

Forum for International Criminal Justice Newsletter: October 2018

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

This Newsletter also includes a special in-depth interview with **Matevz Pezdirc** about his work as Head of the Secretariat to the European Network for investigation and prosecution of genocide, crimes against humanity and war crimes (Genocide Network).

***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 Legal Consultant & FICJ Coordinator | email: LC@iap-association.org

Video Highlights



[Click here](#) to watch a video of Federica Mogherini, High Representative of the EU for Foreign Affairs & Security Policy, expressing support of the ICC



[Click here](#) to watch a lecture by Tom Dannenbaum on how international criminal law might apply to starvation, and why it's potentially important to have a famine-specific crime

New Specialist Prosecutor Jack Smith signs solemn declaration



KOSOVO SPECIALIST CHAMBERS &
SPECIALIST PROSECUTOR'S OFFICE

On 11 September, Specialist Prosecutor Jack Smith signed a solemn declaration that he would exercise his functions independently, impartially and conscientiously. This is in accordance with Article 36 of the Law on Specialist Chambers and Specialist Prosecutor's Office (SPO). Mr Smith was selected for the position of Specialist Prosecutor in May 2018 after a process organised by the European Union and appointed by EULEX Head of Mission, Alexandra Papadopoulou.

Mr Smith signed the solemn declaration in the Registry of the Specialist Chambers in front of the Registrar, Dr Fidelma Donlon, who witnessed the signing. Mr Smith is a US prosecutor with experience in both high-level political investigations and international criminal investigations. Most recently, he served as Vice President and Head of Litigation for the Hospital Corporation of America, the largest non-governmental health-



care provider in the US. Between 2015 and 2017, Mr Smith served as First Assistant United States Attorney and Acting United States Attorney for the Middle District of Tennessee. Between 2010 and 2015, Mr Smith served as Chief of the Public Integrity Section of the US Department of Justice, supervising the litigation of complex public corruption cases across the United States. From 2008 to 2010, Mr Smith served as Investigation Coordinator in the Office of the Prosecutor at the ICC. In that capacity, he supervised sensitive investigations of foreign government officials and militia for war crimes, crimes against humanity, and genocide.

Mr Smith succeeds David Schwendiman, the first Specialist Prosecutor and formerly Lead Prosecutor of the Special Investigative Task Force, who stepped down at the end of March when his term as a US Foreign Service Officer expired.

In August 2015, Kosovo passed legislation that created the SPO to investigate and prosecute grave trans-boundary and international crimes which occurred during and in the aftermath of the conflict in Kosovo in 1998, 1999 and 2000. The law grants authority to the SPO to investigate and prosecute crimes committed in relation to the conduct identified in the Council of Europe Parliamentary Assembly Report Doc 12462 of 7 January 2011.

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First inter-state referral to the ICC on Venezuela



Foreign ministers of several governments in the Americas announce they are requesting the Office of The Prosecutor at the International Criminal Court to investigate the situation in Venezuela. New York, 26 September 2018.

On 26 September 2018, Argentina, Canada, Chile, Colombia, Paraguay and Peru referred the situation of Venezuela to the International Criminal Court (ICC), asking the Court to investigate crimes against humanity committed in Venezuela since 12 February 2014. This is the first time that ICC member states have referred an investigation of alleged atrocity crimes taking place entirely on the territory of another country, and the first collective referral to the ICC.

Earlier this year, ICC Prosecutor Fatou Bensouda announced on 8 February 2018 that her Office had opened a preliminary examination into the situation of Venezuela in the context of demonstrations and related political unrest, and that it would analyse crimes allegedly committed in this State Party since at least April 2017. Among these crimes are the alleged use of excessive force against demonstrators, as well as the arrest and detention of thousands of people, whom were subjected to serious abuse and ill-treatment. The alleged crimes additionally include the injury or killing of members of security forces by some groups of protesters. According to the [Office of the High Commissioner for Human Rights](#), 124 people have been killed in the framework of the protests: 46 killings were allegedly have been committed by the security forces and 27 by the pro-government armed groups.

The ongoing crisis in Venezuela also includes reports of limited access to food, health, water, adequate housing, adequate living conditions – which has led to nearly two million people having fled Venezuela’s economic and political crisis since 2015 [according to the UN](#). According to the UN Refugee Agency Chief Filippo Grandi, ‘Some 5,000 people are now leaving Venezuela daily – the largest population movement in Latin America’s recent history.’

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While the inter-state referral does not automatically lead to the opening of an investigation, it enables the Prosecutor to open an investigation, if she decides to do so once she concludes the preliminary examination of the situation, without seeking the authorization of the ICC Pre-Trial Chamber.

According to Prosecutor Bensouda in her [statement on this referral](#), ‘specifically, under article 53(1) of the Statute, as Prosecutor, I must consider issues of jurisdiction, admissibility and the interests of justice in making this determination. As noted in the Office’s Policy Paper on Preliminary Examinations, these factors are applied to all situations, irrespective of whether the preliminary examination was initiated on the basis of information on crimes submitted pursuant to article 15 of the Statute, by a referral from a State Party (or a group of States Parties) or the United Nations Security Council, or by a declaration accepting the exercise of jurisdiction by the Court, pursuant to article 12(3) of the Statute. In all circumstances, my Office independently evaluates and analyses the information available.’



- Read the full [Referral of the situation in Venezuela](#)
- Read the full [Statement of ICC Prosecutor Fatou Bensouda, on the referral by a group of six States Parties regarding the situation in Venezuela](#)

Myanmar Rohingya crisis: ICC begins inquiry into atrocities

The Prosecutor of the ICC has announced she is launching a preliminary investigation into the deportations of hundreds of thousands of Rohingya Muslims from Myanmar into Bangladesh. Fatou Bensouda said in a written statement and video message on 18 September that she had begun an inquiry – formally known as a preliminary examination – to establish



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whether there was enough evidence to merit a full investigation.

