

# The Year in Review

---

Volume 54 *International Legal Developments*  
*Year in Review: 2019*

Article 11

---

February 2024

## International Criminal Law

Timothy Franklin

Linda Strite Murnane

Momodou Manneh

Susan Schwartz

---

### Recommended Citation

Timothy Franklin et al., *International Criminal Law*, 54 ABA/SIL YIR 163 (2024)

This Disputes is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in The Year in Review by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

## **International Criminal Law**

TIMOTHY FRANKLIN, LINDA STRITE MURNANE,  
MOMODOU MANNEH, AND SUSAN SCHWARTZ\*

This article will address the significant developments in international criminal law from 2019. This article will touch on three topics: Head of State immunity, developments in the International Criminal Court and other international tribunals, and finally the Truth Reconciliation and Reparations Commission of the Gambia.

### **I. Head of State Immunity**

On May 6, 2019, the Appeals Chamber of the International Criminal Court (ICC) issued its much-anticipated judgment<sup>1</sup> reviewing an earlier decision by the court's Pre-Trial Chamber in December 2017.<sup>2</sup> The essential legal question at issue was as follows:

Whether Head of States' immunity is applicable in a situation where the Court requests a State Party of the Rome Statute to arrest and surrender the Head of State of another State (in this instance, Sudan), which, while not being party to the Rome Statute, is the subject of a referral to the Court by the United Nations Security Council, and, in terms of Resolution 1593, is obliged to fully cooperate with the Court.<sup>3</sup>

As a cornerstone of customary international law,<sup>4</sup> Head of State immunity is what affords an individual freedom from any exercise of criminal jurisdiction by another state against him. The custom has been widely recognized as a necessary one "simply to ensure respect for the principle of the sovereign equality of States . . . by ensuring that the officials and representatives of States can carry out their functions without external difficulties or impediments."<sup>5</sup> Additionally, a number of international treaty agreements—most notably the 1963 Vienna Convention on Consular

---

\* Contributing authors include Timothy Franklin, Linda Strite Murnane, Momodou Manneh, and Susan Schwartz.

1. *See* Prosecutor v. Al Bashir, Case No. ICC-02/05-01/09-397 OA2, Judgment in the Jordan Referral re Al-Bashir Appeal (May 6, 2019).

2. *Id.* at 4.

3. *Id.* ¶ 96, at 51.

4. *See* Arrest Warrant of 11 April 2000 (Dem. Rep. Congo v. Belg.), Judgment, 2002 I.C.J. Rep. 3, ¶ 58 (Feb. 14).

5. Int'l Law Comm'n, Second Rep. on the Immunity of State Officials from Foreign Criminal Jurisdiction, ¶ 48, U.N. Doc. A/CN.4/661 (Apr. 4, 2013).

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

Relations<sup>6</sup> and the 1969 Convention on Special Missions<sup>7</sup>—have codified Head of State immunity into legally-binding obligations for many states.<sup>8</sup>

Jordan had appealed the Pre-Trial Chamber’s ruling that it had violated its obligations as a State Party to the Rome Statute by failing to execute ICC-issued arrest warrants against Omar Al Bashir in March 2017, when Bashir traveled there.<sup>9</sup> Jordan argued that the Pre-Trial Chamber had erred in its findings regarding the effects of the Rome Statute upon Bashir’s Head of State immunity, as well as in its conclusion that the U.N. Security Council resolution affected Jordan’s obligations under customary and conventional international law to accord immunity to Bashir.<sup>10</sup> Jordan further argued that even if the Pre-Trial Chamber’s decision with respect to non-compliance was correct, the Chamber had abused its discretion in deciding to refer the issue to the Assembly of States Parties and the U.N. Security Council,<sup>11</sup> and that the ICC was treating Sudan unfairly in comparison to the six other states which had received Security Council referrals.<sup>12</sup>

The Appeals Chamber determined that the Pre-Trial Chamber was correct in its finding that Jordan had failed to comply with its obligation to cooperate with the Court.<sup>13</sup> Moreover, it clarified the Pre-Trial Chamber’s interpretation of Article 27(2) of the Rome Statute regarding the jurisdiction the U.N. Security Council resolution had over Sudan (or would have over any state that, like Sudan, was a member of the Security Council but not the Assembly of States Parties).<sup>14</sup> That is, a Security Council referral places the same cooperation obligations on a target state as if it were a State Party; simultaneously, that target state cannot assert Head of State immunity because the Rome Statute does not recognize such immunity.

