



## OTP Weekly Briefing

14-20 December 2010 – Issue #68

This will be the last OTP Weekly Briefing of the year 2010. The briefings will be resumed on 11 January 2011.

### THIS WEEK'S HIGHLIGHTS:

\* **THE OTP REQUESTED SUMMONSES TO APPEAR AGAINST SIX INDIVIDUALS IDENTIFIED AS RESPONSIBLE FOR POST ELECTION VIOLENCE IN KENYA – ALL SIX HAVE PUBLICLY INDICATED THEIR WILLINGNESS TO APPEAR BEFORE THE ICC**

\* **THE PROSECUTOR IS FOLLOWING CAREFULLY THE SITUATION IN THE IVORY COAST**

### PREVIEW

-New Director of JCCD is appointed: Mr. Phakiso Mochochoko, p. 5



**Prosecutor presents cases against six individuals for crimes against humanity regarding Kenya's post election violence (PEV)**

15 December - The Office of the Prosecutor identified the following individuals as the persons to appear before the ICC: They are, in the first [case](#): **William Samoei Ruto**, MP for Eldoret North and member of the ODM, **Henry Kiprono Kosgey** - currently: Minister of Industrialization, ODM Chairman and during the PEV: MP for Tinderet and **Joshua Arap Sang** - currently Head of

Operations, KASS FM and during the PEV: Radio broadcaster. The OTP considers that they were the principal planners and organizers of crimes against PNU supporters.

In the second Prosecution [case](#): **Francis Kirimi Muthaura** - during the PEV and to date: Head of the Public Service and Secretary to the Cabinet and Chairman of the National Security Advisory Committee. The OTP considers that he authorized the Police to use excessive force against ODM supporters and to facilitate attacks against ODM supporters. **Uhuru Muigai Kenyatta** - currently: Deputy Prime Minister and Minister of Finance. The OTP considers that during the PEV he helped to mobilize the Mungiki criminal organization to attack ODM supporters; and **Mohamed Hussein Ali** - during the PEV: Commissioner of the Kenya Police. The OTP considers that during the PEV he implemented the order to use excessive force against ODM supporters and facilitated attacks against ODM supporters.

The Prosecutor emphasized that the individuals have to be considered innocent until a final decision is taken by the judges. *"By breaking the cycle of impunity for massive crimes, victims and their families can have justice. And Kenyans can pave the way to peaceful elections in 2012."*

Polls show that 85% of the Kenya population supported the investigation into the crimes. The announcement produced an extensive public debate in Kenya, but there were no violent incidents and the six individuals expressed publicly their commitment to appear before the judges if the Chamber decides to call them.

More information on the two cases can be found in the two factsheets annexed.

### Ivory Coast – the OTP monitors recent upsurges of violence

21 December - In the context of a deteriorating security situation in Côte d'Ivoire since the second round of the presidential elections, which resulted in the killing of 10 to 30 persons, the Prosecutor made the following [statement](#): *"First, let me be clear: I have not yet opened an investigation. But, if serious crimes under my jurisdiction are committed, I will do so. For instance, if as a consequence of Mr. Charles Blé Goudé's speeches, there is massive violence, he could be prosecuted. Secondly, if UN peacekeepers or UN forces are attacked, this could be prosecuted as a different crime. I think African states play a critical role in this, to find a solution to the problem. But if no solution can be found and crimes are committed, African states could be willing to refer the case to my Office and also*

provide forces to arrest those individuals who commit the crimes in Cote d'Ivoire. Therefore, violence is not an option. Those leaders who are planning violence will end up in the Hague". The Office has received several Article 15 communications, and is engaged with relevant national, regional and international actors to further assess the situation and potentially contribute to the prevention of future crimes.

The UN Security Council [stated](#): "the members of the Security Council warn all stakeholders that they will be held accountable for attacks against civilians and will be brought to justice, in accordance with international law and international humanitarian law". The European Council [further](#) "condemned the violence perpetrated since the second round of the presidential election in Côte d'Ivoire [...] and recalled the availability expressed by the International Criminal Court to prosecute the persons responsible for such acts". French President Nicolas Sarkozy [stressed](#): "There are international jurisdictions such as the (International) Criminal Court where the prosecutor himself says he is watching the situation very closely and that those who ordered the firing will be called to account." UN High Commissioner for Human Rights, Navi Pillay, [stated](#): "When people are victims of extrajudicial killings there must be an investigation, and there must be accountability".

Through his [spokesperson](#), "The Secretary-General reiterated the warning he issued on Friday that any attack on UN forces will be an attack on the international community and those responsible for these actions will be held accountable. Any continued actions obstructing and constricting UN operations are similarly unacceptable. UNOCI will fulfill its mandate and will continue to monitor and document any human rights violations, incitement to hatred and violence, or attacks on UN peacekeepers. There will be consequences for those who have perpetrated or orchestrated any such actions or do so in the future".

## I. Investigations and Prosecutions

Over the week, the OTP presented nine filings in the various cases and conducted two missions in two countries.

### I.1. Situation in the [Democratic Republic of the Congo \(DRC\)](#)

This situation was referred by the DRC in April 2004. The OTP opened its investigation in June 2004, focusing on Ituri where 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 FNI and FRPI. The trial of [Thomas Lubanga Dyilo](#) began on 26 January 2009. The trial of [Katanga and 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 in Paris.

19 December - HRW reported that Congolese army general and former rebel leader Bosco Ntaganda, as well as officers loyal to him, are forcibly recruiting and training for combat hundreds of young men and boys under the age of 18 in order to prepare for a new rebellion: "It is shocking that an individual wanted by the ICC continues to commit the very crimes for which he is charged".

