



HUMAN
RIGHTS
WATCH

“THESE ARE THE CRIMES WE ARE FLEEING”

Justice for Syria in Swedish and German Courts



“These are the Crimes we are Fleeing”

Justice for Syria in Swedish and German Courts

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Summary

These cases are important. We need to know that these trials are happening because these are the crimes we are fleeing.

—Hassan, Syrian refugee in Germany, February 2017

Over the last six years the Syrian crisis has claimed the lives of an estimated 475,000 people as of July 2017, according to the Syrian Observatory for Human Rights. All sides to the conflict have committed serious crimes under international law amid a climate of impunity.

A range of groups have actively documented violations of human rights and humanitarian law in Syria. In late 2016, the United Nations General Assembly also created a mechanism tasked with analyzing and collecting evidence of serious crimes committed in Syria suitable for use in future proceedings before any court or tribunal that may have a mandate over these crimes.

But for the most part, the wealth of information and materials available has not helped to progress international efforts to achieve justice for past and ongoing serious international crimes in the country. Syria is not a party to the International Criminal Court, so unless Syria accepts the court's jurisdiction voluntarily, the court's prosecutor needs the United Nations Security Council to refer the situation in Syria to her in order to open an investigation there. However, in 2014, Russia and China vetoed a Security Council resolution that would have given the prosecutor such a mandate. And neither Syrian authorities nor other parties to the conflict have taken any steps to ensure credible accountability in Syria or abroad, fueling further atrocities.

Against this background, efforts by various authorities in Europe to investigate, and, where possible, prosecute serious international crimes committed in Syria, may provide a limited measure of justice while other avenues remain blocked.

The principle of “universal jurisdiction” allows national prosecutors to pursue individuals believed to be responsible for certain grave international crimes such as torture, war crimes, and crimes against humanity, even though they were committed elsewhere and neither the accused nor the victims are nationals of the country.

Such prosecutions are an increasingly important part of international efforts to hold perpetrators of atrocities accountable, provide justice to victims who have nowhere else to turn, deter future crimes, and help ensure that countries do not become safe havens for human rights abusers.

This report outlines ongoing efforts in Sweden and Germany to investigate and prosecute individuals implicated in such crimes in Syria.

Drawing on interviews with relevant authorities and 45 Syrian refugees living in these countries, the report highlights challenges that German and Swedish authorities face in taking up these types of cases, and the experience of refugees and asylum seekers in interacting with the authorities and pursuing justice. In so doing, this report draws valuable lessons for the countries involved and other countries considering investigations involving grave abuses committed in Syria.

The report finds that both countries have several elements in place to allow for the successful investigation and prosecution of grave crimes in Syria—above all comprehensive legal frameworks, well-functioning specialized war crimes units, and previous experience with the prosecution of such crimes. In addition, due to the large numbers of Syrian asylum seekers and refugees in Europe, previously unavailable victims, witnesses, material evidence, and even some suspects are now within the reach of the authorities. As the two largest destination countries for Syrian asylum seekers in Europe, Germany and Sweden were the first countries in which individuals were tried and convicted for serious international crimes in Syria.

Nonetheless, both countries have faced difficulties in their efforts. On one hand, authorities pursuing cases on the basis of universal jurisdiction encounter challenges that are inherent to these types of cases, and solutions to some of these challenges are beyond the reach of authorities. For example, these cases are usually brought against people present in the territory of the prosecuting country and authorities cannot control whether or not certain individuals will travel to their country at a specific time.

On the other hand, the standard challenges associated with pursuing universal jurisdiction cases are compounded, in the case of Syria, by an ongoing conflict in which there is no access to crime scenes. As a result, authorities in both countries have been compelled to

turn elsewhere for information, including from Syrian asylum seekers and refugees, counterparts in other European countries, UN entities, and nongovernmental groups involved in documenting atrocities in Syria.

According to practitioners and refugees Human Rights Watch interviewed in Sweden and Germany, gathering relevant information from Syrian refugees and asylum seekers has proved difficult due to their fear of possible retribution against loved ones back home, mistrust of police and government officials based on negative experiences with Syrian authority figures, and feelings of abandonment by host countries and the international community. “Our disappointment is not from the regime, we know the regime, we survived the regime,” one Syrian activist told Human Rights Watch. “Our disappointment is with the world. They use human rights when they need it.”

The report also documents a lack of awareness among Syrian asylum seekers and refugees in Sweden and Germany about the systems in place for the investigation and prosecution of grave crimes, the possibility of their contributing to domestic justice efforts, or the right of victims to participate in criminal proceedings. Most Syrian refugees interviewed were either unaware of ongoing and completed proceedings related to Syria, or had limited or inaccurate information about the cases. Others had unrealistic expectations about what national authorities could deliver by way of accountability given different constraints they face.

Recognizing these issues, authorities in both countries are working to address some of them through various outreach efforts, although more needs to be done and limited resources and mandates constrain efficacy. In addition, authorities need to balance facilitating contact, input and information sharing with potential victims and witnesses with confidentiality requirements inherent in criminal investigations, the risk of being overwhelmed with potentially vast amount of information, and managing expectations of what they will be able to deliver and when to victim communities and the public at large.

Authorities in Sweden and Germany reported that the existence of efficient protocols at the European level has led to good cooperation related to Syria cases, but said they have had limited or no contact with countries neighboring Syria. They have also started to reach out to nongovernmental and intergovernmental actors, including the UN Independent International Commission of Inquiry on Syria, although authorities said that cooperation was slow and that, because of their different mandates, the information collected by these

entities while useful at the investigation stage might not meet domestic thresholds for admissible evidence in criminal proceedings.

While any credible criminal proceedings that lead to accountability for crimes committed during the conflict are welcome, the reality is that the initial few cases authorities have been able to successfully prosecute within their jurisdictions are not representative of the scale or nature of the abuses committed in Syria.

The few cases to reach trial have mostly implicated low-level members of ISIS, Jabhat al-Nusra, and non-state armed groups opposed to the government while only one has addressed alleged crimes committed by a low-level member of the Syrian army. In Germany, practical and jurisdictional limitations, such as difficulties finding evidence linking alleged perpetrators to underlying crimes, have also made it easier to bring terrorism charges rather than prosecute for war crimes or crimes against humanity. Terrorism offenses are easier to prosecute because authorities only have to prove connection between the accused and a labeled terrorist organization. However, terrorism charges do not reflect the extent of crimes committed.

Terrorism prosecutions, or prosecutions of low-ranking members of armed groups, should not substitute for efforts to successfully prosecute grave crimes committed by senior officers that are likely to more directly promote compliance with international humanitarian law and ensure justice for grave crimes.

There is also the problem of perception. The use of terrorism charges without significant efforts to pursue prosecutions for war crimes or crimes against humanity, where there is indication that such international crimes were committed, could send the message that the authorities' only focus is to combat domestic threats. Efforts to pursue terrorism charges can and should go hand in hand with efforts and resources to investigate and prosecute war crimes, crimes against humanity, and genocide.

Syrian refugees interviewed by Human Rights Watch in both countries expressed frustration that cases prosecuted to date reflect neither the full spectrum of the perpetrators nor of the atrocities committed in Syria. In particular, they said, the lack of cases brought against individuals affiliated with the Syrian government led them to question the balance and fairness of the proceedings overall.

In order to address some of the challenges authorities are facing, Sweden and Germany should ensure that their war crimes units are adequately resourced and staffed, provide them with ongoing training, and consider new ways to better engage with Syrian refugees and asylum seekers on their territory.

Overall, the limited nature of the proceedings to date highlights the need for a more comprehensive justice process to address the ongoing impunity in Syria, and means to engage as many jurisdictions as possible where fair and credible trials can be pursued. A number of potential perpetrators, including high-level officials or senior military commanders affiliated with the Syrian government, are unlikely to travel to Europe. To fill this gap, a multi-tiered, cross-cutting approach will be needed in the long-term which, in addition to proceedings under universal jurisdiction, should include other judicial mechanisms at the international and national level.

Recommendations

To Sweden and Germany

- Ensure that specialized war crimes units within law enforcement and prosecution services are adequately resourced and staffed, including by providing the war crimes units within law enforcement with Syria experts, information technology analysts, forensic analysts, and in-house translators. In the case of Germany, provide the war crimes unit within law enforcement with additional funds and personnel to enable it to filter the information it receives from different sources in relation to grave crimes committed in Syria.
- Provide adequate ongoing training for war crimes unit practitioners, judges, and defense and victims' lawyers, in issues such as interviewing traumatized witnesses and assessing witness protection needs.
- Consistent with fair trial standards, explore options to enhance protective measures available to witnesses in proceedings related to grave international crimes where necessary to protect witness' families in other countries.
- Inform asylum seekers who may have been victims or witnesses of grave international crimes that they have the right to report these crimes to the police and to participate in criminal proceedings, including information about the process for doing so. Consider using all appropriate channels of communication for this purpose, including videos and social media.
- Ensure that information provided by individuals in asylum interviews is not shared with law enforcement or prosecution entities without the express informed consent of those individuals, and guarantee as a matter of law that decisions about their refugee status are not contingent on cooperation with law enforcement and prosecutorial authorities.
- Make torture a standalone criminal offense in line with article 1 of the UN Convention Against Torture.
- When there is sufficient evidence to link a suspect to war crimes, crimes against humanity, or genocide, do not limit charges to terrorism offenses.

- Translate important decisions, judgments, press releases, and relevant websites with information on the cases involving crimes in Syria into appropriate languages, such as Arabic and English.
- Consider providing information in appropriate languages, including Arabic and English, on law enforcement and prosecution services websites, electronic applications, and any other similar means used to communicate with the general public on how victims or witnesses of grave international crimes can contact the specialized war crimes units.
- Consider publicizing relevant press conferences and events in which the war crimes units discuss their work within the Syrian community.
- Ensure war crimes units and immigration authorities conduct outreach regarding their mandate to Syrian refugees, asylum seekers, and the broader public in multiple languages including Arabic and English. Consider utilizing social networking platforms to better engage with Syrian refugees and asylum seekers and popularize the work of the units.
- Ensure authorities adequately advertise or distribute the tools they already have available as part of their outreach efforts, including electronic applications, web pages, and brochures.
- Ensure immigration case workers and interpreters employed to assist during asylum interviews are properly trained.
- Ensure that authorities do not use immigration powers to remove persons suspected of serious international crimes instead of prosecuting them, where there is sufficient evidence to do so.
- Continue to provide political and financial support to the International, Impartial and Independent Mechanism on Syria.

To Other Countries Considering Serious Crimes Investigations on Syria

- Establish specialized war crime units within law enforcement and prosecution services where they do not already exist, and ensure they are adequately resourced.
- Establish an adequate legal framework for prosecuting international crimes where one is not in place.

- Ensure effective and meaningful collaboration between the specialized units, including through convening of regular meetings to discuss specific cases.
- Establish a clear and transparent framework for cooperation between immigration authorities and war crimes units that allows for information sharing while protecting the asylum seekers' rights, including confidentiality.
- Provide adequate ongoing training for war crimes unit practitioners, judges and defense and victims' lawyers, such as training in interviewing traumatized witnesses and assessing witness protection needs.
- When there is sufficient evidence to link a suspect to war crimes, crimes against humanity, or genocide, do not limit charges to terrorism offenses.
- Refrain from deporting individuals who have been excluded from refugee status without determining that their removal would expose them to a real risk of torture, unfair trials, or other improper or inhuman treatment.

To the European Union

- Provide the EU Genocide Network and Eurojust with adequate resources to carry out their mandate and provide support to member states, including to continue with the organization of ad hoc meetings, to assist countries without specialized war crimes units, and to facilitate regular briefings at the European Parliament.
- Ensure authorities use information shared through the new EASO Exclusion Network to prosecute or extradite for prosecution elsewhere persons suspected of serious international crimes where there is sufficient evidence rather than deporting them. Ensure that no one, irrespective of 1F status, is deported or extradited to a country where they would face a real risk of torture, unfair trial, or other improper or inhuman treatment.
- Establish a central database for war crimes, crimes against humanity, and genocide within Europol and ensure Europol has adequate analytical support.

To the UN Commission of Inquiry on Syria

- Continue cooperation with domestic authorities engaged in the investigation and prosecution of grave crimes committed in Syria, including by maintaining existing lines of communication.
- Cooperate with the International, Impartial and Independent Mechanism on Syria to ensure complementarity and avoid duplication in the work of the two entities.

To the UN High Commissioner for Human Rights and UN Member States

- Ensure the Commission of Inquiry on Syria is adequately resourced and staffed through the UN Advisory Committee on Administrative and Budgetary Questions (ACABQ) process, including by dedicating personnel to the Commission's work on cooperation with domestic authorities engaged in the investigation and prosecution of grave crimes committed in Syria and providing access to appropriate software and other tools to assist in such cooperation.

To the International, Impartial and Independent Mechanism on Syria

- Cooperate with domestic authorities engaged in the investigation and prosecution of grave crimes committed in Syria, including by establishing an ongoing dialogue with domestic authorities.
- Coordinate and cooperate with the Commission of Inquiry on Syria to ensure complementarity and avoid duplication in the work of the two entities.

Methodology

This report is based on desk research conducted between October 2016 and July 2017 and field research conducted in Sweden and Germany in January and February 2017, respectively.

Human Rights Watch chose to focus on Sweden and Germany because they have received the largest number of asylum applications from Syrians since 2011 and were the first two countries in which trials related to grave crimes in Syria were completed. In addition, both countries have functioning specialized war crimes units within their law enforcement and prosecution services.

This report focuses on cases pursued by Swedish and German authorities under the principle of “universal jurisdiction.” However, two Syria-related cases in Germany also included in this report were brought under the “active personality principle,” another form of jurisdiction that a state’s judicial system may enjoy if the alleged perpetrator is a citizen of the prosecuting country.

While a range of different actors are involved in these cases—including defense and victims’ lawyers—Human Rights Watch’s research focused on the work of law enforcement and prosecutorial authorities.

In this report, the terms “serious international crimes” and “grave international crimes” are used interchangeably to refer to war crimes, crimes against humanity and genocide.

Human Rights Watch conducted interviews with 50 individuals in Sweden, Germany, Switzerland, the Netherlands, and Turkey, including prosecutors, police investigators, analysts, immigration officials, victims’ and defense lawyers, government officials, academics, nongovernmental organizations (NGOs), international and European organizations, and journalists. A Human Rights Watch researcher also observed a hearing in the trial against Haisam Omar Sakhanh in the Stockholm District Court in Sweden on January 18, 2017.

Most interviews with officials and experts were conducted in person, but several took place by phone or over email. Nearly all were conducted in English, but three took place in

German with an interpreter's assistance. Many individuals wanted to speak candidly but did not wish to be cited by name or otherwise identified. As a result, information has been withheld that could be used to identify them. The term "practitioner" is used in this report to ensure that sources are not inadvertently revealed; the term variously refers to prosecutors, police investigators, analysts, immigration officials, and lawyers involved in serious international crimes proceedings.

In addition, Human Rights Watch interviewed 45 Syrian refugees between 17 and 58 years old; 10 women and 35 men from different parts of Syria. Ten interviewees were human rights activists. Human Rights Watch interviewed 19 refugees in Sweden (9 in Värmdö, 9 in Varberg, and one over the phone), and 26 in Germany (12 in Berlin, 9 in Hannover and 5 in Cologne). In Sweden, 2 refugees were interviewed individually (including one over the telephone), while 17 were interviewed in small focus groups comprised of four to five persons. In Germany, 8 refugees were interviewed individually, while 18 were interviewed in small focus groups comprised of two to five persons. Twenty-two of the Syrian refugees said they had been detained by the Syrian government; 16 told Human Rights Watch they had been tortured by government forces. Most of these interviews were conducted in Arabic with the assistance of an interpreter, but 9 took place in English. All of the names of the Syrian refugees interviewed have been withheld to protect their identities, and they are instead referred to using pseudonyms.

All interviewees were informed of the purpose of the interviews and the ways in which data would be collected and used, and voluntarily agreed to participate.

I. Background

Individuals from the various armed groups and sides of the Syrian conflict have committed serious violations of international human rights and humanitarian law.

Since 2011, more than 106,000 people have been detained or disappeared, most of them by government forces, including 4,557 between January and June 2016 alone, according to the Syrian Network for Human Rights.¹ Torture and ill-treatment are rampant in government detention facilities, where thousands have died. The Syrian-Russian coalition has carried out airstrikes targeting or indiscriminately striking civilian areas and Syrian government forces have used cluster, incendiary, and chemical weapons in widespread and systematic attacks, in some cases directed against civilians. The Syrian government and pro-government forces have committed further widespread abuses, including unlawfully blocking humanitarian aid, imposing unlawful sieges, extrajudicial executions, and forced displacement.²

The Islamic State (also known as ISIS), and the former Al-Qaeda affiliate in Syria, Jabhat al-Nusra (later known as Jabhat Fateh al-Sham, and then Hayat Tahrir al-Sham), are also responsible for systematic and widespread violations, including targeting civilians with artillery, kidnappings, and executions. ISIS and Jabhat al-Nusra have imposed strict and discriminatory rules on women and girls and have actively recruited child soldiers. ISIS has sexually enslaved and abused Yezidi women and girls, used civilians as human shields, and planted victim activated antipersonnel mines in and around territory they have lost, maiming and killing civilians attempting to flee or return home. ISIS has also committed at least three documented attacks against civilians using chemical weapons.³

¹ Syrian Network for Human Rights, homepage, <http://sn4hr.org> (accessed September 6, 2017); Syrian Network for Human Rights, “Cases of Arbitrary Arrest Recorded in the First Half of 2016 4557 Including 739 in June 2016,” July 6, 2016, http://sn4hr.org/wp-content/pdf/english/Cases_of_arbitrary_detention_in_the_first_half_of_2016_en.pdf (accessed September 6, 2017).

² Human Rights Watch, *World Report 2017* (New York: Human Rights Watch, 2017), Syria Chapter, https://www.hrw.org/sites/default/files/world_report_download/wr2017-web.pdf, pp. 571-574. For more information on these and other abuses see, for example, Human Rights Watch reporting on the Syrian crisis.

³ *Ibid.*, pp. 571, 575-576.

Non-state armed groups opposing the government have also attacked civilians indiscriminately, used child soldiers, engaged in kidnap and torture, unlawfully blocked humanitarian aid, and imposed unlawful sieges.⁴

The United States has supported forces on the ground, including the Syrian Democratic Forces (SDF)—comprised of the Kurdish People’s Protection Units (YPG) and other groups. The SDF, YPG and the local Kurdish police, the Asayish, have committed abuses, including the use of child soldiers, arbitrary detention and mistreatment of detainees, alleged disappearances and killings of individuals politically opposed to the Democratic Union Party, and endangered civilians by positioning forces in populated civilian areas.⁵

Both the US-led coalition and Turkish forces were responsible for possibly unlawful airstrikes that caused civilian casualties.⁶

Human Rights Watch has concluded that many of these abuses committed by individuals from all parties since the beginning of the Syrian crisis may amount to war crimes and in some cases crimes against humanity.

In August 2013, a military defector code-named “Caesar” smuggled 53,275 photos out of Syria, many showing the bodies of detainees who died in detention centers.⁷ The outrage generated by the images among some Security Council Members prompted France to table a UN Security Council resolution that would have given the International Criminal Court (ICC) a mandate over serious international crimes committed in Syria since 2011. But on May 22, 2014 Russia and China vetoed the resolution, preventing the court’s involvement.⁸

⁴ Ibid., pp. 571, 576.

⁵ Ibid., p. 576.

⁶ Ibid., p. 577-578.

⁷ Human Rights Watch, *If the Dead Could Speak: Mass Deaths and Torture in Syria’s Detention Facilities*, December 2015, <https://www.hrw.org/report/2015/12/16/if-dead-could-speak/mass-deaths-and-torture-syrias-detention-facilities>.

⁸ On April 15, 2014, France convened an “Arria-formula” meeting, an informal, confidential gathering of Security Council members, considering the Caesar photographs. “UN Security Council: Support Justice for Syria,” Human Rights Watch news release, April 14, 2016, <https://www.hrw.org/news/2014/04/14/un-security-council-support-justice-syria>. The resolution was then co-sponsored by 65 countries, including 9 members of the Security Council. Twitter post by Benjamin Cabouat, former representative for the French mission to the United Nations, May 22, 2014, <https://twitter.com/bcabouat/status/469638935011155968> (accessed September 6, 2017); “Referral of Syria to International Criminal Court Fails as Negative Votes Prevent Security Council from Adopting Draft Resolution,” United Nations press release, SC/11407, May 22, 2014, <https://www.un.org/press/en/2014/sc11407.doc.htm> (accessed September 6, 2017).

