Q-CAT **Quaker Concern for the Abolition of Torture**

Charity No 1093735 **Briefing No 52 February 2017**

Victims of torture – a matter of definition?

We have referred to matters relating to torture survivors and asylum before – see briefings 41 and 47, and newsletter 26. We share concerns on these issues with Quaker Asylum and Refugee Network (QARN) and are looking to develop cooperation with them.

The number of asylum seekers who have experienced torture, and/or have a well justified fear of being tortured if returned is difficult to ascertain, but it is certainly very high. The standard of proof required is described in official guidance as "relatively low", but in practice is almost unattainable. There is a long wait for medical examination in assessing such claims, and, in many cases, disbelief even when the evidence seems overwhelming; you will find material relevant to this on the QARN website.

A number of issues now coming to light regarding the treatment of asylum seekers whose situation has come about wholly or partly as a result of torture and/or the fear of torture if returned to their countries of origin, suggest that the Home Office has been rather too ready to base its policies on considerations which have more to do with manipulating the facts to suit itself than on the needs of the victims.

Home Office policy on torture survivors[1]

On 12 September 2016 the Home Office introduced a new policy on immigration detention of vulnerable people, including those claiming to be torture survivors, following increasing criticism that such detention was being used too often, for too long, and with inadequate safeguards.

However, in introducing the new policy, the Home Office also replaced the definition of torture it had previously used – an act inflicted by any individual or group – with the narrower United Nations Convention against Torture (UNCAT) definition, which requires the alleged torture to have been inflicted by a state actor, or with the specific acquiescence of the state. The new policy went further, not only requiring those claiming to be victims of torture to prove this, but also to show that they would suffer harm in detention.

High Court challenge

On 21 November 2016 Mr Justice Ouseley ruled in the High Court that the Home Office

should review its policy on the detention of alleged survivors of torture, andimmediately provide relief to detainees at an interim hearing, releasing them pending a full hearing in March 2017.[2] [3] [4]

Home Office revised guidance

Following this ruling, the Home Office published, on 6 December 2016, a revised Detention Services order (DSO) for the guidance of staff working in immigration removal centres, on the preparation and consideration of reports submitted in accordance with rule 35 of the Detention Centre Rules, 2001. [5]

The definition of torture used in the revised DSO reverted to that previously used, viz "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind". The words *when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity,* which form part of the definition in Article 1 of the UN Convention, were omitted, as they had been prior to September 2016.

The full title of the United Nations Convention is The United Nations Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment. Article 16 of the Convention refers to *other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1.* The United Nations Committee Against Torture regards acts defined in article 16 as equally prohibited to those defined in article 1, and the European Court of Human Rights has ruled that such treatment might in future be considered as torture. In view of this how sustainable is reliance on the distinction between "torture" and "other acts of cruel, inhuman or degrading treatment or punishment"?

If the continued detention of vulnerable people, including alleged torture victims is *in itself* a form of torture, as argued by the charity Medical Justice in their 2012 publication *The Second Torture*[6] and referred to by ourselves in a previous briefing[7], the distinction, if there is one, becomes irrelevant. The policies of requiring them to prove their claims against a culture of disbelief, and of further requiring them to prove that they would suffer further harm in detention, add to this "second torture".

Detained Fast Track

The Detained Fast Track (DFT) rules in force between 2005 and 2014 on asylum appeals meant that those appealing against return to the places whence they had fled had to prepare their cases in difficult circumstances, and with inadequate time. According to a High Court judgement issued on 20 January 2017, also by Mr Justice Ouseley, in response to an action brought by Duncan Lewis Solicitors, these rules were unlawful and *ultra vires* – beyond the legal power of the Home Office. This means that more than 10,000 asylum seekers may now ask to have their cases heard again.[8]

This is too late for many who have already been forcibly removed from the UK to conflict zones, and may never hear about this decision. These include torture victims, many of whom were returned to further persecution and serious harm. One former immigration detainee under DFT said of others sent back to the places from whence they had escaped, "Some of them I still speak to, and some I cannot. They are gone."

So far, the government response to the judgement has been, "We… are considering it. It would be inappropriate to comment further at this stage."

