



## The Limitations of the Principle of Universal Jurisdiction in the Service of the Accountability Process and Its Inability to Prosecute the Highest Ranking Officials

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The Geneva Conventions of 1949<sup>2</sup>, the Convention Against Torture of 1984<sup>3</sup>, and the International Convention for the Protection of All Persons from Enforced Disappearance of 2006<sup>4</sup>, all stipulated the principle of universal jurisdiction<sup>5</sup>; this principle enables local prosecution bodies to prosecute those involved in atrocity crimes such as war crimes<sup>6</sup>, crimes against humanity<sup>7</sup>, terrorism, and torture, even if they are not committed on the state's territory, and even if the perpetrator or the victims are not citizens of the state. In the last three years, however, there have been tremendous exaggerations of the limited role that universal jurisdiction can play. The application of this principle means that the national judiciary in the country in which the violation was committed has failed, and the international criminal judiciary, represented by the International Criminal Court, or the establishment of a special international court have also failed.

The task that universal jurisdiction can play is narrow and beset by numerous complications and difficulties<sup>8</sup> stemming firstly from the nature of this principle itself, and secondly from the willingness or otherwise of the world's countries to interact with it. Whilst it is, obviously, one of the tools used in achieving accountability, it is a simple tool in its essence, for several reasons, perhaps the most prominent of which is that the laws of most countries require the presence of the perpetrator within the state's territory, and it is highly unlikely that anyone from the first or second tiers of offenders among the perpetrators of violations in the Syrian regime will travel to any of the countries whose judiciaries exercise the principle of jurisdiction. In this, we find that all the cases that have been brought have been against low-ranking persons, the majority of whom are not decision-makers, with their status possibly around the ninth or tenth tier among the ranks of regime officials if we assume that there are ten such categories. In addition to these difficulties, there are many legal problems with conducting trials in absentia. Finally, the states allied with the Syrian regime, such as Russia, Iran, China, Venezuela, and Lebanon will not hand over wanted crim-

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<sup>2</sup> ICRC, The Geneva Conventions of 1949 and their Additional Protocols, <https://www.icrc.org/en/doc/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm>

<sup>3</sup> OHCHR, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>

<sup>4</sup> OHCHR, International Convention for the Protection of All Persons from Enforced Disappearance, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/IntConventionEnforcedDisappearance.aspx>

<sup>5</sup> ICRC, The scope and application of the principle of universal jurisdiction: ICRC statement to the United Nations, 2015, <https://www.icrc.org/en/document/scope-and-application-principle-universal-jurisdiction-icrc-statement-united-nations-2015>

<sup>6</sup> International Criminal Court, Rome Statute, Article 8, <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>

<sup>7</sup> International Criminal Court, Rome Statute, Article 7, <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>

<sup>8</sup> Human Rights Watch, First Cracks to Impunity in Syria, Iraq, October 20, 2016, <https://www.hrw.org/news/2016/10/20/qa-first-cracks-impunity-syria-iraq>

inals to the German, French or Swedish public prosecution service, even if judgments are issued against them and the public prosecution officially requests their extradition. This in no way suggests that no work should be done to issue arrest warrants against high-level Syrian regime and other party's individuals involved, but is simply an acknowledgement that such judgments will not usually lead to their arrest and trial.

In June 2016, I spoke at [the United Nations headquarters in New York](#), in the presence of the ambassadors of three of the most prominent countries active in the field of universal jurisdiction, Sweden, Germany, France, in [an intervention published on our YouTube channel](#), about the limitations of universal jurisdiction.

**The vast majority of the complaints or cases that have been filed and ruled upon or which are still under investigation are not against the Syrian regime:**

The Syrian regime is the primary perpetrator of the vast range of violations perpetrated in Syria, some of which amount to crimes against humanity and war crimes, being responsible, according to the Syrian Network for Human Rights' (SNHR) data, for between 85% to 90% of all violations perpetrated, while the other parties to the conflict are collectively responsible for the remaining figure of between 10% to 15%; this is evident in all the reports of the Independent International Commission of Inquiry (COI)<sup>9</sup>, which described many of the Syrian regime's violations as crimes against humanity, meaning that they are systematic and widespread, while COI described the violations by the other parties to the conflict as war crimes (except for the crime of torture by ISIS). When we talked with most of the refugees, they had primarily been affected by the Syrian regime's violations; despite this, however, the vast majority of complaints or cases that have been filed and ruled upon or which are still under investigation are not against the Syrian regime but against ISIS, al Nusra Front (Jabhat al Nusra), Ahrar al Sham, and Free Army personnel (Armed Opposition factions), with this point confirmed by our colleagues at Human Rights Watch (HRW) in their expanded report on this topic published on October 3, 2017, entitled "[These are the Crimes we are Fleeing](#)" where the report indicated that:

"To date, the cases brought to trial are not representative of the crimes in Syria. The war crimes cases that have gone to trial have nearly all been prosecutions of fighters from the Free Syrian Army and other non-state armed groups opposed to the government, ISIS and Jabhat al-Nusra, while one case was brought against a low-level member of the Syrian army. Further, most Syria-related cases in Germany involve prosecution for terrorism offenses rather than charges for war crimes or crimes against humanity."<sup>10</sup>

The main reason behind this is to prosecute those affiliated with extremist organizations under the terrorism law, even if they are mostly war crimes, with the framework of terrorism law in some countries being broad (the previous HRW report referred to German law, for example<sup>11</sup>) and holds accountable for joining an organization that is classified as "terrorist", or for providing support or assistance. Certainly, this does not reflect the nature of the situation in Syria, and many Syrians have interpreted the trial of other parties more broadly than the Syrian regime as a state policy.

