



OTP Weekly Briefing

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THIS WEEK'S HIGHLIGHT: EU CELEBRATES THE 10TH ANNIVERSARY OF UNSCR 1325 ON WOMEN'S PARTICIPATION IN PEACE AND SECURITY AND CALLED FOR RENEWED EFFORTS TO FIGHT AGAINST IMPUNITY AS PART OF THE IMPLEMENTATION OF UNSCR 1325

PREVIEW

- EU Parliament adopts a resolution on Kenya's failure to arrest Al Bashir, p. 3

9 September - During the EU High-Level Conference on UNSCR 1325, Catherine Ashton, High Representative for Foreign Affairs and Security Policy/Vice President of the European Commission, [stated](#) "UN Security Council Resolution 1325 underlined the importance of women's equal participation and full involvement in all efforts for the maintenance and promotion of peace and security. However, 10 years down the road, this commitment has not yet been fulfilled [...]. For example, the international community has not been able to end the plague of violence against women in conflict-affected countries. The mass rape of women and children in the Democratic Republic of the Congo in August is just one shocking reminder of that. Beyond the terrible issue of sexual violence, the number of women in formal peace negotiations remains unacceptably low. According to the UN, women accounted for less than 6 % of formal peace negotiators between 2000 and 2008. [...] Focusing on both the protection of women who have suffered from sexual violence and the prevention of violence, by strengthening the capacity of the justice and police systems to fight against impunity for perpetrators of sexual violence".

Margaret Wallström, Special Representative to the UN Secretary-General on sexual violence in armed conflict, stressed that impunity must end, and encouraged the UN to use all tools at its disposal to [...] bring the perpetrators to justice. Alain Le Roy, Under-Secretary-General for Peacekeeping Operations, emphasized that "the fight against impunity is the most important element missing in the 1325 implementation, and we need the support of states".

Sima Samar, UN Special Rapporteur on the situation of human rights in Sudan, highlighted that "the UN and the international community should not support a peace process in Afghanistan if there is no place for justice, and in particular if there is no end to the culture of impunity for those who are committing sexual violence. Accountability and justice should not to be ignored for short term political gain".

I. Investigations and Prosecutions

Over the week, the OTP presented 5 filings in the various cases and conducted 2 missions in 2 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.

7 September - Assistant Secretary-General for Peacekeeping Operations, Mr. Atul Khare, as well as the SRSG on Sexual Violence in Conflict, Ms. Margot Wallström, briefed the UNSC on the situation in the DRC upon return from their mission to the Kivu provinces. Mr. Khare [mentioned](#) that "systematic and mass rapes" took place in the Kibua area in the Kivus between 30 July and 2 August. "It is essential that the perpetrators of this heinous crime be swiftly apprehended and brought to justice. Rapid and exemplary punishment would deter others who might repeat similar acts", Mr. Khare stated. During her briefing, Wallström highlighted that "the intense focus on the response of the United Nations has deflected attention from the most critical element of all —

pursuing and bringing to justice the perpetrators. As the spotlight falls on the United Nations and what we could have done differently, the perpetrators — those who committed or commissioned rape and pillage — seem to have escaped from the scene of the crime and slipped into the shadows. This challenges our collective credibility and undermines efforts to deter such atrocities in future”.

7 September - Following the UNSC meeting on the situation in the DRC, US Ambassador Susan Rice [stated](#) *“From the United States’ point of view, we will take up the mantle of leadership, as we have to date, in this and other contexts, on ensuring that the perpetrators of the violence are held accountable, including through our efforts in the Sanctions Committee to add them to the lists that exist and to ensure that they are sanctioned.”*

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.

6-7 September - Central African police [reported](#) LRA attacks in Ouanda Djalléin the north, killing 16 people. 45 people abducted by the LRA during attacks in August were reportedly rescued from their captors on 8 September. The same day, the rebel Liberation and Justice Movement in Darfur [reported](#) an apparent LRA attack on their forces in South Darfur by forces which had crossed the border from 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 have been issued, against [Ahmad Harun and Ali Kushayb](#), and against [Omar Al Bashir](#), which are outstanding. Also three summons to appear have been issued, against [Bahar Idriss Abu Garda](#) and against [Abdallah Banda Abaker Nourain and Saleh Mohammed Jerbo Jamus](#). On 12 July, Pre-Trial Chamber I issued a [second warrant of arrest](#) against Omar Al Bashir for three counts of genocide committed against the Fur, Masalit and Zaghawa ethnic groups: genocide by killing, genocide by causing serious bodily or mental harm and genocide by deliberately inflicting on each target group conditions of life calculated to bring about their physical destruction. 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. On 25 May the PTC Chamber issued its [‘Decision informing the United Nations Security Council about the lack of cooperation by the Republic of the Sudan’](#) in the case against Harun & Kushayb. On 17 June, Abdallah Banda Abaker Nourain and Saleh Mohammed Jerbo Jamus [appeared](#) voluntary before the ICC, to answer charges of war crimes for their roles in the 2007 attack against African Union peacekeepers in Haskanita. The Pre-Trial Chamber set the [confirmation of charges hearing](#) for Banda and Jerbo for 22 November 2010.

