



OTP Weekly Briefing

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November

- **UNSC members express support for OTP activities in Libya**

NEWS

UNSC members express support for OTP activities in Libya as Prosecutor Moreno-Ocampo encourages States to ensure that Saif Al-Islam Gaddafi and Abdallah Al-Senussi face justice

2 November - Prosecutor Moreno-Ocampo in his report to the UN Security Council on the progress of the Office's activities in the situation of Libya, updated its members on the current situation of the three indictees.

Whereas Muammar Gaddafi died, the Office of the Prosecutor has been galvanizing efforts to ensure that Saif Al-Islam Gaddafi and Abdallah Al-Senussi face justice. The Office received questions from individuals linked to Saif Al-Islam about the legal conditions attaching to his potential surrender to the Court, but the Office is also receiving information that a group of mercenaries may be endeavoring to facilitate his escape from Libya. *"We are calling upon States to do all they can to disrupt any such operation"*, said the Prosecutor. *"It is up to Saif Al-Islam Gaddafi and Abdallah Al Senussi to decide if they will surrender themselves, remain in hiding, or try to escape to another country."* The Prosecutor also strongly encouraged the Security Council and States to assist the Court in identifying and isolating the personal assets of both indictees, for the potential benefit of the victims, through reparations awarded by the Court.

Prosecutor Moreno-Ocampo indicated the current focus of the Office investigations is two-fold: firstly, it continues the collection of evidence against Saif Al-Islam Gaddafi and Abdallah Al-Senussi in preparation for their eventual trial; secondly, it is continuing its investigations into gender crimes in Libya.

In his briefing, the Prosecutor also affirmed that the Court will impartially look into allegations of crimes committed by NATO as well as forces related to the National Transitional Council (NTC), which include the alleged detention of civilians and killing of detained combatants. In May 2012, the Prosecutor will present a comprehensive analysis of the crimes committed and on the possibility for further investigations. The Prosecutor clarified that the possibility to carry out all of these investigations will depend on the budget available to the Office.

Reactions UNSC members

Ambassador Nestor Osorio of Colombia, welcoming the new Libyan authorities' statements that they are willing to cooperate with the Prosecutor's Office, stressed it is *"necessary to ensure that those still at large were apprehended. Arresting those accused and turning them over to the Court is the way to implement the Council's decision under the Charter's Chapter VII."*

Ambassador Susan Rice of the United States, underlining the necessity to look into abuses on both sides, highlighted the importance that *"the two other Libyan fugitives wanted by the Court - Saif al-Islam Gaddafi and Abdallah Al-Senussi - must be brought to justice."*

Ambassador Martin Brians of France said that international justice had a role, *"not only after, but also during a crisis, with the aim of deterring future crimes. The Court's judicial process had begun and it must follow its course. The investigations must be carried out. The two Libyan fugitives wanted by the Court must turn themselves in or be arrested."* Ambassador Brians further welcomed the

cooperation between the Prosecutor's Office and the Libyan authorities, lauding the fact that other States and regional organizations had pledged their full cooperation with the Office. The arrest warrants for the two other Libyan fugitives were still outstanding. *"The Council must follow up on that and States in the region must help the Libyan authorities ensure that those responsible for the crimes are held to account."*

Ambassador Nawaf Salam of Lebanon said that *"the two fugitives should be brought to justice, as the task of the International Criminal Court did not finish with the demise of Muammar Gaddafi"*, adding that *"neighbouring countries should cooperate with the Court to ensure that their territories do not become safe havens."*

Ambassador U Joy Ogwu of Nigeria stressed her firm commitment to the fight against impunity and to ensuring it was carried out decisively. *"States must cooperate with that aim."* She lauded the Court's contact and cooperation with the Libyan authorities to ensure justice for all Libyan victims. The Court's work was essential to ensure reconciliation in Libya, as the systematic and widespread violations of human rights had left *"open veins and physical and emotional scars"*. She was deeply concerned that the escape of Libyans indicted by the Court could have serious political and security implications for neighbouring States. She called for continued cooperation with the Court, saying it would help expedite completion of current investigations.

Ambassador Mark Lyall Grant of the UK said the Court's investigation into the Libyan situation did not end with Mr. Gaddafi's death. *"There are outstanding arrest warrants for two others, and the Court needs the cooperation of States to bring them to justice."* The UK's authorities had fully supported the Prosecutor. He called on the Libyan authorities to continue cooperating with the Court, to encourage Libya's neighbours to do the same and hand over the two indicted men if found in their territories.

Ambassador Noel Nelson Messone of Gabon noted and welcomed the independence and impartiality in which the Court was conducting the Libyan case.

Ambassador Vitaly Churkin of the Russian Federation welcomed contacts by the Court's representative with some of the accused. He expressed regret that Muammar Qadhafi himself had been killed and was unable to say anything to investigators. Ambassador Churkin said that all who are guilty of the most serious crimes under international law should be punished. He, therefore, welcomed an investigation into the killings of Muammar Gaddafi and his son and expressed hope that the Court had enough resources to conduct that and other investigations. The Court should follow also the pace of the investigation in Libya and render assistance where necessary. If Libyan authorities could not carry out the necessary investigation, then the Court should step in and do so.

