

IN FOCUS: ICC Suspects Arrested in Libya

On 19 November 2011, International Criminal Court (ICC) suspect Saif Al-Islam Gaddafi was **arrested** by Libyan authorities. On 20 November, Abdullah Al-Senussi was also reportedly captured in the south of Libya. Both are **wanted** by the ICC for crimes against humanity allegedly committed in **Libya** as of 15 February 2011. While the Libyan authorities retain primary jurisdiction over crimes committed in their territory, they are **legally bound** to facilitate the transfer of the suspects to the ICC, unless Pre-Trial Chamber I (PTC) decides that the case is no longer admissible before the Court because the Libyan authorities are investigating or prosecuting the same individuals for the same crimes at national level. Such a decision could be triggered in one of three ways (1) either the Libyan government directly challenges the case's before the ICC; (2) the ICC prosecutor seeks an admissibility ruling from the PTC; or (3) the PTC on its own motion decides that the case is no longer admissible. In any event the admissibility determination would be ultimately made by ICC judges. Similarly, if Libyan authorities would allege that the immediate execution of an ICC request for cooperation would interfere with ongoing investigations or prosecutions of the same individuals for different crimes, they would have to consult with the ICC and may postpone the execution of the ICC's cooperation request for a period of time agreed upon with the Court. On 6 December 2011, PTC I **requested** that the Libyan government submit observations by 10 January 2012 on the arrest and detention of Saif Al-Islam, a **deadline further extended** to 23 January 2012. On 22 November 2011, PTC I **decided** to terminate the case against Muammar Mohammed Abu Minyar Gaddafi following his death.

CASES AND SITUATIONS

Key Upcoming ICC Decisions

The first ICC judgment in the case against Thomas **Lubanga** Dyilo is expected by the end of January 2012, first in English and later in or around April in French. PTC II's decisions on the confirmation of charges in the two cases in the **Kenyan** situation are expected before 23 January 2012.

CAR

Bemba Trial: Prosecution Evidence Continues

The prosecution has presented 36 of a possible 40 witnesses in the case against Jean Pierre **Bemba** Gombo for alleged crimes against humanity committed in the Central African

Republic from 26 October 2002 to 15 March 2003. On 15 December 2011, Trial Chamber (TC) III authorized 404 additional victims to participate in the case, bringing the total number to 2,287.

CÔTE D'IVOIRE

Laurent Gbagbo Transferred to ICC

On 30 November 2011, Laurent Koudou **Gbagbo** was **transferred** to the ICC following the issuance of an **arrest warrant** for crimes against humanity committed since 28 November 2010. On 5 December 2011, the suspect made **his initial appearance and PTC III set the date** of the confirmation of charges hear-

ing for 18 June 2012.

DARFUR, SUDAN

Prosecutor Requests Arrest Warrant

On 2 December 2011, the prosecutor **requested** PTC I to issue an arrest warrant against current Sudanese Defense Minister Abdelrahim Mohamed Hussein for crimes against humanity and war crimes allegedly committed in Darfur from August 2003 to March 2004.

Malawi and Chad Failed to Cooperate

PTC I decided that the **Republic of Chad** and the **Republic of Malawi** failed to cooperate with the ICC by not arresting and surrendering Omar Al Bashir to the Court during his visits to those countries, and referred the matter to both the United Nations Security Council (UNSC) and the Assembly of States Parties (ASP).

Prosecutor Presents Report to UNSC

On 15 December 2011, the ICC prosecutor presented his **14th report to the UNSC** on the Court's investigation of the situation in Darfur, Sudan.

DRC

Callixte Mbarushimana Released

On 16 December 2011, PTC I **declined to confirm the charges** of alleged crimes against humanity and war crimes against Callixte **Mbarushimana** and ordered his release. The majority of judges found that there was insufficient evidence to move the case to trial. On 23 December 2011 Mbarushimana was **released** on French territory, from where he was originally arrested and transferred to the ICC.

LATEST RATIFICATIONS

In 2011, there were positive developments regarding ratification of the Rome Statute (RS) and the Agreement on Privileges and Immunities of the ICC (APIC) worldwide. Six new states joining the ICC in 2011—**Tunisia, Grenada, the Philippines, Maldives, Cape Verde** and **Vanuatu**—was the highest number reached in any given year since 2003. Malaysia advanced in its internal process to ratify the RS and Brazil, the Czech Republic, Costa Rica, Chile and Malta ratified the APIC. Each development represents an important step in ending impunity for the most serious international crimes. The Coalition continues to work actively with its members worldwide to engage in advocacy efforts with governments, parliaments and outreach to the media to ensure universal acceptance of the ICC.