The Appeals Chamber then made an additional and separate finding, which was that in the context of the arrest made by a State Party at the

---

6. See Vienna Convention on Consular Relations art. 43, Apr. 24, 1963, 596 U.N.T.S. 8363.

7. See Convention on Special Missions art. 31, Dec. 8, 1969, 1400 U.N.T.S. 23431.

8. Two types of Head of State immunity exist. Immunity *ratione personae* (personal immunity) is rooted in customary international law and covers acting heads of state, heads of government, and foreign ministers. See Int’l Law Comm’n, *supra* note 5, ¶ 6. An individual enjoying immunity *ratione personae* does so because of the office they hold; once they leave office, they are no longer entitled to it. Immunity *ratione materiae* (functional immunity) is a creation of treaty law and covers the acts of state officials performing in their official capacity. The protections of immunity *ratione materiae* can be claimed even after an individual leaves office. See *id.*

9. Prosecutor v. Al Bashir, Case No. ICC-02/05-01/09-326, The Hashemite Kingdom of Jordan’s appeal against the “Decision under article 87(7) of the Rome Statute on the non-compliance by Jordan with the request by the Court for the arrest and surrender [of] Omar Al-Bashir”, ¶ 2 (Mar. 12, 2018).

10. *Id.* ¶ 3.

11. *Id.*

12. Prosecutor v. Al Bashir, Case No. ICC-02/05-01/09, Decision under article 87(7) of the Rome Statute on the non-compliance by South Africa with the request by the Court for the arrest and surrender of Omar Al-Bashir, ¶ 138, at 51 – 52 (July 6, 2017).

13. Prosecutor v. Al Bashir, Case No. ICC-02/05-01/09-397 OA2 ¶ 1, at 4.

14. *Id.* ¶ 3, at 5.

request of the ICC, Bashir had not even been entitled to Head of State immunity under customary international law—regardless of the Security Council referral.<sup>15</sup> The reason for this, the judgment explained, was that “[t]here is neither a State practice nor *opinio juris* that would support the existence of Head of State immunity under customary international law vis-à-vis an international court.”<sup>16</sup> The judgment followed with an exploration of international tribunals as historical precedent, providing examples the Chamber used in drawing its conclusion—including the Military Tribunal at Nuremberg,<sup>17</sup> the International Criminal Tribunals for the former Yugoslavia (ICTY), and International Criminal Tribunal for Rwanda—all of which incorporated provisions barring Head of State immunity.<sup>18</sup>

The Appeals Chamber also noted that while national courts are “an expression of a State’s sovereign power, which is necessarily limited by the sovereign power of the other States,” international courts “act on behalf of the international community as a whole.”<sup>19</sup>

Omar Al Bashir was forcibly removed from power and arrested in a military coup on April 11, 2019,<sup>20</sup> a few weeks before the Appeals Chamber issued its judgment. Until he is transferred to the Hague, his case at the ICC will remain in the pre-trial stage, as the ICC does not try individuals unless they are present in the courtroom.<sup>21</sup> Regardless, Bashir’s terminated status as a sitting head of state will have no effect on the proceedings.<sup>22</sup>

## **II. Developments in the International Criminal Court and Other International Tribunals**

On November 20, 2017, the Prosecutor had requested authorization from Pre-Trial Judges to initiate an investigation into alleged war crimes and crimes against humanity in relation to the armed conflict in the Islamic Republic of Afghanistan, beginning on May 1, 2003, and into similar crimes related to the armed conflict in Afghanistan but allegedly committed in the territory of other States Parties since July 1, 2002.<sup>23</sup> The prospect of an investigation had potential consequences for U.S. military and civilians, and the Central Intelligence Agency officials primarily, as the allegations that

---

15. *Id.* ¶ 2, at 5.

16. *Id.* ¶ 1, at 5.

17. *Id.* ¶ 103.

18. *Id.* ¶ 107, at 54.

19. *Id.* ¶ 115, at 58.

20. Sarah El Sirgany et al., *Sudan’s President Bashir Forced Out In Military Coup*, CNN (Apr. 11, 2019), <https://www.cnn.com/2019/04/11/africa/sudan-unrest-intl/index.html>.

