Briefing: Overseas Operations (Service Personnel and Veterans) Bill

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Contents

[Introduction 2](#_Toc61857601)

[Recommendations 4](#_Toc61857602)

[Statutory presumption against prosecution 4](#_Toc61857603)

[Limiting courts’ discretion 10](#_Toc61857604)

[Remove clause 12 11](#_Toc61857605)

[Further information 13](#_Toc61857606)

Introduction

The Equality and Human Rights Commission has been given powers by Parliament to advise Government on the equality and human rights implications of laws and proposed laws and to publish information or provide advice, including to Parliament, on any matter related to equality, diversity and human rights.

The Overseas Operations (Service Personnel and Veterans) Bill (‘the Bill’) was introduced to Parliament in March 2020 and includes a series of proposals that would limit criminal and civil claims relating to the conduct of UK service personnel operating overseas.[[1]](#footnote-1) The Bill proposes a ‘**presumption against prosecution**’ of service personnel accused of committing a crime overseas if more than five years have passed since the alleged offence took place.[[2]](#footnote-2)

If passed, the Bill will also impose a **time limit on civil claims** for personal injury and death,[[3]](#footnote-3) and a **time limit on human rights claims** under the Human Rights Act 1988 (HRA),[[4]](#footnote-4) where the conduct in question took place in the context of overseas operations by the UK armed forces. The Bill includes a further **requirement that the Secretary of State consider derogating from the European Convention on Human Rights** (ECHR) in relation to future overseas operations.[[5]](#footnote-5)

We are concerned that these proposals are incompatible with the UK’s obligations under international law and risk denying victims access to effective remedy and redress. Other potential consequences, perhaps unintended, include reducing protections for British service personnel serving overseas, and increasing the likelihood of judgments against the UK in international courts, including the International Criminal Court (ICC) and the European Court of Human Rights (ECtHR).

In light of the Government’s aspirations to be a global leader on human rights post-Brexit, it is imperative that the UK is seen to show the highest regard for the international legal order. The Commission recommends changes to the Bill in three priority areas, which we have highlighted below.

Recommendations

### Statutory presumption against prosecution

1. **The UK Government should withdraw legislative proposals for a statutory presumption against the prosecution of current or former military personnel. Any revised proposals must be wholly compatible with the UK’s obligations under the existing domestic and international human rights framework.**

As currently drafted, the Bill creates a statutory ‘presumption against the prosecution’ of current or former military personnel if more than five years have passed since the alleged offence took place, stating that such a prosecution would be ‘exceptional’.[[6]](#footnote-6) Under Clause 3 the relevant prosecutor must give ‘particular weight’ to factors that reduce the person’s culpability or otherwise tend against prosecution.[[7]](#footnote-7) ‘Particular weight’ would also be given to the public interest in finality where there has been a previous investigation and no compelling new evidence has arisen.[[8]](#footnote-8) In England and Wales, consent from the Attorney General would need to be sought in order to proceed with criminal proceedings for crimes committed by UK forces overseas more than five years previously.[[9]](#footnote-9)

1. Incompatibility with international law

The proposed ‘presumption against prosecution’ amounts to a statute of limitations and would be applicable to torture and ill-treatment,[[10]](#footnote-10) and in principle to international crimes including genocide, war crimes and crimes against humanity – something that is widely seen as incompatible with the international human rights framework[[11]](#footnote-11) and customary international law.[[12]](#footnote-12) International human rights law stipulates that complaints of maltreatment must be investigated promptly and impartially by competent authorities so as to make the remedy effective,[[13]](#footnote-13) and that states must investigate alleged or suspected violations of the right to life in situations of armed conflict.[[14]](#footnote-14) The UK’s international treaty obligations explicitly require that serious international crimes such as torture,[[15]](#footnote-15) genocide,[[16]](#footnote-16) crimes against humanity,[[17]](#footnote-17) and grave breaches of the Geneva Conventions[[18]](#footnote-18) are prosecuted.

