



## Assembly of States Parties

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## Report on the activities of the Court

### I. Introduction

1. The present report provides an overview of the activities of the International Criminal Court (the “Court”) during the period 11 October 2010 to 3 October 2011.
2. The Court is seized of seven situations. Two new situations emerged during the reporting period: the situation in Libya, referred to the Court by the United Nations Security Council on 26 February 2011, and the situation in Côte d’Ivoire, where an investigation was opened following the authorization given by Pre-Trial Chamber III on 3 October 2011. The Prosecutor is conducting preliminary examinations of eight situations in four different continents.
3. Five accused are in the custody of the Court and nine other persons have appeared before a Pre-Trial Chamber. The Court completed its first trial with the closing statements presented in the Lubanga case. The verdict is yet to be rendered by Trial Chamber I. Three confirmation of charges hearings were held; the corresponding decisions are pending.
4. Five new States acceded to or ratified the Rome Statute, and five States ratified the Agreement on Privileges and Immunities of the Court.

### II. Judicial Proceedings

#### A. Situation in the Democratic Republic of the Congo (ICC-01/04)

##### 1. *The Prosecutor v. Thomas Lubanga Dyilo* (ICC-01/04-01/06)

5. Mr. Thomas Lubanga Dyilo is charged with having committed war crimes in the Democratic Republic of the Congo, specifically enlisting, conscripting and using children under the age of fifteen years to participate actively in hostilities. His trial started on 26 January 2009 before Trial Chamber I.
6. The Defence case was presented from 27 January 2010 to 18 April 2011. During this period, the Defence tendered 133 items of evidence and called 24 witnesses to testify over a total of 68 trial days. 123 victims have participated, through their legal representatives, in the Lubanga case. Three of the victims authorised to participate in the proceedings testified before Trial Chamber I in January 2010.
7. On 23 February 2011, Trial Chamber I refused the Defence application to stay the proceedings as an abuse of the process. The trial resumed on 21 March 2011.

8. On 20 May 2011, Trial Chamber I ordered the closing of the presentation of evidence stage. The Prosecution and the Defence submitted their closing briefs on 1 June 2011 and 15 July 2011, respectively. The parties and participants presented their closing oral statements in public hearings on 25 and 26 August 2011. The case is now under deliberation of Trial Chamber I for delivery of decision under article 74 of the Rome Statute. The Chamber already announced that, in the event of a conviction, reparations and sentencing would be addressed separately.

**2. *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui (ICC-01/04-01/07)***

9. Mr. Germain Katanga and Mr. Mathieu Ngudjolo are both charged with seven counts of war crimes and three charges of crimes against humanity. Their trial started on 24 November 2009 before Trial Chamber II.

10. The Prosecution concluded its presentation of live evidence in the case on 8 December 2010. During its case, the Prosecution presented 270 pieces of evidence and called 24 witnesses, including 2 expert witnesses, to testify.

11. The Defence of Mr. Katanga presented its case between 24 March 2011 and 12 July 2011 and called 17 witnesses to testify, including three witnesses in common with the second accused, Mr. Ngudjolo. The Defence of Mr. Ngudjolo presented its case between 15 August 2011 and 16 September 2011 and called 11 witnesses, including the three common witnesses with Mr. Katanga. On 27 September 2011, Mr. Katanga started giving evidence and is still currently on the witness bench. Mr. Ngudjolo started to give evidence as soon as Mr. Katanga had completed his testimony (estimated date of start 27 October 2011). 230 items tendered by the defence of Mr. Katanga and 105 items submitted by the Defence of Mr. Ngudjolo were admitted as evidence. A total of 366 victims are participating through their legal representatives, two having testified at trial.

**3. *The Prosecutor v. Callixte Mbarushimana (ICC-01/04-01/10)***

12. Mr. Callixte Mbarushimana is the Executive Secretary of the *Forces Démocratiques pour la Libération du Rwanda* (FDLR). Pre-Trial Chamber I issued a warrant of arrest on 28 September 2010, finding reasonable grounds to believe that he personally and intentionally contributed to a common plan of the FDLR leadership to launch of an offensive targeting the civilian population of the Kivus in order to obtain political concessions, as part of an international campaign to extort concessions of political power for the FDLR.

13. He was arrested in France on 11 October 2010 and was transferred to the Court's Detention Centre in The Hague on 25 January 2011. His initial appearance before the Court took place on 28 January 2011.

14. The confirmation of charges hearing was held between 16 and 21 September 2011. 132 victims are participating at this stage of the proceedings.

**B. *The situation in Central African Republic (ICC-02/04)***

***The Prosecutor v. Jean-Pierre Bemba Gombo (ICC-01/05-01/08)***

15. Mr. Jean-Pierre Bemba Gombo is charged with three counts of war crimes and two counts of crimes against humanity in his capacity as a military commander under article 28 of the Rome Statute (Responsibility of commanders and other superiors).

16. On 19 October 2010, the Appeals Chamber delivered its judgment on the appeal of Mr. Bemba Gombo against the 24 June 2010 decision of Trial Chamber III titled "Decision on the Admissibility and Abuse of Process Challenges". The Appeals Chamber confirmed the challenged decision, finding that when a Trial Chamber is presented with the question of whether the outcome of domestic judicial proceedings is equivalent to a decision not to prosecute in terms of article 17, paragraph 1(b) of the Rome Statute, the Trial Chamber should accept *prima facie* the validity and effect of the decisions of domestic courts, unless presented with compelling evidence indicating otherwise.

