



Between Hope and Despair

A Way Forward after the Koblenz Trial

March 2022

Syria Justice and
Accountability Centre



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The Syria Justice and Accountability Centre

About the Syria Justice and Accountability Centre

The Syria Justice and Accountability Centre (SJAC) strives to prevent impunity, promote redress, and facilitate principled reform. SJAC works to ensure that human rights violations in Syria are comprehensively documented and preserved for use in transitional justice and peace-building. SJAC collects documentation of violations from all available sources, stores it in a secure database, catalogues it according to human rights standards, and analyzes it using legal expertise and big data methodologies. SJAC also supports documenters inside Syria, providing them with resources and technical guidance, and coordinates with other actors working toward similar aims: a Syria defined by justice, respect for human rights, and rule of law. Learn more at syriaaccountability.org

In monitoring and analyzing the Koblenz Trial, SJAC received invaluable support from the International Research and Documentation Centre for War Crimes Trials (ICWC) at the University of Marburg, Germany. The interdisciplinary research center focuses on collecting and documenting war crimes trials, legal research, and hosting regular conferences. ICWC also assisted in drafting this report in relation to applicable German legal framework.

Learn more at syriaaccountability.org

Cover picture: Anwar Raslan entering the courtroom in handcuffs on December 2, 2021 (c) AFP/Pool/Thomas Frey

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The Court Building of the Higher Regional Court in Koblenz © SJAC

Executive Summary

Executive Summary

“Between Hope and Despair - A Way Forward after the Koblenz Trial” is a report by the Syria Justice and Accountability Centre which critically assesses the participation of survivors in the trial of Anwar Raslan and Eyad Al-Gharib. The Trial started on April 23, 2020 and was the first trial against former affiliates of the Syrian government. It highlighted the bravery of survivors who testified about their traumatic experiences and the importance of witness testimonies in bringing to justice perpetrators of atrocity crimes in Syria. Just as [SJAC’s interim report](#) on the Trial, the present report relies on SJAC’s detailed monitoring of the trial. In addition, information provided by the public through an online survey supports the assessment and concrete findings in this report in regard to public perception and experiences of the Syrian community. This report presents lessons learned and makes recommendations relating to overall effective participation of survivors in universal jurisdiction proceedings:

- The Koblenz Trial was a first step towards justice and accountability for Syria. It showed that justice can only be achieved through effective inclusion of survivors and members of civil society as witnesses, plaintiffs, and trial attendees.
- Survivors of international crimes are often unaware of their options to participate in domestic criminal proceedings, and the different rights and duties that accompany the role of witnesses or plaintiffs.
- Recounting traumatic experiences through testimonies poses a high risk of re-traumatization for survivors. Effective measures to reduce this risk during investigations and in court are often not apparent and difficult to access.
- Many witnesses expressed concerns about their own and their families’ safety. Several witnesses withdrew their participation in the Trial, while others were anonymized in court. UJ trials present significant challenges for authorities seized with witness protection and require a flexible application of available measures.
- Adequate foreign language interpretation is essential to correctly reproduce witness testimonies and to ensure the right to a fair and public trial. Courts and prosecuting authorities seized with UJ cases must be cognizant of the complexity of foreign languages and the demanding work of interpreters.
- The Syrian community faced several hurdles in following the trial in the courtroom and from afar. These included a denial of access to in-court interpretation and a lack of communication with the public by relevant authorities.

Recommendations:

- ▶ A centralized domestic chambers should be established within the existing domestic judiciaries of countries prosecuting crimes under UJ to ensure the unique requirements of trials with an international dimension proceed fairly and efficiently and that lessons from prior UJ trials are consolidated within the institutional memory of domestic courts.
- ▶ Each state prosecuting atrocity crimes under UJ should establish a domestic task force to continuously monitor and analyze UJ proceedings to improve policies and legislation, as well as share important lessons learned with other states.
- ▶ Survivors of atrocity crimes must be offered psychosocial support at the earliest stage of prosecutions that is continued throughout the proceedings.
- ▶ Courts seized of UJ cases should consider how to engage in public outreach to communities most affected by the alleged crimes – including through translation services and providing open access to court proceedings and decisions.
- ▶ Prosecutors and courts must work together to establish practical policies on the use of witness protection measures, balancing the requirements of a public trial and potential dangers faced by witnesses.
- ▶ Given the special circumstances surrounding UJ trials, courts seized of such cases must receive capacity building and financial assistance to adequately address the needs of the affected communities and conduct fair and efficient trials.



The Court Building of the Higher Regional Court in Koblenz © SJAC

Introduction

Introduction

On January 13, 2022, the first trial of Syrian government officials ended in Koblenz, Germany. The trial which started on April 23, 2020, was held over a total of 110 trial days and resulted in two convictions. On February 24, 2021, [Eyad Al-Gharib was sentenced](#) to four and a half years imprisonment for 30 counts of aiding and abetting torture as crimes against humanity. Then on January 13, 2022, [Anwar Raslan was sentenced](#) to life imprisonment for co-perpetrating crimes against humanity in 4,000 cases of torture and deprivation of liberty, two cases of sexual violence, and 27 killings. Under German law, these judgments will only be considered final after all appeals have been exhausted.

Because Syria is not a state party to the Rome Statute and the UN Security Council remains deadlocked on a referral of the matter to the International Criminal Court (ICC), victims have been forced to rely on prosecutions under universal jurisdiction (UJ) to fill the impunity gap. The trial of Anwar Raslan/Eyad Al-Gharib in Koblenz marked an important precedent in international justice, as it was the first trial of former officials of the Syrian government. However, it has not proceeded without challenges and controversy. Based on [SJAC's detailed monitoring](#) of the Koblenz Trial, an [interim report](#) surveyed the legal and policy issues surrounding the trial on its one year anniversary and offered proposals to ensure that the Koblenz proceedings and its predecessors are transparent, inclusive, fair, and efficient.

Upon the completion of the trial against the main defendant, Anwar Raslan, this present report assesses the proceedings through the eyes of those who survived the crimes at heart of the trial and who participated as witnesses and plaintiffs, as well as those who followed the proceedings from afar. In doing so, SJAC seeks to amplify the voices of Syrian survivors. Based on the experiences that witnesses, plaintiffs, and the public audience shared with SJAC, in addition to SJAC's observations while monitoring every session of the two-year long trial, this report analyzes critical aspects of victim participation and support, as well as public communication during investigations and trial proceedings. Finally, this report provides recommendations and proposals to ensure that future proceedings are sensitive to the needs of survivors and effectively contribute to transitional justice for Syria.



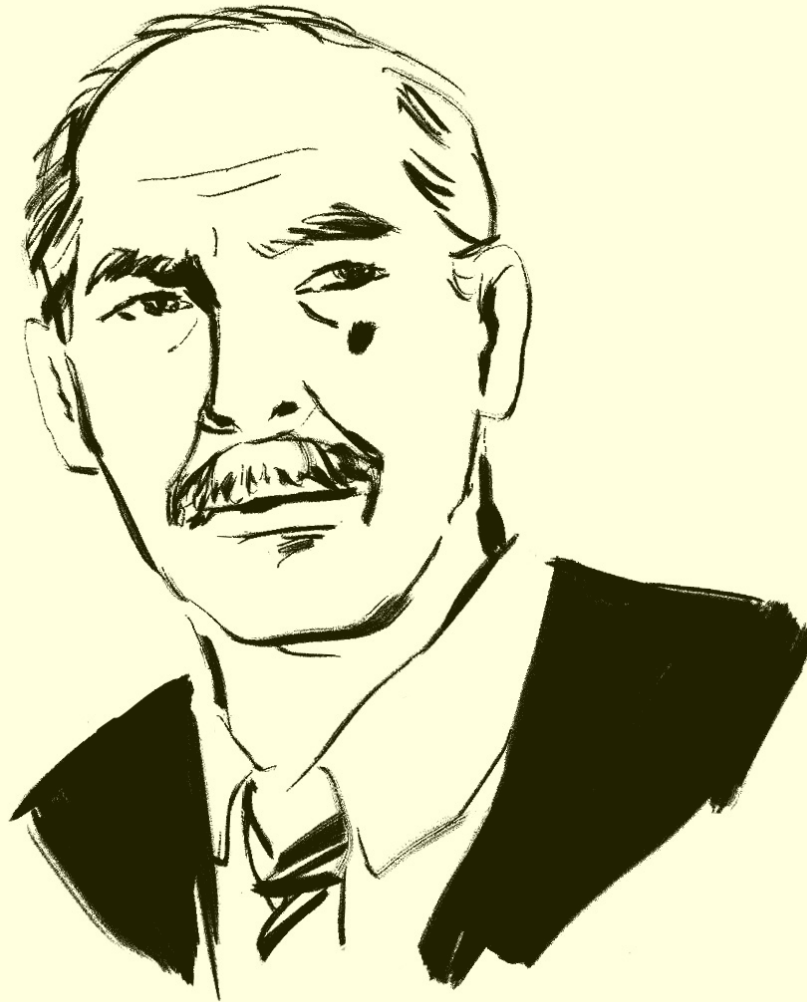


Illustration of Anwar R. © Rachel Ma

Methodology

Methodology

In order to better understand how survivors of atrocity crimes committed in Syria can effectively participate in and benefit from UJ trials, SJAC closely followed the proceedings in Koblenz. Further, SJAC conducted an online survey to understand the challenges faced by the public audience in following the Trial from afar. The framework of the survey is explained below, and the results and detailed analyses are incorporated into the various chapters of this report and explored through visualizations to illustrate the findings and observations.

Identification of Challenges

SJAC's trial monitors—who between them speak German, English, and Arabic—attended every day of the Koblenz proceedings over the course of the two-year long trial, taking detailed notes by hand and later transcribing these notes into reports available in English and Arabic. English reports reached a combined total of 1,500 pages and were made public throughout the proceedings. Reports were later reviewed by the International Research and Documentation Centre for War Crimes Trials (ICWC) to ensure that German legal procedures were accurately described. Based on its detailed monitoring of the Trial, SJAC identified several challenges relating to direct and indirect victim participation. SJAC's observations and analysis on these aspects are detailed in each chapter of this report, along with relevant domestic and international legal background. While the identified challenges were visible in the trial proceedings, the wider context relates to all stages of prosecuting international crimes: from identifying witnesses to investigations to trials.

Public Online Survey

An online survey available in English, Arabic, and German was designed to learn more about how survivors and others interested in the Trial followed the proceedings and to understand the challenges they faced. The survey was available online from September 29, 2021 until January 12, 2022. Based on SJAC's observations from monitoring the Trial in-court, public discussions of the Trial, and the feedback received from readers of SJAC's trial reports, the questions of the survey focused on challenges relating to available information in different languages and communication by German authorities involved in the trial. The survey also sought to measure the general public perceptions of the Trial relating to victim participation, cultural awareness, and overall contribution to justice in the eyes of Syrians.

After a series of general questions about the participants' age, place of residency, and first language, participants were asked in which capacity they followed the Trial, how they followed it, and whether they encountered difficulties following the Trial. Conclusionary questions then covered the participant's evaluation of outreach by German authorities and the Trial in general. Every participant also had the chance to add remarks regarding the trial or the survey using text boxes at the end of the survey. A total of 155 people participated in the survey. Twenty-six of them in English, 121 in Arabic, and eight in German.



