



OTP Weekly Briefing – 13-19 October – Issue #9

1. Investigations and Prosecutions:

a. General overview

Over the week, the OTP presented 33 filings in the different cases.

b. Situation in the [Democratic Republic of the Congo](#) (DRC)

This situation was referred by the DRC in April 2004. The OTP opened its investigation in June 2004, focussing on Ituri where 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 FNI and FRPI. The trial of [the Prosecutor v. Thomas Lubanga Dyilo](#) began on 26 January 2009. The trial of [Katanga and Ngudjolo Chui](#) is scheduled for 24 November 2009. [Bosco Ntaganda](#) is at large.

In September 2008, the OTP announced the start of its investigation into alleged crimes in the Kivus.

Case: The Prosecutor v. Thomas Lubanga Dyilo

14 October - The Prosecution opposed the request of the Defence of Mathieu Ngudjolo and Germain Katanga to lift redactions to the identity of an intermediary. The Prosecution recalled that the Appeal Chamber has established that Rule 81(4) of the Rules of Procedure and Evidence concerning protection of witnesses, victims and members of their families should be read to include “persons at risk on account of the activities of the Court”.

15 October - The Prosecution filed its submissions on the disclosure of medical records. The Prosecution submitted that ordinarily the communications made between a victim and his or her doctor, psychiatrist, psychologist or counselor should be presumptively regarded as privileged and that if the contents of a medical report represent privileged communications, the Court cannot order disclosure without the prior consent of the individual concerned.

Case: The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui

12 October - In its observations on the review of the pre-trial detention of Mathieu Ngudjolo Chui, the Prosecution argued that the accused must remain detained pending trial, scheduled to commence on 24 November 2009, in order, *inter alia*, to ensure the protection of the witnesses, to prevent the accused from obstructing the ongoing court proceedings and to secure his appearance in Court.

12 October - The Prosecution requested leave to appeal Trial Chamber II’s decision of 7 October 2009, which held that, according to Regulation 35 of the Regulations of the Court, the Prosecution was required to apply for authorization from the Trial Chamber to carry out fact-finding missions after the expiry of the deadline for disclosure of all incriminating evidence. The Prosecution submitted that the decision intrudes into the Prosecution’s autonomy in relation to investigative matters.

The Kivus investigation

In response to its cooperation requests, the OTP received abundant documentation on the operation and financing of armed groups involved in crimes in the Kivus.

c. 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 Lords 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. Over the last 18 months, the LRA is reported to have killed more than 1,250, abducted more than 2,000 and displaced close to 300,000 in DRC alone. In addition, there have been substantial numbers of killings and abductions in both South Sudan and Central African Republic.

d. 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 and one summons to appear have been issued against [Ahmad Harun and Ali Kushayb](#), [Omar Al Bashir](#), and [Bahar Idriss Abu Garda](#). Three arrest warrants are outstanding. Mr. Abu Garda [voluntarily appeared](#) before the Court pursuant to a summons. Following his initial appearance on 18 May, he was allowed to leave the Netherlands. The confirmation of charges hearing started on 19 October 2009.

14 October - According to the [New Republic](#), many international aid agencies expelled in March 2009 by President Al Bashir provided comprehensive services for rape victims. *"In their absence, no one has been either willing or able to rebuild Darfur's delicate patchwork of medical, psycho-social, and legal services for survivors of what, in United Nations-speak, is called "GBV" (gender-based violence). [...] In the wake of this year's expulsions, Darfur's already fragile GBV-services network collapsed completely."*

Case: The Prosecutor v. Omar Hassan Ahmad Al Bashir

Case: The Prosecutor v. Bahr Idriss Abu Garda

16 October - During the Court press conference prior to the [confirmation of charges hearing](#), the Prosecutor presented his team in charge of the Haskanita case led by Deputy Prosecutor Fatou Bensouda. The Prosecutor emphasized the gravity of attacks against African Union peacekeepers. As an example, he recalled the killing of peacekeepers in Somalia that resulted in the withdrawal of the peacekeepers, abandoning millions of unarmed civilians. As a result of the Haskanita attack, the African Union camp was closed, leaving thousands of civilians unprotected. The Prosecutor committed to pursue cases against those who attack the peacekeepers.



