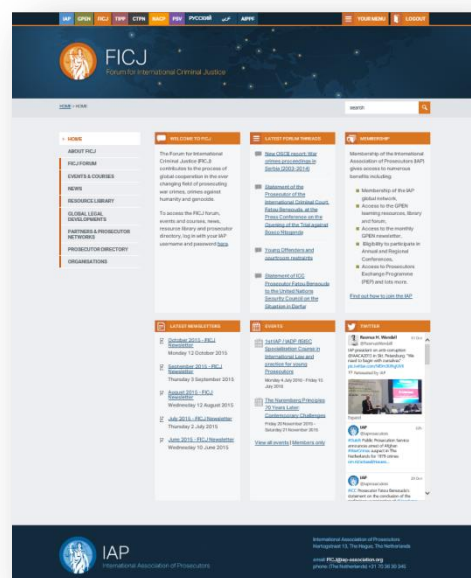


Forum for International Criminal Justice Newsletter: January 2018

Welcome to the IAP's Forum for International Criminal Justice (FICJ) January 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.

Domestic news covered in this Newsletter includes:

Bosnian state prosecution charges 14 Bosniaks with Crimes Against Humanity; **Congolese** fighters convicted of crimes against humanity for raping young girls in landmark case; and Agnes Reeves Taylor, ex-wife of former **Liberian** President Charles Taylor has been denied bail in the **UK** ahead of a war crime related trial slated for October 2018.



***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 a Wayamo Foundation video summary on the ICC's crime of aggression, from Nuremberg in 1945 to Kampala, and the legal and moral debate more than seven decades in the making.



[Click here](#) to watch sessions from the final ICTY Legacy Dialogues, *Looking Back to Move Forward: Final Reflections on the ICTY* held at Leiden University, The Hague campus, on 18 December 2017.



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Crime of Aggression Activated at the ICC: Does it Matter?

***Just Security**, by Alex Whiting*

The International Criminal Court's Assembly of States Parties agreed on 15 December 2017 that the ICC can now prosecute crimes of aggression, making it the fourth crime (after war crimes, crimes against humanity, and genocide) to fall within the Court's jurisdiction. The decision will become [effective](#) on July 17, 2018. This development is enormously significant because it is the first time since Nuremberg's Nazi trials that an international tribunal has been able to prosecute this crime, but given how narrowly they defined the crime, and the scope of the ICC's jurisdiction, its significance may be largely confined to its declarative and symbolic force, though this is a value that should not be underestimated.



Historic moment on 15 December 2017 when the Assembly of States Parties decided to activate ICC jurisdiction over the crime of aggression as of 17 July 2018, the day of the Rome Statute's 20th anniversary

Although today we often think of the Nuremberg prosecutions as being about Holocaust crimes, the reality is that the lead charge was crimes against peace. The first line of Justice Robert Jackson's [opening statement](#) was, "The privilege of opening the first trial in history for crimes against the peace of the world imposes a grave responsibility," and the [judgment](#) in that case concluded that, "To initiate a war of aggression is not only an international crime; it is the supreme international crime, differing only from other war crimes in that it contains within itself the accumulated evil of the whole."

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After Nuremberg, there were no international criminal tribunals until the establishment of the International Criminal Tribunal for the former Yugoslavia in 1993, which then sparked a succession of tribunals for Rwanda, Sierra Leone, and Cambodia, among other places. In 1998, the establishment of the International Criminal Court was agreed to in the Rome Treaty, and it became operational on July 1, 2002.

Although the crime of aggression was the top charge at Nuremberg, it was the one crime that was conspicuously left out of the mandate of all of the tribunals that came after it, which focused instead on war crimes, crimes against humanity, and genocide. The possibility of the crime of aggression was included in the Rome Statute of the ICC, but only in theory. The statute specified that it would become part of the Statute only after the Assembly of States Parties (ASP) of the Court agreed to a definition and a ratification process, which it did at its review conference at Kampala in 2010. There, it was agreed that it would require 30 States Parties to ratify the amendments to the Statute defining the crime, followed by a vote to activate the crime by at least a two-thirds majority of States Parties at an ASP meeting after January 1, 2017. Those ratification conditions were achieved last week, thus making the ICC the first international court since Nuremberg to have the crime of aggression in its statute.

But don't expect to see aggression prosecutions anytime soon. The crime and the Court's jurisdiction are narrowly defined. First, the crime only applies to "manifest" violations of the U.N. Charter, measured by character, gravity and scale. Second, the crime targets only persons in senior leadership, defined as those "in a position effectively to exercise control over or to direct the political or military action of a State." Third, absent a Security Council referral, the Court will have jurisdiction only when a State Party commits the crime of aggression against another State Party. Fourth, as the result of a last-minute compromise last week, the Court's jurisdiction is further narrowed to only those States Parties that have ratified the aggression amendment, presently just [35](#) of the [123 States Parties](#). Finally, even those States Parties that ratify the aggression amendment can elect at any time to opt out of the aggression jurisdictional regime.

Given all of these limitations, it is difficult to imagine an aggression prosecution at the ICC involving States Parties, at least for the time being. At the same time, as noted above, the aggression amendment also allows for the UN Security Council to refer non-States Parties for prosecution to the ICC, and of course there is no possibility of an opt out in this circumstance. In fact, this may be the most likely scenario for an aggression prosecution to arise at the Court: the major powers on the UN Security Council band together to target a rogue state committing an act of aggression. That would be an ironic development because these days, the ICC is often criticized precisely because of a perception that it can only reach weaker states and not the major powers of the world.

At the end of the day, the principal significance of the ICC's adoption of the crime of aggression lies, no doubt, simply in the articulation and establishment of the crime. To date, the international tribunals have made us more aware of individual criminal responsibility for atrocity crimes committed both in the context of war and outside of it. Such crimes are not just an inevitable result of conflict, but are *caused* by individuals who should be held responsible for them. Similarly, adoption of the crime of aggression at the ICC should force policymakers, military leaders, civil society, journalists, educators, and citizens to pay more attention to the question of the legality of war, and more specifically to the responsibility of individuals for wars that are illegal. Illegal wars don't just happen, individual leaders make them happen, and now we will think harder about how they could be held accountable for their actions. Changing the conversation is the first step to changing conduct.

At the same time, adoption of the crime of aggression at the ICC is not without risk. It could burden the ICC with even more expectations that cannot be fulfilled. Already, the Court can prosecute only a tiny fraction of the atrocity crimes that occur in the world, even where it has jurisdiction, leaving many supporters and victims frustrated. Once the crime of aggression is formally activated next year, the Court might find itself spending a lot of time trying to explain why it is *not* prosecuting aggression cases, a dynamic that is never very good for a court's overall reputation and legitimacy.

Further, there continues to be debate about the definition of the crime of aggression and what it means for a violation of the U.N. Charter to be "manifest." Most pointedly, will interventions with a genuine humanitarian purpose count? Harold Koh and Todd Buchwald have [written](#) that activating the crime of aggression, in its present form, could have the paradoxical effect of discouraging military interventions to stop or prevent atrocity crimes. One can only hope that debates that will be spurred by the activation of the crime will help clarify these questions.

In sum, the significance of the inclusion of the crime of aggression within the ICC's remit will not be in the prosecutions that result, but rather in the discussions that ensue, focused on illegal wars, their causes, and when to hold leaders individually responsible for them.

