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CLOONEY FOUNDATION FOR JUSTICE

WAGING JUSTICE

GLOBAL BRITAIN, GLOBAL JUSTICE:

STRENGTHENING ACCOUNTABILITY FOR INTERNATIONAL CRIMES IN ENGLAND AND WALES

FOREWORD

By Baroness **Helena Kennedy of The Shaws**

The United Kingdom has been a central voice in the call for international accountability following Russia's full-scale invasion of Ukraine in February 2022. It led the referral of the situation in Ukraine to the International Criminal Court, donated funds to support the ICC's subsequent investigation, and co-founded the Atrocity Crimes Advisory Group to support the War Crimes Unit of the Office of the Prosecutor General in Ukraine.

Yet despite its robust judicial system, top-tier law schools, and an abundance of highly skilled legal professionals, the UK has done little in the last decade to deliver meaningful accountability for international crimes in its own courts.

If the UK is to continue to play a leading role in promoting justice at the international level, it must match this rhetoric with concrete actions domestically. As atrocities continue to be committed in conflicts around the world, national investigations, arrests, and trials in third-party countries often represent the only meaningful chance for survivors of international crimes and their families to obtain justice.

The UK has the means to prosecute war criminals in its own courts through the principle of universal jurisdiction – a national court's authority to prosecute individuals for international crimes committed in other jurisdictions. In this report, REDRESS and the Clooney Foundation for Justice consider why universal jurisdiction, a complex yet crucial tool in the fight for accountability for atrocity crimes, is used so infrequently in the UK, and how the UK system could be strengthened to more effectively secure accountability for survivors. The report explores the challenges that the UK faces in investigating and prosecuting international crimes, and offers recommendations for how those challenges can be overcome.

For those of us dedicated to the cause of international justice, this report is an important step forward on the path to delivering accountability in Ukraine and so many other conflicts around the globe. It presents a critical opportunity for the UK to consider how it can begin to answer calls for global justice, at home in its own courts – so that survivors are honoured, and so that our country does not become a safe haven for those who should be facing justice in a court of law.

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LIST OF ACRONYMS

AG	Attorney General
CAH treaty	Convention on Prevention and Punishment of Crimes Against Humanity
CJA	Criminal Justice Act 1988
CPS	Crown Prosecution Service, Special Crime and Counter Terrorism Division
DPP	Director of Public Prosecutions
FCDO	Foreign, Commonwealth and Development Office
GCA	Geneva Conventions Act 1957
ICA	Dutch International Crimes Act 2003 (Wet Internationale Misdrijven 2003)
ICC	International Criminal Court
ICCA	International Criminal Court Act 2001
MLA	Mutual legal assistance
MLA treaty	Ljubljana-Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes Against Humanity, War Crimes and Other International Crimes
NGO	Non-Governmental Organisation
Referral Guidelines	CPS/SO15 War Crimes/Crimes Against Humanity Referral Guidelines
Rome Statute	Rome Statute of the International Criminal Court
SMI	Special mission immunity
SO15	Counter Terrorism Command, UK Metropolitan Police
UK	United Kingdom
UNCAT	UN Convention Against Torture
VRR scheme	Victims Right to Review scheme
WCA	War Crimes Act 1991

EXECUTIVE SUMMARY AND RECOMMENDATIONS

© Joel Carillet/iStock.
A Ukrainian family walks through the center of Borodyanka in March 2023, past an apartment building that a year earlier had been bombed in the early days of the Russian invasion.

Following Russia's invasion of Ukraine in February 2022, the UK has joined countries around the world in denouncing war crimes and calling for accountability.[1] But while the UK[2] has celebrated its role at the "forefront of the global response",[3] the reality is that if a Russian general suspected of crimes against humanity in Ukraine were to visit the UK today, he would be free to do so without fear of prosecution.[4] It is time to change this.

Although the reach of national criminal law is typically territorial, more than 150 legal systems around the world provide for some form of "universal jurisdiction" – meaning that they can try suspects for serious international crimes – like war crimes, crimes against humanity and genocide – regardless of where these crimes occur.[5] The rationale behind the principle is that some crimes "so deeply shock the conscience of humanity" that every State has an interest in holding the perpetrators accountable, no matter where the crimes occur, and no matter what the nationality of the victim or perpetrator.[6]

At present, English law includes a limited form of universal jurisdiction. English courts can exercise universal jurisdiction over the crimes of torture, hostage-taking, and a small number of war crimes known as "grave breaches" of the Geneva Conventions[7] if the perpetrator is present in the UK. English courts also have jurisdiction over genocide, crimes against humanity, and war crimes[8] but only if the perpetrator is present in the UK *and* is either a UK national or a legal resident.[9] This means that non-citizens and non-

1 Attorney General's Office, 'UK Attorney General Signs Statement of International Unity in Securing Justice for War Crimes in Ukraine' (UK Government 2022).

2 Note that the use of the term United Kingdom (UK) in this report refers to England and Wales, but not Scotland. This is because Scotland as a jurisdiction has a distinct legal system that is not examined here, and to which these observations and recommendations do not necessarily apply.

3 Attorney General's Office, 'UK Attorney General Signs Statement of International Unity in Securing Justice for War Crimes in Ukraine' (UK Government 2022).

4 Unless the general were subject to an international arrest warrant or were charged with specific war crimes that constitute grave breaches of the Geneva Conventions.

5 For more detail on which countries have adopted universal jurisdiction provisions, see the Clooney Foundation for Justice's 'Justice Beyond Borders' tool.

6 Rome Statute (2187 UNTS 3), Preamble. The Rome Statute opened for signature on 17 July 1998 and entered into force on 1 July 2002.

7 On torture, *see* Criminal Justice Act 1988; on hostage-taking, *see* Taking of Hostages Act 1982; on breaches of the Geneva Conventions, *see* Geneva Conventions Act 1957.

8 *See* International Criminal Court Act 2001, which gives effect to the Rome Statute in the UK. While States Parties to the Rome Statute activated the ICC's jurisdiction over the crime of aggression as its fourth core crime in 2018, the UK has not ratified the corresponding amendments to the Rome Statute: *see* International Criminal Court Act 2001, s 1(10), 'Explanatory Notes'. This report does not address accountability for the crime of aggression in the UK. For more detail on which countries have criminalised aggression, *see* the Clooney Foundation for Justice's 'Justice Beyond Borders' tool.

9 International Criminal Court Act 2001, s 51(2)(b). Under ICCA, "residents" include, amongst others, persons: (a) with indefinite leave to remain in the UK; (b) with leave to enter or remain in the UK to work or study; (c) who have made an asylum or human rights claim; or (d) who are detained in lawful custody. For the full list *see* Coroners and Justice Act 2009, s 70(4).

residents can come to London without fear of prosecution, even if they are reasonably suspected of committing genocide.[10]

In addition to legal challenges, a number of practical challenges have stymied convictions. Official data shows that between 2013 and 2015, 135 individuals were refused citizenship in the UK by the Home Office due to their alleged involvement in war crimes, crimes against humanity, genocide or torture.[11] Yet none of these cases were referred to the Metropolitan Police. Under existing guidelines, the police cannot begin investigations until they have a suspect, and that suspect is in the UK. As a result of this, and practical challenges in gathering evidence of crimes committed abroad, there have only been three successful prosecutions of international crimes in English courts – ever.[12] The last successful prosecution took place well over a decade ago.[13]

This record stands in stark contrast to jurisdictions such as Germany, France, Belgium and Sweden, whose domestic courts have seen a surge in the number of prosecutions initiated under universal jurisdiction laws in recent years. Courts in these countries have tried and convicted ISIS fighters for genocide in Iraq,[14] Assad's henchmen for torture in Syria,[15] and Rwandan genocidaires.[16] These national trials have often been the only meaningful chance to obtain some form of justice for survivors of international crimes and their families.

The Joint Committee on Human Rights of the UK Parliament has criticised the current "patchwork" of laws[17] on prosecuting international crimes in the UK and former Director of Public Prosecutions, Sir Ken Macdonald KC, has described these laws as "illogical".[18] This report sets out reforms that would close loopholes and allow for more successful cases to be brought against war criminals who come to the UK.

10 On the basis that their alleged crimes do not relate to an international armed conflict and the UK therefore cannot exercise its universal jurisdiction over grave breaches of the Geneva Conventions.

11 The requirement for a person to be of good character in order to be naturalised as a British citizen is set out in Schedule 1 to the British Nationality Act (BNA) 1981. Under Home Office guidance, a "person will not normally be considered to be of good character if […] there are reasonable grounds to suspect [that] they […] have been involved in or associated with war crimes, crimes against humanity or genocide, terrorism, or other actions that are considered not to be conducive to the public good".

12 *R v. Sawoniuk* [2000] Court of Appeal (Criminal Division), Crim. L. R. 506; *R v Payne* [2006] Military Court, H DEP 2007/411; *R v Zardad* [2007] Court of Appeal (Criminal Division), Crim. 279.

13 *R v Payne* [2006] Military Court, H DEP 2007/411 (a guilty plea before a court martial).

14 TRIAL International, 'Jennifer W. and Taha A.J.' (last modified 4 April 2022).

15 *See* Human Rights Watch, 'Germany: Conviction for State Torture in Syria' (13 January 2022); EJIL: Talk!, 'France's Highest Court Confirms Universal Jurisdiction' (1 June 2023).

16 *See* TRIAL International, '2022 Universal Jurisdiction Annual Review' (2023).

17 Joint Committee on Human rights, 'Closing the Impunity Gap: UK law on genocide (and related crimes) and redress for torture victims,' (House of Commons, 11 August 2009).

18 *Ibid.*, para. 28.

Legal challenges

UK law includes four major legal challenges that impede successful prosecutions.

(1) UK law limits prosecutions for most international crimes to suspects who are UK residents or citizens. Under the International Criminal Court Act 2001 (ICCA), UK courts can try cases of genocide, crimes against humanity and war crimes committed after a certain date.[19] But, as noted above, prosecutions can only be brought against UK *nationals or residents*, or those subject to the UK's service jurisdiction. In contrast, the Criminal Justice Act 1988 (CJA), which criminalizes acts of torture committed in or after 1988, does not require individuals to be residents or nationals of the UK; it is sufficient for them to be merely present on UK territory. There is no principled reason that UK courts should be able to prosecute non-citizens and non-residents for torture but not crimes against humanity, or war crimes and genocide – which can all be committed through torture when other elements are present.

(2) UK law is inconsistent about how far back prosecutions can go, leaving gaps in the ability to prosecute certain crimes. UK authorities can prosecute international crimes within inconsistent timeframes. Torture can be prosecuted if committed after 1998.[20] Genocide can be prosecuted if committed "on or after 1 January 1991".[21] But crimes against humanity and war crimes can be prosecuted if committed after 1 September 2001 "unless, at the time the act constituting that crime was committed, the act amounted in the circumstances to a criminal offence under international law".[22] Which crimes have been codified in customary law, and when, has however not been clarified by Parliament nor exhaustively addressed by the courts.[23] Meanwhile, grave breaches of the Geneva Conventions can be prosecuted if committed in the context of an international armed conflict as far back as 1957.[24]

19 *See* Legal Framework for Prosecuting Internationl Crimes in the UK, 'Relevant Legislation,' below.

20 Criminal Justice Act 1988, Introductory Text and s 171(6).

21 The ICCA came into force on 1 September 2001, criminalising acts of genocide, crimes against humanity, and war crimes committed after that date (*see* International Criminal Court Act 2001 (Commencement) Order 2001), but given that it repealed the Genocide Act 1991, the ICCA was later amended to retrospectively extend jurisdiction to acts of genocide occurring on or after 1 January 1991. *See* ICCA, s 65, inserted by the Coroners and Justice Act 2009. This ensured that genocidal conduct during the conflicts in the former Yugoslavia and Rwanda in the early 1990s could be criminalised in domestic law.

22 ICCA, s. 65A.

23 Kate Grady, 'International Crimes in the Courts of England and Wales' (2014) 10 *Criminal Law Review* 693.

24 The Geneva Conventions Act 1957 (GCA) criminalises grave breaches of the Geneva Conventions, some of which are also covered by ICCA. The GCA has effect from 31 July 1957 for grave breaches of the 1949 Geneva Conventions, 20 July 1998, for grave breaches of the Additional Protocol I, and 5 April 2010 and for grave breaches of the Third Additional Protocol to the Geneva Conventions. *See R v Jones and Milling,* [2006] UKHL 16, at paras.19 and 23 *per* Lord Bingham (finding that "a crime recognised in customary international law may be assimilated into the domestic criminal law" of the UK, that "the core elements of the crime of aggression have been understood, at least since 1945, with sufficient clarity to permit the lawful trial… of those accused of this most serious crime", but citing with approval the conclusion that "international law could not create a crime triable directly" in English courts). For a detailed review of the UK courts' approach to customary international law, *see* Lord Lloyd-Jones, 'International Law Before United Kingdom Courts: A Quiet Revolution' (2022) 71 I*nternational & Comparative Law Quarterly*.

(3) UK legislation does not recognise command and superior responsibility, two important modes of liability in international law, for some international crimes.[25] These modes of liability allow prosecutors who may not be able to prove beyond reasonable doubt that orders were given, to instead prosecute military commanders or civilian leaders for being negligent in failing to prevent or punish serious atrocities committed by their subordinates.[26] The ICCA has introduced these modes of liability into domestic law in relation to the crimes of genocide, war crimes and crimes against humanity. But they do not exist in relation to torture under the CJA.[27] Nor does the Geneva Conventions Act 1957 specifically incorporate these modes of responsibility for grave breaches of the Geneva Conventions into domestic law.[28] Recognition of these two forms of responsibility for international crimes is instrumental to overcome a common hurdle in the prosecution of international crimes: the linkage of commanders to crimes committed by their subordinates. Domestic forms of accessorial liability will often be insufficient because they do not address such omissions by military and political commanders.

(4) Granting "special mission immunity" to visiting officials obstructs the ability to prosecute them. By conferring "special mission immunity" on foreign government representatives sent on official business to the UK, the UK Government has on occasion prevented the arrest and trial in the UK of individuals suspected of international crimes. For example, the UK police refused to arrest an Egyptian General alleged to be responsible for torture after a violent coup[29] despite its obligation to criminalise torture under the UN Convention against Torture on an extraterritorial basis and investigate and prosecute acts of torture occurring abroad when alleged perpetrators are in the UK.[30]

25 "Command responsibility" as defined in ICCA means that a military commander, or a person effectively acting as a military commander, is responsible for offences committed by forces under their effective command and control or their effective authority and control, where: (a) they either knew, or should have known that the forces were committing or about to commit offences of genocide, crimes against humanity or war crimes; or (b) they failed to take all necessary and reasonable measures within their power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution: International Criminal Court Act 2001, s 65(3)(a). "Superior responsibility", meanwhile, confers responsibility on civilian leaders for offences committed by subordinates under their effective authority and control on a very similar basis, except that there is no expectation that they should have known about the activities of their subordinates; instead, it must be proven that they "either knew, or consciously disregarded information which clearly indicated" that the crimes were being committed: International Criminal Court Act 2001, s 65(3)(a).

26 William Schabas, *An Introduction to the ICC* (CUP 2020), pp. 234 – 235.

27 International Criminal Court Act 2001, s 65. *See* also Rome Statute, art 28.

28 When these crimes do not fall within the jurisdiction of ICCA. This includes breaches of additional protocols.

29 *R (on the application of Freedom and Justice Party) v The Secretary of State for Foreign and Commonwealth Affairs* [2016] EWHC 2010 (Admin), para. 9.

30 As recognised in *Pinochet (No. 3)* [2000] 1 AC 147.

Practical challenges

In addition to legal challenges, five major practical obstacles have stifled attempts to prosecute international crimes in the UK.

(1) Investigations into international crimes traditionally have not begun before a perpetrator has been identified and is present on UK territory.[31] Cases of alleged international crimes are referred to the Counter Terrorism Command of the Metropolitan Police (SO15). Existing guidelines advise the police not to begin investigations until they have an identifiable suspect, and that suspect is in the UK.[32] Waiting for a suspect to travel to the UK before launching an investigation can lead to situations in which investigators have little advance warning or time to gather evidence that would be sufficient to file charges.

(2) UK investigators face significant challenges in gathering evidence from foreign jurisdictions. Investigating international criminal cases often involves obtaining evidence from remote, sometimes conflict-riven, locations in countries that may not be open to cooperation. This task requires specialised expertise, dedicated resources, and contact with credible non-governmental organisations (NGOs) and survivors. NGOs are often the first to bring cases to the authorities' attention and may be the only entities on the ground with contacts to victims and witnesses. While the UK War Crimes Network provides a forum for exchange with NGOs, additional outreach and clear guidance from police and prosecutors on how to collect and submit evidence would improve the contribution that NGOs can make to prosecutions. Indeed, failures when it comes to evidence have led to acquittals in the few cases involving international crimes that have gone to trial. There is also inadequate support for witnesses who travel from abroad[33] and insufficient guidance about how to gather and share evidence in a manner that will be admissible in court.

(3) The UK lacks sufficient mechanisms for international cooperation in investigations. There is currently no international treaty setting out the obligations of States in relation to crimes against humanity. In addition, the UK no longer has access to the Schengen Information System, a database of alerts on people and objects entering EU territory. While it remains an observer of the EU Genocide Network, it is also no longer a member of Eurojust and Europol. It is a party to over forty bilateral mutual legal assistance (MLA) treaties, but there remains a lack of clarity on the exact scope of the duties

31 Crown Prosecution Service, 'War Crimes/Crimes Against Humanity Referral Guidelines' (7 August 2015), section A: Scoping Exercise (suggesting that a scoping exercise preceding the start of an investigation should take into account whether there is an "identifiable suspect" and that if there are no "reasonable means of obtaining evidence of identification […] then it will not be possible to identify the suspect and so an effective investigation cannot at this stage be carried out").

32 *Ibid.*

33 *See* 'UK investigators face significant challenges in gathering evidence from foreign jurisdictions' below.

and obligations of States to assist each other in the investigation and prosecution of international crimes.

(4) There is insufficient coordination between the UK's relevant national agencies. The UK War Crimes Network, a group of government agencies working to address international crimes, convenes bi-annually to discuss case work. Coordination between agencies could be improved, however. For instance, between 2013 and 2015, the Home Office refused citizenship to 135 individuals due to their alleged involvement in war crimes, crimes against humanity, genocide or torture. Yet none of these cases were referred to the Metropolitan Police for investigation.[34]

Universal jurisdiction is a critical weapon in the global fight to curb impunity for grave crimes. For the UK's commitment to achieving accountability for international crimes to move beyond rhetoric, steps must be taken to sharpen the legal and practical tools at the disposal of the UK authorities. The following recommendations are offered to strengthen the UK's response to international crimes, so that it can truly be at the forefront of the global fight to hold the perpetrators of atrocities to account.

