



OTP Briefing

Issue 100

14 September -
10 October

➤ **Investigation in Côte d'Ivoire Authorized**

NEWS



Pre-Trial Chamber III authorizes investigation in Côte D'Ivoire

3 October - Pre-Trial Chamber III issued its majority [decision](#) granting the Prosecutor's request to commence an investigation into alleged crimes within the jurisdiction of the Court committed since 28 November 2010 and any crimes committed in the future with respect to the situation in Côte d'Ivoire. The Chamber also ordered the Prosecution to revert in 1 month's time with any additional information relating to potentially relevant crimes committed between 2002 and 2010.

In his response to the decision, Prosecutor Moreno-Ocampo [stated](#) *"This decision ensures justice for the victims in Côte d'Ivoire. I will conduct effective, independent and impartial investigations. This is a judicial process, and the investigation will be guided by the law and only the law. From today, the Prosecution will collect evidence impartially and independently, and as soon as possible we will present our cases before the Judges, who will ultimately decide who should face trial."* Going on to highlight the role of national justice efforts he stated *"Our investigation should be part of national and international efforts to prevent future crimes in Côte d'Ivoire. The recently-established Truth, Dialogue and Reconciliation Commission would be a central piece of such efforts. National authorities could define other activities to help the victims, ensure peaceful coexistence and prevent future violence. Promoting justice and reconciliation in Côte d'Ivoire must be our common endeavour."*

Côte d'Ivoire, which is not party to the Rome Statute, [accepted the jurisdiction](#) of the ICC on 18 April 2003 and the Presidency of Côte d'Ivoire [reconfirmed the country's acceptance](#) of this jurisdiction 14 December 2010 and 3 May 2011.

OTP Activities

OVERVIEW

7 situations under investigation
12 cases in relation to 25 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 nine 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 on 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

20 September - The Prosecution filed an urgent [request](#) regarding contacts between Mathieu Ngudjolo and Germain Katanga and their Defense team during their testimony under oath. At the hearing of 14 September, the Defense counsels of Germain Katanga and Mathieu Ngudjolo confirmed that the two accused would testify under oath. The start of the deposition of Germain Katanga was scheduled for 27 September. Mathieu Ngudjolo will testify immediately after. In this context, the Prosecution requested that Trial Chamber I order the Registry to put in place the necessary measures to prevent contact between the two accused in the detention center as well as during their various transfers to the courtroom, and this for the duration of their testimony. The Prosecution also requested that the contacts between the defendants and their counsel (defense teams and resource persons) be prohibited during their testimony. This request reflects the general principle that a witness who was sworn in and has testified, is testifying or is about to testify, should not discuss with anyone his or her testimony. This is to avoid any contamination between witnesses and is recalled by the Chamber on a regular basis so that each witness does not discuss the substance of his or her testimony with anyone.

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

28 September - In the case of *The Prosecutor v [Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus](#)*; Trial Chamber IV rendered its [decision](#) on the procedural effect of the Agreement on Evidence [submitted](#) jointly by Prosecution and Defense under Rule 69. This Agreement stated that the accused persons would contest only 3 issues: i. whether the attack on the MGS Haskanita on 29 September 2007 was unlawful, ii. if the attack was deemed unlawful, whether the Accused persons were aware of the factual circumstances that established the unlawful nature of the attack; and iii. whether AMIS was a peacekeeping mission in accordance with the Charter of the UN. All other facts would be uncontested. The Trial Chamber held that the Agreement had the procedural effect of narrowing the scope of the issues to be addressed at trial and that, in the interest of justice and of expeditiousness of the proceedings, the trial would proceed only on the basis of the three contested issues and the parties should not present evidence or make submissions other than on the issues contested.

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

19 September - The Prosecution filed the corrected version of its [Response](#) to the [challenges](#) to the jurisdiction of the Court [submitted](#) by the Defence in the Kenya I case on 30 August. Though described as jurisdictional challenges, in fact the Defense

challenges raise two categories of issues: (i) a legal question regarding the interpretation of the statutory phrase “organizational policy” in article 7(2)(a); and (ii) the clarity and completeness of the charges and the sufficiency of the Prosecution’s evidence to prove that there existed an organizational policy to attack civilians. The Prosecution argues that the Applicants’ challenges must be dismissed by the Judges. First, notwithstanding the self-characterisation of their arguments, these are not legal challenges to the Court’s subject matter jurisdiction. They should be raised opportunistically; they cannot be thrown into a jurisdictional challenge in order to avoid having to include them in a post-confirmation brief. Second, the factual issues raised by the Applicants -- that the charges fail to allege, or the Prosecution’s evidence fails to prove, the existence of an organizational policy -- are also inappropriately argued as jurisdictional challenges. They too can be raised in post-confirmation briefs.

