

## FACTFINDING REPORT ON THE CASE OF CRAIG MURRAY

### Introduction

This brief report was drawn up by two international human rights experts who have known Mr. Craig Murray, the former UK ambassador to Uzbekistan, for many years. They were very concerned when they learned of his imprisonment in Scotland for contempt of court in 2020 in relation to his reporting on serious background matters relating to the trial of a former First Minister of Scotland, Mr. Alex Salmond, and agreed to assist Mr. Murray in the lodging of a complaint to the Human Rights Committee established under the UN International Covenant on Civil and Political Rights (ICCPR), as is allowed under the Optional Protocol to the Covenant, to which the UK is a party.

The brief report sets out the basic facts as they are to be presented in that individual complaint. Next, the two experts will draft an outline of the legal submissions, i.e., the reasons why they believe Mr. Murray's conviction and sentence were in breach of the Covenant.

A supplementary statement that will be annexed to the complaint will in due time expand on both the basic facts as presented here, and on the legal arguments; and full documentation will be added in further annexes.

### Craig Murray:

Craig Murray, is a former British diplomat turned historian and independent journalist, who has gained prominence for his critical and investigative reporting on a wide range of political and social issues.

Murray had a distinguished diplomatic career: he was Head of Cyprus Section (1989-91), Head of Maritime Section (1991-3), First Secretary, British Embassy, Warsaw (1993-7), Deputy Head (Equatorial) Africa Department FCO (1997-9), Deputy High Commissioner to Ghana (1999-2002) and British Ambassador to Uzbekistan (2002-4). However, this was cut short when, in 2004, as ambassador to Uzbekistan, he blew the whistle on UK complicity in torture in that country. He gave witness evidence on this complicity in person before the Council of Europe Parliamentary Assembly's investigation of human rights violations in the "war on terror" and the European Parliament Committee on Extraordinary Rendition and detailed it in his book, *Murder in Samarkand* (2007), that was praised by Harold Pinter as "*a fearless book by a fearless man*", and by Noam Chomsky as "*a remarkable achievement*".

Since his forced departure from the diplomatic service, Murray has become a vocal critic of the UK government's foreign policies and human rights abuses, and a strong campaigner for Scottish independence. His historical studies gained wide acclaim, while as an independent journalist, he has published extensively on his personal blog and in national media. He has become an influential figure within the new media landscape in Scotland and beyond. He has 128,000 followers on twitter.

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His complaint to the Human Rights Committee will concern his conviction and imprisonment for his reporting on the background to the trial of the former First Minister of Scotland and leader of the Scottish National Party, the SNP.

**Alex Salmond's trial:**

Alex Salmond was First Minister of Scotland from 2007 - 2014, before being succeeded by Nicola Sturgeon (First Minister 2014 - 2023), who recently suddenly resigned (see below, under "*Further background information*"). In 2017, senior members of the new administration began collecting allegations of sexual harassment said to have been perpetrated by Salmond during his time in office, encouraging women to come forward with claims. In late 2017, the Scottish Government launched an official inquiry into these allegations. Salmond raised a judicial review of the inquiry, citing serious procedural irregularities including improper contacts between senior government officials and the alleged victims. During the judicial review Scottish Government's own external lawyer advised the Scottish Government they could "*no longer rest on pleadings that they knew to be untrue*" following their "*unexplained*" and "*frankly inexplicable*" failure to disclose "*highly relevant*" documents. This non-disclosure of relevant documents had led to him giving assurances to Salmond's lawyers which turned out to be false. We return to these still non-disclosed documents below.

On 8 January 2019 the Scottish Court of Session ruled that the government inquiry was "*unlawful*", "*procedurally unfair*" and "*tainted by apparent bias*". In August 2019, Salmond was awarded over £500,000 in legal expenses.

Nevertheless, the findings of the Scottish Government inquiry were passed to Police Scotland, which launched its own investigation. With the encouragement of the Scottish Government, Salmond was charged, on 24 January 2019, with 14 counts of sexual assault. The trial commenced on 9 March 2020. Salmond's defence was that the allegations were false and coordinated at the highest levels of the Scottish political establishment to ruin his career. He tried to submit evidence in court, including seriously incriminating messages between the accusers\* and coordinators, but most of this evidence was excluded from the trial by the judge for allegedly being "*collateral*" (irrelevant to the charges against him). His counsel nevertheless addressed some of these issues in his examination and cross-examination of the witnesses (including the accusers). On 23 March 2020, the jury – which heard all the admitted evidence and cross-examinations – acquitted Salmond of all charges.

