



OTP Weekly Briefing

31 May – 8 June 2011 – Issue #90

HIGHLIGHTS:

- PROSECUTION FILES ITS CLOSING BRIEF IN THE LUBANGA CASE
- PROSECUTOR REPORTS TO THE UN SECURITY COUNCIL ON SITUATION IN DARFUR

PREVIEW

- International Commission of Inquiry on Libya issues its report, p. 3

Prosecution files closing brief in the Lubanga case

1 June - The Prosecution submitted its closing brief to the judges of Trial Chamber I in the case of *The Prosecutor v. Thomas Lubanga Dyilo*. A public redacted version of this document will be made available in the coming days.

The Office stressed that *"as the first trial of the ICC, the case against Thomas Lubanga Dyilo is very important. Critical matters were raised during the trial, including on disclosure and witness protection, and seminal decisions were made by the Judges in order to clarify the proceedings, ensure fair trial and respect the rights of the parties and participants, and further contribute to more expeditious proceedings at the ICC. The Prosecution believes it has proven its case beyond reasonable doubt, the evidence showing that Lubanga had total control of UPC militia and deep knowledge of the use of child soldiers. The Prosecution's analysis highlighted the consistency of the different types of evidence submitted, including videos and testimonies of high-ranking officers. But beyond the guilt or innocence of Thomas Lubanga Dyilo, this trial has sent - and will continue to send - a very clear message: using children to participate in hostilities and commit crimes is prohibited. Those who do so will be held accountable."*

On 20 May, the Trial Chamber decided that the parties and participants to the trial will present their closing oral statements in public hearings on 25 and 26 August 2011. After the closing statements, the Trial Chamber will pronounce, within a reasonable period of time, its decision. The Chamber will base its decision on the applicable law and on evidence submitted and discussed at the trial.

Prosecutor briefs the UN Security Council on Darfur

8 June - Prosecutor Moreno-Ocampo briefed the members of the UNSC on the situation in Darfur, stressing *"the Government of the Sudan's policy is to ensure crimes continue in Darfur."*

President Al Bashir continues to challenge the authority of the United Nations Security Council ignoring Resolution 1593 and other resolutions. He has denied the crimes, attributed them to other factors. *"The millions displaced, the women repeatedly raped, attacks against camps and villages are not bi-products of a conflict, a result of inter tribal clashes, nor climate change. These crimes are a consequence of a strategic decision taken by the highest authorities of the Sudanese government,"* said the Prosecutor.

The Prosecutor emphasized the ongoing role of Ahmad Harun, a key player in all the major crime spots in Sudan, who used local militias during the 90s in the Nuba Mountains and in Southern Sudan. He did it again in Darfur where in 2003, as Minister of State for the Interior; he coordinated the attacks on civilians in their villages in Darfur. Between 2005 and 2009, Harun was the Minister of State for Humanitarian Affairs, managing the crime of extermination in the camps for displaced persons in Darfur. Today, he is back in the South, to Abyei, and Abyei is now under attack with civilians destined to suffer the same fate as the people in Darfur. The Prosecutor noted that *"this is a clear demonstration that to stop the crimes, we need to stop the criminals and the only way to do this is to arrest them."*

The Prosecutor further highlighted that *"the mandate of the ICC is to end impunity to prevent future crimes. We share this common prevention mandate with the UN Security Council, the African Union and the Government of the Sudan. The efficacy of our common*

efforts will depend greatly on how we share information with each other and learn from it. The Prosecution is trying to improve its practice in this area, linking the information collected with the current behavior of the suspects.”

The Prosecutor also underscored the importance of the case against Abdallah Banda and Saleh Jerbo, two rebel commanders who led an attack against peacekeepers in Haskanita in 2007, stating: “The Court is impartial and is committed to protecting peacekeepers.” ICC judges have confirmed the case against Banda and Jerbo. The agreement reached between the Prosecution and the Defense on the facts will focus the case on the issue of the neutrality of the AU peacekeepers’ operation.

I. Investigations and Prosecutions

Over the reporting period, the OTP presented fifteen filings in the various cases and conducted seven 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.

30 May - MONUSCO’s Chief of DDR/RR Gregory Alex [stated](#): “DDR/RR has also assisted in judicial proceedings against the FDLR leadership. By assisting German authorities and the ICC, the three top leaders of the FDLR were arrested and are on trial in Europe. Their arrest has had a significant impact on the morale and the command structure and control of the FDLR and is contributing to the continued defection of many in their rank”.

