



OTP Weekly Briefing

ONGOING SITUATION OF FOUR COURT STAFF DETAINED IN LIBYA: Prosecutor Fatou Bensouda stated during her swearing-in: *"I would like to say my thoughts are today with our four colleagues who are currently being detained in Libya, as well as with their families and friends. The Office of the Prosecutor stands with the Court as a whole in their support to ensure their safety and swift release."*

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- Prosecutor Fatou Bensouda is sworn in
- Prosecution address on the sentencing of Thomas Lubanga

NEWS

Prosecutor Fatou Bensouda is sworn in as the new ICC Prosecutor

15 June - Fatou Bensouda made her [solemn undertaking](#) and formally took office as the ICC Prosecutor.



Ms Bensouda made her first speech as the ICC

Prosecutor, stressing she would be *"the Prosecutor of all the 121 States Parties, acting in full independence and impartiality [...] Justice, real justice, is not a pick-and-choose system. To be effective, to be just and to be a real deterrent, the Office of the Prosecutor's activities and decisions will continue to be based solely on the law and the evidence. In turn, the Office's decisions and those of the Court in general must be respected and implemented. That is the only way to sustain and strengthen the system of international criminal justice created by the Rome Statute. It requires the efforts of all actors within the system."*

The Prosecutor highlighted outgoing Prosecutor Moreno-Ocampo's crucial contribution to building the OTP, while noting that *"we need to focus our attention on consolidating and understanding its role and relevance in the management of violence through effective exercise of its mandate to investigate, prosecute and prevent massive crimes. Cooperation with, and support for the Court need to be consistently upheld and strengthened by all actors."*

Ms Bensouda stated the OTP *"will continue to forge ahead with its investigations and prosecutions [...], look[ing] for innovative methods for the collection of evidence to bring further gender crimes and crimes against children to the Court to ensure effective prosecutions of these crimes while respecting and protecting their victims. Preliminary examinations will remain a key element of the Office's activities and the Office will continue to ensure clarity, transparency and predictability in its decisions. Based on the lessons learned exercises it has been conducting internally and externally, the Office will build on its experiences, identify best practices and continue to improve its efficiency."*

ICC Prosecutor's address on the sentencing of Thomas Lubanga

13 June - Outgoing Prosecutor Moreno-Ocampo submitted his [address](#) on the sentencing of Thomas Lubanga. He said *"the Prosecution will request a very severe sentence"* for the crime Lubanga was convicted of, enlisting and conscripting children under the age of 15. The Prosecutor underlined that *"the Judgment recognized the fact that children are particularly vulnerable [and] require privileged treatment in comparison with the rest of the civilian population"* and called for the imposition of a sentence of 30 years in prison for Thomas Lubanga.

The Prosecutor pointed to four aggravating factors related to the crimes committed by Mr Lubanga: 1) Thomas Lubanga bears the greatest responsibility for the UPC actions. He was the top leader; he approved and supervised the common plan; 2) Thomas Lubanga's recruitment included particularly cruel treatment; 3) the crime of recruiting children as soldiers included a fundamental aspect of gender discrimination; and 4) the crime of recruiting children as soldiers denied these children and their generation of their right to education.

The Prosecutor concluded his submission by calling upon Mr Lubanga to make a public apology: *"however, and before I conclude my presentation, the Prosecution would like to offer Mr Lubanga a last chance to mitigate his guilt. Today, or tomorrow, in this courtroom, Mr Lubanga can offer a genuine apology [...] This is the last chance for Mr Lubanga to try to remedy the harm he inflicted to all the affected communities. If he does that, if he seriously commit himself to work to prevent future crimes the Prosecution is ready to recommend a reduced sentence of 20 years."*

OTP Activities

OVERVIEW

7 situations under investigation
14 cases in relation to 23 persons
11 outstanding arrest warrants
7 preliminary examinations in 4 different continents
Phases
1 case before Pre-Trial Chambers
6 cases before Trial Chambers
1 verdict

I. Preliminary Examinations

Preliminary examinations refer to the analytical process by which the OTP assesses whether there is a reasonable basis to proceed with an investigation in a given situation.

In accordance with Article 15 of the Statute, the OTP proactively gathers and evaluates information from multiple sources, including "communications" from individuals and parties concerned ([phase 1](#) – **initial review**). Following a sequential process, and irrespective of the mechanism by which the jurisdiction of the Court is triggered, the Office then applies the same legal criteria laid out in Article 53 of the Statute, namely **temporal/territorial/personal jurisdiction** ([phase 2a](#)), **subject-matter jurisdiction** ([phase 2b](#)), **admissibility**, including complementarity and gravity ([phase 3](#)) and the **interests of justice** ([phase 4](#)).

