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COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI)

Developments concerning the International Criminal Court and other international criminal tribunals

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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 (the Rome Statute) currently has 122 State Parties¹. Since the last meeting of the CAHDI, no new instruments of ratification, acceptance or approval were deposited.

2. Since the last meeting of the CAHDI, there has been a new ratification (by Paraguay) of the two amendments to the Rome Statute, 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”). Both the amendment to Article 8 of the Rome Statute² and the amendments on the crime of aggression have been ratified/accepted by 38 States³.

3. The amendment adopted by the Parties at the 11th plenary meeting of the Assembly of States Parties to the Rome Statute in The Hague (Netherlands) on 26 November 2015, to repeal Article 124 of the Rome Statute (transitional provision with regard to the ICC’s jurisdiction concerning war crimes), will 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), Portugal (11 April 2017), Austria (22 September 2017), France (19 March 2018), Italy (13 April 2018), Croatia (27 April 2018), Romania (14 June 2018), Switzerland (14 December 2018), Slovenia (2 April 2019) and Belgium (16 May 2019) have deposited their instruments of acceptance/ratification with regard to this amendment⁴.

4. The 17th Session of the [Assembly of States Parties](#) to the ICC was held in The Hague, The Netherlands, on 5-12 December 2018. The Assembly adopted [five resolutions](#) by consensus on: the remuneration of the judges of the ICC; amendments to rule 26 of the Rules of Procedure and Evidence; co-operation; the proposed programme budget for 2019; and strengthening the International Criminal Court and the Assembly of States Parties. The 18th Session of the Assembly of State Parties to the ICC will be held in The Hague, The Netherlands, on 2-7 December 2019.

5. The [Trust Fund for Victims](#), created in 2004 by the Assembly of States Parties to the ICC (in accordance with Article 79 of the Rome Statute), aims to support and implement programmes that address harms resulting from genocide, crimes against humanity, war crimes and aggression. Between 5 December 2018 and 15 January 2019, a number of States Parties⁵ made contributions to this Fund, some of them earmarked to support survivors of sexual and gender-based violence⁶.

6. As regards the latest judicial activity at the ICC, since the last CAHDI meeting:

- In the case [The Prosecutor v. Omar Hassan Ahmad Al Bashir](#), the Appeals Chamber of the ICC held five days of hearings in September 2018 in relation to the appeal of the Hashemite Kingdom of Jordan against the [decision of Pre-Trial Chamber II](#) on the non-compliance by Jordan with the request by the Court for the arrest and surrender of Mr Omar Al-Bashir. This was the first time that the Appeals Chamber considered a referral to the Assembly of States Parties (ASP) and the United Nations Security Council (UNSC) of a State Party's non-compliance. On 6 May 2019, the Appeals Chamber decided unanimously to confirm the

¹ The withdrawal of Philippines took effect on 17 March 2019.

² See [Amendment to Article 8 of the Rome Statute of the International Criminal Court](#), Kampala, 10/06/2010.

³ See [Amendments on the crime of aggression to the Rome Statute of the International Criminal Court](#), Kampala, 11/06/2010.

⁴ See, [Amendment to article 124 of the Rome Statute of the International Criminal Court](#), The Hague, 26 November 2015.

⁵ Germany, Ireland, the Netherlands, Norway, the Slovak Republic, Sweden.

⁶ Denmark, Finland, Japan,

decision of Pre-Trial Chamber II as regards Jordan's failure to comply with its obligations by not arresting Mr Omar Al-Bashir and surrendering him to the ICC while he was on Jordanian territory attending the League of Arab States' Summit on 29 March 2017. However, the Appeals Chamber found that the Pre-Trial Chamber had erroneously exercised its discretion in referring Jordan's non-compliance to the ASP and UNSC. Until Omar Al Bashir is arrested and transferred to the seat of the Court, the case will remain in the Pre-Trial stage.

