

RESEARCH REPORT

Gearing Up the Fight Against Impunity

Dedicated Investigative and Prosecutorial Capacities

March 2022



Cover Image: Dutch Judges Lubbe, Renckens, and Holleman and clerks sit in the courthouse in Schiphol, the Netherlands, on July 8, 2019, before the country's first war crimes trial for alleged atrocities in Syria committed by two Dutch nationals who fought with ISIS. (Piroschka van de Wouw/Reuters)

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Acknowledgments

The authors are grateful to the following experts in the field who made themselves available for interviews and enquiries: Alexandra Lily Kather, Carlos Castresana Fernández, Stephen Rapp, Kate Vigneswaran, Emmanuelle Marchand, Matevž Pezdirc, Chloé Faucourt, Dr. María Ángeles Ramos, Commandant Jean-Pierre Chemaly, Sarah Kasande Kihika, Mohamed Azer Zouari, Nadia Jmal, and Cristián Correa. The authors are also grateful for the valuable assistance provided by Yasmin Sooka, Matías Eidem and the Chargé d'Affaires of the Embassy of Argentina in South Africa, María Florencia Segura.

This publication was made possible with support from the Ministry of Foreign Affairs of the Kingdom of The Netherlands.

About ICTJ

The International Center for Transitional Justice (ICTJ) works across society and borders to challenge the causes and address the consequences of massive human rights violations. We affirm victims' dignity, fight impunity, and promote responsive institutions in societies emerging from repressive rule or armed conflict as well as in established democracies where historical injustices or systemic abuse remain unresolved. ICTJ envisions a world where societies break the cycle of massive human rights violations and lay the foundations for peace, justice, and inclusion. For more information, visit www.ictj.org

About FHR

The Foundation for Human Rights (FHR) is a nonprofit human rights organization that works to protect and promote human rights in South Africa. The FHR was established in 1996 to address the historical legacy of apartheid, and to promote and advance transformation and human rights based on the new constitution. The FHR implements four main human rights programs: the Constitutional Awareness and Education Programme, the Gender-Based Violence Programme, the Unfinished Business of the Truth and Reconciliation Commission Programme, and the Community-Advice Offices Programme. Over the last two decades, the FHR has played a major role in promoting the rights of victims of apartheid crimes through supporting the recommendations of the TRC, including justice and accountability for past crimes, reparations, and access to the TRC archives. For more information, visit <https://www.fhr.org.za>

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Executive Summary

Holding perpetrators to account for the worst crimes known to humanity is one of the most important responsibilities of the community of nations in the 21st century. Notwithstanding the appalling nature of atrocity crimes, most perpetrators do not face justice. Despite the commitment of significant resources over many years at both the international and national levels, the machineries of justice are failing victims. Few cases are making it to trial, and those that do are often brought decades after the crimes occurred. It is time to look at ways of gearing up the fight against impunity.

This report explores a broad distinction of approach between countries that leave atrocity crimes to the general administration of justice and countries that adopt a specialized or dedicated approach. It concludes that the generalized approach almost always underdelivers, whereas the dedicated approach tends to produce results. Indeed, there appears to be a direct correlation between the number of serious international crimes and crimes of the past that are prosecuted and the existence of specialized units. Those countries with dedicated capacities pursued higher numbers of cases than those without.

The research emerged from efforts to persuade the South African government to create a dedicated capacity to investigate and prosecute apartheid-era crimes, which have been neglected for many years. Several hundred murder cases referred by the Truth and Reconciliation Commission to the prosecution authority were never pursued.

The issues that are covered in the report, however, are global. For many victims of atrocity crimes, the prospects for achieving accountability, especially for high-level perpetrators, have long been beyond reach, given the current political and legal dynamics in their countries and resistance to establishing international justice mechanisms, like hybrid or ad hoc tribunals. Specialized units operating based on universal jurisdiction offer a ray of hope in an otherwise bleak justice landscape.

Why Specialized Units?

Specialized or dedicated prosecutorial and investigative capacities are entities that are created to focus exclusively on a particular category of crimes. They are typically located within a prosecution authority, police service, or other state agency. Personnel who are attached to such units tend to be recruited for their demonstrated expertise and experience.

Specialized units are established for different reasons. Most often, they are formed to investigate and prosecute complex criminal cases that present a threat to national security or financial stability, such as terrorism, organized crime, corruption, and money laundering. Other categories

of cases that have warranted specialized attention include transnational crimes and crimes that target vulnerable groups, such as children and victims of human trafficking.

Finally, specialized units have been established to deal with international crimes that rise to a certain gravity threshold, such as crimes against humanity, since their investigation and prosecution are required under international law.

In some countries, specialized units have been created within police or prosecution services to deal exclusively with crimes of the past. Their mandates have been limited to certain serious crimes arising from defined historic periods.

The rationale behind the establishment of specialized units generally includes the need to:

- concentrate and centralize national efforts under one organizational entity to facilitate coordination and the exchange of information and leads, and to delineate clear lines of responsibility and accountability;
- have motivated, well-capacitated, and skilled investigators and prosecutors with the necessary expertise;
- promote specialized and focused attention on identified cases and prevent personnel being distracted and diverted onto other matters;
- foster closer cooperation between investigators and prosecutors.

In the report, we differentiate between historical specialized units, new-generation units, and mixed-mandate units. We define these units in the following terms:

- **Historical units** focus on gross human rights violations that are committed within a certain territory or in relation to a specific conflict or set of events. Such units may apply domestic or international criminal law to characterize crimes under their jurisdiction.
- **New-generation units** were mostly established by countries that were required to give effect to their international obligations under the Rome Statute. These units were created to deal with core international crimes such as crimes against humanity and war crimes. In addition to the principle of territoriality, these units invoke extraterritorial bases for jurisdiction, including the principle of universal jurisdiction, to prosecute serious international crimes that occurred in other countries.
- **Mixed-mandate units** refer to units that are established to deal with both historical crimes of the past as well as ongoing international crimes. Often their jurisdiction is extended to include organized crimes, serious corruption, and transnational crimes.

Case Studies

Our research indicates that at least 23 countries have specialized units (including historical, new-generation, and mixed-mandate units) globally. We are aware of 36 specialized units including:

- Fifteen **new-generation units** (e.g., in United States, Germany, France, and Sweden)
- Eleven **historical units** (e.g., in Australia, Argentina, Poland, and Bosnia and Herzegovina)

- Ten **mixed-mandate units** (e.g., in South Africa, Lithuania, and Canada)¹

Are States with Specialized Units More Effective?

Countries with dedicated units, such as Argentina, Germany, and France, have reasonably impressive track records, compared with those countries that left crimes of the past and international crimes to the vagaries of national criminal justice systems.

For example, in **Peru**, prosecutors handling crimes from the past kept getting deflected to handle pension, customs, and tax fraud cases.

In the **United Kingdom**, a disjointed approach has seen little progress made on more than 900 “Troubles” cases that have been referred to the Public Prosecution Service, with very few convictions.

Kenya failed to establish a specialist capacity to investigate and prosecute the post-election violence of 2007, which resulted in total impunity for those who were behind the violence.

Tunisia established Specialized Criminal Chambers to adjudicate crimes that were committed during the Ben Ali regime but neglected to equip them with a dedicated investigative and prosecutorial capacity. After three years of work, not a single verdict has been delivered.

Specialized units tend to be more effective for a variety of reasons.

- They typically have resources to address the intricacies that are inherent in investigating complex crimes committed by large organizations and involving large numbers of victims and perpetrators.
- They develop expertise on international criminal law.
- They have systems in place to deal with challenges.
- They engage in international cooperation and share information, leads, and best practices.
- They are more likely to employ multidisciplinary expertise and to engage in ongoing skills enhancement.

The Role of Specialized Units in Ensuring Accountability for Syria

Given the poor prospects of justice in Syria and at the international level, victims and families have little option but to seek justice before the national courts in the countries that employ extraterritorial jurisdiction over the most serious crimes.

TRIAL International reports 22 ongoing or completed cases in relation to crimes that were committed in Syria. Ten cases have been brought in Germany, six in France, two in the Netherlands, and one each in Austria, Hungary, Sweden, and Switzerland.² With the exception of Austria and Hungary, all these countries had established specialized units to pursue international

¹ The report includes an annex that provides a high-level audit of specialized units in 23 countries, setting out each unit's type, composition, mandate, time frame, and jurisdictional basis. The list includes Spain. Although one cannot speak of a dedicated unit or team in Spain, there are designated investigators that handle investigations of core international crimes.

² Valérie Paulet, TRIAL International, “Universal Jurisdiction Annual Review 2021: A Year Like No Other? The Impact of Coronavirus on Universal Jurisdiction” (2021), 91–95.

crimes. Twenty of the 22 cases are being pursued by countries with specialized units—and only two by countries without specialization.

Seven out of nine reported convictions during 2020 and 2021 took place in Germany. The notable achievements that Germany and France have attained in securing justice for Syrian victims can be attributed to the establishment of fully fledged specialized units at the investigation and prosecution levels. These units collaborate closely with the immigration services, and their investigations and prosecutions are fortified by preliminary structural inquiries. Their work has been greatly facilitated by close collaboration with civil society as well as formal relationships with other specialized units and United Nations investigative mechanisms.

Best Practices and Recommendations

While most specialized units are still in their infancy, some emerging best practices can be identified.

- Close collaboration with immigration services should be promoted in order to identify suspects.
- Units should be established under law or statute, rather than executive action, to provide for the necessary powers and to mitigate against attempts to change course if a new government comes to power.
- Units should be truly dedicated and focus exclusively on their mandated crimes without being deflected by other demands on their time and resources.
- Units should not be merged with other units or departments that are handling unrelated crime portfolios.
- Leadership should be strong and credible, with experience in engaging with multiple stakeholders, including political players.
- Units should employ multidisciplinary teams, including investigators, prosecutors, legal experts, historians, anthropologists, psychologists, data capturers, analysts, and experts specializing in the investigations of certain types of crimes, such as gender-based violence or crimes against children.
- Specialized units should be given sufficient resources to allow them to perform their functions effectively and without prejudice to their independence.
- Investigators should have unrestricted access to archives and documents in state institutions, including the security sector, with legal powers of search and seizure, surveillance, and asset tracing.
- Investigations should be led by the prosecution, with investigators and prosecutors working closely together under the same roof.
- Investigative and prosecution strategies should be informed by preliminary observation proceedings and structural investigations.
- Collaboration with local and international civil society organizations (CSOs) can help to launch cases and identify perpetrators, victims, and witnesses. Units should sign cooperation agreements with the CSOs to clearly delineate responsibilities and to

regulate their relationship. Regular roundtables should be held with CSOs to enhance the sharing of information and knowledge.

- Units should create a component that is responsible for international cooperation and stakeholders' engagement and that can process and fast-track requests for mutual legal assistance.
- Outreach and communication efforts by specialized units should help build public and political support and facilitate effective communication with communities, survivors, and stakeholders.
- Specialized units should have sufficient resources to set up effective protection and well-being programs for witnesses and victims.
- Civil society organizations should engage in focused advocacy campaigns to encourage the formation of specialized units and to build broad public and political support once they are established.

ABBREVIATIONS

| | |
|----------|--|
| CAH | Crimes Against Humanity Unit, France |
| CONADEP | National Commission on Disappeared Persons, Argentina |
| CSO | civil society organization |
| CVR | Truth and Reconciliation Commission (Comisión de la Verdad y la Reconciliación), Peru |
| DPCI | Directorate for the Priority Crimes Investigations, South Africa |
| DSO | Directorate of Special Operations, South Africa |
| EU | European Union |
| EUROJUST | European Union Agency for Criminal Justice Cooperation |
| FHR | Foundation for Human Rights |
| HET | Historical Enquiries Team, Northern Ireland |
| ICC | International Criminal Court |
| ICD | International Crimes Division of Uganda's High Court |
| ICTY | International Criminal Tribunal for the Former Yugoslavia |
| IIM | International, Independent and Impartial Mechanism for Syria |
| ISIS | Islamic State of Iraq and Syria (also known as ISIL and Da'esh) |
| IVD | Truth and Dignity Commission, Tunisia |
| JIT | joint investigation team |
| LIB | Legacy Investigation Branch, Northern Ireland |
| MLA | mutual legal assistance |
| NDPP | National Director of Public Prosecutions, South Africa |
| NGO | nongovernmental organization |
| NPA | National Prosecuting Authority, South Africa |
| OCLCH | Central Office for Combatting Crimes Against Humanity, Genocide, and War Crimes, France |
| PCCH | Office of the Prosecutor for Crimes Against Humanity, Argentina |
| PCLU | Priority Crimes Litigation Unit, South Africa |
| PNAT | National Anti-Terrorism Prosecutor's Office, France |
| PSNI | Police Service of Northern Ireland |
| SCCs | specialized criminal chambers, Tunisia |
| SCCU | Specialised Commercial Crime Unit, South Africa |
| SDWC | Special Division for War Crimes, Bosnia and Herzegovina |
| TRC | Truth and Reconciliation Commission, South Africa |
| UN | United Nations |
| VStGB | Völkerstrafgesetzbuch (Code of Crimes against International Law), Germany |
| WCC | War Crimes Chambers, Bosnia and Herzegovina |
| ZBKV | Central Office for Combating War Crimes, Germany |

I am the son of the late Fort Calata who, along with Matthew Goniwe, Sicelo Mhlauli and Sparrow Mkonto, became known posthumously as the Cradock Four. On 27 June 1985 they were abducted, tortured, murdered and their bodies burned by the Security Branch of the erstwhile South African Police. More than 36 years later, and notwithstanding countless pleas, my family and I are still waiting for the police to finalise its investigations and for the prosecutors to take a decision whether to prosecute the known suspects. I bring this court application to compel these institutions to carry out their functions in relation to the Cradock Four, as they are bound to do under law.

— Extract from the founding affidavit of Lukhanyo Calata in *Calata & Others v. National Director of Public Prosecutions & Others*, High Court of South Africa, Gauteng Division, Case No. 35447/21

Introduction

Holding perpetrators to account for the worst crimes known to humanity is one of the most important responsibilities of the community of nations in the 21st century. Investigating and prosecuting serious domestic and international crimes are particularly arduous and complex tasks. Notwithstanding the appalling nature of such crimes, most perpetrators do not face justice. Typically, machineries of justice are not as expeditious, organized, or focused as the machineries behind violence. Currently, most administrations of justice are no match for the well-oiled machines of mass atrocity.

This report considers ways of gearing up institutions that investigate and prosecute serious crimes. It explores a broad distinction of approach between countries that leave atrocity crimes to the general administration of justice and those that adopt a specialized or dedicated approach. Our starting premise is that the former, or “general,” approach almost always underdelivers, whereas the dedicated approach tends to produce results.

Specialized or dedicated prosecutorial and investigative capacities are entities that are created to focus exclusively on a particular category of crimes. They are typically located within a prosecution authority, police service, or other state agency and are variously created through legislation, regulation, or decree. Personnel who are attached to such units tend to be recruited for their demonstrated expertise and experience.

This report will highlight the institutional and operational arrangements that are typically put in place to investigate and prosecute gross human rights violations. Different models of domestic dedicated investigative and prosecutorial approaches are considered, and their track records assessed. Specialized units mandated to deal with serious international crimes or the “crimes of the past” arising from a defined historic period are the subject of this study.

The genesis of this report emerges from efforts to persuade the South African government to create a dedicated capacity to investigate and prosecute apartheid-era crimes, which have been long neglected. Several hundred murder cases referred by the Truth and Reconciliation Commission (TRC) to the prosecution authority were abandoned. Comparative research was presented to the Ministry of Justice, the National Prosecuting Authority (NPA), and the South African Police Service during 2020 and early 2021 demonstrating that the general approach to crimes of the past had failed in South Africa and other countries, whereas the specialized approach had proved to be considerably more effective.

This report also attempts to address a gap in research on the global fight against impunity. While there exists a plethora of resources on international courts, hybrid mechanisms, and the use of universal jurisdiction with respect to international crimes, there is not as much research available on the institutional and structural arrangements of specialized units.³

The report follows up the ICTJ's 2020 report on the state and future of universal jurisdiction, "Advancing Global Accountability: The Role of Universal Jurisdiction in Prosecuting International Crimes," and considers recent developments in the work of specialized units in bringing justice to perpetrators in the context of the Syrian conflict.

This report is organized in six chapters. The first chapter introduces the notion of specialized units more generally and identifies three categories of specialized units that are the subject of this study, namely historical units, new-generation units, and mixed-mandate units, and outlines the reasons for their establishment.

Chapter 2 provides case studies contrasting countries that have specialized units with those that have adopted the general approach to crimes of the past and international crimes. Chapter 3 examines the primary features that characterize specialized units, including those of prosecution-led investigations, outreach and communication, and the role of civil society organizations (CSOs). The fourth chapter analyzes the main challenges faced by the units, including questions of political will and victim support.

In the fifth chapter, we draw conclusions based on our research and consider whether a specialized approach should be preferred over the general approach to investigating and prosecuting gross human rights violations. Finally, Chapter 6 provides a brief analysis of recent efforts by various specialized units to deliver criminal accountability for serious crimes committed in Syria. We conclude by offering recommendations that have emerged from the practices of the specialized units.

Our research methodology involved desktop research and the conducting of 10 semi-structured interviews with eminent individuals in the field. We employed a qualitative research method to analyze various specialized units established across the world. The report concludes with an annex that provides a high-level audit of specialized units in 23 countries, setting out each unit's type, composition, mandate, time frame, and jurisdictional basis.

3 Notable publications include Human Rights Watch, "The Long Arm of Justice: Lessons from Specialized War Crimes Units in France, Germany, and the Netherlands" (Sept. 16, 2014); Human Rights Watch, "These Are the Crimes We Are Fleeing: Justice for Syria in Swedish and German Courts" (Oct. 3, 2017); Eric A. Witte and Clair Duffy, eds., *Options for Justice: A Handbook for Designing Accountability Mechanisms for Grave Crimes* (Open Society Justice Initiative, 2018); Sarah Finnin, FIDH/Redress/ECCHR, "Surmonter les obstacles: L'accès à la justice en Europe pour les victimes de crimes internationaux" (Sept. 2020). TRIAL International and the Open Society Justice Initiative have published a series of reports on universal jurisdiction; see "Prosecuting International Crimes: A Matter of Willingness" (May 5, 2020), [trialinternational.org/latest-post/prosecuting-international-crimes-a-matter-of-willingness/](https://www.trialinternational.org/latest-post/prosecuting-international-crimes-a-matter-of-willingness/).

Chapter 1: Introduction to Specialized Units

Investigative and Prosecutorial Specialized Units

Specialized investigation and prosecution units are established for different reasons. Most often, these units are formed to investigate and prosecute complex criminal cases that present a threat to national security or financial stability, such as terrorism or money laundering. Other categories of cases that have warranted specialized attention include transnational crimes and crimes that target vulnerable groups, such as children and victims of human trafficking. In addition, crimes that are structural or endemic in nature, such as corruption, require focused attention. Finally, specialized units have been established to deal with crimes that rise to a certain gravity threshold, such as crimes against humanity, since their investigation and prosecution are required under international law. In some countries, specialized units have been created within police or prosecution services to deal exclusively with “crimes of the past.” Their mandates have been limited to certain serious crimes arising from defined historic periods.

While there are many reasons underpinning the formation of specialized units, the rationale behind their establishment generally includes the need to:

- concentrate and centralize national efforts under one organizational entity to facilitate coordination and the exchange of information and leads, and to delineate clear lines of responsibility and accountability;
- have motivated, well-capacitated, and skilled investigators and prosecutors with the necessary expertise;
- promote specialized and focused attention on identified cases and prevent personnel from being distracted and diverted onto other matters;
- foster closer cooperation between investigators and prosecutors.

For the purposes of this report, we differentiate between historical specialized units, new-generation units, and mixed-mandate units as follows:

- **Historical units** focus on gross human rights violations that were committed within a certain territory or in relation to a specific conflict or set of events. Such units may apply domestic or international criminal law to characterize crimes under their jurisdiction. Given the limited scope of their temporal jurisdiction, these units tend to be temporary and cease operations once their mandates have been completed.

- **New-generation units** were mostly established by countries that were required to give effect to their international obligations under the Rome Statute of the International Criminal Court (ICC). These units were created to deal with core international crimes such as crimes against humanity and war crimes. In addition to the principle of territoriality, these units invoke extraterritorial bases for jurisdiction, including the principle of universal jurisdiction, to prosecute serious international crimes that occurred in other countries.⁴
- **Mixed-mandate units** are units that are established to deal with gross human rights violations that were committed during defined historic periods, applying domestic and/or international law. In addition, they prosecute serious international crimes committed around the world based on extraterritorial jurisdiction. Often, such units also have jurisdiction to deal with crimes such as organized crimes, serious corruption, and transnational crimes.

Reasons for the Establishment of Specialized Units

The reasons for setting up specialized units differ between countries. Some states have created specialized units to address gross human rights violations committed during a defined historical period (e.g., in Germany, the Central Office of the Land Judicial Administration for the Investigation of National Socialist Crimes).

Other specialized units have been established to ensure that war criminals masquerading as asylum seekers or refugees are identified and caught. This is sometimes done to deny a “safe haven” to war criminals (e.g., the War Crimes Program in Canada).⁵ The French prosecutorial specialized unit (the Crimes Against Humanity Unit, or *Pôle de crime contre l’Humanité*) was set up to bring to court suspected participants in the Rwanda 1994 genocide, who had fled to France.⁶

Other countries have initiated specialized mechanisms for political reasons or in response to pressure from other states. For example, in Serbia the establishment of the Office of War Crimes Prosecutor of the Republic of Serbia was prompted by Serbian efforts to access the European Union (EU).⁷

The adoption of the Rome Statute of the ICC in 1998 was a catalyst for the domestication of the Rome Statute provisions in national legal frameworks. In some instances, it led to the creation of dedicated investigative and prosecutorial capacities to give effect to new obligations under international law; this was the case with international crimes units in Germany, France, and Sweden.

While data published by Parliamentarians for Global Action show that 71 states have domesticated the provisions of the Rome Statute at least partially, only a handful of states have set up

4 For the purposes of this report, extraterritorial jurisdiction encompasses all situations where states apply their jurisdiction extraterritorially. Such jurisdiction is typically justified by the principle of nationality, the passive nationality principle, and the protective principle or the principle of universal jurisdiction.

5 Interview with Ambassador Stephen Rapp, American prosecutor and the former U.S. ambassador-at-large for war crimes issues in the Office of Global Criminal Justice at the U.S. State Department, Oct. 14, 2021. The War Crimes Program is implemented jointly by four key actors: the Immigration, Refugees and Citizenship Canada; the Canada Border Services Agency; the Royal Canadian Mounted Police; and the Department of Justice. The program takes a holistic approach based on three main avenues to seek accountability: criminal investigations and prosecutions, various immigration proceedings, and citizenship revocation. Government of Canada, “War Crimes and Crimes Against Humanity,” modified Aug. 18, 2021, www.justice.gc.ca/eng/cj-ip/wc-cdg/index.html.

6 Open Society Justice Initiative and TRIAL International, “Universal Jurisdiction Law and Practice in France” (Feb. 2019), 19; H el ene Dumas, “Rwanda: comment juger un g enocide?,” *Politique  trang ere* 80, no. 4 (2015): 39–50.

7 Humanitarian Law Center, “Report on War Crimes Trials in Serbia During 2020” (May 14, 2021), 7; interview with Stephen Rapp.

specialized units.⁸ Matevž Pezdirc, the head of the EU Genocide Network Secretariat, observed that having a specialized unit leads to the development of more cases, which requires a proactive approach—an approach ordinary enforcement and prosecutorial entities often do not have the capacity to take.⁹

Some countries, such as Austria, domesticated the Rome Statute but have decided against the establishment of a specialized unit.¹⁰ However, leaving international crimes to the ordinary legal system can lead to serious challenges during the investigation stage. Alexandra Lily Kather, an international criminal law expert currently consulting for several accountability actors supporting universal jurisdiction proceedings, gave the example of the lack of specialized, ongoing training of investigators as a contributing factor adding to the trauma of torture survivors during interviews.¹¹

8 The Parliamentarians for Global Action’s website states that 71 states “have adopted at least partially domestic implementing legislations on complementarity.” Parliamentarians for Global Action, “Campaign for the Universality and Effectiveness of the System of the Rome Statute of the International Criminal Court (ICC),” www.pgaction.org/ilhr/rome-statute/.

9 Interview with Matevž Pezdirc, the head of the EU Genocide Network Secretariat, Oct. 25, 2021.

10 Permanent Mission of Austria to the United Nations in New York, observations in relation to “The scope and application of the principle of universal jurisdiction” (ref. no. New-York-ÖV/RECHT/0055/2017, May 1, 2017), www.un.org/en/ga/sixth/72/universal_jurisdiction/austria_e.pdf.

11 Interview with Alexandra Lily Kather, international criminal law expert and consultant, Oct. 15, 2021.

Chapter 2: Case Studies

Our research indicates that at least 23 countries have specialized units (including historical, new-generation, and mixed-mandate units) globally.¹² We are aware of 36 specialized units, including 15 new-generation units, 11 historical units, and 10 mixed-mandate units. Germany has established the most units, including three new-generation units at the levels of the police, prosecution, and immigration services, as well as a historical unit that is responsible for preliminary investigations into Nazi crimes. In Argentina, there exist two historical units, but no new-generation unit to deal with universal jurisdiction cases. In England and Wales, the police unit is fully specialized (a new-generation unit), whereas the prosecution unit is mixed-mandate as it deals with both serious international crimes and organized crimes. However, no special prosecutor's office was created to prosecute crimes arising from "the Troubles" in Northern Ireland. In Lithuania, the initially historical unit that was established in 1991 to investigate and prosecute the Nazi and Soviet-era crimes has more recently also assumed the mandate of investigating serious international crimes.¹³ In addition, according to the EU Genocide Network, there is a form of a specialized investigative capacity in Spain.

Historical Units

The section analyzes specialized units established in Argentina, Germany, and Bosnia and Herzegovina.

Argentina

Context

Many dictatorship-era crimes were committed in Argentina. The first democratically elected president of Argentina, Raúl Alfonsín, created a National Commission on Disappeared Persons (known by its Spanish acronym, CONADEP) and tasked it with investigating the fate of the *desaparecidos* (disappeared persons). In 1984, CONADEP released its report, "Nunca Más" ("Never Again"), which listed the victims and detention centers where individuals were murdered and tortured by security forces. CONADEP's findings were then used in several criminal trials.

¹² See the annex. The list includes Spain, which, according to the information obtained from the EU Genocide Network, has appointed designated investigators that can handle investigations of core international crimes. The EU Genocide Network does not use the same terminology we use in this report (i.e., historical, new-generation, and mixed-mandate units) to refer to the specialized units.

¹³ The Prosecutor's Office—Lithuania. Prosecutor General's Office, "Crimes Against Humanity," updated Feb. 29, 2020, www.prokuraturos.lt/en/activities-of-prosecution/crimes-against-humanity/4421. See also BNS, "Lithuanian Prosecutors Launch Probe into Regime Violence in Belarus," LRT, Dec. 9, 2020.

The three hearings, or Juicio a las Juntas Militares (Trials of the Military Junta Members), held throughout 1985 were a landmark for justice in Argentina. The trials concerned crimes against humanity (including murder, torture, and illegal detention) and were held at Argentina's National Criminal Court of Appeals. This court handled 280 carefully selected cases from the 709 cases prepared by the Office of the Public Prosecutor.¹⁴ The prosecutor's "never again" closing argument remains etched in the minds of many Argentines.¹⁵ The trial of the junta members led to the conviction of former presidents Jorge Rafael Videla and Roberto Eduardo Viola, Admirals Emilio Eduardo Masera and Armando Lambruschini, and Brigadier General Orlando Ramón Agosti. More than 800 witnesses were presented, covering some 700 individual complaints taken from CONADEP's case files.¹⁶

Structure

At the federal level, there is a specialized unit established by the Argentinean attorney general: the Office of the Prosecutor for Crimes Against Humanity (PCCH), established in 2013 by Resolution PGN No. 1442/13, formerly known as the Fiscal Unit for Coordination and Follow-Up of Causes for Violations of Human Rights Committed During State Terrorism, created as an autonomous body in 2007 (by Resolution PGN No. 14/07).¹⁷ In 2013, the attorney general merged the PCCH with the Fiscal Unit.¹⁸ The bodies that preceded the PCCH include the Human Rights Commission of the Public Prosecutor's Office, set up in 2001 (by Resolution PGN No. 56/01), which operated under the General Attorney's Office of Criminal Policy, and the Assistance Unit for Cases of Human Rights Violations, established in 2004 on the basis of the commission (by Resolution PGN No. 163/04).¹⁹

The PCCH is one of the special units established as part of the Office of the Prosecutor (Ministerio Público Fiscal), which is an independent state organ created under the constitution and regulated under specific laws.²⁰ The heads of special units, including the PCCH, report directly to the attorney general.²¹ In addition to the PCCH, at the federal level, there exists the Specialized Unit for Cases of Appropriation of Children During State Terrorism.²²

In the regions where many crimes are alleged to have occurred that fall under the PCCH's jurisdiction, specialized units have been established (about 10 of them exist in Argentina). In other regions, no specialized units exist, and the prosecutors deal with serious crimes as part of their regular workload.²³ In all cases, matters arising from the dictatorship are coordinated by the PCCH.

14 International Crimes Database, "Juicio a las Juntas Militares" (2013), www.internationalcrimesdatabase.org/Case/1118/Juicio-a-las-Juntas-Militares/.

15 Ibid.

16 Leonardo Filippini, ICTJ, "Criminal Prosecutions for Human Rights Violations in Argentina" (Nov. 2009), 2.

17 Ministerio Público Fiscal, "Procuraduría de Crímenes contra la Humanidad (PCCH)," www.mpf.gov.ar/lesa/; Procuración General De La Nación (Attorney General of the Nation). On the events leading to the establishment of the PCCH, see Comisión Mexicana de Defensa y Promoción de los Derechos Humanos and the Fund for Global Human Rights, "Eradicating Impunity for Atrocities Committed in Dictatorships, Authoritarian Regimes and Armed Conflicts in Latin America: Challenges and Good Practices in Argentina, Chile, Colombia, Guatemala and Peru" (March 2018), 46–51.

18 Alejandra Gils Carbó, Resolución PGN 1442/13 (July 29, 2013), www.mpf.gov.ar/resoluciones/pgn/2013/PGN-1442-2013-001.pdf.

19 Comisión Mexicana de Defensa y Promoción de los Derechos Humanos and the Fund for Global Human Rights, "Eradicating Impunity," 46–47.

20 Francesca Lessa, Latin American Centre, Oxford School of Global and Area Studies, and University of Oxford, "Investigating Crimes Against Humanity in South America: Present and Future Challenges," trans. Julia Zulver (2019); Argentine Constitution, Art. 120; Law 27148, Organic Law of the Public Prosecutor's Office, June 2015.

21 Interview with Dr. María Ángeles Ramos, head prosecutor of the PCCH, Oct. 22, 2021.

22 Ministerio Público Fiscal, "Unidad Especializada para Casos de Apropiación de Niños durante el Terrorismo de Estado (UFICANTE)," www.mpf.gov.ar/lesa/unidad-especializada-para-casos-de-apropiacion-de-ninos-durante-el-terrorismo-de-estado/.

