



OTP Weekly Briefing

1-7 February 2011 – Issue #73

HIGHLIGHT: OTP CONCLUDES SECOND MISSION TO THE RUSSIAN FEDERATION IN THE CONTEXT OF ITS PRELIMINARY EXAMINATION INTO THE SITUATION IN GEORGIA

PREVIEW

- AIUSA issues new satellite images on ongoing crimes in Darfur, p. 2-3

2-4 February - An OTP delegation [led](#) a second visit to the Russian Federation, in the context of its preliminary examination into the situation in Georgia.



The OTP delegation with Mr. Igor Panevkin, Deputy Director, Legal Department, Ministry of Foreign Affairs of the Russian Federation, and his team

The purpose of the mission was to gather additional information regarding national investigations into crimes allegedly committed in the context of the armed conflict in South Ossetia, Georgia in August 2008. ICC crimes allegedly committed include forced displacement of civilians, directing attacks against protected persons and widespread destruction of civilian objects.

The OTP delegation, headed by Mr. Emeric Rogier, Head of the Situation Analysis Section, met with senior officials from the Ministry of Foreign Affairs and representatives of the Investigative Committee of the Russian Federation. They

received a comprehensive update on the progress of national investigations undertaken by the investigative committee.

Prosecutor Moreno-Ocampo stated: *"We commend the Russian authorities for their cooperation and for their willingness to share their preliminary conclusions with the Office. We look forward to their continued cooperation, as well as that of the Georgian authorities, to ensure accountability for the alleged crimes committed in August 2008"*.

The Office is also receiving cooperation from the Georgian authorities.

I. Investigations and Prosecutions

Over the reporting period, the OTP presented seven filings in the various cases and conducted three missions in two countries.

I.1. Situation in the [Democratic Republic of the Congo](#) (DRC)

This situation was referred by the DRC in March 2004. The OTP opened its investigation in June 2004, focusing first on Ituri where some of the most serious crimes had been committed by the main armed groups. Four arrest warrants have been issued against [Thomas Lubanga Dyilo](#) and [Bosco Ntaganda](#), leaders of the UPC, and [Germain Katanga](#) and [Mathieu Ngudjolo Chui](#), leaders of the FNI and FRPI. The trial of [Thomas Lubanga Dyilo](#) began on 26 January 2009. The trial of Germain [Katanga](#) and [Mathieu Ngudjolo Chui](#) began on 24 November 2009; on 8 December 2010, the Prosecution concluded the presentation of its case. [Bosco Ntaganda](#) is at large. In September 2008, the OTP announced the start of its investigation into alleged crimes in the Kivus. On 28 September 2010 the judges issued an arrest warrant under seal against Callixte Mbarushimana, Executive Secretary of the FDLR. He was arrested on 11 October 2010 in Paris, and surrendered to the Court on 25 January 2011. The Confirmation of Charges Hearing is set for 4 July 2011.

7 February – The Special Representative of the Secretary-General for the DRC Roger Meece [drew](#) the Security Council's attention to the ongoing sexual violence committed by the FDLR. *"During the last half of January, 50 to 80 cases of sexual violence perpetrated by the FDLR had been reported."* Referring to the legal action against the FDLR leadership in Germany and the ICC,

he [stressed](#) that together with sanctions and pressure on the ground these arrests “*had clearly a demoralizing effect.[...] It is certainly premature to assert that the FDLR is collapsing but the group’s capacity is diminishing and is under strain*”.

I.2. Situation in [Uganda](#)

This situation was referred by Uganda in January 2004. The OTP opened its investigation in July 2004. Five arrest warrants have been issued against [top leaders of the Lord’s Resistance Army \(LRA\)](#): Joseph Kony, Vincent Otti (allegedly killed in 2007 on order of Kony), Okot Odhiambo, Raska Lukwiya (killed on 12 August 2006, whose arrest warrant has been withdrawn), and Dominic Ongwen. These arrest warrants are outstanding. Since early 2008, the LRA is reported to have killed more than 2,000, abducted more than 2,500 and displaced well over 300,000 in DRC alone. In addition, over the same period, more than 120,000 people have been displaced, at least 450 people killed and more than 800 abducted by the LRA in Southern Sudan and the Central African Republic.

