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Deputy Prosecutor of the International Criminal Court**

Sixteenth Diplomatic Briefing

Statement

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English Version

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Excellencies, Ladies and Gentlemen,

Thank you for being here.

As the Vice-President mentioned, just a week ago, on 18 May, the ICC held its first initial appearance hearing for a suspect in the Darfur situation.

Mr. Abu Garda's appearance in Court would not have been possible without the assistance of a number of African and European States, who worked together with the Office of the Prosecutor over the last 8 months, including The Netherlands, the Host State of the ICC, Chad, Senegal, Nigeria, Mali and the Gambia. I wish to thank them again.

Ladies and Gentlemen,

Let me update you on the other Office activities since our last meeting.

The Democratic Republic of the Congo (DRC)

In **DRC 1**, *Prosecutor versus Thomas Lubanga Dyilo*, the Trial Chamber has examined 22 Prosecution witnesses. This includes former child soldiers, political, military and other insiders, as well as experts. We have presented documentary evidence, including videos, and documents from the UPC. We expect the Prosecution case to be completed by June 2009.

In the **DRC 2** case, we are ready to go to trial. The beginning of the trial is scheduled for 24 September.

We are trying to present each prosecution case in less than six months. We will present about 25 witnesses in the Katanga/Ngudjolo case.

As you know, we still have one suspect at large in DRC, Bosco Ntaganda. He has been active in the Kivus as Chief of staff of the CNDP. Bosco seems to have taken over the leadership of the group when Nkunda was arrested by Rwanda. The DRC Government is conscious of its obligations under the Rome Statute and we are in discussion with them and all partners in the region in order to ensure that Bosco is surrendered soon.

Our third investigation in the DRC continues, with a focus on the Kivu provinces. We are working on all the groups active in the region, but for operational reasons cannot disclose much information at this stage. In this **DRC 3** case, we are aiming at a coordinated approach whereby national judicial authorities in the region and beyond as appropriate will take over cases in order to ensure that all perpetrators are prosecuted. The possibility for us to transfer information collected in the course of our investigations will depend on the development locally of protection for witnesses and judges.

Let me turn to Northern Uganda

LRA crimes against civilians have resumed with the same cruelty and across a growing area in Northern DRC and Southern Sudan.

It is almost 4 years since the ICC warrants were issued. LRA killings and abductions continue under Kony's leadership, with more than 100,000 now displaced by LRA activity in DRC, and over 50,000 in Southern Sudan, including over 18,000 displaced across the border from DRC, according to UN OCHA estimates.

The joint operation by regional states that we witnessed is recognition of the need for action. The fact that the Governments of the region acted together, with the objective of executing a warrant, is an encouraging signal.

The capture of high level commanders, and information gathered on supply networks should help continue the work against the LRA. Our understanding is that the Ugandans will continue to assist DRC counterparts.

Outstanding arrest warrants have to be executed.

Let me now turn to the Central African Republic, a situation referred to us in 2004 by President Bozize.

On 3rd March, the PTC requested the Prosecution to consider submitting an Amended Document Containing the Charges, addressing Article 28 of the Statute on command/superior responsibility. We submitted the amended document on 30 March 2009, with both modes of liability (command/superior responsibility and individual criminal responsibility under Article 25(3)(a)) as alternatives. The evidence supports both forms of liability. We expect the Chamber to issue its decision by the end of June.

In the meantime, the investigation goes on: We have performed forensic activities in Bangui (exhumation and autopsy) and are grateful for the cooperation extended by the Central African authorities and a number of partners.

Let me turn to the situation in Darfur, the Sudan

As I mentioned earlier, Bahar Idriss Abu Garda voluntarily appeared in Court on 18 May in response to a summons.

The rebel commander is the first person to appear before the Court voluntarily in response to a summons and the first person to appear in relation to the Darfur investigation opened in June 2005.

