



## OTP Weekly Briefing – 26 January-1 February – Issue #22

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### THIS WEEK'S HIGHLIGHT: PROSECUTORIAL STRATEGY 2009-2012

Following extensive public consultations with diversified stakeholders, including States, international and regional organizations, academics and NGOs in The Hague, New York, Geneva and Cambridge (US), [the Office's Prosecutorial Strategy for 2009-2012](#) is finalized and available on the website.

The Prosecutorial Strategy is based on four principles: (i) positive complementarity, meaning that it encourages genuine national proceedings where possible, relying on various networks and participating in a system of cooperation; (ii) focused investigations and prosecutions, concentrating on those most responsible for the most serious crimes under the jurisdiction of the ICC, and presenting selected incidents; (iii) addressing the interests of victims; and (iv) maximizing the impact of its work for the prevention of future crimes.



*Consultations on the Prosecutorial Strategy in Geneva, 3 November 2009*

The Strategy establishes five inter-related objectives for the coming three years:

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

*Find more on this item on page 3.*

## **1. Investigations and Prosecutions:**

### *a. General overview of the cases*

Over the week, the OTP presented 8 filings in the various cases and conducted 7 missions in 7 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***

25 January - In response to the Defence's request to limit the Chamber's questioning of witnesses, the Prosecution submitted that the Chamber may ask questions to fulfill its statutory obligation to establish the truth and to determine an appropriate sentence and reparations in case of conviction. The Prosecution agreed with the Defence that the parties and participants should be allowed to object to the Chamber's questions.

#### ***The Kivus Investigation***

27 January - The Prosecutor met with Rwandese Minister of Justice, Tharcisse Karugarama, and Rwandese Ambassador to the Netherlands, Jean-Pierre Bizimana. Following up on the visit of the Prosecutor to Rwanda in November 2009, and his meeting with President Paul Kagame, the Minister confirmed his Government's ability to assist with the OTP's investigation into crimes committed in the Kivus. Representatives of the Rwandan judicial system had a working session with OTP representatives. An OTP mission to Rwanda is scheduled for the coming week to further develop this cooperation.

28 January - OTP and OECD Representatives met in Paris to discuss cooperation, in particular with regard to OECD's efforts to promote responsible behavior of multinational enterprises in the mining sector in areas of conflict or fragility where the ICC is investigating.

### *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, 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.

19 January - In his latest [report](#) on implementation of the CPA in Sudan, the UN Secretary-General noted the threat posed to security in Western Equatoria by the LRA and assessed that at least 40% of South Sudan's population is at serious risk as a result, *inter alia*, of LRA-related violence. The report noted that UNMIS conducts pre-emptive patrolling in both Western Bahr el Ghazal and Western Equatoria since December 2009, in co-operation with MONUC, to mitigate the threat of LRA.

21 January - US Senators, among whom Senator Feingold, Senator Brownbeck and Senator Kerry, in a [letter](#) to the US Ambassador to the UN, Susan Rice, called for more to be done to provide security for the civilian population of Southern Sudan in the light of increasing violence and the destabilizing effect of attacks by the LRA.

25 January - Ugandan President Yoweri Museveni, in a meeting with the President of the Assembly of States Parties, [commended](#) the ICC for its efforts in fighting crime, saying that he totally supports the ICC because it has a duty to hold criminals accountable.

*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. The Prosecution [appealed](#) the decision of the majority of the Chamber to dismiss the charges of genocide. The Appeal decision is expected 3 February. 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.

*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. On 2 December, the Appeals Chamber upheld the Prosecution's appeal and [reversed](#) a previous decision of the Pre-Trial Chamber granting interim conditional release to Jean-Pierre Bemba Gombo. 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.

*f. [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. In his application, the Prosecutor noted 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 the civilian population.

Members of the Kenyan Truth, Justice and Reconciliation Commission engaged in a sensitization tour through Kenyan provinces related to their mandate - unearthing historical injustices and reconciling Kenyans. Commissioner Betty Murungi [stressed](#) the importance of witness protection, a responsibility which "*rests with the State.*"

*g. miscellaneous*

20-21 January - Civil Society Organisations in Africa and the Diaspora (CSOs) met in Addis Ababa to consider peace and security issues that African leaders will deliberate on during the 14<sup>th</sup> African Union Summit. The CSOs [affirmed](#) that effective prosecution of international crimes is an essential component for achieving sustainable peace and called upon the AU to conclude the Cooperation Agreement with the ICC. They also called on Member States to implement the report of the AU High Level Panel on Darfur.

## **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.

66 communications that may fall under Article 15 have been received by the Office in month of January. 54 of these communications were manifestly outside the jurisdiction of the Court; 12 communications warranted further analysis or were linked to a situation already under analysis. The total of Article 15 communications amounts to 8,630, of which 3,817 were manifestly outside the jurisdiction of the Court.

### *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.

26 January - The Prosecutor met with Guillermo Mendoza, interim General Prosecutor of Colombia. They discussed the cases brought against politicians linked with the paramilitaries (more than 12 parliamentarians and several mayors have been convicted by the Supreme Court). Prosecutor Moreno-Ocampo and Prosecutor Mendoza discussed the process of implementing the Justice and Peace Law notwithstanding the efforts to unveil thousands of killings and to compensate victims, and difficulties to reach final decisions. Prosecutor Mendoza noted the need to distinguish between casualties from actual fighting with guerrillas, illegal executions by police officers and army, and crimes committed for money (‘false positives’ cases).



