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LEGAL FACTSHEET

GENOCIDE AMENDMENT TO THE UK HEALTH AND CARE BILL 2021-2022

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ACCOUNTABILITY
UNIT

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A. SUMMARY

1. The [Genocide Amendment to the Health and Care Bill 2021-2022](#) will ensure that a Minister of the Crown will carry out an assessment of a serious risk of genocide in a region in which the UK procures medical goods or services, if a relevant committee of Parliament requests an assessment (“NHS Genocide Amendment”).
2. Genocide is a crime as defined and codified in the [UN Convention on the Prevention and Punishment of the Crime of Genocide](#) (“Convention”). The prohibition, prevention and punishment of genocide constitute binding obligations on the UK and all other States.ⁱ
3. The instant a State learns, or should have learned, of a “serious risk of genocide”, it must use “all means reasonably available” to prevent a possible genocide.ⁱⁱ If genocide is ongoing, the duty to prevent remains engaged and a State: must not aid or assist possible perpetrators; should cooperate to bring to an end a situation in which genocide is occurring; and should not recognise as lawful the situation created by the breach of the law relating to genocide.ⁱⁱⁱ The obligation, and consequent duty, are greater on a State that has a greater capacity to “effectively influence” a situation.^{iv}
4. In recent years there is growing, and credible, evidence in the public domain that the UK Government, and legal persons in the UK, have procured billions of pounds of medical equipment sourced, in whole or in part, from regions of States where international crimes, including genocide, slavery and/or crimes against humanity, are ongoing.^v UK laws relating to supply chains, including the Modern Slavery Act 2015 and Transparency in Supply Chain legislation, have failed to prevent such procurement and are insufficiently robust or inclusive.^{vi}
5. If procurement of medical goods/services in any way aids, assists or otherwise furthers the commission of prohibited acts of genocide then such procurement is in stark violation of the Convention and customary international law. Full and proper assessments by the Government under the NHS Genocide Amendment, which would include due diligence and risk analysis, are, therefore, critical. They would also ensure that individuals in the UK are not criminally responsible when procuring goods/services from overseas.
6. The NHS Genocide Amendment would bring the UK a small-step closer to developing a comprehensive framework in responding to allegations of genocide, and other violations of peremptory norms of international law, and meaningfully engage its obligations to prohibit, prevent and punish (perpetrators of) genocide.
7. The character of certain violations under international law (which are called peremptory norms and include genocide, crimes against humanity, torture, slavery, apartheid and racial discrimination) are such that States must ensure they are not committed; States generally owe the duties and obligations to the international community of States to prohibit such crimes and protect individuals from them.^{vii} To date, however, the Government has failed to establish any framework to comprehensively discharge its obligations in respect of peremptory norms (including under the Convention). The NHS Genocide Amendment should, therefore, be a welcome first step.

B. PROCEDURAL AND SUBSTANTIVE BACKGROUND

8. The NHS Genocide Amendment is the second iteration of an amendment relating to genocide of a Government Bill. The first iteration was the Genocide Amendment to the Trade Bill 2019-2021^{viii} which would have allowed survivors and victims^{ix} of genocide to make an Application to the High Court for a Preliminary Determination on whether a current or prospective UK trading partner was committing or had committed genocide.^x That amendment, which underwent numerous iterations, was opposed by the Government and was ultimately defeated by a rival amendment moved by Sir Bob Neill.^{xi}
9. The rival amendment, which remains unimplemented, proposed to ‘empower’ parliamentary committees to make genocide determinations after which a vote may be held in Parliament on the Government’s proposed course of action, if any (“Neill Amendment”).^{xii} The Neill Amendment, even if implemented, would bring the Government no closer at all to a comprehensive atrocity prevention framework, for the following reasons:
 - i. it only applies to States that are negotiating bilateral free trade agreements with the UK in the future. Other agreements or existing agreements are not caught; and
 - ii. it does not apply to any situation in which credible allegations of genocide have been made in the State with which the UK already has bilateral relationships.
10. In supporting the Neill Amendment, the Government changed course on a 50-year policy, which incidentally had no basis in international law, that genocide could only be determined by courts or tribunals and such determinations were necessary before the UK’s duties to prohibit, prevent or punish were engaged.
11. Since the passing of the Neill Amendment, and despite the fact it remains unimplemented, the Government has reverted to its original position that genocide can only be determined by courts or tribunals. It is a position which is absurd because a court or tribunal cannot determine whether genocide is occurring if it is yet to occur – the duty to prevent is an obligation which is engaged where there is a serious risk of genocide i.e., before genocide occurs.

