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Make provision for actions for damages for torture; and for connected purposes.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Purpose of Act

The purpose of this Act is to make a person who commits torture, and any State whose servants or agents commit torture, liable to an action for damages for the benefit of the victim, in particular where the torture occurs in a country outside the United Kingdom and it is impracticable for the victim or other person bringing the claim to obtain effective redress in that country. 5

2 Action for damages for torture

- (1) A person who commits torture shall be liable to an action for damages.
- (2) A person shall be liable under this Act in respect of any act of torture wherever committed. 10
- (3) Where it is proved that torture has been committed by a servant or agent of a State, the State shall be liable under this Act for the torture unless the State proves—
 - (a) that it did not authorise or condone the torture; and
 - (b) that it took all reasonably practicable steps to prevent the torture from being committed. 15
- (4) The reference to damages in subsection (1) includes a reference to aggravated and exemplary damages.
- (5) Notwithstanding section 1(2)(a)(i) of the Law Reform (Miscellaneous Provisions) Act 1934 (c. 41) (effect of death on certain causes of action) the damages recoverable by virtue of that section for the benefit of the estate of a deceased person in respect of torture include aggravated and exemplary damages. 20

- (6) In this section “State” means any foreign or commonwealth State (including the United Kingdom); and references to a State include references to –
- (a) the sovereign or other head of that State in his public capacity;
 - (b) the government of that State;
 - (c) any department of that government; and
 - (d) where the act or omission constituting the torture arises from the exercise of sovereign authority, any entity which is distinct from the executive organs of the government of that State and is capable of suing and being sued.
- 3 Limitation** 10
- Notwithstanding anything in the Limitation Act 1980 (c. 58), an action for damages under this Act in respect of torture or death caused by torture may be brought at any time within the period of six years beginning with the date when it first became reasonably practicable for the person concerned to bring an action. 15
- 4 Amendment of State Immunity Act 1978**
- After section 8 of the State Immunity Act 1978 (c. 33) insert –
- “8A Liability for torture**
- (1) A State is not immune as respects proceedings in England and Wales concerning an action for damages in respect of torture or death caused by torture. 20
 - (2) In this section “torture” has the same meaning as in the Torture (Damages) Act 2007.”
- 5 Amendment of Civil Procedure Rules 1998**
- After paragraph 8 of Rule 6.20 of the Civil Procedure Rules 1998 (service out of the jurisdiction where permission of the court is required) insert – 25
- “Claims in respect of torture*
- (8A) a claim is made in respect of torture (within the meaning of the Torture (Damages) Act 2007) or death caused by such torture.”
- 6 Meaning of “torture”** 30
- (1) Subject to subsection (5) below, for the purposes of this Act a public official or person acting in an official capacity, whatever his nationality, commits torture if in the United Kingdom or elsewhere he intentionally inflicts severe pain or suffering on another in the performance or purported performance of his duties. 35
 - (2) Subject to subsection (5) below, for the purposes of this Act a person not falling within subsection (1) above commits torture, whatever his nationality, if –
 - (a) in the United Kingdom or elsewhere he intentionally inflicts severe pain or suffering on another at the instigation or with the consent or acquiescence –
 - (i) of a public official; or
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- (ii) of a person acting in an official capacity; and
 - (b) the official or other person is performing or purporting to perform his official duties when he instigates the infliction of that pain or suffering or consents to or acquiesces in it.
 - (3) Subject to subsection (5) below, where a person commits torture in circumstances falling within subsection (2) above, the official or other person concerned, whatever his nationality, also commits torture for the purposes of this Act. 5
 - (4) It is immaterial whether the pain or suffering is –
 - (a) physical or psychological; or 10
 - (b) caused by an act or omission.
 - (5) An act or omission does not constitute torture for the purposes of this Act if the pain or suffering that is inflicted thereby arises only as a result of sanctions which are held lawful under international law.
- 7 Short title, commencement and extent 15**
- (1) This Act may be cited as the Torture (Damages) Act 2007.
 - (2) This Act shall come into force on such day as the Lord Chancellor may by order made by statutory instrument appoint.
 - (3) This Act extends to England and Wales only.

Torture (Damages) Bill [HL]

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To make provision for actions for damages for torture; and for connected purposes.

Lord Archer of Sandwell

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