

# Guernica 37 Group

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# G37

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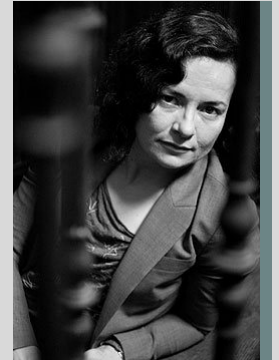
## Newsletter

A Message from the Joint Heads of Chambers.

Welcome to the January 2022 edition of the **New Guernica 37 Group Newsletter**. You will notice a number of changes in this first newsletter of the new year.

We have a new design to bring together the **Guernica 37 Group**, highlighting the achievements of Chambers and the Centre together, as we continue to bring the work of the different entities closer to strengthen our unique partnership. We would also like to introduce Guernica 37 Centro, our Spanish non-profit association, and Guernica 37 Chambers The Hague, as we continue our expansion.

We are also delighted and hope you will join us in welcoming Almudena to the English Bar. Almudena will be called to the Bar by the Honourable Society of the Middle Temple in March 2022 and from that point on, will accept instructions and exercise higher court rights of audience.



We are also pleased to welcome Paulina Strassburger and Clarissa Rodio who were appointed as Private Secretaries to the Joint Heads of Chambers. This will undoubtedly assist the administration of Chambers and the Centre as both entities continue to grow.

On 1 March 2022, Guernica 37 Chambers will be moving to new premises at 6 Pump Court, Temple. This is indicative of our growth both in terms of our domestic practice and international presence.

Our international work continues in a number of key areas including Bangladesh, Bosnia and Herzegovina, India, Kosovo, Lebanon, Libya, Montenegro, Pakistan, Syria, Venezuela, and Yemen.

Our domestic practice continues to grow in the areas of crime, regulatory work, anti-corruption, extradition and mutual legal assistance, Interpol challenges, commercial litigation, arbitration and whistleblower protection.

Almudena and Toby

## COVID -19



During this difficult time of uncertainty, we would like to assure you that Guernica 37 Chambers remains committed to all its clients and will take every measure to ensure that they are not affected by the challenges being adopted globally.

Guernica 37 will remain open and committed to its clients, notwithstanding the current emergency. As

a responsible Barristers' Chambers, we will follow the Government and Bar Council guidelines that are consistent with ensuring the measures taken are strictly necessary and proportionate.

Furthermore, our team remain ready to attend to any new needs and demands that the #Coronavirus crisis imposes and stands ready to assist any of those affected, wherever they may be.

Kind regards,  
The Guernica Team



# G37

CHAMBERS

Guernica 37 Chambers new premises at Pump Court, Temple



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Bringing Accountability For International Crimes & Human Rights Violations

*We do the right work, we do it the right way and we do it with the right people.*

G37  
CHAMBERS

G37  
CENTRE

# Guernica In The News

A 25-year-old asylum seeker from Syria has been told by the Home Office that he can return from the UK to the war-torn country without “risk of serious harm”. The man, who has not been identified for safety reasons, fled Syria in 2017 to avoid forcible conscription into the national army, which was fighting various opposition factions throughout the country’s 10-year conflict. The first known case of its kind in the UK echoes the controversial decisions taken by Denmark in recent months to try and repatriate refugees to what Danish authorities now deem a “safe” Syria.

The Home Office’s controversial decision to send the man back to Syria mirrors recent attempts by Denmark to do the same with hundreds of Syrian refugees who had sought shelter there during the war. London-based international law firm, Guernica 37, is working with Syrian families in Denmark affected by the “deeply concerning” decision.

Reported in *The National*.

In August 2021, the Guernica 37 Chambers law offices made a formal submission to the British Foreign, Commonwealth and Development Office recommending sanctions for 15 current and former senior RAB officers for alleged involvement in human rights abuses and corrupt practices under the Global Human Rights Sanctions Regulations 2020.

Reported in Human Rights Watch, “Word Report 2022: Bangladesh”

<https://www.hrw.org/world-report/2022/country-chapters/bangladesh>

The former deputy Chairman of the KLA War Veterans Association, Nasim Haradinaj, said they oppose the Special Prosecutor’s Office’s approach and not the Specialist Chambers. He has completed his testimony before the trial panel. On the fourth day of his testimony while answering questions from defence attorney Toby Cadman, Haradinaj said he understood the court as legitimate.

<https://kosovapress.com/en/haradinaj-completes-his-testimony-in-the-hague-we-oppose-the-approach-of-the-prosecution-not-the-court/>

Nasim Haradinaj testified on Tuesday at the Kosovo Specialist Chambers in The Hague that the information in documents from the Hague court that were leaked to the Kosovo Liberation Army Veterans’ Organisation was already known to the public. During his testimony on Tuesday, Haradinaj said he and Gucati were justified in distributing the documents to media at a series of press conferences in Pristina for the sake of transparency. He said that the facts about the documents had been “manipulated by journalists, which is not our responsibility”. Haradinaj also told the court he never tried to contact any of the witnesses that were mentioned in the documents. He went on to say that the Specialist Prosecutor’s Office could have stopped the distribution of the documents to the media if it had wanted to because the announcements of the press conferences were public.





