

The Far Reach of Justice:

Holding the Islamic Republic of Iran Accountable in European Courts

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EXECUTIVE SUMMARY

The past year has witnessed increased and sustained calls to secure accountability for the Islamic Republic of Iran (IRI)'s atrocity crimes and gross human rights violations, particularly in response to the protests triggered by Mahsa Jina Amini's death at the hands of the IRI's morality police in September 2022. Accountability efforts have primarily focused on securing justice for victims and survivors of extrajudicial killings, mass arbitrary detention, torture, and other grave abuses committed by the IRI in response to peaceful protests. However, these efforts have also sought to hold IRI authorities to account for unpunished crimes during prior decades, including the IRI's brutal crackdowns on protestors in November 2019 and the 1988 summary executions of thousands of Iranian political prisoners (hereinafter "1988 prison massacres").

Despite these calls for action, the number of investigations and trials of individuals for core international crimes committed by representatives of the Islamic Republic have been limited. The lack of accountability is particularly stark in the wake of the IRI's fatal attack on Armita Geravand, a sixteen-year-old who was assaulted by morality police in a Tehran metro car for not wearing a headscarf and was later declared dead due to her injuries on October 28, 2023.¹ Over the past year, the IRI has been responsible for a litany of serious crimes as part of a systematic attack against innocent civilians, often disproportionately targeting specific groups including women, girls, and religious minorities. Further, the IRI has conducted a "Europe-wide" transnational repression campaign against Iranian dissidents, which includes "hacking, cyber-attacks and online harassment that can include thousands of death threats sent over a week and real-world threats."²

Because the judicial system in Iran is neither independent nor impartial—and is, in fact, responsible for unjust imprisonments and complicit in serious abuses in Iranian prisons—there are no viable domestic routes for accountability. However, there are numerous routes available through international bodies and national judicial systems. Some of these avenues have been explored in the Atlantic Council Strategic Litigation Project's previous reports, including a December 2020 report on civil litigation options in national courts and an October 2023 report on accountability options in international courts and mechanisms.³

This report explores additional accountability options that European states in particular can pursue, with the help of civil society. Throughout Europe, states have adopted universal jurisdiction provisions, which allow them to prosecute acts that constitute core international crimes (genocide,

¹ Mohammed Rasool, "16-Year-Old Iranian Girl in Coma 'Following Attack by Morality Police,'" Vice News, October 4, 2023, <https://www.vice.com/en/article/epvm5p/armita-geravand-iran-tehran-metro-morality-police>; "Armita, 16, in Coma after Tehran Subway Assault by Hijab Authorities," IranWire, October 3, 2023, <https://iranwire.com/en/news/121132-armita-16-in-coma-after-tehran-subway-assault-by-hijab-authorities/>.

² Manisha Ganguly, "Iranian Activists Across Europe Are Targets of Threats and Harassment," *Guardian*, September 22, 2023, <https://www.theguardian.com/world/2023/sep/22/iranian-activists-across-europe-are-targets-of-threats-and-harassment>.

³ Gissou Nia, *Closing the Accountability Gap on Human Rights Violators in the Islamic Republic of Iran through Global Litigation Efforts*, Atlantic Council, December 10, 2020, <https://www.atlanticcouncil.org/in-depth-research-reports/report/closing-the-accountability-gap-on-human-rights-violators-in-theislamic-republic-of-iran-through-global-litigation-strategies/>; Lisandra Novo, et al., *The Islamic Republic of Iran Before the World*, Atlantic Council, October 5, 2023, <https://www.atlanticcouncil.org/content-series/strategic-litigation/international-avenues-to-hold-the-islamic-republic-of-iran-accountable-for-human-rights-violations/>.

war crimes, and crimes against humanity), even if the crime was committed in a different state by and against foreign nationals. Sweden used these provisions to convict former IRI official Hamid Noury for murder and war crimes committed during the 1988 prison massacres, but so far no other IRI official has been tried under universal jurisdiction provisions for crimes committed in Iran, despite newfound opportunities to pursue these cases. For decades, IRI officials have traveled throughout Europe, often owning assets and even reportedly receiving healthcare in different countries.⁴ At the same time, many victims and survivors of the IRI's brutality have sought refuge in Europe—making the presence of IRI officials with no accountability all the more egregious, yet providing an opportunity for these victims and survivors to support investigations with eyewitness accounts and further information.⁵

The countries included in this report (Belgium, England and Wales, France, Germany, the Netherlands, Sweden, and Switzerland) are just seven jurisdictions out of 148 United Nations (UN) member states worldwide that have laws allowing for the investigation and prosecution of some or all core international crimes, even when those crimes are committed beyond their own borders.⁶ These seven jurisdictions were selected as a focus of this report due to several factors including: the strength of their universal jurisdiction frameworks and frequency of use; their robust caselaw and policies for prosecuting atrocity crimes committed extraterritorially; the size of Iranian expatriate communities in these countries, especially those fleeing persecution and violence; and the possibility of travel by IRI officials to these jurisdictions. This report details what each country's universal jurisdiction provisions entail, how proceedings are initiated, and what victims' rights are protected. It also gives an overview of each state's relevant jurisprudence to date, analyzing the legal, practical, and political viability of future cases involving IRI violations, including in light of the country's diplomatic relationship with the IRI.⁷ Finally, it provides

⁴ See, e.g., Faramarz Davar, "Human Rights Sanctions on Iran Are Not Only Symbolic," *IranWire*, October 16, 2023, <https://iranwire.com/en/politics/121572-human-rights-sanctions-on-iran-are-not-only-symbolic/>; "Two Decades of Medical Trips to Europe by Iranian Regime's Top Brass," *IranWire*, April 27, 2023, <https://iranwire.com/en/news/115983-two-decades-of-medical-trips-to-europe-by-iranian-regimes-top-brass/>; Shirin Shakib, "Iranian Cleric's Germany Stay Triggers Heated Debate," *Deutsche Welle*, January 13, 2018, <https://www.dw.com/en/iranian-clerics-germany-stay-triggers-heated-social-media-debate/a-42131404>; Barbara Moens and Nicolas Camut, "Belgium's FM on the Brink over Iran Visas Fallout," *Politico*, June 22, 2023, <https://www.politico.eu/article/belgiums-fm-hadja-lahbib-on-the-brink-over-iranian-visit-fallout/>; Lena Bjurström, "Sweden-Iran: Noury Faces Death Row Survivors," *JusticeInfo*, January 13, 2022, <https://www.justiceinfo.net/en/86471-sweden-iran-noury-faces-death-row-survivors.html>; Celeste Kmiotek and Lisandra Novo, *Iran Targeted Human Rights Sanctions Series: UK Designates the Supreme Council of the Cultural Revolution*, Atlantic Council, July 26, 2023, <https://www.atlanticcouncil.org/blogs/iransource/iran-sanctions-series-uk-sccr/>.

⁵ Cora Engelbrecht, "Iranian Mothers Choose Exile for Sake of Their Daughters," *New York Times*, last updated July 26, 2023, <https://www.nytimes.com/2023/07/24/world/middleeast/iran-women-girls-leave.html>.

⁶ "About the Project," *Justice Beyond Borders*, Clooney Foundation for Justice, last visited December 1, 2023, <https://justicebeyondborders.com/page/about-the-project/> (noting that "148 out of 193 UN Member States (164 jurisdictions) have laws that allow them to investigate and prosecute at least one of the serious international crimes committed beyond their borders." The United Kingdom appears to be treated as one UN Member State. "United Kingdom of Great Britain and Northern Ireland," *Justice Beyond Borders*, Clooney Foundation for Justice, last visited December 1, 2023, <https://justicebeyondborders.com/country/united-kingdom-of-great-britain-and-northern-ireland>). Note that this report focuses on England and Wales, as the United Kingdom is broken into three legal jurisdictions (England and Wales, Scotland, and Northern Ireland). See "Note on the Investigation and Prosecution of Crimes of Universal Jurisdiction," Her Majesty's Government, 2018, para. 5, <https://assets.publishing.service.gov.uk/media/5b02c746e5274a52093587d3/universal-jurisdiction-note-web.pdf>.

⁷ Note that this report is up to date until December 1, 2023.

regional and country-specific recommendations to facilitate more cases against IRI perpetrators and to strengthen universal jurisdiction frameworks more broadly.

Recommendations

Europe-Wide

Lawmakers

- Lawmakers should regularly review their penal codes, criminal procedures, and other relevant authorities to identify any impunity gaps. This review should account for evolving concepts of justice, especially for historically marginalized communities. At a minimum, lawmakers should ensure they have criminalized the core international crimes and have universal jurisdiction to investigate and prosecute those crimes when committed by and against foreign nationals in a foreign state. If they do not have such provisions, they should initiate legislative proceedings to introduce the required laws or amendments.
- Lawmakers should additionally review any restrictions on universal jurisdiction, especially those that are stricter than what international legal precedents allow. For example, this may include
 - eliminating requirements on the physical presence of a suspect before initiating an investigation;
 - allowing the retroactive application of provisions criminalizing core international crimes;⁸
 - eliminating statutes of limitations related to core international crimes;
 - including exceptions for *jus cogens* violations in functional immunity protections for former government officials; and⁹
 - eliminating requirements that non-judiciary government officials approve investigations and/or prosecutions.
- Lawmakers should introduce legislative changes to heighten witness and victim protections, balanced with maintaining defendants' rights.

⁸ While criminal law generally has provisions against retroactivity as an element of defendants' rights, certain courts have allowed exceptions for core international crimes. For example, the European Court of Human Rights has ruled that the retroactive application of core international crimes, when the criminal law and penalties were accessible and foreseeable, was not a violation of Article 7 of the European Convention on Human Rights. "Digest of the European Court for Human Rights Jurisprudence on Core International Crimes," Genocide Network, September 2017, 2–9, <https://www.eurojust.europa.eu/sites/default/files/assets/2017-09-digest-of-european-court-for-human-rights-jurisprudence-on-core-international-crimes-en.pdf>. See also, Bundesstrafgericht [BStR] [Federal Criminal Court] 23 September 2021, *A. contre Ministère public de la Confédération*, Décision du 23 Septembre 2021 Cour des plaintes, paras. 2–2.1.3; "Briefing Paper: Universal Jurisdiction Law and Practice in Belgium," TRIAL International and Open Society Justice Initiative, May 2022, 12, <https://trialinternational.org/wp-content/uploads/2022/05/UJ-Belgium-EN-1.pdf>.

⁹ See, e.g., Special Rapporteur on Peremptory Norm of General International Law (*Jus Cogens*), "Third Report on Peremptory Norms of General International Law (*Jus Cogens*) by Dire Tladi, Special Rapporteur," paras. 121–132, A/CN.4/714, February 12, 2018, <https://undocs.org/en/A/CN.4/714>; Atul Alexander, "Jus Cogens and Immunity: Revisiting ILC Draft Article 7 on Immunity of State Officials from Foreign Criminal Jurisdiction," *Opinio Juris*, July 19, 2022, <https://opiniojuris.org/2022/07/19/jus-cogens-and-immunity-revisiting-ilc-draft-article-7-on-immunity-of-state-officials-from-foreign-criminal-jurisdiction/> (describing a shift toward accepting *jus cogens* exceptions to functional immunity).

- Lawmakers should, to the extent the changes require a legislative amendment, introduce such legislation to allow for structural investigations, cumulative prosecutions, and other tools that better allow investigating and law-enforcement authorities to hold perpetrators accountable.
- Lawmakers should dedicate sufficient funding to investigating and judicial authorities that are pursuing accountability for core international crimes, and ensure that such authorities have the necessary resources to meaningfully engage with civil society and affected communities.

Foreign Ministers and Other Government Officials

- Foreign ministers and government officials must commit to allowing trials conducted under universal jurisdiction provisions to proceed without government interference, particularly in instances in which their approval is needed for cases to proceed.

Domestic Investigating and Judicial Authorities

- Investigating and judicial authorities should take actions that best allow them to hold perpetrators accountable, including
 - as necessary, working with lawmakers to ensure that they can institute structural investigations into core international crimes, as well as individual investigations;
 - while prioritizing the prosecution of core international crimes and crimes most relevant to affected communities, where available cumulatively charging suspects with all relevant crimes;
 - working with lawmakers and other relevant authorities to create separate, independent departments dedicated to pursuing accountability for core international crimes;
 - participating in EuroJust and other collaborative efforts between states; and
 - cooperating with international fact-finding and accountability efforts.
- Investigating and judicial authorities should especially prioritize cases that could hold IRI officials accountable for crimes committed in Iran and extraterritorially, including
 - opening structural investigations into situations involving core international crimes committed by the IRI;
 - These investigations should cover, *inter alia*, the 1988 prison massacres, abuses committed against protesters and dissidents, hostage taking, and abuses committed against religious and ethnic minorities.
 - including crimes committed by, or aided and abetted by, IRI officials in their structural investigations regarding Syria, Ukraine, and other applicable situations; and
 - cooperating with the UN Independent International Fact-Finding Mission on the IRI, and all other international fact-finding and accountability efforts.
- Investigating and judicial authorities should work with civil society and affected communities to identify their priorities and needs. This should be an ongoing process that includes
 - working with civil society and affected communities to identify procedural and policy gaps that need to be addressed, such as witness and victim protections or translation and interpretation services;

- working with lawmakers to introduce and guide any needed legislative changes;
- conducting outreach to affected communities—especially those where there are active investigations, are likely to be active investigations (such as following the onset of a recent conflict), or where criminal complaints have been filed—with an aim to build their trust; and
- working with court officials to ensure that victims and witnesses are afforded needed protections and support.
- Investigating and judicial authorities, working with court authorities, must use their resources to ensure that proceedings are able to accommodate the unique needs of international trials related to core international crimes, including
 - holding trainings and bringing in expert witnesses to ensure that investigators, lawyers, judges, and other relevant personnel have an adequate understanding of the relevant laws, the nuances of international investigations, and notable considerations in examining the testimony of victims and survivors of atrocities; and
 - investing in interpretation and translation services that can accommodate trials involving core international crimes and related crimes.

International and Regional Investigating Authorities

- International and regional investigating authorities, such as joint investigative teams and EuroJust, should encourage members, including the jurisdictions included in this report, to open structural investigations into situations involving core international crimes committed by the IRI in Iran.
- International and regional investigating authorities should include crimes committed by, or aided and abetted by, IRI officials in structural investigations regarding Syria, Ukraine, and other applicable situations.

Belgium

- Belgian politicians should consider withdrawing from the July 2022 mutual legal assistance treaty with Iran (according to the provisions laid out in the treaty to do so).
- Belgian lawmakers should, in the planned reforms to the Criminal Code and Code of Criminal Procedure, consider removing the requirement that cases have a Belgian connection, in line with the full potential of universal jurisdiction.
- Belgian lawmakers should consider introducing legislation allowing civil parties to trigger investigations against perpetrators *in absentia*, and allowing civil parties to appeal prosecutorial decisions not to pursue such situations.

*England and Wales*¹⁰

¹⁰ As indicated above, this report focuses on England and Wales as they constitute one of three legal jurisdictions in the UK. However, the UK government and UK Parliament reserve power over foreign affairs and justice and policing for England and Wales. Acts of the UK Parliament then require the support of UK lawmakers more broadly, including those outside England and Wales. See “Note on the Investigation and Prosecution of Crimes of Universal Jurisdiction,” para. 5; Suzanne Rab, “Legal Systems in the UK (England and Wales): Overview,” Thomson Reuters Practical Law, last updated December 1, 2022, <https://uk.practicallaw.thomsonreuters.com/5-636->

- United Kingdom (UK) lawmakers should adopt the Universal Jurisdiction (Extension) Bill to extend the jurisdiction of the core international crimes to include those crimes committed overseas by anyone, regardless of nationality or residency. They should further extend the exercise of jurisdiction to include, at least, anyone found in the UK.
- UK lawmakers should expand the human rights violations covered by Proceeds of Crime Act—for example, to match those included under the Global Human Rights Sanctions (GHR) Regulations 2020.¹¹

France

- French lawmakers should amend the law relating to core international crimes to remove the remaining three locks and reinstate the civil-party procedure at the investigation stage.

Germany

- German lawmakers must pass the draft law on the further development of international law that was announced in July 2023—expanding and improving on the definition of crimes included in the Code of Crimes against International Law; strengthening victims’ rights; and prioritizing the dissemination of news related to important cases in relevant languages. They also must continue to engage with civil society to further amend German laws as needed.
- German lawmakers must reassess witness-protection protocols and, in consultation with affected communities, must introduce legislation to enhance protections and cover existing gaps. The consultation should focus on those who have participated in trials in Germany, such as the Syrian community.
- German prosecutors should continue to try nonstate actors, but should also make concerted efforts to investigate and prosecute government officials where viable, and where immunities do not prevent prosecution.
- German prosecutors should promptly investigate the case brought on behalf of Jamshid Sharmahd against the Iranian judiciary, and should accede to the request to open a structural investigation.

The Netherlands

- Dutch lawmakers should amend the International Crimes Act of 2003 to eliminate personal and functional immunity with respect to international crimes, to better reflect global trends of state practice and customary law.

Sweden

2498; “Devolution: Factsheet,” UK Civil Service, last visited November 27, 2023, <https://assets.publishing.service.gov.uk/media/5c38cc6ce5274a70ca3c3cef/DevolutionFactsheet.pdf>; “Explore Regions,” UK Parliament, last visited November 27, 2023, <https://members.parliament.uk/region>.

¹¹ The Global Human Rights Sanctions Regulations 2020, § 4 (UK).

- Swedish lawmakers should consider introducing legislation that would ensure that damages won in international cases, including against corporate actors, are distributed to the victims of associated international crimes. This could include introducing legislation that expands the right to state compensation for victims of core international crimes who are Swedish residents and who have been awarded damages in court, as well as legislation that expands the mandate of aggrieved parties' counsel to include assisting them in accessing funds they have been awarded.
- Swedish police should take care to further prioritize the needs of victims and their families, including the Swedish diaspora of affected communities, ahead of relevant trials to identify those who may wish to register as aggrieved persons.
- Swedish courts should take care to prioritize the needs of affected communities, including by ensuring that all relevant documents are translated into all relevant languages—including global languages, such as English or French—and are made available internationally.

Switzerland

- Swiss lawmakers must carry forward the initiative to add torture to the Swiss Criminal Code as a standalone crime, and should ensure that it is subject to universal jurisdiction without any double criminality requirements.
- The Office of the Attorney General must disaggregate the Mutual Legal Assistance, Terrorism, International Criminal Law and Cybercrime unit so that authorities can have dedicated time, budget, and personnel to pursue prosecutions of international crimes.
- Swiss authorities must evaluate Switzerland's special relationship with Iran and find solutions so that perpetrators are not granted *de facto* immunity within Switzerland.

GLOSSARY

- **Active personality jurisdiction:** Jurisdiction that allows a state to prosecute an offense committed by its nationals, even when committed abroad.¹²
- **Command and superior liability:** The principle that commanders and superiors can be held criminally liable for the crimes of their subordinates.¹³
- **Core international crimes:** The crimes of genocide, crimes against humanity, and war crimes.¹⁴
- **Crimes against humanity:** Acts (such as murder or torture) committed as part of a widespread or systematic attack against a civilian population.¹⁵
- **Cumulative prosecution:** The prosecution of an act as multiple offenses—for example, as both war crimes and terrorism-related crimes.¹⁶
- **Customary international law:** Law derived from “a general practice accepted as law,” which is binding on states.”¹⁷
- **Direct or primary liability:** The principle that a party can be held liable for the crimes for which it is immediately responsible.
- **Double criminality:** The principle that an act was criminalized in both the country of commission and the country of prosecution at the time of commission.¹⁸
- **Functional immunity:** Immunity that attaches to “acts performed in an official capacity,” and which is also known as immunity *ratione materiae*.¹⁹

¹² Beth Van Schaack, “Can the Int’l Criminal Court Try US Officials?—The Theory of ‘Delegated Jurisdiction’ and Its Discontents (Part II),” *Just Security*, April 9, 2018, <https://www.justsecurity.org/54620/intl-criminal-court-officials-the-theory-delegated-jurisdiction-discontents-part-ii/>.

¹³ Gideon Boas, James L. Bischoff, and Natalie L. Reid, “3—Superior Responsibility” in *International Criminal Law Practitioner Library* (Cambridge: Cambridge University Press, 2010), 142–277, <https://www.cambridge.org/core/books/abs/international-criminal-law-practitioner-library/superior-responsibility/7256AFEF7C7B70892C46817D1803AB31>.

¹⁴ See, e.g., “Core International Crimes,” European Union Agency for Criminal Justice Cooperation, last visited November 6, 2023, <https://www.eurojust.europa.eu/crime-types-and-cases/crime-types/core-international-crimes>. While other crimes, especially aggression, are sometimes included, they are not for the purposes of this report. See, e.g., “International Crimes—Introduction,” Asser Institute, last visited November 6, 2023, <https://www.asser.nl/nexus/international-criminal-law/international-crimes-introduction/>.

¹⁵ Rome Statute of the International Criminal Court, Article 7, July 17, 1998, 2187 UNTS 3 (hereinafter cited as Rome Statute).

¹⁶ “Cumulative Prosecution of Foreign Terrorist Fighters for Core International Crimes and Terrorism-Related Offences,” Network for investigation and prosecution of genocide, crimes against humanity and war crimes and EUROJUST, 2020, 3, https://www.eurojust.europa.eu/sites/default/files/Partners/Genocide/2020-05_Report-on-cumulative-prosecution-of-FTFs_EN.PDF.

¹⁷ “Customary Law,” International Committee of the Red Cross, last visited October 31, 2023, <https://www.icrc.org/en/war-and-law/treaties-customary-law/customary-law>.

¹⁸ Mona Ghyoot and Waleed Mahmoud, “Universal Jurisdiction: Arguments for a More ‘Universal’ Double Criminality Requirement in France,” *Opinio Juris*, July 21, 2023, <https://opiniojuris.org/2023/07/21/universal-jurisdiction-arguments-for-a-more-universal-double-criminality-requirement-in-france>.

¹⁹ “Concept Note: Seminar on States’ Obligations under Public International Law in Relation to Immunity of State Officials,” Council of Europe, September 21, 2022, <https://rm.coe.int/concept-note-seminar-on-immunities-21-september-2022/1680a86354>.

- **Genocide:** The crime of committing certain acts (such as murder) with the intent to destroy, in whole or in part, protected groups (such as national, ethnical, racial, or religious groups).²⁰
- **Jus cogens:** A category of international norms that are both binding and universally accepted as binding, generally consisting of “prohibitions against egregious conduct, such as crimes against humanity, genocide, slavery and human trafficking.”²¹
- **Passive personality jurisdiction:** Jurisdiction that allows a state to prosecute an offense committed against its nationals, even when committed abroad.²²
- **Personal immunity:** Immunity that attaches to “office or status,” and which is also known as immunity *ratione personae*.²³
- **Secondary liability:** The principle that a party can be held liable for crimes that it assisted.²⁴
- **Standalone crime:** A crime that does not fall under a broader category of crimes (such as the core international crimes).²⁵
- **Structural investigation:** An investigation focused on a broad conflict (such as the ongoing conflict in Syria), as opposed to focusing on one suspect or “crime pattern” at a time.²⁶
- **Universal jurisdiction:** A legal concept that allows states to bring cases against perpetrators for acts committed by and against foreign nationals in a foreign state.²⁷
- **War crimes:** Violations of the laws and customs related to armed conflict, such as those laid out in the Geneva Conventions and the Additional Protocols.²⁸ War crimes only apply to acts committed in the context of an armed conflict.²⁹ This includes non-international armed conflicts, but does not include “internal disturbances and tensions.”³⁰

²⁰ Convention on the Prevention and Punishment of the Crime of Genocide, Article II, December 9, 1948, 78 UNTS 277.

²¹ “Jus Cogens,” Cornell Law School, last visited November 1, 2023, https://www.law.cornell.edu/wex/jus_cogens.

²² Van Schaack, “Can the Int’l Criminal Court Try US Officials?—The Theory of ‘Delegated Jurisdiction’ and Its Discontents (Part II).”

²³ “Concept Note: Seminar on States’ Obligations under Public International Law in Relation to Immunity of State Officials,” Council of Europe, September 21, 2022, <https://rm.coe.int/concept-note-seminar-on-immunities-21-september-2022/1680a86354>.

²⁴ See, e.g., “Secondary Liability: Charging Decisions on Principals and Accessories,” Crown Prosecution Service, February 4, 2019, <https://www.cps.gov.uk/legal-guidance/secondary-liability-charging-decisions-principals-and-accessories>.

²⁵ For an example of such use, see “Briefing Paper: Universal Jurisdiction Law and Practice in Germany,” Open Society Justice Initiative and TRIAL International, April 2019, 4, <https://trialinternational.org/wp-content/uploads/2022/05/UJ-Germany.pdf>.

²⁶ “Universal Jurisdiction Under Scrutiny: a Quantitative Analysis of 250+ Syrian Cases,” Syria Justice and Accountability Centre, June 2023, 14, <https://syriaaccountability.org/content/files/2023/06/UJ-Report-EN.pdf>.

²⁷ “Universal Jurisdiction,” TRIAL International, last visited October 5, 2023, <https://trialinternational.org/topics-post/universal-jurisdiction/>.

²⁸ “War Crimes,” United Nations, last visited October 5, 2023, <https://www.un.org/en/genocideprevention/war-crimes.shtml>; see also, Rome Statute, Article 8.

²⁹ *Ibid.*

³⁰ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), Article I, June 8, 1977, 1125 UNTS 3; “War Crimes”; see also, Rome Statute, Article 8 (hereinafter cited as Additional Protocol II).

INTRODUCTION

In the aftermath of Mahsa Jina Amini’s death in September 2022 at the hands of the IRI’s morality police, and the IRI’s subsequent crackdown and assault on peaceful protestors and dissidents, there has been a groundswell of interest in finding new pathways to hold the IRI regime accountable for both historic and ongoing atrocity crimes and gross human rights violations. Over the course of the past year, IRI security forces targeted protesters’ eyes to forcibly blind them, and subjected women to sexual violence while in prison.³¹ The IRI or its agents are suspected of systematically poisoning schoolgirls, who often participated in the protests.³² Finally, the IRI continued its commission of already-occurring crimes and human rights violations, such as the repression of religious minorities and the taking of dual and foreign nationals as hostages.³³

Meaningful opportunities for accountability remain limited, but a recent case in Sweden offered an example of how universal jurisdiction provisions could be used.

In November 2019, Hamid Noury—the assistant to the deputy prosecutor in Gohardasht prison during the 1988 prison massacres, during which Iranian officials executed thousands of political prisoners—flew from Tehran to Stockholm, reportedly planning to go to the Scandinavian islands, followed by Barcelona and Milan, before returning to Tehran.³⁴ Instead, Swedish police arrested him upon arrival.³⁵ The swift arrest was due to the efforts of a former political prisoner who survived the massacres and received information on Noury’s potential travel to Sweden, joined by the efforts of lawyers who drew up a criminal complaint and alerted the Swedish authorities.³⁶ The trial started on August 10, 2021, and nearly a year later—after ninety-two trial days—Sweden convicted Noury of war crimes and murder on July 14, 2022.³⁷ The trial for the appeal ended on

³¹ Aida Ghajar, Katherine Highnett, and Omid Shams, “The Islamic Republic’s Use of Blinding as a Weapon of War against Protesters,” IranWire, 2023,

https://static.prod.iranwire.com/pdfcomponent/Blinding_as_a_Weapon_of_Suppression_IUhe.pdf; Deepa Parent and Ghoncheh Habibiadzad, “Iranian Forces Shooting at Faces and Genitals of Female Protesters, Medics Say,” *Guardian*, December 8, 2022, <https://www.theguardian.com/global-development/2022/dec/08/iranian-forces-shooting-at-faces-and-genitals-of-female-protesters-medics-say>; Samaneh Ghadarkhan, “Activist Reports Mass Sexual Abuse in Iran’s Detention Centers,” IranWire, November 30, 2022, <https://iranwire.com/en/prisoners/110654-activist-reports-mass-sexual-abuse-in-irans-detention-centers/>.

³² See, e.g., “Iran: Millions of Schoolgirls at Risk of Poisoning,” Amnesty International, April 19, 2023, <https://www.amnesty.org/en/documents/mde13/6696/2023/en/>.

³³ See, e.g., “Iran 2022,” Amnesty International, last visited October 5, 2023,

<https://www.amnesty.org/en/location/middle-east-and-north-africa/iran/report-iran/>.

³⁴ Joshua Nevett, “Hamid Nouri: How Sweden Arrested a Suspected Iranian War Criminal,” BBC, September 5, 2021, <https://www.bbc.com/news/world-europe-58421630>; Christina Anderson and Farnaz Fassihi, “Ex-Iranian Official Convicted by Swedish Court for Prison Executions,” *New York Times*, July 14, 2022,

<https://www.nytimes.com/2022/07/14/world/europe/iranian-official-sweden-prison-executions.html>; Ghazal Golshiri, “Sweden’s Historic Trial of Hamid Noury, Accused of Being a Key Figure in Iran’s 1988 Executions,” *Le Monde*, May 4, 2022, https://www.lemonde.fr/en/international/article/2022/05/04/sweden-s-historic-trial-of-hamid-noury-accused-of-being-a-key-figure-in-iran-s-1988-executions_5982444_4.html.

³⁵ Nevett, “Hamid Nouri: How Sweden Arrested a Suspected Iranian War Criminal.”

³⁶ Bjurström, “Sweden-Iran: Noury Faces Death Row Survivors”; Nevett, “Hamid Nouri: How Sweden Arrested a Suspected Iranian War Criminal.”

³⁷ “Report 1: Historic Trial on 1988 Mass-Executions in Iran Begins in Stockholm District Court,” Civil Rights Defenders, August 10, 2021, <https://crd.org/2021/08/10/report-1-historic-trial-on-1988-mass-executions-in-iran-begins-in-stockholm-district-court/>; “Report 43: The Verdict,” Civil Rights Defenders, July 17, 2022, <https://crd.org/2022/07/17/report-43-the-verdict/>.

November 8, 2023, with the verdict expected on December 19, 2023.³⁸ This was the first—and remains the only—conviction of a perpetrator of the 1988 prison massacres.³⁹

Sweden was able to bring the case under universal jurisdiction provisions in its domestic law.⁴⁰ Since universal jurisdiction in its purest form would allow states to prosecute even without the accused present on their territory, most states have introduced certain restrictions, requiring the suspect to be physically present in the state or the underlying case to have some link to their state.⁴¹ Moreover, most jurisdictions recognize the personal or functional immunity of certain foreign officials, depending on their position, duties, term, and the conduct at issue.⁴² Notwithstanding these restrictions, universal jurisdiction still presents a clear opportunity for international lawyers and activists to pursue cases against perpetrators who may otherwise enjoy impunity. For example, while attempts to bring cases related to the conflict in Syria before the International Criminal Court (ICC) have been stalled and thwarted, European states have been able to gather information and launch cases against perpetrators who arrive there.⁴³ Germany, France, and Sweden have also opened structural investigations, allowing their investigators to look into the serious violations of international law in the Syrian conflict as a whole, rather than focusing on individual suspects.⁴⁴ As of June 2023, there were more than 250 domestic prosecutions related to crimes committed by any side of the conflict in Syria since 2011.⁴⁵

While there have so far been few investigations into IRI officials for core international crimes—and even fewer trials and convictions—universal jurisdiction provisions offer a promising avenue. Following Amini’s death from injuries inflicted by the IRI’s so-called “morality police” and a violent state crackdown on subsequent protests, many Iranians fled their country for safety

³⁸ “After Two Years—Now the Historic Trial Ends,” Civil Rights Defenders, November 8, 2023, <https://crd.org/2023/11/08/after-two-years-now-the-historic-trial-ends/>; “Information från Svea hovrätt om avslutad huvudförhandling och tid för dom i mål om grovt folkrättsbrott och mord i Iran 1988 [Information from the Svea Court of Appeals about the Completion of the Main Hearing and the Time for the Verdict in the Case of Gross Crimes against Humanity and Murder in Iran in 1988],” Svea Hovrätt, November 8, 2023, <https://www.domstol.se/svea-hovratt/nyheter/2023/11/information-fran-svea-hovratt-om-avslutad-huvudforhandling-och-tid-for-dom-i-mal-om-grovt-folkrattsbrott-och-mord-i-iran-1988/>.

³⁹ “Iran Condemns Life Sentence Handed to Former Iranian Prison Official By Court In Sweden,” RadioFreeEurope/RadioLiberty, July 14, 2022, <https://www.rferl.org/a/iran-nouri-sweden-verdict/31942770.html>.

⁴⁰ Anderson and Fassihi, “Ex-Iranian Official Convicted by Swedish Court for Prison Executions.”

⁴¹ “Implementing the Rome Statute of the International Criminal Court,” Case Matrix Network, September 2017, 53, <https://www.legal-tools.org/doc/e05157/pdf/>; “Gearing Up the Fight Against Impunity,” International Center for Transitional Justice, March 2022, 69–98, https://www.ictj.org/sites/default/files/2022-03/ICTJ_Report_Specialized_Units_Web.pdf.

⁴² See, e.g., “Immunity of State Representatives,” Confédération Suisse, last updated April 14, 2023, <https://www.eda.admin.ch/eda/en/fdfa/foreign-policy/international-law/privileges-and-immunities/immunity-state-representatives.html> (describing the customary international law of immunities).

⁴³ Hakan Camuz, “What’s Taking the ICC So Long to Investigate War Crimes in Syria?” TRT World, last visited October 5, 2023, <https://www.trtworld.com/opinion/what-s-taking-the-icc-so-long-to-investigate-war-crimes-in-syria-55523>; “Referral of Syria to International Criminal Court Fails as Negative Votes Prevent Security Council from Adopting Draft Resolution,” United Nations, press release, May 22, 2014, <https://press.un.org/en/2014/sc11407.doc.htm>; Alia Malek, “How a Syrian War Criminal Was Brought to Justice—in Germany,” *New York Times Magazine*, January 25, 2022, <https://www.nytimes.com/2022/01/25/magazine/germany-trial-syria.html>.

⁴⁴ “Universal Jurisdiction Under Scrutiny: a Quantitative Analysis of 250+ Syrian Cases,” 14.

⁴⁵ *Ibid.*

elsewhere.⁴⁶ A significant number of Iranians connected to the protests ended up in Europe, where IRI authorities are also known to visit and hold assets.⁴⁷ Iranian dissidents have also reported physical threats by IRI “agents” and officials within Europe.⁴⁸ Moreover, Europe features a particularly high concentration of states with universal jurisdiction legislation and jurisprudence.⁴⁹ Many European states have dedicated offices, staff, and resources within their police and prosecution offices that focus on international crimes.⁵⁰ The European Union Agency for Criminal Justice Cooperation, or EuroJust, further helps to coordinate accountability action across the European Union (EU) and cooperating non-EU states.⁵¹

European authorities, therefore, have a new and developing opportunity to focus their attention on cases against IRI perpetrators. As with Syria, refugees and immigrants arriving can provide critical testimony and information to investigators. Especially if states open structural investigations into IRI abuses, this information can be used to develop thorough case files mapping out perpetrators across multiple atrocities committed by the IRI. Authorities can then act swiftly when these IRI officials enter Europe. Although prosecutions inevitably come with political and diplomatic repercussions, the severity of the crimes perpetrated by the IRI regime, as covered by universal jurisdiction provisions across the European continent, warrant urgent and robust implementation to secure justice for victims and survivors.

In particular, European jurisdictions can focus their attention on acts falling under the core international crimes as they apply to acts committed by the IRI.

- *Genocide*: Several countries, including Switzerland and France, consider or accommodate political affiliation as a protected group.⁵² While genocide is a difficult charge to prove due to the specific-intent requirement, the IRI’s targeting of political dissidents, such as during the 1988 prison massacres, could be assessed under genocide provisions.⁵³

⁴⁶ Engelbrecht, “Iranian Mothers Choose Exile for Sake of Their Daughters.”

⁴⁷ For general statistics on Iranian refugees and immigrants in Europe, see “Asylum Applications and Refugees from Iran,” WorldData, last visited October 4, 2023, <https://www.worlddata.info/asia/iran/asylum.php>; “Immigrant and Emigrant Populations by Country of Origin and Destination,” Migration Policy Institute, last visited October 4, 2023, <https://www.migrationpolicy.org/programs/data-hub/charts/%C4%B0mmigrant-and-emigrant-populations-country-origin-and-destination>. For information on authorities’ visits and assets, see, e.g., Davar, “Human Rights Sanctions on Iran Are Not Only Symbolic”; “Two Decades of Medical Trips to Europe by Iranian Regime’s Top Brass”; Shakib, “Iranian Cleric’s Germany Stay Triggers Heated Debate”; Moens and Camut, “Belgium’s FM on the Brink over Iran Visas Fallout”; Bjurström, “Sweden-Iran: Noury Faces Death Row Survivors”; Kmiotek and Novo, *Iran Targeted Human Rights Sanctions Series*.

⁴⁸ Ganguly, “Iranian Activists Across Europe Are Targets of Threats and Harassment.”

⁴⁹ See, e.g., “Justice Beyond Borders,” Justice Beyond Borders, Clooney Foundation for Justice, last visited October 4, 2023, (this tool compares the provisions globally, showing the comparative concentration in Europe).

⁵⁰ “Gearing Up the Fight Against Impunity,” International Center for Transitional Justice, 3, 69–98.

⁵¹ “Who We Are,” European Union Agency for Criminal Justice Cooperation, last visited October 5, 2023, <https://www.eurojust.europa.eu/about-us/who-we-are>; see also, “Core International Crimes,” European Union Agency for Criminal Justice Cooperation.

⁵² Schweizerisches Strafgesetzbuch [StGB] [Criminal Code] December 21, 1938, art. 264 (Switz.); Code pénal [C. pén.] [Penal Code] art. 211-1 (Fr.); Case Matrix Network, *Implementing the Rome Statute of the International Criminal Court*, 25–28.

⁵³ For information on why it is difficult to prove, see Leila Sadat, “Why Genocide Is Difficult to Prove Before an International Criminal Court,” NPR, April 12, 2022, <https://www.npr.org/2022/04/12/1092251159/why-genocide-is-difficult-to-prove-before-an-international-criminal-court>. For information on allegations of genocide by the IRI, see,

- *War crimes*: Because war crimes do not include “internal disturbances and tensions,” this limits the number of relevant acts committed by the IRI within Iran.⁵⁴ However, Sweden held in the Noury trial that the 1988 conflict between Iraq and Iran was an international armed conflict, with Iraq exercising “overall control over the [Mojahedin-e-Khalq (MEK)]’s armed branch.”⁵⁵ This meant that a conflict between the MEK and Iran formed part of the conflict between Iraq and Iran.⁵⁶ Crimes committed against members or supporters of the MEK in that context could, therefore, be assessed under war crimes provisions.
- *Crimes against humanity*: Acts that could be assessed under these provisions include the 1988 prison massacres; crackdowns on protests, including the November 2019 protests and the anti-government protests that began in September 2022; and the taking of foreign and dual nationals as hostages.⁵⁷

Of course, this list is not exhaustive and can also include crimes committed outside Iran. As mentioned, the IRI is known to engage in significant transnational repression against Iranian dissidents.⁵⁸ The IRI has also aided and abetted the Russian and Syrian governments in crimes committed in Ukraine and Syria.⁵⁹

Additionally, European jurisdictions can invoke universal jurisdiction provisions to look at standalone crimes. IRI officials have been implicated in crimes such as murder, torture, enforced disappearance, and the taking of hostages—crimes over which some European jurisdictions enjoy

e.g., “In Coppet, A Crime Against Humanity,” *Civitas Maxima*, July 22, 2021, <https://civitas-maxima.org/2021/07/22/in-coppet-a-crime-against-humanity/>; Julia Crawford, “Why Switzerland Is Relaunching an Iranian Cold Case for ‘Genocide,’” *JusticeInfo*, October 26, 2021, <https://www.justiceinfo.net/en/83702-switzerland-relaunching-iranian-cold-case-genocide.html>.

⁵⁴ Protocol II, Article 1; “War Crimes,” United Nations; see also, Rome Statute, Article 8.

⁵⁵ “Report 43: The Verdict.”

⁵⁶ *Ibid.*

⁵⁷ See, e.g., “Blood-Soaked Secrets: Why Iran’s 1988 Prison Massacres Are Ongoing Crimes against Humanity,” Amnesty International, 2017, 8–10, <https://www.amnesty.org/en/wp-content/uploads/2021/12/MDE1394212018ENGLISH.pdf>; “Beyond Reasonable Doubt: Crimes against Humanity Committed by Iran’s Officials, Tribunal Finds,” *Aban Tribunal*, October 4, 2022, <https://abantribunal.com/2022/10/04/judg/>; “Iran: UN Expert’s Report to the Human Rights Council Provides Further Evidence of Widespread Violations in Iran,” Amnesty International, March 21, 2023, <https://www.amnesty.org/en/documents/mde13/6566/2023/en/>; Carla Ferstman and Marina Sharpe, “Iran’s Arbitrary Detention of Foreign and Dual Nationals as Hostage-taking and Crimes Against Humanity,” *Journal of International Criminal Justice* 20, 2 (2022), 403–435, <https://academic.oup.com/jicj/article/20/2/403/6543573>.

⁵⁸ See, e.g., “Iran: Transnational Repression,” Freedom House, 2021, <https://freedomhouse.org/report/transnational-repression/iran>.

⁵⁹ For information on drones provisions to Russia, see, e.g., “Terror in the Details: Western-Made Components in Russia’s Shahed-136 Attacks,” International Partnership for Human Rights, NAKO, Truth Hounds, Global Diligence, 2023, 29–30, https://www.iphronline.org/wp-content/uploads/2023/07/Report-drones-final_3.07.pdf; Dion Nissenbaum, “Chinese Parts Help Iran Supply Drones to Russia Quickly, Investigators Say,” *Wall Street Journal*, June 12, 2023, <https://www.wsj.com/articles/china-helps-iran-supply-drones-to-russia-quickly-investigators-say-dd492264>. For information on Iran’s aid to Russia and Syria in Syria, see Nicole Grajewski, “The Evolution of Russian and Iranian Cooperation in Syria,” Center for Strategic and International Studies, November 17, 2021, <https://www.csis.org/analysis/evolution-russian-and-iranian-cooperation-syria>. For brief overviews of the atrocities committed in each conflict, see “Syria 2022,” Amnesty International, last visited December 14, 2023, <https://www.amnesty.org/en/location/middle-east-and-north-africa/syria/report-syria/>; “Ukraine 2022,” Amnesty International, last visited December 14, 2023, <https://www.amnesty.org/en/location/europe-and-central-asia/ukraine/report-ukraine/>.

universal jurisdiction.⁶⁰ While not the subject of this report, jurisdictions can also use counterterrorism provisions where appropriate, particularly if European states carry forward proposals to designate the IRI's Islamic Revolutionary Guards Corps (IRGC) as a terrorism organization.⁶¹

European investigations and trials under universal jurisdiction provisions can provide much-needed justice for the victims and survivors of IRI abuses, for whom accountability has remained extremely limited to date. National law-enforcement and judicial authorities—with the help of information provided by civil society and legal practitioners—can also use and hone their domestic laws to bolster other international efforts to hold IRI perpetrators to account.

⁶⁰ See, e.g., “Iran 2022.”

⁶¹ See, e.g., “Motie van het lid Brekelmans over Binnen de EU het Voortouw Nemen om te Komen tot Plaatsing van de Iraanse Revolutionary Garde op de EU-terreurlijst [Motion by Member Brekelmans on Taking the Lead within the EU to Have the Iranian Revolutionary Guards Placed on the EU Terrorist List],” Tweede Kamer, September 25, 2023, <https://www.tweedekamer.nl/kamerstukken/moties/detail?id=2023Z15921&did=2023D38840>. For previous examples of the use of terrorism provisions, see, e.g., “Iranian Diplomat’s 20-Year Sentence for French Bomb Plot Confirmed,” RadioFreeEurope/RadioLiberty, May 5, 2021, <https://www.rferl.org/a/iran-belgium-france-terrorism-bombing-opposition-rally/31239101.html>.

