

4 June 2012 #130  
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.

### Pre-Trial Chamber II dismisses the Prosecutor's application for an arrest warrant against Sylvestre Mudacumura

On 31 May 2012, Pre-Trial Chamber II of the International Criminal Court (ICC) unanimously dismissed, *in limine* (without examining the merits), the [Prosecutor's application](#) for a warrant of arrest against Mr Sylvestre Mudacumura, considering that this application "fell short of the proper level of specificity" in describing the alleged crimes "for which the person's arrest is sought".

The Chamber noted that the ICC Prosecutor's application, dated 15 May 2012, did not provide "proper counts or any other kind of accompanying description of the specific facts underlying the crimes" allegedly committed in North and South Kivu Provinces (Democratic Republic of the Congo), and failed to "set out the specific references to the alleged crimes" as requested by the Rome Statute, founding treaty of the ICC.

### ICC Appeals Chamber rejects the Prosecution's appeal

On 30 May 2012, the Appeals Chamber decided unanimously to dismiss the Prosecution's appeal against the [decision issued by Pre-Trial Chamber I](#), declining to confirm the charges against Mr Callixte Mbarushimana.

Judge Erkki Kourula, presiding judge in this appeal, delivered a summary of the judgment in open session. He explained that the Appeals Chamber rejected the first two grounds of appeal, related to the Pre-Trial Chamber's power to evaluate the evidence at the confirmation of the charges stage. The Appeals Chamber found that in determining whether to confirm charges under article 61 of the Rome Statute, the Pre-Trial Chamber may evaluate ambiguities, inconsistencies, contradictions or credibility doubts in the evidence.

Judge Kourula stressed that "the confirmation of charges hearing exists to ensure that cases and charges go to trial only when justified by sufficient evidence" and that article 61(7) of the Rome Statute requires the Pre-Trial Chamber to evaluate whether the evidence is sufficient to establish substantial grounds to believe the person committed each of the crimes charged.

The Appeals Chamber also rejected the third and last ground of appeal, related to whether, under article 25(3)(d) of the Rome Statute, the contribution of the person must be "significant", because the alleged error did not materially affect the decision of the Pre-Trial Chamber.

Judge Silvia Fernández de Gurmendi appended a separate opinion under this ground of appeal, as she would have found it necessary to hold that the Pre-Trial Chamber erred in finding that the contribution to the crimes must be significant under article 25(3)(d) of the Rome Statute.

Judge Kourula highlighted that the Appeals Chamber's judgment relates only to the issues submitted in appeal and should therefore not be seen as endorsing the Pre-Trial Chamber's factual findings.

### Background information

On 16 December 2011, Pre-Trial Chamber I decided by Majority to decline to confirm the charges in the case *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.

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. The Prosecutor is not precluded from subsequently requesting the confirmation of charges on the basis of additional evidence.

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

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## OTP Statement following the Appeals Chamber decision

The Office of the Prosecutor (OTP) takes note of the 30 May 2012 decision by the Appeals Chamber. We are evaluating the decision to see whether it is possible to present a new case against Mr Mbarushimana presenting additional evidence, in accordance with the Judges' ruling.

Source: *Office of the Prosecutor*

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### Decisions taken between 28 May - 1 June 2012

#### Decision on the Prosecutor's Application under Article 58

Issued by Pre-Trial Chamber II on 31 May 2012

#### Lubanga Dyilo Case

##### Order on the defence request for an extension of time

Issued by Trial Chamber I on 28 May 2012

#### Katanga and Ngudjolo Chui Case

##### Ordonnance relative aux requêtes du conseil de permanence relatives à la détention des témoins DRC-D02-P-0236, DRC-D02-P-0228, et DRC-D02-P-0350

Issued by Trial Chamber II on 1 June 2012

#### Mbarushimana Case

##### 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 30 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.

### Postponement of the execution of the request for surrender of Saif Al-Islam Gaddafi to the ICC

On 1 June 2012, Pre-Trial Chamber I of the International Criminal Court (ICC) decided that Libya may postpone its execution of the ICC's request for surrender of Saif Al-Islam Gaddafi, pursuant to article 95 of the Rome Statute, pending the ICC's final determination of Libya's [challenge to the admissibility](#) of the case, dated 1 May 2012.

