



OTP Weekly Briefing¹ - August 2009

1. Investigations and Prosecutions:

a. 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](#), charged with attacking and 'wiping out' the village of Bogoro, is scheduled for later in 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*

12 August – The Prosecution [submitted an application for leave to appeal](#) Trial Chamber I's decision of 14 July 2009 giving notice to the parties and participants that the legal characterisation of the facts in the case may be subject to change pursuant to Regulation 55 (2) of the Regulations of the Court. The Prosecution argued that the Majority misinterpreted Regulation 55 in holding that a Trial Chamber may change the legal characterisation of the charges or add new charges based on facts and circumstances that are not contained in the charging document.

31 August – Following clarification by Trial Chamber I on matters raised by the Defence, the Prosecution maintained its ground for Appeal.

Case: *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*

17 August – The Prosecution submitted a [response to the Defence's motion for a declaration on unlawful detention and stay of proceedings](#) regarding Germain Katanga.

31 August – Trial Chamber II [decided](#) to postpone the commencement of the trial until 24 November 2009.

b. 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killed in 2007 on order of Kony), Okot Odhiambo, Raska Lukwiya (killed on 12 August 2006, whose arrest warrant is withdrawn), and Dominic Ongwen. These arrest warrants are outstanding. Over the last 9 months, the LRA conducted more abduction of children in the Central African Republic (CAR) and the DRC, allegedly killed 1,200 and forced the displacement of 200,000.

c. 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 surrendered to the Court](#) following the issuance of a summons and his initial appearance was on 18 May. He was provisionally released. The confirmation of charges hearing is set for 12 October 2009.

¹ For the summer period, the briefing will cover one month of activities.

Case: *The Prosecutor v. Omar Hassan Ahmad Al Bashir*

11 August - The Prosecution submitted a [Response to Application under Rule 103](#) made by the Sudan Workers Trade Unions Federations (SWTUF) and the Sudan International Defence Group (SDIC) to participate as *amicus curiae* or participants in the proceedings. For the Prosecution, the Application does not respect the process of *amicus curiae* and fails to demonstrate what interest or expertise the Applicants have to offer on the particular legal issue on appeal. They are the union of all Sudanese trade unions and a new “non-governmental committee of Sudanese citizens established out of concern for the negative effects that ICC arrest warrants could have for the peace process of Sudan”. The Prosecution argued that the Applicants are, in effect, seeking to represent President Al Bashir, without legally representing him.

Case: *The Prosecutor v. Bahr Idriss Abu Garda*

26 August - The Prosecution attended the [status conference](#) on disclosure matters convened by Pre-Trial Chamber I in anticipation of the confirmation hearing scheduled for 12 October 2009.

d. Situation in the [Central African Republic](#) (CAR)

This situation was referred by the Central African Republic in December 2004. The OTP opened its investigations in May 2007. One arrest warrant has been issued against [Jean-Pierre Bemba](#). The [confirmation of charges hearing](#) was held on 12 to 15 January 2009. On 15 June, Pre-Trial Chamber II [partially confirmed the charges](#) and the Prosecutor [applied for leave to appeal](#) the Chamber’s decision to decline to confirm certain charges on 22 June. The Office continues to monitor allegations of crimes committed since the end of 2005.

Case: *The Prosecutor v. Jean-Pierre Bemba Gombo*

6 August - [Prosecution's Response to Amicus Curiae Observations of Women's Initiatives for Gender Justice](#). The Prosecution welcomed the *Amicus Curiae* observations, in agreement with its position that considerations required for gender-based crimes “avoid unintentional adverse effects on gender” and ensure that “crimes that occur against women and children during armed conflict are assiduously and fairly pursued”.

7 August – The Prosecution filed its [response](#) to the Defence’s urgent application for a stay of all proceedings. The Prosecution argued that the Defence’s allegations that the Accused’s right to a fair trial was violated by the freezing of his assets was legally and factually unfounded and requested Pre-Trial Chamber II to dismiss the Defence’s application.

14 August – After the issuance of Pre-Trial Chamber II’s decision ordering interim release of Jean-Pierre Bemba Gombo on the same day, the Prosecution [filed its appeal](#) against that Decision.

24 August – The Prosecution [presented its arguments in support of the appeal](#) against Pre-Trial Chamber II’s decision on the interim release of Jean-Pierre Bemba Gombo. 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 Prosecution requested the Appeals Chamber to suspend the enforcement of Pre-Trial Chamber II’s Decision and to reverse the Appealed Decision.

e. Miscellaneous

10 August – OTP Financial investigation seminar with national/international financial units, The Hague.

2. Preliminary Examinations:

a. Afghanistan

The Office made its analysis 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 received no answer yet.

b. Colombia

The Office made its analysis public in 2006. It examines alleged crimes within the jurisdiction of the Court and investigations/proceedings conducted in Colombia against the alleged 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.

c. Georgia

The Office made its analysis public on 14 August 2008. The Georgian Minister of Justice visited the OTP. Russia, a State not Party to the Statute, 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.

d. [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 is examining all issues related to its jurisdiction, including whether the declaration accepting the exercise of jurisdiction by the Court meets statutory requirements, whether crimes within the Court's jurisdiction have been committed and whether there are national proceedings in relation to alleged crimes.

