



TRIAL
International

Universal Jurisdiction Annual Review 2020

Terrorism and international crimes:
prosecuting atrocities for what they are

#UJAR



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Cover: A boy walks through a street near his home in Qayyarah
(Iraq, 2016) © Nicole Tung

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The present report only highlights cases where judges or prosecutors have initiated investigations into the most serious international crimes. It does not, therefore, include every complaint that victims, lawyers and NGOs filed under universal jurisdiction with national authorities in 2019 if these complaints did not result in significant judicial advances, are still pending or have been dismissed by the relevant national authorities.

The report also refers to cases of serious crimes under international law based on active or passive personality jurisdiction where the relevant case has also had an impact on the practice of universal jurisdiction.

The information presented in this report has been collected thanks to the collaboration of the prosecuting authorities of the countries studied with the lawyers and NGOs working on the cases. While every attempt was made to ensure accuracy, information may be subject to change without notice.

This report has been researched and written by Valérie Paulet, Project Coordinator at TRIAL International, in collaboration with REDRESS, the European Center for Constitutional and Human Rights and the International Federation for Human Rights.

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FOREWORD

Six years ago, we published the first Universal Jurisdiction Annual Review (UJAR) with the view to explain and democratize this legal tool. What universal jurisdiction was and how it worked remained at the time widely unknown to those who were not legal experts. And even within the legal community, it met with substantial skepticism.

A few years later the UJAR – its number of pages steadily increasing – started to focus on best practices and successful litigation strategies. As victims from war-struck Syria and Iraq took refuge in Europe, the number of universal jurisdiction cases increased significantly, often initiated by national authorities themselves. For many individuals, seeking justice in their host country was the only option, and so the debate shifted from *whether* to use universal jurisdiction to *how*. It is our hope that the UJAR, conceived as a concrete tool for practitioners, encouraged this trend.

This year, the UJAR focuses on the risks of confusing the prosecution of international crimes with the fight against terrorism. The implications of choosing pragmatism to the detriment of sound legal principles are substantial, and the consequences potentially grave. All mass atrocities should be fully and diligently investigated, even if such investigations are longer and more strenuous.

And yet. Looking back and measuring how far we have come in these past six years, we are hopeful that universal jurisdiction has rooted deeply enough to overcome this trend. The first UJARs were entitled *Make way for Justice*. We are convinced that the way has been made, that a breach has indeed been opened in the wall of impunity. Now we must keep up the fight to ensure all mass atrocities, regardless of who committed them and where, are prosecuted for what they are: international crimes.

As usual, we rely on your support to achieve this goal, and wish you an interesting reading.

Philip Grant

TRIAL International Executive Director

Valerie Paulet

Project Coordinator



Sunset on Baghouz frontline (Syria 2018) © Constantin Gouvy/TRIAL International

The simple way out?

Why international crimes must not be prosecuted as terrorism

The fight against terrorism has become a political priority for many governments in the past years. Unsurprisingly, the judiciary has followed this trend and prosecutions for terrorism are also on the rise. But what exactly do charges for “terrorism” encompass? More importantly, what do they leave out? And paradoxically, could the increased use of terror charges threaten the prosecution of the worst atrocities?

Paris, 5 December 2019. The Court of Appeal of Paris confirms the guilt of Mounir Diawara and Rodrigue Quenum for their participation in a terrorist organization and sentences them to 10 years’ imprisonment. The accused had appeared in photos in combat fatigues in Syria, Kalashnikovs in hand. One of them was brandishing a severed head.

A victory for the fight against impunity for the worst crimes? Not quite. Mounir Diawara and Rodrigue Quenum were brought to court on charges of terrorism, and not international crimes (war crimes, crimes against humanity or genocide). In that precise instance, the suspects could have also been charged, in addition to the terrorism related charges, with outrages upon personal dignity, a war crime clearly defined by the Geneva Conventions. What is in appearance a procedural detail actually reflects a deep – and alarming – legal trend which bears multiple consequences.

Terrorism and international crimes, same difference?

To understand the situation requires a bit of legal and political background. War crimes, crimes against humanity and genocide – known collectively as international crimes – share common features with terrorism. They both concern atrocious crimes, which may be perpetrated in one State but tried in another. In both cases, suspects and victims may be foreign nationals. For this reason, in many States, the same units are in charge of prosecuting both types of crimes – for instance in the United Kingdom, in Germany and in Switzerland. In the present context of scarce resources, it is a zero-sum game: prosecutions for terrorism multiply at the expense of prosecutions for international crimes.

Proving terror charges, especially membership in a terrorist organization, is remarkably straightforward. Convictions have been secured by as few elements as a connection with a known terrorist, or traveling to a zone controlled by a terrorist organization. In comparison, prosecuting international crimes can be a complex and time-consuming matter: more elements must be proved, and prosecutors are usually required to find and interview witnesses and survivors abroad, collect evidence in a context with which they are unfamiliar – and sometimes even conduct their investigations without seeing the crime scenes at all.¹ Put differently, the same evidence may be insufficient to prove international crimes, but may lead to a conviction for terrorism-related offenses. This is what happened in the case against Congolese rebel leaders

Ignace Murwanashyaka and Straton Musoni in Germany.²

As a result, States have increasingly prosecuted suspects under charges of terrorism rather than international crimes. An apparently reasonable choice: suspects appear faster in court, after shorter investigations requiring fewer resources. And yet... terrorism and international crimes have fundamentally different legal bases, and using the former to the detriment of the latter comes with significant drawbacks.

Terrorism has no international definition

First of all, not all prosecutions are created equal. The first and most obvious shortcoming of terrorism is that it does not have a single, internationally recognized definition. Contrary to genocide, torture, enforced disappearance or war crimes, no international treaty circumscribes terrorism clearly. Each State has come up with its own definition, often influenced by current affairs and public opinion.

This creates a loophole for mass atrocities committed by State agents. These actors are hardly ever targeted by anti-terrorism policies, yet they are no less complicit in international crimes. Similarly, charges of terrorism do not encompass the full scope of human rights violations entailed in international definitions of war crimes, crimes against humanity or genocide. For instance, the targeting of a particular ethnic group, such as Yazidi populations in Islamic State (ISIS)-controlled territory, is not punished by terrorism charges *per se*.

¹ See UJAR 2019, p. 6

² Ignace Murwanashyaka and Straton Musoni case, p. 53.

Terrorism prosecutions are not the only – nor the best – way to combat impunity

The determination of States to prosecute suspects must be acknowledged and praised. Not so long ago, domestic prosecutors would feel no incentive to punish atrocities committed abroad. The idea that impunity must be fought globally is gaining momentum and is unequivocally positive. But we cannot be satisfied with an approach to prosecution that omits a range of crimes.

Prosecuting suspects using terrorism charges is sometimes presented as the only way of combatting impunity. But conventions relating to international crimes serve the same purpose, and cover a wider range of atrocities than terrorism does. In other words, many acts commonly understood as “terrorism” are actually war crimes, crimes against humanity or genocide: willful killing or injuring of civilians, torture, outrages upon personal dignity, directing attacks against civilian property and so on.

Combining terrorism and international crimes charges

Thus, the debate is not terrorism charges versus impunity, but on the exact qualification of the crimes. Prosecuting atrocities as international crimes presents sounder legal bases and is less subject to domestic – and political – discretion than terrorism.

And even when terrorism trials are initiated, international criminal law can complement and expand the charges. In a recent case before

the German courts,³ prosecutors added allegations of murder, torture and enslavement – as war crimes and crimes against humanity – to previous charges of participation in a terrorist organization. As a result, new crimes were brought before the judges, including particularly shocking abuses against Yazidi children. France and the Netherlands are also looking into this practice, called cumulative charging.

Terrorism is a crime against State security, not individuals

Assessing the limits of terror charges requires understanding the intent behind the crimes. Fundamentally, terrorism is a threat to State security, whereas international crimes often target individuals.

Several consequences derive from this core difference, the first being the role of victims themselves in judicial proceedings. Terrorism trials are rarely undertaken on the initiative of victims, and victims’ testimony plays a lesser part – if any – in the proceedings. Truth and justice for survivors are not the *raison d’être* of trials for terrorism: what is at stake is the security of the State.

For the same reason, a terrorism trial will only tell a part of the story. The purpose of prosecution is to prove a threat to the State itself, not the atrocities suffered by victims. At best, perpetrators may be convicted on partial charges that fail to encompass the range of abuses against the population in question. Here again, those acts fall outside the scope of terrorism, yet undeniably require prosecution and punishment.

Human rights protection in jeopardy

In the longer run, omitting charges of international crimes weakens the very protection provided by international criminal law. By ratifying conventions against genocide, war crimes and the like, States have assumed international obligations. They have agreed to abide by the highest standards of protection against mass atrocities. By resorting to terror charges – domestically defined without any sort of international consensus – they are turning their backs on international norms built collaboratively over decades. Universal jurisdiction itself is a byproduct of this joint endeavor and thousands of people have reaped its benefits. Must the short-term “efficiency” of terror charges sweep aside this precious common legal heritage?

We are witnessing an unprecedented willingness from States to prosecute and punish the worst international criminals. Never has the demand from survivors, affected communities and civil society for accountability for mass atrocities been more powerful. Prosecuting authorities must not cave in to political pressure and limit this progress to terrorism charges. With the support of civil society and rooted in compelling international norms, they must prosecute crimes against humanity, war crimes and genocide for what they are. No more, no less.

³ Jennifer W. and others case, p. 49.

KEY FINDINGS



22

countries of
commission



16

countries of
prosecution



207

suspects*



40%

more named suspects
than in 2018



11

accused on trial



16

convictions



2

acquittals



37

terrorism charges



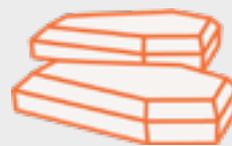
146

crimes against
humanity charges



92

torture charges



21

genocide charges



141

war crimes charges

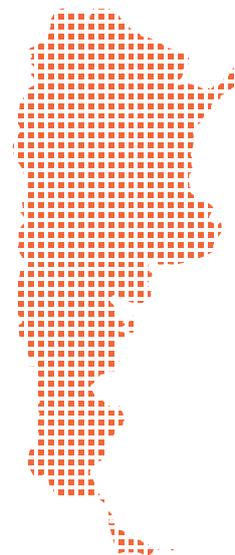
* Due to the increase in structural investigations, in which a large number of suspects are investigated, the exact figure is unknown. 207 is the minimum number.



Mother of a dead fighter (Iraq 2018) © Constantin Gouvy/TRIAL International

Cases of 2019

ARGENTINA



DEMAND FOR JUSTICE SWELLS OVER THE CRIMES OF FRANCO'S REGIME

Rodolfo Martín Villa and others

Context

Ongoing proceedings in Argentina against former Spanish officials and other actors of the Franco dictatorship for alleged serious crimes under international law committed in Spain between 1936 and 1978

Suspects

Former Spanish officials and other actors of the Franco dictatorship (including Antonio González Pacheco, former police officer; Jesús Muñecas Aguilar, former captain of the Civil Guard; and Rodolfo Martín Villa, former government minister)

Country of residence of suspects

Spain

Charges

Crimes against humanity, including torture, extrajudicial killings and enforced disappearances

Current status

Under investigation

Developments in 2019

In June 2019, new testimonies were received by the Argentinian investigative judge María Romilda Servini de Cubría. One complainant, Fermín Rodríguez, was heard

regarding the killing of his brother, German, shot in the head by the police in 1978 during the *Sanfermines* festivities in Pamplona. This is the first time a complaint has been brought regarding the severe police repression that allegedly took place in the bullring of Pamplona, leaving 11 dead. The complaint asks the authorities to issue an international arrest warrant and extradition orders against two officials and eight police officers.

Judge Servini de Cubría is scheduled to travel to Spain on 20 March 2020 to hear Rodolfo Martín Villa in the Argentinian Embassy in Madrid, and indict him for crimes he allegedly committed in Spain during the Franco dictatorship.

Procedure in Spain

In December 2006, the Spanish investigative judge, Baltasar Garzón, opened an investigation into allegations of crimes against humanity committed during the Franco dictatorship. In October 2008, he ruled that the 1977 Spanish law granting amnesty for crimes committed during the Franco dictatorship did not apply, owing to the nature of the crimes. However, the Supreme Court overturned this decision, while Judge Garzón was put on trial for prevarication for his alleged unfair interpretation of the amnesty law. He was eventually acquitted but the amnesty law remains applicable, and the crimes committed by the Franco dictatorship still cannot be investigated or prosecuted in Spain.

Procedure in Argentina

On 14 April 2010, Spanish and Argentinian human rights organizations filed a criminal complaint with the Argentinian investigative judge Servini de Cubría on behalf of Spanish victims. On 18 September 2013, the Argentinian judge issued arrest warrants against four former officials of the Franco dictatorship (including Antonio González Pacheco and Jesús Muñecas Aguilar) and requested their extradition in order to stand trial for crimes against humanity, including acts of torture, allegedly committed in Spain between July 1936 and June 1978.

On 24 April 2014, the Spanish National Court rejected the extradition request issued on 18 September 2013 by Judge Servini de Cubría against González Pacheco and Muñecas Aguilar. On 30 October 2014, notwithstanding the Court's decision, the Argentinian investigative judge issued detention orders against 20 of the accused in order to request their extradition to Argentina. However, these orders were not executed in Spain, the authorities arguing that the Spanish amnesty law prevails.

In 2015, Judge Servini de Cubría sent a second rogatory commission to the local tribunal of Guadalajara in Spain, requesting the exhumation of the corpse of Timoteo Mendieta, a trade unionist who was reportedly imprisoned in the Guadalajara Central Prison and executed in 1939. The rogatory commission also requested a DNA test of his daughter, Ascensión Mendieta, victim and plaintiff in the case. On 24 November 2015, the Tribunal of Guadalajara authorized the exhumation, which started on 19 January 2016. The exhumation of 22 bodies from a mass grave found nearby the Guadalajara prison did not allow the identification of the remains of Timoteo Mendieta.

On 16 March 2016, Women's Link Worldwide, an international women's organization based in Spain, filed a complaint calling for the investigation into systematic gender-based crimes committed against women during the Franco regime.

In August 2016, Judge Servini de Cubría opened an investigation into the death of Spanish poet Federico García Lorca, pursuant to a complaint filed by the *Asociación para la Recuperación de la Memoria Histórica* (Spanish Association for the Recuperation of Historical Memory, or ARMH).

On 9 June 2017, the remains of Timoteo Mendieta were identified in a different mass grave uncovered near the Guadalajara

prison. The archaeological team of the ARMH has exhumed 28 other victims of the Franco regime.

In June 2017, Judge Servini de Cubría issued an international arrest warrant against Martín Villa for the death of five workers in Vitoria in 1976. However, it was annulled by the Appeals Chamber as unfounded. In July 2017, Judge Servini de Cubría issued a new arrest warrant against Martín Villa for crimes against humanity and murder.

On 21 June 2018, the Argentinian Federal Tribunal allowed two victims to join the proceedings against former Spanish officials and other actors of the Franco dictatorship. The first applicant, Ruben Amor Benedicto Salmerón, is the grandson of José Salmerón Céspedes who was forcibly disappeared, tortured and executed in 1936 in Tetouan, then part of the Spanish protectorate in Morocco. The applicant demanded the exhumation of his grandfather's remains, which he believes are buried in the European cemetery of Tetouan. The second application relates to Gustavo Adolfo Muñoz de Bustillo, a 16-year old executed on 11 September 1978 during violent riots in the transitional period in Barcelona. Judge Servini de Cubría had first rejected the application as it happened after the 1977 elections that ousted Franco.

On 22 October 2018, the Spanish National Court denied the request from Judge Servini de Cubría to come to Spain to hear Martín Villa as part of the international rogatory commission issued in September 2017. The Spanish National Court decided that the crimes are prescribed and executing the international rogatory commission would violate the 1977 amnesty law.

On 26 October 2018, Judge Servini de Cubría admitted the complaint filed two years earlier by the NGO Women's Link Worldwide on behalf of six women repressed by the dictatorship. The investigation examines cases of sexual assault, murder, forced abortion and the theft of children under Franco's regime.

ROHINGYA PEOPLE DEMAND JUSTICE OVER GENOCIDE

Aung San Suu Kyi and others

Context

Ongoing proceedings in Argentina for alleged crimes of genocide and crimes against humanity committed in Myanmar against the Rohingya people since 2017

Suspects

Military and civilian leaders, including State counsellor Aung San Suu Kyi and army chief Min Aung Hlaing

Country of residence of suspects

Myanmar

Charges

Crimes against humanity and genocide

Current status

Under investigation

Developments in 2019

The Burmese Rohingya Organisation UK (Brouk) filed a lawsuit on 13 November 2019 before the Argentinian authorities for alleged genocide and crimes against humanity committed against the Rohingya people, including mass killings allegedly committed in August 2017.

On 14 November 2019, a Pre-Trial Chamber of the International Criminal Court (ICC) authorized the Office of the Prosecutor to investigate alleged crimes of deportation, persecution and any other crime within the ICC's jurisdiction committed against the Rohingya people in Rakhine State. This authorization follows the lawsuit filed by The Gambia against Myanmar at the International Court of Justice on 11 November 2019.

Facts

On 25 August 2017, a military crackdown started in Myanmar against the Rohingya people after militants allegedly attacked police posts in Rakhine State. The violent repression forced more than 740'000 civilians to flee massacres, extrajudicial executions and sexual violence. The United Nations Independent International Fact-Finding Mission in Myanmar concluded that soldiers systematically used rape, gang rape and other violent and forced sexual acts against women, girls, boys, men and transgender people.

The UN investigators qualified this severe repression as "genocide" and declared that the generals at the head of the country's army must answer charges of genocide in northern Rakhine State as well as accusations of crimes against humanity and war crimes in the States of Rakhine, Kachin and Shan.

INVESTIGATION CONTINUES AGAINST SAUDI CROWN PRINCE

Prince Mohammed bin Salman

Context

Preliminary examination in Argentina into alleged complicity in war crimes and torture committed in Saudi Arabia

Suspect

Crown prince and deputy prime minister of the Kingdom of Saudi Arabia

Country of residence of suspect

Saudi Arabia

Charges

War crimes; torture and inhuman treatment in violation of the 1984 Convention against Torture

Developments in 2019

The investigation is ongoing. The Argentinian authorities have sent information requests to Turkey, Yemen and the International Criminal Court.

Current status

Preliminary examination, pending the opening of an official judicial investigation

Facts

On 25 March 2015, an international coalition led by Saudi Arabia launched air strikes against the armed group of Houthis in Yemen, triggering a major armed conflict. For three years, Yemen has been ravaged by a war that has already killed more than 10'000 people, half of whom were civilians. Prince Mohammed bin Salman was appointed Minister of Defense on 23 January 2015. One of his first acts was to launch the military campaign in Yemen along with other Arab States.

United Nations bodies and human rights groups have denounced the widespread violations of human rights and humanitarian law committed in Yemen. Alleged violations include deliberately targeting civilians, the use of illegal cluster-munitions, indiscriminate airstrikes and a naval blockade which deprived civilians of access to basic necessities.

The complaint denounces alleged violations of international law committed during the armed conflict in Yemen as well as sexual harassment and torture, including electrocution and flogging of Saudi citizens.

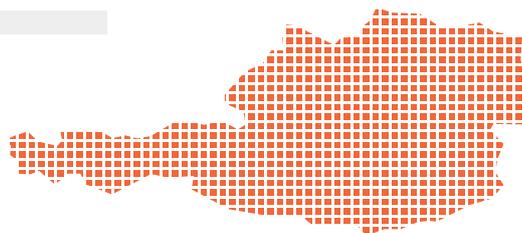
The complaint also denounces bin Salman's alleged role in the murder of Saudi journalist Jamal Khashoggi, who was killed on 2 October 2018 inside the Saudi consulate in Istanbul. Saudi authorities deny bin Salman's involvement. Turkish and United States intelligence agencies found the murder to have been premeditated and ordered by bin Salman himself.

Procedure

On 26 November 2018, the international NGO Human Rights Watch filed a denunciation with the Argentine Federal Prosecutor in anticipation of bin Salman's visit to Buenos Aires for the G20 Summit. The submission asks the Argentine authorities to investigate bin Salman's role in war crimes allegedly committed by the Saudi-led coalition in Yemen, as well as in acts of torture and ill treatment of Saudi nationals, including the murder of Khashoggi.

On 28 November 2018, a federal prosecutor formally requested inquiries into whether the allegations are being investigated elsewhere, and into bin Salman's diplomatic status and immunities. On the same day, the competent federal investigative judge sent information requests to the governments of Saudi Arabia and Yemen, to the International Criminal Court and to the Argentine Foreign Ministry.

