# 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**

The International Criminal Court © ICC-CPI

## In this bulletin



## "Getting the job done" – Closing the gap between international and domestic investigations of international crimes

**Bill Rosato**, Team Leader, Libya Investigation Team,
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Investigators at the Office of the Prosecutor (OTP) of the International Criminal Court (ICC) are responsible for investigating serious crimes[1] yet their power to do so rests largely on the willingness of States to cooperate. Likewise, they are tasked with preserving the wellbeing of witnesses[2] but their ability to conceal witness identities and physically protect them is limited. There is therefore a disjunction between what investigators should be able to do and what they can actually do. In order to overcome this obstacle the OTP is developing strategies and partnerships which will allow it to maximise the efficacy of its investigations.

The interplay between the obligation to investigate, the obligation to protect and disclose, the limited powers available to the OTP under Part 9 of the Statute, regarding "International Cooperation and Judicial Assistance",[3] and the relatively small budget of the Investigations Division compared to national law enforcement (around 12 million euros in 2014) mean that the OTP's best investigative strategy will often be to cooperate with domestic law enforcement agencies.

Investigations of "international crimes" have a lot in common with national-level investigations in that enquiries begin with efforts to trace and interview persons present at the crime scene, and seize the materials they or other "first responders" have collected at the scene. With this in mind, the OTP is making efforts to both improve its response times and its efforts to trace people who left the scene: evacuees, refugees, travellers and suspects as well as the "first responders": national authorities, United Nations investigators, NGOs and the media. Among the first responders, the OTP is prioritising partnerships with domestic immigration and war crimes units (WCUs) in states that are at the forefront of dealing with the outflows from the scene.

Domestic law enforcement and immigration authorities outside the crime scene are often in a position to take proactive steps to gather information from people – evacuees, refugees, suspects - travelling to and from situation countries and, crucially, could obtain their consent to share that information freely with the ICC. Consent from the person providing the information can be critical in overcoming the legal and data protection issues which may hamper information-sharing. The OTP also seeks to move beyond a "request based" system where states act largely in response to enquiries from the OTP to a more proactive system whereby partners spontaneously collect and provide information to the OTP. For example, in response to the Boston bombing, British airport police put up signs asking marathon runners to make themselves known to police. The US authorities did not ask for these immediate steps to be taken to preserve potentially vital evidence but would

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be in a position to derive the benefit.

In addition there is a need to foster an understanding that "international crimes" can be part of the normal spectrum of criminality rather than an exotic niche interest. Interest, proactivity and investment in investigations of international crimes will only increase with a better understanding and recognition of their impact outside the borders of the situation country. Just as a nexus has been established between "simple" crime and terrorism, a nexus may often exist between "simple" crimes, terrorism or organised criminal activity, and international crimes. The interaction of crime, terrorism and international crimes in Syria, Mali, Libya, DRC and elsewhere are examples of the interdependent and overlapping nature of criminality. Both the OTP and national law enforcement organisations would benefit from adopting a more holistic approach to international crimes investigations which recognises that information is rarely specific only to one form of criminality and that there is a benefit to avoiding compartmentalisation of information and sharing it more widely.

The OTP is also seeking to develop information sharing and partnerships with agencies that are using covert techniques to collect information. The fight against organised crime illustrates the power of using covert techniques such as undercover officers, surveillance and telephone interception. The OTP's capacity in this regard is limited but states, their security services and military are often already using informants, intercept and surveillance to gather information about what is happening in conflict areas, particularly if they are parties to the conflict, involved in peacekeeping or their national interests are threatened. Through building effective partnerships with the military the ICTY was able to introduce NATO surveillance photography in support of its cases. The same opportunities have arisen in the OTP's Libya situation. The OTP needs to access similar sources but in order to do so it must first reassure those sources that it has the ability to protect sensitive information and methodologies and then also ensure that it has the ability and skill to convert sensitive intelligence into evidence.

As an initial step the OTP is developing a "Law Enforcement Network" (LEN) with investigators in national WCUs as a precursor to more extensive relationships with a wider range of "first responder" agencies, units and organisations. At this time efforts are focused on increasing contacts and information exchanges with law enforcement, initially within EU member states. At present the OTP hosts a biennial conference of interested parties and is developing information sharing strategies which would allow participants to identify potential areas of cooperation and information sharing. The objectives of the network are twofold: to improve the quality and volume of information available to the OTP but also to ensure that the OTP makes every possible contribution to national investigations. The OTP believes that building strong operational partnerships with WCUs and law enforcement professionals will improve the quality of cases, encourage positive complementarity, target impunity and assist in the reduction of crime in general. ●

[1] Article 54(a) of the Rome Statute: "The Prosecutor shall: In order to establish the truth, extend the investigation to cover all facts and evidence relevant to an assessment of whether there is criminal responsibility."

