RESEARCH REPORT

Gearing Up the Fight Against Impunity

Dedicated Investigative and Prosecutorial Capacities

March 2022
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)
Gearing Up the Fight Against Impunity

Dedicated Investigative and Prosecutorial Capacities

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March 2022
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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 prosecu-
tion 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
cri mes 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
cri mes. 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 histori-
cal, 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
  Hercegovina)
• 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

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\(^1\) 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.

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**

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


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.

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 Pole 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

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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.


specialized units. 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.

Some countries, such as Austria, domesticated the Rome Statute but have decided against the establishment of a specialized unit. 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.

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9 Interview with Matevž Pezdirc, the head of the EU Genocide Network Secretariat, Oct. 25, 2021.
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.\(^\text{12}\) 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.\(^\text{13}\) 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.

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\(^{12}\) 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.

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 Argentineans.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.

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15 Ibid.
21 Interview with Dr. María Angeles Ramos, head prosecutor of the PCCH, Oct. 22, 2021.
22 Ministerio Público Fiscal, “Unidad Especializada para Casos de Apropación 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/.
23 Interview with Dr. María Angeles 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. In Argentina, there are two systems within the criminal system, namely the inquisitorial and adversarial systems, which operate concurrently. 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.

**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.

**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. The guidelines prioritize investigations of sexual violence during the dictatorship. Over time, the investigations expanded from a narrow

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24 Resolution PGN No. 14,42/13, Art. 4.
25 Interview with Dr. María Angeles Ramos.
26 Ibid.
28 Resolution PGN No. 14,42/13. 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 Angeles 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

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32 Interview with Dr. María Ángeles Ramos.
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.
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. 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. 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.

**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.

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.

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). 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.”

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45 Ibid., 4. This included, for instance, mass crimes at concentration camps and extermination camps in Poland.
46 Ibid.
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.
50 Ibid., 8.
51 Ibid., 5.
54 Ibid.
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.
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. 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. The WCC is a domestic chamber based in Sarajevo; it shares concurrent jurisdiction over atrocity crimes with various local courts. 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.

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.

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.

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. 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.

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

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71 Bogdan Ivančević, ICTJ, “The War Crimes Chamber in Bosnia and Herzegovina: From Hybrid to Domestic Court” (2008), 7.
72 Ibid.
74 Interview with Stephen Rapp.
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.”

**Composition**

Initially, the SDWC was composed of both international and national prosecutors. However, international prosecutors were phased out in 2012. 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. 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.

**Outcomes**

Between 2004 and 2017, some 473 war crimes proceedings had been initiated by the SDWC. 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. In 2018, a further 17 accused were convicted.

**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.

**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
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

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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).
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.
89 Interview with Commandant Jean-Pierre Chemaly, head of the Strategy and International Cooperation Division at the Central Office for Combatting Crimes against Humanity, 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.
96 Ibid., 18.
97 Finnin, “Surmonter les obstacles,” 47.
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.
sists. 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. 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.

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. So far, two people have been convicted, both for crimes of genocide and crimes against humanity on matters relating to the 1994 Rwandan genocide. TRIAL International’s 2021 report discloses that there are currently 14 cases under investigation, two trials pending, and one case referred to court.

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. 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.

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. 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. Today, Germany has two main special units that work together to give effect to its international obligations.

105 Interview with Jean-Pierre Chemaly.
106 Ibid.
107 Ibid.
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.”
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.”
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.”
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.

126 Ibid., 76.
127 Ibid.
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.”
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.  

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.

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.

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.

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.

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.

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.

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. The frequent rotation of investigators and prosecutors

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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.”
139 Ibid.
impacts continuity. The absence of a credible witness protection program has deterred victims and witnesses from coming forward. 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.

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. The TRC was empowered to grant amnesty to those who applied for it and made full disclosure of their crimes. 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.

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

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.

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. 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.

140 Interview with Sarah Kasande Kihika.
142 Promotion of National Unity and Reconciliation Act 34 of 1995.
143 Ibid., Sec. 3(1)(b).
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.
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.”

**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. However, the suspect does not have to be present in South Africa at the time of the launching of an investigation.

**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. The Missing Persons Task Team exercises both investigative and memorialization functions.

**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.

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. When attempts were made to pursue such cases, the police refused to provide investigators. 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.

**Outcomes**

The NPA’s annual reports (from 2005/06 to 2016/17) disclose little progress in the investigation and prosecution of the TRC cases. The NPA has also resisted invoking universal jurisdiction.
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.\(^{165}\)


\(^{161}\) See, for example, legal papers 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. 3544721, 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,” *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-002134.


\(^{165}\) 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. 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. 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. 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. 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.

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. 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.

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. 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.

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168 CVR, Informe Final, Tome IX, in Pérez-León, “Reparations and Prosecutions.”
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. 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.

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. However, cases were still not being investigated effectively, prompting the Prosecutor’s Office to assign 15 additional prosecutors to carry out human rights investigations.

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. 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.