Bensouda said she would look at reports of ‘a number of alleged coercive acts having resulted in the forced displacement of the Rohingya people, including deprivation of fundamental rights, killing, sexual violence, enforced disappearance, destruction and looting.’

Myanmar’s military has been accused of widespread human rights violations, including rape, murder, torture and the burning of Rohingya villages – leading about 700,000 Rohingya to flee to neighbouring Bangladesh since August last year.

Bensouda’s announcement came less than two weeks after ICC judges gave her authorisation to investigate the deportations despite Myanmar not being a member state of the court. The judges said in their landmark ruling that because part of the alleged crime of deportation happened on the territory of Bangladesh – which is a member of the court – Bensouda has jurisdiction. They urged her to conclude her preliminary examination ‘within a reasonable time’.

The ICC is a court of last resort, which steps in only when national authorities are unable or unwilling to prosecute alleged crimes. Bensouda said prosecutors “will be engaging with the national authorities concerned with a view to discussing and assessing any relevant investigation and prosecution at the national level”.

Bensouda’s announcement came on the same day UN-backed investigators presented a report that painted a grim picture of crimes against the Rohingya. Such reports will likely be closely studied in her investigation.

- Read the full article on the [Guardian’s website](#)

Statement of Prosecutor of the International Residual Mechanism for Criminal Tribunals on the arrest of five Accused in Rwanda

On 3 September 2018, Rwandan authorities executed arrest warrants issued by the International Residual Mechanism for Criminal Tribunals and took into custody Maximilien Turinabo, Anselme



Nzabonimpa, Jean de Dieu Ndagijimana, Marie Rose Fatuma and Dick Prudence Munyeshuli. The five accused will be transferred to the seat of the Mechanism in Arusha, Tanzania.

The arrest warrants were issued by the Judge of the Mechanism after confirmation on 24 August 2018 of an indictment filed by the Mechanism Office of the Prosecutor. The indictment was kept under seal pending the successful arrest of the accused, and has been made public with redactions to protect witnesses.

The indictment in the *Turinabo et al.* case alleges that the five accused are responsible for contempt of court, incitement to commit contempt and knowing violation of court orders, interfering with the administration of justice at the Mechanism and International Criminal Tribunal for Rwanda (ICTR). The Office of the Prosecutor alleges that Maximilien Turinabo, Anselme Nzabonimpa, Jean de Dieu Ndagijimana and Marie Rose Fatuma, directly and through others, offered bribes and exerted pressure to influence the evidence of protected witnesses in the *Ngirabatware* case. The Office of the Prosecutor further alleges that Dick Prudence Munyeshuli and Maximilien Turinabo disclosed protected information regarding protected witnesses in knowing violation of protective measures ordered by the ICTR and Mechanism. The alleged aim of these efforts was to secure the reversal of Augustin Ngirabatware's conviction by the ICTR, as affirmed by the Mechanism's Appeals Chamber for direct and public incitement to commit genocide, instigating genocide and aiding and abetting genocide and his sentence of 30 years of imprisonment.

In relation to the arrest, Mechanism Chief Prosecutor Serge Brammertz stated:



"I wish to express our gratitude to the Rwandan authorities for promptly executing the Mechanism arrest warrants and apprehending the five accused. The Office of the Prosecutor continues to enjoy excellent cooperation with the Prosecutor-General of Rwanda, Mr. Jean Bosco Mutangana, and other Rwandan authorities.

My Office underscores our determination to stand against all efforts to interfere with witnesses and the proper administration of justice, in accordance with our mandate from the

United Nations Security Council. We are fully committed to safeguarding the integrity of all proceedings before the Mechanism, ICTR and ICTY, in particular by ensuring the protection of witnesses. The confirmation of our indictment and arrests of the five accused this week are visible demonstrations of that commitment."

- Read more on the [Mechanism's website](#)



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In Profile: Matevz Pezdirc, Head of the Secretariat to the European Genocide Network

FICJ Coordinator Danya Chaikel recently had the pleasure to interview Matevz Pezdirc about his work as Head of the Secretariat to the European Network for investigation and prosecution of genocide, crimes against humanity and war crimes (Genocide Network)



Tell us about your international criminal law experience and what drew you to work in this field?

Before joining Eurojust and being appointed as the Head of the Secretariat to the Genocide Network, I was working in national administration in the field of judicial cooperation in criminal law, in Brussels as Counsellor for Justice and Home Affairs, with the Constitutional Court in Slovenia and with the ICTY in The Hague. Being a criminal lawyer, I followed studies at Leiden University in international criminal law and remained attached to this field of work, combining it further with judicial cooperation.



Describe the work of the Genocide Network and the ways you feel it strengthens the prosecution of core international crimes.

The Genocide Network was established in 2002 by the Council of the EU on the initiative of Denmark and the Netherlands with the objective of ensuring close cooperation between national authorities when investigating and prosecuting the crime of genocide, crimes against humanity and war crimes with a view to preventing the European Union from becoming a safe haven. Successful prosecution of core international crimes requires cooperation between States, as documents, witnesses, victims and other evidentiary material as well as perpetrators are usually found in various jurisdictions.

Members of the Genocide Network are national contact points - prosecutors, investigators or MLA legal officers dealing with core international crimes in their respective jurisdiction. In addition to EU Member States, the Network consists of Observer States (Switzerland, Norway, Canada, the USA and, recently, Bosnia-Herzegovina), EU agencies such as Europol and Eurojust, the ICC, IIIM, Kosovo Chambers, MICT/ICTY, ICRC, INTERPOL and several civil society organisations (HRW, AI, Redress, TRIAL, FIDH and CICC). In this manner, the Network provides a unique global forum, acting as a

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connecting thread between EU Member States, non-EU States, international organisations and civil society, devoted to pursuing criminal responsibility of perpetrators of atrocities.

For practitioners, this setting offers a platform of contacts between competent domestic authorities and their counterparts in international courts/tribunals/mechanisms; access to best practice, experiences and methods relating to investigation, judicial cooperation and prosecution of core international crimes; knowledge sharing; and, most important, case-related information exchange. In this manner, the Network members build trust, ensure smooth cooperation with letters of request and MLA, receive information from colleagues, assist each other, learn from each other, gain inspiration and obtain access to jurisprudence from other countries.

