

## TABLE OF CONTENTS

INTRODUCTION .....	1
I. INTERNATIONAL STANDARDS CONCERNING REPARATIONS FOR CRIMES UNDER INTERNATIONAL LAW .....	2
A. International law and standards guaranteeing the right to reparations without any geographic restriction.....	2
B. The right to reparations for torture under Article 14 of the Convention against Torture.....	4
II. NATIONAL LEGISLATION PERMITTING COURTS TO EXERCISE ADJUDICATIVE UNIVERSAL CIVIL JURISDICTION .....	4
CONCLUSION.....	10



# UNIVERSAL JURISDICTION:

## The scope of civil universal jurisdiction

### INTRODUCTION

International law permits the exercise of adjudicative universal jurisdiction over civil tort claims, including those based on genocide, crimes against humanity, war crimes, torture and other crimes under international law without requiring a link between the tort or underlying crime and the forum state.<sup>1</sup>

However, Canada recently submitted an *amicus curiae* brief in a civil suit in the United States of America (USA), *Presbyterian Church of Sudan v. Talisman Energy Inc.*, based on civil universal jurisdiction in which the plaintiffs alleged that they were victims of genocide, crimes against humanity and other violations of international law as a result of acts perpetrated by the Canadian energy company, Talisman Energy, Inc. In that brief, Canada contended that “customary international law requires a genuine and effective link between the nation seeking to exercise jurisdiction and the persons or activities it seeks to regulate”.<sup>2</sup> This assertion is wrong with regard to both criminal and civil universal jurisdiction. Canada fails to cite any relevant state practice supported by *opinio juris* in support of this assertion, which is not surprising since only a handful of states have ever restricted the scope of their universal jurisdiction by requiring a link and some of those states have since eliminated the link.

Indeed, there is considerable state practice and *opinio juris* at the international and national level demonstrating that under customary and conventional international law states may, and in some instances, must, exercise universal criminal and civil jurisdiction, without requiring a link to the forum state, not only over conduct amounting to crimes under international law, but also crimes of international concern in treaties and even serious ordinary crimes common to most legal systems, such as murder, assault, rape and kidnapping.<sup>3</sup> Moreover, the very

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<sup>1</sup> As a preliminary point, it is important to distinguish between *prescriptive* extraterritorial jurisdiction, in which states seek through national legislation to regulate activities in foreign states on the basis of their own national norms, for example, by attempting to impose national antitrust law on foreign companies and individuals, and *adjudicative* universal jurisdiction in which each state may act “in the capacity of a guardian of international law and an agent for its enforcement”, *Attorney-General of Israel v. Eichmann*, 36 Int'l L. Rep. 277, 304 (Israel Sup. Ct. 1962), to investigate and prosecute conduct defined as crimes under international law such as genocide, crimes against humanity, war crimes and torture.

<sup>2</sup> Brief of *Amicus Curiae* the Government of Canada in Support of Dismissal of the Underlying Action, *Presbyterian Church of Sudan v. Talisman Energy Inc.*, No. 07-0016 CV, 2<sup>nd</sup> Cir., 8 May 2007, 2, 7-10. No other state joined Canada's brief.

<sup>3</sup> See generally the 722-page study of state practice in approximately 125 countries by Amnesty International, *Universal jurisdiction: The duty of states to enact and implement universal jurisdiction*, AI Index: IOR 53/002 – 018/2001, September 2001 (second edition forthcoming 2008). The findings and conclusions of this study were recently confirmed with regard to war crimes by the International

definition of universal jurisdiction excludes any link between the forum state and the tort or underlying crime. For example, the current study of the principle of *aut dedere aut judicare* being conducted by the International Law Commission endorsed as “practicable” the definition of universal jurisdiction as “the ability of the prosecutor or investigating judge of any state to investigate or prosecute persons for crimes committed outside the state’s territory which are not linked to that state by the nationality of the suspect or of the victim or by harm to the state’s own national interests”.<sup>4</sup> This paper reviews some of the relevant international law and standards concerning the obligation of states to ensure that victims of crimes under international law and their families obtain reparations and notes some of the many examples of state practice and *opinio juris* concerning universal civil jurisdiction over crimes under international law. The examples cited are not, of course, a comprehensive report of all such examples.<sup>5</sup>

## **I. INTERNATIONAL STANDARDS CONCERNING REPARATIONS FOR CRIMES UNDER INTERNATIONAL LAW**

International law and standards permit and, in some instances, require states to provide civil remedies for crimes under international law committed abroad by foreigners against other foreigners. In particular, as made clear by the Committee against Torture in its examination of Canada’s report, Article 14 of the Convention against Torture requires states to provide a procedure allowing victims to seek and obtain reparations for torture committed abroad, even when the victims and their torturers were not nationals of the state party.

