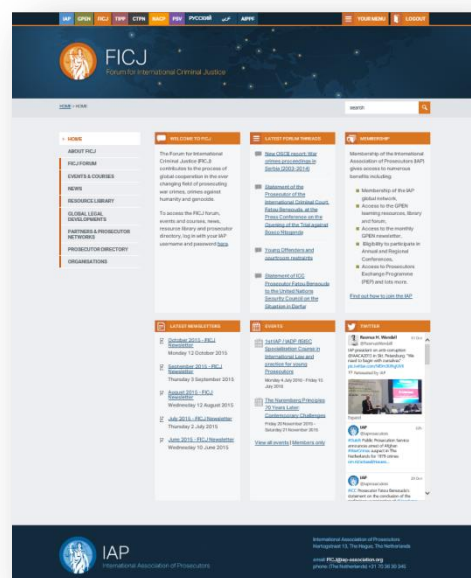


Forum for International Criminal Justice Newsletter: November 2017

Welcome to the IAP's Forum for International Criminal Justice (FICJ) November 2017 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.

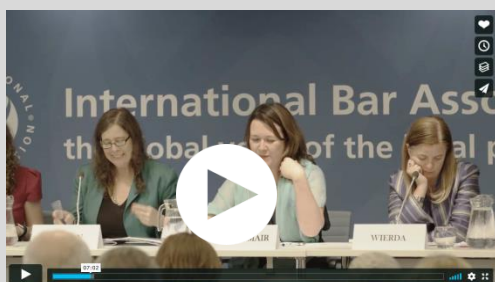
Domestic news covered in this Newsletter includes: Large-scale **Ethiopian** war crimes trial begins in **The Netherlands**; genocide trial against ex-**Guatemalan** dictator Rios Montt to restart; progress in the prosecution of conflict-related sexual violence in **Colombia**; and in **Kosovo**, legal recognition of war-time sexual violence survivors after 18 years.

***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 panel from a recent IBA ICC & ICL Programme conference on Fair Trials and Complementarity: Panel 1: Domestic justice for ICC crimes & fair trials.



[Click here](#) to watch a short Human Rights Watch video on the first Syrian atrocity crimes trials held in Europe. Here, Kristina Lindhoff Carleson, Senior Swedish Prosecutor, discusses some of the issues.



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Large-scale Ethiopian War Crimes Trial Begins in The Netherlands

Dutch [Public Prosecution Service](#) press release



Presiding Judge Renckens, center, opens the court session in The Hague, Netherlands, on Monday, 30 October 2017, in the case against a Dutch national of Ethiopian descent for alleged war crimes committed during the 1970's regime in Ethiopia. (AP Photo/Peter Dejong)

Hearings in the extensive trial about a grim series of events involving the incarceration, torture and murder of opponents of the 1970s revolutionary regime in Ethiopia will begin on 30 October before the Hague Court of First Instance in The Netherlands.

A now 63-year old resident of the Dutch town of Amstelveen has been charged with these crimes by a Dutch Prosecutor. He is alleged to have been the representative of the erstwhile Dergue-régime of Colonel Mengistu in the Ethiopian Province of Gojjam in the late 70s. The Dutch resident has been sentenced to death in absentia in Ethiopia for the murder of suspected opponents of the régime. He was subsequently sentenced to life imprisonment as well. In the Netherlands, he has been in provisional custody for the last two years.

Ethiopian by birth, the accused is a long-time resident of the Netherlands and has acquired Dutch citizenship. Since it is not possible to execute the Ethiopian judgement, a trial in The Netherlands is the best option to call the man to account before a Court of Law. The criminal investigation has been conducted by the International Crimes Team of the Netherlands National Police. The prosecution is in the hands of the Netherlands National Prosecutor's Office.

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War Crimes

The accused has been charged with War Crimes, including arbitrary detention and cruel and inhuman treatment of civilians and fighters who had laid down their arms or were otherwise *hors de combat*. The indictment contains the names of 321 individual victims.

In addition, he has been charged with torture, resulting in severe physical injury and death of his victims. Witnesses have testified that the acts of torture included beatings and kicking and involved victims being tied up and suspended in mid-air while they were beaten with sticks in their faces and against their bare feet.

In August 1978, the suspect allegedly ordered the killing of 75 young prisoners. They were reportedly murdered in a church. Witnesses recounted that their corpses were dumped in a mass grave.

The fourth and last count on the indictment involves the incarceration and inhumane treatment of 240 people. This count involves the humiliation of the victims, the outrages on their personal dignity and their sentencing to prison sentences without trial. Several witnesses have testified that they were locked up in small rooms with too many people where there was hardly any daylight. There were no or insufficient sanitary facilities, unclean food and drinking water and lack of medical care.

Red Terror

Ethiopian Emperor Haile Selassie was deposed in 1974 by the military coup of a group called the 'Dergue'. After internal power struggles, Colonel Mengistu seized power. Under the Mengistu-régime, Ethiopia lived through a bloody period of repression and strife at the cost of thousands of lives. The 'red terror' of the régime was accompanied by mass arrests, torture and killings by the government.

Witnesses

The case file contains the statements of several witnesses. They are Ethiopians who are now living abroad. These witnesses have given statements to the Dutch Police and subsequently testified to the investigative judge about the crimes that the accused is charged with. Some of them will come to the Netherlands to be present at the Trial.

In the first two or three days of the hearings, the court will question the accused about the facts on the indictment. One day will be reserved for the statements of the victims. The closing statement of the Prosecution is expected in the second week of November, followed by the Defence arguments. The date of the judgment has not yet been set.



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Liberia's Civil War Atrocities the focus of Philadelphia Immigration Fraud Trial

On 18 October 2017, a unanimous jury in Philadelphia convicted Mohammed Jabbateh, aka "Jungle Jabbah", a Liberian national living in the United States, for immigration fraud and perjury, stemming from false statements he made about his wartime activities when applying for immigration benefits. Jabbateh faces up to 30 years in prison. The case was a unique and historical step by the US attorney's office to present a case of war crimes in a national courtroom, and it represents the first time that victims have testified in a criminal trial about Liberia's first civil war.



According to the [indictment](#), Jabbateh, during his overall time as a United Liberation Movement for Democracy in Liberia (ULIMO) commander or as a higher-ranking officer, either personally committed, or ordered ULIMO troops under his command to commit, the following nonexclusive list of acts: 1) the murder of civilian non-combatants; 2) the sexual enslavement of women; 3) the public raping of women; 4) the maiming of civilian non-combatants; 5) the torturing of civilian non-combatants; 6) the enslavement of civilian non-combatant's; 7) the conscription of child soldiers; 8) the execution of prisoners of war; 9) the desecration and mutilation of corpses; and 10) the killing of persons because of race, religion, nationality, ethnic origin or political opinion.

The jury found that Jabbateh knew he was answering falsely on his asylum application in 1998, when he withheld his role as a combatant for ULIMO, and responded "no" to whether he had ever committed a crime or harmed anyone else. Later, when applying for legal permanent residency, Jabbateh denied having ordered, incited, assisted or otherwise participated in the killing of any person because of race, religion, nationality, ethnic origin or political opinion.

