



OTP Weekly Briefing – 23-29 September 2009 – Issue # 6

1. Investigations and Prosecutions:

a. 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](#), charged with attacking and 'wiping out' the village of Bogoro, 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*

23 September - Trial Chamber I informed the parties and participants that it intends to deliver a final decision on the recommencement date of the trial against Thomas Lubanga in due course, but that no hearings will take place during the month of October.

24 September - The Prosecution filed its response to the victims' application for participation in the Prosecution and the Defence appeals against Trial Chamber I's Decision of 14 July regarding the legal characterisation of the facts and agreed that the Legal Representatives of these victims should be permitted to present the victims' views and concerns.

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

25 September - The Appeals Chamber [confirmed](#) the decision of Trial Chamber II of 12 June 2009 on the admissibility of the case and dismissed the Appeal of Germain Katanga. In its oral delivery of the Judgment, the Appeals Chamber agreed with the submissions of the Prosecution that according to the wording of Article 17 (1) (a) and (b) of the Statute, the question of unwillingness or inability of a State having jurisdiction is relevant only when, due to ongoing or past investigations or prosecutions in that State, the case appears to be admissible. Therefore, in addressing whether a case is inadmissible, the initial question to ask is 1) whether there are ongoing investigations or prosecutions or (2) whether there have been investigations in the past and the State has decided not to prosecute the person concerned. It is only when the answers are in the affirmative that one has to examine the question of unwillingness and inability. It follows that in the case of inaction the question of unwillingness or inability does not arise. Inaction on the part of a State having jurisdiction renders a case admissible before this Court.

The Kivus investigation

28 September - During the UNGA, [Mr. Alexis Thambwe Mwamba, Foreign Affairs Minister of the DRC](#), noted "[TRANSLATION] *The rapes committed against women and girls in eastern Democratic Republic of the Congo are, in our view, the most shameful and serious crimes that mankind has witnessed to date in the 21st century. Statistically, 80% of all such crimes committed in the country have essentially taken place within two of the country's eastern provinces most gravely afflicted by the consequences of war, namely, Sud-Kivu and Nord-Kivu. 60% of the rapes have been committed in Nord-Kivu and 20% in Sud-Kivu. Justice must be done for these raped women and girls.*"

b. 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 the Central African Republic.

Case: the Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen

c. 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. His initial appearance was on 18 May, after which he was allowed to leave the Netherlands. The confirmation of charges hearing is set for 19 October 2009.

Case: The Prosecutor v. Omar Hassan Ahmad Al Bashir

Case: The Prosecutor v. Bahr Idriss Abu Garda

23 September - The Prosecution attended the status conference convened by Pre-Trial Chamber I in anticipation of the confirmation hearing in the case against [Mr. Abu Garda](#) scheduled for 19 October 2009. The conference covered a variety of issues, in particular arrangements for the attendance of Mr. Abu Garda and for the appearance of witnesses.

25 September - The Prosecution submitted the public redacted version of the Document Containing the Charges and the List of Evidence. The Prosecution will present three witnesses during the confirmation hearing addressing the attack and the neutral role of the AU/UN peacekeepers.

d. 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

23 September - The new Trial Chamber III is composed of Judges Adrian Fulford, Elizabeth Odio Benito and Judge Joyce Aluoch. The Judges of the Chamber III elected Judge Adrian Fulford as the Presiding Judge.

e. Miscellaneous

2. Preliminary Examinations:

a. Statistics on Article 15 Communications and other preliminary examination activities

A preliminary examination has to 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 pro-actively evaluates all information on alleged crimes from multiple sources, including information from individual and groups also known as “communications” and submissions from parties concerned. The triggering of a preliminary examination does not imply that an investigation will be opened down the road.

8,368 communications have been received by the Office to date, sent by groups and individuals in 132 countries. 3,404 (40.67%) were manifestly outside the jurisdiction of the Court, and 4,572 (54.63%) warranted further analysis or were linked to a situation already under analysis.

51 communications were received in the month of September.

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 received no answer yet.

