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# International Decisions—Guatemala Genocide Case

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Eritrea and Ethiopia, or any settlement agreement they may make, stops short of providing compensation to individual victims.

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*Universal jurisdiction—Spain—extraterritorial jurisdiction—genocide—1948 Genocide Convention construed—crimes against humanity—Guatemala*

GUATEMALA GENOCIDE CASE. Judgment No. STC 237/2005. *At* <<http://www.tribunalconstitucional.es/Stc2005/STC2005-237.htm>>.

Constitutional Tribunal (Second Chamber). September 26, 2005.

In December 1999, Nobel Peace Prize winner Rigoberta Menchú and others brought a complaint in Spanish courts alleging genocide, torture, terrorism, summary execution, and unlawful detention perpetrated against Guatemala's Mayan indigenous people and their supporters during the 1970s and 1980s. The suspects included five generals, two police chiefs, and a colonel—a group that included former presidents and defense and interior ministers. Although the investigating magistrate initially accepted the complaint, upper courts held it inadmissible. On September 26, 2005, in its judgment on the *Guatemala Genocide* case,<sup>1</sup> Spain's Constitutional Tribunal reversed, reinstating the complaint in its entirety and issuing a ringing endorsement of broad universal jurisdiction. The Tribunal found that no nexus or tie to Spain—not the presence of the defendant, the nationality of the victims, or Spanish national interest—was needed to initiate a complaint. It also rejected that idea that in order to proceed, complainants needed to show that trial in the territorial state was not possible. In so doing, the Constitutional Tribunal reestablished Spain as one of the world's most welcoming forums for cases based on universal jurisdiction over certain international crimes, and weighed in on some of the knottiest questions regarding the exercise of universal jurisdiction.

The complainants' genocide charges, filed with the Audiencia Nacional,<sup>2</sup> included both the targeting of Mayans as an ethnic group and the intended elimination of a part of the Guatemalan "national" group due to its perceived ideology—a gloss on the definition of genocide that the Audiencia had accepted in earlier cases involving Chilean and Argentine defendants.<sup>3</sup> The complainants grounded Spanish jurisdiction on Article 23.4 of the Organic Law of the Judicial Branch (LOPD).<sup>4</sup> That provision, enacted in 1985, allows for prosecution of certain crimes committed by non-Spaniards outside Spain, including genocide, terrorism, and other crimes recognized in international treaties ratified by Spain. On March 27, 2000, Audiencia Judge Guillermo Ruíz Polanco accepted the Guatemalan complaint and agreed to open an

Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law").

<sup>1</sup> Guatemala Genocide, Judgment No. STC 237/2005 (Tribunal Constitucional Sept. 26, 2005), *at* <<http://www.tribunalconstitucional.es/Stc2005/STC2005-237.htm>>. All translations from the Spanish are by the author.

<sup>2</sup> The Audiencia Nacional hears cases involving drug smuggling, terrorism, state corruption, and international crimes that cannot adequately be dealt with at the level of provinces and autonomous communities. Although divided into chambers, it is roughly equivalent to a U.S. district court. Here, the decisions came from the penal chamber.

<sup>3</sup> See Crimes of Genocide and Terrorism Committed During the Argentine Dictatorship, Jurisdiction, App. No. 84-98 (Audiencia Nacional (Sala de lo Penal) Nov. 4, 1998), *at* <<http://www.derechos.org/nizkor/arg/espanal/audi.html>>; Crimes of Genocide and Terrorism Committed During the Chilean Dictatorship, Jurisdiction, App. No. 173/98 (Audiencia Nacional (Sala de lo Penal) Nov. 5, 1998), *at* <<http://www.derechos.org/nizkor/chile/juicio/audi.html>>.

