

The Northern Ireland Troubles (Legacy and Reconciliation) Bill - Briefing to the House of Lords ahead of Second Reading

Introduction

Freedom from Torture and Survivors Speak OUT Network have concerns about the Northern Ireland Troubles (Legacy and Reconciliation) Bill. It is incompatible with the UK's international obligations and is condemned by victims' groups across Northern Ireland. We urge the House of Lords to reject the Bill.

Who are we?

Freedom from Torture heals and protects people who have survived torture. We provide therapies and medically document torture. We fight to hold torturing states to account and campaign for fairer treatment of torture survivors in the UK.

Survivors Speak OUT is the UK's only torture survivor-led activist network speaking against torture. Set up by survivors of torture, we use first-hand experience to speak with authority for the rights of survivors.

Impunity for torture

Freedom from Torture and Survivors Speak OUT contend that this Bill provides impunity for torture:

1. It prohibits investigations and prosecutions of any case that is not deemed 'serious' or 'connected' - now and in the future.
2. The definitions of what constitutes a 'serious' offence is extremely narrow.¹ As a result, cases that could constitute torture or other ill-treatment will not be investigated or prosecuted, now and in the future, effectively shutting down any access to justice for those survivors.
3. In cases that meet the definition of 'serious' offences, investigations will be replaced with 'reviews'.
4. The commission of enquiry set up to conduct such 'reviews' can provide immunity for prosecution to individuals who they deem to have fully cooperated i.e. torturers could be granted amnesty.

Breaches international obligations

The granting of impunity for torture breaches the UK's obligations under multiple international treaties to a) investigate and prosecute acts of torture and b) not to allow amnesty for torture.

Under Article 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (UNCAT), and the International Covenant on Civil and Political Rights (ICCPR), State parties have a duty to effectively investigate allegations of torture or cruel, inhuman or degrading treatment. Article 5 of UNCAT requires states to prosecute individuals alleged to have committed torture found in their territory.

Amnesties for torture are incompatible with States' obligations under Article 4 of UNCAT. The Committee against Torture has stated, "*In order to ensure that perpetrators of torture do not enjoy impunity, [States parties must] ensure the investigation and, where appropriate, the prosecution of those accused of having committed the crime of torture, and ensure that amnesty laws exclude torture from their reach.*"²

¹ 'Serious' Troubles-related offences include those that cause death or "cause a person to suffer serious physical or mental harm". Further clarification on what constitutes 'serious physical and mental harm' is limited to only the most extreme injury (paraplegia; quadriplegia; severe brain damage; total blindness; total deafness; loss of one or more limbs; severe scarring or disfigurement) or "severe psychiatric damage".

² CAT, Concluding Observations on Azerbaijan, UN Doc. A/55/44, 1999, §69(c).

Article 3 of the ECHR prohibits torture or other ill-treatment and gives rise to both “negative” obligations - not to engage in acts of torture or other ill-treatment – and “positive” obligations involving prevention, investigation, and prosecution. The European Court of Human Rights has held that a State’s obligation under Article 3 ECHR includes an obligation to enact criminal-law provisions that effectively punish the relevant offences, and to apply them in practice through effective investigation and prosecution.³

The Northern Ireland Human Rights Commission has stated that there is no way in which to amend the Bill to make it compliant with the UK’s human rights obligations under the ECHR.⁴

Mixed messaging on sexual violence

We welcome the acceptance of an opposition amendment to exclude conflict-related sexual offences from the scope of the immunity provisions in the Bill in the House of Commons. However, the prohibition on any criminal investigation into such offences remains. Without investigation, how can perpetrators be held to account? As such, perpetrators may still benefit from *de facto* immunity for sexual offences.

Given the UK’s global leadership in the Preventing Sexual Violence Initiative (PSVI), that aims to combat sexual violence in conflict, these proposals risk sending a signal that the UK supports impunity for conflict-related sexual violence, leaving the UK vulnerable to criticisms of hypocrisy. The UK is hosting a global PSVI conference in November 2022 yet risks being accused of undermining it.

Silences survivors

We know as torture survivors that seeking justice helps recovery by affirming the unfairness of what we endured, restoring some control and contributes to torture prevention efforts that can protect others. Yet, the British government is contemplating silencing victims and survivors.

Among those affected could be the ‘Hooded Men’, 14 British citizens who endured torture and simulated executions by British troops in 1971. In 2021, they finally won the right in the Supreme Court to an investigation after a decades-long legal battle.

A threat to the UK’s international standing

For centuries the UK led the way in the evolution of an absolute ban on torture. Torture was ruled out by English common law, and proscribed by Magna Carta. Eventually the British stance prevailed in international law. The UK was central to the drafting of the European Convention on Human Rights and the UN Convention against Torture.

Like the Overseas Operations Bill proposals that were defeated in the face of spirited opposition from the House of Lords, the enactment of proposals that provide impunity for torture would signal to other states that they too can legislate for impunity and evade their international legal obligations. In this moment when the rules-based international system is under great strain from states ignoring the norms and structures created to promote a safe and peaceful world, it is vital that the UK does not regress from its international law obligations.

For further information, please contact:

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³ See *MC v Bulgaria* (App. No. 39272/98), 4 March 2004, §§151-153; *Beganovic v Croatia* (App. No. 46423/06), 25 September 2009, §71; *MGC v Romania* (App. No. 61495/11), 15 June 2016, §§57 & 59.

⁴ NIHR written evidence to the Joint Committee on Human Rights (NIB0003), paragraph 1.2: “The NIHR is clear that the Bill is incompatible with Articles 2 (right to life) and 3 (freedom from torture) of the European Convention on Human Rights (ECHR). This Bill is fatally flawed, it is not possible to make it compatible with the ECHR.”