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The views expressed herein are those of the author(s) alone and do not necessarily reflect the views of the International Criminal Tribunal for the Former Yugoslavia or the Association of Defence Counsel Practicing Before the ICTY.

ICTY CASES

Cases at Trial

Hadžić (IT-04-75)

Karadžić (IT-95-5/18-I)

Mladić (IT-09-92)

Šešelj (IT-03-67)

Cases on Appeal

Popović et al. (IT-05-88)

Prlić et al. (IT-04-74)

Stanišić & Simatović (IT-03-69)

Stanišić & Župljanin (IT-08-91)

Tolimir (IT-05-88/2)

Prosecutor v. Radovan Karadžić (IT-05-95-T/18-I)

The Karadžić trial continued on 27 January, starting with the testimony of Jefto Janković, an investigative Judge from Banja Luka, who provided details concerning the investigations into crimes committed in the area and in particular the 1992 Korićanske stijene crimes. His role as a Judge shed light on the proceedings that were adopted during the conflict towards perpetrators, regardless of their ethnicity.

On 28 January, Former General and Commander of the Main Staff of the Republika Srpska Army, Ratko Mladić, refused to testify and answer any questions due to his medical condition. The Prosecution, therefore, was not able to cross-examine Mladić and his appearance in the Karadžić trial as a witness was discontinued. On the same day Draško Vujić, a former Reserve Officer of the Yugoslav People's Army (JNA) gave his testimony about what happened in Prijedor. Later the same day, Witness KW609, who was under protective measures and was a former employee in Omarska Camp, testified in front of the Court revealing his knowledge about the facility.

On 29 January, Duško Jakšić testified about the events in the area of Banja Luka and Krajina. The current Senator of Republika Srpska and member of the Serb Democratic Party (SDS) testified about the economic reasons that significantly influenced the creation of the Community of Municipalities of Bosnian Krajina (ZOBK) and the concept of regionalisation. The same day, Jovo Kevać, who was a member of the Territorial Defence (TO) Ključ gave his testimony concerning the activities of the SDS. Particularly, he testified about how Muslim extremists had treated Muslim civilians in Sanski Most, Sanića and Ključ, and about incidents of Muslims attacking stations in Prhovo and Biljane. He

ICTY NEWS

- Karadžić: Defence Case Continues
 - Prlić *et al.*: Status Conference
 - Perišić: Prosecution Motion for Reconsideration
- Judge Prandler Deceased

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their civilians from Kljuc to Croatia, Slovenia and for the issuance of equipment from the RS governother European countries prior to the conflict, and ment. By stating that Serbs were also subjected to concluded that he thought the Muslims had been spe- judiciary proceedings he contested the claim that only cifically preparing for war in the area.

Prijedor and its surroundings with a particular focus things. on the events that unfolded in Hambarine.



concluding dence on 5 February. He the public. testified about the state of political affairs during

the period and was heavily cross-examined about his role in the JCE.

ernmental processes had been carried out during the about the overall situation in Prijedor in 1992.

stated that Muslims had moved a large number of time of the conflict. He was asked about the criteria non-Serbs were being convicted and brought to trial.

Ratko Mijolića, a former member of the Republika On 27 March 2013, Stanišić was sentenced by the Srpska Army in Prijedor, testified on 30 January. His ICTY to 22 years imprisonment for his involvement in testimony concerned the events and the situation in the Joint Criminal Enterprise (JCE), amongst other

> Mihajlo Orlović testified on 5 February and his testi-Mićo Stanišić, the for- mony concerned the influence of the media in Sanski mer Minister of Interior Most, as well as the lack of discussion or decision Republika Srpska, regarding the expulsion of Muslims from the territory testified for three days of the Sanski Most municipality. The evidence of the starting on 3 February Director of Radio Sanski Most provided useful inthe sights regarding the local media coverage and broadpresentation of his evi- casting practices, which were aimed at calming down

The final witness in the first week of February, KW426, was a member of the Republika Srpska State Security Service who testified under protective measures about the crimes committed by paramili-Stanišić was asked about his knowledge of how gov- tary groups in Keraterm and Omarska, as well as

Prosecutor v. Prlić et al. (IT-04-74)

of the Rules of Procedure and Evidence. None of the tion by Praljak, requesting the assignment of his for-Accused raised any issues in relation to the detention merly Tribunal-paid Counsel under the Tribunal's conditions. Presiding Judge Theodor Meron provided legal aid provisions that apply to level three cases. a procedural update of the case.

