



ADC-ICT NEWSLETTER

ISSUE 120 • APRIL 2018



© Robin van Lonkhuijsen / Reuters

Head of Office: Dominic Kennedy

Assistant: Nadim Mansour

Contributors: Roberto Cassar, Maraya Fata & Ashwin Manoharan

The views expressed herein are those of the author(s) alone and do not necessarily reflect the views of the Association of Defence Counsel practising before the International Courts and Tribunals

MICT NEWS

Prosecutor v. Karadžić (MICT-13-55)

On Monday 23 April, the Appeal Hearing in the case against Radovan Karadžić began with the Defence presenting their appeal against the Trial Chamber judgement. Kate Gibson, Co-Counsel for Karadžić, argued that the third category of joint criminal enterprise (JCE III) should be evaluated in light of a recent decision of the UK Supreme Court. This UK case (R. v. Jogee) ruled that to convict a secondary party, a judge must now prove beyond reasonable doubt that an accused 'had an intention to assist or encourage the main party or offender'. Any foresight of the consequences of what might happen would be evidence of an intention of the second person, but would not on its own be sufficient".

TABLE OF CONTENTS

MICT News • P. 1

ADC-ICT News • P. 6

ICC News • P. 8

ICL News Round - Up • P. 11

Articles and Blogs • P. 13

Events & Opportunities • P. 14



Head Office/ Room 085,
Churchillplein 1, The Hague, 2517 JW



dkennedy@icty.org



www.adc-ict.org



+31 (0)705125418



Gibson proceeded to link this example to the Karadžić case by saying that she is not asking for a reversal in the use of JCE III, but that one national judicial system has identified an aspect that it had wrong, and that it provides the opportunity to correct it.

In fact, she said there is a pattern from the Prosecution to use the doctrine of JCE to overwhelm the Chambers and Defence with huge amounts of evidence, which confused the Trial Chamber, and led to an unfair trial as a result.

Peter Robinson, Lead Counsel for Karadžić, explained that the Trial Chamber erred in holding that Karadžić was guilty of genocide in Srebrenica. He stated that the Trial Chamber found Karadžić guilty based on a cryptic conversation, which was based on hearsay.

Only Dragan Nikolić corroborated those claims, and the Defence argued that this was insufficient to prove the requisite specific intention for genocide based on this evidence. Robinson also explained that Karadžić had to communicate by code because they did not want their communications to be heard by the Bosnian Army in the vicinity.

Karadžić himself continued to present his appeal by stating that the indictment is permeated with finding that he tried to persuade Bosnia to be carved up, but he reminded the Appeals Chamber that Bosnia did not have the constitutional right to secede from Yugoslavia. Furthermore, he stated that not doing anything in his position would have meant he was judged as a traitor by his own people.

He also stated that the Prosecution accused him of unjustly frightening the Serb population with prospects of genocide, to which he answered that every Serb home in Bosnia had been victim of genocide during World War II by the Ustasa and the Handschar Division, which happened less than 50 years before the Bosnian War.

Karadžić proceeded to remind the Appeals Chamber that he personally went against a number of Serbian paramilitaries, which he prosecuted and disowned. They were considered outlaws and were not under his command. He underlined the fact that he is being charged for their crimes, while he was actively prosecuting them.

The Prosecution dismissed all the arguments of the Defence and argued that Serb forces under Karadžić's supreme command had committed the largest mass murder since World War II in Srebrenica and that Karadžić knew about the plan and actively participated in its execution. The Prosecution also argued that the Bosnian Serb Army, under Karadžić's command, had intentionally targeted civilians in Sarajevo disproportionately for three and a half years. The

Prosecution stated that it was irrelevant whether or not the Bosnian Army provoked Serb forces to open fire on the city, but what mattered was whether the response was in line with international humanitarian law. The Prosecution stated the attacks were either disproportionate or directly targeted civilians, contrary to international humanitarian law.

The Prosecution also rejected Karadžić's claim that he did not receive a fair trial stating that "Karadžić was rightfully sentenced as a protagonist of four joint criminal enterprises, he received a fair trial and failed to prove any legal irregularities or factual errors in the verdict".

On 24 April, the Prosecution presented their appeal against certain parts of the Trial Chamber judgement. The Prosecution alleged that the Trial Chamber erred when it decided that there was insufficient evidence to prove the intention for genocide in the municipalities in Bosnia and Herzegovina.

