



OTP Weekly Briefing

8-14 February 2011 – Issue #74

HIGHLIGHTS:

- * DEPUTY PROSECUTOR FATOU BENSOUDA MEETS WITH ECOWAS PARLIAMENTARIANS IN MONROVIA, LIBERIA
- * UPDATE ON THE BEMBA TRIAL

PREVIEW

-Mbarushimana's status conference, p. 2

Deputy Prosecutor in Monrovia

9 February - Deputy Prosecutor Fatou Bensouda participated in a Regional Roundtable Discussion on Implementation of the Rome Statute, organized by Parliamentarians for Global Action, in Monrovia, Liberia. The roundtable saw broad participation of parliamentarians from ECOWAS countries, together with representatives from the international and local community in Monrovia, including the Head of the EU delegation and UN representatives.



The Minister of Justice and Attorney General of Liberia, Christiana Tah, stated: *"The world has changed to the extent that we all have become members of one huge global village wherein our every action is likely to impact someone somewhere on the globe. [...] New legal and structural frameworks are being [...] developed to which many countries, including Liberia, have subscribed in order to secure a niche for itself in the new world order. One of such frameworks is the Rome Statute, which established the ICC, to address the scourge of impunity in the international community."*

The Deputy Prosecutor also met separately with Minister Tah, to update her on the ongoing activities of the Office.

Update on the Bemba trial

Since the beginning of the trial, the Prosecution has presented 8 crime-based witnesses, one overview and one expert witness on post-traumatic stress disorder. The Prosecution has to prove that the MLC troops were under Bemba's command and that they raped and pillaged in a widespread or systematic manner. Witness 22 stated to the Court that the day she was brutalized, she had to flee with her entire family and felt like committing suicide.

Witness 23 informed the Court on 17 January that the leader of the MLC soldiers in his area had ordered his troops to kill the civilians because they were assimilated to the rebels.

Witness 42 in his testimony before the Court on 11 February further stated that the MLC soldiers lived off the CAR population, raping women and men, and that Bemba was responsible for that.

The Prosecution is planning to present 24 witnesses in this case. The legal representatives of the victims can request authorization to present evidence about the harm they suffered. After that, the Defence can present its own evidence. Finally, the Judges will take a decision on the merits of the evidence presented and the applicable law.

I. Investigations and Prosecutions

Over the reporting period, the OTP presented four filings in the various cases and conducted two 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 - DRC authorities have [reportedly](#) arrested four foreign nationals and impounded a plane in Goma in relation to an alleged smuggling of minerals which several sources have linked to Bosco Ntaganda.

14 February - The Court held a status conference in the case of the *Prosecutor vs Callixte Mbarushimana*. The Prosecution and the Defense both made submissions to the Single Judge in this case, Judge Sanji Mmasenono Monageng, *inter alia* on the agenda leading to the Confirmation of Charges and on matters of disclosure.

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.

7 February - In his [briefing](#) to the UN Security Council, Special Representative of the Secretary-General for the DRC Roger Meece said that LRA leader Joseph Kony, should remain the focus of attention, along with civilian-protection efforts; he further called for careful monitoring of opportunities for LRA due to the changes in South Sudan.

7 February - The Bishop of the Catholic Diocese of Tombura-Yambio in Southern Sudan, [called](#) for greater international focus and support for the arrest of senior LRA leaders, through a professional law enforcement operation, taking all necessary steps to minimize harm to civilians, as a vital component of any comprehensive strategy to end the LRA threat: "*The UN has repeatedly confirmed its commitment to ending impunity and holding to account individuals responsible for serious violations of international law. Supporting apprehension of individuals wanted on existing arrest warrants is therefore within the mandate of the Secretary General and the UN [...] As long as the LRA's top leaders evade capture, I fear they will only continue to abduct our children, who in turn will be trained to replace any lower and mid-level combatants who escape, defect, or are killed.*"

10 February - US Ambassador to the UN, Susan Rice, [highlighted](#) the US's concern over continuing LRA atrocities, and US commitment to increase national efforts to combat the LRA. Rice indicated she believed most countries in the region had concluded that the only way forward is action to root out the LRA and the UNSC had given the UN forces in the DRC the authority to cooperate with the Congolese and Ugandan authorities, providing logistical support, joint planning and related assistance in this task.

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.

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.

10 February - US Ambassador to Kenya Michael Ranneberger [stated](#): *"I want to be clear as I possibly can be. The United States supports the ICC process moving forward and the reason is very simple. There must be accountability for the post election violence; terrible crimes were committed, the Kenyan people deserve justice. It has gone to the ICC and that ICC process needs to be carried through. [...] You know no country on the Security Council ever announces in advance hypothetically what its vote would be and I'm not going to tell you that tonight but I don't think I can be much clearer. It's one of those things, I don't think I can say it any more clearly than I am saying it which is we support continuation of the ICC process."*

10 February - A recent [opinion poll](#) in Kenya shows that Kenyans still favour the ICC process and do not support efforts to pull out from the Rome Statute. The poll showed that 57% of those interviewed thought the six persons named in the Prosecution's application should be tried at the ICC, with only 24% favouring local tribunals. In addition, 61% were opposed to diplomatic efforts to pull out of the ICC while 36% supported the move. There has been a 12% increase in preference for the ICC since June last year.

II. Preliminary Examinations

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

11 February - A group of Egyptians [asked](#) for the ICC to prosecute Egyptian president Hosni Mubarak and other members of his regime for crimes against humanity. The group requested the Prosecutor to focus on the violations that allegedly occurred since 25 January. Currently, the ICC cannot intervene in Egypt, as it is not a State Party to the Rome Statute. The OTP can only intervene if Egypt were to become a State Party, issue a declaration accepting jurisdiction under article 12(3) of the Statute or through a referral by the Security Council.

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.

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

14-15 February - Deputy Prosecutor Fatou Bensouda and Olivia Swaak-Goldman, International Cooperation Adviser, participated in the roundtable seminar “The ICC after Kampala: 2011 and beyond”, organised by the Grotius Centre, and attended by high-level delegations from States Parties and non States Parties. The roundtable focused on the challenges and the way forward after the Review Conference, including the challenges for the ASP and the need to continue to strengthen the Court.

IV. Upcoming Events

- 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
- 25 March – Deputy Prosecutor participates as a featured speaker at the American Society of International Law Annual Meeting, Washington
- 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*