



UPHOLDING THE CONVENTION AGAINST TORTURE

Briefing Paper on the Overseas Operations Bill

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REDRESS

Ending torture, seeking justice for survivors

INTRODUCTION

1. REDRESS is a UK charity that brings legal claims to obtain justice on behalf of survivors of torture. We act for a number of British citizens who have been tortured abroad, and we also support survivors around the world. We have worked with the Metropolitan Police to instigate the prosecution of torturers found in the UK. We have also encouraged the British authorities to prosecute war crimes alleged to have been committed by British soldiers and commanders.
2. The Overseas Operations Bill creates a statutory presumption against prosecution, which stipulates that once five years have elapsed from the date of the incident, it is to be exceptional (requiring the consent of the Attorney General) for a prosecutor to prosecute a service person or veteran for an offence committed during an overseas operation. This applies to all crimes apart from certain sexual offences (as set out in Schedule 1 Part 1 of the Bill). In taking a decision as to whether to prosecute, prosecutors are required to give “particular weight” to two particular factors, namely the adverse effects of “operational conditions” of the accused and, where there has been a previous investigation, the public interest in finality.
3. This Briefing Note draws on REDRESS’ legal and practice expertise and sets out the ways in which the proposed Bill violates international law in five areas:
 - a) **The absolute prohibition of torture.** International law requires that torture will be punished in all circumstances. The Bill introduces a presumption that British soldiers and commanders will not be punished for torture.
 - b) **The duty to investigate and prosecute.** International law requires that those who commit serious violations of international law are effectively investigated and prosecuted. This includes those with command responsibility. The Bill undermines these standards and diverges significantly from established legal practice as to the exercise of prosecutorial discretion. It also fails to address the real problem, which is the poor quality of investigations into crimes committed overseas.
 - c) **De facto amnesties.** International law prohibits amnesties for grave breaches of the Geneva Conventions, torture, genocide, and crimes against humanity. The provisions of the Bill effectively prohibit prosecutions (save in “exceptional” cases) and, as a result, amount to a *de facto* amnesty.
 - d) **Justice for Victims.** The Bill fails to take into account the rights of victims to justice, truth and reparations.
 - e) **Vexatious prosecutions.** The concerns as to “vexatious” prosecutions are misplaced, given that there have been so few prosecutions in the last 20 years for international crimes.
4. Many of the points raised in this Briefing Note mirror those in the report of the Joint Committee on Human Rights (JCHR).¹ In particular, the JCHR expressed “significant concerns that the presumption against prosecution runs risk of contravening the UK’s international legal obligations under international humanitarian law and international human rights law”.² As a result of this, and a number of other failings, the JCHR

¹ The Joint Committee on Human Rights (JCHR), *Legislative Scrutiny: The Overseas Operations (Service Personnel and Veterans) Bill*, Ninth Report of Session 2019-21 (29 October 2020) (JCHR Report), §34. Available at: <https://committees.parliament.uk/publications/3191/documents/29846/default/>.

² *Ibid.*, §§55-61.

concluded that the Bill is simply “bad for the rule of law, bad for the victims of crime and bad for our Armed Forces.”³

³ Statement of Harriet Harman MP QC, Chair of the JCHR. Available at: <https://committees.parliament.uk/committee/93/human-rights-joint-committee/news/120321/operations-service-personnel-and-veterans-bill-is-unjustifiable-ineffective-and-will-prevent-justice-from-being-done-say-joint-committee-on-human-rights/>

A. ABSOLUTE PROHIBITION OF TORTURE

The Bill undermines the absolute prohibition against torture, by creating a presumption that torture will no longer be punished when committed by British soldiers and commanders. This position violates international law.

5. The Geneva Conventions (GCs),⁴ Articles 2 and 16 of the UN Convention against Torture (UNCAT), Article 7 of the International Covenant on Civil and Political Rights (ICCPR), and Article 3 of the European Convention on Human Rights (ECHR) prohibit the use of torture and other cruel, inhuman or degrading treatment or punishment (CIDTP) under any circumstance, including in times of war.⁵ The UK has ratified all of these treaties.⁶
6. Since UNCAT's entry into force, the absolute prohibition of torture and other CIDTP has been recognised as a *jus cogens* norm, that is, one which cannot be derogated from in any circumstances and cannot be covered by a statute of limitations.⁷ This has been explicitly accepted by UK courts.⁸
7. The International Criminal Court Act 2001 makes it an offence "for a person to commit genocide, a crime against humanity or a war crime",⁹ (which includes torture as a crime against humanity), and the Armed Forces Act 2006 makes it an offence for service personnel to commit acts which are prohibited by law,¹⁰ or to commit certain "cruel or indecent" acts.¹¹ The Bill intends all such offences to be covered by the presumption against prosecution, and the only "excluded offences" are certain offences of a sexual nature set out in Schedule 1 Part 1 of the Bill. As the ICC Prosecutor has recently argued:

...the inclusion of a section on 'excluded offences' suggests that the legislation has the potential to impact the ordinary course of criminal inquiries into certain categories of conduct. The UK's assurance that "all allegations of serious offences, including those within the jurisdiction of the Court, will be investigated and, where appropriate, prosecuted" would be clearer, for example, if the crimes within the

⁴ The Geneva Conventions of 1949 and their Additional Protocols of 8 June 1977. For example, torture is prohibited by Article 3 common to the four Geneva Conventions, Article 12 of the First and Second Conventions, Articles 17 and 87 of the Third Convention, Article 32 of the Fourth Convention, Article 75 (2 a & e) of Additional Protocol I and Article 4 (2 a & h) of Additional Protocol II. In international armed conflict, torture constitutes a grave breach under Articles 50, 51, 130 and 147 respectively of these Conventions. Under Article 85 of Additional Protocol I, these breaches constitute war crimes.

⁵ See also Article 5 of the Universal Declaration of Human Rights.

⁶ In particular, the GCs were incorporated into UK law by way of the Geneva Conventions Act 1957, which makes it an offence for someone to commit (or aid, abet or procure someone else to commit) a "grave breach" of any of the Conventions. A "grave breach" is defined as "willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly" (Geneva Conventions Act 1957, sections 1 and 1A, and First Geneva Convention, Article 50).

⁷ Vienna Convention on the Law of Treaties 23 May 1969 (entered into force, 27 January 1980), Article 53. See also: European Court of Human Rights (ECtHR), *Al-Adsani v UK*, App. No 35763/97 (21 November 2001), §§30, 60, 61, quoting International Criminal Tribunal for the former Yugoslavia, *Prosecutor v. Furundzija* (10 December 1998, case no. IT-95-17/I-T) at §§147, 153-154; *Prosecutor v Ieng Sary*, Decision on Ieng Sary's Rule 89 Preliminary Objections (Ne Bis In Idem, Amnesty and Pardon) ECCC Case File No. 002/19-09-2007-ECCC/TC (3 November 2011), §§38-39.

⁸ *A v Secretary of State for the Home Department (No 2)* [2006] 2 AC 221, at §33, recently cited in *McGuigan & McKenna v Chief Constable of the PSNI* [2019] NICA 46, at §76.

⁹ In England and Wales (section 51) and Northern Ireland (section 58).

¹⁰ Section 42.

¹¹ Section 23.

jurisdiction of the Court were set out in the exceptions section of the draft legislation.¹²

8. As outlined above, UK law and international law is clear that the prohibition of torture is absolute in all circumstances, not just exceptional ones, and so must always be prosecuted. The Bill violates this standard, as it creates a presumption that torture will no longer be prosecuted when committed by British troops.

¹² Office of the Prosecutor (OTP) of the International Criminal Court, *Situation In Iraq: UK Final Report* (OTP Report), 9 December 2020, §477, available at <https://www.icc-cpi.int/itemsDocuments/201209-otp-final-report-iraq-uk-eng.pdf>

B. INVESTIGATION AND PROSECUTION

International law requires the UK to prevent, investigate and punish torture, and not to place time limits on these obligations. The Bill is inconsistent with this as it is likely to deter both investigations and prosecutions of international crimes, including those committed by commanders and other senior personnel. In prescribing the approach to be taken to prosecutorial discretion, the Bill also departs from established and well-informed legal practice.

