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BRIEFLY NOTED*

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JUDICIAL AND SIMILAR PROCEEDINGS

1. R. v. Amina Noor (Sentencing Remarks) (Crown Court of England – February 16, 2024)

<https://www.judiciary.uk/wp-content/uploads/2024/02/R-v-Amina-Noor-Approved-Sentencing-Remarks.pdf>

On February 16, 2024, the UK Central Criminal Court handed down its sentence in the unprecedented female genital mutilation (FGM) case against British national Amina Noor for her role in carrying out an FGM procedure performed on a UK citizen abroad.

In 2006, Noor took the victim, who was three years old at the time, to Kenya, where a woman performed the FGM procedure. Noor argued that she had felt pressured by her mother and family, who she alleged threatened her with disownment and violence. In his sentencing remarks, Justice Simon Bryce rejected the existence of such threats. He indicated that such pressure, even if it did exist, did not excuse her complicity in the procedure. In response to Noor's claims that she lacked sufficient knowledge as to the nature of the procedure, the judgment expressed certainty that Noor was well informed, concluding her culpability was "very high."

The conviction, reached last year, found Noor guilty of violating section 3 of the Female Genital Mutilation Act 2003, which prohibits anyone from taking girls overseas to perform the procedure. This first-of-its-kind decision, marked a critical step for the UK in addressing FGM procedures committed against British nationals abroad.

The sentencing judgment highlights the "very high harm" caused by the defendant, given the serious physical and psychological consequences of FGM. Justice Bryce emphasized the gravity of the offense by citing case law identifying FGM as a form of torture under various human rights conventions.

The sentencing remarks also cited a 2006 judgment of the then House of Lords, *Secretary of State for the Home Department v. K and Fornah*. While the crux of the case was aimed at determining qualification for refugee status in relation to "reasons of membership of a particular social group," Lord Bingham of Cornhill in his opinion repeatedly criticizes the practice of FGM. Though the case was mostly an examination of what may be considered as included in a particular refugee category, Bingham repeatedly expresses the horrors of FGM, and how it is not, and should not be tolerated and includes a passage quoted from a report of the UN Special Rapporteur on Violence against Women (E/CN.4/2002/83, January 31, 2002, introduction, ¶ 6).

The Central Criminal Court sentenced Noor to seven years imprisonment following section 3 of the Female Genal Mutilation Act 2003, which allows for a maximum of fourteen years.

2. IN RE: CHIQUITA BRANDS INT'L, INC. (SOUTHERN DISTRICT OF FLORIDA – JUNE 10, 2024)

<https://www.courthousenews.com/wp-content/uploads/2024/06/Chiquita-jury-verdict.pdf>

A federal Jury in Florida found Chiquita Brands, the fruit giant responsible most notably for bananas (and once called United Fruit), liable for killings by a Colombian right-wing paramilitary group who killed thousands of people between 1997 and 2004. Even after the group was designated a terror organization by the US, Chiquita continued pouring millions of dollars into the group. Chiquita claimed that it paid the group, known as AUC (Autodefensas Unidas de Colombia), under duress in order to protect their banana-growing operations amidst the Colombian civil war.

The company must now pay $38.3 million in damages to the families of eight men who were killed by AUC. This civil case follows payment of $25 million dollars Chiquita Brands paid to settle federal criminal charges brought by the Justice Department. The federal admission called for relatives of those killed by AUC forces to file civil cases as well—more than 500,000 cases have been filed—this case is the first win.

*With thanks to Sharon Basch for her assistance in drafting some of these summaries.

This was the first of two bellwether cases, where each trial was to be composed of ten claims out of the aforementioned 500,000, but this case's outcome is likely to speed up the verdict in the following case.

3. BOROCHOV V. IRAN (D.C. COURT OF APPEALS – MARCH 8, 2024)

<https://www.cadc.uscourts.gov/internet/opinions.nsf/3AC5FE3E0BA0348285258ADA00535BB4/$file/22-7058-2044022.pdf>

This case involved a lawsuit filed by an Israeli couple, Rotem and Yoav Golan, who were injured in a terrorist attack perpetrated by Hamas. They, along with other plaintiffs (both U.S. and Israeli citizens who were victims or family members of victims) sued Iran and Syria for providing material support to Hamas, which they believed enabled the attack.