1 February - UK Minister for Africa, Mr. Henry Bellingham, [stated](#) that the UK is “*sparing no effort at all in helping those countries who are on the front line of tackling the LRA, and we are doing all we possibly can to bring its leader to justice in the International Criminal Court as well.*”

2 February - Resolve, Invisible Children, Enough and Citizens for Global Solutions jointly [wrote](#) to US President Obama seeking additional action to implement the US strategy against the LRA, including designation of an envoy dealing with Great Lakes issues, allocation of resources, and work with international and regional partners to apprehend senior LRA commanders and bring them to justice, especially those indicted by the ICC. They also [called](#) for additional deployment of MONUSCO and UNMIS peacekeepers in LRA-affected areas, and for US engagement with the AU, UN Security Council, France and other partners to seek a multilateral consensus and more effective forces, supported by greater intelligence and rapid response capacity, to improve efforts to pursue LRA commanders, together with work to encourage defections and to ensure that external support to the LRA is cut off.

7 February - The UN Secretary-General in his [report](#) on MONUSCO welcomed the AU initiatives in relation to the LRA, and urged regional States and the broader international community to work with the AU to define a coordinated strategy aimed at protecting civilians from the LRA and eliminating their capacity to terrorize civilians. He highlighted MONUSCO activity aimed at deterring LRA attacks, and work to increase coordination and information sharing between UN missions in DRC, Southern Sudan, Chad and CAR.

I.3. Situation in [Darfur, the Sudan](#)

This situation was referred by the UN Security Council in March 2005. The OTP opened its investigation in June 2005. Three arrest warrants have been issued, against [Ahmad Harun and Ali Kushayb](#), and against [Omar Al Bashir](#), which are outstanding. Also three summons to appear have been issued, against [Bahar Idriss Abu Garda](#) and against [Abdallah Banda Abaker Nourain and Saleh Mohammed Jerbo Jamus](#). On 12 July, Pre-Trial Chamber I issued a [second warrant of arrest](#) against Omar Al Bashir for three counts of genocide committed against the Fur, Masalit and Zaghawa ethnic groups: genocide by killing, genocide by causing serious bodily or mental harm and genocide by deliberately inflicting on each target group conditions of life calculated to bring about their physical destruction. Abu Garda [voluntarily appeared](#) before the Court pursuant to a summons. The confirmation of charges hearing was held on 19-30 October 2009. On 8 February 2010 the Pre-Trial Chamber issued a decision declining to confirm the charges. The OTP [requested](#) leave to appeal this decision on 15 March and this was denied by the PTC on 23 April. The OTP will present additional evidence. On 25 May the PTC Chamber issued its [‘Decision informing the United Nations Security Council about the lack of cooperation by the Republic of the Sudan’](#) in the case against Harun & Kushayb. On 17 June, Abdallah Banda Abaker Nourain and Saleh Mohammed Jerbo Jamus [appeared](#) voluntary before the ICC, to answer charges of war crimes for their roles in the 2007 attack against African Union peacekeepers in Haskanita. The [confirmation of charges hearing](#) for Banda and Jerbo took place on 8 December 2010.

29 January - Sudanese Minister of Foreign Affairs Ali Karti [visited](#) ten European States to address, among other issues, European support for the ICC. Ministry spokesman Khalid Musa described the mission as part of an effort to reduce the amount of “foreign presence” in the country, represented by the UN peacekeeping missions, and to embellish Sudan’s image, which he said was tarnished by lobby groups in the West.

2 February - Amnesty International [issued](#) new satellite images revealing continuing atrocities in Darfur. Images secured by Amnesty International USA (AIUSA) and analyzed with partners from the American Association for the Advancement of Science (AAAS) show that civilians were targeted in the Negeha region of south Darfur, with villages burned to the ground as recently as December. According to AI, in December alone, more than 20,000 people were displaced by government attacks.

