

The International Development Committee's Inquiry on Promoting Dialogue and Preventing Atrocities: The UK Government's Approach

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The UK Government claims that it has *tools available* to prevent atrocity crimes. According to the UK Government, these tools include: 'early warning mechanisms to identify countries at risk of instability, conflict and atrocities, diplomacy to help de-escalate tensions and resolve disputes, development/programmatic support to address the root causes of conflict, defence and policing tools, which may include deployments of UK armed forces, to assist with training and capacity-building in the security sector.'¹ The UK Government maintains that these tools help it to understand 'what is happening in countries including the emerging risk of mass atrocity. This includes the Countries at Risk of Instability process, an internal annual exercise, which helps policy-makers to prioritise countries and regions for potential government engagement. Other sources of information include reporting from our diplomatic missions overseas, in-depth internal analyses, as well as reporting from international partners, multilateral and non-governmental organisations and wider open-source reporting.' The UK Government further maintains that these tools help to understand the emerging risk of mass atrocity, including the Countries at Risk of Instability process but also reporting from diplomatic missions overseas, in-depth internal analyses, and reporting from international partners. The UK Government further claims that it uses the Joint Analysis of Conflict and Stability (JACS) which includes a section on atrocity crimes.

JACS is not a specific framework for the analysis of atrocity crimes and should not be used as such. Furthermore, it was not until March 2021, that the guidance was updated to include a section on atrocity crimes. To this day the document is not publicly available and as such - it is difficult to assess whether it is fit for purpose. However, it is noteworthy that the JACS, as originally published in 2017, is focused on conflict analysis and refers to frameworks focused on conflict only.

The UK Government maintains that the issue of atrocity crimes is covered with its crises and conflict responses given that, as the Government claims, the majority of atrocities occur in and around conflict. This approach is flawed in that, first, it ignores the fact that atrocity

¹ See: <https://www.gov.uk/government/publications/uk-approach-to-preventing-mass-atrocities/uk-approach-to-preventing-mass-atrocities>.

crimes can be perpetrated outside of conflict scenarios, including crimes against humanity and genocide. This is very clear from the examples of China and North Korea. Second, responding to conflicts and responding to atrocity crimes are two different (even though sometimes overlapping) approaches.

Within this focus on conflict scenarios, the UK Government argues that it uses early warning mechanisms to identify countries at risk of instability, conflict and atrocities. However, as scholars, including Verdeja, argue, risk factors and early warnings are different and should not be conflated.² In any event, it is crucial to explore what are these early warning mechanisms to identify countries at risk of atrocities, what are the frameworks and the methodology used.

Beyond the above, the UK Government has failed to disclose what assessment they conduct and what framework for analysis of atrocity crimes they use. The issue has been challenged by Alistair Carmichael MP, who asked the then Foreign Secretary Dominic Raab about its Department's assessment of the risk factors of genocide and their conclusions in the case of the Uyghur genocide. Dominic Raab responded that:

The reality is that, in order to secure authoritative assessment and conclusions in relation to those widespread reports, which we think are tenable, plausible and credible, we need access to the camps.³

The response makes it clear that the UK Government does not conduct such an analysis, as otherwise, Dominic Raab would have highlighted it in his response. Furthermore, as it is clear from the response, the Department conflates the assessment of the serious risk with the assessment of the current situation if it believes that this assessment is dependent on access to camps. Indeed, the serious risk of genocide would have been present before such camps were even established. The plethora of evidence from recent years should have been assessed against the risk factors as identified in the UN Atrocity Crimes Framework and the JBI's Compilation. Again, considering the response from Dominic Raab, it is very unlikely this has been done in the case of the Uyghurs, nor other cases.

² Ernesto Verdeja, 'Predicting Genocide and Mass Atrocities' (2016) 9 *Genocide Studies and Prevention: An International Journal* 3: 14.

³ See: <https://hansard.parliament.uk/commons/2021-01-12/debates/C7E8DDAA-46C2-4A47-B2D6-BBBEE0A99B76/XinjiangForcedLabour>.

Similarly, in 2021, Lord Alton wrote to the UK Government asking further to their framework for the analysis and what assessment they have made of (1) the early warning signs of atrocity crimes in Afghanistan, and (2) the risk of genocide against the Hazaras.⁴ The Government's response referred only to the UK's long-standing position on leaving the issue of genocide response to courts and failed to respond to the question asked. As the UK may wish to rely on the argument that it does not have to determine genocide, as flawed as it is, the UK Government must conduct its analysis of the serious risk of genocide. Yet again, the UK Government failed to respond whether it conducts such an analysis of the serious risk of genocide.