Currently, the OTP is conducting preliminary examinations into seven situations: [Afghanistan](#), [Honduras](#), [Korea](#) and [Nigeria](#) (phase 2b), [Colombia](#), [Georgia](#) and [Guinea](#) (Phase 3).

II. Investigations and Prosecutions

1. Situation in the [Democratic Republic of the Congo](#) (DRC) – Referred: April 2004 Investigation Opened: June 2004

Trials

The Prosecutor v [Thomas Lubanga Dyilo](#) – charged with war crimes of conscripting, enlisting and using children to actively participate in hostilities committed in the Ituri region 2002 – 2003

Status: Judgment delivered on 14 March 2012; hearing for submissions of sentencing took place on 13 June 2012

The Prosecutor v [Germain Katanga and Mathieu Ngudjolo Chui](#) – charged with war crimes and crimes against humanity committed during the attack of the village of Bogoro in the Ituri region on 24 February 2003

Status: Defence case presentation concluded, closing oral statements set from 15 to 23 May 2012

Warrant Pending

The Prosecutor v [Bosco Ntaganda](#) – charged with war crimes of conscripting, enlisting and using children to actively participate in hostilities committed in the Ituri region 2002-2003

Issued: 22 August 2006

13 June - The OTP [submitted](#) an amended application to ICC Judges for an arrest warrant against Sylvestre Mudacumura, 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). The new application follows ICC Judges' decision to dismiss a previous application, considering that this application fell short of the proper level of specificity. The Prosecution considers that Sylvestre Mudacumura is Supreme

Commander of the FDLR-FOCA, one of the most active militias in the Kivu Provinces of the DRC, and is allegedly responsible for a campaign of violence targeting civilians in these provinces.

19 June - UN High Commissioner for Human Rights, Navi Pillay [called](#) for every effort to be made to hold militia leaders involved in the current fighting in Eastern DRC accountable for crimes committed against civilians during the current mutiny and previous offences, singling out amongst others Bosco Ntaganda. The statement notes that *"The leaders of the M23 figure among the worst perpetrators of human rights violations in the DRC, or in the world for that matter. Many of them have appalling track records including allegations of involvement in mass rape, and of responsibility for massacres and for the recruitment and use of children."* High Commissioner Pillay further added *"every effort must be made to hold these men, and the soldiers under their command, accountable for human rights violations committed against civilians -- both for crimes committed within the context of the current mutiny, and also for offences committed previously."*

2. Situation in [Uganda](#) – Referred: January 2004 Investigation opened: July 2004

Warrants Pending

The Prosecutor v [Joseph Kony](#) et al. – charged with war crimes and crimes against humanity committed during LRA's insurgency activities in Northern Uganda 2002 – 2004

Issued: 8 July 2005. On 11 July 2007, Pre-Trial Chamber I ordered to terminate the proceedings against [Raska Lukwiya](#). On 8 November 2007, the OTP submitted information to the PTC on the reported death of Vincent [Otti](#).

3. Situation in [Darfur, the Sudan](#) – Referred: March 2005 Investigation opened: June 2005

Trial

The Prosecutor v [Abdallah Banda Abakaer Nourain](#) and [Saleh Mohammed Jerbo Jamus](#) – charged with war crimes committed during an attack against the Haskanita AU peacekeeping base in North Darfur on 29 September 2007

Status: Charges confirmed, trial date to be set

Prosecution to present additional evidence

The Prosecutor v [Bahar Idriss Abu Garda](#) – charged with war crimes committed during an attack against the Haskanita AU peacekeeping base in North Darfur on 29 September 2007

Warrants Pending

The Prosecutor v [Omar Al Bashir](#) – charged with war crimes, crimes against humanity and genocide committed as part of the counter-insurgency campaign in Darfur 2003 – 2008 (at least)

Issued: 4 March 2009 & 12 July 2010

The Prosecutor v [Ali Kushayb](#) and [Ahmad Harun](#) – charged with war crimes and crimes against humanity committed during the attacks against the civilian population in Darfur August 2003 – March 2004

Issued: 27 February 2007

The Prosecutor v [Abdel Raheem Muhammad Hussein](#) - charged with war crimes and crimes against humanity committed during attacks against the civilian population in Darfur August 2003 – March 2004

