REVIEW OF THE SEXUAL VIOLENCE ELEMENTS OF THE JUDGMENTS OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA, THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA, AND THE SPECIAL COURT FOR SIERRA LEONE IN THE LIGHT OF SECURITY COUNCIL RESOLUTION 1820

United Nations
Department of Peacekeeping Operations

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FOREWORD

The aim of this document is to identify the sexual violence elements of the jurisprudence of the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), and the Special Court for Sierra Leone (SCSL).[1] It offers a comprehensive overview of the various ways that sexual violence in armed conflict can be interpreted and addressed under international law. It further provides easy reference to the conclusions that the ICTY, ICTR and SCSL reached with regard to sexual violence in armed conflict. It was prepared in light of Security Council Resolution 1820 (SCR 1820) which requests, inter alia, information on situations of armed conflict in which sexual violence has been widely or systematically employed against civilians, and analysis of the prevalence and trends of sexual violence in situations of armed conflict.

The annexed Toolkit offers key readings, reference, and training materials on sexual violence, assembled to support the request in SCR 1820 for appropriate training programs for personnel deployed by the United Nations in the context of Security Council-mandated missions to help them better prevent, recognize and respond to sexual violence in conflict.

The Study and Toolkit together are intended to serve as a resource for the United Nations System in its efforts to prevent and respond to sexual violence, including by combating impunity for sexual crimes. It is of particular relevance to UN entities working on human rights and the rule of law, particularly human rights and justice components of peacekeeping missions. It will be an exceptional resource to the Team of Experts – mandated by SCR 1888 – to assist national authorities to strengthen the rule of law and address sexual violence in armed conflict, including by enhancing criminal accountability and responsiveness to victims. The analyses herein will also be of assistance to legal and judicial actors and civil society organizations dealing with cases of a similar nature at the national level.

Unless otherwise indicated all data is up to date as of 9 March 2009. ■

EXECUTIVE SUMMARY

The chief purpose of this report is to review sexual-violence elements of the judgments of the UN International Criminal Tribunal for the former Yugoslavia (ICTY), the UN International Criminal Tribunal for Rwanda (ICTR) and the UN-backed Special Court for Sierra Leone (SCSL) against the background of UN Security Council (SC) resolution 1820 of 19 June 2008 (SCR 1820, or resolution). More specifically, the report seeks to "address SCR 1820 and its request for 'information on situations of armed conflict in which sexual violence has been widely or systematically employed against civilians, and analysis of the prevalence and trends of sexual violence in situations of armed conflict" through the review of judgments of the three courts.

The three courts were established to try those individuals 'most' responsible for the international crimes of genocide, crimes against humanity and war crimes committed during certain armed conflicts. These three general categories of atrocity crimes include sexual violence committed against civilians. For various reasons prosecutors cannot and do not prosecute all accused which evidence suggests have committed sexual violence against civilians. As a consequence of such factors, the judgments of the ICTY, ICTR and SCSL cannot be taken to be a comprehensive reflection of the sexual violence committed against civilians during the relevant armed conflicts.

Judgments usually contain findings of fact and law of specific relevance to the case and law at hand, and which have been proven beyond a reasonable doubt by the prosecution. Extrapolating any conclusions from them in relation to the nature, scope, scale and trends of sexual violence committed against civilians in armed conflicts has to be done with great care. For example, the general category of crimes against humanity has a legal element requiring that the alleged criminal conduct must have been part of a widespread or systematic attack directed against any civilian population. A conviction for rape or other sexual violence as crime against humanity does not, therefore, equate with a finding that sexual violence has been widely or systematically employed against civilians.

Numerous judgments of completed cases at all three courts contain findings in relation to sexual violence committed against civilians in the relevant armed conflicts. Sexual violence form part of convictions of genocide, crimes against humanity and war crimes. Sexual violence against civilians also takes various forms and constitutes or is part of different crimes at the three courts. For example, rape and other forms of sexual violence constitute or form part of the crimes of torture, enslavement, sexual slavery and persecution as crimes against humanity; of torture and outrages upon personal dignity as war crimes; and of serious bodily or mental harm as genocide.

Several at-trial cases, awaiting-trial cases, indictments of remaining fugitives, and trial judgments that are subject to appeal also contain charges or findings of sexual violence against civilians.

In these judgments, the main victims of sexual violence were civilians. Women and girls were the chief target. In ICTY and SCSL cases, men were targeted too. Many of the convictions concern sexual violence that formed part of widespread or systematic attacks against civilian populations. In many instances the sexual violence was particularly brutal, both physically and mentally.

At the ICTY, a noticeable feature of the relevant judgments is that sexual violence against civilians formed part of and flowed from the so-called 'ethnic cleansing' of areas by parties to the conflict. Sexual violence centring on detention centres, including in situations amounting to sexual slavery of women and girls, comprise a considerable part of the findings. However, as the judgments clearly show, sexual violence against civilians was also committed away from such detention centres. At the ICTR, a noticeable feature is that sexual violence against civilians, which mostly took the form of rape, formed part of the genocide committed against the Tutsi. At the SCSL a noticeable feature is the abduction of civilian women and girls by and their forced marriage to combatants, in the course of which these so-called 'bush wives' were also raped and subjected to other forms of sexual violence.

The relevant judgments underline the importance and legal duty of superiors to prevent or punish crimes, including sexual crimes, by their subordinates. In several instances, superiors and other perpetrators who were in positions to influence others not only failed in their duty but they also personally raped, sexually enslaved and committed other sexual violence against civilians. ■

Secretary-General Ban Ki-moon addresses guests at a ceremony in commemoration of the fifteenth anniversary of the Rwanda genocide, 7 April 2009, United Nations, New York.

CONTENTS

GENERAL ABBREVIATIONS AND GLOSSARY

(For case-related glossary see "Cases, judgments and decisions cited" at the end of this report)

Additional Protocol I	Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977
Additional Protocol II	Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977
AFRC	Armed Force Revolutionary Council
ARK	Autonomous Regina of Krajina
Atrocity crimes	Genocide, crimes against humanity and war crimes
BiH	Bosnia and Herzegovina
CDF	Civil Defence Forces
Former Yugoslavia	See *SFRY*
ICLS	International Criminal Law Services
ICTR	UN International Criminal Tribunal for Rwanda
ICTY	UN International Criminal Tribunal for the former Yugoslavia
RUF	Revolutionary United Front
SFRY	Socialist Federal Republic of Yugoslavia
SG	UN Secretary-General
SC	UN Security Council
SCR	UN Security Council resolution
SCR 1820	UN Security Council resolution 1820 of 19 June 2008
SCSL	Special Court for Sierra Leone
SCSL-establishment agreement	Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, 16 Jan 2002
TOR	Terms of reference of this report, as amended
Vol	Volume

CHIEF PURPOSE OF REPORT

1. The chief purpose of this report is to review sexual-violence elements of the judgments of the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR) and the UN-backed Special Court for Sierra Leone (SCSL) against the background of Security Council (SC) resolution 1820 of 19 June 2008 (SCR 1820, or resolution).[2] Resolution 1820 and its follow-up resolution 1888 are attached to this report.

2. More specifically, the report reviews the judgments of the three courts in light of the request in SCR 1820 for "information on situations of armed conflict in which sexual violence has been widely or systematically employed against civilians, and analysis of the prevalence and trends of sexual violence in situations of armed conflict." Prepared for a mainly political and peacekeeping audience, this report informed the first progress Report of the UN Secretary-General on (SG) implementation of SCR 1820.[3] ■

Under-Secretary-General for Peacekeeping Operations visits Eastern DRC to asses the impact of the ongoing unrest, 4 November 2008, Goma, Democratic Republic of the Congo.

METHODOLOGY

3. This report is based on desk research. Generally, all judgments of cases completed by 25 February 2009 were consulted.[4] Relevant sexual-violence information drawn from the relevant judgments[5] was tabulated on a case-by-case basis. These three sets of sub-tables on specific cases at each court are integrated at the end of each Section. Generally, the sub-table-entries for each relevant case are: (a) Number of accused. (b) Did court make findings concerning sexual violence? (c) Do said findings concern genocide, crimes against humanity and/or war crimes? (d) Do sexual-violence findings relate to multiple instances? (e) Do one or more sexual-violence findings involve multiple victims and/or perpetrators? (f) Did any of the sexual violence amount to torture? Additional notes and details on each case were also added. On the basis of these case-specific sub-tables, general tables in relation to each court was compiled and are to be found in the relevant sections on the ICTY, ICTR and SCSL. The standard entries of these tables include the following: (a) Total number of completed cases. (b) Number of completed cases in which judgments contain sexual-violence findings. (c) Number of completed cases in which sexual violence was found to be part of widespread and/or systematic attack directed against civilian population. They also contain entries on, for example, at-trial cases. These general tables as well as the case-specific sub-tables served as bases for the non-tabulated information and analyses in the main-text sections dealing with the ICTY, ICTR, and SCSL. Unless otherwise indicated all data is up to date as on about 9 March 2009. ■

I. THE ICTY, ICTR AND SCSL: UN ORIGINS AND TIES, AND GENERAL MANDATES

4. The ICTY is seated in The Hague, the Netherlands, and the ICTR in Arusha, Tanzania. Acting under the powers of Chapter VII of the UN Charter, the SC created the former by resolution 827 in 1993 and the latter by resolution 955 in 1994.[6] As such they are ad-hoc organs of the SC.

5. When it created the ICTY, the SC expressed:

> once again its grave alarm at continuing reports of widespread and flagrant violations of international humanitarian law occurring within the territory of the former Yugoslavia, and especially in the Republic of Bosnia and Herzegovina, including reports of mass killings, *massive, organized and systematic detention and rape of women*, and the continuance of the practice of "ethnic cleansing" [. . .].[7]

It determined that this situation "continues to constitute a threat to international peace and security".[8] In respect of Rwanda, the SC similarly expressed its "grave concern at the reports indicating that genocide and

The President of the United Nations Criminal Tribunal for Rwanda briefs the Security Council on the work of his Tribunal. At right is the President of the United Nations International Criminal Tribunal for the Former Yugoslavia, 3 December 2009, UN, NY.

other systematic, widespread and flagrant violations of international humanitarian law have been committed" there and determined that the situation constitutes a threat to international peace and security.[9]

6. The SCSL is seated in Freetown, Sierra Leone. It was created by agreement between the UN and the Government of Sierra Leone in 2002, which was concluded pursuant to SC resolution 1315 of 2000.[10] The resolution was not adopted under Chapter VII of the Charter, but the SC reiterated that the situation "in Sierra Leone continues to constitute a threat to international peace and security in the region" and requested the SG to negotiate an agreement with the Government of Sierra Leone to create the SCSL.

7. The ICTY, ICTR and SCSL are part of the responses of the international community to the armed conflicts that racked the former Yugoslavia in the 1990s, Rwanda and its neighbours in 1994, and Sierra Leone since late November 1996. The three courts were specifically created to prosecute and try individuals most responsible for the egregious international crimes of genocide, crimes against humanity and war crimes (atrocity crimes) that were committed during the armed conflicts.[11] They are temporary courts and have started scaling back their activities in anticipation of the completion of their current mandates in the next few years.[12] ■

II. PERTINENT ASPECTS OF SCR 1820

8. The general backdrop to the report is SCR 1820, which concerns sexual violence against civilians in armed conflicts. The SC is seized of the matter because it concerns international peace and security. By the resolution, the SC:

> *Stresses* that sexual violence, when used or commissioned as a tactic of war in order to deliberately target civilians or as a part of a widespread or systematic attack against civilian populations, can significantly exacerbate situations of armed conflict and may impede the restoration of international peace and security, *affirms* in this regard that effective steps to prevent and respond to such acts of sexual violence can significantly contribute to the maintenance of international peace and security, and *expresses its readiness*, when considering situations on the agenda of the Council, to, where necessary, adopt appropriate steps to address widespread or systematic sexual violence.[13]

The resolution builds on the earlier work, and supports the ongoing and future work, of the SC, General Assembly, the Secretariat, other UN bodies, Member States and other actors on this issue.[14]

9. The terms of SCR 1820 cover a wide range of aspects relevant to sexual violence in armed conflicts and their aftermath. The immediate backdrop to the chief purpose of this report is the following emphasised parts of operative paragraphs 3 and 15 of the resolution. By paragraph 15 the SC requests the SG:

> to submit a report to the Council [. . .] on the implementation of this resolution in the context of *situations which are on the agenda of the Council, utilizing information from available United Nations sources* [. . .], which would include, inter alia, *information on situations of armed conflict in which sexual violence has been widely or systematically employed against civilians; analysis of the prevalence and trends of sexual violence in situations of armed conflict*; proposals for strategies to minimize the susceptibility of women and girls to such violence; benchmarks for measuring progress in preventing and addressing sexual violence; appropriate input from United Nations implementing partners in the field; information on his plans for facilitating the collection of timely, objective, accurate, and reliable information on the use of sexual violence in situations of armed conflict, including through improved coordination of UN activities on the ground and at Headquarters; and information on actions taken by parties to armed conflict to implement their responsibilities as described in this resolution, in particular by immediately and completely ceasing all acts of sexual violence and in taking appropriate measures to protect women and girls from all forms of sexual violence.

By paragraph 3 the SC demands:

> that all parties to armed conflict immediately take appropriate measures to protect civilians, including women and girls, from all forms of sexual violence, which could include, inter alia, enforcing appropriate military disci-

> plinary measures and *upholding the principle of command responsibility*, training troops on the categorical prohibition of all forms of sexual violence against civilians, debunking myths that fuel sexual violence, vetting armed and security forces to take into account past actions of rape and other forms of sexual violence, and evacuation of women and children under imminent threat of sexual violence to safety [. . .].

10. With reference to the emphasised parts, the states and regions that are the focus of the ICTY, ICTR and SCSL remain on the agenda of the SC. These are, respectively, the states of the former Yugoslavia, Rwanda and the wider Central African region, and Sierra Leone and the wider West African region. As the ICTY and ICTR are UN organs, as the SCSL is a co-creation of the UN, and as all the judges of the ICTY and ICTR and the majority of the judges of the SCSL are selected by the UN,[15] the judgments of the three courts are UN sources. These judgments contain some information on the underlined aspects of sexual violence in armed conflicts; this is explained, and the relevant information is set out in the main body of this report. ■

III. GENERAL RELEVANCE OF ICTY, ICTR AND SCSL TO SCR 1820

11. There are numerous aspects of the ICTY, ICTR and SCSL that are of actual and potential relevance to SCR 1820 and its implementation. The following are some examples.

12. The UN had various aims in mind when it created the three courts. Among these are to help end impunity for atrocity crimes, including sexual violence, committed against civilians in armed conflicts by bringing leading perpetrators to justice, and to ensure redress for victims.[16] The bulk of their investigations, prosecutions and jurisprudence concerns crimes committed against civilians – as opposed to 'combatants' – by leaders of the parties to the relevant armed conflicts. Sexual violence, including rape, is a noticeable element of the work of the three courts. Ending impunity and ensuring accountability and justice for crimes of a sexual nature are among the facets of an eventual comprehensive strategy covered in SCR 1820.[17] The creation and work of the three courts were also meant to contribute to reconciliation and the restoration and maintenance of peace[18] – these issues too are important elements of SCR 1820.[19] By the resolution the SC "*stresses* the importance of ending impunity for such acts *as part of a comprehensive approach* to seeking sustainable peace, justice, truth, and national reconciliation".[20]

13. Analyses of the degree to which the three courts have and still could contribute to achieving such ends – and in particular the maintenance and restoration of international peace and security – through their work on sexual violence have been and will remain fraught with difficulty, but might nevertheless be useful. The same goes for other accountability mechanisms directly or indirectly involving the UN. These range from prosecutorial mechanisms to bring to justice perpetrators of sexual violence and other serious crimes in Timor Leste to the Truth and Reconciliation Commission of Sierra Leone. Reviews of the work of such mechanisms, alongside other sources, would also throw more light on the different facets of sexual violence against civilians in armed conflicts, including the link between such violence and international peace and security.

14. From the outset, an expectation and hope that the three courts would give due attention to sexual violence against civilians were held in many circles. The three courts themselves at times amplified these expectations and hopes. Analyses of the degree of success and failure by them to give due consideration to the issue could point to lessons for the successful implementation of SCR 1820. Examples of relevant aspects to consider are:

(a) the institutionalisation, maintenance and functioning of gender-expert units, especially in the offices of the prosecutors;

(b) the full and equal participation of women in policy-and decision-making concerning investigations and prosecutions;

(c) the full and equal participation of female judges and legal advisers to judges, especially in cases involving allegations and charges of sexual violence;

(d) the full and equal participation of female experts in, for example, victim and witness support and protection units in the registries;

(e) the content and scope of investigation and prosecution strategies in relation to sexual violence;

(f) the degree to which the courts prevailed over particular difficulties involved in investigating and prosecuting crimes of a sexual nature, and identifying, protecting and supporting related victims and witnesses; and

(g) the effect that resource constraints generally and, especially over the past few years, and the pressure on the courts to complete investigations, prosecutions and trials may have had on decisions such as whether to include sexual violence in investigations, whether to include or drop allegations and charges of sexual violence in indictments, whether to plea bargain on sexual-violence charges with accused, and whether to allow or disallow the late amendment of indictments to include sexual-violence allegations and charges or whether to allow or disallow the leading of evidence of sexual violence at trial.

Such issues touch on various aspects of SCR 1820, and include the importance and role of women in all relevant decision-making bodies and phases, the creation and maintenance of responsive mechanisms, and the effective prevention of sexual violence in armed conflicts.[21] ■

IV. THE FOCUS ON JUDGMENTS OF COMPLETED CASES, RELATED PITFALLS, AND OTHER CAUTIONARY NOTES

i. Focus on judgments of completed cases

15. At the ICTY, ICTR and SCSL judgments include factual findings of judges – who form trial and appeal chambers – based generally on evidence presented by prosecution and defence teams. In cases involving sexual violence too, evidence includes statements and testimonies of victims and witnesses. Judges consider and weigh evidence carefully. Their judgments also include legal findings. These are findings applying the specific body of law which the courts are mandated to apply – elements of international criminal law, international humanitarian law ('laws of war'), human rights law and general public international law[22] – to relevant facts that the judges have determined the prosecution proved beyond a reasonable doubt. This bar – standard of proof beyond reasonable doubt – is necessarily high. What the ICTR has noted with respect to its work applies equally to the ICTY and SCSL:

> The process of a criminal trial cannot depict the entire picture of what happened in Rwanda, even in a case of this magnitude. The Chamber's task is narrowed by exacting standards of proof and procedure as well as its focus on the four accused and the specific evidence placed before it in this case.[23]

16. Generally, this report only considers relevant *findings* made by a majority of judges in final trial and appeal *judgments*, including any relevant sentencing judgments. Separating findings from other statements and opinions is not always straightforward. Opinions and statements on issues not directly relevant to the specific case ought to be treated with care as these issues may not have been as rigorously weighed as the directly relevant issues. The main focus is on the relevant parts of judgments of *completed* ICTY, ICTR and SCSL cases. These are cases in which appeals, if any, have been concluded. As a consequence of these limitations, some cases, court decisions and other materials are generally not dealt with at all or in any detail.[24]

ii. Pitfalls of focus on judgments, and other cautionary notes

17. Collating information from and undertaking analyses of judgments for the chief purpose set out in paragraph 2 as opposed to other appropriate non-court sources have some pitfalls.

18. Judges usually take care to limit their factual findings only to evidence directly relevant to proving or disproving specific charges in the case before them. They usually also take care to limit their legal findings to the relevant facts as applied to the relevant law. The relevant law is quite particular.

19. For example, the law on the three categories of atrocity crimes – genocide, crimes against humanity and war crimes – does *not* have as element that crimes underlying these categories – such as rape, sexual enslavement, torture and killing – must *themselves* be committed on a widespread and/or systematic basis against civilians. Consequently, judges need not nor do they usually make findings to that effect (even if the evidence shows that such underlying crimes were committed on a systematic and/or widespread basis against civilians). What judges are required to determine in relation to charges of crimes against humanity in particular, is something quite different, namely, whether the alleged underlying crime or crimes *formed part of* a widespread *or* systematic *attack* directed against any civilian population. (This is explained in more detail in sections V(iv) and (v).) Of importance for current purposes is to underscore that judgments of the ICTY, ICTR and SCSL do not usually contain findings that rapes or other forms of sexual violence have been widely and/or systematically employed against civilians in the relevant armed conflicts, because the law does not require judges to make such findings in order to determine the guilt or innocence of accused for any of the atrocity crimes.

20. Similarly, as the applicable law does not require it, judgments also do not usually contain findings on matters such as the prevalence and trends of sexual violence in armed conflicts or the link between sexual violence and the outbreak, exacerbation and resolution of armed conflicts. For that, some extrapolation, if at all possible, would be required from the judgments. Such extrapolation is beyond the scope of this report. Any such extrapolation would have to be done with care. For example, it would be wrong to extrapolate from a finding in a single case that rapes of civilian women, however many, formed part of a widespread or systematic attack against civilians in a local area over a short period of time, that the same is true for the relevant armed conflict in general.

21. That being said, the following must be borne in mind when considering what judgments can and do convey about sexual violence in the relevant armed conflicts.

22. The ICTY, ICTR and SCSL were not established to deal with civil suits, or with 'ordinary' violations of international law or with 'ordinary' crimes under national law.[25] They were established to deal with grave international crimes amounting to genocide, crimes against humanity and war crimes. Consequently, their judgments dealing with sexual violence usually concern only grave instances of sexual violence, or at least instances of sexual violence linked to the conflict. Gravity could relate to, for example, the scale of the crimes and/or their particularly violent, sadistic and degrading nature.

23. The courts were established to deal with atrocity crimes committed only in certain armed conflicts during certain periods.[26] Generally, they were established to try only those 'most responsible' for serious instances of such atrocity crimes, focusing mainly on the leadership. The Statutes of the ICTY and ICTR do not reflect these courts' recent focus on high-profile accused. This focus has evolved over time, partly in response to SC-initiated efforts to scale back and complete their current workload.[27] The SCSL Statute expressly stipulates that the SCSL is to prosecute those bearing the "greatest responsibility" for atrocity crimes.[28]

24. Nevertheless, in practice these courts cannot deal with *all* grave instances of atrocity crimes committed during the relevant armed conflicts nor even with *all* the 'worst' instances, and they cannot deal with *all* the 'worst' offenders, those who might be considered to be 'most responsible' for atrocity crimes.

25. Their resources are too limited. So are their life-spans. The 'worst' offenders may and do evade justice. It may be difficult to gather evidence that would convince judges of the guilt beyond reasonable doubt of

accused on any or some charges. Prosecutors usually do not charge anyone unless they are reasonably certain that their case would stand up in court. The sheer scale and number of some of the crimes also mean that prosecutors simply cannot charge accused in respect of each, lest the case becomes unmanageably big and complex and requires resources not justifiable when considered against the resource needs of other investigations and prosecutions. Prosecutors can select only some crimes and charge only some accused. In the context of specific cases they often select only some crimes in certain locations committed over relatively brief periods of time.

26. This all applies to potential and actual sexual-violence cases involving civilians too. Prosecutors and other court staff also often face difficulties in convincing traumatised and fearful victims and witnesses of sexual violence to help with investigations and to testify, which may result in all or some sexual-violence allegations and charges being excluded from or pared down in indictments.

27. Consequently, judgments of the ICTY, ICTR and SCSL cannot be said to reflect the totality of sexual-violence crimes – whether they amount to atrocity crimes or not – committed against civilians, including women, in the relevant armed conflicts that convulsed the former Yugoslavia, Rwanda and Sierra Leone. Sexual violence in armed conflicts, including grave sexual crimes amounting to atrocity crimes, is a much bigger problem than reflected in these judgments.

28. The relevance for SCR 1820 of the three courts' different judgments, considered individually and together, would therefore vary. It is only alongside other potentially relevant sources that the value of these judgments can be properly identified and amplified. These sources include reputable UN reports; judgments of ordinary and special courts in the former Yugoslavia and Rwanda dealing with atrocity-crime cases, including sexual-violence cases; reports of civil-society groups and national bodies such as truth and reconciliation commissions; and peer-reviewed history books and academic articles on the judgments themselves and on relevant aspects of the armed conflicts. ■

V. ATROCITY CRIMES, VARIOUS FORMS OF SEXUAL VIOLENCE, LINKS BETWEEN ATROCITY CRIMES AND ARMED CONFLICTS, SUPERIOR RESPONSIBILITY, AND OTHER FEATURES

29. This section sets out some relevant aspects of the law of the ICTY, ICTR and SCSL – as reflected in the Statutes and case-law of the three courts. The following sections must be read in the light of this section.

i. Sexual violence in definitions of genocide, crimes against humanity and war crimes

30. Generally, the ICTY, ICTR and SCSL were established to try the international crimes of genocide, crimes against humanity and war crimes.[29] As noted by the SC in SCR 1820, "rape and other forms of sexual violence can constitute a war crime, a crime against humanity, or a constitutive act with respect to genocide".[30] The definitions of genocide, crimes against humanity and war crimes in the Statutes of the ICTY, ICTR and SCSL are set out in box 1, box 2 and box 3 respectively. The parts of the definitions emphasised in the boxes point to some of the underlying crimes via which sexual violence is prosecuted; this is explained in sub-section ix below.

31. The ICTY and ICTR can try genocide. The SCSL has no jurisdiction to try genocide.

Box 1: The definition of genocide in the ICTY and ICTR Statutes

The genocide provision of the ICTY Statute (article 4) reads: "(1) The [ICTY] shall have the power to prosecute persons committing genocide as defined in paragraph 2 of this article or of committing any of the other acts enumerated in paragraph 3 of this article. (2) Genocide means 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; (e) forcibly transferring children of the group to another group. (3) The following acts shall be punishable: (a) genocide; (b) conspiracy to commit genocide; (c) direct and public incitement to commit genocide; (d) attempt to commit genocide; (e) complicity in genocide."

The ICTR provision – ICTR Statute article 2 – is essentially the same.

32. There are variations between the crimes against humanity definitions in the respective Statutes, including in relation to sexual-violence crimes.

Box 2: The definition of crimes against humanity in the ICTY, ICTR and SCSL Statutes

The crimes against humanity provision in the ICTY Statute (article 5) reads: "The [ICTY] shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population: (a) murder; [. . .] *(c) enslavement*; [. . .] *(f) torture*; *(g) rape*; *(h) persecutions on political, racial and religious grounds*; *(i) other inhumane acts*."[31]

ICTR Statute article 3 is essentially the same, except that it does not include the requirement that the crime must be committed in armed conflict, and that it lists grounds upon which the widespread or systematic attack directed against any civilian population must be perpetrated, namely, "national, political, ethnic, racial or religious grounds".[32]

SCSL Statute article 2 differs in that its general section (chapeau) does not specifically require such crime to have been committed "during armed conflict" (unlike its ICTY counterpart), or "on national, political, ethnic, racial or religious grounds" (unlike its ICTR counterpart). Its sub-paragraphs (g) – dealing with various forms of sexual crimes – and (h) are also more detailed. They read: "*(g) Rape, sexual slavery, enforced prostitution, forced pregnancy and any other form of sexual violence*; (h) Persecution on political, racial, ethnic or religious grounds".

33. The ICTY, ICTR and SCSL Statutes do not refer to a category of atrocity crimes called "war crimes". The various categories of crimes drawn from international humanitarian law which this report refers to as "war crimes" also differ from one court to the next.

Box 3: 'War crimes' in the ICTY, ICTR and SCSL Statutes

Via article 2 of its Statute, the ICTY has jurisdiction over "Grave breaches of the Geneva Conventions of 1949". This provisions reads: "The [ICTY] shall have the power to prosecute persons committing or ordering to be committed grave breaches of the Geneva Conventions of 12 August 1949, namely the following acts against persons or property protected under the provisions of the relevant Geneva Convention: [. . .] *(b) torture or inhuman treatment* [. . .]; (c) wilfully causing great suffering or serious injury to body or health; [. . .]."

The provision on "Violations of the laws or customs of war" – ICTY Statute article 3 – is not directly relevant to this report. The covered violations include the wanton destruction of cities, towns or villages.

At the ICTR, article 4 of its Statute is titled "Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II",[33] and it reads: "The [ICTR] shall have the power to prosecute persons committing or ordering to be committed serious violations of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977. These violations shall include, but shall not be limited to: (a) Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment; [. . .] *(d) Acts of terrorism*; *(e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault*; [. . .] (h) Threats to commit any of the foregoing acts."

SCSL Statute article 3 is essentially the same as ICTR Statute article 4. The SCSL Statute has an additional war-crimes provision. Titled "Other serious violations of international humanitarian law", article 4 reads: "The [SCSL] shall have the power to prosecute persons who committed the following serious violations of international humanitarian law: (a) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities; [. . .] (c) Conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities."

34. The differences in definitions have some relevant consequences. This is explained in sub-sections ii and ix. However, large parts of the substantive atrocity-crimes law of the three courts are identical.

35. The SCSL can try certain crimes under Sierra Leonean laws.[34] The ICTY and ICTR cannot try national-law crimes.

36. The Statute definitions of genocide, crimes against humanity and war crimes do not spell out all the general legal elements of each category or the legal elements in relation to each of the underlying crimes such as rape and sexual slavery. The case-law of each court does so.

ii. Requirement and fact of existence of armed conflict, and significance for purposes of SCR 1820 and this report

37. There are variations at each court and among the courts in respect of the existence of an armed conflict as a general requirement (element) of the three categories of atrocity crimes. At all three, the category of war crimes requires the existence of an armed conflict.[35]

38. Only at the ICTY is there a requirement for crimes against humanity to be committed during an armed conflict. This element has no bearing on the intent or knowledge of accused.[36] As a matter of general international law, both genocide and crimes against humanity can be committed in times of general peace, although in reality they usually are committed in armed conflicts.

39. The above is of relevance for the purposes of SCR 1820, as the resolution mainly deals with sexual violence in armed conflicts. Whether or not the existence of an armed conflict is a general requirement in relation to a specific category of atrocity crime, the three courts were established to deal with atrocity crimes that were committed in armed conflicts.

iii. Required link between armed conflict and war crimes, and significance for purposes of SCR 1820 and this report

40. In respect of the general requirement for *war crimes* of the existence of an armed conflict at the time of the alleged criminal conduct, it goes hand-in-hand with another general requirement, namely, that there must be a link ("a nexus") between the alleged crime and that armed conflict,[37] that is, the alleged crime must be closely related to that conflict.[38] As explained by the ICTY, "the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator's ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed."[39]

41. The above is of relevance for the purposes of SCR 1820, as the resolution revolves around the link between sexual violence and armed conflicts.

42. The link requirement means that someone convicted of war crimes cannot claim to have committed a crime of a 'private' character unrelated to the armed conflict. The ICTY case-law gives a good example:

> When concluding that the members of the Bosnian Serb police and the [Bosnian Serb Army] committed rapes in Teslic municipality, the Trial Chamber cited witnesses who described rapes associated with weapons searches. [. . .] [T]he Trial Chamber clearly established the existence of an [. . .] armed conflict and furthermore reasonably concluded that the *rapes in Teslic, committed as they were during weapons searches, were committed in the context of the armed conflict, and were not "individual domestic crimes"* as suggested by Brdanin.[40]

iv. General requirements of crimes against humanity, link between widespread or systematic attack directed against civilian population and alleged crime, and significance for purposes of SCR 1820 and this report

43. In respect of crimes against humanity there are a few relevant general requirements.[41] There must be a (a) widespread *or* systematic (b) attack which must be (c) directed against any civilian population,[42] that is, it must be the primary rather than incidental target[43] (see sub-section vi too), and (d) the criminal conduct in issue must be part of that *attack*, in other words, legally it need *not* be part of or be linked to the *armed conflict*.[44]

44. The last-mentioned requirement is of particular relevance for the purposes of SCR 1820 as well as this report. Any conviction of any crime as crime against humanity – including crimes such as rape – per definition means that the crime was part of a widespread or systematic attack directed against a civilian population. As explained by one of the courts:

> The law on torture and rape as crimes against humanity requires that the crimes are committed as part of a widespread or systematic attack against a civilian population. This element is what distinguishes crimes against humanity from ordinary crimes. The targeting of a collective in the form of a civilian population, rather than the individual victim, places crimes against humanity among the gravest of crimes.[45]

This important aspect – that any conviction of any crime as crime against humanity per definition means that the crime was part of a widespread or systematic attack directed against a civilian population – will not be mentioned repeatedly in the case-relevant tables and sections below. The requirement also means that "the motives of the accused for taking part in the attack are irrelevant and a crime against humanity may be committed for purely personal reasons."[46]

v. Meaning of "widespread" and "systematic"

45. In the case-law, "widespread" refers to the large-scale nature of the attack and the number of victims, while "systematic" refers to the organised nature of the acts of violence and the improbability of their random occurrence.[47] Patterns of crimes – that is the non-accidental repetition of similar criminal conduct on a regular basis – are a common expression of such systematic occurrence.[48] Except for extermination, a crime need not be carried out against a multiplicity of victims in order to constitute a crime against humanity. Thus an act directed against a limited number of victims, or even against a single victim, can constitute a crime against humanity, provided it forms part of a widespread or systematic attack against a civilian population.[49]

vi. Civilians

46. The ICTY, ICTR and SCSL usually accord the word "civilian" its ordinary meaning.[50] Suffice to further point out the following.

47. First, men and women can be civilians.

48. Second, regarding crimes against humanity, as noted in paragraph 45, the *attack* must be directed against any population which is *predominantly civilian* in nature. For the purposes of this requirement, the definition of civilian contained in article 50(1) of additional protocol I of 1977 to the 1949 Geneva conventions[51] (additional protocol I) applies to crimes against humanity.[52] That the *attack* must be directed against a civilian population does not, however, mean that the individual victims must all be civilians. Combatants who are placed hors de combat by, for example, sickness, wounds or detention can also be victims of a crime against humanity.[53]

49. Third, in the context of war crimes and for the purposes of this report it can very generally be said that a civilian is someone who does not participate actively or directly in the hostilities.[54]

50. Fourth, regardless of someone's civilian or non-civilian status, it is unlawful to rape or otherwise commit sexual violence against such person.

51. Fifth, unless otherwise indicated, all victims identified in this report are civilians in the sense described above. The vast majority of victims of sexual violence identified in this report were not combatants placed hors de combat.

vii. Violent and serious nature of relevant crimes

52. Crimes of a sexual nature – or, if it better describes the particular conduct, gender-based, sex-based or sexual crimes – amounting to genocide, crimes against humanity and war crimes are rarely not physically violent and/or gravely denigrating.[55] The annexed case tables and other parts of the report below amply demonstrate this. By nature crimes involving sexual violence are serious – otherwise they would not constitute or amount to atrocity crimes. For the purposes of this report, atrocity crimes of a sexual nature, sex-based atrocity crimes and gender-based atrocity crimes are generally referred to as "sexual violence".[56]

viii. Women, men and children are victims of sexual violence in armed conflicts

53. The findings of relevant judgments show that women, children and men were victims of sexual violence in the armed conflicts relevant to the ICTY, ICTR and SCSL. They also underscore that the majority of victims of sexual violence identified in the cases at these courts are women.

ix. Sexual violence amounts to various forms of atrocity crimes

54. Sexual violence in armed conflicts can and do constitute or form part of different crimes. The work of the three courts also highlights this. For example, depending on the specific circumstances of a case and assuming that all other requirements are satisfied:

(a) rape can constitute rape as crime against humanity and as war crime;

(b) rape can constitute torture as crime against humanity and as war crime;

(c) rape and/or other sexual violence can form part of genocide in that it can constitute an act causing serious bodily or mental harm to members of the targeted group;

(d) rape and/or other sexual violence can form part of persecution and enslavement as crimes against humanity;[57] and

(e) sexual violence can form part of outrages upon personal dignity and inhumane treatment as war crimes.[58]

55. A relevant consequence of the difference in definitions of the three categories of atrocity crimes among the courts is best illustrated by an example. At the SCSL, slavery involving sexual violence can be tried as sexual slavery as crime against humanity. But at the ICTY it cannot, as there is no underlying crime of sexual slavery as crime against humanity in the ICTY Statute; it can and has been tried as part of, for example, the broader crime of enslavement as crime against humanity.