[2] Article 68 of the Rome Statute requires the Court to take "appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses". The Court has interpreted this to include any person who is at risk by reason of their interaction with the OTP.

[3] See for examples Articles 93 and 96 of the Rome Statute. Article 99(4) provides that OTP can conduct voluntary activities following "all possible consultations" in states where crimes are being committed and "following consultations" and subject to "reasonable conditions or concerns" in state parties.

## Addressing key challenges for the investigation of international crimes

**Nicolas le Coz,** Senior Officer of the French National Gendarmerie, Deputy Head of the Organised Crime and Special Criminality Unit at the General Directorate of the National Gendarmerie

Logo of the OCLCH © OCCH

Efficient criminal investigations are key to fulfilling the international obligation to investigate and prosecute crimes under international law such as genocide, crimes against humanity, war crimes, torture and enforced disappearance. According to the French Code of Criminal Procedure, the most serious crimes may be investigated on the basis of universal jurisdiction. The only condition for the prosecution is that the alleged is present on French territory, although for crimes under the jurisdiction of the ICC, the condition is more restrictive in that the perpetrator must be resident in France.

The obligation to investigate these crimes irrespective of where they were committed can be challenging, in particular in light of the procedural framework in place and the unique features of these crimes, including the geographical remoteness of the crime scenes, quality of the testimonies, and lack of domestic legislation to facilitate appropriate mutual legal assistance. Four examples of possible improvement can be discussed.

Firstly, the conduct of **investigations** could be strengthened through use of **special investigative techniques (SITs)** as set out in the United Nations Convention on Transnational Organised Crime (UNTOCC) and endorsed by the Council of Europe. SITs are defined as "techniques (…) for the purpose of detecting and investigating serious crimes and suspects" which can include, for example, electronic or other forms of surveillance and undercover operations, conducted on a national or cross-border level.[1] Unfortunately these techniques are still not defined in European Union (EU) law or in the domestic laws of many of the 28 EU or 47 Council of Europe Member States. Furthermore, states generally authorise them for the purpose of combatting organised crime, but often do not consider that the "most serious crimes" justifying the use of SITs include crimes under international law.

That was the situation in France in 2004 when a new Act authorised the use of SITs for 15 serious crimes which are general-

ly associated with the activities of criminal organisations, such as trafficking in human beings and drug trafficking.[2] As it was still illegal to use them for crimes under international law, their use was extended to the investigations of genocides, crimes against humanity and war crimes in 2011.[3] Consequently, under Articles 628-8 of the Code of Criminal Procedure, during preliminary investigations under the control of the Public Prosecutor the authorities can now use police custody for up to 96 hours, conduct night-time searches (usually searches are restricted to the hours of 6am - 9pm) of certain locations (excluding private residences), and wire-tapping. For investigations conducted under a rogatory commission by an investigating judge, more extensive SITs can be used including for example wire-tapping of any location or vehicle.

As a result, these measures represent a precious tool for the investigators of the new *Central Office for Combatting Crimes against humanity, Genocide and War Crimes* (OCLCH),[4] which operates at the Ministry of Interior under the direction of the National Gendarmerie, as well as other gendarmerie or national police units conducting investigations into crimes under international law (in cooperation with OCLCH). While the 2011 legislation can therefore be regarded as an example of good practice, it is still subject to shortcomings. For example, the legislation neglects to authorise use of SITs for investigation of torture as defined by the 1984 Convention Against Torture, and the Code of Criminal Procedure should be amended accordingly.

Secondly, the **quality of witness testimonies and statements** may also be undermined by the circumstances and procedures investigators are required to use when questioning witnesses. Depending on the laws of the state where witnesses are located (the "territorial state"), French authorities conducting investigations abroad sometimes may only attend as observers and merely suggest questions, during interviews conducted by the law enforcement agencies of the territorial state. However, the French Code of Criminal Procedure authorises investigators – subject to the previous agreement of the territorial state – to question witnesses themselves and ensure they comply with relevant procedures.[5] This rule improves the quality of testimonies, but it would be greatly strengthened if it was enacted more widely in other states' legislation so as to give effect to mutual recognition.

