



TRIAL
International

(UN)FORGOTTEN

Annual report on the prosecution of sexual
violence as an international crime | 2019

(UN)FORGOTTEN

Annual report on the prosecution of sexual
violence as an international crime | 2019

THIS PUBLICATION BENEFITED
FROM THE SUPPORT OF:



WITH EDITORIAL CONTRIBUTIONS FROM:



dr. Denis
Mukwege Foundation

Women's Initiatives
for Gender Justice

women's  worldwide

TABLE OF CONTENTS

6 FOREWORD
PRAMILA PATTEN

7 FOREWORD
DENIS MUKWEGE

8 INTRODUCTION

9 METHODOLOGY AND
ACKNOWLEDGEMENT

HIGHLIGHTS FROM 2017
THREE SIGNIFICANT DECISIONS

GUATEMALA:

12 BEYOND THE CONVICTION:
COLLECTIVE REPARATION MEASURES

NEPAL:

14 STATE RESPONSIBILITY BEFORE THE UN:
A DECISION AGAINST NEPAL

15 COMMENT:
IMPLEMENTATION CHALLENGES

SENEGAL:

16 FORMER DICTATOR FOUND GUILTY OF
CRIMES AGAINST HUMANITY

18 COMMENT:
INCLUDING SEXUAL AND GENDER-BASED
VIOLENCE FROM THE ONSET
OF AN INVESTIGATION

REVIEW OF 2018
PROSECUTING SEXUAL VIOLENCE
AT THE DOMESTIC LEVEL

ARGENTINA:

22 GENDER SPECIFIC CRIMES UNDER
FRANCO

24 COMMENT:
SEXUAL VIOLENCE THROUGH
A GENDER LENS

BELGIUM:

26 TWO RWANDANS TO STAND TRIAL
FOR RAPE

BOSNIA AND HERZEGOVINA:

27 FORMER SOLDIER ACQUITTED OF RAPE

28 FINAL VERDICT AGAINST “RED BERETS”
COMMANDER

29 “ZULFICAR” COMMANDER SENTENCED
TO TEN YEARS

30 FROM FREEDOM TO PRISON
IN SEVEN MONTHS

31 COMMENT:
STIGMATIZATION IN CRIMINAL
PROCEEDINGS

32 INDICTED FOR RAPE AND SEXUAL ABUSE
AS WAR CRIMES

33 CONVICTED EX-SOLDIER ON THE RUN

34 ANOTHER VICTORY IN THE FIGHT
AGAINST IMPUNITY

35 COMMENT:
PROVIDING FREE LEGAL AID TO VICTIMS
OF WAR CRIMES

36 SOLDIER ORDERED TO PAY
COMPENSATION TO SURVIVOR

37 COMMENT:
COMPENSATION CLAIM AWARDS
IN CIVIL PROCEEDINGS

38 ONGOING TRIAL FOR RAPE
AS A CRIME AGAINST HUMANITY

39 OTHER CASES AND DECISIONS

COLOMBIA:

40 REDUCED SENTENCES AS PART OF
THE PEACE PROCESS

42 COMMENT:
SURVIVORS’ PERSPECTIVE

DEMOCRATIC REPUBLIC OF THE CONGO:

44 WARLORD ACCUSED OF MASS RAPE

46 REBEL GROUP LEADER CONFRONTED
BY FIFTY WITNESSES

48 JUSTICE FOR THE CHILDREN OF KAVUMU

49 COMMENT:
MAKING INROADS IN ACCESSING
FULL JUSTICE

50 COMMENT:
GOING BEYOND FINANCIAL COMPENSATION

52 PRISON SENTENCE REDUCED
FOR FORMER FARDC CORPORAL

53 ARMY CHIEF SENTENCED TO LIFE
IN PRISON

54 THE SUFFERING OF 150 VILLAGERS
ACKNOWLEDGED

EL SALVADOR:

56 NO AMNESTY FOR THE EL MOZOTE
MASSACRE

FRANCE:

58 LAST RECOURSE AGAINST
A RWANDAN PRIEST

60 CHARGES OF RAPE DISMISSED
IN RWANDAN CASE

THE GAMBIA:

62 COMMENT:
BRINGING TO LIGHT SEXUAL
VIOLENCE CRIMES COMMITTED
UNDER YAHYA JAMMEH

GUATEMALA:

64 FOUR FORMER ARMY HIGH OFFICIALS
CONVICTED

66 EVIDENTIARY HEARINGS POSTPONED
IN GROUNDBREAKING CASE

SERBIA:

68 PROSECUTING CRIMES AGAINST
ROMA PEOPLE

69 OTHER CASES

SOUTH SUDAN:

70 UNPARALLELED PRECEDENT FOR THE
PROSECUTION OF RAPE AS A WAR CRIME

SWEDEN:

72 RWANDAN GENOCIDE SUSPECT
ACQUITTED OF RAPE CHARGES

THE EXTRAORDINARY CHAMBERS
IN THE COURTS OF CAMBODIA

76 CASE 002/02

78 COMMENT:
PROSECUTING FORCED MARRIAGE
AS A FORM OF SEXUAL VIOLENCE

THE INTERNATIONAL
CRIMINAL COURT

82 THE ACQUITTAL OF BEMBA

ADDRESSING STATE RESPONSIBILITY:
THE INTER-AMERICAN COURT
OF HUMAN RIGHTS

86 WOMEN VICTIMS OF SEXUAL TORTURE
IN MEXICO

88 COMMENT:
SEXUAL VIOLENCE:
TIME TO “CALL IT WHAT IT IS”!

FOREWORD

PRAMILA PATTEN United Nations Under-Secretary-General and Special Representative of the Secretary-General on Sexual Violence in Conflict

It is my great honour to introduce this volume by TRIAL International on global jurisprudence relating to sexual violence as an international crime. TRIAL International has been and remains a leader in assisting victims of conflict-related sexual violence to achieve justice in diverse contexts ranging from Bosnia and Herzegovina to the Democratic Republic of the Congo by both assisting in the prosecution of perpetrators and seeking reparations for their victims. I can think of few other organisations that could compile such a volume that know first-hand from the field the type of jurisprudence that is necessary for advocates and jurists to use in addressing complex cases of conflict-related sexual violence in a victim-sensitive manner whilst upholding the highest standards of due process of law.

In United Nations Security Council Resolution 1820 (2008), the Council recognized for the first time that the use of sexual violence as a tactic of war threatens international peace and security, impedes the restoration of peace, and can amount to war crimes, crimes against humanity or constitute acts of genocide. Fundamental to Resolution 1820 and its successor Resolutions 1888 (2009); 1960 (2010); 2106 (2013) and 2231 (2016), is that the fight against impunity for sexual violence is essential to the maintenance of international peace and security. Indeed Resolution 1820, paragraph 4, states plainly that States are required to “prosecut[e] persons responsible for [sexual violence], to ensure that all victims of sexual violence, particularly women and girls, have equal protection under the law and equal access to justice, and *stresse[d]* the importance of ending impunity for

such acts as part of a comprehensive approach to seeking sustainable peace, justice, truth, and national reconciliation.” In addition to contributing to sustainable peace, prosecution of sexual violence crimes is a necessary part of deterrence and prevention of these crimes from happening in the future. Experience has shown that rape and other forms of sexual violence are inexpensive and horrifyingly effective weapons. If it remains cost-free to use sexual violence in conflict, then sexual violence sadly will continue to be used.

Rape has traditionally been history’s most silenced crime, but the voices of the victims and the consistent work of their allies in a variety of disciplines such as law, medicine, political and other social sciences have broken that silence. In my work as Special Representative of the Secretary-General on Sexual Violence in Conflict, I have often been struck by both the desire of victims of sexual violence to seek accountability as well as some States’ willingness to prosecute these crimes if proper expertise and capacity is provided. That is why TRIAL International’s volume on jurisprudence relating to conflict-related sexual violence is so important. Practitioners globally, including most importantly at the national level, are looking for ways to strengthen prosecutions for conflict-related sexual violence and are open to learning from the experience of other States and judiciaries that have dealt with similar crimes. There is increasing recognition that if we are to tackle the global scourge of conflict-related sexual violence, we must learn from our collective experience in adjudicating these crimes in increasingly diverse fora.

I believe we are at a crucial point where we all can make the affirmative choice to eliminate the use of sexual violence as a tactic of war by ensuring effective prosecutions that make it no longer cost-free to rape a woman, girl, man or boy, as well as to provide reparations to victims to rebuild their lives. I am grateful for TRIAL International for compiling this volume and I hope for its wide dissemination amongst practitioners so that we can use it in our joint task to eradicate fully and finally sexual violence as a tactic of war. |

New York, March 2019

FOREWORD

DENIS MUKWEGE Founder and Medical Director of Panzi Hospital and Nobel Peace Prize Laureate

When we heard of the judgment in the Kavumu case, a wave of relief swept through our hospital.

Justice had finally been delivered to the community of Kavumu!

In this village north of Bukavu, in eastern Congo, a militia raped dozens of young girls over the course of many years. They were brought to our hospital where we conducted complex surgery and provided psychological care for both children and parents, as far as one possibly can in these cases of extreme violence and destruction.

In the two years following the first reports, the relentless advocacy by Panzi and other actors, both nationally and internationally, was to no avail. Our actions were met by a deafening silence from the authorities. In the meantime, young girls who had been subjected to unimaginable atrocities kept being brought to the hospital. Only when justice finally reached Kavumu did the violence end. The judges convicted the militiamen and sentenced them to life in prison.

The Kavumu case, together with other cases documented in this report, illustrates the critical importance of accountability for crimes of sexual violence in conflict. Unless perpetrators face consequences for their deeds they will continue, and sexual violence risks spreading in the community like an epidemic.

The examples of successful prosecution of sexual violence presented in this report constitute a step towards a necessary cultural change, whereby sexual violence is no longer tolerated as a by-product of war, but is seen as the most serious of crimes that should be investigated and punished.

What is painfully absent in these cases is the enforcement of reparation awards to the survivors and their families. In the Kavumu case, although the judges ordered the payment of compensation to survivors, over a year later, there is no sign that these will ever be paid. When considering justice, we need to bear in mind that for survivors the destruction is real and absolute. Some of the girls in the Kavumu case might never become mothers. Parents were forced to leave the village because of the threats they received. Compensation for these harms is therefore an essential part of justice.

Finally, we should honor the admirable women, change-makers in their communities, behind the successes described in this project. For two decades Panzi teams have provided care for survivors of conflict-related sexual violence. Some of the survivors are shunned by their communities and have to rebuild their lives from scratch. I have never met people who inspired me more than these women – our patients. Without the women who were willing to testify, overcoming all the hurdles and risks associated with starting a legal process, there would have been neither a case nor a conviction.

This report is a document that gives hope to all those who suffer the consequences of rape as a weapon of war, and the injustices that come with it. It enables us to learn from these successes. We should not be satisfied, however, until the violence stops, and survivors feel that complete justice has been done. |

Bukavu, March 2019

INTRODUCTION

“(Un)forgotten” constitutes TRIAL International’s first attempt to present an overview of the prosecution of sexual violence as an international crime around the world.

For victims of conflict-related sexual violence, justice is not always a stepping-stone on their path to reconstruction. However, when it is perceived and asserted as a priority, justice becomes a multifaceted objective. While some victims may request the official and public acknowledgement of their suffering, others will focus on returning home and reintegrating their community. Similarly, while certain individuals will find justice in the provision of financial compensation, others will define it as holding perpetrators accountable. Although our report focuses on the latter, it undoubtedly touches upon the various forms justice can take, and demonstrates that prosecuting sexual violence often goes beyond a mere conviction.

In 2018, more than 30 trials were initiated in over 15 countries, from Guatemala to the Democratic Republic of the Congo, from Bosnia and Herzegovina to Colombia. At least 18 guilty verdicts were delivered, sometimes against multiple defendants.

In comparison to the scale of the violations committed, it is merely a small drop of justice in an ocean of suffering. Still, the number of cases investigated and prosecuted, albeit too rare, is progressively increasing. For the most part they take place in contexts where all interested stakeholders, and more specifically civil society organizations, coalesce around the legal process and coordinate their efforts in order to provide survivors with the necessary support that allows them to step forward as actors of change.

None of the investigations or trials included in this report constitute clear-cut, easy, or ordinary cases. Behind every page reside courage and fear, victories and disillusion, betrayals and cooperation. In fact, we do not solely address successful prosecution, as we believe it is crucial to draw and apply lessons from all cases – both from best practices and challenges.

We hope that this first report will be used as a practical tool by legal practitioners and judicial authorities throughout the world. Moreover, we hope that it will encourage civil society actors to engage with existing legal systems and to strengthen their coordination in the support they bring to survivors. Last but not least, we hope that it will allow survivors to see that justice, as imperfect as it may be, can be achieved. |

Philip Grant
TRIAL International Executive Director

Lucie Canal
TRIAL International Legal Advisor & Project Coordinator

METHODOLOGY AND ACKNOWLEDGEMENT

The present report highlights cases of sexual violence that were investigated and prosecuted in 2018. It does not include developments that have occurred in 2019.

TRIAL International’s mandate is to address sexual violence as an international crime. This report is therefore a collection of cases of sexual violence as a war crime, a crime against humanity, and as an act constituting genocide.

Although the report focuses on prosecution of sexual violence at the domestic level, decisions rendered at the international level and cases addressing State responsibility were believed to provide relevant case-law and were therefore integrated.

The publication has been developed through open source research and collaboration with partner organizations. It also includes cases in which TRIAL International has been directly involved. While every attempt was made to ensure accuracy and exhaustivity, TRIAL International acknowledges that there may be cases about which the organization did not obtain information.

TRIAL International is particularly grateful to Ms. Pramila Patten, United Nations Under-Secretary-General and Special Representative of the Secretary-General on Sexual Violence in Conflict, and Doctor Denis Mukwege, Medical Director of Panzi Hospital and Noble Peace Prize Laureate, for their respective forewords.

This report benefited from the expertise and contributions of the Mukwege Foundation, Red de Mujeres Víctimas y Profesionales, SEMA: the Global Network of Victims and Survivors to End Wartime Sexual Violence, Women’s Link Worldwide, Women’s Initiatives for Gender Justice, and the Transitional Justice Clinic.

The publication was made possible thanks to the generous support of the Foreign & Commonwealth Office (FCO). |

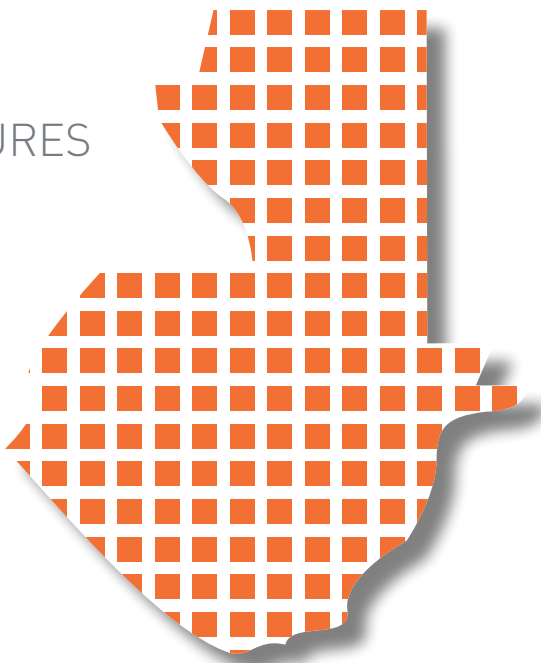


HIGHLIGHTS FROM 2017

THREE SIGNIFICANT DECISIONS

GUATEMALA

BEYOND THE CONVICTION: COLLECTIVE REPARATION MEASURES



CONTEXT

Decision issued by High Risk Court A (*Tribunal de Mayor Riesgo*) against two former Guatemalan military officials for crimes against humanity, including sexual violence and sexual and domestic slavery, committed in Sepur Zarco during the Guatemalan armed conflict

DEFENDANTS

- **Esteelmer Reyes Girón**, former Lieutenant-Colonel of the Guatemalan Army
- **Heriberto Valdéz Asij**, former military commissioner of the Guatemalan Army

CHARGES

- Crimes against humanity (including **sexual violence** and **sexual and domestic slavery**)

CURRENT STATUS

Sentenced to 50 years in prison

FACTS

In July 1982, in the midst of Guatemala’s 36-year-long armed conflict, the army established a military base in the small village of Sepur Zarco, in the north of the country. After at least 15 indigenous Maya Q’eqchi’ men from the area were killed or disappeared, their wives were forced to come to the base approximately every three days. During those ‘shifts’, the women were used as domestic servants, repeatedly raped, and forced to take medications in order to prevent pregnancies. While this exploitation system formally ended after 10 months, sexual harassment and violence against women in the area lasted until the Sepur Zarco military base was closed in 1988.

At the time of the events, Reyes Girón was the Second Lieutenant in charge of the Sepur Zarco military base, while Valdéz Asij acted as a commander of the civil patrols in the area. |

HIGHLIGHT

THE SIGNIFICANCE OF THE SEPUR ZARCO CASE

The Sepur Zarco case is of considerable importance for two main reasons. Not only does it mark the first time crimes of conflict-related sexual violence have been prosecuted in Guatemala, but it also constitutes the first ruling of a national court on charges of sexual slavery perpetrated during an armed conflict.

Moreover, in ordering a wide range of individual and collective reparation measures, the Court acknowledged that justice is not limited to sentencing perpetrators but may take many forms. These include, among others, the establishment of a health center in Sepur Zarco, the provision of scholarships for the community, and the construction of a monument to the Sepur Zarco women’s quest for justice. The Guatemalan Government was also asked to reopen land restitution cases, address prevention of violence against women in military training, and mark 26 February as the Day in Honor of Victims of Sexual Violence and Sexual and Domestic Slavery.

The 11 surviving “Sepur Zarco Grandmothers” have set up an organization, the Jalok U Association, which aims to promote the empowerment of indigenous women and girls. |

PROCEDURE

On 30 September 2011, two local feminist organizations, Mujeres Transformando el Mundo (MTM) and Unión Nacional de Mujeres Guatemaltecas (UNAMG), filed a complaint before the Prosecutor’s Office in the department of Izabal for the alleged crimes committed against Q’eqchi’ women in Sepur Zarco between 1982 and 1983.

The following year, anticipated evidentiary hearings were organized due to the advanced age of the witnesses. Fifteen Q’eqchi women and five men gave their statements between 24 and 28 September 2012.

