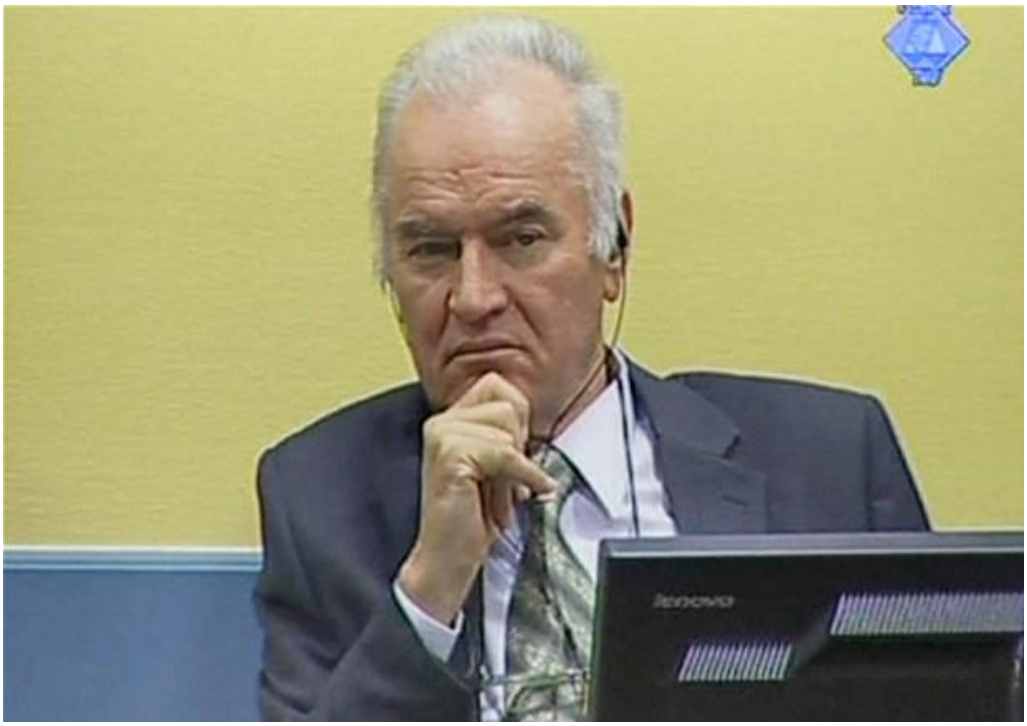

RATKO MLADIĆ

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ICTY News

Prosecutor v. Mladić (IT-09-92)

In the week of 18 April the Defence continued its case with the examination of expert witness Professor Zoran Stanković, a pathologist and expert on the exhumation of the Tomašica mass grave in Prijedor. He analysed the reports of Dr. John Clark, a previous expert witness in the Mladić case, who testified on the exhumation and autopsies of the bodies from the Tomašica mass grave.

During four days of examination Stanković discussed his critical analysis of the two reports of Dr. John Clark regarding the exhumation of the Tomašica mass grave. Stanković stated that in this case, exhumation was conducted in a manner deviating from the procedures that should be followed as a pathologist. He argued, for example, that bodies of mass graves could not be fully examined without adequate equipment, such as an X-ray machine. Stanković also made remarks on Dr. Clark's claim that all the exhumed bodies had died in July 1992. He questioned if this could be reconciled with the fact that on some of the bodies multiple layers of clothing were found. Moreover, Stanković stated that by looking at the evidence it could be argued

that some of the people were participants in armed conflicts. He also testified that he considered it to be strange that the different approaches by Dr. Clark and other pathologists on the cause of death of some of the exhumed remains were not harmonised, which should be the normal procedure. The defence will continue to examine the remaining (expert) witnesses during the last week of April.

MICT News

Prosecutor v. Karadžić (MICT-13-55)

In March and April, Dr. Radovan Karadžić filed two motions before the Appeals Chamber of the MICT in relation to his potential appeal of the verdicts reached by the ICTY Trial Chamber. Both the Prosecution's response and Karadžić's reply have since been filed.

1. Motion for Order to Prosecution to Obtain and Disclose Subsequent Statements

On 30 March, Defence Counsel for Karadžić, submitted a Motion for Order to Prosecution to Obtain and Disclose Subsequent Statements.

Pursuant to Rule 55, Karadžić requested for an order directing the Prosecution to obtain and disclose to him statements and testimony of Prosecution witnesses in subsequent national proceedings.

Counsel for the Defence stated that despite the need for public proceedings before the Mechanism, national authorities and counsel have filed requests for variation of protective measures and for disclosure of statements and testimony of protected Prosecution witnesses for use in national criminal investigations and proceedings without notice to the Defence. In this motion, the Defence expressed its interest in knowing when such applications were being made as they may indicate that the witness will provide a statement or testimony in those national proceedings. Indeed, under Rule 71(B), such statements or testimony may contain new information of an exculpatory nature. Thus, this information could provide assistance to Karadžić in presenting his case on appeal.

