

8 April 2024

By email

Joint Committee on Human Rights (JCHR)

Houses of Parliament

London

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Email: jchr@parliament.co.uk

Dear Committee Members,

Thank you for the invitation to provide evidence to the Committee on the inquiry into accountability for Daesh crimes. I apologize that I was not available to attend in person on the suggested dates and appreciate the opportunity to provide written evidence. This letter supplements the written evidence already provided in my letter of 22 November 2023 and accompanying annexes, all of which is incorporated here by reference.¹

As the Committee knows, Daesh killed more than 5,000 and kidnapped over 6,000 Yazidis.² Women and girls were sold as sex slaves and the boys were used as child soldiers. At least 2,700 are still missing.³

In my earlier letter, I reported on my work as a barrister representing Yazidi victims of Daesh crimes seeking justice against their abusers. I provided detail of my experience as counsel to Yazidi victims in seven cases brought against Daesh members in the German courts, which have resulted in the only convictions of Daesh for genocide and crimes against humanity anywhere in the world.⁴ I also represent a Yazidi victim in a case against a Daesh member that will go to trial later this year in the Netherlands and victims in both criminal and civil cases in the United States.

¹ A copy of my letter to the JCHR (22 November 2023), without Annexes B1-B5, is enclosed as Attachment 1 for ease of reference.

² See P. Loft, [‘UK acknowledges Yazidi genocide by Daesh/Islamic State’](#) (UK House of Commons Library, 9 August 2023).

³ UN Security Council Press Release, [‘ISIL/Da’esh Committed Genocide of Yazidi, War Crimes against Unarmed Cadets, Military Personnel in Iraq, Investigative Team Head Tells Security Council’](#) (10 May 2021) (as of 2021).

⁴ See Annex A to my letter (22 November 2023) (Attachment 1).

As the Committee has heard, following the judgments in Germany, the UK Government now recognises the atrocities committed by Daesh against the Yazidis in northern Iraq in 2014 as genocide.⁵ And the UK is under ‘a duty in international law to avoid impunity for genocidaires’.⁶ As the Committee has heard, this requires the UK ‘to introduce laws to prosecute the perpetrators, to be involved in the prosecutions and to help international tribunals to prosecute others’.⁷ Yet there have been no convictions of Daesh members for genocide or any other international crimes in the UK courts.⁸ Indeed, there have only been three successful prosecutions for international crimes in UK courts – ever – and none have been for the crime of genocide.

This lamentable status quo prompted the Clooney Foundation for Justice (CFJ) and Redress to publish a report in October seeking to identify ways in which legal and policy reforms could prompt more successful prosecutions of such serious crimes against suspects in the UK.⁹

As a result of my work on this report and in representing Daesh victims in court proceedings, I have identified 8 recommendations which, if implemented, would improve the UK Government’s ability to secure accountability for international crimes committed by Daesh and others. I have set out each one in turn below.

1. UK law limits prosecutions for some international crimes such as genocide to UK citizens and residents, while allowing prosecutions for torture and some war crimes on the broader basis of a suspect’s presence in the UK – the UK Government should rationalise the law by allowing prosecutions of all international crimes set out in the ICC Act on the basis of presence.

UK law recognises the principle of universal jurisdiction, which permits national courts to hold trials for crimes such as genocide, war crimes and crimes against humanity no matter where they occur. But a key barrier to the exercise of universal jurisdiction in the UK is the requirement under the International Criminal Court Act 2001 (ICC Act) that prosecutions can only be brought against UK citizens or residents.¹⁰ Suspects of genocide, crimes against humanity and war crimes who are not UK nationals or residents are free to

⁵ See JCHR, Uncorrected oral evidence: [Daesh \(HC 1922, 18 October 2023\)](#), Q8 (Dr Ewelina Ochab, IBAHRI). See further Philip Loft, ‘[UK acknowledges Yazidi genocide by Daesh/Islamic State](#)’ (UK House of Commons Library, 9 August 2023).

⁶ See JCHR, Uncorrected oral evidence: [Accountability for Daesh crimes \(HC 1922, 31 January 2024\)](#), Q72 (Jonathan Hall KC, Independent Reviewer of Terrorism Legislation) (responding to the Chair’s question about the UK’s ‘obligation to prevent and punish acts of genocide’ under the Genocide Convention).

⁷ See JCHR, Uncorrected oral evidence: [Daesh \(HC 1922, 18 October 2023\)](#), Q5 (Dr Ewelina Ochab, IBAHRI) (explaining that the Genocide Convention ‘imposes obligations upon states to prevent and punish the crime of genocide’, that ‘the duty to punish genocide ... is incorporated into Article 1’ of the Genocide Convention, and that ‘the law on genocide’ in the UK is the International Criminal Court Act 2001).

