

13 August 2012 #137
ICC Weekly Update



Situation in the Democratic Republic of the Congo

The Democratic Republic of the Congo (DRC) ratified the Rome Statute, the founding instrument of the ICC, on 11 April 2002. On 3 March 2004, the Government of the DRC referred to the Court the situation (the events falling under the Court's jurisdiction) in its territory since the entry into force of the Rome Statute on 1 July 2002. After a preliminary analysis, the Prosecutor initiated an investigation on 21 June 2004. In this situation, five 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*; *The Prosecutor v. Callixte Mbarushimana*; and *The Prosecutor v. Sylvestre Mudacumura*. Thomas Lubanga Dyilo, Germain Katanga and Mathieu Ngudjolo Chui are currently in the custody of the ICC. The suspects Bosco Ntaganda and Sylvestre Mudacumura remain 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. He was thereafter **sentenced** to a total period of 14 years of imprisonment. On 7 August 2012, Trial Chamber I issued a **decision** on the principles and the process to be implemented for reparations to victims in the case. 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.

Lubanga Case



Mr Thomas Lubanga Dyilo in ICC Courtroom I for his sentencing hearing on 10 July 2012 © ICC-CPI/Jerry Lampen/ANP

Lubanga case: Trial Chamber I issues first ICC decision on reparations for victims

On 7 August 2012, Trial Chamber I of the International Criminal Court (ICC) decided, for the first time in proceedings at the ICC, on the principles that are to be applied to reparations for victims in the context of the case against Thomas Lubanga Dyilo, who was found guilty, on 14 March 2012, of the war crimes of enlisting and conscripting children under the age of 15 and using them to participate actively in hostilities. He was sentenced on 10 July 2012 to a total of 14 years of imprisonment. The Chamber ordered that proposals for reparations, as advanced by the victims themselves, are to be collected by the Trust Fund for Victims and presented to a newly-constituted Trial Chamber I for approval. Reparations will then be implemented through the resources of the Trust Fund for Victims that are available for this purpose.

The Chamber, composed of Judge Adrian Fulford (United Kingdom), Judge Elisabeth Odio Benito (Costa Rica), and Judge René Blattmann (Bolivia), considered that it is of paramount importance that the victims, together with their families and communities, participate in the reparations process, and they should be able to express their particular points of view and communicate their priorities.

In accordance with the Chamber's decision, the potential beneficiaries of an order for reparations are the direct and indirect victims who suffered harm following the crimes of enlisting, conscripting and using children under the age of 15 in Ituri in the Democratic Republic of Congo (DRC), from 1 September 2002 to 13 August 2003. This includes the family members of direct victims, along with individuals who intervened to help the victims or to prevent the commission of these crimes.

The principles established by the Chamber particularly stress the need to ensure that reparations are implemented without any discrimination as regards age, ethnicity or gender, and they should be directed at reconciling the victims of child recruitment and their families and communities in Ituri, while preserving their dignity and privacy. Furthermore, the reparations measures are to be formulated taking into account the age of the victims and the sexual violence that they may have suffered, along with the need to rehabilitate the former child soldiers within their communities.

The Chamber has determined that in the present case reparations are to be implemented through the Trust Fund for Victims, within the limits of its resources. Trial Chamber I highlighted that in order for the reparations award to have effect, the States Parties – including particularly the DRC – and non-States Parties must cooperate, and the Trust Fund will need to receive sufficient voluntary contributions in order to be able to implement a meaningful and efficient reparations programme.

Mr Lubanga has been declared indigent and no assets or property referable to him have been identified to date. It is open to Mr Lubanga to volunteer an apology to the victims, on a public or confidential basis. The Chamber considered that other symbolic reparations may be appropriate; indeed, it decided that Mr Lubanga's conviction and his sentence are examples of relevant symbolic reparations given these events are likely to have significance for the victims and their families and communities. Other forms of reparations may include campaigns to improve the position of victims; issuing certificates that acknowledge the harm they suffered; and outreach and promotional activities, along with educational programmes, which provide information and are directed at reducing the stigmatisation and marginalisation of the victims, avoiding discrimination of any kind.