The Network members meet twice per year. Part of the meeting is open only to national authorities for the exchange of operational information; the other part of the meeting includes associates, and addresses challenges common to all jurisdictions within the Network. For example, previous meetings included discussion on challenges relating to:

- the use and preservation of open source information from social media providers in the context of prosecuting war crimes;
- cooperation between NGOs and national authorities;
- looting and destruction of cultural heritage as a war crime and consequent prosecution of trafficking of looted artefacts;
- international rules on immunity of public officials;

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- criminal responsibility of legal persons and business for complicity in core international crimes;
- sexual- and gender-based violence; and
- cooperation between national immigration and law enforcement/prosecution authorities.

Conclusions of past meetings can be found on the [website](#), offering insight into our activities and ways of strengthening prosecutions of core international crimes.

What are some of the key challenges that members of the Genocide Network currently face in prosecuting atrocity crimes domestically?

Many challenges are common to all domestic jurisdictions attempting to prosecute core international crimes. They relate to the implementation of these crimes in national legislation combined with extraterritorial or universal jurisdiction. Additionally, while many EU Member States have set up specialised units within immigration services, law enforcement and prosecution authorities, many still need to do so, or, alternatively, they need to ensure dedicated and specialised staff for this crime area within units responsible for complex

trans-border organised crime cases. The added value of specialisation, either with units or dedicated staff, leads to improved identification of suspects, trained investigators for taking testimonies from traumatised victims, retained knowledge and experience from cases, and clear points of contact for cooperation. Two challenges in this connection that many

Network members face, however, are

ensuring political and public support for establishing such units, and ensuring sufficient resources for their functioning, often competing with other priority crime areas that have closer territorial ties.

A second set of challenges relate to evidence collection. In this crime area, practitioners are often faced with scattered information and evidence-gathering stretches across many States and/or organisations. Evidence might be difficult to obtain because the crimes were committed many years ago or they relate to a situation with an ongoing armed conflict or a State less willing to cooperate.

Furthermore, in many States, practitioners, particularly judges, lack expertise and training in this area.

“while many EU Member States have set up specialised units within immigration services, law enforcement and prosecution authorities, many still need to do so, or, alternatively, they need to ensure dedicated and specialised staff for this crime area within units responsible for complex trans-border organised crime cases...”

Last, but not least, the number of cases is increasing, with the consequent need for prioritisation. With the conflicts in the EU neighbourhood, the number of cases has increased in many EU jurisdictions. Last year, 2,684 cases were ongoing in the EU Member States.

How are they addressing these challenges?

The Network works to bring the national efforts to fight impunity to the attention of both experts and the general public by organising awareness-raising activities, such as the EU Day Against Impunity, observed every year on 23 May.



Furthermore, some of these challenges can be addressed with enhanced coordination and cooperation at both inter- and intra-state levels. In this respect, links with other crime areas, such as terrorism, migrant smuggling and money laundering, should be acknowledged. A recent case in Germany offers a good example: conviction cumulatively included membership in a terrorist organisation and a war crime of inhumane treatment.

The Network, along with Eurojust and its expertise in dealing with cross-border crimes and tools for judicial cooperation (such as coordination meetings and JITs), provides support to practitioners concerned to mitigate, as far as possible, any practical difficulties encountered in the evidence-gathering and investigative processes.

When collecting evidence, prosecutors follow new developments and use information coming from open sources and from social media providers. Open source information has proven fundamental to securing prosecutions in relation to Syria and Iraq, a notable example being the material published on YouTube, which led to a conviction by the Swedish courts. A final judgement from a situation with an ongoing armed conflict is quite unprecedented. The Secretariat is offering support by translating

relevant judgements and elaborating best practice and trends in a series of expert papers, applicable beyond any national legislative context.

What does international criminal justice mean to you?

I have the privilege of working with highly committed colleagues from different jurisdictions. After all, this work is a joint effort. Each of us can contribute to upholding the values achieved in the course of the last century to protect civilians, to prevent suffering and to punish perpetrators of these horrible crimes. Last year's example from the Netherlands, resulting in a conviction for a crime committed in Ethiopia in 1978, reminds us all that these crimes are not statute-barred and that investigating and prosecuting perpetrators of genocide, crimes against humanity and war crimes can occur at any time, no matter how late.

- Visit the [Genocide Network website](https://www.genocidenetwork.eu) to find out more or contact GenocideNetworkSecretariat@eurojust.europa.eu

Court Finds Guatemalan Army Committed Genocide, but Acquits Military Intelligence Chief

By Jo-Marie Burt and Paulo Estrada, Open Society Justice Initiative

In a tense and packed courtroom, Guatemalan High Risk Court “A” delivered its verdict on 26 September in the retrial of José Mauricio Rodríguez Sánchez for the crimes of genocide and crimes against humanity against the Maya Ixil population.

The court unanimously found that the State of Guatemala, and more specifically the Guatemalan army, committed genocide and crimes against humanity against the Maya Ixil population during the de facto government of Efraín Ríos Montt (1982-1983). The court determined that the evidence presented by the Attorney General's Office and by the co-plaintiffs, the Association for Justice and Reconciliation and the Center for Human Rights Legal Action (CALDH), proved that the Guatemalan army devised a plan to exterminate the Maya Ixil. The army defined the ethnic group as coterminous with armed guerrilla organizations.

Evidence included testimony from some 100 survivors and families of victims, official documents, and expert witnesses. The atrocities included the destruction of at least 50 villages in the Ixil region,



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massacres, the widespread use of torture and sexual violence, especially against women, and search and destroy operations against the displaced population who, fleeing army violence, went to live in the mountains. The court affirmed that the structural racism and discrimination against the indigenous population that has characterized Guatemalan history was the underlying factor pushing the army's counterinsurgency strategy towards acts of genocide.

