

UNIVERSAL JURISDICTION ANNUAL REVIEW 2016



MAKE WAY FOR JUSTICE #2

TABLE OF CONTENTS

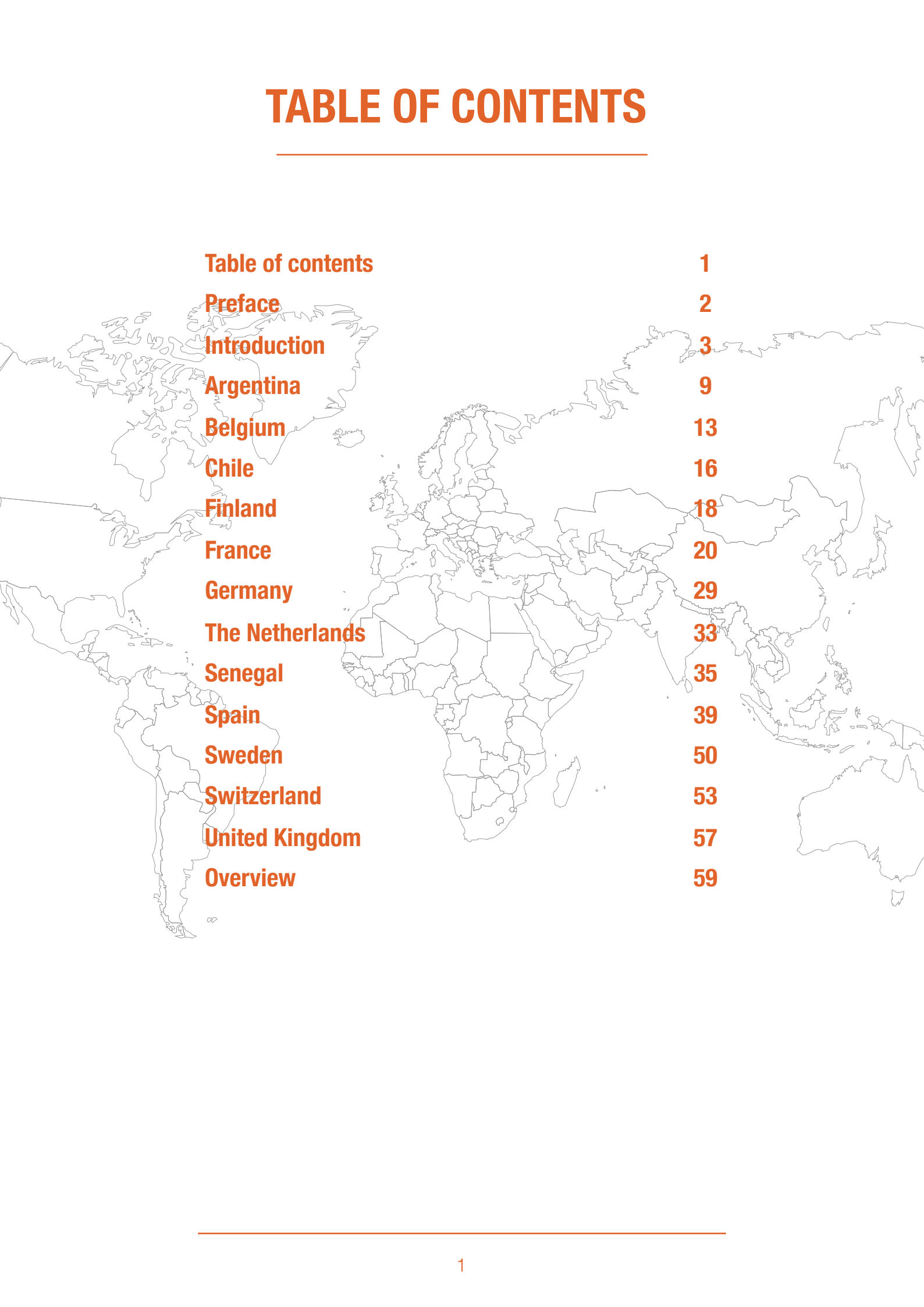


Table of contents	1
Preface	2
Introduction	3
Argentina	9
Belgium	13
Chile	16
Finland	18
France	20
Germany	29
The Netherlands	33
Senegal	35
Spain	39
Sweden	50
Switzerland	53
United Kingdom	57
Overview	59

PREFACE

The Pinochet case revived an old provision of international criminal law, which many considered reserved for combatting piracy or relegated to filling the pages of academic books. Now, as we approach the twentieth anniversary of the case, in which the former Chilean dictator Augusto Pinochet was indicted for serious human rights violations in Spain, we can reflect on the impact that the revival of universal jurisdiction has had on international law and relations: a strengthened legal activism; lawyers and victim defenders with a solid background in human rights law and the ability to seek justice no matter where; judges and prosecutors committed to helping the victims of international crimes, and an increasingly shrinking world for perpetrators of the most heinous atrocities.

However, getting to this point was not easy and major obstacles remain: economic, political and diplomatic pressures have left their mark on the involvement of Belgium and Spain in the fight against impunity. Nonetheless, as stated earlier, universal jurisdiction is not a European product, nor does the West exclusively use it. The successful trial of Hissène Habré in Senegal, the jurisprudential developments in South Africa, Argentina and significant progress in the consolidation of war crimes investigations in Europe show that universal jurisdiction remains a useful tool, one we cannot do without. Adding to this are the efforts of academia and civil society in publishing reports such as this one or in devising new doctrines, such as the Principles of Princeton, Cairo-Arusha or the Madrid-Buenos Aires Principles of Universal Jurisdiction recently released in 2015. These initiatives combined continue to develop and strengthen universal jurisdiction as a crucial instrument that, if used well, can end the cycle of impunity.

Baltasar Garzón Real

INTRODUCTION

What is meant by “Universal Jurisdiction”?

The legal principle of Universal Jurisdiction arose from the idea that crimes of a certain gravity should not go unpunished, no matter where they occur, and that individual states have a right or a duty to bring criminal proceedings against the perpetrators. National laws usually require that at least one of the three following conditions apply:

- the infraction must be committed in the territory of the State in question
- the infraction must be committed by a national of that State
- the victim must be a citizen of that State

However, certain crimes are of such gravity that the very notion of state boundaries is called into question. It is at this point that the whole question of “universal competency” or jurisdiction comes into play. By virtue of this principle the judicial authorities of any State have the possibility, or indeed the obligation, to prosecute perpetrators of serious “international crimes” living within its borders, and this without consideration of the place where the crimes were committed or the nationality of the perpetrators or their victims. The serious crimes covered by this principle are genocide, crimes against humanity, war crimes, torture and enforced disappearances. Universal jurisdiction is a powerful tool in the service of international justice, and is gaining increasing credence through the idea that the fight against impunity has no borders.

How long has this principle been in existence and how has it evolved through time?

Universal jurisdiction did not come into being from one day to the next but started to gain acceptance as an important principle of international law in the aftermath of the Second World War. It gained further recognition in the four Geneva Conventions that entered into force on 12 August 1949, which were aimed at defining the rules for protecting populations during times of armed conflict. These rules, which are still applicable today, commit States to prosecute and punish the perpetrators of violations of defined serious crimes, even if they are committed outside the territory of the State in question. With time, this principle was further consolidated and reinforced through other international conventions. On 17 July 1998, a further advance was made with the adoption of the Rome Statute of the International Criminal Court, which provided for a criminal judicial authority at an international level responsible for prosecuting individuals who commit defined international crimes. The obligation to either extradite the perpetrators of serious international crimes or to prosecute them locally has consequently strengthened its foundation in international law.

Universal jurisdiction; a principle recognized by all States?

As of today, close to 150 of the 197 UN member States provide for universal jurisdiction for at least one of the four recognized international crimes, meaning war crimes, crimes against humanity, genocide and torture. Examples from within the ranks of these States are Argentina, Finland, Senegal, Switzerland and the United Kingdom. Although much progress still needs to be made, a vast majority of States now recognize the principle of universal jurisdiction. However, recognition of the principle has limited value if it is not accompanied by concrete measures to provide for its effective implementation.

To what extent is the principle of universal jurisdiction applied?

Only a small minority of States have enacted the necessary measures to fight effectively against impunity for international crimes. The specific nature and complexity of international crimes demands a strong political commitment and adequate resources. Despite the fact that there are currently no international guidelines concerning best practices in the field of universal jurisdiction, some States' practices can be used as examples to be followed. Others, however, still have a long way to go.

The Netherlands: The Netherlands has set up specific units to pursue perpetrators of war crimes. These are specialized teams entirely devoted to the overall question of universal jurisdiction and its impact on its national judicial authorities, its justice ministry, police, tribunals and immigration services. As a result there are some 70 state employees who investigate cases of international crimes with very tangible results: at the beginning of 2014, this entity was in the process of handling 18 criminal investigations, had opened up more than 40 preliminary inquiries and had brought eight cases before the courts.

France: Currently, France is the European country with the greatest number of procedures for international crimes cases under investigation. The country has set up both a specialized unit and a central office whose role is to handle such cases. Currently, more than 35 cases are opened before this specialized unit.

INTRODUCTION

Germany: Since 2009, Germany has had a specialized entity responsible for opening investigations and prosecuting perpetrators of international crimes. Significant progress has recently been made: on 28 September 2015, Germany sentenced two leaders of the Democratic Forces for the Liberation of Rwanda (FDLR from its French acronym) to 8 and 13 years imprisonment for their involvement in war crimes committed in the Democratic Republic of the Congo. Recently, Germany opened the first war crimes case with regard to the conflict in Syria.

Switzerland: Despite publicly proclaiming its commitment, Switzerland's application of its laws on universal jurisdiction pales in comparison to the Netherlands. In 2012, two prosecutors and two lawyers were assigned to the prosecution of international crimes. However, as of today there is only one prosecutor in charge of handling such complex cases, doing so merely on a part-time basis. Furthermore, not a single police officer or member of the immigration services is explicitly assigned to process these cases. Finally, Switzerland's International Criminal Law Competence Centre, which was independent at the time of its creation, has now been integrated into the Competence Centre for Terrorism. Since the treatment of terrorism cases is usually given priority, the fight against impunity for international crimes is at risk of being relegated to the background.

United Kingdom: Though some entities exist within the country to handle cases related to universal jurisdiction, as of today very few investigations against potential suspects of international crimes have been conducted. The country prefers to concentrate its efforts on terrorism cases and has merged its special unit for war crimes with the one focused on counterterrorism. This perceived lack of commitment concerning universal jurisdiction gives rise to the belief that the United Kingdom is a safe heaven for war criminals. In 2011, legal changes introduced a far stricter control framework, making it even more difficult for victims to have access to the judicial process. In light of these developments, Switzerland's recent adoption of the joint terrorism-international crimes unit model is alarming.

Landmark cases concerning universal jurisdiction

Far from being an abstract principle, universal jurisdiction has facilitated concrete improvements in the field of international justice, having been used to initiate proceedings against perpetrators of international crimes by a number of States. Some recent milestones in case law:

Augusto Pinochet - Chile/United Kingdom – 1998

It was with the arrest of Augusto Pinochet that universal jurisdiction first became widely known. The former head of the Chilean Military Junta was arrested in London on 16 October 1998. The Spanish judge Baltasar Garzon requested that Augusto Pinochet be extradited to Spain, invoking the principle of universal jurisdiction. The request was initially granted, but not implemented due to Augusto Pinochet's alleged ill health, and he was allowed to return to Chile. Even though it did not result in prosecution, this case marked an important milestone in the advance of universal jurisdiction, as it was the first time the principle had been used to arrest a former Head of State.

Hissène Habré - Chad/Senegal - 2015

Hissène Habré was President of Chad from 1982 and 1990. During this time, the Habré regime was allegedly responsible for the killing of thousands of people for their ethnic origin and political affiliation. Following his overthrow in 1990, the former dictator went into exile in Senegal. In 2013, Hissène Habré was indicted there for crimes against humanity, torture and war crimes. His trial, which is ongoing, began in Dakar in July 2015. During the hearings phase, close to 2500 victims gave testimony concerning the atrocities committed by the regime. The Hissène Habré case is the first trial conducted in Africa on the basis of universal jurisdiction. (See our full profile below, page 36)

Pascal Simbikangwa - Rwanda/France - 2014

Pascal Simbikangwa was tried in France in 2014 and sentenced to 25 years in prison for his participation in the 1994 genocide in Rwanda. The trial was based on the principle of universal jurisdiction as well as domestic law which enables France to try cases pertaining to the Rwandan genocide. (See our full profile below, page 21)

Assessment of the implementation of the law of universal jurisdiction

Universal jurisdiction affords considerable potential in the fight against impunity, but this potential remains largely untapped. Internationally, in spite of a great number of States accepting the principle in theory, many of them demonstrate reluctance to put it into practice. Perpetrators of international crimes are still too often able to live freely in the countries where they take up residence, under total impunity and without fear of being arrested.

