



## OTP Weekly Briefing

Issue 101

11 - 17 October  
2011

- **Prosecutor Moreno-Ocampo meets with President Ouattara in Côte d'Ivoire to strengthen cooperation**
- **President Al Bashir visits Malawi for a trade summit**

## NEWS



Prosecutor Moreno-Ocampo greets Côte d'Ivoire President, **Alassane Ouattara**, and **Charles Konan Banny**, President of the Truth, Dialogue and Reconciliation Commission

### ICC Prosecutor's official visit to Côte d'Ivoire

**14 October** - Prosecutor Moreno-Ocampo was [invited](#) to Côte d'Ivoire by President Alassane Ouattara to discuss topics related to the Truth, Dialogue and Reconciliation Commission, as well as future cooperation actions to strengthen future justice procedures.

The Prosecutor met with President Ouattara, the President of the Commission, Charles Konan Banny, as well as with leaders of the opposition and members of civil society.

The Prosecutor stated: *"I am grateful to President Ouattara for extending the invitation for me to conduct an official visit to Côte d'Ivoire. We will also meet members of the Opposition. We will meet with victims, and listen to their views and concerns. We believe it is critically important to meet with the Truth, Dialogue and Reconciliation Commission, which has a crucial mandate to contribute to the prevention of new crimes and the reconciliation of all Ivoirians. My Office is closely monitoring election-related developments including in neighbouring countries such as Liberia, which could affect stabilisation throughout the West African region. We will pay close attention to the actions and statements of the political leaders. Resorting to violence will not be tolerated"*.

### Malawi hosts President Omar Al Bashir

**14 October** - Malawi has allowed Sudanese President Omar Al Bashir into the country for a regional trade summit, despite the outstanding ICC arrest warrants issued against him. Regarding this visit, the spokesperson of EU High Representative Catherine Ashton [stated](#): *"The High Representative is concerned by the announced visit of President of Sudan Omar Al Bashir to Malawi, a state party to the ICC on the occasion of the COMESA Summit, on 14 October 2011. The Court is a valuable instrument of the international community to ensure that there is no impunity for the most serious crimes of international concern; their prosecution must be ensured by measures at both domestic and international level."* The Malawi Deputy Foreign Minister Kondwani Nankhumwa

[affirmed](#) that: “Malawi believes in brotherly coexistence between COMESA (Common Market for Eastern and Southern Africa) states and beyond so we will not arrest him. He is a free person in Malawi.”

The U.N. High Commissioner for Human Rights, Navi Pillay [said](#): “I call on governments and remind them of their legal obligations, and I am disappointed when they do not keep up their obligations”; while the U.K Foreign Office Minister Henry Bellingham [stated](#) that he was “disappointed that Malawi hosted President Bashir of Sudan in defiance of International Criminal Court arrest warrants for war crimes, crimes against humanity and genocide.”

Several NGOs have also reacted to the trip. **Human Rights Watch** [stated](#) that “Malawi was bound by its international obligations to arrest Bashir”, while **Amnesty International** [declared](#) that “President Mutharika’s public reluctance to back the ICC is unacceptable, and the authorities have legal obligations to provide real justice for victims of crimes against humanity and other crimes under international law in Darfur, and should not be welcoming international fugitives.”

On 19 October, Pre-Trial Chamber I [issued](#) a decision requesting the Republic of Malawi to submit, no later than 11 November, any observations with regard to its alleged failure to comply with the cooperation requests issued by the Court for the arrest and surrender of President Al Bashir. The Chamber also noted article 87(7) of the Statute providing that “[w]here a State Party fails to comply with a request to cooperate by the Court contrary to the provisions of this Statute [...] the Court may make a finding to that effect and refer the matter to the Assembly of States Parties or, where the Security Council referred the matter to the Court, to the Security Council”.

## OTP Activities

### OVERVIEW

7 situations under investigation  
12 cases in relation to 25 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 nine 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 ongoing

#### **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

**4 - 6 October** - In the case of *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Germain Katanga testified that that Kinshasa-backed military forces (APC) trained, planned and prepared attacks against the UPC, including in Bogoro, and that he participated in battles under APC command. While he participated in a smaller attack on Bogoro on 10 February, he testified that he did not participate in the main attack he is charged with on 24 February as he was forbidden by the elders, who had the ability to instruct combatants. He expressed his surprise that civilians were killed in Bogoro since he had thought that there were none present there at all and claimed to lack any knowledge of the participation of Ngudjolo's forces in the attack. He provided details of the circumstances leading to the signature of the Agreement on the cessation of hostilities and the formation of the Main Staff FNI-FRPI in March/April 2003.

**6 October** - In the case of *Prosecutor v. Callixte Mbarushimana*, the legal representative of 95 victims, Mr. Ghislain M. Mabanga, filed [final written submissions](#) on the confirmation of charges, requesting Pre-Trial Chamber I to confirm all the charges as detailed in the Document Containing the Charges. He refuted the arguments advanced by the Defence concerning the FDLR's responsibility for the alleged crimes, the facts and the Suspect's criminal responsibility under Article 25(3)(d) and argued that there is sufficient evidence to establish substantial grounds to believe that the Suspect committed the crimes.

**6 October** - In the case of *Prosecutor v. Callixte Mbarushimana*, Legal Representative of 37 victims, Mr. Mayombo Kassongo, filed [final written submissions](#) on the confirmation of charges, requesting that Pre-Trial Chamber I confirm all the charges against the Suspect given his position as one of the highest leaders of the FDLR and the evidence presented by the Prosecution.

