THE FAR REACH OF JUSTICE: Holding the Islamic Republic of Iran Accountable in European Courts

CELESTE KMIOTEK, LISANDRA NOVO, GISSOU NIA, AND ALYSSA YAMAMOTO
Through advising on legal tools and impact litigation, the Atlantic Council’s Strategic Litigation Project works on accountability efforts for atrocity crimes, human rights violations, terrorism, and corruption offenses.
THE FAR REACH OF JUSTICE:
Holding the Islamic Republic of Iran Accountable in European Courts

CELESTE KMIOTEK, LISANDRA NOVO, GISSOU NIA, AND ALYSSA YAMAMOTO
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>EXECUTIVE SUMMARY</td>
<td>1</td>
</tr>
<tr>
<td>GLOSSARY</td>
<td>7</td>
</tr>
<tr>
<td>INTRODUCTION</td>
<td>9</td>
</tr>
<tr>
<td>PROSPECTS IN EUROPEAN JURISDICTIONS</td>
<td>13</td>
</tr>
<tr>
<td>BELGIUM</td>
<td>16</td>
</tr>
<tr>
<td>ENGLAND AND WALES</td>
<td>23</td>
</tr>
<tr>
<td>FRANCE</td>
<td>30</td>
</tr>
<tr>
<td>GERMANY</td>
<td>40</td>
</tr>
<tr>
<td>THE NETHERLANDS</td>
<td>48</td>
</tr>
<tr>
<td>SWEDEN</td>
<td>56</td>
</tr>
<tr>
<td>SWITZERLAND</td>
<td>62</td>
</tr>
<tr>
<td>CONCLUSION</td>
<td>69</td>
</tr>
<tr>
<td>APPENDIX 1: CONTACT INFORMATION BY JURISDICTION</td>
<td>70</td>
</tr>
</tbody>
</table>
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.

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.”

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 executed.

EXECUTIVE SUMMARY

Newspapers with pictures of Mahsa Jina Amini, who died after being detained by the Islamic Republic of Iran's morality police, as seen in Tehran, September 18, 2022. Source: Majid Asgaripour/WANA


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

---


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/5b02c746e5274e5209358d3/universal-jurisdiction-note-web.pdf.

⁷ Note that this report is up to date until December 1, 2023, and additionally includes the December 19, 2023, verdict related to Hamid Noury’s appeal in Sweden.
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; and\(^9\)
  - 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;

---


• 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

- 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 (GHRS) Regulations 2020.

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

- 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.\(^\text{12}\)

**Command and superior liability:**
The principle that commanders and superiors can be held criminally liable for the crimes of their subordinates.\(^\text{13}\)

**Core international crimes:**
The crimes of genocide, crimes against humanity, and war crimes.\(^\text{14}\)

**Crimes against humanity:**
Acts (such as murder or torture) committed as part of a widespread or systematic attack against a civilian population.\(^\text{15}\)

**Cumulative prosecution:**
The prosecution of an act as multiple offenses—for example, as both war crimes and terrorism-related crimes.\(^\text{16}\)

**Customary international law:**
Law derived from “a general practice accepted as law,” which is binding on states.\(^\text{17}\)

**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.\(^\text{18}\)

**Functional immunity:**
Immunity that attaches to “acts performed in an official capacity,” and which is also known as immunity *ratione materiae*.\(^\text{19}\)

**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).\(^\text{20}\)

**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.”\(^\text{21}\)

---


**Passive personality jurisdiction:**
Jurisdiction that allows a state to prosecute an offense committed against its nationals, even when committed abroad.\(^\text{22}\)

**Personal immunity:**
Immunity that attaches to “office or status,” and which is also known as immunity *ratione personae*.\(^\text{23}\)

**Secondary liability:**
The principle that a party can be held liable for crimes that it assisted.\(^\text{24}\)

**Standalone crime:**
A crime that does not fall under a broader category of crimes (such as the core international crimes).\(^\text{25}\)

**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.\(^\text{26}\)

**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.\(^\text{27}\)

**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.\(^\text{28}\) War crimes only apply to acts committed in the context of an armed conflict.\(^\text{29}\) This includes non-international armed conflicts, but does not include “internal disturbances and tensions.”\(^\text{30}\)

\(^{22}\) 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.


\(^{29}\) 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).
I n 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 protestors' eyes to forcibly blind them, and subjected women to sexual violence while in prison. The IRI or its agents are suspected of systematically poisoning schoolgirls, who often participated in the protests. 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.

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—fled from Tehran to Stockholm, reportedly planning to go to the Scandinavian islands, followed by Barcelona and Milan, before returning to Tehran. Instead, Swedish police arrested him upon arrival. 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. 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. The Court of Appeal upheld Noury's life sentence on December 19, 2023. This was the first—and remains the only—conviction of a perpetrator of the 1988 prison massacres.

Sweden was able to bring the case under universal jurisdiction provisions in its domestic law. 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 physi-


40 Anderson and Fassihi, “Ex-Iranian Official Convicted by Swedish Court for Prison Executions.”
cally present in the state or the underlying case to have some link to their state.\footnote{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.\footnote{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.\footnote{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.\footnote{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.\footnote{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 elsewhere.\footnote{46} A significant number of Iranians connected to the


\footnote{45} Ibid.

\footnote{46} Engelbrecht, “Iranian Mothers Choose Exile for Sake of Their Daughters.”
protests ended up in Europe, where IRI authorities are also known to visit and hold assets.\footnote{47} Iranian dissidents have also reported physical threats by IRI “agents” and officials within Europe.\footnote{48} Moreover, Europe features a particularly high concentration of states with universal jurisdiction legislation and jurisprudence.\footnote{49} Many European states have dedicated offices, staff, and resources within their police and prosecution offices that focus on international crimes.\footnote{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.\footnote{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, allows European authorities, therefore, 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, allows European authorities, therefore, to focus their attention on cases against IRI perpetrators.

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.\footnote{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.\footnote{53}

- **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.\footnote{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.”\footnote{55} This meant that a conflict between the MEK and Iran formed part of the conflict between Iraq and Iran.\footnote{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 1989


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

\footnote{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).}

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


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

\footnote{55}{“Report 43: The Verdict.”}

\footnote{56}{Ibid.}
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 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.”

