



OTP Weekly Briefing

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HIGHLIGHTS: * UN SECURITY COUNCIL REFERS SITUATION IN LIBYA TO THE PROSECUTOR

***TRIAL CHAMBER REJECTS LUBANGA'S APPLICATION FOR STAY OF THE PROCEEDINGS. DEFENSE PRESENTATION WILL START ON 21 MARCH**

PREVIEW

- 9 soldiers of the DRC armed forces sentenced by military court for rape as crime against humanity, p. 2

UNSC refers situation in Libya to the Prosecutor

26-28 February - On 26 February, The UN Security Council adopted unanimously a resolution referring the situation in Libya to the Prosecutor. The OTP issued the following [statement](#): "United Nations Security Council [Resolution 1970](#) (2011) provides jurisdiction to the ICC over the situation in Libya. The OTP has to now decide whether an investigation into alleged crimes against humanity committed in Libya since 15 February 2011 should be opened.

The Office is currently assessing allegations of widespread or systematic attacks against the civilian population as well as other additional legal requisites established by the Rome Statute. The Office is liaising with relevant organisations including the Arab League, the African Union, the UN Council on Human Rights, the UN High Commission for Human Rights and the UN Secretariat, as well as with States, in order to collect information required.

The OTP is interested in receiving footage and images to confirm the alleged crimes. Additionally the Office is liaising with Libyan officials and army officers to receive information about the identity of authorities with command and control over the organizations allegedly involved in the crimes.

The OTP has to act impartially. The next step will be to decide whether to open an investigation, and eventually collect evidence and request an arrest warrant against those identified as the most responsible. The judges will then decide based on the evidence. In accordance with its mandate to end impunity to contribute to the prevention of future crimes, the Office will act without delay.

"Information suggests that forces loyal to Colonel Muammar Qadhafi are attacking civilians in Libya" said Prosecutor Luis Moreno-Ocampo. "This could constitute crimes against humanity and must stop. The Office will act swiftly and impartially. There will be no impunity for leaders involved in the commission of crimes."

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Defense application for stay of proceedings rejected in Lubanga trial

23 February - The Judges of Trial Chamber I [issued](#) a confidential decision in which they denied Thomas Lubanga Dyilo's Defence application to permanently stay the proceedings as a consequence of the Prosecutor's abuse of the process.

A public version of the decision will be issued in the near future.

Once the trial resumes on 21 March the Defense will start with the substantive part of its case. It has indicated that it will call up to 10 further witnesses. The Prosecution will then determine whether it will seek leave to present evidence in rebuttal.

It is foreseen that the evidence in the trial will likely be over by April / May 2011. After final arguments, the Judges will then decide on the merits of the evidence presented and the applicable law.

I. Investigations and Prosecutions

Over the reporting period, the OTP presented two 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.

21 February - Nine soldiers of the Congolese armed forces including a Lieutenant Colonel were [sentenced](#) to between 10 and 20 years imprisonment by a military court including for rape as a crime against humanity charged under application of the Rome Statute. The soldiers were found guilty of having committed mass rapes in the village of Fizi on 1 January 2011. The trial was held in Baraka, with the support of the international community. The UN Secretary-General's special representative in the DRC Roger Meece [welcomed](#) the verdict. *"The fight against acts of rape, sexual violence [...] requires the strict enforcement of the law and the end of impunity"*, he stated.

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.

17 February - In a review of LRA activity and its effects in 2010, UN OCHA [recorded](#) a total of 306 attacks resulting in 355 deaths and 680 abductions, with over 380,000 people displaced as a result of LRA activity that followed a time of negotiations used to regain resources and attack. Most attacks continue to take place in the DRC where over 250 deaths and over 300 abductions (many of children) were recorded, but abductions also rose in CAR where more than 300 people were abducted.

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.

20 February - SLM/MM leader Minni Minawi [warned](#) UNAMID and other international organizations to evacuate Darfur airports, deeming them now *"strategic military targets"* because Sudanese warplanes use these airports to commit atrocities against civilians and to transport ammunition and weapons to Darfur. UNAMID responded with *"grave concern"* the *"warning statement"* of Minawi, reminding all parties to the conflict of UNAMID's mandate to protect civilians, and calling on the parties to ensure the safety and security of peacekeepers, aid workers and their equipment. UNAMID head Ibrahim Gambari voiced

grave concern over renewed fighting between GoS and rebel forces in North Darfur, calling on all parties to “refrain from further violence and to allow unfettered humanitarian access to the area and to civilians in need of assistance.”