### 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

**13 October** - President Al Bashir, who was addressing a conference of the youth sector of his ruling National Congress Party (NCP), [said](#) that Sudan had successfully defied the UNSC's resolution 2003 to amend the mandate of the UN-AU Peacekeeping Mission in Darfur (UNAMID) as well as resolution 1706 to expand the mandate of the UN Mission in Sudan (UNMIS) to include deployment in Darfur. "They can shove the new resolutions" Al Bashir said, reiterating his threats to expel whoever is tempted to implement the resolution 2003. Sudan has rejected the UNSC's resolution 2003 which extended UNAMID's mandate for one year and instructed the mission to coordinate closely with the newly independent state of South Sudan, the UN Mission in South Sudan (UNMISS) and the United Nations Interim Security Force for Abyei (UNISFA).

### 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

**6 October** - The Prosecution [opposed](#) the GoK's request to have access to all statements, documents and other evidence in the Court's possession in the Kenya situation and in the two Kenya cases to the extent that it seeks confidential prosecutorial documents it submitted to the Court. It submitted that the suspects have the ability to influence GoK policy and that any information provided to the Kenyan authorities could be used to attack victims and witnesses. It further submitted that the new request failed to satisfy the requirements for granting a request for assistance, in particular, the requirements of specificity, relevance and necessity.

### 6. Situation in [Libya](#) – Referred: February 2011 Investigation opened: March 2011

#### **Warrants Pending:**

*The Prosecutor v [Muammar Abu Minya Gaddafi](#), [Saif Al Islam Gaddafi](#) and [Abdullah Al Sanousi](#)* – 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

## 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

**4 October** - In the investigation into the situation in Côte d'Ivoire, the Prosecution [requested access](#) to Annexes 1 to 1089 of the VRPS Report, consisting of victims representations, which were originally filed by the Registry as confidential *ex parte* available only to the Registry. The Prosecution submitted that the Registry had made no showing, as required by regulation 24bis(2) of the Regulations of the Court, that the Prosecution's knowledge of the contents of all the annexes would defeat their purpose, which is to make observations about the Prosecution's request to open an investigation.

### 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**

**14 October** - United States President Barack Obama [announced](#) the deployment of around 100 military advisors and troops to help stop the LRA. President Obama [stated](#) that "Since 2008, the United States has supported regional military efforts to pursue the LRA and protect local communities. Regional military efforts have thus far been unsuccessful in removing LRA leader Joseph Kony or his top commanders from the battlefield. The Congress also expressed support for increased, comprehensive U.S efforts to help mitigate and eliminate the threat posed by the LRA to civilians and regional stability." He also argued that during November, "additional forces will deploy, including a second combat –equipped team and associated headquarters, communications, and logistics personnel."

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

Current location: **Libya**

**10 October** - In the 3117<sup>th</sup> Foreign Affairs Council meeting, the European Union [recalled](#) the duty to comply with the arrest warrants issued by the ICC and its expectation that all states will cooperate fully with the Court. It welcomed the NTC's call that those responsible for serious human rights violations during the conflict will swiftly face justice in accordance with due process, and its commitment to end impunity. In addition, the EU stressed the need to fully respect all international

obligations and the rule of law, in particular human rights and international humanitarian law, while it welcomed the statements by NTC President Abdul Jalil concerning the need to refrain from reprisals and to protect minorities and vulnerable groups.

*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**

#### IV. Other Co-operation

**10 October** - The Government of the Republic of Cape Verde ratified the Rome Statute, which will enter into force on 1<sup>st</sup> January 2012, bringing the total numbers of ICC States Parties to 119. Parliamentarians for Global Action consider the [119th ratification](#) as a sign of African solidarity with the victims of the most serious international crimes in Africa and elsewhere.

**16-18 October** - The Prosecutor and Deputy Prosecutor together with a group of senior policy-makers, participated in a retreat on the future of the ICC organized in Triesenberg, by the Government of Liechtenstein with support of the Liechtenstein Institute on International Law and Human Rights at Princeton University. The Prosecutor and Deputy Prosecutor participated in the discussions, JCCD Director, Phakiso Mochochoko, gave a presentation on the Court's challenges regarding cooperation.



**18 October** - While in Algeria, UK Foreign Secretary William Hague [stated](#) that he would “discuss the situation in Libya with the Algerian government following the visit to Tripoli. As a neighbour of Libya, Algeria has an important role to play and I will urge the Government to cooperate with the Libyan authorities and the ICC as they seek to bring to justice indicted members of the former Qadhafi regime.”

#### V. Upcoming Events

October						
					1	2
3	4	5 <i>OTP-NGO Roundtable</i>	6 <i>OTP-NGO Roundtable</i>	7	8	9
10	11	12	13	14	15	16
17 <i>Prosecutor participates in Retreat on ICC with ASP President, Liechtenstein</i>	18	19	20	21	22	23
24	25	26	27	28	29	30 <i>Prosecutor addresses the Third Session of the International Forum on Crime and Criminal</i>

						<i>Law in the Global Era, Beijing</i>
31						

November						
1	2 <i>Prosecutor briefs the UN Security Council on the situation in Libya, New York</i>	3	4 <i>Prosecutor delivers keynote speech to ASIL mid year meeting, Los Angeles</i>	5	6 <i>Prosecutor attends screening of The Prosecutor at USC, Los Angeles</i>	7
8	9 <i>Prosecutor addresses Hague Academic Coalition Conference, The Hague</i>	10	11	12	13	13
15 <i>Deputy Prosecutor attends screening of The Prosecutor at Oxford University, Oxford</i>	16 <i>Prosecutor addresses the JFK Forum, Harvard University, Cambridge MA</i>	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

## 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)