The Defence contended that the Trial Chamber was correct in its conclusion that there was insufficient evidence to prove the genocide in the municipalities and that the Prosecution had failed to provide any new evidence to show genocidal intent.

The Defence also highlighted that the International Court of Justice has held that there was no genocide in Bosnia. The Defence requested that the Appeals Chamber affirms the acquittal for genocide in the municipalities.

At the end of the Appeal Hearing, Karadžić was given the opportunity to present a personal statement to the Appeals Chamber. He stated that the Serbs were not the attackers and that they were just defending their territory.

He also stated that the Army of Bosnia and Herzegovina were given orders to attack the Serbs and that the Bosnian Serbs wanted a country with all three ethnic groups included as it had been for many centuries. He stated that when the Muslims decided to secede they indicated that they did not want the Serbs to be included in such a country and that the war was started to stop the Serbs maintaining their independence by creating Republika Srpska.

Karadžić stated that the Muslims were the first to attack in every municipality and that the Serbs were defending themselves.

Until 1994, there were a huge number of Muslims in the territories of Republika Srpska. Karadžić concluded by stating that he was free of prejudice and that it is wrong when a lie is perpetuated through the courts.

The Appeals Judgement will be delivered in due course and no date has yet been set.





Šešelj © MICT

Prosecutor v. Šešelj (MICT-16-99)

The Appeal Judgement in the case against Vojislav Šešelj was delivered on 11 April 2018. The Appeals Chamber found Šešelj guilty of crimes against humanity, instigating persecutions and deportation in Hrtkovci, Vovjodina in Serbia. He was sentenced to 10 years of imprisonment, which the Appeals Chamber declared have been served during his detention in custody from February 2003 to November 2014.

1- Background

On 31 March 2016, Trial Chamber III of the ICTY acquitted Šešelj of all charges, including charges of crimes against humanity and violations of the laws or customs of war. The Prosecution filed an appeal before the MICT in order to challenge the decision of the ICTY Trial Chamber.

Šešelj declined to respond to the Prosecution's arguments, and instead challenged the Prosecution's appeal, by alleging that the Tribunal had a political bias against him. The Appeals Chamber found no irregularities to the procedure and dismissed his request in its entirety.

2- Appeal Judgment

On the charge of violating the laws or customs of war, the Prosecution argued that the Trial Chamber erred by not giving explanations for their decisions, and the Prosecution requested more explanations from the Appeals Chambers.

Those requests were dismissed because they were deemed to have no impact on the verdict.

After reviewing the extensive record in the case, the Appeals Chamber stated that the Trial Chamber erred in concluding that the Prosecution failed to prove the existence of widespread and systematic crimes against humanity in Croatia and Bosnia-Herzegovina.

Furthermore, the Appeals Chambers found that the crimes committed in Hrtkovci were linked to the conflict in Bosnia and Croatia.

The Appeals Chamber also noted that there was a discernable pattern of crimes committed by cooperating Serbian Forces, and that there was a joint criminal enterprise. However, the Appeals Chamber stated that the Prosecution could not prove the involvement of Šešelj in this joint criminal enterprise, and thus dismissed the Prosecution's arguments.

Finally, on the charges of physical perpetration and instigation through his speeches, the Appeals Chambers considered that the Trial Chamber erred in concluding that Šešelj had not physically committed a crime in the town of Hrtkovci. In fact, the Appeals Chamber stated that the influence of Šešelj over the crowd proved that he contributed to the conduct of the perpetrators of crimes in the city.

Accordingly, the Appeals Chamber found Šešelj criminally responsible, on the basis of his 6 May 1992 speech in Hrtkovci, Vovjodina, for instigating deportation and persecution, through forcible displacement, and other inhumane acts as crimes against humanity, as well as for committing persecution, based on a violation of the right to security, as a crime against humanity.



Stanišić and Simatović © MICT



On 6 March 2018, Reynaud Theunens testified in the case of the Prosecutor v. Stanišić and Simatović, Theunens is a military expert witness for the Prosecution.

Theunens alleged that the SDB (Serbian State Security Service) was heavily involved in the conquests of towns in Bosnia-Herzegovina and Croatia. In fact, he contended that the Red Berets, along with the Serbian Volunteers Guard (led by Zeljko Raznatovic, alias "Arkan") and other paramilitary groups, played an important role in those conquests and formed part of the SDB or fell under its direct command.

Theunens also alleged that the SDB sent several of its agents to establish camps in Croatia in order to train Special Forces in the area of Knin. He claimed that the Accused ordered the transfer of weapons in Golubić in 1991, and that this serves as proof that the SDB had commanding powers in the Kninska Krajina area of Croatia.