Without entering into the discussion of whether the case is admissible, the Chamber emphasized that "the arrest warrant [against Mr Gaddafi] remains valid (...), and accordingly Libya must ensure that all necessary measures are taken during the postponement in order to ensure the possibility of an immediate execution of the Surrender Request should the case be found admissible".

The situation in Libya was referred to the ICC Prosecutor by the United Nations Security Council, through the unanimous adoption of Resolution 1970 on 26 February 2011. On 27 June 2011, Pre-Trial Chamber I issued warrants of arrest 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 February 2011 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.

#### Decisions taken between 28 May - 1 June 2012

#### Gaddafi and Al-Senussi Case

##### Decision on the OPCD request for variation of time limit

Issued by Pre-Trial Chamber I on 28 May 2012

##### Decision on the postponement of the execution of the request for surrender of Saif Al-Islam Gaddafi pursuant to article 95 of the Rome Statute

Issued by Pre-Trial Chamber I on 1 June 2012

##### Decision on the OPCD's "Urgent Request for Extension of Time"

Issued by Pre-Trial Chamber I on 1 June 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*.

#### Decisions taken between 28 May - 1 June 2012

##### Decision on the Government of Kenya's Application for Leave to Appeal Pursuant to Article 82(1)(d) of the Rome Statute

Issued by Pre-Trial Chamber II on 29 May 2012

## Situation in Côte d'Ivoire

Côte d'Ivoire, which is not party to the Rome Statute, had accepted the jurisdiction of the ICC on 18 April 2003; more recently, and on both 14 December 2010 and 3 May 2011, the Presidency of Côte d'Ivoire reconfirmed the country's acceptance of this jurisdiction. On 3 October 2011, the Pre-Trial Chamber authorised the Prosecutor to open an investigation into the situation in Côte d'Ivoire since 28 November 2010. The hearing on the confirmation of charges in the case *The Prosecutor v. Laurent Gbagbo*, the only case currently heard before the Court in this situation, is scheduled to start on 18 June 2012.

Decisions taken between 28 May - 1 June 2012

### Gbagbo Case

**Decision on the "Requête de la Défense aux fins de prorogation du délai d'expurgation, aux fins d'expurgation et aux fins d'attribution de pseudonymes aux témoins"**

Issued by Pre-Trial Chamber I on 1 June 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

### Immanuel Kant Baltic Federal University wins the ICC Trial Competition (Russian version)



ICC Judge Joyce Aluoch (centre), ICC Legal Officer Marie Mathiaud (left) and Special Assistant to the ICC President Philipp Ambach (right) with the winners of the ICC Trial Competition (Russian version), representing Immanuel Kant Baltic Federal University, at the seat of the Court in The Hague © ICC-CPI

Immanuel Kant Baltic Federal University is the winner of the ICC Moot Court Competition – Russian version. The final round was held on 1 June 2012, in Courtroom I of the International Criminal Court (ICC) in The Hague. The winning team is composed of (from left to right in above photo): Mr Aleksei Petrenko, Mr Mark Kulezin, Mr Nikita Borisenko, Ms Yana Maria Minina and Ms Irina Olunina. Taras Shevcenko National University of Kyiv and the Higher School of Economics - Nizhny Novgorod won, respectively, the second and third places. The award for the Best Speaker went to Mr Mark Kulezin Immanuel Kant Baltic Federal University.

The teams competed before ICC Judge Joyce Aluoch (presiding), ICC Legal Officer Marie Mathiaud and Special Assistant to the ICC President Philipp Ambach on a fictitious case, presenting oral arguments during a confirmation of charges hearing in the roles of Prosecution, Defence and the Legal representative for victims. The final round of the ICC Trial Competition in Russian was also web streamed live on the Court's official website.

