

# International Courts & Tribunals Interest Group Newsletter

## Introductory Note

The International Courts and Tribunals Interest Group has been quite active since the last newsletter. On March 12, ICTIG hosted, with the ABA's International Courts and Judicial Affairs Committee, an event titled "International Courts: Legitimacy, Perception, and Outcomes." The discussion addressed issues of diversity on the international bench, featuring comments by Saadia Bhatti, Manuel Casas, Linda Strite Murnane, Nicola Peart, and was moderated by Cesare Romano.

On March 25, ICTIG co-chairs David Bigge and Freya Baetens hosted a chat with Philippa Webb during the interest group's annual business meeting. The discussion centered on Webb's new book, co-authored with Amal Clooney, titled "The Right to a Fair Trial in International Law," with a focus on how that right is applied by international courts.

On May 27, ICTIG hosted, with the Centre for International Law at the National University of Singapore, a discussion on maritime delimitation as a judicial process. The panel for this fascinating discussion, which included Nilufer Oral, Massimo Lando, Tara Davenport, Alina Miron, Sarala Subramaniam, and Judge Tomas Heider, addressed how the International Court of Justice has developed its tests for maritime delimitation over time, and considered proposals for future developments.

Recordings of both the "Legitimacy, Perception, and Outcomes" event and the "Maritime Delimitation" event can be found on ICTIG's [page](#) on the ASIL web site.

We have several events in the planning stages, including an event scheduled for next fall on "International Law Without International Courts." Please see the Calls for Papers section of this newsletter for more details on how you can participate in this exciting event.

-David Bigge & Freya Baetens, Co-Chairs

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## International Courts & Tribunals Interest Group

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Views contained in this publication are those of the authors in their personal capacity. The American Society of International Law and this Interest Group do not generally take positions on substantive issues, including those addressed in this periodical.



## Developments at International Courts & Tribunals

### ECCC Issues Revised Completion Plan

The Extraordinary Chambers in the Courts of Cambodia (ECCC), the hybrid tribunal established to prosecute atrocities committed in Cambodia during the Khmer Rouge regime in 1975-1979, is preparing for closure. On March 31, 2021, the ECCC released its **Revised Completion Plan**, which details the steps and timing for completion of its pending cases. In particular, the ECCC anticipates the appeal judgment in Case 002/02 will be issued in 2022.

### U.S. Government Repeals Sanctions against the ICC

On April 2, 2021 President Biden **revoked** an Executive Order previously issued by President Trump and lifted sanctions imposed by the Trump Administration on International Criminal Court (ICC) Prosecutor Fatou Bensouda and the ICC's Head of the Jurisdiction, Complementarity and Cooperation Division of the Office of the Prosecutor, Phakiso Mochochoko. President Trump's **Executive Order**, issued on June 11, 2020, characterized as a national emergency the ICC's investigation into alleged crimes committed by U.S. military and intelligence officials in and related to the Afghanistan conflict, and authorized the imposition of sanctions against any foreign person who engaged or materially assisted the ICC's investigation of U.S. personnel. In revoking the Executive Order, President Biden also terminated a 2019 policy imposing visa restrictions on certain ICC personnel. However, he also made clear that the U.S. Government "strongly disagree[s]" with the ICC's investigation. President Biden further maintained the U.S.'s "longstanding objection to the Court's efforts to assert jurisdiction over personnel of non-States Parties such as the United States and Israel."

### AfCHPR Launches 2021-2025 Strategic Plan

The African Court on Human and Peoples' Rights officially **launched** its Strategic Plan for 2021-2025 on June 1, 2021. The plan has not been posted online, but it reportedly envisions the creation of a Compliance Monitoring Unit and a human rights course for national judges, among other initiatives aimed at improving the Court's impact. From June 2 to 4, the Court held its inaugural Judicial Retreat of Judges of the African Court, **described** as "the first step" in implementing the strategic plan. Previously, the Court had solicited stakeholder input for the plan via a **survey** and **workshop**.

### ECtHR Receives Renewed Funding for Hearing Webcasts

In June, the European Court of Human Rights **announced** it will continue to provide webcasts and recordings of its public hearings, thanks to renewed funding from the Irish Department of Foreign Affairs and Trade. Ireland has provided financial support for the webcasting of ECtHR hearings since 2007. Webcasts and recordings of past hearings may be accessed on the Court's **website**.

