



OTP Weekly Briefing – 24-30 November – Issue #15

THIS WEEK'S HIGHLIGHTS:

PROSECUTOR REQUESTS JUDGES AUTHORIZATION TO OPEN AN INVESTIGATION INTO KENYA SITUATION



26 November - The Prosecutor filed a [request](#) with the Judges for authorization to open an investigation into the 2007-2008 post-election violence in Kenya. According to reports, 1,220 persons were killed; hundreds were raped, with thousands more unreported; 350,000 people were forcibly displaced; and 3,561 were injured as part of a widespread and systematic attack against the civilian population. *"Victims were hurt. They were raped, their homes burnt and they lost their cattle, they lost all their means to support themselves. We are siding with them. We will do justice, we will work together to avoid a repetition of the crimes,"* said Moreno-Ocampo.

Should the Judges authorize the investigation, the Prosecutor intends to return to Kenya in 2010 to meet with victims. [Responding](#) to media from The Hague and Nairobi, the Prosecutor highlighted the threats faced by victims and activists, including allegedly from the police. Stressing that Prosecution witnesses will be protected by the Court, the Prosecutor also emphasized Kenyan authorities' responsibility to protect their citizens requesting justice.

If the Chamber authorizes the investigation, the Prosecutor's aim is to define the charges and identify a limited number of suspects in 2010. He emphasized that *"no list of suspects is binding on me. I have the duty to conduct my own, impartial investigation ... I will make my own determination on who should be prosecuted."*

Since 2003, the Prosecutor has used his *proprio motu* powers under Article 15 of the Rome Statute to independently select situations which merit investigation and then engage with States - Uganda, DRC, Kenya - on the way to trigger the investigation. This is the first time he assessed that a request to the Judges would be the way to proceed. The Prosecutor concluded *"[i]t has been two years since the post election violence in Kenya. In two years another election is planned. The world is watching Kenya and this Court. We cannot fail the women, men and children of Kenya."*

TRIAL OPENS IN CASE OF PROSECUTOR VS. GERMAIN KATANGA AND MATHIEU NGUDJOLO CHUI

24 November - Germain Katanga and Mathieu Ngudjolo Chui are accused of committing crimes against humanity and war crimes in Bogoro, a village in the DRC, on 24 February 2003. *"They used children as soldiers. They killed more than 200 civilians in a few hours. They raped women, girls and elderly. They looted the entire village and they transformed women into sexual slaves,"* said the Prosecutor in his opening statement. *"The plan was to 'wipe out' Bogoro."* It was not an isolated event, it was part of the Congo wars where *"... the international community failed to act when the genocide*

started in Rwanda ... [s]ome of the genocidaires were allowed to escape to neighbouring Congo. They were a factor that destabilized Congo and produced the Congo wars. Almost four million people died, making the Congo wars the gravest conflict since World War II," the Prosecutor stated. In concluding, Moreno Ocampo reminded the Court that "[i]t is time to apply the Rome Statute, to prevent genocide, to prevent another Congo war, to make the promise of 'never again' real."



1. Investigations and Prosecutions:

a. General overview of the cases

Over the week, the OTP presented 10 filings in the various cases and conducted 2 investigative missions in 2 countries.

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](#) 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.

Case: *The Prosecutor v. Thomas Lubanga Dyilo*

The Prosecution concluded the presentation of its evidence on 14 July. On 2 October, Trial Chamber I [decided](#) to adjourn the presentation of the evidence of the Defence, originally scheduled to start in October 2009. The Chamber is waiting for the resolution of the appeal lodged by the Prosecution and the Defence against its 14 July decision, notifying that the legal characterization of the facts may be subject to change in accordance with Regulation 55(2).

Case: *The Prosecutor v. Katanga and Ngudjolo*

25 November: The OTP investigation team leader in the case was the first witness in the trial and emphasized that witnesses had been threatened in the course of the investigation.

The Kivus Investigation

25 November - The Congolese authorities and the UN Secretary-General Deputy Special Representative in the DRC, Leila Zerrougui, launched a [national strategy](#) on combating sexual violence in the DRC. One key component is the reinforcement of the application of the law and the struggle against impunity. According to UN Population Fund data, from January to September 2009, close to 9,000 new cases of sexual violence were recorded. The majority of these cases occurred in the North and South Kivu provinces.

