

## Bill of Rights, Clause 14: Removing access to justice for civilians, service personnel, and veterans

**Ceasefire Centre for Civilian Rights (Ceasefire)** is an international NGO developing civilian-led monitoring of violations of international humanitarian law and human rights and securing accountability and reparation for civilians.

**Rights & Security International (RSI)** is a London-based NGO working since 1990 to hold governments to account for human rights violations committed in the context of national security.

The [Joint Committee on Human Rights](#), the [Law Society](#), and a plethora of NGOs have condemned the government's plans to abolish the Human Rights Act 1998 (HRA) and replace it with a new [Bill of Rights](#), or '[Rights Removal Bill](#)'. Ceasefire and RSI remain particularly concerned about proposed Clause 14, which deals with the application of the HRA to overseas military operations. This clause – if enacted – would end access to justice for human rights violations occurring in UK overseas military and peacekeeping operations. This would significantly impact the ability of members of the Armed Forces and civilians to gain redress and closure in the UK courts for allegations of wrongdoing – essential to military discipline, individual rights and long-term peacebuilding.

### Removing access to justice for civilians, service personnel, and veterans

Under the HRA, access to justice in overseas UK military operations is already limited: people can seek redress in the UK courts only when the state exercises 'state agent authority and control' over an individual or 'effective control' over the territory; in other circumstances, the law's protections do not apply to overseas military operations.<sup>1</sup> This is not an onerous obligation, and instead means that the UK must act in the same way as it would inside of its borders, when acting outside of them.

While international law requires access to justice, Clause 14 would legislate for impunity.

Indeed, the Joint Committee on Human Rights has argued, [in a letter to Dominic Raab MP](#), that Clause 14

“[...] is clearly not compatible with the basic principles of the rule of law, access to justice or the enforcement of human rights, specifically the procedural obligations arising from the right to life (Article 2 ECHR) and the prohibition on torture (Article 3 ECHR and UNCAT), as well as other rights that may be engaged by overseas military operations.”

While some politicians and commentators argue that human rights laws should not apply at all during overseas military operations, we believe such an analysis is based on a misunderstanding of the law. In practice, both UK courts and the European Court of Human Rights have afforded ample room for human rights obligations to be interpreted against the background of the provisions of international humanitarian law.<sup>2</sup>

The HRA has been a vital tool for ensuring accountability for the Ministry of Defence (MoD) and others during overseas military operations. For example, it has been used by the families of soldiers who died because the British government failed to provide them with suitable equipment.<sup>3</sup> The HRA has also been vital for civilian victims of serious human rights violations, such as those who suffered from systematic mistreatment while

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<sup>1</sup> For more information, see: Rights & Security International, '[Rights and Security International's Submission to the Joint Committee on Human Rights: Call for Evidence on the Independent Review of the Human Rights](#)' (2021)

<sup>2</sup> For more information, see: Rights & Security International, '[Rights & Security International's Response to 'Human Rights Act Reform: A Modern Bill of Rights'](#)' (2022), pp. 7-9, and Ceasefire Centre for Civilian Rights and Dr Stuart Wallace, '[Consultation on the Human Rights Act 1998](#)' (2022), p 11.

<sup>3</sup> E.g., [Smith and others v Ministry of Defence](#) [2013] UKSC 41.

detained in Iraq.<sup>4</sup> Under Clause 14, similar victims would be without access to justice, and the military would be able to act with greater impunity.

The effect of the Bill of Rights Bill is exacerbated by the recently-enacted [Overseas Operations \(Service Personnel and Veterans\) Act 2021](#), which similarly restricts the scope of civil and criminal cases brought for human rights violations resulting from overseas military operations. While the existing legislation limits access to justice, the Bill of Rights Bill will remove potential claimants' ability to claim. When combined, these pieces of legislation would mean that the armed forces could act with greater impunity during overseas operations.

#### Lowering of military standards and downgrading of the UK's international reputation

The HRA has been critical in ensuring that effective policy changes are made to improve the decision-making, policies, and training of the UK Armed Forces. For example, the [Baha Mousa Inquiry](#), which uncovered unlawful practices, would not have been possible without the application of the HRA to overseas military operations. In response to litigation brought under the HRA, the government created the Inquiry, which eventually led to much-needed changes to training and policies to improve compliance with international human rights and humanitarian laws.

Indeed, Lt Col Nicholas Mercer, former senior military legal adviser to the 1<sup>st</sup> Armoured Division during the Iraq War of 2003, commented – in response to the government's proposals – that in reality,

“The Human Rights Act has been a force for good in overseas military operations. It has held the State to account for human rights abuses in detention and during interrogation. It has hauled Ministers before judges to give account of themselves when they have failed to take the appropriate and timely action and it has given soldiers the right to seek answers and recompenses for being failed on the battlefield.”<sup>5</sup>

#### Granting the government a blank cheque

If adopted, Clause 14 will not take effect until the Secretary of State has either introduced separate legislation providing alternative domestic remedies for enforcing human rights in relation to overseas operations, or renegotiated the extraterritorial scope of the ECHR itself.

The inclusion of this caveat, Clause 39(3), as the [Joint Committee on Human Rights noted](#), effectively “ask[s] Parliament to grant [...] a blank cheque to pass a provision into law that does not respect the UK's international law obligations to respect human rights and to remove enforcement of human rights for these categories of people, before the Government has negotiated those changes.”

It is unclear whether the government has legislation in mind to provide effective domestic remedies and what such legislation would entail. However, it is highly unusual for the government to ask Parliament to agree to a clause disapplying human rights enforcement without allowing it to scrutinise the alternative remedies. We also note that there is already legislation that allows for effective domestic remedies – the Human Rights Act 1998.

In short, the draft Bill of Rights Bill is the latest iteration of this government's attempts to reduce human rights protections and the rule of law. Clause 14 would remove soldiers' and civilians' rights, make defence institutions more immune from accountability, and likely contribute to a culture of impunity among the Armed Forces.

#### **Ceasefire and RSI urge that Clause 14 be removed from the Bill of Rights Bill.**

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<sup>4</sup> E.g., [Alseran and others v Ministry of Defence](#) [2017] EWHC 3289 (QB).

<sup>5</sup> Lt Col Nicholas Mercer, Comments made in email to Ceasefire, July 2022