



**Cour
Pénale
Internationale**

**International
Criminal
Court**

ICC-PIDS-WU-108/11_Eng

19 December 2011 #108 ICC Weekly Update



Situation in the Democratic Republic of the Congo

In this situation, four cases have been brought before the relevant Chambers: *The Prosecutor v. Thomas Lubanga Dyilo*; *The Prosecutor v. Bosco Ntaganda*; *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*; and *The Prosecutor v. Callixte Mbarushimana*. The accused Thomas Lubanga Dyilo, Germain Katanga and Mathieu Ngudjolo Chui and the suspect Callixte Mbarushimana 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. The confirmation of charges hearing in case against Callixte Mbarushimana was held from 16 to 21 September 2011. On 16 December 2011, Pre-Trial Chamber I declined to confirm the charges against Mr Mbarushimana and ordered his release.

Pre-Trial Chamber I declines to confirm the charges against Callixte Mbarushimana and orders his release

On 16 December 2011, Pre-Trial Chamber I of the International Criminal Court (ICC) decided by Majority, the Presiding Judge Sanji M. Monageng dissenting, to decline to confirm the charges in the case of *The Prosecutor v. Callixte Mbarushimana* and to release Mr Mbarushimana from the custody of the Court, on the completion of the necessary arrangements.

The Majority of the Chamber, comprising Judge Sylvia Steiner and Judge Cuno Tarfusser, found that there was not sufficient evidence to establish substantial grounds to believe that Callixte Mbarushimana could be held criminally responsible, under article 25(3)(d) of the Rome Statute, for the eight counts of war crimes and five counts of crimes against humanity brought against him by the Prosecutor.

This decision does not preclude the Prosecutor from subsequently requesting the confirmation of the charges against Callixte Mbarushimana if such request is supported by additional evidence. Both the Prosecutor and the Defense may also appeal the decision declining to confirm the charges and the order for the release of Mr Mbarushimana.

Factual findings

On the basis of the evidence presented, the Chamber found that there are substantial grounds to believe that, from at least 20 January 2009 until at least 31 December 2009, an armed conflict not of an international character took place in the North and South Kivus, in the Democratic Republic of Congo (DRC), between the forces of the Government of the DRC, supported at times by Rwandese forces (RDF) or the forces of the United Nations Mission in the Democratic Republic of Congo, on the one side, and at least one organised armed group, the *Forces Démocratiques pour la Libération du Rwanda - Forces Combattantes Abacunguzi* (FDLR), on the other.

The Chamber found substantial grounds to believe that FDLR troops committed several war crimes in different locations and at different times, particularly in Busurungi and surrounding villages in March 2009 (murder) as well as on or about 9 to 12 May 2009 (attacking civilians, murder, mutilation, rape, cruel treatment, destruction of property and pillaging); in Manje on or about 20 July 2009 (attacking civilians, murder, cruel treatment and destruction of property); in Malembe on or about 11 to 16 August 2009 (attacking civilians and destruction of property), and in Mianga on or about 12 April 2009 (attacking civilians, murder and destruction of property).

Although the Chamber found substantial grounds to believe that acts amounting to war crimes were perpetrated in five out of the twenty-five occasions identified by the Prosecutor, the Majority found that the evidence submitted was insufficient to be convinced of the existence of substantial grounds to believe that such acts were part of a course of conduct amounting to “an attack directed against the civilian population” pursuant to or in furtherance of an organisational policy to commit such attack, within the meaning of article 7 of the Rome Statute which defines crimes against humanity. Accordingly, the Majority found that there were not substantial grounds to believe that crimes against humanity were committed by the FDLR troops.

The Majority of the Chamber, with the Presiding Judge dissenting, further found that Callixte Mbarushimana did not provide any contribution to the commission of the alleged crimes, even less a “significant” one.

Background

The DRC ratified the Rome Statute, the founding instrument of the International Criminal Court, on 11 April 2002. On 3 March 2004, the Government of the DRC referred to the Court the situation (the events falling under the Court’s jurisdiction) in its territory since the entry into force of the Rome Statute on 1 July 2002. After a preliminary examination, the Prosecutor initiated an investigation on 21 June 2004.

On 28 September 2010, Pre-Trial Chamber I issued a warrant of arrest under seal for Mr Mbarushimana. The warrant was unsealed on 11 October 2010. On 25 January 2011, the French authorities surrendered Mr Mbarushimana to the Court. He was then transferred to the Court’s Detention Centre in The Hague. In the Document Containing the Charges, the Prosecutor charged Mr Mbarushimana with five counts of crimes against humanity (murder, inhumane acts, rape, torture, and persecution) and eight counts of war crimes (attacking civilians, murder, mutilation, cruel treatment, rape, torture, destruction of property and pillaging). The Confirmation of Charges hearing was held from 16 to 21 September 2011.

