



OTP Weekly Briefing

28 June – 4 July 2011 – Issue #94

HIGHLIGHT:

* DEPUTY PROSECUTOR BENSoudA LEADS OTP MISSION TO CÔTE D'IVOIRE TO PROMOTE COOPERATION

PREVIEW

- Botswana supports ICC arrest warrant against Gaddafi, p. 5

27-30 June - Deputy Prosecutor Fatou Bensouda led the first OTP official visit to Abidjan, Côte d'Ivoire, since the Prosecution submitted a request to the judges for authorization to commence an investigation into the situation in Cote d'Ivoire after the presidential runoff of 28 November 2010.



The objectives of the mission were to establish a cooperation framework between the OTP and the Ivorian Government as well as to assess security and operational parameters prior the envisaged launching of investigative activities.

The OTP delegation held numerous meetings with Government officials, including President Ouattara, Prime Minister Guillaume Soro, Justice Minister Ahoussou, Human Rights Minister, Gnenema Coulibaly. Deputy Prosecutor Bensouda and her team further met with representatives of the Ivorian judiciary, as well as with the UN Mission to Côte d'Ivoire and the diplomatic community in Abidjan.

The situation in Côte d'Ivoire offers a unique opportunity to further three parallel and mutually-reinforcing processes, namely (i) dialogue, truth and reconciliation through the Konan Banny Commission; (ii) national proceedings for crimes falling outside the Court's or crimes of lesser gravity; and (iii) ICC investigations and prosecutions to bring to account the persons holding the greatest responsibility for the most serious crimes.

The Deputy Prosecutor also signed on behalf of the OTP a judicial cooperation agreement with the Ivorian Government. This agreement was meant to make up for the lack of implementing legislation of the Rome Statute pending the ratification of the Treaty by Côte d'Ivoire. President Ouattara confirmed his intent to proceed with such ratification as soon as the constitutional and procedural requirements are met.



The OTP delegation also held meetings with the Minister for Family, Women and Children and the Minister for War Crimes and Former Combatants who both committed to provide any assistance required to help victims convey representations to the Pre-Trial Chamber. Similar commitment was received from Ivorian NGOs and victims' representatives.

The OTP mission is planned to last until 5 July. A technical team was set to visit violence-affected areas in the Southern (San Pedro) and Western (Duékoué, Toulepleu, Guiglo, etc.) parts of the country in order to assess the security conditions and other operational requirements, and is benefitting from the valuable assistance of the UNOCI. The OTP will then be in a position to proceed with investigations as soon as authorization from the Pre-Trial Chamber is granted.

I. Investigations and Prosecutions

Over the reporting period, the OTP presented twenty filings in the various cases and conducted three missions in three 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 Prosecution filed its closing brief on 1 June. Oral closing arguments will be presented on 25 and 26 August 2011. 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 17 August 2011.

22 June - In the trial of Germain Katanga and Mathieu Ngudjolo Chui, Trial Chamber II [decided](#) that three defense witnesses can be returned to the DRC after certain protective measures are put in place for them upon their return to the DRC and in the event that their request for asylum is rejected by the Dutch authorities.

28 June - While preparations for the confirmation of charges hearing in the case against Callixte Mbarushimana are ongoing, the UN Security Council [demanded](#) the FDLR to immediately cease all forms of violence and human rights abuses against the civilian population in the Democratic Republic of the Congo, in particular against women and children, including rape and other forms of sexual abuse. The hearing for the confirmation of charges of Mr. Mbarushimana, former FDLR Executive Secretary allegedly having committed war crimes and crimes against humanity in the DRC, is scheduled to commence on 17 August 2011.

28 June - the UN Security Council in its [resolution](#) extending the mandate of the MONUSCO, stressed the importance of the Congolese Government actively seeking to hold accountable those responsible for war crimes and crimes against humanity in the country, and of regional cooperation to this end, including through cooperation with the ICC. The Council also called on MONUSCO to use its existing authority to assist the DRC government in this context.

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.

28 June - the UN Security Council [called](#) for an end to LRA violence and human rights abuses, emphasised the significance of enhanced international cooperation to help address the LRA threat, including information sharing and coordination, and encouraged MONUSCO to keep close contacts with LRA-affected communities and keep its deployments under review in order to achieve maximum effect.

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. On 6 March 2011, Pre-Trial Chamber I [confirmed](#) all of the charges against Banda and Jerbo. A date for the trial has not been set yet.