Previously, on 8 December 2015, Karadžić had requested the ICTY Trial Chamber to direct the Registrar to disclose to him a list of Prosecution witnesses in relation to whom an application for variation of witness protection measures had been filed by national authorities. However, on 18 February 2016, the Trial Chamber denied the request.

On 22 February 2016, in light of this decision, Karadžić requested that the Prosecution make an inquiry of all domestic authorities who have been provided with disclosure of confidential information to determine if the witness had subsequently provided a statement or testimony in domestic proceedings, and if so, to obtain a copy of that statement or testimony and to disclose it. On 25 February, the Office of the Prosecution decided not to do so. Thus, Karadžić decided to file a motion for an order compelling the Prosecution to obtain and disclose such statements. Counsel for the Defence stated in the motion that it is unable to contact national authorities independently to obtain any subsequent statements or testimony made by Prosecution witnesses who have testified in Karadžić's case.

RADOVAN KARADŽIĆ

The Prosecution opposed Karadžić's request for an order requiring that the Prosecution seek and disclose statements and testimony of Prosecution witnesses from national authorities. According to the Prosecution, the motion should be dismissed based on three main reasons. Firstly, Karadžić's request was broad and speculative in nature. Secondly, the Trial Chamber had already ruled on this issue. Thirdly, to the extent that Karadžić relies on authorities from pre-2004 cases from the ICTR Trial Chambers, those

cases do not assist. Finally, Karadžić could direct requests for assistance to national authorities himself.

On 14 April, the Defence replied to the Prosecution's Response. Karadzic restated that the motion for an order directing the Prosecution to obtain and disclose subsequent statements of Prosecution witnesses was well-founded and should be granted. The motion is a request for the Appeals Chamber to provide every practicable facility it is capable of granting under the Rules and Statute when faced with a request by a party for assistance in presenting its case.

2. Motion for Access to *Ex Parte* Filings in Completed Cases

The second motion, filed on 1 April 2016, was for access to portions of *ex parte* Prosecution filings in two trials prior to his own (Prosecutor v. Brdjanin and Prosecutor v. Slobodan Milošević). These filings were motions seeking protective measures over two witnesses, each of which was granted. Those protective measures continued *mutatis mutandis* into Karadžić's trial.

Counsel for Karadžić acknowledged that a higher standard applied to accessing confidential materials filed *ex parte*, rather than *inter partes*. The submissions sought to meet this standard by arguing that the decisions on the Prosecution's motions for protective measures disclosed no factual basis for their grant. It was presumed in both instances that these grounds were set out in the *ex parte* filings. The motion contended that there was a legitimate forensic purpose to Karadžić obtaining both filings: to challenge on appeal the Trial Chamber's denial of protective measures to Defence witnesses in his case, on the basis that a different standard was applied. In relation to the Brdjanin witness, a further potential ground of appeal (and legitimate forensic purpose) was identified, based on the Karadžić Trial Chamber's decision to delay disclosure of the Brdjanin witness's identity until after the trial began. It was submitted that, since the protective measures were granted, the witnesses had testified in Karadžić's trial. As such, their identities were known to him and the need to prevent that could not remain a justification for denying him the factual basis for these measures.

The Prosecution contended that the motion disclosed no legitimate forensic purpose, nor met the high threshold required, for access to *ex parte* filings. Relying on a decision on a motion in Prosecutor v. Momčilo Krajišnik, the Prosecution observed that the threshold is higher in such cases because the material necessarily "contains information which has not been disclosed *inter partes* solely because of security interests of a State, other public interests, or privacy interests of a person or institution".

The Prosecution argued that Karadžić's "interest" in the factual basis for the grant of the protective measures did not "amount to a need" outweighing those security, public or private interests such that the confidentiality of the filings should be removed. In his reply, filed on 14 April 2016, Counsel for Karadžić asserted that delayed disclosure of the Brdjanin witness's identity could have affected the verdicts in the Karadžić trial. The Trial Chamber had accepted the witness's credibility and reliability in relation to events at Sanski Most. By delaying disclosure of the witness's identity, the accused was deprived of time and resources for the preparation of his engagement with the witness, arguably to such a level that the time available was inadequate to allow him properly to challenge the witness's evidence. It was submitted that access to the *ex parte* filings would permit Karadžić to identify whether that decision of the Trial Chamber was justified or whether it should be raised on appeal.

Counsel for Karadžić also observed that the Prosecution had raised no argument that, were access granted, the Prosecution or the witness would be prejudiced. In fact, disclosure of all prior statements and testimony of the two witnesses had already occurred, as noted in the original motion. The reply therefore argued that the balancing test for access to confidential information weighed in favour of the motion being granted, in view of there being some benefit to the accused and no identified harm to the witness.