Because of this glaring failure and lack of any comprehensive mechanisms that could give effect to the obligation to prevent genocide, Bishop of Truro, in his independent review of the FCO/FCDO's responses to the persecution of Christians globally, included an important recommendation aimed at addressing the failed responses to genocide.⁵ Recommendation 7 requires the FCDO to:

Ensure that there are mechanisms in place to facilitate an immediate response to atrocity crimes, including genocide through activities such as setting up early warning mechanisms to identify countries at risk of atrocities, diplomacy to help de-escalate tensions and resolve disputes, and developing support to help with upstream prevention work. Recognising that the ultimate determination of genocide must be legal, not political and respecting the UK's long-held policy in this area, the FCO should nonetheless determine its policy in accordance with the legal framework and should be willing to make public statements condemning such atrocities.

It is unclear whether and how far this recommendation has been implemented.

Furthermore, to address this long-standing failure of the UK Government to deal with the issue of genocide determination, Lord Alton of Liverpool introduced the Genocide Determination Bill, and most recently, the Genocide Amendment to the Trade Bill, which aimed to give the power to the High Court to hear cases and make the interim determination of genocide. It would have enabled a neutral arbiter to consider the case. Subsequently, this

⁴ WPQ of 16 September 2021. Available at: <https://questions-statements.parliament.uk/written-questions/detail/2021-09-16/HL2768>.

⁵ See: Appendix A for an example of the UK Government's failed responses to the Daesh genocide.

determination would be used by the State to inform its responses. Lord Alton's Genocide Amendment ultimately failed when the Neill Amendment (later referred to as the new mechanism) was adopted. The new mechanism allows a responsible committee of the House of Lords or the House of Commons to publish a report which '(a) states that there exist credible reports of genocide in the territory of a prospective FTA counter-party, and (b) confirms that, in preparing the report, the committee has taken such evidence as it considers appropriate.' If, after receiving a response from the Secretary of State, the committee is not satisfied by the Secretary of State's response then it may set out the wording of a motion to be moved in the House of Commons. The Minister of the Crown must then make arrangements for the motion to be debated and voted on. The new mechanism ignores the fact that Parliamentary committees, such as the Foreign Affairs Committee (FAC), already have powers of assessment and recommendation. The FAC found credible evidence of genocide in its 2016 reports on the Daesh atrocities, in its 2017 report on the Burmese's military atrocities, and most recently in its 2020 report on the alleged atrocities by the Chinese government. The UK Government did not follow up. The new mechanism does not provide anything new. Lastly, the new mechanism applies only to future bilateral free trade agreements. This means that no country with which the UK has a relationship, and in which there are currently credible allegations of genocide, will fall within its purview. Considering the very limited scope of the new mechanism, it cannot be seen as a way to implement Recommendation 7.

Recommendations

To be equipped to fulfil its obligations under the Genocide Convention, and also to implement Recommendation 7 of the Bishop of Truro review, the UK Government must introduce significant changes to its approach to genocide prevention. In response to the ongoing failures to address genocide, on 9 December 2021, for the International Day of Commemoration and Dignity of the Victims of the Crime of Genocide and the Prevention of this Crime, British politicians launched the Westminster Declaration on Bridging the Gap in Genocide Responses (the Westminster Declaration), a document to be used as a blueprint to address the current shortfalls. The Westminster Declaration call upon States to:

Monitor: States must introduce domestic mechanisms for monitoring early warning signs of atrocity crimes. As discussed earlier, the duties under the Genocide Convention are States'

duties. To be able to implement them, States must have comprehensive monitoring mechanisms in place that will enable them to be informed and act accordingly. Such monitoring should be done by a specially designated and trained team. First and foremost, the UK Government needs to introduce comprehensive mechanisms that will enable it to identify and assess early warning signs and risk factors of atrocity crimes.

Analyse: States must introduce comprehensive frameworks for real-time documentation, investigation and analysis of atrocity crimes as well as preservation of evidence relating to atrocity crimes. The team should analyse the serious risk of genocide, as required by the ICJ.

Recognise: States must acknowledge and recognise the nature, scope and scale of atrocities for what they are. It is not enough for States to use euphemisms and call atrocity crimes ‘human rights violations’ or ‘industrial-scale human rights violations.’ States must be cautious with making such determinations but must not shy away from making the determination in light of the evidence.

States must conduct their analysis and determine genocide to inform their responses. Genocide determination means here an official determination made by the government based on a comprehensive analysis of all available evidence. This determination should be used to inform the State’s responses to the atrocities, in line with the duties under the Genocide Convention, but also the R2P. It may be argued that genocide determination is not crucial, but actions to address the mass atrocities are. It has to be emphasised that actions and words are strongly linked.

Cooperate: States must establish cross-departmental teams to formulate response plans and act upon the findings. Such crimes as genocide require multi-layered responses and engagement of many different departments, including the Foreign Office, the Ministry of Defence, and others.

