## Resolutions, Declarations, and Other Documents

**1. Executive Order - Improving Critical Infrastructure Cybersecurity (Feb. 12, 2013)**
*<http://www.whitehouse.gov/the-press-office/2013/02/12/executive-order-improving-critical-infrastructure-cybersecurity>*

President Barack Obama signed an Executive Order on cybersecurity on February 12, 2013. The Order aims to "enhance the security and resilience of the Nation's critical infrastructure and to maintain a cyber environment that encourages efficiency, innovation, and economic prosperity while promoting safety, security, business confidentiality, privacy, and civil liberties." The Order expands information sharing on unclassified government cyber threat information and protection efforts with U.S. private sector entities. It also expands the Enhanced Cybersecurity Services program, which provides classified cyber threat and technical information to all eligible critical infrastructure companies or commercial service providers. The Order charges the National Institute of Standards and Technology with developing a framework of cybersecurity practices to reduce cyber risks to critical infrastructure.

## Judicial and Similar Proceedings

**1. Horváth and Kiss v. Hungary (Eur. Ct. H.R. Jan. 29, 2013)**
*<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-116124>*

The European Court of Human Rights ruled that the placement of two Hungarian children of Roma origin in schools for the mentally disabled was a violation of Article 2 of Protocol No. 1 (right to education) read in conjunction with Article 14 (prohibition on discrimination) of the European Convention on Human Rights.

The applicants are Hungarian nationals of Roma origin. Between 2000 and 2001, both applicants were placed in remedial schools for the mentally disabled based on the recommendation of an expert panel. The expert panel tested both boys using various IQ testing methods, revealing disparate results depending on the test administered. In 2005, both were tested by independent experts, who found that neither of them was mentally disabled and that both were capable of being educated in a school with a normal curriculum.

The applicants jointly filed a claim for damages with the regional court in 2006 against the testing panel, the local county council, and the remedial school, alleging a violation of the principle of equal treatment under the Hungarian Civil Code and the Act on Public Education. They claimed that the expert panel's decisions were discriminatory on the basis of their ethnicity, that there were systematic errors in the diagnostic system itself leading to the disproportionate diagnosis of Roma children, and that the parents had been excluded from the testing process in violation of applicable rules. The regional court found that the applicants' rights had been violated and ordered damages of 1,000,000 Hungarian Forints to be paid to each applicant.

The appeals court reversed the regional court's ruling, finding that the placement of the children in remedial schools did not have any connection to their ethnic origin. The Supreme Court upheld the appeals court decision with regard to the discrimination claim, but noted that the "systematic errors" complained of may give rise to a human rights claim in the European Court of Human Rights.

In 2011, the applicants filed a claim with the European Court under Article 2 of Protocol 1 and Article 14 of the European Convention on Human Rights. In its decision in favor of the applicants, the Court noted that "[s]cholarly literature suggests that the systematic misdiagnosis of Roma children as mentally disabled has been a tool to segregate Roma children from non-Roma children in the public school system since at least the 1970s," and that Roma children in Hungary are classified as "disabled" in significantly higher proportions than non-Roma children. The government did not dispute these figures or provide alternate statistical data. The Court concluded that the segregation amounted to indirect discrimination, and the government therefore had to prove that the difference in treatment had no disproportionately prejudicial effects. While the Court accepted the government's reasoning that the establishment of the special schools was motivated by an intention to assist children with special needs, the state "failed to prove that it has provided guarantees needed to

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avoid the misdiagnosis and misplacement of the Roma applicants." The Court therefore found that the applicants suffered discriminatory treatment and that a violation of Article 14 of the Convention taken in conjunction with Article 2 of Protocol No. 1 had occurred. As the applicants had not made damage claims, the Court ordered the Hungarian government to pay 4,500 Euros jointly to the applicants for costs.

**2. Justin Mugenzi and Prosper Mugiraneza v. The Prosecutor (ICTR Feb. 4, 2013)**
*<http://www.unictr.org/Portals/0/Case%5CEnglish%5CMugenzi%5CJudgment%5C130204-Appeal%20Judgment.pdf>*

The Appeals Chamber of the International Criminal Tribunal for Rwanda, in a judgment on February 4, 2013, reversed the Trial Chambers' convictions of Justin Mugenzi and Prosper Mugiraneza for direct and public incitement to commit genocide, entered a verdict of acquittal, and ordered the immediate release of the accused from custody.

Mugenzi and Mugiraneza are both from the Kibungo Prefecture of Rwanda, and in 1994, were Ministers in the Interim Government. In a Cabinet meeting on April 17, 1994, then-prefect of the Butare Prefecture, Jean-Baptiste Habyalimana, a Tutsi, was dismissed from his post. During the installation ceremony of the new prefect, Sylvain Nsabimana, Interim President Théodore Sindikubwabo delivered an inflammatory speech calling for the killing of Tutsis. Mugenzi and Mugiraneza attended the ceremony. The trial chamber found Mugenzi and Mugiraneza guilty of conspiracy to commit genocide based on their roles in the removal of Habyalimana from his post, and of direct and public incitement to commit genocide based on their roles in the installation ceremony of Nsabimana. They were each sentenced to 30 years imprisonment.