However, universal jurisdiction continues to be in the spotlight, and international jurisprudence is increasingly manifesting its adherence to the principle.

To ensure that States do not merely pay lip service to the principle of universal jurisdiction, they must allocate sufficient resources and demonstrate a greater willingness to achieve its implementation.

Findings of the Universal Jurisdiction annual review: make way for Justice #2

This second edition of this “Universal Jurisdiction Annual Review: Make way for Justice #2” compiled relevant developments in twelve countries with significant developments in the area of universal jurisdiction in 2015.

Despite numerous obstacles, universal jurisdiction continues to make significant progress around the world. In July 2015, the trial of former Chadian dictator Hissène Habré started in Senegal, despite his efforts to boycott the proceedings.

Overall, 40 cases have applied the principle in 2015. Tangible progress, such as arrests, indictments or convictions, was achieved in 27 cases, in contrast to a mere 12 cases which reported a progress in 2014. In parallel, 8 cases have been dismissed, 5 of which are under appeal, mainly due to the 2014 Spanish legal reform abolishing universal jurisdiction from Spanish law. 6 cases resulted in a conviction of the accused and no acquittal was pronounced.

In the 12 countries discussed here, 37 cases are still ongoing, including 3 suspects on trial, 17 under investigation and 2 pending trial. In total, the cases involved 11 charges of genocide, 13 charges of war crimes, 19 charges of crimes against humanity and 18 charges of torture. The findings of this report clearly demonstrate that, despite obstacles, a significant practice continued to develop in 2015.

INTRODUCTION

The present report only highlights cases where a judge or prosecutor has initiated an investigation into the most serious international crimes. It does not, therefore, include the further complaints that victims, lawyers and NGOs filed under universal jurisdiction with national authorities in 2015, if they did not result in significant judicial advances, are still pending or have been dismissed by relevant national authorities. The report also refers to cases of serious crimes under international law based on active or passive personality jurisdiction where the relevant case has also had an impact on the practice of universal jurisdiction.

This report has been researched and written by Valérie Paulet, Project Coordinator from TRIAL, in collaboration with the International Foundation Baltasar Garzon (FIBGAR), the European Center for Constitutional and Human Rights (ECCHR) and the International Federation for Human Rights (FIDH). The organizations are grateful to the following persons for their assistance and collaboration in collecting the information compiled in this report: to Alain Werner for his precious expertise, to Marie Lugaz for her thorough research, and to the volunteers who helped with research for the report and with its proofreading (Marina Gomez Riveiro, Josephine Meerman, Una Schamberger, Tom Grant and Hannah Wilson).



ARGENTINA

ARGENTINA

JUDICIAL DEVELOPMENTS

FRANCO DICTATORSHIP CASE

CURRENT STATUS

Under investigation

CONTEXT

Ongoing proceedings in Argentina against former Spanish officials and other actors of the Franco dictatorship for alleged serious crimes under international law committed in Spain between 1936 and 1977.

SUSPECTS

Former Spanish officials and other actors of the Franco dictatorship (including González Pacheco, former police officer, Jesús Muñecas Aguilar, former captain of the civil guard and former government ministers Rodolfo Martín Villa and Jose Utrera Molina)

COUNTRY OF RESIDENCE OF SUSPECTS

Spain

CHARGES

Crimes against humanity, including torture, extrajudicial killings and enforced disappearances

DEVELOPMENTS IN 2015

The Argentinean judge Servini de Cubría sent a second rogatory commission to the local tribunal of Guadalajara in Spain, requesting the exhumation of the corpse of Timoteo Mendieta, who was executed in 1939. It also provided for a DNA test of his daughter, Ascensión Mendieta, victim and plaintiff in the case. On 24 November 2015, the Tribunal of Guadalajara authorized the exhumation. This decision represents the first permission for exhumation granted in Spain following a request by Argentinean judge and the first concrete sign of victims' reparation in this case. The exhumation started on 19 January 2016.

PROCEDURE IN SPAIN

In December 2006, the Spanish investigating judge Baltasar Garzón opened an investigation into allegations of crimes against humanity committed during the Franco dictatorship. In October 2008, he ruled that the 1977 Spanish law granting amnesty for crimes committed during the Franco dictatorship did not apply owing to the nature of the crimes. However, this decision was overturned on appeal. The amnesty law therefore remains applicable, and the crimes committed by the Franco dictatorship cannot be investigated or prosecuted in Spain.

PROCEDURE IN ARGENTINA

On 14 April 2013, Spanish and Argentinean human rights organisations filed a criminal complaint with the Argentinean investigating judge Servini de Cubría on behalf of Spanish victims. On 23 September 2013, the Spanish judge issued arrest warrants against four former officials of the Franco dictatorship (including González Pacheco and Jesús Muñecas Aguilar) and requested their extradition for crimes against humanity, including acts of torture allegedly committed in Spain between July 1936 and June 1977. On 24 April 2014, the Spanish National Court (Audiencia Nacional, Sala de lo Penal) rejected an extradition request issued on 13 September 2013 by Judge Servini de Cubría against González Pacheco and Jesús Muñecas Aguilar. On 30 October 2014, notwithstanding the Court's decision, the Argentinean investigating judge issued detention orders against twenty of the accused in order to request their extradition to Argentina.

For more information: See website: <http://www.ceaqua.org/querella-argentina/>

PARAGUAYAN INDIGENOUS COMMUNITY CASE

CONTEXT

Ongoing proceedings in Argentina for alleged serious crimes under international law committed in Paraguay during the Alfredo Stroessner dictatorship (1954-1989). The Truth and Justice Commission (TJC) established in Paraguay in 2003 identified various serious human rights violations committed by State agents during the dictatorship, including arbitrary detentions, torture and other cruel, inhumane or degrading treatment, enforced disappearances and extrajudicial killings.

SUSPECTS

The TJC identified 448 suspects, allegedly involved in the commission of serious human rights violations, including the dictator Alfredo Stroessner himself, and other collaborators. Many of the suspects identified are still alive.

COUNTRY OF RESIDENCE OF SUSPECTS

Mainly Paraguay

CHARGES

Crimes against humanity and genocide

DEVELOPMENTS IN 2015

A second international rogatory commission was sent to Paraguay in 2015. Paraguay requested a delay to investigate the alleged crimes. In December 2015, Argentina sent a third international rogatory commission to Paraguay. As a result, a Paraguayan prosecutor was appointed to take statements from victims, and a special unit was assigned to go to the Aché Community territories to audition survivors of the crimes.

CURRENT STATUS

Under investigation

FACTS

After Alfredo Stroessner was overthrown, few suspects were prosecuted for crimes committed during the dictatorship. Following international pressure, Paraguay established a Truth and Justice Commission (TJC) in 2003. The TJC's Final Report identified 448 suspects and detailed the crimes committed: crimes against humanity, extrajudicial executions, forced disappearances, systematic torture, arbitrary detentions, forced exile, and other serious human rights violations. Moreover, the TJC also found that members of the Aché Community had been victims of systematic persecutions, which qualified as crimes against humanity, with a possible reclassification as genocide.

Between 1954 and 1989, during the Alfredo Stroessner dictatorship, the Aché community in Paraguay was persecuted to expel them from their land, which is rich in natural resources. They were victims of extrajudicial killings, arbitrary detentions, enforced disappearances, and forced displacements, as well as abductions of their children, mistreatment, torture and inhumane working conditions.

Given the situation of impunity in Paraguay, these violations were brought before the Inter-American Commission on Human Rights (IACHR), which identified in 1977 violations of the right to life, liberty, security, integrity of person, and of the right to family and the right to health and well-being. The IACHR requested that the Government of Paraguay investigate these human rights violations, but no investigation was ever opened. In 2003, Paraguay finally opened a Truth and Justice Commission to investigate all crimes committed during the dictatorship and to identify those responsible for such crimes. Its final report incriminated 448 persons.

PARAGUAYAN INDIGENOUS COMMUNITY CASE (END)

PROCEDURE

On 6 August 2013, 14 victims (Paraguayans and Argentinean) of the Stroessner regime, and two victims' organizations (Fundación Celestina Pérez de Almada and El Movimiento Nacional de Víctimas de la Dictadura Stronista) lodged a complaint with the Argentinean judge Roberto Oyarbibe, for genocide and crimes against humanity, committed against the indigenous Aché community in Paraguay between 15 August 1954 and 3 February 1989. On 21 August 2013, Judge Roberto Oyarbibe sent an international rogatory commission to Paraguay, in order to verify the existence of an investigation in Paraguay into the alleged crimes. On 11 September 2014, Paraguay responded that an investigation was ongoing. In spite of the Argentinean judge's request, Paraguay did not respond to the

allegations of genocide committed against the Aché community, which was included in the complaint.

On 8 April 2014, the Federación Nativa Aché del Paraguay joined the proceedings opened in Argentina by sixteen plaintiffs, denouncing alleged crimes against humanity and genocide against the Aché Community committed between 1954 and 1989 in Paraguay. A second international rogatory commission was sent to Paraguay after the Federación Nativa Aché del Paraguay joined the case.

For more information: See Centro Internacional para la Promoción de los Derechos Humanos website: www.cipdh.gov.ar/nota21.html

A young boy with dark skin and a white shirt is shown from the chest up, holding several bullets in his right hand. The bullets are of various types, including some with brass casings and others with dark tips. The background is a dry, sandy landscape under a clear blue sky. The word "BELGIUM" is written in white capital letters on a red rectangular background, centered over the boy's chest.

BELGIUM

BELGIUM

JUDICIAL DEVELOPMENTS

MICHEL DESAEDELEER

CONTEXT

Ongoing proceedings against a dual Belgian/American citizen allegedly implicated in enslavement and the looting of “blood diamonds” in Sierra Leone, between 1999 and 2001.

SUSPECTS

Businessman

COUNTRY OF RESIDENCE OF SUSPECTS

United-States

CHARGES

Enslavement as a crime against humanity and looting as a war crime

DEVELOPMENTS IN 2015

On 28 August 2015, Michel Desaeleer was arrested in Malaga in Spain, following the European Arrest Warrant issued against him by the Belgian authorities. On 8 September 2015, he was transferred to Belgium, where he was indicted for crime against humanity and a war crime and placed in preventive custody.

CURRENT STATUS

Indicted

FACTS

During the civil war in Sierra Leone, Michel Desaeleer allegedly participated, with the Revolutionary United Front (RUF), in the enslavement of civilians in order to mine diamonds in Kono district mines. Those diamonds were then sent to the former Liberian President, Charles Taylor, and sold on the international market. Indeed, between 1999 and 2001, it is alleged that the Belgian/American businessman was working with Charles Taylor and the RUF, which needed him to provide money, machines and other material. It is alleged that he helped Charles Taylor and the RUF to export the diamonds outside the country.

PROCEDURE

In January 2011, citizens of Sierra Leone who had been forced to work in the mines during the civil war filed a complaint in Brussels against Michel Desaeleer, who was then living in the United States. This complaint led the competent Belgian authorities to open an investigation that finally led to the issuing of a European arrest warrant targeting Michel Desaeleer.

For more information: See Civitas Maxima's and Accountability and Rule of Law in Freetown websites: www.civitas-maxima.org and <http://www.carl-sl.org/home/>:

MARTINA JOHNSON

CONTEXT

The Martina Johnson case constitutes the first arrest and indictment for war crimes and crimes against humanity allegedly committed during the first Liberian civil war (1989-1996). Liberia's former president, Charles Taylor, was sentenced on 30 May 2012 to fifty years in prison (confirmed on appeal, on 10 December 2013) for the crimes he committed during the Sierra Leone civil war, in the 1990s. However, he was not prosecuted for the crimes committed in Liberia by his troops, the National Patriotic Front of Liberia (NPFL).

SUSPECTS

Former Liberian front line Commander of the NPFL, Martina Johnson was allegedly Charles Taylor's chief of the artillery during « Operation Octopus » in October 1992.

COUNTRY OF RESIDENCE OF SUSPECTS

Belgium

CHARGES

Direct involvement in alleged war crimes and crimes against humanity, including mutilation and mass killings

DEVELOPMENTS IN 2015

The investigation is still ongoing.

CURRENT STATUS

Under house arrest; indicted

FACTS

Martina Johnson was allegedly actively involved in "Operation Octopus" launched by Charles Taylor and his NPFL troops in October 1992. This offensive against the government and the peacekeeping forces was aimed at taking over the capital Monrovia and resulted in the deaths of hundreds of civilians, many of whom were targeted for ethnic reasons.

PROCEDURE

In 2012, three Liberian victims filed a complaint in Belgium against Martina Johnson for her alleged direct participation in mutilation and mass killing during "Operation Octopus" in October 1992. Martina Johnson had been living in Ghent, Belgium, for years prior to her arrest. Belgian police arrested Martina Johnson on 17 September 2014. She was released and placed under house arrest on 19 September 2014.

