



## OTP Weekly Briefing

15-19 July 2011 – Issue #96

### HIGHLIGHTS:

- **OTP PARTICIPATES IN AFRICAN UNION-ICC JOINT SEMINAR**
- **OTP FILES DOCUMENT CONTAINING THE CHARGES IN CASE AGAINST CALLIXTE MBARUSHIMANA**

#### OTP participates in African Union-ICC Joint Seminar

18-19 July - The Director of JCCD, Phakiso Mochochoko, and Head of the Analysis Section, Emeric Rogier, participated in a Seminar, co-organised by the African Union Commissions (AUC) and ICC in Addis Ababa, on technical aspects of the Rome Statute and the practice of the ICC. The Seminar was sponsored by the International Organisation of La Francophonie and the Austrian Federal Ministry for European and International Affairs.

The Seminar was attended by staff of the AUC, Ambassadors and legal advisors of African States Parties and Non States Parties to the Rome Statute based in Addis Ababa. The purpose of the Seminar was for each Organ of the Court to explain its work with a view to fostering better understanding of the work of the Court and for the Court to hear AU concerns.

In its presentations, the OTP outlined the role and functions of the OTP, in particular stressing the independence and impartiality of the OTP in the opening of situations and cases, both of which are decided on the basis of clear criteria under the Rome Statute. The ensuing lengthy but constructive question and answer session on the OTP's work helped clarify some of the misconceptions and in particular the belief that OTP deliberately targets Africa and that it is controlled by the UN Security Council. All participants appreciated explanations given to them by the OTP and stressed the need for continued dialogue between the Court and AU.



#### OTP files document containing the charges in case against Callixte Mbarushimana

15 July - Prosecution in the case *The Prosecutor v. Callixte Mbarushimana* filed the Document Containing the Charges and List of Evidence pursuant to Article 61(3) of the Rome Statute. The Charges contain 13 counts of war crimes and crimes against humanity allegedly committed in the provinces of North and South Kivu, Eastern DRC, in the period 20 January to 31 December 2009. Prosecution alleges that Callixte Mbarushimana is responsible under Article 25(3)(d) of the Rome Statute for contributing to the FDLR leaders' common purpose to commit crimes by creating a "humanitarian catastrophe" in the Kivus in order to persuade the Governments of Rwanda and the DRC to abandon their military campaign against the group and to extort concessions of political power from Rwanda.

### I. Investigations and Prosecutions

Over the reporting period, the OTP presented 9 filings in the various cases and conducted 4 missions in 4 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](#)

### PREVIEW

- Libya Contact Group and EU Foreign Ministers call for accountability in Libya, p. 3.
- Statements on the occasion of the Day of International Criminal Justice, p. 5.

[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.

## 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.

14 July - As reports [continue](#) of LRA attacks in the DRC, the Ugandan and DRC Ministers of Defence Crispus Kiyonga and Charles Mwando Nsimba, meeting in DRC, [welcomed](#) the AU initiative to achieve a regional approach to addressing the LRA threat and reinforce the operational capacity of troops from South Sudan, CAR, DRC and Uganda fighting the LRA.

## 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.

19 July - The UN Secretary General's spokesperson [underlined](#) the Secretary General's extreme concern about the violence taking place in South Kordofan and its impact on civilians, following recent [briefings](#) by both Ivan Simonovic, Head of the NY Office of the UN Office of the High Commissioner for Human Rights, and Valerie Amos, Head of the UN Office of Humanitarian Affairs, making clear that they are alarmed and disturbed by the mounting allegations about events there. According to media [reports](#) a yet-to-be-finalized UN report on South Kordofan is warning that war crimes and crimes against humanity may have been committed in South Kordofan, and recommending that the UN Security Council establish a commission of enquiry to investigate the allegations, and look at the potential for ICC investigations.

## 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.

13 July - Prosecution provided information requested by the Single Judge in relation to calling live witnesses at the Confirmation Hearings. The Prosecution indicated that it does not intend to call any live witnesses provided it can rely on redacted materials including summaries.

## **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.

15 July - In its [statement](#) following its fourth meeting held in Istanbul, the Libya Contact Group “took note of the decision of the International Criminal Court to issue arrest warrants against Qaddafi, his son Seyful Islam and Libyan Intelligence Chief Mr. Senusi. On this occasion, the Group expressed its strong condemnation for violations of international humanitarian and criminal law and deplored all crimes against humanity and war crimes. Participants strongly underlined the need for Qaddafi to step down without further delay and reminded Qaddafi and his associates that their responsibilities and obligations under international law continue and that they will be held responsible for any crimes against humanity and war crimes.”

