



# ADC-ICT NEWSLETTER

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*Turinabo et al* © MICT

Head of Office: Dominic Kennedy  
Contributors: Alexandre Chao Viso and Caroline Nash

*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)**

In the contempt proceedings against Turinabo et al, the Parties and the Government of Rwanda (GOR) were requested to give their observations on the suitability for the referral of the case to be tried in Rwanda. On 24 October 2018, the GOR indicated that the case should be tried by the Mechanism as it was initiated by the Office of the Prosecutor of the Mechanism as it would be in the interests of justice. This was despite the Office of the Prosecutor indicating that the case was suitable for transfer to Rwanda, citing that this would be in the interests of justice. The Defence indicated that the case should remain with the Mechanism and should not be transferred to Rwanda as if proceedings were transferred to Rwanda it may result in a breach of the accused fair trial rights.

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



[info@adc-ict.org](mailto:info@adc-ict.org)



[www.adc-ict.org](http://www.adc-ict.org)



+31 (0)705125418



On 7 December 2018, the Single Judge issued his [Decision on the Suitability of Referral of the Case](#). In his decision the Single Judge decided that the case should remain with the Mechanism as there would be a strong likelihood that the trial would commence and conclude more expeditiously if retained by the Mechanism. He also indicated that as the case has a close nexus to the on-going review proceedings in the Ngirabatware case this would facilitate access of the parties to the relevant information in these two related cases.

On 13 December 2018, a [Status Conference](#) was held at the Arusha Branch of the Mechanism. A number of issues were discussed including the disclosure of evidence and the conditions of detention.

On 24 December 2018, the Defence for Turinabo, Nzabonimpa and Fatuma filed a joint [Motion](#) challenging the jurisdiction of the Mechanism. The Defence argued that the doctrine of joint criminal enterprise was not applicable to offences of contempt before the Mechanism and that this mode of liability was strictly reserved for alleged serious violations of the core crimes contained in the Statute of the ICTR and ICTY.

The Prosecution filed its response to the Defence Motion on 7 January 2019, stating that the Mechanism does have jurisdiction to try the accused under joint criminal enterprise for contempt cases. A decision on this Motion is still pending.

The Defence for [Nzabonimpa](#) and [Munyeshuli](#) filed submissions challenging the form of the indictment stating that the indictment lacks specificity and is unclear. The Defence allege that the accused should be aware of exactly what conduct constitutes the charges in the indictment. A decision on these motions is still pending.

No date has yet been set for trial.

### **Prosecutor v. Mladić (MICT-13-56)**

On 18 October 2018, Senior Judge William Sekule issued an [Order Assigning a Bench of the Appeals Chamber](#). Judge Sekule ordered that the Appeals Chamber to be composed of Judge Lee G. Muthoga, Judge Vagn Prusse Joensen, and Judge Ben Emmerson.

On 16 November 2018, the Registry [ordered](#) the United Nations Detention unit to be more stringent and cautious with the phone call regime of the detainee, and to listen to and summarise the phone calls 7 days before and 30 days after that date, following an incident where Mladić appeared to have directly participated in a televised talk show by using the non-privileged telephone line at the UNDU, by telephoning his son, who was present at the

talk show and who invited the Detainee to speak on the show.

On 7 December 2018, Pre-Appeal Judge, Judge Prisca Matimba Nyambe ordered an issuing of public redacted versions of Rule 75 and Rule 86 [Decisions](#). Judge Nyambe noted the judgement issued by Trial Chamber I of the ICTY on 22 November 2017 and that the Defence representing Ratko Mladić and the OTP have appealed against the Trial Judgement.

On 31 December 2018, the Defence submitted a [motion](#) to the Appeals Chamber to admit new evidence for the appeal case. The motion included the new evidence of a transcript from 6 September 2017, which is argued could have impacted the Trial Chamber's verdict if it had been available.

The Appeals Chamber scheduled a [Status Conference](#) for 18 February 2019. The previous status conference was held on 6 November 2018, with Judge Nyambe presiding. The topic of Mladić's state of health and physical condition in the Detention Unit was raised.

### **Prosecutor v. Ngirabatware (MICT-13-43)**

On 3 October 2018, the President of the Mechanism [ordered](#) the Defence to make submissions on what they consider necessary to prepare for the review hearing in order to manage the review proceedings effectively. The Defence submitted that the Review Hearing should be adjourned until the completion of the Turinabo et al proceedings as they are intrinsically linked to the on-going review proceedings.

