

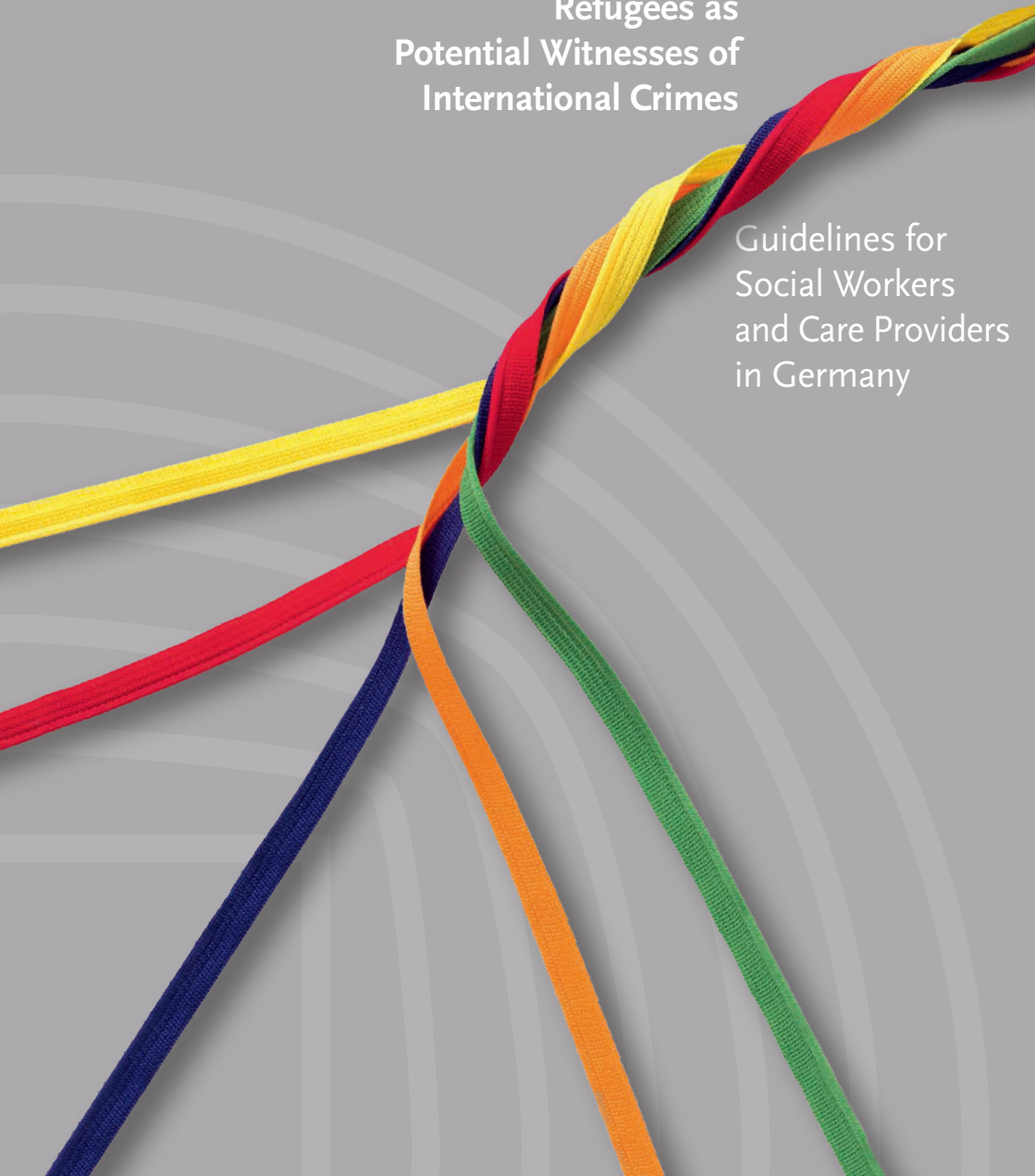


INTERNATIONAL  
NUREMBERG  
PRINCIPLES  
ACADEMY



# Refugees as Potential Witnesses of International Crimes

Guidelines for  
Social Workers  
and Care Providers  
in Germany



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## Foreword

In recent years, Germany, as well as Europe in general, have faced a massive arrival of people forced to flee their home countries and seek protection. The City of Nuremberg has also encountered these challenges with this increase in numbers, handling at one point 180 refugee camps and asylum accommodations. The protection that these individuals, including women and children, sought was as a response to the ongoing and potential conflict and danger spreading within their own home country. Although the reasons for seeking protection might have varied slightly from one case to another, the increased numbers of persons arriving since 2014 have been due to ongoing conflict and tensions in various parts of the world and the impact of this fighting and tension on the day to day lives of individuals.

People fleeing their homes due to ongoing tensions or conflict create nuanced obligations and intricate challenges. This is specifically the case for the state of transit or destination states. A prominent example in this regard is Germany, which now has compelling obligations towards protecting varying groups while also maintaining its international obligations, which include upholding universal values and the fight against impunity. Germany has an obligation to protect its own nationals as well as to protect the individuals who fall within its state control. Hence, this obligation extends to protecting all groups from harm while ensuring that they have guarantees in place and can seek justice for the crimes that were committed against them.