On 14 June 2014, Reyes Girón and Valdéz Asij were arrested in connection with the case, and held in pre-trial detention. Four months later, Reyes Girón was charged with sexual violence as well as sexual and domestic slavery as crimes against humanity, and with the murder of a woman and her two children. Valdéz Asij was charged with sexual violence as a crime against humanity, and with the enforced disappearance of seven Q’eqchi’ men.

Following the transfer of the case to the High Risk Court A in Guatemala City, the trial opened on 1 February 2016. On 26 February, the defendants, who claimed their innocence throughout the proceedings, were found guilty. Reyes Girón and Valdéz Asij were sentenced to 120 and 240 years in prison, respec-

tively. Both sentences, which include 30 years for crimes against humanity, were however reduced to 50 years – the maximum term that can be served under Guatemalan law. Eleven survivors, known as the “Sepur Zarco Grandmothers” waited in court for the verdict to be announced.

Additionally, victims were awarded reparations in the form of health and social programs, as well as over one million dollars as compensation for the harm suffered. The Court, which was presented with expert testimony on the gender aspects of the case, found that the destruction of the indigenous female body and Q’eqchi’ women’s place in society formed a military objective to undermine the survival of the community.

On 19 July 2017, the Court rejected the appeal filed by the defendants and confirmed the first-instance verdict. |

NEPAL

STATE RESPONSIBILITY BEFORE THE UN: A DECISION AGAINST NEPAL

CONTEXT

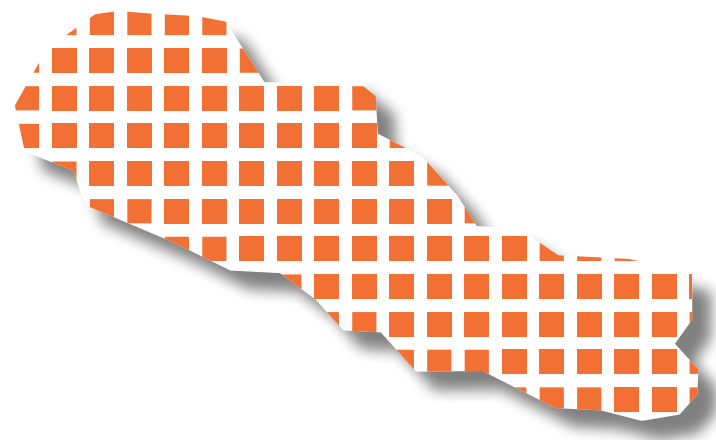
Views of the United Nations Human Rights Committee (UNHRC) in relation to rape and acts of torture committed by members of the Royal Nepalese Army (RNA) against a civilian during the armed conflict

COUNTRY OF COMMISSION

Nepal

CURRENT STATUS

Decided



FACTS

On 23 November 2004, during the conflict that took place between 1996 and 2006, an RNA lieutenant went to the house of the victim, referred to as Purna Maya to protect her true identity, and accused her of being a Maoist. He then proceeded to take her to the Bhawani Bakash army barracks to question her. During the interrogation, she was raped multiple times by the lieutenant and three other soldiers, until she lost consciousness.

When Purna Maya was finally able to walk out of the barracks, she received support from a nearby shop owner and was transported to the Dailekh district hospital. Suffering from considerable physical and psychological consequences, Purna Maya was forced to move to another district with her daughter. Furthermore, upon learning what had happened, her husband stopped sending her a food allowance. |

PROCEDURE

When, in 2010, Purna Maya decided to file a complaint with the police and initiate legal action, she was turned away due to the 35-day statute of limitation on reporting the crime of rape. In 2011, her petition requesting the Supreme Court to order the launch of an investigation into the alleged crimes was rejected as well.

Without any recourse left before domestic authorities, Purna Maya decided to take her case to the international level. On 19 December 2012, Advocacy Forum-Nepal and REDRESS submitted a communication to the UNHRC on behalf of Purna Maya.

Five years later, on 17 March 2017, the UNHRC found Nepal responsible for the violation of multiple rights enshrined in the International Covenant on Civil and Political Rights (ICCPR), including the prohibition of torture and the right to liberty and security. It recommended the State to open an investigation into the case; to abolish the 35-day limitation period for reporting a complaint of rape; to give the victims of rape effective access to justice; to implement provisions considering torture as a crime; and to promote training and campaigns in relation to violence against women. |

COMMENT

IMPLEMENTATION CHALLENGES

HELENA RODRÍGUEZ-BRONCHÚ CARCELLER

TRIAL INTERNATIONAL LEGAL ADVISOR AND HEAD OF NEPAL PROGRAM

Purna Maya v. Nepal is the first case of conflict-related sexual violence decided by the UNHRC against Nepal. This emblematic case exposes the deficiencies of the Nepalese justice system. Indeed, Purna Maya denounced her perpetrator when, two years after the incident, she saw him at the District Administration Office, where she had gone to claim compensation. This was not enough to trigger any meaningful action from the authorities.

After several failed attempts to obtain justice and reparation from the Nepalese system, she brought a complaint against the State before the UNHRC. The human rights body confirmed the violation of several articles of the ICCPR and recommended that Purna Maya receives appropriate reparation. To this date, the decision remains to be implemented.

There currently are approximately 20 cases that have been decided by the UNHRC against Nepal – the first one dating from 2008. In all of them, the UNHRC found that victims' rights had been violated and recommended action by local authorities. None of these recommendations have been meaningfully implemented.

Over the years, the representatives of the victims have attempted different strategies to foster the implementation of the UNHRC Views at the domestic level. These include, among others, organizing meetings with different authorities, registering new complaints, conducting international advocacy with the UNHRC itself, and raising awareness through campaigns such as Real Rights Now. Despite these efforts, Nepalese authorities continue not to give due weight to these decisions.

The recurrent argument that all conflict-era cases will be dealt with by the transitional justice bodies represents the main obstacle – despite the fact that it has repeatedly been refused by the UNHRC on the grounds that quasi-judicial bodies can never replace the criminal justice system.

Additional difficulties include the absence of a coordination mechanism mandated to monitor the implementation of recommendations issued by international bodies, fueled by an unclear division of competencies between the different Ministries and the newly established federal bodies. |

SENEGAL

FORMER DICTATOR FOUND GUILTY OF CRIMES AGAINST HUMANITY

CONTEXT

Decision issued by the Extraordinary African Chambers (EAC) against the former Chadian Head of State for crimes perpetrated between 1982 and 1990

DEFENDANT

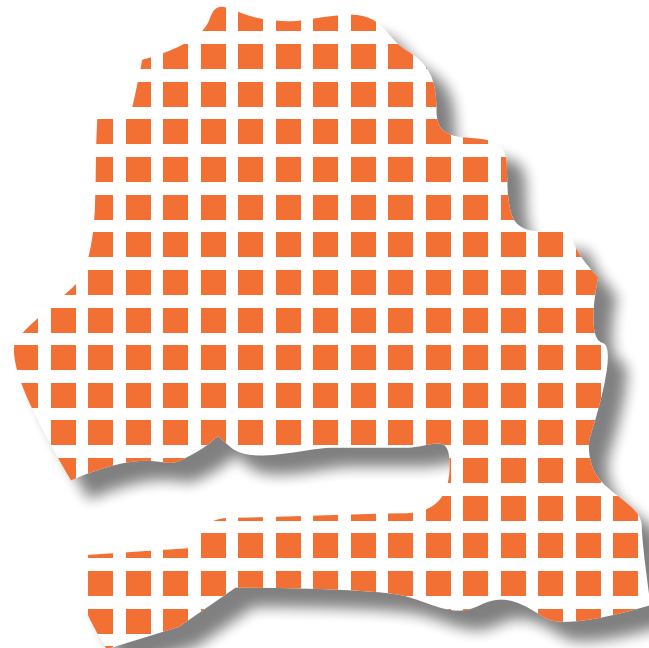
➤ **Hissène Habré**, President of Chad from 1982 to 1990

CHARGES

➤ Crimes against humanity (including **rape** and **sexual slavery**)
➤ War crimes
➤ Torture

CURRENT STATUS

Conviction and sentence of life imprisonment confirmed on appeal; ordered to pay 82 billion CFA francs (approximately 123 million euros) to the victims; acquittal of the charge of rape against Khadidja Hassan Zidane



FACTS

On 7 June 1982, Habré seized power in Chad, overthrowing the government of Goukoni Wedeye. Under Habré's rule, political killings, arbitrary arrests, systematic torture, and the targeting of ethnic groups became widespread practice.

With control over seven secret prisons in the capital, the Documentation and Security Directorate (Direction de la documentation et de la sécurité), Habré's intelligence agency, committed some of the regime's most egregious crimes. Detainees would regularly die of torture, malnutrition, and disease. Those who survived reported that female prisoners were frequently subjected to rape and other forms of sexual violence. Four women testified in court that they had been used as sex slaves by the army during their detention in the north of Chad in 1988; two of them were minors at the time.

In December 1990, Habré was removed from power by his former military chief, Idriss Déby, and fled to Senegal.

Hissène Habré.

PROCEDURE

On 22 August 2012, Senegal and the African Union signed an agreement that established the EAC within the Senegalese court system, with the mandate of prosecuting those responsible "for crimes and serious violations of international law, international custom, and international conventions" committed between 7 June 1982 and 1 December 1990. On 30 June 2013, Habré was arrested, before being charged with crimes against humanity, war crimes, and torture on 2 July 2013.

During the trial, one witness, Khadidja Hassan Zidane testified that Habré had raped her on four occasions in the presidential palace. Her testimony, as well as that of the other women who were subjected to sexual slavery, was met with an outburst of online harassment. Khadidja Hassan Zidane was called a "nymphomaniac prostitute" on Habré's official website.

On 30 May 2016, the Court found Habré guilty of the systematic use of torture, war crimes, and crimes against humanity – including rape and sexual slavery – and sentenced him to life imprisonment. Furthermore, each survivor of rape and sexual slavery was granted 20 million CFA francs (the equivalent of 30,490 euros) as compensation.

On 27 April 2017, the Appeals Chamber of the Court confirmed the verdict and the sentence, and ordered Habré to pay 82 billion CFA francs (approximately 123 million euros) as compensation to 7,396 victims. The former dictator was, however, acquitted of the charge of rape against Kadidja Hassan Zidane. Indeed, while the Court did not question the credibility of the witness, it indicated that the allegation, which had not been included in the indictment, could not be brought once the trial had started. As a result, it could not convict Habré of raping Kadidja Hassan Zidane.

INCLUDING SEXUAL AND GENDER-BASED VIOLENCE FROM THE ONSET OF AN INVESTIGATION

MARION VOLKMANN

INDEPENDENT HUMAN RIGHTS CONSULTANT

The Habré trial is as historic as it is controversial. Indeed, while it marks the first conviction against a former head of State for crimes against humanity by an African court, it also illustrates the difficulties that still exist in the investigation and prosecution of sexual and gender-based violence. Despite its widespread use under Habré's regime, sexual violence was not considered as an investigative priority, and the pretrial fact-finding mostly focused on other categories of crimes, such as torture, enforced disappearances, and mass murders. As a result, charges of rape, sexual slavery, or other forms of sexual violence of comparable gravity were not included in the initial indictment against the former dictator.

In spite of the available evidence on sexual and gender-based violence, much was left unresearched, untold, and even ignored. In September 2015, shortly before the start of the trial, Rachelle Mouaba recounted at a press conference how she had been raped at the age of 18 by a group of soldiers who had come to her house and had arrested and eventually killed her father. She was never asked to testify. Similarly, although an insider described how soldiers had raped and killed a seven-year-old girl during the bloody repression by the national army in the south of the country between 1984 and 1985, the Court did not look into incidents of sexual violence committed during that period. Men were also subjected to sexual violence. According to a French doctor who conducted medical evaluations of hundreds of Chadian torture victims between 1991 and 1996, many of them bore injuries consistent with acts of sexual violence.

It is thanks to the courage of the victims and their lawyers, supported by a number of NGOs, that sexual violence was eventually brought to the forefront of the trial. Survivors were able to testify in court and tell their stories. They provided credible, albeit horrendous, accounts of the violence they suffered or had witnessed. Chadian soldiers forcibly transferred women to military camps in the desert where they subjected them to domestic and sexual enslavement. One victim spoke about sexual abuse in detention, while another explained that she was tortured while pregnant and miscarried as a result. When Khadidja Hassan Zidane took the floor, she explained that Habré himself had raped her four times.

Eventually, the Court did recognize that incidents of sexual and gender-based violence as international crimes had been committed under Habré's regime. It therefore sentenced the former dictator to life imprisonment for crimes against humanity of rape and sexual slavery. He was however acquitted of raping Khadidja Hassan Zidane. The Appeals Court emphasized that the acquittal was a procedural matter and did not reflect on the victim's credibility. Her testimony had indeed arrived too late in the trial to be included within the new charges of sexual violence.

The proceedings against Habré should constitute a wake-up call for all stakeholders involved in the investigation and prosecution of international crimes. Acts of sexual violence committed during an armed conflict or within the context of dictatorial regimes must be considered from the onset of any investigation into war crimes or crimes against humanity. Raising awareness about this necessity would also encourage more survivors to tell their stories and testify in court. |



SANTOS CHICAS	0
NIÑA CLAROS CÓMEZ	0
GILBERTO CLAROS	16
NIÑO MÁRQUEZ	7
LUCÍO MÁRQUEZ	45
LUCÍA CHICAS MÁRQUEZ	14
DORA CHICAS MÁRQUEZ	11
NIÑA CHICAS MÁRQUEZ	7
NIÑA CHICAS MÁRQUEZ	5
NIÑO CHICAS MÁRQUEZ	1
NIÑO MÁRQUEZ	0

ANGÉLICA VIGIL PORTILLO	7
ASCENSION MÁRQUEZ DÍAZ	30
EUGENIA CLAROS ARGUETA	30
SUSANA CLAROS	52
JUAN GIL SORTO	31
ANACLETA SORTO	56
IGNACIO GUEVARA	60
SATURNINA ARGUETA ROMERO	25
PACUNDO	30
MARTINA	30
PERFECTO	

BONIFACIA RODRÍGUEZ	8
MARÍA EFIGENIA DÍAZ	20
BITORIANA DÍAZ MÁRQUEZ	31
JOSÉ ARNOLDO DÍAZ	12
MARÍA RUBIDIA DÍAZ	2
MARÍA MAURA PEREIRA	11
RAMÓN MÁRQUEZ DÍAZ	18
AGUSTINA GARCÍA	45
JOSÉ RENÉ MÁRQUEZ GARCÍA	10
EDITH ELIZABETH MÁRQUEZ GARCÍA	6
YESENIA YANET MÁRQUEZ	0

ESTANISLAO CHICAS	8
CARLOS CHICAS MÁRQUEZ	31
JOSÉ ANTONIO CHICAS MÁRQUEZ	12
JOSÉ HUMBERTO CHICAS MÁRQUEZ	2
ESTANISLAO ROMERO GUEVARA	11
MARÍA FELIPA DÍAZ	18
ISIDRO DÍAZ ROMERO	45
AQUILEO DÍAZ ROMERO	10
HERMELINDA DÍAZ ROMERO	6
OSCAR MÁRQUEZ PEREIRA	0

MARÍA SATURNINA ARGUETA	35
SEFERINA VIGIL ARGUETA	16
FRANCISCO VIGIL ARGUETA	14
MARÍA ANTONIA VIGIL ARGUETA	12
MERCEDES ARGUETA VIGIL	10
MARTIL VIGIL ARGUETA	3
MARÍA SANTOS ARGUETA VIGIL	6
FLORENTINA PEREIRA	61
HERMINIO MÁRQUEZ	41
CRESCENCIO ARGUETA MÁRQUEZ	80

MARÍA SATURNINA ARGUETA	35
SEFERINA VIGIL ARGUETA	16
FRANCISCO VIGIL ARGUETA	14
MARÍA ANTONIA VIGIL ARGUETA	12
MERCEDES ARGUETA VIGIL	10
MARTIL VIGIL ARGUETA	3
MARÍA SANTOS ARGUETA VIGIL	6
FLORENTINA PEREIRA	61
HERMINIO MÁRQUEZ	41
CRESCENCIO ARGUETA MÁRQUEZ	80

JOSÉ MARIO PEREIRA GUEVARA	9
ELSA MARISOL PEREIRA	8
JOSÉ ATILIO PEREIRA MÁRQUEZ	8
MARTO VIGIL ARGUETA	38
GUILLERMA MÁRQUEZ ARGUETA	30
JOSÉ SANTOS ARGUETA MÁRQUEZ	11
ÁNGEL VIGIL MÁRQUEZ	6
BRUNO ALFREDO ARGUETA	5
LUIS VIGIL	55
VIGIL	29

BERNARDA MÁRQUEZ	9
SANTOS EVENOR VIGIL MÁRQUEZ	8
JOSÉ NILO MÁRQUEZ VIGIL	8
MARÍA MARTA CHICAS	38
JOSÉ CONCEPCIÓN MÁRQUEZ	30
ELSA MÁRQUEZ CHICAS	11
DORA MÁRQUEZ CHICAS	6
JOSÉ BENJAMIN MÁRQUEZ	5
MANUEL PEREIRA ARGUETA	55
PETRONA MÁRQUEZ	29

MAGDALENA MÁRQUEZ	70
JUAN JORGE DÍAZ	70
JOSE ANTONIO MOLINA DÍAZ	
JOSE MAURICIO MOLINA DÍAZ	
DOMINGA DÍAZ MÁRQUEZ	
AGUSTIN DÍAZ MÁRQUEZ	
EMILIA DÍAZ MÁRQUEZ	
BRIGIDO DÍAZ MÁRQUEZ	
BRUNO MÁRQUEZ GUEVARA	
ROSALINA ARGUETA	

MAGDALENA MÁRQUEZ	70
JUAN JORGE DÍAZ	70
JOSE ANTONIO MOLINA DÍAZ	
JOSE MAURICIO MOLINA DÍAZ	
DOMINGA DÍAZ MÁRQUEZ	
AGUSTIN DÍAZ MÁRQUEZ	
EMILIA DÍAZ MÁRQUEZ	
BRIGIDO DÍAZ MÁRQUEZ	
BRUNO MÁRQUEZ GUEVARA	
ROSALINA ARGUETA	

JOSÉ MARIO PEREIRA GUEVARA	9
ELSA MARISOL PEREIRA	8
JOSÉ ATILIO PEREIRA MÁRQUEZ	8
MARTO VIGIL ARGUETA	38
GUILLERMA MÁRQUEZ ARGUETA	30
JOSÉ SANTOS ARGUETA MÁRQUEZ	11
ÁNGEL VIGIL MÁRQUEZ	6
BRUNO ALFREDO ARGUETA	5
LUIS VIGIL	55
VIGIL	29

BERNARDA MÁRQUEZ	9
SANTOS EVENOR VIGIL MÁRQUEZ	8
JOSÉ NILO MÁRQUEZ VIGIL	8
MARÍA MARTA CHICAS	38
JOSÉ CONCEPCIÓN MÁRQUEZ	30
ELSA MÁRQUEZ CHICAS	11
DORA MÁRQUEZ CHICAS	6
JOSÉ BENJAMIN MÁRQUEZ	5
MANUEL PEREIRA ARGUETA	55
PETRONA MÁRQUEZ	29

REVIEW OF 2018
PROSECUTING
SEXUAL VIOLENCE AT
THE DOMESTIC LEVEL

ARGENTINA

GENDER SPECIFIC CRIMES UNDER FRANCO

CONTEXT

Ongoing proceedings in Argentina against former Spanish officials for alleged serious crimes under international law, including sexual violence, perpetrated in Spain between 1936 and 1977

DEFENDANTS

- Former Spanish officials, including
- **González Pacheco**, former Police Officer
 - **Jesús Muñecas Aguilar**, former Captain of the Civil Guard
 - **Rodolfo Martín Villa**, former Minister

CHARGES

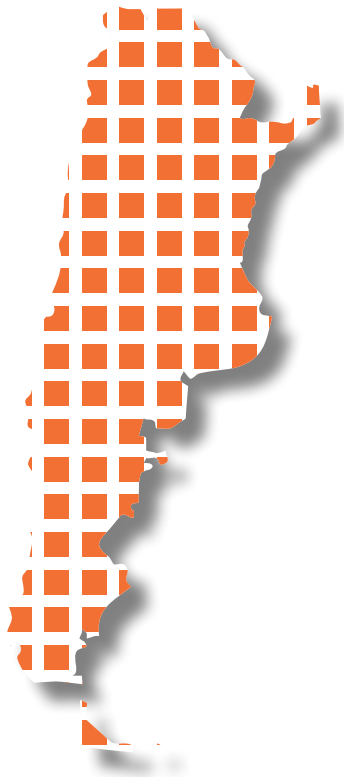
- Crimes against humanity

DEVELOPMENTS IN 2018

On 26 October 2018, the Argentinean judge Servini de Cubría officially opened an investigation into crimes of sexual and gender-based violence perpetrated under the Franco dictatorship in Spain

CURRENT STATUS

Under investigation



FACTS

Under the Franco dictatorship, women’s rights in Spain suffered a major setback. Dismantling the progress made under the Republic, the regime redefined the identity and the role of women as wives and mothers first and foremost.

