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ICC Weekly Update

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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.

Katanga and Ngudjolo Chui case

The Appeals Chamber upholds the decision on the admissibility of the case against Germain Katanga

On 25 September, 2009, the Appeals Chamber of the International Criminal Court (ICC) **dismissed** the appeal of Germain Katanga against Trial Chamber II's decision of 12 June which declared his case admissible before the ICC.

In February 2009, Mr Katanga filed a motion with Trial Chamber II challenging the admissibility of the case before the ICC. He submitted, amongst other things, that the Democratic Republic of the Congo (DRC) was able to prosecute him and that, accordingly, he should not be prosecuted before the ICC. He further submitted that the Prosecutor, when applying for a warrant of arrest, should have disclosed to the Pre-Trial Chamber certain documents indicating that Mr Katanga was under investigation in the DRC, which, he claimed, made the case inadmissible before the Court. On 12 June, the Trial Chamber rejected the challenge. The Defence appealed this decision.



Germain Katanga at the hearing ©ICC-CPI

On 25 September, 2009, Judge Daniel David Ntanda Nsereko, acting as Presiding Judge, gave a summary of the Appeals Chamber's judgment in open court. He explained each of the five grounds for appeal and the Chamber's respective determinations:

- The Defence submitted that Trial Chamber II erred in considering that the challenge to admissibility was filed out of time and that it should have been filed prior to the "commencement of the trial". The Appeals Chamber noted that the appellant himself acknowledged that he did not suffer any prejudice from the Trial Chamber's allegedly erroneous interpretation of the Rome Statute, because the Trial Chamber decided to consider the merits of his admissibility challenge. Since there was no prejudice, the Appeals Chamber did not deem it necessary to consider the merits of this first ground of appeal.

- The Defence submitted that Trial Chamber II erred in considering that Pre-Trial Chamber I had determined the admissibility of the case on proper grounds, since the Prosecutor failed to disclose relevant documents concerning the attacks on Bogoro for which a warrant of arrest against Germain Katanga was requested. The Appeals Chamber considered that, were it to assess the merits of this second ground for appeal, it would, in effect, be assessing the correctness of the Pre-Trial Chamber's decision on the warrant of arrest, and not of the decision of the Trial Chamber, which was the subject of the appeal.
- The third and fourth grounds of appeal related to compliance with the principle of complementarity, under which priority is given to national systems. The ICC complements national criminal justice systems rather than replacing them. The Appeals Chamber found that the complementarity principle, as enshrined in the Statute, strikes a balance between safeguarding the primacy of domestic proceedings vis-à-vis the ICC, on the one hand, and, on the other, the goal of the Rome Statute to "put an end to impunity". If States do not or cannot investigate and, where necessary, prosecute, the ICC must be able to intervene. The Appeals Chamber also noted that, at the time of the admissibility proceedings in the present case, there were no proceedings against Mr Katanga in the DRC, whether for the crimes with which he is charged before this Court, or for other alleged crimes. On the contrary, the DRC has made it clear that it wished for him to be prosecuted before the ICC.
- Under the fifth ground of appeal, the Defence for Mr Katanga disputed the fact that a State can decide whether or not it is willing to prosecute international crimes "without the need to justify or explain its unwillingness". In the opinion of the Defence, that would lead to the accused being deprived of the right to effectively challenge the admissibility of the case based on a State being



Judge Daniel David Ntanda Nsereko at the hearing ©ICC-CPI

unable or unwilling to prosecute. However, the Appeals Chamber considered that this argument is misconceived, and held that whether or not a case is admissible is determined by the Court, which assesses the relevant facts against the criteria of article 17 of the Statute.

For these reasons, the Appeals Chamber upheld Trial Chamber II's decision of 12 June, 2009 and dismissed the appeal.

Germain Katanga was transferred to the ICC on 17 October 2007. The charges against him were confirmed by Pre-Trial Chamber I on 26 September 2008. He and Mathieu Ngudjolo Chui allegedly jointly committed, through other persons, crimes against humanity (murder; sexual slavery and rape) and war crimes (using children under the age of 15 to participate actively in hostilities; intentionally directing an attack against a civilian population as such or against individual civilians not taking direct part in hostilities; wilful killing; destruction of property; sexual slavery and

rape). The trial in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* is scheduled to commence on 24 November 2009.

Relevant links:

[ICC at a Glance, 25 September, 2009](#)

[Case Information Sheet The Prosecutor v. Germain Katanga and Mathieu Ngudjolo](#)

Decisions taken between 21 - 25 September 2009

Katanga and Ngudjolo Chui case

Motifs de la décision relative aux 345 demandes de participation de victimes à la procédure

Issued by Trial Chamber II on 23 September 2009

Décision complémentaire sur la situation du témoin 267

Issued by Trial Chamber II on 23 September 2009

Judgment on the Appeal of Mr. Germain Katanga against the Oral Decision of Trial Chamber II of 12 June 2009 on the Admissibility of the Case

Issued by the Appeals Chamber on 25 September 2009

Lubanga Dyilo case

Decision on the request by the legal representative of victims a/0001/06, a/0002/06, a/0003/06, a/0049/06, a/0007/08, a/0149/08, a/0155/07, a/0156/07, a/0404/08, a/0405/08, a/0406/08, a/0407/08, a/0409/08, a/0149/07 and a/0162/07 for admission of the final report of the Panel of Experts on the illegal exploitation of natural resources and other forms of wealth of the Democratic Republic of the Congo as evidence

Issued by Trial Chamber I on 22 September 2009

Situation in the Central African Republic (CAR)

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.

Decisions taken between 21 - 25 September 2009

Bemba Case

Decision notifying the election of the Presiding Judge in the case against Mr Jean-Pierre Bemba Gombo

Issued by Trial Chamber III on 23 September 2009

Situation in Darfur, Sudan

In the situation in Darfur, Sudan, three cases are being heard: *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*; and *The Prosecutor v. Bahr Idriss Abu Garda*. Three warrants of arrest have been issued by Pre-Trial Chamber I for Harun, Kushayb and Al Bashir for crimes against humanity and war crime. The three suspects remain at large. A summons to appear was issued for Abu Garda who appeared voluntarily before the Chamber on 18 May 2009. Abu Garda is not in the custody of the ICC.

Decisions taken between 21 - 25 September 2009

Abu Garda case

Decision on the Defence's Urgent Application for an ex parte hearing and rescheduling the hearings to be held on 23 September 2009

Issued by Pre-Trial Chamber I on 22 September 2009

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 at our [Youtube channel](#).

Interacting with communities

Outreach Team in Kinshasa holds training session for the legal community



Outreach Team holds training session for lawyers of Kinshasa, 21 and 23 September 2009 ©ICC-CPI

On 21 and 23 September, the Outreach Team based in Kinshasa held a training and information session for the lawyers of the two Bars of Kinshasa. Two hundred lawyers participated in this activity, aimed at reinforcing the capacity of the legal community with respect to the ICC, and preparing them for the upcoming opening of the Germain Katanga and Mathieu Ngudjolo Chui trial. The themes included, among others, a general presentation of the ICC and of the ongoing cases, the implementation of the Rome Statute by the Congolese military tribunals, victims' rights and the role of lawyers before the Court.