PROSPECTS IN EUROPEAN JURISDICTIONS

Most European countries are parties to the Rome Statute of the International Criminal Court, which requires national implementing legislation granting domestic jurisdiction over genocide, crimes against humanity, and war crimes.⁶² However, each state has unique processes and policies for prosecuting these crimes, and—whether due to opportunity, resources, or other factors—some states have developed far more robust universal jurisdiction practices than others. Further, many European states have particular relationships with the Iranian government—whether from bringing a case against an official, negotiating over the return of hostages, or otherwise—that may influence the decision to utilize universal jurisdiction provisions against IRI perpetrators.⁶³

Ultimately, which jurisdiction brings a case or opens a structural investigation comes down to political will and opportunity, including whether a perpetrator is physically present in its jurisdiction and whether the underlying crimes are prosecutable. For those European states with still-nascent practices, the limited caselaw provides prosecutors and civil society an opportunity to adopt the flexible and responsive approaches recommended in this report. For those states that have a developed universal jurisdiction system and routinely interact with the IRI, this report can offer helpful guideposts on how to best pursue cases going forward.

There is still plenty of room for all European states to strengthen their universal jurisdiction legislation, their polices, and their practices for bringing cases involving core international crimes. Even the most experienced states have areas where they can expand their jurisdiction and admissibility provisions, and where they can better listen to and meet the needs of affected communities who risk their safety and well-being to pursue justice.

Recommendations

Lawmakers

- Lawmakers should regularly review their penal codes, criminal procedures, and other relevant authorities to identify any impunity gaps. This review should account for evolving concepts of justice, especially for historically marginalized communities. At a minimum, lawmakers should ensure they have criminalized the core international crimes and have universal jurisdiction to investigate and prosecute those crimes when committed by and against foreign nationals in a foreign state. If they do not have such provisions, they should initiate legislative proceedings to introduce the required laws or amendments.
- Lawmakers should additionally review any restrictions on universal jurisdiction, especially those that are stricter than what international legal precedents allow. For example, this may include

⁶² “The States Parties to the Rome Statute,” International Criminal Court, last visited October 5, 2023, <https://asp.icc-cpi.int/states-parties>; “Joining the International Criminal Court,” International Criminal Court, 11, last visited October 5, 2023, <https://www.icc-cpi.int/sites/default/files/Publications/Joining-Rome-Statute-Matters.pdf>.

⁶³ For examples of those relationships, see Anderson and Fassihi, “Ex-Iranian Official Convicted by Swedish Court for Prison Executions”; Patrick Wintour and Jamie Grierson, “Free at Last: Zaghari-Ratcliffe and Ashoori Head Back to UK after Six-Year Ordeal,” *Guardian*, March 16, 2022, <https://www.theguardian.com/news/2022/mar/16/nazanin-zaghari-ratcliffe-to-leave-iran-after-six-years-in-detention-reports>; Balz Rigendinger, “Iranian Protests Test Switzerland’s Special Status with Iran,” SwissInfo, November 15, 2022, <https://www.swissinfo.ch/eng/business/switzerland-s-special-relationship-with-iran/48049266>.

- eliminating requirements on the physical presence of a suspect before initiating an investigation;
- allowing the retroactive application of provisions criminalizing core international crimes;⁶⁴
- eliminating statutes of limitations related to core international crimes;
- including exceptions for *jus cogens* violations in functional immunity protections for former government officials; and⁶⁵
- eliminating requirements that non-judiciary government officials approve investigations and/or prosecutions.
- Lawmakers should introduce legislative changes to heighten witness and victim protections, balanced with maintaining defendants’ rights.
- Lawmakers should, to the extent the changes require a legislative amendment, introduce such legislation to allow for structural investigations, cumulative prosecutions, and other tools that better allow investigating and law-enforcement authorities to hold perpetrators accountable.
- Lawmakers should dedicate sufficient funding to investigating and judicial authorities that are pursuing accountability for core international crimes, and ensure that such authorities have the necessary resources to meaningfully engage with civil society and affected communities.

Foreign Ministers and Other Government Officials

- Foreign ministers and government officials must commit to allowing trials conducted under universal jurisdiction provisions to proceed without government interference, particularly in instances in which their approval is needed for cases to proceed.

Domestic Investigating and Judicial Authorities

- Investigating and judicial authorities should take actions that best allow them to hold perpetrators accountable, including
 - as necessary, working with lawmakers to ensure that they can institute structural investigations into core international crimes, as well as individual investigations;
 - while prioritizing the prosecution of core international crimes and crimes most relevant to affected communities, where available, cumulatively charging suspects with all relevant crimes;

⁶⁴ As mentioned above, while criminal law generally has provisions against retroactivity as an element of defendants’ rights, certain courts have allowed exceptions for core international crimes. For example, the European Court of Human Rights has ruled that the retroactive application of core international crimes, when the criminal law and penalties were accessible and foreseeable, was not a violation of Article 7 of the European Convention on Human Rights. *Digest of the European Court for Human Rights Jurisprudence on Core International Crimes*, 2–9; see also, *A. contre Ministère public de la Confédération*, Décision du 23 Septembre 2021 Cour des plaintes, paras. 2–2.1.3; “Briefing Paper: Universal Jurisdiction Law and Practice in Belgium,” 12.

⁶⁵ See, e.g., Special Rapporteur on Peremptory Norm of General International Law (*Jus Cogens*), “Third Report on Peremptory Norms of General International Law (*Jus Cogens*) by Dire Tladi, Special Rapporteur,” paras. 121–132; Alexander, “*Jus Cogens* and Immunity: Revisiting ILC Draft Article 7 on Immunity of State Officials from Foreign Criminal Jurisdiction” (describing a shift toward accepting *jus cogens* exceptions to functional immunity).

- working with lawmakers and other relevant authorities to create separate, independent departments dedicated to pursuing accountability for core international crimes;
- participating in EuroJust and other collaborative efforts between states; and
- cooperating with international fact-finding and accountability efforts.
- Investigating and judicial authorities should especially prioritize cases that could hold IRI officials accountable for crimes committed in Iran and extraterritorially, including
 - opening structural investigations into situations involving core international crimes committed by the IRI;
 - These investigations should cover, *inter alia*, the 1988 prison massacres, abuses committed against protesters and dissidents, hostage taking, and abuses committed against religious and ethnic minorities.
 - including crimes committed by, or aided and abetted by, IRI officials in their structural investigations regarding Syria, Ukraine, and other applicable situations; and
 - cooperating with the UN’s Independent International Fact-Finding Mission on the IRI, and all other international fact-finding and accountability efforts.
- Investigating and judicial authorities should work with civil society and affected communities to identify their priorities and needs. This should be an ongoing process that includes
 - working with civil society and affected communities to identify procedural and policy gaps that need to be addressed, such as witness and victim protections or translation and interpretation services;
 - working with lawmakers to introduce and guide any needed legislative changes;
 - conducting outreach to affected communities—especially those where there are active investigations, are likely to be active investigations (such as following the onset of a recent conflict), or where criminal complaints have been filed—with an aim to build their trust; and
 - working with court officials to ensure that victims and witnesses are afforded needed protections and support.
- Investigating and judicial authorities, working with court authorities, must use their resources to ensure that proceedings are able to accommodate the unique needs of international trials related to core international crimes, including
 - holding trainings and bringing in expert witnesses to ensure that investigators, lawyers, judges, and other relevant personnel have an adequate understanding of the relevant laws, the nuances of international investigations, and notable considerations in examining the testimony of victims and survivors of atrocities; and
 - investing in interpretation and translation services that can accommodate trials involving core international crimes and related crimes.

International and Regional Investigating Authorities

- International and regional investigating authorities, such as joint investigative teams and EuroJust, should encourage members, including the jurisdictions included in this report, to

open structural investigations into situations involving core international crimes committed by the IRI in Iran.

- International and regional investigating authorities should include crimes committed by, or aided and abetted by, IRI officials in structural investigations regarding Syria, Ukraine, and other applicable situations.

BELGIUM

Several developments in Belgium over the past few years have touched on the search for justice and accountability in Iran. While trials against IRI officials for core international crimes in Belgian courts remain elusive, the jurisdiction has the precedent of trying and convicting an IRI diplomat on terrorism charges in a Belgian court in 2021 in connection with a foiled bomb plot against an opposition rally in France.⁶⁶ Unfortunately that diplomat—and convicted terrorist—was released less than two years into his twenty-year sentence as part of a prisoner swap between the Belgian authorities and the IRI for a Belgian aid worker and other European nationals arbitrarily detained in Iran.⁶⁷ The legal arrangement underpinning the swap—in the form of a mutual legal assistance treaty—brings into question whether any future visits from IRI officials responsible for atrocity crimes could lead to arrest and prosecution in Belgian courts if ultimately a convicted person would simply be freed prematurely due to political considerations. Since the possibility that IRI officials will travel to Belgium remains—a recent example including the attendance of Tehran’s Mayor Alireza Zakani at a mayor’s summit in Brussels in June 2023—concerns persist over whether Belgian authorities can, and will, follow up on requests to investigate when the opportunity presents itself with the presence of IRI human rights violators in Belgium.⁶⁸ The opportunities and challenges for justice options in Belgium are further explored in the section below.

Framework

Belgium has universal jurisdiction over core international crimes.⁶⁹ Double criminality is not required in these cases.⁷⁰

Torture as a standalone crime is defined in the *Code Penal/Strafwetboek* or Criminal Code, but derives universal jurisdiction from Article 12*bis* of the *Loi Contenant Le Titre Preliminaire Du Code De Procedure Penale/Wet Houdende De Voorafgaande Titel Van Het Wetboek Van Strafvordering* or Preliminary Title of the Code of Criminal Procedure, which provides “jurisdiction to try the offences covered by a [rule of international law deriving from a convention or custom] [or a rule of law derived from the European Union] that is binding on Belgium, where [that rule] requires it, in any manner whatsoever, to submit the case to its competent authorities to conduct a prosecution.”⁷¹

⁶⁶ Steven Erlanger, “Iranian Diplomat Is Convicted in Plot to Bomb Opposition Rally in France,” *New York Times*, last updated February 15, 2021, <https://www.nytimes.com/2021/02/04/world/europe/iranian-diplomat-convicted-bomb-plot.html>.

⁶⁷ Charlotte Van Campenhout, “Three More Europeans Exchanged for Iran’s Assadi in Prisoner Swap,” Reuters, last updated June 3, 2023, <https://www.reuters.com/world/three-other-europeans-exchanged-irans-assadi-iran-belgium-prisoner-swap-2023-06-02/>.

⁶⁸ Charlotte Van Campenhout, “Belgian PM, Foreign Minister Quizzed in Parliament in Iran Visa Scandal,” Reuters, last updated June 21, 2023, <https://www.reuters.com/world/belgian-pm-foreign-minister-quizzed-parliament-iran-visa-scandal-2023-06-21/>.

⁶⁹ C.Pén/Sw. (Belg.), art. 136*bis*, 136*ter*, 136*quater*.

⁷⁰ “Briefing Paper: Universal Jurisdiction Law and Practice in Belgium,” 17, (citing a 2021 interview with a federal magistrate in the federal prosecution service).

⁷¹ This translation is unofficial and was taken from TRIAL International’s briefing paper on Belgian universal jurisdiction laws. Note that article 417(1) was renumbered from 417*bis* in March 2022. “Briefing Paper: Universal Jurisdiction Law and Practice in Belgium,” 8–9. For the French versions of 417*bis* of the Criminal Code and 12*bis* of the Code of Criminal Procedure, see, respectively, C.Pén/Sw. (Belg.), art. 417(1); C.I.Cr/Sv. (Belg.), art. 12*bis* (in

Belgium has had universal jurisdiction over war crimes since 1993, and over genocide and crimes against humanity since 1999.⁷² On August 5, 2003, the core international crimes were added to the penal code with extraterritorial jurisdiction (but requiring a link to Belgium).⁷³ Under existing jurisprudence, the core international crimes are subject to retroactivity, as they were preexisting rules under conventions or custom that were sufficiently accessible and foreseeable to the defendant.⁷⁴ They are likewise not subject to statutes of limitations.⁷⁵ For torture, Belgium's ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) went into effect on July 25, 1999.⁷⁶ However, as a standalone crime, it generally has a statute of limitations that is generally ten to twenty years, depending on the specifics of the case.⁷⁷ It is not clear as of November 2023 if the precedent allowing retroactivity holds for torture.

Heads of state, heads of government, ministers of foreign affairs, and “other persons whose immunity is recognized by international law” are entitled to functional immunity.⁷⁸ Under the *Yerodia* case between Belgium and the Democratic Republic of Congo, the International Court of Justice found no exception under customary international law to immunity for war crimes or crimes against humanity for incumbent ministers for foreign affairs, but did note exceptions for, *inter alia*, acts committed by a former minister of foreign affairs that were conducted in a “private

the titre préliminaire, or preliminary title, of the code). For the law renumbering 417*bis* to 417(1), see Lois, Décrets, Ordonnances et Règlements [Laws, Decrees, Ordinances and Regulations], M.B., August 14, 2002, art. 94.

⁷² See “Law on the Repression of Serious Violations of International Humanitarian Law, 1999,” International Committee of the Red Cross, last visited October 2, 2023, <https://ihl-databases.icrc.org/en/national-practice/law-repression-serious-violations-international-humanitarian-law-1999> (describing, in the underlying document with the text of the law, that the original law of June 16, 1993, was limited to the International Conventions of Geneva of August 12, 1949 and to Protocols I and II of June 9, 1977); “Law Amending the 1993 Law on the Punishment of Serious Violations of International Humanitarian Law, 2003,” International Committee of the Red Cross, last visited November 1, 2022, https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=CE6F90F33E3C2C68C1257D35004F0DCB&action=openDocument&xp_countrySelected=BE&xp_topicSelected=GVAL-992BU6&from=state.

⁷³ Loi du 5 août 2003 relative à la répression des infractions graves au droit international humanitaire [Law of August 5, 2003 relating to the repression of serious breaches of international humanitarian law], August 5, 2003, art. 16, <https://competenceuniverselle.files.wordpress.com/2011/07/loi-du-5-aout-2003-texte-de-loi.pdf>.

⁷⁴ “Briefing Paper: Universal Jurisdiction Law and Practice in Belgium,” 12 (citing French Speaking Court of First Instance Brussels (constitutional chamber), 20 October 2017, J.L.M.B., 2018, No. 6, p. 259).

⁷⁵ C.I.Cr/Sv. (Belg.), art. 12*bis* (in the titre préliminaire, or preliminary title, of the code).

⁷⁶ “Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,” United Nations Treaties, last visited October 2, 2023, <https://treaties.un.org/pages/showdetails.aspx?objid=080000028003d679>.

⁷⁷ For the sentencing requirements for the crime of torture, see C.Pén (Belg.), June 9, 1867, art. 417(2); For the statute of limitations guidelines, see C.I.Cr/Sv. (Belg.), art. 21 (in the titre préliminaire, or preliminary title, of the code).

⁷⁸ Act of 5 August 2003 on serious violations of international humanitarian law, August 5, 2003, art. 13, (Belg.) https://cjad.nottingham.ac.uk/documents/implementations/pdf/Belgium_Serious_Violations_of_International_Humanitarian_Law_2003.pdf (providing a translated version of the law); Loi du 5 août 2003 relative à la répression des infractions graves au droit international humanitaire [Law of August 5, 2003 relating to the repression of serious breaches of international humanitarian law], art. 16 (providing the French version of the law); “Briefing Paper: Universal Jurisdiction Law and Practice in Belgium,” 37–38; United Nations General Assembly, “Sixty-Eight Session of the General Assembly, Sixth Committee, Review of the Report of the International Law Commission on the Work of Its Sixty-Fifth Session, Comments of Belgium on the Topic ‘Immunity of State officials from Foreign Criminal Jurisdiction,’” last visited November 1, 2022, https://legal.un.org/ilc/sessions/66/pdfs/english/iso_belgium.pdf.

capacity.”⁷⁹ Additionally, in a February 2003 decision, the Belgian *Cour de Cassation*, or Supreme Court, recognized immunity for Israeli Prime Minister Ariel Sharon for alleged genocide, crimes against humanity, and war crimes, but allowed a case against former Israeli Army Chief of Staff Amos Yaron to proceed, implying that Sharon could be tried after he left office.⁸⁰

Bringing a Case

The federal prosecutor may open an investigation in four scenarios: upon receipt of an international arrest warrant; when there is reason to believe that an asylum seeker would have committed an international crime; after a complaint is lodged with the federal prosecution service; or on the prosecutor’s own initiative.⁸¹ The competent minister of justice may also order a prosecutor to open an inquiry, but such an order to prosecute does not further bind the office of the prosecutor to take a specific position after the case has been opened (and does not bind the criminal courts).⁸² If the federal prosecutor finds the case should not be brought because of specific circumstances that render it not in the interest of the administration of justice and respect for Belgium’s international obligations, they may close the case without option to appeal.⁸³

If the federal prosecutor finds: that the complaint is manifestly unfounded; the facts do not correspond to serious violations of humanitarian law; or the complaint could not give rise to an admissible prosecution, they must refer the case to the indictment chamber of the Brussels Court of Appeals, which then determines whether there are grounds to prosecute or whether the prosecution is admissible.⁸⁴ The federal prosecutor can file an appeal against the indictment chamber’s decision at the Supreme Court.⁸⁵ In a fourth scenario, if the case could potentially fall under the jurisdiction of the International Criminal Court, another international court, or the jurisdiction where the acts were committed, the federal prosecutor must close the case and notify the minister of justice.⁸⁶ If none of the four situations apply, or if the indictment chamber decides a case should move forward, the complaint is sent to the investigating judge.⁸⁷ Once the

⁷⁹ “Briefing Paper: Universal Jurisdiction Law and Practice in Belgium,” 37–38; Arrest Warrant of 11 April 2000 (Dem. Rep. Congo v. Belg.), Judgment, 2002 I.C.J. Rep. 3, paras. 58–61, February 14, 2002.

⁸⁰ “Sharon & Yaron case, Appeal Court, 26 June 2002 & 10 June 2003 and Court of Cassation, 14 February 2003 & 24 September 2003,” International Committee of the Red Cross, last visited November 1, 2022, https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/caseLaw.xsp?documentId=E62DEBB9290042B6C12576770046E382&action=openDocument&xp_countrySelected=BE&xp_topicSelected=GVAL-992BU6&from=state; Marlise Simons, “Sharon Faces Belgian Trial After Term Ends,” *New York Times*, February 13, 2003, <https://www.nytimes.com/2003/02/13/world/sharon-faces-belgian-trial-after-term-ends.html>.

⁸¹ The federal prosecutor’s office is the competent authority. “Briefing Paper: Universal Jurisdiction Law and Practice in Belgium,” 19, (citing a 2021 interview with a federal magistrate in the federal prosecution service); “Parquet Fédéral [Federal Prosecutor’s Office],” Ministère Public, last visited October 2, 2023, <https://www.om-mp.be/fr/votre-mp/parquet-federal/contact>.

⁸² *Belgium’s Constitution of 1831 with Amendments through 2014*, Constitute Project, PDF generated April 27, 2022, art. 151 § 1, https://www.constituteproject.org/constitution/Belgium_2014.pdf?lang=en; “Vocabulaire Politique: Ministère Public,” Centre de recherche et d’information socio-politiques, <https://www.vocabulairepolitique.be/ministere-public/>.

⁸³ C.I.Cr/Sv. (Belg.), art. 10(1)^obis (in the titre préliminaire, or preliminary title, of the code).

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

⁸⁶ For acts committed after June 30, 2002, the minister of justice will further inform the International Criminal Court of the facts of the case. *Ibid.*

⁸⁷ *Ibid.*

investigation is complete, the investigating judge sends the file back to the prosecutor to bring it before the *Chambre du Conseil/Raadkamer*, or first-instance pre-trial chamber, which either dismisses the case or refers the case to the criminal court.⁸⁸ Again, prosecutors and civil parties can appeal pre-trial chambers' decisions.⁸⁹

Belgium does not officially allow for structural investigations.⁹⁰ Additionally, with the 2003 addition of the core international crimes to the penal code, Belgian authorities can only open an investigation if there is a connection to Belgium.⁹¹ They then have jurisdiction to prosecute if the perpetrator is in Belgium or has residence there, or if, at the time of the crime's commission, the perpetrator was a Belgian citizen, a refugee recognized to have habitual residence in Belgium, or someone who habitually and lawfully stayed in Belgium for at least three years.⁹² There is additionally an admissibility requirement of presence, for which it is necessary and sufficient that the suspect was met and found in Belgium, which, in turn, is a question of fact as to whether their presence was sufficiently prolonged that complete impunity would arouse feelings of injustice and scandal.⁹³ While the core crimes are exempted from the admissibility factor, torture as a standalone crime is not.⁹⁴ Civil parties likewise cannot initiate civil action against perpetrators *in absentia*.⁹⁵

Victim Participation

Victims can participate as injured parties or as civil parties.⁹⁶ Injured parties must make a statement in person or by lawyer to the public prosecutor or to the police, which grants them certain rights (such as to be assisted or represented by a lawyer, to add documents to the case file, and to be informed of certain decisions).⁹⁷ Victims who wish to claim compensation can file a civil action before the investigating judge or the criminal courts.⁹⁸ Victims registered as civil parties are afforded additional rights, such as requesting additional acts of investigation, being heard by the investigating judge at least once upon request, or lodging appeals against certain court decisions

⁸⁸ C.I.Cr/Sv. (Belg.), art. 127, 128, 133 (in the livre premier, or first book, of the code); "Ordinary Courts—Introduction," European Justice, last updated July 28, 2022, https://e-justice.europa.eu/content_ordinary_courts-18-be-en.do?member=.

⁸⁹ C.I.Cr/Sv. (Belg.), art. 135 (in the livre premier, or first book, of the code).

⁹⁰ "Briefing Paper: Universal Jurisdiction Law and Practice in Belgium," 22 (citing a 2021 interview with a federal magistrate in the federal prosecution service).

⁹¹ *Ibid.*, 15 (citing a 2021 interview with a federal magistrate in the federal prosecution service); Loi du 5 août 2003 relative à la répression des infractions graves au droit international humanitaire [Law of August 5, 2003 relating to the repression of serious breaches of international humanitarian law], art. 16.

⁹² C.I.Cr/Sv. (Belg.), art. 10(1)^o*bis* (in the titre préliminaire, or preliminary title, of the code).

⁹³ Cass. [Court of Cassation] "Conclusions du Ministère Public du 30 Mai 2007," May 30, 2007; C.I.Cr/Sv. (Belg.), art. 12 (in the titre préliminaire, or preliminary title, of the code).

⁹⁴ Cass. [Court of Cassation] "Conclusions du Ministère Public du 30 Mai 2007"; C.I.Cr/Sv. (Belg.), art. 12 (in the titre préliminaire, or preliminary title, of the code).

⁹⁵ Cass. [Court of Cassation] "Conclusions du Ministère Public du 30 Mai 2007."

⁹⁶ C.I.Cr/Sv. (Belg.), art. 5*bis* (in the titre préliminaire, or preliminary title, of the code); C.I.Cr/Sv. (Belg.), art. 63 (in livre II, titre III, or book II, title III, of the code).

⁹⁷ C.I.Cr/Sv. (Belg.), art. 5*bis* (in the titre préliminaire, or preliminary title, of the code).

⁹⁸ C.I.Cr/Sv. (Belg.), art. 63 (in the livre premier, or first book, of the code); C.I.Cr/Sv. (Belg.), art. 4 (in the titre préliminaire, or preliminary title, of the code); C.I.Cr/Sv. (Belg.), art. 347 (in livre II, titre II, or Book II, Title II, of the code).

throughout the criminal proceedings.⁹⁹ If they have not suffered a harm, legal entities can only become civil parties if their purpose is to protect human rights or fundamental freedoms contained in the Belgian Constitution and if a number of other specific conditions are fulfilled.¹⁰⁰

Universal Jurisdiction Cases

There have been at least twelve Belgian cases that fell under the universal jurisdiction umbrella, including at least seven convictions relating to the Rwandan genocide.¹⁰¹ Several cases, primarily those regarding the Rwandan genocide and the Liberian war, are ongoing.¹⁰² Recently, Belgium has progressed the war crimes investigation into the 1961 assassination of Congolese Prime Minister Patrice Lumumba, for which Belgian ministers were found in 2001 to bear “moral responsibility.”¹⁰³ The investigation was first opened in 2012 but has moved slowly, and only two

⁹⁹ C.I.Cr/Sv. (Belg.), art. 61 *quinquies*, 63, 127 (in the livre premier, or first book, of the code); C.I.Cr/Sv. (Belg.), art. 359 (in livre II, titre II, or book II, title II, of the code); “Briefing Paper: Universal Jurisdiction Law and Practice in Belgium,” 30.

¹⁰⁰ Specifically, the “corporate purpose” must be “of a particular nature, distinct from the pursuit of the general interest”; it must pursue this objective “in a long-term and effective manner”; the civil action must be in pursuit of this objective, “with a view to ensuring the defense of an interest in relation to that object”; and “only a collective interest” must be pursued by means of the action. “Briefing Paper: Universal Jurisdiction Law and Practice in Belgium,” 28 (citing several court opinions); C.Jud./Ger.W. (Belg.), art. 17.

¹⁰¹ Wolfgang Kaleck, “From Pinochet to Rumsfeld: Universal Jurisdiction in Europe 1998–2008,” *Michigan Journal of International Law* 30 (2009), 933,

https://www.ecchr.eu/fileadmin/Fachartikel/Kaleck_From_Pinochet_to_Rumsfeld_Spring_2009.pdf; “Prosecutor v. Étienne Nzabonimana and Samuel Ndashyikirwa alias Samuel Manzi,” International Crimes Database, last visited October 3, 2023, <https://internationalcrimesdatabase.org/Case/999/Nzabonimana-and-Ndashyikirwa/>; “04.05.07 / Rwanda/Belgium—Belgium Applies Its Law on Universal Jurisdiction for the Third Time,” JusticeInfo, May 4, 2007, <https://www.justiceinfo.net/en/18698-en-en-040507-rwandabelgium-belgium-applies-its-law-on-universal-jurisdiction-for-the-third-time94649464.html>; “Rwandan Gets 20 Years in Genocide Trial,” Reuters, July 5, 2007, <https://www.reuters.com/article/us-rwanda-genocide-belgium/rwandan-gets-20-years-in-genocide-trial-idUSL051276320070705>; “Former Rwandan Banker Gets 30-Year Sentence for War Crimes,” France24, December 1, 2009, <https://www.france24.com/en/20091201-genocide-rwanda-bank-director-brussels-war-crimes-justice>; “Fabien Neretse,” TRIAL International, last updated April 7, 2021, <https://ujim.trialinternational.org/latest-post/fabien-neretse/>.

¹⁰² “Christophe Ndangali,” TRIAL International, last updated March 29, 2022, <https://ujim.trialinternational.org/latest-post/christophe-ndangali/>; “Ernest Gakwaya and Emmanuel Nkunduwimye,” TRIAL International, last updated March 23, 2021, <https://ujim.trialinternational.org/latest-post/ernest-gakwaya/>; “Martina Johnson,” TRIAL International, last updated April 8, 2021, <https://ujim.trialinternational.org/latest-post/martina-johnson/>. See also, Ephrem Rugiriza, “Belgium: The Money Changer, the Militiaman, and the Rwandan Academic,” JusticeInfo, November 19, 2020, <https://www.justiceinfo.net/en/46033-belgium-money-changer-militiaman-rwandan-academic.html>; James Karuhanga, “Kigali Awaits Decision by Belgian Judiciary on Three Genocide Fugitives,” *New Times*, October 6, 2020, <https://www.newtimes.co.rw/news/kigali-awaits-decision-belgian-judiciary-three-genocide-fugitives#.X4b-dn2wZsQ.whatsapp>; Gaëlle Ponselet, “Liberia War Crimes: Belgian Investigators Drag Feet on Martina Johnson,” JusticeInfo, April 2, 2020, <https://www.justiceinfo.net/en/44069-liberia-war-crimes-belgian-investigators-drag-feet-on-martina-johnson.html>; Clara Guldemann, “Waiting for Justice on Martina Johnson’s Alleged War Crimes in Liberia,” *Geneva Solutions*, April 4, 2022, <https://genevasolutions.news/global-news/waiting-for-justice-on-martina-johnson-s-alleged-war-crimes-in-liberia>.

¹⁰³ Specifically, in January 2022, the investigating judge leading the investigation ordered new searches carried out in the Belgian federal parliament, seizing about two hundred folders of documents. The Indictment Chamber ruled in October 2022 that the seizure was legal. “Indictment Chamber Paves the Way for Lumumba Investigation to Continue,” *Brussels Times*, October 8, 2022, <https://www.brusselstimes.com/302095/indictment-chamber-paves-the->

accused officials are still alive.¹⁰⁴ A case related to the Rwandan genocide began on October 9, 2023, though one defendant is reported to have senile dementia.¹⁰⁵ Another case, involving five former Guatemalan government officials, is also awaiting trial.¹⁰⁶ In November, relatives of a slain Congolese politician filed a complaint in Belgium alleging torture and murder against the head of Congo's military intelligence service, who is a Belgian national.¹⁰⁷

Of the cases that did not progress, most ended due to pragmatic difficulties.¹⁰⁸ Additionally, a case against Alexis Thambwe Mwamba for war crimes, crimes against humanity, and corruption committed in the Democratic Republic of Congo was ruled inadmissible, seemingly for lack of evidence on the former two charges and for lack of jurisdiction on the corruption charges.¹⁰⁹

Belgium has also brought related cases under terrorism provisions. For example, Asadollah Assadi, who was attached to the Iranian mission in Austria and who was an officer under the Iranian Intelligence and Security Ministry, was convicted in 2021 for his role in attempting to supply

way-for-lumumba-investigation-to-continue; Ian Black, "Belgium Blamed for Icon's Murder," *Guardian*, November 17, 2001, <https://www.theguardian.com/world/2001/nov/17/humanities.research>; "Etienne Davignon," TRIAL International, April 17, 2023, <https://ujim.trialinternational.org/latest-post/etienne-davignon/>; "Jacques Brassinne de la Buisserie," TRIAL International, last updated April 17, 2023, <https://ujim.trialinternational.org/latest-post/jacques-brassinne-de-la-buisserie/>.

¹⁰⁴ Jason Burke, "Belgium to Return Patrice Lumumba's Gold Tooth in Bid to Atone for Colonial Crimes," *Guardian*, June 18, 2022, <https://www.theguardian.com/world/2022/jun/18/belgium-patrice-lumumba-gold-tooth-return>; "Indictment Chamber Paves the Way for Lumumba Investigation to Continue," *Brussels Times*.

¹⁰⁵ Gaëlle Ponselet, "There Was No Roadblock, There Wasn't the Space," JusticeInfo, October 17, 2023, <https://www.justiceinfo.net/en/123304-there-was-no-roadblock-there-wasnt-the-space.html>; "Pierre Basabose," TRIAL International, last updated March 29, 2022, <https://ujim.trialinternational.org/latest-post/pierre-basabose/>; Gaëlle Ponselet, "Pierre Basabosé is 'Mentally Absent' but Will Be Tried," JusticeInfo, August 21, 2023, <https://www.justiceinfo.net/en/120450-pierre-basabose-is-mentally-absent-but-will-be-tried.html>; "La Demande de Récusation de la Présidente Rejetée dans le Dossier de Pierre Basabosé [The Request for Recusal of the President Rejected in the File of Pierre Basabosé]," RTL Info, July 22, 2023, <https://www.rtl.be/actu/belgique/faits-divers/la-demande-de-recusation-de-la-presidente-rejetee-dans-le-dossier-de-pierre/2023-07-22/article/571540>; "Trial of Two Former Rwandan Officials for 'Crime of Genocide' Opens in Brussels," France24, October 9, 2023, <https://www.france24.com/fr/europe/20231009-le-proc%C3%A8s-de-deux-anciens-responsables-rwandais-pour-crime-de-g%C3%A9nocide-s-ouvre-%C3%A0-bruxelles>.

¹⁰⁶ "Manuel Benedicto Lucas Garcia and Others," TRIAL International, last updated May 3, 2023, <https://ujim.trialinternational.org/latest-post/manuel-benedicto-lucas-garcia-and-others/>.

¹⁰⁷ "Relatives of Slain Congolese Politician File Suit in Belgium against Intelligence Chief," *Brussels Times*, November 8, 2023, <https://www.brusselstimes.com/belgium/787972/relatives-of-slain-congolese-politician-file-suit-in-belgium-against-intelligence-chief>.

¹⁰⁸ Michel Desaeleer died in custody after his indictment; Tzipi Livni cancelled a trip to Belgium after the prosecutor's office announced its intention to arrest and question her; and Hissène Habré was tried and convicted instead at the Extraordinary African Chambers. "Michel Desaeleer," TRIAL International, last updated July 8, 2020, <https://ujim.trialinternational.org/latest-post/michel-desaeleer/>; "Tzipi Livni," TRIAL International, last updated July 15, 2020, <https://ujim.trialinternational.org/latest-post/tzipi-livni/>; "Hissène Habré," TRIAL International, last updated July 27, 2020, <https://ujim.trialinternational.org/latest-post/hissene-habre/>.

¹⁰⁹ "Alexis Thambwe Mwamba," TRIAL International, last updated March 24, 2021, <https://ujim.trialinternational.org/latest-post/alexis-thambwe-mwamba/>; "Breaking Down Barriers: Access to Justice in Europe for Victims of International Crimes," FIDH, ECCHR, and REDRESS Nederland, 33, https://www.ecchr.eu/fileadmin/Publikationen/Breaking_Down_Barriers_EN_web_FINAL_2020-11-08.pdf; "Court Declines to Prosecute Congolese Politician for Shooting Down Civilian Plane in 1998," *Brussels Times*, January 12, 2020, <https://www.brusselstimes.com/88886/court-declines-to-prosecute-congolese-politician-for-shooting-down-civilian-plane-in-1998>.

explosives for a planned attack on an Iranian opposition rally in Paris.¹¹⁰ The court rejected Assadi’s diplomatic immunity claim and convicted him of “attempted terrorist murder and participation in the activities of a terrorist group,” sentencing him to twenty years’ imprisonment.¹¹¹ In 2023, Belgian police also arrested an Iraqi man suspected of belonging to al-Qaeda, charging him with “several murders with terrorist intent, participation in the activities of a terrorist group, war crimes and crimes against humanity,” and a Syrian man suspected of committing war crimes as part of the Islamic State of Iraq and al-Sham (ISIS).¹¹² In 2015, Belgian security forces conducted a “national crackdown on groups of Chechens,” included those suspected of fighting in Syria, linked to related investigations against Belgium-linked members of extremist groups.¹¹³ However, in 2020, the Belgian Supreme Court held that in the context of a non-international armed conflict or civil war where there is permissible use of military force, anti-terrorism legislation cannot be used against parties that may otherwise be classified as a terrorist organization.¹¹⁴

State of Play for Iran-Related Cases

From a legal perspective, Belgium is well placed to launch cases under its universal jurisdiction provisions. Its legislation and caselaw are generally favorable to plaintiffs, particularly when it comes to retroactivity and statutes of limitations; victims are entitled to participate in trials and claim compensation; and it has a history of bringing cases over a variety of conflicts. Belgium has planned further reforms to both its *Code D’instruction Criminelle/Wetboek Van Strafvordering*, or Code of Criminal Procedure, and its Criminal Code to make its criminal-justice system more “humane, clearer and modernised,” including by adding the international crime of ecocide.¹¹⁵ However, there are indications that the reach of Belgium’s universal jurisdiction provisions remains limited by political influence and resource constraints. A 2003 amendment to the Criminal Code—seemingly put in place to prevent the prosecution of former US President George W. Bush and other US officials—significantly restricted Belgium’s jurisdiction through “filters”—for

¹¹⁰ Notably, unlike in universal jurisdiction cases, part of the plot took place in Belgium and Belgium requested Assadi’s extradition. Erlanger, “Iranian Diplomat Is Convicted in Plot to Bomb Opposition Rally in France”; Jamie Dettmer, “Belgian Court Hands Iranian Diplomat 20 Years for Terrorism Plot,” Voice of America, February 4, 2021, https://www.voanews.com/a/middle-east_belgian-court-hands-iranian-diplomat-20-years-terrorism-plot/6201596.html; “Iranian Diplomat Faces Extradition from Germany over ‘Bomb Plot,’” BBC, October 1, 2018, <https://www.bbc.com/news/world-europe-45705799>.

¹¹¹ Erlanger, “Iranian Diplomat Is Convicted in Plot to Bomb Opposition Rally in France.”

¹¹² “Belgium Arrests Iraqi Suspected of Al-Qaeda ‘War Crimes’ in Baghdad,” *Arab News*, May 5, 2023, <https://www.arabnews.com/node/2298121/middle-east>.

¹¹³ Christian Oliver, “Belgian Security Forces Arrest 16 in Crackdown on Chechen Groups,” *Financial Times*, June 8, 2015, <https://www.ft.com/content/9e06a18c-0df2-11e5-9a65-00144feabdc0>.

¹¹⁴ “Belgian Government Defies Ruling of Its Supreme Court on PKK,” *Brussels Times*, January 30, 2020, <https://www.brusselstimes.com/92787/belgian-government-defies-ruling-of-its-supreme-court-on-pkk>.

¹¹⁵ “Réforme de la Procédure Pénale [Reform of Criminal Procedure],” news.belgium, December 23, 2022, <https://news.belgium.be/fr/reforme-de-la-procedure-penale>; “Ecocide and Incitement to Suicide to be Added to Belgian Penal Code,” *Brussels Times*, November 5, 2022, <https://www.brusselstimes.com/317531/ecocide-and-incitement-to-suicide-to-be-added-to-belgian-penal-code>; Dylan Carter, “Clearer, Kinder and Fit for Today: Belgium to Overhaul Penal Code,” *Brussels Times*, November 7, 2022, <https://www.brusselstimes.com/318299/more-humane-clearer-and-modern-belgium-to-overhaul-penal-code>; “CP | Zakia Khattabi Fait Inscrire le Crime D’écocide dans le Code Penal [PC | Zakia Khattabi Has the Crime of Ecocide Included in the Penal Code],” *Zakia Khattabi*, November 5, 2022, <https://khattabi.belgium.be/fr/crime-ecocide>.

example, those requiring a connection to Belgium for admissibility.¹¹⁶ Further, the Belgian criminal-justice authorities are generally overburdened and lacking resources, which often results in cases being considerably delayed.¹¹⁷ As a result, there is a risk that Belgian authorities could prioritize cases involving domestic acts, which are generally easier to investigate and try, compared to more complicated and politically sensitive cases brought under universal jurisdiction provisions.

Political influence and sensitivities may especially curtail cases involving Iran. Indeed, on July 21, 2022, the Belgian parliament ratified a mutual legal assistance treaty (MLAT) with Iran that would allow Iranians who have been convicted in Belgium to serve out any sentence in Iran, and vice versa.¹¹⁸ This was largely seen as a codified prisoner swap to exchange Assadi with Belgian aid worker Olivier Vandecasteele, who is held hostage in Iran.¹¹⁹ As such, critics have argued that the treaty would give into Iran's hostage taking and would undermine the rule of law in Belgium.¹²⁰ Specifically, it would significantly decrease the likelihood that Belgium would prosecute any Iranians, given the high cost of a trial and the negligible effects of a conviction, and would, therefore, turn Belgium into a safe haven for complicit IRI officials.¹²¹ Belgium's Constitutional Court suspended the treaty on December 8, 2022, after ten people who served as plaintiffs in Assadi's trial filed for its cancellation.¹²² In January 2023, the IRI increased Vandecasteele's sentence from twenty-eight years' imprisonment to forty years and seventy-four lashes.¹²³ However, the Constitutional Court upheld the treaty in March 2023 and, on May 26, Vandecasteele

¹¹⁶ Richard Bernstein, "Belgium Rethinks Its Prosecutorial Zeal," *New York Times*, April 1, 2003, <https://www.nytimes.com/2003/04/01/world/belgium-rethinks-its-prosecutorial-zeal.html>; "Briefing Paper: Universal Jurisdiction Law and Practice in Belgium," 4; "Law on Serious Violations of International Humanitarian Law, 2003," International Committee of the Red Cross, last visited November 1, 2022, https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=8F23100E777C86AF41256E61004516B0&action=openDocument&xp_countrySelected=BE&xp_topicSelected=GVAL-992BU6&from=state; "Belgium: Universal Jurisdiction Law Repealed," Human Rights Watch, August 1, 2003, <https://www.hrw.org/news/2003/08/02/belgium-universal-jurisdiction-law-repealed>.

¹¹⁷ "Brussels Prosecutor General Calls for Fund to Strengthen Police, Judiciary," *Brussels Times*, September 1, 2022, <https://www.brusselstimes.com/282069/brussels-prosecutor-general-calls-for-fund-to-strengthen-police-judiciary>.

¹¹⁸ Camille Gijs, "Belgian Parliament Approves Prisoner Swap Treaty with Iran," Politico, July 21, 2022, <https://www.politico.eu/article/prewrite-belgian-parliament-signs-off-treaty-allowing-convicted-terrorist-to-be-sent-back-to-iran/>.

¹¹⁹ Daniel Boffey, "Critics Told 'Lives at Stake' Over Belgium-Iran Prisoner Swap Treaty," *Guardian*, July 5, 2022, <https://www.theguardian.com/world/2022/jul/05/critics-told-lives-at-stake-over-belgium-iran-prisoner-swap-treaty>; Steven Erlanger, "Belgium Ratifies Prisoner-Exchange Treaty with Iran," *New York Times*, July 21, 2022, <https://www.nytimes.com/2022/07/21/world/europe/belgium-iran-prisoner-exchange-treaty.html>.

¹²⁰ Boffey, "Critics Told 'Lives at Stake' Over Belgium-Iran Prisoner Swap Treaty"; Erlanger, "Belgium Ratifies Prisoner-Exchange Treaty with Iran."

¹²¹ Celeste Kmiotek, "One Iranian Perpetrator gets a Life Sentence. Another is Potentially Set Free," IranSource, July 26, 2022, <https://www.atlanticcouncil.org/blogs/iransource/one-iranian-perpetrator-gets-a-life-sentence-another-is-potentially-set-free/>; Hasti Aryana Rostami, "Europe's Efforts to Hold Iranian Officials Accountable for their Crimes," Middle East Institute, August 18, 2022, <https://www.mei.edu/publications/europes-efforts-hold-iranian-officials-accountable-their-crimes>.

¹²² Nicolas Camut, "Belgian Court Puts Iran Prisoner-Swap Treaty on Hold," Politico, December 8, 2022, <https://www.politico.eu/article/belgium-court-assadollah-assadi-iran-prisoner-swap-treaty/>.

¹²³ Wilhelmine Preussen, "Iran Increases Sentence of Belgian Aid Worker to 40 Years Imprisonment, 74 Lashes," Politico, January 10, 2023, <https://www.politico.eu/article/olivier-vandecasteele-iran-increases-sentence-belgium-belgian-aid-worker-40-years-74-lashes/>.

and Assadi were returned to Belgium and Iran, respectively, following an Oman-brokered deal.¹²⁴ Three additional European citizens being held in Iran (one Dane and two Austrian-Iranian citizens) were also returned home as part of the deal, landing in Belgium on June 3.¹²⁵ Later that month, Belgium granted visas to fourteen IRI officials, including the mayor of Tehran, for the Brussels Urban Summit, prompting a debate among Belgian politicians over whether to decline to welcome officials accused of human rights abuses or to grant visas and prevent “agitation [...that] has consequences on the innocents in Iran.”¹²⁶

Recommendations

The following are concrete actions that, along with those described in the above Europe-wide section, can help strengthen Belgium’s laws and practices.

- Belgian politicians should consider withdrawing from the July 2022 MLAT with Iran (according to the provisions laid out in the treaty to do so).¹²⁷
- Belgian lawmakers should, in the planned reforms to the Criminal Code and Code of Criminal Procedure, consider removing the requirement that cases have a Belgian connection, in line with the full potential of universal jurisdiction.
- Belgian lawmakers should consider introducing legislation allowing civil parties to trigger investigations against perpetrators *in absentia*, and allowing civil parties to appeal prosecutorial decisions not to pursue such situations.