AIUSA stated: “While the world has understandably turned a hopeful eye to the referendum process, the satellite evidence collected from the Negeha region of Darfur demonstrates what happens when vigilant attention wanes and support for accountability cedes to political or diplomatic expediency [...]. When the UN Mission in Sudan gives a ride to one of the alleged architects of systematic murder, rape, and torture in Darfur, we have to question the current state of commitment to justice for Darfur. It then becomes easier to understand why the crimes documented in the Negeha analysis continue unabated. Impunity—that’s what the satellite imagery currently shows”.

I.4. Situation in the [Central African Republic \(CAR\)](#)

This situation was referred by the CAR in December 2004. The OTP opened its investigation in May 2007. One arrest warrant has been issued against [Jean-Pierre Bemba Gombo](#) for crimes committed in 2002-2003. The [confirmation of charges hearing](#) was held on 12-15 January 2009. On 15 June 2009, Pre-Trial Chamber II rendered its confirmation of charges decision. On 18 September, the case was referred to Trial Chamber III. In parallel, the Office continues to monitor allegations of crimes committed since the end of 2005. The trial started on 22 November 2010. The Defence decided not to appeal the 17 December Decision on the review of detention of Mr. Jean-Pierre Bemba, pursuant to the Appeals Judgment of 19 November 2010.

I.5. [Kenya](#)

The Office made its examination of the post-election violence of December 2007-January 2008 public in February 2008. On 9 July 2009, the African Union Panel of Eminent African Personalities, chaired by Kofi Annan, announced the [submission to the OTP of a sealed envelope containing a list of persons allegedly implicated and supporting materials previously entrusted to Mr. Annan by the Waki Commission](#). On 5 November the Prosecutor informed President Kibaki and Prime Minister Odinga of his view that crimes against humanity had been committed and of his duty, in the absence of national proceedings, to act. Both the President and the Prime Minister committed to cooperate with the Court. On 26 November the Prosecutor requested authorization from Pre-Trial Chamber II to open an investigation, noting that: 1,220 persons had been killed; hundreds raped, with thousands more unreported; 350,000 people were forcibly displaced; and 3,561 injured as part of a widespread and systematic attack against civilians. On 31 March the Pre-Trial Chamber authorized the Prosecutor to commence an investigation covering alleged crimes against humanity committed between 1 June 2005 and 26 November 2009. The Prosecutor made his first visit to Kenya since the beginning of the investigation on 8-12 May and his second visit 1-3 December. The Prosecutor submitted two applications for summonses to appear regarding six individuals (William Samoei Ruto, Henry Kiprono Kosgey, Joshua Arap Sang, Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohamed Hussein Ali) on 15 December 2010. These individuals are alleged to be most responsible in accordance with the evidence.

2 February - Prime Minister Raila Odinga [commenting](#) on efforts by parts of the Government to get a deferral from the UN Security Council regarding the ICC cases, stated: “I think our country may be embarking on a large operation that will cost us dearly in international reputation without any returns.”

3 February - As part of the “YES to ICC Now, No Deferral” campaign of the Kenyan civil society, [launched](#) in January 2011 and aimed at collecting 1 million Kenyan signatures by mid-February in support of the ICC, a peaceful march on the Parliament was organized where the demonstrators handed over a declaration reprimanding the attempts of the Kenyan Parliament to withdraw from the Rome Statute, stop or defer the on-going ICC proceedings, and use public funds for the defense of the ICC suspects.

3 February - US Deputy Secretary of State James Steinberg [confirmed](#) the US backing of the ICC proceedings in Kenya. “We are very committed to the principle of accountability and the avoidance of impunity and right now the only mechanism to pursue that is through the ICC,” he said and added, “That is the choice the Kenyan government made when both the executive branch and legislature chose not to pursue a domestic approach.”

7 February - A poll of public opinion in Kenya’s Central Province by Radio Africa Group indicates that 68% oppose the recent attempts by the government to withdraw from the ICC (The Star, 7 February 2011)

II. Preliminary Examinations

Statistics on [Article 15 Communications](#) and other preliminary examination activities.

