



## OTP Weekly Briefing

24-30 August 2010 – Issue #52

### THIS WEEK'S HIGHLIGHT: ONGOING GENDER CRIMES IN DARFUR AND THE DRC

#### PREVIEW

- International  
Community reacts to  
presence of President  
Al Bashir in Kenya, p. 2.

#### Sexual Violence

The Office of the Prosecutor is investigating gender crimes in Darfur and the Democratic Republic of Congo (DRC). The evidence shows that in both situations campaigns of massive rape are ongoing.

#### Darfur

In the recent decision on the genocide charges against President Bashir the Pre-Trial Chamber considered that "[t]housands of civilian women, belonging primarily to the Fur, Masalit and Zaghawa groups were subject, throughout the Darfur region, to acts of rape by GoS forces" during the period covered by the arrest warrant application. The judges conclude that there are reasonable grounds to believe that the elements of "the crime of genocide by causing serious bodily and mental harm of article 6(b) are fulfilled." Since the date of the submission of the Prosecution's application, 14 July 2008, the situation has worsened. President Bashir ordered the expulsion of those who were helping the victims of rapes. Recently, on 15 August 2010, it was [reported](#) that the Government of the Sudan expelled UNHCR aid officials for distributing "rape-detection devices" in Darfur. Instead of stopping the rapes, President Bashir stopped the information about the rapes.

In order to listen to Darfuri victims, on 28 August 2010 Prosecutor Moreno-Ocampo participated in a meeting organized by the Darfur Victims Organisations for Rehabilitation and Relief in London. The organizers' Chair, Dr Mariam Saleh Suliman, said rape in Darfur had gone unacknowledged for too long and called for action from the international community to end sexual and gender based crimes. The meeting included Ms Martha Jean Baker, who set out the importance of the Rome Statute in defining gender crimes. Also present were Dr James Smith, from Aegis Trust and Ms Victoria Phan from the International Criminal Court Student Network, organizations that have worked extensively to highlight the plight of the Darfuri people.

#### The DRC

The United Nations reported on 23 August that at least 179 women in North Kivu province, in eastern DRC, were the victims of mass rape between July 30 and August 3. It blamed the Democratic Forces for the Liberation of Rwanda (FDLR), and Mai-Mai militia.

On 25 August, UN Secretary-General Ban Ki-moon [called](#) on the Congolese authorities to bring to justice those responsible for the attacks: "Women and children should not have to live in fear of rape. Communities should not suffer the indignity of knowing that human rights abusers and war criminals can continue to behave with impunity." Executive Director of UNICEF, Anthony Lake, emphasized the urgent need to end the use of sexual violence as a weapon of war, stressing that "egregious violations of human rights, including rape and sexual violence, have become endemic in the DRC." Lake underscored that "[s]exual violence is an international crime and all perpetrators must be held fully accountable. Impunity from prosecution and punishment must end."

On 27 August, upon request of the US and France, the UN Security Council held an [emergency session](#) to discuss and condemn widespread rapes in eastern DRC. US Secretary of State Hillary Clinton stated that "[t]he United States will do everything we can to work with the UN and the DRC government to hold the perpetrators of these acts accountable, and to create a safe environment for women, girls and all civilians living in the eastern Congo."

Leaders of militias that carried out mass rape in Democratic Republic of Congo will face war crimes charges, said Margot Wallstrom, Special Representative on the Prevention of Sexual Violence in Conflict; stating "[i]n this case, like so many others, systematic rape was planned and preventable" [and] "We have to take important steps to make sure that there is no impunity. We have to go after them."

## I. Investigations and Prosecutions

Over the week, the OTP presented 4 filings in the various cases and conducted 5 missions in 3 countries.

### I.1. 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, focusing 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 [Thomas Lubanga Dyilo](#) began on 26 January 2009. The trial of [Katanga and Ngudjolo Chui](#) began on 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.

