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EXECUTIVE SUMMARY

Sexual and gender-based violence in detention facilities of the Air Force Intelligence in Syria: Criminal complaint to the German Federal Public Prosecutor

On 17 June 2020, the European Center for Constitutional and Human Rights ([ECCHR](#)) on behalf of seven survivors, and together with two Syrian feminist organizations, [Urnammu](#) and [Syrian Women's Network](#), submitted the first criminal complaint on sexual and gender-based violence in detention facilities of the Syrian Air Force Intelligence Service to the Office of the German Federal Public Prosecutor. The complaint is directed against the former head of the Air Force Intelligence Service, Jamil Hassan, the head of the National Security Bureau, Ali Mamluk, and seven other high-ranking officials of the Air Force Intelligence heading several regional military commands and branches, including Jawdat al-Ahmed, Mohammed Ramoun, Ghassan Ismail and Abdul Salam Fajr Mahmoud.

The suspects have already been subject of a [criminal complaint](#) filed by ECCHR on behalf of eleven Syrians, and with the [Syrian Center for Legal Studies and Research](#) and the [Syrian Center for Media and Freedom](#) to the German Federal Public Prosecutor in November 2017. This submission contributed, among others, to the issuance of an arrest warrant against Jamil Hassan by the German Federal Court of Justice (Bundesgerichtshof) for killing, torture, severe physical and mental harm as well as deprivation of liberty as a crime against humanity.¹ This complaint now demands for the existing charges against Hassan to be amended as to include sexual and gender-based violence as crime against humanity under Section 7 (1) No 6 of the German Code of Crimes against International Law (*Völkerstrafgesetzbuch*, CCAIL).

With regard to the eight other suspects, the complaint aims for the initiation of person-specific investigations by the Federal Public Prosecutor into their individual criminal responsibility for the above-listed acts of crimes against humanity, as well as the issuance of international arrest warrants against them. Such important steps would further increase public awareness about the

¹ German Federal Court of Justice, Investigating Judge, arrest warrant of 6 June 2018, 4 BGs 106/18, 3 BJs 18/18-4.



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systematic and on-going use of torture and sexual and gender-based violence in Syrian detention facilities with the political aim to oppress and punish the political opposition. Further, it serves as a reminder to the international community of the importance to open effective avenues for prosecuting sexual and gender-based violence committed in government-run detention facilities in Syria.

The complaint is based on the testimonies of seven witnesses, four women and three men. All of the witnesses have either survived or witnessed sexual and gender-based violence and torture in four detention facilities run by the Air Force Intelligence Service in the cities of Damascus and Hama between April 2011 and October 2013. Their detention took place at different times and lasted for different periods between several days to several months. All of the witnesses, with the exception of two who are unable to travel to Germany, currently reside in Germany and are willing to testify before German prosecutorial authorities. Their testimonies are corroborated by various reports by international and Syrian human rights organizations as well as the Independent International Commission of Inquiry on the Syrian Arab Republic of the United Nations (Syria CoI), which include a number of further first-hand accounts of survivors.

Prosecuting sexual and gender-based violence

Although the UN and various international and Syrian NGOs have documented the systematic and widespread commission of sexual and gender-based violence in Syrian detention facilities against both women and men,² impunity prevails for these crimes. In the arrest warrant against Jamil Hassan, sexual violence was investigated as a torture method and charged exclusively as torture as a crime against humanity under Section 7 (1) No 5 CCAIL. The opportunity was thus missed to include charges for sexual and gender-based violence as crime against humanity under Section 7 (1) No 6 CCAIL. Similarly, in October 2019, the German Federal Public Prosecutor indicted **two former officials** of the Syrian General Intelligence Service for killing, torture and deprivation of liberty as crimes against humanity under the CCAIL. By contrast, sexual and gender-based violence was charged under the German Code of Criminal Law as

² UN Human Rights Council, „I lost my dignity“- Sexual and gender-based violence in the Syrian Arab Republic, Conference Room Paper of the Independent International Commission of Inquiry on the Syrian Arab Republic (March 2018), UN-Doc: A/HRC/37/72/CRP.1; Human Rights Watch, Detention and Abuse of Female Activists (2013); If the Dead Could Speak: Mass Deaths and Torture in Syria's Detention Facilities (2015); Amnesty International, It Breaks the Human (2016); Euro-Mediterranean Human Rights Network, Violence against Women, Bleeding Wound in the Syrian Conflict (2013), Marie Forestier, “You want your freedom, this is your freedom” (2017).



single incidents of rape and sexual coercion.³ Thereby, the Federal Public Prosecutor reduced sexual and gender-based violence in Syrian detention facilities to isolated acts, falling short of adequately acknowledging that such acts – as all other crimes which were committed in the crime sites during the same time frame – were committed as part of a widespread and systematic attack against the civilian population.

