



## OTP Weekly Briefing

5-11 April 2011 – Issue #82

### HIGHLIGHTS:

- INITIAL APPEARANCE OF THE 6 PERSONS SUMMONED TO APPEAR BY THE JUDGES IN THE KENYAN SITUATION
- PROSECUTOR ANNOUNCES OTP ROAD MAP IN THE LIBYAN SITUATION AT THE DIPLOMATIC BRIEFING

### PREVIEW

- Laurent Gbagbo arrested,  
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### Initial appearances in the Kenyan cases



7-8 April - The six suspects came voluntarily to the Court pursuant to the summons to appear issued on 8 March. This initial appearance is a crucial achievement for the Court and the Rome Statute system. It demonstrates their respect for the fair and transparent proceedings of the Court, and shows how the ICC is helping Kenya manage the transition from the post-electoral violence.

Pre-Trial Chamber II set the date of the beginning of the confirmation of charges hearing in the case of *The Prosecutor v. William Ruto, Henry Kosgey and Joshua Sang* for 1 September, and in the case of *The Prosecutor v. Francis Muthaura, Uhuru Kenyatta and Mohammed Hussein Ali* for 21 September.

The Judges had set out very clear conditions for their appearance in The Hague. These included: (i) to have no contact victim or a witness (ii) to refrain from interfering with witnesses or the investigation; (iii) to refrain from committing other crimes and (iv) to attend all required hearings at the ICC.

During the hearing, the Presiding Judge [stressed](#) that: *“It came to the knowledge of the Chamber [...] that there are some movements towards retriggering the violence in the country by way of using some dangerous speeches. I would like to remind the suspects [...] that such type of action could be perceived as a sort of inducement which may constitute the breach of one of the conditions set out in the summonses to appear, namely, to continue committing crimes within the jurisdiction of the Court. Accordingly, this might prompt the Chamber to replace the summonses to appear with warrants of arrest”.*



Kofi Annan, Chairman of the AU Panel of Eminent African Personalities, also [emphasized](#): *“Bringing to justice those responsible for the post-election violence is essential to help Kenya heal its wounds, and prevent such crimes from being committed again. [...] At this critical juncture, Kenyans, their leaders and the political elite must renew their commitment to the achievement of these goals, and abandon the language of hate and incitement and allow the ICC process to run its course.”*

The Office has also clearly indicated it will request a warrant of arrest against anyone, suspect or affiliate, interfering with witnesses or seeking to obstruct the course of justice.

### OTP road map in the Libyan situation announced by the Prosecutor at the 20<sup>th</sup> Diplomatic Briefing

8 April - The Prosecutor, implementing the mandate given by the UN Security Council in Resolution 1970 (2011), [informed](#) States representatives of the Office's activities and road map of future activities in the Libyan situation, thus ensuring predictability and transparency.

*"We are focusing the first investigation on a few specific incidents that occurred in the first ten days of the conflict. We have been able to collect strong evidence on two different aspects: (i) a specific Libyan regime policy to attack civilians; (ii) incidents where unarmed civilians were attacked by security forces. The Office is now focusing on identifying those who bear the greatest criminal responsibility for the crimes committed. We are very advanced".*

The Prosecutor also highlighted that the Office was able to start immediately investigations regarding the first case by provisionally reallocating resources from different investigative teams and creating a team of about ten investigators, most of them fluent in Arabic. For the subsequent investigations, the OTP will apply for the contingency fund. The second case will focus on alleged crimes committed by different parties, including rapes, abductions, forced disappearances, forced displacement and torture.

Thanks to questions from States representatives, the Prosecutor clarified the consistency of the Office's work in opening investigations. The Prosecutor explained the difference between Libya and Côte d'Ivoire. The UN Security Council referral of the Libyan situation allowed the Office to open an investigation in a few days. Côte d'Ivoire's authorities lodged a declaration under Article 12(3) accepting the jurisdiction of the Court, but Côte d'Ivoire is not a State Party, and thus cannot refer a situation. As a consequence, the Prosecutor would have to request authorization from the Pre-Trial Chamber to start an investigation, in accordance with Article 15. In this case, the Prosecutor needs to "*conclude that there is a reasonable basis to proceed with an investigation*", which marks a higher threshold. Therefore, the Prosecutor noted that a referral regarding the Côte d'Ivoire situation would expedite the OTP's activities.

## I. Investigations and Prosecutions

Over the reporting period, the OTP presented five filings in the various cases and conducted six 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 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.

8 April - The US State Department Human Rights Report 2010 [highlights](#) reports of continuing criminal activity in the DRC through the year by Bosco Ntaganda and the forces under his command, and the concern expressed by then UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston over indications by both government and UN officials that no steps were being taken to arrest Ntaganda, despite the outstanding ICC warrant against him.

### 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.

7 April - The latest UN [update](#) on LRA activity in DRC, CAR and south Sudan recorded a significant current increase in the number of attacks, with more than 100 attacks reported between January and March, more than a third of the total number of attacks throughout 2010, and more than 38,000 people newly displaced during the period. Attacks have increased markedly in DRC and fallen in CAR, at a time when [according](#) to the UPDF Kony has left CAR and returned to the DRC.