However, the court divided over the criminal responsibility of Rodríguez Sánchez. In a split 2-1 ruling, the majority opinion of presiding judge María Eugenia Castellanos and Judge Jaime González Marín acquitted Rodríguez Sánchez of all charges, while Judge Sarah Yoc Yoc delivered an impassioned, dissenting opinion affirming his culpability for the atrocities. According to the majority opinion, the Attorney General's Office failed to produce a document demonstrating that Rodríguez Sánchez gave the orders to commit these atrocities. In their view, Rodríguez Sánchez was merely an advisor to the General Staff of the Guatemalan Army, and did not have command responsibility.

- Read the full article on the [Open Society Justice Initiative's website](#)

Facebook risks being dragged into war crime trials, UN warns

The United Nations has warned Facebook that it risks being dragged into international war crimes trials for its role in future human rights violations, as it called on the social network to address hate speech more quickly. Zeid Ra'ad Al-Hussein, the UN's former human rights chief, said the company risked becoming an accessory to horrific crimes and that the company had not taken violence in Burma incited on the social network seriously.



It comes after a UN report into atrocities in Burma said Facebook had been "a useful instrument for those seeking to spread hate". As a result, the company banned dozens of accounts, including the military chief's own page, in the country, where 700,000 Rohingya Muslims have fled rape and mass murder, Facebook has been accused of allowing false information and hate speech on its platform to spread across Burma, whipping up violence.

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Speaking in Geneva, Mr Al-Hussein said Facebook risked being subpoenaed in future trials “of those accused of the worst crimes” if it did not learn its lesson from the violence. “We felt early on very uncomfortable with what we were seeing in Myanmar, (but) in the early meetings that we had with Facebook, I didn't think they were taking it seriously,” Mr Al-Hussein said. “Hopefully they've now awoken.” He added that “their role would be brought into question” in other cases “where Facebook is the dominant medium in a country where you see a deterioration of human rights conditions”.

“They have to be sure that they know where they are and what side of the law they are on.” Mr Al-Hussein suggested that Facebook should be regulated by international human rights law, instead of by national governments.

- Read the full article on [The Telegraph website](#)
- See also, [The country where Facebook posts whipped up hate](#), BBC

The Akayesu Judgment at 20: looking back, pushing forward

By Akila Radhakrishnan & Sareta Ashraph, IntLawGrrls

Twenty years ago, on September 2nd, 1998, the International Criminal Tribunal for Rwanda (ICTR) handed down a landmark trial judgment in the [Akayesu](#) case: the first to define rape as a crime against humanity, and the first to recognize that rape and other acts of sexual violence are constitutive acts of genocide. The



Jean-Paul Akayesu is escorted to the International Criminal Tribunal for Rwanda by United Nations security agents in Arusha on 31 May 1996. Alexander Joe / AFP

defendant, the mayor of the Rwandan town of Taba, was found guilty of genocide and crimes against humanity for acts he engaged in and oversaw against Taba's Tutsi residents, including murder, torture, rape, and other inhumane acts.

Throughout its findings, the ICTR Trial Chamber surfaced gender in its legal analysis, illuminating the gendered experience of mass atrocities, and underscoring how the perpetrators' and victims'

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understanding of gender influenced the planning, commission, and impact of a wide range of genocidal acts.

Akayesu's ground-breaking findings owed less to the Prosecution's case theory – which originally failed to include charges of sexual violence, despite the rape of between 250,000 and 500,000 women and girls between April and June 1994 – than to the [Coalition for Women's Human Rights in Conflict Situations](#). Formed by feminist activists in 1996, the Coalition mobilized around the ICTR's failure to investigate and prosecute sexual violence. As prosecution witnesses, who were primarily female survivors of the genocide, gave first-hand accounts of sexual violence, the Coalition submitted an *amicus curiae* brief calling upon the Trial Chamber to use its authority to invite the Prosecution to amend their Indictment to include charges of rape and other acts of sexual violence.

One of the suggestions in the *amicus* was that the Prosecution charge rape and sexual violence as acts of genocide, arguing that they were essential components of the genocide, and were designed to “destroy a woman from a physical, mental or social perspective and [destroy] her capacity to participate in the reproduction and production of the community.” An oft-cited passage in the *Akayesu* Judgment, echoes aspects of this argument:

Sexual violence was an integral part of the process of destruction, specifically targeting Tutsi women and specifically contributing to their destruction and to the destruction of the Tutsi group as a whole. [...] Sexual violence was a step in the process of the destruction of the Tutsi group—destruction of the spirit, of the will to live, and of life itself.

On the 20th anniversary of *Akayesu*, two things are evident.

First, despite the judgment's pioneering nature, a gendered understanding of genocide (and international crimes, more generally) still needs to be consciously asserted in investigations, analysis, and prosecutions. The legal avenues opened by *Akayesu* were, for a long time, not seized upon by prosecutors; the ICTR and the International Criminal Tribunal for the former Yugoslavia (ICTY) Prosecution's practice of charging rape occurring during the genocide as crimes against humanity and/or war crimes, rather than genocide, continued. Decades later, the analysis and reporting of genocide continues to revolve around an understanding of genocide as a crime committed through organized mass killings. Killing remains *the* privileged genocidal act, and consequently the examination of the risk and commission of genocide has largely, and unhelpfully, revolved around the numbers killed. *Akayesu* notwithstanding, the majority of genocide convictions in both the ICTR and ICTY have been based on instances of mass executions, founded upon strategies geared towards achieving the immediate physical destruction of (predominantly male members of) the protected group.

Second, the work of asserting a gendered analysis of international crimes continues largely to be done by feminist jurists and practitioners, most of whom are female. While it is not the role of

female lawyers and activists to bring to light the experience of women and girls in jurisprudence, the task has too often fallen on their shoulders. *Akayesu* would not have been the landmark case it is without the work of the female-led Coalition; the Judges, notably Judge Navanethem Pillay; and the Chamber's Legal Officers, notably Cecile Aptel. At the ICTY, [three female lawyers and investigators](#) led the development of the evidence of crimes committed in Foča with an express focus on building a case that reflected the organized way rape was used as part of ethnic cleansing. As a result, the [Kunarac Judgment](#) found sexual enslavement and rape as crimes against humanity. At the International Criminal Court (ICC), it was under the auspices of the first female Chief Prosecutor, Fatou Bensouda, that a [gender strategy for investigations and prosecutions](#) was developed.

