



## OTP Weekly Briefing

14-20 September 2010 – Issue #55

### THIS WEEK'S HIGHLIGHTS:

❖ PROSECUTION OFFERED TO DISCLOSE IDENTITY OF INTERMEDIARY 143 AND APPLIED TO PROVISIONALLY RESUME THE TAKING OF TESTIMONIES IN THE LUBANGA CASE AFTER TRIAL CHAMBER II DIRECTED THE VWU TO IMPLEMENT FULL PROTECTIVE MEASURES

❖ OTP LEADS GALVANIZING EFFORTS TO ENSURE THE IMPLEMENTATION OF THE OUTSTANDING ARREST WARRANTS IN THE DARFUR SITUATION, HIGHLIGHTING IN PARTICULAR THE ROLE OF HAMED HARUN

### PREVIEW

- Prosecutor statement on recent violence in Conakry, p. 4

### Disclosure of Intermediary 143's identity

On 13 September, the Prosecution offered to disclose the identity of intermediary 143 to the Defence in the Lubanga case. In the Katanga/Ngudjolo case, Trial Chamber II directed the VWU to implement the full protective measures for the same intermediary.

After the TC I imposed the stay and directed that no further submissions would be entertained, it clarified that its order did not bar the parties and participants from making filings that are directly relevant to the stay. In its 16 September [application](#), the Prosecution indicated it “understands that disclosing the identity of Intermediary 143 does not resolve the concerns that triggered the order to stay proceedings. However, the Prosecution invites the Chamber to allow the taking of testimony without lifting the stay, leaving to a later period the determination whether the testimony taken should be admitted in the trial”.

Indeed, the Prosecution submitted that the Chamber has the inherent authority to effect a partial lifting, and that in that framework, the Prosecution submitted the Chamber has the power to allow testimony to be taken even while it continues a stay of proceedings.

The Prosecution thus submitted that “a proposal to allow the Chamber to hear testimony – in advance of the possible resumption of the trial – that might be admitted without further delay if the stay is lifted, would better serve the rights of the parties and participants, of the victims who deserve closure and of witnesses who face continuing stress from the indefinite postponement of their testimony. And it will serve the Court's interest by enabling the use of its resources notwithstanding that the trial is stayed. At the same time, this provisional action during the pendency of the stay order would preserve the Chamber's ruling that trial proceedings must be stayed and permit the Appeals Chamber to resolve the underlying legal and factual issues”.

### OTP activities to galvanize efforts to implement the Darfur arrest warrants

The Office of the Prosecutor had meetings during the last week with State Parties and non-Parties to galvanize efforts to implement the arrest warrants issued by the Pre-Trial Chamber in the Darfur situation. During these meetings the Prosecutor highlighted that in June 2008, the UNSC issued a Presidential Statement calling on the Government of the Sudan (GoS) to arrest Harun and in June 2010 the UNSC was formally informed by the Court that the GoS is not cooperating in Harun's arrest. Ten ICC States Parties on the UNSC can be mobilized to request his removal from South Kordofan and his arrest.

The Prosecution considers that over the years, Ahmed Harun has been the kingpin of a criminal policy, arming and recruiting militias to attack civilians, in Kordofan during the 90s, in Darfur from 2003 to 2008, and in Abyei in 2008. In this case, the whereabouts of those sought by the Court are clear: Harun is the current Governor of South Kordofan.

[Continued on page 5]

## I. Investigations and Prosecutions

Over the week, the OTP presented 7 filings in the various cases and conducted 7 missions in 5 countries.

### I.1. Situation in the [Democratic Republic of the Congo \(DRC\)](#)

This situation was referred by the DRC in April 2004. The OTP opened its investigation in June 2004, focusing on Ituri where 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 FNI and FRPI. The trial of [Thomas Lubanga Dyilo](#) began on 26 January 2009. The trial of [Katanga and Ngudjolo Chui](#) began on 24 November 2009. [Bosco Ntaganda](#) is at large. In September 2008, the OTP announced the start of its investigation into alleged crimes in the Kivus.

13 September - Margaret Wallström, Special Representative of the UN Secretary-General on Sexual Violence in Armed Conflict [asked](#) European Union states to follow the lead of the US Government and establish new laws on conflict minerals from central and eastern Africa. According to SRSG Wallström, the new US statute will help to prevent mass rape in the region. Meanwhile the DRC Government has [suspended](#) all mining activities in eastern DRC in a move aimed at undermining illegal networks fuelling the region's violence including the support networks of militia groups such as the FDLR.

20 September - In an address to the UN Human Rights Council, DRC Minister of Justice Luzolo Bambi Lessa [pledged](#) to “spare no effort” in ending impunity for sexual violence. He added that a military tribunal is committed to ensuring that perpetrators of the recent 151 cases of rape and sexual violence in the North Kivu province would be brought to justice.

