



OTP Briefing

Issue #108

22 December 2011
– 16 January 2012

- Libyan authorities granted time extension to file observations Saif Al-Islam Gaddafi
- Trial Chamber sets date for closing oral statements in case against Germain Katanga and Mathieu Ngudjolo Chui on 15 May 2012
- Prosecution seeks leave to appeal decision declining to confirm charges Callixte Mbarushimana

NEWS

Pre-Trial Chamber grants Libyan authorities time extension to file observations regarding Saif Al-Islam Gaddafi

10 January – Pre-Trial Chamber I [granted](#) the request from the Libya authorities for an extension of time to file observations regarding the arrest of Saif Al-Islam Gaddafi, which now must be filed by 23 January 2012. The decision follows the request from the Libyan authorities, on 9 January 2012, for an extension of the time limit for 3 weeks, starting 10 January. The Libyan authorities had indicated to the Court that “*due to the security situation on Libya, the Libyan authorities are not able to meet the deadline and respectfully request the chambers to grant an extension for an additional period of three weeks.*” The Court argued that three weeks “*would cause an undue delay in the proceedings and that only a shorter extension is appropriate*”.

Trial Chamber sets timetable for closing case against Germain Katanga and Mathieu Ngudjolo Chui

4 January – Trial Chamber II [set](#) the timetable for the closing written submissions in the case *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, and conveyed the parties and participants to present their closing oral statements in a public hearing starting 15 May 2012.

The Prosecution and the Legal Representation of Victims have to file their written closing submissions by 20 February 2012. The two teams of the Defence have been given until 26 March to reply to such submissions. The final submissions address the contextual elements of crimes against humanity and war crimes, the facts which form the basis of the alleged crimes together with the criminal responsibility of the accused.

Prosecution seeks leave to appeal the decision declining to confirm the charges against Callixte Mbarushimana

27 December – The Prosecution has [requested](#) the Pre-Trial Chamber to grant leave to appeal, in accordance to Article 82(1)(d), its decision of 16 December 2011, in which the Majority declined to confirm charges brought by the Prosecution against Callixte Mbarushimana. The issues presented by the Prosecution are whether the correct standard of proof in the context of Article 61 allows the Chamber to deny confirmation of charges; whether a proper interpretation of the scope and nature of a confirmation hearing, as defined by Article 61, allows the Pre-Trial Chamber to evaluate the credibility and consistency of witness interviews; whether a proper interpretation of Article 54(1)(a) forbids an investigator to prompt direct information that incriminates the Suspect and therefore justifies the Chamber’s refusal to give the witness statement full weight; and whether the mode of liability under Article 25(3)(d) requires that the person make a “significant” contribution to the commission or attempted commission of the crime.

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
4 cases before Pre-Trial Chambers
4 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

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

30 December – UN Secretary-General Ban Ki-Moon, in his periodic [report](#) on the African Union-United Nations Hybrid Operation in Darfur (UNAMID), notes the increased number of victims of arbitrary arrest and detention recorded by UNAMID and the continuous report of sexual and gender-based violence. There was also a deterioration in the enhancement of the rule of law, governance and the protection of human rights, with an increase in the recorded overall number of human rights violations, including arbitrary arrests and detentions. In the report the UN Secretary-General also expresses his deep concern about the security of humanitarian and UNAMID personnel operating in Darfur.

16 January – Sudanese Justice Minister Mohamed Bushara Dousa [acknowledged](#) in press statements that 25% of people in Sudan have some form of immunity, and that immunities granted to individuals have “hindered” bringing justice in Darfur and frustrated the work of the special prosecutors. Dousa pledged that legal procedures will be followed and that those who had perpetrated crimes will be prosecuted particularly those related to violations committed in Darfur. This follows remarks made a year ago from the outgoing State Minister for Justice, Bol Lul Wang, that Khartoum has not conducted serious investigations into Darfur crimes. He also claimed that the Sudanese government has no will to go after suspects because of the high-level position they occupy. At the time, it was reported that Zumrawi had difficulty overcoming the issue of immunity in his investigations of several incidents that occurred where mass civilian deaths was alleged to have occurred, including in Gereida in South Darfur. He subsequently resigned, for personal reasons. Sudan’s former Head of Intelligence, Salah Gosh, last year also rapped the Justice Ministry over the lack of progress in its Darfur war crimes prosecutions. “*Despite the appointment of a general prosecutor for crimes in Darfur and having several cases pending we have not seen them [cases] presented to the courts,*” Gosh said at the National Assembly during deliberations on a report presented by the Justice Minister on the performance of his ministry.

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

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

The Prosecutor v Saif Al-Islam Gaddafi and Abdullah Al-Senussi (more information [here](#))

Current location: Libya

Continuation of 1st page story: 12 January – According to Libyan Minister of Justice Ali Humaida Ashour, the Libyan government expects the ICC to agree that Saif Al-Islam Gaddafi can be tried in Libya, and that a final decision would be made within weeks. “The Libyan judiciary is the one that has the jurisdiction to try Saif Al-Islam Gaddafi because the Libyan judiciary is the base and the ICC complements it.” Ashour [said](#) that Saif Al-Islam would be tried on charges of mismanagement of public funds, homicide and rape, adding that if convicted of homicide, he could face the death penalty. He said that “international and legal standards will be taken into account and the trial will be held according to Libyan law” and that it would be conducted by an ordinary Libyan court, not a special tribunal.

The Prosecutor v Ahmed Harun and Ali Kushayb (more information [here](#))

Current location: South Kordofan, Sudan (A. Harun)

Sudan (A. Kushayb)

12 January – Ahmed Harun [threatened](#) international aid agencies in South Kordofan with immediate expulsion, threatening them with overstepping their mandate, for attempting to persuade the Government of Sudan to change its mind and allow international aid agencies to access South Kordofan and Blue Nile States, where food insecurity and malnutrition have reached alarming levels in rebel-controlled areas, according to the UN. Sudan’s Minister of Social Welfare, Amira Al-Fadil, told the UN during a meeting in Khartoum that the government has resolved to prevent the establishment of displacement camps in the two States.

15 January – According to a press release of the SPLM/A, SPLM-North (SPLM-N) forces in South Kordofan have taken control of the village of Al-Ehaimir, approximately 15 km south of South Kordofan’s capital, Kadugli. The SPLM/A indicated in the press release that “it will continue to march towards Kadugli in order to liberate it and to seize the war criminal Ahmed Haroun and deliver him to the ICC in The Hague.”

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

IV. Other Co-operation

V. Upcoming Events

January						
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2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17 Prosecutor presents lectures at Harvard Law School on Prosecution Policies and Strategy at the International Criminal Court, Cambridge	18 Prosecutor presents lectures at Harvard Law School on Prosecution Policies and Strategy at the International Criminal Court, Cambridge Deputy Prosecutor speaks at conference R2P: the next decade, New York	19 Prosecutor speaks at the Boston School College of Law Owen Kupferschmid Memorial Lecture, Boston	20	21	22
23	24	25	26	27	28	29
30	31					

VI. Other Information

6 January – Deputy Prosecutor Bensouda was [named](#) Gambian Personality of the Year by the Gambia News and Report weekly magazine because of what the management of the magazine said was its satisfaction that Bensouda has met the criteria for the award. “In view of the exemplary strides you continue to make at the International Criminal Court resulting to your recent elevation to the top prosecutorial job of this highest Criminal Court of the world.”

** 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*