Thirdly, regarding **mutual legal assistance (MLA) in general**, existing international instruments providing for investigation and prosecution of crimes under international law already place states under a positive duty to cooperate, by providing each other with "the greatest measure" of assistance.[6] However the reality is that these provisions are not very precise, and often territorial states do not consent to requests for assistance during investigations. French procedural law is relatively flexible regarding MLA, allowing prosecution authorities and investigating judges to request mutual assistance measures on the basis of the reciprocity principle when no legal instrument exists. However, not all states are willing to reciprocate and MLA procedures related to crimes under international law still need to be strengthened. Therefore the continuing initiative led by Argentina, Belgium, the Netherlands and Slovenia to negotiate a new international treaty regarding MLA and extradition for crimes under international law is an important proposal which must be supported.[7]

Finally, these initiatives would be further supported by ensuring that the **EU also takes further steps** to address crimes under international law, for example by adopting a comprehensive strategy to combat impunity. This has already been discussed by the Working Party on General Matters, including Evaluation (GENVAL) of the Council of the European Union and by the EU Genocide Network. The Network endorsed the idea and set up a "task force" of practitioners specialised in crimes under international law to develop proposals for such a strategy. The Task Force is currently conducting consultation with the National Contact Points of the EU Genocide Network on practical measures to "encourage cooperation and best practice at national and regional level to enhance investigations and prosecutions".[8]

The above measures would improve the quality but also reduce the length of investigations. This is important because the European Court of Human Rights has previously sanctioned member states – including France – for excessive delays in investigations amounting to a violation of Article 6 of the European Convention on Human Rights. In *Mutimura v France*, the Court acknowledged that investigations into allegations against a Rwandan genocide suspect were complex, but ruled that this could not justify a delay of 8 years and 8 months.[9] Collectively, these initiatives could significantly contribute to ending safe haven for perpetrators in France and other states by strengthening the international and domestic legal frameworks for the investigation and prosecution of crimes under international law. ●

[1] Article 20, United Nations Convention on Transnational Organised Crime, UN Doc. A/55/383 at 25 (2000), [2004] ATS 12; Recommendation Rec(2005)10 of the Committee of Ministers to Member States on "Special Investigation Techniques" in Relation to Serious Crimes Including Acts of Terrorism, 20 April 2005.

[2] Act n°2004-204, dated 9th March 2004. This has subsequently been extended and as of 1 June 2014 SITs can be used for 19 serious crimes.

[3] Act n°2011-1862 dated 13th December 2011.

[4] Decree n°2013-987 dated 5th November 2013.

[5] Article 18§5.

[6] For example see Article 9 of the 1984 Convention Against Torture, and Articles 14 and 15 of the 2006 International Convention for the Protection of All Persons from Enforced Disappearance.

[7] A Permanent Declaration on International Initiative for opening Negotiations on a Multilateral Treaty for Mutual Legal Assistance and Extradition in Domestic Prosecution of Atrocity Crimes (crimes of genocide, crimes against humanity and war crimes) was presented at a side event at the 23rd session of the UN Commission on Crime Prevention and Criminal Justice, 12 May 2014.

[8] Conclusions of the 16th Meeting of the EU Genocide Network, 21-22 May 2014, para 9. See also Conclusions of the 15th Meeting of the EU Genocide Network, 29-30 October 2014, paras. 10-11.

[9] *Mutimura v France,* App. No 46621/99, 8 June 2004. For more information see *Fighting for justice for survivors of the 1994 Genocide of Tutsi in Rwanda: Interview with Yvonne Mutimura* on p4.

**On 24 March 2014 REDRESS, FIDH, ECCHR and TRIAL held a conference in Brussels, *Implementing the EU Directive on Minimum Standards for Victims of Crime: Delivering Justice to Victims of Serious International Crimes in the EU***

You can read the background paper at:
http://www.redress.org/downloads/140320background-paper-final-(eng).pdf

You can read the agenda at:
http://www.redress.org/downloads/agenda---24-and-25-march-2014---brussels.pdf

# Fighting for justice for survivors : Interview with Yvonne Mutimura

*Yvonne Mutimura is a survivor of the 1994 genocide of Tutsi in Rwanda and a civil party in the case of Wenceslas Munyeshyaka, who is accused of various acts of genocide and crimes against humanity. The case was initially opened when she and other survivors filed a complaint against Mr Munyeshyaka in France in 1995, where he has been living since leaving Rwanda after the 1994 genocide. Yvonne Mutimura later filed a complaint at the European Court of Human Rights regarding the failure of the French authorities to conduct a timely investigation into the complaint. In 2004, the Court ruled that France was in violation of Articles 6(1) and 13 of the European Convention on Human Rights due to its failure to investigate within a "reasonable time" and to provide her with a remedy for this shortcoming.*[1] *In 2007 the International Criminal Tribunal for Rwanda (ICTR), which had issued an arrest warrant against Wenceslas Munyeshyaka, decided to decline jurisdiction over the case in favour of the French judicial authorities.*[2] *A judicial investigation on the combined French and ICTR charges has now been open in France since 2009, but to date no plans for a trial have been announced.*

## Q1 Why did you originally decide to try to pursue justice in your case?

I was seeking justice for my cousin, Christophe Safari who was killed at the *Eglise de la Sainte Famille* in Kigali. I have evidence which leads me to strongly believe that Wenceslas Munyeshyaka was responsible for his death.

