

ANNUAL REPORT
2017

Enforcing human rights through legal means

10 ECCHR **YRS**

EUROPEAN CENTER FOR
CONSTITUTIONAL AND
HUMAN RIGHTS

ENFORCING HUMAN RIGHTS THROUGH LEGAL MEANS

ANNUAL REPORT 2017

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Dear readers, friends, supporters and colleagues,

How could we, as a human rights organization, ignore the fact that Donald Trump, Recep Tayyip Erdoğan, Narendra Modi and Rodrigo Duterte, along with the corrupt governments in Brazil and South Africa, are doing everything they can to change the world for the worse? And how could we keep silent when governments and politicians in Europe openly undermine and disregard human rights standards? And yet, there are some glimmers of hope indicating how the law can be used to put a stop to systematic human rights violations.

“Where there is danger, a rescuing element grows as well.”

Friedrich Hölderlin

Legal interventions by ECCHR and its Syrian partners challenging systematic torture under Syria’s president Bashar al-Assad had a lot of resonance with the public over the course of 2017. One of our clients put it succinctly during an event: before he fled to Germany a few years ago, he could never have imagined that he would one day be able to tell his story to German prosecutors as part of efforts to investigate and prosecute his abusers. Similarly with the case of Lafarge/Syria, in which we focused on the role of transnational corporations in the Syrian conflict, French authorities responded swiftly, indicting six managers at the cement company in connection with business dealings with armed groups. A case that made international headlines. The example of Syria shows how ECCHR tries to link legal action with ongoing public debates on human rights violations.

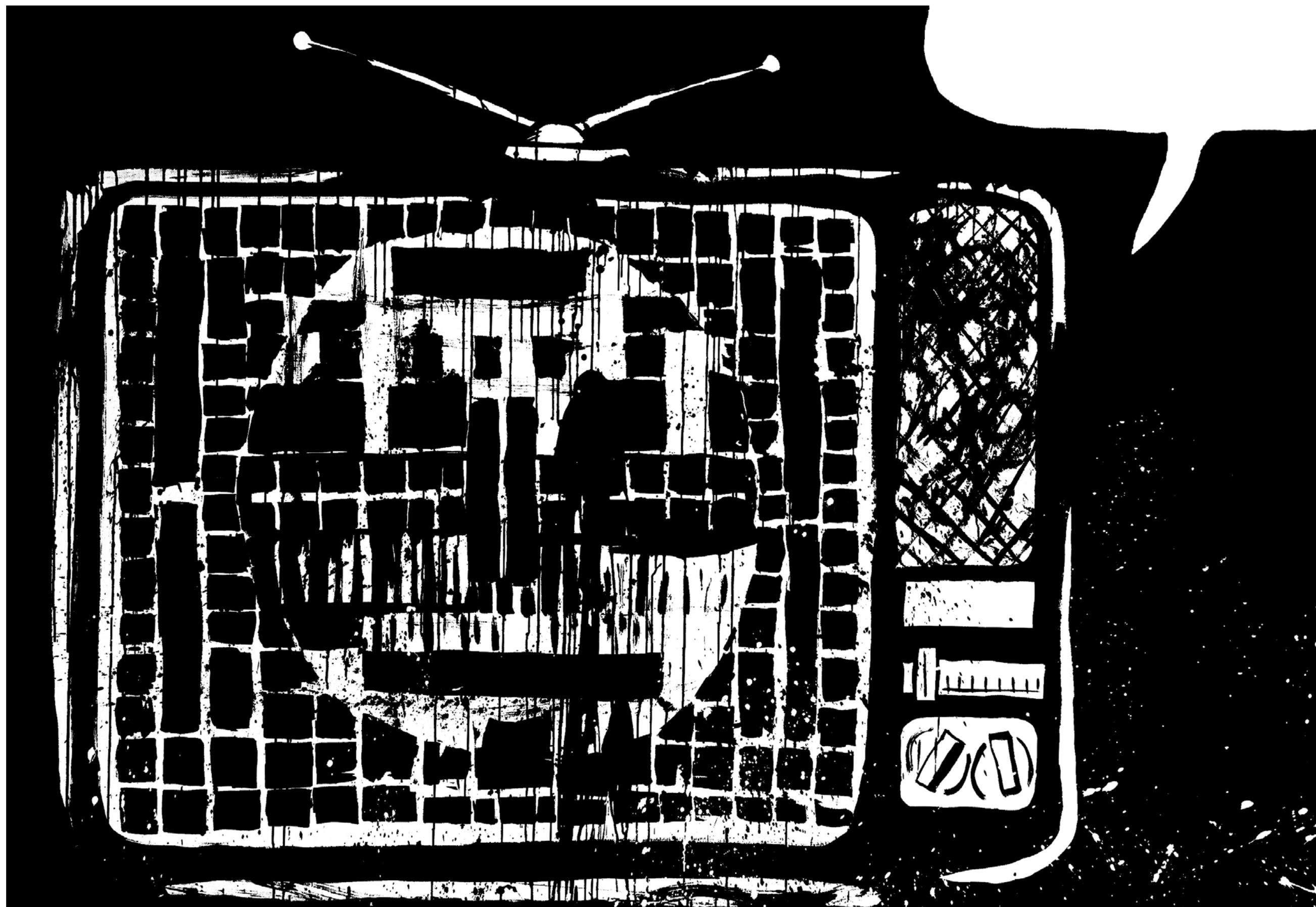
This approach is well suited to cases of emblematic human rights violations, as for instance with the deaths and abuse of people at the EU’s external borders. This raises the question of Europe’s complicity in the conditions of people around the world. Germany ensured that the countries at the EU’s outer borders would bear the burden and responsibility for refugees and migrants arriving there. So while the judgment in *N.D. and N.T. v. Spain*, the case we brought to the European Court of Human Rights, was formally against Spain, what was under scrutiny was a central and contentious element of the broader European border regime. If the decision against Spain is upheld on appeal to the Court’s Grand Chamber, it has the potential to become a principle to be applied at many other borders around the world.

For legal intervention to have this kind of fundamental and sustainable impact, it requires not only the professional legal work we can rely on through our growing network of lawyers, young and old, academics and practitioners. It also relies to a great extent on (an active) role being taken by those affected by human rights violations and the organizations supporting them in the Global South. And it needs a structure within our organization that can communicate our approach and our work to various different audiences in an ever more fragmented society. With this in mind, we have created a new program at ECCHR, the Institute for Legal Intervention, which will be introduced in 2018.

And finally – while it may sound rote, it’s very genuine – we say thanks. Our work in 2017, and over the past 10 years, was made possible by the many people who lent us their advice, their hard work, their kindness and their critiques, and by those who provided us with material support. For this we would like to express our gratitude. We hope to be able to rely on this support in the coming years and to do justice to the faith placed in ECCHR.

WOLFGANG KALECK

General Secretary of the European Center for Constitutional and Human Rights (ECCHR)



I. ECCHR uses the law as a sword and as a shield



ECCHR is celebrating its 10 year anniversary. It is taking a new step forward now and experiencing a second burst of energy. With their work, Wolfgang Kaleck and his team have been uncovering and developing something that the world is not yet very used to: strategic litigation in and from Europe. With this approach, ECCHR aims to hold politicians, military and other officials, as well as companies accountable for violations of the rights of the most vulnerable. ECCHR uses the law as a sword to fight for human rights, and as a shield to protect people against human rights onslaughts.

The law is a remarkable instrument to equalize the uneven scales of state and corporate power against the power of workers, farmers and the less privileged. There is still much work to do in the field of human rights, but we keep dreaming. Dreaming is essential, even if some things do not seem achievable. Unless you dream, you do not take very determined steps towards the realization of a better world. ECCHR is dreaming that dream of a better world. They are not heroic, they are just a group of very determined people working very hard and doing things that they love: opposing injustice, dictators and tyranny.

I want to emphasize the importance of social activism in human rights work. Most people do not have enough anger to work in human rights. As a human rights lawyer, it is crucial to try and acquire the ability to use your eyes and mind, your heart and soul, to see the world through the eyes of the working classes, minorities, women and disadvantaged people of any kind – and feel their anger. You acquire this ability when working together with social movements, which is what ECCHR does. They support local communities in their human rights struggles and work together with activist groups to fight the impunity of the powerful. They feel the anger of those affected, which drives them forward to achieve the great things they do.

Wolfgang Kaleck and the others at ECCHR opened my eyes to international legal cooperation. From them, I learned what we can achieve both in the Global North and South. Human rights work should be international; we should be lawyers without borders fighting for justice without borders. The disturbances in the US, Europe and the rest of the world show us that we have to move to an entirely different kind of

society. If we add climate change to all the evils of capitalism, you realize that we are directly walking over the precipice. The time has come for social change. ECCHR is part of this evolution, as it implements innovative human rights work, educates young lawyers and fights for justice worldwide.

With Wolfgang Kaleck and his team at ECCHR, I feel I have a family that I can work with. Currently, we are working together against German and other multinational companies who sell pesticides in India without proper labeling. The farmers using the pesticides are not informed about the risks they face, they are not provided with protective clothing, and they bring the pesticides home to their families through their clothes after work.

Some of the most lethal pesticides, which German companies would never dare to sell in Germany or Europe, are sold in India and other developing countries. We face a very long battle in the fight against these enemies. Nevertheless, together with ECCHR, we fight it using legal intervention based on barely-known avenues in the Western home countries of transnational companies.

Along our way, we often encounter the great arrogance of Western jurisprudence. Western governments do not recognize collective rights; they are all about individual rights. Public interest litigation in India, for instance, is a new world of jurisprudence rising like a phoenix. It is very powerful, very people-oriented, and it can be cheap and fast. But the Western world will not recognize it. Still, this is the wonderful thing about our work: that we are taking up those different things from all over the world and, together, are developing a new international approach to human rights work.

ECCHR has worked with strategic legal intervention in Europe and the rest of the world, and is extending its reach to new cases and new battles, with another burst of very creative legal work. With this excellent work, ECCHR will be able to achieve great things and its impact will extend far beyond the next 10 years.

COLIN GONSALVES

Senior Advocate at the Supreme Court of India and founder of ECCHR's partner organization the Human Rights Law Network (HRLN) in India. In 2017, he was honored with the Right Livelihood Award. Gonsalves has been a member of ECCHR's advisory board since 2012.



II. Grave crimes – Why the legal response to such acts is a task for society as a whole

War crimes, torture, targeted killings and the intentional bombing of civilians tend to be willed or at least condoned by higher authorities: by heads of government, senior officials or military leaders. Grave international crimes and human rights violations are often committed by dictatorial regimes, but they are also perpetrated by democracies, both illiberal and more open democracies. Regardless of the kind of state involved, one element is almost always true: those responsible assume that they will never be punished for their actions. All too often, this proves to be the case. ECCHR seeks to challenge this. We work on selected emblematic cases to end impunity for grave crimes and to highlight double standards in international criminal justice.

Survivors of international crimes have a right to be heard and taken seriously, to get justice and reparations. But the cases we work on go beyond justice for individuals. Crimes against international law concern society as a whole, which means that legal efforts to address these crimes are a task for society as a whole, as well. As such, we endeavor always to carry out our work hand in hand with survivors of the crimes in question, with relatives of victims, with civil society actors and progressive lawyers and academics.

Anyone seeking to bring those responsible for the torture of thousands of people in Syria, for human rights violations committed as part of counterterrorism actions by the US and its allies, or for Europe's merciless fortification of its borders against refugees and migrants, must first analyze the broader context. All of these crimes (like the corporate human rights violations we also litigate) occur in the context of particular political, economic and social power relations. It is therefore important to critically examine the root causes of structural violence and human rights violations. This analysis is the basis for the strategic decision as to which legal forum or mechanism to choose in a given case.

For ECCHR, strategic human rights litigation is not just about using the law; it's about seeking ways to push the law to its limits, to find creative and innovative ways to pursue a case while always maintaining solid legal arguments. Whether we are taking cases before a national administrative court or the International Criminal Court, whether it's a legal brief in a constitutional challenge or a criminal complaint based on universal jurisdiction, our efforts are about more than just winning

the case on behalf of the applicants. Our work is also about challenging instances of injustice that prosecutors and states don't or won't address. This concept is evident in a number of highlights from our work in 2017 set out below.

INTERNATIONAL CRIMINAL COURT CONFIRMS SUSPICION OF BRITISH MILITARY WAR CRIMES IN IRAQ

The opening of formal investigations into crimes committed by British military forces in Iraq has moved one step closer at the International Criminal Court (ICC). In December 2017, prosecutors at the ICC confirmed they found a reasonable basis to believe that war crimes were committed against Iraqi detainees in UK custody. This follows the submission of a criminal complaint (or "communication" as it is technically referred to) alleging the systematic torture of detainees in Iraq between 2003 and 2008, filed by ECCHR and the British organization Public Interest Lawyers (PIL) in January 2014 in The Hague, as well as follow-up submissions made by ECCHR in 2017. In May 2014, the ICC's Office of the Prosecutor reopened a preliminary examination into the British military in connection with Iraq. As a next step, ECCHR expects that the prosecutors will move to open a formal investigation (more on this case on p. 18).

THE PATH TO JUSTICE FOR SYRIA LEADS IN PART THROUGH GERMANY

For several decades, torture has been a key instrument of power for the ruling al-Assad family in Syria. That this continues to be the case is clear from the reports from men and women who survived detention by Syrian intelligence services and the Syrian army, as well as from photos smuggled out of Syria by the military police defector known as "Caesar" and the group supporting him. While there is currently no international criminal law mechanism with the authority to prosecute the crimes being committed in Syria, German authorities can take action on the basis of universal jurisdiction (see right of page). In 2017, a total of 22 Syrian torture survivors and activists made use of this opportunity. Together with the Syrian Center for Legal Research and Studies, the Syrian Center for Media and Freedom of Expression, and ECCHR, they filed four criminal complaints against members of Assad's inner circle. The group supporting Caesar also worked with ECCHR, in what was their first involvement in legal proceedings. The Caesar Files Group and ECCHR gave German prosecutors almost 27,000 images, including associated metadata. The Federal Public Prosecutor reacted promptly to the complaints and heard evidence from several of the complainants. For the survivors of torture, this marked an important first step towards justice (more on this case on pp. 24-25).

FIGHTING TORTURE AND IMPUNITY WITH UNIVERSAL JURISDICTION

War crimes, crimes against humanity and other grave violations of international law should not go unpunished. ECCHR uses the principle of universal jurisdiction in various kinds of legal action seeking accountability for serious international crimes, such as torture perpetrated by US officials as part of its "war on terror," by Bahraini officials against protesters and human rights activists, and by senior officials in Syria's intelligence services and military police against detainees.

All states have the possibility of applying the principle of universal jurisdiction in cases of grave international crimes. This can help ensure that those responsible for torture, enforced disappearance, sexual violence in armed conflict, and other crimes of a similar magnitude face the legal consequences of their actions, regardless of where the crimes occurred or the nationality of the victims and perpetrators.

NEW LEGAL INTERVENTIONS ON INHUMAN DETENTION AT GUANTÁNAMO AND CIA SECRET PRISONS

With the torture program established under former US President George W. Bush, the United States flouted its human rights and international law obligations in the name of “fighting terrorism.” To date, these crimes have gone unprosecuted. ECCHR continues to work with partner organizations and lawyers to make legal interventions challenging this impunity. In March 2017, the UN Committee against Torture began looking into a complaint against Belgium filed by ECCHR on behalf of former Guantánamo detainee and Belgian citizen Mosa Zemmouri. The complaint accuses Belgium of complicity in Zemmouri’s torture at Guantánamo because, despite knowledge of the abusive methods used at the US facility, Belgian authorities did nothing to prevent it (more on this case on p. 20).

In another legal intervention in June 2017, German prosecutors in Karlsruhe received a criminal complaint from ECCHR regarding Gina Haspel, who was appointed CIA Deputy Director in February 2017. During the Bush administration, Haspel served as Chief of Base at a CIA secret prison in Thailand where she allegedly approved and oversaw the torture of detainees. As with ECCHR’s 2014 complaint against the “Architects” of the US torture program, this submission calls on the prosecutors in Germany to secure evidence. It also calls for the issuance of an arrest warrant for Haspel (more on this case on p. 19).

Alongside these legal steps another highlight was the public debate on US torture in Paris in January 2017. On ECCHR’s invitation, at the event French citizens and former Guantánamo detainees Mourad Benchellali and Nizar Sassi spoke for the first time with former senior US officials about their detention.

CRIMES IN SYRIA, LEGAL ACTION IN GERMANY

Universal jurisdiction has been part of German law since 2002 when the German Code of Crimes against International Law (*Völkerstrafgesetzbuch* – VStGB) came into force. This brought German criminal law into line with international criminal law provisions, particularly those in the Rome Statute of the International Criminal Court. Investigations under the VStGB fall under the remit of the Federal Public Prosecutor at the Federal Court of Justice in Karlsruhe in southwestern Germany.

Currently, there is no international criminal law mechanism with the authority to prosecute grave human rights violations in Syria. As a result, the German Federal Public Prosecutor can and must take action under the principle of universal jurisdiction. In 2017, 22 torture survivors, activists and lawyers from Syria worked with ECCHR to file four criminal complaints to the Federal Public Prosecutor concerning torture committed in Syria.

IN FOCUS

SYRIA: COMBATING IMPUNITY

Tens of thousands of people have been abused and tortured in Syrian prisons in recent years. Thousands did not survive their ordeals in this highly structured and hierarchical system. Systematic torture and massacres have been a feature of the Assad family’s rule for decades. But for many years, the West has looked the other way, as Bashar al-Assad was an ally in the so-called “war on terror.”