C. HOW THE NHS GENOCIDE AMENDMENT WORKS

12. The NHS Genocide Amendment simply requires a Minister of the Crown to carry out an assessment, in some form, to ensure goods or services procured for the national health service are not the product of the commission of prohibited acts of genocide. It is a simple step towards a wider objective: a comprehensive framework for ensuring the UK government fulfils its legal obligations where there are violations of peremptory norms of international law.
13. The NHS Genocide Amendment is necessary because there is a serious and practical issue of the UK Government, or legal persons in the UK, sourcing goods or services produced by victims or survivors possibly undergoing torture, slavery, and/or other violations of international law. It also raises the possibility that perpetrators – who may be individuals or companies – are benefitting from such procurement by the UK Government.
14. The NHS Genocide Amendment would ensure the following:
 - i. that the Government seriously considers creating a mechanism to carry out due diligence and risk assessments, as well as exercise a duty of care, in order to ensure procurement of good/ services are not the product of serious violations of international law;
 - ii. that there is a backstop to prevent the Government from reverting to its previous position that only courts and tribunals must determine genocide before obligations are engaged;
 - iii. that the Government responds to credible allegations of genocide as early as possible to prevent genocide; and

- iv. that there are not lacunae in UK procuring arrangements for the national health service as clearly existing legislation is inadequate.
15. The NHS Genocide Amendment does not preclude or prevent the Government from taking complementary or further action in ensuring a comprehensive framework for fulfilling international obligations relating to mass atrocity crimes. This can only be encouraged.
16. The Government may also use international fora to address such issues such as referral by the Government of the issue of genocide to international mechanisms, courts or tribunals (where they exist and have jurisdiction) for a final determination of a dispute.^{xiii}

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This legal briefing, drafted by [Aarif Abraham](#), is provided as an explanatory note only. Gratitude is owed to external reviewers for thoughts and comments.

