Pre-Indictment Brief

In the Matter of the Complaint to the ICC: OTP-CR-313/04

against

University of Aberdeen Vice-Chancellor Rice and Others (Defendants)

Filed de novo under Article 15 of the Rome Statute of the International Criminal Court

by

Adrienne Gaye Thompson (Complainant)

<xxxxxxxxxxxxxxxxx>, Jamaica

For the Express Attention of:

Prosecutor Luis Moreno-Ocampo

International Criminal Court

174 Maanweg, 2516 AB, The Hague, The Netherlands

The Crime Against Humanity of Apartheid

and other violations of Article 7 of the Rome Statute

Filed 5 October 2006

by email to OTP.InformationDesk@icc-cpi.int

and via Federal Express AirBill No. 855473333900

Distribution:

► Senator the Honourable A. J. Nicholson QC, Attorney General of Jamaica (delivered in person and by email to agminister@moj.gov.jm);

► Senator the Honourable Anthony Hylton, Minister of Foreign Affairs and Trade (delivered in person and by email to hmfaftja@cwjamaica.com);

► Mr. Kenneth Pantry QC, Director of Public Prosecutions, Jamaica (delivered in person and by email to dpp@moj.gov.jm);

► The Right Honourable The Lord Goldsmith QC, Attorney General for England and Wales (delivered by email to lslo@gtnet.gov.uk).

Questions Presented

On 14 and 15 July 2004, the Complainant filed communications with the Office of the Prosecutor (OTP) of the International Criminal Court (the Court) under Article 15 of the Statute of Rome (the Statute).[1] The communications consisted of 11 email messages substantiating a complaint against the Defendants alleging crimes against humanity (the Complaint). The Court replied on 2 March 2005 dismissing the Complaint on grounds that the conduct complained of fell outside the jurisdiction of the Court. The questions presented are:

a. Whether the OTP acted in violation of due process and equal protection of the law in analysing the communications filed?

b. Whether the conduct of the Defendants, which involves widespread and systematic attacks wilfully perpetrated against black/non-white students depriving them of fundamental human rights, constitutes crimes falling within the jurisdiction of the Court warranting prosecution?

c. Whether prosecutorial policy that prioritises situations according to a wilful killing and sexual violence standard, which has a disparate impact on African countries, is permissible under the Statute?

NOTE

12 September 2009

This complaint, which presents evidence of *apartheid*, is being obstructed by the International Criminal Court (the ICC) who, from the evidence, are concerned primarily with the prosecution of defendants from African countries – obstructing justice to prevent elite white defendants from criminal responsibility, contrary to the body of international law prohibiting racial discrimination, and the Statute of Rome itself.

I have excluded the list of Defendants, which needs to be updated. With the exception of this list, and personal addresses (or information leading to the disclosure of such addresses, which I have removed for purposes of publication on my website Code Art Now http://www.codeartnow.com) this is a true copy of the original document filed 5 October 2006, with the Office of the Prosecutor of the ICC.

[1] Rome Statute of the International Criminal Court, 17 July 1998, 2187 U.N.T.S. 90, *entered into force* 1 July 2002 (the Statute), *available at* http://www.un.org/law/icc/statute/english/rome_statute(e).pdf (visited 5 September 2006).

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STATEMENT

British Further and Higher Education institutions (Universities) rely on international students for revenue. The international student market sustains a service industry projected to rival oil exports and financial services at over £13 billion per annum by 2002.[2] This exploitation enjoys formal support from the Government, who in the 1980s introduced policies for increased recruitment of international students attended by elevated fee regimes for the purpose of increasing the earning capacity of Universities. The UK Government have since instituted further measures within their legislative and administrative architecture to accommodate and aggressively market the "UK Education Brand".

In 1999, Prime Minister Blair himself launched the "Prime Minister's Initiative" setting recruitment targets for up to 75,000 additional non-EU international students by 2005, expected to generate over GBP 1 billion for the UK economy. Statistics from the Department of Education and Skills (DfES) and the Home Office indicated that in 1996/97 roughly 100,000 international students from East Asia / Pacific, South Asia, Africa and the Middle East were registered in British Universities, with non-EU international students accounting for 56% of those in Higher Education and 44% in Further Education.The global campaign to market the "UK Education Brand" is being lead by the British Council in consultation with University Vice-Chancellors and Principals. [3]

On 20 April 2004, the British Council launched a study entitled "Vision 2020: Forecasting International Student Mobility"[4] in which earnings of an additional £13 billion per annum from international students was reportedly anticipated by 2020, with most students expected to come from China and India. By 2020 the number of Chinese students is expected to reach 145,000 - triple the number in 2004, and outnumbering those from the entire EU.[5]

Embedded within this marketing campaign, is the execution of a policy to induce international students to the UK with promises to deliver quality education - "second to none" according to Prime Minister Blair - with the knowledge and intent that these students will be probable victims of

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[2] Halpin Tony and Buckley Christine., 'Forget Oil, Overseas Students Make Money' *Times Online* 21 April 2004, *at* http://www.timesonline.co.uk/article/0,,3561-1082632,00.html (visited 29 March 2006). See also Ward, Lucy, 'High hopes for foreign students' *The Guardian* 21 April 2004, *at* http://www.guardian.co.uk/uk_news/story/0,3604,1197146,00.html (visited 29 March 2006).

[3] British Council, *Prime Minister Launches Drive To Attract More International Students : Press Release* 18 June 1999, *available at* http://www.britishcouncil.org/ecs/news/1999/0618/index.htm (visited 29 March 2006); See also, *UK Must Plan Now For International Student Increase, Says British Council : Press Release* 19 December 2003, *available at* http://www.britishcouncil.org/ecs/news/2003/1201/index.htm (visited 29 March 2006).

[4] British Council, *Vision 2020 - Forecasting International Student Mobility : Study* 20 April 2004, *available at* http://www.britishcouncil.org/vision2020/vision2020.html (visited 29 March 2006).

[5] Halpin, *Forget Oil*, above note 2.

a commercial fraud racket designed to extract tuition fees in exchange for falsified, inferior degree classes and degrees, certain of which are divested of rights and interests constituting property, culminating in bogus degrees.

The fraud thus effected achieves a transfer of wealth from developing countries to the UK, furthering the paradigm of a subordinated developing world by guaranteeing the effective exclusion of blacks/nonwhites from genuine doctoral programmes and such other professional opportunities as would facilitate contribution to the scientific and technological progress of their own countries, and denying them the fundamental right to full development of the human personality.[6] This is a device that ensures continued dependence, the provision of markets for goods and services from the developed world, and the maintenance of vulnerabilities in the global scheme of dominance and power.

The Complainant, Adrienne Gaye Thompson, completed her studies in engineering at the University of Aberdeen, Scotland in 1983, and files this complaint on behalf of the class of black/non-white victims. The term "black/non-white" students, as used below, refers to the victims of the crimes alleged, whether such students are international students, British nationals or citizens of the European Union. Where international students are citizens of the European Union it is understood that they are not subject to the full economic cost fee regime imposed by universities in the United Kingdom.

The Complainant alleges that the acts of the criminal enterprise constitute crimes against humanity of *apartheid*, *persecution*, *other inhumane acts*, and *enslavement* contrary to Articles 7 (1) (c), (h), (j) and (k) of the Statute, warranting criminal sanction in accordance with the doctrine of *jus cogens*[7] – which it is the duty of this Court to impose.

[6] Universal Declaration of Human Rights, 10 December 1948, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948) [UDHR], art. 26 (2), *available at* http://www.unhchr.ch/udhr/lang/eng.htm ; International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 993 U.N.T.S. 3 [ICESCR], S. Exec. Doc. D, 95-2 (1978), *entered into force* 3 January 1976, art. 13 (1), *available at* http://www.unhchr.ch/html/menu3/b/a_cescr.htm (visited 5 September 2006).

[7] In distinguising *jus cogens* as a binding source of legal obligation, Professor Bassiouni explains: "The term '*jus cogens*' means 'the compelling law' and, as such, a *jus cogens* norm holds the highest hierarchical position among all other norms and principles. As a consequence of that standing, *jus cogens* norms are deemed to be 'peremptory' and non-derogable", quoted from Bassiouni, Cherif M., 'International Crimes: *Jus cogens* And *Obligatio erga omnes*' *59 Law and Contemp. Probs. 63* (Autumn 1996), *available at* http://www.law.duke.edu/journals/lcp/articles/lcp59dFall1996p63.htm (visited 5 September 2006).; See also Bassiouni, 'Crimes Against Humanity' in *Crimes of War : The Book* (1999), *at* http://www.crimesofwar.org/thebook/crimes-against-humanity.html (visited 5 September 2006).

A. The Complainant

The Complainant, Adrienne Gaye Thompson, whose permanent residence is <xxxxxxxxxxxxxxxx>, Jamaica, was registered during the period October 1979 to June 1983 at the University of Aberdeen, Scotland (the University), where she completed the requirements of the Honours Degree of Bachelor of Science in Engineering (BSc Eng Honours), awarded May 1983 with a degree classification of Second Class (Division 2) (hereafter II-2). The Complainant, a Jamaican national, was the only student of African descent in the Honours graduating class of 43, one-third of which consisted of non-white students who were predominantly Oriental.

Knowing that her examination performance merited the award of First Class Honours – *inter alia,* two of her eight major written papers having deserved 100% - the Complainant appealed on 29 June 1983 to the University Senate for an independent reassessment of her examination papers on grounds of racial discrimination,[8] a pattern of which was evident from the University's records. The appeal was denied and her papers returned to the incumbent external examiners.[9] The Complainant has, since 1983, rejected the degree purportedly awarded.

In 1996, the Complainant discovered the theft,[10] by the University authorities in 1983, of property representing the rights to her Honours dissertation "Interactive Computer Package Demonstrating: Sampling Convolution and the FFT" (the Honours Thesis) and its fraudulent conversion to property transferred into the possession of Defendant Colin S. MacLean (a white male) to realise his thesis "Development of a Microprocessor-Based Signal Analyser for Machine Condition Monitoring" for which MacLean was awarded the degree of Doctor of Philosophy in Engineering, July 1985 (the PhD Thesis). The essence of the Complainant's Honours Thesis was a computer program written in FORTRAN (the FORTRAN Program) the source code of which MacLean, in combination with his supervisor Defendant Fraser Stronach, adapted to fulfil the requirements of his doctoral award.[11]

In consequence of the Complainant's submissions in 2002 – 2003, which disclosed (to public officers and others, including senior officers of the Massachusetts Institute of Technology (MIT) (where her application for entry to the doctoral programme had been rejected), that the University conferred the doctoral award knowing that the work was derived from stolen property, the University had no option but to rescind the doctoral degree conferred on MacLean. The University,

[8] Appendix A I.3, Appendix B II.A.2.

[9] See the University's decision of 21 October 1983, Appendix A I.5, Appendix B II.A.4.

[10] See text at notes 43 - 45 below.

[11] See the Complainant's *Notice of Forgery*, 6 January 2004, para. 3.4.2, Appendix A I.38, Appendix B III.C.7; See also the Complainant's *Reply*, 7 October 2002, paras. 4 - 6, Appendix A I.31, Appendix B III.C.6

rescinded this doctoral degree in March 2003, but continues to retain the stolen property refusing to restore it to its rightful owner, the Complainant. The University have maintained covert accusations against the Complainant, falsely alleging that the Honours Thesis was not her own work (*inter alia,* so as to rationalise the continued handling of the stolen property) while dishonestly representing to the Complainant that her Honours Thesis was always recognized by the University as having been achieved, concealing the entire issue of the Honours Thesis by forged certifications and false statements – and concealing the rescission of the doctoral award itself. Intellectual property rights in respect of the FORTRAN Program of the Honours Thesis (or its adaptation)) do not vest in the University.[12] Accordingly, further to the theft, the University's commercial exploitation of the FORTRAN Program of the Honours Thesis, in combination with the Royal Dutch Petroleum Company and Shell Transport and Trading Company P.L.C. (Shell), also constitutes criminal infringement of copyright.

In keeping with its practice of *apartheid*, the University's strategy aims to subject the Complainant to forced labour by depriving her of livelihood so as to coerce her return to the University to create further valuable software for which whites would be falsely credited as authors. For 23 years the Complainant has been denied access to professional employment in engineering, and all opportunities involving research and development, including admission to doctoral programmes in engineering - having been awarded a bogus degree, the award of the Honours degree in exclusion of the mandatory thesis requirement being ultra vires University regulations and accordingly null and void.

The Complainant believes that murder is contemplated by certain of the Defendants in furtherance of the highly sophisticated and exceptionally resourced conspiracy to conceal the crimes. She fears for her life, and those of her family members and friends, as a result of the Defendants' ongoing surveillance, stalking, and attempts to silence her.

[12] See Appendix A I.38, Appendix B III.C.7, para. 3.3

B. The Defendants

It is for the Court to determine who the defendants bearing the greatest responsibility are. Extrapolation of the crimes to a UK-wide victim population is inferred from the fact of participation by external examiners to the University of Aberdeen drawn annually from universities throughout the UK. The Defendants named by the Complainant are those alleged with perpetration of crimes in relation to the situation at the University of Aberdeen alone. They are listed in the Criminal Complaint filed 12 January 2004 with the Metropolitan Police Service (the MPS, Scotland Yard) and dated 6 January 2004 (Complaint 1).[13] [14]

[13] Criminal Complaint, 6 January 2004, filed by the Complainant 12 January 2004 with the Metropolitan Police Service, London, England by Federal Express AirWay Bill No. 8425 0950 2429, for the express attention of Assistant Commissioner Mr. Tarique Ghaffur, (Complaint 1) Appendix A IV, Appendix B XI.A.1, Appendix C AGT 1.

[14] See text at note 17 below.

C. Factual Background

The full record of events is detailed in the documents listed by the Record of Complaints attached as Appendix A. The major documents listed in Appendix A are exhibited to this brief. The index of email packages comprising this de novo filing is attached as Appendix B, which indexes the exhibits and is cross referenced with Appendices A and C in the footnotes. Appendix C enumerates selected exhibits included in the hardcopy filing via Federal Express. This Statement is a summary of the entire factual record.

1. THE PICTURE OF APARTHEID AT THE UNIVERSITY OF ABERDEEN

The University's records reveal a tradition of racial discrimination in the Department of Engineering. The majority of black/non-white students are from Asian Countries. The records evidence stark incongruence between engineering honours (4th year) degree classes and examination grades obtained during years 1 through 3. The evidence points to artificially depressed achievement of the black/non-white population in the Honours year, and a correspondingly artificially elevated achievement for the white population in relation to achievement during years 1 through 3. Black/non-white students are entirely excluded from awards of first class honours (I), despite the relatively high proportion of firsts awarded, with blacks of African origin being more likely to be awarded third class honours (III). In sum, the marks and degree classes awarded to black/non-whites correlate with race, and not with the examination performance projected by the statistical parameters specified by the examination data from years 1 through 3.[15]

In the particular case of the Complainant's honours graduating class of 1983, all marks pertaining to the black/non-white group were artificially confined to a narrowly constructed II-2 to III band.[16] The Court will note that Mr. N. Roderick Begg, former Clerk to the University Senate (who later became University Secretary), secretly disclosed this information to the Complainant on 23 December 1983, for the specific purpose of advice to the Principal Education Officer of the Commission for Racial Equality (CRE), Gerry German.[17]

Begg later advised the Complainant, in person, that appeal to the University Court was not time-barred, evidently knowing of the theft of the Honours Thesis.[18] The Complainant has no data on

[15] See the letter from Commission for Racial Equality Principal Edication Officer, Gerry German ,to MIT Provost, Mark Wrighton, 10 May 1992, Appendix A III.9, Appendix B VII.A.3.

[16] See table at note 230.

[17] See Complaint 1, paras. 5.a (1) and 17.e, and included Affidavit para. 31.

[18] Appendix A I.31, Appendix B III.C.6, para. 23.

the proportion of the black/non-white engineering victim population representing bogus degree awardees in consequence of theft.

At the graduate level,[19] black/non-white students are admitted to terminal masters programmes while their white peers are admitted directly to doctoral programs. Black students, cheaply funded in masters programmes by the University, provide a form of exploited labour under the *apartheid* regime.

With regard to exploitation of labour in the case of the Complainant, the University wrote, sometime in 1985, inviting her to apply for entry to their PhD programme in engineering[20] - despite her previous express rejection of such invitation - seeking only to fraudulently induce her application with intent to exploit her labour, dishonestly appropriate any further work she would produce, and ultimately deny her a doctoral degree.

2. UNIVERSITY PROCEEDINGS

The Complainant filed a series of complaints with the University against institutional racial discrimination from 29 July 1982 to 6 January 2004,[21] when the University affirmed by letter dated 16 January 2004, its intention to end all correspondence or communication with the Complainant on the matter. [22]

Intent to maintain the *apartheid* regime is evidenced by the response of the University's governing body, the Senate, in squashing the Complainant's appeal in 1983, in ratifying the *persecution* of black/non-white students by the Department of Engineering, and in suppressing all inquiry into the matter so as to "refute any allegation of racial discrimination"[23] thereby denying remedy for this *jus cogens* violation. MIT Professor Patrick Winston, supported by other senior officers of the Institute, knowingly enlisted in this criminal purpose, heightening the programme of extortion from 1991 with intent to coerce the Complainant into abandoning her complaint against the University[24] in order to facilitate the destruction of examination papers and other evidence of the attack against the black/non-white victims of the *apartheid*.

[19] The term commonly used in Britain to refer to "graduate" students is "post-graduate" students.

[20] See Appendix A I.31, Appendix B III.C.7, para.11

[21] Appendix A I.

[22] Appendix A I.39, Appendix B V.F.14, Appendix C AGT 6.d.

[23] Appendix A I.28, Appendix B IV.E.8, para. 1.

[24] Complaint 1, para. 13 (a).

a. University Senate Appeal and the CRE

Chaired by (now deceased) Defendant Principal Professor George McNicol, the Senate Committee of Principal, Vice-Principals and Deans of the University (the CPVD) responded to the Complainant's letter of appeal dated 29 June 1983,[25] by convening a perfunctory hearing on 13 July 1983. The CPVD dismissed the Complainant's appeal for an independent reassessment of the examination papers, returning the latter to the incumbent external examiners, knowing that these examiners were essential parties to the systematic racial discrimination evidenced by the fraudulently constructed II-2 to III band, and to the theft of the Honours Thesis. The CPVD replied by letter dated 21 October 1983, confirming the award of the II-2 and concealing the exclusion of the Honours Thesis from the record of examinations achieved. [26]

McNicol similarly disregarded the letter of complaint dated 16 September 1983, signed by Tang and Tam on behalf of the Oriental students from the graduating class of 1983, protesting the racial discrimination evident in the degree awards.[27]

The Complainant then filed a complaint with the CRE under the Race Relations Act 1976, and the CRE served the University with a questionnaire dated 9 October 1983, under section 65 (1) (a) (the RR651a Questionnaire).[28] The University responded under section 65 (1) (b) of the latter Act with an equivocal statement dated 11 November 1983 (the RR651b Reply), punctuated by false and defamatory statements intended to discredit the Complainant – and again evading the concealed issue of the Honours Thesis.[29]

The CRE decided not to grant the Complainant any further assistance, and on 1 March 1984, Principal Complaints Officer Kuttan Menon wrote confirming that decision on review, citing insufficient evidence.[30] The Complainant, however, continued to lobby the CRE with respect to the provisions for conducting a Formal Investigation under the Race Relations Act, because Mennon's seeming unwillingness to initiate action before the courts against the University contradicted his expressed belief that the University was guilty of institutional racial discrimination. This was evident from his meeting with the Complainant on 10 February 1984 at CRE offices in Manchester, when Menon, joined by Complaints Officer Roy Martin, pronounced their unanimous analysis of what constituted a prima facie showing of institutionalized racial discrimination in the RR651b

[25] Appendix A I.3, Appendix B II.A.2.

[26] Appendix A I.5, Appendix B II.A.4.

[27] Appendix A I.4, Appendix B II.B.1, Appendix C AGT 4.

[28] Appendix A III.2, Appendix B VII.B.2., Appendix C AGT 3.b.

[29] Appendix A III.3, Appendix B VII.B.3, VIII.C.1.a, IX.D.1, Appendix C AGT 3.c.

[30] Appendix A III.6, Appendix B X.E.1.b.

Reply as "the clearest thing".[31] Accordingly, defendant CRE Chairman Sir Peter Newsam obstructed the course of justice when he wrote to Robert Hughes MP on 22 May 1984, dishonestly asserting that in considering whether the University of Aberdeen may have committed some act of unlawful behaviour the CRE "[had] no grounds for such a belief" and "[would] not be conducting a Formal Investigation".[32]

Following Newsam's letter to Hughes, CRE Principal Education Officer, Gerry German, acted on Menon's submission of the case to the Education Division, attempting to conduct an informal investigation. Despite a series of communications with the University over the period 15 August 1984 to 29 July 1985, the University refused to allow German to examine the records, which pertained to information already in the public domain.[33] Newsam's deceitful transformation of the CRE analysis from "the clearest thing" to "no grounds for belief" effectively served to protect the practice of *apartheid* at the University from enforcement of the law.

b. Collaboration with Officers of MIT

The first indication of the complicity of senior officers of MIT in the criminal transaction was a letter from the University dated 25 April 1991, issued after years of silence while the Complainant was registered in a non-degree graduate programme at the MIT Centre for Advanced Engineering Study (CAES). The letter advised her that she was "not entitled to use the degree [sic] until it [had] been formally conferred".[34] The University enclosed application forms for graduation in the letter, which was addressed to the Complainant's permanent residence in Jamaica. The Complainant ignored the letter, and Winston, assisted by senior officers of MIT, acted to enforce the Complainant's graduation, surrender of title to her property, abandonment of her complaint of racial discrimination, and destruction of evidence of *apartheid*.

[31] See text at note 230 . The Complainant recalls her discussion with Menon and Martin on 10 February, when she drew their attention to the Engineering lecturers' unwillingness to fulfill their tutorial obligations mentioning, in particular, her thesis supervisors' unabated discouragement. In this discussion, she drew the CRE officers' attention to the opinion of Jim Mitchell, University Senior Software Engineer, who in October 1982 told the Complainant that he felt that the thesis specification from her supervisors was unnecessarily complex and a waste of time a fact that she mentioned on page 53 of her comments of 3 January 1984 on the RR651B Reply (Appendix A III.4). The Complainant vividly recalls the visible negative reaction, without comment, from Menon and Martin on her mention of the Honours Thesis, and retrospectively recognized that they knew at the time that she had been accused of submitting work which was not her own and (like everyone else) had been instructed - and had agreed - not to raise the issue. The Complainant's continued lobby of the CRE met with repeated advice from Menon to "do nothing".

[32] Appendix A III.7, Appendix B X.E.2.

[33] Appendix A III.8, Appendix B VII.A.1-2, Appendix C AGT 3.f.

[34] Appendix A I.9, Appendix B IV.E.1.

By enlisting the cooperation of former OAS Fellowships Director Anibal Cortina, in August 1991, Winston misapplied the Complainant's OAS fellowship funds as tuition pledged to a graduate degree programme,[35] and recruited Dean Milena Levak to falsely represent to the Complainant that the Institute had decided to admit her to a doctoral programme in EECS, in light of which she should immediately submit a formal application. MIT then rejected the PhD application solicited by Winston, who then engaged Defendant Equal Opportunity Officer Dr. Clarence Williams to advise the Complainant in March - April 1991, *inter alia*, that her doctoral application had been rejected because she had not graduated from the University of Aberdeen, and accordingly had no degree. Concealing the theft of her Honours Thesis, Williams advised the Complainant to apply to the masters programme in the non-computer science area of EECS, where a certain well-known and successful professor was interested in supervising her work, provided that she first accept the degree award from the University.[36]

Recognising, in particular, that the pertinent examination papers from the University of Aberdeen had been secretly evaluated at MIT in the period December 1991 to January 1992, and that the Institute knew that she had earned first place - in a category by herself - in the graduating class of 1983, the Complainant rejected Williams' advice and returned to Jamaica in May 1992. There, with the assistance of the Jamaican Government officials, the criminal enterprise, now backed by senior officers of MIT represented by Defendant James Williams, acting under colour of office as Professor at the prestigious MIT, continued the programme of extortion, covertly propagating information that the Complainant had dishonestly submitted MacLean's work for her Honours Thesis, damaging her reputation and further depriving her of livelihood so as persecute her and impose conditions intended to cause her to abandon her complaint against the criminal practices fundamental to the *apartheid*. Throughout this time the programme of extortion also employed attacks against members of her family,[37] bribery, and attempts to impose a slavery-like condition on the Complainant to coerce her into returning to MIT to be co-supervised by Winston, or to the University of Aberdeen.

The Complainant lodged complaints dated 24 January 1993, and 2 July 2001 with Provost Mark S. Wrighton,[38] and the MIT Corporation respectively.[39] She also copied all major complaints and other emails to the MIT President Dr. Charles M. Vest, who ignored them. Wrighton replied on 5 May

[35] Appendix A II.1, Appendix B VI.C.1, Appendix C AGT 7.a.

[36] Complaint 1, para.13 (a) (v) - (vi).

[37] Complaint 1, Affidavit para. 38

[38] Appendix A II.2, Appendix B VI.A.1.

[39] Appendix A II.4, Appendix B VI.A.2.

1993[40] dismissing the first complaint, and the second complaint was disregarded by the MIT Corporation altogether, as were all emails – effectively allowing James Williams to continue his role as coordinator of the programme of covert surveillance and stalking to persecute the Complainant. The continuing programme of surveillance and stalking utilises electronic surveillance (i.e., telephone eavesdropping and hacking into the Complainant's computer) physical pursuit of the Complainant, and continuous observation of her residence.[41] On 2 April 2006, the Complainant succeeded in getting Cable and Wireless Jamaica Limited to send a technician, Mr. Randolph Bailey, to check her telephone line (9240800) for electronic eavesdropping. The surveillance methods employed by the criminal enterprise are evidently sophisticated, the technician having found no signs of eavesdropping apparatus.

Throughout this time and after she withdrew from MIT in 1992, Winston continued the program of deprivation of livelihood begun by Professor Smith of the University of Aberdeen, conspiring with Cortina to deny funds to which the Complainant was entitled, sabotaging her applications for employment in Jamaica, causing her to acquire debt and attempting to extract her labour to repay that debt by trying to compel her to work with Defendant Professor Lawrence Evans at his company in Massachusetts, Aspen Technologies Inc.[42]

3. Discovery of Theft and Bogus Degrees

The right to own property is a fundamental human right guaranteed under Article 17 of the Universal Declaration of Human Rights. While there might be no single, universally recognised definition of property, property is broadly conceived as rights of ownership defined by law,[43] and theft as the dishonest deprivation of such rights of ownership.

Under the Theft Act 1968 for England and Wales, for example, "property" is defined as including things in action and other intangible property.[44] The chose in action representing exclusive rights to and in the intellectual work comprising a student's dissertation are rights of which the student can be permanently deprived; permanent deprivation is accomplished by the intentional exclusion of the dissertation from the list of courses achieved by the student and certified by the transcript. Accordingly, these rights constitute property capable of theft contrary to section 1 (1) of the Theft Act 1968 England and Wales. The fundamental elements of this definition of theft apply to the

[40] Appendix A II.3, Appendix B VI.B.1.

[41] Complaint 1, para.13 (b)

[42] Complaint 1, para. 13 (c) (i).

[43] See, for example, the definition of property given by Wikipedia at http://en.wikipedia.org/wiki/Property (visited 5 September 2006).

[44] Theft Act 1968 (EW) s. 4 (1).

common law of Scotland and are in fact universal. The dishonest appropriation of such property - here, that determined by rights accruing from a student's achievement of an Honours dissertation - with the intention of permanently depriving the owner of such property, is therefore theft according to any criminal standard.[45]

The term "thesis", as used here, denotes both the Honours dissertations of engineering students and the associated bundle of exclusive rights constituting property capable of theft. The award of Honours degrees in exclusion of such theses (a major requirement of the engineering Honours degree) is ultra vires University regulations, and the degrees so awarded are accordingly null and void – bogus degrees concealing theft from the victims of *apartheid* by the publication of forgeries purporting to be genuine degree certifications and transcripts.

Since fulfilling the requirements for her degree at the University in 1983, the Defendants, informed by the programme of surveillance and stalking, influenced the exclusion of the Complainant from all employment and other opportunity involving engineering research and development. In about 1995 - 1996 the Complainant formed a suspicion that this pattern of exclusion was related to false claims by the University concerning her Honours Thesis, which she initially presumed might have been claims by her supervisors, Defendants Lees and Stronach, that they had themselves written most of her FORTRAN Program. Although the centrepiece of the CAES programme for which she had been admitted involved research into control systems using FORTRAN, Defendant Paul E. Brown obstructed her registration in the designated research project to be supervised by Professor Mark Kramer,[46] and Defendant Professor Lawrence Evans obstructed her progress when she succeeded in registering for a related project.[47] In addition to the opportunities at MIT these opportunities included a masters programme at the University of Stanford, for which she had been accepted on 3 March 1994, but was then incomprehensibly rejected on 15 March 1995 - after submitting a detailed proposal for the inclusion of a programme of research.[48]

In October 1996, Professor Elsa Leo-Rhynie, Deputy Principal of the UWI, disclosed to the Complainant that her Honours Thesis had been "completely deleted" from her academic record.[49] Up to this time, the Complainant had assumed that the certifications published 12 January 1988[50],

[45] Above notes 10 and 11.

[46] Complaint 1, para.17 (h)

[47] Complaint 1, para.13 (c) (i)

[48] Appendix A II.5, Appendix B VI.C.2, See also Complaint 1, para.17 (g)

[49] See the Complainant's Letter of Demand to the University of 4 April 2002, para. 7, Appendix A I.26, Appendix B III.C.5. See also the reference to University of the West Indies Professor Elsa Leo-Rhynie in preamble to Complaint 1.

[50] Appendix A I.7, Appendix B III.D.1, Appendix C AGT 5.a.

and 15 May 1992[51] as transcripts, were abbreviated versions of a full transcript, in that the certifications, which neglected mention of her Honours Thesis, also omitted the marks or grades for each course, which are normally included in a student's transcript. The inclusion of only the taught courses in the presumably abbreviated version which listed "Courses attended and degree examinations passed" therefore seemed irrelevant in that the Honours Thesis was not a taught course but was an independent exercise and an essential part of the record, without which an Honours degree could not be legitimately be awarded. Against the background of facts, this information from Professor Leo-Rhynie led the Complainant to deduce that her Honours Thesis, proof of her ability for research, had been converted for the benefit of former PhD candidate Colin MacLean, whose surname she could not recall at the time. The Complainant then wrote to the University Vice-Chancellor, on 1 November 1996,[52] and 24 November 1997,[53] presenting reproductions of the core FORTRAN subroutines of the Honours Thesis, simulated in the language C, which she taught herself in the period August to December 1996 for the express purpose of adducing evidence of her authorship of the Honours Thesis.

The letter of 24 November 1997 constituted a letter of demand wherein the Complainant demanded a copy of her bona fide official transcript and full disclosure of the facts, including MacLean's full name, a copy of his PhD Thesis and a copy of the Honours Thesis - the Complainant having left her copy behind in Britain when she travelled to Jamaica in 1986 for a holiday from which she never returned. Defendant Vice-Chancellor C. Duncan Rice responded, pronouncing the case closed, unlawfully withholding the Complainant's transcript, and refusing to supply any information whatsoever. In an unbridled show of contempt, evidently secure in the *de facto* state protections for sustaining the institutionalised racial discrimination, Rice falsely declared in his reply of 29 January 1998, that the examination papers and Honours Thesis had been destroyed following the Appeal process in 1983.[54] Incited by James Williams (acting on behalf of the criminal enterprise) the Jamaican Government, the British High Commission, the Delegation of the European Commission in Jamaica, and the Regional Security Office of the US Embassy in Kingston all rejected the Complainant's appeals and complaints, in breach of duty, effectively contributing to the maintenance of the *apartheid* regime.

The Complainant submitted an "Application for Intervention and Review" (the Application) dated 5 May 1999, which she amended 2 July 2001, to the Right Honourable David Blunkett in his respective capacities as Secretary of State for Education and Employment, and Secretary of State

[51] Appendix A I.11, Appendix B III.D.2, Appendix C AGT 5.b.

[52] Appendix A I.17.

[53] Appendix A I.19, Appendix B III.C.1.