23 Interview with Dr. María Ángeles Ramos.

Mandate

The PCCH holds a mandate over the crimes that were committed on Argentinian territory during the dictatorship that lasted from 1976 to 1983.²⁴ In Argentina, there are two systems within the criminal system, namely the inquisitorial and adversarial systems, which operate concurrently.²⁵ However, because the PCCH deals with cases of crimes against humanity that were committed during the period of state terrorism, such cases must be brought under the criminal law that was in place between 1976 and 1983. For this reason, the system that is used with respect to “crimes of the past” is the inquisitorial system.²⁶

Jurisdictional Basis for Launching Investigations

The PCCH operates on the basis of a principle of territoriality.

Functions

The main functions of the PCCH include the following:

- Compile a register of cases of human rights violations committed during the period of repression.
- Oversee preliminary investigations and monitor developments in each case.
- Provide institutional coordination to facilitate efficiency and progress.
- Design strategies to strengthen the investigations in each case, detect weaknesses, and address shortcomings and problems.
- Digitize records and case files to facilitate speedy searches and the extraction of information.
- Research domestic, foreign, and international developments in criminal law and procedure.
- Coordinate tasks with other prosecutors to optimize resources to achieve set objectives.
- Consult with institutional and social actors who are involved in the pursuit of truth and justice.²⁷

Operations

The long experience in the specialized investigation and prosecution of serious human rights violations resulted in the issuance of policies and mandatory guidelines by the attorney general for the investigation of human rights violations.²⁸ The guidelines prioritize investigations of sexual violence during the dictatorship.²⁹ Over time, the investigations expanded from a narrow

24 Resolution PGN No. 1442/13, Art. 4.

25 Interview with Dr. María Ángeles Ramos.

26 Ibid.

27 Ministerio Público Fiscal, “Estado actual del proceso de juzgamiento” (June 24, 2020), www.fiscales.gob.ar/lesa-humanidad/estado-actual-del-proceso-de-juzgamiento-263-causas-estan-en-etapa-de-instruccion-y-67-aguardan-por-el-inicio-del-juicio/.

28 Resolution PGN No. 1442/13. The 2008 resolution followed the Fiscal Unit’s publication of its document “Some Problems Related to the Processing of Cases for Violations of Human Rights Committed During State Terrorism.” Once this recommendation was noted by the Fiscal Unit of Coordination and Follow-Up to the attorney general, implementation guidelines for performance objectives were established, as “Guidelines for the Implementation of Resolution PGN 13/08.”

29 Interview with Dr. María Ángeles Ramos.

focus on military and security personnel to include perpetrators from other government departments and businesspeople.³⁰

The PCCH operates at the federal level and intervenes at the local level when necessary.³¹ It oversees the investigation and prosecution of crimes that were committed during the dictatorship at the federal level, but prosecutors working in the regions are responsible for the cases within their jurisdictions.³²

Argentinian prosecutors have the power to request documents that are relevant for their cases in the possession of state institutions; national, provincial, and local authorities; private companies; and individuals. Prosecutors may take statements from any person who is obliged to comply with the request. Search and seizure orders may be granted by a court.³³ In addition, the Office of the Prosecutor has signed a special agreement with state agencies (including the military and intelligence) to permit prosecutors to access all relevant documents.³⁴

Composition

The PCCH comprises federal prosecutors and is currently led by Dr. María Ángeles Ramos.³⁵ The unit involves approximately 21 people, including lawyers, prosecutors, anthropologists, sociologists, historians, and specialists in media and communications. The specialized units at the regional level are composed of about 15 people each. There are approximately 30 prosecutors working on these cases nationally. Each specialized unit at the regional level is also staffed with two assistant prosecutors who support the work of regular prosecutors and act on their instructions and under their supervision.³⁶

Dr. Ramos, the chief prosecutor of the PCCH, explained that the prosecutors working at the federal and regional specialized units have both investigative and prosecutorial functions. There are no investigators working at the units. The units do not involve state enforcement agencies in the investigations, given that they were implicated in past violations.³⁷

Outcomes

According to the PCCH's official statistics, as of September 16, 2021, a total of 3,525 people have been investigated for crimes against humanity, of whom 1,044 were convicted (as part of 264 sentences that were handed down).³⁸ The disaggregated figure consists of 602 individuals prosecuted and 581 accused, of which cases "without merit" were withdrawn against 165 individuals.³⁹ In addition, 162 accused people were acquitted, 97 cases were dismissed, 39 individuals remain under investigation, and 29 fugitives have not been traced. Finally, 806 people who were implicated in crimes during the dictatorship died before they could face justice.⁴⁰

30 "Guidelines for the Implementation of Resolution PGN 13/08"; Resolución PGN No. 1442/13.

31 Ministerio Público Fiscal, "Qué es el MPF," www.mpf.gob.ar/que-es-el-mpf/.

32 Interview with Dr. María Ángeles Ramos.

33 Law on the Prosecutor's Office, Art. 7, servicios.infoleg.gob.ar/infolegInternet/anexos/245000-249999/248194/texact.htm.

34 Interview with Dr. María Ángeles Ramos.

35 Ministerio Público Fiscal, "Procuraduría de Crímenes contra la Humanidad (PCCH)."

36 Interview with Dr. María Ángeles Ramos. See also, for example, the Organic Law on the Public Prosecutor's Office, adopted by the Legislature of the Autonomous City of Buenos Aires, Art. 37bis, www2.cedom.gob.ar/es/legislacion/normas/leyes/ley1903.html.

37 Interview with Dr. María Ángeles Ramos.

38 Ministerio Público Fiscal, "Son 1044 las personas condenadas en 264 sentencias en causas por crímenes de lesa humanidad" (Sept. 24, 2021), www.fiscales.gob.ar/lesa-humanidad/son-1044-las-personas-condenadas-en-264-sentencias-en-causas-por-crimenes-de-lesa-humanidad/.

39 In cases "without merit," a court orders that further evidence is required to make an informed prosecutorial decision.

40 Ministerio Público Fiscal, "Son 1044 las personas condenadas."

Without the ongoing and focused dedication of the PCCH, it is unlikely that these investigations and prosecutions would have happened. The success in Argentina is a testament to the collective and political will to serve and deliver justice, notwithstanding the long lapse in time.

Challenges

The scale of the abuses makes the process of bringing truth and justice to victims of the dictatorship a long one. The large number of victims and perpetrators places a great burden on prosecutors.⁴¹ However, the dedicated capacity has allowed for the mainstreaming of investigations and prosecutions into the crimes of the past. A challenge is the adjudication of cases before the ordinary courts, which labor under backlogs and do not have sufficient capacity to effectively deal with ordinary crimes, not to mention complex crimes under international law.⁴² While the holding of mega-trials, involving multiple crimes and accused implicated in state violence, has saved resources and time, other trials have taken years to materialize.⁴³

Germany—Prosecuting Nazi Crimes

Context

Nazi crimes committed in World War II were investigated by the Allied authorities, culminating in the famous Nuremberg Trials. These trials were followed by criminal trials before military and civil courts in the then Western zones of occupation and later in West Germany, the Soviet Union, Poland, and Czechoslovakia.⁴⁴

The creation of the Central Office of the Land Judicial Administration for the Investigation of National Socialist Crimes (known as “the Central Office”) was prompted by the Ulm Einsatzkommando Trial in 1958 of 10 former members of the Einsatzkommando Tilsit, responsible for mass executions of Jews and others, which showed that there was still much to do in terms of prosecutions in postwar Germany.⁴⁵

The formation of the Central Office was also prompted by the need to create a jurisdictional basis for the investigation and prosecution of Nazi crimes in Germany, since many of these crimes were committed in counties that were occupied by Germany during the war.

Structure

In 1958, the Central Office to prosecute Nazi criminals was created based on an administrative agreement between the ministers of justice of the lands (ministers of justice from the German federal states).⁴⁶ It is a central office based in Ludwigsburg and financed by all lands (states). In 2015, the ministers agreed that the Central Office “in Ludwigsburg will continue running in its present form further on as long as there are prosecution tasks to fulfil.”⁴⁷

41 Human Rights Watch, “Argentina: Events of 2018,” in *World Report 2019* (2019), www.hrw.org/world-report/2019/country-chapters/argentina#befdob.

42 Witte and Duffy, “Annex 2: Mechanism in the Americas,” in *Options for Justice*, 359–360.

43 Ministerio Público Fiscal, “La Procuraduría de Crímenes contra la Humanidad advierte sobre las demoras en los juicios” (July 26, 2016), www.fiscales.gov.ar/lesa-humanidad/la-procuraduria-de-crime-nes-contra-la-humanidad-advier-te-sobre-las-demoras-en-los-juicios/#0.

44 Central Office of the Land Judicial Authorities for the Investigation of National Socialist Crimes, “Information Sheet, Status as of January 1, 2021” (2021), 3, https://zentrale-stelle-ludwigsburg.justiz-bw.de/pb/site/jum2/get/documents/jum1/luM/Zentrale%20Stelle%20Ludwigsburg/Infoblatt_ZSt_EN_05.07.2021.pdf.

45 Ibid., 4. This included, for instance, mass crimes at concentration camps and extermination camps in Poland.

46 Ibid.

47 Central Office of the Land Judicial Authorities for the Investigation of National Socialist Crimes, “Creation and Competence,” zentrale-stelle-ludwigsburg.justiz-bw.de/pb/Len/Startpage/Creation/Creation+and+Competence.

Mandate

The Central Office's main purpose is to conduct preliminary investigations into crimes that were committed under Nazi rule between 1933 and 1945. The office only conducts preliminary investigations into murders, which were not barred by the statute of limitations.⁴⁸

Jurisdictional Basis for Launching Investigations

Initially, the office only had jurisdiction to investigate "crimes that occurred outside of Western Germany and only those related to wartime operations against civilians," such as crimes in the concentration camps. In 1964, its jurisdiction was extended to include Nazi crimes committed in Western Germany.⁴⁹

Functions

Central Office functions include the investigation of Nazi crimes and the collection, examination, and preservation of records of investigations into and prosecutions of Nazi crimes. The work with records is intended to ensure that future generations learn from history. In 2000, the Central Office and the German federal government on behalf of the Federal Archives signed an agreement with the federal states responsible for the Central Office to take over the archives of the Central Office.⁵⁰

Operations

Following preliminary investigations, the Central Office refers processed cases to public prosecutor offices. The assigned public prosecutors are obliged to report to the Central Office and to notify it of all steps taken.⁵¹ As of 2018, more than 30 cases were referred to public prosecutors from the Central Office per year.⁵²

German prosecutors were hamstrung by a 1969 case that held that the state needed proof that a suspect was directly involved in a crime.⁵³ In 1969, a German high court "overturned the conviction of an Auschwitz dentist and former SS member on the grounds that working at the concentration camp was not a crime in itself." The court forced prosecutors to withdraw the case against the Reich Security Main Office, which was responsible for implementing Hitler's policy of mass extermination.⁵⁴ However, in 2006, the German Federal Court of Justice convicted Mounir el Motassadeq on 246 counts of being an accessory to the murder of passengers aboard the flights that were hijacked on September 11, 2001, for transferring money to one of the hijackers.⁵⁵ In 2009, this precedent was invoked in the prosecution against John Demjanjuk, who had been a guard at the Sobibor Nazi extermination camp in German-occupied Poland, and he was convicted on the grounds that he had aided and abetted the commission of crimes.⁵⁶

48 German Criminal Code, Sec. 211; German Criminal Code, Sec. 78(2); Central Office, "Information Sheet, Status as of January 1, 2021," 5.

49 Central Office, "Information Sheet, Status as of January 1, 2021," 2.

50 *Ibid.*, 8.

51 *Ibid.*, 5.

52 This number has considerably decreased in the last three years due to the age of potential perpetrators and survivors. See an interview by Deutsche Welle with Jens Rommel, chief prosecutor at the Central Office: "Nazi Crimes Prosecutor: 'Time Is Running Out'" (Dec. 1, 2018), www.dw.com/en/nazi-crimes-prosecutor-time-is-running-out/a-46536430.

53 Linda Kinstler, "The Last Nazi Hunters," *The Guardian*, Aug. 17, 2017.

54 *Ibid.*

55 Timo Kost, "Mounir El Motassadeq—a Missed Chance for Weltinnenpolitik?," *German Law Journal* 8, no. 4 (2007): 443–453.

56 Only in the 2009 case against the notorious Nazi guard John Demjanjuk did a German court finally accept that those who knowingly participated in the machinery of death should face justice, even in the absence of evidence of their direct involvement in a particular killing. Howard Varney, ICTJ, "Groundbreaking International Justice in Germany" (May 28, 2020). See also Deutsche Welle, "Nazi Crimes Prosecutor."

This ruling significantly expanded the potential universe of suspects, but by then many suspects and witnesses had already died.

Composition

The Central Office consists of 20 people, including the head of the office, six investigators (judges, public prosecutors, and police officers), two translators, and personnel responsible for administration and database management. Public prosecutors and judges are assigned from the federal states to the Central Office.⁵⁷

During the busiest period of the Central Office, between 1967 and 1971, when it dealt with some 600 preliminary investigations, it comprised 121 staff members, including 49 prosecutors and judges.⁵⁸

Outcomes

Between the inception of the Central Office in 1958 and January 2021, some 7,686 preliminary investigations had been conducted, while 18,661 prosecutions had been concluded or were still pending before various federal courts.⁵⁹ According to data provided by the Ministry of Justice, as of 2019, a total of 6,522 defendants have been convicted for crimes committed under Nazi rule.⁶⁰

Challenges

Initially, the Central Office was not immediately effective.⁶¹ At first, it was not able to prosecute crimes itself. Its work was further impeded by the lack of a special provision for war crimes in contemporary German law and by a statute of limitations that made some crimes difficult or impossible to prosecute after 1960.⁶²

For the next 40 years, the Central Office faded from public consciousness, to reemerge in 2007 with several landmark cases.⁶³ Kurt Schrimm, then head of the Central Office, used the John Demjanjuk case to reenergize the office.⁶⁴

The Central Office has faced some political opposition. Initially there was little public support for the prosecution of Nazi criminals, and the office's "function was intended to be largely symbolic—a kind of alibi for a West German state that wanted to appear as if it were pursuing post-war justice.... As such, the Central Office was denied the ability to prosecute criminals itself."⁶⁵ A 2020 survey found that "about one in five Germans believe that the Holocaust gets too much attention," and around 75 percent of supporters of the right-wing populist party Alternative for Germany believe that Germans should stop "obsessing over Nazi crimes."⁶⁶

Perhaps the greatest setback experienced by German prosecutors was that ultimately, they lost the race against time, as most perpetrators died of old age before they could be held to account.

57 Ibid., 7.

58 Ibid.

59 Ibid., 11.

60 Ibid.

61 Kinstler, "The Last Nazi Hunters."

62 Ibid. Since May 1960, as per Sections 78 and 211 of the German Criminal Code, only Nazi crimes defined as murder could be prosecuted. Offenses such as malicious killing and manslaughter were all subject to the statute of limitations. See Central Office, "Information Sheet, Status as of January 1, 2021."

63 Kinstler, "The Last Nazi Hunters."

64 Ibid.

65 Ibid.

66 The survey is cited in Rainer Schultze, "Why Try a 100-Year-Old Nazi?," *JusticeInfo.net*, Oct. 12, 2021.

Bosnia and Herzegovina

Context

The armed conflict in Bosnia and Herzegovina between 1992 and 1995 was characterized by grave violations of human rights, including mass killings, rapes, widespread destruction, and displacement of the population.⁶⁷ To ensure criminal accountability for international crimes committed in the former Yugoslavia, the United Nations (UN) Security Council established the International Criminal Tribunal for the Former Yugoslavia (ICTY).

The War Crimes Chambers (WCC) in Bosnia and Herzegovina were created in the context of the ICTY's completion strategy.⁶⁸ The WCC is a domestic chamber based in Sarajevo; it shares concurrent jurisdiction over atrocity crimes with various local courts.⁶⁹ It initially had a mixed national-international composition, but as of 2012, the WCC comprises 48 local judges only.

Structure

Adjunct to the WCC, the Special Division for War Crimes (SDWC) was formed in 2004 in the Prosecutor's Office. The SDWC was established as one of three departments within the Prosecutor's Office and is led by the head of the department, who is a deputy chief prosecutor reporting directly to the chief prosecutor. The SDWC is further composed of three sections that have jurisdiction over assigned geographical areas.⁷⁰

Mandate and Jurisdictional Basis to Launch Investigations

The SDWC deals with crimes emerging from the 1992–1995 conflict. As such, it is mandated to prosecute war crimes, crimes against humanity, and genocide as defined in the Penal Code.⁷¹

Functions

The SDWC works on cases that are transferred by the ICTY to the WCC, as well as cases that are initiated in the Prosecutor's Office.⁷²

Operations

The 2008 National War Crimes Processing Strategy imposed a deadline of seven years (i.e., 2015) for the processing of the most complex and highest-priority war crimes cases and a deadline of 15 years (i.e., 2023) for the processing of other war crimes cases. The 2015 deadline was not met and was extended to 2023, the deadline for all other cases.⁷³ Stephen Rapp, a former U.S. ambassador-at-large for war crimes issues in the Office of Global Criminal Justice, indicated that initially the SDWC had a realistic prosecutorial strategy, but once the unit became fully staffed with local practitioners in 2012, it agreed to a request from victims to prosecute all perpetrators. In recent years, the unit has employed a more case-by-case approach and has dealt with lower-level perpetrators.⁷⁴

Prosecutors of the SDWC initially sent “highly sensitive” cases (assessed based on the “Orientation Criteria for Sensitive Rules of the Road Cases”) to the WCC and “sensitive” cases to local

67 Witte and Duffy, “Annex 4: Mechanisms in Europe,” in *Options for Justice*, 485–625.

68 Human Rights Watch, “Looking for Justice: The War Crimes Chamber in Bosnia and Herzegovina” (Feb. 7, 2006).

69 Witte and Duffy, “Annex 4: Mechanisms in Europe,” in *Options for Justice*.

70 Hybrid Justice, “The War Crimes Chamber in Bosnia and Herzegovina,” hybridjustice.com/the-war-crimes-chamber-in-bosnia-and-herzegovina/.

71 Bogdan Ivanišević, ICTJ, “The War Crimes Chamber in Bosnia and Herzegovina: From Hybrid to Domestic Court” (2008), 7.

72 Ibid.

73 Joanna Korner, British Embassy in Sarajevo and OSCE, “Improving War Crimes Processing at the State Level in Bosnia and Herzegovina: A Follow-Up Report” (2020), 9.

74 Interview with Stephen Rapp.

courts.⁷⁵ Since the adoption of the National War Crimes Strategy in 2008, cases have been sorted based on “complexity criteria,” considering “the gravity of the criminal offence, the capacity and role of the perpetrator, and other considerations.”⁷⁶

Composition

Initially, the SDWC was composed of both international and national prosecutors. However, international prosecutors were phased out in 2012.⁷⁷ According to a report by the British Embassy in Sarajevo and the Organization for Security and Co-operation in Europe, in 2020 there were 27 prosecutors supported by legal associates, 10 investigators, and four analysts.⁷⁸ In addition, the State Investigation and Protection Agency provides 80 officers as support to the Prosecutor’s Office, some of whom are dedicated exclusively to the SDWC.⁷⁹

Outcomes

Between 2004 and 2017, some 473 war crimes proceedings had been initiated by the SDWC.⁸⁰ By November 2017, a total of 66 cases had been adjudicated, resulting in the conviction of 83 individuals, the acquittal of 49 suspects, and the suspension of eight cases. A further 13 cases involving 43 accused were at the trial stage, and six cases remained before the Appellate Court.⁸¹ In 2018, a further 17 accused were convicted.⁸²

Challenges

The SDWC strategy to target the most complex and serious cases was poorly implemented, which allowed some of those who were most responsible to escape justice and has created a large backlog of cases. The abandoning of the model of small teams working on geographically similar cases hampered the efficacy of the unit’s work. Finally, the fact that some prosecutors were assigned organized crime cases, as well as other cases outside the SDWC’s mandate, deflected them from vigorously pursuing war crimes cases.⁸³

New-Generation Units

France

Context

France introduced elements of universal jurisdiction into domestic law long before the creation of a dedicated capacity to investigate international crimes. However, it was only when prosecutorial and investigative specialized units were created in 2011 and 2013, respectively, that perpetrators of international crimes began to face justice. Prior to this, the European Court of

75 The crimes warranting the designation of a “highly sensitive” case are genocide, extermination, multiple murders, rape and other serious sexual assaults as part of a system, enslavement, torture, persecutions on a widespread and systematic scale, and mass forced detention in camps. See a Human Rights Watch interview with Marinko Jurcevic, chief prosecutor of Bosnia and Herzegovina, “Importance of War Crimes Prosecutions in Republika Srpska,” in Human Rights Watch, “A Chance for Justice? War Crime Prosecutions in Bosnia’s Serb Republic,” *Human Rights Watch* 18, no. 3(D) (March 2006), 5–13.

76 National Strategy for War Crimes Processing, adopted by the BiH Council of Ministers on Dec. 29, 2008.

77 The Prosecutor’s Office of Bosnia and Herzegovina, Department I (Special Department for War Crimes).

78 Korner, “Improving War Crimes Processing,” 19, 26, 24.

79 *Ibid.*, 27. The State Investigation and Protection Agency was established in 2002 as an independent institution of Bosnia and Herzegovina “in charge of collection and processing of information of interest for implementation of international laws and B&H Criminal Codes, as well as for protection of VIPs.”

80 Organization for Security and Co-Operation in Europe (OSCE), Mission to Bosnia and Herzegovina, “Observations on the National War Crimes Processing Strategy and Its 2018 Draft Revisions, Including Its Relation to the Rules of the Road ‘Category A’ Cases” (Sept. 27, 2018).

81 Witte and Duffy, “Annex 4: Mechanisms in Europe,” in *Options for Justice*.

82 OSCE, “Observations on the National War Crimes Processing Strategy.”

83 Korner, “Improving War Crimes Processing.”

Human Rights in 2004 found France to be in violation of its obligations under Articles 6 and 13 of the European Convention on Human Rights because of unreasonable delays in a case involving crimes of genocide committed in Rwanda.⁸⁴

On December 13, 2011, France's parliament passed a law that created the Crimes Against Humanity Unit (the CAH Unit, or Pôle crimes contre l'humanité) within the Prosecutor's Office.⁸⁵ That specialized unit was initially conceptualized to fight the climate of impunity that resulted from alleged Rwandan criminals fleeing their country for France after the 1994 genocide.

In 2013, the Central Office for Combatting Crimes Against Humanity, Genocide and War Crimes (OCLCH), a service attached to the French National Gendarmerie, was created by decree.⁸⁶

Structure

The prosecutorial CAH Unit was first set up as part of the High Court (Tribunal de Grande Instance).⁸⁷ In 2019, it was incorporated within the newly created National Anti-Terrorism Prosecutor's Office (Parquet National Anti-Terroriste, or PNAT), raising concerns about the future efficiency of the unit.⁸⁸ However, the CAH Unit operates as a separate division under the Anti-Terrorism Prosecutor's Office, which also includes a division dealing with counterterrorism matters. The two are separated and have retained their dedicated capacities.⁸⁹ The CAH Unit falls under the leadership of the PNAT, which is headed by the first prosecutor of the republic for terrorism.⁹⁰

OCLCH is a service attached to the French National Gendarmerie, which is composed of three divisions: the Strategy and International Cooperation Division, the International Crimes Division, and the newly established Hate Crimes Division.⁹¹ The OCLCH is headed by a brigadier general.

Mandate

The CAH Unit and the OCLCH deal with crimes under the Rome Statute as incorporated in the French Criminal Code of Procedure in 2010. They also handle the stand-alone crimes of torture and enforced disappearance, crimes committed in Yugoslavia and Rwanda, and crimes against cultural property during armed conflict.⁹²

84 In this case, the investigation was opened in August 1995 and in 2004 had been ongoing for nine years. *Mutimura v. France*, European Court of Human Rights, Case No. 46621/99, decision (June 8, 2004).

85 Law No. 2011-1862 of Dec. 13, 2011, relating to the distribution of disputes and the streamlining of certain court procedures, Art. 22.

86 Décret No. 2013-987 of November 5, 2013, pertaining to the establishment of the Central Office for Combatting Crimes against Humanity, Genocide and War Crimes.

87 Law No. 2011-1862, Nov. 13, 2011, Art. 22, related to the distribution and reduction of court proceedings.

88 Open Society Justice Initiative and TRIAL International, "Universal Jurisdiction Law and Practice in France," 19. In July 2021, the anti-terrorist public prosecutor notably opened an investigation into four textile giants suspected of concealing "crimes against humanity" for sourcing supplies involving the forced labor of the Uyghur population in the Chinese region of Xianjiang. See Reuters Staff, "LEAD 2-Ouïghours-Enquête en France contre quatre firmes textiles pour recel de crimes contre l'humanité," *Reuters*, July 1, 2021.

89 Interview with Commandant Jean-Pierre Chemaly, head of the Strategy and International Cooperation Division at the Central Office for Combatting Crimes against Humanity, Genocide and War Crimes, Nov. 4, 2021.

90 Finnin, "Surmonter les obstacles," 47.

91 Ministère de l'Intérieur, "L'Office central de lutte contre les crimes contre l'humanité, les génocides et les crimes de guerre (OCLCH)" www.gendarmerie.interieur.gouv.fr/notre-institution/nos-composantes/au-niveau-central/les-offices/l-office-central-de-lutte-contre-les-crimes-contre-l-humanite-les-genocides-et-les-crimes-de-guerre-oclch. The Hate Crimes Division was established in 2020 to address the scourge of hate crimes in France. Interview with Jean-Pierre Chemaly.

92 On torture and enforced disappearance, see Open Society Justice Initiative and TRIAL International, "Universal Jurisdiction Law and Practice in France." Crimes committed in Yugoslavia and Rwanda are defined under the statutes of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR); crimes against cultural property are defined under Articles 15(1)(a), (b), and (c) of the Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, March 26, 1999.

Jurisdictional Basis for Launching Investigations

Cases may be pursued against perpetrators who are French nationals or French residents, or who commit crimes against French citizens.⁹³ The accused must be present on French territory at the time of the filing of a complaint to trigger jurisdiction.⁹⁴

A prosecutor enjoys discretion with respect to ICC crimes and crimes against cultural property. With respect to crimes of torture, enforced disappearance, and crimes committed in Rwanda and the former Yugoslavia, an investigating judge may launch an investigation arising from the filing of a civil party petition even if a prosecutor has declined to investigate.⁹⁵

Functions

The OCLCH leads judicial investigations into crimes against humanity, war crimes, genocide, torture, and enforced disappearance at the request of the judiciary or prosecutors. The prosecutors of the CAH Unit and investigating judges investigate and prosecute universal jurisdiction cases.⁹⁶ Investigating judges have extensive powers to collect evidence with the support of the OCLCH.⁹⁷

Victims and nongovernmental organizations (NGOs) can trigger investigations by filing a complaint to a public prosecutor or by submitting a civil party petition to an investigating judge.⁹⁸ The OCLCH can intervene and conduct preliminary activities at the request of judicial authorities and security forces (the gendarmerie in small towns and rural areas and the police in cities), and on its own initiative.⁹⁹ However, only an investigating judge or a prosecutor can formally initiate an investigation.¹⁰⁰

Operations

The OCLCH works closely with the prosecutors from the CAH Unit. Although they are located in separate entities, they work in a collaborative manner by developing joint investigative strategies for each case and exchanging views on a regular basis.¹⁰¹ Investigators and prosecutors are guided by an overall strategy that prioritizes certain cases over others (e.g., based on the gravity of crimes or the role played by the perpetrator). This strategy is revisited every six months.¹⁰²

In addition to liaising with national and international entities, the OCLCH's Strategy and International Cooperation Division is responsible for preparing contextual, historical, and geopolitical analytical products to assist investigators and prosecutors.¹⁰³

Composition

The CAH Unit is composed of five public prosecutors (Magistrats du Parquet) supported by three judicial analysts, four investigating judges (Juges d'Instructions), and six expert as-

93 They do not hold French citizenship, but they live in France and committed crimes abroad against non-French citizens. With respect to torture, enforced disappearance, and crimes committed in Rwanda and its neighboring countries and in the former Yugoslavia, the jurisdiction is triggered if a suspect is "present" on French territory. No residency is required. See Open Society Justice Initiative and TRIAL International, "Universal Jurisdiction Law and Practice in France," 14.

94 Ministère de La Justice, "Crimes contre l'humanité: bilan du pôle du TGI de Paris," Oct. 17, 2018, www.justice.gouv.fr/justice-penale-11330/crimes-contre-lhumanite-bilan-du-pole-du-tgi-de-paris-31897.html.

95 Open Society Justice Initiative and TRIAL International, "Universal Jurisdiction Law and Practice in France," 16.

96 *Ibid.*, 18.

97 Finnin, "Surmonter les obstacles," 47.

98 Open Society Justice Initiative and TRIAL International, "Universal Jurisdiction Law and Practice in France," 19.

99 Décret No. 2013-987 of Nov. 5, 2013; interview with Jean-Pierre Chemaly.

100 French Code of Criminal Procedure, Art. 40(1), Art. 51; interview with Jean-Pierre Chemaly.

101 Interview with Jean-Pierre Chemaly.

102 *Ibid.*

103 *Ibid.*

sistants.¹⁰⁴ As of November 2021, the OCLCH was composed of approximately 40 people, including 10 staff members at the Strategy and International Division, 20 investigators at the Serious International Crimes Division, and seven investigators at the Hate Crimes Division. The OCLCH is currently recruiting more staff.¹⁰⁵ The investigators are divided into teams who focus on specified geographical areas.

In preparing its analytical products, the OCLCH works closely with the attachés de sécurité intérieure, based in French embassies, as well as researchers affiliated with universities. Researchers do not have access to details of investigations and are bound by confidentiality undertakings.¹⁰⁶

Outcomes

According to Commandant Jean-Pierre Chemaly, the head of OCLCH's Strategy and International Division, the Central Office is currently dealing with approximately 190 cases across 31 countries, including some 40 cases in relation to crimes committed in Syria.¹⁰⁷ So far, two people have been convicted, both for crimes of genocide and crimes against humanity on matters relating to the 1994 Rwandan genocide.¹⁰⁸ TRIAL International's 2021 report discloses that there are currently 14 cases under investigation, two trials pending, and one case referred to court.¹⁰⁹

Challenges

The OCLCH's original focus was to investigate and prosecute cases related to the Rwandan genocide. However, in recent years, the number of cases received by the specialized units has dramatically increased, due largely to referrals from the French Office for the Protection of Refugees and Stateless Persons.¹¹⁰ One of the significant challenges highlighted by Commandant Chemaly is access to evidence in countries where there is no political will to pursue criminal accountability. On-site investigations are not possible in such cases.¹¹¹

Germany—International Crimes Unit

Context

An indirect result of the establishment of a specialized approach to Nazi war crimes in Germany has been the institutionalization of the pursuit of justice for human rights violations. This incorporation helped to create a more vigorous approach to the combating of grave international crimes.¹¹² A specialized international crimes unit was formed at the federal prosecutor's office in 2010 with the allocation of the necessary resources, which greatly facilitated Germany's capacity to pursue universal jurisdiction cases.¹¹³ Today, Germany has two main special units that work together to give effect to its international obligations.¹¹⁴

104 Lena Bjurström, "In France, the Lengthy Syrian Investigations," *JusticeInfo.net*, July 22, 2021; Finnin, "Surmonter les obstacles," 46–47.