The duty to investigate

9. While the Bill explicitly applies to prosecutors, in practice it is likely to limit investigations where it is inevitable that a subsequent prosecution will be blocked by the presumption, or where a preliminary legal opinion is sought from the relevant prosecutor. This will particularly be the case where there has been a previous investigation and the prosecutor is required, when deciding whether to prosecute, to give “particular weight” to the public interest in finality unless “compelling new evidence” has become available. There will also be strong incentives to delay investigations until the five-year period has expired. This potential deterrence of investigations is inconsistent with international law.
10. The Geneva Conventions (GCs),¹³ the UNCAT, the ICCPR and the ECHR all include (or imply) a duty to investigate allegations, especially where they relate to serious crimes such as torture or other CIDTP. This duty has been confirmed by international tribunals, especially with regards to torture.
11. Such tribunals have repeatedly concluded that the prohibition of torture is only effective if it is combined with a duty to investigate.¹⁴ This duty arises as soon as State authorities become aware of allegations or grounds to believe that torture has occurred, and does not first require a complaint to be made by a victim.¹⁵ Any such investigations must be prompt and effective.¹⁶
12. Where there has been a previous investigation, the UK is obliged to take further investigative measures “*where there is a plausible, or credible, allegation, piece of evidence or item of information relevant to the identification and eventual prosecution or punishment of the perpetrator*” of an unlawful killing or torture [emphasis added].¹⁷ This obligation exists regardless of the time that has elapsed since the alleged crime and in respect of war crimes and crimes against humanity, in which the public interest in obtaining prosecution and conviction is “*firmly recognised*”.¹⁸

¹³ First Geneva Convention, Article 49; Second Geneva Convention, Article 50; Third Geneva Convention, Article 129; Fourth Geneva Convention, Article 146.

¹⁴ ECtHR, *Assenov and Others v Bulgaria*, App. No 24760/94 (28 October 1998), §102.

¹⁵ Inter-American Court of Human Rights (IACtHR), *Servellón-García and Others v Honduras*, Series C No. 152, Judgment of 21 September 2006, §119.

¹⁶ For example, see ECtHR, *Armani Da Silva v United Kingdom* (Grand Chamber), App. no 5878/08 (30 March 2016), §§232 – 239.

¹⁷ ECtHR, *Brecknell v the United Kingdom*, App. No 32457/04 (27 November 2007), §71 (regarding the procedural obligation to investigate under Article 2), and ECtHR, *Jeronovičs v. Latvia*, App no 44898/10 (5 July 2016), §107 (regarding the procedural obligation to investigate under Article 3). The Court did recognise that there is no absolute right to obtain a prosecution or conviction (*Brecknell v the United Kingdom*, at §66) and that the investigate steps “*that it will be reasonable to take will vary considerably with the facts of the situation. The lapse of time will, inevitably, be an obstacle as regards, for example, the location of witnesses and the ability of witnesses to recall events reliably. Such an investigation may in some cases, reasonably, be restricted to verifying the credibility of the source, or of the purported new evidence*” (*Brecknell v the United Kingdom*, at §71).

¹⁸ *Brecknell v the United Kingdom*, §69: “*there is little ground to be overly prescriptive as regards the possibility of an obligation to investigate unlawful killings arising many years after the events since the*

Investigative deficiencies in the UK context

13. The Bill fails to address the real problem of the poor quality of, and inordinate delays in, such investigations. High quality investigations undertaken promptly after the events in question are likely to obviate the need for the kind of changes proposed by this Bill, because they will quickly identify any clearly unfounded claims and dismiss them.
14. A wide range of commentators have recognised the deficiencies in the prosecutions brought in relation to the Iraq conflict. In his evidence before the Defence Committee, military law solicitor Lewis Cherry stated that “prosecutions [in relation to the Iraq conflict] should have been brought much nearer to the date”.¹⁹ In its report on the Bill, the Joint Committee on Human Rights (JCHR) found that the evidence presented “indicates overwhelmingly” that investigations have been “inadequate, insufficiently resourced, insufficiently independent and not done in a timely manner to gather adequate evidence”.²⁰ The ICC’s Prosecutor has recently characterised it as ‘uncontroversial’ to assert that “the initial response of the British Army in theatre at the time of the alleged offences was inadequate and vitiated by a lack of a genuine effort to carry out relevant investigations independently or impartially.”²¹ The JCHR concluded that this “resulted in repeated investigations to try and remedy the flaws of previous investigations”.²²
15. It has been recognised that “the main bodies responsible for criminal investigations – IHAT²³ and later SPLI²⁴ – have faced serious obstacles conducting effective investigations, partly due to structural constraints and political opposition – and in some cases reported interference”, and that the resulting uncertainty and delays have impacted soldiers and victims alike.²⁵
16. It is also crucial that the scope of investigations is sufficient to ensure that they are not confined to those alleged to have carried out the relevant abuses, but also those whose commands may have led to the abuses being inflicted (see paragraph 20 et seq on command responsibility).²⁶

The duty to prosecute grave breaches

17. The International Committee of the Red Cross (ICRC), in providing its authoritative commentary on the Grave Breaches regime under the GCs, has also made clear that such cases must be *prosecuted*. This states that if competent authorities have “collected

public interest in obtaining the prosecution and conviction of perpetrators is firmly recognised, particularly in the context of war crimes and crimes against humanity”(emphasis added).

¹⁹ Defence Committee, Oral evidence: ‘MoD support for former and serving personnel subject to judicial processes’, HC 109, 8 June 2016, Q28.

²⁰ JCHR Report, §34.

²¹ OTP Report, §5.

²² JCHR Report, §34.

²³ Iraq Historic Allegations Team.

²⁴ Service Police Legacy Investigations branch of the Service Police.

²⁵ Carla Ferstman, Thomas Obel Hansen and Noora Arajärvi, *The UK Military in Iraq: Efforts and Prospect for Accountability for International Crimes Allegations?* (October 1, 2018), p.50. Available at SSRN: <https://ssrn.com/abstract=3272347>. The recent Service Justice System Review (SJSR) made certain recommendations to improve investigations. See HH Shaun Lyons & Professor Sir Jon Murphy, *Service Justice System Review (Part 2)*, 29 March 2019 (published February 2020), §§77-94; see also: Professor Sir Jon Murphy, *Service Justice System Policing Review (Part 1)*; both available at <https://www.gov.uk/government/publications/service-justice-system-review>

²⁶ IACtHR, *Case of Women Victims of Sexual Torture in Atenco v. Mexico*, Preliminary Objection, Merits, Reparations and Costs, Judgment of 28 November 2018. Series C No. 371, §294.

sufficient evidence to bring a criminal charge, they cannot rely, for example, on national rules of prosecutorial discretion and decide not to press charges”.²⁷

18. As set out further below (at paragraph 25 et seq), the Bill’s provisions as to the exercise of prosecutorial discretion, on which prosecutors will rely, will in fact operate to make prosecutions less likely.

Command responsibility

19. The obligations under international law to investigate and punish serious crimes extend to the investigation and punishment of those giving the relevant orders.
20. The Bill, however, is silent on the question of command responsibility. In its use of presumptions against prosecution, the Bill does not distinguish between service personnel and commanders. There is therefore a risk that impunity is also conferred on senior officials and commanders that give the orders.
21. Customary international law establishes that commanders and other superiors are criminally responsible for war crimes committed or attempted by subordinates following their orders, or (even if subordinates were not following their orders) if the commanders “knew, or had reason to know, that the subordinates were about to commit or were committing such crimes and did not take all necessary and reasonable measures in their power to prevent their commission, or if such crimes had been committed, to punish the persons responsible.”²⁸
22. In domestic law, there are various possible ways to prosecute a military or civilian commander. These include the offences of (a) ‘conspiracy’ contrary to section 1 of the Criminal Law Act 1997 and (b) aiding and abetting torture contrary to section 134 of the Criminal Justice Act 1988.
23. In addition, section 65 of the UK International Criminal Court Act 2001²⁹ embeds the concept of command responsibility within UK law, permitting military commanders or other superiors to be prosecuted domestically for relevant offences (that is, genocide, crimes against humanity, and war crimes) committed by forces under their effective authority and control.³⁰ These offences will also be charged as aiding, abetting, counselling, or procuring.³¹
24. The Bill does not recognise this potential criminal responsibility of commanders and other superiors. This means that the five-year time limit would apply even if, for example, a commander or other senior official was charged with conspiracy to torture or alleged to have aided, abetted or procured a grave breach of the GCs.

The factors in the exercise of prosecutorial discretion

25. In deciding whether to prosecute (contrary to the presumption), the Bill requires the prosecutor to give “particular weight” to specific factors.³² This approach differs significantly from that of the Code for Crown Prosecutors (the Code),³³ which has been followed for years by the Crown Prosecution Service (CPS) and the Service Prosecuting Authority (SPA) in prosecuting both civilians and those in the armed forces (including

²⁷ ICRC, Commentary to the First Geneva Convention, Art.49, §2862 (2016).

²⁸ Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary international humanitarian law* (2005) CUP/ICRC, Rule 153: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule153

²⁹ Available at: <http://www.legislation.gov.uk/ukpga/2001/17/contents>.

³⁰ Sections 65(2) and (3).

³¹ Section 65(4).