Because Syria is not a party to the Rome Statute, the treaty that established the ICC, the court can only obtain jurisdiction over crimes there if the Security Council refers the situation in Syria to the court's prosecutor or if Syria voluntarily accepts the court's authority.⁹ Neither is currently a realistic prospect.

The ICC resolution's defeat means that most avenues toward achieving criminal accountability remain blocked, whether through an international tribunal or at the national level in Syria. The lack of accountability that has resulted has undoubtedly contributed to further grave abuses by all sides to the conflict. At the same time, support for the resolution from many governments and NGOs reflected the widespread international desire to see justice for serious international crimes in Syria.

Documenting Abuses

In response to the Security Council deadlock on Syria, the General Assembly adopted a resolution in 2016 that established an unprecedented mechanism to assist in the investigation of serious international crimes committed there since 2011.¹⁰

In addition, a range of entities have actively documented violations of human rights and humanitarian law in Syria over the last six years. In 2015, the Security Council established the Organization for the Prohibition of Chemical Weapons-United Nations Joint Investigative Mechanism (JIM) to investigate the use of chemical weapons in Syria and to attribute responsibility for any attacks.¹¹ Since then, the JIM has published five reports and has named the Syrian government and ISIS as responsible for chemical attacks in Syria.¹² The Independent International Commission of Inquiry on Syria, established by the UN Human Rights Council in August 2011, has published 22 in-depth reports on grave

⁹ Rome Statute of the International Criminal Court (Rome Statute), A/CONF.183/9, July 17, 1998, entered into force July 1, 2002, articles 12 and 13.

¹⁰ UN General Assembly, "International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Those Responsible for the Most Serious Crimes under International Law committed in the Syrian Arab Republic since March 2011," Resolution 71/248 (2017), A/RES/71/248 (2017), https://www.un.org/ga/search/view_doc.asp?symbol=A/71/L.48 (accessed September 6, 2017).

¹¹ UN Security Council, Resolution 2235 (2015), S/RES/2235 (2015), [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2235\(2015\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2235(2015)) (accessed September 6, 2017).

¹² "Joint Investigative Mechanism of the UN and OPCW," UN News Centre, <http://www.un.org/apps/news/infocusRel.asp?infocusID=146> (accessed September 6, 2017). See also "UN Security Council: Ensure Justice for Syria Atrocities," Human Rights Watch news release, August 30, 2016, <https://www.hrw.org/news/2016/08/30/un-security-council-ensure-justice-syria-atrocities>.

ACCOUNTABILITY FOR SYRIA AT THE UNITED NATIONS



violations by all sides (14 mandated and 8 thematic reports).¹³ Multiple organizations such as Human Rights Watch, Amnesty International, the Syria Justice and Accountability Centre, the Commission for International Justice and Accountability, and various local Syrian groups are also involved in different kinds of initiatives aimed at documenting serious crimes in Syria.¹⁴

Documentation efforts, including preserving potential evidence, will continue to be important and could be vital to future domestic and international accountability processes. At the same time, a judicial forum is still needed for the comprehensive prosecution of perpetrators of serious international crimes in Syria.

¹³ UN Office of the High Commissioner for Human Rights, "Independent International Commission of Inquiry on the Syrian Arab Republic," <http://www.ohchr.org/EN/HRBodies/HRC/IICISyria/Pages/IndependentInternationalCommission.aspx> (accessed September 6, 2017).

¹⁴ Human Rights Watch, "Syria," <https://www.hrw.org/middle-east/n-africa/syria>; Amnesty International, "Syria," <https://www.amnesty.org/en/countries/middle-east-and-north-africa/syria> (accessed September 6, 2017); Syria Justice and Accountability Center, homepage, <https://syriaaccountability.org> (accessed September 6, 2017).

National Prosecutions in Foreign Courts

Typically, national authorities are only able to investigate a crime if there is a link between their country and the crime. The normal linkage is territorial meaning that the crime, or a significant element of it, was committed on the territory of the country wishing to exercise jurisdiction (territorial jurisdiction principle). Many states also prosecute on the basis of the personality, meaning that the alleged perpetrator is a citizen of that country (active personality principle), or the victim of the crime is a citizen (passive personality principle). However, some national courts have been granted the jurisdiction to act even if there is no territorial or personality link. This principle—universal jurisdiction—can normally only be invoked to prosecute a limited number of international crimes, including war crimes, crimes against humanity, torture, genocide, piracy, attacks on UN personnel, and enforced disappearances.

Using the principle of universal jurisdiction, several countries have ensured their domestic laws are broad enough to allow law enforcement to pursue individuals in their countries believed to be responsible for certain grave international crimes, even though the crimes were committed elsewhere and the accused and victims are not country nationals. For the most part, countries' laws require the suspect of these international crimes be present on their territory or be a resident before national authorities can invoke jurisdiction in these cases.¹⁵

Germany, Sweden, and Norway are the only countries in Europe with “pure” universal jurisdiction over war crimes, crimes against humanity, and genocide—meaning that no link is required between the countries and the crime for national authorities to have jurisdiction, and investigations into these cases can proceed even if the suspect is not present on their territory or a resident. Nonetheless, prosecutors have broad discretion to decide whether or not to pursue investigations if the suspect is not in the country, reflecting in part the practical difficulties of securing justice in the absence of the accused.¹⁶

¹⁵ Most laws require the suspect be present on their territory. Legislation in France, the United Kingdom, and Spain further prescribes that the suspect be a resident for national courts to exercise jurisdiction over them for war crimes, crimes against humanity and genocide committed abroad. See Human Rights Watch, “Q&A: First Cracks to Impunity in Syria, Iraq – Refugee Crisis and Universal Jurisdiction Cases in Europe,” October 20, 2017, <https://www.hrw.org/news/2016/10/20/qa-first-cracks-impunity-syria-iraq>.

¹⁶ See Section II, “Frameworks for Justice in Sweden and Germany.” It should be noted that neither Swedish nor German law allow for trials in absentia for grave international crimes.

While a number of European countries have ongoing investigations related to grave abuses in Syria such as torture and other war crimes and crimes against humanity, Sweden and Germany are the first two countries in which individuals have been prosecuted and convicted for these crimes.

Syrians in Sweden and Germany

Germany and Sweden have received the highest number of Syrian asylum applications of all European countries—64 percent of 970,316 total applications between April 2011 and July 2017 (507,795 in Germany, 112,899 in Sweden), according to the UN High Commissioner for Refugees.¹⁷

Syrians interviewed by Human Rights Watch in Germany and Sweden consistently stressed the importance of bringing to justice those responsible for atrocities committed in Syria. Interviewees cited a range of reasons, including helping to restore dignity to victims by acknowledging their suffering. Ahmad, a journalist who explained he was detained and tortured by the Syrian government for his press work, said:

If we keep silent it's like we are involved in the crime. For me and for others the priority is justice. I've been tortured, jailed for something that was legal. My rights have been violated.¹⁸

Samira, who lost several members of her family in the war and said she witnessed various atrocities, expressed her personal desire for justice:

My brother was killed with 14 bullets by the regime. I saw awful things, all my family died. I saw five children being executed, I saw their heads being cut off. I couldn't sleep for a week. [...] It's very important to have justice which will let me feel that I'm human.¹⁹

¹⁷ UNHCR, "Europe: Syrian Asylum Applications," April 2011 to July 2017, <http://data.unhcr.org/syrianrefugees/asylum.php> (accessed September 6, 2017).

¹⁸ Human Rights Watch telephone interview with Ahmad, February 3, 2017.

¹⁹ Human Rights Watch group interview with Syrian refugees, Värmdö, January 18, 2017.

SYRIAN ASYLUM APPLICATIONS

APRIL 2011 – JULY 2017

507,795	GERMANY
112,899	SWEDEN
77,056	HUNGARY
48,632	AUSTRIA
33,897	NETHERLANDS
20,189	BULGARIA
19,384	BELGIUM
18,087	GREECE
17,675	FRANCE
15,139	NORWAY
14,966	SWITZERLAND
12,217	SPAIN
11,868	SERBIA
10,789	UNITED KINGDOM
4,974	CYPRUS
4,355	ITALY
3,432	ROMANIA
3,023	MONTENEGRO
2,559	FINLAND
2,320	MACEDONIA
1,778	MALTA
1,287	LUXEMBOURG

< 900 APPLICATIONS:

POLAND, PORTUGAL, CROATIA, SLOVENIA, IRELAND, CZECH REPUBLIC, LATVIA, LITHUANIA, ALBANIA, BOSNIA AND HERZEGOVINA, ICELAND, SLOVAKIA, ESTONIA, LIECHTENSTEIN



SOURCE: UNHCR 2017



For other interviewees, these proceedings represent not only a means of redress for victims and punishment for perpetrators, but also a way of deterring future violations. Abdullah, who said he was detained and tortured by the Syrian government while still a child and had members of his family killed by government forces told Human Rights Watch:

I became a man while I was in prison. [...] I suffer a lot. My father was killed in a massacre and I don't want to see the people who did it in Sweden. These trials are important to prevent crimes in Syria.²⁰

Ayman, who told Human Rights Watch he was detained and tortured in two different government facilities and had members of his family suffer the same fate, explained:

It's not about what happened to us, it's for the people who die in jail. It's a political decision as well for something to happen because up to now there have been a lot of reports, but nothing has happened.²¹

Syrians Human Rights Watch spoke to in Sweden and Germany also said that prosecuting grave crimes could build respect for, and confidence in, the rule of law, and serve as a warning to perpetrators of grave abuses that they will not escape accountability. Muhammad, an activist engaged in accountability efforts on behalf of some victims in Germany, said:

These people [members of the Syrian government] think that the political solution will come and they will be able to escape to Europe. I want them to feel haunted like they've haunted people all their life. We need to send a message of hope to victims and to send the message to criminals that they will not escape.²²

²⁰ Human Rights Watch interview with Abdullah, Värmdö, January 18, 2017.

²¹ Human Rights Watch group interview with Syrian refugees, Hannover, February 21, 2017.

²² Human Rights Watch interview with Muhammad, Berlin, February 24, 2017.

Aisha, who said she was detained by the Syrian government and witnessed acts of torture by government forces against family members, said: “Don’t let them live their life: if anyone wants to run away, courts are waiting.”²³

Some interviewees also cited reasons linked to their refugee status and believed that criminal cases in their countries of asylum may help combat xenophobic discourse in Europe by showing that refugees are in fact fleeing the crimes being prosecuted and are cooperating in bringing criminals to justice.

Othman, a student who said he was detained and tortured by the Syrian government and witnessed a massacre, told Human Rights Watch that he was worried about Swedish citizens’ perception of Syrian refugees, and thought criminal proceedings would help the population feel secure:

... in Sweden, there is a lot of generalization on refugees. I face this all the time. It’s important for Swedes to feel safe. With these trials, they will know that the bad people will be punished. [...] The important thing is that Swedes know that they can feel safe.²⁴

Finally, some of the Syrian refugees described trials in third countries such as Sweden or Germany as a small step towards a more comprehensive justice for Syria in the long-term. Mustafa, a former humanitarian worker in Syria said:

It’s very important that this is happening. Trials are important, no matter the affiliation. It’s important to pave the way for future justice.²⁵

²³ Human Rights Watch group interview with Syrian refugees, Hannover, February 21, 2017.

²⁴ Human Rights Watch group interview with Syrian refugees, Värmdö, January 18, 2017.

²⁵ Ibid.

II. Frameworks for Justice in Sweden and Germany

Sweden and Germany are the first two countries in which individuals have been prosecuted for serious international crimes committed in Syria during the current conflict.²⁶ There are several reasons for this.

First, both countries have laws and specialized war crimes units within their law enforcement and prosecution services focused on addressing grave international crimes committed abroad. In addition, immigration authorities in Sweden and Germany play a key role supporting the war crimes units by sharing relevant information.

Second, authorities in both countries have previous experience in prosecuting grave international crimes cases. In 1997, Germany became the first country where a person was convicted for genocide based on universal jurisdiction.²⁷ After war crimes units were set up in 2009, German prosecutors also prosecuted individuals for serious international crimes committed in Rwanda, eastern Democratic Republic of Congo, and Iraq.²⁸ Swedish prosecutors secured their first conviction for war crimes in 2006, for atrocities committed during the conflict in the former Yugoslavia in 1993.²⁹ Six more cases have been pursued since the creation of the Swedish war crimes units, against individuals for serious

²⁶ Four of these cases were brought under universal jurisdiction, while two were brought under the active personality principle.

²⁷ Nikola Jorgić appealed his conviction, including to the European Court of Human Rights, but was unsuccessful. German police investigated over 150 other individuals for their involvement in the former Yugoslav conflict, but only four persons were ultimately prosecuted before German courts. See Amnesty International, *Germany: End Impunity through Universal Jurisdiction*, October 1, 2008, <https://www.amnesty.org/en/documents/EUR23/003/2008/en> (accessed September 6, 2017), pp. 91-98.

²⁸ Human Rights Watch, *The Long Arm of Justice: Lessons from Specialized War Crimes Units in France, Germany and the Netherlands*, September 2014, <https://www.hrw.org/report/2014/09/16/long-arm-justice/lessons-specialized-war-crimes-units-france-germany-and>, pp. 102-103; TRIAL International, “Trial Watch: Rami K.,” last modified May 30, 2017, <https://trialinternational.org/latest-post/rami-k> (accessed September 6, 2017).

²⁹ TRIAL international, “Trial Watch: Jackie Arklöv,” last modified June 14, 2016, <https://trialinternational.org/latest-post/jackie-arklov> (accessed September 6, 2017). For more information, see Mark Klamberg, “International Criminal Law in Swedish Courts: The Principle of Legality in the Arklöv Case,” *International Criminal Law Review*, vol. 9 (2009), pp. 395-409.

international crimes committed during the conflicts in the former Yugoslavia, Rwanda and Iraq.³⁰

Third, the presence of large numbers of Syrians means that there are victims and potential perpetrators, and perhaps a greater political impetus on the part of the authorities to hold any perpetrators in their territory to account.

Laws

Sweden

In June 2014, Sweden adopted the Act on Criminal Responsibility for Genocide, Crimes against Humanity, and War Crimes.³¹ The act's provisions in large part mirror those of the Rome Statute of the ICC. It provides the basis for prosecuting genocide, crimes against humanity, and war crimes, and incorporates the different modes of liability typically used in international criminal law including command responsibility. War crimes committed before the act entered into force in 2014 are currently prosecuted under the Swedish Penal

³⁰ TRIAL International, "Trial Watch: Ahmet Makitan," last modified June 1, 2016, <https://trialinternational.org/latest-post/ahmet-makitan> (accessed September 6, 2017); TRIAL International, "Trial Watch: Milic Martinovic," last modified June 9, 2016, <https://trialinternational.org/latest-post/milic-martinovic> (accessed September 6, 2017); TRIAL International, "Trial Watch: Stanislas Mbanenande," last modified June 14, 2016, <https://trialinternational.org/latest-post/stanislas-mbanenande> (accessed September 6, 2017); TRIAL International, "Trial Watch: Claver Berinkindi," last modified February 17, 2017, <https://trialinternational.org/latest-post/berinkindi-clever> (accessed September 6, 2017); TRIAL International, "Trial Watch: Tabaro Theodore," February 8, 2017, <https://trialinternational.org/latest-post/tabaro-theodore> (accessed September 6, 2017); TRIAL International, "Trial Watch: Raed Abdulkareem," last modified February 8, 2017, <https://trialinternational.org/latest-post/raed-abdulkareem> (accessed September 6, 2017).

³¹ Act 2014:406 on Criminal Responsibility for Genocide, Crimes against Humanity and War Crimes (Lag 2014:406 om straff för folkmord, brott mot mänskligheten och krigsförbrytelser), Försvarsdepartementet, entered into force July 1, 2014, https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2014406-om-straff-for-folkmord-brott-mot_sfs-2014-406 (accessed September 6, 2017), Swedish, http://www.government.se/49cd62/contentassets/6e0e65c994124235a39387e2dcf5ad48/2014_406-act-on-criminal-responsibility-for-genocide-crimes-against-humanity-and-war-crimes-.pdf (accessed September 6, 2017), official English translation.

Code as “crimes against international law.”³² Torture is not yet a standalone crime under Swedish law but can be charged as a war crime or a crime against humanity.³³

According to the Swedish Penal Code, Sweden has “pure” universal jurisdiction for war crimes, crimes against humanity, and genocide—meaning no specific link to Sweden is required to prosecute these crimes, even if they were committed outside of Sweden and neither the alleged perpetrator nor the victims are Swedish nationals or present on Swedish territory.³⁴ Prosecutors have discretion to decide whether to proceed with a case based on evidence available to them, but must prosecute when there is sufficient evidence.³⁵

Germany

Germany was one of the first countries to incorporate the Rome Statute of the ICC domestically through its Code for Crimes against International Law (CCAIL) in 2002.³⁶ This code defines war crimes, crimes against humanity, and genocide in accordance with the ICC treaty and also incorporates provisions on command responsibility, among other

³² Swedish Penal Code 1962:700 (Brottsbalken 1962:700), Justitiedepartementet L5, entered into force December 21, 1962, chapter 22, section 6, https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/brottsbalk-1962700_sfs-1962-700 (accessed September 6, 2017), Swedish, <http://www.government.se/49cd60/contentassets/5315d27076c942019828d6c36521696e/swedish-penal-code.pdf> (accessed September 6, 2017), unofficial English translation. Crimes against humanity committed before July 1, 2014 can only be prosecuted as regular crimes under the Swedish Penal Code (e.g. murder, rape, assault), while genocide committed before July 1, 2014 is criminalized in the Act 1964:169 on the Punishment of Genocide (Lag 1964:169 om straff för folkmord), Justitiedepartementet L5, entered into force March 20, 1964, https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-1964169-om-straff-for-folkmord_sfs-1964-169 (accessed September 6, 2017), Swedish.

³³ Act on Criminal Responsibility for Genocide, Crimes against Humanity and War Crimes, sections 2(2), 4(2). The Swedish government has proposed a legislation to penalize the crime of torture as defined in the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention Against Torture). See Swedish Ministry of Justice (Justitiedepartementet), “A Special Torture?” (“Ett särskilt tortyrbrott”), Ds 2015:42, August 2015, <http://www.regeringen.se/contentassets/740d39e2a0c640158b74198b7e760ceo/ds-2015-42-ett-sarskilt-tortyrbrott.pdf> (accessed September 6, 2017). A bill is expected at the end of 2017. See Swedish Government (Regeringskansliet), “Sweden Addresses Criticism of the Council of Europe’s Committee Against Torture” (Sverige åtgärdar kritik från Europarådets kommitté mot tortyr), October 27, 2016, <http://www.regeringen.se/artiklar/2016/10/sverige-atgardar-kritik-fran-europaradets-kommitte-mot-tortyr> (accessed September 6, 2017).

³⁴ Swedish Penal Code, chapter 2, section 3(6); Human Rights Watch interview with Swedish officials, January 17, 2017; Human Rights Watch email correspondence with Swedish academic, April 19, 2017.

³⁵ Swedish Penal Code, chapter 20, section 3; Human Rights Watch interview with Swedish officials, January 17, 2017. If the suspect is not in the territory of Sweden, prosecutors could still open an investigation and share information with other countries in and outside Europe pursuant to relevant cooperation protocols.

³⁶ Code for Crimes against International Law or CCAIL (Völkerstrafgesetzbuch or VStGB), entered into force June 30, 2002, <https://www.gesetze-im-internet.de/bundesrecht/vstgb/gesamt.pdf> (accessed September 6, 2017), German, <http://www.iuscomp.org/gla/statutes/VoeStGB.pdf> (accessed September 6, 2017), unofficial English translation. The CCAIL entered into force one day before the Rome Statute.

modes of liability. Under German law, torture is not a standalone offense, but can be charged as a crime against humanity or as a war crime.³⁷

Under the CCAIL, German authorities can investigate and prosecute grave international crimes committed abroad, even when these offenses have no specific link to Germany. However, this form of “pure” universal jurisdiction is tempered by certain procedural restrictions.³⁸ In particular, article 153(f) of the German Code of Criminal Procedure gives prosecutors discretion not to open an investigation for CCAIL crimes when:

- 1) No German is suspected of having committed the crime;
- 2) The offense was not committed against a German;
- 3) No suspect is, or is expected to be, resident in Germany;
- 4) The offense is being prosecuted by an international court of justice or by a country on whose territory the offense was committed, a citizen of which is either suspected of the offense, or suffered injury as a result of the offense.³⁹

Institutions

Sweden

Swedish police have a specialized war crimes unit (War Crimes Commission) exclusively tasked with investigating serious international crimes. The unit employs 13 investigators and two analysts.⁴⁰ The analysts provide investigators with relevant contextual information and advise them on witness questioning.⁴¹ The War Crimes Commission cooperates closely

³⁷ CCAIL, chapter 1, section 7(1) n. 5 and chapter 2, section 8(1) n.3; Human Rights Watch interview with German officials, February 15, 2017; Human Rights Watch interview with German officials, February 16, 2017.

