

# THE RIGHTS REMOVAL BILL

## AND ITS IMPACT ON EXTRATERRITORIAL CLAIMS AND MILITARY JUSTICE

### HOW WILL THE RIGHTS REMOVAL BILL IMPACT ON EXTRATERRITORIAL CLAIMS AND MILITARY JUSTICE?

The Government believes that human rights laws unduly restrict military operations, and also claims that the military have been subject to 'vexatious' claims arising from overseas military operations. The extraterritorial application of human rights law is a complex issue. Currently under the ECHR, human rights laws only apply to a public body's acts overseas in two situations: when it has control over territory or an individual. The HRA has been vital to holding the British government to account for the failings of the Ministry of Defence in relation to both soldiers and civilians.

In practice, court judgments on matters of extraterritoriality have been pragmatic, cautious and deferential. There has never been a single court judgment that second-guesses a commander's decisions on the battlefield. The relevant judgments have amounted only to the following principles: an absolute prohibition on torture; minimum standards of treatment for detainees; a duty of care on the part of the Ministry of Defence towards the soldiers it sends to fight overseas; and the requirement to have an effective investigation where rights violations have occurred.

### THE HUMAN RIGHTS ACT IN ACTION

"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." - Lt. Col. Nicholas Mercer

- ➔ Military case studies: See the Centre for Military Justice's [Human Rights Act stories](#), e.g. [Cpl Anne Marie-Ellement](#), the [Deepcut families](#).
- ➔ Civilian case studies: See [Ceasefire Centre for Civilian Rights' report](#), e.g. [Baha Mousa](#) and [Alseran](#).

### OUR BIGGEST CONCERNS

**Overseas military operations:** Clauses 14 and 39 of the Rights Removal Bill would have meant that nobody, including veterans, service personnel, and civilians, would have been able to claim against the Government for breaches of the HRA occurring during overseas military operations. Clause 14 is unlawful because it denies to victims of violations of human rights or their families any domestic remedy, contrary to the procedural requirements stemming from other rights (such as Articles 2 and 3) as well as Article 13 of the ECHR; and prevents them from challenging botched investigations. Even the Government recognised that clause 14 would have been unlawful, so it would not have applied straightaway, but only after the Secretary of State was satisfied that it was compatible with the UK's obligations under the ECHR. This could only happen if the jurisprudence on extraterritoriality changed; the UK renegotiated the ECHR; or if the UK passed other legislation to ensure compliance with its obligations under the ECHR. Notwithstanding which of the above options the Government would have opted for, as a result of these clauses, more people would have had to go to the ECtHR to bring their claims.

**Positive obligations:** Clause 5 of the Rights Removal Bill would have limited positive obligations. This would have impacted the state's duties to protect people in certain circumstances, including where recruits are engaged in dangerous activities, in the case of vulnerable conscripts to the armed forces, and where soldiers are engaging in army training exercises. It would have also eroded the requirement to undertake an independent investigation in cases where the state has been involved in a death.

One area where positive obligations have been especially important is rape investigations in the military. Some military rape investigations have been extremely poor, in which case the Human Rights Act has been the only recourse that victims have had to justice. The Rights Removal Bill would have locked survivors out of this vital mechanism of accountability and justice.

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