

# EU UPDATE ON INTERNATIONAL CRIMES

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## REDRESS & FIDH' PROJECT ON AN EU-WIDE APPROACH TO SERIOUS INTERNATIONAL CRIMES

REDRESS and FIDH's project started in 2003, with the aim of bringing the laws and practices of EU member states on the exercise of 'extraterritorial jurisdiction' closer together and encouraging the various bodies and institutions of the European Union to collaborate more effectively in the investigation and prosecution of the most heinous crimes: genocide, crimes against humanity, war crimes and torture. As two organizations with mandates to ensure justice for victims and with experience in assisting victims to exercise their rights to justice, promoting greater access to justice in the EU was and remains a key priority.

'Extraterritorial' or 'universal' jurisdiction is premised on the recognition that certain crimes are so heinous that they offend the international community as a whole, and consequently all states, irrespective of where the perpetrator or victim is located and regardless of the location of the crime, have a duty, and at times an obligation, to ensure that justice is done. The UN Convention against Torture and the Geneva Conventions recognize this principle, which is also recognized under general principles of international law. The coming into force of the Rome Statute on the International Criminal Court heralds in a new era for international justice.

Whilst the ICC has jurisdiction over some of the worst offenders, under the system of complementarity set out in the ICC statute, all states have an obligation to bring to justice those responsible for genocide, crimes against humanity and war crimes. This is a shared responsibility, and a key objective of the Project is to ensure that EU Member States, and the EU as an institution, are capable of implementing their responsibilities to ensure that justice is done.

## WELCOME

Welcome to the first edition of the *EU Update on International Crimes*, a Newsletter on international crimes, published by REDRESS and FIDH.

The Newsletter outlines the main developments in the field of international justice with a focus on European countries while at the same time highlighting the activities and competencies of the European Union.

This edition covers legislative developments and jurisprudence in European countries over the past two years and introduces various legislative instruments adopted by the European Union in relation to the fight against impunity for international crimes: war crimes, genocide, crimes against humanity and torture.

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In recent years, there has been an increase of both victims and perpetrators of international crimes seeking refuge in European States. While several investigations and prosecutions have taken place with a number of persons convicted, victims' access to justice is to a large extent dependant on their 'port of call' and the operative domestic legislation in each State. In some cases, where inadequate or insufficient legislation or legal procedures over certain crimes exist, victims are denied justice and perpetrators living in the country benefit from a safe haven and impunity for the worst crimes.

The European Union, despite an increase of competencies over criminal matters within the Justice and Home Affairs area (the "third pillar"), is only slowly starting to apply these competencies in practice to further encourage and assist Member States to comply with their international criminal law obligations. In a report published at the completion of the first phase of this Project, FIDH and REDRESS illustrated the gaps between Member States' legislation while at the same time outlining the EU competencies and the current state of affairs in respect of international crimes on an EU level.<sup>1</sup>

Building on these findings, the current phase of the project seeks to increase the commitment of the EU in the fight against impunity for international crimes and to ensure that practice and procedures of European States investigating and prosecuting international crimes will be more consistent. Both steps are vital to end safe havens and to provide victims with equal access to justice in the EU. □

## **EU COMMITMENT TO THE FIGHT AGAINST IMPUNITY FOR INTERNATIONAL CRIMES - THE CURRENT STATE OF AFFAIRS**

The institutions of the European Union (EU) the Council of the EU, the European Commission and the European Parliament, have various possibilities to make an important contribution to the fight against impunity for international crimes. On an external level (the EU and its relations with third countries outside of the Union), these include bilateral, multilateral and other demarches with third countries on issues relating to countering impunity and fostering human rights. The guidelines adopted by the Council for General Affairs and External Relations on the EU Policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment, are one example.<sup>2</sup> The European Commission's efforts to include provisions on the International Criminal Court in agreements between the EU and third countries are another. A particular commitment has been shown by the EU vis-à-vis the International Criminal Court, which includes practical support in terms of funding ICC related projects and programmes but also legislative instruments such as the Assistance and Cooperation agreement recently concluded between the EU and the ICC.<sup>3</sup>

An express commitment towards international humanitarian law can be found in the European Union Guidelines on promoting compliance with international humanitarian law, adopted by the General Affairs and External Relations Council in December 2005 on an initiative of the Swedish government.<sup>4</sup> On 16 March 2006, the European Parliament passed a resolution on "Impunity in Africa and in particular the case of Hissène Habré," reiterating that the fight against impunity is one of the cornerstones of the Union's human rights policy and called "on the Commission, the Council and the Member States of the African Union to continue to pay attention to this issue." Further, the resolution called on Member States "to do whatever they can to ensure that ... victims of such crimes committed in Africa or developing crimes receive compensation."<sup>5</sup>

Accordingly, the three European institutions have played a role in contributing to the fight against impunity externally. While these efforts need to continue, they also need to be complemented by initiatives of all three institutions that impact upon the policies and practices of the EU internally (within EU Member States and in respect of the EU as an institution, e.g., through the work within the domain of Justice Freedom and Security. ). The three institutions must ensure that Member States are supported and encouraged in effectively contributing to the fight against impunity. What is expected from third states- the ratification and implementation of the Rome Statute for instance, should be standard practice within the member states. □