<sup>4</sup> Ley Orgánica 6/1985, B.O.E. 1985, 157, *at* <[http://www.juridicas.com/base\\_datos/Admin/lo6-1985.11t1.html](http://www.juridicas.com/base_datos/Admin/lo6-1985.11t1.html)>.

investigation.<sup>5</sup> In reaching that decision, the judge noted that several of the victims were Spanish or had died on Spanish territory.<sup>6</sup> The judge found that Spanish jurisdiction was appropriate because the local courts had not acted. Thus, the judge introduced a notion of “subsidiarity” into the case—the idea that universal jurisdiction is required and justified when domestic courts have failed to address a particular matter themselves.<sup>7</sup>

Over the summer of 2000, the Audiencia Nacional, acting as an appeals court, agreed that in view of the case’s importance, it would be heard by the full court and not just by a panel. In December, the court ruled against the complainants, holding that, “for the moment,” Spanish courts had no jurisdiction over the alleged crimes and that the case should therefore be closed.<sup>8</sup> The judges reasoned that Spanish courts could act only if there were clear legal impediments to prosecution in the territorial state or if judges there were “subject to pressure from official or de facto powers that create a climate of intimidation or fear making it impossible to carry out the judicial function with the serenity and impartiality required.” Moreover, since the U.N.-sponsored truth commission had only recently finished its work in Guatemala, and since the Guatemalan Law of National Reconciliation expressly permitted genocide prosecutions, there was insufficient evidence in the record that the Guatemalan courts were unable or unwilling to proceed with the prosecutions. Therefore, Spanish courts should stay out of the case.

On February 25, 2003, over two years later, Spain’s Supreme Tribunal,<sup>9</sup> by an 8-7 vote, partially overturned the Audiencia Nacional decision. The majority held, in short, that only those cases with a clear tie to Spain could proceed. The case was therefore reopened and remanded, but only to pursue investigations into the possible torture of Spanish citizens in the 1980 embassy massacre<sup>10</sup> and also into the torture of four Spanish priests killed by the military in 1980 through 1982. All of the genocide and terrorism charges, as well as the torture charges against non-Spaniards, were dismissed. While the Spanish courts remained open for cases involving victims of Spanish ancestry (and perhaps for refugees residing in Spain), those courts were no longer available as a situs for universal justice.

The Supreme Tribunal’s opinion first quickly disposed of the Audiencia Nacional’s inquiry concerning the possible availability of an alternative forum. As the tribunal noted, basing subsidiarity “on the real or apparent inactivity of local courts implies a judgment of one state’s courts about the ability to administer justice of the similarly situated organs of another sovereign state” (sec. II[6]); while such an “unable or unwilling” inquiry might be appropriate for the International Criminal Court, national courts should not be making these kinds of

<sup>5</sup> By accepting the complaint, the judge made a preliminary finding that a crime had been committed that was subject to Spanish jurisdiction. At that point, he could begin compiling evidence, calling witnesses, and preparing a record (*sumario*) prior to deciding if there was enough evidence to forward the case to a separate three-judge panel for trial.

<sup>6</sup> One set of allegations referred to the firebombing of the Spanish Embassy in Guatemala City in January 1980, in which several protesters died.

<sup>7</sup> As will become apparent, this element of subsidiarity was to prove problematic as the case moved through the courts.

<sup>8</sup> Appeal No. 115/2000 (Audiencia Nacional (Sala de lo Penal) Dec. 13, 2000), at <<http://www.icrc.org/ihl-nat.nsf>>. In the brief online report of this judgment, there are no helpful markers to identify the location of quotations, so none will be given.

<sup>9</sup> Judgment No. 327/2003 (Tribunal Supremo (Sala de lo Penal) Feb. 25, 2003), at <<http://www.derechos.org/nizkor/guatemala/doc/gtmsent.html>>. An English translation, though not used for the translations in the text, is available at <<http://www.derechos.org/nizkor/guatemala/doc/stsgtm.html>>.

<sup>10</sup> See *supra* note 6. The Spanish ambassador was injured, and several embassy employees were burned to death, in the firebombing and attack on the embassy.

judgments, which could have an important effect on foreign relations and should be left to the political branches.

Next, the majority construed the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.<sup>11</sup> The court found that Article 6 of the Convention<sup>12</sup> was not limited to territorial and international criminal jurisdictions, but that the Convention's listing of those two jurisdictions must mean that any others were "subsidiary." Moreover, Article 8<sup>13</sup> directs states to respond to genocide occurring outside their borders by going to the United Nations, not by exercising universal jurisdiction. The presence of a UN mission showed that the United Nations was familiar with conditions in Guatemala and that it had nevertheless not decided to create an ad hoc tribunal along the lines of those for Rwanda and the former Yugoslavia (ICTY).