- As regards the admissibility challenge in the case [*The Prosecutor v. Saif Al-Islam Gaddafi*](#), the Prosecutor, the UN Security Council and victims who had communicated with the Court in relation to the case had been invited to make written submissions by 28 September 2018. On 20 November 2018, the defence sent its reply to those submissions. On 5 April 2019, the Court's decision rejecting the admissibility challenge was published. Mr Gaddafi is suspected of two counts of crimes against humanity (murder and persecution) allegedly committed in 2011 in Libya. The case remains in the Pre-Trial stage, pending Saif Al-Islam Gaddafi's transfer to the seat of the Court in The Hague.
- The confirmation of charges hearing in the case [*The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*](#) was postponed, for a second time, to 8 July 2019. The purpose of the confirmation of charges hearing is to determine whether there is sufficient evidence to establish substantial grounds to believe that the person committed each of the crimes charged. If the charges are confirmed, the case will be transferred to a Trial Chamber. Mr Al Hassan was transferred to the ICC on 31 March 2018 following a warrant of arrest issued by the Chamber for war crimes and crimes against humanity. Furthermore, on 11 July 2019, the Defence for Mr. Al Hassan submitted an urgent request to disqualify the composition of Pre-Trial Chamber I from sitting on this case.
- In the case of [*The Prosecutor v. Bosco Ntaganda*](#), Bosco Ntaganda, former alleged Deputy Chief of the General Staff of the *Forces Patriotiques pour la Libération du Congo* [Patriotic Force for the Liberation of Congo], is accused of war crimes (murder and attempted murder; attacking civilians; rape; sexual slavery of civilians; pillaging; displacement of civilians; attacking protected objects; destroying the enemy's property; and rape, sexual slavery, enlistment and conscription of child soldiers under the age of fifteen years and using them to participate actively in hostilities) and crimes against humanity (murder and attempted murder; rape; sexual slavery; persecution; forcible transfer of population) allegedly committed in 2002-2003. On 8 July 2019, Trial Chamber VI found Mr Bosco Ntaganda guilty, beyond reasonable doubt, of 18 counts of war crimes and crimes against humanity, committed in Ituri, Democratic Republic of the Congo (DRC), in 2002-2003. The Chamber found that Mr Ntaganda was liable as a direct perpetrator for parts of the charges of three of the crimes (murder as a crime against humanity and a war crime, and persecution as a crime against humanity), and an indirect perpetrator for the other parts of these crimes. He was convicted as an indirect perpetrator for the remaining crimes. Trial Chamber VI will determine Mr Ntaganda's sentence.
- In the case [*The Prosecutor v. Dominic Ongwen*](#), this alleged former brigade commander of the Sinia Brigade of the LRA, an armed group, is charged with 70 counts of crimes against humanity and war crimes in Uganda between 2002 and 2004. The trial opened in December 2016, resumed in January 2017, and continued in September 2018. The Prosecution has completed its presentation of evidence, and the Legal Representatives of Victims also called witnesses to appear before the Chamber. The Defence is currently presenting its evidence. 4,107 victims have been granted the right to participate in the proceedings.
- In the case [*The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*](#), the arrest warrant for Patrice-Edouard Ngaïssona was issued on 7 December 2018. He was subsequently arrested by the French authorities on 12 December 2018 and transferred to ICC custody on 23 January 2019. Mr Ngaïssona is alleged to be the most senior leader and

the "National General Coordinator" of the Anti-Balaka in Central African Republic (CAR), responsible for crimes committed in various locations in the CAR, including crimes against humanity and war crimes. On 15 May 2019, Pre-Trial Chamber II decided to postpone the commencement of the confirmation hearing to 19 September 2019, instead of 18 June 2019 as previously planned. The Chamber granted a request of the Prosecutor for the postponement of the hearing in light of the need to ensure the protection of victims and witnesses.