To end impunity, there is an urgent need to investigate, charge and prosecute acts of sexual and gender-based violence committed in detention facilities run by the Syrian intelligence in accordance to what they are: “repeated incidents of similar behaviour across detention centres (which) provide evidence that sexual and gender-based violence were not individuals private acts but rather formed part of a pattern of deliberate and targeted crimes that were sanctioned at the highest levels.”⁴

Gendered forms of sexual violence in detention

Sexual violence covers both physical and non-physical acts with a sexual element.⁵ Survivors report many forms of sexual violence used in the detention facilities, amongst which were grave incidents of rape, verbal threat of rape, sexual harassment, genital mutilation, electric shocks directed against the detainee’s breast or genital area, intimate searches, forced abortion, forced nudity and sexualized language. Such measures were used against adults as well as children.⁶ Male and female detainees were subjected to gendered forms of sexual violence.

Gender-based crimes are defined by the Office of the Prosecutor of the International Criminal Court as those crimes “committed against persons, whether male or female because of their sex and/or socially constructed gender roles,” with gender-based crimes not necessarily manifesting “as a form of sexual violence.”⁷ In this case, female detainees were predominantly subjected to

³ Federal Public Prosecutor, press release of 29 October 2019, accessible online: www.generalbundesanwalt.de/SharedDocs/Pressemitteilungen/DE/2019/Pressemitteilung-vom-29-10-2019.html, last accessed 14 May 2020.

⁴ Christine Chinkin, Madeleine Rees, A commentary on the Syria Col report on sexual and gender-based violence (May 2018), 4, accessible online www.lse.ac.uk/women-peace-security/assets/documents/2018/LSE-WPS-WILPF-Syria-SGBV.pdf, last accessed 14 May 2020.

⁵ See definition of the Office of the Prosecutor of the International Criminal Court, Policy Paper on Sexual and Gender-Based Crimes (June 2014), 3.

⁶ See only UN Human Rights Council, „I lost my dignity“- Sexual and gender-based violence in the Syrian Arab Republic, Conference Room Paper of the Independent International Commission of Inquiry on the Syrian Arab Republic (March 2018), UN-Doc: A/HRC/37/72/CRP.1 para. 27-50; “They have erased the dreams of my children”: children’s rights in the Syrian Arab Republic, Conference Room Paper of the Independent International Commission of Inquiry on the Syrian Arab Republic (January 2020), UN-Doc: A/HRC/43/CRP.6, para. 52 ff.

⁷ International Criminal Court, Office of the Prosecutor, Policy Paper on Sexual and Gender-Based Crimes (June 2014), 3.



rape and threat thereof, invasive searches, touching of breasts and genitalia and interrogated about their sexual life, male detainees were raped with objects, forced to have intercourse with other detainees, and subjected to invasive searched and genital mutilation.⁸ The witnesses report that beside the severe physical harm caused by sexual and gender-based violence, such crimes were committed in conjunction and as integral parts to other crimes, such as torture and deprivation of liberty. Such violence entailed grave psychological consequences as they made them feel extremely vulnerable, humiliated and in a constant state of threat.

Gendered long-term impacts of sexual violence in detention

In addition to grave physical suffering, sexual violence entails long-lasting psychological, social and economic impacts. These consequences affect survivors differently depending on their gender or their role in society. While women and girls report to suffer from reputational loss and social isolation as a result of sexual and gender-based violence, men and boys feel demasculinized and humiliated.

Due to patriarchal structures in the Syrian society, the psychological, social and economic long-term effects for women and girls are particularly severe. As women are prescribed to carry “the honor of the family,” sexual and gender-based violence against women and girls is to be understood as a means to affect not only the female survivors themselves but also the family as a whole. Due to the widespread accounts of sexual and gender-based violence in detention centers of the Syrian intelligence agencies, witnesses report that if a woman has been detained by the regime, she is often presumed to have been subjected to sexual violence. Women report being considered unfit for marriage as a result of their presumed treatment in detention. Others report having lost all familiar and societal support upon release from detention. Ultimately, sexual and gender-based violence in detention facilities can lead to female detainees being subjected to “honor killings” or committing suicide.⁹

⁸ UN Human Rights Council, „I lost my dignity“- Sexual and gender-based violence in the Syrian Arab Republic, Conference Room Paper of the Independent International Commission of Inquiry on the Syrian Arab Republic (March 2018), UN-Doc: A/HRC/37/72/CRP.1; see also Christine Chinkin, Madeleine Rees, A commentary on the Syria Col report on sexual and gender-based violence (May 2018), 3, accessible online <http://www.lse.ac.uk/women-peace-security/assets/documents/2018/LSE-WPS-WILPF-Syria-SGBV.pdf>

⁹ Women’s International League for Peace and Freedom, Dawlaty, Sexual Violence by Force of Arms Against Women in Syria: A Tool of Political Repression, Social Dismantling and Impoverishment of Women and Communities (2020), 4 ff.; see also Joumana Seif, Wejdan Nassif, Words Against Silence (March 2020), accessible online www.ecchr.eu/fileadmin/Publikationen/WORDS_AGAINST_SILENCE-ENG.pdf; Marie Forestier, You want freedom? This is your freedom (2017), 11; .Sema Nasar, Violence against Women, Bleeding Wound in the Syrian Conflict (2013), 12.



