

## BACKGROUND \_\_\_\_\_

### **Survivors of Assad's torture regime demand justice – German authorities issue first international arrest warrant**

#### **Q & A on the legal basis**

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**On 8 June 2018, it was announced that the Germany Federal Court of Justice (*Bundesgerichtshof* – BGH) had issued an arrest warrant against Jamil Hassan, who until July 2019 was head of the Syrian Air Force Intelligence Service. This measure is a milestone towards justice and accountability for all those affected by Assad's torture system, particularly the 24 Syrian torture survivors and activists whose testimonies contributed to the arrest warrant.**

Since [March 2017](#), they have, together with the lawyers Anwar al-Bunni (Syrian Center for Legal Studies and Research, [SCLSR](#)), Mazen Darwish (Syrian Center for Media and Freedom of Expression, [SCM](#)) and the European Center for Constitutional and Human Rights ([ECCHR](#)), [filed four criminal complaints](#) in Germany based on the principle of universal jurisdiction against high-ranking officials in Assad's government.

#### **The series of criminal complaints in Germany**

Human rights and humanitarian law have been violated by all parties to the armed conflict in Syria. Since the beginning of the conflict, 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-Bunni and Mazen Darwish submitted the first criminal complaint against six suspected high-level officials of the Syrian Intelligence Service to the German Federal Public Prosecutor (*Generalbundesanwalt*). The [Heinrich-Böll-Stiftung](#) has supported the criminal complaint.

On 21 September 2017, the [Caesar Files 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](#).

These criminal complaints against Syrian senior intelligence and military officials are part of a series of legal interventions by ECCHR: against the [“architects” of the US torture system](#) set up as part of the “war on terror” (filed in Germany, France and Spain), against those responsible for torture in [Bahrain](#) (filed in Switzerland and Ireland) and against British soldiers for [torture during the Iraq war](#) (filed with the ICC in The Hague).

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 six 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 (CCAIL), which entered into force in 2002, enables German courts to prosecute international crimes committed in Syria. By adopting the CCAIL, 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 CCAIL 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 CCAIL, 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.

### **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.

## **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.

In June 2018, it was finally time: German authorities issued an international arrest warrant for Jamil Hassan, who until July 2019 was head of the Syrian Air Force Intelligence Service.

## **What impact will the arrest warrant issued in Germany against Jamil Hassan 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.

The fact that the German Federal Prosecutor opened investigations focusing on Jamil Hassan as a specific Syrian officials concerning international crimes in Syria, and the Federal Court of Justice (*Bundesgerichtshof*) issued an international arrest warrant, is a milestone and represents an important step towards ending impunity for torture in Syria.

Like Jamil Hassan, most of the high-ranking officials responsible for torture and other human rights violations in Syria still live in the country. But if they are subject to an international arrest warrant and were to travel outside Syria, they can 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 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 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 further person-related investigations, which will legally address the described crimes in a dignified way.

The investigations initiated by the Federal Public Prosecutor in 2011 were an important first step. Seven years later, however, 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 like the one for Jamil Hassan. 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.

### **What information are the criminal complaints based on?**

The criminal complaints are based on testimonies of women and men, who were imprisoned in different ‘branches’ (detention facilities) 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”.

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.

### **Which steps must follow now?**

In order to achieve accountability for the systematic and widespread human rights violations in Syria further legal interventions have to follow – against the Assad government, against transnational corporations, against third states involved in military intervention in the conflict as well as against organizations such as IS.

Without justice for those affected by the crimes committed in Syria, there is no prospect of a political solution. Justice for human rights crimes are essential for affected individuals. However, accountability has contributed to the prevention of other conflicts and for the development of the rule of law as well as democratic principles after the end of war in Syria.

Further fields of possible legal interventions may be exports of conventional weapons, other armaments or surveillance technologies to the conflict parties, as well as targeted sexual violence against women and the use of chemical weapons in Syria.

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