21. *Al Bashir Case*, INT’L CRIM. CT, <https://www.icc-cpi.int/darfur/albashir>.

22. Prosecutor v. Al Bashir, Case No. ICC-02/05-01/09-397 OA2 n.387, at 76 (citing Chet J. Tan Jr., *The Proliferation of Bilateral Non-Surrender Agreements Among Non-Ratifiers of the Rome Statute of the International Criminal Court*, 19 AM. U. INT’L L. REV. 1115, 1138 – 39 (2004)).

23. Situation in the Islamic Republic of Afghanistan, No. ICC-02/17-7, Request for Authorization of An Investigation Pursuant To Article 15, ¶ 1, at 6 (Nov. 20, 2017).

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

were to be investigated included reports of misconduct by those individuals operating in Afghanistan during the relevant period.<sup>24</sup>

Pre-Trial Chamber II unanimously rejected the request of the prosecutor on April 12, 2019.<sup>25</sup> In announcing its decision, the Chamber stated it had thoroughly checked the information submitted by the Prosecutor and considered that the request established a reasonable basis to consider that crimes within the ICC jurisdiction had been committed in Afghanistan, and that potential cases would be admissible before the Court.<sup>26</sup> But the Chamber rejected the request citing as its primary reasons the great length of time which had elapsed since the opening of the preliminary examination in 2006, the numerous changes to the political scene in Afghanistan since then, and the lack of State cooperation that the Prosecutor had received.<sup>27</sup> The Chamber went on to note that the degree of cooperation was likely to be less in the presence of an investigation, and concluded that this lack of cooperation significantly hampered the chances of successful investigation and prosecution.<sup>28</sup> Finally, the Chamber noted the need for the Court to prioritize the use of its resources towards activities that would have better chances of success.<sup>29</sup>

On April 5, 2019, the United States revoked the visa of the Prosecutor of the International Criminal Court, Fatou Bensouda.<sup>30</sup> Additionally, the U.S. Secretary of State, Mike Pompeo, announced in April 2019, that the United States would not cooperate in any investigation were one to be initiated.

On June 7, 2019, the Prosecutor filed a request for leave to appeal the decision rejecting the initiation of an investigation into these matters. In the request, the Prosecutor raised three issues:

1. Whether it was permissible for the Pre-Trial Chamber to determine whether an investigation would serve the “interests of justice” on the preliminary information provided.
2. Whether it was appropriate for a determination on advancing an investigation to be decided based on state cooperation or budgetary considerations.
3. Finally, the Office of the Prosecutor (OTP) argued that the Pre-Trial Chamber departed from consistent practice of the International

---

24. *Id.* ¶ 352, at 171.

25. Situation in the Islamic Republic of Afghanistan, No. ICC-02/17-33, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Islamic Republic of Afghanistan, 32 (Apr. 12, 2019).

26. *Id.* ¶ 48, at 17.

27. *Id.* ¶ 91, at 29.

28. *Id.* ¶ 44, at 16.

29. *Id.* ¶ 90, at 29.

30. Marlese Simons & Megan Specia, *U.S. Revokes Visa of I.C.C. Prosecutor Pursuing Afghan War Crimes*, N.Y. TIMES (Apr. 5, 2019), <https://www.nytimes.com/2019/04/05/world/europe/us-icc-prosecutor-afghanistan.html>.

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

2020]

CRIMINAL LAW 167

Criminal Court by focusing exclusively on the specific incidents identified by the Prosecutor in its initial request.<sup>31</sup>

On September 17, 2019, the Pre-Trial Chamber, with Judge Mindua dissenting, granted leave to the Prosecutor to appeal its decision on two grounds.<sup>32</sup> Specifically, the Pre-Trial Chamber granted leave for the Prosecutor to appeal the issue of whether there existed a necessity or possibility for a Pre-Trial Chamber to carry out an assessment of the “interests of justice,” and which proper and relevant factors a Pre-Trial Chamber must or may consider for the purposes of such assessment.<sup>33</sup> The Appeals Chamber has scheduled oral hearings on the matters under appeal for December 4 to December 6, 2019.<sup>34</sup>