17. The trial of Mr. Bemba Gombo started on 22 November 2010 before Trial Chamber III. As of 3 October 2011, the Prosecution had presented 30 of its 40 planned witnesses. To date, 1618 victims have been admitted to participate in the trial proceedings through their legal representatives.

18. The Registry also reports periodically to the Chamber on the steps undertaken to recover the funds advanced to Mr. Bemba Gombo for his legal aid further the decision of Trial Chamber III dated 12 November 2010. In the reporting period, the Court received € 27 000 from one of the States that received a request for assistance by the Registry.

## **C. Situation in Darfur, Sudan (ICC-02/05)**

### **1. *The Prosecutor v. Omar Hassan Ahmad Al Bashir* (ICC-02/05-01/09)**

19. Arrest warrants against Mr. Omar Hassan Ahmad Al Bashir, President of the Republic of Sudan, for five counts of crimes against humanity and two counts of war crimes, as well as for three additional counts of genocide, remained outstanding during the reporting period.

20. Pre-Trial Chamber I issued a decision on 12 May 2011 with respect to the visit of Mr. Al Bashir to Djibouti informing the United Nations Security Council and the Assembly of States Parties of this visit. In this decision, as well as in the decisions dated 27 August 2010, concerning Kenya and Chad, Pre-Trial Chamber I noted that the States in question have an obligation to cooperate with the Court, stemming both from United Nations Security Council resolution 1593 (2005) and from article 87 of the Rome Statute. On 18 August 2011, Pre-Trial Chamber I requested observations under Regulation 109, paragraph 3 of the Regulations of the Court from Chad in relation to Mr. Al Bashir's second visit to this country. Chad replied on 29 September that it could not comply with the request for arrest and surrender due to its membership in the African Union. It also indicated that it was entitled to be heard by the Chamber before a finding under article 87, paragraph 7 of the Rome Statute could be made.

21. 12 victims have been admitted to participate in this case through their legal representatives.

### **2. *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus* (ICC-02/05-03/09)**

22. The confirmation of charges hearing in the case against Mr. Abdallah Banda Abakaer Nourain and Mr. Mohammed Jerbo Jamus was held on 8 December 2010. On 7 March 2011, Pre-Trial Chamber I confirmed three charges of war crimes (violence to life, intentionally directing attacks against a peacekeeping mission and pillaging) against the alleged rebel leaders, in relation to an attack on peacekeepers in an AU Mission in North Darfur, Sudan (AMIS), on 29 September 2007. Both suspects appeared before the Court pursuant to summonses to appear.

23. On 16 March 2011, the Presidency of the Court referred the case to the newly constituted Trial Chamber IV. On 16 May 2011, the parties filed a joint submission stating that the accused will contest only certain specified issues at their trial:

(a) Whether the attack on the MGS Haskanita on 29 September 2007 was unlawful;

(b) If the attack is deemed unlawful, whether the accused persons were aware of the factual circumstances that established the unlawful nature of the attack; and

(c) Whether AMIS was a peacekeeping mission in accordance with the Charter of the United Nations.

This joint submission was acknowledged by Trial Chamber IV on 28 September 2011.

24. As of 31 May 2011, a total of 89 victims have been authorized to participate through their legal representatives in the proceedings. The date of the commencement of trial will be set in due course.

## **D. Situation in Kenya (ICC-01/09)**

### **1. *The Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang***

25. Following the Prosecutor's 15 December 2010 application, on 8 March 2011, Pre-Trial Chamber II issued summonses to appear for Mr. William Samoei Ruto, a suspended Minister of Higher Education, Science and Technology, Mr. Henry Kiprono Kosgey, a member of parliament and chairman of the Orange Democratic Movement (ODM), and Mr. Joshua Arap Sang, the head of operations at KASS FM in Nairobi, for their alleged roles in committing crimes against humanity in connection with the 2007-2008 post-election violence. All three accused are allegedly members of the ODM, one of the two political parties of Kenya's ruling coalition. The suspects are charged with three counts of crimes against humanity (murder, forcible transfer of population and persecution).

26. On 7 April 2011, the three suspects voluntarily appeared before Pre-Trial Chamber II. The confirmation of charges hearing was held on between 1 and 8 September 2011. With regard to this hearing, the Prosecution submitted its written submission on 30 September 2011. The deadline for final written submissions of the Defence is 24 October 2011.

27. On 5 August 2011, the Chamber decided that 327 applicants fulfilled the criteria set out in rule 85(a) of the Rules of Procedure and Evidence, thereby recognizing them as victims of the crimes with which the suspects were charged, admitted to participate in the case.

### **2. *The Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali***

28. Following the Prosecutor's 15 December 2010 application, on 8 March 2011, Pre-Trial Chamber II issued summonses to appear for Mr. Francis Kirimi Muthaura, head of Public Service and Secretary to the Cabinet, Mr. Uhuru Muigai Kenyatta, Deputy Prime Minister and Minister for Finance, and Mr. Mohammed Hussein Ali, Chief Executive of the Postal Corporation, for their alleged roles in committing crimes against humanity in connection with the 2007-2008 post-election violence. All three accused are allegedly members of the Party of National Unity, one of the two political parties of Kenya's ruling coalition. The suspects are charged with five counts of crimes against humanity (murder, forcible transfer of population, rape, persecution and other inhumane acts).

29. On 8 April 2011, the three suspects voluntarily appeared before Pre-Trial Chamber II. The confirmation of charges hearing was held between 21 September and 5 October 2011. The deadline for written submissions for the Prosecution was 28 October 2011.