Read more:

- ICC Press Release [Assembly activates Court's jurisdiction over crime of aggression](#)
- The Mission of Liechtenstein to the UN in New York and the Global Institute for the Prevention of Aggression's [Global Campaign for Ratification and Implementation of the Kampala Amendments on the Crime of Aggression](#)
- Coalition for the ICC [crime of aggression webpage](#)



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The Observer view on the effectiveness of international law

the guardian

Observer editorial

The recent conviction of Ratko Mladić, the former Bosnian Serb commander, on charges of genocide, war crimes and crimes against humanity committed in the 1990s may come to be viewed as a high-point for global justice. Mladić's life sentence for his leading role in ethnic cleansing operations in Bosnia, the battle for Sarajevo, and the massacre of Muslims at Srebrenica was fully deserved. But this symbolic success cannot hide the fact that the international criminal justice system is under siege from within and without. In 2017, its problems grew worse.

Mladić's conviction followed the successful prosecution of another high-profile figure, the Bosnian Serb leader, Radovan Karadžić, in addition to nearly 160 other criminal indictees. All this is the work of the international criminal tribunal for the former Yugoslavia (ICTY), created by the UN security council in 1993. At the time, there was scepticism that the new court could function while the war still raged. To this day, many people in the western Balkans remain critical of its performance. But broadly speaking, the ICTY – which will be dissolved at the end of this month – may be judged a success. It brought justice, if not perfect closure, where mayhem and murder once reigned unchecked.

The ICTY precedent has had an impact reaching far beyond south-eastern Europe. In 1994, the UN created a sister court – the international criminal tribunal for Rwanda – to prosecute those responsible for the genocide in that country. The “special court for Sierra Leone”, founded in 2002, was a variation on the theme. The ICTY measurably reinforced the concept of supranational justice applied over the heads, if need be, of national leaders and governments. And its inception undoubtedly smoothed the way for the founding, under UN auspices, of a permanent international criminal court (ICC) with global jurisdiction. The ICC is the world's court of last resort, specifically tasked with investigating genocide, war crimes and crimes against humanity. It began work in The Hague in 2002, when the Rome statute came into force. It is backed by 123 state parties, including Britain, out of a possible total of 195. Member states voted last week to significantly widen its jurisdiction, from next year, to include state-on-state crimes of aggression.

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Fatou Bensouda, ICC Prosecutor has called for the closure of the 'impunity gap'. Photo: ddp USA/REX/Shutterstock

So far, so good. Or perhaps not. From its earliest days, the ICC faced accusations that it was unduly focused on Africa, where nearly all its investigations have taken place. Fatou Bensouda, of Gambia, the current chief prosecutor, has worked to dispel these suspicions. But a degree of disillusionment persists. This year, Burundi became the first ever state to quit the court, claiming it was an “instrument of the west”. South Africa tabled legislation last week that, if enacted, would make good its previous threat to pull out. And African Union states have backed a non-binding proposal for mass withdrawal.

Bensouda has taken concrete steps to broaden the ICC’s scope. Relatively new “preliminary examinations” now include Afghanistan, Iraq, Palestine and Ukraine. This means American troops who have been fighting the Taliban, and killing Afghan civilians, inadvertently or otherwise, since 2001 are coming under belated legal scrutiny. Likewise, the actions of Israeli security forces in the occupied territories and Russian-backed troops in Ukraine will be examined. The behaviour of members of the British armed forces in Iraq following the 2003 invasion, the subject of much domestic litigation, forms part of another ICC examination.

There is much to investigate in all these situations. The question is whether the ICC can act effectively. Palestinian human rights groups, for example, submitted evidence to the ICC in September alleging war crimes and crimes against humanity by Israeli officials in the West Bank and Gaza. Last year, Human Rights Watch called on the ICC to investigate the 2014 Gaza war and the

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expansion of Jewish settlements, illegal under international law. But while the Palestinian Authority joined the Rome statute in 2015, Israel rejects ICC jurisdiction. Israeli nationals could, in theory, be prosecuted for crimes committed on Palestinian soil. But Israel's government has no obligation to surrender them to the court. The US, China and Russia, which also boycott the ICC, afford similar protections to their nationals, wherever they may be, whatever they may do.

This continuing refusal of major global powers to support the international criminal justice system, represented at its apex by the ICC, seriously undermines its credibility. The failure of ICC members to enforce their own rules, as in the case of Omar al-Bashir, the Sudanese president indicted for genocide and war crimes in Darfur, has also done great damage. When Bashir visited South Africa in 2015, Jacob Zuma's government ignored its legal obligations and declined to arrest him.

In her annual report this month, Bensouda said it was imperative to close what she called the impunity gap. "What is required, today more than ever, is greater recognition of the need to strengthen the court and the evolving system of international criminal justice. It is up to state parties, first and foremost, as custodians of the Rome statute, to stand firmly by its values and further foster its positive impact in practice," she said.

The Mladić case aside, developments in 2017 suggest Bensouda's call may fall on deaf ears. In Syria, not a state party to the ICC, horrific war crimes have continued unchecked. In the failed state of Yemen, also not a member, a similar tragedy has played out. Much of the killing in both countries can be attributed to Russian and Saudi forces, respectively, who are beyond the ICC's purview.

In Myanmar, tens of thousands of Rohingya Muslims have suffered what the US terms ethnic cleansing – but neither the Trump administration, the UN, nor a hamstrung ICC have done much about it. The same goes for the North Korean regime's systemic abuses of its citizens. The focus there is on missiles, not misery. In truth, Bensouda's "impunity gap" widened into a chasm in 2017.

This ongoing failure to consistently and comprehensively pursue, prosecute and punish individuals guilty of the worst crimes known to humanity is universally shaming. It is reprehensible that great powers aspiring to global leadership, such as China and India, shirk their responsibilities with self-serving arguments about national sovereignty.

It is shocking that the US, a once proud beacon of liberty and justice, also continues to fail the international community in this regard. And it is unacceptable that notorious malefactors, such as Syria's Bashar al-Assad, appear beyond the reach of the law. A special tribunal set up by the UN has been compiling reports on Syria for years. There is no shortage of damning evidence. But only the UN security council can refer Assad to the ICC. And it has not done so because Syria's ally, Russia, would veto any such move.



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The wider political environment has deteriorated, too. The rise of Donald Trump and inward-looking, nativist and populist forces in the western democracies has further undermined faith in transnational institutions such as the European court of justice and World Court.

Lack of leadership, lack of vision and lack of a sense of common purpose are among many contributory factors. But only one conclusion is possible. Nearly a century after the 1919 Paris peace conference set up a "Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties", it is a scandal that an under-powered, ill-supported international criminal justice system still struggles, and often fails, to bring the world's worst offenders to book.

Ethiopia 'Red Terror' aide Alemu jailed for war crimes in The Netherlands



A court sketch shows Dutch citizen and former Ethiopian government official Eshetu Alemu attending his trial for war crimes in The Hague, The Netherlands on October 31, 2017 © 2017 Getty Image

BBC - A Dutch court has sentenced an aide to Ethiopia's former communist ruler to life imprisonment for war crimes. Eshetu Alemu, 63, was found guilty of crimes including the execution of 75 people during Ethiopia's "Red Terror" purges in the late 1970s. The dual Ethiopian-Dutch national and former aide to then-ruler Mengistu Haile Mariam denied all the charges against him. More than 300 victims were named in four war crimes charges. Ethiopia has already sentenced him to death in absentia.

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Prosecutors said that Alemu was a henchman for Mengistu in the north-west Gojjam province. The case was tried under Dutch universal jurisdiction laws at the district court in The Hague. Presiding judge Mariette Renckens told the court that Alemu was "guilty of war crimes and treated his fellow citizens in a cold and calculating manner... including robbing them of their right to life". Families of victims applauded the sentence, but neither Alemu nor his lawyers were present in court.