Issued: 1 March 2012

4. Situation in the [Central African Republic](#) (CAR) – Referred: January 2005 Investigation opened: May 2007

Trial

The Prosecutor v [Jean-Pierre Bemba Gombo](#) – charged with war crimes and crimes against humanity, including a massive rape campaign, committed in CAR between 26 October 2002 – 15 March 2003

Status: Prosecution completed the presentation of its case on 21 March 2012

7 June - Trial Chamber III [granted](#) the Defence the requested total of 230 hours for the questioning of its witnesses and ordered that the Defence presentation of evidence shall not exceed eight months. It instructed the Defence to review its list of witnesses to determine whether there is a possibility for reducing the number to avoid the presentation of overly repetitive evidence. It decided that the proposed order of appearance of the Defence witnesses shall be adjusted to commence with the testimony of the proposed expert witnesses, followed by all those witnesses that are in possession of, or do not face obstacles in obtaining, travel documents.

5. Situation in [Kenya](#) – OTP request to start investigation: November 2009 Investigation opened: March 2010

Trials

The Prosecutor v [William Samoei Ruto](#) and [Joshua Arap Sang](#) – charged with crimes against humanity committed during the post-electoral violence in Kenya on or about 30 December 2007 – end January 2008

Status: Case sent to trial on 23 January 2012, date of trial to be set before 13 July (charges were not confirmed against Henri Kosgey, but the OTP will present additional evidence)

The Prosecutor v [Francis Kirimi Muthaura and Uhuru Muigai Kenyatta](#) – charged with crimes against humanity committed during the post-electoral violence in Kenya 24 – 28 January 2008

Status: Case sent to trial on 23 January 2012, date of trial to be set before 13 July (charges were not confirmed against Mohammed Ali, but the OTP will present additional evidence)

11-12 June - Trial Chamber V held two status conferences respectively in the cases *the Prosecutor v. William Ruto and Joshua Arap Sang* and *the Prosecutor v. Francis Muthaura and Uhuru Kenyatta*. During the status conference for the Ruto and Sang case, the OTP submitted that the start date of the trial should not be tied to the elections in Kenya. The OTP did not object to the Defence suggestion that the trial begin in March 2013. The OTP requested that the accused provide written undertakings committing themselves to appear before the Court regardless of the outcome of presidential elections. During the status conference for the Muthaura and Kenyatta case, the OTP proposed that the Chamber synchronize the trial date for the two cases. The Judges informed that they will announce the date of the commencement of the trial before the Court's summer judicial recess, that is, before 13 July.

6. Situation in [Libya](#) – Referred: February 2011 Investigation opened: March 2011

Warrants Pending

The Prosecutor v [Saif Al-Islam Gaddafi](#) and [Abdullah Al Senussi](#) – charged with crimes against humanity committed during attacks on the civilian population by the Libyan Security Forces 15 February – at least 28 February 2011

Issued: 27 June 2011; the Chamber decided that Libya could postpone the execution of the request to surrender Saif Al-Islam Gaddafi on 1 June 2012, pending a final determination on the admissibility challenge.

5 June - The Prosecution submitted its [observations](#) on the GoL's admissibility challenge, arguing that the GoL has provided information that it is investigating substantially the same case alleged before this Court and that it has taken concrete investigative steps that surpass the threshold of inactivity. It noted however, that Mr Gaddafi still does not have a defence lawyer in the national proceedings, which is a prerequisite to proceed to the next phase of the case under Libyan law. Accordingly, it considered that before reaching a conclusion, the Court should accept the GoL's offer to provide further information and invite the in-court testimony of the Prosecutor General, which should provide clarity on the evidence collected and particularly on the GoL's ability to advance the judicial proceedings.

7. Situation in [Côte d'Ivoire](#) – OTP request to start investigation: June 2011 Investigation opened: October 2011

Warrant executed

The Prosecutor v [Laurent Gbagbo](#) – charged with war crimes and crimes against humanity committed after the November 2010 Ivorian elections.