The heart of the matter, for the majority, was that Article 23.4 of the LOPD, despite its apparent clarity, could not be so open-ended as to allow criminal investigations based on news of crimes being committed anywhere in the world. Spanish law had to conform to other principles of international law, including respect for other states' sovereignty and the principle of nonintervention in the internal affairs of other states. Extraterritorial jurisdiction, when not authorized by the United Nations or specifically regulated by treaty, required a point of contact with national interests. The majority cited cases from the German and Belgian courts, as well as the International Court of Justice's *Arrest Warrant* case,<sup>14</sup> in support of these propositions. The court pointed to the "extradite or prosecute" provisions of a number of treaties, including the Torture Convention<sup>15</sup> and a number of terrorism-related conventions,<sup>16</sup> as requiring the presence of the defendant to proceed when there is no other type of national interest (such as the protective principle or the active or passive personality principles) involved. A connection to a state interest, the majority opined, creates legitimacy and rationality in international relations and also expresses respect for the non-intervention principle.

The seven dissenters started from the position that universal jurisdiction in cases of genocide was necessary to avoid impunity, and that in such cases the state acted in representation of the international community. The majority's view was too restrictive and therefore "incompatible with the treatment of this grave crime in our internal law and in international law" (Diss. Op., sec. [1]); any limits on jurisdiction should reflect a flexible, prudential rule of reason aimed merely at practical concerns such as the potential effectiveness of an investigation and extradition request or the potentially high burden on Spanish courts. For the dissenters, a tie to

<sup>11</sup> Dec. 9, 1948, 78 UNTS 227.

<sup>12</sup> Article 6 provides:

Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.

<sup>13</sup> Article 8 provides:

Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in article III.

<sup>14</sup> *Arrest Warrant* of 11 April 2000 (Dem. Rep. Congo v. Belg.), 2002 ICJ REP. 3 (Feb. 14); see Alexander Orakhelashvili, Case Report: *Arrest Warrant* of 11 April 2000 (Democratic Republic of the Congo v. Belgium), 96 AJIL 677 (2002).

<sup>15</sup> Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 UNTS 85.

<sup>16</sup> See, e.g., Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, Sept. 23, 1971, 22 UST 1641, 860 UNTS 105; International Convention Against the Taking of Hostages, Dec. 17, 1979, TIAS 11,081, 1316 UNTS 205.

Spain was merely an element in applying this rule of reason, not a jurisdictional prerequisite. In the instant case, they found more than enough links to Spain to justify the Spanish courts' intervention. Historic, social, linguistic, and jurisprudential ties linked the two countries. The crimes at issue involved Spanish citizens—though not as victims themselves of genocide, but as victims targeted because they were defending others from genocide. This case was a paradigmatic example of those in which Spain *should* exercise its jurisdiction: there would never be a more compelling case. “If there is no nexus in this case, then a nexus requirement becomes a mere pretext to exclude or suppress universal jurisdiction in all genocide cases” (*id.*, sec. [13]). That, the dissenters argued, should not be done.

Subsequent Supreme Tribunal cases involving Chile<sup>17</sup> and Peru<sup>18</sup> followed the majority's holding in the instant case, giving it precedential weight. It seemed that the Spanish forum had partially closed, although two cases involving Argentine torturers moved forward because at least one of the victims had Spanish nationality. Meanwhile, Socialist José Luís Rodríguez Zapatero became prime minister in 2004. As a result, the Public Prosecutor's Office, which had been hostile to universal jurisdiction cases from 1996 on, changed its position and began supporting victims' groups in litigating the existing cases.

The Constitutional Tribunal's decision largely mirrors the dissent in the Supreme Tribunal.<sup>19</sup> The Constitutional Tribunal began with the plain language and legislative intent of Article 23.4 of the LOPD, which establishes only a single limitation: the suspect cannot have been convicted, found innocent, or pardoned abroad. It contains no implicit or explicit hierarchy of potential jurisdictions and focuses only on the nature of the crime, not on any ties to the forum; it establishes concurrent jurisdiction. Given the absence of textual support for a restrictive interpretation of the law, such an interpretation would be overly strict and unwarranted. Moreover, the Tribunal found that the subsidiarity requirement imposed by both the Audiencia Nacional and the Supreme Tribunal put complainants in an untenable position, requiring that they prove that no case could be brought at home.

