



OTP Weekly Briefing

15-20 June 2011 – Issue #92

HIGHLIGHTS:

- **OTP PUBLIC NOTICE: VICTIMS OF VIOLENCE COMMITTED SINCE THE 2010 PRESIDENTIAL ELECTION IN CÔTE D'IVOIRE HAVE 30 DAYS TO MAKE REPRESENTATIONS TO ICC ON THE OPENING OF AN INVESTIGATION BY THE PROSECUTOR**
- **OTP DISCUSSES ONGOING ACTIVITIES REGARDING LIBYA AND PALESTINE, AS WELL AS SITUATION IN THE ARAB WORLD, WITH QATARI ATTORNEY-GENERAL, JUSTICE MINISTER FROM THE INC-LIBYA AND PALESTINIAN JUSTICE MINISTER**
- **JUDGE BALTAZAR GARZÓN HOLDS MEETINGS WITH THE OTP TO DISCUSS HIS MONITORING ACTIVITIES IN COLOMBIA FOR THE OAS**

PREVIEW

- 2011 World Development Report acknowledges for the first time that justice is essential to break cycles of violence, and allow for human and economic development, p. 6

OTP informs victims of alleged crimes in Côte d'Ivoire that they can send their comments on the possibility of an investigation to the Judges

17 June - The OTP [informed](#) victims of alleged war crimes and crimes against humanity committed in Côte d'Ivoire by any party following the presidential election of 28 November 2010 that the Prosecutor will shortly request authorization from the Pre-Trial Chamber II to open an investigation into such alleged crimes, under article 15 (3) of the Statute.

Victims of the post-election violence in Côte d'Ivoire can send their comments to the Judges of the Pre-Trial Chamber II on whether an investigation on such alleged crimes should be opened. The victims or their legal representatives have 30 days from this notice to make representations to the Pre-Trial Chamber. Victims can make their representations in writing to the Pre-Trial Chamber, which they should channel through the Registry to the postal address below:

International Criminal Court - Pre Trial Chamber II - Situation in Côte d'Ivoire
PO Box 19519
2500 CM, The Hague - The Netherlands

Victims may also send their representations to the Pre-Trial Chamber to the following email address:
otp.informationdesk@icc-cpi.int

The Pre-Trial Chamber may request additional information from any of the victims who have made such representations, and may hold a hearing if it considers it appropriate.

The Chamber will give notice of its decision on the Prosecutor's request to victims who have made representations.

Should the Judges authorize the opening of the investigation; victims will also have the opportunity to participate in the proceedings and, at a later stage, to request reparations.

OTP meets with Qatari Attorney-General, INC-Libya and Palestine Ministers of Justice to discuss ongoing activities and situation in the Arab World

16 June - The Office of the Prosecutor held meetings with the Qatari Attorney-General Dr. Ali bin Ftais Al Marri; with Minister of Justice from the Interim National Council – Libya (INC – Libya), Mohamed Allagy; and with Palestinian Minister of Justice Ali Khashan, to discuss situations under analysis and under investigation, as well as the evolving situation in the Arab world.

In the meeting with Libyan Minister Allagy, the Minister reiterated the Libyans' commitment to enforce any arrest warrants from the Court, if issued, and to cooperate fully with the OTP in its investigations, whether the investigations target members of the Gaddafi regime or the rebels. He stated that the Interim National Council – Libya would coordinate with key international partners to develop strategies for implementing any arrest warrants issued by the ICC.

In the meeting with Qatari Attorney-General Dr. Al Marri, the Prosecutor and the Attorney-General discussed the recent joint regional conference held in Doha, Qatar on 24 and 25 May, organized jointly by the ICC, the State of Qatar, and the League of Arab States. They covered ongoing discussions about possible ratification in several States of the region, and discussed possible follow-up to the Doha conference.



Qatari Attorney General Dr. Ali bin Ftais Al Marri (left) and Palestinian Minister of Justice Ali Khashan (right)

The Prosecutor also participated with the ministers in Dr. Al Marri's lecture at the seat of the Court, on *"The ICC and the Arab World: Towards a Necessary Partnership"*.

Judge Baltazar Garzón participates in the OAS Mission to Support the Peace Process in Colombia (MAPP/OAS)

14 June - Judge Baltazar Garzón held meetings with the OTP to discuss his ongoing activities as a consultant with the Mission to Support the Peace Process in Colombia of the Organization of American states (MAAP/OAS). The mission was established in 2004, and is supported and financed by twenty countries through the OAS, including Spain, Canada, Switzerland, France, the UK and the USA. The President of Colombia, Juan Manuel Santos, requested the cooperation from the OAS and Spain on this regard.

The MAPP/OAS's objectives is to develop support activities regarding the implementation of the Colombian Law of Justice and Peace, demobilization matters, victims' support, as well as the monitoring of the new law on victims, which includes financial reparations and land restitutions. The MAPP is also mandated to monitor the peace process and the different actors involved, including governmental institutions, the armed groups and civil society.

Judge Garzón's appointment is a concrete example of complementarity, bringing together international, regional and national efforts to support accountability and a sustainable peace in Colombia.