A preliminary examination is the first phase of the Office of the Prosecutor activities, in order to assess if an investigation should be opened. It is a phase during which the Office first assesses the jurisdiction of the Court, whether crimes falling under the ICC jurisdiction may have been, or are possibly being, committed in a given situation; if the conditions are met, whether genuine investigations and prosecutions are being carried out by the competent authorities in relation to these crimes; and, as a third step, whether the possible opening of an

investigation by the Prosecutor would not go against the [interests of justice](#). During this phase, and in accordance with Article 15, the Office proactively evaluates all information on alleged crimes from multiple sources, including “communications” from individuals and parties concerned. The triggering of a preliminary examination does not imply that an investigation will be opened.

II.1. [Afghanistan](#)

The Office made its examination public in 2007. It examines alleged crimes within the jurisdiction of the Court by all actors involved. The OTP met outside Afghanistan with Afghan officials and organizations. The OTP sent requests for information to the Government of Afghanistan and has not yet received an answer.

3 February - The Special Representative of the Secretary-General for Children and Armed Conflict Radhika Coomaraswamy [signed](#) an Action Plan with the Government of Afghanistan to prevent under-age recruitment into the Afghan National Security Forces. SRSG Coomaraswamy called on all parties, including anti-government elements, to end the recruitment and use of children in the ongoing conflict, and urged the Government of Afghanistan to ensure due process, noting, *“I feel confident that the Government of Afghanistan and the international community will work together on this issue.”*

II.2. [Colombia](#)

The Office made its examination public in 2006. It examines alleged crimes within the jurisdiction of the Court and investigations/proceedings conducted in Colombia against the allegedly most serious perpetrators, paramilitary leaders, politicians, guerrilla leaders and military personnel. The Office is also analyzing allegations of international networks supporting armed groups committing crimes in Colombia.

II.3. [Georgia](#)

The Office made its examination public on 14 August 2008. The Georgian Minister of Justice visited the OTP. Russia, a State not Party to the Statute, has sent 3,817 communications to the OTP. The Prosecutor requested information from the Governments of Russia and Georgia on 27 August 2008. Both the Russian and Georgian authorities responded. The Office conducted a visit to Georgia in November 2008 and to Russia in March 2010. A second mission to Georgia was conducted in June 2010.

II.4. [Palestine](#)

On 22 January 2009, the Palestinian National Authority lodged a declaration with the Registrar under Article 12(3) of the Rome Statute which allows States not party to the Statute to accept the Court’s jurisdiction. The OTP will examine issues related to its jurisdiction: first whether the declaration accepting the exercise of jurisdiction by the Court meets statutory requirements; and second whether crimes within the Court’s jurisdiction have been committed. The Office will also consider whether there are national proceedings in relation to alleged crimes. A delegation from the Palestinian National Authority, and Representatives of the Arab League visited the Court on 15-16 October 2009 to present a report in support of the PNA’s ability to delegate its jurisdiction to the ICC. On 11 January, the OTP sent a [letter](#) summarizing its activities to the United Nations at their request. On 3 May, the OTP published a [“Summary of submissions on whether the declaration lodged by the Palestinian National Authority meets statutory requirements.”](#) The OTP has not made any determination on the issue.

II.5. [Côte d’Ivoire](#)

The Court has jurisdiction over the situation in Côte d’Ivoire by virtue of an Article 12(3) declaration submitted by the Ivorian Government on 1 October 2003. The declaration accepts the jurisdiction of the Court as of 19 September 2002. On 17-18 July 2009, high-level representatives of the OTP visited Abidjan.

4 February - In a [briefing](#) on the current situation in Cote d’Ivoire, US Ambassador to Côte d’Ivoire Phillip Carter, said: *“The Africans are looking for whatever means they can to avoid conflict or to exacerbate conflict. They all recognize that the human rights abuses that are occurring in Abidjan and in the western part of the country – not necessarily in the north, which is essentially Ouattara’s – under Ouattara’s control – are something that have to be attended to. And the question of accountability is coming up, and so that window for Gbagbo to leave honorably, peacefully, with amnesty, that window is closing”.*

II.6. [Guinea](#)

