

Forum for International Criminal Justice Newsletter: March 2018

Welcome to the IAP's Forum for International Criminal Justice (FICJ) March 2018 Newsletter which focuses on the prosecution of war crimes, crimes against humanity and genocide, including a roundup of video highlights, legal analysis, announcements, events, new publications and major news developments from the past month.

This Newsletter also includes a special in-depth interview with **Clair Duffy** who candidly speaks about her experience prosecuting atrocity crimes and working in the field of international criminal justice.

***Please have a look at the [FICJ forum](#) page on the IAP website and feel free to contribute:** the Forum provides individual prosecutors with a password protected space to post news, announcements, etc. and to pose questions to fellow prosecutors from around the world. Your contributions will also be posted in this monthly newsletter. Passwords are provided to IAP members – if you do not have a password, check your membership status by contacting the IAP Secretariat: info@iap-association.org.



Danya Chaikel – IAP FICJ Coordinator | email: ficj@iap-association.org

Video Highlights



[Click here](#) to watch Sarah Kihika Kasande, Head of Office in Uganda for the Intl Center for Transitional Justice, speaking to Wayamo Foundation's Judie Kaberia about the challenges facing African states when investigating and prosecuting intl crimes



[Click here](#) to watch the CICC's launch of the commemorations of the 20th anniversary of the Rome Statute, with speeches by ICC officials, state representatives, regional and international organizations, and civil society



FICJ

Forum for International Criminal Justice

ICC Prosecutor opens historic preliminary examinations into crimes in the Philippines and in Venezuela

Statement of ICC Prosecutor Fatou Bensouda of 8 February 2018:

Since 2016, I have closely followed the situations in the Republic of the Philippines and in the Bolivarian Republic of Venezuela. Both countries are States Parties to the Rome Statute. Following a careful, independent and impartial review of



a number of communications and reports documenting alleged crimes potentially falling within the jurisdiction of the ICC, I have decided to open a preliminary examination into each situation.

The preliminary examination of the situation in the Philippines will analyse crimes allegedly committed in this State Party since at least 1 July 2016, in the context of the "war on drugs" campaign launched by the Government of the Philippines. Specifically, it has been alleged that since 1 July 2016, thousands of persons have been killed for reasons related to their alleged involvement in illegal drug use or dealing. While some of such killings have reportedly occurred in the context of clashes between or within gangs, it is alleged that many of the reported incidents involved extra-judicial killings in the course of police anti-drug operations.

The preliminary examination of the situation in Venezuela will analyse crimes allegedly committed in this State Party since at least April 2017, in the context of demonstrations and related political unrest. In particular, it has been alleged that State security forces frequently used excessive force to disperse and put down demonstrations, and arrested and detained thousands of actual or perceived members of the opposition, a number of whom would have been allegedly subjected to serious abuse and ill-treatment in detention. It has also been reported that some groups of protestors resorted to violent means, resulting in some members of security forces being injured or killed.

Under the Rome Statute, national jurisdictions have the primary responsibility to investigate and prosecute those responsible for international crimes. I emphasise that a preliminary examination is not an investigation but a process of examining the information available in order to reach a fully informed determination on whether there is a reasonable basis to proceed with an investigation pursuant to the criteria established by the Rome Statute. Specifically, under article 53(1) of the Rome

Join the FICJ community: WWW.IAP-ASSOCIATION.ORG/FICJ/HOME

Follow us on twitter: [@iaprosecutors](https://twitter.com/iaprosecutors)

Statute, I, as Prosecutor, must consider issues of jurisdiction, admissibility and the interests of justice in making this determination.

In conformity with the complementarity principle, which is a cornerstone of the Rome Statute legal system, and within the framework of each preliminary examination, my Office will be engaging with the national authorities concerned with a view to discussing and assessing any relevant investigation and prosecution at the national level.

In the independent and impartial exercise of its mandate, my Office will also give consideration to all submissions and views conveyed to it during the course of each preliminary examination, strictly guided by the requirements of the Rome Statute.

There are no statutory timelines on the length of a preliminary examination. Depending on the facts and circumstances of each situation, I will decide whether to initiate an investigation, subject to judicial review as appropriate; continue to collect information to establish a sufficient factual and legal basis to render a determination; or decline to initiate an investigation if there is no reasonable basis to proceed.

I reiterate that my Office undertakes this work with full independence and impartiality in accordance with its mandate and the applicable legal instruments of the Court. As we do, we hope to count on the full engagement of the relevant national authorities in the Philippines and Venezuela.

The ICC would have jurisdiction over genocide, crimes against humanity and war crimes if committed on the respective territories of the Philippines and Venezuela or by their respective nationals since the date when the Statute entered into force in each State, namely since 1 November 2011 in the case of Philippines, and since 1 July 2002, in Venezuela.

The ICC must become a champion of justice over abuse of power

Amnesty International, opinion by Legal Adviser Jonathan O'Donohue who reflects on the 20th anniversary of the Rome Statute not as a time for celebration but a crisis point for international justice that demands robust action by the ICC

Twenty years after the Statute of the ICC was adopted in Rome, its core goal of 'ending impunity' is still so far out of reach that, in marking the anniversary, many supporters of international justice no doubt wonder where to go from here. In my view, it is simple: the ICC must be resolute in bringing power to justice. The world is very different than it was in 1998. For that brief period at the turn of the century human rights dominated the international agenda. In the aftermath of the horrific crimes committed in the former Yugoslavia and Rwanda, the initiative to develop a permanent system of

Join the FICJ community: WWW.IAP-ASSOCIATION.ORG/FICJ/HOME

Follow us on twitter: [@iaprosecutors](https://twitter.com/iaprosecutors)

international justice caught the imagination of the vast majority of states and civil society groups around the globe.

Disturbingly, since 9/11, states support for such ideals has waned. The Statute adopted in Rome would not see the light of day if the negotiations took place now.

Armed conflicts are as prevalent as ever, with civilians

continuing to experience the brunt of the violence. “Wars” on terror and drugs, as well as repression and exploitation by state and non-state actors, including corporations, have escalated in almost all corners of the globe. Extremist politics advocating religious and racial hatred, misogyny and persecution of marginalized groups have gained traction in a disturbing number of states. Abuse of power has been exposed almost everywhere that power exists.



In this context, the system of international justice developed in Rome should stand as a beacon of hope for accountability – the ICC a powerful mechanism to hold abuse of power in check. Instead it is barely relevant. This is only partly due to the UN Security Council’s shameful record of refusing to refer situations like Syria to the ICC Prosecutor.

For the most part of the ICC’s work since its establishment in 2002, the Office of the Prosecutor (OTP) has been too meek in calling on national authorities to fulfil their primary obligations to deliver justice in situations where it has jurisdiction; too accommodating in its consideration of deeply flawed national justice efforts; too slow in opening investigations, except in Africa; and too reluctant to pursue justice against those holding positions of power, particularly at the state level. Where the Court has stepped in, its adherence to fair trial rights in some cases and its inconsistent treatment of victims in the proceedings have fallen well short of serving as a model of justice. The level of support, cooperation (in particular arresting and surrendering suspects) and resources provided by states parties to the Statute has been and remains hopelessly inadequate.

The reality is that with crimes against humanity and war crimes being committed at alarming rates, the ICC is currently conducting three trials with few others in sight.