56. Three rulings, two by the SCSL and the other by the ICTR, illustrate the various forms that sexual violence take. The first concerns sexual slavery and an outrage upon personal dignity:

> With reference to the elements of sexual slavery [. . .] the Trial Chamber is similarly satisfied that sexual slavery is an act of humiliation and degradation so serious as to be generally considered an outrage upon personal dignity. The [ICTY] Trial Chamber in [the Kvocka case] held that "perform[ing] subservient acts," and "endur[ing] the constant fear of being subjected to physical, mental or sexual violence" in camps were outrages upon personal dignity. Sexual slavery, which may encompasses [sic] rape and/or other types of sexual violence as well as enslavement, entails a similar humiliation and degradation of personal dignity.[59]

The second example concerns other inhumane acts as crime against humanity, including crimes with sexual elements – such as forced marriage – that are not included expressly elsewhere in the crimes against humanity provision of the SCSL Statute:

> The jurisprudence of the [ICTY and ICTR] shows that a wide range of criminal acts, including sexual crimes, have been recognised as "Other Inhumane Acts." These include [. . .] sexual and physical violence perpetrated upon dead human bodies, [. . .] forced undressing of women and marching them in public, forcing women to perform exercises naked, and [. . .] torture, sexual violence, humiliation, harassment, psychological abuse, and confinement in inhumane conditions.[60]

The final example concerns serious bodily or mental harm in relation to genocide:

> The quintessential examples of serious bodily harm are torture, *rape*, and non-fatal physical violence that causes disfigurement or serious injury to the external or internal organs. Relatedly, serious mental harm includes

> "more than minor or temporary impairment of mental faculties such as the infliction of strong fear or terror, intimidation or threat". *Indeed, nearly all convictions for the causing of serious bodily or mental harm involve rapes or killings.*[61]

57. Sexual violence often forms part of persecution as crime against humanity convictions. Persecution is a violation of a fundamental human right carried out with the intention to discriminate on one of the listed grounds, which at the ICTY are political, racial and religious grounds, and which at the ICTR and SCSL additionally includes ethnic grounds.[62] Persecution, though not limited to sexual conduct, embraces serious abuses of a sexual nature.[63]

x. The intent of perpetrators of sexual violence in armed conflicts

58. The law of the ICTY, ICTR and SCSL requires judges to make findings as to the intent and/or knowledge of accused when deciding whether to convict or acquit; the requisite intent and/or knowledge requirements vary from crime to crime. For example, torture is defined as the:

> intentional infliction [. . .] of severe pain or suffering, whether physical or mental, for a prohibited purpose, such as obtaining information or a confession, punishing, intimidating, humiliating, or coercing the victim or a third person, or discriminating, on any ground, against the victim or a third person.[64]

Discrimination because someone is a woman is covered too.[65]

59. As explained in relation to torture by means of rape, and with reference to the prohibited purposes of torture:

> [. . .] torture by means of rape is a particularly grave form of torture [. . .]. The violation of the moral and physical integrity of the victims makes rape a particularly serious crime. Rape is an inherently humiliating offence, and humiliation is generally taken into account when assessing the gravity of a crime.[66]

60. The relevance of this is that judges do not usually make findings or statements about the intent and/or knowledge of accused going beyond what the law requires. The personal motivations – as distinct from intent – of accused rarely play any role in decisions of guilt or innocence. Where an accused facing charges of rape and rape as torture claims, for example, that he raped women for sexual gratification, the law takes no account of such claim as it is irrelevant to whether he intended to rape the women (in relation to the rape charge) and intended to punish, intimidate, humiliate, or discriminate against the women by raping them (in relation to the torture charge).

xi. Personal and superior responsibility, and special relevance of latter for SCR 1820

61. The ICTY, ICTR and SCSL Statutes provide for the 'personal responsibility' of individuals for crimes. This concerns perpetrators who, for example, planned, ordered, personally committed (alone or in concert with others), aided and abetted or otherwise facilitated, and instigated the commission of a crime.[67]

62. Superior responsibility – which the Statutes of the three courts also provide for[68] – is of special relevance. The importance of superiors in both preventing and punishing sexual violence by their subordinates is underscored in SCR 1820, in which the SC demands that:

> all parties to armed conflict immediately take appropriate measures to protect civilians, including women and girls, from all forms of sexual violence, which could include, inter alia, enforcing appropriate military disciplinary measures and upholding the principle of command responsibility.

63. In the case-law of the ICTY, ICTR and SCSL it is explained that superiors – including military commanders and civilian superiors such as political and local-government leaders – are people who possess the legal or factual power or authority – regardless of whether this is formalised – to either prevent a subordinate's crimes or to punish the subordinate after the crime has been committed; the superior-subordinate relationship must be one of effective control, which refers to the material ability to prevent or punish criminal conduct.[69]

64. In this example, the ICTY addressed the background to and importance of superior responsibility, which has a long history and forms part of customary international law, meaning that all States and all parties to armed conflicts are subject to this law:

> [. . .] criminal responsibility under [the superior-responsibility provision of the Statute] is based primarily on Article 86(2) of [Additional] Protocol I. [. . .] The object and purpose of Protocol I, as reflected in its preamble, is to "reaffirm and develop the provisions *protecting the victims of armed conflicts* and to *supplement measures intended to reinforce their application*". The preamble of Protocol I adds further that "the provisions of the Geneva Conventions of 12 August 1949 and of this Protocol must be fully applied in all circumstances to all persons who are protected by those instruments." *The purpose of superior responsibility, as evidenced in Articles 86(1) and 87 of Protocol I, is to ensure compliance with international humanitarian law.* Furthermore, one of the purposes of establishing the International Tribunal, as reflected in Security Council Resolution 808, is to "put an end to widespread violations of international humanitarian law and to take effective measures to bring to justice the persons who are responsible for them". And, more particularly, the purpose of superior responsibility in Article 7(3) [of the ICTY Statute] is to hold superiors "responsible for failure to prevent a crime or to deter the unlawful behaviour of their subordinates. [. . .]"[70]

65. Of particular importance for the purposes of the implementation of international humanitarian and criminal law in general, and for the implementation of SCR 1820 is the following, as reflected in a provision of additional protocol I dealing with the duty of commanders:[71]

> In order to prevent and suppress breaches, High Contracting Parties and Parties to the conflict shall require that, commensurate with their level of responsibility, commanders ensure that members of the armed forces under their command are aware of their obligations under the Conventions and this Protocol.[72]

Sexual violence against civilians – or anyone else – is prohibited under international humanitarian and criminal law, including the 1949 Geneva conventions and their two 1977 additional protocols. Superiors instructing their subordinates on the illegality and unacceptability of any sexual violence whatsoever, and making clear by word and deed that any breach would be punished, would lead to a decrease in sexual violence.

66. As stressed by the ICTY:

> a superior's failure to punish a crime of which he has actual knowledge is likely to be understood by his subordinates at least as acceptance, if not encouragement, of such conduct *with the effect of increasing the risk of new crimes being committed.*[73]

67. Underlining the importance of superiors' responsibility, the ICTY also noted that there might be situations in which a superior has to use force against subordinates acting in violation of international humanitarian law. A superior may have no other alternative but to use force to prevent or punish the commission of crimes by subordinates.[74]

68. Several accused at the ICTY, ICTR and SCSL were charged on the basis of their superior and personal responsibility in relation to sexual violence committed against civilians by their subordinates, and the evidence supported those charges. However, by law, those convicted on the basis of their *personal* responsibility cannot in addition be convicted on the basis of *superior* responsibility for the same conduct, although the failure to prevent or punish the crimes of subordinates can be considered as an aggravating circumstance in sentencing in relation to convictions based on personal responsibility.[75]

69. In any event, those accused who were convicted on a superior-responsibility basis or those who could have been convicted on that basis, failed in their duty – which is well rooted in customary international law and stem from their positions of authority – to take the necessary and reasonable measures to prevent or punish the sexual violence of their subordinates.[76] ■

VI. SEXUAL-VIOLENCE CASES AT ICTY

70. The break-up of the former Yugoslavia was accompanied by various international and non-international armed conflicts stretching across vast areas of, for example, Bosnia and Herzegovina (BiH),[77] including its Serb republic; Croatia; and Kosovo. At different stages, these armed conflicts pitted different parties against one another. For example, at times Bosnian Muslims and Bosnian Croats would be allied against Bosnian and non-Bosnian Serbs, and at other times Bosnian Muslims would be fighting against Bosnian Croats. The main enduring association that many people have with the break-up of the former Yugoslavia is the so-called 'ethnic cleansing' by Serbs of non-Serbs from swathes of BiH, Croatia and Kosovo.

71. The bulk of the ICTY's cases involve atrocity crimes in BiH committed from 1992-1995 by perpetrators of Serb origin against civilian populations of Muslim and Croatian origin. The judgments show that the perpetrators of atrocity crimes included Bosnian Croats and Bosnian Muslims, and that the victims, also of sexual violence, included civilians of Serb origin. For the purposes of SCR 1820 it is irrelevant whether more supporters of one or the other party to the armed conflicts were convicted for sexual violence, or whether the supporters of only one party committed sexual violence against civilians.

72. Table 1A provides a glimpse of the degree to which sexual violence features in the judgments of the ICTY. The data in this table as well as that in the remainder of this section is drawn from the case-specific data in the table 1B, as well as from the website of the ICTY.

Table 1A: General notes on cases involving sexual violence at ICTY

Total number of completed cases	75[78]
Number of completed cases in which judgments contain sexual-violence findings and/or agreed facts[79]	24
Number of completed cases in which sexual violence was found to be part of widespread and/or systematic attack directed against civilian population	16
Do at-trial cases include sexual-violence allegations?	Yes[80]
Do said at-trail allegations concern genocide, crimes against humanity (CAH) and/or war crimes (WC)?	CAH + WC
Number of trial judgments subject to actual or potential appeal	6
Do trial judgments in said cases contain sexual-violence findings?	Yes[81]
Do said findings concern genocide, crimes against humanity (CAH) and/or war crimes (WC)?	CAH + WC
Do any of awaiting-trial (pre-trial) cases include sexual-violence allegations?	Yes[82]
Do any withdrawn indictments and abandoned cases include sexual-violence allegations?	Yes[83]
Do indictments of remaining fugitives include sexual-crimes charges?	Yes[84]

73. The ICTY has completed 75 cases. Of these, about a third – 24 cases, including multi-accused cases – involve sexual violence against civilians. Three of the seven at-trial cases, three of the four awaiting-trial cases, and the indictments against both the ICTY fugitives (including Ratko Mladic, the former top Bosnian Serb military leader) involve sexual-violence allegations and charges. Four of six trial judgments subject to actual or potential appeal involve sexual-violence findings.

74. In 16 of the 24 cases, sexual violence was found by the court or agreed by accused to be part of a widespread and/or systematic attack directed against civilian populations, as required under the law on crimes against humanity. Sexual violence was also found by the court or agreed by accused to constitute or form part of war crimes.

75. The sexual-violence instances covered in the judgments relate mainly to BiH, but also to Croatia and, in a case subject to appeal, Kosovo. The Krajisnik case is one example of how common and widespread a feature rapes and other forms of sexual violence were in BiH. It is one of the cases in which reference is made of the terrorisation of civilians through brutal crimes, including rapes. Another is the Brdanin case, in which armed men were found to have created an "atmosphere of fear and terror" amongst civilians of other ethnic origins by committing crimes including rapes.

76. Sexual violence takes on various forms in the judgments. These include: rape, torture, enslavement, and persecution as crimes against humanity; and rape, torture, outrages upon personal dignity, and inhuman treatment as war crimes. Rape and/or other sexual violence amounted to torture in several cases. They include the Bralo, Brdanin, Celebici, Kunarac, Kvocka, Milan Simic and Zelenovic cases.

77. The convicted sexual-violence perpetrators were civilian and non-civilian leaders who occupied positions of authority at the national level, local-government level, in detention camps, and in formal army and police units and in paramilitary units. Some of them were convicted on the basis of their personal responsibility for sexual-violence crimes. Some were convicted on the basis of their superior responsibility. The convicts also include lower-ranking perpetrators.

78. The civilian victims of sexual violence include women, children (see, for example, the Brdanin, Tadic, Kunarac and Krajisnik cases) and men.

79. There are many instances in several cases in which more than one perpetrator raped and/or committed other forms of sexual violence against civilians on a single occasion. Among them is the Zelenovic case in which the court held that the crimes of the accused – which include his involvement in gang rapes and the rape of a 15-year old girl – "were part of a pattern of sexual assaults that took place over a period of several months, and in four different locations, and involved multiple victims." Other examples are the Vasiljevic, Tadic, Kunarac and Dragan Nikolic cases.

80. That women were also being raped or otherwise sexually assaulted on more than one occasion together with or in front of other victims were not uncommon occurrences. Among the cases that stand out are the Bralo, Brdanin, Furundzija and Kvocka cases.

81. Sexual violence, including rape, against civilians was found to have been committed in the open, in the homes of victims, in the homes of perpetrators, in detention camps and centres, and in other locations.

82. Examples of sexual-violence instances centring on detention camps are the Brdanin, Celebici, Dragan Nikolic and Kunarac cases. In the Brdanin case the court made findings in relation to large numbers of rapes in such camps, including of girls. It concluded that "rapes and sexual assaults were commonplace throughout the camps in the Prijedor area." It is not the only case in which the court found that sexual violence in and near detention camps were commonplace. In the Tadic case, women were "routinely" taken from Omarska camp to be raped. Detained girls were at great risk. The Dragan Nikolic case seems typical of several cases; the court noted:

> From early June until about 15 September 1992 many female detainees in Susica camp were subjected to sexual assaults, including rapes and degrading physical and verbal abuse. Dragan Nikolic personally removed and otherwise facilitated the removal of female detainees from the hangar, which he knew was for purposes of rapes, and other sexually abusive conduct. The sexual assaults were committed by camp guards, special forces, local soldiers and other men.

Female detainees were sexually assaulted at various locations, including houses surrounding the camp, a hotel, a military headquarters and at locations where women were taken to perform forced labour. Dragan Nikolic also "allowed female detainees, including girls and elderly women, to be verbally subjected to humiliating sexual threats in the presence of other detainees [. . .]." He encouraged the sexually abusive conduct.

83. Calling up an image common to armed conflicts around the globe, a trial chamber, in relation to the long-term detention camp of Omarska in BiH, remarked that sexual violence was a 'natural' – in the sense of ordinary or common – and 'foreseeable consequence' where women were detained in certain circumstances:

> Similarly, any crimes that were natural or foreseeable consequences of the joint criminal enterprise of the Omarska camp, including sexual violence, can be attributable to participants in the criminal enterprise [. . .]. In Omarska camp, approximately 36 women were held in detention, guarded by men with weapons who were often drunk, violent, and physically and mentally abusive and who were allowed to act with virtual impunity. Indeed, it would be unrealistic and contrary to all rational logic to expect that none of the women held in Omarska, placed in circumstances rendering them especially vulnerable, would be subjected to rape or other forms of sexual violence. This is particularly true in light of the clear intent of the criminal enterprise to subject the targeted group to persecution through such means as violence and humiliation. Liability for foreseeable crimes flows to aiders and abettors as well as co-perpetrators of the criminal enterprise.[85]

In the Krstic case, the court held that crimes, including rapes, were a natural and foreseeable consequence of the 'ethnic cleansing' campaign at the time of the genocide at Srebrenica.

84. Several cases, in addition to the Dragan Nikolic case mentioned in paragraph 84, involved women detainees being held captive and repeatedly raped and otherwise subjected to sexual violence by one or more perpetrators over periods ranging from a few days to months. The Bralo case is one example, in which the court described a witness's "brutal rape and torture, and her imprisonment for approximately two months to be further violated at the whim of her captors" as crimes of "a most depraved nature." It considered her "exacerbated humiliation and degradation" as demonstrating "a desire to debase and terrify a vulnerable woman, who was at the complete mercy of her captors". Bralo was in a position to effect her release, but he failed to do so. The Brdanin, Kunarac and Blagoje Simic cases are other examples.

85. The Kunarac case includes a conviction of enslavement as crime against humanity, based in part on the rape of women over several months while they were being held at private homes as if they were the property of their captors. Also, as the appeals chamber in that case noted:

> For the most part, the [three accused] were convicted of raping women held in *de facto* military headquarters, detention centres and apartments maintained as soldiers' residences. As the most egregious aspect of the conditions, the victims were considered the legitimate sexual prey of their captors. Typically, the women were raped by more than one perpetrator and with a regularity that is nearly inconceivable. (Those who initially sought help or resisted were treated to an extra level of brutality). [. . .] [The] physical pain, fear, anguish, uncertainty and humiliation to which the Appellants repeatedly subjected their victims elevate their acts to those of torture. *These were not isolated instances. Rather, the deliberate and co-ordinated commission of rapes was carried out with breathtaking impunity over a long period of time*. Nor did the age of the victims provide any

Victims' group in front of the ICTY at the start of the Karadzic trial, 26 October 2009.

> protection from such acts. [. . .] Whether rousted from their unquiet rest to endure the grim nightly ritual of selection or passed around in a vicious parody of processing at headquarters, the victims endured repeated rapes, implicating not only the offence of rape but also that of torture [. . .].[86]

86. On the effect of superiors not exercising their duty to prevent and punish crimes by their subordinates, a finding by the court in the Brdanin case is instructive. Although Brdanin did not actively assist in the commission of any of the crimes committed in camps and detention facilities, in the light of his superior position:

> his inactivity with respect to the camps and detention facilities, together with his public attitude to them, constituted encouragement and moral support to the running of these camps and detention facilities by the army and the police in the way described to the Trial Chamber throughout the trial. This complete inactivity combined with his public attitude to these camps and detention facilities necessarily left no doubt in the mind of those running the camps and detention facilities that they enjoyed the full support of the ARK Crisis Staff and its President. The Trial Chamber is satisfied that this fact had substantial effect on the commission of torture in the camps and detention facilities throughout the ARK.

In the Plavsic case, the accused – she was a former co-president of the Serbian republic of BiH – pleaded guilty to persecution as crimes against humanity in relation to crimes committed against civilian Bosnian Muslim, Bosnian Croat and other non-Serbs populations in 37 municipalities across BiH. The crimes committed in the course of this 'ethnic cleansing' campaign included rapes and other sexual violence. The court noted that:

> these crimes did not happen to a nameless group but to individual men, women and children who were mistreated, raped, tortured and killed. This consideration and the fact that this appalling conduct was repeated so frequently, calls for a substantial sentence of imprisonment. The Trial Chamber has already found this to be a crime of the utmost gravity.

It also found that:

> the seriousness of the offence is aggravated [. . .] by the senior leadership position of the accused. Instead of generally preventing or mitigating the crimes, she encouraged and supported those responsible.

87. In respect of sexual violence against men, in the Brdanin case several men were forced by their captors to perform sexual acts, including oral sex, with one another in front of other people. There are other cases in which detained men were the victims of sexual violence, which usually involved being forced to perform sexual acts on co-detainees by their captors. An example is the Todorovic case, in which one instance involved the accused forcing one male detainee to bite the penis of another detainee. Among more examples of sexual violence against men is the Tadic case in which it was found that men were severely sexually assaulted. ■

Table 1B: Notes on specific ICTY cases relevant to SCR 1820[87]

BLASKIC CASE (Prosecutor vs Blaskic, IT-95-14)	
Number of accused	1
Did court make findings concerning sexual violence?	Yes
Do said findings concern genocide, crimes against humanity and/or war crimes?	N/A
Do sexual-violence findings relate to multiple instances?	Yes
Do one or more sexual-violence findings involve multiple victims and/or perpetrators?	Yes
Did any of sexual violence amount to torture?	N/A
Notes. See Prosecutor vs Blaskic, IT-95-14-T, Judgement, 3 March 2000 (Blaskic trial judgment), pars 692, 695, 732. Findings referring to rape committed against civilians in BiH were made in the trial judgment. These findings did not relate to specific sexual-violence charges. They included findings on multiple rapes of Bosnian Muslims by Bosnian Croat forces in a village; multiple rapes of detained Bosnian Muslim women by Croatian forces and police; and a finding that the accused could not have been unaware of rapes at a certain school.	
BRALO CASE (Prosecutor vs Bralo, IT-95-17) *(Guilty-plea case)*	
Number of accused	1
Did court make findings concerning sexual violence and/or refer to plea-agreement facts concerning sexual violence?	Yes
Do said findings/agreed facts concern genocide, crimes against humanity and/or war crimes (WC)?	WC
Do sexual-violence findings/agreed facts relate to multiple instances?	Yes
Do one or more sexual-violence findings/agreed facts involve multiple victims and/or perpetrators?	Yes
Did any of sexual violence amount to torture?	Yes
Notes. See Prosecutor vs Bralo, IT-95-17-S, Sentencing Judgement, 7 Dec 2005 (Bralo sentencing judgment), pars 5, 10, 15-16, 33-34, 39. Bralo was a member of a Bosnian Croat military unit. He pleaded guilty to various crimes, including outrages upon personal dignity as a war crime, torture or inhuman treatment as a war crime, and torture as war crime, all of which covered rape or other sexual violence. Bralo repeatedly raped and sexually assaulted a Bosnian Muslim woman (witness A); he threatened to kill her, he raped her in front of other soldiers and ejaculated repeatedly over her body, and he bit her about the body, including her nipples. After that she was taken to another location where she was detained for about two months. There she was again repeatedly raped by members of Bralo's unit, with his knowledge. He failed to release her, even though he was in a position to effect her release. Witness A's ordeal was horrific and lasted for long: "Her brutal rape and torture, and her imprisonment for approximately two months to be further violated at the whim of her captors, are crimes of a most depraved nature. The Trial Chamber emphasises once again that international humanitarian law, along with basic principles of humanity, require that individuals who are detained during an armed conflict must be treated humanely, and that the rape and torture of a woman in this context is a most heinous crime requiring unequivocal condemnation". It considered the "exacerbated humiliation and degradation" of Witness A by Bralo as an aggravating factor, and found that these actions "demonstrate a desire to debase and terrify a vulnerable woman, who was at the complete mercy of her captors". With reference to a later interview with witness A, the court also noted that the "trauma experienced" by her "at the time of her detention and rape, and on an ongoing basis, is undeniable".	
BRDANIN CASE (Prosecutor vs Brdanin, IT-99-36)	
Number of accused	1
Did court make findings concerning sexual violence?	Yes
Do said findings concern genocide, crimes against humanity (CAH) and/or war crimes (WC)?	CAH + WC
Do sexual-violence findings relate to multiple instances?	Yes
Do one or more sexual-violence findings involve multiple victims and/or perpetrators?	Yes
Did any of sexual violence amount to torture?	Yes
Notes. See Prosecutor vs Brdanin, IT-99-36-T, Judgement, 1 Sept 2004 (Brdanin trial judgment), pars 14-15, 17, 97, 104, 115, 318, 490, 512-513, 515-518, 523, 737, 755, 761, 820, 824, 832, 835, 847, 852, 856, 1010, 1010-1013, 1018, 1050, 1058, 1061, and Disposition; and Prosecutor vs Brdanin, IT-99-36-A, Judgement, 3 Apr 2007 (Brdanin appeal judgment), par 256. Civilian Bosnian Muslims and Bosnian Croats were the victims of crimes by Serb forces of which Brdanin, a leading Bosnian Serb politician in BiH at the time, was convicted. Sexual violence, including rapes and sexual assaults, formed the bases of several convictions: persecution as crime against humanity, torture as a crime against humanity and as war crime. Large parts of the case focused on crimes committed in the long-term detention camps of Omarska, Keraterm and Trnopolje over some months in 1992. Some of the instances of sexual violence also appear in other cases.	

At Keraterm camp, a number of guards raped a female inmate on a table in a dark room until she lost consciousness. The next morning she found herself lying in a pool of blood. Other women in the camp were also raped.

At Omarska camp there were frequent incidents of sexual assault and rape. Female detainees were often called out by camp guards and the camp commander to be raped and sexually assaulted. Examples of sexual violence include the following. Camp guards tried to force an elderly Bosnian Muslim to rape a female detainee; the threat of rape constituted a sexual assault vis-à-vis the female detainee. An armed man entered the Omarska camp restaurant where detainees were eating; he uncovered the breast of a female detainee, took out a knife, and ran it along her breast for several minutes; bystanding camp guards laughed watching this incident.

There were many incidents of rape at the Trnopolje camp. Not all of the perpetrators were camp personnel. Soldiers took out girls aged 16 or 17 from the camp and raped them. In one case, a 13-year old Bosnian Muslim girl was raped. "One rape victim was told by a member of the camp staff that it was wartime and nothing could be done about these things."

The court concluded that "rapes and sexual assaults were commonplace throughout the camps in the Prijedor area. It is satisfied that in all these incidents, the male perpetrators aimed at discriminating against the women because they were Muslim."

The commander of Trnopolje camp personally arranged for a Bosnian Muslim woman to be detained in the same house in which he had his office. He raped her nearly every night for about a month. On two occasions, he stabbed her with his knife because she resisted being raped.

At least 10 Bosnian Croat and Bosnian Muslim men and one woman were detained at a particular police station. Outside interrogation, they were forced by a Bosnian Serb policeman to perform sexual acts with each other, in front of a crowd of cheering men in police and Bosnian Serb military uniforms. Two other male detainees, at least one of whom was a Bosnian Muslim, were forced to perform oral sex on each other whilst being subjected to ethnic slurs.

Over 300 Bosnian Muslim and Bosnian Croat women and children and elderly men were held at a sawmill. Female detainees were taken out during the night by Bosnian Serb soldiers and policemen, at least two of whom were raped.

Rapes of Bosnian Muslim and Bosnian Croat women occurred in various BiH municipalities. In each incident, armed Bosnian Serb soldiers or policemen were the perpetrators. Paramilitaries created an "atmosphere of fear and terror amongst the non-Serb inhabitants of the Bosnian Krajina by committing crimes against Bosnian Muslims and Bosnian Croats and their property including rape, murder, plunder and the destruction of property".

Although Brdanin did not actively assist in the commission of any of the crimes committed in these camps and detention facilities, in the light of his superior position as president of the ARK Crisis Staff "his inactivity with respect to the camps and detention facilities, together with his public attitude to them, constituted encouragement and moral support to the running of these camps and detention facilities by the army and the police in the way described to the Trial Chamber throughout the trial. This complete inactivity combined with his public attitude to these camps and detention facilities necessarily left no doubt in the mind of those running the camps and detention facilities that they enjoyed the full support of the ARK Crisis Staff and its President. The Trial Chamber is satisfied that this fact had substantial effect on the commission of torture in the camps and detention facilities throughout the ARK."

Brdanin was also charged with genocide of Bosnian Muslim and Bosnian Croats, and that rape and sexual assault of non-combatants formed part of the related campaign. Genocide was not proven beyond reasonable doubt.

The prosecution failed to prove all the allegations of sexual violence made in the indictment.

"CELEBICI" CASE (Prosecutor vs Mucic and 3 others, IT-96-21)	
Number of accused	4
Did court make findings concerning sexual violence?	Yes
Do said findings concern genocide, crimes against humanity and/or war crimes (WC)?	WC
Do sexual-violence findings relate to multiple instances?	Yes
Do one or more sexual-violence findings involve multiple victims and/or perpetrators?	Yes
Did any of sexual violence amount to torture?	Yes

Notes. See Prosecutor vs Mucic and 3 others, IT-96-21-T, Judgement, 16 Nov 1998 (Celebici trial judgment), pars 495, 925, 936-942, 955-965, 1062-1065, 1253-1255, 1262-1263, 1268-1269, 1275; and Prosecutor vs Mucic and 3 others, IT-96-21-A, Judgement, 20 Feb 2001 (Celebici appeal judgment), pars 1, 400-427.

Of the four accused, Delalic was acquitted, while Mucic, Delic and Landzo were convicted of various crimes that were committed against Bosnian Serbs in the Celebici detention camp, established by Bosnian Muslims and Bosnian Croats, in central BiH in 1992. Mucic was the commander of the camp, Delic the deputy commander, and Landzo a prison guard.

With respect to Delic, sexual violence formed the basis of two convictions of torture as war crime. One woman was raped by Delic on three occasions. He did so in order to intimidate, coerce and punish her, and to obtain information from her. Each of the rapes caused her severe mental and physical pain and suffering. The court also found that "the violence suffered by Ms. Cecez in the form of rape, was inflicted upon her by Delic because she is a woman. [. . .] this represents a form of discrimination which constitutes a prohibited purpose for the offence of torture".

The effect of this rape was expressed by the victim when she told the court: "[. . .] he trampled on my pride and I will never be able to be the woman that I was". She was subjected to multiple rapes on another night. After the third rape that evening she stated: "[i]t was difficult for me. I was a woman who only lived for one man and I was his all my life, and I think that I was just getting separated from my body at this time." She was subjected to a further rape. As a result of her experiences in the camp she stated that "[p]sychologically and physically I was completely worn out. They kill you psychologically."

Delic also raped another woman on three occasions. On the second occasion he raped her anally and vaginally.

Landzo admitted that he forced two brothers to commit oral sex with one another and that he put a burning fuse around their genitals. He did this in front of other detainees. The court described this as "at least, a fundamental attack on their human dignity", and convicted Landzo of inhuman treatment as a war crime. The court also noted that the said crime "could constitute rape for which liability could have been found if pleaded in the appropriate manner."

With respect to rape, the "Trial Chamber considers the rape of any person to be a despicable act which strikes at the very core of human dignity and physical integrity. The condemnation and punishment of rape becomes all the more urgent where it is committed by, or at the instigation of, a public official, or with the consent or acquiescence of such an official. Rape causes severe pain and suffering, both physical and psychological. The psychological suffering of persons upon whom rape is inflicted may be exacerbated by social and cultural conditions and can be particularly acute and long lasting. Furthermore, it is difficult to envisage circumstances in which rape, by, or at the instigation of a public official, or with the consent or acquiescence of an official, could be considered as occurring for a purpose that does not, in some way, involve punishment, coercion, discrimination or intimidation. In the view of this Trial Chamber this is inherent in situations of armed conflict".

With respect to the nature of the crimes committed by the accused, the court found that an "examination of the foregoing crimes and their underlying motivations, where relevant, demonstrates that they cannot be characterised as anything other than some of the most serious offences that a perpetrator can commit during wartime. The manner in which these crimes were committed are indicative of a sadistic individual who, at times, displayed a total disregard for the sanctity of human life and dignity. This is only amplified by the fact that Hazim Delic was the deputy commander of the prison-camp. [. . .] The motive for the commission of these breaches of humanitarian law is also a relevant aggravating factor to be taken into account in the sentencing of Hazim Delic. The evidence indicates that, as well has having a general sadistic motivation, Hazim Delic was driven by feelings of revenge against people of Serb ethnicity [. . .]".

CESIC CASE (Prosecutor vs Cesic, IT-95-10/1) ***(Guilty-plea case)***	
Number of accused	1
Did court make findings concerning sexual violence and/or refer to plea-agreement facts concerning sexual violence?	Yes
Do said findings/agreed facts concern genocide, crimes against humanity (CAH) and/or war crimes (WC)?	CAH + WC
Do sexual-violence findings/agreed facts relate to multiple instances?	No
Do one or more sexual-violence findings/agreed facts involve multiple victims and/or perpetrators?	Yes
Did any of sexual violence amount to torture?	No

Notes. See Prosecutor vs Cesic, IT-95-10/1-S, Sentencing Judgement, 11 Mar 2004 (Cesic sentencing judgment), pars 1-5, 7, 13-14, 18, 35, 51-54.

Cesic was an officer of a Bosnian Serb reserve police force. He was convicted of one sexual assault as crime against humanity (rape) as well as a war crime (humiliating and degrading treatment). All acts or omissions charged were part of a widespread or systematic attack directed against the Muslim and Croat civilian population in BiH. Cesic forced two civilian detained Bosnian Muslim brothers to perform oral sex on one another while guards watched and laughed at the brothers.

FURUNDZIJA CASE (Prosecutor vs Furundzija, IT-95-17/1)	
Number of accused	1
Did court make findings concerning sexual violence?	Yes
Do said findings concern genocide, crimes against humanity and/or war crimes (WC)?	WC
Do sexual-violence findings relate to multiple instances?	Yes
Do one or more sexual-violence findings involve multiple victims and/or perpetrators?	Yes
Did any of sexual violence amount to torture?	Yes

Notes. See Prosecutor vs Furundzija, IT-95-17/1-T, Judgement, 10 Dec 1998 (Furundzija trial judgment), pars 65, 68, 120 et seq, 262, 263 et seq, and Disposition.

Furundzija was convicted of torture as war crime and outrages upon personal dignity (including rape) as war crime. He was the local commander of a Bosnian Croat military-police unit who participated in the ethnic cleansing of Bosnian Muslims from a certain area.

The facts forming the direct basis of his conviction were committed against a civilian Bosnian Muslim woman (Witness A) and a non-civilian male Bosnian Croat, an acquaintance of Witness A, while in detention. She was interrogated while naked in the presence of numerous soldiers, repeatedly raped (including anally and orally), sexually assaulted and subjected to cruel, inhuman and degrading treatment and to threats of serious physical assault, including of a sexual nature. "The purpose of this abuse was to extract information from Witness A [. . .] and also to degrade and humiliate her." She was raped and sexually assaulted in front of a male friend on another occasion.

HALILOVIC CASE (Prosecutor vs Halilovic, IT-01-48)	
Number of accused	1
Did court make findings concerning sexual violence?	No

Notes. See eg Prosecutor vs Halilovic, IT-01-48-T, Judgement, 16 Nov 2005 (Halilovic trial judgment), pars 401 (incl especially footnotes 1294-1296), 406.

The court made several references (but no findings in respect) to evidence in relation to rapes of Bosnian Muslim women.

KORDIC AND CERKEZ CASE (Prosecutor vs Kordic and Cerkez, IT-95-14/2)	
Number of accused	2
Did court make findings concerning sexual violence?	Yes

Notes. See eg Prosecutor vs Kordic and Cerkez, IT-95-14/2-T, Judgement, 21 Feb 2001 (Kordic and Cerkez trial judgment), pars 513, 797, 644 (incl footnote 1251); and Prosecutor vs Kordic and Cerkez, IT-95-14/2-A, Judgement, 17 Dec 2004 (Kordic and Cerkez appeal judgment), pars 462, 492-493, 581, 639.

At trial, evidence regarding rapes and other sexual crimes against multiple Bosnian Muslims by Bosnian Croat forces was heard, including in respect of multiple instances of rape in relation to victims examined by doctors, seemingly also pointing to sexual slavery. On appeal, various finding and observations in relation to rapes and other sexual crimes were made. One of the findings is that the sexual assault referred to was serious and could have been found as proven by the trial chamber (but it noted that the identity of the rapists could not be determined and that the instance was not charged).

KRAJISNIK CASE (Prosecutor vs Krajisnik, IT-00-39)	
Number of accused	1
Did court make findings concerning sexual violence?	Yes
Do said findings concern genocide, crimes against humanity (CAH) and/or war crimes?	CAH
Do sexual-violence findings relate to multiple instances?	Yes
Do one or more sexual-violence findings involve multiple victims and/or perpetrators?	Yes
Did any of sexual violence amount to torture?	No

Notes. See Prosecutor vs Krajisnik, IT-00-39-T, Judgement, 27 Sept 2006 (Krajisnik trial judgment), pars 291, 304, 306, 309, 327, 333, 372, 461, 463, 487, 490, 493, 499, 545, 547, 550, 576, 600, 606, 637-641, 652, 656, 665, 667, 679, 685, 696, 701, 745, 789, 800, 804, 859, 965, 966, 972, 1105, 1146-1146, 1150, 1181-1182.

