



**Information provided to the  
United Nations Committee Against Torture  
in support of the List of Issues for the  
United Kingdom's 5th Periodic Report to the Committee  
May 2013**

**Introduction**

Reprieve, a legal charity based in London, UK, works to enforce the human rights of prisoners on death row and Guantanamo Bay. The information provided in support of the List of Issues concerns the following: allegations against the UK Government in the case of Shaker Aamer; assertions that the UK Government policy towards assisting British nationals abroad falls short of its obligations under the Convention Against Torture; and claims that a proposed new law, the "Justice and Security Bill," that will make it easier for the Government to hide its complicity in torture.

**Shaker Aamer**

One of Reprieve's clients is Shaker Aamer, who has been detained in Guantanamo Bay for 11 years. Mr. Aamer is a legal permanent resident of the United Kingdom, and is married to a British national who lives with their four British children in London. Prior to his capture and detention in Guantanamo, Mr. Aamer had lived in the United Kingdom for many years. The United Kingdom was aware of his capture, and of his subsequent torture and inhumane treatment by the United States in secret prisons including Bagram Airbase and Guantanamo Bay. To date, Her Majesty's Government has not used all the legal and diplomatic means at their disposal to press for Mr. Aamer's release from Guantanamo and return to the United Kingdom. Mr. Aamer has been "cleared for release" from Guantanamo since 2007 (this information is publicly available).

**UK nationals facing the death penalty**

Reprieve also assists UK nationals facing the death penalty all over the world. Through this work, we have been involved in numerous cases of British nationals facing torture. In 2004, Naheem Hussain and Rehan Zaman were arrested on murder charges in Pakistan and were subjected to two weeks of torture. Similarly, Sajid Hussain was arrested on murder charges in Pakistan June 2010 and was also tortured for a period of two weeks. In July last year, three British nationals were arrested on drugs charges in the United Arab Emirates and were tortured. In each of these cases above, the men were forced to sign confessions in languages that they could not understand, and this evidence has not only formed the basis of criminal charges, but also prevented them from being granted bail. They all continue to face the death penalty.

**Justice and Security Bill**

The Government of the United Kingdom is currently debating a law which—if passed—contains a number of measures which would make it extremely difficult to hold the Government or its intelligence agencies to account over complicity in acts such as rendition and torture.

**Information Provided in Support of the List of Issues:**

The information provided in support of the list of issues relates to questions arising from Mr Aamer's case (in particular, Reprieve requests that the United Kingdom provide information about Mr. Aamer's torture and inhumane treatment at Bagram Airbase in 2001, prior to his transfer to Guantanamo Bay), general questions relating to the UK policy regarding its consular assistance to UK nationals being tortured abroad, and the Justice and Security Bill.

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Reprieve, PO Box 52742      T +44 (0)20 7353 4640      info@reprieve.org.uk  
London UK, EC4P 4WS      F +44 (0)20 7353 4641      www.reprieve.org.uk

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**Chair: Ken Macdonald QC**  
**Patrons: Alan Bennett, Julie Christie, Martha Lane Fox, Gordon Roddick,**  
**Richard Rogers, Ruth Rogers, Jon Snow and Marina Warner**

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## Jurisdiction

### Shaker Aamer

In its 2004 Concluding Observations to the UK's 4<sup>th</sup> Periodic Report, the Committee observed that "the Convention's protections extend to all territories under the jurisdiction of a State party and considers that this principle includes all areas under the *de facto* effective control of the State party's authorities."<sup>1</sup> Moreover, in its 2008 General Comment, the Committee expressed its interpretation of the "absolute prohibition" on torture to extend to " 'any territory under its jurisdiction,' linked as it is with the principle of non-derogability, includes **any territory or facilities** and must be applied to **protect any person, citizen or non-citizen** without discrimination **subject to the de jure or de facto control of a State party**. The Committee emphasizes that the State's obligation to prevent torture also applies to all persons who act, de jure or de facto, in the name of, in conjunction with, or at the behest of the State party. **It is a matter of urgency that each State party should closely monitor its officials and those acting on its behalf and should identify and report to the Committee any incidents of torture or ill-treatment as a consequence of anti-terrorism measures**, among others, and the measures taken to investigate, punish, and prevent further torture or ill-treatment in the future, **with particular attention to the legal responsibility of both the direct perpetrators and officials in the chain of command, whether by acts of instigation, consent or acquiescence**. (emphasis added)."<sup>2</sup>