The Appeals Chamber's decision on each motion remains pending.

News from other International Courts

Extraordinary Chambers in the Courts of Cambodia

Jess Baikie, Legal Intern, Meas Muth Defence Team

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Nuon Chea Defence

In March, the Nuon Chea Defence remained fully engaged in the Case 002/02 trial proceedings, which moved to the Security Centres and Internal Purges segment of the trial and focused on two security centres in the Northeast Zone (Au Kanseng and Phnom Kraol). On 3 March, the Defence requested the admission of 17 documents to be used in its cross-examination of genocide "expert witness" Alexander Hinton. The documents related to Hinton's background, independence and impartiality, and his knowledge as to the treatment of the Vietnamese and Buddhists. The Trial Chamber ultimately admitted 15 of the 17 documents.

On 24 March, the Defence filed two requests. The first was a request to hear one additional witness in respect of the Phnom Kraol Security Centre. The second was a request to hear six additional witnesses in respect of the S-21 Security Centre, all of whom had served in Division 310. That request also sought for the Trial Chamber to open an investigation into alleged defectors who might provide evidence of attempted coups d'état during the DK period. As of the end of March, the Trial Chamber has not ruled on these requests.

During the hearings on 24 and 31 March, the Defence made various oral submissions in respect of the upcoming hearings on the S-21 Security Centre. The Defence made several requests, including, *inter alia*, that witness 2-TCW-916 testify only after all other witnesses for Security Centres and Internal Purges do so first; that the Defence be granted additional time to cross-examine 2-TCW-916; and that the Defence be granted access to any additional evidence, if any, which had been gathered by the ECCC's investigators but was not yet on the Case 002/02 case file. The Defence also indicated that it would soon be filing further witness requests in respect of the Security Centres and Internal Purges segment.

Khieu Samphân Defence

In March, the Khieu Samphân Defence remained fully engaged in preparing and attending Case 002/02 hearings regarding Au Kanseng and Phnom Kraol security centers, and the testimony of two witnesses called to testify as experts on the treatment of targeted groups – Alexander Hinton, an anthropologist, and Ysa Osman, an OCIJ analyst. In order to conduct the examination of Hinton, the Defence requested six documents related to his background and methodology be

KHIEU SAMPHÂN

admitted into evidence.

The Defence also filed a response to the Civil Party Lead Co-Lawyers' request to clarify the scope of Case 002/02 regarding allegations of rape outside the context of forced marriage. The Defence recalled previous decisions from the Trial Chamber concluding that it has never been seized of such allegations.

Meas Muth Defence

In March, the Meas Muth Defence filed several letters to the Co-Investigating Judges requesting the correction of various errors in Case File documents (the Defence requested, for example, the removal of duplicate documents and to have certain incorrect translations corrected). The Defence continues to review material on the Case File and to file submissions where necessary to protect Meas Muth's fair trial

rights.

Ao An Defence

On 14 March, the Co-Lawyers for Ao An's Defence appeared at a Further Appearance in Phnom Penh, where the International Co-Investigating Judge expanded the case against Ao An by charging him with additional crimes allegedly committed at nine new crime sites in the Central Zone. The crimes include genocide against the Cham people; the crimes against humanity of murder, extermination, enslavement, imprisonment, torture, persecution and other inhumane acts, namely forced marriage, rape, enforced disappearances, physical abuse, forced labour and inhumane conditions of detention; and premeditated homicide under the 1956 Cambodian Penal Code.

The Defence filed a request with the Office of the Co-Investigating Judges for additional resources, followed by a supplementary filing, at the request of the International Co-Investigating Judge to further justify the need for more resources.

Finally, the Defence continued to review all the materials on the Case File in order to prepare Ao An's defence and safeguard his fair trial procedural rights.

Yim Tith Defence

In March, the Yim Tith Defence continued to analyse the contents of the Case File in order to participate in the investigation, prepare YIM Tith's defence and protect his fair trial rights.

Im Chaem Defence

In March, the Im Chaem Defence requested the Office of the Co-Investigating Judges to seize the Pre-Trial Chamber with a view to annulling further written records of witnesses' interviews following the Defence's initial request in February. The Defence also sought further corrections with regard to the Case File. Finally, the Defence continues to review the evidence in the Case File in order to further prepare its client's defence and safeguard Im Chaem's fair trial rights.

