



ADC-ICT NEWSLETTER

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Turinabo et al © MICT

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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

IRMCT NEWS

Prosecutor v. Turinabo et al (MICT-18-116)

On 3 September 2018, five individuals were arrested in Rwanda on an indictment issued by the Prosecutor of the Mechanism for allegedly interfering with the administration of justice. The five individuals are: Maximilien Turinabo, Anselme Nzabonimpa, Jean de Dieu Ndagijimana, Marie Rose Fatuma and Dick Prudence Munyeshuli. The [Indictment](#) alleges that the accused interfered with Prosecution witnesses in the Ngirabatware case which is currently in ongoing review proceedings before the Mechanism. It is alleged that Turinabo, Nzabonimpa, Ndagijimana and Fatuma contacted protected witnesses directly and/or used others known to them to contact and influence the protected witnesses. In addition, the indictment alleges that Munyeshuli and Turinabo are responsible for committing



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contempt of the ICTR and the Mechanism by disclosing protected information regarding protected witnesses and that Munyeshuli made indirect contact with the witnesses in knowing violation of a court order.

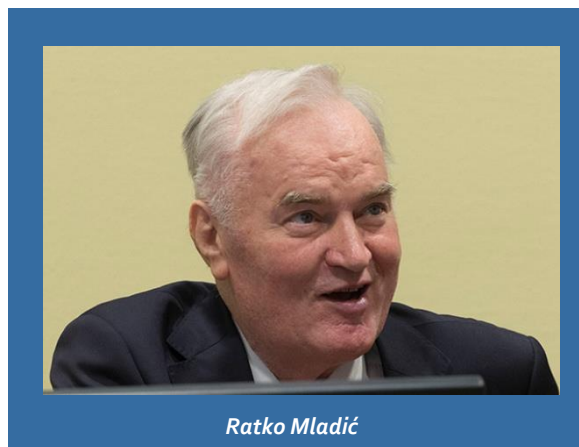
The five accused were transferred to the seat of the Mechanism in Arusha, Tanzania on 11 September and made an [initial appearance](#) on 13 September 2018 before Judge Vagn Joensen. All of the accused pleaded not guilty to the charges in the Indictment.

On 18 September 2018, Judge Vagn Joensen in an [Order](#), invited the government of Rwanda, within 14 days, to provide written submissions on Rwanda's jurisdiction, willingness and preparedness to accept the case for trial. He also ordered the Prosecution to file submissions on the suitability of transfer of the case to Rwanda and ordered the accused to file responses, if any, to the Prosecution's and Rwanda's submissions.

Prosecutor v. Mladić (MICT-13-56)

On 18 June 2018, the Defence for Ratko Mladić respectfully requested the disqualification of Judges [Meron](#), [Agius](#) and [Liu Daqun](#) for actual or apparent bias. These three judges were members of the Appeals Chamber in the ongoing appeal which Mladić has filed against his conviction and life sentence. The motions for disqualification submitted that these judges have previously made findings against the Accused in earlier judgements at the ICTY. The Defence asserted that these previous findings would lead a reasonable observer, properly informed, to apprehend bias in the context of Mladić's appeal. On 20 June 2018, the President of the Mechanism [assigned the requests for disqualification](#) to Judge Antonetti as the next most senior judge after the President.

On 3 September 2018, Judge Antonetti issued a [Decision](#) on the requests for disqualification. In the Decision, he granted the request by the Defence for the removal of Judges Meron, Agius and Liu from the Appeals Chamber as he found that there was an appearance of bias as these judges have already made findings in the context of the *Krstić*, *Tolimir*, *Popović et al.* and *Blagojević and Jokić* cases on the guilt of the Accused for crimes contested in his appeal. Judge Antonetti stated that in his opinion in these judgements, the findings made by these judges constitute sufficient ground for a reasonable observer, properly informed, to reasonably apprehend bias. He added that by allowing certain judges to hear two separate trials arising from the same series of facts and where the cases involve overlapping questions of fact or law, the international criminal tribunals took risks in the matter of impartiality. He stated that the judges involved in a first trial were confronted frequently from the indictment stage with incriminating evidence against a person other than the



accused and essentially this other person in the context of a different trial. These judges read the parties' briefs, heard witnesses, analysed documents and made findings on facts relevant to the case of this other person.