The Trust Fund for Victims has been created by the Assembly of States Parties to the Rome Statute. Its resources are primarily generated through voluntary contributions by States, as well as by private donations. Two mandates govern the activities of the Fund. Under the assistance mandate, which does not depend on the outcome of judicial proceedings before the ICC, the Trust Fund for Victims provides physical or psychological rehabilitation or material support for the benefit of victims, and their families, of crimes within the jurisdiction of the ICC. Over the past four years, activities under the assistance mandate have benefited over 80,000 victims, including in Ituri. With the Chamber's decision on reparations, the mandate of the Trust Fund for Victims to design and implement reparations will be activated for the first time in its history.

Lubanga case, questions and answers on the decision on reparations (YouTube)

[Video](#)

[Audio](#)

Trust Fund for Victims welcomes first ICC reparations decision, ready to engage

On 7 August 2012, the International Criminal Court (ICC) issued its first ever decision on reparations for victims, in the case against Thomas Lubanga, who had earlier been convicted for enlisting and conscripting children under the age 15 years and using them to participate actively in hostilities.

Elisabeth Rehn, Chair of the Board of the Trust Fund for Victims (TFV), hails the decision as "a historic milestone for victims of international crimes". She welcomes the important role and responsibilities given by the Court to the Fund to consult with victims and their communities for the design and implementation of appropriate collective reparations measures. Ms Rehn also says that, to repair harm after mass victimisation, adequate resources are required for the TFV.

The TFV is strongly committed to engage with the Court, independent experts, the Government of the Democratic Republic of Congo (DRC), civil society, affected communities and victims themselves to make reparations a reality for the victims in the Lubanga case. Ms Rehn calls on all parties, including local authorities and community leadership, to lend their support in making reparations to victims in this case a meaningful undertaking.

The decision of Trial Chamber I sets out important principles for reparations before the ICC, confirming that victims should be at the centre of reparation proceedings, and that the needs of vulnerable victims, including women, children, and victims of sexual and gender-based violence, must be addressed as a priority. It also maintains that reparations should promote, whenever possible, reconciliation. The TFV strongly appreciates the stipulation by the Chamber that gender- and child-sensitive measures are required to ensure equal access to justice, and full participation in reparations programs.

As requested by the Chamber, the TFV will hold consultations with victims and their communities at localities in Ituri (DRC) affected by the crimes, including an assessment of harm to be undertaken by a group of multi-disciplinary experts. This inclusive process is expected to result in plans for collective reparations measures, which the TFV will subsequently submit to the Chamber for approval. Upon receiving approval by the Chamber, the Fund will begin to implement the reparations measures in cooperation with the victims and affected communities.

The TFV manages its resources, mostly originating from voluntary contributions by States, in such a way as to be able to complement Court-ordered reparations in the case that a convicted person is declared indigent. In light of the Chamber considering Mr Lubanga to be indigent for the purpose of reparations, the Board of Directors of the Trust Fund for Victims confirms its intent to finance the reparation awards in line with the decision, and in consideration of the availability of resources.

The Fund's current reserve for reparations amounts to 1.2 million euros, which is about one third of its total resources. The reparations reserve of the TFV is maintained with a view to complement reparations awards that may result from all cases pending before the Court. So far, the Court has received over 8,000 applications for reparations overall. In the Lubanga case, 85 victims have applied for reparations, while many more may be eligible.

Background: The Trust Fund for Victims (TFV)

The Trust Fund for Victims (TFV) is the first of its kind in the global movement to end impunity and promote justice. At the end of one of the bloodiest centuries in human history, the international community made a commitment to end impunity, help prevent the gravest crimes known to humanity and bring justice to victims with the adoption of the Rome Statute. In 2002, the Rome Statute came into effect and the Assembly of States Parties established the TFV under article 79 of the Rome Statute, to benefit victims of crimes and their families within the jurisdiction of the International Criminal Court (ICC). These crimes are genocide, crimes against humanity, war crimes – and in the future, crimes of aggression.