Krasjisnik was a member of the Bosnian Serb leadership during the war, including the president of the Bosnian Serb Assembly. He was convicted of persecution as crime against humanity. The persecutory acts included rapes and other sexual violence committed against Bosnian Muslim and Bosnian Croat civilians driven from their homes by Serb forces in 1992. (The genocide charge also included sexual violence, but genocide was not proven.)

The court's findings on sexual violence cover large parts of BiH. There are many different incidents, many victims and many perpetrators. They include the following.

North-eastern BIH

- Paramilitary groups and members of the local MUP (ministry of internal affairs) forces "engaged in criminal activities on a massive scale. Muslim residents as well as some Serbs were terrorized by these groups through [. . .] rapes [. . .]."
- After a group of policemen beat and shot dead an elderly Muslim woman in her home, a local Serb sexually abused the woman's granddaughter.
- Serbs detained Muslims and Croats in the Batkovic camp from a large number of different municipalities. The detainees included some women, children, and elderly persons. Ten detainees were singled out for especially harsh treatment. They were beaten three times a day, forced to beat each other, and repeatedly forced to engage in degrading sexual acts with each other in the presence of other detainees.
- In one of the camps (Luka camp) in which civilians driven from their homes by Serbs were detained "some female detainees were raped".
- At least two Muslim men were sexually mutilated in a detention building.

North-western BIH

- Some of the dozen Croats and Muslims detained in a police station were sexually abused by police officers.
- Approximately 1,000 women, children, and elderly civilians were detained at Pilana sawmill where "Many women and girls aged 13 and older were raped by Serb soldiers".
- Sexual assaults took place at the long-term detention camps of Omarska, Keraterm and Trnopolje. Less than 40 women were detained in Omarska; one of these women was repeatedly raped and beaten. Soldiers coming from outside the Trnopolje camp and the camp commander raped the female detainees there.
- While in detention in a sports centre the detainees were often sexually abused by members of paramilitary units.

Sarajevo municipalities

- Serb military police detained a woman (Witness 141) and her Muslim sister at the civil-defence headquarters where they were beaten and raped by the Serb guards. They were moved to the garage of the municipal building where the witness's sister was sexually abused by a Serb paramilitary soldier. After their transfer to a factory, Radic – one of the accused in the Kvocka case (see sub-table below) – raped the witness's sister regularly. Other commanders and guards stationed at the factory raped both women on many occasions.
- Three women (two Muslim and one of mixed ethnicity) were raped during house searches by an armed man who had come to their apartments.
- Serbs would come from Serbia on the weekends to beat the detainees and force them to perform sexually humiliating acts in a house serving as a detention centre.
- In the process of searching Muslim and Croat homes for weapons, Serb police and paramilitaries committed rape.

South-eastern BiH

■ Local Serbs took a number of women from a village to a motel where one woman was raped.

■ Local Serb soldiers, including Gojko Jankovic – an accused in one of the cases transferred for trial by the ICTY to BiH – and Radomir Kovac – one of accused in Kunarac case (see below) – attacked a Muslim village after which some of the women were brought to one of the attacking soldier's apartment and were raped repeatedly by many soldiers; these women were later sold. Some other women from the same village were taken by Serb soldiers to another detention centre where Gojko Jankovic was in charge. There, Witness 295 was raped by around ten Serb soldiers until she lost consciousness. After being moved to yet another detention centre Witness 295 and nine other women were raped almost every night by local Serb soldiers either in one of the classrooms or at a location outside the school.

■ Large-scale arrests of Muslim civilian men and women were followed by their detention; some of them were raped.

■ Serb soldiers or policemen would come to these detention centres, select one or more women, take them out and rape them. Some of the women were also taken out of detention centres by Serb soldiers, including Dragoljub Kunarac – one of the accused in the Kunarac case (see sub-table below) – to privately owned apartments and houses where they had to cook, clean and serve the residents. They were also subjected to sexual assaults. During one rape, Kunarac expressed with verbal and physical aggression his view that rapes against Muslim women were one of the many ways in which the Serbs could assert their superiority and victory over the Muslims.

■ Other women from Partizan Hall, a detention centre, were moved to different houses and apartments where they continued to be raped and mistreated. At "Karaman's house" in Miljevina soldiers had easy access to women and girls whom they raped. Two female detainees, including a 12-year-old girl, spent about 20 days in another apartment where they were constantly raped by the two occupants of the apartment and by other men who visited. After being moved to another house, they were continually raped by a group of soldiers for about 20 days. This group of soldiers subsequently took them to yet another apartment where they continued to rape them for approximately two weeks.

■ A witness was forced to watch the rape of his own wife by a Serb soldier in a police station.

■ Serbs detained Muslims men and women in a school where women were raped. The sole reason for this treatment of the civilians was their Muslim ethnicity.

■ At another school, the guards raped Muslim detainees.

■ Serb paramilitary groups and locals raped Muslims who remained in their home area or those who had returned to their homes.

The court noted: "There is no need to retell here the countless stories of brutality, violence, and depravation that were brought to the Chamber's attention. But hidden amidst the cold statistics on the number of people killed and forced away from their homes, lies a multitude of individual stories of suffering and ordeal – psychological violence, mutilation, outrages upon personal dignity, rape, suffering for loved ones, despair, death. A sentence, however harsh, will never be able to rectify the wrongs, and will be able to soothe only to a limited extent the suffering of the victims, their feelings of deprivation, anguish, and hopelessness".

KRNOJELAC CASE (Prosecutor vs Krnojelac, IT-97-25)	
Number of accused	1
Did court make findings concerning sexual violence?	Yes
Do said findings concern genocide, crimes against humanity (CAH) and/or war crimes?	CAH + WC
Do sexual-violence findings relate to multiple instances?	Yes
Do one or more sexual-violence findings involve multiple victims and/or perpetrators?	Unclear
Did any of sexual violence amount to torture?	No

Notes. See Prosecutor vs Krnojelac, IT-97-25-T, Judgment, 15 Mar 2002 (Krnojelac trial judgment), par 39. In the context of its factual findings the court held that "Muslim women were transferred to Buk Bijela, Foca High School and Partizan Sports Hall. Serb soldiers repeatedly raped Muslim women and girls, either at these locations or elsewhere. KP Dom detainees who took part in a failed exchange in Cajnice met some of the rape victims there, who told them about their ordeal."

KRSTIC CASE (Prosecutor vs Krstic, IT-98-33)	
Number of accused	1
Did court make findings concerning sexual violence?	Yes
Do said findings concern genocide, crimes against humanity (CAH) and/or war crimes?	CAH
Do sexual-violence findings relate to multiple instances?	Yes
Do one or more sexual-violence findings involve multiple victims and/or perpetrators?	Yes
Did any of sexual violence amount to torture?	No

Notes. See Prosecutor vs Krstic, IT-98-33-T, Judgement, 2 Aug 2001 (Krstic trial judgment), pars 3, 45-46, 150, 517, 616-618, 653, 687-688.

Sexual violence formed part of the basis of the conviction of Krstic for persecution as crime against humanity. He was the chief of staff and later commander of a Bosnian Serb army corps. Krstic was also convicted of genocide of Bosnian Muslim men in the Srebrenica area.

The court referred to several instances of rape and other sexual violence. One instance involved the violent rape of a young woman, seemingly by two Serb soldiers; Bosnian Muslim refugees nearby could see the rape, but could do nothing about it because of Serb soldiers standing nearby.

"Other people heard women screaming, or saw women being dragged away. Several individuals were so terrified that they committed suicide by hanging themselves. Throughout the night and early the next morning, stories about the rapes and killings spread through the crowd and the terror in the camp escalated". The court also referred to Bosnian Muslim refugees near Srebrenica being "subjected to a terror campaign comprised of threats, insults, looting and burning of nearby houses, beatings, rapes, and murders".

Although the court was not convinced that the murders, rapes, beatings and abuses committed against the refugees were an agreed upon objective among the members of the joint criminal enterprise, it found that "there is no doubt that these crimes were natural and foreseeable consequences of the ethnic cleansing campaign. Furthermore, given the circumstances at the time the plan was formed, General Krstic must have been aware that an outbreak of these crimes would be inevitable given the lack of shelter, the density of the crowds, the vulnerable condition of the refugees, the presence of many regular and irregular military and paramilitary units in the area and the sheer lack of sufficient numbers of UN soldiers to provide protection. In fact, on 12 July, the VRS [Bosnian Serb Army] organised and implemented the transportation of the women, children and elderly outside the enclave; General Krstic was himself on the scene and exposed to firsthand knowledge that the refugees were being mistreated by VRS or other armed forces. [. . .] General Krstic thus incurs liability also for the incidental murders, rapes, beatings and abuses committed in the execution of this criminal enterprise [. . .]. Finally, General Krstic knew that these crimes were related to a widespread or systematic attack directed against the Bosnian Muslim civilian population of Srebrenica; his participation in them is undeniable evidence of his intent to discriminate against the Bosnian Muslims."

KUNARAC CASE (Prosecutor vs Kunarac and 2 others, IT-96-23 & IT-96-23/1)	
Number of accused	3
Did court make findings concerning sexual violence?	Yes
Do said findings concern genocide, crimes against humanity (CAH) and/or war crimes (WC)?	CAH + WC
Do sexual-violence findings relate to multiple instances?	Yes
Do one or more sexual-violence findings involve multiple victims and/or perpetrators?	Yes
Did any of sexual violence amount to torture?	Yes

Notes. See Prosecutor vs Kunarac and 2 others, IT-96-23 & IT-96-23/1-T (Kunarac trial judgment). See also Prosecutor vs Kunarac and 2 others, IT-96-23 & IT-96-23/1-A, Judgement, 12 June 2002 (Kunarac appeal judgment), pars 2-3, 5-21, 132, 151, 185-186.

Non-Serb civilians were raped or otherwise abused as a direct result of the armed conflict between Bosnian Serb and Bosnian Muslim forces in eastern BiH in 1992/3. The three accused – Kunarac, Kovac and Vukovic – were Serb soldiers. In the words of the trial and appeal chambers, the armed conflict involved a systematic attack by the Bosnian Serb Army and paramilitary groups on the non-Serb civilian population in order to 'cleanse' the area of non-Serbs and "one specific target of the attack was Muslim women" who were detained in intolerably unhygienic conditions in various places where they were mistreated in many ways, including by being raped repeatedly.

Kunarac

Kunarac was convicted of eleven counts of war crimes and crimes against humanity, all related to sexual violence.

■ He took two women (FWS-75 and D.B.) to his headquarters where he raped D.B. and aided and abetted the gang-rape of FWS-75 by several of his soldiers. Kunarac took FWS-87, FWS-75, FWS-50 and D.B. to another location where he raped FWS-87 and aided and abetted the torture and rapes of FWS-87, FWS-75 and FWS-50 at the hands of other soldiers. He also transferred FWS-95 from a detention centre to another location where he raped her. For these acts he was convicted of torture as well as rape as crimes against humanity and war crimes.

■ Kunarac took FWS-87 to another house where he raped her. For this he was convicted of rape as both a crime against humanity and war crime.

■ Kunarac and two other soldiers took FWS-183 to the banks of a river where they tried to obtain information or a confession from her before Kunarac raped her. For this he was convicted of torture as well as rape as war crime.

■ Kunarac also raped FWS-191 and aided and abetted the rape of FWS-186 by another soldier in an abandoned house. FWS-186 and FWS-191 were kept there for about six months during which time Kunarac visited the house occasionally and raped FWS-191. While FWS-191 and FWS-186 were kept there, Kunarac and the other soldier deprived the women of any control over their lives and treated them as their property, thereby committing the crime of enslavement. For these acts Kunarac was convicted of both rape and enslavement as crimes against humanity and for rape as war crime.

Kovac

FWS-75, FWS-87, A.S. and A.B., four women detainees, were transferred to Kovac's apartment. While being kept there, they were raped, humiliated and degraded. They were required to take care of the household chores, the cooking and the cleaning and could not leave the apartment without Kovac or his flatmate accompanying them.

■ FWS-75 and A.B. were detained there for about a week, while FWS-87 and A.S. were held for about four months. Kovac intended to treat FWS-75, FWS-87, A.S. and A.B. as his property. For this he was convicted of enslavement as a crime against humanity.

■ Throughout their detention, FWS-75 and A.B. were raped by Kovac and by other soldiers allowed to visit or stay in his apartment. He sometimes encouraged them to rape FWS-75 and A.B.. For this he was convicted of rape as a crime against humanity and war crime.

■ Whilst kept in Kovac's apartment, FWS-75, FWS-87, A.S. and A.B. were constantly humiliated and degraded. On one occasion he forced FWS-87, A.S. and A.B. to dance naked on a table while he watched them. Kovac sold A.B. to another man for 200 deutschmarks and handed FWS-75 over to Dragan "Zelja" Zelenovic – the accused in the Zelenovic case (see sub-table below) – and another man. He later sold FWS-87 and A.S. for 500 deutschmarks each to some Montenegrin soldiers. The sales of the girls constituted a particularly degrading attack on their dignity. For these acts Kovac was convicted of outrages upon personal dignity as war crime.

Vukovic

Vukovic was convicted of both torture and rape as war crimes and crimes against humanity. He and another soldier took FWS-50 – a 15-year old girl – from a detention centre to an apartment where Vuković raped her.

As the appeals chamber noted, "For the most part, the [three accused] were convicted of raping women held in *de facto* military headquarters, detention centres and apartments maintained as soldiers' residences. As the most egregious aspect of the conditions, the victims were considered the legitimate sexual prey of their captors. Typically, the women were raped by more than one perpetrator and with a regularity that is nearly inconceivable. (Those who initially sought help or resisted were treated to an extra level of brutality). [. . .]". The "physical pain, fear, anguish, uncertainty and humiliation to which the Appellants repeatedly subjected their victims elevate their acts to those of torture. These were not isolated instances. Rather, the deliberate and co-ordinated commission of rapes was carried out with breathtaking impunity over a long period of time. Nor did the age of the victims provide any protection from such acts. [. . .] Whether rousted from their unquiet rest to endure the grim nightly ritual of selection or passed around in a vicious parody of processing at headquarters, the victims endured repeated rapes, implicating not only the offence of rape but also that of torture [. . .]."

"[. . .] The Appellants contend that their object was sexual satisfaction, not infliction of pain or any other prohibited purpose as defined in the offence of torture. [. . .] the Appeals Chamber does not agree with the Appellants' limited vision of the crime of torture. […]".

KUPRESKIC CASE (Prosecutor vs Kupreskic and 5 others, IT-95-16)	
Number of accused in case	6
Did court make findings concerning sexual violence?	Yes
Do sexual-violence findings relate to multiple instances?	Yes

Notes. See Prosecutor vs Kupreskic and 5 others, IT-95-16-T, Judgement, 14 Jan 2000 (Kupreskic trial judgment), pars 199, 204, 218, 228, 253, 280.

None of the accused was charged with a crime involving sexual violence. However, the court made reference to accounts of rapes of civilian Bosnian Muslim women by Bosnian Croat soldiers at a school which served as a detention camp for civilians who were driven from their homes during an attack on a village in BiH. The court also heard testimony of the father of one of the accused threatening a Bosnian Muslim woman with rape in front of her children shortly after her family house was burnt down and her husband and one child were killed.

KVOCKA CASE (Prosecutor vs Kvocka and 3 others, IT-98-30/1)	
Number of accused	4
Did court make findings concerning sexual violence?	Yes
Do said findings concern genocide, crimes against humanity (CAH) and/or war crimes (WC)?	CAH + WC
Do sexual-violence findings relate to multiple instances?	Yes
Do one or more sexual-violence findings involve multiple victims and/or perpetrators?	Yes
Did any of sexual violence amount to torture?	Yes

Notes. See Prosecutor vs Kvocka and 3 others, IT-98-30/1-T, Judgement, 2 Nov 2001 (Kvocka trial judgment), pars 98-109, 114, 119-122, 182-183, 197, 229, 232-234, 327, 415, 547-549, 551-561, 572-573, 727, 579, Disposition; and Prosecutor vs Kvocka and 3 others, IT-98-30/1-A, Judgement, 28 Feb 2005 (Kvocka appeal judgment)), pars 6, 329-334, 402, 407, and Disposition.

Three of the four Serb accused were convicted for crimes related to sexual violence, including rape, committed against civilian non-Serb women detained in camps in BiH. Prac, Kos and Zigic were convicted of persecution as crime against humanity for acts which included rapes and sexual assaults. Radic was convicted for the same, in addition to being convicted for rape and torture as crimes against humanity and torture as war crime for his rape of and other sexual violence committed against several women. Kvocka was acquitted on appeal for persecutions as crime against humanity to the extent that the conviction related to rapes and sexual assaults. Prcac was an administrative aide, Kos and Radic guard shift leaders, and Zigic a visitor to Omarska camp.

The case included crimes committed at Omarska, Keraterm and Trnopolje detention camps.

With respect to Omarska (the main focus of the case), the trial chamber found that it was "commonplace for women to be subjected to sexual intimidation or violence", later described as "forced or coerced acts of sexual penetration, as well as other acts of a sexual nature committed under coercive or abusive circumstances." Violence against detainees was "the rule, not the exception".

Approximately 36 of the Omarska camp detainees were women of varying ages. Several instances of sexual violence are referenced by the trial chamber. They include the following specific references.

- On one occasion a man approached a female detainee in the eating area, unbuttoned her shirt, drew a knife over one of her breasts, and threatened to cut it off.
- "Many others testified" that women were frequently called out from the administration building or the cafeteria of Omarska camp at night and were subsequently raped or subjected to other forms of sexual violence.
- Two witnesses testified how different men tried to rape them on separate occasions.
- Another witness testified how she was "often taken away by a guard [. . .] at any time of the day or night, to a room upstairs in the administration building where he forced her to have sex with him. Another guard [. . .] called her out twice during the night" and then raped her. She was also taken out on another occasion to be raped by two other men.

■ Another witness was "systematically raped by a string of perpetrators" on several occasions; in one instance she was raped by three or four guards.

The court held that "based on the totality of the evidence, it is clear that murder, torture, rape, beatings and other forms of physical and mental violence were strategically and systematically committed against non-Serbs in Omarska. Most of these atrocities appear to have been committed with a premeditated intent to create an atmosphere of violence and terror and to persecute those imprisoned."

The court also held as follows: "Similarly, any crimes that were natural or foreseeable consequences of the joint criminal enterprise of the Omarska camp, including sexual violence, can be attributable to participants in the criminal enterprise if committed during the time he participated in the enterprise. In Omarska camp, approximately 36 women were held in detention, guarded by men with weapons who were often drunk, violent, and physically and mentally abusive and who were allowed to act with virtual impunity. Indeed, it would be unrealistic and contrary to all rational logic to expect that none of the women held in Omarska, placed in circumstances rendering them especially vulnerable, would be subjected to rape or other forms of sexual violence. This is particularly true in light of the clear intent of the criminal enterprise to subject the targeted group to persecution through such means as violence and humiliation."

Radic grossly abused his position and took advantage of the vulnerability of the detainees. He was convicted for the attempted rape and rapes of two different women. He was also convicted of sexual intimidations, harassment, and assaults amounting to sexual violence committed against four women. He was also convicted of torture on the basis of one attempted rape and one rape, as these acts evidenced the intentional infliction of severe pain and suffering.

The court found that women were raped in Keraterm too.

MILUTINOVIC CASE (Prosecutor vs Milutinovic and 5 others, IT-05-87) ***(The case is subject to appeal and has not been fully considered)***	
Number of accused	Six
Does trial judgment include sexual-violence findings?	Yes

Notes. The Milutinovic trial judgment (Prosecutor vs Milutinovic and 5 others, IT-05-87-T, Judgement Volumes 1 to 4, 26 Feb 2009) is subject to appeal and has not been fully considered. See trial judgment vol 2 pars 68, 1188, 1224; vol 3 pars 472, 633, and dissenting opinion of Judge Chowhan.

The trial judgment includes findings on sexual violence committed by Serb forces against Kosovar Albanian civilians in Kosovo. These findings are made in relation to, among others instances, rapes and other forms of sexual violence against civilian women charged as part of persecution as crime against humanity (this count was found proven by the court). Some allegations were found not to be proven (including an allegation that a particular campaign of forced displacement of Kosovar Albanians included as aim sexual assault).

Judge Chowhan issued a partially dissenting opinion, differing from the view expressed by the majority regarding the foreseeability of sexual assault of Kosovo Albanian women to members of the joint criminal enterprise: "In a conflict like the one we are addressing, which involved able-bodied military and security forces acting pursuant to a common plan to use violence to remove large numbers of Kosovo Albanian civilians, including women, from their homes, prudence and common sense, as well as the past history of conflicts in the region, lead me to think that sexual assaults, like murders, were certainly foreseeable realities".

MUCIC CASE – see "CELEBICI CASE" above	
DRAGAN NIKOLIC CASE (Prosecutor vs Dragan Nikolic, IT-94-2) ***(Guilty-plea case)***	
Number of accused	1
Did court make findings concerning sexual violence and/or refer to plea-agreement facts concerning sexual violence?	Yes
Do said findings/agreed facts concern genocide, crimes against humanity (CAH) and/or war crimes (WC)?	CAH + WC
Do sexual-violence findings/agreed facts relate to multiple instances?	Yes
Do one or more sexual-violence findings/agreed facts involve multiple victims and/or perpetrators?	Yes
Did any of sexual violence amount to torture?	No

Notes. See Prosecutor vs Dragan Nikolic, IT-94-2-S, Sentencing Judgement, 18 Dec 2003 (Dragan Nikolic sentencing judgment), pars 2, 35-36, 61, 66-68, 87-90, 109-111, 203.

Nikolic, a Bosnian Serb and former commander of a detention camp in BiH, pleaded guilty to various counts, including the following which had sexual violence, including rapes, as basis: persecution as well as rape as crimes against humanity.

As summarised or referenced by the trial chamber in the trial sentencing judgment, the agreed facts and pleas included the following. Many detained women were subjected to sexual assaults, including rape. Camp guards or other men who were allowed to enter the camp frequently took women out at night. When the women returned, they were often in a traumatised state and distraught. Dragan Nikolic persecuted Muslim and other non-Serb detainees by subjecting them to murders, rapes and torture. In addition he participated in creating and maintaining an atmosphere of terror in the camp through murders, beatings, sexual violence and other physical and mental abuse. He also persecuted Muslim and other non-Serb detainees by participating in sexual violence directed at the female detainees in the camp.

As the court noted: "From early June until about 15 September 1992 many female detainees in Susica camp were subjected to sexual assaults, including rapes and degrading physical and verbal abuse. Dragan Nikolic personally removed and otherwise facilitated the removal of female detainees from the hangar, which he knew was for purposes of rapes, and other sexually abusive conduct. The sexual assaults were committed by camp guards, special forces, local soldiers and other men." Female detainees were sexually assaulted at various locations, including houses surrounding the camp,

a hotel, a military headquarters and at locations where women were taken to perform forced labour. Dragan Nikolic also "allowed female detainees, including girls and elderly women, to be verbally subjected to humiliating sexual threats in the presence of other detainees [. . .]." He encouraged the sexually abusive conduct.

"Witness SU-032, who was sexually assaulted at the camp, testified about what she felt after the assault and what effect the assault made on her son: I felt miserable, degraded. I wanted to be a good mother, the best I could. I wanted my child to grow up in a beautiful family, but that couldn't be any more. I felt humiliated as a woman and as a mother by the very fact that I was there in that camp in that situation. [. . .] It's been 11 years now, but my son is still pensive, introverted, sad and he knows what had happened to me. He is withdrawn. He doesn't like talking to anyone. He's sad. He often tells me that he doesn't like living anymore. He tells me that he often thinks of suicide. [. . .] [He] was eight years old when we arrived at the camp."

PLAVSIC CASE (Prosecutor vs Plavsic, IT-00-39 & 40/1) *(Guilty-plea case)*	
Number of accused	1
Did court make findings concerning sexual violence and/or refer to plea-agreement facts concerning sexual violence?	Yes
Do said findings/agreed facts concern genocide, crimes against humanity (CAH) and/or war crimes?	CAH
Do sexual-violence findings/agreed facts relate to multiple instances?	Yes
Do one or more sexual-violence findings/agreed facts involve multiple victims and/or perpetrators?	Unclear
Did any of sexual violence amount to torture?	No

Notes. See Prosecutor vs Plavsic, IT-00-39&40/1-S, Sentencing Judgement, 27 Feb 2003 (Plavsic sentencing judgment), pars 8, 10, 29, 34, 120, 126-127.

Plavsic pleaded guilty to persecution as crime against humanity. The count related to persecutions of Bosnian Muslim, Bosnian Croat and other non-Serbs populations in 37 municipalities across BiH. She was a former co-president of the Serbian republic of BiH. References were made by the court to rapes and other sexual violence (some of which resulted in death, and some of which were committed in detention camps) in various locations. At the sentencing hearing, evidence was led that the brutal expulsion of civilian populations from municipalities included numerous sexual assaults and rapes.

The court noted that "these crimes did not happen to a nameless group but to individual men, women and children who were mistreated, raped, tortured and killed. This consideration and the fact that this appalling conduct was repeated so frequently, calls for a substantial sentence of imprisonment. The Trial Chamber has already found this to be a crime of the utmost gravity". It also found that "the seriousness of the offence is aggravated [. . .] by the senior leadership position of the accused. Instead of generally preventing or mitigating the crimes, she encouraged and supported those responsible".

RAJIC CASE (Prosecutor vs Rajic, IT-95-12) *(Guilty-plea case)*	
Number of accused	1
Did court make findings concerning sexual violence and/or refer to plea-agreement facts concerning sexual violence?	Yes
Do said findings/agreed facts concern genocide, crimes against humanity and/or war crimes (WC)?	WC
Do sexual-violence findings/agreed facts relate to multiple instances?	Yes
Do one or more sexual-violence findings/agreed facts involve multiple victims and/or perpetrators?	Unclear
Did any of sexual violence amount to torture?	No

Notes. See Prosecutor vs Rajic, IT-95-12-S, Sentencing Judgement, 8 May 2006 (Rajic sentencing judgment), pars 13, 38, 49, 53, 89.

Rajic, a former commander of Bosnian Croat forces, agreed that forces under his command in various locations committed rapes and sexual assaults as war crimes (among other crimes) against Bosnian Muslim civilians during operations.

SIKIRICA CASE (Prosecutor vs Sikirica and 2 others, IT-95-8) *(Guilty-plea case)*	
Number of accused	1
Did court make findings concerning sexual violence and/or refer to plea-agreement facts concerning sexual violence?	Yes
Do said findings/agreed facts concern genocide, crimes against humanity (CAH) and/or war crimes?	CAH
Do sexual-violence findings/agreed facts relate to multiple instances?	Yes
Do one or more sexual-violence findings/agreed facts involve multiple victims and/or perpetrators?	Yes
Did any of sexual violence amount to torture?	No

Notes. See Prosecutor vs Sikirica and 2 others, IT-95-8-S, Sentencing Judgement, 13 Nov 2001 (Sikirica sentencing judgment), pars 17-18, 22, 99, 117, 125.

Sikirica pleaded guilty to persecution as crime against humanity. Although rapes and sexual assaults that were committed against Bosnian Muslims, Bosnian Croats and other non-Serbs in BiH, including those detained in the Keraterm camp, formed part of the agreed facts in relation to the accused,

he did not plead guilty to the said sexual violence: "It is admitted that a small number of women were raped at Keraterm. There is no evidence that Sikirica knew of any such incidents or that he was in a position to know of their having happened after the event. He admits that there is evidence that certain detainees were forced to engage in sexual activities against their will". One witness testified to having been raped by several men all night long at the Keraterm camp.

BLAGOJE SIMIC CASE (Prosecutor vs Simic and 2 others, IT-95-9)	
Number of accused	3
Did court make findings concerning sexual violence?	Yes
Do said findings concern genocide, crimes against humanity (CAH) and/or war crimes?	CAH
Do sexual-violence findings relate to multiple instances?	Yes
Do one or more sexual-violence findings involve multiple victims and/or perpetrators?	Unclear
Did any of sexual violence amount to torture?	Yes

Notes. See Prosecutor vs Simic and 2 others, IT-95-9-T, Judgement, 17 Oct 2003 (Blagoje Simic trial judgment), pars 728, 772, 1115, 1119, 1123.

The accused were senior Bosnian Serb civilian and military commanders. Acts of sexual violence involving several detained Bosnian Muslim and Bosnian Croat civilians, including the ramming of a police truncheon in the anus of a male detainee, were found to amount to torture, forming part of a count of persecution as crime against humanity. The court also heard credible evidence of incidents involving forcing male prisoners to perform oral sex on each other and on Stevan Todorovic – an accused in another case (see sub-table below) – sometimes in front of other prisoners.

STAKIC CASE (Prosecutor vs Stakic, IT-97-24)	
Number of accused	1
Did court make findings concerning sexual violence?	Yes
Do said findings concern genocide, crimes against humanity (CAH) and/or war crimes?	CAH
Do sexual-violence findings relate to multiple instances?	Yes
Do one or more sexual-violence findings involve multiple victims and/or perpetrators?	Yes
Did any of sexual violence amount to torture?	Yes

Notes. See Prosecutor vs Stakic, IT-97-24-T, Judgement, 31 July 2003 (Stakic trial judgment), pars 133, 234-236, 240-241, 244, 264, 415, 536-537, 544-561, 791-806, 818, 881-882.

Rapes and sexual assaults committed by Serb forces against Bosnian Muslim and Bosnian Croat civilians formed part of the basis of the conviction of Stakic, a former high-ranking Bosnian Serb municipal leader, of persecution as crime against humanity. (The prosecution failed to prove its case of genocide, the basis of which included rapes and sexual assaults (see eg trial judgment pars 536-537, 544-561)). The relevant findings include the following.

- In an attack on a village, Serb forces committed rape.
- Multiple sexual abuses, sexual assaults and rapes against Bosnian Muslims and Bosnian Croats, including civilians, were committed with discriminatory intent by Serb forces in Omarska, Keraterm and Trnopolje camps.

One instance in Omarska involved the rape of a single victim by three to four men for several nights, due to which she experienced severe blood loss, constant painful bleeding and fell into a coma. Another instance involved guards threatening a Bosnian Muslim male to rape a girl, after which he was killed. One instance in Keraterm involved the gang rape of a single victim, which caused her to lose consciousness and resulted in much bleeding. Another instance hinted at the forced rape by male detainees of other male detainees.

In the Trnopolje camp, the court found that several women and young girls, including a 13-year old one, were raped or taken out at night for this purpose. A civilian Bosnian Muslim woman was repeatedly and violently raped and sexually assaulted over a period of several days by a commander at his house, after she was taken from Trnopolje camp.

The court held that: "For a woman, rape is by far the ultimate offense, sometimes even worse than death because it brings shame on her" (Stakic trial judgment par 803).

MILAN SIMIC CASE (Prosecutor vs Milan Simic, IT-95-9/2) *(Guilty-plea case)*	
Number of accused	1
Did court make findings concerning sexual violence and/or refer to plea-agreement facts concerning sexual violence?	Yes
Do said findings/agreed facts concern genocide, crimes against humanity (CAH) and/or war crimes?	CAH
Do sexual-violence findings/agreed facts relate to multiple instances?	Yes
Do one or more sexual-violence findings/agreed facts involve multiple victims and/or perpetrators?	Yes
Did any of sexual violence amount to torture?	Yes

Notes. See Prosecutor vs Milan Simic, IT-95-9/2-S, Sentencing Judgement, 17 Oct 2002 (Milan Simic sentencing judgment), pars 9-12, 63.

Simic, a former president of a municipality in BiH, pleaded guilty to two counts of torture as crimes against humanity. Each count concerns two separate incidents. On one occasion, four male non-Serb prisoners were attacked, beaten and kicked by Simic and others, especially in the genitals. In another incident, another non-Serb male was severely beaten and sexually assaulted by Simic and others. The sexual, violent, and humiliating nature of the acts was considered in aggravation. Simic's conduct was committed for the purpose of punishing, intimidating or humiliating the victims with discriminatory intent.

TADIC CASE (Prosecutor vs Tadic, IT-94-1)	
Number of accused	1
Did court make findings concerning sexual violence?	Yes
Do said findings concern genocide, crimes against humanity (CAH) and/or war crimes (WC)?	CAH + WC
Do sexual-violence findings relate to multiple instances?	Yes
Do one or more sexual-violence findings involve multiple victims and/or perpetrators?	Yes
Did any of sexual violence amount to torture?	No

Notes. See Prosecutor vs Tadic, IT-94-1-T, Opinion and Judgment, 7 May 1997 (Tadic trial judgment), pars 27, 151, 154, 165, 175, 194-198, 206, 227-228, 237, 470, 718, 726, 730, and section VIII (Judgment). See also Prosecutor vs Tadic, IT-94-1-T, Sentencing Judgment, 14 July 1997 (Tadic trial sentencing judgment), par 22. See also Prosecutor vs Tadic, IT-94-1-A, Judgement, 15 July 1999 (Tadic appeal judgment), pars 170-171, where appeals chamber overturned certain acquittals of trial chamber.

Tadic, a Bosnian Serb who was a local leader of a Bosnian Serb party, was convicted of several crimes, some of which – including cruel treatment as war crime, and inhumane acts as crimes against humanity – were based on the severe sexual assault of a civilian Bosnian Muslim male.

Evidence of rape was seemingly considered by the trial chamber as part of the conviction of persecution as crime against humanity.

The prosecution failed to prove all instances of participation by Tadic in sexual violence, and certain charges in relation to forced sexual intercourse were withdrawn from the indictment at the start of the trial. Male and female civilians were subjected to sexual violence. One incident involved beatings of six detained Muslim men. Two men were forced to sexually assault a Bosnian male under the gaze of uniformed men: one was ordered to lick his naked bottom, and another to suck his penis and to mutilate him sexually by hitting him in the genitals and by biting off one of his testicles. Another involved the repeated rape at various locations – at military barracks, in a prison cell, in her apartment, and five times in Omarska camp – over a period of time of a pregnant civilian Bosnian woman who had to get an abortion due to the rapes and who has continuing and irreparable medical injuries.

For those held at camps in the area (including Omarska and Trnopolje camps), the overwhelming majority of the thousands of whom were non-Serbs, the situation was horrendous, with, brutal beatings, rapes and torture "commonplace". Male and female detainees were sexually assaulted.

Women who were held at Omarska were routinely called out of their rooms at night and raped. One witness testified that she was taken out five times and raped and after each rape she was beaten.

Because Trnopolje camp housed the largest number of women and girls, there were more rapes at this camp than at any other. Girls between the ages of 16 and 19 were at the greatest risk. During evenings, groups of soldiers would enter the camp, take out their victims and rape them. A prisoner who had medical training was assigned to work in the medical unit at Trnopolje and testified to the extensive rapes that occurred at the camp. He often counselled and treated victims of rape, the youngest girl being 12 years of age.

In addition, there were women at Trnopolje who were subjected to gang rapes; one witness testified that a 19-year-old woman was raped by seven men and suffered terrible pains and came to the clinic for treatment for haemorrhaging. As noted by the court, the witness stated that the "very act of rape, in my opinion – I spoke to these people, I observed their reactions – it had a terrible effect on them. They could, perhaps, explain it to themselves when somebody steals something from them, or even beatings or even some killings. Somehow they sort of accepted it in some way, but when the rapes started they lost all hope. Until then, they had hope that this war could pass, that everything would quiet down. When the rapes started, everybody lost hope, everybody in the camp, men and women. There was such fear, horrible."

