

# EU Update on International Crimes

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The *EU Update on International Crimes* outlines main Europe-wide developments in international criminal justice. For further information or comments, please contact Tara O'Leary: [tara@redress.org](mailto:tara@redress.org)



European Commission © Sébastien Bertrand

## Ensuring accountability for international crimes within EU borders -

### An EU Action Plan on Combating Impunity

Tara O'Leary, Universal Jurisdiction Project Coordinator, REDRESS

Proposals have recently been put forward to strengthen the EU's role in supporting its Member States to combat impunity for crimes under international law such as torture, war crimes, crimes against humanity and genocide within their own borders. A key component of these proposals has been the adoption of an EU Action Plan on Combating Impunity to ensure that suspected perpetrators of such crimes are unable to find a safe haven in Europe.

Recent deliberations on the need for increased EU engagement on the issue of impunity have included:

- In October and November 2013, the need for EU responses to impunity and the concept of an Action Plan were discussed during meetings of the EU Genocide Network and GENVAL, the 'Working Party on General Matters including Evaluation' of the Council of the EU Secretariat, which is responsible for developing and discussing EU policy related to serious and organised crime.
- At both of these meetings, delegates called for further exploration of this topic, while states including Belgium, France, the Netherlands, Slovakia and Slovenia expressed their support for an Action Plan. A discussion paper on this topic was also prepared by the Council of the EU Secretariat<sup>1</sup>.
- On 11 December 2013 the European Parliament adopted its "Annual Report on Human Rights and Democracy in the World 2012 and the European Union's policy on the matter". This included a call for the EU and Member States "to increase their efforts to fight impunity within the EU's own borders". Member States and EU institutions were also encouraged "to take into consideration the recommendations of the [EU Genocide Network]"<sup>2</sup>.
- In December 2013, submissions were sent to the European Commission, requesting that the issue of impunity for international crimes be included in strategic guidelines which the EU will adopt in 2014 to set out future policy in the area of Justice and Home Affairs (JHA).<sup>3</sup>

The Stockholm Programme, Europe's roadmap for JHA between 2010 and 2014, will soon expire. As part of discussions towards new priorities for the post-Stockholm era, the European Commission is currently preparing a "Communication on Future Initiatives in the Field of JHA Policies", which will provide a starting point for negotiations at the European Council in June 2014. This process will provide a further important opportunity for the EU to identify impunity as a shared criminal justice priority for the coming years.

REDRESS has supported efforts by the EU Genocide Network Secretariat and fellow civil society organisations to work toward the adoption of an EU Action

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Plan on Combating Impunity for Crimes under International Law.<sup>4</sup> An Action Plan could build on existing EU policy, take into account the recommendations of specialised practitioners and the EU Genocide Network, and consolidate existing legal tools and instruments which can assist practitioners in their work and help victims obtain justice. It could address three key areas:

- Clarifying and formalising the responsibilities of EU Institutions
- Promoting cooperation and best practice among national authorities, and
- Further developing the role of the EU Genocide Network.

An Action Plan or other forms of EU engagement are necessary because Member States and practitioners continue to face a number of challenges in responding to suspected perpetrators and victims of international crimes:

- EU Member States are confronted regularly with persons involved in crimes under international law and who are trying to enter and reside in the European Union.<sup>5</sup> For example, figures provided by the UK Home Office indicated that in 2012, UK immigration authorities identified and took action against 99 people on the basis of their suspected involvement in crimes under international law.<sup>6</sup> In the Netherlands, 160 cases of persons suspected of involvement of international crimes were pending before immigration authorities at the end of 2012.<sup>7</sup>
- Tens of thousands of persons from conflict-affected areas such as Syria, Afghanistan and elsewhere who may be victims and witnesses of such crimes are also present within, or are entering, the territories of Member States.<sup>8</sup>
- Despite the establishment of specialised war crimes units of police and/or prosecution teams<sup>9</sup>, and the growing role of the EU Genocide Network in supporting investigations and prosecutions in recent years<sup>10</sup>, only a small number of individuals have ever been prosecuted, and victims have rarely obtained justice and reparation.
- National authorities continue to face difficulties in obtaining evidence, identifying victims and witnesses of international crimes, and exchanging information between jurisdictions,

hampering investigations and damaging prospects for successful trials.

- Victims often do not know about the possibility to file complaints against suspects residing in Europe, about the existence of specialised war crimes units, or about their rights under the 2012 Directive on minimum standards for victims of crimes, which Member States must implement into their national legal systems by November 2015.

