



# THE ISG NEWSLETTER

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Helen Fein, editor

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## PEOPLES AT RISK

### *Democratic Republic of Congo*

The humanitarian crisis in the DRC has political roots. "The offensive by the rebel Laurent Nkunda's National Congress for the Defense of People, or CNDP, has dramatically worsened the crisis in the eastern DRC....The immediate crisis should not distract the world from a larger truth: peace in the Congo-and indeed the Great Lakes-requires a comprehensive strategy, robust diplomatic engagement, and a strong and capable peacekeeping force. It also requires the world's sustained attention. Intermittent and inconsistent crisis management must be replaced by a broader effort to deal with the drivers of endemic insecurity and atrocities. The January Goma agreement-which secured a ceasefire between the Congolese government and 22 armed groups-is effectively dead" says Enough, a project to end genocide and crimes against humanity, on October 31, 2008 (see [www.enoughproject.org](http://www.enoughproject.org)).

Franz Wild notes that "Nkunda says he's defending Congo's Tutsi minority from a mainly Rwandan Hutu militia, whose leaders allegedly took part in neighboring Rwanda's 1994 genocide" (Bloomberg.com, Nov. 3, 2008). The UK Press Association also notes that "The current conflict in the Congo has its roots in the genocide 14 years ago in neighboring Rwanda where up to a million

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Helen Fein, Executive Director  
Joyce Apsel, President  
For More Information on ISG, see our website at:  
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## PEOPLES AT RISK

people were killed when Hutu extremists turned on their Tutsi neighbors. Some 250,000 people are thought to have fled their homes in recent weeks since the breakdown of a UN-brokere ceasefire in the region" (<http://ukpress.google.com>)

Amnesty International (AI) reports on the resurgence of rape and the recruitment of child soldiers in North Kivu province. "In a new report on the ongoing conflict in the eastern DRC, AI reports that for every two children who are released, five are taken and forced to be child soldiers....'The human rights situation in North Kivu is appalling,' said Andrew Philip (AI's expert on the DRC). 'Armed groups and government forces continue to rape women and girls. Even infants and elderly women are among the victims-some of whom have been gang raped. Disturbingly, rapes are often committed in public and in front of family members, including children.'"

*The New York Times* (October 20, 2008) reports that rape victims in the DRC are beginning to speak out about their experiences in order to protect others. Times columnist Nicholas D. Kristof says that the UN is beginning to recognize the epidemic of mass rape but it has happened "painfully slowly." Although systematic rape is a crime against humanity, "it thrives in part because the world shrugs," Kristof said in his blog on October 8, 2008 ([www.findingdulcinea.com/news/Africa/October](http://www.findingdulcinea.com/news/Africa/October))

*Iran/Israel: Proposal to Arrest President Ahmadinejad for Incitement to Genocide:*

A team of legal scholars, led by Irwin Cotler (a Canadian Member of Parliament who was Minister of Justice and Attorney General of Canada) and a coalition including victims of genocide called for the arrest of Pres. Ahmadinejad of Iran for violating the UN Genocide Convention because of his calls for the destruction of Israel. Pres. Ahmadinejad came to speak before the

United Nations on September 23. Genocide Watch, the International Association of Genocide Scholars, Yale University's Initiative for the Interdisciplinary Study of Antisemitism, the Conference of Presidents of Major Jewish Organizations and the Jerusalem Center for Public Affairs also convened a conference in Washington, DC that day of "State-Sanctioned Incitement to Genocide: What Can Be Done?"

*India: "Hindu Threat to Christians: Convert or Flee"*  
Somini Sengupta, writing in the *New York Times* from Borepanga, India (in the state of Orissa) on October 13, 2008, relates how "The family of Solomon Dignal was summoned by neighbors to what serves as a public square in front of the village tea shop. They were ordered to get on their knees and bow before the portrait of a Hindu preacher. They were told to turn over their Bibles, hymnals and the two brightly colored calendar images of Christ that hang on their wall. 'Embrace Hinduism, and your house will not be demolished....Otherwise, you will be killed, or you will be thrown out of the village.'...The forced conversions come amid widening attacks on Christians here and in at least five other states across the country, as India prepares for national elections next spring."

*India: Group Competition and Threats against Minorities*  
Somini Sengupta writing in the *New York Times* in October 29, 2008 relates "Tensions are growing in several corners of the country." These include clashes between Hindus and Christians in Orissa (see above), fighting between indigenous Bodos and Bengali-speaking Muslims in northeastern Assam state, violence between Hindus and Muslims in Maharashtra state and in the state of Andhra Pradesh "where a Muslim family of six was burned to death in their home in mid-October." In Mumbai (once known as Bombay), "an upstart nativist

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party claiming to represent Marathas, the dominant ethnic group in the state, pounced on Indians who had come from elsewhere to apply for jobs at Indian Railways. The police arrested and then released the party leader on a charge of inciting riots , "after which his supporters went on a rampage across the city and its suburbs."

*Millenium Development Grotesquary* by Eric Reeves, *New Republic*, October 10, 2008.

"Incredibly, the regime committing genocide in Darfur is now meant to be in charge of a critical UN Poverty-and-disease-eradication program....Known as the 'Millenium Development Goals' , these included the eradication of extreme poverty and hunger, achieving universal primary education, reduction in child mortality, and combating HIV/AIDS, malaria, and other major diseases, 2015 was set as the deadline for meeting specific targets in all these areas. ...Richer nations, especially in the developed West, have not provided either sufficient financial resources nor the essential tools for developing nations to confront the daunting challenges they face....But the largest and most influential group of developing nations has added an ill-considered and wholly gratuitous burden to the challenges of the MDG. They have selected the Sudan regime-which continues to perpetrate genocide in Darfur in front of the eyes of the world-to be chair in the coming year."

*Sudan (Darfur): Humanitarian efforts in Darfur face escalating war by Khartoum* (by Eric Reeves in the *Sudan Tribune*, October 29, 2008 edited by Helen Fein)

"The long brutal war of attrition directed at humanitarian aid efforts in Darfur is again accelerating, as Khartoum seeks to effect a ...destructive status quo prior to further UNAMID deployment. These immensely destructive efforts are also meant too deter the ICC from an arrest warrant for the National Islamic Force regime head Omar al-Bashir. The UN recently issued yet another report on

humanitarian conditions in Darfur....for more than four months the Khartoum regime refused to allow entry to 5,000 metric tons of sugar bound for Darfur...There is tremendous fear within the humanitarian community of malnutrition, especially among children. In a desperate attempt to sustain children under five through the rainy season that ended earlier ...the World Food Program and nongovernmental humanitarian organizations focused with extraordinary intensity on this most vulnerable population. A key part of their effort was a 'Blanket Supplementary Feeding Program,' using as its primary tool a specially designed 'premix' of foods....Corn-soya blend, dried skim milk...and sugar.

"This delay in releasing a large quantity of a key ingredient in sustaining the lives of young children, largely from non-Arab or African tribal population is a direct assault on their ability to live... [it] represents another in a long and continuous history of genocidal actions by the NIF regime, going back to the outbreak of organized rebellion in Darfur in early 2003 [For history, see DAFUR: GENOCIDE BEFORE OUR EYES ed. by Joyce Apsel listed under publications available in this issue.]

"Indeed, incredibly, disgracefully, the regime's savage campaign of civilian destruction is set to enter its seventh year in a few months....This shortfall in rations-which has inevitably increased malnutrition and mortality...is partly a result of emergency diversion of food resources to children under five. But much more consequential is Khartoum's refusal to provide protection for convoys of the World Program (WFP)...As a consequence, in September, WFP again [said] that it would suspend food delivery if security does not improve for its convoys...WFP spokesman Rachid Jafaar told Reuters the agency had not decided which deliveries would be cut.

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'But large numbers will be affected, ' he said. The WFP currently delivers food to more than 3 million people in Darfur, he added.....As an experienced and particularly well-placed humanitarian officer told this writer, in areas controlled by Khartoum, nothing happens that is not implicitly or explicitly sanctioned by the regime."

### **ACTION YOU CAN TAKE:**

*Postcards to the New US President to Save Darfur.* The Save Darfur coalition is working to elicit more than one million postcards to the new President.. The postcards will say:

"Dear Mr. President:

As a candidate you promised 'unstinting resolve' to end the Darfur genocide. I urge you to keep that promise by making Darfur a priority from day one of your term to achieve:

- \* Protection of civilians from violence, starvation and disease;
- \* Sustainable peace for all Sudan;
- \* Justice for victims and accountability for perpetrators."

Visit [www.AddYourVoice.org](http://www.AddYourVoice.org) to participate.

## GENOCIDE SCHOLARS TO CONVENE

The International Association of Genocide Scholars (IAGS) will hold its 8th biennial conference from 7-10 June 2009 at George Mason University in Arlington, Virginia. The Institute for Conflict Analysis and Resolution at George Mason University is the host.

