



OTP Weekly Briefing

NEWS

Issue 104

8 November - 21
November 2011

- Prosecutor travels to Libya after arrest of Saif Al-Islam Gaddafi
- Defense concludes evidence submission in the Katanga / Ngudjolo Chui trial



ICC Prosecutor arrives in Libya

22 November - Prosecutor Moreno-Ocampo and Deputy Prosecutor Fatou Bensouda lead a delegation to Tripoli which will meet with Libyan authorities as part of coordination efforts following the arrest of Saif Al-Islam Gaddafi and unconfirmed reports regarding the arrest of Abdullah Al-Senussi.

Prosecutor Moreno-Ocampo [said](#) "Saif Al-Islam Gaddafi and Abdullah Al-Senussi must face justice. In resolution 1970, the UN Security Council referred the situation in Libya to the ICC and required the Libyan authorities to cooperate with the Court. I will talk to the national authorities and seek information about proposed national proceedings in order to assist us in analysing the admissibility of the case against Saif Gaddafi and Abdullah Al-Senussi and to understand their plans moving ahead. Their arrest is a crucial step in bringing to justice those most responsible for crimes committed in Libya. This is not a military or political issue, it is a legal requirement."

Warrants of arrest for Saif Al-Islam Gaddafi and Abdullah Al-Senussi were issued by ICC judges on 27 June 2011. "The issue of where the trials will be held has to be resolved through consultations with the Court. In the end, the ICC judges will decide, there are legal standards which will have to be adhered to," said the Prosecutor.

The Office continues its impartial investigation in Libya.

Conclusion of the Defense evidence submission in the Katanga / Ngudjolo Chui trial

11 November - With the end of the testimony of Mathieu Ngudjolo Chui, who testified as a witness on his own behalf, the Defence evidence submission in the case *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* concluded. Trial Chamber II gave the parties until 21 November to suggest evidence for rebuttal to be called by the Chamber. Thereafter, the Trial Chamber will order a status conference to set the timetable for the submission of the closing briefs. A final judgment is expected around mid 2012.

OTP Activities

OVERVIEW

7 situations under investigation
12 cases in relation to 24 persons
18 arrest warrants – 11 outstanding
3 trials
3 confirmation of charges proceedings
8 preliminary examinations in 4 different continents

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 eight situations: [Palestine](#) (phase 2a), [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 against children committed in the Ituri region 2002 – 2003

Status: Trial finished on 26 August 2011, pending judgment

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

Confirmation of Charges Hearing

The Prosecutor v [Callixte Mbarushimana](#) – charged with war crimes and crimes against humanity, including massive sexual violence, committed in the North and South Kivus 2009 – 2010

Status: Hearing held from 16 to 21 September 2011, pending decision

Warrant Pending

The Prosecutor v [Bosco Ntaganda](#) – charged with war crimes against children committed in the Ituri region 2002-2003

Issued: 22 August 2006

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

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

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 case presentation ongoing

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

Confirmation of Charges Hearing:

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

Status: Hearing held from 1 to 9 September 2011, pending decision

The Prosecutor v [Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali](#) – charged with crimes against humanity committed during the post-electoral violence in Kenya 24 – 31 January 2008

Status: Hearing held from 21 September to 6 October 2011, pending decision

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

Warrants Pending:

The Prosecutor v [Muammar Abu Minya Gaddafi, 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

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

Status: 3 October 2011 – Pre Trial Chamber III authorizes the Prosecutor to open an investigation into the situation in Côte d'Ivoire since 28 November 2010

III. Arrests - Cooperation

9 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 November - The UN Secretary-General in a [report](#) to the Security Council on the LRA noted that Joseph Kony, Okot Odhiambo and Dominic Ongwen are still actively involved in the atrocities committed by the LRA and called on LRA-affected countries to take the necessary national measure to prevent impunity and for ICC warrants against them to be acted upon without delay. The UN Security Council in a [Presidential Statement](#) referred to the ICC's arrest warrants for the three LRA leaders and encouraged all states to cooperate with the Ugandan authorities and with the ICC to implement the warrants and bring to justice those responsible for LRA atrocities. A number of Council members, including France, Colombia, the US and India highlighted the importance of action to bring LRA leaders to justice. The Secretary-General's report records that in the first 8 months of 2011 alone, there were more than 250 reports of attacks on civilians, with over 125 civilians killed, more than 360 abducted and an estimated 440,000 displaced as a result of LRA attacks in the DRC, South Sudan and CAR. A further report by the Secretary-General on coordinating action against the LRA is commissioned for mid 2012.

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

Current location: **Libya**

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**

IV. Other Co-operation



9 November - Prosecutor Moreno-Ocampo participated in a high-level seminar on *International Justice, Peace and Crisis Management*, organized by the Swedish Embassy in the Peace Palace in The Hague.