³⁸ This form of “pure” universal jurisdiction is defined in section 1 of the CCAIL: “This Act shall apply to all criminal offenses against international law designated under the Act, so serious criminal offenses designated therein even when the offense was committed abroad and bears no relation to Germany.”

³⁹ German Code of Criminal Procedure (Strafprozeßordnung or StPo), entered into force April 7, 1987, section 153(f), <http://www.gesetze-im-internet.de/stpo> (accessed September 6, 2017), German, http://www.gesetze-im-internet.de/englisch_stpo/englisch_stpo.html (accessed September 6, 2017), unofficial English translation.

⁴⁰ Swedish police (Polisen), “War crimes – Police Work” (“Krigsbrotts – Polisens arbete”), <https://polisen.se/Om-polisen/Olika-typer-av-brott/Krigsbrott> (accessed September 6, 2017). As of September 2017, as far as Human Rights Watch is aware, the commission employed 13 investigators and two analysts.

⁴¹ Human Rights Watch interview with Swedish official, January 17, 2017.

with two officers from the intelligence division of the Swedish police who focus on grave international crimes.⁴²

The Swedish prosecution authority also has a specialized war crimes unit (“war crimes prosecutor team”). This unit employs eight prosecutors, four of whom work full-time on these cases. The rest divide their time between the unit’s work and regular criminal cases.⁴³ Prosecutors in this unit lead the investigations for serious international crimes and work closely with the War Crimes Commission.⁴⁴ They generally do not need judicial authorization to open formal investigations, as might be the case in some other countries, thereby expediting the process.⁴⁵

Both the War Crimes Commission and war crimes prosecutor team work closely with their Swedish counterterrorism counterparts, and have systems in place to regularly exchange information.⁴⁶

The Migration Agency processes asylum applications in Sweden. It employs over 8,000 persons and is composed of 50 units, each with 30 staff members, situated across Sweden.⁴⁷ The agency’s work is divided among six geographical regions in Sweden.⁴⁸

⁴² The intelligence officers also cooperate with the Swedish security service and military intelligence, and with intelligence counterparts in other countries. Human Rights Watch interviews with Swedish officials, January 17, 2017; Human Rights Watch email correspondence with Swedish official, March 21, 2017.

⁴³ Swedish Prosecution Authority (Åklagarmyndigheten), “International Public Prosecutor Office Stockholm” (“Internationella åklagarkammaren Stockholm”), <https://www.aklagare.se/kontakt/aklagaromraden/nationella-aklagaravdelningen/internationella-aklagarkammaren-stockholm> (accessed September 6, 2017). As of September 2017, as far as Human Rights Watch is aware, the unit employed eight prosecutors. The International Public Prosecutor Office employs 40 prosecutors overall and is responsible for most crimes with an international connection, like terrorism or grave international crimes. Human Rights Watch interview with Swedish officials, January 17, 2017.

⁴⁴ In the case of regular crimes, investigations are led by the police. Human Rights Watch interviews with Swedish officials, January 17, 2017.

⁴⁵ This is true for the Swedish prosecution authority overall, and means, for example, that prosecutors can issue arrest warrants or task the police to conduct house searches without judicial authorization. Such authorization is required only in limited circumstances (e.g. wiretapping). To prosecute crimes committed outside of the territory of Sweden, however, prosecutors need authorization from either the government or the prosecutor general. See Swedish Penal Code, chapter 2, section 5(2) and Regulation 1993:1467 authorizing the Prosecutor to order prosecution in certain cases (Förordning 1993:1467 med bemyndigande för riksåklagaren att förordna om väckande av åtal i vissa fall), Justitiedepartementet L5, entered into force December 16, 1993, https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-19931467-med-bemyndigande-for_sfs-1993-1467 (accessed September 6, 2017), Swedish; Human Rights Watch interview with Swedish officials, January 17, 2017.

⁴⁶ Four prosecutors on the war crimes prosecutor team are also trained to work on terrorism cases. Human Rights Watch interviews with Swedish officials, January 17, 2017.

⁴⁷ Swedish Migration Agency (Migrationsverkets), homepage, <https://www.migrationsverket.se/English/Startpage.%20html> (accessed September 6, 2017). The procedure that regulates asylum applications is outlined in the Swedish Aliens Act. See Aliens Act 2005:716 (Utlänningslagen 2005:716), Justitiedepartementet L7, entered into force March 31, 2006,

Specialists in each region are trained to support regular staff on cases in which article 1F, the exclusion clause of the 1951 UN Convention Relating to the Status of Refugees (“Refugee Convention”), is being considered to deny refugee status, including due to the possible commission of grave crimes.⁴⁹ When such cases arise, these specialists advise case workers throughout the refugee status determination process.⁵⁰ The large number of Syrians seeking asylum in Sweden between 2014 and 2016 prompted the Migration Agency to increase the number of these experts from 20 to 35.⁵¹

In addition, one unit within the Migration Agency provides the organization contextual information related to specific countries and addresses country-specific questions arising from individual cases.⁵²

Under Swedish law, the agency must report information on potential serious international crimes it comes across to the War Crimes Commission.⁵³ Human Rights Watch research showed that while the agency regularly shares information on particular asylum seekers who may be implicated in serious international crimes to the commission, it has not yet been able to do the same with respect to potential victims or witnesses of abuses.⁵⁴ When an

https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/utlanningslag-2005716_sfs-2005-716 (accessed September 6, 2017), Swedish,

http://www.government.se/contentassets/784b3d7be3a54a0185f284bbb2683055/aliens-act-2005_716.pdf (accessed September 6, 2017), official English translation; Human Rights Watch interview with Swedish officials, January 16, 2017; Human Rights Watch telephone interview with Swedish official, February 27, 2017.

⁴⁸ These regions are: North, Mid, West, East, and South Sweden as well as Stockholm. Human Rights Watch interview with Swedish official, January 16, 2017; Human Rights Watch telephone interview with Swedish official, February 27, 2017.

⁴⁹ In 2009, the Swedish Aliens Act was amended and now includes a provision on exclusions. See Aliens Act, chapter 4 section 2b, as amended by Act 2009:1542 amending the Aliens Act 2005:716 (Lag 2009:1542 om ändring i utlänningslagen 2005:716), Justitiedepartementet L7, entered into force January 1, 2010, <http://notisum.se/rnp/sls/sfs/20091542.pdf> (accessed September 6, 2017), Swedish, <http://www.government.se/contentassets/86ebb559cc2d4cf5bee5906236977436/act-amending-the-aliens-act.pdf> (accessed September 6, 2017), official English translation.

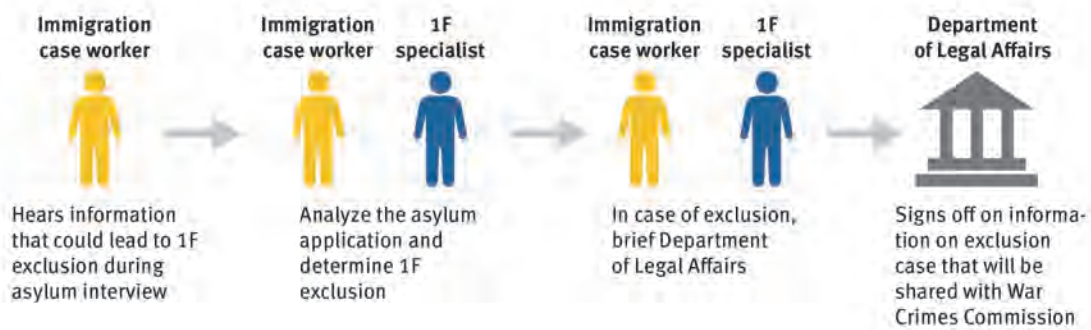
⁵⁰ Human Rights Watch telephone interview with Swedish official, February 27, 2017.

⁵¹ Ibid.

⁵² The unit operates out of the Legal Affairs Department, based in Norrköping. Human Rights Watch email correspondence with Swedish official, March 16, 2016.

⁵³ Regulation 2016:1245 amending Regulation 2007: 996 with instructions for the Migration Agency (Förordning 2016:1245 om ändring i förordningen (2007:996) med instruktion för Migrationsverket), entered into force December 16, 2016, section 2 (17), <https://www.notisum.se/rnp/sls/sfs/20161245.pdf> (accessed September 6, 2017), Swedish; Human Rights Watch interview with Swedish officials, January 16, 2017; Human Rights Watch interview with Swedish officials, January 17, 2017.

⁵⁴ One public official confirmed that during asylum interviews asylum seekers are usually not notified that information they provide may be shared with other government agencies, such as the police or the prosecution authority. Human Rights Watch email correspondence with Swedish official, August 22, 2017.



article 1F determination case is concluded, the agency’s Department of Legal Affairs signs off on what the individual regional office can share with the War Crimes Commission.⁵⁵

In January 2016, the Swedish law enforcement, prosecution and migration services reached an agreement to enhance their cooperation. Representatives from these three authorities now meet regularly to discuss how to improve working methods and exchange of information, including related to potential war crimes cases.⁵⁶

Germany

The federal police have a specialized unit called the Central Unit for the Fight against War Crimes and Further Offenses pursuant to the Code of Crimes against International Law (Zentralstelle für die Bekämpfung von Kriegsverbrechen und weiteren Straftaten nach dem Völkerstrafgesetzbuch, hereinafter ZBKV).⁵⁷

The ZBKV employs 13 police officers. While it does not employ analysts, police officers in this unit are increasingly doing more of the work traditionally done by police analysts. The

⁵⁵ Human Rights Watch interview with Swedish officials, January 16, 2017; Human Rights Watch telephone interview with Swedish officials, February 27, 2017. When a person is under investigation for grave international crimes, the asylum process is suspended and it is resumed if the investigation cannot confirm their involvement in the alleged crimes. If there is evidence that the person may have committed these crimes but there is not enough to start a criminal prosecution, he or she may be deported to the country of origin, after being denied refugee status under the 1F clause of the Refugee Convention. However, if deportation is not possible (as is currently the case of Syria), the person is granted a temporary residence permit in Sweden. Human Rights Watch email correspondence with Swedish official, August 22, 2017.

⁵⁶ Human Rights Watch interview with Swedish officials, January 17, 2017; Human Rights Watch email correspondence with Swedish official, March 22, 2017.

⁵⁷ Federal Criminal Police Office (Bundeskriminalamt or BKA), “Central Unit for the Fight against War Crimes and Further Offenses Pursuant to the Code of Crimes against International Law” (“Zentralstelle für die Bekämpfung von Kriegsverbrechen und weiteren Straftaten nach dem Völkerstrafgesetzbuch or ZBKV), April 14, 2011, https://www.bka.de/EN/OurTasks/Remit/CentralAgency/ZBKV/zbkv_node.html (accessed September 6, 2017); Human Rights Watch interview with German officials, February 22, 2017. For more information on the creation of the unit, see Human Rights Watch, *The Long Arm of Justice*, pp. 52-53.

unit routinely works with translators, researchers, and technical support staff provided by the federal police, as well as with external consultants. The ZBKV also has contact points at the state police in each of the 16 German states.⁵⁸

The federal prosecution authority also has a specialized war crimes unit (“war crimes prosecution unit”) tasked with prosecuting grave international crimes under the CCAIL. The unit employs seven full-time prosecutors, including four women. The unit recently hired more female prosecutors to respond to the growing need to work with female victims of sexual violence.⁵⁹

Similar to Sweden, the war crimes units within the law enforcement and prosecution services in Germany have counterterrorism counterparts. The war crimes and counterterrorism units often work together and have institutionalized meetings and information sharing processes in place.⁶⁰

The German migration authority (Bundesamt für Migration und Flüchtlinge, hereinafter BAMF) processes asylum applications at 40 immigration centers across Germany. It has a specialized section (division 235), which acts as the focal point for collaboration with security authorities at the federal and state level, including the ZBKV and its terrorism counterpart. This collaboration includes sharing information related to potential grave international crimes. At the time of writing, division 235 employed 29 people. The BAMF also has a section tasked with deciding on article 1F exclusion cases (division 233), which can gather information relevant to determining these cases from division 235.⁶¹

⁵⁸ As of September 2017, as far as Human Rights Watch is aware, the unit employed 13 police officers. Human Rights Watch interview with German Officials, February 22, 2017. The ZBKV also employs four regular employees who are not public officials (tarifbeschäftigte), three of which work part-time. See German Parliament (Deutscher Bundestag), “Reply by the Federal Government to the Inquiry Put by Mr Tom Koenigs, Mr Luise Amtsberg, Dr Franziska Brantner, Other Members of Parliament and the Parliamentary Group BÜNDNIS 90/DIE GRÜNE (Green Party): Investigation in Germany for Serious International Crimes Committed in Syria” (“Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Tom Koenigs, Luise Amtsberg, Dr. Franziska Brantner, weiterer Abgeordneter und der Fraktion: Ermittlung von in Syrien begangenen Völkerstraftaten in Deutschland”), Document n. 18/12533 (Drucksache 18 /12533), May 30, 2017, <http://dip21.bundestag.de/dip21/btd/18/125/1812533.pdf> (accessed September 6, 2017), question 17.

⁵⁹ Office of the Federal Prosecutor General (Generalbundesanwalt or GBA), “Crimes under the Criminal Code” (“Straftaten nach dem Völkerstrafgesetzbuch”), <https://www.generalbundesanwalt.de/de/voelker.php> (accessed September 6, 2017). As of September 2017, as far as Human Rights Watch is aware, the unit employed seven prosecutors. Human Rights Watch interview with German officials, February 16, 2017, and email correspondence March 31, May 29, and July 13, 2017.

⁶⁰ Human Rights watch interview with German officials, February 16, 2017; Human Rights Watch interview with German officials, February 22, 2017.

⁶¹ Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge or BAMF), “Migration to Germany” (“Migration nach Deutschland”), <http://www.bamf.de/EN/Startseite/startseite-node.html> (accessed September 6, 2017);



The BAMF employs country experts who are based in the agency's headquarters in Nuremberg, but also convenes trainings on specific country situations for immigration officials in the rest of the country. The agency also has analytical research units which draft country reports that are available to all BAMF staff.⁶²

Between 2014 and 2016, the BAMF increased its overall staff from 2,000 to 9,000 to respond to the large numbers of asylum seekers in Germany. This expansion led to an overall agency restructuring, including by doubling the number of immigration centers.⁶³

German criminal procedure and asylum law regulate the exchange of information between the BAMF and police.⁶⁴ Unlike its Swedish counterpart, the BAMF shares information concerning potential perpetrators as well as possible witnesses, victims and general leads. If during an asylum interview an immigration case worker comes across information relevant to

BAMF, "Organizational Chart," http://www.bamf.de/SharedDocs/Anlagen/EN/Downloads/Infothek/Sonstige/organigramm.pdf?__blob=publicationFile (accessed September 6, 2017). As of September 2017, as far as Human Rights Watch is aware, division 235 employed 29 people. Human Rights Watch interview with German officials, February 17, 2017; Human Rights Watch email correspondence with German official, April 10, 2017. The 2008 Asylum Act regulates the procedure applicable to asylum applications in Germany. See Asylum Act (Asylgesetz), entered into force September 2, 2008, section 3(2)(1), https://www.gesetze-im-internet.de/bundesrecht/asylvfg_1992/gesamt.pdf (accessed September 6, 2017), German, https://www.gesetze-im-internet.de/englisch_asylvfg (accessed September 6, 2017), official English translation.

⁶² Human Rights Watch interview with German officials, February 17, 2017.

⁶³ The initial 20 centers were responsible for all immigration-related tasks, while now different centers have specific functions: welcome, registration, and decision-making. Human Rights Watch interview with German officials, February 17, 2017.

⁶⁴ Asylum Act, section 8(3); German Code of Criminal Procedure, section 487; Law on the Federal Criminal Police Office and Cooperation between the Confederation and the States in Criminal Matters (Gesetz über das Bundeskriminalamt und die Zusammenarbeit des Bundes und der Länder in kriminalpolizeilichen Angelegenheiten or BKAG), entered into force July 7, 1997, https://www.gesetze-im-internet.de/bkag_1997 (accessed September 6, 2017). During asylum interviews, asylum seekers are not notified that information they provide may be shared with other government agencies, such as the federal police or the federal prosecution authority. Human Rights Watch interview with German officials, February 17, 2017; German Parliament, "Reply by the Federal Government to the Inquiry Put by Mr Tom Koenigs, Mr Luise Amtsberg, Dr Franziska Brantner, Other Members of Parliament and the Parliamentary Group BÜNDNIS 90/DIE GRÜNE (Green Party): Investigation in Germany for Serious International Crimes Committed in Syria," Document n. 18/12533, questions 4 and 12.

crimes under the CCAIL, he or she sends it to division 235.⁶⁵ Division 235 then shares such information with the ZBKV, which analyzes it and may ask division 235 specific follow-up inquiries before sending it to the war crimes prosecution unit for further action.⁶⁶

⁶⁵ Division 235, in consultation with the federal police, has developed a system to categorize information using a scale from 1 to 5: Categories 1 and 2 include information about perpetrators present in Germany or Europe; Categories 3 and 4 include information from members of institutions which are relevant to the CCAIL (ideally either eyewitnesses or, giving or receiving orders for actions relevant to the CCAIL); Category 5 includes information about eyewitnesses or victims of a crime relevant to the CCAIL. Division 235 staff categorize information accordingly before sending it to the ZBKV. This system helps the ZBKV prioritize cases by importance. See German Parliament, “Reply by the Federal Government to the Inquiry Put by Mr Tom Koenigs, Mr Luise Amtsberg, Dr Franziska Brantner, Other Members of Parliament and the Parliamentary Group BÜNDNIS 90/DIE GRÜNE (Green Party): Investigation in Germany for Serious International Crimes Committed in Syria,” Document n. 18/12533, questions 15 and 20.

⁶⁶ Human Rights Watch interview with German officials, February 17, 2017; Human Rights Watch email correspondence with German official, April 10, 2017. If a police investigation is opened, the asylum procedure is suspended pending the results of the investigation. If the police investigation finds evidence that a person has committed a grave international crime and prosecutors decide not to pursue the case before German courts, the person is denied refugee status in Germany and usually returned to their home country. If the police investigation cannot confirm involvement in an international crime, the person’s asylum application is then considered by the immigration service. See Human Rights Watch, *The Long Arm of Justice*, p. 57. At the height of the refugee crisis in 2014 and 2015, the BAMF used a form to screen Syrian asylum seekers instead of an asylum interview. This form was only used for a brief period and it included questions about war crimes. If the questionnaire revealed evidence of potential crimes, the person was interviewed by the BAMF. According to some practitioners, the form was not a good source of information because it only asked “YES/NO” questions and did not qualitatively improve the information the ZBKV gathered in that time. Human Rights Watch interview with German officials, February 17, 2017; Human Rights Watch interview with German officials, February 22, 2017. For more information on the initial use of this form see Human Rights Watch, *Long Arm of Justice*, pp. 57-58.

III. Proceedings in Sweden and Germany

At the time of writing, Swedish authorities were conducting a structural investigation into serious international crimes committed in Syria. Structural investigations are broad preliminary investigations, without specific suspects, designed to gather evidence related to potential crimes which can be used in future criminal proceedings in Sweden or elsewhere.⁶⁷ Such investigations allow authorities to collect evidence in real-time or soon after the events as opposed to years later, and have the potential to advance efforts to ensure accountability for grave international crimes in national jurisdictions. Authorities in Sweden were also conducting 13 investigations against specific individuals for crimes in Syria.⁶⁸

German authorities were the first in Europe to open a structural investigation related to Syria, and at the time of writing were conducting two such investigations. The first, initiated in September 2011, covers crimes committed by different parties to the Syrian conflict, but includes a particular focus on the Caesar photographs. The second structural investigation, initiated in August 2014, covers crimes committed by ISIS in both Syria and Iraq, with a focus on the ISIS attack on the Yezidi minority in Sinjar, Iraq, in August 2014.⁶⁹

⁶⁷ This structural investigation was opened in October 2015. Human Rights Watch interviews with Swedish officials, January 17, 2017; Henrik Attorps (Swedish war crimes prosecutor team), untitled contribution to panel discussion at side event “Accountability Series on the Syrian Arab Republic,” Permanent Missions of Liechtenstein and Canada, 34th Human Rights Council, Palais des Nations, Geneva, March 14, 2017; Human Rights Watch email correspondence with Swedish official, June 19, 2017.

