



**OTP Weekly Briefing**

**17-23 May 2011 – Issue #88**

**HIGHLIGHTS:**

- **CHAMBER CLOSES THE PRESENTATION OF EVIDENCE PHASE IN THE LUBANGA TRIAL**
- **PROSECUTOR INFORMS THE ICC PRESIDENT OF HIS INTENTION TO REQUEST AUTHORIZATION TO OPEN INVESTIGATIONS INTO THE SITUATION IN CÔTE D'IVOIRE SINCE 28 NOVEMBER 2010**
- **OTP AND DEFENSE FILE JOINT SUBMISSION ON THE REMAINING CONTESTED ISSUES IN THE TRIAL AGAINST BANDA AND JERBO IN ORDER TO PROMOTE AN EFFICIENT AND EFFECTIVE TRIAL**

**PREVIEW**

- *International reactions to Al Bashir's trip to Djibouti, p. 6*

**Presentation of evidence phase is closed in Lubanga trial**

20 May - Trial Chamber I ordered the closing of the presentation of evidence stage in the first case of the Court, *The Prosecutor v. Thomas Lubanga Dyilo*.

The Chamber decided that the parties and participants to the trial will present their closing oral statements in public hearings on 25 and 26 August 2011. After the closing statements, the Trial Chamber will pronounce, within a reasonable period of time, its decision. The Chamber will base its decision on the applicable law and on evidence submitted and discussed at the trial.

**President assigns situation in Côte d'Ivoire to Pre-Trial Chamber II**

20 May - The Presidency assigned the situation in the Republic of Côte d'Ivoire to Pre-Trial Chamber II. In a letter to the President of 19 May, the Prosecutor informed him that, after a preliminary examination, the Office had concluded that there is a reasonable basis to believe that crimes within the jurisdiction of the Court have been committed in Côte d'Ivoire since 28 November 2010. The Prosecutor thus informed the President of his intention to submit a request to the Pre-Trial Chamber for authorisation to open investigations into the situation in Côte d'Ivoire since 28 November 2010.

**Joint submission by the Prosecution and the Defense in order to promote an efficient and effective trial in the Banda and Jerbo case**

16 May - Following Pre-Trial Chamber I's order of 19 April to the Prosecution and the Defense to provide it with an update in the status of the discussions on a possible agreement to facts, both Parties filed a [joint submission](#) informing the Judges that the Accused will "contest only the specific issues listed below at their trial:

- Whether the attack on the MGS Haskanita on 29 September 2007 was unlawful;*
- If the attack is deemed unlawful, whether the Accused persons were aware of the factual circumstances that established the unlawful nature of the attack; and*
- Whether AMIS was a peacekeeping mission in accordance with the Charter of the United Nations".*

The Parties noted that "If the Chamber determines that AMIS was a peacekeeping mission established in accordance with the Charter of the UN, that the attack itself was unlawful and that the Accused persons were aware of the factual circumstances that established the unlawful nature of the attack, the Accused persons will plead guilty to the charges preferred against them without prejudice to their right to appeal the Chamber's decision".

The Parties also emphasized that *“The agreement reached by the Parties will significantly shorten the trial proceedings by focusing the trial only on those issues that are contested between the Parties. This will promote an efficient and cost effective trial whilst preserving the rights of victims to participate in the proceedings and protecting the rights of the Accused persons to a fair and expeditious trial”*.

The Parties thus asked the Chamber *“to adopt such procedures as are necessary to facilitate the fair and expeditious conduct of the upcoming trial proceedings only on the limited issues identified in [the] joint filing”*.

## I. Investigations and Prosecutions

Over the reporting period, the OTP presented ten filings in the various cases and conducted one mission in one country.

### 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.

18 May - The UN Security Council, in a [discussion](#) of the situation in the DRC, stressed *“the need for urgent progress, with regard to governance and institution building, on judicial reform and support to domestic courts, in order to ensure the rule of law and strengthen the fight against impunity.”* In this regard, the Council noted the interest of the Congolese authorities for establishing specialized mixed courts to address serious violations of international humanitarian and human rights law, complemented by their existing cooperation with the ICC. It called upon MONUSCO and other relevant international actors to support the efforts of the Congolese government in these fields, and to assist in the restoration of basic services, including access to justice. UN Secretary General Ban Ki-Moon [emphasised](#) the importance of bringing an end to the cycle of impunity, urging international partners to provide necessary support for the Congolese police, army and justice system, and to make identifying and prosecuting perpetrators of serious human rights violations a priority. Raymond Tshibanda, DRC Minister for International and Regional Cooperation highlighted his government’s commitment to bringing an end to impunity for serious crimes.

19 May - Pre-Trial Chamber I [rejected](#) the Defence request for interim release of Callixte Mbarushimana to his domicile in France, on the grounds, *inter alia*, that it is not persuaded that the conditions suggested by the Defence would be sufficient to prevent his obstruction of the proceedings or the continued commission of crimes. It recalled in this regard his experience in information technology, his ability to have internet and telephone access in ways which cannot be easily monitored or controlled and the fact that two commissioners of FDLR commission allegedly reside in France.

### 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.

18 May - In a [Presidential Statement](#), the UN Security Council reiterated its deep concern about continuing activities of the LRA and called for an urgent end to attacks against civilians by all armed groups. The US [emphasised](#) that far more needs to be done to deal with both the LRA and the FDLR. Lebanon [highlighted](#) continuing LRA attacks in the DRC and neighbouring countries, and called for increased efforts to end impunity in the DRC. The UK [spoke](#) of the cross-border challenge to security posed by the LRA, calling for greater coordination of strategies between MONUSCO and other UN missions in the region, and

with regional security forces to improve efforts to protect civilians against LRA attacks. Nigeria and Portugal in similar vein emphasised the need for effective international support and regional cooperation.