In its 5<sup>th</sup> Periodic Report, the United Kingdom states that "the United Kingdom's policy on torture and cruel and inhuman or degrading treatment or punishment is clear. The United Kingdom Government does not engage in torture, or solicit, encourage or condone its use. It works closely with its international partners to prevent torture occurring anywhere in the world... In the period since the Committee's examination of the UK's fourth periodic report in November 2004, the reputation of the UK security services has been clouded by serious allegations about the role the UK has played in the treatment of detainees held by other countries. These allegations are not proven. However their seriousness has resulted in an erosion of public confidence in the UK's intelligence services and a tarnishing of the UK's reputation as a country that upholds human rights, justice, fairness and the rule of law. The Government is committed to clearing the stain on the UK's reputation and getting to the bottom of what happened, so that the UK intelligence services are able to get on with their important work with their reputation restored."<sup>3</sup> (**Please note:** this quote from the 5<sup>th</sup> Periodic Report can equally apply to questions surrounding the Government's position regarding the *Justice and Security Bill*.)

The information provided in support of the List of Issues stem from the period in which Shaker Aamer was questioned by British agents while being detained by the United States at Bagram Airbase in Afghanistan. During the periods in which they were questioning him, Mr. Aamer was under the *de facto* control of the United Kingdom; moreover, as a long-term British resident who is married to a British citizen and father to British citizens, the United Kingdom conceivably could, at any time, claimed *de jure* control of Mr. Aamer, thus preventing his torture and other cruel, inhuman and degrading treatment.

### UK nationals facing the death penalty

The information provided in support of this List of Issues relate to UK government policy in regards to the assistance that they provide British nationals tortured as part of criminal proceedings abroad. In its 5<sup>th</sup> Periodic Report, when discussing the deportation of non-citizen terrorism suspects from the United Kingdom, the Government notes that it "will not deport a person where there are substantial grounds for believing there is a real risk of torture or other cruel, inhuman or degrading treatment or

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<sup>1</sup> CAT/C/CR/33/3, paragraph 4(b)

<sup>2</sup> CAT/C/GC/2, paragraph 7

<sup>3</sup> CAT/C/GRB/5, paras 14, 16

punishment, or that the death penalty will apply. The UK is deeply conscious of its human rights obligations and intends at all times to fulfil them.”<sup>4</sup> The UK Government cannot intend to extend less rights to its own citizens than it does to non-citizen, but its current policy regarding consular access may do exactly that. This is illustrated through the cases below, where the failures of the British government have caused the individuals to face further torture, prolonged detention and drawn out trials with the spectre of the death penalty remaining over them.

## **Background**

### **Shaker Aamer**

Shaker Aamer, a legal permanent resident of the United Kingdom, has been imprisoned in Guantánamo Bay since 2002. He is married to a British national who lives with their four British children in London. In June 2001 he went to Kabul to work volunteer for an Islamic charity. During the bombing of Kabul in the aftermath of September 11 he was captured by soldiers and subsequently sold for bounty to U.S.-allied forces. All mistreated him. He was subsequently handed over to Americans and was transferred to Bagram Air Force Base in December 2001. At Bagram, he suffered terrible abuse, including being forced to stay awake and stand upright for nine days straight, being denied food, having freezing water dumped on him, being kept in cages surrounded by barbed wire, being chained or “hog-tied” for hours in positions that made movement unbearable, being walled<sup>5</sup> and having his severely frostbitten feet beaten. He was forced to strip naked in front of both male and female interrogators, and urinate and defecate in front of them, causing him paralyzing shame. He was tied by his wrists to the ceiling with his feet barely hanging off the ground, causing his shoulders to gradually dislocate. He dropped 60 pounds in weight. Throughout this period, Shaker was visited by British agents who continuously questioned him, and made passing comments on his deteriorating condition.<sup>6</sup> Shaker states that the British office made no attempts to stop the torture or enquire into his well-being. On a different occasion British apologised to Shaker for his condition, clearly referencing his torture. Another British agent said he looked like a ‘ghost’ due to his maltreatment.

