

Rt Hon Dominic Raab MP
Secretary of State for Foreign, Commonwealth and Development Affairs
King Charles Street
London
SW1A 2AH

18 January 2021

Re. Support for clauses 4 and 5 of the Trade Bill 2019-21 relating to compliance with the UK's international human rights obligations and to genocide

Dear Foreign Secretary,

We write ahead of the consideration of amendments to the Trade Bill 2019-21 due to be debated in the House of Commons on Tuesday 19 January 2021.

The Bar Human Rights Committee of England and Wales (“BHRC”) is the independent, international human rights arm of the Bar of England and Wales. It is dedicated to promoting principles of justice and respect for fundamental human rights through the rule of law. In July 2020, BHRC published a high-level briefing paper on the responsibility of States, including the United Kingdom, under international law to Uyghurs and other Turkic Muslims in Xinjiang, China.¹

BHRC welcomes the package of measures announced last week to help ensure that British organisations and corporations are not complicit in and do not profit from the human rights violations committed against Uyghurs and other Turkic Muslims in Xinjiang. We further welcome the recognition by the UK Government that “[t]he evidence of the scale and severity of the human rights violations being perpetrated in Xinjiang against the Uyghur Muslims is now far-reaching”.²

However, BHRC considers that there are considerably more robust measures available to the UK Government, designed to give force to the welcome rhetoric of disapproval, and to aid the prevention of continuing and future violations. Such measures include the implementation of Magnitsky sanctions against the perpetrators of these gross human rights violations, stronger sanction for corporations that are complicit in violations through supply chains, as well as supporting the establishment of a formal UN independent investigative mechanism and assisting

¹ The Briefing Paper is available at: <https://www.barhumanrights.org.uk/bhrc-publishes-new-report-outlining-the-responsibility-of-states-under-international-law-to-uyghurs-and-other-turkic-muslims-in-xinjiang-china/>

² House of Commons Debates, 12 January 2021, c.160. <https://www.theyworkforyou.com/debates/?id=2021-01-12b.160.1>

such a mechanism to carry out investigations to determine China's responsibility for violation of any of its international obligations with respect to its treatment of Uyghurs.

Proposed amendments to the Trade Bill 2019-21

BHRC supports proposed amendments to the Trade Bill 2019-21 relating to compliance with the UK's international human rights obligations and to genocide (clauses 4 and 5 respectively).

Clause 4 requires that, before a trade agreement can be laid before Parliament, Ministers must determine whether the trade agreement, if ratified, would be compliant with the UK's international human rights obligations. In this regard, BHRC further welcomes your statement on 12 January 2021 that "any responsible Government" would have acted, and would have halted free trade agreement negotiations, *before* a human rights situation in a country reaches the level of genocide.³ This position appears to be in line with clause 4 that makes a positive step towards ensuring the UK trade is not at the expense of human rights protection.

Clause 5 is right in principle. It provides a vehicle by which the High Court of England and Wales can make a preliminary determination that genocide has been or is being committed by a signatory to a bilateral trade agreement with the UK. The intention is not to conflate the power of the court with the power to terminate an international agreement. That intention can be clarified through appropriate amendments to the text, if necessary.⁴ This will be a positive step towards current and future genocide prevention.

Determination of genocide by domestic courts (Clause 5)

BHRC is concerned by your position taken in the House of Commons on 12 January 2021 that genocide determination is a matter for the international judicial system or an independent body under the auspices of the United Nations. 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.

There is a real concern that this position is used, or may be used, to justify inaction in the face of credible evidence that genocide is occurring.

The UK has an obligation to prevent genocide

In this regard BHRC reminds the Government of its international obligations to prevent genocide, and is concerned by your comments in the House of Commons that an assessment of the risk factors of genocide requires the assessment of "an authoritative, independent body or individual entrusted by the United Nations, of which China is a leading member through the Security Council" and that "[t]he UN Office of the High Commissioner for Human Rights ("OHCHR") seems... the right place and the right individual to support in that regard".⁵

³ House of Commons Debates, 12 January 2021, c163. <https://hansard.parliament.uk/Commons/2021-01-12/debates/C7E8DDAA-46C2-4A47-B2D6-BBBEE0A99B76/XinjiangForcedLabour#contribution-7FEDA1E1-658A-4388-AB05-131F97E1CA3A>

⁴ IBAHRI, 'High-Level Briefing Paper: Genocide Amendment to the UK Trade Bill', 15 January 2021, pp.3-5.

⁵ House of Commons Debates, 12 January 2021, c179. <https://hansard.parliament.uk/Commons/2021-01-12/debates/C7E8DDAA-46C2-4A47-B2D6-BBBEE0A99B76/XinjiangForcedLabour#contribution-F481F7B3-6E78-4447-B692-E6BAD5D9EC61>

With respect to the situation in China, this is wholly unrealistic. As you have acknowledged, China has not permitted the OHCHR to enter Xinjiang, and, as a permanent member of the Security Council, may veto any resolution that seeks to refer the situation to the International Criminal Court, and has made a reservation to Article IX of the Genocide Convention that provides for the referral of any dispute between State Parties to the International Court of Justice (“ICJ”).⁶

As the ICJ has determined in the *Bosnia Genocide Case* (2007),⁷ the obligation to prevent genocide, and the corresponding duty to act, “arise at the instant the State learns of, or should normally have learned of, the existence of a *serious risk that genocide will be committed*”.⁸ There is no requirement that the determination of the existence of a serious risk of genocide is made by an international court or body. The UK is under an obligation to act from that moment onwards, regardless of whether the existence of genocide is ultimately proven in a court of law. In so doing the UK will not only act to prevent genocide, but also serious and systematic violations of human rights and international humanitarian law that might result in genocide.

The UK (together with all State Parties to the Genocide Convention) is under an obligation to prevent genocide “so far as is possible”.⁹ Responsibility for the failure to prevent a genocide will be incurred if the UK “manifestly failed to take all measures to prevent genocide which were within its power, and which might have contributed to preventing the genocide” in question.¹⁰

Waiting for a judicial determination by an international court or body that genocide has been committed or is being committed, where it is not apparent that there is any likely or realistic route to such a determination, undermines the object and purpose of the obligation to prevent: to ensure, in so far as is possible, that genocide is never again committed.

We, therefore, urge you to reconsider your position with regards to the proposed Clause 5 to the Trade Bill 2019-2021, and to support Clauses 4 and 5 accordingly.

Yours sincerely,



Schona Jolly QC

Chair
Bar Human Rights Committee of England and Wales

⁶ Reservation of the People’s Republic of China to Article IX, Convention on the Prevention and Punishment of the Crime of Genocide, Paris, 9 December 1948, 78 UNTS 277.

⁷ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)*, Judgment, ICJ Reports 2007, p.43.

⁸ Ibid, p. 222 para. 431.

⁹ Ibid, p. 221 para. 430.

¹⁰ Ibid.

Copy to:

Boris Johnson, Prime Minister

Elizabeth Truss MP, Secretary of State for International Trade

Nigel Adams MP, Minister for Asia