This changed with the Arab Spring, the Syrian uprising in 2011 and especially with the Assad government’s violent response. The repression of the popular protests was followed by a wave of arrests and torture. The regime also used chemical weapons, as documented by the UN, and bombed civilian targets,

especially in Aleppo. This is in addition to several other crimes against international law committed in Syria by various actors. Legally these acts are crimes against humanity and war crimes. Where, if not Syria, should international criminal justice have a role? Almost all of those crimes falling under the remit of international criminal law, including the statute of the International Criminal Court (ICC), are currently being committed in Syria.

One thing is clear: without a political solution, it will be impossible to bring about an end to the violence or to achieve the (re)building of a democratic system bound by the rule of law. But nearly all organizations of Syrians in exile stress that the (re-) building of a peaceful society will not be possible unless the events of the past years

are subject to criminal law proceedings. A system of transitional justice, as is being discussed in the Colombian peace process, is still inconceivable. For political reasons prosecutions at the ICC or a UN special tribunal cannot currently be pursued. As a result prosecutions and investigations in third states are of great importance.

Under the principle of universal jurisdiction, courts and prosecutors in third party states can take up criminal proceedings for certain international crimes. Almost 100 cases are currently underway in several countries, including Germany, France, Sweden, Switzerland, the Netherlands, Norway, Canada and the United States.

An unabridged version of this text by Wolfgang Kaleck was first published in spring 2017, in „Blätter für deutsche und internationale Politik“ (4/2017), at pp. 21-24.



CURRENT CASES

DOUBLE STANDARDS & DEMOCRACIES

No politician or military officer from a Western state has ever sat on the defendants' bench at the International Criminal Court or gone on trial in a third state for international crimes. Despite many steps forwards, we still seem to be quite far from a truly international system of criminal justice for crimes against international law. With its legal interventions against the US, the UK and other Western democracies, ECCHR sends a clear message against double standards: even powerful perpetrators can face prosecution, and we will use all the means the law provides in order to pursue justice.

Milestone for international justice: The Hague considers investigations into United Kingdom

During the Iraq War beginning in 2003, British soldiers systematically abused and tortured detainees; this is indicated by statements from over 100 former detainees presented in a dossier by ECCHR and the UK group Public Interest Lawyers (PIL). The UK government and authorities have known about these allegations for many years, but to date, there have been no adequate attempts to prosecute those responsible. In particular, there have been no efforts to examine the responsibility of senior military and government decision-makers, such as former head of the British Army Sir Peter Wall and former

Defence Secretary Geoff Hoon. The UK government also used all available means to ensure that PIL had to shut down its operations.

JANUARY 2014: Criminal complaint (communication) to the Office of the Prosecutor at the ICC presenting 85 cases and over 2,000 individual allegations of abuse occurring between 2003 and 2008 in various British detention centers in Iraq. In response to the communication, the Office of the Prosecutor opened a preliminary examination in May 2014.

JUNE AND SEPTEMBER 2017: Two additional ECCHR submissions to the OTP showing that the available evidence provides a reasonable basis to open formal investigations under Article 53(1) of the Rome Statute. In December 2017, the OTP announced it was satisfied there was a reasonable basis to believe that war crimes were committed against Iraqi detainees. This decision brings formal investigations one step closer.

Approved at the highest levels: US torture program

Guantánamo, Abu Ghraib, Bagram and Eastern European torture prisons. Waterboarding, sleep deprivation and electric shocks. These places and methods represent parts of a comprehensive system of abuse. In response to the 9/11 attacks in 2001, the CIA and the US military – with approval at the highest levels – kidnapped, unlawfully detained and tortured hundreds of people. To seek accountability for these crimes,

ECCHR works together with former Guantánamo detainees, the Center for Constitutional Rights (CCR) in New York, and our partner lawyers in Europe (Gonzalo Boye, William Bourdon, Walter van Steenbrugge and Christophe Marchand) to pursue select legal interventions against the architects of the US torture program. These legal efforts focus mainly on high-ranking politicians, officials, intelligence agents and military personnel.

The Architects of US torture: Two criminal complaints in Germany based on universal jurisdiction

Immediately after the publication in December 2014 of the US Senate report on CIA torture, ECCHR filed a criminal complaint in Germany against the Architects of the US torture system. The complaint was filed on the basis of universal jurisdiction. ECCHR filed follow-up submissions, including in 2017 against CIA Deputy Director Gina Haspel, the first complaint against a serving CIA employee. ECCHR argues that in 2002, Haspel approved and oversaw the torture of detainees while serving as Chief of Base of a secret CIA prison in Thailand. ECCHR is calling for an investigation into the entire US torture system and against the government, CIA and military persons responsible.

DECEMBER 2014: Criminal complaint filed with the German Federal Public Prosecutor (*Generalbundesanwalt – GBA*) in Karlsruhe against the former CIA Director George Tenet, former Secretary of Defense Donald Rumsfeld and other members of the Bush administration, who served as the Architects of the post-9/11 US torture program. The crime alleged is the war crime of torture under Paragraph 8(1)(3) of the German Code of Crimes against International Law, inclu-

ding in the case of German citizen Khaled El Masri. The proceedings are ongoing and the criminal complaint is part of the GBA's monitoring process on the matter.

JUNE 2017: Criminal complaint filed with the GBA against Gina Haspel, who was appointed CIA Deputy Director in February 2017. The complaint calls for Haspel's arrest if she travels to Germany or Europe.

Guantánamo litigation in France: Submissions on commander's role

French citizens Mourad Benchellali and Nizar Sassi were tortured at Guantánamo where they were detained for almost three years. For more than 15 years since Benchellali and Sassi, along with their families and ECCHR partner lawyers, have been fighting to ensure that those responsible are held accountable. In March 2016, former Guantánamo commander Geoffrey Miller was summoned to appear before an investigative court in Paris regarding his role in the torture and grave abuse of detainees. While Miller failed to appear in court, the summons represented an important step for Benchellali and Sassi.

FEBRUARY 2014: Dossier on the role of former Guantánamo commander Major General Geoffrey Miller filed in support of the criminal proceedings concerning the torture, abuse and arbitrary detention of former Guantánamo detainees Mourad Benchellali and Nizar Sassi. The submission argues that the abuse in Guantánamo amounts to torture under international law and details Miller's suspected criminal liability. In March 2016, Miller was summoned to appear before the investigating court in Paris, but failed to appear in court.

OCTOBER 2016: Dossier filed seeking summons for William “Jim” Haynes, the former head legal advisor to the US Department of Defense during the Bush administration, to be questioned on his role in the development and approval of the US torture program.

SEPTEMBER 2017: The court in Paris announced its plan to close the case. That decision has been appealed.

Belgian former Guantánamo detainee: Complaint on Belgium’s failure to act

Belgian citizen Mosa Zemmouri was detained at Guantánamo from 2002 to 2005. While detained, he was subjected to several forms of grave bodily and psychological abuse. Belgian authorities knew of the torture methods being used at the US detention center, but failed to take any action or initiate any investigations, as is required under the Convention against Torture.

JANUARY 2017: Complaint against Belgium filed to the UN Committee against Torture in Geneva on behalf of Mosa Zemmouri concerning Belgium’s inadequate efforts to end his detention and torture in Guantánamo and to properly investigate the torture allegations after his return to Belgium.

MARCH 2017: The UN Committee against Torture took on the case. The complaint procedure is ongoing.

Do diplomatic relations trump justice? Europe’s role in US drone strikes

The US has been engaging in attacks using armed drones as a part of its counter-terrorism strategy since 2002. In many cases, these drone strikes kill innocent people, including in places like Afghanistan, Pakistan, Somalia, and Yemen. Meanwhile, European countries such as Germany and Italy facilitate these drone attacks by granting the US the right to use military bases in their territory. ECCHR seeks to challenge this by bringing legal action aimed at enforcing relevant international humanitarian law and fundamental human rights. The legal interventions are possible thanks to close cooperation with drone attack survivors and partner organizations, such as Reprieve (UK) and Rete Disarmo (Italy).

US drone strike in Yemen: Survivors take court action on Germany’s role

A US drone strike in the summer of 2012 in Yemen killed two members of the Bin Ali Jaber family and left many others traumatized ever since. The US military base at Ramstein in southwest Germany played an important role in the attack. Yet the German government rejects any responsibility for the death of civilians in US drone strikes. By taking legal action against Germany, the Bin Ali Jaber family aims to ensure that Germany prevents the use of Ramstein in future drone strikes.

OCTOBER 2014: Administrative law complaint filed against the Federal Government of Germany, represented by the Federal Ministry of Defense. The plaintiffs are three members of the Bin Ali Jaber family from Yemen.

MAY 2015: Hearing at the Administrative Court of Cologne. The Court accepted that the case was admissible, but found the question to fall within the scope of the German government’s discretion on foreign policy.

AUGUST 2015: Represented by ECCHR partner lawyer Sönke Hilbrans, the claimants appealed before the Higher Administrative Court in Münster. An appeal hearing is expected in 2018.

Sicily airbase: Freedom of information litigation on Italy’s involvement in US drone program

The Sigonella airbase in Sicily (Italy) is of strategic importance in US drone strikes in North Africa; the drones take off from this base. Formally, the Italian government has oversight over all military bases on Italian soil, and as such, bears part of the responsibility for US drone strikes that violate human rights. Italy’s Defence General Staff within the Ministry of Defense (*Stato Maggiore della Difesa*) has refused to provide more information on the use of Sigonella.

MARCH 2017: Three freedom of information requests submitted to Italy’s Defense Ministry seeking documents and information on Sigonella.

APRIL 2017: Freedom of information request is rejected.

JULY 2017: Complaint to the Administrative Court in Rome (*Tribunale Amministrativo Regionale, TAR*) against the denial of access to information.

DECEMBER 2017: Dismissal of the appeal by the court in Rome. ECCHR will appeal this decision.

No investigation, no prosecution in Germany: Strasbourg complaint in Kunduz case

The fatal September 2009 airstrike that occurred near the German military base in Kunduz (Afghanistan) has still not been subject to legal review. On orders from German Army Colonel Georg Klein, US fighter jets bombed a large group of civilians while targeting two tanker trucks that had been hijacked by Taliban fighters. More than 100 people, including children, were killed or injured. Since 2010, ECCHR has been working with an Afghani man who lost his two sons, aged eight and twelve, and providing legal expertise in the case.

JANUARY 2016: Complaint against Germany before the European Court of Human Rights (ECtHR) in Strasbourg. In light of the failure by the German military and German prosecutors to adequately investigate the case, the complaint argues that the ECtHR should now examine whether the German prosecution’s response met international human rights standards. The Court accepted the complaint in September 2016. ECCHR made a follow-up submission in April 2017. A decision could be issued in 2018.



REPRESSION & WAR

Dictators and repressive regimes often assume that they will enjoy impunity for persecuting opposition activists, brutally suppressing peaceful protests, and arresting, torturing or killing those who raise their voices against injustice. Similarly, many parties to armed conflicts do not fear legal consequences for targeting civilians or perpetrating sexualized violence against women. ECCHR seeks to put an end to such crimes by ensuring that those responsible are brought before national, regional or international courts.

Human rights violations in Syria: Using univer- sal jurisdiction to fight Assad's torture system

Since 2012, ECCHR has been investigating crimes committed by all parties to the conflict in Syria, including airstrikes on civilian targets, widespread torture and the sexual enslavement of particular groups, such as the Yezidis. One current focus of ECCHR's work is on the Syrian government's systematic use of torture, which it has utilized as a means of exerting power for decades. Those within the Assad government apparatus responsible for torture have little to fear: in Syria, they enjoy almost total impunity, while the path to the International Criminal Court is blocked by Russia and China. To ensure that mass crimes in Syria are subject to prosecution, ECCHR files criminal complaints based on the principle of universal jurisdiction before national prosecutors, such as in Germany. With support from the Heinrich Böll Foundation and Amnesty International Germany, ECCHR works in partnership with torture

survivors and activists who were forced to flee Syria and are now living in Germany. We work closely on these efforts with the lawyers Anwar al-Bunni (Syrian Center for Legal Research and Studies, SCLSR) and Mazen Darwish (Syrian Center for Media and Freedom of Expression, SCM), with whom we have documented several cases demonstrating Assad's torture system and filed criminal complaints in Germany. The aim is to have German prosecutors carry out investigations focused on specific suspects and issue international arrest warrants against high-level associates of Syria's President Bashar al-Assad, such as the head of the National Security Bureau Ali Mamlouk and the Air Force Intelligence Chief Jamil Hassan. Legal proceedings in Germany would send a strong message that those responsible for torture in Syria will not go unpunished.

Initial criminal comp- laint on torture in Syria: German judiciary paves the way for proceedings

The German Federal Public Prosecutor (*Generalbundesanwalt – GBA*) in Karlsruhe responded swiftly to the first criminal complaint filed in Germany concerning torture in Syria. Prosecutors heard witness testimony from twelve complainants. Most of these women and men, including lawyers al-Bunni and Darwish, were tortured or witnessed torture in Syrian military intelligence detention centers. This complaint was the first of a series of legal interventions in Germany in 2017.

MARCH 2017: Criminal complaint filed with the GBA at the Federal Court of Justice in Karlsruhe concerning crimes against humanity, torture and other war crimes in detention centers in branches 215, 227 and 235 of the

Syrian military intelligence. The complaints are directed against six named senior intelligence officials, among others.

APRIL 2017: Follow-up submission to the initial criminal complaint focusing on further military intelligence detention centers.

MAY-JULY 2017: Staff at the Federal Criminal Police Office hear testimony from complainants and witnesses from the first complaint. For the torture survivors, this marks a clear sign of hope for justice.

“Caesar” photos: Group supporting Syrian defec- tor provide prosecutors with key evidence of sys- tematic torture

Over several years, a group of people working with the man known as “Caesar,” a defector from the Syrian military police, smuggled thousands of photos from Syria of detainees who had been tortured and killed in Syrian government prisons. These photos represent harrowing and unique proof of the Assad government's machinery of torture and killing. The metadata associated with the photos provides additional information, increases the evidential value of the material and facilitates further investigative measures. That the Caesar Files Group, working with ECCHR, got involved in legal action for the first time in 2017, marks a significant step towards achieving accountability for systematic torture in Syria.

SEPTEMBER 2017: Criminal complaint from the Caesar Files Group to the German Federal Public Prosecutor against senior functionaries from the Syrian military intelligence and military police concerning crimes against humanity and war crimes. A representative

from the group also provides prosecutors with image files including metadata.

Additional crime scenes, additional suspects: Further criminal com- plaints put focus on Assad's inner circle

For tens of thousands of Syrians, the Saydnaya military prison and Air Force Intelligence detention branches are shorthand for systematic degradation and torture, as well as mass executions. The infamous Saydnaya prison complex has been used to jail political prisoners since the presidency of Bashar al-Assad's father, Hafez al-Assad. Human rights activists say it was used to “break” prisoners. In Air Force Intelligence prisons, the focus is on attaining “confessions” under torture that can be used to implicate others. In this way, the Air Force Intelligence maintains a veritable machinery of torture and persecution. Responsibility for these crimes is borne by senior officials in the Syrian military, military police, the National Security Bureau and Air Force Intelligence, including key decision-makers in the context of al-Assad's policies of repression and extermination.

NOVEMBER 2017: Criminal complaint to the German Federal Public Prosecutor against 17 of those bearing the most responsibility for torture and other crimes in detention centers of the Syrian Air Force Intelligence and the Saydnaya military prison. Complaint submitted on behalf of 13 Syrian survivors and witnesses of torture.

Torture in Bahrain: Criminal complaints filed when suspects visit Europe

Peaceful protest in Bahrain is repeatedly met with repression and violence from the Khalifa royal family and the rest of the country's ruling elite. Reports of the torture of detainees in Bahrain have been common over the past decade. Under the Convention against Torture, states must prosecute persons who commit or are complicit in torture. Jaafar al-Hasabi was subjected to torture while in detention in Bahrain in 2010. He is relying on the principle of universal jurisdiction (see p. 13) to pursue criminal charges against the Bahraini Attorney General Ali Bin Fadhl al-Buainain for his role in facilitating al-Hasabi's torture. He worked with ECCHR and other organizations to file criminal complaints in Switzerland in 2015 and in Ireland in 2016. In both cases the complaints were filed in advance of al-Buainain's attendance at the annual conference of the International Association of Prosecutors. The criminal court in Dublin heard evidence from al-Hasabi and his lawyers, but ultimately refused to summon al-Buainain. Prosecutors in Switzerland opened an investigation, but only after the Attorney General had left Switzerland. They heard witness evidence from al-Hasabi and examined the documentary evidence compiled by ECCHR. In late 2017, the investigation was provisionally suspended, but may be re-opened should al-Buainain return to Switzerland. ECCHR, coordinator of the legal actions against the Attorney General, has been analyzing the responsibility of senior figures in Bahrain for serious human rights violations for several years.

SEPTEMBER 2015: Criminal complaint on behalf of torture survivor Jaafar al-Hasabi submitted to public prosecutors in Berne (Switzerland). Supported by the Bahrain Institute for Rights and Democracy (BIRD), REDRESS (UK) and TRIAL (Switzerland).

SEPTEMBER 2016: Private prosecution application by al-Hasabi before the Central Criminal Court in Dublin and a criminal complaint filed with Irish police. Supported by the Global Legal Action Network (GLAN), BIRD and REDRESS.

DECEMBER 2017: Swiss prosecutors suspend investigation pending al-Buainain's return to Switzerland.

No end to violence despite peace deal: International Criminal Court must investigate Colombia

Colombia continues to suffer the consequences of decades of armed conflict. While non-state actors and some military officials have faced prosecution for crimes and grave human rights abuses in the context of the armed conflict, senior politicians and the military, police and intelligence officials bearing the most responsibility for crimes related to the conflict continue to enjoy impunity. A peace deal was reached between the government and FARC in November 2016, but human rights defenders and social movement activists continue to be targets of persecution, violence and murder. These crimes should be addressed by courts in Colombia, but to date, the authorities have failed to undertake any effective investigations against senior state actors. Furthermore, the planned transitional justice laws (Special Jurisdiction for Peace) do not reflect the extent and length of the conflict. In response, ECCHR

made a submission to the Colombian Constitutional Court in 2017 and also worked with its partner organization Colectivo de Abogados José Alvear Restrepo (CCAJAR) to once again call on the International Criminal Court (ICC) to take action on conflict-related violence against human rights defenders in Colombia. The ICC has been examining crimes in Colombia since 2004, in which time ECCHR and its Colombian partners have filed communications to the court on conflict-related violence against trade unionists (October 2012) and sexualized violence against women (April 2015).