**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. 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.

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
  - eliminating requirements on the physical presence of a suspect before initiating an investigation;
  - allowing the retroactive application of provisions criminalizing core international crimes;
  - eliminating statutes of limitations related to core international crimes;
  - including exceptions for jus cogens violations in functional immunity protections for former government officials; and

---


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.

The Union Flag flies near the Houses of Parliament in London, June 7, 2017. Source: REUTERS/Clodagh Kilcoyne

- 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;

• 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.
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. 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. 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 oppor-

tunity presents itself with the presence of IRI human rights violators in Belgium. 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.

Torture as a standalone crime is defined in the *Code Penal/Strafwetboek* or Criminal Code, but derives universal jurisdiction from Article 12bis 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 whatever, to submit the case to its competent authorities to conduct a prosecution.”

Belgium has had universal jurisdiction over war crimes since 1993, and over genocide and crimes against humanity since 1999. On August 5, 2003, the core international crimes were added to the penal code with extraterritorial jurisdiction (but requiring a link to Belgium). 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. They are likewise not subject to statutes of limitations. 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. 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. 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. 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 not note exceptions for, *inter alia*, acts committed by a former minister of foreign affairs that were conducted in a......

---


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


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 417bis in March 2022. “Briefing Paper: Universal Jurisdiction Law and Practice in Belgium,” 8–9. For the French versions of 417bis of the Criminal Code and 12bis of the Code of Criminal Procedure, see, respectively, C.Pén/Sw. (Belg.), art. 417(1); C.Ir/Cr/Sv. (Belg.), art. 12bis (in the titre préliminaire, or preliminary title, of the code). For the law renumbering 417bis to 417(1), see Lois, Décrets, Ordonnances et Règlements [Laws, Decrees, Ordinances and Regulations], M.B., August 14, 2002, art. 94.


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


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.Ir/Cr/Sv. (Belg.), art. 21 (in the titre préliminaire, or preliminary title, of the code).

"private capacity." 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 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 com-

82 C.I.Cr/Sv. (Belg.), art. 10(f)bis (in the titre préliminaire, or preliminary title, of the code).
83 Ibid.
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.
89 C.I.Cr/Sv. (Belg.), art. 135 (in the livre premier, or first book, of the code).
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.
plete 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 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 accused officials are still alive.104 A case related to the

---

95 Cass. [Court of Cassation] “Conclusions du Ministère Public du 30 Mai 2007;” C.I.Cr/Sv. (Belg.), art. 5bis (in the titre préliminaire, or preliminary title, of the code).
96 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. 63 (in livre II, titre II, or book II, title II, of the code).
98 C.I.Cr/Sv. (Belg.), art. 63 (in livre I, or book I, of the code);
99 C.I.Cr/Sv. (Belg.), art. 63 (in livre I, or book I, of the code);
100 Specifically, the “collective interest” 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.
Rwandan genocide began on October 9, 2023, though one defendant is reported to have senile dementia. Another case, involving five former Guatemalan government officials, is also awaiting trial. 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.

Of the cases that did not progress, most ended due to pragmatic difficulties. 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.


Belgium has also brought related cases under terrorism pro-
visions. 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 explosives for a planned
attack on an Iranian opposition rally in Paris.109 The court re-
jected 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’ imprison-
ment.110 In 2023, Belgian police also arrested an Iraqi man sus-
pected 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 con-
flict 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; vic-
tims are entitled to participate in trials and claim compensa-
tion; 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 Strafvoordering, or Code
of Criminal Procedure, and its Criminal Code to make its crim-
inal-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 in-
fluence and resource constraints. A 2003 amendment to the
Criminal Code—seemingly put in place to prevent the prose-
cution of former US President George W. Bush and other US
officials—significantly restricted Belgium’s jurisdiction through
“filters”—for example, those requiring a connection to Belgium
for admissibility.116 Further, the Belgian criminal-justice authori-
ties 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 in-
volving 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


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


with Belgian aid worker Olivier Vandecasteele, who is held hostage in Iran. As such, critics have argued that the treaty would give into Iran’s hostage taking and would undermine the rule of law in Belgium. 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. 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. In January 2023, the IRI increased Vandecasteele’s sentence from twenty-eight years’ imprisonment to forty years and seventy-four lashes. However, the Constitutional Court upheld the treaty in March 2023 and, on May 26, Vandecasteele and Assadi were returned to Belgium and Iran, respectively, following an Oman-brokered deal. 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. 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.”

**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).
- 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.

---


122 Belgian lawmakers should consider withdrawing from the July 2022 MLAT with Iran (according to the provisions laid out in the treaty to do so).


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

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. 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. 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. 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. 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.

---


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


132 Universal Jurisdiction (Extension) Bill (UK).
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 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 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 im-

\(^{133}\) Terrorism Act 2006, § 17 (UK); Terrorism Act 2000, § 11 (UK).


\(^{140}\) 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).


\(^{143}\) Terrorist Act 2000, § 11(2) (UK).


\(^{146}\) ibid., § 241A (UK).

\(^{147}\) ibid., § 6, (UK).
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

---


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

153 “Global Britain, Global Justice,” 15.


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

156 Ibid.

157 Ibid.

158 Ibid.

159 Ibid.


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

163 “Global Britain, Global Justice,” 39.

164 Ibid.
an arrest warrant is issued or they are charged. 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. Additionally, the definition of "UK resident" is broad in practice, and includes, *inter 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.

Individuals can also apply for a private arrest warrant. 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." 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. 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. The DPP must analyze the application according to the Full Code Test. 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. 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."

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.

**VICTIM PARTICIPATION**

UK law defines “victims” as those who suffered a harm from a criminal offense and their close relatives. 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. Which rights apply depends on, *inter alia*, if the case goes to court and whether...
the crime was reported to the police.\textsuperscript{179} Where defendants are convicted, they may be ordered to pay victims compensation—for example, for personal injury or pain and suffering.\textsuperscript{180} Property that has been confiscated, such as under POCA, can also be used to pay compensation orders.\textsuperscript{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.\textsuperscript{182}

\section*{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.\textsuperscript{183} While not the first universal jurisdiction trial, it is considered a landmark in human rights accountability.\textsuperscript{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.\textsuperscript{185} In at least three cases, the UK’s Foreign Office granted special-mission status, and other cases ended upon findings of state immunity.\textsuperscript{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.\textsuperscript{187} Officers planning to arrest him declined to board the plane out of fear of an armed resistance.\textsuperscript{188} At least two cases stalled due to insufficient evidence.\textsuperscript{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 Saroni 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.\textsuperscript{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.\textsuperscript{191} There

\textsuperscript{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.


