



**OTP Weekly Briefing – 27 October – 2 November – Issue #11**

**1. Investigations and Prosecutions:**

**THIS WEEK'S HIGHLIGHT: CLOSING OF ABU GARDA CONFIRMATION OF CHARGES HEARING**



The Prosecution team



Witness 445



Bahr Idriss Abu Garda

30 October - The Prosecution in its closing statement concluded that *“Abu Garda had control over the rebel forces and the crimes committed by them; that the attack which took place on 29 September is not challenged; that it took place in the context of an armed conflict is not challenged; that 12 peacekeepers died, others were injured and the camp pillaged is not challenged”*. The Prosecution further stated that, as established by the evidence adduced at the hearing, the African Union Haskanita camp had protected status when it was attacked; its personnel and property entitled to the protection accorded to civilians; the Defence has presented no evidence to the contrary.

Three prosecution witnesses were called at the hearing, including two victims and one military expert. Four legal representatives of victims represented victims from Nigeria, Mali and Senegal.

Pre-Trial Chamber I will deliver its decision 60 days after the submission of final written arguments by the Prosecution and the Defence on 30 November. The Chamber may: confirm the charges in relation to which it has determined that there is sufficient evidence; decline to confirm the charges in relation to which it has determined that there is insufficient evidence and adjourn the proceedings against Abu Garda; request the Prosecutor to provide further evidence or conduct further investigations; request the Prosecutor to amend any charge for which the evidence submitted appears to establish that a crime other than the crime charged was committed.

Both parties can apply before the Pre-Trial Chamber for leave to appeal the decision.

*a. General overview of the cases*

Over the week, the OTP presented 15 filings in the different cases and conducted 3 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.

27 October - The EU Council [called on](#) the Government of the DRC “to ensure without exception that those responsible for violations of international law, including human rights and international humanitarian law, are held accountable.” The Council noted that “[t]imely vetting of FARDC commanders and soldiers is of crucial importance in this respect” and reiterated “its full support for the ICC activities in the region and calls on the Government of the DRC to cooperate with the Court, particularly with regard to the arrest and surrender of Bosco Ntaganda to the ICC.”

**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) of the Regulations of the Court.

28 October - In its Response to the Observations of Legal Representatives of Victims on the Appeals against the 14 July 2009 Decision, the Prosecution noted that the Legal Representatives agreed with the Prosecution on all substantive issues, including that Regulation 55(2) allows the Chamber to recharacterise only those facts and circumstances contained in the charges.

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

The beginning of the trial is scheduled for 24 November. On 31 October, the Defence for Mathieu Ngudjolo requested a postponement of three months. At a 2 November status conference, the Chamber requested written submissions from the Defence on their request.

*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 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 Central African Republic.

[Reports](#) of LRA activity in South Sudan include an attack on 21 October on a camp of Darfur internally displaced persons in Western Bahr al-Ghazal state, during which 5 people were reportedly killed and close to 50 people abducted and later freed by the SPLA. On 22 October, on the margins of the AU Special Summit on Refugees in Kampala, Lt. Gen. Nhail Deng Ntial, Minister for SPLA Affairs in the Government of South Sudan, noted that “the LRA seems to be expanding the scope of its murderous activities with alarming rapidity while cross-border incursions have continued to claim innocent lives in these areas”, and called for a concerted regional approach to address the problem.

*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.

October - The AU High Level Panel on Darfur (AUPD) [recommended](#) overhauling “the methods and rules for investigating and proving rape” in the Sudan. The report said there was no evidence that “the crime of rape has been accorded the attention it deserves” and Sudanese law had “forbidding obstacles” to proving rape.

