

5 February 2021

STATEMENT

UK: Proposed Amendment to the Trade Bill 2019-2021 Relating to Genocide

The Bar Human Rights Committee of England & Wales (“BHRC”) welcomes the House of Lords’ approval of the revised Genocide Amendment¹ on 2 February 2021 that will constitute an important step towards ensuring that the UK meets its obligations under the Genocide Convention 1948.

The Amendment squarely addresses concerns raised by some Members of Parliament that the separation of powers would be undermined. In its revised form the Amendment clarifies that a Preliminary Determination of the High Court that genocide has been or is being committed by another State will require the Government to present the Preliminary Determination before both Houses of Parliament and to recommend a course of action. This *may* include, amongst other measures, the cessation of any trade negotiations, or withdrawal or termination of an existing bilateral trade agreement.

The Government has repeatedly emphasised its long-standing position that genocide determination is a matter for the courts. This Amendment permits such a determination to take place. Moreover, a Preliminary Determination by the High Court will not preclude the UK from taking steps to ensure another State’s compliance with its obligations under the Genocide Convention, by institution of proceedings in the International Court of Justice.

Any proposal to substitute a judicial determination with a finding of the Foreign Affairs Committee (“FAC”) will be a mere restatement of the current position. The FAC already has the power to consider whether a situation constitutes genocide, and

¹ Trade Bill, Lords Non-Insistence and Amendments in Lieu, Lords Amendment 3B, printed pursuant to Standing Order Nos. 78 and 57A, 2 February 2021. <https://publications.parliament.uk/pa/bills/cbill/58-01/0252/0252.pdf>

to make recommendations to the Government. On 24 November 2020, the FAC wrote to the Foreign Secretary asking that the Government take formal steps towards determining whether the Chinese government policies in Xinjiang constitute genocide. The Foreign Secretary reiterated, by letter dated 8 December 2020, that the Government maintains its long-standing policy that determination of genocide is a matter for the competent courts.² The Government gave the same response to the FAC in answer to the latter's conclusion in December 2017 that the violence in Rakhine State, Myanmar may constitute genocide.³ In April 2016 MPs voted unanimously in favour of a declaration that the treatment of the Yazidis by Da'esh constitutes genocide.⁴ The Government's position was that genocide is "a matter of legal rather than political opinion".⁵

BHRC restates its concern that the Government's position, that amounts to maintenance of the status quo, is used, or may be used, to justify inaction in the face of credible evidence that genocide is occurring.

There is *no* requirement under the Genocide Convention 1948, or any principle of international law, that requires a State to seek a determination of an international court, or other body acting under the auspices of the United Nations, that genocide has or is being committed before that State's obligations under the Convention are engaged. The Government's long-standing position is that genocide is a matter for judicial determination. The High Court is well disposed to carry out an independent and impartial legal assessment of the facts required to make a Preliminary Determination. Moreover, the Amendment provides that any application for a Preliminary Determination must be in the form prescribed by Government, through a procedure and rules of evidence prescribed in Regulations and must meet reasonable admissibility criteria.⁶

We commend the Amendment to Members of Parliament as an important step towards ensuring that the UK complies with its international obligations and to ensure that genocide is never again committed. That step should be taken now.

ENDS.

² Foreign Affairs Committee, Correspondence with the Foreign Secretary relating to determination of genocide in Xinjiang, dated 08/12/2020 and 24/11/2020, published 17 December 2020.

³ Fourth Special Report - Violence in Rakhine State and the UK's response: Government Response to the Committee's First Report, HC 868, 6 March 2018: "Any determination that atrocity crimes have been committed would be a matter for judicial authorities having considered all the evidence available in the context of a credible judicial process. The FCO is not a judicial authority and is not qualified to make this determination."

⁴ Hansard, House of Commons, Daesh: Genocide of Minorities, vol. 608, 20 April 2016. The Motion passed unanimously, 278-0.

⁵ Tobias Ellwood MP, Hansard, House of Commons, Daesh: Genocide of Minorities, vol. 608, col. 995, 20 April 2016.

⁶ Sub-clause (7).

NOTES FOR EDITORS

1. For an interview with our spokesperson, please contact Josie Fathers, Project Officer on coordination@barhumanrights.org.uk or +44 (0)7854 197862
2. For more information on the Bar Human Rights Committee (BHRC), visit our website at <http://www.barhumanrights.org.uk>
3. The Bar Human Rights Committee of England and Wales (BHRC) is the international human rights arm of the Bar of England and Wales, working to protect the rights of advocates, judges and human rights defenders around the world. BHRC is concerned with defending the rule of law and internationally recognised legal standards relating to human rights and the right to a fair trial. It is independent of the Bar Council.