³² Clause 3 of the Bill.

³³ CPS, *The Code for Crown Prosecutors*, 26 October 2018, accessible at: <https://www.cps.gov.uk/publication/code-crown-prosecutors>.

personnel on overseas operations).³⁴ In doing so, the Bill makes prosecutions less likely, even where they may be sufficient evidence against the accused and/or prosecution would be in the interest of the victim(s).

26. There are four key points of divergence, namely regarding (a) the mental state of the accused, (b) the public interest in finality, (c) the seriousness of the offence, and (d) the position of the victim.

The Code

27. The Code, which was first published in 1986 and is issued by the Director of Public Prosecutions, draws on the expertise of a range of stakeholders and the experience of the CPS in prosecuting thousands of cases each year. The periodic revisions of the Code are informed by detailed consultations involving the police and law enforcement agencies, overseas prosecuting authorities, CPS staff, the judiciary and magistracy, academics and research institutions, government departments, barristers and solicitors and third sector organisations (among others). This ensures that the Code not only reflects changes in prosecution policy and practice, but also legal and social developments, taking into account the views of all interested parties.

The starting point

28. When taking a decision as to whether to proceed with a prosecution, prosecutors generally engage in a two-stage test:³⁵ (a) the evidential stage, which requires prosecutors to be satisfied that there is sufficient evidence to provide a realistic prospect of conviction,³⁶ and (b) the public interest stage, in which prosecutors will determine whether a prosecution is required in the public interest.³⁷ If the evidential stage is met, a prosecution will *usually* take place unless the public interest factors tending against prosecution outweigh those tending in favour.³⁸ This contrasts with the Bill which (as set out above) creates a statutory presumption *against* prosecution.³⁹
29. As a general principle, prosecutors must also apply the principles of the ECHR, in accordance with the Human Rights Act 1998 (HRA) and obligations arising from international conventions, at all stages of a case.⁴⁰ In its current form, the Bill makes no reference to the need to comply with the ECHR or the UK's international obligations (such as establishing an absolute prohibition on torture and other serious and international crimes).

The exercise of prosecutorial discretion

30. The “public interest” stage of the Code requires prosecutors to engage in a delicate balancing exercise, considering a range of factors which tend both in favour of and against prosecution and taking into account the interests of all involved.⁴¹

³⁴ The Service Prosecuting Authority is responsible for the consideration of cases and offences contrary to military discipline. It reviews cases referred to it by the Service Police or Chain of Command and prosecutes cases by Court Martial or through the Service Civilian Court. While the Code is issued primarily for prosecutors in the CPS, the SPA applies the Code when taking decisions as to whether to prosecute (see: https://spa.mod.uk/?page_id=241). The Bill applies to the Director of Service Prosecutions (that is, the Head of the SPA) and SPA prosecuting officers, in addition to the Director of Public Prosecutions and CPS prosecutors (see clause 7(3) of the Bill).

³⁵ The Code, §4.2.

³⁶ *Ibid.*, §§4.6 – 4.8.

³⁷ *Ibid.*, §4.9.

³⁸ *Ibid.*, §4.10.

³⁹ Clause 2 of the Bill.

⁴⁰ The Code, §2.10.

⁴¹ *Ibid.*, §§4.9-4.14.

31. Prosecutors are required to consider, *inter alia*, (a) the seriousness of the offence, (b) the level of culpability of the accused, (c) the circumstances of and the harm caused to the victim, and (d) the proportionality of any prosecution.⁴² The weight to be attached to each of those matters will vary according to the facts and merits of each case.
32. In contrast, the Bill requires a prosecutor to give particular weight to just two specific matters in every case (regardless of the other specific facts of the case), and these matters will only be given particular weight insofar that they *reduce* the accused's culpability or tend *against* prosecution.⁴³
33. The focus of the Bill on those two matters in assessing culpability is also contrary to the Code, which recognises that "*the greater the suspect's level of culpability, the more likely it is that a prosecution is required*".⁴⁴ It identifies a large number of factors that are likely to be determinative of culpability (reflecting the complexity in such an assessment) and which focus primarily on the conduct of the accused.⁴⁵

The two matters to be given "particular weight"

The mental state of the accused

34. Under Clause 3(2)(a), a prosecutor should give particular weight to any adverse effects (or likely adverse effects) of the conditions the accused was exposed to during deployment on an overseas operation, including their experiences and responsibilities. An "adverse effect" is defined as an adverse effect on their capacity to make sound judgments or exercise self-control, or any other adverse effect on their mental health.⁴⁶
35. The criminal law does not consider the mental health of the accused except in exceptional and clearly defined circumstances, namely when taking the decision as to whether to prosecute, when the accused's fitness to plead is in doubt and in any applicable defences.⁴⁷ The Code's approach to the consideration of the mental state of the accused at the time of the offence is nuanced. As part of the evidential stage, prosecutors may consider the accused's mental state, but only to determine whether any defences may apply as part of assessing the prospect of a conviction.⁴⁸

⁴² Ibid., §§4.14(a) – (g).

⁴³ It is currently unclear whether prosecutors will be required to attach particular weight to these matters if they instead tend to increase culpability or support prosecution.

⁴⁴ The Code, §4.14(b).

⁴⁵ The factors include: the suspect's level of involvement in the alleged offence, the degree of premeditation, previous convictions and the likelihood of continued offending. Unlike the Bill, the Code does not provide that any of these factors should only be considered, or particular weight given to them, depending on their impact on the accused's culpability or the likelihood of prosecution.

⁴⁶ Clause 3(4). In making a decision under Clause 3(2)(a), a prosecutor must have regard to the exceptional demands and stresses to which members of Her Majesty's forces are likely to be subject while deployed on overseas operations, regardless of their length of service, rank or personal resilience (Clause 3(3)).

⁴⁷ "Fitness to plead" goes to the extent to which the accused is able to participate in a criminal trial. In the Crown Court, the approach is set out in s. 4 and 4A of the Criminal Procedure (Insanity) Act 1964. A judge will determine whether a defendant is fit to plead on the balance of probabilities, taking into account the evidence of registered medical practitioners as to whether the defendant is incapable of, *inter alia*, understanding the charges against them, deciding how to plead, instructing representation and following the course of proceedings. A relatively recent example of this was the case of former peer Grenville Janner, accused of serious child sex crimes, who was found to be unfit to plead as a result of advance dementia. A trial of the facts took place but without a finding as to guilt.

⁴⁸ For example, the defence of duress, which is not available in murder or attempted murder cases, may involve consideration of whether the accused's mental health made them more susceptible to a threat or circumstances caused their will to be wholly over-borne (*Bowen* [1996] 2 Cr App R 157). The defence of diminished responsibility, which is available in manslaughter, but not murder, cases, requires the

36. At the public interest test stage, specifically when determining the culpability of the accused, prosecutors should have regard to (a) the mental (and physical) health of the accused at the time of the offence and (b) the impact of the prosecution if there is evidence that it is likely to interact with the accused's mental health. However, this is subject to two clear caveats which are not reflected in the Bill. First, the Code makes clear that the mental health of the accused at the time of the offence cannot be considered in isolation.⁴⁹ Instead, prosecutors must also consider the seriousness of the offence, the likelihood of re-offending and the need to safeguard the public. Secondly, it is clearly recognised that "mental health conditions do not provide a carte blanche for criminal culpability" and where the offence is serious, it may be relevant to sentencing, rather than the decision to prosecute.
37. As noted by the JCHR, given that the mental health of a defendant is already considered as part of the exercise of prosecutorial discretion under the Code, there is no "solid basis for including additional requirements that could risk granting de facto impunity to those who have committed crimes on the grounds that the perpetrator lacked sound judgement, or could not exercise self-control, beyond the threshold already established in criminal law."⁵⁰

The public interest in finality

38. Under Clause 3(2)(b), a prosecutor must also give particular weight to the public interest in finality being achieved, without undue delay, where there has already been a relevant previous investigation (that is, which did not lead to a decision as to whether to charge, or a decision was taken not to charge the alleged perpetrator) and "no compelling new evidence" has become available.
39. While the Code recognises that once a suspect is informed of a decision not to prosecute, they will be entitled to rely on that decision, it also clearly states that such a decision may be overturned (particularly if the case is serious).⁵¹ The reasons for overturning such a decision are not confined to the existence of new evidence (described as "significant evidence" in the Code) but include (a) cases where the original decision was wrong and a prosecution should be brought to maintain confidence in the criminal justice system and (b) cases involving a death, in which a review following an inquest concludes that a prosecution should be brought (notwithstanding any previous decisions).⁵² In doing so, the Code recognises that "the legitimate expectations of a complainant cannot be overridden by a suspect's belief that he or she will not be prosecuted".⁵³
40. Moreover, as noted above, significant concerns have been expressed as to the standard and adequacy of investigations of members of the Armed Forces. As made clear by the JCHR, "no prosecution that is in the public interest, should be prevented from being

accused to show (on the balance of probabilities) that they were suffering from an abnormality of mental functioning, (i) arising from a medical condition, (ii) substantially impairing their ability to understand their conduct and form a judgment/exercise self-control, and (iii) which provides an explanation for their actions/omissions.