The Rome Statute of the International Criminal Court requires State Parties to exercise criminal jurisdiction over those responsible for international crimes.[[19]](#footnote-19) Where states are unwilling or unable to investigate or prosecute such crimes, the ICC may do so.[[20]](#footnote-20) The incompatibility of the ‘presumption against prosecution’ with international law could lead to further investigation by the ICC into the conduct of UK forces abroad.[[21]](#footnote-21) Indeed, in its final report on the Situation in Iraq/UK - published in December 2020 - the Office of the Prosecutor of the ICC commented, in reference to the Overseas Operations Bill, that:

‘[t]he effect of applying a statute of limitations to block further investigations and prosecution of crimes allegedly committed by British service members in Iraq would be to render such cases admissible before the ICC as a result of State inaction or alternatively State unwillingness or inability to proceed genuinely under articles 17(1)(a)-(c)’.[[22]](#footnote-22)

The report states the Office of the Prosecutor will continue to monitor the development of the Overseas Operations Bill and its impact, and may revisit its decision not to take action against the UK for war crimes committed in Iraq in the light of new facts or evidence.[[23]](#footnote-23) The increased risk of investigation or prosecution by the ICC also applies in respect of other past and future overseas operations.

1. Incompatibility with ECHR

The specification in Clause 2 that prosecutions brought after a five-year period would be ‘exceptional’ also risks contravening the UK’s procedural obligations under Articles 2 and 3 ECHR to investigate the lawfulness of actions involving the use of lethal force or alleged torture or ill-treatment by service personnel in overseas operations.[[24]](#footnote-24) This is because the ‘exceptionality’ element of the Bill could act as a deterrent against prompt investigations into crimes committed in the course of overseas operations,[[25]](#footnote-25) and risk prejudicing the outcome of any such investigation.[[26]](#footnote-26)

We are troubled by the stipulation that a prosecutor must consider whether any ‘compelling new evidence’ has become available when deciding whether to proceed with a prosecution, and if not the prosecutor must give ‘particular weight’ to the public interest in finality.[[27]](#footnote-27) This is because previously considered evidence can be thrown into new light by later developments, and we are concerned that Clause 3 could restrict the effectiveness of subsequent investigations. This Clause appears to contradict ECtHR case-law, which specifies that even after a significant lapse of time the obligation on the State to carry out an Article 2 compliant investigation remains.[[28]](#footnote-28) It is also worth noting that the public interest in finality is only properly met when justice is fully served through proper examination of all the facts, and not when the potential for prosecution is arbitrarily curtailed.

1. Government justification for including serious international crimes within scope of the Bill, while excluding offences of a sexual nature.

The Government has excluded a number of sexual offences, listed in Schedule 1, from the scope of the Bill.[[29]](#footnote-29) As such, the ‘presumption against prosecution’, the requirement that ‘particular weight’ be given to matters that tend to reduce the accused’s culpability, and the requirement for consent from the Attorney General in order to prosecute do not apply to these offences.

During the Bill’s passage through the House of Commons the Government was asked on several occasions to explain why serious international crimes - such as torture and genocide – remain within scope of the Bill, while offences of a sexual nature are excluded.[[30]](#footnote-30) In response, Secretary of State for Defence, Ben Wallace, and Minister for Defence People and Veterans, Johnny Mercer, argued that violent and lethal acts are sometimes justified during combat, and these activities can expose service personnel to allegations of torture or other war crimes, whereas sexual violence can never be justified.[[31]](#footnote-31)

While we accept that the use of force in military operations can sometimes be justified, torture – like sexual offences – can never be justified. The ECtHR has clarified the definition of torture (as distinct from legitimate force), describing it as ‘deliberate inhuman treatment causing very serious and cruel suffering’.[[32]](#footnote-32) This echoes the [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](https://eur01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.ohchr.org%2FEN%2FProfessionalInterest%2FPages%2FCAT.aspx&data=04%7C01%7Clindsey.pratt386%40mod.gov.uk%7Caf5939de4c2d4604ae5908d89dc41344%7Cbe7760ed5953484bae95d0a16dfa09e5%7C0%7C0%7C637432812772958732%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=lGKs5yvzoqA46W9pSvty2IST%2BqmwJVztXMFS6vPVtn4%3D&reserved=0), which defines torture in terms of the intentional infliction of severe pain or suffering with the aim, *inter alia*, of obtaining information, inflicting punishment or intimidating.[[33]](#footnote-33)

The distinction between legitimate force and other serious international crimes, such as genocide, it also clear. The Convention on the Prevention and Punishment of the Crime of Genocide defines genocide as acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, including, for example, by killing members of the group or causing serious bodily or mental harm to members.[[34]](#footnote-34)

