

**Cour
Pénale
Internationale**



**International
Criminal
Court**

**Judge Sang-Hyun Song
President of the International Criminal Court**

Remarks to the 22nd Diplomatic Briefing

*The Hague
19 September 2012*

Your Excellencies, ladies and gentlemen,

It is my pleasure to welcome all of you to the ICC's 22nd Diplomatic Briefing, in this 10th anniversary year.

From a judicial point of view this is a time of changes. The ICC's first trial, that of Mr *Thomas Lubanga*, has recently come to an end. The judges delivered a guilty verdict, followed by decisions on sentencing and reparations. They left the Court at the end of August. I would like to pay tribute to all three of them – Presiding Judge Adrian Fulford and Judges Elizabeth Odio Benito and Rene Blattmann – for the immense contributions they have made, both individually and collectively, to the development of the ICC over the last decade.

Our second trial, that of Mr *Germaine Katanga* and Mr *Mathieu Ngudjolo Chui* is also nearing its end. We currently hope that the Trial Chamber's verdict will be delivered around the end of this year. Once all necessary decisions have been taken, as in the Lubanga case, the two judges whose mandates were extended to complete the case will also be departing.

In our third trial, the prosecution case against Mr *Jean-Pierre Bemba Gombo* was concluded earlier this year, and the Chamber is currently hearing the case for the defence. Those hearings are likely to continue some way into next year.

Our fourth trial, that of Mr *Banda* and Mr *Jerbo* currently remains at the trial preparation stage. Further developments in the case will depend upon the outcome of issues currently under consideration by the Chamber.

As you will be aware, at the beginning of this year charges were confirmed in two further cases in the Kenya situation, involving two accused in each case. These cases are currently at the trial preparation stage. The Trial Chamber has set 11 and 12 April 2013 respectively as the start dates for the trial hearings in these two cases.

At the pre-trial level, the case of Mr *Laurent Gbagbo* is currently the subject of confirmation of charges proceedings. The Chamber is considering certain health issues raised by the Defence which could affect the further progress of the case. Depending on the outcome of this consideration, any hearing on the confirmation of charges is not likely to take place until after the end of this year.

The two Pre-Trial Chambers remain seized of a number of other country situations, but today I will mention only Libya. Recent developments there in relation to Mr *Saif Al-Islam Gaddafi* and Mr *Abdullah Al-Senussi* have been much in the news. The Pre-Trial Chamber is still considering a challenge to the admissibility of the Prosecutor's case against Mr Gaddafi. In the meanwhile the Libyan obligation to deliver him to the ICC is formally in suspense.

On the instructions of the Chamber, the Registry have however reminded the Libyan authorities of their continuing obligation to surrender Mr Al-Senussi to the Court given that he is now in their custody.

In relation to Libya I must of course also mention the detention of four ICC staff members in Zintan on 7 June, and the intensive work that went into securing their release nearly four weeks later. I would like to express the ICC's immense gratitude to the many States Parties who helped us in so many ways over that period in The Hague, in New York and especially on the ground in Libya itself. It was a strong reminder of the potential risks which ICC staff face when carrying out their functions in situation countries, but also of the vital help and support which States Parties provide to the Court.

The UN, other international bodies and certain non-States Parties also played an active and very helpful role, including the US government and their Ambassador to Libya.

It was therefore with particular shock and sadness that we heard a few days ago of the Ambassador's tragic death in Benghazi along with three of his staff.

On behalf of the Court I would like to offer our most sincere condolences to their families, friends and colleagues.

Madame Registrar will explain further what is being done to follow up the detention of our staff. We are of course very relieved that they are all back, safe and sound. But we must learn lessons from this experience. An independent internal review is currently under way to look at all the circumstances and how the Court responded to the various challenges involved, with a view to identifying what further actions may need to be taken.

In this connection I was glad to hear that the Hague Working Group has taken up the issue of the privileges and immunities of Court personnel in the performance of their functions. The Court is also examining this issue, and I hope that we can work closely together on it.

There are two further judicial issues which I would like to mention.

First, with the conclusion of the *Lubanga* case and in the light of all the judicial experience gained over the lifetime so far of the Court, earlier this year our judges embarked on a systematic "lessons learned" exercise aimed at identifying potential improvements in rules, procedures and practice to increase the efficiency of the ICC's judicial process as a whole.

Under the leadership of Vice-President Monageng, a large number of practical suggestions from the judges have been collected and collated into clusters of related issues for further analysis and discussion over the months ahead. This work is proceeding in close cooperation with the Study Group of States Parties. There is a great deal of ground to cover, some very technical, some very practical. Specific conclusions and recommendations are likely to emerge progressively over the next year or so, which we hope will secure the support and - where appropriate - the formal approval of the States Parties.