Between 1936 and 1975, Spanish women, and in particular those who were thought to oppose the regime, were subjected to gender-specific violence. Francoist troops would regularly commit rape against Republican women in an attempt to humiliate the opposition and demonstrate power over the civilian population. Similarly, female detainees were subjected to various forms of sexual violence during their questioning, and were often raped while in custody. In addition, the regime used the shaving of women and their public parading as a gender-specific form of punishment. The repression was also characterized by taking children from their parents. Pregnant Republican women were allowed to give birth before being executed, and their newborn babies were given to supporters of the regime. In addition, women were not only punished for their political views and involvement, but also for being related to members of the opposition.

For further information about the ongoing proceedings in Argentina, see TRIAL International’s 2019 Universal Jurisdiction Annual Review.

Margalida Jaume was seven months pregnant when she was arrested by Francoist troops in August 1936. She was allegedly detained and tortured, before being executed. A witness later told Jaume’s daughter that at least one supporter of Falangism, an ideology connected to the regime, had raped her mother.

Daira and Mercedes Buxadé Adroher were arrested by Francoist troops on 4 September 1936. After being interrogated and paraded around town, they were examined by a group of doctors to establish whether they were virgins. That night, a group of Falangists raped them multiple times. It is believed that they were executed the next day. Their bodies were never found.

On 19 July 1936, Pilar Sánchez Lladrés, an active member of the Socialist Party, was repeatedly raped by four Falangists and executed. Her remains were never identified.

Matilde Landa Vaz was arrested in April 1939 for her political activities. A leader and role model for the other prisoners, she became the target of harassment by prison authorities. She eventually took her own life.

Lidia Falcón O’Neill was arrested seven times throughout the period of the dictatorship and sentenced to prison on two occasions. While in prison, she was subjected to various forms of torture that specifically targeted her ability to bear children.

PROCEDURE

Following the submission in Argentina of a criminal complaint on 14 April 2010 by Argentinean and Spanish human rights defenders, Judge Servini de Cubría opened an investigation into crimes committed in Spain between 1936 and 1975. Judge Servini de Cubría has requested the extradition to Argentina of former Spanish officials, including Pacheco, Muñecas Aguilar, and Villa on multiple occasions. However, Spanish authorities have so far rejected those requests, arguing that the 1977 Amnesty Law and statute of limitations apply to those cases.

On 16 March 2016, Women’s Link Worldwide (WLW) submitted a supplement to the criminal complaint before the Federal Criminal and Correctional Court no.1 in Buenos Aires requesting that the systematic use of sexual and gender-based violence under Franco be considered as well.

The supplement highlights the story of six women in order to illustrate the crimes committed against women who opposed, or were suspected of opposing, the dictatorship. Similarly, it underscores the differential and specific impact that sexual and gender-based violence had on the lives of women. In addition to requesting the investigation into sexual and gender-based violence as possible crimes against humanity, the supplement seeks to ensure that the ongoing proceedings apply a gender perspective.

In October 2018, Judge Servini de Cubría announced that she was formally opening an investigation into the violations identified in the supplement submitted by WLW. She will be examining cases of rape, forced abortion, and theft of children.

SEXUAL VIOLENCE THROUGH A GENDER LENS

TERESA FERNÁNDEZ PAREDES

WOMEN'S LINK WORLDWIDE

Two and a half years after its submission in Argentina, Women's Link Worldwide's supplemental complaint on the systematic use of sexual and gender-based violence under Franco was admitted. On 27 December 2018, the judge issued various letters rogatory to Spain and Northern Ireland, requesting that the testimonies of the victims and their family members be taken. This small step, while being entirely preparatory in nature, has been seen by our clients as an important victory. Indeed, after decades of waiting, their voices will finally be heard before the authorities for the very first time. This case has the potential to set a crucial precedent on how historic crimes can be brought before the courts using the principle of universal jurisdiction, and on how this can be done through a gender perspective to overcome the different obstacles that often result in impunity for violence committed against women.

It is also worth underlining that this case is being heard in Argentina. As such, this is one of the few cases where a country from the Global South has begun to investigate the international crimes committed in a country from the Global North. This is of vital importance, as the principle of universal jurisdiction is a matter of global interest and should not be viewed as an imposition or political interference. In addition, it should be noted that Argentina is one of the few countries in the world that is currently prosecuting sexual and gender-based violence (SGBV) crimes in its own national judicial systems.

This case offers a unique opportunity to shape public debate. It indeed highlights the specific violence inflicted upon women and girls and generates social mobilization that demands truth and justice for the victims of SGBV crimes in Spain.

International law establishes that national courts have an obligation to prosecute serious human rights violations. In light of this requirement, more and more national jurisdictions have incorporated international obligations into their legal frameworks as binding precedent, particularly in the case of *jus cogens* norms.

The prohibition against international crimes such as genocide, war crimes, and crimes against humanity has acquired status as a *jus cogens* norm, meaning that this prohibition is assigned the highest rank among international laws and is binding on States. International crimes with *jus cogens* status must be prosecuted in all cases, regardless of the nature of the act or the identity or gender of the victim. This applies regardless of where the alleged crime was committed, and regardless of the accused's nationality, under the rationale that such crimes harm the international community or international order itself.

Gender-based violence against women, that is, violence perpetrated against women simply because they are women, falls under this category of international crimes. In situations of armed conflict, the use of violence is gender specific and reflects the gender dynamics of the context in which the violence takes place. Today there is a consensus that these violations of women's human rights constitute violations of the fundamental principles of human rights, as well as international criminal and humanitarian law. For example, the Cairo-Arusha Principles of Universal Jurisdiction in Respect of Gross Human Rights Offences recognize that gender crimes committed during wartime, including rape, are human rights violations. The Principles call for accountability for gender-based violence "committed even in peacetime".

Moreover, international tribunals, such as the International Criminal Tribunal for the Former Yugoslavia and Rwanda (ICTY and ICTR respectively) were responsible for monumental developments in the fields of international criminal law and women's rights. However, the development of jurisprudence has not had linear progress. The problem of prevailing impunity is far from resolved. Even though most judicial actors will speak of, or write about, the importance of ensuring justice for women, too often a lack of expertise, knowledge, or commitment from these actors results in blatant impunity. Women and girls, especially those facing multiple inequalities, continue to be the victims of gross human rights violations during situations of conflict or widespread and systematic human rights violations. Women and girls are targeted due to their gender and they experience violence in a particular way, often through attacks against their sexuality and reproductive capacities.

International law, like any other form of law, does not escape the androcentric bias. This means that the law has traditionally taken a dominant masculine experience as a norm, considering all other experiences as devalued or deserving repression. Thus, the hegemony of men in the public sphere means that rights have been traditionally defined by them, and that women have been denied the space to express the specific violations they suffer. As a result, advocates and lawyers must develop strategies to use international law in a more inclusive way, considering the needs of women.

The challenge is to be able to define the content of international law, by challenging the limited androcentric model and addressing the experiences of women. One strategy could be to resort to the principle of universal jurisdiction in order to address sexual violence and gender-based crimes. It is important to continue working before domestic courts to build upon the cutting-edge jurisprudence that came from international tribunals, and in this way expand their impact at the national level where trials under universal jurisdiction are taking place. Using the principle of universal jurisdiction in countries that regulate it by law can be an innovative strategy to fight impunity for conflict-related sexual violence. |

BELGIUM

TWO RWANDANS TO STAND TRIAL FOR RAPE

CONTEXT

Upcoming trials before the Brussels Criminal Court for genocide and war crimes committed during the 1994 Rwandan genocide

DEFENDANTS

➤ 5 Rwandan nationals, whose names are withheld: **E.G.**, **E.N.**, **F.N.**, **T.K.** and **M.B.**

CHARGES

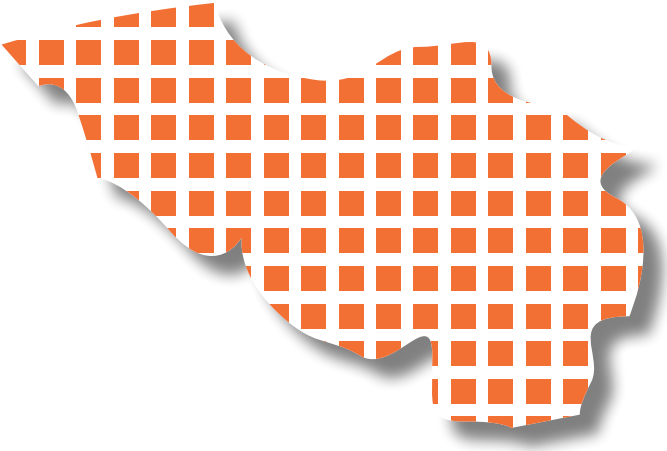
➤ Genocide
➤ War crimes (including **rape** for E.G. and E.N.)

DEVELOPMENTS IN 2018

In December 2018, pre-trial authorities of the Brussels Criminal Court ruled that the five Rwandan nationals shall stand trial for the alleged crimes committed during the 1994 genocide

CURRENT STATUS

Detained; awaiting trial



FACTS

In 1994, the five accused allegedly took part in crimes in connection with the genocide of Tutsis and the massacre of moderate Hutus in Rwanda. |

PROCEDURE

The proceedings were divided into two cases.

The first proceeding involves E.G., E.N. and F.N. They are accused of having committed genocide and war crimes, including, respectively, murder and rape; murder, attempted murder and rape; and murder and attempted murder,

The second proceeding involves T.K. and M.B., both accused of having committed genocide and war crimes, including respectively charges of murder; and murder and attempted murder.

This is the first time that acts of genocide, including rape, have been brought before the Belgium Criminal Court. |

BOSNIA AND HERZEGOVINA

FORMER SOLDIER ACQUITTED OF RAPE

CONTEXT

Decision issued by the Court of Bosnia and Herzegovina for crimes perpetrated against Bosniak civilians in a detention center located in the Rogatica municipality during the conflict in the former Yugoslavia

DEFENDANT

➤ **Brane Planojević**, Bosnian Serb Army serviceman

CHARGES

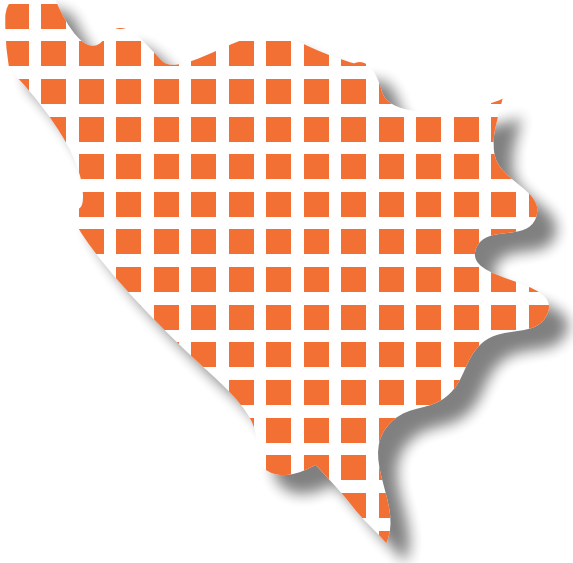
➤ War crimes (including **rape**)

DEVELOPMENTS IN 2018

On 22 May 2018, the Panel for War Crimes of the Appellate Division of the Court of Bosnia and Herzegovina rejected the appeal filed by the Prosecutor's Office, thereby confirming the verdict of 21 December 2017. Planojević was acquitted of all charges, including that of aiding in the commission of rape

CURRENT STATUS

Acquittal; case closed



FACTS

Planojević was a Bosnian Serb Army soldier and the *de facto* deputy manager of the Rasadnik detention centre in Rogatica, where Bosniak civilians were unlawfully detained, tortured, killed, and raped in 1993 and 1994.

Planojević was said to have killed four civilians in March 1993; two of the victims' bodies were never found. In addition, he was accused of aiding the manager of the detention center, Vinko Bojić, rape a female detainee, F.K., by bringing her to the room where the latter would have attacked her. |

PROCEDURE

On 23 September 2016, the Court of Bosnia and Herzegovina confirmed the indictment of Planojević for war crimes, both against civilians and prisoners of war. The accused pleaded not guilty. The trial began on 20 December 2016.

A year later, on 21 December 2017, the Trial Panel of Section I for War Crimes of the Court of Bosnia and Herzegovina found that, although Planojević had indeed taken F.K. out of the camp, his intent to assist in the rape was not adequately proven by the prosecution. More specifically, the Court found that the accused had felt obligated to follow the orders given by Bojić. Planojević was acquitted of all charges brought against him.

The appeal filed by the Prosecutor's Office was rejected, and the acquittal confirmed on 22 May 2018. |

BOSNIA AND HERZEGOVINA

FINAL VERDICT AGAINST “RED BERETS” COMMANDER

CONTEXT

Decision of the Appellate Division Panel of the Court of Bosnia and Herzegovina in relation to the first-instance conviction of a former Bosnian Serb fighter for war crimes and crimes against humanity committed in the territory of Doboj Municipality in 1992

DEFENDANT

➤ **Slobodan Karagić**, Commander of the Special Unit of the Security Services Center in Doboj (known as “Red Berets”)

CHARGES

- Crimes against humanity
- War crimes (including **rape**)

DEVELOPMENTS IN 2018

The Appellate Panel session was held on 24 May 2018; Karagić’s defense appeal was partly granted on 5 July 2018

CURRENT STATUS

Sentenced to 12 years in prison; verdict is final



A woman looks out over Sarajevo, Bosnia and Herzegovina, on 6 October 2018.

FACTS

Between the spring and the fall of 1992, the Bosnian Serb Army targeted the non-Serb population in the territory of the Doboj municipality. Karagić, as commander of the Red Berets special unit, and later member of the Bosnian Serb Army, was accused of killings, severe deprivation of physical liberty, rape, and stealing property on a large scale.

Karagić was accused of raping two girls in July and August 1992. Both were minors at the time of the events. Karagić and another soldier took one of the victims from Radio Doboj to a house in the village of Bare, where they raped and tortured her, inserting various objects in her genitals. Karagić raped the second victim at the Yugoslav People’s Army Center in Doboj. |

PROCEDURE

On 18 January 2016, the Court of Bosnia and Herzegovina confirmed the indictment charging Karagić with war crimes and crimes against humanity. The accused pleaded not guilty.

On 15 January 2018, Karagić was acquitted of crimes against humanity but found guilty of war crimes against civilians, and sentenced to 12 years in prison. Karagić appealed the verdict.

While a partial appeal was granted by the Appellate Division Panel on 24 May 2018, the Court confirmed the judgment rendered in first instance. The verdict is final and cannot be appealed. |

BOSNIA AND HERZEGOVINA

“ZULFICAR” COMMANDER SENTENCED TO TEN YEARS

CONTEXT

Decision issued by the Court of Bosnia and Herzegovina for war crimes committed in Jablanica by a Deputy Commander of the Bosnian Army’s “Zulfikar” Squad during the conflict in the former Yugoslavia

DEFENDANT

➤ **Nihad Bojadžić**, Deputy Commander of the “Zulfikar” Special Detachment for Special Purposes within the Main Staff of the Supreme Command of the Army of the Republic of Bosnia and Herzegovina

CHARGES

- War crimes (including **rape** and **sexual abuse**)

DEVELOPMENTS IN 2018

On 13 July 2018, the Court found the accused guilty and sentenced him to 10 years in prison, to be served concurrently with a 15-year sentence he was already serving

CURRENT STATUS

Sentenced to 10 years imprisonment, to be served concurrently with previous 15-year sentence

FACTS

In 1993 Bojadžić participated in the torture, inhumane treatment, forced labor, infliction of grave bodily injuries, sexual abuse, and rape of civilians of Croat ethnicity and members of the Croatian Defense Council who had been incarcerated in the prison facility Muzej – Bitka na Neretvi in Jablanica. |

PROCEDURE

On 6 January 2012, Bojadžić was charged with war crimes, both against civilians and prisoners. The accused pleaded not guilty. The trial began on 20 March 2012. On 14 April 2016, Bojadžić was found guilty and sentenced to one year in prison for the charges of war crimes against prisoners of war.