The next immediate question that arises is whether we can actually help people seek justice directly here in Germany. The answer is yes: under German law, especially incorporating international crimes and accepting its duties vis-à-vis the principle of universal jurisdiction – which will be explained below – German law enforcement agencies, namely or i.e. the police and prosecutors, are able to prosecute the crimes also committed outside Germany, against individuals who are not German, as long as these crimes are serious enough to warrant this special jurisdiction. International crimes, which also fall under the universal jurisdiction, are serious crimes that require the attention of all states. The very simple idea behind the principle of universal jurisdiction is to punish those who commit certain crimes against people when a concerned state fails to do so or when the state is behind the commission of these crimes.

Now the question is: how is it relevant to your work? These guidelines seek to explain this connection between the obligations arising from international law and your role as a social worker and care provider in Germany. They also aim to elucidate your role with respect to these arising obligations.

These arriving individuals carry with themselves personal stories and experiences as well as information about their home country, including on the political apparatus, criminal organizations, other organs such as the police and the military, cover-up operations, media propaganda, and many other issues. All this information is potentially a source for collecting, establishing, and developing better clarity about the ongoing situation there.

As a social worker or someone volunteering with organizations engaged in social work, you are most likely to encounter four categories of individuals with information that may be relevant for the law enforcement agencies:

- Individuals who have been both victims and witnesses of international crimes;
- Individuals who have witnessed such crimes;
- Individuals who may have committed or assisted in the commission of such crimes;
- Individuals who may have concrete information on potential future crimes that may be committed.

These guidelines do not aim to explain all the complex responsibilities that the German system has to balance and neither does it deal with solutions for the general and wider grievances faced by refugees. Instead, this document will guide you in understanding the German system in place concerning accountability and legal obligations. It will also describe, to the extent possible, the complex realities and experiences faced by many of the people that flee conflict or other related situations. The end goal of these guidelines is to help you understand why it is important as well as how to bridge relevant information to the German law enforcement authorities. It describes the general legal system in place while primarily focusing on explaining the relatively recent incorporation of international crimes into the domestic system in Germany.

The project's purpose has been twofold: Firstly, it aimed to address and raise awareness on the issues related to international crimes arising from the increasing number of people seeking protection. Secondly, it aimed to contribute to the process that would address and achieve long-term and sustainable peace through justice, which is the core of the mandate of the International Nuremberg Principles Academy. This means that, by allowing the addressing of crimes and for witnesses to come forward and tell their stories, there is an increase in the likelihood of prosecuting these crimes and bringing justice for victims. This then has an effect on long-lasting peace, which cannot be maintained without justice.

The City of Nuremberg has partnered with the International Nuremberg Principles Academy believing that addressing the social worker's role as well as that of any care provider with respect to these procedures is important and adds value to the relevant system in place.

The International Nuremberg Principles Academy acknowledges with appreciation the work of the experts and practitioners involved in this project and would like to thank all for their contributions to these guidelines.

The International Nuremberg Principles Academy further wishes to draw particular attention to the support and insight it has received from the City of Nuremberg, which has led to this successful collaboration. The initiation of this project started in 2015 and the City of Nuremberg has been the driving force behind the guidelines and one of the main reasons why the project has come to fruition.

### 1.1. What is the purpose of these guidelines?

## 1. Introduction

Please imagine the following example of Mr. B, who has recently arrived in Germany and has been assigned to your center.

### Practical case

Mr. B used to work as a professional photographer in his native village. What he valued the most about his profession was that it enabled him to capture the everyday realities of the people of his community and their lives. However, as a conflict broke out and escalated in the region, daily attacks and threats became increasingly common and a disproportionate number of serious and violent crimes occurred on a daily basis. Through the lens of his camera, Mr. B witnessed people being killed, neighbors being injured, families being separated, and buildings being destroyed. As the situation regarding his potential safety started worsening significantly, he was subsequently forced to flee his village along with his family and fled with the hard-drive in which he had saved thousands of his photographs.

He is currently in Germany and awaiting in your center.

What steps would you take if Mr. B has been assigned to you directly and if he shares his stories with you, including information about the hard-drive?

These guidelines will set out the steps, and note reasons for including these steps, to answer the problem that is illustrated in the above-mentioned case. Their ultimate goal is to provide social workers and care providers with the understanding of:

- a. the system in place when faced with the challenging question, such as in the case of Mr. B; and
- b. the unique position that the social worker has, and his or her crucial role with respect to ensuring the functioning of the system in place.

After having reflected on the scope and the impact of your social work, the guidelines will end with an illustration of the key points to take away.

These guidelines were created for social workers, care providers, and other staff members and volunteers who are in daily, or at least regular, contact with persons seeking protection in Germany.<sup>1</sup> The aim of the guidelines is to assist these personnel in their work and in particular when they find themselves in situations facing, receiving, or having received information, which might have potential importance for ongoing and future prosecutions of crimes in Germany.

<sup>1</sup> Please be aware that the term refugee, when used in the guidelines, is an umbrella term that covers individuals at all stages before, during, and after the asylum seeking process as well as individuals from other nations fleeing persecution and seeking protection even when they do not officially seek asylum. The definitions of different legal stages before, during, and after the asylum process and status conferred are provided in Annex A.

The focus here is limited to explaining the concept of international crimes, and more specifically explaining the recently often-heard concept of “universal jurisdiction”. The guidelines should be read with the understanding that oftentimes the crimes and the system being referred to might differ and include other crimes falling under the German law.

