

Statement and resolutions on the need to preserve the absolute prohibition on the use of torture.

Submitted by the Bar Human Rights Committee of England and Wales (“BHRC”)¹

1. In light of the central role that the OSCE plays in promoting and protecting human rights and the rule of law, BHRC is concerned at recent developments in the UK and elsewhere that seek to weaken the clear obligations that OSCE members have under UNCAT.

Article 3 UNCAT

2. This provides:

“No State Party 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”.

3. On 20 July 2005, the British Home Secretary Charles Clarke announced the government's plans to rely on diplomatic assurances to return foreign nationals to countries in North Africa and Middle East, notwithstanding previous court rulings that showed a real risk of such persons being subject to torture, inhuman or degrading treatment in those countries.
4. BHRC is concerned about torture, cruel and inhuman treatment of people throughout the world, not confined to European citizens, who are caught up in a war against terrorism of international dimensions. The prohibition of torture is

¹ The Bar Human Rights Committee of England and Wales (BHRC) is an independent group of specialist advocates and experts who work on a voluntary basis to develop law and human rights protection throughout the world. BHRC stands to support and protect practising lawyers, judges and human rights defenders who are threatened or oppressed in their work; uphold the rule of law and internationally recognised human rights standards; furthering interest in and knowledge of human rights and the laws relating to human rights; and advising, supporting and cooperating with other organisations and individuals working for the protection and promotion of human rights. Our remit is international law and we do not involve ourselves in domestic issues except to the extent that our government violates its obligations under international humanitarian and human rights law.

absolute in international law. The use of diplomatic assurances in the face of risk of torture and other ill-treatment violates international human rights law as well as customary international law.

5. Accordingly, we adopt the Joint Statement by Amnesty International, Association for the Prevention of Torture, Human Rights Watch, International Commission of Jurists, International Federation of Action by Christians for the Abolition of Torture, International Federation for Human Rights, International Helsinki Federation for Human Rights and World Organisation Against Torture.

Article 15

6. This provides:

“Each State Party shall 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.”

7. In *A and others v Secretary of State for the Home Department* ([2004] EWCA 1123, 11 August 2004) the English Court of Appeal held that the Secretary of State could rely upon “intelligence” obtained under torture by non-UK officials in a third country in order to justify the detention of persons within the jurisdiction of the UK courts. The House of Lords will hear an appeal from this decision in October 2005.
8. Such “evidence” is inadmissible by reason of the common law, alternatively by reason of Article 6 ECHR, interpreted in light of Article 15 UNCAT.
9. The argument for inadmissibility is also supported by:
 - 1) Comparative law sources, which indicate that the rationale behind the general prohibition on the admission of evidence of involuntary confessions obtained by torture includes (i) the inherent unreliability of

evidence obtained as a result of torture (ii) the outrage to civilised values caused and represented by torture (iii) the public policy objective of removing any incentive to anybody to undertake torture anywhere (iv) the need to ensure protection of the fundamental rights of the party against whose interest the evidence is tendered (and in particular those rights relating to due process and fairness) and (v) the need to preserve the integrity of the judicial process.

2) Customary international law.

Resolutions:

- The proposal to deport people suspected of involvement in terrorism to states which are known by the governments to use torture is unacceptable. Diplomatic assurances in relation to persons removed on national security grounds will not be subjected to torture are contrary to the international prohibition against torture because they are ineffective protection for the right not to be tortured.
- There are no circumstances in which torture can be justified or condoned.
- The use in court or other proceedings of information extracted under torture implicitly condones torture.
- Information obtained by torture is inherently unreliable and the very people governments propose to deport to states which use torture may have been implicated as a result of torture. This in part explains why there is not enough evidence to put them on trial in the deporting state.