

The rule of law belongs to everyone

The worldwide profusion of human rights abuses cries out for law enforcement, but still governments fail to act: **Geoffrey Bindman** reports



The rule of law worldwide is necessary if humanity is to have a viable future. As the Law Society says, 'Now more than ever, the UK legal profession must maintain a global focus'. UK lawyers are increasingly engaged in international commerce, but their role in the international protection of human rights is also vital. It demands strong support from government and from the professional leadership.

The system of human rights protection developed in the wake of the Second World War is under threat from nationalistic and xenophobic attitudes, and its weaknesses need to be addressed. Human rights abuses are often unpunished because the perpetrators are protected, or because enforcement processes are inadequate or ineffective.

Yet there is reason to be optimistic. Many young lawyers are inspired by the challenges of human rights. Even the most conflict-ridden and fragile regions maintain judicial systems and want to be seen as law-abiding. Notwithstanding the risks, UK lawyers are already pursuing justice in many jurisdictions.

International courts & tribunals

International courts and tribunals have a major role, but curbs on their effectiveness are often hidden from public view. When a case is presented for adjudication, the

judges—who are usually lawyers of great experience—can be expected to perform their professional role with skill and some degree of objectivity. Their decisions are generally acted upon. Yet the guilty too often are not brought to court and thus escape retribution.

There is no international police force, and no independent mechanism for bringing suspects to justice. Limits on jurisdiction exempt particular offences and particular offenders. The International Criminal Court (ICC) for example, has jurisdiction over genocide, crimes against humanity and war crimes committed after 1 July 2002 where the crimes were committed by a state party national, or in the territory of a state party, or in a state that has accepted the jurisdiction of the court. But a number of states, including some of those responsible for the most notorious violations, have rejected the jurisdiction of the court and cannot be compelled to accept it. The United Nations Security Council can confer jurisdiction on the court over non-parties by referring cases to the court's prosecutor, but any permanent member (China, Russia, the US, France or the UK) can block a referral by use of the veto. They can secure immunity for themselves and others whom they favour. More effort is needed to encourage investigations by the ICC.

Universal jurisdiction

In 2018, the UK government published a 'Note on the investigation and prosecution of crimes of universal jurisdiction' ([bit.ly/2Uv74KP](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/744442/2018-11-27-Universal-Jurisdiction-Note.pdf)) which asserted the UK's commitment 'to upholding international law and holding those who commit the most serious crimes accountable for their actions'. Where universal jurisdiction operates, foreign nationals who have committed offences abroad can be prosecuted in UK courts. The Metropolitan Police Counter Terrorism Command (SO15) has responsibility for investigating allegations of war crimes, crimes against humanity, genocide and torture.

This honourable aspiration has had little success in practice. I can recall two examples from my own experience. The first is the case of the Chilean dictator Pinochet which was initiated in 1998 by the Spanish government seeking his extradition from Britain to Spain to stand trial for multiple murders and tortures in Chile. He could equally have been prosecuted and tried in Britain and on behalf of Amnesty International; I invited the Metropolitan Police to investigate this possibility. They declined to do so while the extradition case was proceeding. When it became known that the Home Secretary, Jack Straw, was about to overrule the extradition order which had been made (as was then the practice) by the Bow Street magistrate, I repeated the request for a UK prosecution. Pinochet was hastily repatriated to Chile, and the opportunity was lost.

My second case was a few years later when I was instructed to seek the prosecution of a Rwandan refugee in Britain against whom there was powerful evidence of war crimes. I submitted a dossier to the Metropolitan Police who proceeded to investigate. After some delay, and after I had made representations to the Attorney-General (whose consent to a prosecution was required), I was informed by the Met that I need no longer be concerned because the suspect had been arrested and deported back to Rwanda. A trial in Britain was thus avoided.

In 2005, the Afghan warlord Faryadi Sarwar Zardad was arrested and tried in the UK for torture and hostage-taking at Afghan checkpoints in 1991 and 1996. Witnesses, who had been interviewed in Afghanistan by UK police officers, gave evidence by video link from the UK embassy in Kabul. Zardad was convicted and sentenced to 20 years' imprisonment.

In 2013, a Nepalese colonel, Kumar Lama, was tried in the UK on charges of torture in Nepal. He was acquitted on one charge and the jury failed to agree on the other, but there was no retrial.

