



5 September 2011 #93 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 in 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. The confirmation of charges hearing in the case *The Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang* commenced on 1 September 2011. The confirmation of charges hearing in the case *The Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali* is scheduled to commence on 21 September 2011.

Appeals Chamber confirms the admissibility of the cases

On 30 August 2011, the Appeals Chamber of the International Criminal Court (ICC) confirmed Pre-Trial Chamber II's decisions of 30 May 2011 on the admissibility of the 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* (the decisions are available [here](#) and [here](#)) and dismissed the appeals filed by the Government of Kenya.

Judge Daniel David Ntanda Nsereko, the presiding judge for these appeals, delivered a summary of the judgments in open session. The judge indicated that no legal, factual or procedural error could be discerned in the Pre-Trial Chamber's decisions of 30 May 2011. He explained that, for the cases to be inadmissible, a national investigation must be ongoing and must cover the same individuals and substantially the same conduct as alleged in the proceedings before the ICC. Furthermore, the Appeals Chamber considered that the Pre-Trial Chamber made no error when it found that the Government of Kenya had failed to provide sufficient evidence to substantiate that it was investigating the six suspects for the crimes alleged in the summonses to appear issued for them.

The judgments were adopted by majority, with Judge Anita Ušacka dissenting. The dissenting opinion will be filed in due course.

Further information on the Kenyan situation and cases before the ICC is available [here](#).

Ruto, Kosgey and Sang Case

Nairobi: ICC legal representative consults with Kenyan victims on identity disclosure and clarifies distinction between victims and witnesses

From 22 to 24 August 2011, a Court-appointed legal representative of victims, Ms Sureta Chana, held consultations in Nairobi, Kenya, with approximately 100 of the 327 victims authorised to participate in the proceedings in the case *The Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joseph Arap Sang* before the International Criminal Court (ICC). Items discussed included permission to disclose victims' identities to case parties, the reasons behind the new appointment of a common legal representative and the victims' concerns for their personal safety.

In line with a Pre-Trial Chamber II order, Ms Chana led the consultations with assistance from the Victims Participation and Reparations Section (VPRS) of the ICC Registry, and organised it in conjunction with civil society organisations in Kenya.

The consultations were held primarily to confirm whether or not the victims consented to having their identities disclosed to the Defence or the public. Ms Chana also noted that non-disclosure of the victims' identities will not be detrimental to the rights of the Defence, as the victims will not seek to lead evidence or testify during the upcoming confirmation of charges hearing. On the other hand, maintaining confidentiality will reassure victims of their security during and after the confirmation of charges hearing.

As Ms Chana recently replaced a number of former legal representatives of the victims, the meetings were also an occasion for VPRS to explain to the victims the reasons for this change, and to explain the process by which she was appointed. Ms Chana expressed her gratitude to the intermediaries as well as the lawyers who had been working with the victims of the post-election violence in order to enable the victims to exercise their rights before the ICC.

During the meetings, the victims expressed concerns about their personal safety, reporting instances of threats or coercion from within their communities, since they have been wrongly perceived as witnesses rather than victims. In response, the Court is providing protection as necessary to the victims and witnesses. Ms Chana concluded the meetings by promising to raise the views and concerns of the victims before the Court and to "keep the Chamber apprised of the constantly evolving security situation surrounding [her] clients".

A victim participating in ICC proceedings is a person who has suffered harm as a result of a commission of a crime within the jurisdiction of the Court. A witness testifies before the Court, either on behalf of the Prosecution or Defence. Victims have no obligation to testify. Victims' participation allows them to express a position independent from both the Prosecution and the Defence and to express their own concerns and views, allowing for their voices to be heard in the courtroom. Victims' participation is among the most important innovations of the Rome Statute of the ICC. At present, 327 victims have been authorised by Pre-Trial Chamber II to participate in the proceedings in the case against Ruto, Kosgey and Sang. The confirmation of charges hearing in this case started on 1 September 2011.

