



## International System of Justice for Women Perpetrators of International Crimes

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**Abstract.** Women participate in crimes. The majority of perpetrators of the most serious international crimes are men, the largest group of victims are women, children, and other persons belonging to vulnerable groups. However, in contemporary armed conflicts and situations involving mass human rights violations, these roles are often reversed. Not only are many men and boys among the victims of gender-based and sexual crimes, but it is also not uncommon for women to commit such crimes. Examples include events related to conflicts at the end of the 20th century and the beginning of the 21st century and cases pending before international criminal tribunals, as mentioned in the following text. The aim of this study is not only to highlight female perpetrators of international crimes and proceedings before international courts, but also to attempt to answer why, despite the unfortunate visibility of women's participation in crimes, proceedings before international courts are rare. The following research methods were used in this text: historical-legal, theoretical-legal, and, to a lesser extent, comparative. To summarize the problem presented, it should be stated that women are less visible because they do not hold high office, do not make key decisions, and are less likely to give orders. And given that international tribunals primarily prosecute those most responsible, women are not among them. It does not mean, however, that they do not commit crimes. Nor does it mean that they do not favor perpetrators, that they do not support and help them, that they just stand by.

**Keywords:** women-perpetrators, genocide, crimes against humanity, international criminal tribunals, international responsibility of individuals.

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## INTRODUCTION

Women – influential, in the highest positions, yet accused of international crimes. It is nothing new that women participate in crimes; history knows many examples, and this was very evident during World War II in concentration camps, where female guards often matched even the most brutal of their male counterparts in cruelty.

Many authors compare the participation of women in the war machine as perpetrators of crimes during World War II and in the genocide of the Tutsis in Rwanda. The situations are, of course, completely different and challenging to compare. And although there were more female perpetrators of international crimes in various regions and conflicts, we are talking here about those whose responsibility has been, is, or will be brought before international justice. It is, as it turns out, neither common nor obvious.

It would certainly not be an exaggeration or an abuse to say that the majority of perpetrators of the most serious international crimes are men, and that the largest group of victims are women, children, and other persons belonging to vulnerable groups. Similarly, in the case of crimes of a sexual nature, the perpetrators are primarily men, and the victims are women and girls. However, in contemporary armed conflicts and situations involving mass human rights violations, these roles are often reversed. Not only are many men and boys among the victims of gender-based and sexual crimes, but it is also not uncommon for women to commit such crimes. Examples include events related to conflicts at the end of the 20th century and the beginning of the 21st century, as well as cases pending before the International Criminal Tribunal for the former Yugoslavia - ICTY (the Biljana Plavšić case), the International Criminal Tribunal for Rwanda - ICTR (the Pauline Nyiramasuhuko case), the Extraordinary Chambers in the Courts of Cambodia -ECCC (the Ieng Thirith case), and the International Criminal Court - ICC (the Maria Lvova-Bielova case). It is worth paying particular attention to those women who have been accused of the most serious crimes, especially since in recent decades, discussions have emerged in feminist literature on, among other things, war rape, about women as perpetrators of this type of violence. It is vital given that the ICTY and ICTR have considered two high-profile cases of women accused of genocidal rape. Not only is there a lack of research on women who commit acts of violence, but there is virtually no research on women facing trial in various international criminal proceedings. Laura Sjoberg and Caron Gentry have attempted such an analysis concerning Biljana Plavšić, a member of the Presidency of the Republika Srpska, and Pauline Nyiramasuhuko, Minister for Family and Women's Development in Rwanda. Their 2007 book, *Mothers, Monsters Whores: Women's Violence in Global Politics*, tells the story of these women's involvement in genocidal sexual violence (Sjoberg & Gentry, 2007)<sup>1</sup>. The authors concluded that descriptions of women who were victims of these conflicts often obscure or mask their pain. They argue that even descriptions of women as "agents" are frequently highly gendered, limiting their roles and obscuring their choices (Sjoberg & Gentry, 2007, p. 172; Marochkin & Nelaeva, 2014, p. 475). It is therefore worth taking a closer look at these issues, supplementing the picture of this type of perpetrator with examples from the Khmer Rouge regime in Cambodia and Russia's aggression against Ukraine after 2014.

The aim of this study is not only to highlight female perpetrators of international crimes and proceedings before international courts, but also to attempt to answer why, despite the unfortunate visibility of women's participation in crimes, proceedings before international courts are rare.

<sup>1</sup> *Mothers, Monsters, Whores* provides an empirical study of women's violence in global politics. The book looks at military women who engage in torture; the Chechen 'Black Widows'; Middle Eastern suicide bombers; and the women who directed and participated in genocides in Bosnia and Rwanda. Sjoberg and Gentry analyse the biological, psychological and sexualized stereotypes through which these women are conventionally depicted, arguing that these are rooted in assumptions about what is 'appropriate' female behaviour. What these stereotypes have in common is that they all perceive women as having no agency in any sphere of life, from everyday choices to global political events.