[54] Appendix A I.20, Appendix B IV.E.5, Appendix C AGT 6.a.

for the Home Department.[55] The Application was disregarded. The Complainant emailed Stephen Timms MP at stephen@stephentimmsmp.org.uk on 29 February 2000, requesting his assistance.[56] In March 2000, Stephen Timms MP wrote to Secretary Blunkett providing him with a copy of the Application, the Complainant's first letter of demand to the University dated 24 November 1997 and other particulars of the racial discrimination perpetrated by the University, for his consideration. Blunkett's office forwarded the matter to the Right Honourable Henry McLeish in his capacity as Minister for Enterprise and Lifelong Learning.[57] On 26 April 2000, Timms replied to the Complainant enclosing a letter from McLeish dated 20 April 2000. In his letter, McLeish deliberately disregarded the evidence pointing to multiple and systematic racial discrimination by the University, dishonestly dismissing the matter as an individual complaint, thereby ratifying the practice of *apartheid* and the conspiracy of concealment. [58]

In about January 2002, the Complainant succeeded in recalling the surname of the PhD candidate Colin MacLean from an angry note she had written to him in 1983, one evening after he had deliberately locked her out of the tutorial room in which she had been working. The Complainant then communicated with the University Registry by email and facsimile on 18, 19 and 25 February 2002, requesting confirmation of MacLean's name, the title of his PhD Thesis, and other particulars of his doctoral award.[59] On 28 February 2002, Nancy French of the University registry replied to the Complainant on behalf of Defendant University Secretary Steve Cannon, providing Maclean's full name, the title of his PhD Thesis, the name of his supervisor, the date of graduation, and the address of the University Library from which a copy of his thesis could be obtained.[60]

With this information the Complainant wrote her second letter of demand to Rice dated 4 April 2002: alleging theft of her Honours Thesis and its conversion to the PhD Thesis for the benefit of Colin MacLean; and demanding, *inter alia*, bona fide copies of her student transcript and Honours Thesis, restitution of her Honours Thesis, rescission of the PhD Thesis, all honours rights and privileges in respect of the property - including the doctoral award - full disclosure, and rectification of all data obtained by fraud, theft, and unlawful racial discrimination pertaining to the entire engineering student population, past and present.[61]

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[55] Appendix A XIII.3 items a and e, Appendix B XIV.D items 1 and 4, Appendix C AGT 2.a.

[56] Appendix A XIII.10.a, Appendix B XV.F.1.

[57] Appendix A XIII.10.d, Appendix B XV.F.3; Appendix A XIII.3.d, Appendix B XIV.D.3

[58] Appendix A XIII.10.i, Appendix B XV.F.4; Appendix A XIII.7.a, Appendix B XIV.C.2, Appendix C AGT 2.b.

[59] Appendix A I items 21 and 23, Appendix B III.C.2 - 4.

[60] Appendix A I.24, Appendix B IV.E.6.

[61] Appendix A I.26, Appendix B III.C.5.

Cannon replied on 21 June 2002, falsely representing that the Honours Thesis had been "taken into account when [her] degree [sic] was awarded" also evading the allegation of theft by transforming the allegation to one of "plagiarism", and stating that the University would only investigate an allegation of "plagiarism" if the Complainant provided full and unambiguous evidence.[62] Cannon refused to disclose the data requested by the Complainant, sending on 26 June 2002, only a forged document purporting to be her student transcript, dated 24 April 2002,[63] and a copy of the text of the Honours Thesis (the Text). The Honours Thesis submission consisted of the Text as well an original computer printout of the FORTRAN Program (the Printout) signed by the Complainant - the essence of the Honours Thesis. The Complainant emailed on 5 July 2002, again demanding a copy of her Printout,[64] but in his letter of 10 July 2002, Cannon concealed the University's retention of the Printout, dishonestly claiming that the listing in Appendix II of the Text as "a complete computer listing of the package" was the only computer programme from her Honours Thesis known to the University.[65]

In her email of 6 March 2002, assistant Registrar Yvonne Gordon had advised the Complainant that the title of her Honours Thesis would not be included in the transcript,[66] which would cost £6.00. The Complainant responded, asserting in her letter of demand dated 4 April 2002 that by excluding the title of her Honours Thesis, the University sought to deny her right to be identified as author in order to maintain the realisation of the stolen property as the PhD Thesis.[67]

The purported transcript sent by Cannon, ostensibly dated 24 April 2002, consequently included the title of the Honours Thesis; but despite the Complainant's assertion of her request as a data subject access request under the Data Protection Act 1998 (the DPA) - for the specified purpose of fulfilling the requirements of her doctoral application to MIT- all information pertaining to marks, grades and class rank - essential for consideration in the admissions process - was excluded.

The Complainant obtained a copy of the PhD Thesis indexed by the British Library as DX76102 and issued a reply to the University on 7 October 2002 (the Reply) adducing evidence that the substantive work was the product of the entire FORTRAN Program from her Honours Thesis – and no more. In this Reply, the Complainant repeated her data subject access request indicating that the document of 24 April 2002, purporting to be her student transcript, fraudulently declared the title of her Honours Thesis "Interactive Computer Package Demonstrating: Sampling Convolution

[62] Appendix A I.28, Appendix B IV.E.8.

[63] Appendix A I.27, Appendix B III.D.3, Appendix C AGT 5.c.

[64] Appendix A I.29.

[65] Appendix A I.30, Appendix B IV.E.9, Appendix C 6.b.

[66] Appendix A I.25, Appendix B IV.E.7

[67] Appendix A I.26, Appendix B III.C.5, para. 6.

and the FFT" while concealing the mark of zero actually recognised by the University in registering the course as "not achieved".[68]

Defendant University Registrar Dr. Trevor Webb replied by email on 28 November 2002, informing the Complainant: that the University was commissioning an independent investigation into her "allegations of plagiarism [sic]", and that some of the personal data she requested under the DPA would be processed on receipt of the fee of £10.00.[69] In this letter, Webb deliberately misrepresented the law, falsely representing to the Complainant that the remainder of her data subject access request was not disclosable under the DPA. The Complainant responded by email on 23 December 2002, submitting payment of the £10.00 fee via Federal Express.[70] She was issued a record of grades, sent by letter dated 10 February 2003 by Defendant David Jones, Data Protection Officer,[71] a false statement of marks which included a fictitious mark of 60% for the Honours Thesis affixed to the documents in order to deceive the Complainant, while the University continues, in fact, to apply an actual mark of zero for the Honours Thesis, formally accounted for in the University's records as "not achieved".

On 21 February, Cannon wrote to the Complainant reporting that the External Subject Specialist retained in the independent investigation concerning her Honours Thesis had adjudged "that plagiarism of work submitted in [her] Honours thesis did not take place in the work submitted (by Dr. MacLean) for the PhD thesis in question". Cannon concluded by stating that the University considered all matters raised by the Complainant to be closed and would not correspond or communicate with her further.[72]

Sometime in March 2003, the University secretly rescinded the degree of Doctor of Philosophy in Engineering conferred on Colin Sinclair MacLean 5 July 1985. This rescission was in consequence of the independent investigation by the External Subject Specialist, which revealed that the object code in MacLean's PhD Thesis was the adapted source code of the FORTRAN Program belonging to the Complainant's Honours Thesis as verified by the University Computer Centre's backups on electronic media of the Complainant's own user account, ID UEN4059, by which the Complainant created the FORTRAN Program on the Honeywell mainframe computer over the period October 1982 to April 1983.

[68] Appendix A I.31, Appendix B III.C.6.

[69] Appendix A I.32, Appendix B IV.E.10.

[70] Appendix A I.33, Appendix B III.C.8.

[71] Appendix A I items 34 and 35, Appendix B items V.F.11 and III.D.4, Appendix C AGT 5.d.

[72] Appendix A I.36, Appendix B V.F.2, Appendix C AGT 6.c.

The University Defendants knew from the outset of the Complainant's appeal in 1983 that she was the sole author of the FORTRAN Program in her Honours Thesis, and that this work had been falsely attributed to MacLean. The doctoral award was rescinded only because having had the matter exposed by the Complainant, the University would have been discredited *de facto*, for failing to rescind a doctoral degree for which stolen property had been submitted in fulfilment. The University's refusal to disclose the printout of the FORTRAN Program to the Complainant constitutes denial of the Complainant's authorship, corroborating the inference that the University's dishonest control of the intellectual work is for the purpose of gain, economic and otherwise, the adapted FORTRAN Program of the Honours Thesis being criminally in use by the University, in combination with Shell.

On 6 January 2004, the Complainant issued a "Notice of Forgery" to the University in respect of the bogus degree awarded, the forged documents and false statements purporting to be her student transcript and statement of marks consequently uttered, and her lawful entitlement to restitution - inclusive of the award of the degree of Doctor of Philosophy in Engineering by virtue of the doctoral award conferred on her property fraudulently transferred to MacLean.[73]

The Complainant also repeated her demand for restitution of any and all Honours theses fraudulently excluded from the records pertaining to black/non-white students and the concomitant rescission of any PhD theses which might have benefited from theft or other fraudulent invasion of property belonging to the victims[74] Accordingly, the Complainant asserts that among the remedies to be ordered by this Court, at trial, is the award of bona fide degrees in all instances where bogus degrees have previously been awarded, by restitution of property pertaining to rights in intellectual work belonging to the victims of the *apartheid*.

On 12 January 2004, the Complainant filed Complaint 1 with the Metropolitan Police Service (the MPS, Scotland Yard) for the express attention of Assistant Commissioner Tarique Ghaffur (Complaint 1) alleging, *inter alia*, theft, forgery, other fraud and blackmail, as racially motivated offences under the Criminal Justice Act 1993, and as violations of any other statutory provision of the UK, European or International convention within whose proscription the alleged conduct falls.[75]

Complaint 1, along with subsequent complaints filed with the Serious Fraud Office (the SFO), the Police Complaints Authority (the PCA), the Independent Police Complaints Authority (the IPCC), the Metropolitan Police Authority (the MPA), the Federal Bureau of Investigation (the FBI) and the Jamaican authorities, continue to be suppressed consistent with the Defendants' method of operation to conceal the crimes – and the Defendants, in combination with their law enforcement

[73] Appendix A I.38, Appendix B III.C.7.

[74] Id, para.5 (k) and (l)

[75] Complaint 1, above note 13, para. 19.

and ministerial accomplices, likewise seek to influence the suppression of this Article 15 filing, causing irreparable harm to the proper administration of justice before this Court.[76]

[76] See the Statute, art.70 (1) (d); See also *Rules of Procedure and Evidence*, adopted 9 September 2002, Parties to the Rome Statute of the International Criminal Court, First Session, New York, 3-10 Sept. 2002, ICC-ASP/1/3, rule 24 (1) (a), *available at* http://www.un.org/law/icc/asp/1stsession/report/english/part_ii_a_e.pdf (visited 5 September 2006).

D. Obstruction of Justice by Law Enforcement Agencies

The Program of surveillance and stalking enabled the Defendants to intercept the complaints at all points of contact with law enforcement agencies, suppressing investigation and obstructing the course of justice. The influence of the Defendants is evidenced, for example, by the common design shared by officers of the MPS and the SFO in wilfully disregarding the systematic *persecution* of black/non-white students by fraud, misrepresenting the allegation of theft as plagiarism[77] in order to subvert the requirement for criminal prosecution, and in falsely disclaiming jurisdictional competence in order to mislead the Complainant into transferring the case to the Police in Scotland.[78]

The obstruction of justice by the law enforcement agencies derives from the complicit actions of Government officials themselves (from both the legislature and the executive) to conceal the practice of *apartheid* alleged. The letters of complaint include appeals to: Secretaries of State for Education and the Home Department, the Right Honourable David Blunkett[79] and the Right Honourable Estelle Morris,[80] Lord Hughes of Woodside (in his former capacity as MP),[81] Alick Buchanan-Smith MP,[82] the Right Honourable Lord Rooker (in his capacity as MP), [83] Former First Minister for Scotland the Right Honourable Henry McLeish (in both his capacities as Minister for Enterprise and Lifelong Learning, [84] and First Minister of Scotland) and Prime Minister the Right Honourable Tony Blair.[85] Of these, it may be inferred from the facts that McLeish, Blunkett, Rooker and Hughes (a supposed anti-*apartheid* activist) have personal knowledge of evidence of the practice of *apartheid* at the University of Aberdeen.

British High Commissioners Richard Thomas, Antony Smith, and Jim Malcolm, along with European Commission Delegation Head Jan Dubbeldam, with knowledge of the programme of

[77] See, for example, Webb's email of 28 November 2002 (Appendix A I.32, Appendix B IV.E.10), Canon's letter of 21 February 2003 (Appendix A I.36, Appendix B V.F.2), and SFO Officer Mike Jackson's letter of 27 February 2004 (Appendix A V.3, Appendix B XI.C.1.b.)

[78] See text at notes 88 and 97 below.

[79] See Appendix A XIII.3, Appendix B XIV.D

[80] See Appendix A XIII.8, Appendix BXIV.E

[81] See Appendix A XIII.6.a.

[82] See Appendix A XIII.6.b.

[83] See Appendix A XIII.9, Appendix B XV.G

[84] See Appendix A XIII.7, Appendix B XIV.C.2

[85] See Appendix A XIII.2, Appendix B XIV.B.

surveillance and stalking, cooperated with Williams in suppressing the complaints.[86] Not surprisingly, chief officers of Universities UK - the organisation that represents British Universities – chairpersons Professor Sir Howard Newby, Professor Roderick Floud, and Professor Ivor Crewe, as well as Chief Executive Officer Ms. Diana Warwick, all disregarded the complaints.[87]

1. THE MPS and THE PCA

From about 12 January 2004, Defendants Commissioner Sir John Stevens and Assistant Commissioner Mr. Tarique Ghaffur, through their junior officers Detective Matthew Horne, Detective Chief Inspector Vas Gopinathan, and Detective Superintendent Hunt (who engaged in deceptive conduct by email and by telephone) obstructed investigation into Complaint 1.

Detective Horne supplied the Complainant with a false telephone number "0044 207 230 6040" by email on 13 January 2004, in order to delay and frustrate processing of Complaint 1. On 19 January 2004, Horne eventually telephoned the Complainant, falsely advising her that MPS jurisdictional powers were limited to England and Wales.[88] The Complainant instructed Horne to cease handling Complaint 1, and advised him that she would be filing a complaint against his conduct.

Detective Chief Inspector Vas Gopinathan telephoned the Complainant's residence on 20 January 2004, misrepresenting his rank as "Detective Chief Superintendent" and, on 4 and 5 February 2004, he emailed the Complainant misrepresenting the alleged theft as "plagiarism", disregarding the other criminal offences alleged. On 15 March 2004, Hunt advised the Complainant, by telephone, that Gopinathan and another detective from the fraud squad had found that Complaint 1 "[did] not substantiate criminal offences" and that Ghaffur had accepted this assessment, of which he would advise the Complainant in writing.

The Complainant filed complaints with the PCA on 20-21 January 2004 (Complaint 2(a)) [89] and 10 February 2004 (Complaint 2 (b))[90] against Defendants Horne and Gopinathan. On 9 February 2004, Detective Chief Inspector Murray Howell of the MPS Directorate of Professional Standards wrote to the Complainant indicating that he had referred Complaint 2(a) to the MPS Child Protection Unit.[91]

[86] See Appendix A items XIII.1 and XIII.4, Appendix B items XIV.A and XVI.A.

[87] See Appendix A XIII.11, Appendix B XV.H items.

[88] See Complaint 2 (a), to the PCA dated 20 January 2004, Appendix A V.1, Appendix B XI.B.1.a.

[89] Ibid.

[90] Appendix A V.2, Appendix B XI.B.2.a.

[91] See Appendix A V.3, Appendix B XI.B.3.a

The Complainant filed a further complaint with the PCA on 12 February 2004 (Complaint 2 (c)).[92] The MPS suppressed investigation of Complaint 1, failing to execute genuine procedures pursuant to the 12 January filing, and contrary to Hunt's information, there was no response whatsoever from Ghaffur himself.

2. THE SFO and THE LAW OFFICERS

The widespread and systematic nature of the fraud perpetrated against the population of black/non-white victims also constitutes serious and complex commercial fraud as defined by the SFO. On 11 February 2004, the Complainant filed a complaint with the SFO via the online form "Reporting a Fraud to the SFO" at http://www.sfo.gov.uk/cases/guidance.asp, and by email to reportafraud@sfo.gsi.gov.uk and postmaster@sfo.gsi.gov.uk (Complaint 3 (a)).[93] In addition, the Complainant emailed SFO Director Mr. Robert Wardle at private.office@sfo.gsi.gov.uk on 11 and 13 February 2004, attaching Complaint 1 and other particulars, redirecting the email to postmaster@sfo.gsi.gov.uk as instructed by the SFO email reply.

On 27 February 2004, SFO officer, Mike Jackson, replied by email to the Complainant claiming that he had thoroughly reviewed the complaint along with a senior SFO lawyer, and had concluded that the matter was not one that the SFO could investigate. Jackson advised the Complainant that if she believed the alleged "plagiarism" to have caused her financial distress, then she should seek "civil redress".[94]

The Complainant then filed a second complaint against the Serious Fraud Office, addressed to Wardle, which she submitted online at http://www.sfo.gov.uk/publications/complaints/complaintsform.asp 3 March 2004, with copies to complaintsofficer@sfo.gsi.gov.uk, and postmaster@sfo.gsi.gov.uk (Complaint 3 (b)).[95] In the latter complaint, the Complainant alleged that Jackson acted in concert with the Defendants, misrepresenting the SFO's mandate in dismissing Complaint 3 (a), fabricating an allegation of plagiarism, and accordingly proposing civil redress, in order to shield the Defendants from criminal sanction.

On 18 March 2004, the Complainant filed a complaint against the SFO and the MPS addressed to the Law Officers, the Attorney General, the Right Honourable Lord Goldsmith QC, and the Solicitor General, the Right Honourable Harriet Harman QC MP (Complaint 4(a)).[96] She submitted the

[92] Ibid.

[93] Appendix A VI.1, Appendix B XI.C.1

[94] Appendix A VI.2, Appendix B XI.C.1.b.

[95] Appendix A VI.3, Appendix B XI.C.2.a.

[96] Appendix A VII.1, Appendix B XI.D.1.

complaint to the Solicitor General via the website of the UK Parliament http://www.parliament.uk, and by email to harmanh@parliament.uk, enclosing copies of Complaints 1, 2, and 3 (a) along with supporting documents.

SFO Policy Head Mr. Peter Kiernan then wrote to the Complainant on 22 March 2004, again dismissing Complaint 3 (a) as well as Complaint 3 (b) against Jackson. In his letter, Kiernan also disclaimed SFO jurisdictional competence, advising her to make a complaint to the Lord Advocate (Scotland),[97]

Having failed to receive any reply from the Law Officers, the Complainant submitted a second complaint to them on 30 March 2004 at the latter addresses, and also to the Legal Secretariat of the Law Officers by email to Kevin.mcginty@lslo.x.gsi.gov.uk for the attention of the Establishment Officer Mr. Kevin McGinty. In this latter complaint, Complaint 4 (b),[98] the Complainant cited Kiernan's failure of responsibility as SFO Policy Head in dismissing the complaints without factual or legal basis, and she further alleged conspiracy with the Defendants, and racial *persecution* contrary to the Statute - submitting that the Attorney General, himself, should lead the prosecution.

On 21 April 2004, Mr. A Hussain replied purportedly on behalf of the Legal Secretariat affirming Kiernan's statement of 22 March 2004, dismissing the complaints.[99]

3. THE IPCC and THE MPA

On 4 May 2004, the Complainant filed a further complaint with the IPCC alleging criminal conduct by Defendants Stevens and Ghaffur (Complaint 5(a))[100] by email to enquiries@ipcc.gsi.gov.uk. In this complaint, the Complainant attached copies of Complaints 1 through 4 and addressed the matter for the attention of the IPCC Chair, Mr. Nick Hardwick, citing serious corruption, perverting the course of justice, and conspiracy. IPCC Senior Caseworker, Mr. Jonathan Rodgers, replied by letter dated 11 May 2004, indicating that the IPCC chairperson had noted the complaint and passed it for his (Rodgers') attention.[101] Noting that the Complainant had copied Complaint 5(a) to Lord Toby Harris, the MPA Chair, Rodgers advised the Complainant that it would be the MPA's responsibility to handle complaints concerning the conduct of the chief officer of the MPS, and that he would be sending a copy of his letter to the Clerk of the MPA.

[97] Appendix A VI.4, Appendix B XI.C.2.b.

[98] Appendix A VII.2, Appendix B XI..D.2.

[99] Appendix A VII.3, Appendix B XI.D.3.

[100] Appendix A VIII.1, Appendix B XI.E.1.a.

[101] Appendix A VIII.2, Appendix B XI.E.1.b.

On 20 May 2004, the Complainant filed a second complaint: clarifying Complaint 5 (a), against Rodgers, who deliberately excluded a copy of the latter from his advice to the Clerk of the MPA; against the MPA's failure to record the complaint; and against the PCA's failure to record Complaints 2. MPA officer Natasha Porter confirmed in her email messages of 21 May and 7 June 2004, that Rodgers had, in fact, excluded the substantive documents comprising Complaint 5 (a) from his notification to the MPA. The Complainant filed her further complaint of 20 May 2004 (Complaint 5 (b)) by email addressed to the IPCC Deputy Chair, Mr. John Wadham, at John.Wadham@ipcc.gov.uk, asserting IPCC obligations in respect of Schedule 3, paragraphs 4 (1) (b) and (c) of the Police Reform Act 2002, to call in the case.[102]

MPA Solicitor Mr. David Riddle emailed the Complainant on 3 June 2003, rehearsing the excuses given by Porter claiming delayed access to the Complainant's emails since 4 May 2004, purportedly because the .Zip file attachments had caused the server to quarantine the messages.[103] Riddle advised the Complainant that the decision in respect of her complaints would be made by the MPA's ACPO Conduct sub-committee at their next meeting on 15 July 2004. The Complainant responded by appealing to the IPCC on 10 June 2004 (Complaint 5 (c)),[104] against the MPA's failure to record the complaint, notified by Riddle's letter of 3 June 2004. The Complainant emailed Complaint 5 (c) to the IPCC, also including an image of the completed form "Appealing against the Non-Recording of a Complaint", which she had downloaded from the IPCC website and sent to the IPCC by registered mail.

Outgoing MPA Chair, Lord Toby Harris of Harringey (to whom the Complainant copied all emails) emailed the Complainant on 16 June 2004, informing her that he no longer had anything to do with the MPA.[105] On 7 July 2004, IPCC Director of Casework, Mr. Keith Price, wrote to the Complainant dismissing her appeal against the failure of the MPA to record her complaint, misrepresenting the complaint as a repeated complaint.[106] That same day, IPCC Complaints Officer, Ms. Nicola Enston, wrote to the Complainant also dishonestly dismissing her complaint against Rodgers as having no foundation.[107]

On 15 July 2003, Riddle wrote to the Complainant dishonestly verifying the rejection of her appeal by the IPCC as a repeated complaint, also misrepresenting the complaint as constituting issues

[102] Appendix A VIII.3, Appendix B XI.E.2.a; See Porter's emails to the Complainant, Appendix A VIII.4, Appendix B XI.E.2.b.

[103] Appendix A VIII.5, Appendix B XI.E.2.c.

[104] Appendix A VIII.6, Appendix B XI.E.3.a.

[105] Appendix A VIII.7, Appendix B XI.E.3.b.

[106] Appendix A VIII.8, Appendix B XI.E.3.d.

[107] Appendix A VIII.9, Appendix B XI.E.3.c.

related to “direction and control” of a police force by a chief officer, which are excluded from the police complaints system.[108]

The Complainant responded with Complaint 5 (d) dated 28 July 2004 by email addressed to Hardwick, Wadham, and copied to Riddle, resubmitting Complaint 5 (a) and citing cover-up in an unmitigated display of unwillingness to bring the Defendants to justice, constituting admissibility under Article 17 of the Statute.[109] The Complainant also replied to Enston on 1 August 2004 asserting that, as with the remainder of the dossier of deception crafted by UK law enforcement, her letter of 7 July 2004 was simply dishonest.[110]

4. THE FBI

On 31 January 2005, and 10 February 2005, the Complainant filed a complaint with the FBI through the Regional Security Office of the United States Embassy in Kingston (Complaint 6 (a))[111] by email and in person. Complaint 6 (a) against the 5 Defendant nationals of the United States alleged Title 18 violations of the United States Criminal Code including, racketeering (RICO), extortion, conspiracy, mail fraud, wire fraud, and stalking under sections 1962, 1951, 371, 1341, 1343 and 2261A respectively.

The filing by email on 31 January 2005 consisted of an 11-message series to cpakgn@pd.state.gov, addressed to the Regional Security Officer (RSO) Mr. Michael Limpantsis. On 31 January and 1 February 2005, Ms. Evadne Barnes of the US Embassy confirmed receipt of the messages by email receipts sent from BarnesEM2@state.gov, and by telephone. She also confirmed that she had forwarded all messages to the Regional Security Office.[112]

On 8 February 2005, the Complainant telephoned Limpantsis concerning the progress of Complaint 6 (a) and the appointment to meet with him (in order to deliver hardcopy of the complaint and to discuss the matter) requested in her cover letter of 31 January. Limpantsis advised the Complainant that he had forwarded the information to the FBI, but that he would not give the Complainant the option of delivering hardcopy directly to him. Limpantsis advised the Complainant to send the hardcopy by mail, accused her of harassing the RSO, threatened to make a complaint to the Jamaica Constabulary Force (the JCF) - and told her not to call again.

[108] Appendix A VIII.10, Appendix B XI.E.3.e.

[109] Appendix A VIII.11, Appendix B XI.E.4.a.

[110] Appendix A VIII.12, Appendix B XI.E.4.b.

[111] Appendix A IX.5, Appendix B XII.A.2.

[112] Appendix A IX.8, Appendix B XII.A.2.b.

On 10 February 2005, the Complainant delivered hardcopy of Complaint 6 (a) in person to the United States Embassy in Kingston. The hardcopy included Complaint 1, a copy of a letter dated 3 November 1999 from former Assistant RSO Robert F. Grech[113] (to whom she had complained in November 1999) and her covering letter of 31 January 2005. JCF officers Elaine Waldman and Jason Rodriques were on duty at the Embassy lobby security checkpoint. The Complainant advised them that she wished to file a complaint with the FBI through the US Embassy. Rodriques advised the RSO office by telephone and Assistant RSO Leonard Colston came to the lobby to deal with the Complainant.

Colston refused to accept the envelope of documents, insisting that the FBI had no jurisdiction in Jamaica, and that in any case the Regional Security Office already had all her email messages. He advised the Complainant that she could not leave the documents with the Embassy. The Complainant responded by quoting RICO provisions for extra-territorial jurisdiction used by the FBI in investigating and prosecuting international organized crime, including the war on drugs - asserting that she was the victim of terrorism perpetrated by American nationals.

At Colston's continued rejection of custody of the documents, the Complainant delivered the envelope to Rodriques and Waldman, who agreed to accept the complaint on behalf of the Embassy, but declined to sign the receipt drawn up by the Complainant. On handing the documents to Rodriques, Colston grudgingly asked for the envelope. The Complainant delivered the hardcopy to Colston and left the Embassy after reminding him that interfering with the filing of a complaint to the FBI alleging violations of US Federal law was obstruction of justice. Waldman and Rodriques witnessed the entire antagonistic exchange between Colston and the Complainant.

Throughout the Regional Security Office's handling of the matter, Limpantsis and Coltson attempted to intimidate the Complainant and to obstruct the filing of Complaint 6 (a). On 24 January 2005, when the Complainant first telephoned the Regional Security Office in regard to Complaint 6 (a), Limpantsis himself answered the telephone, confirmed that he was the RSO and that he represented the FBI, but refused to give his name. Limpantsis objected to the Complainant's proposed use of the general embassy email address opakgn@pd.state.gov claiming that the latter was an "open" email address, but refused to provide a substitute email address for filing the complaint. The Complainant retrieved the name "Michael Limpantsis" from the US Embassy website at http://foia.state.gov/MMS/KOH/key_country.asp?ID=Jamaica. She noted that her earlier web searches for the FBI, which included http://www.fbi.gov/contactus.htm advising that the FBI be contacted through the United States Embassy, had evidently been noted by the Defendants' surveillance operation and communicated to Limpantsis before she telephoned him.

[113] Appendix A IX.3, Appendix B XII.A.1.a.

On 27 January 2005, the Complainant telephoned the Regional Security Office to make an appointment to meet with Limpantsis. Ms. Sheila Groh, who answered the telephone, informed the Complainant that Limpantsis (with whom she should make the appointment directly) was away on emergency travel, but that she would have Assistant RSO Leonard Colston telephone her. The Complainant spoke with Colston on 31 January 2005. Like Limpantsis, he would not provide her with a direct email address and advised her to print all the files in the email package. The Complainant sent the email messages to opakgn@pd.state.gov, and Colston telephoned. In a lengthy tirade, during which Colston refused to allow the Complainant to speak, he inveighed against her use of the latter email address, which he claimed would be accessed by numerous individuals, claimed that she could not file a criminal complaint,[114] that the Embassy received emails from mentally ill individuals, and asserted that he had powers of arrest. The Complainant again spoke with Groh requesting that Colston - who appeared hysterical, incoherent and not representative of the FBI - not call her again. On 18 March 2005, the Complainant telephoned the RSO to inquire about the progress of Complaint 6(a), which she had delivered in person to Colston on 10 February. Limpantsis responded, reminding the Complainant that he had advised her not to call the RSO office again, threatening that if she did so he would have the JCF arrest her. The Regional Security Office of the United States Embassy acted with hostility toward the Complainant, evidently secure in the knowledge of cooperation between Jamaican Authorities and Defendant MIT Professor James H. Williams.

By their actions, Limpantsis and Colston, acting as agents of the Defendants and with full knowledge of their stalking operation, prevented a complaint and evidence of Federal offences from being communicated to the FBI, misled, threatened, attempted to intimidate the Complainant - and ultimately suppressed Complaint 6 (a).

The Complainant copied the series of email messages sent to the US Embassy on 31 January 2005 to Interpol at cp@interpol.int. On 31 January 2005, she also filed online complaints via the FBI Tips and Public Leads form at https://tips.fbi.gov (Complaint 6 (b)),[115] and the Internet Crime Complaint Centre at http://www.ic3.gov/ (Complaint 6 (c)),[116] as advised by the FBI web page at http://www.fbi.gov/contactus.htm.

In her filing to FBI Tips and Public Leads, the Complainant included a copy of her cover letter of 31 January 2005 to Limpantsis, and the text from Complaint 1.

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[114] The Complainant recognizes that such complaints are normally termed police reports; she however used the term “Criminal Complaint” to emphatically distinguish the criminal nature of the offences from the civil course maliciously proposed to shield the Defendants.

[115] Appendix A IX.6, Appendix B XII.A.3.a.

[116] Appendix A IX.7, Appendix B XII.A.4.a.

In the filing to Internet Crime Complaint Centre, the Complainant reported unauthorised Internet access to her computer and a MasterCard account at RBTT Bank Jamaica Limited belonging to her Uncle, Mr. Manzie G. Porter. On 22 and 23 April 2004, transactions amounting to $608.95 were fraudulently applied to Mr. Porter's account with intent to incite belief that the Complainant had stolen from the account. RBTT Bank employee Ms. Tameka Brown suppressed evidence of the fraud after asking the Complainant if the MasterCard transaction had been executed through MIT. The Complainant inferred that MIT Professor James Williams had communicated with and influenced Brown, and she named Williams as the individual who victimized her.

The Complainant included Complaint 5 (a) and an excerpt from Complaint 1 in the text of the Complaint 6 (c) (which she amended 2 February 2005). Complaint 5 (a) reported the Master Card fraud in paragraph III (2); the fraud constitutes Federal violations contrary to Title 18 USC Chapter 47, Sections 1029 and 1030. The Complaint received an "IFCC Complaint Referral Report" by email on 1 February 2005, as the attached file "IFCC-105013115364847.pdf" from complaints@ifccfbi.gov, complaint number 105013115364847.[117]

5. THE JAMAICAN AUTHORITIES

Advised by MIT Professor James Williams, the Jamaican authorities suppressed all complaints filed. In paragraph 14 of Complaint 1, the Complainant alleged the offering of bribes and other forms of inducements through Williams to secure the ongoing programme of surveillance, stalking, and cover-up perpetrated by the criminal enterprise. University of the West Indies lecturer Dr. Patrick Chin, Attorney Valerie Neita-Robertson, and Engineering Contractor Mr. Steve Ashley – all of whom had been advised by Williams – drew the Complainant's attention to the admission of Prime Minister Percival J. Patterson's son to the doctoral programme in the Department of Earth and Planetary Sciences at MIT.

The Complainant filed complaints with both the Ministry of Justice and the Ministry of Foreign Affairs – all of which have been disregarded. The Complainant made oral and written complaints to Minister of Foreign Affairs and Deputy Prime Minister, the Honourable Seymour Mullings during the period 21 March 1995 to 24 June 1998, meeting with him no fewer than five times. On 24 June 1996, the Complainant also met with Minister of Foreign Trade, Senator the Honourable Anthony Hylton (now Minister of Foreign Affairs and Trade) and in July 1997 spoke with the Cabinet Secretary the Honourable Dr. Carlton Davis. [118]

[117] Appendix A IX.9. Appendix B XII.A.4.b.