## Q2 How did you find information about Wenceslas Munyeshyaka's whereabouts, and how did you go about becoming a civil party in the case?

Thanks to my partner, who became my husband, I managed to leave Rwanda during the genocide and had been living in the south of France since mid-April 1994. In August 1994, I came back to Rwanda in order to repatriate and adopt my two nieces; during this journey I met my cousin, who spent most of the war at the Ste Famille Church. She told me that her brother, Christophe Safari, was killed because he was designated as "*Inyenzi*" by the priest of the Ste Famille Church: Wenceslas Munyeshyaka. A few months later, thanks to a Rwandan friend I learnt that this priest had been given asylum in the south of France, in the Ardèche. With the support of the association *Juristes sans frontières* I filed a complaint against him with the French authorities, and therefore became a civil party in the case.

## Q3 It has now been 19 years since the original complaints against Munyeshyaka were filed in France. What in your view has prevented progress in the case since then?

Different factors intervened: firstly, the power of the *Eglise de France* (French Catholic Church) which gave full support to Munyeshyaka without any doubt about his supposed crimes; secondly, the lack of political will by the French authorities to support the judges who were in charge of investigating Rwandan cases. These extremely complex cases were added to their current workload without any additional support. One could even believe that everything was done to slow down the judicial process in Rwandan cases. Finally, the 2006 severing of diplomatic relations with France suspended the few investigations by French judges which were ongoing at that time. I also believe that the common discourse about Rwanda in France since 1994 has been misleading and was a barrier to a serious understanding of the nature of the genocide of Tutsi. Rwanda genocide cases were not treated as seriously as other genocide cases. Victims and witnesses were mainly considered to be "liars" while the presumed killers were often depicted as victims of "Tutsi propaganda".

Kigali Genocide Memorial Centre © photo by Trócaire

## Q4 What have been some of the practical challenges you as a survivor of international crimes have faced in pursuing the case?

The principal challenge was to keep faith in justice while everything was done to prove me wrong. I still believe in justice for my family, rather than revenge. Despite the continued delays, I strongly believe that Wenceslas Munyeshyaka will be tried before a French *Cour d'assise* in 2015 or 2016; this is what I understand from the recently issued UNMICT monitoring report.[3]

## Q5 In light of your experiences, what recommendations would you make to facilitate other survivors' access to justice?

The main problem is to be strong enough to keep going and not despair. Meanwhile, in the French system no financial support is provided to the victims' lawyers. This is really a problem. For example, we will have to find funds just to cover the travel and accommodation expenses of our lawyers, whenever the case will come to trial. ●

[1] *Mutimura v France*, App. No 46621/99, 8 June 2004.

[2] The United Nations Mechanism for International Criminal Tribunals (UNMICT) began monitoring French proceedings in the case of Munyeshyaka in 2013 and has now issued a number of initial monitoring reports on the case. The reports set out the judicial history of the case since 2005 and detail the ongoing judicial investigation in France. See *Wenceslas Munyeshyaka*, No. MICT-13-45, Report of 12 July 2013 and Report of 5 November 2013.

[3] The most recent UNMICT report, of April 2014, indicated that judicial investigations should be completed by the end of 2014. The reports are available from UNMICT's website: http://unmict.org/cases.html.

# The Caterpillar Sàrl complaint in Switzerland –

# Challenges in ensuring accountability for corporate complicity in war crimes

**Damien Chervaz,** former member of the board of TRIAL, and
independent advocate representing victims in ongoing international crimes cases in Switzerland

In April 2011, based on the research and legal analyses made by Al Haq and TRIAL (Track Impunity Always), six Palestinian families from Qalquilya in the West Bank filed a criminal complaint for war crimes against Caterpillar Sàrl for its alleged participation in the destruction of their houses by the Israel Defense Forces (IDF) in August 2007, amounting to demolitions as a punitive measure, which are considered unlawful under the Geneva Conventions. Caterpillar Sàrl is a Geneva-based branch of the Caterpillar group which handles the sales for the group to the EMEA zone (Europe, Middle East and Africa), including Israel.

On 24 February 2014, the Swiss Federal Prosecutor delivered a decision of "non consideration", deciding not to investigate the case submitted.