AUSTRIA



RETRIAL FOR WAR CRIMES IN SYRIA DELAYED

Name withheld

Context

Ongoing proceedings in Austria for war crimes allegedly committed between 2013 and 2014 in Syria

Suspect

Palestinian national, former member of the Farouq Brigades

Country of residence of suspect

Austria

Charges

Terrorist offenses, war crimes of murder and violations of the 1949 Geneva Conventions

Developments in 2019

The retrial, scheduled to begin in December 2018, has not yet taken place.

Current status

Conviction overturned; retrial pending

Facts

The accused is alleged to have executed at least 20 unarmed and injured Syrian government soldiers in Al Khalidiya and Homs between 2013 and 2014. According to the charges, these murders were allegedly intended to intimidate the population, to force the Syrian army to leave the contested area and to

threaten or destroy the political, constitutional, economic or social structures of the Syrian State.

Procedure

The accused sought asylum in Austria in May 2015. He was subsequently reported to the authorities by refugees, whom he had told that he belonged to the Farouq Brigades and had fought against Syrian President Bashar al-Assad.

The trial opened in February 2017 but was adjourned shortly thereafter on medical grounds, after the accused collapsed in court. On 10 May 2017, the accused was found guilty on 20 charges of murder as a war crime and sentenced to life imprisonment by a jury in Innsbruck. The defense appealed the conviction, arguing that the court had failed to call key witnesses who could testify to the fact that the defendant had left Syria for Turkey in the summer of 2013, and that he had not taken part in hostilities from January 2013 until his departure.

On 12 December 2017, the Supreme Court of Justice overturned the conviction on grounds that the failure to question these witnesses had violated the rights of the defendant, and remanded the case back to the regional court.

A retrial was scheduled to begin on 10 December 2018 before the Regional Court of Innsbruck but has been delayed.

SYRIAN INTELLIGENCE SERVICES UNDER INVESTIGATION

Names withheld

Context

Ongoing investigation into international crimes committed by the Syrian intelligence services

Suspects

High-ranking officials of the Syrian intelligence services, including the Military Intelligence, Air Force Intelligence and General Intelligence services

Country of residence of suspects

Syria

Charges

Crimes against humanity and war crimes

Developments in 2019

The case remains under investigation.

Current status

Ongoing investigation

Facts

The investigation concerns crimes against humanity and war crimes allegedly committed by the Military Intelligence, Air Force Intelligence and General Intelligence services including murder, extermination, torture, serious bodily harm and deprivation of liberty between

February 2011 and January 2017 in 13 detention centers in Damascus, Daraa, Hama and Aleppo.

Procedure

Austrian authorities initiated an investigation into the Syrian intelligence services after 16 women and men from Syria filed a criminal complaint to the public prosecutor in Vienna in May 2018. The group of torture survivors – which included an Austrian citizen – filed the complaint together with the European Center for Constitutional and Human Rights, Syrian lawyers Anwar al-Bunni (of the Syrian Center for Legal Research and Studies) and Mazen Darwish (of the Syrian Center for Media and Freedom of Expression) and the Center for the Enforcement of Human Rights International in Vienna.

Following the submission, the prosecutor heard one of the complainants and initiated a criminal investigation.

BELGIUM

GENOCIDAIRE CONVICTED FOR THE MURDER OF A BELGIAN CITIZEN AND HER FAMILY

Fabien Neretsé

Context

The trial of Fabien Neretsé was the fifth trial held in Brussels in connection with the 1994 Rwandan genocide. However, this was the first time that the Brussels Criminal Court had to deal directly with facts that qualify as genocide

Suspect

Former Rwandan senior civil servant

Country of residence of suspect

France

Charges

Genocide and war crimes

Developments in 2019

On 9 October 2019, the Brussels Criminal Court decided to sever the case of Neretsé from two other Rwandan accused, Ernest Gakwaya and Emmanuel Nkunduwimye, considering that there was no connection between the offenses.

The trial of Neretsé started on 4 November 2019 with the composition of the jury and the hearings on the merits began on 7 November 2019. Neretsé was on trial for genocide and the war

crime of murder, including the murder of Belgium citizen Claire Beckers and her family and other attempted murders.

On 19 December 2019, the Brussels Criminal Court found Neretsé guilty of genocide and war crimes and sentenced him to 25 years in prison.

Current status

Sentenced to 25 years

Facts

Neretsé, originally from Ruhengeri, was an influential figure in the regime of Rwandan President Habyarimana. He murdered a Belgian citizen, Claire Beckers, as well as her Tutsi husband Isaiah Bucyana and their daughter Katia. All three were killed on 9 April 1994 in Kigali.

Procedure

Neretsé was indicted in Rwanda on 8 August 2007 on counts of genocide. An arrest warrant was issued in Belgium on 24 June 2011. He was arrested in France on 29 June 2011 and extradited to Belgium on 30 August 2011.



TWO ALLEGED INTERAHAMWE MEMBERS DUE FOR TRIAL IN 2020

Ernest Gakwaya and
Emmanuel Nkunduwimye

Context

Ongoing proceedings for alleged crimes of genocide and war crimes committed during the 1994 Rwandan genocide

Suspects

Alleged members of the *Interahamwe* militia

Country of residence of suspects

Belgium

Charges

Genocide and war crimes

Developments in 2019

On 9 October 2019, the Brussels Criminal Court decided to sever the cases against Ernest Gakwaya and Emmanuel Nkunduwimye from the case against Fabien Neretsé, considering that there was no connection between the offenses. Thus, Neretsé was tried in November 2019, whereas the other two accused, Gakwaya and Nkunduwimye, will be tried at a subsequent trial session, scheduled for September 2020.

Gakwaya and Nkunduwimye are accused of genocide and war crimes, including murders, attempted murders and rapes.

Current status

Indicted, placed in pre-trial detention

Facts

Gakwaya and Nkunduwimye allegedly participated in the 1994 genocide in Rwanda.

Gakwaya is accused of murdering and raping Tutsis and moderate Hutus during the genocide. Nkunduwimye allegedly committed murder, attempted murder and rape during the same period. They were allegedly members of the *Interahamwe* pro-Hutu militia, heavily implicated in the 1994 genocide.

Procedure

Gakwaya and Nkunduwimye were arrested in March 2011 in Brussels. They denied having been members of the *Interahamwe* militia.

PRESIDENT OF THE SENATE INVESTIGATED FOR ORCHESTRATING A PLANE CRASH

Alexis Thambwe Mwamba

Context

Ongoing proceedings in Belgium for war crimes and crimes against humanity allegedly committed in the Democratic Republic of the Congo (DRC)

Suspect

Former Minister of Justice and President of the Senate of DRC

Countries of residence

Belgium and DRC

Charges

Crimes against humanity and war crimes

Developments in 2019

An initial hearing took place on 24 October 2019 at the Investigative Chamber. The hearing was postponed in order to respond to the defense brief.

The prosecution argues that Belgium is not competent to investigate the case, as the accused does not have his main residence in Belgium.

Current status

Under investigation

Facts

During the Second Congolese War (1998-2003), Alexis Thambwe Mwamba was a member of the rebel group *Rassemblement congolais pour la démocratie* (Movement for the Liberation of Congo, or RCD) led by Jean-Pierre Bemba.

In October 1998, a plane from the company Congo Airline was shot down with 50 persons on board. The RCD, through the voice of Thambwe Mwamba, claimed responsibility for the attack that caused the plane crash.

Thambwe Mwamba explained that the rebels had shot the plane because it was transporting pro-Kabila soldiers and weapons. However, the 50 people on board were civilians (mainly women and children) and crew members.

Procedure

In June 2017, a complaint for war crimes and crimes against humanity was filed in Belgium against Thambwe Mwamba by several families of the victims and the *Ligue congolaise contre la corruption*.

On 4 September 2018, Thambwe Mwamba was heard by the investigative judge regarding his involvement in the crimes.

STILL NO TRIAL FOR LIBERIAN FRONTLINE COMMANDER

Martina Johnson

Context

The Martina Johnson case constitutes the first arrest and indictment for war crimes and crimes against humanity allegedly committed during the first Liberian civil war (1989-1996)

Liberia's former President, Charles Taylor, was sentenced on 30 May 2012 to 50 years in prison (confirmed on appeal on 10 December 2013) for the crimes he committed during the Sierra Leone civil war in the 1990s. However, he was not prosecuted for the crimes committed in Liberia by his troops, the National Patriotic Front of Liberia (NPFL)

Suspect

Martina Johnson, a former frontline commander of the NPFL, who was allegedly Charles Taylor's chief of artillery during Operation Octopus in October 1992

Country of residence of suspect

Belgium

Charges

Direct involvement in war crimes and crimes against humanity, including mutilation and mass killings

Developments in 2019

The investigation is still ongoing and several procedural acts were undertaken throughout the year.

Current status

Under house arrest, indicted

Facts

Martina Johnson was allegedly actively involved in Operation Octopus launched by Charles Taylor and his NPFL troops in October 1992. This offensive against the government and the peacekeeping forces was aimed at taking over Liberia's capital, Monrovia, and resulted in the deaths of hundreds of civilians, many of whom were targeted for ethnic reasons.

Procedure

In 2012, three Liberian victims, assisted by the NGOs Civitas Maxima and its Liberian sister organization the Global Justice and Research Project, filed a complaint in Belgium against Johnson for her alleged direct participation in mutilations and mass killings during Operation Octopus in October 1992.

Johnson was arrested on 17 September 2014 in Gent, Belgium, based on documentation collected by the two NGOs. She was released on 4 May 2015 and placed under judicial supervision.

FOLLOW UP ON OTHER CASES

- T.K. and N.B. (Rwandan nationals): the investigation is ongoing (see UJAR 2019, p. 18)

FINLAND



WAR CRIMES CONVICTION FOR THE DESECRATION OF A DEAD BODY

Ahmed Jabbar Hasan

Context

Iraqi soldier sentenced in Finland for war crimes committed in Iraq in March 2015

Suspect

Iraqi national and former corporal in the Iraqi army

Country of residence of suspect

Finland

Charges

War crimes of desecrating and violating the dignity of a dead body

Developments in 2019

On 10 January 2019, a Court in Helsinki sentenced Ahmed Jabbar Hasan to a suspended sentence of 18-month's imprisonment for war crimes. The accused did not appeal; the judgment is now final.

Current status

Sentenced

Facts

In March 2015, during an operation against the Islamic State (ISIS) near Karma (Iraq), the accused was filmed decapitating the body of an ISIS militant. The video was uploaded to Hasan's Facebook page, along with another video of him posing in front of burning bodies.

Procedure

The investigation was launched in May 2017, after a viewer reported that the video was online.

The accused was arrested at the end of June 2017. He was indicted in July 2018.

OVERCOMING CHALLENGES OF WITNESSES' REMOTE LOCATION

The Iraqi twin brothers

Context

Ongoing proceedings in Finland against Iraqi twin brothers for their alleged implication in the Camp Speicher massacre near Tikrit, Iraq, in June 2014

Suspect

Iraqi nationals and alleged Islamic State (ISIS) fighters

Country of residence of suspects

Finland

Charges

War crimes, murder and aggravated assault committed with terrorist intent

Developments in 2019

The appeal is ongoing. Prosecution and defense witnesses were heard in September in Iraq, in the presence of a defense lawyer and the prosecutor. The court and the accused were in Finland and followed the hearings through videoconference.

Current status

Acquitted; on appeal

Facts

In June 2014, 1'700 unarmed Iraqi army recruits were arrested at Camp Speicher near Tikrit, Iraq, by members of ISIS. The victims were laid on the ground and shot one by one. The Iraqi twin brothers are alleged to have murdered 11 of them.

Procedure

The Iraqi twin brothers entered Finland in September 2015 as asylum seekers. They were arrested by the National Bureau of Investigation on suspicion of involvement in the Camp Speicher massacre committed on behalf of ISIS in Iraq.

Their trial started on 13 December 2016 before the District Court of Pirkanmaa. On 30 November 2016, they were charged with war crimes, murder and assault with terrorist intent. The prosecution sought life imprisonment for the defendants, both of whom had pleaded not guilty. On 24 May 2017, the District Court of Pirkanmaa acquitted the Iraqi twin brothers for lack of evidence. They were granted compensation for their pre-trial detention. The two were allowed to reside in Finland. The prosecution appealed this judgment.

The appeal hearings started on 11 September 2018 but were postponed until further notice due to arrangements regarding hearings of witnesses in Iraq. The Court of Appeal decided that the main hearings would not be formally opened before these witnesses had been heard "outside the main hearing".

Zoom in

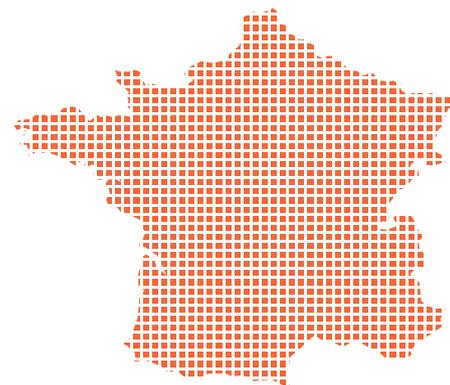
Cooperation with UNITAD

The United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ Islamic State in Iraq and the Levant (ISIL/Da'esh), known as UNITAD, cooperates with national jurisdictions to enforce universal jurisdiction.

Its team collects, analyzes and preserves evidence of crimes committed by ISIL/Da'esh in Iraq. It interviews witnesses and victims, exhumes mass graves and intends to identify those most responsible for the crimes. As such, UNITAD can share evidence and feed domestic prosecutions on universal jurisdiction cases.

In the Iraqi twin brothers case, UNITAD allowed the Finnish prosecuting authorities to overcome the technical challenges of interviewing Iraqi witnesses. The latter were heard in the UNITAD office – instead of an Iraqi court – connected through video conference to the Finnish court.

FRANCE



HISTORICAL MOVE AGAINST AL-ASSAD'S REGIME

Abdulhamid A.

Context

Ongoing joint investigation in France and Germany for crimes against humanity and torture allegedly committed by Syrian officials in Syria since 2011

Suspect

Syrian national; former member of the General Intelligence Directorate (GID), one of the four Syrian intelligence agencies

Country of residence of suspect

France

Charges

Crimes against humanity

Developments in 2019

On 12 February 2019, French authorities arrested Abdulhamid A. in the Paris region on suspicion of crimes against humanity. On the same day, German authorities arrested two other former GID officials, Anwar R. and Eyad A., in Germany. The arrests were coordinated in the context of a joint French-German investigative unit. On 15 February 2019, Abdulhamid A. was indicted by the investigative judges of the specialized unit for the prosecution of genocide,

crimes against humanity, war crimes and torture within the Paris Tribunal for complicity in crimes against humanity, and placed in pre-trial detention.

Current status

Detained pending investigation

Facts

Since the beginning of the Syrian civil war in 2011, Syrian intelligence services have reportedly been systematically arresting, torturing and killing opposition activists. As a former member of the GID, Abdulhamid A. is suspected of having participated in crimes committed against the civilian population by the Syrian regime between 2011 and 2013.

WITNESSES COME FORWARD AGAINST HIGH-RANKING SYRIAN OFFICIALS

Ali Mamluk;
Jamil Hassan;
Abdel Salam Mahmoud

Context

Ongoing investigation in France for international crimes committed in Syria in 2013

Suspects

Ali Mamluk, Director of the National Security Bureau; Jamil Hassan, head of the Syrian Air Force Intelligence; and Abdel Salam Mahmoud, Director of the Syrian Air Force Intelligence investigative branch

Country of residence of suspects

Syria

Charges

Complicity in crimes against humanity, torture and enforced disappearances; war crimes

Developments in 2019

The investigative judges heard around 20 new witnesses who had been held in the Mezzeh detention center in Damascus.

Current status

Judicial investigation ongoing; international arrest warrants issued

Facts

In November 2013, Patrick Dabbagh and his father Mazen Dabbagh, both dual French-Syrian nationals, were arrested from their home in Damascus by Syrian Air Force Intelligence agents and detained for interrogation at the Mezzeh detention center. Neither one has been seen since. In summer 2018, the Dabbagh family received formal notification from the Syrian authorities that Patrick and Mazen Dabbagh had died. According to the United Nation's Commission of Inquiry, Mezzeh has one of the highest mortality rates in Syria.

Procedure

On 24 October 2016, a complaint was filed before the Paris Tribunal by Obeida Dabbagh, a Syrian-French national, on behalf of his nephew and brother, Mazen and Patrick Dabbagh, together with the International Federation for Human Rights and *Ligue des Droits de l'Homme*. An investigation into torture, crimes against humanity and enforced disappearances is currently ongoing before the French specialized unit for the prosecution of genocide, crimes against humanity, war crimes and torture within the Paris Tribunal.

In October 2018, in an unprecedented step towards accountability for crimes committed in Syria, French judges issued international arrest warrants against three high-level regime suspects: Ali Mamluk, Jamil Hassan and Abdel Salam Mahmoud.

Mamluk and Hassan, also subject to an arrest warrant issued in Germany earlier in 2018, are both wanted for complicity in crimes against humanity, torture and enforced disappearances. Mahmoud, in charge of the Air Force Intelligence Service at the Mezzeh military airport, is wanted on war crimes charges as well as complicity in crimes against humanity, torture and enforced disappearances.

RELATIVES RECEIVE COMPENSATION WHILE INVESTIGATIONS GO ON

The Rémi Ochlik, Marie Colvin and Edith Bouvier investigations

Context

Ongoing investigation into the murder of American, British, French and Syrian journalists during an army bombardment of a media center in Syria in 2012

Charges

War crimes

Developments in 2019

The investigation is ongoing. On 30 January 2019, the United States District Court in Washington held Syria's government liable for the targeting and killing of Marie Colvin and awarded a compensatory USD 302,5 million to her relatives.

Current status

Investigation ongoing

Facts

On 22 February 2012, a Syrian army bombardment in Baba Amr, Homs, led to the deaths or serious injury of several journalists operating from a media center based there.

French photojournalist Rémi Ochlik and American war crimes correspondent Colvin were both killed in the attack. Several other journalists were injured in the attack, including French journalist

Edith Bouvier as well as Syrian and British journalists who were using the center as a base to report on the events in Homs in early 2012.

Procedure

This case was originally opened in 2012 as a homicide case but was reclassified in 2014 as a war crimes case.

The families of Ochlik and Colvin are civil parties in the case, together with French, Syrian and British journalists injured in the attack, International Federation for Human Rights and Reporters without Borders.

On 9 April 2018, documents filed in a US civil case concerning Colvin's death were declassified. They allegedly demonstrate the premeditated nature of the Syrian army bombardment of the media center in Homs that led to the death of Colvin and Ochlik, and to the injuries to several others including Bouvier, Paul Conroy and Wael al Omar. These documents have been filed in the ongoing war crimes investigation in France.

Zoom in

The French specialized unit

The French specialized unit for the prosecution of genocide, crimes against humanity, war crimes and torture within the Paris Tribunal (hereinafter the specialized unit) is currently investigating almost 150 cases, divided between the prosecutors (74 cases) and investigative judges (75 cases). Among them, 27 ongoing cases relate to the 1994 genocide in Rwanda. The cases presented in this report are the ones that have been made public. The others are protected by the confidentiality of investigations.

Since 2015, immigration services have the obligation to inform the specialized unit each time refugee protection is denied on the basis of the exclusion clause (Article 1F of the 1951 Refugee Convention, applying when the asylum seeker is suspected of having committed an international crime). Several investigations have been initiated through this procedure including investigations of individuals from Sri Lanka, Chechnya, Iraq, Syria and Rwanda.

NGOS SIDELINED AS CEMENT COMPANY INDICTMENT IS CONFIRMED

Lafarge - Eric Olsen and others

Context

Proceedings against the cement company Lafarge SA (now LafargeHolcim) for, *inter alia*, financing terrorism and complicity in crimes against humanity committed by the Islamic State (ISIS)

Suspects

Current and former Directors and top executives of the French-Swiss LafargeHolcim group (the crimes were allegedly committed by the French company Lafarge prior to its 2015 merger with Swiss-based Holcim) and of its subsidiary Lafarge Cement Syria. The suspects are French and Norwegian nationals

Countries of residence

France and Switzerland (headquarters of the group)

Charges

Financing of a terrorist enterprise, complicity in crimes against humanity, deliberate endangerment of people's lives, exploitative labor practices, forced labor and violation of the European Union embargo on oil purchases

Developments in 2019

On 24 October 2019, the Investigation Chamber of the Paris Court of Appeals denied civil party status to the NGOs Sherpa and the European Center for Constitutional and Human Rights (ECCHR).

