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# ICC Weekly Update

6 April 2010 #28



## Situation in the Republic of Kenya

The Republic of Kenya ratified the Rome Statute on 15 March, 2005, becoming a State Party. On 6 November, 2009, upon receiving a letter from the Prosecutor indicating his intention to submit a request for the authorisation of an investigation *proprio motu*, the International Criminal Court's Presidency issued a decision assigning the situation in the Republic of Kenya to Pre-Trial Chamber II. On 26 November, 2009, the Prosecutor submitted a request to Pre-Trial Chamber II for the authorisation of an investigation into that situation in relation to the post-election violence of 2007-2008.

### ICC judges grant the Prosecutor's request to launch an investigation on crimes against humanity with regard to the situation in Kenya

On 31 March, 2010, Pre-Trial Chamber II, by majority, granted the Prosecutor's request to commence an investigation on crimes against humanity allegedly committed in the Republic of Kenya.

In the decision, the majority found that upon examination of the available information, bearing in mind the nature of the proceedings under article 15 of the Statute, the low threshold applicable at this stage, as well as the object and purpose of this decision, the information available provided a reasonable basis to believe that crimes against humanity have been committed on Kenyan territory. The majority moreover found that all criteria for the exercise of the Court's jurisdiction were satisfied, to the standard of proof applicable at this stage.

The majority therefore granted the Prosecutor's request, and allowed him to commence an investigation covering alleged crimes against humanity committed during the events that took place between 1 June, 2005 (i.e., the date of the Statute's entry into force for the Republic of Kenya) and 26 November, 2009 (i.e., the date of the filing of the Prosecutor's Request).

In his dissenting opinion, Judge Hans-Peter Kaul held that the crimes committed in the Republic of Kenya do not qualify as crimes against humanity under the jurisdictional ambit of the Statute. In particular, Judge Kaul disagreed with the majority on the requirements of a "State or organisational policy" as set out in a Article 7(2)(a) of the Statute. Given the fact that the fundamental rationale of crimes against humanity as codified in a Article 7 of the Statute was to protect the international community against the extremely grave threat emanating from such policies, Judge Kaul concluded that it had to be adopted either by a State or at the policy-making level of a State-like organisation. Upon analysis of the supporting material, Judge Kaul concluded that there was no reasonable basis to believe that the crimes committed on the territory of the Republic of Kenya in relation to the post-election violence of 2007-2008 were committed in an attack against a civilian population pursuant to or in furtherance of a policy stemming from a State or an organisation. Hence, Judge Hans-Peter Kaul felt unable to authorise the commencement of an investigation in the Republic of Kenya.

On 1 April, 2010, the Prosecutor of the International Criminal Court (ICC), Luis Moreno-Ocampo held a press conference at the seat of the Court, in The Hague.

During the press conference, the Prosecutor laid out the precise next steps the Office will take to investigate crimes committed during the post election violence in Kenya in 2008.

### Background information

The Republic of Kenya ratified the Rome Statute on 15 March, 2005 becoming a State Party on 1 June, 2005. According to the Rome Statute, the Court may exercise its jurisdiction in situations where the alleged perpetrator is a national of a State Party or where the crime was committed in the territory of a State Party.

On 6 November, 2009, the Presidency of the ICC issued a decision assigning the situation in the Republic of Kenya to Pre-Trial Chamber II composed of Judges Ekaterina Trendafilova, Hans-Peter Kaul and Cuno Tarfusser. If the Prosecutor intends to commence an investigation *proprio motu* in the Kenyan situation, he must first obtain authorisation from this Chamber. That is what the Prosecutor sought for on 26 November 2009 filing his request together with 39 appended annexes in approximately 1,500 pages.

### Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya

#### Questions and Answers

**YouTube video: The ICC launches investigation related to the situation in Kenya**

**Prosecutor Moreno-Ocampo's Statement, 1 April, 2010**

## 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. 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.

### Decisions taken between 29 March and 2 April, 2010

#### Lubanga Dyilo Case

##### Order on the procedure for suggested interpretation errors

Issued by Trial Chamber I on 1 April, 2010

## Situation in the Central African Republic

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 is scheduled to start on 5 July, 2010.

### Decisions taken between 29 March and 2 April, 2010

#### Bemba Gombo Case

##### Decision on the review of the detention of Mr Jean-Pierre Bemba Gombo pursuant to Rule 118(2) of the Rules of Procedure and Evidence

Issued by Trial Chamber III on 1 April, 2010

### 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](#).

### Events

#### ICC President discussed matters of co-operation with UN Secretary-General and other officials

Between 22 and 26 March, the President of the International Criminal Court (ICC), Judge Sang-Hyun Song, met in New York with United Nations (UN) Secretary-General, Ban Ki-moon and senior UN officials, to discuss developments of co-operation between the Court and the UN.