⁶⁸ In March 2017, the War Crimes Commission was working on a total of 42 investigations covering different countries. Human Rights Watch email correspondence with Swedish official, March 21, 2017; Human Rights Watch telephone correspondence with Swedish official, April 28, 2017.

⁶⁹ Human Rights Watch interview with German officials, February 16, 2017 and February 22, 2017; Human Rights Watch email correspondence with German official, March 20, 2017. At the time of writing, three ZBKV employees were working on the structural investigation on the Syrian conflict, while two were working on the structural investigation on ISIS. See German Parliament, “Reply by the Federal Government to the inquiry Put by Mr Tom Koenigs, Mr Luise Amtsberg, Dr Franziska Brantner, Other Members of Parliament and the Parliamentary Group BÜNDNIS 90/DIE GRÜNE (Green Party): Investigation in Germany for Serious International Crimes Committed in Syria,” Document n. 18/12533, question 18.

In addition to these structural investigations, German authorities are conducting 27 investigations against specific individuals for grave crimes committed in Syria and Iraq.⁷⁰

To date, only seven cases related to serious international crimes committed in Syria (three in Sweden and four in Germany) have reached the trial phase. Of these, five were brought under universal jurisdiction and two under the active personality principle.⁷¹

ONGOING AND COMPLETED CASES FOR GRAVE CRIMES IN SYRIA⁷²

ACCUSED ⁷³	BASIS OF JURISDICTION	ALLEGED CRIMES AND CHARGES	CASE STATUS
Sweden			
Mouhannad Droubi <i>(Syrian non-state armed group affiliated with the Free Syrian Army)</i>	Universal jurisdiction	Assaulted a member of another non-state armed group affiliated with the Free Syrian Army – War crimes and aggravated assault ⁷⁴	Sentenced to 8 years in prison by court of appeal on August 5, 2016 ⁷⁵

⁷⁰ Human Rights Watch interview with German official, February 22, 2017. Since 2011, German authorities have conducted 74 investigations for grave international crimes. Twenty-one of these investigations relate to crimes by ISIS, while six relate to crimes by the Syrian government. See German Parliament (Deutscher Bundestag), “Reply by the Federal Government to the Inquiry Put by Katja Keul, Tom Koenings, Dr. Franziska Brantner Other Members of Parliament and the Parliamentary Group BÜNDNIS 90/DIE GRÜNE (Green Party): Investigation in Germany for Serious International Crimes Committed in Syria” (“Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Katja Keul, Tom Koenigs, Dr. Franziska Brantner, weiterer Abgeordneter und der Fraktion: Ermittlung von in Syrien begangenen Völkerstraftaten in Deutschland”), Document n. 18/12487 (Drucksache 18 /12487), May 24, 2017, <http://dip21.bundestag.de/dip21/btd/18/124/1812487.pdf> (accessed September 6, 2017), questions 3 and 4.

⁷¹ In an additional case, two Swedish nationals, members of ISIS Hassan Mostafa Al-Mandlawi and Al Amin Sultan, were charged alternatively with terrorism offenses and war crimes but were ultimately tried and convicted under terrorism laws. *Prosecutor v. Hassan Mostafa Al-Mandlawi and Al Amin Sultan*, Stockholm District Court, Case B 9086-15, Judgment of December 14, 2015; *Prosecutor v. Hassan Mostafa Al-Mandlawi and Al Amin Sultan*, Court of Appeal for Western Sweden, Case B 5306-15, Judgment of March 30, 2016.

⁷² German authorities have also arrested and charged several individuals suspected of having committed serious international crimes in Syria. For more information on these cases, see Annex I.

⁷³ For the purpose of this chart we have followed the naming convention used by Swedish and German authorities.

⁷⁴ Swedish Penal Code, chapter 3, section 6(2), and chapter 22, section 6 (1). The crimes in this case were committed in 2012, before the new legislation penalizing serious international crimes entered into force. See section II, “Frameworks for Justice in Sweden and Germany.”

⁷⁵ *Prosecutor v. Mouhannad Droubi*, Södertörn District Court, Case B 13656-14, Judgment of February 26, 2015; *Prosecutor v. Mouhannad Droubi*, Svea Court of Appeal, Case B 2440-15, Decision of February 23, 2016 announced on February 26, 2016;

Haisam Omar Sakhanh (<i>Syrian non-state armed group opposed to the government</i>)	Universal jurisdiction	Extrajudicially executed seven Syrian army soldiers – War crimes ⁷⁶	Sentenced to life in prison on February 16, 2017; confirmed by court of appeal on May 31, 2017 ⁷⁷
Mohammad Abdullah (<i>Syrian army</i>)	Universal jurisdiction	Violated the dignity of five dead or severely injured people by posing for a photograph with his foot on one of the victims' chest – War crimes ⁷⁸	Sentenced to 8 months in prison on September 25, 2017 ⁷⁹
Germany			
Aria L. (<i>ISIS</i>)	Active personality principle – Perpetrator is a German national	Desecrated two corpses – War crimes ⁸⁰	Sentenced to 2 years in prison on July 12, 2016 ⁸¹
Abdelkarim El. B. (<i>ISIS</i>)	Active personality principle –	Desecrated a corpse – War crimes,	Sentenced to 8.5 years in prison on November

Prosecutor v. Mouhannand Droubi, Södertörn District Court, Case B 2639-16, Judgment of May 11, 2016; *Prosecutor v. Mouhannand Droubi*, Svea Court of Appeal, Case B 4770-16, Judgment of August 5, 2016.

⁷⁶ Swedish Penal Code, chapter 22, section 6 (1) and (2).

⁷⁷ *Prosecutor v. Haisam Omar Sakhanh*, Stockholm District Court, Case B 3787-16, Judgment of February 16, 2017; *Prosecutor v. Haisam Omar Sakhanh*, Svea Court of Appeal, Case B 3787-16, Judgment of May 31, 2017. On July 20, 2017, the Swedish Supreme Court denied Sakhanh's leave to appeal, *Prosecutor v. Haisam Omar Sakhanh*, Swedish Supreme Court, Case B 3157-17, Decision of July 20, 2017.

⁷⁸ Swedish Penal Code, chapter 22, section 6 (1).

⁷⁹ *Prosecutor v. Mohammad Abdullah*, Södertörn District Court, Case B 11191-17, Judgment of September 25, 2017. Abdullah had been previously accused of the killing of the people in the incriminating photograph. However, charges were dropped and the case was dismissed in March 2016 for lack of corroborating evidence. Human Rights Watch email correspondence with Swedish official, September 15, 2017. See also TRIAL International, *Make Way for Justice #3: Universal Jurisdiction Annual Review 2017*, https://trialinternational.org/wp-content/uploads/2017/03/UJAR-MEP_A4_012.pdf (accessed September 6, 2017), p. 49.

⁸⁰ CCAIL, section 8 (1) n. 9 and section 8 (6) n. 2.

⁸¹ *Prosecutor v. Aria L.*, Frankfurt Higher Regional Court, Case 5 – 3 StE 2/16 – 4 – 1/16, Judgment of July 12, 2016, http://www.lareda.hessenrecht.hessen.de/lexsoft/default/hessenrecht_lareda.html#docid:7661851 (accessed September 6, 2017).

	Perpetrator is a German national	membership in a terrorist organization, and violation of the Military Weapons Control ⁸²	8, 2016 ⁸³
Suliman A.S. (<i>alleged Jabhat al-Nusra</i>) ⁸⁴	Universal jurisdiction	Kidnapped a UN observer – Aiding a war crime ⁸⁵	Sentenced to 3.5 years in prison on September 20, 2017 ⁸⁶
Ibrahim Al F. (<i>Free Syrian Army</i>)	Universal jurisdiction	Allegedly oversaw torture, abduction, and personally tortured several people who resisted the looting of their belongings – War crimes ⁸⁷	Trial started on May 22, 2017 ⁸⁸

⁸² CCAIL, section 8 (1) n. 9; German Criminal Code (Strafgesetzbuch or StGB), entered into force November 13, 1998, sections 129a (1) n. 1, 129a (2) n. 2, 129b (1), and 129b (2), <https://www.gesetze-im-internet.de/bundesrecht/stgb/gesamt.pdf> (accessed September 6, 2017), German, https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html (accessed September 6, 2017), unofficial English translation; Law for the Control of Military Weapons (Kriegswaffenkontrollgesetz, KrWaffKontrG), entered into force November 22, 1990, section 22a (1) n. 6, <http://www.gesetze-im-internet.de/bundesrecht/krwaffkontrg/gesamt.pdf> (accessed September 6, 2017), German, <http://germanlawarchive.iuscomp.org/?p=741> (accessed September 6, 2017), unofficial English translation.

⁸³ *Prosecutor v. Abdelkarim El. B.*, Frankfurt Higher Regional Court, Case 5-3 StE 4/16 - 4 - 3/16, Judgment of November 8, 2016, http://www.lareda.hessenrecht.hessen.de/lexsoft/default/hessenrecht_lareda.html#docid:7812208 (accessed September 6, 2017).

⁸⁴ The accused was acquitted of terrorism charges under sections 129a (1) and 129b (1) of the German Criminal Code.

⁸⁵ CCAIL, section 10 (1) n.1.

⁸⁶ Stuttgart Higher Regional Court (Oberlandesgericht Stuttgart), “5th Senate of the Higher Regional Court Stuttgart convicts the defendant who participated in the kidnapping of a United Nations employee in Syria for aiding and abetting the war crime against humanitarian operations pursuant to Section 10 para. 1 n. 1 of the German Code of Crimes Against International Law and other crimes” (“5. Strafsenat des Oberlandesgerichts Stuttgart verurteilt einen an der Entführung eines Mitarbeiters der Vereinten Nationen in Syrien beteiligten Angeklagten wegen Beihilfe zu einem Kriegsverbrechen gegen humanitäre Operationen gemäß § 10 Abs. 1 Nr. 1 Völkerstrafgesetzbuch u. a.”), September 20, 2017, <http://www.olg-stuttgart.de/pb/,Lde/4801270/?LISTPAGE=1178276> (accessed September 20, 2017).

⁸⁷ CCAIL, section 8 (1) n. 3 and section 9 (1).

⁸⁸ Düsseldorf Higher Regional Court (Oberlandesgericht Düsseldorf), “No. 14/2017 Committed War Crimes under International Criminal Law: Opening, Schedule and Accreditation in the Case against Ibrahim A. F.” (“Nr. 14/2017 Begehung von Kriegsverbrechen nach dem Völkerstrafrecht: Eröffnung, Termine und Akkreditierung im Verfahren gegen Ibrahim A. F.”), May 15, 2017, http://www.olg-duesseldorf.nrw.de/behoerde/presse/archiv/Pressemitteilungen_aus_2017/20170505_PM_Eroeffnung-Ibrahim-A_F_/index.php (accessed September 6, 2017).

To date, the cases brought to trial are not representative of the crimes in Syria. The war crimes cases that have gone to trial have nearly all been prosecutions of fighters from the Free Syrian Army and other non-state armed groups opposed to the government, ISIS and Jabhat al-Nusra, while one case was brought against a low-level member of the Syrian army. Further, most Syria-related cases in Germany involve prosecution for terrorism offenses rather than charges for war crimes or crimes against humanity.

Case Selection Concerns

As previously discussed, Swedish and German authorities are investigating potential crimes committed in Syria by different parties to the conflict, including the Syrian government.⁸⁹ However, at the time of writing, nearly all the Syria-related trials for serious international crimes in these countries had been against low-level members of ISIS, Jabhat al-Nusra, the Free Syrian Army or other non-state armed groups opposed to the Syrian government and one has been against a low-level member of the Syrian army. This case focus may also reflect the fact that curbing ISIS's influence and deterring their own nationals from joining it are national security priorities for Germany and Sweden.

Syrians expressed frustration about the lack of cases brought against individuals affiliated with the Syrian government. "Europe is concentrating on ISIS and forgetting Assad; ISIS is a spot in the sea of Assad's crimes," one Syrian in Germany said.⁹⁰

For some refugees, the frustration is personal: 22 of the Syrians Human Rights Watch interviewed in Sweden and Germany said they were direct victims of crimes committed by the Syrian government. Some said they believed some of the perpetrators were living in Sweden and Germany.⁹¹ Abdou, who said he was among those directly victimized by the Syrian government, explained:

⁸⁹ Human Rights Watch interviews with Swedish officials, January 17, 2017; Human Rights Watch interview with German officials, February 16, 2017; Human Rights Watch interview with German officials, February 22, 2017.

⁹⁰ Human Rights Watch group interview with Syrian refugees, Varberg, January 19, 2017.

⁹¹ Human Rights Watch group interview with Syrian refugees, Värmdö, January 18, 2017; Human Rights Watch interview with Abdullah, Värmdö, January 18, 2017; Human Rights Watch telephone interview with Ahmad, February 3, 2017; Human Rights Watch group interview with Syrian refugees, Berlin, February 20, 2017; Human Rights Watch group interview with Syrian refugees, Hannover, February 21, 2017; Human Rights Watch interview with Hakim, Hannover, February 21, 2017; Human Rights Watch group interview with Syrian refugees, Cologne, February 22, 2017; Human Rights watch interview with Adnan, Berlin, February 23, 2017; Human Rights Watch interview with Muhammad, Berlin, February 24, 2017.

Germans are treating Syrians the wrong way. They see us as a mass without distinction, they're not paying attention as to what they [Syrian government forces] have done. Germans should understand who is who.⁹²

Although Swedish and German authorities are investigating crimes committed by government forces, the publicly available information about these efforts is limited and does not necessarily reflect the breadth of the ongoing probes.

According to practitioners and academics, cases against mid and high-level government officials or military commanders are more difficult to build from an evidentiary perspective than those brought to trial so far. Prosecutions against these individuals require strong evidence to connect the crimes committed to the alleged perpetrators, and evidence to place them within the chain of command.⁹³

While all the accused in the cases brought to trial to date were arrested in Sweden and Germany, high-level officials or senior military commanders affiliated with the Syrian government have not yet travelled to these countries and are unlikely to travel to Europe in the near future. In addition, some could be temporarily protected from timely prosecution as a result of the official positions they hold.⁹⁴

Human Rights Watch found that the fact that these cases are not representative of the breadth of the atrocities committed in Syria has the potential to undercut Syrian refugees' perspectives about the proceedings and their confidence in these efforts to deliver some form of justice.

⁹² Human Rights Watch group interview with Syrian refugees, Cologne, February 22, 2017.

⁹³ Human Rights Watch interview with Swedish officials, January 17, 2017; Human Rights Watch interview with Swedish academic, January 20, 2017; Human Rights Watch interview with German officials, February 16, 2017; Human Rights Watch interview with German academics, February 23, 2017.

⁹⁴ See discussion below on immunities in sub-section on "Standard Challenges," in particular footnote 104.

Reliance on Terrorism Charges

The type of charges upon which cases are brought further impact how representative these proceedings are overall. While this does not seem to be an issue in Sweden yet,⁹⁵ Germany has experienced a problematic proliferation of cases where the offenses charged are those available under terrorism laws, even when it is likely the suspect committed a war crime or crime against humanity.⁹⁶

The legal framework for terrorism in Germany is broad. The German Criminal Code penalizes the acts of membership in, support of, and recruitment for a terrorist organization and judges can in each case determine whether an organization qualifies as terrorist or not.⁹⁷

⁹⁵ The crime of terrorism in Sweden is regulated by three laws penalizing direct responsibility for terrorist offenses, public provocation, recruitment, and training as well as financing. Membership in a terrorist organization is not a criminal offense in Sweden. Act 2003:148 on Criminal Responsibility for Terrorist Offenses (Lag 2003:148 om straff för terroristbrott), Justitiedepartementet L5, entered into force July 1, 2003, https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2003148-om-straff-for-terroristbrott_sfs-2003-148 (accessed September 6, 2017), Swedish, <http://www.government.se/49cd60/contentassets/f84107eae6154ce19e65d64151a1b25f/act-on-criminal-responsibility-for-terrorist-offences.pdf> (accessed September 6, 2017), unofficial English translation; Act 2010:299 on Criminal Responsibility for Provocation, Recruitment and Training Concerning Terrorist Offenses and Other Particularly Serious Crimes (Lag 2010:299 om straff för offentlig uppmaning, rekrytering och utbildning avseende terroristbrott och annan särskilt allvarlig brottslighet), Justitiedepartementet L5, entered into force December 1, 2010, https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2010299-om-straff-for-offentliguppmaning_sfs-2010-299 (accessed September 6, 2017), Swedish, http://www.government.se/4aa8b5/contentassets/f0c331a80c244813af517a0661b8c163/2010_299-act-on-criminal-responsibility-for-public-provocation-recruitment-and-training-concerning-terrorist-offences-and-other-particularly-serious-crime.pdf (accessed September 6, 2017), unofficial English translation; Act 2002:444 on Criminal Responsibility for the Financing of Particularly Serious Crime in Some Cases (Lag (2002:444) om straff för finansiering av särskilt allvarlig brottslighet i vissa fall), Justitiedepartementet L5, entered into force July 1, 2002, https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2002444-om-straff-for-finansiering-av_sfs-2002-444 (accessed September 6, 2017), http://www.government.se/49cd62/contentassets/d28a807aff3f4acb84dcae29daa1aac3/act-on-criminal-responsibility-for-the-financing-of-particularly-serious-crime-in-some-cases_2002_444_unofficial-translation.pdf (accessed September 6, 2017), unofficial English translation. There are currently several proposals to expand this legal framework, including a new provision to penalize participation in combat-related activities in armed conflicts abroad in support of a terrorist organization. See Swedish Justice Department (Justitiedepartementet), “Criminal Action Against Participation in Armed Conflict in Support of a Terrorist Organization” (“Straffrättsliga åtgärder mot deltagande i en väpnad konflikt till stöd för en terroristorganisation”), Official Report SOU 2016:40, June 2016, p. 25, <http://www.regeringen.se/49d6b7/contentassets/fde512ceb1444e85a7be662142f9bcd3/straffrattsliga-atgarder-mot-deltagande-i-en-vapnad-konflikt-till-stod-for-en-terroristorganisation-sou-2016-40.pdf> (accessed September 6, 2017). Some commentators have criticized the proposal. See, for example, Mark Klamberg, “What Can and Should We Outlaw?” (“Vad kan och bör vi kriminalisera?”), *Upsala Nya Tidning*, October 8, 2016, <http://www.unt.se/asikt/ledare/vad-kan-och-bor-vi-kriminalisera-4398397.aspx> (accessed September 6, 2017). In addition, the Swedish Justice Department’s Official Report proposes an extension of criminal liability concerning travel for terrorist purposes, financing of such travel and recruitment for particularly serious crimes. See Official Report SOU 2016:40, pp. 26-27.

⁹⁶ By the end of 2016, there were 45 cases for Syria-related terrorism crimes in Germany and only four cases for war crimes committed in Syria. Human Rights Watch email correspondence with NGO, December 9, 2016.

⁹⁷ German Criminal Code, sections 129a, 129b; Human Rights Watch interview with German officials, February 15, 2017; Human Rights Watch interview with German officials, February 16, 2017; Human Rights Watch interview with German academic, February 17, 2017.

Recent provisions have also been added to penalize the act of financing a terrorist organization and traveling outside Germany with the intent to receive terrorist training.⁹⁸

According to practitioners interviewed in Germany, it is often easier to find evidence to prove that an individual is a member of a terrorist organization than to link such individual to any underlying serious criminal act.⁹⁹

When it is possible to bring someone to trial for both serious international crimes and terrorism, and there is insufficient evidence for a serious international crime prosecution, authorities will charge the suspect with terrorism-related offenses rather than release them from custody.¹⁰⁰

There are costs, however, to prosecuting individuals solely on terrorism charges, when they may also be responsible for war crimes or crimes against humanity. In Germany, serious international crimes are punished with longer prison sentences than those usually prescribed for terrorism offenses.¹⁰¹ In addition, terrorism charges often do not reflect the scope and nature of abuses committed, and risk undermining efforts to promote compliance with international humanitarian law. The use of terrorism charges as means of investigating and prosecuting individuals believed to be responsible for war crimes could send a signal that the authorities' rightful determination to tackle domestic threats eclipses their responsibility to deliver accountability for other serious international crimes. The use of terrorism charges also risks diverting police and prosecutorial resources earmarked for international justice to already well-resourced domestic national security efforts.

The German public prosecutor general stated that situations like those in Syria and Iraq show that terrorism and other serious international crimes are increasingly intertwined as terrorist organizations are new actors in these conflicts. He explained that to fully register

⁹⁸ German Criminal Code, sections 89a, 89b; Human Rights Watch interview with German officials, February 15, 2017; Human Rights Watch interview with German academic, February 17, 2017.

