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# COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW

## (CAHDI)

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### 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 123 state parties, with the latest accession, by Kiribati, on 26 November 2019.
2. Since the last meeting of the CAHDI, there has been two new ratifications (by Bolivia and Mongolia) of the amendments on the crime of aggression, with a total of ratifications/acceptations by 41 states.<sup>1</sup> The other amendment to the Rome Statute adopted at the Review Conference held in Kampala (Uganda) from 31 May to 11 June 2010 (the so-called “Kampala amendments”), regarding Article 8, has been ratified/accepted by 40 states.<sup>2</sup>
3. The amendments to Article 8 of the Rome Statute adopted in New York on 14 December 2017, concerning “weapons which use microbial or other biological agents, or toxins”, “weapons the primary effect of which is to injure by fragments undetectable by x-rays in the human body”, and “blinding laser weapons”, that entered into force on 2 April 2020, have so far been ratified/accepted by seven States (the Czech Republic, Latvia, Luxembourg, the Netherlands, New Zealand, the Slovak Republic and Switzerland).<sup>3</sup>
4. The Amendment to Article 8 of the Rome Statute concerning “intentionally using starvation of civilians” adopted in The Hague on 6 December 2019 and yet to enter into force, has so far been adopted by three states (Andorra, the Netherlands and New Zealand).<sup>4</sup>
5. The amendment adopted by the Parties at the 11<sup>th</sup> 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, 15 states (Andorra, Austria, Belgium, Croatia, France, Finland, Italy, Latvia, the Netherlands, Norway, Portugal, Romania, the Slovak Republic Slovenia and Switzerland) have deposited their instruments of acceptance/ratification with regard to this amendment.<sup>5</sup>
6. The [Assembly of States Parties](#) to the Rome Statute held its 19<sup>th</sup> session from 14 to 16 December 2020 in The Hague. The Assembly adopted six resolutions by consensus, e.g., on the proposed programme budget for 2021, cooperation, the remuneration of judges and strengthening the ICC and the Assembly of States Parties. The Assembly also adopted the 2021 programme budget of the Court totalling €148,259,000 and a staffing level of 972. The 19<sup>th</sup> session of the Assembly was resumed in New York from 18 to 23 December 2020, where it adopted the resolution on the review of the ICC and the Rome Statute system. The Assembly elected Judge Silvia Fernández de Gurmendi (Argentina) as President for the twentieth to twenty-second sessions. The work of the Assembly will continue at its second resumed nineteenth session, to be held in New York in early 2021, to consider

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<sup>1</sup> See, [Amendments on the crime of aggression to the Rome Statute of the International Criminal Court](#), Kampala, 11/06/2010.

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

<sup>3</sup> See, [Amendments to Article 8 of the Rome Statute of the International Criminal Court \(Weapons which use microbial or other biological agents, or toxins\) \(Weapons the primary effect of which is to injure by fragments undetectable by x-rays in the human body\) \(Blinding laser weapons\)](#), New York, 14/12/2017.

<sup>4</sup> See, [Amendment to Article 8 of the Rome Statute of the International Criminal Court \(Intentionally using starvation of civilians\)](#), The Hague, 6 December 2019.

<sup>5</sup> See, [Amendment to Article 124 of the Rome Statute of the International Criminal Court](#), The Hague, 26 November 2015.

agenda item 14, "Election of the Prosecutor". The 20<sup>th</sup> session of the Assembly will be held from 6 to 11 December 2021 in The Hague.

