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ISSUE BRIEF

PRACTITIONER'S MANUAL: HOLDING THE ISLAMIC REPUBLIC OF IRAN ACCOUNTABLE FOR ATROCITY CRIMES

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I. Introduction

With few to no prospects for accountability within Iran's domestic courts, victims and survivors of serious violations of international law are turning toward an increasing number of foreign jurisdictions—most commonly in Europe and Canada, but also in Latin America, Africa, and other regions—to pursue justice for human rights violations carried out by the Islamic Republic of Iran. Under the principle of universal jurisdiction, certain domestic justice systems allow prosecutions in national courts for crimes committed abroad, regardless of the victim's or perpetrator's nationality.[1] Limitations on universal jurisdiction vary between states, however, as do the processes for filing complaints and procedures for investigations, trials, and appeals.

This manual outlines the universal jurisdiction process for those pursuing prosecutions of crimes committed by the Iranian state. It outlines the types of crimes that universal jurisdiction may address, followed by a brief overview of procedures and tips for investigation and documentation procedures. The third section discusses specific jurisdictions with systems of universal jurisdiction and procedures for requesting an investigation and prosecution. Finally, an annex includes printed resources and organizations to contact for additional assistance.

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.

1 See, e.g., "What Is Universal Jurisdiction?" TRIAL International, https://trialinternational.org/topics-post/universal-jurisdiction/.



A woman gestures in defiance in response to Iranian security forces' crackdown on protests in central Tehran on December 27, 2009. Source: Stringer Iran via Reuters Connect

II. Crimes and Violations

Universal jurisdiction stems from the concept that certain crimes are of such gravity that they harm the international community, and national courts outside the country where the violations took place may prosecute them to protect the international order.[2] While the crimes subject to universal jurisdiction provisions differ by state, they generally include crimes against humanity, torture, war crimes, and genocide.[3]

Crimes Against Humanity

Crimes against humanity are certain crimes committed as part of a widespread or systematic attack directed against a civilian population, with knowledge of the attack.[4] These crimes include murder, torture, sexual violence, enforced disappearance, imprisonment, and persecution, among others.[5] The perpetration of crimes against humanity is often directed by the state but may also be committed by non-state actors.[6] Unlike war crimes, crimes against humanity may also be committed in peacetime, including times of social unrest that do not amount to war.

In the context of Iran, examples of violations that could amount to crimes against humanity include the killing of thousands of political prisoners in Iran's jails in 1988; state crackdowns on protests, particularly those in November 2019 (the "Aban" protests) and

2 See, e.g., Rick Gladstone, "An Old Legal Doctrine That Puts War Criminals in the Reach of Justice," The New York Times, February 28, 2021, https://www.nytimes.com/2021/02/28/world/europe/universal-jurisdiction-war-crimes.html; "What Is Universal Jurisdiction?" Center for Justice & Accountability, https://cja.org/what-we-do/litigation/legal-strategy/universal-jurisdiction/.

3 "What Is Universal Jurisdiction?" Center for Justice & Accountability.

4 See, e.g., *The United Nations Rome Statute of the International Criminal Court*, art. 7, https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf.

5 Ibid.

6 See, e.g., "What Are Crimes Against Humanity?" TRIAL International, https://trialinternational.org/topics-post/crimes-against-humanity/.



A view of the entrance to Evin Prison in Tehran. The prison is infamous for reports of torture and mistreatment of political prisoners. Source: Majid Asgaripour/WANA (West Asia News Agency) via Reuters Connect

in September 2022;[7] and the arbitrary detention of foreign and dual nationals.[8]

Torture

Torture is any act by which severe physical or mental pain or suffering is intentionally inflicted on a person for such purposes as obtaining information or a confession; punishing them; intimidating or coercing them or a third person; or any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.[9]

7 "Blood-Soaked Secrets: Why Iran's 1988 Prison Massacres Are Ongoing Crimes Against Humanity," Amnesty International, 2017, 8-10, https://www.amnesty.org/en/wp-content/uploads/2021/12/MDE1394212018ENGLISH.pdf; "Beyond Reasonable Doubt: Crimes against Humanity Committed by Iran's Officials, Tribunal Finds," Aban Tribunal, October 4, 2022, https://abantribunal.com/2022/10/04/judg/); Omid Shams, "List of Children Victims of Iran Protest Crackdown; How They Were Killed," IranWire, November 22, 2022, https://iranwire.com/en/politics/110071-how-did-the-islamic-republic-kill-dozens-of-iranian-children/.

8 Aida Ghajar and Omid Shams, "Blinding as a Weapon of War," IranWire, January 19, 2023, https://iranwire.com/en/politics/112823-blinding-as-a-weapon-of-war/; Carla Ferstman and Marina Sharpe, "Iran's Arbitrary Detention of Foreign and Dual Nationals as Hostage-taking and Crimes Against Humanity," *Journal of International Criminal Justice* 20, no. 2 (May 2022): 403-435, https://academic.oup.com/jicj/article/20/2/403/6543573.

9 UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, December 10, 1984, art. 1, https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading. Torture does not include pain or suffering arising only from, inherent in, or incidental to lawful sanctions, such as corporal punishment. However, the method of lawful sanctions must be consistent with practices that are widely accepted as legitimate by the international community, such as deprivation of liberty through imprisonment. UN Commission on Human Rights, *Report of the UN Special Rapporteur on Torture*, January 10, 1997, E/CN.4/1997/7, ¶ 7-8, https://digitallibrary.un.org/record/238288?ln=en. Certain methods of corporal punishment, such as flogging, stoning, and amputation of limbs have been deemed inconsistent with the Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment. *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Concluding Observations, Saudi Arabia, CAT/C/CR/28/5 (2002), ¶ 4(b), https://documents-dds-ny.un.org/doc/UNDOC/GEN/G02/425/66/PDF/G0242566.pdf?OpenElement.

Cases of torture at the hands or instruction of Iranian state authorities, such as allegations of torture occurring in Iranian detention centers,[10] could be prosecuted under foreign national courts through universal jurisdiction.

War Crimes

War crimes generally include grave breaches of the Geneva Conventions of August 12, 1949, and other "serious violations of the laws and customs applicable in international armed conflicts."[11] Offenses amounting to war crimes include, *inter alia*, murder, torture, intentional attacks on civilians, the taking of hostages, and mistreatment of prisoners of war.[12] Unlike crimes against humanity, war crimes must be committed within the context of an armed conflict, and state practice establishes that war crimes apply to both international and non-international armed conflicts.[13]

War crimes cases could be built for crimes in the context of Iranian conduct during the Iran–Iraq War—as was found in the Hamid Noury trial in Sweden—and for Iranian actors' direct involvement in Syria and Ukraine, and Iranian proxy groups' involvement in conflict zones such as Syria and Yemen.[14]

Genocide

Genocide refers to acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial, or religious group. Acts of genocide include killing members of a targeted group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; and forcibly transferring children of the group to another group.[15] Genocide is uniquely difficult to prove because it requires proof of genocidal intent—i.e., the perpetrators took their actions with the intent to destroy a group's identity—which is a difficult state of mind to establish with certainty, and only applies to the targeting of the four groups enumerated above.[16]The targeting of distinct political groups may not meet the definition of genocide.

III. Investigation and Documentation

Prior to filing a complaint, practitioners should gather relevant documentation and information to guide investigators and prosecutors in their investigation of serious human rights violations. When developing an investigation, investigators should familiarize themselves with best practices in collecting information on serious human rights violations and, where possible, seek expert and legal advice from organizations with experience in developing the type of investigation they are conducting (see the annex for additional resources and recommended organizations).[17] The following is a

10 Patrick Wintour, "Human Rights Lawyers Attempt to Bring Syria War Crimes Cases to ICC," *The Guardian*, February 16, 2022, https://www.theguardian.com/world/2022/feb/16/human-rights-lawyers-attempt-to-bring-syria-war-crimes-cases-to-icc; Colleen Long and Zeke Miller, "US Says Iran May Be 'Contributing' to War Crimes in Ukraine," AP News, January 9, 2023, https://apnews.com/article/russia-ukraine-iran-biden-education-jake-sullivan-886376045d35f9bb7bb96cc0d18a7869; "Syrian Victims of Iranian Crimes Should Not Be Overlooked," Syria Justice and Accountability Centre, January 23, 2020, https://syriaaccountability.org/syrian-victims-of-iranian-crimes-should-not-be-overlooked/; Missy Ryan, "U.N. Report Calls for Alleged War Crimes in Yemen to Be Referred to International Criminal Court," *The Washington Post*, September 10, 2020, https://www.washingtonpost.com/national-security/un-report-calls-for-alleged-war-crimes-in-yemen-to-be-referred-to-international-criminal-court/2020/09/10/3eb69194-f369-11ea-9279-45d6bdfe145f_story.html.

