



## OTP Weekly Briefing

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- **Renewed violence in Congo and call for arrest of Bosco Ntaganda by NGO's as the UNSC calls for an immediate end to rebellion**

### NEWS

#### **Renewed violence in Congo and call for arrest of Bosco Ntaganda by NGOs as the UNSC calls for an immediate end to rebellion**

Bosco Ntaganda, who is subject to an arrest warrant from the Court since 2006, is still on the run in North Kivu since he deserted from the FARDC in early April with several of his former associates from the CNDP.

From his refuge in Masisi territory, North Kivu, he, together with a few hundred defectors, is again challenging the DRC authorities and the international community

and represents yet again a threat to the local population of North Kivu, in particular in the Masisi and Walikale territories. Thousands of villagers are reported by humanitarian agencies to have been displaced in recent days, seeking refuge in neighbouring countries and trying to escape the renewed and increased fighting in the region between the deserters and the FARDC forces. Despite denials from Bosco Ntaganda, it seems that the recent fighting and violence against the civilian population have been conducted by CNDP officers under his leadership.

As stressed by Prosecutor Moreno-Ocampo, *"the Bosco Ntaganda case shows the cost of impunity. Six years after the arrest warrant was issued, he is still at large, reportedly committing acts of violence against civilian populations. He cannot be allowed to continue to defy justice. It is time to arrest him"*.



More than 142 local and international NGOs and civil society organisations have called for Bosco Ntaganda to be arrested and sent to justice. In [letters](#) sent among others to U.S. Secretary of State Hillary Clinton, [Belgian](#) Minister of Foreign Affairs Didier Reynders, EU High Representative of the Union on Foreign Affairs and Security Policy Catherine Ashton, UK Foreign Secretary William Hague and France Minister of Foreign Affairs Alain Juppé, they called these actors to: *"support the Congolese government to urgently plan and carry out a lawful arrest of Bosco Ntaganda, including providing support through the United Nations peacekeeping mission in Congo, MONUSCO [and] press the government of Rwanda, which has backed Ntaganda in the past, to support the lawful arrest of Ntaganda by the Congolese government and not provide him with sanctuary, so that he can be brought to justice."* The UN Security Council, in a [press statement](#) issued on 3 May, also expressed its serious concerns *"over the recent attacks*

*by armed groups in eastern DRC, in particular former elements of the CNDP, under the leadership of Bosco Ntaganda, against the FARDC and called for an immediate end to the rebellion."*

# 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 [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 of 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); Prosecution appealed to Appeals Chamber on 12 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](#).

### 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)

**25 April** -The Kenyatta and Muthaura Defences requested Trial Chamber V to [delay](#) setting a trial date until the Appeals Chamber has rendered its decision on their joint jurisdictional appeal. They submitted that it would be contrary to the interests of justice and the fair trial rights of the Accused, and an inefficient use of court resources to set a trial date and commence trial proceedings before the Appeals Chamber has made a final determination on the Court's jurisdiction over the present case.

**25 April** - The Kenyatta and Muthaura Defences [requested](#) leave from the Appeals Chamber to make oral submissions in support of their challenge to the jurisdiction of the Court. They submitted that the interests of justice and the fair trial rights of the Accused require that submissions be made orally in a public hearing on this issue. On **1 May**, the Appeals Chamber [rejected](#) the Kenyatta and Muthaura Defences' request to make oral submissions. In its decision, the Appeals Chamber has found "*Mr Kenyatta and Mr Muthaura's argument that the Appeals Chamber is obliged to show deference to the cited Kenyan legal instruments when deciding on their request unconvincing.*" The Chamber has also disagreed with the submission of Mr Kenyatta and Mr Muthaura that an oral hearing at this stage would not cause delays and that they would be the most effective method of scrutinizing the substantive merits of the parties' submissions.

### 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; the Government of Libya submitted an application pursuant to Article 19 challenging the admissibility before the ICC of the case concerning Saif Al-Islam Gaddafi and Abdullah Al-Senussi on 1 May

**4 May** – Pre-Trial Chamber I [issued](#) the “Decision on the Conduct of the Proceedings Following the ‘Application on behalf of the Government of Libya pursuant to Article 19 of the Statute.’” In the decision, the Chamber found that the postponement request of the Government of Libya is “a distinct issue which should be decided separately from the Admissibility Challenge.” Furthermore, the Chamber called upon “the Prosecutor and the OPCD to submit their responses to the Postponement Request, if any, no later than 11 May 2012” and appointed “Paolina Massidda from the OPCV as legal representative of victims who have already communicated with the Court in relation to the case [...] for the purpose of the proceedings following the Admissibility Challenge.” The decision also included an invitation to “the Prosecutor, the OPCD, the Security Council and the OPCV to submit observations on the Admissibility Challenge, if any, no later than 4 June 2012.” Finally the Chamber decided to “determine whether a hearing is necessary for the proper determination of the Admissibility Challenge and will, establish the date and agenda for such hearing [...] following the receipt of written observations” regarding Libya’s request for an oral hearing.