¹²⁴ Philip Blenkinsop, “Top Belgian Court Upholds Prisoner Exchange Treaty with Iran,” Reuters, March 3, 2023, <https://www.reuters.com/world/top-belgian-court-upholds-prisoner-exchange-treaty-with-iran-2023-03-03/>; “Olivier Vandecasteele: Belgian Aid Worker Freed in Exchange for Iranian Diplomat,” BBC, May 26, 2023, <https://www.bbc.com/news/world-middle-east-65721707>.

¹²⁵ Belgian officials said the deal was referred to as “Operation Blackstone,” referencing William Blackstone, who said, “It is better that ten guilty escape than one innocent suffer.” “Three European Nationals Released by Iran Arrive in Belgium,” France24, June 3, 2023, <https://www.france24.com/en/middle-east/20230603-three-european-nationals-released-by-iran-arrive-in-belgium>.

¹²⁶ Moens and Camut, “Belgium’s FM on the Brink over Iran Visas Fallout.”

¹²⁷ For an English translation of the treaty, see “Treaty between the Kingdom of Belgium and the Islamic Republic of Iran on the Transfer of Sentenced Persons,” Justice for Iran, March 11, 2022, <https://justice4iran.org/wp-content/uploads/2022/07/The-treaty-between-the-Kingdom-of-Belgium-and-the-Islamic-on-the-Transfer-of-Sentenced-Persons.pdf>.

ENGLAND AND WALES

Home to a large Iranian expatriate community, many of whom fled violence and persecution in Iran over the last four decades, England and Wales are a center of much documentation work proving up human rights violations and atrocity crimes in Iran. However, London’s reputation as a place where legal loopholes allow foreign nationals responsible for corruption and human rights offenses in their home countries to buy property anonymously and store assets has also attracted former and present IRI officials seeking to offload their fortunes away from the effects of inflation in Iran.¹²⁸ This presents the possibility of travel by such officials to the UK—some direct changes are needed to the law, which currently only allows for UK nationals or legal residents to be prosecuted.¹²⁹ This and other challenges and opportunities for the pursuit of justice against IRI officials in UK courts are explored below.

Framework

England and Wales have universal jurisdiction over the crimes of torture pursuant to the Criminal Justice Act 1988 and grave breaches of the Geneva Conventions pursuant to the Geneva Conventions Act 1957.¹³⁰ Under the International Criminal Court Act 2001 (ICCA), English and Welsh authorities can also prosecute the core international crimes when committed in England or Wales, or when committed overseas by a UK national, a UK resident, or a person subject to UK service jurisdiction.¹³¹ The Universal Jurisdiction (Extension) Bill, which seeks to extend jurisdiction over those crimes to include those committed outside England and Wales “regardless of the nationality or residence of the offender,” was introduced to the House of Commons in 2023.¹³² Under the Terrorism Act 2006, England and Wales also have jurisdiction over certain extraterritorial acts of terrorism, including membership in a proscribed terrorist organization, if it would constitute an offense in the UK.¹³³ Hostage taking, along with a handful of other crimes, also has universal jurisdiction provisions.¹³⁴ There is no double criminality requirement, except in the case of conspiracy charges.¹³⁵

While direct liability is always covered, the ICCA, the Geneva Conventions Act, the Terrorism Act 2006, and the Criminal Justice Act (by way of “the ordinary principles of secondary liability

¹²⁸ Oliver Bullough, “Criminals, Oligarchs and Kleptocrats Still Own Large Chunks of the UK—and They’re Using This Loophole to Stay Anonymous,” *Guardian*, February 3, 2023, <https://www.theguardian.com/commentisfree/2023/feb/03/uk-property-ownership-legal-loophole-transparent-identity>.

¹²⁹ “Global Britain, Global Justice,” REDRESS, Clooney Foundation for Justice, October 2023, <https://redress.org/wp-content/uploads/2023/10/Global-Britain-Global-Justice-report.pdf>.

¹³⁰ Criminal Justice Act 1988, § 134 (UK); Geneva Conventions Act 1957, § 1 (UK).

¹³¹ International Criminal Court Act 2001, § 51 (UK).

¹³² Universal Jurisdiction (Extension) Bill (UK).

¹³³ Terrorism Act 2006, § 17 (UK); Terrorism Act 2000, § 11 (UK).

¹³⁴ “Briefing Paper: Universal Jurisdiction Law and Practice in England and Wales,” Open Society Justice Initiative, TRIAL International, and REDRESS, May 2022, 4, <https://trialinternational.org/wp-content/uploads/2022/05/UJ-England-and-Wales-1.pdf>; Taking of Hostages Act 1982, § 1 (UK).

¹³⁵ Criminal Law Act 1977, § 1A(3) (UK); “Briefing Paper: Universal Jurisdiction Law and Practice in England and Wales,” 15.

under domestic law”) also cover secondary liability.¹³⁶ The ICCA also includes command and superior responsibility and, while the Geneva Conventions Act does not explicitly include it, it may still apply.¹³⁷

In terms of temporal jurisdiction, the provisions in England and Wales for universal jurisdiction for torture cover acts committed on or after September 29, 1988.¹³⁸ For grave breaches of the Geneva Conventions, they cover acts falling under the 1949 Conventions as of July 31, 1957; acts under Additional Protocol I as of July 20, 1998, and acts under the Third Additional Protocol as of April 5, 2010.¹³⁹ Most core international crimes can be prosecuted if committed on or after January 1, 1991.¹⁴⁰ However, crimes against humanity or war crimes under Article 8(2)(b) or (e) of the Rome Statute committed between January 1, 1991, and September 1, 2001, can only be prosecuted if they constituted a criminal offense under international law at the time; otherwise, they can be prosecuted if committed on or after September 1, 2001.¹⁴¹ Depending on the act, extraterritorial jurisdiction over terrorism offenses may begin as early as 2000.¹⁴² However, it is a defense to the charge of membership in a proscribed organization if the organization was not proscribed on the date at which membership started and the accused did not take part in the organization’s activities while it was proscribed.¹⁴³ There is no statute of limitations for torture, grave breaches, or core international crimes.¹⁴⁴

Additionally, the Proceeds of Crime Act (POCA) includes provisions for the civil recovery of property obtained through unlawful conduct, which includes that which “constitutes, or is connected with, the commission of a gross human rights abuse or violation.”¹⁴⁵ This includes torture or cruel, inhuman, or degrading treatment or punishment against a whistleblower or human

¹³⁶ “Global Britain, Global Justice,” 34; International Criminal Court Act 2001, §§ 51–52, 55 (UK); Criminal Justice Act 1988, § 134 (UK); Geneva Conventions Act 1957, § 1 (UK); Taking of Hostages Act 1982 (UK); Terrorism Act 2006, § 17 (UK); Terrorism Act 2000, § 11 (UK).

¹³⁷ “Global Britain, Global Justice,” 34; “Briefing Paper: Universal Jurisdiction Law and Practice in England and Wales,” 10–11; International Criminal Court Act 2001, § 65 (UK); Geneva Conventions Act 1957 (UK).

¹³⁸ Criminal Justice Act 1988, § 134 (UK).

¹³⁹ “Briefing Paper: Universal Jurisdiction Law and Practice in England and Wales,” 11 (citing the dates of entry into force of the Geneva Conventions Act, the Geneva Conventions (Amendment) Act 1995, and the Geneva Conventions and United Personnel (Protocols) Act 2009).

¹⁴⁰ International Criminal Court Act 2001, § 65A (UK).

¹⁴¹ Article 8(2)(b) and (e) of the Rome Statute cover extermination and torture. International Criminal Court Act 2001, § 65A, (UK); Rome Statute, Articles 8(2)(b) and 8(2)(e).

¹⁴² “For Information Note: Operating with Counter-Terrorism Legislation, Counter-Terrorism Sanctions and Export Control,” United Kingdom Government, October 11, 2021, <https://www.gov.uk/government/publications/operating-within-counter-terrorism-legislation/for-information-note-operating-within-counter-terrorism-legislation>.

¹⁴³ Terrorist Act 2000, § 11(2) (UK).

¹⁴⁴ For other indictable offenses, there is no general principle establishing a time limit. The Taking of Hostages Act 1982 does not note a time limit. For certain less-serious terrorism offenses to be tried in a magistrates’ court, there are time limits of six months. “Briefing Paper: Universal Jurisdiction Law and Practice in England and Wales,” 12; “Research Note: Limitation Rules in Criminal Matters,” Directorate-General for Library, Research and Documentation, May 2017, paras. 8, 10, https://curia.europa.eu/jcms/upload/docs/application/pdf/2019-12/ndr-2017-005_synthese_en_neutralisee_finale.pdf; Taking of Hostages Act 1982 (UK); Terrorism Act 2006, §§ 1–2, 6, 8, 17 (UK); Terrorism Act 2000, § 11 (UK).

¹⁴⁵ Proceeds of Crime Act 2002, §§ 240–241 (UK).

rights defender by a public official.¹⁴⁶ POCA can also be applied to criminal matters—for example, if a convicted individual benefited from the relevant criminal conduct.¹⁴⁷

As with other states, foreign official immunity is a key obstacle to prosecution. Heads of state are granted personal immunity for personal and official acts while in office, and functional immunity afterward.¹⁴⁸ Sitting defense ministers and foreign ministers also “automatically” acquire personal immunity.¹⁴⁹ The English Court of Appeal has upheld the Foreign Office’s granting of special-mission status to certain visiting foreign officials and extended the recognition of special-mission immunities to common law, purportedly based on its recognition under customary international law.¹⁵⁰

Bringing a Case

The War Crimes Team within the Metropolitan Police’s Counter Terrorism Command (SO15) is charged with investigating war crimes, crimes against humanity, torture, and genocide.¹⁵¹ The Crown Prosecution Service’s Counter Terrorism Division (CTD) is charged with the prosecutions.¹⁵²

The UK has “begun to adopt ‘structural investigations,’” and SO15 has indicated that it plans to open structural investigations into each of the situations which the ICC is investigating.¹⁵³ Additionally, victims and witnesses can send information to the War Crimes Team through the Met Police.¹⁵⁴ Upon such receipt, the War Crimes Team conducts a scoping exercise, ultimately deciding whether a “safe and proportionate” investigation is feasible.¹⁵⁵ Should the War Crimes

¹⁴⁶ Ibid., § 241A (UK).

¹⁴⁷ Ibid., § 6, (UK).

¹⁴⁸ State Immunity Act 1978, § 14(1) (UK) (extending the immunities and privileges conferred in the relevant part of the act to foreign and commonwealth states to also include “the sovereign or other head of that State in his public capacity”); Colin Warbrick, ed., “Current Developments: Public International Law,” *International and Comparative Law Quarterly* 53 (July 2004), 770, <https://www.legal-tools.org/doc/ac15e8/pdf/>; *R. v. Bartle and the Commissioner of Police for the Metropolis and Others, Ex Parte Pinochet; R v. Evans and Another and the Commissioner of Police for the Metropolis and Others, Ex Parte Pinochet*, [1999] 1 AC 147, [1999] UKHL 17, 17–18, 24–38, 55–62, 80–94, 101–108 (Eng.); see also, “Briefing Paper: Universal Jurisdiction Law and Practice in England and Wales,” 34–35; Warbrick, ed., “Current Developments: Public International Law,” 769–770.

¹⁴⁹ Beth Van Schaak, “Immunities and Criminal Prosecution within the United States & Beyond,” *Just Security*, July 9, 2014, <https://www.justsecurity.org/12679/immunities-criminal-prosecution-united-states/>; Warbrick, ed., “Current Developments: Public International Law,” 772–774 (including, in part, the judgment on the warrant for the arrest of General Shaul Mofaz).

¹⁵⁰ “Special Mission Immunity and General Hegazy Case,” REDRESS, last visited November 7, 2022, <https://redress.org/casework/generalhegazycase/>; Convention on Special Missions, Article 1, 31, June 21, 1985, 1400 UNTS 231; *The Freedom And Justice Party & Ors, R (On the Application Of) v The Secretary of State for Foreign and Commonwealth Affairs & Anor (Rev 2)* [2018] EWCA (Civ) 1719 [136] (Eng.).

¹⁵¹ “War Crimes/Crimes Against Humanity Referral Guidelines,” Crown Prosecution Service, August 7, 2015, <https://www.cps.gov.uk/publication/war-crimescrimes-against-humanity-referral-guidelines/>; “Report a War Crime,” Metropolitan Police, last visited November 4, 2022, <https://www.met.police.uk/advice/advice-and-information/war-crimes/af/report-a-war-crime/>; “Briefing Paper: Universal Jurisdiction Law and Practice in England and Wales,” 18.

¹⁵² “War Crimes/Crimes Against Humanity Referral Guidelines.”

¹⁵³ “Global Britain, Global Justice,” 15.

¹⁵⁴ “What Is a War Crime?” Metropolitan Police, last visited October 31, 2023, <https://www.met.police.uk/advice/advice-and-information/war-crimes/what-is-a-war-crime/>.

¹⁵⁵ “War Crimes/Crimes Against Humanity Referral Guidelines.”

Team determine that an investigation is feasible, it will proceed with a full investigation.¹⁵⁶ During the scoping and investigation phases, the War Crimes Team may engage with the CTD for preliminary investigative advice, such as around issues of jurisdiction, potential immunity, or potential offenses.¹⁵⁷

On completion of a full investigation, SO15 will submit the evidence file to the CTD, which will determine whether to proceed with prosecution.¹⁵⁸ This determination is based on the Full Code Test, which requires prosecutors to decide first if the evidence is “admissible, reliable and credible,” and then whether a prosecution is in the public interest.¹⁵⁹ Notably, although some cases have been stalled due to insufficient evidence, as of 2021 the office had never failed to find the requisite public interest for torture or crimes under the ICCA.¹⁶⁰ The CTD may also decline to prosecute if there are concerns that sensitive material could be disclosed.¹⁶¹ The attorney general must then consent to the prosecution.¹⁶² Between 2018 and 2022, the Attorney General’s Office only rejected four requests for consent, all related to private prosecutions.¹⁶³ However, the need for consent still risks political influence that “may be used to thwart prosecutions where broader diplomatic interests may be at stake.”¹⁶⁴

The requisite presence or residency of the suspect in England and Wales depends on the alleged offense. For torture and grave breaches of the Geneva Convention, investigations may begin without a suspect’s presence; however, the suspect must be present, or their presence must be anticipated, before an arrest warrant is issued or they are charged.¹⁶⁵ For England and Wales to exercise jurisdiction over the core international crimes, the suspect must either have been a UK national or resident at the time of the crime or they both must have become one after the crime and must reside in the UK at the time proceedings are launched.¹⁶⁶ However, an investigation can start if a suspect is or was a resident in the UK and there is an “actual or reasonable prospect” they will return.¹⁶⁷ Additionally, the definition of “UK resident” is broad in practice, and includes, *inter*

¹⁵⁶ Ibid.

¹⁵⁷ Ibid.

¹⁵⁸ Ibid.

¹⁵⁹ Ibid.

¹⁶⁰ “Briefing Paper: Universal Jurisdiction Law and Practice in England and Wales,” 16.

¹⁶¹ Ibid.; “Jurisdiction,” Crown Prosecution Service, October 5, 2022, <https://www.cps.gov.uk/legal-guidance/jurisdiction>.

¹⁶² “War Crimes/Crimes Against Humanity Referral Guidelines.”

¹⁶³ “Global Britain, Global Justice,” 39.

¹⁶⁴ Ibid.

¹⁶⁵ “Briefing Paper: Universal Jurisdiction Law and Practice in England and Wales,” 13 (citing an interview with an SO15 police officer, as well as the UK arrest warrant against General Doron Almog from September 2005, which does not appear to be publicly available. Limited documentation is available through the Internet Archive from the Hickman and Rose website: “Israeli War Crimes Suspect Evades British Justice after UK Court Issues Warrant,” Hickman & Rose Solicitors, September 11, 2005, <https://web.archive.org/web/20060110025522/http://www.hickmanandrose.co.uk/news05.html>).

¹⁶⁶ Additionally, the act must have constituted an offence in the part of the UK where the proceedings are brought. International Criminal Court Act 2001, § 68 (UK).

¹⁶⁷ “Briefing Paper: Universal Jurisdiction Law and Practice in England and Wales,” 14; “War Crimes/Crimes Against Humanity Referral Guidelines.”

alia, anyone with indefinite leave to remain in the UK, who has leave to enter or remain in the UK to work or study, or who has been lawfully detained in the UK.¹⁶⁸

Individuals can also apply for a private arrest warrant.¹⁶⁹ However, there have been no successful private prosecutions as of October 2023, and practitioners caution that “it is virtually impossible to bring a private prosecution for an international crime.”¹⁷⁰ The process requires filling out an application for a summons or warrant form, which is sent to a court office where a judge, magistrate, or justices’ legal adviser will make a decision on whether the case can go forward.¹⁷¹ The Director of Public Prosecutions (DPP) must grant prior consent for an arrest warrant for cases alleging certain offenses that occurred outside the UK, including torture, war crimes under the War Crimes Act 1991, hostage taking, and grave breaches of the Geneva Conventions, but not including the core international crimes under the ICCA.¹⁷² The DPP must analyze the application according to the Full Code Test.¹⁷³ If there is “insufficient evidence to satisfy the evidential stage of the Full Code Test” and the suspect “presents a substantial bail risk and not all evidence is available at the time when he or she must be released from custody unless charged,” the DPP will analyze it according to the Threshold Test.¹⁷⁴ This requires reasonable suspicion that the suspect committed the offense and reasonable grounds for believing that identifiable information can be gathered in a reasonable time such to establish “a realistic prospect of conviction in accordance with the Full Code Test.”¹⁷⁵

Claims under POCA can be brought by an “enforcement agency,” which government guidance has established as the DPP, the Director of the Serious Fraud Office, or the Director of the National Crime Agency.¹⁷⁶

Victim Participation

¹⁶⁸ “Briefing Paper: Universal Jurisdiction Law and Practice in England and Wales,” 14; International Criminal Court Act 2001, § 67A (UK).

¹⁶⁹ For information on private arrest warrants, see Prosecution of Offences Act 1985, § 6 (UK).

¹⁷⁰ “Global Britain, Global Justice,” 40.

¹⁷¹ “Private Prosecutions,” United Kingdom Government, February 22, 2022,

<https://www.gov.uk/government/publications/private-prosecutions/private-prosecutions>.

¹⁷² Police Reform and Social Responsibility Act 2011, § 153 (UK); see also, “Global Britain, Global Justice,” 40.

¹⁷³ “War Crimes/Crimes Against Humanity: Guidance for Making an Application for DPP Consent for an Application for a Private Arrest Warrant in Accordance with Section 1(4A) of the Magistrates’ Courts Act 1980,” Crown Prosecution Service, April 2016, <https://www.cps.gov.uk/publication/war-crimescrimes-against-humanity-guidance-making-application-dpp-consent-application>.

¹⁷⁴ *Ibid.*

¹⁷⁵ *Ibid.*

¹⁷⁶ Anyone with information can submit it to the CPS or the SFO, or if they are not themselves a victim, they can anonymously report it through the CrimeStoppers website. The NCA does not accept reports of crimes. Proceeds of Crime Act 2002, § 243 (UK); “Serious Crime Bill,” United Kingdom Government, June 2014, para. 13; Police Reform and Social Responsibility Act 2011, § 153 (UK); “Information and Support for Victims & Witnesses,” Crown Prosecution Services, last visited November 7, 2022, <https://www.cps.gov.uk/information-and-support-victims-witnesses>; “Reporting Serious Fraud, Bribery and Corruption,” Serious Fraud Office, last visited November 7, 2022, <https://www.sfo.gov.uk/contact-us/reporting-serious-fraud-bribery-corruption/>; “Give Information Anonymously,” CrimeStoppers, last visited November 7, 2022, <https://crimestoppers-uk.org/give-information/forms/give-information-anonymously/>; “Please Do Not Report a Crime Here,” National Crime Agency, last visited November 7, 2022, <https://www.nationalcrimeagency.gov.uk/contact-us/10-report-a-crime>.

UK law defines “victims” as those who suffered a harm from a criminal offense and their close relatives.¹⁷⁷ The Ministry of Justice guarantees victims twelve rights, such as the rights to be provided with information about compensation, to be provided with information about the investigation and prosecution, and to make a Victim Personal Statement.¹⁷⁸ Which rights apply depends on, *inter alia*, if the case goes to court and whether the crime was reported to the police.¹⁷⁹ Where defendants are convicted, they may be ordered to pay victims compensation—for example, for personal injury or pain and suffering.¹⁸⁰ Property that has been confiscated, such as under POCA, can also be used to pay compensation orders.¹⁸¹ UK residents injured through a violent crime outside of England, Wales, or Scotland can also claim compensation from the Criminal Injuries Compensation Authority in certain circumstances.¹⁸²

Universal Jurisdiction Cases

England and Wales have a mixed record of pursuing universal jurisdiction cases. In 1988, London police arrested former Chilean ruler General Augusto Pinochet pursuant to a Spanish arrest warrant, ultimately allowing his extradition to Spain on the basis of charges of torture and conspiracy to commit torture.¹⁸³ While not the first universal jurisdiction trial, it is considered a landmark in human rights accountability.¹⁸⁴

However, subsequent cases in England and Wales have faced hurdles, including inadequate political will and legal challenges. For instance, challenges have stemmed from discrepancies between the requirements for charging certain crimes, including those regarding presence and/or residency requirements, modes of liability, and temporal jurisdiction; the granting of special mission immunity to suspects; and the general practice of not investigating until a perpetrator is present on UK territory.¹⁸⁵ In at least three cases, the UK’s Foreign Office granted special-mission

¹⁷⁷ Close relatives generally refer to spouses, partners, “relatives in direct line,” siblings, and dependents. Others (for example, guardians and carers) “may be considered close relatives at the discretion of the service provider.” *Code of Practice for Victims of Crime in England and Wales*, Ministry of Justice, November 2020, para. 3, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/974376/victims-code-2020.pdf.

¹⁷⁸ *Ibid.*, paras. 1–3.

¹⁷⁹ All but three of the twelve rights require reporting the crime to the police. Those not requiring a police report are the rights to be able to understand and to be understood, to be referred to tailored support services, and to make a complaint about rights not being met. *Ibid.*, paras. 1–3.

¹⁸⁰ “How Victims of Crime Can Apply for Compensation,” Metropolitan Police, last visited November 7, 2022, <https://www.met.police.uk/ar/applyregister/vc/compensation-for-victims-of-crime>; “Proceeds of Crime,” Crown Prosecution Service, last visited November 7, 2022, <https://www.cps.gov.uk/crime-info/proceeds-crime>.

¹⁸¹ “Proceeds of Crime,” Crown Prosecution Service, December 19, 2019, <https://www.cps.gov.uk/legal-guidance/proceeds-crime>; “Proceeds of Crime,” Crown Prosecution Service, last visited November 7, 2022, <https://www.cps.gov.uk/crime-info/proceeds-crime>.

¹⁸² “Briefing Paper: Universal Jurisdiction Law and Practice in England and Wales,” 34; “Criminal Injuries Compensation: A Guide,” United Kingdom Government, last updated September 23, 2022, <https://www.gov.uk/guidance/criminal-injuries-compensation-a-guide>.

¹⁸³ “The Pinochet Precedent,” Human Rights Watch, November 1, 1998, <https://www.hrw.org/report/1998/11/01/pinochet-precedent/how-victims-can-pursue-human-rights-criminals-abroad>; Jeremiah Lee, “The ‘Pinochet Precedent’: A Mixed Legacy for Human Rights,” *Jurist*, December 11, 2006, <https://www.jurist.org/commentary/2006/12/pinochet-precedent-mixed-legacy-for/>.

¹⁸⁴ “Pinochet Case a Landmark,” Human Rights Watch, January 12, 2000, <https://www.hrw.org/news/2000/01/12/pinochet-case-landmark>.

¹⁸⁵ “Global Britain, Global Justice,” 42–57.

status, and other cases ended upon findings of state immunity.¹⁸⁶ In one case, Scotland Yard officers obtained a secret arrest warrant for a former Israeli commander, but a military attaché from the Israeli embassy boarded the plane at Heathrow and warned him not to get off.¹⁸⁷ Officers planning to arrest him declined to board the plane out of fear of an armed resistance.¹⁸⁸ At least two cases stalled due to insufficient evidence.¹⁸⁹

Still, there have been at least three convictions related to core international crimes, and several investigations appear to be ongoing. Among the convictions, Anthony Sawoniuk was convicted for war crimes committed as a Nazi in Belarus during World War II—the first and seemingly only conviction under the 1991 War Crimes Act—and Afghan warlord Faryadi Zardad was convicted in 2005, in what was thought to be the first UK torture case brought under universal jurisdiction provisions.¹⁹⁰ In 2007, British soldier Donald Payne pled guilty to the war crime of inhuman treatment under the International Criminal Court Act for crimes committed against Iraqi individuals.¹⁹¹ There have additionally been several successful cases on terrorism charges, such as support for a proscribed organization and engagement in conduct in preparation of terrorist acts.¹⁹²

Ongoing investigations include those involving suspected crimes committed in Liberia, Sierra Leone, Rwanda, Iraq, Kuwait, and Sri Lanka.¹⁹³ In July 2023, the Ministry of Defence confirmed

¹⁸⁶ “Special Mission Immunity and General Hegazy Case”; Harriet Sherwood, “Israeli Minister Hzipli Livni Given Diplomatic Immunity for UK Visit,” *Guardian*, May 13, 2014, <https://www.theguardian.com/world/2014/may/13/israel-tzipi-livni-diplomatic-immunity-uk>; Suggestion of Immunity and Statement of Interest of the United States at 10, *Li Weixum et al. v. Bo Xilai*, 568 F. Supp. 2d 35 (2008) (No. 04-0649 (RJL)), <https://2009-2017.state.gov/documents/organization/98832.pdf>; Van Schaak, “Immunities and Criminal Prosecution within the United States & Beyond”; Warbrick, ed., “Current Developments: Public International Law,” 770, 773.

¹⁸⁷ Vikram Dodd, “Terror Police Feared Gun Battle with Israeli General,” *Guardian*, February 19, 2008, <https://www.theguardian.com/uk/2008/feb/19/uksecurity.israelandthepalestinians>.

¹⁸⁸ *Ibid.*

¹⁸⁹ Owen Bowcott, “Nepalese Officer Cleared of Torturing Suspected Maoist Detainees,” *Guardian*, September 6, 2016, <https://www.theguardian.com/law/2016/sep/06/nepalese-officer-col-kumar-lama-cleared-torturing-maoist-detainees>; “Colonel Kumar Lama’s Acquittal: Prosecuting Torture Suspects Should Remain a Priority of the UK,” REDRESS, September 6, 2017, <https://redress.org/news/colonel-kumar-lamas-acquittal-prosecuting-torture-suspects-should-remain-a-priority-of-the-uk/>; Dominic Casciani, “Torture Charges Against Former Liberia Leader’s Ex-Wife Dismissed,” BBC, December 6, 2019, <https://www.bbc.com/news/uk-50685426>.

¹⁹⁰ “Nazi War Criminal Sawoniuk Dies in Jail,” *Guardian*, November 7, 2005, <https://www.theguardian.com/uk/2005/nov/07/secondworldwar.world>; “Afghan Zardad Jailed For 20 Years,” BBC, July 19, 2005, http://news.bbc.co.uk/2/hi/uk_news/4695353.stm.

¹⁹¹ Steven Morris, “First British Soldier to Be Convicted of a War Crime is Jailed for Ill-Treatment of Iraqi Civilians,” *Guardian*, April 30, 2007, <https://www.theguardian.com/uk/2007/may/01/military.iraq>; *Regina v. Payne*, 2007/411, 30 April 2007, <https://internationalcrimesdatabase.org/Case/811/Payne/>.

¹⁹² *Choudary & Anor v R.* [2016] EWCA (Crim) 61 (Eng.), <http://www.bailii.org/ew/cases/EWCA/Crim/2016/61.html>; *Abdallah & Ors, R.v (Rev 1)* [2016] EWCA Crim 1868 [60–89] (Eng.), <http://www.bailii.org/ew/cases/EWCA/Crim/2016/1868.html>.

¹⁹³ Tom Gillespie, “Man Arrested in London on Suspicion of Liberia War Crimes,” Sky News, August 27, 2020, <https://news.sky.com/story/man-arrested-in-london-on-suspicion-of-war-crimes-in-relation-to-conflicts-in-liberia-12057693>; “UK Police Arrest Man Over Alleged War Crimes in Liberia,” Associated Press, September 7, 2022, <https://apnews.com/article/crime-arrests-war-crimes-england-cd8be1ee85e5e3a8778e84a5f4c87c06>; “Sierra Leone War Crimes: Suspect Held and House Searched in Leeds,” BBC, May 18, 2021, <https://www.bbc.com/news/uk-england-leeds-57159333>; “Vincent Brown (Bajinya),” TRIAL International, last updated April 4, 2022, <https://ujim.trialinternational.org/latest-post/vincent-brown/>; “Universal Jurisdiction Annual Review 2023,” TRIAL

that there is a war crimes inquiry into members of the UK Special Forces for alleged war crimes committed in Afghanistan.¹⁹⁴ As indicated above, the SO15 is also expected to open structural investigations into the situations which the ICC is investigating.¹⁹⁵ However a rise in investigations will not necessarily lead to more prosecutions. Indeed, five Rwandan suspects have been under investigation since as early as 2006 without any cases launched, and the Metropolitan Police has received at least three complaints about instances of crimes committed by United Arab Emirates officials without indication that these have been pursued.¹⁹⁶

Finally, there do not appear to have been any public POCA actions taken under the human rights provisions. Civil-society organizations have raised POCA-related claims relating to cotton imports from China's Xinjiang region.¹⁹⁷ However, most POCA discussions around individuals linked to human rights issues tend to focus on corruption charges, such as in the cases of Russian oligarchs and Kazakh elites.¹⁹⁸

Overall, it has proven difficult to successfully bring cases in England and Wales, and those that have gone forward have faced setbacks ranging from incompetent translators to delays in investigations and trials.¹⁹⁹ Further, the British government amended its universal jurisdiction provisions in 2011 to make it harder for victims to apply for arrest warrants, which was widely interpreted as a political move to shield Israeli officials from prosecution.²⁰⁰ Still, developments

International, April 2023, 89–90, 92, https://redress.org/wp-content/uploads/2023/04/01_TRIAL_UJAR_2023_DIGITAL_27_03.pdf.

¹⁹⁴ “Special Forces at Centre of Afghanistan War Crimes Inquiry, MoD Confirms,” BBC, July 5, 2023, <https://www.bbc.com/news/uk-66106980>.

¹⁹⁵ “Global Britain, Global Justice,” 15.

¹⁹⁶ Four were arrested and faced with extradition hearings starting in 2006, and were then re-arrested in 2013 with an additional suspect for new extradition hearings. “Vincent Brown (Bajinya),” TRIAL International; Owen Bowcott, “Met Asked to Investigate Claims UAE Officials Tortured Three Qataris,” *Guardian*, September 12, 2017, <https://www.theguardian.com/uk-news/2017/sep/12/metropolitan-police-uae-torture-quataris-officials>; “US, UK, Turkey Urged to Arrest UAE ‘War Crimes’ Suspects,” Al Jazeera, February 12, 2020, <https://www.aljazeera.com/news/2020/2/12/us-uk-turkey-urged-to-arrest-uae-war-crimes-suspects>; Borzou Daragahi, “Saudi Arabia and UAE Targeted in UK Petition for Yemen War Crimes Investigation,” *Independent*, October 20, 2021, <https://www.independent.co.uk/news/world/middle-east/saudi-uae-yemen-icc-guernica-37-b1942068.html>.

¹⁹⁷ “UK: Halt Forced Prison Labour Goods from China,” Global Legal Action Network, last visited November 7, 2022, <https://www.glanlaw.org/copy-of-uyghur-forced-labour>; Haroon Siddique, “Failure to Investigate UK Imports Linked to Forced Uyghur Labour Unlawful, Court Told,” *Guardian*, October 25, 2022, <https://www.theguardian.com/world/2022/oct/25/failure-investigate-uk-imports-linked-forced-uyghur-labour-unlawful-high-court>.

¹⁹⁸ Andrew Sparrow, “Russian Oligarchs in UK Face New Laws Tackling ‘Dirty Money,’” *Guardian*, February 27, 2022, <https://www.theguardian.com/politics/2022/feb/28/russian-oligarchs-in-uk-face-new-laws-tackling-dirty-money>; Jon Ungoed-Thomas, “How the Kazakh Elite Put its Wealth into UK Property,” *Guardian*, January 8, 2022, <https://www.theguardian.com/world/2022/jan/08/how-the-kazakh-elite-put-its-wealth-into-uk-property>.

¹⁹⁹ Devika Hovell, “The ‘Mistrial’ of Kumar Lama: Problematizing Universal Jurisdiction,” EJIL:Talk!, April 6, 2017, <https://www.ejiltalk.org/the-mistrial-of-kumar-lama-problematizing-universal-jurisdiction/>; “Vincent Brown (Bajinya),” TRIAL International.

²⁰⁰ Specifically, the changes prevented magistrates from issuing arrest warrants in private prosecutions without first receiving approval from the Director of Public Prosecution. Johnny Paul, “UK Amends Law to Protect Israelis from prosecution,” *Jerusalem Post*, September 15, 2011, <https://www.jpost.com/diplomacy-and-politics/uk-amends-law-to-protect-israelis-from-prosecution>; Alexandra Malatesta, “UK Passes Law Limiting Arrests Under Universal Jurisdiction,” *Jurist*, September 16, 2011, <https://www.jurist.org/news/2011/09/uk-passes-law-limiting-arrests->

such as the anticipated opening of structural investigations indicate that authorities are making efforts to prioritize proceedings related to core international crimes.

State of Play for Iran-Related Cases

While England and Wales have several promising domestic options on the table—with proposals in the UK Parliament to strengthen them and close loopholes—they have been frequently reluctant and slow to use them.²⁰¹ As mentioned above, the UK legislation not only covers core international crimes, but also includes two particularly relevant schemes for the Iranian context: universal jurisdiction over hostage taking, a crime which the IRI has frequently committed against British-Iranian nationals, and POCA, which could be used in response to reports of wealthy regime-linked Iranians in the UK.²⁰² However, as noted above, pursuing such cases in England and Wales has often proven difficult.

For Iran, the UK's relationship with the IRI on human rights issues has been complicated in recent years, and so while the states are hardly allied, it is also not guaranteed that the UK will politically support actions against IRI officials. British officials have proven reluctant to push Iranian authorities—for example, in hostage cases or following threats against British journalists.²⁰³ For instance, the Iranian regime executed British-Iranian national Alireza Akbari in January 2023, and in February the UK reported that since January 2022 it had responded to fifteen “credible threats” by the Iranian regime “to kill or kidnap British or UK-based individuals.”²⁰⁴

under-universal-jurisdiction/; Michael Mansfield, “Sleep Easy, War Criminals,” *Guardian*, October 7, 2011, <https://www.theguardian.com/commentisfree/2011/oct/07/israel-tzipi-livni>; Police Reform and Social Responsibility Act 2011, § 153 (UK), <https://www.legislation.gov.uk/ukpga/2011/13/section/153/enacted>.

²⁰¹ Universal Jurisdiction (Extension) Bill (UK), <https://bills.parliament.uk/bills/3454> (last updated April 26, 2023); Richard Wheeler, “War Criminals Could Visit UK Without Prosecution Fear Unless Law Changed—MP,” *Independent*, April 25, 2023, <https://www.independent.co.uk/news/uk/war-criminals-mps-bill-george-clooney-ukraine-b2326461.html>.

²⁰² “Dual Nationals Imprisoned in Iran,” UK Parliament, July 27, 2022, <https://commonslibrary.parliament.uk/research-briefings/cbp-8147/>; “The UK's Kleptocracy Problem,” Chatham House, December 8, 2021, <https://www.chathamhouse.org/2021/12/uks-kleptocracy-problem>; Sonia Talati, “Wealthy Iranians Moving Into London Real Estate,” *Barron's*, April 12, 2016, <https://www.barrons.com/articles/wealthy-iranians-moving-into-london-real-estate-1460478216>; Erin Cunningham, “Crazy-Rich Iranians Face Blowback at a Time of Sanctions and Economic Stress,” *Washington Post*, January 14, 2019, https://www.washingtonpost.com/world/middle_east/crazy-rich-iranians-face-blowback-at-a-time-of-sanctions-and-economic-stress/2019/01/13/f45bc594-ffb6-11e8-a17e-162b712e8fc2_story.html; Masoud Kazemi, “Iran's Great Petrochemical Corruption Scandal, Part VIII: Career Swindler's Takings Stashed in UK and Canada,” *IranWire*, February 7, 2022, <https://iranwire.com/en/politics/71264/>; “Ex-Minister Mohajerani ‘in Search of Lawyer’ after Accusations in London,” *IranWire*, August 19, 2022, <https://iranwire.com/en/world/106754-ataollah-mohajerani-in-search-of-lawyer-after-accusations-in-london/>; Hannah Somerville, “Iran's Overseas Propaganda: London, Gateway to the World,” *IranWire*, November 20, 2020, <https://iranwire.com/en/features/68084/>.

²⁰³ See, e.g., Patrick Wintour, “Zaghari-Ratcliffe Says Foreign Office Complicit in Forcing Her to Confess,” *Guardian*, May 23, 2022, <https://www.theguardian.com/news/2022/may/23/nazanin-zaghari-ratcliffe-accuses-uk-role-forcing-sign-confession>; Patrick Wintour, “British-Iranian Morad Tahbaz Returned to Tehran Prison,” *Guardian*, March 18, 2022, <https://www.theguardian.com/world/2022/mar/18/british-iranian-morad-tahbaz-returned-to-tehran-prison>; “CPJ Asks British Authorities to Strengthen Protection for London-Based Iran International Staff,” Committee to Protect Journalists, November 8, 2022, <https://cpj.org/2022/11/cpj-asks-british-authorities-to-strengthen-protection-for-london-based-iran-international-staff/>.

²⁰⁴ Emily McGarvey and Aoife Walsh, “Alireza Akbari: Iran Executes British-Iranian Dual National,” *BBC*, January 14, 2023, <https://www.bbc.com/news/world-middle-east-64273520>; HC Deb (20 February 2023) (728) cols. 49–50,

Despite political pressure, the UK government declined to take action such as designating the Islamic Revolutionary Guard Corps as a terrorist organization—which would have opened up the possibility of prosecutions under terrorism provisions—and reportedly has believed it best to “keep the lines of communication open” with the Iranian regime.²⁰⁵ Both a 2020 review on Iran-UK relations by the UK Parliament’s Foreign Affairs Committee and a February 2023 debate in the UK Parliament included calls for action such as the imposition of targeted human rights sanctions, but stopped short of recommending actions relating to universal jurisdiction cases.²⁰⁶ If opposed to such cases, the attorney general could decline to prosecute on the basis of a lack of public interest or the Foreign, Commonwealth & Development Office and the Crown Prosecution Service could advise the Metropolitan Police that the relevant officials have special-mission immunity.²⁰⁷ However, in July 2023 the UK joined with Canada, Sweden, and Ukraine to bring a case against Iran to the International Court of Justice over the downing of Ukraine International Airlines flight PS752, which could indicate political will for further legal action.²⁰⁸

Recommendations

The following, combined with the recommendations in the Europe-wide section, can help UK authorities strengthen their laws and policies in England and Wales related to universal jurisdiction, and better pursue proceedings related to core international crimes and related crimes.

- UK lawmakers should adopt the Universal Jurisdiction (Extension) Bill to extend the jurisdiction of the core international crimes to include those crimes committed overseas by anyone, regardless of nationality or residency. They should further extend the exercise of jurisdiction to include, at least, anyone found in the UK.
- UK lawmakers should expand the human rights violations covered by POCA—for example, to match those included under the Global Human Rights Sanctions (GHR) Regulations 2020.²⁰⁹

<https://hansard.parliament.uk/commons/2023-02-20/debates/29A8956F-795C-430F-BBA8-25D93A5A2FCB/SecurityThreatToUK-BasedJournalists>.

²⁰⁵ Patrick Wintour, “UK Shies Away From Designating Iran’s Revolutionary Guards as Terrorist Group,” *Guardian*, July 6, 2023, <https://www.theguardian.com/politics/2023/jul/06/uk-shies-away-from-designating-iran-revolutionary-guards-as-terrorist-group>; Terrorism Act 2006, § 17 (UK); Terrorism Act 2000, § 11 (UK); Simon Tisdall, “UK Looks Clumsy and Powerless in Wake of Iran’s Execution of Alireza Akbari,” *Guardian*, January 14, 2023, <https://www.theguardian.com/politics/2023/jan/14/uk-powerless-iran-execution-alireza-akbari-rishi-sunak>.

²⁰⁶ *No Prosperity Without Justice: The UK’s relationship with Iran* (House of Commons Foreign Affairs Committee, December 8, 2020) 28–29, <https://committees.parliament.uk/publications/3987/documents/40221/default/>; HC Deb (February 6, 2023) (727), <https://hansard.parliament.uk/commons/2023-02-06/debates/433738C5-1041-4CF5-9C76-A0B09A9B0A64/IranianRegimeThreatToUK>.

²⁰⁷ “Briefing Paper: Universal Jurisdiction Law and Practice in England and Wales,” 16; “Special Mission Immunity and General Hegazy Case” (indicating the Foreign Office and the Crown Prosecution Service advise the Metropolitan Police on special mission immunity).

²⁰⁸ Emma Harrison, “Ukraine Plane: Iran Facing Legal Action Over Downing of Flight PS752,” BBC, July 5, 2023, <https://www.bbc.com/news/world-middle-east-66110345>.

²⁰⁹ The Global Human Rights Sanctions Regulations 2020, § 4 (UK).

FRANCE

A complaint filed with Paris prosecutors in September 2023 targeting several IRI senior officials for public threats made against Iranian dissidents in France for their support of the “woman, life, freedom” protests has brought into focus what role the French courts can play in holding IRI leadership to account for atrocity crimes and violations of human rights.²¹⁰ France’s framework of laws with extraterritorial jurisdiction has delivered justice in the context of Rwanda, Syria, Liberia, the Democratic Republic of Congo, and more—the section below will explore the opportunities and challenges present in the case of the IRI and the role that the sizeable Iranian diaspora community in France can play in such efforts.

Framework

France has a system of heterogeneous universal jurisdiction provisions over specific international crimes, including the core international crimes; torture and other cruel, inhuman, or degrading treatment or punishment (CIDT); and enforced disappearances, primarily stipulated in the *Code de Procédure Pénale* or French Code of Criminal Procedure (FCCP).²¹¹ French courts may exercise jurisdiction extraterritorially if the alleged perpetrator is *un Français*, or a French legal person, or if the victim of the crime was a French citizen at the time the crime was committed.²¹² From 2004, companies may be prosecuted for crimes, including those related to activities outside

²¹⁰ “Iran Revolutionary Guards Chief Targeted in French Criminal Complaint,” France24, September 14, 2023, <https://www.france24.com/en/live-news/20230914-iran-revolutionary-guards-chief-targeted-in-french-criminal-complaint>.

²¹¹ Code de procédure pénale [C. Pr. Pén] [Criminal Procedure Code], art. 689 (Fr.). Only core international crimes are dealt with in in this section. For the full list of crimes over which France can exercise universal jurisdiction, see Code de procédure pénale [C. Pr. Pén] [Criminal Procedure Code] art. 689-2–689-14 (Fr.).