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

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175 Report of the Ombudsman, no. 139.
176 Ibid. 126–139, 145–149.
178 Ibid.
179 Ibid.
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

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

www.ictj.org
In 2012, the PSNI announced that it would launch a murder investigation into the Bloody Sunday deaths, relying on a team of 30 detectives.\textsuperscript{191} However, the PSNI did not begin investigations, complaining that it lacked the necessary resources and expertise to investigate.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.”\textsuperscript{196} The initiative has been met with much criticism.\textsuperscript{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.\textsuperscript{198} Instead of criminal prosecutions, the British government is proposing the establishment of an independent truth-seeking body, similar to South Africa’s TRC.\textsuperscript{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.\textsuperscript{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.\textsuperscript{201}

\begin{footnotes}
\item[191] Northern Ireland Human Rights Commission, “Dealing with Northern Ireland’s Past.”
\item[192] Ibid.
\item[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.
\end{footnotes}
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. 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.

According to the PSNI, in January 2021 there was a total of 929 Troubles-related cases, involving 1,184 victims, including 33 active cases. 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.

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.

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. 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.” 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).

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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.”
208 Ibid., 472–476.
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. However, intimidation of witnesses and a lack of cooperation from the Kenyan government forced the ICC prosecutor to withdraw charges.

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. 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.

**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. 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. 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. The chambers were integrated into the Tunisian judicial system and formed part of the lower courts (Tribunal de première instance). The SCCs are mandated to deal with crimes...
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

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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.”
222 Belhassine, “Tunisie: Quel avenir.”
224 Interview with Kate Vigneswaran, prosecutor and international legal expert, Oct. 18, 2021.
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.\(^\text{229}\)

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.\(^\text{230}\) 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.\(^\text{231}\)

\(^{229}\) 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. In Serbia, the war crimes prosecutor is elected by the National Assembly of the Republic of Serbia.

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. In Sweden, the specialized unit within the Prosecutor’s Office has offices in Stockholm, Göteborg, and Malmö.

Sometimes specialized units are established in both the prosecutor’s office and the police (e.g., in France, Germany, and Sweden). 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.

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, while the unit in Denmark has been merged with the unit dealing with international economic crimes. 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.

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 anthropologists.
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 multidisciplinary approaches.247

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242 Korner, “Improving War Crimes Processing.”
244 Interview with Alexandra Lily Kather. See Ritscher, “Aktuelle Entwicklungen,” 599.
245 See the annex.
246 Interview with Jean-Pierre Chemaly.
plinary expertise. 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. 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.”

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. 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.”

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.”

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. 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.” 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.

**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. Police were growing increasingly dependent on prosecutors for legal advice because of increasing demands to tackle organized crime (particularly money laun-
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

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257 Ibid.
259 Kyprianou, “Comparative Analysis.”
263 Ibid.
264 Human Rights Watch, “The Long Arm of Justice.”
subdirectorate was that its work was intelligence-driven, making use of intelligence agents and informants. 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. 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. 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. 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. The DSO was a highly effective unit with a conviction rate of well over 90 percent. 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.

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. 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. According to Antony Altbeker, this integrated approach resulted in thorough case preparation and presentations in court, faster turnaround times, and higher convictions. The SCCU enjoys a conviction rate of over 90 percent. 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. Altbeker notes that tensions between detectives and prosecutors were handled with grace, professionalism, and competence. In relation to criticism that the integrated approach reduces the independence of SCCU prosecutors, Altbeker 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

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267 Schönteich, “Prosecution-Led Investigation.”
269 Schönteich, “Prosecution-Led Investigation.”
274 Ibid., 5–6.
275 Ibid.
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

279 European Center for Constitutional and Human Rights, “Structural Investigation.”
280 Interview with Alexandra Lily Kather.
282 Morten Bergsmo and Carsten Stahn, eds., Quality Control in Preliminary Examination: Volume 1 (Torkel Opsahl Academic Eublisher Brussels, 2018), 135.
283 Bergsmo and Stahn, Quality Control in Preliminary Examination, 135.
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 in 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

297 Interview with Matevž Pezdirc.
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. 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.” 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.

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. 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. In the UK, the Periodic Community Panels bring together representatives of the enforcement agencies, prosecutors, and NGOs to tackle important issues.

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. 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.

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.
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

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319 Ibid.
320 The PCCH in Argentina runs a very comprehensive website with statistics on the cases available: www.fiscales.gob.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.
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

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326 Interview with Jean-Pierre Chemaly.
328 For example, Germany, France, Belgium, the Netherlands, and Sweden. See Finnin, “Surmonter les obstacles,” 110.
331 Interview with Matevž Pezdirc.
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 UNODCC, “Mutual Legal Assistance (MLA),” www.unodc.org/en/organized-crime/module-11/key-issues/mutual-legal-assistance.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. 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.

Some countries require the approval of the government before instigating an investigation of an international crime committed in another country. For example, in Sweden, 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. 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.