On 23 January 2017, a retrial before the Appeals Division was ordered. On 13 July 2018, Bojadžić was convicted for the criminal offenses of war crimes against civilians, for which he was sentenced to six years in prison, and war crimes against prisoners of war, for which he was sentenced to five years in prison. It was ruled that Bojadžić should serve a cumulative sentence of 10 years in prison.

Two years earlier, however, on 1 September 2015, Bojadžić had also been found guilty of committing crimes in the village of Trusina, near Konjic in 1993, and sentenced to 15 years in prison. As a result, it was decided that he should serve a single sentence of 15 years in prison. |

BOSNIA AND HERZEGOVINA

FROM FREEDOM TO PRISON IN SEVEN MONTHS

CONTEXT

Decision issued by the Court of Bosnia and Herzegovina against a former Bosnian Serb soldier for the multiple rapes of a woman in Visegrad, in 1992 and 1993

DEFENDANT

➤ **Vuk Ratković**, former Bosnian Serb soldier

CHARGES

➤ War crimes (**rape**)

DEVELOPMENTS IN 2018

Trial began on 19 February 2018, and the accused was found guilty on 19 September 2018

CURRENT STATUS

Sentenced to eight years in prison; first-instance verdict appealed

FACTS

Between early June 1992 and mid-January 1993, Ratković, a former member of the Visegrad Brigade of the Bosnian Serb Army, repeatedly raped a Serb woman, victim “VR-1”, in the town of Visegrad.

PROCEDURE

On 19 December 2017, the Court of Bosnia and Herzegovina confirmed the indictment charging the accused Ratković with the war crime of rape. He pleaded not guilty. The trial started on 19 February 2018.

On 19 September 2018, Ratković was found guilty and sentenced to eight years of imprisonment. The compensation claim filed by the injured party, however, was only partly granted, for a total amount of BAM 35,000 (EUR 17,895).

COMMENT

STIGMATIZATION IN CRIMINAL PROCEEDINGS

ADRIJANA HANUSIĆ BEĆIROVIĆ

TRIAL INTERNATIONAL SENIOR LEGAL ADVISOR

Within the framework of the appeal proceedings in the case against Vuk Ratković, the presiding judge Mediha Pašić stated that the defense lawyer, Radmila Radosavljević, questioned the testimony and credibility of victim VR-1. She indeed argued that VR-1 had accused Ratković in order to obtain material gain. Pašić declared that this was an unacceptable approach to the analysis of evidence, and that Radosavljević had made inappropriate references to the sexual history of the victim.

In January 2018, TRIAL International published a report entitled “Rape myths in wartime sexual violence trials: transferring the burden from survivor to perpetrator”. Based on the analysis of 31 interviews and approximately 100 domestic court judgments that included examples of stigmatization of witnesses, the report explores gender-based stereotypes that dominate the prosecution of conflict-related sexual violence.

With the objective of improving victims’ participation in criminal trials, the publication underlines concrete examples of how specific myths manifest themselves during legal proceedings and provides corresponding recommendations for a number of stakeholders such as judges, prosecutors, witness support officers, and the international community.

In 2017, the Principles for Global Action on tackling the stigma of Sexual Violence in Conflict were prepared and presented to UN bodies under the auspice of the FCO. Within this context, TRIAL International seeks to share the lessons learned in Bosnia and Herzegovina and to contribute to the larger fight against stigmatization.

BOSNIA AND HERZEGOVINA

INDICTED FOR RAPE AND SEXUAL ABUSE AS WAR CRIMES

CONTEXT

Proceedings against a former soldier from the Bosnian Serb Army, for war crimes against the civilian population of Vlasenica during the conflict in the former Yugoslavia

DEFENDANT

➤ **Sladjan Pajić**, former Bosnian Serb Army soldier

CHARGES

➤ War crimes (including **rape** and **sexual abuse**)

DEVELOPMENTS IN 2018

Pajić was arrested on 3 July 2018 and charged with the war crimes of rape and sexual abuse, as well as with the torture of unlawfully detained civilians on 19 October 2018

CURRENT STATUS

Indicted



A woman walks down a hill in Sarajevo, Bosnia and Herzegovina, on 5 October 2018.

FACTS

Pajić is accused of raping a Bosniak woman on three occasions in 1992, while armed and in uniform. He allegedly threatened to kill the victim's family, who were at the time held in the Sušica camp. Pajić was also charged with raping a 13-year-old girl on one occasion. In addition, the former soldier is accused of torturing, beating, and abusing four unlawfully detained Bosniak male civilians, including a minor, in the police premises in Vlasenica. |

PROCEDURE

On 3 July 2018, police officers from the State Investigation and Protection Agency arrested Pajić on the suspicion that he had committed war crimes in Vlasenica from May 1992 to the end of that year.

On 19 October 2018, Pajić was charged with committing the war crimes of rape and sexual abuse, as well as with the torture, beating, and mistreatment of unlawfully detained civilians. At the time of the indictment, the accused was, however, on the run and believed to be in the Republic of Serbia. An international arrest warrant was therefore requested. He remains at large. |

BOSNIA AND HERZEGOVINA

CONVICTED EX-SOLDIER ON THE RUN

CONTEXT

Decision issued by the Court of Bosnia and Herzegovina against a former member of the 102nd Brigade of the Croatian Defense Council for the war crime of rape in the Odžak area in 1992

DEFENDANT

➤ **Jozo Đojić**, former member of the 102nd Brigade of the Croatian Defense Council

CHARGES

➤ War crimes (**rape**)

DEVELOPMENTS IN 2018

The session of the Appellate panel was held on 28 February 2018

CURRENT STATUS

Sentence of six years of imprisonment confirmed on appeal

FACTS

Đojić, a former member of the Croatian Defense Council, was accused of raping a Croat woman in the territory of Odžak municipality in July 1992. Đojić told the injured party that if she resisted, her six-month old son would be killed. |

PROCEDURE

On 27 November 2014, the Court of Bosnia and Herzegovina charged Đojić with the war crime of rape. He pleaded not guilty.

The trial started on 24 May 2016. On 9 October 2017, Đojić was found guilty and sentenced to six years in prison.

The session of the Appellate Panel was held on 28 February 2018. The Court dismissed the appeal as unfounded and upheld the conviction. Đojić has however failed to appear to serve his sentence. |

BOSNIA AND HERZEGOVINA

ANOTHER VICTORY IN THE FIGHT AGAINST IMPUNITY

CONTEXT

Decision by the Court of Bosnia and Herzegovina against a former Bosnian Serb policeman for crimes committed during the conflict in the former Yugoslavia, including the rape of a civilian woman

DEFENDANT

➤ **Dragan Janjić**, former Bosnian Serb police officer

CHARGES

➤ Crimes against humanity (including **rape** and **sexual abuse**)

DEVELOPMENTS IN 2018

Janjić's trial began on 24 January 2018. On 12 October 2018, the accused was found guilty of crimes against humanity and sentenced to seven years in prison. Appeal proceedings are currently ongoing

CURRENT STATUS

Sentenced to seven years in prison; first-instance verdict appealed

FACTS

Janjić was accused of raping a female civilian during the attacks of the Republika Srpska's army, paramilitary, and police forces against the Bosniak civilian population in Foča Municipality, between April and September 1992. After taking the victim and her family to the police station in Miljevina, Janjić took the woman into another room and raped her. |

PROCEDURE

On 3 November 2017, the Court of Bosnia and Herzegovina ordered the suspect into pre-trial custody, before confirming on 28 November 2017 the indictment charging him with the crime against humanity of rape. Janjić pleaded not guilty.

On 12 October 2018, Janjić was found guilty; he was sentenced to seven years in prison and to pay BAM 15,000 (EUR 7,588) as compensation for the physical and mental suffering of the victim. Janjić appealed his conviction. |

COMMENT

PROVIDING FREE LEGAL AID TO VICTIMS OF WAR CRIMES

ADRIJANA HANUSIĆ BEĆIROVIĆ

TRIAL INTERNATIONAL
SENIOR LEGAL ADVISOR

In 2016, TRIAL International advocated for the provision of free legal aid to war crimes victims within the framework of criminal proceedings. A legislative amendment was proposed to the Bosnia and Herzegovina Parliamentary Assembly and successfully incorporated into the newly adopted law addressing legal aid.

However, following the adoption of the law, the Ministry of Justice (MoJ) failed to establish an office to ensure the provision of legal aid to Bosnia and Herzegovina citizens, including to war crimes victims. As a result, additional advocacy meetings were organized with the MoJ, which eventually agreed to appoint legal representatives to support victims for the submission of compensation claims in criminal proceedings. Concrete and meaningful results can therefore be achieved through dedicated advocacy strategies implemented on a small scale.

In order to ensure that victims were given access to quality representation, TRIAL International delivered a training to staff members of the MoJ on the provision of legal aid within the framework of compensation claims.

The case against former Bosnian Serb policeman Dragan Janjić allowed the MoJ and civil society actors to assess the effectiveness of the free legal aid system. Once the criminal proceedings were initiated, TRIAL International connected the client with the MoJ and facilitated the legal representation of the victim, with a particular focus on a compensation claim. In October 2018, Janjić was sentenced to seven years and ordered to pay BAM 15,000 (EUR 7,588) to the victim.

Other decisions have since followed (Vuk Ratković and Milan Todović) in which the Court ordered the perpetrators to pay significant compensation amounts to the victims. The latter had received the support of MoJ legal representatives during the proceedings.

The provision of legal aid for compensation claims is therefore progressively becoming regular practice before the Court of Bosnia and Herzegovina, and ensures that victims can rely on assistance from the State. |

BOSNIA AND HERZEGOVINA

SOLDIER ORDERED TO PAY COMPENSATION TO SURVIVOR

CONTEXT

Decision issued by the Court of Bosnia and Herzegovina against a former Bosnian Serb Army soldier for the crimes against humanity of rape and sexual slavery

DEFENDANT

➤ **Milan Todović**, former Bosnian Serb Army soldier

CHARGES

➤ Crimes against humanity (including **rape** and **sexual slavery**)

DEVELOPMENTS IN 2018

On 4 December 2018, Todović was found guilty of crimes against humanity

CURRENT STATUS

Sentenced to 10 years in prison and the payment of BAM 13,100 (EUR 6,697) as compensation for non-pecuniary damage; verdict can be appealed



FACTS

Todović, a soldier of the Bosnian Serb Army at the time of the events, held captive and repeatedly raped a Bosniak woman in the town of Foča in 1993.

Todović bought the victim from another soldier and took her to an apartment where he kept her captive and subjected her to sexual slavery. In addition to being beaten and sexually assaulted on a daily basis, the woman was deprived of food, water, electricity, and heating.

On 5 March 1993, the woman managed to escape from the apartment with the help of three Serbs. |

PROCEDURE

On 25 December 2017, the Court of Bosnia and Herzegovina charged Todović with the crimes against humanity of rape and sexual slavery. He pleaded not guilty.

On 4 December 2018, the accused was found guilty and sentenced to 10 years of imprisonment as well as to the payment of BAM 13,100 (EUR 6,697) as compensation for non-pecuniary damage.

The verdict can be appealed. |

COMMENT

COMPENSATION CLAIM AWARDS IN CIVIL PROCEEDINGS

ADRIJANA HANUSIĆ BEĆIROVIĆ

TRIAL INTERNATIONAL SENIOR LEGAL ADVISOR

In 2015, for the very first time in the history of domestic criminal proceedings, the Court of Bosnia and Herzegovina decided to award compensation to three victims of conflict-related sexual violence, each of them coming from a different ethnic background – Croatian, Bosniak, and Serb.

Since then, the provision of compensation within the framework of criminal trials has gradually become a standard practice in Bosnia and Herzegovina. Indeed, over the past three years, 13 verdicts issued in relation to conflict-related sexual violence have led to survivors being awarded financial compensation for the harm suffered. In parallel with criminal conviction of the perpetrators, 10 of the compensation awards were granted by the Court of Bosnia and Herzegovina, while two were before lower level courts in the Republika Srpska and the Federation of Bosnia and Herzegovina. One guilty verdict (against Muminović and others), accompanied by a compensation award, was however quashed in July 2018.

Those 12 verdicts concern a total of 18 perpetrators and 14 survivors. Out of these 12 decisions, seven of them are final. There still remains, however, a substantial challenge in ensuring their effective enforcement.

The impact of advocacy efforts, led by civil society actors such as TRIAL International, has strongly contributed to the development of the above-described practice. More particularly, it has allowed victims to play a more important part in the unfolding of legal proceedings and support each other through their participation in sustainable change. |

BOSNIA AND HERZEGOVINA

ONGOING TRIAL FOR RAPE AS A CRIME AGAINST HUMANITY

CONTEXT

Ongoing trial before the Court of Bosnia and Herzegovina against a former member of the Bosnian Serb Army and other soldiers for the commission of rape and sexual abuse as crimes against humanity

DEFENDANT

➤ **Milomir Davidović**, a.k.a. Lici, former member of the Bosnian Serb Army

CHARGES

➤ Crimes against humanity (rape and sexual abuse)

DEVELOPMENTS IN 2018

The indictment was confirmed on 16 January 2018 and the trial opened on 29 March 2018

CURRENT STATUS

Pending



People look out over Sarajevo, Bosnia and Herzegovina, on 4 October 2018.

© Will Baxter/TRIAL International

FACTS

Davidović, together with other soldiers, was accused of raping and sexually abusing three Bosniak women between 3 and 18 July 1992, in the context of widespread and systematic attacks of the Republika Srpska armed forces against civilians in Foča.

It should be noted that, due to the high number of pending and decided cases in Bosnia and Herzegovina, TRIAL International decided to only detail a limited selection in the report.

Other pending cases

- Case against Mr. X, former Bosnian Serb soldier, for the rape of a woman during the conflict
- Case against Bosnian Serb soldiers Mile Kosoric and Momčilo Tesić, for the rape of multiple women during the conflict
- Case against Nenad Perović
- Case against Mrđa Goran and others

Other decisions rendered

- Case against Samir Kešmer, Mirsad Menzilović, and Elvir Muminović, former Bosnian Army soldiers, for the rape of an underage girl: found guilty in the first instance on 5 July 2018 and sentenced to five (Kešmer and Menzilović) and six (Muminović) years in prison
- Case against Milisav Ikonić, former employee of the Ministry of Interior, for the rape of a woman during the conflict: found guilty in the first instance on 14 September 2018 and sentenced to nine years in prison
- Case against Jasmin Erović, former Bosnian Territorial Defense Force member, for the rape of a women during the conflict: acquitted on 30 November 2018
- Case against Momir Tasić and Petar Tasić, former Bosnian Army soldiers, for the rape of a woman during the conflict: found guilty in the first instance on 6 September 2018

PROCEDURE

On 16 January 2018, the Court of Bosnia and Herzegovina confirmed the indictment of Davidović with the charges of crimes against humanity.

On 29 March 2018, the trial began. A decision is to be rendered in February 2019.

COLOMBIA

REDUCED SENTENCES AS PART OF THE PEACE PROCESS

CONTEXT

Decision issued by the Justice and Peace Chamber of the Medellín High Court (*Sala de Justicia y Paz del Tribunal Superior de Medellín*) for crimes committed by members of the United Self-Defense Forces of Colombia (AUC)

DEFENDANTS

➤ **Fredy Rendón Herrera**, alias “El Alemán”, commander of “El Bloque Elmer Cárdenas”, and 27 other members

CHARGES

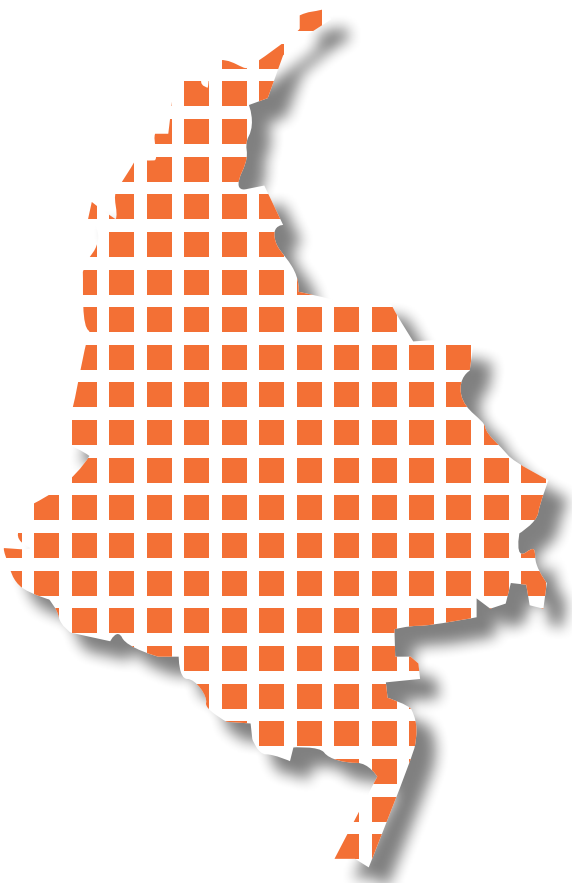
➤ Crimes against humanity (including **rape**, **sexual harassment**, and **sexual slavery**)

DEVELOPMENTS IN 2018

On 17 May 2018, Rendón Herrera was found guilty and sentenced to an alternative prison term of eight years. The other accused were also given alternative sentences of between seven and eight years. Representatives of the victims appealed on 23 May 2018

CURRENT STATUS

First instance guilty verdict and sentence of eight years in prison; ongoing appeal



FACTS

In 1995, Rendón Herrera joined a Colombian self-defense group, which became, along with other groups, the AUC, led by Carlos Castaño. Three years later, Rendón Herrera started leading one of the main sections of this group, known as El Bloque Elmer Cárdenas. In 2004, following Castaño’s murder, Rendón Herrera became one of the leaders of the AUC.

