

**ARE THE UK'S
MASS DEPORTATION FLIGHTS
LAWFUL?**

Corporate Watch

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This briefing outlines some of the important legal questions concerning mass deportation flights. Part of a forthcoming report by Corporate Watch and Stop Deportation examining various other aspects of this controversial programme that started in 2001, it aims to provide campaigners and legal practitioners with some arguments and tools with which to challenge the lawfulness of these flights.

The main focus of the discussion below will be Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms (commonly known as the European Convention on Human Rights, ECHR) and the relevant case law. Article 4 of this protocol, which the UK has signed but not ratified, prohibits the “collective expulsion of aliens.”¹ Article 1 of Protocol No. 7 to the same convention specifies the “procedural safeguards relating to the expulsion of aliens.”² This is another important protocol relating to how charter flight operations are conducted, so we will be discussing it at length too, together with Article 32 of the 1951 Geneva Convention Relating to the Status of Refugees (often referred to as the Refugee Convention or Geneva Convention), which is similar in content to Protocol 7.

Though not exclusive to mass deportations, the “collective expulsion of aliens” may also give rise to issues related to Articles 2 and 3 of the ECHR and Article 33 of the Geneva Convention. Article 2 protects the “right to life”, while Article 3 prohibits “torture [and] inhuman or degrading treatment or punishment.”³ Relevant case law has established that both provisions imply the responsibility of states not to expel an individual to a country where there are substantial grounds to believe that he or she would run a real risk of facing death or being subjected to ill-treatment. Article 33 of the Geneva Convention (known as the principle of ‘non-refoulement’) states that “No Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”⁴ We will also be discussing these legal instruments and their relation to mass deportation flights.

The prohibition of the “collective expulsion of aliens” and the expulsion of people to countries where they may face death or ill-treatment are reiterated in Article 19 of the Charter of Fundamental Rights of the European Union 2000. This states that “Collective expulsions are prohibited” and “No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.”⁵ However, there is little point in discussing the EU Charter when the UK government is considering exiting the EU and/or some of its legal frameworks. Nonetheless, the content of this article will be discussed in relation to the other, similar instruments mentioned above.

It is important to note that not all the international and European instruments discussed here have been inscribed into the UK domestic law. This is the case, for instance, with Article 13 of the ECHR (the right to an effective remedy), which was not incorporated into the Human Rights Act 1998 as it was assumed that the act itself was the effective remedy. However, Section 2(1) of this act requires the UK courts to “take into account” the decisions of the European Court of Human Rights in Strasbourg (ECtHR) when determining a question that has arisen in connection with an ECHR right,⁶ especially when the ECtHR has “clear and constant jurisprudence” on that matter.⁷

Collective expulsion

The European Convention on Human Rights (ECHR) was signed in Rome on 4 November 1950. Protocol No. 4 was added to the convention in 1963. The convention's *travaux préparatoires* (the preparatory works or the official record of the negotiations) are not explicit regarding the meaning and scope of Article 4 of the protocol, which states that “Collective expulsion of aliens is prohibited.”⁸ However, the Explanatory Report accompanying the protocol reveals that the Committee of Experts on Human Rights, who drafted the protocol, had in mind “a provision by which collective expulsions of aliens of the kind which have already taken place [during the war] would be formally prohibited.”⁹ The Committee thus replaced the word 'exile' with 'expulsion' in Article 3 of the protocol in order to “prohibit any constitutional, legislative or administrative or judicial authority from expelling nationals from their own country”, and from expelling aliens in the next article (Article 4). “More often than not,” they argued, “the expulsion of nationals, whether individuals or groups, is inspired by political motives.” Thus, “The word 'expulsion' is to be understood here in the generic meaning, in current use (to drive away from a place).” It should therefore be understood to mean the same as 'removal' or 'deportation' nowadays. Various judgements by the European Court of Human Rights have upheld such an interpretation.

“The collective expulsion of aliens violates two basic principles: the prohibition of discrimination and the prohibition of arbitrariness.”

Furthermore, the original draft of Protocol 4 by the Consultative Assembly of the Council of Europe wanted to limit the scope of Article 4 to those “aliens lawfully residing in the territory” of the expelling state, but the Committee of Experts was of the view that it should also include “all those who have no actual right to nationality in a State, whether they are passing through a country or reside or are domiciled in it, whether they are refugees or entered the country on their own initiative, or whether they are stateless or possess another nationality.”¹⁰ It follows that asylum seekers and refugees, as defined by Article 1 of the 1951 Geneva Convention, who had entered the UK to claim protection and had been residing in the country until the authorities decided they no longer had the right to remain here and should be removed, clearly fall under this definition and the protocol should apply to them – except when they are deemed to be a danger to public order or national security. One complication is that the UK has not ratified Protocol 4, an issue to which we will return later.

The concept of “collective expulsion of aliens” involves foreign nationals or stateless persons being expelled or removed from a country *en masse* due to their nationality or membership of a particular racial or ethnic group, rather than the merits of their individual cases. Under international law, this would violate two basic principles: the prohibition of discrimination and the prohibition of arbitrariness. Once it is accepted that collective expulsion should be prohibited, the main question then is to prove that an expulsion is collective, i.e. arbitrary and discriminatory, and is not the result of a “reasonable and objective examination” of the case of each of the individuals being deported. It is to this tricky issue that we now turn.

European case law

The European Court of Human Rights (ECtHR) has considered the issue of “collective expulsion of aliens” as set out in Protocol 4 in numerous cases. One of the earliest ones was the 1975 case of *Henning Becker v. Denmark*, which concerned the deportation of a group of approximately 200 Vietnamese children by the Danish government. Although it was ruled inadmissible, the judges in the case defined the collective expulsion of aliens as “any measure of the competent authority compelling aliens as a group to leave the country, except where such a measure is taken after and on the basis of a reasonable and objective examination of the particular cases of each individual alien of the group.”¹¹

This definition has been relied upon by the ECtHR judges in many subsequent cases concerning Protocol 4. For example, in the 1999 case of *Andric v. Sweden*, the court used a similar definition: “any measure compelling aliens, as a group, to leave a country, except where such a measure is taken on the basis of a reasonable and objective examination of the particular case of each individual alien of the group.”¹²

