



Rt. Hon. Rishi Sunak MP
Prime Minister
10 Downing Street
London SW1A 2AA
Also by email to:

11 November 2022

Dear Prime Minister,

We, the undersigned organisations, write to raise our serious concerns about the Government's proposed National Security Bill. As a country that prides itself on upholding the rule of law, it is unconscionable that the British Government might shield ministers or officials from accountability for assisting murder and torture, or prevent victims of torture from receiving compensation on the basis of inscrutable 'national security factors'. As the new Prime Minister, you have the opportunity to show your commitment to justice and accountability by removing these provisions. We respectfully request that clauses 27 and 79-83, along with Schedule 13, be withdrawn from the Bill.

Shields ministers from justice

Clause 27 of the National Security Bill seeks to give Ministers and officials effective criminal immunity for assisting and encouraging crimes abroad, where their actions are deemed "necessary" for the proper function of the security services or armed forces. With no limits on what criminal activity the clause includes, this provision could be used to shield British Ministers and officials from prosecution where they have encouraged or assisted extraordinary rendition, interrogations involving torture, or unlawful targeted killings.

Parliament's Intelligence and Security Committee has extensively documented how, during the 'War on Terror', UK politicians and officials became involved in torture and extraordinary rendition of individuals like Abdel Hakim Belhaj, and his pregnant wife, Fatima Boudchar. Many such cases remain unresolved. While we hope abuses of power like this will never again take place, our legal system exists to provide accountability and justice where things go wrong. Clause 27 would undermine any attempt to achieve accountability for Ministerial or official involvement in these crimes.

Clause 27 looks designed to protect politicians and officials based in the UK, as opposed to British personnel operating overseas. The Clause gives legal cover for "encouraging or assisting crimes overseas", such as giving a tip off which leads to someone's torture, as opposed to the direct commission of the crime itself. It is therefore highly unlikely to apply to UK personnel overseas such as troops or intelligence officers, who already receive separate protections under Section 7 of the 1994 Intelligence Services Act).ⁱ Clause 27 appears designed to protect UK Government actors whose actions in the UK contribute to offences overseas – so politicians and officials rather than UK personnel.

Harms the UK's international reputation

The UK has rightly condemned crimes such as the murder of Jamal Khashoggi, allegedly ordered by Crown Prince Mohammed Bin Salman, or the attempted killing of Sergei Skripal,

allegedly ordered by President Vladimir Putin. If Clause 27 were enacted into law, the UK's moral authority as a leader in condemning acts like these would be seriously undermined, and the international prohibition on torture would be weakened.

Creates a two-tier justice system

Our legal system rests on the principle that everyone is equal before the law: this clause attempts to give Ministers and officials a special carve-out from British justice, placing them above ordinary members of the public. Decisions about prosecution in individual cases must rightly be left to the Crown Prosecution Service (CPS) and Director of Public Prosecutions (DPP), rather than being legislated away.

Denies redress to torture survivors

Clauses 79 to 82 could allow Ministers and officials to avoid paying damages to survivors of torture and other abuses overseas. Under these clauses, if the Government is found liable by a British court for harm done to a claimant, it could apply for any damages to be reduced to zero on the basis of vague 'national security factors'. Almost all of these factors would likely apply in cases where the Government had been found liable for involvement in torture overseas. They include the relevant conduct "having occurred overseas", "having been carried out in conjunction with a third party", or that the Minister or official acted in order to avert any "risk of harm". Even where seeking to prevent harm, the Government should be bound by the UK's categorical opposition to torture and other abuses.

These Clauses risk impeding accountability for the torture of people like Jagtar Singh Johal, a British human rights defender facing the death penalty in India after being tortured into making a forced confession to baseless charges. Evidence has since emerged that the British intelligence agencies, MI5 and MI6, may have contributed to Mr Johal's detention and torture by sharing intelligence with the Indian authorities prior to Mr Johal's arrest.ⁱⁱ Mr Johal has now launched a legal claim asking the British Government to grant him redress for the harm he has suffered. If Clauses 79-83 of the National Security Bill pass into law, the Government could avoid paying damages in future cases like Mr Johal's, even if a court found the Government liable.