I. Investigations and Prosecutions

Over the reporting period, the OTP presented 19 filings in the various cases and conducted three missions in two 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 Prosecution filed its closing brief on 1 June. Oral closing arguments will be presented on 25 and 26 August 2011. 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 17 August 2011.

15 June - On 9 June, Trial Chamber II issued a decision concerning the asylum request of three prisoners in the DRC's custody who had been transferred to testify as Defence witnesses in the Katanga/Ngudjolo trial. The Chamber determined that the witnesses could not be returned to the DRC as long as a decision from Dutch authorities concerning the asylum requests was pending. The Prosecution submitted that the Court *"has a statutory duty to return a prisoner 'without delay to the requested State' under Article 93(7)(b) and should not halt this process due to an eventual asylum request. This matter should be decided primarily by the Host state authorities, which can request the Chamber to suspend the return of the prisoners if they consider it to be necessary for the purposes of the asylum determination"*. The Prosecution also submitted that *"absent an indication that the prisoners will be harmed because of their cooperation with the Court (Article 68(1)), the Court should inform the Host state authorities of the request for asylum and provide them a short period of time to receive their submissions as to how to proceed further. It should not, however, indefinitely halt the return of the prisoners, as it did in this case. The decision affects the future cooperation of DRC Government in this and other cases, including the protection of Prosecution witnesses. Such protection is the responsibility of the same DRC authorities that, it is alleged, could violate the human rights of Witnesses DRC-D02-P-0228, DRC-D02-P-0236 and DRC-D02-P-0350"*. The Prosecution also added that *"there is a need that the Appeals Chamber deliver an authoritative decision which will ensure that the law and practice of the Court on a core issue such as cooperation evolves in a coherent and standardised manner, and will provide guidance to this Chamber and to other Chamber to the correct interpretation and application of the law"*.

15 June - UN Assistant Secretary-General for Humanitarian Affairs and Deputy Emergency Relief Coordinator, Catherine Bragg [highlighted](#) the widespread violence that continued to be perpetrated by armed groups [such as the LRA] against civilians in the North East of the DRC. She said she had been meeting with the Department of Peacekeeping Operations, she said, to discuss reassigning troops in order to increase MONUSCO's presence in remote areas

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.

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.

16 June - US Secretary of States Hillary Clinton [stated](#): *"The United States is deeply concerned by reports of wide-scale rape in Libya. Since Eman al Obeidi bravely burst into a hotel in Tripoli on March 26 to reveal that Qadhafi's security forces raped her, other brave women have come forward to tell of the horrible brutality they have experienced. Recently, the ICC has taken note of the appalling evidence that rape in Libya is widespread and systematically employed. A thorough investigation of this matter is needed to bring perpetrators to justice. [...] Qadhafi's security forces and other groups in the region are trying to divide the people by using violence against women and rape as tools of war, and the United States condemns this in the strongest possible terms. It is an affront to all people who are yearning to live in a society free from violence with respect for basic human rights. We urge all governments to conduct immediate, transparent investigations into these allegations, and to hold accountable those found responsible."*

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. 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. On 19 May, the Prosecutor informed the ICC 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.

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

May 2011 - The 2011 World Development Report by the World Bank, [published](#) in late May, acknowledges for the first time that justice, accountability and efforts to document or redress human rights abuses are essential to break cycles of violence, and allow for human and economic development. In discussing how cycles of violence are broken, the report stated: *“Signalling early intent to redress human rights violations is also possible even when the processes take time. Countries emerging from severe violence often carry legacies of human rights violations and trauma that shatter social norms or break the social contract between state and citizen [...] With trust so important for stabilization and recovery, some societies have signalled early commitments to transitional justice. These efforts include steps leading to truth commissions, reparations programs for victims, and counter-impunity initiatives that may involve prosecuting the worst abusers and vetting security forces. Such initiatives send powerful signals about the commitment of the new government to the rule of law”*.

21 June – HRW issued a [statement](#) regarding recent media reports indicating that President Al Bashir will travel to China on 27 June to discuss Sudan’s relationship with China and promoting peace in Sudan: *“Al-Bashir’s flouting of international arrest warrants should be cause for condemnation, not for an invitation. Beijing should instead be using its influence to press for justice in Darfur [...] China has a chance to show it supports the people of Africa. Beijing should do the right thing and withdraw the invitation or arrest al-Bashir should he enter Chinese territory.”*

IV. Upcoming Events

- 21-23 June - Deputy Prosecutor Bensouda participates in the World Justice Forum, Barcelona
- 4-8 July - Deputy Prosecutor Bensouda participates in Wayamo Communication Foundation workshop: *“The battle against impunity: chinks in the armor? Do immunity rights, peace negotiations and national amnesty laws contradict international criminal law?”* in Gaborone, Botswana
- 28-30 August - Deputy Prosecutor Bensouda participates in the 5th Annual International Humanitarian Law Dialogs, Chautauqua, New York
- 29 August - Prosecutor Moreno-Ocampo participates in the 2011 European Forum Political Symposium, Alpbach, Austria

* 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