On July 8, 2019, Trial Chamber VI of the International Criminal Court found Bosco Ntaganda guilty of eighteen counts of war crimes and crimes against humanity, committed in Ituri, Democratic Republic of the Congo, between 2002 and 2003.<sup>35</sup> The Trial Chamber found that the Union of Congolese Patriots (UPC) and its military wing, the Patriotic Force for the Liberation of Congo (FPLC), were involved in at least one non-international armed conflict with an opposing party, in the Ituri district of the DRC from on or about August 6, 2002 to on or about December 31, 2003.<sup>36</sup> The conduct of the UPC/FPLC was the intended outcome of a preconceived strategy to target the civilian population, and the crimes committed took place pursuant to a policy of the UPC/FPLC.<sup>37</sup>

Mr. Ntaganda fulfilled a very important military function in the UPC/FPLC.<sup>38</sup> In this context, the Chamber found Mr. Ntaganda guilty of crimes against humanity (murder, attempted murder, rape, sexual slavery, persecution, forcible transfer, deportation, as well as war crimes (murder, attempted murder, intentionally directing attacks against civilians, rape, sexual slavery, ordering the displacement of the civilian population, conscripting and enlisting children under the age of fifteen years into an armed group, and using them to participate actively in hostilities, intentionally directing attacks against protected objects, and destroying the

---

31. Situation in the Islamic Republic of Afghanistan, No. ICC-02/17-34, Request for Leave to Appeal the Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Islamic Republic of Afghanistan, ¶ 27, at 12 (June 7, 2019).

32. Situation in the Islamic Republic of Afghanistan, No. ICC-02/17-62, Decision on the Prosecutor and Victims’ Requests for Leave to Appeal the ‘Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Islamic Republic of Afghanistan, 16 (Sept. 17, 2019).

33. *Id.* ¶ 36, at 14.

34. *Chamber Schedules a Hearing on 4-6 December 2019 to Hear Oral Arguments*, INT’L CRIM. CT. para. 1–2 (Sept. 27, 2019), <https://www.icc-cpi.int/Pages/item.aspx?name=ma244>.

35. Prosecutor v. Ntaganda, Case No. ICC-01/04-02/06-2359, Judgment, p.535–39 (July 8, 2019).

36. *Id.* ¶ 698, at 338.

37. *Id.* ¶ 689, at 336.

38. *Id.* ¶ 321, at 140.

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

168 THE YEAR IN REVIEW

[VOL. 54

adversary's property).<sup>39</sup> The Trial Chamber concluded that the evidence did not sustain all incidents included in the indictment advanced by the Prosecutor, but found that the evidence did demonstrate in the eighteen counts at least part of the charges were proven beyond any reasonable doubt.<sup>40</sup> On November 7, 2019, Ntaganda was sentenced to thirty years of imprisonment.<sup>41</sup>

In other developments, on March 17, 2019, the Philippines announced its withdrawal from the International Criminal Court.<sup>42</sup> The Philippines had announced its intention to withdraw from the Court one year prior.<sup>43</sup> Under Court rules, the withdrawal cannot take effect until one year after notice is given.<sup>44</sup>

At the International Residual Mechanism for Criminal Tribunals, on September 27, 2019, the Appeals Chamber delivered its review decision in the case of *Prosecutor v. Augustin Ndirabatware*.<sup>45</sup> Augustin Ndirabatware served as Minister of Planning as part of the Rwandan Interim Government in April 1994.<sup>46</sup> The Appeals Chamber rejected Ndirabatware's arguments in review proceedings that the four key witnesses, whose testimony supported his convictions for direct and public incitement to commit genocide and instigating, as well as aiding and abetting, genocide, had truthfully recanted their trial testimonies.<sup>47</sup> The Appeals Chamber affirmed that the appeal judgement, sentencing Ndirabatware to thirty years of imprisonment for his crimes, was appropriate.<sup>48</sup>

On March 20, 2019, the Appeals Chamber of the International Residual Mechanism for Criminal Tribunals delivered its judgment on the appeal of the case of *Prosecutor v. Radovan Karadžić*.<sup>49</sup> The Appeals Chamber reversed in part convictions related to the joint criminal enterprise.<sup>50</sup> The Appeals Chamber unanimously dismissed all other aspects of Mr. Karadžić's appeal and affirmed his remaining convictions pursuant to Articles 7(1) and 7(3) of

---

39. *Id.* ¶ 1199, at 526–30.