The Defence presented evidence that the combatants in this area, mainly paramilitary units led by "Arkan" and Dragan Vasiljkovic (alias "Captain Dragan") were not under the command of the SDB. Theunens admitted that he had not come across evidence of a direct link between Captain Dragan and the Accused, however he added that there was evidence that the SDB did not consider Captain Dragan as a threat.

The Defence proceeded to question Theunens on a military intelligence report, dated October 1991, which he used to refer to rumours that Arkan, with the support of the Serbian SDB, "comes after the JNA has cleaned up villages and committed crimes". Asked by the Defence to produce evidence in support of these serious rumours, Theunens stated that he had none to provide.

Switching to the paramilitary activities in Bosnia, Theunens alleged that, after conducting an analysis, he concluded that the connection between paramilitary forces and the SDB, which had allegedly existed in Croatia, had not ceased to exist in Bosnia, especially in the events of ethnic cleansing in Eastern Bosnia.

The Defence, however, presented evidence which demonstrated that the Red Berets Unit formed part of

the local Territorial Defence or special forces of the Serbian autonomous regions at that time, and not part of the SDB.

Theunens replied that, from the documents he had analysed, it emanated that the JNA had total control over the Red Berets at all time, and the SDB assisted the Bosnian Serb Army in achieving a "third strategic goal" which was to remove the border dividing Serbs along the river Drina.

The Defence did not delve into the veracity or otherwise of the alleged involvement of the Bosnian Serb Army in those "forcible relocations", yet Theunens was asked whether he knew if members of the SDB forcibly transferred the local population during the operation, or actually helped Muslim refugees return to the region. To this question, Theunens accepted that members of the SDB indeed helped the refugees.

Theunens went on to state that the SDB directly recruited Captain Dragan and brought him to Yugoslavia in 1990 through the work of the Accused. However, when asked by the Defence if he had found any pieces of evidence about "a direct link" between the Accused and Captain Dragan after August 1992, Theunens responded in the negative.

After Theunens concluded his testimony, another witness, Edin Hadžović, took to the stand as the next prosecution witness. Hadžović testified that the Serbian Red Berets paramilitaries killed Bosniak and Croat captives in the town of Doboј in Bosnia in 1992.

When evidence was presented by the Defence that one of the men who shot a captive was named differently than he had suggested, the witness did not reiterate his contention.

In addition, when asked whether there was a possibility that during this operation the commanders of the paramilitaries were actually local officials from the town in question, Hadžović responded in the positive by admitting that this could have been the case.

The prosecution case is currently ongoing with a number of witnesses scheduled to testify in the coming weeks.



On the 22nd of March, 2018, the Mladić Defence Team filed their notice of Appeal, setting out the grounds against the Judgment of the ICTY Trial Chamber I in the case of Prosecutor v. Ratko Mladić, Case No.: IT-09-92-T, dated 22 November 2017. The Defence appeals against the convictions entered on Counts 2 - 11 by the Trial Chamber and the life sentence imposed on the Appellant. There are 9 central grounds of appeal, namely:

(a) Ground One: The manifest errors made by the Trial Chamber in the application/interpretation of the indictment resulted in violations of due process;

(b) Ground Two: The procedural errors made by the Trial Chamber infected the trial proceedings and the Judgement, thereby prejudicing the Appellant;

(c) Ground Three: The Trial Chamber erred in law and in fact by finding that an overarching JCE existed and that the Appellant participated in it;

(d) Ground Four: The Trial Chamber erred in law and in fact by finding that a JCE existed in Sarajevo and that the Appellant participated in it;

(e) Ground Five: The Trial Chamber erred in law and in fact by finding that the Appellant participated in the JCE's alleged in Srebrenica in Counts 2-8;

(f) Ground Six: The Trial Chamber erred in law and in fact by finding that the Appellant intended the objective of the hostage taking JCE and that he committed the actus reus and shared the requisite intent for the crime;

(g) Ground Seven: Errors in law and in fact as to modes of liability;

(h) Ground Eight: The Appellant's right to a fair trial was grossly violated;

(i) Ground Nine: Appeal Against Sentence

The overall relief sought is a reversal of all the erroneous findings; the quashing of the Appellant's convictions on Counts 2-11 and enter acquittals; or, in the alternative, the ordering of a retrial; or a reduction in sentence.

