



OTP Weekly Briefing

6-12 July – Issue #45

THIS WEEK'S HIGHLIGHT:

NEW ARREST WARRANT FOR PRESIDENT AL BASHIR FOR GENOCIDE COULD TRIGGER OBLIGATIONS UNDER GENOCIDE CONVENTION

PREVIEW

- OTP presents its proposed budget for 2011, *p. 6*.

12 July - Pre Trial Chamber I, following a previous decision of the Appeal Chamber, issued a second arrest warrant for three charges of genocide against President Omar Al Bashir.

The Prosecution explained in a press conference from Paris that: the first charge of genocide relates to direct killings; the second established that President Al Bashir imposed conditions of life calculated to bring about the physical destruction on part of the Fur, Masalit and Zaghawa, including those 2.5 millions living in camps for internally displaced persons; and the third relates to thousands of women that are subject to acts of rape by Government of Sudan forces, first at their homes and then in the camps.

The Prosecutor highlighted that President Al Bashir denies the crimes committed, while at the same time ordering the expulsion of those providing humanitarian assistance, thus worsening the conditions of life to his millions of victims, and threatening additional crimes, against Darfuris and against the South of Sudan. President Al Bashir used Ahmad Harun as Minister of State for the Interior to coordinate the genocidal attacks on the villages and then as Minister of State for Humanitarian Affairs to control the genocidal conditions of life in the camps. His current role as Governor of Kordofan could indicate the intention to continue using him as a future crimes coordinator.

The Prosecution highlighted that the Genocide Convention could now be applied. States Parties to the Genocide Convention have specific obligations. In accordance with Article 8 they may call upon the UN to take action to prevent and suppress acts of genocide. This Friday they will have a chance to do so during the UN Security Council open debate on conflict prevention and settlement of disputes.

More reactions on page 3

I. Investigations and Prosecutions

Over the week, the OTP presented 9 filings in the various cases and conducted 4 missions in 4 countries.

I.1. 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 [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.

6-10 July - In Kinshasa, an OTP delegation discussed cooperation issues with the Congolese authorities relating to the three ongoing investigations in the DRC and the execution of the arrest warrant for Bosco Ntaganda. The OTP also met with representatives of MONUSCO, UNDP and EU with respect to the DRC investigations.

7 July - During the UN Security Council [debate](#) on the protection of civilians in armed conflict, UN High Commissioner for Human Rights, Navi Pillay, highlighted impunity's effect in the DRC. Rape and violence against women had increased

despite the greater recent attention paid to that issue. During the same debate, UN Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, John Holmes, said the problem of sexual violence in armed conflict needed urgent attention. According to the Population Fund, 15,275 rapes, mainly by armed men, had been reported in eastern DRC, but only a few of the total number of rapes had been reported.

Case: *Prosecutor v. Thomas Lubanga Dyilo*

8 July - The Prosecution is preparing an appeal against the [decision](#) of Trial Chamber I to stay the proceedings. From the Prosecutor's point of view, the case presents a conflict between the level of risk acceptable for the Chamber and for the Prosecution. It presents the question whether the Prosecution dismissed the authority of the Chamber by using legal remedies to insist on the implementation of authorized protective measures before disclosing the identity of Prosecution intermediary 143 and after, to properly evaluate the risk of a limited disclosure. It also presents the question whether the Trial Chamber correctly determined that the Prosecution's conduct rendered it impossible for the Accused to receive a fair trial. The details of the appeal will be presented in the next weekly briefing.

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

12 July - The Appeals Chamber rejected the motion submitted by the Defence of Germain Katanga for a declaration on unlawful detention and stay of proceedings. It found the motion was submitted too late, *inter alia* because the motion was filed seven months after the Trial Chamber's invitation to the parties to submit any relevant issues on which they sought a ruling of the Chamber. The Appeals Chamber found that the decision of the Trial Chamber did not infringe Mr Katanga's right to a fair hearing and that he had been given adequate notice and opportunity to raise the issue of his alleged unlawful pre-surrender arrest and detention.

I.2. 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 1,500, abducted more than 2,250 and displaced well over 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.

4 July - CAR Foreign Minister Antoine Gambi [called](#) for the US to assist the armed forces of the CAR and Uganda in their campaign against the LRA.