**27 April** – Pre-Trial Chamber I [decided](#) on several requests made by the OPCD. It ordered the Registry to make the necessary arrangements for a visit to Mr. Gaddafi by representatives of the Registry in order to discuss further with him the option to appoint counsel of his own choosing as well as a visit by the appointed counsel from the OPCD on a privileged basis. It also requested the Libyan authorities to provide reasonable advance notice to the Court of any transfer of Mr. Gaddafi to another detention centre. Finally, it rejected the OPCD’s request for an *ex parte* status conference as premature.

**25 April** - The Government of Libya [responded](#) to the OPCD’s report concerning its visit to Libya which alleged, *inter alia*, that Mr. Saif Al-Islam Gaddafi is: (i) kept in poor conditions of detention; (ii) denied adequate food; (iii) denied medical and dental care; (iv) held *incommunicado*; (v) subject to physical attacks while in custody; and (vi) being investigated under Libyan law solely with respect to regulatory offences concerning the licensing of camels and unsanitary conditions of fish farms. The Government refuted those allegations and requested Pre-Trial Chamber I to invite the OPCD to: (i) withdraw the baseless, unverified and false allegations in order to repair its serious prejudicial effect against the Government’s article 19 admissibility challenge; and (ii) cease and desist from making further baseless allegations which are not in keeping with article 24 of the Code of Professional Conduct for Counsel.

#### 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.

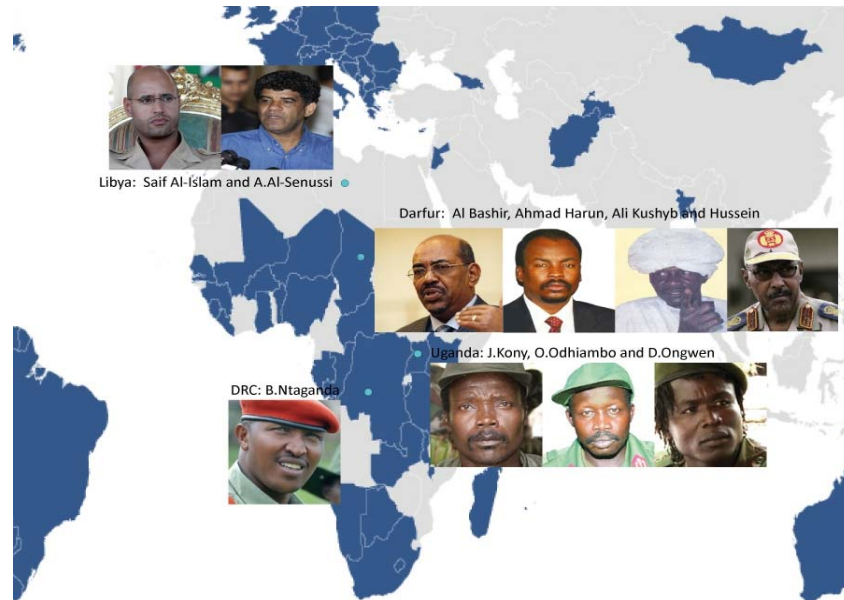
**Issued:** 23 November 2011 (under seal)

**Status:** initial appearance on 5 December 2011; confirmation of charges hearing set for 18 June 2012

### III. Arrests - Cooperation

10 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**

**9 May** - Malawi's new President Joyce Banda has said she does not want Sudan's President Omar Al Bashir to attend the African Union summit to be held in Malawi in July. Banda is trying to improve relations with donors, who had cut aid to her predecessor Bingu wa Mutharika's government, accusing him of political repression and economic mismanagement. The decision not to enforce the arrest warrant last year by her predecessor and to allow Al Bashir to attend the Common Market for the Eastern and Southern Africa (COMESA) summit cost Malawi US\$ 350.7 million from the US [Millennium Challenge Corporation](#) meant to rejuvenate Malawi's fledgling power supply. The move further strained ties with [donors](#), including the United States and European nations, who had already frozen projects in Malawi due to Mutharika's suspected human rights violations and alleged growing autocracy.