### **UK nationals facing the death penalty**

Naheem Hussain and Rehan Zaman: Naheem Hussain and Rehan Zaman are both young men born and raised in the UK to Pakistani parents. Their families were from the same village in Pakistan and so the two men knew each other well. They were on holiday in Paksitan in June 2004 when two members of naheem’s extended family were murdered. Naheem and Rehan were identified as suspects and were taken to Dadyal Police Station for questioning. It was there that they were subjected to two weeks of brutal torture. Techniques used included falaka (whipping the foot with a rod or cane rendering them unable to walk), ‘inverse strappado’ (being hung from a hook and kicked and punched repeatedly, causing shoulders to dislocate), cigarettes extinguished on their skin and fingernails pulled out. Others involved ropes used to pull their legs apart and wood turned like a garrotte to effectively paralyze the legs. The men frequently passed out and water was thrown on them until they revived. After two weeks, Naheem and Rehan were taken to a graveyard and told to confess; they were told that Naheem’s wife and mother - and Rehan’s 80-year-old grandmother - would be arrested and tortured. Two guns had been planted in the graveyard, which the men were forced to identify as the murder weapons; later ballistics testing proved that these guns could not have been used in the crimes. In November 2011, following a change in the bail laws, Naheem and Rehan were granted bail, and were released from prison. After more than 7½ years in prison, they were able to see their family. However, although Naheem and Rehan have been released on bail, the case against them continues and they still leave in fear of having to return to Mirpur prison under a sentence of death.

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<sup>4</sup> CAT/C/GRB/5m paras 49-50

<sup>5</sup> Beating a person’s head so hard against a wall that it bounces

<sup>6</sup> Information taken from Mr. Aamer’s declaration to his attorney dated 23 April 2012 that the U.S. military has reviewed and deemed “Unclassified/For Public Release.”

Despite the family informing the British High Commission in Islamabad within a few days, no action was taken and no UK government officials visited the men until several weeks later. In the end, the UK Government took no diplomatic action on the issue, with internal discussions taking three months to reach this conclusion. Since then, the UK government has requested an independent investigation, but no adequate response has been received.

Sajid Hussain: Sajid Hussain is another British national born of Pakistani parents. He grew up in Birmingham, and was visiting Pakistan with his wife in June 2010 when he was arrested on suspicion of murder. He was taken to Dadyal Police Station (the same police station as Naheem and Rehan) and was subjected to a similar torture. He was regularly punched and beaten with sticks. At times he was flogged on the buttocks with a leather whip. Much of the torture was humiliating. Sajid recalls how he was stripped and forced to crawl on the floor with a dirty slipper in his mouth while the guards told him he was an animal. The police officers then started to threaten his wife. They told Sajid that they would sexually abuse her and post the photographs if he did not confess to the murders. Sajid became so depressed he tried to kill himself.

The UK government was notified of Sajid's torture the day it started. Despite this, they did not even visit Sajid for 11 days. When they did visit him, they took no action to prevent his torture. As a result, Sajid was not only tortured up until half an hour before the Embassy visit, but was tortured again as soon as the Embassy staff left. He felt betrayed by the lack of support he received. Now, over two and a half years later, Sajid remains in prison. His case is not progressing. The UK government's requests for an independent investigation have again received no adequate response.

Grant Cameron, Karl Williams and Suneet Jeerh: these three young men were on holiday in Dubai last July when they were arrested after someone tipped off the police that there was quantity of a drug called Spice (a synthetic cannabis) in their rental car. The police arrested the men and immediately started torturing all three of them. Over the next few hours they were punched, kicked, subjected to mock executions and electrocuted with tasers. Karl endured the worst treatment, having his hand broken and being tasered in the testicles. They were also forced to sign documents in Arabic, a language that they do not understand.