People Standing together in front of a Syrian Flag © Lens Young Dimashqi

Victim Participation

Victim Participation

The Koblenz Trial made history by being the first trial to see the introduction of the Caesar-Files, the photos of dead prisoners smuggled out of Syria by a defecting soldier under the pseudonym “Caesar”.¹ While these photos sometimes included victims held at Branch 251, by far the most important pieces of evidence at trial were the testimonies of 89 witnesses, including 13 insiders and 11 experts on different subjects, such as Syrian law and history. German government employees also testified on the Defendants’ asylum interviews and other administrative aspects of the two cases. Twelve members of various German criminal police offices testified as well. They detailed the investigation phase, analyzed evidence, summarized witness interviews in situations when witnesses declined to appear in court. They also provided clarification when contradictions arose between a witness’ statement and testimony. The vast majority of the witnesses who testified in-person at the Koblenz Trial were former detainees or close relatives of former detainees at Branch 251.

Victims as Witnesses

The number of witnesses who participated in the proceedings points to the crucial role that witnesses, particularly survivors, play in judicial processes. During the investigative phase, they provide law enforcement authorities and prosecutors with valuable information. In Germany, victims of crimes are therefore obliged to cooperate and follow the summons of police,

prosecutors, and courts to act as witnesses in a criminal case.² They can only decline a summons if they are residing abroad.³ Several witnesses who were residing outside of Germany and were summoned to appear at Koblenz Trial made use of this right and declined to testify in court.⁴ Their testimonies were instead introduced in court by the investigator who questioned them prior to the trial.⁵ In cases where foreign witnesses were previously questioned by foreign police, a translation of the transcript of their questioning was read out in court.⁶ In both of these scenarios, however, the evidentiary value of a witness’ testimony was significantly reduced since the witness could not be directly questioned by the parties.

Given this background, it is crucial to inform victims about proceedings beyond their initial interview by authorities, as well as their rights as witnesses during criminal proceedings at the earliest stage possible.⁷ These rights include psychosocial support (*see* Chapter 6) and access to protection mechanisms (*see* Chapter 5), as well as the right to be accompanied by counsel during any interviews and testimonies.⁸ This is particularly relevant for witnesses in cases with an international component since they are often unfamiliar with the legal system of the prosecuting state and cannot exercise their rights effectively without representation.

Victims as Plaintiffs

In Germany, survivors and close relatives of victims of grave crimes have the right to actively join criminal proceedings as plaintiffs.⁹ German law allows redress for the harm caused by the charged crimes. More than twenty survivors and close relatives of former detainees at Branch 251 joined the Koblenz Trial as plaintiffs. This role equipped them with various tools to actively engage in the trial. Unlike regular witnesses who are not allowed to attend any trial days until their own testimony or access information from the case file,¹⁰ plaintiffs are allowed to attend every trial day. Nonetheless, plaintiffs are usually advised not to attend any trial days before their own testimony to keep their testimony as genuine as possible. Additional rights of plaintiffs¹¹ include: the right to legal representation through a plaintiff counsel; the right to question witnesses, experts, and if applicable the Defendant; the right to request the taking of additional evidence; the right to provide statements; the right to access to simultaneous interpretation in court and the translation of important documents; and the right to appeal to the judgment.

Victims can join a case as plaintiffs at any stage of the proceedings. Several witnesses in the Koblenz Trial decided to join as plaintiffs during the course of the trial¹² while others waived their rights as plaintiffs and disconnected themselves from the proceedings.¹³ The Judges in Koblenz decided on the admission of victims as plaintiffs very quickly¹⁴ which allowed them to exercise their rights at the earliest stage possible. All plaintiffs were represented by counsel to exercise their rights throughout the proceedings. Seven plaintiff counsels regularly attended the proceedings and

submitted requests on behalf of their clients, such as the motion to add sexual violence¹⁵ as a crime against humanity to the charges. They also frequently questioned witnesses. Therefore, the participation of plaintiffs in Koblenz was fairly robust.



Limitations on the Rights of Participation

Although victims are afforded the right to representation, the right to have counsel appointed at the state's expense is more limited in cases involving international crimes. In German trials for ordinary crimes, victims are entitled to join as plaintiffs without any assessment of their individual situation¹⁶ and are entitled to have representation paid for by the state¹⁷ irrespective of the outcome of the trial and the financial situation of the victim. This is not the case in trials under the German Code of Crimes against International Law, a discrepancy that has been criticized,¹⁸ based on the fact that it falls short

of acknowledging the suffering of victims of international crimes, limiting their participation rights in certain instances, and discouraging them from participating due to uncertainties about financing their legal representation.

At the same time, critics argue that the seemingly prosecutorial role of plaintiffs causes imbalance and delays in criminal trials.¹⁹ The Defense in Koblenz also complained that they only limited resources to conduct their own investigations regarding exculpatory witnesses as compared to prosecutors and police.²⁰

Nonetheless, fair trial rights for the accused should not be enforced at the expense of victims but rather by strengthening the position of the accused, for example, through additional counsel.²¹ Certain reforms have been introduced to address issues of trial delays and power imbalances in criminal trials due to the participation of plaintiffs, such as the bundling of plaintiff representation.²² But it is not yet clear whether these will strike the right balance between fairness and efficiency.

In addition, more extensive information dissemination to survivors about their rights at the earliest stage possible is crucial. This not only relates to information provided by police or prosecutors at the first questioning, but also to pro-active multilingual information to the public. The latter also ensures engagement of witnesses in general, beyond the participation of certain victims.

SJAC’s online survey on public perceptions of the Koblenz Trial and the personal information

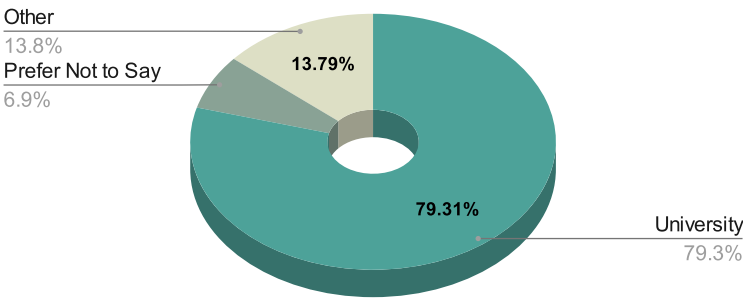
provided by plaintiffs and witnesses during the Trial indicate that most Syrians who heard about the Trial or participated therein have at least a university degree.

Multilingual outreach on different platforms and information about participation rights and procedures during asylum interviews are crucial to enable *all* victims to exercise their rights and to ensure that not only those who are following accountability efforts are connected to people involved therein, or able to understand publicly accessible foreign-language information.

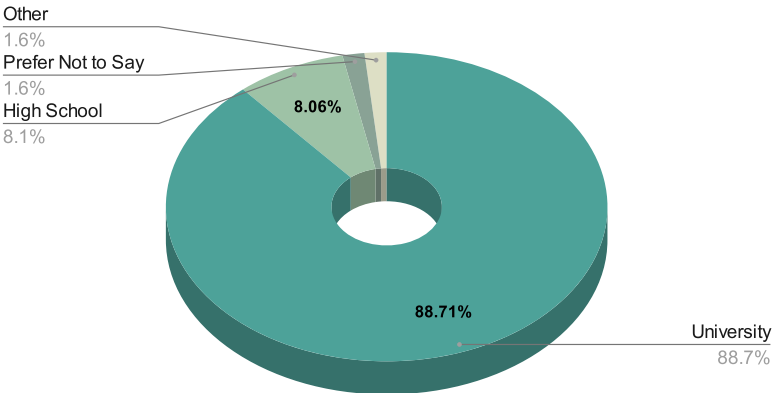
Nothing but the Truth

Regardless of how potential witnesses first hear about investigations and decide to participate

Non-Arabic Speakers: Educational background of those who are aware of the trial



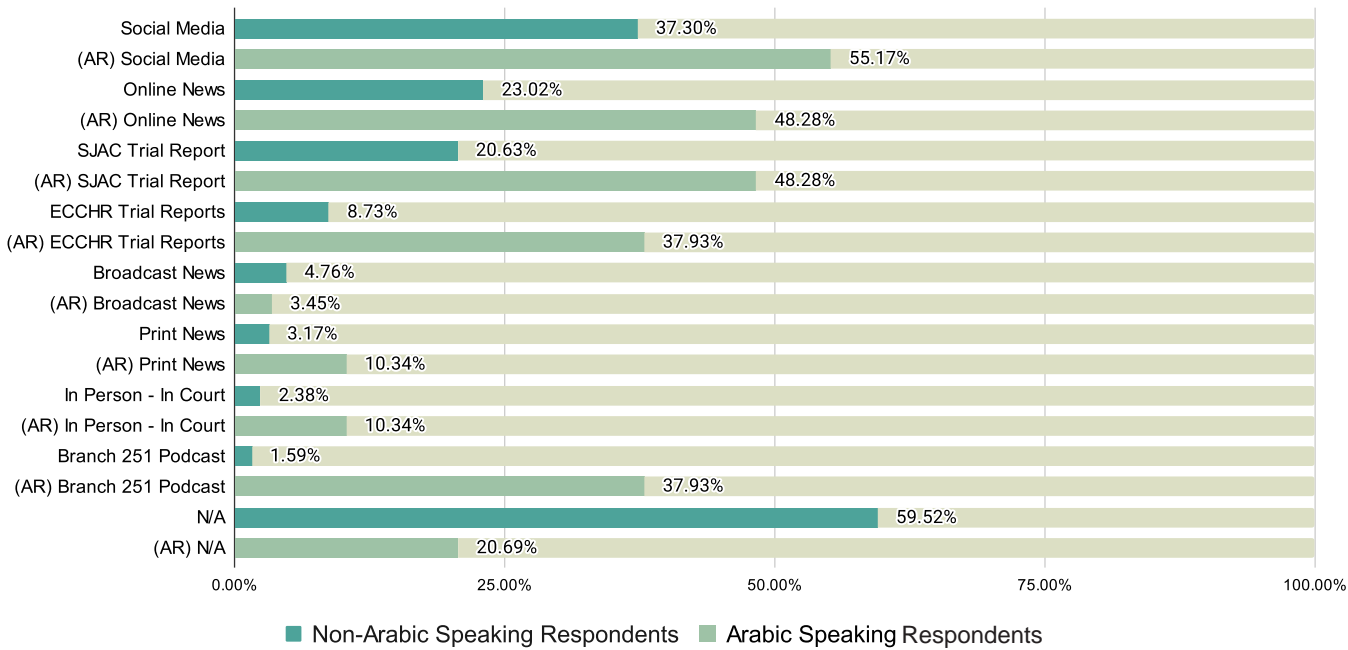
Arabic Speakers: Educational background of those who are aware of the trial