Respond: States must implement the recommended responses using best endeavours, expeditiously and with care.

Oversee: States must oversee the implementation of the recommendations and evaluate their impact.

Adjust: States must adjust the implementation of recommended responses to reflect the effectiveness of the steps as well as adherence to obligations under the Convention.

Assist: States must provide assistance to victims and survivors, including by creating a special fund to assist victims and survivors of genocide.

Take ownership: States must appoint a Special Envoy on Genocide and other International Crimes to take ownership over the work on genocide and other international crimes.

Without these steps, the UK Government will continue to fail to address genocide but also Recommendation 7 cannot be seen as implemented.

Appendix A: How the UK missed the early warning signs in the case of the Daesh genocide

On 3 August 2014, members of the terror organization Daesh (commonly referred to as Islamic State or ISIL) launched a violent attack against Yazidis in Sinjar, Iraq. Daesh fighters killed hundreds, if not thousands of men.⁶ As part of the same campaign, Daesh fighters abducted boys to turn them into child soldiers and women and girls for sex slavery. Thousands of women and girls are still missing and their fate is unknown. A few days after the attack on Sinjar, Daesh also attacked the Ninevah Plains and forced over 120,000 people to flee for their lives in the middle of the night. Daesh committed murder, enslavement, deportation and forcible transfer of population, imprisonment, torture, abduction of women and children, exploitation, abuse, rape, sexual violence and forced marriage.⁷ The atrocities have been recognised, at an international level, as crimes against humanity, war crimes and even genocide.⁸ The number of those killed by Daesh is still not known. Mass graves continue to be discovered.

The events of 2014 can only be described as a full-blown genocide. However, as genocide does not occur overnight, it is clear that the risk factors and early warning signs of the atrocities were there long before the atrocities. The question would be whether they were suggestive of a serious risk of genocide. Another question would be whether the UK Government knew or should have known about it at the time.

It will never be possible to analyse all the evidence available to the Government at the time, and the assessment will rely on publicly available documents on the issue. However, even with this limitation, it is clear that the Government knew or should have known of the serious risk of genocide a few years before the actual atrocities. Indeed, three years before the genocidal atrocities, in 2011, the UK Border Agency published a report on the situation in Iraq⁹ which identified deadly attacks on religious minorities, especially during religious gatherings.¹⁰ This included kidnapping and murder, both crimes were carried out with impunity. Armed groups attacked Christian, Yazidi, and Shabak communities, labelling them

⁶ UN, "‘They came to destroy’: ISIS Crimes Against the Yazidis’ (July 2016) (A/HRC/32/CRP.2).

⁷ Ibid.

⁸ Patrick Wintour, ‘MPs unanimously declare Yazidis and Christians victims of Isis genocide’ The Guardian (20 April 2016). Available at: <https://www.theguardian.com/politics/2016/apr/20/mps-unanimously-declare-yazidis-victims-of-isis-genocide>.

⁹ UK Border Agency, Operational Guidance Note, 2011. Available at: <https://www.refworld.org/pdfid/50c84d102.pdf>.

¹⁰ Ibid., 3.10.5.

crusaders, devil-worshippers, and infidels.¹¹ Such labelling of groups with names like crusaders, devil-worshippers, aims to dehumanise them to make it easier for the perpetrators to justify their annihilation. The report further raised the issues of lack of protection and inadequate government's response to such targeting:

Lacking militias and tribal structures to defend themselves, a disproportionate number have fled the country. Although the government publicly condemns violence against minority groups, it has not taken sufficient measures to bolster security in areas where minorities are particularly vulnerable to attacks, and community leaders say that attacks are almost never thoroughly investigated. Iraqi security forces rarely apprehend, prosecute, and punish perpetrators of such attacks, which has created a climate of impunity.¹²

This data was in the hands of the UK Government back in 2011. This data, if reviewed by a person with expertise in atrocity prevention, would have raised the alarm and triggered an assessment of the serious risk of genocide. Such an assessment would, most likely, confirm the finding of a serious risk of genocide.

However, the risk factors of atrocities were there even before the damning report of 2011. After the fall of the former regime, individuals and armed groups used the power vacuum this created to further their agenda.¹³ Over the ensuing years, sporadic incidents of violence turned into organised and systematic attacks. As such, the serious risk of genocide may have been there even before 2011 and should have been identified if only this data was being collected and assessed by an expert in atrocity prevention.

¹¹ Ibid.

¹² Ibid., 3.10.5.

¹³ See: Minority Rights International, 'From Crisis to Catastrophe: the situation of minorities in Iraq' (2014). Available at: https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/IRQ/INT_CRC_NGO_IRQ_19113_E.pdf.