The theme of the conference is "The New Face of Genocide in the 21st century." Papers and panels reflecting innovative research and thinking are welcomed

on the nature, causes, and consequences of historic and contemporary genocide, and advancing policy and educational studies on the prevention of genocide. Send proposals for papers and panels to the Program Chairs: Dr. James Waller ([jwaller@genocidescholars.org](mailto:jwaller@genocidescholars.org)) and Dr. Hilary Earl ([hearl@genocidescholars.org](mailto:hearl@genocidescholars.org)). You may register online or send questions to the Conference Registrar: Rebecca Parson ([Rparson@genocidescholars.org](mailto:Rparson@genocidescholars.org))

## GENOCIDE IN LAW AFTER NUREMBERG TO 2008: TRIGGERS, CRIMES, AND RESPONSES

CARDOZO SCHOOL OF LAW: EDITED BY SARAH GREGORY AND CHRISTINA HOLDER WITH CONTRIBUTIONS BY PROF. SHERI ROSENBERG (CARDOZO) AND JOYCE APSEL (NYU); RESEARCHERS AND AUTHORS FROM CARDOZO: CIALINETT COLON, PAUL ERIAN, SARAH GREGORY, CHRISTINA HOLDER, JUSTIN LAMORT, JOSHUA MOSKOVITZ, LYDIA ROSS, SHIRA SISKIND

### INTRODUCTION

Defining the crime of genocide is an inherently charged undertaking. The word has a symbolic meaning, the "crime of all crimes," situated at the apex of international atrocity law and reserved in the public imagination as the descriptive term for the world's most heinous acts. The legal definition, however, is more circumscribed. To prove the crime of genocide, two separate elements must be decisively established: the material element refers to the commission of an enumerated criminal act against members of a protected group, while the mental element refers to the specific intent of an individual (in a criminal prosecution), or a State (in a civil action) to destroy the protected group in whole or in part.

The legal definition of genocide established by the 1948 Convention on the Prevention and Punishment of the Crime of Genocide ("Genocide Convention") has withstood the test of time. It defines genocide as "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures intended to

prevent births within the group; or (e) forcibly transferring children of the group to another group." The definition was transferred verbatim into the text of the statutes creating the International Tribunals for the Former Yugoslavia and Rwanda, as well as the Rome Statute for the International Criminal Court. Despite the view of some that the scope of the definition of genocide should be expanded to protect additional groups, such as political groups or sexual minorities, or to include additional acts, such as the forcible displacement of ethnic groups colloquially known as ethnic cleansing, the textual definition of the crime of genocide has remained virtually unchanged for sixty years.

In February 2007, the International Court of Justice (ICJ)-the judicial organ of the United Nations authorized to decide disputes between States-rendered a landmark decision in the case *Bosnia and Herzegovina v. Serbia and Montenegro*, which puts an important judicial gloss on the legal definition of the crime of genocide. In holding that Serbia did not commit genocide in Bosnia, while finding Serbia responsible for failing to prevent genocide in Srebrenica, the Court adopted a narrow view of the crime of genocide that excludes the crime of ethnic cleansing. The Court also clarified that the mental element of specific intent must be "conclusively proved" before a State may be found liable under the Genocide Convention. The standard of proof articulated by the Court is proof to a "high level of certainty" that the State in question committed the acts with the requisite intent of destroying the group. This standard is higher than the "preponderance of the evidence" standard usually applied in civil cases, and approaches the "beyond a reasonable doubt standard" generally reserved for criminal cases.

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While the Court's decision may be disappointing for advocates seeking to hold States responsible for genocide, it serves as an important reminder that public opinion and legal opinion about what constitutes genocide often diverges significantly. The following compilation of genocide accusations from various regions and time periods demonstrates that charges of genocide may fail in court, even when victims and their advocates perceive that genocide has taken place. The shifting symbolic value of the term "genocide" does not necessarily match up with its rigid legal definition, which has remained relatively static.

Nonetheless, prosecution based on crimes against humanity may be available when the legal elements of genocide cannot be established. Prosecution for crimes against humanity has proved an important tool for the International Criminal Tribunal for the Former Yugoslavia ("ICTY"), where genocide crimes were difficult to prove, and for the Special Court for Sierra Leone, where underlying crimes were political rather than ethnic in nature. The overlap between crimes against humanity and war crimes is also noteworthy. Just as crimes against humanity may cover atrocities that the comparatively narrow definition of genocide does not, it may also cover atrocities that fail the definition of war crimes. War crimes, defined by customary international law as well as the Geneva Conventions, include a range of offenses that could also be considered crimes against humanity, such as willful killing and torture or inhumane treatment. To constitute a war crime, however, these offenses must have been perpetrated during armed conflict, making crimes against humanity an important tool where the existence of a conflict is arguable.

Prosecution based on crimes against humanity likely will play a central role at the Extraordinary Chambers in the Courts of Cambodia, a hybrid U.N. and Cambodian court

recently established to try atrocity crimes committed by the Khmer Rouge in the 1970s. More generally, the proliferation of international criminal courts and hybrid tribunals, along with the willingness of many states to adopt national legislation permitting "universal jurisdiction" over genocide, crimes against humanity, and war crimes, suggests that impunity for atrocity crimes is no longer acceptable. The doctrine of universal jurisdiction, although controversial, allows national courts to try these crimes even where the crime was not committed within that nation's borders and even where the crimes were committed by a leader of another sovereign state. Advocates should be wary of relying only on international criminal mechanisms to safeguard the rights of minorities. International criminal tribunals are notoriously slow and resource strapped, and the ICJ's decision in *The Democratic Republic of Congo v. Belgium* (holding that an incumbent Minister of Foreign Affairs is immune from criminal jurisdiction in Belgium) reveals the contested legal underpinnings of universal jurisdiction.

Fortunately, a substantive legal framework for the protection of minority rights outside of international criminal law is developing. For example, minority rights are protected within overlapping national, regional, and international human rights law regimes. Moreover, the Responsibility to Protect (R2P) doctrine endorsed by world leaders at the 2005 World Summit holds that no State may allow genocide, ethnic cleansing, crimes against humanity, or war crimes to occur within its borders, and that the international community must prevent and end these atrocity crimes when States are unwilling or unable to do so on their own. The shift from the prosecution of violations against minorities to the prevention of violations in the first place is a welcome development in human rights law.

## GENOCIDE IN LAW AFTER NUREMBERG TO 2008: TRIGGERS, CRIMES, AND RESPONSES

Hopefully, with the continued development of minority-rights norms and genocide prevention efforts, combined with the potential ramifications of the R2P doctrine, the commission of heinous international crimes such as the ones described below will become a relic of the past.

### AFRICA

#### **RWANDA, ETHNIC TUTSIS**

##### Background

During a period of roughly 100 days from April through July 1994, between 500,000 and one million Tutsis and moderate Hutus were killed during the apex of the infamous Rwandan genocide. The Rwandan Patriotic Front, led by Tutsi refugees living in Uganda, consolidated power in August 1994, putting an end to the genocide. Despite the UN's abandonment of the United Assistance Mission for Rwanda (UNAMIR) during the height of the genocide, the UN later recognized that serious violations of international humanitarian law had been carried out, and called for an international criminal tribunal to bring those criminally responsible to justice. In October 1994, the Secretary-General approved a report that concluded genocide had undoubtedly occurred in Rwanda and recommended the creation of a tribunal. The report gave several reasons for recommending an international, rather than a Rwandan, tribunal, concluding that (1) local courts might be viewed as biased and trials as merely retribution; (2) an international tribunal would be more independent, objective, and impartial; (3) violations of international law concerned the international community and international prosecution would serve as a deterrent in the future; and (4) an international tribunal would have more expertise to interpret international legal norms and maintain the coherent development of such laws.

##### Trials

In November 1994, the UN Security Council established the International Criminal Tribunal for Rwanda (ICTR) to prosecute genocide and other crimes against humanity committed in Rwanda and neighboring states in 1994. In February 1995, the Security Council established the seat of the ICTR in Arusha, Tanzania, where the first trial began in January 1997. As of February 2008, ninety individuals have been indicted, and seventy-five of them arrested, including the former Prime Minister, Jean Kambanda. The ICTR has returned judgments against thirty-five perpetrators, while acquitting five individuals. At least five other cases have concluded recently and are awaiting judgments. Convictions carrying sentences from six years to life in prison have been rendered against businessmen, councilors, government ministers, provincial government authorities, army officers, journalists and news directors, a doctor, a pastor and a Catholic priest, and a youth organizer. Many of the convicted are serving their sentences abroad, including Georges Omar Ruggiu, the only non-Rwandan convicted and sentenced by the ICTR, who was transferred to Italy in February 2008 to serve the remainder of his sentence. Of the fifty-six detainees currently being held in Arusha, three are awaiting decisions on the appeal of their conviction, twenty-seven individuals are currently on trial, seven are awaiting trial dates, and nineteen are convicted and awaiting transfer to prisons in other countries. Of the accused currently on trial or awaiting a trial date, there are nine political leaders, eleven military leaders, six senior government administrators, two religious leaders, three businessmen, a prosecutor, a student leader, and a popular musician. Additionally, five indicted individuals are awaiting transfer to the ICTR from the Netherlands, Germany, and France. Fourteen people accused of crimes by the ICTR remain at large.