## 1. THE ESSENCE OF THE PHENOMENON

In many armies, especially in rebel forces around the world, women and girls are often assigned administrative or support roles—secretaries, cleaners, cooks, porters, or sex slaves. This type of support was usually forced, but sometimes it was voluntary. The contribution of these women and girls was often crucial, especially for rebel forces, which frequently turned them into child soldiers. This term refers to all members of the armed forces under the age of 18, regardless of whether they actively participated in combat (Nowakowska-Małusecka, 2012). Many of them (consciously or not) support genocide and other international crimes (Smeulers, 2015, p. 214-215). Many girl soldiers fought in armies that committed mass atrocities. Although there are direct reports of women committing international crimes in this way, it is likely that women were also actively involved in these crimes. For example, there were small units of girls in Sierra Leone alongside the infamous small units of boys. Female combatants have operated or continue to operate in Peru, Liberia, Sri Lanka, Eritrea, Ethiopia, Nicaragua, Vietnam, El Salvador, Colombia, Guatemala, Nicaragua, Sierra Leone, Sri Lanka, and Uganda. It is also known that many female spies and terrorists have participated in terrorist attacks that resulted in their deaths (Smeulers, 2015, pp. 221-222).

Not only are men perpetrators of mass violence in times of war, but they are also often its victims, and women are not only victims of war and mass violence, but can also be perpetrators. The best documented example of women's involvement in mass violence is undoubtedly the genocide against Tutsis in Rwanda, in which many women played a significant role (Smeulers, 2015, p. 210). The literature indicates that gender norms continue to influence female perpetrators who feel they have experienced gender-based discrimination and stigmatization due to their (alleged or proven) involvement in genocide (Jessee, 2015, pp. 60-80). Nicole Hogg has previously reflected on the role of women as perpetrators of international crimes in Rwanda, stating that female perpetrators often denied their involvement in the genocide because it was inconsistent with expectations of "acceptable" behavior for Rwandan women (Hogg, 2010, pp. 71-74). Interestingly, there seems to be a widespread view that men who commit genocide are considered "normal" perpetrators, while women who commit genocide are considered "aberrant, unusual, or inhuman" (Brown, 2020, p. 165).

The most typical role played by women during periods of mass violence is that of silent observer and supporter of the regime. Although such a supporting role does not entail any criminal responsibility for the crimes committed, it should not be underestimated (Smeulers, 2015, p. 211). It constitutes acceptance of what is wrong and subsequently encourages the escalation of violence. Women who were initially victims may also become perpetrators, living with unresolved trauma. One example from the period of conflict in the former Yugoslavia is the case of Rasema Handanović, who on 30 April 2012, was convicted by a Bosnian court of war crimes—the first woman to be sentenced to five and a half years in prison for killing six men in April 1993. Rasema Handanović had previously lost many members of her family and was raped during the war (Smeulers, 2015, p. 220; Abrasowicz & Koch, 2018)<sup>2</sup>.

When examining war and genocide, it is clear that violence is often gender-based, as it is directed not only against specific national, ethnic, racial, or religious groups, but also against men or women within a given group. Essentially, all men—even those who are unarmed—are treated as soldiers, and women as civilians (Smeulers, 2015, p. 209). As S.E. Brown points out, the problem with well-known female perpetrators, such as Ilse Koch, the wife of the Buchenwald camp commander (nicknamed the "Buchenwald witch" due to her sadism), or Pauline Nyiramasahuko, a former government minister in Rwanda, is that they can be mistakenly thought of as "deviant anomalies" rather than as illustrations of women's capacity for genocide, unique only in terms of the power they wielded. This approach prevents us from examining what half the population did and renders them invisible when exploring the narrative of genocide. Tens of thousands of "ordinary" women participated in the Holocaust, from

<sup>2</sup> <https://balkaninsight.com/2012/04/30/five-and-a-half-years-for-rasema-handanovic/> (access: 13.05.2025).

typing orders to accompanying troops that carried out the massacres to running concentration camps. It is estimated that around 12 million women worked in various positions in National Socialist organizations that supported the genocidal regime. Similarly, nearly 100,000 women were tried by gacaca courts in Rwanda for crimes of genocide, including participation in killing, revealing people in hiding, and occasional direct participation in acts of violence. However, when examining narratives and conducting research on women perpetrators of the Holocaust and genocide in Rwanda, the view is colored by stereotypes, assumptions, and gender norms (Brown, 2020, pp. 172-173). It is difficult to estimate the total number of female perpetrators of the Holocaust. Nevertheless, most of them did not face justice. They participated in several post-war trials that focused on lower-ranking officials. But this is also the result of women's efforts to deny their participation, obscure their role, and evade justice (Brown, 2020, p. 179). Unique to Rwanda are the gacaca courts, a formalized hybrid judicial mechanism that identified and tried female perpetrators across the country at a higher rate than the justice system in other regions. However, researchers are unable to determine the exact number of women who participated in the genocide and their crimes. In June 2012, the gacaca courts were closed, and a summary report showed that of the 1,003,227 suspects tried in more than 10,000 courts across the country, 96,653 were women. The vast majority of trials, over 90 percent, focused on crimes against property, including looting and theft. Some believe that the gacaca courts did not fully reveal the extent of women's participation in the genocide (Brown, 2020, p. 180).

