



OTP Weekly Briefing - Special Edition

Confirmation of charges in DRC III, Kenya I and Kenya II



Confirmation of charges hearing in the DRC III case

21 September - The confirmation of charges hearing in the case of *The Prosecutor v [Callixte Mbarushimana](#)* concluded on 21 September. Mr Mbarushimana, Executive Secretary of the FDLR, is charged with contributing to the FDLR's policy to create a "humanitarian catastrophe" in the Kivus in 2009 through an organizational policy of committing widespread and systematic attacks against the civilian population, including massive sexual and gender violence as part of an international campaign to extort political power for the rebels vis-à-vis Rwanda and the international community. From his Parisian base, Mr Mbarushimana is accused of both contributing to the decision making process behind the common plan and spear-heading the international aspect of this plan through regular use of local and international media channels. Deputy Prosecutor Bensouda explained Mr Mbarushimana's role in the FDLR leadership to the Court: *"He was the linchpin, the man who could transform crimes committed in the Kivus into political leverage in Rwanda....Mr Mbarushimana represented the respectable public face of the FDLR. He spoke the language of peace [to the international community]... But behind the message of peace however, the implicit threat was that unless enemies (of the FDLR) stop from trying to oust them, the killings of civilians would continue."*

The Deputy Prosecutor highlighted the ongoing trauma of those victims of the FDLR's sexual and gender violence: *"Raped women or castrated men were assaulted and injured not only physically and psychologically, but also in their identities as men and women in society. In this way, [gender crimes] seek to destroy the identity of individuals, the cohesion of families and the social structure of communities"*.

The parties will now submit their written briefs, after which the judges will have 60 days to decide whether or not to send the case to trial. It is expected that a decision will be made before Christmas.

Confirmation of charges hearing in the Kenya I case

1-9 September - The confirmation of charges hearing in the case of *The Prosecutor v [William Samoei Ruto](#), [Henry Kiprono Kosgey](#) and [Joshua Arap Sang](#)* took place from 1-9 September 2011. Prosecutor Moreno-Ocampo stated *"The Prosecution evidence shows that the violence in the Rift Valley was the result of*

the planned crimes. The crimes were not spontaneous, the perpetrators were not opportunistic. They were following the suspects' plans." He went on to explain the motive of the suspects was to "create a uniform ODM voting bloc to create a platform for their political careers." Prosecutor Moreno-Ocampo stressed: "As the result of the crimes committed by Mr. Ruto, Mr. Kosgey and Mr. Sang, violence was unleashed in the Rift Valley. At least 700 people died, and approximately 400.000 people were displaced..... These massive crimes are, as the Defence says, a Kenyan problem, but they are not just a Kenyan problem. These are some of the most serious crimes of concern to the international community as a whole, and for that reason the ICC intervened."

At the close of the hearing, the Pre-Trial Chamber reminded the three suspects to fully comply with the conditions imposed on them in the summonses to appear, in particular not to approach or intimidate any witness, any victim, or to undertake any activities that are likely to trigger or exacerbate tension or violence in Kenya.

The Chamber granted the Prosecution three weeks to make written submissions on issues covered during the confirmation hearings (due 30 September), and granted the Defense three weeks from that point to file their written submissions (due 24 October). The Pre-Trial Chamber should then issue its written decision on the outcome of the confirmation hearings within 60 days.

Confirmation of charges hearing in the Kenya II case

21 September - The confirmation of charges hearing in the case of *The Prosecutor v [Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali](#)* took place from 21 September to 5 October 2011.

The Prosecution presented its evidence that shows that Francis Muthaura and Uhuru Kenyatta adopted a common plan and policy to retaliate against perceived ODM supporters and keep the PNU in power through every means necessary, including through the commission of crimes. The Prosecution presented evidence to show that the policy was implemented through a common plan to commit widespread and systematic attacks against perceived ODM supporters by (1) penalizing them through retaliatory attacks, and (2) creating a 'Free Zone' for the retaliatory attacks. The Prosecution explained how Uhuru Kenyatta and Francis Muthaura procured the services of Mungiki leaders and directed them to implement the common plan, and how, in conjunction with Hussein Ali, Francis Muthaura used his position to create the 'Free Zone' to allow the Mungiki and pro-PNU youth to operate with impunity. The Prosecution stated that, as a consequence, areas in and around Naivasha and Nakuru towns were attacked by the Mungiki and pro-PNU youth in late January 2008, resulting in the crimes of murder, forcible transfer of population, rape and other forms of sexual violence, other inhumane acts and persecution.

Prosecutor Moreno-Ocampo highlighted the wide ranging evidence which reveals the existence of a common plan, stating "different sources established that the crimes were committed by the Party of National Unity leaders associated with the Mungiki under the protection of the police." He addressed the motivation behind the attacks stating "[these] crimes were the response to the crimes committed by some of the leaders of the ODM, the opposition party.... the suspects, prominent leaders of the group in power, decided to retaliate against the perceived supporters of the ODM to maintain their own power". The Prosecutor summarized the need for ICC involvement stating "the intervention of the ICC is required to end the use of violence to gain or to maintain political power in Kenya" In closing statements, the Prosecution contended that the confirmation hearings had demonstrated that there are substantial grounds to believe that the three suspects are criminally responsible for the crimes charged and that the case should proceed to trial.

At the close of the hearing, the Pre-Trial Chamber again reminded the three suspects to fully comply with the conditions imposed on them in the summonses to appear, and to refrain from engaging in

activities that are likely to trigger or exacerbate tension or violence in Kenya. The Bench also took the opportunity to address the citizens of Kenya, asking them to respect the life, security, and property of victims and witnesses in the two Kenya cases and to assure the people of Kenya that the three Judges of the Chamber will take their decision independently and impartially, after having carefully examined all pieces of evidence presented by both parties so that justice will be served.

The Chamber granted the Prosecution three weeks to make written submissions on issues covered during the confirmation hearings (due 28 October), and granted the Defence three weeks from that point to file their written submissions (due 21 November). The Pre-Trial Chamber should then issue its written decision on the outcome of the confirmation hearings within 60 days.