



OTP Weekly Briefing

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HIGHLIGHTS:

- BURIAL OF OTP STAFF MEMBER ALAIN KONGOLO LUBAMBA IN DRC, WHO PERISHED IN A FLIGHT ACCIDENT WHILE WORKING FOR THE OTP
- THE LUBANGA TRIAL IS FINISHING

PREVIEW

- President Ouattara states
Laurent Gbagbo may face
international charges, p. 4

Burial of OTP Field Operations Liaison Coordinator, Alain Kongolo Lubamba, in the DRC

On 9 April, Mr. Alain Kongolo Lubamba, OTP Field Operations Liaison Coordinator in the DRC, was buried in the DRC. He perished in a flight accident in the DRC, when he was coming back for an investigative mission. Mr. Kongolo Lubamba is survived by his wife and his three children. An ICC delegation attended the burial and presented its condolences to his family.

Alain Kongolo Lubamba had been working for the OTP for almost five years and has always been devoted to his work.

Even though Alain Kongolo Lubamba died in the line of duty, his death was an accident. However, his tragic disappearance reminds the Office of the Prosecutor's staff of the dangers related to their work. Staff members work in permanence in a complex environment, and OTP investigators and staff travel to areas of on-going violence. Security protocols are in place, but security can never be fully guaranteed.

Three other staff members were in fact with Alain Kongolo Lubamba in DRC and intended to take the same plane. Luckily, two of them decided to change their route and to take a plane to Nairobi instead. The third one was on the waiting list to take the same flight and was eventually not allowed to board. This saved their lives.

The Court held a memorial service to honor the memory of Alain Kongolo Lubamba on 13 April in the Kinshasa field office, in the presence of his family, and at the headquarters in the presence of the President of the Court, the Deputy Prosecutor, the Head of Investigations and his friends and colleagues.

Lubanga trial coming to an end

12 April - Trial Chamber I [set](#) the timetable for the closing written submissions in the Lubanga trial, and convened the parties and participants to present their closing oral statements in public hearings on 25 and 26 August. The Prosecution and the Legal Representation of Victims are to file their written closing submissions no later than 1 June, to which the Defence may reply, no later than 15 July. The Prosecution may file a reply to the Defence by 1 August, and the Defence will have until 15 August to file its final reply. These final submissions shall address all the relevant legal and factual issues arising in the case.

I. Investigations and Prosecutions

Over the reporting period, the OTP presented three filings in the various cases and conducted five missions in five 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.

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.

13 April - UN Deputy Resident and Humanitarian Coordinator in South Sudan Lise Grande, [highlighting](#) more than 800 deaths and almost 94,000 displaced by violence in South Sudan this year alone, singled out LRA activity as posing a persistent threat to any hope of the south feeding itself: *"LRA attacks keep happening every couple of weeks and when it happens people become terrorised, they don't plant [...] this has a big impact on food security around the south as a whole."*

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.

12 April - The Sudanese Ministry of Justice reportedly [revealed](#) that its special prosecutor for Darfur, Abdel-Dayem Zamrawi, asked the government to accept his resignation. The Justice Ministry stressed in its release that Zamrawi resigned in his capacity as Under-Secretary to the Minister of Justice and not as a special prosecutor. It stressed that his team at the Ministry handling the Darfur crimes dossier was still functioning. No progress has been reported in the work of the special prosecutor since establishing the post. Last January, the State Minister for Justice, Bol Lul Wang, stated publicly that the Sudanese Government has not conducted serious investigations into the alleged war crimes in Darfur, and that it had no will to go after ICC suspects because of the high-level positions they occupy.

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.

14 April - The Prosecution submitted an [application](#) to Pre-Trial Chamber II stating that it should not be obliged to reveal information that could identify its witnesses before a final decision is taken on the issue of admissibility in the Kenyan cases. On 6 April, the Presiding Judge had issued a [decision](#) determining that for the purposes of the confirmation hearing, the Prosecution should disclose “*all evidence in the Prosecutor’s possession or control*”. On 7 April, the Chamber scheduled the confirmation hearings on 1st and 21 September 2011. In its 14 April application, the Prosecution asserted that full respect for the complementarity principle and the interest of fairness required that disclosure occur after a final decision on the admissibility challenge presented by the Kenyan Government. The Prosecution also argued that there would be a significant risk for the safety and security of witnesses by disclosing their identities and this should be done after a final decision is adopted. On 20 April, Pre-Trial Chamber II issued a [decision](#) rejecting the Prosecutor’s request. The decision laid out a comprehensive calendar for disclosure with a series of deadlines, the last one being on 16 August.

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.

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.

