



Cour
Pénale
Internationale

International
Criminal
Court

Le Président

The President



Judge Sang-Hyun Song

President of the International Criminal Court

Annual Report to the United Nations General Assembly

31 October 2013

Mr. President, Excellencies, Distinguished Delegates, Ladies and Gentlemen,

It is an honour to appear for the fifth time before this Assembly to deliver the annual report of the International Criminal Court.

As you are aware, the ICC is an independent institution. But it was born under the auspices of the United Nations, and the two organisations engage in practical cooperation under a relationship agreement concluded in the spirit of the Purposes and Principles of the Charter.

I would like to use this opportunity to express the ICC's deep gratitude for the UN's steadfast support of the Court in the context of global efforts to strengthen the rule of law and to promote peace, security and human rights everywhere.

Since I last addressed you, Côte d'Ivoire has become the 122nd State Party to the Rome Statute. 9 further States Parties have ratified the amendments to the Rome Statute on the crime of aggression, and 10 States Parties have ratified the amendments which make the use of chemical weapons in non-international conflicts a war crime punishable by the ICC.

I congratulate those countries for strengthening the international fight against impunity through the Rome Statute system. I also encourage all States to consider ratification of these instruments if they have not already done so.

Allow me to recall that the ICC does not have universal jurisdiction. The Court can prosecute crimes committed on the territory of a State Party, or by a national of a State Party. The only exception is that the UN Security Council can decide to refer a situation to the ICC Prosecutor under Chapter VII of the Charter.

In the past year, the ICC has continued to work hard on the mandate that States have given us. The Prosecutor has opened an eighth investigation, in Mali. The Court has issued its first judgment of acquittal, which is now on appeal. Two arrest warrants were unsealed and one suspect surrendered to the Court. Three trials are continuing and another is set to start soon. Several important decisions have been issued, breaking new legal ground in the Court's jurisprudence.

In institutional developments, Mr. Herman von Hebel has been sworn in as the new ICC Registrar and Mr. James Stewart as the new Deputy Prosecutor.

Mr. President,

I will give a brief overview of the main judicial developments in the eight situations before the ICC.

To date, four States Parties to the Rome Statute – Uganda, the Democratic Republic of the Congo, the Central African Republic and Mali – have referred situations occurring on their territories to the Court.

In two situations - Kenya and Cote d'Ivoire - the previous Prosecutor commenced investigations on his own initiative, with the knowledge and support of the governments concerned.

In addition, the Security Council referred the situations in Darfur, Sudan, and in Libya – both non-States Parties.

In the **situation in Uganda**, regrettably the arrest warrants against Mr. Joseph Kony and three other alleged leaders of the Lord's Resistance Army remain outstanding. Once again I implore all States to cooperate in bringing these persons before justice to face the very serious charges against them.

In the **situation in the Democratic Republic of the Congo**, the Appeals Chamber is currently considering appeals against last year's conviction, sentence and reparations decision in the case of Mr. Thomas Lubanga Dyilo.

On 21 November 2012, the first judgment of acquittal at the ICC was issued when Trial Chamber II found Mr. Mathieu Ngudjolo Chui not guilty of crimes against humanity and war crimes. The Prosecutor's appeal against this judgment is also under consideration by the Appeals Chamber.

The presentation of evidence in the case of Mr. Germain Katanga has ended and the Trial Chamber is expected to issue its judgment in the near future.

In a very welcome development, Mr. Bosco Ntaganda, charged with the use of child soldiers, murder, rape, sexual slavery and other crimes, was transferred to the ICC on 22 March 2013. He is the first person subject to an ICC arrest warrant to have voluntarily surrendered to the Court. I would like to express the ICC's gratitude to the countries that facilitated his transfer. Following a process of disclosure, the hearing on the confirmation of charges against Mr. Ntaganda is set to commence on 22 February 2014.

An arrest warrant against Mr. Sylvestre Mudacumura remains outstanding. He is charged with alleged war crimes committed in the Kivus region of Eastern DRC.

In the **situation in the Central African Republic**, the trial of Mr. Jean-Pierre Bemba has continued, with the presentation of defence evidence expected to conclude shortly.

In the **situation in Darfur, Sudan**, the trial of Mr. Abdallah Banda is set to commence on 5 May 2014. The proceedings against his co-accused, Mr. Saleh Jerbo, were terminated on 5 October 2013 on the basis of information indicating that he had died earlier this year.

Regrettably, arrest warrants remain pending against four persons suspected of having committed very grave crimes in the Darfur situation. The active support of the UN Security Council will be essential in ensuring that these persons are brought before the Court to face the charges against them in compliance with the Council's original resolution.

In the **situation in Libya**, questions of admissibility have featured significantly in the proceedings during the last year.

As you are aware, the Rome Statute gives primacy to national jurisdictions under the principle of complementarity, and if a government can demonstrate that it is genuinely investigating or prosecuting the person before the ICC for the same crimes, the ICC will step back, declaring the case inadmissible.

On 31 May, Pre-Trial Chamber I rejected Libya's admissibility challenge with respect to Mr. Saif Al-Islam Gaddafi in the light of the specific circumstances of that case. Libya has appealed against this decision, but remains under a legal obligation to transfer Mr. Gaddafi to the ICC.

On the other hand, on 11 October the Pre-Trial Chamber declared the case of Abdullah Al-Senussi inadmissible before the ICC, again in the light of the specific circumstances of the case, opening the way for proceedings against Mr Al-Senussi to continue at the national level. This was the first decision of this kind issued by a Chamber of the ICC. However I should stress that this decision has been appealed by Mr. Al-Senussi, and is therefore not final.