For these reasons, regrettably, there is little to celebrate around the 20th anniversary of the Rome conference. Instead, the milestone marks a crisis point in international justice from which there is no easy way forward. The ICC faces a long hard road to establish its credibility in light of its initial failures, including navigating an unambitious Assembly of States Parties and regaining the confidence of disappointed civil society groups.

To its credit, the ICC has started to take significant steps to strengthen its work, although much more must be done. The OTP’s strategies on preliminary examination, case selection and addressing sexual and gender based crimes (overlooked in some of its first cases) will go a long way to addressing many

of its flaws, provided they are fully, transparently and consistently implemented. The Court is also taking important steps to [review](#) the low level of legal aid it provides to the defence compared to other international criminal courts and to improve its strategy in relation to victims.

New efforts by the Office to launch an investigation in Afghanistan, including on allegations of torture by US forces, and to [open a preliminary examination](#) into killings committed in the context of the Philippines government's so called "war on drugs" campaign are significant steps towards [finally](#) repairing some of the damage caused by its myopic focus on non-state actors in Africa. Moreover, such measures, that take a stand against the worst abuses of power falling under the ICC's jurisdiction, are vital to establish the Court's relevance at this point in history.

The notion of employing international criminal law to bring power to justice is not revolutionary – it is at the core of the international criminal justice project, although appallingly implemented. Robert H. Jackson stated in 1945:

We do not accept the paradox that legal responsibility should be the least where power is the greatest. We stand on the principle of responsible government... that even a King is still "under God and the law."

A number of provisions of the ICC's Statute (notably Article 27 on the irrelevance of official capacity) specifically equip the Court to prosecute those in positions of power. The OTP's obligations to perform its functions with independence, impartiality and objectivity implicitly mandate the Office to confront and not to shy away from the most politically challenging investigations and cases.

Of course, bringing power to justice is never easy. Advancing such efforts may appear politically counterintuitive at a time when the Court is often denied the support it requires from states and Sudanese President Omar al-Bashir continues to evade arrest and surrender to the Court. But the ICC is not and must never become a political institution. It is a judicial body and its strength depends first and foremost on its integrity, impartiality and independence in pursuing justice.

In order to hold power to account, the ICC's exercise of its own powers must be beyond reproach in all situations. Consistent with its mantra '[without fear or favour](#)', the OTP must vigorously pursue justice everywhere it has jurisdiction, regardless of the political obstacles or consequences. Its immediate priorities should be to open a long overdue preliminary examination into allegations of crimes against humanity committed in the context of the so-called "war on drugs" in [Mexico](#) and to reach prompt, transparent and convincing decisions on whether to open investigations into crimes committed in Colombia, Guinea, Iraq, Nigeria, Palestine and Ukraine. All of its investigations must consider the criminal responsibility of both state and non-state actors, including expanding the scope of its inquiries to target corporate complicity, where relevant.

Inevitably, bringing power to justice invites a volatile relationship with states. This is an unavoidable consequence of an independent ICC and will be an ongoing challenge for the Court. As South Africa's ongoing efforts to [withdraw](#) from the Statute shows, even the strongest supporters of the ICC can be fickle when their geopolitical interests are affected by the Court's activities. Nonetheless, the likelihood of political attacks and challenges in securing the support, cooperation and resources must not weaken the ICC's resolve. Regrettably, the Court's conviction in the face of such political pressures has too often been lacking, as demonstrated when the President of the ICC obsequiously [remarked](#) at the last Assembly of States Parties that:

'the 20th anniversary offers a golden opportunity to discuss whether the ICC community is ready to sustain in the next 20 years a strong and effective Court.'

As an independent prosecutorial and judicial body, the ICC should never throw itself at the mercy of states in this way. Instead, the onus is on the ICC to lead its way out of the current crisis with a clear vision of its work and conviction in the demands it makes of states parties – no matter how unpopular they may be with some. To start with, it must stop allowing pressure by Canada, France, Germany, Italy, Japan and the UK to influence the level of its annual budget requests and demand the resources it needs to function effectively for 2019 and future years.

Although state support cannot always be guaranteed, it will be more likely if the ICC regains the active support of the thousands of civil society groups that supported its establishment and if the Court wins broader public support for its work. Although many civil society groups are disappointed with the work of the ICC to date, they will no doubt get behind the Court if it expands its efforts to ensure justice for victims. With more sophisticated media, public information, and social media strategies advocating the ICC's work to ensure justice for the worst abuses of power, the ICC has the potential to capture the imagination of millions of people.

At some point this year, someone will inevitably ask whether the ICC will be around in another 20 years? But the aims of international justice should not be limited to the mere survival of its institutions. The more immediate question is whether the ICC will be the just, fair and effective Court that was dreamed of in Rome? This is still well within reach if the Office of the Prosecutor is more ambitious and consistent in its efforts to bring those responsible for the worst abuses of power to justice and if the Court is willing to fight for the support that it requires.

- Read also *The ICC must hold the US accountable for crimes in Afghanistan* by Katherine Gallagher, senior staff attorney with the Center for Constitutional Rights in New York on [The Guardian's website](#)



FICJ

Forum for International Criminal Justice

In Profile: Clair Duffy

FICJ Coordinator Danya Chaikel recently had the opportunity to interview Clair Duffy, who speaks openly and candidly about her diverse experiences prosecuting atrocity crimes. Clair has a Bachelor of Laws and a Bachelor of Arts, in French, both from the University of Queensland, as well as a Masters in Public and International Law from the University of Melbourne. She is admitted as a barrister in the Supreme Courts of Queensland, and Victoria and has worked domestically, and in various capacities, in the international criminal law field.



Clair, please tell us about your background as a prosecutor

First of all, thanks for the invitation to contribute to your newsletter, and to the discussions being had in your forum. Although I have spent several years working as a domestic and international prosecutor, I probably don't have the typical career profile of a prosecutor and I don't exactly consider myself a "prosecutor" *per se*. I worked for about five years with the federal Director of Public Prosecutions office in Brisbane and Melbourne, Australia, which is a fairly specialised area of Australian criminal law (crimes ranging from various types of federal fraud, to immigration and customs offences, as well as terrorism offences and crimes under legislation which domestically implements the Rome Statute).

I then went to the International Criminal Tribunal for Rwanda (ICTR), where I worked for several years in Chambers and then in the Appeals Division of the Office of the Prosecutor. During these six years, I worked in various capacities on crimes arising from the 1994 Rwandan genocide.

Since that specifically in-court experience (domestically and internationally), I stepped outside of the courtroom to the role of legal watchdog. Based in Phnom Penh, I monitored the trials of former Khmer Rouge officials before the Extraordinary Chambers in the Courts of Cambodia; and then I moved to The Hague where I engaged in a similar role in relation to the International Criminal Court.

All of this international experience spanned about a decade when, in late 2014, I returned to Australia. Since then, I have been teaching criminal law and evidence law at Bond University on the Gold Coast, and doing some international consultancy work.

Tell us about your experience prosecuting core international crimes – war crimes, crimes against humanity and genocide

The first international criminal law cases I worked on were two 'Government' cases at the ICTR, in Arusha, Tanzania. This was during the period from early 2005 to late 2010. These were large multi-accused cases, one involving four former government ministers and the other involving three

Join the FICJ community: WWW.IAP-ASSOCIATION.ORG/FICJ/HOME

Follow us on twitter: [@iaprosecutors](https://twitter.com/iaprosecutors)

additional former political leaders. They involved lengthy indictments alleging genocide, war crimes and crimes against humanity, and were based on various theories of joint liability of those in leadership positions for crimes committed by co-conspirators and subordinates. In one of these cases, all four accused were ultimately acquitted. In the other case, two were convicted, the third having died during the trial. When I moved to prosecution appeals, I worked on a number of single accused cases.

