

# An Untapped Justice Opportunity for Syria: A State Party Referral to the International Criminal Court

**SYRIA**



---

**POLICY PAPER #10**

NOVEMBER 2023

## **An Untapped Justice Opportunity for Syria: A State Party Referral to the International Criminal Court**

It has been twelve years since the Syrian government's brutal crackdown against protestors in Dara'a, which propelled the country into a protracted armed conflict and provoked one of the largest humanitarian crises since World War II. From the outset, the war has been characterised by serious violations of international legal norms including arbitrary detention, enforced disappearances, forcible displacement, extrajudicial killings, illegal means and methods of warfare, conflict-related sexual violence, torture, and other cruel, inhuman, and degrading treatment.

The International Criminal Court (ICC) was created to deter this kind of wanton disregard for human life. Sadly, it has been slow to respond to the atrocities, the consequences of which have reached far beyond the borders of Syria to places like Ukraine. A reluctance to act in situations like Syria, despite a credible legal basis for seeking accountability against perpetrators, arguably emboldened perpetrators and accelerated the breakdown in international order, in addition to creating massive refugee flows in the region and into Europe. However, it is not too late to act.

States Parties to the Rome Statute are in a unique position to correct past failures and deliver justice for Syrian victims. They can do this by using the power given to them under Article 14 of the Statute to make referrals to the Office of the Prosecutor (OTP). The grounds for a referral exist. In particular, the ICC has jurisdiction over international crimes associated with the Syrian conflict that occurred at least in part on the territory of Jordan, a State Party. Crimes against humanity within the ICC's jurisdiction include deportation, persecution, and other inhumane acts. Securing an international investigation of these crimes will not only give victims the recognition they deserve but strike a significant blow in the global fight against impunity.

### **About LAW**

This policy brief has been prepared by Legal Action Worldwide (LAW), an independent, non-profit organisation comprised of human rights lawyers and jurists who specialise in providing legal information, assistance, and representation in fragile and conflict-affected areas. LAW has represented thousands of victims globally and currently support survivors in South Sudan, Somalia, Ethiopia, Uganda, Bangladesh/Myanmar, Sri Lanka, Lebanon, Syria and occupied Palestine. LAW's work throughout the world is overseen by Executive Director Antonia Mulvey, a British lawyer with 20 years' experience in international, human rights, refugee and criminal law. She is a former UN investigator and Sexual and Gender-Based Violence expert for the UK Foreign and Commonwealth Office Preventing Sexual Violence Initiative, UN Women and the Justice Rapid Response Unit and former Visiting Fellow at Columbia University and London School of Economics.

LAW has been working on the Syria crisis since December 2017 and responds to the justice needs of Syrian survivors of gendered crimes through legal aid and empowerment, advocacy, and strategic litigation. LAW represents 37 former detainees and survivors of torture, including male and female survivors of rape and other forms of sexual violence. Since 2021, LAW has supported the 37 survivors in their ongoing struggle to secure an international investigation of the crimes committed against them. In May 2021, LAW filed a victims' submission ICC OTP on their behalf urging the Prosecutor to open an investigation into crimes against humanity perpetrated by the Syrian government. It was the first submission to be filed on behalf of Syrian survivors of sexual violence.

### **Glossary of key terms**

“jurisdiction”: the power given to the ICC to investigate and prosecute international crimes within set limits

“Office of the Prosecutor” : an independent organ within the ICC that examines situations where international crimes may have occurred, and investigates and prosecutes individuals who are alleged perpetrators of international crimes

“Pre-Trial Chamber”: a chamber of three ICC judges that makes a preliminary determination on whether a case falls within the jurisdiction of the Court and grants or denies the Prosecutor leave to open an investigation

“Rome Statute” : the founding treaty of the ICC

“situation”: a context under examination or investigation by the ICC, usually defined by geographic and temporal parameters e.g. “the situation in the territory of the Democratic Republic of the Congo since 1 July 2002”

“State Party” : a state that has signed and ratified the Rome Statute

### **What is a State Party referral?**

The Rome Statute establishes three mechanisms for bringing a situation to the ICC’s attention and initiating action by the Court. The first mechanism - and perhaps the most well-known - is a referral by the United Nations Security Council (UNSC). These types of referrals are unique in scope because they can be used to empower the court to act in situations where it lacks jurisdiction. The Council has only used this power twice, referring Darfur in 2005, and Libya in 2011.<sup>1</sup> On 22 May 2014, an attempt to refer the situation in Syria to the ICC was defeated when Russia and China vetoed draft resolution S/2014/348. The Council has not considered a referral since 2014 and is unlikely to do so again given Russia and China’s continued support for the Syrian government.

