



Promoting the rights
and interests of victims
before the International
Criminal Court

ICC Victims' Rights Legal Update: 9 May – 4 July 2012

Democratic Republic of Congo (DRC)

Situation in DRC

Prosecutor applies for new arrest warrants against Sylvestre Mudacumura and Bosco Ntaganda

On 14 May 2012, the Prosecutor requested two new arrest warrants. The first one relates to Bosco Ntaganda, who is already wanted by the International Criminal Court (ICC) for alleged crimes committed as a top commander of Thomas Lubanga's militia, the Union of Congolese Patriots/Patriotic Forces for the Liberation of Congo.¹ The Prosecutor requested to add charges against him for 3 counts of crimes against humanity (murder, persecution based on ethnic grounds, and rape/sexual slavery) and 4 counts of war crimes (intentional attacks against civilians, murder, rape / sexual slavery and pillaging).

The Office of the Prosecutor (OTP) also requested an arrest warrant for Sylvestre Mudacumura, one of the main leaders of the Democratic Forces for the Liberation of Rwanda in relation to a campaign of attacks against the civilian populations in the Kivus between 20 January 2009 and 31 August 2010.² After the original request was dismissed *in limine* for lack of specificity³, OTP filed an amended request on 13 June 2012 for 5 counts of crimes against humanity (murder, inhumane acts, rape, torture and persecution) and 9 counts of war crimes (attack against a civilian population, murder, mutilation, cruel treatment, rape, torture, destruction of property, pillaging and outrage upon personal dignity).⁴

Lubanga case

Submissions on reparations

[Background] On 14 March 2012, Trial Chamber I (TC I) decided unanimously that Thomas Lubanga was guilty, as a co-perpetrator, of the war crimes of conscripting and enlisting children under the age of 15 and using them to actively participate in hostilities from 1 September 2002 to 13 August 2003.⁵ Several organisations applied and were granted the

¹ Second Corrigendum of the Public Redacted Version of Prosecutor's Application under Article 58 filed on 14 May 2012 (ICC-01/04-611-Red), 16 May 2012, ICC-01/04-611-Red-Corr2, <http://www.icc-cpi.int/iccdocs/doc/doc1413826.pdf>

² Corrigendum to "Public redacted version of Prosecution's Application under Article 58" With Explanatory Annex A, 15 May 2012, ICC-01/04-612-Red-Corr, <http://www.icc-cpi.int/iccdocs/doc/doc1398587.pdf>

³ Decision on the Prosecutor's Application under Article 58, 31 May 2012, ICC-01/04-613, <http://www.icc-cpi.int/NR/exeres/24968D42-569B-4804-A40F-32D7D6CE12FB.htm>

⁴ Prosecution's Application under Article 58, 13 June 2012, ICC-01/04-616-Red, <http://www.icc-cpi.int/iccdocs/doc/doc1425996.pdf>

⁵ Judgment pursuant to Article 74 of the Statute, 14 March 2012, ICC-01/04-01/06-2842, <http://www.icc-cpi.int/iccdocs/doc/doc1379838.pdf>

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right to make observations in relation to the principles to be applied and the procedure to be followed at the reparation phase.⁶

On 10 May 2012, the Chamber received submissions from the United Nations Children's Fund, the International Centre

⁶ Registry transmission of communications received in the context of reparations proceedings, 28 March 2012, ICC-01/04-01/06-2855-Anx3, <http://icc-cpi.int/iccdocs/doc/doc1387969.pdf> (UNICEF); Request for leave to file submission on reparations issues, 28 March 2012, ICC-01/04-01/06-2854, <http://www.icc-cpi.int/iccdocs/doc/doc1387317.pdf>; TITRE DEMANDE DE COMMUNICATION A LA PROCEDURE DE REPARATIONS, 28 March 2012, ICC-01/04-01/06-2855-Anx1, <http://www.icc-cpi.int/iccdocs/doc/doc1387967.pdf>; Women's Initiatives for Gender Justice request for leave to participate in reparations proceedings, 28 March 2012, ICC-01/04-01/06-2853, <http://www.icc-cpi.int/iccdocs/doc/doc1387306.pdf>; Demande d'intervenir comme Amicus Curiae dans l'Affaire le Procureur c. Thomas Lubanga Dyilo, en vertu de la Règle 103 du Règlement de Procédure et de Preuve de la Cour, 28 March 2012, ICC-01/04-01/06-2855-Anx2, <http://www.icc-cpi.int/iccdocs/doc/doc1387968.pdf>; Decision granting leave to make representations in the reparations proceedings, 20 April 2012, ICC-01/04-01/06-2870, <http://www.icc-cpi.int/iccdocs/doc/doc1398002.pdf>

for Transitional Justice, Women's Initiatives for Gender Justice (WIGJ) and a joint submission from Justice-plus, Terre des Enfants Centre Pelican-Training for Peace and Justice /Journalistes en action pour la Paix, Fédération des Jeunes pour la Paix Mondiale and Avocats Sans Frontières.⁷ All argued that reparation should be granted to a broad category of victims with WIGJ stressing that the process should be particularly sensitive to gender-based crimes.⁸ All submissions considered both collective and individual reparations, and insisted on rehabilitation measures.

