

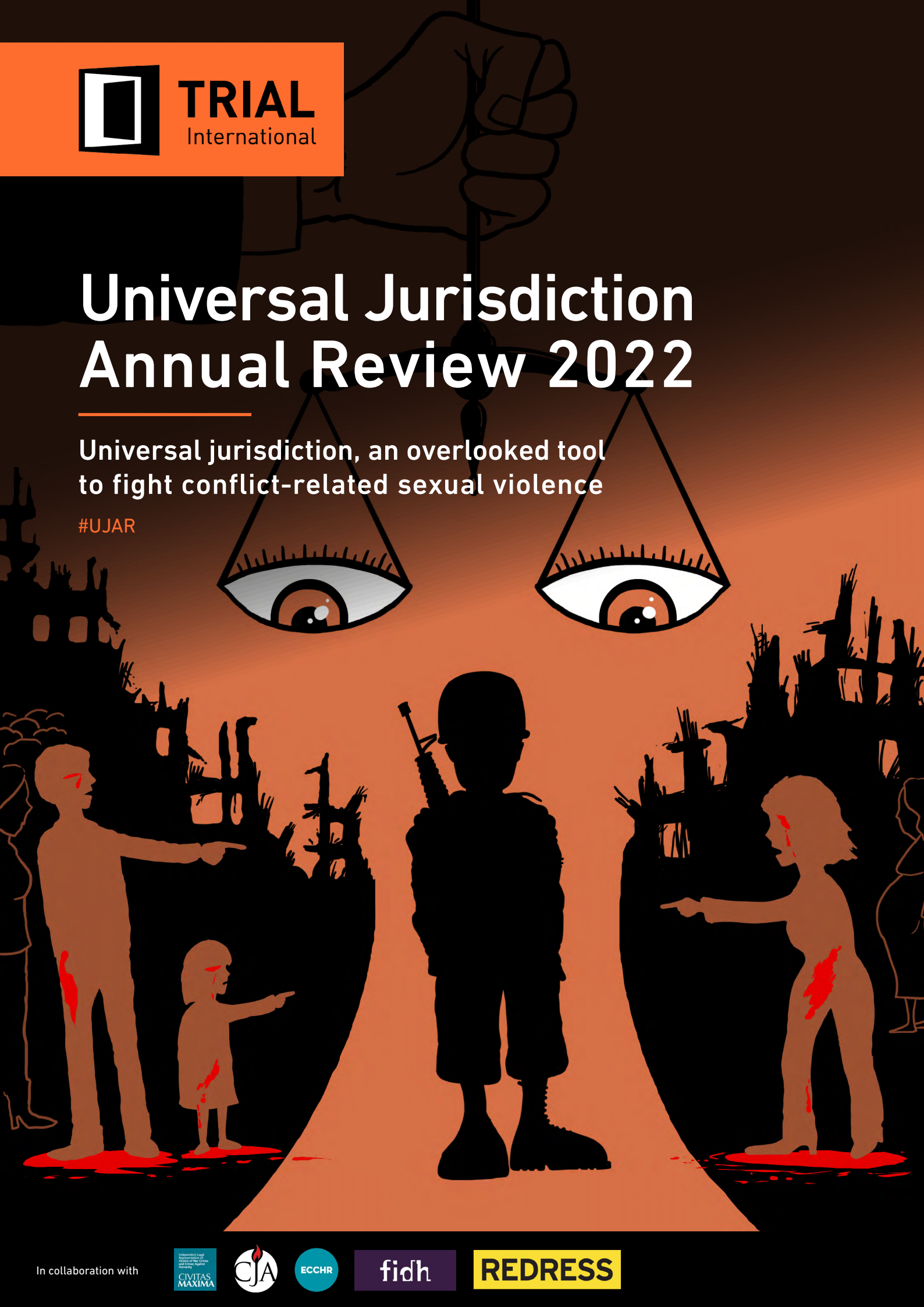


TRIAL
International

Universal Jurisdiction Annual Review 2022

Universal jurisdiction, an overlooked tool
to fight conflict-related sexual violence

#UJAR



In collaboration with





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to fight conflict-related sexual violence

#UJAR



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METHODOLOGY AND ACKNOWLEDGMENT

The present report only highlights cases where judges or prosecutors have initiated investigations into the most serious international crimes. It does not, therefore, include complaints that victims, lawyers and NGOs filed under universal jurisdiction with national authorities in 2021 that did not result in significant judicial advances, are still pending or have been dismissed by the relevant national authorities.

The report also refers to cases of international crimes based on active or passive personality jurisdiction where the relevant case has also had an impact on the practice of universal jurisdiction.

This report has been researched and written by Valérie Paulet, Legal Consultant at TRIAL International, in collaboration with Civitas Maxima, the Center for Justice and Accountability, the European Center for Constitutional and Human Rights, the International Federation for Human Rights, and REDRESS.

TRIAL International is grateful to all the organizations, prosecutors and investigative judges who assisted in collecting the information compiled in this report. While every attempt was made to ensure accuracy, information is subject to change without notice.

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**UNIVERSAL
JURISDICTION,
AN OVERLOOKED
TOOL TO FIGHT
CONFLICT-RELATED
SEXUAL VIOLENCE**



The under-prosecution of sexual and gender-based violence is a long-standing and ongoing phenomenon, regularly decried by non-governmental organizations (NGOs) and victims' associations. This also applies to sexual and gender-based international crimes, such as rape, forced sterilization, pregnancy or nudity, threats of sexual assault, sexual enslavement, etc., constitutive of war crimes, crimes against humanity or genocide. Despite recent progress, there is still a long way to go for these atrocities to be adequately documented, investigated and prosecuted.

In recent years, sexual and gender-based violence constituting international crime has received unprecedented attention. After centuries of almost complete invisibility, these crimes are finally being addressed and condemned in the public sphere thanks, for instance, to the awarding of the 2018 Nobel Peace Prize to two leading figures in the fight against conflict-related sexual and gender-based violence, Dr Denis Mukwege, in the Democratic Republic of Congo and beyond, and Yazidi survivor Nadia Murad. Remarkable State-sponsored initiatives have also seen light, such as the United Kingdom's Preventing Sexual Violence in Conflict Initiative, making conflict-related sexual and gender-based violence a red line.

These steps forward raise the question of how universal jurisdiction can contribute to the fight against impunity for conflict-related sexual and gender-based violence. What legal and procedural guarantees should States implement to prosecute these crimes domestically?

This gradual acknowledgment of international crimes of a sexual nature is reflected, to an extent, in recent universal jurisdiction cases: the convictions of Syrian Colonel Anwar Raslan in Germany (see page 54) and of Liberian warlord Alieu Kosiah in Switzerland (see page 79) both included charges of sexual violence as crimes against humanity.

These are a significant breakthrough, but they should not hide the fact that, by and large, conflict-related sexual and gender-based violence continues to be widely under-prosecuted, including through the use of universal jurisdiction. Out of the 125 charges of international crimes included in the 2021 edition of this report, only 17 addressed conflict-related sexual and gender-based violence. One wonders whether these crimes are really on prosecutors' radars. Experience has shown that prosecutors often tend to focus their strategies on comparatively more established charges, such as torture or murder.

There is, therefore, a gap between the *discourse* around conflict-related sexual and gender-based violence and its effective prosecution. The sexual enslavement of Yazidi women and girls in Islamic State-controlled territory is an appalling example. It may have made the headlines worldwide and shocked public opinion, but to this day very few trials addressing atrocities against the Yazidi have included charges of sexual and gender-based violence.

Prosecuting conflict-related sexual and gender-based violence as international crimes

There are many reasons why the number of cases involving prosecutions of conflict-related sexual and gender-based violence is relatively low, including the fact that sexual and gender-based violence was not considered a priority for a long time and was not the focus of investigative strategies. On one hand, investigating and prosecuting international crimes under universal jurisdiction is often difficult and expensive (see UJAR 2019), particularly when it comes to the contextual elements of such crimes. On the other hand, bringing justice for sexual and gender-based violence requires complex and appropriate processes, as well as specialized resources that are not awarded to most domestic justice systems. Combine these elements and you have an idea of the challenges prosecutors face.

One way these difficulties have been circumvented so far is to prosecute sexual and gender-based crimes under the qualification of torture. Another has been to bring them as stand-alone charges, as the prosecutors did in the trial of Anwar Raslan in Germany, where individual charges of sexual violence were brought in addition to – and not part of – crimes against humanity. Given the lack of routine in dealing with sexualized violence in universal jurisdiction proceedings, the intervention of NGOs and lawyers is sometimes necessary to make law enforcement aware that sexualized violence qualifies as a crime against humanity or as a war crime. In the trial of Anwar Raslan, only the successful intervention of the European Center for Constitutional and Human Rights (ECCHR, a partner in this report) through its partner lawyers, resulted in charges of sexual violence being recharacterized as crimes against humanity (see page 54 of the report).

One may be tempted to ask whether legal qualifications matter, as long as perpetrators are punished. The answer is yes, for two reasons. The first is that only the qualification as international crimes addresses sexual violence as the *weapon of war* it constitutes. "Rape is cheaper than bullets", as an Amnesty International campaign summarized. For too long, sexual crimes were wrongly treated as the unfortunate consequence or side-effect of conflicts. They are, however, an integral part of the tactics used to destabilize or destroy populations. They constitute an important element of the power dynamics during conflicts. Their consequences are devastating not only for the direct victims and their families, but also for the whole social fabric. To punish sexual violence as a single-occurrence crime fails to encompass the strategic use of sexual violence in war time, as well as its widespread and systematic nature.

The second, even more compelling, reason lies in the fact that the exercise of universal jurisdiction might be restricted in some countries to war crimes, crimes against humanity and genocide. As such, if acts of sexual violence are qualified as stand-alone crimes, they will remain unpunished and beyond the reach of national judges.

Survivors must be at the heart of the proceedings

The vast majority of universal jurisdiction trials have the particularity of taking place far away from where the crimes were committed, and often many years later. Material evidence is often very hard to retrieve, meaning the primary source of evidence is victim testimony. Sexual violence charges hold the paradox that testimonies play a key role in their prosecution, but are extremely hard to obtain and risk re-traumatizing survivors. They also need to be correctly contextualized in the socio-cultural environment where they occurred, in order to be fully comprehended.

To overcome these difficulties, the investigation of conflict-related sexual and gender-based violence should be integrated in prosecutors' strategies from the outset, ensuring that the prosecution of these crimes is not left to chance.

Being at the center of the proceedings also means benefiting from protection, attention and care to avoid risk of secondary victimization. It does not mean that victims should bear all the pressure and weight of the case. Their testimony is undoubtedly

essential and should be carefully reflected. Yet, by not relying solely on the testimonies of victims or witnesses, pressure is lifted from the survivors who are therefore less exposed to the risk of secondary victimization. Medical and expert reports, including from international organizations and NGOs, could provide additional evidence. In the Anwar Raslan case in Germany, for example, the joint plaintiff representatives requested that NGO and United Nations reports be introduced into the proceedings to shed light on the systematic use of sexual violence against detainees.

Too often, men, women and children who suffered sexual violence remain silent because of fear of retaliation, shame and stigma. Protective mechanisms in prosecuting countries thus play an essential role in their ability to come forward. Some safeguards exist, such as those included in the European Union Directive establishing minimum standards on the rights, support and protection of victims of crime, and should be applied more systematically by States.

And even victims who agree to meet investigators or prosecutors can be reluctant to go into the details of what they suffered, reverting to elliptical narration or vague expressions. Description of events can occasionally be ambiguous and approximative due to differences in cultural background, which can lead to a very different way of recounting events, as well as due to trauma and social taboos. In universal jurisdiction cases, investigators are typically from a different country and culture than the victims, adding a hurdle to creating a supportive environment. Training law enforcement officers and judicial operators on the best methodology for conducting interviews with victims and survivors could help bridge this gap.

Gender inequalities and stereotypes rooted in patriarchal structures are both a fueling factor for conflict-related sexual and gender-based violence and a deterrent for survivors to file complaints. Interviewers should receive specialized training covering the gender dimension of these crimes. Too many war crimes units and investigative teams lack female staff and interpreters to give the option to the survivor of being interviewed by a female interviewer.

Some prosecutors have been tempted by a "utilitarian" approach to victims, prioritizing efficiency over their well-being. For example, victims testifying have been

known to be flown into a foreign country – where the investigation or trial was taking place – and sent to a hearing or to court mere hours after their arrival. Psychological support is far from being the norm during investigations. It is, however, a powerful tool to face the potential re-traumatizing effects of interviews or cross-examinations, and the emotional challenges of participating in a trial and facing one’s abuser.

These shortcuts also have effects on the quality of the trial, as victims are unlikely to provide appropriate testimonies and participate effectively in the proceedings if they feel rushed, unheard or threatened. In the long run, the perception of justice as fair and accessible may be permanently damaged.

The way forward

Sharing a trauma as intimate as sexual violence will never be easy or comfortable. But certain changes can be made to mitigate the challenge of bringing sexual violence charges into universal jurisdiction cases, by implementing measures ensuring the meaningful participation and protection of survivors, but also mechanisms ensuring that national legal systems are properly equipped to handle these complex crimes. Training judicial actors and sharing good practices is a great start: from interpreters and police officers collecting testimonies, to judges and lawyers interviewing victims, to paralegal actors who can play a role in making victims’ experiences of the judicial system as painless as possible. There are growing initiatives on best practices for investigation, including the Murad Code of Conduct for the Documentation and Investigation of Conflict-Related Sexual Violence. In some countries, courtroom interrogation is regulated to mitigate risks of re-traumatization. Finally, NGOs have acquired useful experience in accompanying victims, psychologically and logistically, throughout the process.

What is at stake is not only more respectful, victim-centered proceedings, but also better-quality evidence-gathering processes and thus higher standards of justice.

KEY FINDINGS



22

countries of
commission



16

countries of
prosecution



102

suspects at least*



34

war crimes
charges



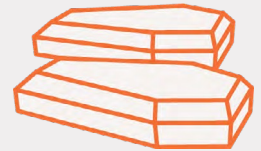
66

crimes against
humanity charges



17

sexual violence
charges



25

genocide
charges



17

accused on trial



15

convictions



0

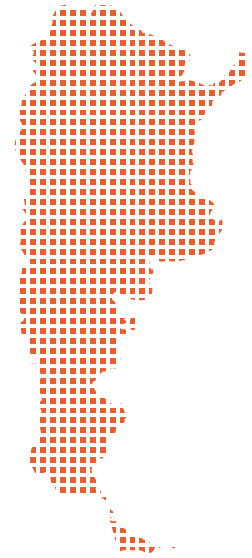
acquittals

TOTAL INTERNATIONAL CRIMINAL CHARGES: 125

** Due to structural investigations, in which a large number of suspects are investigated, the exact figure is unknown. 102 is the minimum number.*

CASES OF 2021

ARGENTINA



FORMER SPANISH MINISTER INDICTED FOR DICTATORSHIP-ERA CRIMES

Rodolfo Martín Villa and others

Context

Ongoing proceedings against former Spanish officials of the Franco dictatorship for alleged international crimes committed in Spain between 1936 and 1977.

Suspects

Former Spanish officials of the Franco dictatorship (including Antonio González Pacheco, former police officer; Jesús Muñecas Aguilar, former captain of the Civil Guard; and Rodolfo Martín Villa, former Minister).

Country of residence of suspects

Spain

Charges

Four counts of aggravated murder

Current status

Under investigation

Facts

After winning the 1930 civil war in Spain, Franco established a bloody dictatorship and proclaimed himself Head of State. Enforced disappearances, extrajudicial executions, torture and inhuman and degrading treatments of perceived political opponents were committed on a

large scale. Franco maintained a tight grip on power until his death in 1975, after which Spain transitioned to democracy.

In 1977, an amnesty law was passed to cover crimes committed during the dictatorship, preventing the prosecution of human rights violations perpetrated under Franco's regime.

Procedure in Spain

In December 2006, the Spanish investigative judge, Baltasar Garzón, opened an investigation into allegations of crimes against humanity committed during the Franco dictatorship. In October 2008, he ruled that the 1977 Spanish law granting amnesty for crimes committed during the Franco dictatorship did not apply, owing to the nature of the crimes. However, the Supreme Court overturned this decision, while Judge Garzón was put on trial for prevarication for his alleged unfair interpretation of the amnesty law. He was eventually acquitted but the amnesty law remains applicable, and the crimes committed by the Franco dictatorship still cannot be investigated or prosecuted in Spain.

Procedure in Argentina

On 14 April 2010, Spanish and Argentinian human rights organizations filed a criminal complaint with Judge Servini de Cubría on behalf of Spanish victims. On 18 September 2013, the judge issued arrest warrants against four former officials of the Franco dictatorship (including González Pacheco, Muñecas Aguilar and Martín Villa) and requested their extradition in order to stand trial for crimes against humanity, including acts of torture, allegedly committed in Spain between July 1936 and June 1977. On 24 April 2014, the Spanish National Court rejected the extradition request.

In August 2016, Judge Servini de Cubría opened an investigation into the death of Spanish poet Federico García Lorca, pursuant to a complaint filed by the *Asociación para la Recuperación de la Memoria Histórica* (Spanish Association for the Recuperation of Historical Memory).

In July 2017, Judge Servini de Cubría issued an international arrest warrant for crimes against humanity and murder against Martín Villa for the death of five workers in Vitoria in 1976.

On 21 June 2018, two victims joined the proceedings: the grandson of José Salmerón Céspedes who was forcibly disappeared, tortured and executed in 1936 and a relative of Gustavo Adolfo Muñoz de Bustillo, a 16-year-old executed on 11 September 1978 during violent riots in the transitional period in Barcelona.

On 26 October 2018, Judge Servini de Cubría admitted the complaint filed two years earlier by the NGO Women's Link Worldwide on behalf of six women repressed by the dictatorship. The investigation examines cases of sexual assault, murder, forced abortion and the theft of children under Franco's regime.

Judge Servini de Cubría interrogated Martín Villa on 3 September 2020 in the Argentinian embassy in Madrid, Spain in a five-hour video conference.

DEVELOPMENTS IN 2021

On 15 October 2021, Judge Servini de Cubría indicted Martín Villa on four counts of aggravated murder. Martín Villa has appealed this decision.

HISTORIC DECISION TO OPEN AN INVESTIGATION INTO THE ROHINGYA MASSACRE

Aung San Suu Kyi and others

Context

Ongoing proceedings for alleged genocide and crimes against humanity committed in Myanmar against the Rohingya people since 2017

Suspects

Military and civilian leaders, including State Counsellor Aung San Suu Kyi and Army Chief Min Aung Hlaing

Country of residence of suspects

Myanmar

Charges

As the case is at the investigation stage, the suspects have not yet been formally charged. The investigation focuses on crimes against humanity, including sexual violence; and genocide

Current status

Under investigation

Facts

On 25 August 2017, a military crackdown started in Myanmar against the Rohingya people after militants allegedly attacked police posts in Rakhine State. The violent repression forced

more than 740'000 civilians to flee massacres, extrajudicial executions and sexual violence. The United Nations' Independent International Fact-Finding Mission on Myanmar concluded that soldiers systematically used rape, gang rape and other violent and forced sexual acts against women, girls, boys, men and transgender people.

The UN investigators qualified this severe crackdown as genocide and declared that the generals at the head of the country's army must answer charges of genocide in northern Rakhine State as well as of crimes against humanity and war crimes in the states of Rakhine, Kachin and Shan.

Procedure in Argentina

The Burmese Rohingya Organisation UK (BROUK) filed a lawsuit on 13 November 2019 before the Argentinian authorities for alleged genocide and crimes against humanity committed against the Rohingya people, including mass killings allegedly committed in August 2017. On 29 May 2020, Argentina's Federal Criminal Chamber 1 opened an investigation against Myanmar's leader Aung San Suu Kyi and senior military officials for genocide and other crimes allegedly committed against the Rohingya people.

Procedure before the International Criminal Court

In parallel, proceedings are underway before the International Criminal Court (ICC). On 14 November 2019, a Pre-Trial Chamber of the ICC authorized

the Office of the Prosecutor to investigate alleged crimes against humanity of deportation, persecution and any other crime within the ICC's jurisdiction committed against the Rohingya people. This authorization follows a lawsuit filed by The Gambia against Myanmar at the International Court of Justice on 11 November 2019.

DEVELOPMENTS IN 2021

On 12 July 2021, the Argentinian lower court dismissed the case based on the existence of an ongoing investigation by the ICC of crimes committed against the Rohingyas. The complainant appealed the decision.

On 26 November 2021, the Argentinian Federal Court ordered the judicial authorities to investigate the crimes against humanity and genocide allegedly committed against the Rohingya people. The Court stated that by virtue of the nature of such crimes, it is the obligation of all states, under peremptory norms of international law, to conduct a preliminary investigation into harmful acts that violate the peace, security and welfare of mankind.

The Federal Court underlined that the existence of the Independent Investigation Mechanism for Myanmar for the collection of evidence would facilitate the complex task of collecting evidence in this case.

INVESTIGATORS ASK FOR TURKEY'S COOPERATION OVER KASHOGGI'S KILLING

Mohammed bin Salman

Context

Investigation in Argentina into alleged complicity in war crimes and torture committed in Saudi Arabia

Suspect

Crown Prince and Deputy Prime Minister of the Kingdom of Saudi Arabia

Country of residence of suspect

Saudi Arabia

Charges

As the case is at the investigation stage, the suspect has not yet been formally charged. The investigation focuses on war crimes; torture and inhumane treatment

Current status

Under investigation

Facts

Yemen became embroiled in a civil war in 2014, when Houthi rebels seized the north of the country, including Sanaa, the country's capital. On 25 March 2015, an international coalition led by Saudi Arabia launched air strikes against the Houthis in Yemen, triggering a major armed conflict. For six years, Yemen has been ravaged by a war that has already killed more than 377'000 people, half of whom are civilians.

Mohammed bin Salman was appointed Saudi Minister of Defense on 23 January 2015. One of his first acts was to launch the military campaign in Yemen along with other Arab States.

United Nations bodies and human rights groups have denounced the widespread violations of human rights and humanitarian law committed in Yemen. Alleged violations include deliberately targeting civilians, the use of illegal cluster-munitions, indiscriminate airstrikes and a naval blockade that deprived civilians of access to basic livelihood.

Bin Salman is alleged to have committed violations of international law during the armed conflict in Yemen as well as torture, including electrocution and flogging of Saudi citizens.

He is also accused of having a role in the murder of Saudi journalist Jamal Kashoggi, who was killed on 2 October 2018 inside the Saudi consulate in Istanbul. Saudi authorities deny the Crown Prince's involvement, however Turkish and United States intelligence agencies found the murder to have been premeditated and ordered by bin Salman himself.