TODOROVIC CASE (Prosecutor vs Todorovic, IT-95/1) *(Guilty-plea case)*	
Number of accused	1
Did court make findings concerning sexual violence and/or refer to plea-agreement facts concerning sexual violence?	Yes
Do said findings/agreed facts concern genocide, crimes against humanity (CAH) and/or war crimes?	CAH
Do sexual-violence findings/agreed facts relate to multiple instances?	Yes
Do one or more sexual-violence findings/agreed facts involve multiple victims and/or perpetrators?	Yes
Did any of sexual violence amount to torture?	Yes

Notes. See Prosecutor vs Todorovic, IT-95/1-S, Sentencing Judgement, 31 July 2001 (Todorovic sentencing judgment), pars 12, 14, 37-40.

Todorovic, a former Serbian police chief in BiH, pleaded guilty to persecution as crime against humanity for different forms of underlying conduct, including sexual assaults of non-Serb civilians detained in various detention camps in BiH. These sexual assaults included the beating and kicking of a male detainee in the genital area and forcing him to bite the penis of another detainee; and forcing two male detainees to perform oral sex on one another.

VASILJEVIC CASE (Prosecutor vs Vasiljevic, IT-98-32)	
Number of accused	1
Did court make findings concerning sexual violence?	Yes
Do said findings concern genocide, crimes against humanity and/or war crimes?	CAH
Do sexual-violence findings relate to multiple instances?	Yes
Do one or more sexual-violence findings involve multiple victims and/or perpetrators?	Yes
Did any of sexual violence amount to torture?	No

Notes. See Prosecutor vs Vasiljevic, IT-98-32-T, Judgment, 29 Nov 2002 (Vasiljevic trial judgment), pars 54, 58, 72, 122.

A finding that non-Serb Bosnian civilians were subjected to rapes was made by the court in the context of its findings on facts relevant to the general requirements for the application of war crimes and crimes against humanity charges. The trial chamber was "satisfied upon the evidence before it that there was a widespread and systematic attack against the non-Serb civilian population of the municipality of Visegrad [in BiH] at the time relevant to the Indictment. The attack took many forms, starting with the Serb take-over of the town and the systematic and large-scale criminal campaign of murders, rapes and mistreatment of the non-Serb population of this municipality, particularly the Muslims, which eventually culminated in one of the most comprehensive and ruthless campaigns of ethnic cleansing in the Bosnian conflict. Within a few weeks, the municipality of Višegrad was almost completely cleansed of its non-Serb citizens, and the municipality was eventually integrated into what is now Republika Srpska." One instance involved the rape of two women by several men on one occasion.

ZELENOVIC CASE (Prosecutor vs Zelenovic, IT-96-23/2) *(Guilty-plea case)*	
Number of accused	1
Did court make findings concerning sexual violence and/or refer to plea-agreement facts concerning sexual violence?	Yes
Do said findings/agreed facts concern genocide, crimes against humanity (CAH) and/or war crimes?	CAH
Do sexual-violence findings/agreed facts relate to multiple instances?	Yes
Do one or more sexual-violence findings/agreed facts involve multiple victims and/or perpetrators?	Yes
Did any of sexual violence amount to torture?	Yes

Notes. See Prosecutor vs Zelenovic, IT-96-23/2-S, Sentencing Judgement, 4 Apr 2007 (Zelenovic trial judgment), pars 13, 17, 21, 23-27, 36-40, 67.

Zelenovic was a Bosnian Serb soldier and military policeman. He agreed to plead guilty to seven counts of crimes against humanity for torture and rape.

There were various instances of rape involving multiple rapists at various locations. The chamber also held that: "The physical and psychological health of many of the female detainees seriously deteriorated as a result of the sexual assaults. The detainees lived in constant fear and some of the sexually abused women became suicidal. Others became indifferent as to what happened to them and suffered from depression".

Zelenovic's crimes "were part of a pattern of sexual assaults that took place over a period of several months, and in four different locations, and involved multiple victims." He took direct part in the sexual abuse of victims in a number of detention facilities, including the multiple rape of victims FWS-75 and FWS-87. He personally committed nine rapes, eight of which were qualified as both torture and rape. He has also been found guilty of two instances of rape through co-perpetratorship, one of which was qualified as both torture and rape, and one instance of torture and rape through aiding and abetting.

Four of the instances of sexual abuse were gang rapes, committed together with three or more other perpetrators. In one of those instances he participated as aider and abettor in the rape of FWS-75 by at least ten soldiers, which was so violent that the victim lost consciousness. He participated as co-perpetrator in an incident during which the victim was threatened with a gun to her head while being sexually abused.

Victim FWS-87, who was raped by Zelenovic on numerous occasions, was about 15 years old.

The crime base in this case is similar to the one in the Kunarac case.

VII. SEXUAL-VIOLENCE CASES AT ICTR

88. At the core of Rwanda's tragedy in 1994 is that perpetrators of mainly Hutu origin committed genocide against Rwandans of Tutsi origin. From April to July, between half a million and one million mainly civilian Tutsis, and moderate Hutus who were seen as sympathetic to the Tutsi-led Rwandan Patriotic Front or as opponents of the ruling regime, were slaughtered.[88] The genocide, crimes against humanity and war crimes took place in the context of a brutal civil war.[89] Members of a militia organisation known as the *Interahamwe* were among the main perpetrators.

89. With a few exceptions, those convicted of atrocity crimes – including sexual violence against civilians – are of Hutu background. For the purposes of SCR 1820, it is irrelevant that this is so, just like whether the supporters of only one party committed sexual violence against civilians.

90. Table 2A provides a glimpse of the degree to which sexual violence features in the judgments of the ICTR. The data in this table as well as that in the remainder of this section is drawn from the case-specific data in table 2B, as well as from the website of the ICTR.

91. The ICTR has completed 24 cases. Of these, just more than half – 13 cases, including multi-accused cases – involve sexual violence against civilians.

Table 2A: General notes on cases involving sexual violence at ICTR

Total number of completed cases	24[90]
Number of completed cases in which judgments contain sexual-violence findings and/or agreed facts[91]	13
Number of completed cases in which sexual violence was found to be part of widespread and/or systematic attack directed against civilian population	9
Do at-trial cases include sexual-violence allegations?	Yes[92]
Do said at-trail allegations concern genocide (G), crimes against humanity (CAH) and/or war crimes (WC)?	G + CAH + WC
Number of accused in respect of whom trial judgments are subject to actual or potential appeal	7
Do said trial judgments contain sexual-violence findings?	Yes[93]
Do said findings concern genocide (G), crimes against humanity (CAH) and/or war crimes (WC)?	G + CAH + WC
Do any of awaiting-trial (pre-trial) cases include sexual-violence allegations?	Yes[94]
Do any withdrawn indictments and abandoned cases include sexual-violence allegations?	N/A[95]
Do indictments of remaining fugitives include sexual-crimes charges?	Yes[96]

92. Several of the ten at-trial cases, including multi-accused cases, include sexual-violence allegations and charges. In one of these – the Karemera case – the trial chamber fairly recently denied the mid-trial motion of the accused to acquit them for lack of evidence, ruling that the defence has a case to answer. The court referred to prosecution witnesses testifying to numerous rapes of Tutsi women at roadblocks in the context of its assessment of testimony relating to various genocide charges. The accused are also charged with rape as crimes against humanity.

93. Four of the eight awaiting-trial accused face sexual-violence allegations. In one, rapes form part of a genocide charge, and in another a trial chamber recently agreed to more specific allegations regarding multiple rapes being added to the indictment.

94. There are 13 at-large accused at the ICTR. The indictments against at least four include sexual-violence allegations and charges, also in relation to genocide. In some, there are allegations of rapes and other forms of sexual violence having been committed on a large scale across the country. Several trial judgments under appeal involve sexual-violence findings; see table 2B on the Bagosora and Rukondo cases.[97]

95. In four guilty-plea cases, three of which were concluded in 2006 and 2007, the prosecution withdrew sexual-violence counts from indictments pursuant to plea agreements with accused who pleaded guilty to other counts. The cases included rape as crime against humanity counts, and one additionally included rape as war crime. The exclusion of sexual violence from guilty-plea cases at the ICTR has been criticised.[98] Some information on these cases is included in table 2B.

96. During the Semanza trial, the accused denied any knowledge of rapes. He explained that "[i]n Rwandan tradition or culture, rape has never existed." According to the court, other defence witnesses "made similar broad assertions, stating either that rape is unknown in Rwanda or that they did not see or hear of any rapes in 1994." In relation to the armed conflict of 1994, the court found that "the unsubstantiated claims of Defence witnesses that no rapes occurred in their localities or in Rwanda are not credible or reliable."

97. In the Bagosora case, the court found that "it is well known that rape and other forms of sexual violence were widespread in Rwanda during the events in 1994." The chamber has determined that these acts were committed at various locations, including Kigali roadblocks. It also held that the "case law of this Tribunal has shown that sexual violence was widespread." Reference was made to the Muhimana, Gacumbitsi, Semanza, and Akayesu cases for support of this finding.

98. Sexual violence takes on various forms in ICTR judgments. These include: rape, torture, inhumane acts, and persecution as crimes against humanity; rape, and outrages upon personal dignity as war crimes; and rape, and serious bodily or mental harm as genocide. Rape and/or other sexual violence amounted to torture in one case (the Semanza case).

99. In nine of the 13 completed cases involving sexual-violence findings, the violence was found to be part of a widespread and/or systematic attack directed against civilian populations. Examples are the cases of Gacumbitsi, Muhimana and Semanza (in which the accused directed a group of people to rape Tutsi women).

100. The convicted sexual-violence perpetrators were civilian and non-civilian leaders. They include national-level and local-government leaders, and leaders of military units and militia groups. In the Rukondo case, the accused was a priest and military chaplain. They were convicted on the basis of their personal responsibility.

101. The civilian victims of sexual violence include women. Girls were also victims; examples include the Akayesu and Kajelijeli cases. In the latter case the handicapped daughter of a Tutsi witness was one of the victims.

102. There are several cases in which rape and other forms of sexual violence formed part of genocide convictions. One example is the Rutaganda case. Refugees fleeing for safety to a stadium were stopped and diverted en route by soldiers. Some women were taken forcibly from the group and subsequently raped. Upon arrival at another location, they were surrounded by militias and soldiers. Hutus were separated from Tutsis, with the Tutsis being slaughtered. Some surviving Tutsi girls were selected, put aside, and raped before they were killed. The court also found that clothing had been removed from many of the women who were killed. In the Gacumbitsi case, the accused publicly instigated the rape of Tutsi girls. He drove around with a megaphone inciting Hutu men to rape Tutsis and to kill atrociously those who resisted. Such rapes were then carried out, including by inserting sticks in the victims' genitals, and some victims died. The rapes of a witness and seven other Tutsi women – ranging from a 12-year old girl to an "old lady" in a single instance by numerous rapists, and the repeated rape over days of a victim by one rapist – were a direct consequence of his instigation. The appeals chamber noted that Gacumbitsi "was a primary player, a leader in the commune who used his power to bring about the brutal massacre and rape of thousands."

103. The court took various factors into account in determining that Muhimana had intent to commit genocide. One of these factors was that he "targeted Tutsi civilians during these attacks by shooting and raping Tutsi victims. He also raped a young Hutu girl, Witness BJ, whom he believed to be Tutsi, but later apologised to her when he was informed that she was Hutu. During the course of some of the attacks and rapes, the accused specifically referred to the Tutsi ethnic identity of his victims."

104. In its genocide-related findings, the court in the Akayesu case ruled that rape and other forms of sexual violence constitute genocide in the same way as any other act as long as they were committed with the specific intent to destroy, in whole or in part, a particular group, targeted as such:

> Indeed, rape and sexual violence certainly constitute infliction of serious bodily and mental harm on the victims and are even, according to the Chamber, one of the worst ways to inflict harm on the victim as he or she suffers both bodily and mental harm. In light of all the evidence before it, the Chamber is satisfied that the acts of rape and sexual violence described above, were committed solely against Tutsi women, many of whom were subjected to the worst public humiliation, mutilated, and raped several times, often in public, in the Bureau Communal premises or in other public places, and often by more than one assailant. These rapes resulted in physical and psychological destruction of Tutsi women, their families and their communities. Sexual violence was an integral part of the process of destruction, specifically targeting Tutsi women and specifically contributing to their destruction and to the destruction of the Tutsi group as a whole. [. . .] *The rape of Tutsi women was systematic* and was perpetrated against all Tutsi women and solely against them. A Tutsi woman, married to a Hutu, testified before the Chamber that she was not raped because her ethnic background was unknown. *As part of the propaganda campaign geared to mobilizing the Hutu against the Tutsi, the Tutsi women were presented as sexual objects*. [. . .] This sexualized representation of ethnic identity graphically illustrates that tutsi [sic] women were subjected to sexual violence because they were Tutsi. *Sexual violence was a step in the process of destruction of the tutsi [sic] group* – destruction of the spirit, of the will to live, and of life itself.[99]

A make-shift camp for refugees who fled the fighting (27 July 1994, Gikongoro, Rwanda).

105. There are several cases in which more than one perpetrator raped and/or committed other forms of sexual violence against civilians on a single occasion. Among them are the Rutaganda, Gacumbitsi and Akayesu cases, referred to above. In one instance in the last-mentioned case, of the six men who raped one witness, two were neighbours, two were teenage boys and two were herdsmen.

106. Some women were raped more than once, in one or more locations. They include four prosecution witnesses in the Semanza case. The Muhimana case involved numerous rapes. Tutsi women were raped in the house of the accused, in a cemetery near a church and at a hospital. In the Kayishema case, the wife of a witness was gang-raped by several Hutu men; the chamber also referred to other rapes taking place before family members. In other cases too, sexual violence was committed before other people. For example, two instances of rape in the Akayesu case involved the rape of a witness in front of 15 women on one occasion, and in front of 10 on another. ■

Table 2B: Notes on specific ICTR cases relevant to SCR 1820[100]

AKAYESU CASE (Prosecutor v Akayesu, ICTR-96-4)	
Number of accused	1
Did court make findings concerning sexual violence?	Yes
Do said findings concern genocide (G), crimes against humanity (CAH) and/or war crimes (WC)?	G + CAH[101]
Do sexual-violence findings relate to multiple instances?	Yes
Do one or more sexual-violence findings involve multiple victims and/or perpetrators?	Yes
Did any of sexual violence amount to torture?	No

Notes. See Prosecutor vs Akayesu, ICTR-96-4-T, Judgement, 2 Sept 1998 (Akayesu trial judgment), pars 1, 449-460, 685-697, 706-707, 731-734, and Verdict.

Akayesu was a local-government leader. He was convicted of several crimes, sexual violence including rapes forming part of the convictions of rape and other inhumane acts as crimes against humanity, and genocide.

The court found that Tutsi girls and women were subjected to sexual violence, beaten and killed across the local area of Taba. Four witnesses testified that they themselves were raped, and three of them witnessed other girls and women being raped. Other witnesses also saw other girls and women being raped. Hundreds of Tutsi, mostly women and children, sought refuge at certain premises, and "many rapes took place on or near the premises". For example, one witness was taken by militia members from a refuge site to a nearby forest area and raped there. This happened often to other young girls and women at the refuge site. The same witness was also raped repeatedly on two separate occasions in the cultural center on the premises, once in a group of fifteen girls and women and once in a group of ten girls and women. Other witnesses confirmed that women and girls were being selected and taken by militias to the cultural center to be raped. Women were also raped outside the premises. Three women were raped at the killing site near the premises. A witness found her younger sister, dying, after she had been raped. "Many other instances of rape in Taba outside the [premises] – in fields, on the road, and in or just outside houses – were described" by seven witnesses. Other acts of sexual violence which took place on or near the premises were the forced undressing and public humiliation of girls and women. In the words of the court, "much of the sexual violence took place in front of large numbers of people, and that all of it was directed against Tutsi women."

With a few exceptions, most of the rapes and all of the other acts of sexual violence were committed by militias. Of the six men who raped one witness, two were neighbours, two were teenage boys and two were herdsmen.

The court found that Akayesu had reason to know and in fact knew that sexual violence was taking place on or near the premises, and that women were being taken away from there and sexually violated. There was evidence that Akayesu ordered, instigated and otherwise aided and abetted sexual violence. He watched two militia members drag a woman to be raped at a certain spot. Two local policemen in front of his office witnessed the rape but did nothing to prevent it. On the two occasions a certain witness was brought to the cultural center to be raped, she and the group of girls and women with her were taken past Akayesu on the way. The evidence was that on the second occasion, he said, "Never ask me again what a Tutsi woman tastes like." Akayesu also told militia members to undress a woman and march her around; he was "laughing and happy to be watching and afterwards told the Interahamwe [militia members] to take her away and said "you should first of all make sure that you sleep with this girl.""

At no point did the defence suggest to the witnesses that the rapes had not taken place.

The court's legal findings with respect to the counts in the indictment were limited to crimes which took place "on or near the [premises]", although "[m]any of the beatings, rapes and murders established by the evidence presented took place away from the [premises].

The court found that Akayesu ordered, instigated, aided and abetted the "multiple acts of rape of ten girls and women" by "numerous" militia members; the rape of a certain witness by a militia member in a field near the premises; and the forced undressing and public marching of a woman naked at the premises. The court found that Akayesu "aided and abetted the following acts of sexual violence, by allowing them to take place on or near the premises of the [premises] [. . .] and by facilitating the commission of these acts through his words of encouragement in other acts of sexual violence, which, by virtue of his authority, sent a clear signal of official tolerance for sexual violence, without which these acts would not have taken place: (i) the multiple acts of rape of fifteen girls and women, including Witness JJ, by numerous Interahamwe in the cultural center of the bureau communal; (ii) the rape of a woman by Interahamwe in between two buildings of the bureau communal [. . .]; (iii) the forced undressing of the wife of Tharcisse after making her sit in the mud outside the bureau communal [. . .]". Other sexual violence, including rapes and other inhuman acts of a sexual nature, for which he was found guilty include the multiple rapes of a woman and her two nieces by militia members.

The court found that "Tutsi women were systematically raped, as one female victim testified to by saying that "each time that you met assailants, they raped you"". It also found that in relation to the proven acts of rape and sexual violence "the Chamber wishes to underscore the fact that in its opinion, they constitute genocide in the same way as any other act as long as they were committed with the specific intent to destroy, in whole or in part, a particular group, targeted as such. Indeed, rape and sexual violence certainly constitute infliction of serious bodily and mental harm on the victims and are even, according to the Chamber, one of the worst ways to inflict harm on the victim as he or she suffers both bodily and mental harm. In light of all the evidence before it, the Chamber is satisfied that the acts of rape and sexual violence described above, were committed solely against Tutsi women, many of whom were subjected to the worst public humiliation, mutilated, and raped several times, often in public, in the Bureau Communal premises or in other public places, and often by more than one assailant. These rapes resulted in physical and psychological destruction of Tutsi women, their families and their communities. Sexual violence was an integral part of the process of destruction, specifically targeting Tutsi women and specifically contributing to their destruction and to the destruction of the Tutsi group as a whole."

The court continued: "The rape of Tutsi women was systematic and was perpetrated against all Tutsi women and solely against them. A Tutsi woman, married to a Hutu, testified before the Chamber that she was not raped because her ethnic background was unknown. As part of the propaganda campaign geared to mobilizing the Hutu against the Tutsi, the Tutsi women were presented as sexual objects. Indeed, the Chamber was told, for an

example, that before being raped and killed, Alexia, who was the wife of the Professor, Ntereye, and her two nieces, were forced by the Interahamwe to undress and ordered to run and do exercises "in order to display the thighs of Tutsi women". The Interahamwe who raped Alexia said, as he threw her on the ground and got on top of her, "let us now see what the vagina of a Tutsi woman takes like". As stated above, Akayesu himself, speaking to the Interahamwe who were committing the rapes, said to them: "don't ever ask again what a Tutsi woman tastes like". This sexualized representation of ethnic identity graphically illustrates that tutsi women were subjected to sexual violence because they were Tutsi. Sexual violence was a step in the process of destruction of the tutsi [sic] group - destruction of the spirit, of the will to live, and of life itself."to mobilizing the Hutu against the Tutsi, the Tutsi women were presented as sexual objects. Indeed, the Chamber was told, for an example, that before being raped and killed, Alexia, who was the wife of the Professor, Ntereye, and her two nieces, were forced by the Interahamwe to undress and ordered to run and do exercises "in order to display the thighs of Tutsi women". The Interahamwe who raped Alexia said, as he threw her on the ground and got on top of her, "let us now see what the vagina of a Tutsi woman takes like". As stated above, Akayesu himself, speaking to the Interahamwe who were committing the rapes, said to them: "don't ever ask again what a Tutsi woman tastes like". This sexualized representation of ethnic identity graphically illustrates that tutsi women were subjected to sexual violence because they were Tutsi. Sexual violence was a step in the process of destruction of the tutsi [sic] group – destruction of the spirit, of the will to live, and of life itself."

Also in relation to the genocide charge, the court found that "in most cases, the rapes of Tutsi women in Taba, were accompanied with the intent to kill those women. [. . .] In this respect, it appears clearly to the Chamber that the acts of rape and sexual violence, as other acts of serious bodily and mental harm committed against the Tutsi, reflected the determination to make Tutsi women suffer and to mutilate them even before killing them, the intent being to destroy the Tutsi group while inflicting acute suffering on its members in the process."

BAGOSORA CASE (Prosecutor vs Bagosora and 3 others, ICTR-98-41) *(The case is subject to appeal and has not been fully considered[102])*	
Number of accused	4
Did court make findings concerning sexual violence?	Yes
Do said findings concern genocide, crimes against humanity (CAH) and/or war crimes (WC)?	CAH + WC
Do sexual-violence findings relate to multiple instances?	Yes
Do one or more sexual-violence findings involve multiple victims and/or perpetrators?	Yes
Did any of sexual violence amount to torture?	No

Notes. See eg Prosecutor vs Bagosora, Kabiligi, Ntabakuze, Nsengiyumva, ICTR-98-41-T, Judgement and Sentence, 18 Dec 2008 (Bagosora trial judgment), pars 23-24, 36, 49-50, 56, 62, 72, 687, 720, 802, 938, 976, 983, 985-986, 988, 1325, 1354, 1489, 1504-1505, 1728-1732, 1746, 1767-1776, 2129, 2132-2133, 2201-2206, 2210-2216, 2219-2227, 2252-2253, 2258 (Verdict), 2266.

At trial, the accused Bagosora was convicted on several charges, including the charge of rape as crime against humanity committed as part of a widespread and systematic attack on ethnic and political grounds. His convictions of persecution and other inhumane acts as crimes against humanity, and of outrages upon personal dignity as war crime are also underpinned by rapes and the sexual assault of the prime minister. The accused Kabiligi was acquitted on all charges, including charges relating to sexual violence. The accused Ntabakuze and Nsengiyumva were acquitted on some charges, including the charge of rape as crime against humanity. Bagosora and Kabiligi were senior military leaders.

The trial chamber held that during the first few days after the start of the death of the president, which triggered the genocide, there were organised crimes involving the Rwandan military, at times working in conjunction with Interahamwe and other militiamen throughout Kigali. Roadblocks were established throughout the city, "and soon became sites of open and notorious slaughter and rape." Bagosora was convicted for these rapes. Civilian women were raped and sexually assaulted at other mass-killing sites and at other locations too.

The trial chamber referred to instances where Tutsi women were forced to undress before being killed. It also accepted the testimony of a UN peacekeeper in relation to the atrocities, including rapes and sexual assaults, committed against male and female Tutsi civilians at Gikondo Parish in Kigali. The testimony included the following: "Pregnant women had their stomachs slashed open, foetuses on the floor. Even a foetus was smashed. I remember – just from the time I was there, I remember looking down, a woman obviously had tried to protect her baby. Somebody had rolled her off the baby. The baby was still alive and trying to feed on her breasts. She'd been – her clothes had been ripped off. The killing that was done was not done, in their opinion, to kill the people immediately; it had been done to kill them slowly. Women's breasts, women's vaginas had been cut with machetes; men's scrotum areas cut with machetes. Men [. . .] would have to watch what was happening to their families. There was rape that had taken place in addition to the killings, and the murder. The priests and military observers were forced to watch, and the gendarmes beat them with rifle butts if they averted their eyes from the killing."

The trial chamber also heard uncorroborated testimony about the military and militiamen marching refugees towards Nyanza during which time assailants pulled women from the column and raped them, sometimes killing them in the bushes.

The trial chamber also found in relation to one roadblock in Kigali that Interahamwe and soldiers would take young Hutu and Tutsi women, house them nearby and then rape. In this regard the court said that it is "consistent with the pattern of sexual violence, which occurred in connection with roadblocks."

The court found that "it is well known that rape and other forms of sexual violence were widespread in Rwanda during the events in 1994. This follows in part from Prosecution Expert Witness Binaifer Nowrojee. The Chamber has determined that these acts were committed openly and notoriously at Kigali area roadblocks [. . .], the Kabgayi religious centre [. . .], and during the attacks at the Saint Josephite Centre [. . .] and Gikondo Parish [. . .]. Furthermore, the case law of this Tribunal has shown that sexual violence was widespread." Reference was made to the Muhimana, Gacumbitsi, Semanza, and Akayesu cases for support of this finding.

In several instances the prosecution failed to convince the trial chamber that accused were linked to the sexual-violence instances, and in some instances the prosecution also failed to convince the trial chamber that rapes and other forms of sexual violence took place.

BISENGIMANA CASE (Prosecutor vs Bisengimana, ICTR-00-60) *(Guilty-plea case)*	
Number of accused	1
Did court make findings concerning sexual violence and/or refer to plea-agreement facts concerning sexual violence?	N/A
Do said findings/agreed facts concern genocide, crimes against humanity and/or war crimes?	N/A
Do sexual-violence findings/agreed facts relate to multiple instances?	N/A
Do one or more sexual-violence findings/agreed facts involve multiple victims and/or perpetrators?	N/A
Did any of sexual violence amount to torture?	N/A

Notes. See Prosecutor vs Bisengimana, ICTR-00-60-T, Judgement and Sentence, 13 Apr 2006 (Bisengimana trial judgment), pars 7 and 12. An earlier indictment against Bisengimana included a charge of rape as crime against humanity. This and other charges were later withdrawn by the prosecution.

GACUMBITSI CASE (Prosecutor vs Gacumbitsi, ICTR-2001-64)	
Number of accused	1
Did court make findings concerning sexual violence?	Yes
Do said findings concern genocide (G), crimes against humanity (CAH) and/or war crimes?	G + CAH
Do sexual-violence findings relate to multiple instances?	Yes
Do one or more sexual-violence findings involve multiple victims and/or perpetrators?	Yes
Did any of sexual violence amount to torture?	No

Notes. See eg Prosecutor vs Gacumbitsi, ICTR-2001-64-A, Judgement, 7 July 2006 (Gacumbitsi appeal judgment), pars 2-3, 42, 99-108, 126, 131, 204, 206; and Prosecutor vs Gacumbitsi, ICTR-2001-64-T, Judgment, 17 June 2004 (Gacumbitsi trial judgment), pars 6, 200-228, 259-260, 292-293, 324-333, 334 (Verdict).

Gacumbitsi was a local-government leader. Sexual violence committed against civilians – almost exclusively against Tutsi women and girls – underpinned his convictions of genocide, and rape as crimes against humanity.

Gacumbitsi publicly instigated the rape of Tutsi girls. He drove around with a megaphone inciting Hutu men to rape Tutsis and to kill atrociously those who resisted. Such rapes were then carried out, including by inserting sticks in the victims' genitals, and some victims died. The rapes of a witness and seven other Tutsi women – ranging from a 12-year old girl to an "old lady" in a single instance by numerous rapists, and the repeated rape over days of a victim by one rapist – were a direct consequence of his instigation. The court acquitted him of certain other rapes that had been recounted by witnesses. It was found that these rapes took place. But it could not be proven that Gacumbitsi instigated them.

His instigation to rape Tutsi women and girls caused serious bodily or mental harm.

One witness who was raped was Hutu and her husband Tutsi. The court found that "through the woman, it was her husband, a Tutsi civilian, who was the target. Thus, the rape was part of the widespread attacks against Tutsi civilians".

The appeals chamber noted that Gacumbitsi "was a primary player, a leader in the commune who used his power to bring about the brutal massacre and rape of thousands."

KAJELIJELI CASE (Prosecutor vs Kajelijeli, ICTR-98-44A)	
Number of accused	1
Did court make findings concerning sexual violence?	Yes
Do said findings concern genocide, crimes against humanity (CAH) and/or war crimes?	CAH
Do sexual-violence findings relate to multiple instances?	Yes
Do one or more sexual-violence findings involve multiple victims and/or perpetrators?	Yes
Did any of sexual violence amount to torture?	No

Notes. See eg Prosecutor vs Kajelijeli, ICTR-98-44A-T, Judgment and Sentence, 1 Dec 2003 (Kajelijeli trial judgment), pars 447, 677, 679-682, 917-925, 934-940, 908-909.

The accused was a local-area leader. The court acquitted him on charges of rape as crime against humanity and inhumane acts as crime against humanity, the latter charge also concerning sexual violence. The accused could not be linked to the various instances of sexual violence, which the court found proven.

Four Tutsi women were raped (and two of them killed) by militia members in separate instances and in different locations. One was the handicapped daughter of a Tutsi witness. Another's sexual organs were pierced with a spear by her attackers. One of the witnesses before the court, a Tutsi woman, was raped and sexually mutilated by militia members. The court also found that "some rapes" were committed against other civilian Tutsi women in other areas.

A Tutsi girl was mutilated by a militia member who cut off her breast and then licked it.

The court found that cutting a woman's breast off and licking it, and piercing a woman's sexual organs with a spear "are nefarious acts of a comparable gravity to the other acts listed as crimes against humanity, which would clearly cause great mental suffering to any members of the Tutsi community who observed them."

KAMUHANDA CASE (Prosecutor vs Kamuhanda, ICTR-99-54A)	
Number of accused	1
Did court make findings concerning sexual violence?	Yes
Do said findings concern genocide, crimes against humanity (CAH) and/or war crimes?	CAH
Do sexual-violence findings relate to multiple instances?	No
Do one or more sexual-violence findings involve multiple victims and/or perpetrators?	Yes
Did any of sexual violence amount to torture?	N/A

Notes. See eg Prosecutor vs Kamuhanda, ICTR-99-54A-T, Judgement and Sentence, 22 Jan 2003 (Kamuhanda trial judgment), pars 497, 507. The court held that rapes of about 20 women took place during an attack against Tutsis, but the accused could not be linked to the rapes, leading to his acquittal on a charge of rape as crime against humanity.

KAYISHEMA CASE (Prosecutor vs Kayishema and Ruzindana, ICTR-95-1)	
Number of accused	2
Did court make findings concerning sexual violence?	Yes
Do said findings concern genocide, crimes against humanity and/or war crimes?	N/A
Do sexual-violence findings relate to multiple instances?	Yes
Do one or more sexual-violence findings involve multiple victims and/or perpetrators?	Unclear
Did any of sexual violence amount to torture?	No

Notes. See Prosecutor vs Kayishema and Ruzindana, ICTR-95-1-T, Judgement, 21 May 1999 (Kayishema trial judgment), pars 6-12, 293-294, 299, 532, 547, and Verdict.

Kayishema, a local-government official, and Ruzindana, a business man, were not accused of sexual violence. However, in the course of its judgment, the trial chamber made several findings in relation to sexual violence in the general context of its findings on genocide and other charges against the accused. These findings include the following. In relation to events in Kibuye, the court noted that they witnessed some Tutsi women being raped. Witness F's wife was gang-raped by Hutus before her children's eyes. The court referred to other rapes taking place before family members.

MUHIMANA CASE (Prosecutor vs Muhimana, ICTR-95-1B)	
Number of accused	1
Did court make findings concerning sexual violence?	Yes
Do said findings concern genocide (G), crimes against humanity (CAH) and/or war crimes?	G + CAH
Do sexual-violence findings relate to multiple instances?	Yes
Do one or more sexual-violence findings involve multiple victims and/or perpetrators?	Yes
Did any of sexual violence amount to torture?	No

Notes. See Prosecutor vs Muhimana, ICTR-95-1B-A, Judgement, 21 May 2007 (Muhimana appeal judgment), pars 2-3, 31, 46, 51, 53-54, 94, 116, 125, 148-149, 165, 173, 178,185, and Disposition; and Prosecutor vs Muhimana, ICTR-95-1B-T, Judgement and Sentence, 28 Apr 2005 (Muhimana trial judgment), pars 304, 513-519, 552-563.

Muhimana was a local-government councillor. Various instances of sexual violence formed the basis of the conviction of Muhimana of genocide, and rape as crime against humanity.

He participated in various attacks by raping numerous Tutsi women or women whom he believed to be Tutsi. Additionally, he disembowelled a pregnant woman by cutting her open with a machete from her breasts to her vagina, causing her death. Muhimana also abetted others who raped women.

In respect of the genocide conviction, the court took various factors into account in determining that Muhimana had intent to commit genocide. One of these factors was that he "targeted Tutsi civilians during these attacks by shooting and raping Tutsi victims. He also raped a young Hutu girl, Witness BJ, whom he believed to be Tutsi, but later apologised to her when he was informed that she was Hutu. During the course of some of the attacks and rapes, the Accused specifically referred to the Tutsi ethnic identity of his victims."

On appeal the trial chamber's finding that Muhimana raped two Tutsi women was overturned. The trial chamber finding that he later drove them out of his house naked and invited militia members and other civilians to see what naked Tutsi girls look like was not appealed. None of the other instances of rape for which he was found guilty was overturned on appeal.

His conviction for rape as crime against humanity rests on his commission of or complicity in the rapes of ten other individuals. Examples include the following: He raped a woman in his house on several occasions. After the attack on a church, Muhimana and a group of militia brought six young

Tutsi women to a cemetery near the church where he raped one of them. During an attack against Tutsi civilians at another location (a hospital) he committed and abetted the rapes of several women (in one instance, two sisters; he also raped one woman twice) in three separate incidents (this also formed part of the genocide conviction; however, the rape of a young Hutu woman whom he mistook for a Tutsi and the rapes of two other women whose Tutsi ethnicity was not established, did not form part of the genocide conviction, only the rape as crime against humanity conviction). He also permitted a militia member to take away a witness knowing that she would be raped.

MUSEMA CASE (Prosecutor vs Musema, ICTR-96-13)	
Number of accused	1
Did court make findings concerning sexual violence?	Yes
Do said findings concern genocide, crimes against humanity (CAH) and/or war crimes?	N/A
Do sexual-violence findings relate to multiple instances?	N/A
Do one or more sexual-violence findings involve multiple victims and/or perpetrators?	N/A
Did any of sexual violence amount to torture?	N/A

Notes. See Musema v Prosecutor, ICTR-96-13-A, Judgement, 16 Nov 2001 (Musema appeal judgment), pars 3-5, 74-75, 165-171, 172-194, 371, Disposition; and Prosecutor vs Musema, ICTR-96-13-T, Judgement and Sentence, 27 Jan 2000 (Musema trial judgment), pars 797-862.

Musema was the director of a tea factory. At trial, he was convicted of various crimes. One of these was rape as crime against humanity. This was for the rape of a Tutsi woman. In relation to the rapes of other women, the court found the allegations unproven or could not enter a conviction for other reasons. On appeal, the rape conviction was overturned based on additional evidence.

In relation to another sexual-violence instance forming part of a genocide charge, it was found that Musema ordered the rape of another Tutsi woman and the cutting off of her breast to be fed to her son. However, despite this finding, the majority of the trial chamber observed that no evidence had been introduced to indicate that Musema ordered that she be killed, nor was there conclusive evidence that she was raped, or that her breast was cut off.

