



## OTP Weekly Briefing

18-24 May – Issue #38

### THIS WEEK'S HIGHLIGHT: OTP DELEGATION VISITS GUINEA

19-21 May - In the context of its preliminary examination in Guinea, the OTP visited Conakry. The OTP delegation, led by the head of the cooperation division, Amady Ba, met with the Guinean Minister of Justice, Col. Lohalamou, as well as Guinean judges to discuss developments since the last mission of the OTP in February, relating to the events of 28 September 2009. The Guinean authorities extended full cooperation to the Court. The OTP Delegation stated at the conclusion of the mission: *"We will continue to closely follow the work of our Guineans colleagues."*

#### PREVIEW:

- President Obama signs into law the LRA Act, p. 2.
- Deputy Prosecutor meets Rwandan President, p. 4.
- HRW calls on States Parties not to attend Al Bashir's inauguration, p. 5.



Amady Ba with the Guinean Minister of Justice



The OTP delegation in a meeting with Guinean journalists

## I. Investigations and Prosecutions

Over the week, the OTP presented 10 filings in the various cases and conducted 5 missions in 5 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killed in 2007 on order of Kony), Okot Odhiambo, Raska Lukwiya (killed on 12 August 2006, whose arrest warrant has been withdrawn), and Dominic Ongwen.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.

24 May - US President Obama [signed](#) into law the LRA Disarmament and Northern Uganda Recovery Act which requires a Presidential strategy to eliminate and mitigate the threat posed by the LRA. The President said *"The legislation crystallizes the commitment of the United States to help bring an end to the brutality and destruction that have been a hallmark of the LRA across several countries for two decades, (...). The LRA preys on civilians – killing, raping, and mutilating the people of central Africa; stealing and brutalizing their children; and displacing hundreds of thousands of people. Its leadership, indicted by the International Criminal Court for crimes against humanity, has no agenda and no purpose other than its own survival. (...) [T]he leadership of the LRA should be brought to justice. I signed this bill today recognizing that we must all renew our commitments and strengthen our capabilities to protect and assist civilians caught in the LRA's wake, to receive those that surrender, and to support efforts to bring the LRA leadership to justice."*

### 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.

19 May - US State Department spokesman Philip Crowley [condemned](#) a Sudanese army offensive against rebels in Sudan's western Darfur region. *"The United States condemns the recent offensive actions in Darfur, particularly the Government of Sudan's use of aerial bombings and local militias [which] endanger civilians and lead to mass displacement,"* said Crowley.

20 May - Ibrahim Gambari, Head of joint UN-AU Force in Darfur, [informed](#) the UN Security Council that civilians are still dying or being displaced and that humanitarian workers are still coming under attack in Darfur. *"These clashes have caused substantial civilian casualties, the displacement of communities, and hampered the delivery of humanitarian assistance,"* said Gambari.

20 May - Farouk Abu Eissa, leader of the opposition alliance, was [detained](#) for several hours of questioning by the Sudanese authorities. Abu Eissa's detention followed the arrest of opposition Islamist Hassan Al Turabi, the seizure of assets of his Popular Congress Party paper and the arrest of four staff. Abou Eissa informed that security forces had asked him about the ICC. *"They are worried,"* he was quoted as saying, *"The world outside is all moving around the ICC and they want to end any escalation in Turabi's defence - I said we will not stop."*

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

20 May - In accordance with its policy to support victims' participation in the Court's proceedings, the Prosecution supported six applications for authorisation to participate as victims in the case on the grounds that all applicants *prima facie* meet the necessary requirements under Article 68(3).

### 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. The Prosecutor made his first visit to Kenya since the beginning of the investigation on 8-12 May.

17 May - Speaking on a UN Radio show, Kenya's Justice Minister Mutula Kilonzo [expressed](#) support for the ICC investigation: *"It has taken us only 8 months to bring Ocampo to Kenya and I have no doubt in my mind he will finish his investigation by the end of the year. Therefore, for me, I don't want to know who did what, I just want to make sure that justice is done."*

20 May - Christian and Muslim leaders in Kenya [expressed](#) support for the ICC investigation after having met with Prosecutor Moreno-Ocampo on 11 May. *"Ocampo's arrival is a blessing because there are issues that have to be addressed in this country,"* said Roman Catholic Cardinal John Njue. *"When certain problems remain as they are (...) they always become a source of pain in the community."* Sheikh Abdullahi Kiptanui, a vice-chairperson of the Supreme Council of Kenya Muslims, said: *"We fully back the punishing of the perpetrators. We are ready to work with Christians."*

## I.6 Miscellaneous

7-17 May - The OTP attended a Justice Rapid Response (JRR) Training Course in Buenos Aires as an observer and provided briefings. JRR is an international cooperative mechanism to supply voluntary assistance at the request of a State or international institution, where the identification, collection and preservation of information would assist a range of international and transitional justice options. The course provided training in various areas, such as international law, personal security, military organizations, and investigation methods and approaches.