<sup>1</sup> The report is available in English at <http://www.redress.org/publications/LegalRemediesFinal.pdf>; in French <http://www.fidh.org/IMG/pdf/LegalRemedies-Final-french.pdf>

<sup>2</sup> available online at: [http://ec.europa.eu/comm/external\\_relations/human\\_rights/torture/guideline\\_en.htm](http://ec.europa.eu/comm/external_relations/human_rights/torture/guideline_en.htm)

<sup>3</sup> available online at: [http://www.icc-cpi.int/library/about/officialjournal/ICC-PRES-01-01-06\\_English.pdf](http://www.icc-cpi.int/library/about/officialjournal/ICC-PRES-01-01-06_English.pdf)

<sup>4</sup> available online at: [http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/oj/2005/c\\_327/c\\_32720051223en00040007.pdf](http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/oj/2005/c_327/c_32720051223en00040007.pdf)

<sup>5</sup> available online at: <http://www.europarl.europa.eu/omk/sipade3?PUBREF=-//EP//TEXT+TA+P6-TA-2006-0101+0+DOC+XML+V0//EN&LEVEL=2&NAV=X&L=EN>

## **INTERVIEW WITH CAROLINE MORGAN, CRIMINAL JUSTICE UNIT OF THE EUROPEAN COMMISSION**

**Conducted by Jürgen Schurr**

Q1: *Caroline Morgan, you are working in the Criminal Justice Unit of the European Commission. Could you briefly describe the task and the mandate of the unit?*

The mission of unit D3 is to ensure that DG Justice,

Freedom and Security plays a full part in achieving a European area of freedom, security and justice in the sphere of criminal justice. In particular, it contributes to the definition of an EU criminal justice policy, by approximating substantive or procedural criminal law where necessary and by improving judicial cooperation between Member States in an integrated EU justice area on the basis of mutual recognition principle. It is responsible for the best use being made of coordination bodies and ensures that rights of individuals in criminal proceedings receive due attention. Furthermore, it represents the Commission at EUROJUST. Finally unit D3 works on devising strategies to ensure proper implementation of EU criminal justice instruments and developing an EU criminal justice policy in the field of international relations.

Q2: *The Network of contact points in respect of persons responsible for genocide, war crimes and crimes against humanity is an example of a third pillar mechanism designed to assist national authorities of Member States in the investigation and prosecution of international crimes. What support, if any, is the criminal justice unit/the DG Freedom, Security and Justice able to render to strengthen the Network and to assist national authorities?*

The Commission, represented by the Criminal Justice Unit in JLS, is not a formal member of the Network but only has observer status. Nonetheless, we support the Network by attending the meetings and participating to the extent that our observer status allows. In the past, the Commission has made funding available, under the GROTIUS and AGIS schemes, for research projects, conferences and seminars and dissemination of materials. The Commission has already indicated to the Network that if a suitable application were to be made, funding of this type could be available.

Q3: *What can the unit contribute to ensure that the EU does not become a safe haven for perpetrators of international crimes and that victims of international crimes have equal access to justice?*

The Commission's contribution to this effort is all in the framework of general judicial cooperation in criminal law. The Commission has ensured that instruments like the European Arrest Warrant apply to crimes under the Rome Statute. The forthcoming adoption by Member States of the European Evidence Warrant will ensure that evidence which is helpful in the prosecution of these crimes may cross borders more speedily and with fewer checks than under the present mutual legal assistance arrangements. As regards access to justice for victims, the provisions of the Framework Decision on the Standing of Victims in Criminal Proceedings, of 15 March 2001, and which is now partially in force throughout the EU, will facilitate access to legal advice and to information for victims.

Q4: *Taking into account the mandate of the unit, how can it complement the EU's commitment to the International Criminal Court (as illustrated for instance in the Common Position of 16 June 2003)?*

By ensuring inclusion of ICC crimes in new judicial cooperation instruments, the Commission ensures that they are included in the list of crimes for which prosecution and punishment is facilitated. This also gives a signal to the Member States that the Commission considers these crimes to be amongst the most serious.

Q5: *What are the obstacles the unit is faced with when tackling international crimes and what would be necessary to overcome these?*

The Commission's mandate and priorities are determined by the Member States, either by way of specific programmes (Tampere, The Hague) or by way of instructions in the Council Conclusions. The Hague programme, on which we are currently working, does not ask the Commission to work on any specific instruments covering international crimes and therefore we are not able to make legislative proposals in these areas. The main obstacle faced by the Commission is that Member States have not identified these crimes as an EU priority so the onus falls on NGOs to lobby Member States in order to alter their priorities if they would like to see a change in this

respect. Additionally, it might be possible to persuade one or more Member States to make a proposal in relation to universal jurisdiction, something that FIDH and REDRESS have contemplated in the past.