The proposed Action Plan and political negotiations in 2014 provide a significant opportunity to ensure that the EU does not become a safe haven for suspected perpetrators of crimes under international law. Criminal justice practitioners can and should be provided with the tools they need to respond effectively to the challenges of investigating and prosecuting these crimes, and to deliver justice to victims. ●

<sup>1</sup> See: <http://www.redress.org/downloads/publications/GENVAL%20discussion%20paper%20by%20European%20Council.pdf>

<sup>2</sup> European Parliament resolution of 11 December 2013 on the Annual Report on Human Rights and Democracy in the World 2012 and the European Union's policy on the matter, 2013/2152(INI) at 104.

<sup>3</sup> Read REDRESS Submission to the European Commission at: [http://ec.europa.eu/justice/events/assises-justice-2013/contributions\\_en.htm](http://ec.europa.eu/justice/events/assises-justice-2013/contributions_en.htm)

<sup>4</sup> See civil society letters to the EU Genocide Network (<http://www.redress.org/downloads/eu-genocide-network-letter.pdf>) and GENVAL (<http://www.redress.org/downloads/publications/Civil%20society%20letter%20to%20GENVAL%20clean%202.pdf>).

<sup>5</sup> This was recognised in Council Decision 2003/335/JHA on the investigation and prosecution of genocide, crimes against humanity and war crimes.

<sup>6</sup> See <http://www.bbc.co.uk/news/uk-23495314>. These were individuals who had applied for British citizenship, asylum or leave to remain in the UK.

<sup>7</sup> See <http://www.rijksoverheid.nl/documenten-en-publicaties/kamerstukken/2013/11/15/rapportagebrief-im.html> (in Dutch).

<sup>8</sup> For example, 28,005 persons from Afghanistan and 24,110 from Syria sought international protection in the EU in 2012; Annual Report on the Situation of Asylum in the EU 2012, European Asylum Support Office (EASO), 8 July 2013.

<sup>9</sup> Such units have been established in countries including Croatia, Belgium, Denmark, France, Germany, the Netherlands and Sweden.

<sup>10</sup> For an overview see "Looking Towards the Future: Update on the EU Genocide Network" by Matevz Pezdirc in EU Update on International Crimes, Issue 10, July 2013, available at <http://www.redress.org/downloads/publications/2013-June-Legal-update.pdf>.

## Corporate accountability for crimes under international law: Argor gold refinery investigated for pillage in Switzerland

Marios Kontos, REDRESS

On 4 November 2013 Swiss federal prosecutors confirmed that they had opened a criminal investigation into the gold refinery Argor-Heraeus SA on suspicion of money laundering linked to the processing of gold allegedly looted from the Democratic Republic of Congo (DRC). Specifically, prosecutors will investigate allegations that Argor knew gold which it handled in 2004 and 2005 had been taken from the Ituri region of the DRC during an armed conflict, therefore giving rise to alleged complicity in the war crime of pillage. It is suspected that proceeds from sale of the gold were used by the group to buy arms in breach of an arms embargo imposed by the UN Security Council.

The gold was allegedly purchased by Hussar Services Ltd, who contracted Argor to refine the gold between July 2004 and May 2005, allegedly with Argor's knowledge of its origin. The complaint in Switzerland was filed by TRIAL (Track Impunity Always). TRIAL, in conjunction with the Open Society Justice Initiative and the Conflict Awareness Project, have now also submitted criminal complaints to the UK authorities regarding related allegations against London-based Hussar Services Ltd, its director, and a Channel Islands-based affiliate. The case therefore sets an important precedent for international businesses who may be accountable for their omissions in conducting appropriate due diligence. ●

For further information see [www.stop-pillage.org](http://www.stop-pillage.org)

# The role of immigration authorities in combating impunity and enhancing cooperation in the Netherlands

Peter ten Hove, Operational Manager of the International Crimes Unit,  
Dutch Immigration and Naturalization Service

Immigration officers in EU Member States have an important role to play when it comes to fighting impunity with regard to international crimes. In many respects they are the eyes and ears of law enforcement agencies, because they are often the first to be confronted with alleged perpetrators as well as victims and witnesses of core international crimes.

The Dutch authorities acknowledged this in the mid-1990s, when a dedicated team of specialists was established within the Immigration and Naturalisation Service (IND). The unit investigates cases in which Article 1F of the 1951 Convention Relating to the Status of Refugees might be applicable.

