



OTP Weekly Briefing

29 March – 4 April 2011 – Issue #81

HIGHLIGHTS:

- **KENYA CHALLENGES THE ADMISSIBILITY OF THE KENYAN CASES AND THE JURISDICTION OF THE COURT**
- **UNSC ADOPTS RESOLUTION CONDEMNING VIOLENCE IN CÔTE D'IVOIRE AND CALLING FOR ACCOUNTABILITY**
- **PROSECUTOR HOLDS MEETINGS WITH THE EU**

PREVIEW

- HR Council recommends to the UNGA to consider referring the situation in Palestine to the ICC, p. 5

Kenya challenges Kenyan cases and Court's jurisdiction

31 March - Two British lawyers, Sir Geoffrey Nice and Rodney Dixon, have [submitted](#) an [application](#) on behalf of the Government of Kenya requesting the Judges to determine that both Kenyan cases are inadmissible before the ICC. This is the first time a State Party has made an application under article 19 of the Rome Statute.

The application sets out *"the key reforms that have been undertaken and the investigative processes that are currently underway"*; it *"envisages that these steps will be completed within the next six months by September 2011"*.

This request is a right of the Kenya Government under the Rome Statute. It will have to prove that it is prosecuting the same cases (including the same suspects and the same incidents).

Additionally, the application requested that the Chamber convene a status conference to organize proceedings relating to the challenge under article 19(2) of the Statute, and the Application expressed a desire for representatives of the Kenyan Government to participate in the initial appearance hearing.

Pre-Trial Chamber II rejected both these requests in its 4 April 2011 [Decision](#).

Parties to the proceedings will have 21 days to respond to the application. In accordance with deadline set by the Chamber, the Prosecution will file its observations by 28 April at the latest.

On the 7 April initial appearance of William Ruto, Henry Kosgey and Joshua Sang, the Judges set the date of the beginning of the confirmation of charges hearing in the case for 1 September 2011

UNSC calls for accountability in Côte d'Ivoire and recalls Court's jurisdiction

30 March - In [Resolution 1975 \(2011\)](#), the UN Security Council expressed *"its concern at the recent escalation of violence [in Côte d'Ivoire] and demand[ed] an immediate end to the violence against civilians"*; the Council indicated that *"the attacks currently taking place in Côte d'Ivoire against the civilian population could amount to crimes against humanity and that perpetrators of such crimes must be held accountable under international law"*, further *"noting that the ICC may decide on its jurisdiction over the situation in Côte d'Ivoire on the basis of article 12 (3) of the Rome Statute"*.

The OTP is seriously concerned about alleged mass killings in Western Côte d'Ivoire. Widespread or systematic commission could amount to crimes against humanity. The OTP reminds all parties to the conflict that any such attack against civilians can be investigated and prosecuted by the ICC.

As rightly indicated by the UNSC, the Office is assessing its jurisdiction under article 12(3). In addition to the 12(3) declaration sent by then President Gbagbo, President Ouattara confirmed by letter acceptance of ICC jurisdiction and his intention to provide information to the Office.

The Office is collecting an increasing volume of information on crimes. The OTP is following with concern the further deteriorating situation in the Western part of the country, in particular alleged mass killings.

The information is still very unclear, including the status of victims and the perpetrators. The Office has received information from Mr. Ouattara and Mr. Gbagbo, who each submitted a memorandum to the Office, as well as from third sources. The OTP will also liaise with the UN commission of inquiry to ensure effective coordination.

Any State who wants the Office to proceed faster can refer the situation to the OTP.

Prosecutor holds meetings with the European Union

30 March - Prosecutor Moreno-Ocampo visited Brussels for meetings with senior representatives of the European External Action Service (EEAS), including the Executive Secretary-General, Pierre Vimont, Deputy Secretary-General, Maciej Popowski, the Managing Director for Africa, Nicholas Westcott, as well as the Managing Director for North Africa, Middle East, Arabian Peninsula, Iran and Iraq, Hugues Mingarelli and the head of the Human Rights and Democracy Department, Veronique Arnault.



The Prosecutor with the Executive Secretary-General of the EEAS, Pierre Vimont

The Prosecutor briefed them about the activities of the Office with regard to the situations of Libya, Kenya, Darfur, the DRC, and Côte d'Ivoire, and discussed issues of cooperation between the OTP and the EU.

The Prosecutor also had a meeting with the EEAS Head of the Training Division, Stella Zervoudaki, on providing trainings on how to negotiate conflicts respecting legal limits.

During his visit to Brussels, the Prosecutor also briefed the 27 Ambassadors to EU members of the Political and Security Committee (PSC), and the Foreign Committee of the European Parliament, about the ongoing activities of the Office.

Prosecutor Moreno-Ocampo also met with the UN/UNDP Office in Brussels, headed by Antonio Vigilante.



The Prosecutor in the European Parliament

I. Investigations and Prosecutions

Over the reporting period, the OTP presented five filings in the various cases and conducted ten missions in seven 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.

