



OTP Weekly Briefing – 12-18 January 2010 – Issue #20

THIS WEEK'S HIGHLIGHT: OTP MEETS WITH BURKINA FASO AND SENEGALESE PRESIDENTS ON THE GUINEA SITUATION



12-13 January - An OTP high-level delegation traveled to Burkina Faso, where it met with President Blaise Compaoré of Burkina Faso, Mediator on behalf of the Guinea Contact group. The meeting took place hours before the arrival of Captain Dadis Camara to Ouagadougou. President Compaoré confirmed to the OTP the need to ensure accountability for the crimes committed on 28 September 2009 in Guinea, and agreed that efforts of African states and the ICC complement each other. The meeting also gave an opportunity to discuss other situations under preliminary examination such as Georgia, Palestine and Kenya. The President requested more information on those issues.

13- 15 January - OTP Cooperation director met with President Abdoulaye Wade of Senegal to discuss matters relevant to the OTP preliminary examination of the situation in Guinea. President Wade reiterated his previous statements that “heinous crimes have been committed and both ICC and the Guineans need to do their work”. Senegal, “as the first State Party to the ICC”, would support both justice efforts and a transitional process. The OTP delegation also met in Dakar with Ibrahima Fall, Special Representative of the UN Secretary-General for Guinea.

1. Investigations and Prosecutions:

a. General overview of the cases

Over the week, the OTP presented 12 filings in the various cases and conducted 2 investigative missions in 1 country.

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, focusing 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. After a new request of the Legal

Representatives of victims to Trial Chamber I on 9 December to invoke Regulation 55, the Trial Chamber [confirmed](#) on 8 January 2010 that the modifications to the legal characterization of facts would infringe on the Appeals Chamber's interpretation of Regulation 55 and rejected the request, as argued by the Prosecution. The trial resumed on 7 January 2010 with the hearing of experts and then victims.

Case: *The Prosecutor v. Katanga and Ngudjolo*

The Kivus Investigation

After the DRC Government announced the end of operation Kimia II on 31 December, MONUC [outlined its cooperation](#) with the commencement of Operation Amani Leo, focusing on protection of civilian populations, clearing strategic areas of FDLR forces, holding territories liberated from FDLR control, and assisting in restoring State authority in these zones.

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, over the past year, more than 80,000 people have been displaced, and close to 250 people killed by the LRA in Southern Sudan and the Central African Republic.

10 January - According to the [Sudan Tribune](#), Operation Light Thunder will continue in 2010. The article reports that the Ugandan army killed 305 LRA fighters and captured 41, whereas 52 fighters defected and over 513 abductees were rescued.

13 January - Justice James Ogoola, Principal Judge of the High Court of Uganda, [reportedly](#) endorsed a Transitional Justice bill focusing on: a criminal accountability mechanism for LRA commanders who ordered mass atrocities; a truth commission like the South African commission; and traditional justice where some combatants would be reintegrated into society. Ogoola said the bill must be in conformity with the Rome Statute. The bill is based on a UNDP study in Uganda concluding that 74% of respondents said LRA top leaders should be held accountable while 25% thought the LRA rank and file should also be accountable.

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. The Prosecution [appealed](#) the decision of the majority of the Chamber to dismiss the charges of genocide. The Appeal decision is expected in the coming months. 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. Ahmad Harun and Ali Kushayb*

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

Case: *The Prosecutor v. Omar al Bashir*

11 January - The Prosecution did not object the victims' request for authorisation to participate in the Prosecution's appeal against the Pre-Trial Chamber's decision dismissing the genocide charges against President al-Bashir. Additionally, the Prosecution submitted that it largely concurs with the victims' submissions that the Pre-Trial Chamber had applied an incorrect standard of proof at the arrest warrant stage.

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. On 2 December, the Appeals Chamber upheld the Prosecution's appeal and [reversed](#) a previous decision of the Pre-Trial Chamber granting interim conditional release to

Jean-Pierre Bemba Gombo. 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*

f. miscellaneous

Reminder - Comments and questions on the draft policy paper on the OTP's legal approach to [victims participation](#) under Article 68(3) of the Rome Statute and on the [revised version of the Prosecutorial Strategy for 2009-2012](#) can be sent to Olivia Swaak-Goldman (Olivia.Swaak-Goldman@icc-cpi.int) by 22 January 2010. The final version of the policy paper and Prosecutorial Strategy 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.