### ***A. International law and standards guaranteeing the right to reparations without any geographic restriction***

The right of victims and their families to recover reparations for crimes under international law, whether during peace or armed conflict, has been confirmed in provisions of a number of international instruments adopted over the past two decades since the Convention was

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Committee of the Red Cross study of customary international humanitarian law. Jean-Marie Henkaerts & Louise Doswald-Beck, *Customary International Humanitarian Law* (Cambridge: Cambridge University Press 2005).

<sup>4</sup> Preliminary report on the obligation to extradite or prosecute (“*aut dedere aut judicare*”) by Mr. Zdzislaw Galicki, Special Rapporteur, International Law Commission, Fifty-eighth session, Geneva, 1 May-9 June and 3 July- 11 August 2006, para. 19 (<http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/CN.4/571&Lang=E>).

<sup>5</sup> Amnesty International plans to publish a comprehensive global review of state practice in all 192 UN member states concerning universal civil and criminal jurisdiction in 2008.

adopted in 1984. These instruments do not restrict this right geographically, require a link to the forum state or abrogate the right by state or official immunities. They include the 1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,<sup>6</sup> the 1998 Rome Statute of the International Criminal Court<sup>7</sup> and two adopted in April 2005 by the Commission on Human Rights, the first of which was adopted subsequently in December of that year by the UN General Assembly, the UN Basic Principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and international humanitarian law (Van Boven-Bassiouni Principles)<sup>8</sup> and the UN Updated set of principles for the protection and promotion of human rights through action to combat impunity (Joinet-Orentlicher Principles).<sup>9</sup> Both instruments, which were designed to reflect current international law obligations, have been cited by Pre-Trial Chamber I of the International Criminal Court in its determination that the harm suffered by victims of crimes under international law includes emotional suffering and economic loss.<sup>10</sup> Most recently, the UN General Assembly adopted by consensus the International Convention for the Protection of All Persons from Enforced Disappearances with a very broad definition of the right to reparations at its 61<sup>st</sup> session in 2006.<sup>11</sup> This right is inherent in the right to a remedy, as guaranteed in Article 2 of the International Covenant on Civil and Political Rights (ICCPR), adopted four decades ago in 1966.<sup>12</sup> Indeed, the international community recognized the rights of victims to civil recovery directly against foreign states for war crimes a century ago in Article 3 of the 1907 Hague Convention IV Respecting the Laws and Customs of War on Land.<sup>13</sup>

<sup>6</sup> GA Res. 40/34, 29 Nov 1985.

<sup>7</sup> Rome Statute of the International Criminal Court, adopted by the United Nations Diplomatic Conference on the Establishment of an International Criminal Court, Rome UN Doc A/CONF.183/9\*, 17 July 1998, as corrected by the *process-verbaux* UN Doc C.N.577.1998.TREATIES-8, 10 November 1998, and UN Doc C.N.604.1999.TREATIES-18, 12 July 1999, Art. 75. Its reach is potentially universal as the Security Council can refer a situation involving crimes in any state to the Prosecutor.

<sup>8</sup> UN Comm'n Hum. Rts Res. E/CN.4/2005/35, 13 April 2005; GA Res. A/RES/60/147, 16 Dec 2005.

<sup>9</sup> UN Comm'n Hum Rts Res E/CN.4/2005/81, 15 April 2005.

<sup>10</sup> *Situation of the Democratic Republic of the Congo*, Decision on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6, Case No. ICC-01/04, Pre-Trial Chamber I, 17 January 2006, para. 115.

<sup>11</sup> UN G.A. Res. A/RES/61/177, 20 December 2006, Art. 24. The Convention has been signed by at least 59 states.

<sup>12</sup> See Human Rights Committee, General Comment No. 31, UN Doc. CCPR/C/21/Rev.1/Add.13 (no suggestion that the right to a remedy under the ICCPR is geographically restricted).

