

## **“Caesar” photos document systematic torture**

### Q&A on the legal background

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#### **What do the Caesar Families Association (CFA) and ECCHR specifically want to achieve with the criminal complaint?**

The primary goal of the criminal complaint, filed by the Caesar Families Association (CFA) together with ECCHR on 23 September 2024, is to initiate further person-specific investigations to legally address the crimes described. This should be done together with the relatives of those killed, as well as survivors of the crimes.

ECCHR hopes that the investigations regarding the criminal complaint will result in further charges against high-ranking perpetrators and additional (international) arrest warrants. These efforts are also aimed at raising public awareness of human rights crimes in Syria and increasing pressure on the international criminal justice system.

#### **Who are the complainants? And what makes this criminal complaint so unique?**

The complainants are relatives of individuals who disappeared after they were arrested in Syria. The relatives were able to identify their murdered family members – often only after many years – using the so-called Caesar photos.

The complainants are also members of the Caesar Families Association (CFA), with whom ECCHR filed this complaint. The Caesar Families Association is the first victims' organization to join existing endeavors to come to terms with such crimes in Syria. This expands the efforts to achieve justice for the Syrian community, as those affected are also organizing themselves independently, creating their own structures, and actively participating in legally addressing the crimes.

## **What are the Caesar photos, and why are they considered to be such important evidence?**

Taken between May 2011 and August 2013, the Caesar photos consist of more than 26,938 photographs of a total of 6,821 people killed. Just over half of the images show the lifeless bodies of prisoners who were tortured and killed within the Syrian government's system of numerous detention centers. The photographs were taken as part of a routine procedure by the Syrian military police. A former military photographer, known by the pseudonym "Caesar," had taken the photos and smuggled them out of the country with the help of supporters, in order to finally hand them over to European law enforcement authorities, among others.

The evidentiary value of the photos lies in the fact that the injuries to the photographed bodies allow conclusions to be drawn as to whether and how the prisoners were tortured and killed in the detention centers of the Syrian secret services and military police. Furthermore, due to the large number of photos and the bureaucratic process in which they were taken, they demonstrate the systematic nature of the torture and killing of prisoners under the government of Syrian President Bashar al-Assad.

In addition, the authenticity of the image files can be verified using their metadata. Metadata usually contains information about the recording device with which the image was taken, as well as additional information beyond the content of the actual image, such as the location and time where it was taken. This data (e.g. the device number of the camera, or the so-called "hash number" of the individual photo) makes it possible to ensure that the photos are genuine and not forgeries.

For these reasons, the Caesar photos served as extremely important evidence both in the world's first trial against two perpetrators of the Assad regime at the Koblenz Higher Regional Court and in other proceedings and investigations against members of the Syrian regime (such as in France).

## **What is the relationship between the new criminal complaint and the previous ones?**

The current criminal complaint concerns four cases of murder, arbitrary detention, enforced disappearance, and torture committed as crimes against humanity. It is directed against high-ranking officials of the Syrian regime, including members of the Syrian Air Force Intelligence Service, the Military Intelligence Service and the National Security Office.

On the one hand, we are calling for the initiation of further person-specific investigations. On the other, the information and evidence contained therein can expand existing structural investigation proceedings.

## **What is ECCHR's role in this?**

With the current criminal complaint, ECCHR is supporting the efforts of those affected to actively participate in the legal process to come to terms with the crimes of the Syrian regime.

The criminal complaint also sends a clear signal that the legal process of addressing the Syrian conflict is far from reaching a successful conclusion, even though high-ranking members of the regime have been convicted in absentia in France. Numerous crimes are still being committed in Syria today; people are still being disappeared and tortured in detention centers. This must always be kept in mind in the context of current political developments.

## **Where does ECCHR's information come from?**

Our criminal complaints are based on the testimonies of family members of disappeared persons, who, at great personal risk, have been searching for their relatives – among them numerous women, as well as men – in various “branches” (detention centers) of the Syrian secret services and military police. In addition, the photos and metadata of the Caesar photographs are of unique value for possible investigations.