²¹² Code de procédure pénale [C. Pr. Pén] [Criminal Procedure Code], art. 113-6, 113-7, 121-2 (Fr.). Jurisdiction in these cases would not be based on the principle of universal jurisdiction, but rather the principles of active or passive personality. French courts also have jurisdiction over certain offenses committed in the former Yugoslavia and in Rwanda. France, Loi n° 95-1 du 2 janvier 1995 portant adaptation de la législation française aux dispositions de la résolution 827 du Conseil de sécurité des Nations Unies instituant un tribunal international en vue de juger les personnes présumées responsables de violations graves du droit international humanitaire commises sur le territoire de l'ex-Yugoslavie depuis 1991 [Law No. 95-1 of January 2, 1995 adapting French legislation to the provisions of Resolution 827 of the United Nations Security Council establishing an international tribunal to judge persons presumed responsible for serious violations of international humanitarian law committed on the territory of the former Yugoslavia since 1991] Journal Officiel De La République Française [J.O.] [Official Gazette of France], January 2, 1995 (hereinafter cited as Loi n° 95-1 du 2 janvier 1995); France, Loi n° 96-432 du 22 mai 1996 portant adaptation de la législation française aux dispositions de la résolution 955 du Conseil de sécurité des Nations unies instituant un tribunal international en vue de juger les personnes présumées responsables d'actes de génocide ou d'autres violations graves du droit international humanitaire commis en 1994 sur le territoire du Rwanda et, s'agissant des citoyens rwandais, sur le territoire d'Etats voisins [LAW no. 96-432 of May 22, 1996 adapting French legislation to the provisions of United Nations Security Council Resolution 955 establishing an international tribunal to judge persons presumed responsible for acts of genocide or other violations serious violations of international humanitarian law committed in 1994 on the territory of Rwanda and, with regard to Rwandan citizens, on the territory of neighboring States] Journal Officiel De La République Française [J.O.] [Official Gazette of France], May 22, 1996 (hereinafter cited as Loi n° 96-432 du 22 mai 1996).

of France.²¹³ Both direct perpetrators and accomplices may be found liable under French law for completed or attempted offenses.²¹⁴

While international crimes codified in France are generally based on their respective international treaties, there are some important definitional differences. French law appears to include a broader definition of genocide than its respective international convention, permitting the class of protected groups to include political groups and other groups defined by arbitrary criteria.²¹⁵ For war crimes, there is an entire chapter in the French criminal code containing a list of prohibited acts.²¹⁶ Crimes against humanity under French law require the existence of a concerted plan but, for persecution, do not require a connection to another crime.²¹⁷ Although torture is not defined under French law, French courts appear to interpret it in a manner consistent with the definition under the CAT.²¹⁸

Temporal jurisdiction over international crimes begins only when the laws codifying them in France entered into force, even if a rule of customary law prohibited the conduct before that time.²¹⁹ For torture, temporal jurisdiction begins in 1985.²²⁰ Temporal jurisdiction for both genocide and crimes against humanity begins in 1994, though the definition of crimes against

²¹³ Code de procédure pénale [C. Pr. Pén] [Criminal Procedure Code], art. 121-2 (Fr.).

²¹⁴ Code pénale [C. Pén] [Criminal Code], art. 121-1–121-7 (Fr.). Additional modes of liability are available depending on which crime is at issue. See, e.g., Code pénale [C. Pén] [Criminal Code], art. 212-3, 213-4-1, 450-1, 461-18, 462-7 (Fr.).

²¹⁵ Code pénale [C. Pén] [Criminal Code], art. 211-1 (Fr.). See also, “Briefing Paper: Universal Jurisdiction Law and Practice in France,” Open Society Justice Initiative and TRIAL International, February 2019, 7, <https://www.justiceinitiative.org/uploads/b264bc4f-053f-4e52-9bb8-fccc0a52816a/universal-jurisdiction-law-and-practice-france.pdf>.

²¹⁶ Code de procédure pénale [C. Pr. Pén] [Criminal Procedure Code], art. 461-1–462-11 (Fr.).

²¹⁷ Code pénale [C. Pén] [Criminal Code], art. 212-1 (Fr.). Compare with Rome Statute, Article 7.

²¹⁸ Code pénale [C. Pén] [Criminal Code], art. 222-1 (Fr.). It prohibits acts of torture but does not provide a definition; United Nations Committee against Torture, “Consideration of Reports Submitted by States Parties under Article 19 of the Convention: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: 7th Periodic Reports of States Parties Due in 2014: France,” paras. 40–45, CAT/C/FRA/7, July 29, 2015, <https://digitallibrary.un.org/record/815857?ln=en>. See also United Nations Committee against Torture, “Eighth Periodic Report Submitted by France under Article 19 of the Convention Pursuant to the Optional Reporting Procedure, Due in 2020,” para. 2, CAT/C/FRA/8, October 12, 2020, <https://digitallibrary.un.org/record/3906071?ln=en>; “Briefing Paper: Universal Jurisdiction Law and Practice in France,” 7 (explaining that French practitioners have indicated torture is interpreted more broadly by domestic courts than as defined in CAT and is not limited only to acts committed by officials). See also, Code de procédure pénale [C. PR. PÉN] (Criminal Procedure Code) art. 689-2 (Fr.) (expressly referring to CAT, art. 1).

²¹⁹ See, “Briefing Paper: Universal Jurisdiction Law and Practice in France,” 11–12; Cour de cassation [Cass.] [supreme court for judicial matters] June 17, 2003, 02-80.719 (Fr.).

²²⁰ Loi n°85-1407 du 30 décembre 1985 portant diverses dispositions de procédure pénale et de droit penal [Law No. 85-1407 of December 30, 1985 relating to various provisions of criminal procedure and criminal law], Journal Officiel De La République Française [J.O.] [Official Gazette of France], p. 15505.

humanity was limited until 2010.²²¹ France has jurisdiction over war crimes committed since 2010.²²² Lastly, enforced disappearances were codified as an independent offense in 2013.²²³

The French government has publicly stated that statutes of limitations are a “key principle of French criminal procedure” and, as such, apply to all criminal offenses except two—genocide and crimes against humanity.²²⁴ The default statute of limitations for serious offenses is twenty years unless a different period is specified.²²⁵ The statute of limitations for torture and CIDT is twenty

²²¹ Code pénale [C. Pén] [Criminal Code], art. 211-1, 212-1 (Fr.); Loi no 92-684 du 22 juillet 1992 portant réforme des dispositions du code pénal relatives à la répression des crimes et délits contre les personnes [Law No. 92-684 of July 22, 1992 reforming the provisions of the penal code relating to the repression of crimes and offenses against persons], Journal Officiel De La République Française [J.O.] [Official Gazette of France], July 22, 1992; Elihu Lauterpacht, C.J. Greenwood, and A.G. Oppenheimer, eds., *International Law Reports Volume 119* (Cambridge: Grotius Publications, Cambridge University Press, 2002), 353, (including the definition of crimes against humanity under Article 212-1 of the French Criminal Code (1994) as “the deportation, enslavement or massive and systematic practice of summary executions, and the enslavement of persons followed by their disappearance, torture or other inhumane acts, inspired by political, racial or religious motives and organized in the execution of a concerted plan against a particular group of the civilian population.”); “France: Law to Adapt France’s Criminal Code to the International Criminal Court,” Library of Congress, September 20, 2010, <https://www.loc.gov/item/global-legal-monitor/2010-09-20/france-law-to-adapt-frances-criminal-code-to-the-international-criminal-court/>. Temporal jurisdiction for core international crimes committed in the former Yugoslavia and Rwanda differs from these provisions. Loi n° 95-1 du 2 janvier 1995, p. 71 (beginning in 1991 for these offenses committed in the former Yugoslavia); Loi n° 96-432 du 22 mai 1996, p. 7695 (limited to the year 1994 for these offenses committed in Rwanda).

²²² Code pénale [C. Pén] [Criminal Code], art. 461-1–461-31, (Fr.); Loi n° 2010-930 du 9 août 2010 portant adaptation du droit pénal à l’institution de la Cour pénale internationale [Law No. 2010-930 of August 9, 2010 adapting criminal law to the establishment of the International Criminal Court], Journal Officiel De La République Française [J.O.] [Official Gazette of France], August 9, 2010, no. 0183.

²²³ Loi n° 2013-711 du 5 août 2013 portant diverses dispositions d’adaptation dans le domaine de la justice en application du droit de l’Union européenne et des engagements internationaux de la France [Law no. 2013-711 of August 5, 2013 relating to various adaptation provisions in the field of justice in application of European Union law and France’s international commitments]] Journal Officiel De La République Française [J.O.] [Official Gazette of France], August 5, 2013, no. 0181.

²²⁴ Comité contre la torture, “Huitième rapport périodique soumis par la France en application de l’article 19 de la Convention selon la procédure facultative d’établissement des rapports, attendu en 2019*, ** [Eighth Periodic Report Submitted by France Pursuant to Article 19 of the Convention under the Optional Reporting Procedure, Expected in 2019],” para. 3, CAT/C/FRA/8, October 12, 2020, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2FC%2FFRA%2F8&Lang=fr. See also, Code de procédure pénale [C. Pr. Pén] [Criminal Procedure Code], art. 7 (Fr.). It is important to note that crimes against humanity under French law includes such acts as torture and enforced disappearances that are also codified as independent offenses. Code pénale [C. Pén] [Criminal Code], art. 212-1 (Fr.). It also includes a category for crimes against humanity committed during armed conflict, effectively allowing certain war crimes to be charged as crimes against humanity. Code pénale [C. Pén] [Criminal Code], art. 212-1 (Fr.). When these acts constitute crimes against humanity, there is no statute of limitations. When they are charged as an independent offense then the statute of limitations for that crime applies.

²²⁵ Code de procédure pénale [C. Pr. Pén] [Criminal Procedure Code], art. 7(1) (Fr.). Under French law, there are three categories of offenses: “crimes,” referred to above as serious offenses for the sake of clarity, which are offenses punishable by 15 or more years of imprisonment; “délits,” punishable by a period of between two months and ten years of imprisonment; and “contraventions,” offenses for which there is no imprisonment, only a fine or other measure. “France: Statute of Limitations Extended for Criminal Offenses,” Library of Congress, March 21, 2017, <https://www.loc.gov/item/global-legal-monitor/2017-03-21/france-statute-of-limitations-extended-for-criminal-offenses/>. See also, “Quels sont les différents types d’infractions pénales? [What Are the Different Types of Offenses?],” Vie Publique, September 5, 2022, <https://www.vie-publique.fr/fiches/268561-quels-sont-les-differents->

years, but is thirty years in cases where the victim is a minor and suffered a permanent injury.²²⁶ The statute of limitations for war crimes is thirty years, unless committed in connection with a crime against humanity (in which case there is no statute of limitations).²²⁷ However, war crimes punished by ten years' imprisonment have a statute of limitations of twenty years.²²⁸ Enforced disappearances also have a statute of limitations of thirty years.²²⁹ Notably, the French Court of Cassation ruled in 2018 that enforced disappearances are a continuous offense, meaning the offense is not complete—and, therefore, the statute of limitations is not triggered—until the fate or whereabouts of the victim are known.²³⁰

The above crimes under the basis of universal jurisdiction can be subdivided into two regimes based on their legal requirements. The first consists of torture and CIDT, international offenses committed in the former Yugoslavia or Rwanda, and enforced disappearances, which require the physical presence of the alleged perpetrator on French territory to initiate proceedings.²³¹ French law allows for trials *in absentia*, which means proceedings may continue even if the accused flees after an investigation has been opened.²³²

types-dinfractions-penales; “Criminal Justice: What Are the Limitation Periods?” Service-Public.fr, February 25, 2022, <https://www.service-public.fr/particuliers/vosdroits/F31982?lang=en>.

²²⁶ Code de procédure pénale [C. Pr. Pén] [Criminal Procedure Code], art. 7(2) (Fr.) read in conjunction with Code de procédure pénale [C. Pr. Pén] [Criminal Procedure Code], art. 706-47(2) (Fr.).

²²⁷ Code de procédure pénale [C. Pr. Pén] [Criminal Procedure Code], art. 7(2) (Fr.) read in conjunction with Code pénale [C. Pén] [Criminal Code], book IVbis (Fr.); Code pénale [C. Pén] [Criminal Code], art. 212-2 (Fr.); “Briefing Paper: Universal Jurisdiction Law and Practice in France,” 12.

²²⁸ Code de procédure pénale [C. Pr. Pén] [Criminal Procedure Code], art. 8(6) (Fr.) read in conjunction with Code pénale [C. Pén] [Criminal Code], book IVbis (Fr.).

²²⁹ Code de procédure pénale [C. Pr. Pén] [Criminal Procedure Code], art. 7 (Fr.) read in conjunction with Code pénale [C. Pén] [Criminal Code], art. 221-12 (Fr.).

²³⁰ Cour de Cassation [Cass.] [supreme court for judicial matters] crim., 17-86.340, May 12, 2023, paras. 17–40. See also, International Convention for the Protection of All Persons from Enforced Disappearance, art. 8(b), December 20, 2006, 2716 UNTS 3 (“...the term of limitation for criminal proceedings:... (b) Commences from the moment when the offence of enforced disappearance ceases, taking into account its continuous nature.”); United Nations Committee on Enforced Disappearances, “Additional information submitted by France under article 29 (4) of the Convention,” CED/C/FRA/AI/1, July 24, 2019, para. 23, <https://digitallibrary.un.org/record/3964851> (“As enforced disappearance is a continuing crime, the statute of limitations commences from the moment the disappearance ceases: the day when the victim reappears, or when his or her death is established, in line with article 8 (b) of the Convention.”).

²³¹ Enforced disappearances are codified as both an independent offense under Article 221-12 and as a crime against humanity under Article 212-1 of the FCP, respectively. Only the independent offense belongs in the first regime. For the requirement of physical presence of the alleged perpetrators, see Code de procédure pénale [C. Pr. Pén] [Criminal Procedure Code], art. 689-1 (Fr.); Cour de Cassation [Cass.] [court of cassation] crim., 95-81.527, March 26, 1996. It is not definitively settled at what precise moment the presence of the accused is required. Some officials appear to interpret the presence requirement to mean at the time a complaint is filed with prosecutors or an investigative judge, while others appear to think it is at the time an investigation is opened. See “The Scope and Application of the Principle of Universal Jurisdiction,” Permanent Mission of France to the United Nations, April 27, 2020, section 1, https://www.un.org/en/ga/sixth/65/ScopeAppUniJuri_StatesComments/France_E.pdf; “Briefing Paper: Universal Jurisdiction Law and Practice in France,” 14–15; “The Legal Framework for Universal Jurisdiction in France,” Human Rights Watch, 2014, 2, n.7, https://www.hrw.org/sites/default/files/related_material/IJ0914France_0.pdf.

²³² Code de procédure pénale [C. Pr. Pén] [Criminal Procedure Code], art. 379-2–379-7 (Fr.). See also, “Briefing Paper: Universal Jurisdiction Law and Practice in France,” 14–15; “The Legal Framework for Universal Jurisdiction in France,” 2.

The second regime includes the core international crimes pursuant to the incorporation of the Rome Statute into French law in 2010.²³³ Until an amendment promulgated on November 20, 2023, the French Code of Criminal Procedure included *les quatre verrous*, or the four locks, which applied to the practical application of this second regime of crimes: double criminality, the requirement that the alleged perpetrator have a habitual residence in France, the principle of subsidiarity, and the prosecutor’s sole discretion in bringing charges.²³⁴ Practitioners warned that the four locks applicable to core international crimes were “a guarantee of impunity before the French courts for these most serious crimes.”²³⁵ The November 20 amendment—which was part of justice reform bill—removed the double criminality requirement from the law altogether and amended, but did not remove, the habitual-residence requirement.²³⁶ French lawyers have criticized the latter as insufficient to properly address the problem and have called for a full removal of the provision.²³⁷

The double criminality requirement had applied to war crimes and crimes against humanity, and required that the offense in question be recognized as a crime in the state in which it occurred or the state of which the perpetrator was a national—on the basis of the state’s domestic criminal law and/or its ratification of or accession to the Rome Statute.²³⁸ As mentioned above, this lock was removed on November 20, 2023.²³⁹ The logic behind the rule had been to safeguard due process

²³³ Code de procédure pénale [C. Pr. Pén] [Criminal Procedure Code], art. 689-11 (Fr.).

²³⁴ Ibid.; “Loi du 20 Novembre 2023 d’Orientation et de Programmation du Ministère de la Justice 2023–2027 [Law of November 20, 2023 on Orientation and Programming of the Ministry of Justice 2023–2027],” *Vie Publique*, November 21, 2023, <https://www.vie-publique.fr/loi/289259-justice-loi-du-20-novembre-2023-orientation-et-programmation-2023-2027>; “France’s Trial for Atrocities Committed in Liberia: Questions and Answers,” FIDH, last updated October 5, 2022, <https://www.fidh.org/en/region/Africa/liberia/questions-and-answers-france-s-trial-for-atrocities-committed-in>; Jan van der Made, “How Far Is France Prepared To Go in Support of Universal Human Rights?” *Radio France Internationale*, June 30, 2022, <https://www.rfi.fr/en/international/20220630-how-far-is-france-prepared-to-go-in-support-of-universal-human-rights>; Léna Bjurström, “La France, Une Terre de Refuge pour les Criminels de Guerre? [France, a Land of Refuge for War Criminals?],” *Amnesty International France*, June 27, 2022, <https://www.amnesty.fr/actualites/competence-universelle-france-ukraine-justice-internationale-cpi>; “Breaking Down Barriers: Access to Justice in Europe for Victims of International Crimes,” 46.

²³⁵ van der Made, “How Far Is France Prepared to Go in Support of Universal Human Rights?”

²³⁶ “Loi du 20 Novembre 2023 d’Orientation et de Programmation du Ministère de la Justice 2023–2027 [Law of November 20, 2023 on Orientation and Programming of the Ministry of Justice 2023–2027],” *Vie Publique*; “Crimes Contre L’Humanité: Les Députés Étendent la «Compétence Universelle» de la Justice Française [Crimes Against Humanity: Representatives Expand ‘Universal Jurisdiction’ of French Courts],” *Figaro*, July 6, 2023, <https://www.lefigaro.fr/flash-actu/crimes-contre-l-humanite-les-deputes-etendent-la-competence-universelle-de-la-justice-francaise-20230706>; Christophe Ayad, “Projet de Loi sur la Justice: Un Amendement Élargit la Compétence Universelle Française [Proposed Justice Bill: Amendment Expands French Universal Jurisdiction],” *Le Monde*, July 4, 2023, https://www.lemonde.fr/societe/article/2023/07/04/projet-de-loi-sur-la-justice-un-amendement-elargit-la-competence-universelle-francaise_6180447_3224.html.

²³⁷ “France: Towards a Historic Vote to Efficiently Prosecute Those Responsible for Crimes Against Humanity, War Crimes and Genocide?” *International Federation for Human Rights*, June 30, 2023, <https://www.fidh.org/en/region/europe-central-asia/france/france-towards-a-historic-vote-to-efficiently-prosecute-those>.

²³⁸ The double criminality requirement was eliminated with respect to the crime of genocide through an amendment in 2019. Code de procédure pénale [C. Pr. Pén] [Criminal Procedure Code], art. 689-11 (Fr.); Loi n° 2019-222 du 23 mars 2019 de programmation 2018-2022 et de réforme pour la justice [LAW no. 2019-222 of March 23, 2019 on 2018-2022 programming and justice reform], *Journal Officiel De La République Française [J.O.] [Official Gazette of France]* March 23, 2019, art. 63(IV); “Briefing Paper: Universal Jurisdiction Law and Practice in France,” 15.

²³⁹ “Loi du 20 Novembre 2023 d’Orientation et de Programmation du Ministère de la Justice 2023–2027 [Law of November 20, 2023 on Orientation and Programming of the Ministry of Justice 2023–2027],” *Vie Publique*.

and prevent arbitrary prosecutions of conduct that was not prohibited at the time and place of commission.²⁴⁰ The double criminality requirement had been subject to extensive jurisprudence, with many commentators expressing concerns that an overly restrictive interpretation could make France a safe haven for perpetrators.²⁴¹ On May 12, 2023, the Court of Cassation overturned a prior decision to hold that the criminalization of offenses like torture and murder in domestic law was enough to satisfy the double criminality requirement for charges of crimes against humanity, because the acts constituting the offense were criminalized even if crimes against humanity as such were not.²⁴²

The second lock requires that the alleged perpetrator have habitual residence in France, in addition to the physical presence requirement. This requirement applies to all core international crimes and has been criticized for creating the possibility that perpetrators can be present on French soil for long periods but avoid accountability by failing to meet the higher threshold of habitual

²⁴⁰ Bénédicte Jeannerod and Aisling Reidy, “Fighting Impunity for Crimes in Syria: Victory in Germany, Setback in France,” Human Rights Watch, January 27, 2022, <https://www.hrw.org/news/2022/01/27/fighting-impunity-crimes-syria-victory-germany-setback-france>.

²⁴¹ See, e.g., Jeannerod and Reidy, “Fighting Impunity for Crimes in Syria: Victory in Germany, Setback in France”; Roger Lu Phillips and Aweiss Al Dobouch, “France Is Not a Safe Haven for Human Rights Abusers—Despite High Court Opinion,” Just Security, December 9, 2021, <https://www.justsecurity.org/79473/france-is-not-a-safe-haven-for-human-rights-abusers-despite-high-court-opinion/>; “France Must Not Be a Land of Impunity for Syrian Torturers,” FIDH, last updated December 3, 2021, <https://www.fidh.org/en/region/europe-central-asia/france/france-must-not-be-a-land-of-impunity-for-syrian-torturers>.

²⁴² Lena Bjurström, “Crucial Hearing for Universal Jurisdiction in France,” JusticeInfo, March 16, 2023, https://www.justiceinfo.net/en/113831-crucial-hearing-universal-jurisdiction-france.html?mc_cid=8d52091943&mc_eid=leadb4427c; Case No. 22-80.057 (France, Cour de Cassation, Plenary Assembly, May 12, 2023), paras. 17–40; Cour de Cassation [Cass.] [court of cassation] crim., 21-81.344, May 12, 2023, paragraphs 17–40. For an official English translation, see Cour de Cassation [Cass.] [supreme court for judicial matters] crim., May 12, 2023, Bull. crim., No. 22-80.057, paras. 17–40. See also, Roger Lu Phillips, “2nd Time’s the Charm: France’s Cour de Cassation Broadens Universal Jurisdiction Law,” Just Security, May 24, 2023, <https://www.justsecurity.org/86689/2nd-times-the-charm-frances-cour-de-cassation-broadens-universal-jurisdiction-law/>; Juliette Rémond Tiedrez, “France’s Highest Court Confirms Universal Jurisdiction,” EJIL Talk!, June 1, 2023, <https://www.ejiltalk.org/france-is-back-on-the-universal-jurisdiction-track/>. The prior decision dismissed a case against a Syrian national on the grounds that Syrian law does not recognize crimes against humanity nor is Syria a party to the Rome Statute. Cour de Cassation [Cass.] [court of cassation] crim. 21-81.344, November 24, 2021; “La Cour d’Appel de Paris Maintient les Poursuites Contre un Syrien Accusé de Torture et de Crimes de Guerre [Paris Court of Appeal Upholds Prosecution of Syrian Accused of Torture and War Crimes],” *Figaro*, April 4, 2022, <https://www.lefigaro.fr/flash-actu/la-cour-d-appel-de-paris-maintient-les-poursuites-contre-un-syrien-accuse-de-torture-et-de-crimes-de-guerre-20220404> (ruling the requirement was satisfied because Syrian law prohibited equivalent crimes); see also, Michel Duclos, “A Perpetrator of Syrian Crimes Against Humanity Went Free in France. Here’s Why It Shouldn’t Happen Again,” Atlantic Council, February 10, 2022, <https://www.atlanticcouncil.org/blogs/menasource/a-perpetrator-of-syrian-crimes-against-humanity-went-free-in-france-heres-why-it-shouldnt-happen-again/>; Lu Phillips and Al Dobouch, “France Is Not a Safe Haven for Human Rights Abusers—Despite High Court Opinion”; “Syria: The Paris Court of Appeal Confirms the Jurisdiction of French Courts in Majdi Nema Case,” FIDH, last updated April 4, 2022, <https://www.fidh.org/en/region/north-africa-middle-east/syria/syria-universal-jurisdiction-majdi-nema>; “France: Conviction for Atrocities in Liberia,” Human Rights Watch, last updated November 2, 2022, <https://www.hrw.org/news/2022/11/02/france-conviction-atrocities-liberia>; Christophe Ayad, “Compétence Universelle: La Cour de Cassation Appelée à Trancher [Universal Jurisdiction: The Court of Cassation Called to Decide],” *Le Monde*, September 21, 2022, https://www.lemonde.fr/societe/article/2022/09/21/competence-universelle-la-cour-de-cassation-appelée-a-trancher_6142545_3224.html.

residence.²⁴³ This question was also raised before the Court of Cassation in the March 17, 2023, hearing in relation to a defendant who argued he had only been present in France for a limited study period.²⁴⁴ The Court of Cassation ruled on May 12, 2023, that the determination of habitual residency required an assessment of the facts of the case by the presiding judge, including such indicators as the duration of and reasons for the stay in France, intention to reside in France for an extended period, and personal and professional ties.²⁴⁵ The November 20 amendment followed the court’s reasoning, opting for a series of indicators to be considered by the judge.²⁴⁶ However, civil society has warned that “en définissant les contours” (by defining the contours) of habitual residence, the amendment may ultimately “tighten the restriction.”²⁴⁷

The third lock is the principle of subsidiarity.²⁴⁸ The FCCP sets out that jurisdiction over all Rome Statute crimes can only be exercised by French authorities if no other national or international court has asserted its jurisdiction over the case.²⁴⁹ This requirement goes directly against the principle of complementarity under the Rome Statute, which grants preference to national courts.²⁵⁰ Practitioners have explained that, pursuant to this principle of subsidiarity, French prosecutors have to expressly ask the ICC to decline jurisdiction and that French authorities will withdraw a case if the ICC is investigating it.²⁵¹ Notably, this requirement does not apply to any other crimes in France.²⁵²

Finally, the fourth lock is unique to the second regime of crimes: the prosecutor has sole discretion in opening or closing an investigation.²⁵³ For the first regime of crimes, civil parties can request

²⁴³ Code de procédure pénale [C. Pr. Pén] [Criminal Procedure Code], art. 689-11 (Fr.); for information on the criticisms, see “France’s Trial for Atrocities Committed in Liberia: Questions and Answers.”

²⁴⁴ Bjurström, “Crucial Hearing for Universal Jurisdiction in France.”

²⁴⁵ The Court of Cassation decided on two cases, both against Syrian nationals, on May 12, 2023. Cour de Cassation [Cass.] [supreme court for judicial matters] crim., May 12, 2023, Bull. Crim., No. 22-82.468, paras. 32–40. For an official English translation, see Cour de Cassation [Cass.] [supreme court for judicial matters] crim., May 12, 2023, Bull. crim., No. 22-82.468, paras. 32–40; Cour de Cassation [Cass.] [court of cassation] crim., 22-80.057, May 12, 2023; “Press Release: Universal Jurisdiction of French Justice for Crimes Committed in Syria,” Cour de Cassation, May 12, 2023. See also, Lu Phillips, “2nd Time’s the Charm: France’s Cour de Cassation Broadens Universal Jurisdiction Law”; Rémond Tiedrez, “France’s Highest Court Confirms Universal Jurisdiction.”

²⁴⁶ Code de procédure pénale [C. Pr. Pén] [Criminal Procedure Code], art. 689-11 (Fr.); “Loi du 20 Novembre 2023 d’Orientation et de Programmation du Ministère de la Justice 2023–2027 [Law of November 20, 2023 on Orientation and Programming of the Ministry of Justice 2023–2027],” Vie Publique; Guillaume Gouffier Valente, “L’Adoption de Mon Amendement sur la Compétence Universelle [The Adoption of My Amendment on Universal Jurisdiction],” July 6, 2023, <https://guillaume.gouffier-cha.fr/2023/07/06/adoption-amdt-cu/>.

²⁴⁷ “France: Vers un Vote Historique pour Juger Efficacement les Responsables de Crimes contre l’Humanité, Crimes de Guerre et Génocide? [France: Towards a Historic Vote to Effectively Judge Those Responsible for Crimes against Humanity, War Crimes and Genocide?],” FIDH, June 29, 2023, <https://www.fidh.org/fr/regions/europe-asie-centrale/france/france-vers-un-vote-historique-pour-juger-efficacement-les-responsables-de-crimes-contre-l-humanite-crimes-de-guerre-et-genocide/>; Alice Autin, “France Delivers Mixed Messages on Justice for Victims of Grave Crimes,” Human Rights Watch, October 11, 2023, <https://www.hrw.org/news/2023/10/11/france-delivers-mixed-messages-justice-victims-grave-crimes>.

²⁴⁸ This is sometimes also referred to as “reverse complementarity.” “France’s Trial for Atrocities Committed in Liberia: Questions and Answers.”

²⁴⁹ Code de procédure pénale [C. Pr. Pén] [Criminal Procedure Code], art. 689-11 (Fr.).

²⁵⁰ Rome Statute, Article 17.

²⁵¹ “Briefing Paper: Universal Jurisdiction Law and Practice in France,” 17.

²⁵² “France’s Trial for Atrocities Committed in Liberia: Questions and Answers.”

²⁵³ Code de procédure pénale [C. Pr. Pén] [Criminal Procedure Code], art. 689-11 (Fr.).

that an investigating judge open an investigation directly through a civil-party application.²⁵⁴ The November 20 amendment does not alter the principle of subsidiarity nor the monopoly of the prosecution for bringing cases.²⁵⁵ In fact, it reflects a compromise to keep the monopoly of the prosecution in order to avoid a possibly massive number of complaints being brought directly by victims, which could overwhelm the system.²⁵⁶

Finally, state immunity applies to both regimes of international crimes. While immunity does not prevent an investigation from being opened, it may be raised later in the proceedings.²⁵⁷ In fact, immunity has been described by some as the principal obstacle to the prosecution of international crimes in France.²⁵⁸ Though French law does not expressly provide for immunity for state officials, France follows customary international law rules on the issue.²⁵⁹ France guarantees immunity to the highest state officials, such as heads of state or ministers, for official acts and acts committed in an official capacity, but not acts of a personal nature.²⁶⁰ However, there is total immunity so long as the suspect holds their position.²⁶¹ For instance, prosecutors found immunity applied to former US Secretary of Defense Donald Rumsfeld for acts committed in his official capacity—even after the end of his mandate—but a French court declined to find immunity in a case dealing with similar charges against a vice consul.²⁶² The French Court of Cassation has extended

²⁵⁴ “Briefing Paper: Universal Jurisdiction Law and Practice in France,” 16.

²⁵⁵ Code de procédure pénale [C. Pr. Pén] [Criminal Procedure Code], art. 689-11 (Fr.); “Loi du 20 Novembre 2023 d’Orientation et de Programmation du Ministère de la Justice 2023–2027 [Law of November 20, 2023 on Orientation and Programming of the Ministry of Justice 2023–2027],” *Vie Publique*; “Crimes Contre L’Humanité: Les Députés Étendent la «Compétence Universelle» de la Justice Française [Crimes Against Humanity: Representatives Expand ‘Universal Jurisdiction’ of French Courts],” *Le Figaro*; Ayad, “Projet de Loi sur la Justice: Un Amendement Élargit la Compétence Universelle Française [Proposed Justice Bill: Amendment Expands French Universal Jurisdiction].”

²⁵⁶ Gouffier Valente, “L’Adoption de Mon Amendement sur la Compétence Universelle [The Adoption of My Amendment on Universal Jurisdiction].”

²⁵⁷ Cour de Cassation [Cass.] [court of cassation] crim., 12-81.676, March 19, 2013.

²⁵⁸ Jeanne Sulzer, “France or Germany: State Torturers, Don’t Go to the Wrong Place,” *JusticeInfo*, May 10, 2021, <https://www.justiceinfo.net/en/77033-france-germany-state-torturers-dont-go-wrong-place.html>.

²⁵⁹ See “Briefing Paper: Universal Jurisdiction Law and Practice in France,” 39; *The Legal Framework for Universal Jurisdiction in France*, 7.

²⁶⁰ See, e.g., Cour de Cassation [Cass.] [court of cassation] crim., 15-83.156, December 15, 2015; United Nations Committee on Enforced Disappearances, “Consideration of Reports of States Parties to the Convention (Continued): Initial Report of France,” CED/C/SR.46, April 17, 2013, paragraph 46, <https://digitallibrary.un.org/record/747448?ln=en>. Cf. *Democratic Republic of the Congo v. Belgium*, “Arrest Warrant of 11 April 2000” 2002, I.C.J. 3, para 51 (February 14) (“The Court would observe at the outset that in international law it is firmly established that, as also diplomatic and consular agents, certain holders of high-ranking office in a State, such as the Head of State, Head of Government and Minister for Foreign Affairs, enjoy immunities from jurisdiction in other States, both civil and criminal.”).

²⁶¹ Cour de Cassation [Cass.] [court of cassation] crim., 09-84.818, January 19, 2010.

²⁶² “Briefing Paper: Universal Jurisdiction Law and Practice in France,” 39. See also, “French Prosecutors Throw Out Rumsfeld Torture Case,” *Reuters*, November 23, 2007, <https://www.reuters.com/article/us-france-rights-rumsfeld-idUSL238169520071123>; “France in Violation of Law Grants Donald Rumsfeld Immunity, Dismisses Torture Complaint,” *FIDH*, November 27, 2007, <https://www.fidh.org/en/region/americas/usa/USA-Guantanamo-Abu-Ghraib/FRANCE-IN-VIOLATION-OF-LAW-GRANTS,4932> (The then-Paris prosecutor stated in a letter that: “The services of the [French] Ministry of Foreign Affairs indicated that in application of the rules of customary international law established by the International Court of Justice, immunity from criminal jurisdiction for Heads of State and Government and Ministers of Foreign Affairs continues to apply after termination of their functions, for acts carried out during their time of office and hence, as former Secretary of Defense, Mr. Rumsfeld, by extension should benefit from this same immunity for acts carried out in the exercise of his functions.”).

immunities to state organs and bodies, as well as their agents, so long as the acts fall within their official capacity.²⁶³ For example, in January 2021, the court confirmed the immunity of US state agents in a case concerning torture of Guantánamo detainees, reasoning that the alleged acts of torture fell within the official capacity of the president of the United States and agents and members of the army.²⁶⁴

Bringing a Case

While generally an investigation into an offense under French law may be opened by the judicial police, a prosecutor, a victim, or an organization, only a prosecutor under the *Parquet National Anti-Terroriste* (PNAT), or National Anti-Terrorist Prosecutor's Office, can initiate proceedings for Rome Statute crimes.²⁶⁵ The PNAT has jurisdiction over crimes against humanity, war crimes, torture committed by state authorities, and enforced disappearance.²⁶⁶ It generally shares jurisdiction with local prosecutors' offices, but it has specific jurisdiction for the most serious offenses.²⁶⁷ The PNAT prosecutor conducts a preliminary investigation and, if there is sufficient information, refers the case to an investigating judge.²⁶⁸ The investigating judge works with the *Office Central de Lutte contre les Crimes Contre l'Humanité et les Crimes de Haine* (French Central Office for Combatting Crimes against Humanity and Hate Crimes, "OCLCH"), an interagency group consisting of police, gendarmes, and other law-enforcement agents specialized in international crime.²⁶⁹

²⁶³ Cour de Cassation [Cass.] [court of cassation] crim., 09-84.818, January 19, 2010.

²⁶⁴ "Impunité/Guantanamo. Une Décision de la Cour de Cassation Envoie un Signal Préoccupant aux Victimes de Torture [Impunity/Guantanamo. A Decision of the Court of Cassation Sends a Worrying Signal to Victims of Torture]," Amnesty International France, February 10, 2021, <https://www.amnesty.fr/presse/amnesty-international-france-est-vivement-preoccupee>; Cour de Cassation [Cass.] [court of cassation] crim., 20-80.511, January 13, 2021, paras. 24–25. ("Les faits incriminés, reprochés à un ancien président des Etats-Unis et à différents membres du gouvernement, fonctionnaires ou membres de l'armée américaine, ne peuvent être assimilés à de simples actes de gestion mais constituent des actes relevant de l'exercice de la souveraineté de l'Etat. La coutume internationale s'oppose à ce que les agents d'un Etat, en l'absence de dispositions internationales contraires s'imposant aux parties concernées, puissent faire l'objet de poursuites, pour des actes entrant dans cette catégorie, devant les juridictions pénales d'un État étranger.")

²⁶⁵ The prosecutorial war crimes unit created in 2012 was in 2019 merged with the Anti-Terrorism Unit. Code de procédure pénale [C. PR. PÉN] (Criminal Procedure Code) art. 1, 689-11 (Fr.). See also, "Briefing Paper: Universal Jurisdiction Law and Practice in France," 17–19; "Breaking Down Barriers: Access to Justice in Europe for Victims of International Crimes," 46–47, 50; Loi n° 2019-222 du 23 mars 2019 de programmation 2018–2022 et de réforme pour la justice [LAW no. 2019-222 of March 23, 2019 on 2018–2022 programming and justice reform]; "Le Parquet National Anti-Terroriste Est Créé," Gouvernement, July 1, 2019, <https://www.gouvernement.fr/actualite/le-parquet-national-anti-terroriste-est-cree>.

²⁶⁶ "Zoom Sur le Nouveau Parquet National Antiterroriste [Focus on the New National Anti-Terrorism Prosecutor's Office]," Ministère de la Justice, September 30, 2019, <https://www.justice.gouv.fr/actualites/actualite/zoom-nouveau-parquet-national-antiterroriste>.

²⁶⁷ Ibid.

²⁶⁸ "Breaking Down Barriers: Access to Justice in Europe for Victims of International Crimes," 50.

²⁶⁹ "Office Central de Lutte Contre les Crimes Contre L'Humanité et les Crimes de Haine (OCLCH) [Central Office for the Fight against Crimes against Humanity and Hate Crimes]," Gendarmerie nationale (France), last visited December 16, 2022, <https://www.gendarmerie.interieur.gouv.fr/notre-institution/nos-composantes/au-niveau-central/les-offices/office-central-de-lutte-contre-les-crimes-contre-l-humanite-et-les-crimes-de-haine-oclch>; "Breaking Down Barriers: Access to Justice in Europe for Victims of International Crimes," 47; Code de procédure pénale [C. PR. PÉN] (Criminal Procedure Code) art. 81, 81-1 (Fr.).

Additionally, if someone seeking asylum is alleged to have committed a crime against peace, a war crime, or a crime against humanity, the *Office Français de Protection des Réfugiés et Apatrides*, or the French Office for the Protection of Refugees and Stateless People, is required to inform OCLCH, and OCLCH is, in turn, required to investigate.²⁷⁰

Victim Participation

Under French law, victims are defined as persons who have suffered a direct harm from an offense.²⁷¹ Nongovernmental organizations (NGOs) that have been established for at least five years are authorized to file complaints either on behalf of a victim, or in their own capacity if defending a special interest in accordance with the FCCP.²⁷² Specifically, the organization's statute must align with certain priorities set out in the FCCP, depending on the crime the complaint concerns.²⁷³ For example, organizations fighting crimes against humanity or war crimes, or defending moral interests and the honor of "*la Résistance*," can submit complaints about war crimes and crimes against humanity.²⁷⁴ This provision has been "interpreted broadly and includes torture and enforced disappearance as independent offenses."²⁷⁵

The options available to victims and NGOs differ depending on which regime of crimes is at issue.²⁷⁶ For cases dealing with the first regime of crimes, victims or NGOs can file complaints in two ways: with a prosecutor, who then has discretion over whether to open an investigation; or directly with an investigating judge, who is obligated to open an investigation.²⁷⁷ For core international crimes, as mentioned above, only the prosecutor may open an investigation.²⁷⁸ If an investigating judge initiates proceedings, then the civil-party procedure becomes available.²⁷⁹

At the investigative stage, civil parties have many rights. These include accessing the case file through their lawyers, requesting that investigating judges take certain investigative measures, requesting expert opinions, and filing legal submissions.²⁸⁰ At the trial stage, civil parties also have specific rights. For example, civil parties can question witnesses, have the right to stay informed,

²⁷⁰ "Exclusion and Decision Not to Grant Refugee Status," *Office Français de Protection des Réfugiés et Apatrides*, last visited August 23, 2023, <https://www.ofpra.gouv.fr/en/exclusion-and-decision-not-grant-refugee-status>; "Briefing Paper: Universal Jurisdiction Law and Practice in France," 18.

²⁷¹ Code de procédure pénale [C. Pr. Pén] [Criminal Procedure Code], art. 2 (Fr.).

²⁷² *Ibid.*, art. 2-1-2-21 (Fr.). See also, "Briefing Paper: Universal Jurisdiction Law and Practice in France," 19.

²⁷³ Code de procédure pénale [C. Pr. Pén] [Criminal Procedure Code], art. 2-1-2-21 (Fr.).

²⁷⁴ *Ibid.*, art. 2-4 (Fr.).

²⁷⁵ "Briefing Paper: Universal Jurisdiction Law and Practice in France," 19.

²⁷⁶ Code de procédure pénale [C. PR. PÉN] (Criminal Procedure Code) art. 1 (Fr.).

²⁷⁷ This is also the case with respect to offenses where jurisdiction is based on active or passive personality rather than universal jurisdiction. See "Breaking Down Barriers: Access to Justice in Europe for Victims of International Crimes," 51-52; Code de procédure pénale [C. Pr. Pén] [Criminal Procedure Code], art. 40, 85 (Fr.). See also, "Briefing Paper: Universal Jurisdiction Law and Practice in France," 19, 21-23.

²⁷⁸ Code de procédure pénale [C. Pr. Pén] [Criminal Procedure Code], art. 689-11 (Fr.). See also, "Breaking Down Barriers: Access to Justice in Europe for Victims of International Crimes," 110.

²⁷⁹ See Code de procédure pénale [C. Pr. Pén] [Criminal Procedure Code], art. 80-3, 87 (Fr.); "Breaking Down Barriers: Access to Justice in Europe for Victims of International Crimes," 50-52, 110.

²⁸⁰ See, e.g., Code de procédure pénale [C. Pr. Pén] [Criminal Procedure Code], art. 81-1, 82-1, 82-2, 114, 156, 175, 175-1 (Fr.). See also, "France's trial for atrocities committed in Liberia: Questions and answers"; "Breaking Down Barriers: Access to Justice in Europe for Victims of International Crimes," 52.

and can make statements before the court, among other rights.²⁸¹ If the proceedings result in a conviction—or, in some cases, even after an acquittal—civil parties have the right to apply for reparation for their injuries and to appeal any decision on such application.²⁸²

Universal Jurisdiction Cases

As of October 2022, there were more than 160 cases in France opened by the public prosecutor's office on the basis of universal jurisdiction.²⁸³ Of these cases, which concern more than thirty countries, eighty were judicial investigations and another eighty were still at the preliminary investigation stage.²⁸⁴ Rwanda has historically been the focus of French prosecutions based on universal jurisdiction, and more than thirty of the open cases as of May 2022 related to it.²⁸⁵ However, in recent years the geographical focus has been diversifying and, as of May 2022, there were forty potential cases, most of which were related to Syria with some related to Iraq.²⁸⁶ Still, the remaining three locks applicable to core international crimes make it difficult to indict suspects under these charges from the beginning of proceedings, especially as the changes to the habitual residence requirement could result in a stricter interpretation.²⁸⁷

Most recently, Kunti Kamara, a former commander of a rebel group active during Liberia's civil war, was convicted of acts of torture and complicity in crimes against humanity.²⁸⁸ Kamara was originally indicted only for torture and barbaric acts, but after an appeal in 2021, the charges were amended to include crimes against humanity.²⁸⁹ Kamara's case was also the first trial in France concerning international crimes committed abroad not relating to Rwanda since the creation of a

²⁸¹ See, e.g., Code de procédure pénale [C. Pr. Pén] [Criminal Procedure Code], art. 306, 308, 312, 315, 330, 332, 338, 344, 346; (Fr.); "France's trial for atrocities committed in Liberia: Questions and answers"; "Breaking Down Barriers: Access to Justice in Europe for Victims of International Crimes," 52–53.

²⁸² Code de procédure pénale [C. Pr. Pén] [Criminal Procedure Code], art. 2, 3, 4, 4-1, 371, 372 (Fr.). See also, "France's Trial for Atrocities Committed in Liberia: Questions and Answers"; "Breaking Down Barriers: Access to Justice in Europe for Victims of International Crimes," 59. Another option for compensation is available only to victims who are French citizens or victims of a crime committed on French territory. See Code de procédure pénale [C. Pr. Pén] [Criminal Procedure Code], art. 706-3–706-15 (Fr.).

²⁸³ "France's Trial for Atrocities Committed in Liberia: Questions and Answers."