30 November – The UN Security Council considered the final report of the UN Group of Experts on the DRC, which describes the link between crimes and the illegal trade of minerals in the Kivus, in particular by the FDLR. It further confirms that Bosco Ntaganda, who is the subject of an ICC arrest warrant, has used the respite he was given to reorganize forces loyal to him in parallel command structures and to continue to commit crimes.

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. Since early 2008, 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 CAR.

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 was held on 19-30 October 2009.

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

e. 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 [27 April 2010](#). In parallel, the Office continues to monitor allegations of crimes committed since the end of 2005.

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

The Appeals Chamber will render its Judgment on the [appeal](#) by the Prosecutor against the Pre-Trial Chamber's decision on the interim release of Jean-Pierre Bemba Gombo on 2 December 2009. In its Appeal, the Prosecution argued that *"contrary to the Single Judge's conclusions, there has been no change of circumstances in the present case. Most of the circumstances cited are pre-existing and have been cited previously by the same Judge as either grounds for continued detention or irrelevant to an application for release. The only significant intervening factor, the issuance of the decision confirming the charges against the Accused, confirms and increases the risks posed by the Accused if released."* The Appeals Chamber decided to grant suspensive effect to the Prosecutor's Appeal. Pre-Trial Chamber II postponed the hearings with States on Mr. Bemba's conditional release until the Appeals Chamber has ruled on the appeal. The Prosecution stated that the conditions of the interim release could not be defined in the abstract and that *"the Single Judge erred in ordering conditional release without also deciding the conditions, knowing to which State the Accused will be released, and determining that the State is competent to enforce the conditions"*.

f. miscellaneous

30 November - Professor John Dugard, former Chair of the Arab League's Independent Fact-Finding Committee on Gaza, gave a guest lecture entitled: *"The work of the Arab League's Independent Fact-Finding Committee on Gaza"*.

2. Preliminary Examinations:

a. 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 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; 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, and in accordance with Article 15, the Office proactively collects and 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.

8,532 communications have been received by the Office to date, sent by groups/individuals from 134 countries. 3,687 (43%) were manifestly outside the jurisdiction of the Court; 4,845 (57%) warranted further analysis or were linked to a situation already under analysis. 91 communications were received in the month of November 2009.

23 November - During the Assembly of State Parties, and thanks to the CICC, Prosecutor Moreno-Ocampo and his staff met with representatives of civil society from Afghanistan, Georgia, CDI, Burma, and Iraq.

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 will examine issues related to its jurisdiction; first whether the declaration accepting the exercise of jurisdiction by the Court meets statutory requirements; second whether crimes within the Court’s jurisdiction have been committed; and third 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.

19 November - United States academics submitted a legal brief to the OTP on jurisdictional issues in relation to the declaration made by the Palestinian National Authority under Article 12 of the Rome Statute.

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.

27 November - OTP met with Government representatives to discuss prospects for increased cooperation between the CDI authorities and the Office.

g. [Kenya](#)

The Office made its examination public in February 2008. On 3 July 2009, a common statement was issued in The Hague by the Prosecutor and a [Government delegation from Kenya](#), led by Justice Minister Kilonzo. 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. 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 of supporting material compiled by the Commission. The Prosecutor opened the envelope, examined its contents 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 past events and to suggest mechanisms to prevent such crimes in the future. On 5 November the Prosecutor met with President Kibaki and Prime Minister Odinga in Nairobi. He [informed](#) them of his view that the crimes committed amounted to crimes against humanity and of his duty, in the absence of national proceedings, to act. On 23 November the Prosecutor notified Kenyan victims of his planned request to the Judges and of the 30 days within which they could express their opinion on the merits of an investigation. On 26 November he requested authorization from Pre-Trial Chamber II to open an investigation.

h. [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.