Recommendations

Overcoming Legal Challenges

The UK Government should amend relevant laws as follows, to allow for more alleged perpetrators of international crimes to be prosecuted in the UK:

(1) The UK should remove the nationality and residence requirements for prosecutions for genocide, crimes against humanity and war crimes, so that any suspect present in the UK can be prosecuted there. This would standardise the UK's approach across international crimes[35] and enhance its ability to prosecute war criminals on its territory. To go one step further, the UK could remove the presence requirement for all international crimes to allow for even greater accountability, as is the case in countries such as Sweden and Germany.

(2) The UK should amend the ICCA to ensure that UK courts have jurisdiction over all crimes covered by the Rome Statute – genocide, crimes against humanity and war crimes – from at least 1991, and indicate which crimes could be prosecuted prior to this date under customary international law. The ICCA should be amended to ensure that UK courts have jurisdiction over all Rome Statute crimes – not just genocide, as per current law – from 1 January 1991, and even further back for any offences that were criminalised under customary international law before that date.

34 Freedom of Information Request held in REDRESS' files.

35 This would bring the provisions of the International Criminal Court Act in line with English law on torture under the CJA.

(3) The UK should amend relevant laws to recognise command and superior responsibility for all international crimes. The Geneva Conventions Act 1957 should explicitly recognise command and superior responsibility for grave breaches of the four Geneva Conventions and their Additional Protocols, as the ICCA does for international crimes covered by that Act. Similarly, the UK Government should amend the Criminal Justice Act 1988 to provide for superior command and superior responsibility for torture committed by subordinates.

(4) The UK should codify its approach to special mission immunity, including its scope under customary international law.[36] **The UK should refuse to accept an individual as being on a special mission, and potentially entitled to immunity, when there are reasonable grounds to suspect that the individual has been involved in or associated with international crimes including torture, war crimes, crimes against humanity or genocide.**[37] **Reasonable grounds include instances when the individual is identified as a suspect by the International Criminal Court, the UK authorities or a UN investigative mechanism.**[38] Creating a carve-out from such immunity for those credibly suspected of international crimes would satisfy the UK's obligations under the UN Convention against Torture, the Rome Statute, the UN Convention on the Prevention and Punishment of the Crime of Genocide, the Geneva Conventions and other treaties. If and when the FCDO does grant special mission immunity, it should be more transparent: by publishing in advance of any grant of special mission immunity information including who it relates

36 *See* CAHDI, 'Replies by States to the questionnaire on 'Immunities of Special missions', CAHDI (2018) 6 prov, p116-117 ("Insofar as the immunity of special missions is part of customary international law, it is also a source of the common law… It is clear that persons on a special mission enjoy personal inviolability and immunity from criminal jurisdiction. It is likely that persons on a special mission would enjoy immunity from civil jurisdiction in so far as the assertion of civil jurisdiction would hinder them performing their official functions…However there are no recent judicial precedents…").

37 *See* Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 5.2, Dec. 10, 1984, 1465 U.N.T.S. 85 ("Each State Party shall … take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph I of this article."); Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the UN General Assembly, Res. 260 A (III), 9 December 1948, Article I ('The Contracting Parties confirm that genocide … is a crime under international law which they undertake to prevent and to punish'); Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in the Armed Forces in the Field Article 50, Aug. 12 1949, 75 U.N.T.S. 31; Geneva Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea Article 51, Aug. 12 1949 75 U.N.T.S. 85; Geneva Convention Relative to the Treatment of Prisoners of War Article 129, Aug. 12 1949, 75 U.N.T.S. 135; Geneva Convention Relative to the Protection of Civilian Persons in the Time of War Article 146, Aug. 12 1949, 75 U.N.T.S. 287.

38 This is consistent with Home Office guidance, which provides that an individual will be refused citizenship if "there are reasonable grounds to suspect [that] they […] have been involved in or associated with war crimes, crimes against humanity or genocide, terrorism, or other actions that are considered not to be conducive to the public good".

to, for what mission and for what duration it will be granted.[39] This would ensure greater transparency and accountability.

Overcoming Practical Challenges

(1) UK authorities should continue to strengthen the concept of structural investigations for the effective investigation of international crimes and investigate suspects likely travel to the UK, even if travel is not imminent. Traditionally, the UK has not investigated a situation until a suspect is present in the UK.[40] But more recently, the UK has begun to adopt 'structural investigations', which allow investigators to compile contextual evidence of war crimes, crimes against humanity, or genocide before a potential perpetrator enters the country. War crimes units in other countries have already adopted this approach. For example, a structural investigation in Germany led to the recent landmark conviction of two former members of the Syrian Intelligence Service for crimes against humanity and torture, when they were identified on German territory after initial investigations had begun.[41] SO15 has recently announced the opening of structural investigations in each of the countries under investigation by the ICC,[42] and this practice should be continued and sufficiently resourced into the future. In addition, SO15 should interpret the requirement of a "reasonable prospect" that the suspect will enter the UK, as set out in the War Crimes/Crimes Against Humanity Referral Guidelines[43] broadly, to allow for investigations to progress in cases even when travel is not imminent.

(2) UK authorities should further collaborate with NGOs and survivors to gather evidence, provide appropriate support to survivors who provide evidence, and disseminate clear guidance on how NGOs should collect and submit evidence to ensure admissibility in UK courts. Both SO15 and the CPS should disseminate clear guidance on how NGOs should collect and submit evidence to ensure maximum trial efficacy, similar to the documentation guidelines published by the ICC Prosecutor,[44]

39 This is consistent with the policy that 'Embassies and High Commissions in London will be invited to inform the FCO of forthcoming visits in cases where they wish to seek the Government's express consent as a special mission. The FCO will respond with Government's consent or otherwise to the visit as a special mission. Any legal consequences would ultimately be a matter for the courts". Foreign and Commonwealth Office, 'Written Ministerial Statement: Special Mission Immunity (4 March 2013).There is also already a published list of "[r]epresentatives of Foreign States & Commonwealth Countries and their diplomatic staff [who] enjoy privileges and immunities under the Diplomatic Privileges Act (1964)". The London Diplomatic List is available online.

40 Crown Prosecution Service, 'War Crimes/Crimes Against Humanity Referral Guidelines' (7 August 2015), section A: Scoping Exercise.

41 TRIAL International, '2022 Universal Jurisdiction Annual Review' (2023).

42 Information provided by email on 8 June 2023. The ICC Office of the Prosecutor currently investigates 'situations' in the following countries: Democratic Republic of the Congo, Uganda, Darfur (Sudan), Central African Republic, Libya, Côte d'Ivoire, Mali, Georgia, Burundi, Palestine, Bangladesh/Myanmar, Afghanistan, the Philippines, and Venezuela.

43 Crown Prosecution Service, 'War Crimes/Crimes Against Humanity Referral Guidelines' (7 August 2015).

44 Office of the Prosecutor, Eurojust, 'Documenting international crimes and human rights violations for accountability purposes: Guidelines for civil society organisations' (September 2022).

and consistent with the Murad Code, a global code of conduct to improve the pursuit of justice for survivors of conflict-related sexual violence developed with UK support.[45] When a case advances to trial, practices such as the provision of testimony by video link should be considered where possible to alleviate certain challenges involving witnesses who are located abroad. Adequate resources should be made available for victim support to ensure their safety and uphold their rights to information, interpretation, and translation. Finally, authorities should improve survivor outreach to ensure that affected communities, especially victims and survivors, and other relevant stakeholders are adequately informed about accountability measures for international crimes in the UK.

(3) The UK should strengthen international cooperation in prosecuting international crimes, including by signing and ratifying the Ljubljana-Hague treaty and taking a leading role in advancing the Crimes against Humanity treaty. The Ljubljana-Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes Against Humanity, War Crimes and Other International Crimes (MLA treaty) was adopted in May 2023 and will be open for signature in 2024. It aims to clarify the duties of State Parties to assist one other in the domestic investigation and prosecution of cases of genocide, war crimes, and crimes against humanity. And, despite efforts by the UK and France to limit obligations under the treaty,[46] the treaty sets out the duty of States to prosecute or extradite suspects of international crimes under international law.

The UK should also adopt the proposed Convention on Prevention and Punishment of Crimes against Humanity. Currently, crimes against humanity (unlike genocide, war crimes and torture) are not codified in any international treaty governing national trials. A treaty drafted by the International Law Commission will be considered at the UN in 2024. If ratified in its current form, the treaty would impose a legal obligation on the UK and other State Parties to "prevent and punish" crimes against humanity through legislative and judicial measures, in cooperation with other States and organisations.[47] Article 7 of the draft treaty also provides that "[e]ach State shall also take the necessary measures to establish its jurisdiction over [crimes against humanity] in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite or surrender the person".[48] This means removing the nationality and residence requirement

45 *See* Murad Code: The Global Code of Conduct for Gathering and Using Information about Systematic and Conflict-Related Sexual Violence (2022).

46 Amnesty International UK, 'UK: Government seeks to water down treaty which could allow war criminals to go free' (18 May 2023).

47 If the UK failed to uphold its obligations, other countries may be able to file a case against it at the International Court of Justice. *See* International Law Commission, Draft articles on Prevention and Punishment of Crimes Against Humanity (2019), Arts 4, 15.

48 International Law Commission, Draft articles on Prevention and Punishment of Crimes Against Humanity (2019), Art 7.

under current legislation, and instead proceeding on the basis of a suspect's presence in the UK alone, as recommended in this report.[49]

(4) The UK's relevant national bodies, such as the Home Office, CPS and Metropolitan Police, should improve coordination amongst themselves and appoint a point person akin to an Ambassador-at-Large for Global Criminal Justice. Building on the UK War Crimes Network, increased coordination among bodies such as the CPS, SO15, the Attorney General's Office, immigration authorities, and the FCDO should improve the exchange of information and data relevant to prosecutions of international crimes (including on any asylum seekers or citizenship applicants who are suspected of such crimes). The UK Government should also create a role similar to the US Ambassador-at-Large for Global Criminal Justice to facilitate coordination amongst national bodies, and encourage a consistent policy approach towards international justice. The US Ambassador-at-Large heads the US Office for Global Criminal Justice, which advises the US Secretary of State and the US Under Secretary of State for Civilian Security, Democracy, and Human Rights on issues related to war crimes, crimes against humanity and genocide. The US Office for Global Criminal Justice also formulates national policy responses to atrocities, which ensures a degree of consistency in the national response to such crimes.[50] Establishing a similar centralising body in the UK would help ensure that the UK's responses to atrocities are consistent with the country's international obligations and enable it to bring war criminals to justice.

49 *See* Recommendation 1 above: The UK should remove the nationality and residence requirements for prosecutions for genocide, crimes against humanity and war crimes so that any suspect present in the UK could be prosecuted.

50 US Department of State, Office of Global Criminal Justice.

BACKGROUND

© Reuters/Dan Chung. Anti-Pinochet demonstrators wave placards outside the House of Lords in 1999 following the Law Lord's decision that the former Chilean dictator should be extradited to Spain to face torture charges.

After the atrocities of World War II, the UK became a leading voice in the call to recognise certain crimes as so shocking to the conscience of mankind that they must be prosecuted regardless of where they take place, or who commits them. The UK spearheaded the Nuremberg trials, and has championed tribunals for Rwanda,[51] Sierra Leone,[52] the former Yugoslavia,[53] Lebanon[54] and Cambodia.[55] In a groundbreaking move, it apprehended Chilean dictator Augusto Pinochet in London, shocking observers around the globe.[56] It has continued to be vocal in its support for international justice until today. It was a founding member of the International Criminal Court (ICC), and has praised the ICC's investigation of war crimes in Ukraine, as well as its involvement in other prosecutions.[57] It has supported, in conjunction with the United States of America and the European Union, the creation of the Atrocity Crimes Advisory Group, a group that aims to support the War Crimes Units of the Office of the Prosecutor General of Ukraine in its investigation and prosecution of conflict-related crimes.[58]

Beyond the Ukraine context, the UK has prioritised the fight against conflict-related sexual violence through the Preventing Sexual Violence in Conflict Initiative and its support to the Murad Code, a global code of conduct to improve the gathering and use of information about and pursuit of justice for survivors of conflict-related sexual violence.[59] But, to be credible, the UK's rhetoric on international justice must be matched by action at the domestic level.[60] There have been several instances recently in which the UK's legislation and policy have undermined its rhetoric on international accountability for atrocities and human rights violations.[61]

51 United Nations Security Council, Resolution 955 (1994) on establishment of an International Tribunal for Rwanda and adoption of the Statute of the Tribunal.

52 Foreign, Commonwealth & Development Office ('FCDO') 'UK Government Announces Support for Cirminal Tribunals' (26 April 2011).

53 United Nations International Criminal Tribunal for Former Yugoslavia, 'Support and Donations' (accessed 29 September 2023).

54 *See* UN Security Council, Resolution 1757 (2007) on the establishment of a Special Tribunal for Lebanon. The UK also served on the Management Committee.

55 Extraordinary Chambers in the Courts of Cambodia, 'United Kingdom Contributes £215,000 to Cambodian side of the ECCC' (accessed 29 September 2023).

56 David Connett, John Hooper and Peter Beaumont, 'Pinochet Arrested in London' (The Guardian, 18 October 1998); Amnesty International, 'How General Pinochet's detention changed the meaning of justice' (13 October 2013).

57 Nadia Khomami, 'Ukraine: UK justice ministry offers more support for ICC war crimes investigation' (The Guardian, 6 June 2022).

58 FCDO and Lord Ahmad of Wimbledon, 'The UK's support to Ukraine in investigating war crimes' (15 July 2022).

59 *See* UK Government, The Preventing Sexual Violence in Conflict Initiative (PSVI) and also FCDO, 'UK Governmenet and Prize Winner Launch Global Code to Tackle Conflict Related Sexual Violence' (13 April 2022).

60 *See e.g.* Lord Ahmad of Wimbledon, 'The UK's support to Ukraine in investigating war crimes' (15 July 2022).

61 *See e.g.* REDRESS, 'Overseas Operations Bill Passes, but with Crucial Amendments Thanks to Concerted Campaign' (29 April 2021).

This report answers a call from survivors of genocide, crimes against humanity and war crimes in the UK to review barriers to accountability through the use of universal jurisdiction for international crimes in English courts.[62] The report explores the reasons why the UK lags behind other States in securing accountability for international crimes. It identifies legal and practical barriers that prevent more cases from being successfully prosecuted in the UK and offers recommendations for how to overcome these challenges, harness recent positive reforms and strengthen accountability for international crimes in the UK.

The report is based on research carried out by REDRESS and the Clooney Foundation for Justice, including a review of relevant legislation, publications, and background information about current and past prosecutions of international crimes in the UK. It is also based on a series of Freedom of Information Act requests submitted to the Home Office, the Attorney General (AG)'s Office and the War Crimes Team of the Counter-Terrorism Command of the Metropolitan Police, known by their unit number of 'SO15' (SO15). In addition, the team held formal stakeholder interviews and discussions with relevant actors over one year, including the Crown Prosecution Service (CPS), the Metropolitan Police, the Foreign, Commonwealth & Development Office (FCDO) and the AG's Office. Formal consultations were also held with the War Crimes Network, legal practitioners who have prosecuted and defended suspects of international crimes, civil society representatives, and prosecutors from other jurisdictions including France, Sweden, Canada, The Netherlands and the USA.

62 REDRESS, 'Survivors of Torture Manifesto' (January 2023).

LEGAL FRAMEWORK FOR PROSECUTING INTERNATIONAL CRIMES IN THE UK

© U.S. Army Photo. Egyptian General Mahmoud Hegazy, allegedly implicated in torture and other human rights violations in Egypt, including the Rab'a Square massacre, avoided arrest when visiting the UK in 2015 after being granted "special mission" immunity by the UK.

Courts in the UK can hold trials for some international crimes pursuant to a legal principle called universal jurisdiction. Universal jurisdiction is a form of extraterritorial jurisdiction that allows States to investigate and prosecute serious international crimes committed abroad in their national courts, even when the case has no direct connection to their citizens or territory.[63] The rationale behind the principle of universal jurisdiction is that certain crimes "so deeply shock the conscience of humanity" that every State has an interest in holding the perpetrators accountable, no matter where the crimes have occurred.[64]

The UK has signed on to a number of international legal instruments that oblige it to criminalise international crimes in its domestic laws. For example, the Rome Statute requires the UK and other States Parties to criminalise genocide, crimes against humanity and war crimes in their national legislation.[65] The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), ratified by the UK in 1988, similarly obliges States to criminalise acts of torture.[66]

In keeping with these obligations, England and Wales has legislation allowing it, under certain circumstances, to prosecute genocide, crimes against humanity, war crimes and torture, as well as hostage-taking, committed anywhere in the world.[67] And yet there have been only three successful prosecutions of international crimes in UK courts – ever. The last successful prosecution took place well over a decade ago.

Successful prosecutions of international crimes in English courts

February 2000 – Anthony Sawoniuk was convicted of two counts of murder as a war crime for his role in the killing of Jews in Domachevo during World War II.[68]

July 2005 – Faryadi Zardad, an Afghan warlord, was convicted of conspiring to commit torture in Afghanistan in the 1990s.[69]

May 2007 – Corporal Donald Payne, a member of the UK armed forces, pleaded guilty before a court martial to inhuman treatment as a war crime for his treatment of Iraqi detainees in Basra in 2003.[70]

63 ECCHR, FIDH, and REDRESS, 'Breaking Down Barriers: Access to Justice in Europe for Victims of International Crime' (2020) p. 21.
64 *See*, Rome Statute, Preamble.
65 *Ibid.*
66 United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 (UNCAT), Article 4.
67 On torture *see:* , s 134. On hostage-taking see: Taking of Hostages Act 1982, s 2. On grave breaches of the Geneva Conventions, *see:* Geneva Conventions Act 1957, s1.2. On war crimes see International Criminal Court Act 2001, s 51.
68 *R v. Sawoniuk* [2000] Court of Appeal (Criminal Division), Crim. L. R. 5062000.
69 *R v Zardad* [2007] Court of Appeal (Criminal Division), Crim. 279.
70 *R v Payne* [2006] Military Court, H DEP 2007/411.

Failed prosecutions of international crimes in English courts

September 2017 – Kumar Lama, a Nepalese Colonel, was acquitted of charges of torture after the jury failed to reach a verdict in August 2016 and the Central Criminal Court accepted the decision of the Crown Prosecution Service not to conduct a retrial.[71]

December 2019 – During a trial at the Central Criminal Court (the 'Old Bailey'), charges were dismissed against the ex-wife of Charles Taylor for torture and conspiracy to commit torture due to 'lack of evidence that the Taylor regime had governmental control' over the areas where the alleged crimes took place.[72]

This record stands in stark contrast to jurisdictions such as Germany, France and Sweden. In 2022 alone, 22 universal jurisdiction cases were initiated or progressed in France, 18 in Germany, seven in Switzerland, four in Belgium, four in the Netherlands, and three in Sweden.[73] German courts have convicted eight ISIS members for crimes committed against the Yazidi people – five for crimes against humanity and war crimes, one for genocide and two for aiding and abetting genocide.[74] Also in 2022, the Higher Regional Court in Koblenz, Germany, convicted a former officer of the Syrian Intelligence Service for torture and crimes against humanity, including rape.[75] These national investigations, arrests, and trials have often been the only meaningful chance to obtain justice for survivors of international crimes and their families.