30. On 26 August 2011, the Chamber decided that 233 applicants fulfilled the criteria set out in rule 85(a) of the Rules of Procedure and Evidence, thereby recognizing them as victims of the crimes with which the suspects were charged, admitted to participate in the case.

### **3. *Challenge on the admissibility in both cases***

31. On 31 March 2011, the Kenyan Government filed an application pursuant to article 19 of the Rome Statute challenging the admissibility of both cases before the Court. Pre-Trial Chamber II rejected the applications on 30 May 2011, considering that they did not provide concrete evidence of ongoing national proceedings with respect to the persons subject of the proceedings at the Court. The Kenyan Government's appealed the decision and the Appeals Chamber confirmed the decisions of Pre-Trial Chamber II on 30 August 2011. Judge Anita Usacka filed a dissenting opinion in each case.

## **E. Situation in Libya (ICC-01/11)**

### ***The Prosecutor v. Muammar Mohammed Abu Minyar Gaddafi, Saif Al-Islam Gaddafi and Abdullah Al-Senussi***

32. On 16 May 2011, the Prosecutor requested that Pre-Trial Chamber I issue arrest warrants against Libyan leader Mr. Muammar Mohammed Abu Minyar Gaddafi, his son Mr. Saif Al-Islam Gaddafi, Libyan Government Spokesman, and Mr. Abdullah Al-Senussi, Director of Military Intelligence, who appear to bear the greatest criminal responsibility for crimes against humanity committed in Libya since 15 February 2011. In this application the Prosecutor produced evidence about orders issued by Mr. Muammar Gaddafi himself, evidence of Mr. Saif Al-Islam organizing the recruitment of foreign soldiers, and evidence of the participation of Mr. Al-Senussi in the attacks against demonstrators, in addition to documenting how the three held meetings to plan the operations.

33. On 27 June 2011, Pre-Trial Chamber I issued warrants for arrest for Mr. Muammar Mohammed Abu Minyar Gaddafi, Mr. Saif Al-Islam Gaddafi and Mr. Abdullah Al-Senussi for two counts of crimes against humanity (murder and persecution) allegedly committed in Libya since 15 February 2011, finding that there were reasonable grounds to believe that Mr. Muammar Gaddafi, in coordination with his inner circle, conceived and orchestrated a plan to deter and quell, by all means, civilian demonstrations against the regime.

## **F. Situation in Côte d'Ivoire (ICC-02/11)**

34. Côte d'Ivoire, which is not party to the Rome Statute, had accepted the jurisdiction of the ICC pursuant to article 12, paragraph 3 of the Rome Statute, on 18 April 2003; on 18 December 2010, President Ouattara reconfirmed his country's acceptance of this jurisdiction.

35. On 23 June 2011, the Prosecutor requested authorization from the Pre-Trial Chamber to open an investigation into the alleged crimes committed on the territory of Côte d'Ivoire since 28 November 2010. On 3 October 2011, Pre-Trial Chamber III granted the Prosecutor's request. The opening of the investigation is authorized with respect to alleged crimes within the jurisdiction of the Court, committed since 28 November 2010 as a result of the post-election violence, as well as with regard to continuing crimes – defined as those sharing the same contextual element as for crimes committed prior to 23 June 2011 – that may be committed in the future in the context of this situation. The Office of the Prosecutor is also requested to revert to the Chamber within one month with information available with respect to crimes committed between 2002 and 2010. The decision specifies the crimes on which investigation is authorized, namely crimes against humanity and war crimes allegedly committed by pro-Gbagbo and pro-Ouattara forces. The Decision further tasks the Registry with carrying out a general information campaign for the benefit of the entire Ivorian population focusing particularly on affected communities, including meetings with victims and victims' groups.

## **III. Investigations and Preliminary examination**

### **A. Investigations**

#### **1. Situation in the Democratic Republic of the Congo**

##### **(a) *The Prosecutor v. Thomas Lubanga Dyilo and The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui***

36. During the period of 11 October 2010 to 3 October 2011, the Office of the Prosecutor conducted nine missions to two countries mainly for the support of trials, to address the arguments raised by the Defence in *The Prosecutor v. Thomas Lubanga Dyilo* and in *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*.

**(b) The case of the Kivu provinces**

37. From 11 October 2010 to 3 October 2011, the Office of the Prosecutor conducted 29 missions to 5 countries for its third investigation in the Democratic Republic of the Congo, focusing on crimes committed by the FDLR militia in the Kivu provinces.

38. The investigation and prosecution of crimes allegedly committed by the FDLR militia in the Kivu provinces in eastern Democratic Republic of the Congo represent one of the most successful examples of complementarity under the Rome Statute system. Part of the FDLR leadership was based in Europe. Mr. Callixte Mbarushimana, the militia's Executive Secretary was based in France. He was arrested by French authorities and surrendered to the Court. Mr. Ignace Murwanashiyaka and Mr. Straton Musoni, the FDLR's President and Vice-President, respectively were arrested by German authorities on 17 November 2009 and are facing trial in Germany including for war crimes and crimes against humanity charged under the German Code of Crimes against International Law.

39. The prosecution of the FDLR leadership is the result of more than two years of investigations conducted by Germany, Rwanda, the Democratic Republic of the Congo, France and the Office of the Prosecutor into the alleged crimes in the Kivus and specifically into the activities of the FDLR.

40. The investigation of the Office of the Prosecutor into alleged crimes committed in the Kivus continues, including against other leaders of the FDLR.