On 25 May 2012, the Defence replied that as sexual violence and torture did not form part of the charges for which Lubanga had been convicted, these crimes should not be used in relation to the determination of the harm suffered by victims for the purpose of reparations.⁹

OTP requests Lubanga to be sentenced to 30 years in prison

On 15 May 2012, Legal Representatives of Victims (LRV) teams and the Prosecutor submitted their observations on sentencing. Emphasizing the gravity of the crimes, they pointed out several aggravating factors, notably routine rape and sexual violence (committed with gender-based discrimination), the abuse of power or official capacity, the vulnerability of victims (primarily due to their age) and the broader social impact of destroying communities, physically and psychologically.¹⁰ All of these circumstances have been opposed by the Defence which further presented evidence to support mitigating circumstances, such as the alleged role of Mr. Lubanga as a peace maker.¹¹

On 13 June 2012, during the sentencing hearing, the Prosecutor requested a 30 year prison sentence against Mr. Lubanga with the possibility that it be reduced to 20 years should Mr. Lubanga attempt "to remedy the harm he inflicted to all the affected communities" and "seriously [commit] himself to work to prevent future crimes".¹² On 10 July Mr Lubanga was sentenced to 14 years with the six already spent in custody deducted (see next issue for more detail).

Katanga & Ngudjolo case

TC II hears closing statements

[Background] The trial against Germain Katanga, former commander of the Force de résistance patriotique militia and Matthieu Ngudjolo, former leader of the Front des nationalistes et intégrationnistes started on 24 November 2009 and entered its final stages following closing statements

⁷ Submission on reparations issues, 10 May 2012, ICC-01/04-01/06-2879, <http://www.icc-cpi.int/iccdocs/doc/doc1410945.pdf>; Submission on the principles to be applied, and the procedure to be followed by the Chamber with regard to reparations, 10 May 2012, ICC-01/04-01/06-2878, <http://www.icc-cpi.int/iccdocs/doc/doc1410766.pdf>; Observations relatives au regime de reparations, 10 May 2012, ICC-01/04-01/06-2877, <http://www.icc-cpi.int/iccdocs/doc/doc1410433.pdf>; Observations of the Women's Initiatives for Gender Justice on Reparations, 10 May 2012, ICC-01/04-01/06-2876, <http://www.icc-cpi.int/iccdocs/doc/doc1410192.pdf>.

⁸ Observations of the Women's Initiatives for Gender Justice on Reparations, 10 May 2012, ICC-01/04-01/06-2876, <http://www.icc-cpi.int/iccdocs/doc/doc1410192.pdf>

⁹ Réponse de la Défense à l'ensemble des observations déposées par les parties et participants relativement à la procédure et aux principes applicables à la phase de réparation, 25 May 2012, ICC-01/04-01/06-2885, <http://www.icc-cpi.int/iccdocs/doc/doc1418503.pdf>

¹⁰ Observations sur la peine pour le groupe de victimes V01, 14 May 2012, ICC-01/04-01/06-2880, <http://www2.icc-cpi.int/iccdocs/doc/doc1411251.pdf>; Observations du groupe de victimes V02 Sur des éléments de preuve établissant des circonstances aggravantes ou des circonstances atténuantes des faits portés à la charge de l'accusé reconnu coupable, 14 May 2012, ICC-01/04-01/06-2882, <http://www2.icc-cpi.int/iccdocs/doc/doc1411517.pdf>; Prosecution's Sentence Request, 14 May 2012, ICC-01/04-01/06-2881, <http://www2.icc-cpi.int/iccdocs/doc/doc1411278.pdf>

¹¹ Version publique expurgée - Observations de la Défense sur la peine, 3 June 2012, ICC-01/04-01/06-2891-Red, <http://www2.icc-cpi.int/iccdocs/doc/doc1422775.pdf>

¹² Hearings Transcripts, 13 June 2012, ICC-01/04-01/06-T-360-Red, <http://www.icc-cpi.int/iccdocs/doc/doc1427330.pdf>

from 15 to 23 May 2012.¹³ Both men are accused of committing war crimes and crimes against humanity perpetrated during an attack on Bogoro village, Ituri, in February 2003.