I.3. 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 have been issued, against [Ahmad Harun and Ali Kushayb](#), and against [Omar Al Bashir](#), which are outstanding. Also three summons to appear have been issued, against [Bahar Idriss Abu Garda](#) and against [Abdallah Banda Abaker Nourain and Saleh Mohammed Jerbo Jamus](#). The Prosecution [appealed](#) the decision of the majority of the Chamber to dismiss the charges of genocide against President Al Bashir. On 3 February the Appeals Chamber ruled that it was a legal error to reject the charges of genocide against President Al Bashir. Abu Garda [voluntarily appeared](#) before the Court pursuant to a summons. Following his initial appearance on 18 May 2009, he was allowed to leave The Netherlands. The confirmation of charges hearing was held on 19-30 October 2009. On 8 February 2010 the Pre-Trial Chamber issued a decision declining to confirm the charges. The OTP [requested](#) leave to appeal this decision on 15 March and this was denied by the PTC on 23 April. The OTP will present additional evidence. On 25 May the PTC Chamber issued its '[Decision informing the United Nations Security Council about the lack of cooperation by the Republic of the Sudan](#)' in the case against Harun & Kushayb. On 17 June, Abdallah Banda Abaker Nourain and Saleh Mohammed Jerbo Jamus [appeared](#) voluntarily before the ICC, to answer charges of war crimes for their roles in the 2007 attack against African Union peacekeepers in Haskanita. The Pre-Trial Chamber set the [confirmation of charges hearing](#) for Banda and Jerbo for 22 November 2010.

5 July - The [Final Communiqué](#) of the Second Retreat of the Joint Special Representative of UNAMID with the Special Envoys for Sudan held in El Fasher does not mention UN Security Council Resolution 1593 (2005) that requires justice in Darfur, UN Security Council Presidential Statement 21 (2008), nor the arrest warrants issued by the Court following such resolution.

7 July - UN Secretary-General Ban Ki-moon, addressing the UN Security Council on issues of protection of civilians in armed conflict, [highlighted](#) the key challenge of accountability, saying *"There have been significant advances in the normative capabilities of national and international systems. Much of this progress derives from the work of the International Criminal Court and its beneficial effects, including the integration of the Rome Statute crimes into national legal systems. But here, too, more must be done to increase the expectation that violators will have to face the consequences of their actions."* In the context of accountability, he emphasized that *"[v]iolent crimes are not the only ones that harm civilians. Acts of omission, including the hindering of humanitarian access, can be just as, or even more, damaging. Those who create such obstacles must also be held accountable, be they State or non-State actors. This is a crucial part of our work to rid the world of zones where humanitarian needs go unmet."*

8 July - UNAMID head Ibrahim Gambari in a press conference in Khartoum called on the Government of the Sudan to lift restrictions on UNAMID and aid groups in Darfur. French Foreign Ministry spokesperson echoed Gambari's call, [stating](#) *"[w]e fully agree with Mr. Gambari calling for the lifting of restrictions on access and movement of UNAMID and humanitarian actors on the whole Darfur."*

9 July - The [Communiqué](#) of the Consultative Meeting between members of the UN Security Council and the AU Peace and Security Council held in New York stresses *"the urgent need to protect civilians (...) in Darfur"*.

9 July - Georg Charpentier, formerly Deputy Special Representative for the UN Operation in Côte d'Ivoire, has been [appointed](#) the Deputy Special Representative, Resident and Humanitarian Coordinator in Sudan.

Continuation of this week's highlight

US State Department spokesman, Philip Crowley, [said](#): *"We continue to support this process. We have, in our previous discussions with Sudanese officials, strongly encouraged Sudan to cooperate fully with the ICC. Scott Gration, who will be leaving for the region later this week, has repeatedly told Sudanese officials that at some point, President Bashir has to present himself to the ICC and be held to account. And he will reiterate that message when he meets with Sudanese officials later this week. (...) There's a warrant out for his arrest. And we believe that he should present himself to the ICC and answer the charges that have been leveled against him. (...) [W]e think the sooner that President Bashir presents himself to that court, the better."*

Professor David Crane, former Prosecutor of the Special Court for Sierra Leone, [said](#): *"The arrest warrant related to the genocide charge captures the entire event that took place in Darfur and the Sudan. It is important for justice that all of the crimes that were committed in Darfur actually be charged so that the full truth can come out. So, I think this is a rounding out, a natural extension of what has taken place in Darfur."*

