



## OTP Weekly Briefing

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- **Prosecutor Moreno-Ocampo presents his last report to the UN Security Council on Darfur**
- **Postponement of the execution of the request for surrender of Saif Al-Islam Gaddafi to the ICC**
- **The Defence team of Laurent Gbagbo challenges the jurisdiction of the ICC**

## NEWS

### Prosecutor Moreno-Ocampo presents his last report to the UN Security Council on Darfur

**5 June** - Prosecutor Moreno-Ocampo [presented](#) his fifteenth and last report on the situation in Darfur, Sudan to the UN Security Council. Recalling the words of Costa Rica Minister for Foreign Affairs, Mr. Bruno Stagno Ugarte, the Prosecutor stated that “the “never again” promise is being tested in the Sudan”.

Prosecutor Moreno-Ocampo stressed: “The failure to arrest and surrender Mr. Harun, Mr. Kushayb, Mr. Hussein and President Al Bashir is a direct challenge to the Council’s authority. It is for the Council to determine the measures to be adopted to ensure the compliance of the Government of the Sudan with the Security Council resolutions. The reality is that Council members have to reconcile their national interests with their responsibilities for international peace and security. I witnessed the impact of the Security Council acting with consensus. The Office would like to contribute by presenting an option that in due time could be explored by the Council. The execution of the arrest warrants on the Sudanese territory is the primary responsibility of the Government of the Sudan and UNAMID should not be authorized to carry out or assist to secure arrests. Instead, the Council can in due course evaluate other possibilities, including asking UN Member States or regional organizations to execute arrest

operations in furtherance of the arrest warrants issued by the International Criminal Court. Such a decision may be problematic, but the victims will receive a clear message: they are not ignored. And the perpetrators will receive a clear message: there will be no impunity.”

### Postponement of the execution of the request for surrender of Saif Al-Islam Gaddafi to the ICC

**1 June** - Pre-Trial Chamber I decided that Libya may postpone its execution of the ICC’s request for surrender of Saif Al-Islam Gaddafi, pursuant to article 95, pending the ICC’s final determination of Libya’s [challenge to the admissibility](#) of the case, dated 1 May 2012.

Without entering into a discussion of whether the case is admissible, the Chamber considered that “Libya’s admissibility challenge has been properly made within the terms of article 19(2) of the Statute and rule 58(1) of the Rules. Accordingly, the request for arrest and surrender for Mr Gaddafi may be postponed.” In addition, the Chamber emphasized that “the arrest warrant [against Mr Gaddafi] remains valid (...), and accordingly Libya must ensure that all necessary measures are taken during the postponement in order to ensure the possibility of an immediate execution of the Surrender Request should the case be found admissible”.

### The Defence team of Laurent Gbagbo filed an admissibility challenge to the ICC

**25 May** - The Defence team of Laurent Gbagbo filed a [challenge](#) related to the jurisdiction of the Court. The Defence challenged the temporal aspect of the Court’s jurisdiction. They argued that the declaration of acceptance of the jurisdiction of the Court sent on 18 April 2003 by the Minister of Foreign Affairs was limited to the attempted Coup of the 19 September

2002 and to the alleged massacres committed by the rebel forces. According to the Defence, the temporal scope of this letter cannot be extended past 18 April 2003, and especially not to the 2010 events. The Defence has also argued that the communications from President Ouattara in 2010, which confirmed the 2003 declaration, were not valid under Article 12(3), as Alassane Ouattara was not the President of Côte d'Ivoire under the national constitutional law, and therefore should not be regarded as a legitimate state authority. The Defence also argued that the arrest and detention of Laurent Gbagbo amount to a violation of articles 55 and 59 of the Statute.

## OTP Activities

### OVERVIEW

*7 situations under investigation*  
*14 cases in relation to 23 persons*  
*11 outstanding arrest warrants*  
*7 preliminary examinations in 4 different continents*  
**Phases**  
*1 case 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 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

##### **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

31 May - Pre-Trial Chamber II [dismissed](#), *in limine*, the Prosecution's application for a warrant of arrest against Mr Sylvestre Mudacumura, considering that this application "*fell short of the proper level of specificity*" in describing the alleged crimes "*for which the person's arrest is sought*". The Chamber noted that the Prosecution's application did not provide "*proper counts or any other kind of accompanying description of the specific facts underlying the crimes*" allegedly committed in North and South Kivu Provinces, and failed to "*set out the specific references to the alleged crimes*" as requested by the Rome Statute.