⁸ See *ibid*, Q4 (Pari Ibrahim, FYF).

⁹ See Clooney Foundation for Justice and Redress, ‘[Global Britain, Global Justice: Strengthening Accountability for International Crimes in England and Wales](#)’ (October 2023) (‘CFJ/Redress report’).

¹⁰ ICC Act, ss. 51 and 67. See further [CFJ/Redress report](#), pp. 29-31.

visit the UK without any fear of prosecution by UK authorities.¹¹ This keeps most Daesh fighters out of the reach of the British police. As the Committee has heard, if a Daesh fighter who is not a British resident or citizen ‘comes to the UK on a student visa or any sort of visa, that person could not be prosecuted ... even if the UK Government had evidence of their involvement’ in international crimes under the ICC Act.¹²

The UK’s laws are both internally inconsistent and anomalous. The UK’s legal framework deviates from that of both civil law jurisdictions in Europe, such as Germany, and other common law jurisdictions around the world. For instance, in Canada, the Crimes Against Humanity and War Crimes Act allows Canadian courts to exercise universal jurisdiction over the crimes of genocide, crimes against humanity and war crimes committed abroad if the suspect is present on Canadian territory, regardless of their nationality or residency.¹³ Likewise, in the United States, the Justice for Victims of War Crimes Act passed in 2023 expanded US law to allow federal authorities to prosecute alleged perpetrators of war crimes committed abroad, based on presence alone and regardless of the nationality of the perpetrator or victim.¹⁴

The UK’s legal framework under the ICC Act in relation to crimes under the Rome Statute also diverges from UK legislation giving effect to other treaties prohibiting international crimes. For instance, the Geneva Conventions Act 1957 prohibits war crimes that amount to ‘grave breaches’ of the Geneva Conventions 1949, encompassing war crimes that take place in an international armed conflict.¹⁵ The Criminal Justice Act 1988 implements the UK’s obligations under the UN Convention against Torture and prohibits the crime of torture.¹⁶ Unlike under the ICC Act, suspects can be prosecuted under either of these Acts regardless of whether they are UK nationals or residents.

The UK Government should therefore follow the recommendation set out in the CFJ/Redress report to remove the nationality and residence requirements for prosecutions for genocide, crimes against humanity and war crimes under the ICC Act, and instead require only presence, as per the existing UK law on torture and war crimes that amount to ‘grave breaches’ of the Geneva Conventions. This would standardise the UK’s approach across international crimes, preserve the principle that defendants must be present,¹⁷ and enhance the UK’s ability to prosecute Daesh members on its territory. This proposal by the Clooney Foundation for Justice and Redress was endorsed at – and since – the launch of the report by a number of UK legal experts including Lord Macdonald of

¹¹ See [CFJ/Redress report](#), pp. 47-50. An exception is that for war crimes amounting to ‘grave breaches’ of the Geneva Convention 1949, prosecutions can take place on the broader basis of presence: see Geneva Conventions Act 1957, s. 1. See further [CFJ/Redress report](#), p. 32.

¹² JCHR, Uncorrected oral evidence: [Daesh \(HC 1922, 18 October 2023\)](#), Q8 (Dr Ewelina Ochab, IBAHRI).

¹³ Canada: Crimes against Humanity and War Crimes Act (S.C. 2000, c. 24), s. 6.

¹⁴ US: Justice for Victims of War Crimes Act 2023, amending title 18 US Code s. 2441.

¹⁵ See Geneva Conventions Act 1957, s. 1.

¹⁶ Criminal Justice Act 1988, s. 134.

¹⁷ See also JCHR, Uncorrected oral evidence: [Accountability for Daesh crimes \(HC 1922, 31 January 2024\)](#), Q79 (Jonathan Hall KC, Independent Reviewer of Terrorism Legislation) (confirming ‘the need for the defendant to be present in the country’).

River Glaven KC, a former Director of Public Prosecutions; Lord Anderson of Ipswich KBE KC, a former Independent Reviewer of Terrorism Legislation; British judge Sir Howard Morrison KCMG CBE KC, a former judge at the International Criminal Court; and Lord Falconer of Thoroton PC KC, a former Lord Chancellor.¹⁸ A mark-up to existing ICC Act provisions reflecting this proposal is enclosed for ease of review.¹⁹

2. **UK legislation does not recognize command or superior responsibility – the UK Government should amend relevant laws to recognize it for all international crimes.**

UK criminal law does not recognise two important modes of liability – command and superior responsibility – for some international crimes.²⁰ While commanders can be tried under existing modes of liability,²¹ recognition of these two forms of responsibility for international crimes is instrumental to overcome a common hurdle in the prosecution of international crimes: the linkage of commanders to crimes committed by their subordinates. Superior responsibility allows prosecutors to charge leaders even when they cannot prove that orders were given – as long as they can demonstrate that leaders were negligent in failing to prevent or punish serious atrocities committed by their subordinates. And the existence of this form of responsibility can act as a deterrent for grave crimes.