The U.S. District Court initially ruled in favor of the plaintiffs, finding that Iran and Syria qualified as state sponsors of terrorism and had provided material support for the Hamas attack. However, the appeals court overturned this decision.

In 1996, Congress withdrew foreign sovereign immunity for lawsuits that seek money damages for personal injury or death from a state sponsor of terrorism that has engaged in an "act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources for such an act (FSIA Terrorism Exception, 28 U.S.C. §1605A(a)(1)). Congress also created a cause of action for U.S. citizens, members of the U.S. armed forces, and U.S. Government employees who have been injured by foreign states' acts or sponsorship of terrorism (28 U.S.C. § 1605A(c)). Three additional preconditions generally must be met for the terrorism exception to apply. First, the foreign state was designated a "state sponsor of terrorism at the time [of] the act or was so designated as a result of such act" (28 U.S.C. §1605A(a)(2)(A)(i)(I)). Second, "at the time [of] the act," either a victim of the act or the claimant in the suit was an American national, a member of the U.S. armed forces, or an employee or contractor for the U.S. government acting within the scope of their employment (Id. § 1605A(a)(2)(A)(ii)). And third, if "the act occurred in the foreign state against which the claim has been brought," the claimant gave the foreign state a "reasonable opportunity" to arbitrate prior to filing a lawsuit (Id. § 1605A(a)(2)(A)(iii)).

The district court concluded that it had jurisdiction because Iran and Syria had provided material support for the purpose of conducting extrajudicial killing of Israelis. Even though no killing resulted, the court held that jurisdiction attached so long as the material support was intended to cause an extrajudicial killing. Because the legal basis for the lawsuit relied on the "extrajudicial killings" exception to the Foreign Sovereign Immunities Act (FSIA), but no killing occurred, the Court of Appeals ruled it did not apply. Their injuries were not enough to attach subject matter jurisdiction for this attempted killing.

4. CASE 3 STR 454/22 (BUNDESGERICHTSHOF – MARCH 20, 2024)

<https://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&sid=298c14a65fadd52970a50aee13832bfc&nr=138553&anz=1&pos=0> [in German only]

Germany's Federal Court of Justice upheld a conviction by the Higher Regional Court of Koblenz convicting a former Syrian intelligence officer to life imprisonment for crimes against humanity. This is one of the first domestic convictions for state-sponsored torture in Syria.

RESOLUTIONS, DECLARATIONS, AND OTHER DOCUMENTS

1. Resolution Establishing the Preparatory Committee for the BBNJ Agreement (UN General Assembly – April 24, 2024)

<https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/78/L.41&Lang=E>

This resolution establishes a preparatory commission to facilitate the entry into force of the Agreement on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction, which was adopted by the UN in June 2023. The commission will be open to all member states of the United Nations and members of specialized agencies parties to the United Nations Convention on the Law of the Sea. It will also

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invite, as observers, representatives of interested global and regional intergovernmental organizations and other interested international bodies.

Paragraph 7 of the resolution provides that "the rules and the established practice applicable to the procedure of the intergovernmental conference on an international legally binding instrument under [UNCLOS] on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, as reflected in paragraphs 17, 18 and 19 of resolution 72/249, shall apply mutatis mutandis to the procedure of the commission unless otherwise agreed by the commission." It further provides in paragraph 8 that, after September 20, 2025, only states and regional economic integration organizations that have signed, ratified, approved, accepted, or acceded to the Agreement can take decisions.

The commission will meet at UN Headquarters in New York, on dates to be determined, to prepare for the entry into force of the Agreement and to prepare for the convening of the first meeting of the Conference of the Parties to the Agreement, at the conclusion of which the commission will cease to exist.

5. Ukraine Ratifies Rome Statute (August 21, 2024)

<https://w1.c1.rada.gov.ua/pls/radan_gs09/ns_golos?g_id=27975>

The Ukraine Parliament (*Verkhovna Rada*) voted to ratify the Rome Statute of the International Criminal, making it a state party. Ukraine signed the Statute in 2000, but until August had not ratified it. Ukraine consented to the Court's jurisdiction by special arrangement under Article 12(3).

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