Marxist strongman Mengistu Haile Mariam ruled Ethiopia between 1977 and 1991 following the overthrow of Emperor Haile Selassie in 1974. There was significant repression under his communist regime. This became known as the "Red Terror". Mengistu was ousted in 1991 after a series of revolts by insurgent groups. He then fled to Zimbabwe, where he still resides. In 2007, Mengistu was found guilty in absentia at an Ethiopian court of genocide.

South Sudan Inches Closer to Hybrid Court on Conflict's Four-year Anniversary

VOA news - A court to try alleged war criminals in South Sudan's conflict was one step closer to reality on 15 December 2017, the fourth anniversary of the day hostilities began. South Sudan's Council of Ministers and the African Union agreed last week to the contents of a document that defines the roles of the so-called "hybrid" court, according to Elizabeth Deng, a Nairobi-based researcher for

Amnesty International. "This is the document that would specify the criminal jurisdiction of the court, that would define the crimes that the court has the competency to investigate and prosecute. The statute would describe the structure and the composition of the court and the appointment procedure for the courts staff," Deng told VOA's South Sudan in Focus.

A 2015 peace deal between South Sudan's government and rebel groups called on the AU Commission to establish the court to investigate and prosecute individuals accused of violating international or applicable South Sudanese law since the conflict erupted in the capital, Juba. Progress has been excruciatingly slow. "Over the past two years, the feeling of Amnesty International



Rebel fighters hold up their rifles as they walk in front of a bushfire in a rebel-controlled territory in Upper Nile State, South Sudan February 13, 2014.

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has been that the government of South Sudan has been a significant factor in delaying the court's establishment. They have been dragging their feet and reluctant ... to ensure it is established quickly,” Deng said.

Parliament is expected to deliberate on the hybrid court statute next. It is not clear when a vote will take place. Jehanne Henry, senior researcher at Human Rights Watch, said the step by the Council of Ministers appears to be progress, but the parliament must act next and act quickly. “Sending the document to parliament is a step, but it is not necessarily a step that moves this thing forward unless it is followed up by a lot of other steps,” Henry told South Sudan in Focus.

A policy analyst at the Juba-based Sudd Institute said the conflict has dragged on far too long and cannot continue. Zachariah Diing Akol said all South Sudanese must stop and reflect on what the nation has gone through and learn from it. “If it was just the individuals -- two, four or 100 -- we would not be where we are today. What is the power of a few individuals? All of us have fought in one way or the other. All of us must learn lessons,” Akol said. Akol said the suffering caused by the war has robbed South Sudanese of their livelihoods and dignity. “Lives have been lost and they continue to be lost. Sources of livelihood of people are destroyed, people don’t do what they used to do; they are relying on others and that is not a comfortable position to be in,” Akol said.

Meanwhile, hundreds of South Sudanese living in Uganda gathered Friday in Kampala to commemorate the fourth anniversary of the fighting and called on the warring parties to end the conflict. Martha Nyayiey Gatluak, 22, said she fled to a camp run by the United Nations Mission in South Sudan (UNMISS) when war erupted in December 2013. Gatluak spent a year in the camp and later fled to Uganda with her family. “I am calling on our leaders to bring us back together,” Gatluak said. “From 2013, we don’t party together, we sit in our separate ways. There is a lot of hatred in us, we don’t love each other the way we used to. We should have peace in our country so we can go back as South Sudanese, not as tribes.”

The fighting that erupted in Juba in late 2013 quickly spread to other parts of the country and took on ethnic overtones. The International Crisis Group said at least 100,000 people were killed during the first weeks of fighting. The conflict led to a humanitarian crisis that has forced more than 4 million South Sudanese to flee their homes, with many relocating to Uganda, Sudan, Kenya and Ethiopia.

- Read the full article on the [VOA news website](#)

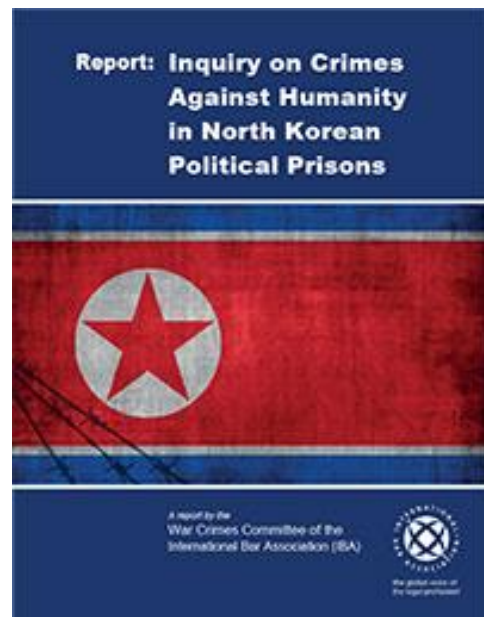


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North Korea: New IBA Inquiry finds Kim Jong-un should be investigated and prosecuted for crimes against humanity

A new report, authored by three internationally renowned judges – **Navanethem ‘Navi’ Pillay**, **Thomas Buergenthal** and **Mark B Harmon** – under the auspices of the [International Bar Association \(IBA\) War Crimes Committee](#), calls on the international community to vest in the ICC or a special international tribunal the power to investigate crimes against humanity committed in North Korea’s political prisons, and to hold culpable parties accountable for their crimes, including ‘Supreme Leader’ Kim Jong-un, members of the Workers’ Party of Korea and its Politburo, internal security officials and prison guards. The three judges, who together have served on some of the most consequential international tribunals of the last half-century and include a child survivor of Auschwitz and a former ICC judge, also call on North Korea to dismantle its gulag system and release the estimated 80,000–130,000 political prisoners.



Under established legal doctrine, including the principle of ‘command responsibility’ – hierarchical accountability, where superiors are held responsible for the criminal acts of their subordinates – the report includes evidence that demonstrates Kim Jong-un and other regime officials should be prosecuted for ten of the 11 crimes against humanity enumerated in the Rome Statute (the treaty establishing the ICC), including crimes committed by subordinates such as prison guards. The ten crimes are: murder, extermination, enslavement, forcible transfer, imprisonment, torture, sexual violence, persecution, enforced disappearances and other inhumane acts.

Titled, [Inquiry on Crimes Against Humanity in North Korean Political Prisons](#), the report focuses on evidence of crimes against humanity committed in North Korea’s political prisons, which include systematic murder (including infanticide), torture, persecution of Christians, rape, forced abortions, starvation and overwork leading to countless deaths. Referenced in the report is highly detailed satellite imagery that, alongside testimony of defectors, debunks North Korea’s denial of the existence of its political prisons, described by Amnesty International as ‘very possibly home to some of the most appalling torture in the world’.

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The Inquiry is an unofficial follow-up to the [United Nations Human Rights Council's Commission of Inquiry \(UN COI\) on Human Rights in the Democratic People's Republic of Korea](#) (DPRK) that, in 2014, published its findings on regime-wide human rights abuses.