JULY 2017: Amicus curiae brief filed with the Colombian Constitutional Court regarding its review of the Special Jurisdiction for Peace. In the brief, ECCHR emphasizes that the planned law leaves a number of gaps concerning the criminal liability of military commanders.

NOVEMBER 2017: Dossier submitted to International Criminal Court on conflict-related violence against human rights defenders in Colombia, documenting representative cases of attacks and murders over the past 15 years. ECCHR and CCAJAR call on the ICC's Office of the Prosecutor to investigate senior state actors in Colombia.

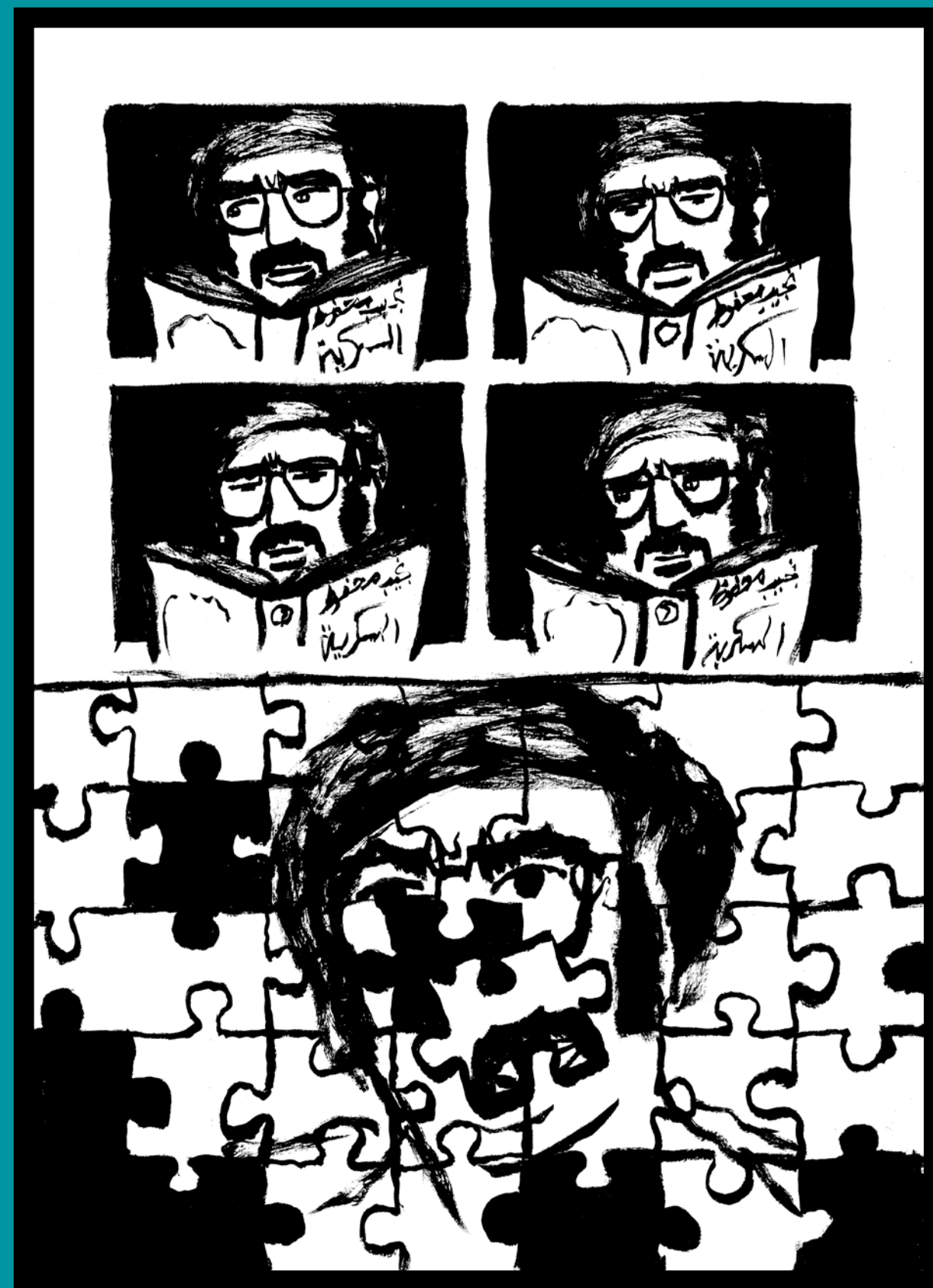
Crimes during the dictatorship in Chile: Former Colonia Dignidad doctor must serve prison sentence in Germany

For many years, German authorities neglected the task of addressing crimes committed at Colonia Dignidad, a settlement in Chile belonging to a German sect. Founded in 1961 by a German named Paul Schäfer, Colonia Dignidad was the scene of grave human rights

violations for decades. Opponents of the Pinochet regime (1973-1990) were "disappeared," tortured and murdered at the colony, while German and Chilean children were subjected to systematic sexual abuse. Now, the Regional Court of Krefeld has decided that the former doctor of the colony, Hartmut Hopp, should be jailed in Germany. Hopp was the "right-hand man" of sect-leader Schäfer and, in 2011, a Chilean court found Hopp guilty of aiding and abetting the sexual abuse of minors, sentencing him to five years' imprisonment. He avoided serving his sentence, however, by fleeing to Germany. That same year, ECCHR worked with survivors and partner lawyer Petra Schlagenhauf to file a criminal complaint against Hopp in German courts. ECCHR expects Germany will now undertake further investigatory steps relating to Hopp's responsibility for the enforced disappearance of opposition activists in Chile. In this way, Germany could make an important contribution to legal efforts to address the crimes of the Chilean dictatorship.

OCTOBER 2011: Criminal complaint filed in Germany against Hartmut Hopp concerning his collaboration with Augusto Pinochet's regime and his crimes against residents of Colonia Dignidad.

AUGUST 2017: The Regional Court of Krefeld reaches the long overdue decision to enforce the sentence handed down to Hopp by Chilean courts. Hopp's appeal against that decision is pending.



III. Fortressed borders – Refugees’ and migrants’ legal fight for the right to have rights

Anyone who decides to make the life-threatening journey across the Mediterranean or over the barbed-wired fences to Europe has already experienced great suffering. War, persecution and severe hardship continue to force people to leave their home countries. But violence and misery does not end for them when they reach the external borders of the European Union and the migration paths across Europe. On the contrary, refugees and migrants are systematically subjected to push-backs at European borders, often involving great brutality. Current European migration and asylum policies are focused not on asylum, protection and assistance, but instead on deterrence, defense and the fortification of borders. Together with those affected, ECCHR challenges this fortressing of Europe and fights to uphold the fundamental right to have rights to which all people, including refugees and migrants, are entitled.

In several European states, fundamental refugee protections and human rights have been suspended in an attempt to keep refugees and migrants out. People have and continue to be subjected to expulsion and deportation without due process, effectively leaving them without rights. They are denied any access to proceedings in which they could put forward their individual case of persecution or apply for legal protection. Until recently, no push-back or violent attack on refugees and migrants had resulted in any legal or political consequence for those responsible.

In 2014, the ECCHR team began developing strategic legal action aimed at helping to end the mass human rights violations resulting from Europe’s asylum and migration policies. We have since worked with activists, journalists and organizations from Europe and Africa to document and analyze individual cases representative of the broader problem. This has formed the basis for various legal interventions undertaken with our partner lawyers in several different countries, and with support from partner groups like *Brot für die Welt* and *PRO ASYL*. Together, we pursue criminal investigations into highly violent border control actions (see the Ceuta case, p. 36), represent survivors of push-backs in bringing complaints before the European Court of Human Rights (see the Idomeni case, p. 40), and compile submissions to relevant UN bodies (see the Rights of the Child case, p. 37), to

THE EUROPEAN CONVENTION ON HUMAN RIGHTS: LAW AT THE BORDER

The European Convention on Human Rights (ECHR) sets out binding norms to protect fundamental rights in Europe. The treaty applies not only to the 28 states of the European Union, but to all 47 member states of the Council of Europe. The European Court of Human Rights (ECtHR) in Strasbourg supervises states’ compliance with the Convention. When states violate the human rights enshrined in the ECHR, individual persons can demand their rights and submit a complaint to the Court independently of their citizenship.

name just some of our efforts. The overarching goal is to make the rights of refugees and migrants visible and to enforce these rights in court. Another aim is to ensure that European asylum and refugee policies are in line with human rights obligations. In 2017, we saw important interim successes in several projects.

N.D. AND N.T. V. SPAIN IN STRASBOURG: IMPORTANT STEP FORWARD FOR REFUGEES AND MIGRANTS AT THE EU’S EXTERNAL BORDERS

On 3 October 2017, the European Court of Human Rights (ECtHR) issued a decision holding that Spain’s practice of refugee and migrant push-backs at the border to Morocco violates Spain’s human rights obligations. The ruling came in response to a complaint against Spain submitted to the Court in February 2015 by N.D. and N.T. (full names withheld to protect applicants), from Mali and the Ivory Coast, respectively. The complaint was initiated by ECCHR and supported by the organization *Brot für die Welt*. In August 2017, the applicants managed to reach Spain by crossing the border fences at Melilla, a Spanish enclave sharing a border with Morocco. Along with 70 other people from sub-Saharan Africa, they were arrested and immediately sent back to Morocco with no process and no opportunity to seek legal protection.

A chamber of seven judges at the ECtHR in Strasbourg endorsed the legal assessment submitted by ECCHR and its partner lawyers Carsten Gericke and Gonzalo Boye, holding that the push-backs at the Spanish-Moroccan border violated Article 4 of Protocol 4 (prohibition of collective expulsions) and Article 13 (right to an effective remedy) of the European Convention on Human Rights. The decision in the Melilla case is an important interim win for the applicants with significance beyond their particular case. It serves as a signal to all European countries that have adopted the model of Spain’s push-backs. The decision was thus welcomed by migration activists and lawyers in Spain and beyond. But the case of *N.D. and N.T. v. Spain* is not yet final. In light of the significance of the case, it will be considered by the Grand Chamber of the Court in summer 2018.

The ECtHR is also looking at other cases of push-backs at the EU’s external borders. Since 2016, the Court has been examining complaints from eight people from Syria, Afghanistan and Iraq, who are being assisted by ECCHR and *PRO ASYL*. In March 2016, all eight were unlawfully pushed back from Macedonia to Greece.

THE PROHIBITION OF COLLECTIVE EXPULSION AND THE RIGHT TO AN EFFECTIVE REMEDY

Article 4 Protocol 4 of the ECHR codifies the “prohibition of collective expulsion of aliens.” This provision is violated when people on the move across borders are returned immediately without the possibility to be heard and explain their personal circumstances. Article 13 of the ECHR codifies the “right to an effective remedy.” This means that individuals facing return procedures shall have access to national legal means to oppose their treatment.

European states that conduct immediate summary expulsions (so-called push-backs) at their borders act in violation of both of these rights. ECCHR supports affected persons in their individual complaints in front of the ECtHR – such as the complaints of *N.D. and N.T. v. Spain* as well as the complaints in the Macedonia/Idomeni case.

LAW AT THE BORDER: THE CODIFICATION OF HUMAN RIGHTS AND THE PROHIBITION OF COLLECTIVE EXPULSIONS

The words of philosopher Hannah Arendt from over 60 years ago remain of great relevance today: “We become aware of the existence of a right to have rights ... only when millions of people emerge who had lost and could not regain these rights because of the new global political situation.” According to Arendt, people who are excluded from political communities continue to be denied the right to have rights. Without the fundamental right to have rights, those affected cannot claim any further specific rights. This is what thousands of people face at the EU’s external borders as well as at some borders between European states.

Since Arendt articulated her critical analysis of human rights, the international community of states has developed international

norms for the legal protection of marginalized people. But in the context of migration, human rights are implemented in a fragmentary way. There are few protective mechanisms that limit sovereign states’ prerogative when it comes to control of their borders. The Universal Declaration of Human Rights contains a right to asylum, but not the right to enter another state to actually apply for asylum. The 1951 Refugee Convention forbids *refoulement*, i.e. returning a person to a state where they would face persecution, but it applies only to persons fleeing specific kinds of persecution, such as on account of their political beliefs. So while the Convention enshrines an essential legal protection, its scope of application is limited.

The European Convention on Human Rights goes one step further and codifies the prohibition of collective expulsions. Since 1963, the Fourth Additional Protocol of that Convention has prohibited the “collective expulsion of aliens.” For people who manage to reach the external

borders of the EU, this provision means that they cannot be summarily pushed back from the border without an examination of their individual situation. Unlike with the definition of a refugee under the Refugee Convention, the prohibition of collective expulsions applies regardless of the reasons why the person fled and their resulting legal status. Accordingly, this provision is key to legal efforts to guarantee access to justice for those threatened with expulsion or deportation.

Legal proceedings can highlight the responsibilities borne by states and articulate the demand that human rights standards be upheld. While some states use legal mechanisms to criminalize migration, law can also be used as a tool against injustice – to question policies and practices that undermine human rights and to bring about political and legal change that extends beyond the individual case.

**An extended version of this text
by Wolfgang Kaleck and Vera
Wriedt first appeared in DIE
ZEIT on 22 February 2018.**



PARTNER ORGANIZATIONS IN CASES AND PROJECTS IN 2017

NORTH AMERICA

- American Civil Liberties Union (ACLU) New York
- Center for Constitutional Rights (CCR) New York
- Center for International Environment Law Washington, DC
- Center for Justice & Accountability San Francisco
- Centro de Derechos Humanos Miguel Agustín Pro Juárez Mexico City
- Earth Rights International Washington, DC
- International Senior Lawyers Project (ISLP) New York
- Open Society Justice Initiative New York
- PILNet New York/Budapest
- Proyecto de Derechos Economicos, Sociales y Culturales (ProDESC) Mexico City
- Tlachinollan, Centro de Derechos Humanos de la Montaña Tlapa de Comonfort
- Bahrain Institute for Rights and Democracy London
- borderline-europe – Menschenrechte ohne Grenzen Berlin
- Business and Human Rights Resource Centre London
- Brot für die Welt Berlin
- Bundeszentrale für politische Bildung Bonn
- Center for International Law Research and Policy (CILRAP) Brussels/Berlin
- Centre for the Enforcement of Human Rights International (CEHRI) Brussels/Berlin
- Civitas Maxima Geneva
- Clean Clothes Campaign / Kampagne für saubere Kleidung Amsterdam/Wuppertal
- Essex Business and Human Rights Project (University of Essex) Essex
- EuroMed Rights Copenhagen
- Fédération Internationale de Ligues des Droits de l'Homme (FIDH) Paris
- FIAN Cologne
- Fundación Internacional Baltasar Garzón (FIBGAR) Madrid
- FEMNET Bonn
- Forensic Architecture Project London
- Forschungs- und Informationszentrum Chile-Lateinamerika (FDCL) Berlin
- Forum for International Criminal and Humanitarian Law (FICHL) Brussels
- Friedrich Ebert Stiftung Berlin
- Fundación Raíces Madrid
- Germanwatch Bonn/Berlin
- Gesellschaft für bedrohte Völker Ostermündingen/Göttingen
- Global Legal Action Network (GLAN) Dublin/London
- Guernica37 London
- Hafiza Merkezi (Truth Justice Memory Center) Istanbul
- Heinrich-Böll-Stiftung Berlin
- Human Rights Watch (HRW) Brussels/Berlin
- Humboldt Universität zu Berlin, Humboldt Law Clinic Grund- & Menschenrechte Berlin
- Komitee gegen Folter Nizhny Novgorod
- Leigh Day & Co London
- Ludwig Boltzmann Institut für Menschenrechte Vienna
- Macedonian Young Lawyers Association (MYLA) Skopje
- medico international Frankfurt/Main
- México via Berlin Berlin
- Misereor Aachen
- Moving Europe
- Multiwatch Bern
- Nürnberger Menschenrechtszentrum Nuremberg
- Observatori DESC Barcelona
- PAN Deutschland Hamburg
- Privacy International London
- PRO ASYL Frankfurt/Main
- Public Eye Zurich
- Redress London
- Reporter ohne Grenzen Berlin
- Reprieve London
- Republikanischer Anwältinnen- und Anwälteverein Berlin
- Rete Italiana per il Disarmo Rome
- Sherpa Paris
- Sri Lanka Advocacy Group Germany
- Statewatch London
- Stiftung :do Hamburg
- Syrian Archive Berlin
- Syrian Center for Legal Studies and Research (SCLSR) Berlin
- Syrian Center for Media and Freedom of Expression (SCM) Paris/Berlin
- Tactical Technology Collective Berlin
- TRIAL International Geneva
- Tactical Technology Collective Berlin
- Voix des Migrants Berlin
- Zentrum ÜBERLEBEN Berlin

CENTRAL / SOUTH AMERICA

- ANDHES Tucumán
- Bureau des Avocats Internationaux (BAI)/ Institute for Justice & Democracy Port-au-Prince/Boston
- Colectivo de Abogados José Alvear Restrepo (CCAJAR) Bogotá
- CooperAcción Lima
- Derechos Humanos sin Fronteras Cusco
- H.I.J.O.S. por la Identidad y la Justicia contra el Olvido y el Silencio Buenos Aires
- Instituto de Defensa Legal Lima

EUROPE

- Akademie der Künste Berlin
- Amnesty International Deutschland Berlin
- Airwars London
- ASK – Arbeitsgruppe Schweiz-Kolumbien Bern
- Bahrain Center for Human Rights Berlin

- Center for Applied Legal Studies (CALS) Johannesburg
- Equal Education Law Centre (EELC) Cape Town
- Khulumani Support Group Johannesburg
- Legal Resources Centre Johannesburg
- Socio-Economic Rights Institute (SERI) Johannesburg

ASIA

- Activist Anthropologist Dhaka
- Al-Haq Ramallah
- Baldia Factory Fire Affectees Association Karachi
- Bangladesh Legal Aid and Service Trust (BLAST) Dhaka
- Center for International Law (CenterLaw) Manila
- Comrade Rubel Memorial Center (CRSK) Dhaka
- Foundation for Fundamental Rights Islamabad
- Garment Workers Unity Forum (GWUF) Dhaka
- Human Rights Law Network (HRLN) New Delhi
- Kheti Virasat Mission Jaitu (Punjab)
- Kilusang Magbubukid ng Pilipinas Manila
- Malaya Lolos Organization Philippines
- Migrant Forum Asia Quezon City
- National Trade Union Federation of Pakistan (NTUF) Karachi
- PAN India Kerala
- Pakistan Institute of Labour Education and Research (PILER) Karachi
- Palestinian Center for Human Rights (PCHR) Gaza City
- Pesticide Action Network Asia-Pacific (PAN-AP) Penang
- Swadeshi Andolan Kerala

AFRICA

- Association Marocaine des Droits de l'Homme (AMDH) Nador
- Association Tchadienne pour la Promotion et Défense des Droits de l'Homme (ATPDH) N'Djamena



VIOLENCE & RIGHTLESSNESS AT EUROPE'S (EXTERNAL) BORDERS

Kilometers of barbed wire border fences and high-tech patrols by land, air and sea. Return agreements like the EU-Turkey Statement or the EU's cooperation agreement with Morocco. Unlawful and often brutal push-backs at the EU's external borders. Europe goes to great lengths to keep out people trying to flee war, persecution and extreme hardship. Spain's push-back practices have become a model for states wanting to barricade their borders. Since 2014, ECCHR has been working on legal interventions to challenge the EU's practice of push-backs and supporting affected people in taking legal action.