**Article 1F** provides that asylum status will not apply to any person in relation to whom there are serious reasons for considering that an applicant has committed a crime against peace, war crimes or crimes against humanity as defined in any international legal instrument dealing with any such crimes. Asylum status must also be denied to persons suspected of "other serious non-political crime" or those "guilty of acts contrary to the purposes and principles of the United Nations".

Nowadays the 1F unit consists of some 20 senior immigration officers, and since its foundation has excluded some 800 immigrants from refugee status or regular residence permits in the Netherlands. Furthermore the unit may decide to withdraw residence permits or revoke the citizenship of immigrants whose involvement in international crimes is only discovered after they have been granted immigration status. In addition, through its efforts and close cooperation with established war crimes teams within the National Police and the Office of the Prosecutor, at least seven suspects have been arrested, of which six have been convicted and sentenced by (inter)national courts.

## Best practices

From an early stage immigration files related to exclusion on the basis of Article 1F were brought within the mandate of the prosecutor and the National Police. Procedural and judicial safeguards were established, which enabled closer cooperation and cross-fertilization. Specialised trainings for immigration officers were conducted. Recently, the 1F unit has also coordinated the exclusion module of the European Asylum Curriculum (EAC) which is focused on providing training for immigration officials across the EU on the applicable legal framework, the detection of exclusion cases, and the assessment and application of Article 1F.<sup>1</sup>

Dutch authorities have also established an interdepartmental programme focused on enhancing overall efforts to combat core international crimes. This set out an overall strategy and established a national Task Force on International Crimes, composed of all national authorities who are involved in efforts to combat impunity and which holds regular coordination meetings. This comprehensive approach created a breeding ground for enhanced practical cooperation and addressed issues related to the prevention of entry, detection and law enforcement for cases of suspected perpetrators of international crimes. In addition, awareness was created regarding the role and position of victims and witnesses which we might encounter in our daily work.

## Challenges

International cooperation between immigration offices needs to be strengthened through the establishment of National Contact Points or specialized units so as to develop a comprehensive approach to cross-border and enforcement issues arising in these cases. A common European approach will be required in due time. The EU Genocide Network sets a positive example and has already advocated for a multidisciplinary approach between law enforcement agencies and immigration offices. From a migration point of view, the Common European Asylum System, the EAC exclusion module and the establishment of the European Asylum Support Office may well be considered as first steps in the right direction.



## Arab Spring and beyond: safeguarding the integrity and acceptance of international protection.

Recently, the 1F unit also initiated a project under the European Refugee Fund<sup>2</sup> which is envisaged to run officially from 2014 until June 2015. Its focus will be on securing, enlarging, sharing and providing information and documentation as well as knowledge and expertise on efforts to identify and address migration issues related to suspected perpetrators of international crimes. It will provide new products and services for immigration officers and reshape instruments focusing on prevention of entry, detection of exclusion cases and law enforcement. We will seek and advocate for closer international cooperation by virtue of establishing a physical and/or virtual platform and thus strengthen existing networks and partnerships among immigration practitioners. With this in mind, we welcome your ideas and suggestions, as well as the initiative to adopt an EU Action Plan on Combating Impunity.<sup>3</sup> ●

<sup>1</sup> The European Asylum Curriculum is a common vocational training system designed mainly for asylum officials throughout the EU. It is overseen by the European Asylum Support Office (EASO), an EU institution responsible for enhancing the quality and ensuring the harmonisation of the Common European Asylum System. For more see <http://easo.europa.eu/about-us/tasks-of-easo/training-quality/>.

<sup>2</sup> The European Refugee Fund is provided by the European Commission to support EU countries' efforts in receiving refugees and displaced persons and in guaranteeing access to consistent, fair and effective asylum procedures across all Member States.

<sup>3</sup> For more information see "Ensuring accountability for international crimes within EU borders - An EU Action Plan on Combating Impunity," p. 1.



