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Fact-Finding on Mass Atrocities and the Persecution of Minorities in northern Iraq

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NEWSLETTER CRIMINOLOGY AND INTERNATIONAL CRIMES

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EDITORIAL

An article that triggered me much during the past six months was the recently published piece by Alex de Waal in the Boston Review: *Writing Human Rights and Getting it Wrong*.¹ First because of the courage of a well-known human rights activist and scholar to acknowledge publicly that every now and again he has been wrong in presenting facts and in the interpretation of facts when writing about human rights. I could not more agree with him.² But at second read the article is much more interesting for another reason.

¹ <http://bostonreview.net/world/alex-de-waal-writing-human-rights#.V1f4aOLS619.twitter>

² Roelof Haveman, *Watching the Human Rights Watchers*, in Marielle Matthee et al. (eds), *Armed Conflict en International Law: in Search of the Human Face, Liber Amicorum Avril McDonald*, T.M.C. Asser Press, 2013, pp. 231-256

One of the issues that has intrigued me my entire life is the zone between the ideal world and everyday reality. As an academic, for many years teaching (international) criminal law, I never wanted to work in the 'field' – as a judge, a lawyer, a prosecutor – as I was afraid to lose my ideals. And rightly so as many of my colleagues proved after some months work in practice, claiming that quite some of those high academic and human rights standards that they had been preaching for years to students were 'impractical' and 'unrealistic'. Years later I made a huge step (for myself): into the practice of Rwanda, later South Sudan and Côte d'Ivoire and now in Mali. Suddenly I 'came to realise' that those practitioners are right: academics in Europe and the United States live in a fake world, with high ideals which even they cannot live up to, despite all the wealth and goodwill and intellectual capacity, so how can we expect to cope with all those demands of, in that respect, less equipped countries? Okay, I agree, this is a bit of a too black versus white distinction but it makes the grey zone I want to write about a bit more distinct.

How to behave, act, and form one's opinion in this grey zone? A way out seems to be to put yourself, your education, beliefs, habits and your opinions (a bit) aside, and listen to the people concerned themselves. Then you may find that the reality of those people is much more complex and complicated than those outsiders who write and ordeal about it make us believe (and than you want to believe yourself). Often only one story is told, where so many other stories can be told also; individual stories that may grow into group stories, against the stories of other groups in the same society. One sentence in De Waal's article drew my attention in this respect: "(...) by the time of our visit [to the Nuba mountains in Sudan] in 1995, the challenge confronting the Nuba leadership was no longer how to escape genocide but how to make a fair peace with their enemies".

This is interesting – apart from the complexity of the change of reality it shows –, because of De Waal putting the direct actors in the centre of attention, the Nuba leadership that had to deal with the situation at hand, five years ago and now in an environment that had changed. That is also the conclusion of his article: "I now believe that a fully emancipatory human rights practice must be based

on an agenda set by the affected people". I do believe he is right but I wonder whether this makes the situation easier. In Rwanda, about which he is also writing, I know too many people from the 'affected group' – say the victims of the genocide – who support the (ongoing) 'strong leadership' of the RPF, as they made an end to the genocide and saved their lives; it is a never ending debate between me and those friends. At the same time, aren't those who were the perpetrators and the willing bystanders not also 'affected' by the genocide and the situation that led to it, and need a say in setting the agenda? All of them are genuine in their thoughts and opinions. Reality is complex and complicated. Whatever it may be, this article by Alex de Waal deserves to be read and discussed, as these kinds of articles are rare.

Roelof Haveman

AGENDA

Representing perpetrators of mass violence, 31 August - 3 September 2016, Utrecht, the Netherlands, more information: <https://perpetratorstudies.sites.uu.nl/2016/02/11/call-for-papers-representing-perpetrators-of-mass-violence/>

3rd Women in and at war conference, 15-16 September 2016, Milton Keynes, United Kingdom, more info: <https://ilg2.org/2016/06/08/call-for-submissions-the-3rd-women-in-war-and-at-war-conference-15-16-september-2016/>

16th Annual Conference European Society Criminology: Crime and crime control – structures, developments and actors, 21-24 September 2016, Münster, Germany. Information: <http://www.eurocrim2016.com/>

Conference on collective violence. Actions, roles, perceptions, 20-22 October 2016, Marburg, Germany. More info: <http://www.hsozkult.de/event/id/termine-29892>

6th Annual Conference of the Historical Dialogues, Justice and Memory Network. NIOD Institute for War, Holocaust, and Genocide Studies, Amsterdam, December 1-3, 2016. Information: <http://historicaldialogues.org/2016-network-conference/>

18th WORLD CONGRESS OF CRIMINOLOGY from 15 – 19 December 2016, at O.P. Jindal Global University, Delhi NCR, Haryana, India. More information: www.jibsisc2016congress.com

The 13th Meeting of the International Association of Genocide Scholars, 9 – 13 July 2017, Brisbane,

Australia. More information: <http://law.uq.edu.au/iags2017>

*If you organize a conference, workshop or symposium related to international crimes, please inform us
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and we will make a reference on our website and in the newsletter.*

All articles are welcome. Please send your contribution to one of the editors (addresses at the bottom of the newsletter)

A LONG READ

Truth with a capital “T” yet to transpire in Gbagbo trial

By Thijs Bouwknecht

When the new building of the International Criminal Court (ICC) was officially inaugurated by Dutch King Willem Alexander last April, the celebratory ceremony ended with a rather odd performance of children singing Michael Jackson's "Heal the World". Three months earlier, on 28 January, there was a totally different atmosphere at the Permanent Premises. Walking up to this international house of criminal justice, you could hear the swelling hymns of a crowd: "Libérez Gbagbo! Libérez Gbagbo! Libérez Gbagbo!" Outside the guarded entrance, armed with megaphones, drums and banners, Ivoirians from the Diaspora community in Europe had assembled to demand the release of the man they still consider to be their President: Laurent Gbagbo. Once inside the Court Tower, from the *salles d'audience*, the pro-Gbagbo supporters overheard the court clerk read out the charges against Laurent Gbagbo and his protégé Charles Blé Goudé. Some of the spectators sizzled, others burst out in sardonic laughter. They rejoiced in faith and utter praises when Gbagbo and his alleged mouthpiece, spin-doctor and 'street general,' Charles Blé Goudé, pleaded not guilty. The tone was set.

In the modern social-media controlled world, international trials are streamed semi-live on the internet and the Ivorian audience is thus potentially much larger than those few who can actually make it to the Netherlands. Conscious of the highly politicized public discourse, controversies and conspiracy theories on the trial he is presiding over, the Italian Judge, Cuno Tarfusser, used the momentum of this important first trial day to

explain what he and his two colleagues were about: “This is a criminal trial. This is not a political demonstration.” Alluring to general expectations among Ivoirians that this trial will adjudicate who is the rightful winner of the 2010 Presidential elections in Côte d’Ivoire, Tarfusser sets the record straight: “This is not a game in which one side wants to win and the other side shall be defeated.” Instead, the blue-robed magistrate entrusted, “this is a trial dealing with two individuals who have been charged by the Office of The Prosecutor with a number of crimes. The task of this bench is to determine on the basis of the evidence adduced by the parties and participants for our assessment whether the charges are, indeed, well-established or not.” It seemed a simple task, but nothing is easy. Prosecuting (former) Presidents is delicate, tricky. It is a slippery slope.

Throughout his life, Laurent “Koudou” Gbagbo is a man of many faces: history professor, play writer, political prisoner, exile in France, fighter for democracy, even president. But now, after more than four years of pre-trial detention – which he spent on writing a book in Scheveningen prison – the 71-year-old Ivorian is a defendant before the international community. And perhaps, after a protracted trial that promised to hear over 138 prosecution witnesses, he will end his career as a convicted criminal against humanity. At 44, Goudé, a former university student, youth leader and Minister, awaits a similar scenario. That is, only if the ICC’s prosecutor, Fatou Bensouda, and her team prove ‘beyond any reasonable doubt’ the court’s most complexly framed indictment to date.

On first sight, the charges against Gbagbo seem clear-cut: four violent attacks against unarmed civilians in the country’s capital Abidjan between December 2010 and April 2011. Goudé is additionally charged with a fifth assault. In reality however, the Prosecutions’ underlying case theory cultivates such a deterministic narrative, that this trial is determined to be all about the political history of Côte d’Ivoire, an opportunity the defence has grasped by full force. So far, it is thus the best public platform, the politician-turned historian Gbagbo and the flamboyant orator Goudé could have wished for.

