



## OTP Weekly Briefing

Issue #110

25 – 31 January  
2012

- **Impact of the confirmation of charge in the Kenya situation**
- **ICC judges in case against Katanga and Ngudjolo Chui visit Ituri**

## NEWS

### Impact of the confirmation of charges in the Kenya situation

23-26 January - Following the Judges' decision to confirm charges in the Kenya situation against four accused, President Kibaki called on *"everyone to remain calm and peaceful. Our great Nation has had its share of challenging times. On these occasions, we have re-examined our national conscience and moved forward together. We continue to do so. [...] It is now the collective responsibility of all these institutions to ensure justice for all at all times. [...] Today, we once again search our national conscience, re-dedicate ourselves to a true sense of national reconciliation and forgiveness. Let us move our country forward"*.

Kofi Annan, Chairman of the AU Panel of Eminent African Personalities, stated: *"Justice should take its course. [...] The period leading to the next national elections will be challenging. As reforms continue and preparations for elections and devolution pick-up momentum, I urge all Kenyans to focus on these essential tasks. The Kenyans have the opportunity to lay a solid, democratic foundation for the future of their country, building on the spirit, letter and intent of the Constitution. The challenge now is to build a country that is peaceful and stable, to ensure sustainable development, rooted in respect for the rule of law and human rights."*

The US State Department [stressed](#) that *"accountability for the 2007-2008 post-election violence is critical to ensuring Kenya's democracy, peace, and long-term stability. [...] We urge the Kenyan government, the people of Kenya, and the individuals involved to continue to cooperate fully with the ICC proceedings and to remain focused on Kenya's future, especially through implementation of the reform agenda."*

The EU High Representative for Foreign Affairs and Security Policy Catherine Ashton called on the four accused *"to continue to cooperate fully with the ICC, and equally urges the Government of Kenya to respect its obligations as a State Party to the Rome Statute of the ICC"*.

On 26 January, following the ICC Judges' decision, President Kibaki accepted the decision by Mr. Kenyatta to step aside as the Minister for Finance, and the decision by Ambassador Francis Muthaura to step down from his position as Permanent Secretary, Secretary to the Cabinet and Head of the Public Service.

### ICC judges in case against Katanga and Ngudjolo Chui visit Ituri

20 January - The judges of Trial Chamber II visited Ituri, in the east of the DRC. The Chamber, which is trying the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, travelled to Bogoro, Aveba, Zumbe and Kambusto, visiting the scenes of the alleged crimes in this case and the home villages of the two accused and of a number of witnesses.

The Chamber decided it was necessary to visit these locations, together with the Prosecutor, the Defence and the Legal Representatives of the victims, in order to make its own findings and verify various witness accounts.

# 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).

## 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

### 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

### 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**

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

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



27 January - HRW [wrote](#) to UN Secretary-General Ban Ki-Moon asking him to take action regarding the presence of UNAMID head Ibrahim Gambari at the wedding of President Deby to the daughter of Musa Hilal, attended by President Al-Bashir. In the letter, it was recalled that UN guidelines limits interactions with individuals indicted by international tribunals to “*what is strictly required for carrying out UN mandated activities*” and that “*interactions of a ceremonial nature with President Al-Bashir should be avoided, including courtesy calls, receptions, photo opportunities, attendance at national day celebrations and so on*”. On 1<sup>st</sup> February, the UN spokesperson [indicated](#) “*Mr. Gambari’s attention has been drawn to the letter and to the need to avoid such encounters in future, however unintentional this particular encounter may have been*”.