Alternatively, the Prosecutor of the ICC has the power to act on his own initiative (known by its Latin term, as an investigation “*proprio motu*”). Articles 13(c) and 15 of the Rome Statute allow the Prosecutor to open a “preliminary examination”, or pre-investigation, when he receives information on crimes within the Court’s jurisdiction. Information can come from any

number of reliable sources, including States, organs of the UN, and intergovernmental or nongovernmental organisations (NGOs). Of the 17 situations under active investigation, eight were launched on the Prosecutor's own initiative. The OTP has received at least three communications outlining crimes against Syrians, including a submission prepared by Legal Action Worldwide (LAW) on behalf of 20 Syrian victims. After four and a half years, no decision has been made on whether to examine the situation further.

The third mechanism for initiating action by the ICC has not been used in the Syria context. Under Articles 13(a) and 14 of the Rome Statute, a State Party may refer a situation to the OTP when one or more crimes within the Court's jurisdiction appear to have been committed. The referral mechanism has been used more and more frequently in recent years. Between 2001 and 2018, eight different States Parties referred situations within their own territories, including Uganda, Mali, DRC, Central African Republic, Palestine, and Gabon. This pattern of self-referrals changed in 2018, when six States Parties referred the situation in another State Party, Venezuela, to the OTP. This was also the first group referral by ICC States Parties. The second came soon after Russia's 2022 invasion of Ukraine when, on 1 March 2022, the Republic of Lithuania submitted a referral of the situation in Ukraine to the OTP. The following day, a coordinated group of 38 States Parties sent referrals of the situation.<sup>2</sup> As a result, the Prosecutor's investigations of core international crimes in Venezuela and Ukraine are ongoing. On 17 November 2023, the OTP received a referral of the Situation in the State of Palestine from five States Parties: South Africa, Bangladesh, Bolivia, Comoros, and Djibouti.

### **Is a State Party referral possible in the Syria context?**

States Parties can only refer situations to the ICC if it appears that crimes within the Court's jurisdiction have occurred. That means one of the preconditions for the ICC to exercise its authority must be fulfilled. The ICC automatically has jurisdiction over crimes that have been committed by persons who are nationals of a State Party. It also has jurisdiction over crimes that have been committed on the territory of a State Party (the "territorial principle"). In 2019, a series of landmark decisions confirmed that the Court's jurisdiction was not limited to situations in which international crimes took place exclusively on the territory of a State Party. The territorial principle is satisfied as long as *part of* the criminal conduct did.

In August 2017, security forces in Myanmar launched a coordinated offensive against the Rohingya, an ethno-religious community living in the country's westernmost province. As a result of the "clearance operations" 10,000 civilians were killed, 392 villages partially or fully destroyed, and 750,000 Rohingya were forced to flee to neighbouring Bangladesh.

Myanmar is not a party to the Rome Statute. Yet within two and a half years of the clearance operations, the ICC had launched a full investigation of crimes against the Rohingya. When the Pre-Trial Chamber was asked to authorise the investigation by the Prosecutor, it found there was a reasonable basis to believe that at least part of the crimes against the Rohingya took place on Bangladesh, a State Party. The reasoning behind the decision is simple. Some crimes are

transboundary in character, meaning they have a cross-border element. The crime against humanity of deportation, for example, involves displacement across an international border as a specific element of the offense. The crime of deportation against the Rohingya began in Myanmar, but it ended in Bangladesh, where 750,000 victims fled and remain to this day, unable to return home. In these situations, when at least one element of a transboundary crime occurs on the territory of a State Party, the ICC has jurisdiction to investigate it.

For Syrian victims, the situation of the Rohingya is analogous to their own. Syrians are also victims of transboundary crimes committed on a massive scale, having been forced from their homes and communities by a widespread and systematic attack on the civilian population, including arbitrary arrests and detention, torture, rape and other forms of sexual violence, extrajudicial killings, siege warfare, chemical attacks, aerial bombardment, and indiscriminate shooting. As a direct result of the attack, over 650,000 victims exercised the one meaningful choice available to them and fled to Jordan. They have been prevented from returning home and live in involuntary exile in Jordan due to an ongoing campaign of violence, terrorisation, intimidation, and harassment.