26 November - Members of the UN Commission of Inquiry arrived in Guinea to probe the events of 28 September 2009. The Commission, appointed by the UN Secretary-General, is composed of Mohamed Bedjaoui from Algeria as Chair, Françoise Kayiramirwa from Burundi and Pramila Patten from Mauritius.

3. Cooperation – Galvanizing Efforts to Arrest:

November - Following the Deputy Prosecutor's participation, the Forum of NGOs, in the 46th Session of the African Commission on Human and Peoples' Rights in Banjul, adopted a Resolution on Strengthening International Justice in Africa, "noting that by attempting to punish those responsible for [the most serious crimes], the ICC is a crucial court of

last resort in defending African victims and attempting to prevent the future occurrence of such atrocities” and called on the African Commission to “encourage the Assembly of Heads of State and Government of the AU to urge its member states, including those under investigation by the ICC, to fully cooperate with the Court”.

23 November - OTP Cooperation Director Béatrice le Fraper addressed the EU Parliament Commission on development on prosecuting crimes of sexual violence. She noted how rape was used by President Al Bashir to destroy communities, as other leaders used rape before him in Rwanda and Bosnia; she emphasized the need for consistency: fighting sexual violence in the DRC, for instance, means first and foremost arresting ICC suspect Bosco Ntaganda.

24 November - OTP Cooperation Director Béatrice le Fraper participated in ASF’s launch of the *Application of the Rome Statute by National Courts in DRC- case study* in The Hague. She recalled the complementarity policy of the OTP described by Prosecutor Moreno-Ocampo in his ASP [opening statement](#): on the one hand, there is the admissibility of cases and this is purely a judicial matter; on the other hand, States have to exercise their responsibility to prosecute massive crimes as part of the international justice system, and the OTP contributes through its law enforcement network, sharing of information with national judiciary, and brokering support for such efforts. Challenges in most countries consist of political interference with the judiciary and threats to judges and witnesses: it took political will rather than aid to address those issues.

26 November - At its 210th meeting, the AU Peace and Security Council was briefed by Francis Deng, Special Advisor of the UN Secretary-General on the Prevention of Genocide. The AUPSC *“stressed the importance that should be given to the prevention of genocide”* and encouraged *“the holding of regular consultations aimed at building synergy and enhancing collaboration between the AU and the UN on the prevention of genocide, particularly in Africa.”*

26 November - Prosecutor Moreno-Ocampo met with US Ambassador-at-large for war crimes issues, Stephen Rapp, on the margins of the ASP. They discussed *inter alia* the recent steps taken by the Prosecutor regarding Kenya.



26 November - The eighth session of the ASP concluded. In its Omnibus resolution, the Assembly *“note[d] the consultations held by the Office of the Prosecutor on the Prosecutorial Strategy with States, international organizations and civil society, and encourage[d] the Office of the Prosecutor to continue to carry out such consultations on its policy papers and guidelines, as a continuing sign of its transparency, and to keep the Assembly of States Parties informed in this regard.”*

27 November - Prosecutor Moreno-Ocampo appointed Mr. Benjamin Ferencz, former Chief Prosecutor at the Nuremberg trials and long-time supporter of the establishment of a permanent international criminal court, as Special Counsel to the Office, as well as honorary member of the OTP’s Advisory Council.

4. Coming Events:

- 24 November - 11 December - Trial of [The Prosecutor v. Germain Katanga and Mathieu Ngudjolo](#)
- 2 December - Judgment on the Appeal of the Prosecutor against PTC decision on interim release of J-P Bemba
- 3 December – Visit of Guinean Foreign Minister Alexandre Cécé Loua to the OTP
- 2-4 December - OTP participates in an International Conference on Regional Courts and Commissions, Strasbourg
- 4 December - Prosecutor’s report to the UNSC on the Darfur situation pursuant to UNSCR 1593 (2005) and meetings with present and incoming members of the UNSC, Patricia O’Brien (OLA) and Alain Leroy (DPKO)
- 5 December - Prosecutor’s address at 3 *Generations* event celebrating anti-genocide activists, New York
- 7-11 December - OTP participation in ICC Regional Training Seminar, Dakar
- 8 December - Prosecutor’s briefing to World Affairs Council of Northern California, San Francisco

** 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*