

**EVIDENCE SUBMISSION BY REPRIEVE TO THE PUBLIC BILL COMMITTEE'S SCRUTINY INTO THE
OVERSEAS OPERATIONS BILL**

Reprieve is a legal action charity which seeks to uphold the rule of law and the rights of individuals around the world. Over the past 20 years, Reprieve has provided legal and investigative support to hundreds of prisoners on death row, the families of innocents killed in drone strikes, victims of torture and extraordinary rendition, and scores of prisoners in Guantanamo Bay. Reprieve welcomes the opportunity to submit to the Public Bill Committee's legislative scrutiny of the Overseas Operations Bill.

EXECUTIVE SUMMARY

1. Reprieve's submission sets out our core concerns with the Overseas Operations Bill as it stands:
 - I. Part 1 of the bill introduces an unprecedented 'triple lock' block on prosecutions for the most serious offences. This risks effectively decriminalising torture when committed by UK forces overseas more than five years ago.
 - II. Part 2 of the bill creates absolute time bars on civil claims against the Ministry of Defence by both survivors of torture and UK soldiers themselves. These apply even to claimants who are unable to bring claims within the time limit because they remain unlawfully detained, or because the UK's role in their mistreatment may not have come to light within this time.
2. The remit of these provisions extends far beyond the traditional battlefield, applying to peacekeeping missions as well as an unrestricted category of "operations for dealing with terrorism" anywhere around the world.ⁱ These provisions would represent a very serious step backwards for accountability over torture and will only make UK forces' difficult job even harder.

THE 'TRIPLE LOCK' ON PROSECUTIONS: DECRIMINALISING TORTURE?

3. Part 1 of the Overseas Operations Bill introduces a so-called 'triple lock' against prosecutions for offences relating to overseas operations five years after they are alleged to have been committed. The three individual 'locks' comprise:
 - i. A statutory presumption against prosecution, stating that prosecutions for such offences are to be "exceptional" (section 2).
 - ii. A requirement that certain matters are to be given "particular weight", which are intended to militate against prosecutions for such offences (section 3).
 - iii. A power provided to the Attorney General to block any such prosecution (section 5).
4. These three 'locks' combine to form a block on prosecutions even for the most serious offences such as torture. Reprieve is concerned that the introduction of these unprecedented measures designed in effect to block prosecutions for such offences – even where independent prosecutors believe the evidence is strong and a prosecution in the public interest – risks effectively decriminalising torture when committed by UK personnel overseas. Decriminalisation is defined as reducing the criminal status of a particular offence, or repealing a strict ban on that offence while keeping it under some form of regulation.ⁱⁱ This is precisely what this legislation seeks to do with respect to acts of torture in the specific circumstances set out by the bill.
5. This presumption against prosecuting acts of torture risks reversing a 300 year-old ban on torture in UK domestic law, which dates from the Long Parliament's Abolition of the Star Chamber in 1640.ⁱⁱⁱ This ban was

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consolidated across UK law in the early 1700s,^{iv} and was enhanced in the 1988 Criminal Justice Act, under which Margaret Thatcher's Government designated as an offence the torture of anyone, anywhere in the world.^v

6. Reprieve understands that there is no precedent for introducing a presumption against bringing a prosecution, particularly one which is intended to apply even where independent prosecutors would otherwise decide that the evidence for the commission of an offence is strong and a prosecution is in the public interest. Even more unprecedented is the combination of this presumption with a requirement to give particular weight to certain factors which are intended to strongly tend against prosecution, which is then backed up by a veto power of the Attorney General.
7. Even countries such as France or the US, which operate statutes of limitations for criminal offences, have never introduced provisions giving military personnel special status in their criminal law, and their statutes of limitations have exceptions for the most serious offences such as crimes against humanity.^{vi} Further, we understand that even amnesties for criminal offences are only introduced in the aftermath of serious civil conflict and are intended to contribute to a transitional justice peace process.
8. During the public consultation which preceded the publication of this Bill, the MOD suggested in a question asked of stakeholders that both the offence of torture and sexual offences may be excluded from the 'triple lock' on prosecutions, stating:

