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Our haven for war criminals

Law that allows genocide suspects to live freely in the UK brings shame on us. It must be changed

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In the shadow of the Congo conflict, next month sees the 60th anniversary of the United Nations genocide convention. Humanity spoke with one voice in December 1948. The Nazi extermination camps had been uncovered and nations came together to say "never again". Since then, "never again" has happened repeatedly. One plain lesson of history is that great unmarked crimes have a habit of returning to haunt us. Addressing a group of Nazi leaders and Wehrmacht generals on the brink of the second world war, Hitler inquired: "Who, after all, speaks today of the annihilation of the Armenians?" We may safely assume that the question was entirely rhetorical.

After 1945 some Nazi war criminals made their way to the UK. They remained at peace and largely undetected until the 1980s, when a campaign by parliamentarians led to the War Crimes Act 1991. At last people suspected of savagery in Nazi-occupied Europe faced prosecution in British courts.

Since then many suspected war criminals have chosen life in Britain. The UK Border Agency is said to examine about six hundred individuals every year. Some, skulking, have appeared anonymously in the media: an alleged member of the grossly genocidal Sudanese Janjaweed militia was recently featured on Newsnight.

Others have been less shy. On BBC radio last week, a senior police officer from Congo described ordering torture. "You use car jump leads and attach them anywhere on the body," he said, "and as soon as you press the button the current goes through and they start to shake. It usually produced results." This efficient individual was apparently interviewed in Britain.

People like him should be investigated and, if the evidence is sufficient, face trial. The question is where. The UN has decided to wind down its special international criminal tribunals, and the international criminal court in The Hague barely has the capacity to hold a handful of trials each year. So where extradition or deportation cannot safely take place, and international justice is unavailable, the UK has to be ready to prosecute these awful crimes here.

But there are serious gaps in our law. Suspects can be tried for genocide, war crimes and crimes against humanity committed abroad only if they are UK residents or nationals, and if they committed their crimes after the International Criminal Court Act was passed in 2001. Quite illogically, this differs from hostage-taking and torture, which are fully prosecutable here, wherever the offences took place, and have no nationality or residency requirements.

So foreign torturers and hostage-takers who commit their crimes overseas can be prosecuted, but Rwandan génocidaires living in the UK are protected. British residents committing war crimes abroad in 2002 may face justice here, but those whose crimes occurred in 1992 are immune.

These distinctions lack all humanity and their consequences are ugly. At present, four suspected category-one génocidaires are appealing against an order for their extradition to Rwanda. If they succeed we shall be unable to prosecute them for genocide in our courts. These men, each accused of mass murder, will simply be released to live contentedly among us.

The Aegis Trust, an organisation that campaigns on genocide issues, proposes two changes to the law. First, we should move from a strict "residency" requirement for prosecution, and embrace something closer to a basic "presence" requirement. This would deal with situations where suspects are found temporarily visiting our country, for example to enjoy medical treatment. It would also bring the UK into line with other common law countries.

Second, our courts should be given jurisdiction over crimes against humanity, genocide and all war crimes from the point at which these offences were recognised under international customary law. This would greatly extend our reach into the past. It would largely scrub away the stain of impunity.

Some people fear making our country the world's policeman. In fact these changes would allow us to play our part in keeping the promise of 1948. There would be no trials in absentia. The director of public prosecutions would retain power to stop proceedings in the face of insufficient evidence, or where the public interest was against prosecution. And trials would continue to be a last resort, after extradition, transfer to an international court or deportations have failed.

The genocide scholar Samantha Power wrote that it is in the realm of domestic politics that the battle to stop genocide is lost. In the absence of changing the law, we bring shame upon ourselves by continuing to tolerate the UK's status as a haven for people suspected of unspeakable crimes.

- Ken Macdonald QC concluded his term as director of public prosecutions last week

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