



OTP Weekly Briefing

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HIGHLIGHTS: * UN SECURITY COUNCIL TAKES FURTHER STEPS TO ENSURE THE PROTECTION OF CIVILIANS IN LIBYA AND RECALLS NEED FOR ACCOUNTABILITY FOR THOSE RESPONSIBLE FOR CRIMES AGAINST CIVILIANS
*** UNSC MEMBERS DECIDE NOT TO SUPPORT REQUEST FOR DEFERRAL OF THE KENYA SITUATION**

PREVIEW

- Prosecution sought leave to appeal the decision issuing the summons to appear against Kenyatta, Muthaura and Ali, p.3



18 March - The UN Security Council adopted [Resolution 1973](#) to further ensure the protection of civilians. In remarks after the adoption of Resolution 1973, French Foreign Minister Alain Juppé [stated](#) that “the situation on the ground is more alarming than ever, marked by the violent re-conquest of cities that have been released,” stressing that the Security Council could not stand by and “let the warmongers flout international legality”.

The Council recalled in the resolution “its decision to refer the situation in the Libyan Arab Jamahiriya since 15 February 2011 to the Prosecutor of the ICC, and stress[ed] that those responsible for or complicit in attacks targeting the civilian population, including aerial and naval attacks, must be held to account”.

Prosecutor Moreno-Ocampo gave a statement in relation to the ultimatum by the Government of Libya to the citizens of Benghazi warning that all civilians must leave the areas they plan to attack. The Prosecutor made clear in his statement that “the issuance of such a warning does not provide an excuse to attack civilians. Any indiscriminate attack against civilians would constitute war crimes and the commanders will be held responsible. There will be no impunity”.

On 21 March, following a question during a parliamentary session if officials and military chiefs who are still standing firm with Colonel Gaddafi have chance of being hauled before the ICC, UK Prime Minister David Cameron [said](#): “The message we should give today, very clearly, to those people still working or fighting for Gaddafi is that if you continue to do so, you could end up in front of the ICC, and now is the time to put down your weapons, walk away from your tanks, and stop obeying orders from this regime.”

The investigation continues, with the goal of producing an arrest warrant application in the coming weeks, at the same time as the Prosecutor’s report to the UN Security Council on 4 May.

UNSC refuses to support deferral of Kenyan cases

18 March - During an informal session at the UN Security Council, member States decided not to support the Government of Kenya’s request to defer the Kenya cases at the ICC in accordance with Article 16 of the Rome Statute. Gérard Araud, Permanent Representative of France to the UN [said](#) “the conditions of the implementation of Article 16 are not fulfilled”.

I. Investigations and Prosecutions

Over the reporting period, the OTP presented eight 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 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.

18 March - the UN Security Council working group on children and armed conflict [called](#) for an end to the recruitment and use of children in armed conflict in the DRC, and highlighting individuals subject to its sanctions list, including Bosco Ntaganda, who remains at large in DRC despite the ICC warrant issued for his arrest in 2006.

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.

16-18 March - Defence Ministers and Chiefs of Defence from Uganda and the DRC, together with the UN Secretary General's Special Representative and head of MONUSCO Roger Meece [met](#) to cement further cooperation in operations to combat continuing substantial LRA attacks. Ugandan Defence Minister Crispus Kiyonga [reportedly](#) emphasized: *"We are not giving up on the prosecution of Kony. If we capture him then, we shall send him to the ICC"*. SRSG Meece reportedly pledged continued support for both countries in their operations against the LRA. Earlier in the month, UNHCR had [highlighted](#) intensifying attacks in Orientale province since the beginning of the year including in more populated areas, with over 50 raids, 35 people killed, 104 abducted and more than 17,000 newly displaced people. On 16 March MONUSCO [reported](#) that earlier in the week it had freed 38 people abducted by the LRA following an attack on an FARDC post at Digouma, West of Banda, killed 5 LRA members and captured one.

18 March - The UN Security Council working group on children and armed conflict [agreed on](#) the need for a strengthened coordinated regional strategy to address the impact of the activities of the Lord's Resistance Army on children in the region. They proposed that the President of the Security Council write to the DRC to recommend development, along with the Governments of the Central African Republic, Uganda and the Sudan, a regional strategy in order to address abuses committed by the Lord's Resistance Army.

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.

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 Chamber requested them to appear before the Court on 7 and 8 April 2011.

