

Germany should take a lead on the prosecution of grave crimes in Syria

Ever since I began writing this blog, I planned to feature contributions from colleagues who inspire and motivate me. Today's blog was written by Ibrahim Alkasem, a Syrian lawyer who fled his home country and is currently working from Berlin. Here he is working with a number of organizations including the European Center for Constitutional and Human Rights.

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When the popular revolution began in Syria in 2011 against Bashar Al-Assad's regime, the majority of the Syrian people sided with the movement. I was part of it from the beginning, joining the peaceful protests and demonstrations, as well as providing humanitarian relief including food and medical aid. However, the most important role for me was through my work as a lawyer when I signed up as a volunteer with the Syrian Commission for Defending Prisoners of Opinion and Conscience. I represented prisoners pro bono before Syrian courts, often before the special "terrorism" court which was created in 2012 as a tool to oppress Assad's opponents. I worked on documenting various grave violations of human rights, especially those based on gender and particularly sexualized violence against women.

Because of these activities, I was detained by the Syrian Intelligence Agency for several weeks. During this time, I was subjected to many attempts to beat me, as well as death threats. Then an application was filed with the terrorist court to prosecute me because of my volunteer work with the Commission.

I fled from Syria to Lebanon where I have spent almost two years. From there I continued my work of documenting grave violations of human rights in Syria. I also provided training for many lawyers in the field of international humanitarian law, human rights law, and international criminal law, in addition to providing training about possible mechanisms for prosecuting the perpetrators of grave violations of human rights in Syria. Two months ago I came to the European Center for Constitutional and Human Rights (ECCHR) in Berlin as a guest researcher to learn more about human rights litigation.

My Syrian colleagues and I are examining all possible judicial mechanisms that could help to prosecute the perpetrators of the atrocities in Syria, no matter which side they are on. We are also looking into the prospect of national courts in Europe becoming active under the principle of universal jurisdiction which applies in cases of torture and crimes against international law. This means that these crimes can be tried before European courts, even if they are committed in Syria by Syrians. This could be one way of ensuring accountability, especially since the presence of Syrian refugees in Germany, France and other European states means easier access for prosecutors and courts to collect testimony from witnesses and victims.

Our approach depends on universal jurisdiction for many reasons, primarily because other mechanisms of holding the perpetrators of grave crimes accountable are currently unavailable. National courts in Syria are unable to prosecute such crimes. First of all, the present regime in Syria does not have any political will to do so. Over the last decades it has set up a totalitarian dictatorship and put legal protections in place so that it can enjoy impunity, based on the constitution and other laws which prevent any kind of prosecution of national security forces. State forces are thus effectively authorized to commit crimes on the regime's behalf.

Furthermore, the rule that "no crime shall be considered, and no punishment passed without a law," means that nobody can prosecute such perpetrators under Syrian criminal laws, simply because these do not include any provisions on war crimes, crimes against humanity, or crimes of genocide.

Additionally, Syrian judicial bodies lack experience in these kinds of proceedings. The Syrian judiciary has never undertaken prosecutions for such crimes, and lawyers and judges have no experience in these matters.

Another problem is that Syria never endorsed the Rome Statute of the International Criminal Court. The only way for the ICC to start investigating crimes committed in Syria would be by a referral of this situation from the UN Security Council. In May 2014, the Security Council proved unable to pass such a resolution after it was vetoed by China and Russia. Therefore, this option is closed to us.

What about ad-hoc international courts, such as the International Criminal Tribunal for the Former Yugoslavia for example, or hybrid international criminal tribunals, like the Special Tribunal for Lebanon that was formed to examine the assassination of the former Prime Minister Rafiq Al-Hariri? I see no political will to set up an independent tribunal, especially in light of the objections of Russia and China.

In view of the foregoing: there is a need for the application of universal jurisdiction before national courts in Europe, courts that have some experience in such cases. European prosecutors and judges should concentrate on crimes of torture and inhumane treatment in Syrian prisons, the perpetrators of which can be prosecuted by these courts under the Convention against Torture, signed by all European countries and even by Syria in 2004.

A workshop on some of these issues was held earlier this month at the European Center for Constitutional and Human Rights in Berlin in conjunction with [EuroMed Rights](#). Participants included representatives of many Syrian organizations working on the documentation of human rights violations and the gathering of testimony from detainees. Several European and international organizations and institutions were also represented. The focus was on the potential of action by European courts under the principle of universal jurisdiction. We spoke of the advantages and possible methods, but also the risks and challenges this mechanism might present.

There are hundreds of victims, witnesses of the most terrible crimes, among the Syrian refugees seeking asylum in Europe. Germany has received the lion's share of those refugees, who suffered from all sorts of violations perpetrated by all parties to the armed conflict in Syria. There is also likely to be some perpetrators among the refugees.

The biggest question will be how willing are European states to pursue the prosecution of Syrian offenders. To date almost all proceedings have been directed against suspects seen as Islamic extremists and who can thus be prosecuted under anti-terrorist laws. In general no efforts are made to pursue those most responsible for human rights violations in Syria. But the current climate of impunity in Syria will not change unless powerful perpetrators in Syria face legal consequences for their actions.

The German Federal Prosecutor's special unit for international crimes is in a good position to take the lead on the prosecution of those most responsible for grave crimes in Syria. Germany has a specialized code of international crimes and is one of the few countries in Europe with genuine universal jurisdiction – meaning that prosecutions can be carried out even if there is no link between Germany and the human rights violations committed in Syria. My Syrian colleagues and I are hopeful that Germany will play its role in the efforts to address inhumane violence in Syria.