These crimes occurred during Liberia's first civil war, which devastated the West African nation in the 1990s. Liberians experienced some of the most serious atrocities during its [14-year armed conflict](#). In December 1989, Charles Taylor and his rebel group, the National Patriotic Front of Liberia (NPFL) launched an invasion to remove then-president Samuel Doe and his Armed Forces of Liberia from power. Even after Doe was killed, additional rebel groups emerged to fight Taylor's forces for control of Liberia, including Jabbateh's ULIMO. The first civil war continued until 1996, when a tentative

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peace agreement and ceasefire was established, but the violence resumed after Taylor was elected president in 1997. By the end of the second civil war in 2003, approximately 250,000 civilians died and more than half of the population were displaced. In 2009, a [Truth and Reconciliation Commission](#) found that all warring factions, including the ULIMO and ULIMO-K, had committed war crimes, crimes against humanity, and other egregious abuses, and identified 98 perpetrators for additional investigation and prosecution. The Commission also recommended the creation of an [Extraordinary Criminal Tribunal for Liberia](#) to prosecute perpetrators in Liberia. To date, no one has been held accountable in Liberia and a court was never established to prosecute these crimes.

Outside of Liberia, only one person has been held criminally accountable for civil war era atrocities. In 2009, the United States convicted [Charles “Chuckie” Taylor](#), the son of the former president, for torture and conspiracy to commit torture while head of Liberia’s Anti-Terrorist Unit, the first and only time the US convicted someone under the Torture Act. Chuckie is currently serving a 97-year prison sentence in Florida. His father, [Charles Taylor](#), was convicted by the Special Court for Sierra Leone for crimes committed in Sierra Leone, but has never faced justice for the abuses linked to him in Liberia. The trial against Jabbateh marked the second criminal trial related to Liberia’s civil war but given that the majority of Jabbateh’s alleged crimes took place before the Torture Act was enacted, the Act did not apply to him.

"The United States will not be a safe haven for human rights violators and war criminals...Today's verdict will help bring justice to the victims of Mr Jabbateh's atrocities, for having survived the suffering he inflicted during the Liberian Civil War. Homeland Security Investigations (HSI) will continue to use every tool at our disposal to ensure that those who have committed such acts abroad never evade justice and accountability for their crimes by hiding among their victims in the United States." - Marlon Miller, special agent in charge of HSI Philadelphia office.

This case has taken on significant importance to the [people of Liberia](#), [International NGOs](#) and [human rights groups](#), who are now looking to foreign governments to prosecute Liberian war criminals, using the principle of universal jurisdiction. Indictments have been issued against alleged Liberian perpetrators residing in the [United Kingdom](#), [Belgium](#), and [Switzerland](#).

- Read more about this case on the [Just Security](#) website; Liberian Quest for Justice Campaign on [Facebook](#) and [Twitter](#); daily trial [monitoring reports](#) provided by [Civitas Maxima](#); and read a [Justice Info Interview with Alain Werner](#), a lawyer and co-founder of Swiss NGO Civitas Maxima, who has been working for many years to help Liberian war victims get justice, and who has followed this case closely.

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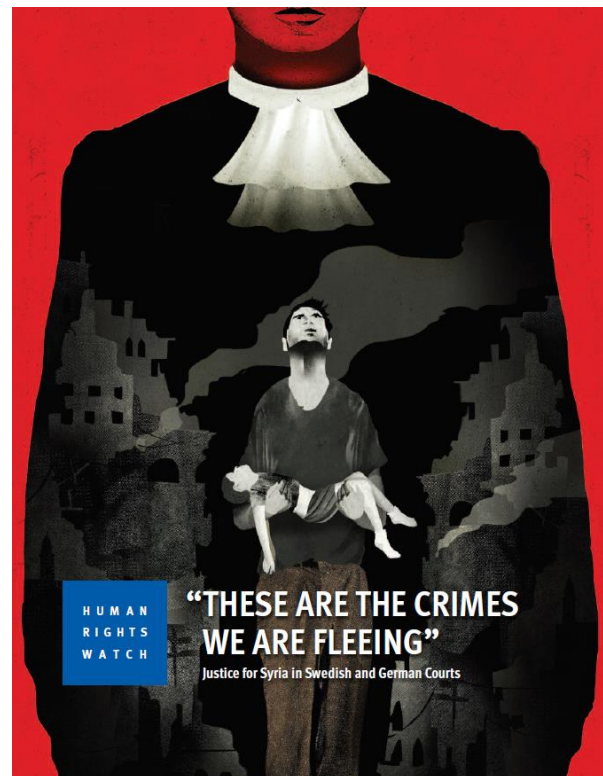
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Syria: First Atrocities Trials Held in Europe

FICJ recently asked [Maria Elena Vignoli](#) to describe a new Human Rights Watch report which she drafted, 'These Are the Crimes We Are Fleeing: Justice for Syria in Swedish and German Courts' and here is what Vignoli told us (with additional information from the Human Rights Watch website):

“ The Syrian crisis has claimed the lives of an estimated 475,000 people as of July 2017, and all sides to the conflict have committed serious crimes amid a climate of impunity. However, international efforts to achieve justice for past and ongoing crimes in the country have proved elusive despite the wealth of information and materials available. Against this background, authorities in several European countries are working to investigate and prosecute grave abuses while other avenues remain blocked. The principle of “universal jurisdiction” allows prosecutors to pursue individuals implicated in certain grave international crimes such as torture, war crimes, and crimes against humanity, even though they were committed elsewhere and neither the accused nor the victims are nationals of the country.



Such prosecutions are an increasingly important part of international efforts to hold perpetrators of atrocities accountable, provide justice to victims who have nowhere else to turn, deter future crimes, and help ensure that countries do not become safe havens for human rights abusers. As the first two countries to hold trials and convict people for atrocities in Syria, Sweden and Germany are putting war criminals on notice that they will have to pay for their crimes.

“These Are the Crimes We Are Fleeing” focuses on Swedish and German efforts to investigate and prosecute individuals implicated in grave crimes in Syria. Drawing on interviews with relevant authorities and Syrian refugees in these countries, the report highlights challenges that Swedish and German authorities face in taking up these types of cases and the experience of refugees and asylum seekers involved in these processes.

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On 25 September, Sweden became the first country to convict a member of the Syrian army for crimes in Syria. The accused, [identified through a photo](#) in which he posed with his foot on the chest of a dead victim, was found guilty of violating the dignity of a dead body.

Both Sweden and Germany have elements in place to allow for the successful investigation and prosecution of grave crimes, including comprehensive laws, well-functioning specialized war crimes units, and previous experience with such cases. In addition, due to the large numbers of Syrian asylum seekers and refugees, previously unavailable victims, witnesses, material evidence, and even some suspects are now within the reach of the authorities in these countries.

Nonetheless, Human Rights Watch found that both Sweden and Germany are facing some difficulties. The standard challenges associated with pursuing these kinds of cases are compounded by an ongoing conflict in Syria, where there is no access to crime scenes. Swedish and German authorities have to turn elsewhere for information, including from Syrian refugees, people doing similar work in other European countries, UN entities, and nongovernmental groups documenting atrocities in Syria.

Human Rights Watch has found that many Syrian asylum seekers and refugees are not aware of the systems in place to investigate and prosecute grave crimes in Syria, the possibility of their contributing to justice efforts in these countries, or the right of victims to participate in criminal proceedings.