24 August - Sylvestre Bwira Kyahi, a Congolese human rights defender, was [abducted](#) in the town of Goma in North Kivu by gunmen reported to be from the Congolese armed forces, FARDC. The abduction followed the publication by Mr. Bwira together with 50 local NGOs, of an open letter to DRC President Kabila denouncing crimes perpetrated in North Kivu by members of FARDC and Bosco Ntaganda's CNDP. The letter demanded the removal of CNDP members from the FARDC who have committed serious human rights violations, including Bosco Ntaganda who is subject to an ICC arrest warrant that has not been executed and who has instead been integrated into the FARDC.

### 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 1,500, abducted more than 2,250 and displaced well over 300,000 in DRC alone. In addition, over the past year, more than 80,000 people have been displaced, and close to 250 people killed 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. Following his initial appearance on 18 May 2009, he was allowed to leave The Netherlands. 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 Pre-Trial Chamber set the [confirmation of charges hearing](#) for Banda and Jerbo for 22 November 2010.

26 August - Human Rights Watch, in advance of President Al Bashir's travel to Kenya, [said](#) that "Kenya will forever tarnish the celebration of its long-awaited constitution if it welcomes an international fugitive to the festivities. Even worse, hosting al-Bashir would throw into question Kenya's commitment to cooperate with the ICC in its Kenyan investigation." Heidi Hautala, Chair of the European Parliament Subcommittee on Human Rights, [called](#) on Kenya to arrest Bashir or deny him entrance into the country. [FIDH](#), [No Peace Without Justice](#), and [Amnesty International](#) expressed their concern about the visit and called on African countries to implement the Court's decisions and cooperate in efforts to arrest. Kenyan Members of the Parliamentarians for Global Action [stated](#) they would demand a ministerial statement on the matter when the Parliament resumes on Tuesday.

27 August - The presence of President Al Bashir on Kenyan territory led the Pre-Trial Chamber I to issue a [‘Decision informing the United Nations Security Council and the Assembly of States Parties to the Court about Omar Al-Bashir’s presence in the territory of the Republic of Kenya and Chad’](#), in order for them to take any appropriate measure.

27 August - UNSG spokesperson Martin Nesirky underlined that *“State parties to the Rome Statute have an obligation to cooperate fully with the International Criminal Court [...] [and] the Secretary-General urges all States party to the Rome Statute to cooperate with the Court”*, consistent with Security Council resolution 1593 (2005).

27 August - The spokesperson of EU High Representative for Foreign Affairs and Security Policy, Catherine Ashton, [stated](#): *“The High Representative is concerned by the visit of President Omar Al-Bashir to Kenya (...). She firmly recalls the importance of all Member States of the United Nations abiding by and implementing the resolutions adopted by the Security Council under Chapter VII of the UN Charter, in this case, UNSCR 1593 (2005). She urges Kenya to respect its obligations under international law to arrest and surrender those indicted by the ICC. She calls upon Kenya to continue to cooperate with the ICC in its investigation into the 2007-2008 post-election violence.”*

27 August - US President Barak Obama [stated](#) that Kenya’s Government *“has committed itself to full cooperation with the ICC, and we consider it important that Kenya honor its commitments to the ICC and to international justice, along with all nations that share those responsibilities. In Kenya, and beyond, justice is a critical ingredient for lasting peace.”*

27 August - Two Kenyans were arrested in Nairobi’s Central Police Station after they demonstrated against the invitation of Kenya to President Al Bashir for whom the ICC has issued a warrant of arrest.

27 August - The Kenyans for Peace, Truth and Justice, a coalition of over 30 Kenyan NGOs, [stated](#) that *“President Bashir’s presence negates the spirit of our new constitution [...]”*. The Kenya Section of the International Commission of Jurists denounced the invitation to Bashir as being both unconstitutional and a breach of Kenya’s international obligations. *“Victims of post-election violence in Kenya suffered violations concurrent with crimes against humanity as set out in the Rome Statute, including systematic acts of rape and other forms of sexual and gender based violence. Similarities can be drawn between the harm suffered by victims in Kenya and Darfur notwithstanding the difference in scale.”* Ndung’u Wainaina, Executive Director of the International Centre for Policy and Conflict, [asserted](#) that *“Inviting President Bashir to Kenya is an act of impunity and a clear indication that Kenya is not ready to cooperate with the ICC. His presence here is an insult to the people of Kenya and the victims of the post-election violence.”*

29 August - Kenya’s Prime Minister Raila Odinga [expressed](#) his position that *“an apology [be] made to the international community, particularly ICC, because we are a signatory and party to the Rome Statute”*.