- In September 2018, the ICC Prosecutor opened a Preliminary Investigation ([Bangladesh/Myanmar](#)) concerning the alleged deportation of the Rohingya people from Myanmar to Bangladesh, as the latter is a State Party to the ICC. On 4 July 2019, following the Office's preliminary examination process, the Prosecutor requested the Court's Judges to authorise an investigation into alleged crimes against humanity, namely deportation, other inhumane acts and persecution committed against the Rohingya people from Myanmar, covering the period since 9 October 2016. On the same day, the Prosecutor also notified victims of her intention to request authorisation to initiate an investigation in the Situation in Bangladesh/Myanmar, informing them that they have until 28 October 2019 to submit representations to the Judges of Pre-Trial Chamber III on her Request.
- On 15 January 2019, Trial Chamber I acquitted Laurent Gbagbo and Charles Blé Goudé, former president of Côte d'Ivoire and his right-hand man, respectively, from all charges of crimes against humanity (murder, rape, other inhumane acts or – in the alternative – attempted murder, and persecution) allegedly committed in Côte d'Ivoire in 2010 and 2011, in the case [The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé](#). On 1 February 2019, the Appeals Chamber decided unanimously that conditions are to be imposed on Mr Laurent Gbagbo and Mr Charles Blé Goudé upon their release to a State willing to accept them on its territory and willing and able to enforce the conditions set by the Appeals Chamber. These conditions are imposed to protect the integrity of the process. Mr Gbagbo and Mr Blé Goudé are no longer in the ICC detention centre, as an interim measure pending their release with conditions. On 16 July 2019, Trial Chamber I filed the written full reasons for the acquittal of Mr Laurent Gbagbo and Mr Charles Blé Goudé. The Prosecutor will file a notice of appeal against this decision.
- On 12 April 2019, Pre-Trial Chamber II of the ICC rejected unanimously the request of the Prosecutor to proceed with an investigation for alleged crimes against humanity and war crimes in the territory of the Islamic Republic of Afghanistan. The Chamber believed that, notwithstanding the fact that all the relevant requirements were met as regards both jurisdiction and admissibility, the circumstances of the situation in Afghanistan are such as to make the prospects of a successful investigation and prosecution extremely limited. The Chamber concluded that an investigation into the situation in Afghanistan would not serve the interests of justice, and rejected the Prosecutor's request for authorisation to investigate.

II. The United Nations Mechanism for International Criminal Tribunals (MICT)

7. The United Nations Mechanism for International Criminal Tribunals (MICT) continues the jurisdiction and essential functions of the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY) after the completion of their respective mandates.
8. The latest developments at the MICT are as follows:

- In March 2018, both parties in the case [The Prosecutor v. Ratko Mladić](#) filed their notices of appeal against the ICTY judgment⁷ of November 2017, whereby Ratko Mladić, Commander of the Main Staff of the Army of the Bosnian-Serb Republic between 1992 and 1995, was found guilty of genocide, crimes against humanity and violations of the laws or customs of war committed by Serb forces in Sarajevo, Srebrenica and 15 other municipalities during the conflict in Bosnia and Herzegovina and sentenced to life imprisonment. The appeal's proceedings are on-going.
- On 20 December 2012, Trial Chamber II of the ICTR convicted Ngirabatware, in the case [Prosecutor v. Augustin Ngirabatware](#), of incitement to commit genocide, instigating and aiding and abetting genocide, and rape as a crime against humanity, in Rwanda in 1994. He was sentenced to 35 years of imprisonment but the Appeals Chamber reduced it to 30 years in December 2014. In June 2017, the Appeals Chamber granted Ngirabatware's request for review of the appeal judgment. In April 2018, both parties were asked to submit a list of the evidence and witnesses they propose to introduce at a future review hearing, which is scheduled to take place in September 2019.
- The appeal hearing in the case of [The Prosecutor v. Radovan Karadžić](#), took place on 23-24 April 2018, against the ICTY Trial Chamber Judgement of 24 March 2016 which had found Karadžić guilty of genocide, crimes against humanity and violations of the laws or customs of war, sentencing him to 40 years of imprisonment. On 20 March 2019, the Appeals Chamber set aside the sentence of 40 years of imprisonment and imposed on Mr. Karadžić a sentence of life imprisonment.
- In August 2018, the Indictment for contempt of court and incitement to commit contempt, submitted by the Prosecutor in the case [The Prosecutor v. Maximilien Turinabo et al.](#), was confirmed as Maximilien Turinabo, Anselme Nzabonimpa, Jean de Dieu Ndagijimana, Marie Rose Fatuma, and Dick Prudence Munyeshuli allegedly, from at least August 2015 through September 2017, shared the intent for and participated in a joint criminal enterprise which sought to overturn Augustin Ngirabatware's final conviction by interfering with the administration of justice, directly and/or through others, including by pressuring, offering bribes to, and otherwise influencing protected witnesses. A review hearing took place in September 2018. This case is at the pre-trial stage.
- In [The Prosecutor v. Stanišić and Simatović](#) case, the two accused - Jovica Stanišić (the Head of the State Security Service of the Ministry of Internal Affairs of the Republic of Serbia) and Franko Simatović (employed by that Service) - were acquitted of all charges (i.e. four counts of crimes against humanity and one count of violations of the laws or customs of war) by an ICTY Trial Chamber in May 2013. However, on 15 December 2015, the ICTY Appeals Chamber ordered that Stanišić and Simatović be retried on all counts of the indictment. The trial started in June 2017 and is on-going. On 9 April 2019, the Trial Chamber dismissed the motion for acquittal filed by the Defence team for Franko Simatović.

