



## OTP Weekly Briefing

16-22 November 2010 – Issue #64

### THIS WEEK'S HIGHLIGHTS:

- JEAN-PIERRE BEMBA'S TRIAL STARTED – THE ISSUE AT TRIAL: THE RESPONSIBILITY OF A MILITARY COMMANDER FOR THE MASSIVE RAPES COMMITTED BY HIS TROOPS
- TWO ADDITIONAL SITUATIONS UNDER PRELIMINARY EXAMINATIONS ARE MADE PUBLIC BY THE OTP TO ENCOURAGE NATIONAL PROCEEDINGS AND PREVENT RECURRENCE OF VIOLENCE – NIGERIA AND HONDURAS

### PREVIEW

- OTP statement on recent clashes in Guinea following electoral results, p. 5

### The trial against Jean-Pierre Bemba



22 November - During the [opening statement](#), the Prosecutor stressed: “The nature of the crimes committed by Jean Pierre Bemba’s troops was unspeakable. Bemba’s troops stole from the poorest people of one of the poorest countries in the world. The massive rapes were not just sexually motivated, as gender crimes; they were crimes of domination and humiliation, directed against women, and against men with authority. They spread terror and devastated communities by means of the cheapest weapons and most available ammunition. Women were raped systematically to assert dominance and to shatter resistance. Men with authority were raped in public to destroy their capacity to lead.”

“A commander that lets his troops carry out such criminal tactics is hundreds of times more dangerous than any single rapist. Jean-Pierre Bemba knowingly let the 1,500 armed men he commanded and controlled commit hundreds of rapes. Command responsibility means that the commander owns the actions of his troops. Bemba’s weapon was his army; Bemba’s body was his army; the result of his intentional lack of control was hundreds of civilians raped. This Chamber will decide Jean-Pierre Bemba’s individual criminal responsibility like any other criminal court. But the preventative aspect of this trial - its forward-looking aspect - has no precedent. Unlike any other Court, the International Criminal Court’s decision will influence the behaviour of thousands of military commanders from the 114 States Parties. The decision will enforce a law adopted by States Parties and make a difference. The difference between a military commander and a criminal is respect for the law.”

SRSG on sexual violence in conflict, Margot Wallström, attended the first day of the trial and held meetings with the OTP. The SRSG stressed: “Today represents a milestone in the history of international criminal justice. [...] Sexual violence is at last being treated the way women have always experienced it – as a tactic of war and terror. [...] [This case] signals that no leader – however connected – is above the law; and no civilian – however isolated – is below it. [...] The charge of command responsibility should give pause to the leaders of armed groups who pursue political power through violence. [...] I am convinced that the tide of impunity is turning. Rule by rape will no longer lead to the corridors of power; it will lead to the cells of a prison. [...] Positions of military and political leadership are positions of responsibility, not immunity.”



## The Prosecutor announces publicly that the situations in Nigeria and Honduras are under preliminary examination

18 November - Prosecutor Moreno-Ocampo announced that the OTP was analysing the situations in Nigeria and Honduras. Regarding the latter, the Prosecutor noted that the Office “has received many communications on crimes linked to the coup of June 2009. There were different allegations, mostly regarding alleged massive cases of torture and more than a thousand people being arrested in one day”. The Office met with the Honduras Minister Counsellor in The Hague on 22 November, who provided relevant information and promised their full cooperation. The Office has also been proactively monitoring this situation, in accordance with its mandate, and analysing different sources of information. Regarding Nigeria, the Office has been analyzing the alleged crimes committed in Central Nigeria since mid-2004 and is looking forward to engaging constructively with the Nigerian authorities on the issue. Regarding both situations, the Office is still at the beginning of its preliminary examination work, in the process of determining whether or not Rome Statute crimes have been committed or not.

In order to fulfil its mandate and maximize the preventative impact of its work, the Office will make public its preliminary examination activities when it assesses that this will have a positive impact in stopping violence and preventing future crimes or when the senders of communications make them public.

## I. Investigations and Prosecutions

Over the week, the OTP presented 8 filings in the various cases and conducted 4 missions in 4 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. On 28 September 2010 the judges issued an arrest warrant under seal against Callixte Mbarushimana, Executive Secretary of the FDLR. He was arrested on 11 October in Paris.

### 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 same period, more than 120,000 people have been displaced, and more than 250 people killed by the LRA in Southern Sudan and the Central African Republic.

