



OTP Weekly Briefing

Issue #111

1 to 9 February
2012

- Prosecutor and Deputy Prosecutor visit Estonia
- OTP holds second informal meeting with Ambassadors at the Court

NEWS

The Prosecutor and Deputy Prosecutor visited Estonia with the ASP President and held meetings with the Prime Minister and the Ministers of Foreign Affairs and Justice



7-8 February - The Prosecutor and Deputy Prosecutor travelled to Tallinn, Estonia, following an invitation from the Estonian Government. They held high level meetings *inter alia* with Mr. Andrus Ansip, Prime Minister of Estonia, Mr. Urmas Paet, Minister of Foreign Affairs, and Mr. Kristen Michal, Minister of Justice, with whom they discussed matters of

mutual cooperation, as well as the strong support expressed by Estonia to the work of the OTP and the Court. Ambassador Tiina Intelmann, ASP President, also participated in their meetings.



The Prosecutor, Deputy Prosecutor and ASP President participated in a conference organized at Tallinn's University of Technology on "International Criminal Court as a prominent actor in international order: Its prospects and challenges".

OTP holds second informal meeting for Ambassadors at the Court



9 February - The OTP held its second informal meeting with Ambassadors of interested States at the seat of the Court, with a view to providing information in relation to the activities of the Office in the coming months. As in 2011, the Office aims to increase the predictability of its decisions, allowing States to factor in the Court's intervention in their political decisions and to maximize the preventative role of the Rome Statute. 85 persons participated, including several representatives of non-States Parties.

The Prosecutor, Deputy Prosecutor, JCCD Director and Head of the International Relations Task Force (IRTF) briefed the participants on the OTP's current work and the transition to the new Prosecutor of the Court.

During the meeting, the OTP also discussed the prospects for its activities in the situations of Kenya, Côte d'Ivoire and Libya, as well as for the arrests of Bosco Ntaganda, the leaders of the Lord's Resistance Army and the outstanding arrest warrants in the Darfur situation. Finally, the OTP also followed-up on its recently issued report on preliminary examinations, providing a summary of recent preliminary examinations activities in eight ongoing situations. Issues of budget and governance were also raised, including issues of arrest and cooperation.

OTP Activities

OVERVIEW

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

Phases

1 initial appearance
2 cases before Pre-Trial Chambers
6 cases before Trial Chambers

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).

24 communications that may fall under Article 15 were received by the Office in the month of January. 8 of these communications were manifestly outside the jurisdiction of the Court; 16 communications warranted further analysis or were linked to a situation already under analysis. The total number of Article 15 communications received to date is 9,355 of which 4,395 were manifestly outside the jurisdiction of the Court.

8 February - OTP met with representatives from the International Center for Transitional Justice, the Afghanistan Human Rights and Democracy Organization, the Afghanistan Analysts Network and Associacio per als Drets Humans a l’Afghanistan (Association for Human Rights in Afghanistan) in relation to the OTP’s preliminary examination of the situation in Afghanistan, to discuss recent developments, civil society perspectives, and prospects for accountability.

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, 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); OTP is seeking leave to appeal

Warrant Pending

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

Issued: 22 August 2006

The Prosecutor v Callixte Mbarushimana

21 January - The Appeals Chamber provided reasons for its 20 December 2011 decision finding inadmissible the Prosecution's appeal against the PTCI decision of 19 December 2011 denying the confirmation of charges and ordering the Suspect's immediate release and its alternative appeal against the PTCI decision of 20 December 2011 denying the request to stay the Suspect's release. It considered that the confirmation decision could not be appealed under article 82(1)(b) on the ground that the order to release the Suspect was a logical consequence of the decision not to confirm the charges, and did not serve to alter the nature of the decision to a "decision granting or denying release". It also found that the 20 December 2011 decision could not be appealed under article 82(1)(b) because the decision dealt only with the procedural question of whether the confirmation decision should have immediate effect. It denied the victims' request to participate in the appeal proceedings on the ground that any delay for procedural reasons in the delivery of the admissibility decision could have affected his release and potentially jeopardised his fundamental right to liberty. The Prosecution filed a request to seek leave to appeal on 27 December 2011.

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](#).