⁹⁹ Human Rights Watch interview with German officials, February 16, 2017; Human Rights Watch interview with German officials, February 22, 2017.

¹⁰⁰ Ibid.

¹⁰¹ See German Criminal Code, section 129a and CCAIL. Human Rights Watch interview with German officials, February 22, 2017.

the unlawfulness of these acts and provide appropriate retribution, international criminal law must not be neglected.¹⁰² Referring to Syria he noted:

[T]he character of the terrorist organizations involved in the conflict, as well as the nature of the specific single acts, can only be fully grasped if they are viewed not only through the lens of counterterrorism, but also viewed in the context of international criminal law.¹⁰³

¹⁰² Dr. Peter Frank (Public Prosecutor General at the Federal Court of Justice) and Holger Schneider-Glockzin (Public Prosecutor at the Federal Court of Justice), “Terrorism and International Crime in Armed Conflicts” (“Terrorismus und Völkerstraftaten im bewaffneten Konflikt”), *Neue Zeitschrift für Strafrecht (New Journal of Criminal Law)*, 2017 Issue 1, January 15, 2017, pp. 2, 5.

¹⁰³ *Ibid.*, p. 9.

IV. Challenges

Swedish and German authorities have encountered several challenges in their efforts to investigate and prosecute grave abuses committed in Syria. Their experiences provide valuable lessons domestically, and for other countries in Europe and elsewhere set to take up cases involving serious international crimes in Syria.

Some of these challenges are inherent to accountability efforts for international crimes at the domestic level. Others are specific to Syria-related cases and are tied to information gathering efforts both within and outside Sweden and Germany. While some of these obstacles are difficult to overcome, authorities are already taking steps to address others.

The combination of these inherent and situation-specific challenges likely impacts both the number and the type of cases brought to trial to date in each of these countries, as well as the way Syrian refugees perceive these justice efforts and contribute to them.

Standard Challenges

Authorities pursuing cases on the basis of universal jurisdiction encounter challenges that are inherent to these types of cases. Solutions to some of these challenges are beyond the reach of authorities.

Domestic prosecutions for serious international crimes are opportunistic efforts, usually brought against people present in the territory of the prosecuting country—as is the case with the cases brought to trial to date in Germany and Sweden.

Case Profile: Haisam Omar Sakhanh

In September 2013, the *New York Times* released a video showing members of a Syrian non-state armed group opposed to the government extrajudicially executing seven captured Syrian government soldiers in Idlib governorate on May 6, 2012. The video was smuggled out of Syria a few days earlier by a former fighter who sent it to the *New York Times*. One of the fighters in the video was Haisam Omar Sakhanh.

In February 2012, Sakhanh was arrested in Italy, where he had been a permanent resident since 1999, in relation to a demonstration at the Syrian embassy in Rome. He was later released and decided to return to Syria.

In 2013, Sakhanh travelled to Sweden where he applied for asylum. During his asylum interview, he failed to disclose information about his arrest in Italy. This omission triggered an investigation that eventually linked him to the *New York Times* video.

Sakhanh was arrested in Sweden in 2016 and charged for his part in the killing of the seven government soldiers as a “crime against international law.”

His trial took place in the Stockholm District Court between January 11- 23, 2017. While Sakhanh admitted to the shooting, he said he was merely carrying out the decision of an opposition court, which ordered the execution of the soldiers. He failed to produce any evidence to substantiate that claim.

On February 16, 2017, the Stockholm District Court convicted Sakhanh and sentenced him to life in prison. While the Swedish judges found that non-state actors can establish courts, in this case they held that such a court was neither independent nor impartial and did not offer the legal guarantees of a fair trial. The judgment and sentence were confirmed by the Svea Appeal Court on May 31, 2017.

Immunity for sitting government officials can represent an additional obstacle to prosecuting certain individuals implicated in serious international crimes. According to this principle, certain foreign government officials, such as accredited diplomats, heads of state and government, and foreign ministers are entitled to temporary immunity from prosecution by foreign states while they hold their positions, even for serious international crimes. The immunity ceases once the person leaves office and should not bar later

prosecutions.¹⁰⁴ Both Sweden and Germany recognize this principle and have incorporated it in their domestic laws.¹⁰⁵

Other typical challenges can be tackled by domestic authorities, who, if provided with adequate resources, would be in a better position to take steps to try to overcome them.

For example, criminal cases for serious international crimes are complex and require more time and resources than regular criminal cases, placing special demands on and requiring special expertise from police, prosecutors, defense and victims' counsel and courts. Gathering evidence—most often from victims and witnesses to the actual crimes—usually requires traveling to the country where the violations occurred. This presents a range of challenges, including linguistic and cultural barriers and possible resistance from national authorities. These cases also usually touch on offenses and modes of liability that are unfamiliar to domestic investigators and prosecutors.

The experience of a number of European countries indicates that specialized war crimes units, trainings for practitioners involved in these types of cases, and adequate resources for investigative and prosecutorial efforts have proven effective in overcoming these challenges.¹⁰⁶

Syria-Specific Challenges

In addition to these standard challenges, the overarching difficulty for authorities working on cases related to Syria is operating amid an ongoing conflict, with no access to locations where crimes were committed. This obliges authorities to look elsewhere for relevant information to build cases.

¹⁰⁴ See *Democratic Republic of Congo v. Belgium*, International Court of Justice, Judgment of April 14, 2002, <http://www.icj-cij.org/files/case-related/121/121-20020214-JUD-01-00-EN.pdf> (accessed September 6, 2017).

¹⁰⁵ Germany's Courts Constitution Act provides immunity from prosecution for diplomatic missions and state representatives on official invitation in Germany. Immunity for other senior government officials is interpreted in line with customary international law. See Courts Constitution Act (Gerichtsverfassungsgesetz), entered into force September 12, 1950, sections 18-20, <https://www.gesetze-im-internet.de/bundesrecht/gvg/gesamt.pdf> (accessed September 6, 2017), German, https://www.gesetze-im-internet.de/englisch_gvg/englisch_gvg.html (accessed September 6, 2017), official English translation. For more information, see Human Rights Watch, *The Legal Framework for Universal Jurisdiction in Germany*, p. 3. Chapter 2, section 7 of the Swedish Penal Code states that "limitations [to the jurisdiction of Swedish courts] resulting from generally recognized fundamental principles of public international law or from special provisions in agreements with foreign powers, shall be observed."

¹⁰⁶ See Human Rights Watch, *The Long Arm of Justice*, pp. 5-21.

In addition to publicly available platforms, such as social media, there are three main sources of such information: Syrian refugees and asylum seekers present on the territories of countries engaged in these investigations; other governments and intergovernmental entities; and various nongovernmental documentation groups working beyond their borders.

Domestic Information Gathering

Sweden and Germany are in different phases of information gathering at the domestic level. While Swedish investigators are encountering difficulties collecting information from Syrian refugees and asylum seekers, their German counterparts are struggling to filter the large amount of information they are receiving from various sources.

The first three Syria-related trials for grave international crimes completed in Sweden were not part of a strategic investigative effort, but rather based on incriminating photographs and videos which were used by the war crimes prosecutor team to build these cases.¹⁰⁷ In addition to this photographic and video evidence, Swedish prosecutors relied mainly on expert witnesses to clarify controversial legal issues or to provide contextual information on the situation in Syria at the time of the crimes.¹⁰⁸

Swedish authorities are now trying to develop a more defined prosecutorial strategy building on information collected as part of their structural investigation. In this context, investigators have started to reach out to Syrian refugees living in Sweden but told Human Rights Watch that they face difficulties finding individuals willing to testify in court.¹⁰⁹

One practitioner explained that, to achieve a more strategic approach, Swedish investigators and prosecutors need “hard facts and people willing to come forward” to build cases for

¹⁰⁷ Human Rights Watch interview with Swedish officials, January 17, 2017; Human Rights Watch interview with Swedish academic, January 20, 2017; Human Rights Watch telephone interview with NGO, February 9, 2017. See also C. J. Chivers, “Syrian Asylum Seeker Linked to Mass Killing is Arrested in Sweden,” *New York Times*, March 16, 2016, <https://www.nytimes.com/2016/03/15/world/europe/syrian-asylum-seeker-linked-to-mass-execution-is-arrested-in-sweden.html> (accessed September 6, 2017).

¹⁰⁸ In the case against Haisam Omar Sakhanh, for example, Mark Klamberg, associate professor in international law at Stockholm University, testified as an expert witness on the possibility for non-state actors to establish courts, issue sentences and void criminal responsibility for acts that would otherwise constitute war crimes. Human Rights Watch interview with Swedish academic, January 20, 2017.

¹⁰⁹ Human Rights Watch interviews with Swedish officials, January 17, 2017; Human Rights Watch telephone interview with NGO, Stockholm, February 9, 2017; Human Rights Watch telephone interviews with Swedish journalists, February 8, 2017.

serious crimes committed in Syria.¹¹⁰ Two other practitioners recognized the importance of leads for these investigations, but told Human Rights Watch that authorities still need eye witnesses, regardless of other information that may be brought to their attention.¹¹¹

German authorities are facing a different challenge: a large amount of general, unfiltered, and often unsolicited information from different sources. This means that investigators must filter this information first, before turning their attention to more strategic outreach efforts.

As of June 2017, the ZBKV had received about 4,100 tips (2,760 related to Syria), some of which eventually led to 27 targeted investigations against individuals for crimes committed in Syria and Iraq.¹¹² Interlocutors explained that the ZBKV has been flooded with information from different sources, including the BAMF and the general public. The latter often directs investigators to potential leads on social media.¹¹³ All this information needs to be checked and, according to one practitioner, the large number of tips makes discerning the veracity of information difficult, in part because much time and resources are needed to sift through the information for lines of inquiry relevant to their ongoing investigative efforts, as well as to identify witnesses with first-hand knowledge of the crimes.¹¹⁴ One practitioner described this process as akin to a mini preliminary investigation.¹¹⁵

Against this background, Syrian refugees in Sweden and Germany can play an important role in supporting the authorities in their efforts. However, investigators and prosecutors in both countries are encountering difficulties in their engagement with refugees, mainly due to mistrust on the part of asylum seekers and refugees towards authorities, fear, and a general lack of awareness.

¹¹⁰ Human Rights Watch interview with Swedish officials, January 17, 2017.

¹¹¹ Ibid.

¹¹² Human Rights Watch interview with German officials, February 22, 2017. See German Parliament, “Reply by the Federal Government to the Inquiry Put by Mr Tom Koenigs, Mr Luise Amtsberg, Dr Franziska Brantner, Other Members of Parliament and the Parliamentary Group BÜNDNIS 90/DIE GRÜNE (Green Party): Investigation in Germany for Serious International Crimes Committed in Syria,” Document n. 18/12533, question 12.

¹¹³ Human Rights Watch interview with German officials, February 16, 2017; Human Rights Watch interview with German officials, February 22, 2017.

¹¹⁴ Ibid.

¹¹⁵ Human Rights Watch interview with German officials, February 22, 2017.

Mistrust

Syrian refugees told Human Rights Watch they often do not trust the police and other officials due to negative experiences with authorities in their home country.¹¹⁶ Ahmad, who lives in Sweden, said:

We are used to looking at the police or the government as a threat. If you have a right you want to follow in Syria you prefer not to, because the police will try to take money from you. No trust. Even in Sweden, if I see a policeman I don't feel normal. We don't look at the police and the government as someone we can trust.¹¹⁷

Other refugees said this mistrust also stems from their perception that the Swedish and German governments support the Syrian government and are indifferent toward ordinary Syrians' suffering, despite the fact that the two countries host far larger numbers of Syrians than most other EU countries.¹¹⁸ Ibrahim, who lives in Germany, said:

The general atmosphere here is against you. You don't feel like someone would really care about you.¹¹⁹

As such, some interlocutors said authorities in both countries needed to be particularly sensitive in their engagement with refugees given their experiences, including crimes they might have suffered firsthand or witnessed. Refugees Human Rights Watch spoke to described a depersonalized asylum process and reported negative experiences interacting with immigration officials in particular. One refugee said:

When you're treated like a number and no one is listening, it makes you uncomfortable to share sensitive, personal information [...] I'm not just a

¹¹⁶ Human Rights Watch interview with Swedish officials, January 17, 2017; Human Rights Watch group interview with Syrian Refugees, Värmdö, January 18, 2017; Human Rights Watch telephone interview with Ahmad, February 3, 2017; Human Rights Watch telephone interview with Swedish journalist, February 8, 2017; Human Rights Watch group interview with Syrian refugees, Berlin, February 20, 2017; Human Rights Watch group interview with Syrian refugees, Cologne, February 22, 2017; Human Rights Watch interview with German officials, February 22, 2017.

¹¹⁷ Human Rights Watch telephone interview with Ahmad, February 3, 2017.

¹¹⁸ Human Rights Watch group interview with Syrian Refugees, Värmdö, January 18, 2017; Human Rights Watch group interview with Syrian refugees, Berlin, February 20, 2017; Human Rights watch interview with Layal, Berlin, February 20, 2017; Human Rights Watch group interview with Syrian refugees, Hannover, February 21, 2017.

¹¹⁹ Human Rights Watch group interview with Syrian refugees, Berlin, February 20, 2017.

victim or only a refugee [...] You feel violated from the first second you are here.¹²⁰

Fear of Reprisals

Many refugees Human Rights Watch spoke to in Sweden and Germany still had family and friends in Syria, making it difficult for authorities to find individuals willing to publicly testify about any crimes they might have suffered or witnessed.

Several refugees interviewed in Sweden told Human Rights Watch that they would be willing to cooperate generally with authorities, but are reluctant to appear in open court or provide named testimony because they are afraid for the safety of their families back in Syria.¹²¹ One refugee explained he would not testify publicly because he believed ISIS and the Syrian government were active in Sweden.¹²² Swedish law does not allow the use of anonymous witnesses in criminal trials, although there is scope for more limited witness protection measures.¹²³

Similar concerns were raised in interviews conducted in Germany. In addition to concerns over the safety of families in Syria, some refugees said that they were also personally afraid because they believed Syrians affiliated with the government and now living in

¹²⁰ Ibid.

¹²¹ Human Rights Watch group interviews with Syrian refugees, Värmdö and Varberg, January 18-19, 2017; Human Rights Watch interviews with Swedish officials, January 17, 2017; Human Rights Watch interview with NGO, Stockholm, January 17, 2017; Human Rights Watch telephone interview with Ahmad, February 3, 2017; Human Rights Watch with Swedish victims' lawyer, January 20, 2017.

¹²² Human Rights Watch group interview with Syrian refugees, Varberg, January 19, 2017.

¹²³ Swedish Code of Judicial Procedure 1942:740 (Rättegångsbalken 1942:740), entered into force January 1, 1948, chapters 36 section 10, and 37 section 3, http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/rattgangsbalk-1942740_sfs-1942-740 (accessed September 6, 2017), Swedish, http://www.government.se/contentassets/a1be9e99a5c64d1bb93a96ce5d517e9c/the-swedish-code-of-judicial-procedure-ds-1998_65.pdf (accessed September 6, 2017), official English translation. Alternative witness protection measures are available in Sweden either under the national program for personal protection or pursuant to the Code of Judicial Procedure. See Police Act 1984:387 (Polislag 1984:387), entered into force June 7, 1984, sections 2a and b, http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/polislag-1984387_sfs-1984-387 (accessed September 6, 2017); Ordinance 2006:519 on Special Personal Safety Programs (Förordning 2006:519 om särskilt personsäkerhetsarbete m.m.), entered into force June 1, 2006, para. 2, http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-2006519-om-sarskilt_sfs-2006-519 (accessed September 6, 2017); Law 1991:483 on Fictitious Personal Identification Data (Lag 1991:483 om fingerade personuppgifter), entered into force May 30, 1991, sections 2-4, http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-1991483-om-fingerade-personuppgifter_sfs-1991-483 (accessed September 6, 2017); Swedish Code of Judicial Procedure, chapters 35 section 14 and 36 sections 18-19. See also Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA), "Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Sweden," GRETA (2014)11, May 27, 2014, paras. 218-219, <https://rm.coe.int/168063c456> (accessed September 6, 2017).

Europe could harm them.¹²⁴ German law allows for the identity of witnesses to be concealed in limited circumstances (for example, victims of sexual violence).¹²⁵ However, anonymity is rarely used because such testimony can only be given limited weight, and prosecutors therefore see it as a last resort.¹²⁶

Lack of Awareness

Human Rights Watch research also revealed a general lack of awareness among Syrian refugees about serious international crimes proceedings. This included:

- Lack of knowledge of the legal systems in place and the possibility for Syrian refugees to contribute to justice efforts;
- Lack of knowledge of victims' right to participate in criminal proceedings; and
- Lack of knowledge about the ongoing cases.

Legal System

Syrian refugees' willingness (and ability) to share information with authorities may be impacted by their lack of knowledge of the mandates and work of immigration authorities, law enforcement, prosecutorial services and how they interact with each other.

This is particularly true in relation to the delicate issue of immigration status. If immigration authorities do not make clear to asylum applicants their mandate and the distinction between the asylum process and criminal investigations, Syrian asylum seekers may be reluctant to share information for fear it may impact their claims for protection.

According to several Syrian refugees in both countries, asylum seekers often deny having witnessed or being victims of crimes during their asylum interview because they believe

¹²⁴ Human Rights Watch interview with Layal, Berlin, February 20, 2017; Human Rights Watch group interview with Syrian refugees, Berlin, February 20, 2017; Human Rights Watch group interview with Syrian refugees, Hannover, February 21, 2017; Human Rights Watch group interview with Syrian refugees, Cologne, February 22, 2017.

¹²⁵ German Code of Criminal Procedure, section 68; Human Rights Watch interview with German academic, February 14, 2017; Human Rights Watch interview with German victims' lawyers, February 14, 2017; Human Rights Watch interview with German officials, February 16, 2017; Human Rights Watch interview with German academics, February 23, 2017.

¹²⁶ In addition, victims who wish to participate in proceedings as civil parties cannot remain anonymous. Human Rights Watch interview with German victims' lawyers, February 14, 2017; Human Rights Watch interview with German officials, February 16, 2017; Human Rights Watch interview with German academics, February 23, 2017.

such disclosure will negatively affect the ultimate decision on their status.¹²⁷ Raslan said he was reluctant to share information during his asylum interview:

I didn't ask too much and didn't say too much. I was afraid for my papers, for myself and for my family back in Syria. [...] I didn't say I saw something in Syria, even if I did.¹²⁸

Two interviewees in Sweden said that many asylum seekers in the country appeared to believe they would be better placed to attribute their flight from Syria to ISIS during asylum interviews even if they fled from government forces or from other armed groups. This belief appeared to be based on the assumption that citing ISIS would more likely result in a positive status determination because of the group's bad international reputation.¹²⁹

Similar stories also circulated among asylum seekers in Germany. Some interviewees were told by other refugees not to mention any crimes they might have suffered at the hands of Syrian government forces because it would "complicate" their asylum process.¹³⁰

None of the Syrian refugees Human Rights Watch interviewed in Sweden and Germany said they were told they had a right to report to the police when they disclosed to the immigration officials information about crimes they were victims of or witnessed. Fifteen interviewees who shared this information with the immigration authorities told Human Rights Watch that they did not know that they could also share it with the police and how to go about doing that.¹³¹

¹²⁷ Human Rights Watch group interview with Syrian refugees, Värmdö, January 18, 2017; Human Rights Watch interview with Abdullah, Värmdö, January 18, 2017; Human Rights Watch interview with Hassan, Berlin, February 20, 2017; Human Rights Watch group interview with Syrian refugees, Hannover, February 21, 2017; Human Rights Watch group interview with Syrian refugees, Cologne, February 22, 2017.

¹²⁸ Human Rights Watch group interview with Syrian refugees, Cologne, February 22, 2017.

¹²⁹ Human Rights Watch group interview with Syrian refugees, Värmdö, January 18, 2017; Human Rights watch interview with Abdullah, Värmdö, January 18, 2017.

¹³⁰ Human Rights Watch group interview with Syrian refugees, Cologne, February 22, 2017.

¹³¹ Human Rights Watch group interview with Syrian refugees, Värmdö, January 18, 2017; Human Rights Watch group interview with Syrian refugees, Berlin, February 20, 2017; Human Rights Watch interview with Hassan, Berlin, February 20, 2017; Human Rights Watch group interview with Syrian refugees, Hannover, February 21, 2017.