### 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 have been issued, against [Ahmad Harun and Ali Kushayb](#), and against [Omar Al Bashir](#), which are outstanding. Also three summons to appear have been issued, against [Bahar Idriss Abu Garda](#) and against [Abdallah Banda Abaker Nourain and Saleh Mohammed Jerbo Jamus](#). On 12 July, Pre-Trial Chamber I issued a [second warrant of arrest](#) against Omar Al Bashir for three counts of genocide committed against the Fur, Masalit and Zaghawa ethnic groups: genocide by killing, genocide by causing serious bodily or mental harm and genocide by deliberately inflicting on each target group conditions of life calculated to bring about their physical destruction. Abu Garda [voluntarily appeared](#) before the Court pursuant to a summons. 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. On 25 May the PTC Chamber issued its [‘Decision informing the United Nations Security Council about the lack of cooperation by the Republic of the Sudan’](#) in the case against Harun & Kushayb. On 17 June, Abdallah Banda Abaker Nourain and Saleh Mohammed Jerbo Jamus [appeared](#) voluntarily before the ICC, to answer charges of war crimes for their roles in the 2007 attack against African Union peacekeepers in Haskanita. The Pre-Trial Chamber set the [confirmation of charges hearing](#) for Banda and Jerbo for 8 December 2010.

16 November - The South Darfur State government has [reportedly](#) called on local communities to join with the Sudan Armed Forces to fight rebels in the region. One of the leaders of the Rizeigat, speaking anonymously, warned against mobilization, saying “We want to tell our people not to listen to these talks, our message is no to war, no to destruction. Those whom we are fighting are

the sons of this country; we are against those who are mobilizing people. The opposition movements emerged to fight the injustice inflicted upon the people of Darfur.” This follows other reports that a group of Arab fighters has joined SLA-Abdel Wahid.

16 November - The UNSC held a ministerial level meeting on the Sudan. During the [meeting](#), accountability and the ICC were raised. In the presidential statement, “The Security Council recall[ed] the importance it attaches to an end to impunity, and to justice for crimes committed in Darfur,” also reiterating “its call for an end to impunity for those who attack peacekeepers and humanitarian workers”. UK Secretary of State William Hague reiterated “we strongly support the work of the ICC in Darfur and urge the Government of Sudan to comply with its obligations under United Nations Security Council Resolution 1593”. US Secretary of State Clinton stated “In Darfur and elsewhere, the Government of the Sudan must live up to its international obligations to respect human rights, allow humanitarian assistance, protect civilians — including victims of sexual violence — ensure that refugees and internally displaced people can return in safety and with dignity, and bring those responsible for the atrocities to justice. As President Obama said here in New York, accountability sends a powerful message that certain behaviour, including genocide, is not acceptable.” Austrian Minister of Foreign Affairs Michael Spindelegger stated that “We strongly support all efforts to strengthen mechanisms to promote justice, accountability and reconciliation, in particular the ICC. Peace and justice must go hand in hand.” Bosnian Minister of Foreign Affairs, Sven Alkalaj, stated that “Addressing those aspects, together with the rule of law and justice — particularly ending impunity and holding all perpetrators of war crimes responsible — would offer a solid basis for sustainable peace in Darfur.” French Ambassador Gérard Araud stated that “There can be no peace without justice in Darfur. The crimes that have been committed there cannot go unpunished. We therefore call on all States to cooperate with the ICC pursuant to resolution 1593 (2005).” Mexican Ambassador Claude Heller stated that “We cannot dodge the need to tackle impunity in the region. Those who perpetrate crimes against the civilian population and the personnel of the AU-UN Hybrid Operation in Darfur must face appropriate punishment. Mexico would therefore once again recall the international obligations of the Government of the Sudan in this respect, including the provisions contained in resolution 1593 (2005) related to cooperation with the ICC.” Turkish Ambassador Ertugrul Apakan stated that “We condemn all attacks on civilians, humanitarian workers and the AU-UN Hybrid Operation in Darfur, and call for the perpetrators to be brought to justice.”

17 November - Pre-Trial Chamber I [decided](#) that the hearing on the confirmation of charges in the Banda and Jerbo case will be held in the absence of the two suspects, and set two sessions to hold the confirmation hearing on 8 December 2010. On 19 October, the Prosecution and Defence for Banda and Jerbo had made a joint filing before the Chamber informing the Judges of the agreement between the parties on the facts, which may allow for a shortened confirmation hearing.

18 November - The Kenyan High Court [received](#) a request from the local chapter of the ICJ that seeks an order from the judges forcing the government to arrest president Al-Bashir should he be present in the country. High Court Judge Nicholas Ombija directed that the suit papers be served on the Attorney General. The parties will appear before him for a hearing on 23 November. The case represents the first legal challenge to decisions made by governments to flout their obligations to the Rome Statute.

#### 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. In parallel, the Office continues to monitor allegations of crimes committed since the end of 2005. The trial started on 22 November 2010.

#### 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 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. The Prosecution has announced that in the course of 2010, it will present two cases against 2 or 3 individuals alleged to be most responsible in accordance with the evidence.