Secondly, I would like to comment briefly on developments in the provision of judges. I mentioned earlier that three extended judges have now departed

following the conclusion of the Lubanga trial, and that two further judges will leave when the Katanga trial is completed.

In last year's budget, on basis of the existing case-load at the time, we also provided for calling just one of our six new judges from March 2012. This last point caused some surprise, and indeed scepticism. But I am pleased to say that so far that is exactly what has happened. We called just one new judge in March. We will certainly need to call more judges next year for the trial hearings in the Kenya cases, and there is also the possibility that unforeseen circumstances could require further decisions before then. But I would like to underline the Presidency's commitment to managing our judicial resources in a cost-effective manner, within the various institutional constraints imposed by the Rome Statute.

Between now and the Assembly of States Parties in late November there will be much discussion of the Court's draft budget for 2013, which was circulated in early August and will be the subject of detailed discussion with the Committee on Budget and Finance next week. Madame Registrar will be covering this issue in detail in her remarks shortly, so for now I would like to make just three points.

First, the Court is fully aware of the budgetary pressures faced by many States Parties, and the efforts which they have been making to limit the cost of their contributions to international organisations generally.

Following the ASP's decisions last year on the ICC's budget for 2012, the Court has itself had a difficult time finding sufficient in-year savings to enable it to live within its authorised budget without compromising its prosecutorial and judicial responsibilities under the Rome Statute.

The Court is keen to find continuing cost and efficiency savings wherever possible. All the organs have worked hard to drive down cost assumptions wherever possible in the draft 2013 budget. At the same time, we also have to recognise the reality that a Court has judicial proceedings to deliver – it is not

the kind of organisation in which programme expenditure can be selectively turned on and off at short notice depending on the current availability of resources.

Developing significant efficiency gains takes time and can require major process re-engineering. The current “lessons learned” exercise provides a number of examples of this, such as looking for ways to reduce the labour-intensiveness of handling applications for victim participation or redaction of evidence. But cost reductions need to be thought through very carefully. Otherwise resource constraints can lead to further delays in proceedings. The long-term additional cost of such delays, in terms of legal aid, witness protection or extension of judges, can be much higher than any short-term savings.

In this respect I hope that there can be a full and frank dialogue between the Court and the States Parties about the practical implications of any potential changes to the draft budget before final decisions are taken at the ASP.

My second point is closely related. The draft 2013 budget includes for the first time a substantial amount for the rent of our premises, for reasons which are well known to the States Parties. This additional cost has been foreseen by all concerned for some time. It has been suggested by some that the Court should absorb it in the regular budget – in other words, that in addition to any other savings that the Court may be called upon to make, it should cut an additional 6 million Euros from its regular operating budget in order to pay for the new rent liability.

I hope everyone here will understand what a drastic and profoundly damaging measure this would be. I am convinced that it could only be achieved by seriously compromising the prosecutorial and judicial functioning of the Court.

Finally, I am very conscious of the fact that along with the interest of all concerned with efficiency and budgetary rigour, there is also a common

interest in clarifying how the financing of the ICC should deal with issues which are foreseeable to an extent but over which there is an unavoidable degree of uncertainty about whether they will happen, if so when, and how much they will actually cost as a result.

In the light of the experience of last year's budget discussions, the Court has tried to improve the quality and quantity of the information available to the CBF and ASP as a basis for their decisions on the 2013 budget. We have produced a more extensive list of formal budgetary assumptions, and described carefully in the budget narrative what developments in the casework of the Court could reasonably be expected at the time of writing.

We also started to develop internal scenarios for those cases where there was substantial uncertainty about the potential budgetary implications in 2013. As a result of this forward thinking, following a decision of the Trial Chamber setting start dates for the two Kenya trials, it was possible at short notice to include detailed provision for these in the draft budget.

Following recent developments in the *Gbagbo* case, the Court is unfortunately unable to provide a firm cost prediction for 2013 at present. But it will be providing the CBF with a paper setting out possible time lines and costings, while underlining that actual costs will depend on issues currently under judicial consideration.

I hope that these efforts by the Court will be helpful to the States Parties as they consider the draft budget. I should underline, however, that the Court has had to work within the established budgetary framework in terms of meeting the various requirements previously laid down by the CBF and ASP. When this year's budget discussions are over, I hope there can be further dialogue between the Court and the States Parties about how the process could be further improved for next year.

With that final thought, I thank you for your attention, and invite Madame Prosecutor to speak next.