Ibrahim complained about the lack of information available on how to contact the competent authorities: “Why don’t they tell us? I don’t know where to go if I want to say something.”¹³²

Victims’ Right to Participate in Proceedings

Under Swedish law, victims have the right to initiate criminal proceedings or participate as civil parties in cases initiated by prosecutors. They are entitled to free legal representation.¹³³ Under German law, victims of specific crimes can join proceedings as “private accessory prosecutors” and have a right to free legal counsel, which is automatically appointed.¹³⁴

None of the refugees interviewed were informed of their right to participate in legal proceedings during or after the asylum process.¹³⁵ Ayman filed a criminal complaint as part of a group of victims with the German prosecutors against some senior Syrian officials.¹³⁶

¹³² Human Rights Watch group interview with Syrian refugees, Berlin, February 20, 2017.

¹³³ See Swedish Code of Judicial Procedure, chapter 20, sections 8-9; Legal Aid Act 1996:1619 (Rättshjälplagen 1996:1619), Justitiedepartementet DOM, entered into force December 1, 1997, http://www.riksdagen.se/sv/dokument-lagar/dokument/svenskforfattningssamling/rattshjalpslag-19961619_sfs-1996-1619 (accessed September 6, 2017), Swedish, http://ec.europa.eu/justice_home/judicialatlascivil/html/pdf/nationalLaw_la_swe_en.pdf (accessed September 6, 2017), unofficial summarized translation.

¹³⁴ See German Code of Criminal Procedure, section 397a (1). Section 395 of the Code of Criminal Procedure lists the crimes for which victims can participate as “private accessory prosecutors.” While the provision does not explicitly mention serious international crimes, it includes offenses against bodily integrity, murder and serious sexual offenses which may constitute acts of war crimes, crimes against humanity and genocide.

¹³⁵ This was also confirmed by civil society working with refugees in Sweden. Human Rights Watch interview with NGO, Stockholm, January 16, 2017. In Sweden, such information is usually delivered to a potential victim during the early stages of an investigation by the lawyer appointed to assist him or her. Human Rights Watch email correspondence with Swedish official, August 14, 2017. In Germany, such information is usually given to asylum seekers if and when they are questioned by the police. Human Rights Watch interview with German officials, February 16, 2017; Human Rights Watch interview with German officials, February 22, 2017. According to article 4 1(b) the 2012 EU Directive on the rights of victims of crimes, “Member States shall ensure that victims are offered the following information, without unnecessary delay, from their first contact with a competent authority in order to enable them to access the rights set out in this Directive: [...] (b) the procedures for making complaints with regard to a criminal offense and their role in connection with such procedures.” See Directive 2012/29/EU of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support, and Protection of Victims of Crime, and Replacing Council Framework Decision 2001/220/JHA, October 25, 2015, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029&from=EN> (accessed September 6, 2017), article 4 1(b).

¹³⁶ On March 1, 2017, the European Center for Constitutional and Human Rights (ECCHR) together with seven Syrian torture survivors as well as two Syrian lawyers Anwar al-Bunni (Syrian Center for Legal Researches & Studies) and Mazen Darwish (Syrian Center for Media and Freedom of Speech) submitted a criminal complaint to the Office of the Federal Prosecutor against six high-level officials within the Syrian Military Intelligence Service. At the time of writing, German prosecutors had started interviewing the victims who brought the claim. See “Torture under the Assad Regime: Germany Paves the Way for First Syrian Cases under Universal Jurisdiction Laws,” ECCHR, <https://www.ecchr.eu/en/international-crimes-and-accountability/syria/torture-under-assad/articles/international-crimes-and-accountability-syria-torture-under-assad.html> (accessed September 6, 2017).

He told Human Rights Watch that he only learned about the possibility of such action after speaking with one of his Syrian friends who is a lawyer.¹³⁷

Ongoing Cases

The majority of the Syrian refugees Human Rights Watch interviewed in Sweden and Germany either had no knowledge about the criminal proceedings taking place in their host country, or limited (and often incorrect) information.¹³⁸ Those who had some accurate information about these proceedings reported learning it from the Facebook pages of Syrian activists.¹³⁹ Some said they wanted to receive more information about these and potential future cases from official sources, preferably in Arabic.¹⁴⁰ They cited social media, and Facebook in particular, as effective platforms to publicize any updates about the cases.

The Syrian crisis is distinct from other situations Swedish and German investigators and prosecutors have worked on in the past. The large presence of Syrian refugees and asylum seekers on their territories and the important role they can play gives rise to new demands on the authorities to effectively engage with these affected communities.

Trials in Sweden and Germany are not videotaped or televised, but they are usually open to the general public and media.¹⁴¹ The proceedings are conducted in Swedish and German, and in the Syria prosecutions that have gone forward Arabic translation is provided to the defendant. Information on the proceedings (usually in relation to an arrest, the beginning of a trial or a judgment) is sometimes published on the websites of the prosecutors and

¹³⁷ Human Rights Watch group interview with Syrian refugees, Hannover, February 21, 2017.

¹³⁸ Human Rights Watch group interviews with Syrian refugees, Värmdö and Varberg, January 18-19, 2017; Human Rights Watch interview with Layal, Berlin, February 20, 2017; Human Rights Watch group interview with Syrian refugees, Berlin, February 20, 2017; Human Rights Watch group interview with Syrian refugees, Hannover, February 21, 2017; Human Rights Watch interview with Hakim, Hannover, February 21, 2017; Human Rights Watch group interview with Syrian refugees, Cologne, February 22, 2017.

¹³⁹ Human Rights Watch group interview with Syrian refugees, Varberg, January 19, 2017; Human Rights Watch group interview with Syrian refugees, Berlin, February 20, 2017; Human Rights Watch group interview with Syrian refugees, Hannover, February 21, 2017; Human Rights Watch group interview with Syrian refugees, Cologne, February 22, 2017.

¹⁴⁰ Human Rights Watch group interviews with Syrian refugees, Värmdö and Varberg, January 18-19, 2017; Human Rights Watch interview with Layal, Berlin, February 20, 2017; Human Rights Watch interview with Hassan, Berlin, February 20, 2017; Human Rights Watch group interview with Syrian refugees, Berlin, February 20, 2017; Human Rights Watch group interview with Syrian refugees, Cologne, February 22, 2017.

¹⁴¹ Portions of trials in Sweden can be audio recorded. The opening of trials and the delivery of judgements in Constitutional Court cases in Germany are at times televised. Human Rights Watch interview with Swedish officials, January 16, 2017; Human Rights Watch interview with German officials, February 15, 2017.

the police, but is only available in Swedish or German.¹⁴² Judgments and other relevant court documents are also only available in Swedish and German. German prosecutors are also seeking the translation of interlocutory—that is provisional—decisions as well as judgments into the languages relevant to particular cases.¹⁴³

In February 2017, Swedish prosecutors organized a press conference to discuss two recent judgments (one related to Syria) and to explain the work of the war crimes prosecutor team.¹⁴⁴ Prosecutors in Germany usually hold a press conference once a trial is over and convene a press conference once a year to discuss their work overall.¹⁴⁵ While these initiatives are valuable and show openness on the part of authorities, they are only held in Swedish and German and do not involve proactive engagement with affected communities.

Swedish and German media have not systematically covered the most recent Syria-related cases.¹⁴⁶ Practitioners in Sweden noted that journalists usually reach out to investigators and prosecutors when there is a new case but there is generally no interest in covering the proceedings afterwards.¹⁴⁷ What coverage exists is also only available in Swedish and German. Syrian refugees in Sweden told Human Rights Watch that there is no Arabic-speaking media outlet that they trust to deliver this kind of information.¹⁴⁸

Interviewees in both countries said the press does not seem interested in these cases and some attributed this to the public's fatigue about Syria-related news, strong interest in

¹⁴² See press release section of the Swedish police website <https://polisen.se/Aktuellt/Pressmeddelanden/oo-Gemensam/Presstraff-att-utreda-krigsbrott-och-folkmord/> (accessed September 6, 2017); news section of the Swedish police website <https://polisen.se/Aktuellt/Nyheter/Gemensam-2017/Februari/Tva-man-doms-for-krigsbrott-/> (accessed September 6, 2017); and press release section of the German federal prosecution authority website <https://www.generalbundesanwalt.de/de/aktuell.php> (accessed September 6, 2017).

¹⁴³ Human Rights Watch interview with German officials, February 16, 2017.

¹⁴⁴ See transcript of invitation to a news conference on how to investigate war crimes, Swedish Prosecution Authority (Åklagarmyndigheten), Stockholm, February 10, 2017, <https://www.aklagare.se/en/nyheter--press/press-releases/?newsId=791CA4712642169F> (accessed September 6, 2017).

¹⁴⁵ Human Rights Watch interview with German victims' lawyers, February 14, 2017; Human Rights Watch interview with German academic, February 14, 2017; Human Rights Watch interview with German officials, February 15, 2017; Human Rights Watch interview with German officials, February 16, 2017.

¹⁴⁶ For the purpose of this report, media include print, online, broadcast and audio news outlets.

¹⁴⁷ Human Rights Watch interview with Swedish officials, January 17, 2017; Human Rights Watch interview with Swedish victims' lawyer, January 20, 2017; Human Rights Watch interview with Swedish defense lawyer, January 20, 2017.

¹⁴⁸ Human Rights Watch interviews with Swedish officials, January 17, 2017; Human Rights Watch group interview with Syrian refugees, Värmdö, January 18, 2017; Human Rights Watch telephone interview with Ahmad, February 3, 2017.

national security issues and ISIS, as well as a lack of understanding about legal concepts such as war crimes.¹⁴⁹

Impact of Limited Outreach on Syrian Refugees

Inadequate outreach to affected communities in Sweden and Germany can have direct impact on the success of accountability efforts in relation to serious international crimes committed in Syria. Fear and mistrust on the part of Syrians in Sweden and Germany inhibits their willingness to share potentially probative information with the authorities. Lack of awareness and understanding of the proceedings and systems in place further fuels these attitudes and likely prevents Syrians from fully understanding these justice efforts and being able to contribute to them.

Abdou, who said he was a victim of crimes perpetrated by the Syrian government and now lives in Germany, said that “Germans didn’t open doors for this community to be involved in these procedures in general.”¹⁵⁰

On the other hand, knowledge of these proceedings and how to contribute to them might provide Syrians in Sweden and Germany with a sense of justice and allow them to feel like stakeholders in these efforts and could potentially also help integrate them into society. Samira, who lives in Sweden, explained that she has information she wants to share about crimes she witnessed in Syria, but did not know she could:

No one hears my voice, no one told me I could talk. I would love to share information, to see the truth and show how much we have suffered.¹⁵¹

At the same time, Syrian refugees sometimes expressed to Human Rights Watch unrealistic expectations about how they might contribute to the prosecution of serious international crimes and the outcome of these cases. Their skewed expectations at times stemmed from a lack of familiarity about the legal systems in place and the limitations of these proceedings.

¹⁴⁹ Human Rights Watch telephone interview with Ahmad, February 3, 2017; Human Rights Watch telephone interviews with Swedish journalists, February 8, 2017.

¹⁵⁰ Human Rights Watch group interview with Syrian refugees, Cologne, February 22, 2017.

¹⁵¹ Human Rights Watch group interview with Syrian refugees, Värmdö, January 18, 2017.

Because of the constraints of their mandates and resources, domestic authorities often cannot utilize the information Syrian refugees provide to build cases. Despite a willingness of some Syrians who have witnessed and/or documented serious crimes to share information with authorities,¹⁵² the information often does not relate to events within their jurisdiction or meet the evidentiary threshold required for criminal prosecutions in Sweden and Germany.

In addition and as outlined above, cases brought before domestic courts for crimes committed abroad often depend on the physical presence of suspects and the availability of evidence. In the context of the ongoing conflict in Syria, it is unlikely that senior government officials or military commanders will travel to Europe in the near future, reducing the likelihood of cases being brought against mid to high-level individuals affiliated with the government.

But these constraints are not necessarily apparent or communicated to Syrian communities in Sweden and Germany, causing frustration and a loss of faith in the authorities. Hakim, a journalist detained by the Syrian government, said: “Most people who want the regime on trial lost hope.”¹⁵³

Regional and International Information Gathering

Swedish and German authorities are also looking outside of their borders to gather information relevant to their efforts to bring justice for grave crimes committed in Syria. While the European Union offers platforms to facilitate the exchange of information between its member states, cooperation with countries outside the EU is more difficult. Nongovernmental organizations, as well as UN bodies, are also playing an increasingly important role in documenting abuses committed in Syria. Investigators and prosecutors are looking for better ways to interact and cooperate with these entities.

¹⁵² Human Rights Watch group interviews with Syrian refugees, Värmdö and Varberg, January 18-19, 2017; Human Rights Watch group interview with Syrian refugees, Berlin, February 20, 2017; Human Rights Watch group interview with Syrian refugees, Hannover, February 21, 2017.

¹⁵³ Ibid.

Countries in Europe

Swedish and German authorities reported effective cooperation at the European level due to protocols that allow for the swift exchange of information.¹⁵⁴

Prosecutors and investigators from both countries also regularly attend meetings of the “Network of Contact Points in Respect of Persons Responsible for Genocide, Crimes Against Humanity and War Crimes” (EU Genocide Network), hosted by Eurojust.¹⁵⁵ Eurojust is the EU's judicial cooperation agency and is mandated to support and strengthen coordination and cooperation between national investigating and prosecuting authorities within the EU in relation to serious crimes.

The EU Genocide Network organizes bi-annual meetings in which investigators and prosecutors from each EU member state, as well as from Norway, Switzerland, Canada, and the United States, exchange information and share experiences and working methods.¹⁵⁶ It provides a forum specifically mandated to facilitate cooperation and knowledge sharing in the EU in the field of grave international crimes.

Civil society is invited to participate for part of the meeting, and the remainder is conducted in closed session so that practitioners can exchange information on specific cases in a confidential setting. According to officials, these meetings have greatly helped foster bilateral relationships that have proved significant to their work and specific cases, including in relation to Syria.¹⁵⁷

Separately, Germany is also working with other European countries, the Netherlands in particular, to establish a central database for war crimes, crimes against humanity and

¹⁵⁴ See in particular, European Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, adopted April 20, 1959, ETS No.030, entered into force June 12, 1962. See also Council Act of 29 May 2000 Establishing in Accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, adopted on May 29, 2000, OJ C 197, 12.7.2000, entered into force August 23, 2005.

¹⁵⁵ Eurojust, EU Genocide Network homepage, <http://www.eurojust.europa.eu/Practitioners/Genocide-Network/Pages/Genocide-Network.aspx> (accessed September 6, 2017). For more information on the establishment and the work of the EU Genocide Network, see Human Rights Watch, *The Long Arm of Justice*, pp. 86-90.

¹⁵⁶ Human Rights Watch, *The Long Arm of Justice*, pp. 86-90.

¹⁵⁷ In the context of Syria, Swedish officials reported effective cooperation with Germany, Finland, the Netherlands, Norway and France, while German officials reported the same with France, Norway and the Netherlands. Human Rights Watch interviews with Swedish officials, January 17, 2017; Human Rights Watch interview with German officials, February 16, 2017; Human Rights Watch interview with German officials, February 22, 2017.

genocide within Europol, the EU agency for law enforcement and cooperation among member states.¹⁵⁸ According to one practitioner, this secure database will optimize the investigative efforts of national authorities, including the secure exchange of information between the existing police war crimes units in Europe.¹⁵⁹

Considering the important role immigration authorities play in the identification of potential suspects of serious international crimes, Human Rights Watch has advocated for the creation of a European network of focal points for exclusion cases, including those related to article 1F of the Refugee Convention.¹⁶⁰ This recommendation appears to have been realized, as of February 2017, with the European Asylum Support Office's launching of the Exclusion Network, which brings together member states' focal points, EU authorities, the UN High Commissioner for Refugees, and the Intergovernmental Consultations on Migration, Asylum and Refugees to cooperate on matters relating to exclusion from international protection.¹⁶¹

As noted above, when governments consider whether to deport people excluded from refugee status based on serious reasons for considering them to have committed grave offenses, governments also have to consider whether their removal might expose them to torture, unfair trials, or other improper or inhuman treatment—and, as a result, whether deportation is barred under international law or if it would be more appropriate to hold them accountable in a jurisdiction where they would receive fair procedures and proper treatment.

¹⁵⁸ Grave international crimes have recently become part of Europol's mandate. See "Regulation of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol)," (EU) 2016/794, May 11, 2017, <https://www.europol.europa.eu/publications-documents/regulation-eu-2016/794-of-european-parliament-and-of-council-of-11-may-2016> (accessed September 6, 2017). Human Rights Watch interview with German officials, February 22, 2017. See also Human Rights Watch, *The Long Arm of Justice*, p. 92.

¹⁵⁹ Human Rights Watch interview with German officials, February 22, 2017. See also Human Rights Watch, *The Long Arm of Justice*, p. 92.

¹⁶⁰ For more information see Human Rights Watch, *The Long Arm of Justice*, pp. 91-92. See also Maarten Bolhuis and Joris van Wijk, "Study on the Exchange of Information between European Countries Regarding Persons Excluded from Refugee Status in Accordance with Article 1F Refugee Convention" (Amsterdam: Department of Criminal Law and Criminology, Vrije Universiteit Amsterdam, 2015), <https://cicj.org/wp-content/uploads/2012/11/Bolhuis-Van-Wijk-2015-Study-on-the-exchange-of-information-on-1F-exclusion-between-European-countries.pdf> (accessed September 6, 2017).

¹⁶¹ See European Asylum Support Office (EASO), "EASO Exclusion Network," <https://www.easo.europa.eu/easo-exclusion-network-o> (accessed September 6, 2017).

Countries neighboring Syria

Turkey, Lebanon, and Jordan host the largest number of Syrian refugees worldwide.¹⁶² As a result, a significant pool of potential victims and witnesses of serious international crimes committed in Syria can be found there.¹⁶³ However, cooperation with these countries is difficult because there is no framework similar to that in Europe for the quick exchange of information. According to some practitioners and government officials in Sweden and Germany, requests from European investigators and prosecutors for information from these countries (known as requests for mutual legal assistance) can be burdensome and time-consuming depending on the bilateral agreements between the interested countries.¹⁶⁴

Swedish and German officials reported that they have had limited or no contact with authorities in Turkey, Lebanon, and Jordan because of the difficulties involved. In addition, such cooperation has been largely unnecessary for the investigations undertaken so far.¹⁶⁵ In one exception, Swedish authorities sought to interview a victim, who was discovered in Turkey by a Swedish journalist.¹⁶⁶ While the request for mutual legal assistance in the case was submitted in May 2015, the interview was not conducted until January 2016.¹⁶⁷ According to some practitioners, Germany has not yet submitted cooperation requests to any of these countries in relation to their current work on Syria.¹⁶⁸

¹⁶² See UNHCR, “Syrian Regional Refugee Response: Total Persons of Concern,” last updated September 6, 2017, http://data.unhcr.org/syrianrefugees/regional.php#_ga=1.19774712.1190624306.1484081490 (accessed September 6, 2017).

¹⁶³ These countries do not have systems in place for the prosecution of grave international crimes. The Turkish Criminal Code contains provisions penalizing crimes against humanity and genocide but does not provide for the use of universal jurisdiction for these crimes. Lebanon, Jordan and Iraq have not incorporated grave international crimes into their domestic laws. Amnesty International, *Universal Jurisdiction: A Preliminary Survey of Legislation Around the World – 2012 Update*, October 9, 2012, <https://www.amnesty.org/en/documents/ior53/019/2012/en> (accessed September 6, 2017); pp. 64-65, 67-68, 72-73, 115-116.

¹⁶⁴ Human Rights Watch interview with Swedish officials, January 17, 2017; Human Rights Watch interview with German officials, February 16, 2017; Human Rights Watch interview with German official, February 23, 2017.

¹⁶⁵ Human Rights Watch interview with Swedish officials, January 17, 2017; Human Rights Watch telephone interview with Swedish journalist, February 8, 2017.

¹⁶⁶ This was the case against Mouhannand Droubi. See *Prosecutor v. Mouhannand Droubi*, Södertörn District Court, Case B 13656-14, Judgment of February 26, 2015; *Prosecutor v. Mouhannand Droubi*, Svea Court of Appeal, Case B 2440-15, Decision of February 23, 2016 announced on February 26, 2016; *Prosecutor v. Mouhannand Droubi*, Södertörn District Court, Case B 2639-16, Judgment of May 11, 2016; *Prosecutor v. Mouhannand Droubi*, Svea Court of Appeal, Case B 4770-16, Judgment of August 5, 2016. See also Terese Christiansson, “An Unusual but Obvious Decision” (“Ett ovanligt men självklart beslut”), *Kronikorer*, February 26, 2016, <http://www.expressen.se/kronikorer/terese-cristiansson/ett-ovanligt-men-sjalkvklart-beslut/> (accessed September 6, 2017).

¹⁶⁷ Human Rights Watch interview with Swedish officials, January 17, 2017; Terese Christiansson, “An Unusual but Obvious Decision,” *Kronikorer*.

