

BACKGROUND _____

Survivors of Assad's torture regime demand justice – Criminal complaints in Germany

Q & A to legal basis

Human rights and humanitarian law have been violated by all parties to the armed conflict in Syria. Since the beginning of the conflict, European Center for Constitutional and Human Rights (ECCHR) has been investigating, if, or rather, what violations have been committed by the individual actors. Since 2012, ECCHR has been working with victims, activists, lawyers and organizations in Germany and Europe to secure evidence and document testimonies.

The result of this research and legal analysis by ECCHR implicated serious violations of human rights and humanitarian law committed by the Bashar al-Assad regime which must be qualified as crimes against humanity and war crimes.

On [1 March 2017](#), ECCHR together with seven women and men from Syria as well as Syrian lawyers Anwar al-Bounni [Syrian Center for Legal Researches & Studies](#) and Mazen Darwish [Syrian Center for Media and Freedom of Speech](#) (SCM) submitted the first criminal complaint against six suspected high-level officials of the Syrian Intelligence Service to the German Federal Public Prosecutor. [The Heinrich-Böll-Stiftung](#) has supported the criminal complaint in a special way.

On 21 September 2017, the [“Caesar-Files Support Group”](#) (which has obtained thousands of photos of tortured and murdered detainees in Syrian government detention facilities) for the first time took legal action by filing together with ECCHR a criminal complaint with the German Federal Prosecutor against senior officials from the Syrian intelligence services and the military police concerning crimes against humanity and war crimes. A representative of the Group also provided the Federal Prosecutor with a set of high-resolution images and metadata.

In November 2017, ECCHR supplemented previous criminal complaints and evidence with two additional complaints directed against high-ranking officials from the [National Security Bureau and Air Force Intelligence](#) as well as the head of the [military police and the Saydnaya military prison](#).

ECCHR's activities are aimed at providing legal support for victims and witnesses of arbitrary arrests, torture and sexual violence. The perpetrators as well as the officials responsible for human rights violations in Syria should be held criminally responsible.

What options does international criminal justice offer to address human rights violations in Syria?

Currently, there is absolute impunity in Syria, and the Assad regime is neither interested in investigating the cases of torture, nor in bringing the perpetrators and the responsible officials before a court.

Through adoption of the [Rome Statute](#), and establishment of the International Criminal Court (ICC) in 2002, international criminal justice was enabled to prosecute war crimes, crimes against humanity, and genocide before the court in Den Haag. However, this option is currently not available for the crimes committed in Syria. The ICC is not authorized to start an investigation into the crimes, as Syria is not a party to the Rome Statute. At the same time, a referral to the court by the UN Security Council is currently blocked by Russia and China.

However, the Independent International Commission of Inquiry on the Syrian Arab Republic (UN CoI Syria) was established in August 2011 by the Human Rights Council through resolution [S-17/1](#) adopted at its 17th special session with a mandate to investigate all alleged violations of international human rights law since March 2011 in the Syrian Arab Republic.

On one hand, UN CoI Syria's investigators have been gathering evidence against all parties to the conflict for more than five years. They also work in the neighboring countries of Lebanon, Jordan, Iraq and Turkey. On the other hand, recently established "International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of those Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011 (IIIM) is tasked with collecting, preserving, and consolidating evidence, while also preparing strong evidentiary files that can be used by prosecutors for independent criminal proceedings. The information gathered by the corroboration of the UN-Commission and the UN-Mechanism is therefore essential for future legal proceedings in national, regional, or international courts. The principle of universal jurisdiction enables domestic courts to initiate judicial proceedings and to hold perpetrators of all ranks accountable. In Germany and other European Union (EU) Member States, investigations have been brought in this regard.

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

Serious crimes concern international society as a whole, and must be responded to. For this reason, it is a duty of the national jurisdictions of third party states, like Germany, to investigate the serious crimes committed in Syria and to prosecute the responsible officials.

The German Code against International Crimes (CCIL), which entered into force in 2002, enables German courts to prosecute international crimes committed in Syria. By adopting the

CCIL, Germany adapted its national criminal law to the standards set by International Criminal Law, and in particular by the [Rome Statute of the ICC](#).

The CCIL affirms the principle of universal jurisdiction, which constitutes the legal basis for prosecution of genocide, crimes against humanity, and war crimes by German courts. According to the CCIL, the Federal Public Prosecutor 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 its victim or perpetrator.