Guernica 37 was established in 2016 on the strength of Syrian work. It has remained since that time one of our core objectives – to ensure that all persons who have engaged in atrocities in Syria are held accountable before a court of law and that victims see justice. We remain committed to bringing justice to Syrians and we will continue to dedicate our work towards justice and accountability.

The historic ruling in the Syria torture trial in Koblenz has shown what can be done – it is the first concrete result, and it is an important step.



Access the full article [here](#).

The Secretary-General of the United Nations, António Guterres, condemned the recent attack by the Saudi-led coalition in Sa'ada, Yemen. The Secretary-General reminded all parties to the conflict that attacks on civilians were prohibited by international humanitarian law and called for prompt, effective and transparent investigations into these incidents to ensure accountability.

In a conflict that has lasted for more than six years, seen over 100,000 deaths, 4 million displaced and 25 million in need of humanitarian assistance, the words of the UN Secretary-General are likely to be meaningless. What is needed is action, not words of regret or sadness. What is needed is a commitment to justice, not endless inquiries that result in no action. What is needed is

accountability, not collective punishment and the entrenchment of impunity.

Access full article [here](#).



More than 460 current and former United Nations officials, human rights and legal experts, international NGOs and academic institutions have written to the UN Human Rights Council calling for an international inquiry into the 1988 massacre of thousands of political prisoners in Iran. Among the signatories, Guernica 37 endorsed the open letter, urging the OHCHR and the UN Human Rights Council to challenge the impunity enjoyed by Iranian officials by mandating an international investigation into the 1988 mass executions and enforced disappearances, which amount to crimes against humanity and genocide.



Access the full article [here](#).

The Guernica 37 Centre is part of a global initiative, led by NYU Law School's Center for Human Rights and Global Justice, aimed at establishing a framework approach to the prevention of human rights violations. The aim of the project is to concentrate on prevention measures at the national level, considering the importance of institutional reforms (especially of the judiciary and the security forces), but also the role of economic factors, civil society, changes in personal dispositions and the cultural dimensions of social integration. The Guernica 37 Centre coordinates the work related to state capture and prevention. Our work aims at deepening its understanding of how state capture takes place, the effect it has on human rights and the mechanisms to confront and prevent these situations.

State capture refers to a condition under which corruption is not just a matter of seeking advantage in the implementation of norms, but rather, where the very formulation of norms is manipulated for the advantage of specific persons. In these instances, the rules of the game are changed to benefit the private over the public. State capture results in narrow interest groups controlling public institutions and processes to the exclusion of those whose interests are meant to be served.

State capture not only can involve gross violations linked to corrupt practices and coercive violence used to take over state institutions; but also, can become the reason for systemic failure of the state (or sectors of the state), thus leading to a pattern of violations, generally marked by discriminatory practices. State capture tends

to aggravate existing systems of privilege and prejudice, thus, exacerbating discrimination and exclusion of certain groups from the administration of public affairs.

We are documenting this dynamic by analyzing certain sectors of public administration and by conducting country specific case studies. For example, in many captured states, the judiciary or the prosecutorial authority are seized to benefit a private group. As a result, justice is distorted; operators can be individually targeted, intimidated and threatened; and, basic guarantees, such as due process, become nugatory. Health care systems are also susceptible to state capture due, in part, to the large number of resources, pre-existing predation and weak controls to address malfeasance. The effect on human rights is grave, given the direct impact on the right to health and the potential impact on the rights to personal integrity and to life.

We presented in late January 2022 the result of our work to the 'Guidance Group' composed of UN officials as well as representatives of Member States committed to the prevention framework. Looking forward: we will continue to document the links between corruption/state capture and human rights violations, including their representation on a scale demonstrating a continuum, and identifying risk factors and tipping points. We will also turn to formulating prevention pathways and further study the best ways through which states can confront situations of gross corruption and state capture (including the use of regulatory and investigative bodies).



# Our Expertise

Guernica 37 is an innovative International Justice Chambers specializing in transnational litigation involving the enforcement of fundamental human rights protection and international criminal norms in national courts.

## International Criminal Law

International criminal and humanitarian law is at the forefront of Guernica 37's practice. Its members have been involved in several high-profile matters prosecuting, defending and acting for victims before international tribunals, hybrid courts and human rights monitoring bodies including the International Criminal Court (ICC), International Tribunal for the Former Yugoslavia, Bosnia and Herzegovina War Crimes Chamber, Bangladesh International Crimes Tribunal and Kosovo Specialist Chambers. Previous cases have included General Augusto Pinochet, President Uhuru Kenyatta, former President Pervez Musharraf, former Bosnian Vice President Ejup Ganic, General Karake Karenze of Rwanda, the political leadership of Bangladesh Jamaat-e-Islami, and more recently the President of Syria Bashar al-Assad.

