

Trials in Sweden, Participants in the Proceedings and other Actors

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Twelve trials in Sweden have related to crimes in former Yugoslavia, Rwanda, Syria and Iraq. The first part of the present article gives an overview of and background to these cases. A more detailed account of the legal issues at hand are presented in a thematic manner in other contributions of this volume. For various reasons additional cases have not reached the trial stage. Some are still under investigation, others have been investigated but have been dismissed for lack of evidence and others again have been transferred to other countries. The second part of the article discusses the relevant participants and actors involved in Sweden's investigation and prosecution of international crimes.

1 Trials in Sweden

The twelve cases all relate to two types of crime: genocide and war crimes. Sweden's legal classification of war crimes prior to 2014 when the law was changed may appear confusing and not correspond to the terminology in other languages. Prior to 2014 war crimes were criminalized in chapter 22 section 6 of the Swedish Criminal Code under the heading "crimes against international law", which covered war crimes.¹ Genocide was at the time criminalized in the Act on Genocide (1964:169) while there was no provision or law to prosecute crimes against humanity. Potential acts committed before 2014 which amounted to crime against humanity could and can only be prosecuted under other headings such as murder, assault or rape. The Act on Criminal Responsibility for Genocide, Crimes against Humanity and War Crimes (2014:406) replaced the previous provision on offences against international law and the 1964 genocide act.

1.1 Cases Related to Former Yugoslavia

Three of the cases are related to the conflict 1991-2001 in former Yugoslavia: *Arklöv*, *Makitan* and *M.M.*² The conflict itself was of mixed character, with elements of non-international armed conflict as well as elements of international armed conflict.

Arklöv was a Swedish citizen who in 1991 went to the region to join a Croatian military unit. He was a guard in the Dretelj prison camp and during July 1993 was a party to torture, cruel and inhuman treatment, unlawful confinement and plundering, all acts directed at Bosnian Muslims (Bosniaks). The Stockholm district court convicted *Arklöv* of gross crime against international law.³

Makitan was a Bosnian Muslim and a soldier in the HOS (Hrvatske Obrambene Snage), a Croatian paramilitary group. He also served in the Dretelj

¹ See Klamberg, Mark, *The Evolution of Swedish Legislation on International Crimes*, Scandinavian Studies in Law, 2020, vol. 66.

² Considering the defendant's reputation and the fact that he was acquitted, the abbreviation M.M. is used in relation to his case B 5373-10 at Stockholm district court and at the Svea Court of Appeal, case B 1248-12.

³ *Åklagaren ./. Jackie Arklöv*, Stockholms tingsrätt, Mål B 4084-04, judgment 18 December 2006.

prison camp, but at a different point of time when there was partly different parties to the conflict. During summer 1992 Makitan was a party to taking hostages, torture and outrage against personal dignity through inhuman treatment and unlawful confinement of Serbs. The Stockholm district court convicted Makitan of gross crime against international law.⁴

M.M. was a policeman and a member of a sub-unit of a special police unit (PJP) under the Serbian Ministry of the Interior (MUP). The main responsibility of the unit, named the Operative Task Group (OPG), was counter-terrorism. M.M. was prosecuted for crime against international law for detaining a large group of civilians, killing 31 persons, attempting to kill 3 persons, setting fire to houses and at gunpoint taking property from Kosovo Albanian civilians in the village of Cuska/Qyshk. The Stockholm district court convicted M.M. of gross crime against international law and murder, attempted murder and gross arson.⁵ On appeal the Svea Court of Appeal found the evidence insufficient for determining that M.M. was at the place and time stated in the indictment, thus M.M. was acquitted.⁶

1.2 Cases Related to Rwanda

Three of the cases relate to the genocide in Rwanda: *Mbanenande*, *Berinkindi* and *Tabaro*. The crime was committed while there was a non-international armed conflict between the two groups Hutu and Tutsi: the alleged culprits were Hutu.