30 May - The Appeals Chamber [decided](#) to dismiss the Prosecution's appeal against the decision issued by Pre-Trial Chamber I, declining to confirm the charges against Mr. Callixte Mbarushimana. The Appeals Chamber rejected the first two grounds of

appeal, related to the Pre-Trial Chamber's power to evaluate the evidence at the confirmation of the charges stage. The Appeals Chamber found that in determining whether to confirm charges under article 61 of the Rome Statute, the Pre-Trial Chamber may evaluate ambiguities, inconsistencies, contradictions or credibility doubts in the evidence. The Appeals Chamber also rejected the third and last ground of appeal, related to whether, under article 25(3) of the Rome Statute, the contribution of the person must be "significant", because the alleged error did not materially affect the decision of the Pre-Trial Chamber. Judge Silvia Fernández de Gurmendi appended a separate opinion under this ground of appeal, as she would have found it necessary to hold that the Pre-Trial Chamber erred in finding that the contribution to the crimes must be significant under article 25(3)(d) of the Rome Statute.

The OTP issued a [statement](#) following the Appeals Chamber decision: *"the OTP takes note of the decision by the Appeals Chamber. We are evaluating the decision to see whether it is possible to present a new case against Mr Mbarushimana presenting additional evidence, in accordance with the Judges' ruling."*

## 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 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 Kiri 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)

29 May - Pre-Trial Chamber II [rejected](#) the Kenya's Government 4 July 2011 application for leave to appeal the "Decision on the request for Assistance." On 21 April 2011 the Kenyan Government had filed a Cooperation Request under Article 93(10) of the Rome Statute, seeking the transmission of "all statements, documents, or other types of evidence obtained by the Court and the Prosecutor in the course of the ICC investigations into the Post-Election Violence in Kenya, including into the six suspects." On 29 June 2011, the Chamber rejected the Request, after which, on 4 July 2011, the GoK requested leave to appeal under Article 82 (1)(d) of the Statute.

#### 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 Chamber decided that Libya could postpone the execution of the request to surrender Saif Al-Islam Gaddafi on 1 June 2012, pending a final determination on the admissibility challenge.

#### 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

23 May - Regarding the confirmation of charges hearing in the Gbagbo case, the Prosecution [informed](#) the Judges, *inter alia*, that: it will need a minimum of six and a half hours for its presentation at the confirmation hearing; it will address amongst its main topics the widespread and systematic nature of the charges, the organisational policy, common plan, structure of the organisation, authority of the Suspect and his criminal responsibility. It noted that if the Defence intends to present evidence and/or witnesses, the length of the Prosecution's presentation may have to be adjusted.

### 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 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**

4 June - [Malawi](#) President Joyce Banda reportedly stated that Omar Al Bashir would be arrested if he attended the African Union heads of state summit next month in Lilongwe. The President reportedly made her position clear after meeting the UK Secretary of State, Andrew Mitchell, who was in Malawi on a three day official visit to re-launch the development and diplomatic partnership. Following the decision Mr. Mitchell told the local media that *"it's a matter of Malawi to decide but the country is a state party to the ICC, therefore it is logical for the President to come out clear on her position"*.

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

Current location: **Khartoum, Sudan**

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

Current location: **Mauritania**

#### IV. Other Co-operation

4-5 June - Prosecutor Moreno-Ocampo and Deputy Prosecutor Bensouda are in New York for the report to the UN Security Council on Darfur. They held bilateral meetings with UN officials, including Secretary-General Ban Ki-moon, and Permanent Representatives to the UN. They also participated in a joint commemorative event to celebrate the ICC's 10th anniversary, hosted by the CICC, the President of the ASP and the German Permanent Mission to the UN. Prosecutor Moreno-Ocampo also participated in an event organized by United to End Genocide and the CICC to honor his work and launch the initiative "Arrest Bashir".