Relevant Legislation

The jurisdiction of criminal courts in the UK is generally premised on territoriality. In other words, English courts exercise exclusive jurisdiction over individuals and other legal persons who commit crimes within England and Wales. There are, however, some offences over which courts can exercise jurisdiction where there is no territorial link to the UK.[76] This is because, as mentioned above, the UK has signed and ratified treaties that oblige it to incorporate the crimes into domestic law and in certain cases to take

71 REDRESS, 'Kumar Lama's Aquittal: Prosecuting Torture Suspects Should Remain a Priority of the UK' (6 September 2017).

72 *R v Reeves Taylor* [2019] UKSC 51.

73 TRIAL International, 'Universal Jurisdiction Annual Review 2023' (2023).

74 Amal Clooney, Natalie von Wistinghausen, Wolfgang Bendler, the NGO Yazda and Nobel Peace Prize Laureate Nadia Murad, 'German ISIS member sentenced to an extended prison term for crimes against humanity against Yazidis following appeal decision' (29 August 2023).

75 ECCHR, 'First criminal trial worldwide on torture in Syria before a German court' (2022), Oberlandesgericht Koblenz, 'Life imprisonment due to crimes committed against humanity and murder – sentencing of a suspected member of the Syrian secret service' (17 January 2022).

76 Ministry of Justice, 'Note on the Investigation and Prosecution of Crimes of Universal Jurisdiction' (2018).

measures to prosecute or extradite perpetrators. These crimes include genocide, crimes against humanity, war crimes, torture and hostage-taking.[77]

Crime	Jurisdictional Basis in UK law	Corresponding International Treaty
Torture	Criminal Justice Act 1988, Section 134	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984
Hostage-taking	Taking of Hostages Act 1982, Section 1	International Convention against the Taking of Hostages 1979
War crimes amounting to "grave breaches" of the Geneva Conventions	Geneva Conventions Act 1957, Section 1	Geneva Conventions 1949
Genocide, crimes against humanity, war crimes	International Criminal Court Act 2001	Rome Statute of the International Criminal Court 1998

Multiple pieces of legislation confer universal jurisdiction on UK courts in relation to these crimes. The relevant legislation includes:

The International Criminal Court Act 2001 (ICCA): The ICCA gives effect to the Rome Statute of the International Criminal Court (Rome Statute) in the UK.[78] Section 51 of the ICCA criminalises the commission of genocide, crimes against humanity and war crimes,[79] and creates over 90 substantive offences.[80]

Genocide, defined in Schedule 6 Article 8 of the ICCA, is defined in identical terms to Article 6 of the Rome Statute. It refers to the (a) killing members of a group; (b) causing serious bodily or mental harm to members of a group; (c) deliberately inflicting on a group,

77 REDRESS, Open Society Justice Initiative, and TRIAL International, 'Universal Jurisdiction Law and Practice in England and Wales' (May 2022).

78 While States Parties to the Rome Statute activated the ICC's jurisdiction over the crime of aggression as its fourth core crime in 2018, the UK has not ratified the corresponding amendments to the Rome Statute. *See*, International Criminal Court Act 2001, s 1(10), 'Explanatory Notes'. This report does not address accountability for the crime of aggression in the UK. For more detail on which countries have criminalised aggression, see The Clooney Foundation for Justice's Justice Beyond Borders Global Mapping Tool.

79 International Criminal Court Act 2001, s 51(1).

80 Kathryn Howarth, *A Practical Guide to International Crimes in Proceedings Before the Courts of England and Wales* (Law Brief Publishing, 2023), p. 3.

conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures intended to prevent births within a group; (e) forcibly transferring children of the group to another group.[81] These acts amount to genocide if committed with the intent to destroy, in whole or in part, a national ethical, racial or religious group.[82]

Crimes against humanity, defined in Schedule 7 of the ICCA, are defined in identical terms to Article 7 of the Rome Statute. They include acts committed as a part of a widespread or systematic attack against any civilian population, with knowledge of the attack. Underlying acts to crimes against humanity include (but are not limited to) murder, enslavement, forcible transfer of a population, torture, rape and other forms of sexual violence, and enforced disappearance.[83]

War crimes under the ICCA are defined in identical terms to Article 8.2 of the Rome Statute, and are set out in Schedule 8 of the ICCA. Neither Article 8.2 nor Schedule 8 of the ICCA reflect all war crimes that have been recognised under customary international law. This is because the Rome Statute was the result of a treaty negotiation, during which agreement could not be reached on the inclusion of certain offences.[84] Schedule 8 covers four categories of war crimes: (a) grave breaches of the Geneva Conventions 1949 (applicable in the context of international armed conflict);[85] (b) other serious violations of the laws and customs applicable in international armed conflict;[86] (c) serious violations of Common Article 3 (applicable to non-international armed conflicts);[87] and (d) other serious violations of the laws and customs applicable to non-international armed conflicts.[88]

The ICCA also criminalises any conduct that is ancillary to acts of genocide, crimes against humanity or war crimes.[89] Sections 52 and 55 of the ICCA define 'Ancillary Offence' as any instance of: (a) aiding, abetting, counselling or procuring the commission of an offence under the ICCA; (b) inciting a person to commit an offence; (c) attempting or conspiring to commit an offence; or (d) assisting an offender or concealing the commission of an offence.[90]

The ICCA grants jurisdiction to UK courts to prosecute these acts when committed in England or Wales, or outside the UK by a national or resident of the UK or by a person subject to the UK's service jurisdiction.[91] The term "resident" refers to a person, amongst

81 Rome Statute, Art. 6, and International Criminal Court Act 2001, s 50(1).
82 Rome Statute, Art. 6, and International Criminal Court Act 2001, s 50(4).
83 Rome Statute, Art. 7 and International Criminal Court Act 2001, s 50(1).
84 Kathryn Howarth, *A Practical Guide to International Crimes in Proceedings Before the Courts of England and Wales* (Law Brief Publishing, 2023), p. 41.
85 International Criminal Court Act 2001, Schedule 8, Article 8(2)(a).
86 *Ibid.*, Schedule 8, Article 8(2)(b).
87 *Ibid.*, Schedule 8, Article 8(2)(c).
88 *Ibid.*, Schedule 8, Article 8(2)(d).
89 *Ibid.*, s 52(1).
90 *Ibid.*, s 52(3).
91 *Ibid.*, s 67 and Coroners and Justice Act 2009, s 70(4) for a full list.

others: (a) with indefinite leave to remain in the UK; (b) with leave to enter or remain in the UK to work or study (for example, on a work or study visa); (c) who has made a formal asylum or human rights claim to the competent authorities and are present on UK territory; or (d) who is detained in lawful custody.[92] In effect, the, the term applies to only a narrow selection of the individuals arriving on UK shores each year.

In addition to this requirement, for an investigation to proceed, an identifiable suspect must be in a country from which the UK can seek extradition, and there must be a "reasonable prospect of the suspect returning to the UK voluntarily".[93] The ICCA does not extend jurisdiction to prosecute non-legal residents in the UK.

Repealing the Genocide Act 1969, the ICCA came into force in 2001, criminalising acts of genocide, crimes against humanity and war crimes committed after 2001. It was subsequently amended to retrospectively extend jurisdiction over genocide to acts occurring on or after 1 January 1991.[94] This amendment ensured that any act committed during the conflicts in the former Yugoslavia and Rwanda in the early 1990s could be criminalised. The amendment stipulates the Act does "not apply to a crime against humanity, or a war crime […], committed by a person before 1 September 2001 unless, at the time the act constituting that crime was committed, the act amounted in the circumstances to a criminal offence under international law".[95]

The consent of the AG is required prior to prosecution for offences under Sections 51 and 52 of the ICCA.[96] Unlike other international crimes (such as hostage-taking or torture), DPP consent is not required for private prosecutions of ICCA crimes.[97] CPS guidance stipulates that where evidence has been collated by a private prosecutor in anticipation of making an application for an arrest warrant, it is preferable that this should be referred to SO15.[98] To date, no successful private prosecutions have been brought under the Act.

There has only been one successful prosecution under the ICCA. This was the case of Corporal Donald Payne, a member of the UK armed forces who pleaded guilty before a court martial to inhuman treatment as a war crime under the ICCA for his treatment of Iraqi detainees in Basra in 2003.[99] For more detail on this case, see the case study in the next Section.

92 *Ibid.*
93 Crown Prosecution Service, 'War Crimes/Crimes Against Humanity Referral Guidelines' (7 August 2015), section A: Scoping Exercise.
94 International Criminal Court Act 2001, s 65A(2).
95 *Ibid.*
96 International Criminal Court Act 2001, s 53(3).
97 REDRESS, Open Society Justice Initiative, and TRIAL International, 'Universal Jurisdiction Law and Practice in England and Wales' (May 2022), p. 19.
98 Crown Prosecution Service, 'War Crimes/Crimes Against Humanity: Guidance for making an application for DPP consent for an application for a private arrest warrant in accordance with section 1(4A) of the Magistrates' Courts Act 1980' (April 2016).
99 *R v Payne* – Sentencing Hearing Transcript (30 April 2007).

The Geneva Conventions Act 1957 (GCA)

The GCA gives effect to the Geneva Conventions 1949 and criminalises "grave breaches" of the conventions. The grave breach regime applies only to conduct that takes place in the context of an international armed conflict.

"Grave breaches" are defined in the conventions, and include: (a) wilful killing; (b) torture or inhuman treatment, including biological experiments; (c) wilfully causing great suffering or serious injury to body or health; and (d) extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly. The GCA also covers certain war crimes amounting to grave breaches under Additional Protocols I and III.[100]

Like torture, but unlike ICCA crimes, which can be prosecuted when the defendant is a national or resident of the UK, the GCA applies to any person, whatever their nationality, who, in the context of an international armed conflict, whether inside or outside the UK, commits, aids, abets or procures the commission by any other person of a grave breach.[101] The CPS/SO15 War Crimes/Crimes Against Humanity Referral Guidelines (Referral Guidelines) indicate that there must be reasonable grounds to believe that the suspect will come to the UK to open an investigation. If there are no reasonable grounds to believe that the suspect will come to the UK, SO15 will refer to the Special Cases Department of the National Security Directorate of the Home Office for potential future immigration action.[102]

The temporal jurisdiction of the GCA depends on the breach in question. Breaches of the Geneva Conventions 1949 can be prosecuted from 31 July 1957. Breaches of Additional Protocol I can be prosecuted from 20 July 1998. Breaches of Additional Protocol III can be prosecuted from 5 April 2010. Grave breaches are also defined in identical terms under the ICCA,[103] but since the CGA takes wider temporal jurisdiction (i.e. is applicable from 1957 rather than 2001, and also covers grave breaches of Additional Protocol I of the Geneva Conventions by virtue of the Geneva Convention Amendment Act 1995), it remains in force and has not been subsumed by the ICCA.[104]

The AG's consent is required prior to prosecution for offences under Section 1 of the GCA,[105] and DPP consent is needed to issue an arrest warrant for a private prosecution.[106] To date, there have been no cases filed or heard under the GCA.

100 The full list of offences can be found in Schedule 5 (in relation to Protocol I) and Schedule 7 (in relation to Protocol III) of the Geneva Conventions Act 1957.

101 Geneva Conventions Act 1957, s 1.

102 Crown Prosecution Service, 'War Crimes/Crimes Against Humanity Referral Guidelines' (7 August 2015), section A: Scoping Exercise.

103 *See* sub-section: Relevant Legislation, and International Criminal Court Act 2001.

104 Kathryn Howarth, *A Practical Guide to International Crimes in Proceedings Before the Courts of England and Wales* (Law Brief Publishing, 2023), p. 20.

105 Geneva Conventions Act 1957, s 1A(3)(a).

106 Magistrates Court Act 1980, s 1, as amended by the Police, Reform and Social Responsibility Act 2011, s 153(1).

War Crimes Act 1991 (WCA): The WCA confers jurisdiction on UK courts to prosecute certain war crimes committed during the Second World War in German-held territory. The Act provides that criminal proceedings for murder, manslaughter, or culpable homicide can be brought against a person resident in the UK, irrespective of their nationality at the time of the offence, if the offence was: (a) committed during the period between 1 September 1939 and 5 June 1945 in a place that was a part of Germany or under German occupation; and (b) constituted a war crime (a violation of the laws and customs of war). But a prosecution cannot be brought against a person "unless he was on 8th March 1990, or has subsequently become, a British citizen or resident" of the UK – the Act does not extend jurisdiction to non-residents who are present in the UK.[107] The AG's consent is required prior to prosecution.[108] There has been one successful prosecution under the WCA (that of Anthony Sawoniuk; for more detail, see the case study below). Its narrow temporal scope makes it unlikely that it will serve as the basis for future prosecutions.

107 War Crimes Act 1991, s 1(2).
108 *Ibid.*, s 1(3).

CASE STUDY | Anthony Sawoniuk

Born Andrei Sawoniuk in Belarus, Anthony Sawoniuk became the first person tried for war crimes in the UK in 1999. Sawoniuk was prosecuted under the WCA for murdering his Jewish neighbours in the Nazi-occupied town of Domachevo in Belarus.[109] After the war, Sawoniuk moved to the UK, changed his name to Anthony, and became a rail ticket collector. Sawoniuk was not the only suspected Nazi collaborator living in the UK, but by the time the WCA was passed in 1991, other potential suspects had died or disappeared.

The conviction was enabled by testimony gathered from 400 witnesses in nine countries. Several witnesses were flown to the UK and the 12 jurors were brought to Belarus to visit the location of the massacres.[110] After a 27-day trial, Sawoniuk was found guilty of murder under Section 1 of the WCA, which criminalises war crimes that took place between 1939 and 1945 in Nazi occupied territory.[111] Sawoniuk was sentenced to life in prison and died in prison six years later.[112]

While the WCA is unlikely to be applied to future cases given its limited scope, the decision contains lessons for future trials of international crimes in the UK. For instance, the Court of Appeal found that the 50-year gap in time between the commission of the crimes and the giving of evidence did not necessarily undermine the reliability of the witnesses' testimony.[113] The decision to bring jurors to Belarus to examine the scene of the crimes was also critical in enabling the jurors to form a judgement about a crime that occurred long ago and far away.[114] These lessons remain relevant to modern trials. For example, the failure of the case against Kumar Lama, discussed below, has been partially attributed to the jury's inability to grasp the foreign context in which the alleged crimes took place.[115]

The Criminal Justice Act 1988 (CJA)

Section 134 of the CJA defines and prohibits the crime of torture, implementing the UK's obligations under the UNCAT. The CJA provides that a public official or person acting in an official capacity, whatever their nationality, commits the offence of torture if they intentionally inflict severe pain or suffering on another in the performance or purported

109 Caroline Moorehead, 'How the net finally closed on the Nazi henchman Andrei Sawoniuk' (The Spectator, 22 January 2022).
110 *Ibid.*
111 *R v. Sawoniuk* [2000] Court of Appeal (Criminal Division), Crim. L. R. 506.
112 'Nazi war criminal Sawoniuk dies in jail,' *The Guardian* 7 November 2005.
113 *R v. Sawoniuk* [2000] Court of Appeal (Criminal Division), Crim. L. R. 506, p. 9.
114 *Ibid.* p. 17.
115 Devika Hovell, 'The 'Mistrial' of Kumar Lama: Problematizing Universal Jurisdiction' (EJIL: Talk!, 6 April 2017).

performance of their official duties.[116] The treaty further provides that a person will commit the offence of torture, wherever it occurs and whatever their nationality, if: (a) they intentionally inflict severe pain or suffering on another at the instigation, consent or acquiescence of a public official or of a person who is acting in an official capacity; and (b) said public official or person acting in an official capacity is performing or purporting to perform their official duties when they instigated, consented or acquiesced to the commission of torture.[117]

While the suspect need not be a UK national or resident, their presence on UK soil is required. The Referral Guidelines indicate that for the crime of torture, there must be reasonable grounds to believe that the suspect will come to the UK if UK authorities are to open an investigation.[118] If there are no reasonable grounds to believe that the suspect will come to the UK, SO15 will refer to the Special Cases Department of the National Security Directorate of the Home Office for potential future immigration action.[119] Courts have jurisdiction over torture committed from 29 September 1988.[120]

The AG's consent is required prior to prosecution for torture under Section 134 of the CJA.[121] The consent of the DPP is needed to proceed with a private prosecution.[122]

There has been one successful prosecution under the CJA: that of Faryadi Zardad, an Afghan warlord who was was convicted of conspiring to commit torture against Afghan civilians in the 1990s. For more detail on this case, see the case study below.

Taking of Hostages Act 1982: The Taking of Hostages Act 1982 gives effect to the International Convention Against Taking of Hostages 1979. The Act provides that any person who: (a) detains any other person (the hostage); and (b) in order to compel a State, international governmental organisation or person to do or obstain from doing any act, threatens to kill, injure or continue to detain the hostage.[123] The Act allows for the prosecution of hostage-taking, regardless of whether the offence was committed in the UK or elsewhere, and regardless of the perpetrator's residence or nationality. The AG's consent is required prior to prosecution for offences under Section 1 of Taking of Hostages Act 1982.[124] There have been no prosecutions under this Act.

116 Criminal Justice Act 1988, s 131(1).
117 *Ibid.*, s 134 (2).
118 Crown Prosecution Service, 'War Crimes/Crimes Against Humanity Referral Guidelines' (7 August 2015), section A: Scoping Exercise.
119 *Ibid.*
120 Criminal Justice Act 1988, Introductory text and s 171(6).
121 *Ibid.*, s 135(a).
122 Magistrates Court Act 1980, s 1, as amended by the Police, Reform and Social Responsibility Act 2011, s 153(1).
123 Taking of Hostages Act 1982, s 1(1).
124 *Ibid.*, s 2(1)(a).

Legislation	Crimes	Timeframe of crimes[125]	UK nationality or residence required for suspect?	UK presence required for suspect?[126]	AG consent required?
International Criminal Court Act (ICCA)	Genocide, crimes against humanity, war crimes anywhere in the world[127]	From 1 January 1991 (for genocide) From 1 September 2001 (for the other crimes), unless determined to be a crime under customary international law at an earlier time	Yes	Yes or "a reasonable prospect of the suspect returning to the UK voluntarily"	Yes
The Geneva Conventions Act 1957 (GCA)	Grave breaches of the Geneva Conventions related to international armed conflicts committed anywhere in the world	From 31 July 1957 for grave breaches of the 1949 Geneva Conventions; from 20 July 1998 for grave breaches of Additional Protocol I; from 5 April 2010 for grave breaches of Additional Protocol III	Yes	Yes or "reasonable grounds to believe that the suspect will come to the UK"	Yes
War Crimes Act (Second World War crimes)	Certain war crimes committed during the Second World War in German-held territory	1 September 1939 - 5 June 1945	Yes	Yes or "a reasonable prospect of the suspect returning to the UK voluntarily"	Yes
Criminal Justice Act (CJA) (Torture)	Torture anywhere in the world	From 29 September 1988	No	Yes or "reasonable grounds to believe that the suspect will come to the UK"	Yes
Taking of Hostages Act	Detaining and threatening to kill a person in an attempt to compel a government, organisation, or person to do or abstain from doing a certain act.	From 26 November 1982	No	Yes or "reasonable grounds to believe that the suspect will come to the UK"	Yes

125 This does not limit prosecutions for acts that were crimes under customary international law before these dates. This is spelled out explicitly in International Criminal Court Act 2001, s 65A(2).