NAHIMANA CASE (Prosecutor vs Nahimana, Barayagwiza and Ngeze, ICTR-99-52)	
Number of accused	3
Did court make findings concerning sexual violence?	Yes
Do said findings concern genocide, crimes against humanity (CAH) and/or war crimes?	CAH
Do sexual-violence findings relate to multiple instances?	Yes
Do one or more sexual-violence findings involve multiple victims and/or perpetrators?	Unclear
Did any of sexual violence amount to torture?	N/A

Notes. See Prosecutor vs Nahimana, Barayagwiza and Ngeze, ICTR-99-52-A, Judgement, 28 Nov 2007 (Nahimana appeal judgment), pars 468, 516-519, 753-754, 988, 993-995; and Prosecutor vs Nahimana, Barayagwiza and Ngeze, ICTR-99-52-T, Judgement and Sentence, 3 Dec 2003 (Nahimana trial judgment), pars 5-12, 114, 118, 122, 245-246, 442, 476, 950, 955, 963, 974, 1079, 1081-1084.

Nahimana was one of the founding members of a radio station (*Radio Télévision Libre des Mille Collines*, RTLM) and a member of a political party. Barayagwiza was a founding member of another political party as well as of RTLM; he was also a director in the Rwandan ministry of foreign affairs. Ngeze founded the newspaper *Kangura* and was its editor-in-chief, and co-founder with Barayagwiza of the CDR party. They were charged with several counts, including genocide-related counts, and persecution as crime against humanity. It would seem as if sexual-violence findings underpinned the persecution conviction of Nahimana, but this is not entirely clear.

Hate speeches carried over RTLM and in the newspaper after 6 April 1994 were accompanied by calls for genocide against the Tutsi group. This took place in the context of a massive campaign of persecution directed at the Tutsi population, this campaign being also characterized by acts of violence including rapes. These hate speeches and calls for violence against the Tutsi constituted underlying acts of, and instigated acts of persecution.

In RTLM broadcasting, Tutsi women were targeted as being instruments and members of opposition forces. This was not contested. One witness testified that after such broadcasts, she had been assaulted several times, and she also saw other women being assaulted in a neighborhood of Kigali following an RTLM broadcast which had mentioned that "they were disturbing the Hutu men" living in this neighborhood. In the absence of details regarding these broadcasts, the appeals chamber was unable to conclude that they constituted direct incitement to commit genocide. Furthermore, since the witness was a Hutu, calls for violence against her could not be regarded as acts of incitement to commit genocide.

The trial chamber found that *The Appeal to the Conscience of the Hutu* and *The Ten Commandments*, published in *Kangura* in December 1990, conveyed contempt and hatred for the Tutsi ethnic group, and for "Tutsi women in particular as enemy agents, and called on readers to take all necessary measures to stop the enemy, defined to be the Tutsi population." Other editorials and articles published in *Kangura* echoed the contempt and hatred for Tutsi. *Kangura* contributed, at least in part, to the killing of Tutsi civilians. The appeals chamber overturned this finding, partly because the temporal jurisdiction of the ICTR precludes the court from relying on acts of instigation pre-dating that date, and also because it could not be proven that post-1 January publications susbstantially contributed to the commission of acts of genocide.

The court held that Tutsi women were often raped, tortured and mutilated before they were killed. It also referred to the presentation of Tutsi women as *femmes fatales* which focused particular attention on Tutsi women and the danger they represented to the Hutu. "This danger was explicitly associated with sexuality. By defining the Tutsi woman as an enemy in this way, *Kangura* articulated a framework that made the sexual attack of Tutsi women a foreseeable consequence of the role attributed to them."

NDINDABAHIZI CASE (Prosecutor vs Ndindabahizi, ICTR-2001-71)	
Number of accused	1
Did court make findings concerning sexual violence?	Unclear
Do said findings concern genocide, crimes against humanity and/or war crimes?	N/A
Do sexual-violence findings relate to multiple instances?	N/A
Do one or more sexual-violence findings involve multiple victims and/or perpetrators?	N/A
Did any of sexual violence amount to torture?	N/A

Notes. See Prosecutor vs Ndindabahizi, ICTR-2001-71-T, Judgement and Sentence, 15 July 2004 (Ndindabahizi trial judgment), pars 9, 13, 122, 465, 474, 508; and Prosecutor vs Ndindabahizi, ICTR-2001-71-A, Judgement, 16 Jan 2007 (Ndindabahizi appeal judgment), pars 86, 141.

The prosecution amended the original indictment by adding, inter alia, a charge of rape as crime against humanity; however, the court later granted a prosecution request to withdraw, inter alia, the said rape charge.

The court referred to the evidence of a witness who said that Tutsi women were raped and then killed in two locations.

In this as in other cases (see eg Nahimana case), the court made findings in relation to credible evidence from various sources that Tutsi women married to Hutu men were targeted for murder, but this was not charged as gender-based crimes.

NIYITEGEKA CASE (Prosecutor vs Niyitegeka, ICTR-96-14)	
Number of accused	1
Did court make findings concerning sexual violence?	Yes
Do said findings concern genocide (G), crimes against humanity (CAH) and/or war crimes?	G + CAH
Do sexual-violence findings relate to multiple instances?	No
Do one or more sexual-violence findings involve multiple victims and/or perpetrators?	Yes
Did any of sexual violence amount to torture?	N/A

Notes. See eg Prosecutor vs Niyitegeka, ICTR-96-14-T, Judgement and Sentence, 16 May 2003 (Niyitegeka trial judgment), pars 5-6, 301, 316, 416, 420, 455-458, 463-465, 467, 477, 480.

The court found that the rape of a young girl was not proven, and as the prosecution led no evidence on the role of the accused – the minister of information at the time – in causing women to be raped, it acquitted him on the charge of rape as crime against humanity. But another sexual-violence act formed part of the conviction of the accused for genocide, as well as inhumane acts as crime against humanity. The court found that the accused, on a public road, ordered militia to undress the body of a Tutsi woman who had just been shot dead, to fetch and sharpen a piece of wood, which he then instructed them to insert into her genitalia. The body of the woman, with the piece of wood protruding from it, was left on the roadside for some three days thereafter.

NTAKIRUTIMANA CASE (Prosecutor vs Elizaphan and Gerard Ntakirutimana, ICTR-96-10 and ICTR-96-17)	
Number of accused	2
Did court make findings concerning sexual violence?	Yes
Do said findings concern genocide, crimes against humanity and/or war crimes?	N/A
Do sexual-violence findings relate to multiple instances?	No
Do one or more sexual-violence findings involve multiple victims and/or perpetrators?	Yes
Did any of sexual violence amount to torture?	N/A

Notes. See eg Prosecutor vs Elizaphan and Gerard Ntakirutimana, ICTR-96-10 and ICTR-96-17-T, Judgement and Sentence, 21 Feb 2003 (Ntakirutimana trial judgment), pars 25, 644-646. Neither accused was charged with rape. However, the court accepted testimony concerning the rape of three women on one occasion by two men, one Hutu and one Twa. The accused were not linked to the said rapes.

NZABIRINDA CASE (Prosecutor vs Nzabirinda, ICTR-2001-77) *(Guilty-plea case)*	
Number of accused	1
Did court make findings concerning sexual violence and/or refer to plea-agreement facts concerning sexual violence?	N/A
Do said findings/agreed facts concern genocide, crimes against humanity and/or war crimes?	N/A
Do sexual-violence findings/agreed facts relate to multiple instances?	N/A
Do one or more sexual-violence findings/agreed facts involve multiple victims and/or perpetrators?	N/A
Did any of sexual violence amount to torture?	N/A

Notes. See Prosecutor vs Nzabirinda, ICTR-2001-77-T, Sentencing Judgement, 23 Feb 2007 (Nzabirinda sentencing judgment), pars 3-4, 9. Nzabirinda pleaded guilty to one count in an amended indictment. The original indictment included a charge of rape as crime against humanity, to which he had pleaded not guilty. Like with certain other charges, the rape charge did not appear in the amended indictment.

RUGAMBARARA CASE (Prosecutor vs Rugambarara, ICTR-00-59) ***(Guilty-plea case)***	
Number of accused	1
Did court make findings concerning sexual violence and/or refer to plea-agreement facts concerning sexual violence?	N/A
Do said findings/agreed facts concern genocide, crimes against humanity and/or war crimes?	N/A
Do sexual-violence findings/agreed facts relate to multiple instances?	N/A
Do one or more sexual-violence findings/agreed facts involve multiple victims and/or perpetrators?	N/A
Did any of sexual violence amount to torture?	N/A

Notes. See Prosecutor vs Rugambarara, ICTR-00-59-T, Sentencing Judgement, 16 Nov 2007 (Rugambarara sentencing judgment), pars 2-3. Rugambarara pleaded guilty to one count in the amended indictment. The original indictment included a charge of rape as both crime against humanity and war crime, to which he had pleaded not guilty. Like with certain other charges, the rape charge did not reappear in the amended indictment.

RUKONDO CASE (Prosecutor vs Rukondo, ICTR-2001-70) ***(The case is subject to appeal and has not been fully considered)***	
Number of accused	1
Did court make findings concerning sexual violence?	Yes
Do said findings concern genocide (G), crimes against humanity and/or war crimes?	G
Do sexual-violence findings relate to multiple instances?	No
Do one or more sexual-violence findings involve multiple victims and/or perpetrators?	No
Did any of sexual violence amount to torture?	No

Notes. See eg Prosecutor vs Rukondo, ICTR-2001-70-T, Judgement, 27 Feb 2009 (Rukondo trial judgment), pars 4, 10, 259, 372-389, 574-576, 591 (Verdict). Rukondo was a priest and military chaplain in the Rwandan army. He was convicted of genocide. One of the acts underpinning this crime was his serious sexual assault of a young Tutsi women in a seminary.

RUTAGANDA CASE (Prosecutor vs Rutaganda, ICTR-96-3)	
Number of accused	1
Did court make findings concerning sexual violence?	Yes
Do said findings concern genocide (G), crimes against humanity and/or war crimes?	G
Do sexual-violence findings relate to multiple instances?	Yes
Do one or more sexual-violence findings involve multiple victims and/or perpetrators?	Yes
Did any of sexual violence amount to torture?	No

Notes. See eg Prosecutor vs Rutaganda, ICTR-96-3-T, Judgement and Sentence, 6 Dec 1999 (Rutaganda trial judgment), pars 300-303, 390, 401, Verdict.

Rutaganda, a former youth-militia leader, was convicted of, inter alia, genocide. Rapes committed against civilian Tutsi women formed part of the conduct which underpinned the genocide conviction. Refugees fleeing for safety to a stadium were stopped and diverted en route by soldiers. Some women were taken forcibly from the group and subsequently raped. Upon arrival at another location, they were surrounded by militias and soldiers. Hutus were separated from Tutsis, with the Tutsis being slaughtered. Some surviving girls were selected, put aside, and raped before they were killed. Clothing had been removed from many of the women who were killed. The killing lasted more than an hour. The accused was present and participated in the forced diversion of refugees, and he directed and participated in the subsequent attack during which rapes took place.

SEMANZA CASE (Prosecutor vs Semanza, ICTR-97-20)	
Number of accused	1
Did court make findings concerning sexual violence?	Yes
Do said findings concern genocide, crimes against humanity (CAH) and/or war crimes (WC)?	CAH + WC
Do sexual-violence findings relate to multiple instances?	Yes
Do one or more sexual-violence findings involve multiple victims and/or perpetrators?	Yes
Did any of sexual violence amount to torture?	Yes

Notes. See Prosecutor vs Semanza, ICTR-97-20-T, Judgement and Sentence, 15 May 2003 (Semanza trial judgment), pars 9, 15, 50-52, 61, 245, 250-251, 255, 258-259, 261, 310, 468, 473-485, 538-539, 542-548; and Prosecutor vs Semanza, ICTR-97-20-A, Judgement, 20 May 2005 (Semanza appeal judgment), pars 365-371, and Disposition.

Semanza was a political leader. He was convicted of various crimes. Sexual violence against a Tutsi woman underpinned his convictions of rape as crime against humanity and war crime, and of torture as crime against humanity. He also directed a group of people to rape Tutsi women before killing them. The rape of a Tutsi woman by one of the members of the group followed; this rape also constituted torture.

Sexual-violence committed against Tutsi civilians in various locations formed part of a genocide-related charge too, but these allegations were not considered by the court due to the vagueness of the allegations, and some allegations were also found not to be proven; the prosecution did not lead any related evidence about rapes or other forms of sexual violence as pleaded in the indictment.

The court found that several Tutsi women, including four prosecution witnesses, were raped at various locations. But, as these rapes were not clearly pleaded in the indictment, the court could not convict the accused for these crimes.

At trial the accused denied any knowledge of rapes, explaining that "[i]n Rwandan tradition or culture, rape has never existed." Other defence witnesses "made similar broad assertions, stating either that rape is unknown in Rwanda or that they did not see or hear of any rapes in 1994." The court found that "the unsubstantiated claims of Defence witnesses that no rapes occurred in their localities or in Rwanda are not credible or reliable."

SERUSHAGO CASE (Prosecutor vs Serushago, *ICTR 98-39) (Guilty-plea case)*	
Number of accused	1
Did court make findings concerning sexual violence and/or refer to plea-agreement facts concerning sexual violence?	N/A
Do said findings/agreed facts concern genocide, crimes against humanity and/or war crimes?	N/A
Do sexual-violence findings/agreed facts relate to multiple instances?	N/A
Do one or more sexual-violence findings/agreed facts involve multiple victims and/or perpetrators?	N/A
Did any of sexual violence amount to torture?	N/A

Notes. See Prosecutor vs Serushago, ICTR-98-39-S, Sentence, 5 Feb 1999 (Serushago sentencing judgment), par 4. Serushago pleaded guilty to four of the five counts against him. He pleaded not guilty to the count of rape as crime against humanity. The prosecution was thereafter authorised by the trial chamber to withdraw the said count.

VIII. SEXUAL-VIOLENCE CASES AT SCSL

107. Relatively speaking, the SCSL has significantly fewer cases than the ICTY and ICTR. Since its creation, it has focused only on a small number of individuals said to be bearing the greatest responsibility for atrocity crimes.[103]

108. The main organised armed groups that were involved in the relevant armed conflict in Sierra Leone included the Civil Defence Forces (CDF), the Armed Forces Revolutionary Council (AFRC) and the Revolutionary United Front (RUF). Three of the SCSL's cases are built around multiple leaders of these groups. Two cases have run their full course: the CDF case involving two leaders and the AFRC case involving three leaders. The trial chamber has recently issued its judgment in the RUF case (involving three leaders).[104] The final case at the SCSL for the time being involves the former Liberian president, Charles Taylor.

109. For the purposes of SCR 1820, it is irrelevant whether one party committed more sexual violence than the others.

The Special Court for Sierra Leone in Freetown.

110. Table 3A provides a glimpse of the degree to which sexual violence features in the judgments of the SCSL. The data in this table as well as that in the remainder of this section is drawn from the case-specific data in the attached table 3B, as well as from the website of the SCSL.

Table 3A: General notes on cases involving sexual crimes at SCSL

Total number of completed cases	2
Number of completed cases in which judgments contain sexual-violence findings[105]	2
Number of completed cases in which sexual violence was found to be part of widespread and/or systematic attack directed against civilian population	1
Does at-trial case (the Taylor case) include sexual-violence allegations?	Yes[106]
Do said at-trail allegations concern crimes against humanity (CAH) and/or war crimes (WC)?	CAH + WC
Number of cases in respect of which trial judgments are subject to actual or potential appeal	1
Do said trial judgments contain sexual-violence findings?	Yes
Do said findings concern crimes against humanity (CAH) and/or war crimes (WC)?	CAH + WC
Do any withdrawn cases include sexual-violence allegations?	Yes[107]
Does indictment of remaining fugitive include sexual-crimes charges?	Yes[108]

111. Both of the completed cases involve findings in relation to sexual violence against civilians. In only one, the AFRC case, was convictions entered for sexual violence, as both crimes against humanity and war crimes. The trial judgment in the RUF case also contains findings of sexual violence as crimes against humanity and war crimes. The indictment in the Charles Taylor case includes allegations of rape as well as sexual slavery and other forms of sexual violence charged as crimes against humanity, and crimes of a sexual nature charged as outrages upon personal dignity as a war crime.[109] Withdrawn indictments included sexual-violence charges, as does the indictment in the case of the remaining fugitive.

i. AFRC case[110]

112. Sexual-violence and related convictions in the AFRC case took different forms. They are: rape as crime against humanity,[111] which the court found to have been part of an attack which was both widespread and systematic; outrages upon personal dignity, and various acts of sexual violence, among others, constituting collective punishments as war crimes. The three leaders were held responsible on the basis of their personal and superior responsibility.

113. The court found that "a widespread or systematic attack by AFRC/RUF forces was directed against the civilian population of Sierra Leone at all times relevant to the indictment." While in government, this attack was state-sponsored, "aimed broadly at quelling opposition to the regime and punishing civilians suspected of supporting the CDF/Kamajors." After the removal of the AFRC/RUF government in early 1998, the two groups operated as non-state actors and the "focal points of violence shifted as AFRC/RUF troops moved throughout the various provinces [. . .]. [T]he continued attack against the civilian population was in most instances more frequent and brutal."

114. On this second stage, the court made a number of relevant findings and observations. Referring to documentary evidence authored by the UN and Human Rights Watch, a human-rights NGO, it noted that

attacks "in villages across Sierra Leone" continued regularly throughout 1998. The following passage sheds light on some aspects of the nature of the sexual violence, its scale and scope, including in relation to sexual slavery and the active targeting of women:

> Numerous instances appear in the oral evidence of pregnant women being killed, beaten or raped in these attacks. Civilians suffered amputations including arms, hands, feet, breasts, lips and ears. The abducted civilians, numbered in their thousands, were forced to serve the AFRC/RUF as "porters, potential recruits or sex slaves". *Women were actively targeted through sexual violence. The phenomenon of the 'bush wives' witnessed thousands of women forcibly married to rebels.* [. . .] A report admitted in evidence, authored by UNHCR officers, details numerous incidents of killings, mutilations, beatings and rapes of civilians in Kono and Koinadugu Districts in 1998. This report is corroborated by documentary evidence and the testimony of both Prosecution and Defence witnesses pertaining to attacks by the AFRC and/or RUF in Kono, Koinadugu and Kailahun Districts. [. . .] This attack culminated in the invasion of Freetown in January 1999, which has been described as "the most intensive and concentrated period of human rights abuses and international humanitarian law violations in Sierra Leone's civil war". Reliable documentary evidence from several sources estimates that up to five thousand civilians were killed, one hundred had limbs amputated, *thousands were raped*, thousands were abducted [. . .]. Witnesses testified that violence against civilians continued over the following months in Port Loko [. . .]. Although it is not strictly necessary, the Trial Chamber finds that the regular pattern of crimes committed demonstrates that the attack was also systematic [in addition to being widespread]. In addition, it is evident from the declaration by AFRC/RUF leaders of a number of 'operations' targeted at civilians that pre-conceived plans or policies for the execution of the attack existed. [. . .] 'Operation Spare No Soul' saw troops instructed to kill, maim or amputate any civilian with whom they came into contact, burn villages and *rape girls and women freely*. [. . .][112]

115. Various rapes (charged as crimes against humanity, and included in the charge of collective punishments as war crime) often involved multiple rapists and multiple victims (including children), and were widespread across Sierra Leone in the year relevant to the indictment, 1998. In at least five instances a single victim was raped by more than one rapist (in one specific instance, by five rapists), including commanders other than the leaders on trial; in some instances the court could not determine the number of rapes, victims or rapists, referring to 'unknown numbers.'

116. In the context of its finding that rape and sexual slavery as outrages upon personal dignity were committed on a widespread basis and involved multiple perpetrators and multiple victims, some of whom were in their teens, the court referred to the testimony of a particular witness which is illustrative of these crimes:

> The Trial Chamber is of the opinion that witness TF1-334's testimony that women were captured; that captured civilians who tried to escape were executed; that captured women were placed under the "full control" of commanders and became their "wives"; and that these women cooked for the commanders and other soldiers is indicative of the deprivation of the captured women's liberty and the exercise of ownership over them by members of the AFRC. The Trial Chamber is also satisfied on the evidence of the witness, namely that the women were "used sexually" and that soldiers, including himself, had sexual intercourse with captured women, that acts of sexual violence were committed against the captured women. The Trial Chamber infers from the environment of violence and coercion that the women did not consent to these sexual acts.[113]

117. Sexual slavery was primarily committed by the AFRC troops "to take advantage of the spoils of war, by treating women as property and using them to satisfy their sexual desires and to fulfil other conjugal needs."

In the circumstances of the AFRC case, the court found that sexual slavery was not done primarily to terrorise the civilian population, which is why it did not consider such acts in relation to the terrorism as war crimes charge.

118. In relation to forced marriage, the court made several references to the targeting and sustained vulnerability of victims of forced marriage and other sexual crimes or crimes with sexual elements:

> The trial record contains ample evidence that the perpetrators of forced marriages intended to impose a forced conjugal association upon the victims rather than exercise an ownership interest and that forced marriage is not predominantly a sexual crime. There is substantial evidence in the Trial Judgment to establish that throughout the conflict in Sierra Leone, women and girls were systematically abducted from their homes and communities by troops belonging to the AFRC and compelled to serve as conjugal partners to AFRC soldiers. They were often abducted in circumstances of extreme violence, compelled to move along with the fighting forces from place to place, and coerced to perform a variety of conjugal duties including regular sexual intercourse, forced domestic labour such as cleaning and cooking for the "husband," endure forced pregnancy, and to care for and bring up children of the "marriage." In return, the rebel "husband" was expected to provide food, clothing and protection to his "wife," including protection from rape by other men, acts he did not perform when he used a female for sexual purposes only. [. . .] The Trial Chamber findings also demonstrate that these forced conjugal associations were often organised and supervised by members of the AFRC or civilians assigned by them to such tasks. A "wife" was exclusive to a rebel "husband," and any transgression of this exclusivity such as unfaithfulness, was severely punished. A "wife" who did not perform the conjugal duties demanded of her was deemed disloyal and could face serious punishment under the AFRC disciplinary system, including beating and possibly death. [. . .] [F]orced marriages which involve the abduction and detention of women and girls and their use for sexual and other purposes is clearly criminal in nature. [. . .] The Appeals Chamber finds that the evidence before the Trial Chamber established that victims of forced marriage endured physical injury by being subjected to repeated acts of rape and sexual violence, forced labour, corporal punishment, and deprivation of liberty. Many were psychologically traumatised by being forced to watch the killing or mutilation of close family members, before becoming "wives" to those who committed these atrocities and from being labelled rebel "wives" which resulted in them being ostracised from their communities. In cases where they became pregnant from the forced marriage, both they and their children suffered long-term social stigmatisation. [. . .] In assessing the gravity of forced marriage in the Sierra Leone conflict, the Appeals Chamber has taken into account the nature of the perpetrators' conduct especially the atmosphere of violence in which victims were abducted and the vulnerability of the women and girls especially those of a very young age. Many of the victims of forced marriage were children themselves. Similarly, the Appeals Chamber has considered the effects of the perpetrators' conduct on the physical, moral, and psychological health of the victims. The Appeals Chamber is firmly of the view that acts of forced marriage were of similar gravity to several enumerated crimes against humanity including enslavement, imprisonment, torture, rape, sexual slavery and sexual violence.

119. The court also dealt with superior responsibility in the context of sexual crimes. After observing that the AFRC had a functioning disciplinary system, it noted that the only evidence that soldiers were punished for crimes refers to their punishment for the rape of other soldiers' 'wives'. In other words, they were not punished for raping civilian women, but for raping women 'belonging' to another perpetrator. The only evidence of Brima taking any steps to prevent the crimes committed is that he:

United Nations repatriates refugees from Liberia to Sierra Leone (05 October 2006, Zimmi, Sierra Leone).

> appointed a provost marshal who was in charge of ensuring that "jungle justice" was adhered to. "Jungle Justice" included a "law" prohibiting rapes during operations and any fighter who raped another fighter's 'wife' would be put to death. The Trial Chamber finds that rules regarding which troops were entitled to rape civilians or rules that prohibited rape at specified times, do not demonstrate the Accused's attempt to prevent or punish these crimes. *Rather they are indicative of the tolerance and institutionalised nature of the commission of the crimes within the AFRC forces*.[114]

ii. RUF trial judgment[115]

120. The RUF trial judgment is subject to potential appeal. It includes various findings on sexual violence against civilians committed across the country, including in respect of rape as crime against humanity (after an attack on Freetown in February 1999, it was found that 648 of 1,168 treated patients had been raped); sexual slavery as crime against humanity; forced marriage (other inhumane acts) as crime against humanity; outrages upon personal dignity (rape, sexual slavery and forced marriage) as war crimes; and sexual violence (including rape, sexual slavery and forced marriage) as a form of terrorism as a crime against humanity.

121. In the context of the sexual slavery charge the trial chamber remarked that specific offences relating to sexual violence "are designed to draw attention to serious crimes that have been historically overlooked and to recognise the particular nature of sexual violence that has been used, often with impunity, as a tactic of war to humiliate, dominate and instil fear in victims, their families and communities during armed conflict."[116]

122. In the context of dealing with sexual violence as terrorism, the trial chamber observed that the evidence shows that "sexual violence was rampantly committed against the civilian population in an atmosphere in which violence, oppression and lawlessness prevailed." The:

> nature and manner in which the female population was a target of the sexual violence portrays a calculated and concerted pattern on the part of the perpetrators to use sexual violence as a weapon of terror. These fighters employed perverse methods of sexual violence against women and men of all ages ranging from brutal gang rapes, the insertion of various objects into victims' genitalia, the raping of pregnant women and forced sexual intercourse between male and female civilian abductees.

123. The chamber referred to rebels that "ravaged through villages targeting the female population effectively disempower[ing] the civilian population". It also noted that:

> the physical and psychological pain and fear inflicted on the women not only abused, debased and isolated the individual victim, but deliberately destroyed the existing family nucleus, thus undermining the cultural values and relationships which held the societies together. Victims of sexual violence were ostracised, husbands left their wives, and daughters and young girls were unable to marry within their community. The Chamber finds that sexual violence was intentionally employed by the perpetrators to alienate victims and render apart communities, thus inflicting physical and psychological injury on the civilian population as a whole. The Chamber finds that these effects of sexual violence were so common that it is apparent they were calculated consequences of the perpetrators' acts. [. . .] The Chamber recalls the testimony of TF1-029 describing the general perception among the rebels that "soldiers who captured civilians had a right to rape them and make them their wives." The Chamber considers this statement indicative of the atmosphere of terror and helplessness that the rebel forces created by systematically engaging in sexual violence in order to demonstrate that the communities were unable to protect their own wives, daughters, mothers, and sisters. Rebels invaded homes at random and raped women. In this way the AFRC and RUF extended their power and dominance over the civilian population by perpetuating a constant threat of insecurity that pervaded daily life and afflicted both women and men.

iii. CDF case

124. In controversial decisions, the court refused to allow the prosecutor to introduce sexual-violence charges in the indictment or to lead evidence of sexual violence at trial.[117] ■

Table 3B: Notes on specific SCSL cases relevant to SCR 1820[118]

AFRC CASE (Prosecutor vs Brima and 2 others, SCSL-04-16)	
Number of accused	3
Did court make findings concerning sexual violence?	Yes
Do said findings concern crimes against humanity (CAH) and/or war crimes (WC)?	CAH + WC
Do sexual-violence findings relate to multiple instances?	Yes
Do one or more sexual-violence findings involve multiple victims and/or perpetrators?	Yes
Did any of sexual violence amount to torture?	No
Notes. See section IX(i) of main body of report for summary of relevant findings. See Prosecutor vs Brima and 2 others, SCSL-04-16-T, Judgement, TC, 20 June 2007 (AFRC trial judgment), pars 224-225, 233-238, 966-1068, 1069 et seq, 1105, 1459, 1509, 1531, 1536, 1546, 1559 and 1560 (it not being clear whether this finding made in fact includes rape too), 1567, 1570-1573, 1577, 1634, 1710-1711, 1739, 1741, 1776, 1911, 1928, section XIII (Disposition); and Prosecutor vs Brima and 2 others, SCSL-04-16-A, Judgment, AC, 22 Feb 2008 (AFRC appeal judgment), pars 170-174, 175-203, 210, 2112-2123 (Disposition).	
CDF CASE (Prosecutor vs Fofana and Kondewa, SCSL-04-14)	
Number of accused	2[119]
Did court make findings concerning sexual violence?	Yes
Do said findings concern crimes against humanity and/or war crimes?	N/A
Do sexual-violence findings relate to multiple instances?	N/A
Do one or more sexual-violence findings involve multiple victims and/or perpetrators?	N/A
Did any of sexual violence amount to torture?	N/A
Notes. Prosecutor vs Fofana and Kondewa, SCSL-04-14-T, Judgment, 2 Aug 2007 (CDF trial judgment), par 48 as well as Prosecutor vs Fofana and Kondewa, SCSL-04-14-A, Judgment, AC, 28 May 2008 (CDF appeal judgment), pars 410-451, and partially dissenting opinion of judge Renate Winter, pars 68, 72, 79-81, 84-89. The prosecution did not include any sexual-violence allegations and charges in the original indictment. Its later attempt – prior to the start of the trial – to include such charges, including rape and sexual slavery as crimes against humanity, was refused by the trial chamber in a decision issued shortly before the start of the trial. The trial chamber held that such amendment would have prejudiced the accused and violated their right to be tried without undue delay and would constitute an abuse of process. The prosecution's efforts to immediately appeal the decision failed, as set out in a trial chamber decision issued several months after the start of the trial. After the trial the prosecution appealed the trial chamber's decision as part of its appeal against the trial judgment. It asked the appeals chamber to reverse the legal reasoning of the trial chamber but not to substitute any additional conviction or to order any further trial proceedings (seemingly because of the limited lifespan of the court). The appeals chamber rejected the appeal, holding that it would be an academic exercise. At trial the prosecution also sought to lead evidence in relation to sexual violence in support of other charges, even though the indictment made no express reference to sexual-violence instances on those charges. The trial chamber rejected this course of action. Among other reasons, it held that it would be prejudicial to the accused to allow such evidence to be admitted, as acts of sexual violence were not pleaded in the indictment under the relevant counts, and the accused had therefore not been put on notice that they were facing such charges. On appeal against the trial judgment, the prosecution appealed the said decision of the trial chamber. The appeals chamber found that the trial chamber erred in denying a hearing of evidence of acts of sexual violence, but that the error does not invalidate the conviction of the accused on the counts to which the evidence would have related. This outcome resulted in a partially dissenting opinion by an appeal judge in which she inter alia wrote: "[...] In the present case, the denial of the amendments precluded that any of the gender-based violence allegedly committed against women and girls by the Kamajors/CDF during the armed conflict could be prosecuted. Article 15(4) of the [SCSL] Statute specifically addresses the need for the Prosecution to consider employment of prosecutors and investigators specialised in gender-based violence. The Trial Chamber itself stated in another context that this provision "underscore[s] the necessity for international criminal justice to highlight the high profile nature of the emerging domain of gender offences with a view to bringing the alleged perpetrators to justice." It follows in my view that denying the Prosecution to prosecute acts of gender-based violence committed against women and girls during the armed conflict in Sierra Leone impeded the Special Court's fulfilment of its mandate."	
RUF CASE (Prosecutor vs Sesay and 2 others, SCSL-04-15) ***(The case is subject to appeal and has not been fully considered)***	
Number of accused	3
Did court make findings concerning sexual violence?	Yes
Do said findings concern crimes against humanity (CAH) and/or war crimes (WC)?	CAH + WC
Do sexual-violence findings relate to multiple instances?	Yes
Do one or more sexual-violence findings involve multiple victims and/or perpetrators?	Yes
Did any of sexual violence amount to torture?	No
Notes. See section IX(i) of main body of report for summary of relevant findings. See Prosecutor vs Sesay and 2 others, SCSL-04-15-T, Judgement, TC, 2 Mar 2009 (RUF trial judgment), pars 143-151, 152-163, 164-171, 173-177, 1340, 1346-1356, 1493, 1575, and section IX (Disposition). (Judgment was delivered on 25 February 2009).	

IX. CONCLUDING OBSERVATIONS

125. Sexual violence against civilians committed during and in relation to the relevant armed conflicts is a noticeable feature of the judgments of completed cases at the ICTY, ICTR and SCSL. It forms part of convictions of genocide, crimes against humanity and war crimes. It takes various forms. These range from rape, sexual slavery and forced marriage to torture, outrages upon personal dignity, persecution and serious bodily or mental harm.

126. Several at-trial cases, awaiting-trial cases, indictments of remaining fugitives, and trial judgments that are subject to appeal also contain charges or findings, as the case may be, of sexual violence against civilians.

127. In these judgments, the main victims of sexual violence were civilians. Women and girls were the chief target. At the ICTY and SCSL, men were targeted too. Many of the convictions concern sexual violence that was committed as part of widespread or systematic attacks against civilian populations.

In observance of International Women's Day, participants march from the centre of Monrovia to the Temple of Justice, home of the Liberian Supreme Court, where they staged a peaceful sit-in protest against gender-based violence, 08 March 2007

128. As numerous examples show, the sexual violence was particularly brutal.

129. At the ICTY, a noticeable feature of relevant judgments is that sexual violence against civilians formed part of and flowed from the so-called 'ethnic cleansing' of areas coveted by parties to the conflict. Sexual violence centring on detention centres, including in situations amounting to sexual slavery of women and girls, comprise a considerable part of the findings. In some judgments, sexual violence was described as being commonplace. However, as the judgments clearly show, sexual violence against civilians was committed away from such detention centres too. At the ICTR, a noticeable feature is that sexual violence against civilians, which mostly took the form of rape, formed a systematic part of the genocide committed against the Tutsi. At the SCSL, a noticeable feature is the abduction of civilian women and girls by and their forced marriage to combatants, in the course of which these so-called 'bush wives' were also raped and subjected to other forms of sexual violence.