On 7 November 2019, the Court confirmed the indictment of nine Lafarge executives and the Lafarge company itself for financing of a terrorist enterprise, breaching an EU embargo and endangering the lives of others. However, the Court revoked the indictment of the company for complicity in crimes against humanity.

The organizations appealed both the 24 October and the 7 November 2019 decisions to the French Supreme Court.

Current status

Ongoing judicial investigation; company and individuals indicted

Facts

Lafarge had a cement factory in Jalabiya, in northern Syria. In an area where several armed groups were operating, the company allegedly entered into negotiations with ISIS to purchase oil and pozzolan (a material used to make concrete) from them, as well as to obtain official ISIS passes for crossing checkpoints in order to maintain its production in the area. Testimonies also point to Lafarge risking its employees' lives and violating a number of basic labor rights.

Procedure

In September 2016, the French Finance Minister filed a complaint before the Office of the Prosecutor against LafargeHolcim for its alleged illegal purchase of oil in Syria in violation of the EU embargo issued in 2012. The Office of the Prosecutor opened an investigation in October 2016.

On 15 November 2016, 11 former Syrian employees, Sherpa and ECCHR (hereinafter the plaintiffs) filed a criminal complaint as civil parties in Paris against Lafarge, Lafarge Cement Syria, and their current and former CEOs, for the financing of terrorism, complicity in crimes against humanity committed in Syria and for a series of labor rights violations.

On 9 June 2017, three investigative judges of the Paris Tribunal opened an investigation into the crimes alleged by the plaintiffs. In September 2017, three of the victims were heard by one of the investigative judges.

On 13 October 2017, the plaintiffs filed a motion requesting that the investigative judges summon a former French Minister of Foreign Affairs and two former French ambassadors to Syria for questioning.

On 14 November 2017, the French police searched the headquarters of LafargeHolcim in Paris. At the same time, the Belgian federal police searched the premises of Groupe Bruxelles Lambert, the second largest shareholder of LafargeHolcim, in Brussels.

On 28 June 2018, three investigative judges of the Paris Tribunal indicted the legal entity Lafarge SA for complicity in crimes against humanity, financing of a terrorist enterprise, breaching an embargo and endangering the lives of others. Lafarge allegedly paid millions of euros to ISIS and several other armed groups to keep its cement factory running. The investigative judges ordered LafargeHolcim to hand over 30 million euros to the authorities as a security deposit ahead of a possible trial.

Eight former executives were also charged in this case between December 2017 and May 2018, and were requested to provide the court with a deposit of several million euros. In September 2019, a Syrian-Canadian alleged former intermediary between the company and ISIS suppliers was also charged.

Zoom in

NGOs face shrinking access to court

A French Appeals Court decided on 24 October 2019 that the organizations ECCHR and Sherpa were no longer admissible as plaintiffs in the proceedings against the French company Lafarge because they were not direct victims of the crimes in this case.

This decision is part of a broader movement in France to shrink the role of NGOs in criminal cases, ultimately limiting legal actions that are essential to fight impunity.

A former Syrian Lafarge employee and plaintiff in the case said: *"Without Sherpa and ECCHR, I would not have had access to French justice."*

"Without our complaint, our expert judicial work and support for the victims, such an investigation would not have been possible," confirmed Sandra Cossart, Sherpa's Executive Director.

Claire Tixeire, Senior Legal Advisor at ECCHR, added that *"(this) decision severely obstructs access to justice of those affected by crimes during armed conflicts."*

Active personality

FRENCH BANK INVESTIGATED FOR FINANCING ATROCITIES IN SUDAN

BNP Paribas

Context

Ongoing proceedings in France regarding the alleged complicity of BNP Paribas (BNPP) in crimes committed by the Sudanese government against its citizens between 2002 and 2008

Suspect

BNPP as a company and its senior staff

Country of residence of suspects

France

Charges

Crimes against humanity, torture, genocide and financial crimes including money laundering and handling the proceeds of crime

Developments in 2019

On 26 September 2019, nine Sudanese victims, supported by the International Federation for Human Rights and Project Expedite Justice, filed a criminal complaint against BNPP before the investigative judges of the Paris Tribunal. The complaint alleges that by providing banking services to the Sudanese government while Sudan was subject to international sanctions

for committing crimes against its civilians, the bank and its senior staff became complicit in these crimes.

Current status

Preliminary analysis phase of the complaint, awaiting the prosecutor's decision to open a formal judicial investigation

Facts

From 2002 to 2008, BNPP was the primary foreign bank of the Sudanese government. During this time, Sudanese government forces and its militia called the *Janjaweed* were engaged in an armed conflict with rebel groups. They systematically targeted civilians belonging to the same non-Arab ethnic groups as the rebels (particularly the Masalit, Fur and Zaghawa), in Darfur and other areas. Government forces and allied militia killed, tortured, detained, forcibly displaced, raped and assaulted tens of thousands of civilians.

These crimes, said to amount to genocide and crimes against humanity, were allegedly facilitated by BNPP through its provision of credit facilities, access to foreign financial markets and petrol exports to the Sudanese government. This alleged responsibility is compounded by the fact that Sudan was subject to sanctions from the United Nations, the European Union and individual States, increasing the government's reliance on the services provided by BNPP.

FORMER IRAQI REFUGEE DETAINED AND UNDER INVESTIGATION

Ahmed Hamdane El Aswadi

Context

Ongoing investigation in France for war crimes and murder committed in Iraq in 2014

Suspect

Iraqi national and suspected member of Islamic State (ISIS)

Country of residence of suspect

France

Charges

Inhuman and degrading treatment as war crimes and violations of the 1949 Geneva Conventions, criminal conspiracy and murder in connection with a terrorist enterprise

Developments in 2019

The accused is in pre-trial detention; investigation ongoing

Current status

Detained; under investigation

Facts

Ahmed Hamdane El Aswadi is suspected of having participated in the massacre at Camp Speicher, a military base near Tikrit (Iraq). In June 2014, armed men abducted and executed hundreds of young army recruits, mainly Shiites,

killing up to 1'700 people. Based on the testimony of other suspects, the Iraqi authorities claim that El Aswadi personally executed 103 soldiers. The accused denies all involvement in the alleged crimes. The accused arrived in France in the summer of 2016. He was granted refugee status in June 2017. This protection was removed after his arrest.

Procedure

In the summer of 2017, the French intelligence services identified El Aswadi as an alleged ISIS member and reported his presence to the judicial authorities.

In November 2017, the Office of the Prosecutor of the French specialized unit for the prosecution of genocide, crimes against humanity, war crimes and torture within the Paris Tribunal (hereinafter the specialized unit) requested the opening of an investigation against El Aswadi. This is the first case to be investigated jointly by the anti-terrorism and the specialized units.

On 6 March 2018, El Aswadi was arrested in Lisieux, Normandy. After two days in police custody, he was indicted for criminal conspiracy, murder in connection with a terrorist enterprise and war crimes of inhuman and degrading treatment and of using prohibited means and methods of warfare. He was subsequently placed in pre-trial detention.

Zoom in

Collaboration between France and Finland

The Camp Speicher massacre is under scrutiny in two European countries through universal jurisdiction: Finland and France. The two countries have been collaborating to improve their understanding of the event and to find evidence. Finland is currently hearing an appeal on the case while France is still investigating the suspect.

CHADIAN REBEL LEADER ARRESTED IN FRANCE

Mahamat Nouri and others

Context

Ongoing proceedings in France against a rebel group leader for complicity in crimes against humanity allegedly committed in Chad and Sudan between 2005 and 2010

Suspects

Chadian politician Mahamat Nouri, former associate of Hissène Habré and Idriss Déby, then leader of the Union of Forces for Democracy and Development (UFDD)

Country of residence of suspects

France

Charges

Crimes against humanity and participation in a criminal organization in order to commit crimes against humanity

Developments in 2019

On 3 January 2019, the Prosecutor of the Court of Tripoli, Libya, issued an international warrant of arrest against Mahamat Nouri and 23 other Chadians for their alleged involvement in attacks in eastern and southern Libya.

On 17 June 2019, Nouri and two other persons were arrested by the French police on suspicion of crimes against humanity. Nouri was heard on 21 June 2019 by the

investigative judges who indicted him for crimes against humanity and participation in a criminal organization in order to commit crimes against humanity. Nouri is suspected of having ordered recruitments of fighters, including child soldiers, between 2005 and 2010 in Chad and Sudan. He was placed in pre-trial detention.

Current status

Indicted, ongoing investigations

Facts

Nouri was the leader of the Chadian rebel group UFDD. He allegedly initiated a series of attacks against government positions in eastern Chad in autumn 2006. After the failure of peace talks held in 2007, Nouri launched an attack on the Chadian capital N'Djamena in February 2008. He was repelled after days of heavy fighting by the army with the backing of French troops.

In 2010, Nouri and two other rebel chiefs were expelled from Sudan, where they had based their operations, after Sudan and Chad normalized their diplomatic relations. Nouri fled to Libya, where the UFDD had established bases on the northern border with Chad. He was expelled from Libya to Qatar in 2010 before arriving in France a year later.

Procedure in France

On 18 January 2017, the French authorities imposed a six-month freeze on Nouri's financial assets. In May 2017, on the basis of a

referral by the French Office for the Protection of Refugees and Stateless Persons and following a rejection of his asylum requests on the basis of Article 1F of the 1951 Refugee Convention, an investigation into Nouri's alleged crimes was opened at the French specialized unit for the prosecution of genocide, crimes against humanity, war crimes and torture.

Procedure in Chad

Charges against Nouri were filed in May 2013 in Chad.

In 2013, the Chadian Ministry of Justice issued an international arrest warrant against Nouri.

GUANTÁNAMO CASE DISMISSAL CONFIRMED BY PARIS COURT OF APPEAL

Geoffrey Miller and others

Context

Proceedings in France against former Guantánamo Bay detention camp commander Geoffrey Miller and other unknown perpetrators for alleged torture committed against French citizens at the United States (US) detention center in Guantánamo Bay, Cuba

Suspect

Former Guantánamo commander Geoffrey Miller and other unknown US officials

Country of residence of suspects

United States of America

Charges

Torture

Developments in 2019

On 7 November 2019, the Investigation Chamber of the Court of Appeal in Paris examined the appeal of the civil parties against the dismissal of the case ordered by the investigative judges. In the 2017 dismissal order, the investigative judge explained that the defendants could not be individually prosecuted, being "representatives of the State acting in this capacity."

On 19 December 2019, the dismissal of the case was upheld by the Court.

Current status

Investigation closed; appeal dismissed

Facts

Mourad Benchellali, Nizar Sassi and Khaled Ben Mustapha are French citizens who were detained at the US detention camp at Guantánamo Bay between 2002 and 2004-2005, where they were subjected to physical and psychological abuse. Geoffrey Miller was commander of the Joint Task Force Guantánamo and reportedly oversaw interrogations and detainee treatment during the plaintiffs' detention.

Procedure

In November 2002, a criminal complaint and a claim for damages were filed in France in connection with the arrest, abduction, detention, false imprisonment and arbitrary detention of Benchellali and Sassi. A judicial investigation was opened in June 2005. The scope of the investigation was later expanded to include torture allegations submitted by the plaintiffs after their release from Guantánamo and to include both the criminal complaint and the civil claim brought by the third plaintiff, Ben Mustapha.

In January 2012, the investigative judge sent a rogatory letter to the US calling on it to cooperate and share information with French investigators. After this request and several follow-up

reminders were ignored by the US, the plaintiffs filed a motion in February 2014 requesting that the investigative judges summon Miller for questioning. The request was initially denied. On 2 April 2015, the Paris Court of Appeal reversed this decision, ruling that Miller should be summoned to give evidence on the acts in question and his role in the treatment of detainees at Guantánamo.

On 20 January 2016, the investigative judge of the Paris Tribunal issued a subpoena requesting that Miller appear before the judge on 1 March 2016 regarding his alleged involvement in torture committed against Guantánamo Bay detainees. However, General Miller failed to appear. On 20 July 2016, the plaintiffs' lawyer requested that an international arrest warrant be issued against Miller.

On 18 September 2017, the case was dismissed. The plaintiffs appealed the decision before the Investigation Chamber of the Court of Appeal in Paris.

LIBERIAN WAR CRIMES SUSPECT REARRESTED

Kunti K.

Context

Ongoing proceedings in France for serious crimes under international law allegedly committed in Liberia between 1993 and 1997

Suspect

Alleged commander in the United Liberation Movement of Liberia for Democracy (ULIMO), a rebel group fighting against Charles Taylor's National Patriotic Front of Liberia (NPFL)

Countries of residence of suspect

Netherlands and France

Charges

Torture, use of child soldiers and murder

Developments in 2019

Kunti K. has appointed a third additional lawyer to defend his interests. The new counsel requested that the investigative judge issue a visiting permit to meet Kunti K. in pre-trial detention. The visiting permit was sent to the wrong person and the new counsel never received the visiting permit. Consequently, the new counsel requested the release of his client.

On 6 September 2019, Kunti K. was released from pre-trial detention. In early January 2020, he was returned to prison after failing to fulfill an obligation related to his release, namely to live at an address known to, and agreed upon by justice.

Current status

Investigation pending; suspect indicted and placed under judicial supervision

Facts

Kunti K. allegedly committed crimes against humanity between 1993 and 1997 as commander of the ULIMO, during the first Liberian civil war (1989-1996). In his capacity as ULIMO commander, Kunti K. allegedly committed murder, enslavement, torture, cannibalism and used child soldiers.

Procedure

On 23 July 2018, the Swiss NGO Civitas Maxima launched a complaint in the name of Liberian victims before the French specialized unit for the prosecution of genocide, crimes against humanity, war crimes and torture within the Paris Tribunal.

On 4 September 2018, Kunti K. was arrested by the French police unit specialized in investigating war crimes, crimes against humanity, genocide and torture. Kunti K. was remanded in custody.

LIBYAN INSURGENCY COMMANDER UNDER SCRUTINY

Khalifa Haftar

Context

Ongoing proceedings in France for torture allegedly committed in Libya between 2016 and 2017

Suspect

Commander-in-chief of the Libyan National Army (LNA)

Country of residence of suspect

Libya

Charges

Torture and acts of barbarism

Developments in 2019

The investigation is ongoing.

Current status

Under investigation

Facts

In 2011, Khalifa Haftar joined the Libyan insurgency against the regime of Muammar Gaddafi and took command of the rebel army, the Libyan National Army (LNA).

During the spring 2014, Haftar and the LNA launched Operation Dignity, aiming to take over the city of Benghazi.

Haftar is accused of having ordered, in October 2014, the attack of a family in Benghazi. One of the family

members was allegedly arbitrarily arrested and tortured for three weeks.

Between 2016 and March 2017, the LNA is suspected of having committed crimes while occupying the city of Benghazi. Haftar is accused of having launched a campaign of indiscriminate shelling, murders and forced disappearances against the neighborhoods of Al-Laitti, Bu-Atni and Ganfouda, where many civilians had found refuge.

Procedure

On 18 April 2018, as Haftar was in France for medical reasons, a complaint was filed against him before the French specialized unit for the prosecution of genocide, crimes against humanity, war crimes and torture (hereinafter the specialized unit). The victim alleged that his family was killed during Operation Dignity in Benghazi. He also alleged that he was arbitrarily detained and tortured for three weeks.

On 26 April 2018, Ali Hamza, a Lebanese-Canadian citizen residing in Canada, filed a second complaint before the specialized unit. He alleged crimes committed by the LNA during the siege of Benghazi between 2016 and March 2017, in which his mother and four of his brothers and sisters lost their lives. The judicial investigation opened following these complaints is still ongoing.

Haftar returned to Libya despite these complaints.

DEFINITIVE LIFE SENTENCE FOR TWO MAYORS

Octavien Ngenzi and Tito Barahira

Context

The case is the second trial in France to have resulted in the conviction of Rwandan nationals for their involvement in the 1994 genocide in Rwanda

Suspects

Former Rwandan mayors

Country of residence of suspects

France

Charges

Genocide and crimes against humanity

Developments in 2019

On 16 October 2019, the French Supreme Court upheld the life sentences of Octavien Ngenzi and Tito Barahira. The judgment is now final.

Current status

Case closed, sentenced to life imprisonment

Facts

Ngenzi was the mayor of the Kabarondo district in eastern Rwanda and the local leader of a political party called the National Republican Movement for Development and Democracy

(MNRD). Barahira was a former mayor of the same district and the chairman of the MRND at the commune level. Ngenzi and Barahira were convicted of participating in the massacre of hundreds of Tutsis, including those who had sought refuge in a church in Kabarondo on 13 April 1994.

Procedure

On 2 June 2010, the *Collectif des Parties Civiles pour le Rwanda* filed a complaint against Ngenzi with the Office of the Prosecutor at the Mamoudzou Tribunal in Mayotte. On 4 June 2010, Ngenzi was arrested and detained in Mayotte.

In October 2010, Barahira was indicted by the National Public Prosecution Authority in Rwanda for his alleged participation in the genocide and for alleged incitement to commit genocide. Pursuant to an arrest warrant issued in Rwanda, he was arrested on 3 April 2013 in Toulouse, France. However, the French authorities denied the Rwandan extradition request, and the two cases were combined on 16 July 2013. Fourteen civil parties have joined the case.

On 13 May 2014, the Office of the Prosecutor of the Paris Tribunal sought the prosecution of Ngenzi and Barahira before the Paris Criminal Court. On 28 May 2014, the investigative judges referred their case to the Paris Criminal Court. The defendants appealed this decision but the French Supreme Court upheld the referral on 7 January 2015.

The trial before the Paris Criminal Court opened on 10 May 2016 and lasted eight weeks, concluding on 6 July 2016 with the conviction of both Ngenzi and Barahira for genocide and crimes against humanity. They were found guilty of overseeing the systematic practice of summary executions of ethnic Tutsis. Both were sentenced to life imprisonment. On 7 July 2016, their lawyers announced their intention to appeal the conviction.

On 2 May 2018, their appeal trial opened before the Appeal Criminal Court in Paris.

On 6 July 2018, the Appeal Criminal Court confirmed their convictions and life sentences issued at first instance. Both defendants appealed to the French Supreme Court.

Active personality

EXTRADITION OF A GENOCIDAIRE SUSPECT

Philippe Hategekimana

Context

Ongoing proceedings in France for crimes allegedly committed during the 1994 Rwandan genocide

Suspect

Former police officer; dual French and Rwandan citizen

Country of residence of suspect

France

Charges

Genocide

Developments in 2019

In February 2019, Cameroon accepted an extradition request from France. Philippe Hategekimana was brought before the investigative judges of the specialized unit for the prosecution of genocide, crimes against humanity, war crimes and torture within the Paris Tribunal (hereinafter the specialized unit) on 15 February 2019, indicted and placed in pre-trial detention. Hategekimana denies the charges.

Current status

Detained; under investigation

Facts

Hategekimana is suspected of having participated in the genocide against Tutsis in Rwanda in 1994. He was allegedly involved in multiple atrocities in Nyanza and the surrounding villages in April 1994. He is accused of having assassinated a Tutsi mayor and of having participated in several mass murders. After the genocide, Hategekimana fled to France where he obtained citizenship.

Procedure

In June 2015, the *Collectif des Parties Civiles pour le Rwanda* (CPCR) filed a complaint against Hategekimana before the Paris Tribunal. The CPCR alleged he was involved in committing atrocities during the Rwandan genocide in 1994. In September 2015, an investigation was opened. The investigative judge of the specialized unit issued an international arrest warrant.

Hategekimana was arrested in Yaoundé, Cameroon, on 30 March 2018. France has requested his extradition to try him before a French court.

INVESTIGATION CLOSED OVER A DEPUTY'S INVOLVEMENT IN THE RWANDAN GENOCIDE

Félicien Baligira

Context

Closed proceedings in France against a Rwandan deputy for crimes committed during the 1994 genocide in Rwanda

Suspect

Former Rwandan deputy, refugee in France

Country of residence of suspect

France

Charges

Complicity in genocide

Developments in 2019

In October 2019, the investigative judges dismissed the case, considering that the evidence was not sufficient to support the charges. The civil party, the *Collectif des Parties Civiles pour le Rwanda* (CPCR) did not appeal the dismissal, which is now final.

Current status

Dismissed

Facts

According to the judgment of Trial Chamber of the International Criminal Tribunal for Rwanda of 25 February 2004 in the case of the *Prosecutor*

v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Félicien Baligira had participated in two meetings to incite, prepare, organize and commit genocide. These meetings allegedly took place towards late 1993 and in early 1994, in Gisuma and Gafunzo.