**President Song and the UN Secretary General Ban Ki-Moon** ©UN Photo/Paulo Filgueiras

President Song reiterated the excellent and close cooperation between the Court and the UN, which is governed by a Relationship Agreement, signed in 2004, in accordance with article 2 of the Rome Statute.

The President expressed his appreciation for the UN's role in convening the Review Conference in Kampala, Uganda, taking place between 31 May and 11 June this year, and for the Secretary-General's commitment to attend, as well as for his pledge for UN logistical support at the Conference. More detailed aspects of logistical support were discussed separately with the Under-Secretary-General of the Department of Peacekeeping Operations, Alain Le Roy.

President Song met with the Under-Secretary-General for Legal Affairs, Patricia O'Brien, expressing the Court's openness to discussing how it could support the residual mechanisms and archives of the closing ad hoc tribunals,

the ICTY and the ICTR.

While in New York, President Song addressed a meeting of Pacific Ocean States and a group of Permanent Representatives of African States to the UN and held a series of bilateral meetings with Permanent Representatives to the UN. President Song also delivered a speech on "The International Criminal Court and Asia" at the Council on Foreign Relations and addressed the 7th Annual Meeting of the Board of Directors of the Trust Fund for Victims.

#### International Criminal Court launches video channel on YouTube

The International Criminal Court (ICC) launched its **official YouTube channel**, to make information on the Court and its activities more accessible, and bring it closer to the general public. The use of YouTube is the first step of new communication efforts that will guarantee more diverse and transparent ways of bringing developments about the ICC to the world.

The video channel allows viewers to follow in particular the various cases before the ICC, thanks to weekly, uploaded summaries of the proceedings under the title *In the Courtroom*. The playlist *In the Field* includes Court outreach activities conducted in situation-related countries. Also available are the popular programmes, *Ask the Court* with responses to frequently asked questions, and at *Meeting the Press*, conferences and briefings with journalists. Other Court related events and activities can also be found on the channel including, swearing-in ceremonies of elected officials and the welcoming of new States Parties to the Rome Statute. Videos are produced in English, French and Arabic.



**The ICC YouTube channel** ©ICC-CPI

The first ICC channel on YouTube began as a pilot project in August, 2008. With more than 10,000 views in the first six months it has proven to be a great success, and has enhanced the Court's visibility and communications reach. With additional content and an improved organisation of videos, the new ICC YouTube channel is more user-friendly. It also provides added background information on the content. Subscribers to the ICC YouTube channel will receive automatic updates of new videos regularly produced and uploaded by the ICC Public Information and Documentation Section.

In the upcoming months the Court will continue developing its online communications, utilizing amongst others, new media tools such as Flickr, for posting and downloading photos, and the social networking tool, Twitter, to send real-time updates on the Court and Court officials' activities. These new ICC online services will complement information currently available on the Court's website, which continues to be the main source of official information for the general public.

**ICC YouTube Channel:** [www.youtube.com/user/IntlCriminalCourt](http://www.youtube.com/user/IntlCriminalCourt)  
**ICC website:** [www.icc-cpi.int](http://www.icc-cpi.int)

**Interacting with communities**

**The Outreach Unit of the International Criminal Court gives lectures in universities of law in the Democratic Republic of the Congo**

As part of its academic outreach programme, the Outreach Unit held classes, from 9 to 31 March, 2010, on the International Criminal Court, at the following universities: *Université de Lubumbashi*, *Université Catholique de Bukavu* and the *Université Libre des Pays des Grands Lacs* in Goma, as well as the *Université de Kisangani*. This first round of activities launched a sustained partnership with these universities.



Over a period of three to five days, a representative from the Court lectured students in their final year of law studies at each of the universities visited on subjects such as: the principle of complementarity, the co-operation with States, the relationship between the Court, Africa and the United Nations, the mandate of the Office of the Prosecutor, the impact of the Rome Statute on Congolese law, the execution of warrants of arrest and developments in the proceedings before the Court.

Briefing law students at the *Université catholique de Bukavu* ©ICC-CPI

**Calendar**

APRIL 2010						
Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
05	06	07	08	09	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26 18 <sup>th</sup> Diplomatic Briefing at the ICC, The Hague	27	28	29	30		
MAY 2010						
					01	02
<b>Future events:</b> 31 May – 11 June: First Review Conference of the Rome Statute, Kampala, Uganda. 5 July: Trial of Jean-Pierre Bemba Gombo is scheduled to start.						

The calendar is subject to last minute changes.