



OTP Weekly Briefing

Issue #109

17 – 24 January
2012

- Charges confirmed against four suspects in the Kenya situation
- UNSC highlights support for ICC and opposition to impunity during debate on rule of law

NEWS

Pre-Trial Chamber confirms charges in the Kenya situation against four suspects



23 January – Pre-Trial Chamber II, by majority, [decided](#) to confirm the charges against four of the six suspects in the two Kenyan cases, namely Mr. Ruto and Mr. Sang in the first case, and Mr. Muthaura and Mr. Kenyatta in the second case.

On 24 January, Prosecutor Moreno-Ocampo [stated](#): “Yesterday’s decision is establishing individual responsibility for the post electoral violence but also for a peaceful Kenya. We appreciate that the judges explained the decision in a public session and that there has been no reports of violence as a result. Judges confirmed that the first acts of violence in 2007/08 were planned and organised by members of the ODM a year in advance. This generated retaliatory attacks against ODM supporters. The ICC has identified those who have to face justice”. [Highlight continues on page 3]

UN Security Council reiterates support for ICC and opposition to impunity during its debate on the promotion and strengthening of the rule of law

19 January – The UN Security Council [adopted](#) a Presidential Statement, reaffirming “its strong opposition to impunity for serious violations of international humanitarian law and human rights law”, emphasizing “the responsibility of States [...] thoroughly investigate and prosecute persons responsible for war crimes, genocide, crimes against humanity or other serious violations of international humanitarian law in order to prevent violations, avoid their recurrence and seek sustainable peace, justice, truth and reconciliation”, and recalling the Statement by its President on 29 June 2010 “which, inter alia, noted the contribution of the ICC, ad hoc and mixed tribunals, as well as chambers in national tribunals to the fight against impunity for the most serious crimes of concern to the international community. In this regard, the Council reiterates its previous call on the importance of states cooperation with the Courts and Tribunals in accordance with states’ respective obligations”.

During the open debate, several States expressed their support to the ICC. Tiina Intelmann, ASP President, [said](#) that the Court had established a reputation in the international arena. Joint efforts with the UN to help develop national capacities to cope with “Rome Statute crimes” would strengthen national justice systems. In combating impunity, the ultimate goal was preventing the commission of those crimes in the first place and the Court’s success would depend on the ability and resolve of States to cooperate. She pointed to the number of outstanding arrest warrants, including in the two cases referred by the Council, and recalled that the Court had recently referred two findings of non-cooperation to the Council [highlight continues on page 5].

OTP Activities

OVERVIEW

7 situations under investigation
14 cases in relation to 27 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).

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

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

17 January – Following its visit to Darfur and its second meeting to review the implementation of the Doha Agreement, the Implementation Follow-up Commission (IFC), headed by Qatar, [called](#) on parties to the Doha Agreement to ensure full access for UNAMID. Along with Qatar, the membership includes diplomats from Western, Asian and Arab States. This statement came after the UN said last week that the Government of the Sudan is "severely" restricting movement of UNAMID peacekeepers. The UN's peacekeeping head, Herve Ladsous, informed the UN Security Council last week of *"a sharp increase in restrictions of movement imposed on Unamid by government authorities,"* coinciding with a rise in clashes between Sudanese armed forces and rebels in recent weeks. He warned that *"the denials of access have severely impeded UNAMID's ability to implement its mandate and resupply team sites in affected areas."*

17 January – The GoS Ambassador to the UN [accused](#) the US Ambassador of wanting to feed rebels, in response to Ambassador Rice's call for more pressure on the GoS to authorize humanitarian assistance to the affected population in the South Kordofan region. UN humanitarian chief Valery Amos visited Khartoum earlier this month to discuss the humanitarian situation and demanded that the GoS authorize the UN and international aid workers to reach the rebel-controlled areas, but GoS officials refused this request.

19 January – UNAMID head Ibrahim Gambari [met](#) with representatives of the Kassab and Fataborno IDP camps in the town of Kutum; women from the camp told him that rapes in and around the camp had increased, and requested more security. Gambari vowed to take up the concern with the local authorities, arguing that UN pressure was the reason the GoS appointed a special court and a special prosecutor.

21 January – UN Secretary-General Ban Ki-Moon [condemned](#) the ambush by an unidentified group on a UNAMID patrol that led to the death of a Nigerian peacekeeper and wounded three others. The attack took place near Saleah, in East Darfur. The Secretary-General urged the Government of the Sudan to carry out a speedy investigation and to ensure the perpetrators are brought to justice. On 23 January, the UN Security Council strongly [condemned](#) the attack and called on the GoS to bring the perpetrators to justice.

