



OTP Weekly Briefing

Issue #119

24 April-01 May
2012

- OTP statement about the situation in Mali
- Lubanga case: Trial Chamber I to hear submission for sentencing on 13 June
- Closing statements in the Katanga and Ngudjolo Chui case is scheduled from 15 to 23 May

NEWS

OTP statement about the situation in Mali

24 April - [The OTP](#) has been closely following the developments in Mali since clashes erupted around 17 January 2012. According to several sources, including senior UN officials, crimes such as killings, abductions, rapes and conscription of children may have been committed by various groups in the northern part of the country. As Mali ratified the Rome Statute on 16 August 2000, in accordance with Rome Statute provisions, the ICC has jurisdiction over possible war crimes, crimes against humanity or genocide that may be committed on the territory of Mali or by Malian nationals as of 1 July 2002.

The OTP has expressed that it will further scrutinize the possible commission of ICC crimes on Malian territory by any party and will make a decision in due course as to whether to undertake a preliminary examination of the situation under Article 15 and Article 53.1 of the Rome Statute.

Lubanga case: Trial Chamber I to hear submissions for sentencing on 13 June

24 April - Trial Chamber I [issued](#) an order fixing the date to hear oral submissions for sentencing in the case *The Prosecutor v. Thomas Lubanga Dyilo*. The hearing is scheduled to start on 13 June 2012.

The Prosecution and the legal representatives of victims are instructed by the Chamber to file submissions by 14 May on the relevant evidence presented during trial that may be applicable to the sentence, along with their views as to the sentence to be imposed on the convicted person taking into consideration, *inter alia*, any specific aggravating and mitigating factors. The Defence is instructed to respond and to file submissions on the sentence to be imposed on Mr Lubanga by 28 May. In addition, the Defence is to notify the Chamber as to whether it will seek authorisation to present new evidence during the sentencing hearing.

At the 13 June hearing, the order of the oral submissions on sentence will be: the Prosecution, the participating victims, and then the Defence.

Closing statements in the Katanga and Ngudjolo Chui case is scheduled from 15 to 23 May



24 April - Trial Chamber II [issued](#) the order on procedures for the presentation of closing statements in the case *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*. The closing statements are scheduled to take place from 15 to 23 May. The modalities for the presentation of concluding oral arguments are established as follows: The Prosecution and two Defence teams will each have 3h30, the Legal Representative of the main group of victims, 1h20 and the Legal Representative of child soldiers victims, 40 minutes to deliver their conclusions. The Parties may

request the right of reply and rejoinder. The accused may make an oral statement according to article 67(1)(h). The Trial Chamber noted that in light of the dispute regarding PTCI's characterization of the armed conflict in Ituri as international in its confirmation decision, it must consider the possibility of a change in the legal characterization of the facts pursuant to regulation 55 of the Regulations of the Court. The Parties and Participants are requested to address the subject in their oral arguments.

OTP Activities

OVERVIEW

7 situations under investigation
15 cases in relation to 24 persons
11 outstanding arrest warrants
7 preliminary examinations in 4 different continents
Phases
2 cases before Pre-Trial Chambers
6 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 seven situations: [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; hearing for submissions on sentencing set for 13 June 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 from 15 to 23 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 March 2012

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

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](#).

20 April – The LRA has allegedly increased its attacks in the Central African Republic since the beginning of 2012. The LRA carried out at least 53 new attacks in Congo and CAR between January and March, abducting 90 civilians and killing nine others, according to new [research](#) by Human Rights Watch in CAR and UN documentation.

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 21 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)

25 April - Libya's direct appeal against the Pre-Trial Chamber's decision regarding the "second request by the Government of Libya for Postponement of the surrender of Saif Al-Islam Gaddafi" was [rejected](#) by the Appeals Chamber. In the same decision, the Appeals Chamber also rejected the Libyan request for suspensive effect and reclassification of Application for Leave to Reply as confidential or ex parte. The reasoning of the decision on the postponement of surrender was explained as

follows: “the Impugned Decision [referring to an earlier decision], concerned a request for the postponement of surrender under article 95 of the Statute and made no determination concerning the admissibility of the case. Therefore, the Impugned Decision cannot be characterised as a decision that consisted of, or was based on, a ruling that the case against Mr Gaddafi was admissible or inadmissible (...) Libya’s argument that the Impugned Decision was therefore a “decision pertaining directly to admissibility” is not convincing.”

On the request for suspensive effects, the decision reads: “the Appeals Chamber has previously found that there is no reason to grant suspensive effect when an appeal has been found to be inadmissible”. Regarding the reclassification request, the Appeals Chamber decided: “the Application to Leave to Reply has been filed publicly in proceedings that are public. The Court’s legal texts [...] do not provide for the confidentiality of the information at issue. Furthermore, Libya does not adequately substantiate or justify a threat to a person who would be protected by making this information confidential. Considering that the proceedings before the Court are, in principle, public, the Appeals Chamber finds that Libya’s arguments in support of reclassification do not establish a factual or legal basis for the confidential treatment of the information.”