International trials are battle grounds, on various levels. Ego, eloquence and even machismo matter. And they often clash. It is all about controlling the strings. Goudé has mastered the art of persuasive charming, while Gbagbo is more like a puppet master. Back home, Gbagbo is known by his political nom de guerre, *le boulanger* (“the baker”) – a man who flours, kneads and moulds his opponents to his taste, before shoving them into the pre-heated oven. He often speaks in the third person

and seeks dominance through cultivating the position he believes was stolen from him by his political rival Alassane Ouattara. In accordance with “General Latin and particular Ivorian and French culture,” he has made his legal team still talk about him as “President,” to the evident chagrin of the victim’s lawyer Paolina Massidda who desired to “calm things down.” Judge Tarfusser, who works hard not to make this a ‘presidential case’, told Gbagbo’s French lawyer Emmanuel Altit that indeed “a title remains attached to its holder forever” but that in his courtroom “accused are all equal before the law” and “therefore, the Chamber requests that you no longer use this title.” In scaling back the status of the defendant to “Mr. Gbagbo,” Tarfusser reinforced the positions in the courtroom, in which of course he is the “Presiding Judge.” But as such, he and his two co-judges are bound to deliver the goods in what is now the ICC’s biggest trial since the court was established in July 2002.

So the pressure is on. But effectively nailing “those most responsible” for mass violence at the ICC is no sinecure. In evidence is the ICC’s recent track record. Last year, the crimes against humanity trial against Kenya’s President Uhuru Kenyatta derailed before it commenced. More recently, Tarfusser’s colleagues decided to relinquish the case against Kenyatta’s deputy, William Ruto, midway a boiled-down trial. The common problem: Prosecution witnesses who were to link Kenyatta to the 2007/8 ethnically tainted post-electoral violence had disappeared as snow before the sun or had recanted their versions of what happened. Will Gbagbo’s trial be different? We have to wait and see what evidence the prosecutors hold up their sleeves. So far though, after a few of months of proceedings and testimonies from a handful of victims, a former insider, an American Human Rights Watch Researcher and a British documentary maker, in many ways, *le boulanger’s* trial already resembles those other hard-to-prove ‘African’ leadership cases at erstwhile international tribunals. In the flagship leadership trials at the SCSL and ICTR against Charles Taylor or Théoneste Bagosora, prosecutors failed to substantiate historically framed charges that would shed light on long-standing criminal conspiracies to plunder Sierra Leone’s Diamonds and to commit genocide in Rwanda. The a-historical outcomes in these trials is partly because the smoking-gun-type-of-evidence that judges fancy is rarely available in these cases, in which the defendants themselves have no blood on their hands; the rest is circumstantial or anecdotal through witness testimony. So if you expect the truth – with a capital “T” – about what happened in Côte d’Ivoire and why – to expire from the Gbagbo trial, be prepared for disappointment and disillusionment.

Enter the Gbagbo trial. One day before the trial started in January 2016, Chief Prosecutor Fatou Bensouda told journalists “that the purpose of the trial [...] is to uncover the truth through purely a legal process [...], for the sake of doing justice for the victims; and to prevent mass atrocities recurring in the future.” On first notice her avowal was innocuous. But a vigilant reading of the prosecution’s case theory warrants caution since the Prosecution progresses a fragile historical narrative: “Upon assuming the Presidency of Côte d’Ivoire in October 2000, Gbagbo harboured the objective of retaining power by, inter alia, repressing or violently attacking those who challenged his authority. In the following years, knowing that a freely-contested presidential election was inevitable, Gbagbo and the Inner Circle jointly conceived and implemented a common plan to keep him in power by all means, including by committing the crimes charged (“Common Plan”). By 27 November 2010, the implementation of the Common Plan had developed to include a State or organisational policy aimed at a widespread and systematic attack against perceived Ouattara supporters.”

Informed by an unsophisticated general hypothesis on the workings of the African state, which even commences two years before the start of the ICC’s temporal jurisdiction from 1 July 2002, and armed with a pile of reports from human rights organizations, the allegations culminate in the core charge that from November 2010 “Gbagbo and members of the Inner Circle jointly planned, organised, coordinated, ordered, induced, authorised and allowed various measures to implement the Common Plan and the crimes charged. In pursuance of the Common Plan, pro-Gbagbo forces attacked, killed, injured, raped and persecuted hundreds of civilians.” Inadvertently, the exact criminal incidents that are retro-actively prosecuted were not only committed in the past, but also not in historical isolation. Moreover, they took place in the immediate context of the first presidential elections in a decade, rising nationalism (*Ivoirité*), a preceding civil war, prior political and ethnic animosity and anti-western – particularly French – sentiments. Arrested by this social, political and historical dimensions, in Bensouda’s quest for the truth, history does actually appear to feature more prominently in the trial than was probably necessary. Moreover, Laurent Gbagbo’s intent to commit crimes, writes Bensouda in the pre-trial brief, is partly demonstrated by “his historical repression of his political opposition.”

In Gbagbo’s view Bensouda may be a good professional prosecutor, but she remains an amateur historian. In February 2013, three years before his

trial started in earnest, Gbagbo, who holds a doctorate in history, told the pre-trial chamber of the ICC that he will therefore share with them his scholarly publications. “Madam President, my entire life, and this is a known fact not only back in Côte d’Ivoire but throughout Africa, and throughout France, throughout political France notably, I have been fighting for democracy. I asked my counsel only last week, and I said that I wanted to bring you all the books that I’ve written, and they said that it was too late to introduce these books, but once we have finished, whatever the result may be, whatever you decide, I will send a batch of books written by Gbagbo to the Office of the Prosecution, and I will send you also a batch of my books, because, well, that is the man that I am.”

His promise came after several days of hearings on the question if the four charges of crimes against humanity against him were confirmed. As in most international criminal proceedings, the arguments of the prosecution and defence had been aggressively confrontational and the narratives valorised – on what occurred in the five months after Côte d’Ivoire’s hotly contested elections in November 2010 that left an estimated 3000 civilians dead – diametrically competing. In his opinion, Bensouda and her team had distorted the facts and “constructed a mere caricature of the history of Côte d’Ivoire, which made it impossible for them to fully grasp the issues at stake or to understand the reality of the crisis in this country.” For Gbagbo the history professor, his criminal trial, as a defendant, is not only an arena in which he had to defend himself from criminal charges, but even more so, from the start he turned it into public lecture hall in which he set out to set the historical record straight.

Out-voiced by Gbagbo and Goudé’s oratorical finesse and sensible of the resonance their defence sparked among the many ‘pro-Gbagbo’ Ivoirians on the Public Gallery, the Prosecution, through Eric MacDonald, sought to temperate the role of history on the first trial day in January 2016: “I will now highlight some of the historical background and context that lead to the post-election violence. This context is not to establish the history of Ivory Coast. It is not the purpose of this trial. This context is relevant to describe the creation of the common plan and, more importantly, it shows evidence of Mr Gbagbo and Mr Blé Goudé’s intent and knowledge of past violence and how their methods in the past evolve over the years. It will serve also as pattern evidence, the “*passé du futur*,” the awareness of their actions.”

A minute later, however, MacDonald spiralled back to 1993, the year Côte d’Ivoire’s first president, Félix Houphouët-Boigny, passed away and

nationalistic, ethnic and xenophobic political discourse (*Ivoirité*) engulfed the political and social arena. From the moment Gbagbo became President in 2000, alleged the prosecutor, unfolded a: “pattern of repression of opposition with repeated allegations of crimes committed by pro-Gbagbo forces; a pattern of denial of these crimes by members of Mr Gbagbo's inner circle; a pattern of failure to hold anyone accountable for these crimes; a pattern of divisive identity-based politics and the use of speech by Blé Goudé and others to mobilize the youth and incite them to violence. You will see how these patterns are repeated in 2010.”

There is the red thread in the case: from the day Gbagbo was elected President in October 2000, Gbagbo – and his wife Simone – had always had an insatiably appetite for power. Once they were served the main dish (the Presidency), the couple was not about breaking bread at “any cost.” First he used the defence forces to quell demonstrations. But after a failed coup attempt in 2002, he employed militias, foreign mercenaries and “pro-Gbagbo youth”. Indeed, the civil war that plagued and divided Côte d’Ivoire in the early 2000s was extremely violent, included massacres and some observers say even bordered on genocide. In fact, the country had been on the first ICC Prosecutor’s (Luis Moreno Ocampo) radar in 2003 and it was Gbagbo himself who had accepted to court’s jurisdiction as a political manoeuvre to oust the rebels from the north, a move that backfired on him. Although prior violence is not charged, the prosecutor highlights them, as patterns, in order to show Gbagbo’s “intentionality” to commit crimes against humanity in the future as well as his awareness that these would be “committed in the ordinary course of events.” In the trial, MacDonald told the bench, “you will hear evidence about the crimes themselves from Ivoirian civilians, overview evidence on the historical and political origins of the crisis, expert evidence, and the evidence of many insider witnesses.” In what appeared an inevitable U-turn, the prosecution invoked historical patterns and even vowed to present evidence to substantiate history.