\textsuperscript{185} “Global Britain, Global Justice,” 42–57.


\textsuperscript{188} Ibid.


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 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 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

---


195 “Global Britain, Global Justice,” 15.


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. 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. 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 kidnaps British or UK-based individuals.”

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. 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. 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. 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.

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 (GHRs) Regulations 2020.

---


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. 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 heterogenous 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*...
Pénal or French Code of Criminal Procedure (FCCP).

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. From 2004, companies may be prosecuted for crimes, including those related to activities outside of France. Both direct perpetrators and accomplices may be found liable under French law for completed or attempted offenses.

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. For war crimes, there is an entire chapter in the French criminal code containing a list of prohibited acts. Crimes against humanity under French law require the existence of a concerted plan but, for persecution, do not require a connection to another crime. Although torture is not defined under French law, French courts appear to interpret it in a manner consistent with the definition under the CAT.

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. For torture, temporal jurisdiction begins in 1985. Temporal jurisdiction for both genocide and crimes against humanity begins in 1994, though the definition of crimes against humanity was limited until 2010. France has

---

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


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

214 Code pénal [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 pénal [C. Pén] [Criminal Code], art. 212-3, 213-4-1, 450-1, 461-18, 462-7 (Fr.).


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

217 Code pénal [C. Pén] [Criminal Code], art. 211-2 (Fr.). Compare with Rome Statute, Article 7.


jurisdiction over war crimes committed since 2010. Lastly, enforced disappearances were codified as an independent offense in 2013.

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. The default statute of limitations for serious offenses is twenty years unless a different period is specified. The statute of limitations for torture and CIDE is twenty years, but is thirty years in cases where the victim is a minor and suffered a permanent injury. 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). However, war crimes punished by ten years’ imprisonment have a statute of limitations of twenty years. Enforced disappearances also have a statute of limitations of thirty years. 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.

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 CIDE, 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. French law allows for trials in absentia, which means proceedings may continue even if the accused flees after an investigation has been opened.

---


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 pénal [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 pénal [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.


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 pénal [C. Pén] [Criminal Code], book IVbis (Fr.); Code pénal [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. 7(6) (Fr.) read in conjunction with Code pénal [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 pénal [C. Pén] [Criminal Code], art. 221 (Fr.).

230 Cour de Cassation [Cass.] [supreme court for judicial matters] crim., 17-66-340, May 12, 2023, paras. 17–40. See also, International Convention for the Protection of All Persons from Enforced Disappearance, art. 8(3), 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., 95-81527, 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,” 2.
The second regime includes the core international crimes pursuant to the incorporation of the Rome Statute into French law in 2010. 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.

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.” 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. French lawyers have criticized the latter as insufficient to properly address the problem and have called for a full removal of the provision.

---

233 Code de procédure pénale [C. Pr. Pén] [Criminal Procedure Code], art. 689-11 (Fr).
235 van der Made, “How Far Is France Prepared To Go in Support of Universal Human Rights?”
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 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 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 2023 Court of Cassation decision had 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. 22-80.057, paras. 17–40. See also, Roger Lu Phillips and Aweiss Al Dobouch, “France Must Not Be a Land of Impunity for Syrian Torturers,” FIDH, last updated November 3, 2021, https://www.fidh.org/en/europe/central-asia/france/france-must-not-be-a-land-of-impunity-for-syrian-torturers.

---


\(^{243}\) 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.”

\(^{244}\) Bjurstrom, “Crucial Hearing for Universal Jurisdiction in France.”

amendment followed the court’s reasoning, opting for a series of indicators to be considered by the judge.\textsuperscript{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.”\textsuperscript{247}

The third lock is the principle of subsidiarity.\textsuperscript{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.\textsuperscript{249} This requirement goes directly against the principle of complementarity under the Rome Statute, which grants preference to national courts.\textsuperscript{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.\textsuperscript{251} Notably, this requirement does not apply to any other crimes in France.\textsuperscript{252}

Finally, the fourth lock is unique to the second regime of crimes: the prosecutor has sole discretion in opening or closing an investigation.\textsuperscript{253} For the first regime of crimes, civil parties can request that an investigating judge open an investigation directly through a civil-party application.\textsuperscript{254} The November 20 amendment does not alter the principle of subsidiarity nor the monopoly of the prosecution for bringing cases.\textsuperscript{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.\textsuperscript{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.\textsuperscript{257} In fact, immunity has been described by some as the principal obstacle to the prosecution of international crimes in France.\textsuperscript{258} Though French law does not expressly provide for immunity for state officials, France follows customary international law rules on the issue.\textsuperscript{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.\textsuperscript{260} However, there is total immunity so long as the suspect holds their position.\textsuperscript{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


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

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

\textsuperscript{250} Rome Statute, Article 17.

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

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

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

\textsuperscript{254} Code de procédure pénale [C. Pr. Pén] [Criminal Procedure Code], art. 689-11 (Fr.)


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


to find immunity in a case dealing with similar charges against a vice consul.262 The French Court of Cassation has extended 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

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

---


267 Ibid.


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.).
“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, 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

274 Ibid., art. 2-4 (Fr.).
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.
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.
282 Code de procédure pénale [C. Pr. Pén] [Criminal Procedure Code], art. 2, 3, 4, 41, 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.”
285 “France’s Trial for Atrocities Committed in Liberia: Questions and Answers.”
286 Ibid.
287 Ibid.
torture and complicity in crimes against humanity. 289 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 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 Said, 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 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


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


302 Ibid.


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.” 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.

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.

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 applicable, though statutes of limitations could be a bar. 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. 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.

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.