### 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 1,500, abducted more than 2,250 and displaced well over 300,000 in DRC alone. In addition, over the same period, more than 120,000 people have been displaced, and more than 250 people killed by the LRA in Southern Sudan and the Central African Republic.

8 December - Ms Sahle-Work Zewde, Special Representative of the UN Secretary-General and Head of the UN Peacebuilding Support Office in the CAR (BONUCA), [told](#) the UNSC that "the Central African Republic cannot be allowed to become a haven for criminality and armed groups in the subregion," noting that the east remained exposed to continuing LRA attacks. The UN Secretary-General's latest [report](#) on the situation in CAR highlighted an increase in those displaced in LRA-affected areas to 32,000, including 6,000 who have fled from the DRC. Fernand Poukré-Kono, Permanent representative of CAR to the UN, said that it was critical that the LRA and other armed groups be dealt with as part of a regional strategy, and that disarmament, demobilization and reintegration receive more support.

14 December - The UN Security Council [issued](#) a Presidential Statement on the situation in CAR, commending “States in the region for their increased cooperation, welcomes efforts they have made to address the threat posed by the LRA and notes, in this regard, the recommendations that resulted from the conference hosted by the African Union in Bangui in October 2010, which include the formation of a joint operations centre, a joint brigade and increased cooperation on border patrols.” The Council called “for the countries of the region and the relevant United Nations missions to [...] enhance coordination and information-sharing regarding the threat posed by the LRA”.

14 December - The Global Centre for the Responsibility to Protect, including Gareth Evans, Jan Egeland, Lloyd Axworthy, Romeo Dallaire and Juan Mendez, [highlighted](#) the need for more effective action by the international community in the face of continuing brutal LRA attacks, and drew attention to the outstanding ICC arrest warrants against top LRA commanders. They called for “serious, coordinated military efforts to apprehend LRA leaders and to end the threat posed by the LRA” and for the UN Security Council to make prevention of further atrocities and protection of civilians a priority to ensure that 2011 doesn’t see more lives lost and communities devastated.

### **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.

### **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.

### **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.

14 December - The latest [polls indicate](#) that 85% of Kenyans support the prosecution of those most responsible for the crimes perpetrated during the post-election violence at the ICC, and 73% of Kenyans are confident that the ICC prosecutions will be successful. Further, 73% of Kenyans believe that the successful prosecution of the perpetrators of post-election violence will make violence during the next election less likely.

15 December - US President Barack Obama [urged](#) “all of Kenya’s leaders, and the people whom they serve, to co-operate fully with the ICC investigation and remain focused on implementation of the reform agenda and the future of your nation.” He emphasised that “No community should be singled out for shame or held collectively responsible. Let the accused carry their own burdens, and let us keep in mind that under the ICC process they are innocent until proven guilty.”

15 December - The six individuals named in the Prosecutor’s applications made public statements to indicate they would voluntarily appear before the Court: William Ruto [stated](#): “I am available when I am required to do so”. Henry Kosgey [indicated](#): “I intend to co-operate fully with the court. I have already written to it providing it with all my contact details. I have also confirmed to the court that I am ready and willing to avail myself at the court at any time and that I will offer any information that may properly be required”. Joshua Arap Sang [stated](#) he would abide by the ICC summons. Francis Muthaura [said](#): “In the event that they do decide to issue a summons, I will voluntarily attend The Hague and respect any request the judges of the ICC have of me.” Uhuru Kenyatta [stated](#): “I expect the ICC process to be free and fair. I welcome the chance to present my case, prove my innocence and end the unnecessary speculation and innuendo that has been peddled over the last year.” Finally, Mohammed Hussein Ali [indicated](#): “As a Kenyan, who has dedicated all his energy to the safety and security of Kenyans, I am confident that all false allegations will be exposed. [...] Accordingly, I have no doubt whatsoever that when the facts are presented to any competent court, these allegations will be found to have no basis in fact at all.”

## 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. The most serious crimes, including alleged widespread sexual violence, were committed in 2002-2005. On 17-18 July 2009, high-level representatives of the OTP visited Abidjan.

15 December - African and international NGOs made a [joint statement](#) reminding leaders of both parties and military commanders that the Office of the Prosecutor has urged supporters of both opponents and security forces to refrain from violence and that *"all reported acts of violence will be closely scrutinized by the Office."*

## 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



### Phakiso Mochochoko is appointed Director of the Jurisdiction, Complementarity and Cooperation Division

15 December - The Prosecutor appointed Mr. Phakiso Mochochoko, from Lesotho, as the new JCCD Director. Mr. Mochochoko joined the Court as part of the ICC Advance Team created to set up the Court in 2002, and has been the Registry Senior Legal Advisor since 2004. Before joining the diplomatic service as Legal Counselor, Mr. Mochochoko practiced law as an attorney in Lesotho from 1984 to 1992. Mr. Mochochoko began his involvement with the process of establishing the ICC in 1994 in his capacity as Legal Counselor for the Permanent Mission of Lesotho to the UN. In addition to chairing the Working Group on Privileges and Immunities, he also chaired the Working

Group on International Cooperation and Judicial Assistance (Part 9 of the Rome Statute) during the Rome Conference and later, the Working Group that elaborated the Rules of Procedure on cooperation.

More information on Mr. Mochochoko can be found [here](#). Mr. Mochochoko will assume his new functions on 1 February 2011.

#### IV. Upcoming Events

- 18-20 January - Prosecutor conducts a review of the Office's policies at Harvard Law School, Cambridge (US)

*\* 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](mailto:Olivia.Swaak-Goldman@icc-cpi.int)*