The ICTR's first two completed cases are of particular  
*Continued on page 8*

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significance. In the first case, which was against former mayor of Taba Jean-Paul Akayesu, the Trial Chamber was called on to interpret the definition of genocide as codified in the 1948 Genocide Convention. Setting an important precedent, the court included rape among acts that, depending on the circumstances, could constitute the crime of genocide. In the second case, Jean Kambanda, the former Prime Minister of Rwanda, pleaded guilty to several crimes, including genocide. This marked the first time an accused acknowledged guilt for the crime of genocide before an international criminal tribunal, and the first time a head of government was convicted for the crime of genocide. Both Akayesu and Kambanda were sentenced to life imprisonment, which they currently are serving in Mali.

The ICTR has formalized a Completion Strategy, which sets a timeline for effectuating its investigations, trials and sentencing by 2010, when the ICTR mandate and funding from the Security Council expire. Part of the ICTR's Completion Strategy includes transferring cases to national jurisdictions for trial. Before a case may be "off-loaded," the Prosecutor must first determine whether the jurisdiction is competent to prosecute cases, which requires a consideration of several factors including fair-trial guarantees in the referral state. In April 2007, the ICTR made its first transfer in the case of Michel Bagaragaza who was referred to The Netherlands for trial. However, in August 2007, the ICTR was forced to revoke the referral when the District Court of The Hague determined it did not have jurisdiction to try the crime of genocide. Despite this setback, the ICTR continues to pursue the transfer of cases to competent national jurisdictions. Recently, two cases were transferred to France for prosecution of individuals arrested there. However, as foreign courts become willing to hold prosecutions, some disagreement has arisen over whom

should be indicted. For example, in February 2008, Spain's high criminal court issued international arrest warrants against forty of the highest-ranking members of the Rwandan Patriotic Front-many of whom are current members of the Rwandan government. Judge Fernando Andreu of the National Court accuses them of "having taken power by force and installing a reign of terror in the country, carrying out horrible crimes against the civilian population[.]"

In response, the Rwandan government accused Spain of attempting to rewrite history and denounced the move as "racist and revisionist."

The most recent iteration of the ICTR's Completion Strategy, which was issued in November 2007, included plans to transfer three pending cases to domestic courts. Anticipating future transfers to Rwanda, the ICTR is helping the country prepare its courts for prosecution of genocide-related cases in conformity with international standards. A prerequisite to transferring cases from the ICTR to Rwanda was Rwanda's abolition of the death penalty, which occurred in July 2007, making Rwanda the first abolitionist country in the Great Lakes region.

Outside the ICTR, several national jurisdictions have pursued prosecution of alleged perpetrators under their own atrocity crime statutes. Canada is using its war crime legislation to prosecute Desire Munyaneza, who is accused of leading a militia gang on a spree of rape and murder in the Butare region of Rwanda in 1994. In 2001, a Belgian jury convicted four Rwandans-a businessman, a professor, and two Benedictine nuns-who received sentences ranging from 12 to 20 years. According to Human Rights Watch, this was the first trial to use a jury to judge foreigners for atrocity crimes. Great Britain is holding three men awaiting the outcome of a hearing to determine whether the country can honor an extradition

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request by the Rwandan government, which would be precluded by a finding that Rwanda's national justice system lacks sufficient fair trial guarantees. In 2006, Denmark arrested Sylvère Ahorugeze, who was the director of the Rwandan Civil Aviation Authority during the genocide. In 1998, Switzerland arrested Fulgence Niyonteze, who was convicted of genocide and sentenced to five years in prison in 2000. After being paroled, he was expelled from the country.

Unfortunately, Rwanda's local justice system is rife with problems. Among other things, the number of people imprisoned awaiting trial in Rwanda is difficult to estimate, and ranges from 70,000 to 135,000. Furthermore, over 800,000 accusations related to crimes committed during the genocide have been filed. So far, the process of developing a functional judicial system has been slow. Along with the national court system, the Rwandan government has experimented with the use of "gacaca" courts. Based on a traditional, community-based model for conflict resolution, these local courts combine traditional Rwandan participatory approaches to justice and internationally recognized legal precepts. By involving local people in the administration of justice, the gacaca courts have great potential for promoting reconciliation-particularly because the number of accused is so great and includes many local leaders and civilians. Unfortunately, the gacaca courts have also received criticism for failing to adhere to international legal standards, lacking proper infrastructure, and having inadequately trained judges.

### Current Situation

Effects of the Rwandan genocide are not limited by national borders. By August 1994, over two million Rwandan civilians had fled the country due to interhamwe

attacks, most settling in refugee camps in the Democratic Republic of the Congo, Tanzania, Burundi, and Uganda. Aftershocks of the genocide continue to reverberate throughout the Great Lakes region of Central Africa. More than ten years after the genocide, the official number of refugees had diminished to roughly 64,000, but that number does not include long-staying urban refugees and so the true count may be much higher. Civilian refugees tax limited local resources and bands of Hutu militias and former interhamwe continue to terrorize civilian populations throughout the borderlands of the Democratic Republic of Congo, Burundi, and Rwanda. The United Nations has noted a dramatic increase in the number of rapes committed in Eastern Congo, which has been attributed to the presence of Hutu militias. International humanitarian agencies, the UN, the ICTR, and local courts continue to work on solutions for reconciliation to stabilize the region and bring justice to the countless numbers affected by the genocide.

*For more information, see*

\* [Leave None to Tell the Story: Genocide in Rwanda.](http://www.hrw.org/reports/1999/rwanda/)  
Human Rights Watch Report.  
<http://www.hrw.org/reports/1999/rwanda/>

**DARFUR, WESTERN SUDAN, SUDANESE TRIBAL**

## GENOCIDE IN LAW AFTER NUREMBERG TO 2008: TRIGGERS, CRIMES, AND RESPONSES

### MINORITIES

#### Background

The ongoing conflict in the Darfur region of western Sudan escalated to genocide in 2003 and within two years resulted in the destruction of thousands of villages, the terrorizing and uprooting of an estimated 2.5 million people from their villages with over 4 million people described as affected population, and the deaths of over 300,000 people primarily from the Dar, Fur and Zaghawa tribes. The genocidal campaign was supported by the Government of Sudan, led by the National Congress Party, and its military. The Janjaweed militias served as the government's proxy forces in many instances and have been supplied and supported by the government. This ongoing series of brutal attacks on Darfur's tribal communities has forced millions of people to camps for the internally displaced across western Sudan, resulting in a severe humanitarian crisis. Moreover, the lack of security from ongoing attacks on these displaced persons camps has resulted in repeated population movements, rape and other human rights violations against civilians.

While the conflict has been popularly depicted as a conflict between primarily African sedentary tribes and the Arab-identified Janjaweed and GOS forces, these labels are largely misleading. There are a complex series of political, economic and environmental factors ranging from land disputes to scarcity of resources, as well as a long history of government neglect that have all contributed to escalation of the violence. The main rebel groups were the Sudan Liberation Army/Movement (SLA/M) and the Justice and Equality Movement (JEM), both of whom have carried out attacks on civilians. The Darfur Peace Agreement (DPA) of May, 2006, was signed

by the GOS and one faction of the SLA headed by Mini Minawi. The peace agreement had little popular support from the outset, however, and its failure to have strong enforcement mechanisms and other weaknesses makes necessary new negotiations and a new treaty with all major parties. In keeping with the divide and rule strategy of the current Sudanese government, the political process of the DPA combined with increased violence on the ground resulted in further fragmentation of the opposition (over a dozen separate groups). The situation remains volatile within western Sudan and violence has spilled into neighboring Chad and the Central African Republic, with cross-border attacks and refugee movements becoming increasingly common.

The United Nations African Union Mission in Darfur (UNAMID) was created by UN mandate in July 2007 in order to bolster the efforts of the overextended African Union Mission in Sudan (AMIS). The goal is for UNAMID is to be fully functional by mid-2008 and it is mandated to protect the civilian population from government and rebel forces and to facilitate humanitarian assistance. Humanitarian organizations have called for immediate international support for UNAMID and for expedient, pro-active peacekeeping so as to overcome the political and logistical frustrations of AMIS. To date, logistical and political support for UNAMID meeting that deadline seems unlikely.