The European Network of Contact Points in respect of persons responsible for crimes against humanity, war crimes and genocide was established by Council decision of 13 June 2002 and met for the third time in The Hague on 22-23 May 2006.<sup>6</sup> Established to enhance cooperation between national authorities involved in the investigation and prosecution of international crimes, the Network brings together prosecutors, investigators and representatives from the Ministry of Justice. It is the first legislative tool adopted under the Justice and Home pillar that deals expressly with international crimes. It is complemented by the Council decision on the investigation and prosecution of international crimes, which was adopted one year later and sets out the formalities of the Network.<sup>7</sup> □

## **INTERVIEW WITH BIRGITTE VESTBERG, HEAD OF THE DANISH SPECIAL INTERNATIONAL CRIMES OFFICE (SICO)**

**Conducted by Jürgen Schurr**

Q1: *Birgitte Vestberg, you are the Head of the Special International Crimes Office in Denmark. Could you briefly describe the reasons for the establishment of your office?*

In late summer 2001 the Ministry of Justice realised that several persons living in

Denmark might have committed serious crimes prior to taking up residence in Denmark. SICO was established on 1 June 2002 as a specialist unit to investigate and if possible prosecute serious crimes committed abroad. So far, SICO has concluded investigations in 98 cases and is currently investigating 26 cases.

Q2: *The Council of the European Union in 2002 adopted a Framework Decision establishing the Network of Contact Points in respect of persons responsible for crimes against humanity, war crimes and genocide. Why was the Network established and what is the objective of the Network?*

The Council Decision of 13 June 2002 refers to the need that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at national level and by enhancing international cooperation. To that end direct communication between centralised, specialised units is essential. Council Decision of 8 May 2003 decided that the contact points at the Presidency's initiative shall meet at regular intervals with a view to exchanging information about experiences, practices and methods.

Q3: *Could you outline the role the Network has played in a specific case your office investigated?*

Without mentioning specific roles information has been supplied on methods to obtain effective legal assistance.

Q4: *The Network of contact points has been established in 2002 and contact points have met three times since then. How can the Network build on experiences made by practitioners and on past meetings to further assist national authorities in the investigation and prosecution of international crimes?*

The best way to build on experiences is to organise Network meetings at least once a year. This will keep national units updated on ongoing challenges and investigations in other EU jurisdictions.

Q5: *What other contribution could the Network/ the EU provide for an investigation and prosecution of international crimes to be more effective and to ensure that the EU does not provide a safe haven to perpetrators of international crimes?* The conclusions at the third meeting in May 2006 point to joint education and training for investigators and prosecutors from different states and allowing EU missions outside Europe to assist national units in facilitating contacts to local authorities. □

<sup>6</sup>available online at: <http://eurocrim.jura.uni-tuebingen.de/cms/en/doc/265.pdf>

<sup>7</sup>available online at: <http://eurocrim.jura.uni-tuebingen.de/cms/en/doc/270.pdf>

## DEVELOPMENTS IN EUROPE IN THE FIELD OF INTERNATIONAL CRIMINAL JUSTICE

In accordance with their treaty obligations arising for instance under Articles 4-5 of the UN Convention against Torture and Articles 49, 129 and 146 of the Geneva Conventions

and in line with the complementarity principle of the Rome Statute of the International Criminal Court, various European States have implemented legislation, that permits them to investigate and prosecute alleged perpetrators of international crimes. The main legislative developments over the past two years as well as the jurisprudence are illustrated below.

### Belgium

#### Legislative developments:

June 2006

The Belgian Cour d' Arbitrage decided on 21 June 2006 in the TotalFinaElf case (see below) to afford refugees who had filed a complaint prior to the legislative changes in 2003 with the same rights as Belgian nationals. A transitory provision that was introduced in 2003 allowed a certain number of cases that were filed by Belgian nationals prior to the changes in 2003 to move forward. This provision was declared to be unconstitutional by the Cour d' Arbitrage, which argued that the UN Refugee Convention of 1951 is directly applicable in Belgium and any legislative provision which discriminated refugees would be unconstitutional. <http://www.arbitrage.be/fr/common/home.html> (Decision No 2006-104). The case is expected to be heard by the Cour de Cassation, which had dismissed the case in a decision on 29 June 2005.

June 2005

Following the decision of the Cour de Cassation in the TotalFinaElf case from 29 June 2005, a legislative provision was introduced expressly allowing refugees in Belgium to access courts under the same conditions as Belgian nationals. Refugees can now file a complaint with Belgian authorities provided that they have been refugees at the time the crime was committed. These legislative changes cannot be applied retroactively (but see Cour d'Arbitrage decision above).

March 2005

Following the changes and the repeal of Belgium's universal jurisdiction law in April and August 2003, once a complaint has been filed by a victim, the decision whether or not to initiate proceedings rests solely with the Federal Prosecutor. In a complaint brought against this absolute discretion of the prosecution, the Cour d' Arbitrage decided on 23 March 2005 that judicial review of a prosecutor's decision not to investigate was permissible to some extent. Accordingly, should the prosecutor decide not to investigate because the complaint is obviously unfounded, the crimes referred to in the complaint do not qualify as serious violations of international humanitarian law or if an admissible public action cannot result from the complaint, this decision will be reviewed by the Indicting Chamber. However, at no stage of the review are private parties filing the complaint allowed to intervene to present their case and the Chamber will base its decision on the reasons set out by the prosecutor only. No judicial review is possible should the prosecutor decide not to investigate because the facts of the case indicate that the case should be heard by the courts of the State where the crimes were committed or by an international court.

#### Bernard Ntuyahaga

June 2006

Belgian judges on 6 June 2006 requested former Rwandan Major Bernard Ntuyahaga to be tried for his part in the murders of 10 Belgian paratroopers and Rwandan Prime Minister Agathe Uwilingiyamana. That is the first step in his committal to the criminal court. The indictment division will ultimately have to decide on the request.