14 April - President Alassane Ouattara stated that Laurent Gbagbo may have to face international charges for alleged crimes committed during his time in office. President Ouattara [told](#) reporters that he was setting up a Truth and Reconciliation Commission in order to bring to justice anyone who committed atrocities during the most recent strife or even before that: *"Reconciliation can't be done without justice. All Ivoirians are equal in the eyes of the law, no matter their politics, their origin, their religion or their race"*. Ouattara further said that charges against Gbagbo will be up to the Ivorian justice minister, adding that international counts would be determined by an international prosecutor. The president also vowed that *"all the soldiers -- even those in the Republican Forces -- identified as being pillagers will be dealt with"*. The alleged massacre in the western Ivorian town of Duekoue, where the International Committee of the Red Cross said 800 people were slaughtered, is also reportedly under investigation. Ouattara said the minister of justice has already begun a probe into those killings, the Human Rights Commission would be sending representatives in the next few days to look into the matter as well, and he has scheduled a meeting with the chief prosecutor for the ICC: *"I condemn this massacre. The people responsible for these killings, whoever they are, will be judged."*

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

11-13 April - The OTP participated in the Expert meeting on complementarities between international refugee law, international criminal law, and international human rights law, organized by ICTR and UNHCR, in Arusha.

12 April - The EU Foreign Affairs Council adopted the following [conclusions](#): *“it reiterated its call to the Libyan regime for a halt to the violence against citizens and for full respect for human rights. The Council also called for full compliance with international humanitarian law and in particular the protection of civilians. In this regard it noted the importance of cooperation with the ICC and welcomed the decision of the African Court of Human and Peoples’ Rights of 25 March”. Regarding Côte d’Ivoire, “as the EU has said repeatedly on previous occasions, all those found responsible for such crimes must be held accountable for their acts. In this context, it welcomes President Ouattara’s commitment to fight impunity and to support the work of the International Commission. Impunity cannot be allowed to undermine the re-establishment of public confidence in the government and the security forces”.*

14-16 April - Prosecutor Moreno-Ocampo traveled to New York in order to hold meetings with, permanent representatives of States members of the UN Security Council and UN officials. The Prosecutor briefed them on the ongoing activities of the Office, focusing specifically on the ongoing investigation regarding Libya and his upcoming report to the UN Security Council on 4 May. To increase the Office of the Prosecutor’s predictability and respect for the UN Security Council’s decision to ensure justice in Libya, the Prosecutor will inform the Council of the Office’s next steps, including the time that the Office will present the evidence before the Judges and request an arrest warrant.

Situations in Côte d’Ivoire, Kenya and the Kivus were also discussed. The Prosecutor also briefed the New York Working Group on the trials, investigations and preliminary examinations activities of the OTP, as well as its achievements and assumptions in the last four years [see the Power Point presentation annexed] The President of the ASP, Ambassador Christian Wenaweser, facilitated the meetings.

The Prosecutor also participated, together with the President of the World Bank, Robert Zoellich, in the High-Level Dialogue on Effective Global Enforcement to Counter Corruption organized by the World Bank in Washington DC. The Prosecutor, the President of INTERPOL, Boon Hui Khoo, as well as the Director-General of the European Anti-Fraud Office (OLAF), Giovanni Kessler, discussed with other participants how to improve coordination between national and international investigative and enforcement institutions, while respecting each other’s autonomous mandate, in order to prevent future crimes.

The Prosecutor also met with Luis Alberto Moreno, President of the Inter-American Development Bank, and discussed how financial institutions can contribute to the prevention of crimes, in particular through financing States’ educational programmes aimed at preventing violence, strengthening civism and conflict management capacities, such as the SREDECC project (Regional system of evaluation and development of citizenship competences), which includes Chile, Colombia, Guatemala, Mexico, Paraguay and the Dominican Republic, and which is meant to support the development of effective citizenship education programmes in Latin America.

14 April - Margot Wallström, Special Representative of the Secretary-General on Sexual Violence in Conflict, [told](#) the UN Security Council that *“civilian protection initiatives, such as in Libya, would not be comprehensive unless they systematically included efforts to end sexual violence before it has begun. [...] Even in the ‘tyranny of the emergency’, before hard evidence emerges, and though it may not be obvious what gender has to do with ‘arms embargoes’ or ‘no-fly zones’, we must remember women”.* Wallström added that there were signs of hope in the DRC; *“the Government had ensured a swift and open investigation into rapes that occurred in the Fizi territory in December 2010, leading to the convictions in military court of 11 officers of FARDC with sentences ranging between 10 and 20 years. In February, Callixte Mbarushimana, affiliated with the FDLR, had been transferred from France to the ICC in The Hague”.* The Special Representative stressed that her Office *“was also developing a number of tools to accelerate the implementation of resolution 1960 (2010). They included the establishment of monitoring, analysis and reporting arrangements, as well as a matrix of early-warning*

signs and building an accountability regime with real-world impact in the fight against impunity. [...] In addition the Team of Experts on the Rule of Law was due to be deployed to Liberia later this month to support Criminal Court E, which had been specifically established to hear cases of sexual violence. The Team would then visit the DRC to reinforce investigators and prosecutors through prosecution support cells in North and South Kivu in the east, and to mentor women magistrates who had been trained to handle cases involving sexual violence. It would deploy in May to South Sudan, to contribute to the development of new legal frameworks”.

13-15 April - The Director of JCCD, Phakiso Mochochoko, participated in an Experts Workshop on Complementarity Toolkit, organized by the European Commission, the European External Action Service and OSJI in Pretoria, South Africa. Mr. Mochochoko also held meetings with a team from the South African Presidency Legal Advisory Support Services to update them on ongoing activities of the Office and discuss matters of common interest.

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 “The 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*