



OTP Weekly Briefing

27 July - 3 August – Issue #48

THIS WEEK'S HIGHLIGHT: AFRICA AND THE ICC

ACHPR rules against Sudanese Government

29 July - The African Commission on Human and Peoples' Rights issued a [decision](#) against the Sudanese Government, accusing it of committing a wide range of human rights violations against the people of Darfur, including large-scale forced evictions, violations of the rights to life, housing, food, health, judicial remedies and to be free from torture, including rape. The African Commission ordered the Sudanese Government, *inter alia*, to investigate abuses in Darfur and hold those responsible accountable, to undertake legislative and judicial reforms to ensure that victims of human rights violations have effective domestic remedies, and to provide restitution and compensation to the survivors of human rights violations in Darfur. The ruling was triggered by a case brought by the Swiss-based Centre on Housing Rights and Evictions.

PREVIEW

- Botswana and South Africa underline commitment to comply with their obligations and to cooperate with the Court, *p. 4*.



Aliyu Mohammed, Fatou Bensouda and Mohammed Bello Adoke

Nigeria welcomes Deputy Prosecutor

1-3 August - Upon invitation from the Nigerian Ministry of Foreign Affairs, on behalf of the Government of Nigeria, Deputy Prosecutor Fatou Bensouda travelled to Abuja to meet with Government officials, as well as to deliver a lecture to Nigerian diplomats about the work of the ICC and the activities of the Office of the Prosecutor.

The Deputy Prosecutor met with Minister of Justice and Attorney-General, Mohammed Bello Adoke, and National Security Adviser, Aliyu Mohammed, to discuss matters of mutual interest, as well as issues of cooperation relating to the situations under investigation of the Office. During the meetings the Government representatives reiterated their full support for the Court, underlining their commitment to cooperate.

I. Investigations and Prosecutions

Over the week, the OTP presented 7 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.

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.

3 August - Civil Society Organisation for Peace in Northern Uganda, a coalition of 86 civil society organizations, [wrote](#) to the African Union drawing attention of Heads of State and Governments to the LRA's ongoing destruction in the DRC, the CAR and Southern Sudan.

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](#). On 12 July, Pre-Trial Chamber I issued a [second warrant of arrest](#) against Omar Al Bashir for three counts of genocide committed against the Fur, Masalit and Zaghawa ethnic groups: genocide by killing, genocide by causing serious bodily or mental harm and genocide by deliberately inflicting on each target group conditions of life calculated to bring about their physical destruction. 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.

Case: *The Prosecutor v. Ahmad Harun and Ali Kushayb*

26 July - The Sudanese Embassy to the Kingdom of the Netherlands in The Hague did not accept the [notification](#) of the 'Decision informing the United Nations Security Council about the Lack of Cooperation by the Republic of Sudan' of the Court.

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. On 7 July, Trial Chamber III convened a status conference for 30 August, when, it will hear submissions on setting the trial date.

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

28 July - Trial Chamber III [ordered](#) the Accused remains in custody as the requirements of Article 58(1)(b)(i) apply: there has been neither a material change of circumstances since the last review of detention nor inexcusable delay attributable to the prosecution.

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.

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.

28 communications that may fall under Article 15 were received by the Office in the month of July. 22 of these communications were manifestly outside the jurisdiction of the Court; 6 communications warranted further analysis or were linked to a situation already under analysis. The total number of Article 15 communications received to date is 8,836, of which 3,980 were manifestly outside the jurisdiction of the Court.

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.

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.

26 July - Amnesty International in a statement [assessed](#) Israeli and Palestinian domestic investigations after ‘Operation Cast Lead’.

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.

III. Cooperation – Galvanizing Efforts to Arrest

29 July - At the African Union Summit in Kampala, Botswana Vice-President Mompoti Merafhe [said](#): *“Botswana cannot associate herself with any decision which calls upon her to disregard her obligations to the International Criminal Court. Botswana intends to comply with its obligations and to cooperate with the ICC.”* He noted that there are no contradictions between the legal instruments of the African Union and the Rome Statute that established the ICC: *“In our view the obligations to the two bodies are not at all in conflict. The Heads of State and Government have made a commitment to fight impunity, and to protect our constituents against various crimes including crimes against humanity.”*

31 July - Thandi Modise, deputy secretary of the ruling ANC party in South Africa, [stated](#): *“If Bashir were to come to South Africa today, we will definitely implement what we are supposed to in order to bring the culprit to Hague. We can’t allow a situation whereby an individual tramples on people’s rights and gets away with it... The perpetrators of war crimes should be tried at all costs.”*

IV. Coming Events

- 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 the Instituto de Estudios para una Nueva Generación (IGEN), Buenos Aires
- 19-20 August - Prosecutor pays an official visit to Guatemala with the President of the Assembly of States Parties
- 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
- 2 October - Deputy Prosecutor delivers speech at a conference ‘Human Rights in Guinea – one Year after Bloody Monday’, Nuremberg
- 5-6 October - Prosecutor participate in a NGO Strategy Meeting ‘Strengthening Justice in the Context of ICC Preliminary Examinations’, organized by the Hauser Center for Nonprofit Organizations, Bellagio, Italy
- 10 October - Deputy Prosecutor attends national celebration of the third edition of the ‘Marché Mondiale des Femmes’ organized by the International movement of Feminists, Tervuren, Belgium

* 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