#### Etienne Nzabonimana and Samuel Ndashyikirwa

June 2005

On 29 June 2005, the Belgian Cour d' Assises sentenced the two Rwandan half brothers to 12 and 9 years imprisonment respectively for their participation in the 1994 genocide in Rwanda. Victims had filed a complaint with the juge d'instruction in Brussels as early as 1995. Following several rogatory commissions to Rwanda and a first universal jurisdiction trial of the 'Butare Four' in Brussels in 2001, the two brothers were arrested in Brussels on 14 October 2002 and the trial opened on 9 May 2005. The complaint survived the changes of the universal jurisdiction legislation as it benefited from a transitory provision that allowed a limited category of cases filed before the changes were implemented to continue. Over 70 victims and witnesses from Rwanda were brought to Brussels to testify in front of a jury, which after almost two months of trial, found both accused guilty for their role in the genocide.

#### TotalFinaElf

June 2006

The Cour d'Arbitrage decided on 21 June 2006 to allow the case against TotalFinaElf to move forward. Almost one year earlier, on 29 June 2005, the Belgian Cour de Cassation decided to dismiss a lawsuit against TotalFinaElf which was brought by Burmese nationals in 2002, one of whom had refugee status in Belgium. The complainants alleged that TotalFinaElf and two of its executives were involved in human rights violations such as torture, forced labour, extrajudicial executions committed in Burma. The Cour de Cassation overruled a decision of the Cour d'Arbitrage from 13 April 2005, which held that the plaintiffs could proceed with their complaint, as refugees had the same status as Belgian nationals and residents and therefore the same right of access to courts. The Cour de Cassation ruled that it was not on the courts to fill a 'legislative lacunae' and dismissed the lawsuit.

#### Hissène Habré

September 2005

On 19 September 2005, a Belgian investigative judge issued a request for the extradition of former President Hissène Habré from Senegal. The request followed the complaint filed by victims in November 2000 and an investigation carried out by a Belgian investigative judge in Chad in

March 2002. Senegalese courts decided that they lacked jurisdiction to decide on the extradition request and the President of Senegal referred the case to the African Union. At its summit on 24 January 2006, the AU decided to set up a commission of African legal experts to decide on the case of Hissène Habré and to report back to the AU at its summit in July 2006. The Committee against Torture on 19 May 2006 determined that Senegal was in violation of its obligations under the Convention against Torture by failing to prosecute or extradite Hissène Habré who had been living in Senegal since 1990. Belgium in the meantime is considering to bring Senegal before the International Court of Justice for failing to meet its treaty obligations under the Convention. <http://www.hrw.org/english/docs/2005/09/30/chad11786.htm>

**Denmark***Sylvaire Ahorugize***February 2006**

In February 2006, Danish authorities traveled to Rwanda and met with representatives of the newly established tracking department in the prosecutor's general office to discuss possible trials of various Rwandan genocide suspects living in Denmark. Both countries agreed to jointly handle the case of Sylvaire Ahorugize, a genocide suspect who has been living in Denmark since the genocide ended in 1994.

[http://www.trial-ch.org/en/trial-watch/profile/db/legal-procedures/sylvere\\_ahorugeze\\_476.html](http://www.trial-ch.org/en/trial-watch/profile/db/legal-procedures/sylvere_ahorugeze_476.html)

**France***Ely Ould Dah***July 2005**

On 1 July 2005, the Cour d'Assises of Nîmes convicted Ely Ould Dah, Captain in the Mauritanian Army, in absentia to ten years imprisonment for torture committed in Mauritania in 1990. The case started in 1999 when two victims, together with the help of several NGOs and victims' lawyers filed a complaint against Ely Ould Dah with the investigative judge in Montpellier, where he was attending a training course. A conditional release in 1999, enabled Ely Ould Dah to escape from France in 2000. An international arrest warrant was not executed by the Mauritanian government. In 2002, the Cour de Cassation had decided in the same case, that an amnesty law of Mauritania would not be applicable in France, as to hold otherwise would result in depriving the principle of universal jurisdiction of all useful effect. [http://www.fidh.org/article.php3?id\\_article=1809](http://www.fidh.org/article.php3?id_article=1809)

*Disappeared of the Beach case***November 2004**

The Cour d'Appel in Paris decided on 22 November 2004 to annul the entire case as the legal conditions for an application of universal jurisdiction as set out in Article 689-1 of the Code of Criminal Procedure were not fulfilled. An appeal against this decision was filed by the 'parties civiles' with the Cour de Cassation and a decision is expected in the fall 2006. In July 2005, Courts in Brazzaville have initiated proceedings in the same case, which, in August 2005, ended with the acquittal of all persons accused. [http://www.fidh.org/article.php3?id\\_article=2903](http://www.fidh.org/article.php3?id_article=2903)

*Congo v France (Certain criminal proceedings in France)***July 2006**

The Republic of Congo issued a claim against France before the International Court of Justice in the 'Disappeared of the Beach' case on 9 December 2002. Subject to the judicial proceedings in France, the deadline for submissions by the parties have been extended several times, with a reply by the Republic of Congo to the written submission of France to be expected on 11 July 2006.