21 February - South Darfur Governor Abd-al-Hamid Musa Kasha [announced](#) that he instigated legal proceedings against the Ministry of Foreign Affairs following accusations by the Ministry that his decision to expel Medecins du Monde threatened the higher interests of the State. Kasha accused the Ministry of inflicting harm and threatening the State’s higher interests as a result of what he said was the ministry’s shedding of tears over international organizations. In August 2010, President Al Bashir reportedly [told](#) a gathering of Darfuri leaders in Khartoum that if any aid group of UN agency or the AU or UNAMID stepped beyond their authority it could be expelled on the same day; Al Bashir reportedly delegated authority to the governors of the three Darfur States to expel foreign organizations as their discretion.

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. The six individuals are formally committed to appear before the Judges if the Chamber accepts the OTP’s applications.

15 February - 29 Kenyan political parties have [united](#) to oppose the request for an ICC deferral. Ben Muema, vice chairperson of the political forum, said Kenya should allow the ICC process to go through, without undermining it, in order to sustain the country’s international standing.

25 February - In reaction to attempts of parts of the Kenyan Government to get a UN deferral for the Kenyan ICC cases, the Network for Global Justice has submitted a [petition](#) to members of the UN Security Council providing 15 reasons why the Kenyan cases before the ICC must not be deferred and to allow the cases to proceed without delays. “Let there be justice for the suspects as well as for the victims” the petition urges the Council.

II. Preliminary Examinations

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

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On 25 and 26 February, the UN Security Council held emergency meetings on the situation, to look into the proposed resolution on Libya, which included sanctions, arms embargo and a referral of the situation to the ICC. The final resolution was [adopted](#) unanimously on 26 February. Resolution 1970 (2011):

- refers the situation in the Libyan Arab Jamahiriya since 15 February 2011 to the Prosecutor;
- *“decides that the Libyan authorities shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor [...] and [...] urges all States and concerned regional and other international organizations to cooperate fully with the Court and the Prosecutor”*;
- invites the Prosecutor to report to the Security Council by 26 April 2011 *“on actions taken pursuant to this resolution”*.

UN Secretary-General Ban ki-Moon [welcomed](#) the resolution: *“It is of great importance that the Council in response has reached the consensus and is determined to uphold its responsibilities for the maintenance of international peace and security. [...] The text sends a strong message that gross violations of basic human rights will not be tolerated, and that those responsible for grave crimes will be held accountable”*.

The French Permanent Representative to the UN, Ambassador Gérard Araud, further [stressed](#): *“The referral of the matter to the ICC will ensure that those responsible for the crimes are brought to justice. The Court has once again showed the rationale for its existence. The resolution recalled the accountability of each State for the protection of its population and the role of the international community when that responsibility was not met. I hope the vote will open a new era for the international community as a whole”*.

Australian Foreign Minister Kevin Rudd [stated](#): *“This is an important step in holding those responsible for committing crimes accountable for their actions. Those who are engaged in committing acts of violence in Libya should take heed - there will be no impunity for their actions.”*

In addition, on 22 February, the High Commissioner on Human Rights Navi Pillay [stressed](#): *“The international community must unite in condemnation of such acts and make unequivocal commitments to ensure justice is rendered to the thousands of victims of this repression [...]. Widespread and systematic attacks against the civilian population may amount to crimes against humanity.”* The UN Human Rights Council [adopted](#) decision S-15/2 on 25 February, *“urgently dispatching an independent, international commission of inquiry, to be appointed by the President of the Council, to investigate all alleged violations of international human rights law in Libya, to establish the facts and circumstances of such violations and of the crimes perpetrated, and, where possible identify those responsible to make recommendations, in particular, on accountability measures, all with a view to ensuring that those individuals responsible are held accountable, and to report to the Council at its seventeenth session [30 May to 17 June 2011]”*.

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.

21-22 February - Soldiers loyal to Laurent Gbagbo allegedly shot at supporters of Alassane Ouattara during demonstrations, killing at least six. In what is thought of as a reprisal attack, at least 10 soldiers loyal to Laurent Gbagbo were killed by unidentified gunmen in Abidjan. UNOCI [issued](#) a statement deploring the recent excessive use of force against demonstrators in Abidjan and surrounding areas: "UNOCI calls on all parties to exercise restraint at a time when political and diplomatic efforts are under way at the highest level to find a peaceful solution to the Ivorian post-electoral crisis".

22 February - Amnesty International [reports](#) that human rights violations including sexual violence and unlawful killings are being perpetrated by forces loyal to Laurent Gbagbo and Alassane Ouattara. Victims and witnesses gave accounts of the ongoing abuses, which followed the November 2010 election.

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

22 February - Pursuant to the Presidential Decree n.4 dated 19 February 2011, published in the Official [Gazette](#) of the Republic of Tunisia, Tunisia has decided to accede to the Rome Statute and to the Agreement on The Privileges And Immunities.

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*