



OTP Weekly Briefing – 20-26 October – Issue #10

1. Investigations and Prosecutions:

THIS WEEK'S HIGHLIGHT: THE ABU GARDA CONFIRMATION OF CHARGES HEARING

The Haskanita case: On 28 November 2008, the Prosecution submitted its application in relation to three rebel leaders suspected of committing war crimes against the African Union peacekeeping mission in the Sudan (AMIS) on 29 September 2007: they were charged with violence to life, in the form of murder; intentionally directing attacks against personnel, installations, material, units, or vehicles involved in a peacekeeping mission; and pillaging. Among numerous attacks against peacekeepers in the Sudan, the attack on the AU Haskanita camp was the most serious. As was done previously in the *Harun and Kushayb* case, the Prosecution suggested that a summons to appear could be sufficient, should the suspects agree to cooperate with the Court. The *Haskanita* suspects agreed, whereas Harun and Kushayb had declined the opportunity and became the subjects of arrest warrants.



"This case is about a deliberate attack against peacekeeping forces in Haskanita, Darfur, the Sudan. It is about intentional attack against persons and objects with protected status under international criminal law, a crime under the Rome Statute. This case is about the killing of 12 peacekeepers and the ransacking of their camps in Haskanita, and the ensuing dismantling of the camp" (Deputy Prosecutor Fatou Bensouda, [opening statement](#)).

The surrender of Abu Garda: The OTP tracking cell worked for 6 months, from the identification of the whereabouts of the suspect, to his extraction from a conflict area to safer locations and onwards to The Hague; the OTP received the assistance of a number of African and European States including Chad, Nigeria, Mali, the Gambia and The Netherlands. Others requested that their assistance remain confidential. The suspect appeared voluntarily at the Court on 18 May 2009, in compliance with a summons. On 19 October, PTC I opened the confirmation of charges hearing in the presence of the suspect, who arrived voluntarily in The Netherlands.

The first week of the hearing: the Prosecution team, headed by Deputy Prosecutor Bensouda, presented its case and three witnesses were heard including an expert military witness and a victim from among the injured peacekeepers. The Prosecution made detailed presentations on the protected status of AMIS as a peacekeeping force and the role of Abu Garda, President of a splinter faction of JEM.

Abu Garda is the first suspect to appear before the ICC in the context of the situation in Darfur (Sudan).

a. General overview of the cases

Over the week, the OTP presented 10 filings in the different cases. Last week OTP conducted 3 investigative missions in two 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.

Case: *The Prosecutor v. Thomas Lubanga Dyilo*

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

19 October - The Prosecution submitted that Trial Chamber II should follow the interpretation of Pre-Trial Chamber I of co-perpetration under Article 25 (3)(a) of the Statute. The Prosecution disagreed with the PTC I on two issues and maintained that: the Prosecution only needs to prove (i) a substantial contribution to the commission of the crimes by the accused as opposed to an essential one; ii) the subjective elements of the accused(s) and not of other uncharged co-perpetrators.

The Kivus investigation

21 October - The OTP has consistently identified that the main obstacle to national proceedings in the DRC and the Kivus was the lack of protection for judges and witnesses. In an [interview](#) with IWPR, NGOs stated “[a]t the material level there has been equipment given to the judges. But on other aspects, like witness protection, nothing has been solved” and “it is necessary that congolese judges are totally free not only from corruption but also psychological constraints, like fear and political pressure”.

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 was withdrawn), and Dominic Ongwen. These arrest warrants are outstanding. Over the last 18 months, 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 Central African Republic.

21 October - According to an IRIN [article](#), military contingents from five East African countries have begun field training in disaster response and anti-terrorism in the northern Ugandan district of Kitgum, supported by the US army. Regional expert Peter Eichstaedt stated “[s]uch a force would be a huge problem for someone like Kony, should he think about a return to northern Uganda. It shows that Uganda has allies who are willing not only to donate moral support and money in the fight against Kony and his maniacal militia, but are willing to put boots on the ground. This is an acknowledgement that Kony is much more than Uganda’s problem, and has become a regional nightmare.”

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 started on 19 October 2009.

20 October - The US administration unveiled its Sudan policy. Major pillars of the policy include a “definitive end to conflict, gross, human rights abuses and genocide in Darfur”; “implementation of the North-South Comprehensive Peace Agreement that results in a peaceful post-2011 Sudan, or an orderly path toward two separate and viable states at peace with each other”; and “ensur[ing] that Sudan does not provide a safe haven for terrorists”. No direct negotiations with President Bashir will be allowed. According to [AFP](#), a senior State Department official stated: “We have no intention of talking with President Bashir. We think he should get himself a good lawyer... and face the charges.” Sudanese Presidential adviser Ghazi Salah-al-din stated that his Government welcomed the strategy and affirmed that they will carefully study it before giving their final word.

