



## OTP Weekly Briefing

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- ICC Prosecutor submits new applications for arrest warrants in DRC situation
- Prosecution makes closing statements in Katanga / Ngudjolo case

## NEWS

### ICC Prosecutor submits new applications for warrants of arrest in DRC situation

**14 May** - The [Office of the Prosecutor](#) has requested two new warrants of arrest in the DRC situation.

The first one relates to Bosco Ntaganda for crimes committed as a top commander of Thomas Lubanga's militia, the UPC/FPLC. Taking into consideration the findings in the final "*Lubanga Judgement*" the Prosecution will seek to add charges against Bosco Ntaganda for the following crimes: 1) crimes against humanity of murder, persecution based on ethnic grounds, and rape/sexual slavery, and 2) war crimes of intentional attacks against civilians, murder, rape / sexual slavery and pillaging. These crimes were committed over a large geographical area within Ituri, DRC between September

2002 to September 2003.

The Office also filed an arrest warrant application against a leader of one of the most active militias in the Kivu provinces, Sylvestre Mudacumura, the Supreme Commander of the FDLR-FOCA. Together with Callixte Mbarushimana and Ignace Murwanashyaka, Sylvestre Mudacumura is one of the main leaders of the FDLR, which launched a campaign of attacks against the civilian populations in the Kivus.

Sylvestre Mudacumura is charged with- 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 or willful killing, mutilation, cruel treatment, rape, torture, destruction of property, pillaging and outrage upon personal dignity. The alleged crimes were committed by the FDLR-FOCA between 20 January 2009 and 31 August 2010, in North and South Kivu Provinces.

### Prosecution makes oral closing statements in Katanga / Ngudjolo case



**15 May** – Closing statements in the Katanga and Ngudjolo Chui case were presented to Trial Chamber II. Deputy Prosecutor Fatou Bensouda stated: "*The Prosecution has presented evidence from 24 Prosecution witnesses. Amongst them, the Chamber has heard the evidence of several survivors of the Bogoro attack. These women and men described the horrific events that took place in Bogoro. They testified about hiding to save their lives; they testified about their family members and friends being butchered; they testified about civilians being hunted down and murdered in the bush surrounding the village; they testified about seeing the village being looted and destroyed by the attackers. One witness even described how he was kept overnight in a classroom filled with dead bodies of civilians, including children,*

women and elderly killed by machetes. They also testified that child soldiers were amongst the attackers. They testified about the great deal of suffering the attack had caused them and their community.

Women described how they were raped and recounted their horrible experiences as sex slaves. [...] The consequences for these women were severe. Their prolonged captivity and repeated sexual slavery affected their physical and psychological well-being. [...] Two of these witnesses became pregnant while sexually enslaved. As they stated, sexually abused women often feel ashamed as rape is still considered taboo in these communities and even though victims their husbands, families and society can reject them. [...] The victims heard in this case are not alone. They testified before this Court and the whole world about the miseries they suffered. Their testimony is now on record and will not be forgotten. [...] The Prosecution's case against Germain Katanga and Mathieu Ngudjolo is logical and coherent. Once pieced together, the evidence placed before you by the Prosecution forms a whole that can only lead to one conclusion: Germain Katanga and Mathieu Ngudjolo are guilty, beyond any doubt, of the crimes as charged".

## OTP Activities

### OVERVIEW

7 situations under investigation  
15 cases in relation to 24 persons  
11 outstanding arrest warrants  
7 preliminary examinations in 4 different continents  
**Phases**  
2 cases 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 [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 set for 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 started on 15 May 2012

### 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:** Pre-Trial Chamber I declines to confirm the charges (16 December 2011); Prosecution appealed to Appeals Chamber on 12 March 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

## 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](#).



**12 May** - Caesar Acellam, the fourth most senior rebel commander of the LRA, was [seized](#) after a firefight with Ugandan troops near the border of CAR with the DRC. He was flown to the South Sudanese headquarters of the regional armies hunting the LRA, for medical checkups. Acellam is not the subject of an ICC arrest warrant.