The Constitutional Tribunal rejected the lower court's analysis of the Genocide Convention. The Convention's silence on alternative jurisdictions beyond territorial and international tribunals cannot be read as an implicit limitation. Rather, Article VI of the Convention simply establishes the minimal obligations on states. The obligations to avoid impunity found in customary international law are incompatible with such a limited reading of the Convention and would, perversely, place more stringent limits on the actions of states parties to the Convention than those that applied to nonparties, which could rely on a universal jurisdiction founded in customary international law.

The Supreme Tribunal majority had found in customary international law a need for “connecting links,” which might include the presence of the defendant, the nationality of the victims, or some other point of contact with national interests. The Constitutional Tribunal strongly disagreed. “We think it is highly debatable that the requirement of a link is to be found in customary international law, especially because the cases cited by the Supreme Tribunal do

<sup>17</sup> Hernán Brady Roche, Judgment No. 319/2004 (Tribunal Supremo (Sala de lo Penal) Mar. 8, 2004), at <<http://www.derechos.org/nizkor/chile/juicio/brady.html>>.

<sup>18</sup> Genocide in Peru, Judgment No. 712/2003 (Tribunal Supremo (Sala de lo Penal) May 20, 2003), at <<http://www.derechos.org/nizkor/peru/doc/tsperu.html>>.

<sup>19</sup> In this case, the Constitutional Tribunal's jurisdiction arose from a writ of *amparo*, which is used when a party complains that a lower court's decision has deprived that party of the constitutional right to an effective judicial remedy (sec. I(3)(a)). The Tribunal has the authority to reverse judicial decisions that are arbitrary, manifestly unreasonable, or a result of clear error, or where jurisdictional provisions have been interpreted in an excessively strict or formalist way or in a way that is disproportionate in balancing the interests served by acceptance or rejection of jurisdiction (*id.*).

not support that conclusion” (sec. II(6)). The Tribunal, echoing the minority’s views below, found that the cited German cases had been superseded, that the *Arrest Warrant* case had been explicitly limited to the issue of the immunity of a sitting foreign minister, and that the Sharon case<sup>20</sup> had not only been similarly limited, but actually embraced a broad view of universal jurisdiction. The Tribunal then noted that numerous other countries have broad jurisdictional grants that do not require any link.<sup>21</sup>

The Supreme Tribunal had also cited a number of treaties containing “extradite or prosecute” obligations (when the defendant is present) as evidence that the presence of the defendant was required. The Constitutional Tribunal found that such a restriction might be applicable when jurisdiction was based on Article 23.4(g) of the LOPD, which extends jurisdiction to non-enumerated crimes when so required by treaty. Nevertheless, such a restriction did not apply to the remainder of the article, which enumerated specific crimes such as genocide and terrorism. Although the defendant’s presence was necessary for trial (Spain forbids trial in absentia), it was not needed to open the case. Extradition could be used to achieve the goal of universal jurisdiction: prosecution and punishment of crimes that affect the entire international community.

Similarly, the Constitutional Tribunal considered limits based on the nationality of the victims or on protective principles to be contrary to the language of the statute and as operating, in practice, to abrogate the statute. Nationality-based limits were especially inappropriate, the Tribunal argued, in cases of alleged genocide, since not only would the victims have to be Spanish, but the specific intent of the defendants would have to encompass the destruction of Spaniards as a group, which the Tribunal found an improbable reading of the Spanish statute. The national interest or protective criteria were equally lacking in merit and also irreconcilable with the very foundation of universal jurisdiction, which is based solely on the nature of the crime. International and transborder prosecutions under universal jurisdiction “transcend the harm to the specific victims and affect the international community as a whole. Therefore, prosecution and punishment are not only a shared commitment, but a shared interest of all states . . . , and one whose legitimacy cannot depend on the particular interests of each one” (sec. II(9)). For those reasons, the Constitutional Tribunal found that the complainants’ right to an effective judicial remedy had been abridged.