In addition to the filing of the Notice of Appeal, the Registrar and Defence in the Mladic case made several additional filings relative to the January 2018 filings of the Defence which sought: a) Provisional Release to Serbia for medical treatment; b) Contempt Proceedings against UNDU Medical staff; and c) a stay of proceedings and to Vacate the Judgment in order to determine the mental/medical capacity of General Mladic to meaningfully participate in proceedings.

Specifically, on 10 April 2018 the Registrar filed its public redacted version of its Submission of Independent Experts' Reports and Further Submission in Relation to Defence Motions and "[Response to Registrar's Submission in Relation to Defence Motions](#)." The filing (heavily redacted) states that the UNDU Medical Services provides the required medical care to Mr. Mladic accordingly.

Further it states that the Defence cannot decide on the role of the Independent Medical Experts and that the Defence's presence during medical examinations would contravene medical ethics and practice, albeit admitting that in past "exceptional" circumstances counsel were asked to be present to act as interpreters during such medical examinations.

The [Defence Response](#) (in public redacted form) was released the day prior, and stated among other things: a) Registry submissions ignore the MRI imagery showing new damage to the brain from 2012 to 2017; b) Registry submissions changed as to the reasons why counsel's presence at medical exams would be unethical from the prior filing; and c) while dismissing the Rule 31 doctor's findings the IME's actually implemented the therapy recommended by same, and in doing so disqualified themselves as Independent Medical Examiners.

The Defence further noted that the IME reports were contradictory and mis-leading in several parts. Examples given were that that General Mladic suffered a heart attack in 2013 and frequent high blood pressure, which previously had been denied by the UNDU MO and IME's; and that the one IME confirmed a heart murmur and high blood pressure only to later deny the same. So far, no public rulings have been made on these matters.



ADC-ICT NEWS

ADC-ICT REPRESENTATIVES MEET WITH GUANTANAMO BAY DEFENCE LAWYER

THE HAGUE

On 20 April 2018, ADC-ICT Representatives, Dragan Ivetic and Dominic Kennedy met with Ms. Alka Pradhan, Human Rights Lawyer for Ammar al-Baluchi who is detained in Camp Seven at Guantanamo Bay and awaiting trial. Al-Baluchi is accused of running money for the attacks of 11 September 2001. He was arrested in April 2003 and held in secret CIA detention until September 2006 when he was transferred to Guantanamo Bay. In November 2009, Attorney General, Eric Holder, announced that al-Baluchi, along with four co-defendants in the 9/11 prosecution, would be moved from Guantanamo to stand trial in a federal district court in New York City. However, in April 2011, the decision was reversed and Holder announced that they would be tried before a military commission in Guantanamo. Pradhan discussed the treatment and conditions of detention which al-Baluchi has suffered during his detention over the last 15 years. She highlighted that al-Baluchi was subjected to 'enhanced interrogation' which amounted to severe torture and that he suffers many issues as a result.

This torture took place when he was detained in one of the CIA 'black sites' before transfer to Guantanamo. The case is currently in the pre-trial stage and a trial is not anticipated to commence for years to come. Pradhan stated that the treatment which is received in Guantanamo falls short of the human rights which should be afforded to all individuals. She also discussed the difficulties that the defence lawyers have in investigating due to limited access to information from the government and how fair trial rights are not being respected by the military commission. In the future it is hoped that the ADC-ICT will be able to collaborate with Alka Pradhan on a number of issues in relation to the situation in Guantanamo Bay.

ADC-ICT SENDS LETTER TO UN SECRETARY-GENERAL AND SECURITY COUNCIL REGARDING ICTR ACQUITTED AND RELEASED PERSONS

On 22 March 2018, the ADC-ICT sent a letter to the UN Secretary-General and member states of the UN Security Council regarding the situation of eleven individuals who were either acquitted or released after serving their sentences at the International Criminal Tribunal for Rwanda (ICTR). These individuals remain in Arusha, Tanzania as they are unable to return to Rwanda and they have not been offered relocation by any other country.

The full letter is available [here](#).



ADC-ICT ADVOCACY TRAINING & MOCK TRIAL

PARTICIPATION OF INTERNATIONAL JUDGES CONFIRMED

THE HAGUE

18 - 25 JUNE

2018



18 – 25 JUNE 2018

ADC-ICT - ICLB

MOCK TRIAL AND

TRAINING

Legal Drafting – Oral Advocacy – Opening and Closing Statements – Realistic International Trial

This one week of evening seminars and full day mock trial on 25 June will take place at the UN Mechanism for International Criminal Tribunals. Five evenings of training will be conducted by counsel practising at the international courts and tribunals. The week will culminate in a full day mock trial in the courtroom of the Mechanism for International Criminal Tribunals in front of international judges. A provisional programme is available on the ADC-ICT website. Places are very limited and are offered on a first come, first served basis.