On 8 November 2018, the Appeals Chamber [ordered](#) the Defence to make submissions on whether there are grounds for reconsideration of the Review Decision made the Appeals Chamber in this case. On 10 November 2018, the Defence submitted that there were no grounds for reconsideration of the Review Decision, that the Defence is willing to proceed with proving the existence of the new fact and that the Defence will present its case at such time as determined by the Appeals Chamber.

On 7 December 2018, the Appeals Chamber [decided](#) that there are exceptional circumstances in the case which justify an extension of time to allow Ngirabatware additional time to conduct further preparation for the review hearing but that Ngirabatware bears the burden to prove the new fact and that he must be prepared to proceed irrespective of the status of the Turinabo et al case by September 2019.



## Prosecutor v. Karadžić (MICT-13-55)

On 6 November 2018, the President of the Mechanism, Judge Meron, issued a [Decision](#) on the Prosecution Motion to Disqualify Judge Jean-Claude Antonetti.

The Defence [requested](#) for Judge William Sekule to be removed from the appeal process in his trial on 15 October 2018. The Defence argued that Judge Sekule could not be unbiased due to his previous placement as a judge that convicted former Bosnian Serb Army officers Vujadin Popović, Ljubisa Beara, Drago Nikolić, Vinko Pandurević and Radivoje Miletić and the former Bosnian Serb security and intelligence chief, Zdravko Tolimir. They were convicted for participating at Srebrenica.

On 2 December 2018, the Defence filed a [Motion for Binding Order Against the United States of America](#), wherein it asked the Chamber to compel the Government of the US to hand over “all cables or reports of the National Security Agency or CIA reflecting words spoken by or attributed to Radovan Karadzic from 9-31 July 1995”, as they would be highly relevant to their case.

This motion was not supported by the Prosecution, who in a [Response](#) stated that the motion should be denied on the grounds that the material sought does not exist, therefore not meeting the “exceptional circumstances” threshold for a binding order at the appellate stage, and that in any event the material would not be relevant to the case. The US government also asked the Appellant’s motion to be denied in its [Response](#), for similar reasons, but stated that they had found a document they would hand in if necessary.

On 27 December 2018, the Appellant filed a [Reply Brief](#). Therein, the Defence asked the Appeal Chamber to invite the United States to provide a sworn declaration from a responsible official from the National Security Agency explaining how the search for records was conducted; as he is convinced more documents can be found and the US did not comply with its due diligence requirements. This motion was not opposed by the Prosecution in its [Response](#).

On 11 January 2019, the United States government filed a [“Response of the United States of America to Appellant’s Reply Brief: Motion for Binding Order to the United States of America”](#), wherein it stated that the “exceptional circumstances” required for the requested interim measure to be applicable were not present. As such, it requested the motion to be denied, but declared that they would be willing to send the document found upon issuance of a proper Order pursuant to Rule 76.

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

The re-trial continued with the expected end of the Prosecution case after the scheduled appearance of the last Prosecution witness.

The Prosecution submitted a [Motion for Enforcement of Order for Retrial](#), in which they asked the Appeals Chamber to intervene in the case and revoke the limitation on new evidence set by the Trial Chamber on 2 February 2017. The Appeals Chamber issued a [Decision](#) on this motion wherein it declared that it was not competent to hear such an appeal where certification had not been granted by the Trial Chamber, hence dismissing it.

## Prosecutor v Augustin Ndindiliyimana et al (MICT-12-29-R)

Francois-Xavier Nzuwonemeye 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.

On 22 October 2018, the Single Judge issued a [Decision](#) on the matter, wherein it denied the request made by the Defence to compel the Government of France to take him back, stating that the authority of the Mechanism in this case is extremely limited. On 17 December 2018, the Defence [appealed this decision](#); which is now pending.