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 Kiriimi 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

[Continuation of highlight on Kenya decisions]: *"Another significance of the ruling is that it defined what crimes against humanity are. It goes back to Nuremberg and makes clear that no country has sovereignty to attack civilians. Talking about legal definitions, contrary to the Prosecution's allegations, the Chamber finds that acts of forcible circumcision do not constitute other forms of sexual violence but other inhumane acts (since not every act of violence targeted against a body part commonly associated with sexuality is sexual in nature.) As any*

other court the ICC is making factual and legal decisions, but ICC intervention is helping Kenya move to a more peaceful future with no costs. In 2008, Kofi Annan helped establish peace in Kenya but what would be the cost of another post election violence in Kenya? More lives lost, more people displaced and not to mention millions in money.

We also appreciate the fact that the accused appeared voluntarily before the court. This goes to show Kenya is managing its transition to a less violent future. President Kibaki yesterday committed to solve the problems of victims of violence still displaced. Victims do not have to wait for a conviction before they receive any help. The government of Kenya has a responsibility to help its citizens. And to protect them. The Office is concerned about allegations of attacks against victims of the crimes.

Let me look to the future now. We will keep investigating Kosgey and the activities of the police as well as crimes allegedly committed in Kibera and Kisumu. We will not appeal the decision. Some of the accused have stated that they will appeal the decision. President Kibaki said Kenyan legal teams are studying the ruling. This is a legal right for the accused. The prosecution is preparing for trial but if the judges accept the appeal, this will delay the beginning of the trial. This further delay may be frustrating for victims but this is the legal process and we have to respect it.

It is in the hands of Kenyans themselves to solve the problems in Kenya. Kenya must decide on the candidates for the upcoming election and seize the opportunity to discuss the way forward and invest in the future”.

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)

20 January - The Court received the observations from the Libyan authorities regarding the arrest of Saif Al-Islam Gaddafi; the Libyan report was filed as confidential, at the request of the Libyan authorities.

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**

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**

IV. Other Co-operation

[Continuation of highlight on UN Security Council debate on rule of law]: Portugal [highlighted](#) that the situations in Darfur and in Libya, which the Council decided to refer to the Court, were proof of the Court's unique role, and that cooperation with the ICC was crucial in achieving justice and fighting impunity, which were necessary for sustainable peace. France [stressed](#) that the message that the international community sent regarding impunity must be strong and coherent. To that end, he supported the Secretary-General's call that United Nations officials and envoys should never accept peace deals that included amnesty for persons alleged to have committed the worst international crimes. The UK [stated](#) that the ICC had ushered in a new era of accountability, which should make people, including those in Syria, think twice before committing atrocities. Togo [affirmed](#) that serious international crimes committed during the armed conflict, such as genocide, rape and violence against children, must not be given impunity, and that perpetrators of those crimes must be punished, in line with each country's respective laws. Brazil [stressed](#) that the Council's increased willingness to resort to the ICC should be accompanied by increased responsibility of the whole United Nations membership in providing the necessary means to the Court to enable it to act independently, as a pillar of the rule of law. Peru [emphasized](#) that all States must unambiguously adopt respective measures to implement the provisions of the Rome Statute and the Charter and execute arrest warrants of the ICC. Switzerland [noted](#) that once the Council referred a case to the Court, it must give the work of the Court its full and continuing support, including financial support, while respecting the Court's independence and decision-making autonomy.

18 January – During his address to the Stanley Foundation Conference on the Responsibility to Protect, UN Secretary-General Ban Ki-Moon [stated](#) that “Because outbreaks of mass violence are rarely spontaneous, we generally have the time and opportunity to remind government and opposition leaders that they could be held accountable by the ICC or other tribunals. One of my greatest satisfactions as Secretary-General has been to help advance the powers of these courts - and to see how effective a deterrent the ICC, in particular, has become.”

V. Upcoming Events

January						
23	24	25	26	27	28	29
30	31					

February						
		1	2	3	4	5
6	7 <i>Prosecutor and Deputy Prosecutor travel to Tallinn, Estonia, for bilateral meetings</i>	8 <i>Prosecutor and Deputy Prosecutor travel to Tallinn, Estonia, for bilateral meetings</i>	9	10	11	12
13 <i>Deputy Prosecutor participate in the Conference "Justice for all? 10 year review of the ICC" and side events in Sydney, Australia</i>	14 <i>Deputy Prosecutor participate in the Conference "Justice for all? 10 year review of the ICC" and side events in Sydney, Australia</i>	15 <i>Deputy Prosecutor participate in the Conference "Justice for all? 10 year review of the ICC" and side events in Sydney, Australia</i>	16 <i>Deputy Prosecutor participate in the Conference "Justice for all? 10 year review of the ICC" and side events in Sydney, Australia</i>	17	18	19
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