On 4 September 2018, Judge Antonetti issued a [Decision](#) assigning Judges Mparany Mamy Richard Rajohnson, Gberdao Gustave Kam and Elizabeth Ibanda-Nahamya to replace Judges Meron, Agius and Liu on the Appeals Chamber bench. On 14 September 2018, Judge Mparany Mamy Richard Rajohnson withdrew from the Appeals Chamber and Judge Antonetti replaced him with Judge Aminatta Lois Runeni N'gum.

The Prosecution filed a [Motion](#) requesting that a panel of three judges be appointed to consider *de novo* the disqualification request filed by the Defence. The President of the Mechanism withdrew from considering the Motion and referred it to the next most senior judge, Judge Masanche. On 13 September, Judge Masanche issued a [Decision](#) denying the Prosecution's request to appoint a panel of three judges to consider *de novo* the disqualification requests. In his Decision he stated that the Prosecution's request lacked any legal basis and was inconsistent with the established case law and effectively was an interlocutory appeal which according to Rule 18(B)(iii) of the Rules of Procedure and Evidence is not permitted.

On 19 September 2018, the Prosecution filed an [Appeal of the Acting President's Decision Denying the Request to Appoint a Panel of Three Judges](#). The President of the Mechanism [assigned the Request to Judge Sekule](#) as the next most senior judge after judges, Meron, Antonetti and Masanche. A decision is on is currently pending.

At a Status Conference held on 10 July 2018, the Defence for Mladić raised a number of issues related to his health and the conditions of detention. The President stated that the Mechanism takes complaints pertaining to health very seriously and he ordered the Registrar to take a serious look at the issues raised because 'we [the Mechanism] cannot afford making mistakes'.



Prosecutor v. Nindiliyimana et al (MICT-13-43)

On 10 September 2018, the ADC-ICT filed a [Motion](#) to appear as *amicus curiae* in relation to the [Motion for Order to the Government of France](#) submitted by the Defence for Francois-Xavier Nzuwonemeye on 23 August 2018. The Motion for Order to the Government of France asked that the Mechanism issue an order to France to take back Nzuwonemeye who was acquitted by the ICTR in 2014 and has been stranded in Arusha, Tanzania since his acquittal. Nzuwonemeye is one of several individuals who remain in Arusha after acquittal or after having served their sentences by the ICTR. Nzuwonemeye's family reside in France and he was transferred from France to the ICTR in 2000 when he was indicted for crimes he did not commit.

The ADC-ICT Motion requests that the Single Judge permit the ADC-ICT to file submissions on France's obligation to take Nzuwonemeye back and that failing to do so violates his human rights. The ADC-ICT states that this issue is something which affects the eleven individuals who are currently stranded in Arusha and that despite efforts of the Mechanism the international community has failed to uphold their obligations to these individuals.

The ADC-ICT has previously sent [correspondence](#) to the UN Secretary-General and Security Council requesting that action be taken to relocate these acquitted or released persons and received a response from Miguel de Serpa Soares, Under-Secretary General for Legal Affairs, on 29 August 2018 which stated that 'the challenge is that, ultimately, it falls to States to decide to accept relocation of any person on their territory'. The response further stated that the Security Council had noted with concern the problems that the Mechanism faces in several Resolutions and called upon all States to cooperate and render all necessary assistance to the Mechanism.

A decision has not yet been made on the ADC-ICT's request to appear as *amicus curiae*.

Prosecutor v. Karadžić (MICT-13-55)

On 26 September 2018, the Defence filed a [Motion](#) to Judge Antonetti for the removal of Judge Meron from the Appeals Chamber for appearance of bias. The Motion stated that Judge Meron has delivered conclusions in other trials relating to Karadžić. The Motion stated that in light of the recent Decision in the Mladić (see above) there was now a sound legal basis to make the argument that Judge Meron should be disqualified. The Motion also stated that the request for disqualification is not untimely as there are no time limits set in the Rules of Procedure and Evidence for the disqualification of judges.