<http://www.icj-cij.org/icjwww/idocket/icof/icofframe.htm>

*Rwandan Genocide suspects:*

According to newspaper reports as well as the list of genocide suspects living abroad and issued by the Rwandan government,<sup>8</sup> France tops the list of countries harbouring suspected genocide fugitives with nine alleged perpetrators supposedly living in France. Cases include the case of *Callixte Mbarushimana*, a former UN employee who is currently living in Paris. French authorities have been asked by the ICTR and the UN to consider to initiate proceedings against Callixte Mbarushimana. A complaint was filed in 1995 against *Wenceslas Munyeshyaka* for his alleged involvement in the genocide in 1994. The case is still pending, with rogatory missions planned at some point in the future. One of the parties civiles filing the complaint against Munyeshyaka in 1999 turned to the European Court of Human Rights, which on 8 June 2004 reprimanded France for the slowness of the proceedings as violating the right to a hearing within a reasonable time (Article 6(1)) as well as the right to an effective remedy (Article 13) as guaranteed by the European Convention of Human Rights. Several other complaints have been filed with French courts between 1995 and 2001, all of which are still pending or have not yet been heard by the courts. These include the case of *Sosthène Munyemana*, *Laurent Bucyibaruta*, *Laurent Serubuga* and *Cyprien Kayumbal*, all alleged to have been involved in the genocide. None of these cases have yet been heard by the courts.

Links:

- Callixte Mbarushimana:  
<http://americanradioworks.publicradio.org/features/rwanda/segb1.html>
- Wenceslas Munyeshyaka:  
<http://www.trial-ch.org/trialwatch/profiles/en/legalprocedures/p112.html>
- Judgment of the EctHR:  
<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Mutumura%20%7C%20v.%20%7C%20France%20%7C%2046621/99&sessionId=7350936&skin=hudoc-en>
- See also: [http://www.fidh.org/article.php3?id\\_article=857](http://www.fidh.org/article.php3?id_article=857)

<sup>8</sup> List available online at <http://www.parquetgeneral.gov.rw/gb/Publication/presgene.pdf>

**Germany***Zokirjon Almatov***June 2006**

On 22 June 2006, the complainants in the case against former Interior Minister of Uzbekistan, Zokirjon Almatov, filed a legal brief challenging the decision of the German Federal Prosecution on 31 March 2006 not to initiate an investigation of the complaint. The prosecution has argued, *inter alia*, that it considered the chances of a successful investigation by German authorities to be non-existent.

The complaint was filed with Federal Prosecution Services in Germany on 12 December 2005 for Almatov's alleged involvement in torture committed in Uzbekistan since 1994 and crimes against humanity committed in Andijan in May 2005. In October 2005 and prior to filing the complaint, Almatov traveled to Germany to receive medical treatment. He has left Germany under unclear circumstances and since returned to Uzbekistan. <http://hrw.org/english/docs/2006/04/06/german13124.htm>

*Donald Rumsfeld:***February 2005**

On 11 February 2005, the Federal Prosecutor decided not to initiate an investigation against Donald Rumsfeld and other senior US officials for their alleged involvement in torture and war crimes committed in Iraq, arguing that the principle of subsidiarity, as enshrined in the German Procedural Code, would prevent an investigation, as the US authorities were already investigating the crimes. According to the prosecutor, when considering the issue of subsidiarity, it is not necessary to take into account the specific crimes or suspects referred to in the complaint but instead whether or not the authorities of the territorial state are investigating the complex as a whole.

[http://www.ccr-ny.org/v2/legal/september\\_11th/sept11Article.asp?ObjID=1xiADJOOQx&Content=472](http://www.ccr-ny.org/v2/legal/september_11th/sept11Article.asp?ObjID=1xiADJOOQx&Content=472)

**Norway***Specialized unit:***September 2005**

Following a rising number of alleged perpetrators of international crimes seeking refuge in Norway, a police unit specialized in the investigation of international crimes was established in September 2005. It is currently looking into 70 cases of alleged perpetrators supposedly present in Norway.

*Michel Bagaragaza***May 2006**

On 15 February, the prosecution of the International Criminal Tribunal for Rwanda filed a motion to request the referral of the case of Michel Bagaragaza to Norway, after taking into account the time constraints imposed by the completion strategy. Article 11bis of the Statute provides for such referrals to third States that ratified the Statute of the ICTR. Norwegian authorities have agreed to take the case, also taking into account the presence of other Rwandan genocide suspects on Norwegian territory. The ICTR on 19 May 2006 rejected the motion, arguing that Norway lacked jurisdiction to try the case, as Norwegian criminal law lacked any implementation of the definition of genocide. The prosecution will appeal this decision. <http://69.94.11.53/ENGLISH/cases/Bagaragaza/decisions/190506.htm>

**Spain***Tibetan Genocide Case***June 2006**

The Audiencia Nacional (National Court) decided on 10 January 2006, to open an investigation of a complaint against several high ranking Chinese officials for their alleged involvement in genocide committed in Tibet. The National Court held, that the complaint fulfilled all requirements outlined by the Constitutional Court in a previous judgment (see below), as the complainants could adduce sufficient evidence indicating that the crimes –genocide, crimes against humanity, torture committed against the Tibetan people- were not investigated by Chinese authorities nor did the International Criminal Court have jurisdiction. Further, the crime of genocide was a crime of universal jurisdiction as referred to in Article 23.4 of the Organic Law providing for universal jurisdiction. As all other universal jurisdiction cases so far in Spain, this case was brought by third parties (in this case a Tibetan victim of Spanish nationality together with an NGO) relying on the *acción popular* which permits Spanish citizens to bring a private prosecution, provided that the exercise of the *acción popular* is reasonable. In order to assess whether to file charges for genocide, crimes against humanity and torture, on 5 June 2006, the investigative judge of the Criminal Chamber of the Audiencia Nacional heard the private party initiating the case and sent requests to authorities in the United Kingdom and Canada to help him to question two other victims.