[118] See, e.g., the Complainant's letters of 2 May 1997, 30 May 1997, 26 August 1997 to Mullings, Appendix A XII items , 6, 9, 10, Appendix B XIII.C ; See also her correspondence of 14 March 1995, 15 June 1995, and 6 May 1997 with Davis, Appendix A XII items 3, 4, and 7, Appendix B XIII.B.

Mullings related to the Complainant in March 1998 that in regard to her letter of 24 November 1997, Rice did not believe that she did not have a copy of her Honours Thesis in her possession, while Hylton, who admitted to not having read any of the documents associated with the case, defended MIT Professor Patrick Winston, asserting that Winston's name did not appear on any of the documents issued by MIT or the OAS. Davis concurred, insisting that, contrary to the Complainant's claims regarding discovery of the issues surrounding her Honours Thesis, no one had told her anything about her thesis – implying that she had dishonestly acquired the work and therefore knew about the matter of authorship from the outset.

The Complainant filed three complaints with the Jamaican Constabulary Force: Statement No.1 dated 13 August 1998,[119] Statement No. 2 dated 11 October 1999,[120] and Statement No. 3 dated 23 May 2000.[121] In May and June 1999, the Complainant tried without success to meet with Police Commissioner Francis Forbes, but met with the DPP Kent Pantry QC on 28 October 1999, who agreed to deliver Statements No. 1 and No. 2 directly to Forbes along with a copy of her Application of 5 May 1999 to Blunkett. The Complainant then delivered her letter of 29 October 1999 to Pantry, in person, enclosing both complaints and the attachments listed.[122] Forbes failed to respond, and Pantry declined to assist the Complainant in forwarding the next complaint to the Police Commissioner, Statement No. 3. The Complainant delivered Statement No. 3, in person, to Forbes' office at 101 Old Hope Road, Kingston 6 - and again Forbes failed to respond.

On 15 September 2003, the Complainant wrote to Pantry requesting an appropriate contact for Scotland Yard (the MPS) and any necessary assistance for filing Complaint 1.[123] Pantry provided the Complainant with the particulars for MPS Assistant Commissioner Tarique Ghaffur, but ultimately failed to provide assistance in bringing the Complaint to the attention of either Ghaffur, or his superior Commissioner Stevens, or in fact any law enforcement officer competent to handle the matter. On 19 January 2004, the Complainant wrote again to Pantry advising him of the actions of the MPS officers to suppress Complaint 1, requesting again that he contact Ghaffur or his superiors immediately, but again Pantry failed to respond.[124]

In her letter of 28 December 2004 to Attorney General Nicholson (emailed to agminister@moj.gov.jm) (concerning Nicholson's failure to remedy the matters raised in his meeting of 7 September 2004 with the Complainant and others concerning denial of rights of

[119] Appendix A X.3.a, Appendix B XII.B.3.a.

[120] Appendix A X.3.b, Appendix B XII.B.3.b.

[121] Appendix A X.3.c, Appendix B XII.B.3.c.

[122] Appendix A X.2.a, Appendix B XII.B.2.a.

[123] Appendix A X.2.c, Appendix B XII.B.2.c.

[124] Appendix A X.2.d, Appendix B XII.B.2.d.

nationality)[125] the Complainant attached, *inter alia*, a copy of Complaint 1, and the Pre-Indictment advice of 14 July 2004 addressed to UK DPP Mr. Ken McDonald and ICC Prosecutor Mr. Luis Moreno Ocampo. Among the recommendations to the Attorney General, in her letter of 28 December 2004 the Complainant proposed declaration and cooperation with the ICC, as provided by Article 12 (3) of the Statute, in respect of the practice of *apartheid* by the criminal enterprise, and the ensuing *persecution* of her family members - incited by Williams. [126] The Complainant regards any suggestions made by Jamaican Government officials, that her pursuit of prosecution of the instant case is affecting or will further affect her family members, to be threats constituting extortion.

On 10 February 2005, the Complainant delivered a copy of Complaint 6 by hand to Nicholson's office, having already copied the corresponding 11-message email series to him at agminister@moj.gov.jm on 31 January 2005. Nicholson's personal secretaries, Mrs. Pamella Gourzong and Mrs. Blanche Campbell, confirmed receipt of all email messages and the hand delivered documents pertaining to Complaint 6.

Up to about 15 September 2004, the Complainant copied or forwarded all major email messages to Pantry at dpp@mnsj.gov.jm, and to dpp@moj.gov.jm when his email address was changed to the latter, but she eventually received email notifications ostensibly indicating that the messages had been rejected by Pantry's mail server.

Other Government officials to whom the Complainant wrote and/or discussed the matter included: the Honourable Benjamin Clare MP (Minister of State in the Ministry of Foreign Affairs and Foreign Trade);[127] The Honourable Donald Buchanan MP (Minister of State in the Ministry of the Public Service); The Honourable Horace Clark MP (Minister of Transportation and Works); Leader of the Opposition Senator Bruce Golding (in his former capacity as Leader of the National Democratic Movement, 29 July 1998); Mr. Derrick Smith MP (Opposition Spokesman on Justice); Mr. Delroy Chuck MP (Opposition Spokesman on Education); Mr. Douglas Orane, who subsequently became a Senator; and Mr. Ronald Thwaites QC, who subsequently became a Member of Parliament.

In about July 1995, Thwaites referred the Complainant to his partner Dennis Daly QC to file suit for non-payment in respect of work done as Project Management Consultant to the Ministry of Health's Central Public Health Laboratory Project for the period mid-June to 3 November 1992. Although Thwaites had reassured the Complainant that his firm "had no qualms about suing Government" before taking the case, Daly filed suit against contractor Mr. Derrick Webb in the Supreme Court of Judicature of Jamaica (Claim No. ……) excluding Minister of Health,

[125] Appendix A X.1.a, Appendix B XII.B.1.a.

[126] Appendix A X.1.b, Appendix B XII.B.1.b, para.4 (c).

[127] Appendix A XII.2, Appendix B XII.A.1.

the Honourable Easton Douglas, and other servants of the Ministry who conspired with Webb (and Williams) to fraudulently induce the contracts so as to obtain the Complainant's services by deception. The claim filed by Daly and Thwaites is a false claim - which they refused to amend over the Complainant's objections. On 11 January 2006 and 1 June 2006, the Complainant, acting *pro se*, filed Notices of Application for court orders to, *inter alia*, amend the Statements of Case and dismiss her attorneys application of 1 May 2006 to withdraw representation. Paragraphs 2 (b) and (c) of the latter Notice of Application, and paragraphs 3 - 11, 15, and 28 of the Complainant's Affidavit in the suit refer to the instant Complaint filed with the ICC. [128]

To date, the Jamaican authorities, evidently in combination with Williams, have continued to suppress all complaints in the matter, thereby facilitating the ongoing international criminal transaction to further the interests of the *apartheid* regime. The Jamaican authorities stand in violation of their obligations under the International Convention on the Suppression and Punishment of the Crime of Apartheid, 30 November 1973 (the Apartheid Convention), and under Article 18 of the Vienna Convention of the Law of Treaties (1969), for actions incompatible with Jamaica's status as a signatory to the Statute.[129]

It is no secret that the 32-year programme of *persecution* aims to coerce the Complainant into accepting a bribe to drop the complaints. The Law Enforcement authorities know only too well that financial compensation in lieu of criminal prosecution is prohibited for criminal violations, that in any case the civil courts persistently disclaim jurisdiction in matters pertaining to universities, and that the proposition for "civil redress" is mere code for bribery.

[128] Appendix A XI.2. items a - c, Appendix B XII.C.1 items a - c; See also Complaint 1, para. 13 (b) (iv).

[129] Vienna Convention on the Law of Treaties, 27 January 1980, 1155 U.N.T.S. 331, *available at* http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf (visited 5 September 2006).

E. The OTP Analysis

On 7 July 2004, the Complainant emailed the Court at pio@icc-cpi.int stating, in a one-page message, her intention to file a complaint under Article 15, and requesting an appropriate email address for the filing.[130] On 14 and 15 July 2004, the Complainant emailed the substantiated information comprising the Complaint entitled "Pre-Indictment Advice and File of Evidence" addressed to UK DPP Mr. Ken McDonald and ICC Prosecutor Mr. Luis Moreno Ocampo.[131] The Complaint consisted of 11 email messages with attachments that included: the Pre-Indictment Advice of 14 July 2004, Complaints 1 and 5, the relevant exhibits, attachments and associated documents.

In her Pre-Indictment Advice of 14 July 2004, the Complainant alleged widespread and systematic fraudulent transfers of fees for inferior degree awards and bogus degrees, thus depriving black/non-white students of fundamental human rights constituting the crime against humanity of *persecution* contrary to Article 7 (1) (h) of the Statute. On 22 November 2004, the Complainant emailed her "Explanatory Notes and Amendments" which amended the Complaint to allege the crime of *apartheid*, contrary to Article 7 (1) (j) of the Statute, as the prevailing offence.[132]

The OTP emailed the Complainant on 2 March 2005, dismissing the Complaint on grounds that the alleged conduct fell outside the jurisdiction of the Court.[133] There was no response whatsoever from DPP Ken McDonald, or from the Crown Prosecution Service.

Regulations governing the handling of communications and referrals are encoded in the document "Annex to the 'Paper on some policy issues before the Office of the Prosecutor': on Referrals and Communications" (the Annex).[134] Contrary to paragraph III of the Annex, which prescribes acknowledgment by the Court within one month of receipt of any communication, the OTP failed to acknowledge receipt of the Complaint, and also disregarded the Complainant's demands for a reference number, a named contact person, advice on operating procedures, the status of the OTP Draft Regulations, and information on the progress of analysis.[135] Only after 7 repeated requests from the Complainant did the OTP acknowledge the Complaint on 1 December 2004, assigning the reference number "OTP-CR-313/04" - almost 5 months after the Complaint was

[130] Appendix A XIV.1, The first of the 11 message series is listed as Appendix B I.B.1.

[131] Appendix A items VII.4 and XIV.3, Appendix B I.B.2 listing the first of the eleven-message series.

[132] See below, part.I.A.2; See also case doc. *Explanatory Notes and Amendments*, part.II.1, Appendix A XIV.13, Appendix B I.B.4.

[133] Appendix A XIV.23, Appendix B 1.C 3.

[134] *Available at* http://www.icc-cpi.int/library/organs/otp/policy_annex_final_210404.pdf (visited 5 September 2006).

[135] Appendix A XIV items 6, 7, 8, 10, 11, 13 and 14, see, e.g., Appendix B I.B.3.

filed.[136] The OTP also disregarded the Complainant's further requests of 3 and 19 January 2005 for notice of the Prosecutor's decision.[137]

The IEU's reply of 2 March 2005 came almost 8 months after the Complaint was filed with the OTP, and only after the Complainant filed her "Complaint against the Prosecutor" on 18 January 2005 (as provided by Rule 26 and Regulation 119) which she resubmitted on 4 February 2005,[138] and a further complaint with the FBI on 31 January and 10 February 2005 (Complaint 6).

The Presidency (or in fact any officer of the Court) has to date not acknowledged or replied to the latter-mentioned complaint against the Prosecutor emailed to pio@icc-cpi.int. All responses from the IEU (OTP.InformationDesk@icc-cpi.int) were sent anonymously, the reply of 2 March 2005 failing to disclose the identity of the sender, who signed on behalf of the Head of the IEU, dismissing the Complaint – purportedly pursuant to Phase I Analysis under regulation 4 of the Annex.

This striking departure from the regulations given by the Annex constitutes a violation of due process of law rendering the 2 March 2005 decision of the OTP accordingly void. In accordance with the *nemo judex* principle, the Complainant asserts the right for review of the Complaint by fair and impartial officers of the Court not associated with the dismissal, and files the Complaint *de novo* under Article 15, without prejudice to the right of application for further consideration provided by Article 15 (6) and Rule 49.

[136] Appendix A XIV.15, Appendix B I.C.1.

[137] Appendix A XIV items 16 and 20, Appendix B I.B.5.

[138] Appendix A XIV items17 and 22, Appendix B I.B.6; See ICC *Rules of Procedure and Evidence*, above note 76, Rule 26; See also ICC *Regulations of the Court*, adopted 26 May 2004, Judges of the Court, Fifth Plenary Session, The Hague, 17- 28 May 2004, ICC-BD/01-01-04, Regulation 119, *available at* http://www.icc-cpi.int/library/about/officialjournal/Regulations_of_the_Court_170604-EN.pdf.

SUMMARY OF ARGUMENT

The drafters of the Statute perhaps never envisaged that vice-chancellors, professors, and other servants of prestigious universities in the developed world, could one day become defendants before this Court. It might have been presumed that such persecutory activity would be too well concealed by those intelligent enough to do so; or that, assisted by State actors, potential complainants could easily be contained, whether through suppression of complaints by the State's law enforcement apparatus, by surveillance, threats, false findings of mental incapacity, or death - failing efforts at bribery, which appears to enjoy an almost exhaustive universal standard of acceptance.

Objections to the bringing of criminal action seek alternatives in civil remedy, because just as the remedy encouraged for cocaine abuse by affluent whites is treatment centres for rehabilitation while users in black neighbourhoods are targeted for federal prosecution,[139] prevailing attitudes hold that the elite white defendants here should not be subjected to the disgrace of criminal sanction when, after all, their victims are only black. But these very sentiments are a species of those that underpin much of the discrimination proscribed by international human rights law, and it is the violation of these fundamental rights that casts as criminal the conduct impugned.

Responding to the OTP's dismissal dated 2 March 2005, the fundamental issue is that of competence i.e. whether the alleged conduct of the defendants falls within the jurisdiction of the Court. The argument below establishes that the premise of the OTP dismissal is false, that prosecutorial policy based on a violence standard is impermissible,[140] and that the case not only falls squarely within the competence of the Court, but that with regard to gravity and the regime of Complementarity, the parameters of admissibility have been intrinsically pre-determined.

The Court is Competent

The determinants of competence are the subject matter jurisdiction (*ratione materiae*), territorial jurisdiction (*ratione loci*), temporal jurisdiction (*ratione temporis*) and personal jurisdiction (*ratione personae*) of the Court.

The conduct of the defendants involves participation in a criminal enterprise engaged in the perpetration of fraud upon black/non-white students: to limit their development in relation to their white peers; to appropriate property belonging to black/non-white students into the possession and enjoyment of whites; and to effect exclusion from, *inter alia*, the global forum of scientific and

[139] See *Armstrong*, below at note 308.

[140] "Violence" here denotes physical violence.

technological research and development. This is conduct that falls under the definition of *apartheid* contrary to Article 7 (1) (h) of the Statute. The fraudulent demotion of duly earned degree classes, derogation of the fundamental right to own property through theft of Honours theses,[141] the consequent award of bogus degrees, and attendant transfers of wealth from the developing to the developed world, constitute inhumane acts perpetrated in the context of institutionalisation by the Universities individually, and collectively under the umbrella of institutions such as Universities UK and Government.

These inhumane acts constitute *persecution* on racial grounds contrary to Article 7 (1) (h) in connection with the intentional and severe deprivation of fundamental rights proscribed by Article 7 (1) (k) *other inhumane acts*, and by virtue of their institutionalisation constitute *apartheid*.

The Court is accordingly competent *ratione materiae* to determine the case in respect of the crimes of *apartheid*, *persecution*, and *other inhumane acts* alleged. Taking into account the University of Aberdeen's efforts to extract cheap and forced labour from certain of the victims, the Court is also charged with determining whether a charge of *enslavement* contrary to Article 7 (1) (c) would also lie.

The Court is obliged to invite the USA and Jamaica to make declarations under Article 12 (3) notwithstanding the scope of its competence ratione loci delegated by the United Kingdom (the UK having ratified the Statute on 4 October 2001) in respect of the American Defendants and their agents whose persecution of the Complainant in the State of Massachusetts USA, and in her home country of Jamaica, aim to further the criminal purposes of the Defendants of British Nationality.

The Court's competence *ratione temporis* in respect of victims who completed study prior to 1 July 2002, the date of entry into force of the Statute, is established by the doctrine of continuing offences under both customary international law and treaty law.

Article 53 Confers a Reasonable Basis to Proceed

In 1983, senior officers of the CRE, Principal Education Officer Gerry German, and Principal Complaints Officer Kuttan Menon, established the commission of institutionalized racial discrimination at the University of Aberdeen on a preponderance of evidence. This, in itself (notwithstanding the further evidence adduced) provides proof beyond the reasonable basis standard required by Article 53 (1) (a) of the Statute, for believing that a crime within the jurisdiction of the Court has/is being committed.

[141] See text at notes 43 – 45 above.

Hundreds, if not thousands, of black/non-white students at the University of Aberdeen alone have become victims of the *apartheid* regime. From considerations of gravity, widespreadness, systematicity[142] and the unwillingness[143] evidenced by the compendious suppression of the complaints by all law enforcement agencies and government officials, the Statute prescribes investigation into and prosecution of the continuing crimes, also taking into consideration the imperative of the *jus cogens* standard in application to the interests of justice.

Prosecutorial Policy Based on a Violence Standard is Impermissible

The "Update on Communications Received By The Office of The Prosecutor of The ICC" published 10 February 2006 (the Update)[144] reveals a policy of selective prosecution conditional upon the perpetration of acts of wilful killing and sexual violence. This policy creates rights of impunity for perpetrators of non-violent crimes against black/non-whites, is violative of the equal protection of law guaranteed by Article 21 (3), disproportionately impacts African countries, and is consequently discriminatory on grounds of nationality and race. This policy is accordingly prohibited by the Statute itself (as well as by other treaty law and customary international law) and signals the Court's duty to identify non-violent acts constituting crimes against humanity, crafted with greater cunning by sophisticated first world perpetrators, and having devastating consequences that endure over multiple lifetimes.

The Court's 2 March 2005 dismissal of the Complaint warranting investigation, constituted a denial of due process and equal protection of the law, operating to shield elite white British perpetrators from their criminal responsibilities, thereby calling the Court's legitimacy into question.

[142] The Statute, art. 7 (1), chapeau.

[143] Id, arts. 17 (1) (a) and 17 (2) (a).

[144] *Available at* http://www.icc-cpi.int/library/organs/otp/OTP_Update_on_Communications_10_February_2006.pdf (visited 5 September 2006).

ARGUMENT

More than fifty years after the Nuremberg and Tokyo trials, international criminal law is still in an embryonic state. The establishment of *ad hoc* tribunals, such as the ICTR and the ICTY, is a late development, but as their judgments have shown, international criminal law continues to evolve, crystallising certain tenets of the charters of Nuremberg and Tokyo, and moving farther to incorporate new principles embracing contemporary criminality not contemplated at Nuremberg and Tokyo.

At the centre of this metamorphosis is an emerging truth - the mutually defining interplay between international human rights and international criminal law. As the fledgling Court endeavours to identify obscured modalities of criminality in the international plane, it must contend with the often adversarial relationships between principle and power, morality and politics, recognising that justice can not be held hostage to power, and that the Court's legitimacy as an international instrument of justice rests on the fundamental principles of equality before the law and equal protection of the law.

The argument below shows that the Defendants' systematic and widespread perpetration of fraud and theft to retard the intellectual and professional development of their black/non-white victims - and in consequence the progress of their home countries – is recognised by international criminal jurisprudence as constituting crimes against humanity within the jurisdiction of the Court.

I. The Court is Competent

The jurisdictional determinants of subject matter, territory, scope in time, and personality, circumscribe the Court's competence to hear the case: whether the conduct of the Defendants fits the descriptions of crimes proscribed (subject matter jurisdiction); whether the conduct took place on the territory of a State party, or whether the Defendants are nationals of a State party (territorial jurisdiction); whether the Defendants are capable of being agents of criminal responsibility recognised by the Court (personal jurisdiction); and whether the temporal dimensions of the conduct at issue are coincident with any period following the Statute's entry into force (temporal jurisdiction).

The facts of the case in terms of these jurisdictional parameters are examined below.

A. Subject Matter Jurisdiction

1. GENERAL REQUIREMENTS

To constitute a crime against humanity under the Statute, the impugned conduct must satisfy four main criteria:

a. There must be targeted attack against a civilian population;[145]

b. The attacks must be widespread or systematic;[146]

c. There must be multiple commission of acts pursuant to or in furtherance of a State or organizational policy;[147] and

d. The acts must be commissioned with the necessary mental elements, intent to commit a specific act with knowledge[148] (whether actual or constructive) that the act will contribute to the broader attack.[149]

In *Prosecutor v. Dusko Tadic*,[150] the first two requirements for the crime were discussed by the Trial Chamber with reference to the report of the Secretary-General of the United Nations presented on 3 May 1993 (*Report of the Secretary-General*),[151] and the Commentary to the Draft Code of Crimes Against the Peace and Security of Mankind, adopted by the International Law Commission (the ILC Draft Code).[152] The requirement that the acts be directed against a civilian population is satisfied by the commission of acts on either a widespread or systematic basis. Widespreadness refers to the scale of the attack connoting a collective attack on multiple victims, while systematicity indicates the existence of a regular pattern of acts pursuant to a premeditated,

[145] The Statute, art. 7 (1), chapeau.

[146] Ibid.

[147] The Statute, art. 7 (2) (a).

[148] Above, note 145.

[149] Ibid.; The Statute, art. 30.

[150] *Prosecutor v. Tadic*, (IT-94-1-T), Opinion and Judgement, Trial Chamber, 7 May 1997 (*Tadic*), paras. 646 and 648, *available at* http://www.un.org/icty/tadic/trialc2/judgement/tad-tsj70507JT2-e.pdf (visited 5 September 2006).

[151] Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993), 3 May 1993, U.N. Doc. S/25704), at paragraph 58 (Report of the Secretary-General), cited in *Tadic*, para. 646.

[152] International Law Commission, *Draft Code of Crimes Against the Peace and Security of Mankind (with Commentaries)*, adopted by the ILC at its forty-eighth session 6 May – 26 July 1996, UN Doc A/CN.4/L.532 (1996), *available at* http://untreaty.un.org/ilc/texts/instruments/english/commentaries/7_4_1996.pdf (visited 5 September 2006).

organized plan. Widespreadness and systematicity therefore measure whether or not the alleged conduct conforms to the dimensions of a crime against humanity.

Both these indices of gravity apply to the UK-wide conduct in universities, pursuant to State policy. The acts committed are widespread because the targeted civilian population of black/non-white students are enrolled in universities throughout the United Kingdom, and the acts are systematic because of policies that induce commercial fraud, and the deliberate failure to introduce measurements that would disclose discrimination.

The prevailing index of gravity at any one university is systematicity. Widespreadness may have connotations of geographical spread in addition to scale, but one might argue that at the university itself, this requirement is fulfilled by considerations of the diversity of nationalities of the international victims. The chapeau to Article 7 (1) and Article 7 (2) (a) should not be interpreted merely as a compromise formula to resolve the widespreadness/sytematicity disjunctive-conjunctive debate,[153] proof of widespreadness also requiring proof of a common policy, and proof of systematicity also requiring proof of multiple commissions. Instead, the chapeau to Article 7(1) and Article 7 (2) (a) should be read together as recognizing that widespreadness and systematicity, rather than being distinct conditions, share an intersection of elements that include multiplicity and policy. It is inconceivable that a large-scale attack could occur without a plan or policy,[154] or that a well-conceived policy could result in only isolated victims. Widespreadness and systematicity should be viewed as conjugate descriptions of any one crime against humanity having reciprocal emphases, each providing an alternative route to proof.[155]

In the specific case of the University of Aberdeen, where the target civilian population identified consists of hundreds of black/non-white engineering students, the systematicity with which the fraud is sanctioned by the University's governing body is itself central to the institutionalization that substantiates the crime of *apartheid*. While the policy requirement may be satisfied by an organization outside the administrative apparatus of the State,[156]

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[153] See McCormack, Timothy L. H. et. al., 'Jurisdictional Aspects of the Rome Statute for the International Criminal Court' (1999) MULR 25, 23 *Melbourne University Law Review 635*, part IV (B) (2), *available at* http://www.austlii.edu.au/au/journals/MULR/1999/25.html (visited 5 September 2006).

[154] *Tadic*, para. 653.

[155] The debate is not considered by some commentators to be relevant. See, e.g., Sautenet, Vincent, 'Crimes Against Humanity And The Principles Of Legality: What Could the Potential Offender Expect?' *E Law – Murdoch University Electronic Journal of Law*, Volume 7, Number 1 (March 2000), para. 19, *available at* http://www.murdoch.edu.au/elaw/issues/v7n1/sautenet71_text.html (visited 5 September 2006); The Complainant agrees, the debate may be resolved by an illuminating mathematical model representing the relationship between widespreadness and systematicity in terms of conjugate descriptions in transform theory – an exercise that is, unfortunately, beyond the scope of this brief!

[156] The entity behind the policy need not have the status of a *de jure* state. See *Tadic*, paras. 654 and 655., citing para. 5 of the Commentary to art. 18 of the ILC Draft Code.

universities as public institutions, dependent on public funds, are agents of the State acting under the authority and control of the State. The criminal acts of the University of Aberdeen are thereby imputed to the State irrespective of the identification of any criminal policy elements as originating from State policy itself.

2. APARTHEID IDENTIFIED

In the case document "Explanatory Notes and Amendments", [157] the Complainant amended the crime against humanity of *persecution* alleged by the case document "Pre-Indictment Advice and File of Evidence[158] to the crime of *apartheid*. This brief includes that justification here, enumerates the crimes of *persecution* and *other inhumane acts* as included offences, and alleges further conduct constituting *enslavement*.

The allegation of the crimes of *persecution* as the primary offence understates the case against the criminal enterprise as it disregards *de facto* law (applied by *de facto* jurisdictional parallels to *de jure* law) authorising the crime. Justice is better served by more accurately representing the character and true measure of the prevailing offence as the crime against humanity of *apartheid*, the *persecution* having been committed within the context of an institutionalized regime - with intent to maintain that regime.

The justification for amending the charge of *persecution* to *apartheid* rests on the recognition that previous international instruments have preserved a distinction between *persecution* and *apartheid*:

- Article 1 (b) of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity added the crime of *apartheid*[159] to the crimes against humanity already prohibited by the Charter of the International Military Tribunal, Nürnberg[160] - which already included *persecution*.
- Article 18 (f) of the ILC Draft Code, introduced the crime against humanity of "institutionalized discrimination" - a generic form of *apartheid* - as distinct from that of *persecution* prohibited by Article 18 (e).

Persuasively, the ILC argued in their Commentary that the crimes of *persecution* and *institutionalized discrimination*, though distinct, are related, in that the latter required "… that the discriminatory plan or policy has been institutionalized …" The definition of "institutionalized", in relation to *apartheid*, prima facie connotes the *de jure* legislative arsenal of the former Government

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[157] Appendix A XIV.13, Appendix B I.B.4

[158] Appendix A XIV.3, See email message 1 of 11 listed as Appendix B I.B.2

[159] Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, 26 November 1968, 754 U.N.T.S. 73, *available at* http://www.ohchr.org/english/law/warcrimes.htm (visited 5 September 2006). The crime of genocide was also added.

[160] Charter of the International Military Tribunal, annexed to the Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, 8 August 1945, 82 U.N.T.S. 279, *available at* http://www.yale.edu/lawweb/avalon/imt/proc/imtconst.htm (visited 5 September 2006).

of South Africa, thereby imposing a perceived one to one correspondence between *apartheid* and the South African regime, resulting in a general reluctance to formally apply the label of *apartheid* to the assonant treatment of ethno-racial groups such as the Native Indians of the United States of America, the Aborigines in Australia, the Maoris in New Zealand, the Kurds, the Tamils in Sri Lanka, and the South Sudanese (now formally acknowledged to be victims of genocide).[161]

Factually, the former South African regime was not unique, but only one instance of temporally unconstrained generic manifestations of socio-political motives to maintain domination of one racial group over another (or others) as illustrated by the latter-mentioned situations. The designation of *apartheid* as a crime by international instruments should not be interpreted as merely symbolic. Recognition of the crime of *apartheid* can not be consigned to history but must be prosecuted, as such, in those instances which fall within the definitions laid down by International Criminal Law.

The inhumane acts listed by Article II of the International Convention on the Suppression and Punishment of the Crime of Apartheid (the Apartheid Convention)[162] have clear counterparts in the measures that achieve systematic racial discrimination at the University of Aberdeen. Paragraphs (a), (b) and (f) relate to the 21-year campaign of *persecution* inflicted to squash access to justice, and other infringements of the Complainant's right to life (acts of which other blacks may also have been victim), including deprivation of livelihood and the imposition of debilitating living conditions calculated to achieve destruction. Paragraph (c) underscores the cumulative effect of measures calculated to prevent full development and participation, corresponding to the effective exclusion of blacks/non-whites from genuine doctoral programmes,[163] in derogation of the right to education, and exclusion from other opportunities that would allow them to contribute fully to the development of their own countries, particularly in the area of scientific and technological research - denying developing countries an equitable stake in the global econo-politico structure, and maintaining the black/white first world/third world scheme of power. In paragraph (d) the division of the population to create separate reserves and ghettos correlates with award of inferior degree classes graphically illustrated by the confinement of the black/non-white students to the fraudulently constructed II-2 to III narrow band in 1983 for instance, while the expropriation of landed property parallels the expropriation/ theft of theses and corresponding award of bogus degrees. Finally,

[161] See, e.g., Ratner, Steven R., 'Apartheid' in *Crimes of War : The Book* (1999), *at* http://www.crimesofwar.org/thebook/apartheid.html (visited 6 September 2006).

[162] International Convention on the Suppression and Punishment of the Crime of *Apartheid* , 30 November 1973, U.N. GAOR Supp. (No. 30), at 75, U.N. Doc. A/9030 (1973) [Apartheid Convention], *entered into force* 18 July 1976, *available at* http://www.unhchr.ch/html/menu3/b/11.htm (visited 6 September 2006).

[163] The award of doctoral degrees to blacks admitted to doctoral programmes where they are denied the supervision, guidance, exposure and mentoring essential for the functional development normally accorded doctoral students, is an injustice well-known as the "token PhD".

Paragraph (e) addresses the exploitation of labour, analogous to the attempts to enslave the Complainant, and the acquisition of other forced labour through the coerced entry of blacks to masters programmes to provide cheap labour.

What measures constitute "institutionalized" discrimination will undoubtedly determine the threshold for identifying and charging the crime. Both the Apartheid Convention and the ILC Draft Code give guidance in determining what this threshold should be. Articles II (c) and (d) of the Apartheid Convention refer to "legislative measures" and other "measures" to establish and maintain racial domination, while the ILC Draft Code indicated the meaning of "institutionalized" as being "for example … the adoption of a series of legislative measures" which, according to Article 18, must be adopted by a Government or any organization or group.[164] Read in conjunction with the Statute where Article 7 (2) (a) refers to the commission of acts in furtherance of "a State or organizational policy", the "measures" adopted, unlike the South African model, need not refer to primary legislation, as this would limit the commissioning of the crime to the state. "Organizational policy" indicates that the institution adopting the measures could also be at the non-State, transnational, supranational or international levels.

This suggests that the threshold for charging the crime of *apartheid* requires that for institutionalisation, while the impugned acts must be part of the way the structure that is the institution normally operates, these acts must be sanctioned not merely by values, beliefs or norms, and performed as a matter of policy within an organized structure,[165] but such policies must by adopted by the governing body of a state, organisation, or group. This translates to policies that must approximate, or have the character of, legislative, administrative or judicial measures (which, for the purposes of this discussion, are referred to as legislative) encompassing the powers delegated to non-State organizations and quasi-judicial institutions such as a University,[166] where the governmental entity is not denominated according to the doctrine of separation of powers (i.e., legislative, administrative and judicial). For unlawful policies to arrogate legislative power, they must accordingly be sanctioned or adopted by the governing body of the institution itself. In addition, the crime of *apartheid* requires that the inhumane acts must be committed with the intention of maintaining the institutionalized regime.

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[164] See above note 156.

[165] See the definition of "institutionalized discrimination" given by Aguirre et al in *American Ethnicity: The Dynamics and Consequences of Discrimination* (Chapter 1, Part.3), quoted by Bloom, Joel, D., *Race and Ethnicity*, Political Science 104 : Problems in United States Politics, Fall 2005 Lecture Notes, p. 11, *available at http://*gladstone.uoregon.edu/~jbloom/problems/MS1AT1.pdf (visited 6 September 2006).

[166] Private universities may be regarded as non-state institutions. Universities in the UK, being recipients of public funds are public institutions.