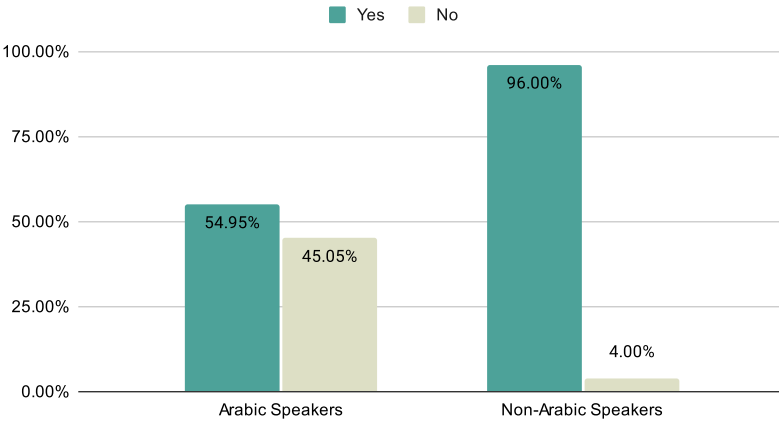
therein, and whether they later join as plaintiffs or not, they are always obliged to tell the truth. As in every criminal trial, all witnesses were informed about their obligation to tell the truth at the beginning of their in-court testimony in Koblenz.²³ They were also informed about the legal consequences of providing false testimony in court. Nonetheless, the Defense questioned the credibility of several witnesses, pointing out possible exaggerations, contradictions between police interviews and in-court testimonies, unclear identification of the Defendant, and

connections between certain witnesses and previous witnesses and experts.²⁴ The Court in Koblenz did not, however, pursue the Defense’s suggestions to re-summon certain witnesses.²⁵ The one exception was the summoning of a police investigator to testify about his interview with a previous witness to clarify inconsistencies in the witness’ in-court testimony.²⁶ Nonetheless, in evaluating the totality of evidence, the Judges have certain discretion to determine which evidence they find credible in making their judgment.²⁷

How Arabic and Non-Arabic Respondents Accessed the Koblenz Trial



Ability to Access the Trial: Arabic V. Non-Arabic Speakers



In addition, false in-court testimonies can have serious consequences for witnesses, regardless of whether they took an oath or not, and regardless of whether the false testimony actually impacted the verdict. Testimony is considered to be false whenever a witness' statements relating to his/her personal information or the subject matter of the questioning differ from the objective facts – *i.e.*, the truth. False testimonies are not only considered an offence against the rights of the defendant but also against the legal system and the judiciary itself. Penalties for false in-court testimony can range from financial fees up to five years imprisonment.²⁸ Although the witness in court is the person who gives false testimony, other people involved therein must face consequences as well. Instigating a witness or expert to knowingly provide false testimony, even if only attempted,²⁹ or inciting a witness or expert to unknowingly provide false testimony is punishable with financial fees and up to six months imprisonment.³⁰

False in-court testimony can also cause distrust with future witnesses and civil society in general. During late stages of the Koblenz Trial, Defense Counsel started questioning many survivors' testimonies once the Defense suspected that the witnesses were externally influenced.³¹ In addition, the Defense Counsel also challenged the involvement of certain civil society organizations who connected witnesses to the Koblenz Trial.³² This shows that regardless of whether false testimonies are detected and proven, the slightest suspicion can have negative impacts on the general credibility of witnesses and trustworthiness of civil society organizations in supporting prosecutions. It can also lead to more aggressive questioning of survivors, as seen in the Koblenz Trial when the Defense Counsel openly told survivors that they

did not believe the survivors' stories.³³ Ultimately, the Higher Regional Court ruled that it did not consider the testimonies of some plaintiffs who had been introduced to investigators through an intermediary based upon inconsistencies between their statements and in-court testimony.³⁴ While advocacy can be effective at gaining the attention of the international community, civil society organizations engaged in criminal trials should ensure that their methodologies facilitate the collection of truthful statements that will be consistent with future testimony. Suspected false testimony provided by plaintiffs and other witnesses undermines the credibility of civil society, the pursuit of justice, and the prospects of future trials.

Recommendations

SJAC welcomes that many survivors were able to participate in the Koblenz Trial as plaintiffs, supported in exercising their rights by Plaintiff Counsels. Nonetheless, **communication about participation rights of victims must be increased**, not only at the first stage of witness interviews with competent authorities, but proactively. It must be **ensured that victims from all educational and social backgrounds are aware of and able to exercise their rights**. SJAC supports calls to **amend procedural law** to enable survivors and close relatives of victims of international crimes to join cases as plaintiffs and to be represented by a counsel **without individual and lengthy assessments** of their financial situation and individual suffering caused by the charged crimes. SJAC encourages all **survivors and witnesses of crimes committed in Syria to support prosecutions** of the perpetrators in Germany and elsewhere.



Al-Gharib entering the courtroom wearing a COVID mask and covering his face with a folder © AFP/Pool/Thomas Lohnes

Security Concerns

Security Concerns

Many witnesses in Koblenz had serious concerns for their own safety, as well as the safety of their families.³⁵ The issue recurred throughout the proceedings, despite some accommodations made by the Judges to witness protection policies. Numerous witnesses declined to testify³⁶ in open court due to security concerns and a lack of trust in existing protection measures.³⁷ These failures point to a need to amend policy and law to ensure that the most crucial evidence in criminal trials – the testimony of witnesses – is secured.

Witness Protection in Germany

German law allows for a wide range of protective measures for witnesses in criminal trials. These may include: concealing personal information in open court; covering the witness's face in court; excluding the public or the accused during testimony; testimony through audio-visual means; or even providing (temporary) relocation and new identities (in rare cases). Protection measures are only granted after a careful case-by-case assessment of the witness's individual situation regarding the imminency and precise nature of alleged threats. All measures must further be carefully weighed against the accused's right to a fair trial,³⁸ particularly the ability to examine a witness. The German Federal Court of Justice consequently held that testimonies of witnesses who the accused was unable to properly examine due to the absence or anonymity of the witness, require a particularly careful consideration by the court, meaning that the evidentiary value could be diminished.³⁹ Further, German authorities have no power to protect the families of witnesses who reside outside of Germany, such as in Syria.

Nonetheless, the protective measure which was requested most in the Koblenz Trial was the concealment of personal information in court. Although names, addresses, former and current professions, and other personal information was already in the case file since the witnesses previously provided it to the police and prosecution, many of the witnesses requested to conceal this information for their in-court testimony.⁴⁰ Most of the former intelligence employees and other insiders were entirely anonymized. They were instead addressed with a code, both in court and the files.⁴¹ This strict anonymization throughout the proceedings also prevented their names from being mentioned in court by accident, or before they were granted anonymization.



Raslan Entering the Courtroom ©AFP Pool Thomas Frey

Several insider witnesses were further allowed to disguise their faces, wearing fake beards, glasses, and caps. Since COVID-19 masks were mandatory for everyone in the courtroom, witnesses were free to keep their COVID-19 masks on during their testimony on the witness stand and therefore cover their faces without specific protection measures. Many witnesses made use of this right. Although they mentioned their names and other personal information in court, it appeared to make some witnesses feel more comfortable to partially cover their faces.

Observations from the Koblenz Trial

SJAC's Trial Monitors also noted that the Judges in Koblenz adapted a more flexible approach to witness protection as the trial developed. At first, witnesses who wanted to conceal information for their own and their family's safety were required to detail the individual circumstances regarding location of their family and precise instances where they themselves or their families were threatened. During the course of the trial, the Judges, however, acknowledged a sufficient risk for every witness who stated in court that their family was either living in government-controlled areas in Syria or that a family member was contacted by someone who knew about the witness's planned appearance in court.⁴²

The Trial Monitors further observed that, at the beginning of the trial, addresses of every witness were validated aloud in court, as generally provided by German procedural law.⁴³ A few months into the trial, the Presiding Judge changed her technique of checking the addresses by simply asking the witnesses if the address at which they received their latest summons was

still accurate – an approach that is provided by procedural law in cases where there is a sufficient risk for the witness if s/he was to provide the full address in court.⁴⁴ In cases where witnesses were accompanied by counsel, the Presiding Judge simply asked if she could note the Counsel's address as the current address of the witness. This shifting approach might be due to the fact that a former Syrian intelligence employee told the Court about journalists harassing him at his home in Germany and letters from the Court that he found opened in his mailbox.⁴⁵

However, it was also noted that some witnesses who raised security concerns in court effectively disavowed these concerns as soon as they left the courtroom.⁴⁶ One witness for example greeted an anonymized witness by mentioning his name. Several witnesses also posted summaries of their testimony on social media using their real names. When the Defense Counsel made the Judges aware of this behavior, the Presiding Judge said the Court could only do whatever was within its mandate to protect witnesses inside the courtroom but could not control how the witnesses behaved once they stepped outside.⁴⁷

Experiences of Plaintiffs in the Koblenz Trial

Once they left the courtroom, some plaintiffs in the Koblenz proceedings openly spoke about their own security concerns, as well as general concerns of Syrian survivors.⁴⁸ They said many survivors were hesitant or refused to testify because they assumed that the Syrian government had spies sitting in the public audience and who closely followed everything that is published about the trial to use the information to identify witnesses

and at least threaten them and their families. In the trial monitors' judgement, these concerns were likely overstated given that only a small handful of observers were present in court each day and these people were generally known to the monitors. Despite these concerns, many survivors were willing to testify in court and joined the trial as plaintiffs, using their real names. They stated that the benefits of bringing a former government employee to justice and possibly encouraging others to testify in future cases and trials outweighed the security risks they faced.

Recommendations

SJAC welcomes the more **flexible and victim-centered approach** taken by the Judges in Koblenz relating to witness protection. Other courts who will be tasked with similar trials in the future should closely look at this and other victim-centered approaches which the Court in Koblenz adapted throughout the trial. Considering that several witnesses who were previously questioned by the police declined to testify in open court, **witnesses should be informed** about the exact procedural steps following their police questioning, in addition to the potential risks and available protection measures, **at the earliest stage possible**. Nonetheless, it is always in the witness' own responsibility to mitigate his/her security risk and ensure the effectiveness of protection measures **by not sharing sensitive information outside the courtroom**.



Destroyed Homes in Syria © Lens Young Dimashqi

Re-traumatization of Survivors

Re-traumatization of Survivors

Victims of a crime are not only persons who physically suffered from a criminal offense, but also those who were caused mental harm through its commission.⁴⁹ The parties in the Koblenz Trial acknowledged the psychological trauma caused by detention, physical torture, and sexual violence as every survivor of Branch 251 was asked about the personal psychological effects of his/her detention and interrogations. The enduring impact of these crimes includes nightmares,⁵⁰ the need for long-term therapy,⁵¹ as well as concentration problems severely restricting the person in his/her daily life.⁵²

Psychosocial Support in German Criminal Trials

German law acknowledges the psychosocial suffering caused by certain grave crimes and provides for support mechanisms for survivors. Following a European Union (EU) directive in 2012, Germany amended its law on victim participation, fully entering into force in 2017.⁵³ Victims of grave crimes can now apply for psychosocial trial support (*Psychosoziale Prozessbegleitung*) provided before, during, and after their testimony.⁵⁴ Psychosocial support workers employed by the court are persons specifically trained in social education, social work, or psychology.⁵⁵ They assist victims and others by offering emotional support, providing general information about the course of proceedings, accompanying the victims to testimonies and police interviews, and arranging psychosocial support after the proceedings. As

non-legal counsel, psychosocial court support workers are not allowed to discuss the subject matter of a case with victims or provide any legal advice.⁵⁶

Victims of particularly serious domestic crimes can be appointed a psychosocial support worker by the court upon request if they were younger than 18-years-old when the crime occurred or when they filed the relevant application, or if they could otherwise not adequately exercise their rights.⁵⁷ Other victims of grave crimes must apply for psychosocial support with the court, detailing their specific protection needs. Court-appointed psychosocial support workers are free of charge for the victim.⁵⁸