<http://www.eitb24.com/portal/eitb24/noticia/en/politics/lawsuit-by-human-rights-group-spain-opens-proceedings-against-chi?itemId=D35212&cl=%2Feitb24%2Fpolitica&idioma=en>

*Jia Qingling***June 2006**

The Spanish Supreme Court ruled on 6 June 2006 that a genocide lawsuit brought by members of the Falun Gong spiritual movement against Jia Qinglin, chairman of the National Committee of the Chinese People's Political Consultative Conference, could go ahead. The Audiencia Nacional had previously, in September 2005, rejected the genocide complaint, arguing that it had not been established that Jia Qingling was in Spain. <http://www.turkishdailynews.com.tr/article.php?enewsid=45572>

*Guatemala Case***September 2005**

On 27 September 2006, the Constitutional Court in the Guatemala case ruled on the scope of Article 23.4 of the Organic Law providing Spanish courts with universal jurisdiction. In previous rulings in the same case, the Audiencia Nacional (in 2000) and the Supreme Court (in 2003) had

limited the scope of Article 23.4, making the exercise of universal jurisdiction dependent on, inter alia, a link to national interests such as the existence of Spanish citizens among the victims or the presence of the accused on Spanish soil. In an appeal by the private parties filing the lawsuit, the Constitutional Court ruled that both courts have not interpreted the relevant provision correctly, as the only restriction contained in Article 23.4 is the principle of ne bis in idem. According to the Constitutional Court, Spanish courts can therefore initiate an investigation based on universal jurisdiction as long as the complainants can adduce some evidence of judicial inactivity in the territorial state, irrespective of any links to Spanish national interests. As trials in absentia are not permitted under Spanish law, the presence of the alleged perpetrator in Spain is only required at the time the investigating judge intends to seek trial. <http://www.redress.org/reports/December2005.pdf> (page 4-5)

**Adolfo Scilingo****April 2005**

On 19 April 2005, Argentine national Adolfo Scilingo was convicted to 640 years imprisonment for crimes against humanity committed during Argentine's 'dirty war'. Scilingo was arrested in Spain in 1997 after testifying in front of the investigative judge of the Audiencia Nacional. The Court indicated that an amnesty law providing blanket impunity for crimes committed by officials will not be recognized by Spanish courts but that it rather serves as an indication that the crimes in question will not be prosecuted by Argentine authorities.

<http://www.trial-ch.org/trialwatch/profiles/en/facts/p258.html> (english)

<http://www.derechos.org/nizkor/espana/juicial/doc/sentencia.html> (spanish)

**Sweden****Iraqi nationals****May 2006**

Saddam Hussein's cousin has been reported to have been living in Sweden for the past two years. He is suspected of having committed war crimes. In addition, Swedish police announced in autumn 2005, that approximately 10 Iraqi nationals, present in Sweden and who requested asylum, are being investigated for alleged crimes against humanity.

<http://www.gulf-daily-news.com/Story.asp?Article=144734&Sn=WORL&IssueID=29069>

**Vjatjeslav Sucharev****January 2006**

A complaint against Russian officer Vjatjeslav Sucharev was filed with the Swedish Police on 23 January for war crimes and crimes against humanity allegedly committed in Chechnya. The case against Sucharev, who was present in Sweden for a military training exercise, was dropped on 26 January 2006 after authorities assessed the chances of obtaining government consent to prosecute him as slim, also taking into account the potential immunity of the suspect, according to officials.

<http://shc.mediaonweb.org/en/1/60/339/>

**Abdi Awale Qaybiid****October 2005**

Somali national, Abdi Awale Qaybiid was arrested in Sweden on 16 October 2005 for suspicion of war crimes while attending a conference in Lund. He was released on 19 October 2005 due to insufficient evidence to keep him in custody and has since returned to Somalia.

<http://www.msnbc.msn.com/id/9733183>

**Switzerland****Legislative Developments:****January 2006**

In its concluding observations on 27 January 2006, the UN Committee on the Rights of the Child regretted the changes made to Article 9 of the Swiss Military Penal Code on 1 June 2004, which require a 'close link' between the alleged perpetrator and Switzerland in order for Swiss authorities to exercise extraterritorial jurisdiction over war crimes, including the conscription of child soldiers. Mere presence in Switzerland is not sufficient. The Committee as well as several academics and NGOs expressly recommended to review these changes to the legislation and to restore full jurisdiction over war crimes. Changes are currently being considered in the Swiss Federal Council with a result not to be expected before fall.