1 September - In a speech to the diplomatic corps in Khartoum, Sadiq Al Mahdi, head of the Sudanese National Umma Party, declared that *“the International Criminal Court is run by elected and independent judges out of the Security Council and enforces a uniform law that grants immunity to nobody [...]. The occurrence of war crimes in Darfur is a fact that has been documented by many parties [...]. The Sudanese regime has dealt with the [UNSC] Resolution in a misguided fashion that denies the progress made in international criminal law and disavows the crimes in Darfur”.*

9 September - UN Secretary-General Ban Ki-Moon has [denounced](#) the Government of Sudan for restricting the movements of UNAMID’s troops and blocking them from accessing Tabra village in North Darfur where pro-government militias are alleged to have killed at least fifty people. *“There is a Status of [Forces] Agreement, of course. They [Sudanese government] should be faithful to provide the necessary support and cooperation. In reality, when we are not able to get such support, it really constrains the movement of our people and peacekeepers,”* said Ban Ki-Moon.

Reactions continue on President Al Bashir’s travel to Kenya

9 September - The DRC group of Parliamentarians for Global Action (PGA-RDC) [condemned](#) President Al Bashir’s visit to Kenya and the non execution of the arrest warrant pending against him. *“It is unacceptable, notwithstanding the decision of the*

African Union to halt cooperation with the ICC, for a State Party to the Rome Statute, even African, to ostensibly violate its international commitments, which had been taken without any constraint - especially since many other states such as South Africa, Botswana, Nigeria and Uganda, have not hesitated to inform Mr. Al Bashir of his possible arrest if he stood on their territories [...]. PGA-DRC welcomes the response of the Kenyan people and of its Kenyan parliamentary colleagues who have not hesitated to publicly disapprove of the presence of President Al Bashir at the ceremony and who, through their mobilization, caused the premature departure of the Sudanese President”.

9 September - The European Parliament adopted a [resolution](#) on Kenya’s failure to arrest President Al Bashir. The Parliament reminded that “Kenya, as well as 31 other African countries, is a signatory to the Rome Statute, which imposes upon them an obligation to arrest any person who is wanted by the ICC and to deliver them to the Court or deny the person admission to their territory”, and that “countries which have ratified the UN Genocide Convention of 1948 have an obligation to cooperate with the ICC, even if they are not signatories to the Rome Statute”. The EU Parliament called “for an end to impunity for all crimes perpetrated during the war in Sudan, and hoped that President al-Bashir will soon be brought to the ICC in The Hague – where he will benefit from rights granted by international law – as part of the necessary re-establishment of justice, the rule of law and respect for the victims of such crimes”, and for “the President and Government of Kenya to reaffirm their commitment and their cooperation with the ICC, including with regard to the acts of violence following the elections of 2007 and 2008”.

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. In parallel, the Office continues to monitor allegations of crimes committed since the end of 2005. On 30 August Trial Chamber III held a status conference where it heard submissions on setting the trial date.

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 between 1 June 2005 and 26 November 2009. The Prosecutor made his first visit to Kenya since the beginning of the investigation on 8-12 May.

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.

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. A second mission to Georgia was conducted in June 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. 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.

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. In 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 informed of its 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. From 19-21 May a second OTP mission met with the Guinean Minister of Justice, Col. Lohalamou, and Guinean judges. The Guinean authorities extended full cooperation to the Court.

III. Cooperation – Galvanizing Efforts to Arrest

9 September - Prosecutor Moreno-Ocampo delivered a closing speech at the 15th IAP Annual Conference, 'Crossing Borders' in The Hague.



13 September - Prosecutor Moreno-Ocampo delivered a key note closing address at the High Level Seminar for Mediators and Human Rights Practitioners, organized by the Dialogue Advisory Group and HRW in Amsterdam. The Prosecutor stressed that in the seven years of operation of the Court, negotiators and political actors adjusted to the new legal framework established by the Rome Statute, and are progressively integrating the justice track in their negotiations. During the discussions, state mediators explained how they created an integrated framework, factoring in the new limits and possibilities created by the Rome Statute.

IV. Upcoming Events

- 14-18 September - Prosecutor meets with US State Department, US congressmen and civil society and addresses the Congressional Black Caucus Foundation's Brain Trust on Africa: "Africa Forging Ahead", Washington DC
- 19 September - Prosecutor participates in "A Special Evening on Africa – Sharing One Vision" organized by the Cinema for Peace Foundation, New York
- 21 September - Deputy Prosecutor delivers speech at a conference of the Konrad Adenauer Stiftung, 'Everything that is just. International jurisdiction in Africa', Berlin
- 28-29 September - Prosecutor participates in 25th anniversary of the Center for Victims on Torture, Minneapolis
- 30 September - Prosecutor in New York for various meetings and a lecture at NYU
- 3-4 October - Prosecutor makes official visit to Denmark
- 5-6 October - Prosecutor analyzes the role of civil society during the preliminary examination phase in a meeting organized by the Hauser Center for Nonprofit Organizations, Harvard University, entitled 'Strengthening Justice in the Context of ICC Preliminary Examinations', Bellagio, Italy
- 10 October - Deputy Prosecutor attends national celebration of the third edition of the 'Marche Mondiale des Femmes' organized by the International movement of Feminists, Tervuren, Belgium
- 19-20 October - Prosecutor and Deputy Prosecutor participate in OTP-NGO Round Table, The Hague
- 26-27 October - Prosecutor participates in an event organised by the NY University School of Law, New York
- 11 November - Prosecutor participates in conference 'Transparency and accountability: Guarantees of good governance', Montevideo

** 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*