Perhaps the most distressing thing for the men and their families is that they too have found the UK Government to be extremely unhelpful. When they were first visited, the men asked the consular staff to photograph their injuries so as to preserve the evidence of torture. This request was refused. A similar request from Reprieve was also refused. The Embassy staff were the only people with access to the men at this time, and were the only people that could possibly have preserved this evidence. They, however, refused to do so. Now any torture claim the men look to present to the court as part of their trial is severely weakened because of this refusal.

#### *The Justice and Security Bill*

Problematic provisions of the Justice & Security Bill include expanding 'Closed Material Procedures' across civil courts – this risks creating a parallel system of secret justice, operating in the shadows and undermining Britain's centuries-old tradition of open justice. It will replace the current system, under which the Government's national security concerns are balanced against the rights and liberties of the individual, with one in which proceedings are strongly skewed in favour of the state. Those who have been victims of wrongdoing by the Government will be denied access to closed proceedings, and represented only by a security-cleared lawyer, with whom they will be allowed little or no contact. In this sense, it flies in the face of the central principle in British law: that you should be able to know what the accusations are which are being made against you, and to challenge the evidence produced to support them. Another problematic provision permits the limiting of 'Norwich Pharmacal' applications – this obscure legal term refers to the mechanism by which we first found out about the torture of British resident Binyam Mohamed. The Bill basically aims to get rid of it. Had this been in place at the time, we would never have known about UK involvement in torture. This move will do nothing to stop our country becoming involved in human rights abuses again – but it will do a lot to stop them ever coming to light.

## References to specific articles

Shaker Aamer:

### **Article 2**

The Convention requires that each State party shall take effective measures to prevent acts of torture not only in its sovereign territory but also “in any territory under its jurisdiction”. This refers to prohibited acts during military occupation or peacekeeping operations and in such places as embassies, military bases, detention facilities, or other areas over which a State exercises factual or effective control<sup>7</sup>. We have already established that Shaker Aamer was periodically under the *de facto* control of the United Kingdom during the he was held at Bagram Airbase.

**Relieve recommends the Committee ask:** Why did British agents fail to live up to the UK’s obligations under Article 2 of the Convention and prevent the torture and mistreatment of Shaker Aamer at Bagram Airbase when they had direct knowledge of this torture and mistreatment?

Pursuant to article 2.1, if a person is to be transferred or sent to the custody or control of an individual or institution know to have engaged in torture or ill-treatment, or has not implemented adequate safeguards, the State is responsible, and its official subject to punishment, for ordering, permitting or participating in this transfer contrary to the State’s obligation to take effective measures to prevent torture<sup>8</sup>.

**Relieve recommends the Committee ask:** In light of well-documented reports of torture in Guantanamo Bay, and evidence of torture at Bagram Airbase, why did the UK allow Shaker Aamer to be transferred to Guantanamo Bay? What monitoring has been carried out to ensure that the Shaker Aamer has not been subject to torture or CIDT since his arrival at Guantanamo? Why hasn’t the UK ensured that Shaker Aamer is repatriated to join his family in the United Kingdom so that he does not suffer future abuse at the hands of the United States?

### **Article 4**

Under Article 4 of the Convention, the UK has an obligation to ensure that acts of torture are criminalized, both on a governmental and individual basis.

**Relieve recommends the Committee ask:** Please describe how the British agents Shaker has described in his declarations have been held criminally liable for their complicity in, and knowledge of, his torture at Bagram Airbase in December, 2001<sup>9</sup>.

### **Article 10**

Under Article 10 of the Convention, the UK has the obligation to ensure that its law enforcement personnel (civil or military), and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment, are educated as to the prohibition against torture.

**Relieve recommends the Committee ask:** Are British intelligence agents aware of the absolute prohibition against torture? Can the UK explain why these agents did not demonstrate knowledge of this prohibition in their interrogation of Shaker Aamer at Bagram Airbase in 2001? What will the UK do in the future to ensure its agents do not flout the prohibition against torture?

