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# 6 June 2011 #80 ICC Weekly Update



## Situation in the Republic of Kenya

On 31 March 2010, Pre-Trial Chamber II granted the Prosecutor's request to open an investigation *proprio motu* in the situation of Kenya, State Party since 2005. Following summonses to appear issued on 8 March 2011, six Kenyan citizens voluntarily appeared before Pre-Trial Chamber II on 7 and 8 April 2011. Confirmation of charges hearings in the following two cases: *The Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang* and *The Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*, are scheduled for 1 and 21 September 2011, respectively.

### Pre-Trial Chamber II confirms the admissibility of the two cases in the Kenyan situation

On 30 May 2011, Pre-Trial Chamber II of the International Criminal Court (ICC) rejected the Kenyan Government's challenges to the admissibility of the two cases brought before the Court in the context of the situation in Kenya: *The Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang* as well as *The Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*. The suspects had appeared voluntarily before the Chamber on 7 and 8 April 2011, following summonses to appear issued by the judges.

After careful analysis of the Kenyan Government's applications and of the observations of parties and participants to the proceedings, Pre-Trial Chamber II considered that the applications do not provide concrete evidence of ongoing proceedings before national judges, against the same persons suspected of committing crimes falling under the ICC's jurisdiction. Pre-Trial Chamber II also considered that the Government of Kenya failed to provide the Chamber with any information as to the conduct, crimes or the incidents for which the suspects are being investigated or questioned for. The Chamber concluded that there remains a situation of inactivity and, consequently, that it cannot but determine that the cases are admissible.

The Government of Kenya may, within five days, file an appeal against these decisions, in accordance with article 82 (1)(a) of the Rome Statute and rule 154.1 of the Rules and Procedure and Evidence.

### Background

On 31 March 2011, the Chamber received the applications on behalf of the Government of the Republic of Kenya challenging the admissibility of the cases, in application of the principle of complementarity which allows the ICC to intervene only if the national authorities do not investigate or prosecute, or is otherwise unwilling or unable genuinely to carry out the proceeding against the suspects for the same alleged conduct. The Government of Kenya argued, inter alia, that the Chamber must make its determination "with a full understanding of the fundamental and far-reaching constitutional and judicial reforms", both recently enacted and anticipated, as well as "the investigative processes that are currently underway", in order to consider that "Kenya is able to conduct national criminal proceedings for all crimes arising from the post-election violence".

### **The ICC's Pre-Trial Chamber II requests observations on the possibility of conducting confirmation hearings in the Republic of Kenya**

On 3 June 2011, Pre-Trial Chamber II of the International Criminal Court (ICC) issued a decision requesting observations from the Prosecutor, the Defence and the victims on the desirability of conducting the confirmation of charges hearings in the Republic of Kenya in the cases of *The Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang* and *The Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*. The Chamber also requested that the parties and participants submit their observations no later than Monday, 13 June 2011.

The Chamber stated that in order to properly assess the desirability and feasibility of conducting the confirmation of charges hearings in the Republic of Kenya, it was deemed valuable to receive observations from the parties and participants to the proceedings in both cases. A confirmation of charges hearing is held to determine whether there is sufficient evidence to establish substantial grounds to believe that each suspect committed each of the crimes charged. If the charges are confirmed, the Pre-Trial Chamber commits the person for trial before a Trial Chamber, which will conduct the subsequent phase of the proceedings: the trial.

#### **Decisions taken between 30 May - 3 June 2011**

#### **Ruto, Kosgey and Sang Case**

##### **Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute**

Issued by Pre-Trial Chamber II on 30 May 2011

##### **Decision Requesting Observations on the Place of the Proceedings for the Purposes of the Confirmation of Charges Hearing**

Issued by Pre-Trial Chamber II on 3 June 2011

##### **Decision Requesting the Victims and Witnesses Unit to Submit Observations**

Issued by Pre-Trial Chamber II on 3 June 2011

#### **Muthaura, Kenyatta and Ali Case**

##### **Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute**

Issued by Pre-Trial Chamber II on 30 May 2011

##### **Decision Requesting Observations on the Place of the Proceedings for the Purposes of the Confirmation of Charges Hearing**

Issued by Pre-Trial Chamber II on 3 June 2011

### **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, Mathieu Ngudjolo Chui and 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 the case *The Prosecutor v. Callixte Mbarushimana* is scheduled to start on 4 July 2011.