Probably the most significant legal issue I looked at during this period involved the definition of the crime of direct and public incitement to commit genocide. In the Rwandan context, this issue was especially significant given the ways in which Rwanda's oral tradition had been used to facilitate the genocide. Ultimately, the Appeals Chamber didn't share our view which I personally think was a missed opportunity for the law to reflect the reality of dissemination of information in the context of societies with a strong oral tradition.

As I moved outside of these courts, to Phnom Penh, my activities were aimed at lobbying those in positions of power for better quality justice. In Cambodia at the ECCC, I was lobbying for thorough investigations in cases which the Cambodian government—in particular, the Prime Minister—had very publicly opposed. This situation still prevails in Cambodia. It was interesting to me, by the time I came to The Hague, to see the ICC going through a lot of the same political issues that had presented themselves at the ECCC and the ICTR—namely, will any of these jurisdictions ever be able to extend their reach to political incumbents (and, indeed, is it desirable for international criminal justice to do so?).

What drew you to work in this field?

Good question. As naïve and idealistic as it might sound: a deep belief in social justice. It was not actually a burning desire to be involved in the prosecution of international crimes that led me to the field. Rather it was a (perhaps somewhat naïve) desire to work in an area of law that contributed to the betterment of the human condition. The extent to which international criminal justice actually does this is something which is very much open to debate, and it is a conversation which must continue to be had in a transparent and frank manner.

Why have you moved from working as a practitioner to teaching/lecturing domestically?

Initially, it was really my father's very sudden death—in 2014—that stopped me in my tracks in Australia, though I had been yearning for "home" for some time. It's important for me to mention this because I think practitioners in the international criminal justice field, or even more widely in the human rights or humanitarian fields, don't speak very openly about the personal cost of the work they choose to do. In one sense, for many of us who have ventured into these fields, it's commonly a reflection of the privileged backgrounds we enjoy that we have access to these jobs. Nonetheless, there is a price to pay for the opportunity to feel that you are contributing to a discussion about

global issues. During my decade overseas, I very much witnessed the toll the work took on my colleagues. I myself was not immune. I hope that conversations around this are happening more routinely these days, especially with the exposure of the fact that all of us who are, or have been, engaged in what is commonly known as “good work” are also fallible. I’m of course talking here about evidence that some of those working for the UN, and various human rights and charitable organisations, are engaging or have engaged in various forms of abuse and exploitation. Those working in these fields need to make themselves accountable to the same standards they very publicly demand of others.

What does international criminal justice mean to you?

If you’re focussing on the “justice” part of this (in the context of atrocity crime):

- That those at the highest echelons of political power face the same force of the law as those who no longer wield any;
- Truth;
- A process that contributes in some way to the broader goals of non-recurrence within the affected society, as well as more broadly within our global community; and
- Credibility and legitimacy of both institution and process.

International criminal law is constantly developing – what are some of the major challenges prosecutors in this field currently face?

At the risk of sounding overly binary in my thinking, in my work in international criminal justice I came across prosecutors who genuinely believed what they were doing was right, no matter what, while I also met those who constantly questioned the value of what they were doing. Of course, many were probably somewhere in between these two extremes. On that spectrum, I personally was naturally somewhere towards the latter extreme. It’s therefore from this vantage point that I see one of the major challenges facing prosecutors in this field as that their work is inherently political: the crimes are inherently political, and the systems within which they operate are inherently political. In this context, and in order for the fledgling system to develop its credibility and legitimacy, those within it (including prosecutors, if not **especially** prosecutors) must challenge the political status quo while recognising its limitations. I recognise that this is a very tough balance to strike.

Tell us about one of your most memorable or inspiring experiences in this field?

I would like to use this space to mention the incredible people that I worked with over the decade that I was in this field. Of course, I am talking about defence lawyers, prosecutors, and judges. But I am also talking about (possibly even more so) those working with and for NGOs; the activists putting themselves on the line, every day. In particular, I was so grateful at various points for the journalists committed to exposing the truth about what goes on in and around our field. Every now and then I

also came across some hard-core diplomats (not a contradiction in terms, as it turns out) attempting to push their governments from within.

What advice would you give to fellow prosecutors who are considering working in this area?

Only ones from my own personal experience. At 29 years old, I went into this field thinking I had something to offer the world of international criminal justice. With the benefit of hindsight, I wish I'd had more humility about what I actually had to offer. I only had a lot to learn. I also wish that someone in a position of leadership in those early days had told me it was okay to be deeply affected by atrocity crime, that this was in fact, human, and had offered me some strategies for coping with it. With these two caveats in mind, I would say: go for it, but you must keep pushing this system and the political institutions around it from within.

- Clair Duffy can be reached on clairduffy@hotmail.com

Kosovo: top war crimes prosecutor forced to leave amid US state department inertia

[The Guardian](#)

David Schwendiman says he is being made to leave the job at a critical stage of the tribunal's work with no designated successor

The chief prosecutor of a war crimes court for [Kosovo](#) has said he is being made to leave the job at a critical stage of the tribunal's work with



KOSOVO SPECIALIST CHAMBERS & SPECIALIST PROSECUTOR'S OFFICE

no designated successor – largely due to inertia in the US state department. David Schwendiman said he had been asking the state department for more than a year to make a decision about the future of the position at the Hague-based court. But he heard only a fortnight ago that he had to leave by April, leaving virtually no time to find a replacement. Schwendiman said he had no idea whether a search has begun for a successor.

"I have been given no assurances. It has essentially been radio silence since two weeks ago," he told the Guardian in a telephone interview from The Hague. The court was established under Kosovan law, but based in the Dutch capital to shield it from political pressure and threats. Schwendiman's experience echoes frequent reports of indecision and paralysis in a state department facing deep budget cuts and riddled with vacancies in its top ranks. Forty ambassador positions remain vacant without a nominee and [seven of the nine top jobs](#) at headquarters. One after another, former diplomats have warned that the US is consequently hemorrhaging influence around the world.

Join the FICJ community: WWW.IAP-ASSOCIATION.ORG/FICJ/HOME

Follow us on twitter: [@iaprosecutors](https://twitter.com/iaprosecutors)

The impending vacuum at the top of the Kosovo tribunal also comes at a precarious time in the region. Ten years after Kosovo declared [independence from Serbia](#) after an uprising, a brutal counterinsurgency and Nato intervention, the country's future has not been resolved. Belgrade, Moscow and their allies refuse to recognise its independence and ethnic Serb enclaves on Kosovo territory remain potential flashpoints.

The court, known as the Specialist Chambers set up in 2016, has made substantial progress towards indicting several leaders of the Kosovo Liberation Army (KLA) for atrocities against ethnic Serbs and opposition Kosovans during and just after the 1998-9 conflict. Senior officials in the current Kosovo government are reported to be among the suspects, and in January the ruling party made [an abortive attempt](#) to repeal the legislation underpinning the court's existence.

The absence of war crimes charges for KLA atrocities is seen as a deep injustice by most Serbs, and many Kosovans complain that a culture of impunity has been allowed to grow, entrenching organised crime and government unaccountability. When the court was first established in 2016, Schwendiman, a US attorney with extensive experience in international war crimes cases was chosen as its first "specialist prosecutor".