105 Interview with Jean-Pierre Chemaly.

106 *Ibid.*

107 *Ibid.*

108 Finnin, "Surmonter les obstacles," 48.

109 Valérie Paulet, TRIAL International, "Universal Jurisdiction Annual Review 2021: A Year Like No Other? The Impact of Coronavirus on Universal Jurisdiction" (2021), 92.

110 Bjurström, "In France, the Lengthy Syrian Investigations."

111 Interview with Jean-Pierre Chemaly.

112 Varney, "Groundbreaking International Justice in Germany."

113 Human Rights Watch, "The Long Arm of Justice."

114 Bundeskriminalamt, "Central Unit for the Fight Against War Crimes and Further Offences Pursuant to the Code of Crimes Against International Law (ZBKV)," www.bka.de/EN/OurTasks/Remit/CentralAgency/ZBKV/zbkv_node.html; German Federal Prosecutor's Office, www.generalbundesanwalt.de/DE/Home/home_node.html.

Structure

The Central Office for Combating War Crimes (ZBKV) is an independent unit within the Federal Criminal Police Office.¹¹⁵ The Specialized International Criminal Unit within Germany's Office of the Federal Prosecutor is located under the centralized department (Zentrale Systeme) dealing with "central tasks, espionage offenses under the Foreign Trade and Payments Act, international criminal law, [and] Europe."¹¹⁶

Mandate

The ZBKV was established to give effect to Germany's international obligations as prescribed in the Code of Crimes Against International Law in 2002.

Jurisdictional Basis for Launching Investigations

Germany's domestic laws to prosecute war crimes were refined in 2002 and are known as the Code of Crimes Against International Law, or Völkerstrafgesetzbuch (VStGB).¹¹⁷ The VStGB granted Germany expansive universal jurisdiction over serious international crimes, in which no link to Germany is required.¹¹⁸

Functions

The ZBKV collects and analyzes information on crimes under its jurisdiction and submits cases to the federal prosecutor general for legal assessment and the institution of investigative proceedings. It also cooperates with other specialized units as well as with the international tribunals and INTERPOL.¹¹⁹ The Specialized International Criminal Law Unit in the Federal Prosecutor's Office is the competent body to lead criminal investigations regarding crimes under the Code of Crimes Against International Law.¹²⁰

Operations

The innovative device of structural investigations has enhanced the ability of German prosecutors to pursue serious human rights violations.¹²¹ Structural investigations are not directed against specific people but rather focus on the structures and context within which crimes occurred.¹²² This has facilitated the ability of prosecutors to identify suspects and has enabled several important prosecutions.¹²³

¹¹⁵ Bundeskriminalamt, "Central Unit."

¹¹⁶ German Federal Prosecutor's Office, "Organogram," www.generalbundesanwalt.de/SharedDocs/ueber-uns-Organigramm.html?nn=677826.

¹¹⁷ Human Rights Watch, "The Long Arm of Justice"; Human Rights Watch, "Universal Jurisdiction in Europe: The State of the Art," *Human Rights Watch* 18, no. 5(D) (June 2006); Melinda Rankin, "The 'Responsibility to Prosecute' Core International Crimes? The Case of German Universal Jurisdiction and the Syrian Government," *Global Responsibility to Protect* 11, no. 4 (2019): 394–410.

¹¹⁸ Human Rights Watch, "The Legal Framework for Universal Jurisdiction in Germany" (2014), 1–10. See also the Basic Law for the Federal Republic of Germany (Grundgesetz für die Bundesrepublik Deutschland), *Deutscher Bundestag*, Sept. 29, 2020, 86–87, and the German Code of Criminal Procedures (Strafprozessordnung, StPO), Code of Crimes Against International Law (Völkerstrafgesetzbuch), Secs. 6–13.

¹¹⁹ Bundeskriminalamt, "Central Unit."

¹²⁰ Open Society Justice Initiative and TRIAL International, "Universal Jurisdiction Law and Practice in Germany" (March 2019), 16.

¹²¹ In Germany, a structural investigation (Strukturermittlungsverfahren) is opened when there is evidence that a crime has taken place, but potential perpetrators have not yet been definitively identified. The investigation focuses on structures related to the potential crime and groupings of potential perpetrators. European Center for Constitutional and Human Rights, "Structural Investigation," www.ecchr.eu/en/glossary/structural-investigation/.

¹²² *Ibid.*

¹²³ Varney, "Groundbreaking International Justice in Germany."

Composition

As of 2019, there were 12 prosecutors working in the Specialized International Criminal Law Unit and approximately 20 investigators working in the ZBKV.¹²⁴

Outcomes

As of July 2020, the VStGB was handling more than 100 international crimes investigations. In 16 cases, indictments were issued, and four cases were on trial.¹²⁵ Many of the cases are connected to the conflict in Syria. Several international human rights organizations have praised the work of the Specialized International Criminal Law Unit and the ZBKV for their contribution to the fight against impunity for international crimes.¹²⁶

Challenges

Victims face challenges within the German court system. They are often unaware of their rights, such as the right to legal aid or the right to join criminal proceedings as civil parties.¹²⁷

Mixed-Mandate Units

Uganda

Context

Following the ascent to power by President Yoweri Museveni in 1986, Uganda faced several counterinsurgencies, most notably from the Lord's Resistance Army. The conflict saw severe human rights violations, including killings, sexual violence, widespread kidnapping, and a pervasive use of child soldiers. An estimated 75,000 children were abducted and forced to serve as combatants, porters, and sex slaves between 1979 and 2005.¹²⁸

The peace agreement that was struck in Juba provided for the creation of a specialized tribunal to try serious international crimes.¹²⁹ In 2008, the principal judge established the War Crimes Division within the High Court of Uganda, which has jurisdiction over core international crimes.¹³⁰ In 2011, the chief justice formally established the International Crimes Division (ICD) of Uganda's High Court, with expanded jurisdiction over international and transnational crimes.¹³¹ The ICD is headquartered in Kampala and comprises five judges, a registrar, and prosecution and investigation units.

124 Interview with Alexandra Lily Kather; Christian Ritscher, "Aktuelle Entwicklungen in der Strafverfolgung des GBA im Bereich Völkerstrafrecht," *Zeitschrift für internationale Strafrechtsdogmatik* (Dec. 2019), 599.

125 Finnin, "Surmonter les obstacles," 65.

126 *Ibid.*, 76.

127 *Ibid.*

128 ICTJ, "Uganda" (2020), www.ictj.org/our-work/regions-and-countries/uganda.

129 Agreement on Accountability and Reconciliation, Government of the Republic of Uganda–LRA, (2007), Art. 4.1. The agreement exempted state actors, including the Uganda People's Defence Forces, from being prosecuted before "special justice processes."

130 Interview with Sarah Kasande Kihika, head of office, International Center for Transitional Justice, Oct. 28, 2021.

See Uganda Judiciary, "International Crimes Division," judiciary.go.ug/data/smenu/18/International%20Crimes%20Division.html.

131 The High Court (International Crimes Division) Practice Directions, Legal Notice No. 10 of 2011. See also Kasande Sarah Kihika and Meritxell Regué, ICTJ, "Pursuing Accountability for Serious Crimes in Uganda's Courts: Reflections on the Thomas Kwoyelo Case" (Jan. 2015).

Structure

The ICD is supported by the War Crimes and Anti-Terrorism Section within Uganda's Directorate of Public Prosecutions, while the Criminal Investigations Department of the Ugandan Police Force is responsible for investigating crimes that may be tried before the ICD.¹³²

Mandate

The War Crimes and Anti-Terrorism Section responds to threats of international terrorism, deals with international trafficking of persons, and supports the ICD. The section is mandated to prosecute war crimes, crimes against humanity, genocide, terrorism, human trafficking, piracy, and other international crimes.¹³³

Jurisdictional Basis for Launching Investigations

The ICD has competence to exercise universal jurisdiction over several types of crimes. Among these are core international crimes that are committed abroad if the suspect is a citizen or permanent resident of Uganda, is employed by Uganda in a civilian or military capacity, or committed the offense against a citizen or permanent resident of Uganda. In addition, the suspect must be present in Uganda.¹³⁴

Operations

Investigators who work on serious crimes are guided by prosecutors who oversee the collection of evidence and lead the investigation. The ICD's Rules of Procedure and Evidence are based largely on the ICC's Rules of Procedure and Evidence.¹³⁵

The ICD established the Court User Committee, composed of judges, prosecutors, investigators, attorney general representatives, and members of civil society. The committee is responsible for the day-to-day running of the ICD. It is a forum that addresses challenges faced by the division, such as issues related to outreach and victims' participation.¹³⁶

Composition

Prosecutors and investigators assigned to the ICD are public officials appointed under the Public Service Act and the Police Act. They are required to undergo specialized training in the investigation and prosecution of serious crimes.¹³⁷

Outcomes

The ICD has prosecuted some 50 people, mostly in relation to human trafficking and terrorism-related crimes. One case involving international crimes has reached the trial stage and another is at the pretrial stage, while a third is at the investigative stage.¹³⁸

Challenges

The ICD and its specialized units have been held back by a lack of funding and human resources, and a dire lack of political support.¹³⁹ The frequent rotation of investigators and prosecutors

132 Office of the Director of Public Prosecutions, "International Crimes," www.dpp.go.ug/index.php/about-dpp/divisions/management-support-services-2/international-crimes.

133 Uganda Judiciary, "International Crimes Division."

134 International Criminal Court Act, 2010, Sec. 18.

135 Interview with Sarah Kasande Kihika; the High Court (International Crimes Division) Practice Directions, Legal Notice No. 10 of 2011, para. 9.

136 Ibid.

137 Kihika and Regué, "Pursuing Accountability for Serious Crimes in Uganda's Courts."

138 Grace Matsiko, "12 Years on, Uganda's International Crimes Division Has Little to Show," *JusticeInfo.net*, March 9, 2020.

139 Ibid.

impacts continuity. The absence of a credible witness protection program has deterred victims and witnesses from coming forward.¹⁴⁰ The ICD is constrained in that it may not investigate state actors, and it suffers from a lack of cooperation by the Uganda People's Defence Forces and the Ugandan Police Force.¹⁴¹

South Africa

Context

Following decades of colonialism and institutionalized racism under apartheid, a negotiated transition saw the establishment in 1996 of the Truth and Reconciliation Commission, which investigated apartheid-era human rights violations.¹⁴² The TRC was empowered to grant amnesty to those who applied for it and made full disclosure of their crimes.¹⁴³ Perpetrators who did not apply for amnesty or were denied amnesty were meant to face justice. However, political interference resulted in the suppression of these cases.¹⁴⁴

Structure

The Priority Crimes Litigation Unit (PCLU) was established in 2003 through a presidential proclamation.¹⁴⁵ It is situated in the Office of the National Director of Public Prosecutions (NDPP) and is headed by a special director.¹⁴⁶

The Directorate for the Priority Crimes Investigations (DPCI), a specialist investigative unit, was established in 2008 as an independent directorate within the South African Police Service under the South African Police Service Act.¹⁴⁷

Mandate

The PCLU manages and directs the investigation and prosecution of crimes outlined in the Rome Statute, as mandated by the International Criminal Court Act, Act No. 27 of 2002, and serious international and national crimes against the state, including terrorism, sabotage, high treason, foreign military crimes committed by mercenaries, and other priority crimes as determined by the NDPP.¹⁴⁸ In addition, the PCLU has also dealt with the proliferation of nuclear, chemical, and biological weapons and contraventions of the National Conventional Arms Control Act. In 2003, the NDPP determined that cases arising from the TRC process (the TRC cases), in which amnesty was denied or not applied for, were "priority crimes" to be handled by the PCLU.¹⁴⁹

140 Interview with Sarah Kasande Kihika.

141 Paul Tajuba, "Police Defy DPP Directive to Produce Suspects in Court," *Daily Monitor*, Sept. 28, 2013; Dear Jeanne, "DPP, IGP Clash over Sebuwufu Murder Investigations," *Uganda Radio Network*, Nov. 24, 2015; Anthony Wesaka, "Chief Justice Warns Police, DPP on Poor Investigations," *Daily Monitor*, June 12, 2018.

142 Promotion of National Unity and Reconciliation Act 34 of 1995.

143 *Ibid.*, Sec. 3(1)(b).

144 Foundation for Human Rights, "The Unfinished Business of the Truth and Reconciliation Commission," unfinishedtrc.co.za/; Howard Varney, "Transitional Justice, Criminal Justice and Exceptionalism in South Africa," in *Contested Transitions: Dilemmas of Transitional Justice in Colombia and Comparative Experience*, eds. Michael Reed and Amanda Lyons (International Center for Transitional Justice and Ministry of Foreign Relations of Norway, 2010), 13; Ole Bubenzer, *Post-TRC Prosecutions in South Africa: Accountability for Political Crimes After the Truth and Reconciliation Commission's Amnesty Process* (Martinus Nijhoff Publishers, 2009).

145 Proclamation by the president of the Republic of South Africa, National Prosecuting Authority Act, 1998, March 25, 2003.

146 Under Sections 13 and 24 of the National Prosecuting Authority Act of 1998, a special director is appointed by the president to exercise certain powers, duties, and functions conferred on him or her by the president by proclamation in the Gazette.

147 Directorate for Priority Crime Investigation, www.saps.gov.za/dpci/index.php.

148 National Prosecuting Authority of South Africa, "Priority Crimes Litigation Unit," www.npa.gov.za/priority-crimes-litigation-unit.

149 National Prosecuting Authority of South Africa, "Priority Crimes Litigation Unit (PCLU)," www.npa.gov.za/sites/default/files/pclu/About%20PCLU%20signedoff.pdf.

The DPCI is responsible for the investigation of national priority offenses, which in the opinion of the head of the DPCI need to be addressed, subject to any policy guidelines issued by the minister of police and approved by the parliament. National priority offenses are defined as “organised crime, crime that requires national prevention or investigation, or crime which requires specialized skills in prevention and investigation.”¹⁵⁰

Jurisdictional Basis for Launching Investigations

In addition to the domestic jurisdictional basis described above, the PCLU and DPCI may investigate core international crimes committed outside South Africa when a victim or perpetrator is a South African citizen or resident, or when a suspect is present in the territory of the republic.¹⁵¹ However, the suspect does not have to be present in South Africa at the time of the launching of an investigation.¹⁵²

Functions

The PCLU is primarily responsible for “coordinating, managing and directing” the investigation into and prosecution of crimes under its jurisdiction. In addition, the Missing Persons Task Team was established in 2005 within the PCLU to search for the remains of some 500 people who were identified as missing by the TRC.¹⁵³ The Missing Persons Task Team exercises both investigative and memorialization functions.¹⁵⁴

Operations

Between 2003 and 2019, the TRC cases were centralized at the PCLU Head Office in Pretoria. In 2019, the newly appointed NDPP introduced a “decentralisation policy” that saw the cases transferred to the provincial offices where the crimes were committed. “Focal points” within these offices were appointed to deal with the TRC cases.¹⁵⁵

Between 2003 and 2015, political interference by senior members of the executive in the work of the NPA and DPCI effectively suppressed all TRC investigations and prosecutions from proceeding.¹⁵⁶ When attempts were made to pursue such cases, the police refused to provide investigators.¹⁵⁷ Prosecutors who attempted to prosecute TRC cases were either removed from office or relieved of their duties in relation to these cases. Other prosecutors and officials in the PCLU and DPCI acquiesced in the suppression of the TRC cases.¹⁵⁸

Outcomes

The NPA’s annual reports (from 2005/06 to 2016/17) disclose little progress in the investigation and prosecution of the TRC cases.¹⁵⁹ The NPA has also resisted invoking universal jurisdiction

150 South African Police Service Act, Act 68 of 1995, Sec. 17D(1).

151 *National Commissioner of The South African Police Service v. SALC and Another* (CCT 02/14) [2014] ZACC 30, para. 41.

152 *Ibid.*, para. 81.

153 South African History Online, “The Missing Persons Task Team (MPTT) to Investigate Apartheid Missing Persons Cases,” April 20, 2018.

154 National Prosecuting Authority of South Africa, “Priority Crimes Litigation Unit (PCLU),” www.npa.gov.za/sites/default/files/pclu/About%20PCLU%20signedoff.pdf.

155 National Prosecuting Authority, “Annual Report 2019/20,” 118, www.npa.gov.za/media/npa-annual-report-20192020.

156 *Rodrigues v. National Director of Public Prosecutions and Others* (1186/2019) [2021] ZASCA 87; [2021] 3 All SA 775 (SCA); 2021 (2) SACR 333 (SCA) (June 21, 2021).

157 Supplementary Answering Affidavit of Adv C R Macadam, pp. 750–919, *Jao Rodrigues v. NDPP @ Ors*, Case No. 76755/18, Gauteng Division.

158 Supporting affidavit of Vusi Pikoli and Anton Ackermann SC filed in *Nkadimeng v. the National Director of Public Prosecutions and Others*, T.P.D. Case No. 3554/2015, Gauteng Division of the High Court of South Africa.

159 See, for example, National Prosecuting Authority, “Annual Report 2007/08,” www.gov.za/sites/default/files/gcis_document/201409/npa-annual-rp0708.pdf; National Prosecuting Authority, “Annual Report 2009/10,” 23,

www.gov.za/sites/default/files/gcis_document/201409/nationalprosecutingauthorityannualreport2009-2010.pdf,

“Annual Report 2010/11,” 28, www.gov.za/sites/default/files/gcis_document/201409/npa-annual-report-2010-2011.pdf.

to pursue international crimes cases, and until recently, declined to indict apartheid-era perpetrators with international crimes, such as the crime of apartheid as a crime against humanity.¹⁶⁰

Progress is only made when the NPA and DPCI are threatened with litigation or if litigation proceeds to compel these institutions to act.¹⁶¹ Since 2017, thanks to the efforts of victims' families, supported by pro-bono lawyers and the Foundation for Human Rights (FHR), four inquests into apartheid-era deaths in police detention have been reopened, and indictments in three matters have been issued.¹⁶²

Following intensive lobbying efforts by the FHR, victims' families, and other civil society groups, the NPA and DPCI agreed in June 2021 to create dedicated capacities in their respective organizations to work exclusively on the TRC cases.¹⁶³ To date, no details about the structure and approach of these specialist capacities have been disclosed.

Challenges

Aside from the political interference in the work of prosecutors and investigators, it must be said that the PCLU was never dedicated exclusively to the TRC cases or international crimes, given its extensive mandate covering multiple categories of crime.¹⁶⁴ In reality, the TRC cases were never treated as "priority crimes."

Since the decentralization approach was launched in 2019, little or no tangible progress has been made in the TRC cases, with most of them in various degrees of stagnation in provincial offices. There is no discernible coordination of the cases, and no connections are being made between them. Prosecutors seem to change on a regular basis, and until recently, there was no central accountability for the TRC cases, with no single entity driving them. To date, no investigative and prosecutorial strategy to tackle the TRC cases has been released.

While individual prosecutors have acted with admirable diligence and keep families apprised of developments, requests by families and civil society groups to the NPA leadership for regular meetings and a joint liaison structure have fallen on deaf ears.¹⁶⁵

160 Lillian Chenwi and Franziska Sucker, "South Africa's Competing Obligations in Relation to International Crimes," *Constitutional Court Review* 7, no. 1 (2015): 199–245, 213; *Southern Africa Litigation Centre and Another v. National Director of Public Prosecutions and Others* 2012 (3) All SA 198 (GNP), para. 31; Christopher Gevers, "Prosecuting the Crime Against Humanity of Apartheid: Never, Again," *African Yearbook of International Humanitarian Law* 2018, no. 1 (Dec. 1, 2018); Foundation for Human Rights, "Historic Crimes Against Humanity Indictment in Cosas 4 Case: Apartheid as a Crime Against Humanity Charged for the First Time in South Africa," press release, Nov. 23, 2021.

161 See, for example, legal papers filed in filed in *Nkadimeng v. the National Director of Public Prosecutions and Others*, www.ahmedtimol.co.za/wp-content/uploads/2020/03/6-Notice-of-motion-and-founding-affidavit-and-annexures.pdf; *Calata @ Ors v. National Director of Public Prosecutions and Others*, Case No. 35447.21, Gauteng Division of the High Court of South Africa.

162 Indictments have been issued in the matters of Ahmed Timol, Hoosen Haffejee, Neil Aggett, and Ernest Dipale, and in the matters of the torture, murder, and enforced disappearance of Nokuthula Simelane, the murder of the COSAS 4 students, and the murder of Ahmed Timol. For more information, see Foundation for Human Rights, "The Unfinished Business of the Truth and Reconciliation Commission."

163 In a joint news statement dated June 26, 2021, the NPA and DPCI explained that a TRC investigation strategy had been adopted to create a dedicated and sustainable capacity to investigate and prosecute apartheid-era atrocity crimes. Jenna Etheridge, comp., "NPA to Set Up Specialist Unit to Probe, Prosecute Apartheid-Era Atrocity Crimes," *News24*, June 27, 2021.

164 Raeesa Pather, "NPA Admits to Political Interference in Prosecutorial Decisions," *Mail @ Guardian*, Feb. 6, 2019; Foundation for Human Rights, "Suppression of Apartheid-Era Cases and Interference in the NPA," unfinishedtrc.co.za/historical-context-of-cases/#suppression-of-cases-002334.

165 Confirmed on 19 November 2021 by Moray Hathorn, an attorney representing families affected by apartheid-era crimes.

Where Special Offices of Prosecution Were Not Established

Peru

Context

Between 1980 and 2000, Peru had an internal armed conflict that resulted in large numbers of human rights violations and some 70,000 fatalities.¹⁶⁶ The Truth and Reconciliation Commission (Comisión de la Verdad y la Reconciliación, or CVR) documented testimonies of gross human rights violations.

The CVR recommended prosecutions in important cases.¹⁶⁷ In its final report that was published in 2003, the commission stressed that strong political will and commitment by state authorities was needed to achieve justice.¹⁶⁸ It recommended the establishment of a special office of prosecution to investigate and prosecute past human rights abuses. No special office was set up, but in 2004, the terrorism jurisdiction of the Prosecutor's Office was expanded to include crimes against humanity and ordinary crimes that constituted human rights violations.¹⁶⁹ This approach proved insufficient as prosecutors and courts were not specialized enough and labored under a heavy workload that did not allow them to work effectively on the cases referred by the CVR.

According to Julie Guillerot, there were initial efforts on the part of the Public Ministry to create "a specialized judicial subsystem," but changes in funding and political priorities derailed this initiative.¹⁷⁰

Follow-Up to the Truth Commission

When the CVR concluded its work in 2003, it delivered evidence of serious crimes in 47 cases to the Public Prosecutor's Office. This evidence was used by the Public Prosecutor's Office to initiate investigations.¹⁷¹ In addition, the Defensoría del Pueblo (Office of the Ombudsman) identified 12 cases to be prioritized for prosecutions, and in 2001 the Inter-American Commission on Human Rights referred 159 cases for prosecution as part of a friendly settlement agreed with the state.¹⁷²

However, progress was limited. By 2008, the majority (57.7 percent) of the 194 total cases examined by the Ombudsman's Office were still in the preliminary investigation stage, despite most of them being initiated between 2001 and 2004.¹⁷³ One of the reasons for the slow progress was that the Office of the Prosecutor had not created a specialized unit to ensure that cases were diligently pursued.¹⁷⁴

166 Milton Leitenberg, "Deaths in Wars and Conflicts in the 20th Century," Cornell University Peace Studies Program Occasional Paper #29, 3rd ed. (2006), 74.

167 CVR, *Informe Final*, Tome IX, "Recommendations of the TRC Towards a National Commitment to Reconciliation," Lima, 2003, as cited in Juan Pablo Pérez-León Acevedo, "Reparations and Prosecutions After Serious Human Rights Violations: Two Pending Issues in Peru's Transitional Justice Agenda," Oxford Transitional Justice Working Papers Series (March 22, 2010).

168 CVR, *Informe Final*, Tome IX, in Pérez-León, "Reparations and Prosecutions."

169 Pérez-León, "Reparations and Prosecutions"; Report of the Ombudsman, no. 139 (2008), 107, www.defensoria.gob.pe/wp-content/uploads/2018/05/informe_139.pdf.

170 Julie Guillerot, ICTJ, "Alive in the Demand for Change: Transitional Justice and Prevention in Peru" (June 2021), 27.

171 Gerardo Arce Arce, "Armed Forces, Truth Commission and Transitional Justice in Peru," *SUR*, no. 13 (Dec. 2010).

172 Report of the Ombudsman, no. 139; Inter-American Commission on Human Rights and Organization of American States, joint press release, Feb. 22, 2001, www.cidh.org/comunicados/english/2001/peru.htm.

173 Report of the Ombudsman, no. 139, 126-127.

174 M. R. Hurtado, ICTJ, "Informative Note on the Situation of Human Rights Criminal Cases in Peru" (2008) (in possession of the author).

The Ombudsman's Office concluded in 2008 that the absence of an exclusive dedication to human rights cases and an elevated caseload resulted in few cases being pursued.¹⁷⁵ It highlighted a number of problems that obstructed the progress of the cases:

- the lack of a specialized prosecutor's office;
- the excessive workload of prosecutors who were overburdened with other cases deemed to be more important;
- the lack of consistent investigations on the cases;
- the lack of a strategy to investigate complex human rights abuses;
- a reduction in support to prosecutors from the state;
- the poor execution of arrest warrants;
- prosecutorial decisions that contradicted the human rights agenda;
- inadequate representation of victims of human rights violations;
- the lack of cooperation from the Ministry of Defence and the security forces.¹⁷⁶

Notwithstanding this critical diagnosis, the government, the Office of the Prosecutor, and the judiciary did not systematically address these shortcomings.

A decade after the conflict ended, three prosecutors were appointed to act at the national level (Fiscalía Penal Nacional), and six prosecutors were assigned to regional jurisdictions (Fiscalías penales supraprovinciales), three in Lima, two in Ayacucho, and one in Huancavelica.¹⁷⁷ However, cases were still not being investigated effectively, prompting the Prosecutor's Office to assign 15 additional prosecutors to carry out human rights investigations.¹⁷⁸

In addition to their responsibilities in relation to crimes of the past, the prosecutors were also tasked with pursuing crimes involving taxes, customs, and intellectual property.¹⁷⁹ This overburdened the prosecutors and severely hampered progress on the crimes from the past.

Outcomes

Despite the truth commission's recommendations to prosecute, and notwithstanding the "friendly settlement" with the Inter-American Commission of Human Rights, only a modest number of cases have proceeded in the 18 years since the CVR concluded its work. Although this is largely due to a lack of political will, restrictions on access to documents in the archives and the refusal by the army to disclose information continue to undermine the work of prosecutors.¹⁸⁰

As of September 2019, the courts had issued rulings in only 86 cases concerning crimes committed during the conflict period, securing 44 convictions.¹⁸¹ This has severely undermined

175 Report of the Ombudsman, no. 139.

176 Ibid. 126–139, 145–149.

177 M. R. Hurtado, ICTJ, "Informative Note on the Situation of Human Rights Criminal Cases in Peru" (2008).

178 Ibid.

179 Ibid.

180 Cristian Correa, ICTJ, "Reparations in Peru: From Recommendations to Implementation" (June 2013); Guillerot, "Alive in the Demand for Change," 28.

181 Human Rights Watch, "Peru: Events of 2019," in *World Report 2020* (2020), www.hrw.org/world-report/2020/country-chapters/peru.

the transitional justice project, as most perpetrators have not been held to account.¹⁸² Despite initial plans to create a truly dedicated capacity, “it has not been possible to consolidate one that brings together the necessary specialized strategy, exclusive dedication, sufficient training, and adequate resources to deal with a problem of this magnitude.”¹⁸³

Guillerot noted that “thousands of cases have been provisionally closed and are at risk of being permanently closed.”¹⁸⁴ At times, the state has gone out of its way to promote impunity, with the courts having to intervene. For instance, in December 2017, the president granted former president Alberto Fujimori a “humanitarian pardon” based on claims of illness, which the Supreme Court overturned one year later.¹⁸⁵

United Kingdom

Context

Northern Ireland endured significant human rights violations during what is known as “the Troubles,” which began in 1968 and ended in 1998 with the Good Friday Agreement. While the Troubles predominantly occurred in Northern Ireland, at times this ethno-nationalist conflict spilled over into England. More than 3,500 people were killed in the conflict, of whom 52 percent were civilians, 32 percent were members of the British security forces, and 16 percent were members of paramilitary groups.¹⁸⁶

Mechanisms

Efforts to address justice have been primarily ad hoc and disjointed.¹⁸⁷ This indicates the absence of an overall strategy to redress the wounds of the past.

In 2005, the Historical Enquiries Team (HET), a special unit of the Police Service of Northern Ireland (PSNI), was established to investigate the 3,269 unsolved murders committed during the Troubles. In 2014, due to budgetary constraints, it was announced that, as part of a broader restructuring of the PSNI, the HET would be wound up and replaced with the much smaller Legacy Investigation Branch (LIB).¹⁸⁸

These efforts had been preceded by an inquiry into one of the most infamous incidents of the conflict, the 1972 Bloody Sunday massacre, which resulted in the deaths of 14 protestors and injuries to another 12. That inquiry, by a three-judge panel headed up by British Law Lord Mark Saville, had begun soon after the signing of the peace agreement in 1998 and issued its final report in 2010, finding that the protestors were unarmed and had not posed a threat to the soldiers.¹⁸⁹ It led to Prime Minister David Cameron’s public apology, acknowledging that “what happened on Bloody Sunday was both unjustified and unjustifiable. It was wrong.”¹⁹⁰

182 Clara Sandoval, “The Challenge of Impunity in Peru: The Significance of the Inter-American Court of Human Rights,” *Essex Human Rights Review* 12, no. 1 (2020): 1–20.

183 Guillerot, “Alive in the Demand for Change,” 28.

184 *Ibid.*

185 Human Rights Watch, “Peru: Events of 2019.”

186 As compiled by Malcolm Sutton. See “Statistical Breakdown of Deaths in the ‘Troubles,’” www.wesleyjohnston.com/users/ireland/past/troubles/troubles_stats.html. For more information on Sutton, see Rory Carroll, “‘It Becomes Immense’: One Man’s Solo Effort to Document Every Death in the Troubles,” *The Guardian*, July 19, 2020.

187 Northern Ireland Human Rights Commission, “Dealing with Northern Ireland’s Past: Towards a Transitional Justice Approach” (2013).

188 UK Parliament, House of Commons Hansard, “Northern Ireland: Historical Enquiries Team” (2008), [web.archive.org/web/20110605022849/http://www.parliament.the-stationery-office.co.uk/pa/cm200708/cmhansrd/cmo80225/text/80225wo004.htm](http://www.parliament.the-stationery-office.co.uk/pa/cm200708/cmhansrd/cmo80225/text/80225wo004.htm).

189 “Independent Report: Report of the Bloody Sunday Inquiry” (June 15, 2010), www.gov.uk/government/publications/report-of-the-bloody-sunday-inquiry.

190 “Bloody Sunday: PM David Cameron’s Full Statement,” *BBC*, June 15, 2010.