The LRA's top three commanders are Okot Odhiambo, Dominic Ongwen and Joseph Kony. All are at large and wanted by the ICC along with

Vincent Otti, who is however thought to be dead.

The [Special Representative](#) of the Secretary-General for Children and Armed Conflict, Radhika Coomaraswamy said *"I am encouraged by the capture of one of the worst perpetrators of child rights violations, and hope that the Ugandan authorities would not apply amnesty but instead, bring him to justice [...] The arrest and subsequent prosecution of Acellam would send a strong message to the LRA leadership that they will be held accountable for their actions"*.

## 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 has completed the presentation of its case on 21 March 2012.

## 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 (charges were not confirmed against Henri Kosgey, but the OTP will present additional evidence); appeal by the Defence on jurisdiction presented on 30 January 2012

*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 (charges were not confirmed against Mohammed Ali, but the OTP will present additional evidence); appeal by the Defence on jurisdiction presented on 30 January 2012

**1 May** - The Appeals Chamber [dismissed](#) the Defence request for an oral hearing in relation to the appeal against the jurisdiction of the Court in the Prosecutor vs. Muthaura and Kenyatta case. It rejected the Defence submission that it is obliged, pursuant to article 21, to apply provisions of the Kenyan Constitution and Criminal Procedure Code which safeguard the right to be heard and to have a public hearing, reasoning that: (i) article 21(1)(c) vests the Court with power to apply general principles of law derived from national laws but not to apply national laws directly; (ii) general principles of law are a subsidiary source of law to which resort may be had if the sources of law listed in article 21(1)(a) and (b) do not regulate the issue at hand; and (iii) as expressed by the words "as appropriate", article 21(1)(c) vests the Court with discretion to derive such general principles, but does not require the Court to do so. It further noted that an oral hearing would unduly affect the expeditious resolution of the appeal since the Defence request was made several weeks after the last filing on the merits had been filed.

## 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 Government of Libya submitted an application pursuant to Article 19 challenging the admissibility before the ICC of the case concerning Saif Al-Islam Gaddafi and Abdullah Al-Senussi on 1 May 2012

**10 May** – The OTP submitted its [comments](#) regarding the “Request to Disqualify the Prosecutor from Participating in the Case against Mr. Saif Al-Islam Gaddafi”. The OPCD, representing Mr. Gaddafi, requests the disqualification of the Prosecutor, alleging that he lacks impartiality and independence. According to the comment, “*the OPCD has not presented a situation that falls under Article 42(7) of the Statute or Rule 34 of the Rules of Procedure and Evidence [which] establish the norms for disqualification of a judge or prosecutor*”. Accordingly, the arguments of the OPCD which presuppose that the Prosecutor is supporting Libya’s admissibility challenge are not well founded and are not in accordance with these provisions. Thus the Prosecution requests from the PTC that the OCPD Application be dismissed.