⁴⁹ CPS Legal Guidance, *Mental Health: Suspects and Defendants with Mental Health Conditions or Disorders*, 14 October 2019, accessible at: <https://www.cps.gov.uk/legal-guidance/mental-health-suspects-and-defendants-mental-health-conditions-or-disorders>.

⁵⁰ JCHR Report, §79.

⁵¹ CPS Legal Guidance, *Reconsidering a Prosecution Decision*, 28 April 2020, accessible here: <https://www.cps.gov.uk/legal-guidance/reconsidering-prosecution-decision>

⁵² The Code, §10.2.

⁵³ CPS Legal Guidance, *Reconsidering a Prosecution Decision*, 28 April 2020.

brought because of inadequate or insufficiently independent prior investigations by the MoD”.⁵⁴

Omitted considerations

41. In identifying two specific matters to be given particular weight in decisions on prosecution, the Bill does not give the same prominence to other considerations, which are emphasised in the Code.

The seriousness of the offence

42. Clause 3 of the Bill does not refer to seriousness of an alleged offence, in spite of the fact that extremely serious offences (such as war crimes and torture) fall within the scope of the Bill. In contrast, the Code emphasises the relevance of the seriousness of an offence, recognising that the “more serious the offence, the more likely it is that a prosecution is required”.⁵⁵ As noted above, the Code also makes clear that consideration of the seriousness of an offence cannot be divorced from the determination of culpability and it is particularly intertwined with consideration of the impact of an accused’s mental health.

The victim

43. Clause 3 of the Bill also omits reference to the victim and the effect of the alleged conduct on them. The Code explicitly notes that the “circumstances of the victim are highly relevant”⁵⁶ as part of the prosecution’s overall view of the public interest. It recognises that “the more vulnerable the victim’s situation, or the greater the perceived vulnerability of the victim, the more likely it is that a prosecution is required”.⁵⁷ Prosecutors are also required to consider the impact that the offence has had on the victim and whether prosecution is likely to have an adverse effect on the victim’s physical or mental health.⁵⁸
44. As outlined above, the introduction of a presumption against prosecution and the identification of two issues to be given “particular weight” when exercising prosecutorial discretion will deter both prosecutions and investigations, contrary to the UK’s obligations under international law. It also goes against years of legal practice which has been built on the experience and expertise of prosecutors and other key stakeholders.

⁵⁴ JCHR Report, §84.

⁵⁵ The Code, §4.14(a).

⁵⁶ The Code, §4.14(c).

⁵⁷ Ibid.

⁵⁸ Ibid.

C. AMNESTIES

The proposals in the Bill will have the effect of preventing the investigation and prosecution of serious international crimes and will eliminate liability. Consequently, they amount to a de facto amnesty and are contrary to international law.

45. As set out below, amnesties and pardons for international crimes and gross human rights violations are prohibited in (a) international humanitarian law, (b) international human rights law, and (c) the decisions of international criminal tribunals. This prohibition not only applies to formal amnesty laws, but also any other measure that may lead to impunity for serious human rights violations, that is, *de facto* amnesties.
46. The proposed legislation will effectively prohibit prosecutions save for “exceptional” cases (clause 2). This is a “blanket” exception, as the Bill applies the prohibition to any international crimes committed by British troops abroad, no matter whether committed by soldiers or by commanders. Save for sexual offences, the proposal applies to all international crimes, regardless of their gravity: Genocide, breaches of the GCs, Crimes against Humanity, and Torture.

International Humanitarian Law

47. The GCs oblige High Contracting Parties (HCPs) to (a) investigate grave breaches and (b) prosecute or extradite offenders.⁵⁹ This obligation is absolute and, as a result HCPs cannot absolve themselves or other HCPs from it.⁶⁰ Rule 158 of the International Committee of the Red Cross (ICRC) customary international humanitarian law study concludes that “States must investigate war crimes allegedly committed by their nationals or armed forces, or on their territory, and, if appropriate, prosecute the suspects,” and that “State practice establishes this as a norm of customary international law applicable in both international and non-international conflicts”.⁶¹

International Human Rights Law

48. Several human rights treaties contain a strong obligation on States to prosecute gross violations of human rights and the use of amnesties is in contradiction with these obligations.⁶² The UN Treaty Body mechanisms have also explicitly prohibited the use of amnesties and pardons for international crimes and gross human rights violations as their use may prevent the appropriate investigation and punishment of perpetrators.⁶³
49. For example, UNCAT – a treaty ratified by the UK – requires the UK to prosecute or extradite persons alleged to have committed torture and prevents it from applying statutes of limitation to torture.⁶⁴ The United Nations Committee against Torture has also expressed its concerns over domestic laws which impede the “investigation and

⁵⁹ For example, Article 49 Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field.

⁶⁰ The GCs prevent HCPs from absolving themselves or any other HCPs of any liability incurred in relation to grave breaches (Articles 51 GC I, 52 GC II, 131 GC III, 148 GC IV). According to ICRC Commentary to Article 51 of the GC I, “any liability” includes the responsibility contained in Article 49 to investigate and prosecute perpetrators of grave breaches.

⁶¹ ICRC, Customary IHL Database, Rule 158, <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1rulrule158>. The ICRC commentary confirms that “State practice establishes this as a norm of customary international law applicable in both international and non-international conflicts”, and provides the basis for the rule.

⁶² Mark Freeman, *Necessary Evils: Amnesties and the Search for Justice*, p.39.

⁶³ United Nations Human Rights Committee, *Concluding Observations of the Human Rights Committee – Lebanon* (1 April 1997) UN Doc. CCPR/C/79/Add.78, §12.

⁶⁴ Articles 4 and 7.

punishment” of human rights violations in breach of the UNCAT,⁶⁵ recommending that states should ensure that that pardon and any other similar measures leading to impunity for acts of torture are prohibited both in law and in practice.⁶⁶

50. Moreover, the United Nations Human Rights Committee has reaffirmed that amnesty laws in regard to serious human rights violations are incompatible with the ICCPR,⁶⁷ reiterating that they contribute to the creation of an atmosphere of impunity and bring about other serious human rights violations.⁶⁸

European Court of Human Rights

51. The European Court of Human Rights has stated that “[g]ranting amnesty in respect of ‘international crimes’ – which include crimes against humanity, war crimes and genocide – is increasingly considered to be prohibited by international law”.⁶⁹ The European Court has also noted that where a state agent has been charged with *jus cogens* crimes, such as torture, it is of the utmost importance for the purposes of an effective remedy that criminal proceedings and sentencing are not time-barred and that the granting of a pardon should not be permissible.⁷⁰ In such a situation, the granting of a pardon can “scarcely serve the purpose of an adequate punishment.”⁷¹

International Criminal Tribunals

52. International criminal tribunals have also consistently held that there can be no blanket amnesties or pardons at the international level for international crimes and gross violations of human rights. This has been made clear most recently by the ICC, which held that amnesties and pardons for serious acts constituting crimes against humanity are incompatible with international law, and that they deny the rights of victims.⁷²

De Facto Amnesties

53. The government has repeatedly stated that the proposal does not amount to an amnesty or a statute of limitations. However, international law prohibits any measures which exempt perpetrators from accountability for international crimes as *de facto* measures that prevent or inhibit investigation and prosecution. These may include clemency, reductions of sentence, pardons, and the application of limitation periods or statutes.

⁶⁵ United Nations Committee against Torture, *Concluding Observations on the Initial Report of Lebanon* (2017), UN Doc. CAT/C/LBN/CO/1, §§46 and 47; United Nations Committee against Torture, *Concluding Observations on Cabo Verde in the absence of a report* (2017) CAT/C/CPV/CO/1, §12. See also: Committee against Torture, *Concluding Observations on Morocco* (2011), UN Doc. CAT/C/MAR/CO/4, §6.

⁶⁶ United Nations Committee against Torture, *Concluding Observations on the Initial Report of Armenia* (2017) UN Doc. CAT/C/ARM/CO/4, §8.

⁶⁷ United Nations Human Rights Committee, *CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*, 10 March 1992, §15.

⁶⁸ United Nations Human Rights Committee, *Rodriguez v. Uruguay*, Communication No. 322/1988, U.N. Doc. CCPR/C/51/D/322/1988 (1994).