The ICC Act, implementing Article 28 of the Rome Statute, is the first piece of legislation to incorporate command and superior responsibility in UK domestic law, supplementing the modes of liability available for ordinary crimes.²² But it does not extend to certain international crimes such as torture and, to date, no commander has been prosecuted in the UK for failure to prevent or punish the crimes of their subordinates. It is possible that a court would apply command responsibility for torture as customary international law (applicable in both international and non-international armed conflict), but this has not yet been fully tested.²³

This means that, in relation to torture as a stand-alone crime, a superior or commander whose subordinates have committed isolated acts of torture *not* constituting crimes against humanity or war crimes (which would be covered under the ICC Act) may not be held responsible under current UK legislation as section 134 of the Criminal Justice Act 1988 does not provide for command or superior responsibility. The UK Government should

¹⁸ See, e.g., C. Baksi, ‘Amal Clooney demands law be changed to prosecute war criminals’ (The Times, 26 October 2023).

¹⁹ See Attachment 2

²⁰ See further [CFJ/Redress report](#), pp. 37-39, 52-53.

²¹ E.g., conspiracy to commit an offence outside England and Wales under s. 1A of the Criminal Law Act 1977, aiding and abetting under the Accessories and Abettors Act 1861, or encouraging and assisting an offence under ss. 44-45 of the Serious Crime Act 2007.

²² ICC Act, s. 65.

²³ See *R v Jones and Milling* [2006] UKHL 16; R. May and S. Powles, ‘Command Responsibility - A New Basis of Criminal Liability in English Law?’ [2002] Criminal Law Review 363. For a detailed review of the UK courts’ approach to customary international law, see Lord Lloyd-Jones, ‘International Law Before United Kingdom Courts: A Quiet Revolution’ (2022) 71 International & Comparative Law Quarterly 503.

therefore amend relevant laws to make clear that command and superior responsibility can apply to international crimes not covered by the ICC Act.

3. Terrorism charges do not capture the nature and scale of the crimes committed against victims – the UK should prosecute suspects for international crimes where there is evidence to do so.

The Committee has heard that a limited number of British Daesh members have been convicted of terrorism.²⁴ But none of have been convicted of international crimes. As the Committee has heard, the reasons for this include that ‘the police looked at managing the risk as their key task, rather than achieving accountability’ and ‘use[d] the terrorism legislation that counterterrorism police are very familiar with as a way of mitigating that risk’.²⁵ And (as mentioned above), when questioning returnees, ‘counterterrorism border police ... did not ask questions designed to identify whether that person was a witness or a perpetrator’ of international crimes.²⁶

Yet as I mentioned in my earlier letter, German authorities prosecuted Daesh members for both international crimes and terrorism related offences to ensure that perpetrators were held to account for all their crimes. This has been very important to survivors, many of whom do not consider that terrorism offences capture the nature and scale of criminality involved. The most glaring example in the UK is that of Aine Davis, an alleged member of the notorious ‘Beatles Cell’ which participated in a brutal hostage-taking scheme that resulted in the deaths of four US citizens, as well as the deaths of British and Japanese nationals,²⁷ and public reports suggest that he was involved in the rape and enslavement of Yazidis.²⁸ Yet Aine Davis was recently convicted in the UK of funding terrorism and possessing a firearm for terrorist purposes and sentenced to only 8 years’ imprisonment.²⁹

Against this background, I endorse the recommendation by the Independent Reviewer of Terrorism that ‘[m]ore resources ought to be put in ... war crimes, and there ought to be a closer working between the war crimes unit and the counterterrorism policing unit’³⁰ and

²⁴ The Independent Reviewer of Terrorism Legislation confirmed to the Committee that only 12 individuals were convicted for their conduct in Syria in the sense that ‘what they did over there’ formed ‘the basis of their criminal conduct’: JCHR, Uncorrected oral evidence: [Accountability for Daesh crimes \(HC 1922, 31 January 2024\)](#), Q69, Q91 (Jonathan Hall KC, Independent Reviewer of Terrorism Legislation). See also JCHR, Uncorrected oral evidence: Daesh (HC 1922, 18 October 2023), Q2, Q4 (Dr Ewelina Ochab).