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)

14 communications that may fall under Article 15 were received by the Office in the month of October. 3 of these communications were manifestly outside the jurisdiction of the Court; 11 communications warranted further analysis or were linked to a situation already under analysis. The total number of Article 15 communications received to date is 9,314, of which 4,373 were manifestly outside the jurisdiction of the Court.

25-26 October 2011 - OTP conducted its fifth mission to Conakry, Guinea, in order to follow up on the national investigation into the 28 September 2009 events, gauge the national authorities' readiness to launch prosecutions and further explore international actors' eagerness to encourage positive complementarity in Guinea. The OTP delegation, composed of Amady Ba, Head of International Cooperation Section and Emeric Rogier, Head of Situation Analysis Section, held meetings with the Guinean Prime Minister Mohamed Said Fofana, the Justice Minister Christian Sow, the pool of investigative judges, as well as victims' groups and international actors. While the Guinean Government has lately provided the investigative judges with necessary material support, victims are getting anxious to see justice being done in Guinea for the crimes they suffered two years ago.



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 ongoing

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

26 October - In the case *The Prosecutor v. Callixte Mbarushimana*, Pre-Trial Chamber I [rejected](#) the Defence's challenge to the jurisdiction of the Court, recalling that crimes committed after the time of a referral may fall within the jurisdiction of the Court provided that they are sufficiently linked to the situation of crisis which was ongoing at the time, and it is irrelevant whether particular individuals or events subsequently charged by the Prosecution could not have been charged at the time of the original referral. The Chamber was satisfied that not only Ituri, but also the Kivus featured as a region of crisis at the time of the referral of the DRC situation and therefore a link existed between the events which led to the referral and the charges brought against the Suspect.

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

26 October – In the case *The Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang*, the Single Judge [decided](#) to exceptionally vary the 60-day time limit prescribed by regulation 53 of the Regulations of the Court to the effect that the decision on the confirmation of charges in Case 1 will be issued at the same time as Case 2 on the ground that light of the security concerns expressed by the victims in both cases.

28 October - In the case *The Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*, the Legal Representative of victims, Mr. Anyah, [requested](#) the Chamber, *inter alia*, to confirm the charges against the Suspects and to request the Prosecution to consider amending the legal characterization of the facts in light of evidence suggesting that acts of destruction, looting, and/or theft of property were committed as underlying acts of the crime against humanity of persecution and/or as the *actus reus* of the crime against humanity of forcible transfer.

The Prosecution [filed](#) its written submissions on several issues following the confirmation hearing, submitting to the Chamber that, for the purposes of confirmation, Pre-Trial Chamber II should accept the Prosecution evidence as dispositive so long as it is relevant and avoid attempting to resolve contradictions between the Prosecution and Defence evidence, which shall occur at trial. It also argued, *inter alia*, that Pre-Trial Chamber II may base its decision on the evidence from anonymous witnesses and

that the evidence should be evaluated as a whole. The Prosecution submitted that its evidence is sufficient to confirm the charges against the three Suspects.

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**

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

26 October - Ian Martin, the Secretary-General's Special Representative for Libya, [said](#) that, while the whereabouts of Saif Al-Islam Gaddafi and Abdullah Al-Senussi remains uncertain, it is the responsibility of the Transitional Council to ensure that, if captured inside Libya, they are treated in accordance with international humanitarian law. *"It is the responsibility of all signatories to the Rome Statute to ensure that they were arrested and brought before the International Criminal Court."*

29 October - Prosecutor Moreno-Ocampo travelled to Beijing, China, to give a keynote speech in a conference at the invitation of the *International Forum on Crime and Criminal Law in the Global Era*. During his visit, the Prosecutor also met with representatives of the Ministry for Foreign Affairs with whom he discussed issues of mutual concern.

3 November - Prosecutor Moreno-Ocampo travelled to Mexico City to give a lecture to a group of magistrates. The conference was organized by *El Instituto de la Judicatura Federal-Escuela Judicial* (Federal Judiciary Institute-Judicial School) about the Prosecutor's role within the Court and how to prevent, investigate and prosecute massive crimes.

V. Upcoming Events

November						
	1	2 <i>Prosecutor briefs the UN Security Council on the situation in Libya, New York</i>	3	4 <i>Prosecutor delivers keynote speech to ASIL mid year meeting, Los Angeles</i>	5	6 <i>Prosecutor attends screening of The Prosecutor at USC, Los Angeles</i>
7	8	9 <i>Prosecutor addresses Hague Academic Coalition Conference, The Hague</i>	10	11	12	13
14 <i>Prosecutor attends screening of The Prosecutor at University of Toronto, Toronto</i>	15 <i>Prosecutor attends screening of The Prosecutor at the University of Ottawa, Ottawa</i>	16 <i>Prosecutor addresses the JFK Forum, Harvard University, Cambridge MA</i>	17 <i>Deputy Prosecutor attends screening of The Prosecutor at Oxford University, Oxford</i> <i>Prosecutor participates in arrest strategies seminar, The Hague</i>	18 <i>Prosecutor participates in arrest strategies seminar, The Hague</i>	19	20
21	22	23	24	25	26	27
28	29	30				

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>	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	

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