work at all and survive on State benefits. This increases their suffering and feeling of marginalisation.
8. To compound all these problems, the regimes responsible for torture rarely apologise or even acknowledge that they have violated the individual in such a horrible way. Bringing the events into the open is important to restoring the individual's sense of identity and dignity. Further, redress, and the validation it engenders, has a positive therapeutic benefit on the recovery of torture survivors.

Victims' right to remedies and access to justice

9. The United Nations' Convention Against Torture, ratified by the UK, provides that each State Party must ensure in its legal system that the victim of torture "has an enforceable right to fair and adequate compensation."¹ In December 2005 the UN General Assembly adopted without a vote the Basic Principles on victims' right to a remedy² which provides that victims of gross violations of international human rights law, such as torture, are entitled to effective access to justice including adequate reparation for the harm suffered.

¹ Art 14 UN Convention Against Torture. Available at <http://www2.ohchr.org/english/law/cat.htm>

² 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 at <http://www2.ohchr.org/english/law/remedy.htm>

10. Under the present law, individuals who have suffered torture may only seek compensation by pursuing a claim in the court of the State where the torture took place. In many cases this will be an appropriate forum for an individual to seek justice from the responsible State. However, this may not always be the case. For example, the national legal system may be undermined by long delays, lack of affordable and trustworthy legal representation and it may be too closely related to the Government regime which was responsible for the torture to allow a fair trial to take place.

Reparation in the United Kingdom

11. Under these circumstances, a British national or resident is left without a remedy as they are prevented from initiating proceedings in the UK as a result of the provisions of the State Immunity Act 1978 (SIA).

12. The SIA provides as a general rule that a foreign State is immune from the jurisdiction of UK courts. It does however recognise several exceptions, designed, for instance, to allow commercial enterprises to sue foreign States for breaching business contracts. There is no exception for torture, even if the torture survivor has no other forum in which to bring a claim. The Torture (Damages) Bill addresses this denial of access to justice.

Les Walker – case study

13. Les Walker, from Liverpool, was imprisoned in Saudi Arabia in February 2001 for more than 900 days without recourse to any legal remedy. For four months he was kept in total isolation and he was systematically tortured over 10 weeks. He was sentenced to serve 18 years in prison after a secret trial.

14. Prior to his detention, Les worked as a project manager in Saudi Arabia, responsible for the running and maintenance of a large housing and hotel complex.

15. On returning to the UK Les found his life completely turned around. As the result of being tortured, his blood pressure became very unstable resulting in numerous periods of hospitalisation. He suffered broken teeth and serious problems with his feet as the result of beatings.

16. His experiences have left him unable to function as before – he says he tends to panic in situations where he is surrounded by people. He has flashbacks and nightmares of his ordeal. He spends a lot of time on his own and is unable to concentrate for more than short periods.

17. Les is unable to work and consequently is dependant on State benefits for his daily needs. He lives in a small 1 bedroom council flat and says he does not have the mental ability to learn new skills due to his lack of concentration.
18. Les has not received any apology or compensation for what happened to him³. If Les were to succeed in bringing a claim against his torturers, he says this would allow him a greater chance to live the life he hoped to have previously.

Questions and Answers

- Q. If individuals can initiate cases against officials and a State for torture, will this not threaten international relations?
- A. States tend to raise a threat to international relations to avoid legal proceedings against them. This applies to both criminal and civil cases⁴. However, for crimes such as torture which command a peremptory status under international law and the practice of which the majority of states have committed to combating, the threat to international relations reflects a risk that states must be prepared to take in cases where impunity would otherwise result.
- Q. Will the Bill not cause a flood of litigation before the Courts of England and Wales?
- A. The Bill is only intended to apply in the narrow circumstances where there is no adequate and effective remedy available in the country where the torture took place. In addition, and notwithstanding any alternative regimes in English law, there is a limitation period of six years from when it became reasonably practicable for a person to bring an action.

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³ The House of Lords found that the national court had no jurisdiction to hear his claim against Saudi Arabia as state immunity was applicable, *Jones et al v. Saudi Arabia* [2006 UKHL 26].

⁴ For example, in the Pinochet case, the then Chilean Foreign Minister, Jose Miguel Insulza, warned that relations between the UK Government and Chile would be threatened if the case proceeded, "Chile says Pinochet case could damage UK ties," *CBC News* (28 November 1998).