The notices of appeal of Slobodan Praljak and Berislav Pušić were filed on 20 June 2013, the notice of appeal of the Prosecution on 27 August 2013. The notices of appeal of Jadranko Prlić, Bruno Stojić, Milivoj Petković and Valentin Ćorić are to be filed within 60 days of the issuance of the official English translation of the trial Judgement, which is yet to be filed. President Meron noted that the estimated time of filing of the English translation remains June 2014. Upon the request of Suzana Tomanović, Co-Counsel for Jadranko Prlić, Judge Meron stated to try to inform the teams of the date of the filing of the English translation in advance, to allow for time to prepare their individual work.

in 3 February, a status conference in the *Prlié et* In addition to a number of procedural summaries, al. case took place, according to Rule 65 bis (B) President Meron addressed the 4 October 2013 mo-This request will be dealt with by the Appeals Chamber in due course. On 20 January, the Registrar filed an application for the recovering of the legal aid and funds from the Accused. Praljak's response was filed on 27 January, requesting the Appeals Chamber to deny the application and asking the Registrar to specify the costs spent on his Defence. The presiding

> Judge stated to await the response by the Registrar and assured the parties that this matter is being attended to.



Prlić et al. case

Upon the request of Senka Nozića, Stojić's Counsel, The status conference entered into private session a Croatian translation of the Judgement shall be subsequently adjourned. made available at the same time as the English translation or very soon thereafter.

President Meron stated his willingness to ensure that upon the request of one of the Defence teams and was

Prosecutor v. Momčilo Perišić (IT-04-81)

Perišić. He was acquitted in February 2013, after an of the case". initial 27-year sentence, imposed by the Trial Chamber, for aiding and abetting crimes committed in Sarajevo and Srebrenica between 1993 and 1995.

The request for reconsideration follows the recent cide on the Prose-Sainović et al. Appeal Judgement, in which the Ap- cution's peals Chamber unequivocally overturned the Perišić. for Appeal Judgement's holding that "specific direction" tion in the case of is an element of aiding and abetting. The Prosecution Momčilo Perišič.

n 3 February, the Office of the Prosecutor filed a argues that the "specific direction" requirement was motion before the ICTY Appeals Chamber, re-incorrect and should hence be overturned. It submitquesting reconsideration of the acquittal of the for- ted that there is a "a manifest miscarriage of justice to mer Chief of Staff of the Yugoslav Army, Moméilo the victims in the rare and exceptional circumstance

President Theodor Meron appointed Judge William

H. Sekule to the Bench of Appeals Chamber to derequest reconsidera-



Judge Prandler Deceased



Judge Árpád Prandler

Prlić et al. case.

Árpád Prandler was born in Ka-

udge Árpád Prandler who was cessfully graduated as a Doctor Juris from Eötvös sworn in as an Ad Litem Loránd University in Budapest. From 1952 to 1962 Judge on 7 April 2006 and left the Judge Prandler served as an Assistant Professor, be-Tribunal in June 2013 passed tween 1969 and 1983 as Associate Professor, and away on 4 February. He was one from 1983 until 2006 as Titular Professor at Eötvös of the four judges sitting on the Loránd University. Judge Prandler was also a member of Hungary's Foreign Ministry from 1962 onwards.

posvár, Hungary on 23 February The ADC-ICTY extends its condolences to Judge 1930. In the year of 1952 he suc- Prandler's family and friends for their loss.

LOOKING BACK...

International Criminal Tribunal for the Former Yugoslavia

Five years ago...

n 9 February 2009, the Tribunal's Appeals Albanian military leader Ramush Haradinaj. Chamber ordered the provisional release of Bajrush Morina from the Tribunal's Detention Unit. Morina's release was ordered as he completed the three-month sentence imposed for contempt of court. part-time editor of the Kosovo newspaper "Bota Sot". Morina was convicted and sentenced on 17 December 2008 of trying to persuade a Prosecution witness not to testify in the trial of former Kosovo

Morina was a former political advisor to the Deputy Minister for Culture, Youth and Sport of Kosovo and Both the Prosecution and the Defence appealed the judgment, which was later affirmed by the Appeals Chamber in 2009.