²⁸⁴ Jean Chichizola, "Jean-François Ricard: «Il Faut Se Donner les Moyens de Juger ces Crimes Contre L'Humanité» [Jean-François Ricard: 'We Must Give Ourselves the Means to Judge These Crimes against Humanity']," *Figaro*, May 8, 2022, <https://www.lefigaro.fr/actualite-france/jean-francois-ricard-il-faut-se-donner-les-moyens-de-juger-ces-crimes-contre-l-humanite-20220508>.

²⁸⁵ "France's Trial for Atrocities Committed in Liberia: Questions and Answers."

²⁸⁶ *Ibid.*

²⁸⁷ Code de procédure pénale [C. Pr. Pén] [Criminal Procedure Code], art. 689-11 (Fr.); "Loi du 20 Novembre 2023 d'Orientation et de Programmation du Ministère de la Justice 2023–2027 [Law of November 20, 2023 on Orientation and Programming of the Ministry of Justice 2023–2027]," *Vie Publique*; "Crimes Contre L'Humanité: Le Gouvernement Prêt à Modifier la Loi sur la Compétence de la Justice Française [Crimes Against Humanity: The Government Ready to Modify the Law on the Competence of French Justice]," *Figaro*, last updated February 10, 2022, <https://www.lefigaro.fr/flash-actu/crimes-contre-l-humanite-le-gouvernement-pret-a-modifier-la-loi-sur-la-competence-de-la-justice-francaise-20220209>; "France: Vers un Vote Historique pour Juger Efficacement les Responsables de Crimes contre l'Humanité, Crimes de Guerre et Génocide? [France: Towards a Historic Vote to Effectively Judge Those Responsible for Crimes against Humanity, War Crimes and Genocide?]," FIDH; Autin, "France Delivers Mixed Messages on Justice for Victims of Grave Crimes."

²⁸⁸ Kim Willsher, "French Court Convicts Former Liberian Rebel Commander Over Atrocities," *Guardian*, November 2, 2022, <https://www.theguardian.com/world/2022/nov/02/french-court-convicts-former-liberian-rebel-commander-over-atrocities>.

²⁸⁹ "France's Trial for Atrocities Committed in Liberia: Questions and Answers."

specialized unit within the Gendarmerie in 2010.²⁹⁰ Previous trials were held against Ely Ould Dah, who was arrested in 1999 for acts of torture committed against Mauritanian soldiers, later escaped, and was convicted and sentenced *in absentia* in 2005; Khaled Ben Saïd, a former Tunisian official, who was convicted *in absentia* of torture; and fourteen Chilean and Argentinian officials who served under General Augusto Pinochet and who were convicted *in absentia* of crimes including kidnapping and torture.²⁹¹ Finally, two trials addressed the 1994 genocide in Rwanda, resulting in convictions of three perpetrators for genocide and crimes against humanity.²⁹²

A slew of cases progressed in Fall 2023, especially those related to Syria. In September, it was announced that three Syrian security officials, for whom French authorities issued international arrest warrants in 2018, would be tried *in absentia* in May 2024 for complicity in war crimes and crimes against humanity.²⁹³ In October, French investigative judges issued international arrest warrants for four high-ranking Syrian officers for complicity in war crimes.²⁹⁴ The Paris Court of Appeal confirmed in November the referral of a former Syrian rebel group spokesperson for, *inter alia*, war crimes.²⁹⁵ Finally—and most prominently—French criminal investigative judges issued arrest warrants for Syrian President Bashar al-Assad, his brother, and two senior officials for using banned chemical weapons against civilians.²⁹⁶ This warrant is particularly noteworthy, as it is reportedly the first time a sitting head of state has been the subject of one in another country for war crimes and crimes against humanity.²⁹⁷ The case against Bashar al-Assad is likely to be

²⁹⁰ “Kunti Kamara: Former ULIMO Commander Sentenced to Life Imprisonment for Crimes Against Humanity and Torture,” Civitas Maximas, last updated November 2, 2022, <https://civitas-maxima.org/2022/11/02/kunti-kamara-former-ulimo-commander-sentenced-to-life-imprisonment-for-crimes-against-humanity-and-torture/>; “Strategies for the Effective Investigation and Prosecution of Serious International Crimes: The Practice of Specialised War Crimes Units,” EuroJust, December 2010, 20, <https://www.eurojust.europa.eu/sites/default/files/assets/2010-redress-fidh-strategies-investigation-prosecution-international-crimes-en.pdf>.

²⁹¹ “Ely Ould Dah,” International Crimes Database, last visited August 23, 2023, <https://internationalcrimesdatabase.org/Case/998/Ould-Dah/>; “Appeal Trial of Khaled Ben Saïd, A Tunisian National: French Justice System Faced With the Challenge of Judging the Most Serious International Crimes,” FIDH, September 8, 2010, <https://www.fidh.org/en/issues/litigation/litigation-against-individuals/Ben-Said-Case/Appeal-trial-of-Khaled-Ben-Said-a/>; “Pinochet Officials Sentenced to Jail in France,” BBC, December 17, 2010, <https://www.bbc.com/news/world-europe-12021397>.

²⁹² “Breaking Down Barriers: Access to Justice in Europe for Victims of International Crimes,” 48–49.

²⁹³ An investigating judge had ordered their indictment in March 2023. Sunniva Rose, “Three Senior Syrian Security Officials to Face War Crimes Trial in Paris,” National News, September 8, 2023, <https://www.thenationalnews.com/world/2023/09/08/three-senior-syrian-security-officials-to-face-paris-trial-in-may/>; “Syria/Dabbagh Case—French Justice Orders the Trial of Ali Mamlouk, Jamil Hassan and Abdel Salam Mahmoud,” International Federation for Human Rights, April 4, 2023, <https://www.fidh.org/en/region/north-africa-middle-east/syria/syria-dabbagh-case-french-justice-orders-the-trial-of-ali-mamlouk>.

²⁹⁴ “Judges of the French War Crimes Unit Issue International Arrest Warrants Against Four High-Ranking Syrian Officers Charged with Complicity in War Crimes,” Syrian Center for Media and Freedom of Expression, October 19, 2023, <https://scm.bz/en/judges-of-the-french-war-crimes-unit-issue-international-arrest-warrants-against-four-high-ranking-syrian-officers-charged-with-complicity-in-war-crimes/>.

²⁹⁵ “War Crimes in Syria: Trial Confirmed in France for a Former Salafist Rebel,” JusticeInfo, November 21, 2023, <https://www.justiceinfo.net/fr/125108-crimes-de-guerre-en-syrie-proces-aux-assises-confirme-en-france-pour-un-ex-rebelle-salafiste.html>.

²⁹⁶ “French Magistrates Seek Arrest of Syria’s Al-Assad and Associates for Chemical Weapons Attacks,” Open Society Justice Initiative, November 15, 2023, <https://www.justiceinitiative.org/newsroom/french-magistrates-seek-arrest-of-syria-s-al-assad-and-associates-for-chemical-weapons-attacks>.

²⁹⁷ *Ibid.*

challenged on head of state immunity issues, and so will add to France’s jurisprudence on the issue and any exceptions (or lack thereof) to that immunity.²⁹⁸

Additionally, a former National Patriotic Front of Liberia commander and a former Rwandan regional prefect were both charged in September, the former with crimes against humanity and the latter with crimes against humanity and genocide.²⁹⁹ A trial against another suspect in the Rwandan genocide for complicity in genocide and crimes against humanity started in November, and a former Congolese warlord was indicted.³⁰⁰ Additionally, six Iranian and Franco-Iranian individuals filed a criminal complaint in September against three senior officials in the IRGC for “death threats and justifying terrorism.”³⁰¹ Also in November, the Court of Cassation was scheduled to reexamine an indictment against the cement manufacturer Lafarge (now a subsidiary of Swiss Holcim) for complicity in crimes against humanity and endangering its employees in Syria.³⁰²

State of Play for Iran-Related Cases

Given the different legal requirements for various international crimes, the decision regarding whether to bring a universal jurisdiction case in France will depend on the crime in question. Without reforming the law related to core international crimes, and taking into consideration the immunity granted to officials, it would be difficult to bring a universal jurisdiction case in France other than one concerning the first regime of torture or enforced disappearances. Indeed, the criminal complaint filed in September 2023 against IRGC officials was qualified as “largely symbolic,” and no investigation had been opened as of November 2023.³⁰³

With respect to cases concerning Iran, nationality-based cases would be much more likely to lead to investigations given that none of the remaining three locks or other obstacles would be

²⁹⁸ Marlise Simons, “French Judges Issue Warrant for Assad in Syria War Crimes Case,” *New York Times*, November 15, 2023, <https://www.nytimes.com/2023/11/15/world/middleeast/bashar-al-assad-syria-war-crimes.html>; “French Magistrates Seek Arrest of Syria’s Al-Assad and Associates for Chemical Weapons Attacks.”

²⁹⁹ “Alleged Former NPFL Commander Charged in France for Crimes against Humanity,” *Civitas Maxima*, September 18, 2023, <https://civitas-maxima.org/2023/09/18/alleged-former-npfl-commander-charged-in-france-for-crimes-against-humanity>; “France Arrests, Charges Rwanda Ex-Official over 1994 Genocide: Source,” *JusticeInfo*, September 23, 2023, <https://www.justiceinfo.net/en/122169-france-arrests-charges-rwanda-ex-official-over-1994-genocide-source.html>.

³⁰⁰ “Ex-Doctor Goes on Trial in France over Rwanda Genocide,” *JusticeInfo*, November 14, 2023, <https://www.justiceinfo.net/en/124706-ex-doctor-goes-on-trial-in-france-over-rwanda-genocide.html>; “Sosthène Munyemana Devant les Assises de Paris [Sosthène Munyemana Before the Paris Conference],” *Le Collectif des Parties Civiles pour le Rwanda*, October 20, 2023, <https://www.collectifpartiescivilesrwanda.fr/sosthene-munyemana-devant-les-assis-de-paris/>; “Upcoming Trial of Congolese Warlord in France Is a Historic Step toward Justice,” *TRIAL International*, last updated November 16, 2023, <https://trialinternational.org/latest-post/upcoming-trial-of-congolese-warlord-in-france-is-a-historic-step-toward-justice/>.

³⁰¹ “Iran Revolutionary Guards Chief Targeted in French Criminal Complaint.”

³⁰² “Lafarge En Syrie: La Cour De Cassation Se Prononce Mardi Sur La Validité Des Poursuites [Lafarge in Syria: The Court of Cassation Rules Tuesday on the Validity of the Prosecutions],” *JusticeInfo*, October 1, 2023, <https://www.justiceinfo.net/fr/122609-lafarge-en-syrie-la-cour-de-cassation-se-prononce-mardi-sur-la-validite-des-poursuites.html>; “Lafarge En Syrie: La Justice Française Réexaminera Le Dossier Le 21 Novembre [Lafarge in Syria: French Justice Will Reexamine the Case on November 21],” October 3, 2023, <https://www.ouest-france.fr/societe/justice/lafarge-en-syrie-la-justice-francaise-reexaminera-le-dossier-le-21-novembre-a29a2e0e-61ee-11ee-927f-c86d7642faa1>.

³⁰³ “Iran Revolutionary Guards Chief Targeted in French Criminal Complaint.”

applicable, though statutes of limitations could be a bar.³⁰⁴ For example, an investigation of enforced disappearance and torture amounting to crimes against humanity committed in Syria against Patrick Abdelkader Dabbagh and his father Mazzen Dabbagh, dual French-Syrian nationals, was opened on the basis of a complaint brought in 2016 by a family member of the victims, in conjunction with civil-society organizations.³⁰⁵ The investigation led to the issuance of arrest warrants for three senior officials of the Bashar al-Assad regime in Syria in 2018 for complicity in crimes against humanity and war crimes and, for the first time in France’s history, an indictment against the three on the same charges was ordered in March 2023.³⁰⁶

Recommendations

In addition to those recommendations described in the Europe-wide section, French officials can implement the following to help improve French laws and practices around universal jurisdiction.

- French lawmakers should amend the law relating to core international crimes to remove the remaining three locks and reinstate the civil-party procedure at the investigation stage.

³⁰⁴ See Code de procédure pénale [C. Pr. Pén] [Criminal Procedure Code], art. 113 (6), 113 (7) (Fr.).

³⁰⁵ “Q&A on the Dabbagh Case: French Judges Order the Trial of Three Senior Syrian Officials before the Paris Criminal Court,” FIDH, April 4, 2023, <https://www.fidh.org/en/issues/international-justice/universal-jurisdiction/q-a-on-the-dabbagh-case-french-judges-order-the-trial-of-three-senior>.

³⁰⁶ Ibid.; “France to Try Senior Assad Allies for Crimes Against Humanity in Syria,” France24, April 4, 2023, <https://www.france24.com/en/middle-east/20230404-france-to-try-senior-assad-allies-for-crimes-against-humanity-in-syria>; Michael Fitzpatrick, “Three Syrian Regime Figures to Face Trial in France Over 2013 Arrests, Killings,” Radio France Internationale, April 4, 2023, <https://www.rfi.fr/en/france/20230404-three-syrian-regime-figures-to-face-trial-in-france-over-2013-killings>.

GERMANY

Of all countries in Europe, Germany is perhaps the jurisdiction with the most promise—and yet the most frustrations—in arresting and prosecuting IRI officials responsible for human rights violations and atrocity crimes. A robust trade relationship and continued diplomatic engagement between Germany and Iran has meant that IRI officials have frequently traveled to Germany over the past decade. In recent years, the former head of the IRI judiciary Ayatollah Mahmoud Hashemi Shahroudi traveled to Germany for medical treatment, while a judge responsible for the torture of journalists fled as a fugitive to Germany and was later found dead outside of a hotel in Romania “in suspicious circumstances.”³⁰⁷ In both instances, criminal complaints were filed with German prosecutors alleging torture and crimes against humanity—and in neither case was an arrest made. This pattern was recently repeated with reports of one of the most notorious architects of the 1988 prison massacres—Hossein Ali Nayyeri—being treated at a hospital in Hanover, Germany in July 2023.³⁰⁸ Nayyeri’s presence was disputed, and no arrests were made.

Yet despite the lack of arrests of IRI officials traveling to Germany, there are some promising signs that the German authorities have increased their commitment to justice for Iranians in the wake of the “Women, Life, Freedom” protests. One positive step was Germany making a joint request, along with Iceland, for a special session of the UN Human Rights Council in November 2022, from which the Independent International Fact-Finding Mission on the Islamic Republic of Iran (FFMI) was established.³⁰⁹ Germany’s leadership role in that request is a positive sign of its commitment to accountability. The section below explores further opportunities and challenges to hold IRI officials accountable should they continue to travel to Germany.

Framework

Germany has universal jurisdiction provisions for the core international crimes and the crime of aggression, as enumerated in the *Völkerstrafgesetzbuch* (VStGB), or Code of Crimes against International Law.³¹⁰ On November 1, 2023, the German government approved a draft bill (hereinafter “draft international law update bill”) that will further update certain international

³⁰⁷ Shabnam von Hein, “Germany Should Not Be a Haven for Criminals,” *Deutsche Welle*, January 11, 2018, <https://www.dw.com/en/iranian-ayatollah-shahroudi-in-hanover-germany-should-not-be-a-haven-for-criminals/a-42109121>. In terms of the “suspicious circumstances,” the judge was said to have fallen out of a window, but there were differing accounts of the situation. “Iranian Judge Accused of Corruption Found Dead in Romanian Hotel,” Reuters, June 19, 2020, <https://www.reuters.com/article/us-romania-iran-judge/iranian-judge-accused-of-corruption-found-dead-in-romania-hotel-idUSKBN23Q2QS>; “Differing Police Accounts on Death of Iran Judge in Romania,” Radio Farda, June 19, 2020, <https://en.radiofarda.com/a/breaking-news-fugitive-iran-judge-found-dead-in-romania/30680116.html>; Frank Elbers, “The Mysterious Death of an Iranian Judge in Romania,” IranWire, June 20, 2020, <https://iranwire.com/en/features/67198/>; “Fugitive Judge’s Relatives Deny His Suicide,” Radio Farda, September 6, 2020, <https://en.radiofarda.com/a/30823586.html>.

³⁰⁸ “Iranian ‘Hanging Judge’ Under Treatment in Germany,” *Iran International*, July 23, 2023, <https://www.iranintl.com/en/202307231211>.

³⁰⁹ “Human Rights Council Establishes Fact-Finding Mission to Investigate Alleged Human Rights Violations in Iran Related to the Protests that Began on 16 September 2022,” United Nations Office of the High Commissioner for Human Rights, November 24, 2022, <https://www.ohchr.org/en/news/2022/11/human-rights-council-establishes-fact-finding-mission-investigate-alleged-human-rights>.

³¹⁰ *Völkerstrafgesetzbuch* [VStGB] [Code of Crimes against International Law], as amended by art. 1 of the Act of 22 December 2016, §§ 1, 6–13 (Ger.).

crimes and liabilities—for example, adding provisions related to sexual violence.³¹¹ The *Strafgesetzbuch* (StGB), or German Criminal Code, also stipulates jurisdiction over certain other serious offenses committed abroad, including terrorism offenses.³¹² While crimes committed overseas under the StGB generally require double criminality if there is no “specific domestic connection” and they were not committed “against internationally protected legal interests,” crimes under the VStGB do not require double criminality.³¹³

Genocide can be prosecuted under the VStGB if it was committed after June 30, 2002 (the date the VStGB came into effect), and—as it had been added to the StGB first—cases committed before June 30, 2002, and after February 22, 1955 (the date genocide was added to the StGB), may also be prosecuted.³¹⁴ Under the VStGB, crimes against humanity and war crimes can be prosecuted if committed after June 30, 2002, and aggression can be prosecuted if committed after January 1, 2017.³¹⁵ However, it is possible that offenses committed before those dates could be prosecuted under the StGB on the basis of international conventions that are binding on Germany.³¹⁶ The provision allowing limited extraterritorial jurisdiction over certain terrorism offenses came into effect August 22, 2002.³¹⁷ There is no retroactivity, and there is no statute of limitations for core international crimes or aggression.³¹⁸

Because German law incorporates customary international law, immunities such as those for state representatives are recognized.³¹⁹ Additionally, the Courts Constitutions Act provides for

³¹¹ The draft bill still needs parliamentary approval. “Vorschläge zur Fortentwicklung des Völkerstrafrechts [Proposals for the further development of International Criminal Law],” *Bundesministerium der Justiz*, press release, July 17, 2023, https://www.bmj.de/SharedDocs/Pressemitteilungen/DE/2023/0717_Voelkerstrafrecht.html; “Germany Moves to Classify Sexual Violence as War Crime,” *Barron’s*, November 1, 2023, <https://www.barrons.com/news/germany-moves-to-classify-sexual-violence-as-war-crime-28f923bd>.

³¹² *Strafgesetzbuch* [StGB] [Criminal Code], as amended by art. 2 of the Act of 22 November 2021, §§ 5–7, 129–129b (Ger.).

³¹³ *Völkerstrafgesetzbuch* [VStGB] [Code of Crimes against International Law], as amended by art. 1 of the Act of 22 December 2016, § 1 (Ger.); cf *Strafgesetzbuch* [StGB] [Criminal Code], as amended by art. 2 of the Act of 22 November 2021, §§ 5–7 (Ger.).

³¹⁴ “Briefing Paper: Universal Jurisdiction Law and Practice in Germany,” 15, (citing *Bundesgesetzblatt Teil I Nr. 42*, ausgegeben zu Bonn am 29. Juni 2002 [Federal Law Gazette Part I No. 42, Issued in Bonn on June 29, 2002, 2254; *Bundesgesetzblatt Teil II Ausgegeben zu Bonn am 12. August 1954* [Federal Law Gazette Part II Issued in Bonn on August 12, 1954], 729; *Bekanntmachung über das Inkrafttreten der Konvention vom 9. Dezember 1948 über die Verhütung und Bestrafung des Völkermordes für die Bundesrepublik Deutschland*, Vom 14. März 1955 [Announcement of the Entry into Force of the Convention of December 9, 1948 on the Prevention and Punishment of the Crime of Genocide for the Republic of Germany, Dated March 14, 1955]).

³¹⁵ *Bundesgesetzblatt Teil I* [Law on the Introduction of the International Criminal Code], June 29, 2002, No. 42, 2254 (Ger.); *Bundesgesetzblatt Jahrgang Teil I* [Law amending the International Criminal Code], December 28 2016, No. 65 (Ger.).

³¹⁶ *Strafgesetzbuch* [StGB] [Criminal Code], as amended by art. 2 of the Act of 22 November 2021, § 6(9) (Ger.); “Briefing Paper: Universal Jurisdiction Law and Practice in Germany,” 15–16.

³¹⁷ *Bundesgesetzblatt Jahrgang Teil I* [Thirty-fourth Criminal Law Amendment Act], August 29, 2002, No. 61, § 129b StGB (34. StrÄndG).

³¹⁸ *Strafgesetzbuch* [StGB] [Criminal Code], last amended by art. 2 of the Act of 22 November 2021, § 1 (Ger.); *Völkerstrafgesetzbuch* [VStGB] [Code of Crimes against International Law], as amended by art. 1 of the Act of 22 December 2016, § 5.

³¹⁹ *Gerichtsverfassungsgesetz* [GVG] [Courts Constitution Act], May 9, 1975, last amended by art. 4 of Act of 25 June 2021, § 20(2); see also, Basic Law for the Federal Republic of Germany as last amended by the Act of 28 June 2022, art. 25.

immunities for diplomats, consular officers, and state representatives who have been invited by Germany.³²⁰ However, the Federal Court of Justice has “explicitly established” that a “foreign subordinate official” of another state is not entitled to functional immunity “with regard to acts carried out within the scope of their duties.”³²¹

Bringing a Case

The Office of the Federal Prosecutor General and the Federal Criminal Police are in charge of criminal investigations for crimes under the VStGB.³²² The prosecutor can open an investigation when there is “sufficient factual indications,” and the investigation is then concluded with either a termination order or, when there are “reasonable grounds to believe” that there could be a conviction, an indictment.³²³ Suspects do not need to be present in Germany for the investigation of core international crimes, though the prosecutor has discretion to refrain from investigating until a suspect is present.³²⁴ German prosecutors can also open a structural investigation to gather and preserve evidence in cases where a perpetrator has not yet been identified, as they have done with Syria and Ukraine.³²⁵

³²⁰ While the latter category is considered “special mission” immunity, as of December 6, 2022, Germany had ratified the Vienna Conventions on Diplomatic Relations and Consular Relations, but not the Convention on Special Missions. Gerichtsverfassungsgesetz [GVG] [Courts Constitution Act], May 9, 1975 as last amended by art. 4 of the Act of 25 June 2021, §§ 18–20; “3. Vienna Convention on Diplomatic Relations,” United Nations Treaty Collection, status as of December 6, 2022, 10:15:44 EDT, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=III-3&chapter=3&clang=_en; “6. Vienna Convention on Consular Relations,” United Nations Treaty Collection, status as of December 6, 2022, 10:15:44 EDT; “9. Convention on Special Missions,” United Nations Treaty Collection, status as of December 6, 2022, 10:15:44 EDT; “Briefing Paper: Universal Jurisdiction Law and Practice in Germany,” 34.

³²¹ “Verbal Note,” Note No. 98/2021, Permanent Mission of Germany to the United Nations in New York, https://www.un.org/en/ga/sixth/76/universal_jurisdiction/germany_e.pdf; “Functional Immunity of Foreign Officials and Crimes under International Law,” *International Law Reports* 200 (2022) 366–393 (providing an English translation of the relevant case, including the term “foreign subordinate official”); “Q&A: First Syria State Torture Trial in Germany,” Human Rights Watch, January 6, 2022, <https://www.hrw.org/news/2022/01/06/qa-first-syria-state-torture-trial-germany>; Claus Kress, “On Functional Immunity of Foreign Officials and Crimes under International Law,” Just Security, March 31, 2021, <https://www.justsecurity.org/75596/on-functional-immunity-of-foreign-officials-and-crimes-under-international-law/>; Claus Kress, “A German Sentence of Life Imprisonment for Crimes Against Humanity—A Small Measure of Justice for Syria,” Just Security, January 14, 2022, <https://www.justsecurity.org/79853/a-german-sentence-of-life-imprisonment-for-crimes-against-humanity-a-small-measure-of-justice-for-syria/>.

³²² Within the Federal Criminal Police, core international crimes are assigned to the Central Unit for the Fight against War Crimes and further Offences pursuant to the Code of Crimes against International Law. Anybody can report an offence to the public prosecution office, the police, or to local courts. “International Criminal Law,” Der Generalbundesanwalt beim Bundesgerichtshof, last visited December 6, 2022, <https://www.generalbundesanwalt.de/EN/Our-role/International-Criminal-Law/Voelkerstrafrecht-node.html>; Bundeskriminalamtgesetz [BKAG] [Federal Criminal Police Office Act], § 4(6)(a) (Ger.); “Central Unit for the Fight against War Crimes and Further Offences pursuant to the Code of Crimes against International Law (ZBKV),” Bundeskriminalamt, last visited December 6, 2022, https://www.bka.de/EN/OurTasks/Remit/CentralAgency/ZBKV/zbkv_node.html; Strafprozeßordnung [StPO] [Code of Criminal Procedure] as last amended by Article 3 of the Act of 11 July 2019, § 158.

³²³ Strafprozeßordnung [StPO] [Code of Criminal Procedure] as last amended by Article 3 of the Act of 11 July 2019, §§ 152(2), 170 (Ger.).

³²⁴ *Ibid.*, § 153f(2) (Ger.); see also, “Briefing Paper: Universal Jurisdiction Law and Practice in Germany,” 17–18.

³²⁵ “Statement by Germany, Sixth Committee,” United Nations, October 2021, https://www.un.org/en/ga/sixth/75/pdfs/statements/universal_jurisdiction/11mtg_germany.pdf; “Statement of

Although German prosecutors generally have the obligation to investigate and prosecute all crimes under the German principle of mandatory prosecution, provided that there is sufficient factual evidence, they have limited discretion for crimes under the VStGB.³²⁶ For example, they may decline to investigate and prosecute core international crimes when there is no nexus to Germany.³²⁷ Generally, however, prosecutors will investigate all cases so long as they can gather evidence or testimony on German territory.³²⁸ Additionally, the government prefers that “the most serious crimes under international law [are] tried by international tribunals,” but it is the legal duty of German prosecutors to investigate crimes if there are no other investigations led by another jurisdiction.³²⁹

Victim Participation

Victims of certain crimes, including some that consist of underlying crimes in the VStGB—such as murder as well as other crimes with “serious consequences”—can be admitted as “private accessory prosecutors.”³³⁰ “Victims” are those who, as a result of the crime, had their legal rights directly impaired, or who directly suffered harm or damage.³³¹ All victims are entitled to certain rights, such as the right to request psychosocial support during legal proceedings, even if they do not join as private accessory prosecutors, but those who join as such are afforded additional rights.³³² Victims can file a claim for compensation regardless of whether they become joint plaintiffs, which again affords certain rights, such as the right to apply for legal aid.³³³

The draft international law update bill looks to further develop German’s international criminal law framework, including by strengthening victims’ rights.³³⁴ For example, it includes provisions

Germany in the UNGA Sixth Committee, ‘The Scope and Application of the Principle of Universal Jurisdiction,’ October 12th, 2022,” Permanent Mission of the Federal Republic of Germany to the United Nations, October 12, 2022, <https://new-york-un.diplo.de/un-en/news-corner/-/2558190>; “Briefing Paper: Universal Jurisdiction Law and Practice in Germany,” 17.

³²⁶ Strafprozeßordnung [StPO] [Code of Criminal Procedure] as last amended by Article 3 of the Act of 11 July 2019, §§ 152(2), 153f (Ger.).

³²⁷ A lack of nexus requires that neither a suspect or a victim is a German national; the suspect is not present or expected to be present in Germany; or the case has been taken up by an international court or a court in the state where the crime was committed or where the suspect or victim is a citizen. Strafprozeßordnung [StPO] [Code of Criminal Procedure] as last amended by Article 3 of the Act of 11 July 2019, § 153f(2) (Ger.).

³²⁸ “Briefing Paper: Universal Jurisdiction Law and Practice in Germany,” 19.

³²⁹ Ibid. (citing Entwurf eines Gesetzes zur Einführung des Völkerstrafgesetzbuches [Draft of a Law to Introduce the International Criminal Code], March 13, 2022, Deutscher Bundestag, Drucksache 14/8524, 38, <https://dserver.bundestag.de/btd/14/085/1408524.pdf>); “Statement of Germany in the UNGA Sixth Committee, ‘The Scope and Application of the Principle of Universal Jurisdiction,’ October 12th, 2022.”

³³⁰ In the case of killed persons, certain relatives may be admitted. Völkerstrafgesetzbuch [VStGB] [Code of Crimes against International Law], as amended by art. 1 of the Act of 22 December 2016, §§ 1, 6–13 (Ger.); Strafprozeßordnung [StPO] [Code of Criminal Procedure] as last amended by Article 3 of the Act of 11 July 2019, § 395; Strafgesetzbuch [StGB] [Penal Code], as amended by Art 2 of the Act of 22 November 2021, §§ 211–212 (Ger.); “Briefing Paper: Universal Jurisdiction Law and Practice in Germany,” 25–26.

³³¹ Strafprozeßordnung [StPO] [Code of Criminal Procedure] as last amended by Article 3 of the Act of 11 July 2019, § 373b (Ger.).

³³² Ibid., §§ 373b, 396–406l (Ger.); see also, “Briefing Paper: Universal Jurisdiction Law and Practice in Germany,” 26–27.

³³³ Strafprozeßordnung [StPO] [Code of Criminal Procedure] as last amended by Article 3 of the Act of 11 July 2019, §§ 403–405 (Ger.).

³³⁴ “Vorschläge zur Fortentwicklung des Völkerstrafrechts [Proposals for further development of international criminal law],” *Bundesministerium der Justiz*.

that expand who may be able to serve as “private accessory prosecutors,” and that entitle victims of crimes under the VStGB who are serving as joint plaintiffs to a victim advocate.³³⁵

Universal Jurisdiction Cases

Germany’s legal architecture has enabled authorities to launch many investigations and cases for core international crimes as well as related charges. Prosecutors have been especially prolific in the Syria context, where through a structural investigation, they received access to extensive evidence, including through the so-called “Caesar files” and cooperation with the UN International, Impartial and Independent Mechanism; the UN Commission of Inquiry; and the Commission for International Justice and Accountability.³³⁶ Additionally, Germany has welcomed a comparatively high number of Syrian refugees, which has meant both that Syrian activists motivated to pursue accountability are present in Germany and that investigators have worked with the Federal Office for Migration and Refugees to ask asylum seekers about any relevant crimes they witnessed.³³⁷

In October 2022, Germany reported that its prosecutors were running more than one hundred investigations into international crimes.³³⁸ Convictions to date have included those for genocide in Rwanda; for abuses in Syria, including those by members of nonstate armed groups (torture, war crimes, membership in a foreign terrorist organization, murder, aiding and abetting the kidnapping of an employee of the UN) and those by Syrian officials including intelligence officers (crimes against humanity); for crimes against Yazidi girls and women in Syria and Iraq, including genocide, crimes against humanity, war crimes, enslavement, membership in a foreign terrorist organization, and breaches of the duty of care or upbringing; for torture as a war crime in Afghanistan; and for crimes against humanity, murder, and attempted murder in The Gambia.³³⁹

³³⁵ Ibid.

³³⁶ Susann Aboueldahab and Fin-Jasper Langmack, “Universal Jurisdiction Cases in Germany: A Closer Look at the Poster Child of International Criminal Justice,” *Minnesota Journal of International Law* 31, 2 (2022), 6–7, https://minnjl.org/wp-content/uploads/2022/09/Aboueldahab-Langmack_v31_i2_1_34.pdf.

³³⁷ Ibid.; Malek, “How a Syrian War Criminal Was Brought to Justice—in Germany.”

³³⁸ “Statement of Germany in the UNGA Sixth Committee, ‘The Scope and Application of the Principle of Universal Jurisdiction,’ October 12th, 2022.”

³³⁹ For the case regarding Rwanda, see “Onesphore Rwabukombe,” TRIAL International, last updated July 27, 2020, <https://ujim.trialinternational.org/latest-post/onesphore-rwabukombe/>. For the cases involving members of Syrian non-state armed groups, see “Ibrahim Al F.,” TRIAL International, last updated July 15, 2020, <https://ujim.trialinternational.org/latest-post/ibrahim-al-f/>; “Harry Sarfo,” TRIAL International, last updated February 9, 2018, <https://ujim.trialinternational.org/latest-post/harry-sarfo/> (noting that Sarfo may additionally be tried for murder and war crimes, pending a decision on whether it would constitute “a second punishment based on the same facts”); “German Court Convicts Syrian Daesh Member of War Crimes for Torturing Captives,” *Arab News*, July 12, 2023, <https://www.arabnews.com/node/2336246/middle-east>; Lizzie Dearden, “Former London Postman Charged With Murdering Syrian Captives in ISIS Mass Execution,” *Independent*, July 19, 2017, <https://www.independent.co.uk/news/world/europe/harry-sarfo-isis-germany-syria-london-postman-charged-murder-mass-execution-palmyra-video-massacre-war-crimes-latest-a7849831.html>; “Khedr. A. K.,” TRIAL International, last updated April 4, 2022, <https://ujim.trialinternational.org/latest-post/khedr-a-k/>; “Fares A. B.,” TRIAL International, last updated March 25, 2021, <https://ujim.trialinternational.org/latest-post/fares-a-b/>; “German Woman Jailed for Taking Son to Syria to Join IS,” Associated Press, July 26, 2022, <https://apnews.com/article/islamic-state-group-middle-east-syria-bombings-36a90395cca4600e005f9f73bdaba194>; “Suliman Al-S.,” TRIAL International, last updated July 15, 2020, <https://ujim.trialinternational.org/latest-post/suliman-al-s/>; “Abdul Jawad A. K., Abdulrahman A. A., Abdoulfatah A. and Abdalfatah H. A.,” TRIAL

Even in a few instances where prosecutions for core international crimes have failed, prosecutors have been able to convict or indict on terrorism-related charges.³⁴⁰ Further proceedings are under way, including cases against a Syrian doctor for alleged crimes against humanity and against alleged members of ISIS.³⁴¹ There is also an arrest warrant out for the head of the Syrian Air Force Intelligence, and a person-specific investigation for crimes committed on an Argentinian naval base.³⁴² Between 2022 and 2023, lawyers have also filed criminal charges against Myanmar

International, last updated March 25, 2021, <https://ujim.trialinternational.org/latest-post/abdalfatah-h-a/>; “Federal Court of Justice of Karlsruhe—Case 3 StR 394/20,” International Committee of the Red Cross, last visited December 8, 2022, <https://ihl-databases.icrc.org/national-practice/federal-court-justice-karlsruhe-case-3-str-39420>. For the cases involving Syrian officials, see “Anwar Raslan and Eyad Al-Gharib,” TRIAL International, April 4, 2022, <https://ujim.trialinternational.org/latest-post/anwar-raslan-and-eyad-al-gharib/>; “Top German Court Rejects Syrian’s Appeal in Torture Case,” Associated Press, May 3, 2022, <https://apnews.com/article/europe-middle-east-syria-crime-germany-fb0a5a2a38418ba01c504401f0e7bb73>; “German Court Finds Syrian Ex-Colonel Guilty,” *Deutsche Welle*, January 14, 2022, <https://www.dw.com/en/german-court-finds-syrian-ex-colonel-guilty-of-crimes-against-humanity/a-60407021>. For cases involving crimes against Yazidi girls and women, see “Carla-Josephine S.,” TRIAL International, March 19, 2021, <https://ujim.trialinternational.org/latest-post/carla-josephine-s/>; “Kassim A.,” TRIAL International, March 19, 2021, <https://ujim.trialinternational.org/latest-post/kassim-a/>; “Nurten J.,” TRIAL International, last updated April 4, 2022, <https://ujim.trialinternational.org/latest-post/nurten-j/>; “Omaima A.,” TRIAL International, last updated April 4, 2022, <https://ujim.trialinternational.org/latest-post/omaima-a/>; “German Court Hands Down Second Genocide Conviction Against ISIS Member Following Enslavement and Abuse of Yazidi Woman in Syria,” Doughty Street Chambers, July 28, 2022, <https://www.doughtystreet.co.uk/news/german-court-hands-down-second-genocide-conviction-against-isis-member-following-enslavement/>; “Taha A.J.,” TRIAL International, last updated November 14, 2023, <https://ujim.trialinternational.org/latest-post/taha-aj/>; “Jennifer W.,” TRIAL International, November 15, 2023, <https://ujim.trialinternational.org/latest-post/jennifer-w/>; “Jennifer Wenisch: German IS Woman Faces Tougher Sentence for Girl’s Death,” BBC, March 9, 2023, <https://www.bbc.com/news/world-europe-64901603>; “German Court Finds Former ‘IS’ Member Guilty of Genocide,” *Deutsche Welle*, November 30, 2021, <https://www.dw.com/en/german-court-finds-former-is-member-guilty-of-genocide/a-59976226>; “Ahmad Zaheer D.,” TRIAL International, last updated April 6, 2021, <https://ujim.trialinternational.org/latest-post/ahmad-zaheer-d/>. For the case regarding Afghanistan, see “Mohammed Rafea Yasee,” TRIAL International, last updated March 25, 2021, <https://ujim.trialinternational.org/latest-post/mohammed-rafea-yaseen-y/>. For the case regarding The Gambia, see “German Court Sentences Gambian Death Squad Member to Life in Prison,” France24, November 30, 2023, <https://www.france24.com/en/live-news/20231130-alleged-gambian-death-squad-member-awaits-verdict-in-german-trial>.

³⁴⁰ “Straton Musoni,” TRIAL International, last updated December 20, 2018, <https://ujim.trialinternational.org/latest-post/straton-musoni/>; “Germany Deports FEDLR’s Straton Musoni to Rwanda,” *New Times*, October 22, 2022, <https://www.newtimes.co.rw/article/1966/news/crime/germany-deports-fdlrs-straton-musoni-to-rwanda>; “Ahmed K.,” TRIAL International, last updated November 16, 2023, <https://ujim.trialinternational.org/latest-post/four-siblings-suspected-of-war-crimes/>.

³⁴¹ Isabelle Kwai, “Syrian Doctor Accused of Atrocities Goes on Trial in Germany,” *New York Times*, January 19, 2022, <https://www.nytimes.com/2022/01/19/world/europe/germany-syria-war-crimes-mousa.html>; “Abbas R.,” TRIAL International, last updated July 15, 2020, <https://ujim.trialinternational.org/latest-post/abbas-r/>; “Raad A.,” TRIAL International, last updated July 2020, <https://ujim.trialinternational.org/latest-post/raad-a/>; Paul Peachey, “German Mother on Terror Charges After ‘Joining Women-only ISIS Unit’ in Syria,” *National News*, March 4, 2022, <https://www.thenationalnews.com/world/2022/03/04/german-mother-on-terror-charges-after-joining-women-only-isis-unit-in-syria/>; “Germany Repatriates Eight Women, 23 Children With Ties to ISIS,” *Alarabiya News*, October 7, 2021, <https://english.alarabiya.net/News/world/2021/10/08/Germany-repatriates-eight-women-23-children-with-ties-to-ISIS>.

³⁴² “Jamil Hassan,” TRIAL International, last updated April 1, 2022, <https://ujim.trialinternational.org/latest-post/jamil-hassan/>; Malek, “How a Syrian War Criminal Was Brought to Justice—in Germany”; “Luis Esteban Kyburg,” TRIAL International, last updated July 4, 2022, <https://ujim.trialinternational.org/latest-post/luis-esteban-kyburg/>; Bojan Pancevski and Ryan Dube, “Luis Esteban Kyburg, Ex-Commander in Argentina’s ‘Dirty War,’ Is

generals for war crimes, crimes against humanity, and genocide; against Iranian judges for crimes against humanity including kidnapping and torture; and against Russian military members and commanders for sexual violence against a Ukrainian woman and for other international crimes against Ukrainian victims following the full-scale invasion.³⁴³ German authorities have reportedly opened an investigation into a possible war crime committed by Russian forces against civilians, including German civilians.³⁴⁴ However, on November 30, 2023, it was announced that the Office of the Federal Prosecutor General was declining to open an investigation into Myanmar generals on the basis of the criminal complaint filed, reportedly due to the absence of named perpetrators and a belief that an investigation would “duplicate” the work of the UN’s Independent Investigative Mechanism on Myanmar.³⁴⁵

As mentioned above, Germany has structural investigations into crimes committed in Syria, as well as crimes committed against the Yazidi in Iraq and Syria and crimes committed by Russian troops in Ukraine.³⁴⁶ The criminal complaints regarding Myanmar and Iran were also both submitted with requests for structural investigations.³⁴⁷

Living Quietly in Berlin, Prosecutors Say,” *Wall Street Journal*, July 21, 2020, <https://www.wsj.com/articles/luis-esteban-kyburg-ex-commander-in-argentinas-dirty-war-is-living-quietly-in-berlin-prosecutors-say-11595339405>; Pilar Safatle, “Luis Kyburg, El Marino Represor que Huyó del País y Podría ser Condenado a Perpetua en Alemania [Luis Kyburg, the Repressive Sailor Who Fled the Country and Could be Sentenced to Life in Germany],” *infobae*, November 30, 2022, <https://www.infobae.com/sociedad/policiales/2022/11/30/luis-kyburg-el-marino-represor-que-huyo-del-pais-y-podria-ser-condenado-a-perpetua-en-alemania/>.

³⁴³ Grant Peck, “Rights Group Files Suit in Germany Against Myanmar Military,” *Associated Press*, January 24, 2023, <https://apnews.com/article/germany-myanmar-crime-e32c784f0f7fc03cdfce1969556ebb84>; Ben Knight, “German Lawyers File Criminal Charges Against Iranian Judges,” *Deutsche Welle*, June 21, 2023, <https://www.dw.com/en/german-lawyers-file-criminal-charges-against-iranian-judges/a-65991082>; “Criminal Complaint Against Judicial Authorities in Iran: German Federal Prosecutor Must Investigate Crimes Against Humanity,” *ECCHR*, June 21, 2023, <https://www.ecchr.eu/en/press-release/strafanzeige-gegen-justizbeamte-im-iran-generalbundeswalt-muss-verbrehen-gegen-die-menschlichkeit-ermitteln/>; “ULAG and ECCHR File Complaint against Russian Military in Germany,” *ECCHR*, June 26, 2023, <https://www.ecchr.eu/en/press-release/ulag-and-ecchr-file-criminal-complaint-against-russian-military-in-germany/>; “CFJ Files Cases in Germany against Russian Commanders for Crimes Committed in Ukraine,” *Clooney Foundation for Justice*, October 26, 2023, <https://cfj.org/news/cfj-files-cases-in-germany-against-russian-commanders-for-crimes-committed-in-ukraine/>.

³⁴⁴ “Germany Probing Possible War Crime in Ukraine,” *JusticeInfo*, September 27, 2023, <https://www.justiceinfo.net/en/122360-germany-probing-possible-war-crime-in-ukraine.html>.

³⁴⁵ “German Federal Prosecutor Declines to Investigate Myanmar Atrocities, Fortify Rights Committed to Ending Impunity,” *Fortify Rights*, November 30, 2023, <https://www.fortifyrights.org/mya-inv-2023-11-30/>.

³⁴⁶ Beini Ye, “How Germany is Leading the Way for Accountability for Crimes in Syria,” *International Justice Monitor*, April 19, 2019, <https://www.ijmonitor.org/2019/04/how-germany-is-leading-the-way-for-accountability-for-crimes-in-syria/>; “Germany Launches Probe into Suspected War Crimes in Ukraine,” *Al Jazeera*, March 8, 2022, <https://www.aljazeera.com/news/2022/3/8/germany-launches-probe-into-suspected-war-crimes-in-ukraine>.