<sup>13</sup> 1907 Hague Convention IV Respecting the Laws and Customs of War on Land, *reprinted in* Adam Roberts & Richard Guelff, *Documents on the Laws of War* 67 (Oxford: Oxford University Press 3<sup>rd</sup> ed. 2000); Hisakazu Fujita, Isomi Suzuki and Kantato Nagano, *War and the Rights of Individuals, Renaissance of Individual Compensation*, Nippon Hyoron-sha Co. Ltd. Publishers (1999), expert opinions by Frits Kalshoven 31; Eric David 49; Christopher Greenwood 59.

## **B. The right to reparations for torture under Article 14 of the Convention against Torture**

Recent practice of the Committee against Torture and scholarship demonstrates that states parties have an obligation to provide victims with a forum to obtain reparations for torture, regardless where it occurred and regardless whether the victim is a national of the forum state. For example, when the Committee against Torture, the expert body that monitors implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment, examined the report of Canada in May 2005, it made clear that states parties had an obligation “under article 14 of the Convention to ensure the provision of compensation through its civil jurisdiction to all victims of torture”, and it is clear from the context that this obligation extended to victims in Canada who suffered torture inflicted abroad by foreigners.<sup>14</sup> A thorough review of the drafting history of Article 14, state practice and the work of the Committee against Torture has concluded that Article 14 requires states parties to provide a forum for foreign victims as well as citizens of the forum to seek reparations for torture committed abroad by foreigners.<sup>15</sup>

## **II. NATIONAL LEGISLATION PERMITTING COURTS TO EXERCISE ADJUDICATIVE UNIVERSAL CIVIL JURISDICTION**

As a preliminary matter, it is useful to note that approximately 125 countries at least had universal criminal jurisdiction legislation as of September 2001, a number which has increased since that date, and almost none of those states required “a constructive and effective link” – or, indeed, any link - between the crime and the forum state, although as a matter of fundamental due process most of those states excluded trials *in absentia* in universal criminal jurisdiction cases.<sup>16</sup> Many of those states permit civil claims based on torts committed abroad to be brought either in their civil courts or in criminal proceedings for torts based on an underlying crime.<sup>17</sup>

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<sup>14</sup> Conclusions and recommendations (Canada), 34<sup>th</sup> Sess., 2-20 May 2005, UN Doc CAT/C/CR/34/CAN, 7 July 2005, paras. 4 (g); 5 (f).

<sup>15</sup> Christopher Keith Hall, *The duty of states parties to the Convention against Torture to provide procedures permitting victims to recover reparations for torture committed abroad*, Eur. J. Int'l L. (forthcoming 2007).

<sup>16</sup> This conclusion is evidenced in Amnesty International, *Universal jurisdiction*, *supra*, note 3.

<sup>17</sup> Although Canadian courts require that foreign plaintiffs seeking to recover for torts committed by foreigner defendants abroad demonstrate “a real and substantial connection” between the tort and the forum, that flexible test is based on Canadian common law and it is not one required by international law. In *Bouzari v. Islamic Republic of Iran*, 122 C.R.R. (2d) 26, 28 (2004) found that there was “no

First of all, *United States* Federal courts have repeatedly exercised adjudicative civil universal jurisdiction under the Alien Tort Claims Act over torts based on the law of nations committed abroad with almost no objections by foreign states.<sup>18</sup> Moreover, the US Congress strongly approved such exercises of adjudicative universal jurisdiction when it enacted the Torture Victim Protection Act giving Federal courts jurisdiction over tort claims based on torture and extrajudicial executions committed abroad.<sup>19</sup>

As the European Commission demonstrated in its *amicus curiae* brief submitted to the United States Supreme Court in *Sosa v. Alvarez-Machain*, many states, including *Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Portugal, Spain* and *Sweden*, permit their courts to entertain civil claims in an *action civile* in criminal cases which are based on universal criminal jurisdiction.<sup>20</sup> Apart from Belgium, which restricted the scope of its universal jurisdiction legislation in the face of US threats related to the NATO headquarters in Brussels, the other states do not require a link between the forum state and the tort or underlying crime. Indeed, Germany, which did impose briefly a judicially created requirement of a link not found in any legislation, abolished that judicially created requirement when it enacted implementing legislation for the Rome Statute.<sup>21</sup> Nine of these countries have opened criminal investigations or prosecuted cases involving criminal universal jurisdiction in the past decade (*Austria, Belgium, Denmark, Finland, France, Germany, the Netherlands, Spain* and *Sweden*).<sup>22</sup> In addition, the Council of the European Union has issued a regulation requiring its 27 member states to recognize judgments of courts of other member states, many of which have universal criminal jurisdiction, granting civil

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reason to displace the usual common law test”, but it did not suggest that the test was required under international law and it decided the case on the basis of a supposed immunity, not jurisdiction.