During the closing submissions, the Prosecutor notably focused on sexual violence crimes, charged for the first time at the ICC. The two teams representing victims stressed their importance in the trial and rejected the defence's argument that testimonies given by victim-witnesses should be given a low probative value due to their interest in testifying being linked to obtaining reparations. They characterized the conflict as ethnic and stressed the existence of widespread or systematic attack against civilians.¹⁴ The accused deny all charges.¹⁵

Mbarushimana case

End of the case against Mbarushimana, OTP's appeal of the decision not to confirm charges is rejected

[Background] On 16 December 2011, due to insufficient evidence, Pre Trial Chamber I (PTC I) declined to confirm charges against Callixte Mbarushimana, Executive Secretary of the Democratic Forces for the Liberation of Rwanda, and ordered his release.¹⁶ On 1 March 2012, the Prosecution was granted leave to appeal on three grounds: i) whether PTC I improperly applied a standard of proof tantamount to "beyond a reasonable doubt" at the pre-trial stage, ii) whether PTC I improperly evaluated the credibility of witness' statements at the confirmation hearing, and iii) whether statutory liability required a "significant" contribution to the commission of the crime.¹⁷

On 30 May 2012, the Appeals Chamber unanimously dismissed the appeal.¹⁸ It found that in determining whether to confirm charges under article 61 of the Rome Statute, a PTC may evaluate ambiguities, inconsistencies, contradictions or credibility doubts in the evidence. The Appeals Chamber also rejected the third ground of appeal, finding that the alleged error did not materially affect the PTC decision. The Office of the Prosecutor has stated that it was evaluating whether to bring a new case against Mr Mbarushimana presenting additional evidence.¹⁹

¹³ Hearings Transcripts, 15 May 2012, ICC-01/04-01/07-T-336-ENG, <http://www.icc-cpi.int/iccdocs/doc/doc1411802.pdf>; 16 May 2012, ICC-01/04-01/07-T-337-Red-ENG, <http://www.icc-cpi.int/iccdocs/doc/doc1422855.pdf>; 21 May 2012, ICC-01/04-01/07-T-338-Red, <http://www.icc-cpi.int/iccdocs/doc/doc1423314.pdf>; 22 May 2012, ICC-01/04-01/07-T-339-ENG, <http://www.icc-cpi.int/iccdocs/doc/doc1416803.pdf>; 23 May 2012, ICC-01/04-01/07-T-340-ENG, <http://www.icc-cpi.int/iccdocs/doc/doc1417444.pdf>

¹⁴ Principaux thèmes de la plaidoirie finale (Ordonnance n°3274), 11 May 2012, ICC-01/04-01/07-3289, <http://www.icc-cpi.int/iccdocs/doc/doc1410600.pdf>; Communication relative aux modalités pratique de présentation des conclusions finales du représentant légal des victimes enfants soldats, 11 May 2012, ICC-01/04-01/07-3288, <http://www.icc-cpi.int/iccdocs/doc/doc1398534.pdf>; Demande de temps additionnel pour la présentation des conclusions orales, 10 May 2012, ICC-01/04-01/07-3287, <http://www.icc-cpi.int/iccdocs/doc/doc1410217.pdf>

¹⁵ Ibid.

¹⁶ Decision on the confirmation of charges, 16 December 2011, ICC-01/04-01/10-465-Red, <http://www.icc-cpi.int/iccdocs/doc/doc1286409.pdf>

¹⁷ Decision on the "Prosecution's Application for Leave to Appeal the 'Decision on the confirmation of charges'", 1 March 2012, ICC-01/04-01/10-487, <http://www.icc-cpi.int/iccdocs/doc/doc1345006.pdf>

¹⁸ Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I of 16 December 2011 entitled "Decision on the confirmation of charges", 30 May 2012, ICC-01/04-01/10-514 30-05-2012 1/34 FB PT OA4, <http://www.icc-cpi.int/iccdocs/doc/doc1420080.pdf>

¹⁹ OTP Statement following the Appeals Chamber decision in Prosecutor v. Callixte Mbarushimana, 30 May 2012, <http://www.icc-cpi.int/NR/exeres/65904C30-B6ED-4968-B402-A2ACD1926602.htm>

Central African Republic (CAR)

Bemba case

Number of victims participating in the case reaches 4,121

On 21 May 2012, Trial Chamber III (TC III) granted participatory status to 1,377 victims and rejected the applications of 16 victims, bringing the number of victims participating in the case to 4,121.²⁰ Jean Pierre Bemba is the former President and alleged commander-in-chief of the Mouvement de Libération du Congo and was transferred to The Hague on 3 June 2008.