- "*Complainer*" is the Scots law term for a person making a criminal allegation. We use "*accuser*" to avoid confusion with the complainant.

**FACTFINDING REPORT ON THE CASE OF CRAIG MURRAY****Reporting restrictions:**

Public access to and reporting on the Salmond trial was restricted. Several mainstream media organisations were allowed to attend the trial, initially on the informal understanding that they

would not reveal the identity of the accusers. Other media and independent reporters (including Murray) were excluded from large parts of the trial including the examination and cross-examination of the accusers. Moreover, on the second day of the trial the judge issued a formal order prohibiting anyone from identifying the accusers (hereafter: “the s.11 order”, that will be examined in detail in the legal submissions).

**Craig Murray’s investigations into and reporting on the trial of Alex Salmond and on the background to that trial:**

As confirmed in the judgment against him (see next heading), Murray “*made extensive and repeated efforts with the Scottish Courts and Tribunal Service to register to cover the [Salmond] trial as a journalist in new media, but accreditation was not granted*”. His ability to report on the trial was accordingly curtailed. He attended two days of the ten day trial when the general public were admitted, before being barred from the court by Lady Dorrian, the trial judge. However, he still reported and commented on the trial in a series of online articles and tweets and in his satirical blog, “*Yes Minister Fan Fiction*”. When prevented from attending court, he drew on and commented on mainstream media reports. In relation to the alleged coordination of the allegedly fabricated allegations against Salmond – the background to the trial that was largely withheld from the public – he carried out his own extensive investigations.

Murray described these efforts in two sworn affidavits submitted to his own trial that will be submitted to the Human Rights Committee as part of his complaint.

In these, he describes how, in 2018, he contacted “*a wide range of contacts*” (Affidavit 1, para. 9), meeting Salmond, the former First Minister (with whom he had little prior acquaintance), in January 2019 (*idem*, paras. 12 – 23).

Murray also met with sources close to the coordinators of the accusations. (He protects the identity of these journalistic sources in accordance with international human rights law). The first source gave him significant inside information on the fabrication and coordination of the accusations including information on meetings between Nicola Sturgeon and “key members of her inner circle, including ministers” where Salmond’s “*political destruction*” by means of false accusations was discussed (Source I, first affidavit, paras. 24 – 29).

The second source showed him evidence collected for Salmond’s trial that was excluded for being “*collateral*”, including incriminating messages between the coordinators (Source II, first affidavit, paras. 32 – 33). He did not take notes, in accordance with his UK Foreign Office training not to write down sensitive information outside secure environments (first affidavit, paras. 35 – 36), but the gist of the messages is set out in the first affidavit (in paras. 32 – 33).

NB: Murray tried to obtain copies of these messages as part of the “*discovery of evidence*” part of his own trial, but although the existence of the messages was acknowledged, the Crown

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Office refused to disclose them and the judge again ruled them to be “collateral” and inadmissible.

From another source, “a senior contact within the SNP whom [Murray] had known for many years”, Murray learned about a grubby political deal whereby [REDACTED]

[REDACTED] in exchange for [REDACTED] agreeing to make an allegation of rape against Salmond (Source III, first affidavit, para. 39). Murray felt that this information was confirmed as correct when months later, the SNP effectively blocked a [REDACTED] (first affidavit, para. 57).

From these sources, which Murray judged to be credible, he became convinced that Salmond was right about the charges against him having been fabricated in order to destroy his career, and that the public should be aware of this information which was – and remains – of the highest public interest. But the public could not understand the scope of the coordinated fabrications whilst unaware of the positions, links and interactions between those involved – almost none of which was reported in the mainstream media. He therefore felt he had a duty to disclose as much information as possible without identifying the accusers – which is what he did.

In his articles, Murray (both before and after the issuing of the s.11 order), avoided revealing details that might allow the public to identify the accusers (see Affidavit 1, paras. 44 and 70 – 73 and paras. 79 and 84), despite significant potentially identifying details being widely published in the mainstream media including the BBC (idem, paras. 74 – 76, 87 and 107). He also tried to counter the selective reporting by the mainstream media which had effectively ignored the defence evidence of the coordination at the highest political levels (idem, paras. 80 – 82 and 106).