Since 2011, the Federal Public Prosecutor has been conducting several person-related investigations as well as a general investigation (Strukturverfahren), which addresses the overall situation in the country and goes beyond individual cases.

What can be achieved by submitting criminal complaints about the crimes against humanity to the Federal Public prosecutor?

A criminal complaint is often the first step to initiate an investigation by the authorities of a third country. The complaints should make the Public Prosecutor aware of a certain situations or acts which from the perspective of the complainants meet criteria of a criminal offence.

Within the general investigation of the situation in Syria, the Federal Public Prosecutor has already gathered and secured evidence. However, this investigation mostly targeted the perpetrators of lower ranks. The criminal complaints submitted by ECCHR should persuade the Federal Public Prosecutor to target high-level officials of the Syrian Intelligence Service, to investigate their crimes and to issue international arrest warrants against them.

Who is the target of the criminal complaints about the crimes in Syria?

A criminal complaint presents an avenue in the German legal system to report an assessment of facts in form of a crime or multiple crimes. It is the task of the investigative authorities to determine the suspect responsible.

The criminal complaints submitted by Syrian torture survivors as well as ECCHR, SCM and SCLRS address the policy of systematic torture in prisons of the Syrian Military Intelligence Service. According to the Code of Crimes against International Law (CCAIL), systematic torture is to be qualified as a war crime and a crime against humanity.

For example, the first criminal complaint lists five officials known by name and further unknown officials of the Syrian Military Intelligence Service and the Syrian government as those who bear responsibility for the addressed crimes.

If arrest warrants are issued in Germany against high-ranking Syrian officials, what impact would this have?

Arrest warrants against those responsible for systematic repression and torture under Assad would be an important signal for survivors, relatives of those affected, and those still detained in the prisons of the Assad regime.

If the German Federal Prosecutor (*Generalbundesanwalt*) opens investigations focusing on specific Syrian officials concerning international crimes in Syria, and the Federal Court of Justice (*Bundesgerichtshof*) issues arrest warrants, this would represent an important step towards ending impunity in Syria.

Most of the high-ranking officials responsible for torture and other human rights violations in Syria still live in the country. But if they were subject to an international arrest warrant and were to travel outside Syria, they could be arrested and extradited to Germany. Germany could then file charges and open criminal proceedings.

The case of the Chilean dictator Augusto Pinochet shows that international arrest warrants against high-profile politicians and military figures are possible and effective. In 1998 the Spanish investigative judge Baltasar Garzón issued an international arrest warrant against Pinochet for genocide and other crimes. While Pinochet was visiting London, he was arrested by Scotland Yard and his extradition to Spain was approved by the then Home Secretary Jack Straw. The Chilean government negotiated that he be freed on humanitarian grounds, but Pinochet's arrest in London ultimately triggered a broader process of legal reckoning with the crimes of the dictatorship in Chile.

Why has ECCHR not yet filed any criminal complaints against President Bashar al-Assad for human rights violations?

As president and commander-in-chief of the armed forces of the Syrian Arab Republic, Bashar al-Assad is at the top of the military chain of command. He has ultimate command over acts of all security and military institutions, including the four Syrian intelligence services, the Ministry of Defense, and the National Security Bureau. President al-Assad thus undoubtedly bears responsibility for their crimes.

As a sitting head of state, however, al-Assad is shielded from prosecution before national courts in third countries. In Germany he is protected by the international law concept of immunity *ratione personae* as set out in Paragraph 20(2) of the Courts Constitution Act (GVG) and Article 25 of the German Basic Law (GG). This means that no criminal proceedings can be undertaken against him at this time. However, as part of its investigations, the German Federal Public Prosecutor is gathering evidence on potential crimes by al-Assad. This information could be used in the future, for instance when he is no longer president, or if charges are leveled against him by the International Criminal Court or a Special Tribunal.

What does ECCHR want to achieve by submitting criminal complaints?

The primary goal of submitting criminal complaints is to initiate a person-related investigation, which will legally address the described crimes in a dignified way.

Since 2011, the Federal Public Prosecutor has been investigating the crimes committed in Syria. It was an important first step. Six years later, it is time to take further steps: the German judiciary should not focus on low-rank perpetrators, but must investigate the acts of those officials who bear the actual responsibility for the crimes. Even though those officials are still in Syria, certain steps can be taken, e.g. by issuing international arrest warrants. To take these

steps, the Federal Public Prosecutor and the Courts should be given additional resources by the state. There is a growing need for educated investigators and better protection for witnesses.