130. The relevant judgments underline the importance of superiors in preventing, and failing that, punishing crimes, including sexual crimes, by their subordinates. In several instances, superiors and other perpetrators who were in positions to influence others not only failed in their duty, they personally raped, sexually enslaved and committed other sexual violence against civilians. ■

A. CASES, JUDGMENTS AND DECISIONS CITED

ICTY		
Blagojevic	Blagojevic appeal judgment	Prosecutor vs Blagojevic and Jokic, IT-02-60-A, Judgement, 9 May 2007
Blaskic	Blaskic trial judgment	Prosecutor vs Blaskic, IT-95-14-T, Judgement, 3 Mar 2000
	Blaskic appeal judgment	Prosecutor vs Blaskic, IT-95-14-T, Judgement, 29 July 2004
Brdanin	Brdanin trial judgment	Prosecutor vs Brdanin, IT-99-36-T, Judgement, 1 Sept 2004
	Brdanin appeal judgment	Prosecutor vs Brdanin, IT-99-36-A, Judgement, 3 Apr 2007
Bralo	Bralo sentencing judgment	Prosecutor vs Bralo, IT-95-17-S, Sentencing Judgement, 7 Dec 2005
Cesic	Cesic sentencing judgment	Prosecutor vs Cesic, IT-95-10/1-S, Sentencing Judgement, 11 Mar 2004
Celebici	Celebici trial judgment	Prosecutor vs Mucic and 3 others, IT-96-21-T, Judgement, 16 Nov 1998
	Celebici appeal judgment	Prosecutor vs Mucic and 3 others, IT-96-21-A, Judgement, 20 Feb 2001
Dordevic		Prosecutor vs Dordevic (IT-05-87/1)
Furundzija	Furundzija trial judgment	Prosecutor vs Furundzija, IT-95-17/1-T, Judgement, 10 Dec 1998
Galic	Galic appeal judgment	Prosecutor vs Galic, IT-98-29-A, Judgement, 30 Nov 2006
Hadzihasanovic	Hadzihasanovic appeal judgment	Hadzihasanovic and Kubura, IT-01-47-A, Judgement, 22 Apr 2008
Halilovic	Halilovic trial judgment	Prosecutor vs Halilovic, IT-01-48-T, Judgement, 16 Nov 2005
Haradinaj		Prosecutor vs Haradinaj and 2 others, IT-04-84-T, Judgement, 3 Apr 2008
Halilovic	Halilovic appeal judgment	Prosecutor vs Halilovic, IT-01-48-A, Judgement, 16 Oct 2007
Hadzic		Prosecutor vs Hadzic (IT-04-75)
Karadzic		Prosecutor vs Karadzic (IT-95-5/18)
Kordic	Kordic trial judgment	Prosecutor vs Kordic and Cerkez, IT-95-14/2-T, Judgement, 21 Feb 2001
	Kordic appeal judgment	Prosecutor vs Kordic and Cerkez, IT-95-14/2-A, Judgement, 17 Dec 2004
Kovacevic		Kovacevic (IT-97-24)
Krajisnik	Krajisnik trial judgment	Prosecutor vs Krajisnik, IT-00-39-T, Judgement, 27 Sept 2006
Krnojelac	Krnojelac trial judgment	Prosecutor vs Krnojelac, IT-97-25-T, Judgment, 15 Mar 2002
Krstic	Krstic trial judgment	Prosecutor vs Krstic, IT-98-33-T, Judgement, 2 Aug 2001
Kunarac	Kunarac trial judgment	Prosecutor vs Kunarac and 2 others, IT-96-23 & IT-96-23/1-T
	Kunarac appeal judgment	Prosecutor vs Kunarac and 2 others, IT-96-23 & IT-96-23/1-A, Judgement, 12 June 2002
Kupreskic	Kupreskic trial judgment	Prosecutor vs Kupreskic and 5 others, IT-95-16-T, Judgement, 14 Jan 2000
Kvocka	Kvocka trial judgment	Prosecutor vs Kvocka and 3 others, IT-98-30/1-T, Judgement, 2 Nov 2001
	Kvocka appeal judgment	Prosecutor vs Kvocka and 3 others, IT-98-30/1-A, Judgement, 28 Feb 2005

Limaj	Limaj trial judgment	Prosecutor vs Galic and 2 others, IT-03-66-T, Judgement, 30 Nov 2005
Martic	Martic appeal judgment	Prosecutor vs Martic, IT-95-11-A, Judgement, 8 Oct 2008
Milosevic		Milosevic, IT-02-54
Milutinovic	Milutinovic trial judgment	Prosecutor vs Milutinovic and 5 others, IT-05-87-T, Judgement Volumes 1 to 4, 26 Feb 2009
Mladic		Prosecutor vs Mladic, IT-95-5/18
Mrksic		Prosecutor vs Mrksic and 2 others, IT-95-13/1-T, Judgement, 27 Sept 2007
Mucic		See Celebici case
Dragan Nikolic	Dragan Nikolic sentencing judgment	Prosecutor vs Dragan Nikolic, IT-94-2-S, Sentencing Judgement, 18 Dec 2003
Plavsic	Plavsic sentencing judgment	Prosecutor vs Plavsic, IT-00-39&40/1-S, Sentencing Judgement, 27 Feb 2003
Prlic		Prosecutor vs Prlic and 5 others, IT-04-74
Rajic	Rajic sentencing judgment	Prosecutor vs Rajic, IT-95-12-S, Sentencing Judgement, 8 May 2006
Seselj		Prosecutor vs Seselj, IT-03-67
Sikirica	Sikirica sentencing judgment	Prosecutor vs Sikirica and 2 others, IT-95-8-S, Sentencing Judgement, 13 Nov 2001
Blagoje Simic	Blagoje Simic trial judgment	Prosecutor vs Simic and 2 others, IT-95-9-T, Judgement, 17 Oct 2003
Milan Simic	Milan Simic sentencing judgment	Prosecutor vs Milan Simic, IT-95-9/2-S, Sentencing Judgement, 17 Oct 2002
Stakic	Stakic trial judgment	Prosecutor vs Stakic, IT-97-24-T, Judgement, 31 July 2003
Stanisic		Prosecutor vs Stanisic and Simatovic, IT-03-96
Strugar	Strugar appeal judgment	Prosecutor vs Strugar, IT-01-42-A, Judgement, 17 July 2008
Tadic	Tadic trial judgment	Prosecutor vs Tadic, IT-94-1-T, Opinion and Judgment, 7 May 1997
	Tadic trial sentencing judgment	Prosecutor vs Tadic, IT-94-1-T, Sentencing Judgment, 14 July 1997
	Tadic appeal judgment	Prosecutor vs Tadic, IT-94-1-A, Judgement, 15 July 1999
Talic		Talic, IT-99-36
Todorovic	Todorovic sentencing judgment	Prosecutor vs Todorovic, IT-95/1-S, Sentencing Judgement, 31 July 2001
Vasiljevic	Vasiljevic trial judgment	Prosecutor vs Vasiljevic, IT-98-32-T, Judgment, 29 Nov 2002
Zelenovic	Zelenovic sentencing judgment	Prosecutor vs Zelenovic, IT-96-23/2-S, Sentencing Judgement, 4 Apr 2007
Zulpjanin		Prosecutor vs Zulpjanin and Stanisic, IT-08-91
ICTR		
Akayesu	Akayesu trial judgment	Prosecutor vs Akayesu, ICTR-96-4-T, Judgement, 2 Sept 1998
	Akayesu appeal judgment	Prosecutor vs Akayesu, ICTR-96-4-A, Judgment, 1 June 2001
Bagambiki		Prosecutor vs Bagambiki, ICTR-97-36
Bagilishema		Prosecutor vs Bagilishema, ICTR-95-1A
Bagosora	Bagosora trial judgment	Prosecutor vs Bagosora, Kabiligi, Ntabakuze, Nsengiyumva, ICTR-98-41-T, Judgement and Sentence, 18 Dec 2008
Bikindi	Bikindi trial judgment	Prosecutor vs Bikindi, ICTR-01-72-T, Judgement, 2 Dec 2008
Bisengimana	Bisengimana trial judgment	Prosecutor vs Bisengimana, ICTR-00-60-T, Judgement and Sentence, 13 Apr 2006
Bizamana		Prosecutor vs Bizamana, ICTR-98-44
Bizimungu (Casimir)		Prosecutor vs Bizimungu (Casimir), Mugenzi, Bicamumpaka and Mugiraneza, ICTR-99-50-T, Decision on Defence Motions Pursuant to Rule 98 Bis, 31 Oct 2005

Bucyibaruta		Prosecutor vs Bucyibaruta, ICTR-05-85
Gacumbitsi	Gacumbitsi trial judgment	Prosecutor vs Gacumbitsi, ICTR-2001-64-T, Judgment, 17 June 2004
	Gacumbitsi appeal judgment	Prosecutor vs Gacumbitsi, ICTR-2001-64-A, Judgement, 7 July 2006
Gatete		Prosecutor vs Gatete, ICTR-2000-62
Hategekimana		Prosecutor vs Nizeyimana and Hategekimana, ICTR-00-55-I, Decision on the Prosecutor's Application for Severance and Leave to Amend the Indictment against Idelphonse Hategekimana, 25 Sept 2007
Kabuga		Prosecutor vs Kabuga, ICTR-99-44B
Kajelijeli	Kajelijeli trial judgment	Prosecutor vs Kajelijeli, ICTR-98-44A-T, Judgment and Sentence, 1 Dec 2003
Kalimanzira		Prosecutor vs Kalimanzira, ICTR-05-88
Kamuhanda	Kamuhanda trial judgment	Prosecutor vs Kamuhanda, ICTR-99-54A-T, Judgement and Sentence, 22 Jan 2003
Karemera		Prosecutor vs Karemera, Ngirumpatse and Nzirorera, ICTR-98-44-T, Decision on Motions for Judgement of Acquittal - Rule 98bis of the Rules of Procedure and Evidence, 19 Mar 2008
		Prosecutor vs Karemera, Ngirumpatse and Nzirorera, ICTR-98-44-AR73(C), Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice, 16 June 2006
Kayishema	Kayishema trial judgment	Prosecutor vs Kayishema and Ruzindana, ICTR-95-1-T, Judgement, 21 May 1999
Mpambara		Prosecutor vs Mpambara, ICTR-01-65
Mpiranya		Prosecutor vs Mpiranya, ICTR-2000-56
Muhimana	Muhimana trial judgment	Prosecutor vs Muhimana, ICTR-95-1B-T, Judgement and Sentence, 28 Apr 2005
	Muhimana appeal judgment	Prosecutor vs Muhimana, ICTR-95-1B-A, Judgement, 21 May 2007
Munyagishari		Prosecutor vs Munyagishari, ICTR-97-26 & ICTR-05-89
Munyarugarama		Prosecutor vs Munyarugarama, ICTR-02-79
Munyeshyaka		Prosecutor vs Munyeshyaka, ICTR-05-87
Musema	Musema trial judgment	Prosecutor vs Musema, ICTR-96-13-T, Judgement and Sentence, 27 Jan 2000
	Musema appeal judgment	Musema v Prosecutor, ICTR-96-13-A, Judgement, 16 Nov 2001
Muvunyi	Muvunyi trial judgment	Prosecutor vs Muvunyi, ICTR-2000-55, Judgement and Sentence, 12 Sept 2006
	Muvunyi appeal judgment	Prosecutor vs Muvunyi, ICTR-2000-55A-A, Judgement, 29 Aug 2008
Nahimana	Nahimana trial judgment	Prosecutor vs Nahimana, Barayagwiza and Ngeze, ICTR-99-52-T, Judgement and Sentence, 3 Dec 2003
	Nahimana appeal judgment	Prosecutor vs Nahimana, Barayagwiza and Ngeze, ICTR-99-52-A, Judgement, 28 Nov 2007
Ndindabahizi	Ndindabahizi trial judgment	Prosecutor vs Ndindabahizi, ICTR-2001-71-T, Judgement and Sentence, 15 July 2004
	Ndindabahizi appeal judgment	Prosecutor vs Ndindabahizi, ICTR-2001-71-A, Judgement, 16 Jan 2007
Ndindilyimana		Prosecutor vs Ndindilyimana, Augustin Bizimungu, Nzuwonemeye and Sagahutu, ICTR-00-56
Ngirabatware		Prosecutor vs Ngirabatware, ICTR-99-54, Decision on Prosecution Motion for Leave to Amend the Indictment, 29 Jan 2009
Niyitegeka	Niyitegeka trial judgment	Prosecutor vs Niyitegeka, ICTR-96-14-T, Judgement and Sentence, 16 May 2003

Nizeyimana		Prosecutor vs Nizeyimana and Hategekimana, ICTR-00-55-I, Decision on the Prosecutor's Application for Severance and Leave to Amend the Indictment against Idelphonse Hategekimana, 25 Sept 2007
Nsengimana		Prosecutor vs Nsengimana, ICTR-01-69
Ntaganzwa		Prosecutor vs Ntaganzwa, ICTR-96-9
Ntagerura		Prosecutor vs Ntagerura, ICTR-96-10A
Ntakirutimana	Ntakirutimana trial judgment	Prosecutor vs Elizaphan and Gerard Ntakirutimana, ICTR-96-10 and ICTR-96-17-T, Judgement and Sentence, 21 Feb 2003
Ntuyahaga		Prosecutor vs Ntuyahaga, ICTR-98-40
Nyiramasuhuko		Prosecutor vs Nyiramasuhuko, Kanyabashi, Ndayambaje, Nsabimana, Ntahobali, Nteziryayo, ICTR-98-42-T, Decision on Defence Motions for Acquittal under Rule 98*bis*, 16 Dec 2004
Nzabirinda	Nzabirinda sentencing judgment	Prosecutor vs Nzabirinda, ICTR-2001-77-T, Sentencing Judgement, 23 Feb 2007
Nzabonimana		Prosecutor vs Nzabonimana, ICTR-98-44
Renzaho		Prosecutor vs Renzaho, ICTR-97-31-DP
Rugambarara	Rugambarara sentencing judgment	Prosecutor vs Rugambarara, ICTR-00-59-T, Sentencing Judgement, 16 Nov 2007
Rukondo	Rukondo trial judgment	Prosecutor vs Rukondo, ICTR-2001-70-T, Judgement, 27 Feb 2009
Rusatira		Prosecutor vs Rusatira, ICTR-02-80
Rutaganda	Rutaganda trial judgment	Prosecutor vs Rutaganda, ICTR-96-3-T, Judgement and Sentence, 6 Dec 1999
	Rutaganda appeal judgment	Prosecutor vs Rutaganda, ICTR-96-3-A, Judgement, 26 May 2003
Rutaganira		Prosecutor vs Rutaganira, ICTR-95-1C-T, Judgement and Sentence, 14 Mar 2005
Rwamakuba		Prosecutor vs ICTR-98-44C
Semanza	Semanza trial judgment	Prosecutor vs Semanza, ICTR-97-20-T, Judgement and Sentence, 15 May 2003
	Semanza appeal judgment	Prosecutor vs Semanza, ICTR-97-20-A, Judgement, 20 May 2005
Seromba	Seromba appeal judgment	Prosecutor vs Seromba, ICTR-2001-66-A, Judgement, 12 Mar 2008
Serushago	Serushago sentencing judgment	Prosecutor vs Serushago, ICTR-98-39-S, Sentence, 5 Feb 1999
Setako		Prosecutor vs Setako, ICTR-04-81
Sikubwabo		Prosecutor vs Sikubwabo, ICTR-95-1D
SCSL		
AFRC	AFRC trial judgment	Prosecutor vs Brima and 2 others, SCSL-04-16-T, Judgement, 20 June 2007
	AFRC appeal judgment	Prosecutor vs Brima and 2 others, SCSL-04-16-A, Judgment, 22 Feb 2008
Bockarie		Prosecutor vs Bockarie, SCSL-2003-04
CDF	CDF trial judgment	Prosecutor vs Fofana and Kondewa, SCSL-04-14-T, Judgment, 2 Aug 2007
	CDF appeal judgment	Prosecutor vs Fofana and Kondewa, SCSL-04-14-A, Judgment, 28 May 2008
Koroma		Prosecutor vs Koroma, SCSL-2003-03
RUF	RUF trial judgment	Prosecutor vs Sesay and 2 others, SCSL-04-15-T, Judgement, 2 Mar 2009
Sankoh		Prosecutor vs Sankoh, SCSL-03-02
Taylor		Prosecutor vs Taylor, SCSL-03-01

B. OTHER SOURCES CITED

ICTY, ICTR and SCSL sources other than case-related sources	
ICTR	
Completion-strategy report from ICTR to SC, S/2008/726, 21 Nov 2008	
ICTR Statute	
ICTY	
Completion-strategy report from ICTY to SC, S/2008/729, 24 Nov 2008	
ICTY Statute	
SCSL	
Special Court for Sierra Leone Completion Strategy, June 2007, attached as annex I to letter dated 7 June 2007 from chargé d'affaires a.i. of Canadian mission to UN addressed to SC president (S/2007/338)	
SCSL-establishment agreement (2002)	
SCSL Statute	
Other UN sources	
SC sources	
SCR 808 (1993)	
SCR 827 (1993)	
SCR 955 (1994)	
SC 1315 (2000)	
SCR 1503 (2003)	
SCR 1534 (2004)	
SCR 1820 (2008)	
SCR 1888 (2009)	
Other UN sources[720]	
UN Charter (1945)	
Websites	
ICTR	www.ictr.org
ICTY	www.icty.org
SC documentation	www.un.org/Docs/sc/
SCSL	www.sc-sl.org

C. BASIC TOOLKIT: COLLECTION OF KEY READINGS AND SOURCES OF POTENTIAL 1820 AND 1888 RELEVANCE

131. This annex contains a modest but strategic toolkit of key readings and reference or training materials to assist those working to prevent and respond to sexual violence, including on ensuring accountability for sexual violence.

132. The general backdrop to the Toolkit is operative paragraph 6 of SCR 1820. In relevant part it reads that the SC requests the SG, in consultation with others, to "develop and implement appropriate training programs for all peacekeeping and humanitarian personnel deployed by the [UN] in the context of missions as mandated by the Council to help them better prevent, recognize and respond to sexual violence and other forms of violence against civilians".

133. The number of sources dealing with the various legal, economic, political, social, developmental and other facets of the prevention of, response to and accountability for sexual violence against civilians in armed conflicts around the globe is vast and this toolkit is thus necessarily selective. It is limited mainly to sources of actual or potential practical use and to sources relating to sexual violence against civilians in or in relation to armed conflicts.

134. To the extent that sources on the relevant law are included, the accent generally is on *international* criminal and humanitarian law sources.

135. Generally, the Toolkit does not include sources that might be considered as 'obvious' relevance such as the Statutes of the ICTY, ICTR and SCSL; the Rome Statute of the International Criminal Court and that court's Elements of Crimes; the four 1949 Geneva conventions and their two additional protocols of 1977; other relevant international and regional treaties and declarations, including human-rights treaties; UN Security Council resolutions; the websites and work of well-known NGOs; and the websites and work of UN entities or mechanisms such as Special Rapporteurs, the Office of the Special Representative of the Secretary-General for Children and Armed Conflict, the Office of the Special Adviser on the Prevention of Genocide, and the Office of the Special Adviser on Gender Issues and Advancement of Women (OSAGI).

136. A handful of sources on the gender-related work of the ICTY, ICTR and SCSL or on gender-based crimes relevant to the armed conflicts relevant to the work of the three courts are also included and may provide some additional context to the report.

137. Unless otherwise indicated, all online sources were accessed between 9 March 2009 and 1 May 2009.

138. The Toolkit should be treated as a mere starting point for UN and UN-associated personnel working on issues relevant to SCR 1820 and 1888. Their specific circumstances – including the relevant law, if any, of the country in or on which they are working – and needs would guide the compilation of better-tailored resource lists, as well as the development of their own comprehensive tools, training materials, best-practices manuals, briefing papers, etc relating to SCR 1820 and 1888.

A. Tools, training materials, best-practices manuals, resource packs, and guidelines

1. DPKO/DFS *Operational Guidance to assist civilian, military, and police components of peacekeeping missions to effectively implement SCR 1820 and 1888,* 2010.
2. DPKO/DFS Guidelines, *Integrating a Gender Perspective in United Nations Military Peacekeeping Operations*, November 2009.
3. DPKO/DFS Guidelines, *Integrating Gender Perspectives into the Work of United Nations Police in Peacekeeping Missions,* June 2008
4. *15 years of the United Nations Special Rapporteur on Violence against Women, its causes and consequences (1994–2009) – A critical review.*

   http://www2.ohchr.org/english/issues/women/rapporteur/index.htm
5. *Addressing the Needs of Women Affected by Armed Conflict: An ICRC Guidance Document*. Written by Lindsey-Curtet, C, Tercier Holst-Roness, F & Anderson, L. ICRC. March 2004

   http://www.icrc.org/Web/Eng/siteengo.nsf/htmlall/p0840/$File/ICRC_002_0840_WOMEN_GUIDANCE.PDF as well as http://www.unicef.org/emerg/files/ICRC_women_war.pdf

   ["The aim of this Guidance Document is to provide a working tool to ensure the provision of appropriate programmes and services to, and with, women affected by armed conflict. Thus it is intended for a specific target audience, namely ICRC policy-makers and field staff, and does not aim to meet the needs of a more generalist reader. It is, however, also a way of sharing the ICRC's experience of working with women (best practices and lessons learned) with staff of other international organizations concerned with the planning, funding and implementation of humanitarian programmes for women." This tool includes sections on sexual violence. See also the ICRC's Women Facing War *Study, to which this guidance document is related.]*
6. *BEST PRACTICES MANUAL: For the Investigation and Prosecution of Sexual Violence Crimes in Situations of Armed Conflict. Lessons from the International Criminal Tribunal for Rwanda*. Office of the Prosecutor. 2008

   http://69.94.11.53/ENGLISH/international_cooperation/papers_presented/Best-Practices-Manual-Sexual-Violence.pdf
7. *Combating Gender-Based Violence: A Key to Achieving the MDGs.* United Nations Population Fund (UNFPA) in collaboration with the United Nations Development Fund for Women (UNIFEM) and Office of the Special Adviser on Gender Issues and Advancement of Women (OSAGI). March 2005

   http://www.unfpa.org/publications/detail.cfm?ID=266

   [This tool includes, among other relevant sections, a section on gender-based violence in conflict situations (pp 22 et seq). It is available in French too. The tool incorporates the views of the Network of African Women Ministers and Parliamentarians.]

8. *Engaging Boys and Men in GBV*[121] *Prevention and Reproductive Health in Conflict and Emergency-Response Settings: A Workshop Module*. Written by Mehta, M & Bartel, D. The ACQUIRE Project. 2008

   http://www.rhrc.org/resources/Conflict%20Manual_CARE_for%20web.pdf

9. *Gender & Peacekeeping Training Course*. Online. UK DFID & Canadian DFAIT. 2002

   http://www.genderandpeacekeeping.org/

   [This online training course is available in French too. There are several relevant modules, including those concerning gender and the conflict phase; gender in the context of peace-support operations; and gender, human rights and international humanitarian law. The resources link contains numerous potentially relevant sources.]

10. *Gender Based Violence: A Failure to Protect, A Challenge to Action*. Joint Consortium of Irish Human Rights, Humanitarian and Development Agencies and Development Cooperation Ireland. October 2005

    http://www.gbv.ie/2005/11/30/gender-based-violence-a-failure-to-protect-a-challenge-to-action/

    ["The [consortium] commissioned research to look at best international practice, and to develop a framework that could be incorporated by all organisations in terms of policy, operations, priority and resources." The background to the framework is the need to develop institutional capacity to respond to gender-based violence on a systematic basis.]

11. *Gender Handbook in Humanitarian Action. Women, Girls, Boys and Men: Different Needs – Equal Opportunities.* Inter-Agency Standing Committee Task Force on Gender and Humanitarian Assistance (IASC). December 2006

    http://www.humanitarianinfo.org/iasc/pageloader.aspx?page=content-subsidi-tf_gender-genderH

    [This practical handbook is available in several languages. As noted in its introduction, the handbook "aims to provide actors in the field with guidance on gender analysis, planning and actions to ensure that the needs, contributions and capacities of women, girls, boys and men are considered in all aspects of humanitarian response. It also offers checklists to assist in monitoring gender equality programming." The IASC is formed by the representatives of a broad range of UN and non-UN humanitarian partners, including OCHA, UNICEF, UNDP, UNHCR, OHCHR and the ICRC. The website of the IASC is www.humanitarianinfo.org/iasc/.]

12. *Gender Resource Package for Peacekeeping Operations.* Peacekeeping Best Practices Unit, Department of Peacekeeping Operations, United Nations. 2004

    http://www.peacekeepingbestpractices.unlb.org/pbps/library/GRP%20Full%20Version.pdf

    [As with most other sources, this one predates SCR 1820. Nevertheless, as stated in its Foreword, "This gender resource package offers concrete guidance on how to identify the various gender issues in peacekeeping and how to integrate, or mainstream, gender into all aspects of peacekeeping." The UN Peacekeeping Resource Hub website (www.peacekeepingbestpractices.unlb.org/PBPS/Pages/Public/viewprimarydoc.aspx?docid=449) also contains a presentation based on this package. The library on the same website contains links to other potential 1820-relevant sources.

13. *Gender-based Violence Tools Manual: For Assessment and Program Design, Monitoring and Evaluation in conflict-affected settings*. RHRC Consortium. February 2004

    http://reliefweb.int/rw/lib.nsf/db900sid/LHON-66TGYJ/$file/Gender_based_violence_rhrc_Feb_2004.pdf?openelement as well as http://www.rhrc.org/resources/gbv/gbv_tools/manual_toc.html

    [As described in its introduction, "This manual is one of several outcomes of a three-year global Gender-based Violence Initiative spearheaded by the Reproductive Health Response in Conflict (RHRC) Consortium and aimed at improving international and local capacity to address gender-based violence (GBV) in refugee, internally displaced, and post-conflict

settings. The tools have been formulated according to a multi-sectoral model of GBV programming [. . .] that promotes action within and coordination between the constituent community, health and social services, and the legal and security sectors. The manual is meant to be used by humanitarian professionals who have experience with and are committed to GBV prevention and response."]

14. *Guidelines for Gender-based Violence Interventions in Humanitarian Settings: Focusing on Prevention of and Response to Sexual Violence in Emergencies.* (Field Test Version.) Inter-Agency Standing Committee Task Force on Gender and Humanitarian Assistance (IASC). September 2005

    http://www.humanitarianinfo.org/iasc/pageloader.aspx?page=content-subsidi-tf_gender-gbv

    [These practical guidelines are available in several languages. As noted on the website of the IASC, the "primary purpose of these guidelines is to enable communities, governments and humanitarian organizations, including UN agencies, NGOs, and CBOs, to establish and coordinate a set of minimum multi-sectoral interventions to prevent and respond to sexual violence during the early phase of an emergency". See source no 11 above on the IASC.]

15. *Sexual and Gender-Based Violence against Refugees, Returnees, and Internally Displaced Persons: Guidelines for Prevention and Response*. United Nations High Commissioner for Refugees. May 2003

    http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3edcd0661&page=search as well as http://www.unhcr.org/refworld/pdfid/3edcd0661.pdf

    [Aspects of this source are of potential relevance to SCR 1820. It is available in several languages, including Arabic, French, Russian, Spanish and Swahili.]

16. *Sexual Violence and Armed Conflict: United Nations Response*. United Nations Division for the Advancement of Women. April 1998

    http://www.un.org/womenwatch/daw/public/cover.pdf

17. *Training Manual: Facilitator's Guide. Interagency & Multisectoral Prevention and Response to Gender-based Violence in Populations Affected by Armed Conflict*. Vann, B. Gender-based Violence Global Technical Support Project, JSI Research & Training Institute, and RHRC Consortium. 2004

    http://www.rhrc.org/resources/gbv/gbv_manual/full.pdf

18. *UNHCR Handbook for the Protection of Women and Girls*. UNHCR. January 2008

    http://www.unhcr.org/protect/PROTECTION/47cfa9fe2.pdf

    [This tool contains various sections in relation to sexual and gender-based violence.]

19. *WHO ethical and safety recommendations for researching, documenting and monitoring sexual violence in emergencies.* World Health Organization. 2007

    http://www.who.int/gender/documents/OMS_Ethics&Safety10Aug07.pdf

B. Reports, papers, briefings and studies

20. Report of the Secretary-General pursuant to Security Council resolution 1820, S/2009/362, 15 July 2009

    http://www.un.org/Docs/sc/

21. *Protecting Civilians in the Context of UN Peacekeeping Operations: successes, setbacks and remaining challenges*, Victoria Holt and Glyn Taylor with Max Kelly, Independent study jointly commissioned by the Department of Peacekeeping Operations and the Office for the Coordination of Humanitarian Affairs, 2009.

http://www.unprh.unlb.org/PBPS/Pages/Public/viewdocument.aspx?id=2&docid=1014

22. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, A/HRC/7/3, 15 January 2008

23. FRIDE. *Justice for Women: Seeking Accountability for Sexual Crimes in Post-Conflict Situations.* Conference Report no 6. Written by Ni Eigeartaigh, F. 2008

http://www.fride.org/publication/454/seeking-accountability-for-sexual-crimes-in-post-conflict-situations

24. IRIN. *Our Bodies – Their Battle Ground: Gender-based Violence in Conflict Zones*. IRIN Web Special on violence against women and girls during and after conflict. September 2004

http://www.irinnews.org/pdf/in-depth/GBV-IRIN-In-Depth.pdf

[See also http://www.irinnews.org/IndepthMain.aspx?IndepthId=20&ReportId=62814 for documentary related to this report.]

25. Lindsey, C. *Women facing war: ICRC study on the impact of armed conflict on women*. International Committee of the Red Cross (ICRC). 2001

http://www.icrc.org/Web/Eng/siteengo.nsf/htmlall/p0798/$File/ICRC_002_0798_WOMEN_FACING_WAR.PDF

[As noted in its Foreword, "This study on the impact of armed conflict on women has been undertaken as part of the ICRC's endeavour to draw attention to the plight of women in wartime. [. . .] It will serve as a basis for targeted action and the ICRC will, to the extent that this is not already the case, gradually implement its main conclusions." Among other relevant sections, is the section on sexual violence (pp 51 et seq). See also source no 5 above: Addressing the Needs of Women Affected by Armed Conflict: An ICRC Guidance Document.*]*

26. Mazurana, D & Carlson, K. *The girl child and armed conflict: Recognizing and addressing grave violations of girls' human rights.* United Nations Division for the Advancement of Women (DAW), in collaboration with UNICEF. Expert Group Meeting. Elimination of all Forms of Discrimination and Violence Against the Girl Child. Florence, Italy, 25-28 September 2006. EGM/DVGC/2006/EP.12

http://www.peacewomen.org/resources/Human_Rights/girl_child.pdf

[This source includes a best-practices section (pp 12 et seq).]

27. Nowrojee, B. *"Your Justice is Too Slow" – Will the ICTR Fail Rwanda's Rape Victims?* Paper no 10. UNRISD. 2005

http://www.unrisd.org/80256B3C005BCCF9/(httpPublications)/56FE32D5C0F6DCE9C125710F0045D89F?OpenDocument

28. Truth and Reconciliation Commission of Sierra Leone (TRCSL). *Witness to Truth: Report of the Truth & Reconciliation Commission of Sierra Leone*. 2004

http://www.trcsierraleone.org

[Volume 3b of the report deals with women and children and the armed conflicts in Sierra Leone; the SCSL and the TRCSL; and reconciliation.]

29. Valchovà, M & Biason, L (eds). *Women in an Insecure World: Violence against Women Facts, Figures and Analysis*. Geneva Centre for the Democratic Control of Armed Forces (DCAF). September 2005

http://www.unicef.org/emerg/files/women_insecure_world.pdf (executive summary) and http://www.dcaf.ch/women/bk_vlachova_biason_women.cfm

30. Ward, J & Marsh, M. *Sexual Violence Against Women and Girls in War and Its Aftermath: Realities, Responses, and Required Resources*. Briefing Paper Prepared for Symposium on Sexual Violence in Conflict and Beyond, 21–23 June 2006, Brussels (Belgium). UNFPA

http://www.unfpa.org/emergencies/symposium06/docs/finalbrusselsbriefingpaper.pdf

*[This is a very useful source, and could serve as a starting point for further action-oriented planning in relation to addressing gender-based violence holistically, employing a multi-sectoral approach. It includes links to other practical sources (such as guidelines on the protection of refugee women affected by conflict produced by the UN High Commissioner for Refugees), not reproduced/referenced here. This source also includes data such as following: * By 1993, the Zenica Centre for the Registration of War and Genocide Crime in Bosnia-Herzegovina had documented 40,000 cases of war-related rape. * An estimated 23,200 to 45,600 Kosovar Albanian women are believed to have been raped between August 1998 and August 1999, the height of the conflict with Serbia. * Of a sample of Rwandan women surveyed in 1999, 39 percent reported being raped during the 1994 genocide, and 72 percent said they knew someone who had been raped. * Based on the outcomes of a study undertaken in 2000, researchers concluded that approximately 50,000 to 64,000 internally displaced women may have been sexually victimised during Sierra Leone's protracted armed conflict.]*

C. Books

31. Askin, KD & Koenig, DM (eds). *Women and International Human Rights Law*. Volumes 1-3. Transnational Publishers. 1999

32. Bastick, M, Grimm, K & Kunz, R. *Sexual Violence in Armed Conflict: Global Overview and Implications for the Security Sector*. Geneva Centre for the Democratic Control of Armed Forces (DCAF). 2007

http://www.dcaf.ch/publications/kms/details.cfm?lng=en&id=43991&nav1=4

33. Durham, H & Gurd, T (eds). *Listening to the Silences: Women and War*. Martinus Nijhoff Publishers. 2005

34. Gardam, JG & Jarvis, MJ. *Women, Armed Conflict and International Law*. Martinus Nijhoff Publishers. 2003

35. Jarvis, M. *An Emerging Perspective on International Crimes*. In Boas, G & Schabas, WA (eds), *International Criminal Law Developments in the Case Law of the ICTY*. Martinus Nijhoff Publishers. 2003

36. Pillay, N. *The Rule of Humanitarian Jurisprudence in Redressing Crimes of Sexual Violence*. In Vohrah & others (eds), *Man's Inhumanity to Man: Essays on International Law in Honour of Antonio Cassese*. Martinus Nijhoff Publishers. 2003

37. Viseur Sellers, P. *The Context of Sexual Violence: Sexual Violence as Violations of International Humanitarian Law*. In Kirk McDonald, G & Swaak-Goldman, O (eds), *Substantive and Procedural Aspects of International Criminal Law: The Experience of International and National Courts*. Vol 1 (Commentary). Kluwer Law International. 2000

38. Ward, J (lead writer). *Broken bodies, broken dreams: violence against women exposed*. OCHA and IRIN. 2005

http://www.irinnews.org/IndepthMain.aspx?IndepthId=59&ReportId=72831

[The book is accompanied by, among other materials, a CD. It includes a chapter on sexual violence in times of war (http://www.irinnews.org/pdf/bb/13IRIN%20Duo-GBV%20&%20Warf.pdf).]

D. Journals and journal articles

39. Africa Legal Aid Quarterly, Double Edition, July-December 2008

[It focuses on various gender issues related to international criminal law, including on the ICTR and International Criminal Court. It includes the contribution by Askin, KD, Gender Justice: the work of the International Criminal Tribunal for Rwanda (ICTR)*.]*

40. Askin, KD. *Prosecuting Wartime Rape and Other Gender-Related Crimes under International Law: Extraordinary Advances, Enduring Obstacles.* Berkeley Journal of International Law. Vol 21, p 288. 2003

41. Askin, KD. *A Decade in Human Rights Law: A Decade of the Development of Gender Crimes in International Courts and Tribunals: 1993 to 2003.* Human Rights Brief. Vol 11, p 16. 2004

42. Campbell, K. *The Gender of Transitional Justice: Law, Sexual Violence and the International Criminal Tribunal for the Former Yugoslavia.* International Journal of Transitional Justice. Vol 1, p 411. 2007

43. Copelon, R. *Gender Crimes as War Crimes: Integrating Crimes against Women into International Criminal Law.* McGill Law Journal. Vol 46, p 217. 2000

    http://www.iccwomen.org/publications/articles/docs/Gender_Crimes_as_War_Crimes.doc

44. Fitzgerald, K. *Problems of Prosecution and Adjudication of Rape and Other Sexual Assaults under International Law.* European Journal of International Law. Vol 8, no 4, p 638. 1997

45. Gardam, JG. *The Neglected Aspect of Women and Armed Conflict-Progressive Development of the Law.* Netherlands International Law Review. Vol 52, no 2, p 197. 2005

46. Haffajee, RL. *Prosecuting crimes of rape and sexual violence at the ICTR: the application of joint criminal enterprise theory.* Harvard Journal of Law & Gender. Vol 29, p 201. 2006

    http://www.law.harvard.edu/students/orgs/jlg/vol291/haffajee.pdf

47. Halley, J. *Rape in Berlin: reconsidering the criminalisation of rape in the international law of armed conflict.* Melbourne Journal of International Law. Vol 9. 2008

    http://www.austlii.edu.au/au/journals/MelbJIL/2008/3.html

48. Kendall, S & Staggs, M. *Silencing Sexual Violence: Recent Developments in the CDF case at the Special Court for Sierra Leone.* University of California Berkeley War Crimes Studies Center. 28 June 2005

    http://socrates.berkeley.edu/~warcrime/Papers/Silencing_Sexual_Violence.pdf

49. Mchenry, JR. *The Prosecution of Rape under International Law: Justice That Is Long Overdue.* Vanderbilt Journal of Transnational Law. Vol 35. 2002

50. Sharratt, S & Kaschak, E (eds). *Assault on the Soul: Women in the Former Yugoslavia.* Routledge. 1999

51. SáCouto, S. *Advances and Missed Opportunities in the International Prosecution of Gender-based Crimes.* Michigan State Journal of International Law. Vol 15, p 137. 2007

52. Schomburg, W & Peterson, I. *Genuine Consent to Sexual Violence under International Criminal Law,* American Journal of International Law. Vol 101, p 99. 2007

53. Sivakumaran, S. *Sexual Violence Against Men in Armed Conflict.* European Journal of International Law. Vol 18, no 2, p 253. 2007

54. Transnational Law & Contemporary Problems. Vol 7, no 1, 1997: *Prosecuting International Crimes: An Inside View.* Meintjes, G (guest editor).