Thus far, the Khartoum regime has provided a series of roadblocks to AMIS and UNAMID as well as humanitarian agencies trying to provide aid to the millions of displaced persons in the regions. The international community has decried the government's policies as damaging and opportunistic, accusing Khartoum of encouraging the turmoil in order to prevent the emergence

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of an opposition movement. In addition, individuals from humanitarian aid organizations have been robbed, shot, beaten and abducted, making it increasingly difficult for these organizations to provide assistance to the over 2.5 million internally displaced persons (IDPs) that rely on their support. In Southern Darfur in particular, the Khartoum government continues to force IDPs from humanitarian aid camps through attacks and killings.

To quell the violence in Darfur, many have called for a more robust UNAMID presence. Currently, UNAMID is deploying slowly in response to the continued instability and impeded access to various regions, and it has only reached about a third of its expected force level. On January 7, 2008 the Sudan Armed Forces (SAF) attacked a UNAMID convoy, making a statement that UNAMID would be restricted from providing aid in the same way that the African Union Mission in Darfur (AMIS) was restricted in 2004. If UNAMID continues to be hindered, it is possible that the African Union, as well as humanitarian aid organizations providing assistance in Darfur, will withdraw from the region.

Although the humanitarian situation in Darfur continues to deteriorate, the international community has failed to come to agreement on how to classify of the crisis. The U.S. led Atrocities Documentation Team, based primarily on interviews with Darfuri refugees in Chad, found that genocide was being carried out in Darfur. Based on these findings and other intelligence, former Secretary of State Powell stated with relation to the Genocide Convention that Darfur was a case of genocide. In contrast, the UN Commission of Inquiry determined that the Sudan government had not pursued genocide in Darfur because the government lacked the mental element of intent to annihilate a specific racial, ethnic, national, or religious group. Secretary of The Commission has, however, identified possible perpetrators of war crimes and crimes

against humanity and suggested that certain individuals may have 'genocidal intent.' Alleged perpetrators include government officials and members of the militia and rebel groups. Alleged perpetrators include government officials and members of the militia and rebel groups. Various human rights groups and countries have defined the destruction differently, referring to the violence as atrocities, war crimes, and/or crimes against humanity. The Institute for the Study of Genocide and the International Association of Genocide Scholars and others define the violence as genocide, emphasizing the intentional killings of specific tribal communities and other factors. No national or international judicial bodies have yet issued genocide indictments, however, and it remains to be seen whether the perpetrators in Sudan will ever face charges of genocide.

### Trials

The UN Security Council referred the situation in Darfur to the International Criminal Court ("ICC") on March 21, 2005. In February 2007, the ICC issued indictments against Ali Kushayb and Ahmad Mohammed Harun for ordering the militia and armed forces to commit mass rapes, killings, torture, and other inhumane acts such as robbing homes and stores. On September 19, 2007, the ICC issued international arrest warrants for the two men. The Sudanese government detained Kushayb for violation of Sudanese laws and crimes he committed in the Darfur region. The Sudanese government, however, released Kushayb shortly after his capture, stating that they owed no obligation to the ICC.

Until 2003, Ahmad Mohammed Harun was the head of the Darfur Security desk. He recruited, armed and funded the thousands of Janjaweed militia. The ICC alleges that the Sudanese government, under Harun's direction, attacked villages in Darfur. The Prosecutor has charged Harun

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with 42 counts of crimes against humanity and war crimes. The ICC is investigating the attacks that occurred in the towns and villages of Kodoom, Bindisi, Mukjar, and Arawala. The ICC issued an arrest warrant against Harun in May of 2007 and in September 2007 the UN's International Police (INTERPOL) circulated a "red notice" authorizing any national or local police authority to secure his arrest, for the purpose of extradition. Subsequent to Mr. Harun's indictment the Sudanese government appointed him Minister of Humanitarian Affairs.

In 2008, the International Criminal Court's prosecutor Luis Moreno-Ocampo filed 10 charges against the President of Sudan, Omar al-Bashir. These include: three counts of genocide, five of crimes against humanity and two of murder. As of late September 2008, judges have begun reviewing the case. The Sudanese Government has denied these accusations and accused the ICC of hindering its efforts to resolve the conflict in Darfur as well as undermining the Government of Sudan's efforts to implement the terms of the North-South Peace Agreement.

### Current Situation

On February 8, 2008, Janjaweed militias, together with Khartoum troops and military aircraft, attacked the northern part of the capital of West Darfur (el-Geneina). The forces attacked towns controlled by JEM in an effort to drive the rebel group out of the area, and to destroy the group's civilian support. Khartoum bombed African Masseleit and Erenga tribal groups. Over 60,000 civilians fled the area. Repeated attacks against displaced populations and lack of security continue. Death from malnutrition and disease as well as fighting between various government-backed rebel groups and local bands

goes on. An unsuccessful attack by JEM forces against the GOS military around Khartoum as well as repeated cross border violence with neighboring Chad and the Central African Republic are two examples of the ongoing violence and volatility in Sudan and neighboring regions and of the genocidal destruction being carried out in Darfur.

*For more information, see:*

\* Report to the Secretary-General, International Commission of Inquiry on Darfur.  
[http://www.un.org/news/dh/sudan/com\\_inq\\_darfur.pdf](http://www.un.org/news/dh/sudan/com_inq_darfur.pdf)

\* Sudan Research, Analysis, and Advocacy, Eric Reeves.  
<http://www.sudanreeves.org/index.html>

### III. ASIA

#### CAMBODIA, CAMBODIAN CITIZENS

##### Background

As the war between the United States and Vietnam escalated, the neutral kingdom of Cambodia was quickly pulled into the Cold War conflict. In 1969, the U.S. commenced an offensive campaign against neutral Cambodia that was motivated by two objectives: first, to eliminate suspected Vietnamese sanctuaries on the Cambodian side of the border, and second, to intimidate North Vietnam by unleashing a furious exhibition of indiscriminate military might. In April 1970, U.S. and South Vietnamese troops invaded Cambodia to attack suspected North Vietnamese strongholds. Though ground troops would be withdrawn within a few months, the bombing campaign escalated. In a six month period in 1973, the U.S. dropped more bombs in 3,695 raids on the populated heartland of Cambodia than were dropped on Japan during all of World War II; an amount, in terms of

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tonnage, equivalent to five Hiroshima bombs. When the bombing ended in August 1973, entire villages had been flattened, and an estimated 150,000 to 500,000 Cambodian civilians had been killed. For those that survived, the worst was yet to come.

On April 17, 1975, the Khmer Rouge emerged from the forest and marched into Phnom Penh, Cambodia's capital city, to seize power over the ravaged and divided kingdom. Led by the brutal despot Pol Pot, the Khmer Rouge immediately began a program of urban evacuation, forcing all Phnom Penh residents out of the city. With remarkable speed, the Khmer Rouge marched the entire Cambodian population into the countryside, where all were forced into slave-like agricultural labor. The agrarian utopia envisioned by the ultra-left Khmer Rouge required that all foreign influences be purged from society in order to establish peasant communism.

The radical social revolution included the elimination of banking, finance and currency, all forms of private property, and the outlaw of all religions. To enforce the extreme program, the Khmer Rouge unleashed savage brutality upon its fellow Cambodians. An estimated 1.5 to 2 million Cambodians died from exhaustion, starvation, disease, torture and execution during the Khmer Rouge's nightmarish three year, eight month reign. In 1975, before the Khmer Rouge's ascent to power, the total population of Cambodia was between seven and eight million. By 1979, only four years later, an estimated 20% to 35% of Cambodia's population had perished. The regime performed several deadly purges that were designed to eliminate remnants of the old society. The waves of terror were directed primarily toward intellectuals, religious groups, and political opponents.

### Trials

On January 7, 1979, Vietnamese troops invaded Phnom Pen, capturing the city and deposing the Khmer Rouge. Defeated, many of the regime's leaders quickly went into hiding. Pol Pot and his minister of foreign affairs, Leng Sary, were tried in absentia for the crime of genocide by a tribunal established under the newly empowered People's Revolutionary Council. In order to obtain convictions, the tribunal departed from the internationally recognized definition of genocide, and instead employed a more expansive understanding of the term. The trial is widely considered to have violated international standards of equity, and the international community has not acknowledged the judgments.

The final remnants of the Khmer Rouge crumbled by 1998, as all of its leaders had either defected to the Royal Government of Cambodia, had been arrested, or had died. In 1998, the Royal Government of Cambodia requested assistance from the United Nations to establish a tribunal to try former Khmer Rouge leaders. However, the Cambodian Government and the United Nations struggled to agree on the nature and extent of international participation in the tribunal. The two bodies finally reached an agreement in 2003, and in 2004, the Cambodian Government established the Extraordinary Chambers in the Courts of Cambodia ("ECCC"), a hybrid court that will serve as the official tribunal for the prosecution of Khmer Rouge crimes. To date, only two former regime leaders have been indicted, Kaing Guek Eav, also known as "Duch" and Nuon Chea. Duch served as the commander of the infamous S-21 prison facility--a former Phnom Penh high school converted by the Khmer Rouge into the largest detention and torture center in Cambodia--and has been charged with crimes against humanity. Chea, a chief political ideologist of the Khmer Rouge and the right-hand man of Pol Pot, was arrested on

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September 19, 2007 and charged with war crimes and crimes against humanity. Scholars continue to dispute whether the atrocities perpetrated by the Khmer Rouge fall within the 1948 Convention definition of genocide, but they may be prosecuted as crimes against humanity and war crimes.

