



OTP Weekly Briefing

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2012

- **OTP issues decision in relation to its preliminary examination of the situation in Palestine**

NEWS

OTP issues decision in relation to its preliminary examination of the situation in Palestine

3 April - The Office of the Prosecutor issued a [decision](#) in relation to its preliminary examination in Palestine.

On 22 January 2009, pursuant to article 12(3) of the Rome Statute, Ali Khashan acting as Minister of Justice of the Government of Palestine lodged a declaration accepting the exercise of jurisdiction by the International Criminal Court for “acts committed on the territory of Palestine since 1 July 2002.”

In accordance with article 15 of the Rome Statute the Office of the Prosecutor initiated a preliminary examination in order to determine whether there is a reasonable basis to proceed with an investigation. The Office ensured a fair process by giving all those concerned the opportunity to present their arguments. The Arab League’s Independent Fact Finding Committee on Gaza presented its report during a visit to the Court. The Office provided Palestine with the opportunity to present its views extensively, in both oral and written form. The Office also considered various reports with opposing views. In July 2011, Palestine confirmed to the Office that it had submitted its principal arguments, subject to the submission of additional supporting documentation.

The first stage in any preliminary examination is to determine whether the preconditions to the exercise of jurisdiction under article 12 of the Rome Statute, are met. Only when such criteria are established will the Office proceed to analyse information on alleged crimes as well as other conditions for the exercise of jurisdiction as set out in articles 13 and 53(1).

The jurisdiction of the Court is not based on the principle of universal jurisdiction: it requires that the United Nations Security Council (article 13(b)) or a “State” (article 12) provide jurisdiction. Article 12 establishes that a “State” can confer jurisdiction to the Court by becoming a Party to the Rome Statute (article 12(1)) or by making an ad hoc declaration accepting the Court’s jurisdiction (article 12(3)).

The issue that arises, therefore, is who defines what is a “State” for the purpose of article 12 of the Statute? In accordance with article 125, the Rome Statute is open to accession by “all States”, and any State seeking to become a Party to the Statute must deposit an instrument of accession with the Secretary-General of the United Nations. In instances where it is controversial or unclear whether an applicant constitutes a “State”, it is the practice of the Secretary-General to follow or seek the General Assembly’s directives on the matter. This is reflected in General Assembly resolutions which provide indications of whether an applicant is a “State.” Thus, competence for determining the term “State” within the meaning of article 12 rests, in the first instance, with the United Nations Secretary General who, in case of doubt, will defer to the guidance of General Assembly. The Assembly of States Parties of the Rome Statute could also in due course decide to address the matter in accordance with article 112(2)(g) of the Statute.

In interpreting and applying article 12 of the Rome Statute, the Office has assessed that it is for the relevant bodies at the United Nations or the Assembly of States Parties to make the legal determination whether Palestine qualifies as a State for the purpose of acceding to the Rome Statute and thereby enabling the exercise of jurisdiction by the Court under Article 12(1). The Rome Statute provides no authority for the Office of the Prosecutor to adopt a method to define the term “State” under article 12(3) which would be at variance with that established for the purpose of article 12(1).

The Office has been informed that Palestine has been recognised as a State in bilateral relations by more than 130 governments and by certain international organisations, including United Nation bodies. However, the current status granted to Palestine by the United Nations General Assembly is that of “observer”, not as a “Non-member State”. The Office understands that on 23 September 2011, Palestine submitted an application for admission to the United Nations as a Member State in accordance with article 4(2) of the United Nations Charter, but the Security Council has not yet made a recommendation in this regard. While this process has no direct link with the declaration lodged by Palestine, it informs the current legal status of Palestine for the interpretation and application of article 12.

The Office could in the future consider allegations of crimes committed in Palestine, should competent organs of the United Nations or eventually the Assembly of States Parties resolve the legal issue relevant to an assessment of Article 12 or should the Security Council, in accordance with article 13 (b), make a referral providing jurisdiction.

OTP Activities

OVERVIEW

7 situations under investigation
15 cases in relation to 24 persons
11 outstanding arrest warrants
8 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 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 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 1st 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

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 the 21st 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)

29 March - The Presidency of the ICC issued a [decision](#) on the constitution of Trial Chamber V and [referred](#) to it the cases in the situation in Kenya: *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang* and *The Prosecutor v. Francis Kirimi Muthaura and Uhuru Muigai Kenyatta*. Trial Chamber V is composed of Judge Christine Van den Wyngaert, Judge Kuniko Ozaki and Judge Chile Eboe-Osuji.

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)

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

30 March - Deputy Prosecutor Bensouda gave a special address during the International Criminal Bar's *Journées d'Étude* "Assembling the Defence", held in Geneva, in a speech entitled "10th Anniversary's analysis and prospects". The Deputy Prosecutor said: "The first trial demonstrated that the ICC will do its part to bring justice to victims of the most serious crimes while guaranteeing a fair trial to the accused. The concept of a fair trial is a cornerstone of the ICC. The Statute provides for numerous guarantees for the rights of the Defence as well as victims as another important component of a fair trial. (...) The Office has encountered various legal and operational challenges during the investigation and prosecution of this first case, but the jurisprudence developed therefrom has helped give clarity and practical meaning to the terms of the Statute and the Rules of Procedure and Evidence. It has given many lessons to our Office to achieve successful investigations and prosecutions while ensuring respect for the rights of the Defence and a fair trial." The Deputy Prosecutor concluded: "We have arrived at a crucial juncture in the history of this young global institution: the closing of its first trials. These are fundamental to reinforce the legal system created by the Rome Statute, and give it more legitimacy as we continue our work. It will also allow us to be even more efficient and effective in conducting judicial proceedings, as the jurisprudence established by the judges and the policies and best practices produced by our investigative and prosecutorial experiences will have helped us to do our work better and faster."

V. Upcoming Events

April						
						1
2 Prosecutor holds bilateral meetings, New York	3 Prosecutor holds bilateral meetings, New York			6	7	8
9	10 Deputy Prosecutor delivers Muller Lecture on the ICC, peace and security, organized by The Netherlands Society for International Affairs, The Hague	11	12 Deputy Prosecutor delivers Robert Jackson Keynote address at the conference "Africa and International Law: Taking stock and moving forward" at Albany Law School, NY	13 Deputy Prosecutor Bensouda speaks at the Boston University Center for Finance, Law and Policy, Boston	14	15
16	17 Deputy Prosecutor holds bilateral meetings, Bern	18	19	20	21	22
23	24	25	26	27	28	29
30						

VI. Other Information

3 April - The Office of the Prosecutor decided to extend the deadline for applications for the position of Deputy Prosecutor (Prosecution) for 2 additional weeks, until 15 April 2012.

* 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