Andric v. Sweden revolved mainly around the appellant, a Croatian national, appealing against the Swedish authorities' decision to forcibly deport him on the grounds that he was suffering from post-traumatic stress disorder, which would have made his removal a breach of his rights under Article 3 of the ECHR. The case was rendered moot when Andric was eventually not deported but, significantly, the court considered “the fact that a number of aliens receive similar decisions does not lead to the conclusion that there is a collective expulsion when each person concerned has been given the opportunity to put arguments against his expulsion to the competent authorities on an individual basis.”¹³

The 1988 ruling in *Alibaks and Others v. the Netherlands* had made a similar finding: “the applicants' expulsions do not reveal the appearance of a collective expulsion within the meaning of Article 4 of Protocol No. 4,” on the basis that the Dutch authorities had individually considered and refused the asylum applications of all the 23 Surinamese applicants, who had “individually received a reply from the Minister of Justice denying them suspensive effect for their review requests.”¹⁴

The first successful Protocol 4 case in the ECtHR was the 2002 case of *Čonka v. Belgium*, in which the court found the Belgian government's decision to deport a family of four, among a group of 70 Slovakian Roma, to be in breach of Articles 5(1), (2), (4) of the ECHR, Article 4 of Protocol 4 and Article 13 taken together with Article 4 of Protocol 4.¹⁵ The ruling also found that there was no violation of Article 13 taken together with Article 3.

The judgement concerning Protocol 4 was made by four votes to three. One of the dissenting judges argued that the applicants' requests for asylum had already been considered and turned down by the Belgian authorities, that those decisions “were reasoned and taken following an examination of the aliens' personal circumstances,” and that the personal circumstances of the applicants “were also examined briefly a third time,” when the police station they were held at contacted the Aliens Office to check whether any of them had leave to remain in Belgium.¹⁶ Another judge argued that each of the refusal decisions had been “accompanied by an order to leave the territory. As the applicants did not comply, measures were taken for them to be forcibly expelled,” adding that the provision contained in Protocol 4 “does not, in my opinion, prevent States from grouping together, for reasons of economy or efficiency, people who, at the end of similar

proceedings, are to be expelled to the same country.”¹⁷

However, the court's final decision noted that the deportation order served on the Slovakian Roma families “was made solely on the basis of Section 7, first paragraph, point (2), of the [Belgian] Aliens Act, and the only reference to the personal circumstances of the applicants was to the fact that their stay in Belgium had exceeded three months. In particular, the document made no reference to their application for asylum.” Although the decision had been accompanied by an order to leave the territory, the court found that, “by itself, that order did not permit the applicants’ arrest.” Their arrest was ordered for the first time on a later date, on a legal basis unrelated to their requests for asylum, but was nonetheless “sufficient to entail the implementation of the impugned measures.” In such circumstances, “and in view of the large number of persons of the same origin who suffered the same fate as the applicants,” the court considered that “the procedure followed does not enable it to *eliminate all doubt* that the expulsion might have been collective.” (emphasis added)

Indeed, the local police had lured the applicants into a trap by sending them, along with other Slovakian Roma families, a notice requiring them to attend the police station in order to “enable the files concerning their applications for asylum to be completed” (the court found that this amounted to a violation of Article 5(1) of the ECHR, which concerns the right to liberty and security). The Director-General of the Aliens Office had written to the Minister of the Interior and the Commissioner-General for Refugees and Stateless Persons to inform them of his intention to “deal with asylum applications from Slovakian nationals rapidly in order to send a clear signal to discourage other potential applicants.” A note providing “general guidance on overall policy in immigration matters,” approved by the Cabinet on 1 October 1999, contained the following passage: “A plan for collective repatriation is currently under review, both to send a signal to the Slovakian authorities and to deport this large number of illegal immigrants whose presence can no longer be tolerated.” Shortly after the deportation date, the Belgian Minister of the Interior declared in response to a parliamentary question: “Owing to the large concentration of asylum-seekers of Slovakian nationality in Ghent, arrangements have been made for their collective repatriation to Slovakia.”¹⁸

“The applicants had been trapped by the authorities, assembled as part of a collective repatriation operation and placed in closed centres where they were told that no appeal was available to them.”

Article 5 of the ECHR provides that “No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: [...] (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.” This is often used by immigration authorities to arrest and detain migrants in order to effect their forcible removal. However, where the lawfulness of detention is disputed, including the question whether “a procedure prescribed by law” has been followed, the judgement in *Čonka v. Belgium* considered that the convention requires, in addition to conforming to national laws and procedures, that any deprivation of liberty should be in keeping with the purpose of Article 5, namely “to protect the individual from

arbitrariness.”¹⁹ In the court's view, this requirement must be reflected in, among other things, the reliability of communications sent to potential deportees, irrespective of whether the recipients are lawfully present in the country or not. It follows that, “even as regards over-stayers, a conscious decision by the authorities to facilitate or improve the effectiveness of a planned operation for the expulsion of aliens by misleading them about the purpose of a notice so as to make it easier to deprive them of their liberty is not compatible with Article 5.”²⁰

Significantly, the ruling in *Čonka v. Belgium* specified the factors that may reinforce the doubt that an expulsion might be collective:

“firstly, prior to the applicants’ deportation, the political authorities concerned had announced that there would be operations of that kind and given instructions to the relevant authority for their implementation; secondly, all the aliens concerned had been required to attend the police station at the same time; thirdly, the orders served on them requiring them to leave the territory and for their arrest were couched in identical terms; fourthly, it was very difficult for the aliens to contact a lawyer; lastly, the asylum procedure had not been completed.”²¹

Following the *Čonka* case, a series of applications to the ECtHR based on Protocol 4 were turned down or found inadmissible.²² Perhaps the most significant for our purposes is the 2007 case of *Sultani v. France*. The applicant, an Afghan national, had claimed a violation of Article 3 and Article 4 of Protocol 4, among other things, on the basis of the risks he would face if he were returned to Afghanistan and of the conditions of his removal (on a mass deportation charter flight). Although the court ruled that the applicant's removal from France would not amount to a violation of Article 4 of Protocol 4 on the basis that the applicant's situation had been examined individually by the French immigration authorities, it pointed out that the conditions for effective domestic remedy had not been fulfilled. The remedy in this case would have been an acknowledgement by the national authorities, either expressly or in substance, of a breach of the convention, and affording the appellant a means of redress. The only reason why the applicant had not been expelled on a charter flight on 20 December 2005 was an interim measure adopted by the ECtHR on the basis of a Rule 39 application. The French government was therefore mistaken, the court found, in alleging that the complaint under Article 4 of Protocol 4 had become “devoid of purpose” because the applicant was still on French territory when he submitted his application to the ECtHR.²³

