



OTP Weekly Briefing

8-14 March 2011 – Issue #78

HIGHLIGHTS:

- * JUDICIAL PROCESS IS ALLOWING KENYANS TO DISCUSS THEIR PAST AND HOW TO PREVENT VIOLENCE IN THE NEXT ELECTIONS
- * POSITIVE COMPLEMENTARITY IN ACTION: OTP IS ASSISTING UGANDAN PROSECUTORS AS THEY PREPARE FIRST DOMESTIC WAR CRIMES PROSECUTION OF AN LRA COMMANDER
- * OTP INVESTIGATION INTO SITUATION OF LIBYA IS PROGRESSING

PREVIEW

- Prosecutor will brief UNSC on Libya on 4 May, p. 3

Prosecutor briefs and takes questions from Kenyan journalists

14 March - Prosecutor Moreno-Ocampo briefed approximately 30 Kenyan journalists based in Nairobi, via video link from The Hague, on the summonses to appear before the Court recently issued by Pre-Trial Chamber II. The Prosecutor said: *"The ICC is providing Kenya the right forum to discuss the past violence and the way to avoid its repetition. Victims can be heard and individuals under suspicion will have the opportunity to clarify their role. In the past I have said Kenya is an example. My words were not well understood. Today, when we are witnessing violence in Libya or Ivory Coast, we can make a comparison: there is no violence in Kenya. We are witnessing an important national debate in a peaceful process, where important discussions are being held. I welcome the decision of the 6 individuals to respect the law, take responsibility and come to The Hague. (...) Elderly from different communities have a crucial role to play. We need their wisdom in uniting the country."*

The Prosecutor also informed the assembled journalists that the OTP would soon send a letter to the Kenyan Government, asking them about the current position and functions of one of the suspects, Francis Muthaura. If he is the superior of Kenyan police, Prosecution cannot interview witnesses in Kenya. The Prosecutor recalled the conditions established by the Pre-Trial Chamber, in violation of which the suspects would be subject to arrest, and warned to not protect the interests of any of the suspects, stressing that victims in Kenya should not be threatened or intimidated. The Prosecutor invited the media and the public to send him any relevant information about threats against victims.

Finally, the Prosecutor noted his intention to appeal aspects of the Pre-Trial Chamber's 8 March 2011 decision concerning the role of the police and the crime of forced circumcision. The filing seeking leave to appeal was submitted the same day.

9 March - Following the issuance of the summonses, the Kenyan Government spokesperson [issued](#) a statement indicating that *"the Government will challenge the admissibility of the cases as well the jurisdiction of the court"*.

OTP meets with Ugandan Prosecutors in preparation of first domestic war crimes case against an LRA commander

11 March - The Head of the Ugandan War Crimes Prosecution Unit and the Head of the Ugandan War Crimes Investigation Unit have been in The Hague from 1 to 11 March for a programme of meetings with the OTP in preparation for the first war crimes case in Uganda.



Putting positive complementarity into practice, and in accordance with Article 93 (10) of the Statute, the Office is providing assistance to Ugandan investigators and prosecutors in support of national cases, thereby seeking to address the impunity gap. The Office also continued to encourage the Ugandan authorities to conduct genuine proceedings in relation to both parties to the conflict in Northern Uganda.

From left to right: Amady Ba, Head of International Cooperation, OTP; Venis Baguma Tumuhimbise, Head of the Ugandan War Crimes Investigation Unit; Joan Kagezi, Head of the Ugandan War Crimes Prosecution Unit and Commissioner of Police; Phakiso Mochochoko, Director of JCCD, OTP

Progress OTP investigation into the situation of Libya

14 March - The investigation into the situation of Libya is progressing. The OTP has assembled a provisional team and will make use of the ICC contingency fund to recruit the remainder of the team.

The Office is receiving support from INTERPOL, the Justice Rapid Response as well as from States, including Spain that agreed to temporarily second a national prosecutor to join the OTP team for Libya. The OTP expects to be ready to present a first case to the Pre Trial Chamber in few months.

I. Investigations and Prosecutions

Over the reporting period, the OTP presented 10 filings in the various cases and conducted 1 mission in 1 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.

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.

10 March - At a time when LRA attacks have reportedly [increased](#) in the DRC and nearly 300,000 are currently displaced in DRC alone as a result of LRA attacks, UN Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator Valerie Amos on a visit to Orientale Province [emphasised](#) the need for the Government of the DRC to strengthen its presence, for MONUSCO to step up its operations and for UN member states to provide significantly more resources to protect people from LRA attacks. She [said](#): “We need to redouble our efforts to find a lasting solution, a regional solution to this crisis.”

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 Chamber requested them to appear before the Court on 7 April 2011.

9 March - Kenyan civil society is campaigning for Deputy Prime Minister Uhuru Kenyatta, Head of Civil Service Francis Muthaura and Post Master General Mohammed Hussein Ali to vacate office in line with Chapter 6 of the new Constitution. Change Associates Trust [said](#): *"We call on the President and Prime Minister to remove the suspects who hold public positions from office because their continued incumbency and ability to influence public decisions may subvert the course of justice and represents a serious conflict of interest."*

9 March - HRW [stated](#): *"The ICC's decision means that six people implicated in Kenya's post-election violence will have to answer to the court. The ICC summonses - which name some of Kenya's most senior leaders - should serve as a wake-up call to Kenyan politicians and officials that they can be held to account."*

10 March - Following a meeting between Kenyan Vice-President Kalonzo Musyoka and US Deputy Secretary of State James Steinberg, the US State Department [stated](#): *"We do not believe that an Article 16 deferral of the Kenya proceedings would help maintain or restore international peace and security so as to warrant action by the Security Council. To the contrary, further delay in the process of holding accountable those responsible for Kenya's post-election violence would undermine prospects for Kenya's long-term stability, which could adversely affect international peace and security. As we have consistently stated, it is critical that perpetrators of Kenya's post-election violence be held accountable to end the country's culture of impunity and help ensure Kenya's future peace and stability."*

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.

7 March - The Prosecutor will brief the UN Security Council on the Office's investigation regarding the situation in Libya on 4 May; the Prosecutor will then inform the Council on when the Office will present its evidence to the Judges.

8 March - The Special Representative of the UN Secretary-General for Children and Armed Conflict, Radhika Coomaraswamy, [stated](#): *"My Office has received unconfirmed reports from human rights groups, civilians on the ground, and the media of violations against children in Libya, including killing and maiming and use of children as combatants and the denial of humanitarian access. I*

remind the Government of the Libyan Arab Jamahiriya, pro-government forces, and opposition groups of their obligation under international law to protect children during armed clashes and that recruitment and use of children may constitute a war crime."

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.

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

10 March - The OTP briefed the OAS Working Session on the ICC regarding its investigations, prosecutions and preliminary examinations in Washington DC.

IV. Upcoming Events

- 15 March - Deputy Prosecutor participates in the international colloquium “Women’s rights, Migrant women’s rights and international humanitarian law”, Dakar
- 21 March - Prosecutor delivers keynote speech at Facing History and Ourselves event, London
- 25 March - Deputy Prosecutor participates as a featured speaker at the American Society of International Law Annual Meeting, Washington
- 6-7 April - OTP holds its bi-annual roundtable meeting with NGOs, The Hague
- 11-13 April - Deputy Prosecutor participates in the Expert meeting on complementarities between international refugee law, international criminal law, and international human rights law, organized by ICTR and UNHCR, Arusha
- 4 May - Prosecutor briefs the UN Security Council on the situation in Libya, New York
- 7 June - Prosecutor briefs the UN Security Council on the situation in Darfur, New York

** 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*