

Crimes against humanity

"The Commission requests States to provide information, by 31 January 2015, on

- a) whether the State's national law at present expressly criminalises "crimes against humanity" as such and, if so*
- b) the text of the relevant criminal statute(s),*
- c) under what conditions the State is capable of exercising jurisdiction over an alleged offender for the commission of a crime against humanity (e.g. when the offence occurs within its territory or when the offence is by its national or resident), and*
- d) decisions of the State's national courts that have adjudicated crimes against humanity "*

United Kingdom response

The International Criminal Court Act 2001 (the "ICC Act 2001") makes crimes against humanity, as well as genocide and war crimes, criminal offences under the law of England and Wales, and Northern Ireland. The International Criminal Court (Scotland) Act 2001 (the "ICC (Scotland) Act 2001") criminalises crimes against humanity, as well as genocide and war crimes, under Scottish law. The Geneva Conventions Act 1957 also makes a grave breach of the Geneva Conventions an offence in all parts of the United Kingdom.

The UK imposes both principal and accessory liability for crimes against humanity. In particular, section 52 (together with section 55) of the ICC Act 2001 makes clear that the following constitute "ancillary" offences in respect of crimes against humanity:

- (a) aiding, abetting, counselling or procuring the commission of an offence,
- (b) inciting a person to commit an offence,
- (c) attempting or conspiring to commit an offence, or
- (d) assisting an offender or concealing the commission of an offence.

These provisions on "ancillary" offences are replicated in sections 2 and 7 of the ICC (Scotland) Act 2001.

The definition of "crimes against humanity" can be found in Article 7 of Schedule 8 of the ICC Act 2001 (which is replicated in Schedule 1 of the ICC (Scotland) Act 2001). The definition is based on the definition in the ICC Statute.

The ICC Act 2001 applies to acts committed in the United Kingdom, or outside the United Kingdom by a UK national, a UK resident, or a person subject to UK service jurisdiction (i.e. the territorial and nationality principles of jurisdiction apply). The ICC (Scotland) Act 2001 applies to acts committed in Scotland, or outside the United Kingdom by a UK national or UK resident.

In the United Kingdom it is also possible to prosecute any individual, of any nationality, for grave breaches of the Geneva Conventions committed in the United Kingdom, or elsewhere, under the Geneva Conventions Act 1957 (i.e. universal jurisdiction).

There have not yet been any prosecutions under either the ICC Act 2001 or the ICC (Scotland) Act 2001. There has been one prosecution resulting from the application of

universal jurisdiction under section 134 of the Criminal Justice Act 1988 (i.e. in respect of the offence of torture by a public official) On 18 July 2005 Afghan warlord Faryadi Sarwar Zardad was found guilty of conspiring to torture and taking hostages in Afghanistan in the early nineties and was sentenced to twenty years imprisonment (see *R v Zardad*, Central Criminal Court judgment (unreported) of 18 July 2005)

A link to the ICC Act 2001 (which is in English) can be found here
<http://www.legislation.gov.uk/ukpga/2001/17/contents>

A link to the ICC (Scotland) Act 2001 (which is also in English) can be found here
<http://www.legislation.gov.uk/asp/2001/13/contents>