17 January - In an op-ed called "[Dealing with brutal Afghan warlords is a mistake](#)", ICG called for accountability against Afghan warlords and for the fight against impunity. "*Instead of entering into alliances of convenience with the most undesirable of local powerholders, the international community, and the Afghan government, would gain by holding warlords [...] accountable for past abuses, and ending the climate of impunity that has allowed so many of them to flourish within and outside government.*"

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.

14 January - Since 30 December, Colombian Courts have [freed](#) 31 military suspects of extrajudicial killings – commonly referred to as "false positives". The decisions were taken on procedural grounds mainly that the General Prosecutor of Colombia has to comply with the legal framework to bring them to trial. The Colombian Prosecutor's Office has appealed the decisions. The Office of the UN High Commissioner of Human Rights in Colombia expressed concern over the impact these liberations may have on the investigation of more than 1,200 cases of extrajudicial killings. The Colombian military ordered the freed men to gather in a garrison in Bogotá. The ICC Prosecutor is monitoring this situation and will meet with the Prosecutor General of Colombia on 26 February.

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. On 11 January, the OTP sent a [letter](#) summarizing its activities to the United Nations at their request, in the context of following up on the Goldstone report.

13 January - [Al Sharq Al Awsat](#) published information that the IDF has issued an internal Report on the UN Fact Finding Mission on the Gaza Conflict, apparently circulated to a limited number of government members and parliamentarians for preliminary evaluation. The IDF Report denies the UN Report conclusion that the IDF intentionally targeted civilians in 150 incidents. Some judiciary members favor a civilian judicial investigation. Prime Minister Netanyahu is reportedly for an independent committee, potentially to be headed by a former President of the Israeli Supreme Court, Meir Shamgar.

14 January - A [joint letter](#) was sent by eleven Palestinian NGOs to the Palestinian Authority and the *de facto* government of Hamas in the Gaza Strip, urging both authorities to investigate Palestinian violations of international law allegedly committed during operation Cast Lead. The organizations asked Palestinian Authority chairman Mahmoud Abbas and Hamas Prime Minister Ismail Haniyeh to launch investigations before the 5 February deadline, by which the UN Secretary-General is to report to the General Assembly on compliance by Israel and the Palestinians with the Goldstone Report.

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 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 its recurrence through a three-pronged approach: with the ICC prosecuting those most responsible; national accountability proceedings for other perpetrators; and reforms and mechanisms such as a Truth 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 crimes against humanity had been committed and of his duty, in the absence of national proceedings, to act. Both the President and the Prime Minister supported action by the ICC and committed to full cooperation.

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 the Prosecutor requested authorization from Pre-Trial Chamber II to open an investigation. In his application, the Prosecutor noted that 1,220 persons had been killed; hundreds raped, with thousands more unreported; 350,000 people were forcibly displaced; and 3,561 injured as part of a widespread and systematic attack against the civilian population.

January - An annual survey carried out by Infotrack Research concluded that 62% of Kenyans would like post-election perpetrators to be tried at the ICC; and that the Kenya National Human Rights Commission is perceived to be the public institution that serves the interests of Kenyans best, enjoying an approval rating of 22%.

8 January - MP Gitobu Imanyara, along with human rights activists Ndung'u Wainaina, Haron Ndubi and Ken Wafula, [expressed](#) disagreement with the International Association of Democratic Lawyers (IADL), a Brussels-based NGO, which objected to the Prosecutor's request for authorization to open an investigation into Kenya. Imanyara, Wainaina and Ndubi stated that this initiative is backed by a Cabinet Minister who fears he might be on the list of suspect perpetrators. The Kenya Section of the International Commission of Jurists (ICJ-K) also responded to the IADL's submission stating that it is *"reactionary and will provide great comfort to the myriad of forces within the African continent that would like the ICC to fail."*

11 January - [According](#) to the Kenya National Commission on Human Rights, about 22 potential witnesses who gave evidence during the Waki Commission sittings are living in fear. *"The witnesses claim to have received verbal and text message threats from people known to them, some of whom are allied to powerful politicians,"* said Hassan Omar Hassan.

