

QUAKER CONCERN FOR THE ABOLITION OF TORTURE

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Torture in the headlines again

Horrific evidence of the use of torture has been produced this month in Sri Lanka and Georgia as well as by both sides in Syria but this Briefing continues to focus on our theme of UK complicity in torture and the sinister implications of the current Justice and Security Bill for this.

Secret courts threaten justice for all

The Guardian, Friday 14/09/12

Everyone feels a bit muddled returning to work after the summer but the Cabinet Office seems more confused than most. Its statement that "nothing heard in open court could be heard in secret" is at best ill informed, at worse shockingly dishonest.

The justice and security bill (Secret courts 'may hide UK role in torture', 12 September) will result in evidence – currently able to be heard in open court – being heard behind closed doors. Staggeringly, it also removes the court's jurisdiction to hear certain claims for disclosure of evidence altogether. Ministers will get to choose what evidence they would rather submit in private – seen only by a judge and not the person bringing a claim, the press or the public. If the material relates to "national security", judges will have to agree regardless of whether they genuinely think disclosure would be damaging or not.

So, huge swaths of evidence currently and safely put before the courts could be withheld by ministers. As the UN rapporteur on torture has recognised, if passed this bill will easily allow for the suppression of torture evidence and other abuses of power.

The government may assert that "it stands firmly against torture and cruel, inhuman and degrading treatment or punishment" but revelations in recent years have undermined this claim. As a result the police are conducting criminal investigations into UK conduct and the government has promised an inquiry to investigate mistreatment of detainees.

Shutting down the legal avenues that triggered these investigations dishonours the government's claim to turn its face against torture. □ **Shami Chakrabarti** □ *Director, Liberty*

Secret justice: back to black *The Guardian editorial, Monday 17/09/12*

Nobody, but nobody, would choose this as the moment to demand repeal of the Freedom of Information Act. If the Hillsborough cover-up has demonstrated one thing, it is that unaccountable power corrupts; the light thrown in by FoI helped expose the facts as well as this insight, 23 years on from the tragedy. The sole comfort with this conspiracy is the hope that the culture has since altered sufficiently that even bent cops would now think twice about abusing their authority so blatantly.

That solace, however, is hard to sustain when a new veil of secrecy is about to be thrown over another element of state power. Just as the police have (half) learned to live in a more open culture, the government is giving the security services and allied bureaucrats an unprecedented licence to switch off the lights in open court. After revelations about MI5's knowledge of American torture emerged in the case of Binyam Mohamed – revelations that the master of the rolls decided were embarrassing as opposed to dangerous – the state's supreme secret operatives set to work on the proposals that have become the justice and security bill. It is back in the House of Lords next month, and it is decision time for the Liberal Democrats. Next week their conference must decide whether to back Jo Shaw's amendment demanding a rethink from first principles, or whether instead to acquiesce in an inherently illiberal law in return for the sort of mushy and unworkable compromises that Gordon Brown once offered on 42 days.

Sloppily drafted, the original proposals came in what Kenneth Clarke conceded was a "very green paper", but were nonetheless immediately rushed into a bill, with the white paper stage being skipped. The most notable concession was the removal of inquests from the sweeping scope of a scheme that covers civil litigation of all other stripes, but now the Lords constitutional committee has warned of the possibility of the executive reversing even this at some future point, by exploiting a so-called Henry VIII power that is written into the bill to allow ministers to revise its terms. The whole process has had the smack of precisely the sort of arrogance that the bill would keep hidden in future. And it is no longer in the hands of the instinctively liberal Mr Clarke, but instead of his replacement as justice secretary, Chris Grayling – a man who said he would like to tear up the Human Rights Act.

Ministers insist that no currently admissible evidence will be rendered secret, but that is doubly misleading. For one thing it assumes – against all expectation – that the judges who currently wield the black marker pen under the public interest immunity (PII) system are as gung-ho with it as the executive will be if it succeeds in usurping this power under the bill. For another, it misses the point – information kept out of court under PII is put beyond the reach of both sides; closed hearings, by contrast, are expressly designed to free the authorities to exploit information that the other side is barred from seeing. That unbalances the scales of an adversarial system whose great merit is allowing the material marshalled by either side to be tested – if need be, to destruction – by the other, and also undermines a principle of open justice that has been embodied in the common law since the fall of the Stuarts.

The Lib Dem leadership plans to muddle through by hinting at compromises to extend notional judicial discretion. No such compromise can cohere, since – like a referee with only one team on the pitch – the judge will still be ruling on material that one side is unable to test. The party must consider whether it really wants a rerun of Nick Clegg's messy handling of health reforms, which even friends now admit he should have killed, or whether instead it would be better to force a clean break. Underlying the political judgment is the principle. With its genesis in torture cases that shamed the authorities, the grim sort of things this bill could keep secret are apparent. Who knows what horrors might emerge 23 years from now to blight the conscience of anyone who acquiesces in its passage.

Convenor: Chas Raws, 38 The Mount, Heswall, Wirral CH60 4RA chasraws@onetel.com