**Training by
International Judges
and Experts in
International Law**

**Mock Trial in the
courtroom of the
UN MICT**

**CLE credits available
upon request**

**External Participants:
Role as Counsel: €200**

**ADC Members & Interns:
Role as Counsel: €150**

**Role as Witness/Accused:
€80**

For further information please
visit the [ADC-ICT website](http://www.adc-ict.org) or
contact: events@adc-ict.org

ADC-ICT

Churchillplein 1
2517 JW, The Hague
+31 (0)70 512 5418

Check out the website now
www.adc-ict.org



Defence rights in reparations proceedings impacted following the recent appeal judgments

by Ashwin Manoharan

Legal Intern, Office of Public Counsel for the Defence

The views expressed herein are those of the author alone and do not reflect the views of the ICC

On 8 March 2018, the Appeals Chamber of the ICC substantially added to its body of appellate jurisprudence by delivering three important judgments. Two of these judgments developed the case law pertaining to reparations, and, by implication, the rights and status of convicted persons in that process. This brief comment will summarise three issues that the Appeals Chamber discussed in those two judgments. First, in *Al Mahdi*, the Appeals Chamber decided that applicants for individual reparations do not necessarily have to disclose their identities to the convicted persons. Second, in *Katanga*, the Appeals Chamber made findings on “transgenerational harm”, and discussed the goals of reparations and how they relate to the culpability of the convicted person.

***Al Mahdi*: victims applying for individual reparations do not need to disclose their identities to the Defence**

The Trial Chamber held that, in screening victims’ individual reparations applications, Mr Al Mahdi must be given an opportunity to make representations before the Trust Fund for Victims (TFV) can assess any applicant’s eligibility. Further, it held that in “assessing eligibility, the TFV may base itself only on information made available and to which the Defence has had an opportunity to access and respond”, and thus required anyone wishing to be considered for individual reparations to make their identity known to both the TFV and the Defence ([ICC-01/12-01/15-236, para. 146](#)).

The Legal Representative for Victims (LRV) requested the Appeals Chamber to grant “initial measures of

confidentiality” to ensure that the identifying information of the victims who sought anonymity is not transmitted, without their consent, to the TFV and “other participants”. It argued, in particular, that the Regulations of the TFV “do not create an obligation to reveal victims’ identities to the defence” ([ICC-01/12-01/15-242, paras 34–35, 40](#)).

The Defence argued that the highly redacted application forms rendered it unable to take a definitive position on the potential victim status of the applicants. It requested lesser redacted versions of the applications and for leave to submit observations, regarding individual reparations, on “the documents submitted by the applicants as proof of their identities, the harm they claim and the causal link between the harm and the Al Mahdi case” ([ICC-01/12-01/15-251, para. 17, pp. 7–8](#)).

The Appeals Chamber found that the Trial Chamber erred in its approach. It noted that, at this stage of the proceedings, Mr Al Mahdi’s interests are limited in that his monetary liability is already set. It thus held that “granting access to all victims’ identifying information, at a stage of proceedings where the interest of the defence is limited in this way, is disproportionate.”

Further, the Appeals Chamber found that “in balancing the interests of the parties at issue, the Trial Chamber failed to justify why it was appropriate to essentially place the victims in the position where they would have to choose between security concerns and their eligibility to be granted individual reparations.”





Al-Mahdi © ICC

It therefore amended the Reparations Order to the extent that “[v]ictim applicants who wish to be considered for individual reparations but do not wish that their identities be disclosed to Mr Al Mahdi may nevertheless participate in the administrative screening process that the TFV will carry out.

In that case, their identities will be disclosed to the TFV, but will not be disclosed to Mr Al Mahdi.” The Appeals Chamber clarified that this applied to those who already applied for reparations and those who will be identified in the future by the TFV (ICC-01/12-01/15-259, p. 4, paras 78–96).

Katanga: Trial Chamber must reassess applications claiming transgenerational harm that it previously rejected

Although an expert report at trial described a phenomenon known as transgenerational harm, whereby “social violence is passed on from ascendants to descendants with traumatic consequences for the latter”, the Trial Chamber rejected victims’ applications claiming reparations for such harm. It concluded that, even if the applicants were “in all likelihood” suffering from transgenerational harm, it could not establish on a balance of probabilities the causal nexus between the trauma suffered and the relevant attack (ICC-01/04-01/07-3728, paras 39, 132, 134, 176).

