



## OTP Weekly Briefing

30 March - 5 April – Issue #31

### THIS WEEK'S HIGHLIGHT

#### PROSECUTOR AUTHORIZED TO START INVESTIGATION INTO SITUATION OF KENYA

31 March - 1 April - Pre-Trial Chamber II, by majority, granted the Prosecutor's request to commence an investigation in the Republic of Kenya.

On behalf of the Kenyan Government, Kenyan Justice Minister Kilonzo [welcomed](#) the decision of the Court

The Office of the Prosecutor will now start its investigation. To prevent recurring violence during the next election cycle the objective is to proceed promptly, conducting an expeditious investigation, aiming to present a sample representative of the crimes committed during the post-election violence. *"We envision at least two cases against one to three persons in each case,"* the Prosecutor said during a press conference with live connection to Nairobi. *"We will focus on those who, according to the evidence that will be collected in the course of our independent investigation, are most responsible. The Office has presented a preliminary list of 20 political and business leaders to the Judges, belonging to or associated with both the PNU and ODM. As you know, this list was just indicative. It is not binding."*

*"Our duty is to investigate both incriminating and exonerating information. Persons under suspicion can request to be interviewed by my Office in order to establish the truth. We will respect the rights of suspects."* said the Prosecutor.

On the issue of protection, the Prosecutor said: *"We have a duty to protect each of our witnesses and we will do it independently. It is also the responsibility of the Kenyan authorities to ensure that all those who speak in favour of justice are duly protected. We will try to present a reduced number of witnesses in the Kenyan cases in order to limit the risk of exposure."*

The Prosecutor will travel to Kenya in May to meet with victims and visit some of the crime scenes. The bulk of the investigation shall be finalized in 2010.

#### PREVIEW:

- UK and France condemn continued LRA atrocities, [page 4](#).
- Prosecutor participates in FIDH forum in Armenia, [page 4](#).



Kofi Annan [saluted](#) the decision taken by the ICC Judges to grant the request to commence an investigation: *"This is an important day for justice in Kenya. Justice for the victims suddenly looks brighter. I urge all concerned to fully cooperate with the ICC."*

## I. Investigations and Prosecutions

Over the week, the OTP presented 7 filings in the various cases and conducted 2 missions in 2 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.

### 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 1,250, abducted more than 2,000 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.

29-30 March - The UN Secretary-General's latest [report](#) on MONUC highlights the continuing challenge posed by armed groups operating in eastern Congo. With regard to the LRA the report notes that "an enhanced military strategy, including greater air mobility and intelligence capabilities, as well as MONUC support for cross-border operations in pursuit of LRA will be required to deter LRA attacks and to target the group's command structure more effectively."

### 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 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. The Prosecution [appealed](#) the decision of the majority of the Chamber to dismiss the charges of genocide against President Al Bashir. On 3 February the Appeals Chamber ruled that it was a legal error to reject the charges of genocide against President Al Bashir. 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.

30 March - The International Crisis Group chaired by Louise Arbour [described](#) the role of President Al Bashir's NCP in manipulating the election process, with as likely result a lack of legitimacy and "catastrophic" consequences for Darfur.

1 April - The leading contender for President of Sudan, SPLM's Yassir Arman, has [withdrawn](#) his candidacy. Also other candidates have [pulled out](#) of the elections. The SPLM blamed the continuing conflict in the Darfur region and "electoral irregularities" for the withdrawal of Arman.

### 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. The trial is set to start on [5 July 2010](#). In parallel, the Office continues to monitor allegations of crimes committed since the end of 2005.

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

29 March - The Prosecution requested the Chamber to dismiss the Defence's challenge to the admissibility of the case. The Prosecution submitted that there have been no relevant domestic proceedings and that given the scale, nature, manner of commission and impact of the war crimes and crimes against humanity confirmed against the Accused, the case is of sufficient gravity to justify further action by the Court. The Prosecution also submitted that the Defence inappropriately incorporated other claims, and that those claims should be dismissed.

## 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 during the events that took place between 1 June 2005 and 26 November 2009.