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-

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338 Capítulo II, Anteproyecto de Ley de Memoria Democrática, Art. 29(2).
340 For example, Switzerland.
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 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

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343 Interview with Emmanuelle Marchand.
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.
**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. 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. Notwithstanding these requirements, inadequate support is often provided to victims by specialized units, with most services being outsourced to NGOs.

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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.”

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.

In doing so, specialized units allow for the long-term retention of knowledge and experience.

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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

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.
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 though 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:

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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


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

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372 Human Rights Watch, “These Are the Crimes We Are Fleeing.”
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.
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.\(^3\) 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.\(^3\)

**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.\(^3\)

**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.\(^3\)

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.\(^3\) He was accused of subjecting persons hors de combat to humiliating and degrading treatment by posing with

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\(^3\) Doughty Street Chambers, “German Court Convicts.”

\(^3\) Ibid.

the corpse of an enemy fighter and kicking the body of another in a video. 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. Vilus was convicted on the terrorism charges that were not investigated by the OCLCH. According to Commandant Jean-Pierre Chemaly, there are about 40 Syria-related cases that are currently on the books of the OCLCH.

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. 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.

Eight Lafarge executives, including former CEO Bruno Laffont, are also charged with financing a terrorist group and/or endangering the lives of others. 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.

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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.
390 Ibid.
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

<table>
<thead>
<tr>
<th>Country</th>
<th>Specialized Unit (including dedicated teams)</th>
<th>Composition</th>
<th>Mandate</th>
<th>Time Frame</th>
<th>Jurisdictional Basis for the Unit’s Operations</th>
<th>Type of Unit</th>
<th>Additional Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Australia (1 unit)</td>
<td>The Office of the Special Investigator (OSI) was established in 2020. It works alongside the Australian Federal Police.</td>
<td>A director-general is responsible for strategic oversight/leadership/operational matters. A special investigator is responsible for reviewing the findings of the Afghanistan Report. Two commanders lead the investigations. In addition, there are 50+ investigators and intelligence analysts.</td>
<td>The mandate encompasses: • investigating allegations of crimes • gathering evidence • where appropriate, referring briefs for consideration to the Commonwealth Director of Public Prosecution</td>
<td>At the time of writing, the office has been granted a temporary mandate.</td>
<td>Criminal offenses under Australian law arising from or related to any breaches of the Laws of Armed Conflict committed by Australian Special Forces in Afghanistan</td>
<td>Historical unit</td>
<td>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.” The OSI’s plan to gather evidence in Afghanistan has been hindered by the fall of the Afghan government in 2021.</td>
</tr>
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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.
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<tr>
<td>2. The United States (1 unit)</td>
<td>The Human Rights Violators and War Crimes Center (HRVWCC) was created in 2008.</td>
<td>The HRVWCC can initiate investigations. It is composed of special agents, attorneys, criminal research specialists, and historians.</td>
<td>The mandate of the Center entails investigations related to gross human rights violations, e.g.,: genocide, war crimes, torture, extrajudicial killings, recruitment of child soldiers, violations of religious freedom, female genital mutilation</td>
<td>Permanent</td>
<td>The HRVWCC can investigate if: the perpetrator is a U.S. citizen, the victim is a U.S. citizen, the perpetrator is located in the United States</td>
<td>New-generation unit</td>
<td>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. 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.</td>
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11 HRVWCC, “Safe Haven.”
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</table>
| England and Wales (3. England and Wales) | **Prosecution**
   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.  
   The SCCTD is mandated to deal with:
   • death in custody
   • terrorism
   • racial and religious hatred
   • war crimes
   • crimes against humanity
   • official secret cases
   • piracy and hijacking  
   Permanent  
   England and Wales have jurisdiction if:
   • 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)  
   **Police**
   The War Crimes Team (SO15) within the Metropolitan Police Counter Terrorism Command investigates serious international crimes.  
   SO15 is responsible for the investigation of all allegations of:
   • war crimes
   • crimes against humanity
   • genocide
   • torture  
   Permanent  
   New-generation unit  
   A series of international crimes prosecutions have been launched in England and Wales, but none of them led to sentences. Examples:  
   • Nepalese Kumar Lama—the former military commander allegedly implicated in torture—was acquitted of all charges in September 2016.  
   • 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.  