The LRV challenged the Trial Chamber’s rejection of the requests for reparations, on the basis that it misapplied the relevant standard of proof, arguing that the admission of the trans-generational nature of the trauma itself is sufficient to establish the nexus when the harm to the parent is linked to the attack (ICC-01/04-01/07-3745-tENG, paras 3, 57).

The Defence focused its response on the expert report, which could not be authenticated, was submitted by the non-neutral LRV without giving Mr Katanga the opportunity to cross-examine its author, and was vague and hypothetical, meaning it was “insufficient to establish a sufficiently close link between the crimes for which Mr Katanga was convicted and any eventual harm” (ICC-01/04-01/07-3758-Red2, para. 34).

The Appeals Chamber was not convinced that “a finding of harm concerning a parent should, without more, necessarily result in a finding of harm for the children based on its transgenerational nature”, and rejected that part of the LRV’s argument. The Appeals Chamber did find error, however, in the Trial Chamber’s conclusion that the causal nexus had not been established, as contradictory to its statement that the relevant applicants were “in all likelihood” suffering from transgenerational harm.

Therefore, it remanded the matter to the Trial Chamber, and directed it “to carry out a new assessment of the applications, providing sufficient reasons for its eventual conclusion thereon” (ICC-01/04-01/07-3778, p. 4, paras 236, 238–239, 260).

"The Appeals Chamber did find error, however, in the Trial Chamber’s conclusion that the causal nexus had not been established."



Katanga: when determining a convicted person's liability for reparations, the focus should be on the extent of the harm and cost to repair such harm, rather than the role of the convicted person

The Trial Chamber carried out an individual analysis of victims' applications for reparations and found that the total monetary value of the extent of the harm suffered was over USD 3.7 million.

With regard to Mr Katanga's liability, it recalled that "a convicted person's liability for reparations must be proportionate to the harm caused and, inter alia, his or her participation in the commission of the crimes for which he or she was found guilty, in the specific circumstances of the case". It then considered a number of factors regarding Mr Katanga's role in the crimes and concluded that his liability for reparations was USD 1 million (ICC-01/04-01/07-3728, paras 162-167, 181-239, 246, 251-264).

The Defence submitted that the reparations awarded "is excessive in light of [his] circumstances, responsibilities and culpability," relying on appellate jurisprudence from the Lubanga case that the reparations imposed on a convicted person must be "remedial and not punitive in nature".

The Defence also argued that the mitigating factors judicially acknowledged in his sentencing should also be given weight at the reparations stage. It further argued that he "cannot be held disproportionately accountable for the crimes on the basis that he is the sole person convicted of offences resulting from the attack", and that in "largely disregarding the role of others, the Chamber effectively

"The Defence submitted that the reparations awarded "is excessive in light of [his] circumstances, responsibilities and culpability,"

applied the joint and several liability principle" (ICC-01/04-01/07-3747, paras 67-87).

The Appeals Chamber held that "the purpose of reparations is to repair the harm that was inflicted on the victims", and, where possible "attempt to restore the status quo ante". It held that "the question of whether other individuals may also have contributed to the harm resulting from the crimes is irrelevant to the convicted person's liability to repair that harm". Further, "while a reparations order must not exceed the overall cost to repair the harm, it is not, per se, inappropriate to hold the person liable for the full amount necessary to repair the harm". It determined that it may, however, be relevant to take into account the role of others and apportion liability if more than one person is convicted by the Court for the same crimes at the same time. It then concluded that there was no error in the Trial Chamber's approach regarding Mr Katanga's role vis-à-vis others, noting that the "focus is on the repair of the harm and not on the mode of liability". In this regard, it added that criteria such as the gravity of the crimes or mitigating factors are not relevant to the extent of harm and the cost to repair, and thus rejected Mr Katanga's argument to take into account the findings made in his sentencing. The Appeals Chamber held that, "as long as a convicted person is held liable for the costs that it takes to repair the harm caused, there is no punitive element", and that "this amount may be high simply as a result of the extent of the harm caused" (ICC-01/04-01/07-3778-Red, paras 174-186).

Conclusion

The findings in these appeal judgments have a clear impact on the rights of convicted persons in reparations proceedings at the ICC, both procedurally and substantively.

