



OTP Weekly Briefing

11-16 May 2011 – Issue #87

HIGHLIGHTS:

- **OTP REQUESTS ARREST WARRANTS FOR MUAMMAR GADDAFI, SAIF AL ISLAM GADDAFI AND ABDULLAH AL SANOUSI**
- **PRESIDENT OUATTARA CONFIRMS THE NEED OF AN ICC INVESTIGATION ON CRIMES COMMITTED IN CÔTE D'IVOIRE**

PREVIEW

- OTP briefs international community about its activities, p. 6.

OTP requests arrest warrants in Libya situation

16 May - Prosecutor Moreno-Ocampo [requested](#) the Judges of Pre-Trial Chamber I to issue arrest warrants against Muammar Abu Minya Gaddafi, Saif Al Islam Gaddafi as well as the Head of the Intelligence, Abdullah Al Sanousi, for crimes against humanity committed in Libya since February 2011.

The Prosecutor, in a press conference during which he [announced](#) his request, said: *"The evidence shows that Muammar Gaddafi, personally, ordered attacks on unarmed Libyan civilians. His forces attacked Libyan civilians in their homes and in the public space, shot demonstrators with live ammunition, used heavy weaponry against participants in funeral processions, and placed snipers to kill those leaving mosques after the prayers. The evidence shows that such persecution is still ongoing."*

"Most of the victims are Libyans, but the widespread and systematic attacks affect the international community as a whole. The crimes are crimes against humanity," Prosecutor Moreno-Ocampo continued. *"That is why the Arab League and the African Union were concerned and the UN Security Council intervened. Further, the Arab people in different regions of the world are playing a key role in exposing the crimes. The fear is not paralyzing them."*



The Office during its investigation gathered direct evidence about orders issued by Muammar Gaddafi himself. *"Muammar Gaddafi committed the crimes with the goal of preserving his absolute authority,"* said the Prosecutor. *"The evidence shows that Gaddafi relies on his inner circle to implement a systematic policy of suppressing any challenge to his authority. His second eldest son, Saif Al Islam, is acting as a de facto prime minister and Abdullah Al Sanousi, Gaddafi's brother-in-law, is his right-hand man, the Head of the Military Intelligence and personally commanded some attacks. The Office documented how the three held meetings to plan and direct the operations."*

The case is now before the judges. They can accept the request, reject it or ask for more evidence. In the meantime, the Office will continue its investigations.

Prosecutor Moreno-Ocampo concluded: *"My Office has not requested the intervention of international forces to implement the arrest warrants. Should the Court issue them and the three individuals remain in Libya, Libyan authorities have the primary responsibility to arrest them. Libya is a member of the United Nations and it has the duty to abide by Security Council Resolution 1970. Libyans will lead."*

When the time comes, implementing the arrest warrants will be the most effective way to protect civilians under attack in Libya and elsewhere. As in any other criminal case, the execution of the warrants will have a deterrent impact for other leaders who are thinking of using violence to gain or retain power."

UK Foreign Secretary William Hague, in a statement following the announcement of Prosecutor Moreno-Ocampo, [said](#): *"I welcome this announcement. The human rights situation in Western Libya and the behaviour of the Qadhafi regime remains of grave concern and the UK was at the forefront of efforts in the UN to adopt resolution 1970 which referred the situation in Libya to the ICC. The request for these warrants is a reminder to all in Qadhafi's regime that crimes will not go unpunished and the reach of international justice will be long."* He continued: *"Those responsible for attacks on civilians must be held to account. The international community must fully support the ICC in thoroughly investigating all allegations. I call on all UN Member States, whether parties to the Rome Statute or not, to offer their full co-operation."*

Also the Danish Foreign Minister, Lene Espersen, [welcomed](#) the application: *"Denmark fully supports the work of the International Criminal Court in bringing the perpetrators of the atrocities against civilians in Libya before the Court."*

Similar support was expressed in a [statement](#) of the French Ministry of Foreign Affairs, indicating that *"[t]his decision, based on UNSC Resolution 1970, is in line with France's commitment to fight impunity in all places."* France also points at *"the extreme concentration of power and criminal responsibility in Libya. More than ever it is clear that Muammar Gaddafi, like the two other individuals involved, should not be involved in the political debate that is necessary to build Libya's future."*

Canada in a statement [said](#): *"Those responsible for planning and ordering widespread and systematic attacks against the civilian population of Libya must be held accountable. Crimes against humanity, directed against civilian populations, remain a grave concern to the entire international community. Canada continues to urge the Libyan authorities to abide by their obligations under UN Security Council Resolution 1970, including the obligation to cooperate fully with the ICC and the Prosecutor."*

NATO [said](#) the Prosecutor's announcement was *"further proof that the international isolation of the Gaddafi regime is growing every day,"* adding that *"[i]t is hard to imagine that a genuine transition in Libya can take place while those responsible for widespread and systematic attacks against the civilian population remain in power."*