20 September - The Pre-Trial Chamber issued a [Decision](#) on the 16 September Request by the Government of Kenya in which it requested “that it be permitted to have legal representation in the courtroom” during the Confirmation Hearing in the case *The Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*. The Chamber rejected the Government’s request to be present in the courtroom, stating “the purpose of the confirmation of charges hearing is to consider, in principle, the charges presented by the Prosecutor against the suspects and not matters that pertain to cooperation between States and the Court. Thus, Kenya’s applications with respect to article 93(10) of the Statute cannot be taken into consideration when addressing the merits of the present Request... The assertion put forth by the Government of Kenya, namely the purported implication of the “State House”, seems to be based on a particular reading of the document containing the charges and is not convincing in itself to justify an automatic reference to national security interests. Further, the simple mention of the word “State House” in the document containing the charges cannot compensate the lack of any proper substantiation of the existence of “information or documents of a State” which would satisfy the legal requirements of article 72 of the Statute. Therefore, the argument as presented by the Government of Kenya must fail.”

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 Sanousi](#) – charged with crimes against humanity committed during attacks on the civilian population by the Libyan Security Forces 15 February – at least 28 February 2011

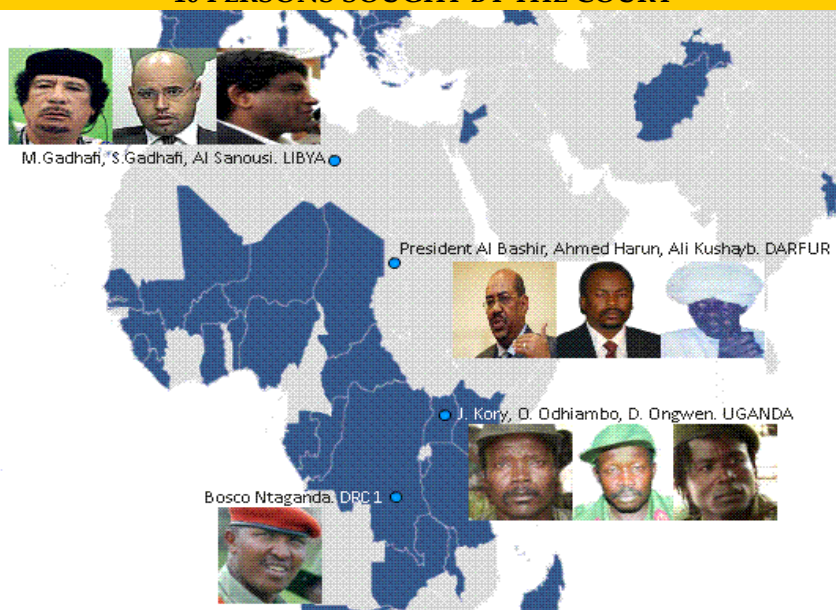
Issued: 27 June 2011

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

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

Current location: **Libya**

15 September - A PGA delegation of Nepalese Members of Parliament visited the Court and held a meeting with the OTP. The delegation thanked the OTP for the information received during the meeting, which was helpful for the MPs to clear some misconceptions regarding ratification of the Rome Statute and cooperation with the Court.

16 September - In Resolution 2009 (2011), the UNSC unanimously [established](#) a UN support mission in Libya (UNSMIL). The Resolution recalled the UNSC “decision to refer the situation in Libya to the Prosecutor of the ICC, and the importance of cooperation for ensuring that those responsible for violations of human rights and international humanitarian law or complicit in attacks targeting the civilian population are held accountable”, and called upon “the Libyan authorities to promote and protect human rights, including those of people belonging to vulnerable groups, to comply with their obligations under international law, including international humanitarian law and human rights law, and calls for those responsible for violations, including sexual violence, to be held accountable in accordance with international standards”.

19 September - The UN Human Rights Council held an [interactive dialogue](#) with the UN Commission of Inquiry on Libya. France welcomed the work done by the Commission of Inquiry on Libya, particularly the relationship developed with the ICC; Belgium thanked the Commission of Inquiry and added that the fight against impunity, which was a priority for Belgium, meant that the violations committed by the regime must be addressed. In this sense, Belgium strongly supported cooperation with the ICC. Austria welcomed the referral of the situation to the ICC and called on all States to fully cooperate with the Court. Denmark condemned the grave violations of human rights and international law by the previous regime in Libya and urged that those responsible for these violations should be brought to justice in cooperation with the ICC. The European Union urged all countries to cooperate fully with the ICC.

