



OTP Weekly Briefing

4-10 May – Issue #36

THIS WEEK'S HIGHLIGHT: THE PROSECUTOR TRAVELS TO KENYA

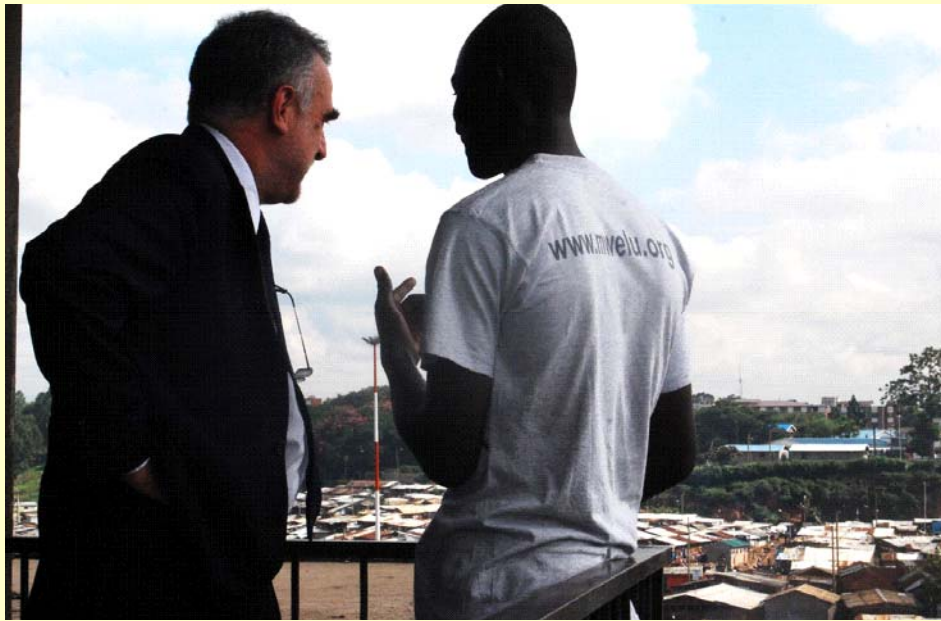
8-10 May - Prosecutor Moreno-Ocampo, in accordance with his mandate to take into consideration the views and interest of victims, is currently in Kenya to lead investigations and meet with victims of Kenya's post-election violence. *"As promised, I will meet the victims, listen to them, understand their views and concerns. We will investigate the crimes, protecting the victims and respecting the rights of the suspects. We will follow the evidence, and we will prosecute those most responsible"* he said.

PREVIEW:

-OTP prepares follow up visit to Conakry, page 5.



The Prosecutor's five-day programme included a town hall meeting with 300 participants who were given the opportunity to ask questions on the investigation, notably civil society and women's groups. The meeting was broadcasted by 5 Kenyan TV channels, reaching an estimated half of the Kenyan population, approximately 20 million people. He also met with the business community, religious leaders, and the media, including community, local and regional radio stations.



The Prosecutor visited Mathare, an area affected by the post-election violence. Similar visits to other affected areas outside Nairobi will follow shortly on his next visit to Kenya later this year. *"The Office will conduct an impartial and independent investigation, selecting the most serious incidents and collecting evidence to define those most responsible. The common goal is to ensure there is no repeat of violence in the 2012 elections"* said the Prosecutor.

On 10 May, the Prosecutor met with the Cabinet Ministers' committee tasked with liaising with the OTP for all matters relating to the on-going investigation, including: Mr. Moses Wetangula, Minister for Foreign Affairs, Mr. James Orengo, Minister for Lands, Professor George Saitoti, Minister for Provincial Administration and Internal Security, and Mr. Amos Wako, Attorney-General.

I. Investigations and Prosecutions

Over the week, the OTP presented 10 filings in the various cases and conducted 6 missions in 6 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.

Case: Prosecutor v. Katanga and Ngudjolo Chui

3 May - The Prosecution sought leave to appeal Trial Chamber II's decision adopting a Protocol on the disclosure of the identity of a protected witness to third parties on the grounds that it fails to respect the Court-wide statutory obligation to protect witnesses. The Prosecution submitted that the Protocol places the assessments of risk caused by the defence's disclosure and the appropriate actions to prevent and manage that risk, solely in the hands of the defence and beyond judicial review.

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 1,500, abducted more than 2,250 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.

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 OTP [requested](#) leave to appeal this decision on 15 March and this was denied by the PTC on 23 April. The OTP will present additional evidence.

