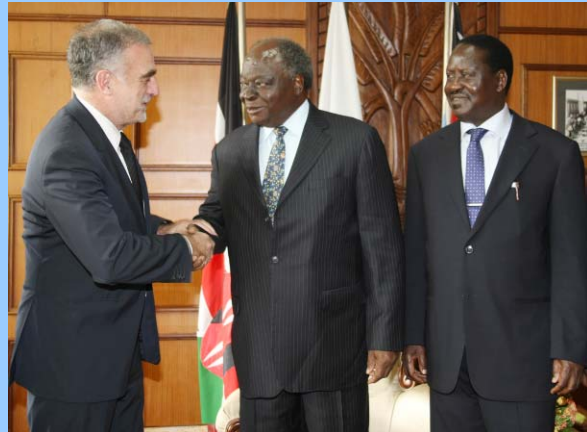




OTP Weekly Briefing – 3-9 November – Issue #12

1. Investigations and Prosecutions:

THIS WEEK'S HIGHLIGHT: ICC PROSECUTOR IN KENYA, ANNOUNCES INTENTION TO INVESTIGATE



Nairobi - Prosecutor Moreno-Ocampo with Kenyan President Mwai Kibaki and Prime Minister Raila Odinga

On 5 November, the Prosecutor [met](#) with Kenyan President Kibaki and Prime Minister Odinga in Nairobi, Kenya to inform them of his view that the crimes committed during the Kenyan post-election violence of 2007-2008 amounted to crimes against humanity. The Prosecutor explained his duty, in the absence of genuine national proceedings, to initiate an investigation into these crimes and added that he would request, by 1 December, authorization from the ICC judges to open an investigation into the situation.

During a joint press conference, the Prosecutor stated “...I consider the crimes committed in Kenya were crimes against humanity, therefore the gravity is there ... [and] I should proceed. So I informed them, in December I would request ... the judges of the... [ICC] to open an investigation and that is the process established by the Rome Treaty”.

President Kibaki and Prime Minister Odinga reiterated the Government's commitment to cooperating with the ICC within the framework of the Rome Statute and the Kenyan International Crimes Act.

a. General overview of the cases

Over the week, the OTP presented 22 filings in the various cases and conducted 2 investigative missions in 2 countries.

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, focussing 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](#) is scheduled to start 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.

2 November - US Special Envoy for the Great Lakes Region, Howard Wolpe, expressed strong concern at the fact that Bosco Ntaganda has yet to be transferred to the ICC. He described the situation as “*inexcusable*” and said that the US will urge the DRC authorities to resolve the issue.

Case: *The Prosecutor v. Thomas Lubanga Dyilo*

The Prosecution concluded the presentation of its evidence on 14 July. On 2 October, Trial Chamber I [decided](#) to adjourn the presentation of the evidence of the Defence, originally scheduled to start in October 2009. The Chamber is waiting for the resolution of the appeal lodged by the Prosecution and the Defence against its 14 July decision, notifying that the legal characterization of the facts may be subject to change in accordance with Regulation 55(2).

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

The trial will begin on 24 November. On 31 October, the Defence for Mathieu Ngudjolo requested a postponement of three months. On 5 November, TC II decided not to grant the request.

The Kivus Investigation

2 November - During a visit to the DRC, UN Under-Secretary-General for Peacekeeping Operations, Alain Le Roy, [stated](#) that MONUC had suspended its support to the 213th FARDC Brigade following reports that they were responsible for the killing of 62 civilians in Lukweti, North Kivu. He called for a joint MONUC/FARDC investigation into the killings of civilians by the Congolese armed forces in the east of the DRC.

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 Lords 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, there have been substantial numbers of killings and abductions in both South Sudan and CAR.

5 November - [Media reports](#) stated that the alleged Director of LRA Operations, Charles Arop, surrendered on 3 November after losing all his troops in battles in the jungles of eastern DRC.

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. 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. Omar Hassan Ahmad Al Bashir*

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

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. 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*

The decision on the [appeal](#) by the Prosecution on the decision of Pre-Trial Chamber II ordering the conditional interim release of Bemba is pending.

3-4 November - Pursuant to the request of Trial Chamber III, the Prosecution submitted (i) a summary of the presentation of its evidence; (ii) a revised Document Containing the Charges; (iii) a list of items of incriminatory evidence which it intends to positively rely upon at trial at this stage. The Prosecution noted that the list does not

limit its right to introduce new evidence necessary to establish the truth. None of the incriminatory evidence that the Prosecution intends to rely upon was obtained on condition of confidentiality under Article 54 (3)(e); (iv) submissions on the jurisprudence of the Court on victims' participation at trial. The Prosecution requested that the Chamber adopt the existing jurisprudence relating to the requirements, timing and modalities of victims' participation. The Prosecutor submitted that the Chamber should depart from some limited aspects of the jurisprudence regarding modalities of Prosecution contacts with individuals enjoying the dual status of victim/witness and access to confidential records by legal representatives; and (v) submissions on translation/interpretation into Sango, the preferred language of most Prosecution's witnesses.

f. Miscellaneous

2. Preliminary Examinations:

a. Statistics on [Article 15 Communications](#) and other preliminary examination activities

A preliminary examination is distinct from an investigation. It is a phase during which the Office assesses whether crimes falling under the ICC jurisdiction may have been, or are possibly being, committed in a given situation; whether genuine investigations and prosecutions are carried out by the competent authorities in relation to these crimes; and 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 information from individuals and groups also known as "communications" and submissions from parties concerned. The triggering of a preliminary examination does not imply that an investigation will eventually 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.