Procedure

On 26 November 2018, the NGO Human Rights Watch filed a denunciation with the Argentinian Federal Prosecutor in anticipation of bin Salman's visit to Buenos Aires for the G20 Summit. The submission asks the Argentinian authorities to investigate bin Salman's role in war crimes allegedly committed by the Saudi-led coalition in Yemen, as well as in acts of torture and ill-treatment of Saudi nationals, including the murder of Saudi journalist Jamal Khashoggi.

On 28 November 2018, a federal prosecutor formally requested inquiries into whether the allegations are being investigated elsewhere, and into bin Salman's diplomatic status and immunities. On the same day, the competent federal investigative judge sent information requests to the governments of Saudi Arabia and Yemen, to the International Criminal Court and to the Argentinian Foreign Ministry.

DEVELOPMENTS IN 2021

Argentinian prosecuting authorities sent a rogatory commission to Turkey in September 2021. No information is available regarding its content.

AUSTRIA

AUSTRIAN OFFICIALS FACE ALLEGATIONS OF ABUSE OF AUTHORITY AROUND THE FLIGHT OF SYRIAN INTELLIGENCE OFFICER

Khaled H. and others

Context

Ongoing investigations into international crimes committed by the Syrian intelligence services since 2011

Suspects

High- and mid-ranking officials of the Syrian intelligence services, including Military Intelligence, Air Force Intelligence and General Intelligence Services – in particular a former General of the General Intelligence Services from Raqqa (northeastern Syria), Khaled H.

Country of residence of suspects

Syria/unknown

Charges

As the case is at the investigation stage, the suspects have not yet been formally charged. The investigation focuses on crimes against humanity and war crimes

Current status

Under investigation

Facts

The investigations concern crimes against humanity and war crimes committed by the Military Intelligence, Air Force Intelligence and General Intelligence Services including murder,

extermination, torture, serious bodily harm and deprivation of liberty.

Since the beginning of the Syrian civil war in 2011, Syrian intelligence services (Military Intelligence, Air Force Intelligence and General Intelligence Services) have reportedly been systematically arresting, torturing and killing persons who opposed or were suspected of opposing the Syrian regime. The government's aim has been to stop the protest movement at the earliest possible stage, and intimidate the population.

Procedure

In 2016, the prosecutorial authorities reportedly initiated an investigation against Khaled H., former General of the General Intelligence Services from Raqqa. He is suspected of committing international crimes in detention facilities that were under his command. The investigation is ongoing.

Austrian authorities have further initiated investigations into several other officers of the Syrian intelligence services after 16 women and men from Syria filed a criminal complaint to the Public Prosecutor in Vienna in May 2018. The group of torture survivors – which included an Austrian citizen – filed the complaint together with the European Center for Constitutional and Human Rights (ECCHR), Syrian lawyers Anwar al-Bunni (Syrian

Center for Legal Research and Studies) and Mazen Darwish (Syrian Center for Media and Freedom of Expression) and the Centre for the Enforcement of Human Rights International in Vienna. Following the submission, the prosecutor heard one of the complainants and initiated a criminal investigation.

Upon the prosecutor's request, NGOs submitted additional evidence.

In November 2020, the Austrian investigative newspaper Kurier alleged that in 2015, the Austrian Office for the Protection of the Constitution (hereinafter the Office) assisted Khaled H. in escaping France. The Office reportedly helped Khaled H. to relocate to Austria and be granted asylum there.

DEVELOPMENTS IN 2021

In 2021, investigations continued without the suspect having been arrested or indicted. In September 2021, The New Yorker and the German magazine Der Spiegel reported in depth about how the Office assisted the suspect in moving to Austria, reportedly as a favor to Israeli Mossad. As a consequence, some officers of the Austrian migration authority and the Federal Agency for State Protection and Counter Terrorism are under investigation because of suspicions of corruption and/or abuse of authority.

BELGIUM

INTERAHAMWE MILITIA MEMBERS SOON TO BE ON TRIAL FOR RAPES

Ernest Gakwaya and Emmanuel Nkunduwimye

Context

Ongoing proceedings for alleged genocide and war crimes committed during the 1994 genocide in Rwanda

Suspects

Rwandan nationals, alleged members of the *Interahamwe* militia

Country of residence of suspects

Belgium

Charges

Genocide and war crimes, including sexual violence

Current status

Pending trial; placed in pre-trial detention

Facts

Ernest Gakwaya and Emmanuel Nkunduwimye allegedly participated in the 1994 genocide in Rwanda.

Gakwaya is accused of murdering and raping Tutsis and moderate Hutus during the genocide.

Nkunduwimye allegedly committed murder, attempted murder and rape during the same period.

They were allegedly members of the *Interahamwe* militia, the youth organization of the National Republican Movement for Democracy and Development, heavily implicated in the 1994 genocide.

Procedure


Gakwaya and Nkunduwimye were arrested in March 2011 in Brussels. They denied having been members of the *Interahamwe*. On 9 October 2019, the Criminal Court decided to sever the case against Gakwaya and Nkunduwimye from the case against Fabien Nereetsé, another Rwandan implicated in genocide and war crimes, considering that there was no connection between their cases.

DEVELOPMENTS IN 2021

The hearings schedule of the Criminal Court was disrupted due to the pandemic.

The case is pending trial. At the date of publishing this report, no date has been set yet for the opening of the trial.





GENOCIDE IN RWANDA: THE INTELLECTUAL, THE FINANCER AND THE HENCHMAN

Pierre Basabose, Séraphin
Twahirwa and Christophe
Ndangali

Context

Ongoing proceedings against three suspects of international crimes committed during the 1994 genocide in Rwanda

Suspects

Three Rwandan nationals: Pierre Basabose, a businessman close to the Rwandan government; Séraphin Twahirwa, leader of an *Interahamwe* militia; and Christophe Ndangali, a teacher and intellectual

Country of residence of suspects

Belgium

Charges

Genocide and war crimes

Current status

Under investigation; indicted; detained and under judicial surveillance

Facts

Basabose is suspected of having financed genocidal propaganda. Basabose allegedly distributed money and weapons to the *Interahamwe* militia in Gatenga and Gikondo and encouraged them to kill Tutsis.

Twahirwa led an *Interahamwe* militia (the youth organization of the National Republican Movement for Democracy and Development) allegedly responsible for massacres of Tutsis in a central region of Rwanda.

Ndangali allegedly participated in the exclusion of Tutsis from the school system and called for the extermination of Tutsis.

Procedure

The three accused were charged with genocide and war crimes on 30 September 2020. Three arrest warrants were issued. Basabose and Twahirwa are currently detained in Belgium. Ndangali currently benefits from an alternative measure to imprisonment and is under surveillance through the use of an electronic bracelet.

FOLLOW-UP ON OTHER CASES

- T.K. and N.B. (Rwandan nationals): the investigation is ongoing. Due to the pandemic, no date has yet been set for the opening of their trial
- Martina Johnson: awaiting trial

DEVELOPMENTS IN 2021

The investigation is ongoing and acts covered by the secrecy of criminal procedure were carried out throughout the year.

FINLAND



FORMER SIERRA LEONEAN RUF COLONEL ON TRIAL FOR AGGRAVATED RAPE

Gibril Massaquoi

Context

The Massaquoi trial is the first of its kind, where a national court has travelled to hold the trial in the affected countries, Sierra Leone and Liberia. It is unique example of cooperation between a prosecuting state and the country of commission of the crimes.

Suspect

Sierra Leonean national; former Lieutenant-Colonel of the Revolutionary United Front (RUF); spokesperson and assistant to the group's founder, Foday Sankoh

Country of residence of suspect

Finland

Charges

Committing and ordering murder; aggravated rape; aggravated war crimes, including murder, torture, rape and the recruitment and use of child soldiers; and aggravated violations of human rights in a state of emergency.

Current status

On trial

Facts

Gibril Massaquoi held a leading position within the RUF – a Sierra Leonean rebel group which had close ties to former Liberian President Charles Taylor's National Patriotic Front of Liberia (NPFL) – during the Sierra Leonean Civil War (1991-2002). The RUF invaded Sierra Leone in March 1999, with support from the NPFL, in an attempt to overthrow the Joseph Momoh government. The NPFL and RUF stayed closely connected throughout the Sierra Leonean civil war.

Procedure

In 2002, the Special Court for Sierra Leone (SCSL) was established. Massaquoi offered to collaborate, and became a top informer for the prosecution. In 2009 and 2012 respectively, the SCSL convicted three former senior leaders of the RUF and Taylor for war crimes and crimes against humanity committed in Sierra Leone. Massaquoi was not charged with any crimes by the SCSL.

As part of their regular investigation and documentation efforts, Geneva-based NGO Civitas Maxima and its Liberian sister organization, the Global Justice and Research Project (GJRP), found evidence that

Massaquoi had allegedly committed, overseen and ordered international crimes in Liberia.

On the basis of indications that he was present in Finland, Civitas Maxima and the GJRP submitted information to the authorities in Finland in 2018 regarding Massaquoi's alleged involvement in mass atrocities in Liberia. Following a preliminary investigation, Finland's General Prosecutor issued an order to proceed with the case.

Finnish police investigators visited Liberia on several occasions since early 2019 to hear witnesses in cooperation with Liberian authorities.

On 10 March 2020, Massaquoi was arrested by Finnish police in Tampere, Finland on suspicion of war crimes and crimes against humanity, including murders, sexual violence and the recruitment and use of child soldiers.

DEVELOPMENTS IN 2021

On 13 January 2021, Finland's National Bureau of Investigation closed the pre-trial investigation on Gibril Massaquoi and the case was officially handed over to the prosecutor, who issued the indictment on 25 January 2021.

The Massaquoi trial started in Tampere, Finland, on 1 February 2021. The Finnish court then travelled to Liberia in mid-February – first conducting site visits in Lofa County before returning to Monrovia and commencing hearings there on 23 February 2021. The hearings in Monrovia concluded on 7 April 2021 and resumed in Sierra Leone from 11 May until 18 May. The court returned to Finland, where eight further hearings were held between 31 May and 25 August. Following the presentation of documentary and expert evidence, as well as of new witnesses, the Finnish court travelled back to Monrovia to hear additional witnesses. The hearings resumed in Monrovia on 13 September and concluded on 8 October. The court returned to Finland where it heard additional witnesses on 26 October, 17 and 19 November, 8 and 20 December 2021. The final pleadings took place in January 2022. The verdict is expected to be issued in April 2022.

FRANCE

INVESTIGATORS GATHERED EVIDENCE AGAINST FORMER CONGOLESE REBEL LEADER

Roger Lumbala

Context

Ongoing proceedings for complicity in crimes against humanity committed during the second civil war in the Democratic Republic of the Congo (1998-2003)

Suspect

Congolese national; former leader of the *Rassemblement Congolais pour la Démocratie-National* (Congolese Rally for National Democracy, or RCD-N) and former Minister of Commerce of the Congolese government

Country of residence of suspect

DRC and France

Charges

Complicity in crimes against humanity, including sexual violence

Current status

Under investigation; indicted; detained

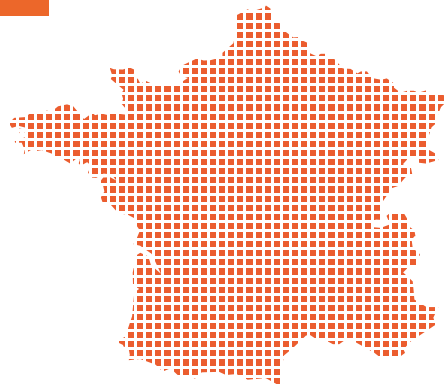
Facts

In 2003 the United Nations published a report implicating the rebel armed group RCD-N in crimes against humanity, including rape, summary executions, mutilation and cannibalism, during the second civil war in the DRC. Roger Lumbala is accused of crimes that took place between 1 July 2002 and the end of December 2003 in the provinces of Ituri and Haut Uélé (northeastern DRC). At the time, Lumbala was the leader of the RCD-N.

Procedure

The Office of the Prosecutor of the French Specialized Unit for the prosecution of genocide, crimes against humanity, war crimes and torture within the Paris Tribunal (integrated in 2019 within the newly created French National Anti-Terrorist Prosecution Office) opened an investigation against Lumbala in 2016.

Lumbala was arrested on 29 December 2020 in Paris.




DEVELOPMENTS IN 2021

On 2 January 2021, Lumbala was indicted for his alleged participation in a group formed with a view to the preparation of crimes against humanity and complicity in crimes against humanity.

Throughout the year, several NGOs as well as more than a dozen Congolese nationals became civil parties.

The investigation has shed light on the crimes committed during the military operation in the Beni-Mambasa-Bunia area by the alliance of the RCD-N and other armed groups toward the end of 2002. Evidence and testimonies were also gathered on crimes committed in Bafwasende and Isiro, areas controlled by the RCD-N in those years.



TESTIMONIES AGAINST HIGH-RANKING SYRIAN OFFICIALS ARE PILING UP

Ali Mamluk, Jamil Hassan and Abdel Salam Mahmoud

Context

Ongoing investigation for international crimes committed in Syria in 2013

Suspects

Ali Mamluk, Director of the National Security Bureau; Jamil Hassan, Head of the Syrian Air Force Intelligence; and Abdel Salam Mahmoud, in charge of the Air Force Intelligence Service at the Mezzeh military airport

Country of residence of suspects

Syria

Charges

As the case is at the investigation stage, the suspects have not yet been formally charged. The investigation focuses on complicity in crimes against humanity, torture and enforced disappearances; war crimes

Current status

Under investigation; international arrest warrants issued

Facts

In November 2013, Patrick Dabbagh and his father Mazen Dabbagh, both dual French-Syrian nationals, were arrested in their home in Damascus by Syrian Air Force Intelligence agents and detained for interrogation at the Mezzeh detention center. Neither one has been seen since. In summer 2018, the Dabbagh family received formal notification from the Syrian authorities that Patrick and Mazen Dabbagh had died. According to the United Nations' Commission of Inquiry on Syria, Mezzeh has one of the highest mortality rates in Syria.

Procedure

On 24 October 2016, a complaint was filed before the Paris Tribunal by Obeida Dabbagh, a Syrian-French national, on behalf of his nephew and brother, Mazen and Patrick Dabbagh, together with the International Federation for Human Rights (FIDH) and its member organization in France the *Ligue des Droits de l'Homme*.

In October 2018, in an unprecedented step towards accountability for crimes committed in Syria, French judges of the Specialized Unit for the prosecution of genocide, crimes against humanity, war crimes and torture within the Paris Tribunal (integrated in 2019 within the newly created French National Anti-Terrorist Prosecution Office) issued international arrest warrants against Mamluk, Hassan and Salam Mahmoud. Mamluk and Hassan, also subject to an arrest warrant issued in Germany earlier in 2018, are both wanted for complicity in

crimes against humanity, torture and enforced disappearances. Mahmoud, in charge of the Air Force Intelligence Service at the Mezzeh military airport, is wanted on war crimes charges as well as complicity in crimes against humanity, torture and enforced disappearances.

DEVELOPMENTS IN 2021

The investigative judges heard the NGO Syrian Center for Media and Freedom of Expression as a civil party in the proceedings.



SHIPPING COMPANY UNDER INVESTIGATION FOR SUPPLYING MATERIALS USED FOR CHEMICAL WEAPONS PRODUCTION

Name withheld

Context

Ongoing investigation regarding crimes against humanity and war crimes committed through the supply of means to various structures of the Syrian regime in charge of the production of non-conventional weapons, through a company based in France and in the United Arab Emirates.

Suspect

Dual French and Syrian national, owner of a sailing company

Country of residence of suspect

France

Charges

Conspiracy to commit crimes against humanity, complicity in crimes against humanity and complicity in war crimes, as well as laundering of war crimes and crimes against humanity

Current status

Under investigation; indicted; detained

Facts

The suspect and his company are suspected of having provided support to the Syrian army through the acquisition of equipment and components used directly for the surveillance and repression of the population, despite an international embargo. The materials provided included items that may have been used in the production of chemical weapons.

Procedure

In 2016, the United States Office of Foreign Assets Control imposed financial sanctions on the suspect and his company and blacklisted them as it found that they had transported goods to Damascus in violation of an international embargo.

In June 2017, a preliminary investigation was opened by the French Specialized Unit for the prosecution of genocide, crimes against humanity, war crimes and torture of the Paris Tribunal (integrated in 2019 within the newly created French National Anti-Terrorist Prosecution Office).

DEVELOPMENTS IN 2021

On 25 December 2021, the suspect was arrested and indicted for conspiracy to commit crimes against humanity, complicity in crimes against humanity and complicity in war crimes as well as for the laundering of war crimes and crimes against humanity. He was placed under pre-trial detention.



CHEMICAL ATTACKS ON EASTERN GHOUTA IN SYRIA

Syrian officials

Context

Ongoing proceedings before the French Specialized Unit for the prosecution of genocide, crimes against humanity, war crimes and torture of the Paris Tribunal (integrated in 2019 within the newly created French National Anti-Terrorist Prosecution Office) for the alleged use of chemical weapons during the war in Syria in August 2013 in two different locations.

Suspects

Syrian state and military officials

Country of residence of suspects

Syria

Charges

As the case is at the investigation stage, the suspects have not yet been formally charged. The investigation focuses on crimes against humanity and war crimes for the use of chemical weapons

Current status

Under investigation

Facts

In August 2013, the Syrian regime is alleged to have launched two chemical attacks and bombings near the capital Damascus, in Eastern Ghouta. The attacks on 4 and 5 August on Adra and Douma injured several hundred people. The bombings on the night of 20-21 August killed more than 1'000 people and injured several thousand.

Procedure

The Syrian Center for Media and Freedom of Expression and individual victims of the chemical attacks filed a complaint on 1 March 2021 and were admitted as civil parties in the proceedings with the support of the Open Society Justice Initiative and Syrian Archive. Similar complaints have been filed in Germany and Sweden.

A judicial investigation was opened for crimes against humanity and war crimes in April 2021.

DEVELOPMENTS IN 2021

Civil parties testified before the investigative judges and witnesses were heard.

CIVIL PARTIES TESTIFIED IN THE CRIMINAL INVESTIGATION OVER THE KILLING OF JOURNALISTS IN SYRIA

The Rémi Ochlik, Marie Colvin and Edith Bouvier investigation

Context

Ongoing investigation into the murder of French, Syrian and British journalists during an army bombardment of a media center in Syria in 2012

Suspects

Members of the Syrian regime

Country of residence of suspects

Syria

Charges

As the case is at the investigation stage, there have been no formal charges. The investigation focuses on potential war crimes.

Current status

Under investigation

Facts

On 22 February 2012, a Syrian army bombardment in Baba Amr (Homs) led to the deaths or serious injury of several journalists operating from a media center based there.

French photojournalist Rémi Ochlik and American war crimes correspondent Marie Colvin were

both killed in the attack. Several other journalists were injured in the attack, including French journalist Edith Bouvier as well as Syrian and British journalists who were using the center as a base to report on the events in Homs in early 2012.

Procedure

This case was originally opened in 2012 as a homicide case but was reclassified in 2014 as a war crimes case.

The families of Ochlik and Colvin are civil parties in the case, together with French, Syrian and British journalists injured in the attack, the International Federation for Human Rights (FIDH) and Reporters without Borders.

On 9 April 2018, documents filed in a United States civil case concerning Colvin's death were declassified. They allegedly demonstrate the premeditated nature of the Syrian army bombardment of the media center in Homs that led to the death of Colvin and Ochlik and to the injuries to several others including Bouvier, Paul Conroy and Wael al Omar. These documents have been filed in the ongoing war crimes investigation in France. The investigation is ongoing.

On 30 January 2019, the US District Court in Washington DC held Syria's government liable for the targeting and killing of Colvin and awarded a compensatory USD 302 million to her relatives.

DEVELOPMENTS IN 2021

The French investigative judges performed several procedural acts in 2021, including hearings of the civil parties.



YAZIDI VICTIMS TESTIFIED ON GENDER-BASED INTERNATIONAL CRIMES

Sabri Essid and Nabil Greseque

Context

Ongoing proceedings against two Islamic State (ISIS) fighters accused of genocide and crimes against humanity committed against Yazidis

Suspects

Sabri Essid and Nabil Greseque, French nationals who allegedly joined ISIS in Syria

Country of residence of suspects

Unknown

Charges

As the case is at the investigation stage, the suspects have not yet been formally charged. The investigation focuses on genocide (serious harm to physical and mental integrity) against Yazidi victims; crimes against humanity (enslavement, imprisonment or any other form of severe deprivation of liberty in violation of fundamental provisions of international law, torture, rape, persecution and other inhumane acts) against civilian victims

Current status

Under investigation

Facts

In August 2014, ISIS fighters invaded Mount Sinjar, the stronghold of the Yazidis, a Kurdish-speaking religious minority in northern Iraq. Thousands were killed and thousands of women and teenage girls were kidnapped and sexually enslaved.

Procedure

In 2016, the prosecutor from the French Specialized Unit for the prosecution of genocide, crimes against humanity, war crimes and torture of the Paris Tribunal (integrated in 2019 within the newly created French National Anti-Terrorist Prosecution Office) opened a preliminary investigation into alleged genocide and crimes against humanity perpetrated by ISIS against the Yazidi community in Syria and Iraq.

In 2018 and 2019, the International Federation for Human Rights (FIDH) legally represented Yazidi survivors who gave their testimonies to the investigators, denouncing the participation of French citizens in the crimes they suffered.

On 25 October 2019, the French National Anti-Terrorist Prosecution Office opened an investigation against Essid for crimes against humanity.

In February 2020, an international arrest warrant was issued for Essid for genocide and crimes against humanity.

On 10 July 2020, a judicial investigation was opened against Greseque for genocide and crimes against humanity committed in Syria against Yazidis between 2015 and 2016.

DEVELOPMENTS IN 2021

Yazidi victims admitted as civil parties in both cases were heard by the investigative judges.

