



**THIS WEEK'S HIGHLIGHT: RESUMPTION OF THE LUBANGA TRIAL: UN SPECIAL REPRESENTATIVE TESTIFIES**



7 January - Ms. Radhika Coomaraswamy, Special Representative for Children and Armed Conflict, [testified](#) in the case of Thomas Lubanga Dyilo, leader of the UPC in DRC, who is accused of the conscription and enlistment of children and the use of children for active participation in hostilities. Ms. Coomaraswamy [shared](#) her expertise on the issue of children affected by war. *"The Lubanga trial represents a crucial precedent in the fight against impunity and will have a decisive deterrent effect against perpetrators of such crimes,"* she said.

Ms. Coomaraswamy was called by the Court as an expert witness after the submission in March 2008 of an *amicus curiae* legal brief containing observations on children enlisted and used by armed groups. She emphasized the impact of the Court's case. Lubanga's trial, which began nearly a year ago, has been hailed as a legal landmark because it is the first time an international court focuses exclusively on child soldiers. She said the prosecution of rebel leaders for exploiting children in war is persuading some groups to release underage fighters. Such court cases have *"sent many armed groups to us [...] willing to negotiate action plans for the release of children"*, said Coomaraswamy. She cited the release earlier of 3,000 former child soldiers from detention camps in Nepal as an example of former fighters being returned to society. The children were among nearly 20,000 former Maoist rebels who had lived in the camps since 2006. Coomaraswamy also explained to the three-judge panel why children's fearlessness makes them ideal "cannon fodder" in conflicts from Asia to Africa. Children under 15 *"have an underdeveloped notion of death"*. She said the latest "sad manifestation" of rebel groups exploiting such fearlessness is the use of teenagers as suicide bombers in countries such as Afghanistan.

Ms. Radhika Coomaraswamy told the ICC that courts must extend their protection to children used as "cannon fodder" or sex slaves in conflicts around the globe. Coomaraswamy urged judges not to differentiate between children forced to fight and those turned into "bush wives" to cook and provide sex to troops. *"The court should see children as a special category, creating a framework that protects their vulnerability"*, she said. *"Any framework for protection of children in wartime and accountability of those who use them [...] must include girls."*

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

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

Over the week, the OTP presented 7 filings in the various cases and conducted 4 investigative missions in 3 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.

23 December - the UN Security Council [extended](#) MONUC's mandate until 31 May 2010. The Council welcomed the commitments made by the DRC Government to hold accountable those responsible for atrocities and noted its cooperation with the ICC. The Council demanded that all armed groups, in particular the FDLR and the LRA, immediately cease abuses against the civilian population, in particular gender-based violence; and immediately stop recruiting and using children and release all children associated with them. The UN Security Council further reiterated that the support of MONUC to FARDC-led military operations is conditioned on FARDC's compliance with international humanitarian law, human rights and refugee law. In accordance with its mandate, MONUC has the duty to lend support to the DRC authorities in proceeding with the arrest of persons indicted by the ICC, such as Bosco Ntaganda.

### ***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 trial resumed on 7 January 2010 with the hearing of experts.

8 January - In response to the renewed request by Legal Representatives of victims that the Trial Chamber consider re-characterisation of facts and circumstances pursuant to Regulation 55, the Prosecution submitted that as the Appeals Chamber emphasised, exercise of Regulation 55 must be limited to those facts and circumstances "*described in the charges*". The Prosecution observed that the sexual slavery, sexual abuses, and other acts of violence and cruelty committed against child soldiers have been and will continue to be an integral part of the case and will justify calling for a severe sentence to reflect the full extent of their suffering. The Prosecution submitted that there is no need to engage Regulation 55. Trial Chamber I refused the renewed motion by the Legal Representatives, following the Appeals Chamber decision. TC I noted that modifications to the legal characterisation of facts as requested by the Legal representatives could only be proved by reference to evidence (i) not referred to by the Pre-Trial Chamber in the Decision on the Confirmation of Charges and (ii) not referred to by the Pre-Trial Chamber in that Decision as supporting the legal elements of the crimes charged. In the result, the proposed modifications would infringe the Appeals Chamber's interpretation of Regulation 55.