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<tr>
<td>England and Wales (cont.)</td>
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<td>• 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</td>
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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:
- 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:
- 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

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

Among the three cases, the court opened indictments against Thomas Kwoyelo, a commander of the Lord’s

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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).
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<tr>
<td><strong>Uganda</strong> (cont.)</td>
<td>The War Crimes and Anti-Terrorism Section is within Uganda's Directorate of Public Prosecutions. The Criminal Investigations Department (CID) of the Ugandan Police Force supports the ICD with investigations.</td>
<td>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.</td>
<td>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.</td>
<td>• 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</td>
<td>N/A</td>
<td>Resistance Army (LRA), for his role during attacks that killed and kidnapped civilians. 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.</td>
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<tr>
<td><strong>5. Canada</strong> (1 unit)</td>
<td>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 international crimes are defined by the Crimes Against Humanity and War Crimes Act (CAH-WCA): • war crimes • genocide</td>
<td>The alleged perpetrator must be present for the procedure to start in Canada if the crime was committed abroad by a foreigner.</td>
<td>N/A</td>
<td>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</td>
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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. | (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. | • crimes against humanity • torture Also included are breaches of military/superior responsibility, which can be prosecuted under universal jurisdiction when committed abroad by a foreigner. In 2013, the unit’s mandate was expanded and now includes other extraterritorial crimes beyond core international crimes. | The presence of the perpetrator is not required if: • 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 conflict | measures to take in a specific case, which might include immigration measures or criminal prosecutions. As of 2020, there were only two trials of universal jurisdiction cases completed in Canada, both linked to the genocide in Rwanda. 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. |
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<tr>
<td>Canada (cont.)</td>
<td>Police</td>
<td>The unit is staffed in part by specialized war crimes investigators.40</td>
<td>Permanent</td>
<td>Mixed-mandate unit</td>
<td>N/A</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>Canada (cont.)</td>
<td>The Extra-Territorial Response Unit within the Royal Canadian Mounted Police (RCMP) Sensitive and International Investigations Unit (SII Unit) deals with serious international crimes.</td>
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<tr>
<td>Canada (cont.)</td>
<td>The Department of Justice</td>
<td>The Crimes Against Humanity and War Crimes Section (DoJ CAHWC) also assists with serious international crimes cases.41</td>
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<tr>
<td>Canada (cont.)</td>
<td>The DoJ CAHWC assists the SII Unit during investigations by providing information and legal research assistance.42</td>
<td></td>
<td>N/A</td>
<td></td>
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<td>42</td>
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</tr>
<tr>
<td>Canada (cont.)</td>
<td>Once the investigation is over, it is transmitted to the DoJ CAHWC, which recommends charges to the Public Prosecution Service of Canada (PPSC).43</td>
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<tr>
<td>6. France (2 units)</td>
<td>Prosecution</td>
<td>The unit gathers five public prosecutors (Magistrats du Parquet) supported by three judicial analysts, four investigating judges (Juges d’Instructions), and six expert assistants. 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).</td>
<td>The CAH Unit within the PNAT and the OCLCH is mandated to investigate and prosecute: • crimes against humanity • war crimes • torture • enforced disappearance • crimes committed in Yugoslavia and Rwanda • crimes against cultural property during an armed conflict</td>
<td>Permanent</td>
<td>The specialized framework in France extends to: • 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 jurisdiction</td>
<td>New-generation unit</td>
<td>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. 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. Octovian Ngenzi and Tito Barahira were sentenced in appeal in July 2018. They were sentenced in 2016 for crimes against humanity.</td>
</tr>
<tr>
<td>6. France</td>
<td>Police</td>
<td>The prosecutorial unit is supported by the Central Office for Combatting Crimes Against Humanity, Genocide and War</td>
<td>The OCLCH is composed of approximately 40 people, including 30 investigators within the International Crimes Division and the Strategy and International Cooperation</td>
<td>Permanent</td>
<td></td>
<td>New-generation unit</td>
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</tbody>
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46 Finnin, “Surmonter les obstacles,” 47.
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.
## Countries with Specialized Units for Investigating International Crimes

<table>
<thead>
<tr>
<th>Country</th>
<th>Specialized Unit (including dedicated teams)</th>
<th>Composition</th>
<th>Mandate</th>
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<th>Type of Unit</th>
<th>Additional Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>France (cont.)</td>
<td>Crimes (OCLCH), a service attached to the French National Gendarmerie.</td>
<td>Division that work on serious international crimes. The OCLCH is headed by a brigadier general (Général de Brigade). The office is under the direction of the judicial police.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>genocide, and summary executions in the village of Kabarondo.</td>
</tr>
<tr>
<td>7. Germany (4 units)</td>
<td>Prosecution</td>
<td>The international crimes specialized unit is with Germany’s Office of the Federal Prosecutor (GBA). The international crimes specialized unit is located within the centralized office dealing with the espionage offenses</td>
<td>As of 2019, there were some 12 prosecutors working in the Specialized International Criminal Law Unit and approximately 20 investigators working in the ZBKV. Crimes falling under the universal jurisdiction in Germany are gathered in three categories: 1. Core crimes: • genocide • crimes against humanity • war crimes</td>
<td>Permanent</td>
<td>Germany has a pure universal jurisdiction that does not require a connection with Germany. 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.</td>
<td>New-generation unit</td>
<td>Between 2017 and 2019, the unit has carried out 105 investigations into crimes in countries like Syria, Iraq, Ivory Coast, and Mali. 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 crimes.</td>
</tr>
</tbody>
</table>

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52 Interview with Jean-Pierre Chemaly.


54 [German Federal Prosecutor’s Office website: www.generalbundesanwalt.de/DE/Home/home_node.html](http://www.generalbundesanwalt.de/DE/Home/home_node.html).