⁶⁹ ECtHR, *Marguš v Croatia*, App no. 4455/10 (27 May 2014), §139.

⁷⁰ ECtHR, *Yeter v Turkey*, App no. 33750/03 (13 January 2009), §70; ECtHR, *Abdülismet Yaman v Turkey*, App no. 32446/96 (2 November 2004), §55. See also: ECtHR, *Tuna v Turkey*, App no. 22339/03 (19 January 2010), §71; ECtHR, *Eski v Turkey*, App no. 8354/04 (5 June 2012), §34; ECtHR, *Taylan Vs. Turkey*, App no. 32051/09 (3 July 2012), §45.

⁷¹ ECtHR, *Enukidze and Girgvliani v Georgia*, App no. 25091/07 (26 April 2011), §274.

⁷² ICC Press Release, “Saif-Al-Islam Gaddafi case: ICC Pre-Trial Chamber I confirms case is admissible before the ICC”, 5 April 2019, available at: <https://www.icc-cpi.int/Pages/item.aspx?name=PR1446>

54. In *Barrios Altos v. Peru* (2001),⁷³ the IACtHR considered an amnesty law which exonerated members of the army who had committed human rights abuses in Peru, and concluded that

...all amnesty provisions, provisions on prescription and the establishment of measures designed to eliminate responsibility are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations such as torture, extrajudicial, summary or arbitrary execution and forced disappearance, all of them prohibited because they violate non-derogable rights recognized by international human rights law.⁷⁴
[emphasis added]

55. More recently, the African Commission on Human and Peoples' Rights, in considering the duty to prosecute members of the Lord's Resistance Army in Uganda found that that States should "at all times and under any circumstances desist from taking policy, legal or executive/administrative measures that in fact or in effect grant blanket amnesties, as that would be a flagrant violation of international law."⁷⁵
56. Thus, international human rights law does not only prohibit formal amnesty laws, but also any other measure that may lead to impunity for serious human rights violations. As set out above, for many years the UK has found it very difficult to effectively investigate allegations of torture and war crimes, and has had to re-investigate many incidents where earlier inquiries were flawed. This means that such investigations are rarely – if ever – concluded within the five-year time limit proposed in the Bill. As a result, in practice the presumption against prosecution will apply to virtually all cases, resulting in a *de facto* amnesty.

Universal Jurisdiction and the ICC

57. If the UK declines to prosecute breaches of the GCs and the UNCAT, then other States would be obliged to do so, under the principle of Universal Jurisdiction and under the jurisdiction of the ICC. This is on the basis that certain crimes – including torture – are so wrong as to require every nation to take responsibility to prosecute them. International tribunals have jurisdiction over such crimes and there are no procedural bars, such as sovereign immunity, that can prevent such international prosecutions.⁷⁶
58. This also means that amnesties under domestic law cannot include crimes under international law that give rise to universal jurisdiction, as other states are still free to prosecute. As the Special Court for Sierra Leone said, "A State cannot bring into oblivion and forgetfulness a crime, such as a crime against international law, which other States are entitled to keep alive and remember."⁷⁷

⁷³ IACtHR, *Chumbipuma Aguirre et al. v. Peru* (Merits) ("Barrios Altos Case"), Judgment of 14 March 2001, Series C No. 75, available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_75_ing.pdf. See also *Barrios Altos* and *La Cantuta v. Peru*, Monitoring Compliance with Judgment, 30 May 2018, §226.

⁷⁴ *Ibid.*, §41.

⁷⁵ African Commission on Human and Peoples' Rights, *Kwoyelo v. Uganda*, Communication 431/12 [2018] ACHPR 129, 17 October 2018, §293.

⁷⁶ Arrest Warrant of 11 April 2000 (*Democratic Republic of Congo v Belgium*) Judgment, Preliminary Objections and Merits, 14 February 2002. The decision established that acting heads of state and foreign ministries still benefit from serving immunity in third-county courts, however the judgment was not unanimous and there are still unresolved questions regarding this principle. The Court has left the category open as to which other officials will be afforded such immunity.

⁷⁷ *Prosecutor v. Morris Kallon and Brima Bazzy Kamara*, Special Court for Sierra Leone, Case No. SCSL-2004-15-AR72(E), SCSL-2004-16-AR72(E), Decision on Challenge to Jurisdiction: Lomé Accord Amnesty, 13 March 2004, §67.

59. Thus, the International Criminal Court would have jurisdiction where the UK is “unwilling or unable” to prosecute the crimes enumerated in the International Criminal Court Act 2001. Indeed, in the context of this proposed Bill, the ICC Prosecutor has recently made it clear that “[t]he effect of applying a statute of limitations to block further investigations and prosecution of crimes alleged committed by British service members in Iraq would be to render such cases admissible before the ICC as a result of State inaction or alternatively State unwillingness or inability to proceed genuinely...”⁷⁸
60. As set out above, under international law there is a presumption that such crimes will be investigated and prosecuted. By reversing that presumption, the UK has demonstrated that it is not willing to prosecute British soldiers and commanders for offences committed overseas.⁷⁹

Summary

61. As detailed above, international law prohibits a presumption against prosecution for international crimes (in addition to imposing an absolute prohibition on torture). Amending the Bill to expand the exceptions in Schedule 1 to include international crimes, as was apparently envisaged in the original 2019 consultation paper, would bring the Bill in line with international law.⁸⁰

⁷⁸ OTP Report, §479.

⁷⁹ The JCHR recognised that there is “a real risk if it is considered that this presumption [against prosecution] (combined with the existing concerns about the inadequacy of MoD investigations) leads other States or the ICC to conclude that the UK is willing or unable to investigate and prosecute for war crimes”, JCHR Report, §69.

⁸⁰ See **Annex 2** for a non-exhaustive list of international crimes which could be included as exceptions in Schedule 1 of the Bill.

D. JUSTICE FOR VICTIMS

Civil courts have a key role to play in providing redress and remedy to victims of serious abuses. Civil courts should have a discretion to allow such claims to be brought even when they are brought outside usual time limits.

62. The Bill also includes provisions as to civil liability. It changes the existing time limits for bringing claims in tort for personal injury or death, and claims for HRA violations, that occur in the context of overseas military operations. In particular, it removes the courts' discretion to extend the existing time limits.
63. The right to reparation is a well-established and basic human right and is firmly embodied in human rights treaties to which the UK is signatory, including the UNCAT (Article 14), and the ICCPR (Article 9(5)). Torture victims, for example, should have access to redress and remedy "regardless of when the violation occurred".⁸¹
64. The cases of *Mutua*, *Alseran* and *Kimathi*⁸² provide examples of how the UK courts are perfectly able to exercise their discretion, balancing the key issues involved, including that of delay, using the existing legislation. In some cases, all the factors having been taken into account, the cases have been allowed to proceed, in others, they have not.
65. The *Alseran* case could not have been brought if there was an absolute 6 year long-stop in civil claims (Mr Alseran's claim was brought around 10 years after his detention). Mr Justice Leggatt concluded that the abuse inflicted was "sadistic" and contemptuous of the victims.⁸³ The case demonstrates the key role of the civil courts in holding UK armed forces to account, without which such abuses may not be brought to light.

⁸¹ *Committee against Torture, General Comment No. 3: Implementation of article 14 by States parties, CAT/C/GC/3*, 13 December 2012, §40.

⁸² *Mutua & others v FCO [2012] EWHC 2678 (QB); Alseran and others v MOD [2017] EWHC 3289 (QB); Kimathi & Others v FCO [2018] EWHC 2066*

⁸³ *Alseran*, §953.

E. VEXATIOUS PROSECUTIONS

Despite frequent Ministerial references to “vexatious prosecutions” to justify the scheme of the Bill, there is no such thing as a “vexatious prosecution”.

66. The Government has stated that the Bill delivers on its manifesto commitment to tackle “vexatious claims” against the British Armed Forces.⁸⁴ However, in our view, there is no such thing as a “vexatious prosecution”. This phrase mixes the idea of criminal prosecutions and civil claims, confusing the issues.
67. Any prosecution for breaching the GCs or the UNCAT must have the consent of the Attorney General⁸⁵ who would be required to take into account all of the factors proposed in the Bill. Any private prosecution can be taken over and discontinued by the DPP.⁸⁶ Any prosecution would also have to satisfy both the evidential and public interest stages of the CPS Full Code test. The prosecution of international crimes is therefore fully within the power of the legal authorities, who are fully capable of preventing any “vexatious” prosecutions. In fact, there has been no suggestion that prosecutions brought by the Service Prosecuting Authority have been “vexatious”, excessive or unjustified – as noted by the JCHR, there is therefore no justification for introducing the statutory presumption.⁸⁷ The ICC Prosecutor has concluded that certain of the issues relied on to justify “the need to introduce legislation aimed at curbing the phenomena of vexatious litigation” have been “considerably exaggerated”.⁸⁸
68. It is also worth noting that there have been very few prosecutions for breaches of the GCs or the UNCAT in the last 20 years. The MoD’s recent evidence to the JCHR revealed that, in relation to Iraq and Afghanistan, “27 individuals were charged since 2000, of whom eight were convicted in a court martial.”⁸⁹
69. This is despite the findings by the Baha Mousa inquiry of appalling ill-treatment of detainees through the prohibited “five techniques” in breach of the GCs, and the findings of the High Court in *Alseran* of systematic use of prohibited interrogation techniques, also breaching the GCs, as well as several judgments of the European Court of Human Rights relating to killings in Northern Ireland.
70. Our own analysis of publicly available material suggests that 30 individuals have been prosecuted over that period (in relation to 6 incidents) with only 6 individuals convicted in total (in relation to only 3 of those incidents: Camp Breadbasket, Baha Mousa and ‘Marine A’). See summary in **Annex 1**.

