



ALGERIA: GENERAL KHALED NEZZAR WILL FINALLY BE JUDGED IN SWITZERLAND FOR WAR CRIMES AND CRIMES AGAINST HUMANITY

Questions and answers

1. Who is Khaled Nezzar?

Born on 25 December 1937, Khaled Nezzar participated along with the Algerian army in the repression of the riots that spread throughout the country in 1988. He was promoted chief of staff on 22 December 1988, and became Minister of Defense on 28 July 1990.

In May 1991, the Islamic Salvation Front (ISF – a political party created in February 1989 after a constitutional reform) demanded, with strikes, early presidential elections. In reaction, the army declared the state of emergency.

On 26 December 1991, the Algerian population renewed their parliament and the ISF won the elections. On 11 January 1992, the President of the Republic, Chadli Bendjedid, announced his resignation. On the following day, the High Council of Security – of which Khaled Nezzar was a member - halted the electoral process and postponed the parliamentary and presidential elections. On 15 January 1992, the High Council of Security created the High Council of State (HCS), a collegiate body invested with all presidential powers - replacing the resigning president - whose mandate was to last until 1993. Actually, the HCS remained in existence until the end of January 1994.

Khaled Nezzar was Minister of Defense until 10 July 1993. In addition to his participation in the creation of the HCS, he was a member himself, until its dissolution on 30 January 1994, when Liamine Zeroual became President.

2. What are the criminal charges against Khaled Nezzar?

The allegations against Khaled Nezzar are part of the “dirty war” – a direct consequence of the cancelation of the electoral process – that began in 1992. The war lasted a decade and has left over 200,000 people dead or missing.

The Office of the Attorney General (OAG) is accusing Khaled Nezzar of having participated in the commission of multiple war crimes (torture, inhuman treatment, illegal detentions and convictions) as well as in killings in the context of a systematic and widespread attack against the civilian population between January 1992 and January 1994, when he was a member of the High Council of State and head of the armed forces.

3. Does Khaled Nezzar benefit from immunity based on his position as Minister of Defense and member of a collegial governmental body at the time of the facts?

In international law, immunity aims at preserving the functioning of the State on a permanent and ongoing basis. Based on that principle, Khaled Nezzar appealed before the Federal criminal Court (FCC) in 2012, claiming that, as Minister of Defense and member of the HCS, he could not be prosecuted.

In a landmark decision of [25 July 2012](#), the FCC held that in regards to the serious nature of the alleged crimes, high level dignitaries such as Khaled Nezzar could not claim any immunity.

4. How can this case be sent to trial in 2023, when the OAG closed its investigation in 2017?

In 2017, the OAG considered that there was no non-international armed conflict going on in Algeria in the early 1990s and decided to close the case, as the existence of an armed conflict at the time of the alleged acts is necessary to prosecute a war crime. On [30 May 2018](#), the FCC overruled this decision and considered that a non-international armed conflict indeed took place in Algeria. Consequently, the case was referred back the OAG.

Based on further investigations, the OAG considers that there are sufficient grounds to qualify the alleged acts as war crimes and crimes against humanity Hence, Khaled Nezzar's indictment is justified.

5. Why will the trial of Khaled Nezzar take place in Switzerland?

Informed of the presence of Khaled Nezzar on the Swiss territory, TRIAL International filed a criminal complaint before the Office of the Attorney General (OAG) in 2011. The Swiss authorities have jurisdiction to prosecute him on the basis of universal jurisdiction (see Q. 6 below).

Mr. Nezzar voluntarily submitted to Swiss jurisdiction by traveling to Switzerland, where he apparently had bank accounts.

The OAG quickly opened a criminal investigation for war crimes. The day after the filing of the complaint, Khaled Nezzar was arrested and questioned by the OAG, before being released on the promise to appear for the remainder of the proceedings.

Khaled Nezzar, who lives in Algeria, traveled to Switzerland when summoned by the OAG for his subsequent hearings and will appear free at his trial. Mr. Nezzar therefore took part in the proceedings, either in person or through his lawyers, thereby explicitly acknowledging the legitimacy of the investigation opened against him.

