

Strasbourg, 1 September 2017

CAHDI (2017) 12 rev 1

COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI)

Developments concerning the International Criminal Court and
other international criminal tribunals

**Information document
prepared by the Secretariat**

54th meeting
Strasbourg (France), 21-22 September 2017

Public International Law and Treaty Office Division
Directorate of Legal Advice and Public International Law, DLAPIL

cahdi@coe.int - www.coe.int/cahdi

DEVELOPMENTS CONCERNING THE INTERNATIONAL CRIMINAL COURT (ICC) AND OTHER INTERNATIONAL CRIMINAL TRIBUNALS

I. The International Criminal Court (ICC)

1. The Rome Statute of the International Criminal Court currently has 124 State parties. Since the last meeting of the CAHDI, no new instruments of ratification, acceptance or approval were deposited. The decision by Burundi to withdraw from the Rome Statute (notification of 27 October 2016) will take effect on 27 October 2017.

2. Since the last meeting of the CAHDI, the two amendments to the Rome Statute of the International Criminal Court adopted at the Review Conference of the Rome Statute held in Kampala (Uganda) from 31 May to 11 June 2010, the so called “Kampala amendments”, were ratified by Portugal (11 April 2017) and Argentina (28 April 2017). Both amendments have now been ratified/accepted by 34 States in total.¹

3. The amendment adopted by the Parties at the 11th plenary meeting of the Assembly of States Parties to the Rome Statute on 26 November 2015 in The Hague (the Netherlands), to delete Article 124 of the Rome Statute (transitional provision with regard to the ICC’s jurisdiction concerning war crimes), shall enter into force for all States Parties one year after instruments of ratification or acceptance have been deposited by seven-eighths of them. So far Norway (1 July 2016), Finland (23 September 2016), the Slovak Republic (28 October 2016), the Netherlands (20 March 2017) and Portugal (11 April 2017) have deposited their instruments of acceptance with regard to this amendment.²

4. As regards the latest judicial activity at the ICC:

- On 22 March 2017, the Trial Chamber VII delivered its decision³ on sentence in the case of [*The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*](#) in the situation of the Central African Republic. Mr Bemba Gombo was sentenced to one additional year imprisonment as well as to a fine of EUR 300,000 while prison sentences between six months and 2,5 years were imposed on the four other accused. The five accused were found guilty of various offences against the administration of justice in a judgment⁴ of 19 October 2016 related to false testimonies of defence witnesses in another case before the ICC, [*The Prosecutor v. Jean-Pierre Bemba Gombo*](#)⁵.
- On 24 March 2017, the Trial Chamber II issued an order⁶ in the case of [*The Prosecutor v. Germain Katanga*](#) awarding individual and collective reparations to the victims of crimes committed by Germain Katanga on 24 February 2003 during an attack on the village of Bogoro, in the Ituri district of the Democratic Republic of the Congo (DRC). The judges awarded 297 victims with a symbolic compensation of USD 250 per victim as well as collective reparations in the form of support for housing, support for income-generating activities, education aid and psychological support. Mr Katanga was sentenced, by judgement⁷ of 23 May 2014, to a total of 12 years’ imprisonment after being found guilty, as

¹ See, [*Amendment to article 8 of the Rome Statute of the International Criminal Court*](#), Kampala, 10 June 2010, and, [*Amendments on the crime of aggression to the Rome Statute of the International Criminal Court*](#), Kampala, 11 June 2010.

² See, [*Amendment to article 124 of the Rome Statute of the International Criminal Court*](#), The Hague, 26 November 2015.

³ ICC, [*The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*](#), case no. ICC-01/05-01/13, Decision on sentence, 22 March 2017.

⁴ ICC, [*The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*](#), case no. ICC-01/05-01/13, Trial judgment, 19 October 2016.

⁵ ICC, [*The Prosecutor v. Jean-Pierre Bemba Gombo*](#), case no. ICC-01/05-01/08.

⁶ ICC, [*The Prosecutor v. Germain Katanga*](#), case no. ICC-01/04-01/07, Order for reparations, 24 March 2017.