126 UK Government, 'Note on the Investigation and Prosecution of Crimes of Universal Jurisdiction' (2018).

127 Grave breaches are governed by a separate regime under the Geneva Conventions Act 1957, although some grave breaches are also covered by the ICCA. While States Parties to the Rome Statute activated the ICC's jurisdiction over the crime of aggression as its fourth core crime in 2018, the UK has not ratified the corresponding amendments to the Rome Statute. *See*, International Criminal Court Act 2001 s 1(10), 'Explanatory Notes'. This report does not address accountability for the crime of aggression in the UK.

Modes of Liability

The ICCA, implementing Article 28 of the Rome Statute, is the first piece of legislation to incorporate command and superior responsibility in UK domestic law, supplementing the modes of liability available for ordinary crimes.[128]

While the terms are sometimes used interchangeably, command responsibility refers to the legal responsibility of military commanders,[129] while superior responsibility refers to the responsibility of civilian leaders for the acts of their subordinates.[130] As the Explanatory Note to the ICCA provides, "[t]he wording draws a distinction between the standards expected of military and quasi-military commanders in relation to military forces under their command, and other superiors such as government officials or heads of civilian organisations, as it is recognised that the latter may not have the same degree of control over the actions of their subordinates".[131]

Command responsibility as defined in the Act means that a military commander, or a person effectively acting as a military commander, is responsible for offences committed by forces under their effective command and control or their effective authority and control where: (a) they either knew, or should have known that the forces were committing or about to commit offences of genocide, crimes against humanity or war crimes;[132] and (b) they failed to take all necessary and reasonable measures within their power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.[133] A civilian superior is

128 International Criminal Court Act 2001, ss 65(2), 65(3). Such responsibility 'does not preclude any other liability that the commander or superior might have, for example where the commander has in fact ordered the commission of the offences'. R May and S Powles, 'Command Responsibility - A New Basis of Criminal Liability in English Law?' [2002] *Criminal Law Review* 363. As of February 2023, 81 UN Member States have command/superior responsibility for at least one of the international crimes (genocide, CAH, or war crimes), including common law jurisdictions such as Canada, Australia and New Zealand. *See* the Clooney Foundation for Justice's 'Justice Beyond Borders' tool.

129 International Criminal Court Act 2001, s 65(2): "A military commander, or a person effectively acting as a military commander, is responsible for offences committed by forces under his effective command and control, or (as the case may be) his effective authority and control, as a result of his failure to exercise control properly over such forces where (a) he either knew, or owing to the circumstances at the time, should have known that the forces were committing or about to commit such offences, and (b) he failed to take all necessary and reasonable measures within his power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution."

130 *Ibid.*, s 65(3): "With respect to superior and subordinate relationships not described in subsection (2), a superior is responsible for offences committed by subordinates under his effective authority and control, as a result of his failure to exercise control properly over such subordinates where (a)he either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such offences, (b) the offences concerned activities that were within his effective responsibility and control, and (c) he failed to take all necessary and reasonable measures within his power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution."

131 *See Ibid.*, s 65, 'Explanatory Notes'.

132 *Ibid.*, s 65(2)(a).

133 *Ibid.*, s 65(2)(b).

responsible for offences committed by subordinates under their effective authority and control on a very similar basis, except that there is no expectation that they should have known about the activities of their subordinates; instead, it must be proven that they "either knew, or consciously disregarded information which clearly indicated" that the crimes were being committed.[134]

While "an organiser of a criminal enterprise" can be prosecuted "for the actions of subordinates who carry it out" or if they "aided, abetted, or encouraged a crime" under UK law, prior to the ICCA, they could not be punished for failure to prevent or punish the crimes of their subordinates. The introduction of command and superior responsibility in the ICCA is therefore "an additional form of criminal responsibility" in English law.[135] As the Explanatory Note to the Act provides, the "[r]esponsibility of commanders and other superiors" is a "well known concept of international law and was reflected in the jurisprudence of the Nuremberg and Tokyo Tribunals. As well as the ICC Statute, it also appears in the Statutes of the Tribunals for the former Yugoslavia and Rwanda. It reflects the hierarchical structure of military and administrative control over subordinates in the context of these crimes. Inclusion of command responsibility with respect to the crimes in the ICCA "is intended to permit the investigation and prosecution of cases before domestic courts in all the circumstances where the ICC might found a case on that basis. The wording of this section is taken directly from Article 28 of the Statute".[136]

However, to date, no individual has been prosecuted in the UK for failure to prevent or punish international crimes committed by their subordinates.

134 *Ibid.*, s 65(3)(a).

135 R May and S Powles, 'Command Responsibility – A New Basis of Criminal Liability in English Law?' (2002) *Criminal Law Review* 363.

136 International Criminal Court Act 2001, s 65, 'Explanatory Notes'.

Modes of Liability					
	Criminal Justice Act 1988	**International Criminal Court Act 2001**	**Geneva Conventions Act 1957**	**War Crimes Act 1991**	**Taking of Hostages Act 1982**
Direct Liability	Yes	Yes	Yes	Yes	Yes
Secondary Liability[137]	Yes The CJA does not directly list secondary liability, but the ordinary principles of secondary liability under domestic law apply.	Yes Section 52/55: "(a) aiding, abetting, counselling, or procuring the commission of an offence (b) inciting a person to commit an offence; (c) attempting or conspiring to commit an offence; or (d) assisting an offender or concealing the commission of an offence". These principles are to be defined in terms of the principles of secondary liability under the law of England and Wales.[138]	Yes "Aiding, abetting, or procuring a grave breach" (Section 1(1))	No	No
Command and Superior Responsibility	No	Yes	The 1995 Amendment Act does not specifically incorporate Articles 86 and 87 of Additional Protocol I (which provide for command and superior responsibility) into domestic law	No	No

137 The notion of a "Joint Criminal Enterprise" as set out in Article 25(3)(d) of the Rome Statute is not incorporated into the ICCA.

138 *See*, International Criminal Court Act 200,1 s 55, 'Explanatory Notes'.

Initiating a Prosecution

The Metropolitan Police

Responsibility for the investigation of international crimes in England and Wales is given to SO15. International crimes can be reported to the police in the same way as any other criminal offence, although ordinarily those providing information go directly to SO15.

War Crimes Team of the Metropolitan Police Counter Terrorism Command (SO15)

The War Crimes Team sits within the Metropolitan Police Service SO15 Counter Terrorism Command and is tasked with investigation of core international crimes. When SO15 opens an investigation, it works in accordance with the Referral Guidelines.[139] During investigations, the War Crimes Team works with multiple national partners, including the Home Office Special Cases Unit, the UK Central Authority, the Foreign, Commonwealth and Development Office, the CPS and the Ministry of Defence.

According to SO15, Counter Terrorism Command has recently restructured under the heading "One SO15, Three Missions": Counter Terrorism, Counter State Threat, and War Crimes. The War Crimes Team has recently increased in size. It also continues to benefit from the resources of the wider command including its forensic teams, intelligence, financial units and local operations teams.[140]

The War Crimes Team is currently scoping 34 situations of interest and actively investigating 16 incidents related to historical or recent conflicts. It recently opened structural investigations for each of the 17 country-based 'situations' under investigation by the ICC. It has also developed an online reporting portal, available in English, Ukrainian and Russian. As of the time of publication, the War Crimes Team received 180 referrals to its website and responded to 90 Requests for Assistance from international partners, including the ICC, in 2022.

139 Crown Prosecution Service, 'War Crimes/Crimes Against Humanity Referral Guidelines' (7 August 2015).
140 Information provided by email on 8 June 2023.

When SO15 receives a referral, it first conducts a "scoping exercise" to consider whether it should proceed to a full investigation, in line with the Referral Guidelines.[141] Separate guidance has been published in relation to applications for the consent of the DPP for the issuance of a private arrest warrant for a named suspect for grave breaches of the Geneva Conventions, hostage-taking, and torture. This separate guidance is to be followed when there is an "imminent prospect" of a suspect arriving in the UK.[142]

The Referral Guidelines indicate that for crimes falling under the ICCA (i.e. those that currently require a suspect to be a British national or resident to proceed with the case), during a scoping exercise, SO15 will consider whether the suspect is a national or resident, and whether they are present in the UK or in a country from which the UK can request extradition.[143] If the suspect is not present in the UK, or a country from which the UK can request extradition, the "investigation will be suspended until there is a reasonable prospect of the suspect returning to the UK voluntarily".[144] For **grave breaches of the Geneva Conventions, torture, or hostage-taking** (over which the UK exercises pure universal jurisdiction by not requiring nationality or residence), SO15 will consider whether there are "reasonable grounds" to believe that the suspect will come to the UK.[145]

In both instances, SO15 will consider additional factors, including the identification of potential victims and witnesses; possible investigations in other jurisdictions; and the prospects of obtaining the necessary evidence abroad and protecting witnesses to secure their evidence at the trial.[146] If a scoping exercise determines that an investigation is viable, the case will progress to a full investigation. Once an investigation is complete, it is referred to the CPS. Where sought, the CPS may also provide the police with advice during the early stages of an investigation. This would include seeking mutual legal assistance from overseas. All operational scoping decisions are made by SO15 and are often not shared with the body which referred the case.

141 Crown Prosecution Service, 'War Crimes/Crimes Against Humanity Referral Guidelines' (7 August 2015), section A: Scoping Exercise. The Referral Guidelines indicate that if SO15 takes on an investigation in a case referred by a private individual, lawyer or organisation, the individual/organisation will be informed that SO15 are willing to take on the investigation. If such an investigation is not possible, SO15 will inform the victim/s of this decision and the reasons for it as soon as reasonably practicable in accordance with the Victim's Code. Any private individual, lawyer or individual who has submitted evidence on behalf of the victims will also be informed in writing: see, *ibid.*, section C: Final investigative scoping.

142 *Ibid.*, section A: Scoping Exercise.

143 Residents include, amongst others, persons (a) with indefinite leave to remain in the UK; (b) with leave to enter or remain in the UK to work or study; (c) who have made an asylum or human rights claim; or (d) who are detained in lawful custody. *See* Coroners and Justice Act 2009, s 70(4). *See also*, sub-section Relevant Legislation and the International Criminal Court Act 2001.

144 Crown Prosecution Service, 'War Crimes/Crimes Against Humanity Referral Guidelines' (7 August 2015), section A: Scoping Exercise. *See* table above in sub-section Relevant Legislation.

145 *Ibid.*

146 Crown Prosecution Service, 'War Crimes/Crimes Against Humanity Referral Guidelines' (7 August 2015), section A: Scoping Exercise.

The Crown Prosecution Service Special Crime and Counter Terrorism Division (CPS)

The CPS is the authority responsible for the prosecution of international crimes in the UK. In the last three years, the CPS has seen a significant increase in referrals from SO15, and there are currently around 20 cases involving alleged international crimes with the CPS including investigations in Eastern Europe, the Middle East, Africa and South Asia. The caseload of the unit is steadily rising.

On completion of a full investigation, SO15 submits its evidence to the CPS for its review. The CPS conducts a "Full Code Test" as set out in the Code for Crown Prosecutors.[147] The Full Code Test review is conducted in two stages:

- *The evidential test.* The prosecutor must be satisfied that there is sufficient admissible, reliable, and credible evidence to provide a "realistic prospect of conviction" for each of the charges.[148] Determining whether there is a "realistic prospect of conviction" is an objective test, requiring prosecutors to be sure that a jury or a bench of magistrates, properly directed in accordance with the law, would be more likely than not to convict the defendant of the charge alleged. If the case does not pass the evidential stage, it will not go ahead. The burden of proof is on the prosecution.

- *The public interest test*. The second stage requires prosecutors to consider whether a prosecution is in the public interest. Prosecutors must consider the factors listed in paragraphs 4.12 (a) to (g) of the Code for Crown Prosecutors, which include the seriousness of the offence, the level of culpability of the suspect, the circumstances of the harm and the harm caused to the victim, the suspect's age, the impact on the community, whether prosecution is an appropriate response, and whether sources of information require protection.

If the CPS decides not to prosecute, providing the decision is a 'qualifying decision', it can be challenged using the Victims Right to Review (VRR) scheme.[149] In line with the VRR, individuals can request a review of the CPS's decision not to prosecute at the pre-charge stage. Once a review has been conducted under the VRR, there is no further scope for review by the CPS, and any further action to challenge the decision would need to be taken via judicial review of the decision not to prosecute in the High Court. The VRR scheme does not apply to decisions made by SO15 not to investigate. In this instance, individuals can request SO15 to review the decision but may not receive a response.[150]

147 The Crown Prosecution Service, Code for Crown Prosecutors (26 October 2018).
148 *Ibid.*
149 The Crown Prosecution Service, 'Victims' Right to Review Scheme.' Qualifying decisions are defined in para. 18 of this document.
150 *Ibid.*

If the CPS decides to proceed with a prosecution, cases of alleged international crimes will be referred to the AG for consent to initiate the prosecution.[151]

Attorney General's Consent

The AG's consent is required to instigate proceedings for crimes of torture committed outside the UK, war crimes under the WCA, hostage taking, grave breaches of the Geneva Conventions, and ICCA crimes.[152]

According to the Government's "Note on the investigation and prosecution of crimes of universal jurisdiction",[153] the AG has full discretion to make this decision and no other approvals are required to institute proceedings. The AG applies the Full Code Test, but can also consider a broad range of public interest issues, including international relations and national security.[154]

In practice, the AG's office will undertake a review of how the CPS has applied the Full Code Test, with some deference to the CPS as an independent prosecuting authority, and unless there have been errors they will grant consent. The AG's office is much more rigorous when reviewing requests for private prosecutions, often asking for a significant amount of information, statements, exhibits and the like. When such requests are not responded to, the application is considered incomplete.[155]

The AG's office receives about 100 requests for consent a year from the CPS, mainly relating to cross-border conspiracies, explosives, and terrorism offences. They also receive requests from other prosecuting authorities, including the Serious Fraud Office and the Service Prosecution Authority.[156]

While the AG should take these decisions independently of the Government, the guidance indicates that "he or she may consult relevant Government Ministers and seek their representations on matters relevant to the public interest as part of the decision-making process (known as a Shawcross exercise)."[157] In practice, such Shawcross exercises are "very rare".[158]

151 Crown Prosecution Service, 'War Crimes/Crimes Against Humanity Referral Guidelines' (7 August 2015), section D: Referral to CTD for consideration of prosecution.

152 Criminal Justice Act 1988, s 135; Geneva Conventions Act s 1A (3)(a); International Criminal Court Act 2001, s 53(3); Police Reform and Social Responsibility Act 2011, s 153. The relationship between the AG and CPS is set out in: UK Government, 'Framework Agreement on Consent to Prosecute' (last updated 14 October 2022), paras. 50-52.

153 UK Government, 'Note on the Investigation and Prosecution of Crimes of Universal Jurisdiction' (2018), Role of the Attorney General.

154 *Ibid.,* at para. 26. The need for AG review of "prosecutorial decisions involving an international element" was briefly considered by the Law Commission in 1998, which recommended the role continue. *See,* the Law Commission, '*Consents to Prosecute*', 20 October 1998, at para.7.14.

155 Meeting with AGO official, 3 August 2023, and follow-up correspondence.

156 Meeting with AGO official, 3 August 2023.

157 *Ibid.*, at para. 25. *See* also paras. 57-59 of UK Government, 'Framework Agreement on Consent to Prosecute'.

158 Meeting with AGO official, 3 August 2023.

The AG Office reports that between 2018-2022 they rejected only four requests for consent to prosecute war crimes, crimes against humanity, genocide or torture – three requests in 2018 and one request in 2019 – all relating to proposed private prosecutions.[159]

The need for AG consent potentially allows for political influence over prosecutions, and there is a risk that this influence may be used to thwart prosecutions where broader diplomatic interests may be at stake. Indeed, the UK made changes to legislation governing private prosecutions following a series of attempts to arrest Israeli officials.[160] Preventing the prosecution of high-profile individuals simply for political reasons undermines the UK's efforts to further accountability for the perpetrators of atrocity crimes.

The Foreign, Commonwealth and Development Office (FCDO)

Both SO15 and the CPS liaise with the FCDO during the investigation and prosecution of international crimes. They may consult the FCDO for advice on diplomatic issues that may emerge from the case.[161] The FCDO may also grant special mission immunity (SMI) from criminal prosecution.[162] This grant of immunity has, on occasion, shielded visitors to the UK accused of international crimes from arrest.[163]

Private Prosecutions

Private individuals can initiate prosecutions by requesting the issuance of an arrest warrant directly from a court officer to commence criminal proceedings without the involvement of SO15 or CPS. This right is provided for in Section 6(1) of the Prosecution of Offences Act 1985. However, while a private individual may initiate a case, the DPP has the power under Section 6(2) of the Prosecution of Offences Act 1985 to take over private prosecutions. Moreover, the CPS can also take over a private prosecution at any time, either on its own accord or at the request of the defendant.[164] Guidance is also provided in the "Guidance for making an application for DPP consent for an application for a private arrest warrant in accordance with Section 1(4A) of the Magistrates' Courts Act 1980".[165]

159 Meeting with AGO official, 3 August 2023.
160 *See* sbu-section Initiating a Prosecution, Private Prosecutions.
161 UK Government, 'Note on the Investigation and Prosecution of Crimes of Universal Jurisdiction' (2018).
162 Foreign and Commonwealth Office, 'Written Ministerial Statement: Special Mission Immunity' (4 March 2013).
163 For more detail on the issue of special mission immunity, *see* section Legal Challenges To Prosecuting International Crimes In The UK, (4) Granting 'special mission immunity' to visiting officials obstructs the ability to prosecute them.
164 Prosecution of Offences Act 1985 s 6(2).
165 Crown Prosecution Service, 'War Crimes/Crimes Against Humanity: Guidance for Making an Application for DPP Consent for an Application for a Private Arrest Warrant in Accordance with Section 1(4A) of the Magistrates' Courts Act 1980' (April 2016).