Furthermore, Baligira was accused of having participated in the massacre of Tutsis in the former Cyangugu Prefecture, at the Kamarampaka stadium, at Mibilizi parish and at the Shangi parish. The most massive assault on 13 or 14 April 1994 resulted in the death of about 800 refugees.

Procedure

On 21 March 2011 the National General Prosecutor of Rwanda demanded Baligira's extradition from French authorities, accusing him of participation in the 1994 genocide. Baligira was arrested in France on 5 March 2012. The Court of Appeal of Rennes refused his extradition as Rwandan criminal law did not provide for the crime of genocide and corresponding penalties before it had been committed. Baligira was set free on 16 April 2012.

On 26 May 2014, the CPCR filed a criminal complaint against Baligira. The investigation lasted five years, during which the investigative judges travelled to Rwanda and witnesses were heard. Yet, in September 2017, Baligira was placed under the status of assisted witness before the case was dismissed in October 2019.

25-YEAR PROCEEDINGS END WITH A DISMISSAL

Wenceslas Munyeshyaka

Context

Closed proceedings in France against a Rwandan priest for crimes committed during the 1994 genocide in Rwanda

Suspect

Former head of the Sainte-Famille parish in Kigali

Country of residence of suspect

France

Charges

Complicity in genocide, crimes against humanity and torture

Developments in 2019

On 30 October 2019, the French Supreme Court rejected an appeal from the civil party against the dismissal of the case ordered by the investigative judges of the specialized unit for the prosecution of genocide, crimes against humanity, war crimes and torture within the Paris Tribunal (hereinafter 'the specialized unit'). Wenceslas Munyeshyaka is definitively cleared of all charges.

Current status

Dismissal of the case confirmed by the Supreme Court

Facts

Munyeshyaka was the former head of the Sainte-Famille parish in Kigali, Rwanda. He was accused of being involved in the mass executions that took place on 17 and 22 April 1994 in the Sainte-Famille parish. He was suspected of repeatedly participating in the selection of Tutsi refugees to be murdered, of leaving them to die of thirst, of reporting to the authorities those who tried to help them and of raping several women. After leaving Rwanda, he became a priest in France.

Procedure before the International Criminal Tribunal for Rwanda

On 20 July 2005, the International Criminal Tribunal for Rwanda (ICTR) indicted Munyeshyaka for genocide and crimes against humanity including rape, extermination and murder. In 2007, the ICTR issued an arrest warrant requesting the French government to arrest him. On 20 November 2007, the ICTR referred the case to the French authorities.

Procedure in France

On 12 July 1995, a complaint was filed against Munyeshyaka by several French associations (the *Collectif des Parties Civiles pour le Rwanda*, *Survie* and the *Ligue Internationale Contre le Racisme et l'Antisémitisme* (International League against Racism and Anti-Semitism, or LICRA), as well as individual plaintiffs. On 25 July 1995, an investigation was opened into genocide, crimes against humanity and torture. The International Federation for Human

Rights and its French member organization, the *Ligue des Droits de l'Homme*, joined the case as civil parties in 2005.

On 8 June 2004, almost 10 years after the investigation opened, the European Court of Human Rights condemned France for exceeding reasonable time requirements.

In parallel, Munyeshyaka was tried *in absentia* in Rwanda and sentenced to life imprisonment in 2006.

Proceedings resumed when the case was transferred in January 2012 to the specialized unit.

On 19 August 2015, the prosecutor of the specialized unit requested a dismissal of the case against Munyeshyaka. On 2 October 2015, the investigative judges dismissed the proceedings. The civil parties appealed this decision.

On 8 November 2017, the Investigation Chamber of the Court of Appeal in Paris postponed the appeal hearing to 31 January 2018, following the dismissal of the case on 2 October 2015 by the investigative judges, in order to review the petitions submitted by the civil parties.

On 22 June 2018, the Investigation Chamber of the Court of Appeal in Paris issued a decision upholding the dismissal of the case. The civil parties appealed against this decision to the French Supreme Court.

THREE MORE UPCOMING GENOCIDE TRIALS

Laurent Bucyibaruta

Context

Pending proceedings in France against a Rwandan prefect for crimes committed during the 1994 genocide in Rwanda

Suspect

Former Gikongoro prefect and head of the prefectural committee of the *Interahamwe* movement (the youth organization of the National Republican Movement for Democracy and Development)

Country of residence of suspect

France

Charges

Genocide and crimes against humanity

Developments in 2019

Laurent Bucyibaruta appealed his referral to the Paris Criminal Court issued by the investigative judges for complicity in genocide and crimes against humanity. The appeal is ongoing.

Current status

Pending procedure; appeal of the referral decision ongoing

Facts

Bucyibaruta, as prefect of Gikongoro, allegedly delivered public speeches urging the Hutu population to attack and kill the Tutsis on many occasions between December 1993 and April 1994. He is also accused of having ordered massacres of Tutsis and moderate Hutus in various locations in the Gikongoro Prefecture, and of having ordered the rape and murder of women and girls in various locations.

Procedure before the International Criminal Tribunal for Rwanda

The International Criminal Tribunal for Rwanda (ICTR) indicted Bucyibaruta on 16 June 2005 for incitement to genocide, genocide and complicity in genocide, as well as crimes against humanity, including extermination, murder and rape.

In August 2007, the ICTR issued an arrest warrant requesting that the French government detain him. On 20 November 2007, the ICTR referred the case to the French authorities.

Procedure in France

On 5 January 2000, the International Federation for Human Rights (FIDH) and its member organization in France, the *Ligue des Droits de l'Homme*, lodged a complaint against Bucyibaruta for his alleged participation in the genocide of 1994. The Office of the Prosecutor of Troyes questioned and detained him on 3 May 2000. He was released on 20 December 2000.

He was arrested again on 5 September 2007 and placed under judicial supervision after the issuance of an arrest warrant by the ICTR in August 2007. On 9 May 2017, the investigative judge within the Paris Tribunal informed the parties that he had completed his investigation.

On 4 October 2018, the prosecution issued its final submission requesting that Bucyibaruta be sent to criminal trial on charges of genocide and crimes against humanity. On 24 December 2018, the investigative judges referred the case to the Paris Criminal Trial Court for complicity in genocide and crimes against humanity. If the Court of Appeal upholds the referral decision, Bucyibaruta will be judged for his alleged complicity in massive and systematic executions of civilians.

Sosthène Munyemana

Context

Pending proceedings in France for serious international crimes committed during the 1994 genocide in Rwanda

Suspect

Gynecologist at the University Hospital of Butare, Rwanda

Country of residence of suspect

France

Charges

Genocide and crimes against humanity

Developments in 2019

Sosthène Munyemana appealed his referral to the Paris Criminal Court issued by the investigative judges for complicity in genocide and crimes against humanity. The appeal is ongoing.

Current status

Pending procedure; appeal of the referral decision ongoing

Facts

On 17 April 1994, in a public speech, Munyemana allegedly incited Hutus to exterminate the Tutsi community of Tumba. From 21 April 1994, he is also accused of taking part in several massacres of Tutsis in and around Tumba. He is reported to have distributed ammunition and compiled lists

of Tutsis to be eliminated. He allegedly led the night patrols and gave instructions as to whom should be abducted.

Procedure

On 18 October 1995, the NGOs *Collectif Girondin pour le Rwanda*, FIDH and *Survie* lodged a criminal complaint against Munyemana for his alleged participation in genocide. In 2001, the *Collectif des Parties Civiles pour le Rwanda* (CPCR) joined the proceedings as a civil party.

In 2006, Rwanda requested the extradition of Munyemana from France. On 7 October 2010, the Investigation Chamber of the Bordeaux Court of Appeal denied this request.

In October 2008, Munyemana was found guilty *in absentia* by the Butare's Gacaca Court in Rwanda. He was sentenced to life imprisonment.

On 14 December 2011, Munyemana was indicted in the French proceedings and placed under judicial supervision.

On 9 May 2017, the investigative judge within the French specialized unit for the prosecution of genocide, crimes against humanity, war crimes and torture within the Paris Tribunal (hereinafter specialized unit) informed the parties that he had completed his investigation.

On 11 May 2018, the prosecutor of the specialized unit issued his final submission. He alleged that Munyemana organized a hunt

against Tutsis, detained some of them in inhumane conditions and sent them to killing sites.

On 13 June 2018, FIDH, jointly with *Ligue des Droits de l'Homme* and CPCR, filed their final submission as civil parties, requesting that Munyemana be sent to trial.

On 3 December 2018, the investigative judges referred the case to the Paris Criminal Court for genocide and crimes against humanity, as well as complicity in genocide and crimes against humanity.

Active personality

Claude Muhayimana

Context

Ongoing proceedings in France for crimes allegedly committed during the 1994 genocide in Rwanda

Suspect

Naturalized French national originally from Rwanda

Country of residence of suspect

France

Charges

Complicity in crimes against humanity and genocide

Developments in 2019

On 4 April 2019, the Court of Appeals confirmed the referral of Claude Muhayimana's case to the Criminal Court for complicity in crimes against humanity

and genocide ordered by the investigative judges. Muhayimana lodged an appeal before the French Supreme Court.

Current status

Pending referral decision

Facts

Muhayimana is alleged to have driven Hutu militias to several attack locations while he was the driver for the Kibuye Guesthouse. He was allegedly involved in the attack on the Nyamishaba school (Kibuye district) in April 1994, and in the massacres of Tutsi civilians who had found refuge in Karongi, Gitwa and Bisesero between April and June 1994.

Muhayimana is also accused of participating in killings carried out in the Kibuye church on 17 April 1994 and in a stadium the following day. Both massacres resulted in the death of thousands of victims.

Procedure

On 13 December 2011, the Rwandan judicial authorities issued an international arrest warrant against Muhayimana for his alleged participation in the Rwandan genocide. In addition, the Rwandan authorities requested his extradition from France.

On 26 February 2014, the French Supreme Court ruled that Muhayimana could not be extradited because Rwanda's request was based on laws passed after the alleged crimes took place.

On 9 April 2014, Muhayimana was arrested in Rouen following a complaint filed in June 2013 by the *Collectif des Parties Civiles pour le Rwanda*. A criminal investigation was launched regarding his alleged role in the genocide committed in the district of Kibuye. Muhayimana was placed in pre-trial detention. On 3 April 2015, he was released and placed under judicial control.

On 9 November 2017, the investigative judge referred the accused to the Paris Criminal Trial Court for complicity in genocide and crimes against humanity through aiding and abetting. Muhayimana appealed the referral decision. The appeal hearings against the referral decision took place on 18 October 2018 before the Investigation Chamber of the Court of Appeal in Paris.

Muhayimana will be judged only for his alleged participation in the Nyamishaba school attack, as well as for the massacres of Karongi, Gitwa and Bisesero between April and June 1994. The prosecutor had called for the dismissal of the accusations regarding the massacres committed in the Kibuye church and in the Gatwaro stadium, as Muhayimana presented an alibi proving that he was not there during the events. He was not referred to the Paris Criminal Court for these crimes.

FOLLOW UP ON OTHER CASES

- MBS: the investigation was closed in 2018 (see UJAR 2019, p. 29)
- Serubuga: the investigation is ongoing (see UJAR 2018, p. 27)
- Qosmos (see UJAR 2019, p. 32) and Amesys (see UJAR 2018, p. 33): the investigation is ongoing
- Norbert Dabira: the investigation is ongoing (see UJAR 2017 p. 22)
- The Caesar investigation: the investigation is ongoing (see UJAR 2019, p. 25)

GERMANY



STRUCTURAL INVESTIGATION AGAINST THE SYRIAN GOVERNMENT: ARRESTS AND INDICTMENTS

Anwar R. and Eyad A.

Context

Structural investigation by the German Federal Public Prosecutor into international crimes allegedly committed by the Syrian government and related institutions since 2011 that has resulted so far in a formal indictment of two Syrian suspects Anwar R. and Eyad A. and an arrest warrant against Jamil Hassan

Suspects

Syrian nationals; former and present members of the Syrian intelligence agencies

Country of residence of suspects

Germany, Syria and potentially other countries

Charges

Crimes against humanity, war crimes and grave domestic crimes including murder, rape and severe sexual harassment

Developments in 2019

On 12 February 2019, German authorities arrested Anwar R. and Eyad A. in Berlin and Rhineland-

Palatinate respectively, as a result of person-specific investigations. On the same day, French authorities arrested another former intelligence service official in Paris (Abdulhamid A., see p. 29). The arrests were coordinated by the joint French-German investigative unit.

On 22 October 2019, the German Federal Public Prosecutor formally indicted Anwar R. and Eyad A. before the Higher Regional Court of Koblenz. Anwar R. was charged with complicity in crimes against humanity committed in Syria in 2011-2012. He is further charged with 58 counts of murder as well as crimes of rape and severe sexual harassment. Eyad A. is charged with aiding and abetting crimes against humanity committed in Syria in 2011-2012.

As for the arrest warrant against Jamil Hassan, the former head of the Syrian Air Force Intelligence Service, the Government of Germany reportedly sent an extradition request to the Government of Lebanon in February 2019 demanding facilitation of his extradition to Germany in accordance with the arrest warrant issued against him in June 2018. Hassan reportedly visited Lebanon to receive medical treatment.

Current status

Anwar R. and Eyad A. are detained pending trial.

Facts

Since the beginning of the Syrian civil war in 2011, Syrian intelligence services have reportedly been systematically arresting, torturing and killing opposition activists. In September 2011, the German Federal Public Prosecutor opened a structural investigation into war crimes and crimes against humanity committed by the governmental institutions.

On 8 June 2018, the German Federal Court of Justice issued an arrest warrant against Hassan, then head of the Air Force Intelligence Service, for alleged crimes against humanity and war crimes, upon a request of the German Federal Public Prosecutor. He is accused of having killed, tortured and caused severe physical or mental harm to numerous detainees of the Air Force Intelligence Service between 2011 and 2013, as a direct perpetrator, co-perpetrator or military commander.

Other person-specific investigations targeted Anwar R. and Eyad A., former members of Al-Khatib Branch, also known as Branch 251, of the General Intelligence Directorate (GID), which is responsible for internal security in the Damascus area. Those investigations resulted in an arrest and a formal indictment.

According to the charges, Anwar R. was head of an investigative unit and its detention center. Between late April 2011 and early September 2012, he implemented and oversaw a brutal system of physical and psychological torture intended to force convictions and gain insight into the opposition movement. At least 4'000 persons were exposed to torture in this detention facility in that period.

Methods of torture included beatings with fists and various objects, inflicting electric shocks, suspending victims from the ceiling by their wrists, sleep deprivation and threatening detainees that their family members would be exposed to torture. The investigation also found at least one case of rape and sexual assault. Moreover, victims were reportedly subjected to inhumane conditions of detention such as overcrowded cells and the withholding of medical attention. At least 58 persons are said to have died as a result of the torture and inhumane conditions.

Eyad A. was an alleged member of a sub-unit of the investigative division tasked with conducting identity checks and arresting demonstrators, deserters and other suspicious persons. He is accused of contributing to the torture and illegal detention of at least 30 persons.

In the autumn of 2011, after an anti-government demonstration in the city of Douma had been violently dispersed by security forces, Eyad A. and other GID officials allegedly pursued and arrested fleeing demonstrators and transported them to the Al-Khatib detention center. According to the charges, Eyad A. had full knowledge of the system of torture and mistreatment that detainees were being subjected to while detained.

Zoom in

Overview of investigations in Germany since 2017

In a response to the parliamentary enquiry by the German political party Bündnis 90/Die Grünen on 12 August 2019, the German government shared information regarding investigations into allegations of international crimes initiated by the German prosecutorial authorities since 2017.

The German Federal Public Prosecutor opened 105 investigations based on the German Code of Crimes against International Law, some 25 investigations of which were subsequently suspended for various reasons.

The investigations concerned crimes allegedly committed in the following countries: Syria, Ivory Coast, The Gambia, South Sudan, the Democratic Republic of the Congo, Iraq, Nigeria, Afghanistan, Mali, Sri Lanka, Cameroon, Somalia, Armenia, the Russian Federation (Chechnya), Pakistan, Ukraine, Central African Republic and Sudan.

Active personality

PROSECUTING GENOCIDE AND OTHER GRAVE CRIMES COMMITTED AGAINST YAZIDIS

Jennifer W. and others

Context

Ongoing structural and personalized investigations and criminal proceedings in Germany for international crimes committed by members of Islamic State (ISIS) against Yazidis in Syria and Iraq

Suspect

Iraqi and German nationals

Country of residence of suspects

Germany

Charges

Membership in a terrorist organization, crimes against humanity, war crimes and genocide

Developments in 2019

In 2019, the investigation regarding the crimes committed by ISIS against the Yazidi community in Syria and Iraq led to arrests, formal indictments and trials against several former members of ISIS based on accusations of crimes against humanity, war crimes, genocide and other crimes.

On 9 April 2019, the trial of a German national, Jennifer W., started before the Higher Regional Court of Munich, based on a formal indictment of 13 December 2018. Jennifer W. is *inter alia* accused of a war crime for the killing of a five-year old Yazidi child, taken captive and enslaved with her mother, by Jennifer W. and her husband Taha A.-J., an Iraqi national.

On 18 April 2019, the German Federal Court of Justice issued an arrest warrant against Taha A.-J. Following his arrest in May 2019 in Greece, he was extradited to Germany on 9 October 2019. The arrest warrant was based on a strong suspicion that as a member of ISIS he committed crimes of genocide, crimes against humanity and war crimes against the Yazidi mother and daughter. He was indicted in early 2020.

The trial against Jennifer W. will continue in 2020. In addition to the original charges, the Court is considering including charges of crimes against humanity.

Current status

Jennifer W. is on trial; Taha A.-J. is indicted

Facts

In August 2014, Jennifer W. left Germany for Iraq and joined ISIS there. In the period between June

and September 2015, she allegedly conducted the so-called daily "moral patrols" in ISIS-occupied Fallujah and Mosul by inspecting whether women's behavior and clothing complied with the rules set by ISIS. While conducting such patrols, Jennifer W. reportedly carried various lethal weapons with her. For this, she allegedly received remuneration from ISIS.

Jennifer W. shared a household with her spouse, Taha A.-J., who allegedly joined ISIS in 2013. In summer 2015, Taha A.-J. reportedly purchased a woman and her five-year old daughter from a group of Yazidis taken captive by ISIS. Taha A.-J. brought the woman and her daughter to his house. Taha A.-J. and Jennifer W. allegedly kept the Yazidi woman and her daughter captive as slaves and exposed them to inhuman living conditions. Taha A.-J. is suspected of having prohibited the Yazidi woman and her daughter from exercising their religion and forced them to convert to Islam. In order to punish the captives, Taha A.-J. allegedly beat them severely and repeatedly. To punish the five-year old, Taha A.-J. is suspected of chaining her outdoors in scorching heat, which subsequently led to the child's death. Jennifer W. reportedly witnessed her husband's acts and did not undertake any steps to prevent the death of the child.

PROSECUTING CRIMES OF NON-STATE ACTORS IN SYRIA AND IRAQ

Ibrahim Al F. and others

Context

Ongoing structural and personalized investigations and criminal proceedings in Germany for international crimes committed by members of non-State armed groups in Syria

Suspects

Syrian nationals

Country of residence of suspects

Germany

Charges

Membership in a terrorist organization, war crimes and torture

Developments in 2019

In 2019, various criminal proceedings regarding international crimes committed by non-State actors in Syria resulted in indictments and convictions. The charges usually include both war crimes and membership in a terrorist organization.

Ibrahim Al F.

On 6 August 2019, the Federal Supreme Court upheld the conviction and life sentence of Ibrahim Al F., a Syrian national. On 24 September 2018, the Higher Regional Court of Dusseldorf found

the accused guilty of war crimes, murder, torture and abduction for the purpose of blackmail, and sentenced him to life imprisonment.

Ibrahim Al F. formerly headed the militia Ghurabaa al-Sham, which has been fighting the Syrian government forces in the Syrian civil war as part of the Free Syrian Army (FSA) since the summer of 2012. The first and second instance courts found that Ibrahim Al F. participated in the abduction and subsequent one-month detention of two civilians who resisted looting. Together with his subordinates, Ibrahim Al F. was found to have personally tortured the detainees, who were only released after a ransom was paid. Under his command, his subordinates abducted at least six other civilians and subjected them to severe torture, which led to the death of at least one person.

