



**OTP Weekly Briefing – 1-7 December – Issue #16**

**THIS WEEK'S HIGHLIGHT:  
PROSECUTOR BRIEFS THE UNITED NATIONS SECURITY COUNCIL ON DARFUR CRIMES**



Prosecutor Moreno-Ocampo at the UN Security Council  
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Prosecutor Moreno-Ocampo with Mrs. Patricia O'Brien, Under-Secretary-General for Legal Affairs and UN Legal Counsel, and Mr. Stephen Rapp, US Ambassador-at-Large for war crimes issues.

4 December - The Prosecutor [briefed](#) the UNSC on the judicial activities of the OTP regarding the [situation in Darfur](#). The Prosecutor stated *"since my last report in June 2009, there have been positive developments. First, judicial proceedings in relation to the Darfur situation are progressing; second, cooperation with the African Union, the Arab League and other international bodies has been fruitful; and third, States and international organizations have maintained consistent support for the execution of the Court's arrests warrants."*

However, the Prosecutor pointed out that *"there are also negative developments in two areas: the lack of cooperation of the Sudan; and the continuation of crimes"*. The Prosecutor stressed that *"over the last six months, President Al Bashir has continued using the Sudanese state apparatus to conduct a diplomatic and communication campaign against the Court; he has endeavoured to shift the attention of the international community to other pressing issues, the conflict with the South in particular. He will exacerbate such conflict if it can shift [the Council's] attention from the crimes committed in Darfur and from his criminal responsibility. As the Prosecutor, I will deal with any judicial challenge brought by President Al Bashir and other suspects in Court. But I will need the full support of the Council to ensure that the attention remains on the need to arrest the persons who are the object of arrest warrants and on the need to end crimes in Darfur."*

**1. Investigations and Prosecutions:**

*a. General overview of the cases*

Over the week, the OTP presented 10 filings in the various cases and conducted 7 investigative missions in 5 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](#) 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.

**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. On 8 December, the appeal lodged by the Prosecution and the Defence against TC I's 14 July decision, notifying that the legal characterization of the facts may be subject to change in accordance with Regulation 55(2), was [granted](#).

**Case: *The Prosecutor v. Katanga and Ngudjolo***

2 December - Trial Chamber II decided to [postpone](#) the hearings in the case *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*. The trial will resume on 26 January 2010.

***The Kivus Investigation***

*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 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 close to 300,000 in DRC alone. In addition, there have been substantial numbers of killings and abductions in both South Sudan and CAR.

*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.

4-5 December - Five Rwandese peacekeepers from UNAMID were killed in North Darfur during an attack while they escorted a water-tanker. The Rwandese Defence Force (RDF) spokesman, Major Jill Rutaremara, stated there was no known rebel activity in the area, and further [stressed](#) "*The proximity of the ambush to the checkpoint manned by the government forces raises some questions. The only logical conclusion the RDF can make is that the RDF Peacekeepers were killed and injured by the government forces.*"

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

*e. 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 [27 April 2010](#). In parallel, the Office continues to monitor allegations of crimes committed since the end of 2005.

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

On 2 December, the Appeals Chamber upheld the Prosecution's appeal and [reversed](#) the decision of the Pre-Trial Chamber granting interim conditional release to M. Jean-Pierre Bemba Gombo. The Appeals Chamber agreed with the Prosecution's arguments and found that the PTC had erred in finding that: (a) a substantial change in circumstances necessitated the conditional release of M. Bemba; and (b) M. Bemba could be granted conditional release without specifying the conditions to be imposed on his release or identifying the state to which Mr Bemba would be released. On 8 December, the TC found that there was no change in circumstances which would justify interim release of M. Bemba.

30 November-- The Prosecution disclosed to the Defence 42 items of potentially exonerating evidence, 7 items of incriminatory evidence and 863 items of evidence containing information material to the preparation of the Defence pursuant to Rule 77 of the Rules of Procedure and Evidence.

*f. miscellaneous*

1 December - Ms Norul Rashid, Office of the Special Adviser on the Prevention of Genocide, delivered an OTP Guest Lecture entitled "*Responding to Genocide: Prevention and Justice.*" Ms Rashid explained the mandate of the OSAPG and presented its Analytical Framework used to determine whether there may be a risk of genocide in a given situation. Ms Rashid engaged with ICC staff on justice-related measures to prevent genocide.

7 December - Based on the ICC Strategy in relation to victims, the Prosecutor has developed its draft policy paper on the OTP's legal approach to [victims participation](#) under Article 68(3) of the Rome Statute, in order to ensure predictability and consistency of OTP positions. Comments and questions are welcome and should be sent to Olivia Swaak-Goldman ([Olivia.Swaak-Goldman@icc-cpi.int](mailto:Olivia.Swaak-Goldman@icc-cpi.int)) by 22 January 2010. The final version of the policy paper will be released on 1 February 2010.

