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STRENGTHENING ACCOUNTABILITY FOR SERIOUS INTERNATIONAL CRIMES IN ENGLAND AND WALES

Reforming the UK's Universal Jurisdiction Framework Through the Crime and Policing Bill

April 2025

SUMMARY

The Crime and Policing Bill presents a critical opportunity to reform the UK's approach to prosecuting international crimes and strengthen its universal jurisdiction laws. Currently, the UK lacks the robust legal framework necessary to hold perpetrators of international crimes accountable. The Joint Committee on Human Rights of the UK Parliament has criticised the current "patchwork" of laws on prosecuting international crimes in the UK[1] and former Director of Public Prosecutions, Sir Ken Macdonald KC, has described them as "illogical".[2] The difficulty of applying these laws is evidenced by the fact that only there have only ever been three successful prosecutions of international crimes in English courts.[3]

In 2023, REDRESS and the Clooney Foundation for Justice published a report that highlights important gaps in the UK's legal system for prosecuting international crimes.[4] **This briefing proposes two straightforward legal changes to close these loopholes, by amending the International Criminal Court Act 2001 to ensure that perpetrators can no longer visit the UK without fear of prosecution, and to extend the temporal jurisdiction for crimes against humanity and all war crimes to at least 1991.** These reforms would allow for more prosecutions under universal jurisdiction and stop the UK from being a 'safe haven' for perpetrators. They would also demonstrate the UK's commitment to combatting impunity and deterring atrocities.

The Crime and Policing Bill provides an ideal platform for these reforms. Part 15, which addresses international law enforcement data-sharing agreements, already acknowledges the importance of cross-border cooperation and consistency in ensuring accountability. This is the perfect moment to align the UK's legal framework with international standards and close the legal gaps that currently allow perpetrators to evade justice.

KEY LEGAL CHALLENGES

The International Criminal Court Act 2001 (ICCA) limits prosecutions for most international crimes to suspects who are UK residents or citizens. Under the ICCA, prosecutions can only be

[1] 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).

[2] Ibid., para. 28.

[3] *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.

[4] The Clooney Foundation and REDRESS, 'Global Britain, Global Justice: Strengthening Accountability for Core International Crimes in England and Wales,' available at: https://redress.org/publication/global-britain-global-justice-strengthening-accountability-for-international-crimes-in-england-and-wales/

brought against UK nationals or residents, or those subject to the UK's service jurisdiction. In contrast, the Criminal Justice Act 1988, which criminalises 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, particularly given that torture can amount to these wider violations when the relevant elements are present. We propose a simple amendment to the ICCA to include "a person present in the territory of the United Kingdom" to the relevant provisions.

The ICCA is inconsistent about how far back prosecutions can go, leaving gaps that make it difficult to prosecute certain crimes. Under the ICCA, genocide can be prosecuted if committed "on or after 1 January 1991".[5] But crimes against humanity and war crimes can be prosecuted only if committed after 1 September 2011 "unless, at the time the act constituting that crime was committed, the act amounted in the circumstances to a criminal offence under international law".[6] The question of which crimes have been codified in customary law, and when, has not been clarified by Parliament and the courts have not resolved the issue, and are not likely to do so soon.[7] We propose to extend the temporal jurisdiction for crimes against humanity and all war crimes to at least 1991 on the basis that these offences were already recognised as criminal in international law by 1991. This can be done by removing subsections 65A(2) and 65A(6) of the ICCA which prevent prosecutions for crimes against humanity and war crimes for offences committed before 1 September 2001.

SOLUTION: AMENDMENTS TO CRIME AND POLICING BILL 2025

We recommend amending Part 15 (Miscellaneous and General) of the Crime and Policing Bill to include the following provision amending the ICCA:

"International crimes: jurisdiction and retrospective application

(1) The International Criminal Court Act 2001 is amended as follows.

(2) In section 51, for subsection (1) substitute—

"(1) It is an offence against the law of England and Wales for a person, whatever his nationality, to commit genocide, a crime against humanity or a war crime."

(3) In section 51, for subsection (2)(b) substitute—

"(b) outside the United Kingdom."

(4) In section 52, for subsection (1) substitute—

[5] 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

[6] ICCA, s.65A.

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

"(1) It is an offence against the law of England and Wales for a person, whatever his nationality, to engage in conduct ancillary to an act to which this section applies."

(5) In section 52, for subsection (4)(b) substitute—

"(b) outside the United Kingdom."

(6) In section 54, for subsection (1) substitute—

"(1) A person intentionally committing any of the acts mentioned in article 70.1 (offences against the administration of justice in relation to the ICC), whatever his nationality, may be dealt with as for the corresponding domestic offence committed in relation to a superior court in England and Wales."

(7) In section 54, for subsection 4(b) substitute—

"(b) outside the United Kingdom."

(8) In section 58, for subsection (1) substitute—

"(1) It is an offence against the law of Northern Ireland for a person, whatever his nationality, to commit genocide, a crime against humanity or a war crime."

(9) In section 58, for subsection 2(b) substitute—

"(b) outside the United Kingdom."

(10) In section 59, for subsection (1) substitute—

"(1) It is an offence against the law of Northern Ireland for a person, whatever his nationality, to engage in conduct ancillary to an act to which this section applies."

(11) In section 59, for subsection 4(b) substitute—

"(b) outside the United Kingdom."

(12) In section 61, for subsection (1) substitute—

"(1) A person intentionally committing any of the acts mentioned in article 70.1 (offences against the administration of justice in relation to the ICC), whatever his nationality, may be dealt with as for the corresponding domestic offence committed in relation to a superior court in Northern Ireland."

(13) In section 61, for subsection 4(b) substitute—

"(b) outside the United Kingdom."

(14) In section 65A—

(a) omit subsection (2);

(b) omit subsection (6)."

Member's explanatory statement

This new clause would amend the International Criminal Court Act 2001 to expand the jurisdiction of the courts in England and Wales, and Northern Ireland, over international crimes and to ensure a consistent approach to the retrospective application of the offences set out in the International Criminal Court Act 2001.