³⁴⁷ Andrea Maria Pelliconi and Francesca Sironi De Gregorio, “New Universal Jurisdiction Case Filed in Germany For Crimes Committed in Myanmar Before and After The Coup: On Complementarity, Effectiveness, and New Hopes for Old Crimes,” *EJIL:Talk!*, March 7, 2023, <https://www.ejiltalk.org/new-universal-jurisdiction-case-filed-in-germany-for-crimes-committed-in-myanmar-before-and-after-the-coup-on-complementarity-effectiveness-and-new-hopes-for-old-crimes/>; “Criminal Complaint Against Judicial Authorities in Iran: German Federal Prosecutor Must Investigate Crimes Against Humanity.”

The few obstacles that have impeded proceedings related to international crimes include instances of a suspect who passed away in detention while a retrial was pending and the repeated use of discretion to decline to prosecute US nationals.³⁴⁸

State of Play for Iran-Related Cases

There have been several key developments in Germany seeking to hold IRI officials to account. As mentioned above, in June 2023 the daughter of Jamshid Sharmahd—who was abducted by IRI security forces in 2020 and sentenced to death in 2023—filed a criminal complaint with the support of an NGO against eight members of the Iranian judiciary.³⁴⁹ Sharmahd is a German citizen, therefore “oblig[ing]” the German judiciary to investigate.³⁵⁰ The complaint was “intended to trigger structural proceedings,” alleging crimes against humanity.³⁵¹ The following month, a German politician filed a criminal complaint against an Iranian judge complicit in the 1988 prison massacres, who was reportedly receiving treatment in Hanover.³⁵² However, the Office of the Federal Prosecutor General ultimately determined that the judge, Hossein-Ali Nayeri, was not receiving treatment there.³⁵³

As evidenced by Sharmahd’s complaint, Germany has the tools at its disposal to lead among universal jurisdiction cases against IRI perpetrators.³⁵⁴ Along with having a dedicated prosecution

³⁴⁸ “Ignace Murwanashyaka,” TRIAL International, last updated July 13, 2020, <https://ujim.trialinternational.org/latest-post/ignace-murwanashyaka/>; “Rwandan Rebel Dies in Germany Awaiting Trial,” *Deutsche Welle*, April 18, 2019, <https://www.dw.com/en/rwandan-rebel-leader-dies-in-germany-awaiting-retrial/a-48385651>; “Geoffrey D. Miller,” TRIAL International, last updated July 7, 2020, <https://ujim.trialinternational.org/latest-post/geoffrey-d-miller/>; “Gina Haspel,” TRIAL International, last updated August 12, 2019, <https://ujim.trialinternational.org/latest-post/gina-haspel/>; David Smith, “Torture Allegations Dog Gina Haspel as She is Poised to Be First Female CIA Head,” *Guardian*, March 16, 2018, <https://www.theguardian.com/us-news/2018/mar/16/gina-haspel-cia-torture-allegations>. Bikowsky has since become an “online beauty influencer.” Elizabeth Braw, “German Human Rights Group Files Complaint Against CIA ‘Queen of Torture,’” *Al Jazeera America*, October 19, 2015, <http://america.aljazeera.com/articles/2015/10/19/in-germany-cia-official-charged-with-torture.html>; Justin Vallejo, “CIA ‘Queen of Torture’ from Zero Dark Thirty Is Now an Online Beauty Influencer,” *Independent*, April 27, 2022; <https://www.independent.co.uk/news/world/americas/cia-waterboarding-zero-dark-thirty-b2066015.html>.

³⁴⁹ Knight, “German Lawyers File Criminal Charges Against Iranian Judges.”

³⁵⁰ *Ibid.*

³⁵¹ “Criminal Complaint Against Judicial Authorities in Iran: German Federal Prosecutor Must Investigate Crimes Against Humanity.”

³⁵² “Iranischer Richter Laut Staatsanwaltschaft Nicht in Hannover [According to the Public Prosecutor’s Office, Iranian Judge Not in Hanover],” *Norddeutscher Rundfunk*, July 31, 2023, https://www.ndr.de/nachrichten/niedersachsen/hannover_weser-leinegebiet/Iranischer-Richter-laut-Staatsanwaltschaft-nicht-in-Hannover,naeiri100.html; “Human Rights Violator: Hossein-Ali Nayeri,” *Justice for Iran*, September 7, 2018, <https://justice4iran.org/11470/>.

³⁵³ “Iranischer Richter Laut Staatsanwaltschaft Nicht in Hannover [According to the Public Prosecutor’s Office, Iranian Judge Not in Hanover].”

³⁵⁴ Additionally, Germany has a significant Iranian diaspora population. In 2021, Germany counted 272,000 people with an Iranian background in Germany, and the UN Refugee Agency found 47,658 Iranian refugees living in Germany in 2022—a number that has steadily risen since 2017. “Bevölkerung in Privathaushalten Nach Migrationshintergrund im Weiteren Sinn Nach Ausgewählten Geburtsstaaten [Population in Private Households by Migration Background in the Broader Sense by Selected Countries of Birth],” *Statistisches Bundesamt*, last visited April 12, 2021, <https://www.destatis.de/DE/Themen/Gesellschaft-Umwelt/Bevoelkerung/Migration-Integration/Tabellen/migrationshintergrund-staatsangehoerigkeit-staaten.html>; “Refugee Data Finder,” *United*

unit for core international crimes, Germany has two critical tools.³⁵⁵ First, Germany allows for structural investigations. This allows authorities to investigate the full extent of the crimes so that they can identify patterns and networks of alleged perpetrators, and that information will be ready when any travel to Germany occurs.³⁵⁶ Second, it allows for cumulative prosecutions.³⁵⁷ Prosecutors have noted that this has been particularly relevant for cases related to former ISIS members—especially in cases where core international crimes may be more difficult to prove based on the evidence available and the elements required—and “ensures the full criminal responsibility of perpetrators, may result in higher sentences, and delivers more adequate justice for victims and survivors.”³⁵⁸ In January 2022, German politicians considered adding the IRGC to the EU list of terrorist organizations, indicating that terrorism charges would be available for certain Iranian perpetrators as well.³⁵⁹ However, as of November 2023, the IRGC had not been designated as such.

There are two areas of concern that could impair cases against IRI officials. First, the relevant offenses in Iran have been committed by state and state-affiliate officials, but Germany tends to try nonstate actors far more frequently than state actors. This is likely explained, at least in part, by practical considerations. Unless they have defected or have been disgraced, state officials generally benefit from a level of protection in their home country while their regime remains in power and so are less likely to travel, and some would likely benefit from immunity in Germany. However, there have been concerns about the Federal Prosecutor’s subordination to the executive branch and its “wide discretion” to decline prosecution, which could contribute to a reluctance to try regime officials.³⁶⁰ When Germany tries officials, it has been in cases where there were relatively low political stakes, as opposed to, for example, cases against US officials.

Nations Refugee Agency, last visited December 13, 2022, <https://www.unhcr.org/refugee-statistics/download/?url=iQ3nTe>.

³⁵⁵ Hayley Evans, “A Survey of Recent Developments and Trends in Universal Jurisdiction,” *Lawfare*, February 9, 2022, <https://www.lawfareblog.com/survey-recent-developments-and-trends-universal-jurisdiction>.

³⁵⁶ Howard Varney, “Groundbreaking International Justice in Germany,” *International Center for Transitional Justice*, May 28, 2020, <https://www.ictj.org/news/groundbreaking-international-justice-germany>; “How Germany is Leading the Way for Accountability for Crimes in Syria”; Malek, “How a Syrian War Criminal Was Brought to Justice—in Germany.”

³⁵⁷ “Statement of Germany in the UNGA Sixth Committee, ‘The Scope and Application of the Principle of Universal Jurisdiction,’ October 12th, 2022”; “Cumulative Prosecution of Foreign Terrorist Fighters for Core International Crimes and Terrorism-Related Offences.”

³⁵⁸ “Statement of Germany in the UNGA Sixth Committee, ‘The Scope and Application of the Principle of Universal Jurisdiction,’ October 12th, 2022”; Alexandra Lily Kather, “‘Water Finds Its Way’? Universal Jurisdiction as an Avenue for Justice in Syria,” *Articles of War*, July 28, 2021, <https://lieber.westpoint.edu/water-finds-way-universal-jurisdiction-justice-syria/> (noting, however, that cumulative prosecutions may disincentivize trying core international crimes, and that survivor communities may view justice as requiring accountability for the harms they suffered—i.e., core international crimes).

³⁵⁹ Patrick Wintour, “Iranian Actor Taraneh Alidoosti Released from Jail After Family Post Bail,” *Guardian*, January 4, 2023, <https://www.theguardian.com/world/2023/jan/04/iranian-actor-taraneh-alidoosti-released-jail-family-post-bail>; Auswärtiges Amt @Auswaertigesamt, “Viele von Euch haben Fragen zu den EU-Sanktionen gegen die Revolutionsgarden. Im Post erklären wir Euch die Fakten [Many of you have questions about the EU sanctions against the Revolutionary Guards. In this post we explain he facts to you],” Instagram, January 4, 2022, <https://www.instagram.com/p/Cm9f25eoU9M/?hl=en>.

³⁶⁰ “Breaking Down Barriers: Access to Justice in Europe for Victims of International Crimes,” 76 (noting the subordination and wide discretion as a concern that could “severely limit victims’ access to justice”).

Second, Germany has faced criticism in its Syrian cases over engagement with the impacted community, including reports of insufficient protective measures for witnesses and failure to properly translate court documents and interpret court hearings, contributing to an overall lack of trust in German authorities.³⁶¹ Further, Germany declined to use the protections that did exist—such as witness anonymity—in a case against a former Syrian official, despite security concerns.³⁶² Given rampant transnational repression against Iranian dissidents, any witnesses would be at risk, and similar failures may inspire the same lack of trust and hinder investigations.³⁶³ However, with the draft international law update bill, the Ministry of Justice has shown a willingness to address many of these gaps. For example, the bill would allow media representatives to use interpretation in court proceedings if they did not speak German, and would provide for the commission of translations into English of landmark judgments on international criminal law.³⁶⁴ These proposals indicate that the German government is taking seriously its responsibility to prioritize victims, survivors, and affected communities, and that it may be willing to further engage as new cases develop.

Recommendations

Germany can help strengthen its universal jurisdiction-related laws and practices—and further lead international practice around prosecuting core international crimes—by implementing the recommendations described in the Europe-wide section, as well as the following.

- German lawmakers must pass the draft law on the further development of international law that was announced in July 2023—expanding and improving on the definition of crimes included in the VStGB; strengthening victims’ rights; and prioritizing the dissemination of news related to important cases in relevant languages. They also must continue to engage with civil society to further amend German laws as needed.
- German lawmakers must reassess witness-protection protocols and, in consultation with affected communities, must introduce legislation to enhance protections and cover existing gaps. The consultation should focus on those who have participated in trials in Germany, such as the Syrian community.
- German prosecutors should continue to try nonstate actors, but should also make concerted efforts to investigate and prosecute government officials where viable, and where immunities do not prevent prosecution.

³⁶¹ “Q&A: First Syria State Torture Trial in Germany”; Mais Masadeh, “One Court at a Time: Challenges of Universal Jurisdiction and Enhancing International Justice,” *Völkerrechtsblog*, January 24, 2022, <https://voelkerrechtsblog.org/one-court-at-a-time-challenges-of-universal-jurisdiction-and-enhancing-international-justice/>; Kather, “‘Water Finds Its Way’? Universal Jurisdiction as an Avenue for Justice in Syria”; Malek, “How a Syrian War Criminal Was Brought to Justice—in Germany”; “‘These Are the Crimes We are Fleeing,’” Human Rights Watch, October 3, 2017, <https://www.hrw.org/report/2017/10/04/these-are-crimes-we-are-fleeing/justice-syria-swedish-and-german-courts>.

³⁶² Alyssa Yamamoto, “From Syria Torture Trial to Liberian Massacre Case—A Plea for Bolstering Witness Protections in Human Rights Litigation,” Just Security, January 13, 2022, <https://www.justsecurity.org/79828/from-syria-torture-trial-to-liberian-massacre-case-a-plea-for-bolstering-witness-protections-in-human-rights-litigation/>.

³⁶³ See, e.g., “Transnational Repression: How Iran Haunts and Kills its Critics Around the World,” IranWire, November 18, 2021, <https://iranwire.com/en/politics/70803/>.

³⁶⁴ “Vorschläge zur Fortentwicklung des Völkerstrafrechts [Proposals for the further development of International Criminal Law],” *Bundesministerium der Justiz*.

- German prosecutors should promptly investigate the case brought on behalf of Jamshid Sharmahd against the Iranian judiciary, and should accede to the request to open a structural investigation.

THE NETHERLANDS

As the seat of many international courts, the Netherlands plays a special role in the minds of Iranians seeking justice for human rights violations and atrocity crimes perpetrated by the IRI. Less understood is the robust role that Dutch domestic courts can also play in applying international law and holding perpetrators of core international crimes accountable. Many Iranians fleeing political persecution and violence have sought asylum or refugee status in the Netherlands, and can contribute to evidence-collection efforts there in the instance any investigation of relevant suspects is initiated. Political dissidents from Iran have also been targeted for assassination in the Netherlands, making the country a focus for any accountability efforts that can focus on the problem of transnational repression carried out by the IRI, often as reprisal for criticism of the dictatorship or for human rights work. The opportunities and challenges presented by the legal framework in the Netherlands are discussed in more depth below.

Framework

In the Netherlands, the *Wet Internationale Misdrijven* or International Crimes Act of 2003 (ICA) replaced a prior patchwork of legislation on genocide, war crimes, and torture, codifying those offenses and adding jurisdiction over crimes against humanity as well.³⁶⁵ One of the drivers behind the ICA was to ensure the full implementation of the Rome Statute of the International Criminal Court in the Netherlands.³⁶⁶ The ICA was later amended to add enforced disappearances and aggression as standalone prosecutable offenses.³⁶⁷ Investigation and prosecution of the offenses enumerated in the ICA are not obligatory, and remain at the discretion of prosecutors.³⁶⁸

Dutch courts have universal jurisdiction over the crimes enumerated in the ICA under the Dutch Criminal Code, in two scenarios: where an identified suspect is physically present on Dutch territory; and/or where the victim or suspect is a Dutch national.³⁶⁹

³⁶⁵ *Wet internationale misdrijven* [International Crimes Act], art. 3 (genocide), 4 (crimes against humanity), 5–7 (war crimes in both international armed conflicts and non-international armed conflicts and under customary international law if not listed), 8 (torture) (Neth.); “The Scope and Application of the Principle of Universal Jurisdiction: Statement by Nynka Staal, First Secretary of the Permanent Mission of the Kingdom of the Netherlands to the United Nations,” Kingdom of the Netherlands, October 12, 2022, https://www.un.org/en/ga/sixth/77/pdfs/statements/universal_jurisdiction/12mtg_netherlands.pdf; “Breaking Down Barriers: Access to Justice in Europe for Victims of International Crimes,” 78.

³⁶⁶ The Netherlands acceded to the Rome Statute on July 18, 1998. “The Scope and Application of the Principle of Universal Jurisdiction: Statement by Nynka Staal, First Secretary of the Permanent Mission of the Kingdom of the Netherlands to the United Nations”; “Briefing Paper: Universal Jurisdiction Law and Practice in the Netherlands,” Open Society Justice Initiative and TRIAL International, April 2019, 4, <https://www.justiceinitiative.org/uploads/e91b3105-914b-415d-9067-54543fac7e36/universal-jurisdiction-law-and-practice-netherlands.pdf>; “Netherlands,” International Criminal Court, last updated March 11, 2003, <https://asp.icc-cpi.int/states-parties/western-european-and-other-states/Netherlands>.

³⁶⁷ “Breaking Down Barriers: Access to Justice in Europe for Victims of International Crimes,” 78; “What Are International Crimes?” Netherlands Public Prosecution Service, last visited January 26, 2023, <https://www.prosecutionservice.nl/topics/international-crimes/what-are-international-crimes>. See *Wet internationale misdrijven* [International Crimes Act], art. 8a (enforced disappearances as a stand-alone crime), 8b (act of aggression) (Neth.).

³⁶⁸ “Briefing Paper: Universal Jurisdiction Law and Practice in the Netherlands,” 4.

³⁶⁹ Dutch courts also have universal jurisdiction over the crime of piracy committed on the high seas. “Briefing Paper: Universal Jurisdiction Law and Practice in the Netherlands,” 11; *Wet internationale misdrijven* [International

In the first scenario, so long as a specific suspect has been identified and is present on Dutch territory, neither the jurisdiction where the crime was committed nor the nationality of the victim or the suspect matter.³⁷⁰ The presence requirement is interpreted strictly, and “anticipatory” investigations are rarely conducted.³⁷¹ While an investigation may be terminated if a suspect were to leave Dutch territory, this is not the case where a prosecution has been started as courts retain jurisdiction after this point even *in absentia*.³⁷² Dutch criminal law also allows for the prosecution of legal persons like corporations for activities outside the Netherlands under any crime in the Dutch Criminal Code.³⁷³ Moreover, the alleged crime need not be criminalized in the state where it was committed or in the state of the suspect’s nationality.³⁷⁴ The Netherlands, however, prioritizes prosecutions taking place in the country where the crime was committed, if possible, and examines any extradition request from this perspective.³⁷⁵

For the second scenario, providing for active and passive personality jurisdiction, physical presence of the suspect is not required for an investigation and, as such, trials *in absentia* are permitted.³⁷⁶ Additionally, investigations of a general situation without needing to identify the suspect are only possible on these two grounds.³⁷⁷

The ICA does not govern procedure, so investigations and prosecutions must instead abide by the *Wetboek van Strafvordering* or Dutch Code of Criminal Procedure (CCP).³⁷⁸ The CCP covers several modes of liability including direct perpetration, co-perpetration, instigation through inducement or attempt to induce another to commit a crime including by providing incentives or through coercive acts, indirect perpetration where the person who commits the crime cannot be

Crimes Act], art. 2(1)(a) (Neth.); “The Scope and Application of the Principle of Universal Jurisdiction: Statement by Nynka Staal, First Secretary of the Permanent Mission of the Kingdom of the Netherlands to the United Nations.”

³⁷⁰ “Briefing Paper: Universal Jurisdiction Law and Practice in the Netherlands,” 11; *Wet internationale misdrijven* [International Crimes Act], art. 2(1)(a) (Neth.); “The Scope and Application of the Principle of Universal Jurisdiction: Statement by Nynka Staal, First Secretary of the Permanent Mission of the Kingdom of the Netherlands to the United Nations.”

³⁷¹ “Breaking Down Barriers: Access to Justice in Europe for Victims of International Crimes,” 78.

³⁷² “Briefing Paper: Universal Jurisdiction Law and Practice in the Netherlands,” 11.

³⁷³ *Wetboek van Strafrecht* [Criminal Code], art. 51, Sr (Neth.); see also, Valérie van de Berg, “Corporate Liability in the Netherlands,” *Global Compliance News*, <https://www.globalcompliancencnews.com/white-collar-crime/corporate-liability-in-the-netherlands/>.

³⁷⁴ “The Scope and Application of the Principle of Universal Jurisdiction: Statement by Nynka Staal, First Secretary of the Permanent Mission of the Kingdom of the Netherlands to the United Nations.”

³⁷⁵ Ministerie van Justitie en Veiligheid [Dutch Ministry of Justice and Security], *Rapportagebrief Internationale Misdrijven 2021 [Annual Report International Crimes 2021]* July 6, 2022, 5, <https://open.overheid.nl/repository/ronl-732d96e03c1bb33326e4f617a1217865f15b7099/1/pdf/tk-rapportagebrief-internationale-misdrijven-2021.pdf>.

³⁷⁶ *Wet internationale misdrijven* [International Crimes Act], art. 2(1)(b)-(c) (Neth.) (For an English translation of Article 2(1), see “The Scope and Application of the Principle of Universal Jurisdiction: Statement by Nynka Staal, First Secretary of the Permanent Mission of the Kingdom of the Netherlands to the United Nations”); “Challenges in Prosecuting the Crime of Aggression: Jurisdiction and Immunities (Advisory Report no. 40, 2022),” Advisory Committee on Public International Law (CAVV), September 12, 2022, 17, n.20, <https://www.advisorycommitteeinternationalallaw.nl/publications/advisory-reports/2022/09/12/challenges-in-prosecuting-the-crime-of-aggression-jurisdiction-and-immunities>.

³⁷⁷ “The Scope and Application of the Principle of Universal Jurisdiction: Statement by Nynka Staal, First Secretary of the Permanent Mission of the Kingdom of the Netherlands to the United Nations.”

³⁷⁸ “Breaking Down Barriers: Access to Justice in Europe for Victims of International Crimes,” 79.

held liable, and accessory liability where the person assists in the commission of the crime.³⁷⁹ The ICA further recognizes command responsibility as mode of liability.³⁸⁰

Although initially it was unclear whether the ICA applied retroactively, the ICA was amended to clarify that jurisdiction applies to conduct already criminalized before its introduction.³⁸¹ Jurisdiction over the crime of genocide thus extends from October 24, 1970, the date on which the Dutch Genocide Convention Implementation Act entered into force; jurisdiction over war crimes, and torture as a war crime, extends to July 10, 1952, the date the Wartime Offences Act (which preceded the ICA) was established; and jurisdiction over torture as a standalone crime, not as a crime against humanity, extends to December 21, 1988, the date the Dutch Torture Convention Implementation Act entered into force.³⁸² Temporal jurisdiction over crimes introduced by the ICA begins on the date of their codification: June 19, 2003, for crimes against humanity, and enforced disappearances as a crime against humanity; January 1, 2011, for enforced disappearance as an autonomous offense, and August 1, 2018, for acts of aggression.³⁸³ There are no statutes of limitations in the Netherlands for prosecuting genocide, crimes against humanity, torture, enforced disappearances, and most war crimes.³⁸⁴

³⁷⁹ “Briefing Paper: Universal Jurisdiction Law and Practice in the Netherlands,” 6–7. See Wetboek van Strafrecht [Criminal Code], art. 47(1)(1) (*pleger*, direct perpetrator), 47(1)(1) (*doen pleger*, indirect perpetrator), 47(1)(1) (*medepleger*, co-perpetrator), 47(1)(2) (*uitlokker*, instigator), 48 (*medepllichtige*, accessory), Sr (Neth.).

³⁸⁰ Wet internationale misdrijven [International Crimes Act], art. 9 (Neth.). See “Briefing Paper: Universal Jurisdiction Law and Practice in the Netherlands,” 8.

³⁸¹ A high-profile case concerning a Rwandan genocide suspect was dismissed on the basis of non-retroactivity. See “The Legal Framework for Universal Jurisdiction in the Netherlands,” Human Rights Watch, 2014, 1–2, n.7, https://www.hrw.org/sites/default/files/related_material/IJ0914Netherlands_0.pdf; ICA, Section 21(4). The ICA also replaced the Dutch Genocide Convention Implementation Act and the Torture Convention Implementation Act. Wet internationale misdrijven [International Crimes Act], §§ 19, 20 (Neth.).

³⁸² Wet internationale misdrijven [International Crimes Act], art. 19, 20, 21(4) (Neth.); “Uitvoeringswet genocideverdrag [vervallen],” Navigator, <https://www.navigator.nl/document/48870f210892533178f0543cac42b9f7?ctx=6b1a7fd66bb9e51b24f4e8c5b34a5a>; Wet oorlogsstrafrecht [Wartime Offences Act] (Neth.); Uitvoeringswet folteringverdrag [Dutch Torture Convention Implementation Act], art. 10 (Neth.); “Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,” United Nations Treaties; “Briefing Paper: Universal Jurisdiction Law and Practice in the Netherlands,” 10; “The Legal Framework for Universal Jurisdiction in the Netherlands,” 1, n.6.

³⁸³ “Briefing Paper: Universal Jurisdiction Law and Practice in the Netherlands,” 9–10; “Breaking Down Barriers: Access to Justice in Europe for Victims of International Crimes,” 78, n.447. See also, Thijs Bouwknegt, *Opsporing, vervolging en berechting van internationale misdrijven in Nederland* [Investigation, prosecution and trials of international crimes in the Netherlands], NIOD Instituut voor Oorlogs-, Holocaust- en Genocidestudies, August 26, 2019, 29–30, https://www.eerstekamer.nl/overig/20191016/niod_rapport_opsporing_vervolging/document.

³⁸⁴ Wet internationale misdrijven [International Crimes Act], art. 13 (Neth.). The offenses in ICA, Section 7(1) and in Section 9 as they related to Section 7(1) are excluded from the prohibition of statutes of limitations provided in Section 13. See also, “The Legal Framework for Universal Jurisdiction in the Netherlands,” 3; “Briefing Paper: Universal Jurisdiction Law and Practice in the Netherlands,” 10–11 (explaining this subset of crimes has a statute of limitations of 12 years). The Netherlands is also one of the few states to have ratified the European Convention on the Non-Applicability of Statutory Limitations to Crimes against Humanity and War Crimes, although it has not ratified the UN Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity. See “European Convention on the Non-Applicability of Statutory Limitations to Crimes against Humanity and War Crimes. Strasbourg, 25 January 1974,” International Humanitarian Law Databases, International Committee of the Red Cross, last visited March 21, 2023, <https://ihl-databases.icrc.org/en/ihl-treaties/coe-conv-statutory-limitations-1974/state-parties?activeTab=undefined>; “Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes against Humanity,” United Nations Treaty Collection, last visited March 23, 2023, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-6&chapter=4&clang=_en#.

Section 16 of the ICA establishes two categories of persons immune from prosecution: “foreign heads of state, heads of government and ministers of foreign affairs, as long as they are in office, and other persons in so far as their immunity is recognised under customary international law” and “persons who have immunity under any Convention applicable within the Kingdom of the Netherlands.”³⁸⁵ Of the first group, only foreign heads of state or government and ministers of foreign affairs enjoy personal immunity, for both private and official acts, including with respect to international crimes.³⁸⁶ For persons falling under the first category, immunity is limited to the duration of their time in office.³⁸⁷ The second category includes persons such as diplomats posted to or visiting the Netherlands on special mission, who generally enjoy functional immunity.³⁸⁸ However, members of official missions “enjoy full immunity for the duration of the mission on the basis of customary international law.”³⁸⁹

Although the Dutch government has expressed multiple times that functional immunity after an officeholder’s term does not apply to international crimes, the Hague District Court has rejected this view.³⁹⁰ In a civil case against former Israeli military commanders over an airstrike that killed many of the claimant’s relatives in the Gaza Strip, the court held that it lacked jurisdiction because the defendants enjoyed functional immunity for the acts at issue, which were committed while they were in office.³⁹¹ The court stated that “a limitation to functional immunity from jurisdiction is not accepted under customary international law in the prosecution of international crimes by national courts,” adding that it “must apply customary international law and is not bound by the opinion of

³⁸⁵ Wet internationale misdrijven [International Crimes Act], art. 16 (Neth.). The English translation is from “Netherlands,” Justice Beyond Borders, Clooney Foundation for Justice, last visited March 22, 2023, <https://justicebeyondborders.com/country/netherlands/>.

³⁸⁶ “Challenges in Prosecuting the Crime of Aggression: Jurisdiction and Immunities,” 15; “Letter of 26 April 2012 from the Minister of Foreign Affairs and the State Secretary for Security and Justice to the Senate and the House of Representatives on the Immunity of Members of Foreign Official Missions,” Kingdom of the Netherlands, 2012, 2, <https://www.advisorycommitteeinternationallaw.nl/publications/government-response/2011/10/19/the-immunity-of-foreign-state-officials/>; “Immunity of State Officials from Foreign Criminal Jurisdictions,” International Law Commission, 2015, 2, https://legal.un.org/ilc/sessions/67/pdfs/english/iso_netherlands.pdf.

³⁸⁷ Wet internationale misdrijven [International Crimes Act], art. 16(a) (Neth.); “Challenges in Prosecuting the Crime of Aggression: Jurisdiction and Immunities,” 15–16; “The Legal Framework for Universal Jurisdiction in the Netherlands,” 3.

³⁸⁸ “The Legal Framework for Universal Jurisdiction in the Netherlands,” 3–4 (explaining that four conditions must be met: “the mission must be temporary in nature, involve a delegation from one state to another, have a specific task or purpose, and be with the prior consent of the receiving state”); “Government Response to CAVV Advisory Report No. 20 on the Immunity of Foreign State Officials,” Kingdom of the Netherlands, 2012, 2, <https://www.advisorycommitteeinternationallaw.nl/publications/government-response/2011/10/19/the-immunity-of-foreign-state-officials/>; “Immunity of State Officials from Foreign Criminal Jurisdictions,” 3; “Briefing Paper: Universal Jurisdiction Law and Practice in the Netherlands,” 29.

³⁸⁹ Unlike personal immunity, this is tied to the duration of the mission in the Netherlands, not office or status. “Immunity of State Officials from Foreign Criminal Jurisdictions,” 3.

³⁹⁰ “Government Response to CAVV Advisory Report No. 20 on the Immunity of Foreign State Officials,” 2–3; “Response to Requests of the International Law Commission (Comments on Immunity of State Officials from Foreign Criminal Jurisdiction),” Kingdom of the Netherlands, February 22, 2017, 2, https://legal.un.org/ilc/sessions/69/pdfs/english/iso_netherlands.pdf; see also, “Challenges in Prosecuting the Crime of Aggression: Jurisdiction and Immunities,” 16 (expressing the view that “not recognising functional immunity for international crimes is currently justifiable as either being consistent with international law or contributing to a legal development that already has strong momentum”); RBDHA January 29, 2020, NJ 2020, 667 (Neth.) para. 4.61, (Case number C-09-554385-HA ZA 18-647 (English)).

³⁹¹ RBDHA January 29, 2020, NJ 2020, 667, para. 4.61 (Neth.) (Case number C-09-554385-HA ZA 18-647 (English)).

the Dutch government.”³⁹² This decision was upheld on appeal, and ultimately by the Dutch Supreme Court.³⁹³ As Professor Cedric Ryngaert noted, this holding “in respect of international crimes renders (quasi-)universal jurisdiction largely ineffective” and “opens up a glaring impunity gap.”³⁹⁴

Bringing a Case

The Netherlands has specialized units for handling international crimes under immigration, police, and prosecution services, as well as specialized judges.³⁹⁵ The *Team Internationale Misdrijven*, or International Crimes Team, of the Dutch Police, in conjunction with the *Openbaar Ministerie*, or Public Prosecution Service, is responsible for investigating and prosecuting genocide, war crimes, torture, and crimes against humanity.³⁹⁶

While both victims and third parties can file a complaint with the Public Prosecution Service against natural or legal persons, only the Public Prosecution Service can initiate investigations or prosecutions, and it is given wide discretion in its decisions.³⁹⁷ In fact, it is rare for the Public Prosecution Service to initiate proceedings on the basis of a formal complaint.³⁹⁸ A more common basis for the Public Prosecution Service to open an investigation is information received from the *Immigratie- en Naturalisatiedienst*, or Immigration and Naturalization Service.³⁹⁹ The Immigration and Naturalization Service informs the Public Prosecution Service when it believes that Article 1F of the UN Convention relating to the Status of Refugees, which allows someone suspected of international crimes to be excluded from refugee protection, applies in the case of a foreign national seeking admission to the Netherlands.⁴⁰⁰ If an investigation is opened and

³⁹² RBDHA January 29, 2020, NJ 2020, 667, para. 4.48 (Neth.) (Case number C-09-554385-HA ZA 18-647 (English)).

³⁹³ GHDHA December 7, 2021, NJ 2021, 2374, para. 4.1 (Neth.) (Case number 200.278.760/01); HR, August 25, 2023, NJ 2023, 1132, para. 4 (Neth.) (Case number 22/00753). See also, Lukas Kotkamp, “Dutch Court Will Not Prosecute Israeli Defense Minister for War Crimes,” Politico, December 7, 2021, <https://www.politico.eu/article/dutch-court-will-not-prosecute-israel-defense-minister-benny-gantz-war-crimes/>; “Dutch Supreme Court: Israeli Military Immune from Prosecution in the Netherlands,” Reuters, August 25, 2023, <https://www.reuters.com/world/dutch-supreme-court-israeli-military-immune-prosecution-netherlands-2023-08-25/>.

³⁹⁴ Cedric Ryngaert, “Functional Immunity of Foreign State Officials in Respect of International Crimes Before the Hague District Court: A Regressive Interpretation of Progressive International Law,” EJIL:Talk!, March 2, 2020, <https://www.ejiltalk.org/functional-immunity-of-foreign-state-officials-in-respect-of-international-crimes-before-the-hague-district-court-a-regressive-interpretation-of-progressive-international-law/>.

³⁹⁵ “Breaking Down Barriers: Access to Justice in Europe for Victims of International Crimes,” 78.

³⁹⁶ *Ibid.*, 78; “What Does the International Crimes Team Do?” Netherlands Public Prosecution Service, last visited January 26, 2023, <https://www.prosecutionservice.nl/topics/international-crimes/what-does-the-international-crimes-team-do>.

³⁹⁷ See “Breaking Down Barriers: Access to Justice in Europe for Victims of International Crimes,” 79; “Netherlands,” Clooney Foundation for Justice; Wetboek van Strafvordering [Code of Criminal Procedure], art. 167, Sv (Neth.); Ministerie van Justitie en Veiligheid (Dutch Ministry of Justice and Security), *Rapportagebrief Internationale Misdrijven 2021 [Annual Report International Crimes 2021]*, 4.

³⁹⁸ “Breaking Down Barriers: Access to Justice in Europe for Victims of International Crimes,” 79; “Netherlands,” Clooney Foundation for Justice.

³⁹⁹ “Breaking Down Barriers: Access to Justice in Europe for Victims of International Crimes,” 78.

⁴⁰⁰ *Ibid.*, 78–79; “Who Does the International Crimes Team Work With?” Netherlands Public Prosecution Service, last visited January 26, 2023, <https://www.prosecutionservice.nl/topics/international-crimes/who-does-the-international-crimes-team-work-with>. See also, “Article 1F,” Immigratie- en Naturalisatiedienst, last visited January 26, 2023, <https://ind.nl/en/about-us/background-articles/article-1f>.

investigative work outside the Netherlands is necessary, the Ministry of Justice and Security will contact the relevant country on behalf of the Public Prosecution Service.⁴⁰¹ The Dutch Ministry of Foreign Affairs also assists with mutual legal assistance requests in investigations into international crimes.⁴⁰²

The District Court of The Hague is the only court in the Netherlands that may try cases related to international crimes, except those cases that fall under the *Wet Militaire Strafrechtspraak*, or Military Criminal Justice Act.⁴⁰³ The Court of Appeal in The Hague hears appeals stemming from cases before the District Court.⁴⁰⁴ The *Bureau Internationale Misdrijven*, or Bureau of International Crimes, under the District Court of The Hague, is made up of specialized judges, investigative and assistant judges, and legal officers.⁴⁰⁵ Trials are conducted based on the evidence gathered by the International Crimes Team and collected in the casefile during the investigation, unless either the judge or one of the parties wants additional evidence.⁴⁰⁶

Victim Participation

While the Public Prosecution Service has a monopoly on the decision to initiate proceedings for international crimes, victims can file a complaint if the Public Prosecution Service declines to prosecute a case with the Court of Appeals.⁴⁰⁷ The Court of Appeals can order the Public Prosecution Service to initiate proceedings or a judicial investigation.⁴⁰⁸ Its decision is final and not subject to appeal.⁴⁰⁹ If victims are not satisfied with the investigation conducted by the International Crimes Team, they may file a complaint with the Public Prosecution Service.⁴¹⁰

If a case is brought, victims cannot be an official party to proceedings.⁴¹¹ Victims, however, have a right to be represented by a lawyer in order to enable the exercise of their rights and facilitate their participation in criminal proceedings.⁴¹² A victim can apply to be an “injured party” to the proceedings, meaning it is possible to claim compensation for financial, physical, or psychological damages as a result of the crime.⁴¹³ This forms part of the Netherlands’ “adhesion model” where the claim for compensation is a civil proceeding that is derivative of the criminal proceedings and depends on the determination of the suspect’s

⁴⁰¹ “Who Does the International Crimes Team Work With?”

⁴⁰² Ibid.

⁴⁰³ *Wet internationale misdrijven* [International Crimes Act], art. 15 (Neth.); “Bureau Internationale Misdrijven [International Crimes Bureau],” de Rechtspraak, last visited January 26, 2023, <https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Rechtbanken/Rechtbank-Den-Haag/Over-de-rechtbank/Organisatie/Paginas/Bureau-Internationale-Misdrijven.aspx>.

⁴⁰⁴ “Bureau Internationale Misdrijven [International Crimes Bureau]”; “Breaking Down Barriers: Access to Justice in Europe for Victims of International Crimes,” 79.

⁴⁰⁵ “Bureau Internationale Misdrijven [International Crimes Bureau].”

⁴⁰⁶ “Breaking Down Barriers: Access to Justice in Europe for Victims of International Crimes,” 79.

⁴⁰⁷ *Wetboek van Strafvordering* [Code of Criminal Procedure], art. 12, Sv (Neth.); “Netherlands,” Clooney Foundation for Justice; “Breaking Down Barriers: Access to Justice in Europe for Victims of International Crimes,” 83.

⁴⁰⁸ “Netherlands,” Clooney Foundation for Justice; “Breaking Down Barriers: Access to Justice in Europe for Victims of International Crimes,” 83.

⁴⁰⁹ “Breaking Down Barriers: Access to Justice in Europe for Victims of International Crimes,” 83.

⁴¹⁰ Ibid.

⁴¹¹ “Netherlands,” Clooney Foundation for Justice.

⁴¹² *Wetboek van Strafvordering* [Code of Criminal Procedure], art. 51c, Sv (Neth.).

⁴¹³ Ibid.; “Netherlands,” Clooney Foundation for Justice; “Briefing Paper: Universal Jurisdiction Law and Practice in the Netherlands,” 27.

guilt in the criminal trial.⁴¹⁴ There is also a public fund from which victims of criminal offences can claim fixed amounts of reparation without the obligation of going through the criminal trial process.⁴¹⁵

Injured parties have other rights, like those to be assisted by counsel, to present documents, and to question witnesses and experts, but they cannot independently call witnesses or appeal the judgment regarding guilt in the criminal trial.⁴¹⁶ Victims also have the right to speak in court, which allows the victim (or next of kin) to make a statement at the trial—for instance, about the consequences of the crime, the evidence, the culpability of the suspect, and the sentencing.⁴¹⁷ Victims who are classified as “threatened witnesses” may testify anonymously before the investigating judge, but an accused cannot be convicted solely on the basis of anonymous testimony.⁴¹⁸

Victims also have the right to access the case file, which means they are entitled to access documents that are relevant to them (i.e., the complete case file or parts of it).⁴¹⁹ The Public Prosecution Service can provide access to the file, but can also deny it based on three reasons: if access to the file would have a severe impact on a witness; strongly affect the police investigation; or impact state security.⁴²⁰

Interviews conducted by Fédération Internationale pour les Droits Humains (International Federation for Human Rights), the European Center for Constitutional and Human Rights, and REDRESS Nederland with the International Crimes Team and Public Prosecution Service revealed that these entities differentiate between victims who make formal complaints concerning a crime and those who come to their attention only after an investigation has been initiated on other grounds.⁴²¹ According to these interviews, the International Crimes Team and Public Prosecution

⁴¹⁴ “Breaking Down Barriers: Access to Justice in Europe for Victims of International Crimes,” 82.

⁴¹⁵ This is the Violent Offences Compensation Fund (Schadefonds Geweldsmisdrijven), the Dutch fund for state compensation under the EU Directive 2004/80/EC and the European Convention on the Compensation of Victims of Violent Crimes. “SchadefondsGeweldsmisdrijven [Violent Offences Compensation Fund],” last visited July 31, 2023, <https://www.schadefonds.nl/>; Wet van 14 december 2005 tot wijziging van de Wet schadefonds geweldsmisdrijven ter uitvoering van richtlijn nr. 2004/80/EG betreffende de schadeloosstelling van slachtoffers van misdrijven 14 december 2005 [Act of 14 December 2005 Amending the Violent Crime Compensation Fund Act in Implementation of Directive No. 2004/80/EC on the Compensation of Crime Victims 14 December 2005], Stb. 2005, 655 (Neth.); Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims, 2004 O.J. (L261) (EC); “Wet en Beleid [Law and Policy],” *Schade Fonds Gewelds Misdrijven* last visited July 31, 2023, <https://www.schadefonds.nl/schadefonds/wet-en-beleid/>.

⁴¹⁶ See, e.g., Wetboek van Strafvordering [Code of Criminal Procedure], art. 51(b), 51(c), 51(ca), 334, Sv (Neth.); “Breaking Down Barriers: Access to Justice in Europe for Victims of International Crimes,” 82, 86.

⁴¹⁷ Wetboek van Strafvordering [Code of Criminal Procedure], art. 51(e), Sv. (Neth.)

⁴¹⁸ Besluit getuigenbescherming [Decree on Witness Protection], 1 augustus 2018, Stb. 2018.

¹² Wetboek van Strafvordering [Code of Criminal Procedure], art. 51(b), Sv. (Neth.).

⁴²⁰ Nieke A Elbers et al., “The Role of Victims’ Lawyers in Criminal Proceedings in the Netherlands,” *European Journal of Criminology* (2020), 8, https://www.researchgate.net/publication/342099731_The_role_of_vict’ms'_lawyers_in_criminal_proceedings_in_the_Netherlands.

⁴²¹ “Breaking Down Barriers: Access to Justice in Europe for Victims of International Crimes,” 84.

Service read their obligation to inform victims of their rights and to provide updates throughout proceedings narrowly, applying only to complainants.⁴²²

Universal Jurisdiction Cases

To date, cases in the Netherlands have dealt with international crimes committed in a wide range of countries, including Afghanistan, Croatia, Ethiopia, Iraq, Rwanda, Sri Lanka, and Syria, among others.⁴²³ At the end of 2022, there were twenty active investigations in the Netherlands relating to international crimes.⁴²⁴ Dutch authorities recently announced the prosecution of a Dutch woman who joined ISIS for crimes against humanity for having enslaved a Yazidi woman in Syria, the first case in the Netherlands related to crimes committed against the Yazidis.⁴²⁵ The same suspect will also face prosecution, along with eleven other women, for membership in a terrorist organization.⁴²⁶ In January 2023, Dutch authorities arrested a Syrian refugee accused of war crimes while allegedly serving as a security official for ISIS.⁴²⁷ That same month, Dutch authorities announced an Eritrean man wanted for human trafficking had been arrested in Sudan, and that the Netherlands would seek his extradition.⁴²⁸ A man was also arrested in October 2023 for involvement in the 1994 Rwandan genocide.⁴²⁹ On November 30, the trial of a man accused of crimes against humanity and war crimes in Syria—including the torture of civilians in Syrian Air Force Intelligence Service detention centers—and of participating in a pro-Assad militia started.⁴³⁰

Past trials in the Netherlands for international crimes include those against Sébastien N, convicted of torture carried out in the Democratic Republic of the Congo; Joseph M, convicted of complicity

⁴²² Wetboek van Strafvordering [Code of Criminal Procedure], art. 51ab, 51ac, Sv. (Neth.); “Breaking Down Barriers: Access to Justice in Europe for Victims of International Crimes,” 84–85.

⁴²³ “What Cases Have Been Prosecuted?,” Netherlands Public Prosecution Service, last visited March 23, 2023, <https://www.prosecutionservice.nl/topics/international-crimes/what-cases-have-been-prosecuted>. See also, Giel Verhagen, “Accountability in The Hague: Recent Developments in Dutch Core International Crimes Cases regarding the Syrian Civil War,” EJIL:Talk!, March 29, 2023, <https://www.ejiltalk.org/accountability-in-the-hague-recent-developments-in-dutch-core-international-crimes-cases-regarding-the-syrian-civil-war/>.

⁴²⁴ Ministerie van Justitie en Veiligheid (Dutch Ministry of Justice and Security), *2022 Rapportagebrief Internationale Misdriften 2022 [Annual Report International Crimes]* May 11, 2023, 12, <https://www.rijksoverheid.nl/documenten/kamerstukken/2023/05/11/tk-rapportagebrief-internationale-misdriften-2022>.

⁴²⁵ “Dutch to Prosecute Woman for Islamic State Membership, Yazidi Enslavement,” Reuters, February 10, 2023, <https://www.reuters.com/world/europe/dutch-prosecute-woman-islamic-state-membership-yazidi-enslavement-2023-02-10/>.