### 1.2. What is the link between your work and the prosecution of crimes, more specifically international crimes?

Any perpetrator of any crime should always be brought to justice. This contributes to the prevention of future crimes and is essential for sustainable peace and justice. It is particularly true that in countries facing conflict or recovering from it, serious crimes are often not prosecuted. The reasons for that might vary and might include an ineffective judicial system, a momentarily dysfunctional judicial system, or even insufficient resources, capacity, or political unwillingness to address these crimes. Consequently, many crimes may go unreported and uninvestigated, perpetrators are not held accountable, and victims may not be able to participate in a justice process.

In this context, refugees may hold important information that play a crucial role in the domestic prosecution of crimes, including international crimes, and bringing those responsible to justice. Coming into regular contact with refugees, your work places you in the position of potentially receiving information, often including sensitive information, which could be important for criminal investigators and prosecutors in Germany. Thus, you are in a position to make a difference towards accountability for these crimes and may help provide the link for potential witnesses and victims of crimes in a justice process.

### 1.3. What is your role in this process?

Your role in the process may include to support refugees who wish to share and report information in relation to a potential crime. You may be able to do so only once you understand what crimes are, and here the focus is primarily on international crimes, how the reporting system works, and the importance of these prosecutions in Germany.

Once you have this understanding, you will be in a position to bridge and channel the potential information coming from the refugee – meaning assisting the refugee himself or herself – to the relevant authorities, while still fulfilling your social work duties. This channeling will be then undertaken in an effective way, advancing the common goals. These goals include, but are not limited to, the well-being of the refugees as well as a broader scope of accountability relating to the prosecution of international crimes in Germany.

## 2. What do you need to know?

### 2.1. What are international crimes?

Genocide, crimes against humanity, and war crimes are the most serious violations of international law and therefore harm the international community as a whole.<sup>2</sup> Such international crimes are universal, which means that every state may already have domestic legislation addressing their respective punishment. They are further defined in the Statute of the International Criminal Court (ICC), which is a permanent international court that has jurisdiction over these crimes.<sup>3</sup>

However, the permanent court’s mandate is limited. The court is competent only when crimes are committed by a national of a State Party,<sup>4</sup> or in the territory of a State Party after 1 July 2002, or if the case has been referred by the Security Council of the United Nations.

Related to the last point, the Security Council is a political organ within the United Nations that has embodied a veto power for five permanent states. This means that in the case of a country, which is not a State Party, the court would only have jurisdiction if the situation is referred by the Security Council. However, if one of those five countries holding a veto power disagrees with the International Criminal Court’s intervention into domestic affairs, they can vote “no” and avoid this permanent court’s ability to bring alleged perpetrators to account for crimes that were committed against the victims. This “no” therefore means that there will be no jurisdiction granted to the court. The reasons for this veto might vary, but usually they lie in the argument that domestic prosecution mechanisms are available and that the particular country is willing or able to prosecute the alleged perpetrators for their crimes.

Consequently, not all international crimes fall under the jurisdiction of the only permanent international court although they correspond to the crimes enlisted under its jurisdiction.

However, international crimes can also be investigated and prosecuted by national courts. In Germany, the Code of Crimes Against International Law (CCAIL)<sup>5</sup> was enacted on 30 June 2002 and implemented in essence the crime provisions of the Statute of the ICC into German law.<sup>6</sup> This means that, as of 2002, international crimes are directly punishable under this Code in Germany.

<sup>2</sup> See Annex B for definitions of genocide, crimes against humanity, and war crimes in German law.

<sup>3</sup> The term jurisdiction means that a court has the authority to investigate, make decisions, and/or pass judgements regarding a specific crime, issue, time period, or place.

<sup>4</sup> States who have signed and ratified the Statute of the ICC are called State Parties.

<sup>5</sup> Völkerstrafgesetzbuch (VStGB) (“Code of Crimes against International Law” or CCAIL), entered into force on 30 June 2002 [online] available at [www.gesetze-im-internet.de/vstgb/BJNR225410002.html](http://www.gesetze-im-internet.de/vstgb/BJNR225410002.html); English translation available at [germanlawarchive.iuscomp.org/?p=758](http://germanlawarchive.iuscomp.org/?p=758), both last accessed at 1 October 2019.

<sup>6</sup> There are distinctions between the CCAIL and the Rome Statute in terms of the elements of crimes and other criteria in some areas.

## 2.2. How are international crimes investigated in Germany?

In Germany, any international crime can be reported to any police station or police officer, public prosecution office, and local court at any time. The Federal Public Prosecutor General in Karlsruhe is specifically tasked with the investigation of international crimes as laid down in the CCAIL.<sup>7</sup> Thus the Federal Public Prosecutor General has broad powers. This office can: a) start/open a criminal investigation case and order competent police units to conduct the inquiry obtaining information from public authorities and from other agencies or persons at any time<sup>8</sup> or b) decline to start any proceedings against a suspect if he or she is not in Germany and if his or her presence in Germany is not anticipated, as long as neither the suspect nor the victim is a German national.

To support the Federal Public Prosecutor General, the German Federal Criminal Police Office (Bundeskriminalamt) established the Central Unit for the Fight against War Crimes (ZBKV).<sup>9</sup> This unit either conducts war crimes investigations under the duty of the Federal Public Prosecutor General or collects and analyses relevant information on the most serious international crimes. The information is then shared with the Federal Public Prosecutor General for the legal review. Moreover, the ZBKV is working in close cooperation with agencies both at the international level (e.g. Interpol, Euro-pol, and War Crimes units in EU states) and at the national level (e.g. with the State Criminal Police Offices and the Federal Police).