## Public International Law

Public International Law is one of the fast growing legal fields. It has been at the cutting edge of legal development in recent years and continues to develop into many interconnected fields. The introduction of the Human Rights Act in the United Kingdom and the increasing reliance on international law in the domestic courts means that expertise in this field is now more important than ever before.

## Extradition, Mutual Legal Assistance and Interpol Red Notices

Guernica 37 regularly advises and represents individuals, foreign governments and judicial authorities in extradition proceedings at all levels. Its members have been involved in a number of high-profile extradition

requests for individuals facing trials in the Balkans, South Asia, Latin America, North America, Africa and numerous Member States of the European Union under the European Arrest Warrant Scheme. Human Rights Act in the United Kingdom and the increasing reliance on international law in the domestic courts means that expertise in this field is now more important than ever before.

## Rule of Law Development

Guernica 37 seeks to adopt a principle to promote international justice through investigation, litigation, and transitional justice initiatives. It does this by building effective global networks, empowering victims and local partners to secure their voice in transitional justice mechanisms. It uses legal accountability to incentivise institutional reform and prevent future abuses. This way it develops transnational legal strategies to overcome entrenched impunity, fostering an exchange of expertise between legal cultures, civil society groups and victim communities to cross-pollinate accountability strategies.

## International Commercial Law, Arbitration & Mediation

International arbitration has enjoyed growing popularity with States and Corporations. There are a number of reasons that parties elect to have their international disputes resolved through arbitration. Guernica 37 is increasingly asked to advise and represent parties in commercial matters seeking to avoid the uncertainties and local practices associated with litigation in national courts. Clients see the more efficient procedures, the relative enforceability of arbitration agreements and awards, the freedom to select and design arbitral procedures, confidentiality and other benefits.



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## Business and Human Rights

Over recent years, corporate responsibility has seen a change of focus. As a global population becomes ever more alive to general principles of individual human rights, they have also become aware of the social and environmental responsibility. Stakeholders, having developed a common understanding, are increasingly adopting responsibility for the issues that corporations are faced with, and seek to highlight such issues and exert pressure where they can. In the area of Business and Human Rights, Guernica 37 provides bespoke advice and assistance on compliance with human rights standards and due diligence policies, advancing the UN Guiding Principles. Guernica 37 further provides advice and assistance to organisations and States in the areas of anti-corruption initiatives, rule of law development, training, institution building, legal reform, and legislative drafting.

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## Anti-Corruption, Bribery & Risk Management

Business and corporate strategy is now more global than it has ever been. With the increase in international trade and associated agreements however, international scrutiny has also increased with businesses and their conduct watched evermore closely. Just as the United States has made the enforcement of the Foreign and Corrupt Practices Act a priority, so too has the United Kingdom Serious Fraud Office sought to target allegations of corruption following the enactment of the Bribery Act. It is essential therefore that businesses are alive to both their domestic and international obligations. Dealing with multi-jurisdictional investigations is now the reality for those companies seeking to conduct business in global market place. We recognise that prevention is better than a cure. Guernica 37 members are perfectly placed to assist businesses in designing and implementing appropriate 'anti-corruption' programmes with policy enactment, and employee training.

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## Domestic Crime

Chambers' domestic criminal law expertise includes a wide range of areas including general criminal law, business and financial crime, anti-corruption and bribery, terrorism, and investigations of serious crimes. With members spanning all levels of seniority and different types of expertise, Chambers provides well-rounded representation and advice at all levels on all types of cases, whether being instructed through solicitors and through direct access.

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## International Climate Justice

Climate change and the risk of irreversible environmental damage is one of the greatest challenges we face. It impacts on a variety of human rights and fundamental freedoms. It has immeasurable consequences of the right to life, right to health, right to housing, freedom from poverty, right to access clean water and is likely to cause catastrophic internal and external displacement. Climate change and our response to the challenges we face have a disproportionate impact on the poor and marginalised. It has disproportionate impact on women, children and the elderly and is a greater threat in certain parts of the world already at risk through poverty, conflict and the absence of sustainable economic and environmental stability.