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.

28-31 October - OTP representatives participated in a conference in Bogotá organized by the Embassy of Germany, the National Commission on Reparation and Reconciliation, the University of the Andes, the Mission to Support the Peace Process in Colombia of the OAS, the National Office of the General Prosecutor and the GTZ on the "Jurisdiction of the International Criminal Court in relation to Colombia". The Conference included the presentation of a study on the implementation of the Justice and Peace Law.

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 all issues related, to its jurisdiction; first whether the declaration accepting the exercise of jurisdiction by the Court meets statutory requirements; second whether crimes within the Court's jurisdiction have been committed; and third 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.

2 November - The Prosecutor met in The Hague with a delegation led by the International Federation of Human Rights (FIDH) and including different Israeli and Palestinian NGOs (Public Committee Against Torture in Israel, Adalah, Al Haq and the Palestinian Center for Human Rights). The meeting focused on issues related to the Court's jurisdiction and admissibility issues including the complementarity regime of the ICC and the likelihood of national criminal investigations and prosecutions.

4 November - Speaking on behalf of the EU during the UN General Assembly (UNGA) debate on the report of the UN Fact-Finding mission led by Justice Richard Goldstone, Swedish Ambassador, Anders Liden, urged Israel and the Palestinians to launch "*appropriate, credible and independent investigations*" into its charges.

5 November - The UNGA [endorsed](#) the Goldstone Report. 114 Member States voted in favour of the resolution, 18 States voted against and 44 countries abstained. The resolution calls on the UN Security Council to act if either side fails to launch credible investigations within three months.

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 in The Hague 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. Kenyan authorities committed themselves to refer the situation to the Court if efforts to conduct national proceedings fail. 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 containing documents and supporting materials 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 recurring violence through a three-pronged approach: with the ICC prosecuting those most responsible; national accountability proceedings for other perpetrators; and reforms and mechanisms such as the Truth, Justice and Reconciliation commission to shed light on past events and to suggest mechanisms to prevent such crimes in the future.

4 November - Swedish Ambassador to Kenya, Ann Dismorr, [stated](#): "[t]he Swedish Presidency of the EU welcomes the visit by the Chief Prosecutor of the ICC, Moreno-Ocampo. His visit is a crucial step towards ending impunity in Kenya of the perpetrators of the post-election violence".

5 November - Following the Prosecutor's announcement, Maina Kiai, former Chairman of the Kenya National Human Rights Commission, [stressed](#): "I have been a strong and consistent supporter of the ICC involvement in Kenya at the top levels and then a Special Court for lower levels". Mr. Kiai also stated: "I am elated! And I hope [the Prosecutor] follows the evidence and gets the Big Fish in a balanced way".

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 Rome Statute.

30 October - UN Secretary-General Ban Ki-Moon [established](#) an International Commission of Inquiry to investigate the events of 28 September 2009 in Conakry. The Commission will be comprised of three members: Mr. Mohamed Bedjaoui of Algeria, as Chairman; Ms. Françoise Ngendahyo Kayiramirwa of Burundi and Ms. Pramila Patten of Mauritius.

10 November - The OTP received a communication from the Ministry of Foreign Affairs of Guinea, in reply to the Prosecutor's request for information of 20 October 2009.

3. Cooperation – Galvanizing Efforts to Arrest:

THIS WEEK'S HIGHLIGHT: FINAL CONSULTATIONS ON OTP PROSECUTORIAL STRATEGY

3 November - The OTP held a final round of consultations on its draft Prosecutorial Strategy for 2009-2012 in Geneva, organized by the Academy of International Humanitarian Law and Human Rights. The meeting, which welcomed 300 representatives of States, intergovernmental organizations, NGOs and academics, was chaired by Professors Nicholas Michel and Andrew Clapham. Prosecutor Moreno-Ocampo and International Cooperation Adviser Olivia Swaak-Goldman presented the Prosecutorial Strategy and collected additional comments. The Prosecutorial Strategy will be finalized in the coming days, taking into consideration comments received. The final version will be circulated prior to the Assembly of States Parties in November 2009.

4 November - Prosecutor Moreno-Ocampo during the 17th Diplomatic Briefing at the Court highlighted the Office's preliminary examination activities. *"Our experience shows that making transparent preliminary examination activities will increase the predictability of the Court, the cooperation of the different stakeholders and the preventative impact of the Rome Statute in general"*. He recalled the OTP's *"policy to increase reactivity to upsurges of violence potentially falling within the jurisdiction of the Court in order to promote timely accountability efforts at the national level and to maximize the preventative impact of our work"* as was done for Guinea.

