



BACKGROUND _____

Survivors of Assad's torture system demand justice – Criminal complaint in Sweden

Q&A on the legal basis

On 19 February 2019, together with nine plaintiffs from Syria, the Syrian Center for Legal Studies and Research (SCLSR), Syrian Center for Media and Freedom of Expression (SCM), Caesar Files Group, the Civil Rights Defenders (CRD) and the European Center for Constitutional and Human Rights (ECCHR) submitted a criminal complaint against 25 known and further unknown high-level officials of the Syrian security apparatus.

The complaint addresses crimes against humanity, war crimes, torture, rape and other crimes committed in detention facilities of four Syrian intelligence services, Joint Investigation Committees, 4th Division and Military Police as well as in the Saydnaya Military prison. The complaint in Sweden is part of a series of criminal complaints across Europe.

Why do torture survivors and human rights lawyers address crimes committed in Syria by filing a criminal complaint in Sweden?

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

Thus, with this submission, the plaintiffs, together with supporting organizations, demand for steps to be undertaken by the Swedish prosecutorial authorities to address the criminal responsibility of high-level officials of the Syrian government, in particular those high-level officers of the Syrian intelligence services named in this complaint.

In comparison to other European states, such as the Netherlands and Spain, Swedish law does not require presence of the suspect in the country to undertake legal steps. This enables the Swedish prosecutorial authorities to carry out person-specific investigations regardless of the place of residence of the suspect.

What options does international criminal justice offer for addressing human rights violations committed in Syria?

Currently, there is absolute impunity for such crimes in Syria. For the foreseeable future there is no prospect of prosecutions of perpetrators linked to the Assad government.

The adoption of the [Rome Statute](#) and establishment of the International Criminal Court (ICC) in 2002 made it possible to prosecute certain cases of war crimes, crimes against humanity, and genocide in The Hague. 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 and efforts by the UN Security Council to refer the case to the court are blocked by Russia and China.

In August 2011, the Independent International Commission of Inquiry on the Syrian Arab Republic (UN CoI Syria) was established and has been gathering evidence against all parties to the conflict since then. It works in the neighboring countries of Lebanon, Jordan, Iraq and Turkey. The information gathered by the UN Commission is crucial for future legal investigations.

The 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), set up in December 2016, is tasked with collecting, preserving, and consolidating evidence, while also preparing files of evidence that can be used by prosecutors in independent criminal proceedings. IIIM has no power to press charges or issue arrest warrants. Instead it looks to national or international courts to make use of the documented evidence.

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

The legal framework for prosecution of the above mentioned crimes under Swedish law is regulated by the Swedish Penal Code and the Law on criminal responsibility for genocide, crimes against humanity and war crimes (adopted in 2014). It allows the Swedish prosecutorial authorities to exercise universal jurisdiction over crimes against international law, grave breaches of international humanitarian law, over particularly grave crimes if the least severe punishment prescribed for the same crimes under Swedish law is imprisonment for four years

or more, as well as for genocide, crimes against humanity and war crimes committed after July 2014 (Law 2014:406).

In Sweden, the presence of the suspect in the country is not required to undertake legal steps. This enables the Swedish prosecutorial authorities to carry out person-specific investigations regardless of the place of residence of the suspect.

Has this been investigated in Sweden before?

Sweden has contributed to the efforts in bringing accountability for the crimes committed in Syria by opening a structural investigation, as well as by prosecuting individual crimes. Beside several convictions of members of non-state armed groups for killing and inhuman treatment as war crimes in Syria, the first judgment against a former soldier of the Syrian Army was pronounced in Sweden. These steps send a clear signal that those perpetrators who are present on the territory of Sweden will be prosecuted and convicted.

However, Swedish authorities have not issued arrest warrants against those who orchestrate the policy behind grave crimes and are still in Syria.

Which evidence is the complaint in Sweden based on?

The complaint is based on testimonies of nine plaintiffs, extensive research and legal analysis. It revolves around the crimes committed against the plaintiffs in various detention facilities in Syria between February 2011 and June 2015. Their detention took place at different times and lasted for different periods, from several days to several years.

What is the content of the plaintiffs' testimonies?

The plaintiffs testified about the crimes they witnessed or were exposed to during detention, including murder, severe torture, detention in inhuman conditions, sexual violence and other inhuman treatment. These statements corroborate testimonies of other former detainees and their family members, documented by various Syrian and international human rights organizations and described in numerous reports.