²⁵ *ibid*, Q70, Q72 (Jonathan Hall KC, Independent Reviewer of Terrorism Legislation)

²⁶ *ibid*, Q75 (Jonathan Hall KC, Independent Reviewer of Terrorism Legislation)

²⁷ See US Attorney's Office, Eastern District of Virginia Press Release, [‘ISIS ‘Beatle’ Sentenced to Life Imprisonment for Hostage-Taking Scheme that Resulted in the Deaths of American, British, and Japanese Citizens’](#) (19 August 2022).

²⁸ See, e.g., [‘FIGHT FOR JUSTICE I was raped by Brit ISIS ‘Beatle’ Aine Davis and sold 15 times as sex slave – jihadi monster must face trial in the UK’](#) (The Sun, 18 November 2023).

²⁹ *ibid*.

³⁰ JCHR, Uncorrected oral evidence: [Accountability for Daesh crimes \(HC 1922, 31 January 2024\)](#), Q99 (Jonathan Hall KC, Independent Reviewer of Terrorism Legislation); see also Q89 (referring to ‘cumulative

also recommend that UK authorities should encourage prosecution for international crimes in addition to terrorism charges to capture the scale of the atrocities committed against victims and hold those who perpetrated them accountable.

4. UK investigations have traditionally not begun before a perpetrator was identified and present on UK territory – UK authorities should carry out more ‘structural investigations’.

The police are generally not encouraged to launch a full investigation until a suspect is present on UK territory. The CPS/SO15 War Crimes/Crimes against Humanity Referral Guidelines indicate that, for crimes falling under the ICC Act, during a scoping exercise, the police will consider whether the suspect is present in the UK or in a country from which the UK can request extradition. If that is not the case, the ‘investigation will be suspended until there is a reasonable prospect of the suspect returning to the UK voluntarily’.³¹

The requirement can make it difficult to build cases against individuals who are only present on the territory of the UK for a short time. If an investigation that ordinarily takes one to two years can only begin in earnest when there are reasonable grounds to believe that the suspect (who under the ICC Act also needs to be a UK national or resident) is arriving in the UK on a particular date, it may be impossible to conclude an investigation within the time needed to lay a charge or effect an arrest, especially as a suspect can only be held for 96 hours without charge.³²

In contrast, authorities can proceed with ‘structural investigations’ without having identified a specific suspect or confirmed the suspect’s presence in the country. They focus on groupings of possible perpetrators and the wider context in which the crimes happened.

As I set out in my earlier letter, the German authorities launched a structural investigation concerning international crimes committed by Daesh against the Yazidis in Syria and Iraq since 2014. As the Committee has heard, these ‘structural investigations’ greatly assisted in the conviction of Daesh members in the German courts.³³ The Independent Reviewer of Terrorism Legislation reported that France and Sweden, joined by the Netherlands and others, took a similar ‘thematic approach’ which was ‘very impressive’.³⁴

offences’ on the Continent, ‘where you go for both terrorism and core international crimes’ and concluding that ‘we should do more’).

³¹ Crown Prosecution Service, ‘[War Crimes/Crimes Against Humanity Referral Guidelines](#)’ (7 August 2015), s. A: Scoping Exercise.

³² Police and Criminal Evidence Act 1984, s. 44(3). Even if an individual is released on pre-charge (police) bail, conditions restricting movement and association can only be imposed on suspects for three months at a time; any extension beyond nine months requires court approval: Police and Criminal Evidence Act 1984, ss. 47ZB(1)(b), 47ZD(2), 47ZDA(2).

³³ JCHR, Uncorrected oral evidence: [Daesh \(HC 1922, 18 October 2023\)](#), Q14 (Dr Ewelina Ochab, IBAHRI).

³⁴ JCHR, Uncorrected oral evidence: [Accountability for Daesh crimes \(HC 1922, 31 January 2024\)](#), Q72 (Jonathan Hall KC, Independent Reviewer of Terrorism Legislation)

Although the UK has not traditionally embraced this investigative model, SO15 opened a structural investigation relating to the atrocities committed against the Yazidis in 2021 and recently announced that they would open structural investigations to mirror the 17 situations under investigation by the ICC,³⁵ meaning that the police can open an investigation before they have a suspect and will be better placed to respond and potentially charge an individual once they are in the UK. *The UK Government should continue to strengthen the concept of structural investigations for the effective investigation of international crimes.*

5. The UK faces challenges in gathering evidence abroad – *to help reduce challenges related to evidence-gathering, the UK Government should encourage better collaboration with victims’ counsel and credible NGOs.*

As I mentioned in my earlier letter, Yazda – a leading Yazidi organization representing the interests of survivors of Daesh crimes – played an instrumental role in supporting criminal cases against Daesh in Germany, including by identifying and locating key witnesses and victims in Iraq and facilitating their participation in the German proceedings. Yazda employees were heard as witnesses at trial.³⁶

Investigating international criminal cases often involves obtaining evidence from remote locations in countries that may not be open to cooperating with foreign investigators. These challenges are exacerbated when the crimes under investigation take place in an active war zone where security can be a significant issue, linguistic and cultural barriers may make it difficult to interview survivors about sensitive topics, and investigators may be unable to contact survivors if the internet and telecommunication channels are cut off.³⁷

Close contact with victims’ counsel and credible NGOs can be instrumental in overcoming such challenges and launching successful prosecutions. NGOs can undertake preliminary investigations and may be the only entities on the ground with access to certain sites and contacts to victims and witnesses.³⁸ They will also often have referral pathways in place to cater for the practical, psychosocial, and other needs of survivors.