Regarding the Review Conference, Prosecutor Moreno-Ocampo stated: *"States have the opportunity to transform the Kampala Review Conference into a major milestone. The next Assembly will be a great moment for you to finalize your plans and exercise your collective responsibilities. How to do it is of course the responsibility of States. [...] The Prosecution is presenting its own plans in order to increase predictability and to help stakeholders to produce their own plans. Our Prosecutorial Strategy is our independent contribution to the Court Strategic plan. It focuses on our activities but also presents areas where we can work together"*.

The UNGA debate on the ICC's annual report to the UN concluded on 30 October.

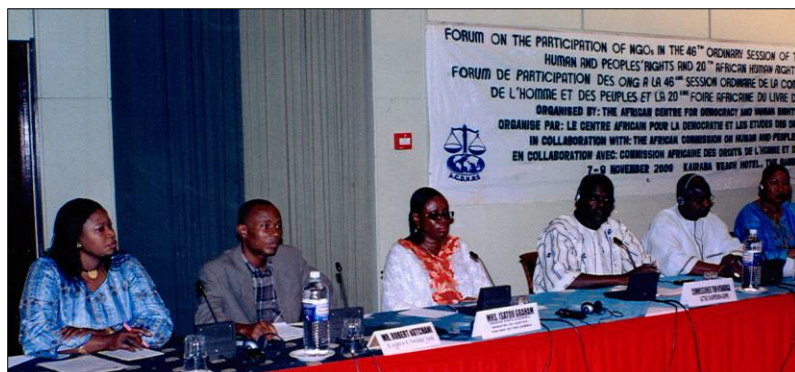
3 November - A network of 60 African civil society organizations from 30 countries [called upon](#) the AU to enhance the ICC's ability to prosecute the world's worst crimes in advance of the AU meeting in Addis Ababa to prepare for the Kampala Review Conference.

6 November - The AU Ministerial Meeting on the Rome Statute of the ICC adopted the following recommendations:

- Prosecutorial Discretion - That the OTP be requested to review its guidelines and code of conduct for the exercise of Prosecutorial powers to *"include factors of promoting peace and submit them to the ASP"*;
- Referral of Cases to ICC - Article 13 of the Rome Statute be retained as it is;
- Deferral of Cases - Article 16 of the Rome Statute should be amended *"to allow UNGA to exercise such powers in cases where the Security Council has failed to take a decision within a specified time frame"*;
- Immunities of Non-State Party Officials - Articles 27 and 98 of the Statute should be discussed by the ASP to obtain clarification on the scope and application of these Articles and State Parties should consider having recourse to Article 119 and Rule 195 regarding the implementation of Articles 27 and 98;
- Aggression - The Security Council should not be granted exclusive powers to determine whether aggression has been committed or not before the ICC can exercise jurisdiction.

8 November - According to [reports](#), President Al-Bashir has told Turkish President Abdullah Gul he would not attend a meeting of the Organisation of the Islamic Conference (OIC) in Istanbul on 9 November, despite earlier

[reports](#) that he would be present. Unnamed Turkish officials have since been quoted as saying that the presidency “directly contacted and persuaded Bashir to cancel his plans to attend”, that Gul “was relieved” by Al-Bashir’s agreeing to stay away.



7-9 November - Deputy Prosecutor Fatou Bensouda participated in the African Centre for Democracy and Human Rights Studies Forum’s 46th Ordinary Session of the African Commission on Human and Peoples’ Rights in Banjul, The Gambia. The Forum facilitates networking among Human Rights NGOs, for the promotion and protection of human rights in Africa. The Deputy Prosecutor engaged with African NGOs on the work of the ICC. Participants affirmed their intention to support the ICC via an NGO resolution to be forwarded to the next session

of the African Commission.

4. Coming Events:

- 11-13 November - Prosecutor/Deputy Prosecutor in Rwanda, International Prosecutors’ Colloquium, Kigali
- 18-26 November - [Eighth Session of the Assembly of States Parties](#), The Hague
- 20 November - Prosecutor to participate in the World Economic Forum, Summit on Global Agenda, Dubai
- 21 November - Deputy Prosecutor to receive “International Jurists Award 2009” by the International Council of Jurists for her contribution to the field of criminal law, New Delhi
- 24 November - Trial Chamber II: Start of the Trial of [The Prosecutor v. Germain Katanga and Mathieu Ngudjolo](#)
- 2-4 December - OTP to participate in Colloquium on Remedies for Gross and Systematic Human Rights Violations, Strasbourg
- 4 December - Prosecutor’s report to the UNSC on the Darfur situation pursuant to UNSCR 1593 (2005)
- 8 December - Prosecutor to brief World Affairs Council of Northern California, San Francisco

* 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