



25 October 2010 #52
ICC Weekly Update



Situation in Darfur, Sudan

In the situation in Darfur, Sudan, four 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*; *The Prosecutor v. Bahar Idriss Abu Garda*; and *The Prosecutor v. Abdallah Banda Abakaer Nourain* (Banda) and *Saleh Mohammed Jerbo Jamus* (Jerbo). Four warrants of arrest have been issued by Pre-Trial Chamber I for Harun, Kushayb and Al Bashir. 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. After the hearing of confirmation of charges, on 8 February, 2010, Pre-Trial Chamber I declined to confirm the charges. 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 is scheduled for 8 December, 2010.

Confirmation of charges hearing in the case against Banda and Jerbo to start on 8 December, 2010

On 22 October, 2010, Pre-Trial Chamber I of the International Criminal Court (ICC) decided to reschedule the confirmation of charges hearing in the case of *The Prosecutor v. Abdallah Banda Abakaer Nourain* (Banda) and *Saleh Mohammed Jerbo Jamus* (Jerbo) to Wednesday, 8 December, 2010, in light of developments that have occurred in the composition of Chambers and of the Court schedule, as well as of the number of courtrooms which are available to the Court. The hearing was initially scheduled to start on 22 November, 2010.



Banda and Jerbo © ICC-CPI/ Toussaint Kluiters

The confirmation hearing is held to ensure that no case goes to trial unless there is sufficient evidence to establish substantial grounds to believe that the person committed the crime with which he or she has been charged. The suspects have the right to attend the hearing or, in their absence, be represented by counsel. Pre-Trial Chamber I decided that, should the suspects intend to waive their right to be present at the confirmation hearing, the written request to the Chamber in this regard must be submitted no later than Monday, 8 November, 2010.

Mr Banda and Mr Jerbo are charged with three war crimes (violence to life, in the form of murder, whether committed or attempted; intentionally directing attacks against personnel, installations, materials, units, and vehicles involved in a peacekeeping mission; and pillaging) allegedly committed during an attack carried out on 29 September, 2007, against the African Union Mission in Sudan (AMIS), a peace-keeping mission stationed at the Haskanita Military Group Site, in the locality of Umm Kadada, North Darfur. It is alleged that the attackers killed 12 and severely wounded 8 soldiers, destroyed communications facilities and other materials and appropriated property belonging to AMIS.

Decisions taken between 18 - 22 October, 2010

Decision postponing the confirmation hearing and setting a deadline for the submission of the suspects' written request to waive their right to attend the confirmation hearing

Issued by Pre-Trial Chamber I on 22 October, 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, initially scheduled to start on 14 July, 2010, is now scheduled to start on 22 November, 2010.

The Appeals Chamber dismisses Mr Bemba's appeal against the decision on the admissibility of his case

On Tuesday, 19 October, 2010, the Appeals Chamber of the International Criminal Court (ICC) confirmed the decision of Trial Chamber III entitled 'Decision on the Admissibility and Abuse of Process Challenges' and dismissed Jean-Pierre Bemba Gombo's appeal against this decision. This judgment confirms that the case against Mr Bemba is admissible.

On 24 June, 2010, Trial Chamber III had dismissed the admissibility and abuse of process challenges, raised by the Defence. The latter filed an appeal against this decision on 28 June and submitted a document in support of his appeal, raising four grounds to appeal, on 26 July, 2010.



Judge Anita Ušacka; Jean-Pierre Bemba Gombo © ICC-CPI

On 19 October, 2010, Judge Anita Ušacka, Presiding Judge in this appeal, delivered an oral summary of the Appeals Chamber judgment. She recalled that article 17(1)(b) of the Rome Statute provides that a case is inadmissible before the ICC where the case has been investigated by a State which has jurisdiction over it, and the State has decided not to prosecute the person concerned, unless that decision resulted from the unwillingness or inability of the State genuinely to prosecute.

Judge Ušacka explained that the Appeals Chamber dismissed Mr Bemba's ground of appeal in which he argued that Trial Chamber III erred in deciding that the case is admissible before the ICC, because it concluded that an order issued by the Bangui Regional Court's Senior Investigating Judge on 16 September, 2004 in the Central African Republic, did not constitute a 'decision not to prosecute' within the meaning of article 17(1)(b) of the Rome Statute. This Order had dismissed the charges against Mr Bemba, which concerned the events that now form the basis of the charges against him before the ICC. Judge Ušacka summarised the procedural history of the proceedings against Mr Bemba before the Central African courts, and indicated that the Court of Appeals and the Court of Cassation in Bangui expressly reversed the Senior Investigating Judge's Order, upheld the charges against Mr Bemba, and ruled that the case against Mr Bemba should be referred by the competent authorities in the Central African Republic to the ICC. On 21 December, 2004, the Government of the Central African Republic referred to the ICC the crimes within the jurisdiction of the Court committed anywhere in its territory since 1 July, 2002.