¹⁶⁸ The federal police have a liaison office in Beirut who, in addition to supporting the work of the German police in Lebanon, is also responsible for Syria. However, the work on Syria is currently stalled due to the ongoing conflict. German Parliament, “Reply by the Federal Government to the Inquiry Put by Mr Tom Koenigs, Mr Luise Amtsberg, Dr Franziska Brantner, Other

Other Actors

National investigators and prosecutors often use reports from international NGOs and other groups or entities for background information or for generating initial leads. However, defense lawyers point out that it is problematic if judges are willing to accept such reports to establish facts at trial, even as background, when the defense has no opportunity to effectively challenge the information in such reports, or question the authors. Courts in Sweden have accepted NGO reports as credible and admissible in court as background evidence.¹⁶⁹

According to one practitioner in Sweden, the excessive reliance of Swedish prosecutors on these kind of reports in the first two Syria-related war crimes cases lead to a de facto lowering of the evidentiary threshold because these reports do not contain information collected according to criminal procedural standards.¹⁷⁰ One practitioner in Germany also said that judges tend to blindly rely on these reports because of their unfamiliarity with the cultural and political context of the countries in which the crimes allegedly took place.¹⁷¹

Authorities are facing similar difficulties with information available in UN Commission of Inquiry reports. Given that the commission is not a prosecutorial mechanism, to make a finding, it requires “reasonable grounds to believe” that the events it investigates occurred as described.¹⁷² This threshold is lower than what is required by domestic criminal procedure.

Practitioners in Sweden said that cooperation with the Commission of Inquiry has also proved difficult due to the commission’s strict disclosure protocols and its limited staff.¹⁷³ According to commission staff, the Syria Commission of Inquiry is mandated with human rights investigations and therefore does not have adequate information management

Members of Parliament and the Parliamentary Group BÜNDNIS 90/DIE GRÜNE (Green Party): Investigation in Germany for Serious International Crimes Committed in Syria,” Document n. 18/12533, question 27. Public officials also told Human Rights Watch that cooperation with Turkey seems unlikely due to diplomatic tensions between Germany and Turkey. Human Rights Watch interview with German officials, February 16, 2017; Human Rights Watch interview with German official, February 23, 2017.

¹⁶⁹ Human Rights Watch interview with Swedish defense lawyer, January 20, 2017; Human Rights Watch email correspondence with German defense lawyer, April 23, 2017.

¹⁷⁰ Human Rights Watch interview with Swedish defense lawyer, January 20, 2017.

¹⁷¹ Human Rights Watch email correspondence with German defense lawyer, April 23, 2017.

¹⁷² See reports of the Commission of Inquiry at UN Office of the High Commissioner for Human Rights, “Independent International Commission of Inquiry on the Syrian Arab Republic,” <http://www.ohchr.org/EN/HRBodies/HRC/IICISyria/Pages/IndependentInternationalCommission.aspx> (accessed September 6, 2017).

¹⁷³ Human Rights Watch interviews with Swedish officials, January 17, 2017.

systems to support criminal investigations or sufficient staff to dedicate to cooperation with national authorities.¹⁷⁴ In addition, information requests from national authorities often pertain to specific individuals or events that were not the subject of the commission's investigations, often because national investigations focused on individuals or victims who happen to fall within their national jurisdiction, rather than individuals involved in directing or ordering high profile incidents documented in commission reports. Another hurdle involved the lack of consent from sources to share information within the possession of the commission with such jurisdictions.¹⁷⁵

Nonetheless, authorities in both Sweden and Germany believe the commission could play an important role in providing relevant information for Syria-related investigations and prosecutions in these countries. One practitioner recommended a contact point within the Swedish War Crimes Commission be dedicated to cooperation issues with the Syria Commission of Inquiry.¹⁷⁶ In the meantime, German officials are sharing experiences with other national authorities to improve and streamline overall cooperation with the Syria Commission of Inquiry.¹⁷⁷

The new UN General Assembly established investigative mechanism for Syria could also become an important source of information for domestic authorities. The mechanism has a two-pronged mandate:

- 1) to collect, consolidate, preserve and analyze evidence of violations of international humanitarian law and human rights violations and abuses; and
- 2) to prepare files in order to facilitate and expedite fair and independent criminal proceedings, in accordance with international law standards, in national, regional or international courts or tribunals that have or may in the future have jurisdiction over these crimes, in accordance with international law.¹⁷⁸

¹⁷⁴ Human Rights Watch telephone interviews with Commission of Inquiry staff members, July 11 and 19, 2017.

¹⁷⁵ Ibid.

¹⁷⁶ Human Rights Watch interview with Swedish official, January 17, 2017.

¹⁷⁷ Human Rights Watch interview with German official, February 23, 2017.

¹⁷⁸ UN General Assembly, Report of the Secretary-General, A/71/L.755, January 19, 2017, https://www.un.org/en/ga/search/view_doc.asp?symbol=A/71/755 (accessed September 6, 2017).

Since the mechanism is not yet operational, it is still too early to determine how this would work in practice. However, Swedish and German authorities have shown interest in cooperating with the mechanism.

Efforts to Address Challenges

Sweden and Germany are taking active steps to address some of the challenges outlined above.

Skills Training and Legal Education

The investigation and prosecution of grave international crimes require specific skills and knowledge. Prosecutors must be able to prove contextual elements that are specific to these kinds of offenses (for example, the existence of a conflict or a widespread and systematic violation against a civilian population) as well as link the alleged perpetrators to atrocities that might have been committed by their subordinates. In addition, these crimes are usually committed against a large number of victims outside the territory of the prosecuting country.

Swedish and German authorities are working toward addressing these challenges. However, certain issues have not yet been addressed and require further consideration.

Sweden

Swedish police within the War Crimes Commission are not specifically trained to investigate serious international crimes and mainly “learn by doing,” though at least one investigator and one analyst have had previous experience with these types of investigations working for international organizations.¹⁷⁹

However, because of the decentralized structure of the Swedish police, any police station in the country could receive important information on serious international crimes (committed in Syria or elsewhere) and must be prepared to recognize and process it accordingly. To better equip regular police officers, the commission prepared guidelines

¹⁷⁹ Human Rights Watch interviews with Swedish officials, January 17, 2017.

and made them available on the internal police website to support officers to handle reports involving suspected war crimes.¹⁸⁰

Swedish prosecutors in the war crimes prosecutor team have developed an internal training strategy by pairing a prosecutor with previous experience in serious international crimes cases with those new to these types of prosecutions.¹⁸¹

Sweden has a decentralized judicial system and serious international crimes cases could potentially be argued in courts anywhere in the country.¹⁸² However, if there are reasons for it (for example, if many witnesses have to be flown to Sweden), prosecutors can ask the Ministry of Justice to move a case to a specific court.¹⁸³ In practice, prosecutors normally request that any serious international crimes cases be referred to the Stockholm District Court, which has informally developed some form of specialization to handle these types of cases.¹⁸⁴ Nonetheless, some interlocutors said that Swedish judges would benefit from training opportunities in international criminal law.¹⁸⁵

With some exceptions, lawyers representing victims and defendants in Sweden are often appointed to work on complex international criminal cases without having any previous exposure to international criminal law.¹⁸⁶ Practitioners suggested that trainings should be provided by the Swedish Bar Association for lawyers wishing to work on these cases.¹⁸⁷

¹⁸⁰ Ibid.; Human Rights Watch email correspondence with Swedish official, March 21, 2017.

¹⁸¹ Ibid.

¹⁸² Swedish Code of Judicial Procedure, chapter 19 section 2; Human Rights Watch interview with Swedish officials, January 17, 2017; Human Rights Watch email correspondence with Swedish official, March 22, 2017.

¹⁸³ The request is submitted to the Division for Criminal Cases and International Judicial Cooperation of the Ministry of Justice, but the decision is made by the government's cabinet as a whole. Human Rights Watch email correspondence with Swedish official, June 19, 2017.

¹⁸⁴ Human Rights Watch email correspondence with Swedish official, March 22, 2017.

¹⁸⁵ Human Rights Watch interview with Swedish victims' lawyer, January 20, 2017; Human Rights Watch interview with Swedish academic, January 20, 2017; Human Rights Watch interview with Swedish defense lawyer, January 20, 2017; Human Rights Watch telephone interview with NGO, February 9, 2017. According to two interviewees, this emerged as a problem in the Al-Madlawi case, in which the District Court of Gotheborg judges misinterpreted international humanitarian law, qualifying the crimes as terrorism offenses instead of war crimes. See *Prosecutor v. Hassan Mostafa Al-Mandlawi and Al Amin Sultan*, Stockholm District Court, Case B 9086-15, Judgment of December 14, 2015; *Prosecutor v. Hassan Mostafa Al-Mandlawi and Al Amin Sultan*, Court of Appeal for Western Sweden, Case B 5306-15, Judgment of March 30, 2016.

¹⁸⁶ Human Rights Watch interview with Swedish officials, January 17, 2017; Human Rights Watch interview with Swedish defense lawyer, January 20, 2017; Human Rights Watch telephone interview with NGO, February 9, 2017.

¹⁸⁷ Human Rights Watch interview with Swedish officials, January 17, 2017; Human Rights Watch interview with Swedish defense lawyer, January 20, 2017.

Germany

In Germany, the ZBKV holds a one-week war crimes training session every year, open to other officers from the federal police and the state police. At time of writing, it was planning to add a specific workshop on how to work with victims of serious international crimes.¹⁸⁸

ZBKV members also regularly attend trainings organized by Interpol.¹⁸⁹ In addition, the ZBKV has an ongoing shadowing program with colleagues from other war crimes units in Europe in which German investigators accompany colleagues from other countries in their daily work for a period of time to compare work and share best practices.¹⁹⁰ BAMF officials also attend trainings, seminars, and meetings with NGOs organized by the federal police.¹⁹¹

The Office of the Federal Prosecutor General consists of both federal prosecutors (generally more experienced) as well as seconded state prosecutors (usually younger and less experienced). The latter serve a three-year term at the Office of the Federal Prosecutor General before going back to their state. At time of writing, the prosecution war crimes unit employed three seconded state prosecutors: two working full-time on serious crimes prosecutions and one dividing time between the unit and other federal prosecutions.¹⁹²

Whenever the term of the seconded prosecutors is over, they are replaced by new state prosecutors who serve the war crimes unit for three years. This system allows for the knowledge of the investigation and prosecution of international criminal law cases to be spread within the prosecutorial offices in Germany and for potential vacant positions of permanent members of the war crimes unit to be filled by someone with previous experience in the unit.¹⁹³ Several prosecutors of the war crimes unit have also had academic experience in international criminal law and/or practical experience in international criminal courts and tribunals.¹⁹⁴

¹⁸⁸ Human Rights Watch interview with German officials, February 22, 2017.

¹⁸⁹ Practitioners also mentioned training by the Institute for International Criminal Investigations. Human Rights Watch interview with German officials, February 22, 2017.

¹⁹⁰ Human Rights Watch interview with German officials, February 22, 2017.

¹⁹¹ Human Rights Watch interview with German officials, February 17, 2017.

¹⁹² Human Rights Watch email correspondence with German official, May 29, 2017.

¹⁹³ Ibid.

¹⁹⁴ In addition, the prosecutors of the war crimes unit participate actively in the Working Group of International Criminal Law (Arbeitskreis Völkerstrafrecht), an annual conference of German-speaking scholars and practitioners working in the field of international criminal law. Human Rights Watch email correspondence with German official, March 20, 2017.

War crime cases in Germany are exclusively tried before the higher regional courts, serving as courts of first instance at the federal level for serious international crimes.¹⁹⁵ Judges in these courts are not specifically trained in international criminal law. However, a particular higher regional court may develop expertise in this field after hearing several cases concerning serious international crimes.¹⁹⁶ Prosecutors of the war crimes unit organize regular training workshops for judges sitting in these courts on international criminal law.¹⁹⁷

Germany has a long-standing tradition of academic focus on international criminal law. Several interviewees in Germany felt that the lawyers working on these cases as defense or victims' counsels had an adequate knowledge of this specific area of law because of their academic training, as well as their accumulated experience with these types of cases.¹⁹⁸

Country Expertise

National investigators and prosecutors may work simultaneously on different cases pertaining to a wide variety of countries. With limited resources at their disposal, they cannot become experts on all these situations. However, it is important to ensure a baseline of knowledge sufficient to allow them to effectively investigate and prosecute crimes committed in a specific context.

The specialized war crimes units within the police in Sweden and Germany are slowly building expertise on Syria, although more needs to be done given the growing number of investigations into the conflict. Swedish investigators are encountering difficulties identifying potential victims and witnesses among Syrian refugees in their territory and engaging with them partly due to language barriers as well as limited knowledge about

¹⁹⁵ Courts Constitution Act, section 120; German Code of Criminal Procedure, sections 7-21; Human Rights Watch email correspondence with German official, March 20, 2017; Human Rights Watch email correspondence with German official, March 31, 2017.

¹⁹⁶ Human Rights Watch email correspondence with German official, March 31, 2017. One ZBKV official recently suggested the creation of specialized panels of judges working on international criminal law cases within the higher regional courts. See Jörg Diehl, "BKA War Crime Investigator: You Will Never Forget Videos of Beheadings" ("BKA-Ermittler gegen Kriegsverbrecher: Aufnahmen von Enthauptungen vergessen Sie nicht"), *Spiegel Online*, June 22, 2017, <http://www.spiegel.de/politik/deutschland/bundeskriminalamt-klaus-zorn-ueber-ermittlungen-gegen-kriegsverbrecher-in-deutschland-a-1152891.html> (accessed September 6, 2017).

¹⁹⁷ Some of the judges are also part of the above-mentioned Working Group of International Criminal Law. Human Rights Watch email correspondence with German official, March 20, 2017.

¹⁹⁸ Human Rights Watch interview with German victims' lawyers, February 14, 2017; Human Rights Watch interview with German academics, February 23, 2017. According to one practitioner interviewed in Germany, there should be a restricted admission policy for lawyers working on these types of cases. Human Rights Watch email correspondence with German defense lawyer, April 23, 2017.

Syria. At the time of writing, the Swedish War Crimes Commission had one investigator and one analyst who spoke Arabic, and one of them is unofficially regarded as a Syria expert.¹⁹⁹ They work with ad hoc translators.²⁰⁰ In Germany, the federal police has Syria experts with whom the ZBKV works closely.²⁰¹

Improving Outreach Efforts

Authorities in Sweden and Germany who spoke to Human Rights Watch said they appreciated the importance of timely and effective outreach, and recognized shortcomings in this area. Practitioners Human Rights Watch interviewed attributed these shortcomings to the novelty of international criminal cases in their jurisdiction and lack of resources to conduct meaningful outreach.²⁰² In this regard, authorities in Germany have been in contact with representatives from international tribunals to learn from their experience with outreach programs.²⁰³ However, some practitioners said such a system could not be replicated at the domestic level due to lack of resources and dedicated institutional structures.²⁰⁴

Two practitioners in Sweden said that they find it difficult to communicate the breadth of their work.²⁰⁵ While they acknowledge that Swedish authorities could do more to popularize what they do, including explaining the system for investigating, prosecuting, and adjudicating serious international crimes works, confidentiality and security considerations limit possibilities.²⁰⁶

Despite these difficulties, Swedish and German authorities are taking steps to address the information gap and to gain the trust of Syrian refugees and asylum seekers through a series of outreach efforts.

At time of writing, for example, the War Crimes Commission in Sweden was crafting a brochure (for distribution by the Migration Agency and civil society organizations), and an

¹⁹⁹ Human Rights Watch interview with Swedish officials, January 17, 2017.

²⁰⁰ Ibid.

²⁰¹ Human Rights Watch interview with German officials, February 16, 2017.

²⁰² Human Rights Watch interview with German officials, February 16, 2017; Human Rights Watch interview with German officials, February 22, 2017.

²⁰³ Ibid.

²⁰⁴ Ibid.

²⁰⁵ Human Rights Watch interview with Swedish officials, January 17, 2017.

²⁰⁶ Ibid.

electronic application to explain the commission's work and provide potential victims and witnesses with contact information. The brochure and application were inspired by consultations between Swedish authorities, civil society organizations, and their counterparts from other countries, in particular Norway, Germany and the Netherlands.²⁰⁷ The commission also has a Swedish language-only web page with information about the unit and how to contact it.²⁰⁸

In Germany, the BAMF is using an electronic application that, in addition to general information on the asylum process and how to live in Germany, includes information on how to reach the police and presents it as a trusted community partner.²⁰⁹ The application does not provide contact information on how to report crimes to the ZBKV for people who might have suffered or witnessed atrocities.

The ZBKV prepared a brochure with information on the unit and how victims or witnesses of grave international crimes can contact it and the state police. This brochure is distributed to the state police and the BAMF.²¹⁰ The federal police also has a web page dedicated to the ZBKV with information on serious international crimes available in English and German.²¹¹ The web page does not contain information on how to contact the unit.

While authorities in both Sweden and Germany are taking important steps to better engage with Syrians on their territories, there are still gaps that need to be filled. Timely and effective outreach through channels accessible to the affected communities, in a language that they can understand, may help the authorities build the trust necessary to collect relevant information while empowering victims and potential witnesses, allowing them to become active participants in these justice efforts.

²⁰⁷ Ibid.; Human Rights Watch interview with NGO, Stockholm, January 17, 2017.

²⁰⁸ See War Crimes Commission webpage, <https://polisen.se/Om-polisen/Olika-typer-av-brott/Krigsbrott/> (accessed September 6, 2017).

²⁰⁹ Human Rights Watch interview with German immigration officials, February 17, 2017. For more information on the electronic application, available in German, English, French, Persian and Farsi, see Ankommen, homepage, <https://ankommenapp.de/> (accessed September 6, 2017).

²¹⁰ Human Rights Watch interview with German officials, February 22, 2017.

²¹¹ See web page on the federal police website dedicated to the ZBKV, https://www.bka.de/EN/OurTasks/Remit/CentralAgency/ZBKV/zbkv_node.html (accessed September 6, 2017).

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Annex I

SYRIA-RELATED SERIOUS CRIMES COMPLAINTS, INVESTIGATIONS, AND ARRESTS IN EUROPE²¹²

Target/Suspect/ Accused	Basis for Jurisdiction	Alleged Crimes and Charges	Case Status
FRANCE²¹³			
Qosmos ²¹⁴ (French software component company)	Universal jurisdiction	Suspected of selling surveillance equipment to the Syrian government that may have been used to facilitate the arrest and subsequent torture of detainees – Aiding and abetting torture	Complaint was filed on June 25, 2012 by the Fédération Internationale des Droits de L’Homme (FIDH) and the Ligue des droits de l’Homme (LDH) Judicial investigation

²¹² In addition to the countries listed below, Human Rights Watch is aware that Syria-related investigations are also ongoing in The Netherlands, Norway and Switzerland. However, Human Rights Watch was unable to collect more detailed information on these efforts, and therefore did not include them in this chart. On February 1, 2017, Guernica 37 International Justice Chambers filed a criminal complaint against nine members of the Syrian Security and Intelligence Forces on behalf of a victim of Spanish nationality, whose brother was arbitrarily detained, forcibly disappeared, tortured, and executed in 2013 in a detention center in Damascus. The alleged crime is state terrorism under Spanish law, and therefore is not included in this chart. See “Guernica 37 International Justice Chambers & G37 Despacho Internacional File a Criminal Complaint Against Members of the Syrian Security forces,” Guernica 37 International Justice Chambers press release, February 1, 2017, <http://guernica37.org/2017/02/press-release-guernica-37-international-justice-chambers-g37-despacho-internacional-file-a-criminal-complaint-against-members-of-the-syrian-security-forces> (accessed September 6, 2017). An investigation was officially opened on April 10, 2017. See “Judge in Spain Begins Investigation of Syrian war crimes” – Associated Press,” Guernica 37 International Justice Chambers, April 10, 2017, <http://guernica37.org/2017/04/judge-in-spain-begins-investigation-of-syrian-war-crimes-associated-press> (accessed September 6, 2017). Following an appeal by the state prosecutor, on July 21, 2017, a High Court in Madrid (Audiencia Nacional) dropped the complaint. See “Spain Court Drops Complaint against Syrian Security Forces,” Reuters, July 21, 2017, <http://www.reuters.com/article/us-mideast-crisis-syria-spain-idUSKBN1A61j1?il=0> (accessed September 6, 2017).

