



# 19 July 2010 #42 ICC Weekly Update



## Situation in Darfur, Sudan

In the situation in Darfur, Sudan, four cases are being heard: *The Prosecutor v. Ahmad Muhammad Harun* (Ahmad Harun) and *Ali Muhammad Ali Abd-Al-Rahman* (Ali Kushayb); *The Prosecutor v. Omar Hassan Ahmad Al Bashir*; *The Prosecutor v. Bahar Idriss Abu Garda*; and *The Prosecutor v. Abdallah Banda Abakaer Nourain* (Banda) and *Saleh Mohammed Jerbo Jamus* (Jerbo). Three warrants of arrest have been issued by Pre-Trial Chamber I for Harun, Kushayb and Al Bashir. The three suspects remain at large. A summons to appear was issued for Abu Garda who appeared voluntarily before the Chamber on 18 May, 2009. Abu Garda is not in the custody of the ICC. After the hearing of confirmation of charges, on 8 February, 2010, Pre-Trial Chamber I declined to confirm the charges. Two other summonses to appear were issued against Mr Banda and Mr Jerbo who appeared voluntarily on 17 June, 2010.

## Pre-Trial Chamber I issues a second warrant of arrest against Omar Al Bashir for counts of genocide

On 12 July, Pre-Trial Chamber I of the International Criminal Court (ICC) issued a second warrant of arrest against the President of Sudan, Omar Hassan Ahmad Al Bashir, considering that there are reasonable grounds to believe him responsible for three counts of genocide committed against the Fur, Masalit and Zaghawa ethnic groups, that include: genocide by killing, genocide by causing serious bodily or mental harm and genocide by deliberately inflicting on each target group conditions of life calculated to bring about the group's physical destruction.



Omar Albashir © UN Photo/  
Stuart Price

This second arrest warrant does not replace or revoke in any respect the first warrant of arrest issued against Mr Al Bashir on 4 March, 2009, which shall thus remain in effect. In the previous arrest warrant, the Chamber considered that there are reasonable grounds to believe that Mr Al Bashir is criminally responsible for five counts of crimes against humanity (murder, extermination, forcible transfer, torture and rape) and two counts for war crimes (intentionally directing attacks against a civilian population as such or against individual civilians not taking direct part in hostilities, and pillaging).

On 4 March, 2009, Pre-Trial Chamber I had rejected the Prosecutor's application in respect of the crime of genocide. On 6 July, 2009, the Prosecutor filed an appeal against this decision. On 3 February, 2010, the Appeals Chamber rendered its **judgment on the Prosecutor's appeal**, reversing, by unanimous decision, Pre-Trial Chamber I's decision of 4 March, 2009, to the extent that Pre-Trial Chamber I decided "not to issue a warrant of arrest in respect of the charge of genocide in view of an erroneous standard of proof". The Appeals Chamber directed the Pre-Trial Chamber to decide anew whether or not the arrest warrant should be extended to cover the charge of genocide. Applying the standard of proof as identified by the Appeals Chamber, Pre-Trial Chamber I concluded today that there are reasonable grounds to believe that Mr Al Bashir acted with specific intent to destroy in part the Fur, Masalit and Zaghawa ethnic groups.

Pre-Trial Chamber I requests the Registrar of the Court to prepare a supplementary request for co-operation seeking the arrest and surrender of Mr Al Bashir for the counts contained in both the first and the second warrant of arrest, and transmit such a request to the competent Sudanese authorities, to all States Parties to the Rome Statute, and to all the United Nations Security Council members that are not States Parties to the Statute. The Registrar is also directed to transmit additional requests for the arrest and surrender of Omar Al Bashir to the Court to any other State as may be necessary.