News from the Region

Bosnia and Herzegovina

Former Bosnian Presidency Member Charged with War Crimes

The trial against former member of Bosnia's tripartite presidency, commenced on 5 April 2016, at the Bosnian State Court. Paravac is accused of having participated in a joint criminal enterprise, targeting the Bosniak and Croat civilian population in Doboj during the period between May 1992 until the end of 1993. Milan Ninković, Andrija Bjelosević and Milan Savić are standing trial alongside Paravac. At the time that the alleged crimes took place, Paravac held the position of President of the Crisis Committee in the Doboj municipality. Thereafter, Paravac became a member of the tripartite Presidency of Bosnia and Herzegovina. Ninković was a member of the aforementioned Crisis Committee in the Doboj municipality, whilst Bjelosević was the Chief of the Public Security Centre in Doboj, having Savić as his deputy.

All four defendants have been charged for attacks executed by the army, police and paramilitary groups, which resulted in civilian casualties and civilians being captured and taken to detention camps at several locations in the Doboj area. In his opening remarks, prosecutor Mirza Hukeljić stated that, "several thousand people were detained in detention camps, where they were tortured, abused and beaten. This has left permanent consequences for the health of many of the survivors. During the persecution, several hundred people were killed." The ICTY previously conducted the investigation of the alleged war crimes the defendants have been charged with, however it referred the case to the Bosnian State Court. The first prosecution witness is scheduled to testify on 26 April 2016.

Croatia

Croatian Serb Leaders to be Tried in Absentia

The County Court in Zagreb announced on 19 April 2016 that Milan Martić, former President of the unrecognised Republic of Serbian Krajina, and Milan Čeleketić, military Chief-of-Staff, are to be tried in absentia. Martić and Čeleketić are accused of ordering and organising rocket attacks on Zagreb, Karlovac and Jastrebarsko in reprisal to the Operation Flash, conducted by the military of Croatia. There were no fatalities in Karlovac and Jastrebarsko, while seven people were killed in the attacks on Zagreb.

MILAN MARTIĆ

Martić has already been sentenced by the ICTY for his assistance in organising the ethnic cleansing of all non-Serbs and the attacks on Zagreb. He is currently serving a 35-year sentence in Estonia. As such, he will be tried only for the attacks on Karlovac and Jastrebarsko. Čeleketić, who currently lives in Subotica and whose extradition Serbia has declined, has been charged for the attacks on all three cities. The trial will commence on 31 May 2016.

Serbia

Nationalism Promoted during Serbian Elections

The Independent Democratic Party of Serbia, running as part of Serbian Progressive Party's electoral list for the parliamentary polls, has been receiving criticism for promoting nationalism during its election campaign. Leaflets promoting the release of Momčilo Krajišnik's book, *How Republika Srpska was Born*, included a quote from the party, urging people to come and "hear part of history first-hand from our Moma [Momčilo]".

In 2009, the ICTY sentenced Krajišnik to 20 years imprisonment for the persecution and deportation of Bosniak and Croat civilians from ten Bosnian municipalities. He was released after serving two-thirds of his sentence in September 2013.

MOMČILO KRAJIŠNIK

During the book promotion, Krajišnik condemned the ICTY, saying that former Bosnian Serb political leader Radovan Karadzic should not have been sentenced to 40 years of imprisonment for genocide and crimes against humanity. The opposition Democratic Party stated such views should not be showcased during the country's election campaign, noting that promoting this during the election campaign "puts the country back in the 1990s" and "cannot move this country forward".

Serbian Radical Party leader Vojislav Šešelj, who was cleared of crimes against humanity by the ICTY last month, is running in the elections. Recent polls suggest Šešelj's party's support among voters is 7.8 per cent, which would be enough for it to get into parliament. Meanwhile, Serge Brammertz, the prosecutor at the UN Mechanism for International Criminal Tribunals, announced on 6 April 2016, that the prosecution will appeal against Šešelj's acquittal.

Looking Back…

International Criminal Tribunal for the former Yugoslavia (ICTY)

Five years ago…

On 15 April 2011, the Trial Chamber delivered its judgment on *The Prosecutor v. Ante Gotovina, Mladen Markač and Ivan Čermak*.

Croatian Generals Gotovina and Markač, as members of a joint criminal enterprise to permanently remove the Serbian population from the Krajina region, were found guilty of persecution, deportation, murder and inhumane acts, and plunder of public and private property, wanton destruction, murder and cruel treatment committed by the Croatian forces during the Operation Storm military campaign between July and September 1995. They were sentenced to 24 and 18 years' imprisonment respectively. Assistant Minister of Defence, Ivan Čermak was acquitted of all charges. On 16 November 2012, the Appeals Chamber reversed Gotovina and Markač's convictions and entered verdicts of acquittal.

The Appeals Chamber unanimously found that the Trial Chamber erred in concluding that the artillery attacks ordered by Gotovina and Markač on the four towns in question were unlawful. On this basis, the Appeals Chamber reversed the Trial Chamber's findings that a joint criminal enterprise existed and ordered their immediate release.