The French government claimed that “the use of specific flights to transport a number of aliens” to their countries of origin was based on “practical considerations” and could not be analysed as a practice of collective expulsion within the meaning of Protocol 4. The introduction of such flights, it claimed, had been “made necessary by the difficulty, and even impossibility, of obtaining seats on scheduled flights to certain destinations, especially to countries to which there were few scheduled services from French airports.” Furthermore, states enjoyed “a scale of the margin of appreciation... in organising operations to expel aliens who were unlawfully present on [their] territory.” It further claimed that, in the case in question, the French authorities had complied with the ECtHR's case law, since no official statement announcing an intention on the part of the French authorities to conduct collective expulsions had preceded the introduction of charter flights to Afghanistan, and that the applicant's request for asylum had been responded to in an individualised and personal decision.

The applicant, on the other hand, claimed that he had been arrested on the same date and at the same location as other Afghan nationals, in targeted arrests based on nationality, with a view to organising a 'grouped flight' to Afghanistan. He submitted that, in a large number of cases, "grouped flights were an expedient enabling the Government to return aliens to countries in which the major airlines no longer wished to land for security reasons," noting that direct flights no longer existed to Somalia, Ethiopia and Afghanistan. In this regard, he pointed out that, since the "joint return operations" (between France and Britain to Afghanistan) had proved "excessively onerous," the police were "governed by profitability objectives and were subject to considerable pressure when preparing such flights." Furthermore, and contrary to what the government had argued, there was "no effective individual and personalised examination of the risks in the event of return to the country of origin and French law provided no effective means of preventing the administrative authorities from carrying out collective expulsions." The administrative courts, he insisted, "did not carry out a genuine individualised check of the lawfulness of the expulsion orders, since they merely validated the negative decisions issued by the OFPRA or the Refugee Appeals Board." They only "used the claim that an individualised removal order was issued in respect of every foreigner as a pretext for systematically dismissing arguments alleging a violation of Article 4 of Protocol No. 4." The individual decision, he added, "was purely formal in nature [and] thus prevented acknowledgement of the collective nature of the removal."

To support his allegations, the applicant submitted several witness statements asserting that police had arrested a group of Afghans on 14 December 2005. He also produced evidence that the flight had been pre-planned: the Minister of the Interior had announced that the flight was imminent as early as 27 July that year, one day after the first Anglo-French charter flight carried 40 Afghan migrants to Kabul. The minister then indicated that other flights were being planned to Afghanistan, Iraq and Somalia.²⁴ Nonetheless, the case was dismissed because Sultani's asylum claim had been considered and refused twice by the French courts.

"French police were governed by profitability objectives and were subject to considerable pressure when preparing such flights."

In February 2012, the ECtHR upheld the case of *Hirsi Jamaa and Others v. Italy* and found that an Italian 'push-back operation' in the Mediterranean sea (preventing migrant boats from reaching European shores and returning them to Libya) was in breach of Article 13 taken together with Article 3 and Article 4 of Protocol 4.²⁵ The case was originally brought in May 2009 by 11 Somali and 13 Eritrean nationals, who were among a group of about 200 migrants who left Libya aboard three vessels with the aim of reaching the Italian coast, but were intercepted by three Italian coastguard ships south of Lampedusa, transferred onto Italian military ships and returned to Tripoli, where they were handed over to the Libyan authorities. The details of the case are interesting but what concerns us most here is whether each of the applicants had been given a chance to challenge his or her expulsion, and whether their individual circumstances had been subject to detailed examination by a competent authority.

The court found that the transfer of the applicants to Libya was "carried out without any form of examination of each applicant's individual situation." The applicants were not

subjected to any identification procedure by the Italian authorities, which simply embarked all the intercepted migrants onto military ships and disembarked them on Libyan soil. There were no interpreters or legal advisers among the personnel on board. The applicants said they were given no information by the military personnel, who led them to believe they were being taken to Italy. Moreover, the court noted that the personnel aboard the military ships were “not trained to conduct individual interviews and were not assisted by interpreters or legal advisers.” This was sufficient for the court to rule out the existence of “sufficient guarantees ensuring that the individual circumstances of each of those concerned were actually the subject of a detailed examination.” It therefore ruled, unanimously, that the removal of the applicants was of a collective nature, in breach of Article 4 of Protocol 4, as well as a violation of Article 3 of the ECHR.

The latter was because the 'push-back operation', in the court's view, “exposed the applicants to the risk of arbitrary repatriation.” In plain English, the court observed, firstly, that Libya had not ratified the Geneva Convention Relating to the Status of Refugees and, secondly, that there was no form of asylum and protection procedure for refugees in the country. The court did not subscribe to the Italian government's argument that the activities of the UNHCR in Libya represented a guarantee against arbitrary repatriation. Indeed, Libya has frequently conducted collective expulsions of refugees and asylum seekers to their countries of origin, where they could be subjected to torture and other ill-treatment. In other words, there was “a very high risk of 'chain refoulements'.” The court therefore found that Italy was “not exempt from complying with its obligations under Article 3 of the Convention because the applicants failed to ask for asylum or to describe the risks faced as a result of the lack of an asylum system in Libya... the Italian authorities should have ascertained how the Libyan authorities fulfilled their international obligations in relation to the protection of refugees.”