In the instant case, the implementation of organizational policy to maintain subordination of black/non-white students is three tiered: the first tier is the unit university; the second, the network of universities throughout the United Kingdom (to which is conjugated the group of defendant accomplices at MIT); and the third is the State tier within whose remit lies the university network of public bodies receiving funding from, and being accountable to, the State. Each tier represents an institution functioning with its sub-tiers as an *apartheid* regime constituted by dual *de facto* and *de jure* jurisdictions where institutionalized discrimination is sanctioned by *de jure* governmental entities exercising *de facto* legislation, effectively conferring legitimacy on a criminal political regime concealed by juridical clothing.

When in 1983, the Senate of the University of Aberdeen concealed the theft of the Honours Thesis and approved the decision of the incumbent external examiners, knowing that the marks for all the black/non-white engineering students were falsely confined to a narrow II-2 to III band, and knowing that the University's records evidenced this fraudulent plan as customary, this constituted ratification by the University's governing body. In turn, the act of ratification of any plan, course of action, code, or principle, by the governing body of an institution, is necessarily a transformation of such a plan, course of action, code, or principle into official policy.

Standard dictionaries concur. The 'Lectric Law Library's Lexicon defines official policy as "A rule or regulation promulgated, adopted, or ratified by the governmental entity's legislative body", while Black's Law dictionary defines "policy" as pertaining to "The general principles by which a government is guided in its management of public affairs, or the legislature in its measures." Furthermore, the policy need not be expressly codified; in *Pembaur v Cincinnatti*, the US Supreme Court held that " 'official policy' often refers to formal rules or understandings - often but not always committed to writing - that are intended to, and do, establish fixed plans of action to be followed under similar circumstances consistently and over time". [167]

Accordingly, by its actions the University of Aberdeen Senate sanctioned, on review, routine discriminatory and fraudulent operating procedures of the Department of Engineering, adopting, implementing and therefore ratifying the custom as *de facto* governing policy of the University. The customary practice of fraud evident in the student records constituted a written code that was transformed by the legislative power of the University into official policy. This policy of racial subordination is no less a legislative measure than the body of policies and procedures constituting the remainder of the University's delegated legislation – rules of procedure and

[167] See the 'Lectric Law Library's Legal Lexicon's Lyceum, *at* http://www.lectlaw.com/def2/o013.htm (visited 6 September 2006); Black's Law Dictionary, 7th ed. 1999, p. 1178, quoted in *Cruz v. HomeBase*, 83 Cal. App.4th 160, 99 Cal.Rptr.2d 435 (Court of Appeal of the State of California USA, Second District, CA 2000), p. 7, *available at* http://caselaw.lp.findlaw.com/data2/californiastatecases/b128058.doc (visited 15 September 2006); *Pembaur v Cincinnati*, 475 US 469, 480 – 481 (1986) *available at* http://supreme.justia.com/us/475/469/case.html (visited 15 September 2006); See also text below at note 203 (*Prosecutor v Tadic*).

practice given the force of law by virtue of the law-making powers delegated by Parliament. The discriminatory policy constitutes, in fact, ultra vires legislation - institutionally operative *de facto*. The indices for gravity indicated by the Statute, "systematic" and "widespread", are satisfied at the unit university tier itself where hundreds of students at the University of Aberdeen alone have been defrauded.

At the network tier, the *apartheid* regime applies this *de facto* legislation, not only through the system of external examiners, but also through representative bodies such as Universities UK (formerly the CVCP, Committee of Vice-Chancellors and Principals) where:

- as a member of the Academic Standards Group, Defendant Principal Professor George P. McNicol co-authored the Code of Practice on Academic Appeals (1985) - *de facto* not applicable to appeals concerning discrimination against black students;
- as Chair of the Information Systems Group, Defendant Principal Professor Maxwell Irvine continued to maliciously disregard the backup tapes and other information systems indicators (from the University's Directorate of Information Systems and Services) evidencing the Complainant's authorship of the Honours Thesis; and where
- Defendant Principal Professor C. Duncan Rice, as a member of the International Strategy Group, now collaborates with Government to develop policy and marketing strategies for the economic exploitation of international students - intending that many (if not most) of these students will become victims of fraud.

Universities UK acts as a shared institution having as one of its primary functions the formulation of policy for adoption by its member universities throughout the United Kingdom - Its character and function is therefore *de facto* governmental.

It is perhaps at the State tier that it becomes most apparent that the *de facto apartheid* legislation is complemented by and given primacy over *de jure* law. Primary legislation, such as the Teaching and Higher Education Act 1998, rightfully provides for a higher fee regime for international students, and higher education institutions have a right to legitimately exploit this fee regime to generate revenue. Exploitation of the *de jure* provisions, however, far from being legitimate, rationalises the false premise that the fraudulently awarded degrees awarded to international students generally (including those that are bogus), are somehow held in great esteem by virtue of a putative internationally reputed high standard of education delivered by British universities.

British universities are financially dependent on international students. Earnings from International students in 2004 were attributed to the same league as exports of oil and financial services.[168] The deprivation of the fundamental rights of black/non-white persons to sustain British economic

[168] Halpin, *Forget Oil*, above note 2.

interests is, however, deja vu. While Blair's initiative introduced measures such as new visa schemes and employment rights,[169] the strategy omitted measurement of the quality of education delivered to the targeted international student group - despite the reported realities of institutional racial discrimination in education underscored, for instance, by paragraph 6.54 of the widely publicised report on the Stephen Lawrence Inquiry (the McPherson Report). [170]

De jure law complements *de facto* policy of excluding such measurement. The Funding Councils, through the Quality Assurance Agency, have a statutory duty to assess the quality of education funded. Section 70 of the Further and Higher Education Act 1992, and section 39 of the Further and Higher Education (Scotland) Act 1992, provide that the Council shall "… secure that provision is made for assessing the quality of education provided in institutions for whose activities they provide, or are considering providing, financial support". Assessment of student progression and achievement is one of 6 core aspects of the QAA review, yet measurement of the progress and achievement of black/non-white students, as a group in comparison with their white British peers, is not part of the quality assessment regime, despite the likelihood of racial discrimination projected by every social index. The Funding Councils can not legitimately justify this failure on the basis that undergraduate international students pay the "full economic cost" and are not funded by the UK government, because undergraduate international students do not pursue individual programmes but are an integral part of the undergraduate cohort of each university. Furthermore, as public institutions, the Funding Councils have a specific duty under the Race Relations Amendment Act 2000 to assess the impact of its functions and policies on students belonging to all ethnic groups, and to monitor, by racial group, student admissions and progress. Enforcement of compliance with the Race Relations legislation is, conveniently, the responsibility of the Commission for Racial Equality, the very government agency that has since 1983 conspired with the University of Aberdeen – as a principle of *de facto* law - to conceal the subordination and defrauding of black/non-white students in engineering at the University of Aberdeen.

The test of intent to realise a state policy of racial subordination and fraud, is whether government could foresee that international students would be discriminated against, but nonetheless omitted to measure their progress and achievement in relation to their white peers. From 1983, CRE and NUS (National Union of Students) officials, Gerry German and Sarah Veale, pointed to systematic racism in higher education and a picture of ethnic minority underachievement (as common knowledge) in their discussions with the Complainant. Not only do the social indices forecast the substantial likelihood of discrimination, but the Macpherson Report highlighted institutional

[169] British Council, *Prime Minister Launches Drive To Attract More International Students*, above note 3.

[170] United Kingdom. *The Stephen Lawrence Inquiry - Report of an Inquiry by Sir William Macpherson of Cluny* : Presented to Parliament by the Secretary of State for the Home Department by Command of Her Majesty February 1999, *available at* http://www.archive.official-documents.co.uk/document/cm42/4262/4262.htm (visited 6 September 2006).

discrimination in education, crystallising the previously ongoing discourse on racism in education that has, for example, spawned recent studies citing institutional racism in further education,[171] a bias against ethnic minorities in research-led universities,[172] and patterns of underachievement by ethnic students.[173] The latter DFES report indicated that "on average all minority ethnic groups do not do as well in degree performance as white students", with black students "more likely to get a III or lower class degree".

In light of the evidence, racial subordination concealed by the Government's failure to apply quality assurance measures to the progress of international students, and ethnic minority students generally, is beyond negligence, recklessness, or wilful blindness. It connotes intent to pursue a policy of subordination, this inference being established without adverting to the fact that vice-chancellors engaged in administering *apartheid* policy within their own institutions actively participate in shaping government policy. The Funding Councils claim to assure quality of education generally, but their deliberate failure to measure the quality of education delivered, by racial group, whether of international students or of British ethnic minority students, is dictated by *de facto apartheid* law.

In his article "Hard Lessons" Professor John Wakeford questions the apparent exclusion of post-graduate international students from a new initiative proposed by the Funding Councils.[174] He argued that although international research students comprise half of the research student population, making essential contributions to their research teams and adding up to £200,000 to the British economy per student, there have been no proposals that international students should be included in the quality assessment initiative proposed for UK government funded postgraduates. Wakeford further observed that a small but increasing proportion of international research students complete, but fail, their PhDs, rarely succeeding after pursuing tedious and expensive appeal procedures. It must be emphasised, here, that Britain's admitted economic dependence on international students inherently stands in conflict with the delivery of quality education to students who are likely to return to their own countries to develop higher education institutions that will also compete, against universities in the United Kingdom, for a share in the international student market.

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[171] Curtis, Polly, 'FE sector branded 'institutionally racist' *The Education Guardian* 21 November 2002, *available at* http://education.guardian.co.uk/racism/story/0,10795,844786,00.html (visited 6 September 2006).

[172] Modood et al., 'Mixed Messages' *The Education Guardian* 13 July 2004, *available at* http://education.guardian.co.uk/racism/story/0,10795,1259477,00.html (visited 6 September 2006).

[173] See United Kingdom. Connor et al, *Why the Difference? A Closer look at Higher Education Minority Ethnic Students and Graduates*, Department of Education and Skills (DFES) Research Report Brief No RB552, ISBN 1 84478 266 2, Jun 2004, *available at* http://www.dfes.gov.uk/research/data/uploadfiles/RB552.pdf (visited 6 September 2006).

[174] Wakeford, John, 'Hard lessons' *The Education Guardian* 9 September 2003, *available at* http://education.guardian.co.uk/higher/postgraduate/story/0,12848,1037962,00.html (visited 6 September 2006).

Intent to legislate *apartheid* policy at the State tier having been established, the *de facto apartheid* regime enforces *de facto* measures by systematically withholding enforcement of *de jure* law which, contrary to the purported legislative intent, actually operates to conceal *de facto* policy to maintain, rather than eliminate, racial discrimination in education. In its periodic reporting to the UN Committee under Article 9 of the International Convention on the Elimination of all forms of Racial Discrimination (ICERD),[175] The United Kingdom prefaces its reports with incomparable assertions of having some of the most stringent and comprehensive anti-discrimination legislation in Europe, and being firmly committed to the elimination of racial discrimination. The instant case, however, exposes the deceit. The evidence shows that the CRE, the MPS, the MPA, the SFO, and the IPCC – the State's primary arsenal of law enforcement agencies – have all wilfully omitted, in the face of overwhelming evidence of racial discrimination, to give effect to this "most comprehensive anti-discrimination legislation".[176]

The *apartheid* policy of the University of Aberdeen, while ultra vires the purpose of its charter, enjoys endorsement in the exercise of dual jurisdictional control by the Scottish Executive as evidenced by the actions of the Right Honourable Henry McLeish in his capacity as Minister for Enterprise and Lifelong Learning, and subsequently as First Minister of Scotland. By falsely representing the complaint as an individual matter in his letter of 20 April 2000 to the Right Honourable Stephen Timms,[177] McLeish positively sanctioned the systematic application of procedures to defraud black/non-white students, falsely ascribing blanket autonomy to a public body accountable to the Scottish Executive under the principal-agent relationship established by the Further and higher Education (Scotland) Act 1992. These actions, by the chief legislator of the Scottish Parliament must, on the facts, be interpreted as constituting not only participation in the criminal enterprise, but as state ratification of *de facto apartheid* policy. In reality, the exercise of power and control over the rights of black/non-white students is ultimately not effected by *de jure* government, but by *de facto apartheid* government having the dual identity of the former.

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[175] International Convention on the Elimination of all forms of Racial Discrimination, 21 December 1965, 660 U.N.T.S. 195, 212 [ICERD], S. Exec. Doc. C, 95-2 (1978), *entered into force* 4 January 1969, *available at* http://www.unhchr.ch/html/menu3/b/d_icerd.htm (visited 6 September 2006).

[176] See, e.g., the 16th periodic report of the United Kingdom and Northern Ireland submitted under CERD 28 November 2002 , CERD/C/430/Add.3, which asserts that "In fact, the United Kingdom has some of the most comprehensive race relations legislation in Europe", para. 8 et. seq. *available at* http://www.unhchr.ch/html/menu2/6/cerd/cerds63.htm (visited 6 September 2006).; See also the Committee's discussion of the 13th periodic report of the United Kingdom and Northern Ireland, CERD/C/263/Add.7,where Netherlands expert and country rapporteur Theodore Van Boven questioned whether the UK had the means to monitor the reported "most comprehensive anti-discrimination legislation in Europe", also noting that the UK was the only EU member to effectively block a draft joint action proposal relating to legal cooperation in relation to racism and xenophobia, reported by Science Blog, *Anti-Discrimination Committee Examines Report Of United Kingdom*, 6 March 1996, *at* http://www.scienceblog.com/community/older/archives/L/1996/A/un960405.html (visited 6 September 2006).

[177] Appendix A XIII.7.a, Appendix B XIV.C.2.

3. CUMULATION of OFFENCES

The Defendants shall be charged under the Statute with committing the following crimes against humanity, enumerated in order of precedence:

1) Apartheid, contrary to Article 7(1) (j), involving the institutionalisation of
2) Persecution, contrary to Article 7 (1) (h), in connection with
3) Other Inhumane Acts, contrary to Article 7 (1) (k); and provisionally
4) Enslavement, contrary to Article 7 (1) (c) where there is a finding of multiple offences of forced labour or other slavery-like practices.

In Prosecutor v *Kupreskic*, the Trial Chamber outlined the principles governing "The Question of Cumulation of Offences".[178] The first 3 crimes may be charged in the alternative, the order of precedence being the order of successive included offences, the crime of *apartheid* requiring the element of institutionalisation of the persecutory acts encompassed, and the crime of *persecution* requiring the element of discriminatory intent further to the perpetration of *other inhumane acts*. [179]

All four crimes may, however, be charged cumulatively following the practice of the ICTR and the ICTY.[180] Multiple convictions are permissible where the same transaction violates distinct provisions of the Statute, each provision requiring proof of a materially distinct element not included in the others.[181]

A conviction of *apartheid* requires proof of an institutionalized policy, while a conviction of *enslavement* requires proof of the exercise of powers attaching to the right of ownership over a person, which in the instant case involves practices that may or may not be aptly described as "institutionalized". A charge of *enslavement* would lie cumulatively with that of *apartheid* where the *enslavement* does not meet the threshold of institutionalisation required. While it is certain that the Prosecutor will, on the evidence, be able to prove all the elements of the crime against humanity of *apartheid* beyond reasonable doubt, the charging should reflect the depth, character, and scope of

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[178] *Prosecutor v Kupreskic*, 14 January 2000, Case No. IT-95-16-T, Judgement, Trial Chamber (*Kupreskic*) *available at* http://www.un.org/icty/kupreskic/trialc2/judgement/kup-tj000114e.pdf (visited 6 September 2006).

[179] See the discussion on *persecution* below, part.I.A.3.a.

[180] See Human Rights Watch, 'Charging, Convictions and Sentencing' X in *Case Law of the International Criminal Tribunal for the Former Yugoslavia*, *available at* http://hrw.org/reports/2004/ij/icty/11.htm (visited 6 September 2006)., citing *Prosecutor v Mucic*, 20 February 2001, Case No. IT-96-21-A, Appeals Chamber Judgment, at para. 400, and *Prosecutor v Naletilic*, 31 March 2003, Case No. IT-98-34-T , Trial Chamber Judgment, at para. 718.

[181] Id, citing *Mucic*, at paras. 405, 412.

acts committed by the criminal enterprise, to allow the sentencing to be commensurate with the full criminality.

a. Persecution

i. *ACTUS REUS* - MEANING OF "FUNDAMENTAL RIGHTS

Under Article 7 (2) (g) of the Statute, *persecution* means the intentional and severe deprivation of "fundamental rights" contrary to international law in connection with any act referred to in paragraph 1, or any crime within the jurisdiction of the Court.[182] Significantly, the Trial Chamber in *Kupreskic* noted that the determination of what constituted "fundamental rights" and satisfaction of the restriction "in connection with" could be satisfied by charging *persecution* in connection with *other inhumane acts* under Article 7 (1) (k).[183] This concurs with the reasoning in paragraph 2 of the Complaint against the Prosecutor. [184]

> It would seem redundant and an insult to the collective intelligence of the Court to labour the fact of recognition of these acts as acts which fall under Article 7(1) (k) that are incompatible with human dignity, that cause great suffering, and that are a factor maintaining the underdevelopment endured by the Third World residual to the very philosophy that rationalised African slavery. These acts are characterised as the crime of *persecution* by reason of racial identity …

Article 7 (1) (k) "other inhumane acts" mirrors the provisions of the Nuremburg and Tokyo Charters and the Statutes of the ICTR and ICTY. This is a residual category in International Criminal Law, which has deliberately not been exhaustively enumerated so as not to restrict new criminal acts not yet identified - in the words of the International Committee of the Red Cross to "catch up with the imagination of future torturers". [185]

In *Kupreskic*, the Trial Chamber held that the parameters for the interpretation of "*other inhumane acts*" were circumscribed by international standards on human rights, the texts of the various provisions identifying the set of fundamental rights defining human dignity, the infringement of which could amount to a crime against humanity.[186] The Trial Chamber concluded that these fundamental rights whose infringement could constitute "*other inhumane acts*", could also

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[182] The Statute, art. 7 (1) (h).

[183] *Kupreskic*, para. 580.

[184] Appendix A XIV items 17 and 22, Appendix B I.B.6.

[185] *Kupreskic*, para. 562, quoting the *ICRC Commentary on the IVth Geneva Convention Relative to the Protection of Civilian Persons in time of War* (1958, repr. 1994), p. 39; See also the Commentary to Article 18 of the Draft Code, para. 17.

[186] *Kupreskic*, para. 566.

constitute *persecution* when commissioned with discriminatory intent, thereby defining *persecution* as "the gross or blatant denial, on discriminatory grounds, of a fundamental right, laid down in international customary or treaty law, reaching the same level of gravity as the other acts …".[187]

The *Kupreskic* Trial Chamber established that these international standards are "those laid down in the Universal Declaration on Human Rights of 1948, the two United Nations Covenants on Human Rights of 1966 and other international instruments on human rights or on humanitarian law".[188] This is consistent with the ILC Draft Code where paragraph 11 of the Commentary to Article 18 stipulates the rights and fundamental freedoms infringed by *persecution* as being recognised in the "Charter of the United Nations[189] (Articles 1 and 55) and the International Covenant on Civil and Political Rights[190] (Article 2)". Referring to the Convention against Discrimination in Education,[191] and the Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind[192] as examples, the reasoning in the Complaint against the Prosecutor concurs:[193]

> The right to own property and to peaceful enjoyment of that property, the right to education, the right to livelihood, the right to life, the right to judicial protection and the right to equal protection before the law, are fundamental rights and freedoms guaranteed under the Charter of the United Nations; the full development of the human personality without limit to type or level of education, and the recognition of the crucial role of science and technology in the social and economic advancement of developing countries, being cognate principles enshrined in international law. Accordingly, exclusion of blacks/nonwhites from genuine participation in scientific and technological research through theft or expropriation of their property, fraudulent confinement to inferior degree awards, and the denial of duly earned educational qualifications, purportedly awarded in exchange for fees, are inhumane acts. These acts intended to preserve the subordination of blacks generally, to continue the expropriation of wealth from the developing world, and to limit our ability to participate in the development of our own countries in order to preserve the economic and power differentials

[187] Id, para. 621.

[188] Ibid.

[189] Charter of the United Nations, *available at* http://www.un.org/aboutun/charter (visited 6 September 2006).

[190] International Covenant on Civil and Political Rights, 16 December 1966, 999 U.N.T.S. 171 [ICCPR], S. Exec. Doc. E, 95-2 (1978), *entered into force* 23 March 1976, *available at* http://www.ohchr.org/english/law/ccpr.htm (visited 6 September 2006).

[191] Convention against Discrimination in Education, 14 December 1960, *entered into force* 22 May 1962, 429 U.N.T.S. 93 *available at* http://www.ohchr.org/english/law/education.htm (visited 6 September 2006).

[192] Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind, 10 November 1975, GA Res. 3384, UN GAOR, 30th Sess., UN Doc. A/Res./3384, *available at* http://www.ohchr.org/english/law/mankind.htm (visited 6 September 2006).

[193] Appendix A XIV items 17 and 22, Appendix B I.B.6.

> between the developed and the developing, the white-dominated and the black-dominated states, constitute an unequivocal deprivation of fundamental rights.

In *Tadic* and *Kupreskic*, the Trial Chambers went further to clarify what acts could constitute *persecution* within the meaning of crime against humanity. They noted that not every denial of a human right may constitute a crime against humanity, that while it was not in the interests of justice to define *persecution* narrowly by explicitly stipulating particular rights (implicitly excluding others) the acts that would constitute a crime against humanity are delimited by considerations of gravity and cumulative effect.[194]

In *Tadic*, the Trial Chamber noted, with reference to the Nuremberg Judgment, that the crime of *persecution* could include "*inter alia* those of a physical, economic, or judicial nature".[195] Persecution "… encompasses acts of varying severity from killing to a limitation on the type of professions open to the targeted group" and "… the plunder of their property…".[196] "[P]ersecution does not necessarily require a physical element".[197]

Similarly, the Trial Chamber in *Kupreskic* cited the Nuremberg Judgment in the Ministries case, where the infringement progressed through rights of citizenship, rights to education, rights to practice professions, economic and property rights to the right to life, in respect of which 6 million were eventually murdered – noting that the US Military Tribunal "did not purport to find a common definitive element in the wide variety of acts it illustrated".[198]

With regard to the destruction of Bosnian Muslim homes and property, the *Kupreskic* Trial Chamber determined what property rights could be considered so fundamental as to categorize their denial as constituting *persecution*. Citing the Flick case - which declared that a distinction could be made between industrial property and property of a more personal type, such as "dwellings, household furnishings and food supplies of a persecuted people" - the Trial Chamber held that attacks on property could constitute *persecution* where the impact was severe enough to affect "life and liberty" under the doctrine of *ejusdem generis*.[199]

The *Kupreskic* Trial Chamber emphasised that under the Nuremburg judgments "[S]everal individual defendants were convicted of *persecution* in the form of discriminatory economic acts".[200]

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[194] *Tadic*, para.707; *Kupreskic*, paras. 618, 621, 622.

[195] *Tadic*, para. 710.

[196] *Tadic*, para. 704.

[197] *Tadic*, para. 707; *Kupreskinc*, para.830.

[198] *Ministries Case*, NMT, Vol. XIV at p. 471, cited in *Kupreskic*, para.599.

[199] *Kupreskic*, paras. 619, 620, 630 and 631, citing *Flick et. al.*, in NMT Vol. VI, p. 1215.

[200] *Kupreskic*, para. 610, citing judgments of the International Military Tribunal, Nuremburg, in respect of *Frank*, *Funk*, and *Frick*.

The restriction of blacks/non-whites to inferior degree classes by fraud is an attack on economic rights and rights to education. Where the commercial fraud involves the award of bogus degrees in consequence of the theft of property constituted by rights to and in theses, this constitutes persecutory attacks on property. The University of Aberdeen's failure, and that of the UK law enforcement agencies, to apply or initiate legitimate judicial proceedings in respect of the Complainant's actions filed on behalf of the victims, is a persecutory attack on judicial rights. These persecutory attacks impact "life and liberty" by excluding access to genuine doctoral programs, and the profession of engineering research, if not the broader profession of engineering itself. Where the impact of the *persecution* on victims results in deprivation of livelihood, this not only affects "life and liberty" but is an infringement on the right to life itself The Court will observe the judgment in *Olga Tellis v. Bombay Municipal Corporation* where the Supreme Court of India held that the right to life encompasses the right to livelihood.[201]

The judgments in *Tadic* and *Kupreskic* prescribe a definitive finding of *persecution* in the instant case, the systematic commercial fraud perpetrated on hundreds of black/non-white engineering students pursuant to University of Aberdeen policy constituting attacks on fundamental social, economic, and judicial rights identified by international customary and treaty law, which affect life and liberty, thereby constituting the *actus reus* of *persecution*.

ii. *MENS REA*

The discriminatory intent grounded on racial identity embodies the thrust of the *mens rea* of *persecution* in the instant case, but the Trial Chamber in *Kupreskic* went further to identify the ultimate aim of *persecution* as the exclusion of victims from aspects of society - if not society itself.[202]

The aforementioned findings in relation to the personal property of Jews and Muslims ordain the systematic commercial fraud as economic *persecution*, and the theft of theses (resulting in bogus degrees) as a persecutory attack on livelihood and therefore the right to life. Like the ousting of the Jews from certain professions such as the legal profession, the victims in the instant case are effectively excluded from admission to doctoral programmes, the profession of engineering research, and in fact any profession requiring a degree when the fraud is discovered. Ultimately, the attack on judicial rights by the UK law enforcement agencies is itself an enforcement of the racial elimination begun by the University.

[201] *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180, *available at* http://www.elaw.org/resources/text.asp?ID=1104 (visited 6 September 2006).

[202] *Kupreskic*, paras. 610 and 634.

As noted in *Kupreskic*, the cumulative effect of the *persecution* is a removal of blacks/non-whites from certain aspects of the global society defined by scientific and technological development, whether as suppression of blacks/non-whites who would otherwise participate in scientific and technological research in developed countries, or the preservation of a global scientific and technological underclass, attended by poverty, concentrated in the developing countries, in particular, the countries of the Third World which represent the *de facto* "ghettos" of the global society.

b. Apartheid

i. *ACTUS REUS* - MEANING OF "INSTITUTIONALIZED"

The *actus reus* of *apartheid* requires the institutionalisation of inhumane acts of a character similar to those prohibited by Article 7 (1) of the Statute. Part I.A.2 above "Apartheid Identified" adequately justifies the charge of *apartheid*, identifying a three-tiered model of institutionalisation with that at the lowest tier being exemplified by legislative measures adopted by the governing body of the University of Aberdeen to administer and maintain institutionalized racial discrimination.

As noted above under the section "Apartheid Identified", the Commentary to Article 18 (f) of the ILC Draft Code distinguishes the crime against humanity of "institutionalized discrimination" (a generic form of *apartheid*) from *persecution*, in that the persecutory "plan or policy" - such as that identified in the previous section - must be "institutionalized, for example, by the adoption of a series of legislative measures" to deny the fundamental rights and freedoms whose infringement constitute *other inhumane acts* (perpetrated with discriminatory intent constituting *persecution*) contrary to Articles 7 (1) (h) and (k) of the Statute. In paragraph 2 of the Complaint against the Prosecutor, the Complainant underscored this institutionalisation of the latter-mentioned acts noting that:

> These acts are characterised as the crime of *persecution* by reason of racial identity, and by virtue of their institutionalisation, constitute the crime of *apartheid* contrary to Articles 7 (1) (h) and (k) respectively.
>
> It is to be further noted that the crime of *apartheid* itself does not require perpetration of the specific acts listed in Article 7 (1) but involves "inhumane acts of a character similar" the scope of which would logically include those acts enumerated under Article II of the International Convention on the Suppression and Punishment of the Crime of Apartheid, which I analogised in section II (1) of Explanatory Notes and Amendments.

With regard to the above finding of State intent to subject black/non-white students to *apartheid*, The Complainant submits that, as with the policy underlying a crime against humanity, the institutionalisation requisite for the crime of *apartheid* need not itself be formally codified. Formal

codification would, in the instant case, give damaging visibility to the parallel *de facto* jurisdiction. In *Tadic,* the Trial Chamber found that the state or organizational policy could be identified even if not expressly formulated:[203]

> Importantly, however, such a policy need not be formalized and can be deduced from the way in which the acts occur. Notably, if the acts occur on a widespread or systematic basis that demonstrates a policy to commit those acts, whether formalized or not.

At the University of Aberdeen institutionalisation of *apartheid* involves the governing body's transformation of procedures to defraud students into a legislative measure through ratification by deception, as opposed to express formulation. Institutionalisation at the state tier included ratification positively conferred by Scotland's chief legislator, the Right Honourable Henry McLeish, former First Minister of Scotland; but more generally, institutionalisation by the State is inferred from examination of particular measures adopted by the United Kingdom. Here, institutionalisation of the discriminatory policy is not accomplished by express formulation of *apartheid* policy, but insidiously combines positive applications of *de jure* law (such as provisions for marketing the UK education brand, a higher fee regime, attractive visa schemes, and employment rights for international students) with wilful omissions:

- To measure the quality of education delivered to the targeted victim population, i.e., the failure of the Funding Councils, through the Quality Assurance Agency, to discharge their duties of assessment (under sections 70 and 39 of the Further and Higher Education Act 1992, and the Further and Higher Education (Scotland) Act 1992, respectively) in accordance with the probable outcome of racially inflicted injury,
- To enforce the duty to undertake such measurement as required by the Race Relations Amendment Act 2000 (to monitor, by racial group, student admissions and progress),
- To prosecute complaints of racism, thereby constituting an infringement of judicial rights.

In the instant case, the institutionalisation that characterises the *actus reus* of *apartheid* is realised by a measured *de facto* sanctioning of omissions to act in breach of duty. The duties breached arise: under the Race Relations acts as well as under other statutory and common law provisions; under the student-university contracts of membership; and under the responsibilities assumed by the Government to take such steps as are reasonable to avert the substantial likelihood of racial discrimination forecasted by all social indicators, having aggressively induced the international sector of the victim population to study in the United Kingdom.

Under the law of agency, the State acts as principal in a relationship with universities as agents to provide educational services to the public. The hybrid formulation of acts and omissions at the

[203] *Tadic*, para. 653. See also the US Supreme Court's definition of "policy" in *Pembaur v Cincinnati*, above at note 167.

state tier constitutes measures to both ratify and facilitate *apartheid* policy legislated at the university tier through law making powers delegated by Parliament. The fact that the schedule of wilful omissions escapes the imposition of statutory and common-law criminal liability (which they would otherwise attract) is evidence that the formulation constitutes measures enjoying a *de facto* legislative and administrative status essential to the *actus reus* of *apartheid* commissioned by the State.

ii. *MENS REA*

The *mens rea* of *apartheid* is, the discriminatory intent of *persecution* on racial grounds, combined with intent to maintain the regime of oppression and domination. One might argue that the crime of *apartheid* is a crime of strict liability, in that the intent to maintain the regime may itself be inferred from the institutionalisation that characterises its *actus reus*. The Complainant submits that the standard of strict liability ought to apply to the authors of the institutionalized measures and those vested with powers of amendment or repeal.

c. Enslavement

i. FORMS OF CONTROL

The Prosecutor may find, in the course of his investigation, that there are acts which may or may not fall within the institutionalisation that differentiates *apartheid* (or which were perpetrated to further the criminal activity or purpose in relation to that crime) and which have defining characteristics representing additional interests that should be represented in the sentencing.

The Complainant submits that the fraudulent appropriation of property representing rights in her Honours Thesis was not only theft, but that the refusal to acknowledge the fate of the Honours Thesis and continuing denial of title to the latter (in which inheres the value of a doctoral degree) is itself a form of control intended: to exclude her from the engineering profession and admission to a doctoral program; to exclude her from social acceptance, having been falsely accused as being the author of the theft; to prevent her achievement of noteworthy intellectual accomplishment; and to confine her indefinitely to a status of subordination incompatible with human dignity.

The Prosecutor shall consider whether under customary international law, or treaty law, the systematic extortion alleged in paragraphs 13 and 14 of Complaint 1 - involving stalking,

deprivation of livelihood,[204] psychological battery, false imprisonment, cruel treatment, ravages to social environment, application of menaces approaching debt bondage aimed to enforce employment to repay debt,[205] and other attacks on the liberty of the Complainant - constitute forms of control which of themselves amount to enslavement of a single victim, or whether these forms of control also calculated to coerce the Complainant's return to the University of Aberdeen or to the Massachusetts Institute of Technology connote intent to acquire forced labour constituting attempted enslavement.