"...there may be particular considerations relating to certain types of offence (e.g. sexual offences or torture), which mean that the presumption should not apply in respect of such offences."^{vii}

9. However, the published version of the bill exempts only sexual offences from the scope of its provisions, and not torture, war crimes, or crimes against humanity. This suggests the Government accepts that certain offences are so serious that their prosecution should not face being blocked, but that it also judges that torture does not meet this threshold of seriousness. It is clearly right to exempt sexual offences from the scope of these provisions, but this raises a question as to why very serious offences such as torture remain within the scope of the bill. The MoD has given no explanation for this decision and has thus far failed to publish the results of its consultation.
10. UK soldiers neither want nor need the dispensation to commit torture which this Bill currently risks creating. The Ministry of Defence's own doctrine makes clear that "*there are no circumstances in which torture, cruel, inhuman or degrading treatment can ever be justified*",^{viii} while the Army Field Manual stresses in particular that it is "*critical*" that detainees are interrogated "*within the rule of law*".^{ix}
11. Individual officers, from across the spectrum of seniority, have strongly echoed these concerns. Field Marshal Lord Guthrie, for example, has described torture as "*a crime in both peace and war that no exceptional circumstances can permit*" and stated that "*there can be no exceptions to our laws, and no attempts to bend them. Those who break them should be judged in court*".^x
12. Reprieve has spoken to several former soldiers who wish to express their serious concerns on record, including Lt Col Mark Goodwin-Hudson who recently resigned after 27 years in the British Army. Having served extensively in the Middle East, Goodwin-Hudson, said "*it is natural to want to do the best for our soldiers*", but he believes it is "*misleading*" to say that this Bill will protect them.^{xi} Citing torture by US forces in Abu Ghraib prison during the occupation of Iraq, he makes clear that "*if we conduct these types of abuses, then of course it puts British soldiers in greater danger. Moreover it makes us no different to the oppressive regimes we are sent to overthrow*". He describes the 'triple lock' against prosecutions in the Bill as "*unjust, unprofessional and ultimately unmilitary*".
13. These provisions will leave the UK in breach of its obligations to investigate torture under the UK's domestic and international human rights commitments, as well as risking substantive breaches by suggesting that acts of torture will not be prosecuted. But the 'triple lock' also risks gravely undermining the Geneva

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Conventions, which provide vital protection to UK troops on overseas operations – sending a dangerous signal to other armed forces that they may also ignore them.

14. This point was powerfully made in a 2017 letter to the then-Prime Minister by a cross-party group of exmilitary MPs including the Rt. Hon David Davis, the Rt. Hon Andrew Mitchell, Crispin Blunt, Dan Jarvis MBE, and the late Rt. Hon Lord Ashdown of Norton-sub-Hamdon GCMG:

“The UK remains a key guarantor of these crucial rules, and the UK's upholding of this system of protections helps safeguard British service personnel across the world. For the UK Government to flout these rules anywhere places British forces at greater risk everywhere.”^{xii}

15. Finally, UK military experts have made clear that these provisions will in fact leave UK forces at greater risk of international investigation. The UK's most senior military judge, Judge Advocate General Jeffrey Blackett, has described the bill as “ill-conceived” and “bring[ing] the UK armed forces into disrepute”, but he also warns that its ‘triple lock’ “increases the likelihood of UK service personnel appearing before the ICC in the future”.^{xiii} Indeed, the Rome Statute stipulates that if a state is “unable or unwilling” to prosecute grave international crimes such as torture, responsibility falls to the International Criminal Court (ICC).^{xiv} Following this, the Defence Committee wrote to the Secretary of State expressing concern that the bill “may not be an effective way” of “protecting serving personnel and veterans”, and asking why the Judge Advocate General was not consulted in its drafting.^{xv}
16. **Reprive recommends that the Overseas Operations Bill be amended to ensure that the most serious offences, such as torture, war crimes, and crimes against humanity are excluded from its ‘triple lock’ on prosecutions.**