Following the decision rendered by the Chamber on the winners of the competition, the ICC hosted an awards ceremony for the winners and participants. Judge Aluoch, Ms Mathiaud, Mr Ambach and Mr Alexander Khodakov, Special Adviser to the Registrar on External Relations, delivered awards to the best teams and top speaker.

This year, 21 universities representing four countries – the Russian Federation, Ukraine, Armenia, and Belarus – participated in the competition, where students put to the test their knowledge of the applicable law and jurisprudence of the ICC. The three top teams came to The Hague for a five-day study visit before the final competition at the ICC. During their time in The Hague, the students visited four other international courts and criminal tribunals:

the International Court of Justice (ICJ), the International Criminal Tribunal for the former Yugoslavia (ICTY), the Special Court for Sierra Leone (SCSL) and the Special Tribunal for Lebanon (STL). The study visit offers to the students a unique opportunity to come together in an exciting setting and to meet with eminent personalities of the international law scene.

This version of the ICC Trial Competition is organised by Professor Gennady Esakov of O.E. Kutafin Moscow State Law Academy with the institutional support of the ICC and direct support from several institutions and organisations.

The Court is also supporting three other language versions of the ICC Trial Competition this year and hosting their finals in the ICC courtroom: English (27 April), Chinese (1 June) and Spanish (22 June). It is envisaged that, in the medium and long term, the ICC Trial Competition will also be expanded, in cooperation with others, to the other official languages of the Court: French and Arabic.

Photos of the competition and awards ceremony are [here](#).

### China University of Political Science and Law wins the ICC Trial Competition (Chinese version)



ICC Judge Cuno Tarfusser (centre), ICC Associate Legal Officer Silvestro Stazzone (left) and ICC Associate Legal Officer Simon Grabovec (right) with the winners of the ICC Trial Competition (Chinese version), representing China University of Political Science and Law, at the seat of the Court in The Hague © ICC-CPI

China University of Political Science and Law is the winner of the ICC Moot Court Competition – Chinese version. The final round was held on 1 June 2012, in Courtroom I of the International Criminal Court (ICC) in The Hague. The winning team is composed of (from left to right in above photo): Mr Guanqun Ge, Ms Ying Zhu, Ms Chenchen Liang, Coach Mr Lijiang Zhu and Mr Xinxiang Shi. China Foreign Affairs University and Peking University won, respectively, the second and third places. The award for the Best Speaker went to Ms Chenchen Liang from China University of Political Science and Law.

The teams competed before ICC Judge Cuno Tarfusser (presiding) and ICC Associate Legal Officers Silvestro Stazzone and Simon Grabovec, on a fictitious case, presenting oral arguments during a confirmation of charges hearing in the roles of Prosecution, Defence and the Legal representative for victims. The final round of the ICC Trial Competition in Chinese was also web streamed live on the Court's official website.

Following the decision rendered by the Chamber on the winners of the competition, the ICC hosted an awards ceremony for the winners and participants. Judge Tarfusser, Mr Stazzone and Mr Grabovec delivered awards to the best teams and top speakers.

This year, 13 universities in China participated in the competition, where students put to the test their knowledge of the applicable law and jurisprudence of the ICC. The three top teams came to The Hague for a five-day study visit before the final competition at the ICC. During their time in The Hague, the students visited four other international criminal tribunals: the International Court of Justice (ICJ), the International Criminal Tribunal for the former Yugoslavia (ICTY), the Special Court for Sierra Leone (SCSL) and the Special Tribunal for Lebanon (STL). The study visit offers to the students a unique opportunity to come together in an exciting setting and to meet with eminent personalities of the international law scene.