Syrian national (name withheld)

On 26 August 2019, the Koblenz Prosecutor General indicted a 33-year-old Syrian national for one count of war crimes, namely the demeaning and degrading treatment of a person protected by international humanitarian law, committed in Syria between early 2012 and September 2014.

The accused is alleged to have joined the armed resistance against the Syrian government in the city of Dara'a in 2012 and posed for pictures with the severed head of a combatant, presumed to have fought for the government. He admitted to being

pictured in the photograph, which investigators found on his phone, and to holding the severed head, but maintains that he discovered the remains underneath some ruins. The accused is currently detained pending confirmation of the indictment by the Higher Regional Court of Koblenz.

Mohamad K.

On 19 February 2019, the trial against Syrian national Mohamad K. began before the Higher Regional Court of Stuttgart. On 4 April 2019, Mohamad K. was found guilty of two counts of war crimes and sentenced to four years and six months' imprisonment by the Higher Regional Court of Stuttgart.

Mohamad K. is a former member of the FSA and is accused of having committed war crimes in Idlib, Syria. Jointly with two other members of the FSA, Mohamad K. allegedly captured and detained two members of an armed group fighting on the side of the Syrian government for an unknown time period between January 2012 and January 2013. To punish the detained fighters, Mohamad K. allegedly tortured the almost unclothed men by beating them severely and repeatedly with a cable-like object. The torture was filmed by another FSA member.

Abdul Jawad A. K.,
Abdulrahman A. A.,
Abdoulfatah A. and
Abdalfatah H. A.

In 2019, the trial against four Syrian nationals and former members of a combat unit belonging to Jabhat al-Nusra, Abdul Jawad A. K., Abdulrahman A. A., Abdoulfatah A. and Abdalfatah H. A., continued before the Higher Regional Court of Stuttgart. The accused are charged with war crimes and membership in a terrorist organization.

Abdul Jawad A. K., founding member of a combat unit belonging to Jabhat al-Nusra, and Abdulrahman A. A., Abdoulfatah A. and Abdalfatah H. A., who joined the unit at a later stage, are alleged to have taken part in hostilities during the capture of Raqqa. In March 2013, the accused, together with other members of their combat unit, reportedly executed 36 Syrian civil servants previously taken prisoner during the capture of Raqqa. Prior to the execution, the civil servants had been sentenced to capital punishment by a Shariah court.

Suliman Al-S.

On 23 January 2019, the Higher Regional Court of Stuttgart lengthened the sentence of Syrian national Suliman Al-S. to four years and nine months. The original sentence of three years and six months' imprisonment for aiding and abetting the kidnapping of an employee of the United Nations in Syria in February 2013 was successfully appealed by the prosecutor.

On 17 February 2013, the Canadian national Carl Campeau, who had been working as a legal adviser to UN forces (UNDOF) in the Golan Heights, was abducted by the terrorist organization Jabhat al-Nusra in the Damascus area. Suliman Al-S. allegedly participated in his abduction by keeping the victim under surveillance between March and June 2013. Carl Campeau was held captive for eight months until he managed to escape in October 2013. While in detention, his captors issued death threats against him and tried unsuccessfully to obtain a ransom for his release.

Fares A. B.

On 12 June 2019, the Higher Regional Court of Stuttgart indicted Syrian national Fares A. B. for membership in the terrorist organization Islamic State (ISIS) and war crimes.

The accused joined ISIS in the summer of 2014. He was deployed in an ISIS prison where he allegedly mistreated at least three prisoners. Furthermore, he is alleged to have conducted raids, brought newly arrested individuals to the prison and guarded checkpoints. On one occasion, during an examination at his checkpoint, he allegedly hit a truck driver on the head with a machine gun, jointly with another ISIS member. Fares A. B. furthermore is alleged to have participated in the shooting of a prisoner captured by ISIS for alleged blasphemy. The perpetrators allegedly placed the corpse of the deceased at the village square for public display.

Mohammed Rafea Yaseen Y.

On 8 March 2019, the Higher Regional Court of Dusseldorf indicted the Iraqi citizen Mohammed Rafea Yaseen Y. for aiding and abetting a killing and war crimes, as well as for membership in the terrorist organization ISIS.

Mohammed Rafea Yaseen Y. was allegedly an active member of ISIS between 2006 and 2008 in his Iraqi hometown of Al-Rutba. Jointly with other ISIS members, the accused is alleged to have constructed explosive devices and used them for attacks in the surroundings of Al-Rutba that resulted in human casualties. Among the victims were members of the United States armed forces, Iraqi police as well as local civilians. In 2014, Mohammed Rafea Yaseen Y. was alleged to have joined ISIS and was deployed as an armed security guard in Al-Rutba. As a part of his activities, he allegedly ensured security during public executions of children, women and men by ISIS members.

AFGHAN SOLDIER TRIED AND SENTENCED FOR WAR CRIMES

Ahmad Zaheer D.

Context

Completed proceedings in Germany for war crimes committed in Afghanistan

Suspect

Afghan national, member of the Afghan armed forces

Country of residence of suspects

Germany

Charges

War crimes

Developments in 2019

On 29 March 2019, the federal prosecutor formally charged Ahmad Zaheer D. with two counts of war crimes. His trial took place from 2 to 23 July 2019 before the Higher Regional Court of Munich.

On 26 July 2019, Ahmad Zaheer D. was found guilty of one count of war crimes as well as inflicting grievous bodily harm, coercion and attempted coercion. He was sentenced to two years' probation.

Notably, the Higher Regional Court did not find that the mistreatment of the prisoners during interrogation amounted to torture in violation of the German Code of Crimes against International Law (VStGB), but rather amounted to infliction of grievous bodily harm, coercion and attempted coercion. In determining the length of the sentence and deciding to impose probation, the court took into account *inter alia* the fact that Ahmad Zaheer D. had confessed, cooperated with authorities and made every effort to integrate in Germany.

Current status

Found guilty, on probation

Facts

Ahmad Zaheer D. was a member of the Afghan military forces and was reportedly responsible for the interrogation of captured enemy fighters on at least one occasion between late 2013 and early 2014. Together with two other military officials, he interrogated three prisoners of war and subjected them to cruel and inhumane treatment in violation of the Geneva Conventions, including by beating them severely by hand and using a hose, and by threatening them with an electrical shock device.

In March 2014, Ahmad Zaheer D. was further found to have subjected the body of a high-ranking enemy combatant to degrading treatment. This involved him parading the body in front of the civilian population while kicking and insulting the deceased, simulating the mounting of the deceased's head on a meat hook and subsequently hanging the body by a rope around the neck, proclaiming to have murdered and killed him "like a donkey". Both instances were captured on video.

Procedure

On 25 October 2018, Ahmad Zaheer D. was arrested by German authorities.

FDLR LEADERS' CASE ENDS IN AN UNEXPECTED WAY

Ignace Murwanashyaka and Straton Musoni

Context

Completed proceedings in Germany against former officials of the *Forces Démocratiques de Libération du Rwanda* (Democratic Forces for the Liberation of Rwanda, or FDLR) for alleged serious crimes under international law committed in the Democratic Republic of the Congo (DRC). The FDLR, formerly the *Armée de Libération du Rwanda* (Liberation Army of Rwanda), was created in 2001 and has been operating in the Eastern DRC since then. Some of its members have been accused of participating in the 1994 genocide in Rwanda

Suspects

Ignace Murwanashyaka was head of the FDLR from its creation in 2001 until his death in 2019. Straton Musoni became deputy head of the FDLR in 2004

Country of residence of suspects

Germany

Charges

Ordering and coordinating crimes against humanity and 16 counts of war crimes committed by the FDLR on Congolese territory between January 2008 and November 2009 and membership in a terrorist organization

Developments in 2019

On 16 April 2019, Ignace Murwanashyaka passed away while in detention pending retrial.

Current status

Murwanashyaka's case was terminated; Straton Musoni's sentence was carried out

Facts

In 2009, Rwanda and DRC led a joint military operation aimed at neutralizing the FDLR. This operation resulted in various retaliatory attacks by the FDLR on Congolese civilians, including women, children and other vulnerable persons. The two FDLR leaders, who were living in Germany at the time of the attacks, were accused of having coordinated attacks that resulted in the death of civilians, pillage, recruitment of child soldiers and rape and other forms of sexual violence.

Procedure

Murwanashyaka and Musoni were arrested in Germany on 17 November 2009, following the issuance of an arrest warrant by the German Federal Court of Justice on 16 November 2009. Their trial before the Higher Regional Court in Stuttgart began on 4 May 2011 and ended after 320 days of hearings, on 28 September 2015. During the proceedings, 11 of the 16 initial charges of war crimes and crimes against humanity were dropped.

The Higher Regional Court of Stuttgart issued its first instance verdict on 28 September 2015, convicting Murwanashyaka of five counts of aiding and abetting war crimes and of leading a foreign terrorist organization, and sentenced him to 13 years in prison. Musoni was sentenced to eight years' imprisonment for his role as leader of a foreign terrorist organization.

The judgment was appealed. While Murwanashyaka remained in detention pending the appeal, Musoni was released on 28 September 2015 due to time served. On 12 February 2018, the Stuttgart regional council ordered Musoni to leave Germany, forbidding him to return to the country for nine years.

The appeal hearing took place on 31 October 2018 before the Federal Court of Justice. On 20 December 2018, the Federal Court of Justice overturned Murwanashyaka's conviction for aiding and abetting war crimes and referred his case back to the Higher Regional Court of Stuttgart for retrial. According to the Federal Court decision, the first instance judgment contained legal errors and did not establish beyond reasonable doubt that Murwanashyaka encouraged or facilitated the attacks. Musoni's conviction and sentence were upheld.

Murwanashyaka, who had been in detention awaiting retrial, died on 16 April 2019 of unknown causes, effectively terminating the case against him.

CASE AGAINST ISRAELI DEFENSE FORCES DISCONTINUED IN ISRAEL, BUT GOES AHEAD IN GERMANY

Names withheld

Context

Preliminary investigation in Germany against members of the Israeli Defense Forces for alleged war crimes committed in Gaza during the Operation Protective Edge between 8 July and 26 August 2014

Suspects

Members of the Israeli Defense Forces responsible for the attack on Al-Salam Tower in Gaza on 21 July 2014

Country of residence of suspects

Israel

Charges

War crimes

Developments in 2019

The Israeli authorities rendered a final decision not to investigate the case. A preliminary investigation is ongoing in Germany.

Current status

Under preliminary investigation

Facts

On 21 July 2014, Israeli armed forces killed members of the German-Palestinian Kilani family – a father, mother, and their five children aged four to 12 years old. The attack took place in the course of the military operation Protective Edge, during which Israeli armed forces conducted air strikes in the Gaza strip between 8 July and 26 August 2014. Civilian facilities and houses were destroyed and heavily damaged, and hundreds of civilians were killed.

Due to a warning of the planned Israeli airstrikes, the Kilani family fled their home in Beit Lahia to Al-Salam Tower. Two days later, on 21 July 2014, rockets hit the building and killed the whole family. Israel stated that the actual target of the attack was a commander of the Palestinian Islamic Jihad.

Procedure

In December 2014, the European Center for Constitutional and Human Rights (ECCHR), together with its partner organization, the Palestinian Centre for Human Rights (PCHR), filed a criminal complaint with the German Federal Public Prosecutor on behalf of Ramsis Kilani, who lost his father and half-siblings in the strike. The submission provided evidence including photos, videos and witness statements. Kilani denounced the alleged disproportionality of the Israeli attack on Al-Salam Tower. At the same time, PCHR filed a criminal complaint in Israel and submitted an appeal against the military prosecutor's decision not to investigate the Kilani case.

In August 2018, ECCHR, together with its partner organization, PCHR, submitted to the German Federal Public Prosecutor further evidence to substantiate the criminal complaint filed in 2014.

FOLLOW UP ON OTHER CASES

- Abdulmalk A. and Mousa H. A.: the investigation is ongoing ([see UJAR 2018, p. 52](#))
- Harry Sarfo: the investigation is ongoing ([see UJAR 2018, p. 54](#))
- Gina Haspel (Guantánamo case): the investigation is ongoing ([see UJAR 2019, p. 54](#))

GHANA

EX-PRESIDENT OF THE GAMBIA TIED TO MURDERS OF MIGRANTS

Yahya Jammeh

Context

Campaign to bring former Gambian President Yahya Jammeh and his accomplices to justice

Suspect

Former Gambian President (1994-2016)

Country of residence of suspect

Equatorial Guinea

Charges

Complicity in enforced disappearances and extrajudicial executions

Developments in 2019

In January 2019, five United Nations human rights monitors urged the UN and the Economic Community of West African States (ECOWAS) to release their report on the 2000 massacre of more than 50 Ghanaian and other West African migrants in The Gambia. According to this report, rogue elements in the Gambian security services "acting on their own" were responsible for the massacre. This information contradicts recent testimonies to the Gambian Truth, Reconciliation and Reparations Commission (TRRC) as well as the investigation of Human Rights

Watch and TRIAL International. The TRRC is tasked with establishing a historical record of the nature, causes and extent of violations and abuses of human rights committed during the Jammeh regime, through testimonies of victims and witnesses.

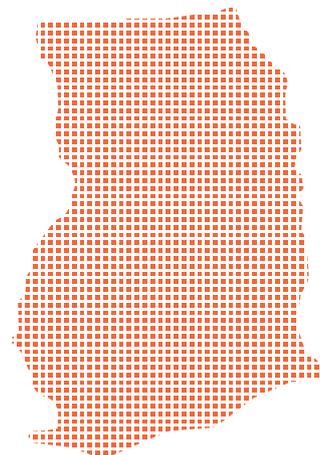
In December 2019, based on his fact-finding mission to The Gambia, the President of Ghana Akufo-Addo revealed that the Gambian government was involved in the extrajudicial killings of the migrants. He also encouraged the Gambian President to take actions after several members of the Junglers, a notorious unit that took its orders directly from then-Gambian President Yahya Jammeh, admitted their involvement in the massacre.

Current status

Pending investigation

Facts

An investigation conducted by Human Rights Watch and TRIAL International revealed that a paramilitary unit controlled by Jammeh allegedly summarily executed more than 50 West African migrants (including some 44 Ghanaians) in July 2005. The migrants, who were bound for Europe but were suspected of being mercenaries, were murdered after having been detained by Jammeh's closest deputies in the army, navy and police forces. The Junglers are alleged to have carried out the killings.

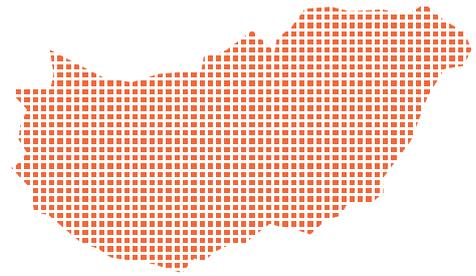


Procedure

In May 2018, the families of the victims and a coalition of local and international NGOs asked Ghanaian authorities to open an investigation against Jammeh. The report and a legal brief about the case were also transmitted to Ghanaian authorities by TRIAL International and Human Rights Watch.

The Ghanaian Inspector General of Police and later the government, through its Minister of Information, stated that "the government had tasked the Ministry of Foreign Affairs and the Attorney-General's Department to study the request" and "advise the government on the way forward."

HUNGARY



EUROPEAN COOPERATION LEADS TO THE ARREST OF AN ISIS SUSPECT

Hassan Faroud

Context

Ongoing proceedings in Hungary for terrorism and crimes against humanity committed between 2015 and 2016 in Syria

Suspect

Syrian national and alleged Islamic State (ISIS) fighter

Country of residence of suspect

Hungary

Charges

Terrorism and crimes against humanity

Developments in 2019

On 22 March 2019, based on information obtained by European national intelligence services, a Budapest Court ordered the detention of Hassan Faroud for alleged murders committed in Syria.

The accused was subsequently arrested by the Hungarian Counterterrorism Center (TEK) at the Budapest Nyírbátor migrants' detention facility where he was detained, awaiting his deportation to Greece where he had refugee status.

Since his arrest, ten people, witnesses and civil parties, have been questioned in Malta and Belgium. An investigation with the involvement of the TEK is underway in several European Union member States, including in Malta, Belgium and Greece.

On 3 September 2019, Faroud was indicted by the Metropolitan Prosecutor's Office of Budapest for carrying out acts of terrorism and crimes against humanity. He remains in custody awaiting trial.

Current status

In custody pending trial

Facts

Faroud is alleged to have commanded a small unit of ISIS in the province of Homs, Syria. He is suspected of having ordered the occupation of Al-Sukhnah in the province of Homs and drawing up a "death list" of those who rejected the goals of ISIS and as a consequence should be executed. The executions included the public beheading of the local imam and at least 25 civilians including women and children in the town of Al-Sukhnah.

The accused is alleged to have personally participated in the execution of the imam as well as the murders of three other civilians in the area between 13 May and 15 May 2015. He also allegedly shot another person.

Procedure

Faroud left Syria in 2016 and illegally entered the Greek island of Leros on 27 February 2016, where he was granted refugee status on 27 October 2017.

The accused was a subject of investigation by the Greek Intelligence Service (EYP) since July 2018, when the Belgian intelligence services transmitted information concerning an unnamed individual allegedly involved in extremist activity as a member of ISIS. National investigations were coordinated by Eurojust, the European judicial cooperation agency. One month later, the EYP managed to identify this individual as Faroud, but no sufficient information was found to prove he belonged to ISIS.

In August 2018, the accused was convicted in Malta for living there with forged identification documents. He was sentenced to six months of imprisonment, suspended for two years and ordered to leave Malta. At that time, there was still no further information confirming his ties with ISIS.

On 30 December 2018, Faroud was caught using forged travel documents again in Budapest's Listzt Ferenc Airport. He subsequently received a suspended prison sentence and was set to be expelled from Hungary to Greece. He was detained in Budapest's Nyírbátor asylum detention facility, awaiting his return.



TORTURING MIGRANTS EARN SOMALI MAN LIFE SENTENCE

Osman Matammud

Current status

Convicted and sentenced to life imprisonment; conviction confirmed on appeal

Context

Proceedings in Italy for the kidnapping, murder and rape of migrants, as well as the facilitation of illegal migration, in Libya at the Bani Walid detention camp between 2015 and 2016

Suspect

Somali national, Director of the Bani Walid detention camp

Charges

Kidnapping for ransom aggravated by murder, rape and facilitation of illicit immigration committed in Libya between 2015 and mid 2016

Developments in 2019

The appeal trial of Osman Matammud took place in March 2019. Seventeen witnesses were heard by the Appeal Court of Milan, recalling the severe torture they suffered. His conviction and life sentence were upheld on 20 March 2019. The Appeal judges emphasized Matammud's cruelty, the fact that he was directly involved in murders and the extreme severity of the torture and rapes.

Facts

The Bani Walid transit camp, located in the town of Bani Walid, in northwest Libya is a detention center where migrants on their way to Europe suffer violence and extremely severe abuse for months. Matammud was the Director of the center. He and his associates would call relatives of the detainees on the phone, threatening to kill them if the "price of the transport" (effectively a bribe) was not paid. During Matammud's trial, witnesses described the horrors and violent abuses they suffered, such as physical and mental violence, sexual abuse, horrendous torture and cruel punishments. Matammud is also accused of having personally raped women, including minors.

Procedure

On 26 September 2016, Matammud was arrested in a migrant center in Milan after he was recognized a few days earlier by other asylum seekers. Several of his victims filed a complaint for the abuses they suffered in the Bani Walid transit camp. Specifically, the complaint concerned kidnapping for ransom and rape.

Matammud was formally charged under Article 10 of the Italian Criminal Code for kidnapping for ransom aggravated by death, rape and facilitation of illicit immigration. The witnesses described in their interrogation tortures and other inhuman treatment, but this was not added to the charges because the crime of torture was introduced in Italy only in June 2017, and these crimes were committed between 2015 and 2016.

The criminal trial started on 23 March 2017. Matammud was convicted and sentenced to life imprisonment on 10 October 2017 by the Court of Milan.

THREE MIGRANT TORTURERS ARRESTED IN MESSINA

Mohammed Condè;
Hameda Ahmed;
Mahmoud Ashuia

Context

Ongoing investigation of the crimes committed in Zawiya detention center in Libya since 2015

Suspect

Mohammed Condè and Hameda Ahmed, both Egyptian nationals; and Mahmoud Ashuia, a Guinean national

Charges

Multiple charges of sexual violence, torture, murder, kidnapping for ransom and facilitating illegal immigration

Current status

Indicted; the accused remain in custody

Developments in 2019

The accused were arrested in September 2019 in Messina (Sicily), in the context of the ongoing investigations of the Office of the Prosecutor of Agrigento and the Anti-mafia Division of Palermo, following a formal complaint filed by victims who arrived in Italy through the Mediterranean migration routes.