International Criminal Tribunal for Rwanda (ICTR)

Ten Years Ago …

On 14 April 2006, Paul Bisengimana, former Mayor of the municipality Gikoro Kigali-Rural, was convicted of extermination as a crime against humanity and sentenced to 15 years in prison.

The Chamber noted that although Bisengimana did not personally commit any violent acts, he was aware that an attack would be launched against refugees at Musha Church using weapons that had been previously distributed. He had the means to challenge the killings but chose not to; he was present when the attack was launched and he knew his presence would encourage the perpetrators of the crimes.

The Chamber also noted that the accused was a person of authority with an obligation to protect the refugees. More than one thousand people were killed. The Chamber rejected the alleged assistance to victims and considered a large sentence appropriate.

On 11 December 2012, Bisengimana was granted early release by the President of the ICTR. Bisengimana had completed two thirds of his sentence, with evidence of rehabilitation and co-operation with the ICTR prosecution.

International Court of Justice (ICJ)

Fifteen years ago…

On 24 April 2001, the Federal Republic of Yugoslavia (FRY) filed an application for revision of a Judgment delivered by the ICJ on 11 July 1996. In the 1996 judgment, the ICJ confirmed it had jurisdiction to deal with Bosnia Herzegovina's application to the court to institute proceedings against FRY for violating the Genocide Convention. In its application for revision, FRY contended that its admission to the UN in 2000 had shown that it had not been a Member of the UN from 1992 to 2000 and thus not a party to the Statute of the Court when the case was filed in 1993. The Court dismissed the application for revision on 3 February 2003 and affirmed that it had jurisdiction to deal with the case. On 26 February 2007, the Court found that Serbia had violated its obligations under the Genocide Convention to prevent genocide in Srebrenica and had failed to fully to co-operate with the ICTY.

Defence Rostrum

Is the Karadžić Judgement Impeding on Mladić's Right to a Fair Trial?

By Karolina Sibirzeff

On 24 March 2016, judgement in the Radovan Karadžić was delivered at the ICTY. The judgment consisted of 2,612 pages. The judgment, when discussing his criminal responsibility, decisions were, once again, also made in regards to Mladić's indictment. The fact that both Karadžić and Mladić were indicted for being part of a joint criminal enterprise (JCE) (and were originally jointly indicted) may naturally entail that their charges overlap. However, considering that the Mladić trial is still on-going, one may wonder what implications this may have on his rights to a fair trial and the presumption of innocence. These two rights are not only enshrined in Article 21 in the ICTY Statute, and are considered internationally recognized rights.

In the *Furundžija* Appeal Judgement it was stated: "the fundamental human right of an accused to be tried before an independent and impartial tribunal is generally recognised as being an integral component of the requirement that an accused should have a fair trial". The question at hand is whether this human right receives sufficient protection when Mladić's criminal liability and involvement in the armed conflict in Bosnia has been comprehensively set out in the judgement of cases, such as *Krstić, Krajišnik, Milosević, Popović et al* and of course *Karadžić*. Focusing on the *Karadžić* judgement specifically, it is difficult to overlook the various incriminating findings concerning Mladić. For example:

"In relation to the Srebrenica component, the Chamber found that the Srebrenica JCE came into existence as Srebrenica fell in July 1995. Its common purpose was to eliminate the Bosnian Muslims in Srebrenica—first through the forcible removal of the women, children, and the elderly, and later through the killing of the men and boys—and was shared by the Accused, Ratko Mladić, Ljubiša Beara, and Vujadin Popović".

The phrasing of the paragraph clearly illustrates that by considering Mladić as a member of this JCE, the Trial Chamber not only made conclusions in regards to Karadžić's criminal responsibility, but also Mladić's. Nevertheless, the question remains, does this breach his right to be tried before an impartial tribunal?

To answer that question, according to the ICTY's own jurisprudence, one must determine whether "the circumstances would lead a reasonable observer, properly informed, to reasonably apprehend bias". Additionally, in its interpretation and application of the impartiality requirement, the Appeals Chamber in the *Furundžija* held that "there is a general rule that a Judge should not only be subjectively free from bias, but also that there should be nothing in the surrounding circumstances which objectively gives rise to an appearance of bias".

Göran Sluiter has previously applied this test when he set out to determine whether

Karadžić's right to be tried before an impartial tribunal was impeded as incriminating statements about him were published in the *Krajišnik* judgement. In his article 'Karadžić on Trial, Two Procedural Problems', he concludes that the "fair minded observer may legitimately question whether any future ruling…especially rulings which are negative for Mr Karadžić– is in some way based or inappropriately influenced by the *Krajišnik* findings". Thus, he concludes that by their own standard, the Chambers are acting in a way that impedes the accused's rights to be tried before an impartial and unbiased tribunal when they make conclusions about their guilt in another accused's judgment.