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

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

- On 16 November 2018, the Trial Chamber of the ECCC convicted the two former senior Khmer Rouge leaders of genocide, crimes against humanity and grave breaches of the Geneva Conventions of 1949 - and sentenced them to life imprisonment. The crimes were committed at various locations throughout Cambodia during the Democratic Kampuchea

⁷ ICTY, [The Prosecutor v. Ratko Mladić](#), case no. IT-09-92, Trial judgment, 22 November 2017, [Vol. 1/5](#), [Vol. 2/5](#), [Vol. 3/5](#), [Vol. 4/5](#).

period from 17 April 1975 to 6 January 1979. In April 2014, the Trial Chamber decided that the following alleged crimes would form the basis for the second trial against Khieu Samphan (former Head of State of Democratic Kampuchea) and Nuon Chea (former Chairman of the Democratic Kampuchea National Assembly and Deputy Secretary of the Communist Party of Kampuchea) in [Case 002/02](#): genocide against the Cham and the Vietnamese; forced marriages and rape; internal purges; treatment of Buddhists at Tram Kok Cooperatives; and targeting of former Khmer Republic Officials in certain locations. Trial hearings started in October 2014 and closing statements were made in June 2017. On 28 March 2019, the Trial Chamber judgment was notified, finding Nuon Chea and Khieu Samphan guilty of crimes against humanity, grave breaches of the Geneva Conventions and genocide of the Vietnamese ethnic, national and racial group. The Chamber additionally convicted Nuon Chea of genocide of the Cham ethnic and religious group. Both Nuon Chea and Khieu Samphan were sentenced to terms of life imprisonment. On 4 August 2019, Noun Chea passed away while admitted to the hospital.

- In August 2018, the Co-Investigating Judges issued two separate closing orders in the [Case 004/02](#), against Ao An, due to a disagreement about whether Ao An is subject to the ECCC's personal jurisdiction as a senior leader or one of the persons most responsible for crimes committed during the period of Democratic Kampuchea. The National Co-Investigating Judge was of the view that Ao An does not fall under the ECCC's personal jurisdiction under either category and dismissed the case against Ao An for that reason. The International Co-Investigating Judge was of the view that Ao An was subject to the ECCC's personal jurisdiction as one of the most responsible persons, and that there was sufficient evidence to indict him for the genocide of the Cham and crimes against humanity, as well as domestic offences under Cambodian law. On 21 June 2019, the Pre-Trial Chamber concluded three days of hearings in this case. The Pre-Trial Chamber will determine if Ao An satisfies the criteria of the court's jurisdiction and whether there are sufficient charges to indict him for the crimes alleged or the charges against him should be dismissed. The Chamber has adjourned to deliberate on its decision, which will be final with no further appeals.
- On 28 June 2019, the Co-Investigating Judges in the [Case 004](#) against Yim Tith issued two separate closing orders due to a disagreement about whether Yim Tith is subject to the ECCC's personal jurisdiction as a senior leader or one of the persons most responsible for crimes committed during the period of Democratic Kampuchea. The National Co-Investigating Judge is of the view that Yim Tith does not fall under the ECCC's personal jurisdiction and dismisses the case for that reason. The International Co-Investigating Judge is of the view that Yim Tith is subject to the ECCC's personal jurisdiction as one of the most responsible persons, and that there is sufficient evidence to indict him for the genocide of the Khmer Krom, crimes against humanity, war crimes as well as domestic offences under Cambodian law. The Co-Investigating Judges jointly signed an order terminating the remainder of the investigation in Case 004. This marks the end of all investigations.