When the genocide began in April 1994, *Mbanenande*, who had a Master of Science in engineering, held a position at the University in Butare. During the genocide he was an informal leader of the lower echelons of younger Hutus, who were or became sympathetic to Hutu extremism. *Mbanenande* came to Sweden with his family in 1999 and became a Swedish citizen in 2009. The Stockholm district court determined that he had taken part in several massacres in the Kibuye prefecture in Western Rwanda during the genocide; he was convicted of genocide and gross crime against international law.⁷ The conviction was upheld by the Svea Court of Appeal.⁸

In 1994 *Berinkindi* was living near Nyamiyaga, a village in the Muyira municipality in Butare prefecture. He was a shopkeeper and had his own shop. He also worked in a slaughter-house in Nyamiyaga. During the weeks preceding his escape on 31 May 1994 he had an informal role in Nyamiyaga and surrounding areas among the lower echelons of Hutus, who were, or became, sympathetic to Hutu extremism. *Berinkindi* came to Sweden as a quota (resettled) refugee with his family in 2002 and became a Swedish citizen in March 2012. The Stockholm district court determined that he had taken part in massacres and killing during the genocide in April/May 1994 in the

⁴ Åklagaren ./ *Ahmet Makitan*, Stockholms tingsrätt, Mål B 382-10, judgment 8 April 2011.

⁵ Åklagaren ./ *M.M.*, Stockholms tingsrätt, Mål B 5373-10, judgment 20 January 2012.

⁶ Åklagaren ./ *M.M.*, Svea Hovrätt, Mål B 1248-12, judgment 19 December 2012.

⁷ Åklagaren ./ *Mbanenande*, Stockholms tingsrätt, Mål B 18271-11, judgment 20 June 2013.

⁸ Åklagaren ./ *Mbanenande*, Svea Hovrätt, Mål B 6659-13, judgment 19 June 2014.

municipalities of Muyira and Ntyazo in Butare prefecture in southern Rwanda. He was convicted of genocide and gross crime against international law.⁹ The Svea Court of Appeal upheld the conviction.¹⁰

At the time of the genocide *Tabaro* lived in Bugayi in the Winteko sector. He was educated as a carpenter and bricklayer. He joined the gendarmerie in 1990 and left in 1993. *Tabaro*'s family ran a shop on their land in Bugayi where they sold beverages and consumables. *Tabaro* himself opened and was running a warehouse in Kamembe after leaving the gendarmerie. He was a local leader in Winteko during the genocide. The Stockholm district court found that *Tabaro* had participated in several attacks in Winteko, one on the school in Nyakanyinya and one on the monastery in Mibilizi. He was convicted of genocide and gross crime against international law.¹¹ The Svea Court of Appeal acquitted him on some counts in the indictments; however it still upheld the main parts of the conviction, finding him criminally responsible for causing injury to and killing a large number of persons, labelling his offences as genocide and gross crime against international law.¹²

1.3 Cases Related to the Conflict in Syria-Iraq

Six cases are related to the conflict in Syria-Iraq which involved fighting between different groups and/or regimes: *Droubi*, *Al-Mandlawi* and *Sultan*, *Abdualkareem*, *Haisam Sakhanh*, *Abdullah* and *Saeed*.

Droubi is a Syrian citizen from the city of Latakia. During 2012 he came in contact with members of the Free Syrian Army (FSA). He took part in acts of violence against, and tied up, a previously injured person, and the violent incident was recorded on film. He applied for asylum in Sweden and in 2013 he obtained a permanent residence permit and alternative refugee status. The Södertörn district court convicted him of exceptionally gross assault and gross crime against international law. When the case came before the Appeal Court the police came in contact with previously unidentified victims of the alleged acts. Both the prosecution and defendant *Droubi* wished to examine the victims, and as a result the Appeal Court set aside the district court's judgment, remanding the case to that court, i.e. a retrial.¹³ At the retrial the Södertörn district court (with a new bench of judges) acquitted *Droubi* of crime against international law but convicted him of exceptionally gross assault.¹⁴ The Svea Court of Appeal changed the conviction of the district court by finding a nexus

⁹ *Åklagaren ./. Berinkindi*, Stockholms tingsrätt, Mål B 12882-14, judgment 16 May 2016.