### Special Tribunal for Lebanon Faces Financial Crisis

The Special Tribunal for Lebanon (STL) is undergoing a significant budgetary crisis which poses a grave threat to the court's future operations. In June 2021, the STL's registrar filed **notice** with the Trial Chamber that the exhaustion of the Tribunal's available funds was "imminent," and would impact the STL's ability to carry out normal operations beyond July 2021. Several days later, the STL's Trial Chamber II issued an **order** cancelling the commencement of the second trial against Salim Jamil Ayyash, whose trial in absentia was scheduled to begin on June 16, 2021. Fifty-one percent of the STL's **budget** is funded by voluntary contributions, while 49% is funded by the Lebanese Government.

### New Prosecutor Takes the Helm at the ICC

Karim Ahmad Khan took over as **Prosecutor** of the International Criminal Court, replacing Fatou Bensouda, on June 16, 2021. Khan, a national of the United Kingdom, was **elected** to the position by the Assembly of States Parties to the Rome Statute in February of this year. His **CV** is available on the Court's website. Bensouda, a national of Gambia, had served as Prosecutor since June 2012, and issued an **end of term statement**.

### Meeting of States Parties to the UN Convention on the Law of the Sea

The **thirty-first meeting** of States parties to the United Nations Convention on the Law of the Sea is scheduled to take place from June 21 to 25, 2021. The meeting will combine in-person plenary meetings, held at UN Headquarters in New York, with virtual consultations. The Convention, which



## New Publications

### Books

We are proud to share that ICTIG members have recently published the following books:

- Esmé Shirlow, *Judging at the Interface: Deference to State Decision-Making Authority in International Adjudication* (Cambridge University Press 2021).
- Catharine Titi, *The Function of Equity in International Law* (Oxford University Press 2021).

### Articles, Essays, & Book Reviews

ICTIG members have recently published articles and essays including the following:

- Brian L. Cox, *Recklessness, Intent, and War Crimes: Refining the Legal Standard and Clarifying the Role of International Criminal Tribunals as a Source of Customary International Law*, 52 Geo. J. Int'l L. 1 (2020).
- Md. Rizwanul Islam, *Ordering the Repatriation of the Rohingya*, 62 Va. J. Int'l L. Online 1 (2021).

## Notable Judgments & Decisions

### AfCHPR Rules on Benin's Failure to Implement Its Decisions

#### Lisa Reinsberg, International Justice Resource Center

The African Court on Human and Peoples' Rights has ruled that it has jurisdiction to decide complaints concerning States' execution of its decisions, in a case involving exiled Beninese presidential candidate Sébastien Ajavon. The Court's March 29, 2021 judgment in *Sébastien Ajavon v. Benin* (app. no. 065/2019) considered whether Benin violated its human rights obligations when it failed to execute the Court's order of provisional measures and judgments in Ajavon's favor.

In December 2018 and March 2019, respectively, the Court adopted **provisional measures** and its **judgment** concerning Ajavon's complaint (app. no. 013/2017) of due process violations leading to his 2018 conviction and twenty-year sentence for drug trafficking. Ajavon further challenged the conviction because it made him ineligible to stand for election. After finding multiple due process violations, the African Court had ordered Benin to "take all necessary measures to annul" Ajavon's conviction and its effects within six months of its March 2019 judgment. When Benin failed to take these steps, Ajavon submitted a new application to the Court in November 2019.

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established the International Tribunal for the Law of the Sea (ITLOS), currently has **168 States parties**. The **provisional agenda** includes ITLOS' presentation of its **annual report** for 2020.