For more information: See Civitas Maxima's website: www.civitas-maxima.org/



CHILE

CHILE

JUDICIAL DEVELOPMENTS

FOCUS ON A CIVIL UNIVERSAL JURISDICTION CASE: THE LÓPEZ AND CEBALLOS CASE

Leopoldo López and Cristobal Daniel Ceballos are members of the opposition party against President Maduro's ruling party in Venezuela. They were arrested and detained within the context of the anti-government protest that took place in Caracas in February 2014. Leopoldo López was arrested on February 2014 and accused of several crimes such as public incitement, criminal association and damages to civilian property. On 10 September 2015, Leopoldo López was found guilty and sentenced to almost 14 year in prison. Cristobal Daniel Ceballos was arrested and accused of criminal association, rebellion and for disobeying a resolution by the Supreme Court of Justice of Venezuela. On 25 March 2014, he was found guilty and sentenced to 12 months in prison.

Leopoldo López and Cristobal Daniel Ceballos began a hunger strike on 24 May 2015, in order to protest against their political detention.

On 25 May 2015, an application for protection was submitted before the Chilean judiciary requesting the protection of the rights of Leopoldo Lopez and Cristobal Daniel Ceballos to life and physical integrity, equal protection under the law and the protection of their private life on the basis of universal jurisdiction and the Chilean Constitution. The Court of Appeals of Valparaiso denied its jurisdiction as the facts took place outside Chile.

On the 28 September 2015, the Supreme Court of Chile overturned this decision and asserted its jurisdiction based on universal jurisdiction. It requested Chile to issue an official petition to the Inter-American Commission on Human Rights and report on the situation of Leopoldo López and Cristobal Ceballos in Venezuela.

On 2 December 2015, the Defence Council of the State (Consejo de Defensa del Estado, an organ representing the government) appealed against the Supreme Court's decision. The Supreme Court did not admit this appeal as it was filed after the prescribed delay to appeal.

For more information: See FIBGAR website: <http://en.fibgar.org/>



FINLAND

FINLAND

JUDICIAL DEVELOPMENTS

THE IRAQI TWIN BROTHERS

Context

Ongoing proceedings in Finland against Iraqi twin brothers for their alleged implication in the Camp Speicher massacre, near Tikrit, Iraq, in June 2014.

SUSPECTS

Islamic State fighters

COUNTRY OF RESIDENCE OF SUSPECTS

Finland

CHARGES

Murders committed with terrorist intent

DEVELOPMENTS IN 2015

The 23 year-old twin brothers entered Finland in September 2015, as asylum seekers. They were arrested in Forssa, Finland, by the National Bureau of Investigation on suspicion of involvement in the Camp Speicher massacre committed on behalf of ISIS in Iraq.

They appeared before the Court of Pirkanmaa for a detention hearing on 11 December 2015 and were held in custody. They are suspected of 11 murders committed with terrorist intent.

The procedure resulted from a propaganda video of the killings released by ISIS in which the twin brothers appear without covering their faces. This video is a key piece of evidence of the alleged involvement of both suspects in the massacre.

CURRENT STATUS

Temporary detention

FACTS

In June 2014, 1700 unarmed Iraqi army recruits were arrested at Camp Speicher, near Tikrit by members of the Islamic State (ISIS) in Iraq. The victims were laid on the ground and shot one by one. The Iraqi twin brothers are alleged to have murdered 11 of them.

For more information: See Trial website: <http://www.trial-ch.org/en/resources/trial-watch.html>



FRANCE

FRANCE

JUDICIAL DEVELOPMENTS

PASCAL SIMBIKANGWA

CONTEXT

The trial of Pascal Simbikangwa was the first in France of a Rwandan citizen allegedly involved in the 1994 genocide in Rwanda. Almost thirty cases related to the 1994 Genocide in Rwanda are reportedly open before the French specialized unit for the prosecution of genocide, crimes against humanity, war crimes and torture within the Paris Tribunal (hereinafter “the specialized unit”)

SUSPECTS

Head of the *Service Centrale des Renseignements* (SCR), the Central Intelligence Service in Rwanda

COUNTRY OF RESIDENCE OF SUSPECTS

France

CHARGES

Genocide, aiding and abetting genocide and aiding and abetting crimes against humanity

DEVELOPMENTS IN 2015

The appeal hearings are scheduled to take place from 24 October to 9 December 2016 before the Bobigny Criminal Court (Cour d'Assises de Bobigny).

CURRENT STATUS

Sentenced; ongoing appeal

FACTS

Pascal Simbikangwa allegedly supplied weapons and other material to Hutu officers or militia, was said to be responsible for roadblocks in the capital and to have instructed and encouraged militiamen to actively participate in the crimes.

On 28 October 2008, he was arrested by the French Police in Mayotte for trafficking fake identity cards, under the false identity of “Safari Senyamuhara”. His true identity was discovered during his detention.

PROCEDURE

On 13 February 2009, the *Collectif des Parties Civiles pour le Rwanda* (CPCR) filed a criminal complaint in Mayotte. On 1 March 2013, the Office of the Prosecutor of the specialized unit requested the indictment of Pascal Simbikangwa for aiding and abetting genocide and aiding and abetting crimes against humanity committed in Rwanda between April and July 1994. He was indicted for these crimes on 29 March 2013.

Pascal Simbikangwa's trial opened on 4 February 2014 before the Paris Criminal Court (Cour d'Assises de Paris). The Court heard twenty expert witnesses and testimonies from fifty-three other witnesses, some of whom had travelled from Rwanda. The Prosecutor requested a life sentence. On 14 March 2014 the Court sentenced Simbikangwa to 25 years imprisonment for his participation in the genocide and for aiding and abetting crimes against humanity. On 18 March 2014, he filed a notice of appeal.

For more information: See FIDH website: www.fidh.org/International-Federation-for-Human-Rights/Africa/rwanda/14932-pascal-simbikangwa-convicted-of-genocide-and-complicity-in-crimes-against

OCTAVIEN NGENZI AND TITO BARAHIRA

CONTEXT

The case against Octavien Ngenzi and Tito Barahira will be the second trial in France of Rwandan nationals suspected of involvement in the 1994 genocide in Rwanda.

SUSPECTS

Former Rwandan Mayors

COUNTRY OF RESIDENCE OF SUSPECTS

France

CHARGES

Genocide and crimes against humanity

DEVELOPMENTS IN 2015

On 30 May 2014, the investigating judge referred their case to the Paris Criminal Court. The defendants appealed this decision but the French Supreme Court (Cour de Cassation) dismissed the appeal on 27 January 2015.

The trial will take place from 10 May to 1 July 2016 before the Paris Criminal Court.

CURRENT STATUS

Detained; upcoming trial before the Paris Criminal Court

FACTS

The two accused allegedly participated on 13 April 1994 in the massacre of hundreds of Tutsis who had sought refuge in a church in Kabarondo.

PROCEDURE

On 2 June 2010, the *Collectif des parties civiles pour le Rwanda* (CPCR) filed a complaint against Octavien Ngenzi with the Office of the Prosecutor at the Mamoudzou Tribunal (Tribunal de Grande Instance de Mamoudzou, Mayotte). On 3 June 2010, Octavien Ngenzi was arrested and detained in Mayotte.

On October 2010, Tito Barahira was indicted by the National Public Prosecution Authority (NPPA) in Rwanda for his participation in the genocide and for incitement to commit genocide. Pursuant to an arrest warrant issued in Rwanda, he was arrested on 3 April 2013 in Toulouse (France). However, the French authorities denied the Rwandan extradition request and the two cases were joined on 5 December 2012. Nine civil parties have joined the case.

On 13 May 2014, the Office of the Prosecutor at the Paris Tribunal (Tribunal de Grande Instance de Paris) sought the prosecution of Octavien Ngenzi and Tito Barahira before the Paris Criminal Court (Cour d'Assises de Paris) for crimes allegedly committed in Rwanda in April 1994. On 30 May 2014, the investigating judge referred their case to the Paris Criminal Court.

For more information: See Trial website: <http://www.trial-ch.org/en/resources/trial-watch/trial-watch/profiles/profile/3994/action/show/controller/Profile.html> and <http://www.trial-ch.org/en/resources/trial-watch/trial-watch/profiles/profile/4255/action/show/controller/Profile.html>

RELIZANE CASE (Mohamed brothers)

Context

Pending proceedings in France against two Algerian militia leaders for alleged crimes of torture and enforced disappearances, committed in the province of Relizane in the 1990s during the Algerian civil war.

SUSPECTS

Abdelkader Mohamed (who has both Algerian and French citizenship) and Hocine Mohamed (Algerian citizenship), allegedly lead the Relizane militia (Group of Self Defence) during the Algerian civil war.

COUNTRY OF RESIDENCE OF SUSPECTS

France

CHARGES

Torture

DEVELOPMENTS IN 2015

On 29 July 2015, the Chief Prosecutor called on the investigating chamber to order a complementary investigation into this case. On 20 January 2016, the Investigation Chamber of the Court of Appeal in Nîmes (Chambre de l'instruction de la Cour d'Appel de Nîmes) repealed the final order to send Hocine and Abdelkader Mohamed up for trial. The civil parties appealed this decision.

CURRENT STATUS

Case dismissed; ongoing appeal

FACTS

In the 1990s, Algeria was in the throes of a very violent internal armed conflict, between state-armed militias and armed Islamic groups. Extrajudicial killings, acts of torture, rapes, abductions, and enforced disappearances were allegedly committed by all parties, and were carried out with full impunity.

Between 1993 and 1994, the Algerian authorities started to arm militias, called "Self-Defence groups" to fight the armed opposition. These militias allegedly committed numerous abuses on the civilian population, including extrajudicial killings, torture, rapes and enforced disappearances. Led by the Mohamed brothers, the Relizane Group of Self-Defence is allegedly responsible for more than one hundred cases of extrajudicial killings and two hundred and eight cases of enforced disappearances committed in the province of Relizane between 1994 and 1998.

PROCEDURE

On 10 October 2003, The International Federation for Human Rights (FIDH) and the *Ligue des Droits de l'Homme* (LDH) filed a complaint for torture and crimes against humanity before the Office of the Prosecutor with the Nîmes Tribunal (Tribunal de Grande Instance de Nîmes). On 11 December 2003, the Tribunal launched an investigation for crimes of torture.

On 29 March 2004, the Mohamed brothers were arrested, indicted and placed in custody. On 30 March 2004, they were released and placed under judicial surveillance.

On 18 June 2004, the investigating judge within the Nîmes Tribunal mandated an international rogatory commission to investigate the crimes committed in Algeria. On 19 July 2005, the Algerian authorities refused to collaborate with the investigating judge. Between 2006 and 2013, the investigation nevertheless continued, and confrontations between the victims and the accused were organized. In July 2013, the Office of the Prosecutor at the Nîmes Tribunal called for the indictment of the Mohamed brothers before the Criminal Court.

On 26 December 2014, the investigating judge within the Nîmes Tribunal issued a final order to bring the two accused to trial before the Nîmes Criminal Court (Cour d'Assises de Nîmes). The defendants appealed this decision.

For more information: See FIDH website: www.fidh.org/International-Federation-for-Human-Rights/

WENCESLAS MUNYESHYAKA

Context

Pending proceedings in France against a Rwandan priest for crimes committed during the 1994 genocide in Rwanda.

SUSPECTS

Former head of the Sainte-Famille parish in Kigali

COUNTRY OF RESIDENCE OF SUSPECTS

France

CHARGES

Complicity in genocide, crimes against humanity and torture

DEVELOPMENTS IN 2015

On 19 August 2015, the French specialized unit for the prosecution of genocide, crimes against humanity, war crimes and torture within the Paris Tribunal (hereinafter “the specialized unit”) requested a dismissal of the case against Wenceslas Munyeshyaka. On 2 October 2015, the French judges dismissed the proceedings against him. The civil parties appealed this decision.

CURRENT STATUS

Dismissal; ongoing appeal

FACTS

Wenceslas Munyeshyaka was the former head of the Sainte-Famille parish in Kigali.

He is accused of being involved in the massive executions that took place on 17 and 22 April 1994 in the Sainte-Famille parish. He is suspected of having repeatedly participated in the selection of Tutsi refugees to be murdered, of leaving them to die of thirst, of reporting to the authorities those who tried to help them and of having raped several women. After leaving Rwanda, he became a priest in France.

PROCEDURE

On 12 July 1995, a complaint was filed against Wenceslas Munyeshyaka, by several French associations entitled to act on behalf of the victims (the *Collectif des Parties Civiles pour le Rwanda*, *Survie*, LICRA, and individual plaintiffs). An investigation was opened against him. However, in June 2004, the slowness of the proceedings led to France being condemned by the European Court of Human Rights for exceeding reasonable time. In 2005 and 2006, the *Ligue des Droits de l’Homme* (LDH) and the International Federation for Human Rights (FIDH) joined as civil parties.