In investigating whether or not multiple provisions within the jurisdiction of the Court may have been simultaneously infringed, the Prosecutor shall consider whether multiple offences of the aforementioned and similar acts by the Defendants constitute the crime against humanity of *enslavement* under the Statute.

ii. *ACTUS REUS* and *MENS REA*

In *Prosecutor v Kunarac*,[206] the Appeals Chamber, referring to Article 1 (1) of the 1926 Slavery Convention,[207] concurred with the Trial Chamber that the *actus reus* of enslavement was "the exercise of *any* or all of the powers attaching to the right of ownership over a person" (emphasis added) while the *mens rea* consisted of "the intentional exercise" of such powers.[208] The Appeals Chamber held that under customary international law the definition of enslavement has evolved beyond that narrowly defined by the Slavery Convention and related instruments[209] to encompass contemporary forms of slavery where, the "exercise of any or all of the powers attaching to the right of ownership" resulted in some measure of "destruction of the juridical personality of [the] victim".[210] Analysis of contemporary forms of slavery must necessarily contemplate contemporary

[204] See, e.g., *Thompson v Webb*, Supreme Court of judicature of Jamaica, Case No. CL1996/T-075, Witness Statement of the Complainant, filed 11 January 2006, para. 22, Appendix A XI.2.e, Appendix B XII.C.1.f ; See also Complaint 1, para. 13(b)(iv). Ministry of Health contractor, Mr. Derrick Webb, and the Minister, the Hon. Easton Douglas, conspired to obtain the Complainant's services by deception. Webb advised the Complainant that she would not have to repay a debt if she returned to MIT.

[205] See text at note 42 above.

[206] *Prosecutor v Kunarac et al*, 12 June 2002, Case Nos. IT-96-23 & IT-96-23/1-A, Judgment, Appeals Chamber (Kunarac), *available at* http://www.un.org/icty/kunarac/appeal/judgement/kun-aj020612e.pdf (visited 8 September 2006).

[207] Slavery Convention, 25 September 1926, 60 L.N.T.S. 253, *entered into force* 9 March 1927, *available at* http://www.ohchr.org/english/law/slavery.htm (visited 8 September 2006).

[208] *Kunarac*, paras. 116, 122.

[209] Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery 1956, 7 September 1956, 226 U.N.T.S. 3, *entered into force* 30 April 1957, *available at* http://www.ohchr.org/english/law/slavetrade.htm (visited 8 September 2006).

[210] *Kunarac*, paras. 117 and 118

forms of control using high technology tools such as the Internet and sophisticated techniques in electronic surveillance in an evolving genus of remote control. The forms of control enumerated in paragraphs 13 and 14 of Complaint 1, when examined in the context of the broader definition of slavery, are essentially of the character of those identified by the *Kunarac* Appeals and Trial Chambers as being indicia of enslavement.[211]

The Complainant submits that these forms of control executed in combination with public officials and agents, named law enforcement and other governmental agencies effected a denial of her right to livelihood, accomplished isolation, and placed her outside the protection of the law, constituting a denial of judicial rights in derogation of her juridical personality. The Complainant further contends that these continuing attacks on her juridical personality were executed in pursuance of the exercise of powers attaching to the right of ownership, in that the attacks overwhelmingly restrained her freedom, aimed to suppress the free expression of her will, attempted to control her psychologically, denied her right to livelihood, denied her right to own property, subjected her to cruel and inhuman treatment, and sought to appropriate her intellectual labour exclusively for the use of certain of the Defendants - thereby comporting with historical practices of slavery.

The Court will have regard to principles adopted by the United Nations Working Group on Contemporary Forms of Slavery, which recognised in Fact Sheet No. 14 on Contemporary Forms of Slavery the clandestine character of certain forms of contemporary slavery, and which also noted that certain practices under *apartheid* regimes constitute slavery.[212] In considering the scope of *apartheid* in relation to institutionalized *enslavement*, the Court will be informed by the Apartheid Convention, which includes forced labour in the definition of *apartheid* under Article II (e). The Court will also observe that paragraph 10 of the Commentary to the ILC Draft Code on Article 18 (d) recognised enslavement as including forced labour.

In the determination of whether or not there are multiple offences of acts constituting *enslavement* under the Statute, the Prosecutor shall also examine the status of black/non-white students registered in masters programmes in the Department of Engineering at the University of Aberdeen, who are exploited as a source of cheap labour while their white peers enjoy registration as doctoral candidates. The Prosecutor shall consider whether the condition of such students constitutes forced labour, that is, whether any “work or service is extracted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”

[211] *Kunarac*, para. 119.

[212] United Nations Working Group on Contemporary Forms of Slavery, *Fact Sheet No. 14 : Contemporary Forms of Slavery*, June 1991, *available at* http://www.ohchr.org/english/about/publications/docs/fs14.htm (visited 8 September 2006).

contrary to Article 2 (1) of the Forced Labour Convention,[213] and the degree of destruction of juridical personality resulting from the latter. In deciphering the meaning of *enslavement*, the Court shall also take into account the "bundle of rights" normally associated with ownership, which includes rights to control and use, benefit from, and exclude property from others; i.e. in relation to these black/non-white engineering students the Court should consider:

1) What forms of control are applied to exact labour –

    a. Whether the students are subject to covert surveillance or stalking;

    b. Whether they are threatened with not obtaining a masters degree in order to force them to work for excessive hours;

    c. Whether their stipends or remuneration and general working conditions are demeaning or substantially less favourable than those afforded white students.

2) What benefits are extracted-

    a. Whether rights to and in the intellectual work created by these students have been appropriated, whether these students have been denied title to property or whether their intellectual work has been otherwise converted or infringed, and in particular, whether the victims have been awarded bogus degrees in consequence of theft;

    b. Whether they are forced to spend the majority of their time performing routine, laborious tasks which have little or no potential for intellectual development or creativity, and whether these tasks merely provide support services to allow whites to proceed with more intellectually challenging work;

3) How they are excluded from others –

    a. How the bogus undergraduate degrees and inferior degree class award regime acts as an instrument of coercion, operating to exclude these students from admission to graduate programmes in other universities, or employment as research and development engineers;

    b. Whether they are provided with unfavourable letters of recommendation or are vilified without their knowledge (as in the case of the Complainant).

In assessing the exercise of powers attaching to such elements of the bundle of rights constituting property, the Court may advert to the observation by the Appeals Chamber in *Kunarac* that "the

[213] Forced Labour Convention, adopted by the International Labour Organisation 28 June 1930 (ILO No. 29), 39 U.N.T.S 55 *entered into force* 1 May 1932, *available at* http://www.ohchr.org/english/law/forcedlabour.htm (visited 8 September 2006).

law does not know of a 'right of ownership over a person' " implying that the exercise of the above-mentioned powers is an assumption of ownership rights.

B. TEMPORAL TERRITORIAL and PERSONAL JURISDICTION

1. TEMPORAL JURISDICTION

The discussion in this section addresses the situation at the University of Aberdeen specifically.

The ICC acquired jurisdiction over crimes against humanity committed by nationals of the United Kingdom, or on the territory of the United Kingdom on 1 July 2002, with the entry of the Statute into force. The Court's jurisdiction encompasses (i) conduct on and subsequent to 1 July 2002, and (ii) conduct commenced prior to 1 July 2002 but persisting after that date under the doctrine of continuing offences.

a. Conduct Subsequent to July 2002

Under Articles 11 and 24 of the Statute, all prohibited acts committed by the Defendants since 2002 are explicitly admissible ratione temporis and ratione personae. These acts include those against victims registered in the engineering graduating classes of 2002 and subsequent years, and those against victims registered in the Complainant's engineering graduating class of 1983, in respect of which Vice-Chancellor Rice and certain others of the Defendants pursued the criminal transaction, issuing forged documents and false statements, and also obstructing justice in furtherance of the concealment and maintenance of the *apartheid* regime. This phase of the criminal transaction after the entry into force of the Statute can be said to have been flagged by University Secretary Cannon's letter of 10 July 2002 to the Complainant.

b. Conduct Admissible Under the Doctrine of Continuing Offences

The alleged violations of Article 7 are offences that have achieved the status of *jus cogens* as international crimes.[214] These crimes include both fraud and conspiracy as underlying offences. Under the national jurisdiction of the United Kingdom, concealed fraud and fraudulent trading are continuing offences, while conspiracy, the offence of which is complete once the agreement is made, continues to exist as long as acts in furtherance of it continue to be performed as the House of Lords held in *Director of Public Prosecutions v. Doot & Others*, (1973) A.C.[215] Section 32 of the UK Limitation Act[216] 1980 (and its predecessors) is clear on postponement of the suspension of

[214] Bassiouni, *International Crimes*, above note 7.

[215] *Director of Public Prosecutions v. Doot et. al.* (1973) A.C. 807 [EWHL], *available at* http://www.law.utoronto.ca (visited 26 December 2005).

[216] Limitation Act 1980 (EW).

time until the fraud has been discovered, or with reasonable diligence could have been discovered, at which time the right of action is said to have accrued.

The doctrine of continuing offences is well established under customary international law and treaty law in relation to the crime of enforced disappearance, which is recognised as being incomplete as long as the fate and whereabouts of the disappeared person have not been determined with certainty.[217] The Court's competence to prosecute conduct commenced prior to 1 July 2002 but persisting subsequently, is informed by the inclusion of enforced disappearance in the Statute as a crime against humanity.[218]

In the case of *Blake v Guatemala*, the Inter-American Court of Human Rights considered submissions brought by its Commission on Human Rights alleging violations of the Inter-American Convention[219] in respect of Blake's abduction, murder, and forced disappearance at the hands of Guatemalan authorities. In its ruling, the Inter-American Court stated that forced disappearance of persons constitutes a multiple and continuing violation of a number of protected rights. The Court noted that Blake's disappearance on 28 March 1985 marked the beginning of a continuing situation, and held that it was competent ratione temporis to decide on Guatemala's responsibility for "the effects and acts that occurred after the date on which Guatemala accepted the competence of the Court.[220]

There is authority for the recognition of other crimes as continuing offences in relation to an international tribunal's ratione temporis. Conspiracy was held to be a continuing offence by the international tribunals of Nuremberg, and Rwanda. In declaring conspiracy to be a "continuing crime" the Trial Chamber in *Prosecutor v Nsengiyumva* referred to *Doot* as well as the case of *Josef Alstotter and Others* before the United States Military Tribunal at Nuremberg in 1947 (the Justice case), holding that the temporal jurisdiction of the Tribunal did not bar evidence of an

[217] The Declaration on the Protection of All Persons from Enforced Disappearance, G.A. res. 47/133, 47 U.N. GAOR Supp. (No. 49) at 207, U.N. Doc. A/47/49 (1992). Adopted by General Assembly resolution 47/133 of 18 December 1992, art. 17 (1), *available at* http://www.ohchr.org/english/law/disappearance.htm (visited 8 September 2006).; Inter-American Convention on Forced Disappearance of Persons, 33 I.L.M. 1429 (1994), *entered into force* 28 March 1996, art. II, *available at* http://www.oas.org/juridico/english/Treaties/a-60.html (visited 8 September 2006).; See also the Draft International Convention for the Protection of All Persons from Enforced Disappearance, adopted by the Human Rights Council 29 June 2006, in Report to the General Assembly on the First Session of the Human Rights Council, at 32, U.N. Doc. A/HRC/1/L.10 (2006), *available at* http://www1.umn.edu/humanrts/instree/disappearanceconvention.html (visited 8 September 2006).

[218] The Statute, art. 7 (1) (i).

[219] American Convention on Human Rights, O.A.S.Treaty Series No. 36, 1144 U.N.T.S. 123, *entered into force* July 18, 1978, *available at* http://www.cidh.oas.org/basicos/basic3.htm (visited 8 September 2006).

[220] *Blake v Guatemala*, 24 January 1998, Series C No. 36 [1998] IACHR 1, Judgment, Inter-American Court of Human Rights, paras. 3 and 67, *available at* http://www.worldlii.org/int/cases/IACHR/1998/1.html (visited 8 September 2006).

alleged conspiracy where the agreement was made before the date of entry into force of the ICTR Statute. [221]

Again, in Prosecutor v Nahimana, the Trial Chamber held that the crime of direct and public incitement to commit genocide was, like conspiracy, an inchoate offence that continues in time until the completion of the acts contemplated, the impact of which could be measured within the Tribunal's ratione temporis.[222]

Like the continuing or permanent crime of enforced disappearance, the underlying offence of concealed fraud in the instant case is incomplete until the crime has been discovered by the victim(s). This is the case with the engineering students at the University of Aberdeen who, other than the diminished quality of life brought about by their failure to access doctoral degree programmes or to enjoy employment as research and development engineers, or to practice their profession at an acceptable standard, are as yet unaware that they are victims in a continuing situation. The population of victims, the crimes against whom the Court is competent ratione temporis to remedy, encompasses those students whose rights were violated from the date of institution of *apartheid* policy at the University of Aberdeen – i.e. prior to the graduating class of 1983 - to the present time. However the policy of fraud underlying the alleged Article 7 Violations is represented under the law of the United Kingdom, whether as concealed commercial fraud, conspiracy to defraud, or fraudulent trading, the conduct constitutes continuing or permanent offences – comprising crimes against humanity - for which the Court is competent ratione temporis to prosecute.

2. TERRITORIAL JURISDICTION

The United Kingdom ratified the Statute on 4 October 2001; Jamaica became a signatory on 8 September 2000 but has failed to ratify the Statute, while the United States of America withdrew its signature (of 31 December 2000) on 6 May 2002. The Complainant submits that notwithstanding this withdrawal, under Article 12 (2) (a) the scope of the Court's competence ratione loci encompasses adjudicatory jurisdiction over the American Defendants and their agents whose actions in concert with the British Defendants served to conceal and maintain the regime of *apartheid* on British territory, through persecution of the Complainant in the USA (Massachusetts) and in Jamaica.

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[221] *Prosecutor v. Nsengiyumva*, Case No. ICTR-96-12-I, 13 April 2000, Decision on the Defence Motions Objecting to the Jurisdiction of the Trial Chamber on the Amended Indictment, Trial Chamber III, paras. 28 –33, *available at* http://69.94.11.53/ENGLISH/cases/Nsengiyumva/decisions/dcs20000413.htm (visited 8 September 2006).

[222] *Prosecutor v. Nahimana*, 3 December 2003, Case No. ICTR-99-52-T, Judgment, Trial Chamber I, para. 1017, *available at* http://69.94.11.53/ENGLISH/cases/Ngeze/judgement/mediatoc.pdf (visited 8 September 2006).

The domestic legislation of both the UK and the USA employ in principle "effects" and "conduct" tests to confer extra-territorial jurisdiction where an act or omission contributes to an offence in the forum State. These States routinely exercise extra-territorial jurisdiction to combat the war on drugs, terrorism, and other transnational organised crime. Examples of such legislation include the Racketeering Influenced and Corrupt Organizations Act (RICO)[223] (USA), the Patriot Act (USA) the Criminal Justice Act 1993 (UK) the Criminal Justice (Terrorism and Conspiracy) Act 1998 (UK) and other anti-terrorist provisions.

The treatment of conspiracy at common law supports the legislative provisions. It is a fundamental principle of law that the acts of a conspirator are imputed to the territorial locus of a co-conspirator committing an overt act. The physical presence of the conspirator in the forum State is not required to establish jurisdiction. "Generally the cases show that jurisdiction exists to try one who is a conspirator whenever the conspiracy is in whole or in part carried on in the country whose laws are conspired against."[224]

The territorial jurisdiction delegated to the ICC by the UK in respect of the American Defendants is, despite the USA's opposition to the Court, firmly underpinned by the municipal law of both the UK and the USA.[225] The competence of the Court ratione loci to prosecute the American Defendants is accordingly not dependent on *ad hoc* consent. The need to extradite these Defendants, as well as the availability of witnesses and other evidence, impose an obligation on the Court to invite Jamaica and the USA to file declarations as provided by Article 12 (3) of the Statute, retrospectively accepting the jurisdiction of the Court, whether under Article 87 (5) or otherwise, the transnational nature of the criminality being a compelling prescription for the Court as the forum for effective prosecution. The crimes against humanity of *apartheid*, *persecution*, *enslavement* and *other inhumane acts* alleged are crimes that have achieved the status of *jus cogens*, imposing binding duties upon Jamaica and the USA, in fact *obligatio erga omnes* reposed in *any* State under the principle of universality, to prosecute these crimes - Jamaica notably being a State party to the Apartheid Convention. The ICC in turn has an obligation to so remind the USA and Jamaica, as well as a further procedural obligation to report the crimes to any international

[223] See, e.g., The Racketeering Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. (1979), ss. 1961-1968, *available at* http://www.law.cornell.edu/uscode/html/uscode18/usc_sup_01_18_10_I_20_96.html (visited 8 September 2006); The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA Patriot Act), s. 377, *available at* http://www.law.cornell.edu/background/warpower/3162.html (visited 8 September 2006); The Criminal Justice Act 1993 c.36 (UK), ss. 3 – 5, *available at* http://www.opsi.gov.uk (visited 8 September 2006); The Criminal Justice (Terrorism and Conspiracy) Act 1998 c.40 (UK), s. 5; The Terrorism Act 2000 c.11 (UK) s. 59.

[224] *Doot*, above note 215, per Viscount Dilhorne, quoting Taft C. J. in *Ford v United States* 273 US 593, 621-622.

[225] See, e.g., Scharf, Michael P., 'The ICC's Jurisdiction Over The Nationals of Non-Party States: A Critique of The U.S. Position' *64 Law & Contemp. Probs. 67* (Winter 2001), p. 111, *available at* http://www.law.duke.edu/journals/lcp/articles/lcp59dFall1996p41.htm (visited 8 September 2006).

penal tribunal under whose jurisdiction the State Parties fall, failing declaration under Article 12 (3) of the Statute.

In the case of Jamaica, the Complainant submits that declaration under Article 12 (3) is not optional, but that Jamaica's duty to make such declaration is prescribed jointly by its duties under the Apartheid Convention and its duties under the Vienna Convention of the Law of Treaties. Jamaica has an obligation under Articles iv, v, and vi of the Apartheid Convention to adopt measures necessary for prosecution of the Defendants, and as a signatory to the Statute, a concurrent obligation under Article 18 of the Vienna Convention "to refrain from acts which would defeat the object and purpose of [the] treaty". Since there can only be effective prosecution of the transnational criminal enterprise by the ICC, Jamaica is obliged to accept the jurisdiction of the Court by declaration under Article 12 (3), failing ratification of the Statute.

With regard to acts commissioned against the Complainant alone by the Defendants in Massachusetts, and by the criminal enterprise through their agents in Jamaica, it is established in international criminal law that a single act, even if perpetrated against a single victim, might constitute a crime against humanity if the act were perpetrated within the context of a widespread or systematic attack against a civilian population.[226] In upholding this principle, the Trial and Appeals Chambers in *Tadic* cited a line of authority from the Nuremberg decisions, notably that of Sch., where denunciation of her landlord led to his conviction and execution by the Gestapo. The Supreme Court in dismissing the appeal said this: [227]

> [T]he International Military Tribunal and the Supreme Court considered that a crime against humanity as defined in CCL 10 Article II 1 (c) is committed whenever the victim suffers prejudice as a result of the National Socialist rule of violence and tyranny ("*Gewalt- oder Willkürherrschaf*t") to such an extent that mankind itself was affected thereby. Such prejudice can also arise from an attack committed against an individual victim for personal reasons. However, this is only the case if the victim was not only harmed by the perpetrator – this would not be a matter which concerned mankind as such – but if the character, duration or extent of the prejudice were determined by the National Socialist rule of violence and tyranny or if a link between them existed. If the victim was harmed in his or her human dignity, the incident was no longer an event that did not concern mankind as such. If an individual's attack against an individual victim for personal reasons is connected to the National Socialist rule of violence and tyranny and if the attack harms the victim in the aforementioned way, it, too,

[226] *Tadic*, para. 647; *Prosecutor v Tadic*, Case No. IT-94-1-A, 15 July 1999, Judgment, Appeals Chamber, para.260 (*Tadic Appeals Chamber Judgment*) *available at* http://www.un.org/icty/tadic/appeal/judgement/tad-aj990715e.pdf (visited 8 September 2006); *Kupreskic*, paras. 550, 624.

[227] *Tadic Appeals Chamber Judgment*, para. 260, citing Decision of the Supreme Court of the British Zone dated 26 October 1948, S. StS 57/48, in *Entscheidungen des Obersten Gerichtshofes für die Britische Zone, Entscheidungen in Strafsachen*, vol. I., pp. 122-126 at p. 124.

> becomes one link in the chain of the measures which under the National Socialist rule were intended to persecute large groups among the population. There is no apparent reason to exonerate the accused only because he acted against an individual victim for personal reasons.

The evidence will show that at all material times the Defendants in Massachusetts acted with intent to further the criminal purposes of the Defendants in the United Kingdom; and that all Jamaican officials indicated acted, or omitted to act, with actual or constructive knowledge of the continuing attack against black/non-white students at the University of Aberdeen – whether or not "personal motivations can be identified in the [defendants'] carrying out of an act".[228]

3. PERSONAL JURISDICTION

The scope of application ratione personae is limited to natural persons pursuant to Article 25, accordingly, the University of Aberdeen, and the Royal Dutch Petroleum Company and Shell Transport and Trading Company P.L.C. (Shell), although legitimate defendants under UK domestic jurisdiction, are inadmissible ratione personae as defendants before the Court.

[228] Id, para. 252.

II. Article 53 Confers a Reasonable Basis to Proceed

The criteria prescribed by the Statute to determine whether or not the Prosecutor has a "reasonable basis" to initiate investigation into the Complaint and, upon investigation, to pursue prosecution of the Defendants, are enumerated in Article 53 paragraphs 1 and 2. Both these paragraphs require the Prosecutor to carry out a three-pronged test, examining:

a. Whether there is a legal/factual basis for exercising the jurisdiction of the Court;

b. Whether the case is admissible under Article 17; and

c. Whether investigation and prosecution would serve the interests of justice.

A. Jurisdiction and Evidence

As paragraph 1.C of the Annex postulates, Article 53 (1) (a) refers to the factual/legal basis for belief that the information communicated points to the commission of crimes within the jurisdiction of the Court.

The Complainant contends that with regard to the crimes committed at the University of Aberdeen, the evidence submitted constitutes "substantiated information" (as required by Article 42 (1) of the Statute) that is beyond the "reasonable basis" threshold required to initiate investigation. The Complainant contends that the factual basis component (Article 53 (1) (a)) of the test to determine whether or not there is a reasonable basis to proceed with investigation was, in effect, accomplished vicariously by principal officers of the Commission for Racial Equality (the CRE) in the United Kingdom during 1983 to 1985. The evidence shows that former Principal Complaints Officer Kuttan Menon established reasonable grounds for inferring that racial discrimination may have occurred in the award of engineering degree classes in 1983, while former Principal Education Officer Gerry German proved the case of institutionalized discrimination on a balance of probabilities (preponderance of evidence).

Menon's referral of the matter in February 1984 to the Education Department of the CRE for investigation would have required a minimum evidentiary finding of reasonable grounds in accordance with well-settled principles governing initiation of investigations into unlawful conduct.[229] His failure to articulate the evidentiary standard as the basis for his referral should only be construed as reflecting his unwillingness to take responsibility for initiating proceedings before the Courts, against elite defendants and, as it transpired, against the opposition of Defendant CRE Chairman Sir Peter Newsam. The Complainant contends that Menon's decision not to institute proceedings before the Courts was not on the merits of the case, but because he anticipated

[229] See Menon's letter to the Complainant 6 February 1984, final para., Appendix A III.5, Appendix B X.E.1.a, Appendix C AGT 3.d.

adverse pressure from State authorities intent on shielding the Defendants. As the Complainant asserted in her Reply of 7 October 2002 to the University, remedy also lay in contract, whether or not there would have been difficulty under the existing Race Relations legislation.

The Complainant submits that Menon's analysis of the information and evidence from the University, under section 65(1) of the Race Relations Act 1976, identified an evidentiary standard establishing a prima facie case of racial discrimination – beyond the reasonable grounds standard sufficient to trigger investigation - and that, accordingly, he referred the matter to the Education Department because he recognised that the CRE was vested with an obligation to conduct an investigation into the matter.

The Complainant contends that Menon's assertion on 10 February 1984 (supported by Complaints Officer Roy Martin) that the 1983 engineering degree class distribution was "the clearest thing" pointed to knowledge that this evidence, by itself, accorded with the prima facie evidentiary standard in respect of racial discrimination against the black/non-white group belonging to the engineering class of 1983. This degree class distribution, taken from paragraph 4 (d), Annexure A of the University's RR651b Reply, is included below:[230]

Race/Nationality	**Degree Class**				
	I	**II-I**	**II-2**	**III**	**No award**
Scottish and English	3	9	11	5	1
Black or other ethnic origins	0	1	12	1	0
Total	3	10	23	6	1

Distribution of Degree Class according to ethnicity : Engineering Class of 1983, University of Aberdeen.

Statistical disparity from which one may reasonably infer improper purpose suffices to establish a prima facie standard. In *Enderby v Frenchay Health Authority*, the European Court of Justice found that a prima facie case of gender discrimination was established where the statistics disclosed an appreciable difference in pay between two jobs of equal value, one of which was carried out almost exclusively by women and the other predominantly by men.[231] In *Johnson v California*,[232] the

[230] Appendix A III.3, Appendix B VIII.C.1.a, p. 6.

[231] *Enderby v Frenchay Health Authority* [1993] ECR 673, para. 16, cited in the Interights Amicus Brief, below at note 238, para. 23.

United States Supreme Court, approving *Batson v Kentucky*,[233] ruled that the California Supreme Court's acknowledgment that "it certainly looks suspicious that all three African-American prospective jurors were removed from the jury" was an inference sufficient to establish a prima facie case. The California Supreme' Court's observations are consonant with Menon's acknowledgment to the Complainant (with which Roy Martin agreed) assessing the above-tabulated degree class distribution as "the clearest thing". It was this recognition of a prima facie case of racial discrimination, which formed the basis for Menon's assertion in the final paragraph of his letter of 6 February 1984 that the matter "[could] only be tackled by our Education Department by way of investigations".[234]

Following Menon's analysis, Principal Education officer Gerry German initiated an informal investigation intending this to be preliminary to the CRE's exercise of their powers of formal investigation. In his letter of 10 May 1992 to former MIT Provost, Professor Mark S. Wrighton, German asserted this:[235]

> Her case revealed what appeared to be on the basis of information available instances of individual and institutional discrimination on racial grounds….
>
> It appeared that overseas students (black, non-white) were admitted with qualifications as good as if not better than their native, white counterparts and that their academic performance over the next three years of the course was also better. However, the final degrees that were awarded seemed to favour white students despite their previous relatively lowlier academic performance.
>
> I suggested to the University authorities that there were good grounds for believing that racial discrimination was taking place and that the Commission could use its powers under the Act to mount a formal investigation to ascertain whether this was so. I suggested that they might examine the records themselves and cooperate with me informally to eliminate discriminatory practices. Despite a lengthy correspondence they proved in the end unwilling to do so.

In statistical terms, German's analysis of data on the graduating classes of engineering students disclosed a bimodal shift from the expected values projected from examination achievement during years 1 to 3. This bimodal shift was realised by an elevated white mode encompassing the entire first class honours interval, and a demoted black/non-white mode. Here, the statistical

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[232] *Johnson v California* 545 U.S. __ (2005) (*Johnson*), *available at* http://supreme.justia.com/us/545/04-6964/case.html (visited 9 September 2006).

[233] *Batson v Kentucky* 476 U.S. 79 (1986), *available at* http://supreme.justia.com/us/476/79/case.html (visited 9 September 2006).

[234] See *Johnson*, above note 232; Menon, 6 February 1984, 1 March 1984, above note 229.

[235] Appendix A III.9, Appendix B VII.A.3, Appendix C AGT 7.b.

disparity sufficed to establish the general prima facie case (of which the graduating class of 1983 was only representative) of systematic fraud pursuant to a policy of institutionalized racial discrimination.

It is well-settled that discrimination is proved as a matter of law once a prima facie case is established and the respondent fails to adequately rebut the factual presumption of discrimination found. The case for a shifting burden of proof to the respondent was argued recently in *Nachova v Bulgaria*[236] in briefs submitted by the European Roma Rights Centre (the ERRC Amicus Brief)[237] and the International Centre for the Legal Protection of Human Rights (the Interights Amicus Brief). [238] The Open Society Justice Initiative also submitted a brief (the OSJI Amicus Brief)[239] asserting that the prohibition against racial discrimination had achieved the status of *jus cogens*, and accordingly, a procedural duty to investigate and prosecute acts of racially motivated violence, which should be exercised *ex officio* according to a "reasonable suspicion standard", was inherent in Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the ECHR).[240] These interventions into the written procedure were noted by the Chamber and Grand Chambers (in *Nachova 1* and *Nachova 2* respectively) of the European Court of Human Rights (the ECtHR).[241]

Nachova concerned applications to the European Commission of Human Rights against Bulgaria alleging the shooting deaths of two Romani men, Mr. Kuncho Angelov and Mr. Kiril Petkov at the hands of the Bulgarian Police on 19 July 1996. The Grand Chamber reversed (by eleven votes to six) the Chamber's finding of a violation of Article 14 of the ECHR in conjunction with the substantive aspects of Article 2 guaranteeing the right to life, but found, unanimously, that there had been a violation of Article 14 together with Article 2 in its procedural aspect, in that the

[236] *Nachova et. al. v Bulgaria*, 26 February 2004, Application Nos. 43577/98 and 43579/98 ECHR 90, Chamber Judgment, European Court of Human Rights (*Nachova 1*) *available at* http://www.worldlii.org/eu/cases/ECHR/2004/90.html (visited 9 September 2006) *; Nachova et. al. v Bulgaria*, 6 July 2005, Application Nos. 43577/98 and 43579/98 ECHR 465, Grand Chamber Judgment, European Court of Human Rights (*Nachova 2*) *available at* http://www.worldlii.org/eu/cases/ECHR/2005/465.html (visited 9 September 2006).

[237] The European Roma Rights Centre, Written Comments in *Nachova 1*, 21 May 2001, (ERRC Amicus Brief) *available at* http://www.errc.org/db/00/C0/m000000C0.doc (visited 9 September 2006).

[238] Interights, Written Comments in *Nachova* 2, 2 November 2004, (Interights Amicus Brief) *available at* http://www.interights.org/doc/Nachova%20Written%20comments%202%20November.doc (visited 9 September 2006).

[239] The Open Society Justice Initiative, Written Comments in Nachova 2, 2 November 2004, (OSJI Amicus Brief) *available at* www.justiceinitiative.org/db/resource2/fs/?file_id=15013 (visited 9 September 2006).

[240] European Convention for the Protection of Human Rights and Fundamental Freedoms, 213 E.T.S. 222, entered into force Sept. 3, 1953, as amended by Protocols Nos. 3, 5, 8, and 11 which entered into force on 21 September 1970, 20 December 1971, 1 January 1990, and 1 November 1998 respectively (ECHR), *available at* http://conventions.coe.int/treaty/en/Treaties/Html/005.htm (visited 9 September 2006).

[241] The Chamber referred to the ERRC Amicus Brief at paras. 152 – 154 of the *Nachova 1*. For the Grand Chamber's reference to the Interights and OSJI Amicus Briefs, see *Nachova 2* at paras. 140 – 143.

authorities failed to investigate possible racist motives behind the events that led to the deaths of Angelov and Petkov.

The Grand Chamber held that while proof of the discriminatory effect of a policy or decision will dispense with the need to prove intent in employment or the provision of services,[242] the approach was difficult to transpose to a case of alleged racially motivated violence, the actions of the authorities having failed to reveal "strong, clear and concordant inferences"[243] that the authorities would have acted differently in a non-Roma neighbourhood. Accordingly, the Grand Chamber recognised both the shifting burden of proof in cases where there is proof that a policy or decision has discriminatory effect, as well as a procedural obligation on the part of the defendant to investigate the presumption of discrimination found.

The Interights Amicus Brief drew the Grand Chamber's attention to the standard of proof established by the legislation and case law of international and national jurisdictions as the establishment of a prima facie case of discrimination by the claimant, upon establishment of which, the burden of proof shifts. Among the cases cited by the Interights Amicus Brief was *Chedi Ben Ahmed Karoui v. Sweden*, where the United Nations Human Rights Committee held that "substantive reliable documentation" would shift the burden of proof to the Respondent State.[244] The Court of Justice of the European Communities (the ECJ) upholds the principle of a shifting burden of proof on establishment of a prima facie case,[245] the European Community have subsequently adopted similarly premised Burden of Proof, Race and Framework Directives,[246] and

[242] *Nachova 2*, para. 157.

[243] Id., para. 147.

[244] *Chedi Ben Ahmed Karoui v. Sweden*, Case No. 185/2001 ICCPR, 25 May 2002, cited in the Interights Amicus Brief at note 6.

[245] See Interights Amicus Brief, note 34, citing: [Bilka Kaufhause GmbH v Weber von Hartz [1987] ICR 110]; *Handels-og Kontorfunktionaerenes Forbund I Danmark v. Dansk Arbejdsgiverforening* (*"Danfoss")* [1989] ECR 3199; N*imz v. Freie und Hansestadt Hamburg* [1991] ECR 1-297*; Kowalska v. Freie and Hansestadt Hamburg* [1990] E.C.R. I-2591.

