



OTP Weekly Briefing

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THIS WEEK'S HIGHLIGHT

OTP ADOPTS ITS POLICY PAPER ON VICTIMS' PARTICIPATION

12 April - The OTP adopted its [policy paper](#) on victims' participation under article 68(3) of the Rome Statute. A draft version of the paper was circulated for comments in the OTP Weekly Briefing #16, 1-7 December 2009, and finalized after the Office had the opportunity to review inputs received.

Consistent with the [Prosecutorial Strategy](#), the Office's policy papers are publicly disseminated in order to promote understanding and predictability of its activities (for other policy papers see the Court's [website](#)). The present paper aims to ensure a clear and consistent approach of the Prosecution in its activities, legal submissions and positions on victims' participation under article 68(3), building upon the experience of the activities of the Office in recent years.

The Office believes that victims bring a unique and necessary perspective to the activities of the ICC and contribute to fair and efficient trials. Under the Rome Statute, victims are actors of international justice rather than its passive subjects. As such, the Office considers that procedures for implementation of their rights must be defined in a clear and consistent manner.

"The role of victims under the Rome Statute may take various forms, from sending information directly to my Office to participating in specific proceedings," said the Prosecutor. *"While implementation will vary according to circumstances, it is important to clarify that participation is a right under the Statute and not a privilege bestowed upon victims on an ad hoc basis. This policy paper is a contribution to such clarity and consistency."*

The Office supports victims' participation when all statutory requirements are met. Bureaucratic or resource-related arguments (*i.e.* numbers of victims) require practical solutions: they do not constitute an obstacle to participation *per se*. The Office will continue to promote direct interaction with victims and victims' associations starting at the earliest stage of its activity. It will support a broad definition of the term "victims" to include persons who are both direct and indirect victims of crimes.

Regarding participation at different stages of proceedings, for participation in trial proceedings, consistent with ICC jurisprudence, the harm alleged by a victim must be linked with the charges alleged. For reparations, by contrast, the Office supports applications by a broader range of individuals and entities than those linked to the charges for which the accused is ultimately convicted.

In terms of the modalities of participation, while an assessment will need to be made on a case by case basis, the Office considers that the overall modalities should be consolidated to the largest extent possible in order to ensure certainty and consistency for victims themselves

Victims' communications to the Office of the Prosecutor should be sent to: Office of the Prosecutor, Communications, PO Box 19519, 2500 CM The Hague, The Netherlands; by email to otp.informationdesk@icc-cpi.int, or by facsimile to +31 70 515 8555.

PREVIEW:

- Prosecutor sends notification letters to States Parties on Kenya investigation, *page 3*.

I. Investigations and Prosecutions

Due to the judicial recess, no filings were presented by the OTP. Over the week, the OTP 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.

5 April - Speaking at a press conference on the upcoming ICC Review Conference, NGOs, including Human Rights Network Uganda, the Ugandan Coalition for the ICC and No Peace Without Justice, [lauded](#) the work of the ICC in Uganda. The attributed both the prevailing peace in northern Uganda since 2006 and the recent passing of the ICC Bill by the Ugandan Parliament to efforts of the Court. *"The ICC played a big role in northern Uganda, people can now sleep,"* said the project coordinator of the Ugandan Coalition, Freda Apio. The legal advisor to Ambassador Ruhakana Rugunda, Uganda's permanent representative to the UN, agreed with the NGOs: *"The impact of the ICC on Uganda has been good."*

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.

7 April - The EU election observers [left](#) Darfur over safety concerns. Veronique de Keyser, head of the mission, said she was not able to monitor elections properly out of safety fears, *"not just for the observers but for the people of Darfur."* De Keyser brought to reminder President Al Bashir's earlier statement that Sudanese Government *"before expelled the British Ambassador and the Canadian Ambassador and special envoy of the UN (...) Whoever tries to insult us we will cut off their neck and extend his tongue to abuse us and we will cut off his tongue."* De Keyser said: *"You don't usually treat international observers you have invited like that."*

7 April - Mia Farrow in an article in the Wall Street Journal said that *"(n)o one in Sudan believes the elections will be anything approaching free or fair. Intimidation, vote rigging, manipulation of the census, and bribing of tribal leaders are rampant."* Farrow noted President Al Bashir's statement on election observers (*"Whoever tries to insult us we will cut off their neck and extend his tongue to abuse us and we will cut off his tongue"*).