## ADC-ICT Annual Conference 2019

### *International Criminal Law: Beyond The Hague*

Saturday 16 February 2019  
Marriott Hotel, The Hague

[Programme](#)  
[Registration by 8 February 2019](#)



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info@adc-ict.org



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# News Round-Up

Click on the box to read the full article

## ICC Appeals Chamber maintains Laurent Gbagbo and Charles Blé Goudé in custody, ICC Press Release

The Appeals Chamber of the International Criminal Court ("ICC" or "Court"), by majority, Judge Howard Morrison and Judge Piotr Hofmański dissenting, decided that Mr Laurent Gbagbo and Mr Charles Blé Goudé shall remain in ICC custody pending the Appeals Chamber's decision on the Prosecution's Appeal against the decision of ICC Trial Chamber I in relation to the release of Mr Laurent Gbagbo and Mr Charles Blé Goudé following their acquittal.

## Croatia Urged to Prohibit Denial of Ustasa Crimes, Balkan Insight

The Simon Wiesenthal Centre, a prominent Jewish human-rights organisation, urged the Croatian authorities to ban books questioning established facts about crimes committed by the WWII fascist Ustasa movement.

The Jerusalem-based Simon Wiesenthal Centre on Wednesday urged the Croatian authorities to ban works which deny crimes committed by the Ustasa regime in the Nazi-allied Independent State of Croatia state during World War II.

## Justice Moves Ahead in the Central African Republic, Human Rights Watch

On December 12, Patrice Edouard Ngaissona, a one-time self-declared political coordinator of anti-balaka militias, was arrested in France on International Criminal Court (ICC) charges.

With his arrest, the prospects for justice for grave crimes committed during the Central African Republic's most recent crisis took a welcome step forward.

## Libyan court-martial defies ICC after releasing war crimes suspect, The Citizen

However, despite the ruling, the ICC has confirmed the arrest warrant against Mahmoud Al Werfalli remains in place. A Libyan military commander, accused of crimes against humanity by the International Criminal Court (ICC), has been released and the charges against him dropped following a court-martial in the eastern Libyan city of Benghazi.

## Beijing fails bid to cut funds for UN's Myanmar probe, Myanmar Times

China's attempt to cut the funding for a United Nations evidence-gathering mechanism tasked with investigations on Myanmar's international crimes has failed as the UN finalises the budget. The UN General Assembly's budget committee approved US\$28 million for the mechanism, with a minor reduction of \$1 million from the original amount. China vainly called for halving the proposed budget during the negotiations, according to rights advocacy group, Human Rights Watch (HRW).



**Attack on UN compound in Somalia may be 'violation of international humanitarian law',**  
*UN News*

United Nations Secretary-General António Guterres strongly condemned Tuesday's attacks against the UN compound in Mogadishu, the capital of Somalia, saying that intentionally attacking UN personnel may constitute "a violation of international humanitarian law." Seven mortars landed inside the compound, injuring two UN staff members and one contractor.

**When Soldiers Go Back to Being Children,**  
*Foreign Policy*

In the United Nations' most recent report on the protection of children during armed conflict, Secretary-General António Guterres delisted three armed forces that had previously been called out for their terrible track records: Sudanese government security forces, the Revolutionary Armed Forces of Colombia (FARC), and Saudi troops operating in Yemen. Their success in doing so may prove instructive.

**Lawyers Take Fight for Syrian Reparations to Dutch Courts,**  
*Balkan Insight*

Lawyers say they are trying to locate witnesses, and potential suspects, among the thousands of Syrians who have sought refuge in the Netherlands since the uprising against Bashar al-Assad began in 2011.

Lawyers in the Netherlands are preparing to bring at least four cases before Dutch courts seeking damages on behalf of a number of Syrian citizens for pain and suffering caused during the Syrian war.

**Khmer Rouge tribunal / 'Astonishing failure' or 'justice for millions'?,**  
*Southeast Asia Globe*

The ECCC landed its first genocide conviction of high-level officers in the Pol Pot regime, but only after nearly 20 years and \$300m in costs. A looming judicial stalemate on the fate of two more cases could lead to the ECCC's termination – which might be welcomed by a nation grown weary of dwelling on its dark past.

On 16 November, the Extraordinary Chambers in the Courts of Cambodia (ECCC), pronounced senior regime leaders Khieu Samphan and Nuon Chea guilty of genocide.

**UN warns Colombia over war crimes tribunal delays,**  
*Colombia Reports*

The United Nations called on Colombia to "urgently remove the obstacles" impeding a war crimes tribunal or risk being called out on failures to comply with an ongoing peace process.