I.2. Situation in [Uganda](#)

This situation was referred by Uganda in January 2004. The OTP opened its investigation in July 2004. Five arrest warrants have been issued against [top leaders of the Lord’s Resistance Army \(LRA\)](#): Joseph Kony, Vincent Otti (allegedly killed in 2007 on order of Kony), Okot Odhiambo, Raska Lukwiya (killed on 12 August 2006, whose arrest warrant has been withdrawn), and Dominic Ongwen. These arrest warrants are outstanding. Since early 2008, the LRA is reported to have killed more than 2,000, abducted more than 2,500 and displaced well over 300,000 in DRC alone. In addition, over the same period, more than 120,000 people have been displaced, at least 450 people killed and more than 800 abducted by the LRA in Southern Sudan and the Central African Republic.

I.3. Situation in [Darfur, the Sudan](#)

This situation was referred by the UN Security Council in March 2005. The OTP opened its investigation in June 2005. Three arrest warrants have been issued, against [Ahmad Harun and Ali Kushayb](#), and against [Omar Al Bashir](#), which are outstanding. Also three summons to appear have been issued, against [Bahar Idriss Abu Garda](#) and against [Abdallah Banda Abaker Nourain and Saleh Mohammed Jerbo Jamus](#). On 12 July, Pre-Trial Chamber I issued a [second warrant of arrest](#) against Omar Al Bashir for three counts of genocide committed against the Fur, Masalit and Zaghawa ethnic groups: genocide by killing, genocide by causing serious bodily or mental harm and genocide by deliberately inflicting on each target group conditions of life calculated to bring about their physical destruction. Abu Garda [voluntarily appeared](#) before the Court pursuant to a summons. The confirmation of charges hearing was held on 19-30 October 2009. On 8 February 2010 the Pre-Trial Chamber issued a decision declining to confirm the charges. The OTP [requested](#) leave to appeal this decision on 15 March and this was denied by the PTC on 23 April. The OTP will present additional evidence. On 25 May the PTC Chamber issued its [‘Decision informing the United Nations Security Council about the lack of cooperation by the Republic of the Sudan’](#) in the case against Harun & Kushayb. On 17 June, Abdallah Banda Abaker Nourain and Saleh Mohammed Jerbo Jamus [appeared](#) voluntarily before the ICC, to answer charges of war crimes for their roles in the 2007 attack against African Union peacekeepers in Haskanita. The [confirmation of charges hearing](#) for Banda and Jerbo took place on 8 December 2010. On 6 March 2011, Pre-Trial Chamber I [confirmed](#) all of the charges against Banda and Jerbo. A date for the trial has not been set yet.

I.4. Situation in the [Central African Republic \(CAR\)](#)

This situation was referred by the CAR in December 2004. The OTP opened its investigation in May 2007. One arrest warrant has been issued against [Jean-Pierre Bemba Gombo](#) for crimes committed in 2002-2003. The [confirmation of charges hearing](#) was held on 12-15 January 2009. On 15 June 2009, Pre-Trial Chamber II rendered its confirmation of charges decision. On 18 September, the case was referred to Trial Chamber III. In parallel, the Office continues to monitor allegations of crimes committed since the end of 2005. The trial started on 22 November 2010. The Defence decided not to appeal the 17 December Decision on the review of detention of Mr. Jean-Pierre Bemba, pursuant to the Appeals Judgment of 19 November 2010.

I.5. [Kenya](#)

The Office made its examination of the post-election violence of December 2007-January 2008 public in February 2008. On 9 July 2009, the African Union Panel of Eminent African Personalities, chaired by Kofi Annan, announced the [submission to the OTP of a sealed envelope containing a list of persons allegedly implicated and supporting materials previously entrusted to Mr. Annan by the Waki Commission](#). On 5 November the Prosecutor informed President Kibaki and Prime Minister Odinga of his view that crimes against humanity had been committed and of his duty, in the absence of national proceedings, to act. Both the President and the Prime Minister committed to cooperate with the Court. On 26 November the Prosecutor requested authorization from Pre-Trial Chamber II to open an investigation, noting that: 1,220 persons had been killed; hundreds raped, with thousands more unreported; 350,000 people were forcibly displaced; and 3,561 injured as part of a widespread and systematic attack against civilians. On 31 March the Pre-Trial Chamber authorized the Prosecutor to commence an investigation covering alleged crimes against humanity committed between 1 June 2005 and 26 November 2009. The Prosecutor made his first visit to Kenya since the beginning of the investigation on 8-12 May and his second visit 1-3 December. The Prosecutor submitted two applications for summonses to appear regarding six individuals (William Samoei Ruto, Henry Kiprono Kosgey, Joshua Arap Sang, Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohamed Hussein Ali) on 15 December 2010. These individuals are alleged to be most responsible in accordance with the evidence. On 8 March 2011, Pre-Trial Chamber II [issued](#) the six summonses to appear. The six suspects voluntarily appeared before the Court on 7 and 8 April 2011. The Chamber scheduled the confirmation hearings on 1st and 21 September 2011.