40. *Id.* ¶ 1201, at 530.

41. *Prosecutor v. Ntaganda*, Case No. ICC-01/04-02/06-2442, Sentencing Judgment, ¶ 248, at 115 (Nov. 7, 2019).

42. Jason Gutierrez, *Philippines Officially Withdraws from the International Criminal Court*, N.Y. TIMES (Mar. 17, 2019), <https://www.nytimes.com/2019/03/17/world/asia/philippines-international-criminal-court.html>.

43. *Philippines Officially Out of the International Criminal Court*, AL JAZEERA (Mar. 17, 2019), <https://www.aljazeera.com/news/2019/03/philippines-officially-international-criminal-court-190317171005619.html>.

44. *Id.*

45. Press Release, International Residual Mechanism for Criminal Tribunals, The Appeals Chamber Renders a Review Judgment In the Case of *Prosecutor v. Augustin Ndirabatware*, U.N. Press Release, para. 1 (Sept. 27, 2019).

46. *Id.* at para. 5.

47. *Id.* at para. 2.

48. *Id.*

49. *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-A, Judgment of the U.N. Intl. Residual Mechanism for Crim. Trib. (Mar. 20, 2019).

50. *See id.* ¶ 775, at 316.

the ICTY Statute for genocide, persecution, extermination, murder, deportation, and other inhumane acts (forcible transfer) as crimes against humanity.<sup>51</sup> The Chamber also affirmed his convictions for murder, terror, unlawful attacks on civilians, and hostage-taking as violations of the laws or customs of war, in relation to his participation in the overarching joint criminal enterprise (JCE), the Sarajevo JCE, the Srebrenica JCE, and the Hostages JCE.<sup>52</sup> The Appeals Chamber dismissed the Prosecution's appeal, except as to the sentence.<sup>53</sup> The Appeals Chamber granted the Prosecution's sentencing appeal, set aside the sentence of forty years of imprisonment, and imposed on Mr. Karadžić a sentence of life imprisonment.<sup>54</sup>

Ongoing trial proceedings continue at the Mechanism for International Criminal Tribunals in the re-trial of *Prosecutor v. Stanišić and Simatović*.<sup>55</sup> The re-trial commenced on June 13, 2017, before the Mechanism for International Criminal Tribunals, and on April 9, 2019, the Trial Chamber issued its oral decision dismissing the motion for acquittal of Franko Simatović.<sup>56</sup> The case is proceeding with presentation of evidence on behalf of the defense.<sup>57</sup>

### III. The Truth Reconciliation and Reparations Commissions of the Gambia

From 1994 to 2017, innumerable human rights violations occurred in the Gambia under the presidency of the former president Yahya Jammeh, who came into power through a military coup on July 22, 1994.<sup>58</sup> After installing a five-member Provisional Ruling Council, Jammeh declared himself president, suspended the constitution, and banned all political activity.<sup>59</sup> Jammeh won the subsequent elections, which were highly controversial and deemed unfair by most human rights watch groups.<sup>60</sup> During his tenure as president of the Republic, Jammeh was seen and held by the general public as a hero.<sup>61</sup> At some point in his career, he declared himself as the only

---

51. *Id.*

52. *Id.*

53. *See id.* at 318.

54. *See id.* ¶ 776, at 317.

55. *See Stanišić and Simatović (MICT-15-96)*, U.N. INTL. RESIDUAL MECHANISM FOR CRIM. TRIB., para. 6, <https://www.irmct.org/en/cases/mict-15-96>.

56. *Id.* at para. 5.

57. *See id.*

58. Ndatu Waweru, *Listen to Yahya Jammeh's Speech after He Overthrew The Gambian Government in 1994*, FACE 2 FACE AFR. (July 22, 2018), <https://face2faceafrica.com/article/listen-to-yahya-jammehs-speech-after-he-overthrew-the-gambian-government-in-1994>.

59. AFRICANA: THE ENCYCLOPEDIA OF THE AFRICAN AND AFRICAN AMERICAN EXPERIENCE, para. 4, at 350 (Henry Louis Gates, Kwame Anthony Appiah eds., 2d ed. 2005).

60. *See Gambia: Ecowas Observers Boycott "Unfair Poll,"* BBC NEWS (Nov. 23, 2011), <https://www.bbc.com/news/world-africa-15851706>.