Two victims testify and three present views and concerns

[Background] On 22 February 2012, TC III granted three victims the right to present their views and concerns in person and two victims the right to testify in the Bemba case.²¹

In early May, the two authorised victims gave oral in-court testimony without in court protection measures such as voice distortion.²² The victims provided evidence on murder, rape and pillaging allegedly committed by soldiers belonging to the Movement for the Liberation of Congo (MLC) in the town of Mongoumba and Sibut in the Central African Republic.

On 24 May 2012, TC III ruled that the views and concerns of the three authorised victims would be given by video-link.²³ As victims were not providing evidence, TC III ruled that they would not be questioned by the parties and that their statement would not be given under oath. The Chamber also requested the victims' legal representative to liaise with the Victims and Witness Unit in order to *inter alia* inform the Chamber about any recommended protective and/or special measures for the victims concerned. On 25 and 26 June 2012, the three authorised victims expressed their views and concerns on various issues such as the stigmatisation suffered as a result of the rape or the hardships endured as the result of leg amputation. The Chamber asked the victims to focus on the harm suffered and on the consequences of the alleged conducts on their life.²⁴

The defence case will start on 14 August 2012.²⁵

Darfur

Banda & Jerbo case

TC IV confirms Registry's appointment of common legal representative of victims

²⁰ Decision on 1400 applications by victims to participate in the proceedings, 21 May 2012, ICC-01/05-01/08-2219, <http://www.icc-cpi.int/iccdocs/doc/doc1415119.pdf>

²¹ Decision on the supplemented applications by the legal representatives of victims to present evidence and the views and concerns of victims, 22 February 2012, ICC-01/05-01/08-2138, <http://www.icc-cpi.int/iccdocs/doc/doc1341474.pdf>

²² Hearings Transcripts, 1 May 2012, ICC-01/05-01/08-T-220-ENG CT WT, <http://www.icc-cpi.int/iccdocs/doc/doc1409206.pdf>; 3 May 2012, ICC-01/05-01/08-T-222-ENG ET WT <http://www.icc-cpi.int/iccdocs/doc/doc1407237.pdf>; 8 May 2012, ICC-01/05-01/08-T-225-ENG ET WT, <http://www.icc-cpi.int/iccdocs/doc/doc1409374.pdf>

²³ In her partly dissenting opinion, Judge Steiner called for victims' appearance in person in the courtroom. Decision on the presentation of views and concerns by victims a/0542/08, a/0394/08 and a/0511/08, 24 May 2012, ICC-01/05-01/08-2220, <http://www.icc-cpi.int/iccdocs/doc/doc1417519.pdf>

²⁴ Hearing transcripts, 25 June, ICC-01/05-01/08-T-227-Red-ENG CT WT, <http://www.icc-cpi.int/iccdocs/doc/doc1435189.pdf>, 26 June, ICC-01/05-01/08-T-228-Red-ENG WT, <http://www.icc-cpi.int/iccdocs/doc/doc1434662.pdf>

²⁵ Decision on the starting date of the defence presentation of evidence and related issues, 24 May 2012, ICC-01/05-01/08-2221, <http://www.icc-cpi.int/iccdocs/doc/doc1398624.pdf>

[Background] On 14 September 2011, the Registry appointed Mrs Cissé and Mr Dieckmann as common legal representatives of victims.²⁶ On 30 September 2011, the former legal representatives of two victims from Darfur requested a review of the Registry's decision.²⁷

On 25 May 2012, Trial Chamber IV (TC IV) confirmed the Registry's appointment, holding that the interests of the two Darfuri victims were not significantly distinct from the interests of the other victims, thus did not warrant a separate legal representation.²⁸ In doing so, TC IV noted that pursuant to Rule 90(4) of the Rules, "the criteria warranting the implementation of a common legal representation system, namely the distinct interests of victims being represented and the absence of conflict of interest, [were] cumulative". On 30 May 2012, the former Legal Representatives of the two Darfuri victims sought leave to appeal the decision.²⁹ A decision is pending.

Kenya

Ruto & Sang and Muthaura & Kenyatta cases

The Appeals Chamber rejects challenges to the ICC's jurisdiction

[Background] On 23 January 2012, Pre-Trial Chamber II (PTC II) confirmed charges against Mr Ruto, Mr Sang, Mr Muthaura and Mr Kenyatta for alleged crimes against humanity committed during post-election violence in 2007-2008 in Kenya.³⁰ The Chamber rejected the Defence's argument that it did not have jurisdiction in the case.