The Office made its examination of the situation in Guinea public on 14 October 2009. Guinea is a State Party to the Rome Statute since 14 July 2003 and, as such, the ICC has jurisdiction over war crimes, crimes against humanity and genocide possibly committed in the territory of Guinea or by nationals of Guinea, including killings of civilians and sexual violence. The Office has taken note of serious allegations surrounding the events of 28 September 2009 in Conakry in accordance with Article 15 of the Statute. In January 2010, OTP high level representatives held consultations with President Compaore of Burkina Faso, mediator for the contact group on Guinea, and President

Wade of Senegal to ensure that they are informed of its work. From 15 to 19 February 2010, the OTP sent a mission to Guinea, led by Deputy Prosecutor Fatou Bensouda, in the context of its preliminary examination activities. From 19-21 May a second OTP mission met with the Guinean Minister of Justice, Col. Lohalamou, and Guinean judges. A third OTP mission, lead by Deputy Prosecutor Bensouda, went to Conakry from 8 to 12 November 2010, and met with President Sékouba Konaté, Prime Minister Doré, as well as both election candidates. The Guinean authorities extended full cooperation to the Court.

II.7. Nigeria

The Office made its examination of the situation in Nigeria public on 18 November 2010. Nigeria is a State Party to the Rome Statute since 27 September 2001. The Office has been analyzing the alleged crimes committed in Central Nigeria since mid-2004 and is looking forward to engaging constructively with the Nigerian authorities on the issue.

II.8. Honduras

The Office made its examination of the situation in Honduras public on 18 November 2010. Honduras is a State Party to the Rome Statute since 1 July 2002. The Office has received many communications on crimes linked to the coup of June 2009. There were different allegations, mostly regarding alleged massive cases of torture and more than a thousand people being arrested in one day. The Office met with the Honduras Minister Counsellor in The Hague on 22 November, who provided relevant information and promised their full cooperation.

II.9. Republic of Korea

The Office made its examination of the situation in the Republic of Korea public on 6 December 2010. Korea is a State Party to the Rome Statute since 13 November 2002. The Office of the Prosecutor has received communications alleging that North Korean forces committed war crimes in the territory of the Republic of Korea. The Office is currently evaluating if some incidents constitute war crimes under the jurisdiction of the Court. These incidents are: a) the shelling of Yeonpyeong Island on the 23 November 2010 which resulted in the killing of South Korean marines and civilians and the injury of many others; and b) the sinking of a South Korean warship, the Cheonan, hit by a torpedo allegedly fired from a North Korean submarine on 26 March 2010, which resulted in the death of 46 persons.

III. Cooperation – Galvanizing Efforts to Arrest

2 February - As UN Secretary-General Ban Ki-moon delivered the 2011 Cyril Foster Lecture on “Human Protection and the Twenty-First Century United Nations” at Oxford University, he [highlighted](#): *“We have welcomed the parallel establishment of the International Criminal Court, a signal advance in the age-old struggle to overcome impunity. Accountability is now an indispensable element of the framework of protection. It is a frontal challenge to impunity. And it also serves as a powerful deterrent against potential perpetrators. [...] As Secretary-General, I have insisted on standards of accountability, especially as they relate to conduct during conflict.”*

IV. Upcoming Events

- 9 February - Deputy Prosecutor participates in a West African Regional Roundtable Discussion on ICC Implementation, to be hosted by the Senate of Liberia in Monrovia, in conjunction with PGA, Monrovia
- 14 February - Prosecutor participates in the Cinema for Peace event, Berlin
- 7 March - Prosecutor delivers the inaugural lecture of the new Master on Governance and Human Rights at the Universidad Autónoma, Madrid
- 15 March - Deputy Prosecutor participates in the international colloquium “Women’s rights, Migrant women’s rights and international humanitarian law”, Dakar
- 21 March - Prosecutor delivers keynote speech at Facing History and Ourselves event, London
- 6-7 April - OTP holds its bi-annual roundtable meeting with NGOs, The Hague
- 11-13 April - Deputy Prosecutor participates in the Expert meeting on complementarities between international refugee law, international criminal law, and international human rights law, organized by ICTR and UNHCR, Arusha

* 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