In essence, the decision states that there is sufficient suspicion of the commission of a *"grave war crime"* by the IDF, as they *"deliberately and intentionally"* destroyed the homes of the plaintiffs without military necessity. It then considers that the D9 model of bulldozer, produced by Cat US and commercialized by Cat Sàrl through its local dealer, had indeed been used for these unlawful home destructions. Finally, the Prosecutor recalls that the Caterpillar group was, during the last 20 years, put several times on notice that the D9 model of bulldozers it was selling to the IDF were often used to destroy Palestinian houses in violation of international humanitarian law (IHL).

Yet despite all this, the Prosecutor concludes that Caterpillar's behaviour does not amount to complicity in war crimes, based on the following findings:

- The D9, as such, is not a weapon and its trade is not forbidden by Swiss laws on war material and on dual-use goods;
- Consequently this type of trade is to be considered a "common and neutral" behavior, which could only be considered criminal under Swiss case law if this activity *inevitably* leads to the commission of a crime and the accomplice accepts it;
- In the present case, as the IDF might also use the D9 for lawful activities, Cat could not infer that its contribution automatically led to the commission of a war crime and it therefore did not accept the perpetration of such a crime;
- The fact that the company was never sanctioned by the EU (despite rules providing for sanction against companies favoring Israeli occupation of the West Bank[1]) and has previously been found not guilty of a war crime in the Rachel Corrie case[2] probably gave the Caterpillar group the impression that it was acting lawfully.[3]

Not only is this reasoning and its outcome unsatisfactory from a moral point of view, but it mainly seems to fall short of international practice regarding complicity in war crimes.

Broadly, international and foreign criminal courts seem to have adopted a similar position to that of Swiss courts with respect to the necessary subjective element, stating that the recklessness of an author of a crime is sufficient to make him an accomplice. Yet, their understanding of recklessness appears to be less restrictive than that of the Swiss Prosecutor, as international practice considers that the author might be considered reckless (and thus, an accomplice) not only if he "knew that his acts would assist the commission of the crime by the perpetrator" but also as soon as "he was aware of the substantial likelihood that his acts would assist the commission of a crime by the perpetrator".

Caterpillar Excavator destroys homes © photo by Michael Loadenthal

Furthermore, no difference should be made if the participation in the crime relates to the supply of standard goods and services to the perpetrator. In this respect, the best example is probably the van Anraat case in the Netherlands, in which an export broker was convicted for complicity in war crimes for delivering thiodiglycol (TDG) - a substance used for creating mustard gas - to Saddam Hussein's Iraqi regime. TDG can be used for different purposes and its trading is therefore not unlawful as such. Yet, van Anraat was condemned because he was aware that it could be used for producing poison gas and that there was a reasonable chance it would be used for chemical attacks, because Iraq had previously done so during the war against Iran.[5]

This approach seems to be the only one consistent with general principles of criminal law regarding aiding and abetting by recklessness. Hence, Swiss jurisdictions should adjust their position in the future to avoid making corporations and businesspeople an unjustifiably privileged category of defendants before the law. ●

[1] See for example Article 5(4) of Directive 2005/29/EC on Unfair Commercial Practices, 11 May 2005.

[2] In August 2012, Haifa District Court in Israel ruled that the State of Israel was not responsible for the death of Rachel Corrie, an American activist who was crushed to death in 2003 by a Caterpillar bulldozer used by the Israeli military while carrying out house demolitions in the West Bank. An appeal of this case was heard at the Supreme Court of Israel on 21 May 2014. See Press Release of the Rachel Corrie Foundation for Peace & Justice, *Israeli Supreme Court to Hear Rachel Corrie Appeal on 21 May*, 12 May 2014.

[3] Rachel Corrie's family and other Palestinian victims of demolitions also filed suit in the US against the Caterpillar Group, accusing it of aiding and abetting war crimes. An appeal court dismissed the case for lack of jurisdiction in 2007. An overview of the case of *Corrie et al. v Caterpillar* is available on the website of the Centre for Constitutional Rights.

[4] Frans van Anraat, Case No. 09/751003-04, District Court of the Hague, Judgment of 23 December 2005; Court of appeal of The Hague, Case No. 2200050906-2, Judgment of 9 May 2007.

[5] *Public Prosecutor v. Van Anraat*, LJN AX6406, The Hague District Court, 23 December 2005, confirmed by The Hague Court of Appeal, LJN BA6743, 9 May 2007. An overview of the case is available on the International Crimes Database of the TMC Asser Instituut.