¹⁰ *Åklagaren ./. Berinkindi*, Svea Hovrätt, Mål B 4951-16, judgment 15 February 2017.

¹¹ *Åklagaren ./. Tabaro*, Stockholms tingsrätt, Mål B 13688-16, judgment 27 June 2018.

¹² *Åklagaren ./. Tabaro*, Svea Hovrätt, Mål B B 6814-18, judgment 29 April 2019.

¹³ *Åklagaren ./. Droubi*, Södertörns tingsrätt, Mål B 13656-14, judgment 26 February 2015; *Åklagaren ./. Droubi*, Svea Hovrätt, Mål B 2440-15, decision 23 February 2016. See discussion on this matter in Klamberg, Mark and Andersson, Anna, *Swedish Case Law on the Contextual Elements Relating to War Crimes*, Scandinavian Studies in Law, 2020, vol. 66.

¹⁴ *Åklagaren ./. Droubi*, Södertörns tingsrätt, Mål B 2639-16, judgment 11 May 2016.

between the assault and the armed conflict, thus also convicting him of crime against international law.¹⁵

Al-Mandlawi and *Sultan* were both Swedish citizens prior to their departure for Syria in 2012. They returned to Sweden in 2013. The Gothenburg district court found it proven that they were members of a jihadi group which killed civilians, however with no nexus to the ongoing armed conflict. A question in the case was whether the act should be classified as a terrorist crime or a crime against international law.¹⁶ The district court convicted the defendants of terrorist crimes, and the sentence was upheld by the Court of Appeal for Western Sweden.¹⁷

Abdulkareem was an Iraqi army liaison officer. The district court in Blekinge found him guilty, during the spring and summer of 2015, of degrading and humiliating treatment in relation to four dead IS/Daesh members by posing next to their corpses and publishing an image thereof. The district court convicted him of war crimes pursuant to the 2014 Act, a judgment upheld by the Scania and Blekinge Court of Appeal.¹⁸

Haisam Sakhanh was a member of “the Suleiman Company”, an armed opposition and jihadi group in Syria. In May 2012 he took part in the killing of seven captured Government soldiers in the Idlib province. Haisam Sakhanh travelled to Sweden on June 18th, 2013 where he applied for asylum as a refugee. On October 17th, 2013 he was granted a permanent residence permit and refugee status. The police later received information about the alleged crimes and started an investigation. One question during the trial was whether non-state actors may establish courts during a non-international armed conflict. The Stockholm district court convicted Haisam Sakhanh of gross crime against international law. The Svea Court of Appeal came to the same conclusion and he was denied permission to appeal by the Supreme Court.¹⁹

Abdullah was a soldier in the Syrian armed forces in early 2014. He came to Sweden on 19 July 2015. The district court found him guilty of subjecting at least five persons protected by international humanitarian law to degrading and humiliating treatment by posing and having himself photographed standing next

¹⁵ *Åklagaren ./. Droubi*, Svea Hovrätt, Mål B 4770-16, judgment 5 August 2016.

¹⁶ See discussion on this matter in Björklund, Fredrik, *Charging of International Crimes in Sweden*, Scandinavian Studies in Law, 2020, vol. 66.

¹⁷ *Åklagaren ./. Al-Mandlawi and Sultan*, Göteborgs tingsrätt, Mål B 9086-15, judgment 14 December 2015; *Åklagaren ./. Al-Mandlawi and Sultan*, Hovrätten för Västra Sverige, Mål B 5306-15, judgment 30 March 2016.

¹⁸ *Åklagaren ./. Abdulkareem*, Blekinge tingsrätt, Mål B 569-16, judgment 6 December 2016; *Åklagaren ./. Abdulkareem*, Hovrätten över Skåne och Blekinge, Mål B 3187-16, judgment 11 April 2017.