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REFERENCES

- i Those obligations bind States Parties to the Convention and also bind all States under customary international law.
- ii *Bosnia and Herzegovina v. Serbia and Montenegro*, Application of the Convention on the Prevention and Punishment of the Crime of Genocide, International Court of Justice, 26 February 2007, para. 430: “[...] it is clear that the obligation in question is one of conduct and not one of result, in the sense that a State cannot be under an obligation to succeed, whatever the circumstances, in preventing the commission of genocide: the obligation of States parties is rather to employ all means reasonably available to them, so as to prevent genocide so far as possible. A State does not incur responsibility simply because the desired result is not achieved; responsibility is however incurred if the State manifestly failed to take all measures to prevent genocide which were within its power, and which might have contributed to preventing the genocide. In this area the notion of “due diligence”, which calls for an assessment *in concreto*, is of critical importance. Various parameters operate when assessing whether a State has duly discharged the obligation concerned. The first, which varies greatly from one State to another, is clearly the capacity to influence effectively the action of persons likely to commit, or already committing, genocide. This capacity itself depends, among other things, on the geographical distance of the State concerned from the scene of the events, and on the strength of the political links, as well as links of all other kinds, between the authorities of that State and the main actors in the events. The State’s capacity to influence must also be assessed by legal criteria, since it is clear that every State may only act within the limits permitted by international law; seen thus, a State’s capacity to influence may vary depending on its particular legal position vis-à-vis the situations and persons facing the danger, or the reality, of genocide. On the other hand, it is irrelevant whether the State whose responsibility is in issue claims, or even proves, that even if it had employed all means reasonably at its disposal, they would not have sufficed to prevent the commission of genocide. As well as being generally difficult to prove, this is irrelevant to the breach of the obligation of conduct in question, the more so since the possibility remains that the combined efforts of several States, each complying with its obligation to prevent, might have achieved the result — averting the commission of genocide — which the efforts of only one State were insufficient to produce.”
- iii Arts 16, 40-41, ILC, ‘Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries’, November 2001, Supplement No. 10 (A/56/10), chp.IV.E.1.
- iv *Ibid.*
- v See, for instance, the following: BEISC, House of Commons, Uyghur forced labour in Xinjiang and UK value chains, 17 March 2021; BHRC, Briefing Paper: Responsibility of States under international law to Uyghurs and other Turkic Muslims in Xinjiang, China, 2020; BMA, Statement on the abuse of Uyghurs in China, 7 December 2021; BMA, Labour rights abuse in global supply chains for PPE through COVID-19 – issues and solutions, July 2021; UNISON, UNISON demands higher human rights standards in PPE, 25 January 2022; Guardian, UK sourced PPE from factories secretly using North Korean slave labour, 20 November 2021; NYT, China Is Using Uighur Labor to Produce Face Masks, 13 August 2020.
- vi BEISC, House of Commons, Uyghur forced labour in Xinjiang and UK value chains, 17 March 2021; BHRC, Briefing Paper: Responsibility of States under International Law to Uyghurs and other Turkic Muslims in Xinjiang, China, 2020.
- vii A *Jus cogens* or peremptory norm is a norm accepted and recognised by the international community of States as a whole, from which no derogation is permitted. (Art 53, 64 VCLT 1969); According to the International Law Commission (ILC), ‘Those peremptory norms that are clearly accepted and recognised include the prohibitions of aggression, genocide, slavery, racial discrimination, crimes against humanity and torture, and the right to self-determination’ (ILC, ‘Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries’, November 2001, Supplement No. 10 (A/56/10), chp.IV.E.1., pp. 112-113.)
- viii UK Parliament. 2020. Lord Alton of Liverpool's Amendment After Clause 2 (9) [Trade Bill](#) 2019-2021, Report Stage.
- ix Legal representatives of survivors or victims, or groups representing them, would make Applications.
- x The Genocide Amendment was moved by Lord David Alton of Liverpool and sponsored by Baroness Kennedy QC of The Shaws, Lord Forsyth of Drumlean, and Baroness Falkner of Margravine. It received [significant support](#) of 287 to 161 in the U.K. House of Lords on December 7, 2020. The Genocide Amendment was rejected by MPs in the House of Commons by a vote of 318 to 309 on 19 January 2021. The revised Genocide Amendment was re-tabled on 20 January 2021 in the House of Lords and was passed on 2 February 2021. On 22 March 2021, the House of Commons voted 319 to 297, majority 22, to disagree with the Lords’ amendment to the Trade Bill.
- xi In its original form the Genocide Amendment allowed survivors and victims of genocide to make an Application to the High Court for a Preliminary Determination on whether a current or prospective UK trading partner is committing or has committed genocide.
- xii Relevant committees, such as the Foreign Affairs Committee (FAC), already have powers of assessment and recommendations. The FAC found credible evidence of genocide in its reports on the Daesh atrocities (2016), Burmese’s military atrocities (2016), alleged CCP atrocities (2020). In relation to the Yazidis a motion was passed in Parliament. The UK Government did not follow up.
- xiii The NHS Genocide Amendment also does not preclude or prevent further consideration of the issue by international organisations including the United Nations.