He told the Guardian he only agreed to take the job on condition that its financial and political independence could be assured and that he would serve a full four-year term until 2020. Although his three-year state department appointment as a senior foreign service officer was due to expire two years before his term in The Hague was up, Obama administration officials assured him his service would be extended to allow him to complete his tenure as prosecutor.

"After the administration changed, I'm absolutely convinced that the professionals in the department understood [the issues] but they were frank with me that others in the department weren't interested," Schwendiman said. "We began to press very hard for an answer about what was going to happen. I wanted to make sure that if I wasn't going to be extended that was time enough to pick a successor so there'd be as little disruption as possible," he said.

However, he received no guidance until he was called to the US embassy in The Hague on 13 February, and told in a call from the state department that he would have to step down at the end of the March. "I was told: Thank you for your service, but they were not going to make an exception to the rules," he said.

Choosing a successor will be complex. It will be up to the European officials to decide how it should be done. They are said to favour a US prosecutor to take up the position, to keep Washington engaged in Kosovo. The deputy prosecutor, Kwai Hong Ip, a British lawyer, will serve as acting chief prosecutor, but his prospects of ultimately taking the job full-time are complicated by the politics of Brexit.

Schwendiman insisted his departure at short notice would not hinder the court's work. "People in the region, those who should be worried about being held accountable have got nothing to rejoice about," he insisted. "My honest assessment is this will not slow us down at all. When the time's ripe we'll do what we have to do."

However, if a policy decision is taken that indictments will have to await a new permanent chief prosecutor, the delay could be considerable while a successor is found, approved and then brought up to speed with the 700,000 pages of documents and hundreds of interviews the court has accumulated.

"Schwendiman's departure is taking the piss with the whole special court thing by delaying the process to the absolute maximum," said Jeta Xharra, a Kosovan investigative journalist and TV anchor. "A new prosecutor will take ages to learn the case ... It is unserious and undermines any faith in this court for the victims."

Kenya gives nod to creation of African version of ICC

Standard Digital

Kenya has promised the African Union that it will formally sign to creation of Africa's version of the International Criminal Court within two months. During a meeting of African foreign ministers of ICC member states at the AU headquarters in Addis Ababa in February, outgoing Foreign Affairs Cabinet Secretary Amina Mohamed committed that Kenya will ratify the Malabo protocol on the court before March 25.



The protocol has plans to merge the African Court of Justice and African Court on Human and People's Rights into one court

The protocol agreed at Equatorial Guinea's capital of Malabo on June 24 last year meant to merge the African Court of Justice and African Court on Human and People's Rights into one court capable of trying the same crimes prosecuted at the ICC. Kenya, alongside nine other countries, signed the intention to approve the court.

The protocol agreed at Equatorial Guinea's capital of Malabo on June 24 last year meant to merge the African Court of Justice and African Court on Human and People's Rights into one court capable of trying the same crimes prosecuted at the ICC. Kenya, alongside nine other countries, signed the intention to approve the court. In the whole of 2017, only one country - Uganda - signed up to the establishment of the court. The protocol needs a threshold of 15 country signatures to gain legal traction.

"Hon Amina Mohamed, Cabinet Secretary for Foreign Affairs of the Republic of Kenya, reiterated her country's commitment to ratifying the Malabo Protocol within the next two months, as the first country to have signed it," minutes of the meeting exclusively obtained by the Saturday Standard say. The ministers were concerned that failure to sign up to the court was undermining the credibility of the AU and its member states in their commitment to fight against impunity on the continent. They also wanted the AU to look into the possibility of extending the jurisdiction of the existing African Court on Human and Peoples' Rights to try international crimes, pending the entry into force of the Malabo Protocol. The ministers agreed on a "plan of action" to accelerate the realisation of the court.

In January 2015, Kenya pledged Sh100 million towards the creation of the court agreed in Malabo. Kenya was also the first country to express intent of joining the court. "I urge you brothers and sisters to join me in ensuring that the necessary ratifications are in place and that the resulting court is fully owned, financed and driven by Africa. This is an urgent and historic task that cannot wait," President Kenyatta said at the time.

Interview with Dr Kaupo Kand, Head of Office for the ICC's new Field Office in Georgia

[Georgia Today](#)



The Office of the Prosecutor (OTP) opened a preliminary examination on the situation in Georgia in August 2008. In January 2016, the Pre-Trial Chamber authorized the Prosecutor to proceed with an investigation into crimes within the ICC jurisdiction, in particular war crimes and crimes against humanity, that were allegedly committed in and around the Tskhinvali region 1 July – 10 October 2008. The ICC seeks to bring justice for victims on all sides, and to ensure that the alleged most serious crimes committed in Georgia during the August 2008 war do not go unpunished.



Join the FICJ community: WWW.IAP-ASSOCIATION.ORG/FICJ/HOME

Follow us on twitter: [@iaprosecutors](https://twitter.com/iaprosecutors)

GEORGIA TODAY spoke to the ICC's Representative in Georgia, Dr Kaupo Kand, to find out more.

What's the main message and the significance of the ICC Country Office opening in Georgia?

The main message is that the 2008 conflict and victims of that conflict are important for the international community in general, and for the ICC in particular. This is our 1st field office outside Africa and hence concretely shows that the ICC is active and carrying out investigations not only in Africa. We opened our field office here in December. It's important to carry out outreach activities, to talk to the victims of the conflict, talk to the general public, state institutions, academia, diplomatic community, international organizations, and so on. Regarding the ICC's mandate, the ICC Country Office is under the Registry and thus is a neutral part of the Court which provides diplomatic, administrative and logistical support to various organs and clients of the Court. The on-going investigative activities, however, are carried out by the OTP in a confidential manner and thus is independent of public outreach and engagement. The ICC's judgements are delivered by the judges in Chambers. An independent Trust Fund for Victims carries out reparations and provides assistance to victims and the conflict-affected population.

Seeing as Russia did its utmost to see the OSCE and UN ceasefire monitoring missions out of Georgia, don't you fear the same fate?

The ICC is set up by more than 120 countries and its judges and prosecutors act in full independence and impartiality. The Russian Federation is not party to the Rome Statute. While the Russian Federation signed the Statute, it withdrew its signature in 2016. So, Russia is a non-state party. Russia is not funding the court and the ICC needs no authorization from Russia to operate outside Russia. Of course, if Russia becomes a state party, if it signs and ratifies the Rome Statute, that might change the situation from the administrative point of view. One should emphasize that the ICC is a judicial institution with an exclusively judicial mandate. It is not subject to political control or influence. The Country Office is the Court's interface for outreach with all parties to the conflict. If you look at the ICC, we're talking about more than 120 countries, it's all around the world - African continent, Europe, Americas, Asia Pacific, it is really, truly, an international organization and independent Court.

What is your take on the brief but violent conflict that occurred in 2008? How much do you buy into the narrative that the conflict was provoked by Georgia?

The ICC solely investigates crimes that fall within its jurisdiction. Political issues, territorial disputes, and the question of who provoked or started the conflict, fall outside of the Court's mandate. These are political and diplomatic questions for historians, academics and experts to study. The Court seeks to ensure, jointly with the relevant national jurisdictions, that the most serious crimes committed in

each situation do not go unpunished. It primarily investigates and prosecutes those who bear the greatest responsibility for such crimes, regardless of his/her nationality.