The TFV addresses and responds to the physical, psychological, or material needs of the most vulnerable victims. It raises public awareness and mobilizes people, ideas and resources. It funds innovative projects through intermediaries to relieve the suffering of the often forgotten survivors. The TFV works closely with NGOs, community groups, women's grassroots organisations, governments, and UN agencies at local, national, and international levels. By focusing on local ownership and leadership, the TFV empowers victims as main stakeholders in the process of rebuilding their lives

With the unique roles of implementing both Court-ordered and general assistance to victims of crimes under the ICC's jurisdiction, the Trust Fund for Victims offers key advantages for promoting lasting peace, reconciliation, and wellbeing in war-torn societies. The TFV fulfils two mandates for victims of crimes under jurisdiction of the ICC:

1. Reparations: implementing Court-ordered reparations awards against a convicted person when directed by the Court to do so.
2. General Assistance: using voluntary contributions from donors to provide victims and their families in situations where the Court is active with physical rehabilitation, material support, and/or psychological rehabilitation.

Currently, the TFV is providing a broad range of support under its second mandate in northern Uganda and the Democratic Republic of Congo – including access to reproductive health services, vocational training, trauma-based counselling, reconciliation workshops, reconstructive surgery and more – to an estimated 80,000 victims of crimes under the ICC's jurisdiction. Most of our projects have incorporated both gender-specific and child-specific interventions to support the special vulnerability of women, girls, and boys.

There are currently seven situations before the ICC, in Northern Uganda, Democratic Republic of Congo (DRC), Darfur, Central African Republic (CAR), Kenya, Libya and Cote d'Ivoire, which means that, with your help, the TFV can assist thousands of victims who come under the jurisdiction of the Court.

Source: Trust Fund for Victims

Decisions taken between 16 July - 10 August 2012

Decision establishing the principles and procedures to be applied to reparations

Issued by Trial Chamber I on 7 August 2012

Katanga and Ngudjolo Chui Case

Decisions taken between 16 July - 10 August 2012

Decision on the Defence Application for Disclosure of Confidential Documents to Dutch Asylum Lawyers Representing Pitchou Iribi and Ndjabu Ngabu

Issued by Trial Chamber II on 20 July 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. On 22 February 2012, Pre-Trial Chamber III decided to expand its authorisation for the investigation in Côte d'Ivoire to include crimes within the jurisdiction of the Court allegedly committed between 19 September 2002 and 28 November 2010. The date for 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, will be announced in due course.

Gbagbo Case

Opening of the confirmation of charges hearing is postponed

On 2 August 2012, Pre-Trial Chamber I of the International Criminal Court (ICC) postponed the confirmation of charges hearing in the case against Laurent Gbagbo until the issue of Mr Gbagbo's fitness to take part in it is resolved. The commencement of the confirmation of charges hearing was initially scheduled for 13 August 2012.

Upon the Defence's request, the Chamber appointed, on 26 June 2012, three medical experts to proceed with the medical evaluation of Mr Gbagbo with a view to determining whether he is fit to take part in the proceedings against him. The confidential medical reports were filed on 19 July. In its decision on 2 August, the Chamber ordered the Prosecutor and the Defence to submit their observations on the reports, respectively, by 13 and 21 August. In light of the importance of the issue, the Chamber decided to postpone the confirmation of charges hearing until such issue is resolved.

Decisions taken between 16 July - 10 August 2012

Decision on the "Requête de la Défense demandant la mise en liberté provisoire du président Gbagbo"

Issued by Pre-Trial Chamber I on 16 July 2012

Decision on the schedule for the confirmation of charges hearing and related issues

Issued by Pre-Trial Chamber I on 16 July 2012

Decision on the "Requête de la Défense aux fins d'expurgation de deux attestations" and the "Demande aux fins de mesures de protection"

Issued by Pre-Trial Chamber I on 26 July 2012

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 16 July - 10 August 2012

Bamba Case

Public redacted version of "Decision on the tenth and seventeenth transmissions of applications by victims to participate in the proceedings"

Issued by Trial Chamber III on 19 July 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.