## 2. BILJANA PLAVČIĆ – FEMALE LEADER

Biljana Plavčić was one of the most important political figures among Bosnian Serbs from 1990 until the end of the war; she exercised *de facto* control and authority over members of the Bosnian Serb armed forces during the conflicts in the former Yugoslavia. Before the war, she had a distinguished academic career as a professor of natural sciences and dean of a faculty at the University of Sarajevo. She was not involved in politics until she joined the Serbian Democratic Party in July 1990. However, she quickly became a prominent party member and was elected representative of Serbia in the Presidency of the Socialist Republic of Bosnia and Herzegovina. She was also a member of the collective and extended Presidency of the Republika Srpska<sup>3</sup>.

The initial indictment against Plavčić was approved on 7 April 2000. Still, after considering the Prosecutor's request, Biljana Plavčić was indicted together with Momčilo Krajišnik in a supplementary consolidated indictment filed on 7 March 2002 following the decision of the Trial Chamber of 4 March 2002 (The Prosecutor v. Momčilo Krajišnik and Biljana Plavčić, IT-00-39&40, *Amended Consolidated Indictment*, 7.03.2002).

The Prosecutor and the Tribunal examined Biljana Plavčić's role. On the one hand, Plavčić accepted and supported the goals of the Bosnian Serbs and contributed to their achievement; on the other hand, she did not participate in the conceptualization and planning. The accused supported these goals in various ways, including through her role as co-president, maintaining the government and military at the local and national levels, through which the goal was implemented. In her speeches, she encouraged participation in the purges, claiming that force was justified because some territories in Bosnia and Herzegovina were legally Serbian. She proclaimed that Serbs should fear genocide by Bosnian Muslims and Bosnian Croats, and therefore invited and encouraged paramilitary forces from Serbia to assist Bosnian Serbs in carrying out ethnic cleansing. Plavčić ignored reports of widespread ethnic cleansing and publicly justified it. She was aware that key leaders of the Serbian Republic of Bosnia and Herzegovina ignored these crimes, even though they had the opportunity to prevent them and punish the perpetrators<sup>4</sup>.

<sup>3</sup> <https://www.icty.org/en/sid/8292> (access: 29.04.2025).

<sup>4</sup> <https://www.icty.org/en/sid/8292> (access: 29.04.2025).

The indictment contained eight charges against Plavšić, who was held individually responsible (under Article 7(1) of the Statute of the International Criminal Tribunal for the former Yugoslavia, ICTY<sup>5</sup>) and as a superior (under Article 7(3) of the ICTY Statute), in the opinion of the Prosecutor, committed the following acts:

- genocide and/or complicity in genocide (Article 4 of the ICTY Statute);
- extermination, murder, persecution on political, racial, and religious grounds, deportation, and other inhumane acts as crimes against humanity (Article 5 of the ICTY Statute),
- murder as a violation of the laws and customs of war (Article 3 of the ICTY Statute).

After Plavšić pleaded guilty to one of the charges—persecution on political, racial, and religious grounds as a crime against humanity—the Trial Chamber ordered the separation of Krajišnik's trial from the proceedings concerning the judgement against Plavšić.

The Prosecutor emphasized that the scale of the actions in which the accused participated was enormous and covered a vast area, resulting in the expulsion of hundreds of thousands of people and the death of many. The action was carried out with particular brutality and cruelty, including torture and sexual violence. The Trial Chamber found that this was an act of exceptional gravity, as it involved ethnic cleansing that led to the death of thousands of people and the expulsion of thousands more in dramatic circumstances. The scale of the persecution also illustrates the gravity of the crime, the number of people killed, deported, and forcibly expelled, the inhuman treatment of detainees, and the scale of the wanton destruction of property and religious sites<sup>6</sup>.

As co-chair of the Serbian leadership, acting individually and in concert with others as part of a joint criminal enterprise, Biljana Plavšić participated in, planned, incited, organized, and carried out the persecution of Bosnian Muslims, Bosnian Croats, and other non-Serb population groups in 37 municipalities in Bosnia and Herzegovina.