Psychological and societal consequences of sexual and gender-based violence against male survivors come in different forms. Men and boys report to feel that they have lost their masculinity and that they are afraid of losing respect of more senior male family members if these find out about the violence they were subject to in detention.¹⁰

Overall, the witnesses' testimonies demonstrate that the reproductive capacities of both females and males have been impacted by the widespread sexual violence in detention facilities of the Syrian intelligence services.

Impact on society as a whole

As sexual and gender-based violence not only affects the direct victims but also their families, it comes with grave and long-lasting consequences for society as a whole.¹¹ It has reportedly ripped families apart and therefore proved to be an effective tool to weaken the political opposition. The fear of sexual and gender-based violence has led particularly women and girls as well as in part entire families to flee the country or prevented both men and women from resuming politically activities upon their release from detention.¹²

Throughout the conflict, the Syrian government has made use of the disproportionate effects of sexual and gender-based violence that demoralizes and isolates survivors by destroying their familial and societal support, to oppress the political opposition and anyone perceived to belong to it.¹³ In particular, women and girls were not only targeted because of their own political activism or perceived belonging to the political opposition, but also to pressure male family members that adhered the opposition or lived in pro-oppositional areas.¹⁴ Thereby, the Syrian government utilized sexual and gender-based violence against women and men to terrorize and oppress members of the opposition and de-stabilize civil society.

¹⁰ UN Human Rights Council, „I lost my dignity“- Sexual and gender-based violence in the Syrian Arab Republic, Conference Room Paper of the Independent International Commission of Inquiry on the Syrian Arab Republic (March 2018), UN-Doc: A/HRC/37/72/CRP.1 para. 6.

¹¹ UN Human Rights Council, „I lost my dignity“- Sexual and gender-based violence in the Syrian Arab Republic, Conference Room Paper of the Independent International Commission of Inquiry on the Syrian Arab Republic (March 2018), UN-Doc: A/HRC/37/72/CRP.1 para. 1.

¹² Palestinian Human Rights Organization, Research on Palestinian Refugees fleeing Syria to Lebanon (2013), 21, “Reasons for fleeing: [...] 54.17% were afraid that the females in their family would be raped”, accessible online: www.palhumanrights.org/rep/ENG/Palestinian%20-%20Syrian%20refugees%20-2013.pdf; Marie Forestier, You want freedom? This is your freedom (2017), 11; Sema Nasar, Violence against Women, Bleeding Wound in the Syrian Conflict (2013), 18.

¹³ Marie Forestier, You want freedom? This is your freedom (2017), 16 f.

¹⁴ UN Human Rights Council, “I lost my dignity”: Sexual and gender-based violence in the Syrian Arab Republic, Conference room paper of the Independent International Commission of Inquiry on the Syrian Arab Republic: (March 2018), UN-Doc: A/HRC/37/72/CRP.1 para. 27.



Witnesses

The testimonies of the seven female and male witnesses reveal the systematic and widespread commission of killing, torture and sexual and gender-based violence in detention facilities run by the Syrian Air Force Intelligence Service. The witnesses report torture and sexual and gender-based violence, and the threat thereof to be omnipresent in detention facilities of the Air Force Intelligence Service. The forms of sexual and gender-based violence they were subject to, vary from “security checks” and intimate searches, including touching of breast and genital area; forced nudity, often upon arrival in detention; rape and threat of rape; sexual harassment, often on the way to the toilet; electric shocks targeting the genital area; sexualised language and intrusive questioning about sex life.

For example, witness 107 (W 107) was pregnant at the time of her arrest in September 2012. She was first brought to the Hama Branch of the Air Force Intelligence Service where she was detained for more than a month in solitary confinement. W 107 reported being intrusively interrogated about her sexual life with her ex-husband. Because of the intimate questions, W 107 felt extremely harassed and menaced.

After about a month, W 107 was transferred to the Marij al-Sultan airport close to Damascus which is controlled by the Air Force Intelligence Service. She spent a couple of days in a detention center on the site of the airport where she reported to have seen many dead bodies of detainees. One evening, she was brutally raped on her way to the toilet.

W 107 reported to have been brought to the al-Mezzeh Investigation Branch where she was regularly tortured during interrogation sessions. As her vaginal bleeding did not stop, she was subject to a forced surgery in military hospital without any pain reliever. W 107 eventually miscarried.

During her more than four-month detention, W 107 witnessed the guards to give female detainees a blue, fine-grounded powder on a daily basis. She reported the highly addictive substance to alter the state of consciousness: after taking the powder, everything went black and she did not hear the screaming of other tortured detainees anymore. Towards the end of her detention, W 107 reported to have been questioned by Jamil Hassan personally. She told him about the violence she was subject to in detention, but he said he would prefer her to provide useful information.