## Focus on Spain: Interview

**Carlos Castresana-Fernández**, Public Prosecutor of the Supreme Court of Spain, Visiting Professor at Haverford College, Pennsylvania, and former head of the International Commission Against Impunity in Guatemala (CICIG)  
**Lydia Vicente Márquez**, Executive Director of Rights International Spain

**Q1 Your respective work has a strong focus on the investigation and prosecution of crimes under international law in Spain. Based on your experiences, what do you see as the key advancements in universal jurisdiction in the 15 years since the Spanish arrest warrant against Augusto Pinochet?**

**Carlos:** The Pinochet case has been a turning point in three senses. Firstly, it illustrates the effectiveness of universal jurisdiction, especially when several extraterritorial domestic jurisdictions cooperate and coordinate their efforts to expand the field of justice and reduce the scope of impunity. We say international criminals are *hostis humanae generis* (“the enemy of mankind”), but the challenge is to make this proclamation a fact. Second, Pinochet has shown that immunity from prosecution, even for heads of state, is not acceptable when dealing with international crimes: for example, the extradition and trial of Fujimori in Peru was easier thanks to the Pinochet precedent. Third, in Pinochet the universal prosecution “pulled the trigger” of the territorial domestic jurisdiction. This is the real happy end of the story: perpetrators being made accountable in Chile and victims protected by their own national courts. Investigations and attempted prosecutions of Pinochet in Spain, the UK, Belgium, Switzerland and France ended up removing political obstacles to his prosecution in Chile.

**Lydia:** Universal jurisdiction proceedings in Spain have certainly played an important role in developing the understanding and application of international law by the judiciary in Spain. In the last decade, a number of independent judges from the Spanish National Court (*Audiencia Nacional*) have come to the forefront in seeking international justice and accountability for serious crimes under international law. In doing so, Spanish courts have played a key role in the development and consolidation of principles and norms of international human rights and criminal law. One such example includes rulings on the non-applicability of amnesty laws in Chile and Argentina in the *Pinochet* and *Scilingo* cases.

**Q2 What are some of the key remaining challenges to successfully combating impunity? Can you provide some examples of how national authorities can successfully address these?**

**Carlos:** International justice is political in nature. International courts are powerful, but at the same time slow, expensive, and sometimes politically biased or controlled. Moreover, they are powerful engines, but they do not have wheels: they cannot wiretap, arrest, order searches, freeze assets, etc. Domestic courts, on the other hand, can be more effective, reasonably independent, faster, cheaper, and have the tools and the authority. The challenge ahead is to get international and domestic courts building a partnership to reduce impunity: connect the engine to the wheels and the car will transport us to justice.

**Lydia:** The interests of Spanish judges and lawyers in international criminal and human rights law have yet to become institutionalised in the Spanish legal system and still rely heavily on the commitment and discretion of individual lawyers and judges. Furthermore, in recent years major setbacks have undermined the application of international law in Spain, in that do-

mestic legal obstacles prevail over international law norms and principles. The reform of Article 23.4 of the Organic Act on Judiciary Power (*Ley Orgánica del Poder Judicial*) in 2009<sup>1</sup>, for example, restricted the principle of universal jurisdiction by requiring a jurisdictional nexus through presence of the victims or alleged perpetrators in Spain, as well applying the principle of subsidiarity in that no other country can be pursuing the case.<sup>2</sup> In Rights International Spain we believe there is still room to ensure that victims continue to have access to justice in Spain, including on the basis of universal jurisdiction. Courses and training addressing international human rights and criminal law for the judicial and legal sector are crucial in this respect.



**Q3. In November 2013 the Criminal Chamber of the Audiencia Nacional issued a ruling in the Tibet genocide case on an appeal filed by the complainants, revoking a decision by the investigative judge to refuse to issue arrest orders against five former Chinese officials. A number of other cases have been pending before the Audiencia Nacional for several years now. What in your view has prevented further progress? Would it help to have a specialised war crimes unit of prosecutors and investigators?**

**Lydia:** In addition to the recent decision in the Tibet case, there are a number of other cases which are still open with investigations ongoing. Even if they are slowly moving forward, the fact that these cases are still open is positive. In the case of El Salvador, for example, the investigative judge issued international arrest warrants in 2011 which are still pending.<sup>3</sup> In the Spanish system, the investigation procedure is led by investigative judges. A key challenge has been that prosecutors, on the other hand, have never initiated investigations *motu proprio* in these types of cases. Current proposals to reform the Criminal Procedure Act giving the prerogative to investigate such cases to the prosecution raise a number of concerns in this respect. However, this reform would certainly be a good opportunity to consid-

der the establishment of a war crimes unit, which could help to address some of these obstacles to progress.