In parallel, Wenceslas Munyeshyaka was tried in absentia, in Rwanda, and sentenced to life imprisonment, in 2006 by the Rwandan courts. After having issued an arrest warrant against Wenceslas Munyeshyaka in 2007, the International Criminal Tribunal for Rwanda (ICTR) decided in February 2008 to decline jurisdiction and to refer the case to the French courts. Proceedings were resumed when the case was transferred to the specialized unit.

For more information: See FIDH website: <https://www.fidh.org/en/region/Africa/rwanda/>

AMESYS CASE

CONTEXT

Ongoing proceedings before the French specialized unit for the prosecution of genocide, crimes against humanity, war crimes and torture within the Paris Tribunal (hereinafter “the specialized unit”) for allegedly aiding and abetting crimes of torture committed in Libya during the Muammar Gaddafi regime (from 1969 to 2011)

SUSPECTS

French company AMESYS and its management

COUNTRY OF RESIDENCE OF SUSPECTS

France

CHARGES

Aiding and abetting acts of torture, by selling surveillance material to the Muammar Gaddafi regime in Libya

DEVELOPMENTS IN 2015

The judicial investigation is still ongoing. Another Libyan victim joined the case and was heard by the investigative judge on 11 December 2015.

CURRENT STATUS

Under investigation

FACTS

In 2007, AMESYS, a French company, signed a contract with the Government of Libya to provide surveillance technologies for the purposes of intercepting communication, processing data and analysis. These materials allegedly allowed the Muammar Gaddafi regime to repress the opposition and to commit serious forms of human rights abuse

PROCEDURE

On 19 October 2011, the International Federation for Human Rights (FIDH) and the *Ligue des Droits de l’Homme* (LDH) launched a criminal complaint as civil parties before the investigating judge at the Paris Tribunal (Tribunal de Grand Instance de Paris) against AMESYS and its management, denouncing their alleged role as accomplices in acts of torture and other cruel, inhumane or degrading treatment, on the basis of universal jurisdiction. On 26 March 2012, the Office of the Prosecutor at the Paris Tribunal issued an order not to open a criminal investigation, arguing that there were insufficient grounds to open an investigation. However, the investigating judge of the specialized unit decided on 23 May 2012 to open a formal criminal investigation. On 15 January 2013, the Paris Court of Appeal (Cour d’Appel de Paris) decided to allow the investigation to be opened. In January 2013, five Libyan victims joined the proceedings as civil parties. They were heard in June and July 2013 by the specialized unit.

For more information: See FIDH website: www.fidh.org/International-Federation-for-Human-Rights/north-africa-middle-east/libya/16959-the-AMESYS-case-the-victims-anxious-to-see-tangible-progress

QOSMOS CASE

CONTEXT

Ongoing proceedings before the French specialized unit for the prosecution of genocide, crimes against humanity, war crimes and torture within the Paris Tribunal (hereinafter “the specialized unit”) for allegedly aiding and abetting crimes of torture committed in Syria since 2011.

SUSPECTS

French companies, including QOSMOS, and their management, as accomplices of acts of torture

COUNTRY OF RESIDENCE OF SUSPECTS

France

CHARGES

Aiding and abetting acts of torture by selling surveillance material to the Bashar al-Assad regime in Syria

DEVELOPMENTS IN 2015

In April 2015, at the end of a hearing before the investigating judge of the specialized unit, QOSMOS was given the status of “assisted witness”. This status, which can be used prior to a formal indictment, may be applied to any person (including a company as such) accused by a witness, or when there is some evidence that a person may have been complicit, as a perpetrator or an accomplice in committing crimes that have been referred to the investigative judge.

In July 2015, five Syrian victims testified anonymously as witnesses before the judge in charge of the judicial proceedings. These victims, who had been identified, arrested and tortured after having been subjected to surveillance of their electronic communications, were able to describe in detail the violence they suffered after their arrest. Due to security issues, they were not able to act as civil parties in the case (they would have had to disclose their identity) and were therefore heard as witnesses.

CURRENT STATUS

Under investigation

FACTS

In the past five years, the Syrian regime’s repression against its own population has led to more than 130,000 deaths, mainly of civilians, as well as innumerable arbitrary detentions, enforced disappearances, and cases of systematic torture in detention centres. The Bashar al-Assad regime has targeted mainly human rights defenders, activists and cyber-activists. Identifying such targets was made possible through communication surveillance tools used by the regime.

QOSMOS is an ICT (Information and Communications Technology) company, specialized in supplying material designed for real-time analysis of digital data. This technology enables intelligence services to intercept live electronic communications with specific key words, and to thus target and repress dissident voices more precisely.

PROCEDURE

On 22 July 2012, the International Federation for Human Rights (FIDH) and the *Ligue des Droits de l’Homme* (LDH) filed a complaint before the Office of the Prosecutor at the Paris Tribunal (Tribunal de Grand Instance de Paris), to urge the investigation and prosecution of French companies, including QOSMOS, for supplying the Bashar al-Assad regime with surveillance equipment. On 11 April 2014, a judicial investigation into the alleged role of Qosmos in aiding and abetting acts of torture in Syria was opened by the Office of the Prosecutor at the Paris Tribunal and handed down to investigating judges from the specialized unit. Following the AMESYS case, this is the second investigation to be opened by a French jurisdiction for the alleged involvement of an information and communication technology (ICT) company in selling surveillance material to an authoritarian regime, on the basis of universal jurisdiction.

For more information: See FIDH website: www.fidh.org/ International-Federation-for-Human-Rights/

FOCUS ON A PASSIVE PERSONALITY CASE: THE GUANTANAMO CASE

CONTEXT

Ongoing proceedings in France against former Guantanamo commander Geoffrey Miller and other unknown perpetrators for alleged torture committed against French citizens at the US detention centre in Guantanamo Bay, Cuba.

SUSPECT

Former Guantanamo Commander Geoffrey Miller and other unknown US officials

COUNTRY OF RESIDENCE

United States of America (USA)

CHARGES

Torture

DEVELOPMENTS IN 2015

On 2 April 2015, the Paris Court of Appeal (Cour d'Appel de Paris) granted the appeal brought by two of the victims and ruled that former Guantanamo commander Geoffrey Miller must be summoned by the investigating judge. Geoffrey Miller was summoned to appear in 2016 as an assisted witness.

CURRENT STATUTE

Under investigation

FACTS

Mourad Benchellali, Nizar Sassi and Khaled Ben Mustapha are French citizens who were detained at Guantanamo between 2002 and 2004-2005 where they were subjected to physical and psychological abuse. Geoffrey Miller was commander of the Joint Task Force Guantanamo and oversaw interrogations and detainee treatment during the plaintiffs' detention.

PROCEDURE

In November 2002, a criminal complaint and a claim for damages were filed in France in connection with the arrest, abduction, detention, false imprisonment and arbitrary detention of Mourad Benchellali and Nizar Sassi. Investigatory proceedings were opened in June 2005. The scope of the investigation was later expanded to include torture allegations submitted by the plaintiffs after their release from Guantanamo, and to include both the criminal complaint and civil claim brought by the third plaintiff, Khaled Ben Mustapha.

In January 2012 the investigating judge sent an international rogatory commission to the United States requesting that the US authorities conduct – in the presence of French officials – investigations into the case and question any persons who had contact with the plaintiffs during their detention at Guantanamo. After this request and several follow-up reminders were ignored by the United States, the plaintiffs filed a motion in February 2014, based on an expert opinion submitted by Center for Constitutional Rights (CCR) and European Center for Constitutional and Human Rights (ECCHR), requesting that the French investigating judge summon General Miller for questioning. The request was initially denied. On 2 April 2015, the Paris Court of Appeal reversed this decision, ruling that General Miller must be summoned by the investigating judge to give evidence on the acts in question and his role in the treatment of detainees at Guantanamo.

*For more information: See TRIAL website:
<http://www.trial-ch.org/en/resources/trial-watch/trial-watch/profiles/profile/4939/action/show/controller/Profile.html>*

FOCUS ON SYRIAN CASE IN FRANCE

A former photographer within the military police of the Syrian regime sought refuge in Europe after fleeing Syria with thousands of pictures of dead bodies, attesting to the torture committed in the jails of the regime of Bashar Al-Assad. In September 2015, on the basis of these pictures, the French Ministry of Foreign Affairs requested the Paris Prosecutor of the French specialized unit for the prosecution of genocide, crimes against

humanity, war crimes and torture within the Paris Tribunal (Tribunal de Grande Instance de Paris) to open a preliminary investigation against the Syrian regime for crimes against humanity, war crimes and torture. France has jurisdiction over these alleged crimes if one or more of the victims is French or, if a suspect has established his habitual residence on French territory, or, in the case of the crime of torture, if a suspect is tracked down on French territory.

*For more information: See FIDH website:
www.fidh.org/International-Federation-for-Human-Rights/*

A large flock of pigeons is captured in mid-flight, filling the frame. They are flying in various directions, with some wings spread wide, creating a sense of dynamic movement. The background is a red brick building with visible wooden beams and window frames, suggesting an urban or historical setting. The overall scene is vibrant and captures a moment of natural activity.

GERMANY

GERMANY

JUDICIAL DEVELOPMENTS

ONESPHORE RWABUKOMBE

CONTEXT

Ongoing proceedings in Germany against a former Rwandan official for his alleged participation in the 1994 Rwandan genocide.

SUSPECTS

Rwandan Mayor of the Muvumba commune, member of the local executive committee of the former governing party of Rwanda (MRND).

COUNTRY OF RESIDENCE OF SUSPECTS

Germany

CHARGES

Genocide

DEVELOPMENTS IN 2015

The appellate judgment on 21 May 2015 largely upheld the first instance judgment, but reversed the decision on Onesphore Rwabukombe's individual criminal liability and sent the issue to re-trial. Following the indications by the appeals court, the Higher Regional Court of Frankfurt convicted Onesphore Rwabukombe of committing genocide and sentenced him to life imprisonment on 29 December 2015. Onesphore Rwabukombe's defence lawyers and the civil party lawyer appealed this decision.

CURRENT STATUS

Sentenced to life imprisonment; detained in Germany; under appeal.

FACTS

During the 1994 genocide in Rwanda, Onesphore Rwabukombe allegedly incited the Hutu residents of Muvumba to kill Tutsi, and actively participated in killings in the nearby Murambi district. In particular, he is allegedly responsible for the death of at least 1200 people during the massacre in the Kiziguro church, on 11 April 1994.

PROCEDURE

In 2007, Rwandan authorities issued an international arrest warrant against Onesphore Rwabukombe. In March 2008, he was arrested in Germany, pending extradition. However, in November 2008, the German authorities denied this request, on grounds that the fairness of his trial in Rwanda was in doubt. Consequently, Onesphore Rwabukombe was released. Yet, on 26 July 2010 he was arrested near Frankfurt am Main and placed in pre-trial custody. On 8 December 2010, the Higher Regional Court of Frankfurt am Main confirmed the charges against Onesphore Rwabukombe. His initial trial began on 18 January 2011 and ended in February 2014 with the condemnation of Onesphore Rwabukombe to 14 years in prison for aiding and abetting genocide. Following an appeal procedure, during which the court found that he had committed genocide himself, his sentence was increased to life imprisonment on 29 December 2015.

For more information: See Trial website: www.trial-ch.org/en/resources/trial-watch.html

IGNACE MURWANASHYAKA & STRATON MUSONI

CONTEXT

Ongoing proceedings in Germany against former officials of the Democratic Forces for the Liberation of Rwanda (Forces Démocratiques de Libération du Rwanda - FDLR), for alleged serious crimes under international law committed in the Democratic Republic of Congo (DRC). The FDLR, formerly the *Armée de Libération du Rwanda* (Liberation Army of Rwanda) was created in 2001 and has been operating in eastern DRC since then. Some of its members have been accused of participating in the 1994 genocide in Rwanda.

SUSPECTS

Ignace Murwanashyaka has been head of FDLR since 2001. Straton Musoni has been his deputy since 2004.

COUNTRY OF RESIDENCE OF SUSPECTS

Germany

CHARGES

Ordering and coordinating crimes against humanity and 16 counts of war crimes, committed by the FDLR on Congolese territory between January 2008 and November 2009; belonging to a terrorist group.

DEVELOPMENTS IN 2015

The Higher Regional Court of Stuttgart issued its first instance verdict on 28 September 2015, convicting Ignace Murwanashyaka for aiding and abetting war crimes on 5 counts and for leading a foreign terrorist organization, sentencing him to 13 years in prison.

Straton Musoni was sentenced to 8 years imprisonment for leadership in a foreign terrorist organization. The judgment was appealed.

CURRENT STATUS

Sentenced to prison sentences of 8 and 13 years; detained in Germany; under appeal.

FACTS

In 2009, Rwanda and the DRC led a joint military operation, aiming at neutralizing the FDLR. This operation resulted in various retaliatory attacks by the FDLR on Congolese civilians, including women, children and other vulnerable persons. The two suspects are accused of having coordinated attacks that resulted in the death of civilians, pillage, recruitment of child soldiers, rapes and other forms of sexual violence.