It is vital to note that a contributing factor to Sluiter's conclusion is that the same judge that was the Presiding Judge on the *Krajišnik* case, was also assigned to the *Karadžić* case (this was later changed). Although there are different judges in the *Karadžić* case and the *Mladić* case, this is still relevant as Judge Orie, the Presiding Judge, has been assigned several other cases that have commented on *Mladić's* guilt and in addition to that, he was involved in the pre-trial proceedings in *Karadžić*.

Judge Orie is undoubtedly one of the most experienced judges at the ICTY and will be

objective. However, the concern lays on the legitimacy of the ICTY which depends on its perception to be a tribunal where principles, such as the right to a fair trial, is respected. And is it? The present author agrees with Sluiter that it is not. Searching for 'Mladić' within the *Karadžić* judgement does not lead to 20, 50 or even 100 hits. It leads to 1,883 results. The Trial Chamber comments on the relationship between Mladić and Karadžić, their joint criminal responsibility and their shared intention in committing some of the most severe crimes in international criminal law in these 1,883 references. The likelihood that the judges in the *Mladić* case would completely disregard these 1,883 references, would to the reasonable observer, seem unlikely. Even if one would place complete trust in the judges in the *Mladić* case, it is still difficult to argue that there is nothing in the surrounding circumstances that objectively would not give rise to an appearance of bias.

Finally, the present author wishes to shine light on the principle of presumption of innocence, a right closely related to the right to an impartial tribunal. According to Article 21(3) of the ICTY Statute, the accused is presumed innocent until proven guilty. In *Delic*, it was further clarified that the prosecution must establish every element of the offences beyond reasonable doubt. In short, the present author argues that establishing the guilt of a defendant before his trial has been finalised goes against the right to be presumed innocent. By establishing the criminal liability of Mladić in the *Karadžić* judgement, as well as in several previous judgements, the Chamber appears to shift the burden of proof, meaning that rather than the prosecution having to establish every element of the crime, the defence must rebut the conclusions of the previous Chambers.

One may note that there have been times when judges in a case have gone against the conclusions made in previous judgements. For example, *Šešelj* was acquitted, regardless of the fact that he was named as one of the members of the overarching JCE in the *Karadžić* judgement.

Only when the trial judgement in the Mladić case is delivered, will it become apparent whether or not the mentioning of him in previous ICTY judgments had any influence on the outcome of his case.

Outstanding ICTR Fugitives

By Mikaela Burch

In the aftermath of the Rwandan genocide, the International Criminal Tribunal for Rwanda (ICTR) has been at the forefront of prosecuting those believed to be responsible for the gravest crimes committed during this time. Although the ICTR was officially closed on 31 December 2015, eight of those indicted still remain at large.

The tracking of these individuals has remained a top priority for the International Residual Mechanism for Criminal Tribunals (the Mechanism) which has taken over the responsibilities of the ICTR. Three of the eight have particularly been set aside to be tried by the Mechanism (Félicien Kabuga, Protais Mpiranya and Augustin Bizimana) while the others have been referred to Rwanda by the ICTR Prosecutor. With this, it is relevant to ask who exactly these three are and what actions would make them worthy of a trial at the international level, in addition to a reward of 5 million USD for any information leading to their arrest?

Félicien Kabuga

In 1935, Félicien Kabuga was born in Muginia, in the commune of Mukarange, prefecture of Byumba, Rwanda. He was often called the 'financier of the genocide' given his rich businessman status and with being a close ally to the family of former President Habyarimana. Kabunga was also the main financial contributor and silent partner of the National Republican Movement for Democracy and Development (MRND) of the Coalition for the Defence of the Republic (an extremist Hutu party inside of the MRND). In this capacity, Kabunga is alleged to have had considerable influence on these

FÉLICIEN KABUGA

organisations and their members, including the Interahamwe (an extremist Hutu militia).

Prior to and during the Rwandan genocide, Kabuga and others were said to have participated in the provision of weapons to the militia and selection of civilians with the aim of exterminating the Tutsi population and their accomplices. From 1992, Kabuga through his business, was reported to have purchased a massive stock of machetes, hoes and other farm tools in the belief that they would be used in the massacres.

The United Nations Assistance Mission in Rwanda (UNAMIR) was created to help establish the institutes provided for by the Arusha Agreement. However, some perceived the military force of primarily Belgian soldiers as an obstacle for extremist and political goals. Thus, such leaders from these groups adopted a provocation strategy towards the Belgian military with the aim of forcing them to withdraw. Kabuga has been reported to have fore fronted anti-Belgian propaganda through media, such as the Kangura newspaper and the RTLM radio, alleged to be created and directed by Kabuga.