International Criminal Tribunal for Rwanda

Ten years ago...

sis of a strike, which they had started the previous leged contact with the Accused. Other concerns reday. The representatives stated that their group was garding the presence of Defence Investigators in composed of all Defence Counsel present in Arusha, Arusha during trial, were their work schedules, paywho were members and non-members of the Associa- ment of legal costs, and the limitation of only the tion of Defence Counsel before the ICTR (ADAD).

Amongst other demands, they were asking that the Registry grant Legal Assistants and Defence Investigators the same position as Lawyers vis-à-vis their

n 27 January 2004, the Registry received a doc- clients. This would entail unfettered access to the ument from Defence lawyers, issued on the ba- United Nations Detention Facility (UNDF) and privi-Lead-Counsel being present during delivery of the Judgement. It was claimed that the totality of these concerns severely affected the right of the Accused to a full and effective defence.



NEWS FROM THE REGION

Bosnia and Herzegovina

Dervišević Aquitted of Murder in Srebrenica

osniak Ramadan Dervišević was acquitted of murder, which took place in the village of Ratkovići in 🕽 1992. Dervišević is a former member of the Territorial Defence of Srebrenica and the Armed Forces of Bosnia-Herzegovina. His indictment, which was confirmed by the District Court in Bijeljina in February 2010, contained charges of committing a war crime against Serb civilians in the area of Srebrenica.

On first instance, Dervišević was convicted of war crimes and sentenced to seven years imprisonment by the District Court in Bijeljina. His Defence Counsel, Lejla Čović, successfully appealed on the ground that the Prosecution did not prove a concrete link between the incidents and the conflict in Srebrenica. The war crime charge was amended to a murder charge and consequently, the statute of limitations, which specifies fifteen years, had expired.

Commemoration of Markale Market in Sarajevo

undreds of citizens and officials commemorated the twenty year anniversary of the Markale Market lacksquare shelling that occurred on 5 February 1994 in Sarajevo. 68 people lost their lives in the shelling on the open-air market and 144 people were injured.

Muamer Bandić, the cantonal minister of Sarajevo, emphasised the importance of remembering this particular day: "This city survived one of the worst aggressions of the 20th century. We are here for our children and the truth. Our young should never forget these crimes, because only through the truth can we move to the future".

The ICTY convicted former Commander of the Sarajevo-Romanija Corps, Stanislav Galić, for the incident at Markale. To this day he is the only one convicted for the incident, although the indictments of Ratko Mladić and Radovan Karadžić also contain references to the Markale Market shelling.

Days of Unrest Across Bosnia and Herzegovina

Three days of protests began in Bosnia on 4 February, which resulted in hundreds of people being injured, the police resorting to rubber bullets and tear gas to quell the unrest and calls for 2014 to be the year of the 'Balkan Spring'.

The demonstrations began in Tuzla, sparked by an ongoing dispute involving the privatisation of four formerly state-owned companies. The privatisation has resulted in unemployment for the workers – an issue which affects up to 44 per cent of the country. The lack of recognition from politicians further encouraged the protesters, with approximately 600 storming the Tuzla local government building. The crowd grew considerably, attracting students, the unemployed and pensioners and 6,000 people had blocked Tuzla city centre and called for the resignation of the local government. The protests resulted in the resignation of the Prime Minister Sead Čaušević on 7 February.



Serbia

International Arrest Warrants for Former ICTY Accused Naser Orić and Hakija Meholjić

The Interpol National Central Bureau for Serbia issued international arrest warrants in relation to an investigation conducted by the Serbian Prosecutor's Office into the murder of nine Serb civilians in Zalazje, near the municipality of Srebrenica in 1992. Naser Orić, Hakija Meholjić and three of their associates are the main suspects in this investigation.

Hakija Meholjić, former Chief of War Police in Srebrenica, has never been indicted before. Naser Orić, former Commander of the 28th Division of the Army of Bosnia-Herzegovina, was previously acquitted by the ICTY in 2008 for war crimes committed against Serbs. The main ground for ac-



quittal was that command responsibility over his Division and related crimes could not be sufficiently established.

In response to the international arrest warrant, Orić commented: "I don't want to check [if there is any arrest warrant] because I am clean in my soul and head. I was prosecuted in The Hague, where I said everything and where I was released".