The Rome Statute of the ICC lists a number of acts which, if committed ‘as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack’ amount to crimes against humanity.[[35]](#footnote-35) These acts include, among others, murder, enslavement and deportation or forcible transfer of population.[[36]](#footnote-36)

Similarly, the Rome Statute lists a number of acts which amount to war crimes if committed ‘as part of a plan or policy or as part of a large-scale commission of such crimes’.[[37]](#footnote-37) These acts include, among others, wilful killing, wilfully causing great suffering, or serious injury to body or health, and taking of hostages.[[38]](#footnote-38)

These acts are clearly distinct from legitimate use of force during combat and it is difficult to envisage a situation in which British service personnel would be engaged in legitimate use of force which meets these definitions of torture, genocide, crimes against humanity and war crimes. In the rare event that credible allegations of such crimes might be made against British service personnel, they should be effectively investigated.

The Government recognises that sexual offences are so innately unjustifiable that they should not be subject to the clauses in the Bill which tend against prosecution. By the same logic, crimes as reprehensible as torture, genocide, crimes against humanity and war crimes should also be excluded from the scope of the Bill.

### Limiting courts’ discretion

1. **Withdraw legislative proposals that limit courts’ discretion to determine whether to extend existing time limits for civil and human rights claims on a case by case basis.**

As drafted, the Bill introduces a ‘long stop’ of six years on civil claims in cases of personal injury and death[[39]](#footnote-39) and limits courts’ discretion to extend the one-year time limit for HRA claims where they arise in the course of overseas operations.[[40]](#footnote-40) The Bill would further create an absolute prohibition on claims under the HRA being brought more than six years after the date on which the act complained of took place, or more than 12 months after the date of knowledge (if later), where they relate to overseas operations.[[41]](#footnote-41)

Evidence of personal injury, death and human rights violations occurring during armed conflict can take years to come to light[[42]](#footnote-42) and victims’ ability to launch civil claims can be impaired by factors outside of their control, such as prolonged periods of detention. With these considerations in mind, the Commission’s view is that attempts to limit courts’ discretion to determine whether to extend existing time limits for civil and human rights claims significantly impacts on victims’ right to a fair trial under Article 6 ECHR and their access to an effective remedy under Article 13 ECHR.[[43]](#footnote-43)

Claims for negligence and breaches of ECHR rights occurring during overseas operations are most regularly taken against the Ministry of Defence by service personnel themselves, or their next of kin.[[44]](#footnote-44) In reality, the six-year limitation period proposed by the Bill would therefore be likely to hinder the ability of service personnel and veterans to take legal action against their employer, particularly as 70 of 522 settled claims of this nature were taken more than six years after the cause of action.[[45]](#footnote-45) This appears to conflict with the Government’s stated purpose for the Bill, to provide ‘greater legal protections to armed forces personnel and veterans serving on military operations overseas’.[[46]](#footnote-46)

### Remove clause 12

1. **Remove Clause 12, which imposes a duty on the Secretary of State to consider whether to make a derogation under Article 15(1) of the ECHR in relation to any ‘significant’ overseas operations. At the very least, the Government should amend Clause 12 to require that future proposals to derogate from the ECHR in relation to overseas operations are put to a parliamentary vote for approval.**

If passed in its current form the Bill would further amend the HRA to place a duty on the Secretary of State to consider whether it would be ‘appropriate’ to make a derogation under Article 15(1) of the EHCR in relation to any overseas operations that are or would be ‘significant’.[[47]](#footnote-47) The Bill does not specify in what circumstances this clause would apply, nor does it define when such a derogation would be considered ‘appropriate’. Importantly, derogations under Article 15 ECHR must align with the ECtHR’s proportionality test, namely that the measures are ‘a genuine response to the emergency situation ... and fully justified by the special circumstances … and that adequate safeguards were provided against abuse.’[[48]](#footnote-48) Derogations under Article 15 ECHR do not apply to the right to life under Article 2 or the prohibition of torture under Article 3, and so any action from the Government under Clause 12 of the Bill would not absolve it of its responsibility to investigate breaches of these rights by armed forces operating overseas.[[49]](#footnote-49)

No Member State of the Council of Europe has previously derogated from the ECHR in the manner proposed by Clause 12. Given the UK’s standing and influence in the Council of Europe, there is a risk that if Clause 12 remains in the Bill and is acted on in the future it could set a dangerous precedent, which may be followed by other member states – in particular those with poorer human rights records than the UK’s – in relation to future conflicts.