### *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. Visits to both countries are planned for 2010.

22, 23 and 28 January - Various articles in the [Georgian](#) and [Russian](#) press announced visits by the OTP to Georgia in early February to “investigate” the circumstances surrounding the August 2008 war.

### *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. 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.

25 January - The President of the Palestinian National Authority, Mahmoud Abbas, issued a decree forming an independent investigation committee responsible for follow-up of the Goldstone Report recommendations. The panel will comprise eight members and is to be headed by former Palestinian Supreme Court President, Isa Abu Sharar.

29 January - Israel submitted an [official 46-page response](#) to the United Nations responding to allegations of war crimes against Palestinians in the Gaza Strip.

#### *e. 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. [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.

29 January - Deputy Prosecutor Bensouda met with Gambian President Yahya Jammeh to discuss *inter alia* Guinea.

### **3. Cooperation – Galvanizing Efforts to Arrest:**

#### *Continuation of this week's highlight*

(...)

The arrest and surrender of individuals subject to ICC warrants/summons remains of key importance to the Office. In accordance with its mandate to galvanize efforts to this end, the Office issued relevant guidelines for the consideration of States:

- a)** eliminate non-essential contacts with individuals subject to an arrest warrant issued by the Court. When contacts are necessary, attempt first to interact with individuals not subject to an arrest warrant;
- b)** in bilateral and multilateral meetings, proactively express support for the enforcement of the Court's decisions, request cooperation with the Court, and demand that crimes, if ongoing, cease immediately;
- c)** contribute to the marginalization of fugitives and take steps to prevent that aid and funds meant for humanitarian purposes or peace talks are diverted for the benefit of persons subject to an arrest warrant; and
- d)** make collaborative efforts to plan and execute arrests of individuals subject to an arrest warrant issued by the Court, including by providing operational or financial support to countries willing to conduct such operations but lacking the capacity to do so.

22 January - In a [letter](#) to AU Heads of State, Human Rights Watch called on African leaders to increase their attention to justice for victims of serious crimes. HRW [asserted](#) that Sudanese President Omar Al Bashir should face trial at the ICC.

26 January - OTP attended the symposium celebrating the 10<sup>th</sup> anniversary of the Stockholm Declaration on the Holocaust, which calls for education, remembrance and research about the Holocaust *“to ensure that future generations can understand the causes of the Holocaust and reflect upon its consequences”*. The symposium, organized by the Living History Forum, was hosted by Swedish Minister of Foreign Affairs Carl Bildt. Participants stressed the role of the ICC in preventing genocide. Elinor Hammarskiöld, Deputy Director-General and Head of the Department for International Law, Swedish Ministry for Foreign Affairs, stated that *“one of the main impacts of the Rome Statute... is the changes that it has brought about nationally, in States that have ratified it. It is not only the fear that if we commit abuses, we will be brought to The Hague; it is the changes that are happening as a result of the ratification at the national level, accepting accountability”*.

27 January - OTP attended and briefed the Permanent Council of the Organization of American States / Committee on Juridical and Political Affairs, during a working session on the ICC in Washington.

29-30 January - At the 40<sup>th</sup> World Economic Forum Annual Meeting in Davos-Klosters, the Prosecutor led discussions on Strengthening the Rule of Law. He also met with the President of the Republic of Slovenia, Danilo Türk, the President of Mexico Felipe Calderón, the Minister of Foreign Affairs of Denmark, Per Stig Møller, the Secretary General of the Arab League, Ambassador Amr Musa, Kofi Annan, AU mediator for Kenya, and Jerzy Buzek, President of the European Parliament, to discuss cooperation issues.

31 January - At the AU Summit the UN Secretary-General highlighted the determination to fight impunity. The Secretary-General confirmed his participation in the first Review Conference for the ICC, urging the audience to join a joint effort to strengthen the Court, the foundation stone of the system of international criminal justice, adding that peace cannot be sustained without justice.

#### **4. Coming Events:**

- 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
- 4-5 February - Prosecutor addresses the Council for Foreign Relations and has Governmental and Congressional meetings, Washington
- 14 February - Deputy Prosecutor participates in a panel during the documentary film series Best.Doks, Munich
- 15 February Prosecutor to co-chair Cinema for Peace gala event which highlights issues in Africa, Berlin
- 15-19 February - OTP mission, lead by Deputy Prosecutor, to Guinea in the context of preliminary examination activities
- 18 February - OTP attends seminar on the ICC and ratification of the Rome Statute in El Salvador, organized by the authorities of El Salvador and the Inter-American Juridical Committee of the OAS.
- 18 February - Prosecutor delivers speech at *Challenge Future* event hosted by Herausforderung Zukunft, Bochum
- 19 February - Prosecutor opens the London International Model United Nations Conference 2010
- 23 February - Prosecutor meets Baroness Scotland QC, Attorney General for England and Wales and Northern Ireland.
- 6 March - Deputy Prosecutor participates in the WOMEN Inc. International Festival, Amsterdam
- 7-10 March - Deputy Prosecutor delivers keynote address for International Women's Day, School of Law of the University of California, Davis, and Santa Clara University School of Law
- 12 March - Deputy Prosecutor participates in “Gender-Based Violence and Access to Justice in Conflict and Post-Conflict Areas” conference organized by Cornell Law School, Washington
- 22-25 March - Resumed session of the meeting of the Assembly of States Parties, New York
- 22-23 March - Prosecutor delivers the Amnesty International Chair public human rights lecture, Ghent University

\* 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)