In the situation in Georgia, the OTP is authorized to investigate war crimes and crimes against humanity, including murder, forcible transfer of population and persecution, attacks against civilian population and peacekeepers, willful killing, destruction of property and pillaging, which were allegedly committed between 1 July and 10 October 2008.

What's the current progress of the investigation?

Just to clarify before answering this question that that the ICC field office and I represent the Registry of the Court. The Court has different organs. The investigation is carried out by the ICC OTP and not by the Registry. As you know, the preliminary examination started in mid-August 2008, and in January 2016, the Pre-Trial Chamber decided to authorize the Prosecutor to start an investigation into the situation in Georgia. As I mentioned earlier, this investigation is confidential, like any other criminal investigation, and the OTP does not share details of ongoing investigations and their possible results. That said, the investigation is progressing at full speed and OTP staff are deploying very often to the field in furtherance of the investigation. The most important part for the Prosecutor is to try to establish the truth about alleged crimes committed during the 2008 conflict, and, of course, to bring justice to the victims on all sides. If and when the OTP determines that it has sufficient evidence to prove that an individual is responsible for a crime in the Court's jurisdiction, the Office presents this information to a panel of judges who will independently and impartially assess whether the evidence meets the legal threshold of the Statute. The burden of proving that someone committed Rome Statute crimes is with the Prosecutor.

As Russia has opted not to cooperate with the investigation, what are the chances of it being considered legitimate and not being labelled as one-sided?

The ICC itself has no police force; it has no kind of enforcement powers. So, on many aspects of Court's activities, it depends on cooperation by the state parties and also by non-state parties and international organizations. As regards the ongoing investigation, the OTP has repeatedly underscored that it attaches great importance to securing cooperation by all parties to the conflict and that it continues its proactive outreach efforts to all sides, including the Russian Federation and South Ossetian region de facto authorities. The OTP has also made it clear that the investigation will continue at full speed. Difficult relations regarding cooperation are not unique to the Georgia situation and such difficulties have been addressed successfully in other investigations the past.

- Read the full interview on the [Georgia Today website](#)



FICJ

Forum for International Criminal Justice

Justice for Syrian Victims Beyond Trials: The Need for New, Innovative Uses for Documentation of Human Rights Violations in Syria

***International Center for Transitional Justice Briefing, by
Nousha Kabawat and Fernando Travesi***

ICTJ Justice
Truth
Dignity

ictj briefing

When the Syrian people took to the streets in March 2011, nobody could have predicted that the ensuing crisis would become the largest international calamity in recent history. Syrians' calls for freedom and justice, which rode the wave of revolutions in neighbouring countries, have become enmeshed in a violent, protracted conflict that has changed the face of Syria and the course of politics in dozens of other states, doubtlessly influencing the way the world will deal with political, social, and humanitarian crises in the future.

It is commonly said that the Syrian war is the most documented conflict in history. Thousands of pictures, videos, and testimonies of victims are fully accessible on the internet and through social networks. There have been at least 182,422 deaths verified by victim identification,¹ with some sources putting the number of total deaths closer to 500,000.² More than 11.5 million people have been displaced from their homes, and thousands have been forcibly disappeared and tortured, and suffered myriad other violations of their human rights. One in four schools has been damaged, destroyed, or used for shelter (and, therefore, left no longer fit for educational purposes),⁴ and at least 454 hospitals have been attacked.

Dozens of different institutions and organizations both within Syria and outside have been collecting evidence of systematic breaches of international human rights and humanitarian law since the war began, originally for the purpose of one day bringing perpetrators on all sides to account. However, as that possibility has faded, information and stories have piled up unused in their databases and files.

The question becomes, are there justice measures complementary to the longer-term goal of criminal prosecution that can be implemented today using this data? And what role can Syrian victims and civil society play in such initiatives?

Nousha Kabawat and
Fernando Travesi
February 2018

Justice for Syrian Victims Beyond Trials

The Need for New, Innovative Uses for Documentation of Human Rights Violations in Syria

When the Syrian people took to the streets in March 2011, nobody could have predicted that the ensuing crisis would become the largest international calamity in recent history. Syrians' calls for freedom and justice, which rode the wave of revolutions in neighboring countries, have become enmeshed in a violent, protracted conflict that has changed the face of Syria and the course of politics in dozens of other states, doubtlessly influencing the way the world will deal with political, social, and humanitarian crises in the future.

It is commonly said that the Syrian war is the most documented conflict in history. Thousands of pictures, videos, and testimonies of victims are fully accessible on the internet and through social networks. There have been at least 182,422 deaths verified by victim identification,¹ with some sources putting the number of total deaths closer to 500,000.² More than 11.5 million people have been displaced from their homes,³ and thousands have been forcibly disappeared and tortured, and suffered myriad other violations of their human rights. One in four schools has been damaged, destroyed, or used for shelter (and, therefore, left no longer fit for educational purposes),⁴ and at least 454 hospitals have been attacked.⁵

Dozens of different institutions and organizations both within Syria and outside have been collecting evidence of systematic breaches of international human rights and humanitarian law since the war began, originally for the purpose of one day bringing perpetrators on all sides to account. However, as that possibility has faded, information and stories have piled up unused in their databases and files.

The question becomes, are there justice measures complementary to the longer-term goal of criminal prosecution that can be implemented today using this data? And what role can Syrian victims and civil society play in such initiatives?

By looking at the response of the international community and the documentation efforts of Syrian civil society organizations, this paper challenges the notion that criminal prosecution is the sole avenue of justice available for alleged crimes in Syria. From 2016–17, ICTJ consulted with more than a dozen Syrian civil society organizations working on

TABLE OF CONTENTS

1. Response of the International Community	2
2. Documentation Efforts of Syrian Civil Society	3
3. Innovative Use of Documentation	5
4. Conclusion	6
Recommendations	9

1. Violations Documentation Center, *Monthly Statistics of Reports on Victims* (November 2017), http://vdc-syria.org/wp-content/uploads/2017/11/Statistics_Sep_Oct_November_2017.pdf
2. Reuters, "Syrian War: Monitor Says at Least 182,422 Killed in Six Years of Fighting," March 15, 2017, citing data of the Syrian Observatory for Human Rights.
3. UN High Commissioner for Refugees, webpage, "Syria Emergency," www.unhcr.org/syria-emergency.html
4. UN Human Rights Council, "Human Rights Situation in Syria," www.unhcr.org/syria-emergency.html
5. The Syria Campaign, "Counting Lives Underground: The Case for Underground Hospitals in Syria," May 2017, <http://countinglivesunderground.org/syriacampaign.org/>

Join the FICJ community: WWW.IAP-ASSOCIATION.ORG/FICJ/HOME

Follow us on twitter: [@iaprosecutors](https://twitter.com/iaprosecutors)

By looking at the response of the international community and the documentation efforts of Syrian civil society organizations, this paper challenges the notion that criminal prosecution is the sole avenue of justice available for alleged crimes in Syria. From 2016–17, ICTJ consulted with more than a dozen Syrian civil society organizations working on issues related to transitional justice, with a specific focus on documentation, in order to understand their processes, use of documentation, and impact, as well as the challenges they face. It is clear that documentation could be used for important other avenues of justice, such as acknowledgement, fulfilling victims’ right to truth, and informing and preparing future transitional justice processes. This paper makes several recommendations for what can be done with documentation to support victims in the face of continuing injustices in Syria.