On 30 January 2012, the Defence teams in both cases requested leave to appeal the confirmation of charges decisions under Article 82(1)(d) of the Rome Statute.³¹ On the same day, the Defence teams also challenged the Court's jurisdiction under Article 82(1)(a) before the Appeal Chamber.³² They contested the interpretation of the term

²⁶ Notification of appointment of common legal representatives of victims, 14 September 2011, ICC-02/05-03/09-215, <http://www.icc-cpi.int/NR/exeres/14200213-9CDA-4386-BADC-8D9EBCBBA896.htm>; See <http://www.vrwg.org/> <http://www.vrwg.org/updates/September2011/>

²⁷ Request of Victims a/1646/10 and a/1647/10 for the Trial Chamber to review the Registry's "Notification of appointment of common legal representatives of victims" in accordance with Regulation 79(3), 30 September 2011, ICC-02/05-03/09-228, <http://www.icc-cpi.int/iccdocs/doc/doc1240384.pdf>; In doing so the lawyers referred to and annexed the letter the VRWG submitted to the Registry on 17 August 2011 regarding common legal representation.

²⁸ Decision on common legal representation, 25 May 2012, ICC-02/05-03/09-337, <http://www.icc-cpi.int/iccdocs/doc/doc1418504.pdf>

²⁹ Application for Leave to Appeal the "Decision on common legal representation" pursuant to Article 82(1)(d), 30 May 2012, ICC-02/05-03/09-339, <http://www.icc-cpi.int/iccdocs/doc/doc1420174.pdf>

³⁰ Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, 23 January 2012, ICC-01/09-01/11-373, <http://www.icc-cpi.int/iccdocs/doc/doc1314535.pdf>; Judge Kaul, dissenting, maintained that the ICC lacked competence because the nature of the crimes did not amount to crimes against humanity as codified by the Rome Statute.

³¹ Defence Application for Leave to Appeal the "Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute", 30 January 2012, ICC-01/09-02/11-385-Corr, <http://www.icc-cpi.int/iccdocs/doc/doc1324381.pdf>

; Public Redacted Version of Defence Application for Leave to Appeal the "Decision on the Confirmation of Charges", 30 January, ICC-01/09-02/11-384-Red, <http://www.icc-cpi.int/iccdocs/doc/doc1301993.pdf>; Defence Application for Leave to Appeal the Decision on the Confirmation of Charges, 30 January 2012, ICC-01/09-01/11-377, <http://www.icc-cpi.int/iccdocs/doc/doc1323931.pdf>

; Defence Application for Leave to Appeal the Decision on the Confirmation of Charges, 30 January 2012, ICC-01/09-01/11-376, <http://www.icc-cpi.int/iccdocs/doc/doc1323929.pdf>

³² Appeal on behalf of Uhuru Muigai Kenyatta and Francis Kirimi Muthaura pursuant to Article 82(1)(a) against Jurisdiction in the "Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute", 30 January 2012, ICC-01/09-02/11-383, <http://www.icc-cpi.int/iccdocs/doc/doc1324026.pdf>

; Articles 19(6) and 82(1)(a) Appeal by the Defence for Mr. Ruto on Jurisdiction, 30 January 2012, ICC-01/09-01/11-374, <http://www.icc-cpi.int/iccdocs/doc/doc1323682.pdf>; Articles 19(6) and 82(1)(a) Appeal by the Defence for Mr. Sang on Jurisdiction, 30 January 2012, ICC-01/09-01/11-375, <http://www.icc-cpi.int/iccdocs/doc/doc1323683.pdf>

'organizational policy' as a component of crimes against humanity under article 7(2)(a) of the Rome Statute and the subsequent findings that such policy existed in the two cases. On 9 March 2012, PTC II rejected the applications for leave to appeal the confirmation of charges decisions.³³

On 24 May 2012, the Appeals Chamber rejected the appeals challenging the ICC's jurisdiction, stating that the interpretation and existence of an 'organizational policy' relate to the substantive merits of the cases as opposed to the question of jurisdiction.³⁴

Ruto & Sang case

LRV requests review of decision on legal aid

[Background] On 9 March 2012, the Single Judge noted that the LRV's appointment was limited to the confirmation of charges stage of proceedings and did not include, in and of itself, future involvement in the case.³⁵ On 23 April 2012, the Appeals Chamber confirmed that the LRV continued to represent victims but that legal aid for any activities undertaken was subject to the Registry's authorisation.³⁶

On 7 May 2012, the LRV requested the Registry to pre-authorise activities of members of her team, including activities by the field workers and case manager. On 23 and 24 May 2012, the Registry refused the request in relation to field workers and stated that no decision had been reached in relation to "others team members". The Registry recalled its understanding of the 23 April 2012 decision that the resources available under the legal aid were restricted to the legal representative personally, and that involvement by any other members, such as field workers, would not be remunerated. On 1 June 2012, the victims' representative requested Trial Chamber V to review the Registrar's decisions on the scope of legal assistance to be paid by the Court.³⁷

Status conference on start of trial and possible re-characterisation of facts

On 11 June 2012, a status conference was held to discuss *inter alia* the start date of the trial (expected after the Kenyan elections scheduled for March 2013), and the possibility of applications for legal re-characterisation of facts under Regulation 55 of the Regulations of the Court.³⁸ Indeed, the Prosecutor has suggested that the facts in the case also support a possible alternative legal characterisation of Mr. Ruto's responsibility, such as contribution to the commission of the crime in addition to indirect co-perpetration.