It is worth noting in this regard that the Italian Minister of the Interior stated, at a press conference held on 7 May 2009, that the operation to intercept the vessels on the high seas and to push the migrants back to Libya was the consequence of bilateral agreements with Libya, which came into force on 4 February 2009, and represented “an important turning point in the fight against clandestine immigration.” In a speech to the Italian Senate on 25 May 2009, the Minister said that, between 6 and 10 May 2009, more than 471 irregular migrants had been intercepted on the high seas and transferred to Libya in accordance with those bilateral agreements.²⁶

The court also considered whether there were *territorial restrictions* to Article 4 of Protocol 4. It noted that the provision contained in the article “has no territorial limitation.” The provision, it said, “refers very broadly to aliens, and not to residents, nor even to migrants. The purpose of the provision is to guarantee the right to lodge a claim for asylum which will be individually evaluated, regardless of how the asylum seeker reached the country concerned, be it by land, sea or air, be it legally or illegally. Thus, the spirit of the provision requires a similarly broad interpretation of the notion of collective expulsion which includes any collective operation of extradition, removal, informal transfer, 'rendition', rejection, refusal of admission and any other collective measure which would have the effect of compelling an asylum seeker to remain in the country of origin, wherever that operation takes place.”²⁷

Finally, the court reiterated “the importance of guaranteeing anyone subject to a removal measure, the consequences of which are potentially irreversible, the right to obtain

sufficient information to enable them to gain effective access to the relevant procedures and to substantiate their complaints.” Given the circumstances of this case, the court considered that the applicants were “deprived of any remedy which would have enabled them to lodge their complaints under Article 3 of the Convention and Article 4 of Protocol No. 4 with a competent authority and to obtain a thorough and rigorous assessment of their requests before the removal measure was enforced.” This, the court ruled, was a breach of the requirements of Article 13 of the ECHR in so far as it did not satisfy the criterion of suspensive effect enshrined in the above-cited *Čonka* judgment (the exhaustion of domestic remedies is discussed in more detail below).

Since the *Hirsi Jamaa* case, there have been a few other applications to the ECtHR based on Protocol 4 but none has been successful yet (one is ongoing).²⁸ In July 2013, however, the ECtHR issued an interim order blocking the Maltese government from returning around 45 Somali migrants to Libya until their asylum applications have been fully and individually considered.²⁹

Chain refoulement

As the ECtHR cases cited above would have demonstrated, mass deportation cases may also give rise to issues related to Articles 2 and 3 of the ECHR and the non-refoulement principle contained in Article 33 of the 1951 Geneva Convention. In this type of case, the human rights situation in the receiving country – be it the deportee's country of origin or a third country – should be assessed so as to establish whether there is a real risk that the person or persons being deported may face death or ill-treatment. This is standard in most asylum cases. The only exception is when there are reasonable grounds for regarding the person “a danger to the security of the country” or “a danger to the community of that country.”³⁰

“The provision of non-refoulement constitutes one of the basic Articles of the 1951 Convention, to which no reservations are permitted.”

Significantly, the liability in such cases falls on the original expelling state. The ECtHR took this view in *Saadi v. Italy*, among other cases, arguing that the expelling state's action “has as a direct consequence [leading to] the exposure of an individual to the risk of proscribed ill-treatment.”³¹ As mentioned above, the court in *Hirsi Jamaa and Others v. Italy* did not buy the Italian government's attempt to shift the responsibility onto the Libyan authorities as this would have led, in the court's view, to “a very high risk of 'chain refoulements' of persons in need of protection.”³²

In a 1977 'Note on Non-Refoulement', the UN High Commissioner for Refugees explained that the provision of non-refoulement constituted one of the basic articles of the 1951 Convention, to which no reservations were permitted, and that, unlike various other provisions in the convention, its application was not dependent on the lawful residence of a refugee in the territory of a contracting state.³³

As to the wording “where his life or freedom would be threatened” used in Article 33, which has been the subject of some discussion, it appears from the convention's *travaux*

preparatoires that it was not intended to lay down a stricter criterion than the definition of a refugee as someone having a “well-founded fear of persecution” contained in Article 1 of the convention. The different wording, it seems, was introduced to make it clear that the principle of non-refoulement applies not only to the refugee's country of origin but to any other country where the person has a reason to fear persecution.³⁴ As the High Commissioner puts it, “In evaluating the practice of States in regard to the principle of non-refoulement, it should be emphasized that the principle applies irrespective of whether or not the person concerned has been formally recognized as a refugee.”³⁵

Finally, it is worth pointing out that the exception contained in the second paragraph of Article 33 regarding national security and serious crimes was introduced following objections by the UK government concerning “an alien [who] despite warning, persists in conduct prejudicial to good order and government and the ordinary sanctions of the law.”³⁶ However, “in view of the serious consequences to a refugee being returned to a country where he is in danger of persecution,” in the words of the High Commissioner, “the exception provided for in Article 33(2) should be applied with the greatest caution.”³⁷ Yet this exception has been institutionalised in the UK to some extent with the 2007 Borders Act, which allowed the automatic deportation of migrants and refugees convicted of specific offences or sentenced to 12 months’ imprisonment,³⁸ even though possible breaches of Articles 2 and 3 and other fundamental human rights are supposed to be considered before taking such an action.

Procedural safeguards and effective remedies

Article 32 of the 1951 Geneva Convention provides that “The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.” Paragraph 2 of the same article states that “The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.”³⁹ In other words, refugees should be allowed, with adequate legal representation and enough time, to legally challenge their deportation before a competent authority.

Similarly, Article 1 of Protocol 7 to the ECHR provides that “An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed: (a) to submit reasons against his expulsion, (b) to have his case reviewed, and (c) to be represented for these purposes before the competent authority or a person or persons designated by that authority.”⁴⁰ Article 2 of the same protocol makes an exception “when such expulsion is necessary in the interests of public order or is grounded on reasons of national security,” in which case the person may be expelled before he or she can exercise their rights under these safeguards. It should be noted, however, that the UK has not signed or ratified Protocol 7. So, like Protocol 4, it is not legally binding in the UK. However, the protocol's provisions are substantially similar to those of Article 32 of the 1951 Convention, to which the UK is signatory, as well as Article 13 of the United Nations Covenant on Civil and Political Rights, so the argument still holds.

“The Convention is intended to guarantee rights that are not theoretical or illusory, but practical and effective.”