1 July - The spokesperson for the UN Secretary General [confirmed](#) the Secretary General's full respect and support for the ICC and its work, saying that he believed there were no plans for the UNSG to meet President Bashir during the 9 July South Sudan independence ceremonies in Juba. He noted that States should consider their own responsibilities in light of the legal instruments which apply to them.

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. On 8 March 2011, Pre-Trial Chamber II [issued](#) the six summonses to appear. The six suspects voluntarily appeared before the Court on 7 and 8 April 2011. The Chamber scheduled the confirmation hearings on 1st and 21 September 2011.

29 June - The Single Judge [rendered](#) a decision requesting the Parties to submit information for the preparation of the confirmation of charges hearing. Regarding the issue of the possibility to hold the confirmation hearings in situ, the Judge indicated that *"the Chamber, for its part, being respectful of their wishes as expressed in the respective submissions, will not consider further the option of conducting the confirmation of charges hearing in the Republic of Kenya. The Chamber has therefore ensured that this concern is submitted to the competent entities entrusted to render a decision upon this question according to rule 100 of the Rules. In any event, absent any decision to the contrary, the confirmation of charges hearing in the present case will take place at the seat of the Court in The Hague."*

I.6. [Libya](#)

This situation was referred by the UN Security Council on 26 February 2011 by [Resolution 1970](#) (2011). As per the Rome Statute, the Prosecutor shall proceed with an investigation unless there is no reasonable basis to believe that crimes falling under the ICC jurisdiction have been committed. Following a preliminary examination of available information, the Prosecutor [decided](#) to open an investigation on 3 March 2011 and [requested](#) Pre-Trial Chamber I to issue arrest warrants against Muammar Abu Minya Gaddafi, Saif Al Islam Gaddafi and Abdullah Al Sanousi on 16 May. The warrants were [issued](#) by the Judges on 27 June 2011.

I.7. [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. On 4 May 2011, the President of Côte d'Ivoire, Alassane Ouattara, [confirmed](#) his wish for the OTP to conduct independent and impartial investigations into the most serious crimes committed since 28 November 2010 on the entire Ivorian territory. On 23 June 2011, the OTP requested Pre-Trial chamber III for the authorization to open an investigation into the situation in Côte d'Ivoire since 28 November 2010.

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. [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 former President Sékouba Konaté, former Prime Minister Doré, as well as both election candidates. The Guinean authorities extended full cooperation to the Court.

II.6. [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.7. [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.8. 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

26 June - In the occasion of the International Day in Support of Victims of Torture, UN High Commissioner for Human Rights Navi Pillay [stated](#): *“The strengthening of international justice mechanisms, including the rapidly maturing International Criminal Court, means that the chances of torturers being snared one day, either on the national or international level, has greatly increased. Despotism governments and officials take heed: torture is a serious international crime and more torturers will be brought to justice – sooner or later.”*

30 June - Regarding the recent visit of President Al Bashir to China, UN High Commissioner for Human Rights Navi Pillay [stated](#): *“There is a duty and responsibility of every government, including China, to assist the court in bringing to justice [individuals who are sought for alleged violations]. It is disappointing when states do not deliver on this responsibility. In this case there was an opportunity to ensure that Mr Bashir is able to stand trial”.*

5 July - The Botswana government [stated](#) it *“wishes to reiterate her position in support of the warrant of arrest. This decision was not reached lightly. State and state-sponsored violence and blatant human rights violations by the Gaddafi regime on its own people, which started in February this year, continues unabated to this day. This is despite international efforts calling on the regime to end its violent campaign against the Libyan people. This campaign of violence, which has resulted in massive loss of life, destruction of property and displacement of people is against all norms of civilized behavior and international humanitarian law. This is a crime against humanity and should therefore be unacceptable to all peace-loving people. The Government of Botswana pledges to continue to uphold basic human and political rights and hereby calls on fellow members of the AU to support the ICC in carrying out its mandate to apprehend the Libyan leader, as a critical step towards alleviating the plights of the Libyan people, and paving the way for a new democratic dispensation in that country”.*

IV. Upcoming Events

- 4-8 July - Deputy Prosecutor Bensouda participates in Wayamo Communication Foundation workshop: *“The battle against impunity: chinks in the armor? Do immunity rights, peace negotiations and national amnesty laws contradict international criminal law?”* in Gaborone, Botswana
- 5-7 July - Training session at the ICC for francophone Supreme Court magistrates, the Hague
- 28-30 August - Deputy Prosecutor Bensouda participates in the 5th Annual International Humanitarian Law Dialogs, Chautauqua, New York
- 29 August - Prosecutor Moreno-Ocampo participates in the 2011 European Forum Political Symposium, Alpbach, Austria

* 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