28 September - During the UNGA, [Dr. Rangin Dadfar Spanta, Minister of Foreign Affairs of Afghanistan](#), highlighted that *“Rather than just managing and reacting to problems, the UN must find ways to address the structural causes of the world’s problems and conflicts. To these ends, closer cooperation between the UN, the International Criminal Court, international financial organizations and global civil society is vital in moving towards more just and equitable relations between nations”*.

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 alleged most serious perpetrators, including 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, 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.

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. The Prosecutor has received numerous Article 15 communications on the post-election violence. On 3 July 2009, a common statement was issued in The Hague by a [Government delegation from Kenya](#) lead 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 the post-election violence. 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 14 July, the Prosecutor received two reports from the Kenyan authorities on witness protection measures and on the status of legal proceedings carried out by national authorities.

23 September - US Ambassador to Kenya Michael Ranneberger stated in the [Kenyan press](#) that if the Kenyan authorities *"cannot get the process done in time, we want and will support the ICC to take action,"* and that *"[i]f Kenya does not act, the ICC should not hold its move on any account. They need to take action regardless of the developments in Parliament over the Imanyara Bill."*

24 September - On the margins of the UNGA, the Prosecutor met with the Kenyan Minister of Foreign Affairs, Mr. Moses Wetangula, in New York.

3. Cooperation – Galvanizing Efforts to Arrest:

16 September - Ambassador Hans Corell, Former Under-Secretary-General for Legal Affairs and Legal Counsel of UN, stated at the [Dean Fred F. Herzog Memorial Lecture](#) at John Marshall Law School in Chicago: *"If the officials who bear the greatest responsibility for international crimes committed in a particular situation are not brought to justice, this constitutes a clear risk not only for a continuation of the conflict at hand but also for breeding new conflicts in the future. There is also a growing realization that if officials at the highest level in a State are suspected of international crimes, these persons soon become a burden to their own country."*

22 September - Sudan Media Centre website reported that President Omar Al Bashir will not lead the Sudanese delegation to the second Africa-South America summit that will take place on 26-27 September in Venezuela.

22-24 September - The Prosecutor was in New York to give the [opening Keynote Address](#) at the [Global Creative Leadership Forum](#), in the presence of WTO Director-General Pascal Lamy, IMF Managing Director Dominique Strauss-Kahn, and former US Secretary of Homeland Security Michael Chertoff. The Prosecutor said that the ICC, the IMF and WTO have something in common. *"All three organizations have the purpose of enabling global processes that work to the benefit of all citizens and nations. My Office has to know more about economic development. In the DRC, the control of gold and other mines is at the root of the violence. In the Sudan, the sharing of resources between the center and the periphery has historically driven violence. So as a Prosecutor mandated to prevent crimes, I shall be interested in your efforts to stabilize economies. And I believe that as institutions regulating financial and trade flows, you should know more about massive crimes when you decide on economic reforms. WTO and the ICC will succeed because they are providing an important service: to refine global rules, set limits and contribute to solving conflicts."*

The Prosecutor also held meetings while in New York on the margins of the UNGA to discuss cooperation regarding investigations and arrests with Mr. Javier Solana, High Representative for the Common Foreign and Security Policy of the European Union, Mr. Amr Musa, Secretary-General of the League of Arab States, the Prime Minister and Minister of Foreign Affairs of Qatar, Sheick Hamad bin Jasim bin Jabir al-Thani, the Minister of Foreign Affairs of Liechtenstein, Mrs. Aurelia Frick, the Minister of Foreign Affairs of Kenya, Mr. Moses Wetangula, and other Foreign Affairs ministers. The Prosecutor also met briefly with South African President Jacob Zuma and Foreign Affairs Minister Maite Nkoana-Mashabane.

25 September - The Prosecutor discussed ongoing cooperation with Patricia O'Brien, UN Under-Secretary-General for Legal Affairs and UN Legal Counsel.

25 September - OTP delegation visited CAR in order to discuss the possible presence of LRA leaders who are subject to an ICC arrest warrant on CAR territory, as well as cooperation between CAR and Uganda.

25 September - South African President Jacob Zuma stated during an interview to CNN that *"What the AU said - the decision said that we're a part of - it did not say President Bashir must not be arrested. All it asked was a deferment of that action on the basis of the progress we are making in terms of the peace intervention"*.