Rendón Herrera was responsible for the commission of a wide range of crimes in the departments

of Antioquia, Chocó, Boyacá, Córdoba, Cundinamarca, and Santander between 1995 and 2006. These include murder, forced displacement, forced recruitment of minors, enforced disappearances, as well as sexual and gender-based violence. With regard to the latter, members of El Bloque Elmer Cárdenas raped, sexually harassed, and subjected to sexual slavery women and girls. It was alleged that the scope of such violence was widespread. |

PROCEDURE

On 15 August 2006, Rendón Herrera joined the demobilization process regulated by the Justice and Peace Law. On 16 December 2011, benefiting from his cooperation with the Colombian authorities, he was sentenced to an alternative prison term of eight years for the enlistment of 309 minors and the kidnapping of the mayor of Unguía. On 30 July 2015, Rendón Herrera was released.

On 17 May 2018, Rendón Herrera was found guilty in a new case concerning crimes committed by El Bloque Elmer Cárdenas. He and 27 other former members of the paramilitary group were tried for 1,709 events and 6,256 offenses which affected 6,069 direct victims. Although only 23 incidents of sexual violence were included in the proceedings, witnesses’ testimonies showed that the scope of these violations was particularly widespread.

More specifically, in referring to the power exercised by the defendants over their victims, the Court found that the systematic use of gender-based violence was not limited to sexual acts but included a wide range of practices that infiltrated every aspect of women’s lives.

Rendón Herrera was originally sentenced to 40 years of imprisonment. However, within the framework of the Justice and Peace Law, all 28 individuals were sentenced to reduced prison terms ranging between seven and eight years in exchange for their cooperation with the judicial authorities. They must also publicly acknowledge their guilt, seek the pardon of their victims, and commit to no longer committing such wrongdoings. In addition, Rendón Herrera and the other defendants were ordered by the Court to pay financial compensation to the victims.

On 23 May 2018, the victims’ representatives appealed the decision. The appeal of this decision is in progress. |

SURVIVORS' PERSPECTIVE

RED DE MUJERES VICTIMAS Y PROFESIONALES

ACKNOWLEDGING SEXUAL VIOLENCE AND SURVIVORS | The verdict issued on 17 May 2018 against El Bloque Elmer Cárdenas constitutes a crucial step towards the recognition of victims of sexual violence. Indeed, the Court found that the defendants, as members of a paramilitary group, resorted to gender-based violence as a means to exercise power over the victims. In addition, it found high-ranking officials guilty of not having prevented the systematic commission of sexual violence in the identified territories and within the timeframe under consideration. In accordance with the Justice and Peace Law framework, the defendants were eventually sentenced to the highest alternative prison terms.

In spite of the above, the members of the Red de Mujeres Víctimas y Profesionales believe that such recognition of gender-based violence crimes in the El Bloque Elmer Cárdenas case remains insufficient. Neither the victims' identities nor the full range of consequences that these crimes had on their lives were adequately acknowledged in the verdict. For instance, although most of the victims are of African descent, the Court did not take into account race as having reinforced the victims' vulnerability or as an element to consider in the provision of remedies.

THE PROVISION OF ADEQUATE REPARATIONS | Reparation measures identified in the verdict, which fail to tackle the stigma attached to sexual violence, are indeed also perceived as insufficient as they do not address the specificities of sexual violence. For instance, even though the Court recognizes that the well-being of victims of sexual violence is dramatically affected by the harm suffered, no measures for psychosocial support were included.

The verdict also makes recommendations for socio-economic stabilization public policies in order to provide support to the victims, and to ensure that national, departmental, and local authorities get involved. However, it does not include certain fundamental aspects such as land restitution for the displaced victims.

GUARANTEES OF NON-REPETITION | Finally, the Court failed to order measures of non-repetition that integrate structural root causes of sexual and gender-based crimes.

In the sentence, the judge suggests but does not order the Alta Consejería Presidencial para la Equidad de la Mujer (governmental entity on women's rights) to set up an intergovernmental task force in order to implement a prevention and protection strategy to support victims of sexual violence in the most affected areas.

Moreover, although the verdict includes measures to prevent underage pregnancies among displaced persons, the Court fails to adopt a multidimensional approach and overlooks factors such as access to education or the reinforcement of justice mechanisms and institutions.

In our opinion, the main issue is that the Court did not adequately consult with victims and victims' organizations when identifying reparation measures. It is important that we go beyond the mere recognition of the commission of sexual and gender-based violence, and that we fully address the complex consequences such crimes have on the daily lives of women and girls. That is why transitional justice processes must provide the space for victims' direct participation and a quality access to legal representation. |

DEMOCRATIC REPUBLIC OF THE CONGO

WARLORD ACCUSED OF MASS RAPE

CONTEXT

Ongoing proceedings against a militia leader for war crimes and crimes against humanity perpetrated during attacks in North Kivu Province from 2010 to 2014

DEFENDANT

➤ **Ntabo Ntaberi “Sheka”**, former commander of the Nduma Defense of Congo (NDC) militia

CHARGES

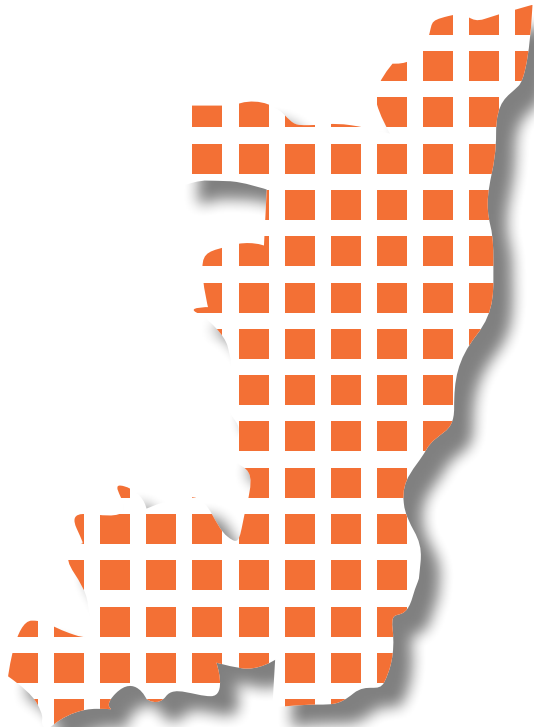
- War crimes
- Crimes against humanity (including **mass rapes**)

DEVELOPMENTS IN 2018

The trial started on 27 November 2018 in Goma, before the Operational Military Court of North Kivu. Following the Defense’s request, hearings were suspended on the first day of the trial. They resumed on 6 December 2018

CURRENT STATUS

Ongoing



FACTS

The NDC, under the command of Sheka, allegedly led systematic attacks against multiple villages in the Walikale and Masisi territories between 2010 and 2014. During those operations, some of which were conducted in coalition with the Democratic Forces for the Liberation of Rwanda (FDLR) unit led by Séraphin Nzitonda “Lionceau”, summary executions, abductions, and acts of forced labor were allegedly committed.

Between 30 July and 2 August 2010, at least 387 women, men, girls, and boys from 13 villages were reportedly raped, sometimes by groups of assailants and in the presence of their relatives or community members. Acts of sexual slavery were also allegedly committed. As the NDC



began to attack specific ethnic groups, acts of sexual slavery as well as the recruitment of child soldiers allegedly became more frequent.

While Sheka did not participate directly in the operations, he was allegedly aware of the violations carried out by coalition troops and did not intervene to stop them. |

PROCEDURE

Local and international actors, gathered in Goma and supported by the national judicial authorities, have documented the crimes committed by the NDC and the FDLR in the Walikale and Masisi territories.

On 30 August 2010, the military prosecution’s office at the Operational Military Court opened a judicial investigation against Sheka for crimes against humanity of rape, looting, and abduction of civilians in relation to attacks that took place that year. Three months later, repeated threats sent by the FLDR led to the suspension of witnesses’ interviews.

On 6 January 2011, Congolese judicial authorities issued an arrest warrant against Sheka for the crime against humanity of rape. The accused, however, ran for public office four months later, without fearing arrest. In November, the UN Security Council froze Sheka’s assets and imposed a travel ban.

It was not until 26 July 2017 that Sheka decided to surrender to UN peacekeepers in North Kivu Province. He was arrested and transferred to the domestic judicial authorities in Goma. Sheka is standing trial with his private nurse Jean Ndoole Batechi, NDC fighter Jean Claude Kamutoto, and Lionceau.

Following a brief suspension, the trial, which had started on 27 November 2018 in Goma, resumed on 6 December. Ensuring the security of all parties to the proceedings constitutes a central issue, as human rights activists involved in the investigation have received numerous threats since Sheka surrendered. |

DEMOCRATIC REPUBLIC OF THE CONGO

REBEL GROUP LEADER CONFRONTED BY FIFTY WITNESSES

CONTEXT

Appeal proceedings initiated before the Congolese Military High Court in relation to the 20-year imprisonment sentence of a Lieutenant-Colonel and Battalion Leader of the Mai Mai rebel group for crimes perpetrated between 2005 and 2007 in South Kivu Province

DEFENDANT

➤ **Maro Ntumwa “Marocain”**, Lieutenant-Colonel and Battalion Leader of the Mai Mai rebel group

CHARGES

➤ War crimes (including **rape**)
➤ Crimes against humanity (including **sexual slavery**)

DEVELOPMENTS IN 2018

On 29 April 2018, the Military Court of South Kivu found the accused guilty and sentenced him to 20 years in prison. Appeal hearings were initiated before the Congolese Military High Court on 12 June 2018

CURRENT STATUS

Sentenced to 20 years of imprisonment; ongoing appeal



FACTS

Between 2005 and 2007, the Mai Mai group, carried out a series of attacks against hundreds of civilians in the Kalehe territory of South Kivu Province.

During these operations, male civilians were tortured, killed on the spot, or taken as prisoners to transport looted goods. Women and girls were taken as prisoners, subjected to sexual slavery, and sometimes forced to enter marriage with one of their assailants.

In 2007, the militia was defeated by the Congolese army and its leaders, known as Marocain and Colonel 106, were arrested. The latter was found guilty and sentenced to life in prison in December 2014. |

HIGHLIGHT

The Marocain case builds upon the verdict issued against Colonel 106 and contributes to the fight against impunity for sexual slavery as a crime against humanity in the Democratic Republic of the Congo. Indeed, despite its widespread use by multiple armed groups, the practice of sexual slavery is rarely prosecuted and the case law at the domestic level remains at an embryonic stage.

Proceedings against Marocain thus constituted an opportunity to strengthen documentation and litigation strategies aiming at obtaining a conviction for this particular form of sexual violence. For example, DNA tests were conducted, with the support of TRIAL International, on children born of sexual slavery victims during their captivity. |

PROCEDURE

In August 2014, Marocain was arrested. He was charged with crimes against humanity, including rape, imprisonment, and other inhuman acts of a similar character, as well as with war crimes, including sexual slavery, looting, attacks against the civilian population, and attacks on buildings devoted to religion. Around 50 victims and witnesses came forward accusing Marocain and the militia under his command of committing abuses. During his initial hearing, Marocain admitted to taking part in the attacks.

Two investigative missions were conducted, in 2016 and 2017. The mobile court trial, initially scheduled to start in 2017, was delayed due to the unstable situation in the Bunyakiri region. On 13 April 2018, the trial opened before the Military Court of South Kivu.

On 28 April, the accused was convicted and sentenced to 20 years in prison for war crimes and crimes against humanity. The Court however rejected the argument according to which Congolese authorities had failed to prevent the crimes and protect the population against Marocain, and did not recognize the State's civil responsibility. |

DEMOCRATIC REPUBLIC OF THE CONGO

JUSTICE FOR THE CHILDREN OF KAVUMU

COMMENT

MAKING INROADS IN ACCESSING FULL JUSTICE

SEMA: THE GLOBAL NETWORK OF VICTIMS AND SURVIVORS TO END WARTIME SEXUAL VIOLENCE

From a legal point of view, this case was a victory. However, there is still a long way to go before justice can be fully achieved. The outcome of the trial is important as it has the potential to inform future court cases. At the same time, it is crucial to take into account multiple aspects when discussing the Kavumu case.

Indeed, there are still individuals in the community who are affiliated with the militiamen. Furthermore, victims and their families suffer from life-long consequences that are not fully recognized. Some of the parents had to leave their land behind in order to escape the crippling stigma they faced in their own community, and they are now living in extreme poverty. In addition, we will have to wait over a decade to understand the true extent of the destruction on the victims themselves. Will they overcome the trauma? Will they be able to bear children?

Reparation measures are extremely important. No sum of money will ever fully compensate victims for the harm they have suffered, and continue to suffer. Yet, financial support will alleviate some of the poverty that they face as a result of the violations. Reparation measures, which have considerable symbolic value, must be designed in consultation with survivors. |

The trial opened on 9 November 2017, before a mobile court in Kavumu. On 13 December 2017, 11 Congolese militia members, including Batumike, were found guilty of crimes against humanity for the murder and rape of 37 children. They were sentenced to life in prison. In addition, each victim of sexual violence was granted USD 5,000 as reparation, while each family of the deceased was awarded USD 15,000.

On 26 July 2018, the Congolese Military High Court in Bukavu confirmed the conviction of Batumike and the other 10 men. |

CONTEXT

Appeal decision of the Congolese Military High Court confirming the conviction of 11 militia members to life imprisonment for crimes committed between 2013 and 2016 in Kavumu, in South Kivu Province

DEFENDANT

➤ **Frederic Batumike**, member of the provincial assembly of South Kivu and militia leader, and 10 other militia members

CHARGES

➤ Crimes against humanity (including **rape**)

DEVELOPMENTS IN 2018

The first instance judgment was confirmed on appeal on 26 July 2018

CURRENT STATUS

First instance judgment and sentence confirmed on appeal



FACTS

Between 2013 and 2016, over 40 young girls from the village of Kavumu, aged between 13 months and 12 years old, were abducted in the middle of the night and raped.

Although these attacks did not initially seem to be related, a specific *modus operandi* was soon identified. Assailants would take the girls from their homes, rape them, and collect their hymeneal blood before returning them to their homes or abandoning them in a field. Most of the children now suffer from permanent damage to their genital organs and are heavily traumatized. Some of the girls died from their injuries. |

PROCEDURE

In May 2014, a group of NGOs, led by Physicians for Human Rights, and joined by TRIAL International in 2016, created a task force to support the victims.

In May 2016, the military prosecutor granted a request from the victims' lawyers to open an investigation into crimes against humanity. In June 2016, following the collection of incriminating evidence, Batumike and 70 suspected members of his militia were arrested.

In September 2017, Batumike and 17 other suspects were indicted for rape as a crime against humanity, as well as with murder, organization in a militia, and attacks against Congolese military settlements.

THE PROVISION OF REPARATION GOING BEYOND FINANCIAL COMPENSATION FONDATION MUKWEGE

The victims in the Kavumu case, together with their families, are facing a cascade of consequences from the violence to which they were subjected, from permanent gynecological injuries to long-term debilitating trauma and stigma. Family ties have been destroyed, and while some of the victims' mothers have been abandoned by their husbands, others have been displaced from their land and disconnected from their community in their search for safety. A mother recently explained that she ties her children's feet to hers with wax fabric every night to make sure she will wake up if one of them goes missing.

The Court awarded USD 5,000 to each victim represented in the Kavumu case as compensation for the harm suffered. Whilst emphasizing that reparations are a crucial component when trying to achieve full justice, three important questions here arise: 1. Will monetary compensation ever be paid to survivors? 2. To what extent will it remedy the harm done? 3. What else can be done?

WILL MONETARY COMPENSATION EVER BE PAID TO SURVIVORS? Recent history in the Democratic Republic of the Congo gives reason to doubt whether court-ordered reparations will ever be enforced. While, to date, reparations were awarded in several other cases at the domestic level, numerous process-related and practical obstacles have prevented most – if not all – survivors from receiving any actual payment. In the Kavumu case the Court decided that, as the State was not found responsible, the militiamen had to pay compensation to the victims. However, over a year after the decision, the reparations order remains little more than a piece of paper for the survivors.

TO WHAT EXTENT WILL MONETARY COMPENSATION REMEDY THE HARM DONE? The amount awarded is undoubtedly insufficient to compensate for the immense suffering of the victims and their families, let alone restore them to the original situation before the violence occurred. However, survivors and their families face extreme hardship, and many of them in fact rely on the payment of these damages to alleviate some of the consequences. Moreover, survivors confirm that the payment would have a symbolic value for them, in that it would constitute a form of acknowledgment of the harm suffered and reaffirm their dignity.

While it is crucial that reparations include monetary compensation, the payment of damages is rarely enough. As outlined in the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation ("UN Basic Principles"), the type of reparation measures provided should be proportionate to the gravity of the violations and the harm suffered. While it is difficult – or even, as some would argue, impossible – to put a monetary value on the harm done to victims of sexual violence, court orders in the Democratic Republic of the Congo are left to the discretion of the judges and have been very inconsistent, ranging from USD 2 to USD 20,000. In the case of Kavumu, a full range of reparation measures is necessary to ensure healing and to achieve a true sense of justice. The reparation order should have included provisions for individual rehabilitation, such as long-term medical treatment and psychological care, as well as measures to alleviate the social and economic harm done to the families.

WHAT ELSE CAN BE DONE? Satisfaction is another form of reparation listed in the UN Basic Principles. In the Kavumu case, victims' families stated that measures under this category could include a public apology from the government or local authorities; an official declaration which acknowledges the harm done to the victims and their families; or the construction of a monument in memory of the victims.

Most importantly, the absence of rehabilitation and satisfaction provisions from the court-order, the difficulty to obtain the payment of damages from the militiamen, and the risk of victims facing prohibitive hurdles to receive compensation should not let the duty-bearers off the hook. Victims have a right to reparation. If reparation measures cannot be obtained from the perpetrator, then State actors must step in.

There are many things the State can do. It can, for example, facilitate access to monetary compensation through the creation of a nationwide reparation fund; undertake action to acknowledge the harm done; and ensure provisions for rehabilitation. In taking the right to reparation seriously, the State can send a clear message to perpetrators that both the government and the society stand by survivors. It may also encourage other victims to pursue legal action, thereby acting as a deterrent for future violence.

