



*Ending Torture. Seeking Justice for Survivors*

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## **Submission to the Attorney General of the United Kingdom on the Public Interest Requirement for the Prosecution of Torture allegedly committed in Nepal**

1. This submission is made by THE REDRESS TRUST ('REDRESS'), an international non-governmental organisation working globally to obtain justice and reparation for victims of torture.<sup>1</sup>
2. We are aware that on 3 January 2013, the Metropolitan Police arrested a suspect of Nepalese nationality in East Sussex on allegations of torture. We also understand that your consent, as Attorney General, is required for the prosecution of the suspect to proceed.
3. As confirmed by the former Attorney General, Sir Nicholas Lyell, the same criteria are applicable when it comes to deciding whether to prosecute a suspect of crimes under international law such as torture as would for any other criminal offence. Accordingly, "first, there must be sufficient admissible and reliable evidence to afford a realistic prospect of conviction; secondly, the circumstances must be such that it would be in the public interest for there to be a prosecution."<sup>2</sup> This is in line with the Code for Crown Prosecutors.<sup>3</sup>
4. We limit our submission to the second point and submit that a prosecution for torture, if warranted by the evidence presented, is in the public interest.
5. Torture is an international crime of *jus cogens* character under international treaty and customary law. There is international consensus that torture is absolutely prohibited and must be prosecuted in accordance with Article 7 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ('the UN Convention against Torture'). To date, 153 States have ratified the UN Convention against Torture.
6. The United Kingdom ratified the UN Convention against Torture on 18 December 1988 and implemented the crime of torture in the same year in section 134 of the Criminal Justice Act 1988. Following the first conviction for torture under section 134 Criminal Justice Act, for

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<sup>1</sup> Further information on REDRESS is available at [www.redress.org](http://www.redress.org).

<sup>2</sup> Written answer by the Attorney General to Mr Boateng, Parliamentary question 19/07/93 published in Hansard, at <http://www.publications.parliament.uk/pa/cm199293/cmhansrd/1993-07-19/Writtens-3.html>.

<sup>3</sup> The Code for Crown Prosecutors, pp.7-12-15 (The Full Code Test).

Afghan warlord Farayadi Sawar Zardad, the then DPP confirmed that ‘by securing this conviction the CPS has shown there is no hiding place here for torturers and hostage takers.’<sup>4</sup>

7. Prosecuting those responsible for torture is therefore a legal obligation, irrespective of where the torture was committed, and irrespective of the nationality of the perpetrator and the victim.<sup>5</sup> Prosecuting torturers is crucial to enforce the absolute prohibition of torture. It sends a signal that the crime of torture is never acceptable and that those who commit torture will be held to account. The prosecution in the United Kingdom for torture committed abroad is particularly important in instances where authorities in charge are not investigating and prosecuting torturers, as is the case in Nepal, where justice for torture victims remains elusive.<sup>6</sup>
8. A prosecution for torture is also required under the ‘Full Code Test’, which emphasises that “the more serious the offence..., the more likely it is that a prosecution will be required in the public interest.”<sup>7</sup> Torture is a particularly serious crime that leaves victims of torture physically and psychologically harmed for years, and often for life. Other factors listed in the Full Code Test as tending in favour of public interest and that warrant a prosecution of torture include that torture is motivated by a form “of discrimination”, including gender and political views,<sup>8</sup> that victims of torture are usually in a vulnerable situation and the suspect took advantage of this<sup>9</sup>, the suspect is in a position of authority or trust and he or she took advantage of this<sup>10</sup> and there are “significant grounds for believing that the offence is likely to be continued or repeated.”<sup>11</sup> Importantly, in deciding whether a prosecution is required in the public interest, the Code for Crown Prosecutors stipulates that prosecutors should take into account any views express by the victim regarding the impact that the offence has had.<sup>12</sup>
9. We submit that none of the factors listed in the Full Code Test as tending against prosecution are applicable as far as the crime of torture is concerned.
10. A decision not to prosecute a suspect against whom sufficient admissible and reliable evidence of torture has been presented could not be justified on the basis of public interest. It would be contrary to the UK’s obligations under international law and contrary to past practice in the UK.<sup>13</sup> Moreover, most members of the public would be repulsed by the idea

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<sup>4</sup>Crown Prosecution Service, ‘CPS secures Historic Torture Conviction’, 18 July 2005, at [http://www.cps.gov.uk/news/press\\_releases/135\\_05/](http://www.cps.gov.uk/news/press_releases/135_05/).

<sup>5</sup> See further Article 5 (2) of the UN Convention against Torture, and section 134 of the Criminal Justice Act.

<sup>6</sup> See Advocacy Forum and REDRESS, ‘Held to Account – Making the law work to fight impunity in Nepal’, December 2011, p.2. at <http://www.redress.org/downloads/publications/Nepal%20Impunity%20Report%20-%20English.pdf>.

<sup>7</sup> The Code for Crown Prosecutors, para.4.12.

<sup>8</sup> Ibid, 4.16 (h).

<sup>9</sup> Ibid, 4.16 (j).

<sup>10</sup> Ibid, 4.16 (n).

<sup>11</sup> Ibid, 4.16 (s).

<sup>12</sup> Ibid, 4.18.

<sup>13</sup> *R v. Zardad*, High Court judgment of 19 July 2005.

that they might be made complicit in the impunity of those responsible for torture by a Government which states that their hands are tied by 'the public interest'.

11. To conclude, we submit that the prosecution of the suspect, subject to the evidence already available, is in the public interest and we urge that no other considerations should be taken into consideration, in particular any policy and / or political considerations.

London, 4 January 2013,

Dadimos Haile,

Interim Director, REDRESS