In his closing statement, the Prosecutor stated that it was the task of the Trial Chamber to deliver a judgement that would take into account the conduct of the accused not only towards the direct victims but also towards humanity as a whole, in a campaign of persecution that destroyed countless lives and communities. While accepting that the scale of these crimes justifies the Prosecutor's request, the Trial Chamber also bears in mind that these crimes did not affect an anonymous group, but individual men, women, and children who were abused, raped, tortured, and killed. Instead of preventing or mitigating the crimes, the accused encouraged and supported those responsible. Any sentence must reflect this factor. Excessive leniency would be inappropriate even in the face of a guilty plea. No sentence imposed by the Trial Chamber can fully reflect the horror of what happened or the terrible fate of thousands of victims (The Prosecutor v. Biljana Plavšić, Case No. IT-00-39&40/1, Sentencing Judgement, 27.02.2003)<sup>7</sup>.

The Trial Chamber considered several factors in determining the sentence, including aggravating and mitigating circumstances. First, the Trial Chamber found that Plavšić had admitted to crimes of the utmost gravity, including ethnic cleansing, which led to the deaths of thousands of people and the expulsion of thousands more. About aggravating circumstances, the Trial Chamber found that one such factor was Plavšić's high position and concluded that, although she was not at the heart of the leadership, did not devise the plan that led to the crimes, and played a lesser role in its implementation than others, she was in the Presidency, the highest civilian authority, encouraged and supported the purges, as well as her participation in the Presidency and her statements. Concerning mitigating circumstances, the Trial Chamber found that these included her admission of guilt, remorse, and reconciliation before the start of the trial. The Trial Chamber found that Plavšić's admission of guilt and acceptance of responsibility, particularly in light of her previous position, should promote reconciliation in Bosnia and

<sup>5</sup> Statute of the International Criminal Tribunal for the Former Yugoslavia. UN Doc. S/25704, 3.05.1993 and SC Res. S/Res/827 (1993), 25.05.1993 with further amendments.

<sup>6</sup> <https://www.icty.org/en/sid/8292> (access: 2.05.2025).

<sup>7</sup> See also: <https://www.icty.org/en/sid/8292> (access: 2.05.2025).

Herzegovina and throughout the region. On 27 February 2003, the Trial Chamber issued a judgement convicting Plavšić based on individual criminal responsibility (Article 7(1) of the Statute of the Tribunal) for persecution on political, racial, and religious grounds, constituting crimes against humanity. The sentence was 11 years' imprisonment. Neither party appealed against the conviction, and on 26 June 2003, Plavšić was transferred to Sweden to serve her sentence. The time spent in detention, i.e., 245 days, was credited towards her sentence. On 14 September 2009, Biljana Plavšić was released early with effect from 27 October 2009 (*Bosnia and Herzegovina*, pp. 5-6).

### **3. PAULINE NYIRAMASUHUKO – A WOMAN, A MOTHER, AND A MINISTER IN THE GOVERNMENT**

On the evening of 6 April 1994, a plane carrying Juvenal Habyarimana, the president of Rwanda, and Cyprien Ntaryamira, the president of Burundi, was shot down over Kigali. These assassinations shattered the fragile peace established under the Arusha Agreement, which had been negotiated in the hope of ending the armed conflict between the Rwandan Patriotic Front and the Rwandan government. Over the next 100 bloody days, the country was engulfed in unimaginable violence. Genocide, crimes against humanity, and war crimes were committed on a horrific scale, primarily against Tutsi civilians and moderate Hutus. The perpetrators included soldiers, gendarmes, politicians, *Interahamwe* militias, and ordinary citizens (Nowakowska-Malusecka, 2000, pp. 43-51).

Hutu extremists murdered between 800,000 and one million men, women, and children—the kill ratio is four times higher than at the height of the Nazi Holocaust<sup>8</sup>.

The ICTR was the first international tribunal in history to issue judgements on genocide and the first to interpret the definition of this crime based on its Statute and the 1948 Convention on the Prevention and Punishment of the Crime of Genocide<sup>9</sup>. The defendants included high-ranking military and government officials, politicians, people in business, as well as clergy, militants, and media leaders. It was also the first international tribunal to define rape in international criminal law and recognize it as a means of committing genocide (the case of Jean-Paul Akayesu - The Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-T, Judgement, 2.09.1998).