But from day one, the evidentiary proceedings have reached boiling points that render the trial nonsensical and even absurd, often leading to frustration among the judges. Already when hearing the first witness in the trial on 8 February, Tarfusser could not hide his annoyance about lawyers asking the same questions “three, four, five, ten times” or the witness being unable to estimate a distance, only to jokingly observe that “at this pace we finish this trial in 2050.” And he may even be right. While only hearing the sixth prosecution witness on 10 May, almost half an hour was spent on questioning him if he was boiling water in a kettle or if he was

washing himself with water at 9 am on a Friday morning, more than five years ago. For the defence.

If getting as close to truth as possible on even the most basic facts about peripheral events in 2011 already seems impossible, how then to deal with witness testimony that turns the trial into almost carnivalesque opera on the world’s larger question on history. After hearing harrowing detailed testimony from four Ivorian victims of the actual charged crimes, the prosecution called to the stand their fifth witness, Mohammed Sam Jichi, better known as ‘Sam l ‘Africain’. As a former ‘insider’ he was to corroborate crucial elements to the prosecution’s case theory. On the stand, however, the witness turned ‘hostile’ and changed the incriminating story he had told ICC investigators a year before and started to exonerate Gbagbo, drifting on saying that “When I see the history of President Gbagbo it reminds me a little of that of Jesus and Barnabas [...] It's history repeating itself [...] This is my analysis. This is what's happening to Gbagbo, Jesus and Barnabas.” Playing along the game, Gbagbo’s lawyer then staunchly asked “and who is Jesus?” only to wait for the Presiding judge to interrupt: “I think we're going a little bit too far with this questioning on the Holy Bible. We should come back a bit to the facts. Please.”

In trying to get closer to the facts that Tarfusser was fishing for, the Prosecution called one of their prime witnesses, former Human Rights Watch researcher Matt Wells, who was to testify on the reports he had authored immediately after the crisis. Yet, the contents of his reporting were hardly discussed and the hearings overshadowed by aggressive cross-examination by the defence on his investigative methodology. This line of questioning was continued when the trial chamber heard from Nigel Walker, a British documentary maker who made a film, *Shadow Work*, about the rise of Goudé’s youth movement in 2006, four years before the crimes charged occurred. Thus, four months into the ICC’s most important trial so far, the proceedings have been riddled with historical questions outside of the scope of the indictment but have not yet reached the heart of the matter: the individual criminal responsibility of Gbagbo and Goudé for the specific incidents charged.

SHORT ARTICLES

Achieving Peace with Justice in Colombia?

By Lily Rueda Guzman

In December 2015, the peace talks between the Government of Colombia and the Revolutionary Armed Forces of Colombia (FARC-EP), the oldest guerrilla group in the region, reached a milestone:

the parties agreed on the creation of a new comprehensive system to satisfy victims' rights to truth, justice, reparations and guarantees of non-repetition. If the parties arrive at a final agreement, a new comprehensive system of transitional justice comprising judicial and non-judicial mechanisms, such as the Tribunal for Peace and the Truth, Coexistence and Non-Repetition Commission, will be put in place.

The negotiators agreed that these new mechanisms will operate in a coordinated manner through a completely novel institutional and procedural framework. The arrangement is innovative and it follows the current understanding of transitional justice as a holistic and comprehensive set of mutually supportive measures. However, it also presents major challenges, particularly with respect to the accountability for and sanctioning of conflict-related crimes, including international crimes. In this commentary, I lay out the structure that would be put in place to punish grave crimes to point out what I consider to be its main challenges.

Accountability and punishment of conflict-related crimes turned out to be the most controversial chapter of the negotiations. The Special Jurisdiction for Peace (SJP), which will not be part of the existing judicial system in Colombia, will be created and it will operate under five general principles. First, amnesties and pardons will be granted for political crimes, including the act of rebellion and acts of killing of combatants during the conflict, thereby recognizing the political agency of the FARC-EP insurgency. These acts will therefore be exempted from any criminal accountability and sanctions.

Second, those crimes that cannot legally be amnestied shall be investigated and punished. These offenses comprise international crimes as defined by the Rome Statute of the International Criminal Court (ICC), namely genocide, crimes against humanity and "grave war crimes". Third, with respect to these crimes a special set of reduced, alternative sanctions with a strong restorative dimension will be available for perpetrators who acknowledge their responsibility. Under this scheme, sanctions will actually operate as incentives but also as threats. On the one hand, sanctions will operate as incentives. Perpetrators, who participate in the system and acknowledge their responsibility for the crimes, will be offered non-traditional, reduced sentences between 5 to 8 years and will not be subjected to imprisonment. The envisaged sanctions include for instance participation in community projects for the reparation of victims and territories affected by the conflict. The reduced sanctions are thus of a reparatory nature. They will be implemented by

means of a regime of "effective restriction of liberty". In contrast to imprisonment, the "effective restriction of liberty" consists of a limitation of the rights of free movement and residency, which will be subject to authorization and supervision.

On the other hand, sanctions operate as threats for those alleged perpetrators not willing to confess the truth and to admit their responsibility. In these cases, adversarial proceedings before the Tribunal for Peace will be initiated. If found guilty, perpetrators will face imprisonment from fifteen to twenty years. Even in such case, however, a defendant will be given a chance to change his/her mind and belatedly confess and acknowledge responsibility. If he/she does so, he/she will also be treated with clemency and subjected to imprisonment ranging from 5 to 8 years. In order to put the severity of envisaged sanctions in context, it is enough to state that under the Colombian Criminal Code, conducts amounting to international crimes, are subjected to possible imprisonment of up to 60 years. Therefore, the envisaged accountability mechanism provides for highly mitigated sentences for the most serious crimes with the aim to promote among others acknowledgement of responsibility, uncovering the truth and reconstructing the country.

Fourth, this jurisdiction will be able to prosecute and sanction state agents, guerrilla members and third parties that –directly or indirectly- committed or participated in the commission of international crimes. However, given the large scale character of international crimes committed during more than 50-year conflict in Colombia, it will specifically target those considered to be the most responsible, instead of every single person with a possible involvement in the commission of the offenses.

Finally, participation in this accountability scheme is conditional. In order to receive and be able to complete the reduced or reparatory sanctions, it will be necessary to comply with obligations related to truth, reparation and non-repetition that will be set up when all the components of the system are functioning.

Arguably the whole system is designed to alter the perpetrators' costs-benefit calculations in order for them to realise that they have more to gain by entering and fulfilling the judicial process than by avoiding it. For some, including the U.S. President Obama, this is a new model for achieving peace while delivering justice. Yet, for others, such as former Colombian president Alvaro Uribe and Amnesty International, the system will result in impunity. When seen in its context, as the compromise achieved during a peace negotiation with a guerrilla group that has not been defeated,

this arrangement is a little bit of both. On the one hand, it was tailored for particularities and political and practical necessities of the Colombian context. On the other hand, this arrangement includes a form of accountability and punishment, but not the usual one guided by mainly retributive purposes.

More interestingly, and beyond the so-called justice vs. peace dilemma, this justice arrangement faces particular challenges when considered as a mechanism for doing justice for international crimes. In the first place, Colombia is obliged under international human rights law to provide for effective remedies to victims of human rights violations, including the duty not to relieve perpetrators of individual responsibility by means of amnesties and any other procedural impediments. According to international criminal law, the state is obliged to prosecute and punish crimes of genocide, apartheid, torture and in general, acts amounting to international crimes. The extent to which reparatory or non-traditional punishment in conjunction with effective restriction of liberty, as designed in Colombia, could satisfy international standards is a question that remains unanswered. In the Colombian context, a possible intervention of the ICC, after ten years of preliminary examinations, plays a prominent political role and it is a factor of potential destabilization. The Rome Statute does not provide guidance on the role of sanctions in the principle of complementarity, which currently governs the relationship between the ICC and the Colombian state. It is silent when it comes to the extent to which the context of a peace negotiation is a suitable justification to not apply deprivation of liberty. Thus, it is not entirely clear whether this creative and non-traditional design will lead to the ICC assessment that Colombia is “unwilling” to genuinely prosecute and sanction international crimes.

In addition, and regardless of the strictly legal analysis, this an ambitious and complex transitional justice mechanism that will during its implementation almost unavoidably face the challenge of being effective and expeditious, all while maintaining its internal logic of operation. The available statistics reveal the grave nature and large scale of conflict-related crimes committed during the sixty years of war in Colombia. As of June 2016, the Unit for Victims’ Reparation counts 8,040,748 officially-registered victims. The Office of the Prosecutor General estimates that at least 10,000 persons that are potentially responsible for 100,000 instances of different crimes will be eligible to participate and benefit from this special judicial regime. Putting aside the human and economic resources this system will require, it will also need to follow a judicial strategy and operative

approach in order to deliver meaningful results within a reasonable timeframe. The Jurisdiction for Peace will also need to work in coordination with the other non-judicial mechanisms, such as the Truth Commission, considering that access to the judicial benefits is conditioned to participation in truth and reparations acts.

