



OTP Weekly Briefing

2-8 March – Issue #27

THIS WEEK'S HIGHLIGHT

2-3 March - The OTP held its bi-annual roundtable at the seat of the Court with representatives of international and local NGOs, including from situations countries.

On this occasion, the Prosecutor introduced the members of the OTP's Advisory Council: Professor [Catharine MacKinnon](#), Special Gender Adviser; Professor [Juan E. Méndez](#), Special Adviser on Crime Prevention; and Professor [Tim McCormack](#), who joined the Council on 2 March as Special Adviser on International Humanitarian Law. They are appointed in accordance with Article 42(9) of the Rome Statute to provide advice to the Prosecutor on legal matters. They work on a *pro bono* basis and offer their expertise in the developments of policies, training and litigation.

PREVIEW:

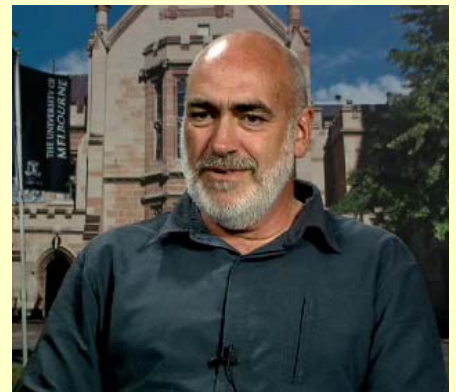
- Prosecution submits information to ICC judges on Kenya situation, *page 2*.
- OTP visits Moscow, *page 4*.



Juan E. Méndez



Catharine MacKinnon, Fatou Bensouda, Luis Moreno-Ocampo



Tim McCormack

The OTP presented recent efforts on standardizing of its work, through the adoption an internal Operational Manual, with the aim of increasing efficiency and building a consistent institution. The Operational Manual is the result of the last 6 years' work, to ensure that each step of the Prosecution's activities is in accordance with the Statute and reflects OTP best practices. Public policy papers on key issues, such as victims' participation, positive complementarity and case selection, will be published in the near future to provide more clarity and transparency on the work of the OTP.

Finally, the roundtable was the occasion to address the 2010 Review Conference. For the OTP, the Kampala Conference should be a celebration of the achievements of the Rome system. While it will not have a role in discussions on substantive amendments to the Statute, the OTP has contributed in the preparation of the stock-taking exercises. With regard to positive complementarity, the Office has emphasized the need to distinguish between admissibility, which is a judicial matter and will be adjudicated by the Court, and positive complementarity, i.e. efforts to encourage national proceedings; in this regard the Office can act as a catalyst for national investigations and prosecutions. With regard to cooperation, the Office has described the high level of cooperation it receives with an 85 percent implementation rate and has asked States to prioritize two areas: (1) the enforcement of arrest warrants and other Court decisions; and (2) consistent public and diplomatic support for the work of the Court. To this end, States and international organizations should commit to mainstreaming Court issues within bureaucracies.

An inter-organ meeting with the NGOs on the Review Conference also took place on 3 March where the organs of the Court expressed their [common views](#).

I. Investigations and Prosecutions

Over the week, the OTP presented 8 filings in the various cases and conducted 3 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.

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.

1 March - Dozens of activists from Resolve Uganda [refused](#) to leave US Senator Tom Coburn's office in Oklahoma City until he would allow the LRA Disarmament and Northern Uganda Recovery Act to pass the Senate.

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. The Prosecutor will seek leave to appeal this decision.

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

8 March - Trial Chamber III ruled on a new calendar for the proceedings, given the Defence admissibility challenge. The trial is set to start on 5 July. The Chamber requested OTP and the Legal Representatives to respond to the admissibility challenge by 29 March and the CAR and DRC authorities to respond, if they wish, by 19 April.

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.

3 March - In response to Pre-Trial Chamber II's request, the Prosecution submitted clarification and additional information demonstrating that senior political and business leaders associated with the main political parties organized, enticed and/or

financed attacks against the civilian population on account of their perceived ethnic and/or political affiliation pursuant to or on furtherance of a State and/or organizational policy. “[The] senior leaders from both PNU and ODM parties were guided by political objectives to retain or gain power,” said the Prosecutor. “They utilized their personal, government, business and tribal networks to commit the crimes. They implemented their policy with the involvement of a number of State officers and public and private institutions, such as members of the parliament, senior government officers, the police force and youth gangs.”

The Prosecutor provided the Judges with a list of the most serious criminal incidents, and a selected list of 20 names of persons who appear to bear the gravest responsibility for these crimes. “At this stage, the names are indicative only,” said the Prosecutor. “The allegations concerning the named individuals will have to be measured against the evidence gathered independently by my Office. If the Judges authorize the investigation, I will engage those who wish to clarify their role or provide further information.”