1 May - The Government of Libya submitted an [application](#) pursuant to Article 19 of the ICC Statute, challenging the admissibility before the ICC of the case concerning Saif Al-Islam Gaddafi and Abdullah Al-Senussi: “In accordance with the principle of complementarity set forth in Article 17 of the Rome Statute, Libya respectfully submits that this case is inadmissible on the grounds that its national judicial system is actively investigating Mr Gaddafi and Mr Al-Senussi for their alleged criminal responsibility for multiple acts of murder and prosecution, committed pursuant to or in furtherance of State policy, amounting to crimes against humanity. These acts, allegedly committed as part of a widespread or systematic attack against Libyan civilians, include but are not limited to crimes committed in Tripoli, Benghazi, and Misrata during the period commencing from 15 February 2011 until the liberation of Libya. The national proceedings concerning these matters are consistent with the Libyan Government’s commitment to post-conflict transitional justice and national reconciliation. It reflects a genuine willingness and ability to bring the persons concerned to justice in furtherance of building a new and democratic Libya governed by the rule of law. To deny the Libyan people this historic opportunity to eradicate the long-standing culture of impunity would be manifestly inconsistent with the object and purpose of the Rome Statute, which accords primacy to national judicial systems.”

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

26 April – The UN Security Council [renewed](#) for another year the set of sanctions imposed on Côte d’Ivoire, while adjusting the arms embargo in light of the need for weapons and ammunition to train and equip the country’s security forces. The unanimous resolution also “reiterat[ed] [the Council’s] firm condemnation of all violations of human rights and international humanitarian law in Côte d’Ivoire, condemning all violence committed against civilians, including women, children, internally displaced persons and foreign nationals, and other violations and abuses of human rights, and stressing that the perpetrators must be brought to justice, whether in domestic or international courts, and welcom[ed] the close cooperation of the Ivorian Government with the International Criminal Court in this regard”.

III. Arrests - Cooperation

10 PERSONS SOUGHT BY THE COURT



The Prosecutor v Bosco Ntaganda (more information [here](#))

Current location: **DRC, in and around Goma**

25 April – The Dutch Ambassador to the DRC, Robert Van Embden, [called](#) on the new DRC government to “revitalize and strengthen the fight against impunity at the national scale and, especially, to the East of the country. The best signal marking the political will would, rightly, be the arrest of Bosco Ntaganda as mentioned in the recent statement by the Head of state, as well as his immediate transfer to the ICC, as requested by many Congolese and the international community”.

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**

24 April – The UN Security Council condemned “[in the strongest terms](#)” an attack on peacekeepers in West Darfur, Sudan, in which four were wounded, one of whom subsequently died as a result of wounds sustained in the attack.

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

Current location: **Khartoum, Sudan**

IV. Other Co-operation

24 April - The Royal Institute for Foreign Affairs "Chatham House" and Parliamentarians for Global Action published “[the Summary Report](#) of the Meeting of Experts, Parliamentarians and other Stakeholders on the Relationship between the ICC and the UN Security Council”, held on 16 March 2012 in London with the participation of Phakiso Mochochoko, Head of the JCCD. The report notes that “[ICC’s] establishment alone represented a significant milestone in the pursuit of justice and accountability. The work of the ICC since then has brought concrete progress in the fight against impunity, as well as raised new challenges in the establishment of an effective system of international criminal justice.” The report further indicates that “the relationship between the ICC and the Security Council is complex, not least in light of the ability of the Council to refer to the Court situations over which the Court would not otherwise have jurisdiction, and the ability of the Council to suspend investigations and prosecution at the ICC. With its limited enforcement powers, the ICC is reliant upon the cooperation and assistance of states, which can be enhanced through the intervention of the Security Council.” The final part of the report made certain suggestions about the ways in which the relationship between the Court and the UNSC can be further improved: “it is imperative that more efforts are made to engage with all members of the Security Council (...) Particular emphasis was placed on the need to engage more constructively with China and Russian Federation.” Further recommendations were noted on issues such as the need for developing consistency when making referrals and in response to non-cooperation, as well as making full use of the forthcoming French presidency in the UNSC to promote the ICC and international justice.

24-25 April - The OTP participated in the [12th meeting](#) of the European Network of Contact Points in respect of persons responsible for genocide, crimes against humanity and war crimes (the Genocide Network) in The Hague. This meeting focused in particular on the relationship between procedures of the national immigration authorities and procedures of law enforcement authorities in identification of alleged perpetrators, victims and witnesses of the crime of genocide, crimes against humanity and war crimes and in addition provided for exchange of experiences and best practices in investigations, prosecutions and judicial cooperation.



25 April - Prosecutor Luis Moreno-Ocampo and the Executive Secretary of the Inter-American Commission on Human Rights (IACHR), Mr. Santiago Canton, signed a Memorandum of Understanding aiming at strengthening the mutual cooperation and assistance between the OTP and the IACHR in the conduct of their respective mandates.

27 April - Olivia Swaak-Goldman, Head of the International Relations Task Force, participated in a specialized course for the ICRC's operational staff on protection, legal issues and IHL in Geneva. About the issue of protection Ms. Swaak-Goldman indicated that *'It is only with the Rome Statute establishing the ICC that the international community added an independent and permanent justice component to its efforts to achieve peace and security (...)'*.

V. Upcoming Events

April						
30						
May						
	1	2	3	4	5	6
7	8	9	10	11 <i>Deputy Prosecutor speaks at Warwick University about The Future Role of ICC , Warwick</i>	12	13
14	15 <i>Start of the closing statements in the case of The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui</i>	16 <i>Prosecutor reports to the UN Security Council on Libya, New York</i>	18	19	20	21
22	23 <i>Deputy Prosecutor attends a conference on Africa and the ICC organised by Open Society Initiative for Southern Africa (OSISA) and OpenForum, Cape Town</i>	24 <i>Deputy Prosecutor attends a conference on Africa and the ICC organised by Open Society Initiative for Southern Africa (OSISA) and OpenForum, Cape Town</i>	25	26	27	28
29 <i>Prosecutor and Deputy Prosecutor participate in OTP-NGO roundtable</i>	30 <i>Prosecutor and Deputy Prosecutor participate in OTP-NGO roundtable</i>	31				

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