<sup>18</sup> Alien Tort Claims Act, 28 U.S.C. § 1350 (1994). An *amicus curiae* brief opposing civil universal prescriptive jurisdiction under the Alien Tort Claims Act where there were no effects in the USA failed to garner the support of more than three (1.5%) of the 192 UN member states. Brief of the Governments of the Commonwealth of Australia, the Swiss Confederation and the United Kingdom of Great Britain and Northern Ireland, *Sosa v. Alvarez-Machain*, No. 03-0339, U.S. Sup. Ct., 23 January 2004 (<http://www.ccr-ny.org/v2/legal/docs/sva19.pdf>). However, only adjudicative jurisdiction over violations of international law, not prescriptive jurisdiction seeking to legislate US norms in foreign states, was at issue in *Sosa*.

<sup>19</sup> Torture Victim Protection Act of 1991, Pub. L. No. 102-256, 106 Stat. 73 (1992) (codified at 28 U.S.C. § 1350 (2000)).

<sup>20</sup> Brief of *Amicus Curiae* the European Commission Supporting Neither Party, *Sosa v. Alvarez-Machain*, No. 03-339, U.S. Sup. Ct., 23 January 2004, 21 n. 48, citing Yves Donzallaz, *La convention de Lugano du 16 septembre 1998 concernant la compétence judiciaire et l'exécution des décisions en matière civile et commerciale*, Vol. III, No. 5203-5272 (1998).

<sup>21</sup> German Code of Crimes against International Law, adopted 26 June 2002 (<http://www.iuscomp.org/gla/statutes/VoeStGB.pdf>). Although the Federal Prosecutor has the discretion under Section 153 (f) of this law not to prosecute if the suspect is not in Germany and is not expected to come to Germany, the Prosecutor may still prosecute the suspect, even if there are no links to Germany.

<sup>22</sup> See, for example, Amnesty International, *Universal jurisdiction*, *supra*, note 3, Chapters Four, Six, Eight and Ten.

recovery during criminal proceedings.<sup>23</sup> There is no requirement in that regulation that the forum state had to have a link to the tort or underlying crime.

The following example of the jurisdictions cited in the European Commission brief is illustrative. *Spanish* law allows civil claims to be brought as a part of criminal proceedings – which could include proceedings based on universal jurisdiction - in order for the victim to recover damages.<sup>24</sup> This procedure is an alternative to a civil suit in a civil court after the criminal proceedings have ended.<sup>25</sup> There is no requirement of a link between the tort or underlying crime and Spain. However, the accused must be present in Spain during the merits phase of the trial.<sup>26</sup>

In addition to the states listed in the European Commission brief, many civil law countries in other parts of the world routinely permit their courts to entertain civil claims in criminal cases and many of those states have universal criminal jurisdiction. For example, courts in the following countries can exercise jurisdiction in criminal cases over civil claims based on torts committed abroad: *Argentina, Bolivia, China, Colombia, Costa Rica, Myanmar, Panama, Poland, Romania, Senegal* and *Venezuela*.

For example, in *Argentina*, a civil claim can be raised in a criminal proceeding.<sup>27</sup> Argentine courts can exercise universal jurisdiction over war crimes, crimes against humanity and genocide.<sup>28</sup> There is no requirement of a link between Bolivia and the tort or the underlying crime.

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<sup>23</sup> Council Regulation (EC) No. 44/2001, O.J. (L 12/1) (January 16, 2001), art. 5, No. 4, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (civil claim for damages or restitution may be brought against person in Member State in which person not domiciled, provided that claim based on act giving rise to criminal proceedings and brought before court seized of those proceedings, to extent that court has jurisdiction under own law to entertain civil proceedings).