## 2.3. Can international crimes be prosecuted before German courts?

Yes, as international crimes are part of German law, they can also be prosecuted before German domestic courts. For instance, if an international crime has been committed by a German national, against a German national, or in the territory of Germany, the prosecution is under a legal obligation to investigate every case that has been reported to it.<sup>10</sup>

Furthermore, the principle of universal jurisdiction, as stated in Section 1 CCAIL, allows Germany generally to prosecute international crimes even if there is no link between Germany and the crime committed. The accused does not have to be present in Germany, does not have to be a German national, or have committed any of the crimes in the territory of Germany itself.<sup>11</sup>

This is possible because the principle of universal jurisdiction is based on the idea that international crimes harm the international community as a whole and that every nation should be allowed to bring the perpetrators of such

7 § 120 (1) No. 8 Courts Constitution Act in conjunction with § 142a Section 1 Courts Constitution Act.

8 See § 161(1) of the German Strafprozessordnung (StPO), the German Code of Criminal Procedure (CCP).

9 Die Zentralstelle für die Bekämpfung von Kriegsverbrechen.

10 Within the framework of German law, the Federal Public Prosecutor can then decide whether to proceed or drop the case, see relevant paragraphs: §§ 152, 153c+f, 160, 161 CCP.

11 Here the prosecutor has more discretion, when it comes to deciding whether to investigate a case or not: § 153f CCP.

crimes to justice. As a result, it enables domestic jurisdictions to investigate and prosecute certain crimes, regardless of where and by whom they were committed. This in principle means that even the top leaders could be held responsible for their crimes. In practice, there are certain limitations to these rules, which however are not relevant to these guidelines.

The Office of the German Federal Public Prosecutor General is currently undertaking so-called “structural investigations” in connection to universal jurisdiction and international crimes. These investigations are not focused on a particular alleged perpetrator or alleged specific criminal act. They seek to collect as much evidence on an overall situation where international crimes are allegedly committed, as is possible. Examples include the situations in Syria and Iraq. This information can then be used for further focused or individual proceedings by German or other courts and has already led to several arrests and indictments.

Structural investigations are different from focused investigations, which only take place in relation with a particular alleged crime or perpetrator.

## 2.4. What duty does your organization or your work impose on you?

It is imperative that you understand the internal regulations of your institution in relation to the enforcement organs that you are dealing with, including the police, the public prosecution office, and the local court. For instance, this may involve informing your superior and gaining their permission for any subsequent action.

Considering your profession and the importance of confidence and potential secrecy clauses, it is even more essential that you understand the procedure for correct bridging of potential claims to the right authorities, have an overall understanding of the criminal system in your vicinity, and understand the relevance of universal jurisdiction, which includes the international crimes as well.

Moreover, with the mere intention of clarifying the current system in place in Germany, it is also essential that the reporting duty is explained a bit further. The reporting duty is a law that is in place to avoid crimes from happening. This means that if an offence can be stopped, the person having information about the potential offence – and this includes preparation, discussion, or witnessing for example the placing of inflammable or explosive tanks in the vicinity of school or public buildings – has a duty to report it. The reporting occurs to the relevant authorities and covers both national crimes enlisted in section 138 of the German Criminal Code (“Strafgesetzbuch”),<sup>12</sup> as well as expands onto international crimes.

12 See § 138 of the German Strafgesetzbuch (StGB) (the German Criminal Penal Code).

This reporting duty does not arise because of your profession *per se*. It is not linked to the professions; all citizens have this reporting duty. There are no exceptions to this rule. However, this reporting duty arises only with respect to crimes that are about to happen and can be still averted in time. It does not concern past crimes.

It is necessary that you understand this reporting duty as it is important that you are able to channel any information about a future crime in this context as and when appropriate to the relevant authorities. It is also important that you inform the refugee of this reporting duty if such a situation arises.

To get a better understanding of the scope, importance, and relevance of this reporting duty in general, please read the case from Hannover that was recently resolved before the court. This case is an example of how non-reporting of a future crime can also have legal consequences for any person who does not report a planned crime to the relevant authorities, especially when the commission of that crime could have been stopped.

Mohammed was indicted for a crime of non-reporting of a planned murder. His friend Safia, a then 15-year-old girl, attacked a police officer in early 2016 in Hannover. She committed this attack upon instructions from a terrorist organization. Before the attack, she shared the details of her plan with Mohammed. These details were shared via phone message, and Mohammed did not report this information to the authorities. The court looked into whether Mohammed knew of Safia's genuine and substantial plan of murdering someone in the name of the terrorist organization. From the records, it became clear that Safia informed Mohammed that she had been instructed to commit a terrorist attack, or kill someone on their behalf and to create significant media attention by doing so. Mohammed did not know the exact details of her plan. However, the specific details of the plan were not needed. The court found that Mohammed was still able to inform the relevant authorities, who could have then prevented the attack. As a result, Mohammed, the then 18 year-old, was sentenced to two years and six months' imprisonment.<sup>13</sup>

This case illustrates how important it is for you to assess information received in light of your reporting duty, especially when it concerns potential future imminent attacks. By way of illustration, let us turn to

<sup>13</sup> Higher Regional Court Celle (HRC), 4th Criminal Division, Judgement, 26.01.2017, 4 StE1/16. The verdict was then upheld by the Federal Court of Justice (BGH): Federal High Court (FHC), Criminal Division, Judgement 19.04.2018, 3 StR 286/17.

the case of Mr. B. Questions that might be relevant are the following: Is the information that he is sharing with you believable? Would sharing this information with relevant authorities prevent imminent or planned commission of crimes? Or does this information merely have a broader relevance to an act committed in the past and is not connected to a potential future crime?

