



OTP Briefing

Issue #129

8 - 27 August 2012

- Principles and Procedures of Reparation Process Established in Lubanga Case
- Prosecutor Bensouda participates in the 6th International Humanitarian Law Dialogues in Chautauqua



NEWS

Principles and Procedures of Reparation Process Established in Lubanga Case

7 August - [Trial Chamber I established](#) the principles and procedures to be applied to reparations. It issued the following principles, *inter alia*: (i) dignity, non-discrimination and non-stigmatisation ; (ii) granting reparations to direct and indirect victims, giving priority to the victims who are in a particularly vulnerable situation or who require urgent assistance; (iii) a gender-inclusive approach; (iv) appropriate measures for the victims of sexual and gender-based violence; (v) measures for child soldiers guaranteeing the development of victims' personalities, talents and abilities to the fullest possible extent and ensuring the development of respect for human rights and fundamental freedoms; (vi) the forms of reparation may be restitution, compensation, rehabilitation, and other forms such as those having symbolic, preventative or transformative value; (vii) reparations may be awarded to individual or groups of victims, if in either case they suffered personal harm; (viii) at a minimum the Court must be satisfied that there exists a "but/for" relationship between the crime and the harm; and (ix) the standard of "a balance of probabilities" is sufficient and proportionate to establish the facts that are relevant to an order for reparations when directed against the convicted person.

In its application, the Prosecution had advocated for a conception of reparations based on the principle of "restorative justice". In its decision, the Chamber agreed "to go beyond the notion of punitive justice" (para.177 Decision). The Chamber also agreed with the Prosecution submissions that victims may be granted reparations regardless of their participation in the trial proceedings (para.194 Decision). [*see continuation on page 2*]

Prosecutor Bensouda participates in the Sixth International Humanitarian Law Dialogues in Chautauqua, gives Charney lecture and receives Cox Humanitarian Award



26-28 August - Prosecutor Bensouda participated in the Sixth International Humanitarian Law Dialogues gathered in Chautauqua, NY during which [the Sixth Chautauqua Declaration was adopted](#) by the assembled international Prosecutors; on 26 August, the Prosecutor participated in the ceremony to lay her stone as new Prosecutor of the ICC. During her visit to the US, the Prosecutor also delivered on 24 August the 2012 Jonathan I. Charney Distinguished Lecture in International Law organized by the Vanderbilt University Law School at Nashville, Tennessee. The Prosecutor completed her visit to the US on 29 August by receiving the 2012 Cox Humanitarian Award for Advancing Global Justice from the Frederick K. Cox International Law Center Lecture on Global Justice at Case Western Reserve University School of Law in Cleveland, where she also presented a lecture.

OTP Activities

OVERVIEW

7 situations under investigation
15 cases in relation to 24 persons
12 outstanding arrest warrants
8 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 eight situations: [Afghanistan](#), [Honduras](#), [Korea](#), [Nigeria](#) and [Mali](#) (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; Mr. Lubanga was sentenced on 10 July to a total of 14 years of imprisonment; principles and procedures to be applied to reparations established on 7 August.

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 took place from 15 to 23 May 2012

Warrants 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; a second warrant was issued to include war crimes of murder, attacks against the civilian population, rape and sexual slavery, and pillaging, as well as crimes against humanity of murder, rape and sexual slavery, and persecution

Issued: 22 August 2006 & 13 July 2012

The Prosecutor v [Sylvestre Mudacumura](#) – charged with war crimes of attacking civilians, murder, mutilation, cruel treatment, rape, torture, destruction of property, pillaging and outrages against personal dignity committed in North and South Kivu Provinces of the DRC between 20 January 2009 and end of September 2010

Issued: 13 July 2012

Reparations decision in Lubanga case

[Continuation from page 1] The Prosecution had submitted that the beneficiaries of reparations should include not only the direct and indirect victims in the Lubanga case (that is the children unlawfully recruited by the UPC or used to participate in hostilities and their immediate families) but also the individuals and communities that were affected by the crimes committed by the UPC in general, as long as they demonstrate that they suffered harm as a result of the “activities of the UPC”. The Chamber agreed with this approach (para.179 Decision). In particular, the Chamber decided that victims eligible for reparations include individuals who suffered harm when helping or intervening on behalf of direct victims, in line with the Prosecution’s submissions (para.196 Decision). The Chamber further decided that legal entities, such as schools or NGOs, can be granted reparations (para.197 Decision).

With regard to victims of sexual violence, the Prosecution had submitted that female recruits in the UPC who were sexually assaulted and raped by UPC members were “clearly victimized” and should therefore be entitled to participate at the reparations stage.