<sup>24</sup> See Article 119 of the Spanish Criminal Code (available at [http://noticias.juridicas.com/base\\_datos/Penal/lo10-1995.html](http://noticias.juridicas.com/base_datos/Penal/lo10-1995.html) (in Spanish)), Articles 13, 299, 615 to 621 and 625 Criminal Procedure Code (available at [http://noticias.juridicas.com/base\\_datos/Penal/lecr.html](http://noticias.juridicas.com/base_datos/Penal/lecr.html) (in Spanish)), and Article 4.4 Regulation 44/2001.

<sup>25</sup> Spanish Criminal Code, Art. 109.2; Spanish Criminal Procedure Code, Arts 111, 112.1, and 114.1.

<sup>26</sup> See *Guatemalan Genocide Case*, No. STC 237/2005 of 26 September 2005 (available at <http://www.uclm.es/profesorado/asanchez/webdih/03Materiales/STC%20237-2005-Guatemala.doc>). Trials *in absentia* are generally not allowed in Spain, with the exception of certain exceptional circumstances. See Articles 791 (4), 789 (4) and 793 of the Spanish Criminal Procedure Code.

<sup>27</sup> Argentine Code of Criminal Procedure, Arts 14-17.

<sup>28</sup> National Constitution, article 118; Law 26.200 (Implementing the Rome Statute), articles 3(d) and 4, available at [http://web.amnesty.org/web/web.nsf/32875f903347b75280257171005b696c/87edcb3c8f98a13f8025728900811c2f/\\$FILE/ATTEKYFB/int\\_jus-legislation\\_argentina-esl.pdf](http://web.amnesty.org/web/web.nsf/32875f903347b75280257171005b696c/87edcb3c8f98a13f8025728900811c2f/$FILE/ATTEKYFB/int_jus-legislation_argentina-esl.pdf).



A civil claim can be raised in a criminal proceeding in *Bolivia*.<sup>29</sup> Bolivian courts can exercise universal jurisdiction over grave breaches of the Geneva Conventions and Additional Protocol I, the crimes against humanity of torture and apartheid, as well as individual cases of torture not amounting to a grave breach or a crime against humanity.<sup>30</sup> There is no requirement of a link between Bolivia and the tort or the underlying crime.

Under the 1997 Criminal Law of the *People's Republic of China*, a court may award civil compensation in a criminal case to the victim for economic losses caused by the crime committed by a convicted person, which is a separate award from any fines and which has priority of payment over any fines.<sup>31</sup> Chinese courts may exercise universal jurisdiction with respect to any crime where it is required to do so by treaty, which would include grave breaches of the Geneva Conventions and torture.<sup>32</sup> No link is required.

Victims of crimes can file civil claims in criminal proceedings in *Colombia*.<sup>33</sup> That country's courts can exercise universal criminal jurisdiction over war crimes, crimes against humanity, genocide, torture and enforced disappearance.<sup>34</sup>

Article 7 of the *Costa Rican* Penal Code provides for universal criminal jurisdiction over a broad range of crimes, without any requirement of "a constructive and effective link":

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<sup>29</sup> Bolivia Criminal Procedure Code, Arts 36-41.

<sup>30</sup> Bolivian Penal Code, Art. 1 (7). See Amnesty International, *Universal jurisdiction*, *supra*, note 3, Chapter Four – Part A, 29-30 (grave breaches of the Geneva Conventions and Protocol I); Chapter Six, 12-13 (crimes against humanity of *apartheid* and torture); Chapter Ten, 11 (torture).

<sup>31</sup> Criminal Law of the People's Republic of China, Art. 36 ("If a victim has suffered economic losses as a result of a crime, the criminal shall, in addition to receiving a criminal punishment according to law, be sentenced to making compensation for the economic losses in the light of the circumstances. If a criminal who is liable for civil compensation is sentenced to a fine at the same time but his property is not sufficient to pay both the compensation and the fine, or if he is sentenced to confiscation of property at the same time, he shall, first of all, bear his liability for civil compensation to the victim."). In minor crimes, a criminal court may order other civil reparations, such as an apology, in lieu of criminal punishment. *Ibid.*, Art. 37 ("If the circumstances of a person's crime are minor and do not require criminal punishment, he may be exempted from it; however, he may, depending on the different circumstances of the case, be reprimanded or ordered to make a statement of repentance, offer an apology or pay compensation for the losses, or be subjected to administrative penalty or administrative sanctions by the competent department.").

