



## OTP Weekly Briefing

Issue 105

22 November - 28  
November 2011

- Laurent Gbagbo arrives at ICC detention center
- Prosecutor meets Libyan officials to discuss course of action
- International community calls for accountability and fair process after Saif Al-Islam Gaddafi's arrest

## NEWS



### New ICC suspect Laurent Gbagbo arrived at the ICC detention centre

30 November - Laurent Koudou Gbagbo, former President of Côte d'Ivoire, 66 years, arrived at the ICC detention centre. He was surrendered to the ICC on 29 November 2011 by the national authorities of Côte d'Ivoire following a warrant of arrest issued under seal by the judges of the Pre-Trial Chamber III on 23 November. The suspect's initial appearance hearing before the Pre-Trial Chamber III, composed of Judges Silvia Fernández de Gurmendi (presiding judge), Elizabeth Odio Benito and Adrian Fulford, will be held soon.

Mr Gbagbo allegedly bears individual criminal responsibility, as indirect co-perpetrator, for four counts of crimes against humanity, namely murder, rape and other forms of sexual violence, persecution and other inhuman acts, allegedly committed in the territory of Côte d'Ivoire between 16 December 2010 and 12 April 2011.

Prosecutor Moreno-Ocampo stated: *"It is exactly a year since the presidential election that led to one of the worst episodes of violence Cote d'Ivoire has ever known, with ordinary Ivorians suffering immensely, and crimes allegedly committed by both parties. We have evidence that the violence did not happen by chance: widespread and systematic attacks against civilians perceived as supporting the other candidate were the result of a deliberate policy. In December last year, we put Mr. Gbagbo and the others on notice. Today, we are following up. Mr. Gbagbo is brought to account for his individual responsibility in the attacks against civilians committed by forces acting on his behalf. He is presumed innocent until proven guilty and will be given full rights and the opportunity to defend himself. Let me make it clear: investigations continue. We will collect evidence impartially and independently, and bring further cases before the Judges, irrespective of political affiliation. Leaders must understand that violence is no longer an option to retain or gain power. The time of impunity for these crimes is over."*

## Prosecutor meets Libyan officials to discuss course of action

**22-24 November** - Prosecutor Moreno-Ocampo and Deputy Prosecutor Bensouda led a [delegation](#) which met with Libyan authorities as part of coordination efforts following the arrest of Saif Al-Islam Gaddafi and unconfirmed reports regarding the arrest of Abdullah Al-Senussi. During his mission to Libya, the Prosecutor [stated](#) that *"it will be up to the ICC to decide where Saif al-Islam Gaddafi, son of the former Libyan leader, will stand trial to face charges for crimes against humanity"* and he added that *"the issue of where the trials will be held has to be resolved through consultations with the Court"*. He said that in the end, the ICC judges will have to decide, as *"there are legal standards which will have to be adhered to."*

Libya's transitional leaders [vowed](#) to work with the ICC and with the United Nations in investigating alleged crimes committed by Saif Al-Islam Gaddafi. The Court received the formal pledge in a letter from National Transitional Council chairman Mustafa Abdul-Jalil, indicating its respect and appreciation for the Court's decisions, and further reaffirming that the Libyan judiciary has primary responsibility to try Saif Al-Islam Gaddafi and that the Libyan State is willing and able to do so. The Libyan authorities intend to work closely with the OTP and the Pre-Trial Chamber in order to seek the postponement of the Court's request for the arrest and surrender of Mr. Gaddafi, as foreseen in article 94 of the Rome Statute.

**25 November** – The Prosecutor [submitted a summary of his](#) trip to Libya to the Judges of Pre-Trial Chamber. The filing indicates that the Libyan Minister of Justice stated that the Libyan authorities would conduct the trial in Libya but would coordinate it with the ICC, while the Prosecutor expressed that he was in Libya to ensure coordination and that the final decision on the jurisdiction of the case would be adopted by the ICC Judges. The Libyan authorities expressed their respect for the Court and for their obligations under the UN Security Council resolution; confirmed the arrest of Saif al-Islam Gaddafi and affirmed their primary jurisdiction to prosecute him, their willingness and ability to do so under Libyan law and finally their intention to work closely with the Prosecution and the Pre-Trial Chamber to facilitate this process.

## International community calls for accountability and fair process after Saif Al-Islam Gaddafi and Abdullah Al-Senussi's arrests in Libya

**22 November** - After Saif Al-Islam Gaddafi's arrest, the international community has expressed the need to guarantee a fair and transparent trial for the Libyan suspects. The UK Foreign Officer Minister, Henry Bellingham, [stated](#) that now *"the ICC has its highest ever profile. It proved that those who commit crimes against humanity have no impunity"*; while Victoria Nuland, spokesperson from US Department of State, [affirmed](#) when asked about Saif Al-Islam that *"he needs to see justice in a manner that meets international standards"* and that *"it is a matter for the Libyan authorities and the Libyan people to decide how that is done."*

Catherine Ashton, EU High Representative, [said](#) that *"the reported capture of Saif is a significant development"* and that *"it is of utmost importance that Saif al-Islam's safety is now ensured and his due process rights guaranteed so that he can be delivered to justice."* France's Ministry of Foreign Affairs welcomed the arrests and [called](#) on the NTC to cooperate with the ICC and expressed the need to give Saif al-Islam a fair trial.