The red thread of genocide continues to course its way through human history. In June 2016, the UN Commission of Inquiry on Syria determined that ISIS was [committing the crime of genocide](#) against the Yazidis of the Sinjar region of northern Iraq. In August 2018, the UN Fact-Finding Mission on Myanmar held that there was sufficient information to support an [inference of genocidal intent](#) regarding the actions of Myanmar's security forces against the Rohingya. Having failed in its obligation to prevent genocide, punishment remains a priority for the international community. The UN's recent report on Myanmar has reinforced calls for the Security Council to refer the situation in Myanmar to the ICC. For the Yazidi genocide, the path to justice is likely to be forged through national courts, including, [hopefully, in Iraq](#). The Iraqi Investigation Team, created by the Security Council, [has just](#) begun its work.

As the push for accountability for the Yazidi and Rohingya genocides continues, it is essential that prosecutors and activists alike ensure that acts of genocide, beyond the act of killing, are fully investigated, properly indicted, and raised at trial. As women and girls are more likely to survive genocide, any ensuing trials rely heavily on what they have seen, heard, and suffered. A conception of genocide that relies on them bearing witness to killings (usually but not solely of male members of the group), and which turns away from all non-lethal acts of genocide (usually but not solely visited on female members of the group) is a harm to the survivors, the group, the historical record, and to our understanding of the crime of genocide.

When genocide is recognized only its most murderous articulations and gendered genocidal crimes such as rape, torture, forced pregnancy, and enslavement are ignored, States and international organizations lose much of their power to uphold the legal obligations to prevent and punish genocide. When the gendered crimes of genocide are excluded from prosecutions, the living survivors of genocide are denied justice and history yet again erases the experiences of women and girls.

In 1998, *Akayesu's* gendered analysis was ground-breaking. In 2018, it's never been more necessary.



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US Takes Aim at the International Criminal Court

Human Rights Watch, opinion by Elizabeth Evenson

On 10 September, US national security advisor [John Bolton denounced](#) the ICC, announcing in a speech that the Trump administration would no longer cooperate with the court and rattling off a number of threats should ICC investigations reach US, Israeli or other allied country citizens.

Of Bolton's bluster, the most outlandish was a threat to prosecute in US courts ICC judges and prosecutors who bring legal action against Americans.

Bolton was the public face of a concerted US campaign under the George W. Bush administration to undermine the ICC, a court set up in 2002 to try the worst international crimes. These efforts did little more than erode US credibility on international justice and gradually gave way to a more supportive US posture. In 2005, the US did not veto a UN Security Council request to the ICC prosecutor to investigate crimes in Darfur, Sudan.

So what prompted the high-profile attack on the ICC, which scraped away the veneer on the Trump administration's stated commitments to accountability for grave crimes in Syria and Myanmar? Bolton said the Bush administration's "worst predictions" were confirmed by the ICC prosecutor's request last November to open an investigation in Afghanistan. Afghanistan is an ICC member, which means the court has jurisdiction over alleged war crimes committed there, which could [include those committed by US military personnel and Central Intelligence Agency officers](#). The ICC prosecutor is also considering launching an investigation into the Palestine situation; Palestine is also an ICC member. Bolton used the speech to announce a decision to close down the PLO representative office in Washington over its support for an ICC probe into serious crimes committed in Palestine.

Bolton's remarks painted the ICC as lacking checks and balances, but there are significant constraints on the ICC's ability to act. Bolton was dismissive of what is, in fact, a key limit: the ICC is a court of last resort. Countries can avoid ICC scrutiny by conducting genuine investigations and bringing appropriate prosecutions as are already required by international law. This is something that the US has not done in Afghanistan nor Israel with respect to Gaza and the West Bank.



In a speech to the Federalist Society, John Bolton said that the U.S. "will use any means necessary to protect our citizens and those of our allies from unjust prosecution" by the ICC. Photograph by Andrew Harnik / AP

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ICC officials and member countries are unlikely to be cowed by Bolton's disdain for the court. But his speech was a stark affront to victims of atrocity crimes seeking justice. The ICC has its shortcomings, but it serves as a powerful signal to perpetrators and victims alike that justice for the worst crimes is possible. ICC member countries pushed back on US threats during the Bush administration. They should do the same this time and make clear that they will ensure the ICC remains the vital avenue for justice the world desperately needs.

- Read the ICC's official reaction, [The ICC will continue its independent and impartial work, undeterred](#) and a UN News [interview with the ICC President, Judge Eboe-Osui](#), who says 'Humanity cries for justice', underscoring the importance of the ICC

Expert reaction to John Bolton's attack on the ICC: Dr Mark Ellis, IBA Executive Director



The extraordinary attack launched by United States National Security Advisor John Bolton against the ICC not only dismisses the principle of accountability for war crimes, but reinforces the Trump administration's repugnant policy of exceptionalism, whereby the US demands adherence to international law by all countries except itself. Bolton's bellicose suggestion that ICC judges and prosecutors could face prosecution in the US is a distressing extension of the Trump administration's attack on the judiciary – both domestic and now international.



The ICC was created to end impunity for perpetrators of the most heinous crimes, including genocide, war crimes and crimes against humanity, when nations are unwilling or unable to prosecute. Despite its complicated relationship with the Court, the US has always stood strong against impunity, and supported the ICC's jurisdictional mandate involving atrocities committed in Sudan and Libya. But any constructive engagement with the Court has now ended. The Trump administration seeks to dismantle completely a legal entity, the sole purpose of which is to bring justice to victims of the most unimaginable atrocities. History will rightfully judge this pernicious policy as an affront to the dignity of mankind.'

