



## **Freedom from Torture response to the Commission on a Bill of Rights consultation ‘Do we need a UK Bill of Rights?’**

Freedom from Torture (formerly the Medical Foundation for the Care of Victims of Torture) is a UK-based human rights organisation and one of the world's largest torture treatment centres. We are the only organisation in the UK dedicated solely to the care and treatment of survivors of torture and organised violence. Since our foundation 25 years ago, more than 50,000 people have been referred to us for rehabilitation and other forms of care and practical assistance. We have centres in London, Manchester, Newcastle, Birmingham and Glasgow.

### **Question 1: Do you think we need a UK Bill of Rights?**

Freedom from Torture considers that **the UK *already* has a Bill of Rights in the form of the Human Rights Act.**

The Human Rights Act must be considered a Bill of Rights because it satisfies the key features of a Bill of Rights: it is a legal instrument, binding on government, that enshrines a set of fundamental human rights and provides a right to redress for victims in the event of violations. In other words, the Human Rights Act is a Bill of Rights *in all but name*.<sup>1</sup>

Unfortunately, suggestions that the UK needs a *new* Bill of Rights appear to be driven by a political agenda within parts of government to curtail the protection of human rights in the UK. The Home Secretary made this clear during the autumn Conservative Party conference when – despite the fact that an independent Commission on a Bill of Rights has been created to examine these issues – she used her speech to argue that the Human Rights Act 'has to go' and announced changes to the Immigration Rules to ensure that the right to respect for private and family life (protected by Article 8 of the European Convention on Human Rights) 'no longer prevents the deportation of people who shouldn't be here'.<sup>2</sup>

The now notorious example she cited of the illegal immigrant who could not be deported because 'he had a pet cat' is illustrative of the problem that the agenda to scrap the Human Rights Act rests on an edifice of myths. As a spokesman for the Judicial Office at the Royal Courts of Justice publicly confirmed soon afterwards, the case was misrepresented because the judgment in question had *not* turned on the existence of a pet cat. In our response to Question 4 below we explain the negative impact this public furore has had on clients of the Freedom from Torture who

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1 This was recognised by the then Home Secretary, Jack Straw, when the Human Rights Act entered into force. See for example a speech he delivered to the Institute of Public Policy Research on 13 January 2000. It has also been recognised internationally. For example, on the first page of his leading textbook on Bills of Rights, Philip Alston identifies the UK's Human Rights Act as a Bill of Rights: *Promoting Human Rights Through Bills of Rights – Comparative Perspectives* (Clarendon Press, 2000), p. 1.

2 This announcement came as a surprise given that the UK Border Agency was at the time still running a consultation on the subject.

are survivors of torture living in exile in the UK.

This distortion by the Home Secretary is merely the latest in a long line of myths that dominate public discourse about the Human Rights Act – the problem is so serious that at one point the Ministry of Justice saw fit to create a rapid rebuttal strategy for combating false stories about the Act in the media.

Freedom from Torture believes that rather than going down the complicated road of creating new constitutional legislation, **what the UK needs at this stage is a programme of public education about the Human Rights Act** so that there is better understanding across the board of the rights it enshrines and the mechanisms it uses – including the crucial duty on public authorities to act compatibly with human rights – to ensure fundamental human rights and freedoms are observed in practice and a culture of respect for human rights can be further developed in the UK.

## **Question 2: What do you think a UK Bill of Rights should contain?**

Any UK Bill of Rights – whether the Human Rights Act or some other instrument - must as a *minimum* incorporate the rights contained in the European Convention on Human Rights, including Protocols to the Convention which the UK has ratified. This is a founding principle of the Commission on a Bill of Rights, as reflected in its terms of reference, and was also the conclusion of parliament's Joint Committee on Human Rights when it looked into these questions in 2008.<sup>3</sup>

In particular, **any UK Bill of Rights must not tamper in any way with the prohibition of torture set out in Article 3 of the European Convention on Human Rights** and made directly enforceable in the UK via the Human Rights Act. The prohibition of torture is a critical source of protection for torture survivors in the UK who do not satisfy the strict definition of a refugee in the 1951 Convention relating to the Status of Refugees (for example because they have been tortured for reasons other than those listed in the Convention) or who, for other reasons, fall beyond the scope of protection afforded by that Convention.