To initiate a private prosecution for international crimes under the GCA, the Taking of Hostages Act 1982, and CJA, an application must be made to a District Judge at Westminster Magistrates' Court to request an arrest warrant. This should be submitted only "when there is a reasonable belief that a suspect will be entering the jurisdiction within 14 days of the application".[166] Prior consent for a warrant must be obtained from the DPP for cases of torture, war crimes under the WCA, hostage-taking and grave breaches of the Geneva Conventions. No such consent is required for ICCA crimes.[167]

The requirement for DPP consent was introduced in 2011 following a series of high-profile attempts to have Israeli officials arrested.[168] In September 2005, a warrant for the arrest of Major Doron Almog, former head of the Israeli forces in the Gaza Strip, was issued. Major Almog arrived at Heathrow airport but having been warned of the warrant, returned to Israel without getting off the plane.[169] Similarly in 2009, a private arrest warrant was sought for Israeli defence minister Ehud Barak but denied on the grounds that Mr Barak had diplomatic immunity.[170] Lastly, in 2009, it was reported a private arrest warrant had been issued for Tzipi Livni, Israel's former foreign minister. Livni ultimately did not travel to the UK. But in response to this warrant, the former Foreign Secretary stated that "Israel is a strategic partner and a close friend of the UK. We are determined to protect and develop these ties. Israeli leaders – like leaders from other countries - must be able to visit and have a proper dialogue with the British Government [...] The Government is looking urgently at ways in which the UK system might be changed in order to avoid this sort of situation arising again."[171]

Where an application for the DPP's consent is made, it must contain details of the alleged perpetrator, details of their arrival into the jurisdiction, means of their arrival into the jurisdiction, details of their position of authority, details of the nature of their visit into the jurisdiction, and sufficient, admissible, reliable, and credible evidence in support of the case that provides a realistic prospect of conviction.[172] In addition, CPS guidance regulating applications for DPP consent foresee that applications for DPP consent will rarely be made as all referrals should go through SO15. In light of these restrictions, practitioners have explained that it is virtually impossible to bring a private prosecution for an international crime. To date, no successful private prosecutions have been brought.

166 *Ibid.*, s 5.
167 Police and Social Responsibility Act 2011, s 153.
168 The requirement was introduced in Section 151 of the Police Reform and Social Responsibility Bill, adopted in 2011.
169 Sally Almandras, 'House of Comons Library: Private Prosecutions' (6 September 2010), p 7.
170 *Ibid.*, p 7.
171 *Ibid.*, p 8.
172 *See* Crown Prosecution Service, 'War Crimes/Crimes Against Humanity: Guidance for Making an Application for DPP Consent for an Application for a Private Arrest Warrant in Accordance with Section 1(4A) of the Magistrates' Courts Act 1980' (April 2016).

LEGAL CHALLENGES TO PROSECUTING INTERNATIONAL CRIMES IN THE UK

© REUTERS/Mohammed Badra.
People walk on rubble following airstrikes by forces loyal to Syria's President Bashar al-Assad in 2015 in the city of Douma, which was also the target of a chemical warfare attack in 2018.

The UK's current legal framework contains several legal loopholes and barriers that prevent the country from delivering meaningful accountability for victims of atrocity crimes. As a 2008 report from the Joint Committee on Human Rights to Parliament concluded, "the staggered development of international and domestic law has resulted in a 'patchwork of norms' containing 'anomalies' and 'gaps' [...] The gaps in the law provide impunity to several categories of international criminals in the UK".[173]

Despite public recognition of these legal obstacles, no reforms have been undertaken. A number of legislative and policy reforms are needed to close these gaps and improve the effective use of universal jurisdiction in the UK. These proposed reforms corresponding to each of the challenges are outlined in turn below.

(1) UK law limits prosecutions for most international crimes to suspects who are UK residents or citizens

A key barrier to the exercise of universal jurisdiction in the UK is the requirement under the ICCA that prosecutions can only be brought against UK citizens or residents. What this means in practice is that suspects of genocide, war crimes, or crimes against humanity who are not UK nationals or residents are free to visit and transit through the UK, potentially for long periods of time, without any fear of prosecution by UK authorities. So if a senior Wagner official accused of crimes against humanity in Russia or an Iranian mullah responsible for widespread repression against women in Iran were to visit the UK, neither could be arrested and charged with crimes against humanity in the courts of England and Wales.[174]

This possibility is not merely hypothetical. Salah Gosh, a former intelligence chief accused of torture and "gross violations of human rights" in Sudan, has visited London at least once since the enactment of the ICCA.[175] Libyan radical cleric Sheikh Sadik Al-Gharani, reportedly suspected of involvement in promoting terrorism in Libya, was also present in the UK and fled when reports emerged in the UK that he was broadcasting to militants in Libya.[176] In 2010, a visiting general from Sri Lanka, Chagi Gallage, who was "commander of Sri Lankan frontline forces during the final military offensive against the Tamil Tigers"

173 Joint Committee on Human rights, 'Closing the Impunity Gap: UK law on genocide (and related crimes) and redress for torture victims,' (House of Commons, 11 August 2009), p 11.

174 With the exception of grave breaches of the Geneva Conventions, over which UK courts do exercise universal jurisdiction. Note, however, that the concept of grave breaches has traditionally only applied to international armed conflicts, and not to non-international armed conflicts. *See e.g.* ICTY, *Prosecutor v. Dusko Tadic*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction (2 October 1995); Marko Divac Oberg, 'The absorption of grave breaches into war crimes law,' 91 *International Review of the Red Cross* (March 2009) 873.

175 Peter Beaumont, 'Sudan's Gosh Holds Talks in London on Darfur and Terror' (Sudan Tribune, 12 March 2006); US Department of State 'Public Designation of Sudan's Salah Gosh under Section 7031(c)' (14 August 2019).

176 Josh Halliday and Chris Stephen, 'Libya's highest spiritual leader banned from UK over support of Islamist' (The Guardian, 2014).

left the UK after Tamil activists applied for his arrest warrant.[177] In a recent debate in the House of Commons, Member of Parliament Virendra Sharma criticised the fact that Iranian Revolutionary Guard Corps commanders can travel freely to the UK and store their wealth in the country with impunity.[178] Similarly, Russian families associated with the Putin regime are known to own property in the UK.[179]

The residence requirement led experts to raise principled objections at the time of the adoption of the ICCA. When debating the International Criminal Court Bill in 2001, members of the UK Parliament noted that it left significant impunity gaps for non-nationals who commit international crimes abroad and flee to the UK. As Lord Lester of Herne Hill said at the time:

> [U]*nder the Bill as it stands, if a UK citizen and an Iraqi citizen were to be involved in a crime against humanity abroad and fled to the UK, the UK national could be prosecuted under the Bill before the domestic courts but the Iraqi citizen could not be prosecuted. That may mean that if the ICC has no jurisdictional basis to try the non-UK national, conceivably his crimes could go unpunished. As a practical matter, our courts will only rarely face such cases, but they should be ready to shoulder that responsibility should a suspected perpetrator of genocide or war crimes come within our territorial jurisdiction.*[180]

He went on to note that "there can be little justification for refusing UK courts full and universal jurisdiction over ICC crimes committed by non-nationals".[181]

Refusing jurisdiction over such crimes is also inconsistent with the broad jurisdiction available for torture, hostage-taking and certain war crimes under other UK statutes, which provide only that the individual need be present in the UK.[182] The result is a system that the former Director of Public Prosecutions, Sir Ken Macdonald KC, has described as "illogical".[183]

Nonetheless, the UK Government have over the years maintained a narrow application of jurisdiction. In response to a 2008 report from the Joint Committee on Human Rights, which noted that the law left open significant impunity gaps, the government responded that "it is important that our courts concentrate first and foremost on those with a

177 Owen Bowcott, 'Tamil activists apply for arrest warrant for Sri Lankan general' (The Guardian, 3 December 2010); *see also*, the FCDO's reluctance to arrest another visiting Sri Lankan General, Prasanna de Silva, who allegedly perpetrated war crimes during the Sri Lankan civil war: Sam Jones, 'Sri Lankan diplomat may avoid questioning on war crimes claims' (The Guardian, 5 April 2012).

178 UK Parliament, House of Commons, Hansard transcripts (6 February 2023), vol 727, cols 639.

179 *See*, e.g, The Insider, 'Family of Russia's Lancet Kamikaze Drone Creator Owns Property in London' (19 July 2023).

180 UK Parliament, House of Commons, Hansard transcript (15 January 2001), vol 620, cols 939.

181 *Ibid*.

182 *See* sub-section Relevant Legislation.

183 Joint Committee on Human rights, 'Closing the Impunity Gap: UK law on genocide (and related crimes) and redress for torture victims,' (House of Commons, 11 August 2009), para. 28.

connection here, and that we are not seen to be global prosecutors on behalf of other countries."[184] It also noted that the term "residence" is broadly defined.[185] However, under the ICCA, "residents" do not include frequent visitors who may spend significant time in the UK, own property in the UK or have other significant ties to the country.[186] Such individuals remain beyond the reach of the law.

The UK's reluctance to close the impunity gap has been signalled very recently during negotiations on a new treaty, the Ljubljana-Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes Against Humanity, War Crimes and Other International Crimes (MLA treaty), that was drafted with UK participation. It requires (in article 8(2)) that State parties take measures to establish jurisdiction over core international crimes when: (a) the alleged offender is a stateless person who is "habitually resident" in that State's territory; or (b) when a *victim* is a national of the state.[187] These articles correspond with the UK's current domestic legislation, in that they require a nexus between the suspect and the state, but represent an expansion for the ICCA crimes of genocide, crimes against humanity and war crimes. In addition, Article 8(3) of the MLA Treaty requires, rather than just permits, State parties to extradite or prosecute core international crimes in cases where the alleged offender is merely present in a State's jurisdiction.[188]

Although Article 8(3) reflects the UK's existing obligations regarding the crime of torture under Article 5 of the UNCAT, the UK strongly objected to the inclusion of Article 8(3), arguing that existing treaty and customary international law did not recognise the obligation to establish jurisdiction on the grounds of mere presence.[189] Following lengthy debate, an additional paragraph was added to Article 92 (dealing with reservations to the treaty) allowing for reservations to be entered under Artcile 8(3) to limit the establishment of jurisdiction to 'habitual residence' instead of mere presence.[190] Given the UK's stance at negotiations, unless there is a change of policy, it is likely that, if the UK ratifies the treaty – which opens for signature in early 2024 – it will enter such a reservation.[191]

Similarly, in the context of negotiations on a new Convention on Prevention and Punishment of Crimes Against Humanity (CAH treaty), the UK emphasised that provisions relating to establishment of universal jurisdiction on the grounds of presence in a State's territory (Article 7 in the current draft) would require changes to domestic law, and

184 *Ibid.*, p. 5.
185 *See* the definition in the Coroners and Justice Act 2009, s 70(4).
186 *Ibid.*
187 MLA Diplomatic Conference, MLA Treaty (26 May 2023), Article 8(2).
188 *Ibid.*, Article 8(3).
189 Bruno de Oliveira Biazatti and Ezechiel Amani, 'The Ljubljana – The Hague Convention on Mutual Legal Assistance: Was the Gap Closed?' (EJIL: Talk!, 12 June 2023).
190 *Ibid.* The reservation must be renewed every three years.
191 The MLA Initiative Republic of Slovenia, 'MLA (Mutual Legal Assistance and Extradition) Initiative' (19 November 2011).

emphasised that it would need to assess the impact of the Convention on its laws before ratification.[192]

The UK's legal framework in relation to crimes under the Rome Statute deviates from that of both civil law jurisdictions in Europe and other common law jurisdictions around the world. In Canada, the Crimes Against Humanity and War Crimes Act 2019 allows Canadian courts to exercise universal jurisdiction over the crimes of genocide, crimes against humanity, and war crimes committed abroad if the suspect is present on Canadian territory, regardless of their nationality or residency.[193] Likewise, in the United States, the Justice for Victims of War Crimes Act passed in 2023, expanded the previous War Crimes Act to allow federal authorities to prosecute alleged perpetrators of war crimes committed abroad, based on presence alone and regardless of the nationality of perpetrator or victim.[194] The legislation governing accountability for international crimes in both countries is therefore less restrictive than in the UK, and in line with the reforms put forward in this report.

The UK should therefore remove the nationality and residence requirements for prosecutions for genocide, crimes against humanity and war crimes under the ICCA, and instead require only presence, as per the existing UK law on torture and war crimes that amount to 'grave breaches' of the Geneva Conventions. This would standardise the UK's approach across international crimes, bring it into line with the law in the US and Canada, and enhance its ability to prosecute war criminals on its territory.

Efforts to strengthen the legislation and close such loopholes are ongoing. In April 2023, Scottish MP Brendan O'Hara proposed the Universal Jurisdiction (Extension) Bill, which would give English courts jurisdiction over the offences of genocide, crimes against humanity, and war crimes regardless of the nationality or residence of the offender.[195] In other words, it aims to close this legal loophole left under the ICCA, through which potential perpetrators of international crimes can travel freely to and within the UK without the threat of arrest. At the time of publication of this report, the Bill is under consideration in Parliament, but no change to the governing legislation has been made.

Recommendation: The UK should remove the nationality and residence requirements for prosecutions for genocide, crimes against humanity and war crimes, so that any suspect present in the UK can be prosecuted there. To go one step further, the UK could remove the presence requirement for all international crimes to allow for even greater accountability, as is the case in countries such as Sweden and Germany.

192 A compilation of the UK's comments on the draft CAH treaty to the Sixth Committee between 2014 and 2020 is available at: Washington University School of Law, 'Compilation of Government Reactions to the UN International Law Commission's Work on Crimes Against Humanity 2013-2020' (February 2021).

193 Crimes Against Humanity and War Crimes Act 2019, s 2000.

194 Justice for Victims of War Crimes Act 2023, amending s 2441 of title 18, U.S. Code.

195 UK Parliament, House of Commons: Hansard transcript, 25 April 2023, vol 731, cols 590

(2) UK law is inconsistent about how far back prosecutions can go, leaving gaps in the ability to prosecute certain crimes

UK authorities can prosecute international crimes within inconsistent timeframes. Torture can be prosecuted if committed after 1998. Genocide can be prosecuted if committed "on or after 1 January 1991".[196] But crimes against humanity and war crimes can be prosecuted if committed after "1 September 2001 unless, at the time the act constituting that crime was committed, the act amounted in the circumstances to a criminal offence under international law."[197] Which crimes have been codified in customary law, and when, has not been clarified by Parliament or exhaustively addressed by the courts.[198] Meanwhile, 'grave breaches' of the Geneva Conventions – criminalised under both the ICCA and the GCA – can be prosecuted if committed in the context of an international armed conflict as far back as 1957.[199] The *Agnes Taylor* case below illustrates the gap in the current framework. As a result of temporal bars, the case charging torture as a war crime or a crime against humanity could not proceed because the conduct occurred prior to 2001.[200]

A number of practitioners interviewed for this report indicated that aligning the timeframes in the legislation would make the law more consistent and facilitate prosecutions for international crimes in the UK.

Recommendation: The UK should amend the ICCA to ensure that UK courts have jurisdiction over all crimes covered by the Rome Statute – genocide, crimes against humanity and war crimes – from at least 1991, and indicate which crimes could be prosecuted prior to this date under customary international law.

196 The ICCA came into force on 1 September 2001, criminalising acts of genocide, crimes against humanity, and war crimes committed after that date: the International Criminal Court Act 2001 (Commencement) Order 2001. But given that it repealed the Genocide Act 1991, the ICCA was later it was amended to retrospectively extend jurisdiction to acts of genocide occurring on or after 1 January 1991: see International Criminal Court Act, s 65, inserted by the Coroners and Justice Act 2009. This ensured that genocidal conduct during the conflicts in the former Yugoslavia and Rwanda in the early 1990s was criminalised in domestic law.

197 International Criminal Court Act 2001, s 65A(2).

198 Kate Grady, 'International Crimes in the Courts of England and Wales' (2014) 10 *Criminal Law Review* 693.

199 *See R v Jones and Milling,* [2006] UKHL 16, at para.19, 23 per Lord Bingham (finding that "a crime recognised in customary international law may be assimilated into the domestic criminal law" of the UK; that "the core elements of the crime of aggression have been understood, at least since 1945, with sufficient clarity to permit the lawful trial… of those accused of this most serious crime"; but citing with approval the conclusion that "international law could not create a crime triable directly" in Engilsh courts). For a detailed review of the UK courts approach to customary international law see Lord Lloyd-Jones, 'International Law Before United Kingdom Courts: A Quiet Revolution' (2022) 71 *International & Comparative Law Quarterly* 503.

200 *R v Reeves Taylor* [2019] UKSC 51.

CASE STUDY | Agnes Taylor

In 2017, Agnes Reeves Taylor was arrested in the UK and charged with seven counts of torture and one count of conspiracy to commit torture contrary to Section 134 of the Criminal Justice Act. The prosecution argued that at the time of the alleged offences in 1990, the National Patriotic Front of Liberia (NPFL) was the *de facto* military government or government authority. Their case was that Charles Taylor, the leader of the NPFL, and those acting for and with him, including Agnes Taylor, were acting in an official capacity for, and on behalf of, the NPFL. As a result, they held effective control of the area where the offences occurred at the time they were committed.

Agnes Taylor's trial before the Old Bailey began in June 2019. She denied involvement in the offences, and argued that: (a) she did not act in an official capacity for the NPFL; and (b) the NPFL was not the *de facto* government authority in the relevant locations and at the relevant times.

A preliminary issue was appealed to the Supreme Court regarding the definition of torture under the Act.[201] The Court ultimately sent the case back to the Old Bailey to decide the point and the court concluded that the ICCA could not apply as the offences occurred before 2001.[202]

(3) UK law does not recognise 'command and superior responsibility' for all international crimes

UK criminal law does not recognise two important modes of liability – command and superior responsibility – for some international crimes. The ICCA, implementing Article 28 of the Rome Statute, is the first piece of legislation to incorporate command and superior responsibility in UK domestic law, supplementing the modes of liability available for ordinary crimes.[203] But it does not extend to certain international crimes such as torture and, to date, no commander has been prosecuted in the UK for failure to prevent or punish the crimes of their subordinates.

This means that, in relation to torture as a stand-alone crime, a superior or commander whose subordinates have committed isolated acts of torture *not* constituting crimes against humanity or war crimes (which would be covered under the ICCA) cannot be held responsible under current UK legislation as Section 134 of the CJA does not provide

201 *Ibid.*, para. 2.
202 Unpublished judgment of Mr Justice Sweeney, 6 December 2019, on file with REDRESS.
203 ICCA s 65(2), 65(3). *See* sub-section Modes of Liability.

for command or superior responsibility. While commanders could be tried under other theories of liability,[204] such modes may not capture the responsibility of architects or orchestrators of these crimes for acts that they should have prevented or punished. By requiring superiors to take affirmative, pro-active measures to curb the behaviour of their subordinates, command responsibility acts as a deterrent for grave crimes.[205] It is possible that a court would apply command responsibility for torture as customary international law (applicable in both international and non-international armed conflict), but this has not yet been fully tested.[206] It is therefore preferable for Parliament to make clear that command and superior responsibility can apply to international crimes not covered by the ICCA.

Recommendation: The UK should amend relevant laws to recognise command and superior responsibility for all international crimes.