Furthermore, at the commencement of the negotiation on how to satisfy victims’ rights, both parties presented what they called a declaration of principles, which enunciate the idea that victims are at the core of the peace process. However, so far, and following the current design, there are only two provisions for victims’ participation: (i) in cases of adversarial proceedings in scenarios of prioritization and selection of cases and (ii) at the stage of sentencing, when judgements affect victims’ fundamental rights. As currently designed, victims have no concrete and explicit means to present their views and to challenge any judicial decisions or the way in which perpetrators recognize their responsibility or justify their actions.

An adequate, serious and transparent operation of the Jurisdiction for Peace could lead to vindication of decades of mistreatment to victims and to construct trustworthiness in the judiciary. Additionally, given their special nature, sanctions have a significant potential of repairing the harm caused by politically motivated violence. However, the imposition of sanctions that could satisfy not only international standards but also national calls for justice will remain a challenge. Delivering the vital message that the commission of international crimes is blameworthy is one that is crucial to avoid repetition of violence or acts of private vengeance. The justice mechanism in a future peace agreement in Colombia faces the major challenge of doing so without making imprisonment front and centre of its design.

A LETTER FROM SOUTH SUDAN

By James Nyawo

A Fragile Peace in South Sudan - Condemned to Repeat

Many welcomed the secession of South Sudan from Sudan in 2011, almost exactly five years ago. The African Union and the United Nations General Assembly acted swiftly to recognise and accept South Sudan’s membership, which effectively cemented its legal status as a sovereign state under international law. There were high hopes that the new state would be prosperous, tapping from the global good will and the existing human and natural resources. There was a promise for forgiveness and reconciliation, as a channel of building the new

nation of South Sudan. It is however becoming increasingly clear that the dream of a vibrant South Sudan capable of protecting its own citizens, respecting rule of law and willing to embrace its ethnic diversity is rapidly fading and turning South Sudan into yet another old African nightmare of state failure, akin to Eritrea and Somalia.

The brutal civil war that broke out in South Sudan in 2013 points towards a state that is likely to tear itself apart unless decisive action is taken either by its own leadership, by neighbouring countries, the African Union or the United Nations. A peace deal which resulted from the negotiations organised by the Intergovernmental Authority and Development (IGAD) and supported by the African Union was signed a year ago in August 2015 and has led to some relative calm although current signs suggest that it could collapse, plunging South Sudan back into another civil war. There is a risk of a repetition of Rwanda's experience where, after the signing of the Arusha Accords, the international community kept hoping that the peace would hold, even when there was clear evidence that the parties to the Accord lacked mutual trust and might not have even been sincere from the beginning. In South Sudan, just like Rwanda, the peace deal led to the formation of Transitional Government of National Unity of the Republic of South Sudan, composed of the warring parties – the Government of the Republic of South Sudan and The South Sudan Armed Opposition, Former Detainees. The Transitional Government has a life span of 30 months (two years and six months) starting from the signing of the agreement in August 2015. This means one year has already lapsed yet there has been no concrete establishment of some key transitional institutions provided for in the agreement.

The Transitional Government has, among other responsibilities, the mandate under Chapter V to establish three transitional justice institutions, namely The Commission for Truth, Reconciliation and Healing (CTR), the Hybrid Court for South Sudan (HCSS) and the Compensation and Reparation Authority (CRA). The peacemakers made sure that amnesty was excluded from the peace agreement. If Transitional Justice institutions are to be established and made to function efficiently and independently of power influence, then South Sudan could stand out as a model upon which the African Union could develop its Regional Transitional Justice Mechanism Framework. The concern however is that although the peace agreement reflects an emerging African blueprint towards conflict resolution, centred on power sharing and a desire for some form of accountability for atrocity crimes, there are no clearly identified benchmarks to measure progress

towards the implementation of the peace agreement. The fighting that broke out in Wau State in June 2016 followed by the fighting between the bodyguards of President Salva Kiir and his Vice President Riek Machar, just before the 5th anniversary of South Sudan's independence are signs that the situation in South Sudan cannot be wished away and more needs to be done to ensure that the peace agreement is fully implemented.

The future of South Sudan could be and should be better, that is if the implementation of the current peace agreement is taken seriously and its violation is met with strong consequences at regional and international level. There should be flexibility and readiness to extend the lifespan of the Transitional Government, as it seems to be unrealistic to imagine that in the next one and a half years, South Sudan will be ready for general elections. Instead of putting emphasis on timelines perhaps focus should be on benchmarks. The idea of establishing a Hybrid Court, which is currently being floated around by the African Union with the support of the European Union is ill timed and could wait. At the moment South Sudan needs more serious responses to its challenges including a formula for effective disarmament of many non-state armed actors. At the moment the establishment of a hybrid court seems to be proposed as a substitute for serious responses to South Sudan's challenges.

The risk is that the African Union and the International Community will remain complacent and witness a repetition of the events that happened between the signing of the Arusha Accords and genocide in Rwanda in 1994. It appears that the African Union's, world powers' and the media's attention has shifted elsewhere and the plight of South Sudanese women and children who continue to bear the brunt of the conflict in South Sudan is not getting enough coverage and attention. The US elections; the EU referendum for Brexit and the subsequent search for a new Prime Minister in the UK; the Black Lives Matter campaign in the US; the visit of Prime Minister Benjamin Netanyahu to East Africa all continue to overshadow the events in South Sudan.

A LETTER FROM ... IRAQ

By Kjell Anderson³

Fact-Finding on Mass Atrocities and the Persecution of Minorities in northern Iraq.

In January I travelled to northern Iraq, with two other scholars, and fellow board members from the International Association of Genocide Scholars

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(IAGS), Elisa von Joeden-Forgey (Stockton University) and Irene Massimino (University of Buenos Aires). Our goal was simple: to learn more about the situation in northern Iraq through doing some basic, preliminary fact-finding on atrocities against the Christian, Shi'a, and Êzidî minorities by the Islamic State. We visited sites of violence, such as mass graves and destroyed cities, as well as speaking with twenty survivors of the recent violence.

It was a trip unlike any other. I've spoken with victims of violence before but the immediacy of the violence in Iraq was different. One of the Êzidî women I interviewed was released from captivity, as a sex slave, only two weeks before I spoke with her.

I found something of the victims' reality of genocide in the hands of an old man in Iraq. He sits, tense in a shipping container within a refugee camp outside Erbil. There is an unopened Barbie doll taped to the wall, awaiting the return of his daughter, a three-year-old girl abducted by the Islamic State. There are prayers scrawled on the wall, his hands work his rosary, his sorrow is brittle, palpable.

Days later I am standing atop Mount Sinjar. A panorama of violence. In the foreground the slope is littered with strewn clothing, personal effects, and rusted trucks, left behind in a desperate flight from the murderous intent of the Islamic State, a world to which the Êzidî do not belong.

Past this dumping ground the ruins of the city itself are visible – nothing but rubble and dust, not a building left standing. Beyond the ruined city, a town burns, cobalt blue sky punctuated by streaming black smoke. It is just across the 'border' in the Islamic State. A distant rumble, the bombs fall.

We avoided the lines of ISIS control, sometimes coming within only a km of the frontline. In the area near Sinjar the frontline was a very visible line – an earthen wall with fortifications every 500m (some of which had mannequins as decoys, in place of real soldiers).

There is a certain continuity to the violence we see today in Iraq – it is embedded in long term processes of marginalisation and exclusion. But the violence is also a moment of rupture. For many Iraqis it represents an end to the life that they know.

I spoke with a Christian family in the ancient St. Matthews Monastery tucked into a hillside near Mosul. When ISIS took Mosul in 2014 they gave Christians a 48 hour ultimatum via the radio. You

have three options: convert, pay jiziyah, or "face the sword."

This was the third time they had fled Mosul. They had been cursed and called names in the street during past episodes of Islamic extremist violence. But this time was different. They did not trust ISIS and so they left for the sanctuary of the monastery.

For many of the people I spoke with, victims of the Islamic State, it was moments of betrayal that hurt the most. How could their neighbours do these things to them? The Orthodox Archbishop of Mosul's voice broke as he recounted to us "my neighbour broke my cross. And I had helped him so many times!"

With victims of genocide elsewhere it seems much the same. A survivor of the Rwandan genocide told me: "I wonder how people, who I remember used to share things...how could people like that kill each other?"

Our lives, our sense of safety, is built on faith in the kindness of others. Where this faith is fundamentally challenged it's difficult to know how to move on, how to survive. What to expect. The Ezidi, Shia, and Christians feel completely abandoned by the international community. That much is clear. But there is also a deep distrust of the Iraqi state, the Kurdish regional government, and perhaps authority more broadly. Victims are not filing criminal complaints because they do not feel they would be taken seriously.

The state is distrusted out of experience. Going back decades the Iraqi state has been a kleptocracy where citizenship comes with few real entitlements but exposes you to the capricious exercise of state power.

As a marginalized group Êzidî identity has been forged, in part, through their historical experience of persecution. Their oral tradition holds that the current violence is the 74th Ferman (massacre or genocide) which the Êzidî have suffered.