Issued: 23 November 2011 (under seal)

Status: initial appearance on 5 December 2011; confirmation of charges hearing set for 13 August 2012

III. Arrests - Cooperation

10 PERSONS SOUGHT BY THE COURT



The Prosecutor v Bosco Ntaganda (more information [here](#))

Current location: **DRC, in and around Goma**

The Prosecutor v Joseph Kony et al (more information [here](#))

Current location: **variously, at different times, in the border area between DRC, CAR and South Sudan**

14 June - UN Secretary-General Ban Ki-moon has [warned](#) that an African Union and U.S.-backed military force hunting fugitive warlord Joseph Kony and the LRA lacks resources needed to be effective. The Secretary-General urged UN member states to provide the resources needed.

The Prosecutor v Ahmed Harun and Ali Kushayb (more information [here](#))

Current location: **South Kordofan, Sudan (A. Harun)**
Sudan (A. Kushayb)

The Prosecutor v Omar Hassan Ahmad Al Bashir (more information [here](#))

Current location: **Khartoum, Sudan**

13 June - Botswana has [commended](#) the Malawi government for its decision to cancel next month's AU summit over the controversy regarding Sudanese President Omar Al-Bashir's attendance. The Botswana government said it was "deeply concerned" about the pressure exerted by the AU Commission on Malawi to commit to hosting President Al-Bashir. The statement read: "Unfortunately, this pressure has consequently, led to the summit being moved to Addis Ababa, thus depriving Malawi to host the meeting. Botswana therefore condemns this action as it is inconsistent with the very fundamental principles of democracy, human rights and good governance espoused by the AU, and which Malawi upholds... It is our considered view that Malawi as a sovereign state has the right to make decisions it may deem necessary, in fulfilment of her obligations under both the Rome Statute and the AU."

The Prosecutor v Abdel Raheem Muhammad Hussein (more information [here](#))

Current location: **Khartoum, Sudan**

The Prosecutor v Saif Al-Islam Gaddafi and Abdullah Al-Senussi (more information [here](#))

Current location: **Libya / Mauritania**

IV. Other Co-operation



12 June - Outgoing Prosecutor Moreno-Ocampo and Incoming Prosecutor Bensouda met with the Dutch Minister of Foreign Affairs, Uri Rosenthal, where they discussed the importance of the work of the Court. Minister Rosenthal thanked Prosecutor Moreno-Ocampo and congratulated Prosecutor Bensouda on her appointment. On 14 June, outgoing Prosecutor Moreno-Ocampo met with Prime Minister Rutte and discussed issues related to the situation in Libya and other matters of common concern. On 21 June, the outgoing Prosecutor met with the Dutch Minister of Security and Justice, Ivo Opstelten. The Minister thanked Mr Moreno-Ocampo for his work as Prosecutor;



Mr Moreno-Ocampo thanked the Minister for the strong support of the Netherlands.



12 June - Mr Evo Morales Ayma, President of the Plurinational State of Bolivia, visited the Court and met with ICC President Judge Sang-Hyun Song, First Vice-President Judge Sanji Mmasenono Monageng, Second Vice-President Judge Cuno Tarfusser, and outgoing Prosecutor Moreno-Ocampo.

19 June - The OTP briefed the Committee on Foreign Affairs of the European Parliament on the situation in Libya, in particular on the judicial process. On the same day, Catherine Ashton, the High Representative of the EU for Foreign Affairs and Security Policy and Vice-President of the Commission issued the following [statement](#) on the detained ICC staff in Libya: "The EU is following with great attention and concern the arrest and detention of four staff members of the ICC held in Libya since 7 June. I am pleased to see that the ICC staff received the visit of their Ambassadors and of the ICC representative. I call for all efforts to be made to

secure the immediate release of the detained individuals. I emphasize that it is the legal obligation of Libya under the UN Security Council’s resolution 1970 (2011) to co-operate fully with and provide any necessary assistance to the ICC pursuant to that resolution and to recognize the privileges and immunities of ICC staff. Libya should address concerns about the conduct of staff of the ICC within the ICC legal framework. I underline the need to grant full consular access consistent with the obligations under the Vienna Convention.”



19 June - Prosecutor Fatou Bensouda met with the International Association of Prosecutors’ President, Mr Kuipers, at the seat of the Court.

V. Upcoming Events

June						
18	19	20	21	22	23	24
25	26	27 Prosecutor Fatou Bensouda gives a speech at the Helen Stacy’s Program on Human Rights, Stanford	28	29	30	

VI. Other Information

* This document reflects the views of the Office of the Prosecutor of the ICC. For more information, contact Mrs. Olivia Swaak-Goldman, International Cooperation Adviser in the Office of the Prosecutor, at Olivia.Swaak-Goldman@icc-cpi.int