These acts amount to the crimes against humanity of deportation, persecution, and other inhumane acts, with at least part of the crimes taking place in Jordan, a State Party to the Rome Statute. The ICC has jurisdiction to investigate crimes against Syrians in the same way it has jurisdiction to investigate crimes against the Rohingya. A State Party referral is an appropriate mechanism for bringing the situation to the attention of the Prosecutor to determine whether crimes have, in fact, been committed and to identify those most responsible.

### **What are the benefits of a State Party referral?**

A referral under Article 14 has clear practical benefits, not least when it comes to the procedural hurdles that must be overcome to initiate an investigation. Such a referral expedites the pathway to an investigation and imposes a positive obligation on the Prosecutor to investigate. .

A State Party referral is a much more expedient pathway to an investigation than when the Prosecutor investigates upon his own initiative. Recent jurisprudence from the ICC Appeals Chamber in the Afghanistan situation clarified that when a State Party refers a situation to the Prosecutor under article 14, the Prosecutor is not obliged to request authorisation from the Pre-Trial Chamber to investigate that situation. In contrast, he must seek such authorization when seeking to investigate matters upon his own initiative (*propio motu*).<sup>3</sup>

The Appeals Chamber further clarified that when a State Party or the UN Security Council refers a situation to the Prosecutor, article 53(1) imposes a positive obligation on the Prosecutor to open an investigation, unless he determines there is no reasonable basis to proceed (“[t]he Prosecutor *shall...*”). This obligation is in contrast to the discretion the Prosecution maintains on whether to initiate *propio motu* investigations under article 15(1) (“[t]he Prosecutor *may...*”).<sup>4</sup>

Furthermore, state party referrals under Article 14 were designed to facilitate the administration of justice by ensuring that the Court was always available when needed, while preventing attempts to invoke the jurisdiction of the Court for frivolous or political reasons.<sup>5</sup> Proposals to restrict the ability to refer situations to “interested” states, or to require referrals from at least two states to trigger jurisdiction, were ultimately unsuccessful, indicating the importance that the drafters attached to the availability of the mechanism.<sup>6</sup> In the end, the *apparent commission* of a crime within the jurisdiction of the court was adopted as a sufficient basis for a State Party referral. The threshold excludes situations that are manifestly outside the jurisdiction of the Court. However, it does not require referring States to establish a *prima facie* case.

In contrast, the Rome Statute places a more demanding threshold on the Prosecutor’s power to investigate on his own initiative. Under Article 15, the Prosecutor may open a preliminary examination, before an investigation, when he receives information on crimes within the jurisdiction of the Court.<sup>7</sup> During a preliminary examination, the information received by the OTP, as well as any further information it requests, is subjected to four stages of analysis. In the initial stages, the OTP will consider the “seriousness” of the information received, a low standard of scrutiny intended to filter out information on crimes that are manifestly outside the jurisdiction of the court from matters warranting further analysis.<sup>8</sup> The latter stages of the process focus on whether there is a reasonable basis to open a full investigation.<sup>9</sup> If the Prosecutor concludes at the end of the analysis that there is a reasonable basis to proceed, the preliminary examination moves to its final step, which involves a request to the PTC to open an investigation.<sup>10</sup> Two of the three Pre-Trial judges must agree with the Prosecutor that there is a reasonable basis to proceed and authorize a full investigation. “Reasonable basis” means a sensible or reasonable justification for believing that a crime falling within the jurisdiction of the Court has been committed, taking account of admissibility criteria and the interests of justice.<sup>11</sup> The complexity of the procedure reflects serious differences of opinion during the drafting of the Rome Statute about the Prosecutor’s ability to act on their own initiative, and is one of the reasons that Article 15 has been described as a delicate provision of the Statute.<sup>12</sup> The result is a cumbersome process requiring the expenditure of a significant amount of resources before a full investigation is ever launched.