301 “Iran Revolutionary Guards Chief Targeted in French Criminal Complaint.”
303 “Iran Revolutionary Guards Chief Targeted in French Criminal Complaint.”
304 See Code de procédure pénale [C. Pr. Pén] [Criminal Procedure Code], art. 113 (6), 113 (7) (Fr).
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.”

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. 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. 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. On November 1, 2023, the German government approved a draft bill (hereinafter “draft international law update bill”) that will further update certain international crimes and liabilities—including, for example, adding provisions related to sexual violence. The Strafgesetzbuch (StGB), or German Criminal Code, also stipulates jurisdiction over certain other serious offenses committed abroad, including terrorism offenses. 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.

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. 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. 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. The provision allowing limited extraterritorial jurisdiction over certain terrorism offenses came into effect August 22, 2002. There is no retroactivity, and there is no statute of limitations for core international crimes or aggression.

Because German law incorporates customary international law, immunities such as those for state representatives are recognized. Additionally, the Courts Constitutions Act provides for immunities for diplomats, consular officers, and state representatives who have been invited by Germany. However, the Federal Court of Justice has “explicitly established” that a


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.).


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.).


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. StrAndG).

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 Act of 28 June 2022, art. 25.

“foreign subordinate official” of another state is not entitled to functional immunity “with regard to acts carried out within the scope of their duties.”

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. 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. 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. 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.

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. For example, they may decline to investigate and prosecute core international crimes when there is no nexus to Germany. Generally, however, prosecutors will investigate all cases so long as they can gather evidence or testimony on German territory. 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.

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.” “Victims” are those who, as a result of the crime, had their legal rights directly impaired, or who directly suffered harm or damage. 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. 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 Germany’s international criminal law framework, including by strengthening victims’ rights.334 For example, it includes provisions 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 upholding for torture as a war crime in Afghanistan; and for crimes against humanity, murder, and attempted murder in The Gambia.339

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.
335 Ibid.
337 Ibid.; Malek, “How a Syrian War Criminal Was Brought to Justice—in Germany.”
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. Further proceedings are under way, including cases against a Syrian doctor for alleged crimes against humanity and against alleged members of ISIS. 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. Between 2022 and 2023, lawyers have also filed criminal charges against Myanmar 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 in-

---


ternational crimes against Ukrainian victims following the full-scale invasion.\textsuperscript{343} German authorities have reportedly opened an investigation into a possible war crime committed by Russian forces against civilians, including German civilians.\textsuperscript{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.\textsuperscript{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.\textsuperscript{346} The criminal complaints regarding Myanmar and Iran were also both submitted with requests for structural investigations.\textsuperscript{347}

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.\textsuperscript{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.\textsuperscript{349} Sharmahd is a German citizen, therefore “oblig[ing]” the German judiciary to investigate.\textsuperscript{350} The complaint was “intended to trigger structural proceedings,” alleging crimes against humanity.\textsuperscript{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.\textsuperscript{352} However, the Office of the Federal Prosecutor General ultimately determined that the judge, Hossein-Ali Nayeri, was not receiving treatment there.\textsuperscript{353}


\textsuperscript{349} Knight, “German Lawyers File Criminal Charges Against Iranian Judges,”

\textsuperscript{350} Ibid.

\textsuperscript{351} “Criminal Complaint Against Judicial Authorities in Iran: German Federal Prosecutor Must Investigate Crimes Against Humanity,”


\textsuperscript{353} “Iranischer Richter Laut Staatsanwaltschaft Nicht in Hannover [According to the Public Prosecutor’s Office, Iranian Judge Not in Hanover]”
As evidenced by Sharmahd’s complaint, Germany has the tools at its disposal to lead among universal jurisdiction cases against IRI perpetrators. Along with having a dedicated prosecution unit for core international crimes, Germany has two critical tools. 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. Second, it allows for cumulative prosecutions. 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.” 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. 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. 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.

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. 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. 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. 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.\textsuperscript{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.

- 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.

\textsuperscript{364} “Vorschläge zur Fortentwicklung des Völkerstrafrechts [Proposals for the further development of International Criminal Law],” Bundesministerium der Justiz.
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.\(^\text{365}\) 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.\textsuperscript{366} The ICA was later amended to add enforced disappearances and aggression as standalone prosecutable offenses.\textsuperscript{367} Investigation and prosecution of the offenses enumerated in the ICA are not obligatory, and remain at the discretion of prosecutors.\textsuperscript{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.\textsuperscript{369}

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.\textsuperscript{370} The presence requirement is interpreted strictly, and “anticipatory” investigations are rarely conducted.\textsuperscript{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 \textit{in absentia}.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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 \textit{in absentia} are permitted.\textsuperscript{376} Additionally, investigations of a general situation without needing to identify the suspect are only possible on these two grounds.\textsuperscript{377}

The ICA does not govern procedure, so investigations and prosecutions must instead abide by the \textit{Wetboek van Strafvoering} or Dutch Code of Criminal Procedure (CCP).\textsuperscript{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 held liable, and accessorial liability where the person assists in the commission of the


\textsuperscript{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 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.”

\textsuperscript{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.”


\textsuperscript{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.”


\textsuperscript{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.”

crime.\textsuperscript{379} The ICA further recognizes command responsibility as mode of liability.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{383} There are no statutes of limitations in the Netherlands for prosecuting genocide, crimes against humanity, torture, enforced disappearances, and most war crimes.\textsuperscript{384}

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.”\textsuperscript{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.\textsuperscript{386} For persons falling under the first category, immunity is limited to the duration of their time in office.\textsuperscript{387} The second category includes persons such as diplomats posted to or visiting the Netherlands on special mission, who generally enjoy functional immunity.\textsuperscript{388}

---


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


\textsuperscript{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/.


\textsuperscript{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.

However, members of official missions “enjoy full immunity for the duration of the mission on the basis of customary international law.”

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. 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. 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 the Dutch government.”

This decision was upheld on appeal, and ultimately by the Dutch Supreme Court. 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.”

---

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)).

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

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

BRINGING A CASE

The Netherlands has specialized units for handling international crimes under immigration, police, and prosecution services, as well as specialized judges. 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.

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. In fact, it is rare for the Public Prosecution Service to initiate proceedings on the basis of a formal complaint. 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. 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. If an investigation is opened and 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.