# The Guernica Accountability Podcast



*You can now listen to the latest episode of the Guernica Accountability Podcast on Spotify, Google podcasts, Apple podcasts and a number of other podcast players. Make sure you subscribe to get access to new episodes as soon as they are uploaded.*

## Our Episodes

- Episode 1 – The Guernica Accountability Podcast – Introducing The Guernica Group, directly from the voices of those who form part of this initiative.
- Episode 2 – Guatemala – Toby Cadman speaks to Law Professor Naomi-Roht-Arriaza about the Guatemalan Genocide and the historic process that saw a former Head of State put on trial in a national court for Genocide.
- Episode 3 – Syria – Toby Cadman speaks to Waad Al Kataeb, the extraordinary young woman who produced the documentary For Sama, her husband Hamza, a surgeon from the last remaining hospital in besieged Aleppo and Catherine Marchi-Uhel, the Head of the United Nations Mechanism for Syria.
- Episode 4 – The Jesuits Massacre Case – Guernica Co-founders, Almudena Bernabeu and Toby Cadman, discuss the historic Jesuit Massacre Trial before the Spanish National Criminal Court. Almudena has been involved in the case for more than a decade.
- Episode 5 – The Secret Barrister – Guernica Co-founder, Toby Cadman discusses a broken legal system with The Secret Barrister. The Secret Barrister discusses the legal system of England and Wales, how it is broken and how it can be fixed.
- Episode 6 – The Pillars of Justice – Guernica Co-founder, Toby Cadman discusses the four pillars of transitional justice - truth; justice; reparations; and non-recurrence - with Pablo de Greiff.
- Episode 7 – Gender Crimes & Sexual Violence – Guernica Co-founder, Toby Cadman speaks to Michelle Jarvis, Deputy Head of the UN IIIM and discusses her career in international criminal justice.
- Episode 8 – An Unorthodox Barrister - Guernica Co-founder, Almudena Bernabeu speaks to Toby Cadman about his unorthodox career path to the English Bar, human rights, Guernica, Bangladesh, Syria, Kung Fu and the Rolling Stones.
- Episode 9 – Sexual Violence as a Weapon of war – Patricia Viseur Sellers takes us on a journey, looking at accountability mechanisms and the development of international law and the role it plays in combating gender violence in conflict.
- Episode 10 – “Accountability through the Lens of Diversity” - In tenth Episode episode of the Guernica Accountability Podcast we discuss Cherie Blair QC’s extraordinary career in law.
- Episode 11– Justice and Reconciliation – Guernica Co-founder, Toby Cadman speaks to Yasmin Sooka and Howard Varney on the pursuit of truth, justice and accountability in South Africa 20 years after the Final Report of the Truth and Reconciliation Commission.

<https://www.guernica37.com/podcast>

# The Month In International Legal News



A former Colombian military officer has been charged in the US in connection with the assassination of Haiti's President Jovenel Moïse last July. Mario Antonio Palacios, 43, is accused of having "participated in a plot to kidnap or kill the Haitian president", the US justice department said. In a statement, the US justice department said a complaint was filed in the state of Florida accusing Mr Palacios, along with a group of about 20 other Colombian nationals and dual Haitian-American citizens, of "conspiracy to commit murder or kidnapping" outside the US.

Britain has been accused of reviving a policy of "targeted killing" after it emerged that the RAF had killed an arms dealer linked to Islamic State in a precision drone strike in Syria at the end of October. The MoD said it had not changed its policy and said the UK has "a robust target clearance process, operates under strict rules of engagement, and is fully compliant with international law".

Security forces in the Central Asian state of Kazakhstan say they have killed dozens of anti-government rioters in the main city, Almaty. A police spokeswoman said that they moved in after protesters tried to take control of police stations in the city. Twelve members of the security forces have been killed and 353 injured in the unrest, sparked by a doubling in the cost of liquefied petroleum gas (LPG). Russia is sending in troops at the request of the Kazakh president. They will be deployed

to help "stabilise" the country, which is a member of the Collective Security Treaty Organization (CSTO) along with Russia, Belarus, Tajikistan, Kyrgyzstan and Armenia.

Aung San Suu Kyi has been handed a four-year jail sentence by a military court in Myanmar over various offences, including illegal possession of walkie-talkies, the latest judgment in a series of cases that could lead to her spending the rest of her life in detention.

The Home Office has told asylum seekers from some of the world's biggest conflict zones that it is safe for them to return there. A 36-year-old from Yemen and a 21-year-old from Afghanistan have both had their asylum claims rejected by government officials on the basis that they would not be at risk in their home countries. The disclosure follows the case of a 25-year-old Syrian asylum seeker who was told it would be safe for him to go back to Syria. The Home Office's own guidance as well as that from UNHCR warns of the dangers of returning refugees to countries such as Syria, Afghanistan and Yemen.

A US official has said that Russia is plotting to stage acts of provocation to create a pretext to invade Ukraine. A Pentagon spokesman said Russian operatives were planning a "false-flag" operation, to allow Moscow to accuse Ukraine of preparing an attack. Russia has dismissed the claims. It comes after a week of US-

Russian talks aimed at defusing tensions. On 14 January, Ukraine accused Russia of being behind a cyber-attack on dozens of official websites. Before the sites went offline, a message appeared warning Ukrainians to “prepare for the worst”. Access to most of the sites was restored within hours. The US and Nato condemned the attack and have offered support to Ukraine.