<sup>32</sup> *Ibid.*, Art. 9 ("This law shall be applicable to crimes which are stipulated in international treaties concluded or acceded to by the People's Republic of China and over which the People's Republic of China exercises criminal jurisdiction within the scope of its obligations, prescribed in these treaties, it agrees to perform.").

<sup>33</sup> Colombian Code of Criminal Procedure, Arts 45 to 49.

<sup>34</sup> Colombian courts may exercise universal criminal jurisdiction over conduct amounting to war crimes, crimes against humanity, genocide, torture and enforced disappearance under Colombian Penal Code, Art. 16 (6). See Amnesty International, *Universal jurisdiction*, *supra*, note 3, Chapter Four – Part A, 46-50 (war crimes); Chapter Six, 22-23 (crimes against humanity); Chapter Eight, 15-18 (genocide); Chapter Ten, 17 (torture); Chapter Twelve, 5 (enforced disappearance).

"Whatever provisions are applicable in the place where the punishable action occurred and regardless of the nationality of the person responsible, any person who commits acts of piracy or acts of genocide, or of counterfeiting or forgery of coins, credit instruments, banknotes or other bearer paper, or engages in the trading of slaves, women or children or in the trafficking of drugs or obscene publications, or commits any other punishable acts contrary to human rights and International Humanitarian Law under any treaties signed by Costa Rica or under this Code shall be liable for punishment in accordance with the Laws of Costa Rica".<sup>35</sup>

In addition, Article 37 of the Costa Rican Code of Criminal Procedure provides that civil suits may be joined to a criminal proceeding – which necessarily would include criminal proceedings based on universal criminal jurisdiction - by victims or their relatives in order to obtain restitution from a convicted person of property or assets derived from the crime or compensation.<sup>36</sup>

Under the *Myanmar* Code of Criminal Procedure, the court may award civil compensation in a criminal case in lieu of part of the fine to be paid to the victim and, as reparations, it may order restitution of stolen property to the victim.<sup>37</sup> Under the 1861 Myanmar Penal Code, national courts may exercise universal jurisdiction over any offence in the Penal Code, without any requirement of a link.<sup>38</sup>

The new Penal Code of *Panama* now makes genocide, crimes against humanity, war crimes, enforced disappearances and torture criminal under national law<sup>39</sup>. The new Code includes a broad provision on the scope of jurisdiction attributed to national courts. It provides for universal jurisdiction, without requiring the suspects physical presence under Panama soil, for genocide, crimes against humanity, war crimes and enforced disappearances.<sup>40</sup> In addition, the Code also provides for all jurisdictional bases set out in treaties to which Panama is a party.<sup>41</sup> The new Code also contains a provision on *aut dedere aut judicare*, whereby when Panama refuses to extradite a national or a foreigner, it is its duty to apply Panama's Law.<sup>42</sup>

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<sup>35</sup> Costa Rican Penal Code (as amended by Law 8272 of 2003), Art. 7.

<sup>36</sup> Article 37 of the Costa Rican Code of Criminal Procedure provides:

*“Artículo 37.- Ejercicio. La acción civil para restituir el objeto materia del hecho punible, así como la reparación de los daños y perjuicios causados, podrá ser ejercida por el damnificado, sus herederos, sus legatarios, la sucesión o por el beneficiario en el caso de pretensiones personales, contra los autores del hecho punible y partícipes en él y, en su caso, contra el civilmente responsable.”*

<sup>37</sup> Myanmar Code of Criminal Procedure, Arts 545 (award of civil compensation out of fine and restitution of stolen property) and 546 (amount of civil compensation received from fine to be deducted from any recovery of damages in any subsequent civil suit).

<sup>38</sup> Myanmar Penal Code of 1861, Art. 3 and note.

<sup>39</sup> Panamanian Penal Code, Arts 431-445 (available at: <http://www.gacetaoficial.gob.pa/pdfTemp/25796/4580.pdf> ).

<sup>40</sup> *Ibid.*, Art. 19. See also Articles 20 (4) and 21.

<sup>41</sup> *Ibid.*, Art. 21.