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. The Court of Appeal in The Hague hears appeals stemming from cases before the District Court. 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. 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.

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. The Court of Appeals can order the Public Prosecution Service to initiate proceedings or a judicial investigation. Its decision is final.
and not subject to appeal. If victims are not satisfied with the investigation conducted by the International Crimes Team, they may file a complaint with the Public Prosecution Service.

If a case is brought, victims cannot be an official party to proceedings. 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. 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. 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 guilt in the criminal trial. 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.

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. 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. 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.

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). 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.

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. According to these interviews, the International Crimes Team and Public Prosecution Service read their obligation to inform victims of their rights and to provide updates throughout proceedings narrowly, applying only to complainants.

---

410 Ibid.
411 “Netherlands,” Clooney Foundation for Justice.
412 Wetboek van Strafvoering [Code of Criminal Procedure], art. 51c, Sv (Neth.).
416 See, e.g., Wetboek van Strafvoering [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 Strafvoering [Code of Criminal Procedure], art. 51(e), Sv (Neth.)
419 12 Wetboek van Strafvoering [Code of Criminal Procedure], art. 51(b), Sv. (Neth.).
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. At the end of 2022, there were twenty active investigations in the Netherlands relating to international crimes. 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. The same suspect will also face prosecution, along with eleven other women, for membership in a terrorist organization. In January 2023, Dutch authorities arrested a Syrian refugee accused of war crimes while allegedly serving as a security official for ISIS. 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. A man was also arrested in October 2023 for involvement in the 1994 Rwandan genocide. 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.

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 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. Other trials relating to torture and war crimes in Afghanistan have resulted in acquittals or have been closed for lack of evidence.

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. 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. 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.\(^{439}\)

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.

---

435 Ibid.
438 Boffey, “Iran Behind Two Assassinations in Netherlands—Minister.”
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. 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. Double criminality is not required. 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. There is no statute of limitations for genocide, crimes against humanity, or gross war crimes. War crimes not considered to be gross have a ten-year statute of limitations.

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

---


444 See Brotsbalen [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 Proposion [Prop.] 2009/10:50 Avskaffande av preskription för vissa alvarliga 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 Brotsbalen [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.).


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

Swedish authorities can open either investigations against specific perpetrators or structural investigations. 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. 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.” 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.

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. This approval looks into, inter alia, the compatibility of a prosecution with public international law 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. 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.

VICTIM PARTICIPATION

Witnesses, aggrieved persons, and injured parties are all afforded certain rights—for example, security measures and permission to make certain statements. Notably, målsäganden, or aggrieved persons, can initiate private prosecutions when the prosecutor declines to bring a case. They can also appeal a decision against bringing a case, which is then reviewed by a senior prosecutor. Additionally, aggrieved persons can claim damages and be eligible for monetary compensation. 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. 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.

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. However, it has also tackled several notable situations, including the only trial and conviction for atrocities committed 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. Sweden also has several ongoing structural investigations, specifically regarding ISIS, Syria, and Ukraine.

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

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. He appealed the decision, the prosecution said corresponded to the profits the company made from the sale of the business in 2003.
ceedings of which began on January 11, 2023. On December 19, 2023, the Court of Appeal upheld Noury’s conviction and life sentence, and awarded damages for mental suffering to the deceased victims’ relatives and to the surviving aggrieved persons. While the Court of Appeal found that in some cases the prosecution did not prove that certain people who were named in the indictment had been executed, overall it upheld the verdict and found the prosecution substantiated.

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. 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. The Court of Appeal upheld the finding of a nexus between MEK-linked prisoners’ executions and the Iraq-Iran conflict. While not binding on other jurisdictions, this still creates a precedent for any future trials of 1988 prison massacre perpetrators to include war crimes 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 law.
atrocities. 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. 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. 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. 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.

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 were unable to travel to Sweden were able to testify in person. 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. 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. 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. Further, it limited international engagement, particularly among the media, despite the international implications of the trial.


475 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://crcr.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 15295-19 (Swed.); “Report 43: The Verdict;” “Report 3: The Prosecution’s Opening Presentation Pt. 1.”

476 Ibid.

477 Ibid.


482 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://crcr.org/category/trial-reports/; گزارش‌های دادگاه جنایی (Hamid Nouri’s Court Reports), Iran Human Rights Documentation Center, last visited July 26, 2023, https://iranhrdc.org/fa/%d8%af%d8%a7%d8%a8%d8%a7%d8%a8%d9%85%db%8c%d8%af-%d9%86%d9%88%d8%b1%db%8c/%1HRCDC, YouTube, last visited July 25, 2023, https://www.youtube.com/@1HRDC/streams.
**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—including global languages, such as English or French—and are made available internationally.**
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.483 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.484 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.485 There is no

---

484 Crawford, “Why Switzerland is Relaunching an Iranian Cold Case for ‘Genocide.’”
485 Schweizersches Strafgesetzeuch (StGB) [Criminal Code] December 21, 1937, art. 6–7, 185, 185bis, 264–264j, 264m (Switz.) (status as of June 1, 2022).
double criminality requirement for these crimes.\textsuperscript{486} 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.\textsuperscript{487} There is a parliamentary initiative to add torture as a standalone offense to the SCC.\textsuperscript{488} Additionally, as of 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.\textsuperscript{489}

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.\textsuperscript{490} For genocide, jurisdiction begins on the day it was added to the SCC: December 15, 2000.\textsuperscript{491} Jurisdiction for crimes against humanity does not begin until their recognition in the SCC on January 1, 2011.\textsuperscript{492} Jurisdiction over enforced disappearance and hostage taking (under the current definition) as standalone crimes begins on January 1, 2017, and October 1, 1982, respectively.\textsuperscript{493} Generally there is no retroactivity under the SCC, except when the former laws are more favorable to the defendant.\textsuperscript{494} 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.\textsuperscript{495} Further, a 2023 Federal Criminal 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.\textsuperscript{496}

Core international crimes are generally not subject to a statute of limitations.\textsuperscript{497} However, because there were previously statutes of limitations, there are exceptions where the statutes of


\textsuperscript{487} 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. Schweizerisches 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.