3 June - Pre-Trial Chamber II issued a [decision](#) requesting observations from the Prosecutor, the Defence and the victims on the desirability of conducting the confirmation of charges hearings in Kenya in the cases of *The Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang* and *The Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*. The Chamber also requested that the parties and participants submit their observations no later than 13 June 2011.

I.6. [Libya](#)

This situation was referred by the UN Security Council on 26 February 2011 by [Resolution 1970](#) (2011). As per the Rome Statute, the Prosecutor shall proceed with an investigation unless there is no reasonable basis to believe that crimes falling under the ICC jurisdiction have been committed. Following a preliminary examination of available information, the Prosecutor [decided](#) to open an investigation on 3 March 2011 and [requested](#) Pre-Trial Chamber I to issue arrest warrants against Muammar Abu Minya Gaddafi, Saif Al Islam Gaddafi and Abdullah Al Sanousi on 16 May.

1 June - The UN International Commission of Inquiry to investigate all alleged violations of international human rights law in Libya issued its [report](#), concluding that that international crimes, and specifically crimes against humanity and war crimes, have been committed in the territory of Libya. They concern human rights law, war crimes and crimes against humanity. The crimes have been committed in large scale by the pro-Gaddafi forces with a chain of command established by Gaddafi. The Commission holds that there is sufficient evidence that the pro-Gaddafi troops used excessive force against demonstrators, resulting to injuries and deaths. The report also notes that the government has unlawfully arrested and detained many people from the opposition across the country, and that Libyan forces also are engaged with enforced disappearances of persons. The range of crimes committed from both forces, the pro-Gaddafi forces and the opposition ones, include torture and other forms of cruel, inhuman or degrading treatment were committed. The Commission indicated that further investigations are required on sexual violence, as well as on the conscription of child soldiers. The report calls to the Libyan authorities to provide effective remedies to victims as well as investigate and bring to justice perpetrators, and further reminds that the UN Security Council, through its resolution 1970 (2011), vested primary jurisdiction with respect to the determination of criminal responsibility with the ICC.

II. Preliminary Examinations

Statistics on [Article 15 Communications](#) and other preliminary examination activities.

23 communications that may fall under Article 15 were received by the Office in the month of May. 17 of these communications were manifestly outside the jurisdiction of the Court; 6 communications warranted further analysis or were linked to a situation already under analysis. The total number of Article 15 communications received to date is 9,214, of which 4,687 were manifestly outside the jurisdiction of the Court.

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.

25 May - Judge Baltasar Garzón was [appointed](#) by the OAS as consultant for the Mission to Support the Peace Process in Colombia (MAPP/OAS). Judge Garzón will advise the MAPP/OAS in the framework of the Mission’s mandate, which establishes support for a policy of peace and the strengthening of a transitional system of justice, according to international standards of human rights, in coordination and agreement with the different partners involved in the development of these policies. Judge Garzón’s appointment is a concrete example of complementarity, bringing together efforts to support accountability and a sustainable peace in Colombia

II.3. [Georgia](#)

The Office made its examination public on 14 August 2008. The Georgian Minister of Justice visited the OTP. Russia, a State not Party to the Statute, has sent 3,817 communications to the OTP. The Prosecutor requested information from the Governments of Russia and Georgia on 27 August 2008. Both the Russian and Georgian authorities responded. The Office conducted a visit to Georgia in November 2008 and to Russia in March 2010. A second mission to Georgia was conducted in June 2010.

II.4. [Palestine](#)

On 22 January 2009, the Palestinian National Authority lodged a declaration with the Registrar under Article 12(3) of the Rome Statute which allows States not party to the Statute to accept the Court’s jurisdiction. The OTP will examine issues related to its jurisdiction: first whether the declaration accepting the exercise of jurisdiction by the Court meets statutory requirements; and second whether crimes within the Court’s jurisdiction have been committed. The Office will also consider whether there are national proceedings in relation to alleged crimes. A delegation from the Palestinian National Authority, and Representatives of the Arab League visited the Court on 15-16 October 2009 to present a report in support of the PNA’s ability to delegate its jurisdiction to the ICC. On 11 January, the OTP sent a [letter](#) summarizing its activities to the United Nations at their request. On 3 May, the OTP published a “[Summary of submissions on whether the declaration lodged by the Palestinian National Authority meets statutory requirements](#).” The OTP has not made any determination on the issue.