[This edition includes the contribution by Viseur Sellers, P & Okuizumi, K, Intentional Prosecution of Sexual Violence.*]*

E. Presentations

55. Del Ponte, C (former prosecutor of ICTY and ICTR). *Panel on good practices and examples of specific solutions to eliminate violence and end impunity from the global to the local levels.* Presentation at unknown event (possibly related to International Women's Day). 2007

56. Nowrojee, B. *We Can Do Better, Investigating and Prosecuting International Crimes of Sexual Violence.* Colloquium of Prosecutors of International Criminal Tribunals in Arusha, Tanzania. November 2004

http://www.womensrightscoalition.org/site/publications/papers/doBetter_en.php

F. Websites[122]

The main reason for including the following websites is because they contain useful information and/or links to other useful sources.

57. UN Office of the High Commissioner for Human Rights:

http://www.ohchr.org/EN/Pages/WelcomePage.aspx

58. Office of the Special Representative of the Secretary-General for Children and Armed Conflict:

http://www.un.org/children/conflict/english/index.html

59. Office of the Special Adviser on the Prevention of Genocide:

http://www.un.org/preventgenocide/adviser/

60. OCHA: http://ochaonline.un.org/

[A search of the OCHA website using, eg, "sexual violence" as search term, results in numerous relevant hits. These include the following: Meeting Report*; Discussion Paper 1,* Sexual Violence in Armed Conflict: Understanding the Motivations*; and Discussion Paper 2,* The Nature, Scope and Motivation for Sexual Violence Against Men and Boys in Armed Conflict. *UN OCHA Research Meeting, Use of Sexual Violence in Armed Conflict: Identifying gaps in Research to Inform More Effective Interventions, 26 June 2008, New York, OCHA Policy Development and Studies Branch. See also relevant sources cited in both discussion papers.]*

61. United Nations International Research and Training Institute for the Advancement of Women:

http://www.un-instraw.org, including its Gender, Peace and Security subsite:

http://www.un-instraw.org/en/gps/general/gender-peace-and-security.html

62. ICRC: www.icrc.org

[Searches of the ICRC website using, eg, "sexual violence" as search term, result in numerous relevant hits.]

63. ICRC, Women and war subsite: http://www.icrc.org/Eng/women

64. ICTJ (International Center for Transitional Justice): www.ictj.org

[Searches of the ICTJ website using, eg, "sexual violence" as search term, result in numerous relevant hits.]

65. Joint Consortium on Gender Based Violence: www.gbv.ie

[See especially the resource-library link.]

66. Sexual Violence Research Initiative, subsite on Sexual Violence in Conflict Settings:

http://www.svri.org/emergencies.htm

67. Women's Initiative for Gender Justice: http://www.iccwomen.org

68. Reproductive Health Response in Conflict (RHRC) Consortium:

http://www.rhrc.org/

69. PeaceWomen (Women's International League for Peace and Freedom):

http://www.peacewomen.org

70. WomenWarPeace.org:

http://www.womenwarpeace.org

G. Other sources

71. Coalition for Women's Human Rights in Conflict Situations. Letter addressed to ICTR Prosecutor Carla Del Ponte. 12 March 2003

http://www.ichrdd.ca/english/prog/women/coalitionLetterRwanda.html

72. *In War as in Peace: Sexual Violence and Women's Status*. LaShawn R Jefferson. January 2004

https://199.173.149.140/wr2k4/download/15.pdf

73. *Making A Statement: A Review of Charges and Prosecutions for Gender-based Crimes before the International Criminal Court*. Women's Initiative for Gender Justice. June 2008

http://www.iccwomen.org/publications/articles/docs/MakingAStatement-WebFinal.pdf

74. *Women Targeted or Affected by Armed Conflict: What Role for Military Peacekeepers?* Conference Summary. Wilton Park, Sussex, UK, conference, May 27–29, 2008. UNIFEM, DPKO, UN Action Against Sexual Violence in Conflict, Wilton Park, and Governments of the United Kingdom and Canada. 2008

http://www.unifem.org/attachments/events/WiltonParkConference_SummaryReport_200805_1.pdf

D. SC RESOLUTION 1820

Resolution 1820 (2008)
Adopted by the Security Council at its 5916th meeting, on 19 June 2008

The Security Council,

Reaffirming its commitment to the continuing and full implementation of resolution 1325 (2000), 1612 (2005) and 1674 (2006) and recalling the Statements of its president of 31 October 2001 (Security Council/PRST/2001/31), 31 October 2002 (Security Council/PRST/2002/32), 28 October 2004 (Security Council/PRST/2004/40), 27 October 2005 (Security Council/PRST/2005/52), 8 November 2006 (Security Council/PRST/2006/42), 7 March 2007 (Security Council/PRST/2007/5), and 24 October 2007 (Security Council/PRST/2007/40);

Guided by the purposes and principles of the Charter of the United Nations,

Reaffirming also the resolve expressed in the 2005 World Summit Outcome Document to eliminate all forms of violence against women and girls, including by ending impunity and by ensuring the protection of civilians, in particular women and girls, during and after armed conflicts, in accordance with the obligations States have undertaken under international humanitarian law and international human rights law;

Recalling the commitments of the Beijing Declaration and Platform for Action (A/52/231) as well as those contained in the outcome document of the twenty-third Special Session of the United Nations General Assembly entitled "Women 2000: Gender Equality, Development and Peace for the Twenty-first Century" (A/S-23/10/Rev.1), in particular those concerning sexual violence and women in situations of armed conflict;

Reaffirming also the obligations of States Parties to the Convention on the Elimination of All Forms of Discrimination against Women, the Optional Protocol thereto, the Convention on the Rights of the Child and the Optional Protocols thereto, and *urging* states that have not yet done so to consider ratifying or acceding to them,

Noting that civilians account for the vast majority of those adversely affected by armed conflict; that women and girls are particularly targeted by the use of sexual violence, including as a tactic of war to humiliate, dominate, instil fear in, disperse and/or forcibly relocate civilian members of a community or ethnic group; and that sexual violence perpetrated in this manner may in some instances persist after the cessation of hostilities;

Recalling its condemnation in the strongest terms of all sexual and other forms of violence committed against civilians in armed conflict, in particular women and children;

Reiterating deep concern that, despite its repeated condemnation of violence against women and children in situations of armed conflict, including sexual violence in situations of armed conflict, and despite its calls addressed to all parties to armed conflict for the cessation of such acts with immediate effect, such acts continue to occur, and in some situations have become systematic and widespread, reaching appalling levels of brutality,

Recalling the inclusion of a range of sexual violence offences in the Rome Statute of the International Criminal Court and the statutes of the ad hoc international criminal tribunals,

Reaffirming the important role of women in the prevention and resolution of conflicts and in peacebuilding, and *stressing* the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security, and the need to increase their role in decision-making with regard to conflict prevention and resolution,

Deeply concerned also about the persistent obstacles and challenges to women's participation and full involvement in the prevention and resolution of conflicts as a result of violence, intimidation and discrimination, which erode women's capacity and legitimacy to participate in post-conflict public life, and acknowledging the negative impact this has on durable peace, security and reconciliation, including post-conflict peacebuilding,

Recognizing that States bear primary responsibility to respect and ensure the human rights of their citizens, as well as all individuals within their territory as provided for by relevant international law,

Reaffirming that parties to armed conflict bear the primary responsibility to take all feasible steps to ensure the protection of affected civilians,

Welcoming the ongoing coordination of efforts within the United Nations system, marked by the inter-agency initiative "United Nations Action against Sexual Violence in Conflict," to create awareness about sexual violence in armed conflicts and post-conflict situations and, ultimately, to put an end to it,

1. *Stresses* that sexual violence, when used or commissioned as a tactic of war in order to deliberately target civilians or as a part of a widespread or systematic attack against civilian populations, can significantly exacerbate situations of armed conflict and may impede the restoration of international peace and security, *affirms* in this regard that effective steps to prevent and respond to such acts of sexual violence can significantly contribute to the maintenance of international peace and security, and *expresses its readiness*, when considering situations on the agenda of the Council, to, where necessary, adopt appropriate steps to address widespread or systematic sexual violence;

2. *Demands* the immediate and complete cessation by all parties to armed conflict of all acts of sexual violence against civilians with immediate effect;

3. *Demands* that all parties to armed conflict immediately take appropriate measures to protect civilians, including women and girls, from all forms of sexual violence, which could include, inter alia, enforcing appropriate military disciplinary measures and upholding the principle of command responsibility, training troops

on the categorical prohibition of all forms of sexual violence against civilians, debunking myths that fuel sexual violence, vetting armed and security forces to take into account past actions of rape and other forms of sexual violence, and evacuation of women and children under imminent threat of sexual violence to safety; and *requests* the Secretary-General, where appropriate, to encourage dialogue to address this issue in the context of broader discussions of conflict resolution between appropriate UN officials and the parties to the conflict, taking into account, inter alia, the views expressed by women of affected local communities;

4. *Notes* that rape and other forms of sexual violence can constitute a war crime, a crime against humanity, or a constitutive act with respect to genocide, *stresses the need for* the exclusion of sexual violence crimes from amnesty provisions in the context of conflict resolution processes, and *calls upon* Member States to comply with their obligations for prosecuting persons responsible for such acts, to ensure that all victims of sexual violence, particularly women and girls, have equal protection under the law and equal access to justice, and *stresses* the importance of ending impunity for such acts as part of a comprehensive approach to seeking sustainable peace, justice, truth, and national reconciliation;

5. *Affirms its intention*, when establishing and renewing state-specific sanctions regimes, to take into consideration the appropriateness of targeted and graduated measures against parties to situations of armed conflict who commit rape and other forms of sexual violence against women and girls in situations of armed conflict;

6. *Requests* the Secretary-General, in consultation with the Security Council, the Special Committee on Peacekeeping Operations and its Working Group and relevant States, as appropriate, to develop and implement appropriate training programs for all peacekeeping and humanitarian personnel deployed by the United Nations in the context of missions as mandated by the Council to help them better prevent, recognize and respond to sexual violence and other forms of violence against civilians;

7. *Requests* the Secretary-General to continue and strengthen efforts to implement the policy of zero tolerance of sexual exploitation and abuse in United Nations peacekeeping operations; and *urges* troop and police contributing countries to take appropriate preventative action, including pre-deployment and in-theater awareness training, and other action to ensure full accountability in cases of such conduct involving their personnel;

8. *Encourages* troop and police contributing countries, in consultation with the Secretary-General, to consider steps they could take to heighten awareness and the responsiveness of their personnel participating in UN peacekeeping operations to protect civilians, including women and children, and prevent sexual violence against women and girls in conflict and post-conflict situations, including wherever possible the deployment of a higher percentage of women peacekeepers or police;

9. *Requests* the Secretary-General to develop effective guidelines and strategies to enhance the ability of relevant UN peacekeeping operations, consistent with their mandates, to protect civilians, including women and girls, from all forms of sexual violence and to systematically include in his written reports to the Council on conflict situations his observations concerning the protection of women and girls and recommendations in this regard;

10. *Requests* the Secretary-General and relevant United Nations agencies, inter alia, through consultation with women and women-led organizations as appropriate, to develop effective mechanisms for providing protection from violence, including in particular sexual violence, to women and girls in and around UN managed

refugee and internally displaced persons camps, as well as in all disarmament, demobilization, and reintegration processes, and in justice and security sector reform efforts assisted by the United Nations;

11. *Stresses* the important role the Peacebuilding Commission can play by including in its advice and recommendations for post-conflict peacebuilding strategies, where appropriate, ways to address sexual violence committed during and in the aftermath of armed conflict, and in ensuring consultation and effective representation of women's civil society in its country-specific configurations, as part of its wider approach to gender issues;

12. *Urges* the Secretary-General and his Special Envoys to invite women to participate in discussions pertinent to the prevention and resolution of conflict, the maintenance of peace and security, and post-conflict peacebuilding, and encourages all parties to such talks to facilitate the equal and full participation of women at decision-making levels;

13. *Urges* all parties concerned, including Member States, United Nations entities and financial institutions, to support the development and strengthening of the capacities of national institutions, in particular of judicial and health systems, and of local civil society networks in order to provide sustainable assistance to victims of sexual violence in armed conflict and post-conflict situations;

14. *Urges* appropriate regional and sub-regional bodies in particular to consider developing and implementing policies, activities, and advocacy for the benefit of women and girls affected by sexual violence in armed conflict;

15. *Also requests* the Secretary-General to submit a report to the Council by 30 June 2009 on the implementation of this resolution in the context of situations which are on the agenda of the Council, utilizing information from available United Nations sources, including country teams, peacekeeping operations, and other United Nations personnel, which would include, inter alia, information on situations of armed conflict in which sexual violence has been widely or systematically employed against civilians; analysis of the prevalence and trends of sexual violence in situations of armed conflict; proposals for strategies to minimize the susceptibility of women and girls to such violence; benchmarks for measuring progress in preventing and addressing sexual violence; appropriate input from United Nations implementing partners in the field; information on his plans for facilitating the collection of timely, objective, accurate, and reliable information on the use of sexual violence in situations of armed conflict, including through improved coordination of UN activities on the ground and at Headquarters; and information on actions taken by parties to armed conflict to implement their responsibilities as described in this resolution, in particular by immediately and completely ceasing all acts of sexual violence and in taking appropriate measures to protect women and girls from all forms of sexual violence;

16. *Decides* to remain actively seized of the matter.

E. SC RESOLUTION 1888

Resolution 1888 (2009)
Adopted by the Security Council at its 6195th meeting, on 30 September 2009

The Security Council,

Reaffirming its commitment to the continuing and full implementation of resolutions 1325 (2000), 1612 (2005), 1674 (2006), 1820 (2008) and 1882 (2009) and all relevant statements of its President,

Welcoming the report of the Secretary-General of 16 July 2009 (S/2009/362), but remaining deeply concerned over the lack of progress on the issue of sexual violence in situations of armed conflict in particular against women and children, notably against girls, and noting as documented in the Secretary-General's report that sexual violence occurs in armed conflicts throughout the world,

Reiterating deep concern that, despite its repeated condemnation of violence against women and children including all forms of sexual violence in situations of armed conflict, and despite its calls addressed to all parties to armed conflict for the cessation of such acts with immediate effect, such acts continue to occur, and in some situations have become systematic or widespread,

Recalling the commitments of the Beijing Declaration and Platform for Action (A/52/231) as well as those contained in the outcome document of the twenty-third Special Session of the United Nations General Assembly entitled "Women 2000: Gender Equality, Development and Peace for the Twenty-First Century" (A/S-23/10/Rev.1), in particular those concerning women and armed conflict,

Reaffirming the obligations of States Parties to the Convention on the Elimination of All Forms of Discrimination against Women, the Optional Protocol thereto, the Convention on the Rights of the Child and the Optional Protocols thereto, and urging states that have not yet done so to consider ratifying or acceding to them,

Recalling that international humanitarian law affords general protection to women and children as part of the civilian population during armed conflicts and special protection due to the fact that they can be placed particularly at risk,

Recalling the responsibilities of States to end impunity and to prosecute those responsible for genocide, crimes against humanity, war crimes and other egregious crimes perpetrated against civilians, and in this

regard, noting with concern that only limited numbers of perpetrators of sexual violence have been brought to justice, while recognizing that in conflict and in post conflict situations national justice systems may be significantly weakened,

Reaffirming that ending impunity is essential if a society in conflict or recovering from conflict is to come to terms with past abuses committed against civilians affected by armed conflict and to prevent future such abuses, *drawing attention* to the full range of justice and reconciliation mechanisms to be considered, including national, international and "mixed" criminal courts and tribunals and truth and reconciliation commissions, and *noting* that such mechanisms can promote not only individual responsibility for serious crimes, but also peace, truth, reconciliation and the rights of the victims,

Recalling the inclusion of a range of sexual violence offences in the Rome Statute of the International Criminal Court and the statutes of the ad hoc international criminal tribunals,

Stressing the necessity for all States and non-State parties to conflicts to comply fully with their obligations under applicable international law, including the prohibition on all forms of sexual violence,

Recognizing the need for civilian and military leaders, consistent with the principle of command responsibility, to demonstrate commitment and political will to prevent sexual violence and to combat impunity and enforce accountability, and that inaction can send a message that the incidence of sexual violence in conflicts is tolerated,

Emphasizing the importance of addressing sexual violence issues from the outset of peace processes and mediation efforts, in order to protect populations at risk and promote full stability, in particular in the areas of pre-ceasefire humanitarian access and human rights agreements, ceasefires and ceasefire monitoring, Disarmament, Demobilization and Reintegration (DDR), Security Sector Reform (SSR) arrangements, justice and reparations, post-conflict recovery and development,

Noting with concern the underrepresentation of women in formal peace processes, the lack of mediators and ceasefire monitors with proper training in dealing with sexual violence, and the lack of women as Chief or Lead peace mediators in United Nations-sponsored peace talks,

Recognizing that the promotion and empowerment of women and that support for women's organizations and networks are essential in the consolidation of peace to promote the equal and full participation of women and *encouraging* Member States, donors, and civil society, including non-governmental organizations, to provide support in this respect,

Welcoming the inclusion of women in peacekeeping missions in civil, military and police functions, and *recognizing* that women and children affected by armed conflict may feel more secure working with and reporting abuse to women in peacekeeping missions, and that the presence of women peacekeepers may encourage local women to participate in the national armed and security forces, thereby helping to build a security sector that is accessible and responsive to all, especially women,

Welcoming the efforts of the Department of Peacekeeping Operations to develop gender guidelines for military personnel in peacekeeping operations to facilitate the implementation of resolutions 1325 (2000) and 1820 (2008), and operational guidance to assist civilian, military and police components of peacekeeping missions to effectively implement resolution 1820 (2008),

Having considered the report of the Secretary-General of 16 July 2009 (S/2009/362) and *stressing* that the present resolution does not seek to make any legal determination as to whether situations that are referred to in the Secretary-General's report are or are not armed conflicts within the context of the Geneva Conventions and the Additional Protocols thereto, nor does it prejudge the legal status of the non-State parties involved in these situations,

Recalling the Council's decision in resolution 1882 of 4 August 2009 (S/RES/1882) to expand the Annexed list in the Secretary General's annual report on Children and Armed Conflict of parties in situations of armed conflict engaged in the recruitment or use of children in violation of international law to also include those parties to armed conflict that engage, in contravention of applicable international law, in patterns of killing and maiming of children and/or rape and other sexual violence against children, in situations of armed conflict,

Noting the role currently assigned to the Office of the Special Adviser on Gender Issues to monitor implementation of resolution 1325 and to promote gender mainstreaming within the United Nations system, women's empowerment and gender equality, and *expressing* the importance of effective coordination within the United Nations system in these areas,

Recognizing that States bear the primary responsibility to respect and ensure the human rights of their citizens, as well as all individuals within their territory as provided for by relevant international law,

Reaffirming that parties to armed conflict bear the primary responsibility to take all feasible steps to ensure the protection of affected civilians,

Reiterating its primary responsibility for the maintenance of international peace and security and, in this connection, its commitment to continue to address the widespread impact of armed conflict on civilians, including with regard to sexual violence,

1. *Reaffirms* that sexual violence, when used or commissioned as a tactic of war in order to deliberately target civilians or as a part of a widespread or systematic attack against civilian populations, can significantly exacerbate situations of armed conflict and may impede the restoration of international peace and security; *affirms* in this regard that effective steps to prevent and respond to such acts of sexual violence can significantly contribute to the maintenance of international peace and security; and *expresses its readiness*, when considering situations on the agenda of the Council, to take, where necessary, appropriate steps to address widespread or systematic sexual violence in situations of armed conflict;

2. *Reiterates* its demand for the complete cessation by all parties to armed conflict of all acts of sexual violence with immediate effect;

3. *Demands* that all parties to armed conflict immediately take appropriate measures to protect civilians, including women and children, from all forms of sexual violence, including measures such as, inter alia, enforcing appropriate military disciplinary measures and upholding the principle of command responsibility, training troops on the categorical prohibition of all forms of sexual violence against civilians, debunking myths that fuel sexual violence and vetting candidates for national armies and security forces to ensure the exclusion of those associated with serious violations of international humanitarian and human rights law, including sexual violence;

4. *Requests* that the United Nations Secretary-General appoint a Special Representative to provide coherent and strategic leadership, to work effectively to strengthen existing United Nations coordination mechanisms, and to engage in advocacy efforts, inter alia with governments, including military and judicial representatives, as well as with all parties to armed conflict and civil society, in order to address, at both headquarters and country level, sexual violence in armed conflict, while promoting cooperation and coordination of efforts among all relevant stakeholders, primarily through the inter-agency initiative "United Nations Action Against Sexual Violence in Conflict";

5. *Encourages* the entities comprising UN Action Against Sexual Violence in Conflict, as well as other relevant parts of the United Nations system, to support the work of the aforementioned Special Representative of the Secretary-General and to continue and enhance cooperation and information sharing among all relevant stakeholders in order to reinforce coordination and avoid overlap at the headquarters and country levels and improve system-wide response;

6. *Urges* States to undertake comprehensive legal and judicial reforms, as appropriate, in conformity with international law, without delay and with a view to bringing perpetrators of sexual violence in conflicts to justice and to ensuring that survivors have access to justice, are treated with dignity throughout the justice process and are protected and receive redress for their suffering;

7. *Urges* all parties to a conflict to ensure that all reports of sexual violence committed by civilians or by military personnel are thoroughly investigated and the alleged perpetrators brought to justice, and that civilian superiors and military commanders, in accordance with international humanitarian law, use their authority and powers to prevent sexual violence, including by combating impunity;

8. *Calls upon* the Secretary-General to identify and take the appropriate measures to deploy rapidly a team of experts to situations of particular concern with respect to sexual violence in armed conflict, working through the United Nations presence on the ground and with the consent of the host government, to assist national authorities to strengthen the rule of law, and *recommends* making use of existing human resources within the United Nations system and voluntary contributions, drawing upon requisite expertise, as appropriate, in the rule of law, civilian and military judicial systems, mediation, criminal investigation, security sector reform, witness protection, fair trial standards, and public outreach; to, inter alia:

(a) Work closely with national legal and judicial officials and other personnel in the relevant governments' civilian and military justice systems to address impunity, including by the strengthening of national capacity, and drawing attention to the full range of justice mechanisms to be considered;

(b) Identify gaps in national response and encourage a holistic national approach to address sexual violence in armed conflict, including by enhancing criminal accountability, responsiveness to victims, and judicial capacity;

(c) Make recommendations to coordinate domestic and international efforts and resources to reinforce the government's ability to address sexual violence in armed conflict;

(d) Work with the United Nations Mission, Country Team, and the aforementioned Special Representative of the Secretary-General as appropriate towards the full implementation of the measures called for by resolution 1820 (2008);

9. *Encourages* States, relevant United Nations entities and civil society, as appropriate, to provide assistance in close cooperation with national authorities to build national capacity in the judicial and law enforcement systems in situations of particular concern with respect to sexual violence in armed conflict;

10. *Reiterates its intention*, when adopting or renewing targeted sanctions in situations of armed conflict, to consider including, where appropriate, designation criteria pertaining to acts of rape and other forms of sexual violence; and *calls* upon all peacekeeping and other relevant United Nations missions and United Nations bodies, in particular the Working Group on Children and Armed Conflict, to share with relevant United Nations Security Council sanctions committees, including through relevant United Nations Security Council Sanction Committees' monitoring groups and groups of experts, all pertinent information about sexual violence;

11. *Expresses its intention* to ensure that resolutions to establish or renew peacekeeping mandates contain provisions, as appropriate, on the prevention of, and response to, sexual violence, with corresponding reporting requirements to the Council;

12. *Decides* to include specific provisions, as appropriate, for the protection of women and children from rape and other sexual violence in the mandates of United Nations peacekeeping operations, including, on a case-by-case basis, the identification of women's protection advisers (WPAs) among gender advisers and human rights protection units, and requests the Secretary-General to ensure that the need for, and the number and roles of WPAs are systematically assessed during the preparation of each United Nations peacekeeping operation;

13. *Encourages* States, with the support of the international community, to increase access to health care, psychosocial support, legal assistance and socio economic reintegration services for victims of sexual violence, in particular in rural areas;

14. *Expresses* its intention to make better usage of periodical field visits to conflict areas, through the organization of interactive meetings with the local women and women's organizations in the field about the concerns and needs of women in areas of armed conflict;

15. *Encourages* leaders at the national and local level, including traditional leaders where they exist and religious leaders, to play a more active role in sensitizing communities on sexual violence to avoid marginalization and stigmatization of victims, to assist with their social reintegration, and to combat a culture of impunity for these crimes;

16. *Urges* the Secretary General, Member States and the heads of regional organizations to take measures to increase the representation of women in mediation processes and decision-making processes with regard to conflict resolution and peacebuilding;

17. *Urges* that issues of sexual violence be included in all United Nations-sponsored peace negotiation agendas, and *also urges* inclusion of sexual violence issues from the outset of peace processes in such situations, in particular in the areas of pre-ceasefires, humanitarian access and human rights agreements, ceasefires and ceasefire monitoring, DDR and SSR arrangements, vetting of armed and security forces, justice, reparations, and recovery/development;

18. *Reaffirms* the role of the Peacebuilding Commission in promoting inclusive gender-based approaches to reducing instability in post-conflict situations, noting the important role of women in rebuilding society, and *urges* the Peacebuilding Commission to encourage all parties in the countries on its agenda to incorporate and implement measures to reduce sexual violence in post-conflict strategies;

19. *Encourages* Member States to deploy greater numbers of female military and police personnel to United Nations peacekeeping operations, and to provide all military and police personnel with adequate training to carry out their responsibilities;

20. *Requests* the Secretary-General to ensure that technical support is provided to troop and police contributing countries, in order to include guidance for military and police personnel on addressing sexual violence in predeployment and induction training;

21. *Requests* the Secretary-General to continue and strengthen efforts to implement the policy of zero tolerance of sexual exploitation and abuse in United Nations peacekeeping operations; and *urges* troop and police contributing countries to take appropriate preventative action, including predeployment and in-theater awareness training, and other action to ensure full accountability in cases of such conduct involving their personnel;

22. *Requests* that the Secretary-General continue to direct all relevant United Nations entities to take specific measures to ensure systematic mainstreaming of gender issues within their respective institutions, including by ensuring allocation of adequate financial and human resources within all relevant offices and departments and on the ground, as well as to strengthen, within their respective mandates, their cooperation and coordination when addressing the issue of sexual violence in armed conflict;

23. *Urges* relevant Special Representatives and the Emergency Relief Coordinator of the Secretary-General, with strategic and technical support from the UN Action network, to work with Member States to develop joint Government-United Nations Comprehensive Strategies to Combat Sexual Violence, in consultation with all relevant stakeholders, and to regularly provide updates on this in their standard reporting to Headquarters;

24. *Requests* that the Secretary-General ensure more systematic reporting on incidents of trends, emerging patterns of attack, and early warning indicators of the use of sexual violence in armed conflict in all relevant reports to the Council, and *encourages* the Special Representatives of the Secretary-General, the Emergency Relief Coordinator, the High Commissioner for Human Rights, the Special Rapporteur on Violence against Women, and the Chairperson(s) of UN Action to provide, in coordination with the aforementioned Special Representative, additional briefings and documentation on sexual violence in armed conflict to the Council;

25. *Requests* the Secretary-General to include, where appropriate, in his regular reports on individual peacekeeping operations, information on steps taken to implement measures to protect civilians, particularly women and children, against sexual violence;

26. *Requests* the Secretary-General, taking into account the proposals contained in his report as well as any other relevant elements, to devise urgently and preferably within three months, specific proposals on ways to ensure monitoring and reporting in a more effective and efficient way within the existing United Nations system on the protection of women and children from rape and other sexual violence in armed conflict and post-conflict situations, utilizing expertise from the United Nations system and the contributions of national

Governments, regional organizations, non-governmental organizations in their advisory capacity and various civil society actors, in order to provide timely, objective, accurate and reliable information on gaps in United Nations entities response, for consideration in taking appropriate action;

27. *Requests* that the Secretary-General continue to submit annual reports to the Council on the implementation of Resolution 1820 (2008) and to submit his next report by September of 2010 on the implementation of this resolution and Resolution 1820 (2008) to include, inter alia:

(a) a detailed coordination and strategy plan on the timely and ethical collection of information;

(b) updates on efforts by United Nations Mission focal points on sexual violence to work closely with the Resident Coordination/Humanitarian Coordinator (RC/HC), the United Nations Country Team, and, where appropriate, the aforementioned Special Representative and/or the Team of Experts, to address sexual violence;

(c) information regarding parties to armed conflict that are credibly suspected of committing patterns of rape or other forms of sexual violence, in situations that are on the Council's agenda;

28. *Decides* to review, taking into account the process established by General Assembly resolution 63/311 regarding a United Nations composite gender entity, the mandates of the Special Representative requested in operative paragraph 4 and the Team of Experts in operative paragraph 8 within two years, and as appropriate thereafter;

29. *Decides* to remain actively seized of the matter.

ENDNOTES

1 See acknowledgements at the beginning of this document.

2 All referenced SC resolutions are available at www.un.org/Docs/sc/.

3 S/2009/362.

4 The websites of the ICTY, ICTR and SCSL served only as guide in determining which cases are completed. See websites for judgments issued and cases completed since about 25 February 2009.

5 All potentially relevant judgments were electronically searched using the search terms "sex" – both as whole word and as part of another word such as "sexual" – and "rape" in order to ascertain whether the judgments deal with sexual violence and to identify the potentially relevant parts that were then mined for data. These two terms also led to parts of judgments on sexual violence charged as underlying crimes like torture, enslavement/slavery, outrages upon personal dignity, and causing serious bodily or mental harm. These links between sexual violence and crimes other than rape in the jurisprudence of the three courts is explained in the main body of this report. In some cases additional search terms were used. These include "sexual violence", "gender", "slavery", "enslavement", "civilians", "women" and "fellatio". In respect of only two cases did the use of such additional search terms result in the identification of relevant information not captured by using the search terms "sex" and "rape".

6 In relation to ICTY see also SCR 808 (1993). Unless otherwise indicated all ICTY, ICTR and SCSL sources are available at the courts' websites: www.icty.org, www.ictr.org, and www.sc-sl.org.

7 SCR 827 preamble (emphasis added).

8 SCR 827 preamble.

9 SCR 955 preamble.

10 Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, 16 Jan 2002 (SCSL-establishment agreement).

11 The ICTY can prosecute persons responsible for the crimes listed in the ICTY Statute committed in the territory of the former Socialist Federal Republic of Yugoslavia (SFRY) since 1 January 1991 (ICTY Statute arts 1 and 8). The ICTR can prosecute persons responsible for the crimes listed in the ICTR Statute committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States between 1 January 1994 and 31 December 1994 (ICTR Statute arts 1 and 7). The SCSL can prosecute persons "who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996, including those leaders who, in committing such crimes, have threatened the establishment of and implementation of the peace process in Sierra Leone" (SCSL Statute art 1(1)). In the case of both the ICTR and SCSL, the armed conflicts have continued for longer periods than suggested by their temporal jurisdiction.

12 Regarding the ICTY see eg SCR 1503 (2003) operative par 7; and latest completion-strategy report from ICTY to SC (S/2008/729, 24 Nov 2008) at ICTY website. Regarding the ICTR see eg SCR 1534 (2004) operative pars 3 and 7; and latest completion-strategy report from ICTR to SC (S/2008/726, 21 Nov 2008) at ICTR website. Regarding the SCSL see eg Special Court for Sierra Leone Completion Strategy, June 2007, attached as Annex I to the letter dated 7 June 2007 from the Chargé d'Affaires a.i. of the Canadian Mission to the UN addressed to the SC president (S/2007/338), par 33; and 5th Annual Report of the President of the Special Court for Sierra Leone, June 2007 to May 2008, pp 5 and 11.

13 SCR 1820 operative par 1.

14 See eg SCR 1820 preamble, and operative pars 6-15.

15 See ICTY Statute arts 13, 13bis, 13ter, 13quater; ICTR Statute arts 13, 13bis, 13ter, 13quater; and SCSL Statute arts 12, 13.

16 See eg preambles of SCR 827; 955; SCR 1315 and SCSL-establishment agreement.

17 See eg SCR 1820 preamble, and operative par 4.

18 See eg preambles of SCR 827; 955; SCR 1315.

19 See eg SCR 1820 preamble, and operative pars 1, 4.

20 SCR 1820 operative par 4 (emphasis added).

21 See eg SCR 1820 preamble, and operative pars 6, 8, 10, 12.

22 Unlike war crimes, genocide and crimes against humanity are arguably not part of international humanitarian law or the 'laws of war', though they are often described as such.

23 Bagosora trial judgment par 5.

24 Such as: (a) awaiting-trial cases, at-trial cases, concluded trial proceedings the trial judgments of which are subject to potential or actual appeal, and abandoned or withdrawn cases such as that of the former Yugoslav leader, Slobodan Milosevic, who died before the conclusion of his trial; (b) chamber decisions other than judgments; (c) minority dissenting or separate opinions of judges appended to final trial and appeal judgments; (d) indictments, briefings filed by prosecution and defence teams, and trial transcripts; (e) other court sources such as annual reports to the SC and public speeches delivered by the presidents, prosecutors and registrars of the courts; (f) UN sources such as reports of the SG, commissions of experts and special rapporteurs on the armed conflicts in the former Yugoslavia, Rwanda and Sierra Leone, on the work of the courts themselves, and on the issue of sexual violence in armed conflicts; and (g) sources such as academic articles or books on the work of the three courts, on the armed conflicts in the relevant countries, and on the issue of sexual violence in armed conflicts.

25 The mandate of the SCSL includes some national-law crimes. The main body of this report contains a description of the varying mandates of the three courts.

26 See footnote 11.

27 See eg SCR 1534 (2004) operative pars 5, 6.

28 SCSL Statute arts 1(1), 15(1). See also AFRC appeal judgment pars 272-285 on whether it is a jurisdictional requirement or a guide to the prosecution in the exercise of its prosecutorial discretion.

29 For their detailed subject-matter, temporal and territorial jurisdictional mandates see eg ICTY Statute arts 1-6, 8-9; ICTR Statute arts 1-5, 7-8; SCSL Statute arts 1-5, 7-8.

30 SCR 1820 operative par 4.

31 Customary international law does not tie crimes against humanity to armed conflicts. This is a unique jurisdictional requirement at the ICTY. See eg Tadic appeal judgment par 251 ("The armed conflict requirement is satisfied by proof that *there was* an armed conflict; that is all that the Statute requires, and in so doing, it requires more than does customary international law.") (original emphasis). See also Kunarac appeal judgment par 83 ("[. . .] the requirement [. . .] is a purely jurisdictional prerequisite which is satisfied by proof that there was an armed conflict and that objectively the acts of the accused are linked geographically as well as temporally with the armed conflict.").

32 Customary international law does not require a discriminatory or persecutory intent for all crimes against humanity. This is a unique jurisdictional requirement at the ICTR. See eg Akayesu appeal judgment pars 465-466 ("[. . .] In the case at bench, the Tribunal was conferred jurisdiction over crimes against humanity (as they are known in customary international law), but solely "when committed as part of a widespread or systematic attack against any civilian population" on certain discriminatory grounds [. . .]. Indeed, this narrows the scope of the jurisdiction, which introduces no additional element in the legal ingredients of the crime as these are known in customary international law. [. . .] Consequently, apart from this restriction of jurisdiction, such crimes continue to be governed in the usual manner by customary international law, namely that discrimination is not a requirement for the various crimes against humanity, except where persecution is concerned.").