While some NGOs are included in the UK War Crimes Network,³⁹ UK authorities should further collaborate with civil society groups and survivors to gather evidence, provide appropriate support to survivors who provide evidence and ensure that information about the trial and verdict are accessible to survivor communities. The UK should also publish

³⁵ See [CFJ/Redress report, p. 62.](#)

³⁶ See also JCHR, Uncorrected oral evidence: [Daesh \(HC 1922, 18 October 2023\)](#), Q9 (Dr Ewelina Ochab, IBAHRI).

³⁷ See further [CFJ/Redress report](#), pp. 63-65.

³⁸ H. Varney and K. Zduńczyk, ‘[Gearing Up the Fight Against Impunity](#)’ (International Centre for Transitional Justice, March 2022), p. 49.

³⁹ The UK War Crimes Network consists of relevant agencies working on international accountability including: the National Crime Agency, the Foreign, Commonwealth & Development Office, the Ministry of Defence, the Crown Prosecution Service, and SO15 as well as NGO representatives.

guidance, similar to the guidelines published by Eurojust and the ICC Prosecutor,⁴⁰ to make clear how NGOs should conduct witness outreach and submit evidence to the authorities, to increase prospects of success.

6. There is insufficient coordination between the UK’s relevant national agencies – they should improve coordination, including by appointing a point person akin to the US Ambassador-at-Large for Global Criminal Justice.

Cooperation among relevant agencies at the national level is crucial to the successful prosecution of international crimes. Many specialised war crimes units work closely with immigration services, who share information on suspected perpetrators with investigators.⁴¹ For example, Canada’s War Crimes Program is a coalition of police, immigration authorities and the Department of Justice that meets regularly to share information and collaborate to detect potential perpetrators on Canadian soil and decide what action should be taken (criminal prosecution, revocation of citizenship and deportation, etc.). And in the Netherlands, a specialised unit known as the ‘1F Unit’ was created within the immigration services to identify people who are suspected of involvement in serious international crimes.⁴²

This type of collaboration was key to the prosecution in Koblenz, Germany, of Eyad Al-Gharib, a former Syrian intelligence officer charged with bringing at least 30 protesters to a Damascus prison, where they were tortured, after peaceful pro-democracy protests erupted against President Assad’s regime in 2011. The German immigration authorities⁴³ are one of the first contact points for Syrian asylum seekers arriving in the country and the first to conduct interviews with them. If, during an asylum interview, a case worker finds information relevant to crimes under the German Code of Crimes Against International Law, they will send this information to a special division within the immigration authorities. This division then passes information on to the federal criminal police. Statements made during Al-Gharib’s asylum proceedings were shared with and triggered an investigation by the German police.⁴⁴ And he was later convicted for aiding and abetting crimes against humanity.⁴⁵

⁴⁰ See, e.g., Eurojust, International Criminal Court Office of the Prosecutor, [‘Documenting international crimes and human rights violations for accountability purposes: Guidelines for civil society organisations’](#) (2022). See also [Murad Code: The Global Code of Conduct for Gathering and Using Information about Systematic and Conflict-Related Sexual Violence](#) (2022).

⁴¹ H. Varney and K. Zduńczyk, [‘Gearing Up the Fight Against Impunity’](#) (International Centre for Transitional Justice, March 2022), p. 51.

⁴² *ibid.*

⁴³ Also known as the Bundesamt für Migration und Flüchtlinge (BAMF).

⁴⁴ [Q&A: First Syria State Torture Trial in Germany](#) (Human Rights Watch, 6 January 2022).

⁴⁵ See [‘Top German court reject’s Syrian’s appeal in torture case’](#) (AP, 3 May 2022).

Insofar as the UK is concerned, the Committee has heard that ‘there ought to be closer working between the war crimes unit and the counterterrorism policing unit’.⁴⁶ For instance, ‘counterterrorism border police’ interviewing those returning from Iraq or Syria ‘did not ask questions designed to identify whether that person was a witness or a perpetrator’.⁴⁷ In addition, in the UK, the Special Cases Unit of the Home Office, based in Liverpool, is responsible for reviewing cases for asylum to ensure that certain individuals linked to terrorism, espionage, war crimes and serious and organized crime are not granted British nationality, or if already granted, are deprived of it.⁴⁸ Where the Special Cases Unit of the Home Office identifies suspected perpetrators of core international crimes, they may refer these to SO15 for prosecution. But this often does not happen.