⁷ ICC, [*The Prosecutor v. Germain Katanga*](#), case no. ICC-01/04-01/07, Decision on sentence, 23 May 2014.

an accessory, of one count of crimes against humanity (murder) and four counts of war crimes (murder, attacking a civilian population, destruction of property and pillaging).

- On 15 June 2017, the Appeals Chamber delivered its judgement⁸ in the case of [*The Prosecutor v. Bosco Ntaganda*](#) rejecting unanimously the appeal of Mr Ntaganda, former alleged Deputy Chief of the General Staff of the Force Patriotiques pour la Libération du Congo (FPLC), who is accused of war crimes and crimes against humanity allegedly committed in Ituri, DRC, in 2002-2003. In its appeal Mr Ntaganda had argued that the war crimes of rape and sexual slavery could not be committed by members of an armed group against other members of the same armed group. In its judgement of 15 June 2017, the Appeals Chamber did not share this view but found that international humanitarian law not only governs actions of parties to the conflict in relation to each other but is also concerned with protecting vulnerable persons during armed conflict and assuring fundamental guarantees to persons not taking active part in the hostilities. According to the Appeals Chamber, members of an armed force or group are not categorically excluded from protection against the war crimes of rape and sexual slavery when committed by members of the same armed force or group.
- On 6 July 2017, the Pre-Trial Chamber II delivered its decision⁹ in the case of [*The Prosecutor v. Omar Hassan Ahmad Al Bashir*](#) in the situation of Darfur (Sudan) finding that South Africa failed to comply with its obligations by not arresting and surrendering Mr Al-Bashir to the ICC while he was on South African territory between 13 and 15 June 2015. However, the Chamber considered that it was not warranted to refer South Africa's non-compliance to the Assembly of States Parties or the Security Council of the United Nations.
- On 15 August 2017, the Pre-Trial Chamber I issued a warrant of arrest¹⁰ for Mr. Al-Werfalli in the case of [*The Prosecutor v. Mahmoud Mustafa Busayf Al-Werfalli*](#) in the situation of Libya. The Prosecutor alleges that Mr Al-Werfalli has directly committed and ordered the commission of murder as a war crime in the context of seven incidents, involving 33 persons, which took place between June 2016 and July 2017 in Benghazi or surrounding areas in the context of the non-international armed conflict in Libya.
- On 17 August 2017, the Trial Chamber VIII issued a reparations order¹¹ in the case of [*The Prosecutor v. Ahmad Al Faqi Al Mahdi*](#) in the situation of Mali, concluding that Mr Al Mahdi is liable for 2.7 million euros in expenses for individual and collective reparations for the community of Timbuktu for intentionally directing attacks against religious and historic buildings in that city. Mr Al Mahdi was found guilty and sentenced to 9 years' imprisonment by judgment¹² of 27 September 2016.

II. The International Criminal Tribunal for the former Yugoslavia (ICTY) and the United Nations Mechanism for International Criminal Tribunals (MICT)

5. The latest developments at the International Criminal Tribunal for the former Yugoslavia (ICTY) and the United Nations Mechanism for International Criminal Tribunals (MICT) were as follows:

⁸ ICC, [*The Prosecutor v. Bosco Ntaganda*](#), case no. ICC-01/04-02/06-1962, Judgment on the appeal of Mr Ntaganda against the "Second decision on the Defence's challenge to the jurisdiction of the Court in respect of Counts 6 and 9", 15 June 2017.

⁹ ICC, [*The Prosecutor v. Omar Hassan Ahmad Al Bashir*](#), case no. ICC-02/05-01/09, Decision on the non-compliance by South Africa with the request by the Court for the arrest and surrender of Omar Al-Bashir, 6 July 2017.

¹⁰ ICC, [*The Prosecutor v. Mahmoud Mustafa Busayf Al-Werfalli*](#), case no. ICC-01/11-01/17-2, Warrant of arrest, 15 August 2017.

¹¹ ICC, [*The Prosecutor v. Ahmad Al Faqi Al Mahdi*](#), case no. ICC-01/12-01/15, Reparations order 17 August 2017.

¹² ICC, [*The Prosecutor v. Ahmad Al Faqi Al Mahdi*](#), case no. ICC-01/12-01/15, Judgment and sentence, 27 September 2016.