11 See, e.g., *The United Nations Rome Statute of the International Criminal Court*, art. 8, https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf.

12 Ibid.

13 See, e.g., *The United Nations Rome Statute of the International Criminal Court*, art. 8; "Rule 156. Definition of War Crimes," ICRC International Humanitarian Law Databases, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule156; Wintour, "Human Rights Lawyers"; Long and Miller, "US Says"; "Syrian Victims," Syria Justice and Accountability Centre; Ryan, "U.N. Report."

14 For an English-language version of the verdict in Hamid Noury's trial, see "Report 43: The Verdict," Civil Rights Defenders, July 17, 2022, https://crd.org/2022/07/17/report-43-the-verdict/.

15 UN General Assembly, *Convention on the Prevention and Punishment of the Crime of Genocide*, December 9, 1948, https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf.

16 See, e.g., an interview with war crimes expert Leila Sadat, "Why genocide is difficult to prove before an international criminal court," "Morning Edition," NPR, April 12, 2022, https://www.npr.org/2022/04/12/1092251159/why-genocide-is-difficult-to-prove-before-an-international-criminal-court.

17 See, e.g., *Handbook on Civil Society Documentation of Serious Human Rights Violations: Principles and Best Practices*, Public International Law & Policy Group, 2016, https://static1.squarespace.com/static/5900b58e1b631bffa367167e/t/59dfab4480bd5ef9add73271/1507830600233/Handbook-on-Civil-Society-Documentation-of-Serious-Human-Rights-Violations_c.pdf.

non-exhaustive list of the types of information relevant to authorities pursuing such cases.

Interviewing Witnesses and Victims

Witnesses and victims of human rights violations are the core of any investigation. Witness and victim interviews should only be conducted when in the best interests of those affected by violations, rather than for the sake of documentation itself.[18] For victims and witnesses to participate in an investigation in any capacity, they must first give their informed consent to be interviewed, with the understanding of how their information may be used and which jurisdictions, individuals, or entities will be receiving this information.[19] Obtaining informed consent requires that the interviewee is informed of and fully understands the purpose of the investigation; the risks and benefits of their participation; the procedures that the investigation team will follow; the confidentiality of the information they will provide; and the identity of the investigators, their affiliations, and means of contacting them.[20]

When asking victims or witnesses of atrocities to recount their experiences, investigators should be knowledgeable about the potential for retraumatization of respondents. To avoid causing unnecessary or unintended harm to respondents, investigators must act with empathy and respect when preparing for and conducting interviews and use trauma-informed interviewing techniques.[21] Investigators should always offer to refer respondents to the appropriate psychosocial support services if they appear to be suffering from retraumatization.[22]

Practitioners are responsible for adequately protecting the information they collect on human rights violations, and so should establish confidentiality measures when planning an investigation. These may include redacting respondents' personal information; using coded language to anonymize information; and securely storing information regarding the identity of a respondent separately from their testimony.[23] Victims and witnesses should be informed that their information may be disclosed to third parties—including the police, investigators, and the court—and that if the information is used in court, confidentiality cannot always be maintained.[24]

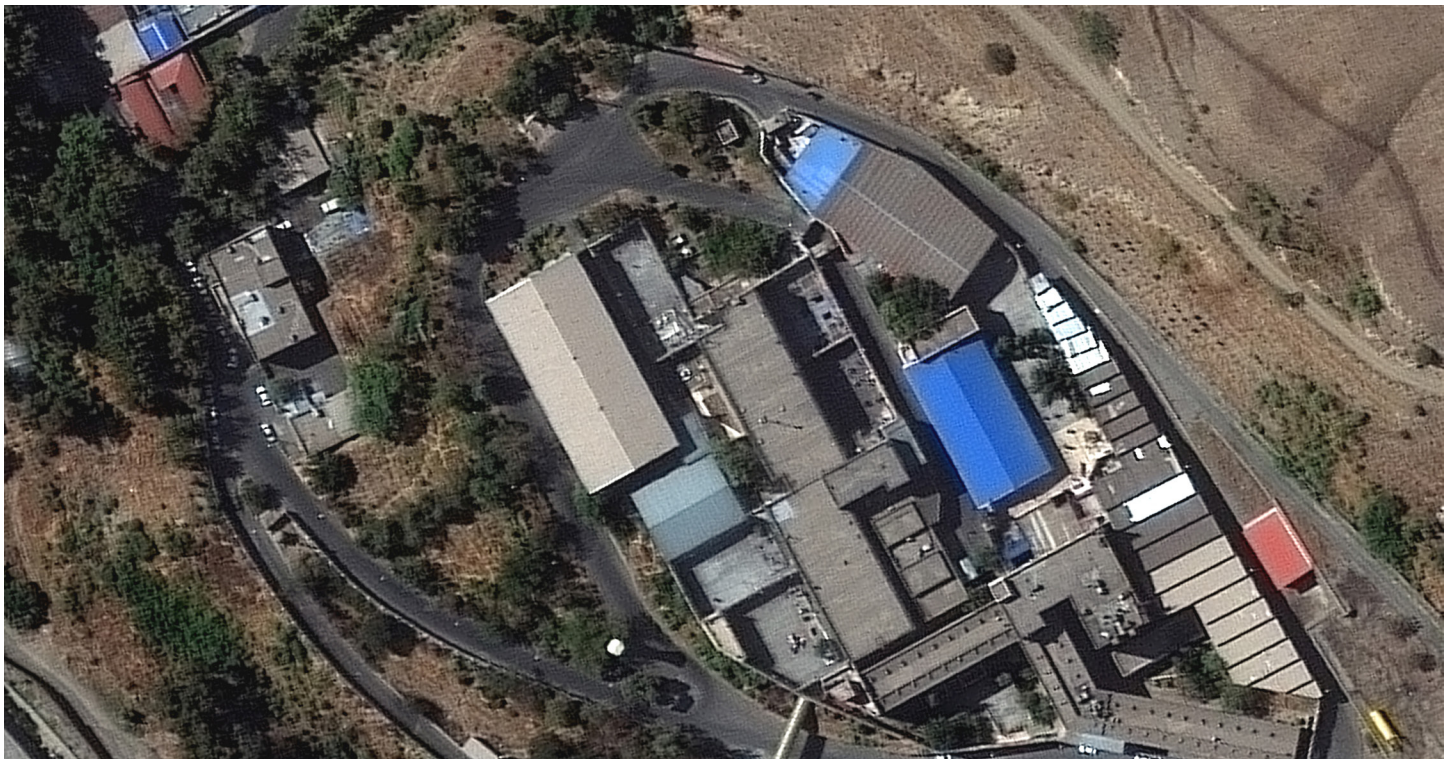
Open-Source Documentation

With increased access to cell phones and the internet, open-source material is playing an ever-larger role in the documentation of human rights violations. Investigators can now gather data about human rights violations from, for example, publicly available satellite images and photos and videos uploaded to social media platforms. As with traditional forms of evidence, however, prosecutors must be able to establish the authenticity of such open-source information for it to be admissible in court.[25] Open-source material should be handled and preserved according to the *Berkeley Protocol on Digital Open Source Investigations* so that it can best aid prosecutors and investigators, and to increase the likelihood it will be admissible.