204 For example, conspiracy to commit an offence outside England and Wales under Section 1A of the Criminal Law Act 1977, aiding and abetting under the Accessories and Abettors Act 1861, or encouraging and assisting an offence under Sections 44-45 of the Serious Crime Act 2007.

205 The doctrine of command responsibility was already conceived as a preventative mechanism in the earliest days of international criminal law, when the U.S. Supreme Court reviewed the *Yamashita* case in 1946: *In Re Yamashita* 327 US 1 (1946).

206 *See R v Jones and Milling* [2006] UKHL 16; R May and S Powles, 'Command Responsibility - A New Basis of Criminal Liability in English Law?' [2002] *Criminal Law Review* 363. For a detailed review of the UK courts approach to customary international law, *see* Lord Lloyd-Jones, 'International Law Before United Kingdom Courts: A Quiet Revolution' (2022) 71 *International & Comparative Law Quarterly 503.*

CASE STUDY | Donald Payne

Donald Payne became the first British soldier to be convicted of a war crime under the ICCA in 2007. He was dismissed from the army and sentenced to a year in prison following his guilty plea to the offence of inhuman treatment of Iraqi civilians as a war crime. He accepted in his plea that he had inflicted severe physical or mental pain or suffering by forcing detainees into stress positions for 36 hours while hooded and handcuffed, and depriving them of sleep. In particular, he accepted that he used force against Baha Mousa, who later died from his injuries. Payne, however, was found not guilty of manslaughter. The court martial accepted that the treatment had become a "standard operating procedure" that was "known of and approved by his superior officers".[207]

Payne was not the only soldier implicated in the abuse, but he was the only individual charged. An independent inquiry found that Payne shared responsibility for the death of Baha Mousa and the abuse of 10 other detainees with at least three other army officers.[208] Likewise, the judge overseeing Payne's trial criticised Payne's superiors for their lack of supervision, citing the fact that abusive practices – including forced stressed positions – were standard procedure at the time. According to Judge McKinnon, the crimes represented a "serious failing in the chain of command all the way up to brigade and beyond".[209]

As the first conviction of a British soldier for war crimes, the case of Donald Payne represents a partial success for accountability efforts in the UK. But the failure to apply the principle of command responsibility to Payne's superiors demonstrates the shortcomings of accountability in practice. Section 165 of the ICCA introduces command responsibility as a mode of liability for war crimes, such that UK nationals or residents can be tried according to this principle in UK courts. Under that law, Payne's superiors could have been tried. That they were not, and that Payne was the only soldier to take the blame for systematic abuses, shows the difficulty of translating legal liability into practical accountability.

207 *R v Payne* [2006] Military Court, H DEP 2007/411.

208 Richard Allen Greene, 'Inquiry: UK troops punched and possibly kicked Iraqi to death,' (CNN, 8 September 2011).

209 Steven Morris, 'First British soldier to be convicted of a war crime is jailed for ill-treatment of Iraqi civilians' (The Guardian, 30 April 2007).

(4) Granting 'special mission immunity' (SMI) to visiting officials obstructs the ability to prosecute them

SMI is another potential legal barrier to the exercise of universal jurisdiction in the UK. A special mission is a "temporary mission, representing a State, which is sent by one State to another with the consent of the latter, in order to carry out official engagements on behalf of the sending State".[210] It is a vehicle for *ad hoc* diplomacy, supplementing the longer-term diplomatic missions established in capitals around the world. A member of a special mission need not be a diplomat. They may be any government representative sent on official business for a temporary period.

The various rules on special missions, including the immunities enjoyed by persons on special missions, are codified in the 1969 New York Convention on Special Missions (the Special Missions Convention). The Special Missions Convention only has 40 States Parties.[211] The UK signed in 1970 but has never ratified it.

Article 31, the provision on immunity in Special Missions Convention, reads in relevant parts:

1. *The representatives of the sending State in the special mission and the members of its diplomatic staff shall enjoy immunity from the criminal jurisdiction of the receiving State* […]

3. *The representatives of the sending State in the special mission and the members of its diplomatic staff are not obliged to give evidence as witnesses* […]

5. *The immunity from jurisdiction of the representatives of the sending State in the special mission and of the members of its diplomatic staff does not exempt them from the jurisdiction of the sending State.*[212]

That provision does not bind the UK as treaty law. However, the High Court and Court of Appeal in the *Freedom & Justice Party* case accepted that the "core" of SMI was part of customary international law and could be applied in the UK on that basis.[213]

210 Andrew Sanger and Michael Wood, 'The Immunities of Members of Special Missions' in Tom Ruys et al (eds), *The Cambridge Handbook of Immunities and International Law* (CUP 2019), Chapter 23, at 452.

211 1969 New York Convention on Special Missions, in force 21 June 1985.

212 *Ibid.*

213 *R (on the application of Freedom and Justice Party) v The Secretary of State for Foreign and Commonwealth Affairs* [2016] EWHC 2010 (Admin); and *R (on the application of Freedom and Justice Party) v The Secretary of State for Foreign and Commonwealth Affairs* [2018] EWCA Civ 1719.

CASE STUDY | General Hegazy and the Freedom & Justice Party case

In 2015, Egyptian General Mahmoud Hegazy visited the UK to take part in an arms fair, and for meetings with the Secretary of State for Defence and the FCDO. The Freedom and Justice Party (a party that formed the elected government of Egypt between June 2012 and July 2013) alleged that General Hegazy was one of the individuals responsible for torture in Egypt after a violent coup in 2013, and alleged his involvement in "acts of torture, during the course of a demonstration in Rab'a Square in support of ex-President Morsi".[214]

Solicitors for the Freedom and Justice Party notified the relevant authorities of General Hegazy's likely presence in the UK, and requested that steps be taken to arrest him for his involvement in torture.[215] They heard the next day that the FCDO had granted Hegazy immunity, and therefore could not be arrested.[216] Immunity was provided through 'special mission status', which the UK Government grants to foreign official visitors on an *ad hoc* basis.

The provision of SMI has no statutory grounding in the UK. Instead, the government bases its decision to grant this status in customary international law, a basis that is contested by some human rights organisations.[217] REDRESS and Amnesty International have argued that there is insufficient state practice supporting this stance.[218] This argument is bolstered by the relative paucity of cases in which States grant SMI.[219]

Solicitors brought judicial review proceedings against the FCDO and DPP. The Divisional Court reached the conclusion that "there has emerged a clear rule of customary international law which requires a State which has agreed to receive a special mission to secure the inviolability and immunity from criminal jurisdiction of the members of the mission during its currency".[220] The Court also rejected the argument that SMI only applies to official acts.[221] The judgment was upheld on appeal.[222] As a result, the current state of the law in the UK is that 'core immunity' from arrest and prosecution is enjoyed by persons the government considers to be on a 'special mission'.

214 *R (on the application of Freedom and Justice Party) v The Secretary of State for Foreign and Commonwealth Affairs* [2016] EWHC 2010 (Admin), para. 9.

215 Members of the Freedom and Justice Party are said to have suffered torture and other human rights violations during and after the uprising: *Ibid.*, para. 9 and UK Parliament, 'Written Evidence from ITN Solicitors on Behalf of the Muslim Bortherhood (ISL0016)'. The Freedom and Justice Party acted as representative for thousands of victims of the coup, see *ibid.*, para. 10.

216 Randeep Ramesh and Rowena Mason, 'Egyptian opposition party plans legal battle over UK immunity for Sisi aide' (The Guardian, 2 November 2015).

217 *See* e.g. REDRESS, 'Special mission immunity and General Hegazy case' (2016).

218 *Ibid.*

219 Andrew Sanger and Sir Michael Wood, 'The Immunities of Members of a Special Missions,' *Legal Studies Research Paper* Series (University of Cambridge Faculty of Law Legal Studies, 2018), p. 13 (although the authors conclude that the immunity has a customary basis).

220 *Ibid.,* para. 163.

221 *Ibid.,* para. 165.

222 *R (on the application of Freedom and Justice Party) v The Secretary of State for Foreign and Commonwealth Affairs* [2018] EWCA Civ 1719.

The conclusion that SMI is customary international law is questionable. In the *Freedom and Justice Party* case, the Divisional Court considered the results of a survey of States run by the Council of Europe's Committee of Legal Advisers on Public International Law. The survey revealed a diversity of approaches. The Divisional Court's conclusion that "the great weight of State practice"[223] favoured SMI was, upon close examination, based on the practice of eight States,[224] falling far short of the requirement of 'widespread and representative practice' accompanied by *opinio juris*, for identifying customary rules.

Still, the legal barrier of SMI in the UK has prevented any steps to prosecute people in at least three other cases that predated the *Freedom and Justice Party* case:

a. the Minister for Commerce and International Trade of the People's Republic of China, Bo Xilai, who was accused of "conspiracy to torture committed in Liao Ning Province since July 1999";[225]

b. the then-Israeli Defence Minister, Ehud Barak, accused of war crimes and breaches of the Geneva Conventions in Gaza;[226]

c. the former head of State of the USSR, Mikhail Gorbachev, accused of giving "orders to troops to disperse peaceful demonstrations on the 9 April 1989 in Tblisi Georgia, 13 January 1991 in Vilnius, Lithuania and [...] that he ordered an attack on the City of Bbaku in Azerbaijan on 20 January 1990. Deaths are alleged to have occurred as the result of each order".[227]

There is a clear tension between the conferral of SMI and several of the UK's international legal obligations. For example, the UNCAT requires States to criminalise torture on an extraterritorial basis, and to investigate and prosecute acts of torture occurring abroad when perpetrators are in their territory, as recognised in the *Pinochet (No. 3)* case.[228] The UN Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention), to which the UK is a party, requires States to take measures to prevent and punish acts of genocide, including if the perpetrators are "responsible rulers, public officials or private individuals".[229] The Geneva Conventions, which govern the conduct of war and provide protections for those who are not taking part in hostilities, include an obligation to prosecute suspected war criminals or extradite them to a country that is better placed to prosecute.[230] The Rome Statute explicitly rejects immunity for Heads of State and other

223 *R (on the application of Freedom and Justice Party) v The Secretary of State for Foreign and Commonwealth Affairs* [2016] EWHC 2010 (Admin), para. 147.

224 Austria, Belgium, Finland, France, Germany, The Netherlands, the United Kingdom, and the United States.

225 *Re Bo Xilai* (2005) 128 ILR 713.

226 Re Ehud Barak, City of Westminster Magistrates' Court, 16 June 2008 (unreported).

227 Re Mikhail Gorbachev, City of Westminster Magistrates' Court, 30 March 2011 (unreported).

228 [2000] 1 AC 147.

229 UN General Assembly, *Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948, United Nations, Treaty Series, vol. 78, p. 277, art 4.

230 Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Geneva, 12 August 1949, Article 49; Convention (II) for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Geneva, 12 August 1949, Article 50; Convention (III) relative to the Treatment of Prisoners of War, Geneva, 12 August 1949, Article 129; Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949, Article 146.

government officials under its Article 27, which notes the "irrelevance of official capacity".[231] The UK Parliament should create a carve-out to SMI to comply with these obligations under international law and its own "firm policy of ending impunity for the most serious international crimes and a commitment to the protection of human rights".[232]

In addition, it is clear that SMI is not automatically bestowed on anyone claiming to represent a foreign state on an official visit – special mission status must be granted by the UK government.[233] For example, SMI was found not to be warranted in a case concerning the Head of the Office of National Security in Mongolia, Mr. Khurts Bat, who was the subject of an extradition request from Germany for "abduction and serious bodily injury".[234] Mr Bat asserted that he was on a seven-day special mission to the UK, but the FCDO submitted that it had not consented to his visit being treated as a 'special mission'. At the time of Mr Bat's visit, there were no prescribed formalities for expressing consent, but the FCDO observed that "such consent would normally be demonstrated by, for example, an invitation by the receiving State and an acceptance by the sending State, an agreed programme of meetings, an agreed agenda of business and so on".[235] The Court ruled that Mr Bat did not benefit from immunity from arrest in the UK as a result,[236] and following the decision, he was extradited to Germany.[237]

For clarity and transparency, the UK Government should codify its approach to SMI including by consistently issuing decisions on whether a diplomatic visit constitutes a 'special mission' in advance, and publishing information about its decision. After the *Khurts Bat* case, the FCDO codified a new 'pilot process' for requesting special missions "so that the Government's consent to a special mission can be addressed expressly before the mission arrives in the UK".[238] Many States in Europe and elsewhere similarly require that the receiving State provide consent in order for SMI to be recognised. Such countries include Bulgaria,[239] Germany,[240] Israel,[241] Italy,[242] Slovenia[243] and Mexico.[244] But so far this information has not been not provided publicly.

231 Rome Statute, art 27. Cf. art. 98 stating that a ICC request for surrender or assistance cannot compel the requested State to act inconsistently with its obligations under international law with respect to the State or diplomatic immunity of a person or property of a third State, unless the Court can first obtain the cooperation of that third State for the waiver of the immunity.

232 *R (on the application of Freedom and Justice Party) v The Secretary of State for Foreign and Commonwealth Affairs* [2016] EWHC 2010 (Admin), para. 7.

233 Foreign and Commonwealth Office, 'Written Ministerial Statement, Special Mission Immunity' (4 March 2013).

234 *Khurts Bat v The Investigating Judge of the German Federal Court v The Government of Mongolia v The Secretary of State for Foreign and Commonwealth Affairs* [2011] EWHC 2029 (Admin), para. 3.

235 *Ibid.*, para. 24.

236 *See* generally *Khurts Bat v The Investigating Judge of the German Federal Court v The Government of Mongolia v The Secretary of State for Foreign and Commonwealth Affairs* [2011] EWHC 2029 (Admin).

237 Cahal Milmo, 'Whitehall Anger over Mongolian Spy Chief Release' (The Independent, 4 October 2011).

238 Foreign and Commonwealth Office, 'Written Ministerial Statement, Special Mission Immunity' (4 March 2013).

239 CAHDI, 'Replies by States to the questionnaire on 'Immunities of Special missions', CAHDI (2018) 6 prov, p. 37.

240 *Ibid.,* p. 62.

241 *Ibid.,* pp. 127, 128.

242 *Ibid.,* pp. 71, 73.

243 *Ibid.,* p. 101.

244 *Ibid.,* pp. 135-136.

Recommendation: The UK should codify its approach to special mission immunity, including its scope under customary international law.[245] The UK should refuse to accept an individual as being on a special mission, and potentially entitled to immunity, when there are reasonable grounds to suspect that the individual has been involved in or associated with international crimes including torture, war crimes, crimes against humanity or genocide.[246] Reasonable grounds include instances when the individual is identified as a suspect by the International Criminal Court, the UK authorities or a UN investigative mechanism.[247]Creating a carve-out from such immunity for those credibly suspected of international crimes would satisfy the UK's obligations under the UNCAT, the Rome Statute, the Genocide Convention, the Geneva Conventions and other treaties. If and when the FCDO does grant SMI, it should be more transparent: by publishing in advance any grant of SMI as well as information including who it relates to, for what mission and for what duration it will be granted.[248] This would ensure greater transparency and accountability.

245 *See* CAHDI, 'Replies by States to the questionnaire on 'Immunities of Special missions', CAHDI (2018) 6 prov, p116-117 ("Insofar as the immunity of special missions is part of customary international law, it is also a source of the common law… It is clear that persons on a special mission enjoy personal inviolability and immunity from criminal jurisdiction. It is likely that persons on a special mission would enjoy immunity from civil jurisdiction in so far as the assertion of civil jurisdiction would hinder them performing their official functions…However there are no recent judicial precedents…").

246 *See* Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 5.2, Dec. 10, 1984, 1465 U.N.T.S. 85 ("Each State Party shall … take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph I of this article."); Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the UN General Assembly, Res. 260 A (III), 9 December 1948, Article I ('The Contracting Parties confirm that genocide … is a crime under international law which they undertake to prevent and to punish'); Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in the Armed Forces in the Field Article 50, Aug. 12 1949, 75 U.N.T.S. 31; Geneva Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea Article 51, Aug. 12 1949 75 U.N.T.S. 85; Geneva Convention Relative to the Treatment of Prisoners of War Article 129, Aug. 12 1949, 75 U.N.T.S. 135; Geneva Convention Relative to the Protection of Civilian Persons in the Time of War Article 146, Aug. 12 1949, 75 U.N.T.S. 287.

247 This is consistent with Home Office guidance, which provides that an individual will be refused citizenship if "there are reasonable grounds to suspect [that] they […] have been involved in or associated with war crimes, crimes against humanity or genocide, terrorism, or other actions that are considered not to be conducive to the public good".

248 This is consistent with the policy that 'Embassies and High Commissions in London will be invited to inform the FCO of forthcoming visits in cases where they wish to seek the Government's express consent as a special mission. The FCO will respond with Government's consent or otherwise to the visit as a special mission. Any legal consequences would ultimately be a matter for the courts". Foreign and Commonwealth Office, 'Written Ministerial Statement: Special Mission Immunity; (4 March 2013).There is also already a published list of "[r] epresentatives of Foreign States & Commonwealth Countries and their diplomatic staff [who] enjoy privileges and immunities under the Diplomatic Privileges Act (1964)". The London Diplomatic List is available online.

PRACTICAL CHALLENGES TO PROSECUTING INTERNATIONAL CRIMES IN THE UK

© UN Photo/Olivier Chassot. A refugee camp in Darfur, a region in Sudan where the ICC has investigated allegations of genocide, war crimes and crimes humanity.

In addition to legal constraints, a number of practical challenges in the investigation and prosecution of international crimes have hampered the ability of authorities in the UK to investigate and prosecute international crimes. Proposed reforms center on the need for updated investigative policies, enhanced cooperation with survivors in evidence-gathering, and increased national and international coordination to ensure that international crimes can be investigated and prosecuted swiftly and effectively.

(1) Investigations into international crimes traditionally have not begun before a perpetrator has been identified and is present on UK territory

Under its current practices, SO15 are generally not encouraged to launch a full investigation until a suspect is present on UK territory.

The Referral Guidelines indicate that, for crimes falling under the ICCA (i.e. genocide, crimes against humanity and war crimes, which require suspects to be a British national or resident to proceed with the case), during a scoping exercise, SO15 will consider, amongst other factors, whether the suspect is a national or resident, and whether they are present in the UK or in a country from which the UK can request extradition. If the suspect is not present in the UK, or in a country from which the UK can request extradition, the guidelines recommend the "investigation will be suspended until there is a reasonable prospect of the suspect returning to the UK voluntarily".[249] Similarly, for grave breaches of the Geneva Conventions, torture, or hostage-taking (over which the UK exercises universal jurisdiction not requiring nationality or residence), the guidelines indicate SO15 should consider whether there are "reasonable grounds" to believe that the suspect will come to the UK.[250] Where reasonable grounds do not exist, the guidelines indicate that SO15 should refer the case to the Special Cases Department of the National Security Directorate of the Home Office for future immigration action (for example, citizenship revocation and/or deportation).