This version of the ICC Trial Competition is organised by Professor Yan Ling of the China University of Political Science and Law, with the institutional support of the ICC and the support of several institutions and organisations, including the Chinese Embassy in The Hague and the Royal Dutch Embassy in Beijing.

The Court is also supporting three other language versions of the ICC Trial Competition this year and hosting their finals in the ICC courtroom: English (27 April), Russian (1 June) and Spanish (22 June). It is envisaged that, in the medium and long term, the ICC Trial Competition will also be expanded, in cooperation with others, to the other official languages of the Court: French and Arabic.

Photos of the competition and awards ceremony are [here](#).

## ICC President Song honoured with IBA Rule of Law Award

On 30 May 2012, Judge Sang-Hyun Song, President of the International Criminal Court (ICC), received the [International Bar Association](#) (IBA) 2012 Rule of Law Award in honour of his significant and lasting contribution to upholding the rule of law world-wide.

In a ceremony held at the Peace Palace in The Hague, IBA Vice-President Michael J Reynolds presented President Song with the Award, saying "It is a privilege on behalf of the IBA to present His Honour, Judge Sang-Hyun Song, with the IBA Rule of Law Award. He has made a truly invaluable contribution to the pursuit of international peace, justice and the rule of law through his unwavering commitment to promoting the universality of the Rome Statute and through focused and dedicated efforts to increase support for the Court."

On receiving the Award, Judge Song said he was honoured and humbled to be among the IBA Rule of Law Award recipients and remarked, "Lately, the rule of law has been increasingly becoming a global issue. This is one of the most important developments of our time, and the ICC illustrates the trend better than any other institution. What a momentous step it is for states to agree that their own nationals, including heads of state, can be held accountable in an international court if they violate the rules of international law!" However, President Song warned that "we still have a long way to go before achieving universal rule of law. More than a billion people around the globe live in areas affected by conflict and large-scale violence. For these societies to achieve stability and prosperity, policymakers must see the rule of law as an integral element of sustainable peace and development."



ICC President Song speaking at the International Bar Association (IBA) ceremony on 30 May 2012 © IBA

## ICC hosts NGO Roundtable

From 29 May to 1 June 2012, the International Criminal Court (ICC) hosted an NGO Roundtable at the seat of the Court in The Hague. Over 35 representatives from 20 Non-Governmental Organizations (NGOs) met with ICC principals and officials from several sections and offices of the four organs of the Court: the Presidency, Chambers, the Office of the Prosecutor and the Registry. The Trust Fund for Victims and the Assembly of States Parties also held sessions with the NGOs during the Roundtable.



NGO participants posing questions to several judges of the Court during the NGO Roundtable on 29 May 2012 © ICC-CPI



The ICC Registrar, Ms Silvana Arbia, speaking at the NGO Roundtable on 31 May 2012 © ICC-CPI



The ICC Prosecutor, Mr Luis Moreno-Ocampo, and Deputy Prosecutor, Ms Fatou Bensouda, speaking at the NGO Roundtable on 29 May 2012 © ICC-CPI



Participants attending the NGO Roundtable at the seat of the Court in The Hague © ICC-CPI

Calendar

JUNE 2012						
Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
4	5	6 Vice-President Sanji Monageng to deliver a keynote address at the Glasgow Law Postgraduate Colloquium 2012 entitled International Justice, University of Glasgow (UK)	7	8	9	10
11	12	13 Trial Chamber I to hear submissions for sentencing in the case against Thomas Lubanga Dyilo	14 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)	15 Solemn Undertaking Ceremony for the newly elected ICC Prosecutor	16	17
18 Confirmation of charges hearing to start in the case against Laurent Gbagbo	19	20	21	22 Court to host ICC Trial Competition (Spanish)	23	24
25	26	27	28	29	30	
JULY 2012						
Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
						1 10 <sup>th</sup> Anniversary of the International Criminal Court
2	3	4	5	6	7	8
17 July: International Criminal Justice Day						

The calendar is subject to last-minute changes.