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Citation for published version (APA):

Hamilton, T. F. B. (2016). Letter to Guardian Weekly 4 July 2016: RE: Mini-biopic of Ms Fatou Bensouda. *The Guardian*.

Citing this paper

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Date: 4 July 2016

Readers' Editor
Guardian Weekly
weekly.letters@theguardian.com

RE: Guardian Weekly Vol 195 no 1 (10-16 June 2016) - Code of Conduct - Section 1. Accuracy

Dear Madam or Sir,

As an avid Guardian Weekly subscriber and former employee of the International Criminal Court, I was pleased to see in Vol 195 no 1 (10-16 June 2016), Ms Esther Addley's front page, devoted to a mini-biopic of Ms Fatou Bensouda. I came across several factual and legal issues in the article and I would like to help the Guardian by providing some comments and corrections.

I hope you won't mind my listing the issues here (in the order they appear in the article). Some are legal inaccuracies, the correction of which may be asking a lot from a journalistic article, but the majority are simple factual mistakes.

- 1 It is not correct that Joseph Kony was charged by the ICC; he was the subject of an arrest warrant and the difference is rather important. At the ICC, 'charges' follow trial-like proceedings that have typically seen defendants spend months and years in detention prior to their completion. As I'm sure the author was aware, Kony has never been to the ICC and he has not faced proceedings to confirm charges against him. I noticed that this mistake does not appear in the original G2 interview (6 June 2016), and perhaps it was an editorial cut-down to fit on the front page.
- 2 The same goes for Muammar Gaddafi; he was never charged by the ICC before he was killed.
- 3 The article states that the ICC 'has convicted only two people, both Congolese rebel leaders found guilty of war crimes', presumably referring to Mr Thomas Lubanga Dyilo and Mr Germain Katanga. This unfortunately misses the biggest piece of news on the ICC in recent months!! The Court convicted Mr Jean-Pierre Bemba Gombo on 21 March 2016 (as reported in the Guardian) and the ICC website states on its home page '*Bemba Case: Sentence to be delivered on 21 June 2016*'.
- 4 It is incorrect to say that Mr Katanga 'was found guilty of war crimes'. His conviction was based on a crime against humanity (murder) as well as war crimes.

- 5 It is not correct that 'members of the UN Security Council have the power to veto the Court's investigations' (paragraph 4). While such a veto power exists with regard to the referral of situations by the UNSC, this is but one of the means of triggering the ICC's jurisdiction, alongside referrals by States (a power Ms Bensouda did explain, as quoted later in the article) and situations initiated proprio motu by the Prosecutor (these were not mentioned in the article, but are a central and controversial aspect of Ms Bensouda's role). I realise that this issue requires some understanding of international law, but it is misleading to suggest that UNSC veto powers apply to ICC proceedings regardless of how they are triggered. It is important to get right, because a critical aspect of the ICC as an institution is that the powers of States and the Prosecutor to initiate the Court's proceedings are independent of the UNSC.
- 6 Further, the UNSC veto powers do not apply to ICC 'investigations' but rather to the referral of 'situations'. Again, it is crucial that the Prosecutor's investigations are independent from the influence of external bodies including the UNSC, so there is only a power to refer a situation, and then the Prosecutor is allowed to get on with her job of independently investigating the situation without any interference from the UN.
- 7 Lastly it is not quite correct to talk of a 'US veto' of potential ICC action against Israel. If the Prosecutor determines (by way of her independent preliminary examination) to go ahead and initiate an investigation into the Palestine situation, no veto power is applicable. The UNSC may, by another legal mechanism, postpone the investigation for renewable periods of 12 months, but this is distinct from a UNSC veto at the referral stage.

I do not wish to criticise the quality of the journalism behind this article, but I did feel disappointed that one of the Guardian's few major pieces on the ICC contained such a number of mistakes, some of which required just the briefest of fact-checks on the Court's website.

Please do not hesitate to communicate with me for any clarification or further discussion. Having the interests of good journalism at heart, I hope this letter proves useful.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Tom Hamilton', with a stylized flourish at the end.

Tom Hamilton

PhD Candidate, King's College London