The sense of abandonment and desperation of the victims was manifest. Three confused academics had become proxy for the entire international community; an Êzidî student even asked me if I could intercede on their behalf with the Security Council. There are many mass graves in the area of Sinjar, they are completely unprotected and little, if any, forensic work has been done. This absence of the international community may be for safety reasons – we heard the crackle of gunfire at one grave, other graves are mined. The graves are hastily dug with bodies, in some cases, rising back to the surface from rainfall.

The current violence is characterized by a systematic policy aimed at the destruction of Yazidi collective existence through massacres, ethnic cleansing, sexual violence, and mass enslavement.

I interviewed several of these former slaves, I will briefly tell you the story of one. She was moved to Syria in a meat (cooler) truck, taken to a secret police prison (formerly run by Assad), and kept in a cell underground. She was eventually sold in slave market. In the market 4 or 5 women a night were paraded around men sitting in chairs. "It was like a fashion show," she said. "The men tapped their foot when they wanted to buy that one". They were forced to memorize Koranic verses to the point where her daughter, forcibly converted, told her "if you are going to continue to pray to the peacock angel I'm going to leave."

Returning to Amsterdam was strange. Only a few hours on a plane brought me from that world to this. My trip had made me angry, frustrated, impatient, and, most of all, disoriented. I had seen what the refugees were fleeing from. A people surviving on the knife's edge.

And yet genocide continues, the victims remain profoundly alone, exiled from their own community, largely ignored by the global community. I will end this article with the voice of a victim, an Êzidi monk. I asked him what it's like living through genocide. He sighs and answers, "we are like a block of ice...melting away."

BOOK REVIEW

Andrew Novak. *African Challenge to Global Death Penalty Abolition. International Human Rights Norms in Local Perspective*. Intersentia 2016.

By Aimé Muyoboके Karimunda⁴

Today, it is strongly voiced that the death penalty was introduced in Africa as part of foreign law for the purpose of colonial domination. At independence, oppressive regimes resorted to similar techniques as the colonizer to maintain the people obedient and silent. Moreover, Sub Sahara retentionist countries consider that the death penalty is enrooted in the African tradition. Its abolition is perceived as un-African and an attempt by imperialist states to impose their views on independent countries 'to override their sovereign rights to fashion their justice system according to

their own judgment of the needs and culture of their country'.

Professor Andrew Novak's study is built on this contradiction in the African narrative on the death penalty. Establishing to which extent pre-colonial law was or was not imbued with the death penalty in Africa is a difficult exercise for most lawyers and penologists. Most available materials are from European amateurs, anthropologists and historians of the colonial period. Having succeeded to dig into African customary law and establish where the death penalty existed and where it was excluded and on which grounds pre-colonial law excluded the death penalty is the great merit of this book. The author eloquently and objectively discusses the existence of pre-colonial criminal law in comparison to European *ius communes*. He concludes to the existence of African traditional criminal law, which had developed more regular and individualized systems of punishments.

The richness of the book is also the easiness with which the author swims in different colonial systems to establish to which extent the death penalty was used as political instrument by colonial masters. His exposé on the use of the death penalty by the French in Algeria, Gabon and Niger and by Belgians in the Congo proves that, though American, he was committed to go beyond his linguistic barrier that was one of his greatest obstacle in writing the book. He demonstrates that the indirect rule policy professed by the British ruler in his territories had nothing indirect in criminal matters. In fact, the importation of European law is adequately discussed to the benefit of anyone intending to learn or lecture comparative law in Africa.

Another important finding is the correlation the book establishes between the advancement of the rule of law in Sub Sahara Africa and the progress of the abolitionist movement. The author argues that "in the past two decades, African Government have become more democratic, better organized, and less economically predatory, and they possess greater capacity to respond to serious challenges, including crime." This assertion confirms the thesis that the eagerness with which independent countries legislated or simply continued the pre-existing colonial regime on the death penalty law was a signal of its politicization.

The book's main thesis is that the global death penalty abolition bears a strong European imprint. Abolition is part of the European integration project and has become part of the European conscience and identity. On this subject the author concludes that the global human rights agenda including the abolition of the death penalty is driven by European

⁴ Supreme Court Judge of the Republic of Rwanda; Guest Senior Lecturer, School of Law, University of Rwanda.

governments, to insinuate that abolition of the death penalty in Africa was, to a certain extent, a response to the European lobby or pressure. However, the author aptly demonstrates that Africa Sub Sahara's Judges have also become active contributors to the global body of human rights norms. Courts in South Africa, Zimbabwe, Uganda, Tanzania and Kenya have heavily relied on global jurisprudence to decry the limits of the death penalty in their respective penal systems. African courts are now part of a global conversation that is actively shaping international law. Moreover, African states have refused to continue being the marionette of their former colonial masters. Most abolitionist countries have politically justified the abolition of the death penalty on the grounds that the penalty was inconsistent with the vision the new leadership was adopting. This is the case for most de jure abolitionist countries in Africa. This in itself universalizes the abolition of the death penalty.

The country study that the author adopts gives to his book a unique feature. It is so far the first book that deeply undertakes a country study over eight countries by discussing death penalty policies from pre-colonial period up to modern days. Botswana, Ghana Kenya, Lesotho, Swaziland, The Gambia, Uganda and Zimbabwe that are studied in this book are all former British colonies and most of them are actively retentionists. Being all former British colonies is not a unifying criterion however. Colonial law was imported on different time and in different ways. It was superposed on customary laws whose conception of justice varied depending on the concerned tribe. The author goes further to establish the difference between criminal policies in civil law countries and common law countries in Africa. Except in Chad and Cameroun where the death penalty was recently extended to terrorism activities, former French and Belgian colonies appear to be more liberal.

Though Novak's book followed a chronological approach, the book does not clearly indicate which methods he relied on to reach his findings. There are repetitions that could have been avoided by grouping some chapters. Some general findings are also found in a specific country study whereas they apply to all studied countries. For instance, the comments on the International Covenant on Civil and Political Rights that fall under the chapter on The Gambia would better fit in a chapeau to all studied countries. The study is missing also crucial conclusions and recommendations in some of its chapters. The author should have discussed the effect of making The Gambia an Islamic state in modern times, the rationale behind the judicial decision of not following the ruling in the Makwanyane case in Botswana while the country's

legal system is built on the South African Roman Dutch law plinth.

These few weakness don't alter the quality of the book however. Professor Novak proves that Africa stands as a reference for other continents where the death penalty still lingers. Progressive attitudes towards the abolition of the death penalty are rooted in customary law and in modern concepts of human rights.

SELECTED NEW PUBLICATIONS

The editors selected some books which they think you might want to read. If you have any suggestions, please send this to roelof.haveman@gmail.com

Brammertz, Serge & Michelle Jarvis (eds). Prosecuting Conflict-Related Sexual Violence at the ICTY. Oxford University Press 2016

Although sexual violence directed at both females and males is a reality in many on-going conflicts throughout the world today, accountability for the perpetrators of such violence remains the exception rather than the rule. While awareness of the problem is growing, more effective approaches are urgently needed for the investigation and prosecution of conflict-related sexual violence crimes. Upon its establishment in 1993, the Office of the Prosecutor (OTP) of the International Criminal Tribunal for the Former Yugoslavia (ICTY) began the challenging task of prosecuting the perpetrators of conflict-related sexual violence crimes, alongside the many other atrocities committed during the conflicts in the former Yugoslavia.

This book documents the experiences, achievements, challenges, and fundamental insights of the OTP in prosecuting conflict-related sexual violence crimes at the ICTY over the past two decades. It draws on an extensive dossier of OTP documentation, court filings, trial exhibits, testimony, ICTY judgements, and other materials, as well as interviews with current and former OTP staff members. The authors provide a unique analytical perspective on the obstacles faced in prioritizing, investigating, and prosecuting conflict-related sexual violence crimes. While ICTY has made great strides in developing international criminal law in this area, this volume exposes the pressing need for determined and increasingly sophisticated strategies in order to overcome the ongoing obstacles in prosecuting conflict-related sexual violence crimes. The book presents concrete

recommendations to inform future work being done at the national and international levels, including that of the ICC, international investigation commissions, and countries developing transitional justice processes. It provides an essential resource for investigators and criminal lawyers, human rights fact-finders, policy makers, rule of law experts, and academics.

Due-Gundersen, Nicolai. *The Privatization of Warfare and Inherently Governmental Functions*. Intersentia 2016.

Since the 2003 U.S. led invasion of Iraq, the private military sector has seen the largest growth of profit for decades. As Iraq continues to be the focal point of private military clients, staff and related actors, the recurring issue of legitimacy must be addressed. While many texts focus only on existing or proposed legislation, this book analyses the public perception of private military companies (PMCs) and, of wider significance, how their use by states affects how the general public perceives state legitimacy of monopolizing force. Furthermore, this book provides a timely overview of how the energy sector and PMCs are challenging the established sovereignty of politically fragmented oil states, illustrating how energy firms may become as culpable as states in their partnerships with the private military sector and subsequent political ramifications.