Four years of impunity: The fight for justice for victims of fatal border operation at Ceuta

At least 15 people died and many more were injured in a push-back action by the *Guardia Civil* on 6 February 2014 in Ceuta, a Spanish enclave in North Africa. Officers of the Spanish paramilitary police force used batons, tear gas and rubber bullets to attack people who were trying to swim across the Spanish-Moroccan border. Almost four years later, the investigative judge closed the case for a

second time. She did so in spite of a decision from the *Audiencia Provincial* (regional court) in Ceuta from January 2017, which, citing various deficiencies in the investigation, called for the case to be reopened and for witness evidence to be heard from survivors of the push-back action. Two survivors who now live in Germany offered to give testimony to the investigative judge, but their evidence was not heard and the investigation was closed. ECCHR is working on this case with our partner lawyer in Madrid, Gonzalo Boye, and the Spanish organization *Observatori DESC*.

SINCE 2014: Provision of legal support to witnesses of the fatal push-back of 6 February 2014 and to ECCHR's Spanish partner organization *Observatori DESC*, which intervened as joint plaintiff in the criminal proceedings against the *Guardia Civil*.

OCTOBER 2015: Complaint against the closing of the investigation filed by ECCHR partner lawyer Gonzalo Boye to the *Audiencia Provincial* in Ceuta.

JANUARY 2017: The *Audiencia Provincial* orders the reopening of the investigation.

APRIL 2017: Investigative judge informed of witnesses living in Germany.

JANUARY 2018: Complaint filed by Boye against the decision to close the investigation for the second time.

Decisive win: European Court of Human Rights condemns Spain's push-backs at EU border

In October 2017, the European Court of Human Rights (ECtHR) ruled against Spain for collectively expelling refugees and migrants who reach the Spanish enclave of Melilla, sending them back to Morocco with no assessment of their individual situations. The Court in Strasbourg found that this violated the European Convention on Human Rights after complaints were brought against Spain by two men from Mali and the Ivory Coast. In August 2014, the two men arrived in Spain by crossing the fence structures at Melilla. Together with roughly 70 other people from sub-Saharan Africa, they were arrested and summarily pushed back to Morocco with no process and no opportunity to apply for legal protection. The complaints were initiated by ECCHR and supported by *Brot für die Welt*. The case sets a precedent for enforcing refugees' and migrants' right to have rights at the external borders of the EU.

FEBRUARY 2015: ECCHR partner lawyer Carsten Gericke (Hamburg) and Gonzalo Boye (Madrid) filed complaints to the ECtHR against Spain on behalf of N.D. and N.T. (full names withheld for the applicants' protection).

OCTOBER 2017: The ECtHR held that Spain's push-back practice at the border to Morocco violates Article 4 of Protocol 4 (prohibition of collective expulsions) and Article 13 (right to an effective remedy) of the European Convention on Human Rights. The Court awards €5,000 in compensation to the applicants.

JANUARY 2018: After referral by the Spanish government, the Court decided that, due to the significance of the case, it will now come before the Grand Chamber. A final decision is expected towards the end of 2018.

Rights of the Child: Spain violating fundamental rights of unaccompanied minors

Not even children are spared from Spain's inhumane push-backs. Unaccompanied refugees and migrants under the age of 18 are frequently arrested as adults and expelled to Morocco. This was the case for D.D. (full name withheld for his protection), a minor from Mali who crossed the border fence to the Spanish enclave of Melilla in December 2014. Working with the organization *Fundación Raíces* in Spain, ECCHR initiated a complaint to the UN Committee on the Rights of the Child on D.D.'s behalf. The complaint centers on Spain's disregard for child welfare and the special protection required by minors. With this case, ECCHR is breaking new legal ground, as the mechanism allowing for individual complaints to the UN Committee on the Rights of the Child has only existed since April 2014. A decision in D.D.'s favor would set a precedent and reinforce the rights of refugees who are minors.

DECEMBER 2015: D.D.'s individual complaint ("communication") submitted to the UN Committee on the Rights of the Child.

JUNE 2017: Committee decided to examine admissibility of complaint together with the merits and requested that Spain submit a response to the complaint.



Rightlessness on the Balkan route: Macedonia must file response to ECtHR on push-backs in Idomeni

Idomeni is a camp at the Macedonian-Greek border that symbolizes the systematic violation of human rights that occurred as the borders along the Balkan route were closed to refugees and migrants in the spring of 2016. The European Court of Human Rights is currently examining an incident from March 2016 in which over 1,500 people seeking protection were unlawfully pushed back from Macedonia to Greece. This follows complaints filed by eight people from Syria, Iraq and Afghanistan, who were forced by Macedonian soldiers to return to Greece during this incident. ECCHR and *PRO ASYL* are assisting the applicants. In an important step forward in efforts to challenge this practice of push-backs, particularly in the Balkans, the complaint was forwarded to Macedonia for a response.

SEPTEMBER 2016: Eight individual complaints (two women and six men) submitted against Macedonia at the ECtHR. All eight applicants submit that they had no chance to explain their personal situation to the Macedonian authorities, to apply for international protection, or to appeal their summary expulsion. As a result, they argue that Macedonia acted in violation of the European Convention on Human Rights.

FEBRUARY 2017: ECtHR communicated the complaint to Macedonia for a response.

NOVEMBER 2017: Final submissions filed on behalf of the applicants. The proceedings are ongoing.

Unlawful proceedings: EU Ombudsperson examines work of European Asylum Support Office in Greece

Since the EU-Turkey Statement came into force in March 2016, asylum seekers from Syria, Afghanistan and Iraq are all interviewed at initial reception centers, known as “hotspots,” on Greek islands. The aim of these interviews is to determine whether Turkey is a “safe third country” for the asylum seekers, in order to deport them there. The responsibility for this procedure is borne primarily by the European Asylum Support Office (EASO). Following an analysis of interviews undertaken on Greek islands, and after several requests to access internal EASO documents, ECCHR has significant doubts about the lawfulness of EASO’s work.

APRIL 2017: Complaint filed with the EU Ombudsperson. ECCHR argues that by influencing national asylum proceedings in Greece, EASO is acting beyond its mandate and EASO officials are disregarding fundamental rights standards for asylum interviews. Asylum seekers are thus denied a fair assessment of their case and careful examination of their particular need for protection. They are also denied a critical evaluation of the question of whether Turkey represents a “safe third country” for them.

JUNE 2017: The EU Ombudsperson finds the complaint is admissible and requests a response from EASO.

SEPTEMBER-OCTOBER 2017: Applications made to EASO seeking access to internal documents regarding the Office’s work in the Greek hotspots that, to date, are classified as confidential.

NOVEMBER 2017: Appeal against the decision denying access to some of the information requested.

IV. Corporate exploitation – The growing legal resistance

Maximizing profit and minimizing costs, at almost any price – this is the principle that transnational companies from the Global North and elites in the Global South rely on in today’s globalized, capitalist world of business. Who loses the most from this system? A majority of people in the Global South, including women and men working often under life-threatening conditions to produce textiles for the Western market, agricultural laborers and small farmers who aren’t adequately informed about the dangers of the pesticides they use, and people who fall victim to war crimes while European companies do business in conflict zones, all in the name of profit. Below are three examples of cases from around the world – KiK in Pakistan, Bayer in India, and Lafarge in Syria – that demonstrate the manifold human rights violations that occur within today’s prevailing economic, social and political hierarchies. In each of these three cases and others, ECCHR works with affected communities to mount legal challenges against egregious corporate exploitation.

The cases we work on in our Business and Human Rights program address structural injustices in the global economy. ECCHR stands with those who refuse to accept these injustices and exploitation, and who wish to pursue a political and legal fight against transnational corporations and their subsidiaries and suppliers. We support affected people, social movements and NGOs around the world as they bring companies to court for their human rights violations. We use legal tools and mechanisms in the Global South, where people and the environment are most directly affected by corporate exploitation, and in countries in the Global North, where many offending companies are headquartered, as well as in relevant international forums. In some cases, we use criminal law, while in others, we bring civil actions. Complaints to UN and other supranational bodies can also be effective. Our strategies range from proven and conventional to innovative and unexpected, depending on the political and economic context and associated legal considerations. The key question is always whether and how we can work with affected people, partner organizations and lawyers on the ground. With them, we discuss opportunities to link a given case to joint strategic and political goals.

ECCHR’s legal interventions aim first and foremost to vindicate the legal claims of those most affected by corporate human rights violations. In the medium-term, our goal is to highlight gaps in existing law and to spark and shape legal and political debate. Our long-term objective is about more than achieving legal reforms; we aim to facilitate fundamental political and economic change. As can be seen in several of ECCHR’s 2017 legal interventions in the field of Business and Human Rights, our work is based in law, but our larger concern is with justice.

FRENCH MULTINATIONAL INVESTIGATED FOR ITS ACTIONS IN SYRIA

The French cement company Lafarge (now LafargeHolcim) and its subsidiary Lafarge Cement Syria (LCS) were involved in the extensive war economy that has been running in Syria since the start of the ongoing armed conflict. In April 2017, the company admitted that its subsidiary regularly financed armed groups to maintain operations at its factory in northern Syria. In December 2017, French investigative judges indicted six former senior Lafarge managers. The investigation follows a criminal complaint filed in Paris in November 2016 by eleven Syrians together with ECCHR and our French partner organization Sherpa. The complaint alleges that by doing business with the so-called Islamic State and other armed groups, LCS financed terrorism and was complicit in war crimes and crimes against humanity, as well as endangering the lives of its employees. The investigations represent an important first step towards showing that companies who contribute to grave human rights violations and fan the flames of war by doing business in conflict regions must and will be held accountable for their actions (more on this case on p. 48).

FORENSIC VIDEO IN KIK PROCEEDINGS SHOWS RESPONSIBILITY FOR FACTORY FIRE DEATHS IN PAKISTAN

In the global textile industry, companies in the Global North profit from the exploitation of workers in the Global South. Companies like German clothing retailer KiK refuse to accept any responsibility for safety and working conditions abroad. This is being challenged by a group of four Pakistanis: one survivor and three relatives of victims of the September 2012 factory fire at KiK-supplier Ali Enterprises in Karachi. On ECCHR’s initiative and with support from medico international, the four filed a civil action against KiK at the Regional Court in Dortmund in March 2015. Two hundred and sixty people died in the Ali Enterprises fire in Karachi, in part due to several breaches of fire safety regulations at the factory. As shown in a computer simulation produced by the Forensic Architecture Project

CORPORATE DUE DILIGENCE FOR HUMAN RIGHTS VIOLATIONS ALONG SUPPLY CHAINS

Corporations have an obligation to respect human rights. The principle of a corporate duty of due diligence is part of the UN Guiding Principles on Business and Human Rights. This means that as part of their business operations, companies must prevent or at least mitigate adverse human rights impacts in which they are involved. This applies to companies’ own production, but also to conduct all along their supply chains. In the global textile industry, the due diligence obligation requires buyer companies to oversee the work of their suppliers and subsidiaries in order to identify possible risks in production and working conditions, as well as environmental risks. They must also develop ways to address and eliminate these dangers.

at Goldsmiths, University of London and submitted to the court in Dortmund in January 2018, a few improvements to the factory's fire safety measures would have saved many lives. As the factory's main client, KiK could have easily insisted on better fire safety precautions. Its failure to do so means the company bears part of the responsibility for the deaths (more on this case, pp. 49-51).

CORPORATE COMPLICITY IN THE TORTURE OF TRADE UNIONISTS: POTENTIAL FOR LEGAL ACTION IN GERMANY BY FORMER VOLKSWAGEN BRAZIL EMPLOYEES

The multinational motor companies Mercedes Benz in Argentina and Volkswagen in Brazil were potentially more than just beneficiaries of Latin American military dictatorships; some cases indicate that the companies were also complicit in the arrest and torture of trade unionists. Legal proceedings have been underway for a year against Mercedes Benz in Argentina, while prosecutors in Brazil have been investigating Volkswagen since 2015. Lúcio Bellentani, a trade unionist and torture survivor, describes how secret police arrested him in the presence of Volkswagen security staff while he was at work at a Volkswagen plant near São Paulo during Brazil's military dictatorship in the 1970s. During a visit to Berlin in November 2017, Bellentani mandated ECCHR's General Secretary to examine what legal avenues could be pursued in Germany against the company by Brazilian torture survivors. One option would be a civil action aimed at obtaining damages and securing a court ruling on the question of Volkswagen's shared responsibility for the torture (more on this case on p. 49).

THE KiK/PAKISTAN CASE – A PRECEDENT FOR DUE DILIGENCE ENFORCEMENT

German clothing retailer KiK has acknowledged that it was the main client of the textile factory Ali Enterprises that burned down in September 2012, killing and injuring hundreds. KiK's Corporate Social Responsibility Reports explicitly note that the company regularly had its supplier companies inspected. KiK knew or should have known about the working conditions and fire safety and construction issues in the Ali Enterprises factory before the fire, such as barred windows and "emergency exits" that led to nowhere. By failing to do anything to improve fire safety at Ali Enterprises, KiK was in breach of its duty of due diligence.

IN FOCUS

COMPETITION FOR RESOURCES THREATENS DEMOCRACY AND HUMAN RIGHTS AROUND THE WORLD

We are experiencing an unprecedented worldwide race for natural resources: governments and national as well as transnational corporations are driving the demand for water, land, fossil fuels, raw materials and organic resources of all kinds as never before. Previously intact ecosystems are being sacrificed to satisfy this hunger for resources.

Citizens, organized civil society, social movements, and affected communities worldwide are pushing back against these developments. They are fighting for their rights, working to preserve their livelihoods, and insisting on democratic participation. Local populations, communities, and organizations that have different ideas about the use of natural resources – and of a socially just and fair economy as well as distribution – are coming under pressure. Questions, criticism and protests are increasingly being met with repression, harassment and defamation. Business interests

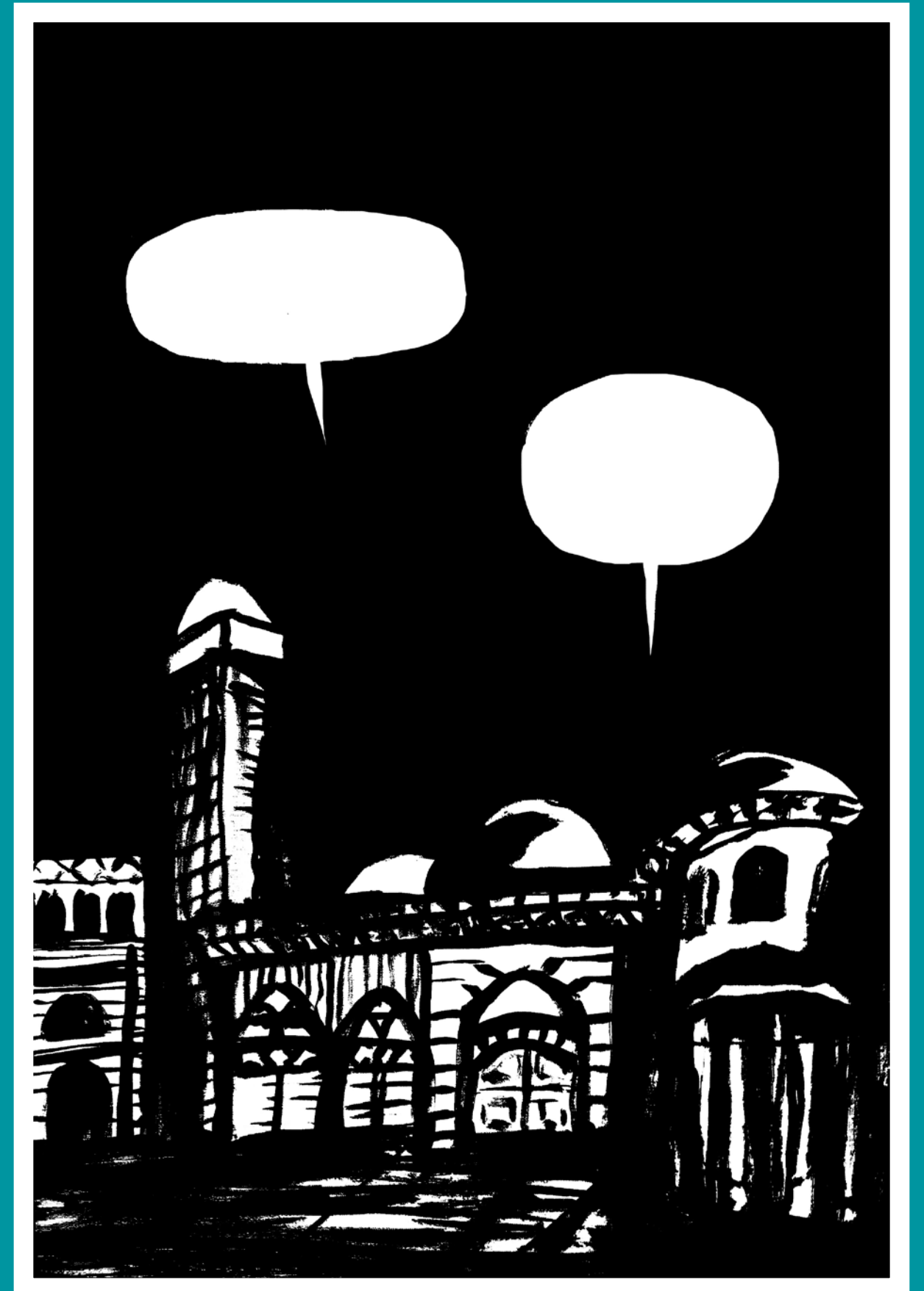
and profit-orientation are, thus, competing with sustainable and just resource policies, environmental protections, democratic standards and human rights.