- Read the full briefing on the [ICTJ website](#)

New Open Source Publications:

Digital Evidence and War Crimes Prosecutions: The Impact of Digital Technologies on International Criminal Investigations and Trials

By Lindsay Freeman, *Fordham International Law Journal*

Abstract: As technology develops, new tools are continually being introduced that alter the nature and availability of courtroom evidence. The proliferation, connectivity, and capabilities of camera embedded and internet-enabled mobile devices, which record far more information about people’s activities and communications than ever before, are transforming the way criminal investigators and prosecutors collect, evaluate, and present evidence at trial. This is particularly true in international criminal trials, where prosecutors must present a voluminous and varied body of evidence to prove multiple charges related to complex conflicts. It is the prosecutor’s job to present evidence in a way that assists the fact-finder in evaluating its significance and understanding how it fits into the greater narrative. Advanced digital devices can now capture far more information about a situation than a witness can perceive, and innovative presentation tools allow lawyers to augment and strengthen the evidence in their cases by adding supplementary data and creating compelling visuals. In cases involving war crimes, crimes against humanity, and genocide, a large quantity and diversity of evidence is necessary to explain the context of the conflict and to prove the requisite elements of crimes and modes of liability. By examining the evidence and presentation techniques used in recent cases before international criminal courts, this article illustrates how war crimes prosecutions are evolving to meet the challenges and advantages of modern times. Part II explains the applicable law

Join the FICJ community: WWW.IAP-ASSOCIATION.ORG/FICJ/HOME

Follow us on twitter: [@iaprosecutors](https://twitter.com/iaprosecutors)

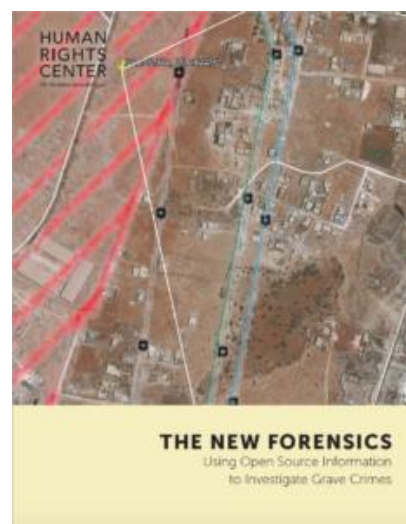
and describes how the use of emerging types of evidence in international criminal cases has expanded and been refined over the years. Part III analyzes three exceptional, yet emblematic cases from 2016, which call attention to an important trend that is predictive of the future use of digital evidence in war crimes prosecutions. Part IV discusses cases on the horizon and what these technological developments mean for members of the international justice community.

- Read the full paper on [the Fordham International Law Journal website](#)

The New Forensics: Using Open Source Information to Investigate Grave Crimes

Human Rights Center, School of Law, University of California, Berkeley

Just released: [*The New Forensics: Using Open Source Information to Investigate Grave Crimes*](#) highlights discussion, conclusions, and recommendations from an historic workshop on evidence collection and legal accountability that the Human Rights Center hosted at the Rockefeller Foundation Bellagio Center in Italy last fall. Participants explored how online open source investigations—internet-based investigations that rely on publicly accessible information—can be strengthened. The workshop marked the first international effort to explore how to harness the probative power and potential of open source investigations for legal accountability.

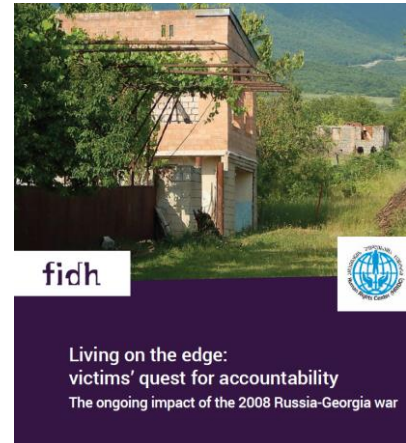


Workshop participants included specialists in open source investigations, investigators and prosecutors from the International Criminal Court, senior trial attorneys from other international tribunals, human rights investigators, and individuals with expertise developing human rights protocols and guidelines.

The workshop is the fourth in an ongoing series exploring how prosecutions of serious international crimes can be strengthened through the diversification of evidence, with an emphasis on adopting and adapting new and emerging technologies. The other three workshops and subsequent reports in the series include [Beyond Reasonable Doubt: Using Scientific Evidence to Advance Prosecutions at the International Criminal Court](#) (2012), [Digital Fingerprints: Using Electronic Evidence to Advance Prosecutions at the International Criminal Court](#) (2014), and [First Responders: Collecting and Analyzing Evidence of International Crimes](#) (2014).

The Russia-Georgia War: The Forgotten Victims 10 Years On

One month after the opening of an ICC field office in Tbilisi, FIDH and its member organisation HRIDC recently released a [report](#) about the victims of the conflict between Russia and Georgia. This report raises the alarm on the continued impact of international crimes committed in the summer of 2008. While no perpetrator of crimes against humanity committed 10 years ago has been charged, the survivors of this war continue to suffer from kidnappings, detentions, and extortion on a daily basis due to the shifting demarcation line, which is not recognised by the international community. Considering that Russian authorities refuse to effectively cooperate with the ICC today, must victims of 2008 learn to live in precarious conditions, an unsafe environment while crimes go unpunished?



- Read more on the [FIDH website](#)

Register for the IBA War Crimes Committee Conference 'War and Justice'

Registration is open for the **War and Justice Conference**, taking place in The Peace Palace, The Hague, the Netherlands on 21 April 2018.

Topics will include:

- **Terrorism, armed conflict and permissible use of force:** how have the fight against terrorism, the introduction of unmanned aerial vehicles (also known as drones), and the activities of non-state armed groups in combat operations changed rules of engagement in war theatres, and what does international law say concerning permissible use of force?
- **The ICC activation of the jurisdiction on aggression: strategic and substantive consideration**
- **Is truth the first casualty of war?** A panel discussion on recent international incidents such as the recent Syrian sarin gas attacks, the Russian invasion of Ukraine and others, where rival claims as to the truth concerning circumstances deflect attention from the tragedy experienced by civilians.
- **Is the future of international criminal law domestic?** This panel will analyse the challenges and obstacles that criminal justice currently faces at the international level, and whether the future of international justice lies on an international, hybrid, or domestic trajectory.




the global voice of
the legal profession

Join the FICJ community: WWW.IAP-ASSOCIATION.ORG/FICJ/HOME

Follow us on twitter: [@iaprosecutors](https://twitter.com/iaprosecutors)

Speakers confirmed so far include: **Howard Morrison**, Judge, International Criminal Court; **Kimberly Prost**, Judge-Elect, International Criminal Court; **Theodor Meron**, President, United Nations Mechanism for International Criminal Tribunals; **John Hocking**, ICTY-IMCT Registrar; **Guénael Mettraux**, Judge, Kosovo Specialist Chambers; **Fidelma Donlon**, Registrar, Kosovo Specialist Chambers; **Michelle Jarvis**, Deputy Head, United Nations International Impartial Independent Mechanism for Syria; former Deputy Prosecutor, International Criminal Tribunal for the former Yugoslavia, **Steven Kay QC**; **Wayne Jordash QC**, Doughty Street, Chambers; **Tristan Ferraro**, Senior Legal Adviser, International Committee of the Red Cross; **Christian Wenaweser**, Permanent Representative of Liechtenstein to the United Nations; **Navanethem Pillay**, former UN High Commissioner for Human Rights, former Judge, International Criminal Court, former President, International Criminal Tribunal for Rwanda; **Stephen Rapp**, former US-Ambassador-at-large for Global Criminal Justice, among others.