# Update on the "FDLR Leadership Trial" in Germany

**Anna von Gall**, Gender and Human Rights Program Manager, ECCHR

**What is the "FDLR Leadership Trial"?**

Since 4 May 2011, the trial of two Rwandan leaders of the *Forces Démocratiques de Libération du Rwanda* (FDLR) has been in session before the Higher Regional Court in Stuttgart. Ignace Murwanashyaka and Straton Musoni are accused of the commission of war crimes and crimes against humanity, including crimes of sexual violence, in the eastern region of the Democratic Republic of the Congo (DRC) during 2008 and 2009. It is the first trial in which crimes set out in the 2002 German Code of Crimes against International Law (*Völkerstrafgesetzbuch* – VStGB) have been charged, but not the first trial in Germany dealing with international crimes committed abroad.[1] As of mid-May 2014, there have been 231 sessions in court. The European Centre for Constitutional and Human Rights (ECCHR) has been monitoring the trial and has published three interim reports in February 2012, November 2012 and February 2014.[2]

**What charges remain…?**

Originally 16 charges were brought against the accused. These included crimes against humanity, including killing and sexual coercion or rape, and war crimes including killings, cruel or inhumane treatment, sexual coercion or rape of a person protected under international humanitarian law, war crimes against property, and forcible recruitment of child soldiers.

However, recent debates around the trial have focused among other things on the decision to remove three charges, and the difficulties of proving that the accused exercised control over the FDLR's armed forces in the DRC from Germany, where they were living at the time the crimes were allegedly committed. Proving this control is an important element regarding a conviction under the command responsibility doctrine.

In November 2013, the Court provisionally dropped three of the charges at the request of the Prosecution, including two counts of rape and enslavement and one of the recruitment of child soldiers. The Prosecution argued that the potential sentences for these charges would be relatively insignificant compared to the overall sentence for the remaining crimes, and that hearing evidence from the victims of these particular charges would "significantly burden and potentially personally endanger" the witnesses. The decision to remove these charges from the indictment means that the charge of recruitment of child soldiers is now entirely excluded from the proceedings. In total, 13 charges remain.

The Court has also indicated that in its view, at this stage of the trial, it is questionable whether the accused Murwanashyaka did in fact exert sufficient control over the FDLR-fighters in the eastern DRC. Yet as long as the accused personally believed this to be the case, he could still be convicted with *attempt*, which could lead to a reduction of sentence.

The Court also suggested – of its own initiative – limiting the indictment against the second accused Musoni to the charge of being a ringleader or member of a foreign terrorist organization, but not for command responsibility for crimes committed by FDLR-forces in eastern DRC. This assessment by the Court is however only preliminary, and the Court's view may change during the continuing trial.

**Testimony from affected individuals**

It is important to note that there are no victims participating as civil parties in this trial.

A number of victims of sexual and gender-based violence have been heard as witnesses and examined by counsel in closed hearings by video-link. The court justified the exclusion of the public from these hearings on the basis that the witnesses' rights to safety and security had to be protected. Because the sessions were held in private, monitors are not in a position to report on how these hearings were carried out. What is known is that a female German lawyer has been appointed to assist the witnesses. However, some of the hearings were discontinued at the request of the witnesses as the questioning proved to be extremely burdensome. The defence repeatedly called into question the credibility of the witnesses, raising alleged inconsistencies in their testimonies and questioning their traumatisation. This became evident from the subsequent statements by the Prosecutors and the Defense after the proceedings had been opened again to the public.

A female German prosecutor, who questioned several victim witnesses in the DRC during investigations, gave testimony in a public hearing, shedding some light on how German authorities questioned victim witnesses. The meetings with the victim witnesses were organized at different places in the region and most had to travel several days to testify. Most of the victim witnesses still suffered physically and psychologically from the incidents they experienced and were accompanied by a person to support them. The prosecutor highlighted the witnesses' attitude towards the investigation and the questioning: on the one side they knew very little about their rights as victims, but on the other side, they had expressed they were glad to testify about the crimes. Some witnesses feared to testify because of potential reprisals. They were thus highly concerned with being identified, leading to the court's decision to hear a number of witnesses in closed session.

The case highlighted the significant challenges for authorities to investigate and prosecute conflict-related sexual violence in third party states. It also underlined the need for further discussion on how to facilitate participation of victims in their own right, and on how best to ensure the well being of victim witnesses supporting the prosecution of these crimes through their testimony. ●

[1] For example in February 2014 the Rwabukombe trial concerning the 1994 Rwandan genocide ended with a conviction before the Higher Regional Court in Frankfurt; for an overview of past prosecutions of international crimes in Germany see A. Schüller, *The Role of National Investigations in the System of International Criminal Justice – Developments in Germany*, Security and Peace, Vol. 31, Issue 4, 2013, pp. 226-231.

[2] *ECCHR*, FDLR-Leadership Trial in Stuttgart, Status Reports of February 2012, November 2012 and February 2014, available at: http://www.ecchr.de/index.php/kongo-war-crimes-gdr.html.