### Decisions taken between 12 - 17 July, 2010

#### Al Bashir case

#### Second Decision on the Prosecution's Application for a Warrant of Arrest

Issued by the Pre-Trial Chamber I on 12 July, 2010

#### Second Warrant of Arrest for Omar Hassan Ahmad Al Bashir

Issued by the Pre-Trial Chamber I on 12 July, 2010

### Situation in the Democratic Republic of the Congo

In this situation, three cases are being heard before the relevant Chambers: *The Prosecutor v. Thomas Lubanga Dyilo*; *The Prosecutor v. Bosco Ntaganda*; and *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*. The accused Thomas Lubanga Dyilo, Germain Katanga and Mathieu Ngudjolo Chui are currently in the custody of the ICC. The suspect Bosco Ntaganda remains at large. The trial in the case *The Prosecutor v. Thomas Lubanga Dyilo* started on 26 January, 2009. The trial in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* started on 24 November, 2009.

### Trial Chamber I orders the release of Thomas Lubanga Dyilo - implementation of the decision is pending

On 15 July, following its **decision**, dated 8 July, 2010, imposing an unconditional stay on the proceedings of the case *The Prosecutor v. Thomas Lubanga Dyilo*, Trial Chamber I of the International Criminal Court ordered the release of the accused. According to the judges, an accused cannot be held in preventative custody on a speculative basis, namely that at some stage in the future the proceedings may be resurrected.

However this order will not be implemented with immediate effect. "This order shall not be enforced until the five day time limit for an appeal has expired", stated presiding Judge Adrian Fulford in a hearing today. "If an appeal is filed within the five day time limit against this order granting release, and if a request is made to suspend its effect, the accused shall not leave detention until the Appeals Chamber has resolved whether this order granting release is to be suspended", Judge Fulford continued. The Chamber also noted that an order releasing the accused shall only be put into effect after arrangements have been made for his transfer to a State that is obliged to receive him.



Thomas Lubanga Dyilo © ICC-CPI/Ed Oudenaarden

In its oral decision, Trial Chamber I also granted the Prosecutor's 15 July application for leave to appeal the decision to stay the proceedings. Furthermore, the Chamber decided to adjourn any action under article 71 of the Statute, dealing with misconduct before the Court, until the Appeals Chamber's judgment on this appeal. "The Prosecutor has failed to implement two of the Chamber's orders; those of 7 July, 2010. For the reasons set out in the decision imposing the stay, this constituted a deliberate and in our judgment, wholly unjustified refusal to comply with the directions of the Court", explained Judge Fulford. However, "It is fair that the issue of sanctions should await the outcome of the appeal" he concluded.

On 8 July, Trial Chamber I had stayed the proceedings considering that the fair trial of the accused was no longer possible due to non-implementation of the Chamber's orders by the prosecution. The judges had ordered the Office of the Prosecutor to confidentially disclose to the Defence the names and other necessary identifying information of intermediary 143.

Thomas Lubanga Dyilo is accused of having committed, as co-perpetrator, war crimes of enlisting and conscripting of children under the age of 15 years into the *Forces patriotiques pour la libération du Congo* (Patriotic Forces for the Liberation of Congo), (FPLC), and using them to participate actively in hostilities in Ituri, a district of the eastern province of the Democratic Republic of the Congo (DRC), between September 2002 and August 2003.

The situation was referred to the Court by the Government of the Democratic Republic of the Congo (DRC) in April 2004. *The Prosecutor v. Thomas Lubanga Dyilo* is one of the cases that arose from the situation in the Democratic Republic of the Congo; others are *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* and *The Prosecutor v. Bosco Ntaganda*. Bosco Ntaganda remains at large. Investigations are ongoing in the DRC.

### Appeals Chamber confirms the decision rejecting the motion of Germain Katanga for stay of proceedings

On 12 July, the Appeals Chamber of the International Criminal Court, decided by majority, with Judge Kourula and Judge Tendafileva dissenting, to dismiss the appeal of Germain Katanga against the decision entitled “Decision on the Motion of the Defence for Germain Katanga for a Declaration on Unlawful Detention and Stay of Proceedings” of Trial Chamber II of 20 November 2009. Judge Nsereko, presiding judge in this appeal, read a summary of the judgment in open session.