It was also before this Tribunal that the first woman was tried for genocide and ultimately convicted of rape as a crime against humanity. It was the so-called *Butare case*, which involved six defendants: Pauline Nyiramasuhuko, former Minister for Women's Affairs and Development; her son, Arsene Shalom Ntahobala, a student in 1994; Sylvain Nsabimany, prefect of Butare from 19 April to 17 June, 1994; Alphonse Ntezirayayo, a lieutenant colonel in the armed forces who was appointed prefect of Butare on 17 June, 1994; Joseph Kanyabashi, long-time mayor of the municipality of Ngoma (from 1974 to July 1994), and Elie Ndayambaje, former mayor of the municipality of Muganza, who was reappointed mayor on 18 June, 1994. The Prosecution charged each of them with conspiracy to commit genocide, genocide, complicity in genocide, crimes against humanity consisting of extermination, murder, persecution, and other inhumane acts, and attempted murder as a war crime. All except Ntahobala were also charged with direct and public incitement to commit genocide. Finally, the Prosecution charged Nyiramasuhuko and Ntahobala with rape as a crime against humanity and attacks on personal integrity as a war crime. The accused were charged with both direct and command responsibility (The Prosecutor v. Pauline Nyiramasuhuko, Arsene Shalom Ntahobala, Sylvain Nsabimana, Alphonse Ntezirayayo, Joseph Kanyabashi, Elie Ndayambaje, Case No. ICTR-98-42-T, Summary of Judgement and Sentence, 24.06.2011, paras. 2-3).

Evidence showed that between 1 April and 14 July 1994, the Interim Government, of which Nyiramasuhuko was a member, issued instructions to encourage the population to pursue and take action against the "enemy" and

<sup>8</sup> <https://unictr.irmct.org/en/genocide> (access: 3.01.2025).

<sup>9</sup> UN Convention on the Prevention and Punishment of the Crime of Genocide of 9.12.1948, UN TS 1951, No. 1021.

its "accomplices". It was how the Tutsi were referred to in general. Evidence showed that on April 16 or 17, Nyiramasuhuko agreed with other members of the Interim Government to remove Prefect Habyalimana from Butare Prefecture, who was an obstacle to the killing of the Tutsi. As a member of the Interim Government, Nyiramasuhuko participated in numerous cabinet meetings at which the massacre of Tutsis was discussed. She participated in decisions that triggered the wave of killings in the Butare prefecture. Taking all these elements into account, the Chamber concluded that there could be only one reasonable conclusion: Nyiramasuhuko participated in a conspiracy to destroy, in whole or in part, the Tutsi ethnic group, thereby committing genocide against the Tutsi in the Butare prefecture (The Prosecutor v. Pauline Nyiramasuhuko et al., para 7).

Nyiramasuhuko ordered the *Interahamwe* militia to rape Tutsi women, and Ntahobali assisted and participated in the rape of one of the victims by seven members of the *Interahamwe* (The Prosecutor v. Pauline Nyiramasuhuko et al., para 24).

The Chamber noted that the indictment charged Nyiramasuhuko and Ntahobali with rape. However, the Chamber concluded that the indictment against these individuals was flawed because it did not recognize rape as genocide. Although the evidence in the case indicated that rape was used as a form of genocide, the Chamber concluded that it would be unfair to hold the accused responsible for committing an act of which they did not have sufficient knowledge. Therefore, the Chamber did not take rape into account in its assessment of genocide and did not issue a conviction for genocide based on rape (The Prosecutor v. Pauline Nyiramasuhuko et al., para 25).

The Chamber noted that rape had been identified in support of the charges of crimes against humanity, and that the outrages upon personal dignity had been identified as a war crime. The Chamber therefore considered rape in the context of those charges. In this regard, the Chamber noted serious negligence on the part of the Prosecution. Although the evidence clearly showed Nyiramasuhuko's direct role in ordering the *Interahamwe* to rape Tutsi women in the Butare prefecture office, the Prosecution charged Nyiramasuhuko only with responsibility for rape as a superior. The Chamber therefore found that between the end of April and mid-June 1994, Nyiramasuhuko, Ntahobali, *Interahamwe*, and soldiers went to the Butare prefecture office to kidnap hundreds of Tutsis. Many were physically assaulted, raped, abducted, and taken to various locations in Butare, where they were killed. During these repeated attacks on defenseless civilians, both Nyiramasuhuko and Ntahobali ordered killings and rapes. Ntahobali additionally committed rapes, and Nyiramasuhuko aided and abetted the rapes, and was therefore responsible as a superior for the rapes committed by members of the *Interahamwe* (The Prosecutor v. Pauline Nyiramasuhuko et al., para 26-27).

After considering all the evidence and submissions of the parties, the Trial Chamber unanimously found Pauline Nyiramasuhuko guilty of conspiracy to commit genocide. The Chamber found her guilty of agreeing with members of the Interim Government to kill Tutsis in the Butare prefecture. The Chamber also found her guilty of ordering the killing of Tutsis seeking refuge in the Butare prefecture office, which was classified as genocide. The Tribunal also found her guilty, as a superior, of acts of rape committed by members of the *Interahamwe* as crimes against humanity, and of persecution as a crime against humanity, as well as violence to life and outrages upon personal dignity as war crimes (The Prosecutor v. Pauline Nyiramasuhuko et al., para 38-48).

In connection with the commission of these crimes, the Trial Chamber found Pauline Nyiramasuhuko guilty of conspiracy to commit genocide, genocide, crimes against humanity consisting of extermination, rape, and persecution, and war crimes consisting of violence against life and attacks on personal dignity. Considering all relevant circumstances, the Chamber sentenced the accused to life imprisonment for these crimes.