7. As regards the latest judicial activity at the ICC, since the last CAHDI meeting:
- In the case [The Prosecutor v. Dominic Ongwen](#) Trial Chamber IX found on 4 February 2021 the defendant, an alleged former brigade commander of the armed group Sinia Brigade of the LRA, guilty for a total of 61 comprising crimes against humanity and war crimes, committed in Northern Uganda between 1 July 2002 and 31 December 2005. The verdict may be appealed by the Defence or the Prosecution. The judges will impose on Dominic Ongwen the sentence for the crimes of which he has been convicted in due course. Furthermore, a phase dedicated to the reparations to victims will be opened.
  - On 16 February 2021, the trial in the case [The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona](#) opened before Trial Chamber V. The Prosecution's presentation of evidence will start on 15 March 2021. The two defendants are accused of war crimes and crimes against humanity allegedly committed in the Central African Republic (CAR) in 2013 and 2014.
  - The opening of the confirmation of charges hearing in the case [The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman](#) is scheduled provisionally for 24 May 2021. The warrants of arrest against the defendant list 53 counts on the basis of his individual criminal responsibility for war crimes and crimes against humanity allegedly committed in Darfur (Sudan).
  - In the case [The Prosecutor v. Paul Gicheru](#), Pre-Trial Chamber A granted, on 29 January 2021, the defendant's request for interim release with specific conditions restricting liberty. In the view of the Chamber, Mr Gicheru's voluntary surrender demonstrates his concrete willingness to subject himself to the jurisdiction of the Court in relation to the allegations against him for offences against the administration of justice consisting in corruptly influencing witnesses regarding cases from the situation in Kenya. The confirmation of charges procedure in the case will, in principle, be conducted in writing in the course of February-March 2021.
  - The defendant in the case [The Prosecutor v. Mahamat Said Abdel Kani](#) was surrendered to the ICC on 24 January 2021. The initial appearance of Mr Said before the Single Judge of Pre-Trial Chamber II took place on 28 and 29 January 2021. The opening of the confirmation of charges hearing is scheduled provisionally for 5 October 2021. Mr Said is charged with war crimes and crimes against humanity allegedly committed in Bangui (CAR) in 2013.
  - On 3 March 2021, the Prosecutor of the ICC announced the opening of her investigation into the [Situation in Palestine](#). This followed the Chamber's majority decision on 5 February 2021 that the Court could exercise its criminal jurisdiction in the Situation in Palestine, and that the territorial scope of this jurisdiction extends to Gaza and the West Bank, including East Jerusalem. The ICC Prosecutor had announced on 20 December 2019 the conclusion of the preliminary examination of the Situation in Palestine. The Prosecutor determined that all the statutory criteria under the Rome Statute for the opening of an investigation had been met.

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

8. 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.
9. The latest developments at the MICT since the last CAHDI meeting were as follows:
  - The trial in the case [The Prosecutor v. Maximilien Turinabo et al.](#) commenced on 22 October 2020 with the Prosecution's opening statement. In addition, the Defence teams of several defendants in the case elected to give opening statements at this time. The Prosecution presented nine witnesses between 26 October and 24 November 2020. The Defence phase was due to begin in February 2021. The Indictment for contempt of court and incitement to commit contempt submitted by the Prosecutor was confirmed in August 2018 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 Ndirakobuca's final conviction (see, [Prosecutor v. Augustin Ndirakobuca](#)) by interfering with the administration of justice, directly and/or through others, including by pressuring, offering bribes to, and otherwise influencing protected witnesses.
  - On 26 October 2020, the defendant in the case [Prosecutor v. Félicien Kabuga](#) was transferred to the Mechanism's custody after his arrest in Paris by French authorities on 16 May 2020. His initial appearance took place on 11 November 2020, during which a plea of not guilty was entered with respect to the charges in the indictment. Mr Kabuga was indicted by the United Nations International Criminal Tribunal for Rwanda in 1997, on seven counts of genocide, complicity in genocide, direct and public incitement to commit genocide, attempt to commit genocide, conspiracy to commit genocide, persecution and extermination, all in relation to crimes committed during the 1994 genocide against the Tutsi in Rwanda.

## III. Special Tribunal for Lebanon (STL)

10. The primary mandate of the Special Tribunal for Lebanon (STL) is to hold trials for the people accused of carrying out the attack of 14 February 2005 which killed 22 people, including the former prime minister of Lebanon, Rafik Hariri, and injured many others. The tribunal also has jurisdiction over other attacks in Lebanon between 1 October 2004 and 12 December 2005 if it is proven that they are connected to the events of 14 February 2005 and are of similar nature and gravity. The mandate also allows the tribunal to have jurisdiction over crimes carried out on any later date, decided by the parties and with the consent of the UN Security Council, if they are connected to the 14 February 2005 attack. The STL is the first tribunal of an international character with jurisdiction over the crime of terrorism in times of peace and the first to utilise trials *in absentia*.

