



OTP Weekly Briefing

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HIGHLIGHT: OFFICE OF THE PROSECUTOR IS INCREASING TRANSPARENCY AND PREDICTABILITY ON ITS PRELIMINARY EXAMINATIONS ACTIVITIES

13 January - The Office of the Prosecutor held a high-level meeting with some Ambassadors of States Parties and representatives of non States Parties, such as China, Russia and the US, in The Hague, to brief them on the nine preliminary examinations that the Office is conducting. The Office aims to increase the predictability of its decisions, allowing States to factor in the Court's intervention in their political decisions and to maximize the preventative role of the Rome Statute.

PREVIEW

- UNSC Resolution call for accountability and end of impunity for sexual violence, p. 4



The Prosecutor highlighted that “the practice of the Office has shown that the mere initiation of a preliminary examination has a deterrent impact. This impact will depend on the national and international support to the justice activities to end impunity. The Office has a legal mandate, with no flexibility to adjust to political considerations.”

Regarding specific situations, the Prosecutor stressed that Guinea and Cote d'Ivoire offer concrete opportunities to use the Office's preliminary examination to prevent crimes. The Office produced a

[short video](#) on Cote d'Ivoire, demonstrating how the international community is working together to put an end to the conflict and to ensure accountability. In addition, the Office's experience to date has shown that agreement on respect for the law could help to overcome difficult crises, like in the Kenyan situation. The investigations into Kenya and the FDLR are opportunities to maximize the preventative impact of the Court, even prior to a final decision by the judges.

Additionally, and in accordance with its positive approach to complementarity, based on the goals of the preamble and article 93(10) of the Statute, the Office will seek to encourage and cooperate with national and international efforts to conduct genuine national proceedings. Guinea is a recent example of both aspects.

A short note on the situations under preliminary examination and the preventative role of the Office's work is annexed.

I. Investigations and Prosecutions

Over the reporting period, the OTP presented 3 filings in the various cases and conducted 2 missions in 2 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; 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 in Paris.

11 January - Another top FDLR commander defected and joined the reintegration process in Rwanda. Upon arrival in Rwanda, the commander [admitted](#) that the rebel movement has been weakened by the arrests of their leadership following arrest warrants issued by Germany and the ICC. *"The recent arrest of the FDLR leaders was a big blow to the force,"* he said.

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 same period, more than 120,000 people have been displaced, and more than 250 people killed by the LRA in Southern Sudan and the Central African Republic.

I.3. Situation in [Darfur, the Sudan](#)

This situation was referred by the UN Security Council in March 2005. The OTP opened its investigation in June 2005. Three arrest warrants have been issued, against [Ahmad Harun and Ali Kushayb](#), and against [Omar Al Bashir](#), which are outstanding. Also three summons to appear have been issued, against [Bahar Idriss Abu Garda](#) and against [Abdallah Banda Abaker Nourain and Saleh Mohammed Jerbo Jamus](#). On 12 July, Pre-Trial Chamber I issued a [second warrant of arrest](#) against Omar Al Bashir for three counts of genocide committed against the Fur, Masalit and Zaghawa ethnic groups: genocide by killing, genocide by causing serious bodily or mental harm and genocide by deliberately inflicting on each target group conditions of life calculated to bring about their physical destruction. Abu Garda [voluntarily appeared](#) before the Court pursuant to a summons. The confirmation of charges hearing was held on 19-30 October 2009. On 8 February 2010 the Pre-Trial Chamber issued a decision declining to confirm the charges. The OTP [requested](#) leave to appeal this decision on 15 March and this was denied by the PTC on 23 April. The OTP will present additional evidence. On 25 May the PTC Chamber issued its [Decision informing the United Nations Security Council about the lack of cooperation by the Republic of the Sudan](#) in the case against Harun & Kushayb. On 17 June, Abdallah Banda Abaker Nourain and Saleh Mohammed Jerbo Jamus [appeared](#) voluntarily before the ICC, to answer charges of war crimes for their roles in the 2007 attack against African Union peacekeepers in Haskanita. The [confirmation of charges hearing](#) for Banda and Jerbo took place on 8 December 2010.

