



## OTP Weekly Briefing

19-25 April 2011 – Issue #84

### HIGHLIGHTS:

- **LUBANGA TRIAL ENDING**
- **OTP FILING IN THE KENYA SITUATION ON THE PROSECUTION'S RIGHT TO A FAIR TRIAL**
- **PROSECUTOR WILL REPORT TO UNSC ON LIBYA NEXT WEEK – JUSTICE COULD CONTRIBUTE TO THE PROTECTION OF CIVILIANS**
- **OTP CALLS FOR END OF VIOLENCE IN NIGERIA AND WILL LOOK AT THE RECENT EVENTS IN THE CONTEXT OF ITS ONGOING PRELIMINARY EXAMINATION**

### PREVIEW

- Egypt looking into Rome Statute ratification, p. 5

### End of the Lubanga trial

In the case *The Prosecutor v. Thomas Lubanga Dyilo*, the presentation of the Defence case came to an end on 18 April. The parties and participants are now preparing their closing briefs, which are due for 1<sup>st</sup> June for the Prosecution, the Legal Representatives of the victims and the Office of the Public Counsel for Victims and for 15 July for the Defence. The Trial Chamber will then hear oral closing statements on 25 and 26 August 2011.

### Kenya situation – OTP filing on the Prosecution's right to a fair trial

27 April - The Prosecutor filed a request for leave to appeal the Chamber's 20 April 2011 decision which rejected the Prosecutor's request for disclosure to take place after a final resolution of the Government of Kenya's admissibility challenge. The Prosecution argues that the Decision is affecting its right to a fair trial: *"There are conditions in this case currently affecting the ability of the Prosecution to ensure an effective prosecution: the disclosure of the names of the current witnesses request to take additional protective measures; the Suspects are not detained and are released in their home country; there are serious concerns about their ability to further increase an unsecure environment; the Government of Kenya has filed a State challenge to admissibility; the Prosecution cannot conduct further investigations while the admissibility challenge is pending, except with express permission in exceptional circumstances. The Prosecution submits that the PTC decision forcing it to move forward reduces the scope of the Prosecution right to a fair trial"*. The Prosecution further noted that *"timely intervention by the Appeals Chamber can avoid unnecessary expense of time and resources by the Court and prevent unnecessary risk or disruption to any witness. It will also ensure that the confirmation procedure remains a fair one, where the Prosecution is able to present evidence that meets the Chamber's standards without subjecting the witnesses and their families to unnecessary risk or disruption to their lives"*.

### OTP reports to the UN Security Council on Libya next week

Prosecutor Moreno-Ocampo will present his first report to the UN Security Council on the situation in Libya on 4 May, providing a summary of the activities the Office of the Prosecutor has undertaken to implement Resolution 1970 (2011).

The Security Council Resolution stressed the need to hold to account those responsible for attacks, including by forces under their control, on civilians. The evidence collected shows attacks against unarmed civilians, including shooting of demonstrators during February and systematic arrests and torture currently constituting crimes against humanity and the existence of an armed conflict with alleged war crimes.

It is indeed a characteristic of the situation in Libya that massive crimes are reportedly committed upon instruction of a few persons who control the organizations that execute the orders. Arresting those who ordered the commission of crimes, should the Judges decide to issue warrants, will contribute to the protection of civilians in Libya.

Further cases will be opened as necessary taking into account the full scope of criminality allegedly committed by different individuals in the context of the Libya situation.

### OTP Statement on Electoral Violence in Nigeria

21 April - The Office issued the following [statement](#): *"The Office of the Prosecutor is closely following on the situation in Nigeria and is concerned with the outbreak of violence surrounding the National Assembly and Presidential elections of April 2011. The Office is mindful that the upcoming governorship elections on 26 April 2011 could lead to further violence.*

*In the context of its on-going preliminary examination activities, the Office will seek to establish whether the recent violence may have been planned and organized and whether crimes falling within the Court's jurisdiction may have been committed.*

*The Office of the Prosecutor therefore, urges Nigerians to avoid engaging in acts of violence and further urges the Nigerian government to ensure, on its part, that it contains the on-going violence and forestalls its future re-occurrence, while taking into account its obligation to prevent impunity under the Rome Statute.*

*The Office of the Prosecutor welcomes Nigeria's political leaders' call on their supporters to show restraint and avoid unrest. In accordance with the complementarity principle, the Office will, in the first place, support national investigations into the violence and its perpetrators."*

## I. Investigations and Prosecutions

Over the reporting period, the OTP presented nine filings in the various cases and conducted five missions in four 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.

### 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.

19 April - UN OCHA [reported](#) an increase of over 9% in the number of people displaced in Orientale Province of the DRC during the first quarter of 2011 compared with the previous quarter. They attributed the rise primarily to LRA attacks in areas of Dungu and Faradje between December 2010 and March 2011. Almost 437,000 are now displaced in the province.

### 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.

20 April - When asked about the conflict in Darfur, President Al Bashir [stated](#): *"Of course, I am the president so I am responsible about everything happening in the country". He also added: "Everything happening, it is a responsibility. But what happened in Darfur, first of all, it was a traditional conflict taking place from the colonial days. [...] As a government we fought the ones who were carrying arms against the state, but also some of the insurgents attacked some tribes [...] so we had human losses. But it is not close to the numbers being mentioned in the western media, these numbers are in fact being exaggerated for a reason. It is a duty for the government to fight the insurgents, but we did not fight the people of Darfur."*

#### 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.

20 April - The Prosecutor submitted a [response](#) to Mr. Muthaura's 30 March 2011 Application to the Chamber for an Order to the Prosecutor Regarding Extra-Judicial Comments to the Press. The Prosecutor stated that he believes that the Application should be dismissed, as it has no factual or legal merit and is rather an excuse to seek to silence the Prosecutor. The Prosecutor stated that his comments, which were now at issue, were an expression of proper and legitimate concerns about the possibility that Mr. Muthaura could exercise authority over the witness protection program. The Prosecutor noted in this filing that Mr. Muthaura's resignation to avoid "any doubt of conflict of interest" confirmed that the Prosecutor's concerns were legitimate.

#### 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

19 April - Egyptian Foreign Minister Nabil al-Arabi [stated](#) that *“Egypt is currently taking the required steps to join all United Nations agreements on human rights and to join the ICC”*.

## IV. Upcoming Events

- 4 May - Prosecutor briefs the UN Security Council on the situation in Libya, New York
- 14-15 May - Deputy Prosecutor participates in Sixth Colloquium for International Prosecutors, Freetown
- 24-25 May - OTP participates in a regional conference on the ICC, Doha
- 24 May - Prosecutor attends the screening of “The Prosecutor” at the One World Human Rights Film Festival, Brussels
- 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](mailto:Olivia.Swaak-Goldman@icc-cpi.int)*