Gathering relevant information from Syrian refugees and asylum seekers has also proved difficult due to their fear of possible retribution against loved ones back home, mistrust of police and government officials based on negative experiences in Syria, and feelings of abandonment by host countries and the international community.

Both Sweden and Germany have systems to protect victims and witnesses in criminal cases. According to Human Rights Watch, consistent with fair trial standards, both countries should explore options to increase protections in these cases for witnesses' families in Syria.

Because of the difficulties involved, Human Rights Watch found only a small number of cases have been concluded, which do not represent the scale or nature of the abuses suffered by victims in Syria. Most cases have been against low-level members of non-state armed groups opposed to the Syrian government.

In Germany, the majority of cases are brought under terrorism charges rather than for grave international crimes. That could send the message that the authorities' only focus is to combat domestic threats, Human Rights Watch said. Efforts to pursue terrorism charges should go hand in hand with efforts and resources to investigate and prosecute war crimes, crimes against humanity, and genocide.

Authorities in both countries are working to address some of these issues, although more needs to be done, Human Rights Watch said. It urges Sweden and Germany to ensure that their war crimes units are adequately resourced and staffed, provide them with ongoing training, and consider new ways to work with Syrian refugees and asylum seekers on their territory through outreach and public information efforts.

Human Rights Watch recommends that European countries follow Sweden and Germany's lead and work to expand these justice efforts for Syrians in Europe. Overall, these cases are not enough on their own and highlight the need for a more comprehensive justice process to address the ongoing impunity in Syria.

- Read the full 66-page report on the [Human Rights Watch website](#)

Extradition: English Court Refuses to Extradite Alleged génocidaires to Rwanda – Will a Domestic Prosecution Follow?

EJIL: Talk!, by Emilie Pottle, 10 October 2017

The Divisional Court of England and Wales has dismissed the appeal of the Government of Rwanda in the high-profile extradition proceedings against five alleged *génocidaires* in the case of *Rwanda v Nteziryayo and others*. The men will not be extradited to Rwanda to stand trial for genocide and it now appears that, if they are to be tried at all, it must be in the UK.

The [judgment](#) of the Divisional Court affirmed the decision of

District Judge Emma Arbuthnot on 22 December 2015 to discharge the extradition requests on two grounds: double jeopardy—one of the requested persons had been tried in a domestic 'Gacaca' court—and article 6 of the European Convention on Human Rights. The Judge accepted the evidence of the requested persons that there was a real risk they might suffer a flagrant breach of their rights to a fair trial if extradited to Rwanda.



Defendants Celestin Mutabaruka, Vincent Brown (aka Bajinya), Emmanuel Nteziryayo, Celestin Ugirashebuja and Charles Munyaneza

The background to this latest decision reveals the evolving measures employed by the international community to promote justice and end impunity for international crimes.

Following the genocide in Rwanda in 1994, the UN Security Council established the International Criminal Tribunal for Rwanda (ICTR) which was intended to bring to trial those most responsible for the genocide and other serious violations of law perpetrated in Rwanda. Security Council Resolution [1824](#), passed on July 2008, called for the completion of the work of the ICTR by 2010. The Tribunal did not complete its work as hoped and Security Council Resolution [1996](#) was passed in December 2010 calling for the Tribunal to transfer cases which did not involve those suspected of being “most responsible” for crimes to Rwandan domestic courts. Five such individuals have been tried in Rwanda since 2009. At the same time, international donors made significant investments in the Rwandan justice system, providing capacity-building to the judiciary and the prosecution authorities.

In 2009, before any cases had been transferred, a previous extradition request by the Government of Rwanda for four of the five men was refused by the Divisional Court on grounds that they would be at real risk of a flagrant denial of justice if extradited to Rwanda. This latest decision arises from a second request, made in 2013. The Government of Rwanda’s case was that its justice system had gone through a sea-change since 2009. The Government pointed to changes in witness protection, video-link facilities, and changes in Rwandan law allowing international judges to try cases of *génocidaires* transferred or extradited to Rwanda.

The District Judge was not persuaded that these improvements were sufficient to protect the men’s rights under Article 6 of the ECHR. She found that, “if extradited, as things presently stand, the defendants would be denied the effective representation of counsel...without such representation and funding, the High Court in Rwanda would be presented with the prosecution case and the RPs would find it impossible to present their side of what happened.”

The District Judge carefully considered the progress of the so-called ‘transferred cases’—the defendants transferred from the ICTR in Arusha to Rwanda. She was concerned about the quality of the representation by the defence advocates in those cases. The judge also found that the conviction of one of the requested persons, Celestin Mutabarkua, in “Gacaca” proceedings, meant that his extradition ought to be barred pursuant to the double jeopardy bar.

Double Jeopardy

The Divisional Court affirmed the District Judge’s decision on the question of double jeopardy in respect of Mutabaruka, it allowed the cross-appeal of Emmanuel Nteziryayo, holding that his extradition should also be barred because he had been previously acquitted and convicted by Gacaca courts. The effect of the Gacaca trials on these extradition proceedings is perhaps a lesson in the far-reaching consequences of trials which do not meet internationally recognised standards of fairness. It was accepted by all parties to the litigation that the standards of the Gacaca proceedings

fell far below that which is required by Article 6 of the ECHR. This meant that extradition to serve the sentences imposed in the Gacaca trials was impossible. To extradite the men to face fresh trials in regularly constituted courts was also impossible, owing to the double jeopardy rule, unless the Gacaca proceedings could be annulled. The Court was not satisfied the Government of Rwanda provided sufficient evidence to show that this was possible. As it stands the decision of the Divisional Court effectively bars the defendants' prosecution in any forum, including the UK.

In the author's view the Court took an overly technical approach to the application of the double jeopardy bar in Mutabaruka's case. The Court refused to admit fresh material on appeal which tended to show the proceedings could be annulled because no good reason had been shown for the failure to adduce it at first instance. Though the efficient conduct of proceedings generally requires both parties to call all of their evidence at first instance, in this case the court arguably lost sight of the bigger picture. Mutabaruka's extradition was sought for the most serious of offences, if there was credible evidence that the Gacaca proceedings could be annulled the court ought to have considered it.

Fair Trials

The Divisional Court affirmed the decision of the District Judge on the fair trials issue. The Court considered further evidence from the Government's expert, Martin Witteveen, which had not been disclosed during the proceedings below. Mr Witteveen, though supportive of extradition to Rwanda, became increasingly concerned about the ability of defence advocates to properly investigate the case for the defence and to present that case in court. In a confidential memo to a prosecution lawyer at the ICTR he noted:

45. What looms is a situation where defendants are convicted without [sufficient] evidence and, through strict control and direction by the Ministry, embraced by the judges, capable and experienced defence attorneys are sidelined and replaced by handpicked lawyers who do not have any trust from their clients, are not conducting any credible defence investigation and are cooperative with the court. From the outside it will look consistent with fair trial. In fact it is flawed.

Before dismissing the Government of Rwandan's appeal the Divisional Court provided a final opportunity to provide renewed assurances to secure the men's extradition to Rwanda. The Government has indicated that it will not provide the assurances. A formal order dismissing the appeals will be sealed shortly.