PROCEDURE

Ignace Murwanashyaka and Straton Musoni were arrested in Germany on 17 November 2009, following an arrest warrant issued by the German Federal Court of Justice on 16 November 2009. Their trial before the Higher Regional Court in Stuttgart began on 4 May 2011 and ended after 320 trial days on 28 September 2015. During the proceedings 11 of the 16 initial charges of war crimes and crimes against humanity were dropped.

For more information: See ECCHR website: www.ecchr.de/kongo-war-crimes-trial.html

US TORTURE CASE

CONTEXT

Monitoring procedure in Germany regarding torture and other crimes committed by US officials in CIA detention and other US overseas detention centres.

SUSPECTS

Unknown US officials

COUNTRY OF RESIDENCE OF SUSPECTS

United States of America (USA)

CHARGES

Torture, other related crimes

DEVELOPMENTS IN 2015

Following the publication of the US Senate Select Committee on Intelligence report on CIA detention and interrogation program on 9 December 2014, the German Federal Public Prosecutor opened a monitoring procedure to collect further information and decide about opening a formal investigation. The European Center for Constitutional and Human Rights (ECCHR) submitted further information about witnesses and suspects on 28 July 2015.

CURRENT STATUS

Monitoring procedure (preliminary examination)

FACTS

The USA planned, developed and exercised torture and other acts of cruel, inhuman, or degrading treatment in its response to international terrorism from 2001. The CIA and the armed forces arrested suspects in different locations worldwide, brought them to US detention facilities outside the US territory or rendered them to other states. As part of the interrogation and detention program, US officials tortured detainees in different detention centres outside the USA.

PROCEDURE

The German Federal Public Prosecutor opened a monitoring procedure in December 2014 as reaction to the publication of the executive summary of the US Senate Select Committee on Intelligence report on CIA detention and interrogation program on 9 December 2014 and a criminal complaint filed by ECCHR on 17 December 2014. The monitoring procedure is still pending.

For more information: See ECCHR website: http://www.ecchr.eu/en/our_work/international-crimes-and-accountability/u-s-accountability/germany.html

FOCUS ON SYRIA CASE

In 2012, Germany opened a structural investigation to gather evidence of war crimes and crimes against humanity committed in Syria since 2011. This evidence has been gathered, mostly through witness interviews, in order to respond to future requests for mutual legal assistance by other States or international courts. Furthermore, it would allow Germany to prosecute

suspects present on German territory. So far, there have been no indictments for war crimes or crimes against humanity committed in Syria. However, charges for membership in a terrorist organization have been brought in an increasing number of cases (17 indictments, 7 convictions).

For more information: See ECCHR website: www.ecchr.de/syria.html



THE NETHERLANDS

THE NETHERLANDS

JUDICIAL DEVELOPMENTS

FOCUS ON AN ACTIVE PERSONALITY CASE: SADEQ ALAMYAR

CONTEXT

Ongoing proceeding against a Dutch national originally from Afghanistan for alleged war crimes committed in Afghanistan during the civil war that started in 1978.

SUSPECT

Former commander of the 444th Commando Force of the Afghan army

COUNTRY OF RESIDENCE

The Netherlands

CHARGES

Direct participation in and superior responsibility of war crimes in Afghanistan

DEVELOPMENTS IN 2015

On 8 April 2015, several police searches of homes and vehicles took place. The accused was arrested on 27 October 2015 in Rotterdam. He is currently detained in the Netherlands.

CURRENT STATUTE

Detained; investigations ongoing

FACTS

In the night of 19 to 20 April 1979, Sadeq Alamyar's troops allegedly raided Kerala, the capital of Kunar province in north-eastern Afghanistan. More than 1000 boys and men were executed or taken away to be killed, in retaliation for collaborating with anti-government fighters. Sadeq Alamyar allegedly fired some of the shots himself. His men used bulldozers to bury the bodies in mass graves. Many of the victims were only wounded and therefore buried alive. The rest of Kerala's population deserted the village. In the 1990s, Sadeq Alamyar was granted asylum in The Netherlands. He is now a Dutch citizen, living in Rotterdam.

PROCEDURE

Following a criminal complaint from relatives of the victims in 2008, the International Crimes Unit of the Netherlands National Police launched a criminal investigation into the crimes allegedly committed by Sadeq Alamyar. Residents of Assadabad, former Mujahedeen fighters, fellow party members of Sadeq Alamyar and troops from the former Afghan government army were heard as witnesses by the crimes unit.

For more information: See: <https://www.om.nl/vaste-onderdelen/zoeken/@91488/afghan-war-crimes/>



SENEGAL

SENEGAL

JUDICIAL DEVELOPMENTS

HISSENE HABRE

Context

Ongoing proceedings against the former President of Chad for alleged serious crimes under international law, committed in Chad between 1982 and 1990.

SUSPECTS

President of Chad from 1982 to 1990

COUNTRY OF RESIDENCE OF SUSPECTS

Senegal

CHARGES

Crimes against humanity, war crimes and systematic use of torture

DEVELOPMENTS IN 2015

In February 2015, the four judges of the Extraordinary African Chambers (EAC) at the Senegalese courts ruled that there was sufficient evidence to send Hissène Habré to trial for crimes against humanity, war crimes, and torture. His trial started on 20 July 2015, but was postponed the next day by the judges of the Chamber, because the defence lawyers decided to boycott the trial and did not appear in Court. The President of the EAC decided to appoint three new defence counsels and gave them 45 days to prepare the case. During the 52 days of the trial, 98 witnesses, mostly coming from Chad, were heard. The pleadings of the civil parties, the prosecution and the defence lawyers will take place in February 2016. In parallel, the trial of more than twenty former officials of the era of Hissène Habré took place in Chad from 14 November 2014 to 25 March 2015.

CURRENT STATUS

Detained in Cape Manuel of Dakar; ongoing trial

FACTS

Hissène Habré was president of Chad from 1982 to 1990, establishing a cruel dictatorship, which relied on its intelligence agency, the Directorate of Documentation and Security (DDS), to act as a tool for political repression. Through this agency, the regime committed widespread human rights violations and carried out collective arrests and mass murders, for reasons of ethnic origin.

In 1992, the Truth Commission established by Hissène Habré's successor, Idriss Deby, accused Hissène Habré of 40'000 political assassinations and systematic torture.

PROCEDURE IN BELGIUM

On 30 November 2000, victims of Hissène Habré's regime who were living in Belgium filed a complaint against Hissène Habré in Brussels, alleging crimes against humanity, torture, arbitrary detention and enforced disappearances. On 19 September 2005, Judge Daniel Franssen of the District Court of Brussels issued an international arrest warrant against Hissène Habré and requested his extradition to Belgium. On 15 November 2005, the Senegalese authorities arrested Hissène Habré in Dakar. However, on 25 November 2005, the Dakar Court of Appeal decided that it had no jurisdiction to rule on the extradition request.

HISSENE HABRE (end)

PROCEDURE IN SENEGAL

On 26 January 2000, seven victims and one victims association (the Association of the Victims of Crimes and Political Repression (AVCRP) in Chad) filed a complaint against Hissène Habré before the Regional Tribunal of Dakar for acts of torture and crimes against humanity. On 3 February 2000, a Senegalese judge, Demba Kandji, indicted Hissène Habré for acts of torture, barbarous acts and crimes against humanity. On 4 July 2000, the Dakar Court of Appeal ruled that Senegalese courts could not pursue the charges because the crimes were not committed in Senegal. The victims appealed. On 20 March 2001, the Senegalese Supreme Court (Cour de cassation) confirmed the first instance decision that Senegalese authorities did not have jurisdiction over the case, because the alleged crimes were not committed in Senegal.

PROCEDURE BEFORE THE EAC

On 2 July 2006, the African Union requested that Senegal prosecute Hissène Habré, to which Senegalese President Abdoulaye Wade agreed. On 31 January 2007, the Senegalese National Assembly adopted a law allowing Senegalese courts to prosecute the crimes with which Hissène Habré is charged, even if committed outside Senegal.

On 16 September 2008, fourteen victims filed a new complaint against Hissène Habré for crimes against humanity and torture before Senegalese jurisdictions. However, from 2008 to 2010, Senegal refused to advance with the case unless it received full funding for the trial.

On 20 July 2012, following a submission from Belgium, the International Court of Justice ordered Senegal to prosecute Hissène Habré without delay if he is not extradited to Belgium. On 22 August 2012, Senegal and the African Union signed an agreement which created the Extraordinary African Chambers (EAC) within the Senegalese court system, with a mandate of “prosecuting and trying the person or persons mainly responsible for crimes and serious violations of international law, international custom, and international conventions ratified by Chad and committed in Chadian territory during the timeframe starting from 7 June 1982 to 1 December 1990”.

On 2 July 2013, the EAC indicted Hissène Habré. On 5 July 2013, 1015 victims joined the procedure as civil parties. In February 2015, following an investigation, the four judges of the EAC ruled that there was sufficient evidence to send Hissène Habré to trial for crimes against humanity, war crimes, and torture. His trial started in 2015. In parallel, on 14 November 2014, the trial of more than twenty former officials of the era of Hissène Habré began in Chad.

For more information: See FIDH and Human Rights Watch websites: <https://www.fidh.org/en/issues/litigation/litigation-against-individuals/hissene-habre-case/> and www.hrw.org/fr/habre-case

PAUL MWILAMBWE

CONTEXT

Ongoing proceedings against Paul Mwilambwe for the alleged murder of Floribert Chebeya on 2 June 2010 in Kinshasa and the disappearance of his associate, Fidèle Bazana.

SUSPECTS

Major in the Police nationale congolaise (PNC), the Congo National Police

COUNTRY OF RESIDENCE OF SUSPECTS

Senegal

CHARGES

Enforced disappearance and murder of human rights defender Floribert Chebeya and his associate Fidèle Bazana

DEVELOPMENTS IN 2015

Paul Mwilambwe was indicted on 8 January 2015 and placed under judicial supervision. In June 2015, Guylain Bazana, the son of Fidèle Bazana, was auditioned by the investigative judge as a civil party.

CURRENT STATUS

Placed under judicial supervision on 8 January 2015

FACTS

Floribert Chebeya was found dead in his car in Kinshasa on 2 June 2010. His associate, Fidèle Bazana, was reported missing. The night before, they had both gone to the PNC headquarters, which was the last time they were both seen alive.

PROCEDURE

On 2 June 2014, the International Federation for Human Rights (FIDH) and families of the victims filed a criminal complaint as civil parties before Senegalese courts. The judiciary heard the plaintiffs in August 2014.

For more information: See FIDH website: www.fidh.org/International-Federation-for-Human-Rights/Africa/democratic-republic-of-congo/16755-the-chebeya-bazana-case-indictment-of-paul-mwilambwe-in-senegal-on-the



SPAIN

SPAIN

JUDICIAL DEVELOPMENTS

The passive personality jurisdiction is not a general principle of competence for the Spanish judges and it only applies to very few crimes such as terrorism. Yet, under the new law on universal jurisdiction of 2014, the principle of “connectedness” allows judges to open investigations in crimes connected to the initial terrorist charges, whatever the nationality of the victims, or the nature of the crime. Spanish judges used this principle of connectedness to build creative solutions to maintain the continuity in their cases of crimes against humanity, war crimes or genocide. Thus, using the fact that at least one of the victims had Spanish nationality, and reclassifying the offences as terrorism, they managed to continue their investigations into cases of crimes against humanity involving foreign victims, such as the Boko Haram case.

THE BOKO HARAM CASE

Context

Ongoing proceedings in Spain against the terrorist group Boko Haram and its leader Abubakar Shekau, for acts of terrorism and crimes against humanity allegedly committed in Nigeria and neighbouring countries against civilian population from 2009 onwards. This is the first case of terrorism and crimes against humanity committed outside the territory to be opened under Spain’s new legislation on universal jurisdiction.

SUSPECTS

Members of Boko Haram, in particular Abubakar Shekau (Boko Haram's leader)

COUNTRY OF RESIDENCE OF SUSPECTS

Uncertain (Nigeria, Cameroon, Chad, Niger)

CHARGES

Acts of terrorism and crimes against humanity

DEVELOPMENTS IN 2015

On 28 April 2015, the Spanish prosecutor requested the opening of the investigation after it was brought to their attention by the International Foundation Baltasar Garzón (FIBGAR).

On 27 May 2015, the Investigating Judge of the Spanish National Court, Fernando Andreu, agreed to admit the case

CURRENT STATUS

Under investigation

FACTS

On 22 March 2013, armed militants from Boko Haram attacked the eastern Nigerian town of Ganye and killed at least 25 civilians. The victims, mainly women and children, were specifically targeted because they were Christians. One of the victims, the Spanish nun Maria Jesus Mayor managed to escape and was rescued by Nigerian security services. The kidnap and possible murder of over than 200 girls from the Chibok Catholic College in North Nigeria on 14 April 2014 was also mentioned in the judge’s statement.