During a day-long hearing held in Washington, DC in 2016, Chief Judge Navi Pillay and her fellow judges heard testimony from North Korean defectors, including a North Korean political prison guard and prison camp survivors. They provided graphic testimony of atrocities they witnessed or were subjected to in the political prisons, including accounts of:

- prisoners tortured and killed on account of their religious affiliation, with officials instructed *'to wipe out the seed of [Christian] reactionaries'*;
- a prisoner's newborn baby, fed to guard dogs and killed;
- an abortion induced by three men standing on a wooden plank placed on a pregnant prisoner's stomach;
- a female prisoner losing consciousness after enduring a beating designed to trigger premature labour, with prison officials killing her baby before she could regain consciousness;
- a prisoner raped by a security officer, after which the officer pushed a wooden stick inside her vagina and beat her lower body, resulting in her death within a week;
- the deliberate starvation, malnutrition, overwork and death of countless prisoners, including between 1,500–2,000 prisoners, mostly children, who are believed to have died each year from malnutrition in one camp alone, with many other prisoners beaten to death for failing to meet production quotas;
- a soldier supervising a forced labour site rolling a log down a steep mountainside, killing ten prisoners as they were carrying logs up the mountain;
- routine public executions of prisoners, carried out in front of both children and adults, designed to subdue the prison population;
- the execution of starving prisoners found digging for edible plants on a mountainside; and
- the beating to death of a prisoner for hiding stolen corn in his mouth.

Alongside personal testimonies, the Inquiry drew on other sources of evidence, including scholarly works, videos, transcripts, testimony provided to the UN COI, and the live testimony of two leading experts on North Korea's network of political prisons and its political system, David Hawk and Kenneth Gause. These and other experts have written about North Korea's longstanding policy of imprisoning the children, spouse, parents and other family members of a purported violator in order to eliminate the 'seed' of three generations of 'class enemies'.

Following the hearing in December 2016, the Inquiry received a detailed affidavit from Mr Thae Yong-ho, North Korea's former Deputy Ambassador to the United Kingdom, and its highest-ranking

defector in recent years. Mr Thae's detailed affidavit provided damning testimony about Kim Jong-un and regime officials, and their level of involvement in committing grave human rights abuses.

Among the nine recommendations made by Judges Pillay, Buergenthal and Harmon in the new report are:

- the dismantlement of the DPRK political prison system and commitment to a new system of fair and transparent justice that affords proper due process to its citizens and acceptance of an international monitoring scheme that ensures the present political prison system remains dismantled;
- the implementation of safeguards by UN member states to prevent the importation of products produced in the North Korean penal system; and
- the adoption of carefully targeted, coordinated and multilateral sanctions against individuals deemed responsible for past or ongoing crimes against humanity in the DPRK.

Steven Kay QC, past Co-Chair of the IBA War Crimes Committee and the lead lawyer to present evidence of North Korea's alleged crimes against humanity at the Inquiry, stated: *'North Korea's network of political prisons has largely eluded the scrutiny of the international community over the decades but, as the number of North Korean defectors swells and accounts of brutal treatment carried out against prisoners are relayed to the outside world, it has become more difficult for the international community to avert its gaze.'* He added: *'The international community should not be deterred from holding to account the perpetrators, from prison guards to those seated at the apex of power. We need to work to halt the seven-decade reign of impunity.'*

A chance to interrupt Afghanistan's cycle of violence

[Globe and Mail](#), by Muzhgan Wahaj, a final-year law student at SOAS University of London (School of Oriental and African Studies) and was an intern with the International Justice Program at Human Rights Watch.

In October 1992, under the dim glow of a sun rising behind the Hindu Kush mountains of Afghanistan, my father found himself surrounded by *mujahedeen*. His traditional black *perahan tumban*, flat *pakol* hat and long beard likened him to the executioners who stood before him.

"Professor, is that you?"

The weathered face of a young man emerged from within the ranks of these *mujaheds*, his rifle slung on his shoulder as he approached my father with the same respect as when he would enter his classroom as a student at Kabul University. I cannot imagine the emotion that might have consumed

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my father at that moment, or my mother, who watched the events unfold from a small truck at the junction of the road, two small children and an infant clinging to her side. At just over a year old, I was the youngest.

This chance encounter between a professor and his former student ensured our safe passage at the Torkham border into Pakistan, and shielded us from the crosshairs of Kalashnikovs that had framed the final moments of so many lives. Under the command of rival warlords, the *mujaheds* had littered the streets of Kabul with the bodies of our friends and neighbours, vying for control of a city they had reduced to ash.

When factions of these fighters later formed the Taliban, many joined the movement in resistance against local warlords, while others were forcibly conscripted. The difficult truth is that the Taliban are the Afghan people, as are the civilians subdued under their rule, and as is the diaspora that watches from afar the decimation of our culture and history. Afghans need no more than one or two degrees of separation to find themselves in the company of a *talib*, a *mujahed*, or a warlord, who were in the years prior simply neighbours, shopkeepers and promising engineering students.

In the decades that have followed the Soviet invasion of Afghanistan, continued foreign intervention in domestic political affairs has weakened confidence in national institutions. Concessions of amnesty to known warlords under current justice schemes have undermined the government, which has entirely disregarded the national desire for justice by appointing these ruthless warlords to office. While tactical support by regional powers such as Saudi Arabia, Pakistan and, more recently, Iran continues to bolster the Taliban in their war with domestic and international forces, government corruption has inadvertently seeded legitimacy for the *talibs* once more.

The Taliban and the warlords in office are woven into the fabric of Afghan society in such a way that domestic accountability in any meaningful sense is impossible. Restoration of local faith in the institutions of justice requires an initiative that is independent of this web, and the International Criminal Court prosecutor's request to open an investigation into the country is a step in that direction. The court has the capacity to investigate and prosecute the world's worst crimes when the country involved cannot or will not pursue justice for the victims.

Afghanistan is struggling now to step out from the shadow of war and mass atrocities, with a near-impossible task of identifying victims and perpetrators in a society marred by cyclical abuse. The potential for an ICC investigation into grave crimes committed in Afghanistan by members of the Taliban, Afghan forces and U.S. forces offers unprecedented hope for accountability. With a focus on those in positions of command, an ICC investigation would allow the Afghan people to find recourse against those at the highest echelons of the militaries that have orchestrated these grave abuses. That the investigation reaches foreign militaries is an integral and legitimizing element of this justice.



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An impartial ICC investigation could be an opportunity to give a voice to the Afghan people, to hear honest and undiluted accounts of the atrocities that have been committed on land that has long been the graveyard of justice. This opportunity should not be missed, and it should not be overshadowed by any potential hostility of the United States over the inclusion of its personnel in the scope of the investigation. An independent investigation that looks squarely at all parties to the conflict is a necessary assurance against sham proceedings and shady dealings that Afghanistan needs to set its national conceptions of law on a new trajectory, one that undoes the normalization of violent retribution and vigilante justice in the country.

The International Criminal Court, bound by its own institutional limitations, is by no means a panacea, but it is uniquely suited to offer Afghanistan some momentum for change – one baton among many that I hope to see the Afghan people carry forward themselves. Afghanistan should use this opportunity to find some resolution in its past, to hold abusers to account, and to begin to reconcile within itself a deeply traumatized and deeply divided people.

Syria civil war: Will anyone be prosecuted for war crimes?

(CNN)The bombardment of rebel-held districts of eastern Aleppo in December – hours after a truce had been declared – prompted grave claims that a war crime had been committed. Turkey's President Recep Tayyip Erdogan accused the government of Syrian President Bashar al-Assad of "brazenly committing war crimes." UN human rights chief Zeid Ra'ad al Hussein similarly said the Syrian regime's [heavy bombardment of an area "packed](#)



A wounded boy sits inside an ambulance as people wait to be evacuated to a government-controlled area of Aleppo on December 15, 2016. CNN

[with civilians"](#) after the brief ceasefire broke down "most likely constitutes war crimes." In a tweet late Thursday, Ukrainian President Petro Poroshenko wrote that "Russia must also pay a high price for heinous war crimes, which it supports and commits in Syria, in particular in Aleppo."