### I.2. Situation in [Uganda](#)

This situation was referred by Uganda in January 2004. The OTP opened its investigation in July 2004. Five arrest warrants have been issued against [top leaders of the Lord's Resistance Army \(LRA\)](#): Joseph Kony, Vincent Otti (allegedly killed in 2007 on order of Kony), Okot Odhiambo, Raska Lukwiya (killed on 12 August 2006, whose arrest warrant has been withdrawn), and Dominic Ongwen. These arrest warrants are outstanding. Since early 2008, the LRA is reported to have killed more than 1,500, abducted more than 2,250 and displaced well over 300,000 in DRC alone. In addition, over the past year, more than 80,000 people have been displaced, and close to 250 people killed by the LRA in Southern Sudan and the Central African Republic.

20 September - Uganda Defence Minister Crispus Kiyonga and DRC Defence Minister Charles Mwando on behalf of their Governments [vowed](#) to work together to combat the LRA. “*In this respect, they agreed to do everything possible to neutralise Joseph Kony [and] his group [...]*”, said the joint statement.

### 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. Following his initial appearance on 18 May 2009, he was allowed to leave The Netherlands. 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 Pre-Trial Chamber set the [confirmation of charges hearing](#) for Banda and Jerbo for 22 November 2010.

15 September - [According](#) to Max du Plessis, of the Institute for Security Studies, “*Africa is not at war with the ICC. African states were key participants in the formation of the Rome Statute in 1998 and Africa remains its largest signatory grouping. [...] Despite obvious difficulties, Africa remains engaged in the strengthening and expansion of the Court, most recently through its support for the extension of the ICC’s jurisdiction over the crime of aggression at the Court’s first Review Conference in Kampala earlier this year. In the face of these cold facts, the Africa-versus-the ICC characterisation is both unhelpful and simplistic. [...] Secondly, Africa is not united behind al-Bashir.*”

*While there are powerful interests within the AU willing to protect Sudan's President, the 'African position' on the ICC is contested and by no means monochromatic. [...] A failure to recognise the various shades of the relationship between the Court and Africa's capitals is unhelpful. This oversimplification, reminiscent of a general predisposition within the West to treat Africa en bloc, should be resisted: it plays directly into the hands of certain African politicians who are keen to present the ICC as anti-Africa, and Africa as anti-ICC."*

#### **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. On 30 August Trial Chamber III held a status conference where it heard submissions on setting the trial date.

#### **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.

## **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 analysing allegations of international networks supporting armed groups committing crimes in Colombia.

15 September - The Special Representative of the Secretary-General on children and armed conflict, Radhika Coomaraswamy, presented her annual [report](#) to the Human Rights Council, in which she included the guerrilla group Fuerzas Armadas Revolucionarias de Colombia-Ejército del Pueblo (FARC-EP), amongst the persistent violators of the international law by recruiting and using children, killing and maiming children and rape and sexual violence against children. The list also includes the guerrilla group Ejército de Liberación Nacional (ELN).

### 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.

13 September - The Human Rights Council published the new [report](#) of the Secretary-General focusing on the status of implementation of the recommendations contained in the report of the United Nations Fact-Finding Mission on the Gaza Conflict. It reviews the actions undertaken so far by all actors to which the Mission addressed recommendations, including the Security Council, the ICC Prosecutor, the State of Israel, Palestinian authorities, Palestinian armed groups and other actors.

### 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. The most serious crimes, including alleged widespread sexual violence, were committed in 2002-2005. 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. The Guinean authorities extended full cooperation to the Court.

14-19 September - International and regional organizations, such as The Economic Community of West African States (ECOWAS), the [UN Secretary General](#), governments including [France](#), and civil society groups, such as [FIDH](#), have voiced their concerns over violence in Conakry and have called Guineans and candidates' sympathizers to exercise restraint and tolerance.

15 September - In light of information of the death of one person and injury of 50 others in clashes between sympathizers of the two presidential candidates on 11 and 12 September 2010 in Conakry, the Prosecutor issued the following statement: "*As part of its ongoing preliminary examination, my Office is closely monitoring developments in Guinea and in particular the risk of upsurges of violence. My Office has taken note of the clashes on 11 and 12 September 2010 in Conakry that have resulted in a dead and fifty wounded. I would point out that electoral violence could potentially fall within the jurisdiction of the ICC when it translates in the commission of crimes defined in the Rome Statute. For instance, I asked, and received on 31 March 2010, authorization to investigate crimes against humanity falling within the ICC's jurisdiction committed in the context of post-electoral violence in Kenya in 2007-2008. It is incumbent on all actors in Guinea to exercise the restraint necessary to avoid a similar scenario in Guinea*".