In the **situation in Côte d'Ivoire**, the only suspect currently in the custody of the ICC is Mr. Laurent Gbagbo. Following a hearing on the confirmation of charges, the Pre-Trial Chamber requested the Prosecutor to consider providing further evidence and gave her until 15 November to do so.

Arrest warrants against two other suspects, Mrs. Simone Gbagbo and Mr. Charles Blé Goudé, were unsealed during the reporting period, but the requests for their arrest and surrender to the ICC remain outstanding.

In the **situation in Kenya**, the trial of Mr. William Samoei Ruto and Mr. Joshua Arap Sang commenced on 10 September 2013 and the presentation of prosecution evidence is currently under way. This is the first criminal trial hearing before any international court in which the accused are not in custody, but appear as free men, having voluntarily complied with the summons to appear issued by the ICC.

In the light of recent submissions by the parties to the other trial in the Kenya situation, that of Mr. Uhuru Kenyatta, the Chamber earlier today issued a decision postponing the start of the trial until 5 February.

A legal question that has recently attracted considerable attention in the Kenya situation is the requirement of an accused person's presence at trial. The relevant provision of the Rome Statute is article 63, which provides in its first paragraph that "[t]he accused shall be present during the trial".

Last week, the ICC Appeals Chamber issued its first ever ruling on the interpretation of this provision, finding that the absence of an accused from trial is permissible under exceptional circumstances when strictly necessary, if a number of specific criteria are fulfilled, including the prior exploration of other possible solutions.

On 16 January 2013, the Prosecutor formally opened an investigation into alleged crimes committed on the territory of **Mali** since January 2012, following the Mali Government's referral of the situation to the Prosecutor last year.

Based on her preliminary examination, the Prosecutor has put the initial emphasis of her investigation on the three northern regions of Mali, and on allegations concerning intentional attacks against buildings dedicated to religion and historic monuments, including those with World Heritage status. The Prosecutor has accordingly cooperated with UNESCO and has also sought cooperation with a number of other UN agencies present in Mali.

Indeed, the logistical and other assistance of the United Nations is of crucial importance for the ICC's ability to conduct effective investigations and other operations in the situation countries. The Court is extremely grateful for the continuing cooperation with the United Nations in this respect.

In addition to the investigations related to the eight situations I have just discussed, the ICC Prosecutor is conducting further eight preliminary examinations around the world with a view to determining whether the opening of a formal ICC investigation is warranted. These concern Afghanistan, Colombia, Georgia, Guinea, Honduras, the Republic of Korea, Nigeria and, finally, a situation referred by the Union of the Comoros, concerning crimes allegedly committed on 31 May 2010 aboard vessels reportedly registered in Comoros, Greece and Cambodia forming part of the flotilla bound for the Gaza Strip.

Mr. President,

Fairness is a cornerstone of the ICC's judicial work. The internationally recognised rights of the accused are meticulously respected. No-one can be convicted unless their guilt is proved beyond reasonable doubt. The Registry of the ICC makes legal aid available to the accused as well as victims if they cannot afford legal representation.

The legal aid extended to victims assists them in asserting their rights under the Rome Statute: to present their views in the context of cases against suspects and accused, as well as to seek reparation for harm suffered. Thus far, the ICC has provided legal assistance to more than seven thousand victims participating in the proceedings.

Parallel to the judicial proceedings at the Court, the ICC's Trust Fund for Victims provides a very concrete response to the urgent needs of numerous victims and their families who have suffered from the worst crimes in international law. The Trust Fund currently supports 28 projects that reach an estimated 110,000 victims and their families in northern Uganda and the eastern part of the Democratic Republic of the Congo.

Of these beneficiaries, over 5,000 are survivors of sexual and gender-based violence. The Trust Fund considers the empowerment of women and girls a fundamental requirement of any justice, reparation, assistance, reconciliation and peace-building process.

The assistance that the Trust Fund is able to provide to victims depends upon voluntary donations, which are also needed to fund reparations when a convicted person is indigent. Once again I thank those States that have already generously supported the ICC's Trust Fund for Victims, and I call upon others to consider doing so, for the benefit of the victims of atrocious crimes.

Mr. President,

The ICC has attracted considerable international attention in the past months, especially in Africa. Some voices have urged the Court to show flexibility on certain issues. I would like to underline that while the ICC will naturally try to find practical solutions to the challenges it faces, such solutions must be consistent with the legal framework set by States in the Rome Statute.

That is also what I ask of the other stakeholders of the ICC system – to uphold the integrity of the Rome Statute, respecting the roles assigned to each entity under the Statute. Whereas the Assembly of States Parties can consider legislative issues and discuss political questions, the ICC must remain an independent, judicial institution, relying on States for enforcement and cooperation.

Mr. President, Excellencies, Distinguished Delegates, Ladies and Gentlemen,

In the words of the Rome Statute's preamble, the grave crimes under the ICC's jurisdiction "threaten the peace, security and well-being of the world". It is not difficult to see why. Mass murder, the use of armed force against civilians, deportation of populations, the use of child soldiers, rape as a weapon of war – these are atrocious acts which inflict irreparable suffering, often across generations.

The issues which engage the ICC's mandate have tremendous societal and political significance in the countries concerned. ICC decisions will often be welcome to some and disappointing to others. But the reasons driving the Court's decisions are always legal, not political.

In five years' time, many *ad hoc* courts and tribunals will have closed their doors. The ICC's role in the global efforts for peace, security and the prevention of mass atrocities will be even more pronounced than it is today.

Let us work together to further enhance that system. The ICC can properly deliver its mandate only if States cooperate in accordance with the obligations they have accepted under the Rome Statute. I also appeal to those States which have not yet joined the Statute to give active consideration to doing so. Ultimately, the ICC's success in suppressing impunity depends on your support.

Thank you for your attention.