If the court, however, rejects an above-mentioned application, victims must pay for psychosocial support themselves. Psychosocial support workers who have not been appointed by the court can further be excluded from certain interviews with the victim if their presence would jeopardize the investigations.⁵⁹ In addition, German law provides that, where psychosocial support workers are called to testify as witnesses in a case involving their client, they cannot refuse to testify.⁶⁰ In other words, there is no therapist-patient privilege. This circumstance, however, contradicts the EU Directive on Victims' Rights, which states that psychosocial support workers are 'bound by the principle of confidentiality.'⁶¹ It can also cause victims to distrust their support workers out of fear of sensitive information being disclosed.⁶²

Observations from the Koblenz Trial

SJAC's trial monitors observed the emotional stress of survivors in Koblenz throughout their testimonies when many started crying, needed breaks to calm down, or simply were not able to remember details because their minds abandoned traumatic memories.⁶³ A medical professional who testified about his own detention at Branch 251 and the general psychological and social consequences of detention in Syria, said that many former detainees were "out of reach".⁶⁴ Meaning, they stopped actively participating in what was happening around them as the trauma was occurring. This witness also spoke about the negative effects of sexual violence, particularly for female detainees. They not only suffer from traumatic experiences, possibly resulting in a change of personality, but also suffer from social exclusion which further exacerbates their trauma. Given the traumatic nature and obvious emotional stress caused by in-court testimonies, it was surprising that only a few witnesses in the Koblenz Trial were accompanied by a person of comfort who emotionally supported them during their testimony in court, either sitting next to them or in the public gallery.⁶⁵ SJAC's Trial Monitors also noted that, despite the fact that at least the plaintiffs in this trial were eligible for free psychosocial support services, none of the witnesses and plaintiffs seemed to have been accompanied by a psychosocial support worker appointed by the court.

Recommendations

SJAC welcomes the far-ranging psychosocial support mechanisms for victims of crimes applicable in the EU. Nonetheless, authorities involved in prosecuting international crimes,

should **inform the victims of these crimes at the earliest stage possible about applicable psychosocial support services and support them in arranging relevant services**. Given the particularly grave nature of international crimes and the increased risk of re-traumatization of survivors of these crimes, the hurdles to access psychosocial support services must be removed. This could be achieved by **lifting the burden to file an application from the survivors and shifting it to the Federal Prosecutor General Office**, who is leading the investigations into these crimes and aware of the needs of the survivors. Another way to ease accessibility of psychosocial support for survivors of international crimes would be to **waive the requirement of particular protection needs** that must be detailed in every application, at least **for crimes that cause psychological suffering per legal definition or are very likely to cause such suffering, including international crimes**. Psychosocial support workers should also receive **special training relating to the needs of survivors of international crimes**.



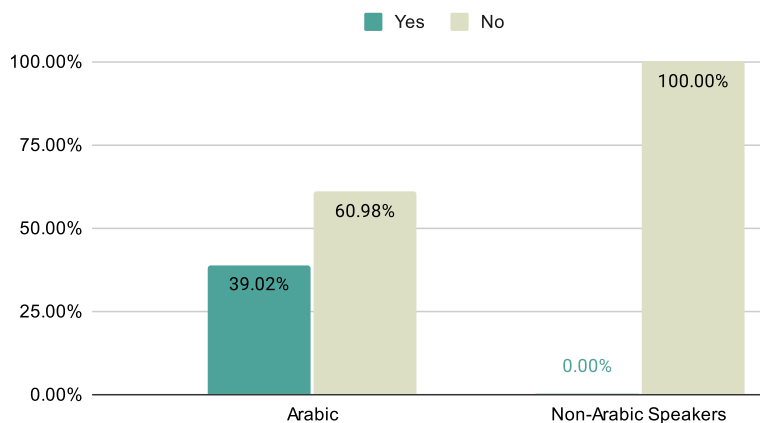
Raslan arranging for access to Arabic translation before the announcement of his verdict, January 13, 2022 © AFP/Pool/Thomas Lohnes

Language Barriers

Language Barriers

From the first trial day in Koblenz, the public audience was denied access to Arabic interpretation in Court provided to the Defendant and Plaintiffs. Despite constant lobbying by several NGOs and a judicial complaint,⁶⁶ language barriers were ever-present, creating a barrier to transparency and exacerbating confusion as the trial proceeded. The vast majority of interested people, particularly Arabic speakers, were unable to follow the proceedings in court or from far away. The Koblenz Trial therefore remained largely invisible for many Syrians and prone to debates within the Syrian community about false information and dominating narratives.

I had difficulties accessing information in a language I understand



In addition, interpretation of in-court and police testimonies as well as translation of various documents directly affected the proceedings by creating confusion, interruptions, and discrepancies.

Lost Without Translation

The official language of any trial in Germany is always German.⁶⁷ When defendants or plaintiffs

do not understand the language, they have the right to be assisted by an interpreter free of charge as this is essential to their fundamental right to be informed of the charges and evidence against them.⁶⁸ The threshold for a defendant's understanding of German in order to exercise their rights is set relatively low by German law, requiring only that the closing statements and submissions by the prosecutors and defense counsel be interpreted.⁶⁹ Defendants can also waive their right to be permanently assisted by an interpreter, and instead receive written translations of important trial documents, such as the indictment and judgments, or foreign-language summaries thereof.⁷⁰ European law, by contrast, provides that the rights of a foreign-language defendant are only observed when they are assisted by an interpreter at all stages of the proceedings, from investigations to court proceedings.⁷¹ A violation of the right to interpretation can constitute an absolute ground of appeal under German law, as interpreters are considered 'persons whose presence in a trial is required by law.'⁷² Defendants can also entirely waive their right to interpretation or translation once they are informed about these rights and the consequences of waiver.⁷³

The Defendants in the Koblenz trial were assisted by personal interpreters throughout the proceedings. In addition, two court interpreters simultaneously interpreted Arabic-language testimonies into German and every German testimony and statement from the Judges and other parties into Arabic. Arabic-speaking

spectators inside the courtroom were, however, lost without translation from the outset of the proceedings.⁷⁴ While all parties to the case could hear the interpretation via court-provided headphones, journalists and spectators sitting in the public audience were not provided access, despite spare headphones lying on tables right in front of the audience. SJAC's informal requests to the Court to gain access to Arabic interpretation were denied. Therefore, in conjunction with a Syrian journalist and support from the European Center for Constitutional and Human Rights (ECCHR), SJAC eventually petitioned the German Federal Constitutional Court for relief.

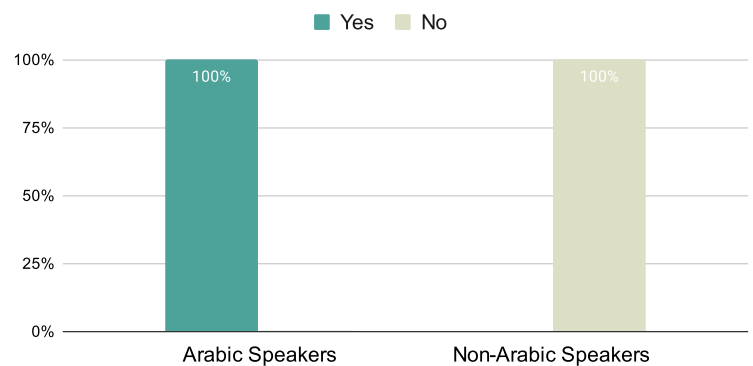
In an extraordinary move, the Constitutional Court issued preliminary measures, obliging the Higher Regional Court in Koblenz to provide all Arabic-speaking accredited journalists who have a genuine special interest in the trial with access to Arabic in-court interpretation.⁷⁵ While the ruling was initially promising, it was narrowly interpreted in Koblenz. The Judges in Koblenz thereafter provided access to the Arabic-speaking journalists they accredited prior to trial.⁷⁶

However, since the accreditation procedure was only open for one week and was administered in German, only a handful of Arabic-speaking journalists were accredited. Further, travel restrictions related to COVID-19 made it impossible for most of them to attend any trial days at all. The result was that the preliminary measures issued by the Constitutional Court rarely resulted in interpretation devices being provided to those in the public gallery.

Arabic-speaking journalists and spectators who regularly attended the trial sessions on the other

hand, but who did not seek accreditation from the Court prior to the trial and the Constitutional Court decision, were left without access to interpretation. Unfortunately, the Court also applied some double standard in granting access to interpretation, as a non-accredited journalist from a renowned U.S. publisher was granted access to interpretation via headphones while everyone else was left without.⁷⁷ COVID-19 restrictions also made it impossible to follow the proceedings without the help of personal whispering interpreters who could have sat next to Arabic speakers to explain the proceedings. The number of spectators consequently declined over the course of the trial.⁷⁸

Respondents Experienced Trouble Following the Courtroom Proceedings



I Never Said That

In addition, interpretation of witness testimonies also had a direct impact on the trial proceedings. As a consequence of having German as the official language, all foreign-language statements made in court or introduced in court through a process of visual inspection or reading a transcript aloud must be translated into German. Furthermore, transcripts of prior witness interviews with the German Police were also only available in German, though many were conducted through interpretation.⁷⁹ As repeatedly detailed by the

investigators who led such interviews, smooth communication between police interpreters and witnesses/suspects was always ensured from the beginning of the interview and German-language transcripts of the interviews were re-translated to the witnesses/suspects at the end of the interview, giving them the chance to make corrections where necessary.⁸⁰ Nonetheless, several witnesses in the Koblenz Trial claimed that there were translation mistakes and misunderstandings during their police interviews when asked in court about specific information from their police interview or discrepancies between the police interview and in court testimony.⁸¹

Indeed, interpreters and translators working for the police do not have the same qualifications as court interpreters since “translator” and “interpreter” are not specially protected professional titles in Germany. Interpreters working for the police are consequently often lower-paid and lower-qualified than their colleagues who work as official court interpreters and are listed in a federal register.⁸² Nonetheless, due to the above-mentioned safeguards by the police, interpretation and translation during investigations of international crimes are always conducted to the highest standards, especially when part of the Federal Prosecutor General Office’s structural investigation into the Syrian conflict. Most of the alleged translation errors and in-court misunderstandings were resolved at trial with the help of the court interpreters, police investigators, and by the Judges’ growing understanding of Arabic language and relevant terminology.⁸³

Small Details Make the Difference

While the interpreters assigned to assist the Defense teams were consistent throughout the trial, this was not possible for the court interpreters who performed German-Arabic interpretation for the Defendants and Arabic-speaking parties.⁸⁴ Despite the above-mentioned required qualifications, some interpreters did not have sufficient knowledge of the Syrian context and lacked experience with such trials. One interpreter was even asked to stop interpreting after the parties noticed some inconsistencies in interpretation.⁸⁵ This proved particularly difficult when an interpreter only attended a few trial sessions and did not have the necessary background.

SJAC’s Trial Monitors also noted that the interpreters often had to work for long periods without sufficient breaks, making it difficult for them to focus and causing them to accidentally miss details of a witness’ testimony. Although the Judges and other parties to the Trial became increasingly cognizant of the difficult work performed by the interpreters,⁸⁶ breaks were not always scheduled frequently enough⁸⁷ and there were instances when the interpreters had to explicitly ask for a break.⁸⁸ Witness testimonies were therefore sometimes not translated adequately or completely.⁸⁹ Nonetheless, some of these instances showed that the Judges familiarized themselves with relevant terms by asking specific questions on the translation and the meaning of individual phrases used by the witnesses.⁹⁰ However, in cases where none of the parties noticed missing or inadequate translation, the information initially provided by the witnesses was lost.