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Witness 24 (W 24) was detained in the al-Mezzeh Investigation Branch for several months in 2011 and 2012. At the time of this arrest, he was engaged with the political opposition, regularly took part in demonstrations and provided internally displaced people with humanitarian aid. W 24 reported that all detainees were forced to uncover upon arrival in prison and sometimes even on their way to the toilet.

One day, during a first interrogation session, a gun was inserted in his anus for multiple times which led to severe bleeding. Later that day, his wrists were tied behind his back, he was hung up on the ceiling so that his feet barely touched the ground (*shabeh*). W 24 was beaten whilst hanging in this position. Then, the guards brought a woman into the room. As he was blindfolded, he could not see her. The guards told him that she was his mother and that they would rape her. W 24 heard the guards beating the woman and he is certain that they put their menace into practice and eventually raped her. W 24 reported that after a while, the woman's screaming stopped. Having heard the guards talking about how to dispose of the woman's body, W 24 is certain that she died as a result of the violence.

Sites of crime

The criminal complaint addresses crimes committed in four detention in Damascus and Hama, namely the al-Mezzeh Investigation Branch, the al-Mezzeh Special Operations Branch, the Harasta Branch in Damascus and the Hama Branch.

The Air Force Intelligence Service is regarded as the most powerful and most brutal of Syria's four intelligence agencies. The head of Air Force Intelligence is said to serve as President Bashar al-Assad's "right hand," both during the violent suppression of the peaceful protest movement that started in 2011 as well as earlier under Bashar's father Hafiz al-Assad, who turned the Air Force Intelligence into his personal machinery of repression and extermination. Since 2011, the Air Force Intelligence Service is also tasked with the surveillance, arrest, and killing of all regime critics. The Air Force Intelligence Service enjoys a particularly high degree of discretion and scope for its activities. Officially, Air Force Intelligence is subordinate to the Ministry of Defense, but reports indicate a direct link to the Central Crisis Management Cell and the National Security Bureau – and thus to the Assad government's innermost circle.



The structure of the Air Force Intelligence Service corresponds with the geographical division of the military command structures. It is divided into five regional commands, namely the Southern Region, Central Region, Northern Region, Eastern Region and Western Region. The detention centers addressed in the criminal complaint belong to the Southern Region, (the al-Mezzeh Investigation Branch, the al-Mezzeh Special Operations Branch and the Harasta Branch in Damascus), the Central Region (Hama Branch) and the Northern Region (the Aleppo Branch).¹⁵

Crimes against humanity

The crimes committed in the Air Force Intelligence's detention facilities situated in the al-Mezzeh Investigation Branch, the al-Mezzeh Special Operations Branch, the Harasta Branch, and the Hama Branch include sexual coercion and rape amounting to crimes against humanity within the meaning of Section 7 (1) No 6 CCAIL.¹⁶

Rape and sexual coercion within the meaning of Section 7 (1) No 6 CCAIL

The complaint submits that the aforementioned forms of sexual and gender-based violence the witnesses survived or witnessed in detention – touching of breast and genital area, forced nudity, rape and threat of rape, sexual harassment, genital mutilation and electric shocks targeting breast and genital area – qualify as acts of sexual coercion and rape within the meaning of Section 7 (1) No 6 CCAIL.

According to Section 7 (1) No 6 CCAIL, crimes against humanity include any act that is part of a widespread or systematic attack directed against any civilian population, whereby the perpetrator “sexually coerces, rapes, forces into prostitution or deprives a person of his or her reproductive capacity, or confines a woman forcibly made pregnant with the intent of affecting the ethnic composition of any population.”

¹⁵ The criminal complaint refers in detail to documents provided by CIJA and various reports by the UN and international and Syrian NGOs that provide evidence for the structure and function of the Air Force Intelligence Service.

¹⁶ This analysis corresponds with the findings of the Independent International Commission of Inquiry on the Syrian Arab Republic, see UN Human Rights Council, „I lost my dignity“- Sexual and gender-based violence in the Syrian Arab Republic, Conference Room Paper of the Independent International Commission of Inquiry on the Syrian Arab Republic (March 2018), UN-Doc: A/HRC/37/72/CRP.1 para. 110 and Out of Sight, Out of Mind: Deaths in Detention in the Syrian Arab Republic, Thematic report (February 2016), UN-Doc. A/HRC/31/CRP.1 para. 98.



Section 7 (1) No 6 CCAIL thereby implements the corresponding Article 7 (1) (g) Rome Statute, with the wording “sexual coercion” implementing the Rome Statute’s wording “any other form of sexual violence of comparable gravity.”

As implementation of the Rome Statute, Section 7 (1) No 6 CCAIL is to be interpreted in accordance with international law and the jurisprudence of the International Criminal Court and other international courts and tribunals. As a result, we below refer to international criminal law jurisprudence rather than exclusively German law:

Rape

According to the elements of crime and the jurisprudence of international courts and tribunals, “rape” means the intrusion into orifices of the body, including intrusion with objects.¹⁷ W 107 was raped with bodily parts. The intrusion of a gun into W 24’s anus qualifies as rape with an object.

