



OTP Weekly Briefing – 9-15 February – Issue #24

PREVIEW:

- US support protection witnesses Kenya.
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THIS WEEK'S HIGHLIGHT: Prosecutor will request leave to appeal Abu Garda decision

8 February - The Prosecutor announced his decision to request Pre-Trial Chamber (PTC) I to grant leave to appeal its decision on the confirmation of charges in the case of *The Prosecutor v. Bahar Idriss Abu Garda*.

On 8 February, PTC I issued a decision declining to confirm the charges against Mr. Bahar Idriss Abu Garda. The Chamber stressed that the case was sufficiently grave because the consequences of the 29 September 2007 attack against the African Union Mission in Sudan (AMIS) at Haskanita affected not only the AMIS personnel and their families, but also the local population as AMIS first suspended, and finally reduced its activities in the area. The Chamber also found that there were substantial grounds to believe that AMIS personnel and installations, material, units and vehicles stationed at Haskanita were entitled to the protection given to civilians and to civilian objects under the international law of armed conflict. The Chamber was not satisfied, however, that there was sufficient evidence to establish substantial grounds to believe that Abu Garda could be linked to the crimes either as a direct or indirect co-perpetrator for the commission of war crimes allegedly committed during the attack. This is what the Prosecution will challenge.

1. Investigations and Prosecutions:

a. General overview of the cases

Over the week, the OTP presented 10 filings in the various cases and conducted 4 missions in 3 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, 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 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. Bosco Ntaganda*

11 February - In an op-ed in the New York Times Nicholas D. Kristoff [highlighted](#) the importance of action to secure the arrest of Bosco Ntaganda, against whom an ICC warrant is outstanding.

The Kivus Investigation

9 February - Heads of State and Government of the International Conference on the Great Lakes Region (ICGLR) [decided](#) to organize in the course of 2010 a special summit to discuss the illegal exploitation of natural resources in the DRC and the involvement of multinational companies, stressing that armed groups accused of committing war crimes and crimes against humanity finance their activities through the illegal exploitation and trade of natural resources in the Kivu provinces of eastern DRC.

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 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.

8 February - US Ambassador to Uganda Jerry Lanier [highlighted](#) that the US is helping Uganda's campaign against the LRA with logistical support, asserting that the only way to eliminate the suffering in the region was to eliminate the LRA.

10-11 February - Army chiefs of the DRC, Uganda and Central African Republic [met](#) to assess operations against the LRA.

12 February - Jean Charles Dupin, Head of UN OCHA in Orientale Province, [highlighted](#) the scale of LRA crimes affecting the region, saying that in September 2008, there were only 65,000 displaced people throughout the province. That number has since risen to over 450,000, 365,000 of which were directly attributable to LRA activity. In addition, he said, the number of those dead or abducted is greater than the number of deaths caused by the FDLR over the last 4 years.

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. The Prosecution [appealed](#) the decision of the majority of the Chamber to dismiss the charges of genocide. 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. The Prosecutor will seek leave to appeal this decision.

9-10 February - *Janjaweed* militias [attacked](#) Al-Baytari camp southern Kass town in South Darfur, killing four residents and wounding 15 people, while 15 others went missing.

11 February - UN Human Rights Council expert Mohamed Chande Othman [noted](#) with concern that, with regard to crimes committed in Darfur since 2003, "[t]he Prosecutor General appointed by the Government [of the Sudan] to investigate those crimes informed me that investigations are continuing and that no one has been charged and tried as yet."

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.

f. [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.

8 February - Kenyan civil society organizations, including the Centre for Multi-Party Democracy, Haki-Focus and the International Centre for Policy and Conflict, [wrote](#) to the EU, the US and the UN Development Programme urging them not

to support the Truth, Justice and Reconciliation Commission (TJRC). The groups accuse Bethwel Kiplagat, the chairman of the TJRC, of involvement in past injustices - including the Wagalla massacre and land grabbing in Kileleshwa.

