



## OTP Weekly Briefing

Issue #115

16 to 26 March  
2012

- **Reactions following Lubanga verdict**
- **Al Senussi arrested in Mauritania**

## NEWS

### Reactions to the first verdict of the ICC

14 March - Following the historic issuance of the first ICC verdict in the case against Thomas Lubanga, several actors issued statements. The UN Security Council President Mark Lyall Grant (UK) stressed: *"War crimes involving the most vulnerable members of society, such as children, are of particular concern and this verdict is an important step towards ensuring that those responsible for such crimes are held accountable. The members of the Security Council reaffirm their strong opposition to impunity for the most serious crimes of international concern."*

Ambassador Wittig, Chair of the UN Security Council Working Group on Children and Armed Conflict, stated: *"Today's verdict is historic. Thomas Lubanga is found guilty of having committed war crimes. One of the perpetrators of grave violations against children's rights is finally brought to justice. The wheels of international justice may be moving slow, but in the long run justice will be established - and impunity won't prevail. This is a message well beyond Lubanga's case: all those who perpetrate acts of grave violations against children's rights won't go unpunished."*

The Special Representative of the UN Secretary-General for Children and Armed Conflict, Radhika Coomaraswamy emphasized: *"Today, impunity ends for Thomas Lubanga and those who recruit and use children in armed conflict. In this age of global media, today's verdict will reach warlords and commanders across the world and serve as a strong deterrent"*. In parallel to the verdict, the SRSG was in Juba for the Sudanese People's Liberation Army of South Sudan (SPLA) signature of an agreement calling on an action plan with the United Nations which renewed their commitment to release all children within their ranks. This new action plan, signed by the Ministry of Defence, UNMISS, UNICEF, and SRSG Radhika Coomaraswamy, also ensures that all militias currently being incorporated into the SPLA are child-free.

Graça Machel, member of The Elders and former UN independent expert on the impact of armed conflict on children, stated: *"the decision of the ICC must be commended and supported unequivocally and without reservation to ensure that the global voice of humanity as a whole sends a clear message to both State and non-State actors, not just in Africa but throughout the world where children have often been used as soldiers, that war is no place for a child and more importantly the encouragement, enticement, or forced recruitment of children as soldiers will not go unpunished! Those who engage in these practices should not only be treated as pariahs in this world but they must be hunted down, tried, convicted and given the maximum sentence."* [Compilation continues on page 2]

### ICC indictee Al Senussi arrested in Mauritania

16 March - Former Libyan intelligence chief and subject to an ICC arrest warrant, Abdullah Al-Senussi, was reportedly arrested in Mauritania. The ICC arrest warrant and request for arrest and surrender were subsequently transmitted to Mauritania, a non State Party. UN Security Council Resolution 1970 (2011) *"urges all States and concerned regional and other international organizations to cooperate fully with the Court and the Prosecutor"*. The Libyan and French authorities are both simultaneously seeking his extradition from Mauritania. The Mauritanian authorities are reportedly considering the legal basis of all these requests.

UK Foreign Secretary, William Hague, stated: “I congratulate the Mauritanian authorities for detaining him and encourage all involved to co-operate fully with the ICC under UN Security Council Resolution 1970. The detention of the final Libya ICC indictee now offers the Libyan authorities the opportunity to focus fully on rebuilding their country and continuing the transition to democracy. Al-Senussi’s arrest is a further reminder that people at all levels should think carefully about the consequences of their actions – whether they are ordering attacks on civilians, carrying out such attacks or otherwise suppressing the wishes of people wanting a better future. The reach of justice is long and there will come a day when they are held to account”.

