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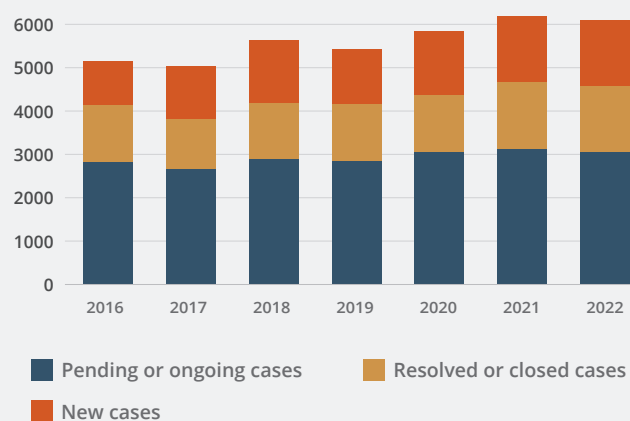
EU Network for investigation and prosecution of genocide, crimes against humanity and war crimes

At a Glance: Universal Jurisdiction in EU Member States

Every year, EU Member States conduct an increasing number of investigations and prosecutions for the crime of genocide, crimes against humanity and war crimes (collectively known as core international crimes). While Member States may prosecute these crimes based on traditional forms of jurisdiction – against their own nationals (active personality principle) or when their nationals become victims of such crimes (passive nationality principle) – a growing number of cases are based on **universal** or **extraterritorial jurisdiction**.

In 2023, universal jurisdiction cases were ongoing in several Member States. This trend is expected to grow exponentially as a result of the war in Ukraine and the launch of several new investigations in response to atrocities committed on the ground.

Core international crimes cases in the EU (2016-2022)



What is universal jurisdiction?

Universal jurisdiction allows a State to investigate and prosecute core international crimes:

- ▶ Committed abroad,
- ▶ By a perpetrator who is not a national of that State,
- ▶ Against a victim who is not a national of that State.

In other words, States can exceptionally exercise their competence over these crimes, despite the absence of any territorial or nationality link.

Universal jurisdiction is meant as a tool of last resort to fight against impunity. Ideally, core international crimes should be prosecuted in the country where they occurred and where the evidence can be found, enabling witnesses, victims and affected communities to engage in the justice process. However, this is not always possible: the State where the crimes were initially committed may be unable or unwilling to prosecute perpetrators for various reasons – for instance in the absence of a functioning judicial system or when the regime in place is involved in the crimes. In such circumstances, universal jurisdiction may be the only path to justice for victims.

Other States have an obligation to ensure that core international crimes do not go unpunished. However, in many instances universal jurisdiction is not absolute: many States will impose some conditions prior to exercising their competence over the crimes.

That is why in some cases universal jurisdiction may be better described as **extraterritorial jurisdiction**.

Eurojust, the EU Agency for Criminal Justice Cooperation, the *Genocide Network*, the EU Network for investigation and prosecution of genocide, crimes against humanity and war crimes, and *Europol*, the EU Agency for Law Enforcement Cooperation, support national authorities in their investigations and prosecutions of core international crimes – including those based on the universal jurisdiction principle. Together, they serve as a central hub for the exchange of information and expertise, and assist national jurisdictions, international bodies and civil society in coordinating accountability efforts.



EU Network for investigation and prosecution of genocide, crimes against humanity and war crimes