18 July - In the [conclusions](#) of the EU Foreign Affairs Council meeting, the EU “condemns the grave violations of human rights and the breaches of international humanitarian law perpetrated by the regime. It reiterates the importance of accountability, justice and the need to fight against impunity. It takes note of the decision of the International Criminal Court’s Pre-Trial Chamber I on 27 June to issue arrest warrants against Muammar Kadhafi, Saif al Islam Kadhafi and Abdullah al-Sanussi in connection with alleged crimes against humanity in Libya and calls for full co-operation with the International Criminal Court.” Also, noting continuing defections from the Kadhafi regime, the EU “calls on its remaining followers to disassociate themselves from its crimes.”

18 July - Human Rights Watch in a [publication](#) said that by issuing arrest warrants, “the ICC has taken an important step toward providing the victims of serious crimes in Libya the chance for redress. The ICC’s action sends a strong message that the law can reach even those long thought to be immune to accountability. Justice should not be abandoned as efforts to end the devastating conflict are pursued. (...) [A]rrest warrants for senior leaders can actually strengthen peace efforts by stigmatizing those who stand in the way of conflict resolution. (...) Libya came before the ICC in February as a result of a unanimous referral by the Security Council under Resolution 1970. The states on the council showed support for accountability by voting for the ICC referral. (...) Handing Gaddafi a “get out of jail free card” would not only be inconsistent with the international community’s expressed commitment to justice for crimes in Libya, but would also have serious consequences for a durable peace. Sidestepping accountability in Libya would send a message to abusive leaders around the world that if they hang on long enough, all will be forgiven.”

## **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

**Statements marking the Day of International Criminal Justice, established at the ICC Kampala Review Conference and observed on 17 July, the day on which the Rome Statute was adopted in 1998.**

15 July - UK Ambassador to the Netherlands, Paul Arkwright, in a blog posted on the FCO website, [said](#) that: “At the heart of international criminal justice is the notion of impunity and the principle of accountability; it is a testament to the progress of the international community that heads of state can now be held to account for their actions. At the individual level no one is above the law.”

15 July - “*Effective justice is a deterrent,*” Radhika Coomaraswamy, the Secretary-General’s Special Representative for Children and Armed Conflict, [said](#) in a keynote address. “*There is some fear about the ICC and such fear is healthy and it is born out of respect. Hopefully, the possibility of appearing before the ICC will deter many parties from committing horrendous crimes.*” Coomaraswamy noted that the ICC has been “instrumental” in bringing the issue of children and armed conflict to the attention of the international community and ending the cycle of impunity for perpetrators of grave violations against children: “*Breaking the silence is the first act of healing. The ICC has made talking, venting and acting against war crimes and crimes against humanity legitimate and created a network of activists and agencies who are in a position to support victims seeking justice for the crimes committed against them.*”

17 July - In an Op-Ed on the [website](#) of Al-Jazeera, David Tolbert, President of the International Center for Transitional Justice, said: “The demands for justice are today a driving force of social change and popular revolutions, and their reach now extends to those at the highest levels of power. Those leaders have, from time immemorial, been deemed untouchable and often afforded immunity in furtive and shabby deals that shielded them from prosecution “for the sake of peace”. That day is passing. The notion that impunity for mass atrocities and severe human rights violations is acceptable has been shattered, largely due to the accelerating development of international justice over the past two decades. (...) The arrest of Slobodan Milosevic in 2001 marked the beginning of a new era in which it is now possible to arrest high-level figures, setting the stage for the ICC to issue arrest warrants for Omar al-Bashir, the president of Sudan, and Muammar Gaddafi, the president of Libya. (...) Such high-level prosecutions send a powerful signal: the circle of justice is closing and the principle that no one is above the law is rapidly gaining ground. This should be a clear message to all who believe widespread, systematic crimes can be perpetrated with impunity.”

17 July - The Italian Minister of Foreign Affairs, Franco Frattini, on behalf of the Italian Government, in a [message](#) underlined Italy’s “firm conviction that only respect for a code that is broadly accepted and trusted in its application by an independent and impartial judicial body can meet the deeply-felt need for retributive justice, and prevent future atrocities. We will thus

continue to assure the International Criminal Tribunals, and in particular the Court born from the Rome Statute, our full support and cooperation so that the July 17th anniversary may continue to mark ongoing progress in the affirmation of rule of law and the rights of the individual.”

19 July - Prosecutor Moreno-Ocampo met with the Director General of the European Anti-Fraud Office (OLAF), Giovanni Kessler, with whom he discussed the respective fields of operation and issues of mutual concern, including the possibility of holding future meetings in order to strengthen the understanding between the two institutions.

19 July - Deputy Prosecutor Bensouda travelled to Paris for meetings with senior representatives of the Ministry of Foreign and European Affairs including from the Minister’s Cabinet, the UN Department and the Africa Department.



#### 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](mailto:OTP.Briefing@icc-cpi.int)*