A freedom of information request revealed that between 2013 and 2015, 135 individuals were refused citizenship in the UK by the Home Office due to their alleged involvement in war crimes, crimes against humanity, genocide or torture. None of these cases were referred for removal action, and none of these cases were referred to the Metropolitan Police for investigation.⁴⁹ The Home Office advised the authors of the CFJ/Redress report that ‘it does not collect data as to the reasons for the individual being assessed as not of good character, which include, but are not limited to, suspected involvement in war crimes, immigration offences and criminality’.⁵⁰

While the UK War Crimes Network convenes relevant agencies bi-annually to discuss casework, a more coordinated approach to identifying and closing gaps in cooperation would be useful. A centralising body similar to the US Office for Global Criminal Justice is one model to ensure such coordination. In the US, the Office and its head, the Ambassador-at-Large for Global Criminal Justice, advise the Secretary of State and others on issues related to war crimes, crimes against humanity, and genocide. The US Office for Global Criminal Justice also formulates national policy responses to atrocities, which ensures a degree of consistency in the national response to such crimes.⁵¹ Establishing a similar entity in the UK would allow the country to develop more consistent policies and practices in response to atrocity crimes around the world. *The UK’s relevant national bodies, such as the Home Office, CPS and Metropolitan Police, should improve coordination amongst themselves and the UK should appoint a point person akin to an Ambassador-at-Large for Global Criminal Justice.*

⁴⁶ JCHR, Uncorrected oral evidence: [Accountability for Daesh crimes \(HC 1922, 31 January 2024\)](#), Q99 (Jonathan Hall KC, Independent Reviewer of Terrorism Legislation).

⁴⁷ *ibid.*, Q75 (Jonathan Hall KC, Independent Reviewer of Terrorism Legislation).

⁴⁸ See Home Office, [Nationality: good character requirement](#) (31 July 2023). See also Home Office, [Exclusion \(Article 1F\) and Article 33\(2\) of the Refugee Convention](#) (28 June 2022).

⁴⁹ See [CFJ/Redress report, p. 74](#).

⁵⁰ *ibid.*

⁵¹ US Department of State, [Office of Global Criminal Justice](#).

7. Evidence of Daesh crimes collected by UNITAD over six years is at risk of going to storage – the UK Government should help ensure that it remains available for prosecutions in courts that respect international human rights law.

As the Committee has heard, the UK Government ‘played a very important role in establishing UNITAD’, the ‘the mechanism that was established to collect and preserve the evidence of the atrocities perpetrated by Daesh’.⁵² At the UN Security Council session in 2017 at which resolution 2379, creating UNITAD, was adopted, the UK – which held the pen on the draft – promised that although ‘bringing Da’esh to justice will take time’, justice should be delivered because ‘we owe it to those who have suffered to press ahead, however long the road might be’.⁵³ The UK Government has contributed at least GBP 2 million to these efforts and to UNITAD’s overall funding of more than USD 125 million.

UNITAD now has significant evidentiary holdings.⁵⁴ It has identified 2,286 alleged perpetrators of crimes against the Yazidis in Iraq’s Sinjar region alone, including 188 foreign fighters.⁵⁵ German prosecutors coordinated with UNITAD to gather evidence for the successful prosecution of Daesh members, including for genocide, in the German courts.⁵⁶ State authorities from 20 countries submitted over 200 requests for assistance to UNITAD and ‘the demand for this support has been growing, and can only be expected to grow’.⁵⁷

Yet as the Committee has also heard, UNITAD will ‘cease to exist’ very soon.⁵⁸ In a session that took less than 20 minutes in September, the UN Security Council abruptly ended UNITAD’s mandate – with no plan as to how the evidence would be used to prosecute Daesh for genocide, sexual violence or other crimes.⁵⁹

The decision to close UNITAD was taken without consulting survivors of Daesh crimes, who painstakingly gave evidence to UN investigators over the course of six years, and

⁵² JCHR, Uncorrected oral evidence: [Daesh \(HC 1922, 18 October 2023\)](#), Q7 (Dr Ewelina Ochab, IBAHRI). See also [UN Security Council Resolution 2379 \(2017\)](#) (UN Doc. S/RES/2379 (2017)), p. 2.

⁵³ [UN Security Council 8052nd meeting](#), 21 September 2017 (UN Doc. S/PV.8052), p. 3.