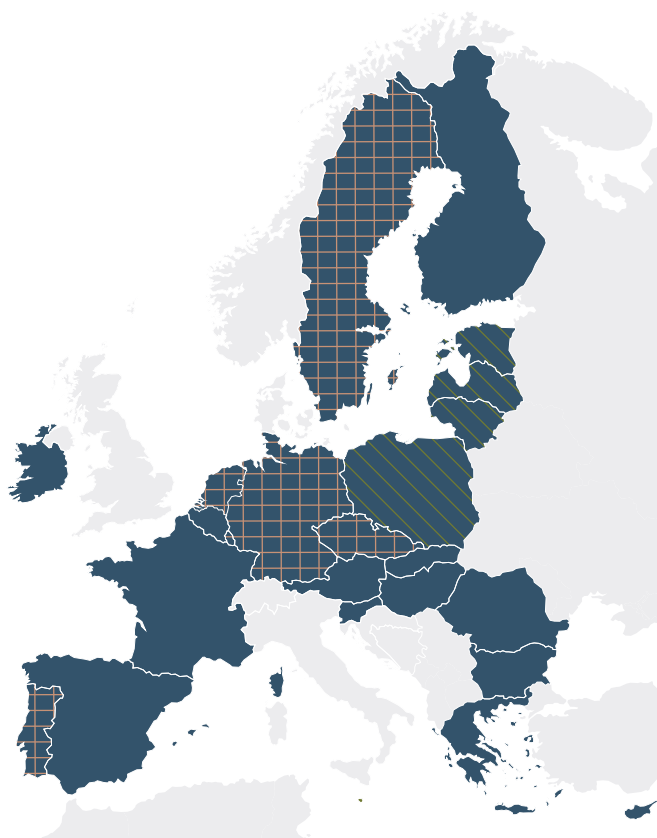
State of play in the EU

All EU Member States are parties to the Rome Statute of the International Criminal Court (ICC). As a result, most of them have now adopted, or in the case of Italy and Denmark, are in the process of adopting legislation defining war crimes, crimes against humanity and the crime of genocide. In line with applicable international legal obligations, their procedural framework generally includes a form of universal or extraterritorial jurisdiction as well.

In addition, some Member States have introduced the crime of aggression (provided for in Article 8 *bis* of the Rome Statute) in their national criminal code, but only a few of them may exercise universal jurisdiction over this crime.¹

Universal or extraterritorial jurisdiction in the law of Member States

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Member States exercising universal or extraterritorial jurisdiction over war crimes, crimes against humanity and genocide: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden
- 
Member States exercising universal or extraterritorial jurisdiction over the crime of aggression: Estonia, Latvia, Lithuania, Poland
- 
Crime of aggression implemented but universal jurisdiction excluded: Czech Republic, Germany, Luxembourg, Netherlands, Portugal, Sweden



Conditions for the exercise of universal or extraterritorial jurisdiction

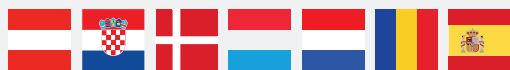
In addition to defining the crimes, adopting legislation that supports the exercise of universal or extraterritorial jurisdiction is a key element for the successful prosecution of core international crimes. However, in most Member States some obstacles remain, as the exercise of universal jurisdiction is limited by a number of conditions,

including (i) the presence or residence of a suspect on the territory of the Member State; (ii) the double criminality principle; and (iii) prior government approval. Where conditions apply, they may impede the arrest of suspects or the opening of a case into alleged core international crimes. Member States should take appropriate safeguards when implementing or revising their universal jurisdiction framework to mitigate the risk of impunity gaps.



Presence

Presence of a suspect on the territory of the Member State is required to initiate proceedings



Legislative proposal currently under consideration



Official approval

Pre-approval of Ministry of Justice, Prosecutor General or other official is required to initiate proceedings



Residence

Suspect must reside on the territory of the Member State to initiate proceedings



Subsidiarity principle

Absence of proceedings before the ICC, or before another competent international/national jurisdiction required to initiate proceedings



Double criminality principle

Condition of double criminality or ratification of the Rome Statute of the ICC by the State where the crimes were committed or the State of which the suspect has the nationality



For crimes against humanity and war crimes



No conditions

Law of Member State does not impose specific criteria

However, in practice, most Member States will not initiate proceedings unless a suspect can be found on their territory





IN FOCUS – Recent convictions in universal jurisdiction cases

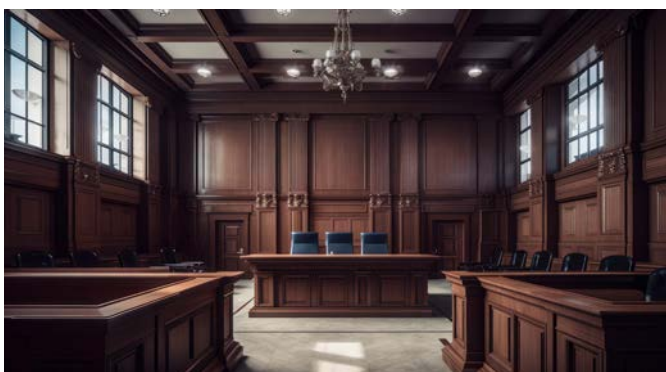
In 2022, EU Member States were remarkably successful in bringing perpetrators of core international crimes to court on the basis of universal or extraterritorial jurisdiction. Convictions have been obtained in relation to situations as diverse as Syria, Afghanistan, Iran, Rwanda and Liberia, sometimes for crimes dating back 40 years. Many other cases are still pending, and several trials or appeal hearings will take place in Finland, France, Germany and Sweden in 2023 for crimes allegedly committed in Rwanda, Sierra Leone, Syria and Sudan.