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Magistrates will be able to lock up people for longer under powers being granted by the government to cut the Crown court backlog. Lord chancellor Dominic Raab announced that he will double the maximum prison sentence – currently six months – that magistrates can hand down. Magistrates will also increasingly be allowed to sentence serious cases such as fraud, theft and assault. Currently, any crime that warrants a prison sentence of more than six months must be sent to the Crown court for a judge to determine the appropriate sentence.

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Israeli police have evicted a Palestinian family and demolished their house in the East Jerusalem neighbourhood of Sheikh Jarrah. Officers raided the Salhiya family home before dawn, arresting several people before a bulldozer moved in. There had been a two-day stand-off after the head of the family threatened to blow up his house rather than move. Israeli officials said the building was illegal - something the family denied - and the land was needed for a school.

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In the case of *Karuyev v. Russia*, the European Court of Human Rights held that there had been a violation of Article 10 of the Convention on the freedom of expression. The case concerned the applicant’s conviction for spitting on a portrait of Russian President Putin in 2012, in the wake of his re-election. He had been convicted of a breach of public order and sentenced to 15 days of detention. The Court was not satisfied that the elements of an offence – “breach of public order” – under the relevant domestic law had been made out

when prosecuting the applicant. Spitting on the portrait of President Putin had been an expression of his political opinion and had not led to any public disturbance. Nor had the act involved any foul language, harassment or damage to property. His conviction had not therefore been “prescribed by law” within the meaning of the Convention.

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*A German court has sentenced a Syrian colonel to life in prison for crimes against humanity in a landmark case. Anwar Raslan, 58, was linked to the torture of over 4,000 people in Syria’s civil war in a jail known as “Hell on Earth”. The trial in Koblenz is the world’s first criminal case brought over state-led torture in Syria.*

The United Nation’s General Assembly adopted, by consensus, a resolution that condemns denial and distortion of the Holocaust. The resolution was approved in the presence of a group of people who survived the Nazi genocide that killed around six million Jews, some two-thirds of the Jewish population of Europe, during World War Two.

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The UN has condemned an airstrike by a Saudi-led coalition on a Yemen detention centre that has killed more than 70 people. The incident happened when a facility was struck in Sa’ada, a stronghold of the rebel Houthi movement, on 21 January. UN Secretary-General António Guterres said the “escalation needs to stop” and called for an investigation into strikes in the country.

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The Appeals Chamber of the Bosnian state court sentenced Adem Kostjerevac, a former member of the military police force of the Bosnian Army's First Muslim Brigade Zvornik, to seven years in prison for committing rape in the Zvornik area in 1992.

The president of the UN's Mechanism for International Criminal Tribunals in The Hague, Carmel Agius, said that Milomir Stakic is entitled to a ten-month reduction in his sentence under the law in France, where he is serving his prison term.

Kosovo Supreme Court confirmed that it has ordered a retrial for Ivan Todosijevic, a Kosovo Serb MP sentenced to two years in jail for inciting ethnic, racial and religious intolerance with comments relating to a massacre of Albanian civilians in Kosovo in January 1999 by Serb forces.

Albania's Special Prosecution Against Corruption and Organised Crime, SPAK, has started investigations into 3.6 million euros of transactions made by the company that built the electricity interconnection line to Kosovo to a small UAE-based consultancy.

The United States has imposed sanctions on Bosnian Serb leader Milorad Dodik, accusing him of corruption and threatening the stability and territorial integrity of Bosnia and Herzegovina.

Kosovo women's rights activists call for the maximum sentence to be applied to a man arrested for murdering his wife, saying too many femicides end in judicial procrastination and low sentences.

Serbian citizens voted to change the country's constitution and accept a judicial reform package, with 60.48 per cent of voters voting in favour. Some of the changes in the referendum are about the way judges and prosecutors will be elected in future. Parliament will now elect only the Supreme State Prosecutor and five out of 15 Constitutional Court judges. All other judges and prosecutors will be elected by two judicial councils.

The Court of Bosnia and Herzegovina in a first-instance verdict acquitted Sena Hamzabegovic of financing terrorist activities by raising cash and taking it to help ISIL fighters in Syria and Iraq.

For several weekends, thousands of demonstrators in Belgrade and other Serbian towns have blocked main roads and bridges to protest the planned mine in western Serbia. Serbia's populist government has decided to cancel all licenses for mining giant Rio Tinto to open a lithium mine near the town of Loznica, in the west of the country, to defuse the large protests by environmentalists.

War victims hope they will be able to win compensation after verdicts are delivered at the Kosovo Specialist Chambers in The Hague – but experts have warned that the process could prove difficult if they want to remain anonymous.

The European Court of Human Rights announced that it has rejected Vladimir Milankovic's complaint about the verdict convicting him of ordering illegal arrests and not punishing the detention and abuse of Serb civilians, which resulted in more than 20 deaths.



# Recent Developments in Data Protection Claims

by Carl Buckley

It has been a busy 12-months for DPA claims, with this increasingly important, and developing area of law thrust into the spotlight on more than 1 occasion.

