

BACKGROUND _____

War crimes by UK forces in Iraq

Q & A on the legal basis

What is this case about?

The use of “stress positions”, sleep deprivation, sensory deprivation (including hooding), food and water deprivation as well as beating and other forms of abuse have been used by British forces and intelligence services as part of counter-insurgency and interrogation efforts for decades, from Malaya and Kenya to Aden and Northern Ireland. These techniques are often applied in combination and will in many cases reach the level of torture under international law. Subjecting detainees to such techniques is prohibited by the Geneva Conventions as well as the European Convention on Human Rights. They also represent war crimes under the Rome Statute of the International Criminal Court.

Available evidence suggests that the responsibility for the widespread abuse of detainees by UK forces in Iraq from 2003 extends up the chain of command to several of the military and civilian superiors who oversaw the arrest, detention and interrogation of Iraqis.

What is the aim of ECCHR’s work on this case?

With its work on this case, ECCHR aims to help obtain [justice for Iraqis](#) who were subjected to abuse in UK detention in Iraq from 2003 to 2008. We also aim to challenge the impunity enjoyed by those ultimately responsible for these widespread war crimes, namely individuals who held senior positions in the British Army and Ministry of Defence. Criminal investigations and proceedings at the International Criminal Court would represent an acknowledgement that war crimes were committed by UK forces and send a clear message that such crimes should not and will not go unpunished.

ECCHR works to challenge double standards in the application of international law. International crimes such as torture are subject to an absolute prohibition under various conventions including the Geneva Convention and the UN Convention against Torture. These

laws must be enforced, including in cases of violations by powerful states. With this work ECCHR seeks to uphold and enforce the absolute prohibition of torture all over the world.

What has happened in this case to date?

- 9 December 2020: ICC's OTP **closes** preliminary investigation in the case.
- 31 July 2019: ECCHR submits a **follow-up communication** to ICC's Office of the Prosecutor (OTP) with a focus on the UK's unwillingness to investigate.
- 4 December 2017: The OTP **announces** it is progressing to the next stage in its preliminary examination, having concluded that there is a reasonable basis to believe that members of the UK armed forces committed war crimes against persons in their custody in the context of the armed conflicts in Iraq, including wilful killing/murder, torture and inhuman/cruel treatment, outrages upon personal dignity and rape or other forms of sexual violence.
- 1 September 2017: ECCHR submits a **follow-up communication** to the OTP with a focus on subject matter jurisdiction, i.e. the grounds for a reasonable basis to believe that war crimes were committed by members of the UK armed forces.
- 29 June 2017: ECCHR submits a **follow-up communication** to the OTP on, *inter alia*, the UK's efforts to discredit war crimes allegations and shield perpetrators from prosecution.
- 13 May 2014: The ICC's Prosecutor **announces** she is reopening the preliminary investigation into the situation in Iraq following the filing of a communication by ECCHR and Public Interest Lawyers.
- 10 January 2014: ECCHR and Public Interest Lawyers submit a **communication** to the OTP detailing war crimes by UK forces in Iraq and setting out the evidence for the criminal responsibility of senior military and civilian officials.
- 9 February 2006: The OTP, having received over 240 communications concerning the war in Iraq **decides** that although there is a reasonable basis to believe that war crimes had been committed by UK forces in Iraq, it would not seek authorization to open an investigation. The OTP notes that this decision could be reconsidered in the future in the light of new facts or evidence.

Why is this a case for the International Criminal Court?

The International Criminal Court can investigate and prosecute what are known as core crimes under international criminal law, including genocide, crimes against humanity and war crimes. It is a court of last resort, i.e. it can only take action in the absence of genuine national proceedings.

The UK ratified the Rome Statute of the International Criminal Court in 2001. The ICC therefore has jurisdiction over war crimes, crimes against humanity and genocide committed by UK nationals or on the territory of the United Kingdom as of 1 July 2002, the date of the entry into force of the Rome Statute.

The UK has to date failed to conduct any genuine investigations examining those bearing the greatest responsibility for war crimes in Iraq, i.e. senior military and civilian officials who oversaw, ordered or tolerated war crimes. As such, it falls to the International Criminal Court to ensure that the crimes do not go unpunished.

Will the ICC investigate the invasion of Iraq?

The legality of the decision to go to war in Iraq does not fall within the jurisdiction of the International Criminal Court. The amendment to the Rome Statute concerning the crime of aggression came into force on 17 July 2018. This crime relates to the planning, preparation, initiation or execution of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the UN Charter. This amendment, which the UK has yet to ratify, does not apply retroactively.

What did the ICC's Office of the Prosecutor decide?

In December 2020, the ICC's Office of the Prosecutor decided to close its preliminary examination. The decision is based on the requirement in the ICC Rome Statute that a case is only admissible if a state is unable or unwilling to prosecute. The test for unwillingness must determine if a state intentionally shields perpetrators from prosecution. The OTP did not find sufficient evidence to prove such shielding by UK judicial authorities and thus closed the situation. However, the OTP confirmed the war crimes allegations made in ECCHR's submissions and harshly criticized the overall domestic investigations, prosecutions and attacks on lawyers representing Iraqi victims. The OTP announced the possibility of reopening investigations should certain information come to light that would enable them to prove the UK is unable or unwilling to prosecute.

Last updated: December 2020

European Center for Constitutional and Human Rights (ECCHR)

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