Other forms of sexual violence

With regard to “sexual violence,” the Office of the Prosecutor of the ICC underlines that “[a]n act of a sexual nature is not limited to physical violence, and may not involve any physical contact – for example, forced nudity. Sexual crimes therefore cover both physical and non-physical acts with a sexual element.”¹⁸ The “sexual element” can, *inter alia*, stem from the act being directed against a person’s sexual characteristics, his or her sexuality or sexual autonomy, or from the perpetrator’s or the victim’s (sexual) perspective.¹⁹ According to the jurisprudence of the ICTY, sexual violence in conflict is commonly used with the objective to sexually humiliate the victim, rather than to get sexual gratification.²⁰

Touching of breast and genital area, sexual harassment and electric shocks and beating targeting the breast and genital area qualify as physical sexual violence that target the victims’ sexual characteristics and aim at sexual humiliation.

¹⁷ ICTR, Prosecutor v Akayesu, ICTR-96-4-T, Trial Chamber Judgment, 2 September 1998, para. 596 ff.; ICTY, Prosecutor v Furundzija, ICTY-IT-95-17/1-T, Trial Chamber Judgment, 10 December 1998, para. 185.; ICTY, Prosecutor v Kunarac et al, ICTY-IT-96-23 & IT-96-23/1-T, Trial Chamber Judgment, 22 February 2001, para. 447-456.

¹⁸ International Criminal Court, Office of the Prosecutor, Policy Paper on Sexual and Gender-Based Crimes (June 2014), 3.

¹⁹ See Alexander Schwarz, *Das völkerrechtliche Sexualstrafrecht* (Berlin 2019), 281 ff. with further references.

²⁰ See for instance, ICTY, Prosecutor v Milutinovic, ICTY-IT-05-87-T, Trial Chamber Judgment, Vol. 1 of 4, 26 February 2009, para. 199: “In the context of an armed conflict, the sexual humiliation and degradation of the victim is a more pertinent factor than the gratification of the perpetrator, and it is this element that provides specificity to the offence.”



The threat of rape, sexualized language and intrusive questioning about sex life, the removal of headscarves and forced nudity target the victims' sexual intimacy and autonomy. In consideration of the importance of virginity, honor and reputation in the Syrian society, these acts qualify as non-physical violence of a sexual nature.

With regard to the threshold of a “comparable gravity,” at least touching of breast and genital area, forced nudity, threat of rape, sexual harassment, genital mutilation and electric shocks targeting the breast and genital area amount to crimes against humanity. Article 7 (1) (g) Rome Statute requires acts of sexual violence to have a “comparable gravity” to rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization. According to international jurisprudence, the required gravity is to be assessed, *inter alia*, in light of the degrading and humiliating nature of the acts²¹ and their long-term physical, psychological and societal impacts, both on the immediate victims and their community.²²

The prescribed acts infringe upon the victims' dignity, sexual autonomy, reproductive capacity and physical and moral integrity. Making use of the predominant patriarchal values in the Syrian society, they serve to degrade upon the victims' masculinity/femininity, virginity, honor and reputation. The severe long-term psychological, societal and economic impacts of such violence, as for instance, the rejection from family and society, qualify as aggravating circumstances. With regard to genital mutilation, electric shocks and beating targeting the breast and genital area, the gravity also stems from the severe physical consequences of such violence, which can ultimately impact on the victims' reproductive capacity.

Force, threat of force or coercion

With regard to both “rape” and “sexual violence,” it is legally required for the perpetrator to have committed such act “by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power [...], or by taking advantage of a coercive environment or [the victim's] incapacity to give genuine consent.”

²¹ ICTY, Prosecutor v Bradnin, ICTY- IT-99-36-T, Trial Chamber Judgment, 1 September 2004, para. 1012: “This offence embraces all serious abuses of a sexual nature inflicted upon the integrity of a person by means of coercion, threat of force or intimidation in a way that is humiliating and degrading to the victim's dignity”; see also Alexander Schwarz, *Das völkerrechtliche Sexualstrafrecht* (Berlin 2019), 304 ff. with further references

²² ICTY, Prosecutor v Kronjelac, ICTY- IT-97-25-T, 15 March 2002: “the extent of the long-term physical, psychological and emotional suffering of the immediate victims is relevant to the gravity of the offences.”; ICTY, Prosecutor v Mucic, ICTY- T-96-21-T, 16 November 1998, para. 1226: “The gravity of the offences of the kind charged has always been determined by the effect on the victim or, at the most, on persons associated with the crime and nearest relations.” For a thorough analysis, see Alexander Schwarz, *Das völkerrechtliche Sexualstrafrecht* (Berlin 2019), 288-315.



All of the witnesses have been unlawfully detained by force. In this coercive environment, they have constantly been threatened with killing, torture and sexual violence. The sexual violence they survived and witnessed has therefore been committed by threat of force and coercion.