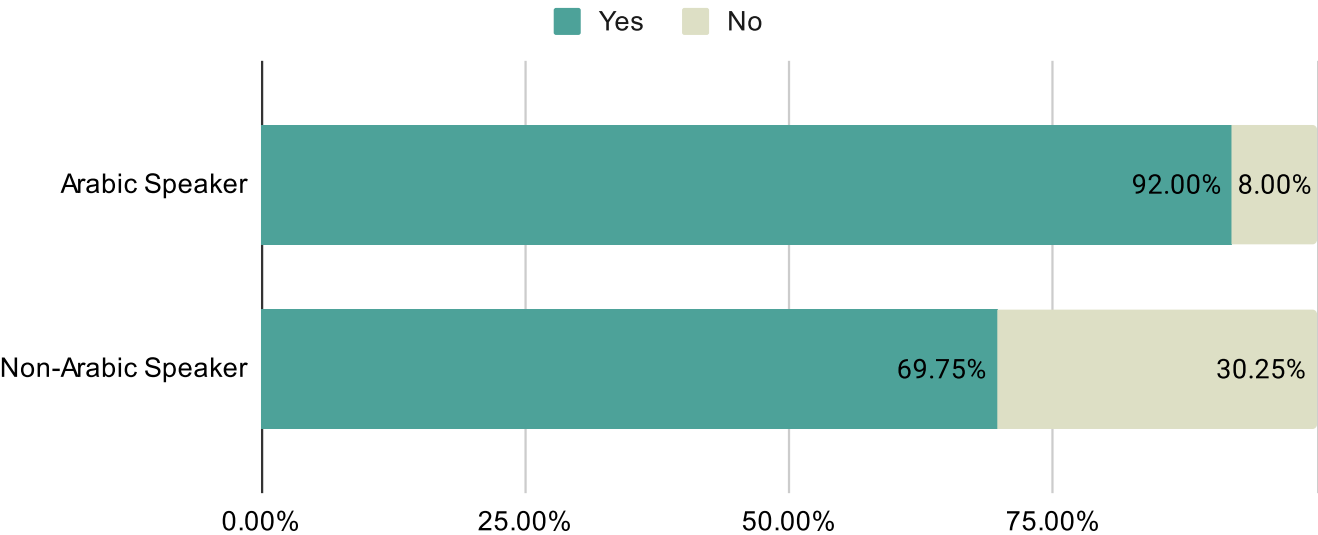
SJAC’s Trial Monitors further noted that, a few months into the trial, the Presiding Judge started to thank all Arabic-speaking witnesses for their appearance and testimony by using the Arabic term “*shukran*” – a gesture that was appreciated by all witnesses. Syrians also highly appreciated that the announcement of the verdicts, in both Al-Gharib’s and Raslan’s trial, were translated into Arabic for the audience inside the courtroom. Those present felt like ‘the place was owned by Syrians’⁹¹ which is an important sign for the Syrian community that, although UJ trials are conducted far away from their home and the crime scene, they are conducted *for* Syrians.

In Public Communications

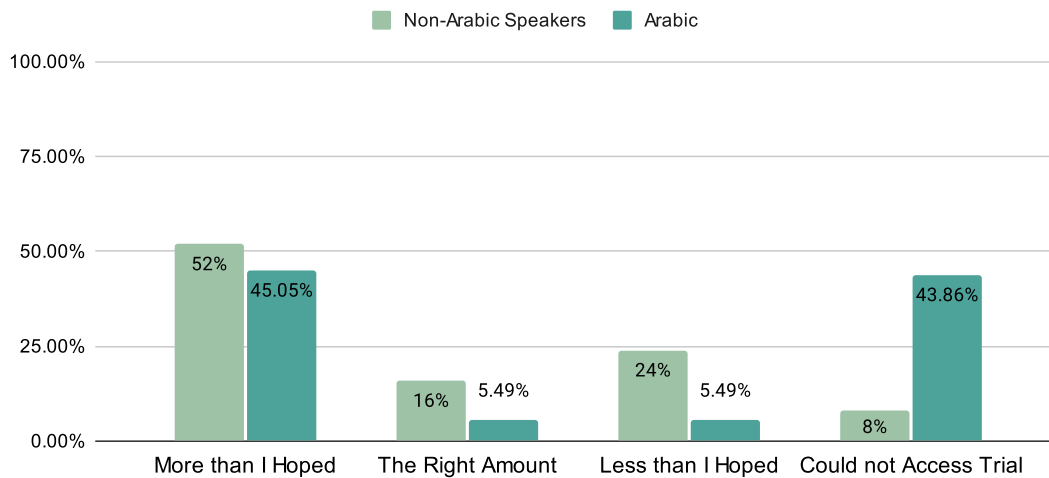
This sense of appreciation was unfortunately missed in terms of public communication. As with any other domestic criminal trial, no updates on what happened in court were shared with a wider public via social media or other platforms. This practice fails to appreciate the broader context in which the charged crimes were committed and the broader context of transitional justice in which these trials are conducted.⁹²

SJAC’s online survey on the public perception of the Koblenz Trial indicates that the majority of people who wanted to follow the trial attempted to do so via social media. This cannot only be said for Syrians seeking to stay up-to date on court developments, but for the public at large interested in the Trial. To increase visibility of these trials, authorities should be more active on social media platforms like Twitter and Facebook. Police and prosecutors in the Netherlands and Finland are already relying on social media, not only to inform the public about ongoing proceedings, but also to engage with potential witnesses or persons in possession of evidence.⁹³ Considering that the Arabic-speaking audience in Koblenz was unable to find information in a language they understood, it remains crucial for courts, as well as police and prosecutors, to communicate in multiple language when it comes to international crimes and UJ cases.

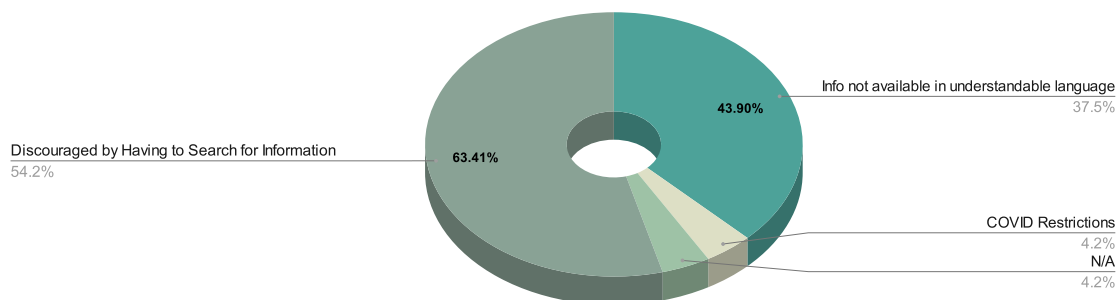
Social Media is Important for Accessing Trial Information



There was Enough Available Information for me to Follow the Trial



Reasons Arabic-speakers were unable to follow the proceedings

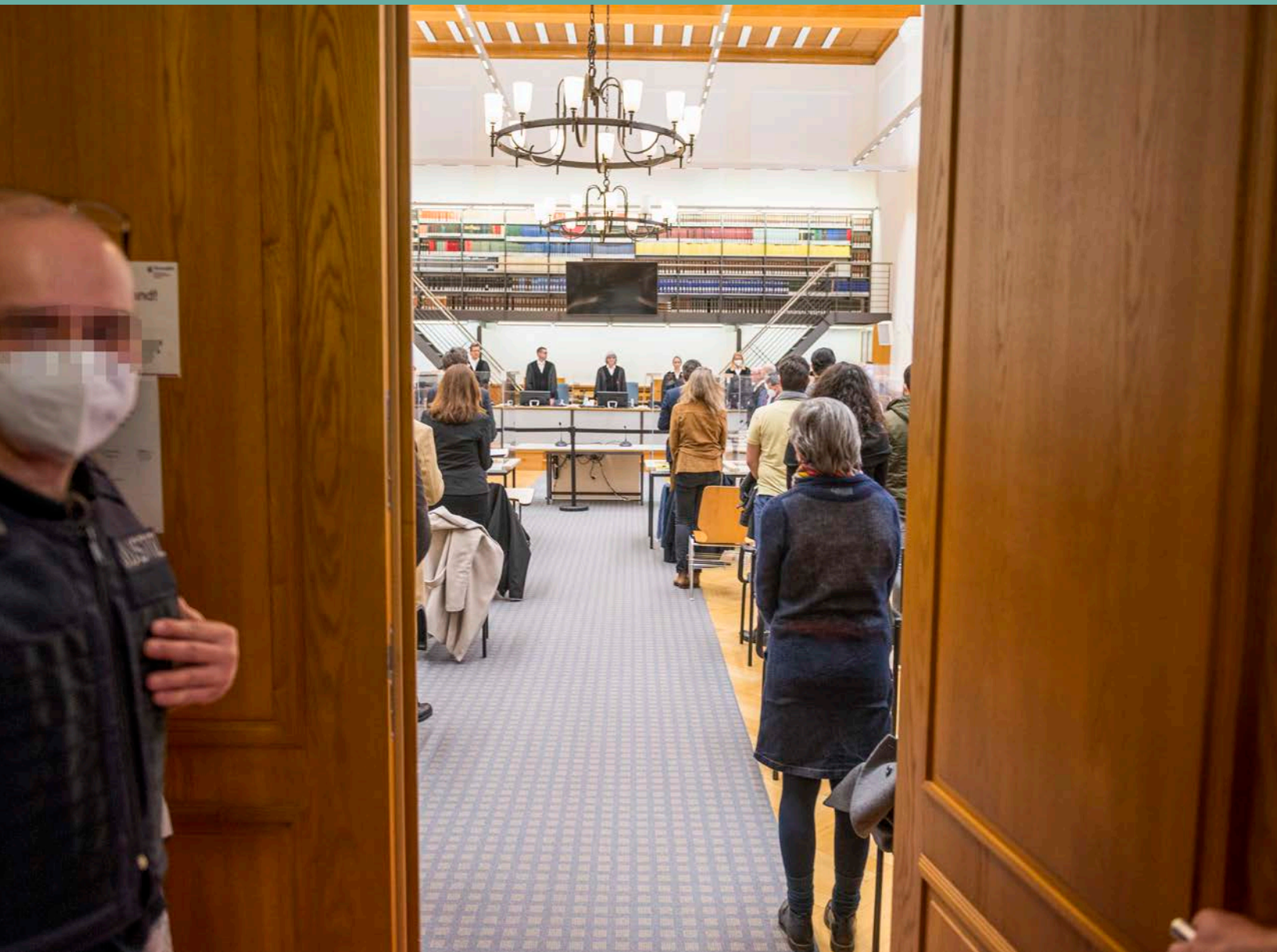


Recommendations

SJAC encourages all courts that are tasked with lengthy and complex UJ trials to ensure that **interpreters are employed for the entire duration of a trial**. This avoids confusion and mistakes caused by changes in personnel. Interpreters should be granted **frequent and long enough breaks** to reduce the risk of accidental mistakes or inaccuracy due to exhaustion. In addition, interpreters should be **given enough time to inspect written statements** that will be read aloud in court and make notes if needed. This ensures a smooth and correct interpretation in court and, consequently, **respects the right of the Accused** to follow everything that is being said in court. Due to the complexity and specific

terminology of UJ trials, and in order to reduce misunderstandings and confusion, **police and court interpreters should fulfil the highest qualification standards and be compensated accordingly**.