TRANSFERRING MILLIONS OF DOLLARS TO ISIS AMOUNTS TO COMPLICITY IN CRIMES AGAINST HUMANITY

Lafarge SA – Eric Olsen and others

Context

Proceedings against the cement company Lafarge SA (now LafargeHolcim) for financing terrorism, complicity in crimes against humanity committed by armed groups in Syria (including the Islamic State, or ISIS), deliberate endangerment of people's lives and violation of an embargo

Suspects

Former directors, including top executives, of the French-Swiss LafargeHolcim group (the crimes were allegedly committed by the French company Lafarge prior to its 2015 merger with Swiss-based Holcim) and of its subsidiary Lafarge Cement Syria. The suspects are French and Norwegian nationals

Country of residence of suspects

France and Switzerland

Charges

Financing of a terrorist enterprise, complicity in crimes against humanity, deliberate endangerment of people's lives and violation of the European Union embargo on oil purchases

Current status

Under investigation; indicted

Facts

Lafarge owned and ran a cement factory in Jalabiya, northern Syria. From 2012 on, several armed groups started to operate in the factory's area. The company allegedly entered into negotiations with ISIS to purchase oil and pozzolan (a material used to make concrete) from them, as well as to obtain official ISIS passes for crossing checkpoints in order to maintain its production in the area. Testimonies also point to Lafarge risking the lives of its employees, who suffered kidnappings and extortion, and violating a number of basic labor rights. The company worked out "arrangements" with armed groups like ISIS around the factory from 2012-2015 amounting to at least EUR 13 million, according to the judicial inquiry.

Procedure

In September 2016, the French Minister of Finance filed a complaint before the Paris prosecutor against LafargeHolcim for its alleged illegal purchase of oil in Syria, despite the EU embargo issued in 2012. The Paris prosecutor opened an investigation in October 2016.

On 15 November 2016, 11 former Lafarge Syrian employees and the human rights groups Sherpa and the European Center for Constitutional and Human Rights (ECCHR) filed a criminal complaint

as civil parties in Paris against Lafarge, Lafarge Cement Syria and their current and former top executives for financing of terrorism, complicity in crimes against humanity committed in Syria, endangerment of people's lives and for a series of labor rights violations.

On 9 June 2017, three investigative judges of the Paris Tribunal opened an investigation into the crimes alleged by the plaintiffs. In September 2017, three of the victims were heard by one of the investigative judges.

Between December 2017 and May 2018, eight former executives, including former CEOs of the group, were charged with financing terrorism and endangerment of people's lives amongst other charges, and were requested to provide the courts with a deposit of several million euros. In September 2019, a Syrian-Canadian alleged former intermediary between the company and ISIS suppliers was also charged.

On 28 June 2018, three investigative judges of the Paris Tribunal indicted the legal entity Lafarge SA (now LafargeHolcim) with complicity in crimes against humanity, financing a terrorist enterprise, endangerment of people's lives and violation of an embargo. The investigative judges ordered LafargeHolcim to hand over EUR 30 million to the judicial authorities as a security deposit ahead of a possible trial.

On 24 October 2019, the Investigation Chamber of the Paris Court of Appeal rejected the admissibility of Sherpa and the ECCHR as civil parties.

On 7 November 2019, the Court of Appeal confirmed the indictments of Lafarge executives and of the Lafarge company itself for financing a terrorist enterprise, endangerment of people's lives and violation of an EU embargo. However, the Court dismissed the charges of complicity in crimes against humanity for the company.

In November 2019, Sherpa and the ECCHR appealed the rejection of their civil party applications and the dismissal of the complicity in crimes against humanity charges to the French Supreme Court. The defense also appealed the 7 November decision.

DEVELOPMENTS IN 2021

On 7 September 2021, the French Supreme Court ruled that Lafarge's indictment for complicity in crimes against humanity was wrongly dismissed by the Paris Appeal Court, finding that knowingly transferring millions of dollars to an organization whose sole purpose is criminal is sufficient to characterize complicity in crimes against humanity. The court also ruled that Lafarge's indictment for endangerment of peoples' lives was wrongly confirmed by the Paris Appeal Court, finding that it had not sufficiently justified the application of French law to the case of Syrian workers. The Supreme Court therefore referred the case back to the Paris Court of Appeal for a new decision on both charges. In addition, it confirmed the inadmissibility of Sherpa as a civil party on all charges and ECCHR's inadmissibility for almost all charges, with the exception of the complicity in crimes against humanity charge.

SUDANESE VICTIMS HEARD BY INVESTIGATIVE JUDGES

BNP Paribas and its senior staff
members

Context

Ongoing proceedings in France regarding the alleged complicity of BNP Paribas (BNPP) in crimes committed by the Sudanese government against its citizens between 2002 and 2008

Suspects

BNPP as a company and its senior staff as individuals

Country of residence of suspects

France

Charges

As the case is at the investigation stage, the suspects have not yet been formally charged. The investigation focuses on complicity in crimes against humanity, torture and genocide, as well as financial crimes, including money laundering and handling the proceeds of crime

Current status

Under investigation

Facts

From 2002 to 2008, BNPP was the primary foreign bank of the Sudanese government. During this time, Sudanese government forces and its militia called the *Janjaweed* were engaged in an armed conflict with rebel groups. They systematically targeted civilians belonging to the same non-Arab ethnic groups as the rebels (particularly the Masalit, Fur and Zaghawa), in Darfur and other areas. Government forces and allied militia killed, tortured, detained, forcibly displaced, raped and assaulted tens of thousands of civilians.

These crimes, said to amount to genocide and crimes against humanity, were allegedly facilitated by BNPP through its provision of credit facilities, access to foreign financial markets and petrol exports to the Sudanese government. This alleged responsibility is compounded by the fact that Sudan was subject to sanctions from the United Nations, the European Union and individual states, increasing the government's reliance on the services provided by BNPP.

Procedure

On 26 September 2019, nine Sudanese victims, supported by the International Federation for Human Rights (FIDH) and Project Expedite Justice, filed a criminal complaint against BNPP before the investigative judges of the Paris Tribunal. The complaint alleges that by providing banking services to the Sudanese government while Sudan was subject to international sanctions for committing crimes against its civilians, the bank and its senior staff became complicit in these crimes.

On 26 August 2020, a judicial investigation was opened into BNPP's alleged role in mass atrocities in Sudan before the French National Anti-Terrorist Prosecution Office.

DEVELOPMENTS IN 2021

The investigative judges summoned the Sudanese victims admitted as civil parties in the case for a hearing.



FRENCH COMPANY AND ITS MAIN EXECUTIVES INDICTED FOR COMPLICITY IN TORTURE IN LIBYA

Amesys and three executives

Context

Ongoing proceedings for allegedly aiding and abetting crimes of torture committed in Libya under Muammar Gaddafi's regime

Suspects

Amesys as a company and three executives of the company

Country of residence of suspects

France

Charges

Complicity in torture as a result of selling surveillance material to Gaddafi's regime in Libya

Current status

Under investigation; four indictments issued

Facts

In 2007, the company Amesys signed a contract with the government of Libya to provide surveillance technologies for the purposes of intercepting communications and processing and analyzing data. This technology allegedly allowed the Gaddafi regime (1969-2011) to repress the opposition and to commit serious human rights abuses.

Procedure

On 19 October 2011, the International Federation for Human Rights (FIDH) lodged a criminal complaint as a civil party before the investigative judge at the Paris Tribunal against Amesys and its management, denouncing their alleged role as accomplices in acts of torture and other cruel, inhumane or degrading treatment in Libya, on the basis of universal jurisdiction.

On 26 March 2012, the Office of the Prosecutor at the Paris Tribunal issued an order not to open a criminal investigation, arguing that there were insufficient grounds to open an investigation. However, the investigative judge decided on 23 May 2012 to open a formal criminal investigation. On 15 January 2013, the Paris Court of Appeal decided to allow the investigation to proceed.

In January 2013, five Libyan victims joined the proceedings as civil parties. They were heard in June and July 2013 by the investigative judge. Another Libyan victim joined the case and was heard on 11 December 2015. In March 2016, it was revealed that new evidence consisting of dozens of documents from Gaddafi's security services had come to light, reportedly showing the regime's extensive use of the surveillance technologies provided by Amesys to track, arrest and torture political opposition.

On 30 May 2017, Amesys was formally assigned the status of assisted witness (*témoin assisté*) for complicity in torture committed in Libya between 2007 and 2011.

DEVELOPMENTS IN 2021

In June and July 2021, three executives of the company, as well as the company itself, were indicted by the investigative judges for complicity in torture.

CYBER-SURVEILLANCE COMPANY AND EXECUTIVES INDICTED FOR TORTURE AND ENFORCED DISAPPEARANCES IN EGYPT

Nexa Technologies and four executives

Context

Ongoing proceedings for allegedly aiding and abetting crimes of torture and enforced disappearances committed in Egypt. The current case is linked to the Amesys case, also ongoing before the French jurisdiction.

Suspects

Nexa Technologies and four executives of the company

Country of residence of suspects

France

Charges

Complicity in acts of torture and enforced disappearances in Egypt between 2014 and 2021

Current status

Under investigation; indictments issued

Facts

In November 2017, following the revelations of the newspaper *Télérama* which had brought to light the existence of a contract concluded by Amesys – now Nexa

Technologies – with the Egyptian regime, International Federation of Human Rights (FIDH) and its member organization in France the *Ligue des Droits de l'Homme* (LDH), with the support of the Cairo Institute for Human Rights Studies, filed a complaint for complicity in torture and enforced disappearances with the French Specialized Unit for the prosecution of genocide, crimes against humanity, war crimes and torture within the Paris Tribunal (integrated in 2019 within the newly created French National Anti-Terrorist Prosecution Office) regarding the participation of Nexa Technologies in the repressive operations carried out by Al-Sisi's regime, through the sale of surveillance equipment. Nexa Technologies, a company run by former Amesys managers, has been accused of selling a software developed by Amesys, called "Cerebro", to the Egyptian regime to track down its opponents.

Procedure

On 9 November 2017, FIDH and LDH filed a complaint with the French Specialized Unit for the prosecution of genocide, crimes against humanity, war crimes and torture within the Paris Tribunal for complicity in acts of torture and enforced disappearances.

On 30 January 2018, FIDH was heard as a civil party.

DEVELOPMENTS IN 2021

In June and July 2021, four executives of Nexa Technologies were indicted for complicity in torture and enforced disappearances.

In September 2021, Nexa Technologies was indicted as a legal entity.



SENIOR JAYSH AL-ISLAM OFFICIAL UNDER INVESTIGATION FOR CRIMES COMMITTED IN SYRIA

Islam Alloush

Context

Ongoing proceedings against a senior official of Jaysh al-Islam, an armed group mainly active in Eastern Ghouta (suburbs of Damascus, Syria), for crimes committed between 2011 and 2018

Suspect

Former spokesperson of Jaysh al-Islam

Country of residence of suspect

France

Charges

War crimes, torture, enforced disappearances and complicity in these crimes

Current status

Under investigation; indicted; detained

Facts

Islam Alloush, a senior official and spokesperson for Jaysh al-Islam, was allegedly involved in the forced enlistment of children in the armed group, kidnapping and torture.

Jaysh al-Islam is also suspected of being involved in the abduction, torture and enforced disappearance of human rights lawyers Razan Zaitouneh, Nazem Al-Hammadi and Wael Hamada; and the political activist Samira Al-Khalil.

Procedure

On 26 June 2019, the Syrian Center for Media and Freedom of Expression, the International Federation of Human Rights (FIDH) and its member organization in France the *Ligue des Droits de l'Homme* filed a complaint against Alloush for crimes committed by Jaysh al-Islam.

Following this complaint, Alloush was arrested on 29 January 2020 in Marseille by the French National Anti-Terrorist Prosecution Office and indicted for war crimes, torture, enforced disappearances and complicity in these crimes.

DEVELOPMENTS IN 2021

The investigative judges performed several procedural acts in 2021, including hearings of victims, civil parties and witnesses.

GARMENT COMPANIES INVESTIGATED FOR FORCED LABOR OF UYGHURS

Several multinational garment companies

Context

Ongoing investigations against several multinational companies in the garment industry that may be involved, through their suppliers, in the forced labor imposed on the Uyghur population in Xinjiang, China

Suspects

Several multinational garment companies

Country of residence of suspects

European Union member states and other countries

Charges

As the case is at the investigation stage, the suspects have not yet been formally charged. The investigation focuses on concealment of forced labor and crimes against humanity

Current status

Under investigation

Facts

Since at least 2019, journalists and researchers have highlighted the existence of systematic forced labor

in the Xinjiang Uyghur Autonomous Region by the Chinese government, where nearly 20% of the world's cotton is produced. However, according to public information available to date, the companies Inditex (including the brands Zara, Bershka, Pull and Bear, Massimo Dutti, etc.), Uniqlo, SMCP (including Sandro, Maje, Claudie Pierlot, and De Fursac) and Skechers, as well as many other transnational companies, continue to subcontract part of their production or to market goods using cotton produced in the region.

DEVELOPMENTS IN 2021

On 9 April 2021, Sherpa, the Collectif Ethique sur l'Étiquette, the Uyghur Institute of Europe and a Uyghur survivor filed a criminal complaint with the Public Prosecutor's Office in Paris against several multinational garment companies.

On 1 July 2021, the French judiciary announced that it has opened a preliminary investigation into the crime of concealment of crimes against humanity.

In September 2021, the European Center for Constitutional and Human Rights filed a similar criminal complaint with the German Federal Public Prosecutor against several German textile brands and retailers. In October 2021, the Public Prosecutor decided to initiate a monitoring process regarding the situation in Xinjiang. However, no formal investigations have yet been opened.



CENTRAL AFRICAN REPUBLIC MILITIA LEADER INVESTIGATED OVER CHARGES OF WAR CRIMES AND CRIMES AGAINST HUMANITY

Eric Danboy Bagale

Context

Ongoing proceedings for war crimes, crimes against humanity, torture and enforced disappearances in the Central African Republic between 2007 and 2014

Suspect

Central African national; former head of the Presidential guard turned militia leader

Country of residence of suspect

France

Charges

War crimes, crimes against humanity, torture, enforced disappearances and complicity in these crimes

Current status

Under investigation; indicted; detained

Facts

Eric Danboy Bagale was a “Liberator”, the name given to supporters of General François Bozizé who brought him to power in 2003, after overthrowing President Ange-Félix Patassé. A member of the Gbaya ethnic group, Bagale had become a senior official in the anti-Balaka militias. These armed groups were formed to fight the Séléka militias, an alliance of rebels from the Muslim-majority north of the Central African Republic, which ousted President Bozizé from power in 2013.

The numerous massacres perpetrated by both sides have plunged the country into a violent civil war. According to the United Nations, which accused both sides of war crimes, between 3’000 and 6’000 people were killed between 2013 and 2015, most of whom were civilians.

According to the prosecution, Bagale arrived in France in 2014. He fled the Central African Republic with relatives of President François Bozizé. France and Monaco have frozen Bagale’s assets, accusing him of working “to destabilize the Central African Republic” and attempting “to commit an act of terrorism”.

Bagale was arrested in France on 15 September 2020 and indicted on 18 September 2020 for war crimes, crimes against humanity, torture, enforced disappearances and complicity in these crimes in the Central African Republic between 2007 and 2014.

DEVELOPMENTS IN 2021

The investigation is ongoing. The suspect alleges that his identity was confused with someone else.



LIBERIAN REBEL COMMANDER SOON TO BE TRIED FOR CRIMES AGAINST HUMANITY AND TORTURE

Kunti K.

Context

Ongoing proceedings for international crimes allegedly committed in Liberia between 1993 and 1997

Suspect

Alleged commander in the United Liberation Movement of Liberia for Democracy (ULIMO), a rebel group fighting against former Liberian President Charles Taylor's National Patriotic Front of Liberia

Country of residence of suspect

The Netherlands and France

Charges

Torture, barbaric acts and complicity in these crimes; crimes against humanity

Current status

Pending trial; detained

Facts

Kunti K. allegedly committed crimes against humanity between 1993 and 1997 as a commander of the ULIMO, during the first Liberian civil war (1989-1996). In his capacity as a ULIMO commander, Kunti K. allegedly committed murder, enslavement, torture, cannibalism and used child soldiers.

Procedure

On 23 July 2018, the NGO Civitas Maxima launched a complaint in the name of Liberian victims before the French Specialized Unit for the prosecution of genocide, crimes against humanity, war crimes and torture within the Paris Tribunal (integrated in 2019 within the newly created French National Anti-Terrorist Prosecution Office).

On 4 September 2018, Kunti K. was arrested by the French police. Kunti K. was remanded in custody. On 6 September 2019, Kunti K. was released from pre-trial detention after a procedural error.

In early January 2020, Kunti K. was returned to prison after failing to fulfill an obligation related to his release, namely to live at an address known to, and agreed upon by, the judge.

On 26 November 2020, the investigative judge issued a closing order ordering Kunti K. to be sent to trial for crimes of torture, barbaric acts and complicity in torture and aggravated acts of barbarism.

In December 2020, the prosecutor appealed the failure to indict for crimes against humanity

DEVELOPMENTS IN 2021

On 1 April 2021, the investigative chamber ruled in favor of the prosecutor, by expanding the indictment to cover crimes against humanity in addition to crimes of torture and acts of barbarism and confirmed the referral to trial of Kunti K.

In June 2021, the trial was set to begin on 10 October 2022.



RWANDAN PUBLIC AGENT INDICTED FOR GENOCIDE AND CRIMES AGAINST HUMANITY

Isaac Kamali

Context

Ongoing proceedings for crimes allegedly committed during the 1994 genocide in Rwanda, in particular in the Gitamara district

Suspect

Dual Rwandan and French national (naturalized in 2002), mathematics professor

Country of residence of suspect

France

Charges

Crimes against humanity; genocide and complicity in genocide

Current status

Under investigation; indicted; under judicial surveillance

Facts

Isaac Kamali is accused of having actively taken part in the 1994 massacres as he was working as an agent of the Minister of Public Works and Energy. He allegedly participated in the organization of the killings, providing weapons and vehicles to the *Interahamwe* militia. He is also alleged to have directly participated in massacres.

Procedure

In 2003, a Rwandan court convicted Kamali *in absentia* for his role in the 1994 genocide in Rwanda. The Rwandan authorities sent an extradition request to France, where Kamali had moved after the genocide.

In June 2007, Kamali was arrested in a Paris airport due to an Interpol Red Notice. The French authorities rejected the Rwandan extradition request in 2008.

In 2009, the French Specialized Unit for the prosecution of genocide, crimes against humanity, war crimes and torture within the Paris Tribunal (integrated in 2019 within the newly created French National Anti-Terrorist Prosecution Office) opened an investigation against Kamali, after the *Collectif des Parties Civiles pour le Rwanda* launched a complaint in February 2009. The investigation unit travelled to Rwanda, Mali and Benin to collect evidence.

DEVELOPMENTS IN 2021

On 16 September 2021, the French authorities indicted Kamali and placed him under judicial surveillance for his alleged involvement in genocide and crimes against humanity.



RWANDAN PRIEST CHARGED WITH GENOCIDE AND COMPLICITY IN CRIMES AGAINST HUMANITY

Marcel Hitayezu

Context

Ongoing proceedings for crimes allegedly committed during the 1994 genocide in Rwanda

Suspect

Dual Rwandan and French national; former priest in Mubuga (southern Rwanda)

Country of residence of suspect

France

Charges

Genocide and complicity in crimes against humanity

Current status

Under investigation; indicted; under judicial surveillance

Facts

As a priest in the parish of Mubuga (southern Rwanda), Marcel Hitayezu is accused of having denied Tutsis who had taken refuge in his church food and water while providing food to the Interahamwe militia who attacked the Tutsis gathered in the church. Hitayezu contests these facts.

Procedure

In 2016, the Rwandan judiciary requested the extradition of Hitayezu to prosecute him in Rwanda. The French Supreme Court denied this request in October 2016.

An investigation into the allegations put forward by the Rwandan authorities was opened in France on 26 July 2016.

DEVELOPMENTS IN 2021

Hitayezu was arrested on 14 April 2021 at his home in Montlieu-la-Garde (Charente-Maritime). He was charged with genocide and complicity in crimes against humanity.

On 6 May 2021, Hitayezu was released and placed under judicial surveillance.



NEW ARREST IN RWANDAN GENOCIDE CASES

Name withheld

Context

Ongoing proceedings for crimes allegedly committed during the 1994 genocide in Rwanda

Suspect

Unnamed suspect

Country of residence of suspect

France

Charges

Genocide, complicity in crimes against humanity and participation in a conspiracy established for the purpose of preparing one of these crimes

Current status

Under investigation; indicted; detained

Facts

The unnamed suspect is alleged to have participated in meetings intended to prepare or coordinate the murders as well as directly taking part in the massacres.

Procedure

In August 2019, an investigation was opened against Jean R., father of the suspect, whose asylum request was denied on the grounds that there were serious reasons to believe that he may have participated in the 1994 genocide in Rwanda. The investigation revealed that the suspect was also involved in the alleged crimes.

DEVELOPMENTS IN 2021

On 9 December 2021, the suspect was arrested in Paris and charged with genocide, complicity in crimes against humanity and participation in a conspiracy established for the purpose of preparing one of these crimes.

FORMER RWANDAN POLICE OFFICER SENT TO TRIAL

Philippe Hategekimana

Context

Ongoing proceedings for crimes allegedly committed during the 1994 genocide in Rwanda

Suspect

Dual Rwandan and French national; former police officer

Country of residence of suspect

France

Charges

Genocide, complicity in genocide, crimes against humanity and participation in a group formed for the purpose of preparing these crimes

Current status

Pending trial; appeal of this referral pending; detained

Facts

Philippe Hategekimana is suspected of having participated in the genocide against Tutsis in Rwanda in 1994. He was allegedly involved in multiple atrocities in Nyanza and the surrounding villages in April 1994. He is accused of having assassinated a Tutsi mayor and of having participated in several mass murders. After the genocide, Hategekimana fled to France where he obtained citizenship.

Procedure

In June 2015, the *Collectif des Parties Civiles pour le Rwanda* (CPCR) filed a complaint against Hategekimana before the French Specialized Unit for the prosecution of genocide, crimes against humanity, war crimes and torture within the Paris Tribunal (integrated in 2019 within the newly created French National Anti-Terrorist Prosecution Office). The CPCR alleged Hategekimana was involved in committing atrocities during the genocide. In September 2015, an investigation was opened. The investigative judge issued an international arrest warrant.

Hategekimana was arrested in Yaoundé, Cameroon on 30 March 2018. France requested his extradition.

In February 2019, Cameroon accepted the extradition request. Hategekimana was brought before the French investigative judges on 15 February 2019, indicted and placed in pre-trial detention. He denied the charges.

DEVELOPMENTS IN 2021

On 20 September 2021, investigative judges from the French National Anti-Terrorist Office ordered that Hategekimana be sent to trial before the French Criminal Court for genocide, complicity in genocide, crimes against humanity and participation in a group formed for the purpose of preparing these crimes. The accused appealed this order.