Who is the subject of the complaint?

The criminal complaint is filed against 25 known and further unknown high-level officials of the Syrian security apparatus, including heads of the four Syrian intelligence services.

Where and when have the crimes been committed?

The criminal complaint addresses crimes that have been committed in 17 different sites, as detention facilities of the Syrian Intelligence Services, namely Military Intelligence, Air Force Intelligence, General Intelligence and Political Security as well as in Saydnaya Military Prison

and detention facility of the 4th Division of the Syrian Armed Forces. The crimes addressed took place between February 2011 and June 2015.

Which criminal complaints have previously been filed in Europe?

The criminal complaint in Sweden against high-level officials in the Syrian intelligence service is part of a series of criminal complaints across Europe.

So far, four criminal complaints have been filed in Germany.

In [March 2017](#), ECCHR and seven torture survivors from Syria as well as Syrian lawyers Anwar al-Bunni (Syrian Center for Legal Studies and Research, [SCLRS](#)), Mazen Darwish (Syrian Center for Media and Freedom of Expression, [SCM](#)) submitted an initial criminal complaint against six suspects – high-level officials in the Syrian intelligence service – to the German Federal Public Prosecutor. The claimants are individuals who were detained in Syrian intelligence service facilities and who were tortured or witnessed torture.

In September 2017, a group working with “Caesar,” a Syrian defector who obtained thousands of photos of tortured and murdered detainees in Syrian government detention facilities, took legal action by [filing together with ECCHR a criminal complaint](#) to the German Federal Public Prosecutor. The complaint was directed against senior officials from the Syrian intelligence services and the military police concerning crimes against humanity and war crimes. A representative of the group provided the Federal Prosecutor with a set of high-resolution images and metadata. The “Caesar photos” present a unique insight into the Syrian government’s machinery of torture and killing under Assad.

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](#).

In May 2018, ECCHR together with 16 women and men from Syria as well as al-Bunni, Darwish and the Center for the Enforcement of Human Rights International ([CEHRI](#)) submitted a criminal complaint to the prosecutor in Vienna, Austria. The criminal complaint addresses torture as a crime against humanity and war crime in detention facilities run by the Syrian Military Intelligence Service, the Air Force Intelligence Service and the General Intelligence Service.

In June 2018, it was announced that the Germany Federal Court of Justice (*Bundesgerichtshof* – BGH) had issued an arrest warrant against Jamil Hassan, until July 2019 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.

In France, another arrest warrant was issued in October 2018 by the French investigative judges against high-ranking officials and close advisors to the Syrian president Bashar al-Assad, namely Ali Mamluk, the head of the National Security Bureau, Jamil Hassan and Abdel Salam Mahmoud, senior Air Force Intelligence official as well as the head of the detention facility at

al-Mezzeh military airport in Damascus. The charges include torture, enforced disappearances, crimes against humanity and war crimes.

How did the so far submitted complaints contribute to the ongoing investigations?

Following ECCHR's submissions in Germany in 2017, the Prosecutor's office heard testimonies of ten survivors represented by ECCHR's lawyers. In June 2018, the Prosecutor's office requested an arrest warrant against one of the high-ranking suspects named in the complaint, Jamil Hassan, who until July 2019 headed the Syrian Air Force Intelligence. The German Federal Court of Justice (*Bundesgerichtshof* – BGH) subsequently issued an arrest warrant against the suspect based on charges of systematic torture and killings as crimes against humanity committed in detention facilities of the Air Force Intelligence Directorate between April 2011 and August 2013. This measure is considered a milestone towards justice and accountability for all those affected by Assad's torture system, particularly the Syrian torture survivors and activists whose testimonies contributed to the arrest warrant.

On 12 February 2019, a former member of the Syrian General Intelligence Directorate was arrested in Germany at the behest of the German Federal Court of Justice. He is suspected of being responsible for the torture of detainees in 2011-2012 in the Al-Khatib detention facility run by the General Intelligence Directorate in Damascus. This will most likely lead to a criminal trial in Germany, which would be the first criminal trial worldwide examining the responsibility of a senior member of the Syrian intelligence agencies of President Bashar al-Assad for crimes of torture. ECCHR is assisting survivors of torture in Syria in these proceedings. Their testimonies and research conducted by ECCHR contributed to the issuance of the arrest warrant against Anwar R.

In Austria, having received the submission, the prosecutor opened an investigation and heard one of the survivors who provided his testimony for the complaint.

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