6. What is universal jurisdiction?

Universal jurisdiction is a legal principle that allows states to investigate and prosecute individuals suspected of having committed international crimes (genocide, crimes against humanity, war crimes, torture and enforced disappearances), regardless of where the crimes were committed and of the nationality of the suspect(s) or victim(s).

Universal jurisdiction cases are playing an increasingly important role in international efforts to hold perpetrators of atrocities accountable and to bring justice to victims. These cases also help to deter the commission of future crimes and send a powerful message that perpetrators of human rights abuses will not find a safe haven anywhere in the world.

TRIAL International and its partners publish an annual [Universal Jurisdiction Annual Review](#) (UJAR), which highlights key developments in cases brought before national courts around the world on the basis of this principle. The 2023 edition of the UJAR includes more than 65 cases concerning international crimes.

Many countries are currently investigating and prosecuting international crimes in the Democratic Republic of Congo, Iraq, Liberia, Rwanda, Syria and Ukraine.

In June 2023, the Appeals Chamber of the FCC found Alieu Kosiah guilty of war crimes and crimes against humanity. The FCC confirmed the 20 years prison sentence handed down in first instance. This is the first conviction in Switzerland of a Liberian national for crimes committed during the two Liberian civil wars. It is also the first war crimes trial in Switzerland before the Federal Criminal Court based on universal jurisdiction.

In April 2023, the OAG referred another case concerning international crimes to the FCC, sending the former Gambian Interior Minister Ousman Sonko to trial for crimes against humanity committed under Yahya Jammeh's dictatorship.

7. Who are the victims of the alleged crimes of Khaled Nezzar?

Five victims were named as plaintiffs against Khaled Nezzar in these proceedings and are represented by lawyers. The OAG considers that they were victims of illegal detention and torture or inhumane treatment from the security forces that were under the control of Khaled Nezzar.

While all the represented victims have various academic and professional backgrounds, they all have one thing in common: their militancy within the ISF.

8. Could other Algerian officials be prosecuted in Algeria or elsewhere for crimes committed during the black decade?

First, it should be noted that former Algerian officials – some of whom are still very close to the current government - enjoy total impunity in Algeria for crimes committed during the civil war. Amnesty laws applicable in the country prevent their prosecution on Algerian territory.

Added to this is the fact that individual freedoms are increasingly under threat in the country, highlighting the government's relentlessness against any movement of protest or criticism against it, and confirming the total unwillingness of those currently in charge to reverse past crimes.

Moreover, those who took part in the civil war of the 1990s, like Khaled Nezzar, are now elderly. Insofar as no other prosecutions are underway outside Switzerland on the basis of universal jurisdiction, it is highly doubtful that the trial of another of the regime's dignitaries will take place in the short term. However, the opening of criminal proceedings, on the basis of universal jurisdiction, remains a possibility.

Ultimately, Khaled Nezzar's trial represents the first, but probably the last, opportunity for victims to obtain judicial recognition of the crimes committed during the period in question.

9. Why are armed groups' members who fought against the Algerian State not being prosecuted?

In Algeria, amnesty laws also apply to members of armed groups active during the "dirty war". Therefore, they cannot be prosecuted on Algerian territory.

The reservations mentioned in the previous answer (age of those concerned and absence of ongoing proceedings) also apply to members of armed groups. It is nevertheless conceivable that proceedings could be opened against members of such groups under universal jurisdiction. In Switzerland, however, prosecution of perpetrators of international crimes is conditioned by the individual's presence on Swiss territory.

10. Is TRIAL International engaged in the defense of Islamic interests, notably of the ISF?

TRIAL International is an independent, apolitical and non-denominational organization recognized as being of public interest. Its aim is to put the law at the service of victims of the most serious crimes in an indiscriminate manner. TRIAL International fights against the impunity of the perpetrators of these crimes.

Our organization does not defend the interests of a specific faction or party, but denounces the crimes of all those responsible, whatever their party, religion or status.

The victims in question are survivors of atrocities. Their religious or political affiliation has no influence on the definition of their status as victims, nor on their right to seek justice or to be plaintiffs before Swiss courts. This is one of the fundamental rights of every individual.