IV. Special Tribunal for Lebanon (STL)

10. The Tribunal's primary mandate is to hold trials for the persons responsible for the attacks that took place in Lebanon between 1 October 2004 and 12 December 2005 if the Tribunal finds that these attacks are connected to the attack of 14 February 2005, which killed former Lebanese Prime Minister Rafik Hariri and many others. The STL was open in March 2009 and has four organs: Chambers; the Office of the Prosecutor; the Defence Office; and the Registry. The STL is the first tribunal of an international character to deal with crimes committed in the Middle-East region, the first with jurisdiction over the crime of terrorism in times of peace, and the first to utilize trials *in absentia*, balanced with strong procedural protections for accused persons, to promote international justice for victims of crimes of international concern.

11. Since the last CAHDI meeting, the latest developments at the STL were as follows:

- In the case of [Ayyash et al.](#), the Trial Chamber heard oral closing arguments from the parties and participating victims in September 2018. This case relates to the 14 February 2005 attack which killed 22 individuals, including the former Lebanese Prime Minister Rafik Hariri, and injured 226 others. The Accused remain at large and the proceedings against them are being held *in absentia*. The trial opened in January 2014 and the presentation of the closing arguments concluded the trial hearings. The Judges have now withdrawn to deliberate and will issue a reasoned judgement that will find the accused "guilty" or "not guilty". A finding of guilt may be reached only when a majority of the Trial Chamber is satisfied that guilt has been proved beyond reasonable doubt. In such a case, the Trial Chamber will subsequently decide on the sentence. Following the first instance judgement, appeals proceedings may be initiated before the STL Appeals Chamber.
- In relation to [cases connected](#) to the 14 February 2005 attack, the announcement by the Prosecutor of the submission of an updated indictment to the Pre-Trial Judge is expected to be forthcoming. The Pre-Trial Judge has previously determined that three terrorist attacks against Lebanese politicians are legally connected to the 14 February 2005 attack within the meaning of Article 1 of the STL Statute. Those attacks concern: (i) a car explosion that targeted the motorcade of Mr Marwan Hamadeh, in Beirut, on 1 October 2004, injuring Mr Hamadeh and his driver were injured, and killing his bodyguard; (ii) a car-bombing in Beirut that killed Mr George Hawi on 21 June 2005; and (iii) an explosive device that targeted the convoy of Mr Elias El-Murr in Antelias, killing one person, and injuring Mr El-Mur and eleven others.
- The Prosecutor also remains seized of jurisdiction to investigate so-called 'related cases'. These cases are those which *may* fall within the STL's jurisdiction under Article 1 of the STL Statute, over persons responsible for attacks that took place in Lebanon between 1 October 2004 and 12 December 2005 if the Tribunal finds that these attacks are connected to the attack of 14 February 2005, but for which the Tribunal has not yet found there to be such a connection.
- On 8-9 November 2018, the [Sixth International Meetings of the Defence](#) were held at the headquarters of the STL in Leidschendam, the Netherlands. The meetings were organised by the Defence Office of the STL, with the support of the Association of Defence Counsel practising before the International Courts and Tribunals (ADC-ICT), the International Criminal Court Bar Association (ICCBA), and the Office of Public Counsel for the Defence at the International Criminal Court (OPCD). The Meetings ended with the adoption of [a joint Final Statement](#) reflecting discussions on, *inter alia*, detention-related issues within the international criminal courts and tribunals; challenges facing defence lawyers when representing clients with limited or no resources at all in proceedings following their conviction or acquittal; and whether retrials should be held before international criminal courts and tribunals.

V. Residual Special Court for Sierra Leone (RSCSL)

12. The Residual Special Court for Sierra Leone (RSCSL) is responsible for the on-going legal obligations of the Special Court for Sierra Leone (SCSL), which concluded its mandate in December 2013. These include supervision of prison sentences, witness protection and support, maintenance and preservation of the archives, and assistance to national prosecution authorities.