Stakeholders in the Democratic Republic of the Congo, including members of the Task Force, need to continue to do everything in their power to urge authorities to take their responsibilities seriously and enforce survivors' right to remedy and reparation. In parallel, it is essential that civil society actors continue to provide holistic care for victims and their families, as well as legal counsel to help them navigate the complex system for monetary compensation claims. Above everything else remains the necessity to ensure that victims and their families remain at the heart of any step taken. |

DEMOCRATIC REPUBLIC OF THE CONGO

PRISON SENTENCE REDUCED FOR FORMER FARDC CORPORAL

CONTEXT

Appeal decision issued by the Military Court of South Kivu against an Army Corporal of the Armed Forces of the Democratic Republic of the Congo (FARDC) for crimes perpetrated in 2013 in South Kivu Province

DEFENDANT

➤ **Katusi Bolingo**, Army Corporal of the FARDC

CHARGES

➤ War crimes (**rape**)

DEVELOPMENTS IN 2018

While Bolingo's conviction was confirmed on appeal, his sentence was commuted from 15 to eight years of imprisonment

CURRENT STATUS

Conviction confirmed on appeal



FACTS

At the beginning of 2013, Bolingo was deployed along with the FARDC in the village of Mukoloka, in the Shabunda territory of South Kivu Province, to free the area from the Raiya Mutomboki ("angry citizens") armed group.

On the night of 14 September 2013, Bolingo entered a private house in the village of Mukoloka, where two families were living. As the husbands were absent, Bolingo threatened two women with his rifle and raped them. During the assault, an infant child of one of the women fell to the ground and died. |

PROCEDURE

Although the Army Commander in charge of Mukoloka arrested him on the night of the events, Bolingo managed to escape only a few days later. In 2014, Bolingo was finally arrested and transferred to Bukavu.

On 9 July 2015, the trial opened before the Military Court of Bukavu.

On 16 June 2016, Bolingo was sentenced to 15 years in prison and the payment of USD 20,000 to each rape victim as reparation.

In August 2018, the Military Court of South Kivu confirmed the conviction on appeal, but reduced the sentence to eight years in prison. |

DEMOCRATIC REPUBLIC OF THE CONGO

ARMY CHIEF SENTENCED TO LIFE IN PRISON

CONTEXT

Decision issued by the Military Tribunal of South Kivu for crimes committed by a FARDC Major and his soldiers during attacks on the villages of Mirenzo, Murangu, and Chirimiro in June 2013

DEFENDANT

➤ **Mabiala Ngoma**, FARDC Lieutenant-Colonel

CHARGES

➤ Crimes against humanity (including **rape**)

DEVELOPMENTS IN 2018

The accused was found guilty of crimes against humanity and sentenced to life imprisonment on 29 November 2018

CURRENT STATUS

Sentenced to life imprisonment



FACTS

On 7 June 2013, after the detention of a young member of the Raiya Mutomboki that led to the death of a FARDC soldier, cross-fire erupted between members of the armed group and FARDC soldiers at the Katasomwa market square, in the Kalehe territory, in South Kivu.

On 7, 8, and 9 June, two FARDC commanders, who were allegedly searching for members of Raia Mutomboki, attacked the villages of Mirenzo, Murangu, and Chirimiro. During these attacks, Ngoma's men pillaged the villages, and raped as well as killed hundreds of civilians. |

PROCEDURE

On 21 November 2018, the trial opened before the Military Tribunal of South Kivu and was relocated as part of the "mobile courts" practice in order to be closer to the area where the crimes were committed. Eight days later, on 29 November, Ngoma was found guilty of crimes against humanity of murder, rape, torture, pillage, and arson. He was sentenced to life imprisonment.

With the support of civil society actors, five lawyers represented 146 victims in the proceedings. All participating victims were granted USD 10,000 as a form of reparation for murder, rape, and torture, and USD 5,000 as compensation for pillage and arson.

The Congolese State was held liable in solidum with Ngoma and was requested to ensure the payment of compensation to the victims if the defendant is found unable to do so. |

DEMOCRATIC REPUBLIC OF THE CONGO

THE SUFFERING OF 150 VILLAGERS ACKNOWLEDGED

CONTEXT

Decision of the Congolese Military High Court against a FARDC Colonel for crimes committed in Musenyi in 2015

DEFENDANT

➤ **Julius Dhenyo Becker**, FARDC Colonel

CHARGES

➤ Crimes against humanity (including **rape**)

DEVELOPMENTS IN 2018

On 12 June 2018, appeal hearings began before the Congolese Military High Court in Bukavu. On 28 July 2018, the Court requalified the first-instance charges of war crimes into crimes against humanity and sentenced him to two years in prison

CURRENT STATUS

Sentenced to two years in prison on appeal



FACTS

From 20 to 22 September 2015, during an anti-militia operation conducted by the FARDC against the Raiya Mutomboki armed group, Musenyi, a village in the Kalehe territory in South Kivu Province, became the target of attacks.

Under the command of Colonel Becker, the FARDC soldiers pillaged the village and almost 150 civilians were subjected to systematic acts of sexual violence, including rape.

PROCEDURE

Becker was arrested at the end of 2015, after some of the victims decided to come forward. Following preliminary inquiries by prosecuting authorities and the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO), it was decided that the case should be prioritized.

On 14 July 2017, mobile court hearings opened in Musenyi, under the jurisdiction of the Military Court of South Kivu. Victims who came to testify in court benefited from free legal counsel as well as psychological support.

On 29 July 2017, Becker was found guilty of the war crimes of rape and looting. In addition to receiving a 10-year prison sentence, he was ordered to pay individual financial compensation to the victim, together with the Congolese authorities: USD 10,000 to each rape victim and USD 5,000 to each victims of pillage.

On 3 August 2017, Becker and the Public Prosecutor appealed the decision: while the accused filed an appeal on the grounds of the violation of the fair trial principle, the Public Prosecutor sought to obtain a requalification of the charges of war crimes into crimes against humanity.

On 12 June 2018, the appeal hearings were initiated in Bukavu before the Congolese Military High Court. On 28 July 2018, the Military High Court requalified the charges of war crimes into crimes against humanity of rape and crimes against humanity of other inhumane acts of similar character. Becker was sentenced to two years in prison.

EL SALVADOR

NO AMNESTY FOR THE EL MOZOTE MASSACRE

CONTEXT

Ongoing proceedings against former soldiers of the Salvadorian Army before the Second Court of San Francisco de Gotera for crimes committed in El Mozote during the civil war in El Salvador

DEFENDANTS

Eighteen former soldiers of the Salvadorian Army, including three retired Generals:

- **Rafael Flores Lima**
- **Juan Rafael Bustillo Toledo**
- **José Guillermo García**, former Minister of Defense

CHARGES

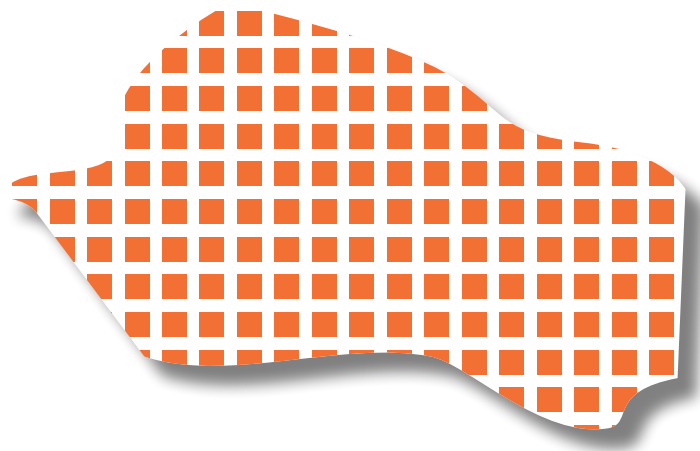
- War crimes
- Crimes against humanity (including rape)

DEVELOPMENTS IN 2018

Judges confirmed the charges and additional witnesses gave testimony

CURRENT STATUS

Pending



FACTS

From 11 to 13 December 1981, in the context of a military operation carried out by the Atlacatl Battalion and other military units in the north of Morazán, the Salvadorian Army allegedly detained, tortured, raped, and killed nearly 1,000 civilians.

The events that took place in El Mozote, a village in the Morazán department, mark the largest massacre to occur in Latin America. Many of the survivors migrated either within the country to different regions or to Honduras in order to escape any possible future attacks.

PROCEDURE

Survivors of the crimes committed in El Mozote first came forward to present a case against the Atlacatl Battalion soldiers in 1990. The adoption of the Law of General Amnesty for the Consolidation of Peace ("General Amnesty Law") three years later, however, led to the closing of the judicial investigation into the massacre.

On 25 October 2012, the Inter-American Court of Human Rights (IACHR) ruled that the General Amnesty Law was incompatible with the American Convention on Human Rights and ordered El Salvador to investigate the El Mozote massacre.

In July 2016, the Salvadorian Constitutional Chamber of the Supreme Court declared the General Amnesty Law unconstitutional. On 30 September 2016, the Criminal Court of first instance in San Francisco Gotera, Morazán, officially reopened the criminal investigation into the El Mozote massacre. It was the first case involving crimes against humanity committed during the Salvadorian civil war to be reopened.

On 29 March 2017, thanks to the commitment of human rights defenders, survivors, and victims' relatives, 18 former military officers were charged with murder, aggravated rape, aggravated assault, acts of terrorism, robbery, conducting searches without warrant, unlawful detention, and aggravated damage. While the acts were initially qualified as ordinary crimes, two amici curiae briefs were submitted advocating for the introduction of double charges, on the basis of national law, and on the basis of international criminal law and customary international law. In December 2018, the Court ruled that the defendants would also be charged with war crimes and crimes against humanity.



A man reads the names on a memorial monument during the 37th anniversary of El Mozote Massacre in the village of El Mozote, Meanguera, El Salvador, 8 December 2018.

FRANCE

LAST RECOURSE AGAINST A RWANDAN PRIEST

CONTEXT

Pending proceedings against a Rwandan priest for crimes committed during the 1994 genocide, including rape

DEFENDANT

➤ **Wenceslas Munyeshyaka**, former head of the Sainte-Famille parish in Kigali

CHARGES

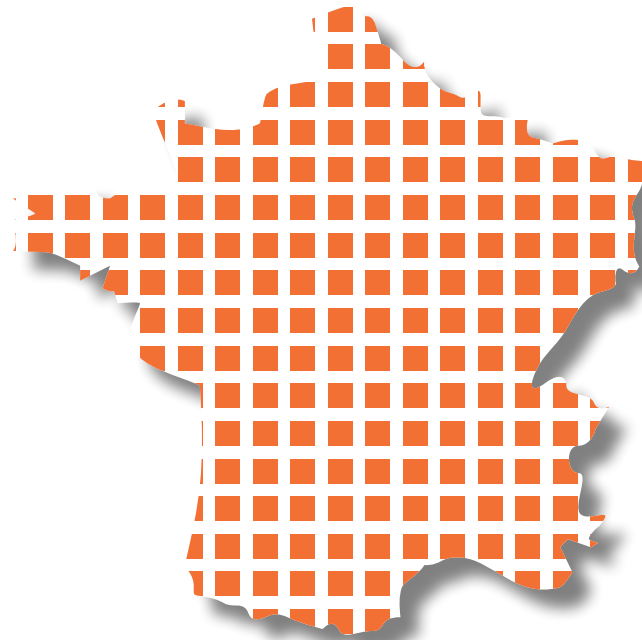
➤ Crimes against humanity (including **rape**)
➤ Genocide

DEVELOPMENTS IN 2018

On 21 June 2018, the Investigation Chamber of the Court of Appeal in Paris (Chambre de l'instruction de la Cour d'Appel de Paris) confirmed the dismissal of the case. Civil parties appealed the dismissal of the case before the Supreme Court (Cour de Cassation)

CURRENT STATUS

Dismissed; last recourse ongoing



FACTS

From 8 April to 5 July 1994, Father Munyeshyaka was in charge of the Centre d'Education de Langues Africaines (CELA), St. Paul Pastoral Center, and the Sainte-Famille parish, where refugees were hosted, in Kigali.

He is suspected of participating in the selection of Tutsi refugees to be killed, of leaving them to die of thirst, of reporting to the authorities those who tried to help them, and of being involved in the mass execution of the Sainte-Famille parish, on 17 and 22 April 1994.

He also allegedly committed and helped to commit sexual violence against Tutsi girls and women, by selecting them from among the refugees and handing them to the Interahamwe (the youth organization of the National Republican Movement for Democracy and Development) to rape them.

Munyeshyaka then left Rwanda and moved to France, where he became a priest. |



Pictures of genocide victims at the genocide memorial in Kigali.

PROCEDURE

International Criminal Tribunal for Rwanda (ICTR)

On 22 July 2005, the ICTR confirmed the indictment of Munyeshyaka for crimes of genocide and crimes against humanity, including rape, extermination, and murder.

On 20 November 2007, following a request by the Prosecution filed on 12 June 2007, the ICTR decided to refer the case to France.

France

On 12 July 1995, French associations (LICRA, Survie, the "Collectif des Parties Civiles pour le Rwanda") and individual plaintiffs filed a complaint against Munyeshyaka.

On 25 July 1995, an investigation into genocide, crimes against humanity, and torture was opened.

On 8 June 2004, the European Court of Human Rights condemned France for exceeding reasonable time requirements.

In 2005, the Federation of Human Rights (FIDH) and the Ligue des Droits de l'Homme (LDH) joined the case as civil parties.

In parallel, Munyeshyaka was tried and sentenced *in absentia* to life imprisonment in 2006, in Rwanda.

In January 2012, the case was transferred to the French specialized unit for the prosecution of genocide, crimes against humanity, war crimes, and torture within the Paris High Court (the "specialized unit"), and proceedings resumed.

On 19 August 2015, the Prosecutor of the specialized unit requested a dismissal of the case against Munyeshyaka. On 2 October 2015, the investigative judges dismissed the proceedings against him due to insufficient information to establish his participation to the crimes committed by the militias. The decision was appealed by the civil parties.

On 21 June 2018, the Investigation Chamber of the Court of Appeal in Paris upheld the dismissal of the case. Civil parties lodged an appeal against the decision before the French Supreme Court. |

FRANCE

CHARGES OF RAPE DISMISSED IN RWANDAN CASE

CONTEXT

Pending proceedings against a Rwandan official for crimes committed during the 1994 genocide

DEFENDANT

➤ **Laurent Bucyibaruta**, former Gikongoro prefect and head of the prefectural committee of the Interahamwe movement (the youth organization of the National Republican Movement for Democracy and Development)

COUNTRY OF PROSECUTION

France

CHARGES

- Crimes against humanity (including **rape**)
- Genocide

DEVELOPMENTS IN 2018

On 24 December 2018, partial dismissal was granted to the accused for the charges of rape and the murder of a gendarme and three priests

CURRENT STATUS

Pending trial, but partial dismissal granted for the charges of rape and murder



The girls' school of Kibeho was the scene of acts of genocide against the Tutsi population in 1993 and 1994.

FACTS

Bucyibaruta is accused of publicly urging the Hutu population to kill Tutsis in acts of genocide and crimes against humanity between December 1993 and April 1994.

From 1 January to 17 July 1994, Bucyibaruta allegedly participated, through the acts of his subordinates, in the rape and murder of several women and girls, committed during the attack

of the girls' school of Kibeho (*Ecole Des Filles De Kibeho*) and in the roadblocks established in Murambi, as well as in other areas of the Gikongoro prefecture.

In addition, he allegedly ordered the massacre of Tutsis and moderate Hutus in multiple locations of the Gikongoro prefecture. |

PROCEDURE

International Criminal Tribunal for Rwanda (ICTR)

On 16 June 2005, the ICTR indicted Bucyibaruta for being individually responsible and responsible as a superior for genocide, complicity in genocide, direct and public incitement to commit genocide, and crimes against humanity, including acts of extermination, murder, and rape.

In August 2007, an arrest warrant was issued by the ICTR requesting France to arrest him.

On 20 November 2007, the ICTR referred the case to French judicial authorities.

France

On 5 January 2000, the FIDH and the LDH filed a complaint before the High Court of Paris against Bucyibaruta, who was arrested and questioned on 30 May 2000. He was released on 20 December 2000.

Following an arrest warrant by the ICTR in August 2007, Bucyibaruta was arrested again on 5 September 2007 and placed under judicial supervision.

On 9 May 2017, the investigative judge within the Paris High Court informed the parties that the investigation had been completed.

On 24 December 2018, and following the prosecutor's request on 4 October of that year, the investigative judge ordered that Bucyibaruta be sent to trial. The charges of rape were, however, dismissed, as well as those concerning the murder of a gendarme and three priests. |

BRINGING TO LIGHT SEXUAL VIOLENCE CRIMES COMMITTED UNDER YAHYA JAMMEH

LUCIE CANAL

TRIAL INTERNATIONAL LEGAL ADVISOR

Yahya Jammeh's rule, which lasted for 22 years, was characterized by widespread human rights abuses. Between 1994 and 2016, as the opposition was brutally repressed, extrajudicial executions, enforced disappearances, and torture became a common practice. After losing the presidential election to Adama Barrow in December 2016, Jammeh fled to Equatorial Guinea in January 2017.

Faced with the necessity to address over two decades of an autocratic regime, The Gambia rapidly entered a transitional justice process through the setting of a Truth, Reconciliation, and Reparations Commission (TRRC). The TRRC, which held its first session on 7 January 2019, is charged with investigating crimes committed throughout the whole duration of Jammeh's presidency.

In parallel, in October 2017, victims of the former government as well as Gambian and international civil society actors launched a campaign to bring Jammeh to justice. The Coalition is indeed working toward ensuring that the former president will eventually be prosecuted.

At the international level, proceedings against Ousman Sonko, the former Minister of Interior, have been ongoing in Switzerland since the beginning of January 2017. Following the re-election of Jammeh in September 2006, Sonko was appointed Minister of Interior. Dismissed from office exactly ten years later, in September 2016, he sought asylum in Sweden. After his application was rejected, Sonko left for Switzerland. Informed of his presence on Swiss territory, TRIAL International filed a criminal complaint before the prosecuting authorities on 25 January 2017. The former Minister of Interior was arrested and charged with crimes against humanity. His detention has been renewed multiple times so as to allow the Office of the Attorney General to interview victims and witnesses.

In this context, sporadic accounts of sexual violence perpetrated under Jammeh's rule are progressively beginning to emerge. Indeed, while the main focus has so far been on the commission of crimes such as arbitrary arrests, extrajudicial executions, and torture, an increasing number of incidents reported as having occurred under Jammeh's rule appear to include a sexual violence component.

Security forces of the former regime, who have been accused of resorting to the use of torture against prisoners, would allegedly subject both male and female detainees to acts of a sexual nature. Women, albeit still limited in number, have begun to tell their stories and explain how they were raped while interrogated. In fact, reports indicate that it was common knowledge amongst security forces that women arrested to be questioned were systematically assaulted. Similarly, a few men have described the various methods that were used to torture them. Practices appear to include, among others, crushing, applying burning flames, and administering electric shocks to the genitals. Some former male detainees have also explained how their torturers would insert objects in the victims' anuses.