\textsuperscript{490} 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] December 31, 1937, footnote 333 (Switz.) (status as of August 1, 2023) (indicating the days of the amendments to the CPM); see also, Bundesstrafgericht [BStR] [Federal Criminal Court] July 19, 2022, Ministère Public de la Confédération, 15; Schweizerisches Strafgesetzbuch [StGB] 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 pénal militaire et de la procédure 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).

\textsuperscript{491} Schweizerisches Strafgesetzbuch [StGB] 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).

\textsuperscript{492} Schweizerisches Strafgesetzbuch [StGB] December 21, 1937, art. 185, 185bis (Switz.) (status as of June 1, 2022).

\textsuperscript{493} Ibid., art. 2, (Switz.).

\textsuperscript{494} Bundesstrafgericht [BStR] [Federal Criminal Court] 23 September 2023, A. contre Ministère public de la Confédération, Décision du 23 Septembre 2021 Cour des plaintes, paras. 2–2.13.


\textsuperscript{496} Schweizerisches Strafgesetzbuch [StGB] December 21, 1937, art. 101 (Switz.) (status as of September 1, 2023).
limitations expired before they were removed.\textsuperscript{498} 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.\textsuperscript{499} 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.\textsuperscript{500} The crime of enforced disappearance has a fifteen-year statute of limitations.\textsuperscript{501} 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.\textsuperscript{502} However, there is no functional immunity for former heads of state for crimes under \textit{jus cogens} norms, including core international crimes and torture.\textsuperscript{503}

**BRINGING A CASE**

Core international crimes and hostage taking to “extert duress on federal or foreign authorities” are under federal jurisdiction, while enforced disappearance and offenses related to torture are under cantonal jurisdiction.\textsuperscript{504} 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.”\textsuperscript{505} Preliminary proceedings are considered to have commenced once the police begin enquiries or the public prosecutor opens an investigation.\textsuperscript{506} The police inform the public prosecutor of any serious offences or other serious incidents, at which time the public prosecutor opens an investigation.\textsuperscript{507} Once the investigation is complete, the public prosecutor either abandons the proceedings or brings charges.\textsuperscript{508}

Under the SCC, there is only jurisdiction when the offender is in Switzerland.\textsuperscript{509} 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.\textsuperscript{509} 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.\textsuperscript{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 jurisdic-

\textsuperscript{498} Ibid.
\textsuperscript{499} Ibid.
\textsuperscript{500} 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 Strafgesetzesuche [StGB] [Criminal Code] December 21, 1937, art. 97, 98, 185, 185bis (Switz.) (status as of June 1, 2022).
\textsuperscript{504} Schweizerisches Strafgesetzesuche [StGB] [Criminal Code] December 21, 1937, art. 22–25 (Switz.) (status as of July 1, 2022).
\textsuperscript{505} 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/rvc.html; Schweizerische Sstrafprozessordnung (StPO) [Code of Criminal Procedure] October 5, 2007, art. 301, 304, (Switz.) (status as of August 1, 2023).
\textsuperscript{506} Schweizerische Sstrafprozessordnung (StPO) [Code of Criminal Procedure] October 5, 2007, art. 300. (Switz.) (status as of August 1, 2023)
\textsuperscript{507} Schweizerische Sstrafprozessordnung (StPO) [Code of Criminal Procedure] October 5, 2007, art. 307, 309, (Switz.) (status as of August 1, 2023).
\textsuperscript{508} Ibid., art. 317–319, 324.
\textsuperscript{509} Schweizerisches Strafgesetzesuche [StGB] [Criminal Code] December 21, 1937, art. 6(l), 7(l), 264m, (Switz.) (status as of September 1, 2023).
\textsuperscript{511} Schweizerisches Strafgesetzesuche [StGB] [Criminal Code] December 21, 1937, art. 264m, 264–264j, 264m (Switz.) (status as of June 1, 2022).
tion was committed.\textsuperscript{512} 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.\textsuperscript{513}

**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.\textsuperscript{514} Those suffering harm can file declarations requesting a prosecution, in which they can participate as private plaintiffs, or can file a civil claim.\textsuperscript{515} Regardless whether they join as plaintiffs, victims also have certain rights, including protective measures and the right to remain silent.\textsuperscript{516} Private claimants also benefit from additional rights, such as legal aid if needed.\textsuperscript{517}

**UNIVERSAL JURISDICTION CASES**

Despite a fair number of investigations, Switzerland has had few convictions under universal jurisdiction provisions.\textsuperscript{518} 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.\textsuperscript{519} 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.\textsuperscript{520} 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.\textsuperscript{521} 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.\textsuperscript{522}

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

\textsuperscript{512} Schweizhersches Strafgesetzeuch [StGB] [Criminal Code] December 21, 1937, art. 264m (Switz.) (status as of July 1, 2022); Schweizerische Strafprozessordnung [StPO] [Code of Criminal Procedure] October 5, 2007, art. 7(f), (Switz.) (status as of August 1, 2023).


\textsuperscript{514} Schweizerische Strafprozessordnung [StPO] [Code of Criminal Procedure] October 5, 2007, art.115–116, (Switz.) (status as of August 1, 2023).

\textsuperscript{515} Ibid., arts. 118, 119.

\textsuperscript{516} 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).


remanded to the Geneva courts.523 He was charged with l’assassinat, or murder, rather than core crimes, with Swiss courts having extraterritorial jurisdictions due to his Swiss citizenship.524 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.”525 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.526

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.527 Sonko’s lawyer characterized his pretrial detention, which had lasted six years as of January 2023, as an abuse of his rights.528 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.529 In August 2023, the OAG filed an indictment with the Federal Criminal Court against Nezzar.530

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.531 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

---


526 “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.”


For two other situations, the proceedings remain ongoing but the suspects were able to leave the country. 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. 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."). 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.

Finally, in September 2023, a Swiss court acquitted Yuri Harauski, a former member of a Belarusian security services unit, for enforced disappearance. 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.” 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.”