In addition, judges in universal jurisdiction cases have raised the issue of a lack of judicial cooperation. For example, in the Couso case (concerning the 2003 death in Iraq of a journalist during an attack on the 'Palestine Hotel' by US forces), the investigative judge recently called on the Spanish government to remedy breaches of the extradition treaty between Spain and the US. The breaches had resulted from a lack of cooperation between the US and Spanish courts, including a failure to serve or notify indictments on the accused.

**Carlos:** The lawyers in the *Tibet* case made an excellent job gathering evidence, the consequence being this decision. I am not optimistic in the short term, however, because political pressure from China could lead to another legal amendment in Spain even more restrictive than the previous one in 2009. This is why I insist that the universal jurisdiction only will succeed if other jurisdictions add their efforts.

#### **Q4 What do you think needs to be done to ensure that victims of international crimes can play a more meaningful role in these cases and access reparation?**

**Lydia:** Victims are the true driving force behind universal jurisdiction cases in Spain. They are filing complaints and provide statements and other evidence. Due to their patience, trust and energy, they always seem to find the thread that needs to be followed up on. We have to persist in our efforts to keep universal jurisdiction alive, promoting informed understanding of this principle among the judicial and legal sectors. A positive development within the EU is the new 2012 Directive establishing minimum standards on the rights, support and protection of (all) victims of crime that Member States have the duty to transpose by 2015.

**Carlos:** We need to build a transnational network of friendly jurisdictions for the successful exercise of universal prosecu-

tions. This is the only way of counteracting the political pressure that isolated jurisdictions suffer. The 20<sup>th</sup> was the century

of the rights of the defendants to a due process. This goal has already been achieved. The 21<sup>st</sup> must be the century of the rights of the victims. ●

<sup>1</sup> An overview of the amendments to Spanish legislation on universal jurisdiction by Manuel Ollé Sesé is available in the November 2010 edition of *EU Update on International Crimes*, available at [http://www.redress.org/EU\\_Newsletter\\_Nov\\_2010.pdf](http://www.redress.org/EU_Newsletter_Nov_2010.pdf).

<sup>2</sup> A further example includes Article 7 of the Cooperation Act with the ICC (*Ley Orgánica 18/2003 de Cooperación con la Corte Penal Internacional*), which provides that in the event of a complaint filed in Spain by non-Spanish nationals concerning crimes committed outside Spanish territory, where the ICC has competence the complainant will be informed of the possibility of going to the ICC. In the *Flotilla* case, the prosecutor argued that this provision (article 7) was a legal obstacle to pursuing the investigation in Spain and thus requested that the judge to close the case. See (in Spanish):

<http://ris.hrahead.org/areas-de-trabajo/jurisdiccion-universal/analisis-juridicos/analisisdelinformedelafiscaliaenelasuntodetofilladelalibertadespananoquiereinvestigarloscrimenosederechointernacional>

<sup>3</sup> An overview of El Salvador "Jesuits Massacre" case is available at <http://www.cja.org/article.php?list=type&type=84>.

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## **Accountability of diplomatic actors for international crimes: Resignation of Colombian Ambassador to Austria, Freddy Padilla de León**

**Marios Kontos, REDRESS**

On 4 October 2013 the Colombian Embassy in Austria announced that its Ambassador, Freddy Padilla de León, had resigned and would return to Colombia. His resignation took place shortly after the European Center for Constitutional and Human Rights (ECCHR) compiled evidence linking him with the killings of hundreds of civilians in his previous position as General Commander of Colombia's Armed Forces, which he held between 2006 and 2010. The allegations relate to the practice of "false positives" (*falsos positivos*): indiscriminate killings of civilians by the army, who subsequently presented their bodies as combat casualties so as to inflate operational figures and obtain professional compensation such as promotions and vacations. ECCHR allege that the crimes were a common practice by the Colombian military on a scale amounting to crimes against humanity. Those allegedly responsible for these crimes include high-ranking military officials, including Padilla, either as direct perpetrators or under their command responsibility by failing to prevent or punish their subordinates during and after the escalation of these killings.