ECCHR hopes that the investigation concerning the criminal complaints will be followed by charges and international arrest warrants against the responsible officials. These steps would also raise public awareness about the human rights violations in Syria and increase pressure on the international criminal justice to prosecute the crimes.

What informations are the criminal complaints based on?

The criminal complaints are based on testimonies of women and men, who were imprisoned in different ‘branches’ (prisons) of the Syrian Military Intelligence Service in Damascus, and photographic evidence accompanied with metadata that was provided by the group around the former Syrian military police employee, “Caesar”.

For years, prisons of the Syrian Military Intelligence Service and the Syrian Military Police have served as torture centers. The witnesses, who are also co-complainants, have been imprisoned in three of these “branches“(227, 235, 215) at various times between October 2011 and July 2015 and for different periods (several days to several months). Their testimonies shed light on the crimes of torture that prisoners have been constantly exposed to. The “Caesar photos” were taken in Syria between May 2011 and August 2013. According to the “Caesar-Files Support Group”, more than half of the total 26,948 files show the bodies of detainees who died in Syrian government detention facilities. Furthermore, the metadata attached to the image files contains information on the camera model used to take the photograph. In many cases, it also indicates the serial number of the device. This information is highly valuable for the verification of the photos.

In addition to the testimonies of the victims, photographic evidence, and metadata, numerous public documents and reports have also been used as sources for the criminal complaints. Many of the crimes committed in Syria, including the crimes of torture, have been well documented through the years by international and Syrian human rights NGOs.

Testimonies of the survivors and witnesses, official documents, as well as pictures of the victims and sites of crime, considered as a whole, demonstrate that the Syrian regime is guilty of crimes against humanity and war crimes.

Why was the first criminal complaint limited to the crimes of torture committed by Assad’s Military Intelligence Service?

ECCHR designated the crimes of torture committed in prisons of the Syrian Military Intelligence Service as the focus of the complaints for several reasons. The crimes of torture are well documented and constitute an example of Assad’s long-standing policy of systematic and violent repression against the Syrian population. This applies particularly to the brutal crackdown against peaceful protesters which started in 2011. Furthermore, the Federal Public Prosecutor has started a general investigation into the crimes of torture based on the so-called „Caesar-Photographs“.

The criminal complaint focuses on three crime scenes that have been used as prisons by the Military Intelligence Service. The so-called ‘branches’ (227, 235, 215) are well-known sites of violent oppression against the prisoners.

The choice of the sites of crime should not be seen as a result of assessment of other similar prisons and Intelligence Services in Syria. The choice is solely linked to the necessity of presenting the concerned crimes in a precise manner so that they can be used for a legal evaluation.

What are the next steps?

The Office of the German Federal Prosecutor reacted promptly to the first criminal complaint in relation to systematic Torture in Syria. At beginning of May 2017, the claimants as well as other persons gave their witness testimony in Berlin and Karlsruhe. From the perspective of the torture survivors, this was an important for step to achieve justice. Furthermore, on 21 September 2017, the group around the former Syrian military police employee “Caesar” for the first time took legal action by filing together with [ECCHR](#) a criminal complaint at the Office of the German Federal Prosecutor in Karlsruhe against senior officials working for three out of the four Syrian intelligence services and military police concerning crimes against humanity and war crimes.

On the basis of the findings and evidence of the criminal complaints submitted by ECCHR as well as the structural investigation, the Federal Prosecutor can now proceed against the responsible officials of the Syrian Military Intelligence.

ECCHR considers the findings and evidence at hand sufficient in order to identify and investigate those responsible for the grave human rights violation in Syria. They are at risk of having issued international arrest warrants and worldwide investigations against them.

Does ECCHR intend to submit further criminal complaints or undertake other legal steps in this regard?

There is no doubt that further legal interventions should be undertaken to ensure that all systematic and widespread human rights violations in Syria will be addressed in an appropriate way.

ECCHR has already looked into other sites of crime and other possible suspects, and plans to bring further criminal complaints in Germany. These might concern the crimes of torture committed by other bodies of the Syrian Intelligence Service or different crimes and locations, like executions in the Saydnaya-prison.

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