The Prosecution also confirmed that there are currently no national proceedings in respect of the incidents and individuals that would likely form the focus of its investigation. The Prosecution requested an expedited decision from the Chamber to authorize an investigation.

4 March - Three personalities - Tourism Minister Najib Balala, former Naivasha MP Jayne Kihara and Eldoret businessman Jackson Kibor - [said](#) they were ready to cooperate with the ICC if implicated.

I.6. Miscellaneous

2 March - The Nobel Women's Initiative [organized](#) an International Tribunal on Crimes Against Women of Burma. The event highlighted egregious crimes, including rape as a weapon of war. The panel, including Nobel Peace Laureates Shirin Ebadi and Jody Williams, issued recommendations urging the UN Security Council to refer Burma to the ICC.

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.

1 March - Radhika Coomaraswamy, UN Special Representative for Children and Armed Conflict, [expressed](#) concern over the protection of civilians and children in Afghanistan, especially the killing and maiming of children. Following a trip to Afghanistan, she reported that, according to official statistics, in 2009 346 children were killed as a consequence of the armed conflict, including 131 by air strikes, 22 in searches and raids and 123 by anti-Government armed groups’ assassinations and suicide bombings. Seven children were used as suicide bombers. Such official statistics are lower than those released on 3 March by Save the Children, which [alleged](#) that 1,050 children were killed by suicide attacks, air strikes and crossfire in 2009.

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.

24 February - A Spanish investigative judge issued a [decision](#) showing evidence that the Colombian guerrilla group FARC and the Basque organization ETA have carried out joint operations in Spain and Venezuela, including organizing attempts against the life of Colombian politicians in Spain. The decision also refers to the operations of members of both groups in Venezuela. In his decision, the judge initiates proceedings against members of both groups, and requires their arrest.

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. Visits to both countries are planned for 2010.

4 March - The Investigative Committee of the Russian Prosecutor-General's Office [declared](#) that it has obtained new evidence of crimes committed by Georgian armed forces during the August 2008 armed conflict and that a criminal case will be opened.

8 March - An OTP delegation led by Director of JCCD, Béatrice le Fraper du Hellen, arrived in Moscow for a two days visit at the invitation of the Russian Government.

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.

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.

4 March - Ivorian party "Le Rassemblement des Houphouetistes pour la démocratie et la paix" [announced](#) it would send a complaint to the ICC on the Gagnoa events where security forces opened fire on civilians, killing seven and wounding many.

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.

3 March - François Lonsény Fall, former Head of the UN mission in Bangui (Central African Republic) and spokesperson for the 'Forces vives de Guinees', [stated](#) in Ma Guinée: "We welcome the visit by Mrs Fatou Bensouda, the Deputy Prosecutor of the International Criminal Court, to Guinea. It shows that the international community continues to take an interest in what unfolded here on 28 September (...) The purpose of the mission was to ascertain whether the Guinean authorities are capable of delivering justice (...) She came! She performed her mission! (...) So if the Guinean Government isn't able to put those implicated in the massacres of 28 September on trial, the ICC will be in a position to take action."

III. Cooperation – Galvanizing Efforts to Arrest

2 March - In a letter to the EU Election Observation Mission to the Sudan, Human Rights Watch [reminded](#) observers that President Al Bashir is wanted by the ICC.

4 March - On the first anniversary of the issuance of an arrest warrant against President Al Bashir, ICC President Sang-Hyun Song [reiterated](#) that President Al Bashir will eventually face justice in The Hague. *"When arrest warrants were issued against Slobodan Milosevic and Charles Taylor, people laughed and said it was a joke, but it took less than three years to get them brought before the tribunal,"* said Judge Song while on a visit to London.

4 March - Briefing the press on his trip to Chad, Sudan, Qatar, and Rwanda, the US Special Envoy to Sudan, Scott Gration, [said](#) about the Al Bashir case *"(...) we believe that that issue is going to have to be resolved if we're going to have a lasting and durable peace. And so we support efforts to ensure that President Bashir answers the questions that the ICC has posed, and we support the process continuing as it's outlined in the international system. (...) [t]here is no hesitancy on our part to support those."*

IV. Coming Events

- 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 FID
- 22-23 March - Prosecutor delivers the Amnesty International Chair public human rights lecture, Ghent University, and addresses a joint session of the Foreign Affairs Committee, the Development Committee and the Human Rights Subcommittee of the European Parliament, Brussels
- 22-25 March - Resumed session of the meeting of the Assembly of States Parties, New York

- 6 April - Prosecutor participates in the International Forum of the 37th FIDH Congress, on Justice, Yerevan, Armenia
- 6-8 April - Deputy Prosecutor participates in the University of North California Law School conference on the future of adversarial systems, participates in a discussion at Duke University on the selection of situations and cases by OTP, and delivers a speech at Chapel Hill, US
- 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 - Hearing on admissibility in the case *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