Collecting Documentary Evidence

Documentary evidence such as financial records, government or corporate documents, medical records, photos, and videos related to the crimes are essential to building an investigation. In collecting such information, it is important to maintain a catalog of the documents collected that clearly identifies the source and context where the documents were found and how the documents were transferred to the investigator. Examples of cataloging documentary evidence and maintaining chain of custody can be found in the

18 Ibid, 22.
19 Ibid, 23.
20 Ibid, 24-25.
21 *Handbook on Civil Society Documentation of Serious Human Rights Violations: Principles and Best Practices*, Public International Law & Policy Group, 34; see generally, *Trauma-Informed Investigations Field Guide, United Nations*, https://www.unitad.un.org/sites/www.unitad.un.org/files/general/2104429-trauma-informed_investigations_field_guide_web_0.pdf.
22 *Handbook on Civil Society Documentation of Serious Human Rights Violations: Principles and Best Practices*, Public International Law & Policy Group, 35.
23 Ibid, 28.
24 Ibid, 29.
25 *Berkeley Protocol on Digital Open Source Investigations*, Human Rights Center at the University of California, Berkeley and Office of the United Nations High Commissioner for Human Rights, January 3, 2022, v, https://www.ohchr.org/sites/default/files/2022-04/OHCHR_BerkeleyProtocol.pdf.



Satellite images of Evin Prison taken before the complex was heavily damaged by a fire on October 15, 2022. Publicly available satellite images are a form of open-source information that can be gathered during an investigation. Source: Maxar Technologies/Handout via Reuters Connect

Public International Law & Policy Group's (PILPG's) *Handbook on Civil Society Documentation of Serious Human Rights Violations*.[26]

Physical Evidence and Chain of Custody

Civil society actors are generally deterred from gathering physical evidence found at a crime scene. This includes pieces of clothing, weapons, bullet casings, objects, or forensic evidence such as hair or fingerprints.[27] Only professionally trained investigators and experts should handle physical evidence of violations, but unofficial investigators may support by photographing or sketching items found at the scene that could provide useful information to professional investigators.[28] If there is physical evidence at risk of being permanently lost and it is not possible to find a professional to perform the collection, civil society actors may collect such evidence if it is safe to do so.[29] To retain as much evidentiary value as possible between the time of collection and the delivery of evidence to official authorities, an unbroken chain of custody must be maintained, ideally granting access to the evidence to only a limited number of people.[30] The chain of custody must include a detailed account of an item's whereabouts, including every handler of the evidence concerned and their reason for handling it.[31]

IV. Requesting

26 *Handbook on Civil Society Documentation of Serious Human Rights Violations: Principles and Best Practices*, Public International Law & Policy Group, 66-67.
27 *Handbook on Civil Society Documentation of Serious Human Rights Violations: Principles and Best Practices*, Public International Law & Policy Group, 93.
28 Ibid.
29 Ibid, 93.
30 Ibid, 36-37.
31 Ibid, 36.

Investigations and Prosecutions in Specific Jurisdictions

Although many states have universal jurisdiction laws and practices, this manual only assesses those with the greatest prospects of accepting and pursuing a case involving Iranian violations, considering the legal frameworks, prior investigations or prosecutions of crimes by the Islamic Republic of Iran, and likelihood of victims or perpetrators being present. As such, the following sections focus on France, Germany, the Netherlands, Sweden, and Switzerland, outlining the legal provisions and the procedures for requesting investigations and prosecutions.

France

Jurisdiction

The French Code of Criminal Procedure (CCP) has universal jurisdiction provisions for, *inter alia*, torture, enforced disappearance, and crimes within the jurisdiction of the ICC (i.e., crimes against humanity, war crimes, and genocide).[32] There is no retroactivity, so crimes can only be prosecuted if the acts were committed after the offenses were introduced into the French Criminal Code (or, for torture, the CCP).[33] There is no statute of limitations for crimes against humanity and genocide.[34] A thirty-year statute of limitations applies to war crimes, and a twenty-year statute of limitations applies to torture.[35] Double criminality is required for crimes against humanity and war crimes, meaning that the crimes were punishable in the country of commission at the time the crime was committed.[36] If the ICC is already investigating the case, the French authorities must withdraw their jurisdiction.[37] In practice, authorities will generally only investigate crimes where the ICC does not have jurisdiction.[38]

Filing a Request to Open an Investigation

Injured parties can initiate criminal complaints in accordance with the CCP.[39] Certain organizations, including associations at least five years old that are dedicated to fighting crimes against humanity or war crimes, are also able to file criminal complaints if they represent certain rights and meet certain requirements.[40] Both the injured party and associations may also bring civil actions for damages.[41] While the French Constitutional Council has previously had an expansive view of which NGOs can file complaints, courts have more recently narrowed the allowances for civil party petitions to only NGOs that directly suffered harm.[42]

Complaints can be made either to the prosecutor or the judicial police, or as a civil party to an investigating judge.[43] For crimes under the ICC jurisdiction, however, the investigating judge cannot initiate an investigation unless requested by the prosecutor.[44] For crimes under the ICC, the competent prosecutor is the specialized War Crimes Unit within the Paris district court, and the competent police force is the Central Office for Combating Crimes Against Humanity and Hate Crimes

32 Code de procédure pénale (French Code of Criminal Procedure, hereinafter CCP), §§ 689, 689-2, 689-11, 689-13, https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006071154/LEGISCTA000006151920?etatTexte=VIGUEUR&etatTexte=VIGUEUR_DIFF&anchor=LEGISCTA000006151920#LEGISCTA000006151920.

33 *Universal Jurisdiction Law and Practice in France*, TRIAL International, February 2019, 11-12, https://trialinternational.org/wp-content/uploads/2022/05/UJ-France-.pdf.

34 CCP, § 7; Code pénal (Penal Code), §§ 211-1–211-3, https://www.legifrance.gouv.fr/codes/id/LEGITEXT000006070719/.

35 CCP, § 7; Code pénal, § 221-12 and Book IVbis.

36 *Universal Jurisdiction Law and Practice in France*, TRIAL International, 17.

37 Ibid (citing a 2018 interview with a member of the police unit specializing in war crimes and crimes against humanity).

38 *Universal Jurisdiction Law and Practice in France*, TRIAL International, 15, 17.

39 CCP, § 1.

40 Ibid, § 2-4, 2-1–2-25.

41 Ibid, § 2-2-25.

42 *Briefing Paper: Universal Jurisdiction Law and Practice in France*, TRIAL International, 20 (citing Cour de Cassation, Chambre criminelle, June 16, 1998, no. 97-82171, https://www.legifrance.gouv.fr/juri/id/JURITEXT000007068845; Cour de Cassation, Chambre criminelle, February 16, 1999, no. 98-80537, https://www.legifrance.gouv.fr/juri/id/JURITEXT000007069721; Cour de Cassation, Chambre criminelle, November 9, 2010, no. 09-88272, https://www.legifrance.gouv.fr/juri/id/JURITEXT000023055249/; a 2018 interview with a French lawyer; and a 2018 interview with French NGO International Federation for Human Rights (FIDH)).

43 *Universal Jurisdiction Law and Practice in France*, TRIAL International, 21.

44 Ibid (citing a 2018 interview with a prosecutor and a 2018 interview with an investigating judge); CCP, § 689-11.

(OCLCH).[45] The complaint must consist of the facts available, ideally including the identity and domicile of the suspect.[46] There are no particular requirements for forms of evidence—authorities will work with whatever the complainant is able to provide.[47]

Any party who has suffered harm such that they can serve as a civil party can file a petition with a competent investigating judge (*"plainte avec constitution de partie civile"*).[48] The investigating judge then orders the communication of the complaint to the public prosecutor so that they can take requisitions.[49] The complaint must be sufficiently substantiated or justified to the point of "mere plausibility of facts alleged," or else the public prosecutor may request that the complainant provide additional information.[50] In practice, this requires a strong submission with facts and a legal analysis, generally prepared by lawyers.[51] Complaints to investigating judges require a deposit unless the party obtains legal aid, but the judge may exempt a party from this requirement.[52]

Opening an Investigation

While French authorities have opened at least one structural investigation against unknown suspects, universal jurisdiction investigations tend to focus on suspects who can be identified and are present or residing in French territory.[53] The structural investigation, which was opened in 2015 regarding abuses in Syria detention facilities, based jurisdiction on the potential residency of perpetrators who could seek asylum in France, or the French nationality or double nationality of either perpetrators or victims.[54]