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<td></td>
<td>crimes and crimes against humanity.52</td>
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<tr>
<td></td>
<td>Police</td>
<td>The ZBKV is headed by a police inspector.64</td>
<td>2. Aggression 3. Other crimes55</td>
<td>Permanent</td>
<td>It is up to the discretion of the prosecutor.60</td>
<td>New-generation unit</td>
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<td>The trial cannot be in absentia.61</td>
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<tr>
<td></td>
<td>Immigration</td>
<td>BAMF shares information with the ZBKV and the regional criminal police (Landers).</td>
<td>Permanent</td>
<td></td>
<td>New-generation unit</td>
<td></td>
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</tbody>
</table>

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.
62 Duerr, “International Crimes.”
65 ZBKV website: [www.bka.de/EN/OurTasks/Remit/CentralAgency/ZBKV/zbkv_node.html](www.bka.de/EN/OurTasks/Remit/CentralAgency/ZBKV/zbkv_node.html).
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<tr>
<td>Germany (cont.)</td>
<td>has a specialized section on international crimes.66</td>
<td>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</td>
<td>It also shares information about potential witnesses and victims.67</td>
<td>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</td>
<td>The office “will continue running in its present form further on as long as there are prosecution tasks to fulfill.”70</td>
<td>Historical unit</td>
<td>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</td>
</tr>
</tbody>
</table>

66 Finnin, “Surmonter les obstacles,” 47.
67 Finnin, “Surmonter les obstacles,” 47.
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<tr>
<td>Poland</td>
<td>The Institute of National Remembrance (IPN) was established by the Parliament in December 1998 and started operating in 2000. 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. It is a separate unit that is structurally located within the Office of the Prosecutor.</td>
<td>The president of the institute is appointed by the Polish Parliament. The post has been previously headed by lawyers and professors. The commission is composed of 81 prosecutors, including seven prosecutors at the central level and 74 at the local level.</td>
<td>The IPN oversees the investigation of crimes committed from November 1917 to July 1990. Among other mandates, the IPN has an obligation to prosecute crimes against peace, crimes against humanity and war crimes, Nazi crimes, and communist crimes.</td>
<td>Permanent</td>
<td>The Chief Commission can lead investigations even when perpetrators are deceased to bring the truth to victims.</td>
<td>Historical unit</td>
<td>In 2020, the commission conducted 1,822 investigations, including 1,324 new cases. Five indictments were issued.</td>
</tr>
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</table>