The first pre-trial hearing took place on February 4, 2008 to consider Nuon Chea's challenge of provisional detention. At the hearing, the judges permitted Theary Seng, a survivor of the notorious S-21 torture and execution facility to address the ECCC and oppose Chea's petition. Ultimately, the Court rejected Nuon Chea's petition for release with bail.

Theary Seng's participation in the February 4 proceedings marked a historical development in international criminal law. Under the ECCC internal rules adopted June 2007, victims of the Khmer Rouge can actively participate in three ways: 1) offering witness testimony, 2) filing complaints, and 3) applying to be joined as civil parties in the proceedings. In January 2008, the Office of Co-Investigating Judges of the ECCC accepted the civil party applications of four victims, among them Theary Seng. This marks the first time an international or hybrid tribunal mandated to investigate war crimes, crimes against humanity or genocide has involved victims as civil parties entitled to full procedural rights, including legal representation. The unique and expansive role created for victims should help the Cambodian people to obtain a measure of justice and reconciliation that has eluded the nation for nearly three decades.

*For more information, see*

\* The Cambodian Genocide Program at Yale University, <http://www.yale.edu/cgp>

\* Extraordinary Chambers in the Courts of Cambodia, <http://www.eccc.gov.kh>

### **BURMA (MYANMAR), ETHNIC MINORITIES**

#### Background

For the past forty-five years, the military regime of Burma has been at war with non-Burman ethnic groups within the country. Tensions between the Burmese central government and ethnic minorities including the Karen, Shan, Karenni, Rohingya, Mon, Chin, and Rakhaing began soon after the country achieved independence from Britain in 1948. In 1962, the military junta capitalized on ethnic tensions to oust the government under the pretext of quelling ethnic separatism. However, conflict between the military junta and resistance movements escalated after the coup, as the military government forcefully attempted to assert control over the country's ethnic regions and combatants from all sides resorted to the widespread use of landmines.

Beginning in 1989, many resistance movements from non-Burman ethnic states began signing cease-fire agreements with the military junta, which has called itself the State Peace and Development Council (SPDC) since 1997. The cease-fire agreements have not amounted to durable political accords, and the military government increasingly has violated the terms of cease-fire agreements by sending large military forces into the natural resource-rich ethnic areas. Nevertheless, the SPDC claims the country is enjoying "unprecedented peace and stability," because of cease fire agreements concluded with all major resistance movements other than the Karen

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National Union. This claim is belied by the reports of major human rights organizations, which maintain that widespread violence against civilians is occurring in Burma's ethnic areas. A 2006 report by Minority Rights Group International describes the treatment of minorities in Burma as among the worst in the world.

Human rights abuses documented in Burma's increasingly militarized ethnic zones include forced labor, sexual violence, summary executions, and destruction and expropriation of property. There are reports that civilians, the majority of whom are women and children, are forced to become "porters" for the military. As porters, they are put at the frontlines to divert enemy fire, and made to act as human minesweepers. Several reports by non-Burman ethnic women who have escaped to Thailand, India, Bangladesh, China and other countries document the widespread use of rape of non-Burman women by the Burmese military as a weapon of war in the anti-insurgency strategy. At a meeting of the UN Human Rights Council in March 2008, the Special Rapporteur on human rights in Myanmar raised concerns about allegations of widespread sexual violence against women in border regions. The Burmese government flatly rejected these allegations and denied increased militarization of the of country's ethnic zones.

Non-governmental organizations (NGOs) including the Burma Lawyers' Council, Women's League of Burma, Karen Women's Organization, and Shan Women's Action Network claim the Burmese military junta is guilty of atrocity crimes including genocide, crimes against humanity, and war crimes. But to date, no allegations of genocide in Burma have been brought before a court of law. British human rights researcher Guy Horton has been the most vocal proponent for charging the Burmese government and individual leaders within the military

junta with the crime of genocide. Horton, funded by the government of the Netherlands and Christian NGOs, spent five years documenting human rights abuses in Burma. He then wrote a 635-page report entitled *Dying Alive: A Legal Assessment of Human Rights Violations in Burma*. The report concludes that three ethnic groups located in the east of the country—the Karen, Shan, and Karenni—have been targeted as victims of the military junta's genocidal policy. The report is based on Horton's consultations with local groups and his own observations. While British and Christian media outlets have publicized Horton's conclusions regarding genocide, no major human rights organization or inter-governmental organization has publicly adopted the position that genocide is occurring in Burma. Rather, the atrocities in Burma typically are characterized as crimes against humanity.

### Trials

In 2005, Horton presented his research and conclusions to the European Parliament, European Union Commission, United States Congress, British Parliament, and the governments of Norway and the Netherlands. Despite Horton's urgings, no state has begun prosecutions against Burma's leaders or third parties for the crime of genocide.

However, at least three cases involving crimes against humanity have been brought before national courts. Two Belgian suits are currently pending in the Belgian Court d'Arbitrage. They charge French directors of Total Exploration Production, a French company involved in the Yadana gas pipeline project, with complicity in crimes against humanity for their support of abusive military forces in securing the pipeline. The charges were brought by four victims of the military abuses, one of whom is a refugee living in Belgium, on the theory that Belgium has jurisdiction over crimes committed against refugees living

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in its borders. The case was dismissed by the Court of Cassation for lack of jurisdiction in June 2005. The Cour d'Arbitrage granted appeal in 2006, and the federal prosecutor re-opened the case before the Cour d'Arbitrage in October 2007.

A civil suit brought in a United States federal court in 1996 also involved abuses related to the Yadana gas pipeline project. Named defendants included Unocal Corporation, the directors of Unocal Corporation, and the French company Total Exploration Research Production. A California federal district court determined that it could not exercise jurisdiction over the French company, but that under the Alien Torts Statute it did have jurisdiction over Unocal Corporation for alleged customary international law violations committed in Burma, including aiding and abetting military forces in the murder, rape, torture, and forced labor of local villagers. After finding jurisdiction, the district court nonetheless dismissed the charges against Unocal. The appellate court reversed the district court's dismissal by finding that sufficient questions of fact warranted trial on most of the villager's claims. Unocal settled the case with Burmese villagers in late 2004, resulting in the withdrawal of the litigation from the appellate court's jurisdiction.

### Current Situation

The military regime has seriously restricted the ability of humanitarian organizations to operate freely in Burma, thus limiting the international community's knowledge about violations on the ground. The International Committee of the Red Cross, known for its political neutrality, issued a public statement in June 2007 criticizing the government's restrictive policies and charging it with complicity in serious violations of humanitarian law. Nevertheless, organizations formed by non-Burman ethnic refugees living mostly in Thailand

have painstakingly documented violations experienced by individuals now living in refugee camps along the Burma-Thailand border. These reports provide important evidence that the international community may use to pressure the Burmese government into lifting restrictions on humanitarian aid organizations, and permitting international fact-finding missions to take place in Burma's ethnic regions.

NGOs, particularly non-Burman ethnic women's organizations, have pressed for Security Council resolutions either establishing a commission to investigate atrocity crimes in Burma, or referring the situation to the International Criminal Court. However, the Security Council remains unlikely to take a strong position on Burma. Russia and China, both of which are major suppliers of weapons to the Burmese military, have vetoed Security Council sanctions against Burma in the past. Thus, the international community likely will have to use other measures—such as pressure by ASEAN, resolutions by the UN General Assembly, and continued attention by the Human Rights Council—to keep human rights violations in Burma from falling off the radar screen, as the current regime appears to desire.

### *For more information, see*

- \* Women's League of Burma <http://www.shanwomen.org>
- \* Karen Human Rights Group (<http://www.khrg.org/>)
- \* Karen Women's Organization (<http://www.karenwomen.org/>)
- \* Shan Women's Action Network (<http://www.shanwomen.org/>)
- \* Guy Horton, *Dying Alive: A Legal Assessment of Human Rights Violations in Burma* (2005) (<http://www.ibiblio.org/obl/docs3/Horton-2005.pdf>)

## IV. THE BALKANS

*Continued on page 17*

## GENOCIDE IN LAW AFTER NUREMBERG TO 2008: TRIGGERS, CRIMES, AND RESPONSES

### BOSNIA, BOSNIAN MUSLIMS

#### Background

Twelve years have passed since the Bosnian genocide and its effects on both the international community and on the Balkans region are still being felt. Although there are numerous allegations of mass killings occurring in Bosnia during the Bosnian War in the nineties, only the events in Srebrenica have been recognized as genocide by international courts. Bosnian Serbs seized Srebrenica in 1995 as part of the nationalist campaign to establish a "Greater Serbia." The siege resulted in the death of over 7,000 Muslim men.