While any person who is present in French territory can be prosecuted under universal jurisdiction as a general principle, in practice the specifics differ between crimes.[55] For torture as a stand-alone crime, the perpetrator's presence on French territory is sufficient.[56] For crimes under the ICC, French authorities may only exercise jurisdiction if the alleged perpetrator "habitually" resides in French territory, which the OCLCH has interpreted as including asylum seekers who are residents of France.[57] For all, the investigation can continue if the suspect leaves French territory, and trials can be conducted by default in their absence.[58]

For a prosecutor to open an investigation, there is no minimum threshold in practice and a "mere suspicion based on anonymous information" can be enough.[59] For an investigating judge, civil party petitions (when accepted) trigger a duty to investigate, and the conditions under which an investigating judge could render an order to not investigate are strict.[60] Specifically, an investigation could be denied if the

45 CCP, §§ 689-11, 628-1; Central Office for Combating Crimes Against Humanity and Hate Crimes (OCLCH), Service-Public.fr, https://lannuaire.service-public.fr/gouvernement/58025b06-7905-4fc4-bf68-463dc20cdc5e; *Universal Jurisdiction Law and Practice in France*, TRIAL International, 18 (citing Law no. 2011-1862, November 13, 2011, relative à la répartition des contentieux et à l'allègement de certaines procédures juridictionnelles, § 22, https://www.legifrance.gouv.fr/loda/article_lc/LEGIARTI000024961936?init=true&page=1&query=2011-1862&searchField=ALL&tab_selection=all).

46 CCP, § 40-1.

47 *Universal Jurisdiction Law and Practice in France*, TRIAL International, 32 (citing a 2018 interview with an OCLCH member and a 2018 interview with a prosecutor).

48 CCP, § 85; *Universal Jurisdiction Law and Practice in France*, TRIAL International, 23.

49 CCP, § 86.

50 CCP, § 86; *Universal Jurisdiction Law and Practice in France*, TRIAL International, 32 (citing Cour de Cassation, Chambre criminelle, February 16, 1999, no. 98-80537; Cour de cassation, Chambre criminelle, June 16, 1998, no. 97-82171).

51 *Universal Jurisdiction Law and Practice in France*, TRIAL International, 32-33 (citing a 2018 interview with a French NGO and a 2018 interview with a French lawyer).

52 CCP, § 88.

53 *Universal Jurisdiction Law and Practice in France*, TRIAL International, 22 (citing a 2018 interview with a member of the police unit specializing in war crimes and crimes against humanity).

54 Ibid.

55 CCP, § 689-1; *Universal Jurisdiction Law and Practice in France*, TRIAL International, 14.

56 CCP, §§ 689-1, 689-2, 689-13.

57 CCP, § 689-11; *Universal Jurisdiction Law and Practice in France*, TRIAL International, 15 (citing a 2018 interview with an OCLCH member).

58 CCP, § 379-2; *Universal Jurisdiction Law and Practice in France*, TRIAL International, 14-15.

59 *Universal Jurisdiction Law and Practice in France*, TRIAL International, 33.

60 Ibid, 23 (citing Cour de Cassation, Chambre criminelle, February 21, 1968, no. 67-92180, https://www.legifrance.gouv.fr/juri/id/JURITEXT000007057570; Cour de Cassation, Chambre criminelle, September 21, 1999, no. 98-85051, https://www.legifrance.gouv.fr/juri/id/JURITEXT000007071582; Cour de Cassation, Chambre criminelle, November 16, 1999, no. 98-84800, https://www.legifrance.gouv.fr/juri/id/JURITEXT000007068973).



The facade of the Cour de Cassation in Paris, France's highest court, on February 13, 2014. Source: Charles Platiau via Reuters Connect

facts cannot legally give rise to a prosecution or would not constitute a criminal offense.[61]

Initiation of a Prosecution

For complaints that are filed with a prosecutor, the prosecutor will either issue a dismissal decision, which can be challenged by the prosecutor general, or will refer the case to the investigating judge.[62] Upon reviewing the facts, the investigating judge issues either a dismissal or referral order to a criminal court.[63] The investigating judge can only indict when there are "serious or concordant indications making it likely that [a suspect] may have participated [...] in the commission of the offences."[64] Civil parties are notified of these orders.[65] The accused can appeal an indictment, and civil parties can appeal orders affecting their civil claims.[66] The district prosecutor and prosecutor general can appeal any order made by the investigating judge, including indictments and dismissals.[67]

Private Prosecution

For minor and intermediate offenses, victims may use a private prosecution (*"citation directe"*).[68] The claimant

61 CCP, § 86.

62 CCP, §§ 40-1, 40-3, 51; *Universal Jurisdiction Law and Practice in France*, TRIAL International, 26.

63 If the facts indicate that it was a contravention (as opposed to an offense), the judge may issue an order referring the case to the police court instead. CCP, §§ 175-179.

64 CCP, § 80-1.

65 Ibid, § 183.

66 Ibid, § 186.

67 Ibid, § 185.

68 "Citation directe," République Française, November 9, 2021, https://www.service-public.fr/particuliers/vosdroits/F1455#:~:text=La%20citation%20directe%20permet%20%C3%A0,ou%20le%20tribunal%20de%20police; "Victims' rights – by country: France," European Justice, July 4, 2018, https://e-justice.europa.eu/content_rights_of_victims_of_crime_in_criminal_proceedings-171-FR-maximizeMS-en.do?clang=en&idSubpage=8&member=1.



Demonstrators gather in Paris in support of imprisoned Iranian rapper Toomaj Salehi and the release of all political prisoners in Iran. Source: Anna Margueritat/Hans Lucas via Reuters Connect

must draft a summons and present sufficient evidence to the court that the case can be heard without delay.[69]

Victim and Witness Rights

Victims are guaranteed certain rights, including the right to apply for reparations, to become a civil party, to be helped by public authorities or an approved victim support association, to be informed of protective measures, to have a translator if needed, and to be accompanied by a legal representative.[70] They are also entitled to be alerted by the public prosecutor of proceedings resulting from their complaint and, if the process is discontinued, of the legal or expediency reasons justifying the decision.[71]

Individuals who have suffered harm can become a civil party and apply for reparations at any time during the investigation.[72] They are also granted additional rights, such as, *inter alia*, the right to access certain case files, the right to request certain investigative acts, the right to call and question witnesses (through the president), and the right to file legal briefs.[73]

Witnesses have certain rights, such as the right to give statements without their identity being disclosed, to give testimony with voice distortion, to have their identity not be made public, and to other protective measures.[74] For crimes against humanity, torture, war crimes, and genocide, the court may order a closed session without the jury to protect certain witnesses who may be in danger.[75]

69 "Citation directe," République Française, November 9, 2021.
70 Ibid, § 10-2.
71 Ibid, § 40-2.
72 CCP, § 87.
73 Ibid, §§ 114(1 and 2), 197(3), 82-1, 281, 329, 330, 312, 332, 315.
74 Ibid, §§ 706-58, 706-61, 706-62-1, 706-62-2.
75 Ibid, § 306-1.

Remedies

Civil parties can apply for reparations against the guilty party, either as monetary compensation or through other means such as restorative justice.[76] The judges of the criminal court adjudicate these claims after the decision on the criminal action, without the involvement of the jury.[77] The court decides on the sum that will be paid, taking into consideration "equity or economic situation of the convicted party."[78] If the accused is acquitted or exempted from penalty, civil parties may still apply for compensation for any damage the accused caused if it derives from the same matter of which they were accused.[79] In that case, the court would determine whether civil responsibility could be established and the amount of the resulting damages.[80]

Germany

Jurisdiction

Germany's universal jurisdiction framework is codified in its Code of Crimes Against International Law (Völkerstrafgesetzbuch, or VStGB), which, when ratified in 2002, domesticated the Rome Statute of the International Criminal Court (ICC) into German law.[81] The VStGB grants Germany jurisdiction over crimes against humanity, war crimes, and acts of genocide without requiring either the victim or the accused to be German nationals.[82] There is no universal jurisdiction over torture as a stand-alone crime.[83] There is no retroactivity for crimes against humanity, war crimes, or genocide, meaning that the underlying conduct may only be prosecuted if committed after the acts were criminalized in Germany.[84] Genocide, for example, was first codified in the German Criminal Code (Strafgesetzbuch, or StGB) on February 22, 1955, so the crime may only be prosecuted if committed after that date.[85] Crimes against humanity and war crimes were codified when the VStGB went into effect on June 30, 2002.[86] "Serious criminal offenses" under the VStGB are not subject to statutes of limitation for prosecution or execution of sentences.[87]