61. *See generally* Khadija Sharife & Mark Anderson, *How Yahya Jammeh Stole a Country*, OCCRP (Mar. 27, 2019), <https://www.occrp.org/en/greatgambiaeist/how-yahya-jammeh-stole-a-country>.



**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

170 THE YEAR IN REVIEW

[VOL. 54

person with a cure for HIV/AIDs.<sup>62</sup> From these declarations, he drew international attention and Al Jazeera later made a documentary about him.<sup>63</sup> The genuineness of his alleged “cure” was contested by the U.N.<sup>64</sup>

Moreover, people subsequently became aware of ubiquitous human rights violations, such as attacks on the media with an attempt to silence them, extrajudicial killings of members of the Armed Forces, unlawful detention and torture of civilians, killings of West African migrants such as the Ghanaians,<sup>65</sup> and hunting of alleged witches.<sup>66</sup> Consequently, several investigations of human rights abuses were instigated.<sup>67</sup>

On July 20, 2017, Ba Tambadou, the Attorney General of the Gambia, led the foundation for the process of establishing a fact-finding commission: The Truth Reconciliation and Reparations Commission (referred to as the TRRC hereinafter).<sup>68</sup>

In December 2017, the National Assembly passed the TRRC Act,<sup>69</sup> which mandated that the commission investigate and establish an impartial record of the nature, causes, and extent of human rights violations committed during the period July 1994 to January 2017.<sup>70</sup> The purpose of the TRRC Act was to promote healing and reconciliation, respond to the needs of the victims, address immunity, and prevent repetition of the violations and abuses suffered.<sup>71</sup> The Commission was mandated to make recommendations for the establishment of appropriate preventive mechanisms, including institutional and legal reform.<sup>72</sup> Additional aims of the TRRC Act were to establish and make known the fate or whereabouts of disappeared victims, to provide victims an appropriate opportunity to relate their own accounts of the violations, and to grant reparations to victims in appropriate cases.<sup>73</sup>

---

62. *The President Who Made People Take His Bogus HIV Cure*, BBC NEWS (Jan. 22, 2018), <https://www.bbc.com/news/stories-42754150>.

63. See Andrew Simmons, *Meet the President – Yahya Jammeh*, AL JAZEERA (May 14, 2007), <https://www.aljazeera.com/news/africa/2007/05/200852518371536606.html>; see also Al Jazeera English, *Meet the President - Yahya Jammeh - 14 May 07 - Part 1*, YOUTUBE (Feb. 10, 2009), <https://youtu.be/jqFW124WYGc>.

64. See *The President Who Made People Take His Bogus HIV Cure*, *supra* note 62.

65. See *Jammeh Ordered Killings of Journalist, U.S. Citizens and Migrants*, AFR. NEWS (Sept. 26, 2019), <https://www.africanews.com/2019/07/26/investigating-jammeh-s-reign-soldier-says-he-was-ordered-to-kill-migrants/>.

66. See Reyhanna Masters, *Tears with Truth: The Gambia’s Truth, Reconciliation and Reparations Commission*, IFEX (Nov. 25, 2019), <https://ifex.org/tears-with-truth-the-gambias-truth-reconciliation-and-reparations-commission/>.

67. See *Jammeh Ordered Killings of Journalist, U.S. Citizens and Migrants*, *supra* note 65.

68. See Masters, *supra* note 66.

69. Brendan Holman et al., *Access to Justice in the Gambia*, UNIV. OF PENN. L. SCH. 14 (Sept. 2019), <https://www.law.upenn.edu/live/files/9725-working-report-access-to-justicegambia>.