8 April - DPKO Head Alain Le Roy, informing the UN Security Council about Sudan, [spoke](#) about serious Government restrictions on political freedom, freedom of speech and association, the opportunity for all political actors to campaign without impediment, harassment of the media, limitations on access to polling stations for many of the people of Sudan, in particular in Darfur.

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.

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.

2 April - Justice Minister Mutula Kilonzo, Foreign Affairs Minister Moses Wetangula, and Attorney-General Amos Wako [said](#) the Kenyan Government will not shield any of the suspects on the Waki List and will hand over anyone indicted by the ICC. *"We are signatories to the ICC Statute and we will play our role to ensure that justice is done,"* said Wetangula.

4 April - Deputy Prime Minister Uhuru Kenyatta, Tourism Minister Najib Balala and Agriculture Minister William Ruto, whose names have been mentioned in a report on the post-election violence compiled by the Kenya National Commission on Human Rights, [welcomed](#) the ICC Pre-Trial Chamber's decision to authorize an investigation. Kenyatta's political aide David Murathe said that *"the Prosecutor's investigations will knock off some of the allegations being bandied around."*

8 April - In accordance with article 18(1) of the Rome Statute, the Prosecutor sent notification letters to all States Parties, informing them on the initiation of an investigation in the situation of Kenya. In accordance with article 18(2), the Prosecutor also invited States Parties to inform the Court of any current or past investigations within their respective jurisdictions into nationals or others with respect to criminal acts committed in the territory of Kenya, which may constitute crimes referred to in Article 5 of the Rome Statute and which relate to the information provided in the notification.

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.

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.

11 April - Human Rights Watch in a [report](#), entitled "Turning a Blind Eye", describes the steps taken by both Israel and Hamas over the past year to investigate alleged violations of the laws of war and possible war crimes committed during the Gaza conflict, and how those investigations have fallen far short of international legal standards.

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. 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.

1 April - Several soldiers have been [arrested](#) for 'incitement to rebellion' after mutiny in the Kaleya military camp, south of Conakry. Among the arrested is Lieutenant Marcel [Guilavogui](#), former Deputy Commander of the Presidential Guard.

III. Cooperation – Galvanizing Efforts to Arrest

5 April - A Sudanese official [denied](#) claims by so-called LRA "political commissar" Mission Solomon [Okello](#) that Sudanese military officers in Darfur were holding talks sanctioned by Khartoum, and offering support to Joseph Kony. The official said President Al Bashir was ready to arrest Kony if he entered Sudan. It is worth recalling that the Sudanese Government signed an agreement with OTP in October 2005 to support the arrest and surrender of Kony and the other LRA commanders subject to ICC warrants.

12 April - UN Secretary-General Ban Ki-Moon in a [message](#) to the 12th UN Congress on Crime Prevention and Criminal Justice said *"The United Nations, for its part, is taking a "one UN" approach by bringing crime prevention into the mainstream of our work, particularly in conflict prevention, peacekeeping and peacebuilding. Crime is also increasingly on the agenda of the Security Council. We are stressing the need for human rights to be at the forefront of efforts to prevent and punish crime. And we are focusing not just what we are against – crime – but what we are for: justice and the rule of law."*

V. Coming Events

- 26 April - Prosecutor delivers key note address at a South/North dialogue organized by Africa Legal Aid, entitled "The Bashir Arrest Warrant: The World vs Africa or the African Union vs the People of Africa?"
- 27 April - Hearing on admissibility in the case *Prosecutor v. Jean-Pierre Bemba Gombo*

- May (dates to be determined) - Prosecutor visits Kenya
- 5-7 May - Prosecutor attends the World Economic Forum on Africa, Dar es Salaam
- 16 - Prosecutor attends annual meeting of the Tufts University Fletcher School in Talloires, France
- 17 May - Prosecutor delivers keynote speech at the Institut de SciencesPo, in an event organised by Jeune République in collaboration with the Center for European studies of the Harvard University, 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
- 30-31 May - Prosecutor attends the World Economic Forum Global Redesign Summit, Doha
- 31 May - 4 June - Prosecutor attends the ICC Review Conference, Kampala

- 4 June - 11 June - Deputy Prosecutor attends the ICC Review Conference, Kampala
- 11 June - Prosecutor briefs the UN Security Council on the situation in Darfur, New York

** 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*