SHAREHOLDER OF THE RADIO LES MILLES COLLINES INVESTIGATED FOR GENOCIDE

Pierre Kayondo

Context

Ongoing investigation for crimes against humanity and genocide committed during the 1994 genocide in Rwanda

Suspect

Former Prefect of Kibuye and former Member of Parliament in Gitarama district

Country of residence of suspect

France

Charges

As the case is at the investigation stage, the suspect has not yet been formally charged. The investigation focuses on genocide; crimes against humanity; complicity in these crimes; participation in a group formed for the purpose of preparing these crimes

Current status

Under investigation

Facts

Pierre Kayondo was reportedly a shareholder of the Radio Television Les Mille Collines – a radio station that played a fundamental role in the genocide, inciting massacres and spreading hatred against the Tutsi and moderate Hutus.

He was reportedly a member of the *Mouvement Republicain National pour la Démocratie et le Développement* (National Republican Movement for Democracy and Development), which had close ties to the *Interahamwe* militia.

He is also alleged to have taken part personally in the massacres.

DEVELOPMENTS IN 2021

On 22 September 2021, the *Collectif des Parties Civiles pour le Rwanda* launched a complaint against Kayondo for his alleged involvement in the 1994 genocide in Rwanda.

On 18 October 2021, the French prosecuting authorities opened an investigation against him for his involvement in crimes of genocide and crimes against humanity allegedly committed between April and July 2014.

BUTARE'S DOCTOR SENT TO TRIAL FOR HIS PARTICIPATION IN THE RWANDAN GENOCIDE

Sosthène Munyemana

Context

Ongoing proceedings in France for serious international crimes committed during the 1994 genocide in Rwanda

Suspect

Gynecologist at the University Hospital of Butare

Country of residence of suspect

France

Charges

Genocide, crimes against humanity and complicity in these crimes, participation in a group formed for the purpose of preparing genocide and crimes against humanity

Current status

Pending trial

Facts

On 17 April 1994, in a public speech, Sosthène Munyemana allegedly incited Hutus to exterminate the Tutsi community of Tumba. From 21 April 1994, he is also accused of taking part in several massacres of Tutsis in and around Tumba. He is reported to have distributed ammunition and compiled lists of Tutsis to be eliminated. He allegedly led night patrols and specified who should be abducted.

Procedure

On 18 October 1995, the NGOs *Collectif Girondin pour le Rwanda*, International Federation of Human Rights (FIDH) and *Survie* lodged a criminal complaint against Munyemana for his alleged participation in genocide. In 2001, the *Collectif des Parties Civiles pour le Rwanda* joined the proceedings as a civil party.

In 2006, Rwanda requested Munyemana's extradition from France. However, on 7 October 2010, the Investigation Chamber of the Bordeaux Court of Appeal denied this request.

In October 2008, Munyemana was found guilty *in absentia* by the Butare Gacaca Court. He was sentenced to life imprisonment.

On 14 December 2011, Munyemana was indicted in the French proceedings and placed under judicial supervision.

On 9 May 2017, the investigative judges within the French Specialized Unit for the prosecution of genocide, crimes against humanity, war crimes and torture within the Paris Tribunal (integrated in 2019 within the newly created French National Anti-Terrorist Prosecution Office) informed the parties that they had completed their investigation.

On 11 May 2018, the prosecutor issued his final submission. He alleged that Munyemana organized a hunt against Tutsis, detained some of them in inhumane conditions, and sent them to killing sites.

DEVELOPMENTS IN 2021

The investigative judges ordered that Munyemana be sent to trial for the commission of crimes against humanity, genocide, complicity in these crimes and participation in a group formed for the purpose of preparing these crimes. At the date of writing this report, no date was set for his trial to start.



TWO UPCOMING TRIALS RELATED TO THE RWANDAN GENOCIDE

Eugène Rwamucyo and Laurent Bucyibaruta

Eugène Rwamucyo

Context

Pending proceedings for crimes committed during the 1994 genocide in Rwanda

Suspect

Rwandan citizen, former head of the Center of Public Health of the University of Butare, Rwanda

Country of residence of suspect

France

Charges

Genocide and crimes against humanity

Current status

Pending trial; appeal of this referral pending

Facts

Eugène Rwamucyo was the head of the Center of Public Health of the University of Butare in 1994. He is accused of having supervised the burial of Tutsi victims and of finishing off those already injured in the Butare prefecture.

Procedure

On 23 April 2007, the *Collectif des Parties Civiles pour le Rwanda* (CPCR) lodged a complaint against Rwamucyo for his alleged participation in the genocide. On 18 July 2007, the Prosecutor of Lille opened a judicial investigation, which was transferred to investigative judges of the Paris Tribunal in November 2007. CPCR was admitted as a civil party in the case at the opening of the investigation. The International Federation of Human Rights (FIDH) also became a civil party in 2010.

Rwamucyo was indicted by the investigative judge on 18 September 2013, and placed under judicial supervision.

On 19 December 2018, the investigative judge informed the parties that he had completed his investigation.

On 7 April 2020, the prosecution issued its final submission requesting that Rwamucyo be sent to trial on charges of genocide and crimes against humanity.

On 13 October 2020, the investigative judge referred the case to the Paris Criminal Court for complicity in genocide and crimes against humanity.

DEVELOPMENTS IN 2021

Both the defense and civil parties lodged appeals against the decision to refer the case to the Paris Criminal Court.

Laurent Bucyibaruta

Context

Ongoing proceedings against a Rwandan prefect for crimes committed during the 1994 genocide in Rwanda

Suspect

Former Prefect of Gikongoro and head of the prefectural committee of the *Interahamwe* movement (the youth organization of the National Republican Movement for Democracy and Development)

Country of residence of suspect

France

Charges

Genocide and crimes against humanity, including sexual violence

Current status

Referred to the Criminal Court; referral under appeal

Facts

As Prefect of Gikongoro, Laurent Bucyibaruta allegedly delivered public speeches urging the Hutu population to attack and kill Tutsis on many occasions between December 1993 and April 1994. He is also accused of having ordered massacres of Tutsis and moderate Hutus in various locations in the Gikongoro prefecture, and of having ordered the rape and murder of women and girls in various locations.

Procedure before the International Criminal Tribunal for Rwanda

The International Criminal Tribunal for Rwanda (ICTR) indicted Bucyibaruta on 16 June 2005 for incitement to genocide, genocide and complicity in genocide, as well as crimes against humanity including extermination, murder and rape.

In August 2007, the ICTR issued an arrest warrant requesting that the French government detain Bucyibaruta. On 20 November 2007, the ICTR referred the case to the French authorities.

Procedure in France

On 5 January 2000, the International Federation of Human Rights (FIDH) and its member organization in France, the *Ligue des Droits de l'Homme*, lodged a complaint against Bucyibaruta for his alleged participation in the genocide. The Prosecutor of Troyes questioned and detained Bucyibaruta on 3 May 2000. He was released on 20 December 2000.

Bucyibaruta was arrested again on 5 September 2007 and placed under judicial supervision after the issuance of the arrest warrant by the ICTR. On 9 May 2017, the investigative judge informed the parties that he had completed his investigation.

On 4 October 2018, the prosecution issued its final submission requesting that Bucyibaruta be sent to trial on charges of genocide and crimes against humanity. On 24 December 2018, the investigative judges referred the case to the Paris Criminal Court for complicity in genocide and crimes against humanity. The accused appealed the referral.

On 7 October 2020, a hearing took place before the Paris Court of Appeal, following the appeals lodged by the accused and by civil parties against the referral of the case to the Paris Criminal Court.

DEVELOPMENTS IN 2021

On 21 January 2021, the Court of Appeal confirmed the referral of the case, changing the charges from complicity to direct perpetration of genocide for certain criminal facts, and adding others which had been rejected by the investigative judge.

The trial is scheduled to take place from 9 May to 1 July 2022 before the Paris Criminal Court (*Cour d'assises*).



EX-DRIVER FOR THE INTERAHAMWE CONDEMNED TO A 14-YEAR PRISON SENTENCE

Claude Muhayimana

Context

Ongoing proceedings for crimes allegedly committed during the 1994 genocide in Rwanda

Suspect

Dual Rwandan and French national

Country of residence of suspect

France

Charges

Complicity in crimes against humanity and genocide

Current status

Sentenced to 14 years' imprisonment

Facts

Claude Muhayimana drove Hutu militias to several attack locations while he was the driver for the Kibuye Guesthouse. He was allegedly involved in the attack on the Nyamishaba school (Kibuye district) in April 1994, and in the massacres of Tutsi civilians who had found refuge in Karongi, Gitwa and Bisesero between April and June 1994.

Muhayimana also participated in killings carried out in the Kibuye church on 17 April 1994 and in a stadium the following day. Both massacres resulted in the death of thousands of victims.

Procedure

On 13 December 2011, the Rwandan judicial authorities issued an international arrest warrant against Muhayimana for his alleged participation in the genocide. The Rwandan authorities also requested his extradition from France.

On 26 February 2014, the French Supreme Court ruled that Muhayimana could not be extradited because Rwanda's request was based on laws passed after the alleged crimes took place.

On 9 April 2014, Muhayimana was arrested in Rouen following a complaint filed in June 2013 by the *Collectif des Parties Civiles pour le Rwanda*. A criminal investigation was launched regarding his alleged role in the genocide committed in the district of Kibuye. Muhayimana was placed in pre-trial detention. On 3 April 2015, he was released and placed under judicial control.

On 9 November 2017, the investigative judge referred the accused to the Paris Criminal Court for complicity in genocide and crimes against humanity through aiding and abetting. Muhayimana appealed the referral decision. His appeal was denied by the Investigation Chamber of the Court of Appeal in Paris.

The trial, initially scheduled from 29 September to 26 October 2020, was postponed twice due to the Covid-19 outbreak.

DEVELOPMENTS IN 2021

The trial took place before the Paris Criminal Court (*Cour d'assises*) between 22 November and 17 December 2021. Muhayimana was found guilty of complicity in genocide for transporting militiamen to various massacre sites during the genocide. He was sentenced to 14 years' imprisonment.

GUANTÁNAMO SURVIVORS FILE APPLICATION TO THE EUROPEAN COURT OF HUMAN RIGHTS AGAINST CLOSURE OF INVESTIGATION

The Guantánamo torture case

Context

Proceedings in France against former Guantánamo Bay detention camp commander Geoffrey Miller and other unknown perpetrators for alleged torture committed against French citizens at the United States detention center in Guantánamo Bay, Cuba

Suspect

Former Guantánamo commander Miller and other unknown US officials

Country of residence of suspect

United States of America

Charges

Torture

Current status

Investigation closed; appeal dismissed; application lodged with the European Court of Human Rights (ECtHR)

Facts

Mourad Benchellali, Nizar Sassi and Khaled Ben Mustapha are French citizens who were detained at Guantánamo between 2002 and 2005, where they were subjected to physical and psychological abuse. Miller was commander of the Joint Task Force Guantánamo and reportedly oversaw interrogations and detainees' treatment during the plaintiffs' detention.

Procedure

In November 2002, a criminal complaint and a claim for damages were filed in France in connection with the arrest, abduction, detention, false imprisonment and arbitrary detention of Benchellali and Sassi. Investigatory proceedings were opened in June 2005. The scope of the investigation was later expanded to include torture allegations submitted by the plaintiffs after their release from Guantánamo and to include both the criminal complaint and the civil claim brought by the third plaintiff, Mustapha.

In January 2012, the investigative judge sent a rogatory letter to the US calling on the US to cooperate and share information with French investigators.

After this request and several follow-up reminders were ignored by the US, the plaintiffs filed a motion in February 2014 requesting that the investigative judges summon Miller for questioning. The request

was initially denied. On 2 April 2015, the Paris Court of Appeal reversed this decision, ruling that Miller must be summoned to give evidence on the acts in question and his role in the treatment of detainees at Guantánamo.

On 20 January 2016, the investigative judge of the Paris High Court (*Tribunal de Grande Instance de Paris*) issued a subpoena requesting that Miller appear before the judge on 1 March 2016 regarding his alleged involvement in torture committed against Guantánamo Bay detainees. However, Miller failed to appear before the judge. On 20 July 2016, the claimants' lawyer requested that an international arrest warrant be issued against Miller.

On 18 September 2017, the case was dismissed. The plaintiffs appealed the decision to the Investigation Chamber of the Court of Appeal in Paris (*Chambre de l'instruction de la Cour d'appel de Paris*).

On 7 November 2019, the Investigation Chamber of the Court of Appeal in Paris examined the appeal of the civil parties against the dismissal of the case ordered by the investigative judges. In the 2017 dismissal order, the investigative judge explained that the defendants could not be individually prosecuted, being "representatives of the State acting in this capacity."

On 19 December 2019, the dismissal of the case was upheld by the Court of Appeal.

DEVELOPMENTS IN 2021

On 13 January 2021, the Criminal Chamber of the Court of Cassation confirmed the dismissal of the appeal, again citing the doctrine of state immunity.

In July 2021, the plaintiffs lodged an application with the ECtHR, invoking a violation of their right of access to a court under Article 6(1) of the European Convention on Human Rights.

FOLLOW-UP ON OTHER CASES

- Ahmed Hamdane Mahmoud Ayach Al Aswadi: the investigation is ongoing
- Mahammat Nouri: the investigation is ongoing
- Laurent Serubuga: the investigation is ongoing
- Qosmos: the investigation was dismissed on 31 December 2020
- The Caesar investigation: the investigation is ongoing

STRUCTURAL INVESTIGATION INTO CRIMES OF THE ASSAD REGIME LED TO TRIALS AND CONVICTIONS

Context

Structural investigation by the German Federal Public Prosecutor into international crimes allegedly committed by the Syrian regime and related institutions since 2011. The structural investigation resulted in the personal investigation and the subsequent trial and conviction of two former members of the Syrian intelligence services, Anwar Raslan and Eyad Al-Gharib (see p. 54); the arrest and trial of a former doctor working for the Syrian intelligence services, Alaa M. (see p. 56); and an arrest warrant against the former head of one of the Syrian intelligence services, Jamil Hassan (see p. 27).

Suspects

Syrian nationals; former and present members of the Syrian intelligence services

Country of residence of suspects

Germany, Syria and potentially other countries

Charges

Crimes against humanity, war crimes and grave domestic crimes including murder, rape and severe sexual coercion

Current status

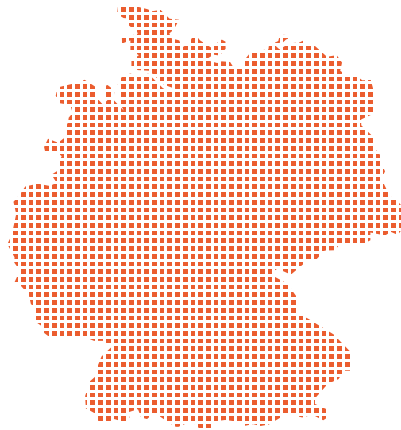
Under investigation

Facts

Since the beginning of the Syrian civil war in 2011, Syrian intelligence services (Air Force Intelligence, Military Intelligence, General Intelligence Services and Political Security) have reportedly been systematically arresting, torturing and killing persons who opposed or were suspected of opposing the Syrian regime. In addition to torture and killings, former detainees held by the intelligence services survived or witnessed various forms of sexual and gender-based violence including rape, sexual harassment, electrical shocks to the genitals, forced nudity and forced abortion, which are yet to be addressed by the prosecutorial authorities.

As reported by numerous international and Syrian organizations, the Syrian intelligence agencies continue today to commit international crimes by unlawfully arresting, torturing, sexually abusing and killing people in their detention facilities.

Martin Lautwein was arrested and detained by Syrian Intelligence agencies in 2018 and then brought to Damascus where he was detained in the so-called Palestine branch of the Military Intelligence Service for 48 days. He was repeatedly exposed to torture and witnessed the torture of other detainees, including by repeated beatings, exposure to electric shocks and the so-called



“German chair”, a method of torture by which the detainee is tied by their arms and legs to a metal chair, the back of which is moved backwards, causing acute stress to the spine and severe pressure on the neck and limbs. Furthermore, Lautwein reported that at least one detainee was exposed to sexual violence.

Procedure

In September 2011, the German Federal Public Prosecutor opened a structural investigation into war crimes and crimes against humanity committed by the Syrian regime.

In 2017, Syrian survivors, together with Anwar al-Bunni (from the Syrian Center for Legal Studies and Research, or SCLSR), Mazen Darwish (from the Syrian Center for Media and Freedom of Expression, or SCM) and the European Center for Constitutional and Human Rights (ECCHR), submitted several criminal complaints against high-level officials of Syrian intelligence agencies to the German Federal Public Prosecutor, addressing killings, persecution, torture and sexual violence committed in Syrian detention facilities, including those under the command of the then-head of the Air Force Intelligence Service, Hassan.

During the same year, the Caesar Files Group (CFG), together with ECCHR, filed a criminal complaint with the Office of the German Federal Public Prosecutor against senior officials of the Syrian intelligence services and the military police, for crimes against humanity and war crimes committed in Syrian detention facilities. A representative of the CFG provided the prosecutor with a set of high-resolution images of deceased and tortured detainees.

On 8 June 2018, the German Federal Court of Justice issued an arrest warrant against Hassan for alleged crimes against humanity and war crimes, upon a request of the German Federal Public Prosecutor. He is accused of having tortured and killed numerous detainees of the Air Force Intelligence Service between 2011 and 2013, either directly as a main-perpetrator or co-perpetrator or indirectly, through command responsibility, for the acts of his subordinates.

In 2019 and 2020, the prosecutorial authorities undertook further steps to address the crimes committed in Syrian detention facilities between 2011 and 2012 through the arrest, indictment and trial of two former members of Syrian intelligence agencies, Anwar Raslan and Eyad Al-Gharib, as well as the arrest of former Syrian doctor Alaa M.

In 2020, the structural investigation was enhanced by submissions of additional evidence against the Syrian regime and related institutions, in particular the Syrian intelligence services.

On 17 June 2020, seven Syrian survivors, together with the NGOs ECCHR, the Syrian Women's Network and Urnammu filed a criminal complaint against nine high-ranking officials of the Syrian regime and Air Force Intelligence Service, including the former head of the Air Force Intelligence Service, Hassan, to the German Federal Public Prosecutor. The complaint addresses sexual and gender-based crimes that were committed between April 2011 and October 2013 in Syrian Air Force Intelligence detention facilities. Testimonies and further evidence indicate that sexual and gender-based crimes in these detention facilities were committed as part of a widespread and systematic attack against a civilian population in Syria and should therefore be legally characterized and charged as crimes against humanity under the German Code of Crimes Against International Law. This additional evidence, highlighting the gendered commission and gendered impact of sexual violence in Syria, calls on the prosecutor to broaden the existing charges against Hassan.

On 10 November 2020, German development aid worker Lautwein joined a criminal complaint filed by the SCLSR, the SCM and ECCHR in March 2017, which was later joined by the CFG.

DEVELOPMENTS IN 2021

In September 2011, the German Federal Prosecutor opened a structural investigation into war crimes and crimes against humanity committed by the Syrian regime.

Investigations have continued throughout 2021 with some leading to witness testimony that became relevant in the case against Anwar Raslan in Koblenz.

LANDMARK CONVICTION IN TRIAL ON SYRIAN STATE TORTURE

Anwar Raslan and Eyad Al-Gharib

Context

Trial before the Higher Regional Court in Koblenz against two former members of the Syrian General Intelligence Service (GIS) for international crimes allegedly committed by the al-Khatib branch (also known as Branch 251) in Damascus. This is the first trial addressing systematic international crimes committed by the Syrian government and its intelligence agencies since 2011.

Suspects

Anwar Raslan, former head of the investigation unit at the al-Khatib branch of the GIS in Damascus; Eyad Al-Gharib, employee of the subdivision working with Raslan's investigation unit

Country of residence of suspects

Germany

Charges

Raslan was originally charged with being a co-perpetrator in 4'000 cases of torture, 58 murders and in individual cases of sexual assault and rape that were committed between 29 April 2011 and 7 September 2012, as crimes against humanity.

Throughout the proceedings, the court has indicated that charges

are extended to further cases of murder and sexualized violence as crimes against humanity.

Al-Gharib was charged with aiding and abetting crimes against humanity in at least 30 cases of deprivation of liberty and torture

Current status

Sentenced; Raslan case on appeal

Facts

Since the beginning of the Syrian civil war in 2011, Syrian intelligence services have reportedly been systematically arresting, torturing and killing opposition activists. In September 2011, the German Federal Public Prosecutor opened a structural investigation into war crimes and crimes against humanity committed by the governmental institutions. Other person-specific investigations targeted Raslan and Al-Gharib.

Raslan headed the investigation unit of the al-Khatib branch. Between late April 2011 and early September 2012, he implemented and oversaw a brutal system of physical and psychological torture intended to extract confessions and gain insight into the opposition movement. At least 4'000 persons were exposed to torture in the al-Khatib detention center under Raslan's direct command. Methods of torture included beatings with fists and various objects, administering electric shocks, suspending victims from the ceiling by their wrists, sleep deprivation and making threats against relatives. Moreover, victims were subjected

to inhumane conditions of detention such as overcrowded cells and the withholding of medical attention. At least 58 persons have died as a result of the torture and inhumane conditions.

Al-Gharib was a member of a sub-unit of the investigative division tasked with conducting identity checks and arresting demonstrators, deserters and other suspicious persons. He was indicted for aiding and abetting the torture and illegal detention of at least 30 persons. In the autumn of 2011, after an anti-government demonstration in the city of Douma had been violently dispersed by security forces, Al-Gharib and other GIS officials pursued and arrested fleeing demonstrators and transported them to the al-Khatib detention center. According to the charges, Al-Gharib had full knowledge of the system of torture and mistreatment that detainees were being subjected to.

Procedure

September 2011, the German Federal Public Prosecutor opened a structural investigation into war crimes and crimes against humanity committed by the Syrian governmental institutions.

On 12 February 2019, German authorities arrested Raslan and Al-Gharib in Berlin and Rhineland-Palatinate, respectively, as a result of person-specific investigations. On the same day, French authorities arrested another former intelligence service official in Paris (Abdulhamid A., page 29, UJAR 2021). The arrests were

coordinated by the joint French-German investigative unit.

On 22 October 2019, the German Federal Public Prosecutor formally indicted Anwar Raslan and Eyad Al-Gharib before the Higher Regional Court of Koblenz.

On 23 April 2020, the trial against Raslan and Al-Gharib started at the Higher Regional Court in Koblenz.

Numerous survivors and witnesses of the crimes, as well as expert witnesses, testified throughout the trial, including forensic analyst Professor Markus Rothschild, who analyzed the 26'938 photographs provided by the defected military photographer Caesar and confirmed that survivors' testimonies were largely consistent with his findings.