76 Institute of National Remembrance, “Information on the Activities.”
77 Institute of National Remembrance, “Information on the Activities.”
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<tr>
<td>Poland</td>
<td>The commission has its headquarters in Warsaw and is decentralized, with local branches across the country.</td>
<td>The Specialized Section comprises three federal magistrates and the deputy federal prosecutor.</td>
<td>In terms of mandate, the Belgium jurisdictions are competent to try:</td>
<td>Permanent</td>
<td>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.</td>
<td>New-generation unit</td>
<td>As of 2019, five trials in relation to the 1994 genocide in Rwanda took place in Belgium. For the first time in Belgium, a person was sentenced for crimes of genocide in December 2019.</td>
</tr>
<tr>
<td>Belgium</td>
<td><strong>Prosecution</strong>&lt;br&gt;The Specialized Section of the Federal Public Prosecutor office (Parquet Fédéral) deals with serious international crimes. There is no dedicated investigative judge for international crimes.</td>
<td></td>
<td>In some cases, a victim can launch the opening of an investigation by filing a complaint to the investigative judge.</td>
<td>Permanent</td>
<td>Permanent</td>
<td>New-generation unit</td>
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82 Finnin, “Surmonter les obstacles,” 27.
83 Finnin, “Surmonter les obstacles,” 27.
87 Finnin, “Surmonter les obstacles,” 27.
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<tr>
<td>Belgium (cont.)</td>
<td><strong>Police</strong>&lt;br&gt;A special unit exists within the federal police of Brussels, which is called the 7th Investigation Service of the Federal Judicial Police.</td>
<td>As of 2020, the 7th Investigation Service of the Federal Judicial Police had seven investigators.(^{89})</td>
<td>The section deals with crimes against humanity, genocide, and war crimes.(^{90})</td>
<td>Permanent</td>
<td>New-generation unit</td>
<td><strong>Federal Ministry of Justice</strong>&lt;br&gt;In 2014, the Belgian Task Force for International Criminal Justice was set up within the Federal Ministry of Justice.</td>
<td>It coordinates and exchanges information on international crimes.(^ {91})</td>
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<tr>
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<tr>
<td>Denmark (cont.)</td>
<td>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).&lt;sup&gt;95&lt;/sup&gt;</td>
<td>The Danish police and the prosecution service are not separated. Also, prosecutors are in charge of both branches.&lt;sup&gt;96&lt;/sup&gt;</td>
<td>• war crimes • other serious crimes committed outside Denmark • financing of terrorists&lt;sup&gt;97&lt;/sup&gt;</td>
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<tr>
<td>11. Sweden (2 units)</td>
<td><strong>Prosecution</strong>&lt;br&gt;The International Division of the Prosecutor’s Office is the specialized unit dealing with serious international crimes, with offices in Stockholm, Göteborg, and Malmö.</td>
<td>There are 15 prosecutors in total.&lt;sup&gt;98&lt;/sup&gt;</td>
<td>Sweden has a specialized unit to investigate international crimes:&lt;br&gt;• crimes against humanity&lt;br&gt;• war crimes&lt;br&gt;• genocide</td>
<td>Permanent</td>
<td>Sweden has absolute universal jurisdiction and does not need the presence of the suspect to initiate prosecutions.&lt;sup&gt;99&lt;/sup&gt; The universal jurisdiction extends to all crimes in the criminal code engaging a sentence of more than four years.&lt;sup&gt;100&lt;/sup&gt; One innovative practice of these jurisdictions is the possibility for the trials to take place outside of Sweden. That was notably New-generation unit</td>
<td>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.&lt;sup&gt;101&lt;/sup&gt; The convictions on the Syrian conflict included a former Syrian army solider,</td>
<td></td>
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<sup>96</sup> Christensen, “International Prosecution and National Bureaucracy,” 159.
<sup>97</sup> Prosecution Service, “State Prosecutor for Special Economic and International Crime.”
<sup>98</sup> Finnin, “Surmonter les obstacles,” 94.
<sup>100</sup> Finnin, “Surmonter les obstacles,” 94.
<sup>101</sup> Bjurström, “Sweden on the Frontline with Syria Cases.”
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<tr>
<td>Sweden</td>
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<td>the case of a district court (tingsratt) and an Appeal Court (hovratter) that opened in Rwanda.</td>
<td>Permanent</td>
<td>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.</td>
</tr>
<tr>
<td>Sweden</td>
<td>Police</td>
<td>As of 2020, the unit comprised 15 investigators and two analysts. They work closely with two agents of the police intelligence, who work exclusively on serious international crimes.</td>
<td>The unit handles serious international crimes.</td>
<td>Permanent</td>
<td>New-generation unit</td>
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</tr>
<tr>
<td>Switzerland</td>
<td>12. Switzerland</td>
<td>Until 2015, there existed the Special War Crimes Office in the Office of the Attorney General of Switzerland (OAG).</td>
<td>The Mutual Legal Assistance and International Criminal Law (RV) Division is responsible for: • the execution of all requests for mutual legal assistance</td>
<td>Permanent</td>
<td>Mixed-mandate unit</td>
<td></td>
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<tr>
<td>Switzerland</td>
<td>12. Switzerland</td>
<td>As of 2019, more than 60 cases had been referred to the International Crimes Unit since 2011.</td>
<td>Switzerland has universal jurisdiction over core crimes when they are committed abroad by a foreigner against foreign nationals: • genocide • crimes against humanity</td>
<td>As of 2019, more than 60 cases had been referred to the International Crimes Unit since 2011.</td>
<td>Universal jurisdiction prosecutions have historically been rare in Switzerland,</td>
<td></td>
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</tbody>
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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.
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</table>
| Switzerland  | 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 |             | • 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 cybercrime 110 |            | • war crimes  
• enforced disappearance 112 |             | 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 Prosecutor v. Niyonzima. 115 |

In the case of enforced disappearance, the cantonal public prosecutors of the 26 cantons have jurisdiction. 111

A suspect must be present in the territory to launch the investigation, but the investigation remains open after a suspect leaves Switzerland. 113

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

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<td>Norway</td>
<td><strong>Prosecution</strong>&lt;br&gt;The National Authority for Prosecution of Organized and Other Serious Crimes (NAPO) specializes in international crimes.¹¹⁷</td>
<td>Public prosecutors specialized in international crimes at NAPO.</td>
<td>Norway can try: &lt;ul&gt;&lt;li&gt;acts punishable under the law of the country in which the crimes were committed&lt;/li&gt;&lt;li&gt;war crimes&lt;/li&gt;&lt;li&gt;genocide&lt;/li&gt;&lt;li&gt;crimes against humanity&lt;/li&gt;&lt;li&gt;breach of the laws of war&lt;/li&gt;&lt;li&gt;enforced disappearance&lt;/li&gt;&lt;li&gt;organized crimes¹¹⁸&lt;/li&gt;&lt;/ul&gt;</td>
<td>Permanent</td>
<td>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</td>
<td>Mixed-mandate unit</td>
<td></td>
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<tr>
<td></td>
<td><strong>Police</strong>&lt;br&gt;The International Crimes Section within the National Criminal Investigation Service (KRIPOS) is responsible for investigating international crimes.¹²⁰</td>
<td>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</td>
<td>Permanent</td>
<td>New-generation unit</td>
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| Finland | The Homicide and Serious Crimes Unit of the National Bureau of Investigation (NBI) oversees international crimes. | 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. | The NBI is mandated to investigate:  
- organized crime  
- crimes against humanity  
- genocide  
- war crimes  
- torture | 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. | 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. |