Nexus between sexual violence and the widespread or systematic attack

According to the definition provided by the Rome Statute and recognized by the German CCAIL, acts of sexual coercion and rape are considered a crime against humanity when committed as part of a “widespread or systematic attack directed against any civilian population.” While it is not necessary that acts of sexual violence form part of the attack itself, there has to be a sufficient nexus between both the single act of sexual coercion or rape and the attack.²³

According to the German Federal Court of Justice’s decision of June 2019, the high number and geographically widespread practice of killing, torture and deprivation of liberty committed by the Syrian government to oppress members of the opposition since April 2011, constitutes a widespread and systematic attack against a civilian population.²⁴ This criminal complaint submits that it is the *combination* of killing, torture, deprivation of liberty *and* sexual and gender-based violence that constitutes the widespread and systematic attack against the civilian population committed by the Syrian government through its intelligence agencies.

Widespread or systematic use of sexual and gender-based violence

The systematic nature of sexual and gender-based crimes committed in the detention facilities has been documented by the Independent International Commission of Inquiry on the Syrian Arab Republic of the United Nations (Syria CoI) which proved that vast state resources had been utilized to enable sexual coercion and rape in detention facilities on a massive scale.²⁵ Further, reports by various Syrian and international NGOs²⁶ highlight that the above-describe crimes of sexual and gender-based violence committed in the prisons of the al-Mezzeh Investigation Branch, the al-Mezzeh Special Operations Branch, the Harasta Branch, and the

²³ ICTR, Prosecutor v Nahimana, Appeals Chamber Judgment, 28 November 2007, para. 924.

²⁴ German Federal Court of Justice (*Bundesgerichtshof*), decision of 6 June 2019 – StB 14/19–, BGHSt 64, 89-111 – juris para. 58-59 applying the standard of an urgent suspicion (*dringender Tatverdacht*) within the meaning of Section 112 (1) of the German Code of Criminal Procedure (*Strafprozessordnung*).

²⁵ UN Human Rights Council, „I lost my dignity“- Sexual and gender-based violence in the Syrian Arab Republic, Conference Room Paper of the Independent International Commission of Inquiry on the Syrian Arab Republic (March 2018), UN-Doc: A/HRC/37/72/CRP.1.

²⁶ see footnote 2.



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Hama Branch are part of a wider pattern of violence committed in numerous detention facilities across the country.

Directed against any civilian population

According to testimonies of the witnesses as well as numerous reports of human rights organizations, the violence is aimed towards those members of the Syrian civilian population that oppose the government, or are perceived to do so. To qualify as a civilian population, victims of the attack do not have to be “civilians” in the sense of international humanitarian law. The group should be rather recognizable by a “common element” and its vulnerability towards the governmental and military authority, such as political opposition in the criminal complaint at hand.²⁷

Like thousands of other victims, the witnesses who testified for the purpose of this criminal complaint about the crimes in the prisons of the al-Mezzeh Investigation Branch, the al-Mezzeh Special Operations Branch, the Harasta Branch and the Hama Branch were targeted due to their political position, which was perceived as “oppositional” by the Syrian government. This constitutes the “common element” of the group. Furthermore, none of the witnesses were involved in armed hostilities or engaged with any party to the conflict as an active member. Testimonies of detainees held in other detention centers as documented in reports of Syrian and international human rights organizations provide further evidence that the affected people did not belong to any authority. The targeted group is therefore to be qualified as civilian population.

State or organizational policy

The sexual and gender-based crimes committed in the prisons of the al-Mezzeh Investigation Branch, the al-Mezzeh Special Operations Branch, the Harasta Branch, and the Hama Branch should be seen as a part of the policy of repression in response to the protests against the government which started in 2011. Under tight supervision of President Assad and the National Security Bureau, the four intelligence services, air force, military, political and general, coordinated the brutal attack against the civilian population. This policy involved sexual and gender-based violence as well as mass arrests, interrogations, torture, detention and executions

²⁷ see German Federal Court of Justice, decision of 6 June 2019 – StB 14/19–, BGHSt 64, 89-111 – juris para. 56.



as a method to suppress the population perceived as “oppositional.”²⁸ In particular, the above-described disproportionate effects of sexual and gender-based violence on women and girls were used as a weapon to suppress and punish the political opposition and anyone perceived to belong to it.²⁹ The systematic commission of deliberate ill-treatment and torture in detention was recognized as state policy of torture and ill-treatment by the UN Independent International Commission of Inquiry on the Syrian Arab Republic.³⁰

Cumulative charging sexual and gender-based violence as torture and sexual coercion

Such acts of sexual and gender-based violence that have been committed during interrogation sessions qualify as both torture under Section 7 (1) No 5 CCAIL and sexual coercion under Section 7 (1) No 6 CCAIL.