**Adallah Kallel****November 2005**

In the case against former Tunisian Minister of the Interior Adallah Kallel, the victim, Adennacer Naït-Liman in November 2005 decided to appeal against the decision of the Swiss Court of First Instance, which in 2004, had dismissed the claim for compensation as inadmissible due to the absence of a close link to Switzerland. [http://www.trial-ch.org/de/aktivitaeten/einzelheiten/year/20/article/fall-kallel-trial-legt-berufung-ein.html?tx\\_ttnews%5BbackPid%5D=50&cHash=1f9aba6c6d](http://www.trial-ch.org/de/aktivitaeten/einzelheiten/year/20/article/fall-kallel-trial-legt-berufung-ein.html?tx_ttnews%5BbackPid%5D=50&cHash=1f9aba6c6d) (in German)

**The Netherlands****Guus van Kouwenhoven****June 2006**

On 7 June 2006, Dutch national Guus van Kouwenhoven was convicted by a court in the Hague to 8 years imprisonment for violating a UN arms embargo on Liberia. He was acquitted on war crimes charges as the court considered the evidence to have been insufficient to show factual involvement and knowledge by van Kouwenhoven in the commission of war crimes. Prosecution and defense are currently considering to appeal the verdict. [http://news.yahoo.com/s/afp/20060607/wl\\_afp/warcrimestimber](http://news.yahoo.com/s/afp/20060607/wl_afp/warcrimestimber)

*Abdullah F***March 2006**

The Dutch war crimes unit, together with the special team in the prosecution services ('Landelijk Parket') is currently investigating against Afghan national Abdullah F., who was a member of the Afghan military intelligence service (KHAD) and is suspected of committing torture and war crimes. He had been refused asylum in 1994 because of the suspicion of war crimes but was allowed to stay in the Netherlands. He was arrested on 31 March 2006. The case is closely linked to the conviction of two other former KHAD members in the Netherlands in 2005 (see below). [http://kابلpress.org/English\\_letters16.htm](http://kابلpress.org/English_letters16.htm)

*Frans van Anraat***December 2005**

Dutch national Frans van Anraat was convicted by a Dutch court on 23 December 2005 to 15 years imprisonment for complicity in war crimes. According to the judgment, van Anraat facilitated attacks on the Kurdish population in Iraq by providing the Iraqi government with the necessary chemicals for the attacks. He was acquitted of charges of genocide as it could not be proven that he knew of the genocidal intent of the Iraqi regime. [www.rechtspraak.nl/ljn.asp?ljn=AX6406](http://www.rechtspraak.nl/ljn.asp?ljn=AX6406)

*Heshamuddin Hesam and Habibullah Jalalzoy***October 2005**

The Hague district court convicted two Afghan nationals, Heshamuddin Hesam and Habibullah Jalalzoy, members of the former military intelligence services (KHAD) under the Soviet backed government, on 14 October 2005 for torture and war crimes committed in Afghanistan. Hesam was convicted to 12 and Jalalzoy to 9 years imprisonment. Both men were arrested in 2004 while seeking asylum in the Netherlands. A unit within the Dutch immigration authorities is specialized in international crimes cases and refers suspects to a special investigative unit within the Dutch police for further investigations. Both Afghan men have appealed the decision.

[http://zoeken.rechtspraak.nl/zoeken/dtluitspraak.asp?searchtype=lijn&lijn=AV1163&u\\_ljn=AV1163](http://zoeken.rechtspraak.nl/zoeken/dtluitspraak.asp?searchtype=lijn&lijn=AV1163&u_ljn=AV1163)  
[http://zoeken.rechtspraak.nl/zoeken/dtluitspraak.asp?searchtype=lijn&lijn=AV1489&u\\_ljn=AV1489](http://zoeken.rechtspraak.nl/zoeken/dtluitspraak.asp?searchtype=lijn&lijn=AV1489&u_ljn=AV1489).

*Sebastien Nzapali***April 2004**

A former Zairian army officer, Sebastien Nzapali, also known as "the King of the Beasts" was convicted to 30 months imprisonment for torture committed in Zaire, now the Democratic Republic of the Congo. The Dutch war crimes unit arrested Nzapali in September 2003, after he was identified by one of his victims. [http://www.coeicl.de/dokumente/NL\\_Nzapali\\_Judgement.pdf](http://www.coeicl.de/dokumente/NL_Nzapali_Judgement.pdf)

**United Kingdom***Legislative developments***February 2006**

Following the case against Israeli General Doron Almog (see below), the Israeli government lobbied for changes in the Prosecution of Offences Act, which currently permits private parties to file an application for an arrest warrant directly with a magistrate, without requiring the consent of the Attorney General. Since the case of Almog, Israeli officials have met twice with Home Office representatives to discuss changes of the legislation. <http://www.guardian.co.uk/humanrights/story/0,,1701276,00.html>

*Saudi Arabia***June 2006**

On 14 June 2006, the House of Lords, Britain's highest court, allowed an appeal by the Kingdom of Saudi Arabia against a 2004 decision of the Court of Appeal which had decided in favor of four UK citizens in their claim for damages against Saudi officials. Ron Jones, Alexander Mitchell, Dr. William Sampson and Leslie Walker, brought claims for damages for torture, assault and battery, unlawful imprisonment against the Saudi officials said to be responsible for these crimes, the Ministry of Interior as principle government agency responsible for the treatment of prisoners and detainees. Ron Jones brought a separate additional claim against the Saudi authorities as well as the State of Saudi Arabia. The complainants claimed that they were falsely charged and repeatedly tortured and threatened with execution by Ministry of Interior officials in Saudi Arabia. The Court of Appeal had decided on 28 October 2004 that there cannot be a blanket subject matter immunity for State officials alleged to have committed systematic torture. To find otherwise would be to deprive the right of access to a court under Article 6 of the European Convention of Human Rights of real meaning in a case where the victims of torture have no prospect of recourse in the state whose officials committed the torture. In respect of the claim brought by Ron Jones against the State of Saudi Arabia, the Court of Appeal held that the State was immune for torture from UK courts. The House of Lords upheld this argument and decided that state immunity does extend to individuals and that therefore no claim could be brought against the Saudi officials accused of torture. The claimants plan to lodge an application in the European Court of Human Rights, arguing that their right to a fair hearing has been denied.