Maja Kocijancic, spokesperson for Catherine Ashton, said the EU [welcomes](#) *"the work of the International Criminal Court in ensuring that those who commit crimes against humanity are brought to justice."*

HRW [said](#): *"The ICC prosecutor's request acts as a warning bell to others that serious crimes will not go unpunished. It's a message to those responsible for grave abuses that they will be held to account for their actions. Libyan civilians who have lived through a nightmare over the past months deserve redress through an independent and impartial judicial process. Today's announcement offers them that chance."*

FIDH [welcomed](#) the announcement made by the Prosecutor, urging the ICC relevant Chamber to make a decision on the Prosecutor's application without delay and calling upon all States to prepare for immediate execution of the arrest warrants once issued.

President Ouattara confirms the importance of ICC intervention in Côte d'Ivoire

May - In a [letter](#) to the Prosecutor dated 4 May 2011, the President of Cote d'Ivoire, Alassane Ouattara, has 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, and to ensure that the persons bearing the greatest criminal responsibility for these crimes are identified, prosecuted and tried before the ICC. President Ouattarra further noted that the Ivorian judiciary is not at this stage in the best position to address the most serious of these crimes, and any attempt at trying the most responsible individuals may face multiple obstacles. The OTP is currently drafting an application to seek authorization from the Pre-Trial Chamber to commence an investigation into the situation in Côte d'Ivoire in accordance with article 15 of the Rome Statute.

I. Investigations and Prosecutions

Over the reporting period, the OTP presented 15 filings in the various cases and conducted 7 missions in 6 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.

12 May 2011 - 77 Congolese, American and international organizations sent a public letter to United States Secretary of State Hillary Clinton urging the appointment of a Special Representative for the Great lakes in order to increase its support for justice by pressing the DRC government to develop a joint arrest strategy regarding Bosco Ntaganda. Mentioning specifically continuing crimes committed by the LRA and the FDLR militias in eastern DRC and outstanding ICC arrest warrants, the NGOs ask for greater efforts to support arrests and judicial proceedings against high-profile human rights violators.

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.

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.

11 May - President Al Bashir did not travel to Uganda for the swearing-in of President Museveni. Ambassador Christian Wenaweser of Liechtenstein, also President of the Assembly of States Parties, [stressed](#) the importance *"that a state party fully cooperates with the court."* He added that while *"[i]t will be difficult to not formally extend an invitation to any Head of State, (...) as long as that invitation is accompanied by a message that that State also fulfills its obligation under the Rome Statute, that is sufficient."*

12 May - Pre-Trial Chamber I issued a [decision](#) informing the UN Security Council and the Assembly of States Parties to the Rome Statute about Al Bashir's visit to Djibouti, to attend the inauguration ceremony of Djibouti's President on 8 May, "in order for them to take any measure they may deem appropriate." The Chamber stressed that Djibouti, as a State Party to the Rome Statute, "has an obligation to cooperate with the Court" in relation to the enforcement of warrants of arrest.

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.

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.

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.

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

12-13 May - Phakiso Mochochoko, Head of the Jurisdiction, Complementarity and Cooperation Division, traveled to Addis Abeba as part of a Court team to discuss and finalize the agenda for the proposed AU/ICC Seminar. The Team met with Ben Kioko, AU Legal Counsel, in the presence of the representatives of the Delegation of the EU and La Francophonie. All agreed on the importance of technical discussions between ICC and AU aimed at clarifying the work of the Court and discussing issues of mutual concern. Participants also agreed to work together and coordinate efforts. In addition, Phakiso Mochochoko briefed the Heads of EU delegations in Addis Abeba on the situations Libya and Côte d'Ivoire, as well as other cases before the Chambers of the ICC.

13 May - Prosecutor Moreno-Ocampo briefed at the seat of Court some 50 Ambassadors of States Parties and non States Parties about the ongoing activities of the Office in relation to the situations in Libya and Côte d'Ivoire, including on the next steps the Office intends to take. The Office used this opportunity to provide a clear road map to the States.

14-16 May - Deputy Prosecutor Fatou Bensouda participated in the Sixth Colloquium for International Prosecutors, held in Freetown. During her visit to Sierra Leone, the Deputy Prosecutor also met with President Ernest Bai Koroma, as well as with Deputy Minister of Foreign Affairs and International Cooperation, Ebun Jusu, updating them on recent activities of the Office and discussing issues of mutual concern.

IV. Upcoming Events

- 24 May - Prosecutor attends the screening of “The Prosecutor” at the One World Human Rights Film Festival, Brussels
- 24-25 May - OTP participates in a regional conference on the ICC, Doha
- 8 June - Prosecutor briefs the UN Security Council on the situation in Darfur, New York
- 16 June - Deputy Prosecutor speaks at the Atrocity Law and Policy Class at Utrecht University, Utrecht

** 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*