On 27 September, President Meron issued a [Decision](#) withdrawing from the Appeals Chamber stating that the Mladić Disqualification Decision clearly contradicts established jurisprudence and that in his view harms the interests of the Mechanism by wrongly suggesting that

there is a risk in terms of appearance where the superior officer is being tried, even on appeal, by the judge who found his subordinates guilty. The President further stated that 'allowing Judge Antonetti to adjudicate yet another motion brought under Rule 18 of the Rules is, in my view, liable to delay the proceedings in this case and further harm the interests of the Mechanism'. The President replaced himself on the Appeals Chamber with Judge Ivo Nelson de Caires Batista Rosa with immediate effect.

At a Status Conference held on 15 August 2018, the President of the Mechanism, stated that the appeals judgement is on schedule to be pronounced in December 2018 and that this would be the last Status Conference in the case before the appeals judgement.

The President also stated that the Registry would enter the third stage of testing on the pilot programme to allow detainees to use Skype or equivalent means to communication with family members from the UN Detention Unit. This stage includes testing the connections between detainees and their family members and would be done before the end of September 2018.

Karadžić stated that the only currently problem in the Detention Unit was the question of food. There have been issues in receiving the supplies of Balkan food and due to cultural differences, this has been a problem. The Registry had informed the President that they are in a tendering process for a new supplier for the prison shop and should be completed shortly.

At the end of the Status Conference, Peter Robinson, Defence Counsel for Karadžić, thanked the President for the concern which he had expressed throughout the Status Conferences for Karadžić's health and the conditions of detention. He also thanked the President for his fairness throughout the appeal proceedings. To conclude, Robinson thanked the President immensely for the contributions he has made to international criminal justice during his time as President of the Mechanism.

Prosecutor v. Stanišić and Simatović (MICT-15-96)

The re-trial continued after the summer recess with the testimony of Stipan Kraljevic. Kraljevic stated that Croats were forced to leave the town of Ilok in eastern Croatia in Autumn 1991 because the Yugoslav National Army (JNA) gave them an ultimatum that they would burn the town to the ground if they did not leave. Kraljevic testified that the JNA and Serbian paramilitary forces had previously attacked several villages where they had destroyed houses and expelled non-Serb civilians. He stated that in addition to the JNA forces there were irregular Serbian units who committed crimes. Kraljevic said that he was told by refugees from Lovas that the JNA ultimatum was followed by an attack and that there were 'massive casualties' and most villagers had fled to avoid being killed. Kraljevic claimed that these attacks were done in collaboration with the Chetniks and aimed to expel Croats and spread terror.





ECCC NEWS

Defence Court Report

by Julien Guet, - *Legal Intern on the MEAS Muth*

Case 002

- NUON Chea

Between June and August, the Nuon Chea Defence Team carried out ongoing research and analysis work on Case 002/02 while awaiting receipt of that trial judgement.

- KHIEU Samphan

During the reporting period, the KHIEU Samphan Defence team was engaged in the preparation of the future appeal in Case 002/02.

Case 003

- MEAS Muth

During the reporting period, the Case 003 Defence filed a request for leave to supplement Mr. MEAS Muth's Response to the International Co-Prosecutor's Final Submission, following the Pre-Trial Chamber's decision on the International Co-Prosecutor's appeal of the Closing Order dismissing the charges against IM Chaem. The Case 003 Defence continues to review the evidence in the Case File to take any steps necessary to protect Mr. MEAS Muth's fair trial rights.

Case 004

- AO An

In June and July, the AO An Defence reviewed materials on the Case File in light of the impending Closing Order. In August, upon receiving the Closing Orders (an indictment order from International Co-Investigating Judge and a dismissal order from National Co-Investigating Judge), the Defence reviewed both documents and filed a confidential Urgent Request for Redaction and Interim Measures against Closing Order (Indictment). The Defence continues to analyse the two Closing Orders in their respective languages, awaiting the translations and undertaking other measures to safeguard AO An's fair trial rights.

- YIM Tith

During the months of June, July and August, the YIM Tith Defence Team continued to analyse the contents of Case File 004 in order to prepare YIM Tith's defence and endeavour to protect his fair trial rights. The YIM Tith Defence Team began preparing YIM Tith's response to the Co-Prosecutors' Final Submissions.