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</table>
| 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. | The Netherlands has jurisdiction over the following crimes:  
• war crimes  
• torture  
• crimes against humanity  
• genocide  
• enforced disappearances | Permanent | Universal jurisdiction is limited in a sense that there must be a link to the Netherlands:  
• the perpetrator is a Dutch national  
• the crimes were committed against a Dutch national  
• the alleged perpetrator is present in the Netherlands | New-generation unit | The cases included crimes committed in Afghanistan, Bosnia and Herzegovina, Croatia, DRC, Ethiopia, Georgia, Iraq, Liberia, Rwanda, Sri Lanka, and Syria. Among others, the convictions include:  
• 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 2013 |
|               | 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). | Permanent | New-generation unit |  |  |
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<td>The Netherlands (cont.)</td>
<td>Immigration</td>
<td>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).</td>
<td>Permanent</td>
<td>New-generation unit</td>
<td></td>
<td>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.</td>
</tr>
<tr>
<td>16. Serbia (2 units)</td>
<td>Prosecution</td>
<td>The Office of War Crimes Prosecutor of the Republic of Serbia (OWCP) was set up in 2003. The OWCP is divided into three teams based on the geographical areas where the war crimes occurred—Croatia, BiH, and Kosovo.</td>
<td>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</td>
<td>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.</td>
<td>Historical unit</td>
<td>Between 2003 and 2018, 192 people have been charged, including 121 people convicted and 43 acquitted.</td>
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137 Finnin, “Surmonter les obstacles,” 81.
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<td>Serbia (cont.)</td>
<td>They were all created in 2003 by the Law on War Crimes.</td>
<td>prosecutors, and support staff.</td>
<td>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 Social Federal Republic of Yugoslavia.</td>
<td>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.</td>
<td>Historical unit</td>
<td>The National Strategy for the Prosecution of War Crimes in Serbia (the National War Crimes Strategy) was adopted in 2016.</td>
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<tr>
<td>Police</td>
<td>The WCIS is under the authority of the Ministry of the Interior. As of 2015, the WCIS had 49 employees, including 16 investigators, 10 analysts, and nine officers.</td>
<td></td>
<td></td>
<td>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.</td>
<td>Historical unit</td>
<td></td>
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<tr>
<td>Bosnia and Herzegovina (1 unit)</td>
<td>Prosecution</td>
<td>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</td>
<td>The SDWC deals with crimes emerging from the 1992–1995 conflict. As such, it is mandated to prosecute war crimes, crimes against humanity,</td>
<td></td>
<td>Historical unit</td>
<td>Between 2004 and 2017, some 473 war crimes proceedings had been initiated by the SDWC. By November 2017, 66 cases had been adjudicated, resulting in the conviction of 83 individuals, the acquittal of</td>
<td></td>
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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).
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<tr>
<td>Bosnia and Herzegovina (cont.)</td>
<td>but started its operations in 2005.152</td>
<td>investigators), and four analysts.153</td>
<td>and genocide as defined in the Penal Code.155</td>
<td></td>
<td>Permanent</td>
<td>Historical unit</td>
<td>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</td>
</tr>
<tr>
<td>Argentina (2 units)</td>
<td>At the federal level, there exists the Office of the Prosecutor for Crimes against Humanity (PCCH) established by the Argentinian attorney general. In addition, there are approximately 10 specialized units that have been created in the regions.</td>
<td>The PCCH at the federal level comprises approximately 21 people, including sociologists, anthropologists, lawyers, historians, and experts in communication.</td>
<td>The PCCH has mandate over crimes that have been committed on Argentinian territory during the dictatorship that lasted from 1976 to 1983.158</td>
<td>Permanent</td>
<td>Principle of territoriality</td>
<td>Historical unit</td>
<td>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</td>
</tr>
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155 Bogdan Ivanišević, ICTJ, “The War Crimes Chamber in Bosnia and Herzegovina: From Hybrid to Domestic Court” (2008), 7.
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<td>Argentina (cont.)</td>
<td>There is no specialized unit to deal with universal jurisdiction cases in Argentina.</td>
<td>There are around 10 units in these jurisdictions that have an average of 15 people working and a total of 30 prosecutors.(^{160})</td>
<td>The unit’s mandate includes the following: • 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</td>
<td>Permanent</td>
<td>Principle of territoriality</td>
<td>Historical unit</td>
<td>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})</td>
</tr>
</tbody>
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160 Interview with Dr. María Ángeles Ramos, head prosecutor of the PCCH, Oct. 22, 2021.
162 Resolution 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.
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<tr>
<td>Argentina</td>
<td></td>
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<td>• analyzing and keeping up to date with national and international jurisprudence. Carry out preliminary investigations on alleged acts of kidnapping. Prepare periodic reports on the status of cases.</td>
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<td>Argentina</td>
<td>(cont.)</td>
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<td>19. Croatia</td>
<td>Prosecution</td>
<td>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.</td>
<td>The Croatian Criminal Code was amended in 2004 to add international crimes: 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.</td>
<td>Principle of territoriality. The Croatian courts use in absentia.</td>
<td>Historical unit</td>
<td>As of 2017, the Croatian judicial system had delivered a total of 141 war crimes verdicts. 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.</td>
<td></td>
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164 Ministerio Público Fiscal, “Unidad Especializada para Casos de Apropiación de Niños durante el Terrorismo de Estado (UFICANTE).”
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<td>Croatia (cont.)</td>
<td>adopted “The Strategy for the Investigation and Prosecution of War Crimes Committed in the Period 1991–1995.”(^{171}) 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.</td>
<td>Several cases were referred by the ICTY.(^{173})</td>
<td>Permanent</td>
<td>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,</td>
<td>Mixed-mandate unit</td>
<td>Croatian Serbs have been the target of physical attacks and hate speech.(^{174})</td>
<td></td>
</tr>
<tr>
<td>20. South Africa (2 units)</td>
<td>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})</td>
<td>The PCLU manages and directs the investigation and prosecution of: • crimes outlined in the Rome Statute of the International Criminal Court Act, Act No. 27 of 2002</td>
<td>Permanent</td>
<td>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,</td>
<td>Mixed-mandate unit</td>
<td>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</td>
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<td>South Africa</td>
<td></td>
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<td>• serious international and national crimes against the state (i.e., terrorism, espionage)</td>
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<td>is present in the territory of the republic.</td>
<td>Permanent</td>
<td>or no information on the investigations and prosecutions of TRC cases.</td>
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<td>(cont.)</td>
<td></td>
<td></td>
<td>• the nonproliferation of nuclear, chemical and biological weapons</td>
<td></td>
<td>The suspect must be present in South Africa to proceed with the prosecution but not to launch the investigation.</td>
<td></td>
<td>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.</td>
</tr>
<tr>
<td>Police</td>
<td>The Directorate for the Priority Crimes Investigations (DPCI) is within the South African Police Service.</td>
<td></td>
<td>The mandate includes the combating, investigation, and prevention of national priority crimes such as serious organized crime, serious commercial crime, and serious corruption in</td>
<td></td>
<td></td>
<td>Mixed-mandate unit</td>
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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.


