



OTP Weekly Briefing – 15-21 December – Issue #18

THIS WEEK'S HIGHLIGHT: Revised Prosecutorial Strategy available for final comments

Following extensive consultations a revised version of the Office's [Prosecutorial Strategy](#) for 2009-2012 is available on the website. The Strategy establishes 5 interrelated objectives for the coming three years:

- a) further improve the quality of prosecutions, completing at a minimum three trials, starting at least one, and efficiently litigating in appellate proceedings;
- b) continue ongoing investigations in seven cases, conduct up to four new investigations of cases within current or newly opened situations and be ready to start another investigation at short notice;
- c) conduct up to ten preliminary examinations in relation to currently examined or new situations;
- d) continue to improve cooperation with States and relevant actors, in particular for the execution of arrest warrants issued by the Court; and
- e) maximize the Office of the Prosecutor's contribution to the fight against impunity and the prevention of crimes.

Final comments can be sent to Olivia Swaak-Goldman (Olivia.Swaak-Goldman@icc-cpi.int) by 22 January 2010. The final version will be released on 1 February 2010.

THIS WEEK'S HIGHLIGHT: Guinea - Report of the International Commission of Inquiry

17 December - The [UN Secretary-General](#) received the report by the International Commission of Inquiry on the events of 28 September 2009, where Governmental forces allegedly killed more than 150 persons. The report qualified the events of 28 September as crimes against humanity and recommends the referral of the situation to the ICC. The Secretary-General considered the document and later retransmitted it to relevant parties, including the President of the UN Security Council.

1. Investigations and Prosecutions:

a. General overview of the cases

Over the week, the OTP presented 8 filings in the various cases and conducted 5 investigative missions in 4 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, 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.

Case: *The Prosecutor v. Thomas Lubanga Dyilo*

The Appeals Chamber [granted](#) the Prosecution's Appeal against the 14 July decision of Trial Chamber I, which had considered that the legal characterization of the facts may be subject to change pursuant to Regulation 55(2) of the Regulations of the Court without being limited to those described in the charges. The Appeals Chamber found that the TC's interpretation of the provision was flawed on the ground, among others, that it is the Prosecutor who is tasked with the investigation of crimes under the jurisdiction of the Court and to proffer charges against suspects. The Defence case presentation, originally scheduled for October 2009, is set to commence [7 January 2010](#).

Case: *The Prosecutor v. Katanga and Ngudjolo*

The Kivus Investigation

13 December - Ahead of the UNSC debate on the extension of MONUC mandate, Human Rights Watch published a [report](#) documenting the alleged deliberate killing of more than 1,400 civilians, over 7,500 cases of sexual violence, the displacement of more than 900,000 people and the destruction of over 9,000 houses, schools, churches and other structures between January and September 2009 in the Kivus. According to HRW, most crimes have been committed by FDLR combatants and CNDP militia loyal to Bosco Ntaganda and now integrated into the Congolese armed forces (FARDC). The report urges DRC authorities and MONUC to arrest and transfer Bosco Ntaganda to the ICC.

16 December - [Briefing](#) the UNSC, Alain Doss, Head of MONUC, mentioned the dilemma posed by MONUC's mandate to work with the FARDC, which allegedly includes elements responsible for human rights violations, in order to disarm the FDLR. Stressing the responsibility of the DRC Government to prosecute those who commit human rights violations, Mr. Doss emphasized the need for judicial proceedings against FDLR expatriate elements that continued to fund, encourage and assist criminal activities in the eastern DRC.

17 December - UN Special Rapporteur on extrajudicial executions, Philip Alston, [noted](#) "*The UN has clearly taken important steps in response to my statements following the mission, but it appears that [FARDC] Colonel Zimurinda remains in command, and that the UN has not implemented a strong conditionality policy that would prevent it from supporting units led by him or by Bosco Ntaganda, for whom the ICC has issued an arrest warrant for war crimes.*"

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 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 close to 300,000 in DRC alone. In addition, there have been substantial numbers of killings and abductions in both South Sudan and CAR.