PROCEDURE

On 24 October 2014, FIBGAR filed a criminal complaint against the leader of Boko Haram, Abubakar Shekau and other members of the group for crimes against humanity and terrorism. Based on this denunciation, the Prosecutor of the Spanish National Court opened an investigation to look into the facts presented to them.

For more information: See FIBGAR website: <http://en.fibgar.org/>

KARENZI KARAKE

CONTEXT

Ongoing proceeding in Spain for genocide, crimes against humanity, war crimes, torture and terrorism against 40 Rwandese nationals, including General Karenzi Karake, for crimes committed in the Great Lakes region between 1994 and 2000 against 9 Spanish citizens and other victims.

SUSPECTS

Forty high-ranking officials of the Rwandan Patriotic Army/Rwandan Patriotic Front (RPA/RPF), including General Karenzi Karake, commanding officer of the Directory Military Intelligence (DMI)

COUNTRY OF RESIDENCE OF SUSPECTS

Rwanda, Democratic Republic of Congo (DRC) and South Africa

CHARGES

Genocide, crimes against humanity, war crimes, torture, terrorism and terrorist group membership.

DEVELOPMENTS IN 2015

One of the 40 suspects, Karenzi Karake, was arrested at London Heathrow airport by the Metropolitan police on 20 June 2015.

Following a hearing on 25 June 2015, he was released on a 1 million pound sterling conditional bail after the date for a full extradition hearing was set for 28 and 29 October 2015.

The hearing was however moved forward to 10 August 2015 without prior notice to the

Spanish authorities or the legal teams of victims. The Crown Prosecution Service indicated that the extradition request did not fulfil all the legal requirements (principle of double criminality). On 11 August 2015, General Karenzi Karake was released and returned to Rwanda.

CURRENT STATUS

Provisionally closed, pending the meeting of new procedural requirements (such as the presence of the accused person in Spanish territory)

FACTS

As commanding officer of the DMI between 1994 and 1997, General Karenzi Karake is accused of organizing various massacres committed in Nyakinama, Mukingo, Ruhengeri, Gisenyi and Cyangugu. He is involved in various crimes, including the murder of three Spanish nationals in 1997 and the killing of Hutu civilians in Rwanda and refugees in the Democratic Republic of Congo. He is also accused of crimes committed by the DMI during his mandate, between 1994-1997, such as the politically motivated murders of Emmanuelle Gapyisi and Félicien Gsatabazi. He allegedly ordered military operations with heavy weapons against civilian populations. In addition, he is accused of being responsible for the forced disappearances of prisoners committed in the Kami Military center, and their murders in 2002.

KARENZI KARAKE (END)

PROCEDURE

A criminal complaint was filed by relatives of victims in 2005. In 2008, after evidence including the statements of more than 50 protected witnesses was gathered, the investigating judge of the Spanish National Court Fernando Andreu issued an indictment and international and European arrest warrants against 40 high ranking officials of the RPA/RPF, including General Karenzi Karake. Rogatory commissions were sent to Rwanda, DRC and South Africa. However, in September 2015, the Supreme Court of Spain provisionally closed the case, pending the meeting of new procedural requirements such as the presence of the accused in the Spanish territory.

Based on this 2008 indictment, various NGO's challenged the application submitted by one of the suspects, Faustin Kayumba Nyamwasa, for refugee status in South Africa. This former Rwandan General is accused of international crimes related to the Spanish investigation. He fled Rwanda in February 2010 to South Africa with his family. On 22 June 2010, he was granted refugee status by South Africa.

For more information: See TRIAL website: <http://www.trial-ch.org/en/resources/trial-watch/trial-watch/profiles/profile/4914/action/show/controller/Profile.html>

TIBET CASE

CONTEXT

Closed proceedings against former Chinese officials for the alleged repression of the Tibetan population in the Tibet region during the 1980s and 1990s, including mass sterilization campaigns, the transfer of Chinese migrants into Tibet, control over religious activities, arbitrary detention and torture of dissidents.

SUSPECTS

Eight Chinese officials: Hu Jintao, former Party Secretary of the Tibet Autonomous Region from 1988 to 1992; Jiang Zemin, former President of the People's Republic of China (1993-2003), Former General Secretary of the Communist Party of China (1989-2002), Chairman of the Central Military Commission (1989 - 2004); Li Peng, former Chinese Prime Minister (1987-1998); Qiao Shi, former Vice Prime minister (1986-1997); Chen Kuiyuan, former Party Secretary (1992-2001); Ren Rong, Party Secretary, (1971-1980); Yin Fatang, Party Secretary (1980-1985); Deng Delyun, Chinese Minister for Family planning in the nineties.

COUNTRY OF RESIDENCE OF SUSPECTS

China

CHARGES

Genocide, crimes against humanity, torture and terrorism

DEVELOPMENTS IN 2015

Following the appeal lodged by the victims, the Criminal Chamber of the Supreme Court issued its judgment on 6 May 2015, upholding the resolution to close the Tibet Case due to the new procedural requirements introduced by the modification of the Judicial Power Act in 2014. In June 2015, the plaintiffs filed an appeal before the Constitutional Court.

CURRENT STATUS

Dismissal; under appeal

PROCEDURE

On 28 June 2005 the CAT filed a criminal lawsuit against eight defendants before the criminal chamber of the Spanish National Court (Audiencia Nacional, Sala de lo penal) for genocide, crimes against humanity, torture and terrorism committed against Tibetans in the late 1980s and 1990s. On 30 July 2008, this complaint was extended to include new cases of torture, as well as charges of genocide. On 30 March 2011, war crimes charges were also added to the case.

On 30 July 2008, another complaint was filed for crimes against humanity against eight other Chinese officials for crimes committed since 10 March 2008. However, on 26 February 2010, this case was dismissed as a consequence of the reform on universal jurisdiction.

On 10 February 2014, Judge Ismael Moreno issued five international arrest warrants against former Chinese officials (Jiang Zemin, Li Peng, Qiao Shi, Chen Kuiyuan, Deng Delyun).

However, on 23 June 2014, the criminal chamber of the Spanish national Court dismissed the case. It considered that under the new law of universal jurisdiction, Spanish courts did not have jurisdiction to investigate and judge the crimes committed, as the defendants were not Spanish, nor ordinarily resident in Spain, nor foreigners whose extradition had been denied by the Spanish authorities.

On 18 September 2014 the *Comité de Apoyo al Tíbet* (CAT) and the co-plaintiffs - the *Fundación Casa del Tíbet* and Thubten Wangchen - lodged an appeal before the Spanish Supreme Court, based on the existence of terrorism charges (not concerned by the universal jurisdiction reform) and on the Spanish nationality of one of the victims of the alleged crimes.

For more information: See Rights International Spain website: <http://rightsinternationalspain.org/>

THE JESUIT MURDER CASE

Context

Ongoing proceedings against former Salvadoran officials for alleged serious crimes under international law committed in El Salvador during the 1980-1992 internal armed conflict.

SUSPECTS

Twenty Salvadoran military officials

COUNTRY OF RESIDENCE OF SUSPECTS

El Salvador and United States of America (USA)

CHARGES

Crime against humanity; murder and terrorism

DEVELOPMENTS IN 2015

On 9 February 2015, the Spanish Public Prosecutor issued a report, denouncing the lack of due process in the proceedings opened in El Salvador. On 6 May 2015, the Spanish Supreme Court allowed Judge Eloy Velasco to continue the investigation, stating the lack of guarantees of independence and impartiality of the proceeding opened in El Salvador.

On 16 December 2015, Judge Eloy Velasco issued a new international arrest warrant against suspects in El Salvador. On 4 January 2016, the Spanish judge sent a new petition to Interpol, ordering the arrest of 17 former soldiers allegedly involved in the murders of the Jesuits.

On 5 and 6 February 2016, four Salvadoran officials were arrested by the civil national police from El Salvador by virtue of the international arrested warrant issued by the criminal chamber of the Spanish National Court (Audiencia Nacional, Sala de lo penal): Colonel Guillermo Alfredo Benavides Moreno, former director of the military school; Sergeant Ramiro Ávalos Vargas; Sergeant Tomás Zárpaté Castillo and Corporal Ángel Pérez Vásquez. The Salvadoran jurisdictions will have to react to the Spanish extradition request.

CURRENT STATUS

Under investigation

FACTS

From 1980 to 1992, El Salvador was divided by an internal armed conflict between the rebel Farabundo Martí National Liberation Front (FMLN) and the Government, led by the Nationalist Republican Alliance (ARENA). In this context, on 16 November 1989, six Jesuit priests, their housekeeper and her 16 years old daughter were killed at the Pastoral centre of José Simeón Cañas Central American University in San Salvador. Following the ratification of the Chapultepec Peace Accords on 16 January 1992, a Truth Commission was established to investigate crimes committed during the war. The Truth Commission investigated the murder of the six Jesuits, their housekeeper and her daughter. It concluded that these crimes were ordered by Salvadoran officials and executed by the Salvadoran armed forces.

THE JESUIT MURDER CASE (end)

PROCEDURE

On 13 November 2008, the Spanish Association for Human Rights (APDHE) and the Centre for Justice and Accountability (CJA) filed a complaint before the Spanish National Court against former Salvadoran President Alfredo Cristiani Burkard and fourteen former military officers and soldiers. On 13 January 2009, Judge Eloy Velasco charged fourteen former officers, including Colonel Ponce, former head of the Armed Forces at the time of the murders, General Rafael Humberto Larios, former Minister of Defence, Colonel Juan Orlando Zepeda, former Vice Minister of Defence, and Colonel Inocente Orlando Montano, former Vice Minister for Public Safety, with murder, crimes against humanity and terrorism for their role in the murders.

On 30 May 2011, six new defendants were added to the indictment, and international arrest warrants were issued. One of the defendants, Colonel Ponce, died of a heart attack in May 2011. On 6 October 2014, the criminal chamber of the Spanish National Court decided that Spain has jurisdiction to investigate and to prosecute the murder of the six Jesuits and their employees as a crime against humanity. The investigating judges used the charges of terrorism and the Spanish nationality of several victims to extend their investigation to all connected crimes, even crimes against humanity.

For more information: See Centre for Justice and Accountability website: www.cja.org/

FOCUS ON THE SAHARA CASE

This case investigates crimes of genocide, war crimes and torture allegedly committed by Moroccan officials against the Sahrawi population between 1975 and 1991. An association of victims and other representatives of civil society filed a complaint on 14 September 2006. On 29 October 2007, the then Spanish national judge Baltasar Garzon declared admissible the complaint and asserted Spain's jurisdiction under the principle of universal jurisdiction. In 2014, following the reform of universal jurisdiction, continuing with the case became problematic. Prosecutors and victims argued that the new requirements of the law were not applicable to this case, as Spanish jurisdictions could be based on the principle of territorial jurisdiction.

The judge validated this argument and confirmed the competence of Spanish jurisdiction on the grounds of territoriality. In addition, the complaint which was submitted in 2013 demonstrated that the alleged crimes of genocide, torture and war crimes committed in Western Sahara occurred during the first 20 days of February 1976, dates in which Spain had not yet abandoned the territory. On 9 April 2015, the Spanish judge issued an indictment against 11 Moroccan officials and an international arrest warrant against seven of them. On 22 May 2015, the indictment was expanded to a Moroccan official and an international arrest warrant was issued against him.

For more information: See FIBGAR website: <http://en.fibgar.org/>

FALUN GONG CASE

CONTEXT

Pending investigation against Chinese officials for allegedly committing crimes against humanity and torture against Falun Gong practitioners.

SUSPECTS

Former Chinese President Jiang Zemin is the most powerful person who has been accused of these crimes. Other high-ranking Chinese officials accused in this process are: Luo Gan, Bo Xilai, Jia Qinglin, Wu Guanzheng.

COUNTRY OF RESIDENCE OF SUSPECTS

China

CHARGES

Genocide and torture

DEVELOPMENTS IN 2015

The modification of the law constraining the application of universal jurisdiction in Spain led to the closure of the case. An appeal was launched on 30 July 2015 and it is now pending before the Constitutional Court.

CURRENT STATUS

Pending on decision of the Constitutional Court

FACTS

On 20 July 1999, Jiang Zemin allegedly started a campaign of persecution against Falun Gong practitioners, which ultimately led to attempts to exterminate them.

Estimates suggest that more than 200,000 practitioners have been tortured and killed as part of this campaign of hatred.

PROCEDURE

Four criminal complaints were brought before the Spanish National Court (Audiencia Nacional, Sala de lo penal) between 2003 and 2007 for the crimes of genocide and torture committed against almost 80 millions Falun Gong (Falun Dafa) practitioners.

Criminal complaints were admitted by the Second Chamber of the Spanish Supreme Court on 20 June 2006 and by the Constitutional Court on 22 October 2007, providing for one single investigation. This investigating phase gathered witnesses and victims' declarations, UN Human Rights Commission's reports, Kilgour–Matas Report and other reports by Amnesty International and Human Rights Watch.