**2. Situation in Uganda**

41. The Office of the Prosecutor continued to gather information on crimes allegedly committed by the Lord's Resistance Army (LRA) and to galvanize efforts to implement warrants against the top LRA leadership. The Office has collected a range of information on crimes allegedly being committed by the LRA under Joseph Kony's leadership. According to the information received by the Office, LRA crimes continued to be committed throughout the year, with a substantial number of killings and abductions across a wide area in the Democratic Republic of the Congo, Southern Sudan and the Central African Republic.

42. Besides the LRA, the Office also continued its information gathering and analysis in relation to alleged crimes committed by the Uganda People's Defence Forces and related national proceedings. The Office also continued to encourage the Ugandan authorities to conduct genuine proceedings in relation to the conflict in Northern Uganda.

43. During the reporting period, as part of its policy of positive complementarity, the Office of the Prosecutor also provided assistance to the Ugandan authorities, as they worked to prepare their first domestic war crimes case to be brought before the newly-established International Crimes Division of their High Court, against an alleged mid-level LRA commander.

**3. Situation in the Central African Republic**

44. The Office of the Prosecutor continued its investigation in the situation in the Central African Republic and conducted a total of six missions to two countries from 12 October 2010 to 3 October 2011, for the purposes of, *inter alia*, screening potential witnesses and following up on new information received.

**4. Situation in Darfur, Sudan**

45. In the period from 12 October 2010 to 3 October 2011, the Office of the Prosecutor conducted 17 missions to seven countries in relation to investigations in the situation in Darfur.

46. In accordance with United Nations Security Council resolution 1593 (2005), the Prosecutor presented his twelfth and thirteenth reports on the status of the investigation into the situation in Darfur to the United Nations Security Council on 10 December 2010 and 8 June 2011, respectively<sup>1</sup>.

47. In his briefing to the United Nations Security Council on 10 December 2010, the Prosecutor drew attention to the Pre-Trial Chamber's issuing of a second arrest warrant against President Al Bashir on three charges of genocide. He again highlighted the lack of cooperation by the Government of Sudan and the lack of national proceedings against those responsible for the crimes committed.

48. In his briefing to the United Nations Security Council on 8 June 2011, the Prosecutor addressed the outstanding arrest warrants and the ongoing crimes, expressing particular concern about the ongoing role of Mr. Ahmad Harun as a key player in the major crime spots in Sudan.

49. The Office of the Prosecutor continues to monitor and gather information regarding the situation in Darfur. The information collected indicates that crimes against humanity, war crimes and genocide, the crimes for which the judges took the decision to issue arrest warrants, continue to be committed.

## **5. Situation in Kenya**

50. The Office of the Prosecutor conducted 61 missions to 13 countries during the reporting period.

## **6. Situation in Libya**

51. On 26 February 2011 the United Nations Security Council unanimously adopted resolution 1970 (2011), referring the situation in Libyan Arab Jamahiriya from 15 February 2011 onwards to the Prosecutor, stressing "the need to hold to account those responsible for attacks, including by forces under their control, on civilians".

52. Following the referral, the Office of the Prosecutor conducted a preliminary examination of the situation, gathering and analysing information on the alleged crimes from many different sources. As a result of this analysis, on 3 March 2011, the Office determined that the statutory criteria for the opening of an investigation into the situation in Libya had been met.

53. The Prosecutor presented his first report to the United Nations Security Council on 4 May 2011 providing information to the Council that in the following weeks the Office would present a first case before the Pre-Trial Chamber of the Court.<sup>2</sup>

54. During the reporting period, the Office conducted 50 missions to 15 countries with regard to the situation in Libya. The Office is further investigating allegations of rape, sexual violence and other instances of crimes against humanity, including torture and inhuman acts committed against civilians perceived as dissidents. The Office is also investigating allegations of attacks against sub-Saharan Africans wrongly perceived to be mercenaries and allegations of war crimes committed by different parties during the armed conflict.

## **B. Preliminary examination activities**

55. The Office of the Prosecutor continued to gather and analyze information on crimes potentially falling within the jurisdiction of the Court, and to assess related relevant proceedings. As of 3 October 2011, the Office had received 9303 communications relating to article 15 of the Rome Statute, of which 431 were received since the last report.

<sup>1</sup> UN documents S/PV.6440, S/PV.6548

<sup>2</sup> UN document S/PV.6528.

56. During the reporting period, the Office continued preliminary examinations in Afghanistan, Colombia, Georgia, Guinea and Palestine. The Office made public that it had initiated preliminary examinations of situations in Nigeria, Honduras and the Republic of Korea. On 23 June 2011, the Prosecutor requested authorization from the Pre-Trial Chamber III to commence an investigation in Côte d'Ivoire.

#### **1. Afghanistan**

57. The Office of the Prosecutor continued to monitor and analyze the situation in Afghanistan, considering all information, including open sources, on alleged crimes potentially committed by all parties. It maintains close contact with experts, civil society organizations, public officials, United Nations officials, and contributing States to the International Security Assistance Force in Afghanistan.

#### **2. Colombia**

58. The Office of the Prosecutor continued to analyze information available on national investigations and prosecutions in Colombia, in particular proceedings against guerrilla groups, paramilitary leaders as well as State actors. In each case, the Office seeks to determine whether the said proceedings focus on or include persons bearing the greatest responsibility for the crimes committed. The Office intends to make public additional information shortly.

59. The Office has also engaged in public discussions about the application of the complementarity principle in Colombia, including at the bi-annual NGO roundtable on 20 October 2010, and at the Conference "In the Shadow of the ICC – Colombia and International Criminal Justice" convened by the Human Rights Consortium, the Institute of Commonwealth Studies and the Institute for the Study of the Americas at the University of London, on 26 and 27 May 2011.