One problem is that both Article 32 of the Geneva Convention and Article 1 of Protocol 7 to the ECHR do not apply to refused asylum seekers who have not been granted refugee status following an individualised legal process of their asylum claim (whether by a Home Office case worker or an immigration judge); they only apply to refugees or foreign nationals “lawfully resident in the territory.” In other words, the provisions apply only to foreign nationals who have entered lawfully or have entered unlawfully but whose status has subsequently been regularised. A person whose admission and stay were subject to certain conditions – for example a limited leave to remain – but who no longer meets these conditions “cannot be regarded as being still ‘lawfully’ present.”⁴¹

Lawful residence has been defined more clearly in other instruments of international law. For instance, Article 11 of the European Convention on Social and Medical Assistance states that “Residence by an alien in the territory of any of the Contracting Parties shall be considered lawful within the meaning of this Convention so long as there is in force in his case a permit or such other permission as is required by the laws and regulations of the country concerned to reside therein.”⁴² The article adds that “Failure to renew any such permit, if due solely to the inadvertence of the person concerned, shall not cause him to cease to be entitled to assistance.”

There is case law establishing that refused asylum seekers and illegal entrants are not considered lawful residents. Nonetheless, it may be possible to argue that many foreign national offenders who are subject to automatic deportation orders, and at least some visa overstayers, do not – or should not – fall under the unlawfully resident category, certainly not before their refugee status or residence permit has not been reviewed and revoked through an individualised process of law that carefully considers their human and asylum rights. Yet both are routinely deported on mass deportation charter flights and there appears to be some evidence that a rigorous review process is not always in place.

The exceptions contained in Article 32 of the Geneva Convention, Article 13 of the UN Covenant on Civil and Political Rights and Protocol 7 to the ECHR, namely national security and public order, should not apply to such cases either because their application should take into account the “principle of proportionality” as defined by the ECtHR case law. States relying on public order or national security arguments to expel foreigners before the exercise of the aforementioned safeguards “must be able to show that this exceptional measure was necessary in the particular case or category of cases.”⁴³ In fact Article 14(4) of the EU Qualification Directive states that people whose refugee status is refused or revoked for reasons to do with national security or committing “a particularly serious crime”, making them “a danger to the community”, should still be entitled to “rights set out in or similar to those set out in Articles 3, 4, 16, 22, 31 and 32 and 33 of the Geneva Convention in so far as they are present in the Member State.”⁴⁴

The important thing to bear in mind is that, without such safeguards, it can be argued – as ECtHR judges have done in a number of cases – that the expelling state did not provide those facing deportation with an effective remedy to deal with claims that their forcible removal may be in breach of their human rights provided for under European and international law, particularly under Articles 2 and 3 of the ECHR and Article 33 of the

Geneva Convention (non-refoulement), which apply to both lawful and unlawful residents.

Article 13 of the ECHR provides that “Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”⁴⁵ In other words, national authorities are required to provide a domestic remedy to deal with any arguable complaints under the convention and to grant appropriate relief. Significantly, the remedy required by Article 13 must be *effective*, in practice as well as in law, and the effectiveness of the remedy should not depend on the certainty of a favourable outcome for the applicant. Nor should the authority referred to in this article necessarily be a judicial authority. The ECtHR judgement in *Čonka v. Belgium* established that the remedies must be “sufficiently certain, not only in theory but in practice.” Failing this, they would “lack the requisite accessibility and effectiveness.”⁴⁶ Even if a single remedy does not by itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so.⁴⁷

As mentioned above, Article 13 has not been incorporated into UK domestic law through the Human Rights Act 1998 (HRA). However, Section 6 of the HRA makes it unlawful for public authorities to act “in a way which is incompatible with a Convention right,” except when this is “the result of one or more provisions of primary legislation” or when the authority “could not have acted differently.”⁴⁸ The question of whether the special arrangements surrounding deportation charter flights are a result of primary (domestic) legislation and whether the authority could act differently will be discussed shortly. For now, it is important to note that the ECtHR case law has established that an applicant's complaint alleging that his or her removal to another country would expose him or her to death or ill-treatment, contrary to Articles 2 and 3 of the ECHR respectively, “must imperatively be subject to close scrutiny by a national authority.”⁴⁹ This principle has led the court to rule that the notion of effective remedy, within the meaning of Article 13 taken together with Article 2 or 3, requires, firstly, “independent and rigorous scrutiny” of any complaint made by a person in such a situation, where “there exist substantial grounds for fearing a real risk of treatment contrary to Article 3” and, secondly, “the possibility of suspending the implementation of the measure impugned.”⁵⁰

“Everyone shall have an effective remedy
before a national authority.”

The judgement in *Čonka v. Belgium* found that, in relation to Article 13 taken together with Article 4 of Protocol 4, the remedy available to the appellants did not meet the requirements of the former article if it did not have a *suspensive effect*. It pointed out that the notion of effective remedy under Article 13 requires that the remedy “may prevent the execution of measures that are contrary to the Convention and whose effects are potentially irreversible.”⁵¹ Consequently, it is inconsistent with Article 13 for deportation measures to be executed before the national authorities have examined whether they are compatible with the convention, although the authorities are afforded “some discretion as to the manner in which they conform to their obligations under this provision.” In light of the importance attached to Articles 2 and 3 and the irreversible nature of the damage that may result if the risk of death or torture materialises, the court ruled that the “suspensive effect should also apply to cases in which a State Party decides to remove an alien to a country where there are substantial grounds for believing that he or she faces a risk of that nature.”⁵²

The court identified a number of factors which “undoubtedly affected the accessibility of the remedy.” These included “the fact that the information on the available remedies handed to the applicants on their arrival at the police station was printed in tiny characters and in a language they did not understand; only one interpreter was available to assist the large number of Roma families who attended the police station in understanding the verbal and written communications addressed to them and, although he was present at the police station, he did not stay with them at the closed centre. In those circumstances, the applicants undoubtedly had little prospect of being able to contact a lawyer from the police station with the help of the interpreter and, although they could have contacted a lawyer by telephone from the closed transit centre, they would no longer have been able to call upon the interpreter's services; despite those difficulties, the authorities did not offer any form of legal assistance at either the police station or the centre.” Indeed, the applicants' lawyer explained at the hearing that he was only informed of his clients' situation at 10.30pm on Friday 1 October 1999, so any appeal to the Belgian “committals division” would have been pointless because the case could not have been heard until 6 October, a day after the applicants' planned expulsion.⁵³

To sum up, the accessibility of a domestic remedy within the meaning of Article 13 of the ECHR implies that the deportation arrangements created by the national authorities must afford those facing deportation a *realistic* possibility of using the remedy. The 'special arrangements' surrounding mass deportation flights in the UK and the obstacles that these place on accessing adequate legal representation and the right to appeal or judicial review clearly do not meet this criterion, as will be discussed in more detail shortly.

