



OTP Weekly Briefing

8-14 June – Issue #41

THIS WEEK'S HIGHLIGHT:

PROSECUTOR TO UN SECURITY COUNCIL: THE MEANS OF ENSURING SUDANESE COMPLIANCE WITH UNSC RESOLUTIONS ARE IN YOUR HANDS

PREVIEW

Inscription of Harun and Kushayb on 1591 sanction list discussed in sanctions committee, [p.2](#)

11 June - In accordance with Security Council resolution 1593 Prosecutor Moreno-Ocampo briefed the UN Security Council on the activities of the OTP regarding the [situation in Darfur, the Sudan](#).

Referring to the Pre-Trial Chamber's '[Decision informing the United Nations Security Council about the lack of cooperation by the Republic of the Sudan](#)' in the case against Harun & Kushayb, which established that the Sudan is not complying with UNSC 1593, the Prosecutor stressed: *"The means to secure compliance by the Sudan of its obligations under UNSC Resolution 1593 are a prerogative of this Council. (...) I hope the Judges' decision can be acknowledged and followed upon by this Council between now and my next report in December 2010."*

The Prosecutor highlighted that crimes against civilians, gender crimes and hindering of humanitarian aid remain unabated in Darfur: *"the crime of extermination continues"*.



The Prosecutor urged Council members to ensure that the arrest of Ahmad Harun and Ali Kushayb be a consistent request of this organization at all times, through its representatives and envoys in the Sudan, as a critical conditions for securing peace and stability to Darfur.

The Prosecutor recalled that Harun's expertise to mobilize and use militias to attack civilians was used in the past in Southern Sudan, then in Darfur and after in Abyei, in the North-South border. He is now again in the South, North Kordofan ready to provide his services. Normally fugitives of justice go into hiding. Prosecutors have to unearth their whereabouts. This is not the case here. Ahmad Harun is currently the Governor of South Kordofan. He should be arrested before he commits new crimes in his new position.

The Prosecutor had consultations with individual members of the Security Council. He also met with Alain Le Roy, Under-Secretary-General for Peacekeeping Operations, Taye-Drook Zerihoun, Assistant Secretary-General for Political affairs and Patricia O'Brien, Under-Secretary-General for Legal Affairs to discuss severance of non-essential contacts with individuals who are subject to arrest warrants. The Prosecutor discussed with the Special Representative of the Secretary-General for Sexual Violence in Conflict, Margot Wallström, the issue of sexual and gender crimes in the Court's cases, including the ongoing sexual violence in Darfur, as well as the upcoming 10th Anniversary of UNSC Resolution 1325.

I. Investigations and Prosecutions

Over the week, the OTP presented 10 filings in the various cases and conducted 3 missions in 3 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.

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.

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 and one summons to appear have been issued against [Ahmad Harun and Ali Kushayb](#), [Omar Al Bashir](#), and [Bahar Idriss Abu Garda](#). Three arrest warrants are outstanding. The Prosecution [appealed](#) the decision of the majority of the Chamber to dismiss the charges of genocide against President Al Bashir. On 3 February the Appeals Chamber ruled that it was a legal error to reject the charges of genocide against President Al Bashir. 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.

10 June - France confirmed publicly they had requested the inscription of Ahmad Harun and Ali Kushayb on the UNSC 1591 Sanctions list.

10 June - Human Rights Watch [urged](#) UN Security Council members to use the upcoming ICC Prosecutor's briefing on Darfur to send a strong message to Sudan to cooperate with the Court or face Council action.

11 June 2010 - The International Federation for Human Rights (FIDH) [welcomed](#) the report submitted to the UN Security Council by the Prosecutor of the ICC, demanding that the Security Council act upon the report's conclusions by ordering targeted sanctions against individuals allegedly responsible for serious violations of human rights and international humanitarian law, and by condemning the continued commission of crimes in Darfur.

11 June – Nobel Peace Prize winner Shirin Ebadi [described](#) the issuing of the arrest warrant against President Bashir as having a positive impact and underlined her belief that if a warrant had not been issued, the situation in the region would be far worse. “Other dictators too have also come to realise that if they breach human rights, they will end up being tried at the ICC”. She called for President Bashir to be arrested as soon as possible and expressed concern that he has been able to visit many countries without facing arrest, saying “Any country that allows Omar Bashir to visit, has committed a crime. And they are seen as accessories to the crime.”

11 June - The Ambassador of Mexico told the press following the briefing of the Prosecutor that there was general agreement within the Council on the need for cooperation by the Sudan on the Harun and Kushayb case. Ambassador Abdel Mahmood of the Sudan stated that Ahmad Harun was a good man, a friend of his and a servitor of the Sudan.