De Guttry, Andrea, Francesca Capone & Christophe Paulussen (eds). *Foreign Fighters under International Law and Beyond*. Asser Press 2016.

This book offers various perspectives, with an international legal focus, on an important and underexplored topic, which has recently gained momentum: the issue of foreign fighters. It provides an overview of challenges, pays considerable attention to the status of foreign fighters, and addresses numerous approaches, both at the supranational and national level, on how to tackle this problem. Outstanding experts in the field – lawyers, historians and political scientists – contributed to the present volume, providing the reader with a multitude of views concerning this multifaceted phenomenon. Particular attention is paid to its implications in light of the armed conflicts currently taking place in Syria and Iraq.

Kelly, Michael J. *Prosecuting Corporations for Genocide*. Oxford University Press 2016.

Modern corporations are key participants in the new globalized economy. As such, they have been accorded tremendous latitude and granted extensive rights. However, accompanying obligations have

not been similarly forthcoming. Chief among them is the obligation not to commit atrocities or human rights abuses in the pursuit of profit.

Multinational corporations are increasingly complicit in genocides that occur in the developing world. While they benefit enormously from the crime, they are immune from prosecution at the international level. Prosecuting Corporations for Genocide proposes new legal pathways to ensure such companies are held criminally liable for their conduct by creating a framework for international criminal jurisdiction. If a state or a person commits genocide, they are punished, and international law demands such. Nevertheless, corporate actors have successfully avoided this through an array of legal arguments which Professor Kelly challenges. He demonstrates how international criminal jurisdiction should be extended over corporations for complicity in genocide and makes the case that it should be done promptly.

Meisenberg, S.M. & I. Stegmiller. *The extraordinary chambers in the courts of Cambodia*, Asser Press 2016.

The first, and so far the only, comprehensive study on the Extraordinary Chambers in the Courts of Cambodia (ECCC) Contains detailed analysis of the work and functioning of a United Nations assisted court system. Presents important developments on International Criminal Law, Human Rights, International Criminal Procedure and International Relations.

Merry, S.A.. *The seductions of quantification – measuring human rights, gender violence and sex trafficking*, University of Chicago Press 2016

We live in a world where seemingly everything can be measured. We rely on indicators to translate social phenomena into simple, quantified terms, which in turn can be used to guide individuals, organizations, and governments in establishing policy. Yet counting things requires finding a way to make them comparable. And in the process of translating the confusion of social life into neat categories, we inevitably strip it of context and meaning – and risk hiding or distorting as much as we reveal.

With *The Seductions of Quantification*, leading legal anthropologist Sally Engle Merry investigates the techniques by which information is gathered and analysed in the production of global indicators on human rights, gender violence, and sex trafficking. Although such numbers convey an aura of objective truth and scientific validity, Merry argues persuasively that measurement systems constitute a form of power by incorporating

theories about social change in their design but rarely explicitly acknowledging them. For instance, the US State Department's Trafficking in Persons Report, which ranks countries in terms of their compliance with anti-trafficking activities, assumes that prosecuting traffickers as criminals is an effective corrective strategy—overlooking cultures where women and children are frequently sold by their own families. As Merry shows, indicators are indeed seductive in their promise of providing concrete knowledge about how the world works, but they are implemented most successfully when paired with context-rich qualitative accounts grounded in local knowledge.

Moerland, Ronald. The killing of death. Denying the genocide against the Tutsi. Intersentia 2016.

This study deals with the phenomenon of genocide denialism, and in particular how it operates in the context of the genocide against the Tutsi. The term genocide denialism denotes that we are not dealing with a single act or type of (genocide) denial but with a more elaborate process of denial that involves a variety of denialist and denial-like acts that are part of the process of genocide. From this study it becomes clear that the process of genocide thrives on a more elaborate denial dynamic than recognized in expert literature until now.

This study consists of three parts. The first theoretical part analyses what the elements of denial and genocide entail and how they are (inter)related. The exploration results in a typology of genocide denialism. This model clarifies the different functions denial performs throughout the process of genocide. It furthermore explains how actors engage in denial and on which rhetorical devices speech acts of denial rely.

The second part of the study focuses on denial in practice and it analyses how denial operates in the particular case of the genocide against the Tutsi. The analysis reveals a complex denial dynamic: not only those who perpetrated the genocide are involved in its denial, but also certain Western scholars, journalists, lawyers, etc. The latter were originally not involved in the genocide but recycle (elements of) the denial discourse of the perpetrators. The study addresses the implications of such recycling and discusses whether these actors actually have become involved in the genocidal process. This sheds light on the complex relationship between genocide and denial.

The insights gained throughout the first two parts of this study have significant implications for many other actors that through their actions engage with the flow of meaning concerning the specific events in Rwanda or genocide in general. The final part of

this study critically reflects on the actions of a variety of actors and their significance in terms of genocide denialism. These actors include scholars from various fields, human rights organisations, the ICTR, and the government of Rwanda. On a more fundamental level this study critically highlights how the revisionist scientific climate, in which knowledge and truth claims are constantly questioned, is favourable to genocide denialism and how the post-modern turn in academia has exacerbated this climate.

Ultimately, this study reveals that the phenomenon of genocide denial involves more than perpetrators denying their genocidal crimes and the scope of actors and actions relevant in terms of genocide denialism is much broader than generally assumed.

Mulgrew R., Abels D. (eds). Research Handbook on the International Penal System. Edward Elgar Publishing 2016.

Drawing on the expertise and experience of contributors from a wide range of academic, professional and judicial backgrounds, the Research Handbook on the International Penal System critically analyses the laws, policies and practices that govern detention, punishment and the enforcement of sentences in the international criminal justice context. It examines the operation of the international penal system, covering pertinent issues such as non-custodial sanctions, monitoring of conditions of detention, the protection of prisoners under international law, the transfer of prisoners or their rehabilitation. These aspects are presented in a logical order, linking up with the chronological sequence of the international criminal justice process.

This Handbook also explores broader normative questions related to contemporary human rights law, transitional and restorative justice and victim redress, before exploring contemporary and alternative mechanisms for punishing and overseeing punishment, and possible avenues for development.

Nylund, Bo Viktor. Child Soldiers and Transitional Justice. Intersentia 2016.

In a political climate that holds limited promise for addressing the issue of child recruitment, *Child Soldiers and Transitional Justice: Protecting the Rights of Children Involved in Armed Conflicts* challenges the trend towards a narrow focus on recruitment and use of the child, and seeks to contribute to more effective prevention and responses that offer the child a chance of recovery, reconciliation and reintegration.

This book adapts existing theoretical frameworks of transitional justice in order to analyse child recruitment, with a view to demonstrating how a society can address the issue in a holistic way. It systematises relevant knowledge across a wide range of legal fields to allow for greater understanding of the law and principles, and a more informed basis for practical engagement with transitional justice mechanisms.

Delving deep into the travaux préparatoires of each of the fundamental legal instruments, the author analyses their evolution, spanning humanitarian law, human rights law, criminal law, and other aspects of public law, including peace agreements and action plans developed with armed groups and forces. He provides a particular focus on an in-depth analysis of the Lubanga case, and its implications for other components of transitional justice. The findings highlight arguments for placing child recruitment firmly on the transitional justice agenda.

By considering child recruitment against a transitional justice framework, the book allows a detailed understanding of the distinct but complementary components – rule of law, criminal justice, historical justice, reparatory justice, institutional justice, and participatory justice – and reveals the untapped potential in interactions between different areas of transitional justice.

Rafter, N. The crime of all crimes – toward a criminology of genocide, New York University Press 2016.

Cambodia. Rwanda. Armenia. Nazi Germany. History remembers these places as the sites of unspeakable crimes against humanity, and indisputably, of genocide. Yet, throughout the twentieth century, the world has seen many instances of violence committed by states against certain groups within their borders – from the colonial ethnic cleansing the Germans committed against the Herero tribe in Africa, to the Katyn Forest Massacre, in which the Soviets shot over 20,000 Poles, to anti-communist mass murders in 1960s Indonesia. Are mass crimes against humanity like these still genocide? And how can an understanding of crime and criminals shed new light on how genocide – the “crime of all crimes” – transpires?

In *The Crime of All Crimes*, criminologist Nicole Rafter takes an innovative approach to the study of genocide by comparing eight diverse genocides – large-scale and small; well-known and obscure – through the lens of criminal behaviour. Rafter explores different models of genocidal activity, reflecting on the popular use of the Holocaust as a

model for genocide and ways in which other genocides conform to different patterns. For instance, Rafter questions the assumption that only ethnic groups are targeted for genocidal “cleansing”, and she also urges that actions such as genocidal rape be considered alongside traditional instances of genocidal violence. Further, by examining the causes of genocide on different levels, Rafter is able to construct profiles of typical victims and perpetrators and discuss means of preventing genocide, in addition to delving into the social psychology of genocidal behaviour and the ways in which genocides are brought to an end. A sweeping and innovative investigation into the most tragic of events in the modern world, *The Crime of All Crimes* will fundamentally change how we think about genocide in the present day.