It's not the first time such accusations of war crimes have been made in Syria's protracted conflict. Opposition fighters were last week [accused of blocking civilians from fleeing rebel-held areas](#) as pro-regime forces advanced, and reportedly abducting and killing some civilians who asked them to quit their neighborhoods.

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But what is the definition of a war crime -- and will anyone be held to account?

What constitutes a war crime?

In the midst of war, international rules protect those who are not active participants in the fighting, such as civilians and prisoners of war. They include international human rights law that applies at all times, whether a country is at war or at peace, and [international humanitarian law](#), such as set out in the Geneva Conventions, which applies in situations of armed conflict. An older body of rules, the Laws and Customs of War, also governs the actions of warring parties, as do domestic laws and international human rights treaties that states have signed up to, such as the UN Convention against Torture.

Mark Ellis, executive director of the International Bar Association, which brings together lawyers worldwide, told CNN that the Geneva Conventions make clear that civilians have to be protected by all combatants. Some acts against civilians are considered ["grave breaches" of the Geneva Conventions](#). These include: wilful killing; torture or inhuman treatment; wilfully causing great suffering, causing serious injury to body or health; extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly; hostage taking; and wilfully making the civilian population or individual civilians the object of attack, if death or serious injury is caused.

Have war crimes been committed in Syria?

No war crimes prosecution has yet been brought against individuals in Syria -- but there have been many allegations of wrongdoing against both sides. "I don't think there's any doubt that war crimes have been committed on a very, very serious scale in Aleppo and elsewhere in Syria," said Avner Gidron, senior policy and law adviser for rights group Amnesty International. "Crimes against humanity are also being committed in Syria, not only war crimes."

The war crimes don't just include bombing attacks that kill civilians, Gidron said, but also abuses being committed in detention centers and prisons. "Civilians cannot be made the target of an attack under the Geneva Conventions, Ellis said, but in Syria "the evidence suggests that it's just the opposite."

Who can be accused of war crimes?

Central to the idea of war crimes is that an individual can be held criminally responsible for carrying out an unlawful act or, significantly, for ordering it, Gidron said. Those assessing whether civilians are the victim of a war crime would need to establish details such as what the target of an attack was, what information the commander had about any risk to civilians, what precautions were taken to prevent harm to civilians, and whether the risk of harm to civilians was disproportionate even if it

was a legitimate military target, Gidron said. "These are very hard things to assess," he said, adding that international law allows some leeway for the realities of war.

Who can bring a war crimes case to justice?

The International Criminal Court was set up to try individuals for genocide, war crimes and crimes against humanity. However, a case would normally have to be referred to it by the UN Security Council. "This is quite unlikely in this case because of Russia's position on the Security Council," said Ellis. Russia, as a permanent Security Council member, has veto power which it has already used to block UN resolutions on Syria.

Another possibility involves the principle of "universal jurisdiction." Some offenses, such as war crimes, crimes against humanity and genocide, are so serious that individual states can seek to prosecute them in their national courts even if they are not party to the conflict and their own citizens are not involved. What's not yet clear is whether any state would have the political will to bring such a case. In the past, Spain has been most active worldwide in pursuing cases under the principle of universal jurisdiction. There has also been discussion of a possible post-war tribunal to try alleged war crimes in Syria, Ellis said, "but I think that's unlikely if Assad stays in power."

Is evidence of alleged war crimes being collected in Syria?

Independent observers may have very limited access to Syria, but those committing war crimes need not rest easy in their beds. International rights groups such as Amnesty International and Human Rights Watch, as well as local Syrian activist groups, are working to preserve evidence and gather testimonies, said Gidron. A spokesman for the UK Foreign Office said it had "trained and equipped the Syrian moderate opposition to collect evidence in Syria of human rights violations and abuses, as well as evidence of breaches of violations of international humanitarian law by any party."

And UK Foreign Office Minister for the Middle East, Tobias Ellwood, tweeted Wednesday that Russia's use of its veto power at the UN Security Council "will not prevent individuals committing potential crimes against humanity from being held to account."

The wealth of video and pictorial evidence that can be collected today would never have been available before, said Ellis, and represents "a very powerful part of building a case."

Will anyone be prosecuted for war crimes in Syria?

As and when the conflict comes to an end, international attention may turn from the current efforts to alleviate civilian suffering in Syria to bringing those responsible to justice, said Ellis. But Gidron warned that it can take a long time for those accused of war crimes to be held accountable. "We are just seeing in Latin America now people being brought to justice for atrocities 40 years ago, still seeing Nazi war crime suspects being tried after all these years," said Gidron. "It takes a long time

sometimes but it's important to try to preserve the evidence of the atrocities, so there's a chance of this later on."

Jan Egeland, special adviser to the UN Special Envoy for Syria, pointed the finger Thursday at all parties for hindering action by the international community. "They have not been able to give us the access that we needed and therefore we have not been witnesses to atrocities that we know have been committed by all sides in this horrific war, including in east Aleppo."

Judge Rules that Customary International Law is Applicable in Uganda's Domestic Courts

Open Society Justice Initiative, by Lino Owor Ogora*

On November 22, 2017, the International Crimes Division (ICD) of Uganda sitting at the High Court in Kampala delivered another landmark ruling when it confirmed that customary international law is applicable in the domestic courts of Uganda. It was the fifth pre-trial hearing of the year in the case of Thomas Kwoyelo, and the case is now one-step closer to a final determination on the confirmation of the charges against him.

Colonel Thomas Kwoyelo is a former commander in the Lord's Resistance Army (LRA) facing charges of war crimes and crimes against humanity before the ICD of Uganda's High Court. He first appeared before the ICD in 2011, but the start of his trial was delayed by various preliminary objections regarding questions on amnesty and most recently the question regarding the applicability of customary international law in the domestic courts of Uganda. The prosecution has charged Kwoyelo with [93 counts](#), 59 of which fall under customary international law.

In 2016, three pre-trial hearings were held in [April](#), [August](#), and [September](#) in an unsuccessful bid to confirm the charges against Kwoyelo. In 2017, [more pre-trial hearings](#) were held in January, February, March, and June, again with the purpose of determining whether the charges against Kwoyelo would be confirmed. At all these hearings, the charges levelled against Kwoyelo could not be confirmed due to preliminary objections against the indictment raised by the defense.

The main question before the court in the pre-trial hearing of November 22 was whether or not international customary law is applicable in Uganda's domestic jurisprudence and if it can be used as a basis of the criminal charges against Kwoyelo. Other questions included: (1) whether the current charges against Kwoyelo were legally enshrined in the Uganda's constitution; (2) whether the crimes with which Kwoyelo is charged under customary international law were recognized as war crimes and crimes against humanity at the time of their alleged commission; and (3) whether the charges in the current indictment were duplicated.

In a hearing that lasted for three hours, the presiding judge, Justice Susan Okalany, overruled all the preliminary objections of the defense and upheld the indictment against Kwoyelo based on “authorities, jurisprudence, case law and the constitution of the republic of Uganda.”

As Justice Okalany explained while delivering her ruling, “I have cautiously considered all the submissions of all parties in this matter, all the relevant laws and authorities indetermining these questions. I can now respond by saying that broadly speaking international law stems from three main sources; treaties, customs and generally accepted principles of laws derived from national and international legal systems.”