The scope of action for civil society actors opposing large-scale projects; protesting social injustices, land grabbing, and environmental destruction; and demanding democratic participation and human rights is shrinking continually. The fact that the rights of civil society are being curtailed worldwide is, unfortunately, not a new finding, but the current scale and scope are new and dramatic. In light of the issues at hand, democratic civil society, in particular, can engage in the critical monitoring of investments in infrastructure and resource extraction, collect information, demand transparency and accountability – not least through legal action – as well as organize communication, shape public opinion and stage protests. A democratically negotiated diversity of opinions and interests does not seem to mesh with business logic, as it costs time and money and stands in the way of swift project implementation. In addition, whereas the interests of

investors enjoy protection, the same cannot be said about human rights and the environment.

The counterstrategies that civil society actors use to defend themselves against restrictions and repression are particularly revealing. The use of legal remedies can be another way forward, albeit a difficult one in view of the structural hurdles. Nevertheless, legal action is a viable way for civil society to defend itself against criminalization and the curtailment of civil and political rights. After all, opportunities for participation in resource-related projects – above all, consultation and the requirement of obtaining consent from affected communities – must be taken seriously and protected against misuse.

Edited extract from the preface by Wolfgang Kaleck and Barbara Unmüßig (President of the Heinrich Böll Foundation) to *Tricky Business: Space for Civil Society in Natural Resource Struggles* (Berlin, December 2017), a study by the Heinrich Böll Foundation and ECCHR based on research in Mexico, India, South Africa and the Philippines. The study was written by ECCHR staff members Dr. Carolijn Terwindt and Dr. Christian Schliemann.



BUSINESS, WAR & DICTATORSHIPS

“Business is business.” Corporate executives like to see their actions as politically and legally neutral. But by actions like selling repressive regimes surveillance technologies or buying raw materials from conflict zones, corporate actors can facilitate the persecution of government critics, fan the flames of war and, in some cases, even aid and abet war crimes. The Nuremberg Trials and the subsequent Nuremberg proceedings show how international law can help to challenge this. Where grave human rights crimes are committed, it’s not just the political and military leaders who belong before a court. The role of corporate executives and managers in dictatorships and wars can also be subject to prosecution.

Business and crimes in Syria: French judiciary indicts former top managers at Lafarge

In 2017, French cement company Lafarge Holcim (formerly Lafarge), world leader in cement production, faced legal trouble for its human rights record. In December 2017, French judges indicted six former top-level managers, all French nationals, in connection with potential crimes relating to Lafarge’s activities in Syria. The indictments concern the financing of terrorism, violation of EU

sanctions and endangering the lives of others. This follows a criminal complaint against Lafarge and its subsidiary Lafarge Cement Syria (LCS) filed by eleven Syrian former employees together with ECCHR and its French partner organization Sherpa in November 2016 in Paris. The complaint showed how Lafarge endangered its Syrian employees’ lives. As the area around the cement factory of Jalabiya in northern Syria fell under the control of the group known as Islamic State, LCS is said to have compelled employees to continue working in the plant, despite the fact that several Lafarge employees had been kidnapped and the surrounding roads were the site of dangerous checkpoints and regular attacks. The case in France proceeded swiftly in 2017. In April, the company admitted that in 2013-14, its subsidiary regularly financed armed groups, including terrorist-designated ones, in order to maintain operations at its factory, as argued in the complaint filed. Also in April 2017, the CEO of Lafarge resigned over the scandal. ECCHR and Sherpa claim that Lafarge should also be investigated for complicity in war crimes and crimes against humanity.

NOVEMBER 2016: Joint criminal complaint against the cement company Lafarge and its subsidiary Lafarge Cement Syria submitted to the chief investigatory judge in Paris by eleven Syrians with ECCHR and the French group Sherpa.

JUNE 2017: French judiciary opened an investigation. Proceedings are ongoing.

THROUGHOUT 2017: ECCHR provided legal assistance to witnesses and in proceedings.

Corporate collaboration with Brazil’s military dictatorship? Tortured trade unionists fight for legal action against Volkswagen

During the Brazilian military dictatorship (1964-1985), Lúcio Bellentani worked for Volkswagen Brazil and was involved in trade union activities. In July 1972, he was arrested while at work, in the presence of Volkswagen security staff. Bellentani says the head of security at the factory was actively involved and held a gun to his back. After his arrest, Bellentani, like many others involved in oppositional activities at the time, was detained for months and subjected to torture. In September 2015, Bellentani, along with other trade unionists, human rights activists and lawyers, filed a criminal complaint against *Volkswagen do Brasil*. It argued that the firm spied on its workforce and delivered opposition activists to the regime for torture. Since then, the *Procuraduria* (investigating authorities) in Sao Paulo have been investigating the case and assessing whether to begin proceedings against the company or recommend an out-of-court agreement. A decision is expected in 2018. If no action is taken, Bellentani and his co-complainants will look for other legal avenues, potentially in Germany, to hold Volkswagen accountable. Bellentani’s case against Volkswagen contains many parallels with ECCHR’s ongoing work on the case of trade unionist Hector Ratto and Mercedes Benz Argentina, another instance of a company not only profiting from a military dictatorship, but also alleged to have been involved in its crimes.

NOVEMBER 2017: Lucio Bellentani mandated Wolfgang Kaleck to examine what legal steps might be possible against Volkswagen in Germany.

EXPLOITATION & GLOBAL SUPPLY CHAINS

Millions of men, women and children work in inhumane conditions as part of global supply chains. They are paid less than a living wage and mistreated at work, where fatal factory accidents are all too common. Companies from the Global North exacerbate working conditions through their pricing and deadline demands. Certification processes and voluntary standards have proven to be ineffective in terms of bringing about improvements. ECCHR therefore uses a range of legal tools to ensure that transnational contractors, buyers and retailers are held responsible for the exploitation of workers.

The KiK/Pakistan case: A precedent for corporate liability

Two hundred and sixty people were killed and 32 injured when the Ali Enterprises factory in Karachi, Pakistan burned to the ground in September 2012. Barred windows, defective fire extinguishers and a single narrow stairwell with emergency exits that led to nowhere combined to make the factory a deadly trap for workers. German clothing discounter KiK was Ali Enterprises’ biggest client, purchasing 70% of the goods produced in the Karachi factory. As such, KiK bears part of the legal responsibility for the working conditions there. Questions also surround the role of Italian certification company RINA, which just weeks before the fire awarded the factory a certificate for good safety and social standards. The corporate attitude of “yes to profits, no to accountability” is now being challenged by survivors and relatives of those

killed in the fire. With support from the Pakistani trade union NTUP, they founded the Ali Enterprises Factory Fire Affecteds Association and are bringing the case to court. ECCHR and the German organization medico international are standing and working with them – in Pakistan against the factory owners, in Germany against KiK, and in Italy against RINA.

Civil legal action in Germany: Law professors and experts support position of Pakistani claimants against KiK

Muhammad Hanif, Muhammad Jabbar, Abdul Aziz Khan Yousuf Zai and Saeeda Khatoon are survivors and relatives of those killed in the Ali Enterprises factory fire. They are also claimants in the case against KiK initiated by ECCHR in 2015. The four Pakistani claimants filed a lawsuit at the Regional Court of Dortmund seeking €30,000 each in damages. The lawsuit cleared the first hurdle in 2016, when the Court determined it did have jurisdiction in the case and awarded legal aid to the claimants. Since then, the Court has been examining whether or not the relevant statutes of limitations have lapsed. The legal action goes beyond the question of compensation, it's also about justice. Hanif, Jabbar, Zai and Khatoon want to see KiK finally face up to its responsibilities – in front of a German court. The thrust of the claim is that since KiK was the main customer of Ali Enterprises, it could easily have demanded improvements in fire safety, but clearly failed to do so. As such, KiK bears part of the responsibility for the 260 deaths. This is also the assessment of experts from the Forensic Architecture (FA) team in London. In 2017, FA created a computer simulation,

commissioned by ECCHR and medico international, which has now been presented to the Court. The simulation meticulously reconstructs the causes and development of the fire and shows that many lives could have been saved if basic fire safety precautions had been taken.

MARCH 2015: Four Pakistanis file a civil action – based on ECCHR's legal expertise – at the Regional Court of Dortmund against KiK-Textilien GmbH. The legal action receives financial support from medico international and the claimants are represented by ECCHR's partner lawyer Remo Klinger.

AUGUST 2016: The Regional Court awards legal aid to claimants. This decision is the first step towards ensuring that a case of human rights violations by a German company abroad can be heard before a German court. A week later, KiK tells the International Labour Organization (ILO) it is prepared to make a voluntary payment of 5 million euro to a compensation fund.

AUGUST 2017: Legal briefs from two professors of law in Lahore, Pakistan confirm, among other points, that the relatives are entitled to damages.

NOVEMBER 2017: The Court names an expert to assess whether statutes of limitations have elapsed.

JANUARY 2018: Klinger, lawyer for the claimants, submits Forensic Architecture computer simulation as evidence to the Court in Dortmund.

Criminal proceedings in Italy: Liability of certification firm RINA must be addressed

Alongside the civil action against KiK in Germany, ECCHR is also assisting the Ali Enterprises Factory Fire Affecteds Association in criminal law proceedings against the factory owners in Pakistan and in proceedings in Italy against the certification company RINA. A few weeks before the fire, RINA awarded the factory the international SA 8000 certification – a standard which purports to guarantee high safety standards and socially responsible production. ECCHR partner lawyers in Italy filed a report on the fire and RINA's role with public prosecutors in Turin on behalf of the Affecteds Association in the hope of determining RINA's criminal liability. Prosecutors opened an investigation and commissioned an expert opinion on fire safety. In early 2016, the case was taken over by prosecutors in Genoa, where RINA's headquarters is based.

APRIL 2014: On behalf of the Ali Enterprises Factory Fire Affecteds Association, lawyers Stefano Bertone and Marco Bona requested that prosecution authorities in Turin take up criminal investigations against RINA.

MARCH 2016: Legal memorandum submitted by ECCHR to the prosecution authorities in Genoa on Italy's obligations to ensure that human rights are upheld. Proceedings are ongoing.

Rana Plaza collapse in Bangladesh: OECD complaint against TÜV Rheinland audit

Who benefits from social audit certification in the textile industry? This question was answered in the most horrific manner in April 2013 with the collapse of the Rana Plaza factory complex in Dhaka, Bangladesh. More than 1,130 people were killed and another 2,500 were injured. Manufacturers, buyers and retailers were quick to point to certificates purportedly guaranteeing Rana Plaza's high standards of safety and working conditions. The companies involved say they are not legally liable because these certificates gave no indication of the possibility of such a disaster. German auditing firm TÜV Rheinland also undertook work at Rana Plaza. A few months before the collapse, TÜV Rheinland inspected the production facilities of the textile factory Phantom Apparel Ltd. in Rana Plaza. The audit report rated the construction quality of the factory building – which would later become a death trap – as good. The report also failed to adequately flag issues of child labor, discrimination against women and the lack of trade unions. To fundamentally change the system of social audits, ECCHR works with those affected, including the Rana Plaza Survivor Group, and other organizations from Germany and Bangladesh, to pursue relevant complaint mechanisms. In May 2016, this network of organizations filed a complaint against TÜV Rheinland with the OECD national contact point in Germany. In 2015, following a similar complaint, the corporate platform Business Social Compliance Initiative admitted that more clarity was needed on questions of liability and sanctions against certification companies.

JULY 2015: Complaint to the Business Social Compliance Initiative in Brussels on TÜV Rheinland's audit report.

MAY 2016: OECD complaint against TÜV Rheinland submitted to the National Contact Point at the German Ministry of Economics. Along with survivors and ECCHR, the complaint was co-submitted with the organizations FEMNET, medico international, Garment Workers Unity Forum and the Comrade Rubel Memorial Center. Those involved in proceedings have, for now, agreed to maintain confidentiality.

SOCIAL RIGHTS & NATURAL RESOURCES

Expropriation to make way for mining, forced resettlements due to infrastructure projects, and damage to health and the environment from the use of pesticides: in global competition for resources, transnational companies often assert their interests with reckless disregard. In taking these actions, companies can usually count on the support of political elites, while the rights of local populations are ignored and, in some cases, seriously violated. ECCHR sees itself as part of a broader civil society movement challenging such corporate abuses and undertakes legal action in support of these political and legal fights.

Pesticide sales: Challenging double standards in international agrobusiness

Pesticide products can only be sold if the risks associated with their use are clearly indicated. Multinational pesticide companies like Bayer

or Syngenta meet these requirements in Europe and North America, but when they sell their products in the Global South, for example in India, they do not take adequate precaution to ensure that people are informed of the risks and necessary safeguards. This breaches international standards. It seems that when it comes to the right to life, health and the preservation of natural resources, the law does not apply equally to all. ECCHR and its partner organizations make use of national and international legal mechanisms to dismantle the double standards in the pesticide industry.

Labels lack warnings for pregnant women: German authorities fail to adequately monitor Bayer exports to India

In Europe, Bayer AG sells the pesticide Nativio 75 WG with the warning: "suspected of damaging the unborn child." However, this same warning is not included on Bayer's products exported for sale in India. For this reason, the Indian Ministry of Agriculture has been investigating Bayer subsidiary Bayer CropScience Ltd (India) since 2016. German authorities, on the other hand, do not see that they have any role to play in the matter. According to a 2017 decision from the Chamber of Agriculture in Nordrhein-Westfalen, Germany lacks jurisdiction to look into it. In other words, the Chamber found that obligations around pesticide export controls end at national borders. In 2016, ECCHR, together with partner organizations from Germany and India, had called on the Chamber to examine Bayer's business practices. In particular, we asked the Chamber's Department of Plant Protection to assess whether Bayer is in violation of Germany's plant protection laws. The export of Nativio had not been assessed

at all until this complaint was filed. Since then, a Germany-wide working group on export control has been set up.

OCTOBER 2016: Complaint against Bayer AG submitted by ECCHR to the Chamber of Agriculture's Department of Plant Protection in Bonn. The complaint is supported by partner organizations Kheti Virasat Mission from India, FIAN Germany, Misereor and PAN Germany.

FEBRUARY 2017: The Chamber of Agriculture refuses to undertake further assessment of Bayer's exports, arguing that the products leaving Germany are not packaged for individual sale. This ignores international regulations stating that, even abroad, Germany must inform consumers about the dangers of pesticides and all necessary protective measures.

FAO and WHO fail to oversee Bayer and Syngenta pesticide exports

The labeling is inadequate, the required protective clothing is not widely available, and the salespeople are not properly trained. Research by ECCHR and its partners in Germany, Switzerland and India point to several shortcomings in the sale of highly hazardous pesticides in Punjab, India. Although Bayer and Syngenta sell their products there through subsidiaries, their sales practices violate international standards, such as the Code of Conduct on Pesticide Management from the UN Food and Agriculture Organization (FAO) and the World Health Organization (WHO). FAO and WHO are familiar with these problems; in 2015, ECCHR and partners filed a complaint to the groups' shared Panel of Experts on Pesticides Management. The Panel discussed the report

in April 2017 and heard input from an ECCHR representative. In the Panel's report from November 2017, however, no concrete recommendations were made to Bayer or Syngenta to address their problems in pesticide sales. This shows the urgent need for fundamental reform in the monitoring of pesticide sales around the world. In an open letter to FAO and WHO, supported by members of the German parliament, ECCHR calls for reform and offers concrete suggestions for improving the FAO/WHO complaint mechanism.

OCTOBER 2015: Complaint submitted to the FAO/WHO Panel of Experts on Pesticides Management regarding the sale of pesticides in Punjab, India by Bayer CropScience (Germany) and Syngenta (Switzerland) without adequate health and safety warnings or instructions for necessary protective measures. The complaint was signed by ECCHR, Kheti Virasat Mission (India), Pesticide Action Network Asia Pacific (Malaysia), *Brot für die Welt* (Germany) and Public Eye (Switzerland).