Ahmad Hussein, spokesman for the Darfuri Justice and Equality Movement, called the development *"a victory for the people of Darfur and the entire humanity."*

Abdel-Mahmood Abdel-Haleem, Sudan's ambassador to the UN, [called](#) the new arrest warrant a *"malignant and desperate attempt"* of a *"criminal institution"* to destabilize the country. In Khartoum, senior National Congress Party official Rabie Abdulatti called the charge ridiculous, saying the issuance of a new arrest warrant was *"not a charge against the President. It is against the sovereignty and independence of our country."* The Minister of Information, Kamal Obeid, pointed out that the decision proved the ICC is a political court, adding that his Government is categorically giving no heed to it.

More reactions on the new arrest warrant against President Al Bashir in next week's OTP Briefing

I.4. 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. In parallel, the Office continues to monitor allegations of crimes committed since the end of 2005.

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

7 July - Trial Chamber III vacated the [commencement](#) date of the trial, scheduled for 14 July, considering that it is in the interests of justice for the challenge to admissibility to be resolved by the Appeals Chamber prior to the commencement of the trial. On 24 June, Trial Chamber III had [dismissed](#) the admissibility and abuse of process challenges raised by the Defence. The Defence appealed this decision on 28 June, followed by a [request](#) for suspensive effect of the appeal. Trial Chamber III convened a status conference for 30 August, when, it will hear submissions on setting the trial date.

I.5. [Kenya](#)

The Office made its examination of the post-election violence of December 2007-January 2008 public in February 2008. 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 5 November the Prosecutor informed President Kibaki and Prime Minister Odinga 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 committed to cooperate with the Court. On 26 November the Prosecutor requested authorization from Pre-Trial Chamber II to open an investigation, noting 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 civilians. On 31 March the Pre-Trial Chamber authorized the Prosecutor to commence an investigation covering alleged crimes against humanity committed between 1 June 2005 and 26 November 2009. The Prosecutor made his first visit to Kenya since the beginning of the investigation on 8-12 May.

I.4. Miscellaneous

UN Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, John Holmes, [urged](#) the Council to take a robust approach to accountability, emphasizing that national justice systems must remain the first line of defence. But when they proved unable or unwilling to bring perpetrators to justice and provide remedies to victims, the international community must explore alternative means. *"The point is that scrutiny needs to become the norm,"* he said. *"Actual and would-be violators need to understand they have nowhere to hide. Politics must not always win out where powerful States or vocal States with powerful protection are involved."* The Council had important powers in that regard, he pointed out: *"It needs to show it is serious and not selective about this."*

II. Preliminary Examinations

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 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.

II.1. [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.

8 July - During the UN Security Council debate on the protection of civilians in armed conflict, UN High Commissioner for Human Rights, Navi Pillay, [stated](#) that the conflict in Afghanistan had an intolerable impact on civilians, expressing concern over civilian casualties caused by aerial attacks and ground operations. Women and girls continued to face widespread abuses, Pillay noted, adding that she was concerned about the legal framework, which in many instances institutionalized violence and discrimination against women. Laws intended to protect women's rights were largely unimplemented.

II.2. 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.

II.3. 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 and to Russia in March 2010. A second mission to Georgia was conducted in June 2010.

II.4. [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. On 3 May, the OTP published a "[Summary of submissions on whether the declaration lodged by the Palestinian National Authority meets statutory requirements](#)." The OTP has not made any determination on the issue.

6 July - A Israeli reserve staff sergeant was [indicted](#) in the military court of the IDF's Central Command for the manslaughter of two Palestinian women during Operation Cast Lead. The soldier was indicted as part of the Military Advocate-General Avichai Mendelblit's investigation into several suspicions of deviation from orders during the operation. The Advocate-General also decided to close the proceedings on some of the other incidents that were mentioned in the Goldstone Report.

II.5. 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.

II.6. [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. In January 2010, OTP high level representatives held consultations with President Compaore of Burkina Faso, mediator for the contact group on Guinea, and President Wade of Senegal to ensure that they are informed of its work. From 15 to 19 February 2010, the OTP sent a mission to Guinea, led by Deputy Prosecutor Fatou Bensouda, in the context of its preliminary examination activities. From 19-21 May a second OTP mission met with the Guinean Minister of Justice, Col. Lohalamou, and Guinean judges. The Guinean authorities extended full cooperation to the Court.