See: <http://www.justice.org.uk/images/pdfs/press140606.pdf>; <http://www.publications.parliament.uk/pa/ld200506/ldjudgmt/jd060614/jones-1.htm>;  
<http://www.redress.org/news/RonJonesPressStatement25April2006.pdf>

*Charles Munyaneza and Célestin Ugirashebuja***January 2006**

A Rwandan genocide suspect was reported to be in Britain on 29 January 2006. *Charles Munyaneza* had been living in Britain for the past 7 years and received the status of refugee in 2002. A former government official, he is suspected of having urged people to massacre Tutsis. The case is currently being considered by the police and the Crown Prosecution Service. The ICTR will not be able to try Munyaneza but has confirmed that it will make all evidence against him available to British authorities. Another suspected genocidaire, Célestin Ugirashebuja, also referred to in the list of 100 most wanted man suspected of genocide and living abroad, has also been found to be living in the UK. While British legislation does not provide for universal jurisdiction over genocide committed before the coming into force of the International Criminal Court Act 2001, prosecutions could be considered under section 134 of the Criminal Justice Act providing for universal jurisdiction over torture.

<http://www.timesonline.co.uk/article/0,,2087-2014429,00.html> and <http://www.guardian.co.uk/immigration/story/0,,1773994,00.html>

**Baha Mousa****December 2005**

The Court of Appeal decided on 21 December 2005 that the role of the Queen's Lancashire Regiment in the violent death of Iraqi civilian, Baha Mousa, must be adequately investigated. Baha Mousa had allegedly been tortured to death in British custody in south eastern Iraq in September 2003. The unanimous decision of the Court of Appeal recognized the extraterritorial application of the European Convention on Human Rights and held that British troops operating abroad are required to uphold the European Convention obligations.

<http://www.redress.org/news/Statement21Dec05.pdf>; <http://www.redress.org/news/judgment21Dec05.pdf>

**Doron Almog****September 2005**

An arrest warrant was issued by a London Magistrates Court against Israeli General Doron Almog on 10 September 2005 for his alleged involvement in war crimes. A British law firm acting on behalf of an NGO and presenting the judge with a detailed dossier of evidence filed the application for the arrest warrant. Almog arrived at Heathrow airport on 11 September where the police were waiting to execute the arrest warrant. General Almog was advised by the military attaché of the Israeli embassy not to leave the plane and to return directly to Israel as an arrest warrant was issued against him. Almog followed the advice and returned to Israel.

<http://www.hickmanandrose.co.uk/news05.html>

**Faryadi Sarwar Zardad****July 2005**

A British jury convicted Afghan national, Faryadi Sarwar Zardad, on 18/19 July 2005 for torture to twenty years imprisonment. Zardad was in charge of a checkpoint located on a route between Kabul and Pakistan. He controlled more than a 1000 men who terrorised, tortured, imprisoned, blackmailed and killed civilians passing by this checkpoint. The case was brought to the attention of the authorities through a BBC documentary in 2000. British investigators of the anti-terrorist branch of the Metropolitan police, together with prosecutors and defense lawyers, traveled several times to Afghanistan to collect evidence and find witnesses.

<http://www.trial-ch.org/trialwatch/profiles/en/facts/p329.html>

**Online-news and Discussion groups on International Criminal Law:**

Universal Jurisdiction Information Network Listserv: This listserv is run by REDRESS, and news items and commentary on universal jurisdiction cases are circulated. To subscribe, send an email to: [uj-info-subscribe@yahoogroups.com](mailto:uj-info-subscribe@yahoogroups.com)

*Trial*- a Swiss NGO (Track Impunity Always), issues a weekly newsletter on cases involving international crimes worldwide and legislative developments in Switzerland.

<http://www.trial-ch.org/en/news/keep-weekly-up-to-date-with-news.html>

*Public International Law & Policy Group* produce 'War Crimes Prosecution Watch', a bi-weekly newsletter which collects official documents and articles from major news sources related to the investigation and prosecution of war crimes throughout the world.

<http://www.publicinternationallaw.org/warcrimeswatch>

**Blogs:**

[www.internationalcrimesblog.com](http://www.internationalcrimesblog.com) - Blog providing updates and explanations on international criminal law and jurisprudence

<http://www.mayasteinitz.com> - Blog by Maya Steinitz on international law, legal theory and more.

<http://www.opiniojuris.org> - Blog dedicated to reports, commentary, and debate on current developments and scholarship in the fields of international law and politics.

<http://tj-forum.org> - the transitional justice forum – Blog on the 'challenges of justice during the transitions to a better world'.

<http://corelaw.blogspot.com> - Blog on Human Rights, Humanitarian Law and International Criminal Law



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