Several insider witnesses who formerly worked in or with Syrian intelligence agencies also gave their testimony, including an anonymous witness who gave a detailed account on mass burial of deceased detainees of intelligence services. The witness reported on his work in cemeteries in the province of Damascus and his assistance to intelligence officers in transporting and burying the bodies of detainees from detention facilities of intelligence services, including the GIS's al-Khatib detention center and the Saydnaya military prison. Trucks carried several hundred corpses per week. The corpses were marked with numbers and symbols on their foreheads or chests, which corresponds with the images provided by Caesar.

Originally, the Court had refused to make an Arabic translation available to the audience. However, on 18 August 2020, the German Constitutional Court granted a preliminary injunction to provide Arabic translation to all accredited journalists following the trial.

On 18 November 2020, the Court severed the trial of Al-Gharib and announced it would hear the closing statements in that trial on 17 February 2021.

On 19 November 2020, the ECCHR supported a motion filed by partner lawyers on behalf of the seven joint plaintiffs to expand the charges against Raslan to include rape and sexual coercion as part of the crimes against humanity indictment, as so far sexual and gender-based crimes had only been indicted as single incidents rather than as part of a crime against humanity.

DEVELOPMENTS IN 2021

On 24 February 2021, Al-Gharib was found guilty of aiding and abetting a crime against humanity in 30 cases of torture and aggravated deprivation of liberty and sentenced to four and a half years in prison.

On 17 March 2021 the Court explicitly informed Raslan that cases of sexual violence in the al-Khatib Branch will now be tried as a crime against humanity in the context of a widespread and systematic attack against the civilian population in Syria.

On 22 July 2021, joint plaintiff representatives and partner lawyers of the ECCHR filed a motion to include enforced disappearance as a crime against humanity in the charges. The court did not grant the request, as it could not confirm that Raslan acted intentionally in this regard.

On 1 July 2021, 23 German and international academics, research institutions and human rights organizations, together with the ECCHR, sent a motion to the Higher Regional Court of Koblenz, Germany, requesting it to produce audio recordings of the last phase of the trial. On 31 August the Court denied the request, as it did not find that the trial was of paramount significance for the contemporary history of the Federal Republic of Germany as required by law.

On 13 January 2022, the Higher Regional Court of Koblenz found Raslan guilty of crimes against humanity in the form of killing, torture, severe deprivation of liberty, rape and sexual assault in conjunction with 27 cases of murder, 25 cases of dangerous bodily harm, aggravated rape, two cases of sexual assault and deprivation of liberty lasting more than one week in 14 cases. He was sentenced to life imprisonment. His lawyers have announced that they will appeal the decision.

SYRIAN DOCTOR ON TRIAL FOR CRIMES AGAINST HUMANITY AGAINST DETAINEES

Alaa M.

Context

Ongoing proceedings for international crimes allegedly committed by a Syrian doctor in Syrian military hospitals

Suspect

Syrian national; former doctor and member of the Syrian intelligence agencies

Country of residence of suspect

Germany

Charges

Crimes against humanity, including sexual violence, torture and dangerous bodily harm

Current status

On trial

Facts

According to the indictment, between April 2011 and the end of 2012, Alaa M. worked as a doctor in a military hospital in the city of Homs as well as in the Al-Mezzeh military hospital

in Damascus. In these hospitals as well as in the prison of Department 261 of the Syrian Military Intelligence in Homs, he allegedly severely mistreated and tortured numerous detained civilians, two of whom subsequently died.

Among other things, he is accused of beating several detained patients with batons and a plastic tube, administering a lethal injection to one person, stepping on a prisoner's wound with boots and subsequently setting it on fire with disinfectant and having poured alcohol over the genitals of a 14- or 15-year-old boy, which he then ignited.

Procedure

On 19 June 2020, the Federal Public Prosecutor arrested the former doctor and alleged employee of the Syrian Military Intelligence Alaa M. under the suspicion of crimes against humanity.

On 16 December 2020, the arrest warrant was extended to cover allegations of murder in one case, torture in 18 cases, inflicting grievous bodily and mental harm in one case, severe deprivation of physical liberty in seven cases (one of which led to death) and an attempt to deprive a person of their reproductive capacity, all of which are characterized as crimes against humanity.

DEVELOPMENTS IN 2021

On 15 July 2021, the Federal Prosecutor's Office of the Higher Regional Court of Frankfurt indicted Alaa M. In early November, the main parts of the indictment were admitted for trial by the Higher Regional Court of Frankfurt. However, the Court declined to admit for trial ten cases that were part of the indictment for legal reasons.

Following an appeal by the Federal Prosecutor's Office, the Federal Court of Justice on 18 January 2022 overturned the Higher Regional Court's decision and admitted the remaining cases to proceed to trial. On 19 January 2022, the trial against Alaa M. began before the Higher Regional Court of Frankfurt.



LIFE SENTENCE FOR INVOLVEMENT IN EXECUTION OF PRISONER OF WAR IN SYRIA

Khedr. A. K. and Sami A. S.

Context

Proceedings for international crimes committed by members of non-state armed groups in Syria

Suspects

Syrian nationals

Country of residence of suspects

Germany

Charges

War crimes; murder; membership in a foreign terrorist organization

Current status

Sentenced

Facts

According to the judgment, Khedr A. K. joined the group "Ghuraba'a Mohassan" in the Syrian village of Mohassan in spring 2012, which became part of the foreign terrorist organization "Jabhat al-Nusra". On 10 July 2012, both defendants participated in the execution of a lieutenant colonel in the Syrian Armed Forces who had previously been captured during violent clashes between opposition groups and the Syrian army. The victim, who visibly suffered from severe mistreatment, was

killed by multiple gunshots as a representative of the Assad regime. Khedr A. K. was among the guards of the prisoner and shielded the execution. Sami A. S. filmed the execution of the victim and commented on it in a glorifying manner. The video was published online shortly thereafter.

Procedure

On 10 July 2020, the investigative judge of the Federal Court issued an arrest warrant against Khedr A. K. and Sami A. S. They were subsequently arrested in Naumburg (Saale) and Essen (North Rhine-Westphalia) on 13 July 2020.

On 16 December 2020, the German Federal Public Prosecutor issued a formal indictment against the accused.

DEVELOPMENTS IN 2021

On 26 August 2021, the Higher Regional Court of Düsseldorf found Khedr A. K. guilty of war crimes by murder in conjunction with murder and membership in a foreign terrorist organization. He was sentenced to life imprisonment. Sami A. S. was found guilty of aiding and abetting these crimes in conjunction with supporting a terrorist organization abroad. He was sentenced to nine years in prison.

ENSLAVEMENT OF YAZIDIS UNDER PROSECUTION

Several trials are ongoing regarding the Yazidi genocide, with several individuals convicted this year. These trials are not based on universal jurisdiction as the accused are German nationals returning from Syria or Iraq – falling under the category of active personality cases. However, they have been included here as they relate to the prosecution of atrocities committed abroad, namely the efforts of the German prosecutors to fight impunity for the Yazidi genocide.

Jennifer W. and Taha A. J.

Context

Proceedings for international crimes, including enslavement of a Yazidi child and her mother in Fallujah, Iraq

Suspects

Jennifer W., German and Iraqi citizen, and Taha A. J., an Iraqi citizen

Country of residence of suspects

Germany

Charges

Jennifer W. was charged with membership in a terrorist organization and war crimes. Taha A. J. was charged with genocide, crimes against humanity, murder, human trafficking and membership in a terrorist organization

Current status

Jennifer W. was sentenced to 10 years' imprisonment; Taha A. J. was sentenced to life imprisonment. Both judgements are under appeal

Facts

Taha A. J. joined the Islamic State (ISIS) in Iraq in March 2013. In August 2014, Jennifer W. left Germany for Iraq and joined ISIS there. In the period between June and September 2015, she conducted the so-called daily "moral patrols" in ISIS-occupied Fallujah and Mossul by inspecting whether women's behavior and clothing complied with the rules set by ISIS. While conducting such patrols, Jennifer W. carried various lethal weapons with her. For this, she received remuneration from ISIS.

Jennifer W. and Taha A. J. shared a household in Fallujah. In summer 2015, Taha A. J. purchased a Yazidi woman and her five-year-old daughter. They were both from a group of Yazidis taken captive during an attack in the region of Sindjar, directed towards the oppression and extinction of the Yazidi religion. Taha A. J. brought the woman and her daughter to his house in Fallujah. Taha A. J. and Jennifer W. kept the Yazidi woman and her daughter as slaves and exposed them to inhumane living conditions. Taha A. J. prohibited them from exercising their religion, forced them to convert to Islam and severely and repeatedly beat them. To punish the five-year old, Taha A. J. chained her outdoors in scorching heat, which subsequently led to the child's

death. Jennifer W. reportedly witnessed her husband's acts and did not undertake any steps to prevent the death of the child.

Procedure

In 2019, the investigation regarding the crimes committed by ISIS against the Yazidi community in Syria and Iraq led to arrests, formal indictments and trials against several former members of ISIS based on accusations of crimes against humanity, war crimes, genocide and other crimes.

On 9 April 2019, the trial of Jennifer W. began before the Higher Regional Court of Munich. The formal indictment of 13 December 2018 included only the charge of the membership in a terrorist organization. After a victim could be identified, the court added the charge of the killing of the child as a war crime.

On 18 April 2019, the German Federal Court of Justice issued an arrest warrant against Taha A. J. Following his arrest in May 2019 in Greece, he was extradited to Germany on 9 October 2019. The arrest warrant was based on a strong suspicion that as a member of ISIS Taha A. J. committed crimes of genocide, crimes against humanity and war crimes against Yazidis.

On 24 April 2020, the trial against Taha A. J. began before the Higher Regional Court of Frankfurt. He was accused of genocide, crimes against humanity, war crimes against persons, human trafficking for labor exploitation and the murder of the five-year-old Yazidi girl.

DEVELOPMENTS IN 2021

On 25 October 2021, the Higher Regional Court of Munich found Jennifer W. guilty of membership in a foreign terrorist organization, aiding and abetting attempted murder as well as attempted war crimes and a crime against humanity. She was sentenced to ten years in prison. The Federal Public Prosecutor subsequently appealed the sentence, demanding life imprisonment.

On 30 November 2021, the Higher Regional Court of Frankfurt am Main found Taha A. J. guilty of genocide, crimes against humanity resulting in death, a war crime, aiding and abetting a war crime and bodily harm resulting in death. He was sentenced to life imprisonment. In addition, he must pay the joint plaintiff and mother of the deceased child EUR 50'000 as compensation for the non-material damage she suffered. Taha A. J. appealed his conviction.

Omaima A.

Context

Closed proceedings for international crimes, including the enslavement of a 13-year-old Yazidi girl in Syria

Suspect

Dual German-Tunisian national

Country of residence of suspect

Germany

Charges

Aiding and abetting crimes against humanity; membership in a terrorist organization

Current status

Sentenced

Facts

Omaima A. traveled January 2015 with her three underage children from Turkey to Syria to settle there and join ISIS. By taking care of the household and children, she enabled her husband to participate in the hostilities as a fighter. At the request of another ISIS supporter, she kept a 13-year-old Yazidi girl, who was being held as a slave, in her apartment for several hours to watch over her.

On two occasions in the spring of 2016, she hosted another ISIS supporter in her apartment, accompanied by two enslaved Yazidi women who had to clean the apartment during the visits. The woman who held the women as slaves was reportedly Sarah O. (see p. 59).

Procedure

On 2 October 2020, the Hanseatic Higher Regional Court in Hamburg found Omaima A. guilty of membership in a foreign terrorist organization, aiding and abetting

a crime against humanity by enslavement, breach of duty of care or upbringing, unlawful imprisonment and breaches of the Military Weapons Control Act. She was sentenced to three years and six months in prison. Omaima A. appealed this decision to the Federal Court of Justice.

DEVELOPMENTS IN 2021

On 9 March 2021, the Federal Court of Justice dismissed the appeal against the judgment of 2 October 2020. Later that same month, the Hamburg Prosecutor General issued another indictment against Omaima A., charging her with aiding and abetting slavery in 2016, which had not yet been tried in court.

On 22 July 2021, the Hanseatic Higher Regional Court in Hamburg found her guilty of aiding and abetting a crime against humanity by enslavement in conjunction with deprivation of liberty. She was sentenced to four years in prison. This sentence encompasses the prison term from the sentence of 2 October 2020.

Sarah O.

Context

Proceedings for international crimes committed in Syria, including the enslavement of five Yazidi women and two underage Yazidi girls

Suspect

German and Algerian national

Country of residence of suspect

Germany

Charges

Crimes against humanity, including aiding and abetting rape as a crime against humanity; membership in a foreign terrorist organization; deprivation of liberty

Current status

Sentenced

Facts

Sarah O. traveled to Syria in November 2013 at the age of 15 to join ISIS. She married a German ISIS member in January 2014 according to Islamic rites. Sarah O. supported her husband's activities for the terrorist organization by running the household and taking care of their three daughters. She temporarily accommodated new arrivals for ISIS and also attempted to persuade others to travel to Syria and participate in jihad.

Following the ISIS ideology, the defendant Sarah O., together with her husband, held five Yazidi women and two underage Yazidi girls as slaves. Three of the five women participated in the proceedings as joint plaintiffs. Sarah O.'s husband violently forced at least two of the three joint plaintiffs to have sexual intercourse with him. This happened with the consent of the defendant, who considered this action against the defenseless women to be required by the rules of ISIS and encouraged her husband in his actions.

An enslaved 14-year-old girl was killed in an attack during a cross-country trip approved by Sarah O. over a road connection near Al-Mayadin that had already been under fire the day before.

Procedure

On 21 September 2018, Sarah O. was arrested on the basis of an arrest warrant issued by the investigative judge of the Federal Court of Justice on 24 September 2015.

On 12 April 2019, the Federal Public Prosecutor formally indicted Sarah O. and her husband's German parents, who had supported their son with weapons supplies, money and equipment.

DEVELOPMENTS IN 2021

On 16 June 2021, the Higher Regional Court of Düsseldorf found Sarah O. guilty of membership in a foreign terrorist organization in conjunction with a crime against humanity by enslavement resulting in the death of the victim, persecution as a crime against humanity, aiding and abetting rape as a crime against humanity and deprivation of liberty for a period of more than one week resulting in death in conjunction with bodily harm. She was sentenced to six years and six months in prison under juvenile law. Her husband's German parents were sentenced to four years and six months and three years respectively in prison for, among other charges, supporting a terrorist organization abroad.

Leonora M.

Context

Proceedings for international crimes committed in Syria, including the enslavement of a Yazidi woman and her two children

Suspect

German national

Country of residence of suspect

Germany

Charges

Aiding and abetting crimes against humanity, membership in a foreign terrorist organization

Current status

Pending trial

Facts

According to the indictment, Leonora M. left Germany for Syria in March 2015 to join ISIS. She married a member of the ISIS security apparatus and lived with him in Raqqa from the fall of 2015 to June 2017. She supported her husband's activities in ISIS by managing the household and writing a letter of application for him to the ISIS intelligence service, for which he then worked until April 2017. Leonora M. also worked for ISIS herself. Shortly after her arrival, she was assigned to a hospital controlled by ISIS for three months. At the end of 2015, she took on the task of investigating the wives of ISIS fighters for the ISIS intelligence service.

Leonora M. also allegedly supported her husband in trafficking in human beings. At the end of June 2015, her husband allegedly bought a 33-year-old Yazidi woman as a slave in order to sell her and her two small children for a profit. They were held captive in the couple's shared apartment in Raqqa. There, at the behest of her husband, the defendant reportedly physically took care of the injured Yazidi woman so that she could be resold at a profit. In addition, she allegedly tried to dissuade the victimized Yazidi woman from her religious beliefs and to convince her of ISIS's understanding of Islam. The enslaved Yazidi woman was subsequently sold at a profit.

Procedure

On 20 December 2020, upon her return to Germany, Leonora M. was arrested on the basis of an arrest warrant issued by an investigative judge of the Federal Supreme Court on 20 May 2020.

DEVELOPMENTS IN 2021

On 8 January 2021, Leonora M. was conditionally released from pretrial detention.

On 7 July 2021, the Federal Public Prosecutor formally indicted her at the Higher Regional Court of Naumburg. She is charged with membership in a foreign terrorist organization, aiding and abetting a crime against humanity and violations of the War Weapons Control Act. The trial is scheduled to start on 25 January 2022.

Nurten J.

Context

Closed proceedings for international crimes, including the enslavement of a Yazidi woman in Syria

Suspect

German national

Country of residence of suspect

Germany

Charges

Crimes against humanity, war crimes, membership in a terrorist organization

Current status

Sentenced

Facts

Nurten J. traveled to Syria with her three-year-old daughter in February 2015 to join ISIS. She married a high-ranking ISIS member and they lived in free apartments provided by ISIS after the owners had fled or were displaced. The accused regularly invited to the apartment a friend who enslaved a Yazidi woman and forced her to clean the house of the accused on at least 50 occasions.

Procedure

On 2 November 2020, the Federal Public Prosecutor indicted Nurten J. on the charges of enslavement as a crime against humanity, war crimes, membership in foreign terrorist organization and breach of the duty of care or upbringing.

DEVELOPMENTS IN 2021

On 21 April 2021, the Higher Regional Court of Düsseldorf found Nurten J. guilty of membership in a foreign terrorist organization, war crimes against property, aiding and abetting a crime against humanity by enslavement in conjunction with deprivation of liberty, breaches of the Military Weapons Control Act and breach of the duty of care or upbringing. She was sentenced to four years and three months in prison.

ALLEGED SYRIAN WAR CRIMINAL ARRESTED

Mouafak Al D.

Context

Ongoing investigation for alleged war crimes and murder committed in Syria in 2014

Suspect

Syrian national; alleged member of the Syrian Free Palestine Movement

Country of residence of suspect

Germany

Charges

War crimes; murder, dangerous bodily harm

Current status

Under investigation; indicted; detained

Facts

According to the arrest warrant, Mouafak Al D. fired a grenade from an anti-tank weapon into a crowd of people in Rejeh Square in Damascus, Syria, on 23 March 2014. The people were civilians from the AlYarmouk neighborhood who were waiting for food parcels to be distributed by the United Nations Relief and Works Agency for Palestine Refugees in the Near East. At least seven people were killed in the attack. At least three other people, including a six-year-old child, were injured.

At the time of the crime, Mouafak Al D. allegedly was a member of the Free Palestine Movement. Previously, he had belonged to the Popular Movement for the Liberation of Palestine General Command. After the beginning of the unrest in Syria, which turned into a civil war, these armed militias exercised control over Al Yarmouk on behalf of the Syrian regime.

DEVELOPMENTS IN 2021

On 4 August 2021, officers of the Berlin Criminal Police arrested Mouafak Al D. in Berlin upon the request of the German Federal Public Prosecutor. In addition, the defendant's apartment in Berlin was searched.

That same day, an investigative judge of the Federal Court of Justice upheld the arrest warrant and Mouafak Al D. was remanded in custody. He is charged with war crimes in conjunction with seven counts of murder and three counts of dangerous bodily harm.

Active personality

NEW TESTIMONY TAKEN IN CASE AGAINST FORMER ARGENTINIAN MILITARY OFFICER

Luis Esteban Kyburg

Context

Ongoing preliminary investigation for enforced disappearance, torture, and murder of civilians during the Argentinian dictatorship

Suspect

Luis Esteban Kyburg, an dual Argentinian and German citizen and former Second Commander of a special unit at the Mar del Plata naval base

Country of residence of suspect

Germany

Charges

As the case is in the investigation stage, Kyburg has not yet been formally charged for any crime. However, the investigation is focused on his involvement in the murder of at least 19 persons in 1976, enforced disappearance and torture

Current status

Under preliminary investigation

Facts

Between 1976 and 1983, the dictatorship in Argentina headed by Jorge Rafael Videla developed a

policy of state terrorism, resulting in scores of human rights violations and crimes against humanity. Among these, at least 30'000 persons were forcibly disappeared for opposing the regime. It is also known that, in many cases, state officials tortured captive pregnant women and forcibly gave their children up for adoption to supporters of the regime.

In this period, the naval base in Mar del Plata (a city 400 km south of Buenos Aires) was being used as an illegal detention center. Detainees were held captive, tortured, possibly drugged and thrown into the ocean by military planes (a practice that is commonly known as death flights – or *vuelos de la muerte*). In 1976, Kyburg was appointed Second Commander of a special unit for tactical divers (*Agrupación Buzos Tácticos*) in the Mar del Plata naval base.

The complaint against Kyburg regards the case of a young man who was detained with his three-month pregnant partner in September 1976. The detention occurred after Argentinian state forces, dressed in civilian clothes, raided their home and took them to the naval base. Since then, their whereabouts are unknown.

At least 16 former members of the armed forces have been convicted for the crimes against humanity committed in Mar del Plata during this period. Among these, the first commander of Kyburg's unit and the person who followed him in his position in 1997 have been convicted and imprisoned.

Procedure

In 2013, Argentinian authorities issued an arrest warrant against Kyburg in the context of criminal proceedings in which he, along with other former naval officers, were being investigated for the crimes against humanity of murder, forced disappearance, torture and kidnapping of civilians in the Mar del Plata naval base.

Kyburg managed to flee Argentina before his arrest and has been living, since then, in Germany. German authorities denied an extradition request as he is a German citizen (Germany does not extradite its own nationals unless the extradition takes place within European Union countries).

German authorities have requested judicial assistance from Argentinian authorities and have obtained substantial amounts of evidence on the crimes that occurred in the Mar del Plata naval base. Additionally, in 2017, the Berlin prosecutor traveled to Argentina in order to gather additional evidence and to meet Argentinian authorities.

In 2018, a criminal complaint against Kyburg was submitted – with the support of the European Center for Constitutional and Human Rights – by the sister of the young man who was forcibly disappeared in 1976. In 2019, German authorities took the testimony of the complainant. Testimonies from witnesses and survivors living in Europe will also be gathered by the authorities.

In July 2020, a prosecutor in Berlin publicly confirmed that a person-specific investigation targeted Kyburg and that he was undertaking further investigatory steps to prosecute the crimes under German law. In this respect, testimony from witnesses and survivors located in Mar del Plata will also be gathered by the authorities.

DEVELOPMENTS IN 2021

In 2021, the testimonies of survivors living in EU countries other than Germany were taken by prosecutors of the respective countries through EU mutual assistance in criminal matters.