In addition to the statements of those affected, publicly available documents and reports serve as sources for this criminal complaint. Many of the crimes in Syria, including torture, have been carefully documented over the years by international and Syrian human rights organizations. Taken as a whole, the statements of survivors and witnesses, official documents, and pictures of victims and crime scenes prove that the Syrian regime is guilty of systematic crimes against humanity and war crimes. The Koblenz Higher Regional Court arrived at the same conclusion in the al-Khatib trial. The verdicts against Eyad A. and Anwar R. are now legally binding.

## **What possibilities does international criminal justice offer for bringing human rights violations in Syria to justice?**

Absolute impunity continues to prevail in Syria, with no prospect of prosecuting perpetrators from the ranks of the Assad regime in the foreseeable future.

Under the Rome Statute of the International Criminal Court (ICC), international criminal justice fundamentally has the power to bring war crimes, crimes against humanity, and genocide before this same court in The Hague. However, there is currently little chance that the crimes in Syria will be prosecuted by the ICC. This is due to the fact that the court cannot take action because, on the one hand, Syria is not a state party to the Rome Statute and, on the other, Russia is blocking a referral to the ICC by the UN Security Council.

Nonetheless, the UN Human Rights Council has set up an independent commission of inquiry into Syria. The investigators have been collecting evidence against all parties to the conflict for more than 12 years. They conduct their work in the neighboring states of Lebanon, Jordan, Iraq and Turkey. The information provided by the UN Commission is indispensable for any future legal assessment of the situation in Syria.

In December 2016, the UN General Assembly also initiated the “International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of those Responsible for the Most Serious Crimes under the International Law Committed in the Syrian Arab Republic since March 2011,” or IIM for short.

## **What legal avenues are available in Germany to prosecute the crimes committed in Syria?**

Serious crimes affect the international community as a whole and must not go unpunished. It is therefore also the responsibility of national jurisdictions in third countries such as Germany to investigate and prosecute serious crimes in Syria.

The German Code of Crimes Against International Law (CCAIL), which entered into force in 2002 and was reformed in 2024, enables German courts to prosecute international crimes committed in Syria. Through the CCAIL, Germany adapted its national criminal code to the standards of international criminal law, in particular those established by the Rome Statute of the ICC.

The principle of universal jurisdiction enshrined in the CCAIL constitutes the legal basis for the prosecution of genocide, crimes against humanity, and war crimes by German courts. According to the CCAIL, the Federal Public Prosecutor (GPA)

can investigate international crimes, even if they were committed outside of Germany. This means that jurisdiction of the courts is independent from the location of the crime, as well as from the nationality of its victim or perpetrator.

Since 2011, the Federal Public Prosecutor has been conducting several person-specific investigations into the crimes committed in Syria, as well as a structural investigation, which addresses larger clusters of crimes in the country beyond individual cases. The series of criminal complaints on torture in Syria, which ECCHR has filed together with almost 100 Syrian torture survivors, relatives, activists and lawyers in Germany, Austria, Sweden and Norway since 2017, also have contributed to the investigations. These investigations were the basis for the so-called al-Khatib trial, the first trial worldwide on state torture in Syria.

## **Who are the targets of ECCHR's additional criminal complaints concerning Syria?**

In the German legal system, a criminal complaint is technically a means of reporting an assessment of facts (an alleged criminal offense). It is then the task of the investigating authorities to identify the suspects who may be responsible for the offense.

The criminal complaints that ECCHR has filed together with the complainants from Syria concern, among other things, the crime of systematic torture in detention centers run by the Syrian secret services and military police. Systematic torture qualifies as a war crime and a crime against humanity under the Code of Crimes Against International Law.

The complaints are directed against numerous known and unknown members of the Syrian military intelligence services and the Syrian government, who are presumed to be responsible for the crimes reported.

Even though high-ranking members of the regime have been convicted – in some cases in absentia (France) – numerous other suspects continue to live undisturbed. We want to change this with our renewed criminal complaint, filed together with our partner organization Caesar Families Association (CFA).

## **What can be achieved by filing criminal complaints for crimes against humanity with the German Federal Public Prosecutor?**

In cases of criminal prosecution in a third country, a criminal complaint is often the first step toward an investigation. A complaint is intended to draw the attention

of the Federal Prosecutor's Office (GBA) to a specific situation or act which, in the view of the complainant, constitutes a criminal offense – i.e. it may be a crime.