Facts

Hundreds of migrants on their way to Europe were held in the Zawiya detention center in Libya where they faced systematic atrocities and physical and psychological torture. Mohammed Condè, Hameda Ahmed and Mahmoud Ashuia are accused of having run the center. The accused used the same procedure for their victims: photographs of the detainees were sent to their families along with a request for ransom. Those whose families paid were freed, whereas the others were killed or sold to human traffickers.

Condè, Ahmed and Ashuia were recognized in Messina by migrants that passed through the detention center in July 2019. Following their arrest, the accused are in custody.

Active personality

NGOS FIGHT DISMISSAL OF ARMS TRADE CASE INVOLVING EXPORTS TO SAUDI ARABIA

RWM Italia S.p.A.

Context

Ongoing investigation against Directors of RWM Italia S.p.A., an Italian arms manufacturer, and against Italian government officials who authorized arms exports to Saudi Arabia and the United Arab Emirates, for complicity in murder and bodily injury

Suspects

Current and former Directors of RWM Italia (a subsidiary of the German-based company Rheinmetall AG), and Italian officials from Italy's National Authority for the Export of Armament (UAMA). The suspected individuals are German and Italian

Country of residence of suspects

Italy

Charges

In relation to the company's Directors and government officials, complicity through gross negligence in murder and bodily injury. The complaint further requests an investigation into the alleged abuse of power by the government officials

The Statute of the International Criminal Court has not been implemented in the Italian Criminal Code and, consequently, it was not possible to request an investigation into complicity in war crimes

Developments in 2019

The Italian Public Prosecutor's Office in Rome requested a dismissal of the case in October 2019. Three organizations appealed the prosecutor's decision: the European Center for Constitutional and Human Rights (ECCHR), the Yemen-based Mwatana Organization for Human Rights and the Italian-based *Rete Italiana per Il Disarmo* (in cooperation with *Osservatorio Permanente sulle Armi Leggere e le Politiche di Sicurezza e Difesa*, OPAL). A court hearing is to be scheduled and is expected to take place in the first half of 2020.

Current status

Pending a decision from the Italian court

Facts

The complaint denounces an air strike launched on 8 October 2016 by the Saudi/UAE-led coalition in Deir Al-Hajari, Yemen, which allegedly killed six civilians. At the site of the airstrike, a suspension lug manufactured by RWM Italia was found. Further remnants indicate the use of a guided bomb. Testimonies of eye witnesses confirm that no military object was in the direct vicinity of the house that was targeted by the airstrike.

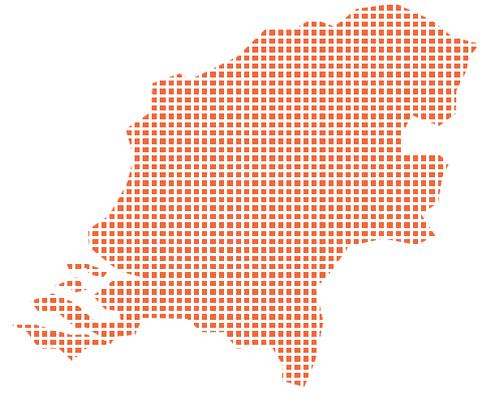
The complaint alleges the criminal liability of RWM Italia's Directors and officials from UAMA for the export of at least a part of the deadly weapons used in the strike to Saudi Arabia or another member State of the military coalition.

Despite major warnings that the Saudi/UAE-led coalition warfare in Yemen causes significant loss of civilian life and breaches international humanitarian law, exports of bombs and other weapons to the coalition member States are still taking place. In Italy, the competent UAMA authorizes these exports of armaments manufactured in Italy.

Procedure

On 17 April 2018, the joint criminal complaint by the NGOs ECCHR, Mwatana Organization for Human Rights and *Rete Italiana per Il Disarmo*, in cooperation with OPAL, was filed before the public prosecutor in Rome. The prosecutor opened an investigation into the allegations.

NETHERLANDS



FIRST INDICTMENT OVER WAR CRIMES COMMITTED IN SYRIA

Abu Khuder

Context

Ongoing proceedings for war crimes allegedly committed in Syria in 2012. This is the first case of a foreign national being charged for crimes committed during the Syrian civil war under Dutch universal jurisdiction laws

Suspect

Syrian national; alleged former member of Jabhat al-Nusra

Country of residence of suspect

Netherlands

Charges

War crimes and membership in a terrorist organization

Developments in 2019

Ahmad al Khedr, also known as Abu Khuder, has been living in the Netherlands since 2014, where he was granted temporary asylum. On 21 May 2019, he was arrested by Dutch police on suspicion of war crimes and terrorism offenses. According to the Dutch National Public Prosecutor, the arrest was based on witness testimonies obtained following a raid against six suspected former Jabhat al-Nusra members in Germany.

On 24 May 2019, an investigative judge in The Hague ordered the prolongation of Abu Khuder's

detention during the judicial investigation. In hearings on 2 September and 18 November 2019, the lawyers of the accused denied the charges.

Current status

Detained pending judicial investigation

Facts

According to an interview he gave to the newspaper The Guardian in 2012, Khuder had been an officer in a Syrian border force known as the Camel Corps when the conflict erupted in 2011, prompting him to join the Free Syrian Army (FSA) in its fight against the Assad regime. The same article states that Khuder subsequently became disillusioned with the FSA's disorganization and lack of success.

He allegedly radicalized and joined Jabhat al-Nusra, a group previously linked to al-Qaeda, after members of that organization helped them attack an army base in the eastern city of Mohassan, driving out the government forces. He then reportedly rose to command a Jabhat al-Nusra battalion known as *Ghuraba'a Mohassan* (Strangers of Mohassan). In this capacity, Khuder allegedly participated in the execution of a captured Syrian lieutenant colonel in July 2012. Khuder denies the charges, maintaining that he lied to the Guardian journalist regarding his membership in Jabhat al-Nusra and that he, while present at the site of the killing, was not involved in the officer's execution.

GERMAN TIP-OFF ALLOWS ARREST BY DUTCH POLICE

Name withheld

Context

Ongoing proceedings for war crimes allegedly committed in Syria in 2015 by a commander of the Salafist militant group Ahrar al-Sham, which was designated as a terrorist organization by a Dutch court in 2019

Suspect

Syrian national; alleged former commander of Ahrar al-Sham

Country of residence of suspect

Netherlands

Charges

War crimes and membership in a terrorist organization

Developments in 2019

On 22 October 2019, the Dutch Police arrested a Syrian man in an asylum center in Ter Apel, on suspicion of outrages upon personal dignity constituting a war crime. According to the National Public Prosecutor's Office, the suspect was flagged by German authorities in 2015 when he spent a short time seeking asylum before returning to Syria due to personal circumstances.

Current status

Detained pending judicial investigation

Facts

According to the prosecution, the suspect commanded Ahrar al-Sham fighters and took part in an April 2015 offensive in the city of Hama. During this time, he allegedly subjected persons *hors de combat* to humiliating and degrading treatment by posing with the corpse of an enemy fighter and kicking the body of another. In addition, he allegedly appears in a video, posted on YouTube, "singing to celebrate the deaths of fighters and referring to them as dogs".

Active personality

AN AFGHAN PRISON COMMANDER DETAINED ON CHARGES OF WAR CRIMES

Name withheld

Context

Ongoing proceedings for war crimes allegedly committed by a former prison commander in Afghanistan in the 1980s

Suspect

Alleged former commander of the Pul-e-Charki prison in Kabul; dual Afghan and Dutch citizen

Country of residence of suspect

Netherlands

Charges

War crimes

Developments in 2019

On 12 November 2019, the Dutch police arrested a 73-year-old man in Kerkrade on suspicion of war crimes. The suspect reportedly arrived in the Netherlands in 2001 and later obtained Dutch nationality.

Current status

Detained pending judicial investigation

Facts

The suspect is alleged to have been the commander and the head of the Department of Political Affairs of the Pul-e-Charki prison in Kabul in the 1980s. The prison was reportedly notorious for its inhumane regime during the Soviet-Afghan war, with detainees being illegally imprisoned, tortured and subjected to inhumane and degrading treatment, as well as executed. According to the Dutch National Public Prosecutor's Office, investigators of the International Crimes Team have received dozens of witness statements testifying to the suspect's involvement in the crimes.

Active personality

PROSECUTOR STARTS HEARING WITNESSES IN ETHIOPIAN "RED TERROR" CASE

Eshetu Alemu

Context

Ongoing proceedings against a Dutch national originally from Ethiopia, for war crimes committed in Ethiopia during the Red Terror in the late 1970s

Suspect

Former member of the Provisional Military Administrative Council, also known as the Dergue, during the Mengistu Haile Mariam regime

Country of residence of suspect

Netherlands

Charges

War crimes including arbitrary detention, inhuman treatment, torture and murder of alleged opponents to the regime

Developments in 2019

The preparation of the appeal has continued. Some witnesses were heard by the appeal investigative judges, and others will testify in Ethiopia.

Current status

Sentenced to life in prison; appeal ongoing

Facts

In 1974, the communist military regime, known as the Dergue, overthrew Emperor Haile Selassie I and seized power in Ethiopia. The regime effectively ruled the country for 17 years. In February 1977, the Red Terror was officially declared, which led to mass killings, arrests, torture and enforced disappearances against suspected political opponents. Eshetu Alemu is accused of ordering the execution of 75 people, of torturing nine people, and of controlling the illegal detention of more than 300 people in cruel and inhuman conditions in Ethiopia's Gojjam province during the Red Terror.

In 1990, Alemu fled to the Netherlands as an asylum seeker and became a Dutch citizen in 1998.

Procedure in Ethiopia

On 12 December 2006, Ethiopia concluded the trial of former Dergue officials, convicting Alemu, and 57 other regime officials, for genocide and crimes against humanity. Alemu was judged *in absentia* and received a death sentence.

Procedure in the Netherlands

Alemu was arrested in the Netherlands in September 2015. In September 2016, 15 Ethiopian witnesses residing in the United States of America and Canada were questioned by a Dutch judge and a prosecutor. Alemu pleaded not guilty to all charges.

On 15 December 2017, Alemu was found guilty of war crimes, including arbitrary detention, inhuman treatment, torture and murders. He was sentenced to life in prison.

Alemu appealed his conviction on 3 January 2018. On 23 April 2018, a pre-trial hearing took place before The Hague Court of Appeal. At the defense's request, on 19 November 2018, the Court agreed to hear a dozen witnesses in Ethiopia. An investigative judge traveled to Ethiopia, together with the defense counsel and prosecutors, to hear those witnesses.

“BLOOD TIMBER” BUSINESSMAN AWAITING EXTRADITION

Guus Van Kouwenhoven

Context

Ongoing proceedings against a Dutch national for alleged war crimes committed during the second Liberian civil war (1999-2003)

Suspect

Dutch national, Director of Operations at the Oriental Timber Company, and owner of the Royal Timber Company, both operating in Liberia

Country of residence of suspect

South Africa

Charges

Complicity in war crimes, supplying arms and ammunition in violation of embargoes

Developments in 2019

Guus Van Kouwenhoven challenged the legality of the warrant of arrest issued by the Magistrate's Court in Pretoria (South Africa), arguing that it was unlawful and invalid.

The Court confirmed that the warrant itself, the applicant's arrest on 8 December 2017 and the proceedings to date were all lawful.

Current status

Sentenced

Facts

Whilst managing the largest timber operation in Liberia, Van Kouwenhoven facilitated the importation of weapons for Charles Taylor, thereby contravening United Nations Security Council embargoes. These weapons were supplied to militias and used to carry out numerous massacres during the second Liberian civil war.

Van Kouwenhoven made available trucks, drivers and facilities for the transportation and storage of weapons, as well as armed personnel to Charles Taylor's troops.

Procedure

On 18 March 2005, Van Kouwenhoven was arrested in Rotterdam. He was charged with delivering arms to Liberia, involvement in war crimes committed in that country and breaching the embargo decreed by the UN on Liberia.

His trial began on 24 April 2006 in The Hague. On 7 June 2006, the Dutch Court acquitted Van Kouwenhoven of war crimes due to a lack of evidence. He was, however, sentenced to an eight-year prison term for breaking the UN arms embargo against Liberia. Both sides filed an appeal.

On 10 March 2008, the Dutch Court of Appeal overturned the conviction and acquitted him of all charges due to a lack of evidence.

On 20 April 2010, the Supreme Court of the Netherlands overturned the decision of the Court of Appeal. The Supreme Court considered that the appeal judges wrongly rejected a prosecution request to hear the testimonies of two new witnesses, and ordered a retrial.

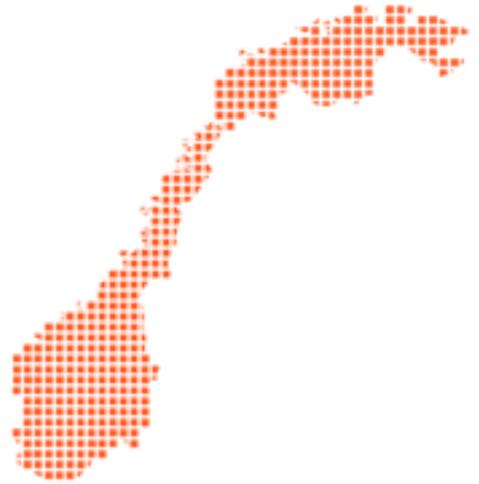
In December 2016, Van Kouwenhoven fled to South Africa. Van Kouwenhoven's appeal hearings nevertheless began on 6 February 2017 before the Court of Appeal of Den Bosch. On 10 February 2017, the prosecution requested a 20-year prison sentence.

On 21 April 2017, the Court of Appeal of Den Bosch sentenced Van Kouwenhoven *in absentia* to 19 years' imprisonment for complicity in war crimes committed in Liberia and for his involvement in arms trafficking. The Court of Appeal considered that by providing weapons, personnel, and equipment to the armed conflict, Van Kouwenhoven consciously accepted the probability that war crimes and/or crimes against humanity would be committed.

On 8 December 2017, Van Kouwenhoven was arrested in South Africa on a Dutch warrant. The Netherlands requested his extradition. Van Kouwenhoven's extradition hearings in South Africa were postponed several times in 2018 for medical reasons. The last hearing took place in October 2018.

On 26 June 2018, the Advocate General advised the Supreme Court to uphold the appeal judgment and confirm his conviction for complicity in war crimes. On 18 December 2018, the Supreme Court upheld his conviction for aiding and abetting war crimes. The judgment is now final.

NORWAY



VICTIMS AND NGOS FILE COMPLAINT AGAINST SYRIAN OFFICIALS

Names withheld

Context

Ongoing proceedings in Norway for war crimes, crimes against humanity and torture allegedly committed by Syrian officials in Syria

Suspect

Syrian nationals; high-ranking intelligence and military officials of Bashar al-Assad's regime

Country of residence of suspects

Syria

Charges

War crimes, crimes against humanity and torture

Developments in 2019

On 13 November 2019, five Syrian torture survivors filed a criminal complaint in Norway against 17 named officials of the Syrian military and intelligence services. The complaint was filed in cooperation with the organizations European Center for Constitutional and Human Rights (ECCHR), the Syrian Center for Legal Studies and Research, the Syrian Center for Media and Freedom of Expression, the Caesar Files Group and the Norwegian Helsinki Committee.

Current status

Preliminary examination

Facts

Since the beginning of the Syrian civil war in 2011, Syrian military and intelligence services have reportedly been systematically arresting, torturing and killing opposition activists. The complaint details torture, murder and rape the plaintiffs suffered or witnessed while imprisoned by authorities between May 2011 and September 2013.

After being arrested (for activities such as attending peaceful anti-Assad protests or providing humanitarian aid), the victims were allegedly severely tortured in 14 different detention centers. Treatments included being suspended by their wrists, subjected to electric shocks, having their fingernails pulled and being beaten with sticks and plastic pipes.

Active personality

WITNESS STATEMENTS UPHELD AS EVIDENCE AGAINST A RWANDAN REFUGEE

Jean Chrysostome Budengeri

Context

Ongoing proceedings in Norway for crimes allegedly committed during the 1994 genocide in Rwanda

Suspect

Dual Norwegian and Rwandan citizen

Country of residence of suspect

Norway

Charges

Murder as part of a genocide

Developments in 2019

Officers from the National Criminal Investigation Service – commonly known as Kripos – have travelled to Rwanda several times, including in 2019, to investigate the suspect's alleged involvement in the 1994 genocide.

In May 2019, Jean Chrysostome Budengeri's defense lawyer requested an independent review of Kripos' investigation by the Attorney-General. According to the defense, witness interviews and their translations were strewn with discrepancies, including incriminating statements that were not made by the witnesses. In November 2019 the Attorney

General concluded that the allegations from the defense did not have sufficient grounds.

On 27 September 2019, for unrelated reasons, Budengeri was released from pretrial detention on the condition that he reports to the police twice a week.

Current status

Under investigation

Facts

Budengeri is suspected of having participated in the genocide against Tutsis in Rwanda 1994.

Procedure

Budengeri arrived in Norway as a refugee through the United Nations Refugee Agency (UNHCR) in 2006. He became a Norwegian citizen in 2014. The investigation against him started in November 2017.

On 5 June 2018, he was arrested by Kripos on suspicion of having participated in the killing of a large number of people, mainly Tutsi, during the 1994 Rwandan genocide.



SALVADORAN COLONEL MAINTAINED IN DETENTION

Inocente Orlando Montano Morales

Context

Ongoing proceedings for serious crimes under international law committed in El Salvador during the 1980-1992 internal armed conflict

Suspect

Military officer and Vice Minister of Public Security (from 1 June 1989 to 2 March 1992) in El Salvador

Country of residence of suspect

Spain

Charges

Murder and terrorism

Developments in 2019

On 19 November 2019, the Spanish National Court extended Inocente Orlando Montano Morales's preventive detention status for two additional years. Therefore, he will remain in prison until his trial begins.

Current status

Extradited and detained in Spain

Facts

From 1980 to 1992, El Salvador was divided by an internal armed conflict between the rebel Farabundo Martí National Liberation Front (FMLN) and the government, led by the Nationalist Republican Alliance (ARENA). In this context, on 16 November 1989, six Jesuit priests, their housekeeper and her 16-year-old daughter were killed at the Pastoral Center of José Simeón Cañas Central American University in San Salvador.

Following the ratification of the Chapultepec Peace Accords on 16 January 1992, a Truth Commission was established to investigate crimes committed during the war, including the murder of the six Jesuits, their housekeeper and her daughter. The Truth Commission concluded that these crimes were ordered by Salvadoran officials and executed by the Salvadoran armed forces.

Procedure

On 13 November 2008, the Spanish Association for Human Rights and the Center for Justice and Accountability filed a complaint before the Spanish National Court against former Salvadoran President Alfredo Cristiani Burkard and fourteen former military officers and soldiers, including Montano.

On 13 January 2009, Judge Eloy Velasco charged fourteen former officers, including Colonel Ponce, former head of the Armed Forces at the time of the murders, General Rafael Humberto Larios, former minister of defense, Colonel Juan Orlando Zepeda, former vice minister of defense, and Montano with murder, crimes against humanity and terrorism.

On 30 May 2011, six new defendants were added to the indictment, and international arrest warrants were issued on charges of terrorism and crimes against humanity.

On 23 August 2011, US authorities arrested Montano on charges of federal immigration fraud. He was indicted on 10 February 2012 for false declarations to the US authorities regarding the date of his entry into the territory and his military training in El Salvador. On September 2012, he pleaded guilty, acknowledging he had given false statements. His trial took place in August 2013 and he was sentenced to 21 months in prison on 27 August 2013.

On 23 July 2014, the Criminal Chamber of the Spanish National Court submitted a supplemental brief to the US authorities in support of a pending request for extradition issued on 4 November 2011. In this request, Spain urged the US authorities to allow the extradition of Montano from the US to Spain to face trial for the murder of the six Jesuits, their housekeeper and her daughter, committed in El Salvador on 16 November 1989.

On 5 January 2016, a judge from the Eastern District Court of North Carolina granted the request to extradite Montano to Spain. On 1 April 2016, Montano's lawyers filed a petition for a writ of *habeas corpus* to reverse the extradition order.

On 21 August 2017, the US Eastern District Court of North Carolina dismissed Montano's petition for a writ of *habeas corpus*, finding no irregularity in the extradition proceedings and no basis upon which the petitioner's request for release could be granted.