⁸⁴ See the statement by the Ministry of Defence at <https://www.gov.uk/government/news/troops-and-veterans-one-step-closer-to-stronger-legal-protection>.

⁸⁵ See section 53(3) ICC Act 2001 and section 135 Criminal Justice Act 1988.

⁸⁶ See section 6(2) and sections 23-24 Prosecution of Offences Act 1985.

⁸⁷ JCHR Report, §§43-46. As noted recently in the OTP Report: “That the allegations investigated by IHAT and SPLI did not result in prosecutions by the SPA does not mean that these claims were all vexatious. At most, it means either that IHAT or the SPLI were not satisfied that there was sufficient credible evidence to refer the cases to the SPA, or that the SPA was not confident that those cases which were referred had a realistic prospect of conviction in a criminal trial” (§7).

⁸⁸ OTP Report, §474.

⁸⁹ *Ibid.*, §41.

ANNEX 1: PROSECUTIONS AND CONVICTIONS

Analysis of Publicly Available Material Regarding Prosecutions and Convictions of Soldiers Since 2000 Related to Iraq/Afghanistan

Incident	Country	Date of incident	Nature of incident	Individuals charged	Individuals convicted	Convictions/ guilty pleas
Ahmed Jabbar Kareem Ali ⁹⁰	Iraq	May 2003	Soldiers allegedly forced civilian into the Shatt Al Basra Canal and watched him drown.	4	0	0
Nadhem Abdullah ⁹¹	Iraq	May 2003	Alleged assault and murder of civilian by soldiers.	7	0	0
Camp Breadbasket ⁹²	Iraq	May 2003	Soldiers abused and assaulted detainees.	4	4	8
Hassan Abbad Said ⁹³	Iraq	Aug 2003	Soldier allegedly murdered civilian.	1	0	0
Baha Mousa ⁹⁴	Iraq	Sep 2003	Soldiers allegedly abused and killed detainees.	7	1	1
Case of Marine A ⁹⁵	Afghanistan	Sep 2011	Marine A killed injured fighter.	7	1	1
TOTAL				30	6	10

⁹⁰ Iraq Fatality Investigations (IFI), Sir George Newman's *Report into the death of Ahmed Jabbar Kareem Ali*, September 2016, available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/553177/Iraq Fatalities Investigations report into the death of Ahmed Jabbar Kareem Ali Print-ready PDF.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/553177/Iraq_Fatalities_Investigations_report_into_the_death_of_Ahmed_Jabbar_Kareem_Ali_Print-ready_PDF.pdf)

⁹¹ IFI, Sir George Newman's *Consolidated Report Into The Death Of Nadheem Abdullah And The Death Of Hassan Abbas Said*, March 2015, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/414772/47516_Iraq_Book_PRINT.pdf

⁹² The Guardian, *Soldiers in Iraq abuse case sent to prison*, 26 February 2005, <https://www.theguardian.com/uk/2005/feb/26/iraq.military>; BBC News, *Iraq abuse troops' jail terms cut*, 1 June 2006, <http://news.bbc.co.uk/1/hi/uk/4598221.stm>

⁹³ IFI, Sir George Newman's *Consolidated Report Into The Death Of Nadheem Abdullah And The Death Of Hassan Abbas Said*, March 2015, *ibid*.

⁹⁴ Baha Mousa Public Inquiry Report, Vols. I-III, September 2011, available at <https://www.gov.uk/government/publications/the-baha-mousa-public-inquiry-report>

⁹⁵ ITV News, *Marine A: Timeline of events*, 28 March 2017, <https://www.itv.com/news/2017-03-28/marine-a-timeline-what-happened>

ANNEX 2: LIST OF OFFENCES

Non-Exhaustive List of International Crimes Which Could be Included as Exceptions in Schedule 1 of the Bill

Geneva Conventions Act 1957 (GCA 1957)					
S.1 GCA 1957	Any person, whatever his nationality, who, whether in or outside the UK, commits, or aids, abets or procures, the commission by any other person of a grave breach of the scheduled Conventions, as listed in the next column.	<p>Grave breaches of the scheduled Conventions:</p> <p>Schedule 1 (for the amelioration of the condition of the wounded and sick in armed forces in the field), Article 50: Wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.</p> <p>Schedule 2 (for the amelioration of the condition of wounded, sick and shipwrecked members of armed forces at sea), Article 51: Wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.</p> <p>Schedule 3 (relative to the treatment of prisoners of war), Article 130: Wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing of great suffering or serious injury to body or health, compelling a prisoner of war to serve in the forces of the hostile power, or wilfully depriving a prisoner of war of the</p>	<p>This section applies to acts committed:</p> <p>(a) in England and Wales; or</p> <p>(b) outside the UK: if an offence under s.1 is committed outside the UK, a person may be proceeded against, indicted, tried and punished in any place in the UK as if the offence had been committed in that place, and the offence shall, for all purposes incidental to or consequential on the trial or punishment thereof, be deemed to have been committed in that place (s.1(2)).</p> <p>This means that the principle of universal jurisdiction applies; under the scheduled Geneva Conventions, states have the right to exercise universal jurisdiction over war crimes in their courts, even when the crime is committed outside their national territory and the accused is not a national of that state.</p>	Triable only on indictment (s.1(A)(2)).	Imprisonment for a term not exceeding 30 years (s.1(6)).

		<p>rights of fair and regular trial prescribed in the Convention.</p> <p>Schedule 4 (relative to the protection of civilian persons in time of war), Article 147: Wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the Convention, taking of hostages, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.</p> <p>First Protocol</p> <p>Article 11, Paragraph 4: Any wilful act or omission which seriously endangers the physical or mental health or integrity of any person who is in the power of a party other than the one on which he depends and which either violates any of the prohibitions in paragraphs 1 and 2 or fails to comply with the requirements of paragraph 3.</p> <p>Article 85, Paragraph 2: Acts committed against persons in the power of an adverse party protected by Articles 44, 45 and 73 of the Protocol, or against the wounded, sick and shipwrecked of the adverse party who are protected by the Protocol, or against those medical or religious personnel, medical units or medical transports which are under the control of the adverse party and are protected by the Protocol.</p>			
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		<p>Article 85, Paragraph 3: Acts committed wilfully, in violation of the relevant provisions of the Protocol, and causing death or serious injury to body or health:</p> <p>(a) making the civilian population or individual civilians the object of attack;</p> <p>(b) launching an indiscriminate attack affecting the civilian population knowing that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects;</p> <p>(c) launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects;</p> <p>(d) making non-defended localities and demilitarised zones the object of attack;</p> <p>(e) making a person the object of attack in the knowledge that he is <i>hors de combat</i>;</p> <p>(f) the perfidious use, in violation of Article 37, of the distinctive emblem of the red cross, red crescent or red lion and sun or of other protective signs recognised by the Conventions or the Protocol.</p> <p>Article 85, Paragraph 4: Acts committed wilfully and in violation of the Conventions or the Protocol:</p> <p>(a) the transfer by the occupying power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or</p>			
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		<p>parts of the population of the occupied territory within or outside this territory, in violation of Article 49 of the Fourth Convention;</p> <p>(b) unjustifiable delay in the repatriation of prisoners of war or civilians;</p> <p>(c) practices of <i>apartheid</i> and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination;</p> <p>(d) making the clearly recognised historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples and to which special protection has been given by special arrangement, for example, within the framework of a competent international organisation, the object of attack, causing as a result extensive destruction thereof, where there is no evidence of the violation by the adverse party of Article 53, sub-paragraph (b), and when such historic monuments, works of art and places of worship are not located in the immediate proximity of military objectives;</p> <p>(e) depriving a person protected by the Conventions or referred to in paragraph 2 of the Article of the rights of fair and regular trial.</p>			
Taking of Hostages Act 1982 (THA 1982)					
S.1 THA 1982	Hostage-taking	<p>A person commits an offence, whatever his nationality, who, in the UK or elsewhere:</p> <p>(a) detains any other person ("the hostage"); and</p> <p>(b) in order to compel a state, international governmental organisation or person to do or</p>	<p>This section applies to acts committed:</p> <p>(a) in England and Wales; or</p> <p>(b) outside the UK.</p>	<p>Triable only on indictment (s1(2)).</p>	<p>Life imprisonment.</p>

