



OTP Weekly Briefing

23 February - 1 March – Issue #26

THIS WEEK'S HIGHLIGHT

26-27 February - Deputy Prosecutor Fatou Bensouda participated in a workshop on the ICC and implementing legislation, organized by the International Bar Association, in Malawi. In her address the Deputy Prosecutor recognized the role of African States in the Rome Statute system. She also presented the ICC's situations and cases, as well as issues pertaining to the arrest and surrender of the Court's suspects.

The discussions generated a number of recommendations, including to: engage parliamentarians in order to implement legislation; synergize efforts by civil society in order to maximize influence on political leaders; and produce recommendations on how to implement arrest warrants.

While in Malawi, the Deputy Prosecutor met with the Chief Justice, the Attorney General, as well as with the Director of Public Prosecutions. She also met with the Deputy Minister of Foreign Affairs to discuss public and diplomatic support of the African Union to the Court. Malawi is the current Chair of the African Union.

PREVIEW:

- Sudan ceasefire agreement signed in Doha; violence continues, *page 2*.



I. Investigations and Prosecutions

Over the week, the OTP presented 13 filings in the various cases and conducted 4 missions in 3 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 [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.

25 February - US Special Envoy to the Great Lakes region, Howard Wolpe, during his meeting with the DRC's Regional and International Cooperation Minister, Raymond Tshibanda Mulongo, confirmed that the US is committed to fight illicit exploitation of minerals in the DRC. Wolpe moreover added that "(t)he security situation has considerably improved (...) between Rwanda and the DRC."

Case: The Prosecutor v. Thomas Lubanga Dyilo

25 February - Regarding the Defence's allegations that some Prosecution witnesses fabricated testimony with the assistance of two intermediaries, the Prosecution noted that even now, the full details of the Defence's allegations and evidence have not been provided to the Prosecution or the Chamber. The Prosecution also submitted that raising such allegations at this stage was unfair because the Defence had not afforded relevant Prosecution witnesses the opportunity to comment on them and it had not provided proper notice to the Prosecution of this particular line of defence. The Prosecution also clarified that in the absence of specific allegations, it does not intend to interview or re-interview the intermediaries, call them as witnesses or disclose their identities, which would unnecessarily subject them to significant risk.

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 1,250, abducted more than 2,000 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.

24 February - US Secretary of State Hillary Clinton, during a US Senate Foreign Relations Committee hearing concerning additional strategic attention and resources to be devoted to combating the LRA, [recalled](#) that the US had already provided \$6.4 million, and more would follow, to support regional militaries with the goal of improving the effectiveness of the military response, focusing on better co-ordination, information and intelligence sharing. They would continue to emphasize both to regional militaries and to UN peacekeeping missions the high priority they need to place on civilian protection and 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 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. 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 Prosecutor will seek leave to appeal this decision.

23 February - President Bashir and JEM leader Khalil Ibrahim [signed](#) a ceasefire agreement in Doha, meant to provide a basis for a final peace agreement to be signed before 15 March between the Government of the Sudan and JEM. Article 2 of the framework agreement purports to grant a general amnesty to members of JEM and Government forces, both civilian and military, for unspecified crimes, and provides for the release of prisoners from both sides. JEM members imprisoned after the May 2008 attack on Omdurman were [released](#) following signature. The Doha process started in August 2008 with the appointment of the former Foreign Minister of Burkina Faso, Djibril Bassolé, one month after the Prosecutor applied for an arrest warrant against President Al Bashir, and has gained momentum since then. This is at least the third time the Government and JEM have signed a framework agreement, having previously signed agreements in 2005 and 2009.

25 February - Sudan's army [attacked](#) rebels in the Jabel Marra region in central Darfur the same day President Bashir declared the region's war over after the ceasefire with JEM. French aid group Médecins du Monde [said](#) it suspended operations because of the fighting that caused the flight of 100,000 people. Hundreds of civilians are [feared](#) to have died in the clashes.

28 February - The Government of the Sudan has [reportedly](#) ended the mandate of the Sudanese Ambassador to the UN, Abdel-Mahmood Abdel-Haleem, as he has reached the official retirement age, although he is believed to have well bypassed the legal retirement age, being granted an exception by President Al Bashir.

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. 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.

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.

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.

49 communications that may fall under Article 15 were received by the Office in the month of February. 33 of these communications were manifestly outside the jurisdiction of the Court; 14 communications warranted further analysis or were linked to a situation already under analysis. The total number of Article 15 communications received to date is 8,681, of which 3,902 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.