15-22 November - An OTP team participated in conferences and workshops throughout Kenya organized by civil society, to further explain the work of the OTP and outline the procedural roadmap for the weeks and months ahead. OTP staff led a media workshop in Nairobi on the “Functions, Structure, Activities and Public Information in the Kenyan Context” to a cross-section of Kenyan publishing, television and radio media. In Nakuru, the capital of the Rift Valley province, OTP staff spoke to over 50 civil society and religious leaders as part of a three-day workshop on “Enhancing the Role of Community-based Human Rights Organizations in Transitional Justice Processes in Kenya”, organized by the Centre for Human Rights and Democracy (CHRD), Muslims for Human Rights (MUHURI) and ICTJ. The OTP was well received at similar events held in Kisumu, where over 100 persons from civil society attended, and Eldoret, with over 160 persons representing civil society, religious groups and ethnic communities. In Nairobi, at a Human Rights Institute-organized conference on “Complementarity and the ICC”, OTP staff presented the Prosecutorial Strategy and engaged the audience of human rights representatives in a discussion on the impact of the work of the OTP in Kenya and the role of civil society in fighting impunity.

## II. Preliminary Examinations

**DRAFT [POLICY PAPER](#) ON PRELIMINARY EXAMINATIONS:** In order to provide additional time for comments and feedback, the deadline for submissions has been extended to 1<sup>st</sup> December. The ninth session of the ASP in New York, from 6 to 10 December 2010, will be the final opportunity for external partners to submit their comments. The Office will take into consideration all the comments sent by States, international organizations, civil society and other stakeholders.

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. A second mission to Georgia was conducted in June 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. 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. In 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 informed of its 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. From 19-21 May a second OTP mission met with the Guinean Minister of Justice, Col. Lohalamou, and Guinean judges. A third OTP mission, lead by Deputy Prosecutor Bensouda, went to Conakry from 8 to 12 November 2010, and met with President Sékouba Konaté, Prime Minister Doré, as well as both election candidates. The Guinean authorities extended full cooperation to the Court.

19 November - Deputy Prosecutor Fatou Bensouda issued the following [statement](#): *“The Office of the Prosecutor keeps a close eye on the situation in Guinea and deplores that at least seven persons have been reportedly killed since the announcement of the election results. In light of the proclamation of a state of emergency in Guinea, I urge the security forces to refrain from any excessive use of force against the civilian population. I encourage the political leaders to further call their supporters and fellow citizens to calm and to avoid unrest. I invite the Guinean authorities to investigate the criminal incidents that have already occurred and any possible future ones. All reported act of violence will be closely scrutinized by the Office of the Prosecutor in order to determine whether crimes falling under the Court’s jurisdiction are committed and should warrant an investigation”*.

## III. Cooperation – Galvanizing Efforts to Arrest

15-18 November - Senior OTP staff briefed senior US government and UN officials on the OTP’s ongoing activities, focused in particular on OTP activities with regard to the FDLR and the LRA. The OTP representatives also briefed NGOs on these issues.

20 November - On the Universal Children’s Day, SRSG Radhika Coomaraswamy and Under-Secretary-General Alain Le Roy issued a joint [statement](#), remembering *“the needs of the children in Afghanistan, Burundi, CAR, Chad, Côte d’Ivoire, DRC, Haiti, Iraq, Lebanon, Myanmar, Nepal, Occupied Palestinian Territory and Israel, Somalia, Sudan, and all other countries in conflict, [and reaffirming] our commitment to be their voices and protectors [...] In a joint effort by our offices, UNICEF and other UN partners, we have achieved notable success in protecting children affected by conflict. In 2010 alone, with the assistance of UN peacekeepers from the MONUSCO, armed forces and groups in the country freed over 1,000 girls and boys from their ranks. UNMIS and UNICEF facilitated the demobilization of over 200 children and the UNAMID played an important role in the release of close to 1,000 children over the last year. In Afghanistan, Myanmar and the DRC, three agreements for the release of child fighters are currently being prepared”*.

19-20 November - Deputy Prosecutor Fatou Bensouda gave a key note address on “Impunity and Human Rights Abuses in Sub-Saharan Africa: the Role of the ICC” at an event organized by the Africa Center for Information & Development in Oslo. Mrs. Bensouda also held meetings with Norwegian officials, including with Rolf Fife, Director General of the Department for Legal Affairs of the Ministry of Foreign Affairs. The Deputy Prosecutor updated Mr. Fife on the recent activities of the OTP, as well as on the ongoing discussions regarding the mandate of the Independent Oversight Mechanism (IOM).

#### IV. Upcoming Events

- 6-10 December - Prosecutor and Deputy Prosecutor participate in the ninth session of the Assembly of States Parties, New York
- 7 December - Prosecutor gives key note speech at a World Bank event on global cooperation to investigate crimes, Washington DC
- 8 December - Prosecutor participates in expert discussions hosted by the Council on Foreign Relations on the OTP's policy paper on preliminary examinations, New York
- 8 December - Confirmation of Charges Hearing in the case of the Prosecutor v. Abdallah Banda and Saleh Mohammed Jerbo
- 9 December - Prosecutor briefs the UN Security Council on Darfur, New York

*\* 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)*