#### Trials

Since the massacre in Srebrenica, hundreds of persons, including political and military officials, have been tried for the events involving the campaign to unite Serbians, which was led by the president of the former Yugoslavia, Slobodan Milosevic. The most prominent cases involving allegations of genocide have been brought before the International Criminal Tribunal for Yugoslavia (ICTY), which was established in 1993 by the UN Security Council as a response to the ongoing violations of international law in the former Yugoslavia. One of the highest officials indicted by the ICTY for genocide crimes-commander of the Bosnian Serb military forces, Ratko Mladic-remains fugitive. The other, former president of the Serb Republic of Bosnia, Radovan Karadzic, was recently arrested in July of 2008 in Belgrade. Mladic and Karadzic are the two individuals most directly responsible for the Bosnian Serb campaign that killed tens of thousands of Bosnian civilians, and Karadzic's arrest is a significant development for the

Tribunal. Karadzic was first indicted by the ICTY in 2005 and now faces eleven counts of genocide, war crimes and crimes against humanity for the role he played in the siege of Sarajevo, the Srebrenica massacre and the campaign of "ethnic cleansing" perpetrated against Bosnian Muslims during the war.

One of Mladic's top aides and the ICTY's third most wanted man, Zdravko Tolimir, was also arrested in June of 2007 and is currently in ICTY custody. Cases involving allegations of genocide in Bosnia have come before the courts of a number of countries, including Germany, where two former paramilitary leaders and a former police commander were found guilty of genocide. There are currently sixteen military and police officers on trial before the ICTY and Bosnian courts.

The highest profile cases have been those of Radislav Krstic and Slobodan Milosevic at the ICTY, and the case of Bosnia-Herzegovina v. Serbia at the International Court of Justice (ICJ). Krstic was the Commander of the Drina Corps of the Army of the Serb Republic of Bosnia-Herzegovina/Republika Srpska, a zone that included Srebrenica. Krstic was charged with numerous crimes including genocide or, alternatively, complicity in genocide. The ICTY Trial Chamber found him guilty of genocide and sentenced him to forty-eight years in prison. On appeal, however, the ICTY Appeals Chamber found him guilty of complicity in genocide, and reduced his sentence to thirty-five years in prison. Krstic's case was of particular importance because it was the first time the ICTY classified the events in Srebrenica as genocide, or targeting of Bosnian Muslims with the specific intent to destroy the group in whole or in part.

Milosevic was also charged with genocide and his trial

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before the ICTY marked the first time a former head of state was tried before an international court. The evidence brought forth at the trial included a video by the Scorpion paramilitary group in which the group was seen killing six men. The court's decision to try him for several different crimes in one trial, Milosevic's refusal to allow anyone to represent him, and his constant defiance of the court slowed the proceedings and provoked criticism against the Court. His trial lasted four years, and he died before a judgment was made. Many in the international community and the survivors of the genocide lamented the fact that his death prevented a final verdict. A Human Rights Watch report suggests that future international criminal tribunals should limit charges to the most serious allegations, and that the right to represent oneself should be limited.

Bosnia's case against Serbia before the ICJ marked the first time a state was haled into court for violation of its obligations under the 1948 Genocide Convention. Videos of the events in Srebrenica, and testimony regarding 520 camps and detention centers where Muslims were held, were presented as evidence before the Court. The ICJ found that the government of Serbia was not guilty of genocide, but had violated the Genocide Convention by failing to prevent the genocide in Srebrenica. The court further found that Serbia had violated its duty to punish, given Serbia's failure to arrest Mladic even though he remains on Serbian territory. Many survivors of the conflict were disappointed by the ICJ's failure to find the state of Serbia responsible for genocide.

### Current Situation

Tensions still remain high in the region, and survivors of the atrocities demand justice. Mladic is still regarded as a hero by many Serbs and nationalist groups, which are part

of the government that still denies the Srebrenica massacre. On the tenth anniversary of the massacre, the Serbian Parliament issued a statement equating the killings in Srebrenica with war crimes against the Serbs. Nonetheless, Serbia continues to be condemned for its failure to arrest Mladic. Though the ICJ recognized the government of Serbia had committed crimes that were "tantamount to acts of genocide," it could not make a finding of genocide because Bosnia did not establish that Serbia had the mental element of intent to destroy. Consequently, Bosnia failed to prove that Serbia was guilty of genocide.

### *For more information, see*

- \* Weighing the Evidence: Lessons from the Slobodan Milosevic Trial, Human Rights Watch. <http://hrw.org/reports/2006/milosevic1206/milosevic1206webwcover.pdf>
- \* The International Criminal Tribunal For the Former Yugoslavia. <http://www.un.org/icty/index.html>
- \* Bosnia and Herzegovina v. Serbia and Montenegro, International Court Of Justice. <http://www.icj-cij.org/docket/index.php?p1=3&p2=3&code=bhy&case=91&k=f4>

## KOSOVO, KOSOVO ALBANIANS

### Background

Kosovo, roughly the size of Kentucky, was a province of Serbia. In 1989, then Serbian President Slobodan Milosevic revoked the province's autonomy that it enjoyed during the Soviet era, and instituted severe discriminatory policies against the ethnic Albanians. This angered the territory's ethnic-Albanian majority who outnumber Serbs nine to one. The Kosovo Liberation Army (KLA) grew from this outrage and began forcefully to demand independence from Serbia. The violence between the two

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escalated in 1998-99 leading to fears that a Serbian military offensive was committing acts of genocide against the Albanians. Some of the most serious allegations include forcibly transferring and deporting some 800,000 Kosovo Albanian civilians, killing over 700 named individuals, sexual assaults, damaging religious sites and looting Kosovo Albanian property. An estimated 10,000 civilians were killed between 1998-1999, many Albanian, with an additional 1,500 Serbs dying in revenge killings soon afterward.

### Trials

On May 24, 1999, the International Criminal Tribunal for the former Yugoslavia (ICTY) indicted the five highest-level officials behind these alleged crimes: Slobodan Milosevic, President of the Federal Republic of Yugoslavia (FRY), who died on March 11, 2006 before the outcome of his trial; Vlatko Stojiljkovic, Interior Minister of Serbia, who died April 13, 2002 before the outcome of his trial; and Milan Milutinovic, President of Serbia, Dragoljub Ojdanic, Chief of staff for the Armed Forces of FRY, and Nikola Sainovic, Vice-Prime Minister of the FRY, all of whom had their trials begin on July 10, 2006 for crimes against humanity and war crimes and who are still awaiting conclusion. Related trials include several ongoing cases against top Serbian generals. The ICTY did not pursue any charges of genocide in Kosovo. Many acts committed against the Albanians could conceivably qualify under those enumerated in the definition of genocide, but the mitigating factor of the KLA conflict makes it difficult to prove that those acts were committed with the requisite intent to destroy the Albanian population and not solely as an effort to destroy the KLA and drive away their supporters.

Allegations of war crimes were not exclusively directed at

Serbia. The ICTY indicted several leaders of the KLA who allegedly began a systematic campaign to drive ethnic Serbs out of Kosovo in 1998. So far the cases against the KLA have led to 2 acquittals, 1 conviction pending appeal, with 3 more cases that are still in progress.

The courts in Serbia have also been involved with post-conflict justice. Serbia, in October, arrested four members of the Scorpions, one of the most brutal paramilitary groups, for their crimes in Kosovo. One member of the KLA was sentenced to 13 years in Serbia, a sentence that was affirmed on appeal on April 6, 2007.

### Current Situation

After years of failed negotiations, Kosovo declared independence from Serbia on Feb. 17, 2008. Inside Kosovo the violence has been minimal with the help of 1,600 NATO troops. In Serbia's capital, Belgrade, 150,000 people joined in relatively peaceful demonstrations. However, 80 demonstrators were charged with hooliganism, theft and resisting arrest after setting fire to the U.S. embassy and damaging the embassies of countries that recognized Kosovo. Serbia has condemned the legality of Kosovo's declaration of independence, declaring it void and in violation of the Constitution of the Republic of Serbia, the U.N. Charter, and U.N. Security Council Resolution 1244. The Serbian Interior Minister filed treason charges on Feb. 18, 2008 against Kosovar Prime Minister Hashim Thaci, President Fatmir Sejdiu, and Speaker of Parliament Jakup Krasniqi for their role in the declaration. Prime Minister Thaci has already been convicted in absentia and sentenced to 10 years on charges of terrorism for his role as a former leader of the KLA.