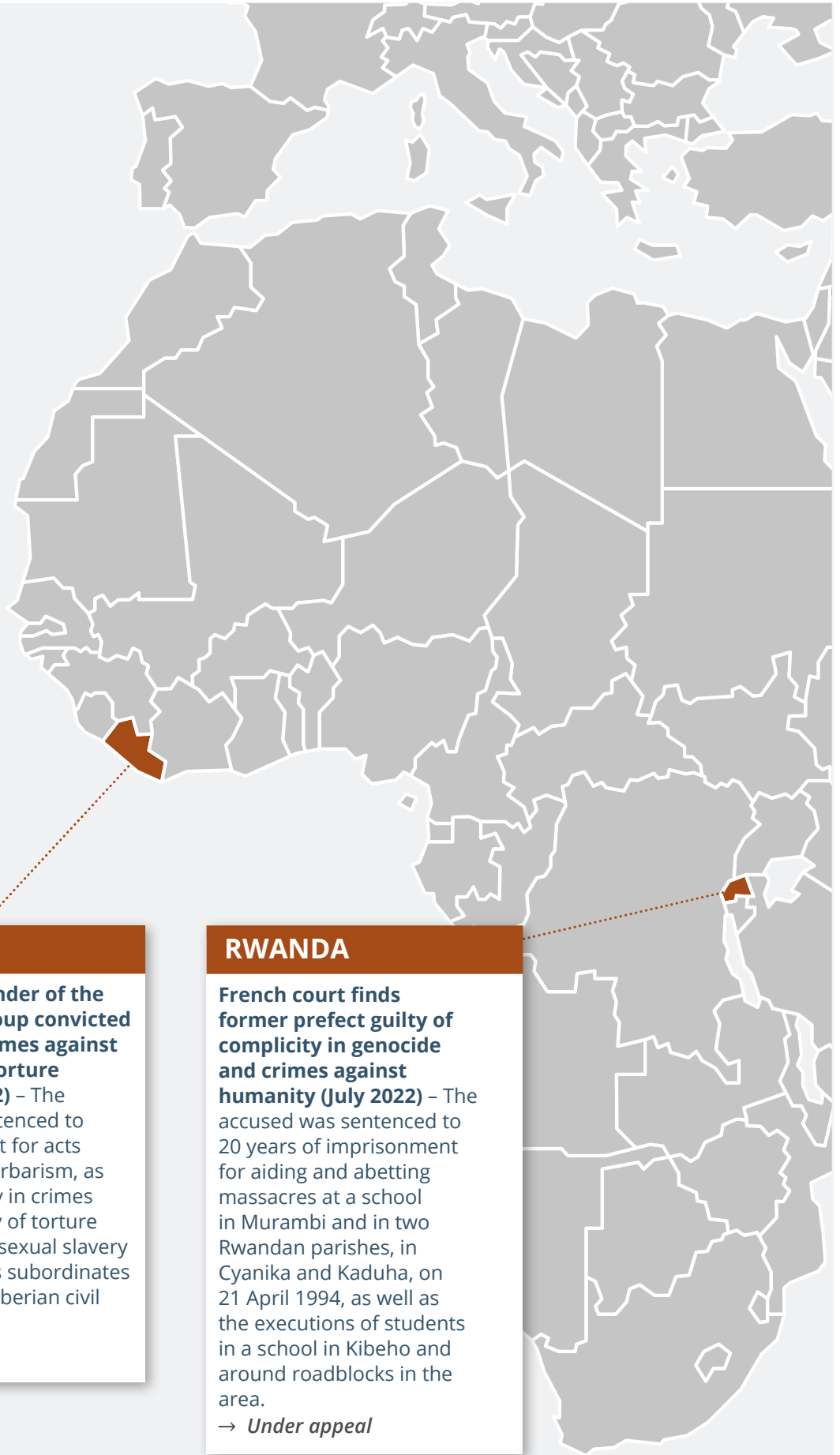
The application of the above conditions varies greatly from one State to another: for example, they may be alternative or cumulative conditions. Some, such as the prior approval of a government official, would only apply in particular circumstances. In a few States, the presence criterion is complemented by the requirement that extradition be impossible (in application of the *aut dedere aut judicare* principle).

Furthermore, the *Ljubljana-The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity, War Crimes and other International Crimes*, adopted in Ljubljana, Slovenia on 26 May 2023, provides that State Parties shall take such measures as may be necessary to establish their jurisdiction over the crimes to which the Convention applies in cases where the alleged offender is present on their territory and is not extradited to another State or surrendered to an international criminal court or tribunal.