I would anticipate that DPA Claims, consequences of breaches, and ongoing developments of the law as it stands is something that will remain with us going into 2022 and beyond given that our Data, and its retention, its processing, and unfortunately, its loss, becomes continually more applicable to each and every one of us as the digitisation of the world and our lives continues.

So what have been the developments?

The short answer, is that there have been several, but for the purposes of this brief blog we will consider 2 in particular, with a passing note to VM Morrisons Supermarkets plc v. Various Claimants [2020] UKSC 12.

Morrisons deserves a moment of our time given its importance in terms of its position with regard to the principle of ‘vicarious liability’, and to issues that arose in a case in which I was instructed by the Claimant earlier this year.

Accordingly, this is where we will start.

Whose Fault is It and Who can we Blame?

This is not always a straightforward question to answer. It is often easy to establish that something has happened that ought not to have, and therefore, an issue that is actionable; however, against whom to target our complaint is not always so straightforward.

Vicarious liability and its general principles need no further discussion here, but the position of the Supreme Court does.

In short, Morrisons Supermarket, and its staff, were the victim of a significant data-leak, one perpetrated by a member of their internal audit team, and therefore importantly, a Morrisons’ employee who uploaded a file containing the data of some 98,998 members of Morrisons’ staff to a publicly accessible file-sharing website.

At first glance therefore, we might consider that as the employer of the perpetrator, Morrisons’ would be

vicariously liable. However, as per the Supreme Court decision, we must look much closer.

The question that fell to be answered in this regard was as per the general test in Dubai Aluminium [2003] 2 AC 366, namely, whether the disclosure was “so closely connected with acts he was authorised to do that, for the purposes of the liability of his employer to third parties, his wrongful disclosure may fairly and properly be regarded as done by him while acting in the ordinary course of his employment”.

The connecting factor was argued to be that he was in the first instance, given the task of collating and transmitting payroll data to KPMG, and therefore it was argued that he could not have made the disclosure if he had not been given the initial task.

The Court found on the facts however that the employee was not engaged in furthering his employer’s business, but rather, that he was pursuing a personal vendetta, and therefore it could not be “fairly and properly be regarded as done by him while acting in the ordinary course of his employment”.

The second issue that fell to be determined, therefore, was whether the DPA excluded the imposition of vicarious liability for statutory torts committed by an employee data controller under the DPA and, misuse of private information and breach of confidence.

The simple answer is that it did not, the Supreme Court confirming this position.

Access the full article [here](#).



## Global Legal Community Stands in Solidarity with Egyptian Lawyer Mohamed el-Baquer

Members of the global legal community took a stand in solidarity with Egyptian lawyer Mohamed el-Baquer in December as he faced baseless criminal charges, following years of reprisal by the Egyptian state. They called on the Egyptian authorities to drop all charges against el-Baquer, to promptly release him unconditionally, and to lift the restrictive measures imposed on him for his work as an attorney. They further called on the Egyptian authorities to halt the targeting of Egyptian lawyers for their legal defence work and exercise of fundamental freedoms.

Mohamed el-Baquer is a human rights lawyer and the founder and director of the Adalah Center for Rights and Freedoms. He has a long history defending individuals whose rights have been violated, including religious and ethnic minorities, and of providing pro bono legal assistance to those prosecuted for exercising their rights to assembly and expression. In November 2020, el-Baquer was awarded the Council of Bars and Law Societies of Europe (CCBE) Human Rights Award for his “courage, determination, and commitment to defending human rights in Egypt.” In 2021, he was one of three finalists for the UIA/Lexisnexis Rule of Law Award after being nominated by the Law Society of England and Wales. Members of the U.S. Congress, the European Parliament, and the UN Special Procedures are only some of the individuals and entities from around the world who have stood in solidarity with el-Baquer.

El-Baquer was first arrested on September 29, 2019 while representing his client, renowned blogger and activist Alaa Abdel Fattah, before the Supreme State Security Prosecution. He was questioned in the same case, faced with a series of arbitrary charges, and remanded into pretrial detention. Since then, el-Baquer has been charged in additional criminal cases through “rotation” (tadwir), the practice of ordering individuals into new criminal cases, where the charges and fact patterns are similar if not the same as earlier cases and which facilitates the bypassing of release orders and the circumventing of pretrial detention maximums. El-Baquer was also designated under the country’s terrorist list pending a case for which he has never been questioned; as a result, he faces a travel ban,

asset freeze, and potential disbarment. Most recently, he was referred to Emergency State Security Court on the baseless charge of “publishing false news that harms the country’s interests on his social media page.” His trial has continued despite President Sisi’s declaration ending the formal state of emergency in October 2021. A verdict, against which there can be no judicial appeal, is set to be handed down on December 20, 2021.