In 2012, the PSNI announced that it would launch a murder investigation into the Bloody Sunday deaths, relying on a team of 30 detectives.¹⁹¹ However, the PSNI did not begin investigations, complaining that it lacked the necessary resources and expertise to investigate.¹⁹²

In 2013, the Northern Ireland Human Rights Commission acknowledged that inquests play a significant role in establishing accountability, by identifying perpetrators who are responsible for violations of human rights. However, the commission observed that, given the long delays in investigating cases, inquests on their own are not adequate due to the scale of the conflict.¹⁹³

The LIB was formed in 2015 to investigate homicide and security force–related deaths arising from the Northern Ireland Troubles and unsolved non-Troubles-related deaths between 1969 and 2004.¹⁹⁴ According to the 2014 Stormont House Agreement, the legacy work of the Police Ombudsman for Northern Ireland and the HET’s responsibilities were meant to be taken over by the new Historical Investigation Unit by 2016, which would be better equipped to deal with the cases.¹⁹⁵ However, the process has stalled.

In its latest attempt to suppress investigations into the Troubles, the British government has announced a wide-ranging amnesty, which would not only end criminal prosecutions but would also “close down current or future investigations in the civil courts, in coronial inquests or police ombudsman investigations.”¹⁹⁶ The initiative has been met with much criticism.¹⁹⁷ In particular, Northern Ireland’s human rights commissioner and others lobbying for justice have noted that the proposed amnesty violates Article 2 (the right to life) of the European Court of Human Rights.¹⁹⁸ Instead of criminal prosecutions, the British government is proposing the establishment of an independent truth-seeking body, similar to South Africa’s TRC.¹⁹⁹

Outcomes

Prosecutions have not been prioritized in Northern Ireland, with the state focused more on symbolic and truth-telling initiatives as well as some inquiries into the abuses.²⁰⁰ Justice has not been served for most victims of the Troubles. There is little reliable data that allows for an adequate assessment of accountability efforts. There were some prosecutions and convictions of security personnel during the Troubles, which were mainly in relation to fatalities that were a direct result of operations.²⁰¹

191 Northern Ireland Human Rights Commission, “Dealing with Northern Ireland’s Past.”

192 Ibid.

193 Ibid. In the case of *McCaughey and others v. the United Kingdom*, the European Court of Human Rights said: “The Court considers that the carrying out of investigations, including holding inquests, into killings by the security forces in Northern Ireland has been marked by major delays. It further considers that such delays remain a serious and extensive problem in Northern Ireland.” European Court of Human Rights, *McCaughey and Others v. the United Kingdom*, Chamber Judgment [2013] ECHR 682 (16 July 2013), para. 144.

194 Police Service of Northern Ireland, Legacy Investigation Branch, “Legacy Investigations and Disclosure,” www.psnipolice.uk/inside-psni/our-departments/operational-support/legacy-investigation-branch/. See also Claire Mills, “Investigation of Former Armed Forces Personnel Who Served in Northern Ireland” (July 27, 2021), researchbriefings.files.parliament.uk/documents/CBP-8352/CBP-8352.pdf.

195 UK Parliament, House of Commons, Defence Committee, “Investigations into Fatalities in Northern Ireland Involving British Military Personnel,” April 25, 2017, publications.parliament.uk/pa/cm201617/cmselect/cmdfence/1064/106404.htm.

196 Rory Carroll, “UK’s Troubles Amnesty Plan Goes Further than Pinochet’s, Study Says,” *The Guardian*, Sept. 7, 2021.

197 Claire Overman, “McCaughey and Others v UK: The Requirement of Prompt Investigation into State Killings,” Oxford Human Rights Hub, July 22, 2013; see also Carroll, “UK’s Troubles Amnesty Plan.”

198 Dan Sabbagh, “Troubles Troops Amnesty Could Break Law, Said Northern Irish Watchdog,” *The Guardian*, May 13, 2020.

199 Ben Quinn, “UK Confirms Plan to Call Time on Troubles Prosecutions,” *The Guardian*, July 14, 2021.

200 Patricia Lundy, “Commissioning the Past in Northern Ireland,” *Review of International Affairs* 60, no. 1138-1 (2010): 101-133.

201 Cases involving the use of lethal force: *R v. Thain* (1984), *R v. Clegg* (1993) (acquitted on retrial in 1999), and *R v. Fisher and Wright* (1995). Another case involving the murder of two Catholic farmers in 1972 was not linked to operations, and in 1981 those military personnel responsible were convicted of murder. See Mills, “Investigation of Former Armed Forces Personnel,” 15.

In 2019, the PSNI reported on progress in the prosecutions of matters arising from the Troubles during the period of 2011 to 2019 and mentioned four convictions.²⁰² In 2021, the PSNI provided an update in respect to the period of 2014 to 2021, which reflected no convictions since the LIB was established in 2014.²⁰³

According to the PSNI, in January 2021 there was a total of 929 Troubles-related cases, involving 1,184 victims, including 33 active cases.²⁰⁴ As reported in Parliament, little progress has been made:

To date, six military personnel have been charged with offences related to the Troubles. In May 2021, however, the first case to come to trial subsequently collapsed after the judge ruled that key evidence in the prosecution's case was inadmissible. Following a review by the PPS [Public Prosecutions Service] a further two cases, including the case against Soldier F for his role in Bloody Sunday, were halted.²⁰⁵

There has been little coordination or coherence in the approach to prosecutions during the Troubles. No truly dedicated unit of prosecutors and investigators was ever established to focus on the cases, which explains the lack of concerted action in most of the nearly 2,000 unsolved cases.²⁰⁶

Kenya

Context

The legacy of colonialism, coupled with decades of discrimination based on ethnicity and tribalism, rampant corruption, and a monolithic one-party system, culminated in serious post-election violence in 2007. Negotiations led by UN Secretary-General Kofi Annan resulted in a power-sharing agreement that was enshrined in the National Accord and Reconciliation Act of 2008. During 2008, the government set up an international commission of inquiry into the post-election violence, known as the Waki Commission. The Truth, Justice, and Reconciliation Commission was established in 2009, and the new constitution was adopted in 2010.

Mechanisms

The Waki Commission recommended the establishment of a special tribunal to pursue criminal accountability for crimes committed during the post-election violence, with a dedicated investigation and prosecution capacity within the tribunal and prosecution-led investigations.²⁰⁷ The tribunal was to consist of four organs: “the Chambers (including an Appeals Chamber) and the Prosecutor, which shall be independent of each other, the Registry, and the Defence Office.”²⁰⁸ The commission further recommended that a failure by the government to set up the tribunal should result in the referral of identified cases to the ICC (a sealed envelope with the names of those bearing the greatest responsibility was handed over to Kofi Annan, the UN secretary-general).²⁰⁹

202 Mills, “Investigation of Former Armed Forces Personnel,” 33.

203 *Ibid.*, 33–34.

204 These data relate only to cases that have been handed over to the LIB since 2014.

205 Mills, “Investigation of Former Armed Forces Personnel.”

206 Rory Carroll, “Dismay over UK Plan to Close Unsolved Troubles Cases,” *The Guardian*, March 18, 2020.

207 Truth, Justice, and Reconciliation Commission, “Commissions of Inquiry—CIPEV Report (Waki Report)” (2008), IX: Government Documents and Regulations, 475, para. 12, digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1004&context=tjrc-gov.

208 *Ibid.*, 472–476.

209 George Kegoro, “A General Update on Kenya’s Search for Accountability for the Post Election Violence,” paper presented at the Regional Forum on International and Transitional Justice, July 30, 2012, www.asf.be/wp-content/uploads/2012/10/Kenya-Situation-Analysis.pdf.

When repeated efforts to establish a special tribunal failed, the ICC prosecutor acting *proprio motu* opened an investigation into the post-election violence in Kenya in 2010 and indicted four high-profile suspects in 2011.²¹⁰ However, intimidation of witnesses and a lack of cooperation from the Kenyan government forced the ICC prosecutor to withdraw charges.²¹¹

In 2012, a committee of the Judicial Service Commission also recommended the establishment of an International Crimes Division of the Kenyan High Court to deal with post-election violence cases, as well as other international and transnational crimes.²¹² However, efforts to create a special division of the High Court were blocked, even though the police department asserted that it had prepared files implicating some 6,000 people.²¹³

Outcomes

Criminal accountability for post-election violence crimes has been virtually nonexistent in Kenya. In an isolated case, the High Court in Nairobi ruled in 2020 in favor of four sexual violence survivors, who filed an application against several state organs claiming that the state had failed in its obligations and hence violated their human rights. The court ordered the payment of compensation to the survivors.²¹⁴ Political opposition to meaningful accountability for post-election violence crimes has ensured that perpetrators continue to enjoy near-total impunity.

Tunisia

Context

The popular uprising known as the Révolution de la Dignité in 2010 and 2011 put an end to decades of President Ben Ali's authoritarian rule, which was characterized by gross human rights violations, including the restrictions of personal freedoms for the people of Tunisia.

Mechanisms

As part of the transitional justice process, the Truth and Dignity Commission (IVD) was set up in 2014. Over 60,000 complaints of human rights violations were collected by the IVD.²¹⁵ In an effort to ensure criminal accountability, 13 specialized criminal chambers (SCCs) were created by the Transitional Justice Law of 2013 (the TJ Law) and operationalized through decrees.²¹⁶ The chambers were integrated into the Tunisian judicial system and formed part of the lower courts (Tribunal de première instance).²¹⁷ The SCCs are mandated to deal with crimes

210 Kenyans for Peace with Truth and Justice, "A Real Option for Justice? The International Crimes Division of the High Court of Kenya" (2014).

211 FIDH, "Termination of Ruto and Sang Case at the ICC: Witness Tampering Means Impunity Prevails over Justice Again," press release, April 5, 2016; Thomas Escritt and Duncan Miriri, "ICC Prosecutor Withdraws Charges Against Kenyan President," *Reuters*, Dec. 5, 2014; International Criminal Court, "Case Information Sheet: *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*," www.icc-cpi.int/CaseInformationSheets/rutosangEng.pdf.

212 Judicial Service Commission, "Report of the Committee of the Judicial Service Commission on the Establishment of an International Crimes Division in The High Court of Kenya" (Oct. 30, 2012). See also Athman Amran, "Post-Election Violence Suspects May Face International Law," *The Saturday Standard*, Aug. 18, 2012.

213 ICTJ, "Prosecuting International and Other Serious Crimes in Kenya" (2013), www.ictj.org/publication/prosecuting-international-and-other-serious-crimes-kenya.

214 The Republic of Kenya in the High Court of Kenya at Nairobi Constitutional and Human Rights Division, Petition No. 122 of 2013, judgment, Dec. 10, 2020, pbr.org/wp-content/uploads/2020/12/NAIROBI-HC-CHR-PETITION-NO.-122-OF-2013-COAW-11-OTHERS-V-A.G.-10-OTHERS-4.pdf. See also Physicians for Human Rights, "Court Delivers Justice for Several Survivors of Post-Election Sexual Violence in Kenya," press release, Dec. 10, 2020.

215 International Commission of Jurists, "Strengthening Accountability Through the Specialized Criminal Chambers in Tunisia: Principles and Recommended Practices on the Investigation, Prosecution and Adjudication of Sexual and Gender-Based Crimes" (June 2021), 6.

216 Olfa Belhassine, "Tunisie: Quel avenir pour les chambres spécialisées à l'heure du déconfinement?," *JusticeInfo.net*, May 5, 2020.

217 Loi organique 2013-53 du 24 décembre 2013, relative à l'instauration de la justice transitionnelle et à son organisation, Art. 8, published in the *Journal Officiel de la République Tunisienne* (hereafter referred to as "the TJ Law").

specified in the TJ Law, including murder, rape and other forms of sexual violence, torture, enforced disappearance, and executions without a fair trial.²¹⁸

The TJ Law made no provision for the establishment of dedicated investigative and prosecutorial units to support the work of the SCCs. The Office of the Public Prosecutor is only mentioned once in the TJ Law, in the context where the IVD is obliged to refer “proven” gross human rights violations cases to the Prosecutor’s Office.²¹⁹ The TJ Law failed to provide a comprehensive legal framework at the investigation and prosecution levels.²²⁰ The IVD, which was an independent truth commission, not a state criminal investigation body, was expected to provide “proven cases” to the SCCs.

Outcomes

As of June 2021, none of the specialized chambers have delivered a verdict.²²¹ It has proven difficult for the SCC to bring police suspects to court due to the opposition of police unions, who refuse to allow their members to provide protection to the SCCs, where colleagues suspected of torture are brought to court.²²²

Concerns have been raised as to the quality of the criminal investigations that are carried out by the IVD.²²³ Kate Vigneswaran, a prosecutor and international legal expert, noted that the IVD as a truth commission lacked the necessary powers and political support to conduct effective criminal investigations. In addition, government departments refused to cooperate with the IVD, limiting its access to state records.²²⁴

The IVD files transferred to the SCCs from the Prosecutor’s Office are often incomplete. In addition, the SCCs do not have the resources and capacity to deal with some of the large and complex cases, such as the corruption case involving 13 banks from the Ben Ali era. The current legal framework fails to provide for the effective operationalization of the SCCs or meaningful participation by victims (e.g., there is a dire lack of legal representation for victims).²²⁵

In Tunisia, under domestic criminal law, the judiciary can conduct “complimentary investigations.”²²⁶ Since no dedicated investigative capacity was attached to the SCCs, and the applicable law did not prescribe a process for the referral of cases back to the Office of the Prosecutor for further investigation, they were considering doing “complimentary investigations” in cases that might normally have been the subject of full criminal investigations. This could raise a possible conflict of interest since the same body would both investigate and adjudicate.²²⁷ In addition to cases arising from the IVD, the prosecutors and judges who are allocated cases before the SCC must also deal with their regular workload related to ordinary crimes.²²⁸

218 The TJ Law, Art. 8.

219 The TJ Law, Art. 42: “The Commission shall refer to the Public Prosecution the cases in which commitment of gross human rights violations is proven and shall be notified of all the measures which are subsequently taken by the judiciary.”

220 International Commission of Jurists, “Tunisia: Procedures of the Specialized Criminal Chambers in Light of International Standards” (July 2017), 3.

221 International Commission of Jurists, “Strengthening Accountability,” 8.

222 Belhassine, “Tunisie: Quel avenir.”

223 International Commission of Jurists, “Tunisia: Procedures of the Specialized Criminal Chambers.”

224 Interview with Kate Vigneswaran, prosecutor and international legal expert, Oct. 18, 2021.

225 Howard Varney and Katarzyna Zdunczyk, ICTJ, “Legal Frameworks for Specialized Chambers: Comparative Studies for the Tunisian Specialized Criminal Chambers” (2018); interview with Mohamed Azer Zouari, legal officer, and Nadia Jmal, program officer, International Center for Transitional Justice in Tunisia, Oct. 27, 2021.

226 Code of Criminal Procedure in Tunisia, Arts. 50, 143, 206. See also International Commission of Jurists, “Strengthening Accountability,” 21.

227 Interview with Kate Vigneswaran. In addition, see Article 50 of the Code of Criminal Procedure in Tunisia, which forbids an investigative judge from sitting on a case as a trial judge in which he or she participated as an investigative judge.

228 Interview with Kate Vigneswaran.

Chapter 3: Key Features Characterizing the Specialized Units

This chapter assesses the main features that characterize specialized units—including their structures, staffing and operations, and outreach and communications—and the role of civil society, and draws conclusions about which attributes of existing specialized units help to make them effective. It also highlights differences between the historical, mixed-mandate, and new-generation units.

Structure

The powers, mandate, staffing, and resources of specialized units depend largely on the enabling legal framework that created them and the political considerations behind the unit's establishment. Some of the most well-known mechanisms are products of a broader accountability strategy, such as in Germany and Argentina. Others, like units in Canada or the United States, are important components of their immigration policies. The new-generation units set up in Europe, in particular in Germany, France, and the Netherlands, are reflective of their commitment to the global fight against impunity.

Although Canada has not set up a specialized unit, it has adopted a holistic approach to accountability for serious international crimes through the introduction of a War Crimes Program. The program engages four existing state entities: the Immigration, Refugees and Citizenship Canada; the Canada Border Services Agency; the Royal Canadian Mounted Police; and the Department of Justice. Specialized teams have been created within the police and the Department of Justice. The program builds on three main avenues to seek accountability: criminal investigations and prosecutions, immigration proceedings, and citizenship revocation.²²⁹

To the best of our knowledge, Germany is the only country that has established both historical and new-generation units. There currently exist the Central Office (investigating Nazi crimes), which is independent from the Federal Prosecutor's Office; the International Crimes Unit, which is within the Federal Prosecutor's Office; and the Central Authority for Fighting War Crimes, or ZBKV, within the Federal Criminal Police Office.²³⁰ In Argentina, there are two historical units dealing with crimes of the past, but there is no special unit dealing with universal jurisdiction because of the relatively small number of such cases being brought in Argentina.²³¹

229 Government of Canada, "War Crimes and Crimes Against Humanity."

230 See the annex.

231 Interview with Dr. María Ángeles Ramos.

Historical units tend to be led by individuals with significant authority. They have been created under deputy chief prosecutors (e.g., in Bosnia and Herzegovina) and a special prosecutor reporting directly to a chief prosecutor (e.g., in Argentina). In Australia, the Office of the Special Investigator, investigating the conduct of Australian Special Forces in Afghanistan, has been formed as an executive agency under the responsibility of the minister of home affairs but is headed by an independent special investigator.²³² In Serbia, the war crimes prosecutor is elected by the National Assembly of the Republic of Serbia.²³³

The new-generation units are often centralized at the national level to facilitate access to central authorities, whose assistance might be required during investigations and prosecutions (e.g., a recommendation by the minister of foreign affairs may be needed to proceed with the investigation) and to facilitate international cooperation.²³⁴ In Sweden, the specialized unit within the Prosecutor's Office has offices in Stockholm, Göteborg, and Malmö.²³⁵

Sometimes specialized units are established in both the prosecutor's office and the police (e.g., in France, Germany, and Sweden).²³⁶ In England and Wales, a War Crimes Team was created within the Metropolitan Police Counter Terrorism Command to investigate serious international crimes, including war crimes, crimes against humanity, genocide, and the stand-alone crime of torture.²³⁷

Some new-generation specialized units that were initially set up as dedicated capacities for serious international crimes have in recent years been merged with entities that are responsible for terrorism or other transnational crimes. The specialized unit in France has recently been incorporated within the terrorism portfolio,²³⁸ while the unit in Denmark has been merged with the unit dealing with international economic crimes.²³⁹ In France, two independent units within the Office of the Prosecutor were merged under one department (PNAT) without affecting the dedicated capacities of the respective units. The units remain separate but now fall under the PNAT umbrella. In Denmark, the merger has eroded the dedicated capacity to investigate international crimes.²⁴⁰

Diverse Composition

States have adopted very different approaches to the composition of specialized units. They range in size from smaller units consisting of several staff members to large units involving more than 100 individuals.

Historical units, which are mandated to deal with crimes of the past, are more likely to include experts from a broad range of disciplines such as historians, sociologists, and anthro-

232 Order to Establish the Office of the Special Investigator as an Executive Agency, Dec. 10, 2020, www.legislation.gov.au/Details/C2020G01030.

233 Office of the War Crimes Prosecutor, "Organization," www.tuzilastvorz.org.rs/en/about-us/organization.

234 Open Society Justice Initiative and TRIAL International, "Universal Jurisdiction Law and Practice in Switzerland" (2019).

235 Finnin, "Surmonter les obstacles," 94.

236 See the annex.

237 Although no specialized unit was created for the Troubles, a team within the police structure was created for international crimes. HM Government, "Note on the Investigation and Prosecution of Crimes of Universal Jurisdiction" (2018), para. 6. There is no parallel devoted team within the Crown Prosecutor's Office. The Counter Terrorism Unit within the Special Crime and Counter Terrorism Division of the Crown Prosecutor's Office deals with serious international crimes. See Crown Prosecution Service, "Independent Report Welcomes Work of CPS Special Crime and Counter Terrorism Division," Feb. 5, 2019.

238 Interview with Alexandra Lily Kather; interview with Emmanuelle Marchand, deputy head and head of legal at Civitas Maxima, Oct. 21, 2021.

239 Currently it is the Office of the State Prosecutor for the Serious Economic Crime and International Crime (SØIK). International core crimes and economic crimes were organized in two separate units until a 2013 reform.

240 Mikkel Jarle Christensen, "International Prosecution and National Bureaucracy: The Contest to Define International Practices Within the Danish Prosecution Service," *Law and Social Inquiry* 43, no. 1 (2018): 152–181.

pologists. Argentina's PCCH, for instance, is composed of approximately 21 people, including lawyers, prosecutors, anthropologists, sociologists, historians, and specialists in media and communications.

Our research shows that historical units are more likely to have a robust human resources structure than new-generation units. For example, in Australia the Office of the Special Investigator is staffed with about 50 investigators and criminal analysts; in Argentina, the PCCH at the central and regional levels comprises some 170 individuals; in Poland, the Chief Commission for the Prosecution of Crimes Against the Polish Nation employs 81 prosecutors at the central and regional levels; and in Germany, the Central Office at the peak of its operations employed 121 staff members, including 49 prosecutors and judges.²⁴¹ The SDWC in Bosnia and Herzegovina, with its 27 prosecutors, 10 investigators, and four analysts, is somewhat smaller, but still larger than most new-generation or mixed-mandate units.²⁴²

In comparison, the new-generation units appear to have a more modest approach to staffing. In France, a new-generation unit, namely the CAH Unit within the PNAT, comprises 18 staff members, whereas the OCLCH within the national gendarmerie has about 40 people, of whom 30 members work on serious international crimes.²⁴³ In Germany, the international crimes unit within the police employs about 20 investigators, and the unit within the prosecutor's office employs 12 prosecutors.²⁴⁴ In Belgium, only seven investigators work in the 7th Investigation Service of the Federal Judicial Police, whereas in Sweden, some 17 investigators and analysts and 15 prosecutors are employed in the War Crimes Unit within the police department and the International Division of the Prosecutor's Office.²⁴⁵

Historical units may be better resourced as it may be easier to justify the allocation of resources to the pursuit of historically significant crimes that took place within the countries in question, as opposed to crimes that took place thousands of kilometers away.

The OCLCH in France is a good example of a specialized unit that has been leveraging existing resources in the pursuit of international justice. It works closely with the attachés de sécurité intérieure, based in French embassies, as well as researchers affiliated with universities, who provide the necessary analytical and technical support.²⁴⁶

In Argentina, the PCCH does not employ investigators since prosecutors are responsible for investigations. The unit does not involve state enforcement agencies or the military in its investigations due to the role they played during the dictatorship.

Operations

Prosecution-Led Investigations: Close Collaboration Between Investigators and Prosecutors

There is a worldwide trend of closer cooperation between investigators and prosecutors, particularly in relation to complex criminal cases that require concentrated efforts and multidisci-

241 Opening Statement to Legal and Constitutional Affairs Legislation Committee, Senate Estimates, Oct. 25, 2021, www.osi.gov.au/news-and-resources/senate-estimates-25-october-2021. See the annex.

242 Korner, "Improving War Crimes Processing."

243 Finnin, "Surmonter les obstacles," 46–47; interview with Jean-Pierre Chemaly.

244 Interview with Alexandra Lily Kather. See Ritscher, "Aktuelle Entwicklungen," 599.

245 See the annex.

246 Interview with Jean-Pierre Chemaly.

plinary expertise.²⁴⁷ Complex criminal cases include organized crime, corruption, and serious international crimes, where the perpetrators are often powerful or politically well-connected. Some specialist units have adopted prosecution-led investigations, such as units in the Netherlands and Uganda.

It appears that both adversarial and inquisitorial systems have moved away from a strict separation between investigative and prosecutive functions.²⁴⁸ A recommendation by the Committee of Ministers of the Council of Europe notes that “states where the police is independent of the public prosecution should take effective measures to guarantee that there is appropriate and functional co-operation between the Public Prosecution and the police.”²⁴⁹

Respondents who were interviewed in this study agreed that prosecution-led investigations are crucial in the effective investigation and prosecution of international crimes and crimes of the past.²⁵⁰ The establishment of specialized units creates a space for closer collaboration between investigators and prosecutors. Human Rights Watch found that because of the creation of specialized war crimes units in Germany, France, and the Netherlands, “the cooperation between police and prosecutors has significantly improved over the years, further enhancing the units’ ability to handle cases effectively.”²⁵¹

As pointed out by Kate Vigneswaran, it is essential that prosecutors guide investigations into international crimes or crimes of the past to “ensure from start to finish that you have a sufficient evidentiary base in order to meet the standards at trial.”²⁵²

Prosecution-led investigations have been adopted by international tribunals since complex criminal cases require a hands-on approach to ensure the adequacy of evidence in meeting the elements of the crime, to address evidentiary challenges, and to facilitate processes that require judicial intervention.²⁵³ Stephen Rapp commented that although civil law countries are more accustomed to prosecution-led investigations, “it does not mean that in the common law system it is not possible—it is possible but very much depends on the personality of individuals and on the relationship that evolves between the prosecution and the investigation.”²⁵⁴ In France, investigators and prosecutors work closely together in a collaborative manner by developing investigative strategies together for each case, holding frequent meetings and sharing information on an ongoing basis.²⁵⁵

England and Wales

In common law countries, investigators and prosecutors typically operate apart from each other. However, in the 1990s, experts and researchers observed several emerging challenges related to separate modes of operation.²⁵⁶ Police were growing increasingly dependent on prosecutors for legal advice because of increasing demands to tackle organized crime (particularly money laun-

247 Office of the United Nations High Commissioner for Human Rights, “Rule-of-Law Tools for Post-Conflict States: Prosecution Initiatives” (2006).

248 Despina Kyprianou, “Comparative Analysis of Prosecution Systems (Part II): The Role of Prosecution Services in Investigation and Prosecution Principles and Policies,” *Cyprus and European Law Review* (2008), 7.

249 Council of Europe, “The Role of Public Prosecution in the Criminal Justice System,” Recommendation Rec (2000)19, adopted by the Committee of Ministers of the Council of Europe on Oct. 6, 2000, and Explanatory Memorandum (2000), 8, rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804be55a.

250 Interview with Stephen Rapp; interview with Kate Vigneswaran; interview with Emmanuelle Marchand.

251 Human Rights Watch, “The Long Arm of Justice.”

252 Interview with Kate Vigneswaran.

253 Interview with Stephen Rapp; interview with Kate Vigneswaran.

254 Interview with Stephen Rapp.

255 Interview with Jean-Pierre Chemaly.

256 Kyprianou, “Comparative Analysis.”

dering and drug trafficking) and crimes under international humanitarian law, combined with the mounting complexities of substantive and procedural law.²⁵⁷

Moreover, the strict separation of investigative and prosecutorial functions led to problems in coordination. Prosecutors typically only get involved in a case once police investigations are advanced enough to indicate that a prosecution is most likely. This practice has the potential to undermine complex cases. K. W. Lidstone notes that “in deciding whether to involve the prosecutor before a charge is made or in deciding what and how much information the prosecutor should be given, the police will be guided by their law enforcement concerns which are not necessarily the same as those of the prosecutor.”²⁵⁸

Under the Criminal Justice Act (2003), once it is apparent that a criminal charge may be preferred, a prosecutor can require the police to investigate further before agreeing to the commencement of criminal proceedings.²⁵⁹ The Crown Prosecution Service “determines the appropriate charges in more serious or complex cases and advises the police during the early stages of investigations.”²⁶⁰

The Netherlands

In the Netherlands, there are separate units within the police, prosecution, and immigration services dedicated to pursuing serious international crimes cases. In addition, a special department within the Ministry of Justice supports the work of these units.²⁶¹ The National Office (Landelijk Parket) of the Dutch Public Prosecution Service (DPPS National Office), based in Rotterdam, is responsible for carrying out serious international crimes prosecutions.²⁶²

Investigations are conducted by the Dutch International Crime Unit (Team Internationale Misdrijven) within the National Crime Squad of the police.²⁶³ An investigative judge plays an important role in overseeing the investigations. Cooperation between war crimes units, and between police and prosecutors, is a critical factor in the success of these prosecutions. Human Rights Watch observes, “The Netherlands is a useful model for other countries in this regard. Police investigators and prosecutors in the Dutch war crimes units work together very closely, with prosecutors closely monitoring and supervising investigations.”²⁶⁴

South Africa

Even though prosecution-led investigations are standard practice in inquisitorial legal systems, the prosecution-led investigations introduced in South Africa in the late 1990s were considered groundbreaking for a common law jurisdiction.²⁶⁵

Prosecution-led investigations were initially introduced to tackle the prevalence of carjackings in Johannesburg in 1999 under a task force at the NPA’s Investigating Directorate: Organised Crime and Public Safety. The unit was headed by a deputy director of public prosecutions and included senior prosecutors, investigating officers, and intelligence agents. A hallmark of this

257 Ibid.

258 K. Lidstone, “The Reformed Prosecution Process in England: A Radical Reform?,” *Criminal Law Journal* (1987), 296.

259 Kyprianou, “Comparative Analysis.”

260 The Crown Prosecution Service, “About CPS,” 2017, www.cps.gov.uk/about-cps.

261 Human Rights Watch, “The Long Arm of Justice.”

262 Open Society Justice Initiative and TRIAL International, “Universal Jurisdiction Law and Practice in the Netherlands” (April 2019).

263 Ibid.

264 Human Rights Watch, “The Long Arm of Justice.”

265 Martin Schönsteich, “Prosecution-Led Investigation: An Innovative Approach from South Africa,” presentation for the Open Society Justice Initiative conference in Mar del Plata, Argentina, Dec. 5–6, 2005, biblioteca.cejamerica.org/bitstream/handle/2015/3188/schoensteich-prosecution-led-ing.pdf?sequence=1&isAllowed=y.

subdirectorates was that its work was intelligence-driven, making use of intelligence agents and informants.²⁶⁶ According to Martin Schönteich, its success was attributed to close prosecutor-investigator cooperation. This involved biweekly strategy meetings with stakeholders to share intelligence and develop enforcement and prevention plans.²⁶⁷ Within 18 months, the unit had increased the conviction rate from 10 percent to 42 percent, reduced the time from arrest to finalization of trial from 180 to 120 days, stopped the loss and sale of case dockets, and established an effective pool of experienced and specialized prosecutors.

Another example of prosecution-led investigations was the establishment of the Directorate of Special Operations (DSO) in 2001 to investigate and prosecute organized crime, serious economic offenses, corruption by public officials, and terrorism. The DSO saw the integration of three traditionally separate functions: intelligence, investigations, and prosecutions.²⁶⁸ In terms of staff, investigators made up 64 percent of the total, prosecutors 18 percent, analysts and specialists 2 percent each, and administrative support 14 percent. The investigations were prosecution-led and intelligence-driven.²⁶⁹ Investigating directors led teams of prosecutors, investigators, and specialists at the DSO. Prosecutors guided investigators to enable the collection of admissible evidence, meeting face to face with investigators from the beginning of each case. Prosecutors were ultimately responsible for cultivating good cooperation from witnesses and became leaders of multiagency solutions to crime problems.²⁷⁰ The DSO was a highly effective unit with a conviction rate of well over 90 percent.²⁷¹ However, it became a victim of its own success, and since its investigations targeted high-profile and powerful suspects, it came under withering political attack and was closed in 2008.²⁷²

The creation in 2011 of the Specialized Commercial Crime Unit (SCCU) in the NPA to prosecute complex financial crimes also helped to pioneer close cooperation between detectives and prosecutors.²⁷³ SCCU prosecutors are involved in investigations at an early stage, and investigators and prosecutors work together in project teams. Investigators are required to present draft investigation plans to prosecutors, and together they are jointly responsible for ensuring proper investigations.²⁷⁴ According to Antony Albekker, this integrated approach resulted in thorough case preparation and presentations in court, faster turnaround times, and higher convictions.²⁷⁵ The SCCU enjoys a conviction rate of over 90 percent.²⁷⁶ Other factors explaining the success of the SCCU include the colocation of investigators and prosecutors in the same building and the material and expert support provided by the private sector. Albekker notes that tensions between detectives and prosecutors were handled with grace, professionalism, and competence.²⁷⁷

In relation to criticism that the integrated approach reduces the independence of SCCU prosecutors, Albekker observes that neither prosecutors nor investigators believed that to be the case. On the contrary, he found that they maintained that prosecutors were better able to exercise

266 Martin Schönteich, Institute for Security Studies, "Lawyers for the People: The South African Prosecution Service," Monograph 53 (March 1, 2001).

