

## A Triple-Threat to Human Rights and the Rule of Law: the Internal Market Bill, Overseas Operations Bill and CHIS Bill

### Introduction

- There is a trio of terrible bills currently making their way through Parliament. Each one of them poses a significant but distinct threat to human rights and the Rule of Law.
- The Internal Market Bill would break international law, the Overseas Operations Bill would limit prosecutions of British personnel for war crimes, and the CHIS bill would allow state agencies to authorise their sources to commit crimes like murder and torture in the UK. All three of the bills will weaken the UK's credibility and authority, and tarnish the British brand.
- Taken together, they paint a picture of a Government that has little respect for human rights, the Rule of Law, or the rules-based international system based on universal principles and values, where Britain ought to be leading the way.
- The [Labour Campaign for Human Rights](#) (LCHR) recommends that Labour opposes each of these Bills in their current forms.

### Internal Market Bill

- The United Kingdom Internal Market Bill passed the Commons in September. The Opposition voted against the bill but it passed with a majority of 77.
- Last week, during the second reading in the Lords, the Peers passed a 'regret' motion by 395 votes to 169, inflicting the heaviest defeat on the Government since 1999.
- The motion, proposed by Lord Judge, the former Chief Justice, states: "*this House regrets that [the bill] contains provisions which, if enacted, would **undermine the rule of law and damage the reputation of the United Kingdom***".
- The Lords Committee stage began on 26<sup>th</sup> October 2020.

### What does it do?

- The Bill relies on the principles of mutual recognition and non-discrimination to prevent barriers to trade within the UK i.e. maintain the UK internal market post-Brexit.
- However, it also gives ministers the power to amend the Northern Ireland protocol already agreed as part of the Withdrawal Agreement.
- Brandon Lewis MP, the Northern Ireland Secretary, therefore admitted that the bill would break international law, but argued this would be in a "*very specific and limited way*".
- The Bill has attracted widespread opposition, including from former Conservative Prime Ministers, Theresa May and John Major, and former Conservative Leader, Michael Howard.
- Bob Neill MP, (Conservative) Chair of the Justice Committee, proposed an amendment requiring Parliament to approve the parts of the bill allowing ministers to breach international law from coming into force.

### What does this mean for human rights?

- Breaking international law in this way would have profound implications for the UK's reputation and soft power. The UK currently enjoys an impressive reputation for having led the creation of the international ruled-based system. This Bill risks the UK's long-standing reputation as a trustworthy and law-abiding partner. Our word will no longer be our bond if the UK turns from being a law maker to a law breaker. This poses a serious threat to both

international law and multilateral institutions that comprise the rules-based international system:

- International law – including international human rights law (IHRL) and international humanitarian law (IHL) – relies on sovereign states entering into treaties and then complying with their terms. Participation is consent-based.
- Similarly, multilateral institutions – from the UN to the EU – only exist when members states follow the treaties which underpin them as well as the laws that they create.
- The combined effect of international law and multilateral institutions has lifted millions of people out of poverty and protected the rights of individuals around the world.
- Breaking international law seriously runs the risk of weakening human rights and rule of law protections globally and plays into the narratives of the most dangerous regimes around the world. In other words, if Britain can break international law in a ‘specific’ and ‘limited’ way, why can’t the governments of China, Iran or North Korea?
- Where human rights are under threat, the UK needs the force of international law to stand up to the governments of [Bangladesh for “disappearing” journalists](#), China for its bullying in Hong Kong or [treatment of Uyghurs in Xinjiang](#), or Saudi Arabia for its [devastating war in Yemen](#).
- This will make it more difficult for the UK to impose human rights conditionality clauses in new trade agreements with third countries, and to enforce its brand-new [global human rights sanctions regime](#), by which sanctions have been imposed on officials in Russia, Saudi Arabia, Myanmar and North Korea. As Bob Neil pointed out [“Their breaking of this rules-based order is one of the things that sets them apart from us”](#).

***LCHR’s position: Labour should continue to oppose the bill to the extent that it allows ministers to amend the Northern Ireland protocol and break international law.***

### **Overseas Operations Bill**

- The Overseas Operations (Service Personnel and Veterans) Bill passed the second reading in the House of Commons on 23<sup>rd</sup> September 2020 and is currently in the Committee Stage. The third reading will be on 3<sup>rd</sup> November 2020.

#### ***What does it do?***

- *First*, the Act would create a statutory presumption against the prosecution of current and former military personnel for offences – including for torture and inhuman or degrading treatment - five years after the alleged event.
- Sexual offences have been excluded from the presumption but other war crimes and crimes against humanity have not.
- *Second*, it would introduce a six-year long-stop date for civil claims for compensation against the Ministry of Defence.
- *Third*, it would commit the Government to consider derogating from the European Convention on Human Rights (ECHR) in relation to future conflicts.
- The Bill has received widespread criticism, including from NGOs, lawyers, torture survivors, veterans, and the Royal British Legion.
- A [letter by Freedom from Torture](#), signed by Field Marshal Lord Guthrie and General Sir Nicholas Parker, described the ‘de facto impunity’ as ‘a stain on the country’s reputation’.