14 March - The Prosecution sought [leave](#) to appeal the decision issuing the summons to appear against Kenyatta, Muthaura and Ali. The Prosecution raises two issues: (1) the first issue presents the construction of “State or organizational policy” in Article 7(2)(a), and calls for the Court to resolve whether Article 7(2)(a) permits the prosecution of persons within a network which includes State actors who act pursuant to an “organizational policy”, but not a “State policy”, when they, but not the State itself, use elements within the state apparatus to commit crimes; (2) the second issue addresses the authority of the Pre-Trial Chamber to reject, without explanation or legal support, the Prosecution’s specific characterisation of criminal activity – here, its characterization that forced circumcision constitutes an act of sexual violence – and to substitute a general charge of “inhumane act” for the Prosecution’s selected charge. As both issues bear on the criminal charges that the suspects will be called upon to answer, the Prosecution holds that they must be resolved now, otherwise it will be irremediably prevented from pursuing its factual and legal theory of the case.

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.

14 March - During a Human Rights Council [session](#) on Libya, Slovenia “welcomed the recent announcement of the Prosecutor of the International Criminal Court that he would launch an official investigation into the matter.” Portugal said that “the tragic degradation of the human rights situation in Libya due to unacceptable acts of aggression required the international community to remain determined in the fight against impunity. The human rights violations in Libya could not remain unpunished and those responsible must be held accountable in the framework of international justice.” HRW stated that: “The (UN) Commission of Inquiry would play a key role in instigating violations and setting the stage for investigations by the ICC.”

21 March - During an EU Council meeting, the EU Ministers of Foreign Affairs held an in-depth discussion on the situation in Libya and [concluded](#) *inter alia*: “The Council expresses its concern at the present situation in Libya and condemns the gross and systematic violation of human rights, violence and brutal repression perpetrated by the regime against the Libyan people. It recalls the UNSC decision to refer these issues to the ICC.”

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 March - [Speaking](#) at the 16th session of the Human Rights Council, the representatives of Côte d’Ivoire declared that given the serious decline in the human rights situation, the President and Government of Côte d’Ivoire would like to receive an International Commission of Inquiry to look at human rights violations so that those who committed those crimes were brought to justice. They consider it is imperative that the perpetrators are held accountable for their acts before the ICC.

15 March - HRW [stated](#) that the grave violations of human rights in Côte d’Ivoire give every indication of amounting to crimes against humanity. Their new investigation indicates that the pro-Gbagbo forces are increasingly targeting immigrants from neighbouring West African countries. The report also indicates that serious violations of humanitarian law and human rights were committed in recent weeks by armed forces fighting for Ouattara, including reprisal killing of civilians and extra-judicial executions.

15 March - The OTP received a Memorandum from Ouattara’s lawyers compiling the information on crimes committed in the post-election violence in Côte d’Ivoire since 28 November 2010. The Memorandum contains information on the facts, their legal characterisation under the Rome Statute as well as an elaboration on the jurisdictional and admissibility issues.

16 March - According to [ONUCL](#), at least 25 people were killed in Côte d'Ivoire when forces loyal to Laurent Gbagbo fired a series of shells into a neighbourhood that supports Alassane Ouattara.

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



15 March - Deputy Prosecutor Fatou Bensouda participated in the international colloquium "Women's rights, Migrant women's rights and international humanitarian law" in Dakar, Senegal. During her visit, the Deputy Prosecutor met with Minister of Foreign Affairs, Me Madické Niang as well as with Justice Minister Cheikh Tidiane Sy, to update them on the current activities of the Office and discuss issues of mutual concern. The Deputy Prosecutor also met with singer Youssou Ndour, discussing *inter alia* his project to raise awareness for international criminal justice.

18 March - Prosecutor Moreno-Ocampo received a Norwegian parliamentary delegation, led by the President of the Norwegian Parliament, Dag Terje Andersen, accompanied by the Norwegian Ambassador to The Netherlands, Eva Brugge. He briefed the delegation on the investigations and cases as well as the preliminary examination activities of the Office. The Prosecutor explained the need to maximize the Court's impact, highlighting its preventive effect and calling for the integration of peace and justice efforts in which regard Norway, together with other States, could fulfil a leadership role.

21 March - Prosecutor Moreno-Ocampo delivers a keynote speech on the importance of education in the prevention of mass violence and in developing global citizens at an event organized by Facing History and Ourselves in London.

21 March - The EU Council [updated](#) the EU's position in support of the ICC. On 16 June 2003, the Council adopted Common Position 2003/444/CFSP on the ICC. On the occasion of the Review Conference in Kampala, the EU pledged to review and update its instruments in support of the ICC. The objective of the Council decision is *inter alia* to support the independence of the ICC and its effective and efficient functioning and to support cooperation with the ICC. As HRW stated, the adoption of the decision on the ICC underscores the EU's strong commitment to combating impunity for the gravest crimes, restating the EU's conviction that justice for these crimes is essential to preserve peace and international security, and emphasizing the importance of state cooperation.

IV. Upcoming Events

- 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
- 4 May - Prosecutor briefs the UN Security Council on the situation in Libya, New York
- 7 June - Prosecutor briefs the UN Security Council on the situation in Darfur, New York

** 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*