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OPEN LETTER TO UK GOVERNMENT ON RWANDA GENOCIDE

London, 8 May 2009

Genocide, war crimes and crimes against humanity are by definition the worst of international crimes, and yet there are known suspects living in the UK who are ostensibly beyond the reach of justice. The effect of this "impunity gap" on the victims and survivors of such atrocities is devastating, and was again illustrated by the High Court's recent decision regarding four Rwandan genocide suspects arrested and held in the UK since 2006.

On 8 April 2009 the High Court in London ordered the release of the four men after rejecting the Rwandan Government's bid to secure their return to Rwanda for prosecution. Although the High Court upheld a lower court's finding that the men had a case to answer for their role in the 1994 genocide, it nevertheless ruled that the suspects cannot be extradited to Rwanda because of fair trial concerns in that country.

The four men will not face trial in the UK either, and have been freed. Under the domestic International Criminal Court Act 2001 UK courts can try genocide crimes perpetrated abroad. But because the Act is not retrospective, it does not apply to the 1994 Rwandan genocide. The result is that the suspects can get on with their lives even though there is sufficient evidence for a trial – but nowhere to try them.

The survivors of the Rwandan genocide in the UK, Rwanda and other parts of the world are horrified that these men will not face justice. Just as there was relief when the men were arrested and the Rwanda Government asked for their extradition, so too their release has led to anguish and trauma for those same survivors. There is substantial evidence against all four men, and as they are in the UK the obvious place for a trial is now before a UK court. The "impunity gap" is unconscionable and unacceptable in a democracy founded on the rule of law.

How has the UK effectively become a safe haven for such suspects? The former Director of Public Prosecutions, Sir Ken MacDonal, told the BBC recently that "the reality is that if we're going to be serious about going after people who have been involved in this kind of activity, we need to look seriously at amending the law." Lord Alexander Carlile (a respected barrister whose views are valued by the Government, as shown by his appointment as the independent reviewer of terrorism legislation), told the same programme that he "believed on good grounds that there may well be more than one hundred people in the United Kingdom who could be prosecuted for very serious crimes, including, genocide, committed abroad." There is good reason to include other known Rwandan genocide suspects amongst these.

Both REDRESS, and African Rights - the organisation that first brought into the public domain much of the evidence on the suspects, have repeatedly called on the UK to urgently amend its laws so that anyone suspected of genocide, war crimes and crimes against humanity can be tried in its courts. The present UK law is completely out of step with international law which has made genocide an international crime since the end of World War II and therefore open to prosecution in all states, including where suspects are found. It is also out of step with countries which have previously denied extradition of suspects to Rwanda but whose domestic laws nevertheless then ensure that suspects can still be held accountable. Such legislation has led to the conviction of genocide perpetrators in Switzerland, Belgium and The Netherlands, while other suspects are currently under investigation in several other countries, including Canada, Germany, France, Norway and Finland. Indeed, these countries initiated domestic investigations against genocide suspects, once their extradition to Rwanda was denied. Norway specifically enacted new legislation in March 2008, providing its courts with retroactive universal jurisdiction over crimes of genocide.

The real problem in the UK is a lack of political will, both to amend the law and to set up a properly resourced unit within the Metropolitan Police to adequately investigate such cases with a view to prosecutions before UK courts. As Lord Carlile again said: “These are, after all, cases of mass murders in some cases, of war crimes in other cases, and therefore the resourcing is very well justified on the merits.” Such specialized ‘war crimes units’ exist in other countries, including Belgium, Canada, Denmark, Sweden, Norway, Germany, the United States and the Netherlands.

The Secretary of State for Justice, Jack Straw, told parliament on 5 May that he is giving “active consideration” to including genocide as an extra-territorial offence within British law. This is a positive development, provided it is followed through. There has been no previous indication that the UK Government was considering amending the International Criminal Court Act, and there is still nothing to show it is considering establishing a proper investigatory unit as there used to be for Nazi war crimes. Unless there is some serious movement in both these directions the UK’s reputation, in the eyes of victims and survivors of the most horrible crimes imaginable, will continue to be that it is indeed a safe haven for suspects of the most horrific crimes – and this lack of justice will continue to compound survivors’ unspeakable suffering.

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