12 January - Professors Hilaire and Cohn asked Pre-Trial Chamber II to grant them the status of Amicus Curiae, challenging the Prosecutor's request to open an investigation on the basis of *"the threshold requirements for exercise of jurisdiction"* as well the principle of complementarity. On 14 January, the Prosecution requested leave to submit its views to the PTC II to oppose the Amicus Curiae, unless the Chamber decides to reject *ab initio* the Amicus Curiae request.

13 January - US Ambassador Michael Ranneberger [stated](#) that the Obama administration was happy with progress on police reforms and constitutional review, but stressed more needs to be done on the trial of post-election violence.

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.

12 January - Guinean President Moussa Dadis Camara [arrived](#) in Burkina Faso from Morocco, where he was recovering from an assassination attempt on 3 December 2009. Subsequent consultations between Burkina Faso's President, Blaise Compaoré, who has been a mediator in the crisis, the UN Regional chief Said Djinnit, the UN Special Representative Ibrahima Fall and Guinean leaders including Dadis Camara led to a decision that he would remain in Ouagadougou.

13 January - The Guinean authorities confirmed their invitation to the OTP to travel to Guinea; the timing of the mission initially scheduled for 17 January was modified for logistical reasons and is re-scheduled to 15 February.

13 January - The final report of the UN International Commission of Inquiry on the events of 28 September 2009 in Conakry, Guinea was made publicly available by the UN under reference number S/2009/693. The Commission confirmed that at least 156 persons were killed or disappeared, and at least 109 women were victims of rape and other forms of sexual violence. Cases of torture or cruel, inhumane or degrading treatment were also confirmed. The Commission considered that there is a strong presumption that crimes against humanity were committed, and that the cases against the individuals concerned should be referred to the ICC.

3. Cooperation – Galvanizing Efforts to Arrest:

12 January - OTP received the Justice Rapid Response (JRR) roster of available criminal justice and related experts, summarized by professional skill-set; field of experience; linguistic abilities; and other relevant information. The active duty professionals on the roster and their employers, participating States and organizations, are committed to availability at short notice, in response to requests from States and organizations in situations of human rights violations, war crimes, genocide or crimes against humanity. JRR experts can assist in conflict-resolving mechanisms, including commissions of inquiry; fact finding commissions; international criminal investigation support; mediation; security sector reform. JRR is a multilateral facility of States and organizations currently chaired by Canada, with No Peace Without Justice as Secretariat.

14 January - In Budapest, OTP briefed the CARIN steering group (Camden Asset Recovery Inter-Agency Network, informal network of judicial and law enforcement practitioners in the fields of criminal asset tracing, freezing, seizure and confiscation, aiming at depriving criminals of illicit profits and improve cross-border and inter-agency cooperation) including representatives of Belgium, Bulgaria, Czech Republic, Hungary, Spain, UK and the US on functioning, jurisdiction, investigative activities, relevance of financial investigations (linkage, reparation for victims, indigence of the accused), and importance of rapid information sharing. The possibility to include in financial units' regulations a provision requiring attention to the sharing of information with ICC was suggested by a participant. All contact points of the network expressed readiness to assist the ICC. The next CARIN Annual Meeting will take place in September 2010.

4. Coming Events:

- 20 January - Deputy Prosecutor speaks to the 2010 Seminar for Practitioners, "Challenges in International Criminal Law", The Hague Academy
- 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
- 28-29 January - Deputy Prosecutor participates in conference organized by the Gambia Bar Association, Banjul
- 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, Chicago
- 4 February - Prosecutor addresses Washington membership of the Council for Foreign Relations, Washington
- 14 February - Deputy Prosecutor participates in a panel during the documentary film series Best.Doks, Munich
- 18 February - Prosecutor delivers speech at *Challenge Future* event hosted by Herausfordereung Zukunft, Bochum
- 19 February - Prosecutor opens the London International Model United Nations Conference 2010
- 23 February - Prosecutor meets with Baroness Kinnock, UK Minister of State for Foreign Affairs
- 6 March - Deputy Prosecutor participates in the WOMEN Inc. International Festival, Amsterdam
- 7-10 March - Deputy Prosecutor delivers keynote address for International Women's Day, School of Law of the University of California, Davis, and Santa Clara University School of Law
- 12 March - Deputy Prosecutor participates in "Gender-Based Violence and Access to Justice in Conflict and Post-Conflict Areas" conference organized by Cornell Law School, Washington
- 22-25 March - Resumed session of the meeting of the Assembly of States Parties, New York
- 22-23 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