10 February - The EU is [urging](#) the Kenyan Government to protect witnesses willing to testify against the masterminds of the post-election violence.

11 February - The OTP met with partners in Nairobi, and separately with Kenyan Minister of Justice, Mutula Kilonzo, to discuss security issues and follow up on the Prosecutor's recent letter.

11 February - The US Government [said](#) it would offer maximum support in protecting witnesses who will give evidence about the post election violence if the ICC investigation formally kicks off. US Ambassador-at-Large for War Crimes Issues, Stephen Rapp, said the Obama administration was prepared to evacuate key witnesses who will give evidence and their families to safe destinations following numerous threats reported by some. *"There may be questions about relocating someone who has a criminal history but there can be potential prospects of relocating a family and getting them out of their homes,"* he said. Rapp also [expressed](#) concern over witness protection during a visit to Nairobi. *"The reform agenda, in particular in regard to police and the judiciary, [is] critical. Without that, you won't have the confidence of witnesses to come forward."*

g. Miscellaneous

9 February - Margot Wallström - following her recent appointment as the UN Secretary-General's Special Representative for Sexual Violence in Conflict - [said](#) that she aimed to ensure that preventing sexual violence was high on the international agenda while sending a clear message from the entire international system that such violence was never acceptable. Since giving States political ownership of the issue was a major objective, she planned to put together a team of legal experts to help strengthen their domestic judicial systems to give them the capacity to prosecute sexual crimes and fight impunity.

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 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.

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. Visits to both countries are planned for 2010.

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; 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.

e. 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. [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.

15 February - The OTP travels to Guinea to conduct a mission, led by the Deputy Prosecutor, in the context of preliminary examination activities.

3. Cooperation – Galvanizing Efforts to Arrest:

15 February - Prosecutor addressed the Cinema for Peace gala event in Berlin on the role of movies in explaining the crimes under the Court's jurisdiction.

4. Coming Events:

- 18 February - OTP attends seminar on the ICC and ratification of the Rome Statute in El Salvador
- 18 February - Prosecutor delivers speech at *Challenge Future* event hosted by Herausfordereung Zukunft, Bochum
- 19 February - Prosecutor opens the London International Model United Nations Conference 2010
- 23 February - Prosecutor meets Baroness Scotland QC, Attorney General for England and Wales and Northern Ireland
- 26-27 February - Deputy Prosecutor participates in IBA workshop on implementing legislation in Malawi

- 6 March - Deputy Prosecutor participates in the WOMEN Inc. International Festival, Amsterdam
- 7-10 March - Deputy Prosecutor delivers keynote address for International Women's Day, School of Law of the University of California, Davis, and Santa Clara University School of Law

- 12 March - Deputy Prosecutor participates in “Gender-Based Violence and Access to Justice in Conflict and Post-Conflict Areas” conference organized by Cornell Law School, Washington
- 17 March - Prosecutor meets with Shirin Ebadi, Nobel Peace Prize Winner, and Mr. Karim Lahidji, Vice-President FIDH
- 22-25 March - Resumed session of the meeting of the Assembly of States Parties, New York
- 22-23 March - Prosecutor delivers the Amnesty International Chair public human rights lecture, Ghent University
- 6 April - Prosecutor participates in the International Forum of the 37th FIDH Congress, on Justice, Yerevan, Armenia
- 12-19 April - OTP participates in panels organized by the Alliance on Crime Prevention and Criminal Justice, in parallel to UNODC’s 12th World Congress on Crime Prevention and Criminal Justice, Salvador, Bahia, Brazil
- 19-21 April - Deputy Prosecutor and Professor Catherine MacKinnon, Special Gender Adviser to the Prosecutor, participate in “International Gender Justice Dialogue” organized by Women’s Initiatives for Gender Justice and Nobel Women's Initiative, Puerto Vallarta, Mexico
- 27 April - Start of the trial *Prosecutor v. Jean-Pierre Bemba Gombo*

* 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