Rieff, David. In Praise of Forgetting, Historical Memory and Its Ironies. Yale University Press 2016.

The conventional wisdom about historical memory is summed up in George Santayana’s celebrated phrase, “Those who cannot remember the past are condemned to repeat it.” Today, the consensus that it is moral to remember, immoral to forget, is nearly absolute. And yet is this right?

David Rieff, insists that things are not so simple. He poses hard questions about whether remembrance ever truly has, or indeed ever could, “inoculate” the present against repeating the crimes of the past. He argues that rubbing raw historical wounds – whether self-inflicted or imposed by outside forces – neither remedies injustice nor confers reconciliation. If he is right, then historical memory is not a moral imperative but rather a moral option – sometimes called for, sometimes not. Collective remembrance can be toxic. Sometimes, Rieff concludes, it may be more moral to forget.

Ranging widely across some of the defining conflicts of modern times – the Irish Troubles and the Easter Uprising of 1916, the white settlement of Australia, the American Civil War, the Balkan wars, the Holocaust, and 9/11 – Rieff presents a pellucid examination of the uses and abuses of historical memory. His essay is an indispensable work of moral philosophy.

Rothe, Dawn L. & David Kauzlarich. Crimes of the Powerful. Routledge 2016.

As politicians and the media perpetuate the stereotype of the “common criminal,” crimes committed by the powerful remain for the most part invisible, or are reframed as a “bad decision” or a “rare mistake.” This is a topic that remains

marginalized within the field of criminology and criminal justice, yet crimes of the powerful cause more harm, perpetuate more inequalities, and result in more victimization than street crimes.

Crimes of the Powerful: An introduction is the first textbook to bring together and show the symbiotic relationships between the related fields of state crime, white-collar crime, corporate crime, financial crime, organized crime, and environmental crime. Dawn L. Rothe and David Kauzlarich introduce the many types of crimes, methodological issues associated with research, theoretical relevance, and issues surrounding regulations and social controls for crimes of the powerful. Themes covered include:

- media, culture, and the Hollywoodization of crimes of the powerful;
- theoretical understanding and the study of the crimes of the powerful;
- a typology of crimes of the powerful with examples and case studies;
- victims of the crimes of the powerful;
- the regulation and resistance of elite crime.

Schabas, William A. (ed.). The Cambridge Companion to International Criminal Law. Cambridge Univ. Press 2016.

Contents include:

- William A. Schabas, Introduction
- Andrew Clapham, Human rights and international criminal law
- Lawrence Douglas, Truth and justice in atrocity trials
- Stephan Parmentier, Transitional justice
- Mark Drumbl, Punishment and sentencing
- Alfred de Zayas, Peace
- Göran Sluiter, Ad hoc international criminal tribunals (Yugoslavia, Rwanda, Sierra Leone)
- Leila Sadat, The International Criminal Court
- Fannie Lafontaine, National jurisdictions
- David Scheffer, The United Nations Security Council and international criminal justice
- William A. Schabas, Atrocity crimes
- Roger S. Clark, Treaty crimes
- Benjamin B. Ferencz & Donald M. Ferencz, Criminalising the illegal use of force
- Diane Marie Amann, Children
- Kai Ambos, Adolf Eichmann
- Michael Scharf, Slobodan Milošević
- Cherner Jalloh, Charles Taylor
- Hans-Peter Kaul, The International Criminal Court of the future
- M. Cherif Bassiouni, Challenges to international criminal justice and international criminal law

Üngör, Ugur (ed.). Genocide. New Perspectives on its Causes, Courses and Consequences. Amsterdam University Press, 2016.

The twentieth century has been called, not inaccurately, a century of genocide. And the beginning of the twenty-first century has seen little change, with genocidal violence in Darfur, Congo, Sri Lanka, and Syria. Why is genocide so widespread, and so difficult to stop, across societies that differ so much culturally, technologically, and politically?

That's the question that this collection addresses, gathering a stellar roster of contributors to offer a range of perspectives from different disciplines to attempt to understand the pervasiveness of genocidal violence. Challenging outdated beliefs and conventions that continue to influence our understanding, Genocide constitutes a major contribution to the scholarship on mass violence.

Wouters, Jan, Philip De Man, Nele Verlinden. Armed Conflicts and the Law. Intersentia 2016.

This book offers a comprehensive yet concise take on the legal regulation of the various phases in the complex cycle of armed conflicts, from prevention to reconstruction, and covering everything in between, in particular the vast body of rules laid down in current international humanitarian law. The manual combines a general theoretical approach with modern practice in order to offer a complete picture of the law before, during and after warfare.

Through a series of fourteen thematic chapters that logically follow from one to another, scholars and practitioners tackle core issues relating to the international regulation of armed conflicts, while situating them in a broader societal context. Particular attention is given to the emergence of the European Union as an increasingly important regional and global player in international peace and security.

In combination with the broad scope and accessible nature of the collection, the experience and ambition on display in this volume makes it a unique reference tool for students, scholars, practitioners, civil servants, diplomats and humanitarian and human rights workers around the globe.

Some other publications

Oxford University with partners launched its report '**Innovative Media for Change: Opportunities and Challenges of Media Collaboration in Transitional Justice**'! The report provides an analysis of the discussions between TJ academics,

journalists and practitioners that unfolded in the context of a workshop 'Innovative Media for Change' that took place from 22-23 June 2015 at the University of Oxford. The report comprises many case studies ranging from Sierra Leone to Syria, from the former Yugoslavia to Colombia, Rwanda and Ethiopia. From a mediascape perspective, discussions ranged from the world of YouTube, reporting and verifications apps, to new technologies for the protection and empowerment of citizen journalism, from grass-root reporting to structured documentary-making, and finally from multi-media outreach mechanisms outside of the courtroom, to journalism in the courtroom. Overall the report concludes that both, new and traditional media in Transitional Justice are susceptible to manipulation, bias and misguided expectations in different ways. At the same time it emphasizes that better cooperation between media, practice and academia can be a fruitful way to maximize their informational and analytical roles while reducing their divisive potential. The report has been co-authored by Julia Viebach, Leila Ullrich, Matilde Gawronski, and Carolyn Hoyle with the help of the OTJR team and funding from the Economic and Social Research Council (ESRC). See for the full report:

https://www.law.ox.ac.uk/sites/files/oxlaw/innovative_media_for_change_full_report.pdf

The Transitional Justice Barometer, a collaboration between the Centre for Applied Human right at the University of York, Impunity Watch, and the Al Kawakibi Democracy Transition Centre, Tunis, has recently published its second study: **The 'victim zone' and collective reparations in Tunisia Ain Draham and Sidi Makhlof: 'So rich and yet so poor'**. The report uses empirical data from two marginalised communities to draw up recommendations for the Truth and Dignity Commission and for the Tunisian authorities to use the novel approach in the Tunisian Organic Law on TJ of the 'victim zone' - a collective victim defined by marginalised regions and communities - to address legacies of social exclusion. See for the report in English:

<http://www.simonrobins.com/TJ%20Barometer%20-%20The%20victim%20zone%20ENG.pdf> and in French:

<http://www.simonrobins.com/Barometre%20TJ%20-%20Zone%20victime%20FRA.pdf>
Arabic:
<http://www.simonrobins.com/TJ%20Barometer%20-%20Victim%20zone%20ARA.pdf>

From 10-12 November 2015, the South Sudan Law Society (SSLS), the Transitional Justice Working Group (TJWG), and the United Nations Development Programme (UNDP) held a conference entitled, "New Beginnings: The Role of

truth, justice, reconciliation and healing in promoting sustainable peace in South Sudan". The purpose of the conference was to bring together a group of key stakeholders to brainstorm a way forward for the implementation of Chapter V of the Agreement on the Resolution of the Conflict in South Sudan (ARCISS), which addresses issues of "Transitional Justice, Accountability, Reconciliation and Healing." The SSLS convened a follow-up workshop in Nairobi on 4 February 2016 to share the conference outcomes with groups in the diaspora and obtain their input on the way forward for transitional justice in South Sudan. The report summarizes the conference proceedings and main outcomes. Please find a report entitled, "**New Beginnings: A Way Forward for Transitional Justice in South Sudan**": http://www.ss.undp.org/content/south_sudan/en/home/library/south-sudan--other-reports/transitional-justice-conference-report.html

The Hague Institute for Global Justice recently launched **The Rule of Law Brief**, an e-newsletter that provides news and expert analysis about issues at the intersection of human rights, law and justice. The bi-monthly brief also highlights project work and activities by The Hague Institute. To sign up for The Rule of Law Brief and learn about other e-newsletters from the Institute: <http://www.thehagueinstituteforglobaljustice.org/mailling-list/#ruleoflaw>