According to international jurisprudence, torture and sexual violence each contain materially distinct elements not contained by the other.³¹ To highlight the severe physical, psychological, societal and economic consequences of sexual and gender-based violence that disproportionately affect certain persons according to their sex, gender and/or role assigned to them by society, acts of sexual nature committed during interrogation sessions are to be charged cumulatively as torture and sexual coercion.

Suspects

The complaint targets nine high-level officials of the Air Force Intelligence Service and the Syrian government. As superiors they maintained and allowed the policy of deliberate ill-treatment, torture and sexual and gender-based violence to occur. The suspected persons are Jamil Hassan, former head of the Air Force Intelligence Service, Ali Mamluk, head of the National Security Bureau, Fu’ad Tawil, former deputy head of the Air Force Intelligence, Mohammed Rahmoun, head of the regional command south, Jawdat al-Ahmad, head of the

²⁸ UN Human Rights Council, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic (January 2020), UN-Doc. A/HRC/43/57, para. 69 “The Government has also used the arrest and detention of family members to exert pressure during negotiations or to suppress political participation. [...] Women have also been threatened by the State security apparatus to prevent them from taking part in other civil society initiatives.”

²⁹ According to Marie Forestier “rapes followed a regular pattern that involved some degree of organisation and were part of a broader state policy of widespread repression against the civil population”, see: You want freedom? This is your freedom (2017), 21.

³⁰ UN Human Rights Council, : Out of Sight, Out of Mind: Deaths in Detention in the Syrian Arab Republic, Thematic report of the Independent International Commission of Inquiry on the Syrian Arab Republic (February 2016), UN-Doc. A/HRC/31/CRP.1 para. 89-90.

³¹ see ICTY, Prosecutor v Kunarac et al, Appeals Chamber Judgment, 12 June 2002, para. 179.



regional command of the central region, Suhayl Hassan, formerly head of the al-Mezzeh Special Operations Branch, then head of the Hama Branch, Abdul-Salam Fajr Mahmoud, head of the al-Mezzeh Investigation Branch, Nazih Hassun, former deputy head of al-Mezzeh Investigation Branch, Ghassan Ismail, head of the al-Mezzeh Special Operations Branch.

The systematic commission of crimes described in this complaint was caused by the involvement of the government apparatus. Once agreed upon, the orders of the high-level officials followed the chain of command down to the direct perpetrators, who executed the orders.

At the top of the chain of command stands President Bashar al-Assad, who as a current head of state enjoys immunity from individual criminal responsibility in national proceedings and thus cannot be prosecuted. The National Security Bureau, which regularly received orders by the President, consists of Assad's closest advisors and is responsible for the supervision of the four intelligence services, which consist of the Military Intelligence Service, Air Force Security, Political Security and General Intelligence Service.³²

All above-listed suspects hold military positions superior to the direct perpetrators of the mentioned crimes, the interrogators working in the prisons of the al-Mezzeh Investigation Branch, the al-Mezzeh Special Operations Branch, the Harasta Branch and the Hama Branch.

Modes of liability

The suspected officials are responsible for the crimes committed in the prisons of the al-Mezzeh Investigation Branch, the al-Mezzeh Special Operations Branch, the Harasta Branch, and the Hama Branch, due to their acting as indirect perpetrators or accomplices of the crimes or/and due to their responsibility as superior commanders.

Indirect perpetration

According to the doctrine of "*Organisationsherrschaft*" under German criminal law, the suspects are to be considered indirect perpetrators. It is beyond any doubt that those who directly committed the crimes presented in this criminal complaint should be considered as perpetrators. However, the multilevel hierarchy of the chain of command and the systematic pattern of the crimes documented in numerous prisons of the Air Force Intelligence Service

³² The criminal complaint refers in detail to documents provided by CIJA and various reports by the UN and international and Syrian NGOs that provide evidence for the chain of command.



indicate that the physical perpetrators of those crimes were only used as a human tool to commit those crimes. By means of their power and their position in the intelligence apparatus, the suspects orchestrated and directed the commission of the aforementioned crimes by their subordinates.

The criminal complaint at hand refers in detail to how the subordinated perpetrators of the crimes had to keep track of their activities by documenting the names of prisoners and the number of deaths as well as by keeping a record of the interrogations.

Accomplice liability

Even if the doctrine of indirect perpetration would not apply, the nine high-level officials are to be qualified as accomplices of the aforementioned crimes.

The crimes were committed by the subordinates upon instructions of the superiors and therefore in cooperation with them. Under German law, the direct involvement of the superiors does not have to be based on their physical presence at the site of crime or their direct participation in the commitment of it. The direct involvement of suspected high-level officials rather arises from the fact that systematic commission of those crimes in the prisons of the al-Mezzeh Investigation Branch, the al-Mezzeh Special Operations Branch, the Harasta Branch and the Hama Branch, as documented by corroborating evidence, was only possible due to the thorough planning and organization undertaken by the head of the Air Force Intelligence agency as well as the respective heads of the branches. Through their orders, the officials had direct impact on the acts of their subordinates and thus on the commitment of the crimes.