All authorities involved in UJ proceedings—from police to prosecutors to courts—should **actively engage with the public on social media**. Updates on the content of public court proceedings, trial schedules, arrest warrants, as well as calls for cooperation in investigations, should be shared in **multiple languages** relevant to the individual case. Most importantly, members of the community affected by the crimes on trial must be granted **access to in-court interpretation**.



A look into the Courtroom in Koblenz on February 24, 2021 © AFP/Pool/Thomas Lohnes

Centralizing Universal Jurisdiction Proceedings

Centralizing Universal Jurisdiction Proceedings

Universal Jurisdiction trials have been the only successful means for Syrians to achieve justice and accountability for crimes committed against them in Syria. Mainly European countries, in particular Germany, are at the forefront of conducting investigations and prosecutions based on this principle.⁹⁴ By doing so, they are contributing to transitional justice efforts for Syria. This means that the criminal nature of atrocities committed during the Syrian conflict are acknowledged, preparators are held accountable, and the stories of survivors are told and heard through criminal trials. If visible to the affected societies, this process enables societies to move on from a violent past and toward a peaceful future.

For prosecuting states, however, UJ trials and investigations are an immensely resource-intensive effort. To pool capacities, many states have created ‘War Crimes Units’ within prosecution and police authorities.⁹⁵ By contrast, in most countries, the judiciary has not benefitted from similar developments. The Koblenz Trial once more showed that a specially designated domestic Chamber for international crimes and terrorism would significantly benefit from economies of scale and the development of specialized expertise, making them more cost efficient for prosecuting states and increasing the impact of these trials on transitional justice.

Domestic International Crimes and Terrorism Courts in Germany and Elsewhere

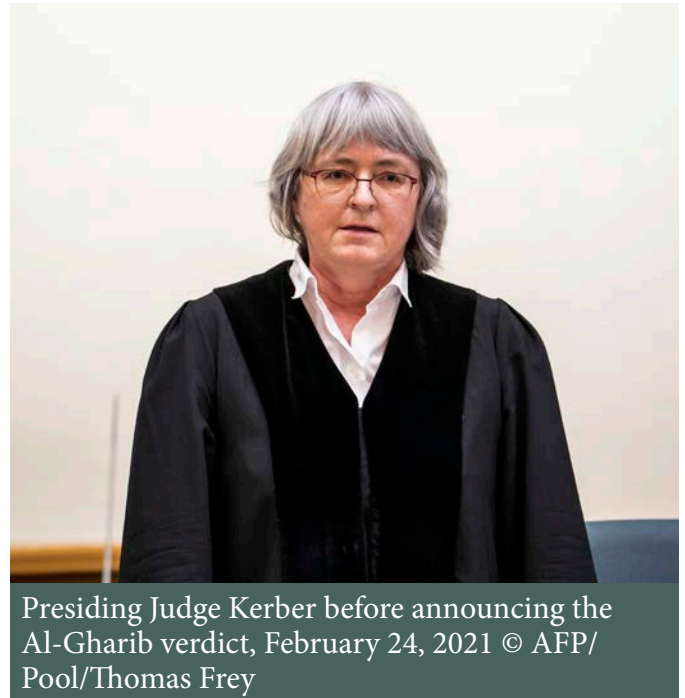
A specialized domestic chamber designated as the primary venue for cases involving charges of terrorism and international crimes could overcome many of the present obstacles related to transitional justice, including concerns regarding fairness and efficiency, as well as more effective victim participation in accordance with international standards. Judges, press officers, interpreters, psychosocial support, and all staff at a specialized chamber would prioritize special training in international criminal law, cultural contexts, and the special needs of victims or international crimes. An interpretation unit would also ensure a more consistent staff to reduce fluctuation of interpreters throughout trials.

The Koblenz Trial was an example of the immense financial burden of a universal jurisdiction trial. Lacking courtrooms with enough seats to accommodate the large number of plaintiffs, plaintiffs counsel, journalists, and public audience, the Higher Regional Court was forced to remodel and refurbish a new room and equip it with relevant technical capacities to host the trial. Due to other judicial responsibilities, including other trials occurring concurrently, the trial was limited to sitting only two trial days per week. Most participants in the trial, including the prosecution, defense, plaintiffs counsel, witnesses, and victims were forced to travel to Koblenz

from across the country for the truncated sitting times over the course of 21 months. Although German law dictates that trial costs must be borne by the defendant in case of conviction, the reality is that the defendants in Koblenz do not have the millions of euros required to stage the trial and the state will be forced to pay the bill.⁹⁶ Considering the fact that future UJ trials will take place at different Higher Regional Courts in different German states,⁹⁷ it is likely that these courts will encounter similar problems and incur the same costs relating to the lack of spatial capacities and the relevant federal states having to deal with excessive trial costs.

In addition, every court will need to develop its own understanding of the relevant cultural and social context to these trials, as well as international criminal law. Despite the fact that the Higher Regional Court in Frankfurt has dealt with multiple Syria, ISIS, and Iraq related cases, other courts do not have such extensive experience administering UJ cases. In 2015, the Presiding Judge of the so-called “FDLR Trial” at the Higher Regional Court in Stuttgart admitted in his announcement of the verdict, that such trials “cannot be done like that”, meaning that German procedural law is not designed to deal with the unique challenges of such cases.⁹⁸ While the Court in Koblenz at times showed a more flexible interpretation of procedural law, every court will have to develop practices that are consistent with international practices. The lengthy, repetitive procedure was already criticized by the head of the war crimes unit of the German Federal Criminal Police Office (BKA) several years ago. He requested that every Higher Regional Court should at least have

distinct ‘senates’ specialized in international criminal law.⁹⁹ Bundling these specialized senates within one distinct chamber would further ease information sharing between different senates and cases. Translations of documents or expert reports on foreign law could be shared more easily between chambers.



The idea of having a specialized domestic chamber with sole jurisdiction in first instance cases concerning international law is not entirely new to domestic legislations, as can be seen from the example of the District Court in The Hague in the Netherlands. Pursuant to the Dutch International Crimes Act, the District Court in The Hague has sole jurisdiction over international crimes and international law matters as laid out in the Act as the court of first instance.¹⁰⁰ In Sweden, UJ cases can go through up to three instances, making proceedings lengthy.¹⁰¹ Having a specialized chamber with expertise in international criminal law to deal with these cases on first instance, with the option to only appeal

to the Supreme Court for procedural matters, would make UJ trials more efficient in Sweden as well, not to mention the benefits of timely trials and specialized court staff for survivors of international crimes.

A provision similar to Dutch law, referring certain legal matters to specific Higher Regional Courts, could be incorporated into German criminal procedure with regards to terrorism and international criminal law. Considering that there are, however, no such provisions regarding other areas of law under German procedure, it could cause inequalities between Higher Regional Courts. It also seems that no existing Higher Regional Court currently has the capacity to take on the task of having exclusive jurisdiction over international crimes cases. In light of cumulative charging, meaning defendants are charged under terrorism and international criminal law,¹⁰² it would avoid competing jurisdiction to refer both international crimes and terrorism cases to a centralized court.

Cases concerning international crimes codified in the German Code of Crimes against International Law (VStGB/CCAIL) usually go through two judicial instances. They are initially referred to the specialized criminal law senates at the Higher Regional Courts.¹⁰³ These senates regularly deal with terrorism cases and cases concerning public security. Of the 24 Higher Regional Courts in Germany, at the time of writing, eight had tried, or were trying a case concerning international crimes or returned foreign fighters or had received a public indictment in such a case. Judgments of Higher Regional Courts can only be appealed at the Federal Court of Justice, who in turn can refer the case back to the Higher

Regional Court after reviewing alleged errors of law by the Higher Regional Court.¹⁰⁴

However, German law allows for the creation of specialized courts for certain subject matter beyond the borders of single federal states.¹⁰⁵ In addition, special courts bundling jurisdiction over certain subject matter may also be created through federal legislation.¹⁰⁶ Given that a specialized International Crimes and Terrorism Court would affect the judicial administration of the federal states, the assembly of the states' representatives would most likely intervene in drafting the relevant federal law to establish such a court.¹⁰⁷ There would be substantial financial resources required to set up such a centralized court which could discourage its implementation. These expenses are currently being dispensed across multiple OLG's which, in the aggregate, likely exceed the costs of a specialized court. Currently, costs are only increasing as the number of international crimes cases grows due to structural investigations into the Syrian conflict conducted by the Federal Prosecutor General's Office and the continuing repatriation and voluntary returns of foreign fighters.¹⁰⁸ Nonetheless, it may prove difficult to convince



federal states in Germany to agree to amend existing procedural law to the point of creating a new specialized court.

Centralized Monitoring Mechanism

Another alternative would be to create a less resource intensive mechanism that does not limit federal states' jurisdiction, and would therefore be a more practicable solution for increasing the visibility and legacy of UJ trials. Such a mechanism could take the form of a central task force within the Federal Ministry of Justice, monitoring and evaluating UJ trials to draw important lessons learned, and share them with national courts and legislator as well as with other countries. An important aspect regarding accessibility of UJ trials which requires uniformity is the availability of foreign language interpretation of the audience in court. While Arabic in-court interpretation in Koblenz was only available to accredited journalists, the Higher Regional Court in Frankfurt announced that there will be no interpretation at all.¹⁰⁹ These different practices on the one hand severely limit visibility of UJ proceedings for affected societies and discourage them and other interested audience to follow the trials at all.

Documentation of UJ trials through recordings is another area that requires a uniform policy. As of now, every court in Germany decides on the allowability of recording criminal trials on its own. Decisions cannot be appealed.¹¹⁰ The Judges in Koblenz denied requests for audio-recording of the entire trial, or at least the closing statements of the parties, several times.¹¹¹ Without official written records or other recordings, the achievements and debates of this trial will be lost for future generations. And even if recordings

are permitted, the files might only be made accessible to a limited circle of people after thirty years.¹¹² According to plans of the new German government, however, recordings of criminal trials and release of redacted judgments are supposed to be mandatory in the future.¹¹³

Recommendations

This present report has **identified various lessons learned from the Koblenz Trial relating to** different procedural, legal, and police aspects of prosecuting crimes under universal jurisdiction. All these lessons learned eventually relate to victims' participation, **visibility, and the overall legacy of UJ proceedings.** In order **to implement these lessons learned**, not only in the specific German context, but in all countries prosecuting under UJ, **a specialized terrorism and international crimes chamber would be significantly more efficient. In the alternative, a monitoring mechanism could fulfill some of the requirements that are currently lacking in UJ trials.** These mechanisms ensure a uniform and cost-effective implementation of lessons learned. They further monitor UJ proceedings to identify any other areas of improvement and share their knowledge with other counties **for comprehensive justice and accountability across borders.**



Woman taking pictures © SJAC

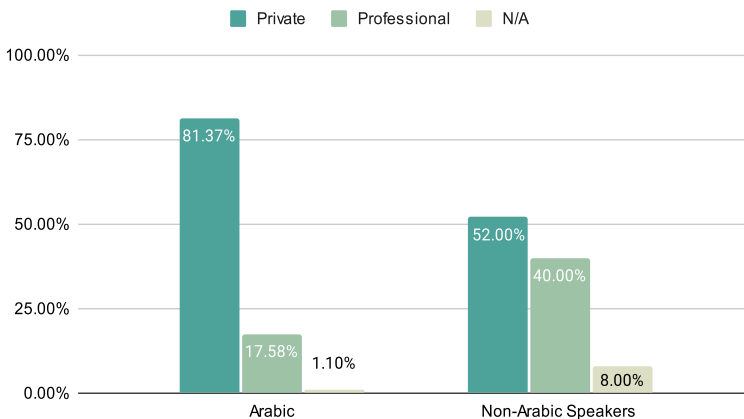
Conclusion

Conclusion

Based on its detailed monitoring and assessment of victims' participation, SJAC has identified several lessons and best practices from the Koblenz Trial. SJAC proposes the following recommendations to ensure that future UJ proceedings in Germany and beyond are in the best interests of justice and cognizant of the needs of survivors of atrocity crimes.