UK case law

There is not much UK case law on charter flights *per se*. Solicitors have managed to stop the removal or deportation of many individuals to DR Congo, Afghanistan, Iraq, Sri Lanka and other frequent charter flight destinations when they could prove that these particular individuals faced a risk of death or torture on return. But many procedural aspects of the programme are yet to be challenged more systematically.

One such aspect is how much notice charter flight deportees and their legal representatives are given before the date of the flight. Public pressure and legal challenges have previously forced the UK Border Agency (UKBA) to amend the content and manner in which it issues Removal Directions letters.⁵⁴ The current minimum requirement for deportations on scheduled flights is 72 hours for normal cases and five working days for third country cases and non-suspensive appeal cases (i.e. those certified as 'manifestly unfounded').⁵⁵ In both cases, most legal practitioners would argue that this time scale is often insufficient to challenge a deportation.

Furthermore, there are now many exceptions to these minimum time requirements, including port refusal cases, where removal occurs within seven days, and second-attempt removals following a failed attempt the first time round. The latter category includes not only people who 'frustrate' their removal by resisting in one way or another, but also people whose removal had been deferred following a judicial review application where the judge handed down a 'no merit' finding. In such cases, the UKBA is not required to issue new removal directions if the new removal date is set within 10 calendar days.

For charter flight deportees, the notice is a minimum of five working days. The reason is that charter deportees who wish to legally challenge their removal now have to seek an injunction, because judicial review applications no longer result in an automatic deferral of removal (more on this below). According to the UKBA, the purpose of this 'extended' period of notice in charter flight cases is “to minimise the number of last-minute applications for injunctive relief to the High Court... and to encourage people to inform UKBA at the earliest opportunity of any further submissions they want to make.”⁵⁶ In practice, charter removal notices do not specify the exact date; they often state “no sooner than five working days, no later than 21 days.” The Home Office justifies this vagueness, which often leaves deportees and their legal representatives with unnecessary uncertainty and inability to act swiftly by saying: “To protect the safety of those on board a chartered aircraft to particular destinations it may be necessary, for security reasons, to withhold the exact details of departure and or the destination.”⁵⁷

“Notice of a decision is required before it can have the character of a determination with legal effect... This is not a technical rule. It is simply an application of the right of access to justice.”

The issue of when a removal or deportation order is issued is crucial, particularly in cases where procedural safeguards depending on the lawful residence status of the deportee discussed above are invoked. Article 11 of the European Convention on Social and Medical Assistance states that “Lawful residence shall become unlawful from the date of any deportation order made out against the person concerned, unless a stay of execution is granted.”⁵⁸ A relevant point here is whether and when the order is received by the deportee. It is established in UK case law that a decision has no legal effect until it has been received by the person concerned. As Lord Steyn puts it in the 2003 House of Lords judgment in *Anufrijeva v. SSHD*, “Notice of a decision is required before it can have the character of a determination with legal effect because the individual concerned must be in a position to challenge the decision in the courts if he or she wishes to do so. This is not a technical rule. It is simply an application of the right of access to justice.”⁵⁹

Yet recent reports by legal practitioners suggest that the UKBA has been faxing its decisions on fresh claims made in good time by people facing deportation to the Administrative Court first, and then to the claimant and/or their legal representative. This means judges would often make a decision on their removal without the original decision having been seen by the claimant or their legal representative.⁶⁰ As one solicitor explains, “I can understand this where the claim may have been made very last minute but there is absolutely no justification for it when the fresh claim had been made before removal directions have even been set.”⁶¹ Furthermore, some of the Factual Immigration Summaries prepared by the Home Office case owners, which usually accompany removal directions, seem to 'omit' references to current or previous fresh claims and give the Administrative Court judges an impression that nothing is pending in the case.⁶²

These two points may seem like minor procedural issues but they could be crucial in mass deportation cases as they “may reinforce the doubt that an expulsion might be collective,” to quote the judgement in *Čonka v. Belgium*.⁶³ This is because the first issue (when a notice is received) may make it “very difficult for the aliens to contact a lawyer,” while the

second (omitting or disregarding fresh claims and other outstanding legal processes) means “the asylum procedure had not been completed.” Indeed, the ruling in *Čonka* has established that, even though removals that are based on “a reasonable and objective examination of the particular case of each individual” should not be regarded as collective expulsion within the meaning of Protocol 4, this “does not mean, however, that where the latter condition is satisfied, the background to the execution of the expulsion orders plays no further role in determining whether there has been compliance with Article 4 of Protocol No. 4.”⁶⁴ In other words, the way in which mass deportation operations are conducted are as important as the legal process for each individual deportee in determining whether or not their removal amounts to an unlawful collective expulsion, because “collective expulsion” should be understood as collective implementation of expulsion measures. But more systematic legal challenges of these aspects of the UK’s mass deportation charter flights are yet to be seen.

Are the UK’s mass deportation flights lawful?

Section 6.1 of Chapter 60 of the UKBA’s *Enforcement Instructions and Guidance* manual states that “Some chartered flights may be subject to special arrangements” due to “the complexity, practicality and cost of arranging an operation.”⁶⁵ This is similar to the “practical considerations” argument used by the French authorities (see, for example, the *Sultani v. France* case discussed above), which the ECtHR did not buy into. In theory, details concerning these ‘special arrangements’ should be communicated in advance to both the High Court and the person being removed. In practice, all that is communicated in these letters is a reiteration of the above sentence: “Because of the complexities, practicalities and costs involved in arranging charter flights, it is essential that these removals are not disrupted or delayed by large numbers of last minute claims for permission to seek judicial review.”⁶⁶ It can be argued that the ambiguity of this statement is not a sufficient basis for eroding the fundamental right of access to justice. As Lord Hoffmann put it once, “Fundamental rights cannot be overridden by general or ambiguous words. This is because there is too great a risk that the full implications of their unqualified meaning may have passed unnoticed in the democratic process.”⁶⁷