BILL DENIES REDRESS TO SOLDIERS AND SURVIVORS OF TORTURE

17. Part 2 of the Bill would introduce new restrictions to the time limits in which claimants – from survivors of torture to UK soldiers who have suffered harm in the course of their duties – may bring legal action against the Ministry of Defence. Section 11 would introduce an absolute bar to human rights claims relating to overseas operations brought more than six years from the date on which the acts took place, or 12 months from the claimants’ knowledge of them.^{xvi} It does this by removing the court’s existing discretion to extend the time-limit for claims brought after the existing time limits (even where “equitable” to do so).^{xvii}
18. Further, sections 8-10 (with Schedules 2, 3, and 4) create a similar absolute bar by removing the discretion of UK courts to extend existing time limits for survivors of abuse or UK soldiers to bring claims relating to personal injury and death. This would apply where there may be good reason to extend these time limits otherwise, such as an individual being unable to bring a claim due to their continued detention overseas.
19. In Reprive’s experience of investigating the use of torture and other forms of mistreatment, it is clear that no arbitrary time limits can be placed on survivors seeking redress. Even where individuals know of the UK’s involvement in their mistreatment – for instance, where they have been detained by UK forces before being rendered by UK partners to arbitrary detention and torture – they may remain wrongly imprisoned for many years more than the 6-year time limit this bill imposes.
20. For example, the UK Government has been found to have been involved in the rendition of individuals from Iraq to face mistreatment in secret prisons around the world.^{xviii} These individuals, by the very fact of their detention and mistreatment, could only bring legal claims several years after these actions took place and the UK’s involvement in them came to light.^{xix} Indeed, the involvement of UK personnel in abuses may not come to light until many years after the time limit has passed. This bill would allow for claims in such cases to be brought within only one year after UK involvement has come to the victims’ knowledge – regardless of the victim’s circumstances or location – following which an absolute bar to legal claims is imposed.
21. Investigation into the UK’s involvement in torture and rendition, for example, has taken nearly two decades, and it was only in 2018 that the Intelligence and Security Committee published its findings that UK

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personnel were systematically involved in mistreatment from the first days of the so-called ‘war on terror’. In the period between these acts of mistreatment occurring and their exposure by the ISC, survivors of these abuses would have been barred from redress by this bill.

22. UK courts already have powers to strike out civil claims that disclose “no reasonable grounds”, including those which are vexatious or “obviously ill-founded”.^x The Court’s discretion to extend the limitation period for civil claims under section 33 of the Limitation Act 1980 is already subject to a full and rigorous assessment of all the circumstances of the case, including the reasons tending *against* extending time such as the impact of delay on the quality of the evidence available. Moreover, claims under the Human Rights Act 1998 must be brought within a year unless good reason can be shown as to why the claim was not brought sooner – a far tighter limitation period than almost all other areas of law.^{xxi}
23. Far from protecting soldiers’ interests, the bill, designed benefit the Ministry of Defence, will fundamentally harm UK soldiers. The largest proportion of claims against the MoD between 2014 and 2019 were brought by service personnel seeking compensation for injuries they have suffered during their service.^{xxii} The bill will have a very significant impact on the ability of UK soldiers and former soldiers to bring claims of this kind.
24. This has led prominent military claims lawyer Hilary Meredith to say, “*I have worked with [Defence Minister] Johnny [Mercer] on many occasions fighting for the rights of service personnel...I cannot understand his sudden change of stance as veterans minister. He seems determined to bring in legislation which is clearly to the detriment of those who serve their country, despite his protestations to the contrary.*”^{xxiii} As former Attorney General Dominic Grieve has highlighted, this raises the real prospect that the beneficiary of this bill “*is not so much the personnel of the armed forces but the government, which is thereby protected from facing what may be wholly deserving late claims.*”^{xxiv}
25. **Reprieve recommends that the Overseas Operations Bill be amended to ensure that survivors of abuses, as well as UK soldiers, do not face absolute time bars to bringing claims for serious human rights abuses, such as torture.**