### **What does a State Party referral involve?**

Article 14 does not impose an evidentiary burden on the referring state. When it comes to the situation in Jordan/Syria, States Parties do not have the responsibility of proving that individual crimes took place or even establishing their transboundary character. While a referring state may choose to submit its own report and analysis to substantiate the referral, it is not required to do so, and it can cite or submit credible reports from third parties. Indeed, the group referral of the Ukraine situation by 38 States Parties were letters consisting of just one or two pages.<sup>13</sup> Something similar is all that is required to refer the situation in Jordan/Syria.

A referral letter is justified by 12 and a half years of well-documented atrocities, on a scale surpassing other situations under ICC investigation. The Syrian conflict has killed 614,000 people,<sup>14</sup> with a civilian death toll of 306,000.<sup>15</sup> Arbitrary detention, torture and other forms of ill-treatment have been committed on a massive scale, particularly against person perceived to be opponents of the government.<sup>16</sup> The number of missing or disappeared persons, estimated to be as high as 100,000, is so vast that the UN Secretary General has recommended the creation of a novel independent mechanism to establish their fate or whereabouts.<sup>17</sup> At least \$117.7 billion USD in physical capital destruction has been caused.<sup>18</sup> 760,000 housing units in Syria have been damaged,<sup>19</sup> affecting roughly 20 percent of all homes in the country.<sup>20</sup> Prior to the conflict, Syria had a population of approximately 22 million.<sup>21</sup> To date, over half the pre-conflict population, approximately 12.3 million people, have been uprooted from their homes,<sup>22</sup> including over five-and-a-half million who were forced to flee to neighbouring countries.

By way of comparison, the ICC has found a “reasonable basis to believe” that transboundary crimes of deportation, persecution, and perhaps more crimes within the jurisdiction of the Court had been committed in Myanmar, where approximately 750,000 Rohingya had been forced to flee.<sup>23</sup> The United Nations Fact Finding Mission to Myanmar estimated that the state-sponsored violence that led to the Rohingya’s exodus killed approximately 10,000 civilians and partially or fully destroyed 37,700 structures.<sup>24</sup> In its recent indictment of Russian President, Vladimir Putin, and Children’s Rights Commissioner, Maria Lvova-Belova, PTC II issued arrest warrants on facts that alleged as many as 19,393 children had been deported or forcibly transferred in Ukraine.<sup>25</sup> These numbers, tragic in their own right, absolutely pale in comparison to the victims of the transboundary criminal conduct alleged in Syria.

### **Isn’t the ICC already overstretched?**

Opening a new investigation into cross-border crimes in Jordan/Syria would undoubtedly cost the ICC money, but there are several ways in which the ICC’s budgetary constraints can be addressed:

- (1) Relying on the International Impartial and Independent Mechanism for Syria (IIIM). Since 2016, the IIIM has collected and analysed evidence on international crimes committed in the Syrian conflict. Its ever-expanding central repository of information and evidence, comprising well over 3 million records, has assisted 193 national investigations as of August 2023. Its analytical products, which can be tailored to the needs and circumstances of specific proceedings, have been utilized in court. The IIIM could provide a huge step up to the Prosecutor in the initial stages of an investigation.
- (2) State Parties pledging more financial support to the ICC. In March 2023, the justice ministers of 40 countries met in London for a war crimes conference, which raised \$4.9 million for the ICC’s investigations.
- (3) Secondment of investigators and lawyers from State Parties to the OTP’s offices in the Hague. In response to the conflict in Ukraine, investigators from countries like the Netherlands,



Belgium and France have been seconded to work with the ICC directly or have worked alongside ICC teams;

(4) Joint investigative field missions with national investigators and experts from State Parties as has been done in the Ukraine investigation.

### **What impact will a State Party referral have?**

A referral of the situation in Jordan/Syria will embolden the OTP to accept that the ICC has jurisdiction over crimes perpetrated against Syrian victims and open an investigation for those crimes against humanity occurring at least in part on the territory of Jordan. It would encourage the OTP to make a decision on a file that has been pending for years – and to do so in support of survivors. In line with recent Appeals Chamber jurisprudence, it would also impose a positive obligation on the Prosecutor to open an investigation under article 53(1), unless he comes to the unlikely determination either that there is no reasonable basis to proceed (a decision that is subject to PTC review). The opening of an ICC investigation would, in turn, lead to a scaling up of anti-impunity efforts in Syria.