## OTP Activities

### OVERVIEW

7 situations under investigation  
15 cases in relation to 24 persons  
11 outstanding arrest warrants  
8 preliminary examinations in 4 different continents

#### Phases

5 cases before Pre-Trial Chambers  
2 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 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 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; parties to present views on the procedures and principles on sentence and reparations by 18 April 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 to start 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); leave to appeal was granted on 1<sup>st</sup> March

#### 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

[Continuation of highlights compilation]: The UN Secretary-General emphasized “the need for the international community to continue with its efforts to put an end to impunity and recalls the importance of holding accountable those who commit genocide, crimes against humanity and war crimes. In this connection, he reaffirms the strong commitment of the United Nations to support the independent work of the Court as the centrepiece of the international criminal justice system.”

The UN High Commissioner for Human Rights Navi Pillay stated: *"For many years, and on a daily basis, we have been documenting gross violations of human rights of the sort perpetrated by Lubanga against the people of the Democratic Republic of the Congo. The Lubanga verdict sends a strong signal against impunity for such grave breaches of international law that will reverberate well beyond the DRC. Two decades ago, international justice was an empty threat. Since then a great deal has been achieved, and the coming of age of the ICC is of immense importance in the struggle to bring justice and deter further crimes."*

Anthony Lake, UNICEF Executive Director, declared: *"This is a pivotal victory for the protection of children in conflict. The conviction of Thomas Lubanga by the ICC sends a clear message to all armed groups that enslave and brutalize children: Impunity will not be tolerated."*

The EU High Representative, Catherine Ashton, stressed: *"This judgment constitutes a significant achievement for the Court in its task of ensuring respect for, and enforcement of, international justice. At the same time, this verdict offers an opportunity for the ICC to reflect on the proceedings and analyze lessons learnt. The verdict demonstrates that perpetrators cannot act with impunity. It resonates far beyond the Democratic Republic of the Congo, as the trial of Mr. Lubanga has raised awareness about the plight of child soldiers and the fact that recruiting and using children under 15 in combat is a war crime."*

French Minister for Foreign Affairs Alain Juppé emphasized: *"The Court's capacity to make decisions is demonstrating its effectiveness in the fight against impunity and the rights of victims. Its role is as dissuasive as punitive. Anyone who may be tempted by the madness of genocide or crimes against humanity knows that nothing can stop justice. And victims of such crimes, their families or their loved ones know there is always a remedy"*. The UK Minister for Africa Henry Bellingham said: *"There has been widespread impunity for serious human rights abuses in DRC and I hope today's judgement will provide some form of comfort to the many victims of Lubanga's crimes, the majority of whom were young children. The British government will continue to give the ICC its full support as it takes forward its mandate to combat impunity"*.

The Synergy of the Congolese NGOs for the Victims (SYCOVI) stated it was *"pleased and proud, in the name of all the Congolese victims, of the verdict that the ICC has just returned in the case of Thomas Lubanga Dyilo. This verdict is a victory for justice, human rights and the social harmony, and is a motive for satisfaction and enjoyment for the Congolese people"*. The DRC National Coalition for the ICC welcomed *"the verdict that ends suspicions of the presumption of innocence of Thomas Lubanga, confirming international criminal responsibility. It also welcomes the very professional work done over several years by the Office of Prosecutor Luis Moreno-Ocampo to present evidence that eliminates any reasonable doubt the guilt of Thomas Lubanga"*.

Several members of civil society, including Amnesty International, Human Rights Watch and the FIDH, called for the urgent need to enforce the outstanding arrest warrant against Bosco Ntaganda.

14 March - Trial Chamber I set a [timetable](#) for sentencing and reparations in the Lubanga case. It ordered the Defence to file submissions by 28 March 2012 on the parts of the article 74 Judgment requiring translation and the time it seeks to prepare sentencing submissions once the translated sections have been received. It invited the Prosecution and Legal Representatives of victims to file, by 18 April 2012, written submissions on the procedure to be adopted for sentencing and the principles to be applied in determining the appropriate sentence to be imposed. It stated that a sentencing hearing will be fixed in due course. With regard to reparations, it invited the Parties and Participants as well as the Registry and Trust Fund for Victims to file, by 18 April 2012, submissions on the principles to be applied by the Chamber and the procedure to be followed, noting that these submissions should address, inter alia: (i) whether reparations should be awarded on a collective or individual basis; (ii) to whom they are to be directed, how harm is to be assessed and the criteria to be applied to the awards; (iii) whether it is possible or appropriate to make a reparations order against the convicted person; (iv) whether it would be appropriate to make an order for an award for reparations through the Trust Fund for Victims; and (v) whether the Parties or Participants seek to call expert evidence. It stated that it will decide thereafter whether to hold a reparations hearing.

