



**OTP Weekly Briefing – 6-12 October – Issue #8**

**1. Investigations and Prosecutions:**

*a. General overview*

Over the week, the OTP presented 16 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***

2 October - Trial Chamber I rendered its [decision](#) on the Prosecution's request not to disclose the information related to the recruitment and use of child soldiers by armed groups other than the UPC/FLPC. Given the lack of dispute *inter partes* on the issue in question, and given the extent of the information already provided by the Prosecution, the Chamber authorized the Prosecution not to disclose further information on this issue.

5 October - The Prosecution submitted an omnibus application concerning disclosure by the Defence. The Prosecution sought to receive information on the evidence Defence witnesses intend to give and to receive timely disclosure of materials under Rule 78 of the Rules of Procedure and Evidence in order to assist the Prosecution in its preparation.

6 October - The Appeals Chamber decided that Judge Sang-Hyun Song would be Presiding Judge in the appeal of Trial Chamber I's [decision](#) of 14 July 2009 giving notice that the legal characterization of the facts may be subject to change in accordance with Regulation 55(2) of the Regulations of the Court.

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

7 October - Trial Chamber II rendered its decision on the Prosecution's applications on disclosure of evidentiary material relating to the Prosecutor's site visit to Bogoro in March 2009 and authorized the Prosecution to disclose the visual representation of the *Institut de Bogoro*.

7 October - Pursuant to the order of Pre-Trial Chamber II during the status conference on 1 October 2009, the Prosecution submitted, in relation to each of its witnesses, a document summarizing the key subjects on which he or she will testify and the estimated time of questioning by the Prosecution as confidential annexes.

**The Kivus investigation**

1-9 October - The OTP conducted an investigative mission on crimes committed in the North and South Kivu provinces. The investigation team met with national authorities and other individuals on alleged crimes and on the structure and presence of armed groups and forces operating 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.

23 September - The UN Secretary General's [report on children and armed conflict in Uganda](#) notes that "[c]hildren and their communities in the Sudan, the Democratic Republic of the Congo and the Central African Republic have been victims of attacks that have claimed hundreds of lives and resulted in the disappearance of hundreds of children". The report calls on the LRA to release children within its ranks and encourages the Security Council Working Group on Children and Armed Conflict to visit Uganda and the region in order to assess the impact of LRA's activities on children.

*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 is set for 19 October 2009.

2 October - Leaders of Sudan's main political parties and representatives of about 20 opposition groups discussed the upcoming 2010 elections in Juba. At the end of the 5-day conference a [Declaration on Dialogue and National Consensus](#) was made public in which the signatories, including GoS Vice-President and GOSS President Salva Kiir, former Prime Minister Sadiq Al-Mahdi, Popular Congress Party leader and former government minister Hassan Al-Turabi, communist party leader Mohamed Ibrahim Nugud "affirm zero tolerance to impunity from prosecution" and expect "those who have committed war crimes ... [to be] brought to book before independent judiciary."

8 October - Former President Thabo Mbeki, Chair of the AU High Level Panel on Darfur, submitted his [report](#) to the AU. Mr. Mbeki indicated that the Panel was honored to interact with Prosecutor Moreno-Ocampo, and stated that "there must be peace, that justice must be done and seen to be done, and that reconciliation should be achieved [...]. The objectives of peace, justice and reconciliation in Darfur are interconnected, mutually dependent, equally desirable and cannot be achieved separate one from the other". In his remarks to the press, Mr. Mbeki reiterated that the ICC is an independent institution, purely legal and not impacted by political decisions.

**Case: *The Prosecutor v. Omar Hassan Ahmad Al Bashir***

**Case: *The Prosecutor v. Bahr Idriss Abu Garda***

6 October - Pre-Trial Chamber I rendered a [decision](#) on the modalities of victim participation at the pre-trial stage of proceedings in the case. Following the Chamber's existing jurisprudence in *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, the Chamber granted victims of the case the participatory rights in relation to access to the public record of the case, attendance and participation at hearings, and questioning of witnesses and filing of documents by their legal representatives.