21 December - The Office of the UN High Commissioner for Human Rights published two reports on crimes committed by the LRA in the DRC and Sudan. The UN Joint Human Rights Office in the [DRC](#) (UNJHRO) established that at least 1,200 civilians were killed, more than 100 people wounded, 1,400 people – the majority women and children – abducted, thousands of buildings destroyed and 200,000 people displaced between September 2008 and June 2009 and concluded that these may constitute war crimes and crimes against humanity. The UN Mission in [Sudan](#) (UNMIS), based on the investigation of 27 LRA attacks carried out between December 2008 and March 2009, found that the attacks may amount to crimes against humanity. During these attacks 81 civilians were reportedly killed with many others injured, mutilated, raped and abducted, including women, and at least 18 children were forced to work as child soldiers, sex slaves, porters and spies. Both reports urge the States concerned to cooperate with the ICC in arresting and transferring all LRA leaders against whom ICC arrest warrants have been issued.

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.

10 December - In an op ed Angelina Jolie [asserted](#) that the U.S. administration should explore ways to bring al Bashir to justice, even as it encourages stability in Darfur; this means bringing all permanent members of the UNSC on board to send the message that the international community will not tolerate mass atrocities.

21 December - The UNSC was briefed on the report of the African Union High Level Panel on Darfur by Mr. Jean Ping, Chairperson of the AU Commission, and former South African President Thabo Mbeki, who chaired the panel. The [UN Secretary-General](#) commended the panel for developing creative and pragmatic proposals for dealing with justice and reconciliation in Sudan. He stressed that there must be compliance with the Security Council Resolution 1593, which refers the situation in Darfur to the International Criminal Court.

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

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

12 December - Speaking in Cairo, rebel leader Abu Garda reaffirmed that he would comply with ICC decisions, explaining “*We carried arms for justice as a principle so I have to appear before the Court and I am willing to bear the consequences whether incriminating or exonerating*”.

Case: *The Prosecutor v. Omar al Bashir*

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*

On 2 December, the Appeals Chamber upheld the Prosecution’s appeal and [reversed](#) the decision of the Pre-Trial Chamber granting interim conditional release to Jean-Pierre Bemba Gombo. The Appeals Chamber agreed with the Prosecution’s arguments and found that the PTC had erred in finding that: (a) a substantial change in circumstances necessitated the conditional release of M. Bemba; and (b) M. Bemba could be granted conditional release without specifying the conditions to be imposed on his release or identifying the state to which Mr Bemba would be released. On 8 December, the TC found that there was no change in circumstances which would justify interim release of M. Bemba.

15 December - In response to the Chamber’s request for a detailed analytical chart, the Prosecution argued that the presentation of such a document was not requested in the *Lubanga* case, is not a necessary component of a fair trial and is an internal working document. The Prosecution proposed to submit an additional in-depth analysis chart of the incriminating evidence disclosed after the confirmation hearing in order to assist the Chamber and the Defence and requested leave to submit it by 28 February 2010.

21 December - The Prosecution filed its observations on issues of disclosure by the Defence, and preparation of Defence witnesses and recommended that PTC III follow existing jurisprudence.

f. miscellaneous

Reminder - Comments and questions on the draft policy paper on the OTP’s legal approach to [victims participation](#) under Article 68(3) of the Rome Statute should be sent to Olivia Swaak-Goldman (Olivia.Swaak-Goldman@icc-cpi.int) by 22 January 2010. The final version of the policy paper will be released on 1 February 2010.

2. Preliminary Examinations:

a. 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 collects and 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.

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.

14 December – UK’s Prime Minister Gordon Brown announced plans for a high-level international [conference](#) in London for January 2010 on civil reconstruction of Afghanistan.

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.

16 December - The UN Special Rapporteur on the Independence of Judges and Lawyers concluded a week-long visit to 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 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.

14 December - British media [reports](#) that a British court issued and then later revoked an arrest warrant for former Israeli Foreign Minister, Tzipi Livni over war crimes allegedly committed in Gaza during her tenure.

