



**OTP Weekly Briefing – 17-23 November – Issue #14**

**THIS WEEK'S HIGHLIGHT: [OTP PUBLIC NOTICE](#): VICTIMS OF POST-ELECTION VIOLENCE IN KENYA HAVE 30 DAYS TO MAKE REPRESENTATIONS TO ICC IN THE HAGUE**

By this notice, the Prosecutor of the International Criminal Court informs victims of alleged crimes committed in Kenya during the post-election violence of 2007-2008 that he will request authorization from Pre-trial Chamber II to open an investigation into such alleged crimes, in accordance with Article 15(3) of the Rome Statute and Rule 50 of the Rules of Procedure and Evidence.

The Prosecutor considers that *“there is a reasonable basis to proceed with an investigation into the Situation in the Republic of Kenya in relation to the post-election violence of 2007-2008”*.

According to Article 15(3) of the Rome Statute, *“victims may make representations to the Pre-Trial Chamber, in accordance with the Rules of Procedure and Evidence”*.

In accordance with the Rules of Procedure and Evidence (Rule 50), *“the Prosecutor shall inform victims, known to him [...] or to the Victims and Witnesses Unit, or their legal representatives, unless the Prosecutor decides that doing so would pose a danger to the integrity of the investigation or the life or well-being of victims and witnesses. The Prosecutor may also give notice by general means in order to reach groups of victims if he or she determines in the particular circumstances of the case that such notice could not pose a danger to the integrity and effective conduct of the investigation or to the security and well-being of victims and witnesses”*.

Accordingly, the Prosecutor notifies victims of the post-election violence in Kenya that they can send their comments to the Judges of Pre-Trial Chamber II on whether an investigation on such alleged crimes should be opened. The victims or their legal representatives have 30 days to make representations to the Pre-Trial Chamber.

Victims can make their representations in writing to Pre-Trial Chamber II, which they should channel through the Registry to the postal address below:

International Criminal Court  
PO Box 19519  
2500 CM, The Hague  
The Netherlands

Further information will follow shortly.

The Pre-Trial Chamber may request additional information from any of the victims who have made such representations, and may hold a hearing if it considers it appropriate.

The Chamber will give notice of its decision on the Prosecutor's request to victims who have made representations.

Should the Judges authorize the opening of the investigation, victims will also have the opportunity to present their voices and concerns during the proceedings and, at a later stage, to request reparations.

The present notice has been posted as of today on the website of the Court, and sent to the media of Kenya, and to a wide range of NGOs. The Registry has been informed.

## **1. Investigations and Prosecutions:**

### *a. General overview of the cases*

Over the week, the OTP presented 13 filings in the various cases and conducted 2 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.

#### **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).

23 November - Chronicles of the Lubanga trial are published on <http://www.aegistrust.org/Lubanga-Trial/>. Their focus is to “*examine key legal issues, [and] also portray the trial participants, looking closely at their personal experiences, feelings and emotions*”.

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

16 November - The Prosecution opposed the Defence’s request for an order directing participating victims to disclose exculpatory material within their knowledge or possession. The Prosecution submitted that neither the Statute and the Rules, nor the existing jurisprudence, provides for such disclosure obligation on victims. It noted that the Appeals Chamber accepted that only in exceptional circumstances may victims request permission to present evidence during the trial. The Prosecution submitted that the Chamber could only make a specific order for disclosure on a case-by-case basis.



24 November - The trial in the Katanga/Ngudjolo Chui case [started](#) on 24 November before Trial-Chamber II. The hearings will be held from 9:30 to 16:00, until 11 December, and will resume on 26 January 2010. On the opening day, Prosecutor Moreno-Ocampo and Deputy Prosecutor Fatou Bensouda gave the OTP [opening statement](#).

#### ***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 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 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.

17 November - The UN Security Council strongly [condemned](#) continued, and recently increasing attacks, by the LRA in the DRC, CAR and South Sudan. They expressed concern at the direct threat posed to civilian populations, humanitarian operations and regional stability and commended States in the region for their increased cooperation, welcoming the joint efforts they made to address the LRA threat. They called for co-ordination between UN missions operating in the region, MONUC, UNMIS, UNAMID, BONUCA and MINURCAT.

17 November - The US Senate Foreign Relations Committee [passed](#) the "LRA Disarmament and Northern Uganda Recovery Act of 2009", thus moving the Bill a step forward in the legislative process. The Bill would allow the US Government to coordinate a strategy which includes the provision of military, intelligence and humanitarian assistance to countries like Uganda, DRC, CAR and South Sudan to fight the LRA rebels. Senator Russ Feingold, Chairman of the Senate's Foreign Relations Sub-Committee on Africa, stated: "[f]or too long, Joseph Kony and the Lord's Resistance Army have terrorised innocent civilians across four countries of central Africa."

*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.

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

16 November - In its final written observations, the Prosecution presented detailed arguments, in particular, on the role of Abu Garda, President of a splinter faction of JEM, in connection with the September 2007 attack against the African Union peacekeeping mission in the Sudan (AMIS) and the protected status of AMIS as a peacekeeping force. The Prosecution submitted that the evidence presented by the Prosecution is sufficient to confirm the war crimes charges brought against Mr. Abu Garda and to commit him to trial.