¹⁹ *Åklagaren ./. Omar Haisam Sakhanh*, Stockholms tingsrätt, B 3787-16, judgment 16 February 2017; *Åklagaren ./. Haisam Sakhanh*, Svea Hovrätt, B 2259-17, judgment 31 May 2017; *Åklagaren ./. Haisam Sakhanh*, Högsta domstolen, B 3157-17, beslut om prövningstillstånd, 20 juli 2017. See translation of the judgment to English: On the Establishment of Courts in Non-international Armed Conflict by Non-state Actors: Stockholm District Court Judgment of 16 February 2017, *Journal of International Criminal Justice*, Volume 16, Issue 2, May 2018, pp. 403–424 and comment by Klamberg, Mark, *The Legality of Rebel Courts during Non-International Armed Conflicts*, *Journal of International Criminal Justice*, Volume 16, Issue 2, May 2018, pp. 235–263.

to the persons, aware that the picture was intended as part of Syrian state propaganda. The Södertörn district court convicted him of crime against humanity.²⁰

Saeed was a member of the Iraqi army and the forces fighting against IS/Daesh in the Daquq area in Kirkuk province, Iraq. The Örebro district court found him guilty of, from February-March 2015, subjecting four dead members of an opposing group to degrading and humiliating treatment by posing and publishing pictures of their corpses. He applied for asylum in Sweden in December 2014. The Örebro district court convicted him of war crimes pursuant to the 2014 Act. The Göta Court of Appeal reached the same conclusion.²¹ The Supreme Court has granted leave to appeal and the case is at the moment (June 2020) pending before the Supreme Court.²²

2 State Agencies, Actors and Other Participants

2.1 Organization

Several Swedish state agencies are involved in the handling, investigation and prosecution of international crime. They include the Swedish Migration Agency, police, prosecutors, courts, and the Division for Criminal Cases and International Judicial Co-operation at the Ministry of Justice (JU-BIRS). Additional actors and participants include defence counsel, victims' representatives, witnesses and experts. One may also consider the role non-governmental organisations such as Amnesty play: they are involved in advocacy and may provide a channel for documents, witnesses and victims to reach and make contact with state agencies (i.e. the police). Sections 2.1.1-2.1.3 below describes the way three state agencies are organized and their method of working.

Most cases relating to international crimes are initiated by the Swedish Migration Agency, but may also be triggered by units in other countries investigating war crimes, by individuals and by information from mass media and social media.²³ During 2018, the Swedish Migration Agency accounted for 90 percent of the complaints/reports to the police relating to genocide and war crimes.²⁴

Regarding inter-agency coordination, each agency management of the Swedish Prosecution Authority, the police and the Migration Agency decided on 24 August 2006 to establish a working group with representatives from the three agencies to review issues relating to the investigation and prosecution of certain

²⁰ *Åklagaren ./. Abdullah*, Södertörns tingsrätt, Mål B 11191-17, judgment 25 September 2017.

²¹ *Åklagaren ./. Saeed*, Örebro tingsrätt, Mål B 6072-18, judgment 19 February 2019; *Åklagaren ./. Saeed*, Göta Hovrätt, Mål B 939-19, judgment 24 September 2019.

²² *Åklagaren ./. Saeed*, Högsta Domstolen, Mål B 5595-19, judgment 23 March 2020.

²³ Elving, Magnus, Martinsson, Pim, Fohgelberg, Anders and Lilja, Per, Internationella förbrytare i Sverige. Att spåra upp, utreda och lagföra förövare av folkmord, brott mot mänskligheten, krigsförbrytelser och vissa andra grova internationella brott. Återblick – Utblick – Inblick – Framåtblick (26 januari 2007), p. 43.