The modification of the law constraining the application of universal jurisdiction in Spain led to the closing of the case. An appeal was launched on 30 July 2015 and it is now pending before the Constitutional Court.

In Argentina a case for the same crimes was also admitted and opened by Judge Octavio Aráoz de Lamadrid. The case is currently under investigation.

For more information: See FIBGAR website:<http://en.fibgar.org/>

FOCUS ON THE INOCENTE ORLANDO MONTANO CASE

CONTEXT

Ongoing proceedings for serious crimes under international law allegedly committed in El Salvador, during the 1980-1992 internal armed conflict.

SUSPECT

Officer in the military, Vice-Minister for Public Security (from 1 June 1989 to 2 March 1992) in El Salvador

COUNTRY OF RESIDENCE

The United States of America (USA)

CHARGES

Crimes against humanity

DEVELOPMENTS IN 2015

On 5 January 2016, Magistrate Judge Kimberly A. Swank of the Eastern District of North Carolina granted the extradition request for Inocente Orlando Montano to Spain. On 8 April 2015 the US government had filed a request seeking his extradition. He remained in custody during his extradition proceeding. However, Montano can still launch an appeal against this decision.

CURRENT STATUTE

Detained in the USA for immigration fraud and perjury

FACTS

See above, “the Jesuits murder case”

PROCEDURE IN THE US

On 23 August 2011, US authorities arrested Inocente Orlando Montano under charges of federal immigration fraud. He was indicted on 10 February 2012 for false declarations to the US authorities regarding the date of his entry to the territory and his military training in El Salvador. On September 2012, he pled guilty, acknowledging he had given false statements. His trial took place in August 2013 and he was sentenced to 21 months in prison on 27 August 2013. On 23 July 2014 the criminal chamber of the Spanish National Court (Audiencia Nacional, Sala de lo penal) submitted a supplemental brief to the US authorities in support of the pending request for extradition issued on 4 November 2011. In this request, the Spanish authority urged the US authorities to allow the extradition of Inocente Orlando Montano from the USA to Spain to face trial for the murder of the six Jesuits, their housekeeper and her daughter, committed in El Salvador on 16 November 1989.

For more information: See Centre for Justice and Accountability website: <http://cja.org/section.php?id=518>

THE GUANTANAMO CASE

CONTEXT

Investigations in Spain against unknown perpetrators for alleged torture committed against Spanish citizens at the US detention centre in Guantanamo Bay, Cuba.

SUSPECTS

Unknown US officials

COUNTRY OF RESIDENCE OF SUSPECTS

United States of America (USA)

CHARGES

Torture

DEVELOPMENTS IN 2015

On 17 July 2015, the investigating judge requested the criminal chamber of the Spanish National Court (Audiencia Nacional, Sala de lo penal) to suspend the investigations until suspects enter Spanish territory. This request reflects changes in Spain's universal jurisdiction law and subsequent Supreme Court decisions on its interpretation.

CURRENT STATUS

Investigation suspended

FACTS

Hamed Abderrahman Ahmed, Ikassrien Lahcen, Jamiel Abdul Latif al-Banna and Omar Deghayes, all former Guantánamo detainees, were held in intense heat in cells made of chicken-wire. They were subjected to constant loud music, were repeatedly interrogated without counsel, sexually assaulted and subjected to forced nudity and severe beatings.

PROCEDURE

In April 2009, a preliminary investigation was opened into “an authorized and systematic plan of torture and ill-treatment on persons deprived of their freedom without any charge and without the basic rights of any detainee, set out and required by applicable international conventions” in US detention facilities. The preliminary investigation did not name any potential defendants. In May 2009, the investigating judge issued formal requests to the United States and the United Kingdom seeking information regarding any pending investigations in the respective countries. To date, neither country has responded. The Office of the Prosecutor filed an appeal against the decision to open the case. The appeal was rejected by a decision from the Appeals Chamber of the Spanish National Court in April 2011, which confirmed that Spain has jurisdiction over the case. Two witnesses and one expert witness have already given testimony.

In January 2011, the Centre for Constitutional Rights (CCR) and the European Center for Constitutional and Human Rights (ECCHR) submitted a dossier to the criminal chamber of the Spanish National Court on the former commander of Guantánamo, Geoffrey Miller, providing evidence of his role in the torture of detainees at Guantánamo and in Iraq. On 10 January 2013, ECCHR and CCR were formally admitted to the case as representatives of two former detainees.

For more information: See ECCHR website: www.ecchr.de/spain-600.html

**FOCUS ON A PASSIVE
PERSONALITY
JURISDICTION CASE: THE
COUSO CASE**

CONTEXT

Closed investigation in Spain against three US soldiers for the alleged murder of José Couso, cameraman for the Spanish network Telecinco, during the Iraq war in 2003.

SUSPECT

Captain Philip Wolford (Captain of the 3rd Infantry Division of the US army in Iraq), Lieutenant Colonel Philip DeCamp and Sergeant Shawn Gibson

COUNTRY OF RESIDENCE OF SUSPECTS

United States of America (USA)

CHARGES

War crime (willful killing of a protected person)

CURRENT STATUTE

Closed

DEVELOPMENTS IN 2015

On 9 June 2015, the Central Investigative Court closed the case due to the amendment of the legislation on universal jurisdiction. On 25 November 2015, the Criminal Chamber of the Spanish National Court (Audiencia Nacional, Sala de lo penal) confirmed this decision, stating that the case could be reopened if the new procedural requirements were met (if the suspects came to Spanish territory, for example).

FACTS

On 8 April 2003, during the Iraq war, Sergeant Shawn Gibson, commander of a tank in the 3rd Infantry Division, received the order from Captain Philip Wolford to fire at the Palestine Hotel, despite the fact that this building was being used as a base for foreign journalists who were covering the battle. José Couso and Taras Protsyuk, a Ukrainian cameraman for Reuters, were killed.

PROCEDURE

In May 2003, Couso's family filed a complaint against the three members of the tank crew, Captain Philip Wolford, Lieutenant Colonel Philip DeCamp and Sergeant Shawn Gibson. On 19 October 2005, Judge Santiago Pedraz issued international arrest warrants against them for war crimes. On 4 October 2011, the soldiers were charged with war crimes, under Article 611(1) of the Spanish Criminal Code. The Judge ordered each of them to post a bail of one million euros as a security for the reparation proceedings. In the same decision the Judge ordered an investigation against General Buford Blount and Colonel David Perkins, hierarchic superiors of Lieutenant Colonel Philip De Camp.

On 5 June 2014 the criminal chamber of the Spanish National Court ruled that the criminal investigation into the killing of José Couso by US soldiers in Iraq in 2003 could be pursued, despite the new legislation on universal jurisdiction. This was revoked one year later.

For more information: See Rights International Spain website: <http://rightsinternationalspain.org/>



SWEDEN

SWEDEN

JUDICIAL DEVELOPMENTS

MOUHANNAD DROUBI CASE

Context

Ongoing proceedings in Sweden against a Free Syrian Army (FSA) militant for war crimes and torture committed during Syrian Civil War in 2011.

SUSPECTS

Mouhannad Droubi was a FSA militant who fought in the Syrian Civil War in 2011

COUNTRY OF RESIDENCE OF SUSPECTS

Sweden

CHARGES

War crime and torture

DEVELOPMENTS IN 2015

Mouhannad Droubi was arrested in Sweden on 4 October 2014 and indicted on 2 February 2015. His trial before the Södertörn District Court began on 10 February 2015 and lasted two days. An expert witness was called to testify on the non-international character of the armed conflict in Syria at the time. Mouhannad Droubi pleaded not guilty to the charges. On 26 February 2015, he was convicted of “extremely gross assault and violation of international law” for violating the Common article 3 of the Geneva Conventions, and customary international humanitarian law. He was sentenced to five years in prison, and appealed the judgment.

CURRENT STATUS

Sentenced to five years in prison; appeal pending.

FACTS

In May 2012, Mouhannad Droubi was recruited by the Free Syrian Army (FSA), an armed group taking part in the Syrian civil war between the Syrian government and several armed groups. Between 1 March 2012 and 31 July 2012, Mouhannad Droubi and other unidentified FSA militants allegedly assaulted a man affiliated with the Syrian state’s armed forces. The victim was repeatedly hit and kicked in the head and on the body with a truncheon, a whip, a pair of pliers and with bare hands. Mouhannad Droubi allegedly filmed the assault and uploaded the video on his Facebook page.

PROCEDURE

Mouhannad Droubi arrived in Sweden as a refugee in September 2013. He was granted asylum status and a permanent residency in December 2013. In July 2014, Swedish police came into possession of Mouhannad Droubi’s video of the assault. He was arrested on 4 October 2014.

For more information: See TRIAL website: <http://www.trial-ch.org/en/resources/trial-watch/trial-watch/profiles/profile/4702/action/show/controller/Profile/tab/fact.html>

FOCUS THE BERINKINDI

CASE:

CONTEXT

Ongoing trial in Sweden against Clever Berinkindi for crimes allegedly committed during the 1994 genocide in Rwanda.

SUSPECT

Alleged leader in attacks against Tutsi in Southern Rwanda during the Rwandan genocide in 1994. He obtained Swedish citizenship.

COUNTRY OF RESIDENCE OF SUSPECTS

Sweden

CHARGES

Genocide, gross offence and crimes against international law

CURRENT STATUTE

Detained since the 23 of September 2014; ongoing trial

DEVELOPMENTS IN 2015

Clever Berinkindi was indicted by the Stockholm District Court on 4 September 2015.

His trial started on 16 September 2015. On 20 September 2015, the Court travelled to Rwanda to visit the five locations of the alleged crimes, and hear statements from victims and witnesses in Kigali. The trial is set to end mid March 2016.

FACTS

Between 18 April and 31 May 1994, Clever Berinkindi allegedly led attacks and participated in the killings of ethnic Tutsi in five different locations, in the village of Nyamiyaga and the surrounding area in the prefecture of Butare in Rwanda.

PROCEDURE

On 24 September 2014, Clever Berinkindi and another suspect, both originally from Rwanda, were arrested in Sweden for their alleged participation in the genocide in Southern Rwanda. On 26 September 2014, the other suspect was released while Clever Berinkindi was held in prison awaiting trial. He is being tried by Swedish authorities due to having obtained Swedish citizenship.



SWITZERLAND

SWITZERLAND

JUDICIAL DEVELOPMENTS

ALI BIN FADHUL AL-BUAINAIN

Context

Ongoing proceedings against the Attorney General of Bahrain for torture allegedly committed in Bahrain in 2010.

SUSPECTS

Attorney General of Bahrain; Vice-President of the International Association of Prosecutors (IAP)

COUNTRY OF RESIDENCE OF SUSPECTS

Bahrain

CHARGES

Torture

DEVELOPMENTS IN 2015

On 9 September 2015, a British citizen, Jaafar Al-Hasabi, filed a criminal complaint with the prosecuting authorities in Bern against Bahraini Attorney General Ali Bin Fadhul Al-Buainain for his alleged participation in torture. On 13 September 2015, an application was filed with the Bern prosecutor for a summons to appear for interviewing. On 17 September 2015, the application was rejected, on grounds that the evidentiary threshold for these measures had not been met. At the same time, the prosecutor found sufficient evidence to open an investigation.

CURRENT STATUS

Under investigation

FACTS

Jaafar Al-Hasabi, a British citizen born in Bahrain, was detained and tortured in Bahrain in 2010 because of his alleged political activities. He and 22 other political activists were arrested and charged of belonging to a "terrorist network" aiming to overthrow the government. The group of detainees became known as "the Bahraini 23". During his incommunicado detention, he was submitted to electric shocks, beatings on the soles of the feet and stress positions. Despite the fact that the United Nations expressed their concerns regarding Jaafar Al-Hasabi's secret detention and the risk that he could endure torture, the Office of the Attorney General of Bahrain decided to authorize the extension of his detention twice.

PROCEDURE

On 8 September 2015, Jaafar Al-Hasabi, filed a criminal complaint in Bern against the Attorney General of Bahrain, Ali Bin Fadhul Al-Buainain, for facilitating torture. He was supported by four NGOs: the European Center for Constitutional and Human Rights (ECCHR), REDRESS, the Bahraini Institute for Rights and Democracy (BIRD) and TRIAL. This complaint was filed in anticipation of Ali Bin Fadhul Al-Buainain's attendance at the International Association of Prosecutors (IAP) annual conference in Switzerland on 16 September, where he was elected vice president of the organization. On 17 September 2015, Ali Bin Fadhul Al-Buainain returned to Bahrain. The investigation is pending.

For more information: See Trial and ECCHR websites: www.trial-ch.org/en/resources/trial-watch.html and http://www.ecchr.eu/en/our_work/international-crimes-and-accountability/bahrain/attorney-general.html

FOLLOW-UP ON THE ERWIN SPERISEN CASE

CONTEXT

Ongoing proceedings for serious crimes under international law allegedly committed in Guatemala in 2005 and 2006.

