

# 28 May 2012 #129 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*. 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. Trial Chamber I convicted Mr Lubanga Dyilo on 14 March 2012, and is scheduled to hear submissions for sentencing on 13 June 2012. The trial in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* started on 24 November 2009. Closing statements in the case were heard from 15 to 23 May 2012. On 16 December 2011, Pre-Trial Chamber I declined to confirm the charges in the case *The Prosecutor v. Callixte Mbarushimana*. Mr Mbarushimana was released on 23 December 2011. After being granted leave to appeal by Pre-Trial Chamber I, the ICC Prosecutor appealed the decision on 12 March 2012.

## Mbarushimana case: ICC Appeals Chamber to deliver its judgment on the prosecution's appeal on 30 May

On 30 May 2012, in open court, at 11:30 (The Hague local time), the Appeals Chamber of the International Criminal Court (ICC) will deliver its judgment on the Prosecution's appeal against the [decision issued by Pre-Trial Chamber I](#), declining to confirm the charges against Mr Callixte Mbarushimana.

The session will be transmitted with no delay via web streaming on the ICC website:

Courtroom I (English): <http://livestream.xs4all.nl/icc1.aspx>

Courtroom I (French): <http://livestream.xs4all.nl/icc2.aspx>

Audio and video rough cuts of the session will be available on the [ICC YouTube channel](#) for viewing, as well as for media downloading in broadcast quality on an FTP server.

### Background information

On 16 December 2011, Pre-Trial Chamber I decided by Majority to decline to confirm the charges in the case of *The Prosecutor v. Callixte Mbarushimana* and ordered that the warrant of arrest issued against him cease to have effect. Mr Mbarushimana was released from the ICC's custody on 23 December 2011, upon the completion of the necessary arrangements, as ordered by Pre-Trial Chamber I. On 1 March 2012, the Pre-Trial Chamber granted the Prosecution leave to appeal this decision. The appeal was submitted on 12 March 2012.

Callixte Mbarushimana was surrendered to the custody of the ICC by the French authorities on 25 January 2011, in accordance with the warrant of arrest delivered against him on 28 September 2010 by Pre-Trial Chamber I. 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. 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 these counts. Judge Sanji Mmasenono Monageng, presiding judge, filed a dissenting opinion.

Further information on the case is available [here](#).

### ICC Trial Chamber II to deliberate on the case against Germain Katanga and Mathieu Ngudjolo Chui

The trial in the case *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* has entered its final stages following closing statements that took place at the International Criminal Court (ICC) from 15 to 23 May 2012. During the closing statement hearings, the Prosecution, the legal representatives of victims and the Defence presented their final arguments. The ICC's Trial Chamber II, comprising Judge Bruno Cotte (presiding judge), Judge Fatoumata Dembele Diarra and Judge Christine Van den Wyngaert will deliberate on the proceedings and, within a reasonable period, will pronounce its decision. The Chamber bases its decision only on the applicable law and on evidence submitted and discussed before it at the trial.

Germain Katanga and Mathieu Ngudjolo Chui, Congolese nationals, are charged with three counts of crimes against humanity and seven counts of war crimes allegedly committed in the context of an armed conflict in Ituri which began in Djugu territory and in the town of Mongbwalu, and in particular during the joint attack by combatants allegedly led by Mathieu Ngudjolo Chui and Germain Katanga on Bogoro village on 24 February 2003, which was allegedly part of a widespread attack directed not only against a military camp located in that village but also against the civilian population of the village. The trial started on 24 November 2009.

Over the course of 239 hearings, the Chamber heard 24 witnesses and experts called by the Office of the Prosecutor, 28 witnesses and experts called by the two Defence teams and 2 witnesses called by the legal representatives of the victims participating in the proceedings. The Chamber also called 2 other experts to testify. The judges ensured the respect of the rights guaranteed by the Rome Statute to each of the parties, including the right to cross-examine the witnesses.

A total of 366 victims, represented by their legal counsel, were authorised to participate in the trial. They have expressed their position on matters heard before the Chamber and were authorised to examine witnesses on specific issues.

The Trial Chamber issued 130 oral decisions, and 456 written decisions. The parties and participants before the Chamber exchanged more than 3,290 filings.

Further information on this case is available [here](#).