²⁴ Nyheter, SVT, Rekordmånga anmälningar till polisen om krigsbrott (11 March 2019).

international crimes and present proposals on how to develop operations.²⁵ One starting point for the working group was the decision by the Council of the European Union on the investigation and prosecution of genocide, crimes against humanity and war crimes. This decision requires member states to, *inter alia*, promote close cooperation by the competent authorities at national level in order to ensure effective investigation and prosecution of such crimes.²⁶ Among the group's proposals was that the police should establish a central unit at the National Investigation Department, that the Swedish Prosecution Authority should designate prosecutors to work closely with this unit, and that the Swedish Migration Agency should designate a person as a point of contact with the law enforcement agencies.²⁷ The working group was inspired by Denmark, Norway and the Netherlands.²⁸ The war in former Yugoslavia,²⁹ mutual peer pressure among like-minded states and Sweden's ratification of the Rome Statute for the International Criminal Court (ICC)³⁰ appear to have been key driving forces for strengthening capacity and cooperation between these Swedish state agencies.

2.1.1 The Migration Agency

The Migration Agency is tasked to investigate and exclude persons from refugee and protected status if there are reasons to believe that they have committed acts mentioned in chapter 4 sections 2b and 2c of the Aliens Act, whereof section 2b(1) lists international crimes which are to be reported to the police.³¹

Asylum examination units (*asylprövningscenter*) at the Migration Agency are responsible for examining and deciding on applications for asylum. Their responsibilities may include issues relating to exclusion from refugee status and complaints/reports to the police,³² pursuant to section 5(3) of the Ordinance on instructions for the Migration Agency (2019:502). Other tip-offs and suggestions for investigation originate primarily from foreign police and intelligence agencies.³³

²⁵ Elving, Martinsson, Fohgelberg and Lilja, 26 January 2007, p. 2.

²⁶ Council of the European Union, 2003/335/JHA: Council Decision 2003/335/JHA of 8 May 2003 on the investigation and prosecution of genocide, crimes against humanity and war crimes.

²⁷ Elving, Martinsson, Fohgelberg and Lilja, 26 January 2007, p. 13

²⁸ *ibid*, pp. 29-35.

²⁹ *ibid*, p. 16: "There are reasons to believe that there are number of war criminals from former Yugoslavia in Sweden".

³⁰ *ibid*, p. 10: "According to the directives for this assignment we are to find suitable structures and routines to meet the requirements of the Rome Statute and the Council of the European Union to investigate and prosecute international crimes."

³¹ See Hevi Dawody Nylén, *International Crimes and Exclusion from Asylum in a Swedish Context*, Scandinavian Studies in Law, 2020, vol. 66.

³² Elving, Martinsson, Fohgelberg and Lilja, 26 January 2007, p. 49.

³³ Patricia Rakic Arle, head of unit, War Crimes Unit, the National Operations Department (NOA), the Police, 25 September 2019, Interview.

Previously there were no exclusion specialists at the asylum examination units, and matters relating to exclusion were referred from the concerned asylum examination unit to the central legal affairs department of the Migration Agency.³⁴

During 2014 work was done to strengthen operational support for processing Migration Agency cases in general. The project included operational support in relation to exclusion cases. This work was completed in the second half of 2014 and a report was published seeking to lessen pressure on the central legal affairs department of the Migration Agency in relation to exclusion cases.³⁵ This provided the basis for a decision in 2015 to establish a special function for handling exclusion cases (and cases involving national security matters). The aim was, *inter alia*, to guarantee correct and uniform handling of cases where there are indications for exclusion and to increase the competence and capability to detect such cases where indicators for exclusion are used in the examination.³⁶ The decision was preceded, *inter alia*, by a visit to the Norwegian UDI (*Utlendingsdirektoratet* – the Norwegian Directorate of Immigration), to observe how their unit processes exclusion cases.³⁷

The 2015 decision required that decision-making officers and litigation officers be specifically trained and work operatively in the asylum examination units. These officers are specialists in the area and possess the advanced knowledge on exclusion rules needed for processing asylum applications to meet the legal requirements. At the time of this writing, there are 40 exclusion specialists working in the six regional branches of the Migration Agency.³⁸

The decision also involved national coordination within the Migration Agency in relation to exclusion cases (and cases involving national security matters).³⁹ This is done currently by a national coordinator in Malmö with additional experts at national level. They hold virtual meetings three times a month and meet face-to-face once a month.⁴⁰

2.1.2 The Police

As a consequence of Sweden's ratification of the Rome Statute, the National Investigation Department of the Police (*Rikskriminalpolisen*) established in December 2001 the War Crimes Commission. The Commission was headed by one person, who was responsible for organizing the Commission and acting as a national coordinator for investigations relating to war crimes.⁴¹ The

³⁴ Mail correspondence 26 September 2019 and interview 27 September 2019 with Erik Saure, expert at the Migration Agency.

