

Strasbourg, 23 August 2024

PIL-ICT (2024) 2

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

67th meeting (hybrid meeting)
19-20 September 2024

Vienna, Austria

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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 124 State parties.
2. The following developments have occurred since the last CAHDI meeting:
 - There have been no new acceptances/ratifications of the amendments on the crime of aggression or the amendment to Article 8 of the Rome Statute adopted at the Review Conference held in Kampala (Uganda) from 31 May to 11 June 2010 (the so-called “Kampala amendments”). The total number of ratifications/acceptances for both amendments remains at 45.¹
 - Estonia, Belgium, Lithuania, and Cyprus ratified each of the three amendments to Article 8 of the Rome Statute adopted in New York on 14 December 2017. This brings the number of ratifications/acceptances for the amendment concerning “weapons which use microbial or other biological agents, or toxins” to 21,² and the number of ratifications/acceptances for the amendments concerning “weapons the primary effect of which is to injure by fragments undetectable by x-rays in the human body” and “blinding laser weapons” to 19 each.³ All three amendments entered into force on 2 April 2020.
 - Estonia, Belgium, Lithuania, and Cyprus also ratified the amendment to Article 8 of the Rome Statute concerning “intentionally using starvation of civilians” adopted in The Hague on 6 December 2019 and entered into force on 14 October 2021 – bringing the number of ratifications/acceptances to 17.⁴ Estonia, Lithuania, and Cyprus also ratified 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). So far, 23 States have deposited their instruments of acceptance/ratification with respect to this amendment, which will enter into force for all States parties one year after instruments of ratification or acceptance have been deposited by seven-eighths of the Parties.⁵
3. A summary of the ICC’s judicial activity since the last CAHDI meeting is set out below:
 - On 10 May 2024, in the case of [The Prosecutor v. Maxime Jeoffroy Eli Mokom Gawaka](#), the Chamber ordered that a hearing take place in relation to Mr Mokom’s request for compensation pursuant to Article 85 of the Rome Statute. Mr Mokom had been released from ICC detention on 17 October 2023 after Pre-Trial Chamber II terminated proceedings on the basis that there was no reasonable prospect for a conviction at trial. The hearing is scheduled to take place on 9 September 2024.
 - On 20 May 2024, in the [Situation of the State of Palestine](#), the Prosecutor applied for arrest warrants for Yahya Sinwar (Head of the Islamic Resistance Movement (“ Hamas”) in the Gaza Strip), Mohammed Diab Ibrahim Al-Masri, more commonly known as DEIF (Commander-in-Chief of the military wing of Hamas, known as the Al-Qassam Brigades), Ismail Haniyeh (Head of Hamas Political Bureau). Furthermore, arrest warrants have been requested for Benjamin

¹ See, [Amendments on the crime of aggression to the Rome Statute of the International Criminal Court](#), Kampala, 11/06/2010; [Amendment to Article 8 of the Rome Statute of the International Criminal Court](#), Kampala, 10/06/2010.

² See, [Amendments to Article 8 of the Rome Statute of the International Criminal Court \(Weapons which use microbial or other biological agents, or toxins\)](#).

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

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

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

Netanyahu (Prime Minister of Israel) and Yoav Gallant (Minister of Defence of Israel). The Office of the Prosecutor submits that the war crimes alleged in these applications were committed in the context of an international armed conflict between Israel and Palestine, and a non-international armed conflict between Israel and Hamas running in parallel. Mr Sinwar, Deif and Haniyeh are accused of war crimes and crimes against humanity in connection with the killing of hundreds of Israeli civilians in attacks perpetrated by Hamas (in particular its military wing, the Al-Qassam Brigades) and other armed groups on 7 October 2023 and the taking of at least 245 hostages. Mr Netanyahu and Gallant are accused of war crimes and crimes against humanity in connection with a widespread and systematic attack against the Palestinian civilian population pursuant to State policy and the use of starvation as a method of war. On 27 June 2024, Pre-Trial Chamber I granted the request of the United Kingdom to provide written *amicus curiae* observations pursuant to Rule 103 of the Rules of Procedure and Evidence by 12 July 2024. The Pre-Trial Chamber also set the deadline for any other requests for leave to file *amicus curiae* observations to 12 July 2024. On 22 July 2024, the Court permitted certain other States, organisations and persons to provide *amicus curiae* observations publicly and no later than 6 August 2024.