13 January - The SPLM/A military spokesperson, Mjak Akol, [accused](#) Ahmed Harun of orchestrating the arming of the Missiriyia militias who recently attacked SPLM/A forces and Dinka Ngok in the Abyei region. Akol added that Harun's recent visit to Abyei also had a secret purpose: to divert the attention of the Abyei administration from the movements of the Missiriyia militias in the nine North West regions of Dinka Ngok, giving a chance to the Missiriyia militias to regroup, rearm and reposition themselves in anticipation for a new wave of attacks on the Dinka Ngok.

13 January - Amnesty International [wrote](#) to the UN Secretary-General criticising the recent assistance given by the UN mission in Sudan in transporting Ahmed Harun, who is subject to an ICC warrant for war crimes and crimes against humanity, to a meeting in Abyei. The Secretary-General's spokesman, Marin Nesirky had [described](#) Harun as *"critical to bringing the Missiriyia leaders in southern Kordofan to a peace meeting in Abyei to stop further clashes and killings"*, and described such transport as *"in accordance with the mandate to provide support to key players."* AI stated: *"While the efforts by UNMIS to defuse tensions and prevent human rights violations should be applauded, providing a safe haven to somebody wanted for war crimes and crimes against humanity, instead of arresting him, is inconsistent with the UN's obligations."*

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.

14 January - Kenyan civil society organizations and key individuals of Kenya's political class [mobilized](#) to collect signatures in support of the ICC. The campaign aims at collecting a minimum of 1 million signatures (5,000 signatures in each of the 210 constituencies) for a "YES Declaration on the ICC" stating very firmly that Kenyans do not support the proposal by parliament to remove Kenya from the ICC, and that this is not their "*desire as the Kenyans the MPs purport to represent in Parliament.*"

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.

13 January - Secretary-General Ban Ki-moon [voiced](#) concerns after forces loyal to Mr. Gbagbo attacked and burned UN vehicles, and warned them that they will be held accountable for their criminal attacks on UN peacekeepers.

14 January - The UN High Commissioner for Human Rights Navi Pillay [announced](#) that the number of people killed in Côte d'Ivoire's political crisis has risen to 247, on both sides of the political divide. The High Commission has also received reports of at least 49 disappearances and three mass graves that they have been prevented from visiting by security forces.

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

16-17 December - The UN Security Council held a debate on Women, Peace and Security. Opening the meeting, Secretary-General Ban Ki-Moon [thanked](#) Council members for adopting the resolution, saying: "*You are putting in place a vital building block for holding perpetrators accountable.*" SRSG Wallström [stated](#): "*The resolution the Council adopted today may not bring justice to every victim throughout the history of war – but it will help to ensure that conflict-related sexual violence no longer goes unreported, unaddressed or unpunished.*" Likewise, a number of states referred to the ICC's important role in the area. This included four Security Council members: France, Brazil, Mexico (no longer a UNSC member) and Austria (no longer a UNSC member). It

also included eight other states – Germany (currently a UNSC member), Liechtenstein, Finland, Switzerland, Slovenia, Italy, Chile and Spain – as well as the Human Security Network. On behalf of the Network, Costa Rica [stated](#): “Neither silence, tolerance, nor impunity are an option when facing the perpetrators”. The Security Council adopted [resolution 1960](#), “Recalling the inclusion of a range of sexual violence offences in the Rome Statute of the International Criminal Court and the statutes of the ad hoc international criminal tribunals”, as well as “recalling the responsibilities of States to end impunity and to prosecute those responsible for genocide, crimes against humanity, war crimes, and other egregious crimes perpetrated against civilians.”



14 January - Approximately a hundred individuals demonstrated in front of the ICC headquarters in The Hague, calling for an end to the alleged human rights violations in Tunisia, and asking for the Court’s intervention. The Office can take no action because Tunisia is not a State Party and has not accepted the Court’s jurisdiction.

IV. Upcoming Events

- 20-21 January - Prosecutor holds high level meetings in New York
- 24-26 January - Deputy Prosecutor participates in the 17th Pre-Summit Consultative Meeting on Gender Mainstreaming in the African Union, Addis Ababa

* 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