On 30 June 2009, Mr Katanga filed a motion requesting a declaration for unlawful detention and a stay of the proceedings against him for his alleged unlawful arrest and detention in the Democratic Republic of the Congo prior to his surrender to the Court. On 20 November 2009, Trial Chamber II rejected the Defence motion without considering its merits, finding that it was submitted too late, *inter alia* because the motion was filed seven months after the Trial Chamber’s invitation to the parties to submit any relevant issues on which they sought a ruling of the Chamber.



Katanga © ICC-CPI/Michael Kooren

The Appeals Chamber observed that the Court’s legal instruments underscore the need for diligence and expeditiousness in the proceedings and agreed with the Trial Chamber’s determination that the parties must act “in a timely manner” or within a reasonable time, in keeping with considerations of efficiency and judicial economy. The Appeals Chamber found that the decision of the Trial Chamber did not infringe Mr Katanga’s right to a fair hearing and that he had been given adequate notice and opportunity to raise the issue of his alleged unlawful pre-surrender arrest and detention.

The dissent considered that the Trial Chamber erred when it decided that the Defence motion was inadmissible for having been filed at too advanced a stage in the proceedings. Accordingly, the dissent concluded that the Trial Chamber’s decision should be reversed and remitted to the Trial Chamber for a consideration on the merits.

In reaching this conclusion, Judge Erkki Kourula and Judge Ekaterina Tendafileva found that the Trial Chamber erred in establishing, for the first time in its decision, requirements applicable to the filing of the Defence motion and applying them retroactively to the detriment of Mr Katanga. They also found that the Trial Chamber erred in the exercise of its discretion when it failed to properly balance the factors in article 64 (2) of the Statute, placing too much emphasis on expeditiousness at the expense of the rights of Mr Katanga.

### Decisions taken between 12 - 17 July, 2010

#### Katanga and Ngudjolo Chui case

#### Judgment on the Appeal of Mr Katanga Against the Decision of Trial Chamber II of 20 November 2009 Entitled “Decision on the Motion of the Defence for Germain Katanga for a Declaration on Unlawful Detention and Stay of Proceedings”

Issued by the Appeals Chamber on 12 July, 2010

#### Scheduling Order for the Judgment on the Appeal of Mr Katanga Against the Decision of Trial Chamber II of 22 January 2010 Entitled “Decision on the Modalities of Victim Participation at Trial”

Issued by the Appeals Chamber on 14 July, 2010

#### Second Scheduling Order for the Judgment on the Appeal of Mr Katanga Against the Decision of Trial Chamber II of 22 January 2010 Entitled “Decision on the Modalities of Victim Participation at Trial”

Issued by the Appeals Chamber on 15 July, 2010

#### Decision on Request to admit prior recorded testimony of P-30 as well as related video excerpts

Issued by Trial Chamber II on 15 July, 2010

#### Ordonnance urgente relative à la mise en oeuvre de mesures de protection concernant l’intermédiaire 143 expurgée

Issued by Trial Chamber II on 16 July, 2010

## Judgment on the Appeal of Mr Katanga Against the Decision of Trial Chamber II of 22 January 2010 Entitled “Decision on the Modalities of Victim Participation at Trial”

Issued by the Appeals Chamber on 16 July, 2010

### Situation in the Central African Republic

In the only case in this situation, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Pre-Trial Chamber II confirmed, on 15 June, 2009, two charges of crimes against humanity and three charges of war crimes, and committed the accused to trial before a Trial Chamber. The trial, initially scheduled to start on 14 July, 2010, has been postponed.

### Decisions taken between 12 - 17 July, 2010

#### Bemba case

#### Instructions relatives à la soumission d’observations en vertu de l’article 19-3 du Statut de Rome et de la règle 59-3 du Règlement de procédure et de preuve

Issued by the Appeals Chamber on 12 July, 2010

#### Corrigendum to Decision on the participation of victims in the trial and on 86 applications by victims to participate in the proceedings

Issued by Trial Chamber III on 12 July, 2010

#### Order on the filing of a response by the Prosecutor to Mr Bemba’s “Requête de la Défense aux fins d’obtenir l’extension de délai”

Issued by the Appeals Chamber on 13 July, 2010

#### Order inviting the parties’ observations on 192 victims’ applications

Issued by Trial Chamber III on 16 July, 2010

#### Decision on the request for an extension of the time limit

Issued by the Appeals Chamber on 15 July, 2010



Jean-Pierre Bemba Gombo ©  
ICC-CPI/Ed Oudenaarden

### Relevant Links

**Courtroom proceedings** can be followed on the ICC website: [www.icc-cpi.int](http://www.icc-cpi.int)

You can also consult the **hearing schedule**.