60. The Office maintains a constant dialogue with the Colombian Government, and has received updated information on relevant national proceedings from the Colombian judicial authorities.

#### **3. Côte d'Ivoire**

61. Pursuant to the preliminary examination of the situation in Côte d'Ivoire, the Prosecutor concluded that the statutory criteria established by the Rome Statute for the opening of an investigation were met, resulting in the request for authorization, on 23 June 2011, to open an investigation into the alleged crimes committed on the territory of Côte d'Ivoire.

#### **4. Georgia**

62. During the reporting period, the Office of the Prosecutor has continued to follow up on investigations into alleged crimes committed during the August 2008 conflict in Georgia.

63. In February 2011, a delegation from the Office made a second visit to the Russian Federation and received a comprehensive update on the progress of national investigations undertaken by the investigative committee of the Russian Federation. The Office has also maintained regular contacts with the Georgian authorities. Both Governments have been requested to provide a written update on the progress (or lack thereof) of their respective investigation.

64. The Office maintains close contacts with NGOs in the region, receiving reports from and participating in meetings with these organizations, some of which are also carrying out an assessment of relevant national proceedings pertaining to the alleged crimes committed during the August 2008 conflict.



## 5. Guinea

65. During the reporting period, the Office of the Prosecutor conducted two missions to Guinea, in November 2010 and March 2011 respectively, to follow up on the national investigation being carried out by Guinean judges into the 2009 events, and to deter the commission of new crimes during the election period, as part of the Office's preventive mandate. The Office met with Government officials, representatives from the judiciary and civil society, as well as victims and victims' associations.

66. The Office has further engaged with various Guinean, regional and international partners to maintain and develop the international consensus to bring to account those bearing the greatest responsibility for the alleged crimes committed on 29 September 2009.

## 6. Honduras

67. On 18 November 2010, the Prosecutor announced the situation in Honduras was under preliminary examination. Honduran authorities immediately offered their cooperation. The Office continues to analyze whether alleged human rights violations following the 28 June 2009 *coup d'état* against former President Manuel Zelaya could constitute crimes under the jurisdiction of the Court. In the course of its analysis, the Office is considering the 17 communications regarding the situation received and public sources, including the Truth and Reconciliation Commission report, published in July 2011.

## 7. Republic of Korea

68. On 6 December 2010, the Office of the Prosecutor announced receiving communications alleging North Korean forces committed war crimes in the territory of the Republic of Korea.

69. The preliminary examination of the situation in the Republic of Korea is focusing on two incidents, namely, a) the shelling of Yeonpyeong Island on 23 November 2010 which resulted in the killing of South Korean marines and civilians and the injury of many others; and b) the sinking of a South Korean warship, the Cheonan, hit by a torpedo allegedly fired from a North Korean submarine on 26 March 2010, which resulted in the death of 46 persons.

70. The Office has been receiving information from relevant sources, including by engaging with the Korean authorities on factual issues that are key to determine whether the incidents could amount to war crimes under the Rome Statute.

## 8. Nigeria

71. The Office of the Prosecutor made its examination of the situation in Nigeria public on 18 November 2010. The Office is analyzing alleged crimes committed in Central Nigeria since mid-2004 and has engaged constructively with Nigerian authorities. The Office met with Nigerian and international civil society organizations which work in the Middle Belt states. Nigerian judicial authorities have been invited to share information with the Office on existing proceedings.

72. On 21 April 2011, the Office expressed concern about the outbreak of violence in the context of the National Assembly and Presidential elections of April 2011. The Office furthermore urged Nigerians to avoid engaging in acts of violence and urged the Nigerian government to contain the on-going violence and forestall its future re-occurrence, while taking into account its obligation to prevent impunity under the Rome Statute. In response, the Nigerian Government was forthcoming in offering information on steps taken to address the eruption of violence.

## 9. Palestine

73. In connection with the declaration lodged by the Palestinian National Authority (PNA) under article 12, paragraph 3 of the Rome Statute on 22 January 2009, accepting jurisdiction of the Court, the Office of the Prosecutor continues to examine whether the declaration meets statutory requirements.

74. The PNA requested the right to be heard on the fulfilment of the statutory requirements for opening an investigation, including on the issue whether Palestine qualifies as a 'State' for the purpose of article 12, paragraph 3 of the Statute. The Office considered that a fair process required that the PNA as well as other interested parties, have the opportunity to be heard. The Office therefore ensured due process to all parties involved. Representatives of the PNA presented arguments by oral and written submissions. The final public briefing will be presented soon.<sup>3</sup>

75. The Office has also received reports from different sources on the preconditions of jurisdiction and organized an interactive discussion among the various experts and NGOs that had provided submissions at the seat of the Court during its bi-annual roundtable on 20 October 2010.

76. In July 2011 the Office provided updated information to the United Nations Office of the High Commissioner for Human Rights pursuant to their request on steps taken by the Office of the Prosecutor with regard to the Palestinian Declaration.

77. The Prosecutor met with various stakeholders, including representatives from the PNA, the League of Arab States Secretariat and a number of Palestinian and Israeli NGOs to discuss the Court's jurisdiction.

## IV. Cooperation with and assistance from States, international and regional organizations

78. The cooperation of the Court with States Parties has been generally forthcoming. The Court made numerous requests to States for cooperation pursuant to Parts 9 and 10 and article 15, paragraph 2 of the Rome Statute. A comprehensive overview of cooperation related issues can be found in the Court's report on Cooperation.<sup>4</sup>

### A. Cooperation with States

#### 1. Arrest and surrender

79. During the reporting period, one request for the arrest and surrender of Mr. Callixte Mbarushimana was executed by France. The transfer of the suspect to the Court detention centre took place on 25 January 2011.