		abstain from doing any act, threatens to kill, injure or continue to detain the hostage.	This section applies to persons of any nationality.		
Criminal Justice Act 1998 (CJA 1998)					
S.134 CJA 1988	Torture	<p>A public official or person acting in an official capacity, whatever his nationality, commits the offence of torture if in the UK or elsewhere he intentionally inflicts severe pain or suffering on another in the performance or purported performance of his official duties.</p> <p>A person not falling within the above commits the offence of torture, whatever his nationality, if:</p> <p>(a) in the UK or elsewhere he intentionally inflicts severe pain or suffering on another at the instigation or with the consent or acquiescence:</p> <ul style="list-style-type: none"> • of a public official; or • of a person acting in an official capacity; and <p>(b) the official or other person is performing or purporting to perform his official duties when he instigates the commission of the offence or consents to or acquiesces in it.</p>	<p>This section applies to acts committed:</p> <p>(a) in England and Wales; or</p> <p>(b) outside the UK.</p> <p>This section applies to persons of any nationality.</p>	Triable only on indictment (s.134(6)).	Life imprisonment.

International Criminal Court Act 2001 (ICCA 2001)					
S.51 ICCA 2001	Genocide, crimes against humanity and war crimes	It is an offence against the law of England and Wales for a person to commit " <i>genocide</i> " ⁹⁶ , a " <i>crime against humanity</i> " ⁹⁷ or a " <i>war crime</i> " ⁹⁸ . Further information in relation to each of these specific offences is provided below.	This section applies to acts committed: (a) in England and Wales; or (b) outside the UK. This section applies to acts committed by a UK national, resident, ⁹⁹ or person subject to service jurisdiction. A person who committed an act outside the UK at a time when he was not a UK national, resident, or person subject to UK service jurisdiction but who subsequently becomes resident in the UK, can have proceedings brought against him if he is resident in the UK at the time the proceedings are brought, and if the acts would have constituted that offence if they had been committed in that part of the UK (s.68(1) and (2)).	Triable only on indictment (s.53(2)). Proceedings for an offence shall not be instituted except by or with the consent of the Attorney General (s.53(3)).	Imprisonment for a term not exceeding 30 years (s.53(6)).
Article 6 ICC Statute	Genocide	"Genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, such as: (a) killing members of the group;	This section applies to acts committed: (a) in England and Wales; or (b) outside the UK.	Triable only on indictment (s.53(2) ICCA 2001). Proceedings for an offence shall	Imprisonment for a term not exceeding 30 years (s.53(6) ICCA 2001).

⁹⁶ S.50(1) states that "genocide" means an act of genocide as defined in Article 6 of the Rome Statute of the International Criminal Court ("**ICC Statute**"):
<https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>, p.3.

⁹⁷ S.50(1) states that "a crime against humanity" means a crime against humanity as defined in Article 7 of the ICC Statute: <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>, p.3.

⁹⁸ S.50(1) states that "a war crime" means a war crime as defined in Article 8 of the ICC Statute: <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>, p.4.

⁹⁹ S.67A provides a list of individuals who would be treated as being resident in the UK: <https://www.legislation.gov.uk/ukpga/2001/17/part/5>.

		<p>(b) causing serious bodily or mental harm to members of the group;</p> <p>(c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;</p> <p>(d) imposing measures intended to prevent births within the group;</p> <p>(e) Forcibly transferring children of the group to another group.</p>	<p>This section applies to acts committed by a UK national, resident,¹⁰⁰ or person subject to service jurisdiction.</p> <p>A person who committed an act outside the UK at a time when he was not a UK national, resident, or person subject to UK service jurisdiction but who subsequently becomes resident in the UK, can have proceedings brought against him if he is resident in the UK at the time the proceedings are brought, and if the acts would have constituted that offence if they had been committed in that part of the UK (s.68(1) and (2) ICCA 2001).</p>	<p>not be instituted except by or with the consent of the Attorney General (s.53(3) ICCA 2001).</p>	
Article 7(1) ICC Statute	Crimes against humanity	<p>"Crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:</p> <p>(a) murder;</p> <p>(b) extermination;</p> <p>(c) enslavement;</p> <p>(d) deportation or forcible transfer of population;</p> <p>(e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;</p> <p>(f) torture;</p> <p>(g) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, or any</p>	<p>This section applies to acts committed:</p> <p>(a) in England and Wales; or</p> <p>(b) outside the UK.</p> <p>This section applies to acts committed by a UK national, resident,¹⁰¹ or person subject to service jurisdiction.</p> <p>A person who committed an act outside the UK at a time when he was not a UK national, resident, or person subject to UK service jurisdiction but who subsequently becomes resident in the UK, can have proceedings brought against him if he is resident in the UK at the time the proceedings are brought, and if the acts would have constituted that offence if they had been committed in that part of the UK (s.68(1) and (2) ICCA 2001).</p>	<p>Triable only on indictment (s.53(2) ICCA 2001).</p> <p>Proceedings for an offence shall not be instituted except by or with the consent of the Attorney General (s.53(3) ICCA 2001).</p>	<p>Imprisonment for a term not exceeding 30 years (s.53(6) ICCA 2001).</p>

¹⁰⁰ S.67A provides a list of individuals who would be treated as being resident in the UK: <https://www.legislation.gov.uk/ukpga/2001/17/part/5>.

¹⁰¹ S.67A provides a list of individuals who would be treated as being resident in the UK: <https://www.legislation.gov.uk/ukpga/2001/17/part/5>.

		other form of sexual violence of comparable gravity;			
		(h) persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognised as impermissible under international law, in connection with any act referred to in the paragraph or any crime within the jurisdiction of the Court; (i) enforced disappearance of persons; (j) the crime of apartheid; (k) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health. ¹⁰²			
Article 8(2)(a) ICC Statute ¹⁰³	War crimes	Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention: (a) wilful killing; (b) torture or inhuman treatment, including biological experiments; (c) wilfully causing great suffering, or serious injury to body or health; (d) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;	This section applies to acts committed: (a) in England and Wales; or (b) outside the UK. This section applies to acts committed by a UK national, resident, ¹⁰⁴ or person subject to service jurisdiction. A person who committed an act outside the UK at a time when he was not a UK national, resident, or person subject to UK service jurisdiction but who subsequently becomes resident in the UK, can have proceedings brought against him if he is	Triable only on indictment (s.53(2) ICCA 2001). Proceedings for an offence shall not be instituted except by or with the consent of the Attorney	Imprisonment for a term not exceeding 30 years (s.53(6) ICCA 2001).

¹⁰² Article 7(2) ICC Statute provides definitions of these terms.

¹⁰³ Article 8(1) ICC Statute states that, in respect of Article 8, the International Criminal Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.

¹⁰⁴ S.67A provides a list of individuals who would be treated as being resident in the UK: <https://www.legislation.gov.uk/ukpga/2001/17/part/5>.

		<p>(e) compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;</p> <p>(f) wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;</p> <p>(g) unlawful deportation or transfer or unlawful confinement;</p> <p>(h) taking of hostages.</p>	<p>resident in the UK at the time the proceedings are brought, and if the acts would have constituted that offence if they had been committed in that part of the UK (s.68(1) and (2) ICCA 2001).</p>	<p>General (s.53(3) ICCA 2001).</p>	
<p>Article 8(2)(b) ICC Statute</p>	<p>War crimes</p>	<p>Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:</p> <p>(a) intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;</p> <p>(b) intentionally directing attacks against civilian objects, that is, objects which are not military objectives;</p> <p>(c) intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;</p> <p>(d) intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe</p>	<p>This section applies to acts committed:</p> <p>(a) in England and Wales; or</p> <p>(b) outside the UK.</p> <p>This section applies to acts committed by a UK national, resident,¹⁰⁵ or person subject to service jurisdiction.</p> <p>A person who committed an act outside the UK at a time when he was not a UK national, resident, or person subject to UK service jurisdiction but who subsequently becomes resident in the UK, can have proceedings brought against him if he is resident in the UK at the time the proceedings are brought, and if the acts would have constituted that offence if they had been committed in that part of the UK (s.68(1) and (2) ICCA 2001).</p>	<p>Triable only on indictment (s.53(2)).</p> <p>Proceedings for an offence shall not be instituted except by or with the consent of the Attorney General (s.53(3) ICCA 2001).</p>	<p>Imprisonment for a term not exceeding 30 years (s.53(6) ICCA 2001).</p>

¹⁰⁵ S.67A provides a list of individuals who would be treated as being resident in the UK: <https://www.legislation.gov.uk/ukpga/2001/17/part/5>.