- On 25 June 2024, in the [Situation in Ukraine](#), Pre-Trial Chamber II issued arrest warrants against Sergei Kuzhugetovich Shoigu, Minister of Defence of the Russian Federation, and Valery Vasilyevich Gerasimov, Chief of the General Staff of the Armed Forces of the Russian Federation and First Deputy Minister of Defence of the Russian Federation. Pre-Trial Chamber II held that there are reasonable grounds to believe that these individuals bear individual criminal responsibility for the war crime of directing attacks at civilian objects, the war crime of causing excessive incidental harm to civilians or damage to civilian objects, and the crime against humanity of inhumane acts under article 7(1)(k) of the Rome Statute. These arrest warrants follow the decision of 5 March 2024 to issue arrest warrants Mr Sergei Ivanovich Kobylash, a Lieutenant General in the Russian Armed Forces who at the relevant time was the Commander of the Long-Range Aviation of the Aerospace Force, and Mr Viktor Nikolayevich Sokolov, an Admiral in the Russian Navy, who at the relevant time was the Commander of the Black Sea Fleet, for the war crime of directing attacks at civilian objects, the war crime of causing excessive incidental harm to civilians or damage to civilian objects, and the crime against humanity of inhumane acts; as well as the decision of 17 March 2023 to issue arrest warrants for Mr Vladimir Vladimirovich Putin, President of the Russian Federation, and Ms Maria Alekseyevna Lvova-Belova, Commissioner for Children's Rights in the Office of the President of the Russian Federation for the war crime of unlawful deportation of population (children) and that of unlawful transfer of population (children).
- On 26 June 2024, in the [Situation in the Republic of Mali](#), Trial Chamber X delivered judgment in the case [The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud](#). Mr Al Hassan was convicted of directly committing, contributing to, or aiding and abetting the crime against humanity of torture and the war crimes of torture and outrages upon personal dignity in Timbuktu between 2 April 2012 and 29 January 2013. He was also convicted of contributing to the crimes perpetrated by other members of Ansar Dine/AQIM regarding the war crimes of mutilation, cruel treatment, and passing sentences without previous judgment pronounced by a regularly constituted court, and the crimes against humanity of persecution and other inhumane acts. The three judges each appended to the decision a separate, partially dissenting opinion. Also in the *Situation in the Republic of Mali*, on 21 June 2024 Pre-Trial Chamber I made public an arrest warrant against [Iyad Ag Ghaly](#) for war crimes and crimes against humanity allegedly committed in northern Mali between January 2012 and January 2013. The arrest warrant had been initially issued under seal on 18 July 2017. Mr Ghaly is allegedly the undisputed leader of Ansar Eddine, which at the time had control of Timbuktu, Mali, jointly with AQIM. Mr Ghaly is not detained by the ICC.

II. Kosovo^{6*} Specialist Chambers (KSC) and Specialist Prosecutor's Office (SPO)

4. The Kosovo Specialist Chambers (KSC) and Specialist Prosecutor's Office (SPO) 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 temporary in nature and have jurisdiction concerning crimes against humanity, war crimes, and other crimes under Kosovo law 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. Since the last CAHDI meeting, the latest developments at the KSC were as follows:

- On 8 April 2024, in the case of [Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi](#), President Trendafilova rejected a request by Mr Thaçi to disqualify or substitute Judge Nicolas Guillou as Single Judge on the basis that he had been sworn in as a Judge of the ICC on 8 March 2024. The President rejected the request on the basis that Judge Guillou would only exercise his judicial functions at the ICC as of 19 August 2024 and no arguments had been advanced that Judge Guillou's work as a Single Judge or his independence has been impacted. On 6 May 2024, the Presiding Judge addressed the parties and participants about the progress of proceedings and expressed gratitude for their cooperation thus far, noting that 105 witness testimonies had been taken and the Trial Panel had issued 367 written and oral decisions in the case to date. Mr Thaçi, Mr Veseli, Mr Selimi and Mr Krasniqi are charged with crimes against humanity and war crimes on the basis of both individual and superior criminal responsibility. The charged crimes allegedly took place between at least March 1998 through September 1999 in the context of and are associated with an armed conflict between the Kosovo Liberation Army (KLA) and forces of the Federal Republic of Yugoslavia (FRY) and the Republic of Serbia, including units of the Yugoslav army, police and other units of the Ministry of Internal Affairs and other groups fighting on behalf of the FRY and Serbia.
- On 31 May 2024, in the case of [Specialist Prosecutor v. Hysni Gucati & Nasim Haradinaj](#), the Specialist Chamber of the Constitutional Court delivered its judgment on the referral made by Mr Haradinaj alleging violations of his individual rights and freedoms in relation to the criminal proceedings against him before the Kosovo Specialist Chambers. The Constitutional Chamber declared part of the complaints inadmissible and rejected the remainder, finding that there had been no violation of the Constitution of the Republic of Kosovo or the European Convention of Human Rights. Mr Gucati and Haradinaj are presently serving sentences of four years and three months of imprisonment for intimidation during criminal proceedings, violating the secrecy of proceedings through the unauthorised revelation of secret information disclosed in official proceedings, violating the secrecy of proceedings through the unauthorised revelation of the identities and personal data of protected witnesses, and obstructing official persons in performing official duties by serious threat.
- On 16 July 2024, in the case of [Specialist Prosecutor v. Pjetër Shala](#), Trial Chamber I pronounced its trial judgment and found Mr. Shala guilty of the war crimes of arbitrary detention, torture and murder between approximately 17 May 1999 and 5 June 1999 against persons detained at the Kukës Metal Factory in northern Albania used by the KLA. Mr. Shala was sentenced to a prison sentence of 18 years, with credit for the time served.
- On 30 July 2024, in the case of [Specialist Prosecutor v. Salih Mustafa](#), the Supreme Court Panel rendered its decision on Mr Mustafa's Request for Protection of Legality. The five grounds raised by Mr Mustafa in his request concerned the translation of the appeal judgment into Albanian, his conviction for murder as a war crime, and the sentence. The Panel dismissed the request with respect to the translation and conviction aspects of the request, however granted the request and annulled the appeal judgment with respect to the sentence of 22 years of imprisonment. The matter has been returned to the Appeals Panel to consider a reduction in sentence. Mr Mustafa was found guilty by Trial Panel I on 16 December 2022 of the war