Besides Callixte Mbarushimana, three persons have been transferred to the Court with respect to the situation in the DRC: Thomas Lubanga Dyilo, Germain Katanga and Mathieu Ngudjolo Chui. A warrant of arrest has also been issued against a fourth person, Bosco Ntaganda, but has yet to be executed.

Investigations are ongoing with respect to the situation in the DRC.

Decision on the confirmation of charges

“The ICC at a Glance” programme (radio) concerning the case of *The Prosecutor v. Callixte Mbarushimana*

[Audio \(MPEG-3 – French\) for download](#)

[Audio \(MPEG-3 – Swahili\) for download](#)

Decisions taken between 12 - 16 December 2011

Mbarushimana Case

Decision on the confirmation of charges

Issued by Pre-Trial Chamber I on 16 December 2011

Lubanga Dyilo Case

Order refusing the application to submit additional observations and a response to the Registry’s observations

Issued by Trial Chamber I on 12 December 2011

Order on the medical reports relating to defence Witness 19

Issued by Trial Chamber I on 7 December 2011

Decision on the translation of the Article 74 Decision and related procedural issues

Issued by the Trial Chamber I on 15 December 2011

Decision on the observations submitted by counsel representing defence Witness 19 in the Dutch asylum proceedings

Issued by the Trial Chamber I on 15 December 2011

Katanga and Ngudjolo Chui Case

Décision relative à la requête de la Défense de Mathieu Ngudjolo Chui concernant la révision complète des transcriptions de la déposition de ce dernier

Issued by Trial Chamber II on the 13th December 2011

Situation in Darfur, Sudan

There are four cases in the situation in Darfur, Sudan: *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 and Saleh Mohammed Jerbo Jamus*. Four warrants of arrest have been issued by Pre-Trial Chamber I for Messrs Harun, Kushayb and Al Bashir. The three suspects remain at large. A summons to appear was issued for Mr Abu Garda who appeared voluntarily before the Chamber on 18 May 2009. After the hearing of confirmation of charges, on February 2010, Pre-Trial Chamber I declined to confirm the charges. Mr Abu Garda is not in the custody of the ICC. Two other summonses to appear were issued against Mr Banda and Mr Jerbo who appeared voluntarily on 17 June 2010; the confirmation of charges hearing took place on 8 December 2010. On 7 March 2011, Pre-Trial Chamber I unanimously decided to confirm the charges of war crimes brought by the ICC's Prosecutor against Mr Banda and Mr Jerbo, and committed them to trial. On 16 March 2011, the ICC Presidency constituted Trial Chamber IV and referred the case to it.

Pre-Trial Chamber I informs the United Nations Security Council and the Assembly of States Parties about Chad's non-cooperation in the arrest and surrender of Omar Al Bashir

On 13 December 2011, Pre-Trial Chamber I of the International Criminal Court (ICC) decided that the Republic of Chad failed to cooperate with the Court by not arresting and surrendering Omar Al Bashir to the Court during his visit to Chad on 7 and 8 August 2011. The Chamber decided to refer the matter to both the United Nations Security Council and the Assembly of States Parties to the Rome Statute, founding treaty of the ICC.

The Chamber indicated also that the Republic of Chad failed to comply with its obligations to consult with the Chamber by not bringing the issue of Omar Al Bashir's immunity to the Chamber for its determination. The Chamber recalled its decision on **the non-cooperation of the Republic of Malawi**, issued on 12 December 2011, and reaffirmed that there is no conflict between the obligations of States Parties to the Rome Statute towards the Court to arrest and surrender the suspect and their obligations under customary international law. Thus, the States Parties, as well as the African Union, can not rely on article 98-1 of the Rome Statute to refuse to comply with the ICC's requests for cooperation regarding the arrest and the surrender of Mr Al Bashir.

On 4 March 2009, Pre-Trial Chamber I issued a first warrant of arrest for Mr Al Bashir, considering that there are reasonable grounds to believe that the suspect is criminally responsible for five counts of crimes against humanity and two counts of war crimes. A second warrant of arrest was issued for Mr Al Bashir on 12 July 2010, for three counts of genocide.

By previous decisions, the Chamber has informed the United Nations Security Council and the Assembly of States Parties to the Rome Statute of Omar Al Bashir's visits to **Djibouti, Chad and Kenya**, as well as of the **non-cooperation of the Republic of Malawi** in arresting Mr Al Bashir. The Chamber had also informed the Security Council of the **non-cooperation of Sudan** with the Court concerning the arrest and surrender of Mr Ali Kushayb and Mr Ahmad Harun. It is for the United Nations Security Council and the Assembly of States Parties to take any measure they may deem appropriate to ensure the full cooperation with the ICC.