29 March - The Prosecution filed a [public redacted version](#) of its “Response to the Defence’s « Requête de la Défense aux fins d’arrêt définitif des procédures »” in the Lubanga case. In its submission, the Prosecution “submits that the Accused has failed to discharge his burden. There is no evidence (i) that any OTP intermediary had a decisive role in the investigation; (ii) that any intermediary with or without a decisive role deliberately suborned perjury; and (iii) that the OTP knew or had reason to know of possible subornation. The credibility of the witnesses should be decided at the end of the trial. Nor is there any other evidence of Prosecutorial misconduct.”. The Judges rejected the Defence application on 23 February, and the trial resumed on 30 March.

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 Chamber requested them to appear before the Court on 7 and 8 April 2011.

1st April - The Single Judge on behalf of Pre-Trial Chamber II, decided to reject the Prosecution's leave to appeal the decision issuing the summons to appear against Kenyatta, Muthaura and Ali. The Prosecution had raised two issues: (1) "*whether State actors may contribute to and thereby participate in an 'organizational policy' that is not an official 'State policy' within the meaning of Article 7(2)(a)*"; and (ii) "*whether the Pre-Trial Chamber properly rejected, without explanation, the Application's characterization of forced circumcision as acts of sexual violence*".

1st April - In a nation wide [poll](#) conducted between 27 March and 1 April 2011, 61% of Kenyans supported trials in The Hague by the ICC.

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.

25 March - The African Court on Human Rights and Peoples' Rights issued an order for provisional measures in the matter of the African Commission on Human Rights and Peoples' Rights v. Great Socialist People's Libyan Arab Jamahiriya, recalling the UNSC Resolution 1970 (2011) and the referral of the situation to the Prosecutor, and further ordering the following provisional measures: "1) *The Great Socialist Peoples' Libyan Arab Jamahiriya must immediately refrain from any action that would result in loss of life or violation of physical integrity of persons, which could be a breach of the provisions of the Charter or of other international human rights instruments to which it is a party*"; and "2) *The Great Socialist People's Libyan Arab Jamahiriya must report to the Court within a period of fifteen (15) days from the date of receipt of the Order, on the measure taken to implement this Order.*"

31 March - While addressing the launch of the Human Rights & Democracy report, UK Foreign Secretary William Hague [stated](#): "[The UK] led the drive to refer Libya to the ICC and to suspend it from the UN Human Rights Council, so that those responsible for atrocities know that there will be a day of reckoning. Today, we are pressing for full and immediate access to Libya for ICC investigators and the Human Rights Council's Commission of Inquiry".

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.

21 March - The Human Rights Council adopted [Resolution A/HRC/16/L.31](#), entitled "Follow-up to the report of the United Nations Fact-Finding Mission on the Gaza Conflict", where it "*recommends that the General Assembly reconsider the report of the United Nations Fact-Finding Mission on the Gaza Conflict at its sixty-sixth session, and urges the Assembly to submit that report to the Security Council for its consideration and appropriate action, including consideration of referral of the situation in the Occupied Palestinian Territory to the prosecutor of the ICC, pursuant to article 13(b) of the Rome Statute*". The Council further recommended "*that the General Assembly remain apprised of the matter until it is satisfied that appropriate action has been taken at the domestic or international level to ensure justice for victims and accountability for perpetrators, and also remain ready to consider whether additional action within its powers is required in the interests of justice*".

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.

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.



OTP delegation with President Alpha Condé (middle)

1st April - The OTP led its fourth mission to Guinea to follow up on the ongoing national investigation into the events of 28 September 2009 and link up with the newly-established authorities. The delegation met inter alia with the President of Guinea, Mr. Alpha Condé, the Prime Minister, Mr. Mohamed Saïd Fofana, and the Minister of Justice, Mr. Christian Sow. All confirmed their commitment to justice and accountability, including in relation to the 28 September 2009 events.

Following an extensive working session with the pool of judges in charge of the case, the OTP delegation noted the progress made since its previous visit in November 2010 and stressed the need to further intensify investigative activities. Both national authorities and foreign ambassadors in Conakry have been urged to provide the judges with the material and political support required to complete the investigative phase in the near future.

In a press statement given on 1st April, the Office stressed: *“If no tangible result is achieved within a reasonable time, the Office will assume his responsibilities. We are however convinced that Guineans could and should shed light on this dark page of their history in order to definitively turn it and get on with the establishment of the rule of law”*.

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

28 March - Deputy Prosecutor Fatou Bensouda met with a delegation of the group “Friends of the ICC” from the European Parliament at the Court and updated them in the ongoing activities of the Office. The delegation also met with the President of the Court, Judge Sang-Hyun Song and the Second Vice-President, Judge Hans-Peter Kaul. During the discussions, the delegation underlined the ICC’s crucial role in preventing impunity for the most serious crimes of concern to humanity. They further stressed the importance of using all the possibilities of the European Union to support the work of the Court and to encourage more states to ratify the Rome Statute of the ICC.

IV. Upcoming Events

- 6-7 April - OTP holds its bi-annual roundtable meeting with NGOs, The Hague
- 11-13 April - OTP participates in the Expert meeting on complementarities between international refugee law, international criminal law, and international human rights law, organized by ICTR and UNHCR, Arusha
- 13 April - Prosecutor participates in Spring Meetings of the World Bank and IMF, Washington DC
- 4 May - Prosecutor briefs the UN Security Council on the situation in Libya, New York
- 8 June - Prosecutor briefs the UN Security Council on the situation in Darfur, New York

** 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*