The former president was also renowned for his vocal hatred toward, and persecution against, the LGBTI community. Throughout Jammeh's regime, and more particularly during the last years of his rule, individuals suspected of engaging in same-sex relations were frequently arrested. Although it remains complex to address the commission of violence against the LGBTI community in The Gambia, where homosexuality still constitutes a criminal offense, courageous individuals have started to explain the sexual violence to which they were subjected while in detention.

In addition, rape and other forms of sexual violence committed within the context of witch hunts have been reported. In 2009, Jammeh ordered security forces to organize and carry out witch hunts across the country. Villagers who were accused of practicing witchcraft were forced to drink hallucinogenic liquids that often led to their death. During these hunts, which were regularly conducted until the end of 2016, witnesses reported that women suspected of being witches were raped.

In a country where sexual violence constitutes a taboo, it has been extremely difficult for victims to speak out. As a result, the commission of such crimes under Jammeh's rule remains dramatically underreported. It is thanks to the progressive emergence of testimonies from victims and witnesses that a clearer picture of the prevalence of rape and other forms of sexual violence perpetrated between 1994 and 2016 is slowly taking shape.

As history has repeatedly shown, investigative processes often tend to overlook sexual violence. It is therefore crucial to ensure that these crimes be duly investigated and adequately integrated into both the Gambian transitional process and all related criminal proceedings. |

GUATEMALA

FOUR FORMER ARMY HIGH OFFICIALS CONVICTED

CONTEXT

Decision issued by High Risk Court C against four former military officers for crimes against humanity, aggravated sexual violence, and forced disappearance committed in Guatemala

DEFENDANTS

- **Manuel Antonio Callejas y Callejas**, former head of Guatemalan military intelligence at Quetzaltenango
- **Francisco Luis Gordillo Martínez**, former commander of the Quetzaltenango military zone
- **Edilberto Letona Linares**, former second commander of the Quetzaltenango military zone
- **Benedicto Lucas García**, former head of the High Army Command
- **Hugo Ramiro Zaldaña Rojas**, former intelligence official of the General Staff at Quetzaltenango

CHARGES

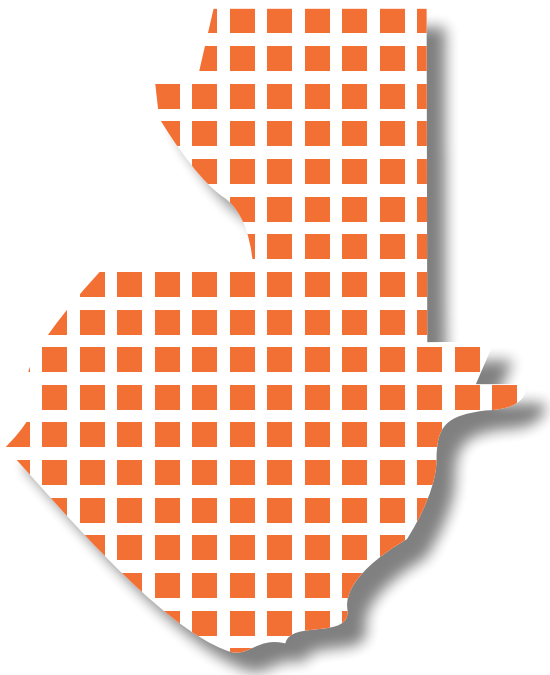
- Crimes against humanity (including **rape** and **sexual violence**)

DEVELOPMENTS IN 2018

On 23 May 2018, the accused were sentenced to 58 years in prison for crimes against humanity, aggravated sexual violence, and enforced disappearance

CURRENT STATUS

Sentenced



FACTS

Within the context of the Guatemalan civil war, Carlos Augusto Molina Palma, who opposed the military regime, was repeatedly arrested and physically abused. He was then forced to leave the country.

On 19 March 1976, Emma Guadalupe Molina Theissen, daughter of Molina Palma and member of the “Juventud Patriótica del Trabajo” (Patriotic Worker Youth), was arrested with her boyfriend. During her detention, she was raped and tortured and her boyfriend was later murdered.

On 27 September 1981, Molina Theissen was again arrested by the military and taken to Manuel Lisandro Barillas military base in Quetzaltenango.

While in detention, the defendants permitted soldiers under the influence of alcohol to rape and torture her outside of interrogation sessions. She was also raped by soldiers during interrogation sessions.

On 5 October 1981, she eventually managed to escape from the military base. The following day, three armed plain-clothed men came to the victim’s family home in Guatemala City. After beating Molina Theissen’s mother, they abducted her 14-year-old brother, Marco Antonio, in an official vehicle. He never returned. |

PROCEDURE

Following the submission of a complaint before the Inter-American Commission on Human Rights by the Molina Theissen family in 1998, the case was submitted to the IACHR on 4 July 2003.

On 4 May 2004, the IACHR held Guatemala responsible for the violation of the American Convention on Human Rights and the Inter-American Convention on Forced Disappearance of Persons in relation to the enforced disappearance of Molina Theissen’s brother, urging the Guatemalan state to launch an investigation into the events, and to publicly recognize its responsibility.

On 6 January 2016, Callejas y Callejas, Gordillo Martínez, Letona Linares, and Zaldaña Rojas were arrested and charged with crimes against humanity, aggravated assault, and the enforced disappearance of Marco Antonio, as well as with sexual violence against, and arbitrary detention and torture of Molina Theissen. The four former military officers denied the charges before the Guatemalan Criminal Court.

At the end of May 2016, the Supreme Court granted the Attorney General’s appeal to transfer the case to High Risk Court C in Guatemala City. In August of that year, Lucas García was also charged with crimes against humanity in the Molina Theissen case.

On 1 March 2018, the trial of the five accused opened before High Risk Court C, with Molina Theissen’s mother as civil party to the proceedings. On 23 May 2018, Letona Linares was acquitted of all charges, while the other defendants were found guilty of crimes against humanity and aggravated sexual abuse of Molina Theissen.

Callejas y Callejas, Lucas García, and Rojas Zaldaña were also convicted for the enforced disappearance of Molina Theissen’s brother and sentenced to 58 years in prison. Gordillo Martínez was sentenced to 33 years in prison. |

GUATEMALA

EVIDENTIARY HEARINGS POSTPONED IN GROUNDBREAKING CASE

CONTEXT

Ongoing proceedings against seven former civil defense patrollers for sexual violence crimes committed against indigenous Maya Achí women in Baja Verapaz between 1981 and 1985

DEFENDANTS

Seven former civil defense patrollers:

- Juan Cecilio Guzmán Torres
- Pedro Sánchez Córdex
- Bernardo Ruíz Aquino
- Benbenuto Ruíz Aquino
- Damian Cuxum Alvarado
- Símeon Enríquez Gómez
- Félix Tum Ramírez

CHARGES

- Crimes against humanity (including **rape** and **sexual violence**)

DEVELOPMENTS IN 2018

Preliminary hearings before the High-Risk Court A concluded in August 2018 for all seven accused. Evidentiary hearings, which were originally scheduled to start on 24 August 2018, were postponed

CURRENT STATUS

Pending



At least nine Maya Achí women were subjected to multiple forms of sexual violence.

FACTS

Between 1981 and 1985, seven civil defense patrollers allegedly subjected at least nine Maya Achí women to multiple forms of sexual violence. They are accused of taking multiple women to the military base located in the Rabinal municipality, in Baja Verapaz, and raping them repeatedly.

Some of the alleged victims, Marcela Alvarado Enriquez, Margarita Alvarado Enquirez, and Estefana Alvarado Sic, were pregnant at the time of the events. The rapes, of which Cuxum Alvarado and Enriquez Gomez are accused, resulted in miscarriages for all three women. Pedrina López de Paz was only 12 years old when the Ruíz Aquino brothers assaulted her.

The Rabinal military base is believed to have been used as a clandestine detention center after over one hundred human remains were exhumed. |

HIGHLIGHT

- ■ ■ As the Guatemalan army created and had control over the civil defense patrols, the plaintiffs requested the State to be considered as a defendant. The request was however rejected on the grounds that civil defense patrols were not State agents.
- ■ ■ In addition, it is worth noting that, from the 36 victims of sexual violence involved in the proceedings and represented by a Rabinal-based indigenous-led law firm, five survivors were able to provide audio-recorded testimonies that were presented in court. |

PROCEDURE

After being arrested and charged with the crime against humanity of sexual violence on 11 May 2018, the accused appeared before the Court for preliminary hearings on 1 and 4 June 2018. The seventh, Tum Ramírez, was arrested one month later in relation to the same case, and presented before the Court on 14 August.

A decision about whether to unify the proceedings against all defendants has yet to be reached. Evidentiary hearings, which were originally scheduled to start on 24 August 2018, were postponed.

One of the accused, Guzmán Torres, died on 30 August 2018. |

SERBIA

PROSECUTING CRIMES AGAINST ROMA PEOPLE

CONTEXT

Decision issued against three former members of the “Sima’s Chetniks” unit for the inhumane treatment, rape, and sexual enslavement of three Roma women in Malesić, in 1992

DEFENDANTS

- Tomislav Gavrić
- Zoran Đurđević
- Zoran Alić

All three former members of the “Sima’s Chetniks” unit

CHARGES

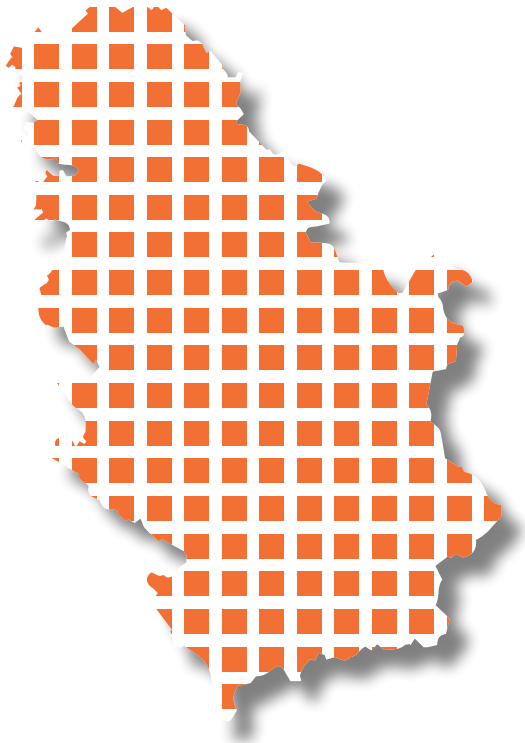
- War crimes (including violation of physical integrity, **rape**, and **sexual enslavement**)

DEVELOPMENTS IN 2018

In July 2018, the Court of Appeal confirmed the first-instance decision that found the defendants guilty of rape and sexual slavery, but acquitted them of the killing of 27 Roma civilians and the demolition of a mosque

CURRENT STATUS

Sentenced to prison terms ranging between six and 10 years; appeal pending before the Belgrade Court of Appeal



FACTS

During the second half of 1992, in the village of Malesić, Gavrić, Đurđević, and Alić, all members of the “Sima’s Chetniks” unit, allegedly kept three women captive and repeatedly raped and abused them over the course of several months. The victims, two of whom were minors at the time of events, were also subjected to domestic enslavement, as the defendants forced them to cook and clean for them.

In July 1992, the three were accused of taking part in the killings of 27 Roma civilians and the demolition of the mosque in Skočić. |

HIGHLIGHT

One of the defendants, Đurđević, had already been convicted and sentenced to 13 years in prison for war crimes committed in Bijeljina in 1992, one month prior to the events in Skočić. More specifically, he was found guilty of raping and subjecting to sexual enslavement two Bosniak women. The Belgrade Court, however, in its 2018 decision, did not appear to take into consideration the similarities between the Skočić and the Bijeljina incidents, nor did it regard Đurđević’s first conviction as a possible aggravating circumstance.

In addition, it is interesting to highlight that, in spite of the similarities between the Skočić and the Bijeljina events, Đurđević was sentenced to a shorter prison-term for the crimes committed in Skočić.

Finally, while at this stage it cannot be established with certainty the reason behind the above-mentioned differences between sentences, it is worth noting that the Skočić case marked the first prosecution of crimes committed against Roma before a domestic court. |

PROCEDURE

In July 2018, the Belgrade Court of Appeal confirmed the first instance verdict that acquitted the accused for the killing of 27 Roma civilians and the demolition of the mosque. It however sentenced Gavrić and Đurđević to 10 years of prison, and Alić to six years of prison for the violation of physical integrity, inhumane treatment, sexual enslavement, and rape of the three Roma women.

The defendants appealed the decision to the third instance panel of the Belgrade Court of Appeal. |

Other pending cases

- Case before the Belgrade Court against Dalibor Maksimović, former member of the Bosnian Serb Army, for war crimes including rape
- Case before the Belgrade Court against 11 former members of the Jackals for war crimes including rape

SOUTH SUDAN

UNPARALLELED PRECEDENT FOR THE PROSECUTION OF RAPE AS A WAR CRIME

CONTEXT

Decision issued by the South Sudanese Military Court against 10 soldiers for crimes committed at the Terrain Hotel in Juba in 2016

DEFENDANTS

➤ Eleven South Sudanese soldiers

CHARGES

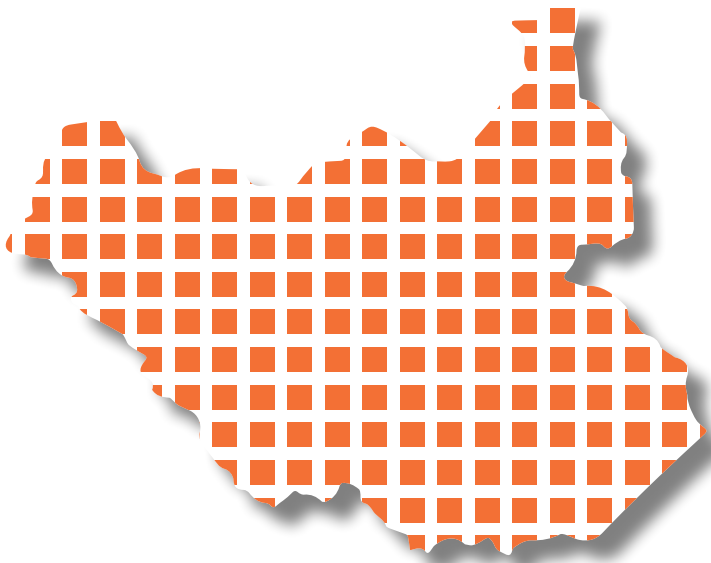
➤ War crimes (including **rape** and **sexual harassment**)

DEVELOPMENTS IN 2018

On 6 September 2018, the Military Court found 10 soldiers out of the 11 defendants guilty of murder, rape, sexual harassment, and theft

CURRENT STATUS

Sentenced to prison terms ranging between seven and 14 years



FACTS

On 11 July 2016, in the context of the civil war in which rebel forces have been opposing the government since 2013, clashes erupted in Juba. During a three-day battle, dozens of soldiers attacked the Terrain Hotel and killed South Sudanese journalist John Gatluak Nhial. Five international aid workers were repeatedly raped by several soldiers.

HIGHLIGHT

- This case is the first of its kind in the country and sets an unparalleled precedent for the prosecution of rape as a war crime in South Sudan.
- It worth nothing that the military head of the United Nations peacekeeping mission, Kenyan Lieutenant General Johnson Mogoia Kimani Ondieki, was fired over the incident for inaction during the incident.

PROCEDURE

On 6 September 2018, the Military Court sentenced two soldiers to life imprisonment for the murder of the South Sudanese journalist Gatluak Nhial. In addition, it convicted three other soldiers for the rape of the foreign aid workers, and convicted four soldiers for sexual harassment and one for theft and armed robbery. They received sentences ranging from seven to 14 years in prison.

One soldier was acquitted for lack of evidence. Finally, the Court ordered the payment of USD 2.2 million to the Terrain Hotel for damages, USD 4,000 to each victim of rape, USD 1,000 to an injured aid-worker, and 51 head of cattle to the family of the journalist.



© Isaac Bity/UNMISS

Investigation team visits the scene where five international aid workers were killed.

SWEDEN

RWANDAN GENOCIDE SUSPECT ACQUITTED OF RAPE CHARGES

CONTEXT

Ongoing appeal following the verdict issued by the Stockholm Special Court for crimes of genocide committed during the genocide in Rwanda

DEFENDANT

➤ **Theodore Rukeratabaro**, known as “Tabaro”

CHARGES

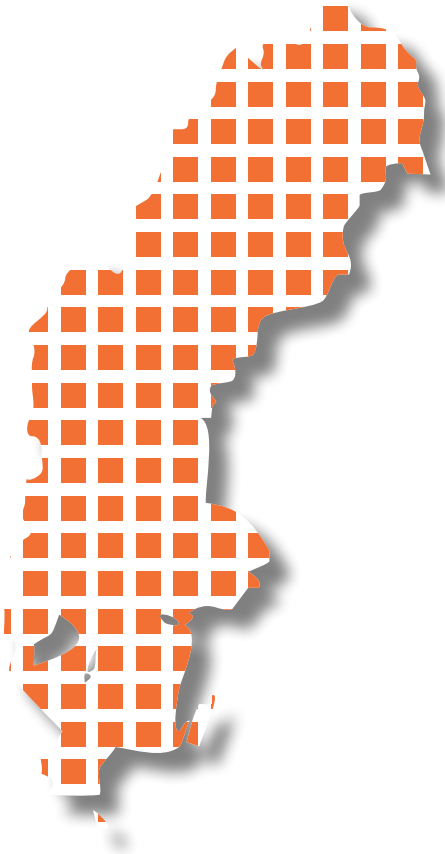
➤ Genocide (including **rape**)

DEVELOPMENTS IN 2018

On 27 June 2018, the Stockholm Special Court found Rukeratabaro guilty of crimes of genocide and sentenced him to life imprisonment; he was acquitted for the charges of rape

CURRENT STATUS

Sentenced, but acquitted for the charges of rape; ongoing appeal



FACTS

Between 9 April and May 1994, in the southwest of Rwanda, near the Winteko, Nyakaninya, and Mibirizi areas, Rukeratabaro was accused of taking part in attacks against a cloister and a school. He contributed to the massacre of approximately 800 civilians, including children.

He also allegedly participated in the rape of women and girls, especially in Winteko.

During the Mibilizi attack in April 1994, women and girls were reportedly gathered in a house to be tortured and raped every day, under Rukeratabaro’s approval.