4 June - Deputy Prosecutor Fatou Bensouda gave a [keynote](#) address at a conference on "The Incidence of the Female Child and the ICC" organized by ASIL and Eng Aja Eze Foundation in New York. The Deputy Prosecutor stressed: *"It is our strong belief that justice cannot be done in or out of the courtroom if the voices of female child soldiers are not heard. Inside the courtroom, it is important for the gender component of conscription and enlisting to be mentioned in order to highlight the different dimensions of those crimes and their consequences, thereby participating in the determination of the whole truth. We also have to focus on the planning, designing and implementing of prevention, demobilization and reintegration programs so that the unique needs of girls are taking into consideration from the inception. Their voices must be heard so that the international community understands their story and their plight as they look for ways to make a contribution, do something meaningful and productive with their life, and try to make up for the harm inflicted on them through any possible means of reparations."*



Prosecutor Luis Moreno-Ocampo and Prime Minister Jeannot Kouadio-Ahoussou

1-2 June - Prosecutor Moreno-Ocampo made his last official visit to Côte d'Ivoire. The Prosecutor met with President Alassane Ouattara, Prime Minister Jeannot Kouadio-Ahoussou, UNOCI SRSG Bert Koenders, and representatives of the diplomatic corps, as well as representatives of the FPI. During a press conference, the Prosecutor noted the good cooperation between the Office and the Ivorian State, explaining the status of investigations to identify those most responsible for the most serious crimes that were committed in the country. The Prosecutor stressed that investigations are continuing and that the confirmation of charges hearing in the first case will begin on 18 June, which will enable all Ivoirians to know the truth about what happened during the electoral violence period in 2010-2011. The Prosecutor recalled that Laurent Gbagbo is presumed innocent, and is entitled to all the relevant rights to defend himself against the charges presented by the OTP. The Judges will decide based on the evidence presented by the new Prosecutor, Mrs. Fatou Bensouda. The Prosecutor welcomed the authorities' commitment to strengthen cooperation with the Court, and highlighted the call for justice for a sustainable peace by the Ivoirian people, especially those most affected by the crimes.

30-31 May - OTP participated in the Meeting of Interested States and Organisations on Complementarity in Stockholm. The meeting, hosted by the MFA of Sweden in cooperation with ICTJ, brought together international justice actors with rule of law and development actors. The objective was to continue the dialogue between various stakeholders with a view to further explore concrete means to promote domestic investigation and prosecution of international crimes.

29-30 May - The 17<sup>th</sup> Strategic Meeting ICC-NGOs took place at the Court. The Prosecutor opened the OTP sessions by summarizing the lessons learned from the cooperation between the OTP and the civil society, and the Prosecutor-elect presented some priorities in terms of preliminary examinations, investigations, prosecutions, institutional development and cooperation with external actors, including civil society. Throughout the rest of the two day meeting, NGOs members focused on the situations in Côte d’Ivoire and Kenya, as well as on coordination in arrest strategies in the LRA, Bosco Ntaganda and Darfur cases. Other sessions focused on the follow-up to the 10<sup>th</sup> session of the ASP and preparations for the 11<sup>th</sup> session.

29 May - An [initiative](#) aimed at tackling sexual violence in war zones across the world is set to be launched by the British government. A team of UK experts will be trained to deploy at short notice to gather evidence in conflict-hit areas. It is hoped the scheme will mean more perpetrators of sexual violence can be pursued in international courts. Foreign Secretary William Hague said: “Sexual violence is a problem found in every society in the world, and all countries have to do more to tackle it at home. But it is in the context of war and conflict that sexual violence is found to the most appalling degree, and on a scale most of us cannot imagine.”

V. Upcoming Events

June						
4	5 <i>Prosecutor and Deputy Prosecutor present briefing on the situation in Darfur to the UNSC, New York</i>	6	7 <i>Deputy Prosecutor gives keynote address at a seminar entitled “Societal Reintegration of Victims of Core International Crimes”, organised by the Forum for International Criminal and Humanitarian Law, held on the occasion of the 10th anniversary of the entry into forces of the Rome Statute, Oslo</i>	8	9	10
11	12	13 <i>Prosecutor attends the public hearing on sentencing in the Thomas Lubanga case</i>	14	15 <i>Swearing-in ceremony for the new ICC Prosecutor</i>	16	17
18 <i>Start of the confirmation of charges hearing in the Laurent Gbagbo case</i>	19	20	21	22	23	24

25	26	27 <i>Prosecutor Fatou Bensouda gives a speech at the Helen Stacy's Program on Human Rights, Stanford</i>	28	29	30	
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## 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)