[246] EU Council Directive 97/80/EC, 15 December 1997, establishing that in cases of gender discrimination the burden of proof shifts to the defendant once the applicant has provided evidence of a prima facie case (the Burden of Proof Directive), *available at* http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=Directive&an_doc=1997&nu_doc=80 (visited 9 September 2006); EU Council Directive 2000/43/EC, 29 June 2000, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (the Race Directive), *available at* http://europa.eu.int/eur-lex/pri/en/oj/dat/2000/l_180/l_18020000719en00220026.pdf (visited 9 September 2006); EU Council Directive 2000/78/EC, 27 November 2000, establishing a general framework for equal treatment in employment and occupation (the "Framework Directive"), *available at* http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0078:EN:HTML (visited 9 September 2006).

the national jurisdictions of Canada, the USA, South Africa, New Zealand, Australia, and Britain have approved this approach.[247]

Applying the afore-mentioned principles, in responding to German's representations that there were "good grounds" for believing that racial discrimination was taking place, the University not only failed to attempt explanation in race-neutral terms, or to provide any justification whatsoever, but proved unwilling to "cooperate with [German] informally to eliminate discriminatory practices". While the University had a procedural obligation (whether under Article 14 of the ECHR or otherwise), the University's failure to investigate of their own accord, while of itself not being required as the standard for shifting the burden of proof, served to corroborate the absence of justification.[248] There being no rebuttal of the presumption of racial discrimination established by the prima facie evidence, there is no question that German proved the case of institutionalized, racial discrimination on a preponderance of evidence (Balance of Probabilities) in accordance with the civil standard of proof. German's findings, however, go beyond that required to establish civil liability. The prima facie case is circumscribed by facts disclosing intent to maintain a regime of systematic institutionalized fraud. Clearly the presumption of criminal purpose in the general case is further informed by the proof beyond reasonable doubt afforded by the Complainant's individual case, where the fraud includes theft.

The "reasonable basis" threshold falls below the "balance of probabilities" standard. The Court will accordingly take note that under the Article 53 (1) (a) test, the finding of a reasonable basis to believe that crimes within the jurisdiction of the Court have been committed, is an exercise that has already been performed (albeit vicariously) by reason of the professional competence of CRE principals, Kuttan Menon and Gerry German,[249] the institutionalized discrimination being conduct which – being amenable to the territorial, temporal, subject matter and personal jurisdiction of the Statute - the Court is competent to prosecute.

[247] See Interights Amicus Brief, notes 36 – 38, citing: The United States Civil Rights Act 1991, section 105(a); The Canadian Human Rights Act, section 15; The South African Promotion of Equality and Prevention of Unfair Discrimination Act of 2000, section 13; section 54A; The New Zealand Human Rights Act 1993, section 92F; and *McDonnell Douglas Corp. v. Green*, 411 U.S. 492 (1973; *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248 (1981); *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*, [1999] 3 S.C.R. 868 [*Grismer]*.

[248] See *Batson*, at note 6.

[249] Despite Defendant Peter Newsam's deliberate disregard of the prima facie case evidenced, in order to obstruct justice by suppressing the formal investigation warranted in accordance with the UK Race Relations Act 1976. Newsam registered his intent in his letter of 22 May 1984, to Robert Hughes MP, Appendix A III.7, Appendix B X.E.2, Appendix C AGT.3.e.

B. Admissibility

As argued above, the requirements of Article 53 (1) (a) are satisfied in respect of evidence substantiating the perpetration of crimes within the jurisdiction of the Court. The Court is then required to apply the test of admissibility in accordance with Articles 53 (1) (b) and 17.

Complementarity: Unwillingness

The compendium of evidence points to prevailing State intent (on the part of the United Kingdom) to shield the Defendants from criminal responsibility. Appendix A enumerates the main responses from law enforcement authorities and other state agencies of the United Kingdom indicating suppression of investigation and prosecution of criminal conduct established on a preponderance of evidence reported by formal complaints filed by the Complainant. These law enforcement authorities include: The Metropolitan Police Service, the Metropolitan Police Authority, the Serious Fraud Office, the Independent Police Complaints Commission, and the office of the Director of Public Prosecutions. The latter merely recognised and fell in line with the understanding of *de facto* impunity inferred from the collective actions of the British High Commission in Jamaica, former CRE chairman and Defendant Sir Peter Newsam, former MP Robert Hughes (now Lord Hughes of Woodside), former MP Jeff Rooker (now the Rt. Hon Lord Rooker), Alick Buchanan-Smith, and former First Minister of Scotland, the Right Honourable Henry McLeish.

The authorities of the United Kingdom will also be aware that the summary failure to enforce the criminal law and race-relations legislation at the national level also constituted breaches of the ECHR: Article 13 providing the right to an effective remedy, Article 4 prohibiting slavery and servitude, Article 2 protecting the right to life, with the accessory provision of Article 14 prohibiting discrimination in respect of the other rights and freedoms guaranteed by the Convention. Evidently, in respect of racial discrimination, the United Kingdom's subscription to other relevant international treaties such as the ICERD (which explicitly prohibits *apartheid* in Article 3) and the ICCPR, is to be regarded as mere posturing.

Gravity

As noted above, the instant case satisfies both requirements of gravity, systematicity and widespreadness.[250] As to the degree of these indicia, the prevailing index of gravity at the unit university tier is the systematicity inherent to the institutionalisation that defines *apartheid*. With respect to widespreadness, while the Complainant has no data on the substantial increase in the

[250] Above part.I.A.1 'General Requirements'.

post 1983 recruitment of international black/non-white students at the University, it is clear from the DFES statistics, which recorded over 100,000 international students from East Asia / Pacific, South Asia, Africa and the Middle East in 1996/97, that there are hundreds, if not thousands, of such victims from the University alone.[251]

The evidence of unwillingness being unassailable, the Complainant submits that Articles 17 (1) (a), 17.1(d) and 17.2(a), taken with 15.3, and 18.2, impose a positive duty upon the prosecutor to apply to the Pre-Trial Chamber to authorise investigation, dismissing any requests from the United Kingdom for deferral under Article 18 (2) as being incapable of instituting genuine state investigation and prosecution.

C. Interests of Justice

Crimes against Humanity are recognised as *jus cogens*, imposing a non-derogable requirement of criminal prosecution as the only legitimate response.[252] Any request for State deferral to alternative justice mechanisms will accordingly fail to meet the requirements of international law. In light of the United Kingdom's demonstrated intent to shield the Defendants from criminal responsibility the *obligatio erga omnes*, concomitant with the principle of *jus cogens*, are reposed in the International Criminal Court pursuant to Articles 17 (1) (a) and 17 (2) (a).

The UK authorities' recognition of the fundamentally heinous nature of the impugned conduct is not in doubt. Even without identification of the conduct as constituting crimes against humanity, protection against racial discrimination is deemed a fundamental right under customary international law as established by the various international treaties and other binding international instruments of law.[253] Correspondingly, as with other national jurisdictions, UK legislation recognises racial discrimination as an aggravating factor in the prosecution of unlawful conduct warranting special investigation, and augmented sentencing regimes.[254]

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[251] Prime Minister Launches Drive, above note 3.

[252] Bassiouni, *International Crimes*, above note 7; See also Scharf, Michael P., 'The Letter of The Law: The Scope of the International Legal Obligation To Prosecute Human Rights Crimes' *59 Law and Contemp. Probs 41* (Autumn 96), *available at* http://www.law.duke.edu/journals/lcp/articles/lcp59dFall1996p41.htm (visited 9 September 2006); Human Rights Watch, *Policy Paper: The Meaning of "The Interests of Justice" In Article 53 of The Rome Statute*, June 2005, pp. 9-11 *available at* http://www.globalpolicy.org/intljustice/icc/2005/06interestsjust.pdf (visited 9 September 2006).

[253] The extensive list includes: Universal Declaration of Human Rights (1948); Discrimination (Employment and Occupation) Convention No. 111 (1958); Convention against Discrimination in Education(1960); International Convention on the Elimination of all Forms of Racial Discrimination(1965); Declaration on the Elimination of all Forms of Racial Discrimination(1965); International Covenant on Economic, Social and Cultural Rights(1966); International Covenant on Civil and Political Rights (1966); International Convention on the Suppression and Punishment of the Crime of Apartheid(1973); Declaration on Race and Racial Prejudice(1978).

[254] Legislation of the United Kingdom: See the Public Order Act 1986 c. 64, which made it a criminal offence to incite racial hatred throughout the UK; Part.2 of the Crime and Disorder Act 1998 c.37, which provided for an increase in sentence in England and Wales

The UK authorities are only too aware of their obligations in the instant case under Article 14 of the ECHR, the provisions of Article 14 being held by the ECtHR to be fundamental. The heightened importance attached to discrimination based on race was apparent, for instance, in *East African Asians v. United Kingdom*, where the Commission held that, that "special importance should be attached to discrimination based on race", also ruling that racial discrimination "might therefore be capable of constituting degrading treatment when different treatment on some other ground would raise no such question".[255]

It is to be noted that Rule 145 (2) (b) (v) of the Court stipulates discrimination (on any of the grounds referred to in Article 21 (3)) as being an aggravating circumstance for the purpose of sentencing. Undoubtedly, the abuse of power by the Defendants acting in official capacities (in whom is reposed the public trust) and their evidential intent to continue perpetration of the crimes against humanity unless restrained by the Court, constitute particularly invidious aggravating factors demanding that the Prosecutor initiate investigation immediately – in the interests of justice.

when a criminal offence is motivated by racial prejudice, and which introduced the offence of racially aggravated harassment for Scotland; s. 39 of the Anti-terrorism Crime and Security Act 2001 c.24; and s. 145 of the Criminal justice Act 2003 c.44, s. 145 also providing that racial hostility is an aggravated factor in sentencing for England and Wales.

[255] *East African Asians v UK*, 3 EHRR 76 (1973), para. 207, cited in the ERRC Amicus Brief , para. 25, and in the OSJI Amicus Brief, note 11.

III. Prosecutorial Policy Based on a Violence Standard is Impermissible

From the above analysis, the Office of the Prosecutor dismissed a substantiated complaint against crimes falling within the jurisdiction of the Court, which warranted investigation in accordance with the criteria for admissibility, and the interests of justice prescribed by Article 53 (1).

The effect of dismissing the Complaint contrary to the Annex Regulations (adopted pursuant to Article 15 (2) of the Statute) operated to benefit the conspiracy to suppress all complaints in the matter filed with State law enforcement agencies in the United Kingdom, the United States of America, and Jamaica. By suppressing application of Annex Regulation 5, which would automatically have triggered contact with the law enforcement and other government agencies in respect of, *inter alia*, "the existence and progress of national proceedings" the crimes themselves were effectively concealed, obstructing justice. This constitutes a substantive offence against the administration of justice contrary to Article 70 (1) (d).

With particular regard to this violation, the Prosecutor will be deemed to have constructive knowledge of the substance of the Complaint.[256] His failure to investigate is therefore subject to assessment *vis à vis* those situations he has chosen for investigation and advanced analysis.

A. Selective Prosecution and Disparate Impact

1. THE APPROACH TO DETERMINING DISCRIMINATION

From the Prosecutor's Update and his letter responding to communications concerning the situation in Iraq dated 9 February 2006 (the Iraq Response), the Prosecutor appears to have adopted a policy for selecting investigations into situations referred or communicated to the Court, justified on the basis of limited resources and the necessity for setting priorities.[257] On page 4 of the Update, the Prosecutor noted that:

> "The gravity thresholds are high. The Prosecutor considers various factors, including the number of victims of particularly grave crimes".

[256] See, for example, *United States v Wilhelm List et. al.*, 1948 (the *Hostage Case*), where the Nuremberg tribunal held that "commanding generals were deemed to have 'constructive knowledge' of reports forwarded to their headquarters that were intended for their review" and the similar reference to the trial of General Tomoyuki Yamashita by the Tokyo Tribunal, 1945, cited in Hendin, Stuart 'Command Responsibility and Superior Orders in the Twentieth Century – A Century of Evolution' *E Law – Murdoch University Electronic Journal of Law*, March 2003, ISSN 1321-9447, Vol. 10 No. 1, paras. 56 and 111, *available at* http://www.murdoch.edu.au/elaw/issues/v10n1/hendin101.html (visited 9 September 2006).

[257] OTP Letter to Senders Re Iraq 9 February 2006, *available at* http://www.icc-cpi.int/library/organs/otp/OTP_letter_to_senders_re_Iraq_9_February_2006.pdf (visited 9 September 2006).

On page 8 of the Iraq Response, the Prosecutor elaborated on what he considered to be grave crimes in relation to Article 53 (1) (b):

> The Office considers various factors in assessing gravity. A key consideration is the number of victims of particularly serious crimes, such as *willful killing or rape* (emphasis added).

Commenting on the situations in the Democratic Republic of the Congo, Northern Uganda, and Darfur in the Sudan, the Prosecutor reported on page 5 of the Update that:

> Each of the three situations under investigation involves thousands of *deliberate killings* as well as large-scale *sexual violence* and abductions, and the three situations collectively result in more than 5 million people displaced (emphasis added).

In reference to the situations in the Central African Republic and the Ivory Coast, the Prosecutor noted on page 4 of the Update:

> The Ivory Coast situation appears to involve over a thousand potential victims of *wilful killing* within the jurisdiction of the Court. The Central African Republic involves lower figures of *wilful killing* but high levels of *sexual violence* (emphasis added).

The apparent policy of selection distinguishes the "most serious situation[s]" as those involving wilful killing and sexual violence. The discussion below exposes this policy for selective prosecution as being a distinction discriminative *de facto* on grounds of race and nationality, that is consequently impermissible under the Statute.

The prioritising of situations for investigation according to whether or not and to what extent physical aggression, such as wilful killing and sexual violence, is a feature of the crimes perpetrated might seem at first sight to be a legitimate and facially neutral measure. The Complainant is not concerned here with whether or not such a measure has been adopted with non-neutral intent as a pretext for discrimination, but seeks to show that the measure has non-neutral effect.

All 5 situations being investigated, or which have been admitted for advanced analysis, involve black victims of crimes perpetrated by black defendants, and are located in Africa. The instant case – "similarly-situated" as involving crimes against humanity prohibited by the Statute - involves black/non-white victims of crimes perpetrated by white defendants, yet has been dismissed. These facts establish a prima facie case of disparate impact resulting from a selective prosecutorial policy that effectively targets black defendants, contrary to the purposes of the Statute and, in particular, to the equal protection of the law principle inherent to Article 21(3):

> The application and interpretation of law pursuant to this article must be consistent with internationally recognized human rights, and be without any adverse distinction founded

> on grounds such as gender as defined in article 7, paragraph 3, age, race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status.

The principles of equality before the law and equal protection of the law underlie the determination of whether a policy or measure adopted pursuant to the Statute is discriminatory contrary to international law. The approach is embodied by CERD General Recommendation 14[258] in combination with CCPR General Comment No. 18.[259] Paragraph 2 of CERD General Recommendation 14 prescribes how a claim against discrimination might be claimed on the basis of disparate impact:

> In seeking to determine whether an action has an effect contrary to the Convention, it will look to see whether that action has an *unjustifiable disparate impact* upon a group distinguished by race, colour, descent, or national or ethnic origin (emphasis added).

In its final paragraph, CCPR General Comment No.18, reflecting the parallel requirement of paragraph 2 of the CERD Recommendation, stipulates that for a differentiation of treatment not to constitute discrimination, the criteria applied must be objectively justified by a legitimate purpose:

> Finally, the Committee observes that not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are *reasonable and objective* and if the aim is to achieve *a purpose which is legitimate* under the Covenant (emphasis added).

Paragraph 6 of this Comment refers to Article 1 of ICERD, which defines racial discrimination to include discrimination based on national origin, then sets out the meaning of discrimination as prohibited by the ICCPR in paragraph 7:

> While these conventions deal only with cases of discrimination on specific grounds, the Committee believes that the term "discrimination" as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.

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[258] CERD General Recommendation 14, 22 March 1993, U.N. Doc. A/48/18 at 114 (1994), *available at*, http://www.bayefsky.com/general/cerd_genrecom_14.php (visited 9 September 2006).

[259] CCPR General Comment No. 18, 10 November 1989, in U.N. Doc. HRI\GEN\1\Rev.1 at 26 (1994), *available at* http://www.unhchr.ch/tbs/doc.nsf/385c2add1632f4a8c12565a9004dc311/3888b0541f8501c9c12563ed004b8d0e?OpenDocument (visited 9 September 2006).

The Court will have particular regard to paragraph 1 of CERD General Recommendation 14, which imposes a congruent obligation upon States to abrogate any legislation or policy having discriminatory effect in respect of these rights and freedoms, thereby denying equality before the law and equal protection of the law:

> A distinction is contrary to the Convention if it has either the purpose or the effect of impairing particular rights and freedoms This is confirmed by the obligation placed upon States parties by article 2, paragraph 1 (c), *to nullify any law or practice* which has the effect of creating or perpetuating racial discrimination (emphasis added).

Paragraph 12 of the Comment notes that the prohibition of discrimination by Article 26 also concerns the application of legislation by State parties, and guarantees an autonomous right not limited in application to those rights explicitly provided for in the Covenant. In the application and interpretation of the provisions of the Statute, the Court is therefore bound under Articles 21 (1) (b) and 21 (3) of the Statute, to observe the recognized approaches to protections against discrimination guaranteed by ICERD and ICCPR.

These principles, underpinned by objective and reasonable justification governing the approach to establishing discriminatory effect, also resonate in the supra-national jurisdictions of the Inter-American Court of Human Rights (the IACtHR), the Council of Europe, the EU, and throughout various national jurisdictions.[260]

The EU's exploitation of the ICERD and ICCPR provisions in their anti-discrimination laws is evident from the Burden of Proof, Race and Framework Directives cited above. Article 2 (2) of the Burden of Proof Directive defines indirect discrimination:[261]

> For purposes of the principle of equal treatment referred to in paragraph 1, indirect discrimination shall exist where an apparently neutral provision, criterion or practice disadvantages a substantially higher proportion of the members of one sex unless that provision, criterion or practice is appropriate and necessary and can be *justified by objective factors unrelated to sex* (emphasis added).

Article 2 (2) of the Race and Framework Directives adopt a similar approach:[262]

> [W]here an apparently neutral provision, criterion, or practice would put persons having a particular [religion or belief, disability, race, or other grounds] at a particular disadvantage compared with other persons unless (i) that provision, criterion or practice is *objectively*

[260] For a discussion of international discrimination law, see the International Centre for the Legal Protection of Human Rights (Interights), Kitching, Kevin (ed.), *Non-Discrimination in International Law : A Handbook for Practitioners*, January 2005, ISBN 1-869940-32-6 (the Interights Handbook), *available at* http://www.interights.org/doc/Handbook.pdf (visited 9 September 2006).

[261] Id., pp. 87.

[262] Id., pp. 86

> *justified by a legitimate aim* and the means of achieving that aim are appropriate and necessary… (emphasis added)

The ECJ has applied these principles in a venerable line of cases that include *Bilka*, *Danfoss*, and *Nimz* mentioned above.[263] In the landmark case of *Bilka*, the ECJ held that discrimination is proved "unless the undertaking shows that the exclusion is based on *objectively justified* factors *unrelated to any discrimination*" (emphasis added), and again in *Meints v Minister van Landbou*, the ECJ said this:[264]

> Unless it is *objectively justified* and *proportionate* to its aim, a provision of national law must be regarded as indirectly discriminatory if it is intrinsically liable to affect migrant workers more than national workers and if there is a consequent risk that it will place the former *at a particular disadvantage* (emphasis added).

In the seminal *Belgian Linguistics* case, the ECtHR emphasised the principles of objective justification and proportionality, holding that:[265]

> The existence of such [an objective and reasonable] justification must be assessed in relation to the aim and effects of the measure under consideration …. A difference of treatment in the exercise of a right laid down in the Convention must not only pursue a *legitimate aim*: Article 14… is likewise violated when it is clearly established that there is no *reasonable relationship of proportionality* between the means employed and the aim sought to be realized (emphasis added).

Across the Atlantic in *María Eugenia Morales de Sierra v Guatemala*,[266] the Inter-American Commission for Human Rights (the IACHR) echoed the "heightened scrutiny" and "weighty reasons" language of the European Commission for Human Rights (the ECHR) noting that "What the European Courts and Commission have stated is also true for the Americas". [267] The IACHR addressed the meaning of equal protection of the laws, noting that the test for discrimination in Belgian Linguistics accorded with that of Advisory Opinion OC-4/84.[268] In ruling that the

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[263] Above note 245.

[264] Interights Handbook, pp. 87, citing case C-57/96, *Meints v Minister van Landbouw* [1997] ECR I-6689 at para. 45.

[265] Id., pp. 129.

[266] *María Eugenia Morales de Sierra v Guatemala* , 19 January 2001, Case 11.625, IACHR Report No. 4/01 Inter-American Commission on Human Rights (*Morales), available at* http://www.cidh.org/annualrep/2000eng/ChapterIII/Merits/Guatemala11.625.htm (visited 9 September 2006).

[267] Id., para. 36, citing *Karlheinz Schmidt v Germany*, *Schuler-Zraggen v Switzerland* and *Burghartz v Switzerland*.

[268] Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica, Advisory Opinion OC-4/ 84 of January 19, 1984, IACtHR (Series A) No. 4 (1984), cited in the Interights Handbook, pp196-197.

Guatemalan Civil Code imposed restrictions inconsistent with the aims meant to be served, making the rights of the applicant susceptible to violation without recourse, the IACHR said:

> [T]he right to *equal protection of the law* set forth in Article 24 of the American Convention requires that national legislation accord its protections without discrimination. … A distinction based on reasonable and objective criteria (1) pursues a legitimate aim and (2) employs means which are proportional to the end sought. [269]
>
> […] statutory distinctions based on status criteria, such as, for example, race or sex, therefore necessarily give rise to *heightened scrutiny* (emphasis added).[270]

United States jurisprudence paved the way for much of the developments in equal protection law recognised internationally. In *Hirabayashi v United States*[271] and *Korematsu v United States*,[272] the US Supreme Court first established the "strict scrutiny" standard for racial classifications in accordance with the Equal Protection Clause of the Fourteenth Amendment of the Constitution.[273] In applying the doctrine of equal protection, the US Supreme Court consistently incorporates the principle of objective and reasonable justification articulated above. In *McLaughlin et. al. v Florida*, the Supreme Court held that official discrimination based on race: [274]

> …will be upheld only if it is necessary, and not merely rationally related, to the accomplishment of a permissible State policy.

Concurring in *Loving v Virginia,* the Court ruled that:[275]

> [R]acial classifications … if they are ever to be upheld, they must be shown to be necessary to the accomplishment of some permissible state objective, independent of the racial discrimination …

The disparate impact theory of discrimination was first recognised in *Griggs v Duke Power Co*., where the US Supreme Court held that discrimination on the basis of race by an employer requires

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[269] *Morales*, para. 31.

[270] *Morales*, para. 36.

[271] *Hirabayashi v United States*,320 U.S. 81 (1943), *available at* http://supreme.justia.com/us/320/81/case.html (visited 9 September 2006).

[272] *Korematsu v United States*, 323 U.S. 214 (1944) *available at* http://supreme.justia.com/us/323/214/case.html (visited 9 September 2006).

[273] United States. Library of Congress, Congressional Research Service, *CRS Annotated Constitution of the United States of America : Fourteenth Amendment*, 1992 ed. rev'd. 2000 (*Annotated USA Constition Amendment 14*) *available at* http://www.law.cornell.edu/anncon/html/amdt14toc_user.html (visited 9 September 2006).

[274] *McLaughlin et. al. v. Florida*, 379 U.S. 184, 196 (1964) *available at* http://supreme.justia.com/us/379/184/case.html (visited 9 September 2006).

[275] *Loving v. Virginia*, 388 U.S. 1, 11 (1967) *available at* http://supreme.justia.com/us/388/1/case.html (visited 9 September 2006).

"reasonable justification" on the grounds of "business necessity".[276] While the US Supreme Court has subsequently held that proof of discriminatory intent is required for claims under the Equal Protection Clause of the US Constitution, the prevailing body of equal protection law – represented by ICERD, ICCPR, the ECtHR the ECJ, the IACtHR, and the legislation of national jurisdictions such as Canada, the USA, South Africa, New Zealand, Australia, and Britain and others - follows the standard set by Griggs.

In essence, this body of equal protection law recognises disparate impact as the signature of unlawful racial discrimination, and accordingly provides for heightened scrutiny requiring that a provision, measure, or condition based on any of the established grounds for discrimination is held to be presumptively invalid unless objectively and reasonable justified. Application of this fundamental and internationally established principle to the instant case means that given the prima facie showing of disparate impact, namely that the prosecutorial policy operates to target African perpetrators, the Prosecutor must show that his policy of selecting situations for investigations - according to a wilful killing and sexual violence standard – satisfies the test of objective and reasonable justification. Accordingly the policy must:

a) Serve the legitimate purposes of the Statute itself, i.e., it must pursue a compelling objective under the Statute, unrelated to discrimination on grounds of race and nationality; and

b) Must be proportional to that aim.

The Prosecutor can not meet this burden of justification as the test fails at each stage.

2. THE POLICY is RELATED to THE DISCRIMINATION

The first prong of the test examines whether adoption of the wilful killing and sexual violence standard pursues a legitimate aim under the Statute, unrelated to discrimination on grounds of race and nationality. It is common knowledge that crimes against humanity involving wilful killing and sexual violence have historically been the province of the least developed countries, especially those in Africa, and less frequently the result of terrorists or pariah dictators.[277]

The United Nations Department of Social Affairs, Division for Social and Policy Development recognised the relationship between poverty and violent crime in their "Report on the World Social

[276] *Griggs v Duke Power Co*. 401 U.S. 424, 431-2 (1971), *available at* http://supreme.justia.com/us/401/424/case.html (visited 9 September 2006).

[277] Dictators such as Adolf Hitler, Saddam Hussein, General Augusto Pinochet, Slobodan Milosovic, and terrorists such as Osama Bin Laden.

Situation, 2005: The Inequality Predicament" (the Report). [278] The Report stated at paragraph 229 that:

> A society characterized by extreme inequalities and the lack of opportunities can become a breeding ground for violence and crime. The *widespread and systematic* destruction of human life is the ultimate indicator that efforts to improve social integration have failed (emphasis added).[279]
>
> […] In many developing countries, competition and the struggle for control over scarce resources leads to violent clashes ….[280]
>
> […] While it cannot be said that poverty, inequality and the denial of human rights cause or justify assault, terrorism or civil war, it is clear that they greatly increase the risk of instability and violence. Poorer countries are more likely than richer countries to engage in civil war, and countries that experience civil war tend to become and/or remain poor.[281]

The Update discloses no situations involving crimes falling within the jurisdiction of the Court that have been dismissed on the basis of Complementarity alone. The prima facie evidence of disparate impact can not therefore be objectively justified on the basis of Complementarity. The impugned policy effectively operates as a proxy for African Countries; this is aptly illustrated by the prima facie showing, and the test of objectivity fails.

3. THE POLICY is PROHIBITED

The second prong of the test inquires into the proportionality of the measure at issue to the legitimate aim stated, i.e. whether the policy is compatible with the defining goal of the Statute, essentially:[282]

> [T]hat the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured...

Here, the measure adopted is not merely incompatible but is prohibited, and the prosecutorial policy also fails the second prong of the test.

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[278] United Nations, 13 July 2005, *Report on the World Social Situation, 2005 : The Inequality Predicament*, Department of Social Affairs, Division for Social and Policy Development, U.N. Doc. A/60/117 (the Report), *available at* http://www.un.org/esa/socdev/rwss/media%2005/cd-docs/fullreport05.htm (visited 9 September 2006).

[279] Id., para. 229.

[280] Id., para.254.

[281] Id., para. 271.

[282] Preamble to the Statute.

The Prosecutor has broad, but not unfettered discretion. His mandate can only be discharged within the law, according to the intent of the drafters and not arbitrarily; he can not arrogate to himself powers that he does not possess. A prosecutorial policy that selects crimes characterised by wilful killing and sexual violence creates two racial classifications. The more obvious classification is that evidenced by the prima facie showing – the single ethno-racial grouping represented by the African countries of the Democratic Republic of the Congo, Northern Uganda, the Sudan, the Central African Republic, and the Ivory Coast. Equally important, but insidiously obscured, is the classification of crimes represented by the instant case where black/non-white victims of acts perpetrated by whites in the developed world are excluded from the protections guaranteed by the Statute - the white perpetrators correspondingly enjoying *de facto* rights of impunity.

The policy in question effectively amplifies the obligations of African countries under the first classification, and under the second classification constitutes a nullification of fundamental rights and freedoms in respect of black/non-white victims. The wilful killing and sexual violence standard, notwithstanding the need to prioritise situations due to the limited resources of the Court, is accordingly violative of the equal protection guaranteed by Articles 21 (1) (b) and 21 (3), which advert to the principles of equality before the law, and equal protection of the law enshrined in ICERD Article 2 and ICCPR Articles 2 and 26. Of interest here is the ruling in *Reed v Reed*,[283] where the US Supreme Court held that objectives of "reducing the workload on probate courts" were of insufficient importance to sustain the use of an explicit gender criterion.[284]

Not only will the Prosecutor not be effective in discharging his mandate by exercising a policy that excludes certain crimes prohibited by the Statute, but his wilful killing and sexual violence policy suffers a more fundamental jurisdictional blow - the Prosecutor can not, by executing this policy, carry out the legitimate aim of exercising his mandate, the policy at issue being itself prohibited by the Statute.

The Court will observe the international consensus on the fundamental nature of the bar against racial discrimination recognised by the courts.[285] Accordingly, in *McLaughlin* the US Supreme Court ruled that racial classifications "bear a far heavier burden of justification" than other classifications.[286] In *Korematsu*, the US Supreme Court held that the measure adopted in regard to

[283] *Reed v Reed* 404 U.S. 71, 76 (1971), *available at* http://supreme.justia.com/us/404/71/case.html (visited 9 September 2006).

[284] See also *Craig v Boren* 429 U.S. 190, 198 (1976), *available at* http://supreme.justia.com/us/429/190/case.html (visited 9 September 2006), where the Court noted that "Decisions following Reed similarly have rejected administrative ease and convenience as sufficiently important objectives to justify gender-based classifications".

[285] See the ERRC Amicus Brief at paragraph 14 et. seq.

[286] *McLaughlin*, at p. 194.

the evacuation of Japanese Americans was subject to "rigid scrutiny" because only a single ethno-racial group was targeted, and again in *Batson*, a "strict scrutiny standard" of suspect racial classifications to ensure the "core guarantee of equal protection" was applied. In *Personnel Administration v Feeney*, the US Supreme Court held that "a racial classification, regardless of purported motivation, is presumptively invalid and can be upheld only upon extraordinary justification".[287] The rulings of the European Courts are congruent, the ECtHR, establishing in *East African Asians*, for example, that "special importance" should be attached to discrimination based on race. Significantly, the IACtHR holds that the triangular principles of equality before the law, equal protection of the law and non-discrimination belong to *jus cogens*:[288]

> [T]he principle of equality before the law, equal protection before the law and non-discrimination belongs to *jus cogens*, because the whole legal structure of national and international public order rests on it and it is a fundamental principle that permeates all laws... This principle (equality and non-discrimination) forms part of general international law. At the existing stage of the development of international law, the fundamental principle of equality and non-discrimination has entered the realm of *jus cogens*.

Accordingly, the test for disparate impact exposes the Prosecutor's wilful killing and sexual violence standard as a racially discriminatory measure that effectively divests black/non-white victims of white-perpetrated crime of judicial rights under the Statute. This policy can have no justification whatsoever, constitutes a violation under the doctrine of *jus cogens*, is statutorily impermissible under Article 21 (3), and is accordingly null and void.

4. THE MANDATED POLICY for SELECTION

The criteria from which a "most serious situation" policy may be inferred (necessitated by limited resources and need to prioritise) are prescribed by the Statute itself as the determinants for admissibility, which are Complementarity and gravity.

Measurement of relative seriousness according to gravity is determined by the indicia of widespreadness and systematicity, however expressed. These indicia form the basis on which International Criminal Law recognises gradations in the relative gravity of crimes against the peace

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[287] *Personnel Administrator v. Feeney*, 442 U.S. 256, 272 (1979), *available at* http://supreme.justia.com/us/442/256/case.html (visited 9 September 2006), (quoted by the Annotated USA Constitution Amendment 14 at page 1809).