### Entry into Force of Protocol 15 to the European Convention on Human Rights

On August 1, 2021, **Protocol 15** to the European Convention on Human Rights (ECHR) will enter into force, bringing some significant changes to the functioning of the European Court of Human Rights. The Protocol reduces from six months to four months the time limit for submitting applications to the Court following the exhaustion of domestic remedies; enshrines the principle of subsidiarity and doctrine of mar-

gin of appreciation in the Convention's preamble; removes the limitation in ECHR art. 35(3)(b) that had prevented the Court from declaring an application inadmissible on the ground that the applicant had "not suffered a significant disadvantage," in instances when a domestic court had not "duly considered" the case; eliminates parties' right to object to relinquishment of a case by a Chamber to the Grand Chamber; and replaces the requirement that judges' terms end when they reach age 70 with a requirement that candidates be less than 65 years old when the Parliamentary Assembly requests the list of candidates. Protocol 15, which opened for signatures in June 2013, was finally ratified by all States parties to the ECHR when Italy joined in April 2021. ■



## Notable Judgments & Decisions —continued from page 3

In the present case, Benin argued that the Court did not have jurisdiction to settle disputes arising from the execution of its judgments, nor to determine a State's compliance. The Court concluded that it did have jurisdiction, based on Article 3 of the Protocol establishing the Court, which empowers the judges to resolve disputes arising under the Protocol itself. Article 30 of the Protocol requires States to comply with the Court's decisions and to guarantee their execution. The Court affirmed that both its orders for provisional measures and its judgments are binding on the parties. In view of the State's failure to dispute Ajavon's allegations of non-compliance, the Court concluded Benin had violated Article 30 of the Protocol and, by implication, Article 1 of the African Charter on Human and Peoples' Rights. It reiterated Benin's obligation to comply with its decisions. After dismissing both parties' requests for damages, the Court awarded Ajavon 1 CFA franc as symbolic reparation for moral prejudice.

### ICC Sentences Dominic Ongwen

**Sara L. Ochs, University of Louisville Brandeis School of Law**

Following a **trial judgment** finding defendant Dominic Ongwen guilty of sixty-one crimes against humanity and war crimes committed in Northern Uganda between 2002 and 2005, on May 6, ICC Trial Chamber IX **sentenced** Ongwen to twenty-five years' imprisonment.

Ongwen served as a Brigade Commander of the Sinia Brigade of the Lord's Resistance Army (LRA), a Ugandan rebel group led by Joseph Kony, which has engaged in armed violence in Uganda, the Democratic Republic of the Congo, and the Central African Republic. Ongwen was abducted by the LRA and conscripted as a child soldier when he was approximately nine years old and subsequently rose through the ranks of the LRA.

In rendering Ongwen's sentence, the Trial Chamber gave weight to Ongwen's abduction as a child and upbringing in the LRA, but reiterated its finding from the trial judgment that Ongwen was not forced to commit the crimes of which he was convicted. The Trial Chamber ultimately determined that Ongwen's circumstances warranted "approximately a one-third reduction" in the length of his sentences. Ultimately, the Trial Chamber declined to sentence Ongwen to life imprisonment and concluded the total term of twenty-

five years' imprisonment to be "proportionate to the crimes" Ongwen committed and "congruous to his specific individual circumstances arising from his abduction as a child."

On the day of the sentencing, The Trial Chamber also issued an **Order for Submissions on Reparations** in an effort to move forward with the reparations stage of the proceedings.

### ICC Appeals Judgments

**Sara L. Ochs, University of Louisville Brandeis School of Law**

In the past several months, the ICC Appeals Chamber has issued a number of important judgments. First, on March 30, the Appeals Chamber **confirmed the conviction** of Bosco Ntaganda for eighteen counts of war crimes and crimes against humanity committed in the Democratic Republic of Congo and his resulting thirty-year sentence. Ntaganda served as the chief of military operations of the Union of Congolese Patriots, during which time the Court determined that he engaged in murder, intentionally directing attacks against civilians, rape, sexual slavery, and conscripting child soldiers. This judgment was monumental in that it represented the **first final conviction** rendered by the ICC for crimes of gender and sexual violence against both men and women, as well as the first final conviction for the commission of war crimes against members of the same force.

Then, on March 31, the ICC Appeals **confirmed** Trial Chamber I's acquittal of Laurent Gbagbo and Charles Blé Goudé of all charges. Gbagbo, who served as the former president of Côte d'Ivoire, and Blé Goudé, an Ivorian political leader and Gbagbo's associate, were charged with crimes against humanity of murder, rape, and other inhuman acts related to post-election violence in Côte d'Ivoire between December 2010 and April 2011. The cases against the defendants were joined in 2015, and following trial and the defendants' filing of no case to answer motions, on January 15, 2019, Trial Chamber I orally **granted** the defense motions in open court and acquitted both defendants of all charges. The Trial Chamber filed its **written reasons** for the decision six months later, in July 2019, finding that the Prosecutor failed to present sufficient evidence against the defendants to warrant convictions on their charges.