26 February - The heart of Kabul was [attacked](#) by Taliban suicide bombers and fighters who opened fire and detonated grenades, reportedly killing 16 persons.

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.

20 February - According to the Colombian Government the towns of Jambaló, Cajibío and Caldono in the southwest of Colombia have been targets of armed [attacks](#) by the guerrilla group FARC, injuring approximately ten civilians.

23 February - Two members of the military, a sergeant and a soldier, were [convicted](#) for 14 years and 6 months for the killings of civilians that were later presented as deaths in combat (so-called “false positives”) in Santa Bárbara (Antioquia).

24 February - Colombian media [informed](#) that nine members of the military forces were given a 24 years prison sentence for false positive cases. The killings occurred on 4 June 2005.

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. Visits to both countries are planned for 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.

25 February - Al-Haq, a human rights NGO based in Ramallah, West Bank, had a legal challenge heard by the Court of Appeal of the United Kingdom. The [application](#) for judicial review focused on the UK’s international obligations in respect of Israel’s actions during Operation Cast Lead. According to Al-Haq, the UK acted in flagrant breach of international law by aiding and assisting Israel during Operation Cast Lead, including by arm sales, and by not cooperating to bring the humanitarian crisis in Gaza, caused by the continuing blockade by Israel, to an end.

26 February - The UN General Assembly [adopted](#) a resolution - with 98 votes in favour, 7 against, and 31 abstentions - calling again on both the Israelis and the Palestinians to conduct “*investigations that are independent, credible and in conformity with international standards*”, and requesting the Secretary-General to report to the General Assembly, within a period of five months, on the implementation of this recommendation with a view to the consideration of further action, if necessary, by the relevant UN organs and bodies, including the Security Council.

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.

19 February - Security forces [reportedly](#) opened fire on hundreds of protesters in south-western Gagnoa town, killing an undisclosed number of people and wounding others.

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. On 12, 13 and 15 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 fully informed of its ongoing 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.

23 February - Amnesty International issued a [report](#) examining the “Bloody Monday” massacre on 28 September 2009 and its aftermath. The report documents extrajudicial executions, torture and other ill-treatment, rape, sexual slavery and arbitrary

detentions. *“Instead of facing justice for these crimes, the perpetrators of the Bloody Monday massacre remain in positions of authority, protected from prosecution,”* said Gaëtan Mootoo, Guinea researcher at Amnesty International.

III. Cooperation – Galvanizing Efforts to Arrest

22-23 February - The Prosecutor met with UK Parliamentarians and officials in London, including with various members of the Shadow Cabinet and with Baroness Scotland of Asthal, the Attorney General for England, Wales and Northern Ireland. He discussed a number of issues, including the significance of the preventative impact of the Court’s work and the importance of the implementation of outstanding arrest warrants.

24 February - During the UN Security Council [debate](#) on drug trafficking and international security, the UN Secretary-General said that *“Criminal justice should figure more prominently in UN peacebuilding and peace-keeping.”* Antonio Maria Costa, Executive Director of UNODC, noted the importance of ensuring that UN conflict prevention, crisis management and peacekeeping included a criminal justice component.

IV. Coming Events

- 3 March - Prosecutor delivers speech at Weekly Lecture Series, organized by the Grotius Centre for International Legal Studies, the T.M.C. Asser Institute and the Coalition for the International Criminal Court, The Hague
- 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
- 17 March - Prosecutor meets with Shirin Ebadi, Nobel Peace Prize Winner, and Mr. Karim Lahidji, Vice-President FIDH
- 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, and addresses a joint session of the Foreign Affairs Committee, the Development Committee and the Human Rights Subcommittee of the European Parliament, Brussels

- 6 April - Prosecutor participates in the International Forum of the 37th FIDH Congress, on Justice, Yerevan, Armenia
- 12-19 April - OTP participates in panels organized by the Alliance on Crime Prevention and Criminal Justice, in parallel to UNODC’s 12th World Congress on Crime Prevention and Criminal Justice, Salvador, Bahia, Brazil
- 19-21 April - Deputy Prosecutor and Professor Catherine MacKinnon, Special Gender Adviser to the Prosecutor, participate in “International Gender Justice Dialogue” organized by Women’s Initiatives for Gender Justice and Nobel Women’s Initiative, Puerto Vallarta, Mexico
- 27 April - Start of the trial *Prosecutor v. Jean-Pierre Bemba Gombo*

** 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*