The Presiding Judge explained that the Order of the Senior Investigating Judge was not a 'decision not to prosecute', within the meaning of article 17(1)(b) of the Rome Statute, because it was not the final decision in the case before the Central African Republic courts. She also underlined that the Appeals Chamber has previously held on 25 September, 2009, in a judgment also relating to the admissibility of the case in the *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, that a 'decision not to prosecute' does not cover decisions to close judicial proceedings in order to refer the matter to the International Criminal Court.

Judge Ušacka clarified that the question as to whether the decision resulted from the unwillingness or inability of the State genuinely to prosecute only arises once it has been established that there was a 'decision not to prosecute'. Since there was no 'decision not to prosecute' Mr Bemba before the Central African authorities, the Appeals Chamber would not consider Mr Bemba's arguments that the Trial Chamber erred in deciding that the Central African Republic was unable genuinely to prosecute.

Finally, the Appeals Chamber also dismissed Mr Bemba's arguments that Trial Chamber III erred in rejecting his request to provide evidence from an expert on the application of the law of the Central African Republic and in deciding that his submissions made before the courts of the Central African Republic in April 2010 constituted an 'abuse of this court's process'. The Presiding Judge recalled that the Appeals Chamber has previously held, in a judgment also relating to the admissibility of the case in the *Prosecutor v. Joseph Kony et. al.*, that at a minimum the appellant must set out not only an alleged error in the appeal, but also indicate, with sufficient precision, how this error would have materially affected the impugned decision. 'Mr Bemba does not advance any arguments [...] to indicate how the outcome of the Impugned Decision would have been different', Judge Ušacka stated in her oral summary of the Appeals Chamber judgment.

Jean-Pierre Bemba Gombo is alleged to be criminally responsible for having effectively acted as a military commander within the meaning of article 28(a) of the Rome Statute for two crimes against humanity (murder and rape) and three war crimes (murder, rape and pillaging) allegedly committed in the territory of the Central African Republic during the period approximately between 26 October, 2002 and 15 March, 2003. Trial Chamber III is to schedule the date of the Trial's opening.

Trial of Jean-Pierre Bemba Gombo to commence on Monday, 22 November, 2010

In an oral decision issued on 21 October, 2010, during a status conference, Trial Chamber III of the International Criminal Court (ICC) set the date for the commencement of the trial in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* as Monday, 22 November, 2010, at 14:30 (The Hague local time).

Jean-Pierre Bemba Gombo is allegedly criminally responsible, as a person effectively acting as military commander within the meaning of article 28(a) of the Rome Statute, for two crimes against humanity (murder and rape) and three war crimes (murder, rape and pillaging), allegedly committed in the territory of the Central African Republic during the period from approximately 26 October, 2002 to 15 March, 2003.

Decisions taken between 18 - 22 October, 2010

Bemba case

Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 24 June 2010 entitled "Decision on the Admissibility and Abuse of Process Challenges"

Issued by the Appeals Chamber on 19 October, 2010

Situation in the Democratic Republic of the Congo

In this situation, four cases are being heard 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 are currently in the custody of the ICC. The suspect Callixte Mbarushimana was arrested on 11 October, 2010, in France. He is currently in the custody of the French authorities, pending their consideration of the ICC Registrar's request for the surrender of the suspect. 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 18 - 22 October, 2010

Lubanga case

Decision on the "Prosecution's Second Application for Admission of Documents from the Bar Table Pursuant to Article 64(9)"

Issued by the Trial Chamber I on 21 October, 2010

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

Colombia's transitional justice experience presented at the ICC

As part of a series of events on victims' issues organized by the Registrar of the International Criminal Court (ICC), Ms Silvana Arbia, the ICC is hosting an informative session on 25 October with Colombia's National Commission for Reparation and Reconciliation (CNRR) on the Colombian experience with respect to victims and reparations.

The session is presided over by Mr Eduardo Pizarro, Chair of the Commission and member of the Board of Directors at the Trust Fund for Victims at the ICC. He is accompanied by four experts from the Commission.

The session focuses on five different topics: Making effective victims' rights to truth and justice; comprehensive approaches to victims' reparations; introducing a gender dimension in reparations: women and former child soldiers; integral reparation as a way to reconciliation; and analysis of Colombia's institutional frameworks for reparation.