The accountability ecosystem for Syria is wide-ranging, but it is far from comprehensive. Crucially, the impunity gap remains for those most responsible for international crimes – a gap that the ICC is designed to fill. The processes that are currently underway at the national and international level are part of the solution, but none of them can close the accountability gap all the way.

An ICC investigation would complement existing processes by filling important gaps in the accountability ecosystem, leading to a more comprehensive administration of justice. The ICC can widen the net of accountability thanks to its expertise in processing large amounts of data, its powerful open-source capabilities, and the fact that its jurisdiction extends to those who may be immune from national prosecution, such as the highest political and military leadership in Syria.<sup>26</sup> Unencumbered by some of the jurisdictional and practical difficulties that have stymied investigations into senior officials at the national level, the OTP can focus its investigative resources on those who bear the most responsibility for commission of atrocities.<sup>27</sup>

### **Conclusion and Recommendations**

Closing the accountability gap is necessary to deliver justice for victims, to deter perpetrators, and to improve the human rights protection of Syrians everywhere, many of whom would like nothing more than to return home. The opening of an ICC investigation would be a huge step forward in reaching that goal. Until now, efforts to secure an investigation have stalled due to a misconception that crimes perpetrated by the Syrian government took place exclusively within its own territory. A failure to grasp the ends of the Syrian government's attack – to understand that it tortured, killed, and bombarded civilians not only to terrorise and persecute individuals it perceived as opponents, but to expel and exclude them from Syrian society by deporting them to other countries – has sustained a belief that the ICC has no jurisdiction. The testimony of Syrian victims contradicts that belief.



Until now, Syrian victims' demands for an international investigation have fallen on deaf ears. All it would take to remedy that failing is for one State Party to make a referral under Article 14. A group referral would, of course, consolidate political and practical support for Syrian survivors as well as for the ICC. Whether made individually or by a group, a referral will expedite an investigation because Article 14 allows the OTP to shorten the often years-long preliminary examination phase and proceed directly to open an investigation. It would also provide space for the OTP to ask for more resources and funds to properly support an investigation in Syria/Jordan.

The opening of an ICC investigation represents an important opportunity for victims to obtain the justice that has been denied to them. Victims and survivors of international crimes, including sexual violence, have clearly voiced their wish for the Syrian government's crimes to be investigated and the perpetrators to be brought to justice. They should not be forgotten as the international community steps up in efforts in the global fight against impunity. Now is the time to act on Syria. Now is the time to act against perpetrators who have evaded responsibility for too long.

LAW makes the following recommendations to States Parties of the Rome Statute:

- ❖ Promptly refer the situation in the Hashemite Kingdom of Jordan/Syrian Arab Republic to the ICC under Article 14 of the Rome Statute, either individually or as part of a group referral.
- ❖ Pledge financial support through voluntary contributions to the ICC to enable the OTP to conduct investigations of Rome Statute crimes in Jordan/Syria and commit to the secondment of investigators or other national experts to increase the capacity of the ICC's forensic and investigative actions on the ground.
- ❖ Request information regarding the status of the preliminary examination of the situation in the Hashemite Kingdom of Jordan/Syrian Arab Republic from the OTP or advocate in the Assembly of States Parties for an interim report on the examination.

---

<sup>1</sup> In country-specific resolutions, the Council has also called on States Parties to cooperate with an ICC investigation. See e.g. United Nations Security Council, *Resolution 2045*, UN Doc. S/RES/2045 (26 April 2012).

<sup>2</sup> The group referral was sent by Republic of Albania, Commonwealth of Australia, Republic of Austria, Kingdom of Belgium, Republic of Bulgaria, Canada, Republic of Colombia, Republic of Costa Rica, Republic of Croatia, Republic of Cyprus, Czech Republic, Kingdom of Denmark, Republic of Estonia, Republic of Finland, Republic of France, Georgia, Federal Republic of Germany, Hellenic Republic, Hungary, Republic of Iceland, Ireland, Republic of Italy, Republic of Latvia, Principality of Liechtenstein, Grand Duchy of Luxembourg, Republic of Malta, New Zealand, Kingdom of Norway, Kingdom of the Netherlands, Republic of Poland, Republic of Portugal, Romania, Slovak Republic, Republic of Slovenia, Kingdom of Spain, Kingdom of Sweden, Swiss Confederation, United Kingdom of Great Britain and Northern Ireland.