[288] *Juridical Conditions and Rights of the Undocumented Migrants, Advisory Opinion OC-18/03 of September 17, 2003*, Inter-Am. Ct. H.R. (Ser. A) No. 18 (2003), para. 101, quoted in Written Comments by the Open Society Justice Initiative in the case of *Dilcia Yean and Violeta Bosico v Dominican Republic*, 14 April 2005, Inter-American Court of Human Rights, part.I (A) (1) *available at* http://www.justiceinitiative.org/db/resource2/fs/?file_id=15639&rand=0.885464006389 (visited 9 September 2006).

and security of mankind.[289] The chapeau to Article 7 (1) uses the term "widespread or systematic" explicitly; Article 8 (1) uses the synonymous language of "plan or policy" and "large-scale commission"; and undoubtedly, both widespreadness and systematicity are inherent to the definition of genocide in Article 6, which stipulates "… intent to destroy, in whole, or in part, a national, ethnical, racial, or religious group.

The *Report of the Secretary-General,* which suggests that "crimes against humanity refer to inhumane acts of a very serious nature, such as *wilful killing*, torture or *rape* committed as part of a widespread or systematic attack…" (emphasis added),[290] does not exclude crimes that do not involve battery or the immediate use of force as elements. The case law has established that acts which constitute crimes against humanity of the category "*other inhumane acts*" may be identified in accordance with the provisions of the various international instruments on human rights, as noted above in *Kupreskic*.[291] The "acts of a very serious nature" referred to by the Secretary-General would accordingly include the latter-mentioned acts.

The Complainant does not dispute that crimes involving wilful killing and sexual violence are accorded an aggravated status. The Complainant submits that this status, however, is pertinent to the sentencing phase and is not fundamentally determinative of admissibility under Articles 53 (1) (b) and 17. Rule 145 "Determination of Sentence" requires the Court to "give consideration to" *inter alia* "the nature of the unlawful behaviour and the means employed to execute the crime" and additionally, aggravating circumstances such as "particular cruelty".[292]

Articles 53 (1) (b) and 17 prescribe the mandated policy for selection. Given the conditions of unwillingness or inability pertinent to Complementarity, the Prosecutor is required to select the "most serious crimes" according to relative gravity, i.e. relative widespreadness or systematicity.

[289] Compare the discussion on the relative gravity of war crimes and crimes against humanity in *Prosecutor v. Tadic*, 11 November 1999, Case No. IT-94-1-Tbis-R117, Sentencing Judgement, Trial Chamber, Separate Opinion of Judge Robinson, *available at* http://www.un.org/icty/tadic/trialc2/judgement/tad-tsojrob991111e.pdf (visited 9 September 2006).

[290] Cited Id.; also cited in *Tadic*, para. 646.

[291] See text at note 186 above.

[292] ICC *Rules of Procedure and Evidence*, above note 76, rule 145 items (1) (c) and (2) (b) (iv).

B. The Cycle of Violence

The ultimate goal of the United Nations system of world government, of which the Court is part, is to maintain international peace and security and to promote the well-being of nations. The Prosecutor should not confuse principles more pertinent to intervention and peacekeeping in the prevention and resolution of deadly conflict with those of justice. The Prosecutor's duties transcend those of a national prosecutor. On the international plane, the global society is an array of distinct economies and cultures, where law enforcement principles imported from national jurisdictions must be weighted in accordance with the fundamental rights and freedoms laid down in the body of international human rights and humanitarian law in conditions of differential political and economic power. Within this array, physical violence is only one threat to world peace, security and well-being.

The Court is positioned to play a pivotal role in charting the course of International Criminal Law in the face of continuously evolving challenges. In the exercise of its noble mandate, the Court is charged with the duty to identify those threats to peace, security and well-being that constitute the most serious crimes of concern – yet unrecognised - to the international community as a whole. What constitutes a "serious international crime" warranting prosecution is not to be determined arbitrarily for political expedience or otherwise, but in accordance with the "specific and carefully defined jurisdiction and mandate" guaranteed by the Statute.

As the Trial Chamber in *Kupreskic* noted, the crimes against humanity of "*other inhumane acts*" could be identified in terms of acts proscribed by the corpus of international instruments of human rights and humanitarian law.[293] As held by the *Tadic* and *Kupreskic* Judgments, these violations need not involve a physical element, as is the case in acts of wilful killing or sexual violence.[294] Crucial to the development of the jurisprudence on International Criminal Law, is the Prosecutor's willingness and ability to recognise those crimes against humanity which fall under "*other inhumane acts*" contrary to Article 7 (1) (k). Like the instant case, the above-mentioned racial classification pertaining to first world perpetrators who enjoy *de facto* rights of impunity include agents of transnational corporations whose acts in themselves constitute "*other inhumane acts*" (if not *persecution* contrary to Article 7 (1) (h)) and which also contribute, directly and indirectly, to the very kind of violent crimes being targeted by the Prosecutor in Africa.

In his article "Enforcing International Humanitarian Law: Catching the Accomplices" Professor William A. Schabas, discussed the international criminal liability of transnational corporations, their

[293] See text at note 186 above.

[294] Above notes 196 and 197.

executives and agents.[295] Schabas, citing attorney Maurice Nyberg's recognition that "It takes little imagination to jump from complicity with human rights violations to complicity with crimes covered under the ICC Treaty",[296] concluded that "Just how robustly the new International Criminal Court will go after accomplices in the boardrooms will depend on prosecutorial policy".[297]

While transnational corporations themselves often engage in armed conflict and other forms of wilful killing, sexual violence, and enslavement, they also engage in economic crime amounting to crimes against humanity, such as the deliberate dumping of toxic waste, other intentional pollution, and widespread destruction of the environment through deliberate application of hazardous mining practices, fully aware that "a consequence [would] occur in the ordinary course of events".[298] While cases such as *Wiwa v Royal Dutch Petroleum*,[299] *Roe et al v Unocal* (Burma), and *Sarei v Rio Tinto* (Bougaineville, Papua New Guinea) also involved willful killing and sexual violence, the violations of fundamental human rights in cases such as Lubbe et al v. Cape plc in South Africa, and Sithole et al v Thor Chemical Holdings Ltd did not.[300] These pernicious forms of white-collar economic crime are rationalized on the basis of economic profit and on the premise that human life in the developing world is of a lesser value.

By adopting a willful killing and sexual violence standard, the Prosecutor fails to recognize the relationship between economic crime, poverty, and the cycle of violence in African countries. Economic crime perpetrated by transnational corporations operating in developing countries fatally impacts local populations by causing severe injury to health, death, and imposes insurmountable barriers to sustainable development, extinguishing the livelihood of entire communities. This in turn imposes conditions of poverty thereby reinforcing the inequalities that lie at the root of a systematic

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[295] Schabas, William A., 'Enforcing International Humanitarian Law: Catching The Accomplices', June 2001, 83: 842 *International Review of the Red Cross* 439, *available at* http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/57JR5U/$File/439-460_Schabas.pdf (visited 9 September 2006).

[296] Id., p. 439, quoting Maurice Nyberg, 'At Risk From Complicity With Crime' *Financial Times* 27 July 1998.

[297] Id., p. 456.

[298] The Statute, arts. 30 (2) (b) and 30 (3).

[299] *Wiwa v. Royal Dutch Petroleum Co.* No 96 Civ 8386, 2002 US Dist LEXIS 3293 (SDNY 2002 unreported), US District Court for the Southern District of New York, *available at* http://www.earthrights.org/files/Legal%20Docs/Wiwa%20v%20Shell/distrcourtopinionFeb2002.pdf (visited 11 September 2006).

[300] See, FAFO and the International Peace Academy, Business and International Crimes : Assessing the Liabilities of Business entities for Grave Violations of International Law, 2004, FAFO Report 467 ISBN 82-7422-469-8, citing: *Roe, et. al. v. Unocal Corporation, et. al., Doe et al. v. Unocal Corporation, et al*. Case Nos. 00-56603, 00-56628 (9th Cir. 2002), US Court of Appeals for the Ninth Circuit; *Sarei et. al. v. Rio Tinto, et. al*. Case No.: CV 00-11695 MMM 221 F. Supp.2d 1116 (C.D. Cal. 2002); *Lubbe et al v. Cape plc* (HL). [2001] 1 WLR 1545, *available at* http://www.fafo.no/liabilities/467.pdf (visited 11 September 2006); Meeran, Richard, *Corporations, Human Rights and Transnational Litigation*, 29 January 2003, Monash University Law Chambers Lecture, *available at* http://www.law.monash.edu.au/castancentre/events/2003/meeranpaper.html (visited 11 September 2006), appendix 1, citing *Sithole & Ors v Thor Chemicals Holdings Ltd & Anor* TLR 15/2/1999, and other cases.

willful killing and sexual violence dynamic - ultimately effecting transfers of wealth from the developing to the developed world.

The relationships between environmental degradation, poverty, and violence can not be ignored. Paragraph 55 of the Report revealed that:

> Supporting these findings is evidence that the poor are typically subjected to the worst housing and living conditions, are disproportionately exposed to pollution and environmental degradation, and often find themselves in situations in which they are unable to protect themselves against violence and *persecution*. Taken together, these socio-political conditions create and sustain a vicious cycle of poverty and despair by contributing to the devaluation of human capital and potentially spawning additional problems that may have implications far into the future. They also have the effect of diminishing any gains achieved in income and poverty reduction.

The Court is not a security agency against physical violence. The Report emphasized the misplaced priority given to curtailing violence at the expense of strengthening the human rights agenda.

> Efforts to strengthen security and curtail violence have intensified around the globe, but little has been done to address the socio-economic causes of conflict.[301]
>
> Countries that promote social integration and respect for human rights are less likely to endure armed conflict and more likely to develop and prosper.[302]

Against this background, the willful killing and sexual violence standard is not only short-sighted, but has a prognosis of self perpetuation where, for instance, violence is the product of economic crime.

Perpetrators from the more politically and economically sophisticated countries of the developed world accomplish preservation of the enduring national and global subordination of blacks artfully, through deceptive means, by obscuring the causative relationship between pollution and health, and by suppressing investigation and prosecution of complaints, often without having to resort to visibly heinous criminal expressions such as wilful killing and sexual violence. With regard to the instant case, It would hardly be savvy for elite white citizens and public agencies of a prominent world power such as the United Kingdom to overtly commission crimes violating fundamental rights and freedoms of black/non-whites, while the United Kingdom, in theory, subscribes to the various international instruments of law prohibiting racial discrimination. These strategies of

[301] The Report, above note 278, para. 221.

[302] Id., para. 260.

deception inoculate the crimes against scrutiny and appeal to the “low priority and limited resources” defence against prosecution, to effect impunity.

C. Discriminatory Purpose

Fundamental human rights violations by transnational corporations disproportionately impact the black/non-white developing world. The failure to punish these violations as international crimes reflects discriminatory purpose in the global reluctance of States to acknowledge, expose and remedy racial discrimination at the national level, while paying lip service to *de jure* recognition of the prohibition of racial discrimination as a *jus cogens* norm. For example, according to the Open Society Initiative "Racial Discrimination in Access to Nationality is a Global Problem". As they stated in their Written Comments in the case of *Dilcia Yean and Violeta Bosico v. Dominican Republic*:[303]

> The instances of racial discrimination in access to citizenship at issue in this case are not isolated phenomena. To the contrary, government discrimination on the basis of race in granting access to citizenship is a problem *in virtually every region of the world* (emphasis added).

The evidence of resistance to holding institutional first-world actors accountable for conduct motivated by racial animus and exploitation is overwhelming. In the pre-*Nachova* ruling of *Anguelova v. Bulgaria* involving the death of a young Romani man while in police custody, Judge Bonello voting for a violation of Article 14 (prohibiting discrimination) against the majority view of the ECtHR noted in his partial dissent:[304]

> I consider it particularly disturbing that the Court, in over fifty years of pertinacious judicial scrutiny, has not, to date, found one single instance of violation of the right to life (Article 2) or the right not to be subjected to torture or to other degrading or inhuman treatment or punishment (Article 3) induced by the race, colour or place of origin of the victim … Leafing through the annals of the Court, an uninformed observer would be justified to conclude that, for over fifty years democratic Europe has been exempted from any suspicion of racism, intolerance or xenophobia. The Europe projected by the Court's case-law is that of an exemplary haven of ethnic fraternity, in which peoples of the most diverse origin coalesce without distress, prejudice or recrimination. The present case energises that delusion.[305]
>
> Frequently and regularly the Court acknowledges that members of vulnerable minorities are deprived of life or subjected to appalling treatment in violation of Article 3; but *not once* has the Court found that this happens to be linked to their ethnicity. Kurds, coloureds, Muslims, Roma and others are again and again killed, tortured or maimed, but

[303] See above note 288.

[304] *Anguelova v. Bulgaria*, 13 June 2002, - Application No. 38361/97 ECHR 489, Judgement, European Court of Human Rights, (Judge Bonello dissenting), *available at* http://www.worldlii.org/eu/cases/ECHR/2002/489.html (visited 11 September 2006).

[305] Id., para. 2.

> the Court is not persuaded that their race, colour, nationality or place of origin has anything to do with it… (emphasis added)[306]
>
> […] "The problem" adds the report, "is further compounded by a pattern of impunity of law-enforcement officers responsible for human rights violations" ["Bulgaria, Shooting, Death in Custody, Torture and Ill-treatment". AI Index: EUR 15/07/96]. On immunity of police officers from prosecution, Amnesty International added that it was "concerned that police impunity which prevails as Bulgarian authorities consistently fail to investigate such incidents properly and impartially places at ever greater risk of racist violence the most vulnerable ethnic community in Bulgaria" [AI Index: EUR 01/06/97].[307]

In the United States, the Courts have persistently resisted challenges to the constitutionality of the crack/powder-cocaine distinction under Federal law that is exploited to selectively prosecute and incarcerate black offenders, resulting in blacks receiving sentences averaging 40% longer than whites convicted for the same offence. In *United States v. Armstrong*,[308] the respondents, who were black, were indicted on federal crack cocaine charges, but challenged the indictments alleging selective prosecution based on race, and filed a motion for discovery or dismissal. The District Court judge dismissed the case after the Government refused to comply with the discovery order. On appeal, the US Supreme Court held that the District Court judge had exceeded her power in ordering discovery. In reversing the decision, the Court ruled that the respondents had failed to make the requisite threshold showing of selective prosecution based on race although the Government failed to produce a single example of a white defendant indicted under the crack cocaine statute, and as Justice Stevens persuasively argued in his dissent:

1. The statistics show that while 65% of crack cocaine offenders are white they represented only 4% of federal crack convictions, 88% of such defendants being black;[309]
2. The respondents submitted a study showing that 24 out of 24 of the crack cases closed by the Federal Public Defender's Office in 1991 involved black defendants;[310]
3. The District Court could have taken judicial notice of the fact of similarly-situated white crack offenders known to the federal agents but who were prosecuted in state court;[311] and

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[306] Id., para. 3.

[307] Id., para. 5.

[308] *United States v Armstrong* 517 US 456, 479 (1996), *available at* http://supreme.justia.com/us/517/456/case.html (visited 11 September 2006).

[309] Id., (Stevens, J., dissenting), pp. 479-480, citing Bureau of Justice Statistics and the Report of the United States Sentencing Commission, *Special Report to Congress: Cocaine and Federal Sentencing Policy* (February 1995) http://www.ussc.gov/crack/EXEC.HTM (visited 11 September 2006).

[310] Id., p. 480.

4. Accordingly, the discovery itself would have established discriminatory intent.

The disparity between *de jure* prohibitions against racial discrimination and *de facto* tolerance (if not encouragement) of racial conduct at the national level translates to preservation of the subordination of the black/non-white developing world at the international level. Explanation of the disparity might have its roots in the duplicity of decision makers and other key players. In his exposed memo of 12 December 1991, former World Bank Chief Economist University of Harvard President Lawrence Summers advocated the exporting of polluting industry to poor countries. His memo said: [312]

> 'Dirty' Industries: Just between you and me, shouldn't the World Bank be encouraging MORE migration of the dirty industries to the LDCs [Less Developed Countries]? I can think of three reasons:
>
> 1) The measurements of the costs of health impairing pollution depends on the foregone earnings from increased morbidity and mortality. From this point of view a given amount of health impairing pollution should be done in the country with the lowest cost, which will be the country with the lowest wages. I think the economic logic behind dumping a load of toxic waste in the lowest wage country is impeccable and we should face up to that.

With such bigoted contributors to the world stage, it should be no surprise that the United Nations' legislative response to the climate of impunity enjoyed by marauding transnational corporations is the impotent "Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights",[313] a non-binding code which imposes no sanctions for non compliance, while the ICC targets African perpetrators of violent crime - crime which in some instances may be the mere progeny of conduct by predatory and sometimes competing powerful first world actors who include agents of transnational corporations. In his report of 26 November 2002 to the Security Council on "The Protection of Civilians in Armed Conflict, the UN Secretary General himself referred to the situation in the Democratic Republic of the Congo:[314]

> The second issue that has increasing impact on the protection of civilians relates to the commercial exploitation of conflict. The illicit and illegal exploitation of natural resources is a growing problem that serves to fuel conflict and increasingly involves and harms the

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[311] Id., p. 482.

[312] Wikipedia, *Summers Memo, available at* http://en.wikipedia.org/wiki/Summers_Memo (visited 11 September 2006).

[313] Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights, adopted 13 August 2003 by the UN Commission on Human Rights, E/CN.4/Sub.2/2003/12/Rev.2, *available at* http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.Sub.2.2003.12.Rev.2.En?Opendocument (visited 11 September 2006).

[314] Report of the Secretary General on the Protection of Civilians in Armed Conflict, 26 November 2002, S/2002/1300, para. 58, *available at* http://daccessdds.un.org/doc/UNDOC/GEN/N02/712/97/PDF/N0271297.pdf?OpenElement (visited 11 September 2006).

> security of the civilian population. This has been a hallmark of the conflict in the Democratic Republic of the Congo, but is common to many conflict situations. Individuals and companies take advantage of, maintain and have even initiated armed conflicts in order to plunder destabilized countries to enrich themselves, with devastating consequences for civilian populations.

The pattern of selective justice and impunity for the white and powerful has been apparent since the Nuremberg and Tokyo trials. Judge Radha Binod Pal was the only member of the Tokyo tribunal to criticize the bombings of Hiroshima and Nagasaki, and the Tribunal itself of being an instrument of US political power. In his scathing dissent he stated: [315]

> Such a trial may justly create the feeling that the setting up of a tribunal like the present is much more a political than a legal affair, an essentially political objective having thus been cloaked by a juridical appearance.

The alarm in respect of the Court's susceptibility for becoming an instrument for selective justice has long been sounded. MIT Institute Professor Emeritus Noam Chomsky (who himself hailed Pal's dissent as a courageous indictment of American criminality) postulated in responding to questions on the Israeli-Palestinian conflict:[316]

> As for the ICC, it has the same flaw as all international institutions. In a world ruled by force, the rich and powerful do pretty much what they like. It's next to inconceivable that the ICC could try, even investigate, Western criminals. … The same was true of Nuremberg. The people sentenced there were some of the worst gangsters in human history, no doubt, but the operational definition of "war crime" was "war crime that they committed and we did not." …, the US and its allies remained immune … because they are far too powerful to touch, and because the educated classes are sufficiently obedient to cover their tracks.

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[315] The Tokyo Judgement, Opinion by Judge Pal (Radhabinod, Pal J.), quoted in Wallach, Evan J., The Procedural And Evidentiary Rules of the Post World War II War Crimes Trials: Did They Provide An Outline For International Legal Procedure?, *available at* http://www.lawofwar.org/Tokyo%20Nurembueg%20article.htm (visited 30 March 2006).

[316] Chomsky, Noam A., *Chomsky Responses*, ZNET Forum, 30 June 2002, *at* http://www.zmag.org/content/showarticle.cfm?SectionID=22&ItemID=2053 (visited 11 September 2006).

So too did Mr. Adama Dieng, UN Assistant Secretary General and ICTR Registrar:[317]

> [I]nherent in the future work of the Court is a conflict between it and the nations of the developing world – Africa, Latin America and Asia – if these regions perceive their citizens as the "exclusive" defendants before the Court.
>
> […] A scenario where an overwhelming majority of staff of the Court are from the developed countries and most of its accused persons are from developing countries should be avoided from the outset. If this is not the case, charges of "judicial imperialism" may gain resonance and may indeed be valid.

The prohibited wilful killing and sexual violence standard, rationalised by limited resources, must be seen as subscribing to the regime of impunity, and is no less reprehensible than the prosecutorial policies applied pursuant to US federal legislation in respect of the 100:1 crack:powder cocaine quantity ratio, used to disproportionately incarcerate blacks in US prisons.

The Court's denial of due process is consistent with the pattern of impunity and discriminatory purpose reflected in the global political, economic and judicial approaches to the black/non-white/developing world. The evidence supports an inference of direct discrimination in selective prosecution. In *Armstrong*, the US Supreme Court laid down the criteria for proving discrimination in a selective prosecution claim:[318]

> In order to prove a selective prosecution claim, the claimant must demonstrate that the prosecutorial policy had a discriminatory effect and was motivated by a discriminatory purpose. To establish a discriminatory effect in a race case, the claimant must show that similarly-situated individuals of a different race were not prosecuted.

While proof of discriminatory intent is irrelevant to a finding of direct discrimination outside US jurisdiction, the Court will observe that in *Batson* and *Johnson*, the unjustified removal of all the "similarly-situated" black prospective jurors from the venire was sufficient to support a finding of purposeful or direct discrimination. In *Morales*, which involved direct discrimination, the IACHR (approving *Belgian Linguistics*) considered a distinction to be directly discriminatory when the treatment in analogous or similar situations is different and without objective and reasonable justification. In *Lovelace v Canada*, the Human Rights Committee considered the denial of Indian status to an Indian woman, due to her inter-racial marriage to be direct discrimination under the ICCPR since such loss of status would not have applied to an Indian man in identical

[317] Dieng, Adama, *Lessons from the International Criminal Court Tribunal for Rwanda – Potential Problems for the Registrar*, Paper presented at the Conference Towards Global Justice: Accountability and the International Criminal Court, Wilton Park, Sussex, United Kingdom, 4-8 February 2002, part.II, *available at* http://69.94.11.53/ENGLISH/speeches/adwiltonpark020202.htm (visited 11 September 2006).

[318] *Armstrong*, at p. 457, citing *Ah Sin v. Wittman*, 198 US 500, *Batson v Kentucky*, 476 US 79, and *Hunter v Underwood*, 471 US 222.

circumstances.[319] In all cases, the test for direct discrimination compares the treatment given to two groups in identical or similar situations. Article 2 (2) (a) of the EU Race and Framework Directives, for example, define direct discrimination as occurring "… where one person is treated less favourably than another is, has been or would be treated in a comparable fashion on [the discriminatory grounds alleged]".

As noted above, the Prosecutor's broad discretion is not without boundary. The allegation of political and racial bias in selective prosecution is not unprecedented. This is one reason for subjecting exercise of decisions by a Prosecutor to judicial review, which in the case of the ICC is the responsibility of the Pre-Trial Chamber; Justice Steven's observations in *Armstrong* concur:[320]

> [The] possibility that political or racial animosity may infect a decision to institute criminal proceedings cannot be ignored. For that reason, it has long been settled that the prosecutor's broad discretion to determine when criminal charges should be filed is not completely unbridled.

The evidence does more than establish the Prosecutor's policy for selective prosecution as being indirectly discriminative through application of the test for disparate impact, the evidence points to direct discrimination in dismissing a case - by wilfully denying due process - concerning "similarly-situated" Defendants who are elite, white, British and American nationals.

[319] *Lovelace v Canada*, Case No. 24/1977, ICCPR), cited in the Interights Handbook, p 73.

[320] *Armstrong*, Stevens J. dissenting, p. 476 citing *Oyler v Boles* 368 US 448, 456 (1962).

CONCLUSION

The OTP's stark departure from the Annex Regulations constitutes a gross violation of due process, and equal protection of the law guaranteed by Article 21 (3). The Prosecutor's wilful disregard of the Complaint in violation of the Annex Regulations evinces his constructive knowledge[321] of the Complaint substantiating allegations of *apartheid*, *persecution* and other crimes within the jurisdiction of the Court, which being admissible under Article 53 warranted investigation and prosecution.

The procedures to be followed on receipt of any communication filed under Article 15 are not applied as a matter of discretion; Article 15 (2) requires that "[T]he Prosecutor shall analyse the seriousness of the information received". As is clear from the response of 2 March 2005, the Complaint filed has not been acknowledged. From the reference in the IEU's letter regarding "… communications received on 07/07/2004, as well as any subsequent related information ..." it may be inferred that the filing was ostensibly treated as "manifestly not providing any basis for the Office of the Prosecutor to take further action" [322] on the basis of the Complainant's preliminary email message of 7 July 2004 alone, and that the essential substantiated information which followed was deliberately not acknowledged, but formally parenthetically disposed of as the inconsequential surplus referred to as "any subsequent information".

It is to be further noted that the OTP's disregard of the substantiated information filed is also evidenced by the failure to officially recognise Complaints 1 - 6 filed with the MPS, the SFO, the FBI and the other law enforcement agencies, the Information and Evidence Unit having advised in the penultimate paragraph of the IEU, that:

> "… if you wish to pursue this matter further, you may consider raising it with appropriate national or international authorities".

Phase II analysis under regulation 5 of the Annex would have required the OTP to "seek additional information about *inter alia* the existence and progress of national proceedings …".[323] It follows that the dismissal of the Complaint at Phase I ensured that the law enforcement agencies would not be called upon to account for suppressing investigation of the complaints filed in the United

[321] See above note 256.

[322] Annex Regulation 4.1 (a).

[323] Annex Regulations 5.3 (b) and (c).

Kingdom, Jamaica, and the United States of America. There is, moreover, no corroborating indication that the Court has duly registered the Complaint. The Prosecutor's Update summarily indicates receipt of 1732 communications originating from 103 countries, failing to break down the communications according to country and the number of communications received from each. This is a marked departure from the corresponding report of 15 July 2003, which listed the latter details. There is a question of transparency.

The actions of the OTP in failing to officially examine the substance of the Complaint and to legitimately register the filing, comports with the pattern of obstruction of justice by the law enforcement agencies. Consistent with the pattern of concealment, the Complaint under Rule 26 to the Presidency against the Prosecutor dated 18 January 2005 was also suppressed, effectively foreclosing review by the Pre-Trial Chamber. A member of the Office of the Prosecutor "shall not seek or act on instructions from any external source".[324] The inference of intent to shield elite, white, British and American Defendants from their responsibility for crimes against blacks/non-whites is convincingly drawn – as is the inference of conspiracy.

In light of the Prosecutor's constructive knowledge of the admissibility of the similarly-situated Complaint *vis à vis* the 5 cases in Africa currently being investigated or further analysed, dismissal of the Complaint constitutes direct racial discrimination. Racial criminal transactions, exemplified by the conduct of the University of Aberdeen, underlie components of the multi-billion GBP international education industry of the UK. It is evident that this Complaint poses a signal threat to the economic objectives of the campaign to market the "UK Education Brand". In much the same way that international power brokers rationalise the export of pollution to the least developed countries, so too do they rationalise the transfer of wealth to the developed world accomplished through the racist award of fraudulent and inferior degree classes and bogus degrees.

Adherence to the unacknowledged precedent of subjugation to powerful economic and political interests – such as those of the UK – is an affront to the spirit and letter of the Statute, to those founders of the ICC who genuinely envisioned the Statute to be an unprecedented and revolutionary gift of hope, and to black States who, through a leap of faith, ratified the Statute. The Prosecutor's apparent adoption of a wilful killing and sexual violence standard for selective prosecution targets African Countries and effectively precludes prosecution for non-violent violations of fundamental human rights, granting impunity to rich, white and powerful perpetrators of the developed world. This policy diminishes the stature of the Court and the exercise of its jurisdiction to a quasi-security operation for the deterrence and punishment of violent black perpetrators, not unlike the effect of the US cocaine Statute used to disproportionately incarcerate

[324] The Statute, art. 42 (1).

blacks in Federal prisons, while white offenders enjoy the privilege of soft state-imposed penalties and rehabilitation centres.

Not surprisingly, The Prosecutor's policy for selective prosecution constitutes racial discrimination under the doctrine of disparate impact. For the Court's actions to be legitimate, it must operate within the framework of that which is permissible under the Statute – within which a wilful killing and sexual violence standard does not fall.

As with the proscription of "intentional and severe deprivation of fundamental rights" constituting persecution under Article 7 (2) (g), Article 7 (1) (k) "*other inhumane acts*" is a provision that was included by the drafters of the Statute for the purpose of identifying criminal conduct not explicitly included in the list of prohibited acts.[325] The acts commissioned by the agents and servants of the University of Aberdeen, the Government officials responsible for controlling them, and their accomplices, belong to this category. Incorporated in the Court's mandate is the duty to traverse the contours of the International Human Rights and International Criminal Law nexus, further defining the locus of intersection. The *ad hoc* tribunals of the ICTR and the ICTY have brought clarity to the evolving international criminal jurisdiction, and this Court faces a challenge like no other in so advancing the goals of peace and security.

The Court will observe that with respect to the Prosecutor's limited resources, unlike the 5 cases in Africa currently being investigated or further analysed, the investigative and prosecutorial burden in the similarly-situated instant case is far from onerous. The evidence essential for investigation and prosecution - which is already committed to paper, in large part by Defendants bearing the greatest responsibility for the crimes themselves - includes unrebutted *prima facie* evidence, beyond the "reasonable basis" threshold required under Article 53.

The Court is charged with the duty to proceed to advanced Phase III analysis under Annex Regulation 6, pursuant to de novo review, to prepare an investigation plan, and to contact the indicated law enforcement agencies in the United Kingdom, Jamaica and the USA, verifying the filing of Complaints 1 - 6. The Complainant submits that the Court has a procedural obligation under the Statute to invite Jamaica and the USA to file declarations, as provided by Article 12 (3), retrospectively accepting the jurisdiction of the Court in respect of the instant case, whether under Article 87 (5) or otherwise.[326] Failing such declaration, the Court will recognise that it also has an obligation to report the violations to those international penal institutions having jurisdiction, in light of the *jus cogens* prohibition against the crimes against humanity and the underlying offence of racial discrimination.

[325] See text at note 185.

[326] See text at notes 126.

The question is whether the Court will meet its first challenge to investigate and prosecute British *apartheid*, or whether it will fail the test in the eyes of the international community as an independent, impartial, and effective instrument of justice "shielding the person[s] concerned from criminal responsibility" in a *de facto* declaration of intent to function as a selective instrument of justice for the powerful, and the illegitimate embodiment of judicial imperialism.

Respectfully submitted

……

Adrienne Gaye Thompson

Complainant

AFFIDAVIT

1. I, Adrienne Gaye Thompson, an Electrical Engineer and Computer Scientist of <xxxxxx> Jamaica, hereby state on oath:

2. I swear this affidavit in support of the Pre-Indictment Brief in which it is included, the pertinent documents noted in Appendix A and the exhibits recorded by Appendices B and C.

3. I am a former engineering student of the University of Aberdeen, registered at the University throughout the period October 1979 to June 1983.

4. I commissioned no examination offences, fulfilling, in its entirety, the requirements for the award of Bachelor of Science in Engineering Honours in 1983. I am sole author and owner of the Honours Thesis, "Interactive Computer Package Demonstrating: Sampling Convolution and the FFT" and the FORTRAN Program therein.

5. I believe the criminal enterprise to be demonstrably capable of wilful killing and murder, and I fear for my life and the lives of my family members and friends.

6. I declare and affirm all statements, facts, and information presented in this Complaint to be true and correct to the best of my knowledge and belief.

WHEREFORE, I file this Pre-Indictment Brief under Article 15 of the Statute of Rome:

a. By email to OTP.InformationDesk@icc-cpi.int,

b. By Federal Express Air Bill No. 855473333900 as a backup filing, and

I demand on behalf of the victims of the *apartheid* and other crimes against humanity alleged, that this Complaint be afforded the due process of law and equal protection of the laws guaranteed by the Statute, and the rules, regulations, policies and procedures of the International Criminal Court.

……
Adrienne Gaye Thompson

Complainant

Sworn and subscribed to at …… In the parish of Saint Andrew
This 5th day of October 2006, before me:

……

Justice of the Peace

APPENDIX A

Record of Complaints, Responses and associated documents

The list below includes all major communications and others referenced in this brief; the communications in the matter are numerous and are not all listed here. All communications logged are in writing and were letters and/or other documents of complaint from the Complainant, unless indicated otherwise.