The fact that JR applications no longer lead to an automatic deferral of removal because of the “special arrangements” surrounding charter flights, i.e. they do not have a suspensive effect, means charter flight deportees are not provided with an effective remedy within the meaning of Article 13 of the ECHR, given how *practically* difficult it is now to find a solicitor and apply for an injunction. The right of appeal was legislated in 1993, when the European Commission on Human Rights – a body that examined applications before they went to the ECtHR – decided that the lack of a right of appeal in deportation cases, particularly where a risk of death or torture on return is claimed, breached Article 13. So the UK government at the time introduced legislation allowing for appeals against asylum refusal decisions. In the 1989 case of *Soering v. the UK* and the 1991 case of *Vilvarajah and Others v. the UK*, the ECtHR ruled that a judicial review of a refusal or removal decision was sufficient to satisfy the effective remedy requirement contained in Article 13.⁶⁸

As indicated above, Article 13 of the ECHR was not incorporated into the Human Rights Act 1998. However, Section 6 of this act makes it unlawful for public authorities to act “in a way which is incompatible with a Convention [ECHR] right,” except when this is “the result of one or more provisions of primary legislation” or when the authority “could not have acted differently.”⁶⁹ The source of the ‘special arrangements’ policy is a guidance manual

by UK Border Agency, an executive body, and not a result of primary legislation (parliament). As one practitioner puts it, “This is a policy that has dropped out of the air and has received no parliamentary scrutiny. But the effect of the policy is to close the door of the High Court to many immigration and asylum claimants.”⁷⁰ And needless to say, the UKBA *can* act differently, as it indeed does in removals on scheduled flights. It follows that the UK’s “special arrangements” policy is arguably in breach of Article 13 of the ECHR, and therefore of Section 6 of the HRA.

Furthermore, as mentioned above, Section 2(1) of the HRA requires the UK courts to “take into account” the decisions of the ECtHR when determining a question that has arisen in connection with a ECHR right,⁷¹ especially when the ECtHR has “clear and constant jurisprudence.”⁷² It should be evident from discussion above that the ECtHR case law on this matter is “clear and constant” enough for UK courts to take it into account and for the UKBA to be challenged in court on this basis. The same goes for the convention’s Article 32 and Article 1 of Protocol 7, which require that deportees are allowed to submit reasons against their removal, have their cases reviewed and be represented, but bearing in mind the legal residence discussion above.

“Because of the complexities, practicalities and costs involved in arranging charter flights, it is essential that these removals are not disrupted or delayed...”

If we add to this the recent cuts to legal aid introduced with the LASPO Act 2012,⁷³ it is now “practically impossible” for most people facing removal from the UK to seek a judicial review of their removal decision. Applicants may be able to access ‘exceptional case funding’ under Section 10 of LASPO but the application process is so complicated and lengthy that it is effectively of no use to people facing imminent deportation, particularly via charter flights.⁷⁴ In some parts of the country, there are virtually no legal aid immigration solicitors left. To quote the judge in the 2010 case brought by Medical Justice which successfully challenged ‘zero notice removals’, “it is frequently almost impossible that somebody served with removal directions will be able to find a lawyer who would be ready, willing and able to provide legal advice within the time available prior to removal, let alone in an appropriate case to challenge those removal directions.”⁷⁵ As discussed above, a remedy has to be effective in practice as well as in law. Indeed, many legal practitioners have reportedly been talking about legal challenges to these cuts and revisiting *Maaoui v. France*, in which the ECtHR ruled that Article 6(1) of the ECHR (the right to a fair trial and access to a court) was not applicable to decisions on entry, stay and deportation of aliens.⁷⁶

The restrictions on deportees’ access to justice are compounded by the volume and speed with which charter flight deportations are conducted, which appear to be overwhelming both solicitors and judges. To quote one barrister, “Given the flood of applications that accompanies many charter flights, it seems quite possible that a daytime duty judge will simply not be able to deal with every application before take off. [An] apparently absolute bar on approaching the out of hours judge [which has recently been put in place by the Administrative Court] could conceivably lead to cases simply not being dealt with in time.”⁷⁷

This is quite important given that the Administrative Court plays an increasing role in deciding the substantive merits of claims in stay applications (people wishing to challenge

their removal now have to obtain a Court Office reference and obtain a stay on their removal as a result of the non-suspensive policy on judicial review in charter cases). The main reason for this new role assumed by the Administrative Court is that Home Office case owners are often too overwhelmed themselves or simply 'cannot be bothered' about making proper decisions, which is in turn a result of the policies and arrangements surrounding deportation charter flights. So given that the Administrative Court now acts "as a filter," to quote another practitioner, "screening out the weak cases and granting a stay to the good ones,"⁷⁸ many charter flight deportees are effectively deprived of their fundamental rights of access to justice, effective remedy and a reasonable and objective examination of their case before their deportation.

And it is not just UK judges that appear to be overwhelmed by charters; the ECtHR appears to be suffering from the same problem. According to one ECtHR judge, who notes that the claimant he was dealing with was one of 20 or so refused asylum seekers due to be removed on the same flight to Sri Lanka who were asking for a stay on their removal,

"Although some of the applications could be considered by other judges when they became available, it was plain by about 14.00 that I would not be able to consider all the remaining applications by 15.00... In those circumstances, I was informed by UKBA's Operational Support and Certification Unit which of the remaining applicants were on the main manifest, and which were on a reserve list and therefore liable to be included on the main manifest only if someone on the main manifest was removed from the flight. Although my priority was to deal with the applications of those on the main manifest, I had not reached the claimant's case by 15.28 when I was told that the [plane] doors were about to close. I was informed yesterday [29/9/2011] that the claimant had been on the flight."⁷⁹

In addition to the questions of access to justice and effective remedy, if it can be shown that the individuals being deported on a given charter flight, or even some of them, found it "very difficult" to contact a lawyer, did not have "sufficient time" to lodge last-minute representations or did not "complete" their asylum procedure due to the way in which charter flight operations are carried out in the UK, then this may "reinforce the doubt" that their expulsion might be collective and unlawful within the meaning Protocol 4 to the ECHR, as the ruling in *Čonka v. Belgium* has established. We will turn very shortly to the issue of Protocol 4 and why the UK has not ratified it. For now, suffice to say that there is plenty of evidence that each of the five factors identified in *Čonka* that may reinforce such doubt have been repeatedly breached by charter deportations from the UK.