Since 2005, Colombia has undertaken a transitional justice process, under the Justice and Peace Law, aimed at ensuring not only accountability for perpetrators of serious crimes, but also the rights of victims to truth, justice and reparation. More recently, the Colombian Government has presented a Victims' Bill yet to be discussed by Congress with the aim of complementing the existing framework for reparations.

The delegation is also holding bilateral meetings with Vice-President Judge Hans-Peter Kaul and representatives of the Office of the Prosecutor.

Background

Through this series of events, the Registrar is seeking to highlight the unprecedented right of victims to participate in ICC proceedings and request reparations for the first time in the history of international criminal justice. The Court may award reparations on an individual or a collective basis, or both. Furthermore, ICC States Parties have established the Trust Fund for Victims (TFV) responsible for supporting victims of crimes under jurisdiction of the ICC by **implementing Court-ordered reparations** awards against a convicted person; and using voluntary contributions to provide victims and their families with **physical and psychological rehabilitation and material support**. At the discretion of the TFV's Board of Directors, funds can be made available to complement the assets seized from convicted persons to support reparation orders.

This is the first event in a series of events on the topic of reparations.

Helping victims make their voices heard: The Office of Public Counsel for Victims launches Manual for victims' legal representatives

The Office of Public Counsel for Victims (OPCV) of the International Criminal Court has launched a new Manual entitled: *Representing victims before the International Criminal Court: A Manual for legal representatives*. The Manual, published on the fifth anniversary of the creation of the Office of Public Counsel for Victims, is launched within the framework of the Office's mandate of providing support and assistance to victims and external legal representatives. The Manual aims at providing a user-friendly guide for legal representatives appearing before the ICC and assists them with the day-to-day challenges and responsibilities involved in representing victims before the Court.



Paolina Massidda, Principal Counsel of the OPCV (right) and Didier Preira, Deputy Registrar during the presentation of the Manual; The Manual on display at the launch © ICC-CPI 2010

The Manual is structured in three parts: Part One contains a general introduction to the International Criminal Court and to the role of victims in the proceedings before the Court. Part Two analyses the practice before the Court by argument and includes the most important extracts of decisions from 2005 until 16 July, 2010, with regard to victims. This Part will be updated regularly. Part Three contains an explanation of practical issues relevant for the representation of victims in the proceedings before the Court.

Interacting with communities

ICC interacting with Sudanese Diasporas in Frankfurt, Germany

Sudanese Diasporas living in Germany interacted with staff members of the International Criminal Court (ICC) during an outreach session held on 16 October in Frankfurt. More than 40 people attended the session, which was facilitated by the German non-governmental organisation *Darfur Aid Foundation (Darfur-Hilfe.V.)*.

Participants received a general briefing on the Court's mandate and its mode of operation, and were provided with updates of the judicial developments of the cases in the situation in Darfur. In addition, the judicial process was explained, presenting the parties and participants in the process: the Prosecutor, the rights of the suspect and accused persons, and the victims represented by counsel.

The session is part of the overall strategic plan for outreach activities with regard to the situation in Darfur, Sudan, aiming, *inter alia*, at fostering greater participation of Sudanese communities in the activities of the Court, and also responding to the concerns and expectations expressed in general by them and in particular by the affected groups within the Sudanese Diaspora that have been forced to live outside Sudan.

Most of the participants praised the Outreach Unit's initiative to enable them to interact with the Court in Germany, and indicated their interest in remaining engaged. Questions asked focused on the Rome Statute's legal provisions to enforce the Court's decisions, such as warrants of arrest.

The Sudan Diaspora Outreach Programme for 2010 has targeted Darfuri communities living in the Netherlands, Belgium, France, the United Kingdom, Italy, Germany and Switzerland. Sudanese refugees in Eastern Chad have also been engaged.

Calendar

OCTOBER 2010						
Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
25	26	27	28	29	30	31
Columbia's National Commission for Reparation and Reconciliation presents at the ICC		ICC President speaks at New York University event	ICC President gives United Nations General Assembly address ICC launches Female Counsel Campaign in Gaborone, Botswana			
NOVEMBER 2010						
Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
1	2	3	4	5	6	7
		ICC holds 19 th Diplomatic Briefing				
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
Bemba trial scheduled to commence						
ICC launches Female Counsel Campaign in Dakar, Senegal						
Future events: 8 December, 2010: The confirmation of charges hearing is scheduled to commence in the case of <i>The Prosecutor v. Abdallah Banda Abakaer Nourain</i> (Banda) and <i>Saleh Mohammed Jerbo Jamus</i> (Jerbo)						

The calendar is subject to last minute changes.