This record is pitifully sparse. There is an understandable presumption in favour of ‘territoriality’—the view that prosecutions can be most effectively conducted in the place where the crime took place. But that is too easy an excuse for abdicating responsibility. There have been some developments outside the UK. In Germany in February 2021, a Syrian former intelligence officer was tried and convicted of aiding torture in Damascus in 2011. He was sentenced to four and a half years’ imprisonment.

Trying perpetrators in their own countries

Even in repressive or corrupt regimes—or indeed in any in which human rights violations are unredressed for whatever reason—lawyers from other countries, supported by committed donors and NGOs, are mounting legal challenges by victims across the globe. Of course, there are risks as well as opportunities.

Legal Action Worldwide (LAW), of which I am a board member, provides direct legal assistance and representation to individual victims of human rights abuses in fragile and conflict affected areas (see www.legalactionworldwide.org) The appropriate fora in which such challenges can be pursued will depend on the facts of each case and the legal system in the particular state. Outside involvement may be needed when resources are lacking within the country where the abuse occurs, or victims and their local supporters are deterred by intimidation or other pressures.

LAW was founded in 2013 by Antonia Mulvey, an English solicitor. It is based in London and Geneva but has teams working in Kenya, Sri Lanka, Lebanon, Palestine, Somalia and South Sudan. Currently it is pursuing complaints to the ICC on behalf of Rohingyas claiming persecution in Myanmar, and for victims of sexual abuse in Lebanon. In 2018, LAW lodged the first

case against the government of South Sudan at the UN Committee on the elimination of all forms of discrimination against women. LAW represents 30 women alleging sexual violence. In Lebanon, LAW has also initiated a criminal prosecution of an employer of a migrant domestic worker alleging torture and slavery. This is the first case of its kind. It is also taking proceedings on behalf of Syrian women forced to flee from threats of violence. These actions would not be practicable without external support.

Hitting the guilty where it hurts

Targeting perpetrators must depend in varying degrees on the acquiescence of those in power where the perpetrators reside. Yet abusers protected from direct legal action may be susceptible to other pressures. ‘Magnitsky laws’ are a response to the fact that those profiting from human rights violations often deposit their ill-gotten gains in secure locations. Access to and acquisition of property in safe countries is a major feature of international crime, and the power to confiscate assets is an important weapon in the battle against it.

Sergei Magnitsky was a Russian lawyer who was murdered by agents of the Russian state when he exposed the theft of funds belonging to his client, the American businessman Bill Browder. Those responsible were known to Browder but were protected by the Russian authorities. Browder retaliated by pressing successfully for legislation in the US to bar the perpetrators from entry and to freeze their assets there.

This first ‘Magnitsky law’ was followed by another with global application and similar laws in other countries. The UK’s Magnitsky law is part of the Sanctions and Anti-Money Laundering Act 2018, brought into force in July 2020. It gives ministers wide powers to impose sanctions on those deemed to have committed gross human rights abuses outside the UK. In July 2020, the foreign secretary Dominic Raab announced 47

names of sanctioned individuals, including those implicated in the death of Magnitsky and 20 Saudis alleged to be implicated in the notorious murder of Jamal Khashoggi. Geoffrey Robertson QC has examined these developments and their potential in his recent book *Bad People: And How to Be Rid of Them: A Plan B for Human Rights* (Biteback Publishing, 2021).

Lawyers & the rule of law

Governments are legally bound by international obligations to uphold human rights, but they are failing to implement them. In Britain we are threatened by our government with withdrawal from the European Human Rights Convention and the weakening of the means to seek access to justice, such as legal aid and judicial review. Our government, while paying lip service to the importance of human rights, is failing to advance them, both domestically and internationally. Government commitment and funding are moral imperatives, but the legal profession and individual lawyers can also act independently. The worldwide profusion of human rights abuses cries out for law enforcement and legal challenge. This demands a coherent and co-ordinated strategy. On 17 May 2021, a summit of the leaders of the Bar Associations and their equivalents in the G7 countries chaired by Law Society president I Stephanie Boyce passed a resolution on guaranteeing the continuity of justice in a time of crisis. They called on the G7 governments to reflect on this and promised future engagement.

This is welcome news. There is indeed much to reflect on, and a well-funded and practical programme must follow.

There is a surplus of law graduates who need employment. The pursuit of international justice will provide plenty of career opportunities.

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