



## OTP Weekly Briefing

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**HIGHLIGHT: MBARUSHIMANA SURRENDERED TO THE ICC – OTP CONTRIBUTES TO EFFORTS TO STOP MASSIVE SEXUAL VIOLENCE IN THE KIVUS AND TO DEMOBILIZE THE FDLR**

### PREVIEW

- Prosecutor briefs NYWG on OTP preliminary examinations, p. 5

25 January - Callixte Mbarushimana, Executive Secretary of the FDLR, was surrendered to the Court by the French authorities. Prosecutor Moreno-Ocampo [thanked](#) France for a smooth and efficient operation.

He and other FDLR leaders decided to create a humanitarian catastrophe in the Kivus to force Rwanda and the international community to negotiate. In early 2009 they launched massive attacks against the civilian population, killing and raping hundreds of persons. In August 2010, the FDLR was involved in the brutal mass rapes against hundreds of women in Walikale territory. Callixte Mbarushimana denied UN reports of FDLR involvement, publicly contradicting the Secretary-General. The OTP is investigating the Walikale mass rapes and assessing whether to add them to the charges.

Following Mbarushimana's transfer to the detention center in The Hague, the Prosecutor [stressed](#): *"Rape can no longer be used as a weapon of war. In the ICC era, the fate of leaders and commanders who plan or oversee campaigns of mass crimes against civilians must be to face justice"*.

Callixte Mbarushimana's arrest and surrender follows the arrests by German authorities in late 2009 of Mr. Ignace Murwanashyaka and Mr. Straton Musoni, the FDLR's President and First Vice - President respectively. These combined efforts between the OTP and States such as Germany, France, the DRC and Rwanda, a non State Party, are a concrete example of complementarity in action. Secretary-General Ban Ki-moon [stated](#), the transfer *"is [...] an excellent example of how international and national criminal courts can work together, in accordance with the principle of complementarity, to fight impunity and ensure that those alleged to have committed serious international crimes are held accountable"*.

In addition, these coordinated efforts, together with those of the UN and the SRSG on sexual violence in conflict, Margot Wallström, contribute to the demobilization of the armed groups in the region and the prevention of new crimes. Following Mbarushimana's transfer, SRSG Wallström stated: *"This is a very important signal to all perpetrators in the DRC and beyond, that crimes of sexual violence are not tolerated and that the international community is fully committed to bringing alleged offenders to justice [...]. We now need to use all the resources at our disposal to apprehend every individual and commander allegedly involved in orchestrating the mass rapes which occurred in Walikale, Fizi and elsewhere in eastern DRC"*. Ban Ki-moon also stressed: *"This cooperative burden-sharing in prosecuting individuals for serious international crimes will greatly advance the fight against impunity. Legal action against FDLR leaders also reinforces efforts to demobilize and repatriate FDLR fighters, which would significantly contribute to stabilizing the eastern DRC"*.

## I. Investigations and Prosecutions

Over the reporting period, the OTP presented five filings in the various cases and conducted 1 mission in 1 country.

### 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.

19 January - Different observers have [commented](#) on the deterrent impact of the ICC action. According to the NGO REDRESS, the biggest impact of the trials has been that there is "no doubt in eastern DRC about the fact that child soldiering is a crime. Previously people thought that children were doing military service that was somehow legitimized by the state of conflict." Also referring to the Lubanga trial, the Executive Secretary of Lubanga's militia / political party UPC admitted that the ICC had a positive educational impact: "Several leaders have finally realized that they can be prosecuted for recruitment of children into the army." Nicolas Mateso, an ex-combatant in Ituri also confirmed the deterrent impact of the trials: "Today many leaders of armed groups are afraid to engage in hostilities or recruit child soldiers [for] fear of being charged by the International Criminal Court."

22 January - During a meeting with Congolese Prime-Minister Adolphe Muzito and other members of the DRC Government in Kinshasa, US Assistant Secretary of State for political-military affairs Andrew Shapiro [raised](#) the issue of serious human rights violations committed by individual officers of the Congolese armed forces, including Bosco Ntaganda. "We addressed the question of the future of these people. They can not continue to work with impunity and expect to be promoted", Shapiro stated after the meeting.

## 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 1,500, abducted more than 2,250 and displaced well over 300,000 in DRC alone. In addition, over the same period, more than 120,000 people have been displaced, and more than 250 people killed by the LRA in Southern Sudan and the Central African Republic.