If the former, your reporting duty is at stake, not because of your profession, but because of the reporting duty all of us have under German law. If you are not sure and no indication is helpful in determining your facts or alleged facts, always inform the authorities.

## 2.5. Complexities behind domestic prosecutions of international crimes

Returning now to the general prosecution of international crimes and the bridging of information, and moving away from the reporting duty, one has to be aware that in general, criminal proceedings are time consuming, lengthy, complex, and might require more information and dedication than first expected. This is particularly true for international criminal proceedings, which often require years to complete. In the case of Mr. B, the crimes documented on the photos might perhaps never be prosecuted, as the hard-drive could have been damaged, unreliable, or simply could contain no useful information. If pursued, this prosecution might take a considerable amount of time.

Further, it is important to observe compliance with your own internal regulations and understand its core points. Consider what actions you may have to take to comply with the decision-making structures within your department. These rules are in place for a reason, and simply confirming and discussing the problem at stake might lead to a simpler solution.

Considering all of this information, the question of how you can effectively assist Mr. B remains.

### 3. How can you effectively assist?

These guidelines are set out to offer assistance at your work when you are facing a situation such as with Mr. B. You are one of the first contact persons in a new country where refugees seek protection and therefore you are one of the first persons with whom they can interact. This nature of your work places you in a unique position where there is a possibility that refugees may share some of their stories. These can be everyday stories of their lives back at home. The information can include traditions, meanings of certain signs, and/or also include the local rules, which are not known outside of the refugee's community/region. Moreover, this information can be a bit more specific and include knowledge of local corruption, functioning of police in certain regions, potentially ongoing violence between various groups in the neighbouring area. In addition to this, and particularly in countries with high crime level or intense ongoing fighting, there is a chance that this information has a much broader scope. Refugees fleeing from their country of origin often witness forms of violence or have heard of crimes being committed.

As a person that might be confronted with information that is potentially helpful for the prosecution of international crimes, you are uniquely placed to bridge and channel this information to the competent authorities. In the case of Mr. B, this bridging requires that you understand the options available to him, the complexity behind this information, and how to provide this information to the relevant authorities.

The next section offers a few steps that might further assist you in ensuring that this channeling and bridging of information is done effectively. It highlights some key points that might overlap with your duties; however, they are tailored to the case of Mr. B, and therefore to assisting potential witnesses of international crimes.

The points raised below are selected in light of the "Do No Harm" approach to the current issue and simply aim to indicate certain points for consideration. This principle aspires to actively and consciously avoid creating negative or mitigating consequences or impact in the context of work in conflict-related areas. It also focuses on increasing conflict sensitivity in these scenarios.

#### **a. Creating a trustful and safe environment**

Creating a trustful and safe environment is vital to help the refugee in all aspects of your work. However, it is also an important step for the purposes of these guidelines because, without trust, the refugee will not feel safe and confident in sharing any information with you. Therefore, to allow for the

possibility to share their stories – and irrespectively of the type of stories – it is crucial to create a caring, trustful, and friendly environment in which the refugee feels familiar, respected, and dignified. This is not to indicate that your duty is to seek their stories. On the contrary, the aim is to allow space for sharing – if the refugee is willing to do so.

The facilitation of contact with the refugee is reflected in the day-to-day organization with respect to mostly medical appointments, school enrolment, or other related paper work. The reliance of the refugee on you expands over time and you should not expect him or her to go into detail about their experience immediately or at all. Instead, try to maintain a consistent and predictable relationship through receptive and expressive communications. Long-term trust guarantees that the refugee is comfortable with the system in place and is able to seek support as needed.

At this point, the concept of confidentiality should be explained, as some refugees are unfamiliar with it and are often reluctant to trust service providers, translators, and other authorities because of potential misunderstandings or past experiences. However, when explaining and considering this concept of confidentiality, you should also bear in mind the reporting duty and the fact that some information might be disclosed to third parties (such as police or investigators). There might be guarantees in place to ensure protection of this information and this can be further discussed with the relevant authorities. Making sure that the refugee understands this process is important to create mutual trust. In turn, this will also ensure he or she remains a well-informed and consenting participant to a potential investigation, and any other related process.

#### **b. Listening carefully**

Listening carefully and understanding what is being shared with you is crucial for helping and advising the refugee effectively. This includes maintaining a positive and open communication style as well as making sure refugees share their information at their own pace and in their own words. It also includes remembering that refugees come from very different parts of the world and therefore have diverse social and cultural backgrounds and speak different languages.

Moreover, you should look out for all opportunities to show respect to, and affirm the refugees' identity as an individual with his own character and dimensions, especially as he or she may feel perceived as the negative stereotype of a refugee. By avoiding generalisations and assumptions, you will not only help promote his or her identity, but you will also encourage

#### **3.1. Essential points to facilitate the channelling**



the refugee's involvement and participation. As the refugee gains some control over the situation, he or she will have opportunities to take decisions and to engage with you, including with regard to potential sharing of information that would need channeling to the right authorities.

### **c. Considering carefully the questions asked**

Being careful with the questions asked will avoid doing more harm.

