

ANNEX B

PUBLIC

LIST OF AUTHORITIES

Sexual and gender-based crimes

1. ICC, *Al Hassan* case, [Confirmation Decision](#), paras. 552-582, 638 and 647-651.
2. ICC, *Al Hassan* case, “Judgment on the appeal of Mr Al Hassan against the decision of Pre-Trial Chamber I entitled ‘Décision relative à l’exception d’irrecevabilité pour insuffisance de gravité de l’affaire soulevée par la défense’” (Appeals Chamber), [No. ICC-01/12-01/18-601-Red](#), 19 February 2020, paras. 121-123.
3. ECCC, Case 002 [Closing Order](#), 15 September 2010, paras. 1442-1445.
4. SCSL, Prosecutor v. Sesay, Kallon and Gbao, [Appeals Judgment](#), Case no. SCSL-04-15-A, 26 October 2009, para. 736.
5. *Women’s Caucus For Gender Justice*, The International Criminal Court, War Crimes, Part III, Recommendations and Commentaries to the December Preparatory Committee Meeting, December 1-12 1997, 1 December 1997, p. 5 : (document not available in Legal Tools or online, but available in the paper collection of the Preparatory Works) :

“Where [forced pregnancy] results, the invasion of the body and self is total. Women are being treated as chattel for the purpose of reproduction; this is another form of gender enslavement. Either a woman must submit to an abortion, which in circumstances of war and/or clandestinity can be fatal or debilitating, or she must suffer the continuation of a hated pregnancy” A more invasive form of violence is hardly imaginable: the pregnancy of rape is intended to and does take over a woman’s body for nine months, at the end of which she faces the intolerable ‘choice’ of keeping a child of rape, abandoning it, and, in some contexts, giving it up for adoption. The profound violence of forced pregnancy is, in fact, illustrated by the numbers of Rwandan women who abandoned the infants of rape despite a powerful cultural tradition of keeping and taking in unwanted children under normal circumstances”.

6. *Women’s Caucus for Gender Justice in the International Criminal Court*, Briefing Paper on Enforced Pregnancy, 16 March 1998, p. 1 (document not available in Legal Tools or online, but available in the paper collection of the Preparatory Works) :

“Difference between ‘enforced pregnancy’ in the draft statute of the ICC and ‘forcible impregnation’ - Forcible impregnation does not capture all the elements of enforced pregnancy. Forcible impregnation involves making a woman pregnant through rape, insemination or other means, whereas enforced pregnancy involves keeping a woman pregnant. Enforced pregnancy is the exercise of control, such as physical confinement, over a pregnant woman ensuring the continuance of pregnancy or the bearing of children against her will. The pregnancy is often, but not always, a result of rape”.

7. Informal Working Paper On War Crimes, Preparatory Committee on The Establishment of an International Criminal Court, 1-12 December 1997, Working Group on Definitions and Elements of Crimes, UN Doc. [A/AC.249/1997/WG.1/CRP.7/Add.1](#), 4 December 1997, p. 1.
8. Informal Working Paper on War Crimes, Preparatory Committee on the Establishment of an International Criminal Court 1-12 December 1997, Working Group on Definitions and Elements of Crimes, UN Doc No. [A/AC.249/1997/WG.1/CRP.8](#), 5 December 1997, pp. 4-5.
9. Proposal submitted by the United States of America, Elements of offences for the International Criminal Court Preparatory Committee on the Establishment of an International Criminal Court, 16 March - 3 April 1998, UN Doc. [A/AC.249/1998/DP.11](#), 2 April 1998.
10. [Discussion Paper Delegation of Bosnia and Herzegovina](#), 14 April 1998, p. 1 :