## 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 18 June 2012

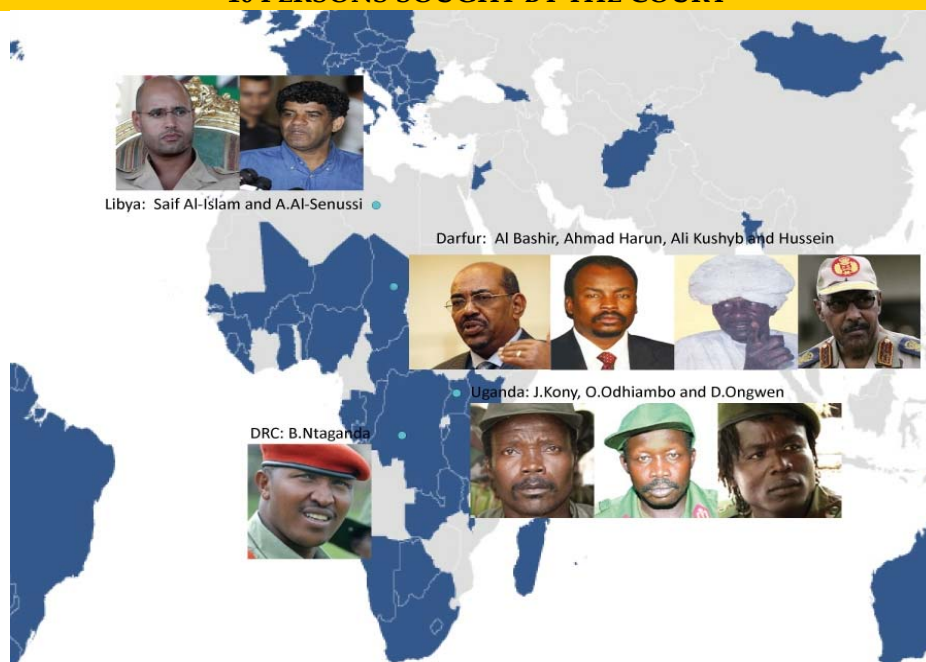
**4 May** - The Single Judge of Pre-Trial Chamber I [requested](#) the Parties to submit observations on the confirmation of charges hearing scheduled to start on 18 June 2012. It ordered the Parties to inform it by 14 May 2012 as to: (i) whether they intend to hear *viva voce* witnesses; and (ii) an estimate of the time required for the questioning of witnesses. It also ordered the Parties to submit by 23 May 2012 their observations for the purposes of establishing a schedule of the hearing by detailing in particular: (i) whether they intend to raise questions or challenges concerning jurisdiction or admissibility and/or to raise objections or make observations concerning issues related to the proper conduct of the proceedings prior to the confirmation hearing; and (ii) an estimate of the time required



for the presentation of the arguments on the merits and evidence, including audio and video based evidence and geographical maps, if any.

### 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**

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

Current location: **Libya / Mauritania**

*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**

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

Current location: **Khartoum, Sudan**

### IV. Other Co-operation

**8 May** - the CICC sent a **letter** to UN member states expressing its support for part of a proposed Resolution, commonly referred to as the “**[S-5 Resolution](#)**”, that calls on permanent members of the Security Council to consider “refraining from using a veto to block Council action aimed at preventing or ending genocide, war crimes and crimes against humanity.” The Coalition believes that this recommendation of the resolution would help strengthen the relationship between the UN Security Council and the ICC. The General Assembly decision on the proposed resolution is scheduled for 16 May 2012.

**14 May** - Deputy Prosecutor Bensouda briefed the Lady Ambassadors in The Hague during a luncheon organized by the Ambassador of Cameroon, Ms. Melono. The Deputy Prosecutor gave an overview over the different situations and cases and discussed matters of cooperation with the Ambassadors present.



**15 May** - Deputy Prosecutor Bensouda met with the Danish Undersecretary for Legal Affairs, Thomas Winkler, in The Hague, to discuss matters of common concern.

## V. Upcoming Events

May						
	1	2	3	4	5	6
7	8	9	10	11 <i>Deputy Prosecutor speaks at Warwick University about The Future Role of ICC , Warwick</i>	12	13
14	15 <i>Start of the closing statements in the case of The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui</i>	16 <i>Prosecutor reports to the UN Security Council on Libya, New York</i>	17 <i>Prosecutor participates in IPI Policy Forum "ICC Prosecutor Luis Moreno-Ocampo Challenges for the ICC over the Next 10 Years- Enforcing Arrest Warrants"</i>	18	19	20
21	22 <i>Deputy Prosecutor attends a conference on Africa and the ICC organised by Open Society Initiative for Southern Africa (OSISA) and OpenForum, Cape Town</i>	23 <i>Deputy Prosecutor attends a conference on Africa and the ICC organised by Open Society Initiative for Southern Africa (OSISA) and OpenForum, Cape Town</i>	24	25	26	27
28	29 <i>Prosecutor and Deputy Prosecutor participate in OTP-NGO roundtable</i>	30 <i>Prosecutor and Deputy Prosecutor participate in OTP-NGO roundtable</i>	31			

## 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](mailto:Olivia.Swaak-Goldman@icc-cpi.int)