³³ Decision on the Defences' Applications for Leave to Appeal the Decision on the Confirmation of Charges, 9 March 2012, ICC-01/09-01/11-399, <http://www.icc-cpi.int/iccdocs/doc/doc1368281.pdf>; Decision on the Defence Applications for Leave to Appeal the Decision on the Confirmation of Charges, 9 March 2012, ICC-01/09-02/11-406, <http://www.icc-cpi.int/iccdocs/doc/doc1368282.pdf>

³⁴ Decision on the appeals of Mr William Samoei Ruto and Mr Joshua Arap Sang against the decision of Pre-Trial Chamber II of 23 January 2012 entitled "Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute", 24 May 2012, ICC-01/09-01/11-414, <http://www.icc-cpi.int/iccdocs/doc/doc1417531.pdf>; Decision on the appeal of Mr Francis Kirimi Muthaura and Mr Uhuru Muigai Kenyatta against the decision of Pre-Trial Chamber II of 23 January 2012 entitled "Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute", 24 May 2012, ICC-01/09-02/11-425, <http://www.icc-cpi.int/iccdocs/doc/doc1417533.pdf>

³⁵ Decision on the Defences' Applications for Leave to Appeal the Decision on the Confirmation of Charges, 9 February 2012, ICC-01/09-01/11-399, <http://www.icc-cpi.int/iccdocs/doc/doc1368281.pdf>

³⁶ Decision on the "Application of the Victims' Representative pursuant to Article 83 of the Regulations", 23 April 2012, ICC-01/09-01/11-409, <http://www.icc-cpi.int/iccdocs/doc/doc1403077.pdf>

³⁷ Urgent request by the Victims' Representative pursuant to regulation 83(4) of the Regulations, 1 June 2012, ICC-01/09-01/11-420, <http://www.icc-cpi.int/iccdocs/doc/doc1422264.pdf>

³⁸ Hearings Transcripts, 11 June 2012, ICC-01/09-01/11-T-16-Red, <http://www.icc-cpi.int/iccdocs/doc/doc1425104.pdf>; 11 June 2012, ICC-01/09-01/11-T-15, <http://www.icc-cpi.int/iccdocs/doc/doc1424878.pdf>

Muthaura & Kenyatta case

Status conference on start of trial and possible re-characterisation of facts

On 12 June 2012, a status conference was held to discuss *inter alia* the start date of the trial and the possibility of applications for legal re-characterisation of facts under Regulation 55.

- *Date of the trial*: while Kenyatta's defence and the Prosecution request a synchronization with the first Kenya case, Muthaura's defence and victims' lawyers favour a trial as soon as possible;
- *Legal re-characterisation of facts*: the Prosecutor may re-frame the mode of individual criminal responsibility for both Muthaura and Kenyatta. OTP added that it may request that some of the facts be re-characterised referring as an example to forced circumcision and penile amputations which are currently categorised as "other inhumane acts" but could also be categorised as "other forms of sexual violence."³⁹

Both the defence teams and the legal representatives of victims have recommended that the Chamber undertake a site visit to Kenya prior to the commencement of the trial.⁴⁰

Libya

Gaddafi & Al-Senussi case

OPCV makes submission on the admissibility challenge; transfer of Gaddafi postponed

[Background] Saif Gaddafi, son of former Libyan leader Muammar Gaddafi and former *de facto* Prime Minister of Libya, was arrested in November 2011. He is wanted by the ICC on charges of crimes against humanity for murder and persecution. On 1 May 2012, Libya challenged the admissibility of the case. It argued that it was already investigating Saif Gaddafi at the national level and made a request to postpone his surrender.⁴¹ For the purpose of the admissibility proceedings, Paolina Massidda from the Office of Public Counsel for Victims (OPCV) was appointed as legal representative of 7 victims who had already communicated with the Court in relation to the case.⁴²

On 4 June 2012, OPCV opposed the admissibility challenge stating that Libya was not investigating the specific incidents forming the basis for the arrest warrant against Mr. Gaddafi. OPCV also expressed concerns regarding Libya's ability to conduct genuine investigations and stressed that the 7 victims represented and other victims whose views had been collected through local or international organisations had