Rukeratabaro moved to Sweden in 1998 and was naturalized in 2006. |

PROCEDURE

On 25 October 2016, Rukeratabaro was arrested in Örebro on suspicion of his involvement in the 1994 Rwandan genocide. After he was remanded in custody by the Stockholm District Court, the War Crimes Commission of the Swedish police took over the investigation. On 6 September 2017, he was charged with genocide by murder, attempted murder, rape, and kidnapping against the Tutsi minority.

On 27 September 2017, the trial opened in Stockholm, before a special court. Seven victims of rape came to testify.

On 27 June 2018, the accused was found guilty and sentenced to life imprisonment for genocide, including murder, attempted murder, and abduction. He was however acquitted for the charges of rape.

Rukeratabaro was also sentenced to pay between SEK 25,000 and SEK 102,000 (from USD 2,800 to USD 11,600) to 16 out of the 30 civil parties as compensation.

On 10 September 2018, the appeal hearing began. The hearing was held in Rwanda and the victims and witnesses were heard through videoconference. |



REVIEW OF 2018

THE EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

CASE 002/02

THE EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

CASE 002/02

CONTEXT

Decision issued by the Extraordinary Chambers in the Courts of Cambodia (ECCC) against senior leaders of the Khmer Rouge communist regime for crimes committed between 1975 and 1979 in Cambodia

DEFENDANTS

➤ **Nuon Chea**, alias Brother Number Two, served as Deputy Secretary of the Communist Party of Kampuchea (CPK), a full-rights member of the CPK Central and Standing Committees, Chairman of the People's Representative Assembly and, on occasion, Acting Prime Minister of the Democratic Kampuchea government

➤ **Khieu Samphan**, held various positions in the CPK and the Khmer Rouge regime, including President of the State Presidium. He was also alleged to have been Chairman of Political Office 870 and a member of the CPK Standing Committee

CHARGES

- Crimes against humanity (including forced marriage and **rape in the context of forced marriage**)
- War crimes
- Genocide

DEVELOPMENTS IN 2018

On 16 November 2018, the ECCC sentenced the two defendants to life imprisonment for war crimes, crimes against humanity, and genocide. They were found guilty, *inter alia*, of forced marriage and rape in the context of forced marriage as crimes against humanity

CURRENT STATUS

Both defendants are serving merged life sentences

As presented by the
Transitional Justice Clinic

FACTS

On 17 April 1975, the Khmer Rouge entered Phnom Penh under the banner of the Cambodian People's National Liberation Armed Forces and began to direct the population to leave Phnom Penh immediately, marking the start of the Khmer Rouge regime which would rule Cambodia until January 1979. Guided by a vision of a classless, rural agrarian ideal, the regime emptied cities and towns, moving most of their populations into forced labor cooperatives and work sites, at the same time purging those perceived to be loyal to the former Khmer Republic or otherwise a threat to the new order. To establish an atheistic and homogenous society, the Khmer Rouge adopted policies to abolish all ethnic, national, religious, racial, class and cultural differences, including by targeting the Cham, Vietnamese, Buddhist and former Khmer Republic officials and their families. Nearly two million people are believed to have died during this period, almost half los-

ing their lives through direct violence, and the remainder perishing from overwork, malnutrition, or inadequate medical care.

The Khmer Rouge used the state apparatus to isolate individuals, instill fear, and thereby completely dominate every aspect of life for ordinary Cambodians. The regime established and operated cooperatives and worksites that were intended to create a strictly controlled labor and production force. The regime also established and operated security centers and execution sites to identify, arrest, isolate, and destroy those considered the most serious enemies. Both systems served to separate the people of Cambodia from the outside world and from each other.

Forced marriage presents an acute example of the extent to which the regime exerted violent control over individual lives, creating a nation-

wide system of sexual violence and social and cultural destruction. Under the state policy known as the "regulation of marriage", authorities arranged marriages throughout the country and during the entire period of the regime. Both men and women were forcibly married under the Khmer Rouge. Some were former monks who had been defrocked. Some had been detained for "moral offences" or had been married to foreigners. Others were remarried after their spouse had disappeared. Most men and women had no choice in their spouse, and shortly after wedding ceremonies, newly wedded couples were usually assigned to sleep in locations where they could be monitored to assure that the marriages were consummated. Refusal to comply could result in "re-education", torture, or death. |

Cambodian Muslims sit at the the ECCC, as they wait for a verdict on the former Khmer Rouge head of state Khieu Samphan and former Khmer Rouge leader "Brother Number Two" Nuon Chea, on the outskirts of Phnom Penh, Cambodia, 16 November 2018.



PROSECUTING FORCED MARRIAGE AS A FORM OF SEXUAL VIOLENCE

KATHY ROBERTS AND MAXINE MARCUS
TRANSITIONAL JUSTICE CLINIC

In 2003, the United Nations and the Royal Government of Cambodia established the Extraordinary Chambers in the Courts of Cambodia (ECCC) to prosecute the crimes of the Khmer Rouge. The ECCC was the first internationalized court dealing with mass crimes that allowed victims to act as civil parties alongside the prosecution and the defense. This proved especially significant in Case 002, since civil parties through their representatives helped to assure that the indictment and ultimate conviction in this case more closely reflected the victims' experience by charging and prosecuting forced marriage and rape within forced marriage.

COMMENT

Case 002 concerns the responsibility of Nuon Chea and Khieu Samphan, former senior leaders of the Khmer Rouge, for crimes committed in Cambodia under the Khmer Rouge regime. Due to the case's complexity and the age of the accused, the Trial Chamber severed the case into two parts: Case 002/1 would address crimes against humanity committed during the early part of the Khmer Rouge regime, including, for example, crimes related to the forced transfer of the population from Phnom Penh in April 1975; Case 002/2 would address crimes against humanity, war crimes, and genocide alleged to have been committed at a number of cooperatives, worksites, security centers and execution sites, and within the context of the armed conflict with Vietnam. Predicate acts would also include forced marriage and the targeting of the Cham, Vietnamese, Buddhists, and former Khmer Republic officials.

The initial charges in Case 002 made no reference to forced marriage, though rape was within the scope of the judicial investigation. Based on their clients' experiences, civil party representatives pushed for investigations into sexual violence and forced marriage specifically.

As a result of the investigations which followed, the 2010 closing order (indictment) incorporated forced marriage and rape within forced marriage as "other inhumane acts" constituting crimes against humanity that were committed throughout the country and throughout the period of the regime.

The co-investigating judges were not, however, convinced that other investigated and documented cases of rape and sexual violence in security centers and worksites could be imputed to the accused due to the – hotly contested – understanding that extramarital rape was prohibited and punished by the Khmer Rouge. Considering the Court's judgment, civil parties, their representatives, and civil society activists held a series of quasi-judicial Women's Hearings to provide a forum for these survivors to be heard and recognized. Meanwhile, hundreds of civil party applicants identified themselves as victims of forced marriage, and most of these men and women were admitted as civil parties on this basis. In their testimonies, civil parties emphasized their lack of consent, and in addition frequently highlighted the lack of family consent and denial of family participation within the wedding ceremony as part of the harm they suffered.

The final judgment issued on 16 November 2018 found the accused guilty of genocide, war crimes, and crimes against humanity by virtue of their participation in a joint criminal enterprise, including by personally overseeing the implementation of policies such as forced marriage and other crimes committed in furtherance of the Khmer Rouge agenda.

The acknowledgement of forced marriage by the ECCC is rightly celebrated as a success of the participation of victims as civil parties. Without the participation of Cambodian victims and their advocates, the crime of forced marriage as it was practiced under the Khmer Rouge might never have received judicial recognition, nor the accused held to account.



REVIEW OF 2018
**THE INTERNATIONAL
CRIMINAL COURT**
THE ACQUITTAL OF BEMBA

THE INTERNATIONAL CRIMINAL COURT

THE ACQUITTAL OF BEMBA

CONTEXT

Acquittal issued by the ICC Appeals Chamber in relation to the first judgment that convicted Bemba of war crimes and crimes against humanity for the attacks conducted by the “Mouvement de Libération du Congo” (MLC) in Central African Republic, between 2002 and 2003

DEFENDANT

➤ **Jean-Pierre Bemba Gombo**, commander of the MLC

COUNTRY OF COMMISSION

Central African Republic

CHARGES

➤ War crimes
➤ Crimes against humanity (including rape)

DEVELOPMENTS IN 2018

On 8 June 2018, the ICC Appeals Chamber reversed the first instance judgment and acquitted the defendant

CURRENT STATUS

Closed; acquittal granted on appeal



Congolese opposition figure Jean-Pierre Bemba (C) is flanked by two security guards, as he waits in court at the ICC in The Hague on 19 October 2010.

FACTS

From 26 October 2002 to 15 March 2003, the MLC, originally established by Bemba who, as a military commander, had effective control over it, was accused of committing crimes against humanity, including murder, rape and pillages, in the Central African Republic.

Following his role as one of the four vice-presidents of the transitional government in the Democratic Republic of the Congo from June 2003, Bemba ran for the Congolese presidency in October 2006. Defeated by Joseph Kabila, Bemba attempted to contest the results, but without success. The defendant's opposition to the government of Kabila led to deadly clashes between the Congolese army and Bemba's personal guard. |

HIGHLIGHT

Bemba's 2016 conviction for rape as a war crime and as a crime against humanity before the ICC had been perceived as an unparalleled milestone by activists, lawyers, and, above everyone else, survivors of conflict-related sexual violence. The verdict appeared to reaffirm that successful prosecution of sexual violence at the international was indeed possible.

As a result, the appeal decision caused a wide range of reactions and analyses, especially within the international legal community. |

PROCEDURE

On 10 May 2007, the ICC Prosecution opened an investigation into the crimes committed in Central African Republic between 2002 and 2003. One year later, on 24 May 2008, the Belgian authorities arrested Bemba, following the arrest warrant issued by the ICC for the MLC's actions in the Central African Republic.

The defendant was charged with crimes against humanity of murder and rape, as well as with war crimes of murder, rape, and pillaging. On 4 July 2008, the day after Bemba was transferred to the ICC, he appeared before the Pre-Trial Chamber III.

On 18 September 2009, the charges of responsibility as a commander for three counts of war crimes (murder, rape and pillaging) and two counts of crimes against humanity (murder and rape) were confirmed against Bemba.

The trial opened on 22 November 2010. The defendant pleaded not guilty on all charges. Throughout the six years during which the trial lasted, 5,229 persons were granted the status of victims to take part in the proceedings.

On 21 March 2016, Bemba was found guilty of murder, rape, and pillaging as war crimes, and of murder and rape as crimes against humanity. The Chamber found that the defendant had acted as commander in chief of, and had effective control over, the MLC. More specifically, Bemba was convicted for the rapes of 27 women and two men committed by his soldiers. In addition, the Court identified two aggravating circumstances for the crime of rape: these acts were committed against particularly defenseless victims and with particular cruelty.

Three months later, Bemba was sentenced to 18 years in prison. The defendant appealed the judgment.

On 8 June 2018, the Appeals Chamber reversed, three to two, Bemba's conviction and the defendant was acquitted of the charges of war crimes and crimes against humanity. Indeed, it ruled that the conviction had exceeded the scope of charges as approved for trial. Four days later, interim release was ordered under specific conditions. |



REVIEW OF 2018

ADDRESSING STATE RESPONSIBILITY

THE INTER-AMERICAN COURT
OF HUMAN RIGHTS

ADDRESSING STATE RESPONSIBILITY

WOMEN VICTIMS OF SEXUAL TORTURE IN MEXICO

CONTEXT

Decision issued by the IACHR in relation to Mexico's responsibility for acts of sexual violence committed by Mexican police officers against 11 women in May 2006

COUNTRY OF COMMISSION

Mexico

DEVELOPMENTS IN 2018

On 28 November 2018, the IACHR delivered its verdict and held the State of Mexico responsible

CURRENT STATUS

Decided



A woman argues with federal riot police guarding a building in Mexico City, during a protest by striking teachers against recently approved reforms to Mexico's state pension system, 1 June 2007.

FACTS

On 3 May 2006, an argument arose between municipal police officers, flower vendors, and members of the People's Front in Defense of the Land in the Texcoco local market. The violent clashes that followed resulted in multiple injuries, two deaths, and numerous arrests.

Eighty-three persons were arrested, among them Yolanda Muñoz Diosdada, Ana María Velasco Rodríguez, Angélica Patricia Torres Linares, María Patricia Romero Hernández, and María Cristina Sánchez Hernández. The following day, police officers also arrested Norma Aidé Jiménez Osorio, Claudia Hernández Martínez,

HIGHLIGHT

- In its decision, the Court highlighted the widespread use of sexual violence against female protesters, who were insulted with vulgar language, groped, stripped, threatened with rape, and raped.
- These acts, which were qualified as amounting to torture, were considered by the IACHR as serving an objective of repression through the instrumentalization of women's bodies. Indeed, the Court further explained that, in its view, police forces had resorted to sexual violence as a control tactic over women and other protesters. |

Mariana Selvas Gómez, Georgina Edith Rosales Gutiérrez, Suhelen Gabriela Cuevas Jaramillo, and Bárbara Italia Méndez Moreno.

The 11 women were transferred to the CEPRESO detention center (Centro de Readaptación Social "Santiaguito"). On the way to the detention center, as well as during their detention, they were verbally, physically, and sexually abused by the police officers.

Between May 2006 and August 2008, the 11 women were released. |

PROCEDURE

Although the Mexican authorities acknowledged that excessive use of power had been used against protesters, they failed to open an investigation into the crimes and prosecute those responsible.

On 29 April 2008, the Centro de los Derechos Humanos Juárez A.C. and the Centro por la Justicia y el Derecho Internacional, acting on behalf of the 11 victims, filed the initial request before the Inter-American Commission on Human Rights ("Commission").

The Commission established that the victims had been illegally and arbitrarily detained, and that they had been subjected to various forms of sexual violence by State agents. On 28 October 2015, the Commission admitted the case on the merits and sent recommendations to the State of Mexico, including, among others, providing full reparation to all victims and investigating the events. On 17 December 2015, the State was notified and granted two months to report that it had complied with the recommendations.

On 17 September 2016, the Commission referred the case to the IACHR. Indeed, while the State recognized its responsibility for some of the human rights violations, the Commission found that Mexico had not integrally and substantively complied with the recommendations.

On 28 November 2018, the IACHR issued its decision, in which it held the State of Mexico responsible for the violation of several rights of the American Convention on Human Rights. In particular, it found that Mexican authorities could have prevented the violence to which the victims were subjected.

The Court urged authorities to prosecute those responsible, to conduct a public act of recognition of its international responsibility, to implement a training plan for Federal and State police officers, and to strengthen the follow-up mechanism of sexual torture cases committed against women (Mecanismo de Seguimiento de Casos de Tortura Sexual cometida contra Mujeres). The IACHR also requested the State of Mexico to grant scholarships to four out of the 11 victims and to pay, within a year, compensation to the victims for material damage as well as for moral injury – including to their partners, children, or parents, and to their siblings or cousins. |

SEXUAL VIOLENCE: TIME TO “CALL IT WHAT IT IS”!

WOMEN’S INITIATIVES FOR GENDER JUSTICE

The Rome Statute is the first international criminal law instrument to expressly include crimes of sexual violence. While this has undoubtedly represented a breakthrough, obstacles remain in the recognition, investigation, and prosecution of these crimes. These obstacles include a lack of clarity in the International Criminal Court’s (ICC) legal texts as to what constitutes “sexual violence”. The Elements of Crimes of the Rome Statute (Elements of Crimes) define what constitutes an act of rape, forced pregnancy, and enforced sterilization; however with regard to the crimes of sexual slavery, enforced prostitution, or “any other form of sexual violence of comparable gravity”, the only guide given by the Elements of Crimes is that an “act of a sexual nature” must have been committed. However, no examples or guidance is offered as to what constitutes an “act of a sexual nature”. This has, unsurprisingly, led to a lack of clarity about what makes violence sexual, and a disparity between how sexual violence is deliberated in courts and how the violence is perceived and experienced by victims. The decision on the confirmation of charges in the *Kenyatta* case, in which judges concluded that that forced circumcision of men did not qualify as sexual violence (as “*not every act of violence which targets parts of the body commonly associated with sexuality should be considered an act of sexual violence*”), offers a telling example of this problem.

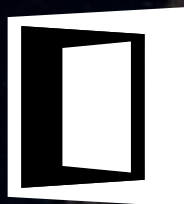
COMMENT

Against this background, the *Call it what it is* campaign contributes to filling the gap by providing contemporary and victim-centric guidance to international criminal law practitioners on what makes violence sexual. Over the course of 2019, Women’s Initiatives for Gender Justice will bring together civil society actors committed to strengthening accountability for sexual and gender-based crimes to spearhead a Civil Society Declaration. The Declaration will contain guidance on what makes violence sexual and a non-exhaustive list of acts that are considered to be of a sexual nature, such as acts that may be intended as sexual by perpetrators and/or perceived as such by victims in specific cultural environments and that otherwise may not have been contemplated in definitions of sexual violence.

The Civil Society Declaration will seek to expand understanding of sexual violence around the world in a way that is inclusive, culturally sensitive, responding to present-day realities, and forward thinking. Importantly, the Declaration will be extensively informed by input from survivors of sexual violence. In doing so, a main aim of the Declaration is to create an opportunity for investigators, prosecutors, defense counsel, victims’ representatives and other judicial actors to gain a better understanding of what an “act of a sexual nature” could entail to survivors themselves. A broadly endorsed Civil Society Declaration will be presented to the ICC at the end of 2019 as a stand-alone guidance document on what can be considered an “act of a sexual nature” within the international criminal legal framework.

The year 2019 is a crucial year to *Call it what it is*: conflict-related sexual violence is widespread in both the Situations from which the two ICC cases that are set to move to the confirmation of charges stage this year were selected (one arising from the Situation in Mali and one from the Central African Republic, involving two suspects). Moreover, sexual violence in conflict is pervasive in a majority of the 10 situations under preliminary examinations and 11 situations under investigation by the ICC Prosecutor. Beyond 2019, the Civil Society Declaration could lead to clarifying the definition of sexual violence in the Elements of Crimes, which could be amended accordingly.

A greater clarity in the definition of the crimes and a greater involvement of the victims’ perspectives in the Court’s work are goals that everyone can and should get behind: join us to “call it what it is”!



TRIAL
International

P.O Box 5116
1211 Geneva 11
Switzerland

+41 22 321 61 10
info@trialinternational.org
@trial

www.trialinternational.org