³⁵ Migrationsverket, Rapport om specialistfunktion för uteslutandeärenden och samarbete med Säkerhetspolisen, 2014.

³⁶ Migrationsverket, Beslut om införande för standard för specialistfunktionen, 17 May 2015.

³⁷ Erik Saure, 26-27 September 2019.

³⁸ *ibid.*

³⁹ Migrationsverket, Beslut, 17 May 2015.

⁴⁰ Erik Saure, 26-27 September 2019.

⁴¹ Elving, Martinsson, Fohgelberg and Lilja, 26 January 2007.

coordinator acted primarily as a contact person for the UN tribunals for former Yugoslavia and Rwanda and other countries.⁴² In the three metropolitan areas (Stockholm, Gothenburg and Malmö) there were, at least from 2007, four special investigators who handled these categories of crimes, operating from the local police authorities.⁴³ Based on the proposals in a preliminary study drafted by a working group consisting of representatives from the Swedish Prosecution Authority, the Police and the Swedish Migration Agency,⁴⁴ the National Police Commissioner on 5 September 2007 designated the War Crimes Commission as a permanent entity and special unit within the police authority.⁴⁵ The unit began its work in March 2008, with a head and nine investigators experienced in investigating serious crimes.⁴⁶ In the 2015 reorganisation of the Swedish Police, the Commission received the formal name “War crimes investigating group” (*Gruppen för utredning av krigsbrott*) and is now a part of the National Operations Department (*NOA - Nationella Operativa Avdelningen*). However, the unit is still called the “War Crimes Commission”. As a consequence of the high numbers of asylum seekers arriving in 2015 and the fear that there would be a need for more investigative resources, six more investigators were allocated to the War Crimes Commission which at the time of writing has a head and fifteen investigators. In addition, it has at its disposal two strategic analysts who gather information and search open sources to support the investigators. The Commission also works with two intelligence officers with access to information from the Security Service (*SÄPO*), which includes signals intelligence and from the Military Intelligence and the Security Service (*MUST*). Since these agencies work with intelligence there is a “wall” to prevent material becoming part of formal law enforcement investigations, thus putting them at risk of becoming public. The agencies may provide information that may have lead potential and function as a springboard to begin a formal investigation. The Commission also cooperates with Europol,⁴⁷ IIM⁴⁸ and CIJA.⁴⁹ Europol includes the Analysis Project Core International Crimes (AP CIC) where information is collected from police agencies in EUROPOL member states, and there is some exchange with IIM and INTERPOL. Swedish police may use the AP CIC to find information

⁴² Dahlbäck, Anna, Amnesty’s ICC-group, Protocol “Besök av av Rikskriminalpolisens Krigsbrottskommission”, 15 October 2008; Interview, Patricia Rakic Arle, 25 September 2019; Patricia Rakic Arle, head of unit, War Crimes Unit, the National Operations Department (NOA), the Police, 27 September 2019, e-mail.

⁴³ Elving, Martinsson, Fohgelberg and Lilja, 26 January 2007, pp. 47-48; Amnesty ICC-group, notes, 28 October 2006.

⁴⁴ Elving, Martinsson, Fohgelberg and Lilja, 26 January 2007.

⁴⁵ Rikspolisstyrelsen, Beslutsprotokoll, Diariennr POA-428-3822/07, 5 September 2007.

⁴⁶ Interview, Patricia Rakic Arle, 25 September 2019; Rikspolisstyrelsen, Beslutsprotokoll, 5 September 2007.

⁴⁷ European Union Agency for Law Enforcement Cooperation.

⁴⁸ International, Impartial and Independent Mechanism (IIM) to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011 established by UN General Assembly resolution 71/248, 21 December 2016.