I. The University of Aberdeen

1. 29 July 1982, Letter of Complaint to Professor John R. Smith, Engineering Head of Department;
2. 29 July 1982, Vice-Principal Professor Hamish M. Keir's annotations to complaint to Smith;
3. 29 June 1983, Appeal to the University Senate;
4. 16 September 1983, Letter of Protest from Engineering Honours awardees Tang and Tam in support of the Complainant's Senate appeal;
5. 21 October 1983, The University's decision on the appeal;
6. 21 November 1985, Statement from Law Faculty lecturer, Vivien M P Ogston;
7. 12 January 1988, Forged Student Transcript;
8. 4 May 1988, Statement from Keir corroborating total fulfilment of Honours degree requirements;
9. 25 April 1991, from the University signed by Executive Officer M. Park;
10. 27 March 1992, to University Secretary, Mr. N.R.D. Begg;
11. 15 May 1992, Forged Student Transcript;
12. 20 May 1992, from Clerk to the Senate Dr. Peter Murray;
13. 26 March 1996, to Principal J. Maxwell Irvine;
14. 8 May 1996, from Irvine;
15. 16 July 1996, to Irvine;
16. 20 August 1996, from Irvine;
17. 1 November 1996, to Irvine;
18. 26 November 1996, from Irvine;
19. 24 November 1997, Letter of Demand to Principal C. Duncan Rice;
20. 29 January 1998, from Rice;
21. 18 and 19 February 2002, Emails to University Secretary Steve Cannon and Registry;
22. 20 February 2002, Email from Post Graduate Registry officer Nancy French;

23. 25 February 2002, Email and Fax to Cannon and Registry;
24. 28 February 2002, Email from French;
25. 6 March 2002, Email from Assistant Registrar Yvonne Gordon;
26. 4 April 2002, Letter of Demand (LOD) to Rice;
27. 24 April 2002, Forged Student Transcript;
28. 21 June 2002, from Cannon;
29. 5 July 2002, Email to Rice;
30. 10 July 2002, from Cannon;
31. 7 October 2002, Letter of Demand (the Reply) to Rice;
32. 28 November 2002, Email from Registrar Dr. Trevor Webb;
33. 23 December 2002, Email to Webb;
34. 10 February 2003, from Data Protection Officer David M. Jones;
35. 10 February 2003, False Statement of Marks;
36. 21 February 2003, from Cannon;
37. 28 February 2003, from Webb;
38. 6 January 2004, Notice of Forgery to Rice;
39. 16 January 2004, from Webb;
40. Further email messages to Webb (demanding legitimate Student Transcript, and all honours, awards, rights and privileges to which the Complainant is entitled), up to 7 September 2005.

II. The Massachusetts Institute of Technology & the University of Stanford

1. 29 August 1991, OAS statement to MIT Bursar pledging fees for graduate degree programme;
2. 24 January 1993, Petition to Provost, Professor Mark S. Wrighton;
3. 5 May 1993, from Wrighton;
4. 2 July 2001, Statement to the MIT Corporation, FedEx A/B 828848743850;
5. 3 March 1994 and 15 March 1995, University of Stanford letters of offer and rejection;
6. Letters to MIT President, Dr. Charles Vest, all of which received no reply with the exception of (a):
   a. 16 September 1994,
   b. 26 September 1994, Reply from Wiley,
   c. 26 March 1996,
   d. 16 July 1996,
   e. 6 November 1996,
   f. 28 November 1996,

g. 20 January 1997,
h. 3 April 1997,
i. 1 December 1997,
j. 9 September 1998,
k. 15 January 1999;
l. 2 July 2001 FedEx A/B 828848706031

III. The Commission for Racial Equality

1. 23 June 1983, CRE Green form;
2. 9 October 1983, Questionnaire served on the University under section 65 (1) (a) of the Race Relations Act 1976 (the RR651a Questionnaire);
3. 11 November 1983, The University's reply to (2) under section 65 (1) (b) of the Race Relations Act 1976 (the RR651b Reply);
4. 3 January 1984, Handwritten Comments to the CRE on the University's Reply;
5. 6 February 1984, from CRE Principal Complaints Officer, Kuttan Menon;
6. 1 March 1984, from Menon, to Complainant
7. 22 May 1984, from CRE Chairman Sir Peter Newsam to Robert Hughes MP;
8. Correspondence between CRE Principal Education Officer Gerry German and the University of Aberdeen:
   a. 15 August 1984, To Professor Smith,
   b. 6 September 1984, From Solicitor to the University, Forbes Keith Sellar,
   c. 1 October 1984, To Sellar,
   d. 5 October 1984, From Sellar,
   e. 10 October 1984, To Smith,
   f. 4 February 1985, To Smith,
   g. 21 February 1985, From Sellar,
   h. 21 February 1985, To Sellar,
   i. 15 March 1985, From Sellar,
   j. 1 April 1985, To Sellar,
   k. 24 April 1985, From University Secretary, W. M. Bradley,
   l. 2 May 1985, To Bradley,
   m. 6 June 1985, From Bradley,
   n. 14 June 1985, To Bradley,
   o. 25 June 1985, From Bradley,
   p. 17 July 1985, To Bradley,
   q. 23 July 1985, From Bradley,
   r. 29 July 1985, To Bradley;

9. Letter from German, to MIT Provost Wrighton, 10 May 1992.

IV. The Metropolitan Police Service: Complaint 1

6 January 2004, Criminal Complaint against the University of Aberdeen and others. Filed via Federal Express (A/B 8425 0950 2429) 12 January 2004, for the express attention of Assistant Commissioner Mr. Tarique Ghaffur.

V. The Police Complaints Authority: Complaint 2

Filed online at http://www.pca.gov.uk/feedback/index.htm

1. 20 January 2004, amended 21 January 2004, Complaint 2 (a);
2. 10 February 2004, Complaint 2 (b);
3. 12 February 2004, Complaint 2 (c).

VI. The Serious Fraud Office: Complaint 3

1. 11 and 13 February 2004, Complaint 3 (a), addressed to http://www.sfo.gov.uk/cases/guidance.asp, reportafraud@sfo.gsi.gov.uk, postmaster@sfo.gsi.gov.uk, and private.office@sfo.gsi.gov.uk;
2. 27 February 2004, Reply from SFO Officer Mike Jackson;
3. 3 March 2004, Complaint 3 (b), addressed to http://www.sfo.gov.uk/publications/complaints/complaintsform.asp, complaintsofficer@sfo.gsi.gov.uk, and postmaster@sfo.gsi.gov.uk;
4. 22 March 2004, Reply from SFO Policy Head, Peter Kiernan.

VII. The Law Officers & the Director of Public Prosecutions (England & Wales): Complaint 4

1. 18 March 2004, Complaint 4 (a), addressed to the Law Officers, http://www.parliament.uk, and harmanh@parliament.uk;
2. 30 March 2004, Complaint 4 (b), addressed to the Law Officers, http://www.parliament.uk, harmanh@parliament.uk, and Kevin.mcginty@lslo.x.gsi.gov.uk;
3. 21 April 2004, Reply from A. Hussain, Legal Secretariat of the Law Officers;
4. 14-15 July 2004, Complaint 4 (c), Pre-Indictment Advice and File of Evidence addressed to DPP Mr. Ken McDonald HQPolicy@cps.gsi.gov.uk and enquiries@cps.gsi.gov.uk.

VIII. The Independent Police Complaints Commission and the Metropolitan Police Authority Complaint 5

1. 4 May 2004, Complaint 5 (a), addressed to enquiries@ipcc.gsi.gov.uk;
2. 11 May 2004, Reply from IPCC Senior Caseworker Jonathan Rodgers;

3. 20 May 2004, Complaint 5 (b), addressed to IPCC Deputy Chair, John.Wadham@ipcc.gov.uk;
4. 21 May 2004, 6 July 2004, 6 July 2004, and 7 July 2004, Replies from MPA Officer Natasha Porter;
5. 3 June 2003, Reply from Solicitor to the MPA, David Riddle;
6. 10 June 2004, Complaint 5 (c), addressed to enquiries@ipcc.gsi.gov.uk;
7. 16 June 2004, Reply from MPA Chair, Lord Toby Harris of Haringey;
8. 7 July 2004, Reply from IPCC Director of Casework, Keith Price;
9. 7 July 2004, Reply from IPCC Complaints Officer, Nicola Enston;
10. 15 July 2003, Reply from Riddle;
11. 28 July 2004, Complaint 5 (d), Resubmission of Complaint, addressed to enquiries@ipcc.gov.uk, John.Wadham@ipcc.gsi.gov.uk, Nick.Hardwick@ipcc.gsi.gov.uk, and copied to David.Riddle@mpa.gov.uk;
12. 1 August 2004, Reply to Enston.

IX. The Federal Bureau of Investigation, US Embassy, and Interpol: Complaint 6

1. 10 May 1999, to Ambassador Stanley McLelland;
2. 11 October 1999, to McLelland;
3. 3 November 1999, from Assistant Regional Security Officer Robert Grech;
4. 5 November 1999, to Regional Security Officer Robert Reed;
5. 31 January 2005 and 10 February 2005, Complaint 6 (a), delivered by email to opakgn@pd.state.gov, and in person to Assistant Regional Security Officer Leonard Colston;
6. 31 January 2005, Complaint 6 (b), filed with FBI Tips and Public Leads, at https://tips.fbi.gov;
7. 31 January 2005, Complaint 6 (c), filed with the Internet Crime Complaint Centre at http://www.ic3.gov/;
8. 31 January 2005 and 1 February 2005, Email read receipts for first and last messages of Complaint 6 (a), from Evadne Barnes, US Embassy;
9. 1 February 2005, IFCC Complaint Referral Report, complaint number 105013115364847, received by email from complaints@ifccfbi.gov (attached file “IFCC-105013115364847.pdf”).

X. The Jamaican Law Enforcement Authorities

1. Complaints to Senator the Honourable A. J. Nicholson QC, Attorney General and Minister of Justice:

a. 7 September 2004, Letter and meeting;
b. 28 December 2004, emailed to agminister@moj.gov.jm;
c. 19 January 2005, emailed to agminister@moj.gov.jm

2. Complaints to Mr. Kent Pantry QC, Director of Public Prosecutions
   a. 29 October 1999
   b. 23 May 2000
   c. 15 September 2003
   d. 19 January 2004
3. Complaints to Police Commissioner Francis Forbes
   a. 13 August 1998, Statement No. 1;
   b. 11 October 1999, Statement No. 2 and letter;
   c. 23 May 2000 and 7 June 2000, Statement No. 3 and letter.

XI. Related Civil Complaints filed in the Supreme Court of Judicature of Jamaica

1. *Thompson v …..* 1994;
2. *Thompson v ….* 1998:
   a. Notice of Application filed by the Complainant, … 2006,
   b. Notice of Application filed by the Complainant, … 2006,
   c. Affidavit in support of Notice of Application, filed by the Complainant, … 2006,
   d. Particulars of Claim, filed by the Complainant, … 2006,
   e. Witness Statement, filed by the Complainant, … 2006,
   f. Statement of issues, filed by the Complainant … 2006;
3. *Thompson v …*, Writ of Summons and Statement of Claim, filed by the Complainant, … 2000.

XII. The Jamaican Government Executive

With the exception of (3) and (14), all communications received no reply.

1. 1 March 1994, to Mr. George Briggs, Permanent Secretary, Ministry of the Public Service;
2. 30 May 1994, to the Honourable Benjamin Clare, Minister of State, Ministry of Foreign Affairs and Foreign Trade;
3. 30 March 1995, to Cabinet Secretary the Honourable Dr. Carlton Davis;
4. 15 June 1995, Reply from Davis;
5. 26 March 1996, to the Honourable Seymour Mullings, former Minister of Foreign Affairs and Foreign Trade;
6. 2 May 1997, to Mullings;

7. 6 May 1997, to Davis;
8. 7 May 1997, to the Rt. Hon. P. J. Patterson, Prime Minister of Jamaica;
9. 30 May 1997, Memo to Mullings pursuant to meeting, listing proposed action;
10. 26 August 1997, to Mullings, updating memo above;
11. 6 October 1997, to Mullings;
12. 9 February 1998, to Mullings;
13. 20 April 1998, to Mullings enclosing draft of Mullings' proposed letter to Professor Rice;
14. 24 February 2000, to Dr. Wesley Hughes, Deputy National Authorising Officer, and Director, Planning Institute of Jamaica.
15. 20 March 2000, Reply from Hughes.

XIII. The Government of the United Kingdom and the European Commission

Other copies of major documents have also been emailed to members of the Government of the United Kingdom. These communications are too numerous to be listed here**.**

1. Correspondence with the British High Commission in Jamaica:
   a. 17 August 1998
   b. 24 August 1998
   c. 26 August 1998
   d. 28 August 1998, Reply
   e. 29 October 1998
   f. 9 November 1998, Reply
   g. 2 February 1999
   h. 5 From February 1999
   i. 24 March 1999
   j. 7 April 1999, Reply
   k. 10 May 1999
   l. 10 May 1999, Reply;
2. Correspondence with the Office of the Prime Minister, the Right Honourable Tony Blair:
   a. 5 May 1999,
   b. 11 October 1999,
   c. 2 July 2001, FedEx A/B 828848706064
   d. 20 July 2001, Acknowledgment from Mrs. S Eastwood, Direct Communications Unit
   e. 24 August 2001,
   f. 10 September 2001, Acknowledgment from Stephen Clarke, Direct Communications Unit,
   g. 25 September 2001,
   h. 11 October 2001, Acknowledgement from Lucy Rackham, Direct Communications Unit

i. 10 April 2002,
j. 23 April 2002, DfES Acknowledgment from James Heath,
k. 17 October 2002 FedEx A/B 8375 0135 7051,
l. Acknowledgment 28 October 2002;

3. Communications with the Secretary of State for Education and Skills, and the Home Department, the Right Honourable David Blunkett MP:
   a. 5 May 1999, Application for Intervention and Review,
   b. 11 October 1999,
   c. 24 October 1999, email confirmation by DfEE Officer Colin Parker (Dfee.MINISTERS@dfee.gov.uk) of receipt of 5 May 1999 Application (and associated documents) by Blunkett's Private Office, sent by the Complainant from challenger_057@yahoo.com;
   d. 16 March 2000, Reply from Blunkett's Office concerning Minister Stephen Timms' initiative,
   e. 2 July 2001, Amended Application for Intervention and Review, FedEx A/B 828848743790,
   f. 24 August 2001, FedEx A/B 830271205710
   g. 20 Dec 2001, Acknowledgment;
4. Letters to Jan Dubbeldam, Head of the Delegation of the European Commission in Jamaica, none of which were replied to:
   a. 13 May 1999,
   b. 11 October 1999,
   c. 2 February 2000,
   d. 11 April 2000;
5. 19 July 2002, Letter from Kevin Fulton, Department of Enterprise and Lifelong Learning, Scottish Executive,
6. Correspondence from Lord Hughes of Woodside and Alick Buchanan-Smith MP
   a. 17 July 1984, Reply from Hughes
   b. 21 July 1984, Reply from Buchanan-Smith
7. Correspondence with the First Minister of Scotland, the Right Honourable Henry McLeish:
   a. 20 April 2000, Reply from McLeish to Stephen Timms MP, 20 April 2000,
   b. 29 June 2001,
   c. 2 July 2001, FedEx A/B 828848743827;
8. Correspondence with the Secretary of State for Education and Skills, the Right Honourable Estelle Morris MP,
   a. 2 July 2001, FedEx A/B 828848743780,
   b. 6 Aug 2001, Acknowledgment from Blackburn.

9. Some correspondence with Lord Rooker:
   a. 12 June 1985, from
   b. 13 November 1985, from
   c. 9 September 1998,
   d. 7 October 1998, from
   e. 29 October 1998,
   f. 2 February 1999;
10. Correspondence with Stephen Timms MP by letter and email to Stephen@stephentimmsmp.org.uk, and through his assistant Gregg Stewart at greggs@parliament.uk:
   a. 29 February 2000,
   b. 7 March 2000,
   c. 7 March 2000, Email Reply,
   d. 9 March 2000, Letter from Timms to Blunkett,
   e. 11 March 2000, from,
   f. 28 March 2000,
   g. 14 April 2000,
   h. 18 April 2000,
   i. 26 April 2000, from,
   j. 10 May 2000,
   k. 12 May 2000, from,
   l. 12 May 2000,
   m. 2 July 2001, FedEx A/B 828848743805;
11. Correspondence with Universities UK:
   a. 9 and 10 November 1999, Email to CEO, Diana Warwick at Diana.Warwick@cvcp.ac.uk,
   b. 14 November 1999, Reply from Warwick,
   c. 2 July 2001, to Professor Sir Howard Newby, President Universities UK, FedEx A/B 828848743849,
   d. 31 August 2001, Reply from Dr. Tony Bruce, Policy Development Director;
12. Correspondence with the Parliamentary Ombudsman
   a. 2 July 2001, FedEx A/B 828848743838,
   b. 8 August 2001, Reply from McNeil
   c. 24 August 2001,
   d. 10 September 2001, Reply from Ogilvie,
   e. 25 September 2001,

f. 18 October 2001 from Ogilvie, falsely stating that the Complainant submitted an unsigned complaints form.

XIV. The International Criminal Court: The Complaint

1. 7 July 2004, to pio@icc-cpi.int;
2. 12 July 2004, to pio@icc-cpi.int;
3. 14 and 15 July 2004, *Pre-Indictment Advice and File of Evidence,* Complaint filed under Article 15 as 11-message series to pio@icc-cpi.int and OTP.InformationDesk@icc-cpi.int;
4. 15 July 2004, Acknowledgment from OTP.InformationDesk@icc-cpi.int;
5. 15 July 2004, Acknowledgment from OTP.InformationDesk@icc-cpi.int;
6. 19 July 2004, to OTP.InformationDesk@icc-cpi.int;
7. 22 July 2004, to OTP.InformationDesk@icc-cpi.int;
8. 28 July 2004, to OTP.InformationDesk@icc-cpi.int;
9. 5 August 2004, to pio@icc-cpi.int;
10. 10 September 2004, to OTP.InformationDesk@icc-cpi.int ;
11. 15 September 2004, to OTP.InformationDesk@icc-cpi.int ;
12. 15 September 2004, to pio@icc-cpi.int;
13. 22 November 2004, *Explanatory Notes and Amendments* etc. to OTP.InformationDesk@icc-cpi.int ;
14. 30 November 2004, to OTP.InformationDesk@icc-cpi.int ;
15. 1 December 2004, Acknowledgment from OTP.InformationDesk@icc-cpi.int ;
16. 3 January 2005, to OTP.InformationDesk@icc-cpi.int ;
17. 19 January 2005, *Complaint against the Prosecutor* filed under Rule 26, to pio@icc-cpi.int;
18. 19 January 2005, to OTP.InformationDesk@icc-cpi.int ;
19. 19 January 2005, to pio@icc-cpi.int;
20. 19 January 2005, to OTP.InformationDesk@icc-cpi.int ;
21. 20 January 2005, Acknowledgment from pio@icc-cpi.int;
22. 4 February 2005, Resubmitted Complaint to the Presidency against the Prosecutor to pio@icc-cpi.int;
23. 2 March 2005, Review Letter from the Office of the Prosecutor, OTP.InformationDesk@icc-cpi.int ;
24. 2 March 2005, to OTP.InformationDesk@icc-cpi.int ;
25. 2 March 2005, to OTP.InformationDesk@icc-cpi.int ;
26. 3 March 2005, Re Review letter of 2 March from OTP.InformationDesk@icc-cpi.int ;
27. 4 March 2005, to pio@icc-cpi.int;

28. 4 October 2005, to pio@icc-cpi.int;
29. 5 October2005, to pio@icc-cpi.int;
30. 5 January 2006, to OTP.InformationDesk@icc-cpi.int;
31. 5 January 2006, Reply from OTP.InformationDesk@icc-cpi.int;
32. 10 February 2006, to OTP.InformationDesk@icc-cpi.int;
33. 5 October 2006, to OTP.InformationDesk@icc-cpi.int, and by FedEx A/B 855473333900.

XV. The Organisation of American States

Complaints to the OAS filed with Dr. Santos Mahung, Director, Department of Fellowships and Training - none of which received a reply.

1. 15 November 2004, delivered by Federal Express and email to smahung@oas.org;
2. 18 November 2004, delivered by email to smahung@oas.org;
3. 7 January 2005, delivered by registered mail and email to smahung@oas.org;
4. 19 January 2005, delivered by email to smahung@oas.org;
5. 3 November 2005, delivered by email to smahung@oas.org.

APPENDIX B

Index of Article 15 Filing by Email

Series of 16 messages, I – XVI, emailed to OTP.InformationDesk@icc-cpi.int. Each entry corresponds to name of a folder containing files exhibited to this brief.

I. Basic ICC Documents Filed (Appendix A XIV)

A. Pre-Indictment Brief

B. 2004 Article 15 Filings

1. Inquiry 7 July 2004
2. Pre-Indictment Advice 14.07.2004 Part 1 of 11
3. ICC 22.11.2004
4. Explanatory Notes and Amendments
5. ICC 03.01.2005
6. ICC 18.01.2005

C. OTP Responses

1. ICC 15.07.2004
2. ICC 01.12.2004
3. ICC 02.03.2005

II. The University of Aberdeen Part 1 (Appendix A I)

A. University Appeal 1983 Part 1

1. Smith 29 July 1982
2. Senate 29 June 1983
3. Keir Annotations June 1982
4. University Decision 21 Oct 1983

B. University Appeal 1983 Part 2

1. Oriental Students 16 Sept 1983
2. Ogston 19 Nov 1985
3. Keir 4 May 1988

III. The University of Aberdeen Part 2 (Appendix A I)

C. Letters of Demand

1. Rice 24 Nov 1997
2. Registry 18 Feb 2002
3. Cannon 19 Feb 2002
4. Cannon 25 Feb 2002

5. Rice 4 April 2002
6. Rice 7 October 2002
7. Rice 6 January 2004
8. Webb 23 Dec 2002

D. Forged Documents

1. Transcript 12 Jan 1988
2. Transcript 15 May 1992
3. Transcript 24 April 2002
4. Marks 10 Feb 2003

IV. The University of Aberdeen Part 3 (Appendix A I)

E. Responses Part 1

1. Park 25 April 1991
2. Murray 20 May 1992
3. Irvine 8 May 1996
4. Irvine 20 August 1996
5. Rice 29 Jan 1998
6. Registry 28 Feb 2002
7. Gordon 6 March 2002
8. Cannon 21 June 2002
9. Cannon 10 July 2002
10. Webb 28 Nov 2002

V. The University of Aberdeen Part 4 (Appendix A I)

F. Responses Part 2

1. Jones 10 February 2003
2. Cannon 21 February 2003
3. Webb 28 Feb 2003
4. Webb 16 Jan 2004

VI. MIT & the University of Stanford (Appendix A II)

A. Complaints

1. Wrighton 24 Jan 1993
2. MIT Corporation 2 July 2001

B. Responses

1. Wrighton 5 May 1993
2. Wiley 26 Sept 1994

C. Official Instruments
   1. OAS 29 Aug 1991.
   2. University of Stanford March 1994 & 1995

VII. The Commission for Racial Equality Part 1 (Appendix A III)

A. German Initiative
   1. Requests 1984-5
   2. Responses 1984-5
   3. Wrighton 10 May 1992

B. Documents, Race Relations Act 1976 Part 1
   1. Green Form 23 June 1983
   2. RR651a Questionnaire 9 Oct 1983
   3. RR651b Reply 11 Nov 1983 Part 1
      a) Header

VIII. The Commission for Racial Equality Part 2 (Appendix A III)

C. Documents, Race Relations Act 1976 Part 2
   1. RR651b Reply 11 Nov 1983 Part 2
      a) Annexure A

IX. The Commission for Racial Equality Part 3 (Appendix A III)

D. Documents, Race Relations Act 1976 Part 3
   1. RR651b Reply 11 Nov 1983 Part 3
      a) Annexure E
      b) Annexure F
      c) Annexure G

X. The Commission for Racial Equality Part 4 (Appendix A III)

E. CRE Lobby
   1. Menon Responses 1984
      a) Menon 6 Feb 1984
      b) Menon 1 March 1984
   2. Newsam 22 May 1984

XI. UK Law Enforcement (Appendices A IV - VIII)

A. The MPS (Appendix A IV)
   1. Complaint 1

B. The PCA (Appendix A V)

1. Complaint 2 (a)
    a) Complaint 2 (a) 20-21 Jan 2004
    b) PCA Notification 23 Jan 2004
2. Complaint 2 (b)
    a) Complaint 2 (b) 10 Feb 2004
    b) PCA Notification 25 Feb 2004
3. Complaint 2 (c)
    a) Complaint 2 (c) 12 Feb 2004
    b) Howell 9 Feb 2002

C. The SFO (Appendix A VI)

1. Complaint 3 (a)
    a) Complaint 3 (a) 11 & 13 Feb 2004
    b) Jackson 27 Feb 2004
2. Complaint 3 (b)
    a) Complaint 3 (b) 3 March 2004
    b) Kiernan 22 March 2004

D. The Law Officers (Appendix A VII)

1. Complaint 4 (a) 18 March 2004
2. Complaint 4 (b) 30 March 2004
3. Hussain 21 April 2004

E. The IPCC and MPA (Appendix A VIII)

1. Complaint 5 (a)
    a) Complaint 5 (a) 4 May 2004
    b) Rodgers 11 May 2004
2. Complaint 5 (b)
    a) Complaint 5 (b) 20 May 2004
    b) Porter May - June 2004
    c) Riddle 3 June 2004
3. Complaint 5 (c)
    a) Complaint 5(c) 10 June 2004
    b) Harris 16 June 2004
    c) Enston 7 July 2004
    d) Price 7 July 2004
    e) Riddle 15 July 2004
4. Complaint 5 (d)
    a) Complaint 5 (d) 28 July 2004

b) Enston 1 August 2004

XII. USA and Jamaican Jurisdiction (Appendices A IX - XI)

A. The FBI, Embassy of the USA, and Interpol (Appendix A IX)

1. US Regional Security Office 1999
    a) Grech 3 Nov 1999
    b) Reed 5 Nov 1999
2. Complaint 6 (a)
    a) Complaint 6 (a) RSO 31 Jan & 10 Feb 2005
    b) Email Read Receipts
3. Complaint 6 (b)
    a) Complaint 6 (b) FBI Tips 31 Jan 2005
4. Complaint 6 (c)
    a) Complaint 6 (c) IFCC 31 Jan 2005
    b) IFCC Automatic Responses

B. Jamaican Law Enforcement (Appendix A X)

1. Attorney General Nicholson
    a) Attorney General 7 Sept 2004
    b) Attorney General 28 Dec 2005
2. DPP Pantry
    a) Pantry 29 Oct 1999
    b) Pantry 23 May 2000
    c) Pantry 15 Sept 2003
    d) Pantry 19 Jan 2004
3. Police Commissioner Forbes
    a) Statement No 1, 13 Aug 1998
    b) Statement No 2, 11 October 1999
    c) Statement No 3, 23 May 2000

C. Related Civil Complaints (Appendix A XI)

1. Thompson v …
    a) Notice of Application filed … 2006
    b) Notice of Application filed … 2006
    c) Affidavit filed … 2006
    d) Particulars of Claim filed … 2006
    e) Statement of Issues filed … 2006
    f) Witness Statement filed … 2006
2. Thompson v …

a) Writ and Statement of Claim … 2000

XIII. The Jamaican Government Executive (Appendices A XII)

A. Minister Clare

1. Clare 30 May 1994

B. Secretary Davis

1. Davis 14 March 1995
2. Davis 15 June 1995
3. Davis 6 May 1997

C. Minister Mullings

1. Mullings 2 May 1997
2. Mullings 30 May 1997
3. Mullings 26 August 1997

D. Director General Hughes

1. Hughes 24 Feb 2000
2. Hughes 20 March 2000

XIV. The Government of the UK Part 1 (Appendix A XII)

A. The British High Commission

1. Thomas 17 Aug 1998
2. Thomas 24 Aug 1998
3. Thomas 26 Aug 1998
4. Thomas 28 Aug 1998
5. Malcolm 9 Nov 1998
6. Malcolm 10 May 1999

B. Prime Minister Blair

1. Blair 2 July 2001
2. Eastwood 20 July 2001
3. Heath 23 April 2002
4. Blair 17 Oct 2002
5. Taylor 29 Oct 2002

C. First Minister McLeish

1. McLeish 2 July 2001
2. McLeish 20 April 2000
3. Fulton 19 July 2002

D. Secretary Blunkett

1. Application 5 May 1999

2. Blunkett 11 Oct 1999
3. DfEE 16 March 2000
4. Blunkett 2 July 2001
5. Blunkett 24 Aug 2001
6. Blunkett 20 Dec 2001

E. Secretary Morris

1. Morris 2 July 2001
2. Morris 6 Aug 2001

XV. The Government of the UK Part 2 (Appendix A XIII)

F. Minister Timms

1. Timms 29 Feb 2000
2. Timms 7 March 2000
3. Timms 11 March 2000
4. Timms 26 April 2000

G. Lord Rooker

1. Rooker 12 June 1985
2. Rooker 13 November 1985
    a) Rooker 13 Nov 1985
    b) Ministerial Powers 7 Oct 1985
    c) PQ 4 July 1984
3. Rooker 9 Sept 1998
4. Rooker 7 Oct 1998
5. Rooker 29 October 1998
6. Rooker 2 February 1999

H. Universities UK

1. Warwick 10 Nov 1999
2. Warwick 14 Nov 1999
3. Newby 2 July 2001
4. Newby 31 Aug 2001

I. The Parliamentary Ombudsman

1. PO 2 July 2001
2. PO 8 August 2001
3. PO 24 August 2001
4. PO 10 September 2001
5. PO 25 September 2001
6. 18 October 2001

XVI. The EU Commission, & the OAS (Appendix A XIII & XV)

A. The EU Commission

1. Dubbeldam 13 May 1999 - 2 Feb 2000

B. The OAS

1. Mahung 15 November 2004
2. Mahung 18 November 2004
3. Mahung 7 January 2005
4. Mahung 19 January 2005
5. Mahung 3 November 2005

APPENDIX C

Index of Backup Filing via Federal Express Fedex AirBill No. 855473333900

		Appendix A	Appendix B	Page
I.	**Pre-Indictment Brief 05.10.2006**	I.A	XIV.33	
II.	**Exhibits**			
AGT 1.	Complaint 1: Criminal Complaint against the University of Aberdeen and others, 6 Jan 2004, filed with the MPS.	IV.1	XI.A.1	5
AGT 2.	Application to the UK Government:			
a.	Application for Intervention and Review to the Secretary of State, 5 May 1999 amended 2 July 2001;	XIII.3.a, e	XIV.D.1,4	14, 15
b.	Response from former First Minister for Scotland, the Right Hon. Henry McLeish MSP, 20 April 2000.	XIII.7.a	XIV.C.2	20
AGT 3.	CRE Documents:			
a.	Green Form 23 June 1983;	III.1	VII.B.1	
b.	Questionnaire served under the Race Relations Act 1976, s. 65 (1) (a), 9 Oct 1983;	III.2	VII.B.2	9
c.	Reply from the University pursuant to s. 65 (1) (b), 11 Nov 1983;	III.3	VII.B.3, VIII.C.1, IX.D.1	9, 68
d.	Letters from CRE Principal Education Officer Menon, 6 Feb 1984 and 1 March 1984;	III.5-6	X.E.1	69
e.	Letter from Newsam to Hughes 22 May 1984;	III.7	X.E.2	10
f.	Correspondence between CRE Principal Education Officer German and the University of Aberdeen, 15 Aug 1984 to 29	III.8	VII.A.1-2	10

July 1985.			
AGT 4. Letter of Protest from Engineering Honours awardees Tang and Tam, 16 Sept 1983.	I.4	II.B.1	9
AGT 5. Forged Documents:			
a. Student Transcript 12 Jan 1988;	1.7	III.D.1	13
b. Student Transcript 15 May 1992;	I.11	III.D.2	14
c. Student Transcript 24 April 2002;	I.27	III.D.3	16
d. Statement of Marks 10 Feb 2003.	I.35	III.D.4	17
AGT 6. Responses from the University:			
a. Vice-Chancellor Rice, 29 Jan 1998;	I.20	IV.E.5	14
b. University Secretary Canon, 10 July 2002;	I.30	IV.E.9	16
c. University Secretary Canon, 21 Feb 2003;	I.36	V.F.2	17
d. Academic Registrar Webb, 16 Jan 2004.	I.39	V.F.14	8
AGT 7. Documents Pertaining to MIT:			
a. OAS statement to MIT Bursar pledging fees for graduate degree programme, 29 Aug 1991;	II.1	VI.C.1	11
b. Letter from former CRE Principal Education Officer German, to MIT Provost Wrighton, 10 May 1992.	III.9	VII.A.3	69
III. Attachments			
1. *Pre-Indictment Advice*, filed under Article 15 by email to OTP.InformationDesk@icc-cpi.int, 14 July 2004.	VII.4, XIV.3	I.B.2	
2. Diskettes of copy filings under Article 15:			
a. Email Message 1/11, 14 July 2004, *Pre-Indictment Advice and File of Evidence Part 1*;	VII.4, XIV.3	I.B.2	
b. Email Message 1/16, 5 October 2006, *OTP-CR-313/04* : *I Basic ICC Documents Filed.*	XIV.33	I	

APPENDIX D : Addresses of Defendants