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The Prosecutor appealed the acquittal on procedural grounds, arguing that the Trial Chamber erred in orally granting the motions and by not articulating and consistently applying a clear standard of proof throughout the proceedings. By a majority, the Appeals Chamber rejected both grounds, finding that the Trial Chamber's six-month delay in providing written reasons for its oral acquittal did not invalidate the ruling, and further recognized that the evidence presented by the prosecutor against both defendants was "exceptionally weak." Two judges dissented from the majority opinion, writing that they would have granted a new trial.

### ECJ Orders Poland to Pause Coal Mine Operation

**Lisa Reinsberg, International Justice Resource Center**

The European Court of Justice, on May 21, granted the Czech Republic's request for interim measures in a pending **dispute** concerning a Polish coal mine close to the Czech border. Specifically, the Vice-President of the Court ordered Poland to immediately suspend operation of the Turów open-cast lignite mine, which is managed by a State-owned company pursuant to a governmental concession. The Czech Republic contended that the six-year extension of that concession in 2020 infringed EU law, and referred the dispute to the European Commission. The Commission found several breaches of EU law by Poland, including the State's failure to conduct an environmental impact assessment. Subsequently, the Czech Republic initiated proceedings before the Court of Justice and requested interim measures.

In granting the request, Vice-President Rosario Silva de Lapuerta found it sufficiently likely that continued operation of the mine would decrease the groundwater level in Czech territory, irreversibly threatening the local drinking water supply. The Vice-President also noted the importance of the "precautionary principle" in EU environmental policy. Further, the Vice-President concluded that the possible harms to the environment and human health from continued operation outweighed possible socio-economic damage in Poland from the mine's closure, given that the latter could be remedied.

Poland subsequently **announced** its intention not to comply with the interim measures. According to the Court's

**tweet**, the Czech Republic requested imposition of a daily penalty on Poland for its failure to comply. The European Commission has **stated** it requested to intervene in the pending case, as well. The interim measures **order**, which is not yet available in English, is summarized in an English-language **press release**.

### ECtHR Requires Adjustments to Mass Surveillance in U.K. and Sweden

**Lisa Reinsberg, International Justice Resource Center**

In separate judgments issued on May 25, 2021, the Grand Chamber of the European Court of Human Rights found violations of the European Convention on Human Rights in certain aspects of past bulk intelligence gathering by the United Kingdom and Sweden. While the two States' regimes differed, the Grand Chamber held that both lacked sufficient "end-to-end safeguards" to ensure the legitimacy of the collection, storage, and sharing of communications and communications data. As such, it found violations of Article 8 (respect for private and family life) and Article 10 (freedom of expression) of the Convention. The Court has provided a joint **legal summary** of the judgments in both *Big Brother Watch and Others v. the United Kingdom* and *Centrum För Rättvisa v. Sweden*.

The Court affirmed that bulk interception is within the State's (narrow) margin of appreciation, but that Article 8 applies to every step of the process. The Grand Chamber noted that the degree of interference with the right to privacy increases from interception through the sharing of data. Generally, the Grand Chamber identified a need to clarify the relevant test and safeguards to be applied to bulk interception regimes, given its differences from targeted surveillance. Importantly, the judges held that the same safeguards should generally apply to the interception, retention, and searching of communications *data* as to the *content* of communications.

Setting out its test for assessing bulk interception regimes, the Court required that domestic law clearly establish and define: 1) the grounds for authorization of bulk interception; 2) the circumstances in which the State may intercept an individual's communications; 3) the procedure for authorizing bulk interception; 4) the procedure for selecting, examining, and using intercepted material; 5) precautions when communicating the material to other actors; 6) the duration of inter-

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## Opportunities

### Awards, Grants & Prizes

#### Rosalyn Higgins Prize: Call for Submissions

*The Law & Practice of International Courts and Tribunals* invites submissions for the 2021 Rosalyn Higgins Prize. The Rosalyn Higgins Prize is an annual prize which awards EUR 1,000 of Brill book vouchers and a one-year LPICT subscription to the author of the best article on the law and practice of the International Court of Justice, either focusing solely on the ICJ or with the ICJ as one of the dispute settlement mechanisms under consideration. The winning article will also be published in LPICT and made freely available online for ninety days to maximize its dissemina-

tion. See additional information in the [announcement](#) and [author instructions](#). Submissions must be received by June 30, 2021.