⁵⁴ Anees Ahmed (the current Director of Evidence Management at UNITAD) has clarified that all of UNITAD’s data is digitized and held online using Relativity software. However, not all of the data has been analysed (i.e., ‘processed’). See also UN Secretary-General, [Report on the implementation of resolution 2697 \(2023\)](#) Report on the implementation of resolution 2697 (2023) (UN Doc. S/2024/20) 15 January 2024, p. 9 (stating that UNITAD holds approximately ‘39 TB of collected data in its unprocessed state’ and ‘27 TB of processed data’).

⁵⁵ Special Adviser and Head of UNITAD, [Tenth report on the activities of UNITAD](#) (UN Doc. S/2023/367) 22 May 2023)p. 6.(as of 2023).

⁵⁶ See also [‘UNITAD Welcomes German Court Conviction of ISIL Female Member for Aiding and Abetting Genocide Against Yazidis’](#) (UNITAD, 26 June 2023).

⁵⁷ Special Adviser and Head of UNITAD Speech, [Briefing to the UNSC, 4 December 2023, 11th Report](#) (5 December 2023).

⁵⁸ JCHR, Uncorrected oral evidence: [Daesh \(HC 1922, 18 October 2023\)](#), Q7 (Dr Ewelina Ochab, IBAHRI).

⁵⁹ See [UN Security Council 9419th meeting](#) (UN Doc. S/PV.9419), 15 September 2023.

against the wishes of 50 survivor groups that had called for a renewal of UNITAD's mandate only weeks earlier.⁶⁰

To ensure that the evidence of crimes committed by Daesh collected by UNITAD can be used in future prosecutions, *the UK Government should publicly endorse and gather international support for the creation of an active UN mechanism that can hold UNITAD's evidence – as well as evidence from other UN investigative bodies and international courts whose mandates have expired – and ensure that it remains available to be shared with national and international authorities for future prosecutions in line with international standards.*

8. Efforts to hold Daesh accountable for crimes in national courts are not sufficient; in order to ensure that Daesh faces justice for its crimes, *the UK Government should support the creation of a hybrid UN-Iraqi tribunal or a similar international court process that can hold trials of perpetrators at scale in line with international standards.*

To date, Germany's courts have been the only ones to bring Daesh to justice for international crimes – including by hearing the only three trials anywhere in the world in which a Daesh fighter has been convicted of genocide. The UN Security Council has refused to refer Daesh crimes committed in Iraq or Syria to the ICC. So far neither Iraq nor Syria have recognized the jurisdiction of the ICC. Iraq has not reformed its laws to criminalize genocide, crimes against humanity or war crimes. Trials of Daesh figures in Iraq have been considered by the UN to violate international standards⁶¹ and apply the death penalty, meaning that UNITAD is prevented from sharing its evidence with Iraq under applicable UN rules.⁶² Survivors have also frequently shared their distrust in a purely national process⁶³ and have consistently called for the establishment of an international tribunal to prosecute members of Daesh on a larger scale.⁶⁴

⁶⁰ See ['Concerns about the non-renewal of UNITAD's mandate in Iraq'](#) (Yazda, 12 September 2023). See also [Statement from Nadia Murad and Barrister Amal Clooney](#) (Nadia's Initiative, 18 September 2023).

⁶¹ See, e.g., UNAMI, ['Human Rights in the Administration of Justice in Iraq: trials under the anti-terrorism laws and the implications posed to justice, accountability and social cohesion in the aftermath of ISIL'](#) (January 2020), pp. 13-16.

⁶² See, e.g., UN Report of the Secretary General, [Report on strengthening and coordinating United Nations rule of law activities](#) (UN Doc. A/73/253) 25 July 2018, p. 16.

⁶³ See, e.g., ['Yazda and a Group of Survivors Discuss Establishing a Tribunal to try ISIL Suspects in Iraq'](#) (Yazda, 9 June 2021).

⁶⁴ ['Highest German court confirms sentence in the first trial ever against an ISIS member for crimes against Yazidi victims'](#) (Doughty Street Chambers, 5 April 2024) (Nadia Murad urging 'the international community and UN member states to establish an international tribunal capable of conducting trials on a larger scale' as 'we mark the 10th anniversary of the Yazidi genocide,')

National security concerns also make the creation of a court imperative. Thousands of Daesh fighters reportedly continue to operate in multiple countries,⁶⁵ while tens of thousands of alleged Daesh-affiliated individuals are held in camps or makeshift prisons in Iraq and Syria.⁶⁶ These detention facilities are at risk of mass breakout⁶⁷ and have been called ‘the perfect breeding ground for a revival of the terrorist caliphate’.⁶⁸ As one US Senator put it, ‘there’s a perfect storm brewing in northeastern Syria, where we have a refugee camp full of ISIS wives and children mixed in with other populations’ that is ‘going to be an ISIS factory.’⁶⁹ Dr Shiraz Maher, director of the International Centre for the Study of Radicalisation, called the situation the ‘single greatest security threat to the West’.⁷⁰