20 May - The UN Secretary-General's annual [report](#) on Children and Armed Conflict includes a list of the most persistent violators for recruiting and using children, including the FARDC, CNDP, FDLR, FNI, LRA, Pro-Government militias in Darfur and SPLA. The report notes that Bosco Ntaganda was made a general in FARDC in January 2009 despite being the subject of an arrest warrant issued by the ICC for the war crime of enlisting child soldiers and using them in hostilities. *"Combat is no place for children. We still live in a world with those who would use children as spies, soldiers, and human shields. (...) Let us remember that we must protect the most innocent and most vulnerable,"* said the Special Representative of the Secretary-General Radhika Coomaraswamy.

## 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.

### 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.

### 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.

### 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.

16 May - The International Contact Group of Guinea during its 13<sup>th</sup> meeting in Conakry [highlighted](#) the importance of justice, reconciliation and fight against impunity as necessary requirements for the transition.

## III. Cooperation – Galvanizing Efforts to Arrest



17-18 May - Deputy Prosecutor Bensouda travelled to Kigali, Rwanda, to attend the International Forum on the Role of Leadership in Promoting, Accelerating and Sustaining Gender Equality and Women's Empowerment. During the visit the Deputy Prosecutor met with the President of Rwanda, Paul Kagame, as well as Louise Mushikiwabo, Rwanda Minister of

Foreign Affairs and Cooperation, during which Rwanda's support to the OTP investigation in the Kivu provinces of the DRC was discussed.

18 May - Prosecutor Moreno-Ocampo gave opening remarks at the *Journées des réseaux institutionnels de la Francophonie*, in Paris. The Prosecutor thanked the members of the Organisation Internationale de la Francophonie and its Secretary-General, former President Adbou Diouf of Senegal for the cooperation provided to the OTP, and called on the OIF to help reinforce national legal systems to combat impunity.

18 May - In the final declaration of the EU - Latin America and Caribbean Summit, the ministers of both regions jointly [reaffirmed](#) their commitment to fight impunity, notably for crimes referred to in the Rome Statute of the ICC, adding that "[t]heir prosecution should be ensured by taking measures at the national or appropriate level and by enhancing international cooperation."

19 May - Béatrice le Fraper du Hellen, Director of JCCD, participated in a panel on cooperation and diplomatic support, during an event on the EU-ICC relationship, organized by the Spanish EU Presidency and the CICC. While highlighting the fruitful cooperation with the EU to date, Le Fraper du Hellen suggested a shift in emphasis with additional focus on action to support implementation of Court decisions, in particular the execution of arrest warrants. Addressing the OTP guidelines on arrest and surrender, which discourage non-essential contacts with persons who are the object of an arrest warrant, Le Fraper du Hellen confirmed that attendance at a presidential inauguration did not fit into the essential contacts category. This position was noted by Karel Kovanda, the EU Council's Deputy Director responsible for the Common Foreign and Security Policy, who underlined the EU's support for the Court.

19 May - In the debate leading to the adoption of an EU Parliament [resolution](#) on the ICC Review Conference, EU representatives voiced support for the work of the Court. Commission Vice-President Viviane Reding said: *"The Court needs the participation and the cooperation of all State Parties and non-Parties, as well as international and regional organisations. The Court cannot perform its functions without the states arresting those for whom an arrest warrant has been issued by the ICC; nor if the witnesses cannot be protected; nor if there are no prisons for those who have been condemned, and that is why the EU supported the Court over the last ten years to help solve these problems. We, as the EU, have from the outset been staunch supporters of the establishment of the Court as an essential mechanism in the new international order designed to end impunity."* The resolution called on Member States to actively cooperate when a person is subject to an ICC arrest warrant and to ensure full cooperation with the Court.

20 May - Human Rights Watch in a letter to the EU Foreign Ministers [stressed](#) that Governments that are committed to justice for atrocities committed in Darfur should not attend the inauguration of President Al Bashir on 27 May. *"Al Bashir is a fugitive from justice who should be arrested, not feted,"* said Elise Keppler, International Justice Program senior counsel at Human Rights Watch. *"Attendance at Al Bashir's inauguration would send a terrible message to victims in Darfur, and globally."*

21 May - The OTP and Belgium finalized a protocol to the Memorandum of Understanding on International Cooperation and Judicial Assistance, relating to requests for forensic assistance.

24 May - Concerning the Review Conference, UN Secretary-General Ban Ki-moon [said](#): *"We have come a long way. A decade ago, few would have believed that the International Criminal Court would now be fully operational, investigating and trying perpetrators of genocide, war crimes and crimes against humanity across a growing geography of countries. The Kampala review conference is an important opportunity, not only to take stock of our progress, but to strengthen our collective determination that international crimes cannot go unpunished. How else are we to deter them in the future? The era of impunity must end. We are entering a new age of accountability."*

## V. Coming Events

- 27 May - Prosecutor delivers keynote address at the 6<sup>th</sup> 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 and Deputy Prosecutor attend 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
- 21-24 June - OTP mission to Georgia in the context of its preliminary examination work
- 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](mailto:Olivia.Swaak-Goldman@icc-cpi.int)