APRIL 2017: Presentation and discussion of the report at a meeting of the Panel of Experts in Delhi, India.

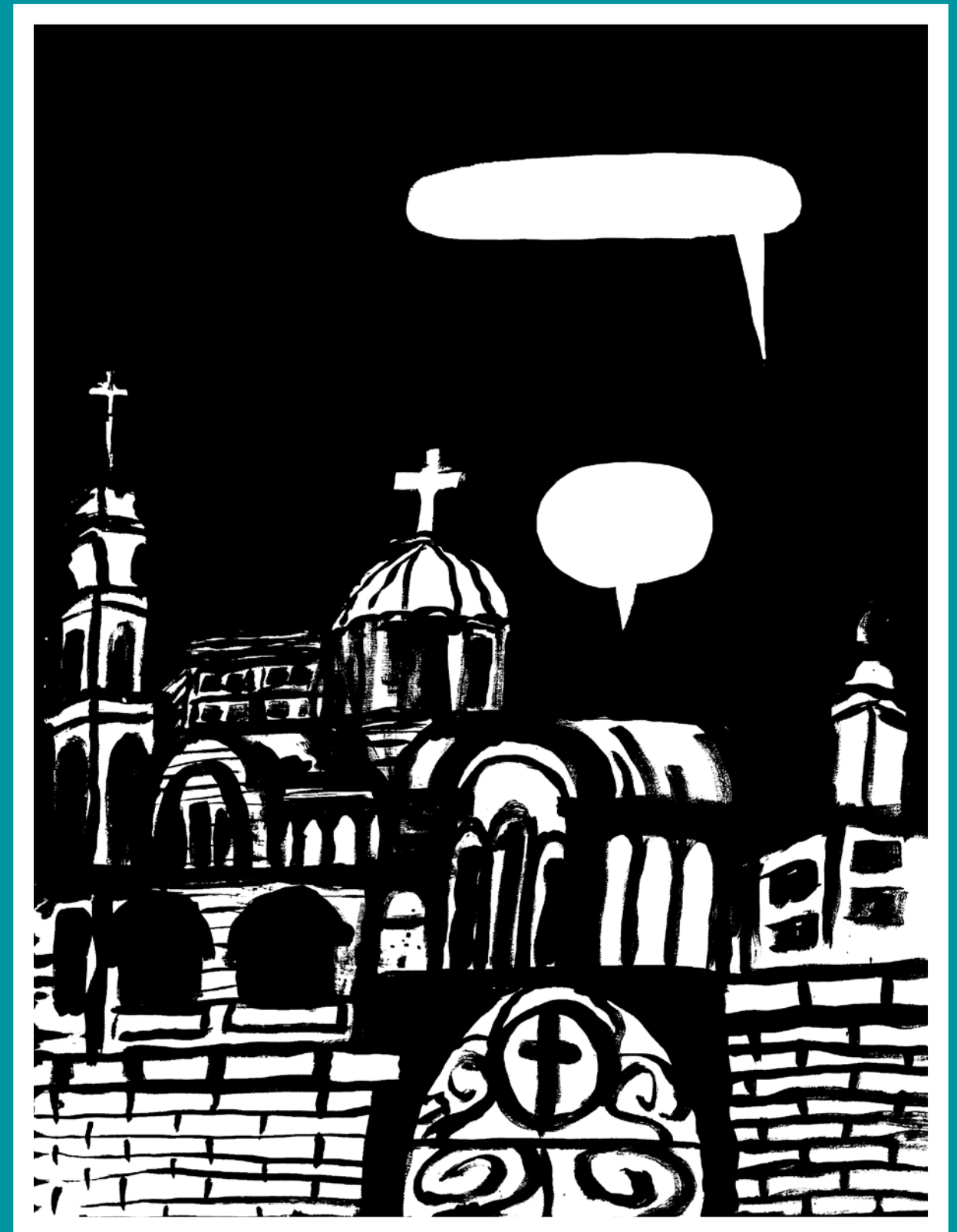
NOVEMBER 2017: Panel of Experts final recommendations and, in response, an open letter from ECCHR and partners calling for significant improvements in the complaint mechanism.

Mining in the Andes: Legal action against Swiss firm Glencore and against Switzerland and Peru

For many years the communities living near the *Tintaya Antapaccay* copper mine in the Andes have raised concerns about pollution and the associated health risks of heavy metals from the mine contaminating nearby rivers and drinking water. The mine, located in the Andes in Peru, is run by a subsidiary of the Swiss company Glencore, the world's biggest commodities firm. The company rejects any responsibility for the pollution or its effects, and Swiss and Peruvian authorities have taken no remedial action. Following a complaint to the UN filed by local community members together with ECCHR and two organizations from Switzerland and Peru, Switzerland said it was prepared to support a study into Glencore's potential responsibility. There was no response from Peru. As such cases require new, international legal standards, ECCHR also presented an expert opinion to the Inter-American Court of Human Rights in a separate, but similar case. The brief sets out the case of the *Tintaya Antapaccay* mine, using it as an example to show which environmental standards states are obliged to adhere to from a human rights perspective. The proceedings have the potential to break new legal ground: even if the proceedings at a national level in Peru are defeated, the action of the local communities will help to advance the overall legal debate.

MAY 2015: Complaints submitted to the UN Special Rapporteur on the human right to safe drinking water and the UN Working Group on human rights and transnational corporations. The complaints call on these bodies to assess whether Peru, Switzerland and Glencore are in violation of the UN Guiding Principles on Business and Human Rights.

JANUARY 2017: Legal brief submitted to the Inter-American Court of Human Rights on the interplay between human rights and international environmental law.



V. Progressive discourses, diversity and learning through networks – A platform for future legal interventions

Transnational human rights lawyering, as ECCHR understands it, goes beyond merely applying existing laws. It also aims to challenge structural human rights problems, which requires an ongoing exchange with as well as training and further education of lawyers from all parts of the world and from diverse groups in society. This allows us to continually develop our method of strategic legal intervention – not just through our casework, but also through critical legal and political discourses. This idea lies at the heart of ECCHR’s Education Program.

The Program’s curriculum aims to open up critical yet constructive perspectives on law. Recommended texts, seminars and other educational events complement and contextualize the practical experience gained while working on cases. Participants in the program examine current global power structures as well as the historical roots of exploitation and repression. Together with ECCHR staff and partners, they discuss legal approaches shaped by theories of post- and de-colonization, feminism and intersectionality. The internationality and diversity of the participants plays an important role, facilitating learning from and with one another. This understanding of cooperation is reflected in the fact that ECCHR has grown into a hub for a diverse range of networks and alliances.

THE CURRICULUM: LEARNING THROUGH DIVERSITY

At the heart of the Education Program is the curriculum – a dynamic program of learning that we have been developing over many years. It complements the practical case work and is actively shaped by Education Program participants, who bring their own diverse experience and backgrounds. Learning and exchange occurs in trainee meetings, lunch talks, workshops, film nights, alternative city tours and at our annual alumni reunion. These events provide practical, comparative legal insights – which can’t be found in any textbook – and feed into ECCHR’s casework. Small moments can often end up being of great significance, for instance, when a debate on the legal traditions of different countries breaks out that unearths ideas about what legal tools and jurisdictions could provide opportunities for legal interventions against powerful state forces or corporations.

LUNCH TALKS (SELECTION)

Global experiences in the struggle for human rights: The Philippines and South Africa
Gilbert T. Andres (CenterLaw, the Philippines) and Mbekezeli Benjamin (Equal Education Law Center, South Africa)
Moderated by: Jakob Aschemann, Shaelyn Gambino

Seeking legal accountability in Germany: A possible path to justice in Syria
Anwar al-Bunni (Partner Lawyer, Syrian Center for Legal Studies and Research, Syria)
Moderated by: Yaroslavna Sychenkova

Argentina’s dictatorship crimes: From Argentina to Europe and back, several decades of legal efforts
Rodolfo Yanzón (Partner Lawyer, Argentina)
Moderated by: Wolfgang Kaleck

We also make the gathered knowledge available to our colleagues and allies. For instance, we have developed jurisprudential guides with current court decisions on a range of topics for our partner organizations, partner lawyers and alumni. In 2017, lunch talks with renowned human rights lawyers from Argentina, Germany, the UK, India, Mali, Colombia, Palestine, the Philippines, Sri Lanka, South Africa and Syria offered trainees, alumni and staff the chance to hear first-hand accounts of contemporary legal practice from around the world.

SUSTAINABLE EDUCATION: SCHOLARSHIPS AND FELLOWSHIPS FOR FUTURE HUMAN RIGHTS LAWYERS

The Education Program is one manifestation of our overarching political goal to help bring about a more just world through the work of ECCHR. The Program’s scholarships and fellowships have been an important part of this. Financial security for the period of participation in the Education Program is important, as it allows participants to concentrate on learning and contributing. ECCHR also wants to help open doors for candidates who for financial reasons or due to geographical or economic considerations would be unable to undertake an unpaid traineeship. In the long term, we want to help dismantle the entrenched structures of privilege in human rights work. We believe this is key to building a solid, long-term foundation for progressive lawyering undertaken in true partnership with organizations and people affected by human rights violations in different parts of the world.

Thanks to the support of the Bertha Foundation (UK) and the Kreuzberger Kinderstiftung (Germany) in 2017 we were able to offer Bertha Justice and Bertha Global Exchange fellowships and scholarships to junior lawyers from Australia, Costa Rica, Germany, Greece, Guatemala, India, Italy, Pakistan, Palestine and Romania.

PRACTICE-BASED AND ACADEMIC ALLIANCES: COOPERATION WITH ALUMNI AND UNIVERSITIES

Long-term cooperation and exchange with our alumni is an important part of ECCHR’s Education Program. We seek to actively maintain contact and collaboration with former participants in various ways. ECCHR also takes alumni into particular consideration in the context of finding new personnel for our projects and programs, and this approach is reflected in the biographies of many of our current staff.

In many cases, alumni go on to become key contact points within partner organizations, such as currently in: the Bonavero Institute of

Transitional justice in Sri Lanka
Bhavani Fonseka (Centre for Policy Alternatives, Sri Lanka)
Moderated by: Wenke Brückner, Marcella Klinker

Consequences of European migration policies in West Africa
Mamadou Konaté (Association Malienne des Expulsés, Mali)
Moderated by: Vera Wriedt

Lawyering for the people, pioneering the use of law: A conversation with Right Livelihood Award laureate Colin Gonsalves from India
Colin Gonsalves (Human Rights Law Network, India) Moderated by: Julia Duchrow (*Brot für die Welt*), Wolfgang Kaleck

Violence against human rights defenders in Colombia: Time for international justice
Soraya Gutiérrez Argüello and Luis Guillermo Pérez Casas (Colectivo de Abogados José Alvear Restrepo, Colombia)
Moderated by: Simon Rau

WORKSHOPS & TOURS (SELECTION)

Critical perspectives: African exodus from the Rome Statute: Discussing controversies and double standards from a post-colonial approach
Lydia Adude, Claire Tixeire

Critical perspectives: Necro-Economy of Civilized Killings: Ethics of violence in international humanitarian law
Claire Tixeire, Marie Badarne

Follow the data: Gathering evidence from online sources securely

Gabi Sobliye, Hadi Al

Human Rights at the University of Oxford, *Brot für die Welt* in Germany, the German Institute for Human Rights, CCAJAR in Colombia, and the ACLU in the US. Others have gone on to qualify as lawyers in various jurisdictions and become ECCHR partner lawyers, or to form their own organizations like the refugee law clinic abroad (rlc abroad), which advises refugees at EU “hotspots” on the East Aegean island of Chios on their rights and the asylum process. We also work with Bertha Global Exchange alumni on long-term projects in India, the Philippines, Pakistan, Colombia and Spain.

Alumni are also involved in our ongoing educational activities. They are invited as expert speakers and guests to workshops, lunch talks and other events, and they help the Education Program team to plan and run the annual alumni reunion.

ECCHR seeks to help shape academic discourse and, as such, we maintain close academic alliances and conduct regular exchanges with universities. The Legal Training Program regularly hosts students from the Humboldt Law Clinic for Fundamental and Human Rights and from the law faculties of the University of Milan and New York University (NYU). Students from the law clinic for international humanitarian law at the University of Leiden compile research papers on an ECCHR research topic. Cooperation with universities is not limited to projects with law faculties. On several occasions, ECCHR has also contributed to an annual summer school on the topic of intersectionality.



GLOBAL PARTNERSHIPS: THE BERTHA JUSTICE NETWORK

Since 2012, ECCHR has been part of the Bertha Justice Network, a global group of human rights organizations with a legal focus, all of which are supported by the Bertha Foundation. ECCHR has been working with some of the organizations in this network – the Center for Constitutional Rights (CCR) and Earth Rights International in the US, the Human Rights Law Network (HRLN) in India, Colectivo de Abogados José Alvear Restrepo (CCAJAR) in Colombia, the Palestinian Center for Human Rights (PCHR) in Palestine, and ProDESC in Mexico – for many years. Through the Bertha Justice Network, ECCHR has also formed new partnerships with organizations like the Institute for Justice and Democracy in Haiti, CenterLaw in the Philippines and the Foundation for Fundamental Rights (FFR) in Pakistan. All the groups in this network share a similar approach and focus, and where possible, pursue concrete transnational cooperation in individual cases.

Khatib (Tactical Technology Collective)

Lawyers in the late years of the Weimar Republic: A state under the rule of law destroyed (city tour in Berlin Mitte)
Ralf Oberndörfer

LEGAL TRAINEE MEETINGS (SELECTION)

The situation in Gaza and the work of the Palestinian Center for Human Rights
Suheir Kharma

The arms trade through the lens of the Yemeni conflict
Nektaria Papadaki

Transitional justice in Guatemala and Colombia: A comparative analysis
Gretel Mejía

Made in Europe = Made Fair? The story of a Romanian shoe factory
Corina Ajder

The Supreme Court of India: A human rights activist
Kalika Mehta

Elements of the draft legally binding UN treaty on transnational corporations and other business enterprises with respect to human rights
Beatriz Mayans Hermida, Caroline Strunk

Stop the boats: Denial of protection to asylum seekers arriving by sea to Australia and the EU
Sohini Mehta, Cloé Marsick

HUMAN RIGHTS CINEMA (SELECTION)

Shadow World (2016)
by Johan Grimmonprez

Tarajal – A European Phantasmagoria (2015)
by Xavier Artigas, Xapo Ortega, Marc Serra

In March 2017, ECCHR organized a Bertha Educational Exchange workshop for members of this network entitled “Hissène Habré – Sharing the lessons of a victim-driven campaign,” with participation from 26 colleagues from all over the world. Key figures from the Habré trial – victims’ representatives Clement Abaifouta and Souleymane Guengueng, as well as lawyer Jaqueline Moudeïna (Association Tchadienne pour la Promotion et la Defense des Droits de l’Homme) and Reed Brody (Human Rights Watch) – joined workshop participants to discuss lessons from the trial of Chad’s former dictator, a case notably shaped by initiatives of survivors.

ECCHR’s Education Program director is a co-founder of the Women Working Group within the Bertha Justice Network and is actively involved in its curriculum committee. ECCHR also works closely with the Bertha Justice Initiative, the program for all Bertha Justice Fellows. In 2017, ECCHR staff took part in the Bertha Justice Fellow Convening, the Directors’ Meeting in Cape Town, South Africa, and at the Women Working Group meeting in Manila, the Philippines.

2017 IN BRIEF:

Trainees and fellows came from 19 different countries in Africa, Asia, Europe, North and South America and Australia.

55 alumni and trainees took part in the annual alumni reunion in November 2017.

Thanks to support provided by the Bertha Foundation and the Kreuzberger Kinderstiftung, ECCHR was able to provide 16 scholarships to promising, emerging lawyers; an additional 9 participants received grants from their universities or other institutions.

12 young lawyers completed the Legal Training Program as part of their *Referendariat*, a component of the official qualification process for lawyers in Germany.

THE CONCRETE AND THE CONTEXT: ALUMNI REUNION 2017

The 6th annual alumni reunion on 2-3 November 2017 was shaped to a great degree by our partners and colleagues. People affected by human rights violations and human rights litigators joined 50 trainees and alumni to discuss their perspectives on individual ECCHR cases.

The reunion opened with the Syria team: Yazan Alkhatib,* a torture survivor and activist, spoke with ECCHR's Syrian partner lawyer Joumana Seif and the head of ECCHR's Syria project on the significance – especially for Syrians who fled to Europe – of the criminal complaints in Germany against suspects from the Syrian government and intelligence services.

Conference participants then heard Nasir Mansoor (National Trade Union Federation, Pakistan) and Zehra Khan (Homebased Women Workers Federation, Pakistan) speak about how survivors and

family members of those killed in the factory fire at Ali Enterprises in Karachi continue to organize their political and legal fight. The litigation against German company KiK, the factory's main client, shows how the various people and groups involved rely on one another. While our Pakistani partners emphasized the importance of ECCHR's professional advice for their work, ECCHR wouldn't be able to pursue legal action against the German company KiK without the involvement and contributions of those affected by the fire in Pakistan.

On the topic of refugees and migration, activists Trésor (Voix des Migrants) and Aboubakar Sidibé (co-director of the documentary "Les Sauteurs") described the challenges attached to building long-term initiatives in a social environment characterized by ever-shifting living situations and their criminalization. An ECCHR Bertha Justice Fellow linked this with ECCHR's casework and described the everyday difficulties of making and

maintaining contact with those affected by push-backs at the EU's external borders.

The conference also examined critical perspectives on strategic litigation. One working group explored the potential for using court decisions for far-reaching social aims. Another looked at the manifold and often invisible borders inherent in society, politics and the law, and how these might be overcome.