⁴⁹ Commission for International Justice and Accountability.

and evidence. Recruitment to the War Crimes Commission is primarily internal within the Police, where employees in other parts of the organisation may apply.⁵⁰

2.1.3 The Public Prosecutor's Office

Until 2006 the Public Prosecutor's Office had six international public prosecutor offices. Thereafter there were three that could take on these types of crime.⁵¹ In 2007 the Stockholm Office established a designated group of prosecutors to investigate international crimes.⁵² Nowadays the three offices have been absorbed by the National Unit Against Organised Crime (*RIO - Åklagarmyndighetens riksenhet mot internationell och organiserad brottslighet*) and designated prosecutors for international crimes are situated in Malmö, Gothenburg and Stockholm.

2.2 Organizational Learning and Knowledge Dissemination

Dealing with international crimes is still an unfamiliar task for the Swedish legal system, and thus there may be a need to share experience and develop skills and competencies. One way is for the same persons in the state agencies concerned to become specialists responsible for handling these types of crime.

2.2.1 The Swedish Migration Agency

In 2016 the Swedish Migration Agency trained a first batch of some fifteen exclusion specialists; thereafter new batches have been trained as required by the Agency's regional offices. The exclusion specialists are trained with the support of an appropriate UNHCR (United Nations High Commissioner for Refugees) expert and the Agency's own experts. The specialists also train their colleagues in the regions and some are also national educators following the European Training Curriculum's Exclusion Module developed by the European Asylum Support Office (EASO).⁵³

All the exclusion specialists, the national coordinators, legal experts and other experts within the Agency are part of a national collegium which meets regularly to discuss issues related to exclusion. The collegium also invites external speakers.⁵⁴

⁵⁰ Interview, Patricia Rakic Arle, 25 September 2019.

⁵¹ Elving, Martinsson, Fohgelberg and Lilja, 26 January 2007, p. 48.

⁵² Åklagarmyndigheten, Årsredovisning, 2007, p. 32.

⁵³ Erik Saure, 26-27 September 2019.

⁵⁴ *ibid.*

Part of European cooperation is the EASO network on exclusion, in which the Agency participates. The network maintains discussions on best practices, legal issues and case law.⁵⁵

2.2.2 The Police

At the War Crimes Commission, new investigators in the unit all get a mentor. Considering that the Commission's members generally have prior experience as investigators of serious crime they can often begin their Commission work with the type of investigative measure they are familiar with. Unlike in most other police units (and other state agencies in general), there is no handbook. This is because international crimes are often very diverse in character and form. However, the Commission has a digital collection of documents organized in folders and this partly replaces a handbook. Two more experienced investigators have a special responsibility for coordination, requesting files from the Migration Agency, responding to questions from internal and external actors, keeping statistics, etc. New Commission investigators normally familiarise themselves by reading previous Swedish judgments relating to war crimes and genocide. The Commission and the RIO co-organise joint training with speakers invited from the ICC, the Migration Agency and other experts. After two years the Commission investigators attend a two-week course in The Hague organised by the Institute for International Criminal Investigations (IICI).⁵⁶ The Nordic countries have a long tradition of police agencies exchanging information and experience. An annual Nordic war crimes conference has been organized since 2007 where police and prosecutors from Sweden, Norway, Denmark and Finland meet to exchange experience. A similar network exists in the EU where police and prosecutors meet twice a year through the Genocide Network at Eurojust. These meetings are partly open to external actors and are partly closed, to permit discussions of a more operational nature.⁵⁷

2.2.3 The Public Prosecutor's Office

The prosecutors demonstrate a clear strategy of building on previous experience. Each case has at least two prosecutors allocated. In the very first case of this nature in a Swedish court, *Arklöv*, neither prosecutor had previously prosecuted these types of crime before a Swedish court. In subsequent cases, at least one of the two prosecutors has had prior experience of such cases.