7 July - During the the UN Security Council debate on the protection of civilians in armed conflict, the French Permanent Representative to the UN, Gérard Araud, [said](#): "[W]e welcome the cooperation of the Guinean authorities with the International Commission of Inquiry set up by the Secretary-General following the massacre of 28 September 2009, as well as with the International Criminal Court in the context of its preliminary inquiry."

7 July - [While](#) congratulating the Guinean people on the electoral process, US President Barack Obama recalled that many feared that, after the massacre of 28 September 2009, brutality would consume Guinea and spread across its borders; adding "the character and resilience of the Guinean people in claiming their democratic rights sends a powerful message around the world."

III. Cooperation – Galvanizing Efforts to Arrest

7 July - During the UN Security Council debate on the protection of civilians in armed conflict, the French Permanent Representative to the UN, Gérard Araud, [said](#) *“In Darfur, attacks against civilians do not come about by chance; they are organized and have been deemed crimes against humanity by the International Criminal Court.”* He concluded: *“Beyond the crises which may draw the attention of international public opinion, States must resolutely commit themselves to the fight against impunity. We call upon all States, especially the Sudan, (...) to cooperate with the International Criminal Court in conformity with Council resolution 1593 (2005).”*

8 July - Interpol [calls](#) on web surfers to help catch fugitives wanted for murder, rapes, child sexual abuses and other crimes.

12 July - Prosecutor Moreno-Ocampo travelled to Paris for various high-level meetings. The Prosecutor met with Bernard Kouchner, Minister of Foreign Affairs of France, and discussed issues of cooperation.

IV. Other

Budget

5 July - As part of the overall Court's presentation, the OTP proposed a minor decrease in the OTP's budget for 2011 of 0.2% compared with the approved budget for 2010. The Prosecution workload was unexpectedly increased with the two new investigations opened in Kenya situation that will continue in 2011 but the Office is not requesting an increase in budget. To face the new challenges the Office is improving its efficiency through the system of rotating resources between the different joint teams and standardizing its operations to facilitate this rotation. This has already allowed the Office to manage its 2010 workload without increasing its resources: three cases in trial phase that continue to require the review of the evidence presented in Court and to investigate the Defence allegations; the appearance of two other individuals before the Judges in the Haskanita case and the preparations for the new confirmation hearing; investigations in the Kivus progressing; and the new investigations in Kenya. As in previous budget exercises and in conformity with the Statute, the Office relies on the Victims and Witnesses Unit of the Registry to reallocate its witnesses.

12 July - The vacancy notice for the position of Director of the Jurisdiction, Complementarity and Cooperation Division was published on the recruitment [website](#) of the Court. The OTP invites all States Parties to promulgate the vacancy notice among national candidates. Additionally, pending the conclusion of the recruitment process for an established post of three years, the vacancy will be filled on a General Temporary Assistance (GTA) basis.

V. Coming Events

- 14-16 July - Deputy Prosecutor participates in an International Conference on 'Africa and the Future of International Criminal Justice' at the University of Witwatersrand, Johannesburg
- 9 August - Prosecutor delivers speech at a seminar, 'Reflections on international criminal law and gender issues', organized by Center of Legal and Social studies, ICTJ and Women's Link Worldwide, Buenos Aires
- 9 August - Prosecutor delivers speech at a seminar, '25 years after the historic Junta trials', organized by PGA and IGEN, Buenos Aires
- 19-20 August - Prosecutor pays an official visit to Guatemala
- 20 August - Deputy Prosecutor participates in ISS and SADC Lawyers Association annual conference, Lumbumbashi
- 31 August-1 September - Deputy Prosecutor participates in 4th international Humanitarian Law Dialogs, Chautauqua
- 9 September - Prosecutor delivers closing speech at the 15th IAP Annual Conference, 'Crossing Borders', The Hague
- 21 September - Deputy Prosecutor delivers speech at a conference of the Konrad Adenauer Stiftung, 'Everything that is just. International jurisdiction in Africa', Berlin
- 28-29 September - Deputy Prosecutor gives a presentation on human trafficking at the Global Economic Symposium, Istanbul

* 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