On 15 November 2017, the Supreme Court dismissed Montano's last request to halt his extradition to Spain. On 29 November 2017, Montano was extradited to Spain and placed in police custody. He is accused of actively participating in planning the murder of the six Jesuits.

On 12 July 2018, the Criminal Chamber of the Spanish National Court partially upheld the appeal filed by the accused, eliminating from the indictment the alleged crime against humanity that the investigative judge had excluded from the procedure in 2014. The indictment only referred to the eight murders committed with a terrorist intent. Montano is currently detained in pre-trial detention before his trial.

SYRIAN INTELLIGENCE CASE DEFINITELY CLOSED

Ali Mamluk and others

Context

Closed proceedings for alleged international crimes committed in Syria since 2011

Suspects

Nine high-level Syrian members of the security and intelligence forces: Ali Mamluk, Director of the National Security Bureau; Jamil Hassan, head of the Syrian Air Force Intelligence; Abdul-Fattah Qudsiyeh, Deputy Director of the National Security Bureau; Mohammad Dib Zeitun, Director of the General Intelligence Directorate; Faruq Al-Sharaa, former Vice President; Mohamed Said Bekheitan, Deputy Head of the ruling Baath Party; Mohammad Al-Hajj Ali, Major General; General Jalal Al-Hayek; Colonel Suleiman Al-Yusuf; and another high-level official of the Syrian government

Country of residence of suspects

Unknown

Charges

Terrorism, enforced disappearances and torture

Developments in 2019

On 13 March 2019, the Spanish Supreme Court dismissed the appeal lodged by the law firm

Guernica 37 International Justice Chambers, deciding that Spanish Courts lacked jurisdiction over the crimes and adopting a narrow interpretation of the concept of victim.

This decision was appealed before the Constitutional Court on 30 April 2019. The Court could not find any *prima facie* infringement of the victim's fundamental rights and, consequently, dismissed the appeal.

Current status

Closed; recourse to the Spanish Supreme Court and to the Constitutional Court were rejected

Facts

On 17 February 2013, Abdulmuemen Alhaj Hamdo, a Syrian national born in Idlib, disappeared while covering his daily delivery shift as a professional transporter between the municipality of Mashta el Helou and the city of Homs in western Syria.

In 2015, Abdulmuemen Alhaj Hamdo's eldest son recognized the body of his father in several photographs taken by a forensic photographer codenamed Caesar, who deserted from the Syrian army. Caesar made public over 50'000 photographs depicting various crimes committed in detention centers of the Syrian government since 2013.

Procedure

On 1 February 2017, Amal Hag Hamdo Anfalis filed a complaint with the Spanish National Court against nine high-level military and government officials of the Syrian Arab Republic for alleged acts of terrorism and enforced disappearance committed against her brother, Alhaj Hamdo.

On 27 March 2017, Judge Eloy Velasco Núñez declared the complaint admissible and opened an investigation. Judge Velasco requested that Eurojust ascertain whether there were other countries of the European Union investigating international crimes committed by the administration of the Syrian Arab Republic. He also ordered that testimonies be obtained from the victim, witnesses and expert witnesses, and that rogatory letters be sent. On 30 March 2017, the Spanish public prosecutor appealed this decision.

On 27 July 2017, the Spanish National Court dismissed the case after the public prosecutor argued it lacked jurisdiction to judge the crimes committed. The law firm Guernica 37 International Justice Chambers appealed the decision before the Appeals Chamber of the Spanish National Court. On 15 December 2017, the appeal was rejected.

In February 2018, Guernica 37 International Justice Chambers requested the Spanish Supreme Court to admit its complaint and to order the reopening of the investigation. They also asked the Constitutional Court to examine the constitutionality of the current law on universal jurisdiction in Spain.

In parallel, Guernica 37 International Justice Chambers seized the Court of Justice of the EU to determine if the current definition of a victim under Spanish legislation is in accordance with European regulations, and if the European directives equate the concepts of direct and indirect victim in order to hold legitimacy to exercise jurisdiction and give competence to the Spanish courts.

SWEDEN

FIRST CASE OPENED IN THE KARAJ PRISON MASSACRE IN IRAN

Hamid Noury

Context

Ongoing proceedings in Sweden for alleged war crimes committed in Iran in 1988

Suspect

Iranian lawyer, alleged former assistant prosecutor in Iran

Country of residence of suspect

Iran, traveled to Sweden

Charges

War crimes of abetting the execution of political prisoners

Developments in 2019

Hamid Noury was arrested on 9 November 2019 while traveling for personal reasons in Sweden. On 13 November, the Court allowed his pre-trial detention for a month while the investigation is ongoing.

On 11 December 2019, his detention was renewed until 20 January 2020.

Current status

Under investigation; pretrial detention

Facts

During the war between Iraq and Iran, Iran's Leader, Rouhollah Khomeini issued an order to execute all prisoners who were supporting the People's Mojahedin Organization of Iran (PMOI), an outlawed opposition group, as well as leftist prisoners. Prisoners at the Karaj prison, close to Tehran, were brought before so-called "death commissions" that ordered their arbitrary execution. The number of victims is unknown but estimated to be over 5'000. Many of those killed were subjected to torture and other cruel, inhuman and degrading treatment or punishment.

Noury is alleged to have participated in the murder and torture of prisoners from the Karaj prison during the summer of 1988.



TORTURE SURVIVORS REPORT THE CRIMES OF AT LEAST 25 SYRIAN INTELLIGENCE OFFICIALS

Names withheld

Context

Ongoing proceedings for war crimes, crimes against humanity and torture allegedly committed by Syrian officials in Syria

Suspects

Syrian nationals; 25 known and several other unknown high-level officials of the Syrian security services

Country of residence of suspects

Syria

Charges

War crimes, crimes against humanity, torture and degrading treatment, rape, severe bodily injury and illegal abduction

Developments in 2019

On 20 February 2019, nine Syrian torture survivors filed a criminal complaint with the War Crimes Unit of the Swedish Police. The complaint details crimes allegedly committed by 25 known and other unknown high-level Syrian security officials, including heads of the four Syrian intelligence services. The complaint was filed in cooperation with the European Center for Constitutional and

Human Rights (ECCHR), Syrian lawyers Anwar al-Bunni (of the Syrian Center for Legal Studies and Research) and Mazen Darwish (of the Syrian Center for Media and Freedom of Expression), the Caesar Files Group and the Swedish organization Civil Rights Defenders. All nine torture survivors testified before the Swedish police.

Current status

Preliminary examination

Facts

Since the beginning of the Syrian civil war in 2011, Syrian military and intelligence services have reportedly been systematically arresting, torturing and killing opposition activists. The complaint details instances of murder, severe torture, detention in inhuman conditions, sexual violence and other inhumane treatment that the complainants suffered or witnessed while imprisoned by government authorities between February 2011 and June 2015.

After being arrested for activities such as attending peaceful anti-Assad protests or providing humanitarian aid, the victims were imprisoned in 17 different detention facilities of the Syrian intelligence services, namely the Military Intelligence, Air Force Intelligence, General Intelligence Directorate, as well as in Saydnaya Military Prison and a detention facility of the fourth Division of the Syrian Armed Forces.

During their detention, the victims were severely tortured, including being subjected to beatings with sticks, cables and plastic pipes, kicks to head and genitals, electric shocks, sleep deprivation and sexual abuse. They also witnessed the torture and killings of other detainees.

CASE COMPLETED FOR IRAQI SOLDIER POSTING PICTURES OF DEAD ISIS FIGHTERS

Kurda Bahaalddin H.
Saeed H. Saeed

Context

Completed proceedings in Sweden for war crimes committed in Iraq in 2015

Suspect

Iraqi national

Country of residence of suspect

Sweden

Charges

War crimes

Developments in 2019

The trial of Kurda Bahaalddin H. Saeed H. Saeed before the Orebro District Court began on 29 January 2019. On 19 February 2019, the court found Saeed guilty of four counts of the war crime of subjecting protected persons to humiliating or degrading treatment. The court found that the pictures and videos of dead ISIS fighters he had posted on Facebook "were intended to seriously violate personal integrity". He was sentenced to 15-months' imprisonment.

Current status

Convicted

Facts

Saeed was a soldier in the Iraqi army and fought the Islamic State (ISIS) in Kirkuk, northern Iraq, in 2015. Between February and March 2015, he took several photographs and videos of himself posing with the bodies of enemy fighters, some of whom had been mutilated.

Procedure

In March 2018, the Swedish police arrested Saeed for posting pictures and videos of dead ISIS fighters on Facebook. Since he had a wife and two children in Sweden, the flight risk was considered to be minimal and he was released on bail the next day.

FOLLOW UP ON OTHER CASES

- Lundin Petroleum - Alex Schneiter and others: pending trial (see UJAR 2019, p. 64)

SWITZERLAND



PREVENTIVE DETENTION RENEWED FOR THE FORMER GAMBIAN MINISTER OF INTERIOR

Ousman Sonko

Context

Ongoing proceedings against former Gambian Minister of Interior under the Yahya Jammeh regime for alleged serious crimes under international law

Suspect

Former Inspector General of the Police (2005 to 2006) then Minister of Interior (2006 to 2016)

Country of residence of suspect

Switzerland

Charges

Crimes against humanity and torture

Developments in 2019

Ousman Sonko's detention was renewed on 4 February 2019. On 25 July 2019, his detention was renewed until 25 January 2020. Throughout the year, more witnesses were heard and the Swiss federal criminal police produced a report to support the extension of the accused's detention.

Since 2019 and the beginning of hearings before The Gambia's Truth, Reconciliation and Reparations Commission, Sonko's

name has been mentioned several times in relation to human rights violations committed during the Jammeh regime, such as unlawful interrogations, torture and killing of one soldier.

Current status

Detained pending trial

Facts

The Gambia was under the control of Jammeh from 1994 to 2016. For more than two decades, all opposition was repressed: torture, extrajudicial executions and enforced disappearances were widespread. After Jammeh's re-election in September 2006, Sonko was appointed Minister of Interior. He held this position until September 2016, when he was dismissed from office and left The Gambia.

Procedure

Alerted of Sonko's presence on Swiss territory, TRIAL International lodged a criminal complaint before the prosecuting authorities in Bern on 25 January 2017. The former Gambian Minister was arrested the following day at the immigration center of Lyss (canton of Bern), where he had applied for asylum. He was charged with crimes against humanity. Nine

Gambian victims filed additional complaints. Six of them, along with several witnesses, were heard by the Attorney General.

On 9 October 2017, the Swiss Federal Supreme Court confirmed the seizure of Sonko's assets, worth approximately USD 15'000. His detention was extended several times in 2017 and 2018 to allow the Office of the Attorney General to conduct the investigation.

THREE ONGOING PROCEDURES AGAINST THE UNCLE OF BASHAR AL-ASSAD

Rifaat al-Assad

Context

Ongoing proceedings in Switzerland against the former Vice President and head of the Defense Brigades in Syria for alleged war crimes committed in Hama in 1982

Suspect

Brother of the former Syrian President Hafez al-Assad and uncle of the current President Bashar al-Assad; former head of the Defense Brigades, Syria's elite commando troops, from 1971 to 1984

Country of residence of suspect

Various

Charges

War crimes allegedly committed in Hama in 1982

Developments in 2019

The investigation is ongoing in Switzerland.

A procedure is ongoing in France as well but on different grounds. On 9 December 2019, his trial opened in Paris. He is suspected of having embezzled Syrian public money, money then laundered via numerous front companies before being invested in stone.

The charges include organized gang laundering, aggravated tax evasion and misappropriation of Syrian public funds between 1984 and 2016.

In Spain, an indictment has been issued by a judge on similar grounds.

Current status

Under investigation by the Office of the Attorney General of Switzerland for war crimes and by the Spanish criminal authorities for financial offenses. On trial in France for financial crimes.

Facts

On 27 June 1980, the Defense Brigades, commanded by Rifaat al-Assad, attacked the Tadmor prison (Syria) murdering hundreds of inmates related or suspected of being related to the Muslim Brotherhood. This attack followed the attempted assassination of former President Hafez al-Assad the day before. As the hierarchical superior of this armed force, Rifaat al-Assad is suspected of having a responsibility in this massacre.

Rifaat al-Assad, as the commander of the Defense Brigades, is also suspected of having participated in the massacre of several thousand people in Hama in 1982 during the civil war in Syria. In February 1982, opponents of the regime took up arms in Hama. As retaliation, the Syrian armed forces, including the Defense Brigades, attacked the city. The civilian population was trapped in Hama for almost a month.

The estimated number of civilian casualties ranges from 10'000 to 40'000, depending on the sources.

Procedure

In December 2013, after being informed that Rifaat al-Assad was present in Switzerland, TRIAL International filed a criminal denunciation with the Office of the Attorney General of Switzerland regarding the massacre in Hama in 1982. A criminal investigation for war crimes was opened a few days later against Rifaat al-Assad. In August 2014, a first private claimant joined the proceedings.

In September 2015, Rifaat al-Assad returned to Geneva. TRIAL International and the private claimant asked the Swiss authorities to arrest him. After the Office of the Attorney General refused to proceed with his arrest, the victim filed a motion for provisional measures before the Federal Criminal Court. Two days later, the Office of the Attorney General was ordered to hear Rifaat al-Assad without delay. In 2016, three other private claimants joined the criminal proceedings.

In 2017, TRIAL International filed a complementary denunciation regarding the Tadmor massacre as well as various offers of proof. It was later dismissed.

On 25 September 2017, four years after the official opening of the investigation, one of the private claimants filed a petition alleging a denial of justice. The Federal Criminal Court dismissed it, considering that the extensive

delay could notably be explained by the complexity of the case.

In August 2018, a letter to Switzerland signed by the United Nations Special Rapporteurs on torture and on the independence of judges and lawyers was published by the UN. It heavily criticized Switzerland for an alleged lack of independence and political interference notably concerning the case against Rifaat al-Assad. In six years of proceedings, four witnesses and two private claimants have been heard.

ALGERIAN MINISTER'S PROSECUTION DRAGS ON DESPITE UNITED NATIONS WARNING

Khaled Nezzar

Context

Ongoing proceedings against the former Algerian Minister of Defense for alleged war crimes committed in Algeria between 1992 and 1994

Suspect

General in the Algerian army, Minister of Defense in Algeria from 1990 to 1994, and Member of the High Council of State (HCS) from 1992 to 1994

Country of residence of suspect

Spain

Charges

War crimes of torture, extrajudicial killings and enforced disappearances; other grave breaches of international humanitarian law

Developments in 2019

The investigation is ongoing in Switzerland. In 2019, one witness was heard by the Office of the Attorney General.

In Algeria, Khaled Nezzar was tried *in absentia* along with other former regime members and sentenced to 20 years of imprisonment for acts of conspiracy against the authority of the State. He is currently on the run abroad.

Current status

Investigation ongoing

Facts

From 14 January 1992 to 31 January 1994, as Minister of Defense and member of the HCS, Nezzar allegedly incited, authorized and ordered military and public agents to commit acts of torture, murders, extrajudicial killings, enforced disappearances and other grave violations of international humanitarian law. The "dirty war", which ended in 2000, caused the death of approximately 200'000 persons and the disappearance of some 20'000 others.

Procedure

Three torture victims filed a first complaint against Nezzar in France in 2001, but the suspect left the country before judicial action could be initiated. In October 2011, TRIAL International filed a denunciation as Nezzar was travelling to Geneva. Two victims of torture joined the procedure in 2011 by filing a criminal complaint. Three more victims later added their own complaint.

Nezzar was arrested in October 2011 and interviewed by the Swiss Office of the Attorney General. Before being allowed to leave the country, his lawyers challenged the jurisdiction of the Office of the Attorney General, in particular on the grounds that he would benefit from immunity from jurisdiction. In a 25 July 2012 decision, Nezzar's appeal was rejected: the Federal Criminal Court notably considered that functional immunities cannot

be invoked for international crimes. In early January 2017, the Office of the Attorney General dismissed the case, considering that the alleged acts committed by the former Minister of Defense could not be considered as war crimes, on the grounds that there was no war in Algeria when the acts allegedly occurred. On 18 January 2017, the plaintiffs appealed the decision before the Federal Criminal Court.

On 30 May 2018, the Federal Criminal Court overturned the decision of the Office of the Attorney General. The Court recognized the existence of a non-international armed conflict in Algeria in the early 1990s and found that there was no doubt that Nezzar was aware of the acts committed under his order. Therefore, the court concluded that the Office of the Attorney General should complete its investigation on war crimes, and determine whether Nezzar could also be charged with crimes against humanity, torture and murder.

In August 2018, a letter to Switzerland by the United Nations Special Rapporteurs on torture and on the independence of judges and lawyers was made public. It heavily criticized Switzerland for an alleged lack of independence and political interference, mentioning explicitly the case against Nezzar.

In eight years of proceedings, four private claimants and 13 witnesses have been heard by the Office of the Attorney General.

REBEL COMMANDER SENT TO TRIAL FOR WAR CRIMES

Alieu Kosiah

Context

Ongoing investigation for serious crimes under international law allegedly committed during the first Liberian civil war (1989-1996)

Suspect

Former rebel commander of the United Liberation Movement of Liberia for Democracy (ULIMO)

Country of residence of suspect

Switzerland

Charges

War crimes including systematic killings and targeting civilians

Developments in 2019

On 22 March 2019, the Office of the Attorney General of Switzerland presented an indictment against Alieu Kosiah to the Federal Criminal Court. The suspect is accused of violations of the laws of war as a member of a military faction in the 1989-1996 Liberian war.

On 31 October 2019, the Swiss Federal Criminal Court set Kosiah's trial from 14 to 30 April 2020 in Bellinzona (canton of Ticino). On 25 November 2019, the Federal Criminal Court dismissed a complaint accusing him of participation in a massacre committed by the ULIMO. He is still detained awaiting his trial for other war crimes.

Current status

Awaiting trial; in custody

Facts

During the first Liberian civil war, the accused joined the ULIMO, which gathered supporters of former President Samuel Doe. The ULIMO carried out attacks against Charles Taylor's National Patriotic Front of Liberia (NPLF).

Kosiah is accused of having ordered or participated in the murder of civilians and soldiers *hors de combat*, desecrated the corpse of a civilian, raped a civilian, ordered the cruel treatment of civilians, recruited and employed a child soldier, ordered several pillages and ordered and/or participated in forced transports of goods and ammunition by civilians. The accused allegedly committed these crimes between March 1993 and the end of 1995 as commander of the ULIMO.

Procedure

In July and August 2014, seven Liberian victims, assisted by the NGO Civitas Maximas, filed a complaint in Switzerland against Kosiah for his alleged participation in war crimes and systematic killings committed between 1993 and 1995 in Lofa County in northwestern Liberia. An investigation for war crimes was opened in August 2014.

On 10 November 2014, Kosiah was arrested in Switzerland. On 13 November 2014, a Swiss judge decided to hold him in pre-trial detention. The plaintiffs as well as several witnesses from Liberia came to Switzerland to be heard by the prosecutor. Kosiah remains in pre-trial detention.

Zoom in

A first for both Liberia and Switzerland

Kosiah is the first person to be tried for war crimes in a non-military criminal court in Switzerland, and is the first ULIMO member to be indicted for crimes committed during the first Liberian civil war.

"This is a historical case for both Liberia and Switzerland" stated Alain Werner, Director of Civitas Maxima. He is one of the two lawyers representing four of the seven plaintiffs who will testify in the trial.

CONVICTION OF THE HEAD OF THE GUATEMALAN POLICE CONFIRMED

Erwin Sperisen

Context

Ongoing proceedings for serious crimes under international law allegedly committed in Guatemala in 2005 and 2006

Suspect

Head of the National Civilian Police (NCP) of Guatemala from 2004 to 2007; dual Swiss and Guatemalan citizen

Country of residence of suspect

Switzerland

Charges

Extrajudicial executions in 2005 (the killing of three inmates from the Infiernito prison) and in 2006 (the killing of seven inmates at the Pavón prison), both in Guatemala

Developments in 2019

On 28 November 2019, the Swiss Federal Court confirmed the conviction of Erwin Sperisen and his sentence to 15 years in prison. The Court confirmed his complicity in the killing of seven detainees during the repression of a mutiny at Pavón prison in September 2006. The court ruled that as Head of the NCP and given his presence there, Sperisen could not have ignored the details of the operation

carried out by the police. Sperisen announced his intention to seize the European Court of Human Rights.

Current status

Conviction confirmed by the Swiss Federal Court

Facts

In October 2005, 19 prisoners escaped from El Infiernito, a high security prison in Guatemala City. Sperisen allegedly set up a plan aimed at finding and executing the escaped prisoners; this was known as the Gavilan Plan. Nine prisoners were captured and three executed as a result.

