



OTP Weekly Briefing

11-17 May – Issue #37

THIS WEEK'S HIGHLIGHT:

THE PROSECUTOR WRAPS UP HIS VISIT TO KENYA, ASKS FOR IMMEDIATE ASSISTANCE TO VICTIMS

PREVIEW:

- OTP announces missions to Georgia and Guinea, p. 3 & 4.

12 May - Prosecutor Moreno-Ocampo's five-day visit in Kenya focused on interacting with victims and different Kenyan groups and concluded with a meeting with the President and Prime Minister. The Prosecutor presented his plans to present at least two cases against three individuals, including allegations of police involvement in crimes attributed to some of the organizations which are allegedly involved in the crimes. The cases should be ready for presentation to the Judges by the end of 2010. The Office will follow its policy of focusing on those most responsible. The Office of the Prosecutor will ensure the security and well-being of its approximately 60 witnesses. The visit helped to clarify and manage the expectations of Kenyan citizens and the public authorities. The Prosecutor confirmed the need to immediately develop programs to alleviate the suffering of the victims. Additionally, he insisted that the security of the 400,000 people that suffered from the violence was the responsibility of the Government of Kenya. In the meeting with the Prosecutor, President Kibaki and Prime Minister Odinga reiterated their full support for the ICC and their responsibility for the security of Kenyan citizens.



The Prosecutor with community based journalists



The Prosecutor at the final press conference

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.

12 May - Ugandan Defence Minister Kiyonga [renewed](#) his call for the LRA to surrender, saying that the UPDF would seek permission from other countries, including the Central African Republic, to pursue the rebels if Kony did not surrender.

12 May - The LRA Disarmament and Northern Uganda Recovery Bill [passed](#) the US House of Representatives and awaits Presidential signature to pass into law. After the vote, Senator Russ Feingold, one of the Bill's sponsors, [said](#): *"Congress is committed to ending the LRA's reign of terror. I urge President Obama to sign this bill into law and quickly develop a plan to stop Joseph Kony and the LRA from committing further atrocities by bringing a lasting resolution to the conflict."*

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 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.

12 May - In testimony before the Senate Foreign Relations Committee, Scott Gration, US Special Envoy to Sudan, [said](#) with regard to US strategy for Sudan that *"accountability for genocide and atrocities is necessary for reconciliation and lasting peace. In addition to supporting international efforts to bring those responsible for genocide and war crimes in Darfur to justice, we are consulting closely with our international partners and Darfuri civil society on ways to strengthen locally-owned accountability and reconciliation mechanisms in light of the recommendations made by the African Union High Level Panel on Darfur led by former South African President Thabo Mbeki."*

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 [5 July 2010](#). On 27-28 April, the Trial Chamber held a hearing on admissibility. 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. On 31 March the Pre-Trial Chamber authorized the Prosecutor to commence an investigation covering alleged crimes against humanity committed during the events that took place between 1 June 2005 and 26 November 2009.

I.6 Miscellaneous

12 May - The OTP confirmed that it has [requested](#) Judge Baltasar Garzón of Spain to work as a consultant for seven months, helping the Office further improve its investigative methods. *“Judge Garzon’s extensive experience in investigating massive crimes committed by States and non-State organizations will be a great contribution to the Office,”* said the Prosecutor. Judge Garzón has already assisted the Office in relation to its preliminary examination of Colombia.

17 May - Walter Dorn, Associate Professor of Defence Studies at the Royal Military College of Canada and the Canadian Forces College, provided training to OTP staff on *Plausible Deniability*. Plausible Deniability is defined as denying a fact without arousing suspicion, or the method of achieving this. It is applied to leadership to ensure cover up or concealment for a wide range of illegal deeds.

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.

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.

10 May - A Colombian Court [sentenced](#) four members of the armed forces to 33 years in jail for the 2005 murder of a farmer in Argelia, Antioquia department, reported by the soldiers as a guerrilla casualty (a so-called “false positive” case).

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.

17 May - The OTP announced a mission will take place to Georgia from 21-24 June.

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.

13 May - Human Rights Watch released a new [report](#) documenting 12 separate cases of extensive destruction of civilian property during Operation Cast Lead by Israeli forces. The report also criticized Hamas and other Palestinian groups for firing rockets from populated areas; and recommends the UN Security Council refer the conflict to the Prosecutor of the ICC if the parties continue to fail to conduct thorough and impartial investigations meeting international standards.

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. 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.

14 May - The OTP confirmed that a [mission](#) to Conakry led by OTP cooperation director Amady Ba will take place from 19 to 21 May to meet with Guinean Judges.

III. Cooperation – Galvanizing Efforts to Arrest

5 May - During a roundtable the Nigerian Minister of Justice, Mohammed Bello Adoke, reportedly pledged the country's commitment to cooperate with the ICC and take proactive steps aimed at curbing the escalation of genocide, war crimes and crimes against humanity.

17 May - Prosecutor Moreno-Ocampo met with Abdou Diouf, Secretary-General of the *Organisation Internationale de la Francophonie* to discuss cooperation. Diouf expressed the wish to address the Kampala conference, if possible through a recorded intervention.

17 May - Prosecutor Moreno-Ocampo visited France and delivered a speech during a colloquium at the French *Institut d'Études Politiques*. He described the role students of political science could play in further explaining how the Rome Statute offers opportunities for conflict management. At the conclusion of the meeting Judge Garzón was awarded the *Prix Liberté et Démocratie René Cassin*.



V. Coming Events

- 18 May - Prosecutor gives opening remarks at the *Journées de la Francophonie*, organized by the OIF, Paris
- 27 May - Prosecutor delivers keynote address at the 6th session of the Consultative Assembly of Parliamentarians for the ICC and the Rule of Law, Kampala
- 28 May - Prosecutor and Deputy Prosecutor participate in an Africa Legal Aid seminar entitled 'Africa and the international Criminal Court', Kampala
- 31 May - 4 June - Prosecutor attends the ICC Review Conference, Kampala

- 4 June - Prosecutor travels to New York for consultations
- 11 June - Prosecutor briefs the UN Security Council on the situation in Darfur, New York

- 5 July - Start of trial of the case *Prosecutor v. Jean-Pierre Bemba Gombo*
- 12 July - Prosecutor participates in an International Student Debate at the University of Amsterdam
- 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

* 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