Following the appeal proceedings, the Appeals Chamber upheld the conviction of Pauline Nyiramasuhuko for conspiracy to commit genocide under Article 6(1) of the ICTR Statute<sup>10</sup>, genocide and extermination as crimes

<sup>10</sup> Statute of the International Criminal Tribunal for Rwanda. Annex to the SC Resolution S/Res/955 (1994), 8.11.1994 with further amendments.

against humanity, as well as attacks on life, health, and physical and mental well-being as serious violations of Article 3 common to the 1949 Geneva Conventions<sup>11</sup> and Protocol II to these conventions of 1977<sup>12</sup>, under Article 6(1) of the ICTR Statute in the form of issuing an order to kill Tutsis, as well as for rape as a crime against humanity and attacks on personal dignity as serious violations of Article 3 common to the 1949 Geneva Conventions and the 1977 Additional Protocol II to the Geneva Conventions. It was the responsibility of a superior, under Article 6(3) of the Statute, for failing to prevent and punish rapes committed by the *Interahamwe*. However, the Appeals Chamber changed the sentence from life imprisonment to 47 years' imprisonment (The Prosecutor v. Pauline Nyiramasuhuko, Arsene Shalom Ntahobali, Sylvain Nsabimana, Alphonse Ntezirayayo, Joseph Kanyabashi, Elie Ndayambaje, Case No. ICTR-98-42-A, Judgement, Vol. II, 14.12.2015, para 3539).

In this way, Pauline Nyiramasuhuko became the first woman to be indicted and arrested by an international criminal court. After her trial, she remains the first woman convicted of genocide, conspiracy to commit genocide, and rape as a crime against humanity<sup>13</sup>.

#### 4. IENG THIRITH – A MEMBER OF THE KHMER ROUGE GOVERNMENT

The reference to the case of Ieng Thirith here is more of an organizational one, to complete the picture of women who faced international justice at the turn of the 20th and 21st centuries. However, this case is not particularly significant from the point of view of international criminal law. Still, it once again illustrates the participation of women in the planning and commission of international crimes on a massive scale.

Ieng Thirith (1932-2015) was Minister of Social Affairs of Democratic Kampuchea. She was indicted by the Extraordinary Chambers in the Courts of Cambodia<sup>14</sup> for genocide, crimes against humanity, serious violations of the Geneva Conventions on the protection of victims of war, and crimes under the Cambodian Penal Code. She was deemed unfit to stand trial and remained under judicial supervision until her death<sup>15</sup>. It was case 002, in which charges of crimes against humanity included acts such as murder, extermination, enslavement, deportation, imprisonment, torture, rape, and persecution on political, racial, and religious grounds, as well as other inhumane acts. The acts alleged as genocide included the killing of members of the Vietnamese and Cham groups. In contrast, serious violations of the 1949 Geneva Conventions included intentional killing, torture or inhuman treatment, intentional infliction of great suffering or serious injury to body or health, intentional deprivation of a prisoner of war or civilian of the right to a fair and impartial trial, illegal deportations or unlawful imprisonment of civilians. She was also charged with violating the 1956 Cambodian Penal Code through acts such as murder, torture, and religious persecution (Case No. 002/19-09-2007/ECCC/TC, Closing Order, D427, para. 1613). The proceedings were discontinued on 24 August 2015, following the death of Ieng Thirith (Case No. 002/19-09-2007/ECCC/TC, Judgment, E465, para. 6)<sup>16</sup>.

<sup>11</sup> Four Geneva Conventions on the Protection of the Victims of War of 12.08.1949: I – for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, II – for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, III – Relative to the Treatment of Prisoners of War, IV – Relative to the Protection of Civilian Persons in Time of War. <https://ihl-databases.icrc.org/en/ihl-treaties/geneva-conventions-1949additional-protocols-and-their-commentaries> (access: 14.05.2025).

<sup>12</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8.06.1977. <https://ihl-databases.icrc.org/en/ihl-treaties/apii-1977?activeTab=1949GCs-APs-and-commentaries> (access: 14.05.2025).

<sup>13</sup> <https://unictr.irmct.org/en/ictr-milestones> (access: 3.01.2025).

<sup>14</sup> Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea, with inclusion of amendments as promulgated on 27 October 2004 (NS/RKM/1004/006), <https://www.eccc.gov.kh/en/about/legal-framework> (access: 14.05.2025).

<sup>15</sup> <https://www.eccc.gov.kh/en/cases/charged-profile/ieng-thirith> (access: 22.04.2025).

<sup>16</sup> See also: <https://www.eccc.gov.kh/en/cases/charged-profile/ieng-thirith> (access: 22.04.2025).