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



19 September - Senior representatives of the OTP participated in the first regional seminar on the Court in North Africa in Tunisia. The seminar took place from 19 to 23 September, under the patronage of the President of the Republic of Tunisia. The OTP representative welcomed the holding of this session of training and exchange in Tunisia, a symbol of a country undergoing political transition that recently ratified the Rome Statute, showing a firm commitment to the fight against impunity. The OTP further thanked the participants for their presence, as well as the Tunisian authorities who spared no effort to facilitate the holding of the seminar. During the five-day seminar, participants from nine countries of the region exchanged views with senior representatives of the Court and international experts to allow them a “better understanding of the ICC system”. Several workshops offered opportunities to discuss issues such as complementarity, international cooperation and legal representation of the suspects and of the victims.

20 September - With more than 26,000 hits and 1,400 unique visitors per month, the ICC Legal Tools Database enjoys a breakthrough in its use. It has become the leading resource for legal information on core international crimes, freely available

at www.legal-tools.org. During the past week its collections surged to 48,202 visible legal documents. These collections include 11,272 documents generated by the ICC itself; 13,200 key documents produced by other international criminal jurisdictions; 1,891 documents from national cases involving core international crimes; an advanced research tool for national legislation; and 8,991 documents prepared during the negotiations of the ICC Statute, Rules of Procedure and Elements of Crime document, including for the amendments of provisions in the Statute on crimes.



20 September - Deputy Prosecutor Fatou Bensouda received the World Peace Through Law Award, given by the Washington University Law. This prize recognizes individuals who have achieved great distinction in the field of international law. The Deputy Prosecutor stated: *“International justice, national justice, search for the truth, peace negotiations can and must work together; they are not alternative ways to achieve a goal; they can be integrated into one comprehensive solution.”*

21 September - Maldives deposited its instrument of ratification of the Rome Statute with the Office of the UN Secretary-General at the UN Treaty Office, becoming the 118th State Party of the ICC.

21-27 September - During the [UN General Assembly General Debate](#), Estonia, Latvia, Croatia, Costa Rica, Montenegro, Bangladesh, Trinidad and Tobago, Belgium, Tunisia, Botswana, Maldives, Liechtenstein and Norway referred to the work of the ICC. Liechtenstein stated that the *“central role the Court is playing in many situations illustrates the profound paradigm shift that the Rome Statute has brought about”*, while Bangladesh stressed that *“As a state party to the Rome Statute [...], we believe in the Statute’s provision of bringing perpetrators to justice. It is the only way to healing the wrongs of the past, and bring national reconciliation”*. Costa Rica and Botswana affirmed that *“The ICC is, today, the main multilateral mechanism to accomplish [the goal that those responsible for crimes against humanity be held accountable and punished]”* and that *“support for the ICC is crucial to realize the full implementation of the Rome Statute”*, respectively.

5 October - In the sixty-sixth session of the UN General Assembly, UN Deputy Secretary-General Rose Migiro [spoke](#) on UN efforts to *“strengthen the Rome Statute system of international criminal justice”*, and assist states in fulfilling their primary responsibility to investigate and try perpetrators of serious international crimes. The UNSG’s annual paper on rule of law issues, [released](#) on 8 August 2011, included statements supportive of the ICC from Australia, Austria, Denmark, Finland, Slovenia, Sweden, Switzerland and the UK. For instance Austria, as well as the majority of countries, expressed that the ICC is *“one of the most effective tools to buttress the rule of law and combat impunity”*. Many other States, as Denmark, Finland and Kenya, paid special attention to the topic of positive complementarity and the possibility to strengthen the judicial national mechanisms that are in place.

5- 6 October - The 16th Strategic Meeting ICC-NGOs took place at the Court. The Prosecutor opened the session by summarizing the lessons learned from the cooperation between the OTP and the civil society, and emphasized the need for coordination and support in the ongoing preliminary examinations, cases and investigations. The Deputy Prosecutor presented an update on the different trials and confirmation of charges, focusing on the closing of the first case of the ICC, *The Prosecutor vs. Thomas Lubanga*. Throughout the rest of the two day meeting, the NGOs members discussed the OTP’s policy on communication and public information, and focused on the situation in Côte d’Ivoire and Kenya. Other sessions focused on arrest strategies, budget preparations for 2012 and the OTP Operational Manual and policies.

V. Upcoming Events

October						
					1	2
3	4	5 OTP-NGO Roundtable	6 OTP-NGO Roundtable	7	8	9
10	11	12	13	14	15 Prosecutor visits Côte d'Ivoire	16

17 <i>Prosecutor participates in Retreat on ICC with ASP President, Liechtenstein</i>	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

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	13
15 <i>Deputy Prosecutor attends screening of The Prosecutor at Oxford University, Oxford</i>	16 <i>Prosecutor addresses the JFK Forum, Harvard University, Cambridge MA</i>	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

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