ECCHR submitted evidence to the ministries of foreign affairs of Colombia, Austria and the other countries where Padilla was affiliated as Colombia's diplomatic representative: the Czech Republic, Croatia, Serbia, Slovakia, Slovenia, and Hungary. The evidence was accompanied by a request to declare Padilla "persona non grata", so that his diplomatic immunity would be lifted and he could be investigated with a view to prosecution in Austria. Austrian authorities reportedly did begin investigations in connection with Padilla's alleged crimes prior to his resignation and return to Colombia. The case illustrates the responsibility of receiving states to conduct requisite investigations before accepting a diplomat onto its territory. ●

For further information see [www.ecchr.de](http://www.ecchr.de)

# The role of immigration authorities in combating impunity: Perspectives from South Africa

Angela Mudukuti, Project lawyer, International Criminal Justice, Southern Africa Litigation Centre

South African immigration authorities are akin to gatekeepers entrusted with the responsibility to protect the borders of the Republic of South Africa. Given South Africa's position as an economically stable and peaceful African country, it is a popular destination for many and has become a sanctuary for refugees and asylum seekers. Of particular interest to the Southern Africa Litigation Centre (SALC) was the refugee application made by Rwandan Lieutenant-General Faustin Kayumba Nyamwasa.



Protesters wearing Zimbabwe flags. Photo © John Rohan, flickr

Nyamwasa was a high ranking member of the Rwandan Patriotic Army (RPA) between 1990 and 1998. Between 1994 and 1998 he allegedly commanded troops stationed on the border between Zaire (which, in 1997, was re-named the Democratic Republic of Congo (DRC)) and Rwanda. The RPA participated in warfare in Congo and is allegedly responsible for the perpetration of war crimes and crimes against humanity in both territories. A United Nations report detailed some of the crimes committed, including an attack on a Red Cross facility, the killing of refugees (including children) and the massacre of Hutu refugees in 1997.<sup>1</sup> Nyamwasa's known seniority within the RPA at this time provides serious reason to believe that he, either directly or by virtue of his command authority, is responsible for the commission of crimes in the region.

Nyamwasa is the subject of extradition requests from three separate states: Spain, France, and Rwanda. The Spanish indictment,<sup>2</sup> which formed the basis of an extradition request to South Africa, was issued in February 2008. It charges Nyamwasa and other formerly high-ranking officials of the Rwandan military with crimes against humanity and war crimes allegedly perpetrated against civilians in Rwanda and the DRC between 1990 and 2002. The alleged crimes include the murder of three Spanish nationals and the massacre of 2500 Hutu refugees at the Byumba football stadium. The French indictment and extradition request relate to the 1994 aeroplane crash that resulted in the death of a number of people including former Rwandan President Habyarimana and three French nationals. The Rwandan extradition request is based on charges connecting Nyamwasa to fatal grenade attacks in Kigali in 2010.

Despite the extradition requests and his suspected involvement in war crimes and crimes against humanity, Nyamwasa was granted refugee status in 2010 by the Crown Mines Refugee Reception Office in Johannesburg, South Africa.

In order to maintain the integrity of the South African refugee system and to prevent suspected perpetrators of odious crimes from finding sanctuary in South Africa, SALC in conjunction with the Consortium for Refugees and Migrants in South Africa (CoRMSA) launched a court application in the High Court seeking judicial review of the decision to grant Nyamwasa refugee status. Final arguments were heard in the case on 17 May 2013 and judgment is expected very soon.

SALC submitted that, Nyamwasa, as a suspected war criminal, is ineligible for refugee status in accordance with South Africa's Refugees Act 130 of 1998. Section 4(1)(a) of the Act clearly and unequivocally states that:

*"A person does not qualify for refugee status for the purposes of this Act if there is reason to believe that he or she – (a) has committed a crime against peace, a war crime or a crime against humanity, as defined in any international legal instrument dealing with any such crimes."*

This aligns with international exclusionary principles articulated in international and regional instruments such as the United Nations Convention relating to the Status of Refugees 1951,<sup>3</sup> the United Nations Protocol Relating to the Status of Refugees 1967, and the Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969.<sup>4</sup> South Africa acceded to all of these in 1996.

This case is of great significance as it pertains to the interpretation and administration of South Africa's Refugees Act in accordance with international law. It also represents the intersection between refugee law and international criminal law. Immigration authorities have a duty to combat impunity, and awarding refugee status to suspected perpetrators goes against the founding tenets of refugee law which is committed to the protection of the persecuted not the persecutors.

South Africa is duty bound to ensure that it does not become a safe haven for alleged perpetrators of international crimes and must be committed to upholding legally sound and transparent decisions. SALC aims to encourage compliance with international law, to ensure that those who are in genuine need of protection benefit from the system. Individuals suspected of having committed international crimes must face justice, and to that end, gatekeepers must remain vigilant and prevent the misuse of refugee law. ●

<sup>1</sup> This report does not include the names of suspected perpetrators.