The INTERPOL Secretary-General [affirmed](#) that the *"arrest of Saif Al-Islam Gaddafi is an important milestone for the new Libya,"* and also that *"Gaddafi being taken into custody not only shows fugitives that they cannot run forever, but also is a clear signal to the people of Libya and citizens around the world that the NTC will continue to hunt for those accused of crimes and bring them before the Courts."*

## OTP Activities

### OVERVIEW

7 situations under investigation  
12 cases in relation to 24 persons  
18 arrest warrants – 11 outstanding  
3 trials  
3 confirmation of charges proceedings  
8 preliminary examinations in 4 different continents

## 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:** Hearing held from 16 to 21 September 2011, pending decision

#### **Warrant Pending**

*The Prosecutor v [Bosco Ntaganda](#)* – charged with war crimes against children committed in the Ituri region 2002-2003

**Issued:** 22 August 2006

**15 November** – In the case the *Prosecutor v. Thomas Lubanga Dyilo*, Trial Chamber I held a [status](#) conference regarding the timing of the delivery of the final judgment. It informed the Parties that the English version is likely to be ready at the turn of the New Year but that the French translation would not be ready until April 2012. The Chamber sought the views of the Parties on: i) whether the judgment is to be delivered simultaneously in both languages or whether the English version is to be issued first; and ii) in case of the latter, the timing of the commencement of the right of appeal as well as of sentencing or release of the Accused. Both Parties supported the notification of the English version before the French translation and agreed that in the event of acquittal, the right of appeal for the Prosecution should start upon notification of the English version, but in the event of a conviction, the right of appeal for the Defence should start upon notification of the French translation. While the Prosecution supported moving to sentencing or release of the Accused upon notification of the English version, the Defence suggested that sentencing or reparation should not take place until the Appeals Chamber’s a final judgment on the guilt or innocence of the Accused. The Chamber indicated that it would deliver its decision as regards the timing of the delivery of the judgment in writing.

### 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

### 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

#### **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

**14 November** - The Prosecution [opposed](#) the Muthaura Defence's application in which the Defence claimed that in an interview the Prosecutor misrepresented and mischaracterised evidence elicited during the testimony of Kenyatta at the confirmation hearing. It submitted, inter alia, that: the Prosecutor's comments were both responsible and appropriate and in full respect of the Chamber decision and the "Integrated Strategy for External Relations, Public Information and Outreach" adopted by the Court; and his comments emphasized repeatedly and accurately the need to respect the rule of law, the supreme role of the judges, and the fairness and objectivity of the process. On 16 November, the Single Judge [dismissed](#) the Muthaura Defence's application on the grounds, inter alia, that: while the Prosecutor indeed commented on the proceedings in the present case, it is also evident from the transcript that he was expressing his own view as Prosecutor on the conduct of the confirmation hearing and the evidence presented; and the transcript of the interview does not provide for a conclusion that the Prosecutor made a pre-determination of the pending case or interfered with the integrity of the proceedings before this Chamber.

### 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



**22 November** - Pre-Trial Chamber I decided to terminate the [case](#) against Muammar Mohammed Abu Minyar Gaddafi. The ICC Prosecution had requested the Judges to withdraw the warrant of arrest issued for Muammar Gaddafi because of the changed circumstances caused by his death. The Chamber recalled that the purpose of criminal proceedings is to determine individual criminal responsibility and that jurisdiction cannot be exercised over a deceased person.

#### 7. Situation in [Côte d'Ivoire](#) – OTP request to start investigation: June 2011    Investigation opened: October 2011

**Status:** 3 October 2011 – Pre Trial Chamber III authorizes the Prosecutor to open an investigation into the situation in Côte d'Ivoire since 28 November 2010

**15-18 November** - An OTP delegation was invited to participate at the Séminaire D'Imprégnation de la Commission de Dialogue, Verité et Reconciliation (CDVR) sur les Enjeux de la Justice Transitionnelle organized by the UNOHCHR and ONUCI in Côte d'Ivoire. The OTP gave a presentation on international crimes, the relations between Truth and Reconciliation commissions and judicial processes and on witness protection.

### 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)**

**28 November** - The Kenyan High Court issued a [warrant](#) requiring the Government arrest and hand over President Al Bashir to the ICC should he ever enter Kenya again. Justice Nicholas Ombija of the Kenyan High Court granted the orders following an application by the International Commission of Jurists (ICJ) Kenya Chapter. Justice Ombija ordered the Attorney-General and the Internal Security Minister to enforce the directive and hand over the Sudanese leader to the ICC.

#### IV. Other Co-operation

**21 November** - The Special Representative of the UN Secretary-General for Children and Armed Conflict, Radhika Coomaraswamy, visited Bangui and Obo in Central African Republic, to assess the situation of the Lord's Resistance Army and to sign an agreement or action plan for the release of child soldiers with the Convention des patriots pour la justice et la paix (CPJP), an armed rebel group listed by the United Nations for recruitment and use of children. In N'dele, SRSG Coomaraswamy [highlighted](#) the ongoing LRA brutality and called for the international community to stand together and provide security to protect children and communities: "The LRA is a brutal force and the international community must stand together to provide security for these communities and to ensure that child survivors of the LRA are given proper care and support."



**28 November** - Prosecutor Moreno-Ocampo received the Yemeni Nobel Peace Prize laureate Tawakkul Karman at the Court. During the meeting, Ms. Karman provided information about alleged crimes against humanity committed in Yemen. The Office received the information as a communication under article 15 and informed Ms. Karman it will provide a proper answer in due time.

#### V. Upcoming Events

December						
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
Tenth Session of the Assembly of States Parties, New York	Tenth Session of the Assembly of States Parties, New York	Tenth Session of the Assembly of States Parties, New York	Tenth Session of the Assembly of States Parties, New York  Prosecutor reports to UN Security Council on Darfur, New York	Tenth Session of the Assembly of States Parties, New York		
19	20	21	22	23	24	25
Tenth Session of the Assembly of States Parties, New York	Tenth Session of the Assembly of States Parties, New York	Tenth Session of the Assembly of States Parties, New York				
26	27	28	29	30	31	

## VII. 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)*