This point is mainly relevant for situations in which the refugee is willing to share his or her story that involves potential information about crimes. In such a situation, it is essential that you bear in mind the issue of re-traumatization.

Therefore, avoid asking a series of questions or questions that might put pressure on the refugee regarding the stating of his or her story. Open-ended questions are also preferred to yes or no or leading questions. It is vital that you listen if he or she is willing to share but do not push for more information. Clarify if anything is unclear for your own account and try to understand the information conveyed. However, do not exceed the discussion beyond the topics shared.

In terms of your own duty and responsibility, yet pending on the internal regulations you might have, you should remember to take account of what has been said and shared with you.

If possible, try to document, preferably in writing, the information provided and the circumstances in which they were discussed, as this will be useful if the account narrated to you by the refugee has to be shared with law enforcement agencies. It is again important to remember that the nature of your interaction with the refugee in this context is not investigative and that this is not a structured process.

You can do this as part of daily personal report and this account should be sufficient if it contains your recollection of what has been shared. It should not be an inciting questionnaire but a summary of the information provided.

In the case of Mr. B, the summary could easily be limited to the fact that Mr. B has a hard-drive with photographs from his village which could potentially be valuable information for the authorities.

### **d. Making no promises**

Making no promises relates especially to your understanding of your role in bridging the potential information, if need be, and to your understanding of the criminal system and the points raised above.

You should be able to understand some of the complexities behind the criminal justice system in order to avoid raising false hopes of the refugees. For example, by now, you should be able to understand how essential information might be for criminal prosecution. You should also know that criminal proceedings might require considerable time. Filing a complaint under the domestic legislation has its burdens. There might be no follow-up if it warrants no case or if there is no sufficient evidence. For this reason and in general, each piece of information being submitted has to be analyzed and verified. Testifying and clarifying this information also requires further time and brings within a lot of uncertainties.

These are just few examples. They do not imply that the information should not be considered for being bridged to the enforcement authorities. What remains important is that you avoid raising false hopes and expectations from the refugee regarding either criminal investigations, seeking justice, or asylum procedures when providing testimonies on a subject matter.

At this stage, you may also consider discussing with your organization, and also the refugee, your involvement in the process and the support you are willing and able to provide. Clearly explain your mandate and the limits of your assistance. Being honest, realistic, and specific when discussing the assistance you can offer helps to maintain necessary boundaries and avoids unrealistic guarantees and biased perceptions regarding the information collected.

### **e. Facilitating the contact and channeling the information**

Once you are aware that the refugee has information that can be useful for other authorities and might have some impact on the accountability process, you shall keep in mind that you are the key contact for facilitating the bridging of this information between the refugee and the law enforcement agency.<sup>14</sup>

The bridging of the information to a law enforcement agency might take various forms and could require involving other services in order to support this channeling and bridging of information. You may be in a position to channel various services such as referring them to the appropriate legal, and/or psychological support, in order to ensure that, for example, Mr. B agrees and feels ready to share his information.<sup>15</sup> Facilitating the contact with other services is crucial as refugees, like Mr. B, might require specific assistance that you are not able to provide. To illustrate this point, here are some examples:

- Out of fear for his family and friends, Mr. B might ask, for example, for suggestions of steps to be taken to minimize any potential risks. This may

<sup>14</sup> Please remember and assess this information also in light of your own reporting duty especially when the crime is imminent and can be prevented from occurring. There are exceptions to this reporting duty considering some professions. However, these exceptions do not apply to international crimes.

<sup>15</sup> See e.g. Annex C.

also include seeking advice from a legal expert in the field of criminal law who will be able to analyze the information that has been shared with you and advise on possible options of how to proceed.

- Mr. B might also seek advice and further steps on his asylum procedure if one is pending or foreseeable. You might not have the necessary information about this procedure or not all the information. Therefore, an expert specialized in refugee/asylum law might be able to inform him about his rights as a potential victim, and/or witness, and procedures related to his potential involvement in criminal proceedings. This might also include asking about the possibility of bringing such a case and the associated risks as well as discussing any potential implications reporting information may have on the refugee's personal situation. However, in general, if the refugee chooses to provide information, it has to be clear that any prosecution or legal process that may be initiated based on the information provided by the refugee and the asylum process are separate procedures and do not normally influence each other.
- Moreover, Mr. B might need psychological support for sharing his stories or the content of the photographs with other people and talking about his experience. In this case, it is crucial to facilitate the contact with organizations and agencies whose services are tailored for victims of crimes. This includes helping Mr. B with accessing support structures, particularly regarding psychological support.

There may be plenty of avenues where you can facilitate Mr. B's contacts in your city. The above-mentioned points to consider are not exhaustive, and more importantly, it does not indicate that all instances must be observed. The point of this subsection is only to highlight potential areas that one can observe given his or her role while considering also work, space, time, and other limitations.

This role in itself is however very linked to the unique position that you are in, highlighting both the immense responsibilities and unique character of your position.

### 3.2. What did Mr. B's story lead to?

Allowing for an effective bridging of information is indispensable to the investigation of crimes. This information does not necessarily need to be linked to killings, murder, rape, or chemical attacks as part of a conflict. It can be information connecting the responsibilities of certain individuals. As noted above, structural investigations, in particular, are aimed at collecting evidence within a broader range, looking at the state and

organisation apparatus, rather than a specific person, instance, or crime. This then helps to connect the dots that lead to criminal responsibility. This type of investigation has been used in Germany as a tool to ensure accountability for the ongoing conflicts where crimes have reached high level of seriousness and no accountability is in place. Many other countries, including Austria, Finland, and Sweden, have brought charges for alleged crimes under the umbrella of universal jurisdiction seeking accountability, and halting the commission of crimes that affect not only men but women, and children.