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The international community has split in recognizing Kosovo's independence. The United States, Great Britain, France and Germany have recognized Kosovo while Russia, China, Spain, and Greece have not. U.N. Secretary General Ban Ki-Moon has refused to comment on the legality of Kosovo's independence with a Security Council Resolution unlikely to be passed through the deadlock. Serbian Foreign Minister Vuk Jeremic plans to pursue Serbia's case before the International Court of Justice. Those supporting recognition of Kosovo argue that Kosovo is unique in that it was born of past violence stopped only by years of international control. Those opposing recognition warn of setting a dangerous precedent for other regional conflicts over autonomy. The fight over Kosovo's independence could be long and contentious but the fact that it is taking place in courts of law instead of the city streets is in itself a sign of progress and a reason to hope.

*For more information, see*

\* United Nations Mission in Kosovo, <http://www.unmikonline.org>

### V. MIDDLE EAST

#### IRAQ, IRAQI KURDS

##### Background

The ethnic Kurdish minority of northern Iraq was persecuted under the government of Saddam Hussein throughout the 1970's and 1980's. The Kurds, as non-Arabs, were considered a national threat, and the Iraqi government implemented various programs to "Arabize" Kurdish communities. The Anfal campaign was the violent culmination of Kurdish persecution, and resulted in the killing of at least 50,000, but possibly as many as 100,000 Kurds.

Ostensibly a military response to the Kurdish Peshmerga rebellion in the north, the Anfal, meaning "spoils" in Arabic, was an eight-stage military campaign carried out between February and September of 1988. During the Anfal, the Iraqi government attacked and killed tens of thousands of Kurdish men, women, and children living in targeted zones. Human Rights Watch has documented several instances in which the government used chemical and nerve agents against the Kurds in air attacks. For example, in a March 16, 1988 attack, the Iraqi government used chemical weapons against Kurds living in Halabja, killing as many as 5,000 civilians and creating long-term health problems and birth defects in survivors. Estimates vary, but human rights groups, Iraqi prosecutors for the High Tribunal, and Kurdish leaders agree that at minimum 50,000 to 100,000 Kurds were killed during the Anfal military campaign.

##### Trials

Following investigations in the early 1990's, Human Rights Watch identified the Anfal campaign as genocide against the Kurds. In 1994 and 1995, Human Rights Watch called on the international community to bring charges of genocide against the Iraqi government under the UN Genocide Convention at the International Court of Justice (ICJ), however no charges were ever brought before the ICJ.

After the fall of Saddam Hussein's Ba'ath party, the Iraqi High Tribunal was established to prosecute Iraqi leaders that took part in the Anfal and other atrocities against Iraqi communities. Originally called the Iraqi Special Tribunal, the Iraqi High Tribunal's statutory mandate was finalized by Iraq's Transitional National Assembly in October 2005, immediately before its first trial was to start. The High Tribunal has jurisdiction over Iraqi citizens and non-Iraqi

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citizens residing in Iraq. It is competent to hear charges of genocide, crimes against humanity, and war crimes-pursuant to the definitions set forth in the ICC Rome Statute-for crimes committed between the coup of July 1968 and the invasion of May 2003.

From its incipience, the High Tribunal faced opposition from the international community. Critics objected to the establishment of a domestic tribunal during occupation by the United States, the Tribunal's primary sponsor. Internecine violence between Sunni and Shi'a escalated as the trials began, and commentators warned that a U.S.-funded domestic trial could provoke civil war. Leandro Despouy, the Special Rapporteur on the Independence of Judges and Lawyers for the UN Commission on Human Rights, issued a statement objecting to the Tribunal's use of international criminal law in combination with outdated Iraqi legislation allowing the death penalty. Despouy has also criticized the Tribunal for not conforming to international standards on the right to competent defense and for its limited temporal jurisdiction, noting that war crimes committed during the U.S. occupation and ensuing conflict would not be justiciable before the Tribunal.

Saddam Hussein al-Majid al-Tikriti, the former president of Iraq and leader of the then-ruling Ba'ath party, was charged with genocide, crimes against humanity and war crimes for his participation in and oversight of the Anfal Campaign in northern Iraq. Ali Hassan al-Majid al-Tikriti was also charged with genocide, crimes against humanity and war crimes for his involvement in the Anfal.

The Anfal trial against Saddam Hussein started August 21, 2006, beginning the second trial adjudicated by the Iraqi High Tribunal. On November 5, 2006-just over two months after the Anfal trial began-Saddam Hussein was sentenced to death for crimes against humanity in the

Dujail massacre, a separately adjudicated trial. After the Dujail verdict was affirmed on automatic appeal, Saddam Hussein was executed by hanging on December 30, 2006. After his death, the genocide charges against him were dropped and the Anfal trial continued against his codefendants without him.

Ali Hassan al-Majid is the second Iraqi leader to be charged with genocide for his role in the Anfal Campaign against the northern Iraqi Kurds. As Secretary of the Northern Bureau of Iraq's Ba'ath Arab Socialist Party, al-Majid governed the northern Kurdish region of Iraq from 1987-1990. Al-Majid earned the name "Chemical Ali" during this time, orchestrating the use of chemical weapons against Kurdish populations and overseeing summary executions of tens of thousands of civilians.

Al-Majid faced charges of genocide with Saddam Hussein in the Anfal trial until the latter was executed in December 2006. Al-Majid's trial continued without Saddam Hussein, and on June 24, 2007, al-Majid was convicted of genocide, war crimes and crimes against humanity. He was sentenced to death by hanging, affirmed on automatic appeal. The Iraqi government must approve all executions, and on February 28, 2008, a three-member presidential council sanctioned Al-Majid's sentence. He now awaits execution. Al-Majid has denied all allegations against him and has said he has no knowledge of the alleged chemical attacks against populations in the north.

### Current Situation

Despite the international recognition of the Anfal atrocities, concerns persist about the Tribunal's ability to function as a stable and neutral arbitrator. In particular, Human Rights Watch has identified shortcomings concerning the organization and fairness of the trials, as

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well as the legal qualifications of the Tribunal's lawyers and judges. The group is especially concerned with defendants' ability to contest evidence brought against them, political interference in the court, and the security environment. The Tribunal has already seen the murder of three defense lawyers and a strong resistance from witnesses called to testify.

The trial and execution of Saddam Hussein was broadcast worldwide in the midst of continued military fighting and violence in the streets of Iraq. The timing, in-country location, and procedure of the trial created a politically charged, emotional, and divisive atmosphere in an already unstable country, and the reactions of Iraqi citizens reflected such a mood. Shiite communities, oppressed under the Ba'ath party, chanted and celebrated Saddam Hussein's death. Kurdish citizens relished a long-awaited justice for the atrocities committed against their families.

At the same time, Ba'ath supporters and Sunni populations that had enjoyed protection under the party pledged revenge. The trials of Saddam Hussein and Ali Hassan Al-Majid exposed and punished documented atrocities against large groups of innocent civilians. Yet its victories felt short-lived as the Iraq war escalated beyond control, masking any hope that the trials would set the stage for peace and reconciliation in the country.

*For more information, see*

\* [Genocide in Iraq: The Anfal Campaign Against the Kurds](#), Human Rights Watch.

<http://www.hrw.org/reports/1993/iraqanfal>

\* [Saddam's Life and Times](#), BBC News.

[http://news.bbc.co.uk/2/shared/spl/hi/middle\\_east/03/v3\\_iraq\\_timeline/html/default.stm](http://news.bbc.co.uk/2/shared/spl/hi/middle_east/03/v3_iraq_timeline/html/default.stm)

## THE GENOCIDE INTERVENTION NETWORK: TO PREVENT AND STOP GENOCIDE

Ellen Kennedy, Interim Director, Center for Holocaust and Genocide Studies, University of Minnesota (Founder and director, Genocide Intervention Network - Minnesota)

A few years ago I was teaching about the genocide in Rwanda and, having just returned from two weeks traveling that country with a young orphan survivor, I was particularly passionate about the need for students to engage with global affairs. One of my students approached me after class and told me that she was deeply moved by reading Phillip Gourevitch's book *We wish to inform you that tomorrow we will be killed with our families: stories from Rwanda*. She asked, "What are we going to do about this?"

I had no ready answer to her question; she clearly implied that education alone was an insufficient response to genocide and that I, as a professor, should be able to direct her in an appropriate action-oriented direction.

Several weeks later I was reading the newsletter from the Center for Holocaust and Genocide Studies at the University of Minnesota, where I now work. In a small item, Steve Feinstein, of blessed memory, had written about a newly-formed organization headquartered at Swarthmore College called the Genocide Intervention Network (GI-Net), designed to engage college students in preventing and stopping genocide.

I made some calls and decided that GI-Net was a good answer to the question.

And now, close to three years later, I've had the great privilege to establish and run a state division of GI-Net.