<sup>3</sup> Appeals Chamber, *Judgment on the appeal against the decision on the authorisation of an investigation into the situation in the Islamic Republic of Afghanistan*, 5 March 2020, ICC-02/17-138, at paras. 28-33.

<sup>4</sup> *Ibid.*

---

<sup>5</sup> United Nations General Assembly, *Report of the International Law Commission on the work of its forty-sixth session 2 May-22 July 1994*, UN Doc. A/49/10 (1994), p. 90.

<sup>6</sup> Preparatory Committee on the Establishment of an International Criminal Court, *Report of the Inter-Sessional Meeting from 19 to 30 January 1998 in Zutphen, The Netherlands*, UN Doc. A/AC.249/1998/L.13 (1998), pgs. 36 (referrals by two states required for jurisdiction) and 85 (only states with direct interest can refer situations). See also Preparatory Committee on the Establishment of an International Criminal Court, *Summary of the Proceedings of the Preparatory Committee During the Period 25 March-12 April 1996*, UN Doc. A/AC.249/1 (1996) para. 163.

<sup>7</sup> Rome Statute of the International Criminal Court, Article 15(1).

<sup>8</sup> ICC Office of the Prosecutor, *Policy Paper on Preliminary Examinations*, para. 78 (November 2013), [https://www.icc-cpi.int/sites/default/files/iccdocs/otp/OTP-Policy\\_Paper\\_Preliminary\\_Examinations\\_2013-ENG.pdf](https://www.icc-cpi.int/sites/default/files/iccdocs/otp/OTP-Policy_Paper_Preliminary_Examinations_2013-ENG.pdf). Considerations that are important at this stage of the process include an analysis of the credibility and reliability of sources, information and evidence, as well as analysis of multiple sources for bias control. ICC, *Regulations of the Office of the Prosecutor*, Reg. 24 (23 April 2009), <https://www.icc-cpi.int/sites/default/files/Publications/Regulations-of-the-Office-of-the-Prosecutor.pdf>.

<sup>9</sup> In Phase 2, the Prosecutor will examine information in light of preconditions to jurisdiction under Article 12; In Phase 3 admissibility of potential cases in terms of complementarity and gravity, and the interests of justice. ICC Office of the Prosecutor, *Policy Paper on Preliminary Examinations*, para. 80-83 (November 2013), [https://www.icc-cpi.int/sites/default/files/iccdocs/otp/OTP-Policy\\_Paper\\_Preliminary\\_Examinations\\_2013-ENG.pdf](https://www.icc-cpi.int/sites/default/files/iccdocs/otp/OTP-Policy_Paper_Preliminary_Examinations_2013-ENG.pdf)

<sup>10</sup> Rome Statute of the International Criminal Court, Article 15(3).

<sup>11</sup> ICC, *Situation in the Republic of Kenya*, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Kenya, PT. CH. II, Case No. ICC-01/09-19 (31 March 2010), para. 35.

<sup>12</sup> ICC, *Situation in the Republic of Kenya*, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Kenya, PT. CH. II, Case No. ICC-01/09-19 (31 March 2010), para 17.

<sup>13</sup> See, e.g. British Embassy to the Netherlands, <https://www.icc-cpi.int/sites/default/files/2022-04/Article-14-letter.pdf> (last visited 17 May 2023); International Criminal Court, *State Party Referral under article 14 of the Rome Statute*, <https://www.icc-cpi.int/sites/default/files/2022-04/State-Party-Referral.pdf> (last visited 17 May 2023)).

<sup>14</sup> Syria Observatory for Human Rights, *Syrian Revolution 12 years on | Nearly 614,000 persons killed since the onset of the revolution in March 2011* (15 March 2023), available at <https://www.syriaohr.com/en/291981/>.

<sup>15</sup> United Nations Office of the High Commissioner for Human Rights, *UN Human Rights Office estimates more than 306,000 civilians were killed over 10 years in Syria conflict* (28 June 2022), <https://www.ohchr.org/en/press-releases/2022/06/un-human-rights-office-estimates-more-306000-civilians-were-killed-over-10>.

<sup>16</sup> Human Rights Council, “No End in Sight”: *Torture and ill-treatment in the Syrian Arab Republic 2020-2023 Report of the Independent International Commission of Inquiry to the Syrian Arab Republic*, UN Doc. A/HRC/53/CRP.5 (10 July 2023), para. 12.