The GBA is already investigating, collecting and securing evidence in various structural proceedings concerning Syria. In person-specific proceedings, however, the focus is mostly on low-ranking perpetrators, as they can often be found in Europe and, thus, be brought to justice. With ECCHR's criminal complaints, the aim is to get the GBA to investigate specific individuals who hold or have held leading positions in the Syrian secret services and military police, and obtain arrest warrants for them from the Federal Court of Justice.

In May 2018, this approach was successful. The Federal Court of Justice (BGH) issued an international arrest warrant against Jamil Hassan, who until July 2019 was head of the Syrian Air Force Intelligence Service.

## **What can be achieved with an arrest warrant issued by the Federal Court of Justice against a high-ranking Syrian official?**

In Germany, criminal proceedings can only take place if defendants are present in person. Issuing arrest warrants against those responsible for the systematic repression and torture under Assad sends an important signal for the survivors, the relatives of those affected, and also for those who are still being held in the prisons of the Assad government.

The fact that the GBA opened a person-specific investigation on a Syrian official for international crimes committed in Syria, and that the Federal Supreme Court (BGH) subsequently issued an international arrest warrant, represent initial concrete steps toward ending impunity in Syria.

Like Jamil Hassan, most of the high-ranking individuals responsible for torture and other human rights violations under Assad are in Syria, but if an international arrest warrant is issued against them and they leave the country, they can be arrested and extradited to Germany. The German judiciary is then in a position to bring charges and initiate court proceedings. For example, in the case of former IS supporter Taha al-J, the Federal Court of Justice issued an arrest warrant against him in April 2019. He was arrested in Greece in May 2019, transferred to the Federal Republic of Germany in October 2019 following an extradition request from the Federal Public Prosecutor's Office, and then brought to trial there.

The case of Chilean dictator Augusto Pinochet shows that international arrest warrants against high-ranking politicians and military officers are not only possible but also effective. In 1998, the Spanish investigating judge Baltasar

Garzón issued an international arrest warrant against Pinochet for genocide. During a visit to London, Scotland Yard arrested the former dictator, and the then British Home Secretary Jack Straw granted his extradition to Spain. Although the Chilean government secured his release on humanitarian grounds, Pinochet's arrest ultimately paved the way toward legally addressing the crimes of the dictatorship in Chile.

## **Why hasn't ECCHR filed a criminal complaint against President Bashar al-Assad for human rights crimes?**

As President and Commander-in-Chief of the Armed Forces of the Syrian Arab Republic, Bashar al-Assad is at the top of the pyramid of the military command chain. He has supreme control over the actions of all security and military institutions, including the four Syrian intelligence services, the Ministry of Defense and the National Security Bureau. This means that President Assad is undoubtedly responsible for crimes committed by these institutions.

As acting head of state, Assad is protected from prosecution in national courts of third countries. In Germany, he is granted international immunity *ratione personae* in accordance with Section 20 (2) GVG and Article 25 GG. This means that no criminal proceedings can currently be brought against him. Nevertheless, the GBA is also collecting evidence of possible crimes committed by Assad within the context of the structural investigation proceedings. These findings can be used when he is no longer president or if the ICC or a special tribunal on the Syrian conflict one day brings charges against Assad.

However, in May 2024, a Paris court of appeal decided to uphold a (French) arrest warrant against Bashar al-Assad. In the corresponding proceedings, Assad is to be held accountable for the use of chemical weapons against his own population. The Paris court considered such an act to be outside the purview of a head of state's activities and denied him immunity in this case.

## **What are the next steps?**

In order to address the systematic and widespread human rights violations in Syria, further legal interventions must follow – against the Assad government, against transnational corporations, against the states that intervene militarily in the conflict, and against armed groups such as IS.

Without justice for those affected by the crimes in Syria, there will be no political solution to the conflict. Legally addressing human rights crimes is indispensable.

It is also of lasting significance in the establishment of a constitutional and democratic society in the aftermath of the war in Syria.

Topics for potential further legal action include the supply of conventional weapons, other armaments, or surveillance technology to the parties to the conflict, as well as targeted sexual violence against women and the use of chemical weapons in Syria.

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