II.5. [Côte d’Ivoire](#)

The Court has jurisdiction over the situation in Côte d’Ivoire by virtue of an Article 12(3) declaration submitted by the Ivorian Government on 1 October 2003. The declaration accepts the jurisdiction of the Court as of 19 September 2002. On 17-18 July 2009, high-level representatives of the OTP visited Abidjan. On 4 May 2011, the President of Côte d’Ivoire, Alassane Ouattara, [confirmed](#) his wish for the OTP to conduct independent and impartial investigations into the most serious crimes committed since 28 November 2010 on the entire Ivorian territory. On 19 May, the Prosecutor informed the ICC President of his intention to submit a [request](#) to the Pre-Trial Chamber for authorisation to open investigations into the situation in Côte d’Ivoire since 28 November 2010.

II.6. Guinea

The Office made its examination of the situation in Guinea public on 14 October 2009. Guinea is a State Party to the Rome Statute since 14 July 2003 and, as such, the ICC has jurisdiction over war crimes, crimes against humanity and genocide possibly committed in the territory of Guinea or by nationals of Guinea, including killings of civilians and sexual violence. The Office has taken note of serious allegations surrounding the events of 28 September 2009 in Conakry in accordance with Article 15 of the Statute. In January 2010, OTP high level representatives held consultations with President Compaore of Burkina Faso, mediator for the contact group on Guinea, and President Wade of Senegal to ensure that they are informed of its work. From 15 to 19 February 2010, the OTP sent a mission to Guinea, led by Deputy Prosecutor Fatou Bensouda, in the context of its preliminary examination activities. From 19-21 May a second OTP mission met with the Guinean Minister of Justice, Col. Lohalamou, and Guinean judges. A third OTP mission, lead by Deputy Prosecutor Bensouda, went to Conakry from 8 to 12 November 2010, and met with President Sékouba Konaté, Prime Minister Doré, as well as both election candidates. The Guinean authorities extended full cooperation to the Court.

II.7. Nigeria

The Office made its examination of the situation in Nigeria public on 18 November 2010. Nigeria is a State Party to the Rome Statute since 27 September 2001. The Office has been analyzing the alleged crimes committed in Central Nigeria since mid-2004 and is looking forward to engaging constructively with the Nigerian authorities on the issue.

II.8. Honduras

The Office made its examination of the situation in Honduras public on 18 November 2010. Honduras is a State Party to the Rome Statute since 1 July 2002. The Office has received many communications on crimes linked to the coup of June 2009. There were different allegations, mostly regarding alleged massive cases of torture and more than a thousand people being arrested in one day. The Office met with the Honduras Minister Counsellor in The Hague on 22 November, who provided relevant information and promised their full cooperation.

II.9. Republic of Korea

The Office made its examination of the situation in the Republic of Korea public on 6 December 2010. Korea is a State Party to the Rome Statute since 13 November 2002. The Office of the Prosecutor has received communications alleging that North Korean forces committed war crimes in the territory of the Republic of Korea. The Office is currently evaluating if some incidents constitute war crimes under the jurisdiction of the Court. These incidents are: a) the shelling of Yeonpyeong Island on the 23 November 2010 which resulted in the killing of South Korean marines and civilians and the injury of many others; and b) the sinking of a South Korean warship, the Cheonan, hit by a torpedo allegedly fired from a North Korean submarine on 26 March 2010, which resulted in the death of 46 persons.

III. Cooperation – Galvanizing Efforts to Arrest

6 June - During a meeting of the UN Security Council on the ICTY and ICTR, several States mentioned the importance of arrests for international justice. The French representative, Béatrice Le Fraper du Hellen, [stressed](#) *“that a message must be sent to all those who attempted to stay in power by violence: that the fight against impunity would continue and that warrants of arrest for serious crimes had no time limits”*. The US Deputy Permanent Representative, Rosemary A. DiCarlo, [stated](#) *“Mladic’s capture [...] puts perpetrators of mass atrocities on notice: they will be held accountable for genocide, war crimes, and crimes against humanity.”* The representative of Lebanon, Caroline Ziade, further [emphasized](#) that *“the Council must ensure that the Tribunals achieved their goals, not just to provide a resolution for the victims of crimes committed in Rwanda and the former Yugoslavia, but to demonstrate to the entire world that there would be no impunity for those that breached international law.”*

6-10 June - The final round of the X edition of the Moot Court competition on the proceedings before the ICC Victor Carlos Garcia Moreno in Spanish will be held this week in the ICC courtroom and the University of Utrecht. The previous national stages of the competition were held in Bogota, Caracas and Madrid and Tucuman, as well as a regional stage in Mexico City. The Moot Court case was written by Professor Hector Olasolo and his team at the Utrecht Law Clinic on Conflict, Human Rights and International Justice. The final round of the competition will take place on 10 June at the ICC.

IV. Upcoming Events

- 9-12 June - Deputy Prosecutor participates in the Aspen Ministers Forum, The Hague
- 14-15 June - OTP participates in UN-ICC roundtable, 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