19 October - During her opening statement, Deputy Prosecutor Fatou Bensouda stated: *"This case is about the killing of 12 peacekeepers and the ransacking of their camps in Haskanita and the ensuing dismantling of the camp. The peacekeepers came from Nigeria, Mali, Senegal, Botswana, the Gambia and other countries. [...] They came to serve and protect the civilians, fellow Africans in Darfur, thousands of people who have been the victims of crimes by Sudanese forces and integrated Janjaweed/Militia over the last 6 years. [...] They were murdered. [...] The AU never re-established the base at Haskanita, leaving the civilians that had depended on its protection defenceless".* The Deputy Prosecutor stressed: *"Peacekeepers must be protected by more than the weapons and armour of war. They must be shielded by all the power of international law - including this court. Warring parties around the world must know that international justice will not tolerate impunity for those who violate the protected status of peacekeeping forces."*

e. Situation in the [Central African Republic](#) (CAR)

This situation was referred by the Central African Republic in December 2004. The OTP opened its investigations in May 2007. One arrest warrant has been issued against [Jean-Pierre Bemba](#) for crimes committed in 2002-2003. The [confirmation of charges hearing](#) was held on 12 to 15 January 2009. On 15 June, Pre-Trial Chamber II rendered its confirmation of charges decision. On 18 September, the case was referred to the new Trial Chamber III. In parallel, the Office continues to monitor allegations of crimes committed since the end of 2005.

Case: *The Prosecutor v. Jean-Pierre Bemba Gombo*

12 October - Stressing that all efforts should be made by the Court to reach out to affected communities, the Prosecution proposed that parts of the trial against Mr. Jean-Pierre Bemba be conducted in Bangui, *in situ*.

f. Miscellaneous

2. Preliminary Examinations:

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

A preliminary examination can be distinguished from a formal investigation. It is a phase during which the Office assesses whether crimes falling under the ICC jurisdiction may have been, or are possibly being, committed in a given situation; whether genuine investigations and prosecutions are carried out by the competent authorities in relation to these crimes; and whether the possible opening of an investigation by the Prosecutor would not go against the [interests of justice](#). During this phase, the Office proactively evaluates all information on alleged crimes from multiple sources, including information from individuals and groups also known as “communications” and submissions from parties concerned. The triggering of a preliminary examination does not imply that an investigation will eventually be opened.

12 October - Jurists meeting in Brussels, as part of a [conference on Western Sahara](#) organized by Oxfam-Solidarité and the Université Libre de Bruxelles, suggested that one of the ways the Sahrawis could defend their cause in international judicial institutions is by making a declaration accepting the exercise of the jurisdiction of the Court under Article 12 (3) of the Rome Statute, “*following the same model as what was done by the Palestinian National Authority in January 2009 regarding the events in Gaza*”. The jurists also suggested that the Sahrawi Arab Democratic Republic could also “*deposit an instrument of ratification to the ICC Statute, and if the SADR meets the conditions to be party to the statutes, it could then open the jurisdiction of the Court regarding a certain number of events which are taking place on its territory.*”.

b. 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.

c. 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 analysing allegations of international networks supporting armed groups committing crimes in Colombia.

d. 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.

e. [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 is examining all issues related to its jurisdiction, including whether the declaration accepting the exercise of jurisdiction by the Court meets statutory requirements, whether crimes within the Court's jurisdiction have been committed and whether there are national proceedings in relation to alleged crimes.

12 October - Israeli Prime Minister Benjamin Netanyahu stated, in relation to the Goldstone report, during his speech at the opening session of the Israeli Parliament "[w]e will not allow Ehud Olmert, Tzipi Livni and Ehud Barak, who sent our sons to war, to arrive at the International [Criminal] Court in The Hague".