The articles on which the subsequent proceedings against the complainant were based were published on 23 August 2019, and 18 January, 10, 11, 12, 16, 18, 19, 20, 30 March and 3 April 2020. Those articles will also be provided to the Human Rights Committee.

NOTE: It is not necessary in this brief report – or in due course for the Human Rights Committee – to concur with his conclusion that the allegations against Salmond were fabricated and coordinated at the highest levels of the Scottish political establishment. It suffices to accept that Murray acted diligently and professionally in his investigations, and that there was tangible evidence to support that conclusion – as the jury in the Salmond case also clearly concluded. His conclusion was and is not without foundation.

**Craig Murray’s trial:**

On 21 April 2020, the Crown Office presented a petition and complaint to the High Court of Justiciary in Scotland (in effect, the charges) alleging Murray’s articles (and two tweets) were in contempt of court because they included information likely to lead to the identification of certain accusers in the Salmond trial, contrary to the s.11 order.

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A hearing on the petition (in effect, the trial) took place on 27 January before three judges of the High Court, including Lady Dorrian, who had presided over the Salmond trial, issued the s.11 order and excluded Murray from the court. At Murray's trial, Lady Dorrian again excluded evidence relating to the fabrication and coordination of the accusations against Salmond, referring to them only obliquely as "*the collateral issues that had been excluded from the [Salmond] trial*" (judgment, para. 66), or "*the background issues*" (para. 70), without even mentioning the words "fabrication" or "coordination". These issues were, in her words, "*irrelevant*", "*hearsay*" and "*gossip*", and could be ignored by the court (trial judgment, para. 66). The defence claim that Murray's reporting had been in the public interest was also dismissed in various appeals (see the chronological overview of the proceedings, below; full details on the appeals will be provided with the full complaint).

The court found that Murray had breached the s.11 order, and was in contempt of court. This is despite him not naming the accusers or publishing information sufficient for members of the general public to identify them. However, the court held that if members of some (unspecified) "section of the public" might possess information that, if combined with the information published by Murray, could identify any accuser to that "section of the public", that would also be in breach of the order (so-called "jigsaw identification"). At the trial and in various appeals, Murray's lawyers pointed out that, since Murray could not possibly know what other "pieces of the puzzle" unspecified others might possess, the application of this test is utterly unforeseeable and arbitrary – but that argument, too, was not accepted. This – and the contentious legal doctrine of "jigsaw identification" generally – will be further discussed and analysed in the legal submissions.

In this factual summary it will suffice to note that the judgment against Murray makes clear that it was against the law for him – or anyone else – to report details of the coordinating of the accusations against Salmond, the official positions of those involved, their links and interactions including communications between them. The effect of his conviction is that it was – and remains – unlawful to disclose those details to the public. Consequently, the public were denied and are still denied those details and is not aware – and may not be made aware – that there are concrete facts indicating that there was (or at the very least may well have been) most serious misconduct against a leading Scottish politician by a close circle of fellow Scottish politicians, aimed at "destroying" the former's political career.

The fact that the High Court rendered it impossible to report on the misconduct in a manner which would be intelligible to the public was obliquely acknowledged by the High Court:

*"[Murray] states that in writing the Yes Minister Fan Fiction article it had been a challenge to work out how to tell the public of the identities [read: of the positions, links and interactions between the accusers and coordinators] without being in contempt. It was not a challenge, it was an impossibility, since doing so would be a breach of the plain terms of the order."*

(High Court opinion on the petition [=judgment on the contempt charges], at §62)

Note that Murray here is found to have written an article in breach of an order that was not even made until several months after his article was published. More substantially, in the

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complaint it will be argued that this fact – this rendering it impossible to report, in a way intelligible to the general public, on most serious misconduct at the highest levels of society, a matter of manifest public interest – is in clear breach of the Covenant.

The UK courts moreover explicitly granted Murray, as a new media reporter, less freedom of expression protection than is accorded to the mainstream media (that too will be addressed in detail in the complaint).