8 May - The Sudanese Government [relocated](#) its Ambassador to the UN, Abd-al-Mahmud Abdel-Haleem, despite the fact that his tenure had first been extended on an exceptional basis last March by President Al Bashir. The pro-government Al-Ra'y al-Amm newspaper said that he was summoned to Khartoum on 6 May. In his last [report](#) to the UNSC in December 2009, the Prosecutor stated: *"my Office is [also] considering the criminal responsibility of Sudanese officials who actively deny and dissimulate crimes. [...] Since Nuremberg, due obedience is no longer a legal excuse for the commission of crimes"*.

8 May - Sudanese Presidential adviser Mustafa Osman Ismail [travelled](#) to Beirut to plead for the support of Lebanon, Arab League member and current member of the UN Security Council, for Sudan's positions in the UN. The Lebanese Prime Minister previously commented on the indictment of President Al Bashir, saying that justice will reach Bashir as part of a growing trend in the region.

9 May - In an official [statement](#), UN Secretary-General Ban Ki-Moon expressed his alarm at an attack against a UNAMID military convoy that killed two and injured three Egyptian peacekeepers. He called on the Government of Sudan to launch an immediate investigation to identify, apprehend and bring the perpetrators to justice.

9 May - The Government of Sudan [expressed](#) dissatisfaction over conferences related to the ICC being held on the African continent, suggesting that it is weakening political decisions taken by African leaders.

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](#). On 27-28 April, the Trial Chamber held a hearing on admissibility. In parallel, the Office continues to monitor allegations of crimes committed since the end of 2005.

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.

5 May - EU diplomats in Nairobi [called for](#) strong action against people who are allegedly threatening potential ICC witnesses against post-election violence suspects. Speaking after meeting civil society groups, Dutch Ambassador to Kenya, Laetitia van den Assum, on behalf of the European envoys, called on the Kenyan Government to invoke the Witness Protection Act and

assure witnesses of their safety. The Head of the EU delegation to Kenya, Eric van der Linden, said “*the vast majority of Kenyans wants justice done to the post-election violence victims...we hope Ocampo shall receive full co-operation from Kenya*”.

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.

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.

5 May - Media [reported](#) that Colombia's Supreme Court will investigate whether two former Congressmen from the north-west Choco department, Odin Sanchez and Edgar Ulises Torres, were involved in crimes against humanity committed by paramilitaries who they are alleged to have worked with.

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. On 3 May, the OTP published a “[Summary of submissions on whether the declaration lodged by the Palestinian National Authority meets statutory requirements](#).” The OTP has not made any determination on the issue.

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.

5 May - The latest International Crisis Group [report](#), following President Laurent Gbagbo's recent dissolution of the Independent Electoral Commission and the Government, reminds the protagonists that national or international justice

mechanisms are available to bring to trial anyone who may attempt to initiate violence around the elections, and that the international community should be prepared, if violence occurs, to support such measures.

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.

It is announced that an expert mission of the OTP should visit Conakry in the weeks to come.

III. Cooperation – Galvanizing Efforts to Arrest

4 May - In a statement to the UN Security Council regarding the cooperation between the UN and the EU in maintaining international peace and security, the EU High Representative for Foreign Affairs and Security Policy, Catherine Ashton, [stated](#) that *“the fight against impunity for the most serious crimes remains a key factor in peacebuilding and conflict prevention. That is why the EU is a staunch supporter of the International Criminal Court. Promoting the universality of the Court and bolstering the enforcement of the Court’s decisions are among the key topics for the upcoming Review conference in Kampala.”*

V. Coming Events

- 17 May - Prosecutor delivers keynote speech at the Institut d’Études Politiques, in an event organised by Jeune République in collaboration with the Center for European Studies of Harvard University, Paris
- 17-18 May - Deputy Prosecutor attends an “International Forum on the Role of Leadership in Promoting Gender Equality”, organized by the Rwandan Ministry of Foreign Affairs, Kigali
- 17 May - Prosecutor meets with Abdou Diouf, Secretary-General of the *Organisation Internationale de la Francophonie*
- 18 May - Prosecutor gives opening remarks at the *Journées de la Francophonie*, organized by the OIF, Paris
- 27 May - Prosecutor delivers keynote address at the 6th session of the Consultative Assembly of Parliamentarians for the ICC and the Rule of Law, Kampala
- 28 May - Deputy Prosecutor participates in Africa Legal Aid seminar entitled “Africa and the international Criminal Court”, Kampala
- 31 May - 4 June - Prosecutor attends the ICC Review Conference, Kampala
- 4 June - Prosecutor travels to New York for consultations
- 11 June - Prosecutor briefs the UN Security Council on the situation in Darfur, New York
- 5 July - Start of trial of the case *Prosecutor v. Jean-Pierre Bemba Gombo*
- 12 July - Prosecutor participates in an International Student Debate at the University of Amsterdam
- 14-16 July - Deputy Prosecutor participates in an International Conference on ‘Africa and the Future of International Criminal Justice’ at the University of Witwatersrand, Johannesburg

* 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