



OTP Weekly Briefing – 8-14 December – Issue #17

THIS WEEK'S HIGHLIGHT: ICC TRAINING SEMINAR IN DAKAR, SENEGAL



11 December – The ICC concluded a Regional Training Seminar in Dakar, Senegal, hosted in the Centre de Formation Judiciaire with a [speech by the Minister of Foreign Affairs of Senegal](#). The one week programme covered the themes of international cooperation, complementarity, and victim's participation. After a series of interactive training sessions, senior government officials and members of civil society from Bénin, Burkina Faso, Côte d'Ivoire, Guinée Conakry, Mali, Niger and Togo adopted a Final Report suggesting practical measures to enhance state cooperation with the Court, including through the execution of arrest warrants and the surrender of individuals subject to them, as well as hosting accused who have been granted interim release or those who have been convicted. The Report includes detailed recommendations on how to implement the complementarity principle, notably by improving the willingness and ability of national judicial systems to carry out genuine investigations and prosecutions. A lasting outcome of the seminar is the creation of a network of ICC cooperation focal points throughout West Africa.

1. Investigations and Prosecutions:

a. General overview of the cases

Over the week, the OTP presented 5 filings in the various cases and conducted 8 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 Appeals Chamber [granted](#) the Prosecution's Appeal against the 14 July decision of Trial Chamber I, which had considered that the legal characterization of the facts may be subject to change pursuant to Regulation 55(2) of the Regulations of the Court without being limited to those described in the charges. The Appeals Chamber found that the TC's interpretation of the provision was flawed on the ground, among others, that it is the Prosecutor who is

tasked with the investigation of crimes under the jurisdiction of the Court and to proffer charges against suspects. The Defence case presentation, originally scheduled for October 2009, is set to commence [7 January 2010](#).

Case: *The Prosecutor v. Katanga and Ngudjolo*

The Kivus Investigation

9 December - The UN Office of Legal Affairs has [stated](#) that there would be significant legal obstacles to MONUC participating in envisaged Kimia II operations if Bosco Ntaganda were to play a role, either as commander, senior officer or staff member of any of the FARDC units involved.

11 December - The UNSC published the [final report](#) of the Group of Experts on the DRC. The report shows that FDLR continues to benefit from support from top commanders of the Congolese armed forces (FARDC) and has sealed alliances with other armed groups in North and South Kivu. The report also states that Bosco Ntaganda has continued to retain heavy weapons and continues to act as the deputy operational commander of Kimia II. The report also provides evidence that FARDC and FDLR have been involved in the killing of significant numbers of civilians and other abuses, causing additional waves of displacement of several hundred thousand civilians.

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.

December - In his most recent quarterly report to the Security Council on the [UN mission in DRC](#), the UNSG expressed concern at the continuing attacks by the LRA in DRC, CAR and the Sudan. He emphasised the need to ensure a joint, regional response and encouraged the Security Council to consider taking steps to harmonize the mandates of the various affected missions in support of the protection of civilians.

December - Humanitarian organisations [report](#) that LRA attacks in the Central African Republic are leading to food shortages as local farmers are driven off their lands due to LRA raids. The Director of UN World Food Program operations in the CAR stated that "[p]eople are no longer able to farm. They are in the bush running away from this LRA."

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.

13 December - President Mbeki [visited](#) the Sudan to begin implementation of the AUPD report recommendations. Mbeki met with Pagan Amum, SPLM Secretary-General, who stated: "[w]e support the creation of hybrid courts for crimes against humanity and war crimes committed in Darfur because we do not have confidence in the independence of the Sudanese judiciary." In contrast, President Al Bashir dismissed the proposal for a hybrid court, saying that "[w]e on our end expressed reservation on this point ... because we have an independent judiciary and the judicial institution has the say in forming any courts inside the borders to prosecute any Sudanese. Mbeki understands our reservation."

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 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.

14 December - The Prosecution sought leave to appeal a Decision of the TC denying its application to disclose, three months before the commencement of the trial, a limited number of additional evidence. The Prosecution argued that the summary rejection of highly relevant evidence, on procedural grounds and without analysing its relevance affects the fair conduct of the proceedings as it directly impairs the Prosecution's right and duty to present its case at trial.

f. miscellaneous

Reminder: 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) 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; 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.

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."