Decisions taken between 29 August - 2 September 2011

Decision on the "Defence Request for Leave to Appeal the 'Urgent Decision on the 'Urgent Defence Application for Postponement of the Confirmation Hearing and Extension of Time to Disclose and List Evidence' (ICC-01/09-01/11-260)'"

Issued by Pre-Trial Chamber II on 29 August 2011

Decision on the "Defence Request pursuant to Rule 124(1) for Mr. William Ruto to Waive his Right to be Present for part of the Confirmation of charges Hearing"

Issued by Pre-Trial Chamber II on 29 August 2011

Order to the Registrar to Provide Independent Legal Advice to Witnesses

Issued by Pre-Trial Chamber II on 30 August 2011

Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 entitled "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 the Appeals Chamber on 30 August 2011

Decision on the "Request by the Government of Kenya in respect of the Confirmation of Charges Proceedings"

Issued by Pre-Trial Chamber II on 1 September 2011

Muthaura, Kenyatta and Ali Case

Decision Requesting Observations on the Schedule for the Confirmation of Charges Hearing

Issued by Pre-Trial Chamber II on 30 August 2011

Decision on the Presiding Judge of the Appeals Chamber in the appeal of the Prosecutor against the decision of Pre-Trial Chamber II entitled "Decision with Respect to the Question of Invalidating the Appointment of Counsel to the Defence"

Issued by the Appeals Chamber on 30 August 2011

Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 entitled "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 the Appeals Chamber on 30 August 2011

Decision on the Defence Applications for Leave to Appeal the Single Judge's Order to Reduce the Number of Viva Voce Witnesses

Issued by Pre-Trial Chamber II on 1 September 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 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 the case *The Prosecutor v. Callixte Mbarushimana* is scheduled to start on 16 September 2011.

Decisions taken between 29 August - 2 September 2011

Lubanga Dyilo Case

Decision reviewing the Registry's decision on legal assistance for Mr Thomas Lubanga Dyilo pursuant to Regulation 135 of the Regulations of the Registry

Issued by Trial Chamber I on 30 August 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 29 August - 2 September 2011

Bemba Case

Summary of the Decision on the "Demande de mise en liberté provisoire de M. Jean-Pierre Bemba Gombo afin d'accomplir ses devoirs civiques en République Démocratique du Congo"

Issued by Trial Chamber III on 30 August 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 Philippines becomes the 117th State to join the Rome Statute system



From left to right in this photo: Her Excellency, Senator Loren Legarda, President of the Senatorial Committee of Foreign Affairs (Philippines); His Excellency, Mr Libran N. Cabactulan, Ambassador Extraordinary and Plenipotentiary, Permanent Representative of the Republic of the Philippines; Ms Arancha Hnojál, Legal Officer, Treaty Section, United Nations Office of Legal Affairs; Mr Andrei Kolomoets, Officer-in-Charge, Treaty Section, United Nations Office of Legal Affairs

On 30 August 2011, at the United Nations Office of Legal Affairs in New York, the government of the Republic of the Philippines deposited its instrument of ratification to the **Rome Statute** of the International Criminal Court (ICC). The Statute will enter into force for the Philippines on 1 November 2011, bringing the total number of States that have joined the Rome Statute system to 117.

ICC President Sang-Hyun Song, who visited the Philippines and other Southeast Asian countries in March to facilitate informed consultations regarding the ratification of the Rome Statute, applauded this move. Speaking from the seat of the Court in The Hague, he stated: "This act is yet another indication of Asia's growing role in the international community's efforts to put an end to impunity for the most serious crimes of concern to humanity. I send my heartfelt congratulations to all those in the Philippines who worked hard to make this day possible, and I hope that this historic decision will serve to dispel unfounded concerns about joining the ICC among other Asian nations".

The ratification by the Philippines reaffirms the Southeast Asian region's solid commitment to international criminal justice in general and, in particular, the ICC, which is the first permanent international court set up to prosecute individuals for genocide, crimes against humanity, war crimes and the crime of aggression.

Calendar

SEPTEMBER 2011						
Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
5	6	7	8	9	10	11
12	13	14	15	16 Confirmation of charges hearing to commence in the case <i>The Prosecutor v. Callixte Mbarushimana</i> (scheduled until 20 September)	17	18 Open Day: ICC opens its doors on The Hague International Day
19	20	21	22	23	24	25
ICC to host Regional Seminar "Understanding the ICC system" in Tunisia					24	25
		Confirmation of charges hearing to commence in the case <i>The Prosecutor v. Francis Kirihi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali</i> (scheduled until 11 October)		ICC to launch the "Calling Arab Lawyers" campaign in Tunisia		
26	27	28	29	30		

The calendar is subject to last minute changes.