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. 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 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. On 5 November the Prosecutor met with President Kibaki and Prime Minister Odinga in Nairobi. He [informed](#) them of his view that the crimes committed amounted to crimes against humanity and of his duty, in the absence of national proceedings, to act. On 23 November the Prosecutor notified Kenyan victims of his planned request to the Judges and of the 30 days within which they could express their opinion on the merits of an investigation. On 26 November he requested authorization from Pre-Trial Chamber II to open an investigation. In his application to the Judges, the Prosecutor emphasized that 1,220 persons had been killed; hundreds were raped, with thousands more unreported; 350,000 people were forcibly displaced; and 3,561 were injured as part of a widespread and systematic attack against the civilian population

10 December - PTC II issued an [order](#) requesting the Victims Participation and Reparations Section to gather all victims' communications received by the Court and submit a consolidated document summarizing the victims' observations by 21 December 2009. PTC II also requested VPRS to, "identify, to the extent possible, the community leaders of the affected groups to act on behalf of those victims who may wish to make representations (collective representation)."

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 Statute.

3. Cooperation – Galvanizing Efforts to Arrest:

9 December - In his [message](#) to mark the anniversary of the Convention on the Prevention and Punishment of the Crime of Genocide, Francis Deng, UN Special Adviser on the Prevention of Genocide, noted: *“Too often, the international community has failed to remain vigilant to the various manifestations of genocidal situations, such as “ethnic-cleansing” and targeting of civilian groups from which armed elements draw their membership. These situations are typically labeled as military and “counter-terrorism” strategies and highlight the ongoing necessity to understand genocide (...). The choices we make on how and when we decide to respond to prevent genocide reflect (...) the “never again” promises we have repeatedly made to victims of past genocides that they will be the last”.*

17-18 December - Deputy Prosecutor Bensouda participated in the Annual Meeting organized by the International Prosecutors Project of the Leuven Center for Global Governance, with Daniel Bellemare (STL), Stephen Rapp (US Ambassador-at-Large for War Crimes Issues), Serge Brammertz (ICTY) and William Schabas (National University of Ireland, Galway). Speaking of the Prosecutor's *proprio motu* powers, she stressed Prosecutor Moreno-Ocampo's consistent use of Article 15 of the Rome Statute to select situations and cases, to encourage national proceedings, prevent upsurges of violence through preliminary examination and finally trigger an investigation (Kenya).

4. Coming Events:

- January - Prosecutor's consultations on OTP's draft policies at Harvard University, Cambridge
- 7 January - Defence presentation commences in case of *The Prosecutor v. Thomas Lubanga Dyilo*
- 15-16 January 2010 - Deputy Prosecutor to speak on “The work of the OTP and the challenges related to the arrest and surrender” organized by the IBA and the Law Society of Malawi and the Southern African Development Community Lawyers Association, Malawi
- 23 January - Deputy Prosecutor presents lecture at Hague Academy for International Law
- 26 January - Trial resumes in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*
- 27-31 January - Prosecutor participates in 40th World Economic Forum Annual Meeting, Davos-Klosters
- 4 February - Deputy Prosecutor participates in Atrocity Crimes Litigation Conference, organized by David Scheffer, former US Ambassador-at-Large for War Crimes Issues, Northwestern University, Chicago
- 4 February - Prosecutor to address Washington membership of the Council for Foreign Relations, Washington DC
- 19 February - Prosecutor delivers speech at *Challenge Future* event hosted by Herausfordereung Zukunft, Bochum
- 7-10 March - Deputy Prosecutor delivers keynote address for International Women's Day to students at the School of Law of the University of California, Davis, and at the Santa Clara University School of Law, California
- 12 March - Deputy Prosecutor participates in panel at the inaugural “Gender-Based Violence and Access to Justice in Conflict and Post-Conflict Areas” conference organized by Cornell Law School, Washington
- 23 March - Prosecutor delivers the Amnesty International Chair public human rights lecture, Ghent University

Please note that due to the holidays the next OTP Weekly Briefing will be sent on 12 January 2010.

* 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