12 October - HRW [called on the UNSC](#) to "demand justice for the civilian victims on both sides of the Gaza war. Breaking the climate of impunity in the Israeli-Palestinian conflict is a precondition for stability and lasting peace". Steve Crawshaw, UN advocacy director at HRW, said "[a]s it has in other conflicts, the Council should demand that the parties to the conflict punish those responsible for serious abuses. [...] Israel and Hamas can avoid international prosecutions by conducting credible domestic investigations".

15 October - As part of its preliminary examination, the Prosecutor met in The Hague with a delegation of the International Federation for Human Rights (FIDH) led by its President, Souhayr Belhassen, and its Vice-President, Raji Sourani who is also President of the Palestinian Centre for Human Rights (PCHR). The meeting focused on issues related to the jurisdiction of the ICC, admissibility issues including national accountability mechanisms, and operation *Cast Lead*. Mr. Sorani said: "We have a dream: justice". "We have a dream in the ICC".

16 October 2009 - The UN Human Rights Council adopted a resolution endorsing the findings, and calling for the implementation of the recommendations, set out in the reports of the Fact Finding Mission to Gaza led by Justice Goldstone and by the High Commissioner for Human Rights.



16 October - The Prosecutor received a Palestinian delegation headed by Dr. Ali Khashan, Minister of Justice of the Palestinian National Authority (PNA), accompanied by the Palestinian Ambassador to The Netherlands, Nabil Abuznaid, and a team of legal experts including Vaughan Lowe QC of Oxford University. The Prosecutor also received members of the

Independent Fact-finding Committee led by Professor John Dugard and members of the Arab League Secretariat. The PNA delegation submitted a preliminary report presenting its legal arguments in support of the [declaration lodged 22 January 2009](#), accepting the jurisdiction of the Court over crimes committed in Palestine. The Office will carefully examine supporting arguments submitted, starting with the issue of whether the declaration by the PNA accepting the exercise of jurisdiction by the ICC meets statutory requirements. The Prosecutor said "We appreciate the efforts undertaken by the PNA and the extensive legal arguments presented on a highly complex area of law". A further report is to be presented by the PNA, clarifying additional issues.



Béatrice Le Fraper du Hellen, Director of JCCD; Ambassador Radwan Ben Khadra (Legal Adviser to the Secretary-General of the Arab League) and Ambassador Hesham Youssef (chef de cabinet to the Secretary-General of the Arab League)

f. 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. The most serious crimes, including alleged widespread sexual violence, were committed in 2002-2005. On 17-18 July 2009, high-level representatives of the OTP visited Abidjan.

g. [Kenya](#)

The Office made its examination public in February 2008. On 3 July 2009, a common statement was issued in The Hague by a [Government delegation from Kenya](#), led by Justice Minister Kilonzo, and the Prosecutor. It stated that in order to prevent a recurrence of violence during the next election cycle, those most responsible for previous post-election violence must be held accountable. Kenyan authorities committed themselves to refer the situation to the Court if efforts to conduct national proceedings fail. 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 16 July, Prosecutor Moreno-Ocampo received the sealed envelope and 6 boxes containing [documents and supporting materials compiled by the Commission](#). The Prosecutor opened the envelope, examined its content and resealed it. On 30 September, the Prosecutor [reiterated](#) the commitment to address post-election violence and prevent recurring violence through a three-pronged approach: with the ICC prosecuting those most responsible; national accountability proceedings for other perpetrators; and reforms and mechanisms such as the Truth, Justice and Reconciliation commission to shed light on the history of past events and to suggest mechanisms to prevent such crimes in the future.

The [4th Review Report of the Kenya National Dialogue and Reconciliation Monitoring Project](#) in Kenya was published. The report, produced by South Consulting, is based in part on a national survey conducted in the country covering the period July - September 2009. Asked to identify the most important thing that Kenya should do to address past injustices, 40% of the respondents said they wanted prosecutions, 31% said they would rather forgive and forget while 11% want a Truth, Justice and Reconciliation Commission. When asked what mechanism should be used to try individuals responsible for post-election violence, 58% said the suspects should be taken to the ICC, 14% through a local tribunal.