The practical effect of the judgment is to send the *Guatemala Genocide* case back to the investigating magistrate, to be reopened in line with the Tribunal’s judgment—and consequently reinstating the bulk of the genocide claims against the Guatemalans. The judgment also overturns the prior doctrine enunciated by the Supreme Court,<sup>22</sup> and affects other pending cases as well<sup>23</sup>—at least in those cases where local courts are not actually prosecuting.

<sup>20</sup> H.S.A. v. S.A., Cour de Cassation, Feb. 12, 2003, No. P.02.1139.F/1, *translated in* 42 ILM 596 (2003).

<sup>21</sup> The Tribunal cited the German penal code, which provides for universal jurisdiction over genocide, crimes against humanity, and war crimes even when the crime has been committed abroad and has no link to Germany. The Tribunal failed to mention, however, the potential limitations on jurisdiction to be found in section 153(f) of the German Code of Criminal Procedure. That provision, passed in conjunction with the Code of Crimes Against International Law in 2002, gives the prosecutor discretion to reject certain cases where there is no link. For a discussion, see the German Federal Court prosecutor’s dismissal of the case against Donald Rumsfeld, Case 3 ARP 207/04-02, *at* <[http://www.ccr-ny.org/v2/legal/september\\_11th/docs/german\\_appeal\\_english\\_tran.pdf](http://www.ccr-ny.org/v2/legal/september_11th/docs/german_appeal_english_tran.pdf)>. See *infra* note 26 and accompanying text.

<sup>22</sup> When a Constitutional Tribunal judgment declares unconstitutional a court ruling that has acquired precedential status, such ruling is modified according to the Constitutional Tribunal judgment. Organic Law of the Constitutional Tribunal, ch. IV, Art. 40.2.

<sup>23</sup> Thus, on January 10, 2006, and citing the decision of the Constitutional Tribunal, the Audiencia Nacional opened a case against high-ranking Chinese officials accused of genocide in Tibet (Appeal No. 196/05 Jan. 10, 2006).

The prosecutions of Augusto Pinochet in Spain and Hissène Habré in Belgium opened a new era in the use of universal jurisdiction, giving hope to victims of massive human rights violations. It also created a backlash, with states arguing that the sovereign equality of states required strict limits on the use of the doctrine. Although the International Court of Justice's 2002 *Arrest Warrant* judgment did not turn on the issue of universal jurisdiction itself, some of the judges indicated that the doctrine should be interpreted narrowly.<sup>24</sup> The Belgian Parliament, under heavy pressure from the United States and Israel, modified the Belgian universal jurisdiction law in 2003 to require either that the defendant be present or that the victim either be Belgian or have resided in Belgium for at least three years when the alleged crimes took place, thus narrowing access to the Belgian courts.<sup>25</sup> Along the same lines, the German statutory scheme on universal jurisdiction, enacted as part of Germany's implementing legislation concerning the International Criminal Court, encourages the prosecutor to reject cases where the defendant is not present and not a German national, although it makes exceptions for compelling cases.<sup>26</sup>

In light of the above trend, the judgment of Spain's highest court is significant. The decision takes on some of the thorniest issues relating to universal jurisdiction: those involving links to the forum state and the relationship between the forum state and the territorial state. To require that the defendant be present, for example, changes the nature of universal jurisdiction from a doctrine providing for prosecution and punishment, to a doctrine that does little more than eliminate safe havens. Few defendants are likely to hang around while judges investigate their cases or while complainants amass the requisite evidence. In contrast, an advantage of allowing an investigation to begin without the defendant present—and with the defendant's presence for trial to be sought later through extradition—is that even if extradition is eventually denied, the request may, under certain treaties, trigger a duty to prosecute domestically.<sup>27</sup> Similarly, requiring a nexus through the nationality or residence of the victims, or through "national interest," ignores the fundamental claim of universal jurisdiction to be based on the interests of all states in suppressing certain heinous crimes that affect international order—and thereby reduces universal jurisdiction to a variant of passive personality jurisdiction. The Tribunal's decision to jettison those limits is welcome and important.