- From 20 to 28 March 2017, the appeal hearing took place in the case of [*The Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić and Berislav Pušić*](#), the ICTY's last and biggest-ever case before the Appeals Chamber. The Appeal judgement is expected for November 2017. The case concerns six high-level leaders of the Bosnian Croat wartime entity Herceg-Bosna and the Croatian Defence Council who were convicted on 29 May 2013 by judgement¹³ of Trial Chamber III to sentences of 10-25 years of imprisonment for crimes against humanity, violations of the laws or customs of war, and grave breaches of the Geneva Conventions committed between 1992 and 1994.
- On 13 June 2017, the retrial in the case of [*The Prosecutor v. Jovica Stanišić and Franko Simatović*](#)¹⁴ commenced before the MICT following the successful Prosecution appeal against the acquittals of the accused. Indeed, the Trial Chamber I of the ICTY had found on 30 May 2013 by majority judgement¹⁵ Mr Stanišić and Mr Simatović not responsible for committing the crimes alleged in the indictment through participation in a joint criminal enterprise (JCE), the alleged objective of which was the forcible and permanent removal of the majority of non-Serbs from large areas in Croatia and Bosnia and Herzegovina. Mr Stanišić and Mr Simatović were acquitted on all counts of the indictment. Following the Prosecution's appeal, the ICTY Appeals Chamber ordered by judgement¹⁶ of 9 December 2015 that the accused be retried on all counts of the indictment quashing the acquittals. In this judgement, the Appeals Chamber held that the Trial Chamber had failed to make findings on the existence and scope of a common criminal purpose shared by a plurality of persons prior to finding that the intent of the accused was not established thus failing to adjudicate and provide a reasoned opinion on essential elements of JCE liability. The MICT has competence over retrials originating from the ICTY on or after 1 July 2013.
- On 19 June 2017, the Appeals Chamber of the MICT issued a decision in the case of [*The Prosecutor v. Augustin Ngirabatware*](#)¹⁷ granting a request for review of the judgement¹⁸ of 20 December 2014 by Trial Chamber II of the International Criminal Tribunal for Rwanda (ICTR). In this judgement, Mr Ngirabatware, the former Rwandan Minister of Planning, was sentenced to 30 years of imprisonment for committing direct and public incitement to commit genocide and instigating and aiding and abetting genocide. Review of final judgements is one of a number of essential residual functions carried out by the Mechanism, previously exercised by the ICTR and the ICTY.
- On 17 August 2017, the Trial Chamber I issued a revised order in lieu of indictment in the contempt case of [*Prosecutor v. Jojić et al.*](#)¹⁹, following official notification by the Serbian authorities that one of the three accused, Jovo Ostojić, passed away on 29 June 2017. Petar Jojić and Vjerica Radeta, the two remaining accused, are charged with contempt of court for allegedly having threatened, intimidated, offered bribes to, or otherwise interfered with two witnesses while serving as defence lawyers for Mr Šešelj in the case of [*Prosecutor v. Vojislav Šešelj*](#)²⁰ and a related contempt case²¹ against him. Arrest warrants and orders for surrender of the accused have been pending execution by Serbia since 19 January 2015.

¹³ ICTY, *The Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić and Berislav Pušić*, case no. IT-04-74, Trial judgement, 29 May 2013, [Vol. 1/6](#), [Vol. 2/6](#), [Vol. 3/6](#), [Vol. 4/6](#), [Vol. 5/6](#) and [Vol. 6/6](#).

¹⁴ MICT, *The Prosecutor v. Jovica Stanišić and Franko Simatović*, case no. MICT-15-96.

¹⁵ ICTY, *Prosecutor v. Jovica Stanišić and Franko Simatović*, case no. IT-03-69, Trial judgement, 30 May 2013, [Vol. 1/2](#) and [Vol. 2/2](#).

¹⁶ ICTY, *Prosecutor v. Jovica Stanišić and Franko Simatović*, case no. IT-03-69, Appeal judgement, 9 December 2015.

¹⁷ MICT, *The Prosecutor v. Augustin Ngirabatware*, case no. MICT-12-29.

