



OTP Weekly Briefing

20-25 July 2011 – Issue #97

HIGHLIGHTS:

- INTERNATIONAL COMMUNITY DISCUSSES EFFORTS TO ADDRESS THREAT POSED BY LRA
- PROSECUTION APPEALS JUDGES' DECISION ON THE CONDITIONS FOR A FORMER OTP LAWYER TO JOIN DEFENCE TEAM

PREVIEW

- Goran Hadžić, the last fugitive from ICTY, is arrested, p. 5

International community discusses efforts to address threats posed by LRA

21 July - The UN Security Council [encouraged](#) all States to cooperate with the Ugandan authorities and with the ICC in order to implement the ICC warrants against the top LRA leadership and bring to justice those responsible for LRA atrocities. The Council strongly condemned ongoing LRA attacks and emphasised the importance of sustained coordinated action by regional Governments to bring an end to the LRA problem, stressing the need for coordination amongst all those engaged in addressing the threat posed by the LRA. The Security Council welcomed recent AU initiatives to develop and implement a comprehensive strategy to tackle the LRA threat, including military operations and civilian protection work, together with demobilisation, disarmament, repatriation, resettlement and reintegration.

25 July - Discussions between the South Sudan Caretaker Minister of Regional Cooperation Deng Alor and visiting DRC Foreign Minister Alexis Thambwe Mwamba [included](#) renewed focus on strategies to put a stop to LRA attacks, with DRC, Uganda, South Sudan and CAR working together under AU auspices.

25 July - In a press [statement](#), the UN Security Council Working Group on Children and Armed Conflict strongly [condemned](#) abuses against children committed against children by the LRA, including recruitment, rape and other forms of sexual violence and abductions in the south-eastern and eastern areas of CAR.

Prosecution appeals on the conditions for a former OTP lawyer to join Defence team

25 July - The Prosecution requested the Appeals Chamber to reverse the decision of Trial Chamber IV of 30 June, in which it denied the Prosecution's request to invalidate the appointment of a former OTP trial lawyer who joined the defence team in the *Banda and Jerbo case* two weeks after leaving the OTP.

The Prosecution submitted that the Trial Chamber erred when it refused to apply an objective standard - that a former Prosecution lawyer may not join the defence against his former office in a case that was open when he/she worked for the Prosecution -, which the Prosecution submits would have led to disqualification of the person involved. The Prosecution also held that the Chamber erred when it required, while applying article 12(1)(b) of the Code of Professional Conduct (which requires disqualification if the attorney was "*privy to confidential information as a staff member of the Court relating to the case in which counsel seeks to appear*"), that the former OTP trial lawyer be *effectively* in possession of "*more than de minimis*" confidential information, placing an unrealistic evidentiary burden that, in most cases, will be impossible to meet.

The Prosecution holds the view that the importance of the Court's mandate, the particular context in which the Court operates and the need to protect the integrity of its proceedings require the adoption of standards that provide the highest degree of protection to the integrity of the Court's proceedings. Because of the essential need to freely consult and discuss factual, legal, and policy issues, lawyers have an obligation of confidentiality as to all information and an assumption that all interactions within the Prosecution Division will be unrestricted and therefore confidential. National systems also generally reflect the objective principle that a former prosecutor cannot immediately join the Defence. In the view of the Prosecution, the Trial

Chamber's decision embraces a test that is wrong in law and offers inadequate protection, particularly inadequate in view of practice within the OTP.

The Prosecution is also seeking leave to appeal in a similar situation, involving a former Prosecution lawyer who joined the defence in the *Muthaura case* in the situation of Kenya.

I. Investigations and Prosecutions

Over the reporting period, the OTP presented 28 filings in the various cases and conducted four missions in four 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 Prosecution filed its closing brief on 1 June. Oral closing arguments will be presented on 25 and 26 August 2011. 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 17 August 2011.

20 July - The Prosecution filed the [public redacted version](#) of its Closing Brief in the Lubanga case. The closing statements will take place on 25 and 26 August.

22 July - A UN investigation into mass rapes in the DRC seven months ago [identifies](#) the rapists as Congolese army soldiers, demands their prosecution and asks the Government to protect the victims from reprisals from the perpetrators. Navenenthem Pillay, the UN High Commissioner for Human Rights, [called](#) for an end to the use of rape as a weapon of war, and demanded that the perpetrators be prosecuted. The probe by the UN mission in the DRC (MONUSCO) and the UN High Commissioner for Human Rights (OHCHR) says of the incidents in the villages of Bushani and Kalambahiro in North Kivu province in the country's east that it "*can confirm that men in uniform identified by various sources as soldiers of the Armed Forces of the Democratic Republic of Congo (FARDC) submitted 47 women, including one minor, to sexual violence, including rape, abducted two civilians, and inflicted cruel, inhuman or degrading treatment on 12 other civilians.*"

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.

22 July - FIDH and its Sudanese member organisations, the African Center for Justice and Peace Studies (ACJPS) and the Sudan Human Rights Monitor (SUHRM), [expressed](#) deep concern about the serious violations of human rights and humanitarian law being perpetrated in South Kordofan. Commenting on President Al Bashir and Ahmed Harun, ACPJS noted that their role in South Kordofan *“is reminiscent of their role in the Darfur conflict. This is an unbearable example of the threat to peace and security which can emanate from the failure to address accountability. In this context, execution of the outstanding arrests warrants is critical for the sake of both justice and peace.”*

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. Situation in [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.

I.6. Situation in 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. The warrants were [issued](#) by the Judges on 27 June 2011.

25 July - The OTP has dismissed suggestions that Muammar Gaddafi could be allowed to remain in Libya as part of negotiated deal to remove him from power, insisting that a new government would be obliged to arrest him under warrants issued by the Court. The decision to seek justice had been unanimously made by the UN Security Council, and the Court's arrest warrants are legal facts which cannot go away. The OTP has insisted that any negotiation or deal has to respect UN Security Council resolution 1970 and the Judges' decision.

I.7. Situation in [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. 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 23 June 2011, the OTP requested Pre-Trial chamber III for the authorization to open an investigation into the situation in Côte d'Ivoire since 28 November 2010.

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. [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 former President Sékouba Konaté, former Prime Minister Doré, as well as both election candidates. The Guinean authorities extended full cooperation to the Court.

II.6. [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.7. 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.8. 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

20 July - Following the arrest of Goran Hadžić, the last fugitive from an ICTY arrest warrant issued for crimes against humanity and war crimes, the UN Secretary General's spokesperson [highlighted](#) the powerful message sent *"that those who are alleged to have committed such crimes cannot evade justice and will be held accountable."* UN High Commissioner for Human Rights Navi Pillay [said](#): *"A strong message has been sent today to those who commit human rights violations that they will be held accountable, if not by domestic judicial processes, then by international justice mechanisms. The momentum created by these latest developments in the ICTY will serve to strengthen existing processes and initiatives in the field of international criminal justice, not only in the region, but also elsewhere in the world."*

IV. Upcoming Events

- 28-30 August - Deputy Prosecutor Bensouda participates in the 5th Annual International Humanitarian Law Dialogs, Chautauqua, New York
- 29 August - Prosecutor Moreno-Ocampo participates in the 2011 European Forum Political Symposium, Alpbach, Austria

** 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 OTP.Briefing@icc-cpi.int*