➤ On 17 August, the Prosecutor received a communication from the Embassy of Israel in The Hague containing a report entitled *The Operation in Gaza – 27 December 2008-18 January 2009 – Factual and Legal Aspects*.

e. 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, high-level representatives of OTP visited Abidjan.

f. [Kenya](#)

The Office made its analysis public in February 2008. The Prosecutor has received numerous Article 15 communications on the post-election violence. On 3 July 2009, a common statement was issued in The Hague by a [Government delegation from Kenya](#) lead by Justice Minister Kilonzo and the Prosecutor. 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. Kenyan authorities committed themselves to refer the situation to the Court if efforts to conduct national proceedings fail. 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 the post-election violence. On 16 July, Prosecutor Moreno-Ocampo received the sealed envelope and 6 boxes containing [documents and supporting materials compiled by the Commission](#). The Prosecutor opened the envelope, examined its content and resealed it. On 14 July, the Prosecutor received two reports from the Kenyan authorities on witness protection measures and on the status of legal proceedings carried out by national authorities.

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

➤ 8,317 communications have been received by the Office to date; 3,476 were manifestly outside the jurisdiction of the Court, and 4,571 warranted further analysis or were linked to a situation already under analysis. 72 communications were received in the month of August.

➤ On 24 August, the OTP attended a Conference on “The Evolution of International Criminal Law regarding crimes against humanity and grave violations against human rights” in Tegucigalpa, Honduras.

3. Cooperation – Galvanizing Efforts to Arrest:

➤ On 5 August, in Nairobi, at a joint press conference with US Secretary of State Hillary Rodham Clinton, Kenyan Foreign Minister, Moses Wetangula stated “[...] the AU does not and has not and will not say that President Bashir is innocent, because we have no capacity to say that. He has been investigated, he has been indicted’. [...] [n]obody will stand in the way of President Bashir being arrested and prosecuted, but for now, the AU’s position is that let’s see what internal mechanisms can be done. I don’t think the AU is asking for too much”.

➤ On 6 August, the Prosecutor met with the Prosecutor of the Special Court for Sierra Leone and the new US Ambassador-at-Large-designate for War Crimes Issues, Mr. Stephen Rapp, in The Hague.

➤ On 26 August, the Prosecutor met Ugandan Minister for Security, Hon. Amama Mbabazi, to discuss implementation of the Court’s arrest warrants against Joseph Kony and other LRA leaders, in The Hague.

4. Coming Events:

➤ 1 September - Visit of South African lawyers to the OTP on jurisdiction issues in the context of preliminary examination of the situation in Palestine, The Hague

➤ 10 September - Presentation of OTP’s 2009-2012 draft Prosecutorial Strategy at the [Consultative Conference on International Criminal Justice](#), New York

➤ 15 September - Prosecutor’s Keynote address, [Research Conference “The ICC and Complementarity: From Theory to Practice”](#), The Hague

➤ 16 September - Prosecutor’s Presentation, International Conference on Fighting Impunity in peacebuilding Contexts, The Hague

➤ September 2009 - Publication of the UN Fact Finding Mission Report on the Gaza Conflict

➤ September 2009 - Continuing consultations and publication of the Report of AU High Level Panel on Darfur

➤ October - Trial Chamber I: Start of the Defence case in [The Prosecutor v. Lubanga Dyilo](#),

➤ 6-7 October - OTP-NGO bi-annual roundtable, The Hague

➤ 12 October - Pre-Trial Chamber I: Confirmation of charges hearing in [The Prosecutor v. Abu Garda](#)

➤ 26-27 October - Prosecutor’s visit to Ecuador in the context of preliminary examination activities in the region

➤ 9-10 November 2009 - Prosecutor’s participation in symposium “The ICC that Africa Wants”, Cape Town

➤ 11-13 November - Prosecutor’s visit to Rwanda on the occasion of the International Prosecutors’ colloquium

➤ 20-22 November - Prosecutor’s participation in the World Economic Forum’s Summit on the Global Agenda 2009, Dubai

➤ 24 November - Trial Chamber II: Start of the Trial of [The Prosecutor v. Germain Katanga and Mathieu Ngudjolo](#)

➤ December - Prosecutor’s report to the UNSC on the Darfur situation pursuant to UNSCR 1593 (2005)

* 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