¹⁸ ICTR, *The Prosecutor v. Augustin Ngirabatware*, case no. ICTR-99-54-T, Trial judgement, 20 December 2012.

¹⁹ ICTY, *Prosecutor v. Jojić et al.*, case no. IT-03-67-R77.5.

²⁰ ICTY, *Prosecutor v. Vojislav Šešelj*, case no. IT-03-67.

²¹ ICTY, *Prosecutor v. Vojislav Šešelj*, case no. IT-03-67-R77.3.

III. The Extraordinary Chambers in the Courts of Cambodia (ECCC)

6. Since the last CAHDI meeting, the latest developments at the Extraordinary Chamber in the Courts of Cambodia (ECCC) were as follows:

- On 19 May 2017, the Co-Investigating Judges issued a forwarding order requesting the Co-Prosecutors to file their final submission in [Case 004/2](#)²² against Mr Ao An for genocide of the Cham people and crimes against humanity including, *inter alia*, the persecution against the so-called “17 April people”, former “Lon Nol soldiers”, people from the East Zone and other “internal enemies”, committed between 17 April 1975 and 6 January 1979.
- On 25 July 2017, the International Co-Investigating Judge issued a forwarding order requesting the Co-Prosecutors to file their final submission in [Case 003](#)²³ against Mr Meas Muth. The case pertains to crimes (genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, violations of the 1956 Cambodian Penal Code) allegedly committed by the accused in his various positions within the “Revolutionary Army of Kampuchea” between 17 April 1975 and 6 January 1979 at various security centres and worksites.

IV. Special Tribunal for Lebanon (STL)

7. Since the last CAHDI meeting, the latest developments at the Special Tribunal for Lebanon (STL) were as follows:

- On 28 August 2017, the legal representatives of 72 victims participating in the case of [The Prosecutor v. Salim Jamil Ayyash, Hassan Habib Merhi, Hussein Hassan Oneissi and Assad Hassan Sabra](#)²⁴ began presenting evidence on the victims’ behalf. According to a Press Release²⁵ of the STL, this marks “the first time that victims of terrorism have presented their case before an international tribunal”. The case concerns the 14 February 2005 attack in Beirut that killed former Lebanese Prime Minister Rafik Hariri and 21 others, and injured 226 more. The accused, currently facing trial *in absentia*, are charged with conspiracy to commit a terrorist act, along with a number of other related charges.

V. Residual Special Court for Sierra Leone (RSCSL)

8. Since the last CAHDI meeting, the latest developments at the Residual Special Court for Sierra Leone (RSCSL) were as follows:

- In the case of *The Prosecutor v. Allieu Kondewa*, the RSCSL President ruled²⁶ on 29 May 2017 that Mr. Kondewa will be granted conditional early release, but only after he serves an additional ten months in custody during which he is to receive additional specific training, especially on human rights and correct behaviour as a citizen of Sierra Leone. Mr Kondewa, the former Civil Defence Forces (CDF) Initiator and High Priest, was convicted and sentenced to a prison term of 20 years in 2008 by judgement²⁷ of the Appeals Chamber of the SCSL for five counts of war crimes and crimes against humanity, including

²² ECCC, case file no. 004/2/07-09-2009-ECCC-OCIJ.

²³ ECCC, case file no. 003/07-09-2009-ECCC-OCIJ.

²⁴ STL, *The Prosecutor v. Salim Jamil Ayyash, Hassan Habib Merhi, Hussein Hassan Oneissi and Assad Hassan Sabra*, case no. STL-11-0.

²⁵ STL, [Press Release](#), 28 August 2017.

²⁶ RSCSL, [The Prosecutor v. Allieu Kondewa](#), case no. RSCSL-04-14, Decision of the President on application for conditional early release, 29 May 2017.

²⁷ SCSL, [The Prosecutor v. Moinina Fofana and Allieu Kondewa](#), case no. SCSL-04-14, Appeal judgment, 28 May 2008.

for murder, pillage, cruel treatment and inhumane acts. With the decision on conditional early release the resettlement of Mr Kondewa in his community is planned for late March 2018. His full term of sentence will be complete in May 2023.