The Referral Guidelines do not define what constitutes a "reasonable prospect" or "reasonable grounds". But the requirement makes it very difficult, if not impossible, to build cases against individuals who are only present on the territory of the UK for a short time. If an investigation that ordinarily takes one to two years can only begin in earnest when there are reasonable grounds to believe that the suspect (who also needs to be a UK national or resident) is arriving in the UK on a particular date, it may be impossible

249 Crown Prosecution Service, 'War Crimes/Crimes Against Humanity Referral Guidelines' (7 August 2015), section A: Scoping Exercise.

250 *Ibid.*

to conclude an investigation within the time needed to lay a charge or effect an arrest, especially as a suspect can only be held for 96 hours without charge.[251]

In addition, SO15's War Crimes Team is housed within the counter-terror unit and resources are limited, meaning that cases of international crimes, which can be time- and resource-intensive, may be deprioritised.

In some countries, the window of opportunity to initiate and conduct investigations is wider because authorities can proceed with investigations without having identified a specific suspect, nor confirmed their presence in the country. These investigations are known as 'structural investigations'. Structural investigations do not focus on specific suspects, but rather, on groupings of possible perpetrators and the wider context in which the crimes happened. They enable a more proactive approach to the investigation of international crimes because specialised units can in some cases facilitate cooperation through the creation of Joint Investigative teams, such as the one set up by Germany and France to investigate crimes committed in Syria.[252]

Structural investigations also allow investigative units to build an evidence base before specific suspects are arrested, and allow for greater civil society engagement to support the development of the case at an early stage. For example, in Germany, authorities can launch a structural investigation as soon as there are reasonable grounds to believe that an international crime has taken place. Even prior to opening a structural investigation, the German Central Unit for the Fight Against War Crimes and Further Offences in the Federal Criminal Police can open a "preliminary examination".[253]

Though the UK has not traditionally embraced this investigative model, SO15 have recently announced that they will open structural investigations to mirror the 17 situations under investigation by the ICC,[254] meaning that the police can open an investigation before they have a suspect and will be better placed to respond and potentially charge an individual once they are in the UK. The War Crimes Team has also recently been designated as a separate unit within SO15, and the team has increased in size. These are positive developments, but additional resources will likely be required.

Recommendation: UK authorities should continue to strengthen the concept of structural investigations for the effective investigation of international crimes and investigate suspects likely to travel to the UK, even if travel is not imminent.

251 Police and Criminal Evidence Act 1984, s 44(3). Even if an individual is released on pre-charge (police) bail, conditions restricting movement and association can only be imposed on suspects for three months at a time; any extension beyond nine months requires court approval: *ibid.*, ss. 47ZB(1)(b), 47ZD(2), 47ZDA(2).

252 ECCHR, FIDH, and REDRESS, 'Breaking Down Barriers: Access to Justice in Europe for Victims of International Crime' (2020), pp. 13-14.

253 *Ibid.,* pp. 62-63; *see* also Open Society Justice Initiative and TRIAL International, 'Universal Jurisdiction Law and Practice in Germany' (April 2019), p. 19.

254 Information provided by email on 8 June 2023.

(2) UK investigators face significant challenges in gathering evidence from foreign jurisdictions

Non-Governmental Organisation (NGO) Documentation

Investigating international criminal cases often involves obtaining evidence from remote, sometimes conflict-riven, locations in countries that may not be open to cooperating with foreign investigators. These challenges are heightened in situations where the crimes under investigation take place in an active war zone: (a) the ability of investigators and prosecutors to travel to conduct investigations in these circumstances may be limited; (b) security can be a significant issue, particularly if victims and witnesses face ostracisation or threats from the local community for cooperating with an investigation; (c) linguistic and cultural barriers may make it difficult to interview survivors about sensitive topics, such as sexual and gender-based violence; and (d) investigators may be unable to contact survivors and witnesses if the internet and telecommunication channels are cut off.

To overcome these challenges, it is crucial that relevant units are sufficiently resourced to meet the cost of investigations, and that investigators and prosecutors have specialist training and knowledge of core international crimes. Jurisdictions such as Germany, France, and Canada have created dedicated units to investigate and prosecute such crimes, allowing staff to develop specialised expertise in international crimes and how to investigate them. This expertise, in turn, makes teams more strategic about the cases they investigate, and allows them to develop effective partnerships with colleagues in other jurisdictions.

NGOs can also be instrumental to the success of an international crimes case, as they can undertake preliminary investigations, and have connections with survivors and knowledge of the relevant conflict.[255] NGOs are often the first to bring cases to the authorities' attention and may be the only entities on the ground with valuable contacts to victims and witnesses.

NGOs have brought several cases to the attention of prosecuting authorities, including the *Kumar Lama* and *Agnes Taylor* cases described elsewhere in this report.[256] One practitioner described the important relationship between NGOs and the authorities as follows:

> *There are different realities [in a universal jurisdiction case]. Civil society and grassroots organizations have the role to be the link between these two [realities]. The more you distance [civil society] from the proceedings, the less chance you have to understand what is happening.*

255 For example, a French Court's recent conviction of Kunti Kamara, the former commander of the United Liberation Movement of Liberia for Democracy, for torture and crimes against humanity was made possible by the civil complaint filed by the NGO Civitas Maxima; *see* TRIAL International, '2022 Universal Jurisdiction Annual Review' (2023), p. 31.

256 REDRESS, 'Colonel Kumar Lama's acquittal: prosecuting torture suspects should remain a priority of the UK' (6 September 2017); TRIAL International, Agnès Reeves Taylor (8 July 2020). *See* also below in this Section, and the previous Section (Legal Challenges to Prosecuting International Crimes in the UK).

A recent report authored by the International Centre for Transitional Justice highlighted the importance of collaboration with NGOs, who, through their networks, can identify victims, survivors, and witnesses. They can also identify, and link the authorities to, defectors or insider witnesses.[257] Moreover, NGOs fill a knowledge gap as they are often the only entities operating 'on the ground', collecting evidence in situations which are difficult to access by the prosecuting authorities. They will also often have referral pathways in place to cater for the practical, psychosocial, and other needs of witnesses, victims, and survivors. In some jurisdictions, civil society organisations may represent victims in legal proceedings and have a more formal role.

But establishing and fostering collaboration with NGOs can be challenging and in some cases even "antagonistic".[258] In many countries (for instance, France), investigations are confidential.[259] This can create difficulties when NGOs provide information including contacts of witnesses, and then they are not kept in the loop about the proceedings.

In the UK, NGOs involved in accountability proceedings are often not informed about the status of the investigation and its needs. The evidence they collect may not be admitted in UK courts for several reasons, including the quality of evidence or lack of information on its origins and chain of custody. For example, in the *Kumar Lama* case, the judge pointed to "questionable behaviour" by the NGO involved in the case, including "removing inconsistencies between accounts, suggesting evidence for witness to include, and seeking to hide multiple versions of witness statements."[260] One legal practitioner described challenges involved in this practice as follows:

> *The earlier investigations and statements will always have to be disclosed and you will therefore always be stuck with the initial quality of the investigation […] Once you start to plant seeds of doubt, that creates problems for the prosecution.*

While some NGOs are included in the UK War Crimes Network,[261] there are opportunities to further involve them in the development of cases while maintaining the integrity of the criminal process.[262] The UK should also publish guidance, similar to the documentation guidelines published by the ICC Prosecutor,[263] to make clear how NGOs should conduct witness outreach and submit evidence to the authorities, to increase prospects of success.

257 International Centre for Transitional Justice, 'Gearing Up the Fight Against Impunity' (March 2022), p. 49.
258 *Ibid.,* p. 47.
259 *Ibid.,* p.48.
260 Jonathan Grimes, Colonel Lama trial: a test of universal jurisdiction (The Times, 22 September 2016).
261 The UK War Crimes Network consists of relevant agencies working on international accountability including: the National Crime Agency, The Foreign and Commonwealth Development Office, The Ministry of Defence, The Crown Prosecution Service, and SO15 as well as NGO representatives.
262 *See* further below in this Section.
263 *See e.g.* Eurojust, International Criminal Court Office of the Prosecutor, 2022); Murad Code: The Global Code of Conduct for Gathering and Using Information about Systematic and Conflict-Related Sexual Violence (2022).

CASE STUDY | Kumar Lama

Kumar Lama was a colonel in the Royal Nepalese Army during Nepal's internal armed conflict between the Government and the Nepal Communist Party (Maoist insurgents) during 1996 and 2006. On 3 January 2013, Kumar Lama was arrested in the UK and charged with two counts of torture under Section 134(1) of the CJA.[264] The charges related to allegations of the torture of Janak Raut and Karam Hussain between April and October 2005 at the Gorusinghe Army Barracks in Kapilvastu, Nepal.[265] The case was the third universal jurisdiction trial in the UK[266] and the second since the adoption of the CJA.[267]

Throughout the case, the Nepalese Government was unwilling to cooperate and openly disregarded its obligation under UNCAT to "[a]fford [other State parties] the greatest measure of assistance in connection with criminal proceedings [...] including the supply of all evidence at their disposal".[268] They claimed that Kumar Lama's arrest was "against the general principle of international law and jurisdiction of a sovereign country".[269] The UK investigative authorities were not allowed to enter the country, nor did they receive any requested documentation or evidence from Nepal. In contrast, defence lawyers were allowed to enter the country and gather evidence.[270]

Although Nepal was in breach of a treaty obligation, UK authorities and other diplomatic missions decided not take any steps to compel Nepal to cooperate.[271] As a result, the UK authorities arranged to interview victims and witnesses in third countries during the preliminary stages of the investigation,[272] which gave rise to complex issues relating to witness safety.

In August 2016, Kumar Lama was acquitted, as the jury reached a 'not guilty' verdict on one count and failed to reach a verdict on the other. In September 2016, the CPS decided not to proceed with a re-trial.

264 The CJA, Art 134(1) provides that: "[a] public official or person acting in an official capacity, whatever his nationality, commits the offence of torture if in the United Kingdom or elsewhere he intentionally inflicts severe pain or suffering on another in the performance or purported performance of his official duties." *See* also: Devika Hovell, The Authority of Universal Jurisdiction, *European Journal of International Law* (2018), p. 428; Devika Hovell, 'The 'Mistrial' of Kumar Lama: Problematizing Universal Jurisdiction', (EJIL: Talk!, 6 April 2017); Hasan Suroor, Nepal-U.K Row over Colonel's Arrest (The Hindu, 5 January 2013); Ingrid Massagé and Mandira Sharma, 'Regina v. Lama: Lessons Learned in Preparing a Universal Jurisdiction Case', *Journal of Human Rights Practice* (2018), p. 339; Mandira Sharma, 'Torture in Non-International Armed Conflict and the Challenge of Universal Jurisdiction: The Unsuccessful Trial of Colonel Kumar Lama' in Suzannah Linton, Tim McCormack and Sandesh Sivakumaran (eds), *Asia-Pacific Perspectives on International Humanitarian Law* (Cambridge University Press 2019).

265 Devika Hovell, The Authority of Universal Jurisdiction, *European Journal of International Law* (2018).

266 Devika Hovell, 'The 'Mistrial' of Kumar Lama: Problematizing Universal Jurisdiction', (EJIL: Talk!, 6 April 2017.

267 *Ibid*.

268 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 5.2, Dec. 10, 1984, 1465 U.N.T.S. 85, Article 9.

269 Hasan Suroor, Nepal-U.K Row over Colonel's Arrest (The Hindu, 5 January 2013).

270 Ingrid Massagé and Mandira Sharma, *Regina v. Lama: Lessons Learned in Preparing a Universal Jurisdiction Case,* Journal of Human Rights Practice (2018), p. 339.

271 *Ibid*.

272 Mandira Sharma, 'Torture in Non-International Armed Conflict and the Challenge of Universal Jurisdiction: The Unsuccessful Trial of Colonel Kumar Lama' in Suzannah Linton, Tim McCormack and Sandesh Sivakumaran (eds), *Asia-Pacific Perspectives on International Humanitarian Law* (Cambridge University Press 2019).

Witness Support

Issues relating to testimony by foreign witnesses in English trials have the potential to significantly impact the effectiveness of prosecutions of international crimes. Given how few cases of international crimes have advanced to trial in the UK courts, there is limited experience from which to draw, but both the *Kumar Lama* and *Agnes Taylor* cases exemplify some challenges.

In the *Kumar Lama* case, for instance, the first trial collapsed in March 2015 due to a lack of effective translation of critical testimony from twenty Nepalese witnesses.[273] An interpreter should be made available to a victim when they report a criminal offence, are interviewed by the police, or give evidence as a witness at trial.[274] But in *Kumar Lama*, the judge noted that "it is relatively rare for so many witnesses to require interpreters and indeed for so many problems to arise in one case".[275] Frequent adjournments and constant interruptions created a disjointed process, one that led many jurors in the trial to feel disconnected from the case.[276] Dr. Devika Hovell, Associate Professor in Public International Law at the London School of Economics, who observed the trial, noted that the case was "very nearly lost in translation".[277]

The jury's role in the *Kumar Lama* case was further complicated by the immense gap between the life experience of the jurors and the Nepalese defendant and witnesses.[278] Crime scene visits, like the one to Belarus in the *Sawoniuk* case,[279] can help to bridge this gap, especially in jury trials. In most civil law systems that exercise universal jurisdiction, there are no jury trials. Even in Canada – a common law system – such cases can be heard by either a judge or a jury.[280]

Practitioners also pointed to the difficulties in providing appropriate witness support during trials of international crimes. Often, witnesses will be flown in to testify and participate in court proceedings in a foreign system, foreign language, and foreign

273 Devika Hovell, 'The 'Mistrial' of Kumar Lama: Problematizing Universal Jurisdiction', (EJIL: Talk!, 6 April 2017); Crown Prosecution Service, The Code for Crown Prosecutors (26 October 2018). *See* also Clooney & Webb, 'The Right to a Fair Trial in International Law' (OUP, 2020).

274 Crown Prosecution Service, The Code for Crown Prosecutors (26 October 2018). *See* also Clooney & Webb, 'The Right to a Fair Trial in International Law' (OUP, 2020).

275 Devika Hovell, 'The 'Mistrial' of Kumar Lama: Problematizing Universal Jurisdiction', (EJIL: Talk!, 6 April 2017).

276 *Ibid.*

277 *Ibid.*

278 *Ibid.*

279 *See* the Section, Legal Framework for Prosecuting International Crimes in the UK, above.

280 There have been two international crimes prosecutions in Canada. In the first case under the Crimes Against Humanity and War Crimes Act, Désiré Munyaneza was convicted of genocide, CAH, and war crimes committed during the 1994 Rwandan genocide. *See* Superior Court of Quebec, *R. v. Munyaneza*, 2009 QCCS 2201, 22 May 2009 (lower court convicting), Court of Appeal of Quebec, *Munyaneza v. R*, 2014 QCCA 906, 7 May 2014 (appellate court upholding). Mr. Munyaneza availed himself of a jury for his trial per section 473(1) of the Canadian Criminal Code, and the case was heard by judge alone. In the second case, Jacques Mungwarere was acquitted of genocide and CAH in a case heard by a jury. *See* Superior Court of Justice of Ontario, *Her Majesty the Queen v. Jacques Mungwarere*, 211 CSON 1254, 5 July 2013.

setting. One practitioner interviewed for this report noted that a victim in the *Kumar Lama* case was so disoriented during trial proceedings, he believed that the prosecutor was his own counsel, found cross-examination highly traumatising, and, upon hearing the verdict, asked why the court thought he was lying. Another practitioner emphasised the difficulties around securing permission for witnesses to travel to testify in the UK. In the words of one NGO practitioner:

> *Witness/victims protection is a big issue for extraterritorial cases. There is a double standard: victims being in Europe and having access to all services and security and victims being abroad and being left on their own and relying on us, the NGO, to assist them.*

Lessons can be learnt from international courts and tribunals in this regard. For example, the ICC and other international accountability mechanisms have developed good practices in the field of witness support. The ICC allows witnesses to have a support person accompany them to court, or testify via video link from a location outside of the courtroom.[281] In the view of one practitioner:

> *It could be very daunting for a victim to be brought to an entirely alien court vs. via video link in familiar surroundings. There is nothing to say that video evidence has less of an impact than the person in the room. It can all be quite powerful. We can get too hung up on the best way – if it is powerful and truthful, good and sound evidence it doesn't matter.*

Another issue highlighted by legal and NGO practitioners was that, while witness protection plans are considered where appropriate by authorities, it is sometimes left to NGOs to develop the security plan for witnesses, victims or survivors in their country of origin, where SO15 and CPS may have little ability to influence or put in place a necessary protection plan. Retaliation against witnesses in their home country is a very real risk that will often be difficult to mitigate. Indeed, the recent backlash in Liberia connected to the *Agnes Taylor* case brought to trial in the UK illustrates this issue.[282] Enhanced collaboration and cooperation in this regard is key, especially through engagement with the multilateral mechanisms contemplated in the MLA treaty.[283]

Finally, victims of international crimes are not always provided with adequate specialised psychosocial support during the trial process. Victims of international crimes in the UK are often referred to organisations that are not equipped or mandated to deal with these types of victims. Identifying organisations that are able to provide the specialised support required for victims of international crimes, and setting up strong robust referral pathways, is key to ensuring that the needs of survivors are adequately met.

281 International Criminal Court, Witnesses: Special Measures: Trauma and vulnerability.

282 Civitas Maxima, Attempt to silence victims' quests for justice: Agnes Reeves Taylor sues Civitas Maxima and Global Justice and Research Project in Liberia (10 March 2023).

283 *See* further below, in this Section.

CASE STUDY | Faryadi Zardad

Faryadi Zardad was a warlord who fled Afghanistan when the Taliban took power in 1996. Between 1992 and 1996, Zardad had established a checkpoint on a road near Kabul, where he and his men took passengers hostage, detained and tortured them, and held them for ransom.[284]

Zardad fled to Britain in 1998 on a fake passport and sought asylum there. He was tracked down in London by a BBC journalist, and the case was referred to the Home Office, which asked SO15 to investigate. He was arrested in 2003 and charged with hostage-taking and torture under Section 134 of the CJA.[285]

While gathering evidence for trial, UK officials travelled several times to Afghanistan, where, under armed escort, they tracked down Zardad's alleged victims. They were then able to arrange for them to give evidence via video link from the UK embassy.[286]

This evidence made all the difference at trial. Former DPP Ken Macdonald noted: "Zardad's actions and those of his men were horrific. Through our witnesses, we were able to tell the jury of his reign of terror. The victims, many of whom are still terrified of Zardad, showed great courage in helping us present our case."[287]

In 2005, Zardad was convicted in a landmark judgment. As then-AG Lord Goldsmith said: "We believe this to be the first time in any country in international law, and certainly in English law, where offences of torture and hostage-taking have been prosecuted in circumstances such as this", pointing to the fact that the defendant was not a British subject, nor were the victims British. He added that "there are some crimes which are so heinous, such an affront to justice, that they can be tried in any country".[288]

In 2016, Zardad was released on parole after serving 11 years of a 20-year prison sentence, then deported to Afghanistan on 14 December 2016.[289]

284 Press Association, UK court convicts Afghan warlord of 'heinous' crimes (The Guardian, 18 July 2005).
285 *Ibid.*
286 *Ibid.*
287 *Ibid.*
288 *Ibid.*
289 *Ibid.*

Outreach and Communications

A key element of the successful investigation and prosecution of international crimes is a strong outreach and communications programme by national investigative authorities. The purpose of such a programme is twofold. First, an outreach programme can engage affected communities, promote access to justice for survivors and victims of international crimes, and manage their expectations for the accountability process. Second, it can garner public and political support for the prosecution of international crimes. Such support can lead to better resourcing and visibility, and less risk of political interference in the process.[290]

As one practitioner interviewed for this report put it:

> *Police services* […] *are overburdened because of daily criminal offences happening in your area and in your city. The call for justice is there in your country,* […] *you have to cope with that, and, at some point, you have to plead for resources for crimes which have been happening 10,000 kilometres away 20 years ago but are completely somehow disconnected in appearance and disconnected from the reality of your society.* […] [*People*] *don't understand why it's taking them one year to get a divorce, whereas you will be trying to allocate time and resources to try these kinds of crimes in the courts.*

An effective outreach programme can also ensure that when a trial does take place, its impact is felt by the affected communities. This may require engagement with local media in the country in which the offences took place, ensuring access to information about the trial in the communities' own language, and where possible, facilitating the ability of these communities – particularly survivors – to watch hearings.