REFERENCES

- i See section 1(6), section 11(2), Schedule 2 paragraph 1, and Schedule 4 paragraph 1.
- ii see Miriam Webster DICTIONARY, 2020: “Decriminalize (verb): to remove or reduce the criminal classification or status of; especially: to repeal a strict ban on while keeping under some form of regulation”. Available at: <https://www.merriamwebster.com/dictionary/decriminalize#h1>
- iii Blackstone’s Commentaries on the Laws of England (1789) vol IV, ch 25, pp. 320-321.
- iv For instance, with the Treason Act 1708. ^v <https://www.legislation.gov.uk/ukpga/1988/33/contents>
- v See House of Commons Library, Briefing Paper on Overseas Operations (Service Personnel and Veterans) Bill 2019-21, 18 August 2020, pp. 23-24, available at: <https://commonslibrary.parliament.uk/research-briefings/cbp-8983/>.
- vi https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819101/20190718MOD_consultation_document-FINAL.pdf, p. 11.
- vii Ministry of Defence, ‘Joint Doctrine Publication 1-10 Captured Persons (CPERS)’, 2015, p. 2-8, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/455589/20150820JDP_1_10_Ed_3_Ch_1_Secured.pdf
- viii https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1298581529392746496
- ix British Army Field Manual, Volume 1, Part 10, ‘Countering Insurgency’, Army Code 71876, October 2009, p. 8-C-1, available at: http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/16_11_09_army_manual.pdf
- x <https://www.thetimes.co.uk/article/torture-uses-the-body-against-the-soul-it-is-illegal-and-dumb-ff6mll9nzh>
- xi <https://twitter.com/Reprieve/status/1298581529392746496>
- xii <https://www.thetimes.co.uk/article/ex-services-mps-urge-may-to-hold-inquiry-on-torture-mqp52vkfs>
- xiii <https://www.thetimes.co.uk/article/law-to-protect-soldiers-could-leave-them-facing-war-crimes-tribunal-36nbs3bzj>.
- xiv <https://www.thetimes.co.uk/article/law-to-protect-soldiers-could-leave-them-facing-war-crimes-tribunal-36nbs3bzj>.
- xv Article 17, Rome Statute
- xvi <https://committees.parliament.uk/publications/1901/documents/18579/default/>
- xvii Section 11 of the bill makes clear that 12-month period runs from the claimant’s combined knowledge of the act in question *and* it being an act of the Secretary of State or the Ministry of Defence.

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- ^{xviii} See section 7(5)(b) of the Human Rights Act 1998.
- ^{xix} See, for example: https://www.therenditionproject.org.uk/prisoners/rahmatullah_ali.html.
- ^{xx} <https://www.theguardian.com/uk-news/2014/jul/29/mod-foreign-office-yunus-rahmatullah-torture-case> ^{xx} Civil Procedure Rules, Part 3.4, available at: <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part03#3.4>, and Practice Direction 3A, available at: https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part03/pd_part03a.
- ^{xxi} Section 7(5) of the Human Rights Act 1998.
- ^{xxii} <https://www.libertyhumanrights.org.uk/issue/liberty-responds-to-plans-to-limit-armed-forces-accountability-no-deadline-on-justice/> ^{xxiii} <https://www.lawgazette.co.uk/news/limitation-changes-not-an-attack-on-veterans-says-forces-minister/5105166.article> ^{xxiv} <https://www.thetimes.co.uk/article/military-prosecutions-bill-creates-more-than-problems-than-it-fixes-dn2t3zcld>