33 The reference to Additional Protocol II is to the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977.

34 SCSL Statute article 5 reads: "The [SCSL] shall have the power to prosecute persons who have committed the following crimes under Sierra Leonean law: (a) Offences relating to the abuse of girls under the Prevention of Cruelty to Children Act, 1926 (Cap. 31): (i) Abusing a girl under 13 years of age, contrary to section 6; (ii) Abusing a girl between 13 and 14 years of age, contrary to section 7; (iii) Abduction of a girl for immoral purposes, contrary to section 12. [. . .]" No charges have been brought on the basis of this provision.

35 At ICTY, an *international* armed conflict is required in relation to one sub-category of war crimes. For another example, see RUF trial judgment pars 94-98 in respect of differences between certain general requirements of war crimes categories at SCSL.

36 See first footnote of box 2.

37 See eg AFRC trial judgment pars 240-248; and RUF trial judgment par 93: "The Chamber acknowledges that the general requirements which must be proved to show the commission of war crimes pursuant to Article 3 of the [SCSL] Statute are as follows: (i) An armed conflict existed at the time of the alleged violation of Common Article 3 or Additional Protocol II; (ii) There existed a nexus between the alleged violation and the armed conflict; [. . .]." The crimes listed in SCSL Statute article 4 are subject to the same general (chapeau) requirements as those in article 3 (AFRC trial judgment par 257). This nexus requirement also exists at the ICTY and ICTR.

38 Rutaganda appeal judgment pars 569-570; Kunarac appeal judgment pars 57-59.

39 Kunarac appeal judgment par 58 ("What ultimately distinguishes a war crime from a purely domestic offence is that a war crime is shaped by or dependent upon the environment – the armed conflict – in which it is committed. It need not have been planned or supported by some form of policy. The armed conflict need not have been causal to the commission of the crime, but the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator's ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed. Hence, if it can be established, as in the present case, that the perpetrator acted in furtherance of or under the guise of the armed conflict, it would be sufficient to conclude that his acts were closely related to the armed conflict. [. . .]").

40 Brdanin appeal judgment par 256 (emphasis added).

41 See also first footnote in box 2.

42 "Any" signifies that there is no requirement that the victims be linked to a particular party or side to the conflict (see eg Limaj trial judgment par 186; Kunarac trial judgment par 423; Vasiljevic trial judgment par 33). See also Galic appeal judgment par 144; CDF appeal judgment par 259 (on predominantly civilian nature of population). The attack need not be against the entire population of the geographical entity in which the attack is taking place, but it must also not be against a limited and randomly selected number of individuals (Kunarac appeal judgment par 90).

43 See eg Kunarac appeal judgment par 91; and RUF trial judgment par 80.

44 See eg Kunarac appeal judgment pars 85, 98-104 (another requirement is that the perpetrator "must know that his acts constitute part of a pattern of widespread or systematic crimes directed against a civilian population and know that his acts fit into such a pattern"); and Tadic appeal judgment pars 151-152. See also AFRC trial judgment par 214: "An 'attack' has been defined as a "campaign, operation or course of conduct directed against a civilian population and encompasses any mistreatment of the civilian population". The concepts of 'attack' and 'armed conflict' are distinct and separate notions [. . .]". At the ICTY, the requirement that the attack must be widespread or systematic – a requirement not expressed in the ICTY Statute – is set out in eg Tadic appeal judgment par 248 (incl its footnote 311) and Kunarac appeal judgment par 93.

45 Zelenovic sentencing judgment par 37.

46 Kunarac appeal judgment par 103.

47 See eg Kunarac appeal judgement par 94; Blaskic appeal judgment par 101; RUF trial judgment par 78; AFRC trial judgment pars 213-222; Nahimana appeal judgment par 920.

48 See eg CDF trial judgment par 112; Kunarac appeal judgment par 94; RUF trial judgment par 78.

49 Nahimana appeal judgment par 924.

50 See eg Martic appeal judgment par 297.

51 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.

52 Martic appeal judgment pars 295, 297. The said article provides, inter alia: that a civilian is someone who, for example, accompanies the armed forces without actually being a member thereof, or who is a member of services responsible for the welfare of the armed forces; that in case of doubt whether a person is a civilian, "that person shall be considered to be a civilian"; and that the "presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character."

53 Martic appeal judgment pars 307, 314: "307. "[. . .] There is nothing in the text of [the crimes against humanity provision] of the Statute, or previous authorities of the Appeals Chamber that requires that individual victims of crimes against humanity be civilians. [. . .] 314. [. . .] the Appeals Chamber finds that the Trial Chamber erred in finding that, under Article 5 of the Statute, persons *hors de combat* are excluded from the ambit of crimes against humanity when the crimes committed against them occur as part of a widespread or systematic attack against the civilian population. Provided this *chapeau* requirement is satisfied, a person *hors de combat* may be a victim of crimes against humanity."

54 See eg Strugar appeal judgment pars 172-179: the notion of direct participation in hostilities set out in article 51(3) of additional protocol I encompasses acts of war which by their nature or purpose are likely to cause actual harm to the personnel or equipment of the enemy's forces. The concepts of "active participation" under common article 3 and "direct participation" under additional protocol I are synonymous. The notion of participation in hostilities is of fundamental importance to international humanitarian law and is closely related to the principle of distinction between combatants and civilians.

55 See also Akayesu trial judgment par 688 in which it described sexual violence "which includes rape, as any act of a sexual nature which is committed on a person under circumstances which are coercive. Sexual violence is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact. [. . .]".

56 This is not ideal, but in the context of this report is the most practical approach.

57 But, by way of example, they are distinct crimes: "enslavement, even if based on sexual exploitation, is a distinct offence from that of rape" (Kunarac appeal judgment par 186).

58 The same conduct may be relevant to and lead to convictions for different atrocity crimes (both vis-a-vis the three general categories of atrocity crimes and the various crimes under each category), but there are circumstances in which the law requires one provision rather than another to serve as basis for a conviction to be entered against an accused, with the other charge being dismissed. See Celebici appeal judgment pars 412-413 for test determining when cumulative convictions for same conduct are permissible; see also Nahimana appeal judgment pars 1019-1020; and Strugar appeal judgment pars 321-322.

59 AFRC trial judgment par 719.

60 AFRC appeal judgment par 184 with reference to various ICTY and ICTR judgments. The appeals chamber ruled that forced marriage is covered by "other inhumane acts", and that as such it's different from sexual slavery as a crime against humanity (AFRC appeal judgment pars 175-203). It also accepted that in this context forced marriage is "not *predominantly* a sexual crime" (AFRC appeal judgment pars 195-196; emphasis added).

61 Seromba appeal judgment par 46 (emphasis added). The court added that to support a conviction for genocide, the bodily harm or the mental harm inflicted on members of a group must be of such a serious nature as to threaten its destruction in whole or in part.

62 Nahimana appeal judgment par 985; and Brdanin appeal judgment par 296. Both judgments explain that the discriminatory acts or omissions which underlie persecution need not themselves amount to crimes under international criminal law as long as they, considered together or separately, are as grave as the other crimes against humanity.

63 Stakic trial judgment par 757. See also Milutinovic trial judgment vol 1 pars 183-202 on definition of sexual assault, including as form of persecution as crime against humanity, for which purposes the court held that sexual assault includes rape and other forms of sexual assault. At par 199 the court considered "that it would be inappropriate to place emphasis on the sexual gratification of the perpetrator in defining the elements of "sexual assault". In the context of an armed conflict, the sexual humiliation and degradation of the victim is a more pertinent factor than the gratification of the perpetrator, and it is this element that provides specificity to the offence." This judgment is subject to appeal.

64 Kvocka appeal judgment 289.

65 See table 1B on Celebici case.

66 Zelenovic sentencing judgment par 36. See also Kunarac appeal judgment par 151: "Severe pain or suffering, as required by the definition of the crime of torture, can thus be said to be established once rape has been proved, since the act of rape necessarily implies such pain or suffering. [. . .]".

67 ICTY Statute art 7(1) reads: "A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of [an atrocity crime listed in the Statute] shall be individually responsible for the crime." ICTR Statute art 6(1) and SCSL Statute 6(1) are essentially the same. These various 'modes of liability' in relation to personal responsibility are defined in numerous judgments, and need not be explained here.

68 ICTY Statute art 7(3) reads: "The fact that any of the [ICTY crimes] was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof." ICTR Statute art 6(3) and SCSL Statute 6(3) are essentially the same.

69 See eg AFRC appeal judgment par 257; Nahimana appeal judgment pars 484-487, 785; Halilovic appeal judgment pars 59-64.

70 Blagojevic appeal judgment par 282 (emphasis added). See also Nahimana appeal judgment pars 485-486.

71 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.

72 Article 87(2). Additional protocol I arts 86-87 read in full: "*Art 86. Failure to act*. 1. The High Contracting Parties and the Parties to the conflict shall repress grave breaches, and take measures necessary to suppress all other breaches, of the Conventions or of this Protocol which result from a failure to act when under a duty to do so. 2. The fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from penal or disciplinary responsibility, as the case may be, if they knew, or had information which should have enabled them to conclude in the circumstances at the time, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach. *Art 87. Duty of commanders*. 1. The High Contracting Parties and the Parties to the conflict shall require military commanders, with respect to members of the armed forces under their command and other persons under their con-

trol, to prevent and, where necessary, to suppress and to report to competent authorities breaches of the Conventions and of this Protocol. 2. In order to prevent and suppress breaches, High Contracting Parties and Parties to the conflict shall require that, commensurate with their level of responsibility, commanders ensure that members of the armed forces under their command are aware of their obligations under the Conventions and this Protocol. 3. The High Contracting Parties and Parties to the conflict shall require any commander who is aware that subordinates or other persons under his control are going to commit or have committed a breach of the Conventions or of this Protocol, to initiate such steps as are necessary to prevent such violations of the Conventions or this Protocol, and, where appropriate, to initiate disciplinary or penal action against violators thereof."

73 Hadzihasanovic appeal judgment par 30 (emphasis added).

74 Hadzihasanovic appeal judgment par 228 (the court added that this kind of use of force is legal under international humanitarian law insofar as it complies with the principles of proportionality and precaution).

75 See eg Nahimana appeal judgment par 487: "The Appeals Chamber recalls that it is inappropriate to convict an accused for a specific count under both Article 6(1) and Article 6(3) of the Statute. When, for the same count and the same set of facts, the accused's responsibility is pleaded pursuant to both Articles and the accused could be found liable under both provisions, the Trial Chamber should rather enter a conviction on the basis of Article 6(1) of the Statute alone and consider the superior position of the accused as an aggravating circumstance."

76 Halilovic appeal judgment pars 63-64: "necessary" measures are the measures appropriate for superiors to discharge their obligations (showing that they genuinely tried to prevent or punish) and "reasonable" measures are those reasonably falling within the material powers of the superiors.

77 BiH was known by different names in the 1990s. For practical reasons, it is referred to as BiH throughout this report.

78 Some of these cases involve multiple accused. These figures exclude eight cases transferred by ICTY to BiH (six cases), Serbia (one case) and Croatia (one case) for trial before national courts. The transferred cases were not considered for possible relevance to SCR 1820.

79 There are nine completed cases in which the accused pleaded guilty and which the subsequent sentencing judgments contain sexual-violence facts agreed to between the prosecution and accused. Such agreed facts are not adjudicated facts. Sentencing judgments that follow plea agreements usually summarise the agreed facts, and rarely contain findings that are relevant to SCR 1820. Unless appeal judgments add something of relevance, they are not referenced in table 1B. For example, if an appeal judgment simply confirms the sexual-violence findings of the trial chamber without making additional relevant findings, the appeal judgment is not referenced. In other words, there are more judgments than completed cases concerning sexual violence.

80 There are seven at-trial cases, the indictments of three which include sexual-violence allegations. These indictments do not necessarily reflect the current state of the prosecution's case. For example, at trial the prosecution could have withdrawn a charge or certain allegations forming part of a charge, or the trial chamber may have struck charges from the indictment; this would not necessarily result in a formal amendment of the indictment. The indictment in Prosecutor vs Dordevic (IT-05-87/1) includes sexual-violence allegations involving Kosovar Albanian women, including as charges of deportation as crime against humanity, and persecutions as crime against humanity. The indictment in Prosecutor vs Prlic and 5 others (IT-04-74) includes allegations of rapes and other sexual violence, including as charges of inhuman treatment (sexual assault) as war crime, and rape as crime against humanity. The indictment in Prosecutor vs Seselj (IT-03-67) includes sexual-violence allegations, including as persecutions as crime against humanity.

81 Trial judgments in four cases do. See Prosecutor vs Milutinovic and 5 others, IT-05-87-T, Judgement Volumes 1 to 4, 26 Feb 2009; Prosecutor vs Mrksic and 2 others, IT-95-13/1-T, Judgement, 27 Sept 2007; Prosecutor vs Haradinaj and 2 others, IT-04-84-T, Judgement, 3 Apr 2008; Prosecutor vs Delic, IT-04-83-T, Judgement, 15 Sept 2008.

82 Of the four awaiting-trial cases, indictments of three include sexual-violence allegations. The indictment in Prosecutor vs Karadzic (IT-95-5/18) includes allegations of rapes and other acts of sexual violence committed against Bosnian Muslims and Bosnian Croats as part of genocide charge, and as part of persecutions as crime against humanity charge. Karadzic was the president of the Serb republic of BiH. The indictment in Prosecutor vs Stanisic and Simatovic (IT-03-96) includes references to rapes and sexual violence committed by Serb forces in Croatia and BiH against non-Serbs in the context of charges of deportation as a crime against humanity and inhumane acts (forcible transfer) as a crime against humanity. The two accused were security-force commanders. The indictment in Prosecutor vs Zulpjanin and Stanisic (IT-08-91) includes allegations of sexual violence committed by Serbs against Bosnian Croats and Bosnian Muslims and other non-Serbs as part of persecutions as crime against humanity charge, as part of torture as crime against humanity and war crimes charges, as part of cruel treatment as war crime charge, and as part of inhumane acts as crime against humanity charge.

83 Twenty-two indictments have been withdrawn. Cases against sixteen accused have been abandoned after their deaths prior to transfer to the ICTY (ten), or after transfer (six, including Slobodan Milosevic). Indictments against accused who have died prior to their transfer have not been considered for their possible relevance to SCR 1820. The indictment against Kovacevic (IT-97-24) contains, for example, allegations regarding rape and sexual assaults committed against Bosnian Muslim detainees by Bosnian Serb and Croat forces in several detention camps in BiH (Omarska, Keraterm, Trnopolje). There were three indictments against

the former president of Serbia and Yugoslavia (SFRY), Slobodan Milosevic (IT-02-54), one each for Croatia, BiH and Kosovo. The Croatia indictment included allegations of sexual assaults committed against Croat and other non-Serb civilian detainees; the relevant charges included torture as a crime against humanity on the basis of the personal and superior responsibility of the accused. The BiH indictment included allegations of sexual violence committed against Bosnian Muslims forming part of genocide charges; and against non-Serbs, principally Bosnian Muslims and Bosnian Croats, as part of persecutions as a crime against humanity. The Kosovo indictment included allegations of sexual assaults committed against Kosovo Albanian women forming part of charges of deportation and persecutions as crimes against humanity. All the mentioned charges were based on the personal and superior responsibility of the accused. The indictment against Talic (IT-99-36) included several allegations of sexual violence (rape and sexual assault) committed against non-Serb civilians (women and men) as part of charges of genocide, persecutions as crime against humanity, and torture as crime against humanity and war crimes. Talic was a member of a high-level body tasked with coordinating the ethnic cleansing of the Bosnian Serb republic of BiH, and the commander of a military brigade.

84 There are two at-large accused at ICTY. The indictment in Prosecutor vs Hadzic (IT-04-75) includes sexual-violence allegations against Croat and other non-Serbs in Croatia, including under torture, inhumane acts and cruel treatment as crime against humanity charges. Hadzic was a senior Serb Croatian leader. The indictment in Prosecutor vs Mladic (IT-95-5/18) includes sexual-violence allegations against Bosnian Muslims in BiH in genocide counts, and against Bosnian Muslims, Bosnian Croats and other non-Serbs in persecutions as crime against humanity count. The accused is charged on the basis of his personal and superior responsibility. He was a top Bosnian Serb military leader.

85 Kvocka trial judgment par 327. See also Milutinovic trial judgment vol 3 for dissenting opinion on Judge Chowhan. He differed from the view expressed by the majority regarding the foreseeability of sexual assault of Kosovo Albanian women during a civilian-displacement campaign: "In a conflict like the one we are addressing, which involved able-bodied military and security forces acting pursuant to a common plan to use violence to remove large numbers of Kosovo Albanian civilians, including women, from their homes, prudence and common sense, as well as the past history of conflicts in the region, lead me to think that sexual assaults, like murders, were certainly foreseeable realities".

86 Emphasis added.

87 See also footnotes in table 1A. The various sub-tables each deals with a specific case. The sub-tables encompass (a) relevant completed cases (including plea-bargained cases) and (b) to a limited extent, other cases, including the incomplete Milutinovic case. Some cases are related to one another. For example, a single case against four accused may have been split because only two accused were in custody when the trial was ready to commence. Or, a specific campaign of 'ethnic cleansing' in a certain part of a country may have spawned different cases, all sharing certain facts to varying degrees. These links have not been highlighted. The "Number of accused" entries relate to the total number of accused in each case, not the total number of accused in relation to which sexual-violence findings were made or in relation to which relevant facts have been agreed (in respect of completed plea-bargained cases).

88 As recently observed by the ICTR, "as the evidence in this case and the history of the Tribunal show, not every member of these groups committed crimes", and "[a]lso other persons than Tutsis and moderate Hutus suffered in 1994" (Bagosora trial judgment pars 4, 5).

89 See Prosecutor vs Karemera, Ngirumpatse and Nzirorera, ICTR-98-44-AR73(C), Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice, 16 June 2006, placing beyond doubt, among others, the central facts of the genocide, crimes against humanity and war crimes. These core facts no longer need to be proven in each case.

90 Some of these cases involve multiple accused. The ICTR website uses the figure of 29 completed cases; this equals the number of accused in respect of which cases have been completed. The figure in this table excludes two cases (involving two accused: Bucyibaruta, and Munyeshyaka) transferred by the ICTR to France for trial. The transferred cases were not considered for possible relevance to SCR 1820. The figure in this table also excludes six cases in which six accused were acquitted. These accused are Bagambiki, Bagilishema, Mpambara, Ntagerura and Rwamakuba. Also excluded from the figure is the Muvunyi case (ICTR-00-55): the accused was acquitted on a charge of rape as crime against humanity by the trial chamber, a decision confirmed on appeal, but the appeals chamber also ordered a retrial in relation to other charges; the retrial does not involve sexual-violence charges (see Muvunyi trial judgment and Muvunyi appeal judgment incl pars 4, 6, 160-169). The Muvunyi chambers confirmed that rapes were committed, but the accused could not be held responsible for that.

91 There are no completed cases in which the accused pleaded guilty and which the subsequent sentencing judgments contain sexual-violence facts agreed to between the prosecution and accused. Unless appeal judgments add something of relevance, they are not referenced in table 2B. For example, if an appeal judgment simply confirms the sexual-violence findings of the trial chamber without making additional relevant findings, the appeal judgment is not referenced. In other words, there are more judgments than completed cases concerning sexual violence. In respect of a few cases the appeal judgment is used as primary reference with the trial judgment referenced only if it adds relevant findings not overturned or confirmed on appeal. The Muvunyi case is not counted as a completed case, but see footnote 90 on the sexual-violence findings of the trial and appeals chambers.

92 There are 11 at-trial cases. Four of these are multi-accused trials; one of them, Muvunyi (ICTR-00-55), is a retrial excluding sexual-violence charges (see footnote 90 on the Muvunyi case). Several of the related indictments include sexual-violence allegations.

These indictments do not necessarily reflect the current state of the prosecution's case. For example, at trial, the prosecution could have withdrawn a charge or certain allegations forming part of a charge, or the trial chamber may have struck charges from the indictment; this would not necessarily result in a formal amendment of the indictment. Some of the indictments seem out of date. A 1999 indictment of the multi-accused trial involving Bizimungu (Casimir), Mugenzi, Bicamumpaka and Mugiraneza (ICTR-99-50) (the so-called "Government II" case) includes allegations regarding widespread sexual violence, including rapes and sexual assaults, committed against civilian Tutsis and moderate Hutus. These allegations would seem to form the basis of, inter alia, genocide-related charges. However, the accused Bizimungu, Bicamumpaka, Mugenzi and Mugiraneza have been acquitted in relation to sexual-violence allegations at mid-trial (see Decision on Defence Motions Pursuant to Rule 98 Bis, 31 Oct 2005). In the so-called "Military II" case – Ndindilyimana (a former chief of staff of the national gendarmie), Augustin Bizimungu (a former chief of staff of the Rwandan army), Nzuwonemeye (a former commander of a reconnaissance battalion in the Rwandan army) and Sagahutu (a Hutu and deputy to Nzuwonemeye) (ICTR-00-56) – a 2004 indictment includes allegations and charges concerning sexual violence committed against civilian Tutsi women. The charges include rape as war crime against three of the accused, based on allegations of multiple instances of rape. In the multi-accused trial – Prosecutor vs Karemera, Ngirumpatse and Nzirorera (ICTR-98-44) – the trial chamber has recently denied the mid-trial motion of the defence to acquit the accused (see Prosecutor vs Karemera and 2 others, ICTR-98-44-T, Decision on Motions for Judgement of Acquittal - Rule 98bis of the Rules of Procedure and Evidence, 19 March 2008. In other words, the court ruled that the case has to continue as the accused have cases to answer. Sexual-violence allegations involving civilians form part of the case. The trial chamber referred to various prosecution witnesses testifying to numerous rapes of Tutsi women at roadblocks in the context of its assessment of testimony relating to various genocide charges (see eg decision par 28). The accused are also charged with rape as crimes against humanity. The trial chamber noted that there were prosecution eyewitnesses to rapes conducted by Hutu groups and that "there is evidence from which the Chamber can draw inferences about the knowledge of the Accused about the rapes and the extent to which the rapes were foreseeable and the ability of the Accused to prevent and punish perpetrators of rape" (decision pars 35, 39-40). With respect to another multi-accused case – Nyiramasuhuko and 5 others (the accused Kanyabashi, Ndayambaje, Nsabimana, Ntahobali, Nteziryayo) (ICTR-98-42) – a 2004 decision of the trial chamber denying the mid-trial motion of the accused to acquit them suggests that the current case includes allegations and charges relating to sexual violence against civilians, including extensive rapes and sexual assaults committed in Butare (see Prosecutor vs Nyiramasuhuko and 5 others, ICTR-98-42-T, Decision on Defence Motions for Acquittal under Rule 98*bis*, 16 Dec 2004, pars 30-32, 52, 74-75, 137, 186-187). With respect to the single-accused cases the situation is as follows: (a) the indictments against Kalimanzira (ICTR-05-88) and Nsengimana (ICTR-01-69) do not include any allegations of sexual violence; (b) the indictment against Setako (ICTR-04-81) does not seem to include any sexual-violence allegations; (c) based on a trial chamber decision, the amended indictment against Hategekimana (ICTR-00-55) would seem to include allegations of sexual violence committed against civilians in support of an earlier genocide count as well as a new charge of rape as crime against humanity (see Prosecutor vs Nizeyimana and Hategekimana, ICTR-00-55-I, Decision on the Prosecutor's Application for Severance and Leave to Amend the Indictment against Idelphonse Hategekimana, 25 Sept 2007, pars 25, 27-28, 36); and the indictment against Renzaho (ICTR-97-31-DP) includes chares of rape as war crime and crime against humanity.

93 There are seven accused whose cases are under appeal (Bagosora, Bikindi, Nchamihigo, Nsengiyumva, Ntabakuze, Rukondo, Zigiranyirazo). See table 2B on the Bagosora case, which involved as co-accused Kabiligi, Nsengiyumva and Ntabakuze, as well as on the single-accused Rukondo case. In the Bikindi trial judgment (Prosecutor vs Bikindi, ICTR-01-72-T, Judgement, 2 Dec 2008, pars 365-366, 350) the sexual-violence allegation of multiple sexual assaults against civilian Tutsi women were rejected because the prosecution failed to lead any related evidence except in respect of one incident of rape of a Tutsi women to which the accused could not be linked.

94 There are seven accused awaiting trial. Of them, four face sexual-violence allegations. The indictment in Prosecutor vs Gatete (ICTR-2000-62) includes a charge of rape as crime against humanity (Gatete was a political leader and leader of a militia group). His incitement to, ordering to, supervision of and participation in various incidents of rapes of civilian Tutsis, including in church hospitals, form part of a genocide charge. In the light of the Decision on Prosecution Motion for Leave to Amend the Indictment dated 29 January 2009, it would seem as if an amended indictment in the case of Prosecutor vs Ngirabatware, ICTR-99-54, would contain more particularised sexual-violence allegations and charges, including with respect to the rape of various women. The indictment against Nzabonimana (ICTR-98-44) could not be accessed, but other sources suggest it contains no sexual-violence allegations.

95 One accused (Musabyimana) died before trial, and indictments against two accused (Ntuyahaga, and Rusatira) were withdrawn. These have not been considered for their possible relevance to SCR 1820.

96 There are 13 at-large accused at ICTR. The indictment against Mpiranya (ICTR-2000-56) includes sexual-violence allegations and charges. One of the charges concerns rape as crime against humanity. In this regard, the accused, a Hutu who was the commander of the presidential guard, is charged with responsibility for the sexual assault of the then prime minister before she was killed, and also for the following: "During April and May 1994, soldiers, including those of the Presidential Guard, and *Interahamwe* came to the *Conseiller's* compound in Kicukiro on a daily basis and abducted young Tutsi women and girls to nearby locations, particularly empty houses and to a forest nearby, where they subjected them to gang-rapes, rapes and other degrading acts. Those who showed any resistance were killed" (indictment par 5.54). Sexual violence, including numerous rapes and sexual

assaults committed throughout Rwanda, also forms part of the basis of, for example, the genocide charge as well as the charge of war crime (causing violence to health and to the physical or mental well-being of civilians) against Mpiranya. The indictment contains numerous references to sexual violence – targeting in particular Tutsi women and young girls – which was committed on a widespread and systematic basis against civilians across Rwanda: "During the events referred to in this indictment, rapes, sexual assaults and other crimes of a sexual nature were systematically and widely committed throughout Rwanda. These crimes were perpetrated by, among others, soldiers, militiamen and gendarmes against the Tutsi population, in particular against Tutsi women and young girls" (indictment par 5.71). See also indictment pars 4.40 ("Furthermore, soldiers, militiamen and gendarmes abducted some Tutsi women and girls, and took them to other locations, where they raped or sexually assaulted them or committed other crimes of a sexual nature against them. These acts were commonly accompanied by verbal abuses, physical assault, degrading treatments and several cases of murder. Those crimes resulted in serious mental and physical injuries, permanent disabilities, including destruction of reproductive organs, unwanted pregnancies and sexually transmitted diseases, including AIDS."), 5.19, 5.43 ("From April to July 1994, by virtue of their position, their statements, the orders they gave and their acts [. . .] Major Protais Mpiranya [. . .] exercised authority over members of the *Forces Armées Rwandaises*, their officers and militiamen. The military, gendarmes and militiamen, as from 6 April 1994, committed massacres of the Tutsi population and of moderate Hutu and other crimes such as rapes and sexual assaults and other crimes of a sexual nature, which extended throughout the territory of Rwanda with the knowledge of [. . .] Major Protais Mpiranya [. . .]"), 5.45, 5.48, 5.50, 5.53, 5.57, 5.58, 5.59, 5.60, 5.62 ("[. . .] in Butare [. . .] Rape and other acts of sexual violence were notoriously committed by soldiers and Interahamwe against Tutsi women and young girls. Furthermore, soldiers and Interahamwe abducted Tutsi women and young girls to isolated locations where they raped them and subjected them to various other acts of sexual violence, including degrading and humiliating treatment, such as exposure of sexual organs, nudity and derogatory and sexually abusive language."), 5.63, 5.65, 5.66, 5.74. The indictment against Munyagishari (ICTR-97-26 & ICTR-05-89), a well-connected local leader, also includes sexual-violence allegations. There is a charge of rape as crime against humanity. One allegation is that he created, instigated and ordered a special youth unit to rape and kill Tutsi women, and that he instigated his wife and a female group that she headed to sexually torture Tutsi women before killing them (indictment par 37). See also indictment pars 43 (regarding rapes, sexual assaults and other crimes of a sexual nature that were "widely and notoriously committed throughout Gisenyi"), 45, 46. The indictment against Nizeyimana (ICTR-2000-55), an intelligence and military commander, also contains numerous sexual-violence allegations. These include rapes committed on a widespread basis, and rapes of daughters in front of their parents (see indictment pars 3.47 and 3.47(i)). These sexual-violence allegations form the basis for genocide charges against the accused. The indictment against Ntaganzwa (ICTR-96-9), a former mayor and political-party leader, includes sexual-violence allegations, including rapes committed (see eg indictment pars 6.46, 6.54). These allegations form the basis of various war crimes, crimes against humanity and genocide charges. The indictment against Bizamana (ICTR-98-44) includes sexual-violence allegations, one of which concerns the disembowelling of pregnant women by another accused (indictment par 6.76), another the rape of Tutsi and Hutu moderate civilians in the Gisenyi area (indictment par 6.78), and yet another the multiple rapes of Tutsi female students and refugees of which the accused knew (indictment par 6.91). See also par 6.101 of indictment. The accused is charged with various crimes in relation to sexual violence, including genocide and rape as crime against humanity. The indictments of the accused Sikubwabo (ICTR-95-1D), Munyarugarama (ICTR-02-79) and Kabuga (ICTR-99-44B), the top ICTR fugitive, could not be accessed.

97 See footnote 93 on recent Bikindi trial judgment and findings in relation to sexual violence to which accused could not be tied.

98 See also eg Semanza case (in table 2B) in which the prosecution did not lead evidence in support of all sexual-violence allegations in the indictment and in which the court could not convict for rapes of four prosecution witnesses as these rapes were not properly pleaded in the indictment.

99 Akayesu trial judgment pars 731-732 (emphasis added). In the Ndindabahizi case, as in the Nahimana case, the court made findings in relation to credible evidence from various sources that Tutsi women married to Hutu men were targeted for murder, but this was not charged as gender-based crimes. In the latter case (Nahimana, see table 2B) the prosecutor did not charge the three accused for their role in encouraging rapes and other sexual violence through their propaganda as some critics say it could and should have.

100 See also footnotes in table 2A, including in relation to Muvunyi case which is not covered in table 2B. The sub-tables of table 2B encompass (a) relevant completed cases (including plea-bargained cases) and (b) to a limited extent, other cases, including incomplete cases. The reference to a non-appearing witness having been raped in Prosecutor vs Rutaganira, ICTR-95-1C-T, Judgement and Sentence, 14 Mar 2005, par 45 is not considered relevant for inclusion in this report (see also pars 14-23, 105). Some cases are related to one another. For example, a single case against four accused may have been split because only two accused were in custody when the trial was ready to commence.

101 The indictment included war crimes charges in relation to sexual violence, but as with many other cases, for technical reasons an accused cannot be convicted for crimes against humanity and war crimes for the same underlying conduct in certain instances. In other words, for example, in some cases an accused could have been convicted of war crimes had crimes against humanity not been charged too.

102 This is not the only case that is subject to appeal which deals with sexual violence: see table 2A and relevant footnote.

103 Resource constraints may also have influenced decisions on the number of cases to pursue; the court has always found it challenging to raise funding, seeing as it relies on voluntary contributions, unlike the ICTY and ICTR which rely mainly on funding from the regular UN budget.

104 Prosecutor vs Sesay and 2 others, SCSL-04-15-T, Judgement, 2 Mar 2009 (RUF trial judgment). (Judgment was delivered on 25 February 2009). The three accused were members of the RUF. Indictments against two other individuals who were more senior RUF members were withdrawn after the confirmation of their deaths; they were Foday Saybana Sankoh and Sam "Mosquito" Bockarie.

105 But see table 3B in relation to CDF case. There are no completed cases in which the accused pleaded guilty and which the subsequent sentencing judgments contain sexual-violence facts agreed to between the prosecution and accused.

106 The final at-trial case at the SCSL for the time being involves the former Liberian president, Charles Taylor (Prosecutor vs Taylor, SCSL-03-01).

107 See eg: (a) Withdrawn indictment in Prosecutor vs Sankoh (SCSL-03-02) which included charges of widespread sexual violence – such as rape and sexual slavery as crimes against humanity – committed against hundreds of civilian women and children (including brutal rapes by multiple rapists). Sankoh was a RUF leader. (b) Withdrawn indictment in Prosecutor vs Bockarie (SCSL-03-04) which included charges similar to those in the Sankoh indictment. Bockarie was a senior commander of the RUF.

108 The indictment in Prosecutor vs Koroma (SCSL-03-03) includes charges of widespread sexual violence – such as rape and sexual slavery as crimes against humanity – committed against hundreds of civilian women and children. Koroma was the leader of the AFRC, and former head of state of Sierra Leone.

109 Indictment as amended in Prosecutor vs Taylor, SCSL-03-01.

110 See table 3B for references to following summary.

111 See footnote 113 regarding forced marriage constituting an 'other inhumane act' as crime against humanity.

112 Emphasis added.

113 The convictions for outrages upon personal dignity were based on evidence concerning sexual slavery and forced marriage. This is the reason why no convictions were entered on the count of sexual slavery and any other form of sexual violence as a crime against humanity against each of the three leaders. Overruling the trial chamber, the appeal chamber found that additional convictions against each of them could have been entered on the count of other inhumane acts (forced marriage) as a crime against humanity, but it exercised its discretion not to do so in the circumstances, in the process remarking: "The Appeals Chamber is convinced that society's disapproval of the forceful abduction and use of women and girls as forced conjugal partners as part of a widespread or systematic attack against the civilian population, is adequately reflected by recognising that such conduct is criminal and that it constitutes an "Other Inhumane Act" capable of incurring individual criminal responsibility in international law."

114 Emphasis added.

115 See table 3B for references to following summary.

116 RUF trial judgment par 156. Referenced by the chamber is the following UN sources: SCR 1820 itself; Final report submitted by Ms Gay J McDougall, Special Rapporteur, Contemporary Forms of Slavery: Systematic rape, sexual slavery and slavery-like practices during armed conflict, Economic and Social Council, Commission on Human Rights, Sub- Commission on the Promotion and Protection of Minorities, E/CN.4/Sub.2/1998/13, 22 June 1998, pars 7-19; Update to Final report submitted by Ms Gay J McDougall, Special Rapporteur, Contemporary Forms of Slavery: Systematic rape, sexual slavery and slavery-like practices during armed conflict, Economic and Social Council, Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, E/CN.4/Sub.2/2000/21, 6 June 2000, par 20; Report of the United Nations High Commissioner for Human Rights, Systematic rape, sexual slavery and slavery-like practices during armed conflicts, General Assembly, Human Rights Council, Sub-Commission on the Promotion and Protection of Human Rights, A/HRC/Sub.1/58/23, 11 July 2006, pars 5-11.

117 Table 3B describes this in more detail.

118 See also footnotes in table 3A.

119 The case involved a third accused (Sam Hinga Norman) but the case against him was withdrawn following his death.

120 See also footnote 116 in relation to UN sources cited in RUF trial judgment.

121 "Gender-based violence".

122 These are in addition to the websites referenced elsewhere in this Toolkit.

Front cover image:
The Security Council unanimously adopting resolution 1888 on 30 September 2009

The chief purpose of this report is to review sexual-violence elements of the judgments of the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR) and the UN-backed Special Court for Sierra Leone (SCSL) against the background of Security Council Resolution 1820 of 19 June 2008.

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