The Prosecution also submitted that it is not necessary that child soldiers directly cause the victims’ suffering or loss, but only that the harm is caused by the UPC militia (which became stronger and able to cause greater harm with the presence of child soldiers in its ranks). In line with the Prosecution’s submissions, the Chamber decided that reparations should not be limited to “direct” harm or the “immediate effects” of the crimes for which Thomas Lubanga was convicted, as long as there is a “but/for” relationship between the crime and the harm and that the crimes for which Thomas Lubanga was convicted were the “proximate cause” of the harm for which reparations are sought (para.249-250 Decision).

The Prosecution had submitted that reparations should not be limited to financial awards. In particular, it suggested that the Chamber could order or request Thomas Lubanga to make a public or private apology to the victims. The Chamber followed the Prosecution’s submission (para.241 Decision).

The Prosecution had recommended appointing one or more experts to assess victim eligibility and how to best approach the possibility of collective reparations. The Chamber recommended that a multidisciplinary team of experts is retained to provide assistance to the Court concerning the assessment of the harms suffered and the approach to be taken as regards reparations in general, in particular for the communities affected (para.263 Decision).

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 set for 10 April 2013 (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 set for 11 April 2013 (charges were not confirmed against Mohammed Ali, but the OTP will present additional evidence)

27 July 2012 - The UN Human Rights Committee, issuing its latest periodic [report](#) on Kenya's implementation of the provisions of the International Covenant on Civil and Political Rights, while noting the efforts of Kenya to cooperate with the ICC in prosecuting those who bear the greatest responsibility for the post 2007 election violence and the continuing work of the Truth, Justice and Reconciliation Commission, regretted the lack of investigations and prosecutions of the other categories of perpetrators which exacerbates the climate of impunity that prevails there. They concluded that Kenya "*should, as a matter of urgency, pursue all cases of post 2007 election violence to ensure that all allegations of human rights violations are thoroughly investigated and that the perpetrators are brought to justice, and that victims are adequately compensated. In this regard, the State party should ensure that the recommendations of the Commission of Inquiry into the Post-Election Violence (Waki Inquiry) are duly implemented.*"

31 July - Human Rights Watch issued a [letter](#) to the US Secretary of State Hillary Clinton, asking to utilize her forthcoming visit to Kenya to press for the creation of a special mechanism to prosecute those responsible for violence after the 2007 Kenyan elections, together with greater accountability by policy and security forces. Mr. Bekele wrote "*Kenya's general elections are slated for March 2013, yet few perpetrators have been brought to justice for the violence following the 2007 elections. The International Criminal Court has charged four high-profile suspects – including two presidential aspirants – with crimes against humanity for the post-election violence, but the Kenyan government has not upheld its promises to prosecute other cases... We urge you to press for greater accountability by police and security forces, which, according to our field-based investigations, continue to commit torture, beatings, arbitrary arrests, and unauthorized searches of homes*".

The Prosecutor v. William Samoei Ruto and Joshua Arap Sang

21 August - Following Trial Chamber II's order of 5 July 2012, the Prosecution submitted an updated post-confirmation hearing document containing the charges (DCC), with reference to the relevant paragraphs of the PTC confirmation decision on 21 August 2012. While the Prosecution maintains the charges against Ruto as an 'indirect co-perpetrator in the commission of murder, deportation or forcible transfer of a population and persecution' it has excluded the crime of 'other forms of sexual violence' against Uhuru and Muthaura bringing the number of charges to five (5) instead of six (6); namely murder, deportation or forcible transfer, rape, persecution and other inhumane acts. Sang will now face charges of only contributing to the commission of murder, deportation or forcible transfer of a population and persecution. The Prosecution has annexed a chart presenting the issues, which remain in dispute between the Parties.

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.

Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi

9 August – **Pre-Trial Chamber I** [rejected](#) the GOL's request to convene a status conference, deeming it neither useful nor appropriate as the present issues can all be addressed in writing. It granted the request for an extension of time by which to reply to the responses to the admissibility challenge and suspended the deadline pending the appointment of a new Ministry of Justice team in Libya. Noting that Mr. Gaddafi has now been in detention for nine months, it ordered the GOL to provide a report by 7 September 2012 as to: (i) the status of the appointment of the Minister of Justice, Attorney General and Prosecutor General in Libya, and counsel's ability to receive instructions; (ii) the status of the national proceedings against Mr. Gaddafi, including whether he has had a lawyer appointed; and (iii) Mr. Gaddafi's conditions of detention. In light of the foregoing, it also rejected the GOL's request #199 to reply to the OPCD's response and the Registry's observations.