Case: *The Prosecutor v. Omar Hassan Ahmad Al Bashir*

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

19 October - In response to requests of the Legal Representatives for victims to access confidential documents, including those related to witnesses called to testify at the confirmation of charges hearing, the Prosecution submitted that such access should only be granted in exceptional situations when an applicant has established that the material in question directly affects his or her interests.

e. Situation in the [Central African Republic](#) (CAR)

This situation was referred by the Central African Republic in December 2004. The OTP opened its investigation in May 2007. One arrest warrant has been issued against [Jean-Pierre Bemba](#) 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 the newly constituted Trial Chamber III. In parallel, the Office continues to monitor allegations of crimes committed since the end of 2005.

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

21 October - Regarding the manner of submission of evidence by the parties and participants at trial, the Prosecution requested that Trial Chamber III apply the jurisprudence developed by Trial Chamber I in the case of *the Prosecutor v. Thomas Lubanga Dyilo*.

f. Miscellaneous

2. Preliminary Examinations:

THIS WEEK’S HIGHLIGHT: VISIT OF GUINEA MINISTER TO THE ICC



20 October - The Minister of Foreign Affairs of Guinea, Alexandre Cécé Loua, [visited](#) the ICC and met with Deputy Prosecutor Fatou Bensouda. Minister Loua described the events of 28 September 2009 in Conakry and set out what measures had been taken by Guinea to ensure that the crimes allegedly committed would be investigated. He stated that the national judiciary was “able and willing” to proceed. OTP officials handed Minister Loua a letter asking for written information on the crimes and on modalities put in place for conducting national investigations and prosecutions of those responsible. “Guinea is a State party, the Court is your Court, working together we will ensure that there will be no impunity for the crimes committed,” said Deputy Prosecutor Bensouda.

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

A preliminary examination can be distinguished from a formal 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, 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.

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 is examining all issues related to its jurisdiction, including whether the declaration accepting the exercise of jurisdiction by the Court meets statutory requirements, whether crimes within the Court’s jurisdiction have been committed and 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.

October - During a [meeting](#) of the UN Security Council on the Middle East, Palestinian Foreign Minister Riad al-Malki stated that the Palestinian authorities take very seriously the allegations of possible Palestinian war crimes raised in the Goldstone report. He stated that the Palestinian Government supported *“the pursuit of domestic investigations to address this critical matter.”*

22 October - In a Christian Science Monitor [article](#), Deputy Prime Minister Meridor of Israel stated that *“Today, with the development of international law, one of the best means of defence is for a state to investigate itself”*. Alan Baker, former legal advisor to Israel’s Foreign Ministry, said: *“if Israel launches its own investigation, the ICC will no longer claim jurisdiction [...]. If Israel forms an impartial, high-level inquiry which is run by internationally respected judges and legal experts and not by the military, all of this could be neutralized. In my opinion, it will justify the moral aspects of how the Israeli army was functioning and will likely show that IDF did not willfully and deliberately, as Goldstone argued, set out to harm Palestinians.”*

22 October - In the UN General Assembly, Richard Falk, Special Rapporteur on the situation of Human Rights in the Occupied Palestinian Territories stated that: *[t]he [Goldstone] Report’s significance is to propose steps that look toward accountability, either by way of the Security Council monitoring domestic proceedings, or the ICC or through recourse to universal jurisdiction.”*

23 October - An Al-sharq Al-Awsat [article](#) quotes Brigadier-General Tzvika Fogel, previously head of Southern Command, as saying that while Israeli leaders are rejecting an internal investigation into the charges made in the Goldstone report, he was ready to appear before the ICC to refute them; he could refute the 36 cases considered war

crimes in the Goldstone report, and convince the ICC that the Israeli army in all these cases tried to spare civilians, unlike Hamas. In a 13 October [interview](#) with Israeli press outlet, Walla, he expressed confidence *"that cooperation with the Goldstone Commission (...) would allow the world to realize how we really are entitled to use our power against an enemy who does not hesitate to use his children, his wives and his illness as hiding for terrorism against an entirely Israeli population."*