#### GoJIL Student Essay Competition: Call for Papers

The *Goettingen Journal of International Law* seeks contributions on the topic of "International Law in Times of a Pandemic" from students (including doctoral students). The winning submission will be published in an upcoming issue of the GoJIL. See additional information in the [Call for Papers](#). The deadline for submissions is August 1, 2021.

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ception and storage of material and when it must be destroyed; 7) supervision by an independent authority; and, 8) *ex post facto* review of compliance.

In the case of *Big Brother Watch and Others v. the United Kingdom*, the Grand Chamber held that the British surveillance regime violated articles 8 and 10 because of inadequate safeguards, including the lack of independent authorization for interception. The Grand Chamber held that the U.K.'s arrangements for receiving intelligence from foreign governments did not violate articles 8 or 10, but that its acquisition of communications from service providers violated both provisions because the regime had not met the requirements of EU law.

In the case of *Centrum För Rättvisa v. Sweden*, the Grand Chamber found that the Swedish bulk interception scheme violated Article 8 because it lacked a clear rule on the destruction of material not containing personal data, did not require consideration of individual's privacy when deciding whether to share intercepted material with foreign governments, and did not establish an effective *ex post facto* control mechanism.

### MICT Affirms Ratko Mladić's Conviction

#### Sara L. Ochs, University of Louisville Brandeis School of Law

On June 8, the Appeals Chamber for the International Residual Mechanism for Criminal Tribunals (MICT) affirmed

the judgment and sentence of life imprisonment rendered by the International Criminal Tribunal for the Former Yugoslavia (ICTY) against Ratko Mladić. Mladić served as the Commander of the of the Main Staff of the Army of Republika Srpska from 1992 until 1996 and was instrumental in overseeing and conducting the Srebrenica Massacre, in which Serbian troops murdered at least 7,000 Bosnian Muslim men and boys. Following trial, the ICTY **convicted** Mladić in November 2017 of genocide, crimes against humanity, and war crimes for his role in both the Srebrenica Massacre and committing atrocities throughout Bosnia-Herzegovina, and sentenced him to life imprisonment.

The **MICT** was created to carry out the essential residual functions of the International Criminal Tribunal for Rwanda and the ICTY, following their respective closures in 2015 and 2017. The MICT's Appeal Chamber's **judgment** dismissed Mladić's appeal in its entirety, rejecting his arguments that the Trial Chamber violated his fair trial rights and lacked evidence for its findings that Mladić was involved in various Joint Criminal Enterprises related to genocide of Bosnian Muslims and Croats, spreading terror among civilians in Sarajevo, and hostage taking of UN Personnel.

President Joe Biden praised the MICT's decision, recognizing in a **White House statement** that "justice and reconciliation are the foundation for peace and stability for the future." ■

## Opportunities —continued from page 6

### Conferences, Webinars & Programs

#### 28th Annual Conference of the Australian and New Zealand Society of International Law

The Australian and New Zealand Society of International Law will host the **28th ANZSIL Conference**, virtually, from June 30 through July 6, 2021. This year's topic is "Inertia or Innovation? Reshaping International Law for a Complex Future." **Registration** is required.

#### Association of Human Rights Institutes (AHRI) 2021: Human Rights Strategies

The Maastricht Centre for Human Rights, Maastricht University, Faculty of Law, will host **AHRI 2021** virtually on August 27-28, 2021. The conference will address the practice of human rights strategies from different angles and disciplines. Attention will be paid to the different dimensions such strategies play in discussions about alleged violations and abuses of human rights by a variety of actors while focusing on the question what role academics in the broad field of human rights research can and must play to preserve the delicate balance between exposing human rights abuses and retaining academic integrity. This conference requires **registration**.

#### Symposium on Salient Issues in International Arbitration

The Center on International Commercial Arbitration at American University Washington College of Law will hold the fifth **Symposium on Salient Issues in International Arbitration** on Wednesday, November 10, 2021. The topic of this Symposium is "Does a Transnational Legal Order Exist in International Arbitration?"