11. Since the last CAHDI meeting, the developments at the STL were as follows:
  - On 13 January 2021, the Prosecution and the Defence Counsel for Mr Salim Jamil Ayyash filed notices of Appeal against the Trial Chamber's Judgment of 18 August 2020, and the Defence against the Sentencing Judgment of 11 December 2020, in the [Ayyash et al.](#) case. The Legal Representative of Participating Victims also filed a notice of Appeal against the Sentencing Judgment. The case relates to the 14 February 2005 attack in Beirut, Lebanon, that killed 22 people including former Lebanese Prime Minister Rafik Hariri and injured 226

others. On 18 August 2020, the Trial Chamber found unanimously Salim Jamil Ayyash guilty beyond reasonable doubt of all counts against him in the indictment. It further found Hassan Habib Merhi, Hussein Hassan Oneissi and Assad Hassan Sabra not guilty of all counts charged against them in the indictment. On 11 December 2020, the Trial Chamber pronounced its Sentencing Judgment in the case. It unanimously sentenced the convicted Accused Salim Jamil Ayyash to five concurrent sentences of life imprisonment. It also issued a renewed arrest warrant, an international arrest warrant, order and request for the transfer and detention of Mr Ayyash. It also called on those shielding Mr Ayyash from justice to surrender him to the Tribunal.

#### **IV. 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. Since the last CAHDI meeting, the latest developments at the RSCSL were as follows:

- Former Revolutionary United Front (RUF) convict Augustine Gbao was transferred on 20 December 2020 from Mpanga Prison in Rwanda back to his native Sierra Leone, where he will serve out the remainder of his 25-year sentence under strict conditions and close monitoring. Gbao, who was the Overall Security Commander for the RUF, was found guilty of war crimes and crimes against humanity, including acts of terrorism, murder, rape, sexual slavery, forced marriage, cruel treatment, enslavement, pillage, and attacks against UN peacekeepers (see, [The Prosecutor v. Issa Hassan Sesay, Morris Kallon and Augustine Gbao \(the RUF accused\)](#)). He was acquitted on several other charges, including the use of child soldiers, the murder of UN peacekeepers, and taking peacekeepers hostage.

#### **V. Kosovo\* Specialist Chambers (KSC) and Specialist Prosecutor's Office**

14. The Kosovo Specialist Chambers (KSC) and Specialist Prosecutor's Office were established pursuant to an international agreement ratified by the Kosovo Assembly, a Constitutional Amendment and the Law on Kosovo Specialist Chambers and Specialist Prosecutor's Office. They are of temporary nature with a specific mandate and jurisdiction over crimes against humanity, war crimes and other crimes under Kosovo law, which were commenced or committed in Kosovo between 1 January 1998 and 31 December 2000 by or against citizens of Kosovo or the Federal Republic of Yugoslavia.

15. Since the last CAHDI meeting, the latest developments at the KSC were as follows:

- The accused in the case of [Specialist Prosecutor v. Salih Mustafa](#) was arrested and transferred to the Detention Unit of the KSC on 24 September 2020. His initial appearance before the Pre-Trial Judge took place on 28 September 2020. At his further appearance on 28 October 2020, Mr Mustafa pleaded not guilty to all counts of the indictment which charges him on the basis of individual criminal responsibility and superior criminal responsibility with crimes committed by certain Kosovo Liberation Army (KLA) members against persons detained at the Zilash detention compound.

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\* 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.

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- The indictment against the four accused in the case of [\*Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi\*](#) was confirmed on 26 October 2020. The indictment states that the war crimes and crimes against humanity charged were committed from at least March 1998 through September 1999 and took place in several locations across Kosovo as well as in Northern Albania. They were allegedly committed by members of the KLA against hundreds of civilians and persons not taking part in hostilities. The indictment alleges that the accused are individually criminally responsible, pursuant to various forms of criminal responsibility, for crimes, which were committed in the context of a non-international armed conflict in Kosovo and were part of a widespread and systematic attack against persons suspected of being opposed to the KLA. Following their arrest by the Specialist Prosecutor, the accused were transferred to the Detention Facilities of the KSC in The Hague on 4 and 5 November 2020. During their initial appearances before the Pre-Trial Judge all four accused pleaded not guilty to all counts of the indictment.
  - The indictment against the two accused in the case of [\*Specialist Prosecutor v. Hysni Gucati & Nasim Haradinaj\*](#) was confirmed on 11 December 2020. The indictment states that between at least 7 and 25 September 2020, on the occasion of three press conferences and other broadcasted events, as well as through further dissemination, including by social media statements, Gucati and Haradinaj revealed, without authorisation, information protected under the law of the Specialist Chambers, including the identifying details of certain (potential) witnesses. Gucati and Haradinaj also made disparaging accusations and remarks against (potential) witnesses and repeatedly expressed their intention to undermine the Specialist Chambers. The accused were arrested in Prishtinë/Priština, Kosovo, on 25 September 2020 and transferred to the KSC Detention Unit.