



OTP Weekly Briefing

7-13 December 2010 – Issue #67

THIS WEEK'S HIGHLIGHTS:

- PROSECUTION CLOSES ITS PRESENTATION OF EVIDENCE IN THE KATANGA / NGUDJOLO CASE
- COURT HOLDS CONFIRMATION HEARING IN THE BANDA / JERBO CASE – PROSECUTOR REPORTS TO THE UN SECURITY COUNCIL ON DARFUR
- MANDATE OF THE INDEPENDENT OVERSIGHT MECHANISM IS ADOPTED, PROTECTING THE INDEPENDENCE OF THE OTP

PREVIEW

- Final consultations on draft policy paper on preliminary examinations, p. 3

Prosecution closes presentation of evidence in Katanga / Ngudjolo case

8 December - The last Prosecution witness completed her testimony, and the Prosecution closed the presentation of its evidence. The Prosecution presented 24 witnesses. While the Chamber had allocated 120 hours for the Prosecution's presentation, the Office presented its case in 110 hours and 27 minutes. In addition, the Prosecution used only 69 court days for the entire OTP case, including questioning of all witnesses by all participants. As provided in its [2009-2012 Prosecutorial Strategy](#), the Office seeks to "refine the quality of its evidence and reduce the time needed for its presentation [...]. The goal is to present evidence at trial, in principle, within a maximum period of 100 court working days". Starting 21 February 2011, the Legal Representatives for Victims will present 4 witnesses and, on 21 March, the Defence will start the presentation of its case.

Confirmation hearing in Banda / Jerbo case concluded – Prosecutor reports on Darfur situation to UN Security Council



8 December - Pre-Trial Chamber I held a hearing on the confirmation of charges in the case of *The Prosecutor v. Abdallah Banda and Saleh Jerbo*. The two commanders are charged with war crimes for leading 1,000 troops to attack an African Union peacekeepers' base in Haskanita, killing 12 peacekeepers, injuring 8 and looting the base. The Defense has accepted that the evidence is sufficient to confirm the charges and requested to go to trial, thus allowing for a one day hearing. The Chamber has until 17 February 2011 to decide whether or not to confirm the charges.



9 December - The Prosecutor presented his 12th [report](#) to the UN Security Council, on Darfur, presenting the findings of the Pre Trial Chamber on the charges of genocide against President Al Bashir. The Prosecutor explained that the situation in Darfur is not just an humanitarian crisis; it is an ongoing genocide. Genocide by rape and fear against 2, 5 millions displaced. The Prosecutor stated "Resolution 1325 should be implemented in Darfur". The Prosecutor highlighted that the presence of many representatives of States Parties in the Security Council meeting underscores their consistent support for the end of impunity for these crimes.

Credit: Peter de Groot/CICC

IOM operational mandate is adopted, respecting the independence of the Office of the Prosecutor

10 December - The ASP reviewed and adopted the Operational Mandate for the Independent Oversight Mechanism (IOM). The Office is thankful to States Parties for having taken into consideration the observations it expressed in New York. The adopted IOM mandate respects the independence of the Court, while at the same time allowing for effective oversight by the IOM.

I. Investigations and Prosecutions

Over the week, the OTP presented 6 filings in the various cases and conducted 4 missions in 4 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. On 28 September 2010 the judges issued an arrest warrant under seal against Callixte Mbarushimana, Executive Secretary of the FDLR. He was arrested on 11 October in Paris.

9 December - The OTP participated in a meeting of the FDLR working group in Brussels, including representatives of the EU, US and UN. During discussions on judicial initiatives against the FDLR, the OTP briefed the group on the ongoing investigation and prosecution of Callixte Mbarushimana. The OTP has been informed by the French authorities that the hearing on the transfer of Mr. Mbarushimana to the ICC will be held on 4 January 2011, before the Cour de Cassation in Paris.

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 same period, more than 120,000 people have been displaced, and more than 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 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. 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](#) voluntarily before the ICC, to answer charges of war crimes for their roles in the 2007 attack against African Union peacekeepers in Haskanita. The [confirmation of charges hearing](#) for Banda and Jerbo took place on 8 December 2010.

13 December - The Office filed a [notification](#) of possible travel of President Al Bashir to the Republic of Senegal and the Republic of Zambia pursuant to Article 97 of the Rome Statute. Public statements and [publications](#) have suggested that President Al Bashir intends to visit Senegal in the period between 10 – 31 December 2010, to attend the 3rd World Festival of Negro Art, and Zambia on 15 December 2010, on the invitation from his Zambian counterpart, Rupiah Banda, to participate in the Special Summit of the International Conference on the Great Lakes Region (ICGR). It has since been [reported](#) that President Al Bashir will not attend the ICGR Special Summit and that his country's delegation will be headed by foreign minister Ali Karti and minerals minister Abdelbaki al Gailani. Earlier this month, President Al Bashir was forced to cancel his appearance at independence celebrations in the Central African Republic, after diplomatic pressure from France.