As such, the Commission is of the view that Clause 12 should be removed from the Bill in order to protect the human rights framework in the UK, and to avoid a negative impact on the collective respect for and enforcement of human rights by Council of Europe Member States. If Clause 12 stands, it should be amended to require a parliamentary debate and vote in both Houses before any future decision to derogate from the ECHR in relation to overseas operations.

Further information

The Equality and Human Rights Commission is a statutory body established under the Equality Act 2006. Find out more about our work on the [Equality and Human Rights Commission website](http://www.equalityhumanrights.com)**.**

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1. [Overseas Operations (Service Personnel and Veterans) Bill (HC Bill 117)](https://services.parliament.uk/bills/2019-21/overseasoperationsservicepersonnelandveterans.html). [↑](#footnote-ref-1)
2. [Overseas Operations (Service Personnel and Veterans) Bill (HC Bill 117)](https://services.parliament.uk/bills/2019-21/overseasoperationsservicepersonnelandveterans.html), Clause 1(4) and 2. The Bill halves the time limitation on prosecution from the previously proposed ten years, see: Ministry of Defence (2019), ‘[Legal protections for armed forces personnel and veterans serving in operations outside the United Kingdom](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819101/20190718-MOD_consultation_document-FINAL.pdf)’ [accessed 11 January 2021]. [↑](#footnote-ref-2)
3. [Overseas Operations (Service Personnel and Veterans) Bill (HC Bill 117)](https://publications.parliament.uk/pa/bills/cbill/58-01/0117/cbill_2019-20210117_en_1.htm), Schedules 2 and 3 [↑](#footnote-ref-3)
4. [Overseas Operations (Service Personnel and Veterans) Bill (HC Bill 117)](https://publications.parliament.uk/pa/bills/cbill/58-01/0117/cbill_2019-20210117_en_1.htm), Clause 11. [↑](#footnote-ref-4)
5. [Overseas Operations (Service Personnel and Veterans) Bill (HC Bill 117)](https://publications.parliament.uk/pa/bills/cbill/58-01/0117/cbill_2019-20210117_en_1.htm), Clause 12; [European Convention on Human Rights](https://www.echr.coe.int/Documents/Convention_ENG.pdf), Article 15: derogation in times of emergency. [↑](#footnote-ref-5)
6. [Overseas Operations Bill](https://publications.parliament.uk/pa/bills/cbill/58-01/0117/20117.pdf), Clause 2. [↑](#footnote-ref-6)
7. [Overseas Operations Bill](https://publications.parliament.uk/pa/bills/cbill/58-01/0117/20117.pdf), Clause 3. For example, the exceptional demands and stresses effecting their capacity to make sound judgements or exercise self-control. [↑](#footnote-ref-7)
8. [Overseas Operations (Service Personnel and Veterans) Bill (HC Bill 117)](https://services.parliament.uk/bills/2019-21/overseasoperationsservicepersonnelandveterans.html), Clause 3 and 4. [↑](#footnote-ref-8)
9. [Overseas Operations (Service Personnel and Veterans) Bill (HC Bill 117)](https://services.parliament.uk/bills/2019-21/overseasoperationsservicepersonnelandveterans.html), Clause 5. In the case of Northern Ireland, consent must be obtained by the Advocate General. Clause 5 does not apply to Scotland. [↑](#footnote-ref-9)
10. Equality and Human Rights Commission (May 2020), [Britain and the Convention against Torture, Follow up Submission to the UN Committee against Torture](https://www.equalityhumanrights.com/sites/default/files/britain_and_the_convention_against_torture.pdf). [↑](#footnote-ref-10)
11. Committee against Torture (2012), ‘[General comment no. 3: implementation of article 14 by states parties](https://www2.ohchr.org/english/bodies/cat/docs/gc/cat-c-gc-3_en.pdf)’, paragraph 40 [accessed: 11 January 2021]. [↑](#footnote-ref-11)
12. See, for example, International Committee of the Red Cross (2005), [Customary International Humanitarian Law Volume 1: Rules](https://www.icrc.org/en/doc/assets/files/other/customary-international-humanitarian-law-i-icrc-eng.pdf), Rule 158, page 607. Cambridge: Cambridge University Press [accessed: 11 January 2021]. [↑](#footnote-ref-12)
