

# IntLawGrrls

voices on international law, policy, practice

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Wednesday, August 1, 2012

## Universal jurisdiction: Swiss court denies immunity

Yesterday, my former employer TRIAL ([Swiss Association against Impunity](#)) made headlines after the highest Swiss criminal tribunal issued a landmark case on immunity and universal jurisdiction: The Federal Criminal Court found that an Algerian former defense minister does not enjoy immunity for war crimes allegedly committed during his tenure.



(credit)

Khaled Nezzar, who was arrested in Geneva last October, challenged the proceedings against him and argued that he was entitled to immunity. In its decision released yesterday, the Federal Criminal Court emphasized that immunity is not available for international

crimes such as war crimes, crimes against humanity, torture or genocide. The tribunal took the view that the serious nature of such crimes implies that all states must ensure that such conduct is effectively addressed, independent of other rules of international law or the attitude of other states.

The full text of the decision (in French) and more background information are available on [TRIAL's website](#).

This is the most relevant passage, from page 26 of the judgment:

'... il serait à la fois contradictoire et vain si, d'un côté, on affirmait vouloir lutter contre ces violations graves aux valeurs fondamentales de l'humanité, et, d'un autre côté, l'on admettait une interprétation large des règles de l'immunité fonctionnelle (*ratione materiae*) pouvant bénéficier aux anciens potentats ou officiels dont le résultat concret empêcherait, *ab initio*, toute ouverture d'enquête. S'il en était ainsi, il deviendrait difficile d'admettre qu'une conduite qui lèse les valeurs fondamentales de l'ordre juridique international puisse être protégée par des règles de ce même ordre juridique.'

Roughly translated:

'... it would be both contradictory and futile to, on the one hand, fight against these gross violations to the most fundamental values of humanity and, on the other hand, to accept a broad interpretation of the rules of functional immunity (*ratione materiae*) that would benefit former strongmen or other officials and that would preclude any investigation from the outset. If this were the case, it would be difficult to accept that conduct harming the fundamental values protected by the international legal order would be protected by immunity rules of that same legal order.'

The significance of the decision by the Federal Criminal Court goes beyond the Swiss national jurisdiction. As TRIAL's [press release](#) states, the judgment 'opens up significant possibilities in the fight against impunity based on the principle of universal jurisdiction'. According to Philip Grant, director of TRIAL,

'[T]his decision sets a ground-breaking precedent that will have a significant impact beyond our borders and gives a very strong signal to executioners: in the future, they can no longer hide behind their official position to commit atrocities.'

The case originated from a denunciation by TRIAL and a complaint by two Algerian refugees residing in Switzerland. Nezzar is accused of serious violations of international humanitarian law committed during the early years of the Algerian civil war. The decision released yesterday implies that the investigation against Nezzar will continue and a war crimes trial might eventually take place in Switzerland. Previously, a Swiss criminal court convicted [Fulgence Nionteze](#), a Rwandan national

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present on Swiss territory for war crimes committed in the context of the Rwandan genocide.

After IntLawGrrl Naomi Roht-Arriaza's excellent *ASIL Insight* about the disappointing *prevaricación decision* of the Spanish Supreme Court (prior [post](#)), the decision by the Swiss Federal Criminal Court is a welcome reminder of the role domestic tribunals can play in the fight against impunity. Congratulations, TRIAL!

by [Evelyne Schmid](#) at 3:10 PM



Labels: [accountability](#), [Algeria](#), [Evelyne Schmid](#), [immunity](#), [international criminal law](#), [jus cogens](#), [NRA](#), [Rwanda](#), [Switzerland](#), [universal jurisdiction](#)

## 1 comment:



**Alexandra Dolce** said...

Correct municipal courts have broader powers than they choose to exercise. This is an excellent first step. I think if other courts follow this trend then government officials may start "thinking" before they act.

August 10, 2012 at 12:34 PM

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