On 30 January, Naser Orić was removed from the blacklist of the United States (US), which means he is allowed to travel to the country and has free access to any assets he might have in the US.

Both Orić and Meholjić are currently residing in Bosnia-Herzegovina, a country which does not extradite citizens charged with war crimes. In accordance with the domestic Law of International Cooperation in Criminal Matters of Bosnia and Herzegovina, the criminal investigations into the alleged acts of the two Bosniaks can be transferred to competent judicial authorities in BiH. This law requires that Serbia is notified that these men cannot be extradited. However, Serbia hopes to rely on a Protocol of Cooperation on War Crime Cases, which was signed last year between the respective countries. This protocol only concerns the exchange of evidence and not extraditions.

At the moment, the nature of the diffuse arrest warrants does not oblige third countries to arrest and extradite the men to Serbia. The Interpol headquarters in Lyon have to decide whether they change the diffusion to a red notice, which does impose an obligation to arrest and extradite.

NEWS FROM OTHER INTERNATIONAL COURTS



Extraordinary Chambers in the Courts of Cambodia

By Sophie Pilcher, Defence Team Intern, Case 003

The views expressed herein are those of the author(s) alone and do not necessarily reflect the views of the Extraordinary Chambers in the Courts of Cambodia.

Both Case 002 Defence teams have preparing for a Trial Management Meeting, scheduled for 11 February 2014, to discuss the commencement of Case 002/02. The Nuon Chea Defence team is preparing for Case 002/02 by analysing evidence and past decisions of the Trial Chamber. This Defence team filed a submission on 15 January seeking a medical examination of Nuon Chea and another submission on 31 January concerning the scope of Case 002/02.

The Khieu Samphan Defence team filed a motion on the scope of Case 002/02 on 31 January, and is currently drafting its submission, as requested by the Trial Chamber, on the Defence's argument that case 002/01 must be finally adjudicated before Case 002/02 can start. The Defence team also responded to a Prosecution motion arguing that evidence from Case 002/01 should automatically be admitted in Case 002/02. The Defence team requested that the Trial Chamber



dismiss this motion, since Cases oo2/o1 and oo2/o2 are separate cases and therefore, the evidence admitted in Case oo2/o1 cannot automatically be admitted in Case oo2/o2.

The Defence team for the Named Suspect in Case 003 filed eight submissions this month to protect the rights of the suspect.

The Defence team for one of the Named Suspects in Case 004 filed a motion and distributed a press release requesting the annulment of investigative actions based on the argument that the ECCC lacks personal jurisdiction over the suspect. The Defence team published another press release highlighting the continued denial of access to the case file and participation in judicial investigations. To protect the client's interests, the Defence continues to file additional motions.

The Defence teams in Cases 003 and 004 continue to review publicly available material as they do not have access to the case file.



International Criminal Court

The views expressed herein are those of the author(s) alone and do not necessarily reflect the views of the International Criminal Court.

s presented in issue 56 of the Newsletter, 5 Feb- seeking to relay. Our warnings were not heeded". ruary 2014 was supposed to be the date on which The Prosecutor v. Uhuru Muigai Kenyatta trial started at the International Criminal Court (ICC), instead a Status Conference was held that day.

During this Status Conference the Office of the Prosecution (OTP) requested a three month adjournment of the case, wishing to conduct additional investigative steps, and in order to allow the Chamber to adjudicate the OTP's application for a finding of noncompliance against the Government of Kenya.

Defence Counsel Steven Kay QC stated that the OTP tries to stop the case through a blame shifting exercise in relation to the allegations of obstruction to availability of evidence from the Government of Kenya. He also indicated that the Defence had "alerted the Court and the Prosecutor as to the inconsistencies and falsity of the evidence upon which they were

The OTP presented its written submissions on 10 February. Two further status conferences were scheduled for the 13 and 14 February, to the latter of which the Kenyan Government representative at the ICC, Attorney General Githu Muigai, has been invited.

In January 2014, Judge Geoffrey A. Henderson (Trinidad and Tobago) replaced Judge Chile Eboe-Osuji on the bench in the Kenyatta case.

The Katanga Trial Judgment, which was scheduled for 7 February was rescheduled, as one of the Judges is currently unavailable for health reasons. The date was set for 7 March instead.