First, the UK government or politicians have occasionally made statements announcing a charter flight or scheme to a certain country. Iraq and Sri Lanka are good examples. Secret bilateral agreements could also be seen as part of such plans or intentions, as do the operational names given to country-specific charter deportation programmes ('Operation Ravel' for Afghanistan, 'Operation Majestic' for Nigeria, etc.).

Second, migrants and refugees from a certain nationality are often detained roughly around the same time in preparation for a charter flight to that country. A cursory look at monthly detention statistics may demonstrate this more clearly. We do not (yet) have concrete evidence that immigration reporting centres and enforcement teams are sent instructions to detain a certain number of people from a certain nationality, but it is not

difficult to imagine that this is the case. Another important point in this regard is the manner in which people are detained. If someone is asked to attend a reporting centre and given the impression that this is to do with their asylum or immigration process, then this may amount to them being misled by the authorities with the sole intention of facilitating a pre-planned mass deportation operation, in breach of Article 5 of ECHR, which applies to asylum seekers, refugees and overstayers.

Fourth, removal directions served on charter deportees seem to be sufficiently identical, especially if it is true that some factual summaries accompanying them have been omitting crucial aspects of the deportee's claim. In some cases this could also mean that the due legal process has not been completed because of the operation. This would be most obvious, perhaps, with the use of so-called 'reserves', which we have tackled at length elsewhere.⁸⁰

Finally, the special arrangements surrounding charter flights, together with the legal aid cuts, are making it increasingly difficult for deportees to access adequate legal representation and allow them sufficient time to challenge the decision to deport them.

Of course to use any of these arguments, one would need good, concrete evidence. But even with such evidence, until the UK has ratified the protocol, it is difficult to see how any Protocol 4 argument can be persuasive in UK courts, perhaps save for the relation between ECHR and HRA discussed above.

The UK and Protocol 4

The ECtHR Protocol 4-related cases are highly persuasive but are not binding in UK courts. The reason is that the UK signed this protocol in 1963 but has *never ratified* it. By only signing a convention (or additional protocols), a state is not legally bound by it. A signature shows that the state intends to ratify the convention, which will make it binding. In the period between signature and ratification, states have the opportunity to amend their domestic laws so as to fulfil their obligations under the new convention. Protocol 4 has been ratified by 43 of the 47 Council of Europe member states. The only other country that has signed but not ratified it is Turkey. Greece and Switzerland have neither signed nor ratified it.⁸¹

The UK government set out its policy regarding the ratification of Protocol 4 and its incorporation into domestic law in a 1997 White Paper, entitled 'Rights Brought Home', as follows: "These are important rights, and we would like to see them given formal recognition in our law. But we also believe that existing laws in relation to different categories of British nationals must be maintained. It will be possible to ratify Protocol 4 only if the potential conflicts with our domestic laws can be resolved. This remains under consideration but we do not propose to ratify Protocol 4 at present."⁸² There was nothing about Article 4 of the protocol concerning the collective expulsion of aliens.

Indeed, in its seventh report (Session 2004-5), the UK parliament's Joint Committee on Human Rights pointed out that the UK has refused to ratify Protocol 4 on account of the protocol's Articles 2 and 3, noting "continuing concerns over Articles 2 and 3 of Protocol 4 which could be taken, respectively, to confer rights in relation to passports and a right of abode on categories of British nationals who do not currently have that right."⁸³ Article 2 protects the right of everyone lawfully within the territory of a state to liberty of movement

and freedom to choose their residence, while Article 3 protects the right not to be expelled from, or to be refused entry to, the country of one's nationality. If Protocol 4 is ratified, the UK government is worried that nationals of dependent territories (former colonies) would be able to enter and remain in the UK. Shameful as it is, this has nothing to do with mass deportations.

"The UK is one of only a small number of Council of Europe Member States that have not ratified Protocol 4."

Indeed, a 1998 Commons research paper on the Human Rights Bill 1997-8 traced the government's refusal to ratify Protocol 4 to "concerns about the exact extent of the obligation regarding a right of entry."⁸⁴ In fact, the terms of Article 2 of the protocol are substantially similar to those of Article 12 of the International Covenant on Civil and Political Rights (ICCPR), which the UK has ratified subject to reservations regarding disciplinary procedures for members of the armed forces and regarding nationals of dependent territories (concerning their right to enter and remain in the UK and each of the dependent territories). Yet, despite noting that the UK is "one of only a small number of Council of Europe Member States that have not ratified Protocol 4," the select committee's review in 2004-5 concluded that the UK "should not ratify" the protocol but recommended that "at a minimum, consideration should be given to ratification with appropriate reservations to overcome the specific issues identified by the Government."⁸⁵

On 18 March 2009, Lord Lester of Herne Hill asked the government in the House of Lords: "what are their reasons for not seeking to ratify the Fourth Protocol to the European Convention on Human Rights with reservations similar to those made by the United Kingdom when ratifying the United Nations International Covenant on Civil and Political Rights, in respect of nationality and immigration issues." The Parliamentary Under-Secretary of State, Ministry of Justice, Lord Bach answered: "The Fourth Protocol to the European Convention on Human Rights has a much more specific focus than the UN International Covenant on Civil and Political Rights. Ratification of the Fourth Protocol would require significant reservations to two of its four substantive articles. The Government do not consider it appropriate to ratify the Fourth Protocol with such significant reservations to such a large proportion of its substantive provisions. However, the Government will continue to keep this position under review."⁸⁶ The "two substantive articles" referred to here are understood to be Articles 2 and 3 of the protocol. Again, nothing about Article 4.

Given that the UK government's objections to Protocol 4 appear to have nothing to do with collective expulsion, there is no reason why it cannot ratify the protocol with reservations concerning the articles it has problems with.⁸⁷ The same goes for Protocol 7, which the government stated its intention to sign in the aforementioned White Paper, a promise that did not subsequently materialise in the 1998 Human Rights Act. Perhaps one should learn from the UK government itself about effective lobbying to get states to ratify international legal instruments: The Foreign and Commonwealth Office's Global Opportunities Fund, which "supports action on global issues in areas of strategic importance to the UK," has apparently been funding and supporting "international campaigns to promote prison reform and the ratification of the Optional Protocol to the Convention Against Torture."⁸⁸

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