### ***Case: The Prosecutor v. Katanga and Ngudjolo***

In advance of the upcoming hearing of Prosecution witnesses in the case, the Prosecution continued following up on potential security concerns for its witnesses, in liaison with the VWU and the Trial Chamber as relevant.

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

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.

23 December - UN Under-Secretary-General for Humanitarian Affairs John Holmes [called for](#) stronger measures to protect civilians, saying that "[...] the LRA is increasingly a regional threat, destabilising a significant area of Central Africa by committing atrocities against civilians in the CAR and Southern Sudan, as well as the DRC. The magnitude of the problem and the enormous threat to the civilian population requires concerted efforts by the Governments of the DRC and neighbouring countries, and by the wider international community to protect civilians and resolve the threat posed by the LRA in the region once and for all".

2 January - A Ugandan army spokesman [announced](#) Ugandan forces had killed senior LRA commander 'Brigadier' Bok Abudema in the South East of the Central African Republic on 1 January. UPDF troops, working together with their counterparts in North Eastern DRC, South Eastern CAR and Southern Sudan continue operations against the LRA, and LRA commanders subject to ICC arrest warrants, Joseph Kony, Okot Odhiambo and Dominic Ongwen.

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. Ahmad Harun and Ali Kushayb***

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

The OTP has provided information through three filings on 29 December, 5 January and 11 January to Pre-Trial Chamber I in relation to the Haskanita case.

**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. 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.

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

*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 and on the [revised version of the Prosecutorial Strategy for 2009-2012](#) can be sent to Olivia Swaak-Goldman ([Olivia.Swaak-Goldman@icc-cpi.int](mailto:Olivia.Swaak-Goldman@icc-cpi.int)) by 22 January 2010. The final version of the policy paper and Prosecutorial Strategy 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.

*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.

10-14 December - As part of its preliminary analysis of the situation in Georgia, the OTP has sent letters to Georgia and Russia.

*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.

12 January - In response to a letter by the Office of the High Commissioner for Human Rights, dated 14 December 2009 in relation to the Palestine situation, the Office sent to the UN an [update](#) of its activities in relation to jurisdiction and national proceedings.

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.

5 January - Kenya media sources suggested that a [campaign](#) to silence potential witnesses for the ICC has significantly intensified in recent weeks and that several witnesses have allegedly been targeted. Ken Wafula, Director of the Centre for Human Rights and Democracy, was quoted as saying that a victim of post-election violence believed to be a key witness was tortured and killed by police in the first week of January.

6 January - The Kenya National Commission on Human Rights issued a communiqué asking the Pre-Trial Chamber to authorize investigations into the post-election violence as soon as possible. "*There is anxiety with respect to the intervention of the ICC and it is the desire of most Kenyans that this matter be dispensed expeditiously and preferably before the next general election,*" Mr Hassan said.

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.

7 January - The OTP announced the visit of Deputy Prosecutor Fatou Bensouda and an OTP mission to Guinea in the week of 19 January.

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

30 December - Sudanese President Omar Al Bashir traveled to Saudi Arabia, a non State party. According to media reports, the matter discussed was the threat posed by Shi'ite Muslim insurgents from Yemen who crossed the border into the Kingdom.

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

- 13 January - Prosecutor participates in event at the Fletcher School for Law and Diplomacy, Medford
- 26 January - Trial resumes in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*
- 27-31 January - Prosecutor participates in 40<sup>th</sup> World Economic Forum Annual Meeting, Davos-Klosters
- 28-29 January - Deputy Prosecutor participates in conference organized by the Gambia Bar Association, Banjul
  
- 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 addresses Washington membership of the Council for Foreign Relations, Washington
- 18 February - Prosecutor delivers speech at *Challenge Future* event hosted by Herausfordereung Zukunft, Bochum
- 19 February - Prosecutor opens the London International Model United Nations Conference 2010
- 23 February - Prosecutor to meet with Baroness Kinnock, UK Minister of State for Foreign Affairs
  
- 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
- 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
- 22-25 March - Resumed session of the meeting of the Assembly of States Parties, New York
- 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)