80. With regard to the situation in Libya, 125 requests for arrest and surrender were transmitted by the Registry to States Parties and other States, including Libya, in 22 languages.

81. At the time of submission of this report, 12 warrants of arrest are still outstanding. The Court is concerned by the recent visits of Mr. Omar Al Bashir in two States Parties in the reporting period, Djibouti on 8 May 2011 and Chad on 7 and 8 August 2011. The visit to Chad is of particular concern as it is the second visit of Mr. Omar Al Bashir to this country. The Chamber is yet to make a decision on the observations submitted by Chad.

<sup>3</sup> The Office of the Prosecutor made available a first summary of submissions on whether the declaration lodged by the Palestinian National Authority meets statutory requirements on its website.

<sup>4</sup> Report of the Court on cooperation dated 18 October 2011 (reference to be added when available).

## 2. Other requests for cooperation

82. During the reporting period, the Registry sent 677 requests for assistance concerning *inter alia* the provision of records and documents, the protection of witnesses, the questioning of witnesses, the support to the investigations conducted by the defence, the transfer of detained persons, the provision of storage space, interim release, the identification and freezing of good and assets, the security for staff and the issuance of travel documents (549 requests) to States Parties, other States and international organizations.

83. The Office of the Prosecutor sent 228 requests addressed to States and international organizations regarding its investigative and prosecutorial activities during the reporting period. While some of these requests are still pending, in particular the recent ones, the execution rate is already at 70 per cent.

## 3. Voluntary agreements and other arrangements

84. No new witness relocation agreement was signed during the reporting period, although there are advanced negotiations ongoing with four States. In order to increase the options of the Court for relocating witnesses internationally, the Court opened a new Special Fund for witness relocations for States to donate funds for the purposes of funding cost neutral relocations of witnesses to third States. The Court has already received substantial donations to the Special Fund which are currently used to finance several witnesses' relocations. The Court is now approaching States Parties with a focus on Africa to see whether they would agree to enter into a cost-neutral witness relocation agreement with the Court, financed by the Special Fund.

85. During the reporting period, Colombia and Serbia concluded agreements on the enforcement of sentences with the Court. The Court is grateful to these States Parties for extending this valuable form of support.

86. In order to prepare for the eventuality that the Court in the future issues a decision granting interim release to a person in custody, the Registry has circulated a model exchange of letters on interim release among States Parties in May 2011, and is currently addressing the comments received. The Registry is also currently in the process of finalizing a model agreement with States for cases of acquittal.

87. In order to stimulate cooperation in situation countries, focal points from the Democratic Republic of the Congo, Kenya, Uganda, Chad and Central African Republic were invited for a two-day training at the Court in July 2011.

## B. International and regional organizations

### 1. Cooperation with the United Nations

88. Cooperation with the United Nations, based on the Relationship Agreement<sup>5</sup>, continues to be essential to the Court institutionally and in the different situations and cases. A comprehensive overview of cooperation between the Court and the United Nations can be found in the Court's seventh annual report to the United Nations General Assembly.<sup>6</sup>

### 2. Cooperation with regional organizations and other intergovernmental institutions

89. The Court concluded a Framework Cooperation Arrangement with the Organization of American States and a Memorandum of Understanding on cooperation with the Commonwealth Secretariat. The Court continued to communicate closely with the African Union, the European Union and other regional organizations and increased its cooperation and engagement with the League of Arab States during the reporting period. The Court benefited from the sponsorship and cooperation of La Francophonie for two regional

<sup>5</sup> UNdocument UNTS, vol. 2283.

<sup>6</sup> A/66/309, 19 August 2011

seminars held in Africa. More details on cooperation with regional and other intergovernmental organisations can be found in the Court's report on cooperation.<sup>7</sup>

## **V. Other activities of the Court**

### **A. Support to Judicial Proceedings**

90. 177 days of court hearings were held at the seat of the Court during the reporting period, supported by the Registry's Court Management Section and including simultaneous trials during the period from January to April.

91. The Court Translation and Interpretation Section (CTIS) supported the training of a team of Sango interpreters that started to work on November 2010 in the Bemba trial. CITS translated judicial documents into French, English and/or Arabic, taking into account the tight deadlines as required by the proceedings. The Section also supported the translation of the numerous requests for assistance dealing with the complexity of the languages combinations chosen by States Parties. Field and Operational Interpretation has steadily increased its pool of field interpreters and added new languages. The greatest challenge has been the Darfur languages, particularly the Zaghawa language.

92. The Registry's Victims and Witnesses Unit ensured the appearance of 93 witnesses before the Court during the reporting period.<sup>8</sup> These witnesses were under the Unit's care for a total of 2,559 days and were provided with appropriate support and protective measures.

93. Following the Prosecutor's request for authorization to open an investigation in Côte d'Ivoire, victims had 30 days within which they could make representations in writing to Pre-Trial Chamber III on the Prosecutor's request. The Registry's Victims Participation and Reparations Section filed a consolidated report on 29 August 2011 indicating that a total of 1,089 victims' representations were received and transmitted.

94. During the reporting period, the Victims Participation and Reparations Section conducted a total of 176 targeted activities in situation related countries aimed at assisting victims to participate in the different phases of proceedings. During the period under consideration the Section received a total of 5,676 applications for participation in pre-trial and trial proceedings and 6,068 applications for reparations, from all the situations and cases before the Court. The largest numbers relate to the cases arising from the situations in the Central African Republic and Kenya, in response to deadlines set by Chambers for the receipt and transmission of applications for participation in the proceedings.

