



OTP Weekly Briefing

24-30 May 2011 – Issue #89

HIGHLIGHTS:

- **OTP TEAM DISCUSSED WITNESS PROTECTION WITH KENYAN AUTHORITIES - ICC JUDGES RULE TWO KENYA CASES ADMISSIBLE**
- **PROSECUTOR DISCUSSED LIBYA CASE IN QATAR**
- **NEW DATE FOR MBARUSHIMANA CONFIRMATION OF CHARGES HEARING**

PREVIEW

- Independent review report on Kenya shows that 78% of the Kenyan population is happy with the ICC investigation, p. 4

OTP team travels to Kenya to discuss witness protection

30 May - An OTP team is in Kenya to discuss protection of witnesses with Kenyan authorities. The aim will be not just an assessment of the specific protection program, but also to get an understanding of the current position of the Government in relation with the Post Electoral Violence.

In a [statement](#) issued on 29 May, the Prosecutor reminded that “On 5 November 2009, President Kibaki and Prime Minister Odinga stated their commitment to cooperate with the Court. We received strong cooperation, but since we announced the names of the 6 suspects we have seen a shift in position: high ranking members of the government are misrepresenting ICC efforts to do justice for the victims as an attack against Kenyan sovereignty.

They are pursuing regional and political campaigns to stop the case. Not only is this sending the wrong signal, but it is also promoting a growing climate of fear that is intimidating potential witnesses and ultimately undermining national and international investigations.

Our Office is doing what we promised to do: Justice for the victims. It was in the point 4 of the Agenda. Everyone agreed on the need to clarify the problem before the next election.

My question to the Kenyan government is this: does the government of Kenya want justice for the victims? We need an unequivocal answer, an answer that Kenyans and the world could understand. Is the government of Kenya protecting witnesses or protecting the suspects from investigation? That is the question”.

The same day, the Government of Kenya’s admissibility challenge was rejected

The Judges [highlighted](#) that “It is apparent that the Government of Kenya in its challenge relied mainly on judicial reform actions and promises for future investigative activities. At the same time, when arguing that there are current initiatives, it presented no concrete evidence of such steps.”

Prosecutor participates in Regional conference on the ICC in Doha and holds government meetings



The Prosecutor received by H.H. The Emir of State of Qatar

25 May - The Office of the Prosecutor participated at the Regional Conference on the ICC, co-organized by the ICC, the League of Arab States and the State of Qatar. The Prosecutor also held high level meetings with H.H. the Emir of Qatar, H.E The Prime Minister and the Attorney General of the State of Qatar, to discuss matters of common concern, including the situation in Libya.

The conference is the first to be held in the region and produced a positive impact in the region. It included about 300 participants from 13 Arab Countries in addition to the

Philippines and Brunei; also present were regional and international NGOs. The participants spoke positively about the ICC and its role in the region. State representatives have shown a strong commitment towards the ratification of the Rome Statute.

The State of Qatar has also proposed a follow-up conference to be held at the League of Arab States headquarters in Cairo in the near future in order to continue the discussion.



The Prosecutor received by H.E. The Prime Minister of State of Qatar

Judges agree to fix new date for start of confirmation of charges hearing in Mbarushimana case

31 May - Pre-Trial Chamber I [decided](#), at the request of the Prosecution, to postpone the commencement of the confirmation of charges hearing in the case The Prosecutor v. Callixte Mbarushimana, to 17 August 2011. The Chamber took this decision in view of the delays caused by technical difficulties encountered in the process of reviewing electronic devices (hard drives, CDs, etc.) seized at the premises of the suspect at the time of his arrest.

The Prosecution [filed](#) the request on 25 May in order to preserve the fairness of the proceedings. The Prosecution held that, *"under the current schedule, the Prosecution cannot include any of the seized electronic evidence in its Document Containing the Charges, identify it on its List of Evidence, or rely upon it at the Confirmation Hearing. Access to the largest and potentially most significant portion of the evidence is an essential prerequisite of a confirmation hearing that is fair to the Prosecution and permits it to exercise its duties under the Rome Statute. It would therefore violate the Prosecution's right to a fair proceeding to require it to establish its case at a Confirmation Hearing without allowing it sufficient access to the seized materials"*.

I. Investigations and Prosecutions

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

12 May - The UN Secretary General, in his latest [report](#) on MONUSCO, emphasised his concern at increasing LRA attacks in the DRC, including attacks on population centres and on DRC forces, the FARDC. He welcomed steps by the AU and countries in the region to better define a coordinated strategy to deal with the LRA. He detailed additional MONUSCO and FARDC activity aimed at deterring LRA attacks, and the sending of a UN multidisciplinary team to the region this month to

carry out further assessments on the LRA threat, to consult with the AU and to make recommendations to strengthen and better coordinate UN efforts to help deal with the LRA.

23 May - A coalition of 39 human rights and humanitarian organizations, including Invisible Children, Enough, HRW, Resolve and numerous local organisations in DRC and South Sudan [called](#) for greater international efforts to apprehend Kony and other senior LRA commanders, coupled with increased efforts to encourage other LRA commanders and fighters to defect. The report concludes that: *“What has been lacking to date are the appropriate means and will to put this information to use in a timely and effective manner by states capable of conducting a law enforcement operation to apprehend the LRA’s leaders sought on ICC arrest warrants. The UN Security Council, the United States, and other concerned actors should make the commitment necessary to ensure that capable forces are deployed to pursue the LRA’s top leaders sought on arrest warrants by the ICC.”* Resolve [said](#) there needs to be a *“much more robust, multilateral effort focused on protecting civilians from these brutal attacks and on apprehending the leaders of the LRA, who are wanted by the ICC.”*

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.

25 May - An independent review [report](#) on Kenya, commissioned by the Panel of African Eminent Personalities chaired by Kofi Annan, shows that 78% of the Kenyan population is happy with the ICC investigation; 72% of Kenyans are confident that the ICC will prosecute those suspected of perpetrating violence during and after the December 2007 elections. In a [statement](#), Kofi Annan deplored the fact that the report found that the personalisation and politicisation of the ICC process had obscured dialogue on reforms that would prevent future violence and the need to find justice for the victims, including IDPs.

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.

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. 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

IV. Upcoming Events

- 8 June - Prosecutor briefs the UN Security Council on the situation in Darfur, New York
- 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*