As indicated in the previous question, TRIAL International would not hesitate to lodge a complaint against members of Islamist armed groups (or of other persuasions) suspected of having committed violations of international humanitarian law present on Swiss territory.

11. In this case, aren't Switzerland and the prosecuting authorities interfering in an issue that is not their responsibility?

By voluntarily setting foot on Swiss soil, Khaled Nezzar has submitted himself to the Swiss legal system and the laws applicable in the country. Indeed, anyone suspected of international crimes runs the risk of being prosecuted under Swiss law.

The proceedings initiated against Khaled Nezzar are not the result of any interference in Algerian affairs. It is based solely on Swiss law, which derives from Switzerland's international obligations. These are the same commitments that Algeria made when it ratified the Geneva Conventions in 1960, and the two additional protocols to these Conventions in 1989. These texts oblige States to prosecute the perpetrators of grave breaches of the Conventions.

Conversely, if no prosecution had been initiated, Switzerland would have been in breach of its obligations to combat impunity for international crimes.

Khaled Nezzar's prosecution and indictment are therefore justified and are the result of an impartial application of Swiss law, as well as an independent criminal investigation conducted for and against the accused.

12. How many cases related to international crimes have been opened in Switzerland?

The 2022 Annual Report of the Office of the Attorney General of Switzerland reported 15 ongoing investigations regarding international crimes (genocide, crimes against humanity and war crimes).

Since the entry into force, in 2011, of the provisions implementing the Rome statute into Swiss law, only one trial related to international crimes has been held before the Federal Criminal Court (FCC), that of Alieu Kosiya in 2020-2021. Kosiya was convicted of war crimes in 2021. During his appeal trial, whose verdict was handed down in June 2023, he was also found guilty of crimes against humanity.

A second case is currently before the FCC, that of former Gambian Interior Minister Ousman Sonko, whose trial shall open soon. He will have to answer for crimes against humanity committed during Yahya Jammeh's dictatorship.

Khaled Nezzar's forthcoming trial will thus be the third to be held before the FCC for international crimes.

13. How long is the trial of Khaled Nezzar expected to last?

It will be up to the federal judges to organize the trial hearing session. Currently, length and dates of the trial are to be determined. Judgments rendered by the FCC can be appealed, first to the Higher Appeals Chamber of the FCC, and, subsequently, to the Federal Supreme Court in Lausanne.

The presumption of innocence applies to Khaled Nezzar until a final judgment has been delivered.

14. How accessible will the trial be to the public, journalists and affected communities in Algeria?

In accordance with the principle of a public trial, which plays a fundamental role in a democratic society by promoting transparency in the justice process and thus contributing to public confidence in the judicial system, the trial of Khaled Nezzar will be accessible to the public, within the limits of the available courtroom space. It will be conducted in French.

TRIAL International recalls that the human rights situation in Algeria, and in particular the failure to respect the right to freedom of expression in recent years, is extremely worrying. Nonetheless, it is essential that Algerians be kept informed of the progress of the trial and the verdict that will be handed down.

Indeed, beyond the victims represented in the proceedings, the purpose of this trial is to provide a judicial response to the events that took place during the Algerian civil war, and to impartially determine the criminal responsibility of Khaled Nezzar in this context. This response must be shared with as many Algerians as possible. It is indeed difficult to imagine lasting

reconstruction and peace for Algeria and its people, without responding to the demand for justice.

For this reason, TRIAL International is constantly striving to expand its network of Algerian journalists, whether in the diaspora or in Algeria.

15. What role did TRIAL International play in this case?

As mentioned in question 5 above, TRIAL International initiated the proceedings when it reported Khaled Nezzar to the prosecuting authorities in 2011.

Throughout the investigation, TRIAL International has offered logistical support to the victims to facilitate their travel to Switzerland and their participation in Swiss hearings. Psychological support has also been offered to the victims in order to minimize further trauma as a result of having to revisit the painful events they have experienced through their testimonies.

Our organization will continue to support them up to and during the trial.