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. The trial started on 22 November 2010.

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 and his second visit 1-3 December. The Prosecution has announced that in the course of 2010, it will present two cases against 2 or 3 individuals alleged to be most responsible in accordance with the evidence.

12 December - The two Kenyan principals publicly [commented](#) on the ICC process during a rally marking Jamhuri Day, a national holiday in Kenya. President Mwai Kibaki, urged Kenyans *"to demonstrate patience and political maturity"*. Prime Minister Raila Odinga explained the role of the ICC in Kenya, stating, *"We tried to establish a local mechanism but failed."* The Prosecutor will announce the names of six suspects for whom he will seek summons to appear, for the alleged commission of crimes against humanity during the 2007/2008 post-election violence, on Wednesday 15 December.

II. Preliminary Examinations

DRAFT [POLICY PAPER](#) ON PRELIMINARY EXAMINATIONS: On 9 December 2010, during a side event during the ASP in New York, the Prosecutor and the Deputy Prosecutor received comments from States Parties and civil society on the OTP's Policy Paper on Preliminary examinations. In addition, Prosecutor Moreno-Ocampo participated in discussions hosted by the Council on Foreign Relations, together with academics, members of the judiciary and civil society.



The Office will take into consideration all the comments received and will issue its final policy paper in January 2011.

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 analyzing 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. A third OTP mission, lead by Deputy Prosecutor Bensouda, went to Conakry from 8 to 12 November 2010, and met with President Sékouba Konaté, Prime Minister Doré, as well as both election candidates. The Guinean authorities extended full cooperation to the Court.

II.7. Nigeria

The Office made its examination of the situation in Nigeria public on 18 November 2010. Nigeria is a State Party to the Rome Statute since 27 September 2001. The Office has been analyzing the alleged crimes committed in Central Nigeria since mid-2004 and is looking forward to engaging constructively with the Nigerian authorities on the issue.

II.8. Honduras

The Office made its examination of the situation in Honduras public on 18 November 2010. Honduras is a State Party to the Rome Statute since 1 July 2002. The Office has received many communications on crimes linked to the coup of June 2009. There were different allegations, mostly regarding alleged massive cases of torture and more than a thousand people being arrested in one day. The Office met with the Honduras Minister Counsellor in The Hague on 22 November, who provided relevant information and promised their full cooperation.

II.9. Republic of Korea

The Office made its examination of the situation in the Republic of Korea public on 6 December 2010. Korea is a State Party to the Rome Statute since 13 November 2002. The Office of the Prosecutor has received communications alleging that North Korean forces committed war crimes in the territory of the Republic of Korea. The Office is currently evaluating if some incidents constitute war crimes under the jurisdiction of the Court. These incidents are: a) the shelling of Yeonpyeong Island on the 23 November 2010 which resulted in the killing of South Korean marines and civilians and the injury of many others; and b) the sinking of a South Korean warship, the Cheonan, hit by a torpedo allegedly fired from a North Korean submarine on 26 March 2010, which resulted in the death of 46 persons.

III. Cooperation – Galvanizing Efforts to Arrest

7 December - Prosecutor Moreno-Ocampo gave a key note speech at the first meeting of the International Corruption Hunters Alliance organized by the World Bank on global cooperation to investigate crimes, in Washington DC.

9 December - Prosecutor Moreno-Ocampo gave opening remarks to the UN/OIOS hosted Conference on Combating Corruption through International Investigations in New York. The Prosecutor focused on the example of multilateral cooperation in the Callixte Mbarushimana case, and called for greater collaboration between the different actors involved in international and financial investigations.

9 December - Deputy Prosecutor Fatou Bensouda participated in the ICTJ side event during the ASP on “Making Complementarity Work: The Way Forward” in New York.

10 December - In its Resolution on “Strengthening the International Criminal Court and the Assembly of States Parties”, the Assembly called upon *“States Parties to comply with their obligations under the Rome Statute, in particular the obligation to cooperate in accordance with Part 9, encourage[d] cooperation between States Parties to the Rome Statute particularly in situations where it is being challenged; further call[ed] upon States Parties to continue and strengthen their efforts to ensure full and effective cooperation with the Court in accordance with the Statute, in particular in the areas of implementing legislation, enforcement of Court decisions and execution of arrest warrants”*. The ASP *“further encourage[d] States Parties to express their political and diplomatic support to the Court”*.

IV. Upcoming Events

- 17 January - Prosecutor gives inaugural lecture for the Masters on Governance and Human Rights at the Universidad Autónoma de Madrid
- 18-20 January - Prosecutor lectures during the ICC winter course at Harvard Law School, Cambridge (US)

* 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