SUSPECT

Head of National Civilian Police (NCP) of Guatemala from 2004 to 2007. He has dual citizenship: Swiss and Guatemalan

COUNTRY OF RESIDENCE OF SUSPECTS

Switzerland

CHARGES

Extrajudicial executions in 2005 (three inmates who had escaped from the Infiernito prison) and in 2006 (assassination of seven inmates at the Pavón prison) in Guatemala.

CURRENT STATUTE

Condemnation upheld in appeal, detained in Switzerland

DEVELOPMENTS IN 2015

The appeal trial of Erwin Sperisen took place from 4 to 8 May 2015 before the Criminal Chamber of the Geneva Court of Appeal. On 12 May 2015, the Criminal Chamber upheld his life imprisonment sentence. In addition to the seven extra-judicial executions for which he was found guilty in the first instance, he was condemned for the murder of three fugitives from the prison “El Infiernito” (see below), as jointly responsible, but not as a direct perpetrator.

FACTS

In October 2005, nineteen prisoners escaped from Infiernito, a high security prison in Guatemala City. Erwin Sperisen allegedly set up a plan aimed at finding and executing the escaped prisoners; this was known as the “Gavilan Plan”. Nine prisoners were captured and three allegedly executed as a result of it.

In September 2006, Erwin Sperisen, along with 3000 NCP officers and members of the army, intervened in the Pavón prison, a high security prison controlled by prisoners, to restore State authority. This intervention ended in the arrest and the alleged extra-judicial execution of seven prisoners.

PROCEDURE

In 2008, several Swiss organizations filed a criminal complaint against Erwin Sperisen with the Office of the Prosecutor in Geneva, after discovering that he was living in Switzerland. He was arrested on 31 August 2012 in Geneva. In March 2013, the mother of a victim filed a complaint and joined the criminal proceedings. 14 witnesses travelled from Spain, France and Guatemala to be heard by the Swiss authorities. His trial opened on 15 May 2014 in Geneva. He was convicted on 6 June 2014 and sentenced to life imprisonment for the crimes he committed in the Pavón prison, but he was acquitted for alleged involvement in the “Gavilan Plan”. Erwin Sperisen appealed the conviction, but his sentence was upheld on 12 May 2015.

For more information: See Trial website: <http://www.trial-ch.org/guatemala-fr/sperisen.html>

ALIEU KOSIAH

Context

Ongoing investigation in Switzerland for serious crimes under international law allegedly committed in Liberia (Lofa County) between 1993 and 1995.

SUSPECTS

Former Liberian «United Liberation Movement of Liberia for Democracy» (ULIMO) Rebel Commander

COUNTRY OF RESIDENCE OF SUSPECTS

Switzerland

CHARGES

War crimes, such as systematic killings, targeting civilians

DEVELOPMENTS IN 2015

Investigations are still ongoing. On 15 January 2015, the detention order was renewed a first time until 9 May 2015.

CURRENT STATUS

Under investigation, held in provisional detention

FACTS

Alieu Kosiah allegedly committed war crimes, between 1993 and 1995, as commander of the ULIMO. This rebel group was fighting against the National Patriotic Front of Liberia (NPFL) of Charles Taylor, until 1996.

PROCEDURE

Seven Liberian victims filed a complaint in Switzerland against Alieu Kosiah for his alleged participation in war crimes and systematic killings committed between 1993 and 1995 in Lofa County, Northwestern Liberia. On 10 November 2014, Alieu Kosiah was arrested in Switzerland for his alleged involvement in war crimes committed between 1993 and 1995. On 13 November 2014, a Swiss Judge decided to hold him in detention.

For more information: See Civitas Maximas website: <http://civitas-maxima.org/>



UNITED KINGDOM

UNITED KINGDOM

JUDICIAL DEVELOPMENTS

COLONEL KUMAR LAMA

Context

Ongoing trial against a former Nepali official for serious crimes under international law allegedly committed in Nepal between 2005 and 2006, during the non-international armed conflict that tore the country apart.

SUSPECTS

Colonel in the Nepali Army

COUNTRY OF RESIDENCE OF SUSPECTS

Sudan

CHARGES

Torture

DEVELOPMENTS IN 2015

The investigation into the crimes allegedly committed by Kumar Lama was closed in 2014. His trial began on 24 February 2015 in London, before the Old Bailey (London's central criminal court). However, the trial was adjourned because no qualified interpreter was available for the hearing.

CURRENT STATUS

On trial

FACTS

In 2005, Colonel Kumar Lama allegedly participated in the torture of two detainees at an army barracks that was under his command. The torture took place during the nine-year-long internal conflict, which brought into opposition the Nepali Government and Maoist Insurgents. The conflict ended in 2006 following the signing of a Comprehensive Peace Agreement. Since the end of the conflict, army and police forces still enjoy immunity and there has been no investigation in Nepal into gross human rights abuses committed during the conflict.

PROCEDURE

Colonel Kumar Lama was arrested in the United Kingdom on 3 January 2013 when he was on leave from peacekeeping duty in Sudan. He claims to be entitled to immunity as he was acting on official duties in 2005, argues that he currently enjoys immunity as a United Nations peacekeeper, and claims that he has already been convicted and punished in Nepal under the Nepalese Torture Compensation Act. Kumar Lama was released on bail on 15 March 2013 and remains in the UK during his trial.

For More information: See Redress website: <http://www.redress.org/case-docket/colonel-kumar-lama>

Universal jurisdiction annual review / Overview

This table provides an overview of the pending universal jurisdiction cases in 2015. It aimed to facilitate the use of this report. While every effort has been made to ensure the accuracy of the information presented in each case, readers are advised to confirm the currency of the information cited.

CASE	CHARGES					COUNTRY OF COMMISSION	CURRENT STATUS	COUNTRY OF PROSECUTION	PAGE
	TORTURE	GENOCIDE	CRIMES AG. HUMANITY	WAR CRIMES	OTHER CHARGES				
Franco dictatorship	✓		✓			Spain	Under investigation	Argentina	10
Paraguayan Indigenous community		✓	✓			Paraguay	Under investigation	Argentina	11-12
Michel Desaedeleer			✓	✓		Liberia	Under house arrest; indicted	Belgium	14
Martina Johnson			✓	✓		Liberia	Under house arrest; indicted	Belgium	15
Lopez and Ceballos case					✓	Venezuela	Closed	Chile	17
The Iraqi twin brothers case					✓	Iraq	Under investigation; provisional detention	Finland	19
Pascal Simbikangwa		✓	✓			Rwanda	Sentenced; on appeal	France	21
Octavien Ngenzi & Tito Barahira		✓	✓			Rwanda	Detained; Referred to the Paris Criminal Court	France	22
Relizane (Mohamed brothers)	✓					Algeria	Case dismissed; on appeal	France	23
Wenceslas Munyeshyaka	✓	✓	✓			Rwanda	Case dismissed; on appeal	France	24

CASE	CHARGES					COUNTRY OF COMMISSION	CURRENT STATUS	COUNTRY OF PROSECUTION	PAGE
	TORTURE	GENOCIDE	CRIMES AG. HUMANITY	WAR CRIMES	OTHER CHARGES				
Amesys	✓					Libya	Under investigation	France	25
Qosmos	✓					Syria	Under investigation	France	26
Guantanamo case	✓					Cuba (Guantanamo Bay Us detention centre)	Under investigation	France	27
Syrian cases	✓					Syria	Under investigation	France	28
Onesphore Rwabukombe		✓				Rwanda	Condemned; on appeal	Germany	30
Ignace Murwanashyaka & Straton Musoni			✓	✓		Congo	Condemned	Germany	31
US Torture case	✓					Different locations	Under investigation	Germany	32
Syrian cases			✓	✓		Syria	Under investigation	Germany	32
Sadeq Alamyar				✓		Afghanistan	Under investigation; provisional detention	The Netherlands	34
Hissène Habré	✓		✓	✓		Chad	On Trial	Senegal	36-37
Paul Mwilambwe					✓ (Enforced disappearance)	Democratic Republic of Congo	Under investigation; provisional detention; indicted	Senegal	38
Boko Haram case			✓		✓ (terrorism)	Nigeria	Under investigation	Spain	40
Karenzi Karake	✓	✓	✓	✓	✓ (terrorism)	Rwanda/ DRC	Under investigation	Spain	41-42

CASE	CHARGES					COUNTRY OF COMMISSION	CURRENT STATUS	COUNTRY OF PROSECUTION	PAGE
	TORTURE	GENOCIDE	CRIMES AG. HUMANITY	WAR CRIMES	OTHER CHARGES				
Tibet	✓	✓	✓			China (Tibet)	Closed	Spain	43
The Jesuits Murder			✓			El Salvador	Under investigation; provisional detention; indicted	Spain	44-45
The Sahara case	✓	✓		✓		Morocco	Under investigation	Spain	45
Falung Gong case	✓		✓			China	Under investigation	Spain	46
Inocente Orlando Montana			✓			El Salvador	Pending extradition to Spain	Spain	47
Guantanamo	✓					Cuba (Guantanamo Bay Us detention centre)	Under investigation	Spain	48
José Couso				✓		Iraq	Case dismissed; on appeal	Spain	49
Mouhannad Droubi	✓			✓		Syria	Condemned; on appeal	Sweden	51
Clever Berindinki		✓			✓ (Gross offence under international law)	Rwanda	Under investigation	Sweden	52
Ali Bin Fadhul Al-Buainain	✓					Barhain	Under investigation	Switzerland	54
Erwin Sperisen					✓ (Extradjudicial killings)	Guatemala	Condemned on appeal	Switzerland	55

CASE	CHARGES					COUNTRY OF COMMISSION	CURRENT STATUS	COUNTRY OF PROSECUTION	PAGE
	TORTURE	GENOCIDE	CRIMES AG. HUMANITY	WAR CRIMES	OTHER CHARGES				
Alieu Kosiah				✓		Liberia	Under investigation; provisional detention	Switzerland	56
Colonel Kumar Lama	✓					Nepal	On trial	United Kingdom	58

ABOUT TRIAL

Founded in 2002, TRIAL is an association under Swiss law based in Geneva that puts the law at the service of victims of international crimes (genocide, crimes against humanity, war crimes, torture and enforced disappearances). TRIAL fights against the impunity of perpetrators and instigators of the most serious crimes under international law and their accomplices. The organization defends the interests of victims before Swiss and foreign courts, and various international human rights bodies. TRIAL also raises awareness among the authorities and the general public regarding the need for an efficient national and international justice system for the prosecution of crimes under international law. In the past 12 years, TRIAL has defended close to 360 victims through 145 international procedures concerning Algeria, Bosnia and Herzegovina, Burundi, Libya, Nepal, Russia and Tunisia. The organisation has submitted 40 reports to the UN and filed or supported over 120 domestic proceedings in Algeria, Bosnia and Herzegovina, Burundi, France, Nepal, Switzerland, Tunisia and the United Kingdom, a significant number of which have resulted in investigations, convictions or are currently still pending. For further information on TRIAL, please consult our website at www.trial-ch.org.

ABOUT ECCHR

European Center for Constitutional and Human Rights (ECCHR), Berlin, Germany: ECCHR is an independent, non-profit legal organization that enforces human rights by holding state and non-state actors responsible for egregious abuses through innovative strategic litigation. ECCHR focuses on cases that have the greatest likelihood of creating legal precedents in order to advance human rights around the world. For further information on ECCHR, please consult our website at www.ecchr.eu.

ABOUT FIDH

FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice. A broad mandate: FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights. A universal movement: FIDH was established in 1922, and today unites 178 member organisations in more than 100 countries around the world. FIDH coordinates and supports their activities and provides them with a voice at the international level. An independent organisation: Like its member organisations, FIDH is not linked to any party or religion and is independent of all governments. For further information on FIDH, please consult our website at www.fidh.org/La-Federation-internationale-des-ligues-des-droits-de-l-homme.

ABOUT FIBGAR

International Foundation Baltasar Garzón (FIBGAR) is a private, social, non-profit foundation, deeply committed to the defense and promotion of Human Rights and Universal Jurisdiction. Although FIBGAR was established in Spain in 2011, it is also present in Colombia, Argentina and Mexico. One of FIBGAR's firm convictions is to consider universal jurisdiction as a valuable instrument in order to fight against impunity and in defense of victims worldwide. Along with many other projects on human rights protection, an important line of action for FIBGAR is to promote universal jurisdiction through various initiatives such as the release of the Madrid-Buenos Aires Principles on Universal Jurisdiction in 2015, the denouncement of Boko Haram before the Spanish National Court, the promotion of the universal prosecution of economic and environmental crimes, drafting reports and conducting extensive research on International Criminal Law and the application of Universal Jurisdiction. For further information on FIBGAR, please consult our website at <http://en.fibgar.org/>

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