Domestic Prosecution

In their judgement, Foskett LJ and Irwin J repeatedly emphasized the imperative to try the men whose extradition was not barred by reason of double jeopardy, "We also recognise fully that there

should be no impunity for those guilty of such terrible crimes as are alleged here.” In the accompanying press summary the Court was unusually candid, effectively calling for trials in the UK, “If they are not returned to Rwanda, these three can still be tried here, provided the Government of Rwanda cooperates. If their guilt is established, that means there will be no impunity for those guilty of genocide. If they are innocent, their innocence will be established.”

Following the Divisional Court’s decision to refuse extradition in 2009, amendments were made to the International Criminal Court Act 2001 to enable UK courts to exercise jurisdiction over international crimes committed on or after 1 January 1991. These amendments were made with the specific intent to facilitate domestic prosecutions for crimes committed in Rwanda and the Balkans in the 90s.

Accordingly, the Metropolitan Police commenced an investigation in 2010 into the alleged war crimes committed in Rwanda by the four men whose extradition had been refused. The Rwandan authorities were not prepared to cooperate with that investigation. Now that this second set of extradition proceedings is at an end, it remains to be seen whether the Rwandan authorities are prepared to change tack and support domestic prosecutions in the UK. If they do, any ensuing prosecution will be part of a growing trend of domestic prosecutions for international crimes. A recent [report](#) by Trial International on universal jurisdiction reports that in 2016 authorities in Austria, Finland, France, Germany and Sweden brought charges for alleged crimes in Syria.

It is probably too soon to say whether this trend will take hold in the UK, where prosecutions under universal jurisdiction principles have been rare. Though domestic prosecutions geographically removed from the location of the offences present a host of challenges, they are sometimes the only option if impunity is to be avoided.

Media Allegations against Former ICC Prosecutor Luis Moreno Ocampo

In October, serious media allegations emerged against former ICC Prosecutor Luis Moreno Ocampo, as well as current staff of the ICC Office of the Prosecutor. The European Investigative Collaborations ([EIC](#)) and 11



participating news outlets base their allegations on 40,000 documents obtained by Mediapart (France) and shared with the EIC, which include financial statements, diplomatic cables, correspondence, and personal emails. The allegations include that Ocampo had [owned offshore companies](#) in Caribbean tax havens, allowed himself to be exploited by the West in the 2011 Libyan conflict and, at the end of his term with the ICC, signed up to some [dubious advisory roles](#) with

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clients that included a Libyan oil billionaire who used to be close to the Gaddafi regime. Finally, it has been alleged that two members of current ICC Prosecutor Fatou Bensouda's staff were secretly lobbying on behalf of Ocampo after his term as ICC Prosecutor had ended. Prosecutor Bensouda has [stated](#) that she views "such allegations with concern and take[s] them very seriously". She further announced her referral of the two staff members to the [Independent Oversight Mechanism](#) (IOM), and the IOM has determined that the matter will proceed to a full investigation. Der Spiegel has [reported](#) that ICC staff refers to this scandal as "Ocampagate".

Prosecutor Bensouda has also [stated](#) that her office "has not initiated contact, sought advice or collaborated with the former ICC Prosecutor, Mr Ocampo, in relation to any of the situations or cases being handled by the Office or the Court since I assumed office as Prosecutor." Moreover, she has previously "asked him, in unequivocal terms, to refrain from any public pronouncement or activity that may, by virtue of his prior role as ICC Prosecutor, be perceived to interfere with the activities of the Office or harm its reputation." Some media outlets have challenged this assertion, claiming that emails in their possession show that Prosecutor Bensouda asked for advice from Ocampo regarding cases, and [shared](#) confidential ICC documents with him.

Regarding the alleged 40,000 leaked documents, according to an [ICC statement](#), while there may be a suggestion in the public domain indicating that personal email systems were the subject of hacking, the Court has no knowledge as to how this documentation was obtained. Ocampo, however has [stated](#) that he and some colleagues were in fact the focus of a cyber-attack. He announced that "[a]n investigation as to the extent of the attack and its perpetrators is underway and a criminal investigation is in process." He further stated:

I find notable that this massive hack occurs at a time when I have begun to investigate government links to material support for terror and associated financing. Not for the first time in my 35 years of investigating people in power, selective and out of context information has already been distributed by parties clearly opposed to me and my work, leading to false and misleading reporting in several media outlets. I will not assist in authenticating information associated with the hack nor break attorney-client privilege. Regarding reporting of my banking arrangement, it should be understood that I am working "offshore" I neither have an office nor clients in my native Argentina. I have offices in Montevideo and New York and my personal banking arrangements reflect this. I used part of my savings contained in standard international accounts to supplement my spending while I was a Prosecutor and there have been no third party payments to those accounts during that time.

This is an ongoing matter, which the FICJ is following closely.



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Bosnian Judges and Prosecutors Face Possible Dismissal without Prior Disciplinary Procedure

Balkan Transitional Justice

Bosnian's top judicial body, the High Judicial and Prosecutorial Council, HJPC, said on 26 October that it will request information on investigations into judges and prosecutors after a complaint from the Justice Ministry war crimes centre in Bosnia's Serb-dominated Republika Srpska. The Republika Srpska Justice Ministry's Centre for Research on War, War Crimes and Missing Persons complained to the HJPC earlier this month, accusing nine judges and six prosecutors of having discriminated against Serbs in war crimes cases.



The Bosnian state court. Photo: BIRN.

It claimed that the judges and prosecutors worked as military judges during the war, based on a decree from the wartime Bosnian presidency, and that that some of them were military judges in wartime prison camps where Serbs were detained. The HJPC is also asking to be allowed to sack judges and prosecutors without disciplinary hearings. "We shall ask the Ministry of Justice of Bosnia and Herzegovina, the Council of Ministers and the Parliamentary Assembly of Bosnia and Herzegovina to amend the Law on the HJPC, via an urgent procedure, in order to introduce the exceptional possibility of releasing judges or prosecutors from their duties without the need to conduct a disciplinary procedure against them," the HJPC said.

Among those accused of bias by the Bosnian Serbs is judge Saban Maksumic, who was on the judging panel in the trial of the Bosnian Army's former Srebrenica commander Naser Oric, who was acquitted by the state court this month of killing Serb prisoners of war. The other two judges on the panel were Serbs. The Oric verdict sparked anger among Bosnian Serb political leaders. The HJPC's president, Milan Tegeltija, said the information submitted by the Bosnian Serbs was "very serious and delicate". "We did not participate in the appointment of those people, so we cannot dismiss them without a disciplinary procedure. A disciplinary procedure could only result from criminal proceedings against them," Tegeltija said.

A few members of the HJPC disagreed with the proposal. "This is an arbitrary and dangerous route," said judge Goran Nezirovic.

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The HJPC is also asking for legal changes to be proposed to parliament in order to enable it to dismiss unsuitable judges by a two-thirds majority. It is further asking courts to provide data on the ethnicity of people who have been acquitted and convicted of war crimes under second-instance verdicts, the legal classification of the crimes for which they have been convicted and the duration of their imprisonment sentences.

The association of Bosnian court judges told BIRN that it was unhappy with the HJPC's course of action. "This decision has led to permanent uncertainty for certain judges and disrupted the trust of citizens in justice and the independence of the judiciary," the association said in a statement.

IN RESPONSE: Statement by the OSCE Mission to BiH on the conclusions of the HJPC

The [OSCE Mission to Bosnia and Herzegovina](#) expresses its deep concerns about the nature of statements expressed in the conclusions of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina (HJPC), at its session on 26 October 2017, in relation to the information submitted by the Centre for War Research, War Crimes and Search for Missing Persons of RS.