On the second day, a Bertha Justice alumnus presented his research topic "From the right to work to the freedom from work." In what was at times a heated debate, participants addressed opposing and radical new models for society.

All podium discussions and workshops were prepared and led by alumni and current trainees.

** Name has been changed for security reasons. Real name is known to ECCHR.*



VI. Appendix

LEGAL INTERVENTIONS

INTERNATIONAL CRIMES AND ACCOUNTABILITY

Belgium: Complaint to the UN Committee against Torture on Guantánamo

Complaint against Belgium on behalf of former Guantánamo detainee Mousa Zemmouri concerning Belgium's failure to adequately address his arrest and torture in Guantánamo, and failure to investigate his torture claims after his return to Belgium.

Submitted on 11 January 2017 to the UN Committee against Torture in Geneva (Switzerland)

Germany: Criminal complaint against members of the Syrian government and intelligence services for torture

Criminal complaint on behalf of seven Syrian torture survivors against six named and other high-level officials from the Syrian government and intelligence services concerning torture carried out by the Syrian military intelligence.

Submitted on 1 March 2017 to the German Federal Public Prosecutor at the Federal Court of Justice in Karlsruhe (Germany)

Italy: Freedom of information request on armed drones and US airbases on Italian soil

Three freedom of information requests concerning Italy's agreement with the United States on the use of the Sigonella Airbase in Sicily and the stationing of armed drones at the base.

Submitted on 27 March 2017 to the Ministry of Defense, the Office of the Prime Minister and the Central Commander of the Air Force in Rome (Italy)

Germany: Bombing of Kunduz, Afghanistan

Applicants' response to the submission of the German government.

Submitted on 13 April 2017 to the European Court of Human Rights in Strasbourg (France)

Italy: Appeal against denial of freedom of information requests on armed drones and US airbases on Italian soil

Appeal against the denial of three freedom of information requests concerning the Italian agreement with the United States on the use of the Sigonella Airbase in Sicily and the stationing of armed drones at the base.

Submitted on 24 May 2017 to the Ministry of Defense in Rome (Italy)

Germany: Criminal complaint regarding US torture

Criminal complaint against CIA Deputy Director Gina Haspel concerning torture in CIA secret prisons.

Submitted on 6 June 2017 to the German Federal Public Prosecutor at the Federal Court of Justice in Karlsruhe (Germany)

United Kingdom: ICC preliminary examination on war crimes in Iraq

Two follow-up submissions to the Office of the Prosecutor at the International Criminal Court on war crimes carried out by the British military from 2003 to 2008.

Submitted on 29 June and 1 September 2017 to the International Criminal Court's Office of the Prosecutor in The Hague (The Netherlands)

Italy: Complaint on access to information on armed drones and US airbases on Italian soil

Complaint against Defense Ministry on denial of access to information on the Italian agreement with the United States on the use of the Sigonella Airbase and the stationing of armed drones at the base.

Submitted on 10 July 2017 to the Administrative Court in Rome (Italy)

Colombia: Amicus curiae brief submitted to Colombian Constitutional Court

Amicus curiae brief on command responsibility under international criminal law and under the Rome Statute of the International Criminal Court in proceedings on the enforcement of the peace agreement and the Special Jurisdiction for Peace in Colombia.

Submitted on 27 July 2017 at the Colombian Constitutional Court in Bogotá (Colombia)

Germany: Germany's role in US drone strikes

Follow-up submission in appeal proceedings on the United States' use of the Ramstein Airbase in Germany for armed drone operations.

Submitted on 5 September 2017 to the Higher Regional Court for the state of North Rhine-Westphalia in Münster (Germany)

Belgium: Guantánamo torture allegations

Response on behalf of the applicant, a former Guantánamo detainee, to Belgium's submissions on admissibility of the complaint.

Submitted on 11 September 2017 to the UN Committee against Torture in Geneva (Switzerland)

Germany: Criminal complaint by Caesar Files Group against senior officials in the Syrian intelligence services and military police

Criminal complaint filed together with the group supporting Syrian military police defector “Caesar” against high-level officials in Syria’s secret services and military police concerning crimes against humanity and war crimes. Submission included handing over of the “Caesar photos” as well as metadata.

Submitted on 21 September 2017 to the German Federal Public Prosecutor at the Federal Court of Justice in Karlsruhe (Germany)

Germany: Two criminal complaints against torture in military prison Saydnaya and air force intelligence branches in Syria

Criminal complaint against 17 of those most responsible for torture and other crimes in the branches of the Syrian air force intelligence and the military prison Saydnaya on behalf of 13 affected persons from Syria.

Submitted on 6 November 2017 to the Federal Public Prosecutor at the German Federal Supreme Court in Karlsruhe (Germany)

Colombia: Communication on violence against human rights defenders

Communication to the Office of the Prosecutor at the International Criminal Court on repression and violence against human rights defenders in Colombia, with ten key cases.

Submitted on 30 November 2017 to the Office of the Prosecutor at the International Criminal Court in The Hague (The Netherlands)

MIGRATION

Greece: Access to asylum procedures at EU “hotspots” in the Aegean Islands

Complaint on the activities of the European Asylum Support Office (EASO) in interviews at reception centers for asylum seekers on the Aegean Islands.

Submitted on 28 April 2017 to the European Ombudsperson in Strasbourg (France)

and applications to access EASO documents on the conduct of asylum admissibility interviews on the Aegean Islands as part of the EU-Turkey Statement.

Submitted on 13 September and 24 October 2017 to the European Asylum Support Office (Malta)

Macedonia: Push-backs to Greece

Submissions on admissibility and merits of eight individual complaints concerning unlawful push-backs at the Greek-Macedonian border.

Submitted on 8 November 2017 to the European Court of Human Rights in Strasbourg (France)

BUSINESS AND HUMAN RIGHTS

United Nations: Impact of German weapon exports on women in receiving states

Shadow report on Germany’s extraterritorial state obligations regarding the role played by German weapons exports in sexualized conflicts in third countries.

Submitted in January 2017 to the Committee on the Elimination of Discrimination against Women in Geneva (Switzerland)

Peru: Water pollution around Glencore mine

Written submission (*opinión escrita*) on the question of international environmental standards and their impact on state obligations in relation to mining activities.

Submitted on 12 January 2017 to the Inter-American Court of Human Rights in San José (Costa Rica)

Mexico: Weapons exports from Germany

Response to arguments of the prosecution and defense in connection with an application on behalf of parents of a man badly injured in a police action in Iguala (Mexico), seeking the right to access files in criminal proceedings against Heckler & Koch.

Submitted on 17 February 2017 to the Regional Court in Stuttgart (Germany)

Romania: Accounting for human rights and environmental law in investor-state disputes

Application to access case documents, witness reports and expert evidence in the case of Gabriel Resources v. Romania.

Submitted on 10 March 2017 to the Arbitral Tribunal of the International Centre for the Settlement of Investment Disputes in Washington, DC (USA)

Germany: Factory fire in Pakistan

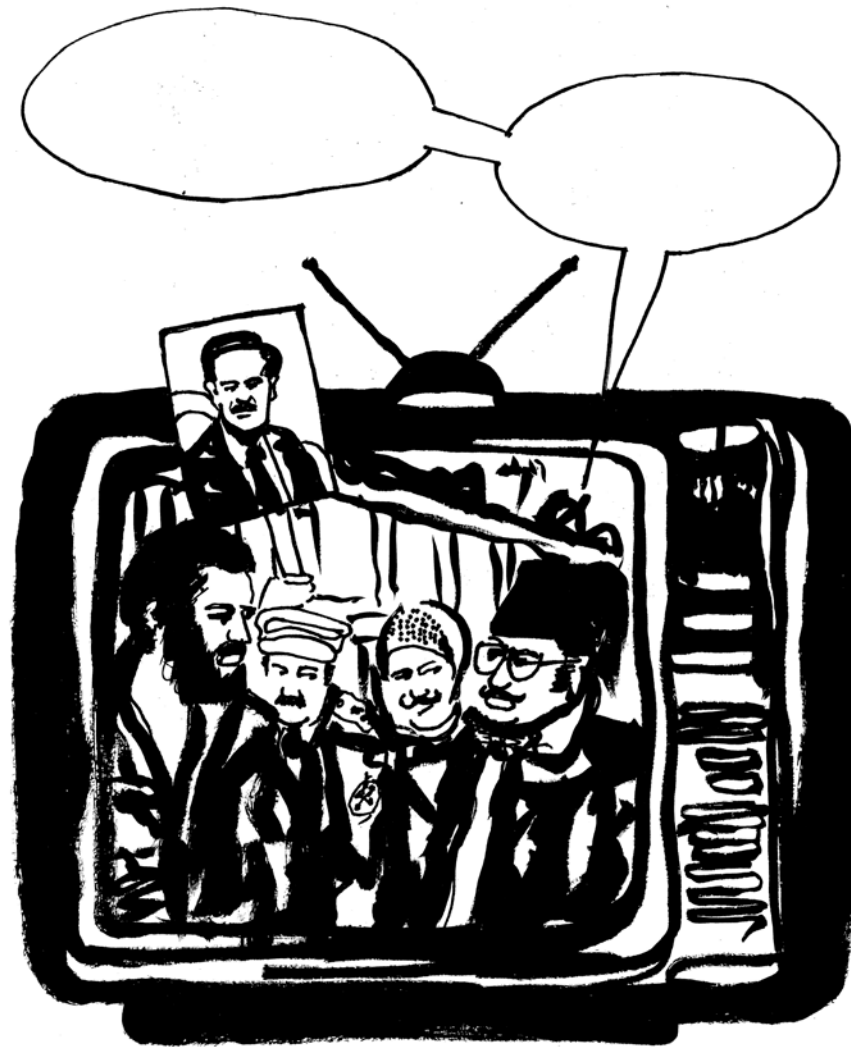
Written submissions in the case of *Jabir v. KiK Textilien und Non-Food GmbH* along with legal brief on statute of limitations and the right under Pakistani law to damages for the bereaved.

Submitted on 25 August 2017 to the Regional Court in Dortmund (Germany)

India: Pesticides sales

Open letter supported by German and international civil society on the lack of recommendations addressing the health risks arising from business practices of Bayer AG and Syngenta AG in Punjab, India.

Filed on 21 November 2017 to the World Health Organization (WHO) and the UN Food and Agriculture Organization in Rome (Italy)



PUBLICATIONS

ECCHR PUBLICATIONS

ECCHR / Brot für die Welt / Misereor (eds.),
Dr. Miriam Saage-Maaß
**Unternehmen zur Verantwortung ziehen:
Erfahrungen aus transnationalen Menschenrechtsklagen,**
Berlin, March 2017

ECCHR / FIBGAR / fidh / Redress / TRIAL
(eds.), Andreas Schüller
**Make Way for Justice: Universal Jurisdiction Annual
Review 2017,** Berlin, March 2017

ECCHR / Brot für die Welt (ed.),
Reed Brody
**Documentation – L’Affaire Hissène Habré: Le Combat
de Victims pour Traduire Leur Dictateur en Justice,**
Berlin, April 2017

ECCHR (ed.), Andreas Schüller /
Fiona Nelson
**Litigating Drone Strikes: Challenging the Global
Network of Remote Killing,** Berlin, May 2017

ECCHR / Heinrich Böll Foundation (eds.), Dr.
Carolijn Terwindt / Dr. Christian Schliemann
**Supporting Civil Society under Pressure: Lessons from
Natural Resource Exploitation,** Berlin, June 2017

ECCHR (eds.), Andreas Schüller
**Terrorismusbekämpfung in Syrien und unbegrenzter
Einsatz von Kampfdrohnen? Deutschland muss der
Aufweichung des Völkerrechts ein Ende setzen,**
Berlin, July/August 2017

ECCHR / Heinrich Böll Foundation (ed.), Dr.
Carolijn Terwindt / Dr. Christian Schliemann
**Tricky Business: Space for Civil Society in Natural
Resource Struggles,** Berlin, December 2017

ARTICLES

Wolfgang Kaleck
**1968: Von den furchtbaren Juristen zu den streitbaren
Juristen und Juristinnen,** in: Susanne Schüssler (ed.),
Wetterbericht 68 und die Krise der Demokratie,
Berlin 2017

Wolfgang Kaleck
**Menschheitsverbrechen in der Demokratischen
Republik Kongo. Perspektiven einer juristischen
Aufarbeitung,** in: Milo Rau (ed.), **Das Kongo Tribunal,**
Berlin 2017

Wolfgang Kaleck
Syrien: Wider die Straflosigkeit, in: **Blätter für deutsche
und internationale Politik,** Berlin 2017

Wolfgang Kaleck
**Preface to Criminalization of Flight and Escape Aid
by Sara Bellezza and Tiziana Calandrino, border-
line-europe** (ed.), Berlin 2017

Wolfgang Kaleck
**Whoever wants all people to be equal, must grant
them citizens’ and human rights, as well as give
them access to all social rights,** in: Milo Rau (ed.),
IIPM General Assembly, Leipzig 2017

Wolfgang Kaleck / Morten Bergsmo / Sam
Muller / William H. Wiley
A Prosecutor Falls, Time for the Court to Rise,
in: **FICHL Policy Brief Series 86,** Florence 2017

Corina Ajder
Europe’s Working Poor, in: **Deutsche Gesellschaft
für Internationale Zusammenarbeit** (ed.), **Digital
Development Debates 20,** Bonn 2017

Claudia Müller-Hoff
**Unternehmen als Täter – Internationale Perspektiven
und Herausforderungen für das deutsche Straf-
und Prozessrecht,** in: Markus Krajewski / Franziska
Oehm / Dr. Miriam Saage-Maaß (eds.), **Zivil- und
strafrechtliche Haftung von Unternehmen für Men-
schenrechtsverletzungen, Interdisziplinäre Studien
zu Menschenrechten 1,** Heidelberg 2017

Linde Bryk / Claudia Müller-Hoff
**Taking the G20 at its Word: Suggestions for
Immediate & Effective Measures to Eliminate
Modern Slavery & Human Trafficking,** in: **Business
and Human Rights Resource Centre,** London 2017

Darius Reinhardt / Vera Wriedt
**Analysis: Opaque and Unaccountable: Frontex
Operation Hera,** in: **statewatch,** London 2017

Dr. Miriam Saage-Maaß
Wirtschaft und Menschenrechte,
in: **Newskitchen,** Auckland 2017

Dr. Miriam Saage-Maaß / Dr. Remo Klinger
**Unternehmen vor Zivilgerichten wegen der Verlet-
zung von Menschenrechten – Ein Bericht aus der
deutschen und internationalen Praxis in:
Markus Krajewski / Franziska Oehm / Dr. Miriam
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tung von Unternehmen für Menschenrechtsverlet-
zungen, Interdisziplinäre Studien zu Menschenrech-
ten 1,** Heidelberg 2017

Dr. Christian Schliemann
**Das völkerrechtliche Institut der Autonomie
innerstaatlicher Gruppen,** in: **Jus Internationale
et Europaeum 131,** 2017

Dr. Carolijn Terwindt
**Blue Jeans Blues. Trotz Entschädigung: Prozess
gegen KIK und der Kampf um bessere Arbeitsbe-
dingungen in der Textilindustrie gehen weiter,** in:
IPG Journal. Internationale Politik und Gesellschaft,
Berlin 2017

Dr. Carolijn Terwindt
**Haftung entlang der Lieferkette: Die Zivilklage der
Kläger aus Karachi gegen den Textilhändler KiK
aus historischer Perspektive,** in: **Elfter Runder Tisch
Bayern: Sozial- und Umweltstandards bei Unterneh-
men, Eine Welt Netzwerk Bayern,** Augsburg 2017

Dr. Carolijn Terwindt /
Dr. Christian Schliemann
**Commentary: Civil Society is Increasingly Using
Strategic Litigation to Address Corporate Human
Rights Abuses,** in: **CIVICUS State of Civil Society
Report 2017,** Johannesburg 2017

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Dr. Christian Schliemann
**Transnational Strategic Litigation: An Emerging
Part of Civil Society’s Repertoire for Corporate
Accountability,** in: **CIVICUS State of Civil Society
Report 2017,** Johannesburg 2017

Dr. Carolijn Terwindt
**Supporting Prisoners or Supporting Terrorists:
The 2008 Trial of Gestoras Pro Amnistia in Spain,**
in: **Beatrice de Graaf & Alex P. Schmid (eds.): Terro-
rists on Trial,** Leiden University Press,
Leiden, 2016

Franziska Wohltmann
**Lieferbeziehungen und unternehmerische Sorg-
faltspflichten im englischen Deliktsrecht,** in:
Markus Krajewski / Franziska Oehm / Dr. Miriam
Saage-Maaß (eds.), **Zivil- und strafrechtliche Haf-
tung von Unternehmen für Menschenrechtsvelet-
zungen, Interdisziplinäre Studien zu Menschenrech-
ten 1,** Heidelberg 2017

Vera Wriedt / Kiri Santer
**(De-)Constructing Borders. Contestations in and
around the Balkan Corridor in 2015/16 in: move-
ments. Journal für kritische Migrations-
und Grenzregimeforschung 3/1,** Göttingen 2017

BLOG POSTS

Linde Bryk / Claudia Müller-Hoff
**Of Slaves and Slave Masters: Strategic Litigation to
Address Forced Labour,** in: **Global Supply Chains,**
in: **Oxford Human Rights Blog,** 6 September 2017

Hanaa Hakiki
**Summary Land Border Expulsions in Front of
the ECtHR: ND and NT v Spain,** in: **The European
Database of Asylum,** 25 October 2017

Alejandra Muñoz Valdez
Malaya Lolas’ Road to Justice in: **Bertha Be Just
Blog,** 10 January 2017

Claudia Müller-Hoff
**Human Rights, the Environment and Mining:
Holding Transnational Corporations Accountable,**
in: **Oxford Human Rights Hub,** Oxford, 19 May 2017