She continued on to explain that if customary law could form part of Uganda’s constitution, then so could customary international law. In her opinion, “The matter may only require a repugnancy test to establish it in Uganda’s jurisprudence, a test which in my opinion is not a very difficult one,” she said. Repugnancy in legal terms refers to an inconsistency or opposition between two or more clauses of the same deed, contract, or statutes. In Justice Okalany’s opinion, therefore, there was no inconsistency between Uganda’s constitution and customary international law.

Justice Okalany cited Article 128 of Uganda’s Constitution and clause 15(13) of Uganda’s Judicature Act, which permit the ICD to apply customary international law and customary law in general, and several other authorities and jurisprudence of institutions such as the International Court of Justice (ICJ), International Criminal Court (ICC), the International Criminal Tribunal for Rwanda (ICTR), the International Criminal Tribunal for Yugoslavia (ICTY), and the Special Court for Sierra Leone.

The court also ruled that the indictment and charges contained therein was legally enshrined in Uganda’s Constitution. The court explained that the crimes with which Kwoyelo is accused were recognized as war crimes and crimes against humanity at the time of their alleged commission and that the charges in the indictment are not duplicated.

Consequently, the court permitted the prosecution to pursue all crimes brought in the indictment as alleged to have been committed by the accused. The next hearing is scheduled to take place Monday, December 4. It is hoped that the ICD will make the final decision on whether or not to confirm the charges against Kwoyelo, who has been in detention since 2008, ending a lengthy pre-trial process and potentially paving the way for the ICD’s first trial.

Lino Owor Ogora is a peace-building practitioner who has worked with victims of conflict in northern Uganda since 2006. He is also the Co-Founder of the [Foundation for Justice and Development Initiatives \(FJDI\)](#), a local Non-Government Organization based in Gulu District that works with children, youth, women and communities to promote justice, development and economic recovery in northern Uganda.



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The ICC Prosecutor appoints Patricia V. Sellers as her Special Adviser on Gender

The ICC Prosecutor, Mrs Fatou Bensouda, is pleased to announce the appointment of Ms Patricia Viseur Sellers as her Special Adviser on Gender.

Ms Sellers is an international criminal lawyer with more than two decades of experience working in the fields of international criminal justice and human rights as a practitioner, lecturer, policy adviser, and advocate for women's rights and gender equality. In the ongoing



Ms Patricia Viseur Sellers, Special Adviser to the ICC Prosecutor on Gender © ICC-CPI

implementation of the Office's [Policy Paper on Sexual and Gender-Based Crimes](#), Ms Sellers will, *inter alia*, provide advice to the Prosecutor. Her immediate priority will be to further strengthen the Office's approach to a range of gender issues and, support office-wide strategic responses to sexual and gender-based crimes under the Rome Statute.

"Since the adoption of our Policy on Sexual and Gender-Based Crimes in 2014, the Office has been involved in various implementation initiatives. Further integrating a gender perspective into all areas of our work is a priority for me. Ms Sellers is a renowned expert on gender issues and her deep knowledge and experience in this field will be of benefit to my Office", said Prosecutor Bensouda.

For more background regarding Ms Patricia V. Sellers, [click here](#).

Under article 42.9 of the Rome Statute, the Prosecutor may appoint Special Advisors with legal expertise on specific issues, including, but not limited to, sexual and gender violence. Special Advisors to the Prosecutor work on a voluntary pro bono basis. They are required to sign a confidentiality agreement with the Office of the Prosecutor, and are bound by the 'Standards of Conduct' stipulated in [Annex I to Administrative Instruction ICC/AI/2016/002](#).



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Database of Missing from Yugoslav Wars to be Created

Balkan Transitional Justice - A unique database containing the names of people missing since the 1990s Yugoslav wars whose remains have still not been found will be created, governments across the region have agreed.

The 14th regional conference on the exhumation and identification of people who disappeared in the 1990s wars, held in Belgrade on Friday, was told that a unique database of missing persons will be established in The Hague.



Participants at the Belgrade conference. Photo: Sanja Ivanis.

Representatives of the Bosnian, Croatian, Kosovo, Montenegrin and Serbian governments, as well as some international organisations, have agreed to participate in the project, said a representative of victims' families' associations. Olgica Bozanic, the chairperson of the board of the Regional Coordinating Body of Families' Associations, warned that there has been a drop in activity in recent years when it came to locating victims' remains.

"In most cases, politics gets involved when we ask that certain locations be checked," Bozanic told BIRN after the conference. But Bozanic said she was glad that the representatives of all government bodies and international organisations present have agreed to participate in setting up the list of missing persons. "It would happen in the past that individuals were reported missing in multiple places," she said. She also noted that the number of missing persons has been the subject of political manipulation.

The database of active missing-persons cases is a project of the International Commission on Missing Persons, ICMP, which is hosting all the data. The agreed goal with participating countries is to put the database in the public domain in 2018. Bozanic added that the ICMP has launched an online tool to assist in locating hidden gravesites. People who know the locations of mass graves but are afraid to come to victims' association offices, or do not want to be identified for any other reason, can now report what they know anonymously, Bozanic said.

The regional conference brought together representatives of state commissions for missing persons, war crimes prosecutors, and representatives of 18 victims' families' associations from the former

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Yugoslavia. Their meeting, however, ended in vocal altercations, as some families' representatives' "feeling of powerlessness turned to anger," according to Bozanic. "Many still cannot overcome their emotions and fight for truth in a dignified manner. Shouting will not help anyone," she said.

According to the International Committee of the Red Cross, there are still 10,373 missing persons from the Yugoslav wars. The regional coordinator of the International Committee of the Red Cross for the Western Balkans, Zita Crener, said that locating the missing should be regarded as a humanitarian issue, not a political one. "We are stepping up our efforts on calling for more actions from all sides," Crener told BIRN.

News December 2017

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

31 December

[What the Yugoslav war-crimes tribunal achieved](#) (Economist)

The ICTY, which was established by the United Nations Security Council in 1993, closes at the end of this month. A few remaining appeals and retrials will become the responsibility of the Mechanism for International Criminal Tribunals, which performs the same role with the now-closed Rwandan tribunal. The ramifications of the ICTY's work extend far beyond the region. It was the first such court to prosecute war crimes since the Nuremberg and Tokyo trials at the end of the second world war. It indicted 161 people, including former presidents and prime ministers. All were caught, handed themselves in, or died. Ninety were convicted. Nineteen were acquitted. None is a fugitive. The court heard evidence from more than 4,650 witnesses in cases relating to genocide, ethnic cleansing, mass murder and sexual violence...

[Slobodan Praljak suicide 'could not have been prevented'](#)

(BBC)

The UN court in the Hague says it could not have prevented a war criminal from taking poison and killing himself. Gambian judge Hassan Jallow said

that without specific intelligence, no measures would have guaranteed the poison was detected. Bosnian Croat war criminal Slobodan Praljak died after taking potassium cyanide when his prison sentence was upheld. A Dutch police inquiry into possible criminal activity is continuing...

28 December

[Argentina Dirty War: Killer Etchecolatz gets house arrest](#)

(BBC)

A court in Argentina has granted house arrest to an 88-year-old former police officer who was serving a life sentence for crimes against humanity. Miguel Etchecolatz headed police investigations in Buenos Aires province from 1976 to late 1977, when Argentina was ruled by a military junta. Etchecolatz confessed to killing political opponents under military rule although he never said how many...