The critical issues identified in the Koblenz Trial require sustainable long-term solutions, some of which will necessitate changes to existing procedural or criminal codes. However, there are a number of best practices that could have an immediate effect on addressing shortcomings without any legislative fixes.

Trial Observers



Policy Recommendations

The Judges at the Higher Regional Court in Koblenz showed some flexibility in applying existing procedural laws, thereby providing guidance for other courts in Germany and beyond on how to tackle the special needs of survivors of international crimes in UJ trials.

The Judges in Koblenz, for example, adapted a

more flexible approach to witness protection throughout the proceedings after the stories of many fearful witnesses unveiled a need to act to secure reliable in-court testimonies. In addition, courts tasked with UJ trials should provide more generous witness protection by liberally granting requests to conceal personal information in court or to partially cover a witness' face. This is even more important in cases where the social networks of defendants are still powerful enough to threaten the relatives of witnesses living far beyond the territory of prosecuting states. The Judges and the parties in the Koblenz Trial also became more cognizant of the difficult and exhausting work performed by the court interpreters. Consistent with international practice, they were given more frequent and longer breaks and parties who submitted written statements to the Court, as well as the Judges themselves, provided written decisions and submissions to the interpreters before the start of the trial day to give them guidance before simultaneously interpreting the read-outs of these documents. Both practices should be adapted by other courts to enhance smooth and accurate in-court interpretation.

While refusing to make in-court interpretation accessible to the public, the Judges in Koblenz at least provided for consecutive interpretation via loudspeaker for the oral announcement of the two verdicts in the trial. This must be the *minimum standard* for courts, in addition to providing the same services for the read-out of the indictment by the prosecutors and opening statements by

the defense. This would be the first step to reduce false and conflicting information about crucial details of the trial amongst the public.

Police and prosecutors should all adapt a more active public communications strategy. Critical developments, such as calls to support investigations, arrest warrants, important content discussed in UJ trials, trial schedules, and judgment summaries, should be communicated to the public in multiple languages depending on the relevant case. This information must also be visible to a broad audience through social media channels, particularly to the wider victim community living in different countries.

Witnesses and plaintiffs already involved in individual cases and investigations must also benefit from clearer communication. Investigators, prosecutors and judges must ensure that they understand participation rights, available support relating for protection, legal and psychosocial counselling, as well as next steps and future proceedings. Only then can survivors from all educational and social backgrounds effectively exercise their rights.

Structural Recommendations

Many critical issues identified throughout the Koblenz Trial in and outside the courtroom, however, require structural changes and amendments to domestic laws. Since the lessons learned are based on German domestic law, concrete structural recommendations also relate to the German domestic legal framework. Nonetheless, just like the policy recommendations, they are also applicable to other states conducting UJ prosecutions.

Survivors and close relatives of victims of atrocities crimes should be able to actively engage in UJ cases as plaintiffs without having to file complicated requests for individual assessments of their personal suffering. Procedural law must be amended in this regard, including by adding international crimes to the list of crimes permitting simplified procedures for admission as plaintiffs and free legal representation. The same is true in relation to psychosocial support services for survivors of atrocity crimes. Hurdles to receive free psychosocial support must be lowered either by relieving survivors of the burden of filing requests for such services themselves or by waiving the requirement of detailing their personal suffering by including international crimes in the list of crimes for which survivors can receive free psychosocial support without lengthy and emotionally stressful individual assessments.

Legal reforms are further required relating to the work of interpreters in UJ prosecutions and trials. Interpreters involved in investigations as well as those involved in the trial phase should fulfil the same high qualification requirements and be compensated accordingly. In addition, court interpreters must be given enough time to prepare for trial sessions by accessing relevant redacted documents from the case file or summaries thereof to allow for correct and complete interpretation of court proceedings. This not only relates to the role of survivors whose testimonies should be fully interpreted and available to the parties, but also to the right of the defendant to understand the proceedings against him/her.

The same can be said for increased payments and specialized trainings for psychosocial support workers involved in UJ proceedings. They also ensure that survivors are not re-traumatized, and that their testimonies are comprehensive and reliable. To strengthen the position of survivors of atrocity crimes, the EU Directive on Minimum Standards of Rights, Support, and the Protection of Victims of Crimes must be fully implemented in all EU member states. The potential of having one unified, high standard in this area across multiple countries is invaluable, particularly considering the leading role EU member states play in conducting UJ prosecutions.

Domestic courts seized of UJ cases, whether there is one distinct court or multiple courts, must be equipped with the necessary financial support, specialized staff, and technical capacity required for these trials. Making these resources available and using them in the most effective manner is considerably easier if there is one distinct court tasked with UJ trials as court of first instance.

In spite of interim measures ordered by the German Federal Constitutional Court to make in-court foreign language interpretation available for accredited journalists, further legislative action is required. In trials where in-court interpretation is provided to the defendant or other entitled parties, it is crucial to make it available to the public audience as well. Transitional justice for the entirety of Syrian society can only take place if the community as a whole can understand the legal proceedings stemming from the crimes that caused victims harm. This is also relevant to the creation of audio or audiovisual records of the

trial. Decisions on the creation of such records should not be left to the sole discretion of the court administering the trial.

Germany and other states conducting UJ prosecutions, are encouraged to establish a centralized domestic mechanism to constantly monitor and evaluate UJ prosecutions and trials in their own countries and to exchange best practices and lessons learned with other states through Europol's Analysis Project Combating International Crimes, Eurojust's Genocide Network, as well as other mechanisms. Well-founded recommendations by these mechanisms can lead to precise domestic legislation, further improving fair trials and elevating the role of survivors under the principle of universal jurisdiction.

Recommendations to Survivors

Survivors of atrocity crimes are encouraged to support domestic investigations conducted under the principle of universal jurisdiction. Civil society organizations, such as SJAC and its partners around the globe, are dedicated to supporting survivors wishing to share their stories by initiating contact with investigative authorities, providing survivors with legal and psychosocial support throughout judicial processes, and eventually helping survivors to feel dignified through their pursuit of justice and accountability.

Endnotes

Endnotes

- 1 *see e.g.* SJAC, Trial Monitoring Report #16 and SJAC, Trial Monitoring Report #17, day 41
- 2 §§ 163(3), 48, 161a(1)s.1 Strafprozessordnung (StPO)/German Code of Criminal Procedure
- 3 Art.8 European Convention on Mutual Assistance in Criminal Matters
- 4 *see e.g.* SJAC, Trial Monitoring Report #36, day 73
- 5 *see e.g.* SJAC, Trial Monitoring Report #46, day 93; SJAC, Trial Monitoring Report #47, day 94; SJAC, Trial Monitoring Report #53, day 104
- 6 *see e.g.* SJAC, Trial Monitoring Report #36, day 73; SJAC, Trial Monitoring Report #39, day 80
- 7 §§ 406i, 406j Strafprozessordnung (StPO)/German Code of Criminal Procedure
- 8 § 68b, Strafprozessordnung (StPO)/German Code of Criminal Procedure for all witnesses including insiders and other eyewitnesses; § 406f (1) Strafprozessordnung (StPO)/German Code of Criminal Procedure for victims of crimes
- 9 §§ 395 ff. Strafprozessordnung (StPO)/German Code of Criminal Procedure
- 10 § 58 (1) Strafprozessordnung (StPO)/German Code of Criminal Procedure
- 11 § 387 Strafprozessordnung (StPO)/German Code of Criminal Procedure
- 12 *see e.g.* P33 [SJAC, Trial Monitoring Report #,34 day 71] and P50 [SJAC, Trial Monitoring Report #46, day 92] joined as plaintiffs while the trial had been going on for more than a year.
- 13 SJAC, Trial Monitoring Report #33, day 70
- 14 *Ibid.*
- 15 SJAC, Trial Monitoring Report #18, day 45
- 16 § 395 Strafprozessordnung (StPO)/German Code of Criminal Procedure
- 17 § 397a (1) Strafprozessordnung (StPO)/German Code of Criminal Procedure
- 18 Dr. Schwarz et al. “Strafbarkeitslücken Schließen – Betroffenenrechte Stärken.”, *ECCHR*, https://www.ecchr.eu/fileadmin/Juristische_Dokumente/20211020_Stellungnahme_Reform_VStGB_zur_Veroeffentlichung.pdf, last accessed on 11/25/21.
- 19 Valerius “§395 StPO”, *Münchener Kommentar Strafprozessordnung*, 2019, rns 8-9.
- 20 SJAC, Trial Monitoring Report #50, day 100
- 21 §144 StPO, Deutscher Bundestag „Drucksache 19/13829, Gesetzentwurf der Bundesregierung: Entwurf eines Gesetzes zur Neuregelung des Rechts der notwendigen Verteidigung“, 9 October 2019, pp. 49 f., <https://dserver.bundestag.de/btd/19/138/1913829.pdf>, last accessed on 11/26/21.
- 22 § 397b Strafprozessordnung (StPO)/German Code of Criminal Procedure
- 23 Due to repetition, SJAC’s Trial Reports do not detail the exact wording of every time the witness was “informed about his/her rights and duties as a witness” at the beginning of his/her testimony.
- 24 *see* SJAC, Trial Monitoring Report #44; SJAC, Trial Monitoring Report #53, day 103; and closing statements of the defense in SJAC, Trial Monitoring Report #57
- 25 *see* SJAC, Trial Monitoring Report #53
- 26 *see* SJAC, Trial Monitoring Report #47, day 95
- 27 § 261 Strafprozessordnung (StPO)/German Code of Criminal Procedure
- 28 § 153 Strafgesetzbuch (StGB)/German Criminal Code, § 47 (2) Strafgesetzbuch (StGB)/German Criminal Code
- 29 § 159 Strafgesetzbuch (StGB)/German Criminal Code
- 30 § 169 Strafgesetzbuch (StGB)/German Criminal Code
- 31 The issue was first raised in SJAC, Trial Monitoring Report #30
- 32 *see* SJAC, Trial Monitoring Report #30, SJAC, Trial Monitoring Report #53, day 103
- 33 *see* SJAC, Trial Monitoring Report #53, day 103
- 34 *see* SJAC, Trial Monitoring Report #58, the Raslan verdict
- 35 Syria Justice and Accountability Centre „Scratching the Surface – One Year Into the Koblenz Trial“, March 2021, *Chapter 7 – Witness Protection*.
- 36 *see e.g.* SJAC, Trial Monitoring Report #36, day 73; SJAC, Trial Monitoring Report #46, day 93
- 37 One witness who was previously interviewed by the BKA and receiving protective measures decided to leave the country, presumably out of fear of her own and her family’s safety, *see* SJAC, Trial Monitoring Report #53, day 104
- 38 Art. 6 (3) d ECHR
- 39 Case No. BGH 3 StR 323/16 (Bundesgerichtshof, 4 May 2017), <http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&nr=78546&pos=0&anz=1>
- 40 *see e.g.* SJAC, Trial Monitoring Report #22, day 52; SJAC, Trial Monitoring Report # 24, day 55; SJAC, Trial Monitoring Report #29, day 64; SJAC, Trial Monitoring Report #53, day 104
- 41 *see e.g.* SJAC, Trial Monitoring Report #8; SJAC, Trial Monitoring Report #12; SJAC, Trial Monitoring Report #46, day 93
- 42 *see e.g.* SJAC, Trial Monitoring Report #53, day 103
- 43 § 68 (1) Strafprozessordnung (StPO)/German Code of Criminal Procedure
- 44 § 68 (2) Strafprozessordnung (StPO)/German Code of Criminal Procedure
- 45 SJAC, Trial Monitoring Report #20, day 48
- 46 *see e.g.* SJAC, Trial Monitoring Report #12, day 30; SJAC, Trial Monitoring Report #15, day 36
- 47 SJAC, Trial Monitoring Report #15, day 36
- 48 Deborah Amos, „Syrians Have Stared Down Threats To Testify Against Assad’s Regime In A Landmark Trial“, <https://www.npr.org/2021/09/28/1038326725/germany-syrian-torture-witnesses-threats?t=1637937587306>, 28 September 2021, last accessed on 11/26/2021.
- 49 Christoph Safferling and Gurgun Petrossian, *Victims before the International Criminal Court: Definition, Participation, Reparation* (Cham, Switzerland: Springer, 2021).
- 50 SJAC, Trial Monitoring Report #12; SJAC, Trial Monitoring Report #19; SJAC, Trial Monitoring Report #30
- 51 SJAC, Trial Monitoring Report #40; SJAC, Trial Monitoring Report #44, day 88
- 52 SJAC, Trial Monitoring Report #37, day 76
- 53 Directive 2012/29/EU of the European Parliament

