



OTP Weekly Briefing

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HIGHLIGHT: PROSECUTOR RECEIVED THE VISIT OF LEGAL ADVISER OF US DEPARTMENT OF STATE AND RUSSIAN SPECIAL ENVOY ON DARFUR

16-17 February - Prosecutor Moreno-Ocampo met with the Legal Adviser of the US Department of State Harold Koh and his team in The Hague; the Prosecutor analyzed with Mr. Koh recent developments on the ongoing situations and cases and discussed issues of mutual interest.

The Prosecutor also met with the Russian special envoy to Sudan, Mikhail Margelov, in The Hague. [Following](#) the meeting, Mr. Margelov questioned the value of prosecuting President Al Bashir, stating that the mechanisms for executing his arrest warrant remain unclear; however, he indicated he would continue coordinating with the Prosecutor on the matter of the warrant. Russia voted in favor of UNSC Resolution 1593 in March 2005, referring the Darfur situation to the ICC.

PREVIEW

- National Council of Non-Governmental Organizations teams visit embassies of UNSC members in Nairobi, urging them not to support deferral of Kenya case, p. 3

I. Investigations and Prosecutions

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

16 February - Latest UN [figures](#) on refugees and IDPs in South Eastern CAR, where LRA attacks have again been on the [rise](#), record close to 6,000 refugees and over 20,000 IDPs. UNOCHA [reports](#) that more than 80 people have been killed, and 350 abducted in the area between January 2010 and January 2011.

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.

13 February - The African Center for Justice and Peace Studies' [report](#) cites the targeting of Zaghawa civilians following the breakdown of relations between the GoS and DPA signatory Minni Minawi. *"Attacks have been ethnically targeted and an attempt to eradicate perceived Zaghawa support to the SLA/MM [Sudan Liberation Army/Minni Minawi faction] through destruction of villages and property. All of the victims of attacks, except for one, were members of the Zaghawa tribe."*

14 February - South Darfur State authorities expelled Médecins du Monde, a French aid group that worked in Jebel Marra since 2008 to provide maternal and child primary health care. South Darfur Governor Abdel Hamid Moussa Kasha accused the NGO of sharing intelligence with the rebels and releasing *"false written and electronic reports about rape in the region."* Aid workers in Darfur [stated](#) that GoS authorities are targeting staff individually and sometimes force them to quit the region rather than expelling the groups working there.

16 February - Following remarks by US Ambassador to the UN Susan Rice on 26 January, over the performance of UNAMID to discharge its mandate in Darfur, UNAMID Head Ibrahim Gambari [announced](#) that UNAMID would no longer seek or wait for GoS clearance to gain access to desired locations, but would only inform the GoS of their movement plans "for coordination purposes".

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.

Update on the number of OTP witnesses in the Bemba trial¹

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.

¹ Following last week's [update](#) on the Bemba trial, the OTP would like to correct the information on the number of witnesses it will call to testify during the course of the trial. The OTP is planning to present 40 witnesses in total (36 witnesses, including crime-based witnesses, insiders and overview witnesses, as well as 4 expert witnesses).

14 February - Kenyan Prime Minister Raila Odinga [called](#) for accountability and justice, stating that *“those who planned and executed violence during the last election must be punished, even if I am one of them; or else such people could cause worse chaos in 2012.”*

15 February - The National Council of Non-Governmental Organizations, a Kenyan civil society group, has [formed](#) teams that will visit the embassies of UN Security Council members in Nairobi, urging them not to support the deferral of the Kenya case from the ICC. The office of the Prosecutor received assurances from the six individuals identified to be prosecuted in the Kenya situation that they would appear before the Chamber if the judges decide so. In accordance with the Rome Statute, the Prosecution can request arrest warrants or summons to appear for those who, from its investigation, appear to be involved in the crimes and should be prosecuted. The Prosecutor concluded that summonses, and not arrest warrants, would be the most effective way to ensure the appearance of the identified persons before the Pre-Trial Chamber. Therefore, the Prosecution announced the filing of its Application and the identities of those for who summonses to appear were requested, in order to fulfil its obligation and to provide the opportunity to the six individuals to express their will before the judges make a decision. The Pre-Trial Chamber will decide on the merits of the Prosecution’s request and will decide on whether to issue summons or arrest warrants. Notwithstanding these allegations, in accordance with article 66 of the Rome Statute, the six individuals are regarded as innocent until proven guilty.

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.

14 February - A [report](#) of the UN Secretary-General on Children and Armed Conflict in Afghanistan, covering the period from September 2008 to August 2010, details grave violations committed against children, with an emphasis on recruitment and use of children, killing and maiming of children, and attacks on schools. The report highlights how children have allegedly been used by anti-government elements, including for suicide bombing or for planting explosives, or recruited by the Afghan National Security Forces, despite the official government policy.

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.

16 February - The new [report](#) of the Special Representative of the Secretary-General on the human rights of internally displaced persons Walter Kälin commended the Government of Georgia for the efforts made in rehabilitating collective

centers and building new housing for IDPs since 2008 and explained that the main obstacles to IDPs' return to breakaway regions of Georgia remain political as the authorities in control are still very reluctant to allow any returns.

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

IV. Upcoming Events

- 7 March - Prosecutor delivers the inaugural lecture of the new Master on Governance and Human Rights at the Universidad Autónoma, Madrid
- 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

** 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*