On appeal, Mugenzi and Mugiraneza challenged their convictions on various grounds, including alleged violations of their right to a fair trial, such as undue delay and violation of Rule 68's disclosure of evidence requirements. The Appeals Chamber dismissed the appeals related to fair trial with Judge Robinson dissenting in part.

The defendants also challenged their convictions for conspiracy based on improper consideration of the evidence below. The Appeals Chamber noted that "a conviction for conspiracy to commit genocide may be based on circumstantial evidence but that, where an inference of guilt is drawn from circumstantial evidence, it must be the only reasonable inference available from the evidence." The Appeals Chamber found that the Trial Chamber failed to consider evidence that "Habyalimana was removed from his post for administrative reasons, in particular, as a result of a prior agreement between the PSD and PL to switch control over the Kibungo and Butare Prefectures, for failing to attend a key meeting of prefects in Kigali . . . without explanation, and because of his perceived links with the [Rwandan Patriotic Front]." In light of this evidence, the Appeals Chamber found that the Trial Chamber "erred in concluding that the only reasonable inference that could be drawn from the circumstantial evidence is that Mugenzi and Mugiraneza possessed the requisite *mens rea* for a conviction for conspiracy to commit genocide."

With respect to the direct and public incitement to commit genocide charge, the defendants challenged the Trial Chamber's finding that they possessed the requisite *mens rea* due to their attendance at the speech by President Sindikubwabo. The Appeals Chamber noted that the intent requirement for this charge is "the specific intent for genocide." The Trial Chamber found the specific intent existed because the defendants participated in the removal of Habyalimana as prefect. However, during the trial, additional evidence was presented that Mugenzi and Mugiraneza attended the ceremony where the President delivered an inflammatory address as a result of obligations arising from their positions as ministers, and the Appeals Chamber notes that no direct evidence was presented that the defendants met with Sindikubwabo prior to the ceremony or were engaged in pre-planning before the speech. The Appeals Chamber thus found that the Trial Chamber erred in concluding that the only reasonable inference from the evidence was that Mugenzi and Mugiraneza had the specific intent required for the direct and public incitement to commit genocide charge.

Judge Liu dissented from the reversal of the convictions and the entry of a verdict of acquittal. In his view, the defendants "failed to demonstrate that the Trial Chamber erred by not giving sufficient credence to the evidence on the record . . . [and] have likewise failed to show that the Trial Chamber exceeded the scope of

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its discretion in weighing the evidence and in rejecting alternative explanations for Kabyalimana's removal." He finds that the majority's "conclusion is without foundation and exceeds the purview of the Appeals Chamber."

**3. Fourth Interim Award on Interim Measures of the Tribunal Constituted Under the Permanent Court of Arbitration in the Matter of an Arbitration Between Chevron Corporation and the Republic of Ecuador (Feb. 7, 2013)**
*<http://www.theamazonpost.com/wp-content/uploads/Fourth-Interim-Award-on-Interim-Measures.pdf>*

In the Permanent Court of Arbitration case No. 2009-23, convened under the U.S.-Ecuador Bilateral Investment Treaty, a Tribunal found on February 7, 2013 that Ecuador violated the Tribunal's prior Interim Awards by failing to take measures to prevent the attempted enforcement of a $19 billion judgment against Chevron Corporation abroad. That judgment, issued in February of 2011 and made final in August 2012, held that Chevron was liable to plaintiffs living in Ecuador's Lago Agrio region, who sued the company over environmental damage to the area's rain forest. The plaintiffs in the Lago Agrio case have since sought the judgment's enforcement in Canada, Brazil, and Argentina.

The arbitration in this case began in 2009 under the Treaty between the United States of America and the Republic of Ecuador concerning the Encouragement and Reciprocal Protection of Investment, signed on 27 August 1993, and following the Arbitration Rules of the United Nations Commission of International Trade Law of 1976. With administrative support from the Permanent Court of Arbitration, the Tribunal issued three Interim Awards on Interim Measures between January 25, 2012 and February 27, 2012. Of note, the First and Second Interim Awards ordered that the Respondent Ecuador "take all measures at its disposal to suspend or cause to be suspended the enforcement or recognition within and without Ecuador of any judgment against the First Claimant [Chevron] in the Lago Agrio Case."

The Tribunal found in its latest award that "the Lago Agrio Judgment was made final, enforceable and subject to execution . . . in violation of the Tribunal's First and Second Interim Awards." The Tribunal stressed that its prior orders and awards "were directed not only to the Respondent's executive branch but to all branches and organs that make up the Respondent as a state, including its judiciary and legislature." The Tribunal noted that it is the only body with the power to restrain Ecuador from "aggravating the Parties' dispute," and pointed out the significant risk to fairness in the arbitration proceedings if the Lago Agrio judgment was enforced in multiple localities. Therefore, the Tribunal wrote that it "confirms and declares, as a matter of international law, that [Ecuador] has a continuing obligation to ensure that the commitments that it has given under the Treaty and the UNCITRAL Rules are not rendered nugatory by the finalization, enforcement, or execution of the Lago Agrio Judgment."

The Tribunal further required that Ecuador should show cause as to why the Tribunal should not now compensate Chevron for "any harm caused" by Ecuador's noncompliance with the Tribunal's prior awards. The Tribunal has still not decided on any of the substantive merits of the dispute.

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