Rome Statute

Ratifications/accessions: 120
Most Recent: **Vanuatu**
(2 December 2011)

APIC

Ratifications/accessions: 70
Most Recent: **Brazil**
(12 December 2011)

Universal Ratification Campaign 2012

January: **Pacific Islands, Bahrain, Morocco**
February: **Libya, Togo**

ASP10 HIGHLIGHTS

From 12 to 21 December 2011, states parties to the ICC Rome Statute gathered in New York (USA) to address numerous key issues to the Court's operations. The ASP is a pivotal event for the Coalition, which has participated in ASP sessions for well over a decade. More than 100 NGO representatives contributed to discussions through side events, statements and position papers. The next ASP will take place on 14-22 November 2012 in The Hague (Netherlands).

GENERAL DEBATE: The ASP opened with statements by high-level ICC, ASP and UN officials, followed by statements by 38 states representatives, including two heads of states, and 12 civil society representatives.

ELECTIONS: States parties elected 35 new officials, including 6 new judges, a new prosecutor and a new ASP president, resulting in the most significant change in the ICC and ASP leadership since the Court's establishment. Throughout its Campaign on ICC Elections, the Coalition called for fair, transparent and merit-based elections.

The Assembly elected **Fatou BENSOUDA** (The Gambia) to be the next ICC prosecutor for a nine-year term beginning on 16 June 2012.

Six new judges were elected in 16 rounds, representing a third of the Court's full slate of 18 judges, namely: Miriam DEFENSOR-SANTIAGO (the Philippines), Anthony Thomas Aquinas CARMONA (Trinidad and Tobago), Robert FREMR (Czech Republic), Olga Venecia HERRERA CARBUCCIA (Dominican Republic), Howard MORRISON (United Kingdom) and Chile EBOE-OSUJI (Nigeria).

Tiina INTELMANN (Estonia) was elected as the new ASP president for a three-year term. Markus Börlin (Switzerland) and Ken Kanda (Ghana) were elected as vice-presidents.

The Assembly also elected the 18 members of the ASP Bureau—the ASP's executive committee—for three-year terms, six members of the ASP's Committee on Budget and Finance (CBF)—a subsidiary expert body set up to help the ASP with the budget—, and a member of the permanent premises oversight committee.

The ASP took steps towards the future establishment of an advisory committee to facilitate the election of ICC judges. The ASP Bureau will also start consultations with states parties to evaluate and examine ways of strengthening future prosecutorial elections.

BUDGET: While the Court had requested a budget of approximately €117 million for 2012, the Assembly approved a €108,800,000 budget, as well as an additional €2,200,000 to replenish the ICC's Contingency Fund—additional finances available to the Court as a last resort. This was adopted by consensus after long negotiations involving the majority of states parties present in sessions closed to observers, including civil society, but which saw a significant number of states seeking to reject arbitrary budgetary cuts. Given the Court's increasing workload, the Coalition fears this compromise may have damaging consequences for the ICC.

OMNIBUS RESOLUTION: The ASP passed the resolution "Strengthening the International Criminal and the Assembly of States Parties," which covers a wide range of policy and practical issues relating to the ICC, the ASP and other stakeholders. Issues addressed included: Rome Statute ratification, complementarity, the Agreement on Privileges and Immunities of the International Criminal Court, cooperation, non-cooperation, institution-building, elections, governance, oversight, strategic planning, victims and affected communities, the Trust Fund for Victims, recruitment and gender and geographical representation, amongst others.

COOPERATION: The Assembly adopted a resolution on cooperation, emphasizing the importance of cooperation and assistance from states, particularly with respect to arrests warrants, as well as the impact that non-cooperation has on the Court's mandate, in particular relating to the arrest of ICC suspects.

COMMUNICATIONS AND OUTREACH: In the omnibus resolution, states parties emphasized the need to continue to adapt outreach activities in affected countries and to effectively and efficiently implement the Strategic Plan for Outreach, including where appropriate by early outreach from the outset of the Court's involvement, including during the preliminary examination stage. States also mentioned the shared responsibility of the Court and states parties regarding public information and communications about the Court, as well as activities around International Justice Day and the Court's 10th anniversary in 2012.

LEGAL AID: The Assembly requested the registrar to finalize ongoing consultations with relevant stakeholders and to present a proposal for a review of the ICC's legal aid system to the ASP Bureau by 15 February 2012.

TFV: Sweden announced a voluntary contribution of 10 million Swedish krona—approximately 1.1 million Euros—to the Trust Fund for Victims, the largest in the history of the Fund.

OTHER: Other texts adopted by the ASP included an amendment to rule 4 of the Rules of Procedure and Evidence giving the ICC president the power to assign judges to Chambers, a resolution on reparations, a resolution on the permanent ICC premises and the Report of the Credential Committee.

GLOBAL PARTNERS

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