Organization for Security and
Co-operation in Europe

Independence of the judiciary is a fundamental principle of international human rights law, including through several major international instruments. While the functioning of judiciary may be legitimately scrutinized, the Mission's assessment is that the HJPC conclusions, due to their content, constitute undue pressure on independent judicial institutions.

The HJPC's conclusions, requesting among others, from all courts in Bosnia and Herzegovina to provide data on the ethnicity of defendants in ongoing and completed war crime cases, as well as the proposal to amend the Law on HJPC by introducing the exceptional possibility of dismissal of a judge or prosecutor without prior disciplinary procedure, do not reflect the meaning and purpose of an independent judiciary as a paramount principle of rule of law.

The Mission urges the HJPC to establish consistent practices to defend members of the judiciary from undue pressure and protect public confidence against unfounded attacks, especially in view of the fact that judges and prosecutors who have been criticised are sworn to discretion which precludes them from replying.

Acting within the General Framework Agreement for Peace in Bosnia and Herzegovina ("Dayton Agreement") the OSCE Mission in Bosnia and Herzegovina is mandated to implement the OSCE's tasks in the fields of elections, human rights monitoring, and to facilitate the monitoring of arms control and confidence-building measures. Co-operation between the Mission and the BiH authorities on Rule of Law, Democratization and good governance is longstanding.

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New United Nations Mechanism for International Criminal Tribunals Online Exhibition on Children in Conflict



Online Exhibition

Children in Conflict

Evidence from the Archives of the International Criminal Tribunals

This [online exhibition](#) provides insight into some of the ways in which children were affected by the Balkan wars of the 1990s and the Rwandan genocide of 1994. Cases brought before the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) did not focus on the age of victims per se, nor did they record all significant attacks against children. Yet, many of the testimonies and objects admitted into evidence before the Tribunals depict how children often became the intentional target of sexual violence, torture, persecution, forcible transfer, murder and extermination, among other crimes.

Relying on a selection of photographs, video and audio materials, transcripts and other official documents that were admitted as evidence in cases before the ICTY and the ICTR, this exhibition presents a non-exhaustive picture of the plight of children in the Balkan wars and the Rwandan genocide and, more generally, of the impact of an armed conflict on a community's youngest members.

All material displayed in the exhibition is drawn from the ICTY and ICTR public archives, which are in the custody of the Mechanism for International Criminal Tribunals.

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Prosecuting President Duterte

Jurist, opinion by Perfecto Caparas, Associate Director of Graduate Programs and a Doctor of Juridical Science candidate of Indiana University Robert H. McKinney School of Law. He is also a lifetime member of the Integrated Bar of the Philippines.

In the face of [charges](#) of ordering and condoning the murder of thousands of civilians by the Philippine National Police, President Rodrigo Duterte boasts that he is immune from suit. A former prosecutor himself, Duterte touts immunity as an armour. The [Rome Statute](#) of the International Criminal Court created the first permanent global criminal court to hear and



try genocide, crimes against humanity, and war crimes. The Philippines validly ratified the Rome Statute, pursuant to [Section 21, Article VII](#) (Executive Department) of the 1987 [Philippine Constitution](#). The Rome Statute entered into force in the Philippines on November 1, 2011. Its [domestic counterpart](#), the Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity (RA 9851) took effect 15 days after its publication in the Official Gazette on December 11, 2009.

Sitting presidents like Duterte can thenceforth be investigated, prosecuted, tried and punished under RA 9851 for war crimes, genocide, or other crimes against humanity before Philippine courts even during their tenure. No impeachment needed. No need for them to finish their term. Those constitute unjustifiable and inexcusable crimes - the gravest forms of human rights violations - and, therefore, absolutely prohibited. The President retains her or his immunity, true; but not for "core crimes" under Art. 5 of the Rome Statute.

RA 9851 purportedly accords immunity to the President, at least during her or his tenure. Under Sec. 9(a), Chapter V (Some Principles of Criminal Liability), the President is supposedly immune from being hauled into court during his or her tenure.

The Rome Statute lacks any provision comparable to the "other than the established constitutional immunity from suit of the Philippine President during his/her tenure" qualifier found in Sec. 9(a) of RA 9851. The Rome Statute's silence on immunity from suit of heads of state, for "core crimes"

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punishable under Art 5, speaks volumes. This is precisely because no immunity for genocide, crimes against humanity, or war crimes exists.

Rome Statute Art. 27, para. 2 (Irrelevance of official capacity) accords no immunity at all to heads of state because, according to its preamble, such crimes are characterized by "unimaginable atrocities that deeply shock the conscience of humanity". No immunity for war crimes, crimes against humanity and genocide exists since "such grave crimes threaten the peace, security and well-being of the world".

Shorn of immunity, heads of state can legally be investigated, prosecuted, tried and punished for these crimes in order "to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes". Breaking the walls of impunity will surely "guarantee lasting respect for and the enforcement of international justice".

Hence, the Rome Statute provides that immunities "shall not bar the Court from exercising its jurisdiction over such a person." Instead of according heads of state with immunity, the Rome Statute seeks to destroy impunity. Non-immunity of heads of state from criminal prosecution deters the commission of mass atrocities.

The Rome Statute's Art. 27 collides with Sec. 9(a) of RA 9851 on presidential immunity from suit for the worst international crimes. Having been a later act of both the President and the Senate, the Rome Statute ratification expresses the latest, specific intent of the President and the Senate - on behalf of the Philippine state - for the President to be legally bound by the Rome Statute, including its Art. 27 provision on the "[i]rrelevance of official capacity". This later act of ratifying the Rome Statute effectively nullifies the immunity from suit, under Sec. 9(a) of RA 9851, of the President insofar as those crimes are concerned, assuming *arguendo* that such immunity was valid in the first place.

Furthermore, the Philippine [ratification](#) of the Rome Statute indicates the intent on the part of the state to further achieve its purpose in enacting RA 9851 into law. In light of RA 9851's primary aim and purpose in Sec. 2(e) (Declaration of Principles and State Policies), the proper statutory interpretation then must be that, in ratifying the Rome Statute, the Philippine President and the Senate concurrently intended to reinforce and strengthen RA 9851 by removing any presidential immunity from suit for crimes under RA 9851. This, in order to achieve both RA 9851's and the Rome Statute's fundamental objective "to put an end to impunity for the perpetrators of these crimes and thus contribute to the prevention of such crimes" (Sec. 2[e], RA 9851).


The Philippines' ratification of the Rome Statute reflects the subsequent and latest will of the state, as expressed through the President's signing of the Rome Statute's instrument of ratification with the subsequent concurrence of the Philippine Senate on August 23, 2011. The effective ratification of the Rome Statute supersedes and repeals Sec 9(a) of RA 9851. It shows its intent to fully carry out and

fulfil the Philippine state's obligation under the Rome Statute and its RA 9851 domestic counterpart to end impunity.