### Genocide Intervention Network: Background

GI-Net's story is a remarkable one, all the more so because it was started by and for college students and now, four years later, commands an important position in Washington, D.C. and influences national and global policy regarding genocide.

Mark Hanis, GI-Net founder, is the grandson of four Holocaust survivors. He grew up in Quito, Ecuador in a community of refugees from Europe. Above a door in the small Quito synagogue were the words "Never again," a legacy that has shaped Mark's life.

When Mark learned about the genocide occurring in Darfur, he felt he couldn't sit idly by. He was a child during the Rwandan and Bosnian genocides but this tragedy was occurring on his watch and he was compelled to act.

The organization that he now directs has a staff of nearly 20 in Washington and more than 850 student chapters called STAND: A Student Anti-Genocide Coalition, in high schools and colleges around the world. GI-Net also oversees the Sudan Divestment Task Force.

### Genocide Intervention Network: Educate, Advocate, Donate

GI-Net has a goal to empower ordinary citizens to prevent and stop genocide, realizing that foreign policy, indeed all legislative policy, belongs to individuals who can influence their elected officials. The key, of course, is to motivate them sufficiently to do so. GI-Net focuses on three tools: Educate; Advocate; and Donate.

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In the educational arena, GI-Net brings news about genocide to ordinary people in educational, faith, and civic organizations through the internet; video; speakers' bureaus; conferences; exhibits; teaching materials; and special events.

Education is the first step. Once people learn about the brutalization of innocent men, women, and children in Darfur, or Burma, or Congo, or wherever mass atrocities are occurring, there is a response of great empathy and a willingness to do something. However, most people feel paralyzed by the enormity of the situation and don't know where to begin.

GI-Net's remarkable story lies in telling people what to do, in creating simple steps for individuals, organizations, and institutions. At the individual level, everyone is urged to contact their elected officials and to express support for specific legislation that can increase safety and security for those at risk. Mark recognized, of course, that few people will 'make the call,' given that most people don't know who their elected officials are, or how to reach them, or what to say. He came up with a profoundly simple yet incredibly powerful tool: a 1-800 number, a toll-free call to end genocide.

### **Make the Call**

One dials 1-800-GENOCIDE (436-6243), certainly a memorable phone number. When connected, human rights activist Mia Farrow explains how to proceed. The caller enters his or her zip code, which automatically routes to the appropriate representative, senator, or to the White House simply by selecting a 1, 2, or 3 on the phone. After choosing the elected official to speak to, the caller hears the relevant 'talking points.' The caller is then connected directly to the legislator's office.

Close to 20,000 calls have been logged on 1-800-GENOCIDE since the line was introduced. It has revolutionized citizen access and communication to legislators. The calls have had a powerful impact in passing important legislation such as the recent Sudan Accountability and Divestment Act. The number works throughout the U.S. and in Canada, where it connects Canadians to their members of Parliament.

### **Darfur Scores**

A second advocacy tool is called "Darfur Scores." When GI-Net first began, Mark and his colleagues were fresh out of college and recognized the strong influence that grades exerted on their academic performance. Using this link between grades and behavior, GI-Net ranks all 100 senators and 435 representatives with grades of A through F for their support of legislation to prevent and stop genocide. These grades, posted at [www.darfurscores.org](http://www.darfurscores.org), are publicly available; politicians refer to their grades to tout their performance on this issue.

These scores provide great leverage for citizens to influence their elected officials. In my congressional district in Minnesota, our representative had a 'Darfur Score' of C when our GI-Net state chapter first began. We visited his office in Washington and pointed this out. No legislator wants a C, especially not when public attention is drawn to it, which we did in a front-page newspaper article. Our representative promptly co-sponsored legislation, joined the Sudan Caucus in the House of Representatives, etc., and now has an A.

We've targeted our entire Minnesota delegation using these scores, applauding those with As and A+ grades and urging those with Cs and Ds to make genocide, and specifically the Darfur crisis, a more important issue on

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their political agendas. We're proud that Minnesota's legislators now have one of the highest 'GPAs' of any state in the country - not yet a 4.0, but well on the way at a 3.6. And some members of our delegation call us regularly to find out what steps they can take to keep their grades up and, of course, to get extra credit.

### **Divestment**

One of the strongest tools to fight genocide is economic pressure on the offending nations. The Sudan Divestment Task Force, a project of GI-Net, designed a program called targeted divestment, urging divestment from a list of about two dozen companies that are particularly complicit in funding the Khartoum government's purchase of military supplies to wage genocide. Unlike divestment from South Africa nearly two decades ago, this strategy exempts companies that benefit infrastructural development in needy areas, provide vital products and services, etc. The program is very successful, with 27 states divesting their public pension funds from these targeted companies. To date, 61 colleges and universities, 19 cities, and 11 international and religious organizations have also passed divestment policies. GI-Net Minnesota is proud that our state; the University of Minnesota; our capital city of St. Paul; and the suburb of Edina have all supported divestment. The Sudan Divestment Task Force has expanded its efforts and now operates in 18 countries.

Divestment is urged not only at the city, state, and institutional levels but is also encouraged for individual investors. Nobody wants their money, either in the form of their tax dollars or their own personal portfolios, to support genocide, and we see increasing pressure put onto portfolio and fund managers to examine investment strategies carefully.

Perhaps one of the most encouraging consequences of the divestment activities is the result that the offending companies underperform their competitors in the marketplace. The message is clear: genocide doesn't pay.

Divestment has had another consequence as well. Some of the most egregiously-offending companies are Chinese enterprises. The divestment effort has brought pressure and unfavorable attention to China's role in supporting the genocidal regime in Khartoum, and China, which had vetoed at least seventeen Security Council efforts to send United Nations peacekeepers into Darfur, finally acceded to a hybrid UN-African Union force in fall 2007. Although only 9,000 of the mandated 26,000 soldiers are presently on the ground, this represented a very positive step.

### **Protection**

The third part of the GI-Net mission, to donate, has resulted in more than \$500,000 being raised to support important protection efforts on the ground. A genocide is not a natural disaster, yet nations are quick to send food and slow to provide protection to those targeted with violence and extermination. Although it is important to 'stop the dying' through providing food, water, and medicine, it is even more urgent to 'stop the killing.' Women and girls in Darfur are particularly at great risk of horrific gender-based violence, being vulnerable daily as they leave villages and camps to search for firewood. Men get killed; women get violated; and the 'Sophie's choice' of decision-making is therefore to send the women. GI-Net has established firewood patrols, in connection with AU staff, to combat this violence. GI-Net is also providing alternative fuel sources, given the scarcity of firewood and the environmental consequences of tree depletion throughout the region.

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The United Nations Assistance Mission in Darfur (UNAMID) has what are called Formed Police Units (FPUs). These units are responsible for the majority of day-to-day civilian protection activities. However, no standards exist for assessing the readiness and skill-level of FPUs contributed by various countries, which means that UNAMID troops act in different ways within the same mission. In February, GI-NET support helped to develop an interim set of standards for the FPUs in the Darfur mission. GI Net staff is now working with an expert on policing in UN missions to develop a training course for the FPUs going to Darfur now and to other locations in the future. GI-NET is currently providing salary support for a contractor to work on these issues.

These funds come from many sources, including large gifts from generous philanthropists; money raised from high school bake sales; bar mitzvah checks; and corporate contributions. Minnesotans have been particularly generous, raising more than 20 percent of the GI-Net funds to date.

GI-Net focuses efforts on Darfur given the fact that the United States has labeled this crisis a genocide and it is now in its fifth year. However, GI-Net is expanding its work into other areas where protection is badly needed. The protection team has spent time inside eastern Burma, where the Burmese government has conducted a program of ethnic targeting against its own people for over four decades. In the last ten years, over 3,000 villages have been burned and more than 500,000 people have been displaced. The GI-Net team is working on a strategy for supporting civilian protection projects through local organizations there.

### The Future

GI-Net has identified several other areas of concern: Sri Lanka; Democratic Republic of Congo; Chad; Central African Republic; Somalia; and Iraq, all places where innocent individuals face great potential for violence. As GI-Net resources expand, protection programs will be developed for these other places as well.

At the state level, GI-Net has given us remarkable tools to use for raising awareness; generating citizen involvement to prevent and stop genocide; and opportunities to participate in vitally-important civilian protection programs. I refer interested readers to the national website at

[www.genocideintervention.net](http://www.genocideintervention.net); to our state site at [www.mngin.org](http://www.mngin.org)

and I invite you to contact me for additional information: [ejkennedy@mngin.org](mailto:ejkennedy@mngin.org) or [ekennedy@umn.edu](mailto:ekennedy@umn.edu)

### 'The Question'

My student knows that I mention her question, "What are we going to do about this?" whenever I tell the GI-Net story. She is very embarrassed. She is embarrassed because she thought everyone would have been asking the question - and they did not. ***We all must ask, and we all must act.***

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