Based on the investigation conducted in case 002, the judges found that there was sufficient evidence that Ieng Thirith:

- was a member of a joint criminal enterprise with the leaders of the Kampuchean Democratic Party, whose common goal was to implement a swift socialist revolution and defend the party against internal and external enemies by all means possible;
- participated in or contributed to the design, implementation, and control of the party's policies, including population transfers, the establishment of cooperatives and workplaces, the re-education of "bad elements", the killing of enemies, the targeting of specific groups of people, and the regulation of marriages;
- was aware of drug shortages and serious health problems throughout the country;
- supported the policy;
- implemented party policy throughout the country on health and social issues and, within her department, on security issues<sup>17</sup>.

On 12 November 2007, Ieng Thirith was arrested and charged. She was indicted on 15 September 2010, and on 27 June 2011, a preliminary hearing was held. On 17 November 2011, the Chamber found the defendant unfit to stand trial due to dementia and therefore dismissed the case and released her unconditionally. Following an appeal by the Prosecutor, the Supreme Chamber ordered additional treatment for the defendant to improve her mental health to a level that would enable her to appear in Court and participate in the trial. In August 2012, experts concluded in their report that Ieng Thirith's dementia was progressing and that her cognitive abilities, despite treatment, had deteriorated slightly in recent months. Consequently, on 13 September 2012, the Chamber confirmed its earlier decision that the proceedings could not continue due to the defendant's health and rereleased her (Case No. 002/19-09-2007/ECCC/TC, Termination of the Proceedings Against the Accused Ieng Thirith, 27.08.2015, paras 2-3). Further health problems of the defendant and her frequent hospital stays in Thailand prevented her from appearing before the Court or being re-examined by specialists. Although this was possible later, the results showed that the defendant was completely incapacitated, suffering from advanced dementia, and there was no possibility of treatment at that time. Ieng Thirith died at her home on 22 August 2015 (Case No. 002/19-09-2007/ECCC/TC, Termination of the Proceedings Against the Accused Ieng Thirith, 27.08.2015, paras 4-9).

Although Ieng Thirith did not stand trial, it is significant that the Extraordinary Chambers in the Courts of Cambodia charged her with the most serious crimes. Here, justice was powerless in the face of biological processes and the defendant's dementia, which prevented not only her being brought to trial but also, albeit to a minimal extent, any form of redress for the victims of the criminal Khmer Rouge regime, of which she was a representative.

## 5. MARIA LVOVA-BIELOVA – A WOMAN "INVOLVED" IN THE PROTECTION OF THE RIGHTS OF THE CHILD

On 17 March 2023, the Pre-Trial Chamber II of the International Criminal Court (ICC) issued arrest warrants for two individuals concerning the situation in Ukraine: Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Bielova.

Vladimir Putin, President of the Russian Federation, is allegedly responsible for the war crime of unlawful deportation of the population (children) and unlawful transfer of the population (children) from the occupied territories of Ukraine to the Russian Federation (under Articles 8(2)(a)(vii) and 8(2)(b)(viii) of the Rome Statute of

<sup>17</sup> Case No. 002/19-09-2007/ECCC/TC, Closing Order, D427, paras. 1538-1539, 1227-1234, 1247, 1253, 1263-1264, 1273, 1287, 1290, 1292, 1538, 1293, 1295, 1235-1236, 1243-1244, 1246, 1293, 1295 and Case No. 002/19-09-2007/ECCC/TC, Judgment, E313, para. 777; Case No. 002/19-09-2007/ECCC/TC, Judgment, E465, paras. 3743, 1492, 1494, 1495, 412, 1307, 1494, 1495, 3900.

the International Criminal Court<sup>18</sup>). These crimes were allegedly committed in the occupied territory of Ukraine since at least 24 February 2022. There are reasonable grounds to believe that Putin bears individual criminal responsibility for the crimes mentioned above, (i) for committing acts directly, jointly with others and/or through others (Article 25(3)(a) of the Rome Statute) and (ii) for failing to exercise effective control over civilian and military subordinates who committed or allowed the commission of acts and who were under his actual authority and control (Article 28(b) of the Rome Statute)<sup>19</sup>.

Maria Alekseyevna Lvova-Belova, Commissioner for Children's Rights in the Office of the President of the Russian Federation, is allegedly responsible for the war crime of unlawful deportation of the population (children) and unlawful transfer of the population (children) from the occupied territories of Ukraine to the Russian Federation (under Articles 8(2)(a)(vii) and 8(2)(b)(viii) of the Rome Statute). These crimes were allegedly committed in the occupied territory of Ukraine since at least 24 February 2022. There are reasonable grounds to believe that Lvova-Belova bears individual criminal responsibility for the crimes as mentioned earlier, as she committed these acts directly, jointly with others, and/or through others (Article 25(3)(a) of the Rome Statute). Pre-Trial Chamber II has determined, based on the Prosecutor's submissions of 22 February 2023, that there are reasonable grounds to believe that each suspect is responsible for the war crime of unlawful deportation and unlawful transfer of population from the occupied territories of Ukraine to the Russian Federation, to the detriment of Ukrainian children. The Chamber decided that the warrants are secret to protect victims and witnesses and safeguard the investigation. Nevertheless, considering that the conduct in question is allegedly ongoing, and that public awareness of the orders may contribute to preventing further crimes from being committed, the Chamber considered that it was in the interests of justice to authorize the Registry to publicly disclose the existence of the orders, the names of the suspects, the crimes for which the orders were issued, and the modes of responsibility determined by the Chamber<sup>20</sup>.