FORMER MEMBER OF GAMBIAN ARMED FORCES SUSPECTED OF CRIMES AGAINST HUMANITY

Bai L.

Context

Ongoing investigation for crimes against humanity allegedly committed by a paramilitary unit (known as “Junglers”) from December 2003 until December 2006. The Gambia was under the control of Yahya Jammeh from 1994 to 2016. For more than two decades, human rights violations, including enforced disappearances, torture, extrajudicial killing, sexual violence and arbitrary detention were widespread

Suspect

Former member of the Junglers

Country of residence of suspect

Germany

Charges

As the case is at the investigation stage, the suspect has not yet been formally charged. The investigation focuses on crimes against humanity, murder and attempted murder.

Current status

Under investigation; detained

Facts

Bai L. is alleged to be a former member of the Junglers death squad, a paramilitary unit in the Gambia believed to be responsible for carrying out widespread human rights abuses on behalf of former Gambian President Yahya Jammeh. According to the arrest warrant, Bai L. was a driver for the Junglers from December 2003 until December 2006.

In that context, Bai L. was allegedly involved in three killing missions. In late December 2003, the unit allegedly received an order to kill a lawyer in Banjul, the capital of The Gambia. In his capacity as driver, Bai L. allegedly drove the remaining members to the location where the crimes took place. There, a member of the unit allegedly fired several shots at the lawyer, who survived the attack. A year later, the “Patrol Team” killed a Gambian journalist, who was critical of the government. The unit, with the alleged participation of Bai L., stopped the journalist’s car on a road in Kanifing. Subsequently, two members of the unit killed him by firing several shots, while Bai L. allegedly transported one of the shooters in his vehicle. In the period that followed, probably around 2006, members of the unit shot and killed a suspected opponent of the Gambian President near the Banjul airport. As before, the suspect allegedly transported the other perpetrators to the location of the shooting.

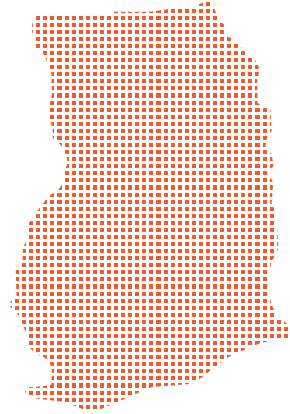
DEVELOPMENTS IN 2021

On 16 March 2021, the suspect was arrested in Hannover by the Federal Criminal Police and the state police forces under suspicion of crimes against humanity and his apartment was searched. Subsequently, and in execution of an arrest warrant, the suspect was placed in detention.

FOLLOW-UP ON OTHER CASES

- Israeli Defense Forces: in August 2021, the German Federal Public Prosecutor announced that he decided not to open formal investigations against the Israeli Defense Forces personnel responsible for the airstrike on the Al-Salam building in Gaza on 21 July 2014 that killed 7 members of the Kilani family. According to the prosecutor, the evidence necessary to conclusively determine whether a war crime had been committed was not obtainable

GHANA



FORMER PRESIDENT TIED TO THE KILLING OF 59 MIGRANTS

Yahya Jammeh

Context

Campaign to bring former Gambian President Yahya Jammeh and his accomplices to justice. The Gambia was under the control of Yahya Jammeh from 1994 to 2016. For more than two decades, human rights violations, including enforced disappearances, torture, extrajudicial killing, sexual violence and arbitrary detention were widespread

Suspect

Former Gambian President from 1994 to 2016

Country of residence of suspect

Equatorial Guinea

Charges

As the case is pending investigation, the suspect has not been formally charged. It is hoped that an investigation will focus on complicity in enforced disappearances and extrajudicial killings

Current status

Pending investigation

Facts

An investigation conducted by the NGOs TRIAL International and Human Rights Watch alleged that the paramilitary unit known as “the Junglers” and controlled by then-Gambian President Jammeh summarily executed more than 50 West African migrants (including some 44 Ghanaians) in July 2005. The migrants were bound for Europe but were wrongly suspected of being mercenaries. They were murdered after having been detained by Jammeh’s closest deputies in the army, navy and police forces. Members of the Junglers death squad are alleged to have carried out the killings.

Procedure

In May 2018, the families of the victims and a coalition of local and international NGOs asked Ghanaian authorities to open an investigation against Jammeh. A legal brief was transmitted to Ghanaian authorities by TRIAL International and Human Rights Watch.

The Ghanaian Inspector General of Police, and later the government, through its Minister of Information, stated that “the government had tasked the Ministry of Foreign Affairs and the Attorney-General’s Department to study the request” and to “advise the government on the way forward.”

In January 2019, five United Nations human rights monitors urged the UN and the Economic Community of West African States to release their report on the 2005 massacre. According to this report, rogue elements in the Gambian security services “acting on their own” were responsible for the massacre.

In the summer 2019, three former Junglers testified publicly before the Truth, Reconciliation and Reparations Commission (TRRC) that they and 12 other Junglers had carried out the killings on Jammeh’s orders.

In July 2020, families of victims and 11 human rights organizations called for an international investigation into the massacre of the West African migrants.

At the same time, in its interim report submitted to the Gambian government in April 2020, the TRRC announced that it would hold hearings on the migrants’ case before the end of its mandate. Due to the impact of Covid-19 on the work of the Commission, the TRRC’s mandate was extended until 30 June 2021.

DEVELOPMENTS IN 2021

In February and March 2021, the TRRC held public hearings on the migrants' case. The testimonies revealed new elements and confirmed existing information, further strengthening the ties between former President Jammeh and these killings.

The TRRC submitted its final report to the Gambian President on 25 November 2021. The report includes recommendations for the prosecution of those who bear the greatest responsibility for human rights violations and abuses.

During the last session of the Human Rights Council in September 2021, the Working Group on Enforced or Involuntary Disappearances (WGEID) presented its follow-up report regarding The Gambia. The WGEID underlined the importance of the work of the TRRC as well as the need to prosecute those responsible for the crimes committed under Jammeh. Specifically, the WGEID looked at the 2005 massacre of West African migrants and called for a diligent and transparent investigation to shed light on the fate of those forcibly disappeared.

LIFE SENTENCE FOR ISIS FIGHTER CONFIRMED ON APPEAL FOR PUBLIC EXECUTION OF CIVILIANS

Hassan Faroud

Context

Completed trial for terrorism and crimes against humanity committed between 2015 and 2016 in Syria

Suspect

Syrian national; Islamic State (ISIS) fighter

Country of residence of suspect

Hungary

Charges

Crimes against humanity

Current status

Sentenced to life imprisonment; confirmed on appeal

Facts

Hassan Faroud commanded a small unit of ISIS in the province of Homs. He ordered the occupation of the town of Al-Sukhnah and the drawing up a "death list" of those who rejected the goals of ISIS and as a consequence would be executed. The executions included the public beheading of the local imam and at least 25 civilians, including women and children, in Al-Sukhnah.

Faroud personally participated in the execution of the imam as well as the murders of three other civilians in the area between 13 May and 15 May 2015. He also shot another person.

Procedure

Faroud left Syria in 2016 and illegally entered the island of Leros, Greece on 27 February 2016, where he obtained refugee status on 27 October 2017.

The Greek Intelligence Service (EYP) received information from the Belgian intelligence services regarding an unnamed individual allegedly involved in extremist activity as a member of ISIS. The EYP opened an investigation against this unnamed individual in July 2018. The investigation was coordinated by Eurojust, the European judicial cooperation agency. In August 2018, the EYP identified this unnamed individual as being Faroud.

On 22 March 2019, based on information obtained by European national intelligence services, a Budapest court ordered Faroud's detention for alleged murders committed in Syria. He was subsequently arrested by the Hungarian Counterterrorism Center at the Nyírbátor immigration detention facility.



On 3 September 2019, Faroud was indicted by the Metropolitan Prosecutor's Office of Budapest for carrying out acts of terrorism and crimes against humanity.

On 13 November 2019, Faroud's trial began. In December 2020, he was found guilty of crimes against humanity committed as a part of a criminal organization and sentenced to life imprisonment with the possibility of parole after 30 years. He was acquitted of the terrorism charges.

The Prosecution appealed his conviction and sentence to include the offense of terrorism and for more serious punishment, namely life imprisonment without parole. Faroud appealed seeking acquittal.

DEVELOPMENTS IN 2021

On 11 October 2021, the Court of Appeal confirmed the conviction of Faroud. It also found that Faroud had committed the crimes against humanity as part of a criminal organization. Faroud was sentenced to life in prison, without parole.



EXPORT AND USE OF ITALIAN WEAPONS IN YEMEN WAR REMAIN UNDER INVESTIGATION

RWM Italia S.p.A.

Context

Ongoing investigation against directors of RWM Italia S.p.A., an Italian arms manufacturer, and against Italian government officials who authorized arms exports to Saudi Arabia and the United Arab Emirates, for complicity in murder and bodily injury, as well as abuse of power

Suspects

Current and former Directors of RWM Italia S.p.A. (a subsidiary of the German-based company Rheinmetall AG); officials from Italy's National Authority for the Export of Armament (UAMA). The suspects are German and Italian nationals

Country of residence of suspects

Italy

Charges

The investigation focuses on complicity through gross negligence in murder and bodily injury, and abuse of power

Current status

Under investigation

Facts

The complaint denounced an air strike launched on 8 October 2016 by the Saudi/UAE-led coalition in Deir Al-Hajārī, Yemen, which allegedly killed six civilians. At the site of the airstrike, a suspension lug manufactured by RWM Italia S.p.A. was found. Further remnants indicate the use of a guided bomb. Testimonies of eye witnesses confirm that no military object was in the direct vicinity of the house that was targeted by the airstrike.

The complaint alleges that RWM Italia S.p.A.'s directors and officials from UAMA are criminally liable for exporting at least part of the deadly weapons used in the air strike to Saudi Arabia (or another member state of the military coalition).

Despite major warnings that the Saudi/UAE-led coalition warfare in Yemen causes significant loss of civilian life and breaches of international humanitarian law, exports of bombs, planes and other weapons to the coalition member states are still taking place. In Italy, the UAMA is competent to authorize these exports of armaments manufactured in Italy.

Procedure

On 17 April 2018, a joint criminal complaint by the NGOs European Center for Constitutional and Human Rights (ECCHR), Mwatana for Human Rights (a Yemen-based organization) and *Rete Italiana Pace e Disarmo* (an Italian-based organization, in cooperation with *Osservatorio Permanente sulle Armi Leggere e le Politiche di Sicurezza e Difesa*) was filed before the Public Prosecutor in Rome. The Prosecutor opened an investigation into the allegations.

In October 2019 the Public Prosecutor requested dismissal of the case. The NGOs that filed the complaint opposed the decision in front of the Judge for Preliminary Investigations. The appeal hearing was scheduled for February 2020. However, due to the Covid-19 pandemic, the hearing was postponed until 2021.

DEVELOPMENTS IN 2021

In February 2021, Judge for Preliminary Investigations in Rome ruled that the Public Prosecutor must continue the criminal investigation into RWM Italia and UAMA's role in the deadly attack on Deir Al-Hajārī.

WITNESSES TESTIFIED AGAINST BELARUSIAN OFFICIALS

Names withheld

Context

Ongoing investigation for alleged acts of torture committed against an activist during the protests against the re-election of Belarus President Alexander Lukashenko

Suspects

Belarusian security officers, including Belarusian Deputy Minister of Interior Nikolai Karpenkov

Country of residence of suspects

Belarus

Charges

As the case is at the investigation stage, the suspects have not yet been” or “no suspects have yet been

Current status

Under investigation

Facts

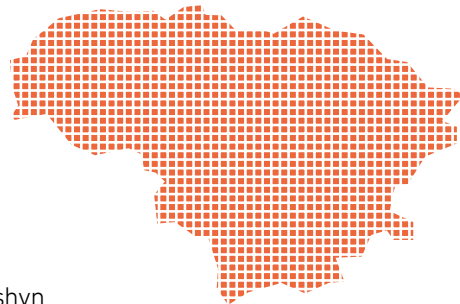
Maksim Kharoshyn, a Belarusian citizen, claims that on 13 October 2020, after attending pro-democracy protests in in Minsk, he was attacked and tortured by officers loyal to Lukashenko’s regime.

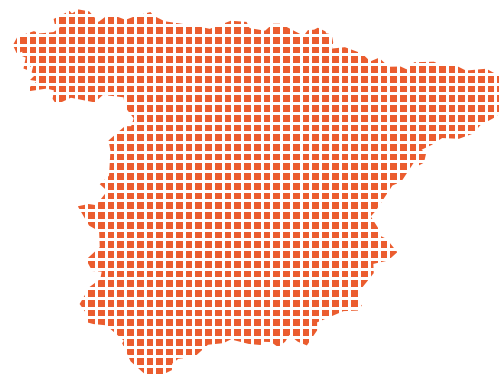
Procedure

On 30 November 2020, Kharoshyn filed a petition with Lithuanian authorities for the acts of torture he suffered while in custody in Minsk, Belarus. Lithuania’s General Prosecutor opened an investigation against Belarusian regime officials over alleged torture of pro-democracy activists.

DEVELOPMENTS IN 2021

In 2021, several witnesses were heard.





Passive personality

133-YEAR SENTENCE OF SALVADORAN MILITARY OFFICER CONFIRMED ON APPEAL

Inocente Orlando Montano Morales

Context

Completed trial for international crimes committed in El Salvador during the internal armed conflict. From 1980 to 1992, El Salvador was divided by an internal armed conflict between the rebel Farabundo Martí National Liberation Front and the government, led by the Nationalist Republican Alliance.

Suspect

Salvadoran citizen; military officer and Vice Minister of Public Security (from 1989 to 1992) in El Salvador

Country of residence of suspect

United States of America

Charges

Murder and terrorism

Current status

Sentenced; confirmed on appeal

Facts

On 16 November 1989, six Jesuit priests (five Spaniards and one Salvadoran), their housekeeper and her 16-year-old daughter were killed at the Pastoral Center of José Simeón Cañas Central American University in San Salvador.

Following the ratification of the Chapultepec Peace Accords on 16 January 1992, a Truth Commission was established to investigate crimes committed during the war, including the murder of the six Jesuits, their housekeeper and her daughter. The Truth Commission concluded that these crimes were ordered by Salvadoran officials and executed by the Salvadoran armed forces.

Procedure

On 23 August 2011, US authorities arrested Inocente Orlando Montano Morales on charges of federal immigration fraud. He was indicted on 10 February 2012 for false declarations to the US authorities regarding the date of his entry into the territory and his military training in El Salvador. On September 2012, he pleaded guilty, acknowledging he had given false statements. His trial took place in August 2013 and he was sentenced to 21 months in prison on 27 August 2013.

On 23 July 2014, the Criminal Chamber of the Spanish National Court submitted a supplemental brief to the US authorities in support of a pending request for extradition issued on 4 November 2011. In this request, Spain urged the US authorities to allow the extradition of Montano from the US to Spain to face trial for the murder of the six Jesuits, their housekeeper and her daughter.

On 5 January 2016, a judge from the Eastern District Court of North Carolina granted the request to extradite Montano to Spain. Montano unsuccessfully challenged the extradition process. On 29 November 2017, he was extradited to Spain and placed in police custody.

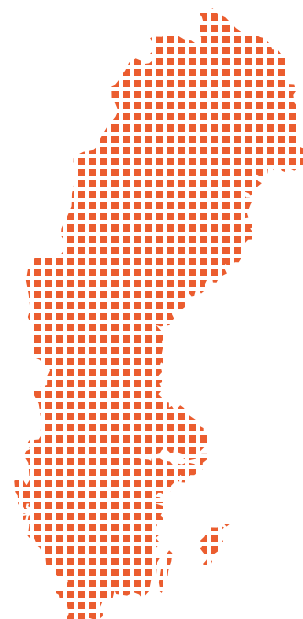
On 12 July 2018, the Criminal Chamber of the Spanish National Court excluded from the indictment the charges of crimes against humanity, as they were not included in the procedure initially. The indictment only referred to the eight murders committed with a terrorist intent. Montano was detained in pre-trial detention before his trial.

On 11 September 2020, the Spanish National Court convicted Montano and sentenced him to 133 years of prison for the murder of five Spanish Jesuit priests. He was not convicted for the murder of Salvadoran victims (a priest, a housekeeper and her daughter) because Spain lacked jurisdiction over these cases. Yet, the Spanish National Court considered it proven that the High Command of the Salvadoran Armed Forces, of which Montano was a member, ordered the killing of Ignacio Ellacuría, the Salvadorian Jesuit priest, without leaving any witnesses.

On 6 November 2020, Montano appealed this judgment before the Spanish Supreme Court.

DEVELOPMENTS IN 2021

On 3 February 2021, the Spanish Supreme Court confirmed Montano's conviction and sentence.



IRANIAN SUSPECT REMAINS IN DETENTION FOR KARAJ PRISON MASSACRE

Hamid Noury

Context

Ongoing proceedings for alleged war crimes committed in Iran in 1988

Suspect

Iranian lawyer; alleged former assistant prosecutor in Iran

Country of residence of suspect

Iran, arrested when travelling to Sweden

Charges

War crimes of abetting the execution of political prisoners

Current status

On trial

Facts

During the war between Iraq and Iran, Iran's leader Rouhollah Khomeini issued an order to execute all prisoners who were supporting the People's Mojahedin Organization of Iran, an outlawed opposition group, as well as leftist prisoners.

Prisoners at the Karaj prison, close to Tehran, were brought before so-called "death commissions" that ordered their arbitrary execution. The number of victims is unknown but estimated to be over 5'000. Many

of those killed were subjected to torture and other cruel, inhumane and degrading treatment or punishment. Hamid Noury is alleged to have participated in the murder and torture of prisoners.

Procedure

Noury was arrested on 9 November 2019 while traveling for personal reasons in Sweden.

On 13 November 2019, the Court allowed his pre-trial detention for a month while the investigation was ongoing. His detention was renewed several times in 2019 and 2020.

DEVELOPMENTS IN 2021

On 10 August 2021, Noury's trial opened in Stockholm.

On 9 November 2021, the Stockholm District Court moved to Durres, Albania for two weeks to hear seven witnesses. The trial is expected to finish in April 2022.

A related investigation against another Iranian citizen regarding crimes committed in 1988 in detention facilities in Iran has been opened by the prosecution office. At the time of publishing this report, no further information is available.

LUNDIN ENERGY EXECUTIVES CHARGED WITH COMPLICITY IN SUDANESE WAR CRIMES

Alex Schneider and Ian Lundin

Context

Ongoing investigation in Sweden into complicity in international crimes committed in Sudan (now South Sudan) between 1997 and 2003

Suspects

Alex Schneider, Swiss national and CEO of Lundin Petroleum, and Ian Lundin, Swedish national and Chairman of Lundin Petroleum

Country of residence of suspects

Sweden and Switzerland

Charges

Complicity in war crimes

Current status

Under investigation; indicted

Facts

The second Sudanese civil war was fought by the Government of Sudan, the Sudanese People's Liberation Army (SPLA) and other armed groups from 1983 to 2005.

According to a report published by the European Coalition on Oil in Sudan, Lundin Petroleum (then

Lundin Oil) signed a contract in 1997 with the Government of Sudan for the exploration and production of oil in a war zone in southern Sudan, the Block 5A concession, which was not at that time under full Government control.

A civil war broke out between the Government and SPLA-supported armed groups for the control of the Block 5A concession.

The company allegedly paid the Sudanese army and non-state armed groups to forcibly displace the local population from oil-rich areas. Almost 200'000 civilians were forcibly displaced and thousands died. Other crimes allegedly carried out to clear the land include unlawful killings, rape, enslavement, torture, indiscriminate attacks, pillage and the recruitment of child soldiers.

Procedure

In 2010, the European Coalition on Oil in Sudan published a report indicating that Lundin Petroleum may have been complicit in international crimes committed in Sudan between 1997 and 2003. The report was submitted to the Swedish International Public Prosecution Office, which opened a preliminary investigation the same year. Schneider, who was Head of Exploration during the relevant time period, and Lundin became formal suspects after being questioned by prosecutors in 2016.

On 18 October 2018, the Swedish Government authorized the prosecution authority to proceed with an indictment in this case. Pursuant to Swedish law, the prosecution of a foreign national for crimes committed abroad requires governmental authorization.

Since 2010, prosecutors have conducted 270 interviews.

DEVELOPMENTS IN 2021

On 11 November 2021, Schneider and Lundin were indicted for complicity in war crimes in Sudan in 1999-2003, related to the non-international armed conflict in Sudan that was ongoing at the time.

According to the prosecution, the Sudanese regime systematically attacked civilians and committed indiscriminate attacks, in order to take control over areas and create conditions for the oil exploration activities of Lundin Oil.

The accused, in various ways, are accused of being accomplices in war crimes committed by the then-Sudanese regime with the purpose of securing the company's oil operations in southern Sudan.

A claim has been filed to confiscate an amount of SEK 1'391'791'000 (EUR 136'817'662) from Lundin, which, according to the prosecutor, corresponds to the profit the company made on the sale of the business in 2003.

INVESTIGATION OPENED OVER SYRIAN CHEMICAL ATTACKS

Syrian Officials

Context

Ongoing proceeding in Sweden over chemical weapons attacks in 2013 and 2017 in Syria

Suspects

Members of the Syrian government, including President Bashar al-Assad

Country of residence of suspects

Syria

Charges

As the case is at the investigation stage, the suspects have not yet been formally charged. The investigation focuses on war crimes, crimes against humanity and gross crime against international law

Current status

Under investigation

Facts

In its report, the United Nations Fact-Finding Mission into the Alleged Use of Chemical Weapons in the Syrian Arab Republic confirmed that chemical weapons, specifically sarin, had been used on multiple occasions during the armed conflict in Syria. The report stated that in Ghouta in August 2013, significant quantities of sarin were used in a well-planned

attack that indiscriminately targeted civilian areas, resulting in countless casualties.

In April 2017, more than 80 civilians were killed in a chemical attack in Khan Cheikhoun (Idlib).

DEVELOPMENTS IN 2021

In April 2021, the Syrian Center for Media and Freedom of Expression, Civil Rights Defenders, Syrian Archive and the Open Society Justice Initiative filed a complaint against Syrian officials for chemical attacks in Idlib province in 2017 and Ghouta, near Damascus in 2013, where hundreds of civilians were killed.

In June 2021, the Swedish prosecutor opened two investigations: an investigation for war crimes and crimes against humanity for the 2017 attack and an investigation into gross crime against international law for the 2013 attack. The investigations are ongoing.