13. Human Rights Committee (1994), [General Comment 20, Article 7](http://hrlibrary.umn.edu/gencomm/hrcom20.htm#:~:text=and%20mental%20suffering.-,7.,ensure%20observance%20of%20this%20provision.), paragraph 14 [accessed 11 January 2021]. [↑](#footnote-ref-13)
14. Human Rights Committee (2018), [General Comment No. 36 – Article 6 (the right to life)](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=11), paragraph 64 [accessed 11 January 2021]. [↑](#footnote-ref-14)
15. International Court of Justice (2012), ‘[Questions relating to the obligation to prosecute or extradite (Belgium v Senegal)](http://www.worldcourts.com/icj/eng/decisions/2012.07.20_Belgium_v_Senegal.pdf), 20 July 2012, General List No. 144, paragraph 95: ‘prosecution is an international obligation under the Convention, the violation of which is a wrongful act engaging the responsibility of the State’ [accessed: 11 January 2021]. As a consequence of a failure to prosecute domestically, UK personnel may face being extradited by other States party to the CAT. See: Freedom from Torture (2019), [‘Response to MoD consultation on legal protections for armed forces personnel’](https://www.freedomfromtorture.org/sites/default/files/2019-10/FFT%20response%20to%20MOD%20consultation%20on%20legal%20protections%20for%20armed%20forces%20personnel.pdf), page 7. [↑](#footnote-ref-15)
16. [Convention on the Prevention and Punishment of the Crime of Genocide](https://www.ohchr.org/en/professionalinterest/pages/crimeofgenocide.aspx), Articles VI stipulates that persons charged with genocide ‘shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.’ [↑](#footnote-ref-16)
17. [The Rome Statute](https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf) stipulates that ‘it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes’. [↑](#footnote-ref-17)
18. In relation to grave breaches, the First Geneva Convention stipulates that ‘[e]ach High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. See [First Geneva Convention](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=3F6C2B8B20272F58C12563CD0051A2BB), Article 49. [↑](#footnote-ref-18)
19. [Rome Statute of the International Criminal Court](https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf), preamble. [↑](#footnote-ref-19)
20. [Rome Statute of the International Criminal Court](https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf), Article 17. [↑](#footnote-ref-20)
21. Since 2014, the ICC been conducting preliminary examinations of the UK’s actions in Iraq. See: International Criminal Court, ‘[Preliminary Examination: Iraq/UK](https://www.icc-cpi.int/iraq)’ [accessed 11 January 2021]. [↑](#footnote-ref-21)
22. International Criminal Court Office of the Prosecutor (9 December 2020), [Situation in Iraq/UK Final Report](https://www.icc-cpi.int/itemsDocuments/201209-otp-final-report-iraq-uk-eng.pdf). Under Articles 17(1)(a)-(c) of the Rome Statute, the ICC shall consider a case inadmissible where (emphasis added): (a) The case is being investigated or prosecuted by a State which has jurisdiction over it*, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution*; (b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, *unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute*; (c) The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under article 20, paragraph 3. [↑](#footnote-ref-22)
23. International Criminal Court Office of the Prosecutor (9 December 2020), [Situation in Iraq/UK Final Report](https://www.icc-cpi.int/itemsDocuments/201209-otp-final-report-iraq-uk-eng.pdf). The ‘presumption against prosecution’ in the Bill will not apply retrospectively to any legal proceedings that are already underway when the Bill comes into force, including any war crimes allegedly committed by UK personnel in Iraq that are already under investigation. However, if any new allegations of crimes committed by British personnel in Iraq, which fall within the jurisdiction of the ICC, arise after the Bill enters into force and a decision is made not to prosecute due to ‘the presumption against prosecution’ provisions of the Bill, then that could be grounds for the ICC to revisit its decision to drop its inquiry into alleged British war crimes in Iraq. [↑](#footnote-ref-23)