### 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.

6 April - The Prosecution [requested](#) Pre-Trial Chamber II to add additional conditions to their summonses for the six suspects, specifically that the Chamber order the suspects as follows: (i) to provide the Chamber with all residential and office addresses, email addresses, and telephone numbers; (ii) to submit complete financial information; (iii) to not make any public statements that contain or can be construed as containing an open or veiled threat to actual or prospective witnesses or victims; and (iv) to appear in person before the Chamber at least once every six months and certify before the Chamber, under oath, that they have complied in full with all the conditions.



7 April - The Prosecutor met with the Kenyan Attorney General, Mr. Amos Wako, as well as with Mr. Wanjuki Muchemi, Solicitor General, Mr. Kiriako Tobiko, Director for Public prosecutions, and Ambassador Ruthie Rono, Kenyan Ambassador in the Netherlands.

## 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.

## II. Preliminary Examinations

Statistics on [Article 15 Communications](#) and other preliminary examination activities.

54 communications that may fall under Article 15 were received by the Office in the month of March. 38 of these communications were manifestly outside the jurisdiction of the Court; 16 communications warranted further analysis or were linked to a situation already under analysis. The total number of Article 15 communications received to date is 9,146, of which 4,271 were manifestly outside the jurisdiction of the Court.

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. [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.



6 April - The OTP is very [concerned](#) about the deteriorating situation in Ivory Coast including recent information about alleged mass killings in the Western part of the country. The Office continues to collect information on alleged crimes committed there by different parties to the conflict. The OTP has been conducting a preliminary examination in Ivory Coast and the next step will be for the Prosecutor to use his independent *proprio motu* power to request authorization from the Pre Trial Chamber in order to initiate an investigation. Ivory Coast is not a state party of the Rome Statute, but then President Gbagbo accepted jurisdiction of the Court in accordance with article 12(3). Current President Ouattara confirmed by letter his acceptance of ICC jurisdiction and provided information to the office. However, to expedite the process, if a State Party of the Rome Statute refers Ivory Coast to the Prosecutor, the OTP can proceed faster with an investigation and start to prepare a request for an arrest warrant for those most responsible for crimes in Ivory Coast.

11 April - Forces stormed the president's residence in Côte d'Ivoire and arrested Laurent Gbagbo. President Ouattara [called](#) his countrymen to lay down their weapons and said he has asked the Justice Minister to start legal proceedings against Gbagbo, his wife and his colleagues. U.S. Secretary of State Hillary Clinton [said](#) Gbagbo's capture "*sends a strong signal to dictators and tyrants. [...] They may not disregard the voice of their own people. [...] There will be consequences for those who cling to power*". UN Secretary-General Ban Ki-moon also highlighted: "*What happens in Côte d'Ivoire has huge implications for the continent that will have 16 presidential elections this year*".

## 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.

## 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

### OTP-NGO bi-annual roundtable discussions at the Court

6-7 April - The OTP held its bi-annual meetings with civil society at the Court's headquarters with representatives from international and local NGOs, including from situation countries and situations under preliminary examination, such as Kenya, DRC, Georgia, Côte d'Ivoire and Afghanistan.



The focus of this roundtable's thematic sessions was on the policies of the Office, preliminary examinations, as well as positive complementarity and the preventive impact of the work of the Office. The OTP also held focused sessions on the Kenyan and Libyan situations. Civil society members also had the opportunity to go into deeper discussions regarding the Office's other four ongoing situations with OTP staff members, as well as to watch the first initial appearance through live feed.

Deputy Prosecutor Fatou Bensouda provided an update on the ongoing trials and recent developments in the Court.

Civil society representatives took stock of the important role the ICC has come to play in the international arena, and stressed the importance of the unanimous referral of the Libyan situation by the UN Security Council in that regard. Discussions followed on how civil society could contribute to ensuring further mainstreaming of the activities of the Court in States' and international organizations' agendas, as well as further adjustment to the new legal obligations established by the Rome Statute.



8 April - Deputy Prosecutor Fatou Bensouda met with Mr. Abdou Diouf, Secretary-General of the Organisation Internationale de la Francophonie (OIF) in Paris. The Deputy Prosecutor updated the Secretary-General on situations and cases, focusing on Guinea, Côte d'Ivoire and Libya.

9 April - Amady Ba, Head of the International Cooperation section, participated in a high-level conference on the question of Darfur in Paris, organized by Urgence Darfour.

11 April - UN Secretary-General Ban Ki-moon [stressed](#) the urgent need to strengthen the rule of law worldwide, noting that it can assist in tackling some of the key global challenges the international community is currently facing. He highlighted the fact that *"thanks largely to the work of the ICC and similar tribunals, crimes against humanity and large-scale violations of human rights will no longer go unpunished. We are entering a new age of accountability. The Security Council's referral of the situation in Libya to the ICC is only the most recent testament to that effect."*

#### IV. Upcoming Events

- 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
- 12-13 April - Prosecutor participates in Spring Meetings of the World Bank and IMF, Washington DC
- 14-16 April - Prosecutor holds meetings with States representatives and UN officials, New York
- 14 April - Prosecutor briefs the New York Working Group of the Bureau on Libya, Ivory Coast and Kenya, New York
- 4 May - Prosecutor briefs the UN Security Council on the situation in Libya, New York
- 24 May - Prosecutor attends the screening of "The Prosecutor" at the One World Human Rights Film Festival, Brussels
- 8 June - Prosecutor briefs the UN Security Council on the situation in Darfur, New York
- 16 June - Deputy Prosecutor speaks at the Atrocity Law and Policy Class at Utrecht University, Utrecht

\* 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](mailto:Olivia.Swaak-Goldman@icc-cpi.int)