MISCELLANEOUS

The Leuven Institute of Criminology of KU Leuven started a new initiative called the **Fund on Transitional Justice**, which is intended to promote further research and action in the field of TJ with a particular focus on truth commissions, victim reparation programmes and peace building efforts. The university is working on a visitors programme allowing scholars and practitioners from the Global South who are already employed to spend some time in Leuven and work with in Leuven on specific issues of transitional justice. Whomever is interested can contact Prof. Stephan Parmentier: stephan.parmentier@law.kuleuven.be

JusticeInfo.net is an electronic platform offering real time journalistic coverage and academic analysis of Transitional Justice (TJ) processes all over the world. The platform was officially launched in June 2015 and is a collaborative project between Fondation Hironnelle, Oxford Transitional Justice Research (OTJR) and the Harvard Humanitarian Initiative. OTJR's role in the project is to produce concise, high-quality academic contributions that will complement the journalistic coverage provided by Hironnelle's media network

of over 220 journalists reporting from post-conflict and transitional countries worldwide. Information: <http://www.justiceinfo.net/en/research.html>

Jo-Marie Burt published a couple of recent posts on the International Justice Monitor on the status of the prosecution efforts in the **CREOMPAZ case in Guatemala**. Here are links to the articles, and a brief description of the case can be found below. <http://www.ijmonitor.org/2016/06/eight-military-officers-to-stand-trial-in-creompaz-grave-crimes-case/> ; <http://www.ijmonitor.org/2016/06/creompaz-hearings-conclude-tribunal-to-determine-if-case-goes-to-trial/>

About the CREOMPAZ Case (source <http://www.ijmonitor.org/2016/06/creompaz-hearings-conclude-tribunal-to-determine-if-case-goes-to-trial/>): On January 6, 2016, the arrest of 18 high-ranking military officers on charges of human rights violations connected to the most violent years of Guatemalan armed conflict convulsed Guatemala. While some transitional justice cases have moved forward in recent years, these arrests are different because of the number of officials involved and because those arrested are high-ranking military officials who are believed to be responsible for some of the worst abuses during the Guatemalan counterinsurgency war in the 1980s. Four of the 18 officers arrested were charged in the case of the enforced disappearances of 14-year old Marco Antonio Molina Theissen, while the remaining 14 were charged in the CREOMPAZ case. The now retired military officers are accused of criminal responsibility for numerous cases of enforced disappearances, torture, sexual violence, and extrajudicial execution carried out between 1981 and 1987 in Military Zone 21 (MZ21), a former military base that was the center of military coordination and intelligence in Cobán, Alta Verapaz, and is now used to train UN peacekeepers. This case has been painstakingly developed by government prosecutors since the initial discovery of human remains at CREOMPAZ in 2012. Since then, investigators from the Forensic Anthropology Foundation of Guatemala (FAFG) have exhumed more than 550 bodies from 85 clandestine graves within the CREOMPAZ installations, and have positively identified over 130 victims using DNA evidence. The victims were forcibly disappeared between 1981 and 1987, the worst years of violence in a 36-year internal conflict that claimed 200,000 lives, the majority of them from the indigenous Mayan population. The human remains at CREOMPAZ belong to individuals from different Mayan ethnic groups, including Achí, Q'eqchi', Pomochí, Ixil, and Kiché.

**Invitation/Call for Applications 2016
Transitional Justice Fellowship Programme, 10-**

28 October 2016 Johannesburg and Cape Town South Africa. The Institute for Justice and Reconciliation (IJR) is pleased to announce the convening of its annual Transitional Justice in Africa Fellowship Programme. This is a residential programme which will be held in Johannesburg and Cape Town, South Africa from 10-28 October 2016. Applicants from Burundi, the Democratic Republic of Congo, Kenya, Somalia, South Sudan, Uganda and Zimbabwe will be given preference. We are now inviting qualified individuals to apply to this Fellowship Programme.

Please see for further details: <http://www.ijr.org.za/transitional-justice-in-africa-fellowship.php>

Voices magazine is looking for contributors to its next issue. This issue is centred on children born of war whose needs, while important, are often ignored and overlooked. In this issue we hope to explore opportunities and challenges for children of born of war by providing a space for previously unheard voices. We welcome a variety of content for this issue including standard articles and essays, photographs and photo essays, poetry, drawings, paintings and any other creative contributions. If you want to contribute to this issue, please get in touch with the Voices editorial team via email at voices@justiceandreconciliation.com to share your ideas. Please bear in mind that we use a three-stage process for accepting, reviewing and editing submissions:

- Submission of story ideas to the editorial team based on the given theme an issue is based on. This may be in the form of a brief (150-200 word) title and abstract, or simply in the form of a proposed title.
 - Submission of a first draft after a story idea is approved by the editorial team.
 - Liaising with editors and submission of final draft.
- Full submission guidelines can be found on JRP's website:

<http://justiceandreconciliation.com/initiatives/voices/>

Voices is a publication of the Justice and Reconciliation Project (JRP) which provides a space for victim-centred views on transitional justice. It aims to be a regular, open platform for victims and key stakeholders to dialogue on local and national transitional justice developments. Past issues have dealt with thematic areas such as amnesty, reparations, truth-telling, accountability and sexual- and gender-based violence. We welcome the submission of articles from conflict-affected community members, academics, civil society and government representatives on each issues' given theme.

African Union: Activists Challenge Attacks on ICC. Video Highlights Problems in AU Approach

Activists from across Africa clarify misconceptions about the International Criminal Court (ICC) and highlight the need for African governments to support the court in a video released today by 21 African and international nongovernmental organizations. In January 2016, the African Union (AU) gave its Open-Ended Committee of African Ministers on the ICC a mandate to develop a “comprehensive strategy” on the ICC, including considering the withdrawal of African member countries from the court. The committee met in April and agreed on three conditions that needed to be met by the ICC in order for the AU to agree not to call on African countries to withdraw from the court. These include a demand for immunity from ICC prosecution for sitting heads of state and other senior government officials – which is contrary to a fundamental principle of the court.

It is not clear if the AU will consider any of the open-ended committee’s assessments and recommendations at its upcoming summit in Kigali, Rwanda, from July 10 to 18.

Six out of the nine African situations under ICC investigation came about as a result of requests or grants of jurisdictions by African governments – Côte d’Ivoire, Democratic Republic of Congo, Mali, Uganda, and the Central African Republic twice. Two other investigations in Africa, the Darfur region of Sudan and Libya, were referred to the court by the United Nations Security Council. In Kenya, the ICC prosecutor received the authorization of an ICC pretrial chamber to open investigations after Kenya repeatedly failed to investigate the 2007-08 post-election violence domestically.

In January, the ICC prosecutor opened the court’s first investigation outside Africa, into Georgia, and is conducting several preliminary examinations of situations outside Africa – including in Afghanistan, Colombia, Palestine, and alleged crimes attributed to the armed forces of the United Kingdom deployed in Iraq.

The recommendations from the open-ended committee are the latest development in a backlash against the ICC from some African leaders, which has focused on claims that the ICC is “unfairly targeting Africa.” The backlash first intensified following the ICC’s 2009 arrest warrant for President Omar al-Bashir of Sudan for serious crimes committed in Darfur.

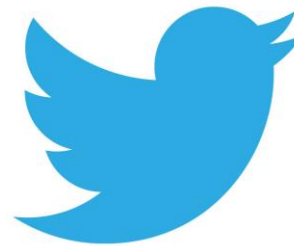
While blanket immunity for sitting heads of state is available in some domestic jurisdictions, it has never been available before international criminal courts dealing with grave crimes.

The AU, in 2015, adopted a protocol to give its continental court authority to prosecute grave crimes, but also, in a controversial provision, grants immunity for sitting heads of states and other senior government officials. That protocol will need 15 ratifications before coming into force, but has yet to be ratified by any country.

The video features 12 African activists who raise concerns about AU actions toward the ICC. To download the video:

<http://media.hrw.org/index.asp?ID=FTTYC&lang=ENG&videoID=2802&showEmbargoed=true>

Regular updates via Twitter



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<https://twitter.com/AletteSmeulers>

If you want to get regular updates on various cases at the international tribunals you can follow Thijs Bouwknegt @thijsbouwknegt

SUBSCRIPTION

The newsletter will be sent electronically to all who have signed up on the website. Scholars who conduct research in the field of international crimes, such as genocide, war crimes, crimes against humanity and other gross human rights violations, international (criminal) law or any other relevant subject matter are invited to send us their details and they will be enlisted on the website.

In case you are interested: please contact us: Roelof.haveman@gmail.com and give your names, position, institutional affiliation, e-mail address, research interest and website and we will enlist you as a scholar within two weeks.

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Deadline next issue: 31st November 2016

Please send submissions for the newsletter to:
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