24. *McCann and Others v. The United Kingdom*, no. 18984/91¸ paragraph 161: when reading Article 2 in conjunction with Article 1 there is an obligation on the state to conduct an investigation when individuals have been killed by the use of force by agents of the state; *Marguš v Croatia*, no. 4455/10, paragraph 127: [G]ranting amnesty in respect of the killing and ill-treatment of civilians would run contrary to the State’s obligations under Articles 2 and 3 of the Convention since it would hamper the investigation of such acts and necessarily lead to impunity for those responsible.’ The European Court of Human Rights (ECtHR) has emphasised that where lethal force has been used by a State agent, then ‘stringent scrutiny’ would need to be applied by the authorities investigating the incident. See: *Armani Da Silva v. the United Kingdom [GC]*, no. 5878/08, 30 March 2016, para. 234. [↑](#footnote-ref-24)
25. The European Court of Human rights has underlined that the procedural obligations arising under Articles 2 and 3 of the Convention will not be met where an investigation is terminated through statutory limitation of criminal liability resulting from the authorities’ inactivity. See: [*Association “21 December 1989” and Others v. Romania, nos. 33810/07 and 18817/08*](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-104864%22]}), paragraph 144. [↑](#footnote-ref-25)
26. Any investigation must involve a ‘thorough, objective and impartial analysis’ of the evidence. See: *Kolevi v. Bulgaria*, no. 1108/02, 5 November 2009, para 201. [↑](#footnote-ref-26)
27. This is defined as a piece of evidence which has not been taken into account in a previous investigation. There is no further guidance on what might constitute ‘compelling’ evidence. See: [Overseas Operations (Service Personnel and Veterans) Bill (HC Bill 117)](https://publications.parliament.uk/pa/bills/cbill/58-01/0117/cbill_2019-20210117_en_1.htm), Clause 3. [↑](#footnote-ref-27)
28. [*Brecknell v. the United Kingdom*, no. 32457/04](http://www2.bailii.org/eu/cases/ECHR/2007/989.html), paras 67 and 71. The Court said: “[W]here there is a plausible, or credible, allegation, piece of evidence or item of information relevant to the identification, and eventual prosecution or punishment of the perpetrator of an unlawful killing, the authorities are under an obligation to take further investigative measures. The steps that it will be reasonable to take will vary considerably with the facts of the situation. The lapse of time will, inevitably, be an obstacle as regards, for example, the location of witnesses and the ability of witnesses to recall events reliably. Such an investigation may in some cases, reasonably, be restricted to verifying the credibility of the source, or of the purported new evidence.” [↑](#footnote-ref-28)
29. [Overseas Operations Bill](https://publications.parliament.uk/pa/bills/cbill/58-01/0117/20117.pdf), Schedule 1. [↑](#footnote-ref-29)
30. Hansard, [Overseas Operations (Service Personnel and Veterans) Bill Volume 680: debated on Wednesday 23 September 2020](https://hansard.parliament.uk/Commons/2020-09-23/debates/BE01763F-2480-4C4B-9FAA-E36AC7158566/OverseasOperations(ServicePersonnelAndVeterans)Bill#contribution-9B08B44A-14E8-4CCA-B78C-D9A5DA7A478C), [accessed: 11 January 2021]; Hansard, [Overseas Operations (Service Personnel and Veterans) Bill (Sixth sitting) Debated on Wednesday 14 October 2020](https://hansard.parliament.uk/Commons/2020-10-14/debates/61a41ccd-a513-46ec-bacd-b865adbd6a8e/OverseasOperations(ServicePersonnelAndVeterans)Bill(SixthSitting)#contribution-7E190AED-7423-481F-9BE7-C49DAF4643FF), [accessed: 11 January 2021]; Hansard, [Overseas Operations (Service Personnel and Veterans) Bill (Seventh sitting) Debated on Tuesday 20 October 2020](https://hansard.parliament.uk/Commons/2020-10-20/debates/a16c3d96-fbb4-4487-86a5-adcedb658b31/OverseasOperations(ServicePersonnelAndVeterans)Bill(SeventhSitting)#contribution-9A0A834D-945F-4BD8-8285-1679A8BA7788), [accessed: 11 January 2021]. [↑](#footnote-ref-30)