In the short term, it will be important to monitor how the Katanga Trial Chamber will reassess the transgenerational harm applications, and how the Al Mahdi Trial Chamber will balance the rights of the convicted person with those of reparations applicants, who are now entitled to withhold their identities from the Defence.

For further developments in reparations law, readers are advised to follow the Lubanga case, where the Trial Chamber's reparations decision (ICC-01/04-01/06-3379-Red) is currently being challenged before the Appeals Chamber, as well the Bemba case, where reparations proceedings are ongoing.



News Round-Up

Click on the box to read the full article

'I will arrest you': Duterte warns International Criminal Court lawyer to steer clear of Philippines, *The Straits Times*

Philippine President Rodrigo Duterte has threatened to arrest an International Criminal Court (ICC) prosecutor if she conducts activities in his country, arguing it was no longer an ICC member so the court had no right to do any investigation.

Hitting out at what he said was an international effort to paint him as a "ruthless and heartless violator of human rights"

There must be justice for victims of crimes in Syria, says head of UN body building cases for prosecution, *UN News*

"Perpetrators of core international crimes must be held accountable," Catherine Marchi-Uhel, head of the International, Impartial and Independent Mechanism, told diplomats during an informal meeting in New York organized by the UN General Assembly, an intergovernmental body consisting of 193 Member States.

Israel and Hamas may both be violating international law at Gaza fence, ICC says, *The Times of Israel*

International court's chief prosecutor says anyone who engages in or incites to violence 'is liable to prosecution'. The International Criminal Court's chief prosecutor warned on Sunday that actions taken by the Israeli army and by Hamas during the last two weeks' protests at the Gaza border may constitute war crimes.

International Criminal Court steps up investigations against Nigeria, *New Telegraph*

The International Criminal Court has escalated the eight potential cases against Nigeria, the Attorney-General of the Federation and Minister of Justice, Mr. Abubakar Malami (SAN) has said. He said this on Thursday while playing host to the newly elected President of the ICC, Prof. Chile Osuji, at his office in Abuja. Six of the cases were said to be against

Remains of some 120 genocide victims found in mass grave in Kigali's neighborhood, *Xinhua*

Local authorities and residents have found remains of about 120 victims of the 1994 Rwandan genocide buried in a mass grave on the outskirts of the capital Kigali, survivors' association said. The site in Rusororo sector at Gasabo district is located in a residential neighborhood, where several Rwandans after the genocide lived but sold the land off and relocated after suspecting that there is a mass



Bosnian Croat Fighters Charged with Killing Serbs, *Balkan Insight*

Croatian Defence Council ex-fighters Zdenko Grbavac and Zeljko Simunovic were charged with committing crimes against humanity by killing three Serbs in Bosnia and Herzegovina's Konjic area during wartime. The Bosnian state court on Wednesday confirmed an indictment charging Grbavac and Simunovic with having persecuted and aided in the persecution of the Serb population in the Konjic municipality

Is the world ignoring North Korea's 'crimes against humanity'? *Deutsche Welle*

Rights activists have condemned a recent visit to North Korea by the Olympic Committee president as a sign that the international community is willing to overlook human rights abuses for the sake of dialogue. Thomas Bach held talks with Kim Jong Un, the North Korean dictator, during a three-day visit to Pyongyang from March 29, with the North's state-run media playing up their discussions.

Liberians Crave for War Crimes Court after Jungle Jabbah's Sentencing, *Front Page Africa*

After news of Mohammed Jabbateh, alias 'Jungle Jabbah' 30 years sentencing spread across Monrovia, Liberians weigh in with their calls for the establishment of a war crimes court in the country. Liberians from all walks of life expressed gratitude for getting justice for victims during the civil war and also called on the government to establish similar court in Liberia to trail people who committed atrocity

When will Britain face up to its crimes against humanity?, *The Guardian*

After the abolition of slavery, Britain paid millions in compensation – but every penny of it went to slave owners, and nothing to those they enslaved. We must stop overlooking the brutality of British history.

Bosniak Commander Charged with Attack on Serb Villagers, *Balkan Insight*

Former Territorial Defence commander Nehru Ganic was charged with having command responsibility for an attack on the village of Cemerno in 1992 in which 30 Serbs were killed, some by being mutilated. The Bosnian state prosecution on Tuesday filed an indictment against Nehru Ganic, charging him with war crimes against Serb victims in the village of Cemerno in the Ilijas municipality near Sarajevo

Former Romanian President Iliescu Charged with Crimes Against Humanity, *Sputnik News*

Former Romanian President Ion Iliescu has been charged with committing crimes against humanity over a violent clampdown on protesters that demanded his resignation in 1989, local media reported on Tuesday. On April 13, incumbent Romanian President Klaus Iohannis ordered the authorities to launch a criminal investigation into the former leadership of the country.