12. June - European Commissioner for International Cooperation, Humanitarian Aid and Crisis Response, Kristalina Georgieva, called after a 4 day visit for the Sudan to relax a near-blanket ban on travel to remote parts of South Darfur to let aid groups reach civilians, citing 26 of 30 recent requests for road trips having been turned down.

14 June - In the Security Council briefing on the Sudan, the United States, France and Austria referred to the Prosecutor's briefing and to the Pre-Trial Chamber's decision notifying the Council of Sudanese non-cooperation; they requested full cooperation of the Sudan and the arrest of Harun and Kushayb.

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. The trial is set to start on [5 July 2010](#). On 27-28 April, the Trial Chamber held a hearing on admissibility. In parallel, the Office continues to monitor allegations of crimes committed since the end of 2005.

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.

10 June - UN High Commissioner for Human Rights, Navanethem Pillay, [commended](#) the role played by the ICC in Kenya: *"The involvement of the ICC is a major development in the fight against the current almost total lack of accountability for the terrible events that took place in the wake of the elections."*

I.6. Miscellaneous

9 June - During a regional conference in N'Djamena, organized by UNICEF and the Government of Chad, six central African countries, Cameroon, Chad, the Central African Republic, Niger, Nigeria, and Sudan, [signed a declaration](#) to end recruitment of child soldiers.

21 June - Prof Tim McCormack, Special Advisor to the Prosecutor on International Humanitarian Law, will work at the OTP premises in the Hague.

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.

9 June - The annual survey of the International Trade Union Confederation has documented an [increase](#) in the number of trade unionists murdered in 2009. Last year 101 unionist were killed worldwide – an increase of 30% over the previous year. 48 of these murders were committed in Colombia.

10 June - President Uribe [proposed](#) the creation of legislation to protect members of Colombia's armed forces from civil prosecution, following the sentencing of retired army Colonel Alfonso Plazas Vega for his role in the forced disappearance of eleven civilians in the 1985 Palace of Justice siege.

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.

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, in the context of following up on the Goldstone Report. 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. 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.

III. Cooperation – Galvanizing Efforts to Arrest

8 June - States Parties at the Review Conference [adopted](#) a declaration on cooperation, which “*emphasizes the crucial role that the execution of arrest warrants plays in ensuring the effectiveness of the Court’s jurisdiction and further emphasizes the primary obligation of States Parties, and other States under an obligation to cooperate with the Court, to assist the Court in the swift enforcement of its pending arrest warrants*”.

8 June - Prosecutor Moreno-Ocampo held discussions with mediation and peace negotiation experts from the UN, academia and civil society in New York under the auspices of the Center for Humanitarian Dialogue on means to better integrate justice and mediation efforts. Similar consultations will be held in the coming months.

10 June - South African Foreign Ministry Director-General of International Relations and Cooperation, Ayanda Ntsaluba, [confirmed](#) that President Bashir would not attend the World Cup Opening ceremony.

10 June - Nobel Peace Laureate Professor Wangari Maathai [stated](#) at the Review Conference “*her support for the ICC, especially in light of the statements that have been made that the ICC is not good for Africa and should not be supported by Africans because it is targeting this continent. I know that the majority of ordinary Africans support the ICC because they are victims of conflict. Those who may not support the ICC are the leaders who are the perpetrators of violence against humanity. (...) It is not that Africa is being targeted. True African leaders have nothing to fear from the ICC. (...) women have been used and punished. They are the ones displaced to refugee camps and who lose their husbands and children. But by far, the greatest crime against them is that rape is used as a weapon of war.*”

IV. Coming Events

- 21-24 June - OTP mission to Georgia in the context of its preliminary examination work
- 25 June - Prosecutor, as the previous recipient, presents the Seventh Premio Tomás y Valiente to Italian writer Roberto Saviano, Madrid
- June / July– Visit by delegation of Palestinian National Authority delegation to the ICC in the context of the OTP’s preliminary examination activities.
- 5 July - Start of trial of the case *Prosecutor v. Jean-Pierre Bemba Gombo*
- 8 July - Prosecutor speaks on ‘the realities of implementing justice’ at a symposium by Johns Hopkins University, Bologna
- 12 July - Prosecutor participates in an International Student Debate at the University of Amsterdam
- 14-16 July - Deputy Prosecutor participates in an International Conference on ‘Africa and the Future of International Criminal Justice’ at the University of Witwatersrand, Johannesburg

* 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