267 Schönteich, "Prosecution-Led Investigation."

268 Moses Montesh, "A Critical Analysis of Crime Investigative System Within the South African Criminal Justice System: A Comparative Study" (2007).

269 Schönteich, "Prosecution-Led Investigation."

270 Ibid.

271 Joey Berning and Moses Montesh, "Countering Corruption in South Africa: The Rise and Fall of the Scorpions and Hawks," *SA Crime Quarterly*, no. 39 (March 2012): 5.

272 Sebastian Berger, "South African Crime-Fighting Unit Stung by Its Own Success," *The National*, July 29, 2008.

273 Antony Albekker, Institute for Security Studies, "Justice Through Specialisation? The Case of the Specialised Commercial Crime Court," Monograph 76 (2003).

274 Ibid., 5–6.

275 Ibid.

276 National Prosecuting Authority, "Annual Report 2019/20," 90.

277 Ibid.

their discretion and preserve their independence since they enjoyed more insight into investigation dockets than they normally would, and that a prosecutor's training helps to overcome subjectivity in the exercise of discretion.²⁷⁸

Investigative Approaches

Given the nature and scale of international crimes and crimes of the past, in most situations, investigations and prosecutions differ from those conducted in connection with ordinary crimes. Crimes against humanity, for instance, involve large-scale violence and usually require an examination of the systems and patterns of the crime to better understand their origins and establish state involvement.

As a result, specialized units have innovated to enhance their ability to pursue serious human rights violations. The German International Criminal Law unit within the Federal Prosecutor's Office, for instance, has been using preliminary observation proceedings and structural investigations into international crimes.²⁷⁹ A preliminary observation proceeding is one step before a structural investigation is opened. At that stage, no investigation file is opened, but there is information that crimes have been committed in certain contexts. The preliminary observation proceedings focus on monitoring activities rather than collecting evidence.²⁸⁰

Structural investigations were pioneered by German prosecutors investigating Nazi crimes and war crimes committed by the Syrian regime and terror organizations, such as the Islamic State of Iraq and Syria (ISIS, also known as ISIL and Da'esh).²⁸¹ Structural investigations do not focus on specific suspects but rather on groupings of possible role players and the wider context in which the crimes happened. The purpose is not to assign individual criminal liability, but to develop an understanding of the "overarching organizational structures which would otherwise be missed if an investigation is solely concentrated on the person itself."²⁸²

Structural investigations involve investigating the background to crimes, including the modus operandi of the perpetrators and the chains of command behind the crimes. They are designed to collect and preserve evidence in preparation for future proceedings in respect to both identified and unidentified perpetrators. A structural investigation "enables law enforcement agencies to explore the complexities of a 'situation' independent of the procedural destiny of a single case which aims at assigning individual criminal responsibility."²⁸³ Such investigations tend to reveal connections between cases, perpetrators, and victims and to ultimately identify perpetrators or groups of perpetrators for specific criminal investigation and prosecution.

Alexandra Lily Kather explained that in the German context, "the more information gathered and analyzed in a structural investigation, the more substructural investigations would be pursued.... The end goal is to reach the threshold of a person-specific investigation, which is then against the designated individual."²⁸⁴

278 Altbeker, "Justice Through Specialisation?," 66.

279 European Center for Constitutional and Human Rights, "Structural Investigation."

280 Interview with Alexandra Lily Kather.

281 Felix Graulich, *Die Zusammenarbeit von Generalbundesanwalt und Bundeskriminalamt bei dem Vorgehen gegen den internationalen Terrorismus* (Duncker & Humblot, 2013), 316, 317, 337, 340.

282 Morten Bergsmo and Carsten Stahn, eds., *Quality Control in Preliminary Examination: Volume 1* (Torke Opsahl Academic Publisher Brussels, 2018), 135.

283 Bergsmo and Stahn, *Quality Control in Preliminary Examination*, 136.

284 Interview with Alexandra Lily Kather. See also Ritscher, "Aktuelle Entwicklungen."

Structural investigations are not only an extremely useful tool for investigators and prosecutors but also an opportunity for civil society organizations that are able to provide support.²⁸⁵ During this stage of investigation, civil society groups can support investigations by providing information, leads, and technical assistance on issues such as the characterization of crimes.²⁸⁶ Stephen Rapp noted that structural investigations allow criminal justice practitioners to build solid foundations for future cases that make them less vulnerable to political interference. Rapp recommends that the approach of structural investigations should be built into the mandates of specialized units to further develop this best practice.²⁸⁷

Prosecutorial Strategies

Where historical units responsible for crimes of the past have been established, their work has often been guided by a prosecutorial strategy focused on case selection.²⁸⁸ A strategic approach is necessary as invariably it is not possible to deal with all cases.²⁸⁹

New-generation units typically have broad discretionary powers. Even states that are required to comply with the principle of mandatory prosecution provide a measure of discretion to the launching of investigations into international crimes.²⁹⁰ By way of example, in Germany, a prosecutor may deviate from the principle of mandatory prosecution in cases where there is no nexus to Germany.²⁹¹ This discretion has been met with some opposition from civil society and lawyers acting for victims, who view such discretion with suspicion, since it may open the door to political interference in the prosecution process.²⁹²

Since prosecutorial discretion is typical for common law countries where the principle of a mandatory prosecution is not applied, prosecution policies and strategies are more standard in common law countries than in civil law countries. However, civil law countries such as France and the Netherlands do accord prosecutors a measure of discretion, which is guided by strategies.²⁹³ Most civil law jurisdictions have codes of procedural law, which typically include binding principles for prosecutors to follow during the prosecution process.²⁹⁴

In France, investigators and prosecutors with the specialized unit prioritize cases based on agreed criteria (e.g., the seriousness of the crimes, the role of the perpetrators) and revisit and refine the strategy every six months.²⁹⁵

285 Interview with Alexandra Lily Kather.

286 Ibid.

287 Interview with Stephen Rapp.

288 For example, in Argentina, Bosnia and Herzegovina, and Germany, even if such a strategy has been criticized (e.g., in Bosnia and Herzegovina). On prosecutorial strategies, see Howard Varney, Shenali De Silva, and Alexandra Raleigh, ICTJ, "Guiding and Protecting Prosecutors: Comparative Overview of Policies Guiding Decisions to Prosecute" (Oct. 2019), 25–41.

289 Interview with Stephen Rapp.

290 The prosecutor is in principle required to prosecute every case where there is sufficient evidence to sustain a prosecution.

291 Section 153 of the German Criminal Procedure Code (Strafprozessordnung), cited in Open Society Justice Initiative and TRIAL International, "Universal Jurisdiction Law and Practice in Germany."

292 Interview with Alexandra Lily Kather. See, for example, European Center for Constitutional and Human Rights, "Universal Jurisdiction in Germany? The Congo War Crimes Trial: First Case Under the Code of Crimes Against International Law" (2016), 5, 28.

293 United Nations Office on Drugs and Crime, "The Status and Role of Prosecutors: A United Nations Office on Drugs and Crime and International Association of Prosecutors Guide" (2014), 9. The principle of opportunity is employed in certain civil law jurisdictions, such as France, the Netherlands, Slovenia, and Sweden. The principle states that a crime will be punished only if its prosecution is considered opportune, allowing prosecutors to decide against prosecution on this basis. See, for example, the Dutch Criminal Procedure Code, Arts. 12–13a.

294 Examples of civil law codes include the Indonesia Criminal Procedure Code, Law No. 16 of the Republic of Indonesia, the Public Prosecution Service, and the Tunisian Code of Criminal Procedure.

295 Interview with Jean-Pierre Chemaly.

Multicountry Joint Investigative Teams

Joint investigation teams across countries have been widely used in complex and time-sensitive cross-border investigations to ensure the speedy and efficient resolution of cases. The European Union Agency for Criminal Justice Cooperation (EUROJUST) website defines a joint investigation team (JIT) as

one of the most advanced tools used in international cooperation in criminal matters, comprising a legal agreement between competent authorities of two or more States for the purpose of carrying out criminal investigations. Made up of prosecutors and law enforcement authorities as well as judges, JITs are established for a fixed period, typically between 12 and 24 months, such as is necessary to reach successful conclusions to investigations.²⁹⁶

In recent years, joint investigation teams have been set up to investigate serious international crimes across Europe (e.g., a French-German JIT is investigating Syrian crimes). Although these cross-border teams cooperate closely on the matters, they are not colocated and operate from their respective countries.²⁹⁷

Cooperation with Civil Society

Civil society organizations, both at the grassroots and international levels, play diverse roles in pursuing criminal accountability for serious international crimes. These include advocacy, research and policy development, capacity-building and technical assistance, documentation and collection of evidence, litigation, and provision of psychosocial and legal support to survivors and witnesses. The approach adopted by specialized units toward CSOs and NGOs differs between countries.

Types of Relationships

The nature of the relationship between civil society actors and investigators and prosecutors ranges from constructive to antagonistic. In some jurisdictions, for instance, victims have a right to participate in criminal proceedings as civil parties or to initiate criminal proceedings in the form of private prosecutions (e.g., in Poland and Spain) or “popular prosecution” (e.g., *acusadores populares* in Spain), which enables any person or civil society group to pursue criminal prosecutions at the same time as the state.²⁹⁸ In France, as Emmanuelle Marchand from *Civitas Maxima* explained, the ability of victims to become civil parties in France has enabled CSOs representing victims to trigger investigations, which may not otherwise have been pursued by the state.²⁹⁹

Similarly, popular prosecutions have been used in Spain by civil society activists to pursue significant prosecutions, such as the indictment of Augusto Pinochet.³⁰⁰

296 EUROJUST, “Joint Investigation Teams,” www.eurojust.europa.eu/judicial-cooperation/eurojust-role-facilitating-judicial-cooperation-instruments/joint-investigation-teams.

297 Interview with Matevž Pezdirc.

298 Finnin, “Surmonter les obstacles.” In Spain, a private prosecution allows an individual with a legal interest to institute criminal proceedings, whereas a popular prosecution can be instituted by anyone if the proceedings are in the public interest. See “Acusación popular,” conceptosjuridicos.com/acusacion-popular/; Alejandro Gamez Selma, “Popular Indictments in Spain: Taking Stock of a Tool to Democratise Justice,” *Fair Trials*, Feb. 14, 2019.

299 Open Society Justice Initiative and TRIAL International, “Universal Jurisdiction Law and Practice in France”; interview with Emmanuelle Marchand.

300 Interview with Carlos Castresana Fernández, public prosecutor at the Court of Auditors of Spain, Oct. 19, 2021.

Civil society organizations also have a critically important role in documenting and collecting evidence. The international investigative mechanisms (e.g., the International, Impartial and Independent Mechanism for Syria, or IIIM) have signed memorandums of understanding or cooperation agreements with NGOs working on evidence collection and documentation.³⁰¹ In 2018, Syrian civil society organizations and the IIIM signed the “Protocol of Cooperation Between the International, Independent and Impartial Mechanism and Syrian Civil Society Organisations Participating in the Lausanne Platform.”³⁰² The protocol created a space for a “two-way dialogue” allowing

all parties to focus on maximizing their contributions, whether the IIIM providing support to civil society documentation and analysis or affording the evidence providers better understanding as to what the most valuable evidentiary material is, and how to obtain and provide it in a way that meets criminal legal standards.³⁰³

In other contexts, civil society plays a more consultative role. In Argentina, for instance, the PCCH employs an open-door policy to civil society actors and hosts an annual roundtable discussion between civil society delegates, prosecutors, and representatives of relevant state agencies to consider progress, challenges, and the strategy going forward.³⁰⁴

And in Uganda, as noted by Sarah Kasande of the ICTJ, a loose network of civil society organizations known as the Kwoyelo Initiative works closely with the ICD. Some of these organizations are part of the ICD’s Court User Committee, which has had a significant positive impact on the functioning of the division, for example by coming up with criteria for reviewing victim participation applications.³⁰⁵ In the UK, the Periodic Community Panels bring together representatives of the enforcement agencies, prosecutors, and NGOs to tackle important issues.³⁰⁶

In South Africa, the relationship between the NPA’s Priority Crimes Litigation Unit and civil society has been mostly antagonistic. This arises from the role of that unit in acquiescing to political pressure to abandon apartheid-era cases and the ongoing failure of prosecutors to deliver justice.³⁰⁷ Although collaborative relationships have been established with individual prosecutors, the NPA has declined to formalize contact with civil society. Instead, families must litigate to get the authorities to act.³⁰⁸

According to Jean-Pierre Chemaly, French investigations are guided by the principle of impartiality, which prevents investigators from engaging with NGOs. The OCLCH pursues leads shared by CSOs, but it cannot share any details of the investigation unless it is ordered to do so by the investigating judge.³⁰⁹

301 The IIIM and the Commission for International Justice and Accountability have entered into a memorandum of understanding facilitating the online transfer of the commission’s archive to Geneva. See Michelle Burgis-Kasthala, “Assembling Atrocity Archives for Syria: Assessing the Work of the CIJA and the IIIM,” *Journal of International Criminal Justice* (2021).

302 Syrians for Truth and Justice, “Signature of a Protocol of Cooperation Between Syrian Civil Society Organisations and the IIIM,” April 10, 2018, stj-sy.org/en/495/; Protocol of Cooperation Between the International, Independent and Impartial Mechanism and Syrian Civil Society Organisations Participating in the Lausanne Platform (2018), iiim.un.org/wp-content/uploads/2018/04/Protocol_IIIM_-_Syrian_NGOs_English.pdf.

303 Federica D’Alessandra and Kirsty Sutherland, “The Promise and Challenges of New Actors and New Technologies in International Justice,” *Journal of International Criminal Justice* 19, no. 1 (2021): 9–34.

304 Interview with Dr. María Ángeles Ramos.

305 Interview with Sarah Kasande Kihika.

306 Interview with Matevž Pezdirc.

307 Foundation for Human Rights, “Statement: Call for an Independent Public and Open Commission of Inquiry into the Suppression of the TRC Cases,” media release, Nov. 9, 2021, unfinishedtrc.co.za/3104-2/.

308 Tymon Smith, “Calata’s Last Stand for the Cradock Four,” *New Frame*, July 26, 2021.

309 Interview with Jean-Pierre Chemaly.

Benefits of a Close Relationship Between Civil Society and Specialized Units

Collaboration with CSOs has been beneficial to specialized units for the following reasons:

- CSOs, through their contacts and networks, can identify survivors and witnesses and link the authorities to defectors or insider witnesses.³¹⁰
- CSOs assist survivors to file complaints and represent victims. Sometimes, CSOs file complaints in multiple countries to increase the chances of cases being pursued.³¹¹
- CSOs fill the “knowledge gap.” In Germany, the specialized units benefit from the work of civil society organizations, which facilitate contact with witnesses and survivors and provide legal analysis or represent victims in their interactions with investigators and prosecutors.³¹²
- CSOs provide resources that would otherwise not be available, such as relocating witnesses and providing psychosocial support.³¹³
- CSOs provide capacity building and training. In Uganda, CSOs provide regular trainings to the ICD.³¹⁴
- CSOs document, collect, and collate information. CSOs are often the only entities operating “on the ground,” collecting evidence for possible use in cases.

In countries that have not set up specialized capacities to investigate international crimes, civil society has a valuable role to play to convince the state to establish such units to comply with the obligations under international law.³¹⁵

Challenges

While the role played by NGOs is often pivotal to the launching of cases, their involvement brings certain challenges. Questions of impact on prosecutorial independence have been raised in relation to a proposed model of institutionalized cooperation between civil society and the international crimes specialized unit.³¹⁶ Stephen Rapp pointed out that victims, in their interactions with the prosecution, may sometimes push a certain political agenda that “puts their victimhood above other people’s victimhood,” and hence may be at odds with the overall interests of justice.³¹⁷

Kate Vigneswaran, a former prosecutor at the ICTY, noted that while NGOs have a role to play in human rights advocacy and legal support, they do not always have enough expertise to collect evidence in a manner that can be used in courts.³¹⁸ Vigneswaran highlighted the issue of “over-documentation,” where the same witnesses are interviewed multiple times by different actors, which can lead to retraumatization and undermine the credibility of witnesses when inconsistencies emerge in different statements. To mitigate these risks, she recommends the making of

310 Interview with Alexandra Lily Kather.

311 Interview with Emmanuelle Marchand.

312 Interview with Alexandra Lily Kather. See also Finnin, “Surmonter les obstacles.”

313 Interview with Emmanuelle Marchand; interview with Alexandra Lily Kather.

314 Interview with Sarah Kasande Kihika.

315 Interview with Carlos Castresana Fernández; interview with Alexandra Lily Kather.

316 Interview with Alexandra Lily Kather.

317 Interview with Stephen Rapp.

318 Interview with Kate Vigneswaran.

cooperation agreements between specialized units and NGOs to regulate conduct in relation to witnesses and the collection of evidence.³¹⁹

Outreach, Communication, and Archives

Most specialized units do not run informative or outreach websites. The PCCH in Argentina is a notable exception. It employs a comprehensive communication and media strategy, which includes meetings with affected communities and maintaining an informative website.³²⁰ Such regular communication with the public and affected communities to report on progress is particularly important to manage expectations.³²¹

New-generation units seemed less likely to have comprehensive outreach programs, perhaps due to limited resources or because they prefer to keep a lower profile. Matevž Pezdirc of the EU Genocide Network stressed that outreach and raising public awareness about international crimes is crucial for the specialized units to build public support.³²² He remarked that outreach and communication programs are needed to explain to the public why it is necessary to investigate both ordinary and international crimes:

The issue in fighting criminality is that the criminality never ends. It's inexhaustive. So as a prosecutor, you need to make priorities, and then of course, do you devote resources to a burglary case in your neighborhood or do you devote resources to prosecuting a war criminal that killed 10 persons 10 years ago in a country 10,000 kilometers away.³²³

Stephen Rapp observed that the more public support for a specialized unit, the less likely it will be undermined or closed by political elements.³²⁴

Archival work is an essential element of the work of traditional specialized units such as the Central Office in Germany and the PCCH in Argentina. In Germany, there is an administrative agreement between the Central Office and the German government on behalf of the Federal Archives on the sharing of materials, which can be accessed by contacting the Archives.³²⁵ Our research indicates that new-generation units appear to have paid less attention to archiving.

National and International Cooperation

Investigating serious crimes across borders requires cooperation between countries. Some specialized units have an international cooperation component, which facilitates international cooperation and requests for mutual legal assistance; liaises with other states, specialized units, international organizations, and NGOs; and is generally responsible for stakeholder engagement.

In France, the Strategy and International Cooperation Division within the OCLCH is responsible for international cooperation and engages with university researchers who assist with open-source research. This division is also mandated to conduct contextual, historical, and

319 Ibid.

320 The PCCH in Argentina runs a very comprehensive website with statistics on the cases available: www.fiscales.gov.ar/lesa-humanidad/?tipo-entrada=informes.

321 Interview with Carlos Castresana Fernández. See, for example, the website of the Press Office of the Central Office of the Land Judicial Authorities for the Investigation of National Socialist Crimes: zentrale-stelle-ludwigsburg.justiz-bw.de/pb/Len/Startpage/Media/Press+Office.

322 Interview with Matevž Pezdirc.

323 Ibid.

324 Interview with Stephen Rapp.

325 Central Office, "Archives and More," zentrale-stelle-ludwigsburg.justiz-bw.de/pb/Len/Startpage/Archives+and+More.

geopolitical analysis with respect to situations under investigation.³²⁶ In Switzerland, the Special War Crimes Office in the Office of the Attorney General has been merged with the unit responsible for mutual legal assistance, the Mutual Legal Assistance and International Criminal Law Division.³²⁷

Some new-generation specialized units work closely with immigration services, who share information on suspected perpetrators with investigators.³²⁸ In the Netherlands, a specialized unit known as the 1F Unit has been created within the immigration services to identify people who are suspected of involvement in serious international crimes.³²⁹

European cooperation is facilitated by the EU Genocide Network, which was established in 2002 by the Council of the European Union to coordinate efforts in bringing perpetrators of core international crimes to justice.³³⁰ The network hosts two plenary meetings per year joined by prosecutors, investigators, other state agents, and international and regional bodies, as well as civil society partners, which allows practitioners to get to know each other and informally share information, knowledge, and best practices.³³¹ Where necessary, use is made of EUROPOL to coordinate policing activities and EUROJUST for cooperation in judicial matters.³³² At the international level, specialized units use the assistance of INTERPOL.³³³

The EU legal framework and close collaboration in judicial matters across the EU have helped to fast-track cooperation. Some of the tools employed include the JIT, the European arrest warrant, and the European investigation order.³³⁴ The EU legal framework has contributed to the growing number of extraterritorial cases involving serious international crimes in this part of the world. Mutual legal assistance is used to share evidence and information between states, particularly with countries outside the EU.³³⁵ Attempts are being made to adopt the Multilateral Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes Against Humanity and War Crimes, also known as the Mutual Legal Assistance (MLA) Convention, which would facilitate international cooperation with respect to core international crimes.³³⁶

Chloé Faucourt, a legal officer working with the EU Genocide Network, highlighted cooperation agreements that have been struck between UN investigative mechanisms (such as the IIIM) and various countries, particularly those with specialized units.³³⁷

326 Interview with Jean-Pierre Chemaly.

327 See the Mutual Legal Assistance and International Criminal Law Division, the Federal Prosecutor's Office, www.bundesanwalt.ch/mpc/fr/home/die-bundesanwalt.ch/organisation/rtvc.html; Julia Crawford, "Why Switzerland's War Crimes Office Is Dragging Its Feet," *SwissInfo*, Jan. 31, 2019.

328 For example, Germany, France, Belgium, the Netherlands, and Sweden. See Finnin, "Surmonter les obstacles," 110.

329 A reference to Article 1F of the Convention Relating to the Status of Refugees (adopted July 28, 1951, entered into force April 22, 1954).

330 Genocide Network website: www.eurojust.europa.eu/judicial-cooperation/practitioner-networks/genocide-network.

331 Interview with Matevž Pezdirc.

332 EUROPOL, www.europol.europa.eu; EUROJUST, www.eurojust.europa.eu.

333 INTERPOL, www.interpol.int/en.

334 "The European arrest warrant ('EAW') is a simplified cross-border judicial surrender procedure—for the purpose of prosecution or executing a custodial sentence or detention order," which is applicable within the European Union. See European Commission, "European Arrest Warrant," ec.europa.eu/info/law/cross-border-cases/judicial-cooperation/types-judicial-cooperation/european-arrest-warrant_en. "The European Investigation Order (EIO) is a judicial decision issued in or validated by the judicial authority in one EU country to have investigative measures to gather or use evidence in criminal matters carried out in another EU country." See EUROJUST, "European Investigative Order," www.eurojust.europa.eu/judicial-cooperation/eurojust-role-facilitating-judicial-cooperation-instruments/european-investigation-order-eio.

335 "Mutual legal assistance (MLA) in criminal matters is a process by which States provide assistance to each other to serve judicial documents and gathering evidence." See UNODOC, "Mutual Legal Assistance (MLA)," www.unodc.org/e4j/en/organized-crime/module-11/key-issues/mutual-legal-assistance.html.

336 Parliamentarians for Global Action, "Mutual Legal Assistance Convention: PGA Advocating for Inter-State Cooperation On International Crimes," Jan. 30, 2020, www.pgaction.org/news/mutual-legal-assistance-convention-international-crimes.html.

337 Interview with Chloé Faucourt, legal officer at the EU Genocide Network, Oct. 25, 2021.

Chapter 4: Key Challenges Faced by Specialized Units

Political Dynamics

Historical units investigating crimes of the past are particularly vulnerable to political manipulation. Without political support, specialized units will not get established in the first place, as has been seen in South Africa, the United Kingdom, and Kenya. Even if they are established, changing political dynamics can result in support being withdrawn.

In July 2021, the Spanish government approved the Democratic Memory Bill (Proyecto de Ley de Memoria Democrática) to address the legacy of the Spanish Civil War. Among various other measures, the bill is intended to establish the Office of the Prosecutor of the Democratic Memory and Human Rights (Fiscalía de Sala de Memoria Democrática y Derechos Humanos) to investigate atrocities that occurred during the civil war.³³⁸ The bill has faced waves of criticism from conservative political parties. The People's Party and the far-right party Vox have promised to repeal the law if they win the national elections in 2023.³³⁹

Some countries require the approval of the government before instigating an investigation of an international crime committed in another country.³⁴⁰ In Sweden, for example, prosecutors need the approval of the “Government or the public authority designated by the Government” before filing an indictment relating to crimes committed in a foreign country.³⁴¹ This requirement could leave potential investigations in such countries open to possible political interference.

Access to Evidence

Specialized units are bound by procedural laws in respect to the securing of evidence. They will not always have access to the territory where crimes are committed and will rely largely on witness testimonies and other available evidence, such as medical reports. The units are often forced to rely on third parties to identify victims and perpetrators and to collect evidence.³⁴²

Even when they have access to territories where the crimes are committed, investigators often work in unfamiliar environments and may not be able to speak the local dialects. At the logisti-

338 Capítulo II, Anteproyecto de Ley de Memoria Democrática, Art. 29(2).

339 Natalia Junquera, “Spain Drafts More Ambitious Historical Memory Bill amid Waves of Revisionism,” *El País*, July 22, 2021.

340 For example, Switzerland.

341 Open Society Justice Initiative and TRIAL International, “Universal Jurisdiction Law and Practice in Sweden” (2020), 14.

342 Interview with Kate Vigneswaran.

cal level, specialized units must often make complex arrangements such as setting up witness interviews in neighboring countries and arranging for witnesses to testify in trials in the countries where the units are situated.³⁴³

At a technical level, specialized units are often confronted with huge amounts of digital information from open sources and intelligence gathering. Witness accounts and video footage of violations are often recorded on phones and tablets and then posted on social media platforms. Assessing whether such evidence is reliable is challenging. Specialized units require additional human and technical resources to adequately analyze such digital evidence.³⁴⁴

Analysing digital resources is less pertinent when it comes to investigating crimes of the past. Carlos Castresana Fernández, a Spanish prosecutor and international lawyer, explained that in those cases, investigations typically involve a reconstruction of evidence rather than collecting new evidence: “Evidence is not alive, everything is in history.”³⁴⁵

Merging of Units

The merging of specialized units with other units and departments can undermine the very reason the units were created in the first place. This shortcoming also applies when the mandates of the units are expanded to include crimes other than international crimes or crimes of the past.

The merging of various crimes’ portfolios raises the possibility that crimes of the past and international crimes will become “second category crimes” in terms of prioritization. This happened at the PCLU unit in South Africa, where the acting head of the unit repeatedly advised families that their cases were sidelined because the unit had more pressing cases to handle.³⁴⁶

Alexandra Lily Kather observed that “prosecutors are interested in prosecutable cases.” She noted that crimes of the past, which often happened years or decades before, and international crimes, which can be legally complex, are often viewed by prosecutors as simply too difficult to pursue, especially when there are other, “easy win” cases.³⁴⁷ An example is the inclusion of terrorism and international crimes under the same portfolio, which may encourage prosecutors to focus predominantly on terrorism charges, as they typically require a much lower evidentiary threshold to prove.³⁴⁸

The EU Genocide Network recognizes the benefits of “cumulative prosecutions” for war crimes, crimes against humanity, and the crime of genocide, in addition to terrorism-related offenses. According to the Network, a cumulative prosecution “ensures the full criminal responsibility of perpetrators, results in higher sentences and delivers more justice for victims.”³⁴⁹ The matter of Ahmed Hamdane Mahmoud Ayach El Aswadi, an Iraqi ISIS member, is an example of a case that has been investigated jointly by the anti-terrorism and OCLCH units in France.³⁵⁰

343 Interview with Emmanuelle Marchand.

344 Karolina Aksamitowska, “Digital Evidence in Domestic Core International Crimes Prosecutions: Lessons Learned from Germany, Sweden, Finland and the Netherlands,” *Journal of International Criminal Justice* 19 (2021): 189–211.

345 Interview with Carlos Castresana Fernández.

346 Interview with Moray Hathorn.

347 Interview with Alexandra Lily Kather.

348 Interview with Alexandra Lily Kather; interview with Emmanuelle Marchand.

349 EUROJUST, “Cumulative Prosecution of Foreign Terrorist Fighters for Core International Crimes and Terrorism-Related Offences” (May 2020).

350 TRIAL International, “Ahmed Hamdane Mahmoud El Ayach El Aswadi,” last modified March 24, 2021, trialinternational.org/latest-post/ahmed-hamdane-mahmoud-el-ayach-el-aswadi/.

Victim Support

The European Convention on Human Rights and the Victims' Rights Directive oblige EU member states to provide victims of human rights violations with assistance following a crime, including long-term medical, physical, and psychological assistance as well as practical support.³⁵¹ The Victims' Rights Directive is applicable to all victims, regardless of their nationality or where the crime happened, as long as the investigation was opened in one of the member states.³⁵² Notwithstanding these requirements, inadequate support is often provided to victims by specialized units, with most services being outsourced to NGOs.³⁵³

351 For example, the International Covenant on Civil and Political Rights, 1966; the European Convention on Human Rights, 1950; the Commission on Human Rights, "Promotion and Protection of Human Rights: Impunity—Report of the Independent Expert to Update the Set of Principles to Combat Impunity, Diane Orentlicher" (E/CN.4/2005/102/Add.1, Feb. 18, 2005); UN General Assembly, Resolution 60/147, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Dec. 16, 2005).

352 Directive 2012/29/EU of the European Parliament and of the Council of Oct. 25, 2012, establishing minimum standards on the rights, support, and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

353 Interview with Alexandra Lily Kather; interview with Emmanuelle Marchand. See in particular Finnin, "Surmonter les obstacles."

Chapter 5: Are States with Specialized Units More Effective?

The research conducted in this study suggests that countries with specialized units are likely to achieve considerably more success in investigating and prosecuting crimes of the past and international crimes when compared with countries without dedicated capacities.