Thus, the new Convention does not provide for 'pure' universal jurisdiction but a form of extraterritorial jurisdiction, with a nexus to the alleged perpetrator's presence on the territory of the State Party, regardless of the perpetrator's or the victims' nationalities.

Universal jurisdiction is a powerful tool to achieve accountability for the gravest crimes, and is readily available to the majority of EU Member States. Nonetheless, most legal proceedings led on that basis remain limited to a handful of Member States. The renewed commitment of the EU to fight against impunity, not only for crimes committed in Ukraine, but also in all other situations, should translate into increased efforts and resources in all Member States to ensure that universal jurisdiction is used to its full potential.





LIBERIA

Former commander of the ULIMO rebel group convicted in France for crimes against humanity and torture (November 2022) – The

accused was sentenced to life imprisonment for acts of torture and barbarism, as well as complicity in crimes against humanity of torture for the rape and sexual slavery committed by his subordinates during the first Liberian civil war (1989–1996).

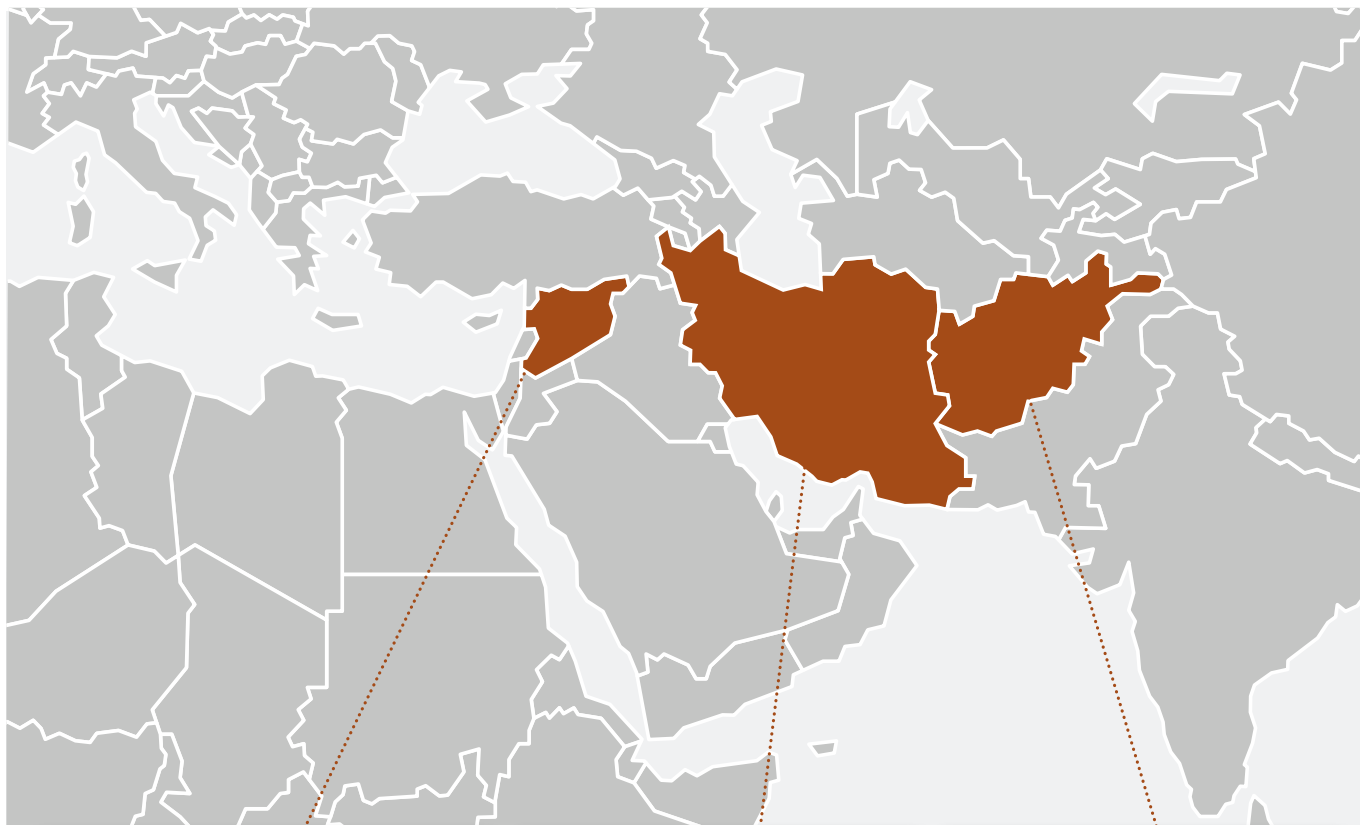
→ *Under appeal*

RWANDA

French court finds former prefect guilty of complicity in genocide and crimes against humanity (July 2022) – The

accused was sentenced to 20 years of imprisonment for aiding and abetting massacres at a school in Murambi and in two Rwandan parishes, in Cyanika and Kaduha, on 21 April 1994, as well as the executions of students in a school in Kibeho and around roadblocks in the area.