95. The number of victims represented by the Office of Public Counsel for Victims (OPCV), at one stage or another of proceedings, increased by 82 per cent over 2010/2011. As per October 2011, a total of 2119 victims are represented by the Office in the different situations and case.

### **B. Detention matters**

96. As of 3 October 2011, ten persons are detained in the Court's Detention Centre: five suspects (Mr. Thomas Lubanga Dyilo, Mr. Germain Katanga, Mr. Mathieu Ngudjolo Chui, Mr. Jean-Pierre Bemba Gombo and, since January 2011 further to his transfer to the Hague, Mr. Callixte Mbarushimana) and since 31 May 2011, four detained witnesses in two of the cases before the Court (one in the Lubanga case and three in the Katanga and Ngudjolo Chui case). In addition, Mr. Charles Taylor remains at the Court's Detention Centre further to the agreement with the Court and the Special Court for Sierra Leone.

97. On the 18 February 2011, the product price agreement relating to detention services was signed with the host State.

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<sup>7</sup> See footnote 2.

<sup>8</sup> The Registry also arranged for the transfer of four detained witnesses.

98. The Registry's Detention Section assisted in organizing seven family visits (in total 19 persons) to indigent detainees during the reporting period.<sup>9</sup>

99. Eight complaints by detainees were lodged during the reporting period; one is pending a decision of the Presidency, one is pending the Registrar's decision and another one has been withdrawn while a decision of the Registrar was awaited. Of the five others, one was found justified.

### C. Support to Counsel

100. The Registry's Counsel Support Section (CSS) continued to provide administrative support to all counsel representing victims (30) and the defence (13), as well as devising, managing and implementing all work related to the Court's legal aid system including legal aid for victims.

101. The Court currently provides legal aid to eight defence teams and 11 teams of legal representatives representing victims in seven different cases. Decisions refusing additional resources issued by the Registrar have been reversed by the competent Chamber on two different occasions.

102. To date, 411 lawyers from 57 States have been admitted to the List of Counsel eligible to appear before the Court. The Lists of Assistants to counsel and Professional Investigators, equally maintained by the Registrar, consist of 118 and 28 professionals, respectively.

103. In May 2011, the Court organized for the ninth time a Seminar of Counsel, where all persons included in the List of Counsel and all external counsel currently engaged in proceedings before the Court were invited to attend.<sup>10</sup> The Seminar, attended by more than 200 invitees, allowed for an update and discussions on matters relevant to the work of counsel in the Court's proceedings. The Seminar was followed by three intensive days of training for some 100 counsel in both working languages of the Court.

104. The OPCV has supported and given assistance to 41 external legal representatives in all situations and cases before the Court including during the hearings. In particular, legal advice and research have been provided on more than 500 separate occasions.

105. The Office of Public Counsel (OPCD) for the defence has experienced an almost 50 per cent increase in its workload due to the commencement of seven new cases in the reporting period. The OPCD provided and continues to provide legal research and real time legal assistance to 13 Defence teams through its access to real time transcripts (Lubanga, Katanga and Ngudjolo, Bemba, Banda and Jerbo team, Mbarushimana, Ruto, Sang and Kosgey, and Muthaura, Kenyatta and Ali). The OPCD also provides ongoing assistance to any duty counsel or ad hoc counsel for the Defence appointed by the Registry. The Office has provided intensive assistance to teams newly involved in the Court's processes in connection with their preparation for the confirmation of charges hearings. The case manager of OPCD was also mandated by these teams to assist with the process of disclosure.

### D. Public Information and Outreach

106. During the reporting period, a total of 514 outreach sessions for affected communities and other target groups were organised in connection with four out of seven situations (Uganda, the Democratic Republic of the Congo, Darfur (Sudan), and the Central African Republic) by the Registry through its Public Information and Documentation Section (PIDS). 36,269 people participated in the sessions, approximately 40 per cent of whom were women. Estimated audiences of nearly 54.8 million people were regularly exposed to Court information through local radio and television programmes.

<sup>9</sup> Out of these seven family visits two were against the 2010 budget while the other five were against the Trust Fund for Family Visits.

<sup>10</sup> Financial assistance was provided to lawyers from the List coming from developing countries.

107. Through public information activities, PIDS engaged with global audiences and key selected target groups, including journalists, legal communities, and academic communities. Journalists are engaged for a wider dissemination of timely, accurate information about the Court, to inform global and local audiences, and to counter misperceptions. Using its own platforms, during the reporting period, the Court disseminated information, including 205 press releases and media advisories, through the Court's website, which had 956,000 visitors. PIDS also produced and disseminated 406 audio-visual programmes through the ICourt's YouTube channel (with 126,932 views, which is 47,286 more than the previous year), as well as national, regional and international broadcast and online media.

108. Through the Legal Programme, judges, prosecutors, and members of bar associations were engaged. PIDS continued its successful campaign "Calling African Female Lawyers" and launched a new campaign to call on Arab lawyers with the support of the CSS. In the course of 23 events organized in cooperation with national bar associations, the Court reached lawyers from 15 countries, mostly in Africa. Other groups of lawyers were targeted during side events organized in the context of international or regional conferences held by 27 bar associations.

109. With regard to academic communities, the Registry conducted five-day seminars for professors from 24 law faculties of universities in Uganda, the Democratic Republic of the Congo, Central African Republic and Kenya with the financial support of the European Commission and other donors. This pilot project encourages and equips universities to add courses on the Court and International Criminal Law to their official curricula.