In his statement, the ICC Prosecutor emphasized that there are reasonable grounds to believe that President Putin and Ms. Lvova-Belova are criminally responsible for the unlawful deportation and transfer of Ukrainian children from the occupied territories of Ukraine to the Russian Federation, contrary to the provisions of the Rome Statute. The incidents identified by the Office of the Prosecutor include the deportation of at least hundreds of children taken from orphanages and children's care homes. Many of these children have been put up for adoption in the Russian Federation. The law was changed in the Russian Federation through presidential decrees issued by President Putin to speed up the process of granting Russian citizenship and facilitating the adoption by Russian families. The Office of the Prosecutor alleges that these actions, among others, demonstrate an intention to expel these children from their own country permanently. At the time of these deportations, the Ukrainian children were protected persons under the Fourth Geneva Convention of 1949 on the protection of civilians during the war. According to the Prosecutor, most of the deportations were carried out in the context of acts of aggression committed by the Russian armed forces against the sovereignty and territorial integrity of Ukraine, which began in 2014. At the same time, the Prosecutor addressed the UN Security Council and emphasized that the investigation into the alleged illegal deportation of children from Ukraine is a priority for his Office, so that those responsible for the alleged crimes are held accountable and the children are returned to their families and communities. Children must not be treated as spoils of war<sup>21</sup>.

Both the Prosecutor and the Court have classified the acts listed in the arrest warrant as war crimes, as there is no doubt that the alleged acts constitute such crimes. Another solution is also possible. Once the conditions set

<sup>18</sup> Rome Statute of the International Criminal Court of 17.07.1998. UN TS 1998, No. 2187.

<sup>19</sup> <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and> (access: 2.05.2025).

<sup>20</sup> *Ibidem*.

<sup>21</sup> <https://www.icc-cpi.int/news/statement-prosecutor-karim-khan-icc-issuance-arrest-warrants-against-president-vladimir-putin> (access: 2.05.2025)

out in the Rome Statute are met, the acts committed against Ukrainian children could be classified as crimes against humanity and, if intent to destroy the group as such, in whole or in part, is proven, even as genocide. However, there is still a long way to go. The perpetrator must be brought before international justice.

This proceeding will only end if Maria Lvova-Bielova is handed over to the Court, which, as of today, seems unlikely soon.

## CONCLUSIONS

There is growing awareness of the role of women as perpetrators and supporters of violence and as agents of patriarchal and homophobic ideologies that prevail throughout the world. However, there remains a significant reluctance to recognize women and girls as perpetrators of two specific forms of violence-domestic and sexual - which were central to the development of early feminist criticism (especially radical feminism). As noted by the prominent scholar Adam Jones, little attention is paid to female perpetrators of rape in the academic literature on sexual violence in war and genocide. Perhaps it is still too "unthinkable" to consider. It is not without significance here that the perpetrators of sexual violence against men and boys are overwhelmingly male; sexual violence against women during wars and genocides seems to be directed mainly against other women (Jones, 2015, February 26-27).

When female perpetrators are dismissed as inhuman, their involvement is ignored, or the focus is placed solely on women who were victims or bystanders. It misses an opportunity to gain a fuller understanding of why and how genocide occurs, and how best to respond to prevent or stop it (Brown, 2020, p. 181).

Four women – influential leaders, holding high government positions, whose criminal activities have or had their continuation before the international courts of justice. Two of the cases discussed ended with convictions, one was dismissed, and the last one, which has caused a lot of emotion in recent years, is still awaiting continuation. It is a fact that the perpetrators are primarily men, who bear the primary responsibility for acts contrary to international law during armed conflicts or other extraordinary situations in which human rights are violated on an unprecedented scale. However, it seems obvious, not only from the examples cited, but also from historical knowledge, that women often take an active part in criminal activities. The fact that they are less visible is usually because they do not hold high office, do not make key decisions, and are less likely to give orders. And given that international tribunals primarily prosecute those most responsible, women are not among them. It does not mean, however, that they do not commit crimes. Nor does it mean that they do not favor perpetrators, that they do not support and help them, that they just stand by. The research undertaken by the authors mentioned at the beginning - Sjoberg and Gentry - seems still in its infancy, and the question of women perpetrators remains relevant.

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