Dr Mark Ellis, Executive Director, International Bar Association



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New Philippe Kirsch Institute International Criminal Justice Blog Call for Contributions

An international criminal justice blog has been operating since July of 2017. It is called the PKI Global Justice Journal published under the auspices of the Philippe Kirsch Institute (<http://www.kirschinstitute.ca/>). Philippe Kirsch,



who chaired the historic negotiations to

establish the International Criminal Court and was elected as one of its first judges and its first President, lent his name to the Institute and is on its Faculty. The Institute is the educational arm of the Canadian Centre for International Justice whose mission is to support individuals seeking justice in domestic and international courts for serious human rights violations (<https://www.cciij.ca/>).

The Journal was developed as an academic blog with a practical approach for both practitioners and scholars. It has positioned itself between the space occupied by academic journals and blogs with short entries on current issues by publishing medium length (under 2500 words) academic on-line contributions about international issues generally within the mandate of the CCIJ.

The Journal includes articles and contributions on:

- evolving international criminal law, including commentaries on new decisions from various international criminal institutions
- Canadian law, policy and jurisprudence related to international and transnational law, including state immunity, the act of state doctrine, corporate responsibility, and recourse for victims of atrocities and other human rights abuses committed abroad, and
- international developments in areas such as international criminal, humanitarian, human rights, and labour law, including reviews of legal decisions from both international and foreign courts and tribunals.

The Journal has also recently started to add interviews with experts in the above fields. It also provides a forum for students working and writing in the field of international justice.

For examples of recent articles, see <http://www.kirschinstitute.ca/pki-global-justice-journal/>.

The Journal is currently seeking contributions of articles related to the above areas. For the process to submit a contribution, see <http://www.kirschinstitute.ca/call-for-contributions/>. Articles typically will be published within a couple of weeks from the date of submission and are assigned a uniform citation for referral.

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Register your interest for the IBA War Crimes Committee 2019 conference: The Next Big Questions for International Criminal Justice

Date; 13 April 2019, The Hague, the Netherlands




International Bar Association

Topics include:

- **Corporate accountability for war crimes, crimes against humanity, and genocide: what gives?**
From Facebook's alleged role in Myanmar's incitement to violence to environmental disasters that might amount to crimes against humanity, can corporations be held accountable for their acts or omissions under international criminal justice?
- **Private actors and investigations: aide or hindrance to international criminal justice?**
The advantages and potential dangers of these actors' operations within the international justice field, and draw wherever possible lessons learned and best practices.
- **Novel investigative models to fight impunity: the IIIM, the Iraq Mechanism, and justice for Syria, Iraq and Myanmar** What is new about these mechanisms and their mandates? To what extent can they constitute precedents for future investigations? What challenges are they encountering?
- **Gender justice: progress and challenges of prosecuting sexual and gender-based violence**

To find out more and register your interest visit the [IBA WCC website](#)

News Sept 2018

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

27 September

[U.N. sets up body to prepare Myanmar atrocity prosecution files](#)

(Reuters)

The U.N. Human Rights Council voted on Thursday to set up a body to prepare evidence of human rights abuses in Myanmar, including possible genocide, for any future prosecution... The resolution sets up a body to "collect, consolidate, preserve and analyze evidence of the most serious international crimes and violations of international law committed in Myanmar since 2011, and to prepare files in order to facilitate and expedite fair and independent criminal proceedings"....

26 September

[A new report estimates that more than 380,000 people have died in South Sudan's civil war](#)

(Washington Post)

Years of brutal civil war in South Sudan have left at least 382,000 people dead, according to an estimate in a new US State Department-funded study that far surpasses an earlier figure issued by the United Nations and points to the horrors of an often-overlooked conflict...

25 September

[Germany convicts member of Western-backed Syrian opposition for 'war crimes'](#)

(CNN)

A German court sentenced a member of a Western-backed Syrian armed opposition group on Monday to life imprisonment for "war crimes," according to court documents. The convict,

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identified as Ibrahim A., was found guilty of "torture and killing persons protected under international humanitarian law" as well as "murder, extortionist kidnapping and the commission of war crimes under the International Criminal Code."...

[DRC: Two militiamen found guilty of crimes against humanity](#)

(Trial International)

On Friday 21 September, a military tribunal in Bukavu (Democratic Republic of the Congo) condemned two high-ranking commanders for murder and torture constituting crimes against humanity. Video footage was submitted to the proceedings as incriminating evidence – an all-time first in DRC. The NGOs TRIAL International, eyeWitness to Atrocities and WITNESS, which have worked jointly on the case, salute this step towards accountability in Eastern DRC...

24 September

[Myanmar army chief says 'no right to interfere' as U.N. weighs Rohingya crisis](#)

(Reuters)

Myanmar's army chief on Monday warned against foreign interference as world leaders gather at the United Nations to find ways to hold the country's powerful generals accountable for atrocities against Rohingya Muslims last year...The U.N. mission called for Min Aung Hlaing and five other generals to be prosecuted for crimes against humanity and genocide over allegations of mass killings and gang rapes...

21 September

[SA to review its withdrawal from the ICC](#)

(SABC News)

South Africa's Chief Diplomat says the country has received unprecedented support ahead of the Nelson Mandela Peace Summit, and that they will carry Madiba's example into their work in the Security Council next year. Speaking in a wide-ranging interview in New York ahead of the Summit and UN General Assembly next week, International Relations Minister Lindiwe Sisulu also reaffirmed the new administration's position that it was reviewing its withdrawal from the ICC...

[Danish court: Man can be extradited to Rwanda for war crimes](#)

(AP)

An appeals court in Denmark says a man can be extradited to his native Rwanda where he is suspected of committing crimes against humanity in 1994. The Eastern High Court in Copenhagen on Friday said Wenceslas Twagirayeze can be deported on suspicion of taking part in a massacre in a church and at a university where more than 1,000 people were killed...