Andreas Schüller
**Next Challenge for Universal Jurisdiction:
Overcoming Double Standards,** in: **TRIAL
International Blog,** Geneva, 19 July 2017

Dr. Carolijn Terwindt / Marie Miermeister
**Die Haftung der Zertifizierer – Überlegungen zur
Übertragbarkeit des EuGH-Urteils zu mangelhaften
Brustimplantaten,** in: **Grund- und Menschenrechts-
blog der Humboldt Law Clinic,** Berlin, 3 August 2017

EVENTS

The US Experience: Exceeding Legal Boundaries in Countering Terrorism

Discussion with: Mourad Benchellali and Nizar Sassi (Guantánamo survivors from France), Clémence Bectarte and Karine Bonneau (fidh France), Apolline Cagnat (lawyer), Mark Fallon (formerly of US Naval Criminal Investigative Service), Katherine Gallagher and Aliya Hussain (Center for Constitutional Rights), Janis Karpinski (former US Commander in Iraq), Alberto Mora (former head of US Navy's legal department), Yves Prigent (Amnesty International France), Lawrence Wilkerson (office manager of former US Secretary of State Colin Powell) and Andreas Schüller (ECCHR)

26 January 2017, Paris

Human Rights and the “War on Terror”: Holding the United States Accountable in Foreign Jurisdictions

Conference by the Center for Human Rights and Global Justice (CHRGJ) at the New York University School of Law. Discussion with: Shahzad Akbar (Foundation for Fundamental Rights) and Andreas Schüller (ECCHR)

24 February 2017, New York

How to Do Justice: Accountability for Mass Atrocities in Syria

Discussion with: Anwar al-Bunni (Syrian Center for Legal Research and Studies), Mazen Darwish (Syrian Center for Media and Freedom of Expression), Andreas Krüger (German Foreign Office), Lotte Leicht (Human Rights Watch), Cem Özdemir (BÜNDNIS 90/DIE GRÜNEN), James Rodehaver (UN Commission for Syria), Bente Scheller (Heinrich Böll Foundation), Chris Woods (Airwars), Patrick Kroker and Wolfgang Kaleck (both ECCHR)

2 March 2017, Berlin

A Global Quest for Accountability: Lessons from the Habré Legal Saga

Discussion with: Clément Abaifouta und Souleymane Guengueng (Association des Victimes du Régime de Hissène Habré), Shahzad Akbar (Foundation for Fundamental Rights), Reed Brody (Human Rights Watch), Mario Joseph (Bureau des Avocats Internationaux), Jacqueline Moudeïna (Association Tchadienne pour la Promotion et Défense des Droits de l'Homme) and Wolfgang Kaleck (ECCHR)

13 March 2017, Berlin

Whistleblowers, Lawyers and Journalists: How to Unmask the Global Network of Remote Killing

Presentation and discussion with: Pratap Chatterjee (CorpWatch), Srdjan Cvijic (Open Society European Policy Institute), John Kiriakou (University of Kent), Lisa Ling (drone whistleblower), Kathleen McClellan (Expose Facts) and Andreas Schüller (ECCHR)

11 May 2017, Berlin

Mauern: Positionen gegen die europäische Abschottung

Discussion with: Jana Ciernioch (SOS MEDITERRANEE), Axel Grafmanns (Sea-Watch), Alexander Hof (Jugend Rettet e.V.), Ramona Lenz (medico international) and Carsten Gericke (ECCHR)

11 May 2017, Berlin

Für ein Ende der Strafflosigkeit: Syrische Kriegsverbrechen vor deutschen Gerichten?

Discussion with: Anwar al-Bunni (Syrian Center for Legal Research and Studies), Mouaffaq Nyrabia (Syrian opposition), Ariela Groß (Friedrich Ebert Foundation), Friederike Stolleis (Friedrich Ebert Foundation) and Dr. Patrick Kroker (ECCHR)

16 May 2017, Berlin

Unternehmen vor Gericht. Globale Kämpfe für die Menschenrechte

Discussion with: Dr. Caroline Hornstein-Tomic (Bundeszentrale für politische Bildung), Prof. Dr. Birgit Mahnkopf (Berlin School for Economics and Law, Berlin), Anke Müller-Jacobsen (lawyer), Christina Varvia (Forensic Architecture), Wolfgang Kaleck and Dr. Miriam Saage-Maaß (both ECCHR)

10 October 2017, Berlin

Towards Accountability for International Crimes in Syria: Concerted Efforts by Civil Society, National Prosecutors and International Investigators

Presentation and discussion with: Anwar al-Bunni (Syrian Center for Legal Research and Studies), Markus Beeko (Amnesty International Germany), Mazen Darwish (Syrian Center for Media and Freedom of Expression), Chris Engels (Commission for International Justice and Accountability), Marie Forestier (independent journalist), Tarek Hakan (Syrian Center for Media and Freedom of Expression), Matevž Pezdirc (EU Genocide Network), Donatella Rovera (Amnesty International), Barbara Unmüßig (Heinrich Böll Foundation), Wolfgang Kaleck and Dr. Patrick Kroker (both ECCHR)

8 November 2017, Berlin

Rejections and Returns: The EU-Turkey Statement and Its Consequences for Refugees in Greece, Turkey and Germany

Discussion with: Dr. Jill Alpes (Universiteit Utrecht), Berenice Böhlo (lawyer), Robert Nestler (Max Planck Institute for Evolutionary Anthropology), Orçun Ulusoy (Vrije Universiteit Amsterdam) and Carsten Gericke (ECCHR)

20 November 2017, Berlin

Lunch Talk with Colin Gonsalves, Winner of the Right Livelihood Award 2017

Panel discussion with: Colin Gonsalves (Human Rights Law Network), Dr. Julia Duchrow (Brot für die Welt) and Wolfgang Kaleck (ECCHR)

5 December 2017, Berlin

PRESS (SELECTION)

The Express Tribune (Pakistan)

Baldia factory tragedy: “We don’t want compensation in instalments”, 2 February 2017

Le Monde (France)

La victoire au rabais des défenseurs des droits de l’homme, 15 February 2017

Neue Zürcher Zeitung (Switzerland)

Syrien-Krieg: Folter-Überlebende erstatten Anzeige, 1 March 2017

Süddeutsche Zeitung (Germany)

Das Muster der Tyrannei, 2 March 2017

Financial Times (UK)

LarfargeHolcim admits to “unacceptable” activity in Syria, 2 March 2017

NBC news (USA)

Tortured Syrians Seek Justice in German Courts, 2 March 2017

Washington Post (USA)

Here’s how German courts are planning to prosecute Syrian war crimes, 4 April 2017

New York Times (USA)

Middle East: As Atrocities Mount in Syria, Justice Seems Out of Reach, 15 April 2017

taz. die tageszeitung (Germany)

Kontrollen für Textilindustrie: EU-Kommission soll Gesetz vorlegen, 28 April 2017

International Business Times (USA)

CIA Deputy Director Gina Haspel’s Prosecution Requested In Germany For Torturing Prisoners In Thailand, 7 June 2017

Die Zeit (Germany)

Trump’s Darling, 8 June 2017

Neue Züricher Zeitung (Switzerland)

Voruntersuchung gegen Lafarge-Holcim, 13 June 2017

Die Zeit (Germany)

Der lange Atem der Gerechtigkeit, 5 July 2017

The Guardian (UK)

How Bahrain uses sport to whitewash a legacy of torture and human rights abuses, 17 July 2017

El Día (Chile)

Colonia Dignidad: Justicia alemana condena a exmédico por delitos sexuales, 14 August 2017

Al Jazeera (Qatar)

Syria: “This case is about saving humanity”, 20 August 2017

El País (Spain)

El fotógrafo desertor de Siria presenta el caso contra El Asad ante la justicia alemana, 22 September 2017

Le Figaro (France)

Syrie: des photos de torture remises à la justice allemande, 22 September 2017

Der Spiegel (Germany)

Fotos aus dem Folterkeller – Justiz: Der Militärpolizeifotograf „Caesar“ hat dem Generalbundesanwalt Zehntausende Bilder von Opfern des Assad-Regimes übergeben, 23 September 2017

Zeit Online (Germany)

Spaniens Abschiebungen verstoßen gegen Menschenrechtskonvention, 3 October 2017

taz. die tageszeitung (Germany)

Spanien schiebt illegal ab, 4 October 2017

Reinformation (France)

Selon la CEDH, les migrants clandestins au Maroc doivent bénéficier du droit de l’UE applicable aux réfugiés, 6 October 2017

Spiegel Online (Germany)

Ermittlungen gegen Assad-Regime: Syrische Ex-Gefangene stellen in Karlsruhe Anzeige wegen Folter, 8 November 2017

Italian Esquire (Italy)

Le guerre segrete dei droni, 9 November 2017

Euractiv (Germany)

EU-Türkei Deal: „Die Bearbeitung von Asylanträgen wird verschleppt“, 14 November 2017

JusticeInfo (Switzerland)

Syrie: l’affaire du cimentier Lafarge, 1 December 2017

Deutsche Welle (Germany)

VW hat Militärdiktatur in Brasilien unterstützt, 15 December 2017

euronews (International)

Syrian torture survivors speak out, 21 December 2017

New York Times (USA)

How did bombs made in Italy kill a family in Yemen?, 29 December 2017

COUNCIL, ADVISORY BOARD AND STAFF

ECCHR COUNCIL

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EU Director, Human Rights Watch, Brussels

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Professor of Criminal Law and International Criminal Law at the Universität Hamburg, Hamburg

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International Crimes and Accountability (Consultant)

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International Crimes and Accountability (Bertha Justice Fellow, until October 2017)

Claudia Müller-Hoff

Education Program / Business and Human Rights

Fiona Nelson

International Crimes and Accountability / Media and Communications

Anna Ramskogler-Witt
Partnerships and Fundraising

Simon Rau
Business and Human Rights (Bertha Justice Fellow,
as of September 2017)

Darius Reinhardt
Assistant to the General Secretary
(until August 2017)

Dr. Christian Schliemann-Radbruch
Business and Human Rights

Andreas Schüller
International Crimes and Accountability

Dr. Carolijn Terwindt
Business and Human Rights

Claire Tixeire
Education Program

Yvonne Veith
Business and Human Rights (until March 2017)

Vera Wriedt
Migration (Bertha Justice Fellow, as of September 2017)

EDUCATION PROGRAM
PARTICIPANTS

In 2017, Education Program participants came from 18 countries: Australia, Austria, Costa Rica, Egypt, France, Germany, Greece, Guatemala, India, Italy, Mali, Mexico, the Netherlands, Pakistan, Palestine, Romania/Moldova, Spain, USA

Bertha Justice Fellows
Linde Bryk, Hanaa Hakiki, Alejandra Munoz Valdez,
Simon Rau, Vera Wriedt

Bertha Global Exchange
Suheir Kharm (Palestinian Center for Human Rights, Palestine)

Legal Training Programm
Basel Alsourani, Corina Ajder, Jakob Aschemann, Michael Bader, Ana Barrera Lertxundi, Amira Bayoumi, Jürgen Bering, Marlitt Brandes, Pauline Brosch, Pia Bruckschen, Wenke Brückner, Cinny Buys, Monica Espinoza Rojas, Jenny Fleischer, Shaelyn Gambino, Maria Khan, Marcella Klinker, Cloé Marsick, Diego Mauri, Beatriz Mayans Hermida, Kalika Mehta, Sohini Mehta, Gretel Mejía, Marie Miermeister, Nektaria Papadaki, Beatrice Pesce,

Sarah-Lena Schadendorf, Ann-Kathrin Schulte, Katharina Schwenzer, Leonie Steinl, Caroline Strunk, Agnese Valenti

Advanced Training for Lawyers
Mohamed Beseiso, Mohamed Elalami, Mamadou Konaté

Media and Communication
Julia Berg, Nina Crobath, Arite Keller, Arabella Wintermayr, Nina Zegarra

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Please note: For reasons of personal safety, not all participants are listed.

COOPERATION WITH
UNIVERSITIES

In 2017, we continued to work with:

Boston University School of Law (Boston, USA)
DePaul University School of Law (Chicago, USA)
Emory University School of Law (Atlanta, USA)
Essex Business and Human Rights Project, Essex University (Colchester, UK),
European Inter-University Centre for Human Rights and Democratisation (Venice, Italy)
European University Institute (Florence, Italy)
Forensic Architecture Project,
Goldsmiths, University of London (London, UK)
Freie Universität Berlin, Lehrstuhl für Strafrecht, Strafverfahrensrecht, Wirtschafts- und Umwelt strafrecht (Berlin, Germany)
Georg-August-Universität, Institut für Diversitätsforschung (Göttingen, Germany)
Hertie School of Governance (Berlin, Germany)
Humboldt Universität zu Berlin, Humboldt Law Clinic Grund- und Menschenrechte (Berlin, Germany), Leiden University, Grotius Centre for International Legal Studies (Leiden, The Netherlands)
Ludwig Boltzmann Institut für Menschenrechte (Vienna, Austria), NYU School of Law, Center for Human Rights and Global Justice (New York, USA)
Università degli Studi di Milano, Fachbereich öffentliches Recht (Milan, Italy)
Universität Hamburg, Fakultät für Rechtswissenschaft, Lehrstuhl für Strafrecht, Strafprozessrecht, Internationales Strafrecht und Juristische Zeitgeschichte (Hamburg, Germany), Universität Regensburg, Lehrstuhl für Öffentliches Recht und Politik, insbesondere europäisches und internationales Recht sowie Rechtsvergleichung (Regensburg, Germany), Université libre de Bruxelles (Brussels, Belgium) Zentrum für Europäische Rechtspolitik (Bremen, Germany)

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Karim Popal
Lawyer / Administrative law, immigration law, contract law, and international civil and criminal law, Anwaltskanzlei Popal, Bremen, Germany

Petra Schlagenhauf
Lawyer, Berlin, Germany

Faisal Siddiqi
Lawyer / Commercial law, Karachi, Pakistan

Rodolfo Yanzón
Lawyer / Criminal law, Buenos Aires, Argentina

FINANCES

INCOME 2017

Institutional sponsorship	702,211 €
Project sponsorship	1,078,648 €
Donations	54,366 €
Other	25,838 €
Income sum	1,861,063 €

Assets as of 01/01/2017 (incl. funds received prior to 2017 earmarked for 2017)	883,540 €
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TOTAL	2,744,604 €
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OUTGOINGS 2017

Personnel costs (only staff)	850,920 €
External services	118,155 €
Rent, offices, communication, travel	239,840 €
Programs, projects, events	250,569 €
Personnel costs – Education Program	286,186 €
Investment costs	16,184 €
Other outgoings	19,450 €

TOTAL	1,781,304 €
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Assets as of 31/12/2017	963,300 €
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Of this, funds earmarked for 2018	- 479,329 €
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Reserve	483,971 €
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ECCHR IS A MEMBER OF:

Bertha Justice Initiative Network **London, UK**, Koalition gegen Straflosigkeit. Wahrheit und Gerechtigkeit für die deutschen Verschwundenen in Argentinien **Nuremberg/Berlin, Germany**, CorA – Netzwerk für Unternehmensverantwortung **Berlin, Germany**, European Coalition for Corporate Justice (ECCJ) **Brussels, Belgium**, Forum Menschenrechte **Berlin, Germany**, OECD Watch **Amsterdam, The Netherlands**, Allianz Rechtssicherheit für politische Willensbildung **Lübeck, Germany**. ECCHR also has consultative status at the United Nations Economic and Social Council (ECOSOC).

DONORS

We are grateful to all those who have provided financial support to ECCHR's legal human rights work.

Special thanks go to the very generous support of:



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FREEDOM WRITER – HAMID SULAIMAN

Hamid Sulaiman fled Syria in the midst of the horrors of the civil war in 2011. As an activist, he was involved in the uprising and suffered the consequences – he was persecuted, imprisoned and tortured. The first time we met at ECCHR, we spoke for a while about ECCHR’s Syria work: criminal complaints against members of the Assad government’s intelligence services aimed at bringing about prosecutions by German federal prosecutors. For several months, ECCHR has been speaking to dozens of torture survivors who have found refuge in Germany and Europe. Hamid is one of them. He was tortured at military intelligence Branch 215, one of the facilities we name in our March 2017 criminal complaint. With his own unique humor, he describes his time there: “I drew torture scenes (as part of my activism) and then they put me in prison to prove that there’s no torture.”

In France, Hamid quickly came to be regarded as a leading graphic novel artist. In France and Belgium, this art form is very highly regarded, much more so than in Germany. Hamid’s graphic novel “Freedom Hospital” deals with a fictitious Syrian hospital that treats wounded people from all sides of the conflict. The book was a huge success and was translated into many languages (published in English by Jonathan Cape in 2017).

The paintings and drawings that we were able to display at ECCHR are a preview of his work for a new book about the February 1982 massacre in the Syrian city of Hama. Hamid’s approach to this topic demonstrates the strengths of Hamid himself, as well as of his chosen art form. There are no pictures of the actual events of that time, when the Syrian Army massacred an estimated 20,000 to 40,000 people. Hamid chooses not to focus on explicit or shocking scenes in his book – he is not interested in finding the most dramatic or even faithful way to commemorate the massacre. Instead, in the scenes where violence is depicted, he channels the kind of classic war and horror imagery found in the paintings of Otto Dix and the films of Stanley Kubrick. Large parts of the book do not explicitly address the massacre; the novel focuses more on people’s responses to it. Even before February 1982, his protagonists have a sense of what is to come, but cannot gauge exactly the extent of it. When the massacre occurs, they, like many in Syrian society, are left in no doubt about the monstrosity of the crimes committed by the regime of Hafez al-Assad.

In Syria, people don’t speak about the Hama massacre – unlike, notes Hamid, the events of 2011 and after. This taboo, this tiptoeing around the unspoken, is what the artist seeks to capture in his drawings.

ECCHR was delighted to be able to exhibit some of these works at its offices in winter 2017.



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