19 January - Ambassador Princeton Lyman, head of the US Sudan Negotiation Support Unit [confirmed](#) in testimony to the US Congress that any support by the Government of Sudan to the LRA would preclude any action to take the Sudan off the US list of State Sponsors of Terrorism, saying that both he and General Scott Gration, US Special Envoy to Sudan, had made clear to the Sudanese government that any support to the LRA would be an obstacle to normalisation of relations. Earlier in the month, U.S. Deputy Assistant Secretary for African Affairs Karl Wycoff [said](#) he had seen no evidence of Sudanese support for the LRA, but that "It's something we closely monitor."

## 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](#) voluntarily 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.

12 January - Al Jazeera aired a [video](#) showing Ahmed Harun, Governor of South Kordofan, getting off a UN plane en route to Abyei. The report also presented documents about the GoS's arming tribes in the region. It showed an alleged GoS top secret document entitled "Arming the Tribes" carrying orders from both the Defence Minister Marshal Abdulrahim Mohamed Hussein and the Chief of the Sudanese Armed Forces Joint Staff General Essamat Abdurrahman Zain al Abedin. During the course of the news segment Harun stated that he investigated the document and reached the conclusion that it was a falsification and said: "I don't have any information about arming of Arab Tribes in the region".

#### **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.

### **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.

#### **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.

14-19 January - Secretary-General Ban Ki-moon [stressed](#) his deep concern at the growing number of violent incidents in Côte d'Ivoire. He indicated that the UN has "concrete intelligence" that the former president and those around him are inciting violence against its peacekeepers and their own countrymen. On 19 January, the Security Council [authorized](#) the immediate reinforcement of UNOCI with an additional 2,000 peacekeepers and three armed helicopters. In a unanimous [resolution](#) adopted under Chapter VII of the UN Charter, the Council voiced deep concern at the continued violence against civilians and UN peacekeepers in Côte d'Ivoire. Meanwhile, the African Union Peace and Security Council reportedly decided to discuss the Côte d'Ivoire crisis in the upcoming AU summit. UNSG Ban Ki-moon, French President Sarkozy and several African heads of states are expected at the meeting. In the meantime, Raila Odinga has engaged in shuttle diplomacy to rally countries to back AU's position. He met with South African President Jacob Zuma, as well as Angolan President dos Santos. Odinga has reportedly secured the support of President's John Atta Mills (Ghana), Blaise Compaore (Burkina Faso) and Amadou Toumani Toure of Mali. On 14 January, the EU Council adopted a [decision](#) imposing an assets' freeze and extending the visa ban to additional persons and entities that are obstructing the process of peace and national reconciliation in Côte d'Ivoire. The Office is collecting information on alleged crimes committed in order to assess if an investigation should be opened.

## 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

17-19 January - The Prosecutor participated in the final two days of the second Harvard Law School Seminar on the policies of the Office of the Prosecutor, taught by Dean Martha Minow and Professor Cora True-Frost. The Prosecutor also engaged in discussions with Harvard professors on the development of educational projects and materials.



21 January - The Prosecutor briefed the New York Working Group on the ongoing preliminary examinations of his Office, in accordance with the Office's commitment to increase its transparency and predictability. Of the nine situations under preliminary examination, the Office is analyzing alleged crimes regarding four situations – Honduras, Republic of Korea, Afghanistan and Nigeria; regarding three other situations, the Office is checking if genuine national proceedings are being carried out – these are Guinea, Colombia and Georgia. Finally, the Office is assessing the

declarations accepting the jurisdiction of the Court by the Palestinian National Authority and Côte d'Ivoire. Answering questions from the New York diplomatic corps, the Prosecutor stressed that the Office only identifies situations; it has no discretion to ignore crimes falling under its jurisdiction. Within situations, the Office selects cases based on clear and transparent criteria. The Prosecutor further highlighted: *"Experience shows that massive crimes are well planned. If the international community is consistent in its support, we can have a critical impact in preventing crimes and stopping violence through our preliminary examination work. Diplomats and mediators should take this into account in their political decisions and negotiations"*.

### IV. Upcoming Events

- 24-26 January - Deputy Prosecutor participates in the 17<sup>th</sup> Pre-Summit Consultative Meeting on Gender Mainstreaming in the African Union, Addis Ababa
- 28-30 January - OTP participates in the Third JRR Training Course, Doha, Qatar
- 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

\* 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)