70. See *id.*

71. See *id.*

72. See Masters, *supra* note 66, at para. 11–12.

73. See Holman et al., *supra* note 69, at 14.

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

2020]

CRIMINAL LAW 171

A. THE EIGHTH AND NINTH SESSIONS OF THE TRRC

On October 3, 2019, the TRRC completed its eighth three-week session.<sup>74</sup> During that session, twenty-five witnesses appeared, bringing the total number of witnesses who have appeared before the TRRC to 129.<sup>75</sup> Thirty-one of those were perpetrators and alleged perpetrators, the rest were mostly victims, including twenty-one women.<sup>76</sup> The eighth session focused on student demonstrations from April 10 to April 11, 2000,<sup>77</sup> in which fourteen students and one Red Cross volunteer were killed by security forces and two children were accidentally killed. Many more suffered injuries and trauma.<sup>78</sup>

The Ninth Session was held from October 14 to October 31, 2019.<sup>79</sup> During this period, the Commission heard testimony concerning sexual and gender-based violence.<sup>80</sup> The witnesses included both direct and indirect victims, security officers, civil servants, and private civilians.<sup>81</sup> Topics to be covered in the tenth session will include the 2009 witch-hunting.<sup>82</sup>

1. *The Perpetrators*

Jammeh had a hit squad which was colloquially known as the Jungular Squad.<sup>83</sup> The most notorious were Malick Jatta and Alieu Jeng, who testified at the commission;<sup>84</sup> however, the most anticipated testimony of these perpetrators was that of Brigadier General, Alagi Martin.<sup>85</sup> He is known for the phrase: “Oga before God” (meaning the president or boss before God).<sup>86</sup> Like most men in Jammeh’s inner circle, Martin instilled fear in people; his

---

74. TRUTH, RECONCILIATION & REPARATIONS COMM’N, TRRC DIGEST, (8th ed. 2019), <https://www.anekeed.org/archives>.

75. *Id.*

76. TRRC Hearing On Sexual & Gender Based Violence Commences With Horrific Testimonies, FOROYAA (Oct. 15, 2019), <https://foroyaa.gm/trrc-hearing-on-sexual-gender-based-violence-commences-with-horrific-testimonies/>.

77. See TRUTH, RECONCILIATION & REPARATIONS COMM’N, *supra* note 74, at 14.

78. *See id.*

79. Statement by the Chairman, Dr. Lamin J. Sise, at the Opening of the 10th Session of the TRRC’s Public Hearings November 11, 2019, TRUTH, RECONCILIATION, AND REPARATIONS COMM’N UPDATES, para. 1, <http://www.trrc.gm/updates/>.

80. TRRC to Start Sessions on Witch-Hunt, GAM. RADIO STATIONS (Nov. 5, 2019), <https://www.news.thegambiaradio.com/trrc-to-start-sessions-on-witch-hunt/>.

81. See TRRC Hearing On Sexual & Gender Based Violence Commences With Horrific Testimonies, *supra* note 76, at para. 2.

82. See TRRC to Start Sessions on Witch-Hunt, *supra* note 80, at para. 1.

83. Yankuba Jallow, *Gambia: “Jungler” Alieu Jeng Admits Participating in Killing of Several People*, ALL AFR. para. 1 (Aug. 20, 2019), <https://allafrica.com/stories/201908200743.html>.

84. *See id.* at para. 2, 7.

85. Lamin Njie, “It Was Allah Before God”: General Martin Makes Embarrassing Gaffe During Relentless TRRC Questioning, FATU NETWORK (June 20, 2019), <https://fatunetwork.net/it-was-allah-before-god-general-martin-makes-embarrassing-gaffe-during-relentless-trrc-questioning/>.

86. *See id.*

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

172 THE YEAR IN REVIEW

[VOL. 54]

orders, whether legal or illegal, were obeyed.<sup>87</sup> His tools of torture included, but were not restricted to, beating with an AK47, kicking, electrocuting, and suffocating with plastic bags; however, he argued that he did not torture any person but he admitted that he had “beat his victims mercilessly.”<sup>88</sup>

2. *Reluctant and Recalcitrant Witnesses*

Although many of Jammeh’s cronies were ready to testify at the TRRC, some were reluctant to do so and stated that they did not recognize the legitimacy of the TRRC.<sup>89</sup> Retired Captain Yankuba Touray, a member of the defunct Armed Forces Provisional Ruling Council (AFPRC), appeared before the commission on June 26, 2019, and claimed that he had constitutional immunity for all crimes that he might have committed in concert with the former president.<sup>90</sup> He therefore refused to recognize the constitutionality of the TRRC’s proceedings and walked out of the room; the Chairman was left with no choice but to order his arrest.<sup>91</sup>