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. Progress has increased over the course of 2023—for example, in the cases of Sonko and Nezzar. 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

---


540 Ibid.


543 “Ousman Sonko Case: The Second Trial for Prosecution 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.”
has meant a lack of sufficient specialization, combined with a systematic reduction in staff and orders to prioritize mutual assistance-related cases.\(^{544}\)

**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.\(^{545}\) However, Switzerland’s historic use of these provisions has been tepid, with cases stymied by 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.\(^{546}\) The reluctance to prosecute crimes that could “create diplomatic problems,” combined with insufficient financial and human resources, has reportedly prevented cases from being prosecuted.\(^{547}\) 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.\(^{548}\) Switzerland hosts both Iranian refugees and Iranian businessmen and officials and their families, including several who have been sanctioned by the United States.\(^{549}\) 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.\(^{550}\) 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.\(^{551}\)

**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.**

---


545 Schweizerisches Strafgesetzeuch [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.’”

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


548 Rigender, “Iranian Protests Test Switzerland’s Special Status with Iran.”


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.

<table>
<thead>
<tr>
<th>STATE</th>
<th>POLICE/LAW-ENFORCEMENT AUTHORITIES</th>
<th>PROSECUTORIAL/JUDICIAL AUTHORITIES</th>
<th>NONGOVERNMENTAL ORGANIZATIONS</th>
</tr>
</thead>
</table>
| **BELGIUM** | For Belgium, it is advised to contact the federal prosecutor’s office, not law enforcement. | PARQUET FÉDÉRAL  
Website: https://www.om-mp.be/fr/votre-mp/parquet-federal/contact  
Phone: +32 2 557 77 11  
Email: parquet.federal@just.fgov.be | FÉDÉRATION INTERNATIONALE POUR LES DROITS HUMAINS (FIDH)—BRUSSELS OFFICE  
Website: https://www.fidh.org/en  
Phone: +32 2 609 44 23  
Email: https://www.fidh.org/en/about-us/contact-1776/# |
| **ENGLAND AND WALES** | METROPOLITAN POLICE COUNTER TERRORISM COMMAND (SO15)  
Website: https://www.met.police.uk/advice/advice-and-information/war-crimes/af/report-a-war-crime  
Phone: N/A  
Email: SO15Mailbox.WarCrimesunit@met.pnn.police.uk  
SERIOUS FRAUD OFFICE  
Website: https://www.sfo.gov.uk/  
Phone: N/A  
Email: There is a secure reporting form: https://sforeporting.egressforms.com/  
NATIONAL CRIME AGENCY  
Website: https://www.nationalcrimeagency.gov.uk/  
Phone: N/A  
Email: N/A | CROWN PROSECUTION SERVICE: COUNTER TERRORISM DIVISION (CTD)  
Website: https://www.cps.gov.uk/special-crime-and-counter-terrorism-division-sctd  
Phone: N/A  
Email: N/A  
CROWN PROSECUTION SERVICE: DIRECTOR OF PUBLIC PROSECUTIONS  
Website: https://www.cps.gov.uk/about-cps  
Phone: N/A  
Email: N/A | REDRESS LONDON  
Website: https://redress.org  
Phone: +44 (0)20 7793 1777  
Email: info@redress.org |
<table>
<thead>
<tr>
<th>STATE</th>
<th>POLICE/LAW-ENFORCEMENT AUTHORITIES</th>
<th>PROSECUTORIAL/ JUDICIAL AUTHORITIES</th>
<th>NONGOVERNMENTAL ORGANIZATIONS</th>
</tr>
</thead>
</table>
| ENGLAND AND WALES (CONTINUED) | CRIMESTOPPERS  
This is an organization that anonymously sends information to the police.  
Website: https://crimestoppers-uk.org/give-information/forms/give-information-anonymously  
Phone: N/A  
Email: There is a reporting form: https://crimestoppers-uk.org/give-information/forms/pre-form | | |
| FRANCE | OFFICE CENTRAL DE LUTTE CONTRE LES CRIMES CONTRE L'HUMANITÉ ET LES CRIMES DE HAINE (OCLCH)  
Website: 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  
Phone: +33 01 85 56 27 17  
Email: oclch@gendarmerie.interieur.gouv.fr | LE PARQUET NATIONAL ANTI-TERRORISTE (PNAT)  
No contact information is available for the PNAT. | FÉDÉRATION INTERNATIONALE POUR LES DROITS HUMAINS (FIDH)  
Website: https://www.fidh.org/en  
Phone: +0033 1 43 55 25 18  
Email: https://www.fidh.org/en/about-us/contact-1776/ |
| GERMANY | ZENTRALSTELLE FÜR DIE BEKÄMPFUNG VON KRIEGSVERBRECHEN (ZBKV)  
Website: https://www.bka.de/DE/UnsereAufgaben/Aufgabenbereiche/Zentralstellen/ZBKV/zbkv_node.html  
Phone: +49(0)611/55-0  
Email: poststelle@bka.de-mail.de | DER GENERALBUNDESANWALT  
Website: https://www.generalbundesanwalt.de/DE/Home/home_node.html  
Phone: +49 (0721) 81 91 0  
Email: poststelle@generalbundesanwalt.de | EUROPEAN CENTER FOR CONSTITUTIONAL AND HUMAN RIGHTS (ECCHR)  
Website: https://www.ecchr.eu/en  
Phone: +49 (0)30 – 400 485 90  
Email: info@ecchr.eu |
<table>
<thead>
<tr>
<th>STATE</th>
<th>POLICE/LAW-ENFORCEMENT AUTHORITIES</th>
<th>PROSECUTORIAL/ JUDICIAL AUTHORITIES</th>
<th>NONGOVERNMENTAL ORGANIZATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>THE NETHERLANDS</td>
<td>TEAM INTERNATIONALE MISDRIJVEN</td>
<td>OPENBAAR MINISTERIE: INTERNATIONALE MISDRIJVEN</td>
<td>REDRESS NEDERLAND</td>
</tr>
<tr>
<td></td>
<td>Website: <a href="https://www.politie.nl/onderwerpen/team-internationale-misdrijven-tim.html">https://www.politie.nl/onderwerpen/team-internationale-misdrijven-tim.html</a></td>
<td>Website: <a href="https://www.prosecutionservice.nl/topics/international-crimes">https://www.prosecutionservice.nl/topics/international-crimes</a></td>
<td>Website: redress.org</td>
</tr>
<tr>
<td></td>
<td>Phone: +31 88 6625 743</td>
<td>Phone: +31 88 6625 743</td>
<td>Phone: +31 708 919 317</td>
</tr>
<tr>
<td></td>
<td>Email: <a href="mailto:warcrimes@politie.nl">warcrimes@politie.nl</a></td>
<td>Email: <a href="mailto:warcrimes@politie.nl">warcrimes@politie.nl</a></td>
<td>Email: <a href="mailto:info.nederland@redress.org">info.nederland@redress.org</a></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SWEDEN</td>
<td>POLISEN: WAR CRIMES UNIT</td>
<td>ÅKLAGARMYNDIGHETEN: THE NATIONAL UNIT AGAINST ORGANISED CRIME</td>
<td>CIVIL RIGHTS DEFENDERS</td>
</tr>
<tr>
<td></td>
<td>Phone: 114 14 (or internationally, +46 77 114 14 00)</td>
<td>Phone: N/A</td>
<td>Phone: +46 (0)8 545 277 30</td>
</tr>
<tr>
<td></td>
<td>Email: <a href="mailto:registrar.kansli@polisen.se">registrar.kansli@polisen.se</a></td>
<td>Email: <a href="mailto:international@prosecutor.se">international@prosecutor.se</a></td>
<td>Email: <a href="mailto:info@crd.org">info@crd.org</a></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SWITZERLAND</td>
<td>BUNDESAMT FÜR POLIZEI FEDPOL</td>
<td>BUNDESANWALTSCHAFT: RECHTSHILFE, TERRORISMUS, VÖLKERSTRAFRECHT UND CYBERKRIMINALITÄT (RTVC)</td>
<td>TRIAL INTERNATIONAL</td>
</tr>
<tr>
<td></td>
<td>No other contact information is available.</td>
<td>Phone: +41 58 462 45 79</td>
<td>Phone: +41 22 321 61 10</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Email: PrivaSphere messaging platform: <a href="https://www.bundesanwaltschaft.ch/mpc/en/home/eingaben-an-die-bundesanwaltschaft/eingaben-an-die-ba.html">https://www.bundesanwaltschaft.ch/mpc/en/home/eingaben-an-die-bundesanwaltschaft/eingaben-an-die-ba.html</a></td>
<td>Email: <a href="mailto:info@trialinternational.org">info@trialinternational.org</a></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
CHAIRMAN
*John F.W. Rogers