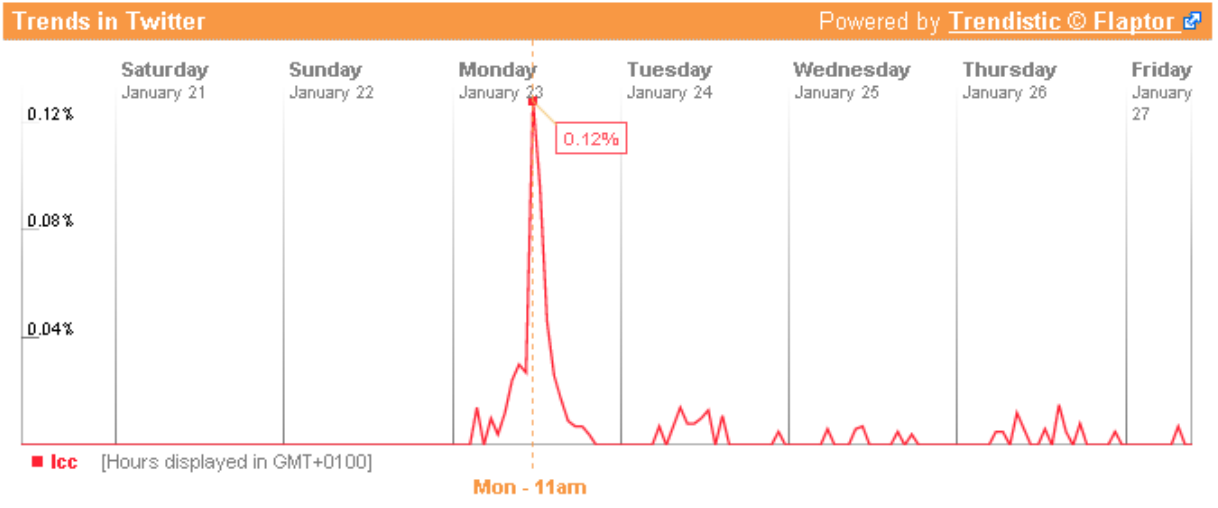
31 January - The leaders of the AU at the summit in Addis Ababa [asked](#) the Chairperson to consider seeking an advisory opinion of the International Court of Justice regarding the immunity of state officials under international law, although the AU Commission has not yet made any move in this direction. In 2000 the ICJ held in its ruling on the *Congo vs. Belgium* that there are certain exceptions to the principle of immunity of serving officials where an incumbent “*may be subject to criminal proceedings before certain international criminal courts, where they have jurisdiction. Examples include the ICTY, the ICTR....and the future ICC*”.

*The Prosecutor v Omar Hassan Ahmad Al Bashir (more information [here](#))*

Current location: **Khartoum, Sudan**

IV. Other Co-operation

A recent study (Tweetminster and Portland) of African use of Twitter, based on an analysis of over 11.5million (geo-located only) Tweets from the last quarter of 2011, shows that Kenyans are the second most active users of this social networking tool on the African continent, with almost 2.5 million Tweets. The chart below shows how the usage of the hash tag #ICC peaks at the moment of the confirmation of charges decision. This is just one view of activity. Twitter users use a variety keywords to comment and share information on events related to the ICC proceedings in Kenya (icc, ruto, kenyatta, ocampo, ekaterina, justice, PEV, suspects, etc.). It reflects the continued high public interest in ICC proceedings.



V. Upcoming Events

January						
30	31					
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 Conference "Justice for all? 10 year review	Deputy Prosecutor participate in the Conference "Justice for all? 10 year review	Deputy Prosecutor participate in the Conference "Justice for all? 10 year review	Deputy Prosecutor participate in the Conference "Justice for all? 10 year review of the ICC" and side			

<i>of the ICC" and side events in Sydney, Australia</i>	<i>of the ICC" and side events in Sydney, Australia</i>	<i>of the ICC" and side events in Sydney, Australia</i>	<i>events in Sydney, Australia</i>			
20	21	22	23	24	25	26
27	28	29				

## VI. Other Information

31 January - Professor Héctor Olásolo gave an OTP Guest Lecture at the Court presenting his latest book, "Essays on International Criminal Justice". His presentation examined the preventative mandate of the ICC, the complementarity regime, the new role granted to victims, and the prosecution of the highest leadership through the notion of indirect perpetration.

2 February - The Dutch Preliminaries of the ICC Trial Competition will take place at Utrecht University. The hearing will be followed by a seminar on the "Core role of international justice and human rights research for the work of the ICC and other international judicial institutions based in the Netherlands".

In accordance with Article 42 of the Statute, the ASP shall elect one Deputy Prosecutor out of a list of three submitted by the Prosecutor in its November session. In order to ensure that States Parties have sufficient time to make a choice between the three candidates, the Office published a vacancy announcement on 26 January 2012. Having informally been told by the Vice-President of the ASP, Ambassador Markus Börlin, that some States desired more time to process the vacancy announcement, the Office decided to extend the period for an additional month, until 31 March 2012. The Office intends to submit the three names to the ASP in July 2012.

\* 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)