29 October - In its 207th session [communiqué](#), the AU Peace and Security Council adopted the recommendations of the AUPD chaired by former President Mbeki as “the basis of AU engagement in Darfur and its interaction with its international partners,” stating that they “ [...] provide a clear and sound Road Map for achieving peace, justice, reconciliation and healing in Darfur.” The AU “[...] strongly condemn[ed] the violations of human rights in Darfur.” At the same time, the PSC urged the UN Security Council to “heed the AU’s call for the deferral of the process initiated by the [...] ICC against President Omar Hassan Al Bashir.” The AU PSC established a team of experts — including former Presidents Mbeki, Pierre Buyoya of Burundi and General Abdul salami Abu-Bakr of Nigeria — to assist in implementing the recommendations.

30 October - The Sudanese Government [formally expressed reservations](#) to the hybrid court in Darfur proposed by the AUPD. Vice-President Taha stated: “[A] new justice mechanism in the form of hybrid courts requires satisfying and accurate definition on the extent of conformity of the principle of establishing it with the constitution and the principle of independent judiciary, jurisdiction and determining its workings and specifics. This requires close cooperation between us and the mechanism that we recommend the AU to establish”. He also stressed that the Sudan has established special courts and appointed a special Prosecutor and that Sudanese law and the competence of its judiciary “provides the necessary framework to achieve justice”. Speaking to reporters, former President Mbeki said that Sudan “accepted” the hybrid court but would need further discussions with the AU. In an address to the PSC, he said, “the time to act is now. Exceptional measures must be put in place to assure the people of Darfur that justice will be done, taking into account the objective reality that a number of them have little confidence in the independence and impartiality of their national criminal justice system”.

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

This situation was referred by the Central African Republic in December 2004. The OTP opened its investigation in May 2007. One arrest warrant has been issued against [Jean-Pierre Bemba](#) 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.

**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.

*f. Miscellaneous*

1 November – Mrs Shamila Batohi took up the function of Senior Legal Advisor in the Office of the Prosecutor. Ms. Batohi has 23 years experience as a Prosecutor in South Africa and is the former Director of Public Prosecutions for KwaZulu-Natal, South Africa. Ms. Batohi’s immediate responsibility will be to lead the development of the Office’s Operational Manual and the policies of the Office.

**2. Preliminary Examinations:**

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

A preliminary examination is distinct from an investigation. It is a phase during which the Office assesses 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 evaluates all information on alleged crimes from multiple sources, including information from individuals and groups also known as “communications” and submissions from parties concerned. The triggering of a preliminary examination does not imply that an investigation will eventually be opened.

8,441 communications have been received by the Office to date, sent by groups/individuals from 132 countries. 3,525 (42%) were manifestly outside the jurisdiction of the Court; 4,672 (55%) warranted further analysis or were linked to a situation already under analysis. 72 communications were received in the month of October 2009.

*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.

1 November - The Article 124 Declaration made by Colombian in 2002 - providing that, for a period of seven years after the entry into force of the Statute in Colombia, it does not accept the jurisdiction of the Court regarding war crimes alleged to have been committed by its nationals or on its territory - expired.

*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 all 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.

*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. 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 16 July, Prosecutor Moreno-Ocampo received the sealed envelope and 6 boxes of supporting material containing documents and supporting materials 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.

The Prosecutor is scheduled to meet with President Kibaki and Prime Minister Odinga on 5 November to discuss the upcoming steps in investigating and prosecuting those most responsible for crimes committed in the context of the post-electoral violence. The Prosecutor may initiate an investigation *proprio motu* on the basis of information on crimes within the Court's jurisdiction. In such a case, the Prosecutor must request authorization by the Court's Pre-Trial Chamber. Alternatively, the Kenyan Government may choose to refer the situation.

#### *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.

27 October - Human Rights Watch issued a [report](#) stating that it had uncovered new evidence that the September 2009 massacre and widespread sexual violence were allegedly organized and committed largely by the elite Presidential Guard, the "red berets". HRW also found that the armed forces attempted to hide evidence of the crimes by seizing bodies from the stadium and the city's morgues and burying them in mass graves.