In an exchange of letters between the Kenyan Government and the Prosecutor, it was agreed that the Prosecutor would meet President Mwai Kibaki and Prime Minister Raila Odinga in Nairobi the first week of November. The Prosecutor will explain his duty with respect to the prosecution of crimes committed in Kenya during the post election violence, and with respect to the prevention of further crimes, in the face of fresh reports that some Kenyan groups are re-arming for the 2012 elections.

h. [Guinea](#)

The Prosecutor made public its examination of the situation in Guinea 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 or 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 Rome Statute.

12 October - In a [12-point communiqué](#) issued at the end of the one-day meeting at the ECOWAS Commission in Abuja, the International Contact Group on Guinea including the UN, the AU, the EU, the Organization of Islamic states, Libya, Nigeria, Germany, Spain, Japan and four permanent members of the UNSC (France, UK, US, Russia) made an urgent appeal to UNSG Ban Ki Moon for an International Commission of Inquiry to investigate the 28 September 2009 “the massacre of unarmed civilians and rapes, identify the culprits and prosecute them in the competent courts in Guinea or at the ICC so as to put an end to acts of impunity in the country”.

14 October - The Prosecutor [confirmed](#) that the situation in Guinea is now under preliminary examination by the OTP. Deputy Prosecutor Fatou Bensouda [said](#): *"From the information we have received, from the pictures I have seen, women were abused or otherwise brutalized on the pitch of Conraky's stadium, apparently by men in uniform. This is appalling, unacceptable... Those responsible must be held accountable"*.

3. Cooperation – Galvanizing Efforts to Arrest:

16 October - In a [press release](#), Amnesty International recalled *"'President al Bashir is a fugitive from international justice – charged with responsibility for crimes against humanity and war crimes in Darfur,' said Christopher Keith Hall, Senior Legal Adviser with Amnesty International's International Justice Project. 'The Ugandan government has an obligation to arrest President al Bashir and hand him over to the ICC should he enter Ugandan territory.'"*

19 October - President Al Bashir will not attend the Special Summit of Heads of State and Government on Refugees, Returnees and Internally Displaced Persons in Africa on 19-20 October in Uganda. According to the [Sudan Tribune](#), the Sudanese government is dispatching two junior ministers to Uganda to attend the Special Summit.

4. Coming Events:

- 19-30 October - Pre-Trial Chamber I Confirmation of Charges hearing, case of [The Prosecutor v. Abu Garda](#)
- 27-29 October - OTP Financial Investigation Seminar, The Hague
- 28 October - Prosecutor to receive award for his work in human rights, Universidad Complutense, Madrid
- 30 October - Consultations on the draft Prosecutorial Strategy for 2009-2012 with States, The Hague

- 3 November - Consultations on the draft Prosecutorial Strategy for 2009-2012, Geneva
- 4 November - Prosecutor's briefing to the seventeenth Diplomatic Briefing, The Hague
- 5 November - Prosecutor's briefing to EU Ambassadors following "COJUR-ICC", The Hague
- 6-8 November - Prosecutor's visit to Nairobi, Kenya
- 7-9 November - Deputy Prosecutor to participate in African Centre for Democracy and Human Rights Studies Forum, 46th Ordinary Session of the African Commission on Human and Peoples' Rights, Banjul
- 9-10 November - Prosecutor to participate in symposium "The ICC that Africa Wants", Cape Town
- 11-13 November - Prosecutor and Deputy Prosecutor visit Rwanda for the International Prosecutors' colloquium, Kigali
- 18-26 November - [Eighth Session of the Assembly of States Parties](#), The Hague
- 22 November - Deputy Prosecutor to attend Praemium Erasmianum Foundation screening of *The Reckoning*, The Hague
- 20 November - Prosecutor to participate in the World Economic Forum, Summit on Global Agenda, Dubai
- 24 November - Trial Chamber II: Start of the Trial of [The Prosecutor v. Germain Katanga and Mathieu Ngudjolo](#)

- 4 December - Prosecutor's report to the UNSC on the Darfur situation pursuant to UNSCR 1593 (2005)

* 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