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 postponed to date yet to be set

Prosecutor v. Laurent Gbagbo

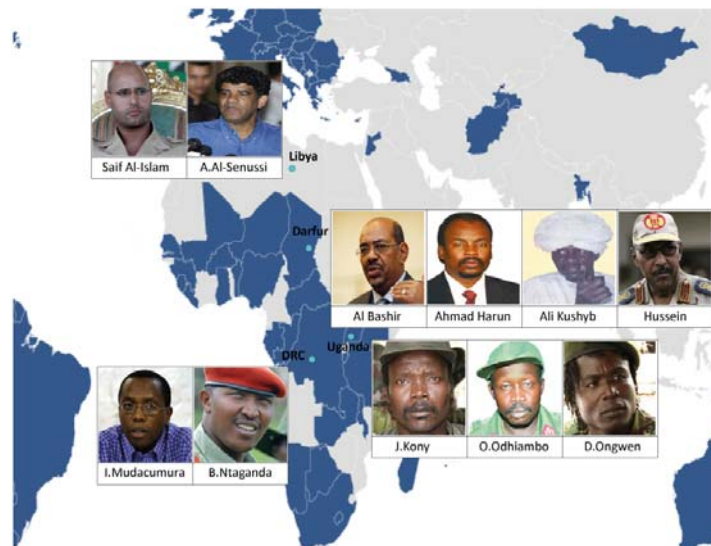
15 August – Pre-trial Chamber I issued its [decision](#) on “the Corrigendum of the challenge to the jurisdiction of the International Criminal Court on the basis of articles 12(3), 19(2), 21(3), 55 and 59 of the Rome Statute” filed by the Mr. Gbagbo’s Defence. **PTCI** rejected the Defence challenge to the Court’s jurisdiction over the case, finding that the Court has jurisdiction over all alleged crimes committed since 19 September 2002 on the basis of the declaration lodged by Côte d’Ivoire on 18 April 2003. It also took the view that the second limb of the Defence challenge related to the alleged violation of the rights of the Suspect between his arrest and his transfer to the Court cannot be considered a challenge to the jurisdiction but decided to entertain it in light of its power to stay proceedings in case of abuse of process. However, it did not find any breach of his rights that can be attributed to the Court and that would warrant the stay of proceedings.

The Defence challenge to the jurisdiction of the Court based on the limited scope of Côte d’Ivoire’s acceptance of jurisdiction under article 12(3) of the Statute was rejected as the Chamber found that “*contrary to the Defence submission... it will be ultimately for the Court to determine whether the scope of acceptance, as set out in the declaration, is consistent with the objective parameters of the situation at hand*” and “*the Court has jurisdiction over all alleged crimes committed since 19 September 2002... on the basis of the Declaration of 18 April 2003*”.

Regarding the submissions of the Defence regarding the violation of Mr. Gbagbo’s rights between 11 April 2011 and 29 November 2011 to which he is entitled under Ivorian law, international law and articles 55(1)(b) and (d) and 59(2) of the Statute such as arbitrary arrest and detention, the Chamber decided Article 55(1) as not applicable. The chamber noted that the “*the alleged violations of article 55(1) of the Statute were not perpetrated by the Prosecutor or by the Ivorian authorities on behalf of the Prosecutor or any organ of the Court*” and “*Mr Gbagbo was arrested and detained by the Ivorian authorities and subsequently charged with economic crimes in circumstances seemingly unconnected to the proceedings before the Court.*” Similarly, regarding the alleged violation of the Article 59 of the Statute, the Chamber noted that the link asserted by the Defence between the alleged violations of Mr Gbagbo’s fundamental rights and the Court by claiming that the Prosecutor was under a duty of care as concerns Mr Gbagbo during his detention in Côte d’Ivoire were not persuasive.

III. Arrests - Cooperation

11 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**

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: **Libya / Mauritania**

IV. Other Co-operation

V. Upcoming Events

					1	2
3	4	5	6 <i>Prosecutor gives keynote remarks at the Symposium "Strengthening Gender Justice through International Prosecutions", organized by Women's Initiatives for Gender Justice and UN Women, The Hague</i>	7	8	9
10	11	12	13 <i>Prosecutor briefs the Friends of the Court, The Hague</i>	14	15	16
17	18 <i>The Prosecutor conducts official visit to Sweden</i>	19	20 <i>The Prosecutor gives a keynote speech at the international conference Peace for Humanity in the 21st Century organized by The University for Peace Centre. The Hague</i>	21 <i>The Prosecutor attends the "Breakfast Meeting on Protection of Education During Insecurity and Conflict: Legal Response" organized by Education Above all with the Emiress of Qatar and a meeting with the American Society of International Law and the Council for Foreign Relations, New York</i>	22	23

24	25	26	27	28	29	30
		<i>The Prosecutor attends the nineteenth session of the Committee on Budget and Finance, The Hague</i>	<i>The Prosecutor attends the nineteenth session of the Committee on Budget and Finance, The Hague</i>	<i>The Prosecutor attends the nineteenth session of the Committee on Budget and Finance, The Hague</i>	<i>The Prosecutor attends the nineteenth session of the Committee on Budget and Finance, The Hague</i>	

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