News Round-Up

Click on the box to read the full article

ICC will continue 'undeterred' after US threats, *The Guardian*

The international criminal court (ICC) will continue to investigate war crimes "undeterred" by the Trump administration's threat of sanctions against its judges, the Hague-based organisation has declared.

Responding to a firebrand speech by the US national security adviser, John Bolton, the United Nations-backed court said it would not be intimidated or dissuaded from its global mission.

Bosnian Witness Accuses Naser Oric of Shooting Prisoner, *Balkan Insight*

The first witness at the retrial of the Bosnian Army's former commander in Srebrenica, Naser Oric, who is accused of killing three Serb captives in 1992, said he saw the defendant shoot a prisoner.

A protected prosecution witness told the Bosnian state court in Sarajevo on Monday that he saw Bosniak commander Naser Oric shoot a Serb prisoner of war in June 1992.

Crucial video evidence of war crimes is being deleted – how can it be saved?, *The Conversation*

From Syria to Myanmar and beyond, many of today's most intractable and brutal conflicts are being documented by everyday internet users equipped with smartphones. But even though they're documenting vital evidence that could one day help convict perpetrators of atrocities; their footage and photos are at risk from the very platforms that host them.

Legal case builds for trying Duterte at the ICC, *Asia Times*

The International People's Tribunal (IPT) handed down a symbolic guilty verdict in Brussels against Philippine President Rodrigo Duterte for gross human rights abuses, adding to the rising chorus for the populist leader to be referred to the International Criminal Court at The Hague for his various scorched earth policies

There Can Be No Peace for Myanmar Without Justice, *Time*

Bringing peace, national reconciliation, democracy and development to all the people of Myanmar is said to be the goal of Aung San Suu Kyi's civilian government. Indeed, at a recent peace conference aimed at ending the country's decades-long civil war, she herself said: "We will strive with unrelenting moral force to create a stable and peaceful surrounding that is free from armed conflicts for our new generation, fulfill the wishes and aims of our preceding leaders and brighten the hopes dimmed by armed conflicts."



Two Serb Paramilitaries Convicted of Killing Croats, *Balkan Insight*

Zagreb county court sentenced former Serb paramilitaries Dusan Zarkovic and Bogdan Jednak to 15 years in prison each for taking part in the killing of 21 Croats in Josevica in central Croatia in December 1991. The two men, who were tried in their absence as they are no longer in Croatia, were found guilty of participating in the murder of 21 Croat villagers in Josevica in December 1991.

Germany convicts member of Western-backed Syrian opposition for 'war crimes', *CNN*

A German court sentenced a member of a Western-backed Syrian armed opposition group on Monday to life imprisonment for "war crimes," according to court documents. The convict, identified as Ibrahim A., was found guilty of "torture and killing persons protected under international humanitarian law" as well as "murder, extortionist kidnapping and the commission of war crimes under the International Criminal Code."

Rohingya genocide: Will Myanmar generals face ICC justice?, *Deutsche Welle*

Myanmar's government is facing increasing international pressure for its violent crackdown on the Rohingya people. The International Criminal Court says it has jurisdiction over the crisis, but a conviction is unlikely. The International Criminal Court in The Hague (ICC) stated last week that it did, in principle, have the jurisdiction to initiate an indictment against members of Myanmar's military for driving scores of Rohingya people from their homes in 2017.

Israeli Farmers Travel to The Hague, File War Crimes Complaint Against Hamas, *Jerusalem Post*

A group of Israeli farmers traveled to The Hague in the Netherlands on Monday and filed a war crimes complaint with the International Criminal Court (ICC) against top Hamas officials for what they called fire kite terrorism during the Gaza border crisis.

The complaint was drafted by Shurat Hadin-Israel Law Center and co-signed by the farmers and some 50,000 concerned individuals worldwide.

Sri Lanka President rejects foreign pressure over war crimes, *Economynext*

President Maithripala Sirisena asked the United Nations and member states not to pressure Sri Lanka in dealing with war crimes and ensuring non-recurrence of human rights violations nearly a decade after ending the island's separatist war.

Addressing the 73rd United Nations General Assembly in New York on Tuesday evening (Sri Lanka Wednesday morning) President Sirisena repeatedly asked foreigners to back off Sri Lanka.