110. In 2011, the Court supported the celebration of 17 July as International Criminal Justice Day. Stakeholders and the public at large were encouraged to celebrate achievements in the field of international criminal justice, reflect on the plight of the countless innocent civilians who continue to be the victims of unimaginable atrocities and to act by declaring support for the system of international criminal justice.

## **E. Field Operations**

111. During the reporting period, the Field Operations Section has developed Standard Operating Procedures to guide the Registry's field operations in the yearly review and their effective implementation in accordance with the judicial developments and the budgetary framework<sup>11</sup>. Driven by the judicial developments and as a result of the strategic review undertaken in March 2011, the Registry achieved a number of efficiencies in the area of field operations. They pertain to scaling down and closing down a number of field presences. Consequently, the Court's field presences were reduced from seven to five including a limited field presence in Kenya since June 2011 to ensure the coordination of the activities in relation to the two ongoing cases. Additionally, by redistributing staff and non staff resources, the Registry will be able in 2012 to support and effectively coordinate increased workload in six situations and cater for increased service demands of its clients, namely the Office of the Prosecutor, counsels and Trust Fund for Victims, as well as for Registry driven activities. A core capacity has been secured to ensure flexible responses to unforeseen judicial developments in the new situations requiring field engagement, most recently in relation to the Court's activities in Côte D'Ivoire while reducing its proposed programme budget for 2012 by 3,4 per cent.

## **F. Human Resources**

112. Recruitment activities were on target, resulting in the employment of 696 staff on established posts, of which 318 are on professional posts, representing 76 nationalities. A new e-recruitment system officially went live providing further efficiency measures for the Courts recruitment processes. Measures to strengthen the capabilities of hiring managers and to target underrepresented countries through new recruitment activities continue to receive importance. Also, the first Managerial Leadership Programme was launched.

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<sup>11</sup> See the report on the Field Operations Strategy to be submitted at the tenth session of the Assembly.

113. It was agreed to harmonize the conditions of service for internationally-recruited staff working in non-family duty stations in the common system.

## **G. Strategic Planning**

114. The Court is preparing for the revision and update of the 2009-2018 Court-wide Strategic Plan<sup>12</sup>. The process being developed will include consultation within and across organs as well as with the States Parties. The goal is to finalize a new Plan with a shorter time horizon based on the Court's strategic planning experience over the last seven years. The link between the Plan, the budget and the performance indicators will be further improved.

## **H. New York Liaison Office**

115. During the reporting period the Court's Liaison Office to the United Nations in New York continued to facilitate and promote cooperation between the Court and the United Nations, its Funds, Programmes and Agencies, as well as between the Court and Permanent and Observer Missions to the United Nations, through sustained contacts and information exchange.

## **I. Permanent Premises**

116. The revised Preliminary Design was approved by the Oversight Committee at the end of February 2011. In accordance with the Assembly's resolution<sup>13</sup>, the Court identified and quantified the other costs related to the project but not directly related to the construction (Box 4) and submitted them to the Oversight Committee on 1 March 2011. The Final Design stage is ongoing and is expected to be finalized in early 2012. Combined efforts of the Court and the Project Director's Office to keep the costs within the approved budget are ongoing. The Court continues to provide all necessary input.

## **J. Audit Committee**

117. The Audit Committee held its 14th meeting from 28 February to 1 March 2011 and its 15th meeting on 17 June 2011, and submitted an annual report on its activities to the Committee on Budget and Finance<sup>14</sup>.

## **K. Assistance to the Special Court for Sierra Leone**

118. The Court continues to provide detention services and other related assistance to the Special Court for Sierra Leone as specified in an exchange of letters.

## **VI. New accessions**

119. During the reporting period, five new States deposited their instrument of accession or ratification of the Rome Statute with the Secretary-General of the United Nations: Republic of Moldova on 12 October 2010, Grenada on 19 May 2011, Tunisia on 24 June 2011, the Philippines on 30 August 2011 and the Maldives on 21 September 2011, bringing the number of States Parties to 118 when the Statute enters into force for the Maldives on 1 December 2011.

120. Five states acceded to or ratified the Agreement on Privileges and Immunities during the reporting period: Costa Rica on 28 April 2011, Czech Republic on 4 May 2011, Tunisia on 29 June 2011, Malta on 21 September 2011 and Chile on 26 September 2011, bringing the total number of States Parties to 64. The Agreement is foreseen in article 48 of the Rome Statute.

<sup>12</sup> ICC-ASP/9/20, para. 16.

<sup>13</sup> ICC-ASP/9/20, para. 16.

<sup>14</sup> CBF/17/11

## VII. Conclusion

121. During the reporting period, the Court faced an unprecedented, and partially unforeseen, volume of activities. Arrest warrants or summonses to appear were issued for ten persons, of whom seven appeared before the Court. A third trial started, presentation of evidence was concluded in one trial and charges were confirmed against two accused. The Prosecutor opened two new investigations, one following a referral by the United Nations Security Council and one *proprio motu* with the authorization of the Pre-Trial Chamber.

122. Outstanding arrest warrants continued to be a major source of concern to the Court. The effective implementation of the Court's mandate requires the full cooperation of the States Parties, collaborative efforts and a consistent approach.

123. The Court continues to strengthen its relationship with States and increase its cooperation and engagement with regional and other international organizations. International support of the Court continued to grow, as illustrated *inter alia* by accessions or ratifications by five new States Parties and the unanimous resolution of the United Nations Security Council on the referral of the Libya situation.

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