Decisions taken between 16 July - 10 August 2012

Saif Al-Islam and Al-Senussi Case

Decision on the OPCD "Request Pursuant to Regulation 23bis of the Regulations of the Court"

Issued by Pre-Trial Chamber I on 18 July 2012

Decision on the "Libyan Government Application for leave to reply to any Response/s to article 19 admissibility challenge"

Issued by Pre-Trial Chamber I on 26 July 2012

Decision shortening the time limit for responses to the "Libyan Government Request for Status Conference and Extension of Time to file a Reply to the Responses to its Article 19 Admissibility Challenge"

Issued by Pre-Trial Chamber I on 1 August 2012

Decision on the "Libyan Government Request for Status Conference and Extension of Time to file a Reply to the Responses to its Article 19 Admissibility Challenge"

Issued by Pre-Trial Chamber I on 9 August 2012

Statement by ICC Prosecutor Fatou Bensouda on the Malian State referral of the situation in Mali since January 2012

On 18 July 2012, I received a delegation from the Government of Mali led by the Minister of Justice, H.E. Malick Coulibaly. The delegation transmitted a letter by which the Government of Mali, as a State Party to the ICC, refers "the situation in Mali since January 2012" to my Office and requests an investigation to determine whether one or more persons should be charged for crimes committed. The Government of Mali submits that the Malian courts are unable to prosecute or try the perpetrators. The Malian delegation also provided documentation in support of the referral.

The referral by the Government of Mali, which is the fourth referral by an African State Party, follows the 30 May 2012 decision by the Malian Cabinet to refer the situation to the ICC. It is in line with the 7 July 2012 request to the ICC by the ECOWAS Contact Group of Mali (composed of Benin, Burkina Faso, Côte d'Ivoire, Liberia, Niger, Nigeria and Togo) to "launch the necessary enquiries in order to identify the perpetrators of these war crimes and to initiate the necessary legal proceedings against them."

My Office has been following the situation in Mali very closely since violence erupted there around 17 January 2012. On 24 April, as instances of killings, abductions, rapes and conscription of children were reported by several sources, I reminded all actors of ICC jurisdiction over Rome Statute crimes committed on the territory of Mali or by Malian nationals. On 1 July, I stressed that the deliberate destruction of the shrines of Muslim saints in the city of Timbuktu may constitute a war crime under Article 8 of the Rome Statute.

I have instructed my Office to immediately proceed with a preliminary examination of the situation in order to assess whether the Rome Statute criteria stipulated under Article 53.1 for opening an investigation are fulfilled. I will make a public decision in due course.

Referral letter by the Government of Mali

Source: *Office of the Prosecutor*

Decisions taken between 16 July - 10 August 2012

Decision Assigning the Situation in the Republic of Mali to Pre-Trial Chamber II

Issued by the Presidency on 19 July 2012

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

TFV publishes Summer 2012 Report

Empowering victims and their communities toward positive change in their lives is an inspirational journey. This Summer 2012 report illustrates the unique road traveled by the Trust Fund for Victims and its partners towards articulating and achieving reparative justice for victims, whether or not in a context of resurgence of violence. It includes country-level assessments of the Fund's outlook in Uganda and the DRC. You will also find a summary of the Fund's submission to Trial Chamber I on the principles and procedural issues to be addressed in a reparations phase in the Lubanga case – the first ever before the ICC.

TFV Summer 2012 Programme Progress Report

Source: *Trust Fund for Victims*

Calendar

AUGUST 2012						
Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		
Judge Kaul to speak on "The ICC at Ten – current challenges and perspectives of International Criminal Justice", the Sixth Annual International Humanitarian Law Dialogs, Chautauqua (US)*						
	Judge Trendafilova to speak at the 75 th International Law Association Conference, Sofia (Bulgaria) Judge Steiner to speak at an International Law Seminar on the ICC, Universidade de São Paulo (Brazil)*	Judge Steiner to speak at the 18 th International Seminar of IBCCRIM, São Paulo (Brazil)*	Judge Steiner to speak at "The International Criminal Court: <i>Dez Anos de Luta</i> ", Universidade Noce de Julho, São Paulo (Brazil)*			
SEPTEMBER 2012						
Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
					1	2
3	4	5	6	7	8	9

The calendar is subject to last-minute changes.

*The ICC is grateful to the organizers for covering the costs of the Court's participation.