News February 2018

 Click on the hyperlinked headlines to see the full articles of international criminal justice news from the previous month.

28 February

[Argentina and ICC sign agreements on Interim Release and Release of Persons](#)

(ICC press release)

Today, 28 February 2018, the Ambassador of the Argentine Republic to the Kingdom of the Netherlands, H.E. Horacio Salvador, and the Registrar of the ICC, Herman von Hebel, signed cooperation agreements on interim release and release of ICC detained persons on the Argentine territory... Argentina is the second country accepting to provisionally receive ICC detained persons on its territory and the first country to sign the agreement on release of persons. With these signatures, Argentina becomes the first country to have signed four cooperation agreements with the Court, providing the ICC with successful tools for cooperation...

23 February

[Bosnia Hopes to Complete War Crimes Cases in 2023](#)

(Balkan Transitional Justice)

Bosnia's judicial overseer, the High Judicial and Prosecutorial Council, has backed proposed

changes to the national war crimes strategy to tackle delays in processing hundreds of cases and ensure they are completed within five years...

[Rights Commissioner: Serbia Mustn't Glorify War Criminals](#)

(Balkan Transitional Justice)

The Council of Europe's Human Rights Commissioner Nils Muiznieks told BIRN that it was unacceptable for Serbia and other Balkan countries to give a public platform to convicted war criminals...

[UN identifies South Sudan military officers accused of war crimes](#)

(Guardian)

UN investigators say they have identified more than 40 South Sudanese military officers who may be responsible for war crimes and crimes against humanity. Their findings are a sharp departure from previous UN reports that documented crimes but not perpetrators...

21 February

[Private Corporation May be Sued for Role in Abu Ghraib Torture, Judge Rules](#)

(Center for Constitutional Rights)

Today, a Virginia federal judge [ruled](#) that the treatment of three Iraqi individuals formerly detained at the infamous "hard site" at Abu Ghraib prison in Iraq constitutes torture, war crimes, and



FICJ

Forum for International Criminal Justice

cruel, inhuman and degrading treatment, based on a thorough review of U.S. domestic and international law. The ruling also held that the men have sufficiently alleged that employees of private military contractor CACI Premier Technology conspired to commit and aided and abetted these crimes...

[The slaughter in Syria should outrage us. Yet still we just shrug](#)

(Guardian)

...The Guardian has Syria on the front page today, but there's no moral high ground here for any of us. This bloodletting has gone on for seven years now, and for most of that time most of us – politicians, media, public – have looked the other way. I look back at some of the things that have exercised me while this murder has continued day after day – at Donald Trump's tweets, say, or the twists and turns of Brexit – and I know I'm part of this global shrug in the face of atrocity...

20 February

[Kenyan Judge Says ICC Erred in Issuing Arrest Warrant for Two Kenyans Wanted in Bribery Case](#)

(Open Society Justice Initiative)

A Kenyan High Court judge has said a judge at the International Criminal Court (ICC) erred in issuing an arrest warrant for two Kenyans wanted by the ICC for offenses against the administration of justice. This decision was made in November 2017 but only recently published online. Judge Luka Kimaru declined to issue an order to execute an ICC arrest warrant for Paul Gicheru, a lawyer, and Philip Kipkoech Bett, stating that the single judge of the ICC's Pre-Trial Chamber II issued the warrant on "speculative" grounds...

19 February

[Peru: Fujimori may be tried after decision not to apply grace in Pativilca case](#)

(Amnesty International)

The decision not to apply the grace granted by President Kuczynski to Alberto Fujimori constitutes an important advance in the fight against impunity for the crimes that occurred in Pativilca, and reinforces the obligation of the Peruvian state to guarantee the right of victims to truth, justice and reparation, said Amnesty International. Today Court B of the National

Criminal Court of Peru decided not to apply the grace granted by President Kuczynski on 24 December, clearing the way for Alberto Fujimori to be finally tried for his alleged responsibility for the murders of six people in the town of Pativilca, considered crimes against humanity...

[Myanmar government 'bulldozing Rohingya mass grave to hide evidence'](#)

(Guardian)

The government of Myanmar is bulldozing over the site of a Rohingya mass grave in an effort to destroy evidence of a massacre committed last year by the military, according to a rights monitoring group. The claim follows investigations conducted by the Associated Press and Reuters news agencies, which revealed evidence of other mass graves...

18 February

[Arrest Bashir if he comes to Kenya, Appeal Court orders State](#)

(Standard Digital)

Security officers should arrest Sudan President Omar Al Bashir if he dares step into the country, Court of Appeal has ruled. In the judgement issued on Friday, Court of Appeal judges Daniel Musinga, William Ouko and Agnes Murgor said Kenya acted in utter impunity for failing to arrest the Sudan leader when he attended the 2010 Constitution promulgation fete...

17 February

[Afghans submit 1.17 million war crimes claims to international court](#)

(The Independent)

Afghans have submitted 1.17 million statements to the International Criminal Court in the three months since it began collecting material ago for a possible war crimes case involving their homeland. The statements include accounts of alleged atrocities. not only by groups like the Taliban and the Isis, but also Afghan Security Forces and government-affiliated warlords, the US-led coalition, and foreign and domestic spy agencies, said Abdul Wadood Pedram of the Human Rights and Eradication of Violence Organisation...

16 February

[Bringing ISIS to justice](#)

Join the FICJ community: WWW.IAP-ASSOCIATION.ORG/FICJ/HOME

Follow us on twitter: [@iaprosecutors](https://twitter.com/iaprosecutors)



FICJ

Forum for International Criminal Justice

(IBA)

As the United Nations finalises its agreement with the Iraqi authorities to collect evidence of crimes committed by ISIS, it's time to consider ways of bringing ISIS militants to justice. Official documents providing guidelines on the treatment of slaves; accounts of rape and abuse; mass graves; testimonies of innocent children forced onto battlefields. These are just some of the harrowing details emerging from reports of allegations against ISIS in Iraq. Now, there is hope for justice for its victims. A United Nations-mandated team will start gathering evidence of these crimes as soon as an agreement with the Iraqi government is reached...

15 February

[One in six children 'affected by conflict' - Save the Children](#)

(BBC)

One in every six children are now living in a global conflict zone, a new report by Save the Children claims. Children are at more risk from armed conflict now than at any other time in the last 20 years, the charity says. Its new analysis found more than 357 million children were living in a conflict zone - an increase of 75% from the 200 million of 1995.

[Hague Court Says Serbia Must Agree to Try Radicals](#)

(Balkan Transitional Justice)

The Mechanism for International Criminal Tribunals in The Hague on Thursday called on the Serbian authorities to declare within 30 days that they have the "jurisdiction, willingness and readiness to accept the trial in the case" against the two wanted Serbian Radical Party members, Petar Jovic and Vjerica Radeta. Jovic and Radeta are wanted by the UN court for influencing witnesses in the trial of their party leader, Vojislav Seselj. They are accused of threatening, blackmailing and bribing witnesses to either change their testimonies or to not testify at all...