Décision rendue en application de l'article 87-7 du Statut de Rome concernant le refus de la République du Tchad d'accéder aux demandes de coopération délivrées par la Cour concernant l'arrestation et la remise d'Omar Hassan Ahmad Al Bashir

Pre-Trial Chamber I informs the United Nations Security Council and the Assembly of States Parties about Malawi's non-cooperation in the arrest and surrender of Omar Al Bashir

On 12 December 2011, Pre-Trial Chamber I of the International Criminal Court (ICC) decided that the Republic of Malawi failed to cooperate with the Court by not arresting and surrendering Omar Al Bashir to the Court during his visit to Malawi on 14 October 2011. The Chamber decided to refer the matter to both the United Nations Security Council and the Assembly of States Parties to the Rome Statute, founding treaty of the ICC.

The Chamber found that there is no conflict between Malawi's obligations towards the Court to arrest and surrender the suspect and its obligations under customary international law. The Judges indicated that this analysis also addresses the legal viability of the African Union's position, which the Republic of Malawi relied upon, and which refuses to comply with the ICC's requests for cooperation regarding the arrest and the surrender of Mr Al Bashir.

The Chamber, recalling its previous decisions on the Al Bashir case, re-affirmed that "the current position of Omar Al Bashir as Head of a state which is not a party to the Statute, has no effect on the Court's jurisdiction over the present case". The Chamber also indicated that the Republic of Malawi failed to comply with its obligations to consult with the Chamber by not bringing the issue of Omar Al Bashir's immunity to the Chamber for its determination, as it was invited to do by the ICC Registry's note verbale sent to the Malawi authorities on 13 October 2011.

In today's decision, Pre-Trial Chamber I examined Malawi's observations submitted on 11 November 2011 and considered that customary international law creates an exception to Head of State immunity when international courts seek a Head of State's arrest for the commission of international crimes. The Judges noted that immunity for Heads of State before international courts has been rejected time and time again dating all the way back to World War I. Giving the examples of international prosecutions against Slobodan Milosevic, Charles Taylor, Muammar Gaddafi, Omar Al Bashir and Laurent Gbagbo, the Chamber noted that initiating international prosecutions against Heads of State have gained widespread recognition as accepted practice.

On 4 March 2009, Pre-Trial Chamber I issued a first warrant of arrest for Mr Al Bashir, considering that there are reasonable grounds to believe that the suspect is criminally responsible for five counts of crimes against humanity and two counts of war crimes. A second warrant of arrest was issued for Mr Al Bashir on 12 July 2010, for three counts of genocide.

Decision Pursuant to Article 87(7) of the Rome Statute on the Failure by the Republic of Malawi to Comply with the Cooperation Requests Issued by the Court with Respect to the Arrest and Surrender of Omar Hassan Ahmad Al Bashir

Decisions taken between 12 - 16 December 2011

Al Bashir Case

Decision Pursuant to Article 87(7) of the Rome Statute on the Failure by the Republic of Malawi to Comply with the Cooperation Requests Issued by the Court with Respect to the Arrest and Surrender of Omar Hassan Ahmad Al Bashir

Issued by the Pre-Trial Chamber I on 12 December 2011

Décision rendue en application de l'article 87-7 du Statut de Rome concernant le refus de la République du Tchad d'accéder aux demandes de coopération délivrées par la Cour concernant l'arrestation et la remise d'Omar Hassan Ahmad Al Bashir

Issued by the Pre-Trial Chamber I on 13 December 2011

Situation in the Central African Republic

The situation was referred to the Court by the Government of the Central African Republic in December 2004. The Prosecutor opened an investigation in May 2007. 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 Trial Chamber III. The trial started on 22 November 2010.

Decisions taken between 12 - 16 December 2011

Bemba Case

Order on the filing of a response to the application by victims for participation in the appeal against the "Decision on the accused's application for provisional release in light of the Appeals Chamber's judgment of 19 August 2011" of Trial Chamber III

Issued by the Appeals Chamber on 11 October 2011

Decision on 418 applications by victims to participate in the proceedings

Issued by Trial Chamber III on 15 December 2011

Public Redacted Version Decision on "Application of Legal Representative of Victims Mr Zarambaud Assingambi for leave to participate in the appeals proceedings following the Defence appeal of 21 September 2011"

Issued by the Appeals Chamber on 15 December 2011

Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 26 September 2011 entitled "Decision on the accused's application for provisional release in light of the Appeals Chamber's judgment of 19 August 2011"

Issued by the Appeals Chamber on 15 December 2011

Relevant Links

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

You can also consult the [hearing schedule](#)

Video summaries can be found on our [YouTube channel](#) | The ICC's activities can also be followed through [Twitter](#)

Events

The Assembly of States Parties to the Rome Statute opens its tenth session

عربي, Español



The Assembly of States Parties to the Rome Statute of the International Criminal Court ("the Assembly") opened its tenth session at UN Headquarters in New York, which will last from 12 to 21 December 2011.