30 October – The AU Peace and Security Council decided to impose [sanctions](#) against the leaders of Guinea for those crimes. Sanctions would include measures such as the freezing of bank accounts and travel visas.

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

#### **THIS WEEK'S HIGHLIGHT: CONSULTATIONS WITH STATES ON OTP PROSECUTORIAL STRATEGY**

30 October - As in 2006, the OTP is holding rounds of consultations with its partners on its draft Prosecutorial Strategy for 2009-2012. Consultations started earlier this year at Harvard University with academics and members of civil society. They continued at United Nations Headquarters in New York in September where Prosecutor Moreno-Ocampo presented the draft Strategy at the Consultative Conference on International Criminal Justice. The OTP also consulted at the Court's Headquarters in The Hague with civil society representatives during the OTP-NGO Roundtable on 6-7 October.

On 30 October, 40 representatives from States Parties and Non States Parties attended the meeting chaired by Prosecutor Moreno-Ocampo. States expressed their appreciation for the opportunity to provide comments. States also expressed their support for the 5 priorities set by the Prosecutor for the next three years. In response to questions, the Prosecutor explained how the objectives set would be implemented, for instance with regard to the dissemination of OTP policies, trainings, educational projects, and the efficiency of the Office's investigations and prosecutions. The Prosecutor stressed: "*My Office continues to build upon its six years of experience in order to be as clear, transparent and predictable as possible, while maintaining its full independence. We need to do the best job possible in the courtroom; but the impact of our cases will also greatly depend on [States]. We aim to work together in the coming three years to maximize the impact of our common work.*"

Additional consultations with States, international organizations, NGOs and academics will take place in Geneva on 3 November. The Prosecutorial Strategy will then be finalized, taking into consideration comments received. The final version will be circulated prior to the Assembly of States Parties in November 2009.

24 October - During the visit of Sudanese Vice-President Salva Kiir to Botswana, Botswana Vice-President Merafhe [reasserted](#) that “...Botswana has found it fitting to pronounce its position on the indictment of President Al Bashir by the International Criminal Court,” and the ICC must not be prevented from carrying out its mandate.

28 October - According to media [reports](#), the French Government is considering calling off the next Africa-France summit, due to be held in Egypt in February as they do not want President Al Bashir present.

29 October - In a [statement](#) to the UNGA on behalf of the African Group of ICC States Parties, Ambassador Muburi Muita, Permanent Representative of Kenya to the UN, reaffirmed the Group’s commitment to its obligations under the Rome Statute: African States Parties remained committed to the fight against impunity, as well as to the fair, independent, impartial, and effective functioning of the Court. In order to make more progress, he said the Court needed to be given all the support necessary.

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

- 4 November - Prosecutor’s briefing to the seventeenth Diplomatic Briefing, The Hague
- 5 November - Prosecutor’s visit to Nairobi, Kenya
- 7-9 November - Deputy Prosecutor to participate in African Centre for Democracy and Human Rights Studies Forum, 46th Ordinary Session of the African Commission on Human and Peoples' Rights, Banjul
- 9-10 November - Prosecutor to participate in Symposium “The ICC that Africa Wants”, Cape Town
- 11-13 November – Prosecutor/Deputy Prosecutor in Rwanda, International Prosecutors’ Colloquium, Kigali
- 18-26 November - [Eighth Session of the Assembly of States Parties](#), The Hague
- 20 November - Prosecutor to participate in the World Economic Forum, Summit on Global Agenda, Dubai
- 21 November - Deputy Prosecutor to receive “International Jurists Award 2009” by the International Commission of Jurists for her contribution to the field of criminal Law, New Delhi
- 23-27 November - Deputy Prosecutor to participate in Forum for civil society, Nairobi
- 24 November - Trial Chamber II: Start of the Trial of [The Prosecutor v. Germain Katanga and Mathieu Ngudjolo](#)
- 4 December - Prosecutor’s report to the UNSC on the Darfur situation pursuant to UNSCR 1593 (2005)
- 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)