12 March - The Prosecution filed a [document](#) in support of its appeal against the confirmation of charges in the Mbarushimana case. It submitted that PTCI wrongly exceeded the scope and nature of a confirmation hearing by: resolving conflicts, inconsistencies or ambiguities in written statements; making credibility findings without an adequate record; diminishing the credibility of categories of witnesses; requiring corroboration; and resolving presumptions and apparent conflicts in favour of the Defence. It also contended that the requirement that the person makes a "significant" contribution to the commission or attempted commission of the crime was erroneous given that article 25(3)(d) only requires "any" contribution.

## 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](#).

7 March - US Ambassador at large in the Office of Global War Crimes issues, Stephen Rapp, in a [briefing](#) to a US House Committee, highlighted US support for the ICC's efforts to bring senior LRA leaders to justice and their belief that they should be apprehended and held accountable for their actions. He described the work of US military advisers with regional national forces assisting them in pursuing the LRA's top commanders and helping to enhance their capacity to bring these individuals to justice. He supported proposed expansion of the current US "War Crimes Rewards Program" to include individuals such as Joseph Kony and other top LRA leaders to bolster efforts to generate information on top commanders' whereabouts and encourage further lower-level defections.

16 March - US Ambassador to the AU Michael Battle [emphasised](#) the importance of capturing LRA leader Joseph Kony and bringing him to justice before the ICC: *"if you don't capture him, you're not going to reintegrate anybody, because everybody is so afraid of him. So we need to capture him militarily. He needs to go before the ICC. He needs to be prosecuted."*

23 March - AU Special Envoy on the LRA Francisco Madeira and the UN Secretary General's Special Representative for Central Africa Abou Moussa [concluded](#) a regional meeting in Entebbe focused on developing a regional strategy against Kony and the LRA. AU envoy Madeira welcomed the agreement of the four regional governments affected to cooperate and the launch of the Regional Joint Operations Task Force on 24 March, with its operations centre based in South Sudan. He [said](#): *"We need to stop Kony with hardware - with military hardware in this case [...] We are on a mission to stop him"*. SRSF Moussa [said](#) that (as the recent Kony 2012 documentary made clear) in light of the continuing threat to the region posed by Kony and the LRA, LRA leaders needed to be brought to justice. *"We need to take advantage of the high level of interest, goodwill and political commitment to finally put an end to this crime"*.

## 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 the 21<sup>st</sup> 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)

*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)

## 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; Pre-Trial Chamber I ordered the termination of the case *the Prosecutor v. Muammar Gaddafi*, after Prosecution request (22 November 2011)

## 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.

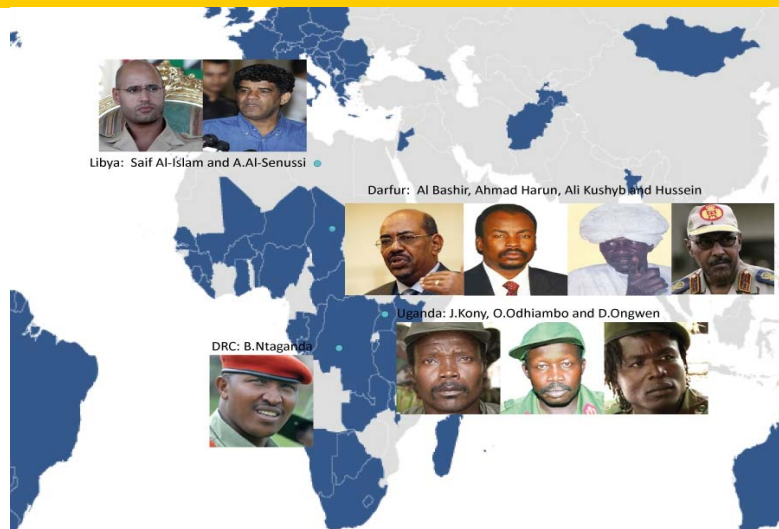
**Issued:** 23 November 2011 (under seal)