Since his arrest, el-Baquer has faced extensive due process and other human rights violations. His pretrial detention has been regularly renewed in near-automatic fashion and without proper review; at times, he has not been physically brought before the authority reviewing his detention. His legal team has been unable to visit him in prison since COVID-19 restrictions were announced in March 2020. As his trial ensued, the court has refused to allow his team permission to photocopy the 1,500-page case file and his legal team has been denied the right to present a proper defense. In custody, el-Baquer has been subject to ill-treatment and inhumane detention conditions in the maximum security prison in which he is held. These conditions, coupled with the denial of his outdoor recreation time, and access to books, a clock, and a mirror have resulted in a severe deterioration to his physical and mental health.

The authorities’ targeting of el-Baquer is emblematic of Egypt’s treatment of human rights lawyers, who are increasingly subject to harassment, threats, prosecution, arrest, and punitive administrative measures for their legal defense work.



The full list of signatories can be found here:

<https://www.guernica37-media.com/post/global-legal-community-stands-in-solidarity-with-egyptian-lawyer-mohamed-el-baquer>

# Christian Michel: Persistent Failures by India, The UAE and The UK

Christian Michel, a British national, has been held in Tihar jail in New Delhi, India, for more than three years without charge. During his time in detention, he has suffered considerably by being subjected to repeated and prolonged interrogations as well as to inhuman and degrading treatment of such severity that it constitutes torture. The reason why Mr. Michel is being detained is believed to be rooted in an agreement between the UAE and India, specifically a de facto swap for the return of Sheikha Latifa, daughter of Dubai's ruler Sheikh Mohammed bin Rashid Al Maktoum, thereby amounting to a politically motivated rendition.

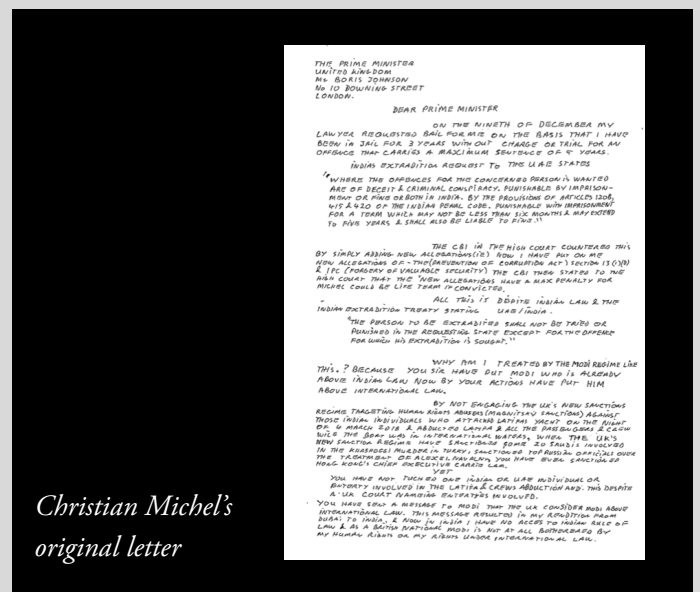
By virtue of Guernica 37 and Zimeray & Finelle Avocats, who jointly filed an "Urgent Communication" with the UN Working Group on Arbitrary Detention (WGAD), Opinion No. 88/2020 was delivered, which ruled that Christian Michel was being arbitrarily detained in breach of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, and recommended his release as well as his right to compensation.

On 25 November 2021, Christian Michel wrote a personal letter to PM Boris Johnson which stated that he would commence a hunger strike. Mr. Michel's decision appears to be the consequence of the repeated failures by the following parties: firstly, the Indian authorities and the UAE in failing to implement the aforementioned UN WGAD's Opinion, and secondly, the UK's failure in taking any steps to intervene.

On 16 December 2021, Christian Michel wrote his last letter to PM Boris Johnson, emphasising the exigency of imposing sanctions against India and the UAE. Mr. Michel drew attention to how the UK imposed these sanctions in other cases, such as, against the Saudis involved in the Khashoggi murder in Turkey, against Russian officials over the treatment of Alexei Navalny, as well as against Hong Kong's chief executive Carrie Lam. However, despite these precedents, the UK has neglected his appeals for sanctions against India and the UAE. Finally, he mentioned that the UN WGAD must act and intervene for a British national in the event that the UK is too compromised to do so.

Neither India nor the UAE have complied with the UN ruling. The Indian authorities have rejected the allegations in their entirety, particularly in relation to the fact that due process was not followed, and reacted by asserting that it has an "independent and vibrant judiciary" and that all is in accordance with the law in terms of the judicial process involved. India made it plain that the UN WGAD is not a judicial body, hence it rejected its Opinion since it is not legally binding. Furthermore, the external affairs ministry spokesperson Anurag Srivastava asserted that the conclusions drawn by the WGAD are based on limited information, biased allegations and an inaccurate understanding of its criminal justice system. The UAE authorities instead, bluntly turned a blind eye to this ruling.