<sup>9</sup> OHCHR, Independent International Commission of Inquiry on the Syrian Arab Republic, lists of all reports, updates, statements and resolutions issued by or related to the Independent International Commission of Inquiry on the Syrian Arab Republic., <https://www.ohchr.org/EN/HRBodies/HRC/IIICISyria/Pages/Documentation.aspx>

<sup>10</sup> Human Rights Watch, These are the Crimes we are Fleeing, p. 33, October 3, 2017, <https://www.hrw.org/report/2017/10/04/these-are-crimes-we-are-fleeing/justice-syria-swedish-and-german-courts>

<sup>11</sup> Human Rights Watch, These are the Crimes we are Fleeing, p. 22, October 3, 2017, <https://www.hrw.org/report/2017/10/04/these-are-crimes-we-are-fleeing/justice-syria-swedish-and-german-courts>

There are many other minor matters related to the above issues, such as the continuing conflict in Syria, which leaves investigators unable to safely visit the crime scene, the limited access to evidence, and the Syrian regime's refusal to cooperate in any of the cases, whether against it or against opposition groups or extremist Islamist organizations. While it is true that there are hundreds of thousands of refugees in Europe, who are a main source of information, many of them refuse to cooperate for fear of reprisals by the Syrian regime because they have relatives and friends in Syria.

### **The trial in Koblenz<sup>12</sup> :**

The trial in Koblenz does not deviate from the parameters cited above, with many Syrians aware of the principle of universal jurisdiction, and having heard that other trials are taking place in Europe because of this trial specifically, although the trial had already begun earlier in the Syrian conflict, in 2015<sup>13</sup> , with the first ruling for the first case being issued against Muhannad D., an armed opposition member, who was sentenced to 8 years in prison by the Appeal Court in Sweden in August 2016<sup>14</sup> .

The importance and special significance of the Koblenz trial stems from the fact that it is a trial of individuals who were working with the Syrian regime, and that, while it is true that they have defected from the regime, they are still being held accountable for the violations that they committed during the period of their work with it. As SNHR indicated previously, both Eyad and Anwar are from the very low ranks in the Syrian regime hierarchy, and this trial will not create a state of panic for the regime or stop torture; the Syrian regime has lost dozens of its officers and members from its first and second tiers but that hasn't prevented it from continuing the killing and bombardment. Even if we assume, for the sake of argument, that a first-tier high-ranking member of the regime was handed over to a European court, this also will not deter the regime which will continue to practice torture and killing under torture, and will be largely unaffected by losing a few people, simply by hiring those who take over their duties after them, as has repeatedly happened over the past ten years.

We must always establish and state our expectations, as the only option currently available to us to hold perpetrators of violations criminally accountable is through universal jurisdiction - perhaps we talk in another article about the ongoing accountability step through the International Court of Justice - and it often will not be able to prosecute the first-rank personnel, but this does not mean that we don't go ahead with this option, as it includes many positives in the event of avoiding exaggeration; although it is trying individuals such as Eyad and Anwar, but these individuals are a small part of the brutal security system of the Syrian regime, and their trial has revealed the barbaric torture practices practiced by the Syrian regime, and received wide media coverage, which contributed to further exposing the crimes of the Syrian regime in front of German, European and international public opinion, and this is a tremendous achievement in terms of advocating for the issue of detainees and the torture they are subjected to, and advocating the cause of the Syrians as a whole and their right to demand disposal of such a regime that practices the most heinous methods against its political opponents; just as many Europeans have realized that the Syrians did not just flee from killing and bombardment, but also for fear of arrest and the brutal torture they would be subjected to. This has had an impact on changing public opinion towards

<sup>12</sup> Reuters, First Syria torture trial opens in Germany on Thursday, April 22, 2020. <https://www.reuters.com/article/us-syria-security-germany-idUSKCN22424N>

<sup>13</sup> BBC, A Syrian citizen imprisoned in Sweden due to a video showing scenes of beating, May 11, 2016. [https://www.bbc.com/arabic/worldnews/2016/05/160511\\_sweden\\_court\\_syrian\\_assult](https://www.bbc.com/arabic/worldnews/2016/05/160511_sweden_court_syrian_assult)

<sup>14</sup> Human Rights Watch, These are the Crimes we are Fleeing, p. 31, October 3, 2017. <https://www.hrw.org/report/2017/10/04/these-are-crimes-we-are-fleeing/justice-syria-swedish-and-german-courts>

Syrian refugees and their return. Finally, all these trials confirm the tireless dedication to freedom and justice and the constant diligence of Syrian advocates of democratic change to seize the opportunity for every attempt, no matter how small, to end the current culture of impunity, and express their yearning for universal justice, including justice for their opponents, and their aspiration towards practicing all their experiences in the process of transitional justice, which includes accountability for the largest possible number of perpetrators of violations.

It was published by the Harmoon Center for Contemporary Studies in a file titled "[Transitional Justice: The Path and Indicators ... Open Discussion with Experts and Specialists](#)".



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