13. Judges of the RSCSL held a Plenary in Vienna in December 2018 and elected Justice Jon Kamanda of Sierra Leone to a two-year term as President. The Plenary also saw the pre-launch of a compilation of the jurisprudence of the Appeals Chamber of the Special Court, scheduled for publication in 2019.

14. Prior to the Plenary, RSCSL Judges took part in a colloquium on 'Children Recruited and Exploited by Terrorist and Violent Extremist Groups'. RSCSL Judges and the Principal Defender presented Special Court's experience and jurisprudence in trying defendants on terrorism charges. The colloquium was organised by Justice Renate Winter together with the UN Office of Drugs and Crime (UNODC), and sponsored by the Council of Europe, Save the Children Sweden and *Terre des Hommes*.

15. There are no new developments since those reported to the last CAHDI meeting:

VI. Kosovo* Specialist Chambers (KSC) and Specialist Prosecutor's Office

16. On 10 June 1999, the UN Security Council passed Resolution 1244⁸ establishing a framework for the resolution of the conflict in Kosovo* following the dissolution of the Socialist Federal Republic of Yugoslavia. The Resolution authorised the deployment of an international civilian and military presence that would provide an international transitional administration and security presence in the region. In April 2009, the European Union established EULEX, the European Union Rule of Law Mission to assist Kosovo* judicial authorities and law enforcement agencies in their process towards sustainability. Its legal basis lies in the *European Union Joint Action*⁹ of February 2008 and the Council Decisions of June 2010, 2012, 2014, 2016 and 2018¹⁰.

17. On 7 January 2011, the Council of Europe Parliamentary Assembly approved a Report entitled "[Inhuman treatment of people and illicit trafficking in human organs in Kosovo*](#)" (Doc.12462) which alleged that serious violations of international law had taken place in connection to the inhuman and degrading treatment to which some Serbians and some Albanian Kosovars were subjected by the Kosovo* Liberation Army. Based on the allegations of this Council of Europe Parliamentary Assembly Report, in September 2011 the European Union established a [Special Investigative Task Force](#) (SITF), an autonomous entity that derives its jurisdiction and legal authority from the *European Union Joint Action*¹¹.

18. To address these allegations, on 3 August 2015, the Kosovo* Assembly adopted the new [Article 162 of the Kosovo* Constitution](#) and the [Law on Specialist Chambers and Specialist Prosecutor's Office](#) (Law no.05/L-053) to investigate and prosecute grave trans-boundary and international crimes which occurred during and in the aftermath of the conflict in Kosovo* in 1998, 1999 and 2000 in relation to the conduct identified in the Council of Europe Parliamentary Assembly Report of 7 January 2011.

19. The *Law on Specialist Chambers and Specialist Prosecutor's Office* gives the *Specialist Prosecutor's Office* the authority to, inter alia, request the presence of and to question suspects, victims and witnesses, collect and examine information and evidence, and take decisions on the initiation, and the continuation or termination of criminal proceedings. The *Specialist Prosecutor's Office* acts independently from the *Specialist Chambers* and all other prosecutors in Kosovo*.

⁸ UN Security Council, *Security Council resolution 1244 (1999) on the deployment of international civil and security presences in Kosovo**, 10 June 1999, S/RES/1244 (1999).

⁹ [Council Joint Action 2008/124/CFSP](#) of 4 February 2008 on the European Union Rule of Law Mission in Kosovo*, EULEX KOSOVO*.

¹⁰ [Council Decision 2010/322/CFSP](#) of 8 June 2010, [Council Decision 2012/291/CFSP](#) of 5 June 2012, [Council Decision 2014/349/CFSP](#) of 12 June 2014, [Council Decision 2016/947/CFSP](#) of 14 June 2016, and [Council Decision \(CFSP\) 2018/856](#) of 8 June 2018, amending and extending Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo* (EULEX KOSOVO)*.

¹¹ See n. 8 above.

* All references to Kosovo, whether the territory, institutions or population, in this text shall be understood in full compliance with United Nation's Security Council Resolution 1244 and without prejudice to the status of Kosovo.