Last but not least, it is striking and simultaneously perturbing that both India and the UAE have been re-elected as members of the UN Human Rights Council for the 2022-2024 term. This is regardless of their reputation that points towards numerous violations of human rights, contrary to the conditions set within UN Resolution 60/251: to demonstrate their commitment to the highest standards of human rights, including their full cooperation with all UN mechanisms.



Christian Michel's original letter

## KOSOVO SPECIALIST CHAMBERS

### The Specialist Prosecutor v. Hysni Gucati and Nasim Haradinaj

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On 15 December 2021, the Defence for Nasim Haradinaj gave its opening speech and on 11 January 2022 started to present its defence case after the winter recess.

On 11 January 2022, Nasim Haradinaj testified for the first time and his testimony lasted until 14 January. He stated that the information contained in the documents which were leaked to the Kosovo Liberation Army War Veterans Association (KLA WVA) was already known to the public. During his testimony, Mr. Haradinaj stated that any actions were justified in the public interest for the purposes of transparency and that the SPO was at fault for allowing the leak of potentially confidential documents.

On 14 January 2022, the defence called its second witness, a former General Director of the Kosovo Police, Rashit Qalaj. Before the Trial Panel, Mr. Qalaj said that the Special Prosecution of Kosovo has not authorised the Kosovo Police to investigate the case concerning the files that were delivered, by still unknown persons, to the offices of the KLA WVA. Rashit Qalaj added that the Kosovo Police have been very careful not to meddle in the competencies of other institutions, although they have always asked their international partners, the head of the EULEX mission, to be part of the process regardless of what is required from the Specialist Chambers.

On 21 January 2022, the Haradinaj's Defence called an expert witness, Ms. Anna Myers, whose testimony entailed whistleblowing law and practice. She testified about the laws and procedures that regulate protected disclosures in the public interest, the circumstances when a whistleblower goes public in order to provide information they believe is in the public interest, and how to address journalists who are able to subsequently decide whether or not to publish information. Furthermore, when asked whether an individual can

make the information public, Anna Myers replied that if an individual has tried to raise concerns in his organisation and has not received any response, it is ultimately his decision to make the information public.

On 24 and 28 January 2022, the fourth and final witness was called, a former Chief of Operations at the Office of the Prosecutor of the ICTY, Robert Reid. He testified about international investigative standards, practices and procedures, which specifically focus on search and seizure operations, chain of custody and authentication of material. Mr. Reid was also asked whether the investigation complied with the necessary steps and procedures according to international investigative standards. On 26 January 2022, Robert Reid was awarded the Member of the Order of Australia for significant service to international criminal investigations.

On 31 January 2022, a status conference was held for the final stages of the procedure and on 4 February 2022 the Trial Panel closed the evidentiary proceedings and set 14 -18 March 2022 for closing speeches.







## The Pathway to the Future

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*Rhea Hogben - Guernica Academy Intern*

To fulfil the potential this opportunity clearly offered from the outset demanded hard work, but I feel privileged to say that I am working hard just to ensure that I put in as much as I am given. The support, direction and kindness offered provides nothing but reassurance for a future in law and more specifically a career as a Barrister.

From day one of the application process, to the present day undertaking my internship, everything has been clearly explained, and the opportunity to tailor the process is evident. The tenet of flexibility as advertised is certainly upheld.

Having come straight from academia the exposure to cases with real life implications for people, both victims and perpetrators, is nothing short of impactful. The work completed at university only touches on the surface of what life in the legal field actually requires but there is no reason for concern because your mentor, other members and those who instruct the work are always willing to assist.

The range of experience and the opportunities I have been exposed to have been diverse. From domestic work requiring the construction of chronologies and the drafting of advices for judicial review, to international work on war crimes requiring a more investigative approach. Nothing is beyond the scope of an intern at Guernica 37; if you are interested in a particular area and the opportunity is there, you will be able to assist in a meaningful way.

Be enlightened about the lives of others, be surprised by the sympathy that is evinced, but learn that your job is to strive to achieve the right result, doing the right work, in the right way, working with the right people - because that is what working with Guernica 37 entails.

Whilst the fact that the internship is remunerated is an evident benefit, it pales in comparison to the experience you receive, the environment you become part of, and the work you undertake.

This is far from a dry and dusty experience; personal communication, encouragement and feedback were forthcoming from the point of application and throughout the experience. Therefore, if I were to offer any advice for prospective applicants or those who are considering the opportunity, it would simply be this:

- Do justice to yourself and your work, you will get back what you give!
- Develop and maintain accountability, hold yourself responsible for your attitude and effort because, if you do, the capacity for development is unparalleled; and
- Work with sustainability in mind, not only with a view to assist in developing enduring approaches and frameworks that support and give courage to those who require assistance, but also with the aim to develop attributes that you can maintain for your future, to further yourself, because if you allow it the experience will enrich you.

I am incredibly grateful to Guernica 37 and Carl Buckley for this innovative experience, it is one that I will carry with me for the future.

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