26 October - An Haaretz [article](#), reported that Prime Minister Netanyahu, Defense Minister Ehud Barak and high-ranking Defense officials decided to appoint a task force, not an inquiry committee *"to present its recommendations as to Israel's course of action on the Goldstone report and its ramifications."* Barak is quoted as saying that *"in addition, Israel will act to amend rules of war to adjust them to the battle against terrorists who fight from among civilians."* Haaretz also reports that Hamas has said that it will form a committee *"to investigate the allegations of the Goldstone report."*

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 a [Government delegation from Kenya](#), led by Justice Minister Kilonzo, and the Prosecutor. 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 content and resealed it. On 30 September, the Prosecutor [reiterated](#) the commitment to address post-election violence and prevent recurring crimes 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 the history of past events and to suggest mechanisms to prevent such future crimes in the future.

20 October - Speaking to the Financial Times, Kenya's Prime Minister Odinga [pledged](#) to cooperate with the ICC and hoped that prosecutions would eliminate the political violence threatening Kenya: *"Politicians have to agree to play by the rules, with different means of campaigns, other than trying to use violence in order to gain advantage over their opponents"*.

22 October - The Kenya National Association of Social Workers and the International Federation of Social Workers' Africa office, report that workshops aimed at disseminating information on ratification and implementation of the Rome Statute in Kenya had been conducted in the Mathare slums in Nairobi; Maragwa, in Murang'a District; Kondele in Kisumu District; Gatundu/Ruiru in Thika District; and a major workshop for social workers in Nairobi City. The report indicates that participants felt that *"there was a genuine reason for the ICC to look into the crimes which were committed during the 2007 post-election violence, as this falls within the Court's mandate. This, they felt would end the culture of impunity in Kenya which is now a phenomenon during any election year"*.

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.

2. Cooperation – Galvanizing Efforts to Arrest:

23 October - Deputy Prosecutor attended the formal swearing in ceremony of Stephen J. Rapp, US Ambassador-at-large for war crimes issues in Washington, D.C.

23 October - The Sudan Tribune published extracts of the [report](#) of the AU High Level Panel on Darfur, headed by former South African President Mbeki, which will be presented to AU Peace and Security Council Heads of States on 29 October. According to the Tribune, the report endorses the work of the ICC and emphasizes the complementary nature of the ICC, a ‘court of last resort’ which only targets few people: “The Prosecutor (...) has adopted a policy of focusing only on those few who he believes bear the greatest responsibility for the most serious crimes that have been committed” and Khartoum “cannot ignore its own duty to deal with crimes committed in Darfur”. Noting that “Justice from the ICC, exclusively, would (...) leave impunity for the vast majority of [direct perpetrators] in Darfur” the report recommends additional measures such as a Hybrid Court with international and Sudanese judges, the reinforcing of the Sudanese judiciary, the suppression of state immunities and the establishment of a truth and reconciliation commission.

23 October - The Sudanese Media Center confirmed that Vice-President Taha, not President Omar Al-Bashir would attend the AU PSC meeting in Abuja on 29 October. Nigeria is a State Party to the ICC. The Sudanese President has not visited a State Party since the ICC warrant of arrest was issued on 4 March 2009.

4. Coming Events:

- 26-29 October - Continuation of Confirmation of Charges hearing, case of [The Prosecutor v. Abu Garda](#)
- 27-29 October - OTP Financial Investigation Seminar, The Hague
- 28 October - Prosecutor to receive award for his work in human rights, Universidad Complutense, Madrid
- 30 October - Consultations on the draft Prosecutorial Strategy for 2009-2012 with States, The Hague

- 3 November - Consultations on the draft Prosecutorial Strategy for 2009-2012, Geneva
- 4 November - Deputy Prosecutor’s briefing to the seventeenth Diplomatic Briefing, The Hague
- 5 November - Prosecutor’s visit to Nairobi, Kenya
- 7-9 November - Deputy Prosecutor to participate in African Centre for Democracy and Human Rights Studies Forum, 46th Ordinary Session of the African Commission on Human and Peoples' Rights, Banjul
- 9-10 November - Prosecutor to participate in symposium “The ICC that Africa Wants”, Cape Town
- 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 Commission of Jurists for her contribution to the field of criminal Law, New Delhi
- 23-27 November - Deputy Prosecutor to participate in Forum for civil society, Nairobi
- 24 November - Trial Chamber II: Start of the Trial of [The Prosecutor v. Germain Katanga and Mathieu Ngudjolo](#)

- 4 December - Prosecutor’s report to the UNSC on the Darfur situation pursuant to UNSCR 1593 (2005)
- 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