**Status:** initial appearance on 5 December 2011; confirmation of charges hearing set for 18 June 2012

21 March - The UN Human Rights Council [held](#) an interactive dialogue on the report of the Independent Expert Doudou Diene on the situation of human rights in Côte d'Ivoire. Diene said the long-lasting roots of the crisis in the country were based on the fight for political power to the detriment of human rights, the relationship between political structure and ethnicity and rural land policy which constituted a ticking time bomb, and the predominance of a culture of impunity and lawlessness at all levels of power. In the dialogue that followed, several states called for the investigation and prosecution of all perpetrators of human rights violations regardless of their affiliation and encouraged the Ivoirian government and other actors such as the ICC to combat impunity.

## 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**

*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**

22 March - The US government's Millennium Challenge Corporation (MCC) Board of Directors, chaired by US Secretary of State Hillary Clinton, [decided](#) to suspend its compact with Malawi involving a planned \$350 million investment in the power sector on the basis of a pattern of actions by the Malawian government inconsistent with the democratic governance criteria used by the MCC to select its partners. The MCC cited "*Malawi's decision to allow Sudanese President Omar Al Bashir to attend a trade summit in Lilongwe, despite the ICC's outstanding warrant for his arrest*" as one of the government's actions which "*further deepened*" their concerns.

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

Current location: **Khartoum, Sudan**

#### IV. Other Co-operation



16 March - A Bahraini women's parliamentary delegation visited the OTP. The delegation was received by the Prosecutor and topics of mutual interest were discussed. The delegations also discussed recent changes in Bahrain since the February 2011 unrest, the integral role of women and the recommendations of the Bahrain Independent Commission of Inquiry (BICI).



21 March - Deputy Prosecutor Bensouda participated, together with First Vice-President Judge Monageng and the Registrar, in the opening session of the Ninth Annual Meeting of the Board of Directors of the Trust Fund for Victims of the ICC. The Deputy Prosecutor said: "*This meeting convenes at a very appropriate time. (...) [L]ess than a week ago, the Court delivered its first decision. Trial Chamber I decided unanimously that Thomas Lubanga Dyilo is guilty, as a co-perpetrator, of the war crimes of conscripting and enlisting children under the age of 15 and using them to participate actively in hostilities. (...) On 18 April, the parties have to present their general views on reparations. The Trust Fund will have an important role here too. The world will know more about the suffering of the victims in Ituri. (...) The Rome Statute, the ICC and the Trust Fund are a promise to the victims and to the affected communities; a promise for justice, accountability, reparation and hope.*"

#### V. Upcoming Events

March						
19	20	21	22	23	24	25
26	27	28	29	30 Deputy Prosecutor delivers a keynote address at the Journée d'études on the	31	

				role of the Defence organized by the ICB, Geneva		
--	--	--	--	---	--	--

April						
						1
2 <i>Prosecutor holds bilateral meetings, New York</i>	3 <i>Prosecutor holds bilateral meetings, New York</i>			6	7	8
9	10	11	12 <i>Deputy Prosecutor delivers Robert Jackson Keynote address at the conference "Africa and International Law: Taking stock and moving forward" at Albany Law School, NY</i>	13 <i>Deputy Prosecutor Bensouda speaks at the Boston University Center for Finance, Law and Policy, Boston</i>	14	15
16	17 <i>Deputy Prosecutor holds bilateral meetings, Bern</i>	18	19	20	21	22
23	24	25	26	27	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](mailto:Olivia.Swaak-Goldman@icc-cpi.int)