23-29 September - During the general debate of the 64th session of the UNGA, several States mentioned the need for justice and the role of the ICC; UN [Secretary-General Ban Ki-Moon](#) stressed *"No nation, large or small, can violate the human rights of its citizens with impunity. Where conflicts arise, justice and accountability should follow. That is why the work of the International Criminal Court is so vital. We look to the review conference in Kampala, next May, as an opportunity to strengthen its mandate"*; [Mr. Fredrik Reinfeldt, Prime Minister of Sweden, on behalf of the European Union](#) emphasized *"... we need security. We cannot let war crimes, genocide or crimes against humanity go unpunished. Therefore, the work of the International Criminal Court is fully supported by the European Union"*; [South Africa President Jacob Zuma](#) highlighted that *"The search for global peace, stability and security cannot be separated from the pursuit of justice, selfdetermination, human rights and economic development"*; [Rwandan President Paul Kagame](#) noted *"Improving global governance has also to address international justice. International justice should be fair to all - rich and poor; strong or weak"*; [Mr. John Key, Prime Minister of New Zealand](#), stated *"New Zealand also strongly supports the International Criminal Court. It is a fundamental tenet of our domestic legal systems that wrong doers must be brought to justice. The ICC is the mechanism for applying that same principle to persons accused of the most serious international crimes"*; [Mr. Navinchandra Ramgoolam, Prime Minister of the Republic of Mauritius](#), noted *"In line with our commitment to see that perpetrators of grave human rights violations are brought to justice, we wish to reaffirm our unflinching support for the International Criminal Court. Mauritius will not renege on its international commitments under the Rome Statute. Nor will it endorse any attempts to undermine the legitimacy of the Court or its judicial processes"*; [Mr. Faustin Archange Touadera, Prime Minister of the Central African Republic](#), emphasized *"But the Central African Republic's main concern and that of the Great Lakes region states' meeting within the international conference, countries such as Sudan, the Democratic Republic of Congo, and Uganda, relates to the criminal actions of the rebels, of the so-called Lord's Resistance Army which are causing death and destruction even in the Central African Republic. The LRA's destructive capacity goes beyond the territory of the Republic of Uganda and is turning into a regional problem for which regional and concerted action is required"*.

29 September - Sudanese Presidential Adviser Ghazi Salah al-Din stated in an interview in Washington that the ICC's decision was *"limiting the movement of the President. [...] He has to study of course any particular (travel plan) on its own merits"*. The Presidential Adviser also added that *"If there is a case, it should be tried in Sudan"*.

4. Coming Events:

- October 2009 - Publication of the Report of AU High Level Panel on Darfur
- 1 October - [ceremony to welcome the Czech Republic](#) as a new State Party to the Rome Statute, The Hague
- 6-7 October - OTP-NGO bi-annual roundtable, The Hague
- 9 October - Visit of Vice-President for Integrity of the World Bank, Mr. Leonard McCarthy, to the Court and meeting with the Prosecutor to sign a Memorandum of Understanding
- 15-16 October - Visit of the Arab League Independent Fact finding Committee on Gaza, the Arab League Secretariat and the Palestinian National Authority in the context of OTP analysis of jurisdiction in the Palestine situation, The Hague
- 19 October - Pre-Trial Chamber I: Confirmation of charges hearing in [The Prosecutor v. Abu Garda](#)
- 26-27 October - Prosecutor's visit to Ecuador in the context of preliminary examination activities in the region
- 28 October - Prosecutor receives award in recognition of his work in human rights, Law School, Universidad Complutense, Madrid
- 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 during a meeting of the ICC sub-group of the EU Judicial Committee ("COJUR"), The Hague
- 9-10 November - Prosecutor's participation in symposium "The ICC that Africa Wants", Cape Town
- 11-13 November - Prosecutor's visit to Rwanda on the occasion of the International Prosecutors' colloquium, Kigali
- 18-26 November - [Eighth Session of the Assembly of States Parties](#), The Hague
- 20-22 November - Prosecutor's participation in the World Economic Forum's Summit on the Global Agenda 2009, Dubai
- 24 November - Trial Chamber II: Start of the Trial of [The Prosecutor v. Germain Katanga and Mathieu Ngudjolo](#)
- 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*