ARRESTED AND FREED OVER WAR CRIMES COMMITTED IN SYRIA

Name withheld

Context

Ongoing investigation for complicity in international crimes committed in Syria in 2012

Suspect

Former Syrian army official

Country of residence of suspect

Sweden

Charges

As the case is at the investigation stage, the suspect has not yet been formally charged. The investigation focuses on war crimes and crimes against humanity

Current status

Under investigation

Facts

Unknown

DEVELOPMENTS IN 2021

The suspect was arrested and later on freed on 6 December 2021 by the Swedish police under suspicion of having committed a gross violation of international law in Syria in 2012. The investigation is ongoing.

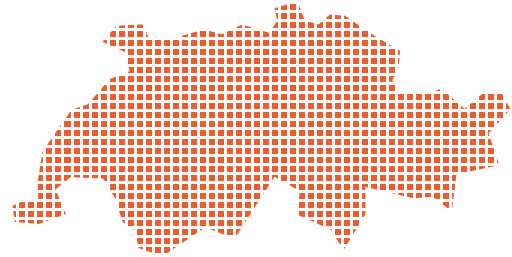
FOLLOW-UP ON OTHER CASES

- Member of a Syrian intelligence service: the investigation is ongoing

SWITZERLAND

FORMER GAMBIAN MINISTER OF INTERIOR REMAINS IN DETENTION

Ousman Sonko



Context

Ongoing proceedings against former Gambian Minister of Interior for alleged international crimes under Yahya Jammeh's regime

Suspect

Former Inspector General of the Police (2005 to 2006), then Minister of the Interior (2006 to 2016)

Country of residence of suspect

Switzerland

Charges

Crimes against humanity and torture

Current status

Under investigation; detained

Facts

The Gambia was under the control of President Jammeh from 1994 to 2016. For more than two decades, all opposition was repressed: torture, extrajudicial executions and enforced disappearances were widespread.

After Jammeh's re-election in September 2006, Ousman Sonko was appointed Minister of Interior. He held this position until September 2016, when he was dismissed from office and left The Gambia.

Procedure

Alerted of Sonko's presence on Swiss territory, TRIAL International lodged a criminal complaint before the prosecuting authorities in Bern on 25 January 2017. The former Gambian Minister was arrested the following day at the immigration center of Lyss (canton of Bern), where he had applied for asylum. He was charged with crimes against humanity and the case was transferred to the Office of the Attorney General (OAG).

On 9 October 2017, the Swiss Federal Supreme Court confirmed the seizure of Sonko's assets, worth approximately USD 15'000. His detention has extended several times since 2017 to allow the OAG to conduct the investigation.

Nine Gambian victims filed additional complaints. Many of them, along with several witnesses, including the United Nations Special Rapporteur on Torture, were heard by the OAG.

Since 2019 and the beginning of hearings before The Gambia's Truth, Reconciliation and Reparations Commission, Sonko's name has been mentioned several times in relation to human rights violations committed during the Jammeh regime.

Sonko's application for conditional release was denied. The Swiss authorities travelled several times to The Gambia during the course of the ongoing investigation to gather evidence in the framework of mutual judicial cooperation, notably to hear witnesses.

DEVELOPMENTS IN 2021

In 2021, the OAG continued its investigation of the case. The Swiss authorities travelled again to The Gambia in June 2021 to gather more evidence. Throughout the year, several witnesses were heard by the OAG, including through mutual legal assistance. Sonko's detention has been renewed several times throughout 2021 for three-month periods.



FORMER SYRIAN VICE-PRESIDENT UNDER INVESTIGATION FOR WAR CRIMES IN HAMA FLED TO SYRIA

Rifaat al-Assad

Context

Ongoing proceedings against the former Vice President and head of the Defense Brigades in Syria for alleged war crimes in Hama in February 1982

Suspect

Vice President and brother of the former Syrian President Hafez al-Assad, and uncle of the current President Bashar al-Assad; former head of the Defense Brigades (*Saraya al-Difa*), Syria's elite commando troops, from 1971 to 1984

Country of residence of suspect

Formerly residing in France, the suspect fled to Syria in October 2021

Charges

As the case is at the investigation stage, the suspect has not yet been formally charged. The investigation focuses on war crimes allegedly committed in Hama in February 1982

Current status

Under investigation by the Office of the Attorney General (OAG) for war crimes; sentenced to four years in prison in France for financial crimes

Facts

Rifaat al-Assad, as the commander of the Defense Brigades, is suspected of having participated in the massacre of several thousand people in Hama in 1982 during the civil war in Syria. In February 1982, opponents of the regime took up arms in Hama. As retaliation, the Syrian armed forces, including the Defense Brigades, attacked the city. The civilian population was trapped and cut off from supply, food and electricity for almost a month.

The estimated number of civilian casualties ranges from 10'000 to 40'000, depending on the source. Apart from the high number of casualties, whole areas of the city were destroyed.

Procedure

In December 2013, after being informed that Rifaat al-Assad was present on Swiss territory, TRIAL International filed a criminal complaint with the OAG accusing him of having committed war crimes during the Hama massacre in 1982. A criminal investigation was opened a few days later against Rifaat al-Assad for the same charges. In August 2014, a plaintiff joined the proceedings.

In 2015, Rifaat al-Assad returned to Geneva. TRIAL International and the plaintiff asked the Swiss authorities to arrest him, notably in order to proceed to his hearing. After the OAG refused to proceed with his arrest, the plaintiff filed a motion for provisional measures before the Federal Criminal Court. Two days later, the OAG was ordered

by the Court to hear Rifaat al-Assad without delay. In 2016, three other plaintiffs joined the criminal proceedings.

In 2017, TRIAL International filed an additional complaint, with various offers of proof, regarding the Tadmor massacre. The complaint was dismissed by the OAG.

On September 2017, four years after the official opening of the investigation, one of the plaintiffs filed a petition alleging a denial of justice. The Federal Criminal Court dismissed it, considering that the extensive delay could be explained by the complexity of the case.

In August 2018, a letter to Switzerland signed by the United Nations Special Rapporteurs on torture and on the independence of judges and lawyers was published by the UN. It heavily criticized Switzerland for an alleged lack of independence and political interference notably concerning the case against Rifaat al-Assad. In five years of proceedings, only four witnesses and two plaintiffs have been heard.

In June 2020, Rifaat al-Assad was convicted in France and sentenced to four years in jail for money laundering and embezzlement of Syrian public funds. French authorities also confiscated several properties worth millions.

DEVELOPMENTS IN 2021

In 2021, the investigation is still ongoing in Switzerland with the hearing of other plaintiffs and witnesses.

On 9 September 2021, the French Court of Appeal confirmed Rifaat al-Assad's sentence of four years in jail for money laundering and embezzlement of Syrian public funds.

In October 2021, Rifaat al-Assad fled Europe to return to Syria despite the ongoing proceedings against him and the judicial surveillance he was under in France. The investigation before the OAG continues regardless.



20-YEAR SENTENCE HANDLED DOWN FOR LIBERIAN WAR CRIMES, INCLUDING SEXUAL VIOLENCE

Alieu Kosiah

Context

Ongoing trial for international crimes allegedly committed during the first Liberian civil war (1989-1996)

Suspect

Former rebel commander of the United Liberation Movement of Liberia for Democracy (ULIMO)

Country of residence of suspect

Switzerland

Charges

War crimes, including murder, rape, inhumane treatment, looting and the recruitment and use of child soldiers

Current status

Convicted and sentenced to 20 years in prison

Facts

During the first Liberian civil war (1989-1996), Alieu Kosiah joined the ULIMO, which gathered supporters of former President Samuel Doe. The ULIMO carried out attacks against former Liberian President Charles Taylor's National Patriotic Front of Liberia.

Kosiah was involved in ordered or participated in the murder of civilians and soldiers *hors de combat*, desecrated the corpse of a civilian, raped a civilian, ordered the cruel treatment of civilians, recruited and employed a child soldier, ordered several pillages and ordered and/or participated in forced transports of goods and ammunition by civilians. He committed these crimes between March 1993 and the end of 1995 as commander of the ULIMO.

Procedure

In July and August 2014, seven Liberian victims, assisted by the NGO Civitas Maxima, filed a complaint in Switzerland against Kosiah for his alleged participation in war crimes and systematic killings committed between 1993 and 1995 in Lofa County (northwestern Liberia). An investigation for war crimes was opened in August 2014.

On 10 November 2014, Kosiah was arrested in Switzerland. On 13 November 2014, a Swiss judge decided to hold him in pre-trial detention.

On 22 March 2019, the Office of the Attorney General of Switzerland presented an indictment against Kosiah to the Federal Criminal Court, alleging that Kosiah violated the laws of war as a member of a military faction in the 1989-1996 Liberian war, including through acts of sexual violence, recruitment of child soldiers, lootings, ordering and participating in the forced movement of looted goods and ammunitions, forcing civilians to work in cruel conditions, ordering and committing murders and carrying out acts of cannibalism.

The trial was due to begin in April 2020 but was postponed four times because of Covid-19. From 3 to 11 December 2020, the hearing of the defendant took place.

DEVELOPMENTS IN 2021

From 15 February to 5 March 2021, the plaintiffs and the witnesses were heard, and the lawyers made their final pleadings.

On 18 June 2021, the Swiss Federal Court issued the verdict against Kosiah. He was found guilty of 21 counts including: ordering the killing of 13 civilians and two unarmed soldiers; murdering four civilians; raping a civilian; ordering the cruel treatment of seven civilians; infringing upon the dignity of a deceased civilian; repeatedly ordering the cruel, humiliating, and degrading treatment of several

civilians; repeatedly inflicting cruel, inhuman, and degrading treatment on several civilians; repeated orders to loot, and using a child soldier in armed hostilities.

The crimes (four counts) for which Kosiah was acquitted include: recruiting a child soldier; attempted murder of a civilian; complicity in a civilian murder; and giving orders to loot in one instance.

Kosiah was sentenced to 20 years in prison, from which his over six years of pre-trial detention will be deducted, and he was ordered to pay over CHF 50'000 to the seven plaintiffs who testified against him. Kosiah's defense lawyer announced that he would appeal.

This was the first time a Liberian national was tried for war crimes in relation to the Liberian civil wars, and the first time the Swiss Federal Criminal Court held a war crimes trial.



THE WAY IS PAVED FOR A TRIAL AGAINST FORMER ALGERIAN DEFENSE MINISTER

Khaled Nezzar

Context

Ongoing proceedings against the former Algerian Minister of Defense for alleged war crimes committed in Algeria between 1992 and 1994

Suspect

Former Chief of Staff of the Armée nationale populaire (National Popular Army) from 1988 to 1990; Minister of Defense in Algeria from 1990 to 1993; Member of the High Council of State (HCS) from 1992 to 1994

Country of residence of suspect

Algeria

Charges

As the case is at the investigation stage, the suspect has not yet been formally charged. The investigation focuses on crimes against humanity, war crimes, notably acts of torture, killings and enforced disappearances

Current status

Under investigation

Facts

From 14 January 1992 to 31 January 1994, as Minister of Defense and member of the HCS, Khaled Nezzar allegedly incited, authorized, and ordered military and public agents to commit acts of torture, murders, extrajudicial killings, enforced disappearances and other grave violations of international humanitarian law. The "dirty war", which ended in 2000, caused the death of approximately 200'000 persons and the disappearance of some 20'000 others.

Procedure

In October 2011, after having been informed of the presence of the suspect on Swiss territory, TRIAL International filed a criminal complaint against Nezzar for war crimes committed during the civil war in Algeria. Two victims of torture joined the procedure in 2011 by filing a criminal complaint before the Office of the Attorney General (OAG). In 2012, 2014 and 2016, three other victims filed their own criminal complaint and became plaintiffs.

Nezzar was arrested in October 2011 and interviewed by the OAG. Before being allowed to leave the country, his lawyers challenged the jurisdiction of the OAG, in particular on the grounds that Nezzar would benefit from jurisdictional immunity. In a 25 July 2012 decision, Nezzar's appeal was rejected: the Federal Criminal Court notably considered that functional immunities cannot be invoked for international

crimes. In early January 2017, the OAG dismissed the case, considering that the alleged acts committed by the former Minister of Defense could not be considered as war crimes, on the grounds that there was no war in Algeria when the acts allegedly occurred. On 16 January 2017, some of the plaintiffs appealed the decision before the Federal Criminal Court.

On 30 May 2018, the Federal Criminal Court overturned the decision of the OAG. The Court recognized the existence of a non-international armed conflict in Algeria in the early 1990s and found that there was no doubt that Nezzar was aware of the acts committed under his order. Therefore, the court concluded that the OAG should complete its investigation on war crimes, and determine whether Nezzar could also be charged with crimes against humanity, torture and murder.

In August 2018, a letter to Switzerland by the United Nations Special Rapporteurs on torture and on the independence of judges and lawyers was made public. It heavily criticized Switzerland for an alleged lack of independence and political interference, mentioning explicitly the case against Nezzar.

In Algeria, Nezzar was tried in absentia along with other former regime members and sentenced to 20 years of imprisonment for acts of conspiracy against the authority of the State.

DEVELOPMENTS IN 2021

On 8 February 2022, the Swiss Office of the Attorney General (OAG) has conducted the final hearing of Khaled Nezzar. The OAG holds that numerous war crimes and crimes against humanity were committed while Mr. Nezzar was leading the military junta and serving as Minister of Defense at the beginning of the Algerian civil war. After more than 10 years of investigation and numerous judicial twists, the end of the proceedings paves the way for Mr. Nezzar to be sent to trial before the Federal Criminal Court (FCC) for serious offences constituting complicity in war crimes and crimes against humanity, including extrajudicial executions, torture and enforced disappearances.

FOLLOW-UP ON OTHER CASES

- Erwin Sperisen: The case is pending before the European Court of Human Rights

THE NETHERLANDS

JABHAT AL-NUSRA COMMANDER CONVICTED OF WAR CRIMES

Abu Khuder

Context

Ongoing proceedings for war crimes allegedly committed in Syria in 2012. This is the first case of a foreign national being charged for crimes committed during the Syrian civil war under Dutch universal jurisdiction laws

Suspect

Syrian national

Country of residence of suspect

The Netherlands

Charges

War crimes and membership in a terrorist organization

Current status

Sentenced to 20 years in prison; appeal ongoing

Facts

Abu Khuder was an officer in a Syrian border force known as the Camel Corps when the Syrian conflict erupted in 2011, prompting him to join the Free Syrian Army in its fight against the al-Assad regime.

He was accused of having radicalized and joined Jabhat al-Nusra, a group previously linked to al-Qaeda, after members of that organization helped them attack an army base in

the eastern city of Mohassan, driving out the government forces. He was accused of having the command of a Jabhat al-Nusra battalion known as Ghuraba'a Mohassan (Strangers of Mohassan).

In this capacity, Khuder allegedly participated in the execution of a captured Syrian lieutenant colonel in July 2012. Khuder denied the charges, maintaining that he lied to a Guardian journalist regarding his membership in Jabhat al-Nusra and that he, while present at the site of the killing, was not involved in the officer's execution.

Procedure

Khuder has been living in the Netherlands since 2014, where he was granted temporary asylum. On 21 May 2019, he was arrested and detained by Dutch police on suspicion of war crimes and terrorism offenses. According to the Dutch National Public Prosecutor, the arrest was based on witness testimonies obtained following a raid against six suspected former Jabhat al-Nusra members in Germany.

On 24 May 2019, an investigative judge in The Hague ordered the prolongation of Khuder's detention during the judicial investigation. In hearings on 2 September and 18 November 2019, the lawyers of the accused denied the charges.

DEVELOPMENTS IN 2021

On 16 July 2021, Khuder was found guilty of a war crime for his involvement in the execution of a prisoner *hors de combat*. He was sentenced to 20 years imprisonment. The Court found that there was insufficient evidence to conclude that Khuder was a member of Jabhat al-Nusra. Both Khuder and the prosecution filed an appeal against the judgment.

Active personality

AFGHAN PRISON COMMANDER SOON ON TRIAL FOR TORTURE

Abdul Razaq Arif

Context

Ongoing proceedings for war crimes allegedly committed in Afghanistan in the 1980s

Suspect

Dual Afghan and Dutch national; alleged former commander of the Pul-e-Charki prison in Kabul

Country of residence of suspect

The Netherlands

Charges

War crimes

Current status

Pending trial; detained

Facts

The suspect is alleged to have been the commander and the head of the Department of Political Affairs of the Pul-e-Charki prison in Kabul in the 1980s. The prison was reportedly notorious for its inhumane regimen during the Soviet-Afghan war, with detainees being illegally imprisoned, tortured and subjected to inhumane and degrading treatment, as well as executed.

Procedure

On 12 November 2019, the Dutch police arrested Abdul Razaq Arif on suspicion of war crimes. He reportedly arrived in the Netherlands in 2001 and later obtained Dutch nationality.

In 2020, the prosecutors gathered statements from victims and former employees in the Afghan communist government, demonstrating that the suspect worked in three different positions at the Pul-e-Charki prison.

DEVELOPMENTS IN 2021

In 2021, the trial of Arif was pending before the District Court of The Hague. Hearings in this case are planned to take place in February 2022.



AL-SHAM COMMANDER SENTENCED FOR WAR CRIMES COMMITTED IN SYRIA

Ahmad al-Y

Context

Ongoing proceedings for war crimes allegedly committed in Syria in 2015 by a commander of the Salafist militant group Ahrar al-Sham. That group was designated as a terrorist organization by a Dutch court in 2019

Suspect

Syrian national; alleged former commander of Ahrar al-Sham

Country of residence of suspect

The Netherlands

Charges

War crimes and membership in a terrorist organization

Current status

Sentenced to 6 years' imprisonment; appeal ongoing

Facts

Ahmad al-Y commanded Ahrar al-Sham fighters and took part in an offensive in the city of Hama in April 2015. During this time, he allegedly subjected persons who were *hors de combat* to humiliating and degrading treatment by posing with the corpse of an enemy fighter

and kicking the body of another. In addition, he appeared in a video, posted on YouTube, "singing to celebrate the deaths of fighters and referring to them as dogs".

Procedure

On 22 October 2019, Dutch police arrested Ahmad al-Y in an asylum center in Ter Apel, on suspicion of outrages upon personal dignity constituting a war crime. According to the Dutch Public Prosecutor, Ahmad al-Y was flagged by German authorities in 2015 when he spent a short time seeking asylum there before returning to Syria due to personal circumstances.

On 15 January 2020, Ahmad al-Y was heard before the High Secure Court in Amsterdam. The Public Prosecutor found a YouTube video showing Ahmad al-Y celebrating the death of government soldiers. The defense lawyer rejected this evidence and argued it would not be possible to ascertain that his client could be identified on the video.

DEVELOPMENTS IN 2021

On 21 April 2021, The Hague District Court found Ahmad al-Y guilty of membership in a terrorist organization and committing a war crime but acquitted him of the charges of outrage upon personal dignity. He was sentenced to six years in prison. The prosecution has appealed this decision.

APPEAL HEARING TO BE HELD IN THE ETHIOPIAN RED TERROR CASE

Eshetu Alemu

Context

Ongoing proceedings for war crimes committed in Ethiopia during the Red Terror

Suspect

Dual Dutch and Ethiopian national; former member of the Provisional Military Administrative Council, also known as the Dergue, during the Mengistu Haile Mariam regime

Country of residence of suspect

The Netherlands

Charges

War crimes including arbitrary detention, inhumane treatment, torture and murder of alleged opponents of the regime

Current status

Sentenced to life in prison; appeal ongoing

Facts

In 1974, the communist military regime, known as the Dergue, overthrew Emperor Haile Selassie I and seized power in Ethiopia. The regime effectively ruled the country for the next 17 years. In February 1977, the Red Terror was officially declared, which led

to mass killings, arrests, torture and enforced disappearances against suspected political opponents. Eshetu Alemu was accused of ordering the execution of 75 people, of torturing nine people and of controlling the illegal detention of more than 300 people in cruel and inhumane conditions in the Gojjam province during the Red Terror.

In 1990, Alemu fled to the Netherlands as an asylum seeker and acquired Dutch citizenship in 1998.

Procedure in Ethiopia

On 12 December 2006, Ethiopia concluded the trial of former Dergue officials, convicting Alemu, and 57 other regime officials, for genocide and crimes against humanity. Alemu was judged *in absentia* and received a death sentence.

Procedure in the Netherlands

Alemu was arrested in the Netherlands in September 2015. In September 2016, 15 Ethiopian witnesses residing in the United States and Canada were questioned by a Dutch judge and a prosecutor. Alemu pleaded not guilty to all charges.

On 15 December 2017, Alemu was found guilty of war crimes, including arbitrary detention, inhumane treatment, torture and murders. He was sentenced to life in prison.

Alemu appealed his conviction on 3 January 2018. On 23 April 2018, a hearing took place before The Hague Court of Appeal. At the defense's request, on 19 November 2018, the Court agreed to hear a dozen witnesses in Ethiopia. An investigative judge traveled to Ethiopia, together with the defense counsel and prosecutors, to hear those witnesses.

DEVELOPMENTS IN 2021

The appeal proceedings are ongoing. The appeals hearing is planned to start in April 2022 at The Hague Court of Appeal.



SOUTH AFRICAN SUPREME COURT AUTHORIZED “BLOOD TIMBER” BUSINESSMAN’S EXTRADITION TO THE NETHERLANDS

Guus Kouwenhoven

Context

Proceedings for war crimes committed during the second Liberian civil war (1999-2003) which resulted in 250'000 deaths

Suspect

Dutch national, Director of Operations at the Oriental Timber Company and owner of the Royal Timber Company, both operating in Liberia

Country of residence of suspect

The Netherlands

Charges

Complicity in war crimes; supplying arms and ammunition in violation of embargoes

Current status

Sentenced; on appeal before the European Court of Human Rights

Facts

In his capacity as Director of Operations of the Oriental Timber Company and owner of the Royal Timber Company, Kouwenhoven facilitated the importation of weapons for former Liberian President, Charles Taylor, thereby contravening United Nations

Security Council embargoes. These weapons were supplied to militias and used to carry out numerous massacres during the second Liberian civil war.

Guus Kouwenhoven supplied the militias with trucks, drivers and facilities for the transportation and storage of weapons, and supplied armed personnel to Taylor's troops.

Procedure

On 18 March 2005, Kouwenhoven was arrested in Rotterdam. He was charged with delivering arms to Liberia, involvement in war crimes committed in that country and breaching the embargo decreed by the UN on Liberia.

His trial began on 24 April 2006 in The Hague. On 7 June 2006, the Dutch Court acquitted Kouwenhoven of war crimes due to a lack of evidence. He was, however, sentenced to an eight-year prison term for breaking the UN arms embargo. Both sides filed an appeal. On 19 March 2007, Kouwenhoven was conditionally released pending his appeal against the judgment.