²¹³ French law provides for two phases of a criminal investigation: preliminary investigations (“enquêtes préliminaires”) undertaken by prosecutors, and judicial investigations (“informations judiciaires”) handled by investigative judges. See Human Rights Watch, *The Long Arm of Justice*, p. 70

²¹⁴ “FIDH and LDH Ask French Judiciary to Investigate on the Involvement of French Companies in Syria,” FIDH press release, July 25, 2012, <https://www.fidh.org/en/region/north-africa-middle-east/syria/FIDH-and-LDH-ask-French-judicial> (accessed September 6, 2017); and “France: Opening of a Judicial Investigation Targeting Qosmos for Complicity in Acts of Torture in Syria,” FIDH press release, April 11, 2014, <https://www.fidh.org/en/region/europe-central-asia/france/15116-france-opening-of-a-judicial-investigation-targeting-qosmos-for-complicity> (accessed September 6, 2017). For more information on the development of the case, see also “Designation of Qosmos as ‘Assisted Witness’ Constitutes an Important Step Forward in Case Underway,” FIDH press release, April 20, 2015, <https://www.fidh.org/en/region/europe-central-asia/france/designation-of-qosmos-as-assisted-witness-constitutes-an-important> (accessed September 6, 2017).

			was opened on April 11, 2014
Syrian government ²¹⁵	Passive personality principle – Victims are French nationals	Assassination of a French journalist, Remi Ochlik, and attempted assassination of a French journalist, Edith Bouvier, while they were covering the Syrian army's shelling of the Baba Amr district of Homs on February 22, 2012 – War crimes	Judicial investigation opened in 2012 for assassination and attempted assassination In October 2014, the facts were reclassified as war crimes, and the proceedings transferred to the war crimes unit
Syrian government ²¹⁶	N/A	Crimes allegedly committed between 2011 and 2013 by the Syrian government based on the Caesar photographs	Preliminary examination opened in September, 2015
Syrian government ²¹⁷	Passive personality principle – Victim (complainant) is a French national	Patrick and Mazzen Dabbagh were arrested in November 2013 by the Syrian Air Forces intelligence service, and were never seen again – Enforced disappearance	Complaint was filed on October 24, 2016 by Obeida Dabbagh (brother and uncle of the victims) Judicial investigation

²¹⁵ FIDH, *Annual Report 2015*, https://www.fidh.org/IMG/pdf/fidh_annual_report_2015.pdf (accessed September 6, 2017), pp. 30, 51. On July 9, 2016, the Center for Justice and Accountability (CJA) filed a lawsuit in the U.S. District Court for the District of Columbia on behalf of the family Marie Colvin, who fell victim of the same attack. The lawsuit was filed under the Foreign Sovereign Immunities Act, a federal law that allows victims to sue designated state-sponsors of terrorism for the murder of US citizens. For more information on this case see “Syria: War Crimes and the Murder of Journalist Marie Colvin,” CJA, <http://cja.org/what-we-do/litigation/colvin-v-syria> (accessed September 6, 2017). The family of Marie Colvin and British journalist Paul Conroy (also injured in the 2012 attack in Baba Amr) joined the complaint in France as civil parties. Human Rights Watch interview with NGO, July 4, 2017.

²¹⁶ See TRIAL International, *Make Way for Justice #3: Universal Jurisdiction Annual Review 2017*, p. 26.

²¹⁷ Ibid. See also “The Case of Two Disappeared Franco-Syrians in a Bachar El-Assad Jail Referred to the French Justice,” FIDH press release, October 24, 2016, <https://www.fidh.org/en/region/north-africa-middle-east/syria/the-case-of-two-disappeared-franco-syrians-in-a-bachar-el-assad-jail> (accessed September 6, 2017); and “Syria: French Judges Open Enquiry into Disappearance of Franco-Syrian Father and Son in Bachar El-Assad’s Jails,” FIDH, November 7, 2016, <https://www.fidh.org/en/impacts/syria-french-judges-open-enquiry-into-disappearance-of-franco-syrian> (accessed September 6, 2017). In July 2016, a similar claim was filed by Mustafa Abdul Rahman, brother of Hicham Rahman, a Syrian doctor allegedly disappeared, tortured and killed by Syrian government forces. The complainant died later in the summer and the case was dismissed. Human Rights Watch interview with NGO, July 4, 2017.

		and torture as crimes against humanity	was opened on October 27, 2016
Lafarge (French cement-manufacturing company) ²¹⁸	Active personality principle – Perpetrator is a French national	Suspected of financing ISIS and being complicit in war crimes and crimes against humanity in Syria	Complaint was filed on November 15, 2016 by 11 former Lafarge Syrian employees, the European Center for Constitutional and Human Rights (ECCHR), and the Paris-based legal organization, Sherpa. Judicial investigation was opened on June 6, 2017 ²¹⁹
GERMANY			
Different parties to the conflict in Syria ²²⁰	N/A	Grave international crimes	Structural investigation opened in September 2011
ISIS ²²¹	N/A	Grave international crimes	Structural investigation opened in August 2014
Individuals suspected of having committed grave crimes in Syria and Iraq ²²²	N/A	Grave international crimes	27 targeted investigations

²¹⁸ “French-Swiss Company LafargeHolcim Sued for Grave Crimes in Syria,” ECCHR, <https://www.ecchr.eu/en/business-and-human-rights/lafarge-syria/articles/lafarge-syria-june17.html> (accessed September 6, 2017).

²¹⁹ It should be noted that the case was assigned to two investigative judges, from the financial and anti-terrorism divisions of the Paris High Court. See “French-Swiss Company LafargeHolcim Sued for Grave Crimes in Syria,” ECCHR.

²²⁰ Human Rights Watch interview with German officials, February 16, 2017; Human Rights Watch interview with German officials, February 22, 2017; Human Rights Watch email correspondence with German official, March 20, 2017. See also German Parliament, “Reply by the Federal Government to the Inquiry Put by Mr Tom Koenigs, Mr Luise Amtsberg, Dr Franziska Brantner, Other Members of Parliament and the Parliamentary Group BÜNDNIS 90/DIE GRÜNE (Green Party): Investigation in Germany for Serious International Crimes Committed in Syria,” Document n. 18/12533; German Parliament (Deutscher Bundestag), “Reply by the Federal Government to the Inquiry Put by Katja Keul, Tom Koenigs, Dr. Franziska Brantner Other Members of Parliament and the Parliamentary Group BÜNDNIS 90/DIE GRÜNE (Green Party): Investigation in Germany for Serious International Crimes Committed in Syria,” Document n. 18/12487.

²²¹ Ibid.

²²² Human Rights Watch interview with German officials, February 22, 2017.

Akram A. (<i>ISIS</i>) ²²³	Universal jurisdiction	Accused of membership in a terrorist organization and rape as a war crime	Arrested on February 7, 2017. After further investigation, the arrest warrant was lifted and Akram A. was later released on June 12, 2017
Six high-level officials of the Syrian Military Intelligence Service and government: Ali Mamluk, Abdelfattah Qudsiyeh, Rafiq Shehadeh, Muhamad Mahalla, Muhammad Khallouf (alias Abou Ezzat), Shafiq Masa as well as other unidentified officials ²²⁴	Universal jurisdiction	Torture committed in three prisons of the Military Intelligence Service in Syria – Crimes against humanity and war crimes	Complaint was filed on March 1, 2017 by seven victims, and Syrian Lawyers Anwar al-Bunni (Syrian Center for Legal Researches & Studies) and Mazen Darwish (Syrian Center for Media and Freedom of Speech), and ECCHR
Abdalfatah H. A. (<i>Jabhat al-Nusra</i>) ²²⁵	Universal jurisdiction	Accused of membership in a terrorist organization and murder (including as a war crime) for the killing of 36 members of the Syrian forces	Arrested on March 1, 2017
Abdulmalk A. (<i>Jabhat al-Nusra and ISIS</i>) ²²⁶	Universal jurisdiction	Accused of membership in terrorist organizations	Arrested on May 9, 2017

²²³ Office of the Federal Prosecutor General, “Police Arrest Syrian ISIS Suspect Accused of Rape” (“Festnahme wegen des Verdachts der Mitgliedschaft in der ausländischen terroristischen Vereinigung „Islamischer Staat“ (IS) sowie der Begehung eines Kriegsverbrechens”), February 7, 2017, <https://www.generalbundesanwalt.de/txt/showpress.php?themenid=19&newsid=671> (accessed September 6, 2017); Office of the Federal Prosecutor General, “Warrant for Membership of the Foreign Terrorist Organization ‘Islamic State’ (IS) and the Commission of a War Crime” (“Haftbefehl wegen des Verdachts der Mitgliedschaft in der ausländischen terroristischen Vereinigung „Islamischer Staat“ (IS) sowie der Begehung eines Kriegsverbrechens aufgehoben”), June 12, 2017, <https://www.generalbundesanwalt.de/de/showpress.php?themenid=19&newsid=714> (accessed September 6, 2017).

²²⁴ “Torture under the Assad Regime: Germany Paves the Way for First Syrian Cases under Universal Jurisdiction Laws,” ECCHR, <https://www.ecchr.eu/en/international-crimes-and-accountability/syria/torture-under-assad/articles/international-crimes-and-accountability-syria-torture-under-assad.html> (accessed September 6, 2017).

²²⁵ Office of the Federal Prosecutor General, “Two Suspected Members of the Foreign Terrorist Group ‘Jabhat al-Nusra’ (JaN)” (“Festnahme zweier mutmaßlicher Mitglieder der ausländischen terroristischen Vereinigung „Jabhat al-Nusra“ (JaN)”), March 2, 2017, <https://www.generalbundesanwalt.de/de/showpress.php?themenid=19&newsid=680> (accessed September 6, 2017).

		and murder (including as a war crime)	
Harry S. (<i>ISIS</i>) ²²⁷	Active personality principle – Perpetrator is a German national	Accused of murder as a war crime for killing six prisoners in 2015.	Already in prison in Germany for terrorism-related offenses. Charged with murder as a war crime on July 10, 2017
Fares A.B. (<i>Jabhat al-Nusra and ISIS</i>) ²²⁸	Universal jurisdiction	Accused of membership in a terrorist organization, and ill-treatment of prisoners and murder as war crimes	Arrested on August 8, 2017
Heads of the Syrian National Security Bureau, the Military Intelligence Service, the Air Force Intelligence Service, the General Intelligence Directorate and the Military Police ²²⁹	Universal jurisdiction	Systematic torture committed in Syrian military intelligence and military police facilities – Crimes against humanity and war crimes	Complaint was filed on September 21, 2017 by the “Caesar-File Support Group” and ECCHR
SWEDEN			
Mohammed Abdullah (<i>Syrian army</i>) ²³⁰	Universal jurisdiction	Allegedly committed war crimes but was released without charges	Case dismissed for lack of corroborating evidence in March 2016

²²⁶ Office of the Federal Prosecutor General, “Two Suspected Members of the Foreign Terrorist Groups ‘Jabhat al-Nusra’ (JaN) and ‘Islamic State’ (IS)” (“Festnahme zweier mutmaßlicher Mitglieder der ausländischen terroristischen Vereinigungen „Jabhat al-Nusra“ (JaN) und „Islamischer Staat“ (IS)”), May 9, 2017, <https://www.generalbundesanwalt.de/de/showpress.php?themenid=19&newsid=702> (accessed September 6, 2017).

²²⁷ Office of the Federal Prosecutor General, “Prosecution Against a Suspected Member of the Foreign Terrorist Organization ‘Islamic State (IS)’ Charged for Murder” (“Anklage gegen ein mutmaßliches Mitglied der ausländischen terroristischen Vereinigung „Islamischer Staat (IS)“ wegen Mordes erhoben”), July 19, 2017, <https://www.generalbundesanwalt.de/de/showpress.php?themenid=19&newsid=718> (accessed September 6, 2017).

²²⁸ Office of the Federal Prosecutor General, “Arrest Warrant for the Commission of War Crimes and Membership in the Foreign Terrorist Organization ‘Islamic State’ (IS) enforced” (“Haftbefehl wegen des Verdachts der Begehung von Kriegsverbrechen und Mitgliedschaft in der ausländischen terroristischen Vereinigung „Islamischer Staat“ (IS) vollstreckt), August 9, 2017, <https://www.generalbundesanwalt.de/de/showpress.php?themenid=19&newsid=723> (accessed September 6, 2017).

²²⁹ “Caesar Photos Document Systematic Torture: Syrian Military Police defector “Caesar” Passes Key Evidence to German Federal Prosecutor,” ECCHR, <https://www.ecchr.eu/en/international-crimes-and-accountability/syria/the-caesar-files/articles/caesar-files.html> (accessed September 22, 2017).

²³⁰ TRIAL International, *Make Way for Justice #3: Universal Jurisdiction Annual Review 2017*, p. 49.

All parties to the conflict in Syria ²³¹	N/A	Grave international crimes	Structural investigation opened in 2015
Individuals suspected of having committed crimes in Syria ²³²	N/A	Grave international crimes	13 targeted investigations

²³¹ Human Rights Watch interviews with Swedish officials, January 17, 2017; Henrik Attorps (Swedish war crimes prosecutor team), untitled contribution to panel discussion at side event “Accountability Series on the Syrian Arab Republic,” Permanent Missions of Liechtenstein and Canada, 34th Human Rights Council, Palais des Nations, Geneva, March 14, 2017; Human Rights Watch email correspondence with Swedish official, June 19, 2017.

²³² Human Rights Watch telephone correspondence with Swedish official, April 28, 2017.

Annex II

SYRIA-RELATED SERIOUS CRIMES PROCEEDINGS IN EUROPE²³³

Accused	Basis of Jurisdiction	Alleged Crimes and Charges	Case Status
GERMANY			
Aria L. (<i>ISIS</i>) ²³⁴	Active personality principle – Perpetrator is a German national	Desecrated two corpses – War crimes	Sentenced to 2 years in prison on July 12, 2016
Abdelkarim El. B. (<i>ISIS</i>) ²³⁵	Active personality principle – Perpetrator is a German national	Desecrated a corpse – War crimes, membership in a terrorist organization, and violation of the Military Weapons Control	Sentenced to 8.5 years in prison on November 8, 2016
Suliman A.S. (<i>alleged Jabhat al-Nusra</i>) ²³⁶	Universal jurisdiction	Kidnapped a UN observer – Aiding a war crime and membership in a	Sentenced to 3.5 years in prison on September 20, 2017

²³³ On May 10, 2017 an Austrian court convicted a member of a Syrian non-state armed group affiliated with the Free Syrian Army to life in prison for murder as a “terrorist offense” for killing 20 government soldiers. The exact provision under which this individual was convicted is not clear. See “Tyrol: Lifetime imprisonment for 20 counts of murder in Syria” (“Tirol: Lebenslange Haft wegen 20-fachen Mordes in Syrien”), *Der Standard*, May 10, 2017, <http://derstandard.at/2000057301960/Prozess-wegen-20-fachen-Mordes-in-Syrien-in-Tirol> (accessed September 6, 2017). See also TRIAL International, *Make Way for Justice #3: Universal Jurisdiction Annual Review 2017*, https://trialinternational.org/wp-content/uploads/2017/03/UJAR-MEP_A4_012.pdf (accessed September 6, 2017), p. 9.

²³⁴ *Prosecutor v. Aria L.*, Frankfurt Higher Regional Court, Case 5 – 3 StE 2/16 – 4 – 1/16, Judgment of July 12, 2016, http://www.lareda.hessenrecht.hessen.de/lexsoft/default/hessenrecht_lareda.html#docid:7661851 (accessed September 6, 2017).

²³⁵ *Prosecutor v. Abdelkarim El. B.*, Frankfurt Higher Regional Court, Case 5-3 StE 4/16 - 4 - 3/16, Judgment of November 8, 2016, http://www.lareda.hessenrecht.hessen.de/lexsoft/default/hessenrecht_lareda.html#docid:7812208 (accessed September 6, 2017).

²³⁶ The accused was acquitted of terrorism charges under sections 129a (1) and 129b (1) of the German Criminal Code. Stuttgart Higher Regional Court (Oberlandesgericht Stuttgart), “5th Senate of the Higher Regional Court Stuttgart convicts the defendant who participated in the kidnapping of a United Nations employee in Syria for aiding and abetting the war crime against humanitarian operations pursuant to Section 10 para. 1 n. 1 of the German Code of Crimes Against International Law and other crimes” (“5. Strafsenat des Oberlandesgerichts Stuttgart verurteilt einen an der Entführung eines Mitarbeiters der Vereinten Nationen in Syrien beteiligten Angeklagten wegen Beihilfe zu einem Kriegsverbrechen gegen humanitäre Operationen gemäß § 10 Abs. 1 Nr. 1 Völkerstrafgesetzbuch u. a.”), September 20, 2017, <http://www.olg-stuttgart.de/pb/,Lde/4801270/?LISTPAGE=1178276> (accessed September 20, 2017).

		terrorist organization	
Ibrahim Al F. (<i>Free Syrian Army</i>) ²³⁷	Universal jurisdiction	Allegedly oversaw torture, abduction, and personally tortured several people who resisted the looting of their belongings – War crimes	Trial started on May 22, 2017
SWEDEN			
Mouhannad Droubi (<i>Syrian non-state armed group affiliated with the Free Syrian Army</i>) ²³⁸	Universal jurisdiction	Assaulted a member of another non-state armed group affiliated with the Free Syrian Army – War crimes and aggravated assault	Sentenced to 8 years in prison; confirmed by court of appeal on August 5, 2016
Haisam Omar Sakhanh (<i>Syrian non-state armed group opposed to the government</i>) ²³⁹	Universal jurisdiction	Killed seven Syrian army soldiers – War crimes	Sentenced to life in prison on May 16, 2017; confirmed by court of appeal on May 31, 2017
Mohammad Abdullah (<i>Syrian army</i>) ²⁴⁰	Universal jurisdiction	Violated the dignity of five dead or severely injured people by posing for a photograph with his foot on one of the victims' chest – War crimes	Sentenced to 8 months in prison on September 25, 2017.

²³⁷ Düsseldorf Higher Regional Court (Oberlandesgericht Düsseldorf), “No. 14/2017 Committed War Crimes under International Criminal Law: Opening, Schedule and Accreditation in the Case against Ibrahim A. F.” (“Nr. 14/2017 Begehung von Kriegsverbrechen nach dem Völkerstrafrecht: Eröffnung, Termine und Akkreditierung im Verfahren gegen Ibrahim A. F.”), May 15, 2017, http://www.olg-duesseldorf.nrw.de/behoerde/presse/archiv/Pressemitteilungen_aus_2017/20170505_PM_Eroeffnung-Ibrahim-A_F_/index.php (accessed September 6, 2017).

²³⁸ *Prosecutor v. Mouhannad Droubi*, Södertörn District Court, Case B 13656-14, Judgment of February 26, 2015; *Prosecutor v. Mouhannad Droubi*, Svea Court of Appeal, Case B 2440-15, Decision of February 23, 2016 announced on February 26, 2016; *Prosecutor v. Mouhannad Droubi*, Södertörn District Court, Case B 2639-16, Judgment of May 11, 2016; *Prosecutor v. Mouhannad Droubi*, Svea Court of Appeal, Case B 4770-16, Judgment of August 5, 2016.

²³⁹ *Prosecutor v. Haisam Omar Sakhanh*, Stockholm District Court, Case B 3787-16, Judgment of February 16, 2017; *Prosecutor v. Haisam Omar Sakhanh*, Svea Court of Appeal, Case B 3787-16, Judgment of May 31, 2017; *Prosecutor v. Haisam Omar Sakhanh*, Swedish Supreme Court, Case B 3157-17, Decision of July 20, 2017.

²⁴⁰ *Prosecutor v. Mohammad Abdullah*, Södertörn District Court, Case B 11191-17, Judgment of September 25, 2017.

“THESE ARE THE CRIMES WE ARE FLEEING”

Justice for Syria in Swedish and German Courts

The Syrian crisis has claimed the lives of an estimated 475,000 people as of July 2017, and all sides to the conflict have committed serious crimes amid a climate of impunity. However, international efforts to achieve justice for past and ongoing crimes in the country have proved elusive despite the wealth of information and materials available.

Against this background, authorities in several European countries are working to investigate and prosecute grave abuses while other avenues remain blocked.

The principle of “universal jurisdiction” allows prosecutors to pursue individuals implicated in certain grave international crimes such as torture, war crimes, and crimes against humanity, even though they were committed elsewhere and neither the accused nor the victims are nationals of the country.

Such prosecutions are an increasingly important part of international efforts to hold perpetrators of atrocities accountable, provide justice to victims who have nowhere else to turn, deter future crimes, and help ensure that countries do not become safe havens for human rights abusers.

“These Are the Crimes We Are Fleeing” focuses on Swedish and German efforts to investigate and prosecute individuals implicated in grave crimes in Syria. Drawing on interviews with relevant authorities and Syrian refugees in these countries, the report highlights challenges that Swedish and German authorities face in taking up these types of cases and the experience of refugees and asylum seekers involved in these processes.



Cover illustration

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