#### Decisions taken between 21 - 25 May 2012

### Mbarushimana Case

#### Scheduling Order for the judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I of 16 December 2011 entitled "Decision on the confirmation of charges"

Issued by the Appeals Chamber on 25 May 2012

### Situation in Kenya

On 31 March 2010, Pre-Trial Chamber II granted the Prosecutor's request to open an investigation *proprio motu* in the situation in Kenya, State Party since 2005. Following summonses to appear issued on 8 March 2011 in two separate cases, six Kenyan citizens voluntarily appeared before Pre-Trial Chamber II on 7 and 8 April 2011. The confirmation of charges hearings in the two cases took place from 1 to 9 September 2011, and 21 September to 5 October 2011, respectively. On 23 January 2012, the judges declined to confirm the charges against Henry Kiprono Kosgey and Mohammed Hussein Ali. Pre-Trial Chamber II confirmed the charges against William Samoei Ruto, Joshua Arap Sang, Francis Kirimi Muthaura and Uhuru Muigai Kenyatta and committed them to trial. On 29 March 2012, the ICC Presidency constituted Trial Chamber V and referred to it the two cases: *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang* and *The Prosecutor v. Francis Kirimi Muthaura and Uhuru Muigai Kenyatta*.

### Kenyan cases: Appeals Chamber rejects appeals regarding challenges to the ICC's jurisdiction

On 24 May 2012, the Appeals Chamber of the International Criminal Court (ICC) decided unanimously to reject the appeals regarding the challenges to the ICC's jurisdiction, raised by the Defence teams in the two Kenyan cases: *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang* and *The Prosecutor v. Francis Kirimi Muthaura and Uhuru Muigai Kenyatta*.

The Defence teams of the accused had challenged the Court's jurisdiction before the Pre-Trial Chamber, submitting that the Court should decline to exercise jurisdiction over their cases and contesting the interpretation of the term 'organizational policy' as a component of crimes against humanity under article 7 (2) (a) of the Rome Statute, which the Pre-Trial Chamber had adopted, by majority, in its decision authorising the opening of an investigation into the situation in Kenya, dated 31 March 2010. In its decisions on 23 January 2012, the Pre-Trial Chamber decided, by majority, to endorse its previous definition of the term 'organizational policy' and confirmed that the ICC has jurisdiction over the two Kenyan cases. The Defence teams appealed the Pre-Trial Chamber's decisions on 30 January 2012, essentially alleging legal, factual or procedural errors stemming from the Pre-Trial Chamber's interpretation of the term 'organizational policy' and its subsequent findings that such policy existed in the two cases. They requested the Appeals Chamber to declare that the Court does not have subject-matter jurisdiction in this instance and to reverse the Pre-Trial Chamber's confirmation of charges against the accused.

In its decisions on 24 May 2012, the Appeals Chamber indicated that the interpretation and existence of an 'organizational policy' relate to the substantive merits of this case as opposed to the issue of whether the Court has subject-matter jurisdiction to consider such questions. These issues relate to whether the Pre-Trial Chamber erred when it confirmed the charges in respect of the accused. As the Prosecutor has expressly alleged crimes against humanity, including the existence of an 'organizational policy', the Appeals Chamber found that the ICC has subject-matter jurisdiction over the alleged crimes. The Appeals Chamber noted that whether the Prosecutor can establish, in law and on the evidence, the existence of such a policy is not a question of jurisdiction, but rather a question to be determined on the merits. The Appeals Chamber concluded that the issues raised on appeal are therefore not properly before the Appeals Chamber. The Appeals Chamber decisions relate only to the issues raised by the accused and are with no prejudice to the merits of the cases.

The cases *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang* and *The Prosecutor v. Francis Kirimi Muthaura and Uhuru Muigai Kenyatta* are currently before Trial Chamber V. Status Conferences are scheduled, respectively, on 11 and 12 June 2012. Further information on the two Kenyan cases is available respectively [here](#) and [here](#).

### Decisions taken between 21 - 25 May 2012

#### Ruto and Sang case

**Decision on the appeals of Mr William Samoei Ruto and Mr Joshua Arap Sang against the decision of Pre-Trial Chamber II of 23 January 2012 entitled "Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute"**

Issued by the Appeals Chamber on 24 May 2012

#### Muthaura and Kenyatta case

**Decision on the appeal of Mr Francis Kirimi Muthaura and Mr Uhuru Muigai Kenyatta against the decision of Pre-Trial Chamber II of 23 January 2012 entitled "Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute"**

Issued by the Appeals Chamber on 24 May 2012

### 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 21 - 25 May 2012

#### Bemba Case

**Decision on 1400 applications by victims to participate in the proceedings**

Issued by Trial Chamber III on 21 May 2012

**Decision on the presentation of views and concerns by victims a/0542/08, a/0394/08 and a/0511/08**

Issued by Trial Chamber III on 24 May 2012

**Decision on the starting date of the defence presentation of evidence and related issues**

Issued by Trial Chamber III on 24 May 2012

## 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*; *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*; and *The Prosecutor v. Abdel Raheem Muhammad Hussein*. Five warrants of arrest have been issued by Pre-Trial Chamber I for Messrs Harun, Kushayb, Al Bashir and Hussein. The four 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, in 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 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.