### 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.

### 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.

### 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 and [requested](#) Pre-Trial Chamber I to issue arrest warrants against Muammar Abu Minya Gaddafi, Saif Al Islam Gaddafi and Abdullah Al Sanousi on 16 May.

17 May - During the visit of President Song to Colombia, President Santos [stated](#): "Colombia, as a member of the UN Security Council, voted in favor of the resolution authorizing the intervention in Libya. For this reason, we see the recent decision by the ICC Prosecutor, Mr. Luis Moreno-Ocampo, to request arrest warrants against Muammar Gaddafi, his son and brother-in-law, for murder and

persecution of civilians, as a step forward towards. In Libya, as anywhere else in the world, those who commit crimes against humanity must be held accountable and answer for their crimes”.

20 May - Radosław Sikorski, Minister of Foreign Affairs of the Republic of Poland, stated that “Poland welcomes the request of the Prosecutor of the ICC, Mr. Luis Moreno-Ocampo, dated 16th of May, 2011, for issuance of arrest warrants by the Pre-Trial Chamber of the Court against Muammar Mohammed Abu Minyar Gaddafi, Saif Al Islam Gaddafi and Abdullah Al Sanousi. Poland is deeply convinced that all individuals responsible for committing crimes against the Libyan people must be brought to justice. The role of the ICC in this regard remains crucial and of utmost importance.”

23 May - The EU Ministers of Foreign Affairs adopted during a Council meeting the following [conclusions](#): “The Council welcomes the first Report to the UN Security Council by the Prosecutor of the ICC on the Kadhafi regime’s crimes against humanity and war crimes. It also underlines the significance of the request by the Prosecutor for arrest warrants against the three individuals it considers most responsible for crimes against humanity: Colonel Kadhafi, Saif al Islam Kadhafi and Abdullah al-Sanussi, as well as the continued investigations of the situation in Libya, including of war crimes. This request also sends a signal to those who support the Kadhafi regime to dissociate themselves from it and its crimes.”

## 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.

23 May - During the seminar “Legislating for Peace”, organized by the Colombian Senate’s Commission for Peace, President Juan Manuel Santos [called](#) for an end to violence, so that national reconciliation and victims’ reparations can be achieved. Judge Baltasar Garzón, adviser to the OAS Mission to Support the Peace Process in Colombia (MAAP), [stressed](#): “I think [the Justice and Peace law] is a fundamental law and I have supported it since its inception. I have said that there have been many difficulties and it has some aspects to improve. [...] We must define the legal and political framework for this process that has taken five years, and come to achieve the ultimate goal of reconciliation, of just peace, going through the process of justice, truth and reparation”.

### 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. On 4 May 2011, the President of Côte d'Ivoire, Alassane Ouattara, [confirmed](#) his wish for the OTP to conduct independent and impartial investigations into the most serious crimes committed since 28 November 2010 on the entire Ivorian territory.

19 May - HRW [called](#) on the Ouattara government to assist the ICC if it opens a formal investigation into crimes committed in Côte d'Ivoire and to pursue domestic prosecutions of serious crimes by those perpetrators that are unlikely to be tried by the ICC.

20 May - A team of experts of UNOCI issued a [report](#) on incidents and killings that took place on 4 May 2011 in Dabou, Irobo and Grand Lahou, following the retreat of pro-Gbagbo forces from Abidjan to the South of Côte d'Ivoire. The investigation reached the conclusion that at least 55 persons were killed by the Liberian mercenaries and militias and at least one woman from Malinké origin was raped in Irobo, after the militias accused her of supporting the rebels.

## 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

#### *International reactions to President Al Bashir's visit to Djibouti*

11 May - The UK Minister for Africa, Henry Bellingham [expressed](#) disappointment that Djibouti hosted President Al Bashir despite the ICC warrants against him, and emphasized the British government's expectation that the Government of Djibouti should stand by its Rome Statute obligations.

12 May - A spokesperson for the French Foreign Ministry [confirmed](#) that France has carried out a demarche to the Djibouti authorities following the 8 May visit by President Al Bashir. France regretted that President Al Bashir had been able to visit Djibouti freely despite the two ICC warrants against him and recalled the obligation on all States Parties to the Rome Statute to cooperation with the Court.

14 May - A spokesperson for the EU High Representative Catherine Ashton [highlighted](#) the EUHR's concern at the visit by President Al Bashir to Djibouti, and urged Djibouti to respect its obligations under international law to arrest and surrender those indicted by the ICC, firmly recalling the importance of all Member States of the UN abiding by and implementing the resolutions adopted by the UNSC under Chapter VII of the UN Charter, in this case, UNSCR 1593(2005).

19 May - Grenada deposited its instrument of accession of the Rome Statute with the Office of the UN Secretary-General at the UN Treaty Office, becoming the 115<sup>th</sup> State to join the ICC.



20 May - Prosecutor Moreno-Ocampo answered questions from audiences on "BBC World TV Have Your Say"; the programme went out to 75 million viewers, as well as on BBC World Service radio show, with 20 million listeners.

24 May - Prosecutor Moreno-Ocampo held meetings in Brussels with representatives of the European External Action Service (EEAS) and the European Parliament. The Prosecutor also attended the screening of "The Prosecutor" at the European Parliament, as part of the One World Human Rights Film Festival.

### IV. Upcoming Events

- 24-25 May - OTP participates in a regional conference on the ICC, Doha
- 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)