On 10 March 2008, the Dutch Court of Appeal overturned the conviction and acquitted Kouwenhoven of all charges due to insufficient evidence.

On 20 April 2010, the Supreme Court of the Netherlands overturned the decision of the Court of Appeal. The Dutch Supreme Court considered that the appeal judges erred when

they had rejected a prosecution request to hear testimonies of two new witnesses and therefore ordered a new appellate trial.

In December 2016, Kouwenhoven fled to South Africa. Kouwenhoven's appeal hearings nevertheless began on 6 February 2017 before the Court of Appeals in Den Bosch. On 10 February 2017, the Prosecution repeated the original demand of 20 years of imprisonment for Kouwenhoven.

On 21 April 2017, the Court of Appeal of Den Bosch sentenced Kouwenhoven *in absentia* to 19 years' imprisonment for complicity in war crimes committed in Liberia and for his involvement in arms trafficking for Taylor. The Court of Appeal considered that by providing weapons, personnel and equipment to the armed conflict, Kouwenhoven consciously accepted the probability that war crimes and/or crimes against humanity would be committed.

On 8 December 2017, Kouwenhoven was arrested in South Africa on a Dutch warrant. The Netherlands requested his extradition. Kouwenhoven's extradition hearings in South Africa were postponed several times in 2018 for medical reasons. The last hearing took place in October 2018.

On 18 December 2018, the Dutch Supreme Court upheld the conviction for aiding and abetting war crimes. The judgement is final.

In 2019, Kouwenhoven challenged the legality of the warrant of arrest issued by the Magistrate's Court in Pretoria (South Africa), arguing that it was unlawful and invalid. On 19 September 2019, the Court confirmed that the warrant itself, the applicant's arrest on 8 December 2017 and the proceedings to date were all lawful.

On 21 February 2020, the Cape Town Magistrate's Court denied the extradition request of Kouwenhoven to the Netherlands, as South Africa's Extradition Act limits extraditions to those regarding offenses committed within the applicant state.

On 5 November 2020, the South African Department of Home Affairs cancelled Kouwenhoven's visitor's visa and declared him undesirable. He was given 10 working days (until 20 November) to appeal the decision.

DEVELOPMENTS IN 2021

On 22 September 2021, the South African Supreme Court found that Kouwenhoven could be extradited. The Supreme Court found that Kouwenhoven "was convicted by a Dutch court of a crime under Dutch law."

Kouwenhoven has appealed his conviction in the Netherlands to the European Court of Human Rights.

UNITED KINGDOM



RWANDAN GENOCIDE SUSPECTS QUESTIONED BY THE METROPOLITAN POLICE

Vincent Bajinya, Célestin
Ugirashebuja, Charles
Munyanzeza, Emmanuel
Nteziryayo and Célestin
Mutabaruka

Context

Ongoing investigations against five suspects for crimes committed during the 1994 genocide in Rwanda

Suspects

Five Rwandan nationals: Vincent Bajinya (also known as Vincent Brown), allegedly a close associate of former Rwandan President Juvénal Habyarimana; Célestin Ugirashebuja, allegedly mayor of Kigoma in the Gitamara province, and a longstanding member of the National Revolutionary Movement for Democracy and Development; Charles Munyanzeza, allegedly mayor of Kinyamakara in Gikongoro province; Emmanuel Nteziryayo, allegedly mayor of Mudasomwa in Gikongoro province; and Célestin Mutabaruka, allegedly a local politician in Gikongoro province

Country of residence of suspects

United Kingdom

Charges

As the case is at the investigation stage, the suspects have not yet been formally charged. The investigation focuses on genocide, complicity in genocide, crimes against humanity and conspiracy to murder

Current status

Investigation ongoing

Facts

Bajinya is alleged to have established and supervised checkpoints in Kigali and near the Kibihekane school in northwest Rwanda, where killings took place. Munyanzeza is alleged to have encouraged others to kill Tutsis, organized roadblocks and led several attacks in Ruhashya, which killed thousands. Nteziryayo and Ugirashebuja are alleged to have ordered the killing of Tutsis and to have provided weapons to do so. Mutabaruka is alleged to have led attacks in Gatare and on Muyira Hill in Bisesero, which are reported to have killed tens of thousands.

Procedure

On 29 May 2013, following extradition requests by the Rwandan authorities, the UK police arrested the five suspects. Four of the suspects had already been arrested in 2006 following an earlier extradition request by Rwanda. They were later released following the UK's refusal to extradite due to concerns about their right to a fair trial in Rwanda.

On 22 December 2015, a British court declined to order extradition in response to a new request. The decision regarding the first four suspects was founded on the conclusion that there was a real risk of an unfair trial if they were extradited, such that there would be a breach of Article 6 of the European Convention on Human Rights. The decision regarding Mutabaruka was that his extradition was barred by the rule against double jeopardy.

An appeal took place before the High Court. On 28 July 2017, the Court upheld the first instance decision. It ruled that if extradited, the suspects would be at risk of a flagrant denial of the right to a fair trial. It also found that the extraditions of Mutabaruka and Nteziryayo were barred by the rule against double jeopardy.

In January 2018, Rwandan General Prosecutor Jean Bosco Mutangana and Prosecutor Jean Bosco Siboyintore, Head of the Genocide Suspects Tracking Unit, traveled to London to request the UK to open an investigation against the five suspects. They recalled the obligation of the UK, if it was unwilling to extradite the suspects, to try them in its own courts. The Metropolitan Police has since commenced an investigation.

The five suspects are being investigated for their alleged involvement in the 1994 genocide. On 9 April 2019, British police forces announced that the allegations against the suspects were being actively investigated. The UK Minister of State for Security and Economic Crime announced that officers had been sent to Rwanda to investigate on the ground.

In September 2020, the suspects (except Munyaneza, who suffered a stroke) were voluntarily questioned by police. None were arrested.

DEVELOPMENTS IN 2021

UK parliamentarians formed an All-Party Parliamentary Group (APPG) on 21 April 2021 to “look into matters relating to the presence of alleged Rwandan war criminals in the UK and the prosecution of those who participated in the Rwandan genocide”.

On 26 April 2021, the Rwandan Minister of Justice and Attorney General, Johnston Busingye, held virtual discussions with the APPG, noting that “Rwanda does not seek revenge” and will not “prejudge the 5 suspects, whether they are innocent or guilty will be decided by the courts. All [Rwanda] seek[s] is that due process is followed and that justice, so far delayed, does not end up denied.”



LEEDS RESIDENT ARRESTED ON SUSPICION OF WAR CRIMES IN SIERRA LEONE

Name withheld

Context

Investigation relating to atrocities committed during the Sierra Leone civil war between 1994 and 2000

Suspect

Name withheld

Country of residence of suspect

United Kingdom

Charges

War crimes

Current status

Investigation ongoing

Facts

Unknown

DEVELOPMENTS IN 2021

The Metropolitan Police arrested a 42-year-old man in Leeds on 18 May 2021 as part of ongoing investigations into allegations of atrocities that occurred during the Sierra Leone civil war between 1994 and 2000. The suspect was arrested on suspicion of offenses contrary to section 51 of the International Criminal Court Act 2001, and later released pending further investigation. The Metropolitan Police also carried out searches of a property in Leeds.

FOLLOW-UP ON OTHER CASES

- 45-year-old Londoner suspected of war crimes committed in Liberia (name withheld): the investigation is ongoing

UNITED STATES OF AMERICA

AN OPPORTUNITY FOR JUSTICE FOR GAMBIAN SURVIVORS OF TORTURE

Michael Sang Correa



Context

Ongoing proceedings against an alleged former member of the Junglers, a paramilitary unit in The Gambia, for crimes of torture committed in March and April 2006. The Junglers are believed to be responsible for carrying out widespread human rights abuses on behalf of former Gambian President Yahya Jammeh. Michael Sang Correa's indictment marks the first prosecution of a member of Jammeh's death squad anywhere in the world, and is only the third time the United States has laid charges pursuant to its extraterritorial torture statute

Suspect

Alleged former member of the Junglers death squad unit

Country of residence of suspect

United States of America

Charges

Torture and conspiracy to commit torture

Current status

Detained; pending trial

Facts

The Gambia was under the control of Jammeh from 1994 to 2016. For more than two decades, human rights violations, including enforced disappearances, torture, extrajudicial killing, sexual violence and arbitrary detention were widespread.

Correa is alleged to be a former member of the Junglers death squad. The Junglers were members of the Gambian Armed Forces that answered directly to then-President Jammeh and were considered one of the most brutal enforcement arms of Jammeh's regime. In 2015, the United Nations Special Rapporteur on Torture found that the Junglers carried out the regime's most repressive abuses: arbitrary detention, torture, enforced disappearance and extrajudicial killing.

In the aftermath of a failed coup in March 2006, the regime announced that it would crush all opposition. A wave of arrests took place in The Gambia with at least 63 people detained. Correa and other Junglers allegedly tortured the detainees in the Mile 2 Prison and the National Intelligence Agency Headquarters. According to the US government's indictment, Correa and other Junglers tortured suspected participants for confessions, including by beating

their victims with plastic pipes, wires, and branches; suffocating them with plastic bags; dripping molten plastic and acid on their bodies; and subjecting them to electric shocks.

Procedure

On 17 September 2019, the US Department of Homeland Security arrested Correa in Denver, Colorado for overstaying his visa. Correa was placed in immigration detention and removal proceedings. Correa appealed his asylum denial in February 2020, and his removal from the US was stayed pending the resolution of his appeal.

Following news of his detention, a coalition of human rights organizations and Correa's victims, including the Center for Justice and Accountability, the African Network Against Extrajudicial Killings and Enforced Disappearances, the Gambia Center for Victims of Human Rights Violations, the Guernica Centre for International Justice, Human Rights Watch, the Solo Sandeng Foundation and TRIAL International called on the US to investigate the allegations of grave international crimes committed by Correa in The Gambia.

On June 11, 2020, the US Attorney for the District of Colorado announced Correa's indictment on six counts of torture and one count of conspiracy to commit torture. Correa has pled not guilty to the charges against him and is currently in detention awaiting trial.

DEVELOPMENTS IN 2021

Correa's trial continues to be delayed due to Covid-19 restrictions. At a status hearing held in May 2021, the prosecution announced that it produced nearly 17'000 pages of documents to the defense for its review in preparation for trial. Due to travel restrictions arising from Covid-19, however, Correa's defense team has still not been able to travel to The Gambia to investigate the allegations against him and prepare its defense. The presiding judge has issued several extensions on scheduling a trial date. The trial is now anticipated to take place at the end of 2022.

STILL AWAITING CHARGES FOR SEXUAL ENSLAVEMENT OF YAZIDI WOMEN

Umm Sayyaf

Context

Ongoing proceeding in the United States against an Iraqi citizen and member of the Islamic State of Iraq and the Levant (ISIL) for crimes committed in Syria. The alleged crimes involved sexual enslavement of women belonging to the Yazidi community. Yet, rapes and sexual violence were not included in the charges by the US prosecutors

Suspect

Nisreen Assad Ibrahim Bahar (also known as Umm Sayyaf)

Country of residence of suspect

Iraq

Charges

Knowingly and intentionally conspiring to provide material support to a terrorist organization

Crimes of sexual violence, enslavement, torture, and genocide have not been included in the charges despite the sexual enslavement and other abuse denounced by the victims

Current status

Under investigation; detained by the Kurdistan Regional Government in Iraq (KRG)

Facts

Umm Sayyaf and her husband, Abu Sayyaf al-Iraqi (Abu Sayyaf), a senior ISIL leader, are accused to have enslaved at least seven Yazidi girls and American aid worker Kayla Mueller in their home in Al-Shaddadi, Syria.

While enslaved, they were allegedly subjected to torture, rape and sexual violence, beatings, and starvation. Umm Sayyaf allegedly routinely prepared and led the women and girls to be raped by ISIL militants, including by Umm Sayyaf's husband and Abu Bakr al-Baghdadi, the leader and self-proclaimed caliph of ISIL. Mueller was reportedly killed, and Inas was never seen again.

In May 2015, US Special Operations forces raided the home, capturing Umm Sayyaf and liberating a Yazidi victim. Abu Sayyaf was killed in the raid. US forces eventually transferred Umm Sayyaf to the custody of the KRG in Iraq.

Procedure

On 9 February 2016, US prosecutors filed a criminal complaint in the Eastern District of Virginia against Umm Sayyaf with a single count under 18 U.S.C. §2339(b) for "knowingly and intentionally [...] conspir[ing] to provide material support to a terrorist organization." Umm Sayyaf is not charged with sexual violence, enslavement, torture, and genocide for the crimes committed against the women and girls she enslaved.

Meanwhile, the KRG launched criminal proceedings against Umm Sayyaf in Erbil. No witnesses appear to have been examined. The trial was closed to victims and the media. Sometime in the spring of 2016, Umm Sayyaf was reportedly convicted of a crime related to ISIL membership. Details surrounding the Iraqi trial and sentencing of Umm Sayyaf remain unclear.

DEVELOPMENTS IN 2021

In 2021, the Yazidi survivors submitted a motion in US federal court asking that the US government respect their rights under the Crime Victims' Rights Act (CVRA). Specifically, they requested that the US government recognize them as "victims" under the CVRA and provide them with information about the proceedings in Iraq against Umm Sayyaf, including the charges, conviction, sentence and detention, and any effort from the US government to extradite or transfer Umm Sayyaf to the US to face charges.

While the US government and the federal court ultimately acknowledged that the Yazidis were entitled to CVRA rights, including any supplemental information about Umm Sayyaf's transfer, the court denied their request for additional information regarding the proceedings in Iraq.



CIVIL UNIVERSAL JURISDICTION CASES

In the United States, suspects of international crimes who are found in the country can be subject to civil suit for violations of international law committed outside of the US, based on several different federal statutes:

The Alien Tort Statute (ATS) gives US federal courts jurisdiction to hear lawsuits filed by non-US citizens for torts committed in violation of international law where the claims sufficiently touch and concern the territory of the US. Over the past 30 years, the ATS has been used successfully in cases involving torture, state-sponsored sexual violence, extrajudicial killings, crimes against humanity, war crimes and arbitrary detention, though the applicability of the ATS has been considerably narrowed by Supreme Court decisions in the last decade.

The Torture Victim Protection Act (TVPA) allows US citizens and non-citizens alike to bring civil claims for torture and extrajudicial killing committed by foreign state actors.

The Foreign Sovereign Immunities Act (FSIA) and the Anti-Terrorism Act (ATA) also permit civil claims against perpetrators of mass atrocity under limited circumstances.

These civil cases not only offer survivors an opportunity to face their abusers in a court of law, but can also pave the way for criminal proceedings. Below are some cases with notable developments from this past year.

Mamani et al. v. Sánchez de Lozada and Sánchez Berzaín

In 2007, the Center for Constitutional Rights brought a lawsuit in a federal court in Florida under the ATS and TVPA against the former president of Bolivia, Gonzalo Sánchez de Lozada, and the former Minister of Defense, Carlos Sánchez Berzaín.

The claims arose from a brutal crackdown by the Bolivian military during a period of civil unrest in September and October 2003, during which over 50 civilians were killed and hundreds more were injured.

In April 2018, a federal jury found Sánchez de Lozada and Sánchez Berzaín responsible for their roles in planning and ordering the crackdown which led to the extrajudicial killings. It marked the first time a former head of state has been found guilty in a US court for human rights abuses. The plaintiffs were awarded USD 10 million in compensatory damages.

In May 2018, the judge in the case overturned the unanimous jury verdict. The plaintiffs appealed. In August 2020, the court of appeals vacated the judgment in favor of the defendants, reversing the lower court's ruling. The case was remanded back to the trial court for further proceedings.

In November 2020, the defendants filed a renewed motion for judgment as a matter of law and a motion for a new trial. The court denied the defendants' motion in April 2021

and entered a final judgment in favor of the plaintiffs on their TVPA claims. The defendants filed a notice of appeal and, after addressing a jurisdictional question, filed their opening brief in July 2021. The case is now again proceeding before the court of appeals.

Estrada v. Jimenez "Macaco" Naranjo

In 2010, the Center for Justice and Accountability (CJA) filed a lawsuit in a federal court in Florida under the ATS and TVPA against former Colombian paramilitary leader Carlos Mario Jiménez Naranjo (also known as Macaco) for his role in the killing of community activists and human rights defenders in the Middle Magdalena region of Colombia. Macaco was the head of the Bloque Central Bolívar (BCB), a division of the United Self-Defense Forces of Colombia. A self-described "killing machine", the BCB murdered, disappeared and tortured thousands of civilians under Macaco's command.

The suit also alleges that the BCB's human rights violations were facilitated by the Colombian military. A trial date was originally set for November 2020. However, Macaco was removed from the United States in 2019, after being released early from US federal prison where he had been serving a sentence following his conviction for drug trafficking.

In December 2020, plaintiffs filed a motion seeking summary judgment against Macaco, supplying the court with evidence obtained from Macaco

himself, expert reports and sworn depositions of former paramilitaries, community leaders and eye-witnesses.

In September 2021, the court ruled that Macaco was responsible for torture and extrajudicial killing – the first time he has even been held to account for his human rights crimes. Significantly, the court also found “an abundance of evidence ... that the BCB operated in a symbiotic relationship with Colombian state actors”.

Jane W. v. Thomas

In February 2018, CJA filed a lawsuit in federal court in Pennsylvania under the ATS and TVPA on behalf of survivors of the Lutheran Church Massacre of 1990, the worst single atrocity of the first Liberian civil war.

This civil action was brought against Moses Thomas, a former commander of the Special Anti-Terrorist Unit, an elite unit of the Armed Forces of Liberia. Thomas was the commander responsible for the Massacre, during which Liberian armed forces attacked a Red Cross designated shelter at St. Peter’s Lutheran Church in Monrovia and massacred 600 civilians. Thomas unsuccessfully sought to dismiss the case, which moved into discovery in 2019.

In March 2021, Plaintiffs filed a motion seeking judgment against Thomas, submitting approximately 2’000 pages of documentary evidence, two expert reports and testimony from twelve witnesses.

In September 2021, the court found that Thomas ordered and led the Lutheran Church Massacre, and ruled that he was responsible for war crimes, crimes against humanity, torture, extrajudicial killing and attempted extrajudicial killing. This judgment marks the first time that any court has held a member of the Armed Forces of Liberia accountable for the atrocities government forces committed during Liberia’s first civil war, and establishes important precedent for litigation under the ATS and TVPA.

Warfaa v. Ali (Tukeh)

In 2004, CJA filed a lawsuit in federal court in Virginia under the ATS and TVPA against Colonel Yusuf Abdi Ali (nicknamed “Tukeh”) for his role in war crimes and other abuses perpetrated in northern Somalia in the 1980s under the Siad Barre regime. Eyewitnesses say that Tukeh willfully participated in the escalating violence against people of Isaaq heritage. Tukeh was accused of ordering public mass executions and infamously killed a sheikh by his own hand.

CJA represents Farhan Mohamoud Tani Warfaa, an Isaaq Somali survivor whom Tukeh and his troops were accused to have tortured and shot. On 21 May 2019, following a three-day trial and nearly 15 years of pre-trial litigation, a jury found Tukeh liable for torture under the TVPA, but declined to find liability for attempted extrajudicial killing.

Tukeh appealed, claiming that the court erred as a matter of law in permitting the case to proceed given that the statute of limitations for TVPA is ten years.

In June 2021, the court of appeals rejected the defendant’s appeal. In its decision, the court of appeals found that plaintiffs in TVPA cases do not need to establish particularized harm to toll the statute of limitations and can instead rely on the broader state of civil unrest and general lack of access to a legal remedy. The court recognized that “regimes committing egregious human rights violations don’t ordinarily foster legal systems in which those abuses can be redressed, so permitting tolling until claimants have the ability to both compile evidence supporting their claims and pursue claims without fear of reprisal falls within the purpose of equitable tolling specifically and the TVPA more generally.”



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WHO WE ARE

TRIAL INTERNATIONAL

TRIAL International is a non-governmental organization fighting impunity for international crimes and supporting victims in their quest for justice. TRIAL International takes an innovative approach to the law, paving the way to justice for survivors of unspeakable suffering. The organization provides legal assistance, litigates cases, develops local capacity and pushes the human rights agenda forward.

www.trialinternational.org

CIVITAS MAXIMA

Civitas Maxima, based in Geneva (Switzerland), ensures the coordination of a network of international lawyers and investigators who work for the interests of those who have been victims of international crimes, particularly war crimes and crimes against humanity.

www.civitas-maxima.org

THE CENTER FOR JUSTICE AND ACCOUNTABILITY

The Center for Justice and Accountability (CJA) is a United States-based human rights organization dedicated to accountability for torture, war crimes, crimes against humanity and other grave abuses. Using innovative litigation and transitional justice strategies, CJA partners with survivors and their communities to seek truth, justice and redress for atrocity.

www.cja.org

THE EUROPEAN CENTER FOR CONSTITUTIONAL AND HUMAN RIGHTS

The European Center for Constitutional and Human Rights (ECCHR) is an independent, non-profit organization based in Berlin that makes use of groundbreaking strategic legal intervention to challenge impunity, injustice and human rights violations worldwide. ECCHR aims to hold the responsible State and non-State actors accountable and to bring about political, economic, legal and social change. In order to achieve that, ECCHR works closely with partners from around the world.

www.ecchr.eu

THE INTERNATIONAL FEDERATION OF HUMAN RIGHTS

The International Federation of Human Rights (FIDH) takes action for the protection of victims of human rights violations, the prevention of violations and to bring perpetrators to justice. A broad mandate: FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights. A universal movement: FIDH was established in 1922 and unites 184 member organizations in 112 countries around the world. An independent organization: FIDH is not linked to any party or religion, and is independent of all governments.

www.fidh.org

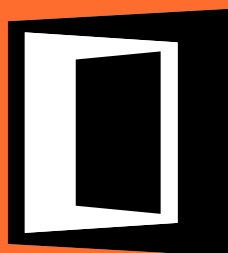
REDRESS

REDRESS is a non-governmental organization that pursues legal claims on behalf of survivors of torture in the UK and around the world to obtain justice and reparation for the violation of their human rights. It empowers survivors to access justice through cases against governments, civil cases against individuals and cases where it advocates for law enforcement bodies to prosecute perpetrators under the principle of universal jurisdiction. REDRESS's approach is strategic, so that as well as representing an individual it targets the policy reasons that enabled the torture to take place, by building a campaign that uses advocacy, community engagement and communications to influence change.

www.redress.org







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