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ICC prosecutor requests Georgia investigation

Stalled domestic proceedings into alleged grave crimes prompt move to open full investigation into August 2008 South Ossetia conflict

WHAT: On 13 October 2015, Prosecutor of the International Criminal Court (ICC) Fatou Bensouda requested authorization from Pre-Trial Chamber I to open an investigation into war crimes and crimes against humanity allegedly committed in relation to the August 2008 armed conflict in Georgia, involving Russia, over the breakaway region of South Ossetia. Judges of Pre-Trial Chamber I will now consider whether there is a reasonable basis to proceed with an investigation.

HOW: For the ICC to open an investigation, a situation can be referred to the Court by a state party to the Rome Statute, the United Nations Security Council, or initiated by the ICC prosecutor of her own accord, *proprio motu*, with the authorization of the judges. This is the third time that the prosecutor has sought to open a *proprio motu* investigation in accordance with article 15 of the Statute.

WHY: The ICC Office of the Prosecutor (OTP) has been examining the situation in Georgia since 14 August 2008 in order to determine whether an investigation is warranted. The OTP concluded that there was a reasonable basis to believe that crimes under ICC jurisdiction were committed in South Ossetia, and in areas in a “buffer zone” from at least 7 August to 10 October 2008. These may include alleged war crimes committed in the context of forcible displacement of ethnic Georgians from South Ossetia as well as attacks against peacekeepers, and several counts of crimes against humanity. The prosecutor has requested authorization to investigate from 1 July to 10 October 2008.

The latest phase of the OTP assessment was examining whether effective national investigations were taking place into these crimes in Georgia and Russia. The OTP’s request to judges this week concluded that obstacles and delays hampered investigations in both countries, and that an ICC investigation was necessary as national proceedings in Georgia have recently stalled. Unlike Georgia, Russia is not an ICC state party, but the prosecutor reported domestic proceedings are ongoing there.

COMMENTS: Members of the Coalition for the ICC have long been calling for the opening of an ICC investigation into alleged crimes committed in Georgia in 2008.

“After seven years since the August 2008 war, no effective national investigations have been carried out and perpetrators continue to live with impunity while victims of grave human rights and international humanitarian law violations are left without any redress,” **said Ana Natsvlishvili, chair of the Georgian Young Lawyers Association.** “Therefore we welcome the move by the ICC prosecutor and hope that justice will be served. Effective investigation and prosecution in the case of August war is not only the right of victims, but the duty of the international community to keep its promise that most serious crimes must not go unpunished.”

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“This is a big step forward for finding the truth about the gross human rights violations committed in Georgia during the August 2008 war, and for bringing perpetrators to justice,” said **Nika Jeiranashvili, human rights program manager at the Open Society Georgia Foundation**. “The August war was the result of an untold truth about the wars of 1990s, impunity for those crimes, and nearly 20 years of injustice. Ending this cycle will provide grounds for a real guarantee of peace and security not only to Georgia, but to the entire region. For that reason we hope the pre-trial chamber will grant authorization and full-scale investigation of crimes against humanity will begin.”

“The request to initiate an investigation is a positive step towards accountability in Georgia and in the absence of genuine national investigations” said **Virginie Amato, Coalition for the ICC senior advocacy and programme officer**. “Over the years, the OTP has reported that both Georgia and Russia authorities provided information on their respective national proceedings but where there is no capacity or willingness to investigate violations of international human rights and humanitarian law then it falls to the ICC to do so,” **Amato continued**. “It is crucial the Court begin immediately informing victims and affected communities in the region and explaining its mandate and what the prosecutor’s request means.”

BACKGROUND: Georgia ratified the Rome Statute on 5 September 2003, giving the Court jurisdiction over ICC crimes committed in the country from 1 December 2003 onwards. A first conflict over South Ossetia occurred between 1990 and 1992. The August 2008 armed conflict lasted for about a week and under the auspices of the European Union, parties agreed to end hostilities on 12 August 2008 although alleged crimes continued to be committed in the aftermath of the conflict. A ceasefire agreement was signed on 15 August 2008.

On 8 October 2015, the ICC presidency assigned the situation in Georgia to ICC Pre-Trial Chamber I following a notification by the prosecutor of her intention to submit a request to the judges for authorization to open an investigation. Pre-Trial Chamber I is composed of Presiding Judge Joyce Aluoch, Judge Péter Kovács and Judge Cuno Tarfusser.

The ICC is the world’s first permanent international court to have jurisdiction over war crimes, crimes against humanity, and genocide. Central to the Court’s mandate is the principle of complementarity, which holds that the Court will only intervene if national legal systems are unable or unwilling to investigate and prosecute perpetrators of genocide, crimes against humanity and war crimes.

There are currently nine active investigations before the ICC: the Central African Republic I & II; DRC; Darfur, Sudan; Kenya; Libya; Uganda; Côte d’Ivoire and Mali. The ICC has publicly issued 33 arrest warrants and nine summonses to appear. Two trials are ongoing. There have been two convictions and one acquittal. Nine preliminary examinations are currently ongoing, including into situations in Afghanistan, Colombia, Georgia, Guinea, Honduras, Palestine, Iraq, Nigeria and Ukraine. The Office of the Prosecutor has concluded preliminary examinations relating to Venezuela, Palestine, the Republic of Korea and the Comoros referral, declining in each case to open an investigation.

WHO WE ARE: *The Coalition for the International Criminal Court is a global network of civil society organizations in over 150 countries working in partnership to strengthen international cooperation with the ICC; ensure that the Court is fair, effective and independent; make justice both visible and universal; and advance stronger national laws that deliver justice to victims of war crimes, crimes against humanity and genocide.* www.coalitionfortheicc.org.