In Gisenyi, on 25 April 1994, Kabuga and others have been reported to have reached an agreement for the creation of the National Defence Fund. It was established to provide assistance to the Interim Government and to help fight against Tutsis and moderate Hutus. This fund was believed to finance weapons, vehicles and uniforms for the Interahamwe and the Army throughout the country. Kabuga was later appointed as President of the National Defence Fund's Acting Committee and is alleged to have informed the Interim Government about the existence of this fund and assisted the government in how to use and manage it.

In June 1994, Kabuga with others were said to have held a meeting in Gisenyi, during which members of the MRND were reported to have made a list of Tutsis and moderate Hutu's who sought refuge in Gisenyi. From this, they are reported to have drafted a list of persons to be eliminated which ultimately was given to the Interahamwe.

With being confronted with the advancement of the Rwandan Patriotic Front troops, Kabuga fled Rwanda. After reaching Switzerland and receiving an order to leave the country, he then went to Kinshasa, Democratic Republic of the Congo. As of this date, Kabuga has not been arrested and avoided all attempts to arrest him.

Protais Mpiranya

Protais Mpiranya was born in Gitarama, Rwanda in 1960. From late 1990 until July 1994, Mpiranya is alleged to have adhered to and participated in the development of a plan aimed at exterminating the Tutsis ethnic group. Among other things, this plan is said to have included recourse to hatred and ethnic violence, the training of and distribution of arms to militias as well as the drafting of lists of individuals to be eliminated.

PROTAIS MPIRANYA

In 1993, Mpiranya was appointed Commander of the Presidential Guard Battalion in the Rwandan Army. With being second-in-command of military operations and intelligence (S2 and S3) in this position, he exercised authority over the units of this battalion. He is believed to have sent subordinates to supervise trainings of the Interahamwe and have distributed weapons to militias and to certain selected civilians with the extent to exterminate Tutsis.

Mpiranya is also alleged to have had a role in preventing the swearing in ceremony of the Transitional Government in January 1994 as on the set date the Interahamwe organised a demonstration in conjunction with members of the Presidential Guard. During this event and negotiation attempts by the UNIMAR between Mpiranya, he allegedly refused access of political opponents into the National Development Council premise.

Other events have also been attributed to Mpiranya. On 7 April 1994, Agathe Uwilingiyimana, then Prime Minster was arrested, sexually assaulted and assassinated by the Rwandan Army in Kigali. The participants of the attack have also been alleged to be members of the Presidential Guard and more specifically acting under the

command of Major Protais Mpiranya. Other similar events include the murder of ten Belgian para-commanders from the UNAMIR by elements of the Presidential Guard and the murder of Faustin Rucogoza, the Minister of Information, together with his wife.

Many of the killing, rapes, and other crimes of sexual nature of the Tutsi population, in addition to the murders of numerous politicians are alleged to have been carried out by soldiers and civilians acting under orders from Mpiranaya. With eventually becoming faced with the advancement of Rwandan Patriotic Front troops, Mpiranya fled Rwanda towards which some believe, the Democratic Republic of Congo. As of this date, he has not been arrested.

Augustin Bizimana

Augustin Bizimana was born in 1954 in Gituza commune, Byumba prefecture, Rwanda. During the events in question, Bizimana was the Minister of Defence in the Interim Rwandan Government until mid-July 1994 where in this capacity he exercised authority of the Rwandan Armed Forces.

From 1990 until 1994, Bizimana with others, are alleged to have participated in a plan with the intent to exterminate the civilian Tutsi population. Among the components of this plan were recourse to hatred and ethnic violence, the training and distribution of arms to militia as well as the preparation of lists of individuals to be eliminated. Within the preparation of this plan, Bizimana was said to have organised, ordered and participated in the massacres through controlling the possession of weapons and explosives by civilians.

The indictment specifies that from July 1993 to July 1994, Bizimana encouraged and facilitated the acquisition of weapons for militants of the MRND. On 25 May 1994, the Interim Government, in which Bizimana was a member, adopted a civilian defence programme said to be aimed at legalising the distribution of arms to the militiamen and legitimising the massacres of civilian populations.

Further, the indictment alleges that between 9 April and 14 July 1994, several meetings for the Council of Ministers were held, where directives and instructions were given to the prefects aimed at inciting, encouraging or assisting them with carrying out killings. Between 11 April and 14 July 1994, Bizimana was said to have gone to several prefectures to supervise the implementation of instructions handed down by the government. It is reported that during his trips throughout the country, Bizimana would have crossed many roadblocks where many corpses were scattered. There was one instance of Bizimana was reported present at a roadblock where a member of his escort executed two Tutsi's without him intervening to prevent the crime. It is alleged that while in the role as Minister

AUGUSTIN BIZIMANA

of Defence, Bizimana was constantly informed of the socio-political situation in the country and despite being aware of the massacres committed against the civilian population, he did nothing within his capacity over the Rwandan Army to prevent these killings. On the contrary, the ICTR Prosecutor concluded that Bizimana refused to intervene and control the population so long as a cease fire agreement was not ordered. Thus far, Bizimana has been able to elude arrest after feeling Rwanda in 1994.