#### **Further background information:**

The Lord Advocate that pursued both Salmond and Murray had a dual role of senior prosecutor in Scotland and senior legal adviser to the Scottish Government. He gained a reputation for adopting «lawfare» to silence dissenting voices. In 2020, he publicly admitted “*maliciously prosecuting*” two people and later resigned. The Lord Advocate’s prosecution case of another new media journalist - who tweeted about the alleged misconduct behind Salmond’s prosecution - was thrown out of court by the presiding sheriff, who upheld the defence submission of no case to answer and noted the journalist’s comments were protected under Article 10 of the European Convention on Human Rights. This journalist is currently separately pursuing the Lord Advocate for “malicious prosecution”.

The Scottish Parliament’s ability to investigate the misconduct was severely restricted by the absence of “*parliamentary privilege*” in that forum – unlike the UK Parliament in which Members are protected from being prosecuted for matters they raise in parliament. During the Scottish Parliament inquiry into the Salmond case, documents evidencing the misconduct were either withheld or heavily redacted and parliamentarians and witnesses were threatened with legal action by the Lord Advocate if they referred to them.

Grave concerns about the systemic failings of the Scottish Government and Scottish prosecution and judicial system have been raised in the UK House of Commons and House of Lords using parliamentary privilege.

On 16 March 2021, David Davis MP (Conservative) said that the absence of “parliamentary privilege” in the Scottish Parliament meant that it could not hold the Scottish Government to account without risk of legal action. He said, “[*The*] Scottish Government failed to live up to their duty of candour” with an “*indefensible case [then] set their sights on impeding the Committee tasked with investigating ... the inquiry has had to cope with evasiveness from the Scottish Government and the constant threat of legal action by the Crown Office.*” Hansard vol 691 col 278.

On 9 September 2021 Lord Foulkes (Labour) in the House of Lords said, “the allegations of an organised conspiracy continue ... *astonishingly the former ambassador Craig Murray ... was sentenced to eight months in prison, not for naming the complainers ... but for so called jigsaw identification ... the SNP has become very skillful at controlling criticism using patronage and threats.*” Hansard vol 814

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Police Scotland are currently investigating the former First Minister and her husband Peter Murrell (former SNP CEO) on fraud allegations. Both have been interviewed by Police Scotland

and on 5 April 2023 the former First Minister's husband was arrested. As a leading commentator noted:

*"Scottish politics is in a very strange place following the arrest of the SNP Chief Executive, Peter Murrell, husband of the former First Minister, Nicola Sturgeon. There is almost nothing we can say about this extraordinary state of affairs without risking imprisonment for contempt of court. In today's Scotland, independent journalist face the very real threat of imprisonment ... even for stating factual information in the wrong way."*

<https://iainmacwhirter.substack.com/p/what-is-humza-thinking?r=3uo2w> (8 April 2023)

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Overleaf: Chronological overview of the proceedings/exhaustion of domestic remedies:

**FACTFINDING REPORT ON THE CASE OF CRAIG MURRAY****Chronological overview of the proceedings/exhaustion of domestic remedies:**

- 21 April 2020: Complainant charged with contempt of court.
- 27 January 2021: Complainant tried at the High Court.
- 25 March 2021: Complainant convicted of contempt.
- 11 May 2021: Complainant sentenced to eight months imprisonment.
- 1 August 2021: Complainant starts prison sentence.
- 30 November 2021: Complainant released from prison.
- 14 May 2021: Complainant applies to the High Court for permission to appeal to the UK Supreme Court.
- 8 June 2021: Application refused by the High Court.
- 15 June 2021: Complainant applies for permission directly to the Supreme Court.
- 29 July 2021: Permission refused by the Supreme Court.
- 22 September 2021: Complainant presents a nobile officium petition to the High Court. (The standard form of appeal against a finding of contempt by the High Court.)
- 28 October 2021: High Court orders a hearing on the competency of the petition.
- 20 January 2022: High Court opinion on competency of the petition.
- 2 February 2022: Written submissions of complainant on the merits of the petition.
- 23 February 2022: Hearing of the merits of the nobile officium petition.
- 25 March 2022: High Court ruling on the nobile officium petition.
- This was the final domestic remedy.

Documents relating to the above will be submitted to the Human Rights Committee, with a summary of domestic law.

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Cambridge/Geneva, 21 April 2023