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

**Current location: Khartoum, Sudan**

#### **IV. Other Co-operation**

**5-6 May** – Prosecutor Moreno-Ocampo participated in the Qatar Law forum on the Rule of Law, held in Doha, and gave closing remarks on the role of international courts in advancing the rule of law. The Prosecutor also met with HH Sheikha Moza bint Nasser, following-up to their meeting in February of this year, to continue discussions on questions of mutual concern regarding education and next steps regarding the educational project the Office has been discussing with different actors.

**3 May** - A number of African civil society organizations and international organizations with a presence in Africa have written a [letter](#) to the Justice Ministers and Attorney Generals of African States Parties to the ICC regarding the proposed expansion of

the jurisdiction of the African Court of Justice and Human Rights (African Court) to the prosecution of individuals. The letter points out to a number of possible risks of such expansion: *“The expansion of the African Court’s jurisdiction risks undermining the progress in the development of Africa’s human rights system. The merger between the existing African court on Human and People’s Rights and the African Court of Justice could already dilute the work of the former. [T]he prospect of criminal jurisdiction may be a disincentive for some states to join the merged African Court [...] If states have not joined the [merged] African Court, they may remain outside [...] the human rights mandate.”* About the possible effects such an initiative might have over the ICC, the letter reads: *“the ICC already promotes complementarity at the national level. Expanding the African Court’s jurisdiction [would] [...] divert resources and attention from strengthening the ability and willingness of national authorities to prosecute international crimes [...] The continued engagement of African States Parties is vital to the ICC’s success. If the African Court’s jurisdiction is expanded, African ICC States Parties may face duplicative or competing obligations between the African Court and the ICC, including in resource and cooperation requests [... In such a situation] African ICC states parties would be placed in a situation which may frustrate efforts at accountability and their relationship with the ICC and other institutions.”* The letter ends with the following suggestion: *“In the spirit of openness, transparency, and good regional governance, a genuine process of consultation should be facilitated [with] the ICC [and] civil society organizations [who] have critical expertise to offer, as do other relevant stakeholders.”*

## V. Upcoming Events

| May |   |   |  |  |    |    |
|-----|---|---|--|--|----|----|
|     | 1   | 2   | 3  | 4  | 5  | 6  |
| 7   | 8   | 9   | 10   | 11<br><i>Deputy<br/>Prosecutor speaks<br/>at Warwick<br/>University about<br/>The Future Role<br/>of ICC , Warwick</i> | 12 | 13 |
| 14  | 15<br><i>Start of the<br/>closing<br/>statements in<br/>the case of The<br/>Prosecutor v.<br/>Germain<br/>Katanga and<br/>Mathieu<br/>Ngudjolo Chui</i>   | 16<br><i>Prosecutor<br/>reports to the UN<br/>Security Council<br/>on Libya, New<br/>York</i>   | 17<br><i>Prosecutor<br/>participates in<br/>IPI Policy Forum<br/>“ICC Prosecutor<br/>Luis Moreno-<br/>Ocampo<br/>Challenges for<br/>the ICC over the<br/>Next 10 Years-<br/>Enforcing Arrest<br/>Warrants”</i> | 18   | 19 | 20 |
| 21  | 22<br><i>Deputy<br/>Prosecutor<br/>attends a<br/>conference on<br/>Africa and the<br/>ICC organised<br/>by Open Society<br/>Initiative for<br/>Southern Africa<br/>(OSISA) and<br/>OpenForum,<br/>Cape Town</i> | 23<br><i>Deputy<br/>Prosecutor<br/>attends a<br/>conference on<br/>Africa and the<br/>ICC organised by<br/>Open Society<br/>Initiative for<br/>Southern Africa<br/>(OSISA) and<br/>OpenForum,<br/>Cape Town</i> | 24   | 25   | 26 | 27 |
| 28  | 29<br><i>Prosecutor and<br/>Deputy<br/>Prosecutor<br/>participate in</i>  | 30<br><i>Prosecutor and<br/>Deputy<br/>Prosecutor<br/>participate in</i>  | 31   |  |    |    |

|  |                       |                       |  |  |  |  |
|--|-----------------------|-----------------------|--|--|--|--|
|  | OTP-NGO<br>roundtable | OTP-NGO<br>roundtable |  |  |  |  |
|--|-----------------------|-----------------------|--|--|--|--|

**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](mailto:Olivia.Swaak-Goldman@icc-cpi.int)*