³⁹ Hearings Transcripts, 12 June 2012, ICC-01/09-02/11-T-19-Red, <http://www.icc-cpi.int/NR/exeres/9885CDA9-8A77-40D0-8608-22DB0DE8FC24.htm>; 12 June 2012, ICC-01/09-02/11-T-18, <http://www.icc-cpi.int/NR/exeres/CC932475-1CB1-448C-A999-29F8960C29E1.htm>

⁴⁰ Defence for Uhuru Muigai Kenyatta Submissions on Status Conference Agenda In Response to Trial Chamber Order dated 14 May 2012 (ICC-01/09-02/11-422), 28 May 2012, ICC-01/09-02/11-429, <http://www.icc-cpi.int/iccdocs/doc/doc1419027.pdf>; Defence Submissions on the status conference agenda items contained in the Trial Chamber's "Order scheduling a status conference" of 14 May 2012, 28 May 2012, ICC-01/09-02/11-427, <http://www.icc-cpi.int/iccdocs/doc/doc1418991.pdf>; Victims' Submissions in Response to the Order Scheduling a Status Conference, 28 May 2012, ICC-01/09-02/11-426, <http://www.icc-cpi.int/iccdocs/doc/doc1418890.pdf>

⁴¹ Application on behalf of the Government of Libya pursuant to Article 19 of the ICC Statute, 1 May 2012, ICC-01/11-01/11-130, <http://www.icc-cpi.int/iccdocs/doc/doc1405819.pdf>

⁴² Decision on the Conduct of the Proceedings Following the "Application on behalf of the Government of Libya pursuant to Article 19 of the Statute", 4 May 2012, ICC-01/11-01/11-134, <http://www.icc-cpi.int/iccdocs/doc/doc1407703.pdf>; Notification of appointment of the Office of Public Counsel for Victims as legal representative of victim applicants in relation to the Admissibility Challenge pursuant to Article 19 of the Rome Statute, 30 May 2012, ICC-01/11-01/11-161, <http://www.icc-cpi.int/iccdocs/doc/doc1420167.pdf>

indicated they did not trust the Libyan judicial system and favoured an international trial.⁴³

On 1 June 2012, PTC I granted the postponement of the surrender of Saif Al-Islam Gaddafi, pending a final determination on the admissibility challenge.⁴⁴

Lawyers for Justice in Libya and REDRESS file amicus curiae

On 18 May 2012, PTC I authorised Lawyers for Justice in Libya (LFJL) and REDRESS to file amici curia observations in relation to the admissibility proceedings on 4 issues, namely:

- (i) the current state of the judiciary in Libya;
- (ii) the extent to which the present Libyan legal framework for the prosecution of Rome Statute crimes complies with principles of accountability contained in the ICC Statute and other international treaties binding on Libya;
- (iii) the current security situation in Libya;
- (iv) the experiences of victims of crimes within the jurisdiction of the ICC in obtaining justice in Libya's domestic criminal jurisdictions and other fora.⁴⁵

On 8 June 2012, LFJL and REDRESS filed their observations.⁴⁶ They observed that despite important steps taken by the Libyan National Transitional Council (NTC), various challenges remained. They stressed that with upcoming elections of a new government, the legal framework established by the NTC in Libya would likely be subject to changes, which were difficult to predict. The amici emphasised that criminal courts in Libya were only beginning to function, mainly for *de minimus* crimes and highlighted challenges relating to: executive interference; independence of judges; increasing insecurity; lack of control over militias; lack of training for judges, and lack of special measures for the protection of victims/witnesses.

Ivory Coast

Gbagbo case

139 victims authorised to participate in the confirmation of charges hearing, OPCV appointed as common LRV

[Background] On 5 April 2012, the Single Judge in the case approved a new collective form for victims' applications for participation in the confirmation of charges hearing.⁴⁷ On 16 May 2012, the Registry transmitted 6 collective application forms representing 101 victims, as well as 57 individual applications.⁴⁸ The Registry also submitted a recommendation in relation to counsel to be appointed as

⁴³ Public redacted version - Observations on behalf of victims on the Government of Libya's Application pursuant to Article 19 of the Rome Statute, 4 June 2012, ICC-01/11-01/11-166-Red, <http://www.icc-cpi.int/iccdocs/doc/doc1422979.pdf>

⁴⁴ Decision on the postponement of the execution of the request for surrender of Saif Al-Islam Gaddafi pursuant to article 95 of the Rome Statute, 1 June 2012, ICC-01/11-01/11-163, <http://www.icc-cpi.int/iccdocs/doc/doc1422109.pdf>

⁴⁵ Decision on the "Application by Lawyers for Justice in Libya and the Redress Trust for Leave to Submit Observations pursuant to Rule 103 of the Rules of Procedure and Evidence", 18 May 2012, ICC-01/11-01/11-153, <http://www.icc-cpi.int/iccdocs/doc/doc1414787.pdf>