### III. Cooperation – Galvanizing Efforts to Arrest

#### Continuation of THIS WEEK'S HIGHLIGHT:

Ahmad Harun's role as Governor of South Kordofan should be of particular concern because he has been instrumental in committing crimes in Darfur, and his previous actions constitute an early warning for the situation in the South of Sudan:

- As the Minister of State for the Interior from March 2003, Harun coordinated the attacks against villages in Darfur, displacing 2.5 million civilians into Internally Displaced Persons (IDP) camps;
- As Minister of State for Humanitarian Affairs, from September 2005 onwards, a few months after the UNSC referral to the ICC, he implemented a new criminal tactic: the slow extermination in the camps through fear and rapes.

The international community's denial of Harun's background allowed his appointment as Governor of South Kordofan, a critical area in the border between the North and South of Sudan. With his appointment, President Al Bashir sent a message to those who would follow illegal orders: they will be protected, there will be impunity.

Harun has been accepted and even praised by the international community as an "efficient organizer". However there is serious information indicating that the Misseriya militias are being regularized into GoS forces, the way the Janjaweed were regularized into the Border Guard.

During his meetings, the Prosecutor stressed that the upcoming High Level meeting on the Sudan at the UN on 24 September is an opportunity to discuss the need for Harun's removal and arrest. There are 51 charges of crimes against humanity and war crimes pending against him. A UNSC request to immediately remove him from his position as Governor of South Kordofan (with his eventual arrest) would have a chilling effect on the militias he works with, and help prevent a recurrence of massive crimes. Harun's removal would also serve to undermine the sense of impunity of those committing crimes in the Sudan.

On 15 September, following a question regarding the visit of Prosecutor Moreno-Ocampo, US Special Envoy to Sudan, Scott Graton, [confirmed](#) that the US continues to push for Sudan to comply with ICC requests in relation to the warrants issued against Ahmed Harun and President Al Bashir.

Meanwhile, crimes continue in Darfur. On 14 September, Justice Mohamed Chande Othman, the Independent Expert on the situation of human rights in Sudan, [stated](#) that new information appears to confirm reports that more than 37 people were killed and over 50 injured after a militia group attacked the village of Tabra in northern Darfur on 2 September. Chande said he was "deeply disturbed about these killings which highlight the continuing deterioration of the situation in Darfur", and urged the government to conduct "as a matter of urgency a thorough and transparent investigation into the attack on civilians in North Darfur." He stressed that "this incident should be investigated thoroughly and impartially and those responsible should be brought to justice."

15 September - UK Foreign Secretary William Hague in a [speech](#) about the place of values in foreign policy, highlighted the UK's commitment to "support the pioneering work of the International Criminal Court and work to reinforce its authority, including speaking out when governments that are party to the Rome Statute allow indicted individuals to visit their country with impunity."

19 September - Prosecutor Moreno-Ocampo attended a special evening on Africa organized by the Cinema for Peace Foundation in New York. Along with other guests, Prosecutor Moreno-Ocampo took the opportunity to highlight the Court's work in Africa and the need for justice: "Africans are leading the way in establishing a new idea: a global agreement to stop massive violence". The Prosecutor pointed out that the biggest challenge in Africa is the ongoing genocide in Darfur.

### IV. Upcoming Events

- 21 September - Deputy Prosecutor delivers speech at a conference of the Konrad Adenauer Stiftung, 'Everything that is just. International jurisdiction in Africa', Berlin
- 28-29 September - Prosecutor participates in 25<sup>th</sup> anniversary of the Center for Victims on Torture, Minneapolis

- 30 September - Prosecutor in New York for various meetings and a lecture at the NYU Forum “The gender of atrocity: Accountability vs. Impunity in Sudan and beyond”
- 3-4 October - Prosecutor makes official visit to Denmark
- 5-6 October - Prosecutor attends meeting organized by the Hauser Center for Nonprofit Organizations, Harvard University, entitled ‘Strengthening Justice in the Context of ICC Preliminary Examinations’, Bellagio, Italy
- 10 October - Deputy Prosecutor attends national celebration of the third edition of the ‘Marche Mondiale des Femmes’ organized by the International movement of Feminists, Tervuren, Belgium
- 19-20 October - Prosecutor and Deputy Prosecutor participate in OTP-NGO Round Table, The Hague
- 26-27 October - Prosecutor participates in an event organised by the NY University School of Law, New York
- 11 November - Prosecutor participates in conference ‘Transparency and accountability: Guarantees of good governance’, Montevideo

*\* This document reflects the views of the Office of the Prosecutor of the ICC. For more information, contact Mrs. Olivia Swaak-Goldman, International Cooperation Adviser in the Office of the Prosecutor, at [Olivia.Swaak-Goldman@icc-cpi.int](mailto:Olivia.Swaak-Goldman@icc-cpi.int)*