To help advance accountability for Daesh crimes, I set out options for international prosecutions in my speech to the UN Security Council in April 2019.⁷¹ I have since developed – with and on behalf of Daesh survivors – a proposal for a hybrid UN-Iraq tribunal that builds on UNITAD’s work by providing that the UNITAD team transitions into the prosecution arm of a hybrid UN-Iraq court.⁷² This would become increasingly domesticated when benchmarks for the conduct of domestic trials have been reached and would eventually be fully incorporated into the Iraqi judicial system. When I first shared the proposal, it was received in positive terms by state officials, including within the UK and US governments. But no leader has taken this proposal forward in a meaningful way.

Support for an international court to put ISIS on trial does not conflict with support for the ICC when the jurisdiction of such a court goes beyond the reach of the ICC Prosecutor, who currently could not pursue Syrian or Iraqi nationals for such crimes and whose budget usually limits the number of perpetrators who can be prosecuted for each

⁶⁵ UN Security Council Press Release, [‘Repatriating Detained Foreign Fighters, Their Families Key to Combating Threat Posed by Islamic State, Counter-Terrorism Officials Warn Security Council’](#) (24 August 2020).

⁶⁶ Analytical Support and Sanctions Monitoring Team, [Twenty-seventh report submitted pursuant to resolution 2368 \(2017\) concerning ISIL \(Da’esh\), Al-Qaida and associated individuals and entities](#) (UN Doc. S/2021/68) 3 February 2021, pp. 19 -20; A. Hanna, [‘Islamists Imprisoned Across the Middle East’](#) (Wilson Centre, 24 June 2021). See also, e.g., M.R. Gordan and B. Faucon, [‘U.S., Europeans Clash Over How to Handle Islamic State Detainees’](#) (The Wall Street Journal, 1 December 2019).

⁶⁷ Lead Inspector General Report to the US Congress, [‘Operation Inherent Resolve’](#), 1 January 2020 – 31 March 2020, p. 57. See also Lead Inspector General Report to the US Congress, [‘Operation Inherent Resolve’](#), 1 January – 31 March 2021 p. 67; Analytical Support and Sanctions Monitoring Team, [Twenty-seventh report submitted pursuant to resolution 2368 \(2017\) concerning ISIL \(Da’esh\), Al-Qaida and associated individuals and entities](#) (UN Doc. S/2021/68) 3 February 2021, pp. 19-20.

⁶⁸ F. Milan, [The return of ISIS? Jihadis fleeing into Asia and detainees in Syria and Iraq pose a greater danger than terrorists returning home](#), (King’s College London, 16 July 2020).

⁶⁹ M. Brest, [“Perfect storm brewing” for “reemergence of ISIS” in Syria, Graham warns](#) (The Washington Examiner, 21 July 2022).

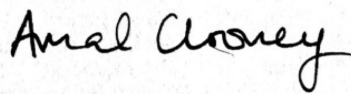
⁷⁰ See L. O’Callaghan, [‘West warned of potential ISIS return next year’](#) (The National News, 27 December 2022).

⁷¹ Attachment 4.

⁷² Attachment 3.

conflict.⁷³ Similarly, the UK is already closely examining the possibility of a new international court to deal with certain crimes committed in Ukraine that are beyond the reach of the ICC.⁷⁴ So the closure of UNITAD should be an impetus for the UK Government to publicly state its support for an international tribunal that can deal with ISIS crimes at scale, and the UK should take the lead on moving it forward with other states.

Yours faithfully,



Ms. Amal Clooney

⁷³ ICC Prosecutor, [Statement on the alleged crimes committed by ISIS](#) (8 April 2015).

⁷⁴ See UK Government Press Release, '[UK announces further support for Ukraine's efforts to bring war criminals to justice](#)' (10 December 2023). See also P. Butchard and N. Walker, '[Potential merits of a special tribunal on Ukraine](#)' (House of Commons Library, 5 May 2023);

ANNEX

List of attachments

1. Amal Clooney letter to the JCHR (22 November 2023) excluding Annexes B1-B5
2. Mark-up of section 51 of the International Criminal Court Act 2001 to remove the nationality and residence requirements for universal jurisdiction (March 2024)
3. Proposal for a UN-IRAQ Tribunal to Hold ISIS Accountable for International Crimes prepared by Amal Clooney on behalf of survivors of ISIS (January 2022)
4. Amal Clooney remarks delivered at the UN Security Council Open Debate on Sexual Violence in Conflict (23 April 2019).