[Blog: Who is responsible for the war crimes of killer robots?](#)

(Asser Institute)

The difficulty in determining who is responsible for war crimes committed with the use of *Lethal Autonomous Weapon Systems* (LAWS) has led to rising legal concerns over their development. States are facing the daunting task of trying to assess the technical, legal, ethical and policy questions raised by the development and use of LAWS in armed conflicts...

[Will the new crimes against humanity treaty protect women and LGBTI persons?](#)

(IntLawGrrls)

If you haven't heard about the new treaty on crimes against humanity that the United Nations has in the works, you're not alone. Most haven't. What you should know is if this treaty goes forward for adoption in its current draft form, only some—not all—people will be protected from crimes against humanity like massacres, rape, torture and persecution. This is because the treaty adopts an outdated definition of gender that some states will inevitably use to shirk their responsibility for addressing gender-based crimes...

[ICC Prosecutor Fatou Bensouda on closing Gabon situation](#)

(ICC Press Release)

...Following a thorough factual and legal analysis of all the information available, I have determined that, at this stage, the legal requirements for opening an investigation into the situation in Gabon have not been satisfied...



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20 September

Canada accuses Myanmar of genocide against Rohingya

(The Guardian)

Canadian lawmakers have unanimously voted to declare Myanmar's military actions against the Rohingya people a genocide. The House of Commons endorsed the findings of a UN fact-finding mission on Myanmar that found "crimes against humanity have been committed against the Rohingya" and that these acts were sanctioned by top Myanmar military commanders. Canadian lawmakers said they "recognise that these crimes against the Rohingya constitute genocide" and urged the UN security council to refer the case to the international criminal court, while also calling for Myanmar's generals to be investigated and prosecuted "for the crime of genocide"...

Legal case builds for trying Duterte at the ICC

(Asia Times)

The International People's Tribunal (IPT) handed down a symbolic guilty verdict in Brussels against Philippine President Rodrigo Duterte for gross human rights abuses, adding to the rising chorus for the populist leader to be referred to the International Criminal Court at The Hague for his various scorched earth policies...

19 September

Yemen conflict: A million more children face famine, NGO warns

(BBC)

A further one million children are at risk of famine in Yemen, the charity Save the Children has warned. Rising food prices and the falling value of the country's currency as a result of a civil war are putting more families at risk of food insecurity. But another threat comes from fighting around the key port city of Hudaydah, which is the principal lifeline for almost two-thirds of the population...

17 September

South Sudan war crimes: UN calling for forming hybrid court

(Aljazeera)

The UN Human Rights Commission on South Sudan is calling on the government to set up a hybrid court to try potential war criminals. South Sudan's government signed a peace deal last week to end

nearly five years of civil war. The commission says those who committed crimes during the conflict must be held accountable and says the court could serve to stem any continuing violence...

ICC sentences DRC's Jean-Pierre Bemba over witness tampering

(Aljazeera)

The ICC has sentenced Jean-Pierre Bemba, a former vice president and rebel leader in the Democratic Republic of Congo (DRC), for bribing witnesses during his war crimes trial. In a ruling on Monday, The Hague-based court handed Bemba a 12 month sentence and a 300,000 euros (\$350,000) fine for tampering with witnesses in an earlier hearing over possible war crimes and crimes against humanity committed by fighters he sent to suppress a coup in neighbouring Central African Republic between October 2002 and 2003...

15 September

South Sudanese government must bring soldiers under control, urges UN mission chief, as peacekeeper is shot and injured

(UN News)

A 'lack of command and control' on the part of South Sudan's government, just days after signing a new peace agreement to end years of brutal civil conflict, is one of the factors which led to the shooting of a United Nations peacekeeper on Saturday, the UN mission chief in the country has said...

14 September

Sri Lanka seeks UN reprieve over war crimes probe

(Channel News Asia)

Sri Lanka's president said Friday (Sep 14) that he wants the United Nations to drop its demand for state accountability over the alleged killing of some 40,000 Tamil civilians by government forces during a brutal civil war. Maithripala Sirisena told local editors in Colombo that he will ask the UN General Assembly to allow Sri Lanka to "amicably resolve" war crime allegations against the majority Sinhalese government forces who fought a 37-year conflict against Tamil separatists...



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[Bosnia Convicts Serb of Wartime Rape in Rogatica](#) (BIRN)

The Bosnian state court in Sarajevo on Friday found Former Bosnian Serb Interior Ministry employee Milisav Ikonc guilty of having forcibly taken a woman from the secondary school building in Rogatica in July 1992 to an apartment, where he raped her. The court found that he repeated the same crime over the next six days, which caused the victim mental and physical injuries...

[Decisive action from Russia, Iran and Turkey required to avoid needless deaths in Idlib siege, Elders warn](#)

(The Elders press statement)

Fearing an imminent large-scale offensive, The Elders strongly urge Iran, Russia and Turkey to overcome recent differences and work together to prevent heavy civilian casualties in Syria's Idlib region...

13 September

[Forced Relationships: Prosecutorial Discretion as a Pathway to Survivor-Centric Justice](#)

(Opinio Juris opinion)

The opening of the *Al Hassan* case before the ICC earlier this year has the potential to re-ignite the debate surrounding the appropriate legal characterisation of forced relationships. Discourse has thus far centred on whether forced relationships are best qualified as sexual slavery, forced marriage as an other inhumane act, enslavement, or whether the Rome Statute ought to be amended to include a distinct crime of forced marriage. Yet, what has not been sufficiently explored in these discussions is the utility of, and tools available for, instilling survivors' perspectives into this legal categorisation of forced relationships...

[Aung San Suu Kyi defends verdict against Reuters journalists](#)

(BBC)

Myanmar's Aung San Suu Kyi has defended the jailing of two Reuters journalists, despite international condemnation. She said Wa Lone and Kyaw Soe Oo had broken the law and their conviction had "nothing to do with freedom of expression at all". The two were sentenced for

possession of police documents while investigating the killing of Rohingya Muslims...

