



OTP Weekly Briefing

26 April – 2 May 2011 – Issue #85

HIGHLIGHTS:

- **OTP RESPONDS TO KENYAN GOVERNMENT ADMISSIBILITY CHALLENGE AND REQUESTS THE JUDGES TO DISMISS IT**
- **PROSECUTOR REPORTS TO UN SECURITY COUNCIL ON LIBYA – THE OFFICE WILL REQUEST ARREST WARRANTS AGAINST 3 INDIVIDUALS IN THE FIRST CASE – JUDGES WILL DECIDE**
- **GERMAN COURT WILL OPEN TRIAL AGAINST FDLR PRESIDENT AND VICE-PRESIDENT, DEMONSTRATING COMPLEMENTARITY IN ACTION**

PREVIEW

- President Ouattara announces launch of criminal probe against Laurent Gbagbo, p. 5

OTP files response to Kenyan Government admissibility challenge

28 April - The Prosecutor filed responses to the “Application on behalf of the Government of the Republic of Kenya pursuant to Article 19 of the ICC Statute”. The Prosecutor noted that the “*determination whether a case is inadmissible under Article 17(1)(a) hinges upon “whether there are ongoing investigations or prosecutions” at the time of the proceedings concerning the admissibility challenge.*” Indeed, “*different Chambers of the Court have consistently held that a case is only inadmissible if the State is investigating or prosecuting the same person for the same conduct that is the subject of the case before the Court.*” Consequently, “*the fact that the Applicant is a State and is promising to conduct proceedings is not a valid reason to modify this substantive criterion.*”

Further, the Prosecutor cited the relevant articles and rules of procedure set out in the Rome Statute, which indicate that “*permitting a lengthy timetable for submissions in order to evaluate the evolution of the local judicial institutions has no basis in the Statute, does not entail a case specific inquiry, and would undermine the expeditious conduct of proceedings.*” Additionally, the Prosecution asserted that the 22 supplemental annexes should be rejected as they were filed out of time, and yet noted that the supplemental materials “*effectively demonstrate that there is currently no national investigation or prosecution related to the suspects for the conduct which forms the subject of the cases before the Court.*”

On 27 April, the Kenyan Section of the International Commission of Jurists submitted proposed Amicus Curiae observations to Pre-Trial Chamber II relating to the Article 19 admissibility challenge filed by the Government of Kenya. The Kenyan Section of the ICJ noted that “*Since the cessation of Kenya’s post election violence in February 2008 [...] not a single prosecution has been successfully completed either of a low-level, mid-level or high-level perpetrator.*”

On 2 May, Pre-Trial Chamber II issued decisions on the Government of Kenya’s request for 30 days to reply to observations submitted by the Prosecutor, Defence and OPCV to the admissibility challenge. The Chamber indicated it “*must ensure that proceedings are fair in the sense that, inter alia, the Government lodging the challenge enjoys the opportunity to respond to the parties’ and participants’ observations, but equally expeditious in order to avoid unnecessary delays of the entire proceedings*”. Pre-Trial Chamber II decided to grant the Government of Kenya the opportunity to reply to the observations to its admissibility challenge, but declined the request for a 30 day period within which to do so. The Chamber decided that the Government’s reply should be submitted within the ten days time limit provided in regulation 24(5) of the Regulations, by no later than 13 May.

Prosecutor reports to UNSC on the situation in Libya

4 May - Prosecutor Luis Moreno-Ocampo informed the UN Security Council that in a few weeks he will request the judges to issue arrest warrants against three individuals for crimes against humanity committed in Libya since 15 February 2011 [see the full statement in annex].

In accordance with the Statute, the Office will focus investigations and prosecutions on those who bear the greatest responsibility for the most serious crimes, based on the evidence. This includes those who ordered, incited, financed or otherwise planned the commission of the alleged crimes.

Prosecutor Moreno-Ocampo called on States to prepare for arrests should judges decide to issue arrest warrants: *“Arresting those who ordered the commission of crimes will contribute to the protection of civilians in Libya because it will deter ongoing crimes. It will deter crimes by removing those who ordered the crimes, and by sending a serious message to other potential perpetrators, in Libya and in other situations, that the international community will not condone such crimes. Arrests cannot be successfully conducted without serious planning and preparation, which takes time. The international community should take steps now to assist with such practical planning”*.