#### **Mbarushimana Case**

##### **Hearing on the confirmation of charges now scheduled to commence on 17 August 2011**

On 31 May 2011, Pre-Trial Chamber I of the International Criminal Court (ICC) decided, at the request of the Prosecution, to postpone the commencement of the confirmation of charges hearing in the case *The Prosecutor v. Callixte Mbarushimana*, to 17 August 2011. The hearing was initially scheduled for 4 July 2011.

The Chamber took this decision in view of the delays caused by technical difficulties encountered in the process of reviewing electronic devices (hard drives, CDs, etc.) seized at the premises of the suspect at the time of his arrest. These devices might contain potentially exculpatory information, useful material to the preparation of the Defence or other elements that might be relevant for the Prosecution's case.

Mr Mbarushimana, a 47 year old alleged national of Rwanda, was surrendered and transferred to the ICC on 25 January 2011 by the French authorities, following a warrant of arrest issued by Pre-Trial Chamber I on 28 September 2010 and his arrest on 11 October 2010. He is alleged to have been, since July 2007, the Executive Secretary of the *Forces Démocratiques pour la Libération du Rwanda - Forces Combattantes Abacunguzi*.

According to the warrant of arrest, Mr Mbarushimana is allegedly criminally responsible, under article 25(3)(d) of the Rome Statute of the ICC, for five counts of crimes against humanity (murder, torture, rape, inhumane acts and persecution) and six counts of war crimes (attacks against the civilian population, destruction of property, murder, torture, rape and inhuman treatment) allegedly committed in the context of an armed conflict which waged in the Kivu Provinces of the Democratic Republic of the Congo in 2009.

### Decisions taken between 30 May - 3 June 2011

#### Decision on the Prosecution's request for the postponement of the confirmation hearing

Issued by Pre-Trial Chamber I on 31 May 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, the 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.

### Decisions taken between 30 May - 3 June 2011

#### Banda and Jerbo Case

#### Order requesting submissions on procedures to facilitate the fair and expeditious conduct of the proceedings following the Joint Submission of 16 May 2011

Issued by Trial Chamber IV on 30 May 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 a Trial Chamber. The trial started on 22 November 2010.

### Decisions taken between 30 May - 3 June 2011

#### Bemba Case

#### Order on the procedure relating to the submission of evidence

Issued by Trial Chamber III on 31 May 2011

#### Partly Dissenting Opinion of Judge Kuniko Ozaki on the Order on procedure relating to the submission of evidence

Issued by Trial Chamber III on 31 May 2011

#### 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



ICC President Sang-Hyun Song and the Hon Stephen Smith MP, Minister for Defence of Australia, at the seat of the Court in The Hague on 6 June 2011  
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### Australian Minister for Defence visits the ICC

On Monday, 6 June 2011, the Hon Stephen Smith MP, Minister for Defence of Australia visited the International Criminal Court (ICC). He met with the ICC President, Judge Sang-Hyun Song. Also attending the visit was H.E. Ms Lydia Morton, Ambassador of Australia in The Netherlands.

## Interacting with communities

### ICC opens Seminar on International Criminal Law and the Court in Kinshasa, DRC

On Saturday, 4 June 2011, the International Criminal Court (ICC) opened a six-day Seminar on International Criminal Law and the Court in Kinshasa, the Democratic Republic of the Congo (DRC).

Eleven law professors from Bangui, Central African Republic, and from Kinshasa, north and south Kivu, Kisangani, Lubumbashi, DRC are participating in the Seminar, which aims to encourage the teaching of a wider and more in-depth range of courses on International Criminal Law (ICL) and the International Criminal Court (ICC or the Court) in law universities.



Professor Xavier Philippe, international law professor at *Université Paul Cézanne – Aix Marseille III*, addressing an audience of international law and criminal law professors the first day of the seminar © ICC-CPI

## Calendar

JUNE 2011						
Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
		1	2	3	4	5
					ICC hosts Seminar on International Criminal Law and the ICC in Kinshasa, DRC	
6	7	8	9	10	11	12
		Prosecutor to brief the UN Security Council on the situation in Darfur, New York		ICC hosts Spanish-language version of Moot Court Competition		
ICC hosts Seminar on International Criminal Law and the ICC in Kinshasa, DRC						
13	14	15	16	17	18	19
20	21	22	23	24	25	26
ICC Vice-President Judge Fatoumata Dembele Diarra speaks at a Female Counsel Campaign event in Cameroon				ICC Vice-President Judge Fatoumata Dembele Diarra speaks at a Female Counsel Campaign event in Chad		
27	28	29	30			

The calendar is subject to last minute changes.