7 October - In relation to the upcoming confirmation hearing, the Prosecution raised issues concerning Defence's non-disclosure of evidence.

8 October - The Single Judge in Trial Chamber I issued a decision on the 52 applications for participation at the pre-trial stage, recognizing the right to participation of 44 applicants and rejecting the participation of local Darfuri applicants on the basis of insufficient nexus to the Haskanita incident. The Prosecution had submitted that all of the applicants should be granted authorisation to participate as victims.

The confirmation of charges hearing is scheduled to start on 19 October, at 09:30. According to the [provisional agenda](#) the hearing is expected to last until 30 October. The OTP will be represented by Deputy Prosecutor Fatou Bensouda, Senior Trial Lawyer Essa Faal, trial lawyers Ade Omofade, Shyamala Alagendra and Victor Baiesu, and International Cooperation Adviser Jennifer Schense.

*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***

6 October - The Prosecution requested that the Appeals Chamber dismiss the application by the *Association pour la promotion de la démocratie et du développement de la République Démocratique du Congo* (Aprodec) to participate as *amicus curiae* in the appeal proceedings on conditional release to Mr Jean-Pierre Bemba Gombo. The Prosecution submitted that the application failed to demonstrate that the Applicant had the expertise and impartiality desirable to assist the Appeals Chamber in the resolution of the issues before it.

*f. Miscellaneous*

30 September - The UNSC high-level debate on Women, Peace and Security, chaired by US Secretary of State Hillary Clinton resulted in the adoption of [Resolution 1888 \(2009\)](#), which recalls “the responsibilities of States to end impunity and to prosecute those responsible for genocide, crimes against humanity, war crimes and other egregious crimes perpetrated against civilians”; and “recall[s] the inclusion of a range of sexual violence offences in the Rome Statute of the International Criminal Court and the statutes of the ad hoc international criminal tribunals”. The Resolution requests the UN Secretary-General to appoint a Special Representative on sexual violence in armed conflict, and urges States to ensure that perpetrators of sexual violence in conflicts are brought to justice.

**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.

*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.

10 October - The Prosecutor met with Carlos Franco, Director of the Colombian Presidential Program for Human Rights and Eduardo Pizarro, Chairman of the Colombian National Commission on Reparation and Reconciliation. They discussed the implementation of Justice and Peace Law, including the effect of the extradition of former paramilitaries to the United States in 2008. They also discussed information on arbitrary killings attributed to members of the armed forces against civilians, known in Colombia as “false positives” (*falsos positivos*), and proceedings against those responsible.

*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.

2 October - The UN Human Rights Council deferred a vote on a draft resolution concerning the report of the United Nations fact-finding mission on the Gaza conflict until its next session in March. The report included a recommendation that, after six months of monitoring of national proceedings, the UNSC refer the situation in Gaza to the ICC Prosecutor.

2 October - An [Editorial in Haaretz newspaper](#) calls for a national commission of inquiry saying “[t]he Israeli public deserves and needs to know whether IDF soldiers, their officers and their political overseers acted legally and morally during the Gaza operation.”

8 October - An [opinion piece in Haaretz](#) newspaper by Profesor Gavison, Jerusalem, stated “these issues are not purely judicial ones and they certainly do not require an investigation (...) the [Goldstone] report does not state what Israel is allowed to do to defend its citizens”.

10 October - The Prosecutor received the visit of the new Palestinian Ambassador to The Netherlands.

*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, high-level representatives of 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.

7 October - At the conclusion of a three-day visit to Kenya, Kofi Annan stated that the key perpetrators should be tried at the ICC whilst the others should face justice in Kenya. *"I have always seen a three-tier approach to the settlement of this issue,"* he said. *"The Truth, Justice and Reconciliation Commission, a special tribunal as recommended by the Waki commission or another effective local mechanism that meets international standards. This is absolutely essential. And then, of course, the International Criminal Court."* He further stressed that *"Kenyans have welcomed the involvement of the ICC and the government has assured me that it will collaborate with the Court"*.