Mr. B's case was just one illustrative example. The story of Mr. B has some parallels to the true story of a Syrian former military photographer now code-named Caesar. You might recall this name from 2017 when he was awarded the International Nuremberg Human Rights Award in Nuremberg for his travail linked to more than 50,000 photographs which he brought out of Syria, showing 11,000 detainees killed by the Syrian government. These images were captured in one region during the Syrian Civil War over a two and half year period from May 2011 to August 2013. Caesar was officially tasked to take the photographs as part of the Syrian military police's internal procedures and documentation. Caesar decided to secretly copy these photographs onto USB sticks and send them out of the country. He loaded the photographs onto an external hard-drive that he brought out of Syria in 2013. The value of this evidence is significant. Many international organizations and human rights organisations have acknowledged that these photographs are the first large scale and systematically documented evidence of serious crimes, such as killing and torture, committed during the Syrian conflict.<sup>16</sup>

These guidelines hopefully clearly indicate the huge impact that information can have in the fight against impunity for international crimes. They further indicate the essence of your role, as a social worker or someone volunteering with organizations in social work, in bridging this information, and bridging it in line with the current standard.

<sup>16</sup> See for example Human Rights Watch, *If the Dead could speak*, 16 December 2015, available at: [www.hrw.org/report/2015/12/16/if-dead-could-speak/mass-deaths-and-torture-syrias-detention-facilities](http://www.hrw.org/report/2015/12/16/if-dead-could-speak/mass-deaths-and-torture-syrias-detention-facilities), last accessed at 1 October 2019; ECCHR, Photographs and data from the "Caesar - File Support Group" – Evidence of systematic torture in detention facilities of the Syrian intelligence services and military police, September 2017, available at [www.ecchr.eu/fileadmin/Hintergrundberichte/Background\\_Syria\\_Torture\\_CaesarFiles\\_GermanyCriminalComplaint\\_ECCHR\\_20170922.pdf](http://www.ecchr.eu/fileadmin/Hintergrundberichte/Background_Syria_Torture_CaesarFiles_GermanyCriminalComplaint_ECCHR_20170922.pdf), last accessed at 1 October 2019.

## Annex A – Definitions

**Asylum seekers:** individuals who intend to file an asylum application but have not (yet) been registered as asylum applicants by the German Federal Office.

**Asylum applicants:** asylum applicants whose asylum proceedings are pending and whose cases have not yet been decided on.

**What are the four protections available in Germany?**<sup>17</sup>

1. **Refugee** means a national from another country who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion, or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it.<sup>18</sup>
2. **Person eligible for subsidiary protection** means a third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country.<sup>19</sup>
3. **Entitlement to asylum:** Persons who would be subject to a serious human rights violation should they return to their country of origin are entitled to asylum and deemed to have been persecuted on political grounds because of their race, nationality, political opinion, fundamental religious conviction, or membership of a particular social group without having an alternative of refuge within the country of origin or other possibility of protection against persecution.<sup>20</sup>
4. **National ban on deportation in Germany:** Should none of the three forms of protection – entitlement to asylum, refugee protection, and subsidiary protection – be applicable, a ban on deportation can be issued if specific grounds apply.<sup>21</sup>

**Persons entitled to protection and persons entitled to remain:** individuals who receive an entitlement to asylum, refugee protection, or subsidiary protection, or who may remain in Germany on the basis of a ban on deportation.

17 See also the website of the BAMF, Forms of protection, available at: [www.bamf.de/EN/Fluechtlingsschutz/AblaufAsylv/Schutzformen/schutzformen-node.html](http://www.bamf.de/EN/Fluechtlingsschutz/AblaufAsylv/Schutzformen/schutzformen-node.html), last accessed at 1 October 2019.

18 Article 2 (d) of the Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011.

19 Article 2 (f) of the Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011.

20 BAMF, Entitlement to asylum, available at: [www.bamf.de/EN/Fluechtlingsschutz/AblaufAsylv/Schutzformen/Asylberechtigung/asylberechtigung-node.html](http://www.bamf.de/EN/Fluechtlingsschutz/AblaufAsylv/Schutzformen/Asylberechtigung/asylberechtigung-node.html), last accessed at 1 October 2019.

21 BAMF, National ban on deportation, available at: [www.bamf.de/EN/Fluechtlingsschutz/AblaufAsylv/Schutzformen/AbschiebungsV/abschiebungsverbot-node.html](http://www.bamf.de/EN/Fluechtlingsschutz/AblaufAsylv/Schutzformen/AbschiebungsV/abschiebungsverbot-node.html), last accessed at 1 October 2019.

## Annex B – Definitions of international crimes in German law

### What is Genocide?

Section 6 of the German CCAIL (Code of Crimes Against International Law) is using the definition of genocide as it is provided for in Art. 6 of the Rome Statute of the International Criminal Court:<sup>22</sup>

For the purpose of this Statute, „genocide“ means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.<sup>23</sup>

### What are Crimes against Humanity?

Section 7 of the CCAL is using the definition of crimes against humanity as it is provided for in Art. 7 of the Rome Statute:<sup>24</sup>

1. For the purpose of this Statute, „crime against humanity“ means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:
  - (a) Murder;
  - (b) Extermination;
  - (c) Enslavement;
  - (d) Deportation or forcible transfer of population;
  - (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
  - (f) Torture;
  - (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
  - (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
  - (i) Enforced disappearance of persons;
  - (j) The crime of apartheid;
  - (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

22 § 6 CCAIL, Genocide.