**Video summaries** can be found on our **Youtube channel**.

## Events

### ICC launches Twitter account to keep followers updated

On 16 July the International Criminal Court started “**tweeting**” to share relevant news and last minute information in real-time. The use of this social media platform, that follows the launching of the **ICC YouTube channel**, is part of the Court’s efforts to guarantee more accessible information in a diverse and transparent way.

With its short, 140-character format, Twitter updates – known as *tweets*, will provide concise and quick announcements on cases, last minute important press releases and changes of hearing schedules. Twitter will be also used to keep followers updated on relevant events, activities in the field, job opportunities, launching of new videos and other matters related to the work of the Court.

Users can register to “follow the Court” in order to receive immediate updates on all the Court posts, or *tweets*, via Twitter and can disseminate this information to their own Twitter followers, if desired.

The use of Twitter will complement the information available on the Court’s **website**, which continues to be the main source of official information for the general public.

The ICC is using social media networks to guarantee more diverse ways of bringing developments about the ICC to the world. In March the ICC launched its official **YouTube channel**. With more than 40,000 views so far, it has proven to be a great success, and has enhanced the Court's visibility and communications reach. In the upcoming months the Court will continue developing its online communications, utilizing amongst others, other new media tools such as Flickr, for posting and downloading photos.

### ICC celebrates the Day of International Criminal Justice 17 July

On 17 July, the International Criminal Court (ICC) officially commemorated the Day of International Justice for the first time. The date of 17 July was adopted by the Assembly of the States Parties during the Review Conference of the Rome Statute held in Kampala (Uganda) last June. The date marks the anniversary of the adoption of the Rome Statute, the founding treaty of the ICC.

"Indeed we have good reason to celebrate 17 July as a day which signifies tremendous achievements in the field of international criminal justice. However, we should not be too satisfied, because countless innocent civilians still continue to be the victims of terrible atrocities in different parts of the world", stated ICC President, Judge Sang-Hyun Song.

By adopting this date, the States Parties to that Statute reaffirm their engagement, previously expressed in the **Preamble of the Rome Statute**, to put an end to impunity for the perpetrators of unimaginable atrocities, for the sake of present and future generations.

President Song underlined that "the States Parties have entrusted the Court with a tremendously important mission of turning into practice the noble principles embodied in the Rome Statute". He called all States Parties "to implement the provisions of the Rome Statute in their national legislation, enabling effective cooperation with the Court". The ICC President closed his **statement** by encouraging all States that have not yet done so to ratify the Rome Statute.

Various activities such as roundtables, seminars and town hall meetings were organised in co-operation with local NGOs in countries where the ICC has opened investigations. In addition, the Municipality of The Hague, the seat of the ICC, raised 50 flags to honour the day.

For complete speech of President Song [click here](#)

For video message of President Song [click here](#)

For video commemorating the Day of International Justice [click here](#)

## Calendar

JULY 2010						
Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
19	20	21	22	23	24	25
Judicial recess (17 July - 8 August)						
26	27	28	29	30	31	
AUGUST 2010						
						1
Judicial recess (17 July - 8 August)						
2	3	4	5	6	7	8
Judicial recess (17 July - 8 August)						
9	10	11	12	13	14	15
16	17	18	19	20	21	22
<b>Future events:</b> 22 November, 2010: Pre-Trial Chamber I has set the date for the beginning of the confirmation of charges hearing in the case of <i>The Prosecutor v. Abdallah Banda Abakaer Nourain (Banda) and Saleh Mohammed Jerbo Jamus (Jerbo)</i>						

The calendar is subject to last minute changes.