*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***

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. 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 Appeals Chamber decided to grant suspensive effect to the Prosecutor's Appeal. Implementation of the decision on interim release is suspended pending the final decision on the merits of the Prosecution's Appeal. Pre-Trial Chamber II postponed the hearings with States on Mr. Jean-Pierre Bemba's conditional release until the Appeals Chamber has ruled on the appeal. The Prosecution stated that the conditions on the interim release could not be defined in the abstract and that "*the Single Judge erred in ordering conditional release without also deciding the conditions, knowing to which State the Accused will be released, and determining that the State is competent to enforce the conditions*".

## **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 activity, in order to assess if an investigation should be opened. It is a phase during which the Office 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; 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 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; 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. 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. He announced that he would request an authorization from the Judges to open an investigation.

18 November - Efforts to establish a local tribunal, to prosecute those responsible for post election violence stalled due to [the lack of quorum](#) in Parliament. Only 17 MPs were present to debate the Bill introduced by Member of Parliament Imenti Gitobu Imanyara. Imanyara stated that the debate on the Bill would continue next week.

18 November - While in Kenya, US Special Envoy for war crimes Stephen Rapp [stated](#) that the US would continue to cooperate with the ICC to prosecute perpetrators of the post-election violence if local efforts failed.

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.

18 November - A delegation sent on behalf of Guinean President Dadis Camara, was received by Deputy Prosecutor Bensouda. The delegation was headed by Jean-Paul Dias, advisor to Mr Camara.

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

18 November - The Prosecutor met with the Minister of Justice and the Prosecutor General of the DRC to discuss execution of the arrest warrant against Bosco Ntaganda and support for OTP investigations in the Kivus.



18 November - Prosecutor Moreno-Ocampo [addressed](#) the eighth ASP, highlighting the Prosecution's participation in Pre-Trial, Trial and Appeals proceedings, and presenting the Prosecution's activities outside of the court room: investigations, preliminary examinations and galvanizing efforts to arrest. The Prosecutor noted "*arrest remains the biggest test for States Parties. Some individuals sought by the Court are enjoying the protection of their own militias, such as the LRA leaders or Bosco Ntaganda. Others, like President Al Bashir or Ahmed Harun are members of governments eager to shield them from justice. They are still committing massive crimes*". On management, the Prosecutor added that "*there are two key aspects of our*



cost efficiency: flexibility and standardization. Our OTP teams and our OTP field offices will continue to be organized in a flexible manner; we will move our staff members according to the needs of the Office; a rigid organizational structure will be more expensive. Standardization also enhances the Prosecution's performance. The Office is currently focused on consolidating its policies and practices to ensure clarity of operational processes, reporting lines and responsibilities, and to facilitate in-house training leading to improved systems of evaluation and internal compliance". Prosecutor Moreno-Ocampo concluded that "the Kampala Review Conference should be an opportunity to show a community of nations and citizens committed to ending impunity for massive atrocities; a community of nations and citizens working to protect those with no rights: those 11 year boys forced to kill in Bunia or Gulu; or those 13 year old girls raped in Bangui or Darfur".

21 November - The OTP attended the presentation to President Song, in the presence of Cameroon Ambassador to The Hague, of a gift offered by President Paul Biya. NB: Cameroon is a signatory to the Rome Statute.



21 November - Deputy Prosecutor Fatou Bensouda received the "International Jurists Award 2009" from the President of India, Mrs. Pratibha Devisingh Patil in New Delhi, in a conference organized by International Council of Jurists, All India Bar Association, All India Senior Advocate Association and Indian Council of Jurists. Deputy Prosecutor Bensouda was chosen "for her contributions to national and international criminal law and promotion of fair and effective criminal justice administration in international criminal justice. She is the first woman and African being selected for this award".

23 November - Prosecutor Moreno-Ocampo met with Swedish Members of Parliament, Mr. Kent Olsson, Ms. Anita Broden and Ms. Marie Norden, in a visit organized by Parliamentarians for Global Action. The Prosecutor explained that there were many leaders in Europe and Africa willing to support the ICC. EU parliamentarians should express themselves clearly for those committed leaders, and not for those committing crimes.

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

- 18-26 November - [Eighth Session of the Assembly of States Parties](#), The Hague
- 24 November - 11 December - Trial of [The Prosecutor v. Germain Katanga and Mathieu Ngudjolo](#)
- 26 November - Prosecutor's request to Pre-Trial Chamber II for authorization to open an investigation into the situation of the Republic of Kenya, in relation to the post-election violence of 2007-2008; Prosecutor's [press conference](#) at 13h00.
- 2-4 December - OTP to participate in International Conference on Regional Courts and Commissions, Strasbourg
- 4 December - Prosecutor's report to the UNSC on the Darfur situation pursuant to UNSCR 1593 (2005)
- 5 December - Prosecutor's keynote address on genocide at 3 *Generations* event celebrating anti-genocide activists, New York
- 7-11 December - ICC Regional Seminar in Dakar, Senegal
- 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
- 8 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)