180 The reopened inquests are in the matters of Ahmed Timol, Hoosen Haffejee, 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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<td>South Africa (cont.)</td>
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<td>terms of Section 17B and 17D of the South African Police Service Act, 1995, as amended. TRC cases have been declared priority cases.</td>
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<td>21. Lithuania (1 unit)</td>
<td>The Special Investigations Division of the Prosecutor General’s Office of the Republic of Lithuania was established in 1991.</td>
<td></td>
<td>The division was initially established to conduct preliminary investigations into Soviet- and Nazi-era crimes. 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. The law was repealed when subsequent amendments to the Criminal Code were introduced. New categories of serious crimes were added.</td>
<td>Permanent</td>
<td>Lithuania can exercise universal jurisdiction over war crimes and crimes against humanity, under some circumstances.</td>
<td>Mixed-mandate unit</td>
<td>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.</td>
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<td><strong>Lithuania</strong> (cont.)</td>
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<td>international crimes have been introduced, such as war crimes and crimes against humanity. 186</td>
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<td>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</td>
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<tr>
<td><strong>22. Latvia</strong> (2 units)</td>
<td>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</td>
<td></td>
<td>The investigative arm was tasked with investigations and prosecutions of crimes of the past committed during the Soviet era, including serious international crimes.</td>
<td>Temporary (it ceased to exist a few years after the Centre for the Documentation of the Consequences of Totalitarianism.)</td>
<td></td>
<td>Historical unit</td>
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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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<td>Latvia</td>
<td>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).&lt;sup&gt;189&lt;/sup&gt;</td>
<td>The Centre employed professional historians.</td>
<td>The Centre was initially tasked with reviewing and preserving KGB material. From 1995, the Centre was granted pretrial criminal investigative powers.&lt;sup&gt;190&lt;/sup&gt;</td>
<td>Temporary (The Centre was restructured in 2008—and subsequently lost all its investigative powers.)</td>
<td>Historical unit</td>
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<tr>
<td>23. Spain</td>
<td>According to information obtained from the EU Genocide Network, there is a form of specialized investigative capacity in Spain.&lt;sup&gt;191&lt;/sup&gt;</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>N/A</td>
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<sup>189</sup> Pettai and Pettai, *Transitional and Retrospective Justice in the Baltic States*, 82.<br><sup>190</sup> Pettai and Pettai, *Transitional and Retrospective Justice in the Baltic States*, 83.<br><sup>191</sup> Although one cannot speak of a dedicated unit or team in Spain, there are designated investigators that can handle investigations of core international crimes.