"We support the proposition to include within the definition of war crimes the acts of enforced pregnancy because we believe that this crime has to find a proper qualification under this statute, distinct from other forms of sexual abuse. In our view, a specific criminalisation of these acts is needed as they have a different criminal purpose than other forms of sexual assaults. It is our experience that victims of this crime and any children born out of such consequences were subject to greater stigmatization unless offered the proper legal status by explicit recognition of this crime. This stigmatization not only could have negative social consequences, but also end up discouraging all available options for the female victim and the potential offspring. The crime of enforced pregnancy given its particular purpose, does not depend on whether or not women have access to abortion. While women under the national laws of Bosnia and Herzegovina had and have legally available to them the full range of options, it is our experience that recognition of the legal status of victims of such crimes would not encourage termination of pregnancy but to the contrary. It is of the utmost importance that the crime of enforced pregnancy is included in the list of offenses within the jurisdiction of the Court, both as a war crime and as a crime against humanity. It would be appropriate in our opinion, to also qualify this crime as a crime against humanity, as such offenses do not necessarily arise only within the context of an armed conflict".

11. [Terra Viva No. 9](#), ICC Monitor, No Peace Without Justice, Conference on the Establishment of an International Criminal Court, 25 June 1998, p. 7 :

"[T]he question of whether to include enforced pregnancy] in the International Criminal Court (ICC) statute is shaping up into a classic battle between pro-abortion and anti-abortion camps, but some diplomats feel such a division is misguided. [...] Many [States and groups], including traditional religious movements, remain wary of the language of enforced pregnancy, which they believe could provide a back door to legitimise abortions".

12. *Women's Caucus for Gender Justice* in the International Criminal Court, [The Crime of Forced Pregnancy](#), pp. 1-2. See also. [OTR ICC Volume 1, Issue 9](#), On the Record: Your link to the Rome conference for the establishment of an international criminal court, 29 June 1998, pp. 3-4:

"With the efforts of some groups to insert the issue of abortion into [the] negotiations through attacking the inclusion of forced pregnancy in the statute. The effort to link the crime of forced pregnancy to the issue of abortion ignores that forced pregnancy is a violent crime, committed with a violent intent, and it causes extreme suffering for the victims. It is clearly a crime of commission, not a crime of omission. It is difficult to understand how the debate about the crime of enforced pregnancy has become a debate about abortion. National laws which criminalize the termination of pregnancy are not violations under international law and thus would not come within the ICC's jurisdiction. The issue of abortion has no place in the current discussions about the crime of enforced pregnancy [...] It is crucial that this conference recognize, punish and deter the future commission of this terrible crime of violence against women. Therefore, the crime of 'forced pregnancy' should be listed as both a war crime and a crime against humanity. This will not affect national abortion laws or the omission to provide abortion".

13. [OTR ICC Volume 1, Issue 9](#), On the Record: Your link to the Rome conference for the establishment of an international criminal court, 29 June 1998, pp. 3-4, p. 2:

"National abortion laws will not be undermined by inclusion of forced pregnancy as a crime against humanity, pledges Women's Caucus Bosnian government agrees, lobbies with Muslim countries".

14. [Terra Viva No. 19](#), IICC Monitor, No Peace Without Justice, Conference on The Establishment of An International Criminal Court, 9 July 1998, p. 5 :

"[Many] countries have blocked language on protecting victims of enforced pregnancy, fearing that such language could be used by some nations as basis in domestic law for allowing abortions in the case of rape".

15. United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Committee of the Whole, Summary Record of The 3rd Meeting, Held at the Headquarters of the Food and Agriculture Organization of the United Nations on Wednesday, 17 June 1998, UN Doc. [A/CONF.183/C.1/SR.3](#), 20 November 1998, paras. 31-32.

16. Summary Record of the 34th Meeting, Held at the Headquarters of the Food and Agriculture Organization of the United Nations on Monday, 13 July 1998, UN Doc. [A/CONF.183/C.1/SR.34](#), 20 November 1998, paras. 72-73.

17. Summary Record of the 4th Meeting, Held at the Headquarters of the Food and Agriculture Organization of the United Nations on Wednesday, 17 June 1998, UN Doc. [A/CONF.183/C.1/SR.4](#), 20 November 1998, para. 63.

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References CLRV submissions

18. Summary Record Of The 5th Meeting, Held at the Headquarters of the Food and Agriculture Organization of the United Nations on Thursday, 18 June 1998, UN Doc. [A/CONF.183/C.1/SR.5](#), 20 November 1998, paras. 20-21 and paras. 71-72.