# Closing the impunity gap: bringing together global experts to increase cooperation on war crimes investigations

**Stefano Carvelli,** Head of INTERPOL's Fugitive Investigative Support Unit


INTERPOL Secretary General Ronald K. Noble addressing the 6th International Expert Meeting on Genocide, War Crimes and Crimes against Humanity in Kigali, Rwanda.© INTERPOL

From 14-16 April 2014, INTERPOL held its 6th International Expert Meeting on Genocide, War Crimes and Crimes against Humanity in Kigali, Rwanda, which was hosted and supported by the Rwandan national police as the world was observing the 20th anniversary of the genocide in Rwanda.

The aim of INTERPOL's biannual International Expert Meeting on Genocide, War Crimes and Crimes against Humanity is to enhance cooperation and the exchange of information in the investigation and prosecution of these serious international crimes.

Based on the theme 'Closing the Impunity Gap', this year's three-day expert meeting brought together some 100 law enforcement and judicial experts from 24 countries, as well as representatives from 15 international organizations, academia and civil society.

The opening ceremony was addressed by the Prime Minister of Rwanda, Pierre Damien Habumuremyi, INTERPOL President Mireille Ballestrazzi, INTERPOL Secretary General Ronald K. Noble, and Inspector General of Police in Rwanda and INTERPOL Executive Committee Member for Africa, Emmanuel K. Gasana.

Keynote speakers included Hassan Jallow, Chief Prosecutor, International Criminal Tribunal for Rwanda (ICTR) and Prosecutor of the Mechanism for International Criminal Tribunals (MICT); Serge Brammertz, Chief Prosecutor, International Criminal Tribunal for the Former Yugoslavia (ICTY); Michel de Smedt, Head of Investigations, Office of the Prosecutor, International Criminal Court; as well as a video message from Adama Dieng, UN Special Adviser on the Prevention of Genocide.

Participants in the meeting discussed the latest developments in various countries and organizations concerning fact finding, investigations, prosecutions, best practices, cooperation and information sharing projects and initiatives aimed at combating impunity with regard to the most serious international crimes.

Discussions on the first day were exclusively dedicated to early warning methodologies, mechanisms, tools and responses to prevent genocide, war crimes and crimes against humanity.

A discussion panel on criminal justice saw experts from national law enforcement authorities share their experiences and underline the challenges they have faced in investigating these crimes at the domestic level.

A special focus on Rwanda and Africa highlighted both the challenges and opportunities facing cooperation in tracking genocide fugitives in the region, and presented the role of the International Conference on the Great Lakes Region (ICGLR) – in particular the ICGLR protocols related to the prevention and punishment of genocide, war crimes and crimes against humanity – in supporting regional efforts to combat these serious crimes. Discussions also focused on cases of sexual violence during armed conflicts, highlighting sexual violence against males, and also presented the role and achievements of reconciliation commissions in Africa.

Training and capacity building were also among the topics covered during the meeting, as well as new developments and initiatives launched by the international law enforcement community and specialized national units active in investigating and prosecuting serious international crimes. Experts also debated issues and ways forward in improving international and regional cooperation.

At the close of the meeting, participants adopted a set of recommendations for improving the global response to these crimes. Enhancing the existing network of specialists who can work together with the common purpose of cooperating on investigations was identified as a priority. In this respect, participants agreed to encourage the establishment, within their national law enforcement agencies, of contact points or dedicated teams for the investigation and prosecution of serious international crimes.

Participants also welcomed the recent decision of the INTERPOL Secretary General to create a dedicated War Crimes unit at INTERPOL to provide extended support to member countries in this area, beyond the work already undertaken by the INTERPOL Fugitive Investigative Support unit in assisting International Tribunals and countries in tracking and arresting fugitives wanted for genocide, war crimes and crimes against humanity.

Side meetings focusing on specific operational cases and projects were held following the expert meeting. These offered law enforcement and prosecution authorities an opportunity to further exchange information on high-priority cases currently being investigated or prosecuted. Participants were also given a more detailed insight into INTERPOL's War Crimes Programme, and more specifically on Project Basic (Broadening Analysis on Serious International Crimes), in the framework of which INTERPOL maintains a database on all ongoing and past investigations into serious international crimes handled by national war crimes units and international courts.