<sup>2</sup> For an overview of the indictment and the Spanish courts assertion of jurisdiction of these crimes see "The Spanish Indictment of High-Ranking Rwandan Officials", *Journal of International Criminal Justice* 6 (2008) p.1003.

<sup>3</sup> Article 1(f).

<sup>4</sup> Article 1 (5).

For more information visit

[www.southernafricalitigationcentre.org](http://www.southernafricalitigationcentre.org)



## Civil society assistance to victims as civil parties in France: Lessons learned and best practice

Clémence Bectarte, Lawyer at the Paris Bar and Coordinator of FIDH's Litigation Action Group

FIDH has longstanding experience in supporting victims of international crimes in extraterritorial jurisdiction cases, mainly but not exclusively before French courts. Through the unique combination of its Litigation Action Group (LAG), a network of lawyers, magistrates and law professors, and FIDH's 178 member organisations around the world – working in the field and often the main interlocutors for victims during situations of grave human rights violations – FIDH is able to support victims in their search for justice. This includes connecting victims with lawyers who may be able to represent them as civil parties to international criminal cases, as well as joining cases directly as a civil party in order to develop strategic litigation in these cases.

FIDH's priority is of course to assist victims to bring cases before the courts of the country where the crimes have been perpetrated, but it is often not possible due to the lack of political willingness or capacity of the national jurisdiction concerned. In these circumstances, the LAG provides legal assistance to victims to help them bring their case forward to alternative courts which have jurisdiction to hear the case under extraterritorial or other international legal principles.

LAG is currently representing victims in some dozen cases before French courts, especially those which are being dealt with by the Specialised Unit for the prosecution of international crimes, which was established in January 2012 at the Paris Tribunal de Grand Instance. Before the creation of this unit, French prosecutors were very reluctant to initiate judicial proceedings under universal jurisdiction. The consequence was that victims had to trigger the opening of judicial proceedings themselves by filing complaints. This meant that there was no process as such to identify victims who would have been eligible to participate in cases which were already open; rather, the issue at stake was to select only cases which were potentially strong enough to trigger the opening of an investigation. The role of victims was therefore crucial, as without them nothing was happening.

Despite the importance of their role, victims and their lawyers nonetheless faced several obstacles due to the lack of willingness of French authorities to investigate these cases. For example, little if any progress was made on many cases for years after they were filed and victims and their lawyers were quite systematically faced the opposition of Prosecutors to the progression of these cases. However, victims have, used the procedural means available under French law to overcome such obstacles. For example, their status as civil parties offers them and their lawyers extended powers to act during the course of the investigation: they have access to the case file and they can ask for the court to hear witnesses or to investigate, and they may submit evidence and testimonies directly to the court. In this regard, the role of NGOs accompanying and supporting victims is essential to constitute the link in addressing their very concrete concerns about participation, security and access to reparation, as well as the legal and judicial issues at stake.

Civil society had hoped that this situation would change with the creation of the specialised unit in January 2012. Although the creation of the specialised unit has undoubtedly facilitated the conduct of investigations concerning international crimes,

two years after its creation, things have not radically changed in terms of outreach to victims. This aspect still needs to be enhanced and developed in order for victims to have precise information on their cases and the situations which are under the scope of the specialised unit, to enable them to join the proceedings and strengthen their ability to access justice and reparation.



Practitioners' Seminar in The Hague, 28 October 2013, © REDRESS

Of course NGOs, such as FIDH, engaged in these proceedings as civil parties, can work to bring victims into these proceedings, but this should not be the responsibility of NGOs, but rather the authorities. Extraterritorial proceedings are by essence taking place (far) away from the crime scene, from victims and from the political context in which they were perpetrated. They are crucial when there is no hope of justice in the countries where crimes were committed, but it is essential to maximize their impact so that victims benefit directly from these legal proceedings.