The question of the relationship between the forum investigating the crimes and the territorial forum is more complicated. Investigations based on universal jurisdiction, if they are successful, can serve as catalysts for domestic investigations; indeed, I argue elsewhere that the potential for such catalytic effects is one of the primary benefits of exercising universal jurisdiction.<sup>28</sup> The calculus of how real or effective domestic prosecution efforts are is often not easily answerable and changes over time; the simple opening of an investigation at home may not be enough and should not, by its terms, supersede the jurisdiction of another state.<sup>29</sup> Moreover, at some point considerations of judicial economy and "sunk costs" counsel continuing

<sup>24</sup> See *Arrest Warrant of 11 April 2000* (Dem. Rep. Congo v. Belg.), 2002 ICJ REP. 3 (Feb. 14) (especially separate opinion of President Guillaume).

<sup>25</sup> See *Act on Grave Breaches of International Humanitarian Law*, Aug. 5, 2003, MONITEUR BELGE, Aug. 7, 2003.

<sup>26</sup> Code of Crimes Against International Law §153f; see *supra* note 21 and accompanying text.

<sup>27</sup> The Convention Against Torture and various antiterrorism treaties contain this "extradite or prosecute" obligation.

<sup>28</sup> See ROHT-ARRIAZA, *THE PINOCHET EFFECT: TRANSNATIONAL JUSTICE IN THE AGE OF HUMAN RIGHTS* (2005).

<sup>29</sup> Thus, for example, a case charging genocide against many of the suspects in the Guatemalan case has been open in Guatemala since 2000, but progress has been slow and difficult, with no indictments yet entered. Case No. 3920-2000, Ministerio Público, Guatemala (on file with author).

a prosecution where it has begun, even if at some point later a domestic forum becomes available. Nevertheless, concurrent prosecutions could be duplicative and lead to inconsistent results, and if one of the relevant goals is to strengthen domestic legal systems, they actually need to be used to try cases. Beyond counseling self-restraint by complainants and improved judicial cooperation, courts may find it necessary to develop doctrines of prudential abstention or suspension in cases where concurrent investigations would be wasteful or confusing. But Spain's Constitutional Tribunal helped to clarify that such accommodations are neither jurisdictional nor required—the International Criminal Court's "unable or unwilling" requirement does not apply to national courts.

Finally, the degree to which Spanish courts are open to transnational prosecutions needs also to be viewed in light of another recent Spanish court decision. In its April 19, 2005, judgment of Argentine naval officer Adolfo Scilingo, a three-judge panel of the *Audiencia Nacional* convicted Scilingo of committing crimes against humanity for his participation in torture, illegal detention, and throwing prisoners out of airplanes to their deaths.<sup>30</sup> Although crimes against humanity were not made part of the Spanish penal code until well after the events at issue, and although the original charge was genocide, the panel found that by the 1970s, crimes against humanity (including genocide) constituted a part of customary international law and could therefore be applied by local courts without violating the principle of *nullum crimen sine lege*. The panel relied extensively on ICTY jurisprudence to reach its conclusion. If followed by other courts, the decisions, taken together, pave the way for additional cases involving crimes against humanity to be brought before the Spanish courts, even without links to that forum.

These developments herald a new vitality for the exercise of universal jurisdiction, at least in Spain. Combined with the September 2005 Belgian decision to try Hissène Habré, the ex-leader of Chad,<sup>31</sup> and the recent convictions of low- and mid-level criminals in the Netherlands<sup>32</sup> and the United Kingdom,<sup>33</sup> the promise—as well as the potential difficulties—of transnational prosecutions based on universal jurisdiction remains a potent one.

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<sup>30</sup> Scilingo, No. 16/2005 (Audiencia Nacional (penal chamber, 3d section) Apr. 19, 2005).

<sup>31</sup> See Human Rights Watch, *The Case Against Hissène Habré, an "African Pinochet,"* at <<http://www.hrw.org/english/docs/2005/09/30/chad11786.htm>>.

<sup>32</sup> Hesamuddin Hesam, 57, and Habibullah Jalalzoy, 59—a former head of Afghan intelligence and his deputy—were convicted of torture in October 2005. Sebastian Nzapali, a former colonel in the Zairian army under Mobutu, was tried and convicted on torture charges in Rotterdam in March 2004.

<sup>33</sup> Faryadi Sarwar Zardad, an Afghan accused of torture and hostage taking, was convicted in London in July 2005.