The incorporation clause of the 1987 Constitution (Sec. 2, Art. II) also renders nugatory the presidential privilege of immunity stated in Sec. 9(a) of RA 9851 for being violative of *jus cogens* principles or peremptory norms of customary international law. The Constitution's "generally accepted principles of international law" include customary international law, comprising uniform and consistent state practices performed out of a sense of legal obligation. The Rome Statute also embodies *jus cogens* or peremptory norms of customary international law which are non-derogable. Those cannot be deviated from under any and all circumstances at all times, anywhere in the world. *Jus cogens* norms prohibit slavery, genocide, torture, crimes against humanity and war crimes.

RA 9851's presidential immunity from suit is therefore void *ab initio*. Heads of state have no immunity for war crimes, genocide and crimes against humanity, as established in the [Nuremberg judgment](#) and the Pinochet decision in [Regina v. Bartle](#). Such "exception" is tantamount to according impunity to sitting presidents for these most egregious forms of international crimes. It's incompatible with *jus cogens* or peremptory norms of customary international law.

News October 2017

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

30 October

[EU Raps Serbia for Giving War Criminal Teaching Job](#)

(Balkan Transitional Justice)

EU spokesperson Maja Kocijancic told BIRN on Monday that Serbia has "deviated" from the principles it needs to uphold as a candidate for EU membership by appointing general Vladimir Lazarevic, who served ten years in prison for war crimes during the Kosovo conflict, as a teacher at the Serbian Military Academy. "We expect political leaders to honour the victims of past conflicts and sincerely promote reconciliation in the Western Balkans [which is] essential for stability, peaceful future and prosperity," Kocijancic said in a statement...

28 October

[Burundi becomes first nation to leave international criminal court](#)

(The Guardian)

Burundi on Friday became the first nation ever to leave the international criminal court, set up 15 years ago to prosecute those behind the world's worst atrocities. The government on Friday hailed it a "historic" day and called on people to demonstrate across the country on Saturday in celebration. An ICC spokesperson said: "Burundi's withdrawal from the Rome Statute will take effect on Friday, 27 October 2017."...

27 October

[Syria: first training session on the law of armed conflict for the Syrian Democratic Forces near Raqqa](#)

(Geneva Call)

In September 2017, Geneva Call trained more than 100 commanders from the Syrian Democratic Forces (SDF) on the law of armed conflict, including the rules regulating the conduct of hostilities and humanitarian relief. The session took place at their military base in Ain Issa, a city located 50 km north of Raqqa, in northern Syria, and came after a first meeting with the SDF General Command in July. It was the first training session of its kind for these high- and middle-ranking commanders. The SDF



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were created in 2015 and include Kurdish, Arab and Assyrian forces. They recently took the city of Raqqa with the support of a US-led coalition...

26 October

[Time to Resolve the Debate Over Immunity and the International Criminal Court](#)

(Chatham House, opinion by Dr Max du Plessis)

When the ICC charged President Omar al-Bashir of Sudan with the commission of international crimes a fractious relationship developed between the African Union (AU) – who claim that the president should be accorded immunity as a head of state – and the Court. There have been threats by many African states to withdraw from the ICC, and some have taken steps to do so. A meeting of African ministers in New York on 21 September, and an AU Commission proposal presented there by South Africa's legal adviser, highlight both the ongoing tensions but also, importantly, the possibilities for resolution. The debate goes to the heart of the international criminal justice project; 2017 has proved a watershed year, with recent events confirming the tensions. It has also highlighted the mounting need for a resolution of the dispute, or at the very least a debate about how it might best be put to rest...

[Bosnian Judges' and Prosecutors' War Records Face Checks](#)

(Balkan Transitional Justice)

Bosnian's top judicial body, the High Judicial and Prosecutorial Council, HJPC, said on Thursday that it will request information on investigations into judges and prosecutors after a complaint from the Justice Ministry war crimes centre in Bosnia's Serb-dominated Republika Srpska. The Republika Srpska Justice Ministry's Centre for Research on War, War Crimes and Missing Persons complained to the HJPC earlier this month, accusing nine judges and six prosecutors of having discriminated against Serbs in war crimes cases...

[Investigating conflict-related sexual and gender-based crimes—lessons from Iraq and Syria](#)

(UN Women)

In the lead-up to UN Security Council Open Debate on Women, Peace and Security, experts discuss what it takes to document and investigate conflict-related sexual and gender-based crimes and

pathways to justice for the crimes committed in Iraq and Syria...

25 October

[Sexual and Gender-Based Violence: The Case for Expertise and Professionalism in Investigations](#)

(Justice in Conflict, by Andras Vamos-Goldman, Executive Director of Justice Rapid Response) Crimes of sexual and gender-based violence (SGBV) committed in the context of the world's many conflict situations are no longer beyond the reach of accountability... One catalyst in this rapid expansion of international capacity to address accountability for SGBV violence in conflict is the [UN Women – Justice Rapid Response \(JRR\) partnership](#). This partnership manages and can rapidly deploy from a stand-by roster of currently 217 SGBV justice experts and has already done so on 67 occasions since its inception...

[Rohingya girls under 10 raped while fleeing Myanmar, charity says](#)

(The Guardian)

Rohingya children, some of them under 10 years old, are receiving treatment for rape in camps on the Bangladesh border, according to medics who say that young refugees account for half of those sexually assaulted while fleeing violence in Myanmar. Médecins Sans Frontières says dozens of Rohingya girls have been given medical and psychological support at its Kutupalong health facility's sexual and reproductive health unit – a specialist clinic for survivors of sexual assault based in the largest refugee camp in Cox's Bazar...

23 October

[Famine can be a war crime and should be prosecuted, says independent UN rights expert](#)

(UN News Centre)

Famine can constitute a war crime or crime against humanity, an independent United Nations human rights expert today said, noting that more civilians die from hunger and disease related to conflicts than in direct combat. "If the famine comes from deliberate action of the State or other players using food as a weapon of war, it is an international crime," the UN Special Rapporteur on the right to food, Hilal Elver, told journalists in New York...



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19 October

[ICC says probing several crimes in Mali](#)

(Justice Info)

The International Criminal Court said Wednesday it was investigating several potential war crimes including murder in Mali, months after finding an ex-jihadist guilty liable for millions worth of damage in the landlocked country. "Our investigations are continuing (into) other crimes... sexual crimes and crimes against peacekeepers, killings and all those," ICC chief prosecutor Fatou Bensouda told reporters in Bamako...

[In Kosovo, legal recognition of war-time sexual violence survivors after 18 years](#)

(UN Women)

After almost two decades of silence and stigma, Kosovo women survivors of sexual violence during the armed conflict of 1998 – 1999 will soon get legal recognition and reparations, including financial assistance. Systematic sexual violence against women and girls was a mainstay in the conflict that broke out between ethnic Albanians and Serbian forces in Kosovo, which used to be a province under Serbia. Two decades later, comprehensive efforts are being made by the Government, together with civil society and survivors, to implement full and comprehensive reparations programmes for thousands of women survivors of conflict-related sexual violence...

18 October

[ICTY Trial Judgement in the case of Ratko Mladić to be rendered on 22 November 2017](#)

(ICTY press release)

The Trial Chamber has scheduled the pronouncement of the judgement in the case of *The Prosecutor v. Ratko Mladić* for Wednesday, 22 November 2017 at 10:00 in Courtroom I. Ratko Mladić, former Commander of the Bosnian Serb Army Main Staff, has been charged with the commission of genocide, crimes against humanity and violations of the laws or customs of war in Bosnia and Herzegovina from May 1992 to late 1995...