20. The Specialist Chambers (KSC) and the Specialist Prosecutor's Office (SPO) are of temporary nature, and function in accordance with the "[Rules of Procedure and Evidence before the Kosovo* Specialist Chambers including Rules of Procedure for the Specialist Chamber of the Constitutional Court](#)" adopted pursuant to Article 162(6) of the Constitution of the Republic of Kosovo* and Article 19(1) of the *Law on Specialist Chambers and Specialist Prosecutor's Office*. The KSC and SPO are part of the judicial system of Kosovo*, but based in the Netherlands, on the basis of an Agreement between the Netherlands and Kosovo* of 15 February 2016. The Specialist Chambers have primacy over all other courts in Kosovo*. The Specialist Chambers or the SPO may order the transfer of proceedings within its jurisdiction from any other prosecutor or any other court in the territory of Kosovo* to the Specialist Chambers and the SPO at any stage of an investigation or proceedings.

21. In May 2018, Mr Pietro Spera was appointed as Ombudsperson for the KSC and the SPO. The Ombudsperson has an essential role in monitoring, defending and protecting fundamental rights and freedoms as enshrined in the Constitution of Kosovo* for those persons interacting with the KSC and the Specialist Prosecutor's Office. The Ombudsperson may not interfere in judicial proceedings before the Specialist Chambers, except in instances of unreasonable delay, but can make recommendations to the President of the KSC or to the Specialist Prosecutor on matters falling within their functions.

22. In June 2018, the KSC and the Specialist Prosecutor's Office published their [first report](#), highlighting some of the critical milestones achieved between April 2016 and February 2018. The first part of the report explains the process that led to the KSC becoming judicially operational (April 2016 – July 2017) and further major steps in building the regulatory framework and strengthening outreach (July 2017 – February 2018). The second part of the report presents the background and establishment of the Specialist Prosecutor's Office, highlighting its responsibility and the challenges of its work. The [2018 Annual Report](#) of the KSC was published in February 2019.

23. On 1 November 2018, the KSC added new names to the Lists of lawyers for Defence and Victims' Counsel, in addition to Counsel who were already admitted. The new updated public Lists contain 119 legal practitioners from Kosovo*, Serbia and a number of other countries. Being on those Lists enables lawyers to be eligible to appear before the KSC to represent suspects, accused, a group of victims or any other person who is entitled to legal representation in accordance with the Law establishing the KSC and the [Directive on Counsel](#). Counsel can choose whether they want their names publicly mentioned on the website of the KSC.

24. In January 2019, two former commanders of the Kosovo* Liberation Army (UCK), Rrustem Mustafa and Sami Lushtaku, were interviewed by the KSC regarding their role in Kosovo's* war of independence from Serbia. Mustafa and Lushtaku have been politically active in the Democratic Party of Kosovo* for the past 20 years and the Kosovar Prime Minister Ramush Haradinaj, who was twice acquitted of crimes against humanity and war crimes before the ICTY, spoke out in support of the two men. Mustafa has already served a four year sentence of imprisonment after being found guilty by a Pristina court of torturing wartime prisoners.

25. On 7 February 2019, the Specialist Chamber of the Constitutional Court of the KSC granted the interim measure requested by Mr Mahir Hasani suspending the Order to provide certain documents and information to the Specialist Prosecutor's Office on 11 February 2019, when he had been summoned for questioning. On 20 December 2018, the Specialist Prosecutor's Office had issued a summons to question Mr Hasani on that date, and an Order for him to provide certain documents and information to the Specialist Prosecutor's Office on the same day. The interim measure granted was without prejudice to Mr Hasani's obligation to appear for questioning before the SPO.

26. On 19 July 2019, Prime Minister Ramush Haradinaj, a wartime commander of the Kosovo* Liberation Army, resigned after being summoned by the SPO for questioning as a suspect.

27. The KSC are expected to try former Liberation Army fighters for crimes including killings, abductions, illegal detentions and sexual violence. However, to date (3 September 2019), no indictment procedures before the Kosovo* Specialist Chambers have been initiated.

* All references to Kosovo, whether the territory, institutions or population, in this text shall be understood in full compliance with United Nation's Security Council Resolution 1244 and without prejudice to the status of Kosovo.