

REDRESS

Ending torture, seeking justice for survivors

OVERSEAS OPERATIONS (SERVICE PERSONNEL AND VETERANS) BILL PUBLISHED 18 MARCH 2020

Briefing note

Summary: The Bill risks creating impunity for serious offences including torture, and thus will result in the UK being in breach of its international treaty obligations. Genuine victims of human rights violations committed by UK armed forces abroad may lose their ability to obtain justice. The Bill makes the mistake of assuming that all victims are fake, and that the UK armed forces are always in the right. That is not borne out by history.

STATUTORY PRESUMPTION AGAINST PROSECUTION

1. The Bill creates a statutory presumption against prosecution, which stipulates that once five years have elapsed from the date of an incident, it is to be exceptional (requiring the consent of the Attorney General) for a prosecutor to prosecute a service person or veteran for an offence committed during an overseas operation. The MOD argues that the Bill will not prevent prosecutions, but will require prosecutors to take into account the adverse effects of “operational conditions” on “the ability of that service person or veteran to make sound judgements or exercise self-control or on their mental health”.¹
2. It is worth remembering that:
 - a) The UK’s obligations under domestic and international law establish that the UK Government must prevent, investigate and punish human rights violations, and require the State to ensure that there are no barriers to accountability;
 - b) The UN Convention against Torture (UNCAT) – a treaty ratified by the UK - provides an obligation on the UK not to apply statutes of limitation to torture, and an ongoing obligation to investigate which cannot be time-limited;
 - c) International law also provides that victims have rights to redress for harm suffered.
3. Whilst some serious offences (for example, sexual offences and people trafficking) are excluded from these provisions, torture is not. It could easily have been included, and **the Bill should be amended to so that torture is included in the exceptions in Schedule 1.**
4. The adverse effects of “operational conditions” can already be taken into account during a criminal process. The interests of genuine victims, or of justice in general, are not served by the prioritising of the interests of the perpetrator over the interests of the victim. There are no excuses for torture.
5. High quality investigations undertaken promptly after the events in question are likely to obviate the need for the kind of presumptions proposed by this Bill. Rather than incentivizing delay in undertaking investigations into allegations against armed forces personnel, **the Bill should provide strict time limits for concluding the thorough investigations required to ensure that meritorious cases proceed promptly, whilst**

¹ MOD Explanatory Notes published with the Bill.

others are closed expeditiously. This would ensure that uncertainty and delays are avoided for both soldiers and victims alike.

6. The Bill risks undermining the UK's influence on human rights in the global context, and would be incompatible with the decisions of a whole range of international legal tribunals. As far as we are aware, no other State has introduced such 'presumptions against prosecution' save in transitional justice situations or as part of post-conflict peace agreements. Even in these situations, amnesties are not permissible in relation to international crimes, including torture.
7. It creates the extraordinary prospect that a soldier could be prosecuted for an offence committed against another UK service person, contractor or civil servant, but that the bar could be set too high for a prosecution of an identical offence committed against a local civilian.

NEW TIME LIMITS IN CIVIL LITIGATION

8. The Bill changes the existing time limits for bringing claims in tort for personal injury or death, and claims for Human Rights Act 1998 (HRA) violations, that occur in the context of overseas military operations. In particular it removes the courts' discretion to extend the existing time limits.
9. The right to reparation is a well-established and basic human right and is firmly embodied in human rights treaties to which the UK is signatory, including the UNCAT (Article 14), and the International Covenant on Civil and Political Rights (Article 9(5)).
10. The Bill's proposals must be seen in the light of the fact that, in Iraq, for example, the ill-treatment suffered by Iraqi civilians appears to have been a matter of policy and/or practice at the time. Thus, the Bill would appear to be an attempt to avoid accountability.
11. Based on the contents of the UNCAT, the Committee against Torture's General Comment No. 3 on redress states that "States parties shall ensure that all victims of torture or ill-treatment, **regardless of when the violation occurred** or whether it was carried out by or with the acquiescence of a former regime, are able to access their rights to remedy and to obtain redress."² [emphasis added]
12. The UK courts have shown themselves perfectly able to balance the key issues involved, including that of delay in the commencement of the litigation, using the previous legislation. In some cases, all the factors having been taken into account, the cases have been allowed to proceed, in others, they have not.
13. Often there are good reasons – beyond the control of genuine victims – which may prevent someone from bringing a civil claim against the MOD within the six year time period proposed, for example, where a conflict is ongoing. Where UK armed forces have occupied an area (as was the case in Iraq), people may fear bringing a claim and might only contemplate doing so once the UK armed forces have left. Or a victim's mental health issues might be so severe as to make it impossible or impractical to do so more promptly. The Bill does not appear to take into account the psychological impact on the victims of abuse in their ability to bring the claim within a limited time period. Fundamentally, **the Bill's blanket limitation does not take into account the**

² Committee against Torture, *General Comment No. 3: Implementation of article 14 by States parties*, CAT/C/GC/3, 13 December 2012, §40.

rights of victims to justice, truth and reparations, and the Bill's provisions in this regard are unnecessary.

CONCLUSION

14. The UN Special Rapporteur on the question of impunity has described the dangers of going down the road proposed by this Bill:

“Impunity” means the impossibility, de jure or de facto, of bringing the perpetrators of human rights violations to account - whether in criminal, civil, administrative or disciplinary proceedings - since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims.³

15. The Bill as drafted will inevitably lead to the UK breaching its existing treaty obligations, along with its legal and moral obligations to foster a respect for international human rights law.

³ *Revised final report of the Special Rapporteur on the question of impunity of perpetrators of human rights violations (civil and political)*, UN Doc E/CN.4/Sub.2/1997/20/Rev.1 (1997), p.17.