23 Art. 6 Rome Statute, Genocide.

24 § 7 CCAIL, Crimes against Humanity.

2. For the purpose of paragraph 1:

- (a) „Attack directed against any civilian population“ means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;
- (b) „Extermination“ includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;
- (c) „Enslavement“ means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;
- (d) „Deportation or forcible transfer of population“ means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;
- (e) „Torture“ means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;
- (f) „Forced pregnancy“ means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;
- (g) „Persecution“ means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;
- (h) „The crime of apartheid“ means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;
- (i) „Enforced disappearance of persons“ means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to

acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

- 3. For the purpose of this Statute, it is understood that the term „gender“ refers to the two sexes, male and female, within the context of society. The term „gender“ does not indicate any meaning different from the above.<sup>25</sup>

### What are War crimes?

War crimes are serious violations of laws and customs of war committed during an international or non-international armed conflict.

The CCAIL is again relying on the definition of the Rome Statute,<sup>26</sup> as can be seen from the more detailed definitions of war crimes, which the CCAIL provides:

War crimes are extensively defined in the CCAIL under the following sections:<sup>27</sup>

- Section 8 – War crimes against persons
- Section 9 – War crimes against property and other rights
- Section 10 – War crimes against humanitarian operations and emblems
- Section 11 – War crimes consisting in the use of prohibited methods of warfare
- Section 12 – War crimes consisting in employment of prohibited means of warfare

<sup>25</sup> Art. 7 Rome Statute, Crimes against Humanity.

<sup>26</sup> Art. 8 Rome Statute, Crimes against Humanity.

<sup>27</sup> §§ 8–12 CCAIL, War crimes.

## Annex C – Relevant entities

The following list provides some of the key contacts that might assist you. However, please bear in mind that this list is non-exhaustive. If it does not include an organization near you, please contact BAfF e.V for further assistance:

**BAfF e.V., Bundesweite Arbeitsgemeinschaft der  
Psychozentralen Zentren für Flüchtlinge und Folteropfer**

Auguststraße 71  
10117 Berlin  
Phone: +49 30 310 124 63  
E-Mail: [info@baff-zentren.org](mailto:info@baff-zentren.org)  
[www.baff-zentren.org](http://www.baff-zentren.org)

**The UNHCR Sub-Office in Nürnberg**

Frankenstraße 210  
90461 Nürnberg  
Phone: +49 911 44 21 00  
E-Mail: [gfrnu@unhcr.org](mailto:gfrnu@unhcr.org)  
[www.unhcr.org/dach/de/ueber-uns/kontakt](http://www.unhcr.org/dach/de/ueber-uns/kontakt)

**IOM Nürnberg**

Neumeyerstraße 22–26  
90411 Nürnberg  
Phone: + 49 911 4300 0  
E-Mail: [iom-germany@iom.int](mailto:iom-germany@iom.int)  
[www.germany.iom.int/de/iom-nuremberg](http://www.germany.iom.int/de/iom-nuremberg)

**Website of the police in Bavaria:**

[www.polizei.bayern.de/](http://www.polizei.bayern.de/)  
Polizeipräsidium Mittelfranken  
Jakobsplatz 5  
90402 Nürnberg  
Phone: +49 911 2112 0

**Website of the Bavarian State Ministry of Justice (which includes  
information for victim support services as well as for asylum seekers):**

[www.justiz.bayern.de](http://www.justiz.bayern.de)  
Justizpalast am Karlsplatz  
Prielmayerstraße 7, 80335 München (street address) or  
80097 München (postal address)  
Phone: +49 89 5597 01  
E-Mail: [poststelle@stmj.bayern.de](mailto:poststelle@stmj.bayern.de)

**Relevant authorities  
in Germany**

**Office of the German Federal Public Prosecutor General  
(Federal Court of Justice)**

Herrenstraße 45 A  
76133 Karlsruhe  
Phone: +49 721 81 91 0  
E-Mail: [poststelle@gba.bund.de](mailto:poststelle@gba.bund.de)  
[www.generalbundesanwalt.de/de/adressen.php](http://www.generalbundesanwalt.de/de/adressen.php)

**Office of the Central War Crimes Unit (ZBKV)  
Bundeskriminalamt**

Referat IZ 35  
65173 Wiesbaden  
Phone: +49 611 55-16111  
E-Mail: by using the contact form on the website:  
[www.bka.de/DE/KontaktAufnehmen/Kontaktinformationen/  
Buergerkontakt/buergerkontakt\\_node.html](http://www.bka.de/DE/KontaktAufnehmen/Kontaktinformationen/Buergerkontakt/buergerkontakt_node.html)  
[www.bka.de/DE/UnsereAufgaben/Aufgabenbereiche/  
Zentralstellen/ZBKV/zbkv\\_node.html](http://www.bka.de/DE/UnsereAufgaben/Aufgabenbereiche/Zentralstellen/ZBKV/zbkv_node.html)

**Relevant authorities  
in Nuremberg**

**Relevant authorities  
in Bavaria**

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