South Sudan war crimes: UN calling for forming hybrid court, *Al Jazeera*

The UN Human Rights Commission on South Sudan is calling on the government to set up a hybrid court to try potential war criminals. South Sudan's government signed a peace deal last week to end nearly five years of civil war. The commission says those who committed crimes during the conflict must be held accountable and says the court could serve to stem any continuing violence. However, the South Sudanese government has denied committing any atrocities and has said the priority should be on building peace in the country.



ARTICLES AND BLOGS

BLOG UPDATES AND ONLINE LECTURES

Blog Updates

"The Hartford Guidelines on Speech Crimes in International Criminal Law", by Richard Ashby Wilson. Blog available [here](#).

"The Legality of a U.S. Space Force" by Adam Irish. Blog available [here](#).

"Rome Statute at 20: Suggestions to States to Strengthen the ICC", by Fergal Gaynor and Christopher "Kip" Hale. Blog available [here](#).

Online Lectures and Videos

"Gender Crimes in International Criminal Law", by Niamh Hayes. Lecture available [here](#).

"Armed gang violence: at the crossroad between armed conflict and law enforcement?" by Geneva Academy for International Humanitarian Law and Human Rights. Lecture available [here](#).

"Rüsselsheim: The First War Crimes Trial of WWII", by Nathan Huegen, National WWII Museum. Lecture available [here](#).

PUBLICATIONS AND ARTICLES

Books

Héctor Olásolo (2018), **International Criminal Law, Transnational Criminal Organizations and Transitional Justice**, Brill | Nijhoff.

Fabrizio Guariglia, Ben Batros, Reinhold Gallmetzer, George Mugwanya (2018), **The Appeals Chamber of the International Criminal Court**, Cambridge University Press.

Rachel Killean (2018), **Victims, Atrocity and International Criminal Justice: Lessons Learned from Cambodia**, Routledge.

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

Articles

Geert-Jan Alexander Knoops, "**The Proliferation of Forensic Sciences and Evidence before International Criminal Tribunals from a Defence Perspective**", *Criminal Law Forum* (2018)

Alice Riccardi (2018), "**The Use of UN Smart Sanctions in Connection with ICC Proceedings: A (Human Rights-Oriented) Rebuttal**", *Diritti umani e diritto internazionale*, Issue 1/2018, pages 77-102.

Joanna Nicholson (2018), "**The Role played by External Case Law in promoting the Legitimacy of International Criminal Court Decisions**", *Nordic Journal of International Law*, Volume 87, Issue 2, pages 189-211.

CALLS FOR PAPERS

The Exeter Centre for International Law has issued a call for papers on the topic "Legal Resilience in an Era of Hybrid Threats".

Deadline: 30 November 2018, for more information click [here](#).

The City College of New York issued a call for papers on the topic "Critical Perspectives on Human Rights".

Deadline: 31 October 2018, for more information click [here](#).

The Asian Law Institute has issued a call for papers on the topic "*The Rule of Law and the Role of Law in Asia The Rule of Law and the Role of Law in Asia*".

Deadline: 3 December 2018, for more information click [here](#).



EVENTS AND OPPORTUNITIES

EVENTS

Religion and Ethnicity on the International Bench

Date: 4-5 October 2018

Location: Leiden University, The Hague Campus

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

20th Anniversary of the Rome Statute: Law, Justice and Politics

Date: 19-20 October 2018

Location: Courtroom 600, Nuremberg, Germany

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

Armed Conflict and Starvation: What Does the Law Say?

Date: 12 October 2018

Location: Chatham House, London, UK

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

'East-West Street and the Making of Modern Human Rights' (Philippe Sands QC)

Date: 24 October 2018

Location: Edinburgh Law School, UK

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

OPPORTUNITIES

Senior Legal Officer (S2)

OSCE Mission in Kosovo, Pristina

Deadline: 3 October 2018

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

Legal Officer (P3)

Office of Legal Affairs, UN, New York

Deadline: 11 October 2018

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

Associate Analyst (P2)

International Criminal Court, The Hague

Deadline: 5 October 2018

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

Associate Legal Officer (P2)

International Court of Justice, The Hague

Deadline: 24 November 2018

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



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