The first trial in France of a suspect of the Rwandan genocide, Pascal Simbikangwa, is scheduled to open before the Paris Criminal Court on 4 February 2014. It is of course a huge step forward for French judicial system to be able to organise this trial, as the first complaint against a Rwandan suspect who had sought refuge in France dates back to 1995; Simbikangwa himself was first arrested in 2008. However, most regrettably in a trial concerning a genocide, this hearing will most probably take place without any victims participating as civil parties. This situation illustrates the progress which needs to be made in terms of outreach to victims in relation to current and future investigations and prosecutions of international crimes in France. In particular, experience should be drawn from other European specialised units, who have developed specific programmes of outreach and information to victims. ●

***SAVE THE DATE: On 24 March 2014 REDRESS and partners will host a conference in Brussels on "Implementing the EU Directive on Minimum Standards for Victims of Crime: Delivering Justice to Victims of Serious International Crimes in the EU"***

# Enhancing cooperation on international crimes in the UK: The CPS Community Involvement Panel on War Crimes, Crimes against Humanity and Genocide

Deborah Walsh, Deputy Head of Special Crime and Counterterrorism, Crown Prosecution Service



Scales of the Justice at the Old Bailey,  
Photo © Citizensheep, flickr



## CPS

Logo of the CPS

In May 2009, following the decision of the Crown Prosecution Service (CPS) not to proceed with a prosecution of a suspected war criminal in the UK, a meeting was held with REDRESS and Amnesty International to explain how the CPS deals with international crime and what is needed to be able to pursue a prosecution of this type. It was decided that it would be helpful to set up what the CPS terms a “Community Involvement Panel” on War Crimes, Crimes against Humanity and Genocide with leading victims’ NGOs being invited to attend.

As Deputy Head of the Special Crime and Counter Terrorism Division within the CPS, I was asked to chair these meetings, the first of which took place in October 2009. A focus was placed on the rights and interests of victims and witnesses in such cases, which are often evidentially complex for prosecutors, but incredibly traumatic for those affected. The value and significance accorded to this Panel can be demonstrated by the attendance at the inaugural meeting of the then-Director of Public Prosecutions (DPP), Keir Starmer QC, and the attendance at the upcoming meeting in February 2014 by his successor, Alison Saunders, who was appointed on 1 November 2013. Membership has grown and the Panel is now attended by NGOs, CPS lawyers, officers from the Metropolitan Police Service, academics, solicitors and representatives of the United Kingdom Border Force and the Foreign and Commonwealth Office.

The views of experts in the field often prove invaluable for successful investigations and prosecutions; the aims of the Panel meetings include providing a forum for the CPS to consult with and inform NGOs on CPS policy in relation to the prosecution of such cases, through which NGOs can feed in views to the CPS, and for on-going dialogue on issues of concern and relevance. For example, when the law was changed in 2011 so that applica-

tions for private arrest warrants for international crimes require DPP consent<sup>1</sup>, we (CPS) decided that the public should know what our approach to such applications would be. We drafted guidelines which we then discussed and agreed at the Panel meeting and which have now been published on our website [www.cps.gov.uk](http://www.cps.gov.uk).

The Panel meetings were initially held every six months. However, by request, the frequency of these meetings has now increased to every three months, and at every second meeting we consider issues on a thematic basis. For example, meetings in 2013 have included a presentation from the Foreign and Commonwealth Office about Special Mission Immunity and an explanation of a new pilot process by which the Government will be informed of inward visits which may qualify for special mission status.<sup>2</sup> At its most recent meeting, the Panel was provided with a presentation from John Jones QC, a defence counsel experienced in the practice of both domestic courts and international criminal tribunals, about the application of command responsibility in international and domestic law.

I am also the UK representative at the European Network of Contact Points for the investigation and prosecution of genocide, crimes against humanity and war crimes (the “EU Genocide Network”), which meets twice a year. Several NGO Panel members also attend the open sessions of these meetings. We are delighted that the Network has recognised the value of our Panel meetings as follows:

*“The Members of the Network take note of the work and endeavours done by the civil society and NGOs in the identification of suspects, witnesses and victims. The Network recommends law enforcement and prosecution services to work closely with NGOs in efforts to strengthen the relationship between them. Moreover, it strongly recommends following the example of UK in the establishment of community panels, which consist of organized dialogue between law enforcement and prosecution authorities and the civil society and others.”<sup>3</sup>*

<sup>1</sup> See s153 of the Police Reform and Social Responsibility Act 2011

<sup>2</sup> For more information about this policy, see the Ministerial Statement of 4 March 2013, [http://www.dodsmonitoring.com/downloads/WMS/WMS\\_2013/Mar\\_04\\_2013/WMS6.pdf](http://www.dodsmonitoring.com/downloads/WMS/WMS_2013/Mar_04_2013/WMS6.pdf)

<sup>3</sup> Final Conclusions of the 13<sup>th</sup> meeting of the EU Genocide Network, 7-8 November 2012, para 4.



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