		<p>damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;</p> <p>(e) attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;</p> <p>(f) killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;</p> <p>(g) making improper use of a flag of truce, or of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;</p> <p>(h) the transfer, directly or indirectly, by the occupying power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;</p> <p>(i) intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;</p> <p>(j) subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;</p>			
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		<p>(k) killing or wounding treacherously individuals belonging to the hostile nation or army;</p> <p>(l) declaring that no quarter will be given;</p> <p>(m) destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;</p> <p>(n) declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;</p> <p>(o) compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;</p> <p>(p) pillaging a town or place, even when taken by assault;</p> <p>(q) employing poison or poisoned weapons;</p> <p>(r) employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;</p> <p>(s) employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;</p> <p>.....</p> <p>(t) committing outrages upon personal dignity, in particular humiliating and degrading treatment;</p> <p>(u) committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, or any other form of sexual violence</p>			
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		<p>also constituting a grave breach of the Geneva Conventions;</p> <p>(v) utilising the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;</p> <p>(w) intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;</p> <p>(x) intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;</p> <p>(y) conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.</p>			
Article 8(2)(c) ICC Statute ¹⁰⁶	War crimes	<p>In the case of an armed conflict not of an international character, serious violations of Article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed <i>hors de combat</i> by sickness, wounds, detention or any other cause:</p> <p>(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;</p>	<p>This section applies to acts committed:</p> <p>(a) in England and Wales; or</p> <p>(b) outside the UK.</p> <p>This section applies to acts committed by a UK national, resident,¹⁰⁷ or person subject to service jurisdiction.</p>	<p>Triable only on indictment (s.53(2) ICCA 2001).</p> <p>Proceedings for an offence shall not be instituted except by or with the consent of the</p>	<p>Imprisonment for a term not exceeding 30 years (s.53(6) ICCA 2001).</p>

¹⁰⁶ Article 8(3) ICC Statute states that nothing in Article 8(2)(c) shall affect the responsibility of a government to maintain or reestablish law and order in the state or to defend the unity and territorial integrity of the state, by all legitimate means.

¹⁰⁷ S.67A provides a list of individuals who would be treated as being resident in the UK: <https://www.legislation.gov.uk/ukpga/2001/17/part/5>.

		<p>(b) committing outrages upon personal dignity, in particular humiliating and degrading treatment;</p> <p>(c) taking of hostages;</p> <p>(d) the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognised as indispensable.</p> <p>This applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.</p>	<p>A person who committed an act outside the UK at a time when he was not a UK national, resident, or person subject to UK service jurisdiction but who subsequently becomes resident in the UK, can have proceedings brought against him if he is resident in the UK at the time the proceedings are brought, and if the acts would have constituted that offence if they had been committed in that part of the UK (s.68(1) and (2) ICCA 2001).</p>	<p>Attorney General (s.53(3) ICCA 2001).</p>	
<p>Article 8(2)(e) ICC Statute¹⁰⁸</p>	<p>War crimes</p>	<p>Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:</p> <p>(a) intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;</p> <p>(b) intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;</p> <p>(c) intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission</p>	<p>This section applies to acts committed:</p> <p>(a) in England and Wales; or</p> <p>(b) outside the UK.</p> <p>This section applies to acts committed by a UK national, resident,¹⁰⁹ or person subject to service jurisdiction.</p> <p>A person who committed an act outside the UK at a time when he was not a UK national, resident, or person subject to UK service jurisdiction but who subsequently becomes resident in the UK, can have proceedings brought against him if he is resident in the UK at the time the proceedings are brought, and if the acts would have constituted</p>	<p>Triable only on indictment (s.53(2) ICCA 2001).</p> <p>Proceedings for an offence shall not be instituted except by or with the consent of the Attorney General (s.53(3) ICCA 2001).</p>	<p>Imprisonment for a term not exceeding 30 years (s.53(6) ICCA 2001).</p>

¹⁰⁸ Article 8(3) ICC Statute states that nothing in Article 8(2)(e) shall affect the responsibility of a government to maintain or reestablish law and order in the state or to defend the unity and territorial integrity of the state, by all legitimate means.

¹⁰⁹ S.67A provides a list of individuals who would be treated as being resident in the UK: <https://www.legislation.gov.uk/ukpga/2001/17/part/5>.

		<p>in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;</p> <p>(d) intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;</p> <p>(e) pillaging a town or place, even when taken by assault;</p> <p>(f) committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, and any other form of sexual violence also constituting a serious violation of Article 3 common to the four Geneva Conventions;</p> <p>(g) conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;</p> <p>(h) ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;</p> <p>(i) killing or wounding treacherously a combatant adversary;</p> <p>(j) declaring that no quarter will be given;</p> <p>(k) subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause</p>	<p>that offence if they had been committed in that part of the UK (s.68(1) and (2) ICCA 2001).</p>		
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		<p>death to or seriously endanger the health of such person or persons;</p> <p>(l) destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;</p> <p>(m) employing poison or poisoned weapons;</p> <p>(n) employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;</p> <p>(o) employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions.</p> <p>This applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a state when there is protracted armed conflict between governmental authorities and organised armed groups or between such groups.</p>			
S.52 ICCA 2001	Conduct ancillary to genocide etc. committed outside the jurisdiction	<p>It is an offence for a person to engage in conduct ancillary to an act to which this section applies.</p> <p>Applies to acts which, if committed in England or Wales, would constitute an act under s.51 or s.52 but which, being committed outside England and Wales, do not constitute an offence.</p>	<p>This section applies to acts committed:</p> <p>(a) in England and Wales; or</p> <p>(b) outside the UK.</p> <p>This section applies to acts committed by a UK national, resident, or person subject to service jurisdiction.</p> <p>A person who committed an act outside the UK at a time when he was not a UK national, resident,</p>	<p>Triable only on indictment (s.53(2)).</p> <p>Proceedings for an offence shall not be instituted except by or with the consent of the Attorney</p>	<p>Imprisonment for a term not exceeding 30 years (s.53(6)).</p>

			or person subject to UK service jurisdiction but who subsequently becomes resident in the UK, can have proceedings brought against him if he is resident in the UK at the time the proceedings are brought, and if the acts would have constituted that offence if they had been committed in that part of the UK (s.68(1) and (2)).	General (s.53(3)).	
S.54 ICCA 2001	Offences in relation to the International Criminal Court ("ICC")	<p>A person intentionally committing any of the acts mentioned in Article 70.1¹¹⁰ (offences against the administration of justice in relation to the ICC) may be dealt with as for the corresponding domestic offence committed in relation to a superior court in England and Wales.</p> <p>These are:</p> <p>(a) Article 70.1(a) (giving false testimony when under an obligation to tell the truth) and s.1(1) of the Perjury Act 1911;</p> <p>(b) Article 70.1(c) (interference with witness or evidence) and s.51 of the Criminal Justice and Public Order Act 1994; and</p> <p>(c) Article 70.1(b) or (d) to (f) (other offences) and offences at common law/under the Bribery Act 2010.</p>	<p>If an offence under this section, or an offence ancillary to such an offence, is not committed in England or Wales:</p> <p>(a) proceedings may be taken; and</p> <p>(b) the offence may for incidental purposes be treated as having been committed,</p> <p>in any place in England or Wales (s.54(6)).</p> <p>This section applies to acts committed by a UK national, resident, or person subject to service jurisdiction.</p> <p>A person who committed an act outside the UK at a time when he was not a UK national, resident, or person subject to UK service jurisdiction but who subsequently becomes resident in the UK, can have proceedings brought against him if he is resident in the UK at the time the proceedings are brought, and if the acts would have constituted that offence if they had been committed in that part of the UK (s.68(1) and (2)).</p>	Where a person intentionally commits any of the acts mentioned in Article 70.1, they may be dealt with as for the corresponding domestic offence committed in relation to a superior court in England and Wales (s.54(1)).	Where a person intentionally commits any of the acts mentioned in Article 70.1, they may be dealt with as for the corresponding domestic offence committed in relation to a superior court in England and Wales (s.54(1)).

¹¹⁰ ICC Statute: <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>, p.34.

Front Cover: In 1982 the UN Human Rights Commission considered the draft Convention against Torture, which was eventually adopted by the UN General Assembly in 1984. *Photo Credit: United Nations.*

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