Decisions taken between 21 - 25 May 2012

### Banda and Jerbo Case

#### Order to the prosecution for information on potentially exculpatory evidence or Rule 77 material

Issued by Trial Chamber IV on 24 May 2012

#### Decision on common legal representation

Issued by Trial Chamber IV on 25 May 2012

## Situation in Libya

On 26 February 2011, the United Nations Security Council decided unanimously to refer the situation in the Libyan Arab Jamahiriya since 15 February 2011 to the ICC Prosecutor. On 3 March 2011, the ICC Prosecutor announced his decision to open an investigation in the situation in Libya, which was assigned by the Presidency to Pre-Trial Chamber I. On 27 June 2011, Pre-Trial Chamber I issued three warrants of arrest respectively for **Muammar Mohammed Abu Minyar Gaddafi**, **Saif Al-Islam Gaddafi** and **Abdullah Al-Senussi** for crimes against humanity (murder and persecution) allegedly committed across Libya from 15 until at least 28 February 2011, through the State apparatus and Security Forces. On 22 November 2011, Pre-Trial Chamber I formally terminated the case against Muammar Gaddafi due to his death. The remaining suspects are not in the custody of the Court.

Decisions taken between 21 - 25 May 2012

### Gaddafi and Al-Senussi Case

#### Decision on the "Application by Lawyers for Justice in Libya and the Redress Trust for Leave to Submit Observations pursuant to Rule 103 of the Rules of Procedure and Evidence"

Issued by Pre-Trial Chamber I on 22 May 2012

### 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](#) | The ICC's activities can also be followed through [Twitter](#)

## Events

### President of the Assembly visits Rabat

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From 16 to 17 May 2012 the President of the Assembly of States Parties ("the Assembly"), Ambassador Tiina Intelmann visited Rabat, Morocco. As part of her participation in the campaign for universality of the Rome Statute, she met with several Moroccan government officials and took part in parliamentary consultations for Middle Eastern and North African Parliamentarians, which were co-organised by the Parliament of Morocco and Parliamentarians for Global Action.

In her meeting with H.E. Mr Saad-Eddine El Othmani, Minister for Foreign Affairs and Cooperation of Morocco she highlighted the achievements of the International Criminal Court ("the Court") in its first ten years of operation. The tenth anniversary of the entry into force of the Rome Statute, and the first ratification of the amendments on the crime of aggression were an excellent opportunity for Morocco to once again consider ratification carefully, said the President.

President Intelmann also underscored the importance that parliamentarians play in the process of ratification in her meetings with several Moroccan parliamentarians including Mr Mohamed Yatim, MP, First Deputy Speaker of the Chamber of Representatives, Mr Mohammed Benabdessadeq, MP, Chairman of the Legal Affairs Committee, and Mr Driss Lachguar, MP. President Intelmann plans to continue her efforts to reach out to parliamentarians of States Parties and non-States Parties throughout her tenure.

Speaking at the opening of the parliamentary consultations, President Intelmann recalled the leading role played by Middle Eastern and Northern African States in the establishment of the Court, and in the negotiations on the crime of aggression. She expressed her hope that the mood of change that has gripped the region would encourage parliaments to take a new look at the Statute and the Court.

Additionally, President Intelmann met with Dr Hassan Maaouni, President of the *forum des initiatives de développement et consolidation de la primauté du droit*, members of Moroccan civil society and gave a series of interviews to the local press.

Source: Assembly of States Parties

## The Network of the Presidents of the Supreme Judicial Courts of the EU visit the ICC



ICC President Sang-Hyun Song and several ICC judges with a delegation from The Network of the Presidents of the Supreme Judicial Courts of the EU at the seat of the Court in The Hague © ICC-CPI

On 25 May 2012, a delegation from The Network of the Presidents of the Supreme Judicial Courts of the EU visited the International Criminal Court (ICC). After a tour and explanation of the ICC's Courtroom I, they met with the ICC President, Judge Sang-Hyun Song, the Second Vice-President of the Court, Judge Cuno Tarfusser, and Judges Hans-Peter Kaul, Errki Kourula, Ekaterina Trendafilova, and Bruno Cotte, as well as other high-ranking ICC officials.