and of the Council of 25 October 2012 Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime, and Replacing Council Framework Decision 2001/220/JHA. (Directive 2012/29/EU)

54 § 406g Strafprozessordnung (StPO)/German Code of Criminal Procedure; Gesetz über psychosoziale Prozessbegleitung im Strafverfahren (PsychPbG)

55 § 3 Gesetz über die psychosoziale Prozessbegleitung im Strafverfahren (PsychPbG)/German Law on Psychosocial Support in Criminal Proceedings

56 § 2 Gesetz über die psychosoziale Prozessbegleitung im Strafverfahren (PsychPbG)/German Law on Psychosocial Support in Criminal Proceedings

57 §§ 406g (3), 397a (1) nos 4 + 5 Strafprozessordnung (StPO)/German Code of Criminal Procedure

58 §§ 406g (3), 397a (1) nos 1-3 Strafprozessordnung (StPO)/German Code of Criminal Procedure

59 § 406g (4) Strafprozessordnung (StPO)/German Code of Criminal Procedure

60 § 2 G(2) s.3 Gesetz über die psychosoziale Prozessbegleitung im Strafverfahren (PsychPbG)/German Law on Psychosocial Support in Criminal Proceedings

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63 P12, SJAC, Trial Monitoring Report #30, SJAC, Trial Monitoring Report #33

64 see SJAC, Trial Monitoring Report #46, P50's testimony

65 SJAC, Trial Monitoring Report #24, day 55

66 SJAC "PRESS RELEASE: SJAC Petitions German Constitutional Court to Obtain Arabic language translation for Syrian Victims", 13 August 2020, <https://syriaaccountability.org/updates/2020/08/13/press-release-sjac-petitions-german-constitutional-court-to-obtain-arabic-language-translation-for-syrian-victims/> (last accessed 11/30/21); SJAC: PRESS RELEASE: Syrian journalist and human rights organization secure access to Arabic translation for the Anwar Raslan trial" August 19 2020, <https://syriaaccountability.org/updates/2020/08/19/press-release-syrian-journalist-and-human-rights-organization-secure-access-to-arabic-translation-of-the-al-khatib-trial/> (last accessed 11/30/21)

67 § 184 Gerichtsverfassungsgesetz (GVG)/German Courts Constitution Act ; the national Sorb minority is allowed to speak Sorbic in courts in their region.

68 § 187 Gerichtsverfassungsgesetz (GVG)/German Courts Constitution Act ; Art. 14.

69 § 189 Gerichtsverfassungsgesetz (GVG)/German Courts Constitution Act

70 § 187 (2) Gerichtsverfassungsgesetz (GVG)/German Courts Constitution Act

71 Art. 2 (1) Directive 2010/64/EU of the European Parliament and the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings

72 § 338 no. 5 Strafprozessordnung (StPO)/German Code of Criminal Procedure

73 § 187 (3) Gerichtsverfassungsgesetz (GVG)/German Courts Constitution Act

74 see SJAC, Trial Monitoring Report #1, day 1

75 Case No. 1BvR 1918/20, Bundesverfassungsgericht, Beschluss des BVerfG, 18 August 2020, EN translation available at https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2020/08/rk20200818_1bvr191820en.html

76 see SJAC, Trial Monitoring Report #9, day 24

77 see SJAC, Trial Monitoring Report #41

78 Compare SJAC's trial reports tracking the attendance of public audience and journalist for every trial day, available at <https://syriaaccountability.org/trial-monitoring/>

79 §163 (7) Strafprozessordnung (StPO)/German Code of Criminal Procedure

80 see e.g. SJAC, Trial Monitoring Report #25, day 57; SJAC, Trial Monitoring Report #26, day 59; SJAC, Trial Monitoring Report #39, day 80.

81 see e.g., SJAC, Trial Monitoring Report #4, P1's testimony; SJAC, Trial Monitoring Report #53, P57's testimony.

82 Bundesverband der Dolmetscher und Übersetzer – Bayern, 'Infoblatt zur Heranziehung von Dolmetschern durch Polizeibehörden', May 2017, available at https://by.bdue.de/fileadmin/verbaende/by/Dateien/PDF-Dateien/Mitglieder_Beeidigte_UE/BDUE_BY_Infoblatt_Polizeidolmetschen.pdf, last accessed on 12/28/21.

83 see e.g. SJAC, Trial Monitoring Report #4, SJAC, Trial Monitoring Report #44, day 88; SJAC, Trial Monitoring Report #53, day 103

84 see e.g. SJAC, Trial Monitoring Report #31; SJAC, Trial Monitoring Report # 48

85 see SJAC, Trial Monitoring Report #48; SJAC, Trial Monitoring Report #49

86 see e.g. SJAC, Trial Monitoring Report #27, day 60 when Prosecutor Polz requested a break for the interpreters when the Prosecutors delivered their closing statements in the trial of Eyad Al-Gharib; SJAC, Trial Monitoring Report #36, day 73 when the Presiding Judge ordered a break during the read-out of a long transcript; SJAC, Trial Monitoring Report #44 when the Presiding Judge reminded the interpreters to ask for a break whenever they would need one and kept reassuring that they were able to continue. All parties explicitly thanked the interpreters in their closing statements, see SJAC, Trial Monitoring Report #54, SJAC, Trial Monitoring Report #55, SJAC, Trial Monitoring Report #56, SJAC, Trial Monitoring Report #57, and the Judges' announcement of the verdict in SJAC, Trial Monitoring Report #58.

87 Surveys among court interpreters and practices from international courts show that frequent breaks are indispensable for accurate interpretation in court, regardless of whether the interpreters conduct simultaneous or consecutive interpretation, see Stern, Ludmilla "What Can Domestic Courts Learn from International Courts and Tribunals about Good Practice In Interpreting?: From the Australian War Crimes prosecutions to the International Criminal Court" *T & I Review*, no. 2 2012, pp. 7-30

88 see e.g. SJAC, Trial Monitoring Report #28 when the interpreters asked for a break during the announcement of the verdict against Eyad Al-Gharib; SJAC, Trial Monitoring Report #41, day 80 when the Presiding Judge asked the witness whether he wanted to have a break but not the interpreters.

89 see e.g. SJAC, Trial Monitoring Report #10, Riad Seif's testimony; SJAC, Trial Monitoring Report #21, P23's testimony; SJAC, Trial Monitoring Report #29, P29's testimony; SJAC, Trial

Monitoring Report #37, P34's testimony

90 see e.g. SJAC, Trial Monitoring Report #46, P50's testimony when Presiding Judge Kerber wanted clarification on the term "kuffar" that she heard the witness mentioning, SJAC, Trial Monitoring Report #51, P56's testimony, when Judge Wiedner consulted the interpreters to ensure that the Arabic term "ameed" was correctly translated to Brigadier General.

91 "Branch 251, Season 2, Episode 6, "The Judgment" available at <https://branch-251.captivate.fm/episode/judgement>

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93 Public multilingual outreach by the Dutch Public Prosecution Service: <https://www.prosecutionservice.nl/topics/international-crimes>; public outreach by the Finnish National Bureau of Investigation: <https://poliisi.fi/en/national-bureau-of-investigation>

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95 Human Rights Watch, "The Long Arm of Justice – Lessons from Specialized War Crimes Units in France Germany, and the Netherlands", 16 September 2014, <https://www.hrw.org/report/2014/09/16/long-arm-justice/lessons-specialized-war-crimes-units-france-germany-and> (last accessed on 11/29/21)

96 § 465 Strafprozessordnung (StPO)/German Code of Criminal Procedure

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99 Diehl and Zorn "BKA-Ermittler gegen Kriegsverbrecher 'Aufnahmen von Enthauptungen vergessen Sie nicht.'", *Der Spiegel*, 22 June 2017, <https://www.spiegel.de/politik/deutschland/bundeskriminalamt-klaus-zorn-ueber-ermittlungen-gegen-kriegsverbrecher-in-deutschland-a-1152891.html> (last accessed 11/29/21)

100 Sect 15 Dutch International Crimes Act

101 Trial proceedings concerning international crimes start at one of Sweden's 48 District Courts, can be appealed at a Court of Appeal and might be referred to the Supreme Court for revision of procedural matters, see SJAC "A Guide To National Prosecution In Sweden For Crimes committed in Syria" <https://syriaaccountability.org/universal-jurisdiction/> (last accessed 11/30/21), pp. 8f.

102 "FYF – Seven-Year Commemoration of the Yezidi Genocide – Free Yezidi Foundation" https://www.youtube.com/watch?v=0_5qta8UMI4 (last accessed 11/30/21) @03:08:05

103 § 120 (1) no. 8 Gerichtsverfassungsgesetz (GVG)/German Courts Constitution Act

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105 § 13 a (2) Gerichtsverfassungsgesetz (GVG)/German

Courts Constitution Act

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112 If stored at the German Federal Archive, material is usually sealed for thirty years pursuant to § 11 (2) BArchG

113 "Koalitionsvertrag zwischen 2021-2025 zwischen der Sozialdemokratischen Partei Deutschlands (SPD), BÜNDNIS 90/DIE GRÜNEN und den Freien Demokraten (FDP) https://www.spd.de/fileadmin/Dokumente/Koalitionsvertrag/Koalitionsvertrag_2021-2025.pdf, p.106.

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