→ *Under appeal*



SYRIA

German court sentences high-ranking official to life imprisonment for crimes against humanity (January 2022)

– The convicted official, a former member of the Syrian intelligence services, was arrested in Germany in 2019. The court held him directly responsible for, *inter alia*, the deaths of 27 members of the opposition, torture in at least 4000 cases, serious deprivation of liberty and rape in 2011 and 2012.

→ *Under appeal*

This was the second conviction related to the 'Caesar files', a document containing over 26,000 pictures of the torture of victims in mass detention centres of the Syrian regime. In 2021, an associate of the official was already sentenced to 4.5 years imprisonment for complicity in crimes against humanity and torture.

→ *Judgement and sentence are final*

IRAN

Former assistant to deputy prosecutor at Gohardasht prison convicted in Sweden for war crimes (July 2022)

– The accused was arrested in 2019 while traveling to Sweden. He was sentenced to life imprisonment for war crimes for his role in the mass executions of detained Mujahidin's sympathisers and for murders for the executions of left-wing sympathisers, in 1988.

→ *Under appeal*

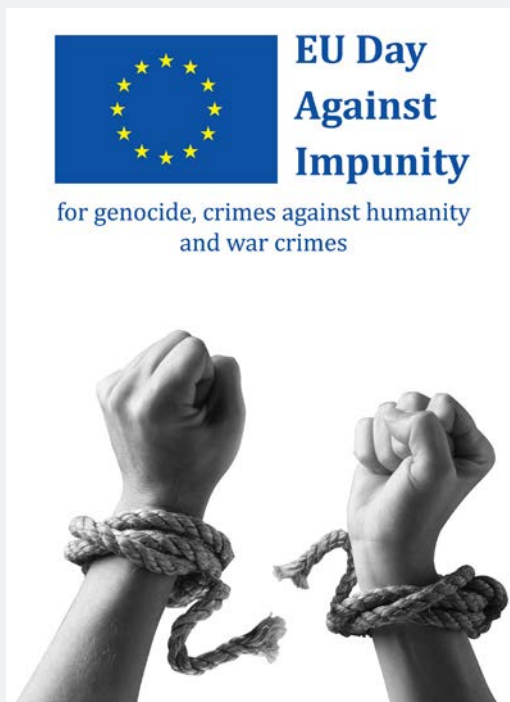
AFGHANISTAN

Former commander of Pul-e-Charki prison convicted by Dutch court for war crimes (April 2022)

– The accused, who settled in the Netherlands in 2001 and acquired Dutch nationality, was found guilty of the war crimes of arbitrary detention, cruel and inhuman treatment and assault on the personal dignity of political prisoners. He was responsible for the detention conditions at the prison between 1983 and 1988.

→ *Under appeal*

The EU Day Against Impunity

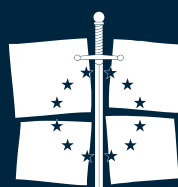


Since 2016, 23 May has become the annual *EU Day Against Impunity for Genocide, Crimes Against Humanity and War Crimes*. Co-organised by the Presidency of the Council of the EU, the European Commission, the Genocide Network and Eurojust, this initiative aims to raise awareness of the most heinous crimes.

At the same time, the EU Day Against Impunity aims to promote national investigations and prosecutions, to formally recognise the common efforts of the EU Member States and the European Union in enforcing international criminal law, to address the position and participation of victims in criminal proceedings for these crimes, and to reinvigorate Europe-wide commitment to the ongoing fight against impunity for these crimes.

The first EU Day Against Impunity took place on 23 May 2016. Since then, the event has been attended by practitioners, representatives of international tribunals, Member States, the European Institutions and international organisations, non-governmental organisations, academics, lawyers, journalists, etc.

¹ The information presented in this factsheet has been compiled by the Genocide Network Secretariat based on the following sources: (i) a study conducted by the Directorate of Legal Affairs of the French Ministry of Foreign Affairs and the French Ministry of Justice; (ii) TRIAL International's *Universal Jurisdiction Database*; (iii) the *Justice Beyond Borders* project by the Clooney Foundation for Justice; (iv) information provided by Genocide Network Contact Points, and (v) open source research. This factsheet is meant solely for information purposes. Any inaccuracies are the sole responsibility of the Genocide Network Secretariat.



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