⁴²⁶ *Ibid.*

⁴²⁷ “Dutch Authorities Arrest Alleged Syrian ISIS Security Chief,” Reuters, January 17, 2023, <https://www.reuters.com/world/europe/dutch-authorities-arrest-alleged-syrian-isis-security-chief-2023-01-17/>.

⁴²⁸ “Eritrean Trafficker Wanted by Netherlands Arrested in Sudan, Dutch Prosecutors Say,” Reuters, January 5, 2023, <https://www.reuters.com/world/eritrean-trafficker-wanted-by-netherlands-arrested-sudan-dutch-prosecutors-say-2023-01-05/>; Jan van der Made, “Interpol Says ‘World’s Most Wanted’ Human Trafficker Arrested in Sudan,” RFI, January 6, 2023, <https://www.rfi.fr/en/africa/20230106-interpol-says-world-s-most-wanted-human-trafficker-arrested-in-sudan>.

⁴²⁹ “Rwandan Genocide Suspect Arrested in the Netherlands,” Reuters, October 3, 2023, <https://www.reuters.com/world/africa/rwandan-genocide-suspect-arrested-netherlands-2023-10-03/>.

⁴³⁰ Fritz Streiff and Hope Rikkelman, “Syrian Regime Crimes on Trial in the Netherlands,” Just Security, November 22, 2023, <https://www.justsecurity.org/90225/syrian-regime-crimes-on-trial-in-the-netherlands/>; “Suspected Syrian Pro-Government Fighter Goes on Trial in the Netherlands,” Reuters, November 30, 2023, <https://www.reuters.com/world/suspected-syrian-pro-government-fighter-goes-trial-netherlands-2023-11-30/>.

in torture and war crimes for acts in Rwanda; Hesamuddin H and Habibullah J, convicted of torture and war crimes committed in Afghanistan in the 1980s; and two Dutch nationals: Frans van A, convicted of war crimes for supplying a key component of mustard gas to Saddam Hussein's government in the 1980s, and Guus K, convicted of complicity in war crimes for transactions with Charles Taylor's regime in Guinea and Liberia.⁴³¹ Other trials relating to torture and war crimes in Afghanistan have resulted in acquittals or have been closed for lack of evidence.⁴³²

State of Play for Iran-Related Cases

There have been a few cases in Dutch courts concerning Iran, though none under the ICA. In one case, an Iranian refugee was convicted of preparing and financing terror attacks against the IRI and its supporters in Iran.⁴³³ According to Dutch authorities, the man in question was linked to the Arab Struggle Movement for the Liberation of Ahwaz, a separatist group, and was in contact with members of this group who carried out attacks in Iran.⁴³⁴ While the prosecution sought a six-year sentence, the judges sentenced him to four years after taking into account his personal history of being imprisoned and tortured in Iran.⁴³⁵ Other cases dealt with two political assassinations in the Netherlands, which led to European Union sanctions against two Iranians and the IRI's military intelligence.⁴³⁶ The Dutch government's public statement found "strong indications that Iran was involved in the assassinations of two Dutch nationals of Iranian origin."⁴³⁷ The Dutch government also expelled two Iranian diplomats and summoned the Iranian ambassador.⁴³⁸ Most recently, in June 2023, two Dutch companies were sued by five Iranian victims of mustard-gas attacks for allegedly providing chemicals known to be used in making mustard gas to Iraq during the 1980s Iran-Iraq war.⁴³⁹

⁴³¹ While Frans van A. and Guus K. were Dutch nationals, Sébastien N., Joseph M., Habibullah J., and Heshamuddin H. were present on Dutch territory at the time of their arrests. "Breaking Down Barriers: Access to Justice in Europe for Victims of International Crimes," 80; "Public Prosecutor v. Sebastien Nzapali," International Crimes Database, last visited October 31, 2023, <https://internationalcrimesdatabase.org/Case/1128>; "09.07.11—Rwanda/Mpambara—Joseph Mpambara Sentenced to Life in Jail in Netherlands," JusticeInfo, July 9, 2011, <https://www.justiceinfo.net/en/23561-en-en-090711-rwandampambara-joseph-mpambara-sentenced-to-life-in-jail-in-netherlands1437414374.html>; "The Public Prosecutor v. Heshamuddin Hesam," International Crimes Database, last visited October 31, 2023, <https://internationalcrimesdatabase.org/Case/1020/Hesam/>; "The Public Prosecutor v. Habibullah Jalalzoy," International Crimes Database, last visited October 31, 2023, <https://internationalcrimesdatabase.org/Case/1025/Jalalzoy/>.

⁴³² "Breaking Down Barriers: Access to Justice in Europe for Victims of International Crimes," 81.

⁴³³ "Dutch Court Convicts Iranian Refugee on Terror Charges," Reuters, October 27, 2021, <https://apnews.com/article/europe-middle-east-iran-migration-netherlands-88b38c6cbb716ae324210dca1def2cbe>.

⁴³⁴ *Ibid.*

⁴³⁵ *Ibid.*

⁴³⁶ Daniel Boffey, "Iran Behind Two Assassinations in Netherlands—Minister," *Guardian*, January 8, 2019, <https://www.theguardian.com/world/2019/jan/08/iran-behind-two-assassinations-in-netherlands-minister>; Daniel Boffey and Martin Chulov, "Death of an Electrician: How Luck Run Out for Dissident Who Fled Iran in 1981," *Guardian* January 14, 2019, <https://www.theguardian.com/world/2019/jan/14/a-dutch-electricians-raises-issues-of-trust-in-iran>.

⁴³⁷ Boffey, "Iran Behind Two Assassinations in Netherlands – Minister"; Boffey and Chulov, "Death of an Electrician: How Luck Run Out for Dissident Who Fled Iran in 1981."

⁴³⁸ Boffey, "Iran Behind Two Assassinations in Netherlands—Minister."

⁴³⁹ "Iraq Poison Gas Victims Suing Dutch Firms for Supplying Saddam Hussein Regime," *NL Times*, June 16, 2023, <https://nltimes.nl/2023/06/16/iraq-poison-gas-victims-suing-dutch-firms-supplying-saddam-hussein-regime>.

For international crimes, the Netherlands would be a possible forum for IRI-related cases, given its extensive temporal jurisdiction for certain crimes and the lack of statutes of limitations. However, a connection to the Netherlands would have to be shown either through an identified suspect's physical presence or Dutch nationality on the part of the suspect or victim. Further, the prosecution has a monopoly over the decision to initiate proceedings and certain officials enjoy broad immunity. With all that in mind, a trial could take place in the Netherlands if those conditions are met.

Recommendations

Dutch authorities should consider implementing the recommendations in the Europe-wide section, and can additionally strengthen their universal jurisdiction-related laws and practices by pursuing the following.

- Dutch lawmakers should amend the ICA to eliminate personal and functional immunity with respect to international crimes, to better reflect global trends of state practice and customary law.

SWEDEN

As the only country to date that has held a universal jurisdiction trial on Iran, Sweden has served as a test case for lessons learned on how prosecutors across Europe should approach investigations and trials against IRI officials. Recommendations on access to translation, participation of victims, and efforts to inform the public have all emerged as steers from the experience of having Hamid Noury in the dock. The knowledge that Sweden's war crimes unit has now built upon human rights violations and atrocity crimes in Iran on account of the Noury trial should be put to future use in pursuing further accountability, including for more contemporary crimes resulting from the IRI's violent crackdown on the "Women, Life, Freedom" protests. However, complicating factors remain, including the IRI's continued arbitrary detention of an EU diplomat from Sweden and a Swedish-Iranian scientist, both of whom are reportedly being considered for a Belgium-style prisoner swap for the convicted Noury.⁴⁴⁰ The challenges and opportunities for justice options on Iran in Swedish courts are explored further below.

Framework

Sweden has universal jurisdiction provisions covering the core international crimes.⁴⁴¹ Double criminality is not required.⁴⁴² Under these provisions, Sweden has jurisdiction over war crimes committed after 1954; acts of genocide committed after July 1, 1972; and crimes against humanity committed after July 1, 2014.⁴⁴³ There is no statute of limitations for genocide, crimes against

⁴⁴⁰ Matina Stevis-Gridneff, "E.U. Official from Sweden Imprisoned in Iran for Over 500 Days," *New York Times*, September 4, 2023, <https://www.nytimes.com/2023/09/04/world/europe/iran-sweden-prisoners-johan-floderus.html>.

⁴⁴¹ Lag om straff för vissa internationella brott [Act on Criminal Responsibility for Certain International Crimes] (SFS 2014:406) (Swed.).

⁴⁴² "Universal Jurisdiction Law and Practice in Sweden," TRIAL International and Open Society Justice Initiative, 14–15, <https://trialinternational.org/wp-content/uploads/2022/05/UJ-Sweden.pdf>.

⁴⁴³ However, acts of genocide committed after January 1, 1965 (when the crime of genocide was codified) but before July 1, 1973 (when universal jurisdiction provisions were applied to the crime), can be prosecuted under other jurisdiction options. Mark Klamberg, "The Evolution of Swedish Legislation on International Crimes,"

Scandinavian Studies in Law (September 2020), 206–215, <https://scandinavianlaw.se/pdf/66-10.pdf>; Kungl. Maj:ts proposition nr 142 [Royal May's Bill No. 142] (SFS 1953:142) (Swed.); Lag om straff för folkmord [Act on punishment for genocide] (SFS 1964:169) (Swed.); Kungl. Maj:ts proposition nr 98 år 1972 [Royal May Bill No. 98 of 1972] 2:3 (SFS 1972:28) (Swed.), ch. 2 § 3; Statens Offentliga Utredningar [SOU] 2002:98 Internationella brott och svensk jurisdiction [government report series] (Swed.), 103, 148, 174–175; Brottsbalken [BrB] [Penal Code] 2:3 (Swed.), Lag om straff för vissa internationella brott [Act on Criminal Responsibility for Certain International Crimes] (SFS 2014:406) (Swed.); "Universal Jurisdiction Law and Practice in Sweden," 11–12.

humanity, or gross war crimes.⁴⁴⁴ War crimes not considered to be gross have a ten-year statute of limitations.⁴⁴⁵

In Sweden, immunities are generally governed by international law.⁴⁴⁶ However, there is also a Swedish Act on Immunity and Special Privileges that applies to certain sectors.⁴⁴⁷

Bringing a Case

Swedish authorities can open either investigations against specific perpetrators or structural investigations.⁴⁴⁸ For the former, while identified perpetrators do not need to be in the country for authorities to open an investigation, in practice a case will rarely proceed without the perpetrator present, and prosecutors will not bring a case if there is not a reasonable chance that the suspect will be apprehended.⁴⁴⁹ Additionally, if there is “cause to believe that an offence subject to public prosecution has been committed,” then a preliminary investigation “shall” be opened unless it is “manifest that it is not possible to investigate the offence.”⁴⁵⁰ For structural investigations, the same standard applies, with the nature of the investigation seen as helping clear the “possible to investigate” hurdle that can otherwise thwart the opening of investigations into extraterritorial crimes.⁴⁵¹

Prosecutors are required under the *Brottsbalk*, or Criminal Code, to obtain approval from the Prosecutor General before they initiate a prosecution related to core international crimes.⁴⁵² This approval looks into, *inter alia*, the compatibility of a prosecution with public international law

⁴⁴⁴ See Brottsbalken [BrB] [Penal Code] 35:2 (5) (Swed.). War crimes were subject to a twenty-five-year limit until a July 1, 2010, amendment, and so any war crime for which the statute of limitations had run out before the date of the amendment cannot be prosecuted. See Proposition [Prop.] 2009/10:50 Avskaffande av preskription för vissa allvarliga brott [government bill] (Swed.). Additionally, there remains a statute of limitations for perpetrators under the age of eighteen at the time the relevant acts were committed. This is dependent on the maximum imprisonment that can be given for the relevant offense, which amounts to fifteen years for genocide and crimes against humanity, and ten or fifteen years (dependent on the offense) for war crimes. See Brottsbalken [BrB] [Penal Code] 35:1–2 (Swed.); Lag om straff för vissa internationella brott [Act on Criminal Responsibility for Certain International Crimes] (SFS 2014:406) (Swed.).

⁴⁴⁵ Lag om straff för vissa internationella brott [Act on Criminal Responsibility for Certain International Crimes] (SFS 2014:406) art. 3–10 (Swed.); Brottsbalken [BrB] [Penal Code] 35:1(3) (Swed.).

⁴⁴⁶ “Universal Jurisdiction Law and Practice in Sweden,” 26 (citing Proposition [Prop.] 2013/14:146 Straffansvar för folkmord, brott mot mänskligheten och krigsförbrytelser [government bill] p. 2, (Swed.)); see also, Kristoffer Löf, Åsa Waller, Lisa Hyder & Mannheimer Swartling, “Quick Answers on State Immunity—Sweden,” Wolters Kluwer, last updated November 2020, <https://www.mannheimerswartling.se/app/uploads/2021/07/Quick-Answers-on-State-Immunity-%E2%80%93Sweden-Kristoffer-Lof-Asa-Waller-Lisa-Hyder.pdf>.

⁴⁴⁷ Lag om immunitet och privilegier i vissa fall [Act on immunities and privileges in certain cases] (SFS 1976:661) (Swed.).

⁴⁴⁸ ““These Are the Crimes We Are Fleeing””; Miriam Ingeson, “Structural Investigations in Sweden—Reinventing Investigations of International Crimes,” *Scandinavian Studies in Law* 66, 363 (2020), last visited July 17, 2023, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3979458; Lena Bjurström, “Sweden on the Frontline with Syria Cases,” JusticeInfo, February 11, 2021, <https://www.justiceinfo.net/en/73587-sweden-frontline-syria-cases.html>.

⁴⁴⁹ “Universal Jurisdiction Law and Practice in Sweden,” 12–13 (citing Proposition [Prop.] 2013/14:146 Straffansvar för folkmord, brott mot mänskligheten och krigsförbrytelser [government bill] p. 2, (Swed.); Brottsbalken [BrB] [Penal Code] 2:3(6) (Swed.); and a 2016 interview with a war crimes prosecutor).

⁴⁵⁰ Rättegångsbalken [RB] [Code of Judicial Procedure] 23:1 (Swed.).

⁴⁵¹ Rättegångsbalken [RB] [Code of Judicial Procedure] 23:1 (Swed.); Ingeson, “Structural Criminal Investigations in Sweden – Reinventing Investigations of International Crimes,” 357–365.

⁴⁵² Brottsbalken [BrB] [Penal Code] 2:7–8 (Swed.).

obligations; the extent of any links between the offenses or the suspects and Sweden; any legal proceedings outside Sweden; and the “actual possibilities” to investigate and initiate proceedings in Sweden.⁴⁵³ The Prosecutor General must refer a matter to the government for a decision, if there is reason to believe that an examination would be “of particular importance for Sweden’s foreign and security policy” and the Prosecutor General determines that there is no impediment to bringing a prosecution.⁴⁵⁴

Victim Participation

Witnesses, aggrieved persons, and injured parties are all afforded certain rights—for example, security measures and permission to make certain statements.⁴⁵⁵ Notably, *målsäganden*, or aggrieved persons, can initiate private prosecutions when the prosecutor declines to bring a case.⁴⁵⁶ They can also appeal a decision against bringing a case, which is then reviewed by a senior prosecutor.⁴⁵⁷ Additionally, aggrieved persons can claim damages and be eligible for monetary compensation.⁴⁵⁸ However, victims of crimes committed outside Sweden do not have a right to compensation from the state if the perpetrator does not have assets or the government cannot access those assets.⁴⁵⁹ Further, while aggrieved persons are entitled to special counsel in certain circumstances (such as in cases where a crime may result in imprisonment and there is a particularly strong need for the aggrieved person to be assisted), the mandate of the counsel does not extend to helping them access awarded damages.⁴⁶⁰

Universal Jurisdiction Cases

Most of Sweden’s public investigations and prosecutions under universal jurisdiction and related provisions for international atrocity crimes have been against perpetrators in situations often represented in criminal cases globally—notably, the genocide in Rwanda and Syria’s civil war.⁴⁶¹

⁴⁵³ Ibid., 2:8 (Swed.).

⁴⁵⁴ Ibid., 2:8 (Swed.).

⁴⁵⁵ See, e.g., Rättegångsbalken [RB] [Code of Judicial Procedure] 20:8,15; 22:1,2; 23; 36; 46:6 (Swed.); Ordinance [Ord.] 2006:519 Förordning om särskilt personsäkerhetsarbete m.m. [government ordinance] (Swed.), issued June 1, 2006.

⁴⁵⁶ Rättegångsbalken [RB] [Code of Judicial Procedure] 20:8(1) (Swed.).

⁴⁵⁷ “Överprövning och annan prövningsverksamhet [Review and Other Review Activities],” Riksåklagaren, 2.5.1, https://www.aklagare.se/globalassets/dokument/ovriga-dokument/rar/rar-20131_.pdf; “Universal Jurisdiction Law and Practice in Sweden,” 16–17.

⁴⁵⁸ Rättegångsbalken [RB] [Code of Judicial Procedure] 22:1 (Swed.).

⁴⁵⁹ “If You Have Been a Victim of Crime,” Brottsoffermyndigheten, last visited September 25, 2023, <https://www.brottsoffermyndigheten.se/eng>.

⁴⁶⁰ Lag om målsägandebyrå [Law on Plaintiff’s Counsel] (SFS1988:609) (Swed.).

⁴⁶¹ “Tabaro Theodore Rukertabaro,” TRIAL International, last updated July 17, 2019, <https://ujim.trialinternational.org/latest-post/tabaro-theodore/>; “Stanislas Mbanenande,” TRIAL International, last updated July 13, 2020, <https://ujim.trialinternational.org/latest-post/stanislas-mbanenande/>; “Public Prosecutor v. Stanislas Mbanenande,” International Crimes Database, last visited July 13, 2023, <https://www.internationalcrimesdatabase.org/Case/3263>; Moise M. Bahati, “Swedish Court Reduces Genocide Convict Mbanenande’s Life Sentence,” *New Times*, December 30, 2022, <https://www.newtimes.co.rw/article/3942/news/crime/swedish-court-reduces-genocide-convict-mbanenandes-life-sentence>; “Make Way for Justice #3,” TRIAL International, 2017, 47, https://trialinternational.org/wp-content/uploads/2022/05/UJAR-MEP_A4_012.pdf; Justin Cosgrove, “Sweden Court Upholds Life Sentence in Rwanda Genocide Case,” *Jurist*, February 17, 2017, <https://www.jurist.org/news/2017/02/swedish-court-upholds->

However, it has also tackled several notable situations, including the only trial and conviction for atrocity crimes related to the 1988 prison massacres in Iran; investigations into Syrian government officials for crimes committed during the civil war, including for chemical attacks; a conviction for crimes committed by Iraqi military forces against ISIS members; and an ongoing trial regarding an energy company's executives' complicity in war crimes in what is now South Sudan.⁴⁶² Sweden also has several ongoing structural investigations, specifically regarding ISIS, Syria, and Ukraine.⁴⁶³

Certain cases have resulted in monetary compensation to victims.⁴⁶⁴ Additionally, in the case against Lundin Energy executives, the prosecution asked the court to confiscate SEK 2.4 billion

life-sentence-verdict-in-rwanda-genocide-case/; Wilhelmine Preussen, "Swedish Woman Gets 3 Months in Prison for Syria 'War Crime,'" Politico, March 29, 2023, <https://www.politico.eu/article/sweden-göteborg-district-court-sentence-woman-three-months-prison-war-crimes-syria-raqqa/>; "Göteborgs Tingsrätt Dömer Kvinna Till Fängelse För Krigsförbrytelse [The Gothenburg District Court Sentences a Woman to Prison for a War Crime]," *Göteborgs Tingsrätt*, March 29, 2023, <https://www.domstol.se/goteborgs-tingsratt/nyheter/2023/03/goteborgs-tingsratt-domer-kvinna-till-fangelse-for-krigsforbrytelse/>; "Lina Ishaq," TRIAL International, last updated April 3, 2023, <https://ujim.trialinternational.org/latest-post/lina-ishaq/>; "Haisam Omar Sakhanh," TRIAL International, last updated July 27, 2020, <https://ujim.trialinternational.org/latest-post/haisam-omar-sakhanh/>; Christina Anderson, "Syrian Rebel Gets Life Sentence for Mass Killing Caught on Video," *New York Times*, February 16, 2017, <https://www.nytimes.com/2017/02/16/world/europe/syrian-rebel-haisam-omar-sakhanh-sentenced.html>; "Prosecutor v. Mouhannad Droubi," International Crimes Database, last visited July 13, 2023, <https://www.internationalcrimesdatabase.org/Case/3296/Prosecutor-v-Mouhannad-Droubi/>.

⁴⁶² "Report 1: Historic Trial on 1988 Mass-Executions in Iran Begins in Stockholm District Court"; "Iran Condemns Life Sentence Handed to Former Iranian Prison Official by Court in Sweden," RadioFreeEurope/RadioLiberty; "Universal Jurisdiction Annual Review 2022," TRIAL International, 2022, 74, 75, https://trialinternational.org/wp-content/uploads/2022/03/TRIAL_International_UJAR-2022.pdf; "Victims of Syrian Gov't Chemical Attacks File Case in Sweden," Al Jazeera, April 20, 2021, <https://www.aljazeera.com/news/2021/4/20/victims-of-syrian-govt-chemical-attacks-file-case-in-sweden>; "Eight Years after the Chemical Weapons Attacks at Ghouta, Investigations Have Been Opened in Three European Countries," Civil Rights Defenders, August 21, 2021, <https://crd.org/2021/08/21/eight-years-after-the-chemical-weapons-attacks-at-ghouta-investigations-have-been-opened-in-three-european-countries/>; "Five Years Since the Chemical Weapons Attack in Syrian Khan Shaykhun—Now We Submit Further Evidence," Civil Rights Defenders, April 4, 2022, <https://crd.org/2022/04/04/five-years-since-the-chemical-weapons-attack-in-syrian-khan-shaykhun-now-we-submit-further-evidence/>; "Make Way for Justice #4," TRIAL International, 2018, 74, <https://trialinternational.org/wp-content/uploads/2022/05/UJAR-Make-way-for-Justice-2018.pdf>; Heba Habib and Louisa Loveluck, "A Syrian Soldier Has Been Sentenced for Battlefield Crimes. Why Did It Take So Long?" *Washington Post*, October 1, 2017, https://www.washingtonpost.com/world/middle_east/a-syrian-soldier-has-been-sentenced-for-battlefield-crimes-why-did-it-take-so-long/2017/09/30/d4ab28d6-a362-11e7-8c37-e1d99ad6aa22_story.html; "Kurda Bahaalddin H. Saeed H. Saeed," TRIAL International, July 27, 2020, <https://ujim.trialinternational.org/latest-post/kurda-bahaalddin-h-saeed-h-saeed/>; "Raed Abdulkareem," TRIAL International, last updated July 27, 2020, <https://ujim.trialinternational.org/latest-post/raed-abdulkareem/>; "Report 1: Landmark Trial at Stockholm District Court: Allegations of Complicity in Serious International Crimes in Sudan (1997–2003) against Two Corporate Leaders," Civil Rights Defenders, September 5, 2023, <https://crd.org/2023/09/05/report-1-landmark-trial-at-stockholm-district-court-allegations-of-complicity-in-serious-international-crimes-in-sudan-1997-2003-against-two-corporate-leaders/>.

⁴⁶³ Ingeson, "Structural Investigations in Sweden—Reinventing Investigations of International Crimes," 363; Bjurström, "Sweden on the Frontline with Syria Cases"; "How Sweden is Working to Hold Russia Accountable for Crimes in Ukraine," Government Offices of Sweden, March 30, 2023, <https://www.government.se/government-policy/swedens-support-to-ukraine/how-sweden-is-working-to-hold-russia-accountable-for-crimes-in-ukraine/>.

⁴⁶⁴ "Theodore Tabaro," TRIAL International, last updated November 7, 2023, <https://ujim.trialinternational.org/latest-post/tabaro-theodore/>; Cosgrove, "Sweden Court Upholds Life Sentence in Rwanda Genocide Case"; "Prosecutor v. Mouhannad Droubi"; "Hamid Noury," TRIAL International, last updated March 31, 2023, <https://ujim.trialinternational.org/latest-post/hamid-noury/>.

(\$217 million), an increase from the initial SEK 1.4 billion that the prosecution said corresponded to the profits the company made from the sale of the business in 2003.⁴⁶⁵ Under the precedent set in a 2013 case against a Rwandan genocide suspect, claims for compensation are determined by the law of the location of the offense.⁴⁶⁶

State of Play for Iran-Related Cases

Sweden had the first universal jurisdiction case related to the 1988 prison massacres in Iran, which is also the only universal jurisdiction conviction of an IRI official for atrocity crimes as of November 2023. On July 14, 2022, Hamid Noury was convicted of war crimes and murder for his acts committed as an assistant to the deputy prosecutor.⁴⁶⁷ He appealed the decision, the proceedings of which began on January 11, 2023, and lasted until November 8, 2023.⁴⁶⁸ The verdict of the appeal is expected on December 19, 2023.⁴⁶⁹

Legally, Noury’s trial created several major precedents. Regarding jurisdiction, it broadened the usual links between the accused and the country of arrest that are required in universal jurisdiction cases. Whereas often the suspect is a resident of the country, Noury merely arrived at the Stockholm airport, which indicated that mere presence in Swedish territory is sufficient.⁴⁷⁰ For the substantive crimes, the court classified the 1988 conflict between Iraq and Iran as an international armed conflict, and found that Iraq “exercised overall control over [Mojahedin-e-Khalq] MEK’s armed branch”—meaning that abuses against members of the MEK by the IRI in the context of that conflict could be classified as war crimes, provided that there was a sufficient link between the criminal acts at hand and the conflict.⁴⁷¹ While not binding on other jurisdictions, this still creates a precedent for any future trials of 1988 prison massacre perpetrators to include war crimes

⁴⁶⁵ The case is expected to run until 2026, and so no ruling on the monetary claim has been made at this time. Anna Ringstrom, “Former Oil Firm Executives Go on Trial in Sweden over Sudan War Crimes,” Reuters, September 5, 2023, <https://www.reuters.com/world/africa/sudan-war-crime-trial-ex-oil-firm-executives-starts-sweden-2023-09-05/>; “Ian Lundin and Alex Schneider,” TRIAL International, last updated November 13, 2023, <https://ujim.trialinternational.org/latest-post/alex-schneider-and-ian-lundin/>.

⁴⁶⁶ “Stanislas Mbanenande.”

⁴⁶⁷ “Iran Condemns Life Sentence Handed to Former Iranian Prison Official by Court in Sweden,” RadioFreeEurope/RadioLiberty; “Swedish Court Convicts Iranian Ex-Official over 1988 Executions,” BBC, July 14, 2022, <https://www.bbc.com/news/world-europe-62162676>.

⁴⁶⁸ “Report 44: The Proceedings in the Court of Appeal are Initiated,” Civil Rights Defenders, March 24, 2023, <https://crd.org/2023/03/24/report-44-the-proceedings-in-the-court-of-appeal-are-initiated/>; “Report 52: Introduction to the Fifth Block of Recorded Testimonies,” Civil Rights Defenders, July 4, 2023, <https://crd.org/2023/07/04/report-52-introduction-to-the-fifth-block-of-recorded-testimonies/>; “After Two Years—Now the Historic Trial Ends,” Civil Rights Defenders, November 8, 2023, <https://crd.org/2023/11/08/after-two-years-now-the-historic-trial-ends/>.

⁴⁶⁹ “After Two Years—Now the Historic Trial Ends”; “Information från Svea hovrätt om avslutad huvudförhandling och tid för dom i mål om grovt folkrättsbrott och mord i Iran 1988 [Information from the Svea Court of Appeals about the Completion of the Main Hearing and the Time for the Verdict in the Case of Gross Crimes against Humanity and Murder in Iran in 1988].”

⁴⁷⁰ “What Justice for Iran’s International Crimes?” Civitas Maxima, October 6, 2022, <https://civitas-maxima.org/2022/10/06/what-justice-for-irans-international-crimes/>; “Episode 49—Iranian Crimes, Swedish Justice with Aida Samani and Gissou Nia,” Asymmetrical Haircuts, September 8, 2021, <https://www.asymmetricalhaircuts.com/episodes/episode-49-iranian-crimes-swedish-justice-with-aida-samani-and-gissou-nia/>; “Theodore Tabaro”; “Stanislas Mbanenande”; “Lina Ishaq”; “Haisam Omar Sakhanh”; “Prosecutor v. Mouhannad Droubi.”

⁴⁷¹ “Report 43: The Verdict.”

charges. Additionally, it adds to Sweden’s caselaw more broadly on classifying armed conflicts, especially when nonstate armed groups are involved.

However, Swedish law prevented prosecutors in the Noury trial from charging crimes against humanity retroactively, as the law went into effect in 2014—despite legal precedent arguing in favor of retroactive application of international atrocity crimes provisions.⁴⁷² The prosecutors were able to charge Noury with murder, but not other applicable crimes—for example, exceptionally gross assault—due to the statutes of limitations.⁴⁷³ As described above, prosecutors were able to charge Noury with war crimes (as they were defined in Swedish legislation at the time of the crimes) but the charges were strictly limited to offenses against the MEK.⁴⁷⁴ Non-MEK victims were not considered parties to an armed conflict with the Iranian regime, rendering war crimes charges non-applicable to acts committed against them.⁴⁷⁵ Families of executed non-MEK prisoners were able to join the case as injured parties, but surviving non-MEK prisoners were only able to participate as witnesses.⁴⁷⁶

While Sweden made notable efforts to adjust the logistical aspects of the trial to accommodate victims and the affected communities, civil society still noted flaws in the process. On the positive side, parts of the trial were held in Albania, where seven witnesses who were exiled from Iran and

⁴⁷² Two legal professionals who testified in the Noury trial, as well as one expert witness, classified the 1988 prison massacres as crimes against humanity, as did Human Rights Watch, Amnesty International, and the Iran Tribunal. Lena Bjurström, “Iran: First Trial for 1988 Massacres Opens in Stockholm,” JusticeInfo, August 24, 2021, <https://www.justiceinfo.net/en/81098-iran-first-trial-1988-massacres-stockholm.html>; Claus Kreß, “Nulla Poena Nullum Crimen Sine Lege [No Punishment Law Without Crime],” *Max Planck Encyclopedia of Public International Law*, paras. 22–27, <https://www.legal-tools.org/doc/f9b453/pdf/>; “Report 27: Witness Hearings pt. 7,” Civil Rights Defenders, March 7, 2022, <https://crd.org/2022/03/07/report-27-witness-hearings-p-7/>; “Report 30: Witness Hearings pt. 8,” Civil Rights Defenders, April 1, 2022, <https://crd.org/2022/04/01/report-30-witness-hearings-p-8/>; “Report 33: Expert Witness Hearing Pt. 2,” Civil Rights Defenders, April 19, 2022, <https://crd.org/2022/04/19/report-33-expert-witness-hearing-pt-11/>; “Iran: 1988 Mass Executions Evident Crimes Against Humanity,” Human Rights Watch, June 8, 2022, <https://www.hrw.org/news/2022/06/08/iran-1988-mass-executions-evident-crimes-against-humanity>; “Blood-Soaked Secrets: Why Iran’s 1988 Prison Massacres Are Ongoing Crimes Against Humanity”; “Final Stage Closing Report,” Iran Tribunal, March 17, 2013, <https://irantribunal.com/sessions/final-session/final-stage-closing-report/>. For examples of retroactivity in other jurisdictions, see, e.g., *A. contre Ministère public de la Confédération, Décision du 23 Septembre 2021 Cour des plaintes*, paras. 2–2.1.3 (finding limited retroactivity to be permissible for crimes with a historic dimension in Switzerland); “Briefing Paper: Universal Jurisdiction Law and Practice in Belgium,” 12 (citing French Speaking Court of First Instance Brussels (constitutional chamber), 20 October 2017, J.L.M.B., 2018, No. 6, p. 259, which found crimes against humanity, war crimes, and genocide are subject to retroactivity in Belgium as they were covered by preexisting rules under conventions or custom).

⁴⁷³ Noury was specifically charged with murder under Chapter 3, Section 1 of the Swedish Criminal Code according to its wording before July 1, 2009. Under the Swedish Criminal Code’s wording before January 1, 2022, Sweden had jurisdictions for crimes committed overseas if the lightest penalty under Swedish law was imprisonment for four years, which was less than that for murder (ten years). The Criminal Code was later changed to include jurisdiction over crimes committed overseas that result in imprisonment for more than six months, but with the requirement that the perpetrator be in Sweden. Exceptionally gross assault currently results in imprisonment of at least five years. “Report 3: The Prosecution’s Opening Presentation Pt. 1,” Civil Rights Defenders, August 24, 2021, <https://crd.org/2021/08/24/report-3-the-prosecutions-opening-presentation-pt-1/>; *Brottsbalken [BrB] [Penal Code] 2:5(3); 2:3; 3:6 (Swed.); Tingsrätt [B] 2002*, pp. 24, 36 B 15255-19 (Swed.); “Report 43: The Verdict.”

⁴⁷⁴ “Report 3: The Prosecution’s Opening Presentation Pt. 1.”

⁴⁷⁵ *Ibid.*

⁴⁷⁶ “Report 1: Historic Trial on 1988 Mass-Executions in Iran Begins in Stockholm District Court”; “Report 3: The Prosecution’s Opening Presentation Pt. 1.”

were unable to travel to Sweden were able to testify in person.⁴⁷⁷ Injured parties in Albania were also able to watch the trial through a video link, and those in Sweden had the option of watching the trial in a dedicated room with Persian-language interpretation.⁴⁷⁸ However, other aspects of the trial were less supportive of victims and affected parties. While the press release on the verdict was released in English and Swedish, the verdict itself was released (upon email request) exclusively in Swedish.⁴⁷⁹ NGOs and civil society filled in the gaps to the extent they were able, but this system risked the accidental introduction of errors in unofficial streams and translations, and these versions could be permanently lost in the absence of a central, permanent location.⁴⁸⁰ Further, it limited international engagement, particularly among the media, despite the international implications of the trial.

Recommendations

Swedish authorities should consider implementing the recommendations suggested in the Europe-wide section, as well as the following, to strengthen Sweden’s universal jurisdiction-related laws and practices.

- Swedish lawmakers should consider introducing legislation that would ensure that damages won in international cases, including against corporate actors, are distributed to the victims of associated international crimes. This could include introducing legislation that expands the right to state compensation for victims of core international crimes who are Swedish residents and who have been awarded damages in court, as well as legislation that expands the mandate of aggrieved parties’ counsel to include assisting them in accessing funds they have been awarded.
- Swedish police should take care to further prioritize the needs of victims and their families, including the Swedish diaspora of affected communities, ahead of relevant trials to identify those who may wish to register as aggrieved persons.
- Swedish courts should take care to prioritize the needs of affected communities, including by ensuring that all relevant documents are translated into all relevant languages—

⁴⁷⁷ “Iranian Ex-Official’s Trial Resumes in Albania,” France24, November 10, 2021, <https://www.france24.com/en/live-news/20211110-iranian-ex-official-s-trial-resumes-in-albania/>; “Report 15: Plaintiff Hearings Pt. 9,” Civil Rights Defenders, November 19, 2021, <https://crd.org/2021/11/19/report-15-plaintiff-hearings-pt-9/>.

⁴⁷⁸ “Report 2: First Week of Trial Concluded,” Civil Rights Defenders, August 16, 2021, <https://crd.org/2021/08/16/report-2-first-week-of-trial-concluded/>.

⁴⁷⁹ “Iranian Citizen Sentenced to Life in Prison for Executions of Political Prisoners in Iran in 1988,” *Stockholms Tingsrätt*, July 14, 2022, <https://www.domstol.se/stockholms-tingsratt/nyheter/2022/07/iranian-citizen-sentenced-to-life-in-prison-for-executions-of-political-prisoners-in-iran-in-1988/>; “Iransk Medborgare Döms Till Livstids Fängelse för Avrättningar av Politiska Fångar i Iran 1988 [Iranian Citizen Sentenced to Life Imprisonment for Executions of Political Prisoners in Iran 1988],” *Stockholms Tingsrätt*, July 14, 2022, <https://www.domstol.se/stockholms-tingsratt/nyheter/2022/07/iransk-medborgare-doms-till-livstids-fangelse-for-avrattningar-av-politiska-fangar-i-iran-1988/>.

⁴⁸⁰ Civil Rights Defenders published a series of trial reports, while Iran Human Rights Documentation Center translated these reports into Persian and streamed the Persian feed of the trial on YouTube. “Trial Reports,” Civil Rights Defenders, last visited July 18, 2023, <https://crd.org/category/trial-reports/>; “نوری حمید دادگاه گزارش‌های [Hamid Nouri’s Court Reports],” Iran Human Rights Documentation Center, last visited July 26, 2023, <https://iranhrdc.org/fa/%d8%af%d8%a7%d8%af%da%af%d8%a7%d9%87-%d8%ad%d9%85%db%8c%d8%af-%d9%86%d9%88%d8%b1%db%8c/>; “IHRDC,” YouTube, last visited July 25, 2023, <https://www.youtube.com/@IHRDC/streams>.

including global languages, such as English or French—and are made available internationally.

SWITZERLAND

While universal jurisdiction cases in Switzerland have historically moved at a slower clip than in some other European countries, Switzerland's new attorney general, who assumed the position in 2021, has taken strong actions in holding Russian state actors accountable for the full-scale invasion of Ukraine and pushing justice files at the federal prosecutor's office forward more generally.⁴⁸¹ Of specific interest to Iran is the reopening of a case in September 2021 by the Swiss Federal Criminal Court concerning an Iranian dissident assassinated in Switzerland more than thirty years ago on allegations of genocide or crimes against humanity.⁴⁸² This shows the ability of war crimes units to tackle historical cases on Iran involving violations committed by the IRI in the regime's early years. The section below discusses Switzerland's universal jurisdiction provisions and the opportunities and challenges in seeking justice for Iranian victims and survivors of violations in Swiss courts.

Framework

Switzerland has universal jurisdiction provisions under the *Schweizerisches Strafgesetzbuch*, or Swiss Criminal Code (SCC), for core international crimes and certain standalone crimes such as enforced disappearance and hostage taking, all of which are prosecutable when committed abroad by a non-Swiss national against foreign nationals.⁴⁸³ There is no double criminality requirement for these crimes.⁴⁸⁴ In addition, torture as a standalone crime can be prosecuted as a related ordinary crime (for example, assault, aggression, or "endangering the life or health of another"), but is only subject to universal jurisdiction where there is double criminality.⁴⁸⁵ There is a parliamentary initiative to add torture as a standalone offense to the SCC.⁴⁸⁶ Additionally, as of

⁴⁸¹ Jamey Keaten, "Switzerland's Top Lawyer Seeks Tools to Curb Financial Crime," Associated Press, April 29, 2022, <https://apnews.com/article/business-europe-crime-money-laundering-switzerland-bef995d2faab5adccafd21c74a82059c>

⁴⁸² Crawford, "Why Switzerland is Relaunching an Iranian Cold Case for 'Genocide.'"

⁴⁸³ *Schweizerisches Strafgesetzbuch* [StGB] [Criminal Code] December 21, 1937, art. 6–7, 185, 185*bis*, 264–264*j*, 264*m* (Switz.) (status as of June 1, 2022).

⁴⁸⁴ *Schweizerisches Strafgesetzbuch* [StGB] [Criminal Code] December 21, 1937, art. 6–7, 264*m* (Switz.) (status as of June 1, 2022); "Message Portant Approbation et Mise en Œuvre de la Convention Internationale pour la Protection de Toutes les Personnes contre les Disparitions Forcées [Message on Approval and Implementation of the International Convention for the Protection of All Persons against Enforced Disappearances]," November 29, 2013, 13.105, 472, <https://www.fedlex.admin.ch/filestore/fedlex.data.admin.ch/eli/fga/2014/95/fr/pdf-a/fedlex-data-admin-ch-eli-fga-2014-95-fr-pdf-a.pdf>.

⁴⁸⁵ In this instance, there is universal jurisdiction where there is double criminality and Switzerland is obliged to prosecute under an international convention. Switzerland is a party to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, which obliges prosecution under Article 7. *Strafgesetzbuch* [StGB] [Criminal Code] December 21, 1937, art. 6, 122, 123, 126, 127 (Switz.) (status as of June 1, 2022); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 7, December 10, 1984, 1465 UNTS 85; "Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment," United Nations Treaties; see also, "Briefing Paper: Universal Jurisdiction Law and Practice in Switzerland," TRIAL International and Open Society Justice Initiative, June 2019, 11–12, <https://trialinternational.org/wp-content/uploads/2022/05/UJ-Suisse.pdf>.

⁴⁸⁶ "20.504 Parliamentary Initiative: Include Torture as Such in the Catalog of Offenses under Swiss Criminal Law," Federal Assembly—Swiss Parliament, last visited September 5, 2023, <https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaefft?AffairId=20200504>.

March 2023, Switzerland’s Council of States and National Council had both approved a proposal to add the crime of aggression against a sovereign state to the SCC.⁴⁸⁷

War crimes were punishable under the *Militärstrafgesetz*, or Swiss Military Criminal Code, starting on March 1, 1968, so the constituent acts are subject to universal jurisdiction from that date onward according to the definition at the given time.⁴⁸⁸ For genocide, jurisdiction begins on the day it was added to the SCC: December 15, 2000.⁴⁸⁹ Jurisdiction for crimes against humanity does not begin until their recognition in the SCC on January 1, 2011.⁴⁹⁰ Jurisdiction over enforced disappearance and hostage taking (under the current definition) as standalone crimes begins on January 1, 2017, and October 1, 1982, respectively.⁴⁹¹ Generally there is no retroactivity under the SCC, except when the former laws are more favorable to the defendant.⁴⁹² However, a 2021 Federal Criminal Court decision ruled that there is limited retroactivity for crimes with a historic dimension, such as genocide and crimes against humanity.⁴⁹³ Further, a 2023 Federal Criminal

⁴⁸⁷ “Lutte contre l’Impunité. Transposition du Crime d’Agression Défini par le Statut de Rome dans la Législation Suisse [Fight against Impunity. Transposition of the Crime of Aggression as Defined by the Rome Statute into Swiss Legislation],” Federal Assembly—Swiss Parliament, last visited October 31, 2023, <https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20223362>; “Switzerland Passes Bill to Prosecute ‘Crimes of Aggression,’” Reuters, March 16, 2023, <https://www.reuters.com/world/europe/switzerland-passes-bill-prosecute-crimes-aggression-2023-03-16/>; “Motion Sommaruga Carlo. Kampf Gegen Die Straffreiheit. Übernahme des Verbrechens der Aggression Gemäss Römer Statut in das Schweizer Recht, [Motion Sommaruga Carlo. Fight against Impunity. Adoption of the Crime of Aggression According to the Rome Statute into Swiss Law],” Federal Assembly—Swiss Parliament, March 16, 2023, <https://www.parlament.ch/en/ratsbetrieb/amtliches-bulletin/amtliches-bulletin-die-verhandlungen?SubjectId=60200>.

⁴⁸⁸ Code penal militaire [CPM] [Military Penal Code] June 13 1927, footnote 188; “Briefing Paper: Universal Jurisdiction Law and Practice in Switzerland,” 7–10, 15; Schweizerisches Strafgesetzbuch [StGB] [Criminal Code] December 21, 1937, footnote 333 (Switz.) (status as of August 1, 2023) (indicating the days of the amendments to the SCC); see also, Bundesstrafgericht [BStR] [Federal Criminal Court] July 19, 2022, Ministère Public de la Confédération contre Office Fédéral de la Justice, Unité Extraditions, Cour des plaintes, para. F.

⁴⁸⁹ “Briefing Paper: Universal Jurisdiction Law and Practice in Switzerland,” 7–10, 15; Schweizerisches Strafgesetzbuch [StGB] [Criminal Code] December 21, 1937, footnote 333, (Switz.) (status as of August 1, 2023) (indicating the days of the amendments to the SCC); Loi fédérale concernant la modification du code penal, du code penal militaire et de la procedure pénale fédérale [Federal Law on Amendments to the Criminal Code, the Military Criminal Code and Federal Criminal Procedure] [Fedlex] March 24, 2000 (establishing that the amendment adding genocide went into effect on December 15, 2000).