In conclusion, quoted as 'the big fish fugitives' by the ICTR Prosecutor Hassan Bubacar Jallow, Félicien Kabuga, Protais Mpiranya and Augustin Bizimana have eluded justice for nearly two decades. Although ICTR has officially closed, many countries continue to be involved in the search of ICTR fugitives in addition to several organisations, such as the International Police Organisation. There have been some hints towards the whereabouts of the three; Kabuga being linked to Kenya, Mpiranya being in Zimbabwe and Bizimana within various locations. However, these clues have not been successful as the three are still at large.

Blog Updates and Online Lectures

Blog Updates

Kevin Jon Heller, "**The Ruto Trial Chamber Invents the Mistrial Without Prejudice**", 8 April 2016. Blog available here.

Patryk Labuda, "**Complementarity Compromised? The ICC Gives Congo the Green Light to Re-Try Katanga**", 11 April 2016. Blog available here.

Kristen Boon, "**New Decision Finds UN Responsible in Kosovo Lead Poisoning Case**", 14 April 2016. Blog available here.

Online Lectures and Videos

"**Voices of the Tribunal**", by The Hague Institute of Global Justice. Lecture available here.

"**Launch of the Updated Commentaries to the Geneva Conventions**", by the International Committee of the Red Cross. Lecture available here.

"**Securing Access: Maintaining Presence & Proximity in Insecure Settings**", by Harvard Humanitarian Initiative's Advanced Training Program on Humanitarian Action. Lecture available here.

Publications and Articles

Books

Appazov, Artur (2016). **Expert Evidence and International Criminal Justice,** Springer International Publishing.

Demirdjian, Alexis (2016). **The Armenian Genocide Legacy,** Palgrave Macmillan UK.

Gibney, Mark (2016). **International Human Rights Law : Returning to Universal Principles,** Rowman & Littlefield Publishers.

Meisenberg, Simon M. and Stegmiller, Ignaz (2016). **The Extraordinary Chambers in the Courts of Cambodia - Assessing their Contribution to International Criminal Law,** Springer International Publishing.

Articles

Mégret, Frédéric (2016). **"The Anxieties of International Criminal Justice",** Leiden Journal of International Law, Volume 29, Issue 1.

Van Sliedregt, Elies (2016). **"International Criminal Law: Over-studied and Underachieving?"** Leiden Journal of International Law, Volume 29, Issue 1.

Veroff, Julie (2016). **"Reconciling the Crime of Aggression and Complementarity: Unaddressed Tensions and a Way Forward",** Yale Law Journal, Volume 125, Issue 3.

Calls for Papers

The Fourth Annual International Criminal Law Workshop has issued a call for paper on "The Politics of International Criminal Law". Deadline: 9 May 2016, for more information click here.

The Impact of the Law of Armed Conflict on General International Law Expert Roundtable has issued a call for papers on various topics. Deadline: 20 May 2016, for more information click here.

Events

KNVIR Spring Meeting 2016 on 'Migration, Refugees and International Law'

Date: 3 May 2016

Location: The Hague Institute for Global Justice, The Hague

For more information, click here

ADC-ICTY's Advocacy Training on Expert Evidence

Date: 7 May 2016

Location: The International Criminal Tribunal for the former Yugoslavia, The Hague

For more information, click here

Book Launch: Foreign Fighters under International Law and Beyond

Date: 31 May 2016

Location: TMC Asser Institute, The Hague

For more information, click here

The 3rd Cleer Summer School on EU External Relations Law

Date: 27 June-1 July

Location: Brussels, Belgium

For more information, click here

Opportunities

Associate Legal Officer (P2)

International Criminal Tribunal for the Former Yugoslavia

Chambers Legal Support Section, Division of Judicial Support Services, Registry-The Hague

Deadline: 14 May 2016

For more information, click here

Legal Officer (P3)

United Nations

Environment Programme-Manama

Deadline: 16 May 2016

For more information, click here

Legal Officer (P3)

United Nations

Office of Human Resources Management-Nairobi

Deadline: 5 June 2016

For more information click here

Legal Officer (P3)

United Nations

Joint Staff Pension Fund- New York

Deadline: 30 April 2016

For more information, click here

John Jones QC

The ADC-ICTY expresses its deepest sympathies for the tragic loss of John Jones QC, a highly distinguished international criminal lawyer and a long-time member of the ADC. Our thoughts are with his family and friends during this difficult time.

A Condolence Book is being signed at the ICTY, ICC and STL. If you are not present in The Hague, you can send a message here and it will be included in the Condolence Book.

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