The Prosecutor maintained his dialogue with the Kenyan authorities, responding to the 1 October letter by Minister Kilonzo, and suggesting a meeting with the President and Prime Minister of Kenya. The purpose of this visit will be to explain the Prosecutor's duties with respect to the prosecution and the prevention of crimes, as part of a comprehensive solution that requires the leadership of Kenyan principals.

### **3. Cooperation – Galvanizing Efforts to Arrest:**

2 October - During a joint briefing of US Ambassador-at-Large for Global Women's Issues Melannie Verveer, and Ambassador-at-Large for War Crimes Issues Stephen Rapp, Ambassador Rapp stated *"certainly, in the second term of President Bush, the United States began to take, I think, an approach of greater cooperation with the ICC. As you recall, we didn't oppose the referral of the Darfur situation. And both the last administration and this have opposed any effort to defer the Prosecutor's investigation and indictment there that does involve allegations of sexual violence against individuals in Darfur. We'll see in the future, whether it's possible, as we develop our policy, that we can work constructively with the ICC on cases in other places where it has jurisdiction. [...] When we're talking about the people that have been indicted by the ICC in Uganda, the LRA, and we're talking about those that – indicted in the DRC, we want to see those people brought to justice, and we want to see a fair trial. But we want to see, if they're guilty of these offenses, that they're imprisoned. And so it's very much our policy that the ICC succeeds in those cases"*.

6-7 October - The OTP held its bi-annual roundtable with NGOs in The Hague and provided participants with an overview of trends and priorities on cooperation and arrests, situations under preliminary examination and investigations and proceedings. The OTP policy to publicly communicate that it is analyzing certain situations when it considers that it can have a positive effect has been appreciated by NGOs. The Office also received various comments regarding its draft Prosecutorial Strategy for 2009-2012. The Prosecutor stated *"the Office is working towards solidifying its role and its impact. We want to be clear, transparent and predictable, and cooperate with all the various actors concerned, while respecting their autonomous mandate and independence. In the next three years, we will continue to maximize the impact of the Court, and the NGOs' role in this matter is critically important"*.

6 October - Human Rights Watch's [report](#) suggests that the situation in Darfur be classified as a continuing conflict and recommends to the Government of National Unity that it *"fulfill obligations to cooperate with the ICC including surrendering those subject to ICC arrest warrants to the court"*.





9 October - The Prosecutor received the [Vice-President for Integrity of the World Bank](#), Mr. Leonard McCarthy. The Prosecutor and the Vice-President signed a Memorandum of Understanding regarding cooperation between the OTP and the Integrity Vice-Presidency. *"The victims of crimes under ICC jurisdiction need justice and development.... [w]e are exploring different ways of cooperation to serve them better,"* said the Prosecutor. Mr. McCarthy also met with OTP staff members, who briefed him on the Office's work regarding financial investigations. He delivered an OTP Guest Lecture to ICC staff members on the work of the Integrity Office. *"I am looking forward to working with the Prosecutor in areas of mutual interest,"* Mr. McCarthy said. *"We are two global institutions with global mandates, and we will be able to learn from each other."*

In advance of its next session, on 14 and 15 October, the OTP has conveyed to the members of the Great Lakes Contact Group updated information on its two priorities: the arrest of Bosco Ntaganda and the arrest of the LRA members subject to arrest warrants by the Court.

#### **4. Coming Events:**

- 15-16 October - Visit of Arab League Independent Fact Finding Committee on Gaza, Arab League Secretariat and Palestinian National Authority in the context of OTP analysis of jurisdiction in the Palestine situation, The Hague
- 19-30 October - Pre-Trial Chamber I Confirmation of Charges hearing, case of [The Prosecutor v. Abu Garda](#)
- 26-27 October - Prosecutor's visit to Ecuador in the context of preliminary examination activities
- 28 October - Prosecutor to receive award for his work in human rights, Universidad Complutense, Madrid
- 29-30 October - Deputy Prosecutor to participate in African Legal Aid Workshop, Kampala
- 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
- 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](mailto:Olivia.Swaak-Goldman@icc-cpi.int)