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Criminal
Court

ICC-PIDS-WU-22/10_Eng

ICC Weekly Update

22 February 2010 #22

Situation in the Republic of Kenya

The Republic of Kenya ratified the Rome Statute on 15 March, 2005, becoming a State Party. On 6 November, 2009, upon receiving a letter from the Prosecutor indicating his intention to submit a request for the authorisation of an investigation *proprio motu*, the International Criminal Court's Presidency issued a decision assigning the situation in the Republic of Kenya to Pre-Trial Chamber II. On 26 November, 2009, the Prosecutor submitted a request to Pre-Trial Chamber II for the authorisation of an investigation into that situation in relation to the post-election violence of 2007-2008. Pre-Trial Chamber II is now considering the Prosecutor's request.

ICC judges request clarification and additional information with regard to the situation in Kenya

On 18 February, 2010, ICC judges of Pre-Trial Chamber II requested the Prosecutor to provide, no later than 3 March, 2010, clarification and additional information in the process of assessing whether or not to authorise the Prosecutor to commence an investigation with regard to the situation in the Republic of Kenya. According to rule 50(4) of the Rules of Procedure and Evidence, the Pre-Trial Chamber may request additional information from the Prosecutor, if it considers it appropriate, in order to properly exercise its function under article 15 of the Rome Statute.

On 26 November 2009, the Prosecutor sought authorisation from Pre-Trial Chamber II to commence an investigation in relation with the crimes within the jurisdiction of the Court allegedly committed on the territory of the Republic of Kenya within the context of the 2007-2008 post-election violence. The Prosecutor claims that the alleged crimes appear to constitute crimes against humanity.

The judges requested the Prosecutor to provide additional information and clarification with respect to (1) the State and/or organisational policy under article 7(2)(a) of the Rome Statute and (2) the admissibility within the context of the situation in the Republic of Kenya. With regard to the first issue, the Chamber requested additional information and more clarity on the linkage between, on the one hand, the events, the persons, and the acts of violence allegedly committed in the various regions of the Republic of Kenya during different periods of time and, on the other hand, a policy of a State or one or more organisations.

With regard to the second issue, the Chamber requested more recent information on: (1) the incidents that are likely to be the focus of an investigation; (2) the groups of persons involved that are likely to be the target of an investigation for the purpose of identifying the potential cases under consideration; and (3) domestic investigations, if any, with respect to those potential cases.

Background information

The Republic of Kenya ratified the Rome Statute on 15 March, 2005 becoming a State Party on 1st June 2005. According to the Rome Statute, the Court may exercise its jurisdiction in situations where the alleged perpetrator is a national of a State Party or where the crime was committed in the territory of a State Party.

On 6 November, 2009, the Presidency of the International Criminal Court (ICC) issued a decision

assigning the situation in the Republic of Kenya to Pre-Trial Chamber II composed of Judges Ekaterina Trendafilova, Hans-Peter Kaul and Cuno Tarfusser. If the Prosecutor intends to commence an investigation *proprio motu* in the Kenyan situation, he must first obtain authorisation from this Chamber. That is what the Prosecutor sought for on 26 November 2009 filing his request together with 40 appended annexes in approximately 1,500 pages.

On 3 February, 2010, the Chamber rejected the Amicus Curiae Application submitted by professors Max Hilaire and William A. Cohn.

The decision on the Prosecutor request for authorisation to commence an investigation in the situation in the Republic of Kenya is pending. No deadline is provided for in the Rome Statute to issue such a decision.

Questions and Answers

Decisions taken between 15 - 19 February 2010

Decision Requesting Clarification and Additional Information

Issued by the Pre-Trial Chamber II on the 18th February 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.

Decisions taken between 15 - 19 February 2010

Katanga and Ngudjolo Chui case

Decision on Prosecution requests ICC-01/04-01/07-1726-Conf-Exp and ICC-01/04-01/07-1738-Conf-Exp made pursuant to regulation 35 of the Regulations

Issued by the Trial Chamber II on the 15th February 2010

Décision invitant le Procureur et la Défense à présenter leurs observations sur certaines demandes de participation de victimes (règle 89-1 du Règlement de procédure et de preuve)

Issued by the Trial Chamber II on the 16th February 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 is scheduled to start on 27 April, 2010.

Decisions taken between 15 - 19 February 2010

Bemba Case

Order requesting the parties and participants' observations regarding the review of the detention of Mr Jean-Pierre Bemba Gombo pursuant to Rule 118(2) of the Rules of Procedure and Evidence

Issued by the Trial Chamber III on the 19th February 2010

Relevant Links

Courtroom proceedings can be followed on the ICC website: www.icc-cpi.int

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

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

Events

Judge Joyce Aluoch opens the « ICC-Trial Competition »

Judge Joyce Aluoch opened the third edition of the **ICC-Trial Competition** on Sunday, 14 February, 2010. Speaking to the participants of the competition, Judge Aluoch said of the role of magistrates in judicial proceedings that "...Judges, like those of the ICC and other important institutions, safeguard trial fairness and respect for the different parties and participants' rights in the proceedings."

The ICC-Trial Competition, organised by the International Criminal Law Network (ICLN) and the University of Amsterdam in cooperation with the International Criminal Court, Pace University, and the American Society of International Law, took place in The Hague from 14 to 19 February. This year, 88 students from 19 universities representing 12 countries participated in the simulation exercise. They took on the roles of Prosecution, Defence, and legal representatives of victims. The final round of the competition was assessed by a jury composed of three ICC Judges: Judge Joyce Aluoch (Kenya), Judge Sanji Mmasenono Monageng (Botswana) and Judge Daniel David Ntanda Nsereko (Uganda).

In her opening speech, Judge Aluoch reminded those present that the ICC was established to replace a culture of impunity with one of accountability. She stated that "for too long, the most heinous and serious of crimes have been committed on a large scale, trapping humanity in cycles of violence and revenge. The ICC's main mission is to help break these cycles. It is to give a legal, and thus a human, answer to blind violence. Your presence here is a sign that we can achieve this mission. For such a noble goal, continuous efforts are needed at all levels. Justice must be done, seen to be done, and understood whilst being done."

Providing information to different audiences, such as academic and legal communities, is crucial in order to enhance the understanding of the Court, its principles, objectives and activities and to gain and maintain the global community's support.

Trial Competition Participants at the ICC

On the occasion of a moot court competition, the International Criminal Court welcomed two groups of participants, representing different competing universities on 19 February. The students had the possibility to meet with various ICC representatives and to be briefed about practical aspects of the functions, mandates and daily work of the different organs and sections of the Court. They also visited the public gallery of the courtroom and received an explanation about the technical aspects of an e-court and protective measures that may be implemented in the courtroom.



Trial Competition Participants at the ICC public gallery © ICC-CPI

Calendar

FEBRUARY 2010						
Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
22	23	24	25	26	27	28
MARCH 2010						
01	02	03	04	05	06	07
	2010 first bi-annual strategic meeting with NGOs					

MARCH 2010

08	09	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
Eighth session of the Assembly of States Parties in New York (resumption)						

Future events:

27 April: Trial of Jean-Pierre Bemba Gombo is scheduled to start
31 May – 11 June: First Review Conference of the Rome Statute, Kampala, Uganda.

The calendar is subject to last minute changes.