[UN, US failed to prevent 'ethnic cleansing' in South Sudan](#)

(AP)

Until the summer of 2016, South Sudan's Yei region was a leafy oasis in the midst of the country's civil war. But when a national peace deal broke down and government soldiers ransacked the area, a handful of U.N. and U.S. officials begged their leaders for help. The United Nations must send peacekeepers to Yei to protect civilians from President Salva Kiir's forces, who are burning villages and slaughtering men, women and children, they argued. And the U.S. needs to change its approach in the face of a potential genocide, they warned...

[UN says still determining if Myanmar crisis is genocide](#)

(Reuters)

The United Nations has yet to determine whether violence against Rohingya Muslims in Myanmar meets the legal definition of genocide, Jyoti Sanghera, Asia Pacific chief at the Office of the High Commissioner for Human Rights said on Wednesday...

[Reshaping Amnesty in Uganda: The Case of Thomas Kwoyelo](#)

(Oxford Journal of International Criminal Justice)

For over 15 years, the state of Uganda granted amnesty to thousands of people from various rebel groups through the passing of the Amnesty Act 2000. This landmark legislation purported to offer a formal promise from the state that recipients of amnesty would not be prosecuted for their participation in armed rebellion. Over 13,000 former Lord's Resistance Army (LRA) combatants availed themselves of this amnesty. That is, until one LRA commander, Thomas Kwoyelo (aka Latoni), was arrested...

17 October

[Gaddafi son in good health, following politics - family lawyer](#)

(Reuters)

Saif al-Islam Gaddafi, the most prominent son of the former Libyan leader, is in good health and is following the political situation in Libya from his base inside the country, a Gaddafi family lawyer said on Tuesday...

[UN Prosecutor to Report Croatia to Security Council](#)

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(Balkan Transitional Justice)

Serge Brammertz said in an interview with Croatian newspaper Novi List on Tuesday that he will inform the UN Security Council that the Zagreb authorities are obstructing cooperation between the Croatian judiciary and its counterpart in Bosnia and Herzegovina on war crimes cases, preventing suspects from being brought to trial...

16 October

Seminar Report: Carrying Forward the Legacy of The EAC in the Habré Trial

(AFLA)

Africa Legal Aid (AFLA) is pleased to publish the Narrative Report of the Seminar 'Carrying Forward the Legacy of the Extraordinary African Chambers in the Habré Trial: An African Solution to an African Problem'. The Seminar was held at the African Union Headquarters in Addis Ababa, Ethiopia, as a Side Event to the 29th Ordinary Session of the Assembly of Heads of State of the African Union, from 3 – 4 July 2017...

Russian Minister Says Hague Tribunal 'Should Be Closed'

(Balkan Transitional Justice)

Sergey Lavrov said on Monday that the International Criminal Tribunal for the Former Yugoslavia, ICTY, should have been shut down because it has "proved its bias and one-sidedness", Russian news outlet Sputnik reported...

13 October

Bringing Daesh To Justice - On The Road To Nowhere?

(Forbes)

On September 21, 2017, the UN Security Council unanimously passed the resolution 2379 aimed at establishing a mechanism for bringing Daesh to justice. It establishes an Investigative Team tasked with collecting evidence of Daesh atrocities in Iraq. The resolution has received widespread praise. However, the resolution, as a whole, may be too weak to ensure justice for the victims...

11 October

Genocide trial against ex-Guatemalan dictator Rios Montt to restart

(Reuters)

Former Guatemalan dictator Efraín Ríos Montt will face a second trial on Friday for genocide, a lawyer for victims said, reviving a case against the strongman accused of ordering massacres of Maya Indians during a long civil war...

Progress in the prosecution of conflict-related sexual violence in Colombia

(Case Matrix Network)

While the Colombian legal framework on conflict-related sexual violence has been considerably strengthened in recent years, significant challenges persist regarding its implementation: as of 2016, only 14 cases have led to convictions...

10 October

Can Congo's new child-free army bring lasting change?

(IRIN)

The Democratic Republic of Congo's military has been removed from the UN's 'list of shame' of armed groups that recruit and use child soldiers – only the second ever delisting after Chad in 2014. It's a hugely positive step. The UN's annual Children and Armed Conflict report, released last week, is a key document in highlighting the militaries and armed groups that recruit and commit grave violations against children. This year, 56 state forces and armed groups from 14 countries were named. However, the progress made by the Congolese armed forces, the FARDC, has been a long time coming, and serious concerns remain over sexual violence committed by its soldiers...

9 October

The 'rape capital of the world'? We women in Congo don't see it that way

(The Guardian, opinion)

I grew up in Goma, near the eastern border of the Democratic Republic of the Congo, a country where sexual violence is notoriously widespread. But we do not see ourselves as the "rape capital of the world". Instead, I agree with Liberia's Nobel Prize laureate Leymah Gbowee, who called my nation "the world capital of sisterhood and solidarity". Congolese women have decided to take our future into our own hands. We have few resources but we have an enormous amount of know-how...



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[Srebrenica Commander Naser Oric Acquitted of War Crimes](#)

(Balkan Transitional Justice)

The Bosnian state court on Monday acquitted Naser Oric and former Bosnian Army soldier Sabahudin Muhic of killing three Serb prisoners of war in the Bratunac and Srebrenica area. The prosecution had alleged that Oric, who was a commander of Bosnian Army territorial defence units, and Muhic, whom was his subordinate, killed the Serb captives in the villages of Zalazje, Lolici and Kunjerac in 1992. But presiding judge Saban Maksumic said the prosecution failed to prove beyond reasonable doubt that Oric and Muhic committed the killings...

8 October

[The Struggle for Justice in the Face of Mass Atrocities](#)

(UUFH)

The world is full of conflict and massive human rights abuses. Many societies have realized that abuses must be confronted and addressed, not swept under the carpet. They have turned to the concept of transitional justice, as the criminal justice system is not adequate to address the scale of the abuses, much less “get at” the root causes of conflict and repression...

7 October

[Rape and slavery was lure for UK Isis recruits with history of sexual violence](#)

(The Guardian)

Men with a history of sexual violence and domestic abuse joined Islamic State because of the organisation’s systemic use of rape and slavery as a form of terrorism, according to new analysis. The promotion and sanctioning of sexual violence by the extremist group was a pivotal means of “attracting, retaining, mobilising and rewarding fighters” as well as punishing kaffir, or disbelievers, says a report to be released by the Henry Jackson Society...

[Canada gravely concerned with deteriorating situation in Myanmar](#)

(Government of Canada)

... “Canada is deeply concerned by the plight of the Rohingya and other ethnic minorities in Myanmar.

The killings and other gross violations of human rights are part of a widespread attack against the Rohingya. These are crimes against humanity—and the responsibility for ending this ethnic cleansing falls squarely on Myanmar’s military leadership and its civilian government...

6 October

[Is ex-warlord Charles Taylor pulling Liberia’s election strings from prison?](#)

(BBC)

Liberia’s former President Charles Taylor is currently serving a 50-year sentence for war crimes in a prison in the British city of Durham. But is he using that as a base to interfere in the elections in his homeland next Tuesday?...