Matevž Pezdirc of the EU Genocide Network asserted that there is a direct correlation between the number of international crimes cases investigated and whether a country has a specialized unit. In countries without dedicated capacities, the number of cases launched is invariably much lower.³⁵⁴

Stephen Rapp explained why ordinary law enforcement and prosecutorial agencies are not in a good position to effectively investigate and prosecute international crimes and crimes of the past:

You fundamentally run into problems, busy prosecutors, complicated cases, lots of different priorities, understaffing, inadequate justice system, not to mention the specialized skills that are necessary to put these cases together. The fact that they involve different kinds of crimes, committed in different ways, by organizations. You need a detailed understanding of the structures of power and violence. Who really pulled the strings, who went along for the ride, ...all of those things take real multidisciplinary skills—which are not going to be available within an ordinary office that's dealing with crimes of all sorts.³⁵⁵

Alexandra Lily Kather offered a further advantage of specialization, namely, to give meaningful effect to the obligations of states to guarantee the rights of victims and societies to truth, justice, reparation, and guarantees of nonrecurrence:

It is not just that we need specialized unit for the holistic investigation and prosecution, but also that we don't do a disservice to the survivors and the structural and political implications of the crimes being committed.³⁵⁶

From a policy perspective, it can be concluded that without a dedicated capacity, crimes of the past and international crimes will rarely be treated as priority crimes within ordinary legal

354 Interview with Matevž Pezdirc.

355 Interview with Stephen Rapp.

356 Interview with Alexandra Lily Kather.

systems. Stephen Rapp remarked that “having a specialized office or specialized leadership on certain areas...makes an enormous amount of sense, because otherwise, when things are mainstreamed, they are forgotten.”³⁵⁷

Matevž Pezdirc pointed out that specialization helps to address complex crimes. A good understanding of both domestic and international criminal law is needed to properly characterize criminal conduct and to appropriately guide investigations to ensure that the evidence that is collected proves the elements of the crimes. Specialization also helps in dealing with the challenges of building cases involving complex organizational structures and large numbers of incidents. Specialized units are more likely to employ a multidisciplinary approach and develop appropriate strategies, policies, and guidelines to investigate and prosecute gross human rights violations.³⁵⁸ In doing so, specialized units allow for the long-term retention of knowledge and experience.

³⁵⁷ Interview with Stephen Rapp.

³⁵⁸ Interview with Matevž Pezdirc.

Chapter 6: Specialized Units and Accountability for Crimes Committed in Syria

Poor Prospects of Accountability

Notwithstanding compelling evidence of gross human rights violations in Syria, impunity continues unabated. There are no prospects of credible justice at the domestic level in Syria, and challenges exist at the international level.

The ICC does not enjoy jurisdiction over crimes committed in Syria, and given the composition of the UN Security Council, there is little chance of the situation in Syria being referred to the ICC.³⁵⁹ There is also little prospect of an ad hoc tribunal being established, given the difficulty in setting up such a mechanism in a complex situation.³⁶⁰

One of the only avenues for accountability before the ICC that may be available is based on the so-called Myanmar precedent. Although Myanmar is not a state party to the Rome Statute, Bangladesh is, and the ICC Pre-Trial Chamber accordingly held in 2018 that since Rohingya civilians are alleged to have been forcibly deported from Myanmar to Bangladesh, jurisdiction could be exercised.³⁶¹ During 2019, the Guernica Centre for International Justice filed an Article 15 Communication with the Office of the Prosecutor at the ICC, requesting that a preliminary examination be opened into the situation in Syria on the grounds that civilians had been forcibly deported into Jordan, which is a state party to the Rome Statute.³⁶² However, as of the date of publication, the ICC had not opened a preliminary examination, and the UN human rights chief, Michelle Bachelet, announced in March 2021 that attempts to refer atrocities in Syria to the ICC for prosecution have failed.³⁶³

Given the poor prospects of justice in Syria and at the international level, victims and families have little option but to seek justice before the national courts in the countries that employ

359 United Nations, "Referral of Syria to International Criminal Court Fails as Negative Votes Prevent Security Council from Adopting Draft Resolution," press release, May 22, 2014; Human Rights Watch, "Syria: Criminal Justice for Serious Crimes Under International Law" (Dec. 17, 2013).

360 Human Rights Council, "Report of the Independent International Commission of Inquiry on the Syrian Arab Republic" (UN Doc. A/HRC/22/59, Feb. 5, 2013).

361 International Criminal Court, "ICC Pre-Trial Chamber I Rules that the Court May Exercise Jurisdiction over the Alleged Deportation of the Rohingya People from Myanmar to Bangladesh," Sept. 6, 2018.

362 Guernica Centre for International Justice, "Briefing Note: Article 15 Communication to the Prosecutor of the International Criminal Court in Relation to the Forced Deportation of Syrian Civilians to Jordan," [opiniojuris.org/wp-content/uploads/Microsoft-Word-190306-Syria-Briefing-Note-on-ICC-Filing.docx.pdf](https://www.opiniojuris.org/wp-content/uploads/Microsoft-Word-190306-Syria-Briefing-Note-on-ICC-Filing.docx.pdf). See also Asser Khattab and Vito Todeschini, "What Justice Can International Law Bring to Syrians?," *OpinioJuris* (2021).

363 Stephanie Nebehay, "Step Up Trials of Alleged Syrian War Criminals, U.N. Rights Chief Says," *Reuters*, March 11, 2021.

extraterritorial jurisdiction over the most serious crimes.³⁶⁴ In Europe, the increase in universal jurisdiction cases coincided with the influx of refugees and asylum seekers from Syria and Iraq, together with the collection of evidence by UN investigative bodies as well as Syrian and international NGOs.³⁶⁵

The Role of Specialized Units

Germany, with the highest number of Syrian refugees and asylum seekers in Europe, is among the countries leading the fight against impunity for crimes committed in Syria. The efforts to bring perpetrators to justice in Germany and other European countries have been spearheaded by specialized units established within police and prosecution agencies.

TRIAL International reports that there are 22 ongoing universal jurisdiction cases (either investigations, trials, or concluded cases) related to Syria.³⁶⁶ Ten cases have been brought in Germany, six in France, two in the Netherlands, and one each in Austria, Hungary, Sweden, and Switzerland.³⁶⁷ Among the 22 cases, 14 were under investigation, while there were six convictions, with one case pending trial and one on trial.³⁶⁸ In addition, it appears that another three convictions were obtained during 2021 for crimes committed in Syria.³⁶⁹

Except for Austria and Hungary, all countries dealing with Syria-related cases have established specialized units to pursue international crimes. Seven out of the nine reported convictions were reached in Germany.³⁷⁰ The notable achievements notched up by Germany and France in securing justice for Syrian victims can be attributed to the establishment of fully fledged specialized units at the investigation and prosecution levels.³⁷¹ Such units have enabled the concentration of expertise and capacity to pursue these cases. The units collaborate closely with the immigration services, and their outputs have been strengthened through preliminary or structural inquiries and strong international cooperation.

The units have faced serious challenges in pursuing Syrian cases. Human Rights Watch has highlighted some of these challenges, which include:

364 Howard Varney and Katarzyna Zduńczyk, ICTJ, “Advancing Global Accountability: The Role of Universal Jurisdiction in Prosecuting International Crimes” (Dec. 3, 2020).

365 Phillip Connor, “Most Displaced Syrians Are in the Middle East, and About a Million Are in Europe,” PEW Research Center, Jan. 29, 2018. Evidence has been collected by, among others, the Commission for International Justice and Accountability, Lawyers and Doctors for Human Rights, the Syria Archive, the Syrian Institute for Justice, and the Syria Justice and Accountability Centre.

366 This includes structural investigations. A report by TRIAL International highlights cases where judges or prosecutors have initiated investigations into the most serious international crimes. Valérie Paulet, TRIAL International, “Universal Jurisdiction Annual Review 2021: A Year Like No Other? The Impact of Coronavirus on Universal Jurisdiction” (2021). It seems that one case was incorrectly classified as related to Syria, since the crime was committed in Iraq. See TRIAL International, “Mohammed Rafea Yaseen Y.,” last modified March 25, 2021, trialinternational.org/latest-post/mohammed-rafea-yaseen-y/; Paulet, “Universal Jurisdiction Annual Review 2021,” 93.

367 *Ibid.*, 91–95.

368 These data are based on our review of Paulet, “Universal Jurisdiction Annual Review 2021.”

369 Doughty Street Chambers, “German Court Convicts a Third ISIS Member of Crimes Against Humanity Committed Against Yazidis,” June 18, 2021; “Netherlands Sentences Alleged Ex-Syria Opposition Commander to Jail,” *Middle East Monitor*, April 23, 2021; “Le djihadiste Tyler Vilus condamné en appel à la réclusion criminelle à perpétuité,” *La Monde*, Sept. 21, 2021.

370 Tabulated based on Paulet, “Universal Jurisdiction Annual Review 2021” and our own research.

371 In a setback to international justice, a recent French court ruling has stopped prosecutors from pursuing justice for Syrian victims of crimes against humanity in universal jurisdiction cases. On November 24, 2021, the French *cour de cassation* ruled that prosecutors could not investigate crimes against humanity under the principle of “double criminality” because Syria had not criminalized crimes against humanity at the domestic level. The case involved Abdulhamid C., who was a former member of the state security services in Damascus, which brutally suppressed anti-government demonstrations. French prosecutors may still pursue justice for torture, genocide, and war crimes committed in Syria and elsewhere. See Roger Lu Phillips and Aweiss Al Dobouch, “France Is Not a Safe Haven for Human Rights Abusers—Despite High Court Opinion,” *Just Security*, Dec. 9, 2021.

- no access to crime scenes in Syria;
- difficulty in accessing neighboring countries;
- distrust of asylum seekers and refugees by state authorities;
- a lack of awareness by Syrian refugees and asylum seekers about available accountability mechanisms;
- fear of retribution against loved ones in Syria.³⁷²

Updates on Syrian Cases

Significant developments in Syria-related cases have taken place between 2020 and 2021. TRIAL International's 2021 report refers to six Syria-related cases, five in Germany and one in Hungary, that resulted in convictions in 2020 and 2021.³⁷³ Following the publication of this report, one case that was categorized as “on trial” resulted in a conviction.³⁷⁴ Our research unearthed a further conviction in Germany, bringing the total to seven convictions in Germany in this period, including several that have been advanced as the result of the structural investigations opened by German prosecutorial authorities.³⁷⁵

Abdalfatah H. A., Abdul Jawad A. K., Abdulrahman A. A., and Abdoufatah A.

In January 2020, the Stuttgart Higher Regional Court found the accused guilty of membership in a terrorist organization and breaches of the Military Weapons Control Act.³⁷⁶ Abdul Jawad A. K. was found guilty of murder and war crimes and received a life sentence.³⁷⁷

Kassim A.

In February 2020, the Koblenz Higher Regional Court found Kassim A., a member of the armed resistance against the Syrian government, guilty of war crimes, namely the demeaning and degrading treatment of a person protected by international humanitarian law. His phone contained pictures of him posing with the severed head of a combatant. He was sentenced to a year and six months in prison.³⁷⁸

Carla Josephine S.

In April 2020, the Düsseldorf Higher Regional Court found Carla Josephine S., a German citizen, guilty of a war crime (child theft resulting in death) and breaches of the Military Weapons Control Act. She left Germany with her three children and joined ISIS in Raqqa, Syria, where her children were exposed to the bombardment, which resulted in the death of one child.³⁷⁹

372 Human Rights Watch, “These Are the Crimes We Are Fleeing.”

373 Paulet, “Universal Jurisdiction Annual Review 2021,” 92–93.

374 Conviction of Eyad A.

375 The further conviction was the case of Sarah O. Those advanced as a result of German investigations include the cases brought against Kassim A. and Carla Josephine S. In those cases, the structural investigation relates to crimes committed by nonstate armed groups in Syria and Iraq and is reported to have resulted thus far in investigations of over 50 people. Trial International, “Kassim A,” March 19, 2021, trialinternational.org/latest-post/kassim-a/.

376 Germany's Military Weapons Control Act regulates the manufacture, sale, and transport of weapons of war.

377 Paulet, “Universal Jurisdiction Annual Review 2021,” 51–52.

378 Paulet, “Universal Jurisdiction Annual Review 2021,” 51. Kassim A. also received an additional two-year sentence for lesser crimes that were committed since his arrival in Germany.

379 Ibid.

Fares A. B.

In November 2020, the Stuttgart Higher Regional Court found the Syrian national Fares A. B. guilty of war crimes, attempted homicide, torture, and membership in a terrorist organization.³⁸⁰ He shot a member of a militia aligned with the regime who was kneeling in front of him.

Anwar R. and Eyad A.

On February 24, 2021, the Higher Regional Court in Koblenz convicted former Syrian secret service agent Eyad A. of aiding and abetting 30 counts of crimes against humanity committed against protestors in 2011 and sentenced him to four years and six months in prison. He had been indicted with Anwar R., the former head of interrogations at Branch 251 of the Syrian General Intelligence Directorate, but this case was separated from the Eyad A. case on February 17, 2021. The trial of Anwar R. continues.³⁸¹

Sarah O.

On June 16, 2021, the Higher Regional Court of Düsseldorf convicted a German ISIS member, known as Sarah O., of membership in a foreign terrorist organization, assault, deprivation of liberty, aiding and abetting rape, enslavement, and religious and gender-based persecution as crimes against humanity. Sarah O. was sentenced to six years and six months in prison.³⁸²

Omaima A.

Arising from one of the incidents in the Sarah O. case, on July 26, 2021, Omaima A., a German ISIS member, was convicted by the Higher Regional Court of Hamburg of aiding and abetting crimes against humanity in the enslavement of two Yazidi women in her house in Raqqa, Syria.³⁸³

Convictions in Syria-related cases were also secured in the Netherlands and France during the same period.

Case of Ahmad Al Y. in the Netherlands

In the Netherlands, a former commander of the Salafist militant group, Ahrar Al-Sham, was sentenced to six years in prison for war crimes and terrorism by the District Court of The Hague on April 21, 2021.³⁸⁴ He was accused of subjecting persons hors de combat to humiliating and degrading treatment by posing with

380 TRIAL International, "Fares A. B.," last modified March 25, 2021, [trialinternational.org/latest-post/fares-a-b/](https://www.trialinternational.org/latest-post/fares-a-b/). That conviction was confirmed on appeal by Germany's Federal Court of Justice in August 2021. German Federal Court, Decision on Conviction for war crimes committed in Syria final, 3 StR 212/21, Aug. 10, 2021, www.bundesgerichtshof.de/SharedDocs/Pressemitteilungen/DE/2021/2021160.html?nn=10690868.

381 Commission for International Justice and Accountability, "Koblenz Court Issues Verdict in Eyad A. Case" (Feb. 24, 2021). Anwar R stands for Anwar Raslan, who was sentenced by the Higher Regional Court in Koblenz on January 13, 2022 to life in prison for crimes against humanity of murder, torture, and rape committed in Syria. He is the highest-ranking Syrian officer convicted of crimes against humanity. The development occurred following the finalization of this report and is not reflected in the report's statistics. See *Deutsche Welle*, "German Court Finds Syrian Ex-Colonel Guilty of Crimes Against Humanity," January 14, 2022, www.dw.com/en/german-court-finds-syrian-ex-colonel-guilty-of-crimes-against-humanity/a-60407021; *Amnesty International*, "Germany/Syria: Conviction of Syrian Official for Crimes Against Humanity a Historic Win for Justice," www.amnesty.org/en/latest/news/2022/01/germany-syria-conviction-of-syrian-official-for-crimes-against-humanity-a-historic-win-for-justice/.

382 Doughty Street Chambers, "German Court Convicts."

383 *Ibid.*

384 Maarten Bolhuis, "First Syrian Asylum-Seeker Convicted for Terrorism and War Crime in the Netherlands," Center for International Criminal Justice, April 21, 2021.

the corpse of an enemy fighter and kicking the body of another in a video.³⁸⁵ The accused had been arrested after seeking asylum.

Case of Tyler Vilus in France

In September 2021, jihadist and ISIS member Tyler Vilus was sentenced on appeal by a special court in France to life imprisonment for his role in crimes committed by ISIS in Syria between 2013 and 2015. In 2015, Vilus participated in the public execution of two blindfolded prisoners in orange jumpsuits in Al-Chaddadeh, in eastern Syria. The killing was filmed and broadcast in an ISIS propaganda video.³⁸⁶ Vilus was convicted on the terrorism charges that were not investigated by the OCLCH.³⁸⁷ According to Commandant Jean-Pierre Chemaly, there are about 40 Syria-related cases that are currently on the books of the OCLCH.³⁸⁸

French prosecutors have also investigated the activities of corporate entities for their misdeeds in Syria. On September 7, 2021, the cement company Lafarge failed in its attempt to dismiss a charge of complicity in crimes against humanity in Syria when the French Court of Cassation overturned an earlier ruling ordering that the matter be reexamined.³⁸⁹ The company stands accused of dealing with armed groups in Syria, including the Islamic State, to keep its plant running. In 2019, a lower court dismissed the charge, holding that Lafarge had not deliberately associated itself with the crimes of the armed groups. However, the apex court found that a person or company could be complicit by turning a blind eye, even without actively taking part in the crimes:

In this case, the payment of several million dollars...to an organisation which is actively criminal is enough to characterise that complicity, whether or not the party in question was only doing so to pursue a commercial activity.³⁹⁰

Eight Lafarge executives, including former CEO Bruno Laffont, are also charged with financing a terrorist group and/or endangering the lives of others.³⁹¹ In another case involving QOSMOS, a French software components company, the investigative judge, in dismissing the case, concluded that a link between the communication surveillance tools sold to the Syrian government and acts of torture committed by the regime had not been demonstrated.³⁹²

385 Paulet, "Universal Jurisdiction Annual Review 2021," 76.

386 "Le djihadiste Tyler Vilus condamné en appel à la réclusion criminelle à perpétuité," *La Monde*, 2021.

387 Interview with Jean-Pierre Chemaly.

388 *Ibid.*

389 Sarah White, "Court Blocks Lafarge Bid to Scrap Syria Crime Against Humanity Charge," *Reuters*, Sept. 7, 2021.

390 *Ibid.*

391 "French Firm Lafarge Loses Bid to Dismiss 'Crimes Against Humanity' Case in Syria," *France 24*, Sept. 7, 2021.

392 Centre de Ressources sur les Entreprises et les Droits de l'Homme, "Affaire Qosmos (Syrie)," www.business-humanrights.org/fr/dernières-actualités/affaire-qosmos-syrie/.

Conclusion and Recommendations

Research conducted in this study suggests that countries with specialized units are likely to achieve considerably more success in investigating and prosecuting crimes of the past or serious international crimes compared with countries without dedicated capacities.

Specialized capacities tend to be particularly effective when they include the following elements:

- investigators and prosecutors working closely together;
- prosecution-led investigations;
- carefully planned investigative and prosecutorial strategies;
- strong political support and endorsement for justice in the units.

While most specialized units are still in their infancy, some emerging best practices can be identified.

- Units should collaborate closely with immigration services in order to identify suspects.
- The units should be established under law or statute, rather than executive action, to provide for the necessary powers and mitigate against attempts to change course if a new government comes to power.
- Units should be truly dedicated and focus exclusively on their mandated crimes, without being deflected by other demands on their time and resources.
- Units should not be merged with other units or departments that are handling unrelated crime portfolios.
- Leadership should be strong and credible, with experience in engaging with multiple stakeholders, including political players.
- Units should employ multidisciplinary teams, including investigators, prosecutors, legal experts, historians, anthropologists, psychologists, data capturers, analysts, and experts specializing in the investigations of certain types of crimes, such as gender-based violence or crimes against children.
- Specialized units should be given sufficient resources to allow them to perform their functions effectively and without prejudice to their independence.

- Investigators should have unrestricted access to archives and documents in state institutions, including the security sector, with legal powers of search and seizure, surveillance, and asset tracing.
- Investigations should be led by the prosecution, with investigators and prosecutors working closely together under the same roof.
- Investigative and prosecution strategies should be informed by preliminary observation proceedings and structural investigations.
- Collaboration with local and international civil society organizations can help to launch cases and identify perpetrators, victims, and witnesses. Units should sign cooperation agreements with CSOs to clearly delineate responsibilities and to regulate their relationship. Regular roundtables should be held with CSOs to enhance the sharing of information and knowledge.
- Units should create a component that is responsible for international cooperation and stakeholders' engagement and that can process and fast-track requests for mutual legal assistance.
- Outreach and communication efforts by specialized units should help build public and political support and facilitate effective communication with communities, survivors, and stakeholders.
- Specialized units should have sufficient resources to establish effective protection and well-being programs for witnesses and victims.
- Civil society organizations should engage in focused advocacy campaigns to encourage the formation of specialized units and to maintain and build broad public and political support once they are established.

Annex: Audit of the Specialized Units

| Country | Specialized Unit (including dedicated teams) | Composition | Mandate | Time Frame | Jurisdictional Basis for the Unit's Operations | Type of Unit | Additional Information |
|--------------------------|--|--|---|---|--|-----------------|--|
| 1. Australia (1 unit) | <p>The Office of the Special Investigator (OSI) was established in 2020.</p> <p>It works alongside the Australian Federal Police.¹</p> | <p>A director-general is responsible for strategic oversight/leadership/operational matters.</p> <p>A special investigator is responsible for reviewing the findings of the Afghanistan Report.²</p> <p>A director of investigations conducts investigations.³</p> <p>Two commanders lead the investigations.⁴</p> <p>In addition, there are 50+ investigators and intelligence analysts.⁵</p> | <p>The mandate encompasses:</p> <ul style="list-style-type: none"> • investigating allegations of crimes • gathering evidence • where appropriate, referring briefs for consideration to the Commonwealth Director of Public Prosecution | At the time of writing, the office has been granted a temporary mandate. ⁶ | <p>Criminal offenses under Australian law arising from or related to any breaches of the Laws of Armed Conflict</p> <p>committed by Australian Special Forces in Afghanistan</p> | Historical unit | <p>The so-called Brereton Report, which ended the inquiry commissioned by the military, “recommended that 19 individuals be referred for criminal investigation and possible prosecution.”⁷</p> <p>The OSI’s plan to gather evidence in Afghanistan has been hindered by the fall of the Afghan government in 2021.⁸</p> |

1 Daniel Hurst, “Special Investigator Continues to Examine Alleged ADF War Crimes in Afghanistan, Despite Reports,” *The Guardian*, Sept. 1, 2021.

2 The Inspector-General of the Australian Defence Force, “Afghanistan Inquiry Report” (2020).

3 Office of the Special Investigator, “Our People,” www.osi.gov.au/about-us/our-people.

4 Office of the Special Investigator, “Senate Estimates 25 May 2021: Opening Statement to Legal and Constitutional Affairs Legislation Committee,” May 25, 2021, www.osi.gov.au/news-and-resources/senate-estimates-25-may-2021.

5 Office of the Special Investigator, “Senate Estimates 25 October 2021: Opening Statement to Legal and Constitutional Affairs Legislation Committee,” Oct. 25, 2021, www.osi.gov.au/news-and-resources/senate-estimates-25-october-2021.

6 Australian Centre for International Justice, “The Establishment of the Office of the Special Investigator Is Welcome and Should Be Made Permanent,” media release, Nov. 12, 2021.

7 Julia Crawford, “Australia Launches Unprecedented War Crimes Probe,” *Justicelife.net*, Jan. 4, 2021.

8 Daniel Hurst, “Investigation of Alleged Australian War Crimes Could Be Hindered by Fall of Afghan Government,” *The Guardian*, Aug. 21, 2021.

| Country | Specialized Unit (including dedicated teams) | Composition | Mandate | Time Frame | Jurisdictional Basis for the Unit's Operations | Type of Unit | Additional Information |
|----------------------------------|---|---|---|------------|---|---------------------|---|
| 2. The United States (1 unit) | The Human Rights Violators and War Crimes Center (HRVWCC) was created in 2008. | The HRVWCC can initiate investigations. It is composed of special agents, attorneys, criminal research specialists, and historians. ⁹ | The mandate of the Center entails investigations related to gross human rights violations, e.g.: <ul style="list-style-type: none"> • genocide • war crimes • torture • extrajudicial killings • recruitment of child soldiers • violations of religious freedom • female genital mutilation¹⁰ | Permanent | The HRVWCC can investigate if: <ul style="list-style-type: none"> • the perpetrator is a U.S. citizen • the victim is a U.S. citizen • the perpetrator is located in the United States¹¹ | New-generation unit | As of 2021, the U.S. Immigration and Customs Enforcement has more than 140 active investigations into suspects of human rights violations. The HRVWCC has stopped 194 human rights violation perpetrators and war crimes suspects from entering U.S. territory. ¹² The work of the HRVWCC led to the trials of several international criminals. The expertise of the HRVWCC notably contributed to the conviction in March 2017 of Gervais “Ken” Ngombwa, a naturalized U.S. citizen who played a role in massacres in the Rwandan genocide, to 15 years in prison. ¹³ |

9 U.S. Immigration and Customs Enforcement, “Seeking Justice for Victims Around the World,” updated Dec. 6, 2021, www.ice.gov/features/seeking-justice-victims-around-world#.

10 U.S. Immigration and Customs Enforcement, “Human Rights Violators Investigators,” July 3, 2019, www.ice.gov/factsheets/hrv; HRVWCC, “Safe Haven for Victims of War Crimes and Other Atrocities,” www.justsecurity.org/wp-content/uploads/2019/02/HRVWCC-Brochure-1.pdf.

11 HRVWCC, “Safe Haven.”

12 U.S. Immigration and Customs Enforcement, “Seeking Justice.”

13 U.S. Immigration and Customs Enforcement, “Human Rights Violators Investigators.”

| Country | Specialized Unit (including dedicated teams) | Composition | Mandate | Time Frame | Jurisdictional Basis for the Unit's Operations | Type of Unit | Additional Information |
|---------------------------------------|---|--|--|------------|---|---------------------|---|
| 3. England and Wales (2 units) | <u>Prosecution</u> Established in 2011, the Counter Terrorism Unit within the Special Crime and Counter Terrorism Division (SCCTD) of the Crown Prosecutor's Office deals with serious international crimes. ¹⁴ | There are 150 people working within the SCCTD. The division has offices in London and York. | The SCCTD is mandated to deal with: <ul style="list-style-type: none"> • death in custody • terrorism • racial and religious hatred • war crimes • crimes against humanity • official secret cases • piracy and hijacking¹⁵ | Permanent | England and Wales have jurisdiction if: <ul style="list-style-type: none"> • the perpetrator is a UK citizen (active personality principle) • the victim is a UK citizen (passive personality principle) • foreign nationals have committed offenses abroad (universal jurisdiction)¹⁶ | Mixed-mandate unit | A series of international crimes prosecutions have been launched in England and Wales, but none of them led to sentences. Examples: <ul style="list-style-type: none"> • Nepalese Kumar Lama—the former military commander allegedly implicated in torture—was acquitted of all charges in September 2016.¹⁷ • In December 2009, the British court issued an arrest warrant against Tzipi Livni, who was Israel's foreign minister at the time of the attacks against civilians in Gaza in 2008 and 2009. She was not arrested in the UK because of diplomatic immunity.¹⁸ |
| | <u>Police</u> The War Crimes Team (SO15) within the Metropolitan Police Counter Terrorism Command investigates serious international crimes. ¹⁹ | | SO15 is responsible for the investigation of all allegations of: <ul style="list-style-type: none"> • war crimes • crimes against humanity • genocide • torture²⁰ | Permanent | | New-generation unit | |

14 Crown Prosecution Service, "Independent Report Welcomes Work of CPS Special Crime and Counter Terrorism Division," Feb. 5, 2019, www.cps.gov.uk/cps/news/independent-report-welcomes-work-cps-special-crime-and-counter-terrorism-division.

15 Crown Prosecution Service, "Special Crime and Counter Terrorism Division (SCCTD)," www.cps.gov.uk/special-crime-and-counter-terrorism-division-scctd.

16 HM Government, "Note on the Investigation and Prosecution of Crimes of Universal Jurisdiction" (2018), para. 6.

17 TRIAL International, "Kumar Lama," last modified July 8, 2020, trialinternational.org/latest-post/kumar-lama/.

18 TRIAL International, "Tzipi Livni," last modified July 15, 2020, trialinternational.org/latest-post/tzipi-livni/.

19 HM Government, "Note on the Investigation and Prosecution," paras. 10–13.

20 HM Government, "Note on the Investigation and Prosecution," paras. 10–13..

| Country | Specialized Unit (including dedicated teams) | Composition | Mandate | Time Frame | Jurisdictional Basis for the Unit's Operations | Type of Unit | Additional Information |
|---------------------------|---|---|---|------------|--|--------------------|---|
| England and Wales (cont.) | | | | | | | <ul style="list-style-type: none"> • Agnes Reeves Taylor was arrested in London (UK) in 2017. She appeared before court in June 2017 and in December 2019, the Central Criminal Court judge dismissed all charges against her.²¹ |
| 4. Uganda (1 unit) | In 2008, the principal judge established the War Crimes Division within the High Court of Uganda, which had jurisdiction over core international crimes. ²² In 2011, the chief justice formally established the International Crimes Division (ICD) of Uganda's High Court with expanded jurisdiction over international and transnational crimes. ²³ | In 2020, 99 police officers were appointed commanders and heads of the CID, with 32 female officers and 67 male officers. ²⁴ | The ICD is mandated to deal with: <ul style="list-style-type: none"> • genocide • war crimes • crimes against humanity • terrorism • human trafficking • piracy and other international crimes²⁵ | Permanent | Universal jurisdiction over several crimes, including core international crimes when committed abroad if: <ul style="list-style-type: none"> • the person is a citizen or permanent resident of Uganda • the person is employed by Uganda in a civilian or military capacity | Mixed-mandate unit | <p>The ICD has prosecuted about 50 people, mostly in relation to human trafficking and terrorism-related crimes. One case involving international crimes has reached the trial stage and another is at the pretrial stage, while a third is at the investigative stage.²⁶</p> <p>Among the three cases, the court opened indictments against Thomas Kwoyelo, a commander of the Lord's</p> |

21 TRIAL International, "Agnes Reeves Taylor," last modified July 8, 2020, trialinternational.org/latest-post/agnes-reeves-taylor/.

22 Interview with Sarah Kasande Kihika, head of office, International Center for Transitional Justice, Oct. 28, 2021. See Uganda Judiciary, "International Crimes Division," judiciary.go.ug/data/smnu/18/International%20Crimes%20Division.html.

23 The High Court (International Crimes Division) Practice Directions, Legal Notice No. 10 of 2011. See also Kasande Sarah Kihika and Meritxell Regué, ICTJ, "Pursuing Accountability for Serious Crimes in Uganda's Courts: Reflections on the Thomas Kwoyelo Case" (Jan. 2015).

24 "Uganda Police Picks 99 to Head Criminal Investigation Departments," *The Independent*, Jan. 26, 2020.

25 Human Rights Watch, "Justice for Serious Crimes Before National Courts: Uganda's International Crimes Division" (Jan. 15, 2012), 5.

26 Grace Matsiko, "12 Years On, Uganda's International Crimes Division Has Little to Show," *JusticeInfo.net*, March 9, 2020.

| Country | Specialized Unit (including dedicated teams) | Composition | Mandate | Time Frame | Jurisdictional Basis for the Unit's Operations | Type of Unit | Additional Information |
|--------------------|--|--|--|------------|---|--------------|--|
| Uganda (cont.) | <p>The War Crimes and Anti-Terrorism Section is within Uganda's Directorate of Public Prosecutions.²⁷</p> <p>The Criminal Investigations Department (CID) of the Ugandan Police Force supports the ICD with investigations.</p> | | <p>The CID is responsible for crimes that can be tried before the ICD. According to Human Rights Watch, senior police investigators based in Kampala and across the country, attached to the local police office, work on ICD investigations.²⁸</p> | | <ul style="list-style-type: none"> the person has committed the offense against a citizen or permanent resident of Uganda the person is, after the commission of the offense, present in Uganda | | <p>Resistance Army (LRA), for his role during attacks that killed and kidnapped civilians.²⁹</p> <p>Jamil Mukulu, a former commander of Uganda's Islamist militant group, the Allied Democratic Forces (ADF), was arrested and charged, alongside 37 other individuals, for committing murders in various parts of Uganda between 2002 and 2015.³⁰</p> |
| 5. Canada (1 unit) | <p>The Crimes Against Humanity and War Crimes Program known as the War Crimes Program was established in Canada as part of the domestic and international fight against</p> | <p>The program is implemented jointly by four key actors: the Immigration, Refugees and Citizenship Canada (IRCC); the Canada Border Services Agency (CBSA); the Royal Canadian Mounted Police</p> | <p>International crimes are defined by the Crimes Against Humanity and War Crimes Act (CAHWCA):</p> <ul style="list-style-type: none"> war crimes genocide | | <p>The alleged perpetrator must be present for the procedure to start in Canada if the crime was committed abroad by a foreigner.</p> | N/A | <p>The SII Unit conducts a preliminary assessment to decide whether to open investigations. The File Review Committee, composed of four key stakeholders of the War Crimes Program, decides which</p> |

²⁷ Human Rights Watch, "Justice for Serious Crimes Before National Courts: Uganda's International Crimes Division" (Jan. 15, 2012), 7.