Filing a Request to Open an Investigation

The Federal Criminal Police Office houses the Central Unit for the Fight against War Crimes and further Offences pursuant to the VStGB and reports to the federal prosecutor general.[88] Anyone, including victims and nongovernmental organizations (NGOs), can report an offense to any public prosecution office, the police, or local courts.[89] These reports can be made orally or in writing, but should be made in German when possible to avoid delays.[90] They should include contact details of the reporting party, a full version of the facts of the incident available to the reporting party, and any available information about the suspect.[91]

Opening an Investigation

The legal threshold required to open an investigation is that there are "sufficient factual indications" of a

76 Ibid, § 10-2.
77 Ibid, § 371.
78 Ibid, § 375.
79 Ibid, § 372.
80 *Universal Jurisdiction Law and Practice in France*, TRIAL International, 38, 17 (citing Cour de cassation, Chambre criminelle, December 2, 2009, no. 08-87229).
81 *Universal Jurisdiction: Law and Practice in Germany*, TRIAL International, March 2019, 4, https://www.justiceinitiative.org/uploads/0b3c66af-68e0-4fd3-a8e0-d938a6e2b43b/universal-jurisdiction-law-and-practice-germany.pdf.
82 Völkerstrafgesetzbuch (Code of Crimes against International Law, hereinafter VStGB) of June 26, 2002, §§ 1, 6-12, https://www.gesetze-im-internet.de/englisch_vstgb/englisch_vstgb.html.
83 *Universal Jurisdiction: Law and Practice in Germany*, TRIAL International, 4.
84 Strafgesetzbuch (German Criminal Code, hereinafter StGB), § 1, https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p0013.
85 *Universal Jurisdiction: Law and Practice in Germany*, TRIAL International, 15.
86 Ibid.
87 VStGB, § 5.
88 The Federal Criminal Police Office, which is in charge of leading criminal investigations under the VStGB, can be contacted at poststelle@bka.de-mail.de. See also *Universal Jurisdiction: Law and Practice in Germany*, TRIAL International, 4 (citing § 4, ¶ 1, no. 4, Gesetz über das Bundeskriminalamt [Law of the Federal Criminal Law Office], https://www.gesetze-im-internet.de/bkag_2018/__4.html).
89 *Universal Jurisdiction: Law and Practice in Germany*, TRIAL International, 21; Strafprozeßordnung (German Code of Criminal Procedure, hereinafter StPO), § 158, https://www.gesetze-im-internet.de/englisch_stpo/englisch_stpo.html.
90 *Universal Jurisdiction: Law and Practice in Germany*, TRIAL International, 21.
91 Ibid.



An installation by Syrian artist Khaled Barakeh stands before a Koblenz, Germany courtroom during the first universal jurisdiction trial against suspected members of Syrian security services for crimes against humanity. Source: Wolfgang Rattay via Reuters Connect

crime that a prosecutor can investigate.[92] Under the mandatory prosecution principle, investigators are then obligated to open an investigation into the case upon receipt unless the law provides otherwise.[93] The exceptions include prosecutorial discretion for crimes under the VStGB when there is no link to Germany, the suspect is not in or is not expected to be in Germany, or the offense is being prosecuted elsewhere.[94] In practice, German prosecutors have generally used their discretion to decline pursuing cases when no German national is involved (either as a perpetrator or a victim) and when the suspect is neither present in nor expected to be present in German territory in the foreseeable future.[95]

While not regulated by law as of 2019, structural investigations (i.e., investigations into general situations rather than specific cases) can be opened even without an identified suspect.[96] These can be pursued even when it is not foreseeable that they will result in investigations for specific cases.[97]

Initiation of a Prosecution

Once an investigation is closed, the prosecutor will send either an indictment or a termination order to the competent court.[98] If the investigation found "sufficient reason to prefer public charges" that the suspect would be convicted during a trial, then the prosecutor will issue an indictment and the court will order the opening of the trial.[99]

92 StPO, § 152.
93 Ibid.
94 Ibid, §§ 152, 153f.
95 *Universal Jurisdiction: Law and Practice in Germany*, TRIAL International, 19.
96 Ibid, 17.
97 Ibid.
98 StPO, §§ 170-171.
99 StPO, § 170.



A protestor holding a sign of people who have lost their lives due to crackdowns on protestors in Iran is seen at a demonstration in Cologne, Germany. Source: Ying Tang/NurPhoto via Reuters Connect

Private Prosecution

Private prosecution is available in Germany for certain crimes, which do not include those under the VStGB.[100]

Victim and Witness Rights

Victims have certain rights, whether or not they have joint plaintiff status.[101] These include the rights to request information on whether a suspect has been taken into custody; to have a lawyer inspect files or obtain information from files; to appoint a lawyer or to be represented by one; to anonymity when necessary; to certain protections if particularly vulnerable; and, if they have filed a compensation claim, to attend hearings, be represented by a lawyer, and apply for legal aid.[102]

Joint plaintiffs have additional rights, which include, *inter alia*, the right to challenge judges or experts, to ask questions, to object to questions, to apply for evidence to be taken, to make statements, and to appeal decisions.[103]

Witnesses also have certain rights during trials and investigations, including the rights not to be required to share revealing information in the event of a well-founded fear of danger; to be compensated in certain circumstances; to be represented by legal counsel; and to not incriminate themselves during questioning.[104]

Remedies

Victims may bring property claims against the accused during criminal proceedings.[105] The application can be made orally or in writing by the registry clerk, or

100 StPO, § 374.
101 Ibid.
102 StPO, §§ 406-406j.
103 Ibid, §§ 395-401.
104 Ibid, §§ 55, 68-71.
105 Ibid, § 403.

orally at the main hearing before speeches begin, and must specify the subject of and grounds for the claim, supported by evidence.[106] Additionally, German nationals or foreign nationals who sustained an injury due to a violent crime committed abroad may be entitled to damages paid by the government if they have ordinary and legal residence in Germany and if, at the time of the crime, they were outside Germany for no longer than six months.[107]

The Netherlands

Jurisdiction

The Dutch International Crimes Act (ICA) allows for prosecution of any person on Dutch territory for crimes against humanity, torture, war crimes, and genocide.[108] There is no retroactivity.[109] Dutch authorities are able to prosecute acts under universal jurisdiction for war crimes if committed after July 10, 1952 (with the enactment of the Wartime Offenses Act); genocide if committed after October 24, 1970 (as specified in the ICA); crimes against humanity if committed after June 19, 2003 (with the implementation of the ICA); and torture as a stand-alone crime if committed after December 21, 1988 (with the enactment of the Dutch Torture Convention Implementation Act).[110] There is no statute of limitations, except for certain war crimes.[111]

Filing a Request to Open an Investigation

Anyone with knowledge of a criminal offense can file a complaint with the Dutch International Crimes Team.[112] Complaints may be against an unknown suspect, who can be either a natural person or legal entity, and should include information about the event that took place, the involvement of the suspect, and information about victims and witnesses.[113] In practice, the complaint must also demonstrate that the suspect is on Dutch territory.[114] Information should include sources and specify what information was personally observed, whether any other documentation is available, and how the submitting party came to acquire any additional physical or digital documentation.[115]

Opening an Investigation

Dutch authorities cannot open an investigation for alleged international crimes committed abroad by non-Dutch perpetrators unless the suspect has been identified and is present in the country and remains there throughout the investigation.[116] Dutch jurisdiction is terminated if the suspect leaves the country during the investigation, though Dutch courts are still able to proceed if the suspect leaves once a prosecution has started.[117] General investigations, where the alleged perpetrator is not present, can only be opened when the victim is a Dutch national.[118]

Initiation of a Prosecution

In determining whether to move forward, the prosecutors will exercise discretion by looking at the likelihood of success of their investigation, the possibility of traveling to the location of the offense, the availability of documentary evidence, and the availability of witnesses.[119] They will further look at, *inter alia*, jurisdiction, investigations by other courts, non-criminality of the offense, or insufficient indications of