EXECUTIVE CHAIRMAN EMERITUS
*James L. Jones

PRESIDENT AND CEO
*Frederick Kempe

EXECUTIVE VICE CHAIRS
*Adrienne Arsht
*Stephen J. Hadley

VICE CHAIRS
*Robert J. Abernethy
*Alexander V. Mirtchev

TREASURER
*George Lund

DIRECTORS
Stephen Achilles
Elliot Ackerman
*Gina F. Adams
Timothy D. Adams
*Michael Andersson
Alain Bejjani
Colleen Bell
Sarah E. Beshar
Stephen Biegun
Linden P. Blue
Brad Bondi
John Bonsell
Philip M. Breedlove
David L. Caplan
Samantha A.
Carl-Yoder
*Teresa Carlson
*James E. Cartwright
John E. Chapoton
Ahmed Charai
Melanie Chen
Michael Chertoff
*George Chopivsky
Wesley K. Clark
*Helima Croft
Ankit N. Desai
Dario Deste
Lawrence Di Rita
*Paula J. Dobriansky
Joseph F. Dunford, Jr.
Richard Edelman
Stuart E. Eizenstat
Mark T. Esper
Christopher W.K. Fetzer
*Michael Fisch
Alan H. Fleischmann
Jendayi E. Frazer
*Meg Gentle
Thomas H. Glocer
John B. Goodman
Sherri W. Goodman
Marcel Grisnigt
Jarosław Grzesiak
Murathan Gûnal
Michael V. Hayden
Tim Holt
*Karl V. Hopkins
Kay Bailey Hutchison
Ian Ihnatowycz
Mark Isakowitz
Wolfgang F. Ischinger
Deborah Lee James
*Joia M. Johnson
*Safi Kalo
Andre Kelleners
Brian L. Kelly
John E. Klein
*C. Jeffrey Knittel
Joseph Konzelmann
Keith J. Krach
Franklin D. Kramer
Laura Lane
Almar Latour
Yann Le Pallec
Jan M. Lodal
Douglas Lute
Jane Holl Lute
William J. Lynn
Mark Machin
Marco Margheri
Michael Margolis
Chris Marlin
William Marron
Gerardo Mato
Erin McGrain
John M. McHugh
*Judith A. Miller
Dariusz Mioduski
*Richard Morningstar
Georgette Mosbacher
Majida Mourad
Virginia A. Mulberger
Mary Claire Murphy
Julia Nesheiwat
Edward J. Newberry
Franco Nuschese
Joseph S. Nye
*Ahmet M. Oren
Ana I. Palacio
*Kostas Pantazopoulos
Alan Pellegrini
David H. Petraeus
*Lisa Pollina
Daniel B. Poneman
*Dina H. Powell McCormick
Michael Punke
Ashraf Qazi
Thomas J. Ridge
Gary Rieschel
Charles O. Rossotti
Harry Sachinis
C. Michael Scaparrotti
Ivan A. Schlager
Rajiv Shah
Wendy R. Sherman
Gregg Sherrill
Jeff Shockey
Ali Jehangir Siddiqui
Kris Singh
Varun Sivaram
Walter Slocombe
Christopher Smith
Clifford M. Sobel
Michael S. Steele
Richard J.A. Steele
Mary Steet
Nader Tavakoli
*Gil Tenzer
*Frances F. Townsend
Clyde C. Tuggle
Francesco G. Valente
Melanne Verveer
Tyson Voelkel
Michael F. Walsh
Ronald Weiser
*Al Williams
Ben Wilson
Maciej Witucki
Neal S. Wolin
Tod D. Wolters
*Jenny Wood
Guang Yang
Mary C. Yates
Dov S. Zakheim

HONORARY DIRECTORS
James A. Baker, III
Robert M. Gates
James N. Mattis
Michael G. Mullen
Leon E. Panetta
William J. Perry
Condoleezza Rice
Horst Teitschik
William H. Webster

*Executive Committee Members

List as of
January 1, 2024