12 February

[Liberian church massacre survivors seek US justice](#)

(BBC)

The Monrovia Church massacre in 1990 was the worst single atrocity of the Liberian civil war.

About 600 civilians, including many children, were killed while taking refuge in a church. Now, four survivors are bringing a claim for damages against one of the men they believe was responsible, reports Elizabeth Blunt who was a BBC correspondent in Liberia at the time...

[The Role of the ICC in Protecting the Rights of Children Born of Rape in War](#)

(EJIL: *Talk!*)

The trial at the ICC of Dominic Ongwen, commander of the Lord's Resistance Army (LRA), has attracted widespread legal and political debate. Much of the commentary has focused on the former child soldier's status as a victim-perpetrator. Missing from mainstream legal discourse is consideration of another status Ongwen holds as a result of his alleged crimes: fatherhood. Relatedly, and more importantly, also overlooked is a group of victims of his crimes: children born as a result of rape. Within the LRA "forced marriage" system, thousands of children were born from the rape of girls held in captivity...

10 February

[Islamic State 'Beatles' duo 'should be tried at The Hague'](#)

(BBC)

Two captured British fighters should be tried in an international criminal court, rather than sent to Guantanamo Bay, a defence minister has said. Tobias Ellwood told two newspapers it was important that "terrorists from any origin are transparently and fairly held account for their actions". The fighters, Alexanda Kotey and El Shafee Elsheikh, were captured by Syrian Kurdish forces in Syria. The BBC understands the pair have been stripped of their UK citizenship... It has been suggested they could be sent to the US military prison at Guantanamo Bay. Alternatively, they could be put on criminal trial in the US or at the International Criminal Court, The Hague, which can prosecute people for genocide, war crimes, crimes against humanity and aggression...

[Bosnian Serb Minister Denies Recognising Srebrenica Genocide](#)

(Balkan Transitional Justice)

Dragan Mektic on Saturday attempted to prevent a major controversy after he was quoted by *Vecernji*



FICJ

Forum for International Criminal Justice

List newspaper as saying that the 1995 Srebrenica massacres were genocide, insisting that he had been misquoted. "There are relevant documents proving genocide and the Serbs have to admit it," Mektic was quoted by *Vecernji List* as saying. Bosnian Serb leaders have long denied that the 1995 massacres were genocide, despite the rulings of Bosnian and international courts...

9 February

[After 25 years, a breakthrough for victims of Chad dictator Hissène Habré](#)

(Guardian)

A trust fund has been established for victims of the former Chadian president, Hissène Habré, who have waited three decades without receiving compensation. A court in Senegal found Habré guilty of crimes against humanity in 2016, making him the first head of state ever to be convicted of that crime by the courts of another country. A Chadian commission of inquiry said more than 40,000 people were killed and 54,000 imprisoned during Habré's rule from 1982 to 1990...

[Bosnian Croat Ex-Fighters Charged over Mostar Detention Camps](#)

(Balkan Transitional Justice)

The Bosnian state court on Thursday confirmed the indictment charging the 11 former Croatian Defence Council members - Nedžad Corić, Jure Kordić, Dražen Lovrić, Dario Šusić, Nedžad Tinjak, Nuhan Sikalo, Dario Mihalj, Stanko Skobić, Tomislav Anđić, Marinko Sunjic and Slavko Golemac - with crimes against humanity. They are accused of participating in a widespread and systematic attack from July 1993 to March 1994, during which more than 70 Bosniak civilians from the Mostar area were unlawfully arrested and taken to a detention camp in the town of Vojno, where they were held in inhumane conditions...

7 February

[STL: The Prosecution completes the presentation of evidence in the Ayyash et al. case](#)

(STL press release)

On 7 February 2018, the Special Tribunal for Lebanon (STL) Prosecutor completed the presentation of evidence in the *Ayyash et al.* before the STL marking the conclusion of the prosecution case. Since the start of the

Prosecution case, the Prosecution has presented evidence from over 260 individual witnesses and about 2470 exhibits in documentary form...

[Libyan commander wanted by ICC 'hands himself in' to military police: source](#)

(Reuters)

A Libyan commander sought by the International Criminal Court (ICC) over the alleged summary execution of dozens of people has handed himself in to the military police in eastern Libya, a military source said on Wednesday. It was not clear whether the apparent move would lead to any action being taken against the commander, Mahmoud al-Werfalli, or any restrictions on his movement...

6 February

(The Atlantic)

[Assad Is Still Using Chemical Weapons in Syria](#)

UN investigators are looking into reports the Syrian regime used chemical weapons on at least two rebel-held towns in recent days. The reports mark at least the sixth time the regime of President Bashar Assad has used such weapons against civilian population centers. The UN Commission of Inquiry on Syria said Tuesday it had received multiple reports "that bombs allegedly containing weaponized chlorine have been used in the town of Saraqeb in Idlib and Douma in eastern Ghouta."...

3 February

[Switzerland contributes funding to contested Kosovo tribunal](#)

(swissinfo.ch)

In January 2018, Switzerland granted funding of CHF200,000 (\$214,750) to the tribunal charged with shedding light on war crimes committed in Kosovo between 1998 and 2000, particularly the disappearance of 500 mainly Serb civilians in the context of conflict between separatists and Serb forces plus a NATO military intervention. But numerous parliamentarians from the party in power in Pristina remain determined to put an end to this new tribunal which could threaten key people in power who were commanders of the former rebel movement UCK...



FICJ

Forum for International Criminal Justice

2 February

[International Criminal Court judges consider Afghanistan war crimes inquiry](#)

(BBC)

Judges at the ICC are deciding whether to authorise an official war crimes inquiry into events in Afghanistan. They are due to begin examining written submissions from victims in Afghanistan about whom and what any potential investigation should focus on. In 2017, ICC prosecutor Fatou Bensouda said there was a "reasonable basis to believe" war crimes had been committed. Possible perpetrators included the Taliban, CIA and Afghan forces...

1 February

[Kosovo President: Special War Court Can't Be Stopped](#)

(Balkan Transitional Justice)

Hashim Thaci said on Thursday that an initiative by MPs to revoke the law on the new Specialist Chambers, set up in The Hague to prosecute former Kosovo Liberation Army fighters for wartime and post-war crimes, will not succeed. "The Special Court cannot be revoked and will not be revoked. This is the stance of the state and not an opinion," Thaci said. Forty-three Kosovo MPs have backed the initiative to revoke the law that established the court, which is part of the Kosovo justice system but staffed by internationals and based in The Hague...

Quick links

The following are some useful research links:

- FICJ [Resource Library](#): research tools, best practice reports, commentaries and more
- FICJ [Global Legal Developments](#): specialised units, legislation, international & national cases
- International Criminal Court Legal Tools Database: an electronic library on international criminal law and justice with over 41,000 documents: [browse](#) | [search](#) | [annotated Rome Statute](#) | [annotated Rules of Procedure and Evidence](#) | [National Implementing Legislation Database](#)
- International Criminal Tribunal for the Former Yugoslavia [Legal Library](#)
- International Criminal Tribunal for Rwanda [Documents](#)

This newsletter is published by the Forum for International Criminal Justice (FICJ) part of the International Association of Prosecutors - Hartogstraat 13, The Hague, The Netherlands

Join the FICJ community: WWW.IAP-ASSOCIATION.ORG/FICJ/HOME

Follow us on twitter: [@iaprosecutors](https://twitter.com/iaprosecutors)