**2. Preliminary Examinations:**

*a. 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 collects and 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.

*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.

*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 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. 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. .

2 December - The OTP received a communication by the Public Committee Against Torture in Israel (PCATI) in relation to Israel's December 2007 -January 2008 *Cast Lead* operation in the Gaza Strip.

*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. 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 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. On 5 November the Prosecutor met with President Kibaki and Prime Minister Odinga in Nairobi. He [informed](#) them of his view that the crimes committed amounted to crimes against humanity and of his duty, in the absence of national proceedings, to act. On 23 November the Prosecutor notified Kenyan victims of his planned request to the Judges and of the 30 days within which they could express their opinion on the merits of an investigation. On 26 November he requested authorization from Pre-Trial Chamber II to open an investigation. In his application to the Judges, the Prosecutor emphasized that 1,220 persons had been killed; hundreds were raped, with thousands more unreported; 350,000

people were forcibly displaced; and 3,561 were injured as part of a widespread and systematic attack against the civilian population: "[v]ictims were hurt. They were raped, their homes burnt and they lost their cattle, they lost all their means to support themselves. We are siding with them. We will do justice, we will work together to avoid a repetition of the crimes."

2 December - The parliamentary debate on the Special Tribunal Bill to prosecute those responsible for post election violence has [stalled](#) due to lack of quorum. Only 18 MPs attended the debate.

4 December - OTP briefed Kenyan journalists on the work of the Office in the framework of the International Justice Radio Workshop held in Nairobi.

#### *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 Statute.

3 December - The Foreign Affairs Minister of the Republic of Guinea, Mr. Alexandre Cécé Loua, visited the OTP for the second time and updated OTP representatives on national and international efforts at seeking accountability for the events of 28 September 2009 in Conakry.

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

1-7 December - The Prosecutor held meetings with individual members of the UNSC, as well as with Alain Le Roy, Department of Peacekeeping Operations, Patricia O'Brien, Office of Legal Affairs and Djibril Bassole, Joint AU-UN mediator for Darfur. Priority issues were the arrest of Bosco Ntaganda in the DRC and complementary efforts to address the Darfur crimes.

2-4 December - OTP participated in a two-day colloquium organized by the International Center for Transitional Justice in Strasbourg, which brought together members of relevant UN human rights bodies and of the Organization of American States, African Union, Council of Europe, and Association of Southeast Asian Nations human rights courts and commissions, as well as litigants and experts, to compare and contrast their jurisprudential approaches to Remedies for Gross and Systematic Violations of Human Rights.

3 December - Béatrice Le Fraper, Director of JCCD, briefed the US Faith and Ethics Network for the ICC (US FENICC) and the Gender-Based violence/Sudan Working group on the role of the OTP regarding child soldiers and gender and sexual crimes, in all of the OTP cases. She highlighted that many diplomats and other stakeholders were still reluctant to recognize that rape and sexual violence were part of policies to destroy entire communities.

5 December - The Prosecutor addressed a gathering of anti-genocide and human rights activists organized by 3 *Generations*. He called on them to continue their efforts to put forth the truth about the victims of ongoing conflicts in an effort to prevent future crimes.

7 December - Vice-President Diarra and Béatrice Le Fraper, Director of JCCD, opened the ICC Regional Training Seminar in Dakar, Senegal. The one week interactive training programme will cover the themes of international cooperation, complementarity, and victim's participation. The seminar was attended by the Minister of Justice of Senegal, who [reaffirmed](#) his country's commitment to its obligations, including in relation to arrest warrants.



Participants include senior government officials and members of civil society from Bénin, Burkina Faso, Côte d'Ivoire, Guinée Conakry, Mali, Niger and Togo.

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

- 7 December - Deputy Prosecutor participates in seminar with international prosecutors hosted by Leuven Center for Global Governance as part of the *International Prosecutor's Project*, a five year thematic study, Leuven
- 8 December - Prosecutor's briefing to World Affairs Council of Northern California, San Francisco
- 8 December - Deputy Prosecutor speaks at the "*Peace and Reconciliation*" conference organized by the Belgian Senate Foreign Affairs Commission and European Parliamentarians for Africa, Brussels
- January - Prosecutor's consultations on OTP's draft policies at Harvard University, Cambridge
- 23 January - Deputy Prosecutor presents lecture as part of Hague Academy for International Law's *Seminars for Advanced Studies in public and private international law*, The Hague
- 26 January - Trial resumes in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*
- 27-31 January - Prosecutor participates in 40<sup>th</sup> World Economic Forum Annual Meeting, Davos-Klosters

\* 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)