The prohibition of torture and inhuman or degrading treatment or punishment is absolute. It applies to all human beings within the UK's jurisdiction irrespective of their conduct. The implications of this in the immigration context – elaborated by the European Court of Human Rights in the landmark judgment *Chahal v UK* (1996) – have been a source of complaints by politicians frustrated with their inability to expel terror suspects and others to states where 'substantial grounds' are shown that they would face a 'real risk' of torture or other ill-treatment contrary to Article 3.

These complaints found expression in an ill-fated intervention by the UK in the case of *Saadi v Italy* (2008) in which the Grand Chamber of the European Court of Human Rights rejected the UK's arguments for a relaxing of the ban in expulsion cases and categorically affirmed that the torture prohibition is absolute.

European law on the matter is thus entirely clear and yet the political debate continues. Earlier this year, the Home Secretary Theresa May stated in Parliament that she found it 'incredible' that the UK is unable to deport people linked to al-Qaeda because of court rulings relating to their human rights.<sup>4</sup> At a fringe event entitled 'Is our security being compromised by the judges' at this year's Conservative Party autumn conference, various speakers including Baroness Neville-Jones, until

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<sup>3</sup> Joint Committee on Human Rights, *A Bill of Rights for the UK? Twenty-ninth Report of Session 2007-08* (HL Paper 165-1, HC Paper 150-1, 10 August 2008), p. 20.

<sup>4</sup> *Hansard*. HC, 16 February 2011, col 963.

recently Minister of State for Security and Counter-Terrorism in the Home Office, suggested that the jurisprudence of the European Court of Human Rights on these matters is absurd. Other members of the panel, including Dr Michael Pinto-Duschinsky who is a member of the Commission on a Bill of Rights, failed to properly acknowledge that the absolute prohibition on expulsions where there is a substantial risk of torture is not only a creature of European jurisprudence but is a well-established principle of international law. For example it is *expressly* set out in Article 3 of the UN Convention against Torture which provides that '*No state shall expel, return ('refouler') or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture*'. When challenged on this point by Freedom from Torture, Baroness Neville-Jones confirmed that there should be no question of the UK resiling from the UN Convention against Torture, which begs the question of what purpose is served by damaging attacks of this sort on the European Court of Human Rights.

The right to respect for private and family life protected by Article 8 of the European Convention on Human Rights has also been a focus of sharp political attacks in relation to immigration issues in recent years, as illustrated by the Home Secretary's criticisms of the Human Rights Act at this year's autumn Conservative Party conference (see our response to Question 1 above). Unlike the torture prohibition, this right is not absolute and instead encompasses a balancing exercise between the rights of the individual and the wider public interest, including the public interest in controlling immigration, though this is often misrepresented. For example, in its recent consultation on family migration, the UK Border Agency asked respondents how the UK should strike a balance between the individual's right to respect for private and family life and the wider public interest in protecting the public and controlling immigration, the implication being that no such balance is struck under Article 8.

Like the prohibition of torture, the right to respect for private and family life is an important source of protection for torture survivors in the UK, including as a basis for remaining in the UK where there are family or other strong personal ties here or because the survivor's right to psychological integrity as an aspect of 'private life' requires access to torture rehabilitation services that are not available in their country of origin. For those torture survivors granted protection in the UK, the right to respect for private and family life is also important as a means of reuniting with family members after separation following the survivor's flight to safety. In our extensive experience of working clinically with survivors of torture in the UK, the ability to reunite with family members can be a crucial step in the process of recovering from torture. Many of our clients are socially isolated owing to their complex and often chronic psychological health difficulties and the challenges of living in exile. In this context, the rehabilitative importance of reuniting with family members cannot be overstated.

