



**OTP Weekly Briefing – 10-16 November – Issue #13**

**THIS WEEK'S HIGHLIGHT: PROSECUTOR VISITS SOUTH AFRICA AND RWANDA**

9-10 November - The Prosecutor participated in the symposium "The ICC that Africa Wants" in Cape Town, organized by the Institute for Security Studies (ISS) for diplomats, representatives of NGOs, and academics. In his speech, "Working with Africa: the view from the ICC Prosecutor", he highlighted the following facts: Africans led the adoption of the Rome Statute and Africa is leading in its implementation; 50% of OTP requests for assistance go to African states which implement them; African countries surrendered 75% of the suspects; African States Parties are firm in their commitment to implement arrest warrants, including against President Al Bashir, in their territories; and the AU mediation teams in Kenya, Darfur and Guinea are working with the OTP and requesting justice and accountability.

The Prosecutor met with Mr. Ibrahim Ismail Ibrahim, South African Deputy Minister of International Relations and Cooperation and updated him on recent developments. The Prosecutor expressed his appreciation for South Africa's support of the Court. Minister Ibrahim reiterated South Africa's commitment to collaborate with the ICC.

10- 13 November - The Prosecutor and Deputy Prosecutor participated in the International Prosecutors' Colloquium in Kigali. The Kigali Declaration, signed by all Prosecutors present (ICC, ICTY, ICTR, SCSL, ECCC, STL), called upon States "(i) to ensure that their legal systems and other regional legal arrangements to which they are party have the jurisdiction and the capacity to effectively prosecute international crimes or to extradite suspects of such crimes; (ii) to provide full cooperation to all international criminal tribunals and to execute all requests and orders for assistance from the tribunals including the arrest of all fugitives indicted by them; (iii) to seriously consider the adoption of a Convention on the Suppression and Punishment of Crimes against Humanity; and (iv) that have not yet done so to become party to the Rome Statute of the ICC and cooperate fully with the court in the execution of its mandate".

12 November - Prosecutor Moreno-Ocampo and Deputy Prosecutor Fatou Bensouda were received by President Paul Kagame of Rwanda, as well as Minister of Justice Tharcisse Karugarama. They discussed the failure of the international community to prevent and stop the Rwanda genocide and the current status of international justice.

**1. Investigations and Prosecutions:**

*a. General overview of the cases*

Over the week, the OTP presented 17 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](#) is scheduled to start 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. Germain Katanga and Mathieu Ngudjolo Chui***

9 November - The Prosecution requested that Trial Chamber II grant 39 applications for participation as victims in the trial, as they satisfy all the statutory requirements and Chamber jurisprudence. The OTP considers that victims' participation in proceedings is a right guaranteed by the Statute, not a privilege to be afforded on an *ad hoc* basis.

11-13 November - The Prosecution notified Trial Chamber II that on 5, 9 and 12 November, it disclosed to the Defence teams of Germain Katanga and Mathieu Ngudjolo Chui more than 300 documents in total containing information material to the preparation of the defence pursuant to Rule 77 of the Rules of Procedure and Evidence.

***The Kivus Investigation***

11-12 November - OTP representatives met with Rwandese sources to gather information on the ongoing investigation.

17 November - Ignace Murwanashyaka, a FDLR leader, was arrested by German police authorities for allegedly belonging to a terrorist organization and for having committed crimes against humanity in Eastern DRC. The OTP and Germany have been cooperating regarding the Kivus investigation for the last eight months.

*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.

11 November - MONUC Force Commander, Lieutenant General Babacar Gaye, [reported](#) that there are "between 50 and 100 [LRA] scattered in small pockets, mainly in the eastern part of the Garamba Park and near the border with Central African Republic", the rest having crossed into CAR. "The LRA has always been considered a sub-regional threat. It is not a surprise that the LRA is moving towards the country where they feel they will have less difficulty to settle... the weakest link." Ugandan Chief of Defence Forces General Aronda Nyakairima, meeting his DRC counterpart General Didier Etumba, [reported](#) that less than 300 active LRA fighters remain in total, with the majority in the 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. Bahr Idriss Abu Garda***

16 November - The Prosecution submitted its written closing brief. The Judges decision is expected within 60 days of all written submissions by parties and participants.

*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 decision on the [appeal](#) by the Prosecution on the decision of Pre-Trial Chamber II ordering the conditional interim release of Bemba is pending. 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. Implementation of the decision on interim release is suspended pending the final decision on the merits of the Prosecution’s Appeal. Pre-Trial Chamber II postponed the hearings with States on Mr. Jean-Pierre Bemba’s conditional release until the Appeals Chamber has ruled on the appeal. The Prosecution stated that the conditions on 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”*.

In the meantime, preparations for trial continue.

11 November - The Prosecution notified Trial Chamber III that on 10 November, it disclosed to the Defence team of Jean-Pierre Bemba Gombo: (a) more than 200 items of incriminatory evidence; and (b) more than 300 items of incriminatory evidence referred to in the List of Evidence.

**2. Preliminary Examinations:**

*a. Statistics on [Article 15 Communications](#) and other preliminary examination activities*

A preliminary examination is the first phase of the Office’s activity, 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 eventually 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.