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<sup>7</sup> CAT/C/GC/2, paragraph 16

<sup>8</sup> CAT/C/GC/2, paragraph 19

<sup>9</sup> See Shaker Aamer’s ‘Declarations’, *supra* note 6

### **Article 11**

Under Article 11 of the Convention, the United Kingdom is obligation to undertake a systematic review of its interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

**Relieve recommends the Committee ask:** Given that torture was not prevented in the case of Shaker Aamer, has there been a review of the UK's interrogation rules, instructions, methods and practices to ensure that all cases of torture are prevented in the future? If so, Relieve recommends that these policies are made public and widely disseminated.

### **Article 12**

Under Article 12 of the Convention, the UK must undertake a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

**Relieve recommends the Committee ask:** Given that there is strong evidence of Shaker Aamer's torture at Bagram Airbase, and the UK's knowledge of it while it was ongoing, has the UK undertaken an investigation into Mr. Aamer's mistreatment? If so, Relieve recommends that the conclusions of this investigation are made public and widely disseminated.

### **Article 13**

Under Article 13 of the Convention, the UK must ensure that Shaker Aamer—who alleges he was tortured at Bagram Airbase with the knowledge and complicity of the United Kingdom—has the right to complain to, and to have his case promptly and impartially examined by, competent authorities.

**Relieve recommends the Committee ask:** What steps has the UK government taken to ensure that Shaker Aamer has the ability to have his torture allegation promptly and impartially examined by the competent authorities?

### *UK Nationals facing the death penalty:*

#### **Article 5:**

Article 5(1)(c) of the Convention allows states to assert jurisdiction over a case when it is a national of that state that is the victim of torture. However, the UK does not appear to have ever asserted this jurisdiction, considering only jurisdiction under Articles 5(1)(a) and (b).

**Relieve recommends the Committee ask:** Under what circumstances would the UK Government consider asserting its jurisdiction under article 5(1)(c)? Why has it not considered asserting this jurisdiction in the past (as in the cases above), where British nationals have been tortured in another state that is failing to fulfil its obligations under the Convention? Would the UK Government consider undertaking other Convention obligations,(e.g. Article 12 – undertaking a prompt and impartial investigation) in circumstances where it asserted its rights under Article 5(1)(c)?

#### **Article 14**

Under Article 14 of the Convention, the UK must ensure that each victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation

**Relieve recommends the Committee ask:** At paragraph 209 of the 5th Periodic Report, the UK Government states that its position is that the Convention “has no bearing on the issue of civil jurisdiction in relation to acts committed abroad but only relates to criminal jurisdiction.” – how does the UK justify this jurisdiction? Is the UK Government proposing to put forward legislation allowing torture victims to gain compensation for torture suffered abroad? Given that British torture victims often are unable to bring litigation for damages in the state where they were tortured (due to corruption, inadequate representation, etc), why doesn't the UK government feel that the obligation to provide an

avenue for fair and adequate compensation falls upon them? What actions has the UK Government taken against governments that have not provided appropriate compensation?

#### **Article 15**

Under Article 15, states must ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

**Relieve recommends the Committee ask:** What representations has the UK Government made to ensure that evidence extracted under torture has not been used in the cases of any British nationals – particularly those named above? What responses has it received from states? If those responses are not adequate what action has it taken, or does it propose to take to ensure that its nationals' rights under the Convention are protected?

#### Justice and Security Bill:

#### **Article 13**

Under Article 13 of the convention, the UK has the obligation to ensure that any individual who alleges he has been subjected to torture has the right to have his/her case promptly and impartially examined by, its competent authorities.

**Relieve recommends the Committee ask:** How does the UK believe that its proposals for the expansion of secret courts known as 'Closed Material Procedures' across the civil justice system fit with the convention's requirement for impartial examination of the cases of individuals subjected to torture; given that (1) such procedures would apply to cases brought by those in whose mistreatment UK authorities have been complicit and (2) such procedures would see one side excluded from the court altogether, leaving the state to put its case to the judge free from challenge by the torture victim - a process which has been described as "fundamentally unfair" by expert lawyers in this field known as the Special Advocates?