Clause 83, along with Schedule 13, would give the Government an additional power to freeze damages a court has awarded to a Claimant, where it is suspected they might be used for the purposes of terrorism. Powers already exist to freeze any asset at risk of being used for such purposes.ⁱⁱⁱ

Civil claims are a vital mechanism for holding the Government to account, and have, in cases like that of Abdel Hakim Belhaj, caused information to come to light which has informed changes to UK policy. Introducing additional measures to impede civil claims would deprive survivors of their rights to seek redress, and prevent lessons being learned in the future. The cases of *Mutua* and *A/seran*^{iv} provide examples of how the UK courts have awarded damages in cases of torture, where 'national security factors' could have been raised in evidence or submissions, potentially engaging the powers envisaged in this Bill to reduce or eliminate damages. In *A/seran*, Mr Justice Leggatt concluded that the abuse inflicted was "sadistic" and contemptuous of the victims.^v It is utterly inappropriate in such cases that the claimants should risk a reduction in their damages as a result of the Government having raised vague 'national security' factors in the course of the litigation.

If this legislation is allowed to proceed, it will demonstrate that the United Kingdom has learnt nothing from the shameful, acknowledged excesses of the 'War on Terror', as well as more recent cases like that of the British human rights defender Jagtar Singh Johal. It should be unthinkable that the UK Government would seek to legislate to allow Ministers to effectively get away with murder or torture, and this attempt begs the question: why would Ministers seek to

protect themselves and their officials from criminal prosecution for murder and torture if they don't expect to be committing such serious crimes?

We urge you to withdraw clauses 27 and 79-83, along with Schedule 13, from the National Security Bill without delay.

Yours sincerely

Reprieve
REDRESS
Freedom From Torture
Survivors Speak OUT
Liberty
Amnesty International UK
Quaker Concern for the Abolition of Torture
Centre for Military Justice
Omega Research Foundation
INQUEST
Unlock Democracy

ⁱ <https://www.legislation.gov.uk/ukpga/1994/13/section/7>

ⁱⁱ <https://www.bbc.co.uk/news/uk-62639233>

ⁱⁱⁱ The **Anti-Terrorism, Crime and Security Act 2001 (ATCSA 2001)** allows the Government to make a freezing order where it reasonably believes that (a) action to the detriment of the United Kingdom's economy has been or is likely to be taken or (b) action constituting a threat to the life or property of one or more nationals of the United Kingdom or residents of the United Kingdom has been or is likely to be taken (s.2). The Government can also forfeit property where any property is "intended to be used for the purposes of terrorism" (s.1). **The Counter-Terrorism (Sanctions) (EU Exit) Regulations 2019** – these provide for the Treasury to create 'designated persons' (someone they have reasonable grounds to suspect is involved in terrorist activity – broadly defined at s.6). Any assets held in the UK can be frozen, and anyone who deals with them financially, or provides them with resources, commits an offence (s.11). 'Making funds available' to a designated person would be an offence, so these regulations could be used to effectively freeze the Claimant's damages. The **Sanctions and Anti-Money Laundering Act 2018** gives Ministers the power to make sanctions regulations (s.1) covering any 'designated person', including asset freezing, for the purpose of the "prevention of terrorism" or for reasons of "national security" (s.3). The Government's guidance (para 3.1.2 and 3.1.3) on financial sanctions makes it clear that essentially any asset or good owned by the 'designated person' is covered, and should be immediately "frozen" by the person in possession of it.

^{iv} *Mutua & others v FCO* [2012] EWHC 2678 (QB); *Alseran and others v MOD* [2017] EWHC 3289 (QB)

^v *Alseran*, §953.