[14 Bosniaks Charged with Crimes Against Humanity](#)

(Balkan Transitional Justice)

The Bosnian state prosecution on Thursday indicted Esad and Agan Ramic, Sefik Niksic, Adnan Alikadic, Mitko Pirkic, Redzo Balic, Hamed Lukomirko, Safaudin Cosic, Muhamed Cakic, Ismet Hebibovic, Almir Padalovic, Enes Jahic, Senadin Cibo and Sead Jusufbegovic for alleged crimes against humanity in Konjic and the surrounding villages in 1992 and 1993. Since it started working in 2003, the Bosnian prosecution has never before filed charges against Bosniaks for alleged crimes against humanity. The maximum penalty is 40 years in prison...

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[Unicef says scale of attacks on children in conflicts is shocking](#)

(BBC)

The UN children's fund says the scale of attacks on children in the world's conflict zones reached "shocking" levels in 2017. In a new report, Unicef said there was widespread and blatant disregard for international laws designed to protect the most vulnerable. Unicef director Manuel Fontaine said children were being targeted in their homes, schools and playgrounds...

27 December

[Bosnia war crimes: Former female fighter Azra Bašić gets 14 years](#)

(BBC)

A court in Bosnia has sentenced a woman known as "the mistress of life and death" to 14 years in prison for war crimes committed in the 1990s. Azra Bašić was found guilty of crimes during the Balkan war, including the torture of ethnic-Serb civilians. The judge said Bašić was responsible for "particular cruelty" towards those detained by Bosnian-Croat forces. Her sentence is the most severe to be handed to a woman for atrocities committed during the Bosnian conflict...

[Kosovo: War Court Challenged, Ex-Guerrillas Acquitted](#)

(Balkan Transitional Justice)

As the year drew to a close in Pristina, a group of MPs made a controversial attempt on the night of December 22 to scrap the law that established the new Kosovo Specialist Chambers, as the new Hague-based court prepares to issue its first indictments of former Kosovo Liberation Army fighters for wartime and post-war crimes. Forty-three MPs out of a total of 120 signed a demand for an extraordinary parliamentary session to revoke the Kosovo law that allows the Specialist Chambers to operate...

21 December

[2017: The year even the U.N. human rights commissioner gave up on human rights](#)

(Washington Post)

Zeid Raad al-Husseini isn't afraid to speak his mind. The U.N. high commissioner for human rights has taken on some of the most powerful countries in the world... Now Hussein is waving the white flag.

In an email to his staff, he announced that he will step down after his term ends next summer. He explained that the climate for human rights advocacy had gotten too bad. "Next year will be the last of my mandate," Hussein wrote in the memo, obtained by Foreign Policy. "After reflection, I have decided not to seek a second four-year term. To do so, in the current geopolitical context, might involve bending a knee in supplication; muting a statement of advocacy; lessening the independence and integrity of my voice — which is your voice."...

20 December

[Bosnian Serb Ex-Soldiers Arrested on Genocide Charges](#)

(Balkan Transitional Justice)

State Investigation and Protection Agency police officers on Wednesday arrested ex-soldiers Mile Kosoric, Rade Garic and Momcilo Tesic for alleged crimes against Bosniak prisoners of war and civilians in July 1995, including genocide. The prosecution said that a search of buildings in the Vlasenica and Han Pijesak area was also underway...

[Liberia: Agnes Reeves, Charles Taylor Ex-Wife Denied Bail in UK](#)

(allAfrica)

Agnes Reeves Taylor, ex-wife of former Liberian President Charles Taylor has been denied bail ahead of a war crime related trial slated for October 2018. She will remain in custody until the trial begins. It can be recalled, that Reeves Taylor was arrested by the Metropolitan Police's war crimes unit on 1 June and now faces one count of conspiracy to commit torture under the Criminal Law Act 1977 and seven counts of torture under the Criminal Justice Act 1988...

[Guantánamo: Something's wrong with war court prosecutor's charges in Southeast Asia terror plots](#)

(Miami Herald)

Guantánamo prosecutors forwarded a proposed Southeast Asia war crimes case to a Pentagon official for approval, only to have the case returned, a military official said Wednesday. Navy Cmdr. Sarah Higgins related what sounded like a snafu in a brief statement from the Office of

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Military Commissions. The Miami Herald reported exclusively earlier this month that the war crimes prosecutor had served non-capital charges on Indonesian captive Riduan bin Isomudin, known as Hambali, and Malaysians [Bashir Lap](#) and [Mohd Farik Bin Amin](#), accusing them of being in league with al-Qaida and plotting terrorism in Southeast Asia after the Sept. 11 attacks. The grisly 2002 Bali nightclub bombing that killed more than 200 people was included...

19 December

[The Hartford Guidelines on International Speech Crimes](#)

(International Judicial Monitor)

...International courts face unique challenges when adjudicating international speech crimes such as direct and public incitement to commit genocide, and instigating crimes against humanity. The courts must balance freedom of expression, a right protected by international conventions, with the need to regulate potentially harmful speech and punish those who incite others to commit genocide or persecute members of a protected group. They must also determine the intentionality of the speaker advocating a crime, and in the case of completed crimes, ascertain the causal nexus between the expression and the crime...

18 December

[Could Aung San Suu Kyi face Rohingya genocide charges?](#)

(BBC)

Zeid Ra'ad Al Hussein, is determined that the perpetrators of the horrors committed against the Rohingya face justice. He's the head of the UN's watchdog for human rights across the world, so his opinions carry weight. It could go right to the top - he doesn't rule out the possibility that civilian leader Aung San Suu Kyi and the head of the armed forces Gen Aung Min Hlaing, could find themselves in the dock on genocide charges some time in the future. Earlier this month, Mr Zeid told the UN Human Rights Council that the widespread and systematic nature of the persecution of the Rohingya in Myanmar (also called Burma) meant that genocide could not be ruled out...

[Serbia's War Crimes Strategy 'Failing to Deliver'](#)

(Balkan Transitional Justice)

Since Serbia adopted its national war crimes strategy in 2016, there has been no significant progress in the prosecution of war crimes, warns a report by the Belgrade-based Humanitarian Law Centre NGO that was published on Monday. Without true dedication, as well as political will, all the envisioned reforms are doomed to fail," the report says. The HLC says that since the strategy was adopted, only eight new indictments have been issued, and war crimes trials continue to take an unreasonably long time...

15 December

[Congo child soldiers awarded \\$10 million compensation in landmark ruling](#)

(Reuters)

International war crimes judges awarded \$10 million in compensation on Friday to child soldiers recruited by convicted Congolese warlord Thomas Lubanga - the largest reparation of its kind. The International Criminal Court said Lubanga was liable to pay the full amount to his young victims and their relatives, but added it recognized there was no way he would be able to afford it. So it said part of the payment would be made by a court Trust Fund for Victims - and said the fund should ask for contributions from the government of the Democratic Republic of Congo...

13 December

[Congolese fighters convicted of raping young girls in landmark case](#)

(Guardian)

Twelve members of a Congolese militia group have been convicted of raping 37 toddlers and young girls in a landmark case that lawmakers hope will deter potential future perpetrators. Fighters from a group that christened itself Djeshi ya Yesu (The Army of Jesus), carried out the rapes in the belief they would give them supernatural powers on the battlefield, a court in the Democratic Republic of Congo (DRC) heard...

[UN Court Hears Appeal In Serbian Nationalist Politician's Acquittal](#)

(Radio Free Europe)

A UN court has heard an appeal against the acquittal of Serbian nationalist politician Vojislav Seselj on charges of war crimes and crimes against humanity. Seselj is accused of committing the

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crimes against non-Serbs in Croatia, Serbia's Vojvodina region, and Bosnia-Herzegovina during the Balkan wars that followed the breakup of Yugoslavia in the early 1990s and cost an estimated 130,000 lives. During the December 13 appeal hearing, the prosecution explained to judges at the Mechanism for International Criminal Tribunals (MICT) in The Hague why they believe that the 2016 verdict should be overturned...