<sup>42</sup> *Ibid.*, Art. 20 (4).

The Criminal Procedural Code also allows civil claims to be brought as part of criminal proceedings.<sup>43</sup>

It is possible for victims to bring civil claims in criminal proceedings in **Poland**.<sup>44</sup> Polish courts can exercise universal jurisdiction over war crimes, the crimes against humanity of *apartheid* and torture and individual cases of torture not amounting to crimes against humanity or war crimes.<sup>45</sup> No link is required.

Civil claims can be brought in **Romanian** criminal proceedings.<sup>46</sup> Romanian courts can exercise universal jurisdiction over war crimes, crimes against humanity, genocide and torture, without any requirement of a link.<sup>47</sup>

In **Senegal**, civil claims may be raised in criminal proceedings under Articles 2 and 3 of the Code of Criminal Procedure.<sup>48</sup> Under Article 669 of that code, Senegalese courts may exercise universal criminal jurisdiction over genocide, crimes against humanity, war crimes and other crimes of international concern if the suspect is found in Senegal or victims reside in Senegal or extradition has been obtained.<sup>49</sup> There is no requirement of any constructive or effective link to Senegal. The former President of Chad is now facing the prospect of prosecution based on an *action civile* in the near future.

Civil claims can be filed in a criminal case in **Venezuela**.<sup>50</sup> It has universal jurisdiction over "atrocious crimes and crimes against humanity", without any requirement of a link.<sup>51</sup>

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<sup>43</sup> Panamanian Criminal Procedure Code, Art. 1986.

<sup>44</sup> Beth Stephens, *Translating Filártiga; A Comparative and International Law Analysis of Domestic Remedies for International Human Rights Violations*, 27 Yale J. Int'l L. 1, 19, n. 62 (2002) (civil claims can be filed as an adjunct to a criminal prosecution in Poland).

<sup>45</sup> Polish courts may exercise universal criminal jurisdiction over conduct amounting to war crimes, crimes against humanity or genocide under Polish Penal Code, Arts 5, 110 (2), 111 and 113 (universal criminal jurisdiction). See Amnesty International, *Universal jurisdiction, supra*, note 3, Chapter Four – Part B, 57-58 (war crimes); Chapter Six, 60-61 (crimes against humanity of *apartheid* and torture); Chapter Eight, 53-54 (genocide); Chapter Ten, 63-64 (torture).

<sup>46</sup> Stephens, *supra*, note 42, 19, n. 62 (civil claims can be filed as an adjunct to a criminal prosecution in Romania).

<sup>47</sup> Romanian courts may exercise universal criminal jurisdiction over conduct amounting to war crimes, crimes against humanity or genocide under Romanian Criminal Code of 1988, Arts 4, 6 and 7 (universal criminal jurisdiction); Art. 357 (defining genocide as a crime). See Amnesty International, *Universal jurisdiction, supra*, note 3, Chapter Four – Part B, 60-62 (war crimes); Chapter Six, 61-62 (crimes against humanity); Chapter Eight, 55-56 (genocide); Chapter Ten, 65 (torture).

<sup>48</sup> *Code de Procédure Pénale, arts 2 et 3*.

<sup>49</sup> *Ibid.*, art. 669.

<sup>50</sup> Stephens, *supra*, note 42, 19, n. 62 (civil claims can be filed as an adjunct to a criminal prosecution in Venezuela).

<sup>51</sup> Venezuelan Penal Code, Art.4 (9) (universal criminal jurisdiction) and 113. See Amnesty International, *Universal jurisdiction, supra*, note XXX, Chapter Four – Part B, 107-109 (war crimes); Chapter Six, 79 (atrocious crimes and crimes against humanity); Chapter Eight, 70 (genocide); Chapter Twelve, 7 (enforced disappearance).

## CONCLUSION

Therefore, substantial state practice and *opinio juris* in the form of (1) legislation and extensive jurisprudence permitting national civil courts to exercise universal civil jurisdiction over torts committed abroad by foreigners against foreign victims without any link to the forum and (2) legislation and jurisprudence in states with universal criminal jurisdiction, without any requirements of links to the forum, permitting civil claims to be made in criminal proceedings demonstrates conclusively that international law does not require that the forum state have a constructive and effective link to the forum in order to exercise universal civil jurisdiction.