<sup>17</sup> United Nations General Assembly, *Missing people in the Syrian Arab Republic: Report of the Secretary-General*, UN Doc. A/76/890 (2 August 2022). Some estimates put the number of disappeared persons at over 100,000. See e.g. Syrian Network for Human Rights, *The Tenth Annual Report on Enforced Disappearance in Syria on the International Day of the Victims of Enforced Disappearances: Long Years of Constant Grief and Loss* (30 August 2021), [https://snhr.org/wp-content/pdf/english/The\\_Tenth\\_Annual\\_Report\\_on\\_Enforced\\_Disappearance\\_in\\_Syria\\_on\\_the\\_International\\_Day\\_of\\_the\\_Victims\\_of\\_Enforced\\_Disappearances\\_Long\\_Years\\_of\\_Constant\\_Grief\\_and\\_Loss\\_en.pdf](https://snhr.org/wp-content/pdf/english/The_Tenth_Annual_Report_on_Enforced_Disappearance_in_Syria_on_the_International_Day_of_the_Victims_of_Enforced_Disappearances_Long_Years_of_Constant_Grief_and_Loss_en.pdf).

<sup>18</sup> United Nations Economic and Social Commission for Western Asia, *Losses exceeding \$443 billion and millions in need of humanitarian assistance: the catastrophic repercussions of 8 years of war in Syria* (23 September 2020), <https://www.unescwa.org/news/losses-exceeding-442-billion-syria>.

<sup>19</sup> United Nations Human Rights Council, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, UN Doc. A/HRC/46/54 (21 January 2021), para. 43.

<sup>20</sup> The World Bank, *The Toll of War: Economic and Social Impact Analysis (ESIA) of the Conflict in Syria - Key Facts* (10 July 2017), [www.worldbank.org/en/country/syria/brief/the-toll-of-war-economic-and-social-impact-analysis-esia-of-the-conflict-in-syria-key-facts](http://www.worldbank.org/en/country/syria/brief/the-toll-of-war-economic-and-social-impact-analysis-esia-of-the-conflict-in-syria-key-facts); United Nations Human Rights Council, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, UN Doc. A/HRC/46/54 (21 January 2021), para. 43.

<sup>21</sup> United Nations Human Rights Council, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, UN Doc. A/HRC/46/54 (21 January 2021) para. 20.

<sup>22</sup> An estimated 5.5 million Syrians are refugees, mostly in the countries neighbouring Syria, while 6.8 million have been internally displaced. United Nations High Commissioner for Refugees, *Syria Emergency*, <https://www.unhcr.org/syria-emergency.html> (last visited 28 April 2023).

<sup>23</sup> ICC, *Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar*, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar, PT. CH. III, Case No. ICC-01/19 (14 November 2019), para. 104-105.

<sup>24</sup> United Nations Human Rights Council, *Report of the independent international fact-finding mission on Myanmar*, UN Doc. A/HRC/39/64 (12 September 2019), para. 36, 42.