106 Ibid, § 404.
107 German Crime Victims Compensation Act (OEG), § 3a, https://www.gesetze-im-internet.de/englisch_oeg/englisch_oeg.html#p0013.
108 Wet internationale misdrijven (Dutch International Crimes Act), §2, https://wetten.overheid.nl/BWBR0015252/2020-01-01.
109 Wetboek van Strafrecht (Dutch Criminal Law), art. 1(1), https://wetten.overheid.nl/BWBR0001854/2014-02-15.
110 *Universal Jurisdiction Law and Practice in the Netherlands*, TRIAL International, April 2019, 5, 9-10, https://trialinternational.org/wp-content/uploads/2022/05/UJ-Netherlands.pdf.
111 Wet internationale misdrijven (Dutch International Crimes Act), § 13.
112 "International Crimes," Netherlands Public Prosecution Service, https://www.prosecutionservice.nl/topics/international-crimes; Wetboek van Strafvordering (Dutch Code of Criminal Procedure), § 163, https://wetten.overheid.nl/BWBR0001903/2022-07-01#BoekEerste.
113 *Universal Jurisdiction Law and Practice in the Netherlands*, TRIAL International, 15 (citing interviews with Dutch lawyers and a Dutch prosecutor); *A Guide to National Prosecutions in the Netherlands for Crimes Committed in Syria*, Syria Justice and Accountability Centre, 4, https://syriaaccountability.org/content/files/2022/04/Dutch-Jurisdiction-Guide-EN--1-.pdf.
114 *Universal Jurisdiction Law and Practice in the Netherlands*, TRIAL International, 15 (citing interviews with Dutch lawyers).
115 *A Guide to National Prosecutions in the Netherlands*, Syria Justice and Accountability Centre, 4.
116 Wet internationale misdrijven (Dutch International Crimes Act), § 2(1).
117 *Universal Jurisdiction Law and Practice in the Netherlands*, TRIAL International, 11 (citing an interview with a Dutch prosecutor and lawyers, and Court of The Hague [Gerechtshof's-Gravenhage], October 26, 2009, ECLI:NL:GHSGR:2009:BK1478, https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:GHSGR:2009:BK1478).
118 *Universal Jurisdiction Law and Practice in the Netherlands*, TRIAL International, 11.
119 *Universal Jurisdiction Law and Practice in the Netherlands*, TRIAL International, 12 (citing an interview with a Dutch prosecutor).



A view of the International Criminal Court (ICC) in The Hague, Netherlands on September 10, 2018. Source: Martin Bertrand/Hans Lucas via Reuters Connect

guilt.[120] The Dutch minister of justice and security may also give instructions to prosecute a specific crime.[121] If the public prosecutor decides to move forward, they will serve a summons on the accused, commencing the case, to which the subject is able to object.[122] If the prosecutor decides not to move forward, they will notify the suspect in writing.[123] A person who is "directly concerned" (i.e., someone who has an interest "directly affected" by the prosecution) can challenge a decision not to prosecute.[124]

Victim and Witness Rights

Victims are afforded certain rights, including to receive "sufficient information" about the start and progress of a case; to be referred to a victim support institution; with the permission of the public prosecutor, to look at certain procedural documents and to request that the public prosecutor add documents as needed; to be assisted by a lawyer, and to have translations of documents and proceedings as needed; to make a statement at the court hearing; and to join the proceedings as an injured party and make a claim for compensation.[125]

Witnesses have certain rights if their testimony puts them at risk (for example, the right to have their identity concealed).[126] If needed, additional witness protection measures may be taken.[127] Measures could also entail being interviewed away from a victim's home community, or in extreme cases temporary

120 Wetboek van Strafvordering (Dutch Code of Criminal Procedure), § 247, https://wetten.overheid.nl/BWBR0001903/2022-07-01#BoekEerste.
121 Wet op de rechterlijke organisatie (Judicial Organization Act), § 127, https://wetten.overheid.nl/BWBR0001830/2022-05-01#Hoofdstuk4.
122 Wetboek van Strafvordering (Dutch Code of Criminal Procedure), §§ 258, 262.
123 Ibid, §§ 242-246.
124 Ibid, § 12.
125 Ibid, §§ 51aa-51f.
126 Wetboek van Strafvordering (Dutch Code of Criminal Procedure), §§ 226a-226f, 226l-226s.
127 See generally, Besluit getuigenbescherming (Dutch Witness Protection Decree), https://wetten.overheid.nl/BWBR0019359/2018-08-01.



People light candles commemorating the victims of the Iranian regime at a vigil held in Utrecht, Netherlands on October 6, 2022. Source: Romy Arroyo Fernandez/NurPhoto via Reuters Connect

or permanent relocation to the Netherlands.[128] Additionally, witnesses may abstain from answering questions that would result in self-incrimination or incriminate certain close relatives or partners.[129]

Remedies

As noted above, victims (or, if deceased, their next of kin) may join criminal proceedings as injured parties and make a claim for compensation.[130] Public prosecutors further encourage options for restorative justice, including mediation, where possible and with the consent of the victim or victims.[131]

Sweden

Jurisdiction

Sweden has universal jurisdiction provisions for crimes against humanity, war crimes, and genocide, with torture only included as a crime against humanity.[132] There is no retroactivity, so the only acts that may be punished are those that occurred after they were criminalized.[133] This means that the only acts that can be prosecuted under universal jurisdiction are those committed after January 1, 1965, for war crimes; July 1, 1973, for genocide; and July 1, 2014, for crimes against humanity.[134] Because war crimes and genocide were transferred from the Swedish Criminal Code to the

128 *A Guide to National Prosecutions in the Netherlands*, Syria Justice and Accountability Centre, 11.
129 Ibid, § 219.
130 Ibid, §§ 51f-51h.
131 Ibid, § 51h.
132 Act on Criminal Responsibility for Genocide, Crimes Against Humanity and War Crimes, ICRC International Humanitarian Law Databases, May 28, 2014, https://ihl-databases.icrc.org/en/national-practice/act-criminal-responsibility-genocide-crimes-against-humanity-and-war-crimes-2014.
133 The Instrument of Government (1974:152), ch. 2, § 10, https://www.riksdagen.se/globalassets/07.-dokument--lagar/regeringsformen-eng-2021.pdf.
134 *Universal Jurisdiction Law and Practice in Sweden*, TRIAL International, April 2020, 11-12, https://trialinternational.org/wp-content/uploads/2022/05/UJ-Sweden.pdf.



A courtroom sketch depicts Hamid Noury, who was standing trial in Stockholm for involvement in the massacre of Iranian political prisoners in 1988, and his attorney. The universal jurisdiction case resulted in a guilty verdict on July 14, 2022. Source: Anders Humlebo/TT News Agency via Reuters Connect

Universal Crimes Act (UCA) in 2014, however, any provisions specific to the UCA can only be applied to acts committed after 2014.[135] The statute of limitations does not apply to genocide, crimes against humanity, or gross war crimes.[136] Under Swedish law, a "gross war crime" is assessed by looking at whether the act was committed as part of a plan or policy, was part of "extensive crimes," or whether the relevant act resulted in death, severe pain or injury, severe suffering, "extensive damage to property," or "particularly serious damage to the natural environment."[137] Gross war crimes were subject to a twenty-five-year statute of limitations until a July 1, 2010, amendment removed this limit (the amendment does not apply, however, if the twenty-five-year limit ran out by the time of the amendment's implementation).[138] War crimes not considered gross have as their punishment imprisonment of at most six years and so have a ten-year statute of limitations.[139] Sweden does not require double criminality to assert jurisdiction.[140]

Filing a Request to Open an Investigation

Parties can file complaints with the Swedish police War Crimes Unit and should describe the facts of the criminal event with as much detail as possible, including

135 *Universal Jurisdiction Law and Practice in Sweden*, TRIAL International, 11-12. Acts of genocide committed after January 1, 1965, but before July 1, 1973, can be prosecuted under other jurisdiction options.

136 The Swedish Criminal Code (SFS 1962:700 Brottsbalken), ch. 35, § 2, https://www.government.se/government-policy/judicial-system/the-swedish-criminal-code/.

