

JUSTICE PRESS RELEASE

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1 DECEMBER 2010 – FOR IMMEDIATE RELEASE

Changes to arrest warrant rules will undermine universal jurisdiction for war crimes and torture

JUSTICE today criticised as unnecessary and unjustified the government's proposals to change the laws governing the issue of arrest warrants in private prosecutions for war crimes and other offences of universal jurisdiction.

On Tuesday the government introduced the Police Reform and Social Responsibility Bill into Parliament, clause 151 of which will require the consent of the Director of Public Prosecutions to be gained before an arrest warrant can be issued as part of a private prosecution for war crimes, genocide or crimes against humanity.

The government claims that it is necessary to make the change in order to prevent 'possible abuse by people trying to obtain arrest warrants for grave crimes on the basis of flimsy evidence to make a political statement or to cause embarrassment'. In particular, the Ministry of Justice noted recent attempts to obtain warrants in respect of former US Secretary of State Henry Kissinger, Chinese Trade Minister Bo Xilai and former Israeli Defence Minister Tzipi Livni.

However, JUSTICE notes that:

- There is no indication that arrest warrants for war crimes have been issued improperly or on the basis of insufficient evidence. The government's proposals overlook the fact that arrest warrants for such crimes are issued exclusively by experienced specialist magistrates sitting in the City of Westminster Magistrates' Court.
- Arrests and prosecutions are currently dealt with by the counter-terrorism divisions of the Metropolitan Police and CPS, both of which are facing severe budgetary cuts and both of which have much higher priorities than arresting suspected war criminals entering the UK at short notice.
- Without the right of private prosecutors to seek arrest warrants, it is therefore highly likely that no action will be taken against suspected war criminals entering the UK at short notice for short periods of time.

Eric Metcalfe, JUSTICE's director of human rights policy said:

The right to bring a private prosecution is one of the oldest rights under English law. It helps ensure that prosecutors apply the law without fear or favour, affection or ill will.

In particular, the right of private prosecutions in the field of war crimes helps ensure that those reasonably suspected of war crimes do not escape arrest due to resource shortages or fears over diplomatic sensitivities.

At a time when both the CPS and the Metropolitan Police are facing massive cuts, it is fanciful to suppose that the DPP will have the time to consider last-minute requests from private prosecutors to arrest suspects.

The government's proposal is therefore likely to amount to a free pass for any suspected war criminal planning a weekend visit to the UK. It risks undermining years of hard work on strengthening the law on universal jurisdiction.

For further information, contact Eric Metcalfe (tel 020 7762 6415, emetcalfe@justice.org.uk) or Sally Ireland on 020 7329 5100.

Notes to editors

1. JUSTICE responded to the Ministry of Justice consultation on arrest warrants for offences of universal jurisdiction in March 2010.
2. The right of a citizen to bring a private prosecution for a criminal offence is one of the oldest rights known to the common law. One law lord, Lord Diplock, described it as 'a useful constitutional safeguard against capricious, corrupt or biased failure or refusal of those authorities to prosecute offenders against the criminal law'. Another, Lord Simon of Glaisdale, described it as being founded upon the 'fundamental constitutional principle of individual liberty based on the rule of law'.
3. In December 2009, Lord Justice Leveson, a Court of Appeal judge, noted that private prosecutions are regularly used by organisations with specialist knowledge of the particular area of the criminal law concerned, such as the RSPCA in animal cruelty cases and FACT (the Federation Against Copyright Theft) in copyright infringement cases, because of resource shortages of the police and the CPS (*Scopelight Ltd and others v Chief of Police for Northumbria* [2009] EWCA Civ 1156).
4. Private prosecutions for war crimes are also possible in many countries including Australia, Canada, France, the Republic of Ireland, New Zealand and Spain.
5. The right of private prosecutors to seek an arrest warrant was explicitly preserved by Parliament by way of section 25(2)(a) of the Prosecution of Offences Act 1985.
6. The Ministry of Justice claims that it is problematic that it is possible to obtain a warrant for arrest of a suspect on the basis of much less evidence than would be required to charge or convict. But, as noted above, this is the case with warrants for *all* offences, and irrespective of whether the prosecution is public or private. If it is problematic, then it is unclear why the problem should be limited to private prosecutions for war crimes. Moreover, if lack of evidence is genuinely a problem, the more appropriate response would be to require a higher evidential threshold, rather than to seek to amend section 25 of the 1985 Act.
7. UK law already provides certain government officials enjoy state immunity from prosecution for war crimes and crimes against humanity, including sitting heads of state, and serving heads of government, foreign ministers, defence ministers and diplomats.

Chairman of Council **Baroness Kennedy of The Shaws QC** *Director* **Roger Smith OBE**

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