The confirmation of charges in the case against *Bosco* Ntaganda began on 10 February and ended on 14 February. The details of the hearings will be covered in the upcoming Newsletter issue.



Special Tribunal for Lebanon

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t the STL, the trial in absentia against the Accused Salim Jamil Ayyash, Mustafa Badreddine, Hussein Hassan Oneissi and Assad Hassan Sabra set into motion in January. On 11 February, it was decided that the Ayyash et al. case would be joined with the case against the fifth suspect, Hassan Habib Merhi.

The Chamber heard the submissions from the Prosecution, Defence, the Registrar and the Head of the Defence Office regarding this.

Merhi's Lead Counsel Mohamed Aouini and Co-Counsel Jad Youssef Khalil filed written submissions on this issue on 30 January, indicating, inter alia, that they are not opposed to the motion for a joinder,

if the Accused can enjoy the same rights and guarantees that if he was tried in a separate trial.

The Trial Chamber is yet to decide the time of the adjournment to allow Merhi's Counsel to familiarise and prepare for the case.



DEFENCE ROSTRUM

Frivolous Motion for Reconsideration: Why the OTP Will Fail

Bv Kristina Belić

motion before the ICTY Appeals Chamber re- ly applied. questing reconsideration of its acquittal of the former Chief of Staff of the Yugoslav Army, Momčilo Perišić. He had previously been sentenced to 27 years imprisonment by the Trial Chamber for allegedly aiding and abetting crimes committed in Sarajevo and Srebrenica between 1993 and 1995.

"specific direction". The Appeals Chamber, Judge Liu want. dissenting, found that specific direction was an element of the actus reus of aiding and abetting, and that it had to be explicitly established.

therefore challenged the theory.

January 2014, in the case of Sainović et al., the Appeals Chamber reversed its prior interpretation to say $\ \$ retroactivity and the in favorem principle. that specific direction is not a constituent part of the actus reus of crimes against humanity. As a result, Finally, the motion should not succeed based on the Vladimir Lazarević, who was Co-Accused in the idea of overall justice, fair trial, and rights of the Ac-Sainović et al. case was convicted to 14 years impriscused. Even though the ICTY has changed its interonment for crimes committed in Kosovo. Following pretation, and one can view this as a flaw in the systhe Judgement in Sainović et al., the Office of the tem, to introduce and reverse the principle repeatedly Prosecutor filed a motion to have *Perišić's* acquittal would result in some persons being convicted on the reviewed. I offer four arguments for why this motion same grounds by which others were acquitted. should not succeed.

a fundamental tenet of criminal law. That is, of criminal law, nullum crimen sine lege. course, if the main goal of the OTP is to obtain a con-

n 3 February, the Office of the Prosecutor filed a viction at any cost rather than to have the law be fair-

Further, some may argue that under Article 26 of the ICTY Statute, an exception to review of proceedings is provided. However, Article 26 allows review of a Judgement succeeding the introduction of a new fact in the case. Facts are facts and interpretation is something else. While interpretations may vary, facts al-Perišić was acquitted on 28 February 2013 of all ways remain unchanged. To enlarge the meaning of charges by the Appeals Chamber. At the bottom of the "fact" in Article 26 would be to open the gates and to decision to acquit Perišić was the requirement of allow the Prosecution to interpret "fact" however they

Even for those that would still think that "fact" and "interpretation" are interchangeable, there is one crucial reason why a later interpretation cannot be On 26 September 2013 in the case the *Prosecutor v*. seriously considered a reason to review a judgement. Charles Ghangkay Taylor, before the Special Court Article 119 of the Rules of Procedure and Evidence for Sierra Leone, the Appeals Chamber ruled that the allows the request of a review when a "new fact has theory of specific direction, as set out by the ICTY been discovered". In this case, a new fact has not been Appeals Chamber, could not be relied upon. They discovered; there has been an evolution in the law. Moreover, it has been evolved after the sentence was delivered, for which any attempt to go back to Less than a year after the *Perišić* Judgement, on 23 *Perišić's* Judgement to apply to him something that is less favourable would be at odds with non-

The current state of affairs brings a lot of uncertainty First, reviewing the Judgement with the sole purpose for which arguments the Prosecutor and the Defence of making the outcome harsher constitutes a clear team can put forward, which is in contravention of violation of in dubio pro reo which, needless to say, is one of the most important principles of international

BLOG UPDATES AND ONLINE LECTURES

Blog Updates

Benjamin Joyes, **Trial Date Vacated in Kenyatta Case**, 24 January 2014, available at http://tinyurl.com/qbbsl56.