31. Hansard, [Overseas Operations (Service Personnel and Veterans) Bill Volume 680: debated on Wednesday 23 September 2020](https://hansard.parliament.uk/Commons/2020-09-23/debates/BE01763F-2480-4C4B-9FAA-E36AC7158566/OverseasOperations(ServicePersonnelAndVeterans)Bill#contribution-E369BEB2-B0C1-4487-881B-F78853D8B9E6), [accessed: 11 January 2021]; Hansard, [Overseas Operations (Service Personnel and Veterans) Bill (Sixth sitting) Debated on Wednesday 14 October 2020](https://hansard.parliament.uk/Commons/2020-10-14/debates/61a41ccd-a513-46ec-bacd-b865adbd6a8e/OverseasOperations(ServicePersonnelAndVeterans)Bill(SixthSitting)#contribution-A81C072E-150F-4FB3-A698-53D4F36A6EAE), [accessed: 11 January 2021]; Hansard, [Overseas Operations (Service Personnel and Veterans) Bill (Seventh sitting) Debated on Tuesday 20 October 2020](https://hansard.parliament.uk/Commons/2020-10-20/debates/a16c3d96-fbb4-4487-86a5-adcedb658b31/OverseasOperations(ServicePersonnelAndVeterans)Bill(SeventhSitting)#contribution-2D63B501-F0B6-415E-B35E-F182E67EEE89), [accessed: 11 January 2021]. [↑](#footnote-ref-31)
32. ECtHR, [El-Masri v The former Yugoslav Republic of Macedonia](https://eur01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fhudoc.echr.coe.int%2Feng%23%257B%2522appno%2522%3A%5B%252239630%2F09%2522%5D%2C%2522itemid%2522%3A%5B%2522001-115621%2522%5D%257D&data=04%7C01%7Clindsey.pratt386%40mod.gov.uk%7Caf5939de4c2d4604ae5908d89dc41344%7Cbe7760ed5953484bae95d0a16dfa09e5%7C0%7C0%7C637432812772958732%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=DxeMwfAjqwHDKeEq57RxiyZLm5%2FS1Hy7drmhzCpkqC4%3D&reserved=0), para. 197. [↑](#footnote-ref-32)
33. [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#_Hlk61339215), Article 1.. [↑](#footnote-ref-33)
34. [Convention on the Prevention and Punishment of the Crime of Genocide](https://www.ohchr.org/en/professionalinterest/pages/crimeofgenocide.aspx), Article II. Other acts which can amount to genocide if perpetrated in these circumstances include: Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; Imposing measures intended to prevent births within the group; and Forcibly transferring children of the group to another group. [↑](#footnote-ref-34)
35. [Rome Statute of the International Criminal Court](https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf), Article 7 (1). [↑](#footnote-ref-35)
36. [Rome Statute of the International Criminal Court](https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf), Article 7(1). Other acts which can amount to crimes against humanity in these circumstances include: Extermination; Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; Torture; Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; Enforced disappearance of persons; The crime of apartheid; Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health. [↑](#footnote-ref-36)
37. [Rome Statute of the International Criminal Court](https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf), Article 8. [↑](#footnote-ref-37)
38. [Rome Statute of the International Criminal Court](https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf), Article 8. Other acts which amount to war crimes in these circumstances are listed in Article 8(2). [↑](#footnote-ref-38)
39. [Overseas Operations (Service Personnel and Veterans) Bill (HC Bill 117)](https://publications.parliament.uk/pa/bills/cbill/58-01/0117/cbill_2019-20210117_en_1.htm), Clause 8-10 and Schedules 2-4.The Bill prescribes that a court or tribunal can only exercise its discretion to extend the time limit up to a maximum of six years after the cause of action accrued or an individual became aware that a cause of action had accrued. [↑](#footnote-ref-39)
40. [Overseas Operations (Service Personnel and Veterans) Bill (HC Bill 117)](https://publications.parliament.uk/pa/bills/cbill/58-01/0117/cbill_2019-20210117_en_1.htm), Clause 11.d [↑](#footnote-ref-40)
41. [Overseas Operations (Service Personnel and Veterans) Bill (HC Bill 117)](https://publications.parliament.uk/pa/bills/cbill/58-01/0117/cbill_2019-20210117_en_1.htm), Clause 11. [↑](#footnote-ref-41)