In addition, the Office of the Prosecutor will continue investigations on different forms of war crimes allegedly committed as well as commissions of rape and the unlawful arrest, mistreatment and killings of sub-Saharan Africans wrongly perceived to be mercenaries.

The Office will also investigate the alleged commission of war crimes in Libya since the end of February, including the use of imprecise weaponry such as cluster munitions, multiple rocket launchers and mortars, and other forms of heavy weaponry, in crowded urban areas.

German Court opens trials against top FDLR leadership

4 May - A German Court in Stuttgart will [open the trial](#) against Ignace Murwanashyaka und Straton Musoni, President and Vice-President of the FDLR. Charges include war crimes and crimes against humanity charged for the first time under the German Code of Crimes against International Law the implementation law of the Rome Statute. At the same time Callixte Mbarushimana, the FDLR Executive Secretary faces charges of war crimes and crimes against humanity before the ICC. The legal proceedings against the FDLR leadership represent one of the best examples of complementarity provided for by the Rome Statute system to fight impunity for the worst crimes, in these cases crimes committed in the DRC.

I. Investigations and Prosecutions

Over the reporting period, the OTP presented eleven filings in the various cases and conducted six missions in six 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.

Update on the Katanga / Ngudjolo Chui trial

The OTP concluded the cross-examination of two Defense witnesses this week, witnesses 228 and 350. The Defense aims at concluding the presentation of their case by early June and intends to call up to 14 more witnesses.

29 April - The US State Department published a [factsheet](#) on its comprehensive strategy to address sexual and gender-based violence (SGBV) in the DRC. In line with the UN strategy on SGBV, the US government's four key objectives, in support of Congolese efforts, are to (1) Reduce impunity for perpetrators of SGBV; (2) Increase prevention of and protection against SGBV for vulnerable populations; (3) Improve the capacity of the security sector to address SGBV; and (4) Increase access to

quality services for survivors of SGBV. The US Government confirmed to remain committed to working with the DRC Government, the United Nations, and other international and local partners to improve the DRC Government's capacity to prevent SGBV, address the threat from illegal armed entities (including their link to conflict minerals), and break the cycle of impunity for crimes affecting innocent men, women and children.

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.

25 April - In a new [report](#) to the Security Council, UN Secretary General Ban Ki-moon [highlighted](#) continued grave crimes committed by the LRA in Central African Republic, ranging from the killing of children, their forcible abduction and recruitment, sexual violence, to attacks on health centres and denial of humanitarian access, with more than 25,000 people displaced as a result of LRA attacks since early 2010. The Secretary General welcomed CAR government efforts to address the LRA threat, and urged further work together with partners, in collaboration with States in the region under the auspices of the AU.

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.

II. Preliminary Examinations

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

45 communications that may fall under Article 15 were received by the Office in the month of April. 40 of these communications were manifestly outside the jurisdiction of the Court; 5 communications warranted further analysis or were linked to a situation already under analysis. The total number of Article 15 communications received to date is 9,191, of which 4,307 were manifestly outside the jurisdiction of the Court.

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.

27 April - President Ouattara [announced](#) he has launched a criminal probe against Laurent Gbagbo, Simone Gbagbo and 100 other close associates over alleged human rights abuses, notably the attacks by his security forces on opposition protesters after the presidential elections. The first hearings at the Korhogo trial courts will take place on 4 May. The Justice Minister has specified that this preliminary investigation excludes crimes that may fall under the jurisdiction of the ICC. The lawyers of Laurent Gbagbo, Jacques Verges and Roland Dumas, have [lodged](#) a complaint in France for crimes against humanity regarding the alleged massacre committed in Dekoué, Western Cote d'Ivoire on 29-30 March.

1 May - President Ouattara has [named](#) former Prime Minister and former governor of the West African BCEAO central bank Charles Konan Banny to lead the Ivorian Commission for Dialogue, truth and reconciliation.

2 May - The Prosecutor [stated](#) that he plans to ask judges very soon to open an investigation into alleged crimes against humanity and war crimes in Ivory Coast following the 28 November's presidential elections.

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

4 May - See highlight on Prosecutor's briefing to the UN Security Council on the situation in Libya.

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 “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*