

GUINEA

Procedural History

156. The situation in Guinea has been under preliminary examination since 14 October 2009. The Office has received 48 communications pursuant to article 15 in relation to the situation in Guinea.

Preliminary Jurisdictional Issues

157. Guinea deposited its instrument of ratification to the Statute on 14 July 2003. The ICC therefore has jurisdiction over Rome Statute crimes committed on the territory of Guinea or by Guinean nationals from 1 October 2003 onwards.

Contextual Background

158. In December 2008, after the death of President Lansana Conté, who had ruled Guinea since 1984, Captain Moussa Dadis Camara led a group of army officers who seized power in a military coup. Moussa Dadis Camara became the Head of State, established a military junta, the *Conseil national pour la démocratie et le développement* (“CNDD”), and promised that the CNDD would hand over power to a civilian president upon the holding of presidential and parliamentary elections. However, subsequent statements that appeared to suggest that Captain Camara might run for president led to protests by the opposition and civil society groups. On 28 September 2009, the Independence Day of Guinea, an opposition gathering at the national stadium in Conakry was violently suppressed by the security forces, leading to what became known as the “28 September massacre”.

Subject-Matter Jurisdiction

159. In October 2009, the UN established an international commission of inquiry (“UN Commission”) to investigate the alleged gross human rights violations that took place on 28 September 2009 and, where possible, identify those responsible. In its final report of December 2009, the UN Commission confirmed that at least 156 persons were killed or disappeared, and at least 109 women were victims of rape and other forms of sexual violence, including sexual mutilations and sexual slavery. Cases of torture and cruel, inhuman or degrading treatment during arrests and arbitrary detentions, and attacks against civilians based on their perceived ethnic and/or political affiliation were also confirmed. The UN Commission considered that there was a strong presumption that crimes against humanity were committed and determined, where it could, possible individual responsibilities.
160. The *Commission nationale d’enquête indépendante* (“CNEI”), set up by the Guinean authorities, confirmed in its report issued in January 2010 that killings, rapes and

enforced disappearances took place, although in slightly lower numbers than documented by the UN Commission.

161. The 28 September 2009 events in the Conakry stadium can be characterised as a widespread and systematic attack directed against a civilian population, namely the demonstrators present at the stadium, in furtherance of the CNDD's policy to prevent political opponents from, and punish them for, challenging Moussa Dadis Camara's intention to keep his group and himself in power.
162. The Office has concluded that the information available provides a reasonable basis to believe that the following crimes against humanity were committed in the national stadium in Conakry on 28 September 2009 and in their immediate aftermath: murder under article 7(1)(a); imprisonment or other severe deprivation of liberty under article 7(1)(e); torture under article 7(1)(f); rape and other forms of sexual violence under article 7(1)(g); persecution under article 7(1)(h); and enforced disappearance of persons under article 7(1)(i) of the Statute.

Admissibility Assessment

163. On 8 February 2010, in accordance with the recommendations of the reports of the UN Commission and of the CNEI, the General Prosecutor of the Conakry Appeal Court appointed three Guinean investigative judges ("panel of judges") to conduct a national investigation into the 28 September 2009 events. Therefore, since a national investigation is underway, the Office's admissibility assessment has focussed on whether the national authorities are willing and able to conduct genuine investigations, and in particular whether proceedings are conducted with the intent to bring to justice the alleged perpetrators within a reasonable time frame.
164. During the reporting period, a joint effort of the Guinean and the Senegalese authorities resulted in the arrest on 16 December 2016 in Dakar, and subsequent extradition to Conakry of Lt. Aboubacar Chérif Diakité (a.k.a. Toumba), former President's aide-de-camp and commander of the presidential close protection unit (red berets). Lt. Diakité was at large since December 2009 after he admittedly attempted to assassinate former Head of State Moussa Dadis Camara. Following his transfer to Conakry, he was interviewed by the panel of judges in March 2017. During the reporting period, the panel of judges also heard over a dozen of additional victims.
165. To date, the panel of judges has indicted 14 individuals for the acts of violence committed on 28 September 2009 including, Moussa Dadis Camara, the former Head of State, Moussa Thégboro Camara, current Minister in charge of the Special Services responsible for combatting drug trafficking and organised crime, and Claude Pivi, current Minister responsible for the President's security. Moreover, the panel of judges has taken the statement of approximately 450 victims, including a number of victims of SGBC.

166. On 9 November 2017, the Guinean Justice Minister, Cheick Sako, announced that the panel of judges had transmitted the investigative dossier pertaining to the 28 September 2009 events to the relevant prosecutor, the "*Procureur de la République près le Tribunal de première instance de Dixinn*", and had informed the parties accordingly. At the time of writing, the investigation phase was to be formally terminated upon the prosecutor's submissions. The Justice Minister further announced the setting-up of a steering committee for the purpose of the logistical preparation of the upcoming trial.

OTP Activities

167. In the past year, the Office has continued to assess the Guinean authorities' efforts to complete the national investigation into the 28 September 2009 events. In March 2017, the Office conducted its 14th mission to Conakry to obtain detailed information on the investigative steps taken by the panel of judges and gauge the prospect of organising a trial within a reasonable time frame. During the mission, the OTP delegation held meetings with the Minister of Justice, the panel of judges, prosecution authorities, civil society organisations, victims' legal representatives and the diplomatic community in Conakry, including the UN, the EU and other relevant States. As in previous visits, the OTP delegation also responded to national and international media queries on the purpose of the visit and the status of the preliminary examination.
168. The Office also engaged with Guinean authorities on other multiple occasions during the reporting period. The Prosecutor met with the Minister of Justice in July 2017 in Dakar in the margins of a high-level conference on the "Challenges and Opportunities for the ICC on the eve of the 20th Anniversary of the Rome Statute", and in October 2017 in Niamey, at the high-level regional symposium on cooperation and complementarity. The Office also facilitated the participation of the Prosecutor of the Court of First Instance of Dixinn, with territorial competence over the 28 September 2009 events, in the fifth ICC seminar on cooperation with national focal points, held in September 2017 at the seat of the Court.
169. Additionally, the Office met with Guinean civil society and victims' representatives during the 15th session of the Assembly of States Parties in December 2016 in The Hague, to listen to their views and concerns on the prospect of genuine prosecution of all the alleged perpetrators. A follow-up meeting with the ICC Prosecutor was subsequently organised during the NGO-ICC Roundtable Meetings held in June 2017 at the seat of the Court.
170. In October 2017, the Prosecutor further discussed with the newly appointed UN Special Representative of the Secretary-General on Sexual Violence in Conflict, Ms Pramila Patten, ways and means to increase cooperation between their respective offices in support of the Guinean authorities' efforts to bring perpetrators of SGBC to account.

Conclusion and Next Steps

171. Over seven years since the appointment of the panel of judges to investigate the 28 September 2009 events, the completion of the investigation constitutes a most significant progress in the ongoing national proceedings. While this commendable effort should pave the way for the effective holding of a trial in 2018, the Office will continue to closely examine any potential obstacle to genuine accountability and to support, in coordination with other relevant stakeholders, the organisation of a fair and impartial trial, respectful of the rights of the accused and of the victims.