Superior responsibility

The suspected officials might further be responsible for the crimes against humanity committed towards the witnesses as well as many other detainees due to their positions as superiors and military commanders according to Section 4 CCAIL. As the military superiors of the direct perpetrators, they had constant control over their subordinates and their activities. Furthermore, the rigorous documentation system regularly informed at least the ten suspects about the crimes committed in the detention facilities. Due to their superior positions, they were continuously able and obliged to take measures to put an end to the unlawful acts of their subordinates, investigate the crimes committed by them or bring them before a court. Considering the fact that the suspected officials were in their positions for several months if not years and taking note of the international media coverage of the high number of deaths and torture practices in



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detention facilities of the government, it appears to be beyond any doubt that they were or should have been aware of the atrocities happening in those prisons.

Jurisdiction of German authorities

German courts have jurisdiction over the aforementioned crimes on the basis of the principle of universal jurisdiction. The CCAIL affirms in Article 1 the principle of universal jurisdiction, which constitutes the legal basis for prosecution of international crimes including crimes against humanity and war crimes, by German courts. The Federal Public Prosecutor can investigate international crimes, even if the victim and the perpetrator of the crime are not present in Germany.

Therefore, the Federal Public Prosecutor has the authority to investigate the international crimes presented in this complaint as well as the respective individual criminal responsibility of the nine officials of the Syrian Air Force Intelligence Service and the Syrian government.

With regard to the situation in Syria, the Federal Public Prosecutor has already brought charges for crimes against humanity against two former officials of the Syrian Military Intelligence Service. The [first trial worldwide on Syrian state torture](#) started in Koblenz, Germany, on 23 April 2020. The main accused, Anwar R is suspected to be complicit in the torture of at least 4000 people between 2011 and 2012 in the General Intelligence's al-Khatib Branch in Damascus. This torture resulted in the death of at least 58 people. Anwar R's colleague, Eyad A, has been charged with torture in at least 30 cases.

Besides, the Federal Public Prosecutor is currently working on several individual-related investigations – *inter alia* with regard to Jamil Hassan – as well as “structural investigations,” which are broad investigations of similar nature to the “situations” at the ICC. One structural investigation focuses on crimes committed by the so called Islamic State or Daesh in Syria and Iraq, while the scope of the other one, inspired and supported by the publication of the “Caesar photos,” draws on international crimes committed in Syria, in particular, by the Syrian government, since the beginning of the conflict.³³

³³ Christian Ritscher, Aktuelle Entwicklung in der Strafverfolgung des Generalbundesanwalts auf dem Gebiet des Völkerstrafrechts, ZIS 2019, 599, 600.



Next steps

As an immediate outcome following the litigation, ECCHR demands for sexual and gender-based violence in the Syrian Air Force Intelligence's detention centers to be investigated and prosecuted as acts of crimes against humanity under Section 7 (1) No 6 of the CCAIL. Investigations and prosecutions should recognize that *both* torture and sexual and gender-based violence were employed by the Syrian government as effective tools of violence to oppress the political opposition and anyone perceived to belong to it. Therefore, the existing charges against Jamil Hassan in the form of the international arrest warrant should include sexual and gender-based violence as a crime against humanity under Section 7 (1) No 6 CCAIL. With regard to the eight other suspects, the complaint aims for the initiation of person specific investigations by the Federal Public Prosecutor into their individual criminal responsibility for killing, torture, persecution and sexual and gender-based violence as crimes against humanity, as well as the issuance of international arrests warrants against them. This criminal complaint, supported by testimonies of witnesses and other evidence, should be used as a foundation for these investigations. The witnesses should be given an opportunity to present their testimonies.

There is no doubt that further legal interventions should be undertaken to ensure that sexual and gender-based violence in Syria will be adequately addressed by law enforcement agencies. To end impunity for sexual and gender-based violence, ECCHR demands German authorities to prioritize the investigation and prosecution of sexual and gender-based violence in the context of their work on Syria. A gender-sensitive approach to the investigation and prosecution of such crimes uncovers the structural discrimination that both leads to and follows from sexual and gender-based violence.³⁴ The long-lasting and severe consequences of sexual and gender-based violence concern females, males, children, LGBTQI-persons, the elderly, as well as persons with disabilities. With this criminal complaint, ECCHR aims to shed light on the disproportionate effects a particular treatment can have on certain individuals or groups of individuals depending on their sex, gender or role they have in the respective society, illustrating that this disproportionate effect is used as a weapon to weaken the Syrian society as a whole. With regard to long-term effects and working towards peace in Syria, ECCHR submits

³⁴ See the efforts of the IIIM Syria to address sexual and gender-based violence, and gender issues more broadly, as a core part of its work and implement an effective gender perspective: UN Human Rights Council Report of the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011 (February 2020), UN-Doc. A/74/699, para. 39 ff.



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that the German government should make resources available for law enforcement agencies to include a gender perspective in the way investigations and prosecutions are conducted, including training on the required expertise.