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

5 February - Musa Hilal, included on the UN Security Council sanctions list since April 2006 for freezing of his financial assets and imposition of a travel ban on him, was [quoted](#) as saying he has travelled to four countries recently. His daughter recently wed to Chadian President Idriss Deby and the reception was attended by head of UN Darfur peacekeeping mission Ibrahim Gambari and Sudanese President Al Bashir. Gambari was told by the UN to [avoid](#) such encounters in future.

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

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

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

3 February - Mr. Ruto's Defence Team and Mr. Sang's Defence Team requested leave to appeal the confirmation decision and also appealed the Majority's findings in the confirmation decision. Similarly, on the same day, Mr. Muthaura's Defence Team requested leave to appeal the Majority confirmation decision.

On 30 January, the Muthaura and Kenyatta Defence appealed against jurisdiction in the decision on the confirmation of charges, submitting that the Majority erred in: (i) determining that material jurisdiction is met; (ii) dismissing the jurisdictional challenge brought by the Kenyatta Defence; (iii) determining that the "organization" definition issue is not an independent argument; (iv) adopting an incorrect interpretation of the notion of "organisation"; (v) fundamentally changing the Prosecutor's presentation of the facts by suggesting that the Mungiki alone represented the "organisation"; and (vi) concluding that the Mungiki qualified as an organisation. They requested that their appeal have suspensive effect.

On 3 February, the Prosecution opposed the Defence applications for leave to appeal the confirmation decision on the grounds that none of the issues raised by the Defence constitutes an appealable issue and that they additionally do not fulfil the requirements for leave to appeal under article 82(1)(d).

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

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**

7 February - At the UN Security Council briefing, the DRC representative Charlotte Omoy Malenga [highlighted](#) the importance of stepping up efforts to tackle the LRA threat, describing armed groups and peacebuilding and the “priority of priorities”.

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)

3 February - Ahmad Harun reportedly addressed a conference of the Native Administration at the Western Sector of Southern Kordofan State, arguing that South Sudan had based its policy on war to divert attention from its failure as a government, that it was waging a proxy war for its own interest, and that he expected a direct war with the Sudan. He called on the Native Administration to live up to its role and establish a coherent national front. He expressed satisfaction with the victories achieved by the Sudan Armed Forces thus far.

The Prosecutor v Omar Hassan Ahmad Al Bashir (more information [here](#))
 Current location: **Khartoum, Sudan**

2 February - The 18th AU Heads of State Assembly, held in Addis Ababa, [discussed](#) the report of the AU Commission on the implementation past decisions to delay the proceedings against President Al Bashir. “*The Assembly urges all member states to comply with the Assembly decisions on the warrants of arrest issued by the ICC against President Al Bashir,*” said the resolution passed by the Assembly of heads. Meanwhile, UN Secretary-General Ban Ki-Moon has urged the AU to respect the work of the ICC and cooperate: “*ICC is an independent judicial organization, independent of the UN and the AU. Their work has to be respected. They have an obligation to cooperate with the ICC because the Court makes its decisions based on proven facts*”.

6 February - South Sudan President [called](#) on President Al Bashir to surrender himself to the ICC in an address to members of the Sudan People’s Liberation Army in Juba. He reiterated his threat to sue Khartoum over oil it confiscated since late in 2011. Kiir downplayed the warning made by Bashir last week that war has become a real possibility. “*If Bashir wants to fight us in Juba, we will meet him in Judat*” he said.

IV. Other Co-operation

V. Upcoming Events

February						
		1	2	3	4	5
6	7	8	9	10	11	12
	Prosecutor and Deputy Prosecutor travel to Tallinn, Estonia, for bilateral meetings	Prosecutor and Deputy Prosecutor travel to Tallinn, Estonia, for bilateral meetings				
13	14	15	16	17	18	19
Deputy Prosecutor participate in the	Deputy Prosecutor participate in the	Deputy Prosecutor participate in the	Deputy Prosecutor participate in the Conference			

Conference “Justice for all? 10 year review of the ICC” and side events in Sydney, Australia	Conference “Justice for all? 10 year review of the ICC” and side events in Sydney, Australia	Conference “Justice for all? 10 year review of the ICC” and side events in Sydney, Australia	“Justice for all? 10 year review of the ICC” and side events in Sydney, Australia			
20	21	22	23	24	25	26
27	28	29				

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