

The Overseas Operations (Service Personnel and Veterans) Bill Must be Amended

by Dr Shereen Fernandez and the Muslim Lawyers Action Group (23th November 2020)

In March 2020 the Government introduced the Overseas Operations Bill to Parliament. Through this, they seek to introduce what has been termed a “triple lock” against the prosecution of British soldiers acting overseas. This so-called triple lock will effectively introduce a statute of limitations for the offence of torture. **Torture has been absolutely prohibited under international law since 1948** and is enshrined in legal instruments such as the UN convention against torture, and the Geneva conventions of 1949. Despite this prohibition, the Government is preparing to amend those terms with the overseas operations bill.

This Bill seeks to make lawful:

1. **Statutory presumption against prosecution of current or former personnel for alleged offences committed in the course of duty more than five years ago**
2. **Requirement that any prosecution brought more than five years after the event must have the attorney general’s consent to proceed**
3. **A ‘longstop’ to prevent claimants bringing human rights or civil litigation claims for personal injury or death more than six years after the event**
4. **The secretary of state’s ability to deviate from the European Convention on Human Rights (ECHR) ahead of military operations abroad**

The proposal to introduce a presumption against prosecution amounts to a quasi-statute of limitations. **Introducing a time limit risks creating impunity for serious crimes** and the proposal would be an exception to the normal law for a category of criminal matters that does not exist anywhere else. The presumption would apply to some of the most serious crimes, such as torture. To allow allegations of it to go unanswered would damage this vital protection, **setting a dangerous example to other countries and presenting a marked step backwards for human rights standards in the UK**.

Introducing a ‘longstop’ to prevent human rights and civil litigation claims being brought after six years would create arbitrary distinctions and will stop people getting access to justice. It would apply to everyone where their claim is a result of military activity overseas (including soldiers themselves). When a claim is brought a long time after an incident, **the courts must already consider a range of factors to decide whether cases of this nature should be allowed to proceed. There’s no evidence to suggest they are not already doing so appropriately**, so one needs to ask why a time limit is being proposed now? Recent public inquiries, such as the Baha Musa Inquiry, which demonstrate that the British Army have breached UN conventions on torture by the use of unlawful interrogation techniques in Iraq and Afghanistan may provide an answer.

If this Bill passes into law, the Government will have effectively legislated to protect itself from those allegations. The most serious of these include the discredited global rendition and torture programmes of the war on terror. **To protect against future abuses of power and to ensure that the UK is able to set an example to the rest of the world by upholding the Geneva conventions against torture, this Bill must be amended by parliament.**

Visit our website for further briefings (<https://blogs.soas.ac.uk/cop/>). If you would like a personal briefing or clarification on any of the issues raised here, please contact the author at sta@no5.com. Do contact Professor Alison Scott-Baumann and her team for further briefings and access to other experts as150@soas.ac.uk

The views expressed in SOAS ICOP Briefings are those of the authors and do not necessarily represent those of SOAS.