²⁸ Human Rights Watch, "Justice for Serious Crimes Before National Courts: Uganda's International Crimes Division" (Jan. 15, 2012), 7.

²⁹ Grace Matsiko, "12 Years On, Uganda's International Crimes Division Has Little to Show," *JusticeInfo.net*, March 9, 2020.

³⁰ Matsiko, "12 Years On."

| Country | Specialized Unit (including dedicated teams) | Composition | Mandate | Time Frame | Jurisdictional Basis for the Unit's Operations | Type of Unit | Additional Information |
|----------------|---|---|--|------------|---|--------------|---|
| Canada (cont.) | impunity for perpetrators of core international crimes. ³¹ | (RCMP); and the Department of Justice (Justice Canada). It takes a holistic approach based on three main avenues to seek accountability: criminal investigations and prosecutions, various immigration proceedings, and citizenship revocation. ³² | <ul style="list-style-type: none"> crimes against humanity torture³³ <p>Also included are breaches of military/superior responsibility, which can be prosecuted under universal jurisdiction when committed abroad by a foreigner.³⁴</p> <p>In 2013, the unit's mandate was expanded and now includes other extraterritorial crimes beyond core international crimes.³⁵</p> | | <p>The presence of the perpetrator is not required if:</p> <ul style="list-style-type: none"> the perpetrator is a Canadian citizen or employed by Canada in a civilian or military capacity the perpetrator is a citizen of a state that was engaged in an armed conflict against Canada, or was employed in a civilian or military capacity by such a state the victim was Canadian the victim was a citizen of a state that was allied with Canada in an armed conflict³⁶ | | <p>measures to take in a specific case, which might include immigration measures or criminal prosecutions.³⁷</p> <p>As of 2020, there were only two trials of universal jurisdiction cases completed in Canada, both linked to the genocide in Rwanda.³⁸</p> <p>Between 1997 and 2007, over 17,000 cases of suspected war criminals were transferred to the program, which resulted in the ban of entry to Canada of 3,700 people.³⁹</p> |

31 Government of Canada, "War Crimes and Crimes Against Humanity," modified Aug. 18, 2021, www.justice.gc.ca/eng/cj-ip/wc-cdg/index.html.

32 Open Society Justice Initiative and TRIAL International, "Universal Jurisdiction Law and Practice in Canada" (April 2020), 21.

33 Open Society Justice Initiative and TRIAL International, "Universal Jurisdiction Law and Practice in Canada" (April 2020), 4.

34 Open Society Justice Initiative and TRIAL International, "Universal Jurisdiction Law and Practice in Canada" (April 2020), 15.

35 Interview with a member of the RCMP SII Unit on June 27, 2019, as cited in Open Society Justice Initiative and TRIAL International, "Universal Jurisdiction Law and Practice in Canada," 22.

36 Open Society Justice Initiative and TRIAL International, "Universal Jurisdiction Law and Practice in Canada."

37 Open Society Justice Initiative and TRIAL International, "Universal Jurisdiction Law and Practice in Canada" (April 2020), 21.

38 Amnesty International USA, "No Safe Haven: New Report Highlights Canada's Failure to Prosecute Individuals Accused of War Crimes and Crimes Against Humanity," Sept. 8, 2020.

39 Amnesty International, "No Safe Haven."

| Country | Specialized Unit (including dedicated teams) | Composition | Mandate | Time Frame | Jurisdictional Basis for the Unit's Operations | Type of Unit | Additional Information |
|----------------|--|--|---------|------------|--|--------------------|------------------------|
| Canada (cont.) | <u>Police</u> The Extra-Territorial Response Unit within the Royal Canadian Mounted Police (RCMP) Sensitive and International Investigations Unit (SII Unit) deals with serious international crimes. | The unit is staffed in part by specialized war crimes investigators. ⁴⁰ | | Permanent | | Mixed-mandate unit | |
| | <u>The Department of Justice</u> The Crimes Against Humanity and War Crimes Section (DoJ CAHWC) also assists with serious international crimes cases. ⁴¹ | The DoJ CAHWC assists the SII Unit during investigations by providing information and legal research assistance. ⁴² Once the investigation is over, it is transmitted to the DoJ CAHWC, which recommends charges to the Public Prosecution Service of Canada (PPSC). ⁴³ | | N/A | | N/A | |

40 Open Society Justice Initiative and TRIAL International, "Universal Jurisdiction Law and Practice in Canada."

41 Open Society Justice Initiative and TRIAL International, "Universal Jurisdiction Law and Practice in Canada," 22-23.

42 Open Society Justice Initiative and TRIAL International, "Universal Jurisdiction Law and Practice in Canada," 22.

43 Open Society Justice Initiative and TRIAL International, "Universal Jurisdiction Law and Practice in Canada," 23.

| Country | Specialized Unit (including dedicated teams) | Composition | Mandate | Time Frame | Jurisdictional Basis for the Unit's Operations | Type of Unit | Additional Information |
|------------------------|--|---|---|------------|--|---------------------|---|
| 6. France (2 units) | Prosecution The Crimes Against Humanity Unit (Pole de crime contre l'Humanité) is within the National Anti-Terrorism Prosecutor's Office (Parquet National Anti-Terroriste, or PNAT). ⁴⁴ | The unit gathers five public prosecutors (Magistrats du Parquet) supported by three judicial analysts, four investigating judges (Juges d'Instructions), and six expert assistants. ⁴⁵ The "Pole" is under the leadership of the PNAT, which is headed by the first prosecutor of the republic for terrorism (procureur de la République antiterroriste). ⁴⁶ | The CAH Unit within the PNAT and the OCLCH is mandated to investigate and prosecute: <ul style="list-style-type: none"> • crimes against humanity • war crimes • torture • enforced disappearance • crimes committed in Yugoslavia and Rwanda • crimes against cultural property during an armed conflict⁴⁷ | Permanent | The specialized framework in France extends to: <ul style="list-style-type: none"> • perpetrators who are French nationals or residents in France • perpetrators of crimes against French citizens • accused who are present on French territory at the time of the filing of the complaint to the prosecutor to trigger the jurisdiction⁴⁸ | New-generation unit | As of October 2021, the OCLCH was dealing with an estimated 190 cases across 31 countries, including an estimated 40 cases in relation to crimes committed in Syria. ⁴⁹ The first trial opened in 2014 against a gendarmery captain: He was found guilty of complicity of genocide and crimes against humanity and sentenced to 25 years in prison. ⁵⁰ |
| | Police The prosecutorial unit is supported by the Central Office for Combatting Crimes Against Humanity, Genocide and War | The OCLCH is composed of approximately 40 people, including 30 investigators within the International Crimes Division and the Strategy and International Cooperation | | Permanent | | New-generation unit | Octovian Ngenzi and Tito Barahira were sentenced in appeal in July 2018. They were sentenced in 2016 for crimes against humanity, |

44 Open Society Justice Initiative and TRIAL International, "Universal Jurisdiction Law and Practice in France" (Feb. 2019), 19.

45 Lena Bjurström, "In France, the Lengthy Syrian Investigations," *Justiceinfo.net*, July 22, 2021, <https://www.justiceinfo.net/en/80112-in-france-the-lengthy-syrian-investigations.html>; Sarah Finnin, FIDH/Redress/ECCHR, "Surmonter les obstacles: L'accès à la justice en Europe pour les victimes de crimes internationaux" (Sept. 2020), 47.

46 Finnin, "Surmonter les obstacles," 47.

47 Open Society Justice Initiative and TRIAL International, "Universal Jurisdiction Law and Practice in France", 12.

48 They do not hold French citizenship, but they live in France, and they committed crimes abroad, on non-French citizens.

49 Interview with Commandant Jean-Pierre Chemaly, head of the Strategy and International Cooperation Division at the Central Office for Combatting Crimes against Humanity, Genocide and War Crimes, Nov. 4, 2021.

50 Hélène Dumas, "Rwanda: comment juger un génocide?," *Politique étrangère* 80, no. 4 (2015): 39–50.

| Country | Specialized Unit (including dedicated teams) | Composition | Mandate | Time Frame | Jurisdictional Basis for the Unit's Operations | Type of Unit | Additional Information |
|----------------------|--|---|--|------------|---|---------------------|---|
| France (cont.) | Crimes (OCLCH) , a service attached to the French National Gendarmerie. ⁵¹ | Division that work on serious international crimes. ⁵² The OCLCH is headed by a brigadier general (Général de Brigade). The office is under the direction of the judicial police. | | | | | genocide, and summary executions in the village of Kabarondo. ⁵³ |
| 7. Germany (4 units) | Prosecution The international crimes specialized unit is with Germany's Office of the Federal Prosecutor (GBA). ⁵⁴ The international crimes specialized unit is located within the centralized office dealing with the espionage offenses | As of 2019, there were some 12 prosecutors working in the Specialized International Criminal Law Unit and approximately 20 investigators working in the ZBKV. ⁵⁵ | Crimes falling under the universal jurisdiction in Germany are gathered in three categories: 1. Core crimes: <ul style="list-style-type: none">• genocide• crimes against humanity• war crimes | Permanent | Germany has a pure universal jurisdiction that does not require a connection with Germany. ⁵⁶ The ZBKV can investigate anyone and has no limitations to citizenship. The presence of the suspect is not necessary for the investigation as the prosecutor can still lead investigations to secure evidence for a future trial. | New-generation unit | Between 2017 and 2019, the unit has carried out 105 investigations into crimes in countries like Syria, Iraq, Ivory Coast, and Mali. ⁵⁷ In recent years, the unit has been overwhelmed with cases coming from Syria. Indeed, from 2015 to 2017, the unit received more than 4,000 tips of potential war |

51 Gendarmerie Nationale, "L'Office central de lutte contre les crimes contre l'humanité, les génocides et les crimes de guerre (OCLCH)," www.gendarmerie.interieur.gouv.fr/notre-institution/nos-composantes/au-niveau-central/les-offices/l-office-central-de-lutte-contre-les-crimes-contre-l-humanite-les-genocides-et-les-crimes-de-guerre-oclch

52 Interview with Jean-Pierre Chemaly.

53 AFP, "France Upholds Life Sentences for Rwanda Genocide Mayors," *JusticeInfo.net*, July 6, 2018.

54 German Federal Prosecutor's Office website: www.generalbundesanwalt.de/DE/Home/home_node.html.

55 Interview with Alexandra Lily Kather, international criminal law expert and consultant, Oct. 15, 2021. See Christian Ritscher, "Aktuelle Entwicklungen in der Strafverfolgung des GBA im Bereich Völkerstrafrecht," *Zeitschrift für internationale Strafrechtsdogmatik* (Dec. 2019), 599.

56 Benjamin Duerr, "International Crimes: Spotlight on Germany's War Crimes Unit," *Justiceinfo.net*, Jan. 10, 2019.

57 "From Belarus to Syria, Victims Look for Justice in Germany," *France 24*, March 13, 2021.

| Country | Specialized Unit (including dedicated teams) | Composition | Mandate | Time Frame | Jurisdictional Basis for the Unit's Operations | Type of Unit | Additional Information |
|-----------------|--|---|---|------------|---|---------------------|---|
| Germany (cont.) | under the Foreign Trade Act, International Criminal Law, Europe. ⁵⁸ | | 2. Aggression 3. Other crimes ⁵⁹ | | It is up to the discretion of the prosecutor. ⁶⁰ | | crimes and crimes against humanity. ⁶² |
| | Police The Central Authority for Fighting War Crimes (ZBKV) is within the Federal Criminal Police Office. ⁶³ | The ZBKV is headed by a police inspector. ⁶⁴ | The ZBKV collects and analyzes information on crimes against humanity, genocide, and war crimes and submits it to the federal prosecutor general for legal assessment and the institution of investigative proceedings. ⁶⁵ | Permanent | The trial cannot be in absentia. ⁶¹ | New-generation unit | |
| | Immigration The Bundesamt für Migration und Flüchtlinge (BAMF) | | BAMF shares information with the ZBKV and the regional criminal police (Landers). | Permanent | | New-generation unit | |

58 German Federal Prosecutor's Office, "Organogram," www.generalbundesanwalt.de/SharedDocs/ueber-uns-Organigramm.html?nn=677826.

59 Open Society Justice Initiative and TRIAL International, "Universal Jurisdiction Law and Practice in Germany" (March 2019), 4–12. Other crimes include, for example, command and superior responsibility or a failure to report a crime. See Articles 14 and 15, Völkerstrafgesetzbuch (Code of Crimes against International Law) of June 26, 2002, Bundesgesetzblatt (Federal Law Gazette) 2002 I, p. 2254; cf. BT-Drucksache 14/8524.

60 Open Society Justice Initiative and TRIAL International, "Universal Jurisdiction Law and Practice in Germany," 17.

61 Open Society Justice Initiative and TRIAL International, "Universal Jurisdiction Law and Practice in Germany," 17.

62 Duerr, "International Crimes."

63 Open Society Justice Initiative and TRIAL International, "Universal Jurisdiction Law and Practice in Germany," 20.

64 Matthias von Hein, "Germany Pursues Justice for Survivors of Yazidi Genocide," *DW*, Aug. 3, 2019.

65 ZBKV website: www.bka.de/EN/OurTasks/Remit/CentralAgency/ZBKV/zbkv_node.html.

| Country | Specialized Unit (including dedicated teams) | Composition | Mandate | Time Frame | Jurisdictional Basis for the Unit's Operations | Type of Unit | Additional Information |
|-----------------|---|---|--|--|--|-----------------|--|
| Germany (cont.) | has a specialized section on international crimes. ⁶⁶ | | It also shares information about potential witnesses and victims. ⁶⁷ | | | | |
| | <p>The Central Office of the State Justice Administrations for the Investigation of National Socialist Crimes was created in 1958.</p> <p>It was established through agreement by the ministers of justice of the lands.</p> | There are 20 people, including the head of the office, six investigators (judges, public prosecutors, and police officers), two translators and the personnel responsible for the main databases, and administrative personnel. Public prosecutors and judges are delegated from the single federal states to the Central Office. ⁶⁸ | The Central Office mandate is to conduct preliminary investigations into the crimes committed under Nazi rule, between 1933 and 1945. For legal reasons, the office conducts preliminary investigations only into crimes defined as murder that can be prosecuted (per Section 211 of the German Criminal Code). ⁶⁹ | The office “will continue running in its present form further on as long as there are prosecution tasks to fulfill.” ⁷⁰ | The Central Office has jurisdiction to deal with crimes that occurred outside of Western Germany and only those related to wartime operations against civilians. In 1964, jurisdiction was extended to include Nazi crimes committed in Western Germany. | Historical unit | As of January 2021, the Central Office has opened 7,686 preliminary investigations (which, especially at the beginning, included many proceedings involving multiple accused persons), with 18,661 criminal prosecutions that were or are still pending at the public prosecution's offices and federal courts. ⁷¹ As of 2019, a total of 6,522 defendants have been convicted for crimes committed under the Nazi era. ⁷² |

66 Finin, “Surmonter les obstacles,” 47.

67 Finin, “Surmonter les obstacles,” 47.

68 Central Office of the Land Judicial Authorities for the Investigation of National Socialist Crimes, “Information Sheet, Status as of January 1st, 2021” (2021), 7, zentrale-stelle-ludwigsburg.justiz-bw.de/pb/site/jumz/get/documents/jum1/JuM/Zentrale%20Stelle%20Ludwigsburg/Infoblatt_ZSt_EN_05.07.2021.pdf.

69 Central Office, “Information Sheet,” 5.

70 Central Office of the Land Judicial Authorities for the Investigation of National Socialist Crimes, “Creation and Competence,” zentrale-stelle-ludwigsburg.justiz-bw.de/pb/Len/Startpage/Creation/Creation+and+Competence.

71 Central Office, “Information Sheet,” 11.

72 Central Office, “Information Sheet,” 7.

| Country | Specialized Unit (including dedicated teams) | Composition | Mandate | Time Frame | Jurisdictional Basis for the Unit's Operations | Type of Unit | Additional Information |
|-----------------------|---|--|---|------------|---|-----------------|--|
| 8. Poland (1 unit) | <p>The Institute of National Remembrance (IPN) was established by the Parliament in December 1998 and started operating in 2000.</p> <p>The institute comprises a few components, including the Chief Commission for the Prosecution of Crimes Against the Polish Nation, which is in charge of prosecuting perpetrators of crimes of the past.⁷³ It is a separate unit that is structurally located within the Office of the Prosecutor.</p> | <p>The president of the institute is appointed by the Polish Parliament.⁷⁴</p> <p>The post has been previously headed by lawyers and professors.⁷⁵</p> <p>The commission is composed of 81 prosecutors, including seven prosecutors at the central level and 74 at the local level.⁷⁶</p> | <p>The IPN oversees the investigation of crimes committed from November 1917 to July 1990.⁷⁷</p> <p>Among other mandates, the IPN has an obligation to prosecute crimes against peace, crimes against humanity and war crimes, Nazi crimes, and communist crimes.⁷⁸</p> | Permanent | The Chief Commission can lead investigations even when perpetrators are deceased to bring the truth to victims. ⁷⁹ | Historical unit | In 2020, the commission conducted 1,822 investigations, including 1,324 new cases. Five indictments were issued. ⁸⁰ |

73 Institute of National Remembrance, "The Statutory Tasks of the Institute of National Remembrance," Aug. 14, 2016.

74 Institute of National Remembrance, "The Statutory Tasks of the Institute of National Remembrance," Aug. 14, 2016, ipn.gov.pl/en/about-the-institute/mission/2.Institute-of-National-Remembrance-Commission-for-the-Prosecution-of-Crimes-again.html.

75 Institute of National Remembrance, "About the Institute," ipn.gov.pl/en/about-the-institute.

76 Institute of National Remembrance, "Information on the Activities."

77 Institute of National Remembrance, "Information on the Activities."

78 The Act on the Institute of National Remembrance, Dec. 18, 1998, Art. 1, www.legal-tools.org/doc/fc69d7/pdf/.

79 Institute of National Remembrance, "The Chief Commission for the Prosecution of Crimes Against the Polish Nation," March 13, 2021, ipn.gov.pl/en/about-the-institute/offices/7802.The-Chief-Commission-for-the-Prosecution-of-Crimes-against-the-Polish-Nation.html.

80 Institute of National Remembrance, "Information on the Activities," 370.

| Country | Specialized Unit (including dedicated teams) | Composition | Mandate | Time Frame | Jurisdictional Basis for the Unit's Operations | Type of Unit | Additional Information |
|----------------------|--|--|--|------------|---|---------------------|--|
| Poland (cont.) | The commission has its headquarters in Warsaw and is decentralized, with local branches across the country. ⁸¹ | | | | | | |
| 9. Belgium (2 units) | <p>Prosecution</p> <p>The Specialized Section of the Federal Public Prosecutor office (Parquet Fédéral) deals with serious international crimes.</p> <p>There is no dedicated investigative judge for international crimes.⁸²</p> | The Specialized Section comprises three federal magistrates and the deputy federal prosecutor. ⁸³ | <p>In terms of mandate, the Belgium jurisdictions are competent to try:</p> <ul style="list-style-type: none"> • war crimes • crimes against humanity • genocide • torture⁸⁴ <p>In some cases, a victim can launch the opening of an investigation by filing a complaint to the investigative judge.⁸⁵</p> | Permanent | Until 2003, the Belgium courts had comprehensive universal jurisdiction based on a law established in 1993. Since then, they can have jurisdiction over acts committed abroad under certain conditions. ⁸⁶ | New-generation unit | <p>As of 2019, five trials in relation to the 1994 genocide in Rwanda took place in Belgium.⁸⁷</p> <p>For the first time in Belgium, a person was sentenced for crimes of genocide in December 2019.⁸⁸</p> |

81 Institute of National Remembrance, "Information on the Activities of the Institute of National Remembrance in the Period 1 January 2020–31 December 2020," 369, ipn.gov.pl/pl/o-ipn/informacje-o-dzialalnosc/143381.w-okresie-1-stycznia-2020-r-31-grudnia-2020-r.html.

82 Finnin, "Surmonter les obstacles," 27.

83 Finnin, "Surmonter les obstacles," 27.

84 Finnin, "Surmonter les obstacles," 26.

85 Finnin, "Surmonter les obstacles," 26.

86 Finnin, "Surmonter les obstacles," 26.

87 Finnin, "Surmonter les obstacles," 27.

88 Police Fédérale, "Première condamnation en Belgique pour génocide," Dec. 23, 2019, www.police.be/5998/fr/presse/premiere-condamnation-en-belgique-pour-genocide.

| Country | Specialized Unit (including dedicated teams) | Composition | Mandate | Time Frame | Jurisdictional Basis for the Unit's Operations | Type of Unit | Additional Information |
|-------------------------|--|---|--|------------|---|---------------------|------------------------|
| Belgium (cont.) | Police A special unit exists within the federal police of Brussels, which is called the 7th Investigation Service of the Federal Judicial Police. | As of 2020, the 7th Investigation Service of the Federal Judicial Police had seven investigators. ⁸⁹ | The section deals with crimes against humanity, genocide, and war crimes. ⁹⁰ | Permanent | | New-generation unit | |
| | Federal Ministry of Justice In 2014, the Belgian Task Force for International Criminal Justice was set up within the Federal Ministry of Justice. | | It coordinates and exchanges information on international crimes. ⁹¹ | N/A | | N/A | |
| 10. Denmark (1 unit) | The Special International Crimes Office (SICO) was established in 2002 as part of the prosecution service. ⁹² | SØIK is composed of lawyers, police officers, specialist consultants with a financial background, analysts, and administrative staff. ⁹³ | The unit is mandated to deal with: <ul style="list-style-type: none">• serious economic crimes• genocide• crimes against humanity | Permanent | Conditional universal jurisdiction applies—among other things, a presence in the country is required. ⁹⁴ | Mixed-mandate unit | |

89 Finnin, “Surmonter les obstacles,” 27.

90 Finnin, “Surmonter les obstacles,” 27.

91 Finnin, “Surmonter les obstacles,” 27.

92 Prosecution Service, “SICO 2008—Summary in English,” anklagemyndigheden.dk/sites/default/files/Documents/SICO-2008-Summary-in-English.pdf.

93 Prosecution Service, “State Prosecutor for Special Economic and International Crime,” <https://anklagemyndigheden.dk/en/state-prosecutor-for-serious-economic-and-international-crime>.

94 Brigitte Vestberg, “Prosecuting and Investigating International Crimes in Denmark,” guest lecture series of the office of the Prosecutor (April 5, 2006), 4, www.icc-cpi.int/NR/rdonlyres/9C4449DE-B59B-40E2-BF72-062764FFCBEB/0/Vestberg_paper.pdf.

| Country | Specialized Unit (including dedicated teams) | Composition | Mandate | Time Frame | Jurisdictional Basis for the Unit's Operations | Type of Unit | Additional Information |
|----------------------|--|--|---|------------|---|---------------------|---|
| Denmark (cont.) | After a reform in 2013, the unit was incorporated into the Office of the State Prosecutor for the Serious Economic Crime and International Crime (SØIK) . ⁹⁵ | The Danish police and the prosecution service are not separated. Also, prosecutors are in charge of both branches. ⁹⁶ | <ul style="list-style-type: none"> • war crimes • other serious crimes committed outside Denmark • financing of terrorists⁹⁷ | | | | |
| 11. Sweden (2 units) | <p>Prosecution</p> <p>The International Division of the Prosecutor's Office is the specialized unit dealing with serious international crimes, with offices in Stockholm, Göteborg, and Malmö.</p> | There are 15 prosecutors in total. ⁹⁸ | <p>Sweden has a specialized unit to investigate international crimes:</p> <ul style="list-style-type: none"> • crimes against humanity • war crimes • genocide | Permanent | <p>Sweden has absolute universal jurisdiction and does not need the presence of the suspect to initiate prosecutions.⁹⁹ The universal jurisdiction extends to all crimes in the criminal code engaging a sentence of more than four years.¹⁰⁰</p> <p>One innovative practice of these jurisdictions is the possibility for the trials to take place outside of Sweden. That was notably</p> | New-generation unit | <p>The unit has worked on cases regarding Rwanda, the former Republic of Yugoslavia, and, more recently, Syria. Alongside Germany, Sweden has been one of the first countries to open prosecutions on cases regarding the civil war in Syria. Around 50 investigations are underway on the Syrian cases.¹⁰¹</p> <p>The convictions on the Syrian conflict included a former Syrian army soldier,</p> |

95 Mikkel Jarle Christensen, "International Prosecution and National Bureaucracy: The Contest to Define International Practices Within the Danish Prosecution Service," *Law and Social Inquiry* 43, no. 1 (2018): 152–181.

96 Christensen, "International Prosecution and National Bureaucracy," 159.

97 Prosecution Service, "State Prosecutor for Special Economic and International Crime."

98 Finnin, "Surmonter les obstacles," 94.

99 Lena Bjurström, "Sweden on the Frontline with Syria Cases," *JusticeInfo.net*, Feb. 11, 2021.

100 Finnin, "Surmonter les obstacles," 94.

101 Bjurström, "Sweden on the Frontline with Syria Cases."

| Country | Specialized Unit (including dedicated teams) | Composition | Mandate | Time Frame | Jurisdictional Basis for the Unit's Operations | Type of Unit | Additional Information |
|--|--|---|---|------------|---|---------------------|---|
| Sweden (cont.) | | | | | the case of a district court (tingsrätt) and an Appeal Court (hovrätt) that opened in Rwanda. ¹⁰² | | for violating the dignity of five dead or severely injured people by posing for a photograph with his foot on one of the victims' chests, and two members of rebel groups. ¹⁰³ |
| | Police The War Crime Unit within the police was created in 2008 within the Swedish police. ¹⁰⁴ | As of 2020, the unit comprised 15 investigators and two analysts. ¹⁰⁵ They work closely with two agents of the police intelligence, who work exclusively on serious international crimes. ¹⁰⁶ | The unit handles serious international crimes. | Permanent | | New-generation unit | |
| 12. Switzerland (1 unit) | Until 2015, there existed the Special War Crimes Office in the Office of the Attorney General of Switzerland (OAG) . ¹⁰⁷ | | The Mutual Legal Assistance and International Criminal Law (RV) Division is responsible for: • the execution of all requests for mutual legal assistance | Permanent | Switzerland has universal jurisdiction over core crimes when they are committed abroad by a foreigner against foreign nationals: • genocide • crimes against humanity | Mixed-mandate unit | As of 2019, more than 60 cases had been referred to the International Crimes Unit since 2011. ¹⁰⁸ Universal jurisdiction prosecutions have historically been rare in Switzerland, |

102 Finnin, "Surmonter les obstacles," 95.

103 The soldier was Mohammed Abdullah. Bjurström, "Sweden on the Frontline with Syria Cases."

104 Finnin, "Surmonter les obstacles," 95.

105 Finnin, "Surmonter les obstacles," 95.

106 Finnin, "Surmonter les obstacles," 95.

107 A report by TRIAL International highlights cases where judges or prosecutors have initiated investigations into the most serious international crimes. Valérie Paulet, TRIAL International, "Universal Jurisdiction Annual Review 2021: A Year Like No Other? The Impact of Coronavirus on Universal Jurisdiction" (2021), 68.

108 Julia Crawford, "Why Switzerland's War Crimes Office Is Dragging Its Feet," *SwissInfo*, Jan. 31, 2019.

| Country | Specialized Unit (including dedicated teams) | Composition | Mandate | Time Frame | Jurisdictional Basis for the Unit's Operations | Type of Unit | Additional Information |
|---------------------|--|-------------|---|------------|--|--------------|---|
| Switzerland (cont.) | Since 2015, the Special War Crimes Unit has been merged with the legal assistance unit under the Mutual Legal Assistance and International Criminal Law Division . ¹⁰⁹ | | <ul style="list-style-type: none"> • cross-border collaboration between Swiss and foreign criminal prosecution authorities • assisting other divisions in the field of mutual legal assistance • conducting proceedings for genocide, crimes against humanity, war crimes, and cybercrime¹¹⁰ <p>In the case of enforced disappearance, the cantonal public prosecutors of the 26 cantons have jurisdiction.¹¹¹</p> | | <ul style="list-style-type: none"> • war crimes • enforced disappearance¹¹² <p>A suspect must be present in the territory to launch the investigation, but the investigation remains open after a suspect leaves Switzerland.¹¹³</p> | | <p>with political interference being raised as one of the reasons for the lack of investigations and prosecutions.¹¹⁴ There has been only one successful conviction based on the universal jurisdiction by a military court, in <i>Prosecutor v. Niyonteze</i>.¹¹⁵</p> <p>According to TRIAL international, as of 2020/21, there have been three cases under investigation and one trial, and one person has been convicted—Erwin Sperisen (based on the active personality principle).¹¹⁶</p> |

109 Julia Crawford, “Why Switzerland’s War Crimes Office Is Dragging Its Feet,” SwissInfo, Jan. 31, 2019; the Mutual Legal Assistance and International Criminal Law Division, the Federal Prosecutor’s Office, www.bundesanwalt.ch/mpc/fr/home/die-bundesanwalt/schaft/organisation/rtvc.html.

110 The Mutual Legal Assistance and International Criminal Law Division, the Federal Prosecutor’s Office; Julia Crawford, “International Crimes: Spotlight on Switzerland’s War Crimes Unit,” *Justiceinfo.net*, Feb. 15, 2019.

111 Open Society Justice Initiative and TRIAL International, “Universal Jurisdiction Law and Practice in Switzerland” (June 2019), 20.

112 Open Society Justice Initiative and TRIAL International, “Universal Jurisdiction Law and Practice in Switzerland” (June 2019), 20.

113 Open Society Justice Initiative and TRIAL International, “Universal Jurisdiction Law and Practice in Switzerland,” 16-17.

114 Antoine Harari, “Un procureur des crimes de guerre claque la porte,” *Le Temps*, Feb. 18, 2018.

115 Tetevi Davi and Stella Nasirumbi, “Universal Jurisdiction in Switzerland: Challenges for the War Crimes Trial of Alieu Kosiah,” Oxford Human Rights Hub, Feb. 24, 2021.