* 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.

crimes of arbitrary detention, torture and murder, committed against persons detained at the detention compound in the village of Zllash, located in the Gollak/Goljak region in Kosovo. On 22 July 2024, the public redacted version of the Single Judge's decision from 25 March on Victims' Counsel's Request to Set a Date for the Payment of Reparations and other Matters was published, in which the Single Judge decided that the Reparations Order can be implemented immediately as it had not been appealed and there was now a final verdict in the case.

III. The United Nations Mechanism for International Criminal Tribunals (IRMCT)

5. The United Nations International Residual Mechanism for Criminal Tribunals (Mechanism) 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. The latest developments at the Mechanism since the last CAHDI meeting were as follows:

- On 10 May 2024, in the case of [Prosecutor v. Ratko Mladić](#), the President of the Mechanism denied an application seeking provisional release on compassionate/humanitarian grounds or, alternatively, to continue serving his sentence in the Republic of Serbia. The President was not satisfied that compelling humanitarian circumstances had been substantiated and held that the defendant received all necessary care at the UNDU. Mr Mladić is presently serving a sentence of life imprisonment at the UNDU for genocide, persecution, extermination, murder, deportation and inhumane acts (forcible transfer) as crimes against humanity, and murder, terror, unlawful attacks on civilians and taking of hostages as violations of the laws or customs of war.
- On 15 May 2024, the IRMCT Prosecutor announced that it had accounted for all fugitives indicted by the ICTR after concluding that the final two fugitives, Ryandikayo and Sikubwabo, were deceased. As the last ICTY fugitive was arrested in 2011, there are no longer any fugitives indicted by the ICTR and ICTY at large.
- On 15 July 2024 and 22 July 2024, in the cases of [Prosecutor v. Dominique Ntawukulilyayo](#) and [Prosecutor v. Dragoljub Kunarac](#), the President of the Mechanism rendered separate decisions on the application for early release of the defendant in each case. Both applications were denied by the President.
- On 6 August 2024, in the matter of [François-Xavier Nzuwonemeye et al.](#), a Single Judge dismissed a joint motion requesting the assignment of counsel at the expense of the Mechanism for the purpose of assisting them in their response to the Order to Show Cause; a stay of the Order to Show Cause until the Relocated Persons have the time and legal aid resources to engage with Rwandan authorities and until a final decision has been issued on a separate motion; and that a status conference to be organised to discuss issues raised in the motion and in the Order to Show Cause. The Single Judge found that the applicants had failed to demonstrate exceptional circumstances warranting the assignment of counsel at the Mechanism's expense or that the Order to Show Cause should be stayed. The applicants had also failed to demonstrate that holding a status conference was either appropriate or necessary.

IV. Special Criminal Court of the Central African Republic (SCC-CAR)

6. The Special Criminal Court (SCC-CAR) is a special court within the justice system of the Central African Republic created by Organic Law No. 15.003 of 3 June 2015 to investigate, prosecute and judge serious violations of human rights and international humanitarian law committed on the territory of the Central African Republic since 1 January 2003, as defined by the Central African Criminal Code and international law. It comprises international and Central African judges, four chambers and a Special Judicial Police Unit. With a limited duration of 5 years (renewable), the SCC-CAR focuses on the most serious crimes, such as war crimes and crimes against humanity, and takes precedence over ordinary national courts. The SCC-CAR complements the work of the ICC, which was seized by the Central African authorities on 30 May 2014. On 24 September 2014, the ICC

Prosecutor announced the opening of an investigation into crimes within its jurisdiction committed since 1 August 2012 on Central African territory. As the ICC gives priority to prosecuting those most responsible, the SCC-CAR is responsible for investigating and prosecuting the dozens of other perpetrators of serious human rights violations committed. The latest SCC-CAR developments since the last CAHDI meeting are as follows:

- On 27 February 2024, Investigating Chamber no. 3 delivered an international arrest warrant against [Francois Bozize YANGOUVONDA](#) for crimes against humanity allegedly committed in the civil prison and military instruction centre of Bossembelé between 2009 and 23 March 2013.