Other rights protected by the Human Rights Act that are crucial for torture survivors' efforts to rebuild their lives in the UK include the right not to be arbitrarily detained (protected by Article 5 of the European Convention on Human Rights – note there are many problems with this in practice as torture survivors are often detained by the UK Border Agency contrary to its own policy), the right to marry (Article 12) and the right not to be discriminated against in the enjoyment of Convention rights (Article 14). It is imperative that none of these rights are diluted in any way.

We would also like to stress that **there should be no interference with the Human Rights Act mechanism** – including sections 3, 4, 6, 10 and 19 – **dividing up responsibility between Parliament, the executive and the courts for ensuring effective protection of human rights in the UK**. We consider that this mechanism strikes the right balance and that efforts in particular to minimise the role of the courts ought to be fiercely resisted.

Finally, in terms of *enhancing* protection for specific human rights in the UK, Freedom from Torture would welcome express constitutional protection for a variety of **socio-economic rights** – such as the right to health, the right to work and the right to housing – and for the rights protected by the **UN Convention on the Rights of the Child** to also be explicitly enshrined in domestic law.

### **Question 3: How do you think it should apply to the UK as a whole, including its four component countries of England, Northern Ireland, Scotland and Wales?**

Freedom from Torture welcomes the UK-wide application of the Human Rights Act and, subject to the caveat below in relation to Northern Ireland, considers that this ought to be the case for any other Bill of Rights. We are also mindful that any repeal or amendment to the Human Rights Act may require amendments to various devolution statutes.

Although Freedom from Torture does not work in Northern Ireland, we are aware of long-standing efforts to develop a Bill of Rights for Northern Ireland as part of the Belfast (Good Friday) Agreement 1988. We understand that this Bill of Rights would operate alongside the Human Rights Act which applies to England, Northern Ireland, Scotland and Wales. Given the rootedness of these efforts in the reconciliation process, we feel that they must not be derailed by discussions about a new UK Bill of Rights and, on account of the extensive community consultation that has taken place, must come to fruition as quickly as possible.

### **Question 4: Having regard to our terms of reference, are there any other views which you would like to put forward at this stage?**

Like most organisations working with very vulnerable groups, **Freedom from Torture has seen at close range the damaging impact of public attacks on the Human Rights Act**, including by Cabinet ministers and other senior politicians, **on the confidence and sense of safety of our clients**. Our clients are torture survivors who have fled to the UK in no small part because of this country's strong tradition of protecting human rights at home and defending them abroad. For example, one client recently commented to a clinician that she felt that the Home Secretary Theresa May's recent calls for the Human Rights Act to be scrapped and her false example involving the pet cat were 'mocking' of those who have relied on the Human Rights Act for protection. Another client with a pending claim based on the right to respect for private and family life was highly anxious that the Home Secretary's comments meant that he would be immediately expelled from the UK.

This is an important point on a more general level in light of the well-known culture of disbelief within the UK Border Agency which, combined with chronically poor decision-making, frequently leads to incorrect refusals of protection for torture survivors and other asylum seekers which must be corrected by the Tribunal and the higher courts. In other words, this failure of political leadership by the Home Secretary, who is in charge of the asylum process, and by other senior politicians, undermines efforts to counter institutional distrust of asylum seekers within the UK Border Agency and to ensure that those requiring protection are granted it quickly and treated with respect by officials.

We would like to end this submission by impressing that **repeal or weakening of the Human Rights Act would have negative consequences internationally** including because the Act continues to serve as an important model for other jurisdictions working to create new Bills of

Rights. It would also be highly damaging for the UK's credibility as a strong promoter of human rights in its foreign policy and would send a powerful signal to states with less positive human rights records that Bills of Rights are easily disposable in the event that they cause discomfort for the government.

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