⁴⁶ LAWYERS FOR JUSTICE IN LIBYA and REDRESS TRUST'S OBSERVATIONS PURSUANT TO RULE 103 OF THE RULES OF PROCEDURE AND EVIDENCE, 8 June 2012, ICC-01/11-01/11-172, <http://www.icc-cpi.int/iccdocs/doc/doc1424525.pdf>

⁴⁷ Second decision on issues related to the victims' application process, 5 April 2012, ICC-02/11-01/11-86, <http://www.icc-cpi.int/iccdocs/doc/doc1392379.pdf>

⁴⁸ First transmission to the Pre-Trial Chamber and the Prosecutor of unredacted versions of applications to participate in the proceedings, 16 May 2012, ICC-02/11-01/11-121, ICC-02/11-01/11-120, <http://www.icc-cpi.int/iccdocs/doc/doc1413242.pdf>

common legal representative of the victims (CLRV) and proposed that a single team comprised of a principal counsel, a team member based in the field, and a case manager, be appointed.⁴⁹

On 4 June 2012, Single Judge Fernandez de Gurmendi granted participatory status in the confirmation of charges hearing and related proceedings to 139 victims.⁵⁰ While taking note of the recommendation of the Registry, the Judge found that the short time left prior to the confirmation of charges hearing warranted to ask a counsel from the OPCV to act as CLRV. The Single Judge ruled that OPCV counsel should be assisted by a team member with wide knowledge of the context and based in Cote d'Ivoire, to be paid under the legal aid system of the Court. She also noted that the system could be revisited at a later stage in light of the views expressed by the victims.

The opening of the confirmation of charges hearing has now been postponed to 13 August 2012.⁵¹

Defence challenges ICC's jurisdiction

On 24 May 2012, the Defence challenged the ICC's jurisdiction, submitting that the Court had no jurisdiction for the facts and period mentioned in the arrest warrant against Laurent Gbagbo.⁵² It argued that the declaration of 18 April 2003 on which the Court based its jurisdiction did not cover the period concerned. It further submitted that the confirmation of the declaration on 14 December 2010 by Allassane Ouattara was void since he was not entitled to engage the Ivorian State at that time.

On 4 July 2012, the Registry notified the parties and participants that it has received to date a total of 190 applications of victims to participate in the proceedings, all represented by the OPCV.⁵³

On 27 June 2012, OPCV submitted that the victims all contended that the Court had jurisdiction and trusted that the case should proceed before the ICC in order for justice to be done and be seen to be done.⁵⁴

These are summaries of ICC decisions and related pleadings relevant to victims' rights. For further information please consult linked documents. Comments to Gaelle Carayon: gaelle@redress.org

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⁴⁹ Proposal for the common legal representation of victims, 16 May 2012, ICC-02/11-01/11-120, <http://www.icc-cpi.int/iccdocs/doc/doc1413734.pdf>

⁵⁰ Decision on Victims' Participation and Victims' Common Legal Representation at the Confirmation of Charges Hearing and in the Related Proceedings, 4 June 2012, ICC-02/11-01/11-138, <http://www.icc-cpi.int/iccdocs/doc/doc1423293.pdf>

⁵¹ Decision on the "Requête de la Défense en report de l'audience de confirmation des charges prévue le 18 juin 2012", 12 June 2012, ICC-02/11-01/11-152-Red, <http://www.icc-cpi.int/iccdocs/doc/doc1425646.pdf>

⁵² Requête en incompétence de la Cour Pénale Internationale fondée sur les articles 12 (3), 19 (2), 21 (3), 55 et 59 du Statut de Rome présentée par la défense du Président Gbagbo, 24 May 2012, ICC-02/11-01/11-129, <http://212.159.242.180/iccdocs/doc/doc1417734.pdf>

⁵³ Notification following the appointment of the Office of Public Counsel for Victims as legal representative of victims and applicants in relation to the Admissibility Challenge pursuant to Article 19 of the Rome Statute, 4 July 2012, ICC-02/11-01/11-171, <http://www.icc-cpi.int/iccdocs/doc/doc1426670.pdf>

⁵⁴ Decision on the conduct of the proceedings following the defence challenge to the jurisdiction of the Court pursuant to article 19 of the Rome Statute, 15 June 2012, ICC-02/11-01/11-153, <http://www.icc-cpi.int/iccdocs/doc/doc1426475.pdf>; Observations on behalf of victims regarding the Defence Challenge to the Jurisdiction of the Court, 27 June 2012, ICC-02/11-01/11-165, <http://www.icc-cpi.int/iccdocs/doc/doc1426577.pdf>