[Serbian Court Delays Srebrenica Massacre Trial](#)

(Balkan Transitional Justice)

The court decided on Wednesday to postpone the trial of eight former Bosnian Serb policemen for the massacre of Bosniaks from Srebrenica in the village of Kravica in 1995 because it had not received documents from the Appeals Court related to defendants' possible complaints about previous procedural decisions. "We have no faith in this court," said Suhra Sinanovic, president of the Association of Women of Podrinje-Bratunac, who lost her husband and relatives in Kravica...

[US Urges Serbia to Tackle Kosovo Massacre Cover-Up](#)

(Balkan Transitional Justice)

The US State Department said on Tuesday that it has brought a report by the Belgrade-based Humanitarian Law Centre NGO about the cover-up of crimes in Kosovo to the attention of Serbia's recently-appointed war crimes prosecutor. "We believe that those guilty of moving the bodies of Albanian civilians from Kosovo to clandestine mass graves in Serbia to conceal evidence of earlier massacres should be brought to justice," said Deputy Secretary of State John Sullivan, in a response to a question from US Representative Eliot L. Engel...

12 December

[How to Fix the US Military's Broken Targeting System](#)

(Just Security)

The recent groundbreaking investigation by the *New York Times* into civilian casualties in Iraq uncovered a shocking truth for the many Americans who believe the United States is engaged in the "cleanest" and "most precise" war of all time: the U.S.'s targeting system in Iraq is broken and, as a result, U.S. airstrikes there are

killing far more civilians than the U.S. acknowledges. What is even more disturbing is that we can now safely assume that the number of uncounted civilian deaths extend far beyond Iraq into Syria, Afghanistan, and other countries the U.S. is bombing...

[EU governments complicit in migrant torture in Libya, says Amnesty](#)

(BBC)

European governments are knowingly complicit in the torture and abuse of refugees and migrants in Libya, Amnesty International has alleged. In an effort to stem migration, the EU is actively supporting a "system of abuse and exploitation" on Libyan shores, the group said in a report. EU funds are going to authorities working with militias and people smugglers, the report says. The EU said its work to help migrants made things better, not worse. It has provided ships, training and funding to the Libyan coastguard. Libya is the main thoroughfare for migrants trying to reach Europe. Arrivals in Italy - the main destination for boat crossings - fell sharply following the provision of EU funds to the Libyan coastguard...

11 December

[Al-Bashir case: ICC Pre-Trial Chamber II decides to refer Jordan's non-cooperation to the ASP and UNSC](#)

(ICC Press Release)

On 11 December 2017, Pre-Trial Chamber II of the ICC found that the Hashemite Kingdom of Jordan, a State Party to the ICC Rome Statute since 2002, failed to comply with its obligations under the Statute by not executing the Court's request for the arrest of Omar Al-Bashir and his surrender to the Court while he was on Jordanian territory attending the League of Arab States' Summit on 29 March 2017. The Chamber decided to refer the matter of Jordan's non-compliance to the Assembly of States Parties of the Rome Statute ("ASP") and the United Nations Security Council...

9 December

[Pentagon 'Deeply Committed' to Laws of War as ICC Considers Investigation](#)

(VOA news)

The Pentagon has reasserted its commitment to complying with the laws of war, after news



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emerged that the International Criminal Court is seeking an investigation into alleged war crimes by U.S. personnel in Afghanistan. Pentagon spokesman Mike Andrews, a lieutenant colonel in the Air Force, told VOA on Friday that the United States is "deeply committed to complying with the law of war, and we have a robust national system of investigation and accountability that more than meets international standards."...

8 December

Preliminary examinations: A closer look at one of the most important parts of the ICC Office of the Prosecutor's work

(IntLawGrrls)

Preliminary examinations are in the limelight following the release of the ICC Office of the Prosecutor (OTP's) 2017 Report on Preliminary Examination Activities, which was presented today at the 16th session of the ICC Assembly of States Parties in New York. Additionally, recent developments in several situations under preliminary examination have garnered attention, including the Prosecutor's decision to seek authorisation to open investigations in Afghanistan and Burundi and affirmation of her 2014 decision not to proceed with an investigation into war crimes allegedly committed by members of the Israel Defence Forces on the vessels of Comoros, Cambodia, and Greece...

7 December

Rights group: 'Hunting down', 'killing' British Daesh fighters is a war crime

(Middle East Monitor)

British citizens fighting with Daesh abroad should be hunted down and killed, insisted the UK defence secretary during an interview with the *Daily Mail* yesterday. However remarks by Gavin Williamson have come under strong criticism from terrorist watchdogs and human rights group who have accused the minister of advocating "war crimes". The newly appointed minister said that not a single British citizen who has fought for Daesh should be allowed back into the UK. "Quite simply, my view is a dead terrorist can't cause any harm to Britain," he said to the *Daily Mail*. "I do not believe that any terrorist, whether they come from this country or any other, should ever be

allowed back into this country," Williamson added...

6 December

DR Congo displacement crisis 'worse than Middle East'

(BBC)

Conflict has forced 1.7 million people to flee their homes in the Democratic Republic of Congo this year, causing "a mega-crisis", aid agencies say. This means that for the second consecutive year, DR Congo is worst-affected by conflict displacement in the world, the agencies add. DR Congo has been hit by years of instability, with rival militias fighting for control of territory...

6 December

The ICC in the Context of Libya: Principle of Complementarity, Al-Senussi and Deterrence

(IntLawGrrls)

One of the interesting side events that took place today, on day three of the ASP, included a panel discussion around the importance of the ICC role in the pursuit of deterrence. Additionally, the concept of complementarity, specifically pertaining to the case of [Abdullah Al-Senussi](#) and the context of Libya, was of focus... the purpose of this blog is to elaborate on each of the panelist's contributions to the areas of complementarity, the role of the ICC as a tool for deterrence and the Al-Senussi case, in the order in which they were presented...

5 December

UN rights chief: cannot rule out genocide in Myanmar

(Jurist)

UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein said Tuesday that he could not rule out that genocide is occurring in Myanmar against the Rohingya Muslim minority... Zeid said that witnesses have reported acts of "deliberately burning people to death inside their homes; murders of children and adults; indiscriminate shooting of fleeing civilians; widespread rapes of women and girls; and the burning and destruction of houses, schools, markets and mosques" against the Rohingya people...



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4 December

[UN chief urges universal ratification of International Criminal Court's founding treaty](#)

(UN News Centre)

United Nations Secretary-General António Guterres on Monday stressed the importance of all States ratifying the treaty that established the International Criminal Court as the central institution of the global criminal justice system, known as the Rome Statute. "To ensure accountability around the world, it is essential to reach universal ratification of the Rome Statute," said Mr. Guterres at the opening in New York of the 16th session of the Assembly of States Parties to the treaty, whose adoption in 1998, he said, was

"a hopeful, historic moment near the end of a century marked by atrocities and unspeakable inhumanity." ...

1 December

[Corporate Criminal Accountability for International Crimes](#)

(Just Security)

This post is the latest in [our series on the upcoming U.S. Supreme Court case *Jesner. v. Arab Bank*](#), a case with implications for everything from human rights to terrorism financing cases that will resolve the question of whether corporations can be sued under international law...

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](#)

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