The 6th International Expert Meeting on Genocide, War crimes and Crimes against Humanity has once again demonstrated the strong and continued commitment of INTERPOL to assist its member countries and international institutions in bringing to justice the perpetrators of these heinous crimes. ●

# Universal Jurisdiction News: Key legal developments so far in 2014

**Tara O'Leary and Manveer Bhullar**, REDRESS

As part of its work to help victims of international crimes access justice and reparation, REDRESS closely monitors legal developments related to criminal investigations and prosecutions of suspected perpetrators in countries around the world. Using this information REDRESS produces a regular update, *Universal Jurisdiction News*, which contains a summary of recent cases, legal developments, publications and events related to the exercise of extra-territorial and universal jurisdiction worldwide.

This article summarises some of the most significant legal developments which have taken place between 1 January and 30 June 2014: **four convictions for genocide, war crimes and murder; two genocide convictions upheld on appeal; a trial ongoing for war crimes and crimes against humanity; and four further cases expected to begin shortly**. Further, in addition to the information below REDRESS has recorded a number of both civil and criminal complaints filed before national courts, investigations ongoing, and developments related to extradition proceedings. Collectively, these cases illustrate that future prosecutions are likely, and that victims, civil society and national authorities remain actively engaged in efforts to combat impunity. Even this brief snapshot of international practice demonstrates that state practice in this field remains vibrant, with universal jurisdiction playing an increasingly important role in an increasing number of countries worldwide, helping to end the culture of safe haven for international crimes.

**Four perpetrators of serious international crimes have been convicted** in national-level courts so far in 2014, in France, Germany, Hungary and Switzerland. All except Hungary acted on the basis of extra-territorial jurisdiction. On 18 February, **Onesphore Rwabukombe** was convicted of accessory to genocide by the Higher Regional Court of Frankfurt am Main in Germany and sentenced to 14 years in prison. On 14 March, **Pascal Simbikangwa**, a former intelligence chief and captain of Rwanda's presidential guard, was convicted of genocide and complicity in crimes against humanity by the Paris Criminal Court (*Cour d'assises*) in France and sentenced to 25 years in prison. On 13 May, **Bela Biszku**, a former Hungarian Interior Minister, was convicted of war crimes in relation to the shooting of protesters during the 1956 anti-communist uprisings in Hungary and sentenced to five years and six months in prison. On 6 June, **Erwin Sperisen** was convicted of murder and sentenced to life in prison by the Geneva Criminal Court in Switzerland for his involvement in the extra-judicial killings of seven prisoners in Guatemala while serving as Guatemalan Chief of Police between 2004 and 2007. All of the above convictions are subject to appeal.

**Two convictions have also been upheld on appeal this year,** both related to the 1994 Rwandan genocide. On 7 May the Quebec Court of Appeal in Canada upheld the 2009 conviction of **Désiré Munyaneza** for genocide, crimes against humanity and war crimes – including sexual violence – committed in Rwanda in 1994. On 19 June, a Swedish Court of Appeal upheld the 2013 conviction and life imprisonment of **Stanislas Mbanenande** for genocide.

**One trial is currently ongoing**: that of **Straton Musoni and Ignace Murwanashyaka** in Stuttgart, Germany for war crimes and crimes against humanity allegedly committed between 2008 and 2009 in the Democratic Republic of Congo. They are accused in their capacity as alleged leaders of the FDLR (*Forces Démocratiques de Libération du Rwanda*) militia group.[1]

**Indictments have been confirmed in at least four other cases**, which are currently expected to proceed to trial in 2014 or 2015. This includes the case of **Kumar Lama** in the UK, who in January 2013 was charged with two counts of torture allegedly committed in Nepal in 2005. At the Extraordinary African Chambers (EAC) in Senegal, former president of Chad **Hissène Habré** was charged in July 2013 with crimes against humanity, torture and war crimes allegedly committed in Chad between 1982 and 1990; the trial is expected to begin in 2015 with over 1,000 victims participating as civil parties. The EAC prosecutor has also requested the indictment of five further officials from the Habré administration, three of whom are reportedly subject to extradition requests from Chad. In France, on 30 May 2014 charges of genocide and crimes against humanity allegedly committed in 1994 were confirmed against **Octavien Ngenzi and Tito Barahira,** and the case transferred for trial. This will be France's second genocide trial, and is one of at least 27 cases linked to the 1994 Rwandan genocide which are reportedly open before the French specialised war crimes unit. Finally, in November 2013 the Higher Regional Court in Düsseldorf, Germany confirmed charges in November 2013 against **three defendants** accused of being members of the FDLR and therefore "members of a terrorist organization abroad". ●

[1] For more information see p6: *Update on the "FDLR Leadership Trial in Germany"* by Anna von Gall.

**For further details of these cases, see *Universal Jurisdiction News* online at: http://www.redress.org/newsletters/universal-jurisdiction-news- To subscribe by email, please email Tara O'Leary, Universal Jurisdiction Project Coordinator: tara@redress.org**

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