## 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.

36 communications that may fall under Article 15 were received by the Office in the month of March. 22 of these communications were manifestly outside the jurisdiction of the Court; 14 communications warranted further analysis or were linked to a situation already under analysis. The total number of Article 15 communications received to date is 8,716, of which 3,930 were manifestly outside the jurisdiction of the Court.

### 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.

28 - 30 March - FARC [released](#) two soldiers, one of them after almost 12 years. In response, and in order to secure the release of the remaining hostages in FARC custody, President Uribe [opened](#) the doors to a possible humanitarian exchange with the FARC. Celebrating the release, the UN also [reminded](#) the FARC that systematic and long deprivation of freedom and submitting the captives to inhuman and degrading treatments constitute war crimes and may constitute crimes against humanity.

### 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.



## 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, in the context of following up on the Goldstone Report.

1 April - The Prosecutor met with a delegation from the European Center for Law and Justice, which had previously sent to the OTP a "*Legal Memorandum opposing Accession to the ICC by Non-State entities.*" The meeting dealt with both issues of jurisdiction and admissibility in relation to the Palestinian declaration under Article 12(3) of the Rome Statute.

## 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.

## 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. On 12, 13 and 15 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 fully informed of its ongoing 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.

## III. Cooperation – Galvanizing Efforts to Arrest

29 March - DRC Minister of Justice Luzolo [highlighted](#) that LRA commanders were subject to an ICC arrest warrant, and that the Government, working with Uganda, was employed in operations to locate and arrest them. He said "*The Government will do everything to secure their arrest and surrender to the International Criminal Court.*"

29 and 30 March - The French and UK Governments condemned the continuing LRA atrocities. France *inter alia* [reminded](#) that LRA leader Joseph Kony is subject to an ICC arrest warrant, and that ICC proceedings must be pursued. The UK [welcomed](#) ongoing cooperation between the states in the region and their efforts to address the LRA threat, and urged states to cooperate with UN missions in LRA affected areas and to make every effort to ensure that civilian populations are fully protected.

5-6 April - The Prosecutor participated in the 37<sup>th</sup> FIDH Congress Forum, entitled "Justice, the new challenges", in Yerevan, Armenia. He spoke about the complementarity principle and thanked civil society, including FIDH, for supporting the Court, in particular with regard to the arrest and surrender of suspects. The Prosecutor also held meetings with the President of Armenia, Serzh Sargsyan; the Minister of Justice, Gevorg Danielian; the Minister of Foreign Affairs, Edward Nalbandyan; the President of the Armenian Constitutional Court, Gagik Harutyunyan; and the Head of the National Assembly standing Committee on State and Legal affairs, David Harutyunyan.



*The Prosecutor with the Armenian President*

## V. Coming Events

- 8 April - Prosecutor participates in a Technology, Entertainment and Design (TED) conference in Buenos Aires.
- 12-19 April - OTP participates in panels organized by the Alliance on Crime Prevention and Criminal Justice, in parallel to UNODC's 12<sup>th</sup> World Congress on Crime Prevention and Criminal Justice, Salvador, Bahia, Brazil
- 26 April - Prosecutor delivers key note address at a South/North dialogue organized by Africa Legal Aid, entitled "The Bashir Arrest Warrant: The World vs Africa or the African Union vs the People of Africa?"
- 27 April - Hearing on admissibility in the case *Prosecutor v. Jean-Pierre Bemba Gombo*
- May (dates to be determined) - Prosecutor visits Kenya
- 5-7 May - Prosecutor attends the World Economic Forum on Africa, Dar es Salaam
- 27 May - Prosecutor delivers keynote address at the 6<sup>th</sup> session of the Consultative Assembly of Parliamentarians for the ICC and the Rule of Law, Kampala
- 30-31 May - Prosecutor attends the World Economic Forum Global Redesign Summit, Doha
- 31 May - 4 June - Prosecutor attends the ICC Review Conference, Kampala
- 4 June - 11 June - Deputy Prosecutor attends the ICC Review Conference, Kampala
- 11 June - Prosecutor briefs the UN Security Council on the situation in Darfur, 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)