In September 2006, Sperisen, along with 3'000 NCP officers and members of the army, intervened in the Pavón prison, a high security prison controlled by prisoners, to restore State authority. This intervention ended in the arrest and the extrajudicial execution of seven prisoners.

Procedure

In 2008, several Swiss organizations led by TRIAL International filed a criminal complaint against Sperisen with the Office of the Prosecutor in Geneva, after discovering that he was living in Switzerland. He was arrested on 31 August 2012 in Geneva. In March 2013, the mother of one of the victims filed a complaint and joined the criminal proceedings. Fourteen witnesses travelled from Spain, France and Guatemala to be heard by the Swiss authorities.

Sperisen's trial opened on 15 May 2014 in Geneva. He was convicted on 6 June 2014 and sentenced to life imprisonment for the crimes he committed in the Pavón prison, but he was acquitted for his alleged involvement in the Gavilan Plan.

Sperisen appealed the conviction and his appeal trial took place from 4 to 8 May 2015 before the Criminal Chamber of the Geneva Court of Appeal. On 12 May 2015, the Criminal Chamber upheld the life imprisonment sentence. In addition to the seven extrajudicial executions for which Sperisen was found guilty in the first instance, he was condemned as jointly responsible for the murder of three fugitives from the Infiernito prison, though not as a direct perpetrator. Arguing that his right to a fair trial had been violated, Sperisen lodged an appeal against the conviction.

On 29 June 2017, the Swiss Federal Court overturned the judgment of the Criminal Chamber of the Geneva Court of Appeal and ordered Sperisen's retrial. The Federal judges recognized the existence of extrajudicial executions committed by a commando composed of police forces. Yet they considered that Sperisen should have been confronted with several witnesses.

On 20 September 2017, the Swiss Federal Court allowed Sperisen's release pending his retrial. On 25 September 2017, he was released and placed under house arrest.

Sperisen's new trial took place in April 2018 in Geneva. The public prosecutor requested a life sentence for Sperisen's participation in the 2006 killing of seven detainees in the Pavón prison. In the alternative, the prosecutor requested a 15-year sentence for Sperisen's alleged complicity in these murders. The defense pleaded for his acquittal.

On 27 April 2018, Sperisen was sentenced to a 15-year sentence for his complicity in the 2006 murders. He appealed the judgment to the Swiss Federal Court.

Active personality

SWISS BUSINESSMAN UNDER CRIMINAL INVESTIGATION FOR PILLAGE IN DRC

Christoph Huber

Context

Ongoing proceedings regarding illegal trade of minerals in the Democratic Republic of the Congo (DRC)

Suspect

Christoph Huber, Swiss national, businessman in the mining sector

Country of residence of suspect

South Africa

Charges

War crime of pillage

Developments in 2019

The investigation is ongoing

Current status

Investigation ongoing

Facts

Christoph Huber allegedly dealt natural resources with the *Rassemblement Congolais pour la Démocratie-Goma* (Rally for Congolese Democracy–Goma, or RCD-Goma), a Rwanda-backed violent armed group controlling a large portion of Eastern Congo during the Second Congo War (1998-2003). In 2001, the company he represented was granted a

mining concession by RCD-Goma, including guarantees of protection by soldiers of the armed group.

In a 2009 United Nations investigation, Huber was accused of being involved in the large-scale transport of coltan out of DRC and Rwanda when RCD-Goma occupied much of Eastern Congo during the war.

Procedure

TRIAL International and the Open Society Justice Initiative (OSJI) have investigated the case since 2013. The two organizations filed a criminal denunciation in November 2016 against Huber for his alleged involvement in the alleged illegal trade of minerals in DRC during the Second Congo War, constituting the war crime of pillage. The Office of the Attorney General opened a criminal investigation in March 2018. The case was made public in 2019.

UNITED KINGDOM



DISMISSAL OF TORTURE CHARGES AGAINST CHARLES TAYLOR'S EX-WIFE

Agnes Reeves Taylor

Context

Completed proceedings for torture allegedly committed during the first Liberian civil war (1989-1996). The Agnes Reeves Taylor case is the fourth arrest by a Western country of a suspect of war crimes allegedly committed during the first Liberian war. Liberia's former President, Charles Taylor, was sentenced on 30 May 2012 by the Special Court for Sierra Leone to 50 years' imprisonment (confirmed on appeal on 26 September 2013), for crimes he committed during the Sierra Leone civil war in the 1990s

Suspect

Ex-wife of former Liberian President Charles Taylor

Country of residence of suspect

United Kingdom

Charges

Torture and conspiracy to commit torture

Developments in 2019

Hearings in Agnes Reeves Taylor's appeal regarding the interpretation of "person acting in an official capacity" under section 134 of the UK Criminal Justice Act 1988

were held before the Supreme Court on 24 and 25 June 2019. The Supreme Court issued its decision on 13 November 2019, quashing the Court of Appeal's decision, and sending back the application for dismissal to the Central Criminal Court judge for reevaluation in light of the Supreme Court's decision.

The Supreme Court on 13 November 2019 defined a "person acting in an official capacity" as including "a person who acts or purports to act, otherwise than in a private and individual capacity, for or on behalf of an organisation or body which exercises, in the territory controlled by that organisation or body and in which the relevant conduct occurs, functions normally exercised by governments over their civilian populations [...] whether acting in peace time or in a situation of armed conflict." The majority judgment emphasized that for the purposes of section 134, the exercise of a governmental function must be distinguished from purely military activity that does not involve the exercise of official or quasi-official powers, but noted that it would be necessary to make allowance for the particular conditions which may make administration difficult and for different views of appropriate structures of government.

On 6 December 2019, the Central Criminal Court judge dismissed all charges against Agnes Reeves Taylor. Applying the test set out by the Supreme Court majority, he held that, at the time of each alleged offense, the National Patriotic Front of Liberia (NPFL) did not exercise

"functions normally exercised by governments over their civilian populations". Accordingly, the actions of Agnes Reeves Taylor did not fall under section 134 of the UK Criminal Justice Act 1988.

Current status

Case dismissed

Facts

Agnes Reeves Taylor, who was then married to Charles Taylor, was alleged to have been one of the founders of the NPFL and to have held high rank in the NPFL at the material time. She was accused of having ordered and carried out torture in Gbarnga, the site of the headquarters of Charles Taylor's NPFL; and in Gborplay, between 23 December 1989 and 1 January 1991, during the first Liberian civil war. According to the indictment, she ordered soldiers to rape seven women as well as ordered the beating of a 13-year old boy.

Procedure

On 1 June 2017, Agnes Reeves Taylor was arrested at her residence in East London by the Metropolitan Police, based on information provided by the NGOs Civitas Maxima and its Liberian sister organization, the Global Justice and Research Project. On 2 June 2017, she was charged with one count of conspiracy to commit torture and seven counts of torture under the UK Criminal Justice Act 1988. On 11 August 2017, the Westminster Magistrates' Court rejected her request for provisional release on bail.

Agnes Reeves Taylor made an application to the Central Criminal Court to dismiss the charges against her. The parties agreed that the judge should first decide on the correct legal interpretation of the term "person acting in an official capacity" under the UK Criminal Justice Act 1988 before ruling on the issue of dismissal. On 30 July 2018, the judge ruled that the term applies "not only to acting for entities either tolerated by, or acting under the authority of the government of a state, but also, in situations of armed conflict, to individuals who act in a non-private capacity and as part of an authority-wielding entity".

Agnes Reeves Taylor appealed this ruling to the Court of Appeal, which dismissed the appeal on 21 December 2018. The Court of Appeal ruled that the category of perpetrator defined as "a public official or person acting in an official capacity" in section 134 of the 1988 Act is not confined to those acting on behalf of a recognized State but "covers any person who acts otherwise than in a private and individual capacity for or on behalf of an organisation or body which exercises or purports to exercise the functions of government over the civilian population in the territory which it controls and in which the relevant conduct occurs".

The Supreme Court granted permission on 13 February 2019 for Agnes Reeves Taylor to file a further appeal (see Zoom in).

Zoom in

Defining "a person acting in an official capacity"

The prosecutor argued that as a senior member of the NPFL, which exercised *de facto* control over the territories where the offenses were committed, Agnes Reeves Taylor was acting in an official capacity at the time of the commission of the offenses.

The defense submitted that at no time did Agnes Reeves Taylor act in an official capacity for the NPFL. It argued that the NPFL was not the *de facto* government at the relevant time in the relevant locations.

GENOCIDE INVESTIGATION OPENED BY THE METROPOLITAN POLICE

Vincent Bajinya,
Célestin Ugirashebuja,
Charles Munyaneza,
Emmanuel Nteziryayo and
Célestin Mutabaruka

Context

Ongoing investigations against five suspects for crimes committed during the 1994 genocide in Rwanda

Suspects

Vincent Bajinya (also known as Vincent Brown), allegedly a close associate of Rwandan President Juvénal Habyarimana; Célestin Ugirashebuja, allegedly mayor of Kigoma commune in the Gitamara province, and a longstanding member of the National Revolutionary Movement for Democracy and Development; Charles Munyaneza, allegedly mayor of Kinyamakara commune in the Gikongoro province; Emmanuel Nteziryayo, allegedly mayor of Mudasomwa commune in the Gikongoro province; and Célestin Mutabaruka, allegedly a local politician in the Gikongoro province

Country of residence of suspects

United Kingdom

Charges

Genocide, complicity in genocide, crimes against humanity and conspiracy to murder

Developments in 2019

The five suspects are being investigated over their alleged involvement in the 1994 genocide. On 9 April 2019, British police forces announced that the allegations against the suspects were being actively investigated. The UK Minister of State for Security and Economic Crime announced that officers had been sent to Rwanda to investigate on the ground.

Current status

Investigation ongoing

Facts

Vincent Bajinya is alleged to have established and supervised checkpoints in Kigali and near the Kibihékane School in North-West Rwanda, where killings took place. Charles Munyaneza is alleged to have encouraged others to kill Tutsis, organized roadblocks and led several attacks in Ruhashya, which killed thousands. Emmanuel Nteziryayo and Celestin Ugirashebuja are alleged to have ordered the killing of Tutsis and provided weapons to do so. Celestin Mutabaruka is alleged to have led attacks in Gatara and on Muyira Hill in Biseseo, which are reported to have killed tens of thousands.

Procedure

On 29 May 2013, following extradition requests by the Rwandan authorities, the UK police arrested the five suspects. Four of the suspects had been

arrested previously in 2006 following an earlier extradition request by Rwanda. They were later released following the UK courts' refusal to extradite due to concerns about their right to a fair trial in Rwanda.

On 22 December 2015, a British court declined to order extradition in response to the new request. The decision regarding the first four suspects was founded on the conclusion that there was a real risk of an unfair trial if they were extradited, such that there would be a breach of Article 6 of the European Convention on Human Rights. The decision regarding Mutabaruka was that his extradition was barred by the rule against double jeopardy.

An appeal took place before the High Court. On 28 July 2017 the Court upheld the first instance decision. It ruled that if extradited, the suspects would be at risk of a flagrant denial of the right to a fair trial. It also found that the extraditions of Mutabaruka and Nteziryayo were barred by the rule against double jeopardy.

In January 2018, Rwandan Prosecutor General Jean Bosco Mutangana and Prosecutor Jean Bosco Siboyintore, Head of the Genocide Suspects Tracking Unit, traveled to London to request the UK to open an investigation against the five suspects. They recalled the obligation of the UK, if it was unwilling to extradite the suspects, to try them in its own courts. The Metropolitan Police has since commenced an investigation.

UNITED STATES OF AMERICA

CIVIL CASES TAKE OVER CRIMINAL PROCEEDINGS

In the United States, suspects of international crimes who are found in the country can be subject to civil suit for violations of international law committed outside of the US, based on several different federal statutes:

The Alien Tort Statute (ATS) gives US federal courts jurisdiction to hear lawsuits filed by non-US citizens for torts committed in violation of international law where the claims sufficiently touch and concern the territory of the US. Over the past 30 years, the ATS has been used successfully in cases involving torture, State-sponsored sexual violence, extrajudicial killings, crimes against humanity, war crimes and arbitrary detention.

The Torture Victim Protection Act (TVPA) allows US citizens and non-citizens alike to bring civil claims for torture and extrajudicial killing committed by foreign State actors.

The Foreign Sovereign Immunities Act and **the Anti-Terrorism Act** also permit civil claims against perpetrators of mass atrocity under limited circumstances.

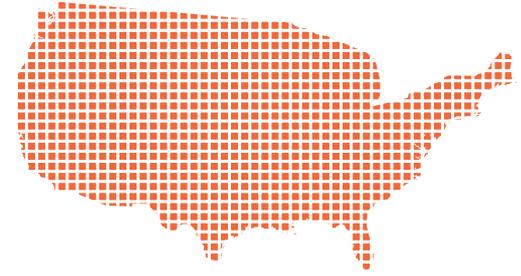
These civil cases not only offer survivors an opportunity to face their abusers in a court of law, but can also pave the way for criminal proceedings. Below are some cases with notable developments from this past year.

Wickrematunge v. Rajapaksa

In April 2019, the Center for Justice and Accountability (CJA) filed a lawsuit in federal court in California against Gotabaya Rajapaksa, Sri Lanka's former Secretary of Defense and brother of former President Mahinda Rajapaksa, for his alleged involvement in the killing of journalist Lasantha Wickrematunge and the widespread and systematic targeting of journalists.

The Rajapaksas oversaw the final years of a decades-long civil war between the government of Sri Lanka and the Liberation Tigers of Tamil Eelam (LTTE). The final phase of the war was marked by gross human rights abuses and serious violations of international law, with a United Nations Panel of Experts finding evidence of crimes committed by both the Sri Lankan forces and the LTTE. During this period, journalists perceived to be critical of the war effort or the Rajapaksa government found themselves the targets of harassment and violence. Although the government denied playing a role in the abductions, assaults and killings of journalists, many attacks were traced back to government security forces under Gotabaya Rajapaksa's Ministry of Defense.

In August 2019, Gotabaya Rajapaksa sought to dismiss the complaint, raising several defenses, including that Sri Lanka was a more convenient forum for the case and that he enjoyed common law immunity because all the alleged conduct was done



in his capacity as the Secretary of Defense. The plaintiff's opposition argued that human rights cases against the Rajapaksa administration could not proceed in Sri Lanka without facing judicial interference, delay and danger to litigants and witnesses. Moreover, the plaintiff argued that common law immunity should not attach because the assassination of a journalist cannot be considered an official act of State, and because the government of Sri Lanka never sought immunity on Gotabaya Rajapaksa's behalf and treated the attack as a crime.

In October 2019, the lower court dismissed the complaint, finding that Gotabaya Rajapaksa was entitled to common law foreign official immunity for the alleged acts – torture, extrajudicial killing and crimes against humanity – because they were performed while the defendant was Secretary of Defense. A notice of appeal was filed in early November 2019, shortly before Gotabaya Rajapaksa was elected President of Sri Lanka. The case is currently pending before the Ninth Circuit Court of Appeals.

Mamani *et al.* v. Sánchez de Lozada and Sánchez Berzaín

In 2007, the Center for Constitutional Rights, Harvard Law School's International Human Rights Clinic, and two *pro bono* law firms filed a lawsuit on behalf of nine Aymara indigenous Bolivians in a federal court in Florida under the ATS and TVPA against the former President of Bolivia, Gonzalo Sánchez de Lozada, and the former Minister of Defense, Carlos Sánchez Berzaín.

The claims arose from a brutal crackdown by the Bolivian military during a period of civil unrest in September and October 2003, during which over 50 civilians were killed and hundreds more were injured. The Aymara plaintiffs sought to hold these two officials responsible for their alleged role in planning and organizing the mass killings that resulted in the death of their family members.

In April 2018, a federal jury found Sánchez de Lozada and Sánchez Berzaín responsible for their roles in planning and ordering the crackdown that led to the extrajudicial killings. This was the first time a former head of State was found guilty in a US court for human rights abuses. In May 2018, the trial court judge overturned the unanimous jury verdict, a decision which was appealed by the plaintiffs. In November 2019, the 11th Circuit Court of Appeals heard oral argument. The Court's decision is pending.

Farhan Warfaa v. Yusuf Abdi "Tukeh" Ali

In 2004, CJA brought a lawsuit in a federal court in Virginia under the ATS and TVPA against a high-ranking Somali commander, Colonel Yusuf Abdi Ali, also known as "Tukeh", for his alleged role in torture and attempted extrajudicial killing perpetrated in northern Somalia in the 1980s under the Siad Barre regime. Tukeh is alleged to have ordered public mass executions and participated in the persecution of the Isaaq ethnic group. The case against Tukeh was brought on behalf of an Isaaq Somali torture survivor, Farhan Warfaa, who alleged that Tukeh and his troops tortured him before he was shot five times at point blank range and left for dead.

On May 21, 2019, following a three-day trial and nearly 15 years of pre-trial litigation, a jury issued a verdict finding Tukeh liable for the torture only of Farhan Warfaa, and awarded him USD 500'000 in damages. The jury did not find Tukeh liable for attempted extrajudicial killing. Tukeh appealed the judgment to the Fourth Circuit Court of Appeals.

Estrada v. Jimenez "Macaco" Naranjo

CJA represents the family members of human rights defender Eduardo Estrada killed by a paramilitary group in Colombia commanded and controlled by Carlos Mario Jiménez Naranjo, also known as "Macaco". Macaco headed one of the most

notorious paramilitary groups in Colombia, the *Bloque Central Bolívar*. He allegedly commanded the military units responsible for carrying out systematic attacks on human rights defenders attempting to develop peaceful alternatives to the drug trade. Alma Rosa Jaramillo, a human rights lawyer, and Estrada, a community activist, were among the leaders killed by Macaco's forces. Although their families pursued Macaco through the transitional justice process in Colombia, their hopes for redress abruptly ended when Macaco was extradited to the United States to face prosecution for narcotics trafficking, where he was convicted and sentenced to 33 years in prison. In June 2010, CJA filed a civil suit under the ATS and TVPA in a federal court in Florida against Macaco for torture, extrajudicial killing, crimes against humanity and war crimes. The Jaramillo family claims were dismissed in 2015, though the Estrada family claims have been allowed to proceed. In July 2019, Macaco was granted early release by the United States and sent back to Colombia, where he was arrested upon arrival on the basis of pending indictments. The civil litigation in the United States continues to proceed.

FOLLOW UP ON OTHER CASES

- Mohammed Jabbateh: appeal ongoing (see UJAR 2019, p. 76)
- Thomas Jucontee Woewiyu: awaiting sentencing decision (see UJAR 2019, p. 77)



Collapsed buildings in Mosul Old City (Iraq, 2018) © Constantin Gouvy/TRIALInternational

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WHO WE ARE

TRIAL INTERNATIONAL

TRIAL International is a non-governmental organization fighting impunity for international crimes and supporting victims in their quest for justice. TRIAL International takes an innovative approach to the law, paving the way to justice for survivors of unspeakable sufferings. The organization provides legal assistance, litigates cases, develops local capacity and pushes the human rights agenda forward.

www.trialinternational.org

THE EUROPEAN CENTER FOR CONSTITUTIONAL AND HUMAN RIGHTS

The European Center for Constitutional and Human Rights (ECCHR) is an independent, non-profit organization based in Berlin, that makes use of groundbreaking strategic legal intervention to challenge impunity, injustice and human rights violations worldwide. ECCHR aims to hold the responsible State and non-State actors accountable and to bring about political, economic, legal and social change. In order to achieve that, ECCHR works closely with partners from around the world.

www.ecchr.eu

THE INTERNATIONAL FEDERATION OF HUMAN RIGHTS

The International Federation of Human Rights (FIDH) takes action for the protection of victims of human rights violations, the prevention of violations and to bring perpetrators to justice. A broad mandate: FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights. A universal movement: FIDH was established in 1922 and unites 184 member organizations in 112 countries around the world. An independent organization: FIDH is not linked to any party or religion, and is independent of all governments.

www.fidh.org

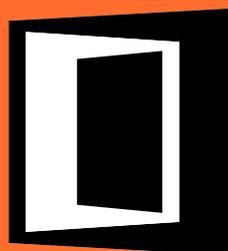
REDRESS

REDRESS is an international human rights non-governmental organization with a mandate to assist victims of torture and related international crimes to seek justice and other forms of reparation. REDRESS collaborates with partners around the world to ensure that victims' rights to justice and reparation are enforced in practice. It accomplishes this through a combination of litigation, advocacy and capacity building.

www.redress.org







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