The high-level seminar, attended by the international community in The Hague, saw the participation inter alia of the President of Burkina Faso, Blaise Compaoré; former Joint AU-UN Chief Mediator for Darfur and current Minister of Foreign Affairs for Burkina Faso, Djibril Yipèné Bassolé; Nicholas Westcott, Managing Director for Africa, European External Action Service; and incoming President of the Assembly of States Parties, Ambassador Tiina Intelmann.

President Compaoré, when discussing his experiences in relation to managing conflicts, said: “[W]e always opted for holistic and inclusive

approaches, as political solutions and legal actions are equally important. Peace and justice were the two components of the comprehensive solution to the crisis in Darfur. The two objectives may mutually reinforce each other (...). In the Republic of Guinea, the launching of preliminary enquiries by the International Criminal Court to establish human rights was a catalyst for the return to dialogue among all the actors toward accelerating and consolidating national reconciliation process. (...) Justice and peace may not be contemplated independently from one another. If the gap of impunity is not filled, genuine reconciliation will not happen. Similarly, the legal international justice should be an instrument to restore peace and adapting to various requirements.”

In the afternoon, Prosecutor Moreno-Ocampo gave the keynote address in the 8th Annual Conference organized by the Hague Academic Coalition, in cooperation with the Swedish Embassy, with the theme *Peace diplomacy, global justice and international agency: rethinking human security and ethics in the spirit of Dag Hammarskjöld*. The Prosecutor emphasized that “as the Prosecutor of the ICC, I have to follow my mandate and apply the law; I cannot adjust to political considerations. Other actors have to adjust to the new paradigm in international relations: the rule of law”.

9 November - The UN Secretary-General stated in the UNSC open [debate](#) on the Protection of Civilians in Armed Conflict that it is necessary to enhance “compliance with international human rights and humanitarian law. Violations must be met with appropriate action from the Council, including strong condemnation where clearly warranted (...) demands for compliance should be backed by the threat of targeted sanctions and intense scrutiny, including through commissions of inquiry or referrals to the ICC.” He also affirmed that accountability must be enhanced.

The UK Ambassador and Permanent Representative to the UN, Mark Lyall Grant, [said](#) that the “primary responsibility to protect civilians lies with States”, and added that “the ICC is bringing to account those responsible for atrocities against civilians and it is a visible demonstration of the international community’s increasing intolerance for impunity.”

Ambassador Gérard Araud, French Permanent Representative in UN, [affirmed](#) that “when civilians die, to consider how to protect them is good, but to actually protect them is better.” He added that “in 2005, the Security Council referred to the ICC atrocities in Darfur. This year, unanimously, the UNSC referred to the ICC the case of Libya. Finally, it is clear that without justice there can be no lasting peace, reconstruction of the social fabric and reconciliation between communities.” While Ambassador Ivan Barbalic, Permanent Representative to the UN from Bosnia and Herzegovina, urged the Council to have a better interaction with the ICC, Ambassador Baso Sangqu, Permanent Representative to the UN from South Africa, stressed that the fight against impunity had been strengthened through, among other things, the work of the ICC and special tribunals.

11-16 November - Prosecutor Moreno-Ocampo participated in a series of academic events in Canada and the US. The Prosecutor participated in a conference organized by the New York University on “How best to assure the independence of the ICC Prosecutor”, together with President Wenaweser. The Prosecutor also participated in screenings of “The Prosecutor” at the University of Toronto, the University of Ottawa and the Harvard Kennedy School.

19 November - Prosecutor Moreno-Ocampo, at the invitation of the European External Action Service (EEAS), briefed the participants of the EEAS Seminar on Political and Diplomatic Issues for Advisors in Delegations in Brussels. During the meeting, the Prosecutor discussed with delegates the synergies between managing conflicts and the legal requirements under

the ICC Rome Statute, analyzing how the work of the Office affects the activities of other actors, what limits should be respected when negotiating conflicts and how the law can provide leverage during the negotiations.

V. Upcoming Events

December						
			1	2	3	4
5	6	7	8	9	10	11
12 <i>Tenth Session of the Assembly of States Parties, New York</i>	13 <i>Tenth Session of the Assembly of States Parties, New York</i>	14 <i>Tenth Session of the Assembly of States Parties, New York</i>	15 <i>Tenth Session of the Assembly of States Parties, New York</i> <i>Prosecutor reports to UN Security Council on Darfur, New York</i>	16 <i>Tenth Session of the Assembly of States Parties, New York</i>	17	18
19 <i>Tenth Session of the Assembly of States Parties, New York</i>	20 <i>Tenth Session of the Assembly of States Parties, New York</i>	21 <i>Tenth Session of the Assembly of States Parties, New York</i>	22	23	24	25
26	27	28	29	30	31	

VII. 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