Articles and Blogs

BLOG UPDATES AND ONLINE LECTURES

Blog Updates

"Time to Investigate European Agents for Crimes against Migrants in Libya", by Itamar Mann. Blog available [here](#).

"Strategic Litigation Before the African Regional Courts", by Nani Jansen Reventlow. Blog available [here](#).

"The Use of Force of Turkey in Rojava after the Capture of Afrin." by Stefano Marinelli. Blog available [here](#).

Online Lectures and Videos

"Human Rights for Open Societies", by Utrecht University. Lecture available [here](#).

"Some Salient Features of the Contemporary International Disputes in the Precedents of the International Court of Justice", by Ms. Mariko Kawano. Lecture available [here](#).

"International Organizations as Law-Makers", by Prof. Jose Alvarez. Lecture available [here](#).

PUBLICATIONS AND ARTICLES

Books

Judi Rever. (2018). **In Praise of Blood, The Crimes of the Rwandan Patriotic Front**, Random House Canada.

Ian Park. (2018). **The Right to Life in Armed Conflict**, Oxford University Press

Joanna Nicholson. (2018). **Fighting Victimhood in International Criminal Law**, Routledge.

Harmen van der Wit and Christophe Paulussen (eds). (2017). **Legal Responses to Transnational and International Crimes**, Edward Elgar Publishing.

Articles

Jan Kleijssen and Pierluigi Perri (2016), **"Cybercrime, Evidence and Territoriality: Issues and Options"**, Netherlands Yearbook of International Law, Volume 47, pp. 147-173.

Lucy Richardson (2017), **"Offences against the Administration of Justice at the International Criminal Court: Robbing Peter to Pay Paul"**, Journal of International Criminal Justice, Volume. 15, Issue 4, pp 741-774.

Carsten Stahn (2018), **"Liberals vs. Romantics: Challenges of an Emerging Corporate International Criminal Law"**, SSRN

CALLS FOR PAPERS

The T.M.C. Asser Institute has issued a call for papers on the topic "The International Legality of Economic Activities in Occupied Territories?".
Deadline: 15 May 2018, for more information click [here](#).

Max Planck Institute Luxembourg for Procedural Law has launched a call for papers for its coming conference: "Sociological Perspectives on International Tribunals: Formal and Informal Rules, Functions and Symbols".
Deadline: 18 May 2018, for more information click [here](#).

University of Groningen with BRILL Open Law has issued a call for papers on the topic "Special Issue on International Law for the Sustainable Development Goals".
Deadline: 28 June 2018, for more information click [here](#).



EVENTS AND OPPORTUNITIES

EVENTS

The Future of Multilateralism – Beyond Current Distrust

Date: 7 May 2018

Location: Austrian Embassy, The Hague

For more information, click [here](#).

70 Years Later: The International Military Tribunal for the Far East

Date: 17-19 May 2018

Location: Palace of Justice, Nuremberg

For more information, click [here](#).

Putin 4.0: Ready for a New Cold War?

Date: 18 May 2018

Location: Clingendael Instituut, The Hague

For more information, click [here](#).

Self-Determination and International Law

Date: 18 May 2018

Location: Chatham House, London

For more information, click [here](#).

OPPORTUNITIES

Legal Adviser

International Anti-Corruption Academy, Vienna

Deadline: 30 April 2018

For more information, click [here](#).

Program Coordinator

Geneva Call, Amude - North East Syria

Deadline: 30 April 2018

For more information, click [here](#).

Associate Electronic Evidence Officer

International Criminal Court

Deadline: 09 May 2018

For more information, click [here](#).

Legal Officer

United Nations Environment Programme, Nairobi

Deadline: 18 May 2018

For more information, click [here](#).



JOIN US

Full, Associate and Affiliate Membership

Available to legal practitioners, academics, young professionals, and students.

Benefits include:

- Monthly Opportunities Bulletin
- Reduced Training Fees
- Free Online Lectures
- Networking Opportunities



Head Office/ Room 085,
Churchillplein 1, The Hague, 2517 JW



dkennedy@icty.org



www.adc-ict.org



+31 (0)705125418