29 August - Kofi Annan [expressed](#) his surprise about President Al Bashir’s visit to Kenya and recalled to the Republic its specific obligations as a signatory of the Rome Statute, in particular on cooperation.

30 August - The Canadian Minister of Foreign Affairs, Lawrence Cannon, [deplored](#) the Government of Kenya’s invitation to President Al Bashir to attend the constitution’s adoption ceremony which *“contravenes Kenya’s obligations as a state party to the Rome Statute of the ICC, which requires that it cooperate with the Court”*.

30 August - A spokesperson for the French Ministry of Foreign Affairs [expressed](#) regret that President Al Bashir was able to visit Kenya with complete impunity, in spite of the two arrest warrants issued by the ICC against him. He recalled that all Rome Statute States Parties, including Kenya, have the obligation to cooperate with the ICC so that those allegedly responsible for the most serious crimes can be brought to trial.

30 August - *“President Bashir is fighting for his freedom using different tactics,”* the Prosecutor [said](#) on Saturday during his visit with Darfur victims. Those tactics include *“abusing African hospitality”* by going to neighbouring countries, *“threatening Western countries with affecting the south (Sudan) and offering carrots to foreign business, to French, American and English companies,”* he said. *“U.N. Security Council members should implement a strategy to counter Bashir’s tactics.”*

#### 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. On 7 July, Trial Chamber III convened a status conference for 30 August, when, it will hear submissions on setting the trial date.

#### 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.

## 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 analysing 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. 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.

27 August - The United Nations Operations in Cote d'Ivoire (UNOCI) [reported](#) that serious human rights violations had been committed during the demonstrations in February 2010 following the dissolution of the Government and the national electoral authority, including the killing of 13 people, extrajudicial executions, cruel, inhuman and degrading treatment of those arrested, and illegal arrests by agents of the Defence and Security Forces.

## 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. The Guinean authorities extended full cooperation to the Court.

## III. Cooperation – Galvanizing Efforts to Arrest

## IV. Other

30 August - Back versions of the Weekly Briefing in Arabic will be available on the ICC [website](#).

## V. Coming Events

- 31 August-1 September - Deputy Prosecutor participates in 4<sup>th</sup> International Humanitarian Law Dialogs, Chautauqua
- 5 September - Deputy Prosecutor attends inauguration of President Kagame, Kigali
- 9 September - Prosecutor delivers closing speech at the 15<sup>th</sup> IAP Annual Conference, 'Crossing Borders', The Hague
- 21 September - Deputy Prosecutor delivers speech at a conference of the Konrad Adenauer Stiftung, 'Everything that is just. International jurisdiction in Africa', Berlin
- 28-29 September - Prosecutor participates in 25<sup>th</sup> anniversary of the Center for Victims on Torture, Minneapolis
- 30 September - Prosecutor in New York for various meetings and a lecture at NYU
- October - Events relating to the 10<sup>th</sup> anniversary of Security Council Resolution 1325 on Women, Peace and Security
- 3-4 October - Prosecutor makes official visit to Denmark
- 5-6 October - Prosecutor participates in a NGO Strategy Meeting 'Strengthening Justice in the Context of ICC Preliminary Examinations', organized by the Hauser Center for Nonprofit Organizations, Bellagio, Italy
- 10 October - Deputy Prosecutor attends national celebration of the third edition of the 'Marche Mondiale des Femmes' organized by the International movement of Feminists, Tervuren, Belgium
- 19-20 October - Prosecutor and Deputy Prosecutor participate in OTP-NGO Round Table, The Hague
- 26-27 October - Prosecutor participates in an event organised by the NY University School of Law, 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](mailto:Olivia.Swaak-Goldman@icc-cpi.int)*