Elli Goetz, ICTY Appeals Chamber Issuing Judgement in the Sainovic et al Case, 23 January 2014, available at http://tinyurl.com/mdses3w.

Edona Peci, Kosovo Jails Serb Policeman for War Crime, 12 February 2014, available at http://tinyurl.com/094zvh5.

Haru Mutasa, The ICC and the DRC: Will the trial of a Congolese warlord make a difference to a terrorised population? 10 February 2014, available at http://tinyurl.com/o2fpv38.

Online Lectures and Videos

"Benjamin Franklin and the American Dream" by Alan Houston, published on 11 February 2014, available at http://tinyurl.com/pcfw76b.

"Situation in the Central African Republic: Statement of the Prosecutor of the ICC" published on 7 February 2014, available at http://tinyurl.com/nqoplxl.

"International Criminal Court (ICC) - Institutional Video" published on 6 February 2014, available at http://tinyurl.com/mgpwedz.



"Introduction to International Criminal Law", an 8-weeks course presented by Michael Scharf - start: 1 March 2014, visit: http://tinyurl.com/pjg2xe8.

PUBLICATIONS AND ARTICLES

Books

Sergey Sayapin (2014), *The Crime of Aggression in International Criminal Law - Historical development, Comparative Analysis and Present State,* T.M.C. Asser Press.

Julie McBride (2014), The War Crime of Child Soldier Recruitment, T.M.C. Asser Press.

Henry F. Carey, Stacey M. Mitchell (2014), *Understanding Criminal Law through International Moot Courts: Genocide, Torture, Habeas Corpus, Chemical Weapons, and the Responsibility to protect*, Lexington Books.

Heike Krieger (2014), *The Kosovo Conflict and International Law: An Analytical Documentation 1974-1999*, Cambridge University Press.

Articles

Michael G. Karnavas (2014), "Bringing Cambodian Cases into Compliance with International Standards", *Cambodia Law and Policy Journal*, Issue I.

Mark Findlay (2014), "Sign Up or Sign Off —Asia's Reluctant Engagement with the International Criminal Court", *Cambodia Law and Policy Journal*, Issue I.

Barbara Mauthe (2014), "Public Law and the Value of Conceptual Analysis", *International Journal of Law in Context*, Issue I.

Steven Wheatley (2014), "Conceptualizing the Authority of the Sovereign State over Indigenous Peoples", *Leiden Jour*nal of International Law, Issue II.

CALL FOR PAPERS

The **Journal of International Criminal Justice** is inviting submissions for use in a special issues dedicated to the interplay between international humanitarian/criminal law and refugee/immigration law.

Deadline: 28 February 2014 More Info: http://tinyurl.com/p7gh9nb.

The **Utrecht Journal of International and European Law** is inviting submissions for use in its general edition on International and European Law.

Deadline: 30 March 2014 More Info: http://tinyurl.com/o8qk89d.

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Any contributions for the newsletter should be sent to Isabel Düsterhöft at iduesterhoeft@icty.org

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The ADC-ICTY would like to express its appreciation and thanks to Sarah Coquillaud for her hard work and dedication to the Newsletter over the past three years. We wish her all the best in her future endeavours. She will be missed.

EVENTS

Roads to Justice: International Criminal Justice and Global Politics - Perspectives of the Defence

Date: 20 February 2014

Location: De Balie, Kleine Gartmanplantsoen 10, Amsterdam

More info: http://tinyurl.com/k9zcbrb

Knowledge Platform's Annual Conference 2014

Date: 27 February 2014

Location: The Hague Institute for Global Justice

More info: http://tinyurl.com/lhuehqf

OPPORTUNITIES

Associate Legal Officer (P-2), The Hague

International Criminal Court (ICC) - Counsel Support Section

Closing Date: 20 February 2014

Associate Legal Officer (P-2), Arusha

Mechanism for International Criminal Tribunals (MICT) - Chambers

Closing Date: 26 February 2014



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