#### ***What does this mean for human rights?***

- The Bill sets a dangerous precedent: that UK service personnel can commit heinous crimes during conflict and will be protected from prosecution after five years.
- As [Dan Jarvis MP has stated](#), this “*would effectively grant veterans of the Iraq and Afghanistan campaigns immunity from prosecution*”.
- Amnesty International has described the Bill as ‘[bad law and a worse example](#)’ with Kate Allen, UK Director, stating it: “*would do irreparable damage to the reputation of the armed forces, undermines basic principles of access to justice and sends a bad message internationally*”.
- Furthermore, the ‘longstop’ date would prevent victims of torture from seeking redress, including veterans themselves for bringing claims for conditions such as PTSD or hearing loss. This would leave soldiers with fewer employment protections than the civilians they protect.
- As well as being wrong in principle, the presumption is entirely unnecessary – prosecutors must already satisfy themselves that there is sufficient evidence and a prosecution would be in the public interest, and there is no history of vexatious prosecutions of soldiers in the UK.
- Furthermore, the Bill would make it more likely that British soldiers would face prosecution for war crimes at the International Criminal Court at the Hague. Instead of protecting British soldiers, it would leave them exposed.
- As with the Internal Market Bill, this sends a terrible message about the UK’s principles and values. Britain should be championing human rights around the world, not qualifying them. We should be condemning torture in all circumstances, not effectively legalising it.

***LCHR’s position: Labour should oppose the bill at the third reading.***

### **Covert Human Intelligence Sources (Criminal Conduct) Bill**

- The CHIS Bill passed the Commons on 15<sup>th</sup> October 2020. Labour officially abstained but 34 MPs broke the whip and voted against the Bill.
- It is awaiting the second reading in the House of Lords.

#### ***What does it do?***

- The Bill aims to allow law enforcement agencies’ Covert Human Intelligence Sources (CHIS) to commit criminal offences where necessary for protecting national security, preventing or detecting crime or disorder, or protecting the UK’s economic wellbeing.
- It would make such criminal activity ‘lawful for all purposes’ i.e. provide full civil and criminal immunity.
- The use of CHIS by law enforcement agencies is not new. Indeed, those acting for MI6 have been authorised by statute to commit criminal offences overseas since 1994 (s.7 Intelligence Services Act).
- However, the Bill was prompted by an Investigatory Powers Tribunal (IPT) case last year which discovered that the Government allowed MI5 to authorise criminal activity by its covert agents. The basis for this power is very unclear but was held by the tribunal – in a 3-2 decision – to be the Security Service Act 1989. As this legal basis is so weak, the Government has now sought to put this power on statutory footing.

#### ***What does this mean for human rights?***

- The most serious problem with the Bill is that it does not expressly rule out the authorisation of murder, torture or sexual violence by a CHIS.

- Whilst the Bill does refer to the Human Rights Act to limit the scope of crimes that could be authorised, this is little comfort when the Government has clear intentions to ‘update’ (which undoubtedly means ‘water down’ or even ‘repeal’) that same Act.
- In Canada, the list of crimes that a CHIS cannot be authorised to commit is set out in statute and includes murder, torture and sexual offences.
- A further problem is that the list of agencies has been cast far too wide to include, for example, the Department for Health and Social Care and the Food Standards Agency. It is not clear why these agencies need such powers or, if they do, whether they have the experience or capability to put appropriate safeguards in place.
- Finally, there is a lack of judicial involvement or other suitable overnight mechanisms e.g. a requirement that agencies produce an annual report on authorisations to the Investigatory Powers Tribunal (IPT) or be required to retrospectively apply for authorisation for offences already committed.
- A [joint statement opposing the Bill](#) was released by various unions, MPs, and campaigning organisations.

***LCHR’s position: Labour should oppose the bill in the Lords as long as it: (1) does not expressly rule out the authorisation of serious crimes such as murder, torture or sexual offences; and (2) does not include a suitable oversight mechanism.***

#### **LCHR Recommendations:**

- Each of these Bills poses a serious threat to human rights and the Rule of Law.
- The Internal Market Bill would allow the UK to break international law, setting a dangerous precedent to be followed by abusive regimes and undermining our global reputation and credibility.
- The Overseas Operations Bill would make it more difficult to prosecute war crimes (including torture), leave British personnel exposed to international prosecutions, create a perverse hierarchy of war crimes (sexual offences v torture), and deny compensation to victims, including soldiers themselves.
- The CHIS Bill would allow a wide range of state agencies to authorise their sources to commit crimes without expressly excluding murder, torture or sexual offences, without any judicial oversight.
- Taken together, the bills paint a disturbing picture. This Government risks abandoning British values that have long been respected by successive governments, undermining international law, damaging multilateral organisations, weakening the rules-based system, and tarnishing the British brand. Each of these bills is anathema to the cause of human rights.
- As our Honorary President, Lord Judd, stated “*These bills undermine the determination of many in the armed, security and police services to uphold the highest standards, and play into the hands of those we claim to be determined to resist and defeat*”.

***LCHR recommends that Labour should oppose all of these bills in their current forms.***

#### **Further Reading:**

- [I’m a Tory MP who wants to support Boris Johnson, but his Internal Market Bill undermines the British brand](#), Sir Bob Neill, 14<sup>th</sup> September 2020
- [Brief to MPs](#), Freedom from Torture, September 2020
- [Concerns about the CHIS Bill, Open Labour, October 2020](#)
- [The Covert Human Intelligence Sources \(Criminal Conduct\) Bill 2020, Garden Court Chambers, 8<sup>th</sup> October 2020](#)