137 Act on criminal responsibility for genocide, crimes against humanity and war crimes, May 28, 2014, § 11.

138 As an exception, if the perpetrator was under the age of twenty-one, then the twenty-five-year statute of limitations will apply. See *Universal Jurisdiction Law and Practice in Sweden*, TRIAL International, 12 (citing, for the former, a 2019 interview with an academic, and for the exception for those under the age of twenty-one, ch. 35, §1(5) of the criminal code, which calls for twenty-five years for offenses that can result in imprisonment for life); The Swedish Criminal Code, ch. 35, § 1(5).

139 Act on criminal responsibility for genocide, crimes against humanity and war crimes, May 28, 2014, §§ 3-10; The Swedish Criminal Code, ch. 35, § 1(3).

140 *Universal Jurisdiction Law and Practice in Sweden*, TRIAL International, 14-15.



A woman cuts her hair during a demonstration in solidarity with Mahsa "Jina" Amini outside the Ministry of Foreign Affairs in Stockholm on September 24, 2022. Source: Fredrik Persson via Reuters Connect

any available evidence and the names of potential witnesses.[141] There is no specific type of evidence required; complaints can include, for example, victims' testimonies and reports from NGOs.[142] The evidentiary threshold to open an investigation is "cause to believe" that an offense has been committed.[143]

Opening an Investigation

Swedish authorities are able to open structural investigations, as they have in relation to Syria and Iraq.[144] If the perpetrator is identified, they do not need to be in Sweden for an investigation to be opened if the alleged act constituted a serious international crime.[145] In practice, however, Swedish prosecutors have rarely proceeded with investigations without a suspect present, and prosecutors will not start a case if there is no reasonable chance of apprehending the accused.[146]

Swedish prosecutors "shall" initiate investigations when there is "cause to believe that an offense subject to public prosecution has been committed."[147] *Cause to believe* means that there must be concrete circumstances, as opposed to vague rumors.[148]Prosecutors may decline to open an investigation,

141 Ibid, 22 (citing a 2019 interview with a lawyer).

142 Ibid, 22 (citing a 2019 interview with a lawyer).

143 The Swedish Code of Judicial Procedure, ch. 23, § 1, https://www.government.se/contentassets/a1be9e99a5c64d1bb93a96ce5d517e9c/the-swedish-code-of-judicial-procedure-ds-1998_65.pdf.

144 *Universal Jurisdiction Law and Practice in Sweden*, TRIAL International, 13 (citing a 2020 interview with an academic). For details on the Syria investigation, see " 'These Are the Crimes We Are Fleeing,' " Human Rights Watch, October 3, 2017, https://www.hrw.org/report/2017/10/03/these-are-crimes-we-are-fleeing/justice-syria-swedish-and-german-courts.

145 *Universal Jurisdiction Law and Practice in Sweden*, TRIAL International, 12 (citing Prop. 2013/14:146, 2, https://www.regeringen.se/49bb7d/contentassets/c7eeff0e35f24df0b824f0b9693ff89d/straffansvar-for-folkmord-brott-mot-mansklighetен-och-krigsforbrytelser-prop.-201314146); The Swedish Criminal Code, ch. 2, § 3(6).

146 *Universal Jurisdiction Law and Practice in Sweden*, TRIAL International, 12 (citing a 2016 interview with a war crimes prosecutor).

147 The Swedish Code of Judicial Procedure, ch. 23, § 1(1).

148 *Universal Jurisdiction Law and Practice in Sweden*, TRIAL International, 13.

however, if they decide it is "manifest that it is not possible to investigate the offense."[149]

Initiation of a Prosecution

Under the Swedish Criminal Code, prosecutors need to obtain the approval of the prosecutor general before initiating a prosecution.[150] Approval takes into account whether a prosecution is compatible with Sweden's obligations under public international law; the extent to which the offenses or the suspect are linked to Sweden; whether legal proceedings will be initiated elsewhere; and what "actual possibilities" there are to investigate and bring legal proceedings against the suspect in Sweden.[151] If there is reason to believe that the examination is particularly important to Sweden's foreign and security policy and the prosecutor general decides there is no impediment to bringing an investigation, they must refer the matter to the government for a decision.[152] If the prosecutor does not move forward with a case, injured parties can appeal that decision, which will then be reviewed by a senior prosecutor.[153]

Private Prosecution

If the prosecutor declines to investigate a complaint, an aggrieved person can initiate a prosecution themself through a private prosecution.[154] Private prosecutions are initiated by filing a written and signed application for summons against the alleged perpetrator.[155] The application should contain information about, *inter alia*, the defendant, the alleged criminal act, any claims for damages, evidence, the court's basis for jurisdiction, and proof that the prosecutor declined to prosecute.[156] Government approval is still required before an indictment can be filed if the crime was committed in a foreign country.[157]

Victim and Witness Rights

Witnesses have a right against self-incrimination.[158] In the cases of serious and organized crime, witnesses may also be granted additional security measures if they are in particular danger.[159]

Aggrieved persons may be accompanied by a supporting person during trial examinations and, in certain cases, may be appointed counsel.[160] Additionally, they may, *inter alia*, make a statement at the beginning of the main trial and request that the accused be detained.[161]

Injured parties can introduce private civil claims in criminal cases to claim damages and be eligible for monetary compensation.[162] In such cases, the prosecutor will prepare and present the action in conjunction with the prosecution so long as it is not a major inconvenience and the claim is not "manifestly devoid of merit."[163] When an aggrieved person becomes a party to a case, either by filing such a claim for damages or by supporting the prosecution, they have additional rights such as being present throughout the trial if not public and accessing certain case files.[164]

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149 The Swedish Code of Judicial Procedure, ch. 23, § 1(2).
150 The Swedish Criminal Code, ch. 2, §§ 7-8.
151 Ibid, ch. 2, § 8.
152 Ibid, ch. 2, §§ 7-8.
153 Överprövning och annan prövningsverksamhet, 2.5.1 (https://www.aklagare.se/globalassets/dokument/ovriga-dokument/rar/rar-20131_.pdf); *Universal Jurisdiction Law and Practice in Sweden*, TRIAL International, 16-17.
154 The Swedish Code of Judicial Procedure, ch. 20, § 8(1),
155 Ibid, ch. 47, § 1.
156 Ibid, ch. 47, § 2.
157 The Swedish Criminal Code, ch. 2, §§ 7-8; *Universal Jurisdiction Law and Practice in Sweden*, TRIAL International, 21.
158 The Swedish Code of Judicial Procedure, ch. 36, § 6.
159 Ordinance (2006:519) on special safety work etc., issued June 1, 2006, https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-2006519-om-sarskilt_sfs-2006-519#:~:text=Den%20som%20blir%20f%C3%B6rem%C3%A5l%20f%C3%B6r,att%20persons%C3%A4kerhetsarbetet%20ska%20kunna%20bedrivas.
160 The Swedish Code of Judicial Procedure, ch. 20, § 15.
161 Ibid, ch. 46, § 6(1), ch. 24, § 17(1).
162 Ibid, ch. 22, § 1.
163 Ibid, ch. 22 § 2.
164 "Victims' rights - by country: Sweden," European Justice, https://e-justice.europa.eu/content_rights_of_victims_of_crime_in_criminal_proceedings-171-SE-maximizeMS-en.do?clang=en&idSubpage=6&member=1.