2.2.4 The Courts

The first four cases relating to crimes against international law were conducted before the Stockholm district court. The Government had in, a specific decision

⁵⁵ *ibid.*

⁵⁶ Interview, Patricia Rakic Arle, 25 September 2019

⁵⁷ *ibid.*

in each case and as requested by the case prosecutor, designated the Stockholm district court responsible for that case.⁵⁸ There appears to be a will, possibly among the prosecutors, the Government and the Stockholm district court, to start by building experience at one court; thereafter other district courts have dealt with these type of cases. Some of the cases adjudicated by other district courts appear to be less complex since they concern situations where the defendants have posed for photos or films showing injured or dead persons.⁵⁹ An exception is the *Al-Mandlawi and Sultan* case adjudicated by Gothenburg district court. This was not investigated by the War Crimes Commission but by the Security Service (SÄPO). The case was first characterized as relating to terrorism and not as a war crime. Its handling appears to follow a different template than that for war crimes cases in other regards as well: the prosecutor came from the National Security Unit (*Riksenheten för säkerhetsmål*) which normally handles terrorism-related cases from the Security Service.

Another observation is that the same Stockholm district court judge heard the *Mbanenande*, *Berinkindi* and *Haisam Sakhanh* cases. Of the seven cases that have gone to the appeals stage, only one judge has heard two cases (*M.M.* and *Droubi*),⁶⁰ the others have only heard one each.

2.2.5 Legal Counsel

As victims' representatives, some legal counsel keep reappearing: Göran Hjalmarsson and Bengt Hasselberg have undertaken three cases each. Defence counsel are a different story, they hardly ever reappear in these types of case – which is remarkable. Thomas Bodström is the only one to have participated in two completed trials, first as victim representative (*Berinkindi*) and second as defence counsel (*Tabaro*). Thomas Olsson may reappear a second time if the prosecutor serves an indictment and the *Lundin* matter goes to trial.

2.2.6 Experts

Primarily, the same experts have reappeared in the three Rwanda cases. Several experts with different fields of expertise have served, including those with knowledge of Rwanda as a country, Gaçaça trials and how time and memory may influence the quality of testimonial evidence. In the Syria and Iraq cases, Professor Mohammad Fazlhashemi has testified several times (*Abulkareem*, *Abullah* and *Saeed*) to explain how the criminal acts may be connected to

⁵⁸ *Arklöv*, judgment 18 December 2006, p. 12; *Makitan*, judgment 8 April 2011, p. 41; *M.M.*, Stockholms tingsrätt, judgment 20 January 2012, p. 46; *Mbanenande*, Stockholms tingsrätt, 20 June 2013, p. 12.

⁵⁹ *Droubi* at Södertörn district court, *Abulkareem* at Blekinge district court, *Abdullah* at Södertörns district court and *Saeed* at Örebro district court.

⁶⁰ *M.M.*, Svea Hovrätt, judgment 19 December 2012 and *Åklagaren ./. Droubi*, Svea Hovrätt, Mål B 4770-16, judgment 5 augusti 2016. I have excluded the Svea Court of appeal decision of 23 February 2016 to remand the *Droubi* case to Södertörn district court since that decision did not rule on the defendant's guilt; otherwise there would have been one more judge with experience of two cases, *Droubi* and the appeal judgment in *Al-Mandlawi and Sultan*.

traditions in the area and their significance. Regarding international law matters, different experts have been heard, among them Ola Engdahl, Said Mahmoudi and Mark Klamberg. The National Forensic Centre (NFC) has contributed to the courts' proceedings with written expert opinions regarding physical evidence, such as photos and film.

2.3 *Comment*

There appears to be a conscious decision to take advantage of the acquired knowledge and experience, especially at the Migration Agency, in the public prosecutor's office and among victims' representatives; and, to some extent, also the courts. However, this appears to be lacking among the defence counsel. This may be explained by the role legal counsel have in our legal system, taking on different kinds of cases. However, there may be concern from the perspective of a fair trial since, even if a defence counsel may have an excellent general skillset, this type of case often requires specialist competence. This does not require that the same defence counsel take on all the cases; the issue can also be remedied through exchange of experience and training.

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