Eritrea

In late 2014, British officials visited Eritrea, and in discussions with Eritrean government officials, agreed to consider aid to Eritrea in return for a promise to reduce forced military

conscription. It now appears that this promise was not kept, and that this and other abuses continue unabated.[9] [10]

The real priority for the UK was to justify reducing the number of Eritrean asylum seekers coming to the UK. Eritrea is one of the most repressive regimes in the world, and routinely carries out torture and extrajudicial executions.

A parliamentary answer given in the House of Lords in January 2015 confirmed that the visit had taken place, and that topics discussed included "the current drivers of irregular migration, ways to mitigate it, and voluntary and enforced returns."

Revised guidance from the Home Office (March 2015) led to a sharp drop in the number of Eritreans granted asylum in the UK, impacting with particular severity on 13-15 year old children stranded in Calais, most of whom were denied entry into the UK, despite the Dubs amendment. The UK government have subsequently admitted that the revised guidance issued in 2015 was flawed, and withdrawn it. Again, this is too late for many.

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[1] There is a useful paper issued by Right to Remain in January 2017 on *Defining Torture, and detaining survivors* which summarises developments and their implications from pre-September 2016 to the present day. Go to http://www.righttoremain.org.uk/legal/ to find it.

[2] see report in *The Guardian* 21 November 2016

[3] Briefing by Medical Justice

[4] www.politics.co.uk *Rule 35: How Britain knowingly detains victims of torture*

[5] all versions of Detention Services orders can be viewed by visiting https://www.gov.uk/government/collections/detention-service-orders

[6] *Second Torture*, published by Medical Justice in 2012, quotes an asylum seeker as saying *The detention centre was the second torture that I had...the first was in DRC and was physical, the second one was psychological".* See http://www.medicaljustice.org.uk/wp-content/uploads/2016/03/the-second-torture-full-version.pdf

[7] see *Q-CAT Briefing 47*, about article 35

[8] see report in *The Guardian* 20 January 2017

[9] see Aljazeera report 31 March 2016

[10] www.publiclawproject.org.uk

What can we do?

To its credit, the government did revise the DSO guidance on detention of victims of torture following the case heard in the High Court in November 2016. A full hearing has been promised for March 2017. Watch for this, and contact your local MP, and Home Secretary Amber Rudd, *when the outcome is known* – **do not do this before then** (the matter is now *sub judice*), but in the meantime study the reports on the issue, and try to ascertain how far the judge's stipulation that that Home Office should "immediately" release survivors of torture pending the full hearing has been carried out.

Contd over

The response so far on Detained Fast Track has been more muted – write to your MP about this also. You can do this now – it might be a good idea if only to ensure that the matter is not forgotten because of the attention given to immigration detention. If you follow the report of 20 January mentioned above, it will guide you to the responses of the solicitors who brought the action, and the comments of *Detention Action* and *Medical Justice.*

The revised guidance on Eritrea has been withdrawn, too late, but Eritrea is only one country with a poor human rights record. Country guidance from the Home Office influences ministry officials and judges in making decisions on asylum claims, so it is a matter of major concern if it is skewed to serve drive down the numbers of successful claimants, rather than protect victims of torture. Investigate the current country guidance of any countries of which you have knowledge, and if you have questions about it, raise them with the Home Office, and let your MP know you have done so. Again, there is no need to wait before taking these actions.

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The next Newsletter is planned for early March.
The next Briefing is planned for mid-April.

Feeding the Darkness – shining a light on state sanctioned torture through story, poem and song

Do you live in the London area? There will be a performance of this important production at Friends House on Monday 27th March at 6.30p.m. (hot drinks available from 6 p.m.), followed by a short discussion and finishing at 8 p.m. Free but donations welcome.

This 65 minute performance is a result of extensive research into the dark world of state-sanctioned torture and its stark impact on victims, perpetrators, families and those who collude in the 'process'.

Immersive in style, Feeding the Darkness frames verbatim and 'faction' monologues, duologues and poetry as a series of 'ministries' which challenge our ignorance and avoidance of this sensitive and disturbing subject.

It features such wide-ranging material as the experiences of the mother of Private Lynddie England (court-marshalled for her role in the abuse of Abu Ghraib detainees), that of a Kurdish asylum seeker at an appeal tribunal, and the role of trained medical professionals in state-sanctioned torture, amongst many others.

Feeding the Darkness encourages us to examine how the UN Convention Against Torture (1965) Article 1 is clearly being abused by UK and world-wide governments.