The so-called Special Jurisdiction for Peace (JEP) became the center of controversy again last week after conservative President-elect Ivan Duque called on changes to the procedural rules of the court.

**Duterte's War on Drugs Can't Escape International Law,**  
*The Diplomat*

The ICC says it will continue to study the complaints filed against Duterte in spite of his dismissal of the institution.

Earlier this month, the International Criminal Court (ICC) announced that it would continue to study complaints filed against Philippine President Rodrigo Duterte's war on drugs despite his unwillingness to recognize the legitimacy of the body. The announcement marks the continuation of international legal scrutiny around one of Duterte's most controversial policies as president.



# ARTICLES AND BLOGS

## BLOG UPDATES AND ONLINE LECTURES

### Blog Updates

"International Organizations and the Making of Modern Legal Histories", by Megan Donaldson. Blog available [here](#).

"The Decentralisation of International Crimes: A shift from the central criminal apparatus at the ICC?" by Sean Shun Ming Yau. Blog available [here](#).

"Procedural fairness and the crucible of cross examination", by Owain Thomas QC. Blog available [here](#).

### Online Lectures and Videos

"The Individual and the Group: The Universal Declaration of Human Rights and the Genocide Convention at 70", by Geneva Academy for International Humanitarian Law and Human Rights. Lecture available [here](#).

"Online Course on the International Criminal Court", Stanford Human Rights Education Initiative. Lecture available [here](#).

"Successes and Challenges in the Fight against Impunity", by Olympia Bekou, University of Oxford. Lecture available [here](#).

## PUBLICATIONS AND ARTICLES

### Books

Harold Hongju Koh (2018), **The Trump Administration and International Law**, Oxford University Press.

Colleen Rohan, Gentian Zyberi (2018), **Defense Perspectives on International Criminal Justice**, Oxford University Press.

William H. Boothby (2018), **New Technologies and the Law in War and Peace**, Cambridge University Press.

Jorge E. Núñez (2019), **Sovereignty Conflicts and International Law and Politics**, Routledge.

### Articles

Yudan Tan (2018), "The Identification of Customary Rules in International Criminal Law", *Utrecht Journal of International and European Law*, Volume 34, Issue 2, pages 92–110.

Yue Zhang (2018), "Customary International Law and the Rule Against Taking Cultural Property as Spoils of War", *Chinese Journal of International Law*, Volume 17, Issue 4, pages 943-989.

Alexander Heinze (2018), "A Semantic Approach to Purposes and Goals in International Criminal Justice", *International Criminal Law Review*, Volume 18, Issue 6, pages 929-957.

## CALLS FOR PAPERS

The Academy on Human rights and Humanitarian Law at the American University Washington College of Law has issued a call for papers on the topic "*The Protection of Migrants under International Human Rights Law*". Deadline: 1 February 2019, for more information click [here](#).

The European Journal of Law and Political Sciences issued a call for papers on the topic "Science of Law". Deadline: 28 February 2019, for more information click [here](#).

The Editorial Board of the African Yearbook on International Humanitarian Law has issued a call for papers on the 'Current Developments' section. Deadline: 1 March 2019, for more information click [here](#).



# EVENTS AND OPPORTUNITIES

## EVENTS

### **Under Fire: Cultural Heritage and Armed Groups**

Date: 28 January 2019

Location: British Institute of International and Comparative Law, London, UK

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

### **'But what about men?': Gender Discomfort in International Criminal Justice**

Date: 28 January 2019

Location: Seminar Room, Oxford Transitional Justice Seminar

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

### **Winter Academy on Artificial Intelligence and International Law**

Date: 11 February 2019

Location: Asser Institute, The Hague

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

### **ADC-ICT Annual Conference on International Criminal Law: Beyond The Hague**

Date: 16 February 2019

Location: Marriott Hotel, The Hague

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

## OPPORTUNITIES

### **Legal Officer, Ombudsperson's Office (ML-2)**

Kosovo Specialist Chambers, The Hague

Deadline: 25 January 2019

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

### **Legal Officer (P3)**

Economic and Social Commission for Asia and the Pacific, Phnom-Penh

Deadline: 30 January 2019

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

### **Legal Adviser**

International Committee of the Red Cross, Geneva

Deadline: 27 January 2019

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

### **Legal Officer (P3)**

Office of Legal Affairs, UN, New York

Deadline: 6 February 2019

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



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