5 October

[ICRC Commentary of Common Article 3: Some questions relating to organized armed groups and the applicability of IHL’](#)

(EJIL)

... It is well known that for there to be a non-international armed conflict, the violence must involve an organized armed group. So one of the first questions to arise in this context is what degree of organization of the armed group is required in order to trigger the application of international humanitarian law (IHL)?...

[Sexual violence used as weapon of war in CAR: HRW](#)

(Aljazeera)

Armed fighters in the Central African Republic (CAR) have used sexual violence to “terrorise women and children” as a tactic of war during the nearly five-year conflict, Human Rights Watch (HRW) has claimed. Fighters beat women, burned them and left them with broken bones, smashed teeth and head wounds, the New York-based rights group said in a report on Thursday, citing testimony...

[Key Finding on Use of Chemical Weapons in Syria](#)

(HRW)

Samples from an attack in northern Syria on March 30 “prove the existence of sarin,” a deadly nerve agent, the director of the Organisation for the Prohibition of Chemical Weapons (OPCW) said on October 4...

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[Naser Oric: Srebrenica Commander Inspires Love and Hate](#)

(Balkan Transitional Justice)

Ahead of his war crimes verdict, Naser Oric, a wartime defender of Srebrenica who once worked as Slobodan Milosevic's bodyguard, says he is "loved" by Bosniaks - but is also despised by many Serbs...

[The Unitary Form of Participation in Danish Criminal Law \(and Its Potential Use in International Criminal Law\)](#)

(James G. Stewart)

In his article, which is a basis for this mini-symposium on criminal participation, James G. Stewart advances the unitary theory of participation that has been utilized in a number of national jurisdictions, including Denmark. He opines that the Danish approach to criminal participation – being representative of the unitary form of participation – can be successfully transposed to international criminal law that has been struggling to find adequate forms of attribution that characterize responsibility for international crimes...

[Canada lawmakers approve bill banning visas for rights abusers](#)

(Jurist)

Canada's House of Commons on Wednesday passed bill S-226 [text], the "Magnitsky Act," which would allow for the Canadian government to take "restrictive measures in respect of foreign nationals responsible for gross violations of internationally recognized human rights." These actions include sanctioning, freezing assets, or denying entry of foreign citizens of countries with human rights violations or corruption...

[ICC Statement on recent media allegations](#)

(ICC)

Since last Friday, articles have emerged in certain media making allegations against the former Prosecutor of the International Criminal Court ("ICC" or "Court"), Mr Luis Moreno Ocampo. These articles are reportedly based on 40,000 documents, including personal emails, obtained and processed by the European Investigative Collaborations and eleven participating news outlets...

[Syria violence at worst level since Aleppo: ICRC](#)

(Aljazeera)

The worst fighting since the battle for eastern Aleppo last year is raging in several regions of Syria, causing hundreds of civilian casualties, the International Committee of the Red Cross (ICRC) has said...

4 October

[The Anti-CICIG Campaign in Guatemala: Implications for Grave Crimes Cases \(Part II\)](#)

(International Justice Monitor)

The campaign against the International Commission Against Impunity in Guatemala (CICIG) and Commissioner Iván Velásquez, which we analyzed in a previous post, remains at a tense standstill. While CICIG's mandate does not allow it to investigate cases related to Guatemala's internal armed conflict, it has played a fundamental role in strengthening the country's justice system, empowering judicial operators, and building the capacity of the Attorney General's Office...

[Aung San Suu Kyi to be stripped of Freedom of Oxford over Rohingya Muslim crisis](#)

(The Independent)

Aung San Suu Kyi is to be stripped of her Freedom of Oxford award because of her response to the Rohingya crisis. Burma's de facto leader, who completed her undergraduate degree at Oxford University, was granted the honour in 1997 for her "struggle for democracy"...

[Common Article 3 and Linkages Between Non-State Armed Groups](#)

(Lawfare)

The shape-shifting nature of today's organized armed groups and their opportunistic associations with other armed groups means that a state fighting one non-state armed group (NSAG) sometimes finds itself confronting other NSAGs as well. How should we determine when two or more NSAGs are interacting in a way that unites them in a single non-international armed conflict (NIAC) against a state?...

[Yemen war: UN 'to list Saudi coalition for killing children'](#)

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(BBC)

A Saudi-led multinational coalition fighting in Yemen has been included on a draft United Nations list of parties that kill and maim children in war. The text says the coalition's actions resulted in 683 child casualties during 2016, and accuses it of carrying out 38 attacks on schools and hospitals...

[Why the Laws of War Apply to Drone Strikes Outside "Areas of Active Hostilities" \(A Memo to the Human Rights Community\)](#)

(Just Security)

Reports that the White House is poised to revise a four-year old set of policy restrictions on drone strikes and other lethal operations has generated a heated debate that turns on a basic legal question. The existing policy restrictions—the May 2013 Presidential Policy Guidance (PPG)—were designed to place far greater constraints than what the laws of war require in the way of civilian protection and other matters...

2 October

[Women and girls must not be excluded from reparation in the \[ICC\] Al Mahdi case](#)

(Amnesty International)

Adrienne Ringin, a student of University of Melbourne Law School's International Criminal Justice Clinic, highlights important gender concerns arising in the International Criminal Court's third reparations order. The piece includes input from Amnesty International's Mali team...

[Easing US Killings Outside War Zones Would be a Serious Mistake](#)

(Just Security)

President Donald Trump is poised to rescind some of the key rules crafted by the Obama administration that restrain the use of armed drones and other lethal operations outside war zones... The proposed new policy hasn't gotten that much attention, perhaps because it's been drowned out by the latest Trump travel ban and threats to annihilate North Korea. Its significance has also been downplayed by some experts, who apparently expected worse. But it deserves more scrutiny, for several reasons...

[US Court Dismisses Croatian WWII Victims' Lawsuit](#)

(Balkan Transitional Justice)

A court in Chicago dismissed WWII victims' relatives' lawsuit against Croatia, a case marred by allegations of identity theft, after the plaintiffs' lawyer failed to appear in court...

1 October

['Tribunal' finds Myanmar guilty of genocide](#)

(Khmer Times)

The Permanent People's Tribunal (PPT) on Myanmar last week found the Myanmar government guilty of genocide, crimes against humanity and war crimes. The tribunal's seven judges, comprising legal and human rights experts, handed down the preliminary judgement after hearings took place in Kuala Lumpur, Malaysia, from September 18-22, announcing that: "The State of Myanmar is fully responsible for genocide against the Rohingya people..."

[A Syrian soldier has been sentenced for battlefield crimes. Why did it take so long?](#)

(The Washington Post)

Grinning for the camera, a man in Syrian army fatigues rests his boot on a corpse. Around him, more bodies litter the floor. The photograph resembles hundreds, if not thousands, of images that have streamed out of Syria during six years of war. But for prosecutors a 3,000-mile drive away in the Swedish capital of Stockholm, this one was different. The photo was presented as evidence in a trial that ended in a landmark conviction last week, the first anywhere in the world of a Syrian soldier for crimes committed during the war...

[I'm all for war crimes trials in The Hague – so long as we agree to prosecute every possible war criminal](#)

(Independent, opinion)

Reflect on the fact that Rifaat al-Assad had been in Europe for decades after he was first accused of sending his Defence Brigades to massacre civilians in Hama. He was worth millions. He lived in luxury in London at a time when I was asking why Scotland Yard didn't pay him a visit...



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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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