As the Prosecutor stated, *"voluntary appearance is always an option under the Statute, including for President Al Bashir should he elect to cooperate."*

The initial appearance of Mr. Abu Garda was also an occasion to pay tribute to the peacekeepers targeted in Haskanita: *“By killing peacekeepers, the perpetrators attacked the millions of civilians who those soldiers came to protect. They came from Senegal, from Mali, from Nigeria, from Botswana, to serve and protect. They were murdered. Attacking peacekeepers is a serious crime under the Statute and shall be prosecuted.”*

Regarding our case against President Omar Al Bashir, the Sudan is obliged under international law to execute the warrant on its territory. If it does not enforce the warrant, the United Nations Security Council, which referred the case to the ICC, will need to ensure compliance. The Prosecutor will report on the non-cooperation of the Sudan to the UNSC on 5 June.

The Prosecutor is also in regular contact with President Mbeki, as the leader of the AU high-level panel. President Mbeki has written to offer dialogue and cooperation. The Office recognizes the importance of a comprehensive solution for Darfur, including reconciliation and compensation, as well as moving ahead the process of accountability for other individuals involved in the commission of crimes. The Office of the Prosecutor is committed to working with President Mbeki and the AU panel toward these goals.

Non-essential contacts with Omar Al-Bashir should be severed. When contacts are necessary, attempts should be made first to interact with non-indicted individuals; there are at this time only three persons sought by the Court: Ali Kushayb, Ahmed Harun and Omar Al-Bashir.

In bilateral and multilateral meetings, States Parties should proactively express their support to the enforcement of the Court’s decision, request cooperation with the Court in accordance with Security Council resolution 1593, and demand that attacks against the displaced, including through expelling humanitarians, cease immediately. The Office is grateful for initiatives already taken by some States in this regard.

Let me now turn to **other situations**

Situations in five countries on four continents are under analysis: Colombia, Georgia, Kenya, Côte d’Ivoire, and Afghanistan.

On 30-31 March, upon the invitation of former Secretary General Kofi Annan, the Office participated in the Geneva Conference on Kenya with government representatives, as well as members of the civil society. The leadership of Kofi Annan is essential. We fully support his efforts to encourage local accountability mechanisms. We stand ready to assist Kenya.

On 22 January 2009, the Palestinian National Authority lodged a declaration accepting jurisdiction of the Court in accordance with Article 12(3). The OTP has also received 326 communications related to the situation of Israel and the Palestinian Territory. The Office continues to examine all issues related to its jurisdiction,

including whether the declaration by the Palestinian Authority accepting the exercise of jurisdiction by the ICC meets statutory requirements, whether crimes within ICC jurisdiction have been committed and whether there are national proceedings in relation to alleged crimes. We have received important contributions to our analysis, including a report sent by the Prosecutor by the Secretary-General of the Arab League, Mr. Amr Musa.

Before I conclude, let me say a few words about positive complementarity and its importance in terms of enforcing the mandate of the Court and maximizing the impact of our work.

A positive understanding of complementarity means firstly making sure that the Court is taken seriously as an enforcer of the Statute. After six years, the international community recognizes the existence of a new global legal framework, and realizes that it has to act. This means for instance implementing the provisions of the Rome Statute into national legislations.

Secondly, the Office has developed the practice of being as transparent as possible so the international community and our partners will know whether there are situations which may require investigations to be carried out.

A third manner in which the Office can act is to use its access and expertise to help broker certain forms of assistance to national prosecutions and judicial authorities.

The fourth way that the Office can act is to provide information to national authorities that have been obtained in the course of its investigations. The Office is willing to do so, with the important caveat that any such information will only ever be transmitted if the Office is satisfied that the security of witnesses and the independence of the judiciary can be adequately addressed and guaranteed.

Thus we, together with national police institutions, and together with national judiciary, will do the investigative and prosecutorial work. We need you, the diplomatic community, to ensure that justice is respected and arrest warrants are implemented.