During their meeting, the ICC President thanked the members of the delegation for their steadfast support for the Court and highlighted the matter of complementarity between national judicial systems and the Rome Statute system.

The delegation comprised Dr Geert J.M. Corstens, President of the Supreme Court of the Netherlands, Prof. Lasar Gruev, President of the Supreme Court of Cassation of Bulgaria, Pauliine Koskelo, President of the Supreme Court of Finland, Vincent Lamanda, First President of the French Cour de cassation, Livia Stanciu, President of the High Court of Cassation and Justice of Romania, Prof. Dr. Klaus Tolkdorf, President of the Supreme Court of Germany (Bundesgerichtshof), Dominique Hascher, Presiding Judge, Court of Appeal of Reims, France, Jean-Jacques Arnaldez, Court of Appeal of Reims, France, M.A.A.M.G. Corstens-Mignot, Spouse of President Corstens, Kalina Grueva, Spouse of President Gruev, Martina Dineva, Assistant to President Gruev, Simona Cristea, Assistant to President Livia Stanciu, and Dr. Hans Storm, Registrar in Chief of the Supreme Court of the Netherlands.

### SRSR Roger Meece, Head of MONUSCO, visits the ICC

On 25 May 2012, SRSR Roger Meece, Head of MONUSCO, visited the International Criminal Court (ICC) and had meetings with the ICC President, Prosecutor and other high-ranking Court officers.

During their meeting, the ICC President, Judge Sang-Hyun Song, updated Mr Meece on judicial developments, particularly in regard to the situation in the Democratic Republic of the Congo, and discussed matters of continued cooperation between MONUSCO and the ICC. The ICC President thanked Mr Meece for his continued support for the Court in its efforts to end impunity for serious crimes of international concern.



SRSR Roger Meece, Head of MONUSCO, and ICC President Sang-Hyun Song at the seat of the Court in The Hague © ICC-CPI

### ICC President, Judge Sang-Hyun Song, gives address at the 14<sup>th</sup> International Symposium of the World Society of Victimology



The ICC President, Judge Sang-Hyun Song, giving a congratulatory address at the opening ceremony of the 14<sup>th</sup> International Symposium of the World Society of Victimology in the Ridderzaal, The Hague, on Sunday 20 May 2012 © Persburo Jos van Leeuwen



The ICC President, Judge Sang-Hyun Song, gave a congratulatory address at the opening ceremony of the 14<sup>th</sup> International Symposium of the World Society of Victimology in the Ridderzaal, The Hague, on Sunday, 20 May 2012. The Symposium was themed "Justice for Victims: Cross cultural perspectives on conflict, trauma and reconciliation". Director of the Trust Fund for Victims, Pieter de Baan, also participated in the proceedings of the Symposium, which took place from 20 to 24 May 2012.

### ICC President Speech at Opening of Victimology Symposium

### ICC Registrar visits Côte d'Ivoire



The ICC Registrar, Ms Silvana Arbia and President Ouattara © ICC-CPI



The ICC Registrar, Ms Silvana Arbia and Prime Minister, Jeannot Kouadio-Ahousou © ICC-CPI

From 23 to 25 May 2012, the Registrar of the International Criminal Court (ICC), Ms Silvana Arbia, paid a visit to Côte d'Ivoire with the aim to strengthen cooperation between the Ivorian national authorities and the ICC.

## Calendar

MAY 2012						
Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
28	29	30	31			
		ICC President Song to speak at the opening of the IBA Bar Leaders’ Conference, The Hague (The Netherlands)				
	ICC to host NGO Roundtable					
JUNE 2012						
Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
				1	2	3
				Court to host ICC Trial Competition (Chinese and Russian)		
				ICC to host NGO Roundtable		
4	5	6	7	8	9	10
Vice-President Sanji Monageng to deliver a keynote address at the Glasgow Law Postgraduate Colloquium 2012 entitled International Justice, University of Glasgow (UK)						
11	12	13	14	15	16	17
		Trial Chamber I to hear submissions for sentencing in the case against Thomas Lubanga Dyilo	ICC President Song to participate in a high-level panel at the Fifth International Conference of the International Association For Court Administration (The Hague, The Netherlands)	Solemn Undertaking Ceremony for the newly elected ICC Prosecutor		
18	19	20	21	22	23	24
Confirmation of charges hearing to start in the case against Laurent Gbagbo				Court to host ICC Trial Competition (Spanish)		

The calendar is subject to last-minute changes.