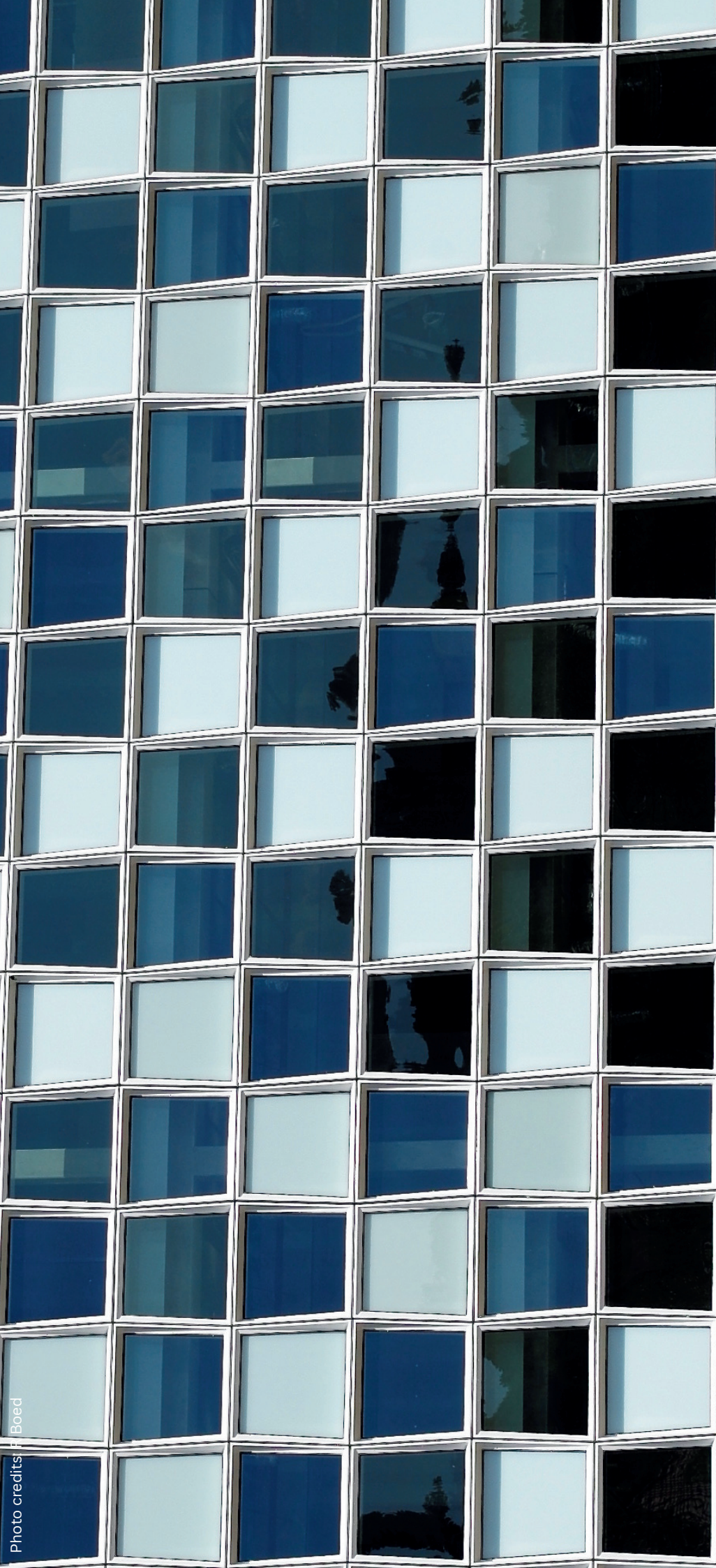
---

<sup>25</sup> ICC, *Situation in Ukraine: ICC judges issue arrest warrants against Vladimir Bladimirovich Putin and Maria Alekseyevna Lvova-Belova* <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin->

[and#:~:text=Today%2C%2017%20March%202023%2C%20Pre,Ms%20Maria%20Alekseyevna%20Lvova%2DBelova](#) (last visited 17 May 2023); Government of Ukraine, *Children of War* <https://childrenofwar.gov.ua/> (last visited 10 May 2023). (last visited 10 May 2023).

<sup>26</sup> Institute for War and Peace Reporting, *Ukraine: International Support for War Crimes Investigations* (February 2023), <https://iwpr.net/global-voices/ukraine-international-support-war-crimes-investigations>.

<sup>27</sup> National authorities, particularly in Europe, have launched investigations and prosecutions of Syrian perpetrators in cases based on extraterritorial and universal jurisdiction. There are, however, important limitations to extraterritorial and universal jurisdiction that should not be minimized. Many legislative frameworks impose restrictions on the exercise of universal jurisdiction, including rules limiting investigations to suspects that are present in the country (e.g. The Kingdom of the Netherlands, International Crimes Act (2003), Article 2), wide prosecutorial discretion when there is no link to the investigating state (e.g. German Parliament, “Entwurf eines Gesetzes zur Einführung des Völkerstrafgesetzbuches,” March 13, 2002), and additional jurisdictional requirements such as double criminality (e.g. French Code of Criminal Procedure, art. 689-11).



Funded by the  
European Union



**LAW**  
Legal Action  
Worldwide

*This publication was funded by the European Union. Its contents are the sole responsibility of Legal Action Worldwide and do not necessarily reflect the views of the European Union.*

 [info@legalactionworldwide.org](mailto:info@legalactionworldwide.org)

 [www.legalactionworldwide.com](http://www.legalactionworldwide.com)

 LegalActionWW