12 September

[Jordan Says Pre-Trial Chamber Was Wrong to Refer it to UN Security Council](#)

(Open Society Justice Initiative)

Jordan has told the ICC that it interpreted international law correctly when it did not arrest Sudan's President Omar Ahmad al-Bashir while he was in Jordan for a heads of state summit of the League of Arab States last year. According to Jordan, al-Bashir had immunity under international law as a sitting Head of State, and that by arresting him during his visit, Jordan would have violated customary international law...

[UN documents further Syrian government use of banned chemical weapons](#)

(Reuters)

UN investigators said on Wednesday that they had documented three further uses of banned chlorine weapons by Syrian government forces that constituted war crimes, and urged major powers to help avert a "massacre" in the final battle for Idlib...

[Burundi under fire at UN for expelling UN human rights team](#)

(Reuters)

Burundi's ambassador in Geneva struggled to explain to the U.N. Human Rights Council on Tuesday why his government had thrown out a U.N. team that the Council, with Burundi's backing, had sent to investigate human rights abuses in the country...

10 September

[Detention and armed conflicts: Exploring realities and remedies](#)

(ICRC)

Regardless of the actor depriving persons of their liberty or of where those detained are held, all too often the ICRC finds that detainees are subject to extra-judicial killing, enforced disappearance or torture and other forms of ill-treatment. We also frequently observe that conditions of detention are inadequate—lacking in basics such as adequate food, water, clothing and bedding,



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accommodation, hygienic installations or health care...

9 September

[How can we defend human rights while selling arms to Saudi Arabia?](#)

(The Globe and Mail opinion)

...That Canada continues to supply Saudi Arabia with arms, despite the horrific atrocities being committed in Yemen on a daily basis by a military coalition led by Saudi Arabia, is puzzling – if not absurd. Canada's arms-control regulations prevent the export of arms in cases where there is a substantial risk that they will be used to commit human-rights violations. This stipulation was reiterated by Ms Freeland herself earlier this year...

6 September

[South Sudan soldiers jailed for rape and murder](#)

(BBC)

A military court in South Sudan has sentenced 10 soldiers to jail terms ranging from seven years to life for a rampage in which a journalist was killed and foreign aid workers raped. The court also ordered South Sudan's government to pay each rape survivor \$4,000 (£3,000) in compensation. The crimes were committed during an attack in the Terrain Hotel in the capital Juba in 2016. A UN report accused peacekeepers of failing to respond to pleas for help...

[Mexico violence: Remains of 166 found in Veracruz mass grave](#)

(BBC)

The skulls of at least 166 people have been found in a mass grave in Mexico's eastern state of Veracruz. State prosecutor Jorge Winckler said the skulls and other human remains had been there for at least two years. The exact location is not being disclosed for security reasons, he added. Drug traffickers have used Veracruz as a dumping ground for their victims for many years. In March 2017, 250 skulls were found in another mass grave there...

5 September

[Mladic appeals judges replaced over bias allegations](#)

(Reuters)

Three out of five appeals judges hearing the case of former Bosnian Serb military commander Ratko

Mladic at an international tribunal have been removed from the panel due to possible bias, court documents released on Wednesday showed. Mladic, 75, was convicted of war crimes and genocide in November 2017 and sentenced to life in prison, notably for his role in the ethnic cleansing of Bosnian Muslims and Bosnian Croats during the 1992-95 war in Bosnia...

[Iraq Yazidis: The 'forgotten' people of an unforgettable story](#)

(BBC)

..."Yazidis feel betrayed by their neighbours, forgotten by their government, and the provision of aid is dwindling," says Kris Phelps of the British charity War Child, one of the few international non-governmental organisations (NGOs) still working in Yazidi camps. "It's really striking to see the surge and ebb in attention the Yazidis have received," Ms Phelps remarks...

3 September

[Myanmar Rohingya: How a 'genocide' was investigated](#)

(BBC)

Indiscriminate killing; villages burned to the ground; children assaulted; women gang-raped - these are the findings of United Nations investigators who allege that "the gravest crimes under international law" were committed in Myanmar last August. Such was their severity, the report said, the army must be investigated for genocide against the Rohingya Muslims in the western Rakhine state. The investigators' conclusions came despite them not being granted access to Myanmar by the government there, which has since rejected the report. This is how the investigators came to their conclusions...

[Myanmar Sentences Reuters Journalists to 7 Years in Prison](#)

(New York Times)

...Their case, which has stretched over almost nine months of court hearings, has become the most notable blow in Myanmar's intensified crackdown on the press, as officials seek to deny or obscure atrocities against the country's Rohingya Muslim minority. A United Nations mission recently called for Myanmar military leaders to be tried for genocide against the Rohingya...

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1 September

[Nicaragua expels UN team after critical report](#) (BBC)

The government of Nicaraguan President Daniel Ortega has ordered a team from the United Nations Commission for Human Rights to leave. The expulsion comes days after a critical report into human rights in Nicaragua during months of anti-government protests. The chief of the UN mission, Guillermo Fernandez, said his team would continue to monitor the situation from abroad. More than 300 people were killed during the recent political unrest...

31 August

[Bosnian Serb Ex-Soldier Charged with Crimes Against Humanity](#)

(Balkan Transitional Justice)

The state court in Sarajevo on Friday confirmed the indictment of Rade Garic, the former commander of the Interventions Squad of the Bosnian Serb Army's Vlasenica Brigade, for crimes against

humanity. Garic is accused of having persecuted the Bosniak civilian population in the Vlasenica municipality through murders, torture, rape, forcible disappearances, the deprivation of liberty and the causing of physical and mental injuries from April 1992 to the end of that year...

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

(EJIL: Talk!)

...the Peace and Justice Initiative and the University of Connecticut Law School and Human Rights Institute convened a group of ten attorneys and researchers in Hartford, Connecticut, including staff with experience in the Office of the Prosecutor, as Defense Counsel, and in Chambers at the ICTY, ICC and Special Tribunal for Lebanon. The result is a set of clear and practical guidelines for lawyers and policy-makers as they confront public expression that may be prohibited under international law; the Hartford Guidelines on Speech Crimes in International Criminal Law. These can be freely downloaded [here](#)...

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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