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.

11 November - Meeting with his Israeli counterpart, [Avigdor Lieberman](#), Dutch Foreign Minister [Maxime Verhagen](#) urged Israel and Hamas to investigate war crimes allegations stemming from *Operation Cast Lead*. The Danish Minister of Foreign Affairs, Per Stig Møller, had met with his Israeli counterpart on 10 November and had raised the issue of national proceedings and urged Israel and the Palestinian parties to conduct "*genuine, credible and independent investigations*".

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.

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. He announced that he would request an authorization from the Judges to open an investigation.

9 November - In an [interview](#) with the Guardian, Kenyan Prime Minister, Raila Odinga reiterated the urgent need for justice to prevent future politically-inspired violence. "*We will not shield or protect people found to have committed crimes against humanity*". In support of the approach taken by the Prosecutor to prosecute those bearing the greatest responsibility in The Hague, he stated that lower-level perpetrators could still face justice domestically.

11 November - The Kenyan Parliament suspended the debate on the *Constitution of Kenya (Amendment) Bill* aimed at incorporating the statute for a Special Tribunal for Kenya into national legislation, due to the lack of quorum. The debate was adjourned until the next sitting on 18 November. The bill was introduced by Gitobu Imanyara, an individual Member of Parliament after a Government proposal for a Special Tribunal failed to pass the Legislature on 12 February 2009.

#### 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 Rome Statute.

10 November - Following his visit to the OTP on 20 October 2009, the Guinean Minister of Foreign Affairs Alexandre Cécé Loua informed the Office about a recently appointed national commission of inquiry to investigate the events of 28 September 2009 in Conakry, where, according to information available to the Prosecutor, killings and sexual violence allegedly took place when security forces and demonstrators clashed.

### **3. Cooperation – Galvanizing Efforts to Arrest:**

6 November - Deputy Prosecutor Fatou Bensouda met with the President of the Gambia, H.E. Mr. Yahya Jammeh. The Deputy Prosecutor briefed the President on the OTP's work and expressed gratitude for Gambia's cooperation. President Jammeh expressed his position of not endorsing impunity for crimes, wherever they occur.

10-16 November - OTP high level representatives travelled to Cairo, Egypt and Doha, Qatar, to address issues of general cooperation with the Arab League and with participants to the Doha peace talks on Darfur.

10 November - On the margins of the Third Conference of States Parties to the UN Convention on corruption held in Doha, Qatar, experts called for those who stole funds meant to address hunger and poverty to be prosecuted for their crimes by the ICC. Jack Blum, US Chair of the Tax Justice network, stressed: *"It shouldn't be an issue of simple criminal law...we need a global legal system"*.

11 November - At the UN Security Council [debate](#) on the protection of civilians in armed conflict, UN Secretary-General Ban Ki-moon said *".. we must enhance accountability for individuals who commit war crimes, crimes against humanity, genocide and other serious violations of international human rights law. There is a need for consistency and perseverance in this regard. Through criminal prosecutions and other resolute action, we must hold to account those who violate the law — the laws, I should stress, that we have worked so hard to put in place."* States, such as Croatia, Costa Rica, Japan, France, Mexico, Italy and Sweden (on behalf of the EU) noted the importance of ICC action when national justice was not operating, and called for full cooperation with the Court by all States. Speaking on behalf of High Commissioner for Human Rights Pillay, Deputy High Commissioner Kyung-wha Kang stated *"Law without enforcement is of little moment to would-be perpetrators"* and [urged](#) the Council to work consistently to ensure accountability for perpetrators of war crimes. Resolution [1894](#), unanimously adopted, recalled *"the inclusion of war crimes, crimes against humanity and genocide in the statutes of the ad hoc international criminal tribunals and the Rome Statute of the ICC, and emphasiz[ed] in this regard the principle of complementarity"*, and affirmed *"the responsibility of States to comply with their relevant obligations to end impunity and to thoroughly investigate and prosecute persons responsible for war crimes, genocide, crimes against humanity or other serious violations of international humanitarian law in order to prevent violations, avoid their recurrence and seek sustainable peace, justice, truth and reconciliation"*.

### **4. Coming Events:**

- 18-26 November - [Eighth Session of the Assembly of States Parties](#), The Hague
- 21 November - Official handover to President Sang-Hyun Song of a gift offered by President Paul Biya of Cameroon during the visit of Vice-President Fatoumata Diarra to Yaoundé. Prosecutor Moreno-Ocampo will attend the ceremony in the presence of the Cameroon Ambassador to The Hague, Mrs. Odette Melono. NB: Cameroon is a signatory to the Rome Statute but has not yet ratified it



- 21 November - Deputy Prosecutor to receive “International Jurists Award 2009” by the International Council of Jurists for her contribution to the field of criminal law, New Delhi
- 24 November - Trial Chamber II: Start of the Trial of [\*The Prosecutor v. Germain Katanga and Mathieu Ngudjolo\*](#)
- 2-4 December – OTP to participate in 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)
- 8 December - Prosecutor to brief 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](mailto:Olivia.Swaak-Goldman@icc-cpi.int)*