9 December - Kofi Annan [expressed appreciation](#) for the Kenyan Government's action in reforming the Constitution in order to avoid a repeat of the violence that followed the 2007 elections: "*I sense a renewed energy, a renewed effort to implement the reforms. There are difficulties but the atmosphere is much better now than it was a few months ago*". However, Annan also [expressed concern](#) about political wrangling: "*It is imperative these reforms bear full fruit before end of 2010 and before the next wave of electoral politics hit the country - although the country seems to be in the mode already*".

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. Cooperation – Galvanizing Efforts to Arrest:

7 December - After opposition parties refused to cancel a banned march in Khartoum, Sudanese forces cracked down on the demonstrators, arresting senior SPLM members, including Secretary-General Pagan Amum and Deputy Secretary-General Yassir Arman. Both were released after 9 hours of detention.

8 December - UN Spokesperson Martin Nesirky confirmed that UN Secretary-General Ban Ki Moon's call to President Al Bashir over the weekend had the strictly humanitarian purpose to secure the release of two AU-UN peacekeepers, from Nigeria and Zimbabwe, abducted last August; his call marked the 100th day of the kidnapping. The spokesperson confirmed the legal position of the UN that the Secretary General will keep political distance from any person indicted by the ICC. The Sudan official news agency (SUNA) had tried to overblow the call, saying it had covered the general situation in Darfur and the nomination of Ibrahim Gambari as UNAMID chief.

8 December - During a visit to the Sudan, Russian Special Envoy for Darfur announced plans to meet with the Prosecutor early next year.

8 December - The Prosecutor met with Professor Steven Krasner, Professor of International Relations and Senior Fellow at the Freeman Spogli Institute and the Hoover Institution of Stanford University, as well as a group of Stanford academics. They discussed the ICC's role in international relations and the Court's evolution over the last six years.

8 December - Prosecutor Moreno-Ocampo gave a keynote speech on the ICC and its impact in international affairs at the World Affairs Council of Northern California in San Francisco. The Prosecutor also met with high school children from the Bay area, and further introduced them to the concepts of international justice and conflict management.

10 December - In his [Nobel Prize acceptance speech](#), President Obama stressed that “[w]hen there is genocide in Darfur, systematic rape in Congo, or repression in Burma, there must be consequences ...” Referring to the President’s speech, US Ambassador to the UN, Susan Rice, reminded that President Al Bashir has not been brought to account for alleged crimes committed in Darfur whereas an indicted rebel had surrendered voluntarily. Ambassador Rice also highlighted the three Sudan priority areas for the President: “one, ending mass atrocities, killings, violence, genocide in Darfur; two, effectively implementing the North-South peace agreement ... and preventing Sudan from again serving as a safe haven for international terrorists, like Al Qaida.”

11 December - The EU Council adopted the [Stockholm Programme](#) for 2010-2014 calling upon EU institutions to “promote cooperation between the Member States, third countries and the international tribunals in this field, and in particular the International Criminal Court, and develop exchange of judicial information and best practices in relation with the prosecution of such crimes ... in respect of persons responsible for genocide, crimes against humanity and war crimes.”

14 December - The Egyptian government [announced](#) its decision to cancel hosting the 25th France-Africa summit after failing agree with the French government over the issue of inviting the Sudanese president Omer Hassan Al-Bashir. French officials are quoted as saying that “if Omar Al-Bashir is invited then Nicolas Sarkozy cannot be present.”

4. Coming Events:

- January - Prosecutor's consultations on OTP's draft policies at Harvard University, Cambridge
- 7 January - Defence presentation commences in case of *The Prosecutor v. Thomas Lubanga Dyilo*
- 23 January - Deputy Prosecutor presents lecture at Hague Academy for International Law
- 26 January - Trial resumes in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*
- 27-31 January - Prosecutor participates in 40th World Economic Forum Annual Meeting, Davos-Klosters

- 4 February - Deputy Prosecutor participates in Atrocity Crimes Litigation Conference, organized by David Scheffer, former US Ambassador-at-Large for war crimes issues, Northwestern University School of Law, Chicago
- 19 February - Prosecutor delivers speech at *Challenge Future* event hosted by Herausfordereung Zukunft, Bochum

- 23 March - Prosecutor delivers the Amnesty International Chair public human rights lecture, Ghent University

* 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