116 Paulet, “Universal Jurisdiction Annual Review 2021,” 68–73.

| Country | Specialized Unit (including dedicated teams) | Composition | Mandate | Time Frame | Jurisdictional Basis for the Unit's Operations | Type of Unit | Additional Information |
|-------------------------|--|---|---|------------|---|--------------------|------------------------|
| 13. Norway (2 units) | Prosecution The National Authority for Prosecution of Organized and Other Serious Crimes (NAPO) specializes in international crimes. ¹¹⁷ | Public prosecutors specialized in international crimes at NAPO. | Norway can try: <ul style="list-style-type: none"> • acts punishable under the law of the country in which the crimes were committed • war crimes • genocide • crimes against humanity • breach of the laws of war • enforced disappearance • organized crimes¹¹⁸ | Permanent | The Criminal Code does not mention the need for a case to have a link to Norway, but in practice crimes falling under the Criminal Code will only be investigated and prosecuted when there is a link with Norway. ¹¹⁹ | Mixed-mandate unit | |
| | Police The International Crimes Section within the National Criminal Investigation Service (KRIPOS) is responsible for investigating international crimes. ¹²⁰ It is part of the National Police Directorate. ¹²¹ | The KRIPOS is composed of 11 police officers, including the head and two police prosecutors that support the unit. ¹²² There is a head of KRIPOS. It follows the recommendations of the police prosecutors to open an investigation. ¹²³ | | | Permanent | | New-generation unit |

117 The National Authority for Prosecution of Organised and Other Serious Crime website: www.riksadvokaten.no/english/.

118 Open Society Justice Initiative and TRIAL International, "Universal Jurisdiction Law and Practice in Norway" (Jan. 2019), 5.

119 Open Society Justice Initiative and TRIAL International, "Universal Jurisdiction Law and Practice in Norway," 20.

120 Human Rights Watch, "Universal Jurisdiction in Europe: The State of the Art," *Human Rights Watch* 18, no. 5(D) (June 2006), 81.

121 Open Society Justice Initiative and TRIAL International, "Universal Jurisdiction Law and Practice in Norway," 26.

122 Open Society Justice Initiative and TRIAL International, "Universal Jurisdiction Law and Practice in Norway," 26.

123 Open Society Justice Initiative and TRIAL International, "Universal Jurisdiction Law and Practice in Norway," 26.

| Country | Specialized Unit (including dedicated teams) | Composition | Mandate | Time Frame | Jurisdictional Basis for the Unit's Operations | Type of Unit | Additional Information |
|-------------------------|---|---|---|------------|---|--------------------|--|
| 14. Finland (1 unit) | The Homicide and Serious Crimes Unit of the National Bureau of Investigation (NBI) oversees international crimes. ¹²⁴ | As of 2020, the unit was composed of seven senior police officers and 25 investigators working on all crimes under the jurisdiction of the unit. ¹²⁵ | The NBI is mandated to investigate: <ul style="list-style-type: none"> • organized crime • crimes against humanity • genocide • war crimes • torture¹²⁶ | Permanent | Investigations of crimes committed abroad can only be initiated by order of the prosecutor-general, but this order is not necessary if the crime was committed abroad by a Finnish citizen or resident, or against a Finnish citizen, entity, or resident. ¹²⁷ The decision of the prosecutor-general not to investigate cannot be challenged. ¹²⁸ | Mixed-mandate unit | The unit has previously conducted investigations on crimes in Afghanistan, Iraq, and Rwanda. As of 2020, there was one ongoing investigation regarding universal jurisdiction, for crimes committed in Liberia. In February 2021, the Pirkanmaa District Court opened the trial of Gibril Massaquoi, a Sierra Leonean who was a key actor of the rebel group Revolutionary United Front (RUF). He was arrested in 2008 by the National Bureau of Investigation after NGOs informed authorities about his alleged involvement in mass atrocities in Liberia. ¹²⁹ |

124 Open Society Justice Initiative and TRIAL International, "Universal Jurisdiction Law and Practice in Finland" (Feb. 2020), 15.

125 Open Society Justice Initiative and TRIAL International, "Universal Jurisdiction Law and Practice in Finland", 15.

126 DCAF, "Finnish Police—National Bureau of Investigation (NBI)," issat.dcaf.ch/Share/People-and-Organisations/Organisations/Finnish-Police-National-Bureau-of-Investigation; Open Society Justice Initiative and TRIAL International, "Universal Jurisdiction Law and Practice in Finland," 4.

127 Ministry of Justice, Finland, The Criminal Code of Finland (unofficial translation), Ch. 1, Sec. 12(1)(1), antislaverylaw.ac.uk/wp-content/uploads/2019/08/Finland-Criminal-Code.pdf.

128 Open Society Justice Initiative and TRIAL International, "Universal Jurisdiction Law and Practice in Finland."

129 Civitas Maxima, "Liberian History in the Making: Groundbreaking Decision Regarding Gibril Massaquoi's Trial," Feb. 1, 2021.

| Country | Specialized Unit (including dedicated teams) | Composition | Mandate | Time Frame | Jurisdictional Basis for the Unit's Operations | Type of Unit | Additional Information |
|----------------------------------|---|--|--|------------|--|---------------------|---|
| 15. The Netherlands (3 units) | Police The International Crimes Team (TIM) within the Dutch National Police is based in Rotterdam. | As of 2020, TIM had around 35 police officers, including experienced criminal investigators, historians, anthropologists, political scientists, and open-source intelligence experts. ¹³⁰ | The Netherlands has jurisdiction over the following crimes: <ul style="list-style-type: none"> • war crimes • torture • crimes against humanity • genocide • enforced disappearances¹³¹ | Permanent | Universal jurisdiction is limited in a sense that there must be a link to the Netherlands: <ul style="list-style-type: none"> • the perpetrator is a Dutch national • the crimes were committed against a Dutch national • the alleged perpetrator is present in the Netherlands¹³² | New-generation unit | The cases included crimes committed in Afghanistan, Bosnia and Herzegovina, Croatia, DRC, Ethiopia, Georgia, Iraq, Liberia, Rwanda, Sri Lanka, and Syria. ¹³³ Among others, the convictions include: <ul style="list-style-type: none"> • Sebastien N. for torture in the DRC in 2004 • Joseph M. for his implication in torture and war crimes in Rwanda in 2009 • Yvonne B. for her implication in genocide in Rwanda in 2013 • Hesammudin H. and Habibullah J. for torture and war crimes in Afghanistan in 2013¹³⁴ |
| | Prosecution The specialized International Crimes Unit is within the National Prosecutor's Office (Prosecution Services). | As of 2020, the National Office of the Public Prosecution Service has seven full-time staff (three prosecutors, an anthropologist, a legal advisor, a policy officer, and a legal officer). ¹³⁵ | | | Permanent | | New-generation unit |

130 Finin, "Surmonter les obstacles," 80.

131 Larissa van den Herik, "The Dutch Engagement with the Project of International Criminal Justice," *Netherlands International Law Review* 57, no. 2 (2010): 303-322; Stephanie Van Der Berg, "The Dutch War Crimes Unit Hits Harder on Syrian Suspect," *JusticeInfo.net*, May 29, 2019.

132 Van Der Berg, "The Dutch War Crimes Unit Hits Harder on Syrian Suspect."

133 Politie, "International Crime," 6-17, www.politie.nl/binaries/content/assets/politie/wob/11-landelijke-eenheid/internationale-misdrijven/international-crime-unit.pdf.

134 Finin, "Surmonter les obstacles," 82.

135 Finin, "Surmonter les obstacles," 82.

| Country | Specialized Unit (including dedicated teams) | Composition | Mandate | Time Frame | Jurisdictional Basis for the Unit's Operations | Type of Unit | Additional Information |
|-------------------------|---|---|---|------------|--|---------------------|---|
| The Netherlands (cont.) | Immigration In addition to the specialized unit within the police and prosecution, there exists a specialized international crimes unit within the immigration services (the 1F Unit). ¹³⁶ | As of 2020, the unit was composed of 17 researchers, two project officers, and a manager. ¹³⁷ | | Permanent | | New-generation unit | The investigation is conducted nationally and internationally. The war crimes unit has been traveling to the scene of crimes, and around 80 to 90 percent of the evidence has been gathered abroad. |
| 16. Serbia (2 units) | Prosecution ¹³⁸ The Office of War Crimes Prosecutor of the Republic of Serbia (OWCP) was set up in 2003. ¹³⁹ The OWCP is divided into three teams based on the geographical areas where the war crimes occurred—Croatia, BiH, and Kosovo. | The OWCP is led by the chief prosecutor, elected by the National Assembly, and comprises 27 staff members, including deputy prosecutors, a senior adviser to the prosecutor, an independent adviser, a secretary general, assistant | The office deals with two broad categories: 1. Crimes committed in the former Social Federal Republic of Yugoslavia since January 1, 1991: <ul style="list-style-type: none">• war crimes• genocide• crimes against humanity• crimes of aggression¹⁴⁰ | | The universal jurisdiction in Serbia is extended to any crime committed anywhere in the former Republic of Yugoslavia in the 1990s, regardless of the nationality of the perpetrator or the victim. ¹⁴¹ | Historical unit | Between 2003 and 2018, 192 people have been charged, including 121 people convicted and 43 acquitted. ¹⁴² |

¹³⁶ Finnin, "Surmonter les obstacles," 80.

¹³⁷ Finnin, "Surmonter les obstacles," 81.

¹³⁸ The Special War Crimes Chamber (WCC) within the District Court of Belgrade was also created in 2003; in 2009, it was renamed the Department of War Crimes (WCD), within the Higher Court of Belgrade. See Eric A. Witte and Claire Duffy, eds., "Annex 4: Mechanisms in Europe," in *Options for Justice: A Handbook for Designing Accountability Mechanisms for Grave Crimes* (Open Society Justice Initiative, 2018), 578. The 2003 law also created a Witness Protection Unit. See Amnesty International, "Serbia: Ending Impunity for Crimes Under International Law" (2014), 5, 29.

¹³⁹ Office of the War Crimes Prosecutor website: www.tuzilastvorz.org.rs/en/about-us. See also Humanitarian Law Center, "Report on War Crimes Trials in Serbia During 2020" (May 14, 2021), 7.

¹⁴⁰ Witte and Duffy, "Annex 4: Mechanisms in Europe," 573. The criminal offenses are defined under Articles 370 through 384, 385, and 386 of the Criminal Code of Serbia.

¹⁴¹ The Law on the Organization and Competence of State Authorities in War Crimes Proceedings, Art. 3, arhiva.mpravde.gov.rs/images/Law%20on%20the%20organisation%20and%20competences%20of%20the%20government%20authorities%20in%20war%20crimes%20proceedings_180411.pdf.

¹⁴² Republic of Serbia, Prosecutor's Office for War Crimes, "The Prosecutorial Strategy for the Investigation and Prosecution of War Crimes in Republic of Serbia 2018–2023," 8, www.tuzilastvorz.org.rs/public/documents/2021-06/strategija_trz_eng.pdf.

| Country | Specialized Unit (including dedicated teams) | Composition | Mandate | Time Frame | Jurisdictional Basis for the Unit's Operations | Type of Unit | Additional Information |
|-------------------------------------|---|---|--|------------|---|-----------------|--|
| Serbia (cont.) | They were all created in 2003 by the Law on War Crimes. ¹⁴³ | prosecutors, and support staff. ¹⁴⁴ | 2. Grave breaches of international humanitarian law committed in the territory of the former Yugoslavia since January 1, 1991, as specified in the Statute of the International Criminal Court for the Former Yugoslavia. ¹⁴⁵ | | The jurisdiction can try Serbian citizens and foreign nationals who are suspected of having committed crimes in the territory of the former Social Federal Republic of Yugoslavia. ¹⁴⁶ | Historical unit | The National Strategy for the Prosecution of War Crimes in Serbia (the National War Crimes Strategy) was adopted in 2016. ¹⁴⁷ |
| | Police The War Crimes Investigation Service (WCIS) is within the Ministry of the Interior. | The WCIS is under the authority of the Ministry of the Interior. ¹⁴⁸ As of 2015, the WCIS had 49 employees, including 16 investigators, 10 analysts, and nine officers. ¹⁴⁹ | | | | | |
| 17. Bosnia and Herzegovina (1 unit) | Prosecution ¹⁵⁰ The Special Department for War Crimes (SDWC) of the Prosecutor's Office was established in 2002 | In 2020, there were 27 prosecutors working on cases related to the past conflict supported by legal associates, 10 investigators (with a possibility of employing a further nine | The SDWC deals with crimes emerging from the 1992–1995 conflict. As such, it is mandated to prosecute war crimes, crimes against humanity, | | | Historical unit | Between 2004 and 2017, some 473 war crimes proceedings had been initiated by the SDWC. ¹⁵¹ By November 2017, 66 cases had been adjudicated, resulting in the conviction of 83 individuals, the acquittal of |

143 Damjan Brković, Kathrin Gabriel, Dušan Jovanovic, Alberto Pasquero, and Marija Sekulovic, OSCE, "War Crimes Proceedings in Serbia (2003–2014): An Analysis of the OSCE Mission to Serbia's Monitoring Results" (Oct. 26, 2015), 21.

144 Office of the War Crimes Prosecutor, "Organization," www.tuzilastvorz.org.rs/en/about-us/organization.

145 Office of the War Crimes Prosecutor, "Area of Competence," www.tuzilastvorz.org.rs/en/about-us/area-competence.

146 The Law on the Organization and Competence of State Authorities in War Crimes Proceedings.

147 Witte and Duffy, "Annex 4: Mechanisms in Europe," 579.

148 Witte and Duffy, "Annex 4: Mechanisms in Europe," 580.

149 Witte and Duffy, "Annex 4: Mechanisms in Europe," 582.

150 The War Crimes Chamber (WCC) was established at the same time (2005). The WCC is a domestic chamber in Sarajevo. Integrated in the State Court, the WCC exercises a supreme jurisdiction over the most serious war crimes cases in Bosnia and Herzegovina, and cantonal and district courts handle other war crimes. See Human Rights Watch, "Looking for Justice: The War Crimes Chamber in Bosnia and Herzegovina" (Feb. 7, 2006).

151 Organization for Security and Co-Operation in Europe (OSCE), Mission to Bosnia and Herzegovina, "Observations on the National War Crimes Processing Strategy and Its 2018 Draft Revisions, Including Its Relation to the Rules of the Road 'Category A' Cases" (Sept. 27, 2018).

| Country | Specialized Unit (including dedicated teams) | Composition | Mandate | Time Frame | Jurisdictional Basis for the Unit's Operations | Type of Unit | Additional Information |
|--|--|--|--|------------|--|-----------------|--|
| Bosnia and Herzegovina (cont.) | but started its operations in 2005. ¹⁵² | investigators), and four analysts. ¹⁵³ The State Investigation and Protection Agency provides 80 officers as support to the Prosecution's Office, some of whom are dedicated exclusively to the SDWC. ¹⁵⁴ | and genocide as defined in the Penal Code. ¹⁵⁵ | | | | 49 suspects, and the suspension of eight cases. A further 13 cases involving 43 accused were at the trial stage, and six cases remained before the Appellate Court. ¹⁵⁶ In 2018, a further 17 accused were convicted. ¹⁵⁷ |
| 18. Argentina (2 units) | At the federal level, there exists the Office of the Prosecutor for Crimes against Humanity (PCCH) established by the Argentinean attorney general. In addition, there are approximately 10 specialized units that have been created in the regions. | The PCCH at the federal level comprises approximately 21 people, including sociologists, anthropologists, lawyers, historians, and experts in communication. | The PCCH has mandate over crimes that have been committed on Argentinian territory during the dictatorship that lasted from 1976 to 1983. ¹⁵⁸ | Permanent | Principle of territoriality | Historical unit | According to the PCCH official statistics, as of September 16, 2021, some 3,525 people have been investigated for crimes against humanity, of whom 1,044 were convicted (as part of 264 sentences that were handed down). ¹⁵⁹ The disaggregated figure consists of 602 individuals |

152 Hybrid Justice, "The War Crimes Chamber in Bosnia and Herzegovina," [hybridjustice.com/the-war-crimes-chamber-in-bosnia-and-herzegovina/](https://www.hybridjustice.com/the-war-crimes-chamber-in-bosnia-and-herzegovina/).

153 Joanna Korner, British Embassy in Sarajevo and OSCE, "Improving War Crimes Processing at the State Level in Bosnia and Herzegovina: A Follow-Up Report" (2020), 19, 26, 24.

154 Joanna Korner, British Embassy in Sarajevo and OSCE, "Improving War Crimes Processing at the State Level in Bosnia and Herzegovina: A Follow-Up Report" (2020), 27.

155 Bogdan Ivanišević, ICTJ, "The War Crimes Chamber in Bosnia and Herzegovina: From Hybrid to Domestic Court" (2008), 7.

156 Witte and Duffy, "Annex 4: Mechanisms in Europe."

157 OSCE, "Observations on the National War Crimes Processing Strategy."

158 Resolution PGN No. 1442/13, Art. 4.

159 Ministerio Público Fiscal, "Son 1044 las personas condenadas en 264 sentencias en causas por crímenes de lesa humanidad" (Sept. 24, 2021), www.fiscales.gob.ar/lesa-humanidad/son-1044-las-personas-condenadas-en-264-sentencias-en-causas-por-crimenes-de-lesa-humanidad/.

| Country | Specialized Unit (including dedicated teams) | Composition | Mandate | Time Frame | Jurisdictional Basis for the Unit's Operations | Type of Unit | Additional Information |
|-------------------|---|--|---|------------|--|-----------------|--|
| Argentina (cont.) | There is no specialized unit to deal with universal jurisdiction cases in Argentina. | There are around 10 units in these jurisdictions that have an average of 15 people working and a total of 30 prosecutors. ¹⁶⁰ | | | | | being prosecuted, 581 accused, 165 cases without merit, 162 acquitted, 97 dismissed, 39 investigated, and 29 fugitives. In addition, 806 individuals implicated in crimes during the dictatorship died. ¹⁶¹ |
| | The Specialized Unit for Cases of Appropriation of Children During State Terrorism (UFICANTE) was established in 2012. ¹⁶² | An estimated 21 people are employed at the unit. ¹⁶³ | <p>The unit's mandate includes the following:</p> <ul style="list-style-type: none"> • keeping a complete and up-to-date record of cases related to the appropriation of children during the state terrorism • maintaining a detailed and disaggregated database • designing investigation strategies • coordinating investigations and providing assistance to prosecutors, and ensuring the adequate treatment of victims | Permanent | Principle of territoriality | Historical unit | |

160 Interview with Dr. María Ángeles Ramos, head prosecutor of the PCCH, Oct. 22, 2021.

161 Ministerio Público Fiscal, "Son 1044 las personas condenadas en 264 sentencias en causas por crímenes de lesa humanidad" (Sept. 24, 2021).

162 Resolución PGN No. PGN N° 435/12; Ministerio Público Fiscal, "Unidad Especializada para Casos de Apropiación de Niños durante el Terrorismo de Estado (UFICANTE)," www.mpf.gob.ar/lesa/unidad-especializada-para-casos-de-apropiacion-de-ninos-durante-el-terrorismo-de-estado/.

163 Interview with Dr. María Ángeles Ramos.

| Country | Specialized Unit (including dedicated teams) | Composition | Mandate | Time Frame | Jurisdictional Basis for the Unit's Operations | Type of Unit | Additional Information |
|----------------------|--|---|---|---|--|-----------------|--|
| Argentina (cont.) | | | <ul style="list-style-type: none"> analyzing and keeping up to date with national and international jurisprudence carrying out preliminary investigations on alleged acts of kidnapping preparing periodic reports on the status of cases¹⁶⁴ | | | | |
| 19. Croatia (1 unit) | <p>Prosecution¹⁶⁵</p> <p>The specialized prosecution offices within the Office of the Public Prosecutor and within four specialized war crimes courts were set up through the 2003 law.¹⁶⁶</p> <p>They only became operational in 2011, when they started receiving their first cases, after the government</p> | The State Attorney's Offices have a limited capacity to deal with war crimes cases. In 2017, the Zagreb prosecutor's office had two officials working on war crimes. ¹⁶⁷ | <p>The Croatian Criminal Code was amended in 2004 to add international crimes:</p> <ul style="list-style-type: none"> genocide crimes of aggression crimes against humanity war crimes (civilians, wounded or sick, prisoners of war) torture other cruel or inhumane treatment | Crimes committed from 1991 to 1995 ¹⁶⁸ | Principle of territoriality. The Croatian courts use in absentia. ¹⁶⁹ | Historical unit | <p>As of 2017, the Croatian judicial system had delivered a total of 141 war crimes verdicts.¹⁷⁰</p> <p>According to the Human Rights House Zagreb report, criminal proceedings have not been scheduled, and the court proceedings remain lengthy. There is also the problem of lasting tensions within the Croatian society.</p> |

164 Ministerio Público Fiscal, "Unidad Especializada para Casos de Apropiación de Niños durante el Terrorismo de Estado (UFICANTE).

165 The 2003 Law on Crimes Against International Law also established specialized war crimes chambers within county courts of Osijek, Rijeka, Split, and Zagreb. In addition, the 2003 Law on Witness Protection established a Witness Protection Unit within the Ministry of Interior, and in 2005 another one within the Ministry of Justice. Witte and Duffy, "Annex 4: Mechanisms in Europe," 526.

166 Witte and Duffy, "Annex 4: Mechanisms in Europe," 526.

167 Witte and Duffy, "Annex 4: Mechanisms in Europe," 524.

168 Amnesty International, "Croatia: Briefing to the European Commission on the Ongoing Concerns over Impunity for War Crimes in Croatia" (EUR 64/011/2011, Oct. 13, 2011), 5.

169 Witte and Duffy, "Annex 4: Mechanisms in Europe," 528.

170 Witte and Duffy, "Annex 4: Mechanisms in Europe," 572.

| Country | Specialized Unit (including dedicated teams) | Composition | Mandate | Time Frame | Jurisdictional Basis for the Unit's Operations | Type of Unit | Additional Information |
|----------------------------|---|-------------|---|------------|--|--------------------|--|
| Croatia (cont.) | <p>adopted “The Strategy for the Investigation and Prosecution of War Crimes Committed in the Period 1991–1995.”¹⁷¹</p> <p>The 2003 law envisaged the establishment of the specialized investigative capacity within the specialized war crimes courts.¹⁷² It is not known whether such investigative capacity was created.</p> | | Several cases were referred by the ICTY. ¹⁷³ | | | | Croatian Serbs have been the target of physical attacks and hate speech. ¹⁷⁴ |
| 20. South Africa (2 units) | The Priority Crimes Litigation Unit (PCLU) was established in 2003 through a presidential proclamation and is located in the Office of the National Director of Public Prosecutions (NDPP). ¹⁷⁵ | | <p>The PCLU manages and directs the investigation and prosecution of:</p> <ul style="list-style-type: none"> crimes outlined in the Rome Statute of the International Criminal Court Act, Act No. 27 of 2002 | Permanent | South Africa has jurisdiction over core international crimes when a victim or perpetrator is a South African citizen or resident, or when a person, after the commission of the crime, | Mixed-mandate unit | An analysis of the National Prosecuting Authority’s annual reports (2005/06–2016/17) has revealed that hardly any progress has been made in the investigations and prosecutions of TRC cases. In fact, these annual reports contain little |

171 Witte and Duffy, “Annex 4: Mechanisms in Europe”, 525; Amnesty International, “Croatia,” 5.

172 Witte and Duffy, “Annex 4: Mechanisms in Europe,” 524.

173 Witte and Duffy, “Annex 4: Mechanisms in Europe”, 524; Ivo Josipovic, “Responsibility for War Crimes Before National Courts in Croatia,” *International Review of the Red Cross* 88, no. 861 (2006): 145–168, 150.

174 Anja Vladisavljevic, “Croatian War Crime Trials Stalled Again in 2020, Report Warns,” *Balkan Transitional Justice*, April 15, 2021.

175 Proclamation by the President of the Republic of South Africa, National Prosecuting Authority Act, 1998—Determination of Powers, Duties and Functions of a Special Director of Public Prosecutions, March 25, 2003.

| Country | Specialized Unit (including dedicated teams) | Composition | Mandate | Time Frame | Jurisdictional Basis for the Unit's Operations | Type of Unit | Additional Information |
|----------------------|--|-------------|--|------------|---|--------------------|---|
| South Africa (cont.) | | | <ul style="list-style-type: none"> serious international and national crimes against the state (i.e., terrorism, espionage) the nonproliferation of nuclear, chemical and biological weapons cases arising from the work of the Truth and Reconciliation Commission¹⁷⁶ | | is present in the territory of the republic. ¹⁷⁷ The suspect must be present in South Africa to proceed with the prosecution but not to launch the investigation. ¹⁷⁸ | | or no information on the investigations and prosecutions of TRC cases. ¹⁷⁹ Since 2017, thanks to the efforts of victims' families, supported by the pro-bono lawyers and the Foundation for Human Rights, four inquests into deaths in detention during apartheid have been reopened and indictments in three matters have been issued. ¹⁸⁰ |
| | <p>Police</p> <p>The Directorate for the Priority Crimes Investigations (DPCI) is within the South African Police Service.</p> | | The mandate includes the combating, investigation, and prevention of national priority crimes such as serious organized crime, serious commercial crime, and serious corruption in | Permanent | | Mixed-mandate unit | |

¹⁷⁶ National Prosecuting Authority of South Africa, "Priority Crimes Litigation Unit (PCLU)," www.npa.gov.za/sites/default/files/pclu/About%20PCLU%20signedoff.pdf; Annex TN8 (Affidavit of Anton Ackerman) to founding affidavit in *T P Nkademeng v. National Director of Public Prosecutions & Others*, Case No. 3554/2015, Gauteng Division, para. 14.

¹⁷⁷ *National Commissioner of The South African Police Service v. SALC and Another* (CCT 02/14) [2014] ZACC 30, para. 41.

¹⁷⁸ *National Commissioner of The South African Police Service v. SALC and Another* (CCT 02/14) [2014] ZACC 30, para. 81.

¹⁷⁹ The National Prosecuting Authority's "Annual Report 2017/18" mentions the reopened inquest into the death of Ahmed Timol, but other than that, all annual reports (those that are publicly available) from 2005/06 through 2016/17 do not report on any progress in relation to other investigations and prosecutions of the TRC cases. Some annual reports make a very brief reference to some TRC cases. The "Annual Report 2010/11" reports: "The PCLU furnished specific additional guidance to investigating officers from the Directorate for Priority Crime Investigations (DPCI) in respect of Pebco 3, Cradock 4, Nokuthula Simelane and Highgate Hotel matters," 28, www.gov.za/sites/default/files/gcis_document/201409/npa-annual-report-2010-2011.pdf. In the "Annual Report 2009/10," the PCLU reported about the withdrawal of charges against two accused in *S v. Van Zyl and Coole*, and a decision not to prosecute in the Anton Lubowski case, 23, www.gov.za/sites/default/files/gcis_document/201409/nationalprosecutingauthorityannualreport2009-2010.pdf. In the "Annual Report 2007/08," the PCLU reported about the matter in *S v. Van der Merwe & Others*, in which the accused pleaded guilty to a charge of attempting to poison Reverend Frank Chikane, the director-general in the presidency, www.gov.za/sites/default/files/gcis_document/201409/npa-annual-rpto708.pdf.

¹⁸⁰ The reopened inquests are in the matters of Ahmed Timol, Hoosen Haffeejee, Neil Aggett, and Ernest Dipale. The indictments issued are in the matters of the torture, murder, and enforced disappearance of Nokuthula Simelane, the murder of the COSAS 4 students, and the murder of Ahmed Timol. For more information, see Foundation for Human Rights, "The Unfinished Business of the Truth and Reconciliation Commission," unfinishedtrc.co.za.

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|------------------------------|---|-------------|--|---------------|---|--------------------|---|
| South Africa (cont.) | | | terms of Section 17B and 17D of the South African Police Service Act, 1995, as amended. TRC cases have been declared priority cases. | | | | |
| 21. Lithuania (1 unit) | The Special Investigations Division of the Prosecutor General's Office of the Republic of Lithuania was established in 1991. ¹⁸¹ | | <p>The division was initially established to conduct preliminary investigations into Soviet- and Nazi-era crimes.¹⁸²</p> <p>The Law on Liability for the Genocide of Residents of Lithuania, which came into effect on April 9, 1992, provides the basis for the prosecution of Soviet-era crimes.¹⁸³</p> <p>The law was repealed when subsequent amendments to the Criminal Code were introduced. New categories of serious</p> | Permanent | Lithuania can exercise universal jurisdiction over war crimes and crimes against humanity, under some circumstances. ¹⁸⁴ | Mixed-mandate unit | For example, in 2005, Algimantas Dailide, a former member of the Nazi-sponsored Lithuanian Security Police, was convicted of war crimes for participating in the arrest of tens of thousands of Jews. The sentence was suspended due to the advanced age of the convict. ¹⁸⁵ |

181 Eva-Clarita Pettai and Vello Pettai, *Transitional and Retrospective Justice in the Baltic States* (Cambridge University Press, 2015), 81.

182 The Prosecutor's Office—Lithuania, "Crimes Against Humanity," www.prokuraturos.lt/en/activities-of-prosecution/crimes-against-humanity/4421.

183 Pettai and Pettai, *Transitional and Retrospective Justice in the Baltic States*, 75.

184 See Permanent Mission of the Republic of Lithuania to the United Nations (no. SN78-144, May 7, 2021), www.un.org/en/ga/sixth/76/universal_jurisdiction/lithuania_e.pdf. See also BNS, "Lithuanian Prosecutors Launch Probe into Regime Violence in Belarus," *LRT*, Dec. 9, 2020.

185 Pettai and Pettai, *Transitional and Retrospective Justice in the Baltic States*, 89.

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|----------------------|--|-------------|--|---|--|-----------------|------------------------|
| Lithuania (cont.) | | | international crimes have been introduced, such as war crimes and crimes against humanity. ¹⁸⁶ Following the amendments of the Criminal Code in 2003, the Special Division also deals with a pretrial investigation into all crimes against humanity, including genocide and war crimes, as well as criminal offenses against equal rights and freedom of conscience. ¹⁸⁷ | | | | |
| 22. Latvia (2 units) | The Special Investigative Arm of the Latvian Prosecutor General's Office, the Investigation Division for Crimes of the Totalitarian Regimes was set up in 1990. ¹⁸⁸ | | The investigative arm was tasked with investigations and prosecutions of crimes of the past committed during the Soviet era, including serious international crimes. | Temporary (It ceased to exist a few years after the Centre for the Documentation of the Consequences of Totalitarianism.) | | Historical unit | |

¹⁸⁶ Pettai and Pettai, *Transitional and Retrospective Justice in the Baltic States*, 76.

¹⁸⁷ The Prosecutor's Office—Lithuania, "Crimes Against Humanity."

¹⁸⁸ Pettai and Pettai, *Transitional and Retrospective Justice in the Baltic States*, 82.

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|----------------|--|--|--|---|--|-----------------|------------------------|
| Latvia (cont.) | The Centre for the Documentation of the Consequences of Totalitarianism initially operated under the Ministry of Justice, but from 1995, it has fallen under the Constitutional Protection Bureau (Intelligence Service). ¹⁸⁹ | The Centre employed professional historians. | The Centre was initially tasked with reviewing and preserving KGB material. From 1995, the Centre was granted pretrial criminal investigative powers. ¹⁹⁰ | Temporary (The Centre was restructured in 2008—and subsequently lost all its investigative powers.) | | Historical unit | |
| 23. Spain | According to information obtained from the EU Genocide Network, there is a form of specialized investigative capacity in Spain. ¹⁹¹ | | | | | N/A | |

¹⁸⁹ Pettai and Pettai, *Transitional and Retrospective Justice in the Baltic States*, 82.

¹⁹⁰ Pettai and Pettai, *Transitional and Retrospective Justice in the Baltic States*, 83.

¹⁹¹ Although one cannot speak of a dedicated unit or team in Spain, there are designated investigators that can handle investigations of core international crimes.

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