Remedies

Under Swedish law, victims can claim compensation as a form of reparation, as detailed in the previous section.[165] Swedish courts assess liability for compensation in accordance with the law of the country where the injurious act was committed.[166] If joining the claim with the criminal proceedings causes a major inconvenience, the court may order the compensation claim be "disposed of" as a separate civil action.[167]

Switzerland

Jurisdiction

Switzerland has jurisdiction over crimes against humanity, war crimes, and genocide.[168] There is no retroactivity.[169] For war crimes, acts committed after March 1, 1968, are punishable (though they were subject to military jurisdiction until December 31, 2010).[170] Genocidal acts committed after December 15, 2000, and crimes against humanity committed after January 1, 2011, are punishable.[171] There are no statutes of limitation for crimes against humanity, war crimes, or genocide.[172]

Filing a Request to Open an Investigation

Anyone may report an offense to a criminal justice authority.[173] It can be made either in writing or orally, though the former is preferred.[174] The Swiss Criminal Procedure Code does not detail what needs to be included, but federal case law requires that reports include the name of the alleged offender (if known) and the relevant facts, though it does not need to list the exact name of the crime.[175]

Opening an Investigation

For Swiss authorities to establish jurisdiction and open an investigation the perpetrator needs to be present in Swiss territory.[176] If the accused leaves the country immediately after the investigation is opened, however, authorities retain jurisdiction and may continue investigating.[177] When the alleged crimes were committed abroad and when neither the victim nor the alleged perpetrator is a Swiss national, the prosecutor has discretion to terminate the prosecution if the suspect is no longer present in Switzerland and is not expected to return, or if another foreign domestic or international court is exercising jurisdiction over the case.[178] Prosecutors do not need political approval to move forward with an investigation, but the Federal Department of Foreign Affairs may provide an opinion, which usually occurs when there are immunity questions.[179]

Initiation of a Prosecution

Upon completing the investigation, the public prosecutor will either bring charges through an indictment or will completely or partially abandon the proceedings through a legally binding rule that is equivalent to an acquittal.[180] They will bring an indictment if there are sufficient grounds for suspicion, at which time jurisdiction transfers to the court.[181]

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165 The Swedish Code of Judicial Procedure, ch. 22.
166 *Universal Jurisdiction Law and Practice in Sweden*, TRIAL International, 25 (citing a 2019 interview with a lawyer).
167 The Swedish Code of Judicial Procedure, ch. 22, § 5.
168 Swiss Criminal Code of December 21, 1937 (status as of June 1, 2022), §§ 185bis, 263-264n, https://www.fedlex.admin.ch/eli/cc/54/757_781_799/en.
169 Ibid, § 2.
170 Universal Jurisdiction Law and Practice in Switzerland, TRIAL International, June 2019, 15, https://trialinternational.org/wp-content/uploads/2022/05/UJ-Suisse.pdf.
171 Ibid, 15.
172 Swiss Criminal Code of December 21, 1937 (status as of June 1, 2022), § 101.
173 Swiss Criminal Procedure Code of October 5, 2007 (status as of July 1, 2022), § 301, https://www.fedlex.admin.ch/eli/cc/2010/267/en.
174 Ibid, § 301; *Universal Jurisdiction Law and Practice in Switzerland*, TRIAL International, 22.
175 *Universal Jurisdiction Law and Practice in Switzerland*, TRIAL International, 18 (citing Michel Dupus et al., Petit Commentaire – Code penal, Helbing Lichtenhahn [2017] ad art. 30 SCC, 232).
176 Swiss Criminal Code of December 21, 1937 (status as of June 1, 2022), §§ 6(1), 7(1-2), 164m(1).
177 *Universal Jurisdiction Law and Practice in Switzerland*, TRIAL International, 18 (citing Michel Dupuis et al., Petit Commentaire – Code penal, Helbing Lichtenhahn [2017] ad art. 264m SCC, p. 1730).
178 Swiss Criminal Code of December 21, 1937 (status as of June 1, 2022), § 264m.
179 *Universal Jurisdiction Law and Practice in Switzerland*, TRIAL International, 18 (citing Federal Criminal Court, Judgment of November 14, 2018, TPF BB.2018.167, ¶ 3.2).
180 Swiss Criminal Procedure Code of October 5, 2007 (status as of July 1, 2022), §§ 319-320, 324.
181 Ibid, §§ 324, 328.



A view of the Swiss Federal Criminal Court in Bellinzona, Switzerland, the competent court of first instance for prosecutions of genocide, crimes against humanity, and war crimes. Source: Arnd Wiegmann via Reuters Connect

The public prosecutor can order the complete or partial closing of proceedings if suspicions are not substantiated such to justify bringing charges; the conduct does not fulfill the necessary elements of the offense; the procedural requirements or procedural challenges cannot be fulfilled; or there are applicable statutory regulations that allow them to decline to bring charges or impose a penalty.[182]

Victim and Witness Rights

Those who suffered harm as a result of a crime may bring civil claims as a private claimant in the criminal proceedings.[183] Relatives of a victim and others in a close relationship to them may also bring their own civil claims.[184] To be a civil claimant, the party must expressly declare their intention to serve as such to a criminal justice authority by the end of the preliminary proceedings.[185]

Private plaintiffs have the right to, *inter alia*, be assisted by a lawyer; to benefit from free legal aid if indigent and asserting a viable civil claim; to access case files and to participate in procedural acts; to participate in the taking of evidence and to request that further evidence be obtained; to make submissions; and to challenge investigating and prosecuting authorities' decisions.[186]

Remedies

Those who suffered harm based on a criminal offense and those in close relationships to them can serve as private claimants in criminal proceedings to bring civil claims.[187] The criminal court decides on the claim if the

182 Ibid, § 319.
183 Ibid, § 122.
184 Ibid, §§ 116, 122.
185 Ibid, § 118.
186 Ibid, §§ 127, 136, 107, 147, 109, 382.
187 Ibid, §§ 116, 122.



A general view of a session of the UN Human Rights Council at the United Nations in Geneva, Switzerland on February 24, 2020. Source: Denis Balibouse via Reuters Connect

accused is convicted and if it is "in a position to make a decision" if the accused is acquitted.[188] The decision is otherwise referred to civil proceedings.[189]

V. Additional Resources

Guides on universal jurisdiction laws and practices:

- TRIAL International and the Open Society Justice Initiative, working with NGOs based in the relevant jurisdictions, have produced guides on universal jurisdiction law and practice specific to various countries.

- The Syria Justice and Accountability Centre has produced guides on initiating and joining universal jurisdiction cases in various countries, with a focus on cases pertaining to Syria.

- The Institute for International Criminal Investigations has compiled a list of training materials on international criminal law and practice.

Guides for civil society on conducting and organizing human rights investigations:

- The Public International Law & Policy Group has published the Handbook on Civil Society Documentation of Serious Human Rights Violations and the accompanying Field Guide for Civil Society Documentation of Serious Human Rights Violations.

Guides on conducting and using open-source investigations:

- Human rights practitioners Sam Dubberley, Alexa Koenig, and Daragh Murray edited the book Digital Witness on using open-source information.

188 Ibid, § 126.
189 Ibid, § 126.

- The Human Rights Center at the University of California, Berkeley produced the Berkeley Protocol on conducting open-source investigations.

Organizations and practitioners that may be able to assist in investigating and/or bringing universal jurisdiction cases:

- European Center for Constitutional and Human Rights (ECCHR), TRIAL International, International Federation for Human Rights (FIDH), Redress, Center for Justice & Accountability (CJA), and Civil Rights Defenders (CRD; legal organizations that help victims pursue cases)
- Witness (produced guidance on video documentation)
- eyewitness to Atrocities (produced a cell phone app to document video evidence of violations)
- Human Rights Center at the University of California, Berkeley (produced training on open-source investigations)
- Institute for International Criminal Investigations (produces training on investigations and documentation)
- Physicians for Human Rights (produces forensic documentation)

Competent investigating authorities in the above listed jurisdictions that are able to receive evidence:

- In France, the National Police's Central Office for Combating Crimes Against Humanity and Hate Crimes can be contacted at oclch@gendarmerie.interieur.gouv.fr.
- In Germany, the Federal Criminal Police Office (Bundeskriminalamt, or BKA) houses the Central Unit for the Fight against War Crimes and further Offences pursuant to the Code of Crimes against International Law (Zentralstelle für die Bekämpfung von Kriegsverbrechen, or ZBKV). The BKA can be contacted at poststelle@bka.de-mail.de.
- In the Netherlands, the International Crimes Team sits within the Public Prosecution Service. It can be contacted at warcrimes@politie.nl.
- In Sweden, the War Crimes Unit falls under the Swedish Police. It can be contacted (in Persian, here) by email with the subject line "Gruppen för utredning av krigsbrott" (translating to "The Group for the Investigation of War Crimes") at registrator.kansli@polisen.se.
- In Switzerland, the Office of the Attorney General (OAG) includes a unit for Mutual Legal Assistance, Terrorism, International Criminal Law and Cybercrime (RTVC). Criminal complaints can be made directly to the Office of the Attorney General on its PrivaSphere secure messaging platform, according to its guidelines. PrivaSphere can be accessed here.

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