



## OTP Weekly Briefing

Issue #118  
17-23 April  
2012

- **Prosecutor travels to Libya**
- **Deputy Prosecutor Bensouda visits Bern**

Interior respectively. The Prosecutor meetings with the Libyan Attorney General as well as EU Ambassadors based in Tripoli in addition to the US and Russian Ambassadors. The Prosecutor also visited the city of Misrata, where he met with members of its Municipal and Military Councils, local dignitaries and human rights and civil society activists. The Prosecutor also visited Tripoli Street, scene of fierce fighting between Gaddafi forces and rebels during the revolution.

### Prosecutor travels to Libya



Prosecutor Moreno-Ocampo with Prime Minister Abdelrahman al Kib

**18-20 April** - Prosecutor Moreno-Ocampo led a four day visit to Libya, where he met in Tripoli with the NTC leadership including the Chairman Mustafa Abdeljalil, the Prime Minister Abdelrahman al Kib and the ministers of Justice and also held



Prosecutor Moreno-Ocampo with Chairman Mustafa Abdeljalil

### Deputy Prosecutor Fatou Bensouda visits Bern

**16-17 April** - Deputy Prosecutor Fatou Bensouda travelled to Bern to have exchanges with Swiss officials. Mrs. Bensouda met with the Head of the Federal Department of Foreign Affairs, Federal Councilor Didier Burkhalter, the Head of the Federal Department of Justice and Police (FDJP), Federal Councilor Simonetta Sommaruga, as well as with Attorney-General Michael Lauber and Federal Prosecutor Laurence Boillat. Ambassador Markus Börlin, Vice-President of the ASP, also participated in the meetings. The mission offered the opportunity to discuss the role of the ICC, the priorities of the new Prosecutor and Switzerland's contribution to the work of the ICC as well as matters related to cooperation with the Court.



Following the visit, the Swiss government [stated](#): "There is a consensus view that in the ten years of its existence the ICC has become an important force in the struggle against impunity. Switzerland has always actively supported the ICC. Federal Councillor Burkhalter assured Mrs Bensouda that Switzerland would further strengthen its commitment with the appointment of the Swiss Representative to the vice-presidency of the Assembly of States Parties".

# 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; parties to present views on the procedures and principles on sentence and reparations by 18 April 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 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); leave to appeal was granted on 1<sup>st</sup> March

#### **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

### **Prosecution submissions on sentencing and reparations in Lubanga Case**

**18 April** - On 14 March, following the verdict in the Lubanga case, Trial Chamber I invited the parties to file written submissions by 18 April on the principles and procedure to be applied by the Chamber with regard to reparations and sentencing.

In its written submissions about procedures and principles of sentencing, the Prosecution [indicated](#) it “considers that the sentencing policy has to take into consideration the seeming conflict between the scale of these gravest crimes in the world and the available sentences. Sentencing in the ICC cannot suggest a seeming tolerance of criminal conduct that, if committed in national systems, would be severely punished. In addition, the Prosecution submits that, to avoid inexplicable sentencing discrepancies, it is necessary that the Court

presume a consistent baseline for determining any sentence for conviction of one or more of these grave crimes; the baseline must also be substantial; and it cannot be adjusted based on a theory that some crimes are necessarily less heinous than others. Accordingly, the Prosecution urges that the Court presume that an appropriate sentence be a substantial percent of the statutory maximum, around 80% of the scale. This presumption will ensure that this Court's sentence will be sufficiently severe, and thus will reflect the gravity of these crimes and of comparable harms punished in national systems. The baseline presumption can then be adjusted".

In a separate [document](#) on principles and procedure to be applied in reparations, the Prosecution underlined the following: "The criminal proceeding and the reparation procedures should be distinguished as separate processes [...] The limited charges brought in this criminal proceeding therefore should not prejudice the right of others to seek individual or collective restitution [...] The Prosecution submits that all victims of the attacks perpetrated by the UPC, the group led by Mr Lubanga, in particular the targeted members of the Lendu communities, could apply as victims in the reparations phase. It will be enough to permit their participation in this phase if they demonstrate the harm suffered and that it was as a result of the activities of the UPC [...] The Chamber should convene a hearing to call experts and clarify the issues to be decided [and] decide, in general terms, the classes of victims who may receive compensation, the types of harm suffered meriting reparations, the areas of influence of the UPC, the satisfactions that Mr Lubanga must personally offer and the possibilities to award both collective and individual reparations". The Prosecution also holds that the Chamber should "prepare and implement a Reparations Plan that would identify those entitled to collective and individual compensation and determine the amount, nature and scope of award, taking into consideration the number of victims, their interests and the funds available".

## 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](#).

**23 April** - US President Barack Obama [pledged](#) to "bring this madman [Joseph Kony] to justice." During his speech at the US Holocaust Memorial Museum, President Obama said "it's part of our regional strategy to end the scourge that is the LRA and help realize a future where no African child is stolen from their family and no girl is raped and no boy is turned into a child soldier."

## 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)

4 April- Pre Trial Chamber rejects Libya's article 95 request as no admissibility challenges have been made. PTC further orders the surrender of Saif Al-Islam Gaddafi and warns that further failure to surrender could result in a non-compliance finding.

## 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**

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

Current location: **Khartoum, Sudan**

#### IV. Other Co-operation

**21 April** - Deputy Prosecutor Fatou Bensouda attended a ceremony in Banjul to be awarded the Great Ife alumni Award from the Great Ife Alumni Association Chapter in the Gambia. Deputy Prosecutor Bensouda thanked the Gambia Chapter for the honor of receiving this award, and pledged that in her “next 9 years as Prosecutor [of the ICC], I will endeavor to solidify the promotion of the rule of law, in and outside Africa”.

#### V. Upcoming Events

April						
23 <i>Eighteenth Session Committee Budget and Finance (CBF)</i>	24 <i>Eighteenth Session CBF</i>	25 <i>Eighteenth Session CBF</i>	26 <i>Eighteenth Session CBF</i>	27 <i>Eighteenth Session CBF</i>	28	29
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	16 <i>Prosecutor and Deputy Prosecutor report 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</i>	30 <i>Prosecutor and</i>	31				

<i>Deputy Prosecutor participate in OTP-NGO roundtable</i>	<i>Deputy Prosecutor participate in OTP-NGO roundtable</i>					
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## VI. Other Information

18 April - Deputy Prosecutor and Prosecutor-elect Fatou Bensouda was [named](#) as one of 100 most influential people in the world by Time magazine.

*\* 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)*