42. Human rights violations during overseas operations may arise from policy decisions directed by senior members of the armed forces or Government, rather than individual service personnel, and evidence of these violations may not surface until years later. For example, in 2018 the Intelligence and Security Committee of Parliament identified a ‘corporate policy’ by MI5 and the Secret Intelligence Service of facilitating the rendition of prisoners captured in 2001. See: Intelligence and Security Committee of Parliament (June 2018), [Detainee Mistreatment and Rendition: 2001-2010](https://b1cba9b3-a-5e6631fd-s-sites.googlegroups.com/a/independent.gov.uk/isc/files/20180628_HC1113_Report_Detainee_Mistreatment_and_Rendition_2001_10.pdf?attachauth=ANoY7cq8ILtcwT1yvI5v_Bu9Z571cT5XKmAe7GQc0g_OqHqs3r8hGZ1w-jfqAB-haHy-tdDrVgi3-AYKxp5-f2NkQW7avdyZLYeIth2ZCB-gKdyyS-SecB2wry8MijIdOYFpWlv3E6YFJb0PTAtwzv_3Kz5Iyvt6zFaXY84TM0al-EfxvJeQ-gIk1x-g62rZjUHmgDzT2pcnRhBiO15HJLjZ7AAoiT83dfti3ShcFBOSch8LiIoYM2Tzt-dc4FRuqlMreURN3DpiCzitr8fbQgx4B2zH2Dk-92jZTW_usGCqHMIOzK_ObX4%3D&attredirects=1), p. 88 [accessed 11 January 2021]. [↑](#footnote-ref-42)
43. Including the very essence of the right to access to a court. See: [Ashingdane v. the United Kingdom, no. 8225/78](http://www2.bailii.org/eu/cases/ECHR/2007/989.html), para 57. The ECtHR has stipulated that an absolute limitation period must not impair the very essence of the right to a court. [↑](#footnote-ref-43)
44. As of November 2016, the Ministry of Defence had paid £21.8 million in settlements to Iraqi complainants, amounting to just one third of the compensation they paid to their own personnel and employees in a single year. See: [Written submission from the Bingham Centre for the Rule of Law to the Joint Committee on Human Rights (DRO0011)](http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/human-rights-committee/the-governments-proposed-derogation-from-the-echr/written/49515.html#_ftn14) (March 2017), para. 7. [↑](#footnote-ref-44)
45. UK Parliament (16 July 2020), ‘[Urgent question: Civil liability claims against MoD from British troops overseas](https://www.parliament.uk/business/news/2020/july/urgent-question-civil-liability-claims/)’ [accessed 19 August 2020]. [↑](#footnote-ref-45)
46. Ministry of Defence (18 March 2020), ‘[Information relating to the Overseas Operations (service personnel and Veterans) Bill](https://www.gov.uk/government/publications/overseas-operations-service-personnel-and-veterans-bill)’ [accessed: 11 January 2021]. [↑](#footnote-ref-46)
47. [Overseas Operations (Service Personnel and Veterans) Bill (HC Bill 117)](https://publications.parliament.uk/pa/bills/cbill/58-01/0117/cbill_2019-20210117_en_1.htm), Clause 12. [ECHR](https://www.echr.coe.int/Documents/Convention_ENG.pdf) Article 15 states: ‘In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.’ [↑](#footnote-ref-47)
48. [*A and Others v. The United Kingdom*, (2009) 49 EHRR 29](https://www.refworld.org/cases,ECHR,499d4a1b2.html), paragraph 184. [↑](#footnote-ref-48)
49. While Article 15 does allow for derogations from Article 2 in *“respect of deaths resulting from lawful acts of war”*, it is important to bear in mind that the mere existence of an armed conflict in the State where the operation takes place does not mean that any use of lethal force will be covered by such derogation. See: Tom Ruys & Cedric De Koker (Ghent Rolin-Jaequemyns International Law Institute) (March 2017), [Written evidence to the Joint Committee on Human Rights (DRO0009)](http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/human-rights-committee/the-governments-proposed-derogation-from-the-echr/written/49471.pdf) [accessed 11 January 2021]. In addition, where there is any doubt, the ECtHR has held that the procedural obligation under Article 2 continues to apply in difficult security conditions, including in the context of armed conflict. See: [*Al-Skeini and Others v. the United Kingdom* [GC], 55721/07](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-105606%22]}), para 164 [↑](#footnote-ref-49)