But one practitioner pointed out that no outreach took place in the wake of the *Kumar Lama* trial, nor was the verdict translated into the local language of the affected community. The reporting ban in England added to the difficulty, as "[civil society organisations] couldn't report on the trial in the UK", but in Nepal it was "all over the front pages of the English-speaking newspapers that he'd been found innocent […] when in fact he was found not guilty on one count and the jury could not decide on the second count".

Another practitioner pointed to a similar issue in the *Agnes Taylor* case:

> *On the question of torture, Agnes Taylor had strict reporting restrictions in place – the press are allowed to report on the name of the accused, summary of the charges, and that's about it* […] *But this is not the same in other jurisdictions. There's a value in delivering or reporting universal jurisdiction prosecutions. It was really interesting to see the Syria prosecutions in Germany and read about them in the German press and in international newspapers and blogs. In Agnes Taylor - on the final day in court – we were the only people in the court – it was me, one intern and one BBC reporter.*

290 *See* International Centre for Transitional Justice, 'Gearing Up the Fight Against Impunity' (March 2022).

Recommendation: UK authorities should further collaborate with civil society groups and survivors to gather evidence, provide appropriate support to survivors who provide evidence, disseminate clear guidance on how NGOs should collect and submit evidence to ensure admissibility in UK courts and ensure that information about the trial and verdict are accessible to survivor communities.

(3) The UK lacks sufficient mechanisms for international cooperation in investigations

International cooperation through bilateral, regional, and international frameworks is critical in cases involving international crimes.[291] Mutual legal assistance treaties provide a legal framework for the UK to request support with gathering evidence, and requests are more likely to be successful if a treaty exists. So far, the UK is party to 42 bilateral mutual legal assistance treaties.[292] But more cooperation is needed to facilitate successful prosecutions of international crimes.

Following Brexit, the UK lost access to the Schengen Information System, an important investigative tool that allows police and border guards to enter and consult alerts on people entering EU territory in one common database. The UK's access to the European Arrest Warrant – a simplified cross-border judicial surrender procedure – has also been replaced by the EU-UK Trade and Cooperation Agreement, under which the UK must receive or disseminate extradition arrest warrants bilaterally or through INTERPOL. While the UK is no longer a member of Eurojust[293] and Europol,[294] it maintains some level of collaboration through UK liaison officers and participates in various joint investigative task forces. These relationships are crucial to enhancing the UK's ability to prosecute and investigate international crimes.

The Genocide Network, set up by the Council of the European Union in 2002 to enable close cooperation between the national authorities investigating core international crimes, provides a key opportunity for continuing cooperation and currently has the UK as an observer state. Joint investigative task forces can also be key to facilitating the

291 European Parliament, Directorate-General for External Policies of the Union, 'Universal Jurisdiction and International Crimes: Constraints and Best Practices' (September 2018), s 5.4.

292 *See* UK Government, Bilateral treaties on mutual legal assistance in criminal matters.

293 Eurojust, or the European Union Agency for Criminal Justice Cooperation, is based in The Hague, Netherlands and coordinates collaboration between national judicial authorities to tackle serious organised cross-border crime. EU Member States, as well as third States, work together to investigate and prosecute transnational crime through networks and cooperation agreements. *See* European Union Agency for Criminal Justice Cooperation, 'What we do'.

294 *Ibid.*

gathering and exchange of information and evidence.[295] Evidence can be collected in accordance with the legislation of the country in which it was obtained and shared without the need to use formal mutual legal assistance agreements.

The MLA treaty, adopted in 2023, will also provide inter-State cooperation mechanisms for the investigation and prosecution of international crimes on a global level. The MLA treaty addresses legal gaps in current mutual legal assistance and extradition frameworks for the national adjudication of genocide, crimes against humanity and war crimes,[296] and enshrines the duty of State Parties to prosecute or extradite the suspects of these crimes.[297]

The obligations contained in the MLA treaty will potentially be bolstered by a Convention on Prevention and Punishment of Crimes Against Humanity (CAH treaty) that is currently in draft form, which aims to clarify the obligations of States in relation to crimes against humanity and regulate inter-State cooperation in the investigation and prosecution of this crime.[298]

The International Law Commission, a body of experts responsible for helping develop and codify international law, drafted the current proposed CAH treaty and it will be considered in 2024 by the Sixth Committee of the United Nations General Assembly. This initiative fills a gap in international law by ensuring there is a treaty to deal with the prosecution of crimes against humanity, just as there are treaties governing States' obligations to prosecute genocide and war crimes. Indeed, while there are other treaties that address offences such as torture or enforced disappearance (both of which could amount to crimes against humanity), those treaties do not directly address crimes against humanity.[299] An independent treaty on crimes against humanity would therefore stigmatise such conduct, draw further attention to the need for its prevention and punishment, and help to encourage more effective inter-State cooperation on prevention, investigation, prosecution and extradition for such crimes.

295 For example, the recent joint investigative team (JIT) for Ukraine set up by Lithuania and Poland, and joined by Estonia, Latvia, Slovakia and Romania will be a critical tool. The ICC participates in the JIT. The JIT also has a Memorandum of Understanding with the United States. *See* European Union Agency for Criminal Justice Cooperation, 'ICC participates in joint investigation team supported by Eurojust on alleged core international crimes in Ukraine' (25 April 2022); European Union Agency for Criminal Justice Cooperation, National Authorities of the Ukraine joint investigation team sign Memorandum of Understanding with the United States Department of Justice (4 March 2023).

296 *See* section Practical Challenges to Prosecuting International Crimes in the UK, (3) The UK lacks sufficient mechanisms for international cooperation in investigations.

297 MLA Diplomatic Conference, MLA Treaty (26 May 2023).

298 International Law Commission, Draft articles on Prevention and Punishment of Crimes Against Humanity, para 22.

299 There have been various attempts to codify crimes against humanity in a dedicated treaty of international law. Though none have yet led to a finalised treaty, the prohibition of crimes against humanity, similar to the prohibition of genocide, has been considered a peremptory norm of international law, from which no derogation is permitted and which is applicable to all States.

Currently, domestic laws relating to crimes against humanity differ widely, and a large number of States have no national law on crimes against humanity at all, severely hampering efforts and mutual legal assistance. The UK has consistently indicated support for the treaty, including very recently, when it stated it "believes that a new convention would have an important role to play in improving accountability for these atrocious crimes and reducing their occurrence in the future".[300] The UK sponsored a draft resolution proposing the establishment of an *ad hoc* committee to examine the Draft Articles.[301]

However, as with negotiations for the MLA treaty, the UK emphasised that provisions relating to establishment of universal jurisdiction on the grounds of presence in a State's territory (draft Article 7) would require changes to domestic law, and emphasised that it would need to assess the impact of the proposed treaty on its laws before ratification.[302]

Recommendation: The UK should strengthen international cooperation in prosecuting international crimes, including by signing and ratifying the MLA treaty and take a leading role in advancing the CAH treaty.

(4) There is insufficient coordination between the UK's relevant national agencies

Cooperation among relevant agencies at the national level is also crucial to the successful prosecution of international crimes. Many newly created specialised war crimes units in Europe work closely with immigration services, who share information on suspected perpetrators with investigators.[303] For example, in the Netherlands, a specialised unit known as the '1F Unit' was created within the immigration services to identify people who are suspected of involvement in serious international crimes.[304] Similarly, Canada's War Crimes Program is a coalition of the Royal Canadian Mounted Police (Canada's federal police body), Canadian Border Services Agency, Immigration, Refugees, and Citizenship Canada, and the Department of Justice. This coalition meets regularly to share information and collaborate in detecting potential perpetrators on

300 United Kingdom Mission to the United Nations, Statement of United Kingdom of Great Britain and Northern Ireland to the United Nations General Assembly, Sixth Committee, UNGA 77, Agenda Item 78 (10 October 2022).

301 *Ibid.*

302 *See* section Practical Challenges To Prosecuting International Crimes In The UK, (2) UK Investigators Face Significant Challenges in Evidence Gathering from Foreign Jurisdictions. A compilation of the UK's comments on the treaty to the Sixth Committee between 2014 and 2020 is available at: Whitney R. Harris World Law Institute Washington University School of Law, Compilation of Government Reactions to the UN International Law Commission's Work on Crimes Against Humanity 2013-2020 (February 2021).

303 International Centre for Transitional Justice, 'Gearing Up the Fight Against Impunity' (March 2022), p. 51.

304 *Ibid.*

Canadian soil, investigating allegations of international crimes brought to their attention, and deciding on the most appropriate remedy if applicable (criminal prosecution, revocation of citizenship and deportation, etc.).

This type of collaboration was key to the prosecution in Koblenz, Germany, of Eyad Al-Gharib, a former Syrian intelligence officer charged with bringing at least 30 protesters to a Damascus prison, where they were tortured, after peaceful pro-democracy protests erupted against President Assad's regime in 2011. The German immigration authorities[305] are one of the first contact points for Syrian asylum seekers arriving in the country and the first to conduct interviews with them. If, during an asylum interview, a case worker finds information relevant to crimes under the German Code of Crimes Against International Law, they will send this information to a special division within the immigration authorities. This division then passes information on to the federal criminal police. Statements made during Al-Gharib's asylum proceedings in May 2018, in which he claimed to have witnessed violent assaults on protestors, and again in August 2018 where he disclosed his involvement in the arrest of 30 protestors and witnessed their mistreatment, triggered an investigation by the German police.[306] He was later convicted for aiding and abetting crimes against humanity.[307]

Collaboration between police units and prosecutors is also very important. Again in Germany, in a case involving Anwar Raslan (Al-Gharib's superior in the Syrian General Intelligence Directorate), police investigators testified that Raslan filed a criminal complaint with a Berlin police station stating that he felt he was being followed by Syrian intelligence agency members in 2015.[308] In this complaint, he gave information on his work as a colonel in Syria's General Intelligence Directorate, and even signed his name using his military title – 'Colonel'.[309] Based on this information, the German federal police contacted the prosecution authorities to open investigations.[310] A case was opened concerning his alleged role in the torture and abuse of over 4,000 detainees in a prison under his command between the end of April 2011 and the beginning of September 2012.[311] On 13 January 2022, the court in Koblenz found him guilty of crimes against humanity committed through killing, torture, severe deprivation of liberty, rape and sexual assault as well as other crimes.[312]

In the UK, the Special Cases Unit of the Home Office, based in Liverpool, is responsible for reviewing cases for asylum to ensure that certain individuals linked to terrorism, espionage, war crimes and serious and organised crime are not granted British

305 Also known as the Bundesamt für Migration und Flüchtlinge (BAMF).
306 Human Rights Watch, Q&A: First Syria State Torture Trial in Germany (6 January 2022).
307 TRIAL International, Eyad Al-Gharib (last updated 3 April 2023).
308 Human Rights Watch, Q&A: First Syria State Torture Trial in Germany (6 January 2022).
309 Human Rights Watch, Seeking Justice for Syria (6 January 2022).
310 Human Rights Watch, Q&A: First Syria State Torture Trial in Germany (6 January 2022).
311 Open Society Justice Initiative, Federal Prosecutor's Office v. Anwar R.
312 TRIAL International, Anwar Raslan (last updated 30 March 2023).

nationality, or if already granted, are deprived of it.[313] Where the Special Cases Unit of the Home Office identifies suspected perpetrators of core international crimes, they may refer these to SO15 for prosecution. But this often does not happen.

A freedom of information request revealed that between 2013 and 2015, 135 individuals were refused citizenship in the UK by the Home Office due to their alleged involvement in war crimes, crimes against humanity, genocide or torture. None of these cases were referred for removal action, and none of these cases were referred to the Metropolitan Police for investigation.[314] Although the authors of this report sought to obtain more recent statistics, the Home Office stated that "it does not collect data as to the reasons for the individual being assessed as not of good character, which include, but are not limited to, suspected involvement in war crimes, immigration offences and criminality".[315]

While the UK War Crimes Network convenes relevant agencies bi-annually to discuss relevant casework, a more coordinated approach to identifying and closing gaps in cooperation would be useful. Appointing a government point person who is responsible for the UK's accountability efforts as a whole would be a useful step in this regard. This individual would be responsible for regular coordination of the various responsible bodies on this issue in a dedicated and systematic manner.

A centralising body similar to the US Office for Global Criminal Justice is one model to ensure such coordination. In the US, the Office and its head, the Ambassador-at-Large for Global Criminal Justice, advise the Secretary of State and the Under Secretary of State for Civilian Security, Democracy, and Human Rights on issues related to war crimes, crimes against humanity, and genocide. The US Office for Global Criminal Justice also formulates national policy responses to atrocities, which ensures a degree of consistency in the national response to such crimes.[316] Establishing a similar entity in the UK would allow the country to develop more consistent policies and practices in is response to atrocity crimes around the world.

Recommendation: The UK's relevant national bodies, such as the Home Office, CPS and Metropolitan Police, should improve coordination amongst themselves and appoint a point person akin to an Ambassador-at-Large for Global Criminal Justice.

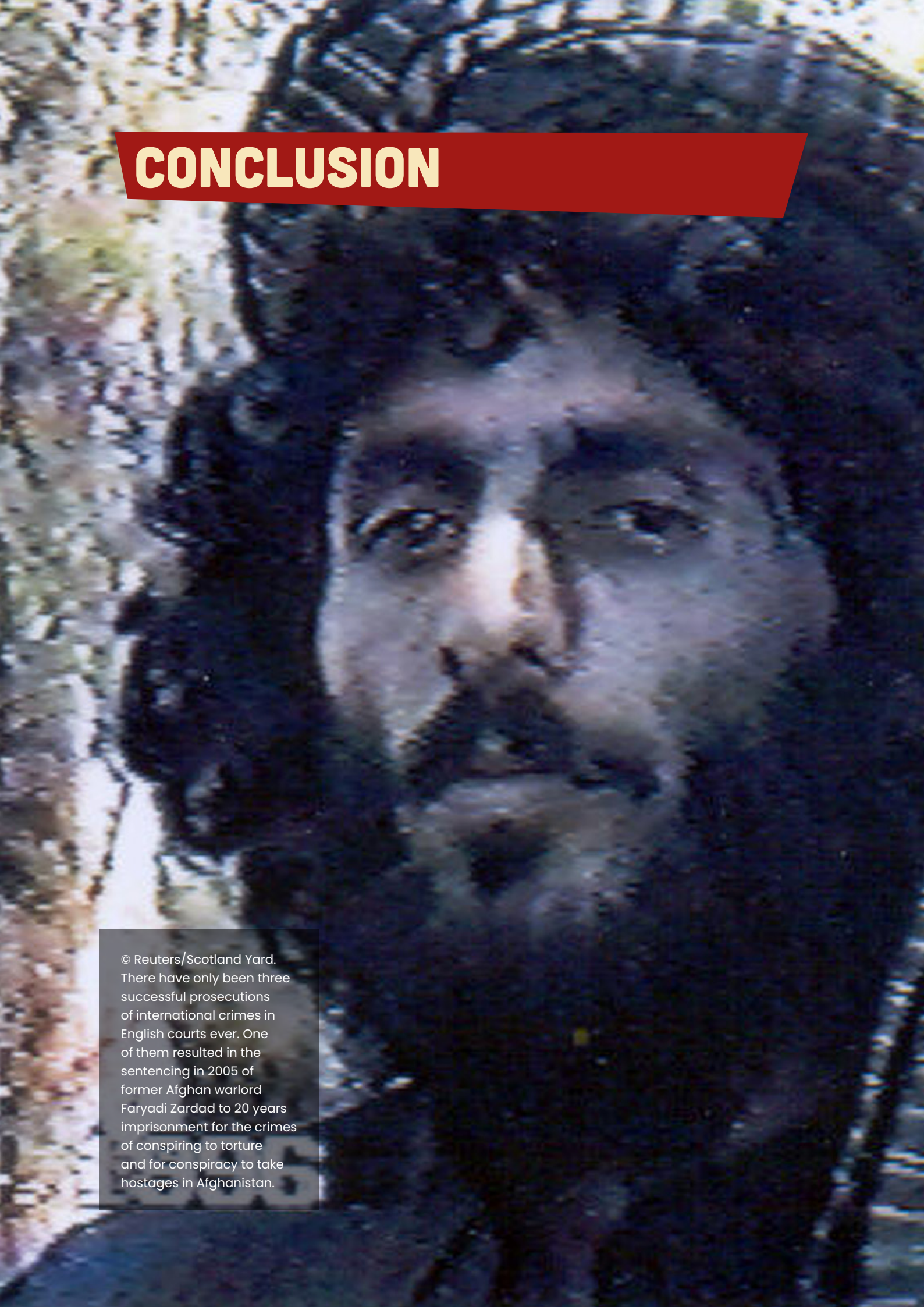
313 *See* Home Office, Nationality: good character requirement (31 July 2023); *see also*, Home Office, Exclusion under Article 1F of the Refugee Convention: caseworker guidance (28 June 2022).

314 Freedon of Information Requests held in REDRESS files.

315 *Ibid.*

316 United States Department of State, Office of Global Criminal Justice.

CONCLUSION



© Reuters/Scotland Yard. There have only been three successful prosecutions of international crimes in English courts ever. One of them resulted in the sentencing in 2005 of former Afghan warlord Faryadi Zardad to 20 years imprisonment for the crimes of conspiring to torture and for conspiracy to take hostages in Afghanistan.

This report has highlighted the key legislative and practical challenges that have hindered the successful prosecution of international crimes in UK courts in recent years. As things stand, many perpetrators of international crime are free to visit the UK without fear of prosecution by the authorities, provided they are not British citizens or residents. The UK should make the changes that are needed to ensure it is hostile territory – and not a safe haven – for perpetrators of the worst crimes known to humanity.

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