3. *The Vice President’s Testimony*

Many awaited the direct testimony of Isatou Njie Saidy, the former Vice President of the Gambia and “Mother of the Nation” as she was described during the trial.<sup>92</sup> Saidy was serving as Acting President at the time of the student demonstrations from April 10 to April 11, 2000, where fourteen students and one Red Cross volunteer were killed.<sup>93</sup> The President had travelled to Cuba and the Vice President was put in charge of the administrative affairs of the state.<sup>94</sup> She refused to take responsibility for the killings and, to some extent, she feigned a lack of memory, which the Lead Counsel, Essa M. Faal, described as a case of “selective memory.”<sup>95</sup>

---

87. See generally *id.*

88. Kebba Jeffang, *Sana Sabally Was Mercilessly Beaten, but Not Tortured – Gen. Albagie Martin Tells TRRC*, CHRONICLE (June 20, 2019), <https://www.chronicle.gm/sana-sabally-was-mercilessly-beaten-but-not-tortured-gen-alhagie-martin-tells-trrc/>.

89. See Kaddy Jawo, *TRRC Orders Arrest of Former Junta Member Yankuba Touray*, GAM. TIMES (June 26, 2019), <https://www.thegambiatimes.com/trrc-orders-arrest-of-former-junta-member-yankuba-touray/>.

90. See *id.*

91. See *id.*

92. See generally, Basidia M. Drammeh, *Opinion: VP Njie’s Testimony: Key Lessons*, GUNJURONLINE (Oct. 8, 2019), <https://www.gunjuronline.com/post/opinion-vp-njie-s-testimony-key-lessons/>.

93. See Mustapha Darboe, *The Selective Memory of Gambia’s Former Vice-President*, JUSTICEINFO.NET (Oct. 7, 2019), <https://www.justiceinfo.net/en/truth-commissions/42544-selective-memory-gambia-former-vice-president.html>.

94. See *id.*

95. See *id.*

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

2020]

CRIMINAL LAW 173

4. *The Testimony of Former Defense Minister Edward Singbateh*

In his testimony on October 17, 2019, Edward Singbateh, former Defense Minister and close associate of Yahya Jammeh, admitted to ordering the execution of several soldiers on November 11, 1994.<sup>96</sup> Although he admitted many allegations, he denied many as unfounded and baseless.<sup>97</sup>

5. *Reparations*

On October 7, 2019, the Government of the Gambia, through the Ministry of Justice, announced a contribution of fifty million dalasis to the TRRC Victim Support Fund.<sup>98</sup> Sections 13 and 20 of the TRRC Act provide for reparations for the victims of crimes directed by President Jammeh's leadership.<sup>99</sup> The fifty million dalasis was paid out of the proceeds of sale of former president Jammeh's assets, which are currently being sold in accordance with the recommendations of the Janneh Commission.<sup>100</sup> Also, some individuals made personal contributions,<sup>101</sup> such as the Lead Counsel, Essa M. Faal, who donated a plot of land to Mafugi Sonko (a former driver in The Gambian Army).<sup>102</sup> Additionally, the TRRC Secretariat has employed some victims in the Victim Support Unit.<sup>103</sup>

---

96. See Mustapha Darboe, *Gambia: Top Leader in 1994 Coup Admits to Murder*, JUSTICEINFO.NET (Oct. 18, 2019), <https://www.justiceinfo.net/en/truth-commissions/42654-gambia-top-leader-1994-coup-admits-murder.html>.

97. See *id.*

98. Yankuba Jallow, *TRRC Receives D50 Million From Government*, FOROYAA (Oct. 8, 2019), <https://foroyaa.gm/trrc-receives-d50-million-from-government/>.

99. Truth, Reconciliation, Reparations Commission Act, 2017 § 13(d) (Gam.).

100. See Jallow, *supra* note 98.

101. See *id.*

102. Momodou Jarju, *Gambia: TRRC Witness Receives Cash Donation, Land*, ALL AFR. (Mar. 29, 2019), <https://allafrica.com/stories/201903290787.html>.

103. *Media Advisory: Government Contributes D50 Million To TRRC Victim Support Fund*, FREEDOM NEWSPAPER (Oct. 7, 2019), <https://www.freedomnewspaper.com/2019/10/07/media-advisory-government-contributes-d50-million-to-trrc-victim-support-fund/>.

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

**PUBLISHED IN COOPERATION WITH**  
**SMU DEDMAN SCHOOL OF LAW**