⁴⁹⁰ Schweizerisches Strafgesetzbuch [StGB] [Criminal Code] December 21, 1937, footnote 333, (Switz.) (status as of August 1, 2023) (indicating the days of the amendments to the SCC); Loi fédérale portant modification de lois fédérales en vue de la mise en œuvre du Statut de Rome de la Cour pénale internationale [Federal law amending federal laws to implement the Rome Statute of the International Criminal Court] [Fedlex] June 18, 2010 (establishing that the amendment adding crimes against humanity went into effect on January 1, 2011); see also, “Briefing Paper: Universal Jurisdiction Law and Practice in Switzerland,” 15 (noting that there is, however, some question as to whether the legislature intended jurisdiction to begin earlier for crimes against humanity, based on the wording of the SCC’s provision on the statute of limitations for crimes against humanity).

⁴⁹¹ Schweizerisches Strafgesetzbuch [StGB] [Criminal Code] December 21, 1937, art. 185, 185bis (Switz.) (status as of June 1, 2022).

⁴⁹² Ibid., art. 2, (Switz.).

⁴⁹³ Bundesstrafgericht [BStR] [Federal Criminal Court] 23 September 2021, A. contre Ministère public de la Confédération, Décision du 23 Septembre 2021 Cour des plaintes, paras. 2–2.1.3.

Court decision found there was jurisdiction for the crime against humanity of murder for acts committed in 1994, as the charges for murder were not time barred in 2011.⁴⁹⁴

Core international crimes are generally not subject to a statute of limitations.⁴⁹⁵ However, because there were previously statutes of limitations, there are exceptions where the statutes of limitations expired before they were removed.⁴⁹⁶ This applies to acts of genocide or war crimes where the statute of limitations expired by January 1, 1983, and acts of crimes against humanity where the statute of limitations expired on or before June 18, 2010.⁴⁹⁷ The standalone crime of hostage taking carries custodial sentences of not less than one year, and has a seven-year statute of limitations starting from the date the criminal conduct ceased.⁴⁹⁸ The crime of enforced disappearance has a fifteen-year statute of limitations.⁴⁹⁹ For torture, the statute of limitations would be assessed according to the ordinary crimes charged.

Switzerland grants personal immunity to heads of state, heads of government, and ministers of foreign affairs (“*Triade*,” or the “Triad”), and functional immunity is granted to representatives of foreign governments other than Triad members; officials without other immunities, including diplomatic staff; and former heads of state.⁵⁰⁰ However, there is no functional immunity for former heads of state for crimes under *jus cogens* norms, including core international crimes and torture.⁵⁰¹

⁴⁹⁴ “The Higher Appeals Chamber Convicts Aliou KOSIAH For Crimes Against Humanity and War Crimes (CA.2022.8),” *Bundesstrafgericht*, June 1, 2023, https://www.bstger.ch/uploads/2023-06-01_CA.2022.8_Press_release.pdf; Bundesstrafgericht [BStR] [Federal Criminal Court] May 30, 2023, A contre Ministère public de la Confédération, Décision du 30 Mai 2023 Cour d’appel, part I, para.1.4; see also, Bundesstrafgericht [BStR] [Federal Criminal Court] May 30, 2018, A., B., C., contre Ministère Public de la Confédération, Décision du 30 mai 2018 Cour des plaintes, paras. 7–7.5; “The Nezzar Case before the FCC,” TRIAL International, May 30, 2019, <https://trialinternational.org/wp-content/uploads/2019/05/translation-NEZZAR-decision.pdf> (providing an English translation of relevant sections).

⁴⁹⁵ Schweizerisches Strafgesetzbuch [StGB] [Criminal Code] December 21, 1937, art. 101 (Switz.) (status as of September 1, 2023).

⁴⁹⁶ *Ibid.*

⁴⁹⁷ *Ibid.*

⁴⁹⁸ However, hostage taking involving threats to kill or injure a victim and “particularly serious cases” have higher sentencing provisions, and so would have statutes of limitations of ten and thirty years, respectively. Schweizerisches Strafgesetzbuch [StGB] [Criminal Code] December 21, 1937, art. 97, 98, 185, 185*bis* (Switz.) (status as of June 1, 2022).

⁴⁹⁹ “Briefing Paper: Universal Jurisdiction Law and Practice in Switzerland,” 18 (citing Swiss Federal Council, “Message Portant Approbation et Mise en Œuvre de la Convention Internationale pour la Protection de Toutes les Personnes contre les Disparitions Forcées [Note on Ratification and Implementation of the International Convention on the Protection of All Persons against Enforced Disappearance], FF 2014 437, 450, <https://www.fedlex.admin.ch/eli/fga/2014/95/fr>).

⁵⁰⁰ Bundesstrafgericht [BStR] [Federal Criminal Court] 25 July 2012, A. contre Ministère Public de la Confédération, Décision du 25 juillet 2012 Cour des plaintes, paras. 5.1–5.3.2. For an unofficial English translation, see “A. against the Office of the Attorney General of Switzerland, Decision of the Swiss Federal Criminal Court dated 25 July 2012,” Asser Institute, paras. 5.1–5.3.2, https://www.asser.nl/upload/documents/20130221T040104-Nezzar_Judgm_Eng_translation%2025-07-2012.pdf.

⁵⁰¹ Bundesstrafgericht [BStR] [Federal Criminal Court] 25 July 2012, A. contre Ministère Public de la Confédération, Décision du 25 juillet 2012 Cour des plaintes, para. 5.3.5. For an unofficial English translation, see “A. against the Office of the Attorney General of Switzerland, Decision of the Swiss Federal Criminal Court dated 25 July 2012,” Asser Institute, paras. 5.3.5. See also, Swiss Confederation, “Rapport de la Commission du Droit International [Report of the International Law Commission],” International Law Commission, November 5, 2012, https://www.un.org/en/ga/sixth/67/pdfs/statements/ilc/switzerland_3.pdf.

Bringing a Case

Core international crimes and hostage taking to “exert duress on federal or foreign authorities” are under federal jurisdiction, while enforced disappearance and offenses related to torture are under cantonal jurisdiction.⁵⁰² Within the *Bundesanwaltschaft*, or Office of the Attorney General (OAG), the *Rechtshilfe, Terrorismus, Völkerstrafrecht und Cyberkriminalität* (RTVC), or Mutual Legal Assistance, Terrorism, International Criminal Law and Cybercrime Division, is responsible for “offences under international criminal law.”⁵⁰³ Preliminary proceedings are considered to have commenced once the police begin enquiries or the public prosecutor opens an investigation.⁵⁰⁴ The police inform the public prosecutor of any serious offences or other serious incidents, at which time the public prosecutor opens an investigation.⁵⁰⁵ Once the investigation is complete, the public prosecutor either abandons the proceedings or brings charges.⁵⁰⁶

Under the SCC, there is only jurisdiction when the offender is in Switzerland.⁵⁰⁷ However, the Federal Criminal Court has ruled that this should be interpreted broadly; it is sufficient that the offender be in Switzerland at the time the investigation commences or that there are grounds to believe the individual will enter Swiss territory in the near future.⁵⁰⁸ For core international crimes, the OAG may abandon or dispense with the prosecution if the suspect is being prosecuted in a court whose jurisdiction Switzerland recognizes and the suspect is being extradited there, or if the suspect is no longer in Switzerland and is not expected to return.⁵⁰⁹ However, the OAG must still secure evidence, and criminal justice authorities are otherwise “obliged” to commence or conduct proceedings where there are “grounds for suspecting” an offense under their jurisdiction was committed.⁵¹⁰ The Directorate of Public International Law of the Federal Department of Foreign Affairs may offer an opinion on a specific matter such as immunities, but the Public Prosecutor is free to make an independent decision.⁵¹¹

⁵⁰² Schweizerisches Strafgesetzbuch [StGB] [Criminal Code] December 21, 1937, art. 22–25 (Switz.) (status as of July 1, 2022).

⁵⁰³ Anyone can make a complaint to the police, the public prosecutor, or the appropriate prosecuting authority. “Mutual Legal Assistance, Terrorism, International Criminal Law and Cybercrime,” Bundesanwaltschaft, last visited August 30, 2023, <https://www.bundesanwaltschaft.ch/mpc/en/home/die-bundesanwaltschaft/organisation/rtvc.html>; Schweizerische Strafprozessordnung [StPO] [Code of Criminal Procedure] October 5, 2007, art. 301, 304, (Switz.) (status as of August 1, 2023).

⁵⁰⁴ Schweizerische Strafprozessordnung [StPO] [Code of Criminal Procedure] October 5, 2007, art. 300, (Switz.) (status as of August 1, 2023).

⁵⁰⁵ Schweizerische Strafprozessordnung [StPO] [Code of Criminal Procedure] October 5, 2007, art. 307, 309, (Switz.) (status as of August 1, 2023).

⁵⁰⁶ *Ibid.*, art. 317–319, 324.

⁵⁰⁷ Schweizerisches Strafgesetzbuch [StGB] [Criminal Code] December 21, 1937, art. 6(1), 7(1), 264*m*, (Switz.) (status as of September 1, 2023).

⁵⁰⁸ *Ibid.*; A. contre Ministère Public de la Confédération, Décision, November 142018 Cour des plaintes, para. 2.2; Bundesstrafgericht [BStR] [Federal Criminal Court] July 25, 2012, A. contre Ministère Public de la Confédération, Décision du 25 juillet 2012 Cour des plaintes, para. 3.1.

⁵⁰⁹ Schweizerisches Strafgesetzbuch [StGB] [Criminal Code] December 21, 1937, art. 264*m*, 264–264*j*, 264*m* (Switz.) (status as of June 1, 2022).

⁵¹⁰ Schweizerisches Strafgesetzbuch [StGB] [Criminal Code] December 21, 1937, art. 264*m* (Switz.) (status as of July 1, 2022); Schweizerische Strafprozessordnung [StPO] [Code of Criminal Procedure] October 5, 2007, art. 7(1), (Switz.) (status as of August 1, 2023).

⁵¹¹ “Briefing Paper: Universal Jurisdiction Law and Practice in Switzerland,” 18 (citing three interviews with academics each in 2019, and the Khaled Nezzar case: A. contre Ministère Public de la Confédération, Décision du 25 juillet 2012 Cour des plaintes, paras. E, F).

Victim Participation

Swiss law stipulates certain rights for “victims”—defined under the *Schweizerische Strafprozessordnung*, or Swiss Criminal Procedure Code, as those who suffered direct physical, sexual, or mental harm—as well as those “suffering harm”—defined as those whose rights were directly violated by an offense.⁵¹² Those suffering harm can file declarations requesting a prosecution, in which they can participate as private plaintiffs, or can file a civil claim.⁵¹³ Regardless whether they join as plaintiffs, victims also have certain rights, including protective measures and the right to remain silent.⁵¹⁴ Private claimants also benefit from additional rights, such as legal aid if needed.⁵¹⁵

Universal Jurisdiction Cases

Despite a fair number of investigations, Switzerland has had few convictions under universal jurisdiction provisions.⁵¹⁶ In 2001, the Swiss Military Court of Cassation confirmed the conviction and prison sentence of Fulgence Niyonteze for violations of the law of war in the context of the 1994 Rwandan genocide.⁵¹⁷ Alieu Kosiah received a twenty-year custodial sentence and fifteen-year expulsion from Swiss territory for war crimes in June 2021, seven years after a complaint was first launched with the OAG.⁵¹⁸ He was also ordered to pay a total of CHF 51,100 divided between the seven civil parties as *titre de tort moral*, or moral damages.⁵¹⁹ Upon appeal, the court upheld the twenty-year sentence, found additional convictions for crimes against humanity, lowered the expulsion to ten years, and lowered the moral damages to CHF 49,700.⁵²⁰

Additionally Swiss-Guatemalan dual national Erwin Sperisen has been convicted three times of extrajudicial killings he committed in Guatemala, but each conviction was overturned and

⁵¹² Schweizerische Strafprozessordnung [StPO] [Code of Criminal Procedure] October 5, 2007, art.115–116, (Switz.) (status as of August 1, 2023).

⁵¹³ *Ibid.*, arts. 118, 119.

⁵¹⁴ Schweizerische Strafprozessordnung [StPO] [Code of Criminal Procedure] October 5, 2007, art. 117 (Switz.); See also, “Briefing Paper: Universal Jurisdiction Law and Practice in Switzerland,” 25–26 (outlining a full list of victims’ rights under the Swiss Criminal Procedure Code).

⁵¹⁵ Schweizerische Strafprozessordnung [StPO] [Code of Criminal Procedure] October 5, 2007, art. 136 (Switz.) (status as of August 1, 2023). See also, “Briefing Paper: Universal Jurisdiction Law and Practice in Switzerland,” 26–27 (outlining a full list of private claimants’ rights under the Swiss Criminal Procedure Code).

⁵¹⁶ Antoine Harari, “Switzerland: Kosiah Convicted in First Universal Jurisdiction Trial,” JusticeInfo, June 21, 2021, <https://www.justiceinfo.net/en/78920-switzerland-kosiah-convicted-first-universal-jurisdiction-trial.html>.

⁵¹⁷ “14-Year Sentence Definitely Confirmed for Ex-Mushubati Mayor,” JusticeInfo, April 27, 2001, <https://www.justiceinfo.net/fr/7904-peine-de-14-ans-confirmer-definitivement-pour-lex-maire-de-mushubati4694.html>; “Fulgence Niyonteze Case, Military Court of Cassation, 27 April 2001: Switzerland,” International Humanitarian Law Databases, April 27, 2001, <https://ihl-databases.icrc.org/en/national-practice/fulgence-niyonteze-case-military-court-cassation-27-april-2001>.

⁵¹⁸ “Alieu Kosiah,” TRIAL International, last updated June 21, 2021, <https://ujim.trialinternational.org/latest-post/alieu-kosiah/>.

⁵¹⁹ Bundesstrafgericht [BStR] [Federal Criminal Court] June 18, 2021, Ministère Public de la Confédération et parties plaignantes contre Alieu Kosiah, Jugement du 18 juin 2021 Cour des affaires pénales, 281–282.

⁵²⁰ “The Higher Appeals Chamber Convicts Alieu KOSIAH for Crimes against Humanity and War Crimes (CA.2022.8),” Bundesstrafgericht; Bundesstrafgericht [BStR] [Federal Criminal Court] May 30, 2023, A contre Ministère public de la Confédération, Décision du 30 Mai 2023 Cour d’appel, part I para. 1.4, part II.

remanded to the Geneva courts.⁵²¹ He was charged with *l'assassinat*, or murder, rather than core crimes, with Swiss courts having extraterritorial jurisdictions due to his Swiss citizenship.⁵²² In 2023, the European Court of Human Rights (ECtHR) found that Switzerland violated Sperisen's right to a fair trial "in so far as [Article 6 § 1 of the European Convention on Human Rights] guaranteed the right to an impartial tribunal," and ordered Switzerland to pay 15,000 euros "in respect of costs and expenses."⁵²³ While the complaint was limited to the actions of the presiding judge of the Criminal Appeals and Retrial Division of the Court of Justice of the Canton of Geneva, the ECtHR found that the judge's lack of impartiality meant that Sperisen was not provided his right to an impartial tribunal during the proceedings that led to his second conviction, which was decided by a bench led by that judge.⁵²⁴

Two other universal jurisdiction cases seemed posed for trial as of Fall 2023. In April 2023, the OAG indicted Ousman Sonko, who had been under investigation and in detention since 2017, for crimes against humanity committed in The Gambia.⁵²⁵ Sonko's lawyer characterized his pretrial

⁵²¹ "Swiss Court Annuls Sperisen's 15-Year Sentence," SwissInfo, October 20, 2023, <https://www.swissinfo.ch/eng/swiss-court-annuls-sperisen-s-15-year-sentence/48909198>; "Swiss Federal Court Upholds Erwin Sperisen's Conviction," TRIAL International, November 29, 2019, <https://trialinternational.org/latest-post/swiss-federal-court-upholds-%e2%80%a8erwin-sperisens-conviction/>; "Life Sentence for Guatemalan Police Chief Sperisen," SwissInfo, June 6, 2014, https://www.swissinfo.ch/eng/long-arm-of-the-law_life-sentence-for-guatemalan-police-chief-sperisen/38737288; "Former Head of the National Police of Guatemala Arrested in Geneva," TRIAL International, last updated July 17, 2017, <https://trialinternational.org/latest-post/former-head-of-the-national-police-of-guatemala-arrested-in-geneva/>; "Confirmation of Erwin Sperisen's Conviction: A Victory for the Fight Against Impunity," TRIAL International, last updated July 12, 2017, <https://trialinternational.org/latest-post/confirmation-of-erwin-sperisens-conviction-a-victory-for-the-fight-against-impunity/>; "Guatemala Ex-Police Chief Freed after Swiss Court Quashes Conviction," *Tico Times*, October 20, 2023, <https://ticotimes.net/2023/10/20/guatemala-ex-police-chief-freed-after-swiss-court-quashes-conviction>; Fati Mansour, "L'Affaire Sperisen et Les Dangers d'une Double Casquette de Juge [The Sperisen Affair and the Dangers of a Double Hat]," *Le Temps*, October 24, 2023, <https://www.letemps.ch/suisse/geneve/l-affaire-sperisen-et-les-dangers-d-une-double-casquette-du-juge>.

⁵²² "Universal Jurisdiction Annual Review 2021," TRIAL International, 2021, 73, https://trialinternational.org/wp-content/uploads/2021/04/UJAR-2021_UniversalJurisdictionAnnualReview-2.pdf; "Swiss Federal Court Upholds Erwin Sperisen's Conviction," TRIAL International, November 29, 2019, <https://trialinternational.org/latest-post/swiss-federal-court-upholds-%E2%80%A8erwin-sperisens-conviction/>; A. contre le jugement JTCR/3/2014 rendu le 6 juin 2014 par le Tribunal criminel, et le Ministère Public de la République et canton de Genève, Chambre pénale d'appel et de revision Arrêt du vendredi 27 avril 2018; *Schweizersches Strafgesetzbuch [StGB]* [Criminal Code] December 21, 1937, arts. 7, 112, https://www.fedlex.admin.ch/eli/cc/54/757_781_799/en; "Life Sentence for Guatemalan Police Chief Sperisen," SwissInfo.

⁵²³ The ECtHR unanimously held that "the finding of a violation of Article 6 § 1 constituted sufficient just satisfaction in respect of any non-pecuniary damage sustained by the applicant." "Violation of Mr Sperisen's Right to a Fair Trial on Account of the Lack of Impartiality of the President of the Appeal-Court Bench Which Sentenced Him to 15 Years' Imprisonment," European Court of Human Rights, press release June 13, 2023, <https://hudoc.echr.coe.int/eng-press?i=003-7673736-10582336>; see also, "Switzerland Criticized By Strasbourg Court for Judge's Lack of Impartiality," SwissInfo, June 13, 2023, <https://www.swissinfo.ch/eng/politics/switzerland-criticised-by-strasbourg-court-for-judge-s-lack-of-impartiality/48586110>.

⁵²⁴ "Violation of Mr Sperisen's Right to a Fair Trial on Account of the Lack of Impartiality of the President of the Appeal-Court Bench Which Sentenced Him to 15 Years' Imprisonment"; "Switzerland Criticized By Strasbourg Court for Judge's Lack of Impartiality."

⁵²⁵ The trial is scheduled to take place in January 2024. "Swiss Charge Ex-Gambian Minister with Crimes Against Humanity," Al Jazeera, April 19, 2023, <https://www.aljazeera.com/news/2023/4/19/swiss-charge-ex-gambian-minister-with-crimes-against-humanity>; Henry Habegger, "Bundesanwalt Blättler: 'Sanktionen bis fünf Millionen

detention, which had lasted six years as of January 2023, as an abuse of his rights.⁵²⁶ In February 2022, the OAG conducted a final hearing against Khaled Nezzar, eleven years after a criminal complaint was filed and after an immunity argument was rejected by the FCC.⁵²⁷ In August 2023, the OAG filed an indictment with the Federal Criminal Court against Nezzar.⁵²⁸

While the OAG reported in its 2022 Annual Report that “the field of international criminal law” was one of its “strategic priorities,” with twenty-eight pending preliminary inquiries and criminal investigations, many investigations appear to have progressed slowly.⁵²⁹ For instance, an investigation against Swiss businessman Christopher Huber for war crimes has been ongoing since 2018, though he was publicly accused of funding rebel forces in the Democratic Republic of Congo as early as 2002.⁵³⁰ An investigation into the 1990 assassination of Iranian opposition leader Kazem Rajavi in Switzerland was reopened in September 2021 after the FCC’s Complaints Court accepted an appeal by Rajavi’s brother.⁵³¹ The original case on murder charges was dismissed after the thirty-year statute of limitations expired, but the court found that genocide and crimes against humanity may still apply.⁵³²

für Firmen? Lachhaft’ [Federal Prosecutor Blättler: ‘Sanctions of Up to Five Million for Companies? Laughable’],” Watson, November 26, 11, 2022, <https://www.watson.ch/schweiz/interview/342503087-bundesanwalt-blaettler-zu-mafia-und-wirtschaftskriminalitaet>; Philip Grant (@PhilipGrant40), La [#] CompétenceUniverselle 3.0 s’accélère. Le Procureur général de la Confédération annonce qu’ »il y aura d’autres inculpations dans un futur proche. Entre autres contre un ancien. ...” Twitter, November 30, 2022, <https://twitter.com/PhilipGrant40/status/1597936441979711495>; “Ousman Sonko,” TRIAL International, last updated April 4, 2022, <https://ujim.trialinternational.org/latest-post/ousman-sonko/>; Julia Crawford, “Five Years On, the Slow Wheels of Swiss Justice in Gambian Case,” JusticeInfo, January 25, 2022, <https://www.justiceinfo.net/en/86932-five-years-on-slow-wheels-swiss-justice-gambian-case.html>; “Ousman Sonko Case: The Second Trial for Crimes against Humanity in Switzerland to Take Place in January 2024,” TRIAL International, <https://trialinternational.org/latest-post/ousman-sonko-case-the-second-trial-for-crimes-against-humanity-in-switzerland-to-take-place-in-january-2024/>.

⁵²⁶ Crawford, “Five Years On, The Slow Wheels of Swiss Justice in Gambian Case”; Schweizerisches Strafrecht [StGB] [Criminal Code] December 21, 1937, art. 264.

⁵²⁷ TRIAL International, et al., *Universal Jurisdiction Annual Review 2022*, 81; “The Way is Now Paved for the Trial in Switzerland of General Khaled Nezzar,” TRIAL International, last updated February 9, 2022, <https://trialinternational.org/latest-post/the-way-is-now-paved-for-the-trial-in-switzerland-of-general-khaled-nezzar/>.

⁵²⁸ “Algeria: General Khaled Nezzar Will Finally Be Tried in Switzerland for War Crimes and Crimes against Humanity,” TRIAL International, last updated November 16, 2023, <https://trialinternational.org/latest-post/algeria-general-khaled-nezzar-will-finally-stand-trial-in-switzerland/>.

⁵²⁹ *Annual Report 2022*, Office of the Attorney General of Switzerland, 2023, 33,

<https://www.bundesanwaltschaft.ch/mpc/en/home/taetigkeitsberichte/taetigkeitsberichte-der-ba.html>.

⁵³⁰ *Universal Jurisdiction Annual Review 2020*, TRIAL International et al., 2020, 82, https://trialinternational.org/wp-content/uploads/2022/05/TRIAL-International_UJAR-2020_DIGITAL.pdf; “Swiss Businessman Accused of Funding Rebels in Congo,” SwissInfo, January 16, 2002, <https://www.swissinfo.ch/eng/swiss-businessman-accused-of-funding-rebels-in-congo/2486022>.

⁵³¹ Bundesstrafgericht [BSr] [Federal Criminal Court] 23 September 2021, A. contre Ministère public de la Confédération, Décision du 23 Septembre 2021 Cour des plaintes, paras. A-H, 2.3; “Investigation Relunched into Murder of Kazem Rajavi,” SwissInfo, September 28, 2021, <https://www.swissinfo.ch/eng/investigation-relaunched-into-murder-of-kazem-rajavi/46985104>.

⁵³² Bundesstrafgericht [BSr] [Federal Criminal Court] 23 September 2021, A. contre Ministère public de la Confédération, Décision du 23 Septembre 2021 Cour des plaintes, paras. A-H, 2.3; “Investigation Relunched into Murder of Kazem Rajavi,” SwissInfo.

For two other situations, the proceedings remain ongoing but the suspects were able to leave the country.⁵³³ In one of those cases, that of former Syrian Vice President Rifaat al-Assad initiated in 2013, the Swiss Federal Criminal Court ordered the issuance of an international arrest warrant in 2022 (made public in 2023), after the OAG and the Federal Office of Justice disagreed on the matter in 2021.⁵³⁴ The special rapporteurs on torture and on the independence of judges and lawyers submitted a letter to Swiss authorities in 2018 on the handling of the Nezzar and the Rifaat al-Assad cases, noting that there were serious elements seeming to indicate the lack of political will to investigate cases deemed politically sensitive (“*il existe de sérieux éléments semblant indiquer le manque de volonté politique [...] d'instruire des affaires jugées politiquement sensibles*”).⁵³⁵ In a separate case, the suspect was able to leave the country before action could be taken on a criminal complaint, and the Swiss courts ruled that a subsequent civil claim was inadmissible.⁵³⁶

Finally, in September 2023, a Swiss court acquitted Yuri Harauski, a former member of a Belarusian security services unit, for enforced disappearance.⁵³⁷ The acquittal was based first on discrepancies in Harauski’s testimony, in which he admitted to being part of a special unit within the Ministry of the Interior and to abducting and killing three men, and on Harauski being part of a “hit squad” rather than an “arrest and kidnapping squad.”⁵³⁸ The trial also reportedly had “almost amateur official translation,” and the lawyer for two of the victims’ daughters criticized the judges as “seem[ing] to lack a comprehensive understanding of the crime of enforced disappearance.”⁵³⁹

Stefan Blättler, who took the role of federal prosecutor on January 1, 2022, has acknowledged protracted and resource-intensive investigations under way, but affirmed that he considers international crimes one of his top priorities.⁵⁴⁰ Progress has increased over the course of 2023—

⁵³³ “Rifaat Al-Assad,” TRIAL International, last updated November 14, 2023,

<https://ujim.trialinternational.org/latest-post/rifaat-al-assad/>; “France Has Highest Award Returned by Assad Uncle,” Middle East Monitor, September 15, 2022, <https://www.middleeastmonitor.com/20220915-france-has-highest-award-returned-by-assad-uncle/>; “Ali Bin Fadhul Al-Buainain,” TRIAL International, last updated December 10, 2020, <https://ujim.trialinternational.org/latest-post/ali-bin-fadhul-al-buainain/>.

⁵³⁴ “War Crimes in Syria: Switzerland Issues an International Arrest Warrant for the Extradition of Rifaat al-Assad,” TRIAL International, last updated August 23, 2023, <https://trialinternational.org/latest-post/war-crimes-in-syria-switzerland-issues-an-international-arrest-warrant-for-the-extradition-of-rifaat-al-assad/>.

⁵³⁵ Letter from the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Special Rapporteur on the Independence of Judges and Lawyers to the Swiss Government (April 5, 2018) (on file with the United Nations Office of the High Commissioner for Human Rights), <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23726>.

⁵³⁶ “Arbitrary Detention and Torture of Abdennacer Naït-Liman in April 1992,” TRIAL International, last updated June 26, 2018, <https://trialinternational.org/latest-post/arbitrary-detention-and-torture-of-abdennacer-nait-liman-in-april-1992/>.

⁵³⁷ Nick Cumming-Bruce, “Swiss Court Acquits Belarusian in Disappearance of Opposition Leaders,” *New York Times*, September 28, 2023, <https://www.nytimes.com/2023/09/28/world/europe/belarus-disappearance-opposition-swiss-trial.html>.

⁵³⁸ *Ibid.*

⁵³⁹ Sarah Rainsford, “Yury Garavsky: Swiss Trial Acquits Man Who Admitted Abducting Belarus Politicians,” BBC, October 1, 2023, <https://www.bbc.com/news/world-europe-66865795>; Cumming-Bruce, “Swiss Court Acquits Belarusian in Disappearance of Opposition Leaders.”

⁵⁴⁰ “The Attorney General of Switzerland,” Bundesanwaltschaft, last visited August 30, 2023, <https://www.bundesanwalt.ch/mpc/en/home/die-bundesanwalt/die-bundesanwalt.html>; “In 2022, the Office of the Attorney General of Switzerland Set Operational Priorities and Initiated Structural Adaptations,”

for example, in the cases of Sonko and Nezzar.⁵⁴¹ However, there are still some practical concerns. For example, the 2015 merger of the war crimes and the mutual legal assistance units into the RTVC has meant a lack of sufficient specialization, combined with a systematic reduction in staff and orders to prioritize mutual assistance-related cases.⁵⁴²

State of Play for Iran-Related Cases

Switzerland has a strong universal jurisdiction framework—including with provisions relevant to Iran, such as universal jurisdiction for the standalone crime of hostage taking. Additionally, Switzerland stands out as having a genocide definition that includes “political affiliation” among the potential targeted groups, allowing the OAG to charge, for example, the IRI’s widespread attacks on dissidents as genocide.⁵⁴³ However, Switzerland’s historic use of these provisions has been tepid, with cases stymied with lengthy investigations and processes—in some cases allowing the suspect to leave the jurisdiction altogether—and lack of political will. The recent acquittal of a former Belarusian official also appears to show the judges’ misunderstanding of enforced disappearance—a crime that IRI officials continue to commit—which creates unfavorable precedent for any related future cases.⁵⁴⁴ The reluctance to prosecute crimes that could “create diplomatic problems,” combined with insufficient financial and human resources, has reportedly prevented cases from being prosecuted.⁵⁴⁵ However, given Blättler’s relatively new tenure, in conjunction with the considerable positive updates since he took his role, Switzerland could shift its approach and act on more cases.

However, IRI-related cases may still prompt caution, as any potential suspects would raise political concerns. IRI officials enjoy an “uncomplicated” visa process to travel to Switzerland.⁵⁴⁶ Switzerland hosts both Iranian refugees and Iranian businessmen and officials and their families,

Schweizerische Eidgenossenschaft, April 20, 2023, <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-94287.html>; Julia Crawford, “What Are the Swiss Doing to Gather Evidence of War Crimes in Ukraine?” SwissInfo, May 19, 2022, <https://www.swissinfo.ch/eng/politics/what-are-the-swiss-doing-to-gather-evidence-of-war-crimes-in-ukraine-/47601174>.

⁵⁴¹ “Ousman Sonko Case: The Second Trial for Crimes against Humanity in Switzerland to Take Place in January 2024”; “Algeria: General Khaled Nezzar Will Finally Be Tried in Switzerland for War Crimes and Crimes against Humanity”; “War Crimes in Syria: Switzerland Issues an International Arrest Warrant for the Extradition of Rifaat al-Assad.”

⁵⁴² Julia Crawford, “International Crimes: Spotlight on Switzerland’s War Crimes Unit,” JusticeInfo, February 15, 2019, <https://www.justiceinfo.net/en/40328-international-crimes-spotlight-on-switzerland-s-war-crimes-unit.html>; “Victims of the Algerian Civil War Still Await Justice,” TRIAL International, October 19, 2021, <https://trialinternational.org/latest-post/victims-of-the-algerian-civil-war-still-await-justice/>; Antonie Harari, “Un Procureur des Crimes de Guerre Claque la Porte [War Crimes Prosecutor Slams Door],” *Le Temps*, February 18, 2018, <https://www.letemps.ch/suisse/un-procureur-crimes-guerre-claque-porte>; see also, “Mutual Legal Assistance, Terrorism, International Criminal Law and Cybercrime.”

⁵⁴³ Schweizerisches Strafgesetzbuch [StGB] [Criminal Code] December 21, 1937, art. 264 (Switz.) (status as of June 1, 2022); Crawford, “Why Switzerland Is Relaunching an Iranian Cold Case for ‘Genocide.’”

⁵⁴⁴ Cumming-Bruce, “Swiss Court Acquits Belarusian in Disappearance of Opposition Leaders.” For IRI officials’ ongoing commission of enforced disappearance, see “Iran 2022.”

⁵⁴⁵ “Universal Jurisdiction Gains Ground in Switzerland,” SwissInfo, July 21, 2023, <https://www.swissinfo.ch/eng/society/universal-jurisdiction-gains-ground-in-switzerland/48669650>.

⁵⁴⁶ Rigendinger, “Iranian Protests Test Switzerland’s Special Status with Iran.”

including several who have been sanctioned by the United States.⁵⁴⁷ Additionally, Switzerland has a “special relationship” with Iran, and has reportedly served as a go-between for the United States and the IRI when arranging prisoner swaps for the release of hostages.⁵⁴⁸ While this relationship has reportedly been tested by the anti-government protests in Iran that began in September 2022, and the Swiss ambassador to Tehran has publicly “strongly condemned” executions linked to it protests, it is still likely to chill political will toward universal jurisdiction cases.⁵⁴⁹

Recommendations

Along with the suggestions in the Europe-wide section, the following actions can help the Swiss OAG and other Swiss authorities best prioritize universal jurisdiction proceedings related to core international crimes and related crimes.

- Swiss lawmakers must carry forward the initiative to add torture to the SCC as a standalone crime, and should ensure that it is subject to universal jurisdiction without any double criminality requirements.
- The OAG must disaggregate the Mutual Legal Assistance, Terrorism, International Criminal Law and Cybercrime unit so that authorities can have dedicated time, budget, and personnel to pursue prosecutions of international crimes.
- Swiss authorities must evaluate Switzerland’s special relationship with Iran and find solutions so that perpetrators are not granted *de facto* immunity within Switzerland.

⁵⁴⁷ “Refugee Data Finder,” United Nations High Commissioner for Refugees, last visited November 29, 2022, <https://www.unhcr.org/refugee-statistics/download/?url=a14hPk>; Masoud Kazemi, “Players, Take a Bow: Iran’s Anti-Corruption Show is Over,” IranWire, June 21, 2022, <https://iranwire.com/en/politics/105036-players-take-a-bow-irans-anti-corruption-show-is-over/>; Ehsan Mehrabi, “Career Controversialist Alireza Zakani Becomes Mayor of Tehran,” IranWire, August 9, 2021, <https://iranwire.com/en/features/70110/>; “Suspects in \$165 Million Bank Fraud in Iran Fled to Britain, Switzerland,” Radio Farda, November 4, 2019, <https://en.radiofarda.com/a/suspects-in-165-million-bank-fraud-in-iran-fled-to-britain-switzerland/30251918.html>; “Iran Sanctions Designations; Non-proliferation Designations; Counter Terrorism Designations,” US Department of the Treasury, August 29, 2014, <https://home.treasury.gov/policy-issues/financial-sanctions/recent-actions/20140829>; “Issuance of Iran-related General License 8A and Amended Frequently Asked Questions; Counter Terrorism Designations and Designations Updates; Iran-related Designations and Designations Updates,” US Department of the Treasury, October 26, 2020, https://home.treasury.gov/policy-issues/financial-sanctions/recent-actions/20201026_33.

⁵⁴⁸ Rigendinger, “Iranian Protests Test Switzerland’s Special Status with Iran”; Dan De Luce, “U.S., Iran Use Swiss as Go-Between to Negotiate Release of Americans Held in Iran,” NBC News, February 13, 2020, <https://www.nbcnews.com/politics/national-security/u-s-iran-use-swiss-go-between-negotiate-release-americans-n1136501>.

⁵⁴⁹ Rigendinger, “Iranian Protests Test Switzerland’s Special Status with Iran”; “Iran Summons Swiss Envoy Over Call to Halt Executions,” Voice of America, May 21, 2023, <https://www.voanews.com/a/iran-summons-swiss-envoy-over-call-to-halt-executions/7102982.html>.

CONCLUSION

While European politicians have been vocal in their condemnation of the IRI's abuses against its own citizens, particularly following Mahsa Jina Amini's death, European jurisdictions have a crucial opportunity to take firmer, effective action using existing universal jurisdiction provisions. Criminal investigations and prosecutions are, of course, dependent on the evidence available and, generally, on the presence of a perpetrator on a state's territory. However, states can take immediate steps to ensure that when opportunities present themselves, they will be ready to take immediate action. By strengthening their laws and policies to ensure thorough and timely proceedings, investigating and judicial authorities can lay the groundwork for long-overdue justice for victims and survivors of IRI abuses.

APPENDIX 1: CONTACT INFORMATION BY JURISDICTION

The following chart provides contact information for the relevant authorities in each of the jurisdictions analyzed above, including both the relevant police and law-enforcement offices and the relevant prosecutor and judicial offices. It also includes information for NGOs based in that jurisdiction that can offer further guidance and resources.

State	Police/Law-Enforcement Authorities	Prosecutorial/Judicial Authorities	Nongovernmental Organizations
Belgium	<p>For Belgium, it is advised to contact the federal prosecutor's office, not law enforcement.</p>	<p><i>Parquet Fédéral</i></p> <p><u>Website:</u> https://www.ommp.be/fr/votre-mp/parquet-federal/contact</p> <p>+32 2 557 77 11</p> <p><u>Email:</u> parquet.federal@just.fgov.be</p>	<p><i>Fédération Internationale pour les Droits Humains (FIDH)—Brussels Office</i></p> <p><u>Website:</u> https://www.fidh.org/en</p> <p><u>Phone:</u> +32 2 609 44 23</p> <p><u>Email:</u> https://www.fidh.org/en/about-us/contact-1776/#</p>
England and Wales	<p><i>Metropolitan Police Counter Terrorism Command (SO15)</i></p> <p><u>Website:</u> https://www.met.police.uk/advice/advice-and-information/war-crimes/af/report-a-war-crime</p> <p><u>Phone:</u> N/A</p> <p><u>Email:</u> SO15Mailbox.WarCrimesunit@met.pnn.police.uk</p> <p><i>Serious Fraud Office</i></p> <p><u>Website:</u> https://www.sfo.gov.uk/</p> <p><u>Phone:</u> N/A</p> <p><u>Email:</u> There is a secure reporting form:</p>	<p><i>Crown Prosecution Service: Counter Terrorism Division (CTD)</i></p> <p><u>Website:</u> https://www.cps.gov.uk/special-crime-and-counter-terrorism-division-scctd</p> <p><u>Phone:</u> N/A</p> <p><u>Email:</u> N/A</p> <p><i>Crown Prosecution Service: Director of Public Prosecutions</i></p> <p><u>Website:</u> https://www.cps.gov.uk/about-cps</p> <p><u>Phone:</u> N/A</p> <p><u>Email:</u> N/A</p>	<p><i>REDRESS London</i></p> <p><u>Website:</u> https://redress.org</p> <p><u>Phone:</u> +44 (0)20 7793 1777</p> <p><u>Email:</u> info@redress.org</p>

	<p>https://sforeporting.egressforms.com/</p> <p><i>National Crime Agency</i></p> <p><u>Website:</u> https://www.nationalcrimeagency.gov.uk/</p> <p><u>Phone:</u> N/A</p> <p><u>Email:</u> N/A</p> <p><i>CrimeStoppers</i></p> <p>This is an organization that anonymously sends information to the police.</p> <p><u>Website:</u> https://crimestoppers-uk.org/give-information/forms/give-information-anonymously</p> <p><u>Phone:</u> N/A</p> <p><u>Email:</u> There is a reporting form: https://crimestoppers-uk.org/give-information/forms/pre-form</p>		
France	<p><i>Office Central de Lutte contre les Crimes contre l'Humanité et les Crimes de Haine (OCLCH)</i></p> <p><u>Website:</u> https://www.gendarmerie.interieur.gouv.fr/notre-institution/notre-organisation/l-office-central-de-lutte-contre-les-crimes-contre-l-humanite-et-les-crimes-de-haine-oclch</p> <p><u>Phone:</u> +33 01 85 56 27 17</p>	<p><i>Le Parquet National Anti-Terroriste (PNAT)</i></p> <p>No contact information is available for the PNAT.</p>	<p><i>Fédération Internationale pour les Droits Humains (FIDH)</i></p> <p><u>Website:</u> https://www.fidh.org/en</p> <p><u>Phone:</u> +0033 1 43 55 25 18</p> <p><u>Email:</u> https://www.fidh.org/en/about-us/contact-1776/</p>

	<p><u>Email:</u> oclch@gendarmerie.interieur.gouv.fr</p>		
Germany	<p><i>Zentralstelle für die Bekämpfung von Kriegsverbrechen (ZBKV)</i></p> <p><u>Website:</u> https://www.bka.de/DE/UnsereAufgaben/Aufgabenbereiche/Zentralstellen/ZBKV/zbkv_node.html</p> <p><u>Phone:</u> +49(0)611/55-0</p> <p><u>Email:</u> poststelle@bka.de-mail.de</p>	<p><i>Der Generalbundesanwalt</i></p> <p><u>Website:</u> https://www.generalbundesanwalt.de/DE/Home/home_node.html</p> <p><u>Phone:</u> +49 (0721) 81 91 0</p> <p><u>Email:</u> poststelle@generalbundesanwalt.de</p>	<p><i>European Center for Constitutional and Human Rights (ECCHR)</i></p> <p><u>Website:</u> https://www.ecchr.eu/en</p> <p><u>Phone:</u> +49 (0)30 – 400 485 90</p> <p><u>Email:</u> info@ecchr.eu</p>
The Netherlands	<p><i>Team Internationale Misdrijven</i></p> <p><u>Website:</u> https://www.politie.nl/onderwerpen/team-internationale-misdrijven-tim.html</p> <p><u>Phone:</u> +31 88 6625 743</p> <p><u>Email:</u> warcrimes@politie.nl</p>	<p><i>Openbaar Ministerie: Internationale Misdrijven</i></p> <p><u>Website:</u> https://www.prosecutionservice.nl/topics/international-crimes</p> <p><u>Phone:</u> +31 88 6625 743</p> <p><u>Email:</u> warcrimes@politie.nl</p>	<p><i>REDRESS Nederland</i></p> <p><u>Website:</u> redress.org</p> <p><u>Phone:</u> +31 708 919 317</p> <p><u>Email:</u> info.nederland@redress.org</p> <p><i>The Nuhanovic Foundation</i></p> <p><u>Website:</u> https://www.nuhanovicfoundation.org/</p> <p><u>Phone:</u> N/A</p> <p><u>Email:</u> mail@nuhanovicfoundation.org</p>
Sweden	<p><i>Polisen: War Crimes Unit</i></p> <p><u>Website:</u> https://polisen.se/en/victims-of-crime/war-crime-swedish-police-efforts/</p>	<p><i>Åklagarmyndigheten: The National Unit Against Organised Crime</i></p> <p><u>Website:</u> https://www.aklagare.se/en/about-us/specialist-offices/</p>	<p><i>Civil Rights Defenders</i></p> <p><u>Website:</u> https://crd.org/</p> <p><u>Phone:</u> +46 (0)8 545 277 30</p> <p><u>Email:</u> info@crd.org</p>

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Switzerland	<p><i>Bundesamt Für Polizei Fedpol</i></p> <p><u>Website:</u> https://www.fedpol.admin.ch/fedpol/en/home/polizei-zusammenarbeit/national/polizeiarbeit_auf.html</p> <p>No other contact information is available.</p>	<p><i>Bundesanwaltschaft: Rechtshilfe, Terrorismus, Völkerstrafrecht und Cyberkriminalität (RTVC)</i></p> <p><u>Website:</u> https://www.bundesanwaltschaft.ch/mpc/en/home/die-bundesanwaltschaft/organisation/rtvc.html</p> <p><u>Phone:</u> +41 58 462 45 79</p> <p><u>Email:</u> Privasphere messaging platform: https://www.bundesanwaltschaft.ch/mpc/en/home/eingaben-an-die-bundesanwaltschaft/eingaben-an-die-ba.html</p>	<p><i>TRIAL International</i></p> <p><u>Website:</u> https://trialinternational.org/</p> <p><u>Phone:</u> +41 22 321 61 10</p> <p><u>Email:</u> info@trialinternational.org</p>