

Public Annex G



H.E. Mme Fatou Bensouda
 Chief Prosecutor
 International Criminal Court
 Maanweg 174, 2516 AB, Den Haag, the Netherlands

Excellency,

It is my sincere pleasure to write to you in response to your letter dated 13 February 2015, in which you inquired on the updates of the domestic criminal proceedings of Georgia over the war crimes and crimes against humanity allegedly committed in the context of August 2008 armed conflict ("the August war criminal case").

At the outset, I would like to avail myself of this opportunity to express my profound appreciation to you and to your office for your invaluable efforts towards the gatekeeping of accountability for the world's most heinous crimes. My country has been a victim of such crimes since 1990ies and notably in August 2008, when thousands of civilians were targeted in a repeated wave of ethnic cleansing and other unspeakable acts. I am most grateful for the prompt opening of examination of the "situation in Georgia" already on 14 August 2008 by your Office delivering thus a strong message that the above crimes could not go unpunished and unabated.

Georgia is one of the most committed State Parties to the Rome Statute and it has been co-operating with the Court for the latter to effectively achieve its objectives enshrined in the Statute. A vast burden of co-operation with the ICC in the context of August 2008 armed conflict has lied with the Prosecution Service of Georgia (PSG) owing to its responsibility for the national criminal proceedings subject to the ICC preliminary examination. The PSG immediately launched its investigations once the very first allegations emerged over the commission of grave crimes during the armed conflict in 2008. Throughout 2008-2014, the PSG investigators carried out the investigations of a scale that was unprecedented in the history of this institution. The Georgian investigation team interrogated over 7,000 witnesses, obtained over 200 forensic expert opinions, carried out crime scene inspections in over 30 inhabited areas. Where evidence was inaccessible due to the occupation of the Georgian territories and presence of barbed wire fences installed by the aggressor state, the PSG took extraordinary efforts such as the examination of crime scenes through satellite imagery. The existing state of the proceedings gives an opportunity to file charges against a number of individuals allegedly responsible for the war crimes and crimes against humanity.

It needs to be recalled in this regard that the PSG has been continuously cooperating with the ICC and updated the Court with all substantial developments in its criminal proceedings. On the current occasion also, the PSG has produced, or where applicable, compiled relevant materials as per nine-point request detailed in your latest letter. I am herewith enclosing the said documents for your consideration.

01/23/03-5958
17.03.2015

GEO-OTP-0003-1169



However, I would like to address the issue of the likely challenges that the above-mentioned domestic criminal proceedings might face on its next stages. Specifically, these challenges relate to the fragile security situation in the occupied territories of Georgia and in the areas adjacent thereto, where violence against civilians is still widespread. For example, throughout 2012-2014 Georgian authorities recorded 393 cases of abductions of civilians across the conflict lines and abductions were not the only forms of violence recorded. Since 9 December 2014 through 13 March 2015, the intensity of violence has further increased – a total of 182 arbitrary detentions (155 in Abkhazia and 27 in Tskhinvali region/South Ossetia) under the pretext of “illegal border crossing” were identified as a result of Russia’s continued “creeping annexation” of Abkhazia and Tskhinvali region, in particular by concluding the so-called “treaties of alliance” with them and thus absorption into Russia’s security, defence and political space. It is most alarming that cases of forcible expulsion of the Georgian population from the region still continue, as was the case with 8 ethnic Georgian residents of Gali on 17 December 2014.

Regrettably, the government of Georgia has very limited control over such violence. It needs to be noted that the persons implicated in the commission of the crimes subject to Georgia’s domestic proceedings under the August war criminal case might be directly involved or affiliated with the on-going violence. Moreover, many of the witnesses and victims involved in the PSG criminal proceedings live in the close proximity with the occupied territories and because of the threats and insecurity described above could be prone to avoiding further examinations and/or changing testimonies given previously.

Furthermore, on a number of occasions the occupying Russian forces have been expanding the occupied areas deeper into Georgia in response to some legitimate decisions of the government of Georgia that concerned the occupied territories. Even few days before writing this letter, the occupying forces held large-scale military trainings in the occupied territories with a clear message of the demonstration of power. Launching prosecutions in the proceedings at issue could be a decision comparable to those legitimate actions of the Georgian authorities which previously have been responded with the aggressive and unlawful reactions by the occupying forces.

In light of the foregoing, the PSG has had doubts that an advance to the prosecution stage in the given proceedings might have prompted certain backlash from the groups engaged in the violence across the conflict lines. If such developments have high likelihood to occur, the civilians living nearby the occupied territories, including the victims and witnesses involved in the proceedings pending before the PSG might face certain security threats. Given that, the PSG has to carefully weigh the interests at stake in the two available options of prosecution or non-prosecution for at least until the threats disappear.

Owing to those reasons, the PSG had referred the issue to the wider executive authorities to assess whether such threats are real and if so, what is the likely extent of them. In this process, in fulfilling our obligations under the Rome Statute, we will and need to take into consideration the interests of victims and justice, and the possible correlations between the legal action and the security situation. For the moment being, the executive authorities have been of the view that the security situation on the ground in humanitarian, military and political sense is not far away from being alarming.

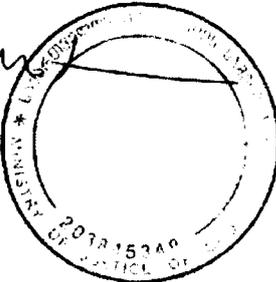


Given that, the PSG intends to resume efforts once the situation is conducive to advancing in the proceedings.

Please accept, Excellency, the assurances of my highest consideration.

Sincerely,


Thea Tsulukiani



- Encl.: - 7 (seven) pages: short report of the PSG on the Nine-Point request from the ICC/OTP
- 1 (one) CD: annexes to the short report of the PSG