The outgoing President of the Assembly, Ambassador Christian Wenaweser (Liechtenstein), underscored some of the achievements of last three years, including the increase in the number of States Parties to 120 and the Kampala Review Conference, but also the challenges lying ahead, especially how to make best use of the Rome Statute system.

The Assembly elected Ambassador Tiina Intelmann (Estonia) as President for the tenth to twelfth sessions. It also elected for the same period Ambassadors Ken Kanda (Ghana) and Markus Börlin (Switzerland) as Vice-Presidents and the following other members of the Bureau: Argentina, Belgium, Brazil, Canada, Chile, Czech Republic, Gabon, Finland, Hungary, Japan, Nigeria, Portugal, the Republic of Korea, Samoa, Slovakia, South Africa, Trinidad and Tobago and Uganda.

Upon her election, President Intelmann observed that, in the coming years, the Assembly would need to focus on how best to assist the Court in handling its increasing workload, providing it with adequate means and ensuring broad political support. She further reminded States of their important responsibilities under the Rome Statute system, including prosecution of relevant crimes in national courts.

In an opening statement, the United Nations Deputy Secretary-General, Ms. Asha-Rose Migiro, highlighted the progress achieved in the course of the last year towards putting an end to impunity for international crimes. She reaffirmed that the partnership between the United Nations and the Court was based on shared values as well as mutual respect for the respective mandates of these institutions.



In a keynote address to the Assembly, the President of Botswana, H.E. Seretse Khama Ian Khama, gave a positive assessment of the work of the Court, which he characterized as an important player in the overall human quest for global peace and security of mankind. He pointed out that the effectiveness of the ICC depended on State cooperation and expressed regret in this regard over the African Union decision in June 2011 not to cooperate with the Court. He appealed to all States to support victims by promoting judicial and other efforts to end impunity and promoting accountability for serious international crimes.

Opening remarks were also delivered by the United Nations High Commissioner for Human Rights, Ms. Navanethem Pillay, who observed that the ICC and human rights protection complemented each other. She called for a political consensus on objective criteria regarding Security Council referrals and deferrals. She further considered it within her remit to call upon the Council to refer a situation to the Court when it appeared to her that gross human rights violations amounting to international crimes have been - or are being - committed, as she had done regarding Syria.

The President of the Court, Judge Sang-Hyun Song noted that 2011 had been the busiest year of the Court so far, with an increase in the number of country situations, Court hearings, new applications for victim participation as well as for reparations. He therefore called for an outcome of the budget discussions reflecting a rational balance between the task-driven needs of the Court and the requirements of economy and efficiency.

The outgoing Prosecutor, Mr. Luis Moreno-Ocampo, highlighted three key areas of his Office's policy during his tenure, namely full respect for the principle of complementarity, focus on those who bear the greatest responsibility for the most serious crimes and contribution to the prevention of future crimes. He expressed the view that the two competing risks facing the Court, i.e. infringement on its independence and isolation, had both been managed.

The Chair of the Board of Directors of the Trust Fund for Victims, Ms. Elisabeth Rehn, referred to the various forms of assistance extended under the Fund to victims to date in spite of scarce resources. She also pointed to future prospects, including the challenges related to Court-ordered reparations. She expressed her gratitude to all donors and institutions supporting the Fund.

The Assembly elected by acclamation Ms. Fatou Bensouda (Gambia) as the new Prosecutor of the Court for a period of nine years starting from 16 June 2012. Thanking States Parties for the honor bestowed on her, Ms. Bensouda pledged to continue working in close cooperation with the other organs of the Court under the "one Court principle" as well as with the Assembly and civil society and to ensure that the Office of the Prosecutor would carry out its work in a consistent, predictable and transparent manner.



Source: Assembly of States Parties

Calendar

DECEMBER 2011						
Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
19	20	21	22	23	24	25
ICC President Song to give keynote address at the event Plan of Action: universality of the Rome Statute and implementing legislation in New York (USA)						
Assembly of States Parties to hold its tenth session in New York (USA)						
Judicial recess						
26	27	28	29	30	31	
Judicial recess						
January 2012						
Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
						1
2	3	4	5	6	7	8
Judicial recess						
Please note that there will be no hearings during the ICC's Judicial Recess from Friday, 16 December 2011 (17:30) until Monday, 9 January 2012 (09:00)						

The calendar is subject to last minute changes.