### Calls for Papers

#### PluriCourts Research Conference on Compliance Mechanisms

PluriCourts has issued a **Call for Abstracts** for a research conference and edited volume on the topic of "International Courts versus Compliance Mechanisms: Comparative advantages of non-compliance mechanisms and complaint procedures." The research conference is scheduled for October 2021 and selected papers would be due by January 30, 2022. The deadline for submission of abstracts is June 30, 2021.

#### Journal of International Law of Peace and Armed Conflict

The *Journal of International Law of Peace and Armed Conflict / Humanitäres Völkerrecht* (JILPAC / HuV) has issued a **Call for Papers** for its second issue of 2021, which will contain works pertaining to the 60th anniversary of the Convention Relating to the Status of Refugees. The deadline for submissions is July 1, 2021.

#### AALS Section on Islamic Law: Islamic Law and the Modern International Legal Order

The Association of American Law Schools' Section on Islamic Law has announced a **Call for Papers** from which one or more presenters will be selected for the section's program to be held during the AALS 2021 Annual Meeting in San Francisco on the subject of Islamic Law and the Modern International Legal Order. Papers should be between 7,500 and 15,000 words in length and not previously published. The selected presenter will have the opportunity, but not the obligation, to publish the article in the *Arab Law Quarterly*. Papers should be submitted no later than August 14, 2020.

#### German Yearbook of International Law

The *German Yearbook of International Law* invites papers of between 10,000 and 12,500 words on any topic relevant to public international law for the General Articles section of Volume 64. The deadline for submissions is September 1, 2021.

#### International Review of Human Rights Law

The *International Review of Human Rights Law* has issued a **Call for Papers** for its seventh issue, scheduled for publication in February 2022. The call seeks innovative and original manuscripts focusing on human rights law issues. The last date for submission is September 5, 2021.

#### ASIL ICTIG: Conference on International Law Without International Courts

The International Courts and Tribunals Interest Group of the American Society of International Law welcomes abstracts for a conference and an anticipated edited volume or special journal issue on the continued relevance of international courts to the enforcement and development of international law. Within the topic of "International Law



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Without International Courts: Looking to History and Considering the Future,” the organizers seek papers addressing the ways in which international courts have impacted international law and relations, and how international law has, might have, or could still develop in their absence. The conference will take place on December 16 and 17, 2021. The **Call for Papers** is available from the **ICTIG webpage**. Abstracts are due by September 27, 2021.

## Job Postings & Other Opportunities

### Legal Officer (P4), IIIM-Syria

This Geneva-based position is located within the Collection, Analysis and Sharing Section (CASS) of the International, Impartial and Independent Mechanism to assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011 (IIIM). Applications will be accepted through June 24, 2021. Additional details are available in the **posting**.

### Associate Legal Officer (P-2), International Criminal Court

The ICC is accepting applications for an Associate Legal Officer position in the Victims Participation and Reparations Section, to be based in The Hague, Netherlands. The deadline for applying is June 25, 2021. See additional details in the **posting**.

### Associate Legal Officer (P-1), International Criminal Court

The ICC is accepting applications for an Assistant Legal Officer position in the Office of the Prosecutor, to be based in The Hague, Netherlands. The deadline for applying is July 7, 2021. See additional details in the **posting**.

### Consultant, International Nuremberg Principles Academy

Among other **openings**, the Nuremberg Academy seeks consultancy services in connection with a research project on cooperation efforts in international criminal justice. The consultancy is for an estimated 30 days of work between July and October 2021, and would involve mapping existing cooperation. The deadline for applying is July 25, 2021. Additional details are available in the **posting**. ■

## Member News

*ICTIG members, please send news of your promotions, new positions and appointments, awards, events, and other developments to share in the ICTIG Newsletter.*

We invite submissions to the newsletter on an ongoing basis, and encourage members to contribute case summaries, news items, publications, relevant announcements and opportunities, and their own professional news for inclusion in the next issue. For summaries and news items, please limit submissions to 300 words or fewer and indicate how you would like to be credited. All submissions may be sent via email with the subject “ICTIG newsletter submission” to Sara Ochs ([sara.ochs@louisville.edu](mailto:sara.ochs@louisville.edu)) and Lisa Reinsberg ([lisa@ijrcenter.org](mailto:lisa@ijrcenter.org)).