

July 2007

Dear Friends,

This is the third edition of **Eye on the ICC**, a regular e-update on developments at the International Criminal Court (ICC) as they relate to promoting women's human rights and gender justice.

Eye on the ICC provides up-to-date information on the substantive work of the ICC, its investigations and prosecutions, trials, participation of victims/survivors, and judicial decisions as well as our own work in ensuring the prosecution of gender based crimes, access to justice for women in conflict situations and reparations for women victims/survivors of war and armed conflicts.

More information about the work of the Women's Initiatives for Gender Justice and previous editions of **Eye on the ICC** can be found on our website, www.iccwomen.org. If you would like to subscribe to **Eye on the ICC**, please send an e-mail to grcampaign@iccwomen.org with your name, contact information and organization. We look forward to hearing from you.

Sincerely,
Women's Initiatives for Gender Justice

Women's Initiatives for Gender Justice Legal Officer

Reminder - we are seeking to fill the post of **Legal Officer**. Applications close 10 July 2007; further details are available on our website <http://www.iccwomen.org/>

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International Criminal Court (ICC)

There are currently four situations before the Court at various stages of proceedings (Central African Republic, Darfur, the DRC and Northern Uganda). In the Central African Republic, the ICC Prosecutor announced at the end of May the official opening of an investigation with a focus on investigating rape and other forms of sexual violence. In Darfur, arrest warrants issued in April against two Sudanese individuals have yet to be executed. In the DRC, charges against the first accused before the ICC have been confirmed and a second investigation in the situation is at

an advanced stage. In Uganda, arrest warrants for four commanders of the Lord's Resistance Army (LRA) are still outstanding. In addition the Government of Uganda and the LRA continue to be engaged in Peace Talks and most recently reached an agreement on 'Accountability and Reconciliation', the third item on a five-point agenda for the peace negotiations.

Below is a summary of the most recent developments in the situations before the Court. Further information on each of these items is available on the 'News' section of our website: http://www.iccwomen.org/news/2007_05_18.php

Central African Republic (CAR)

On 22 May 2007, ICC Prosecutor Luis Moreno-Ocampo announced the decision to open an investigation in the Central African Republic (CAR). The Court's preliminary analysis of alleged crimes reveals the peak of criminality occurred in 2002 and 2003, in the context of an armed conflict between the government and rebel forces.

In the CAR, local women's rights advocates and NGOs have documented more than 1,000 incidents of sexual violence during 2002 and 2003.

The government of the CAR referred the situation to the Prosecutor, and the Cour de Cassation, the CAR's highest judicial body, subsequently confirmed that the national justice system was unable to carry out the complex proceedings necessary to investigate and prosecute the alleged crimes.

On 22 May 2007, the Women's Initiatives issued a press statement welcoming the opening of an investigation which is significant because it is the first time the Prosecutor has announced the intention to explicitly investigate gender based crimes as a priority at the outset of a formal investigation.

Given the evidence and information already gathered by local NGOs and the willingness of victims/survivors and witnesses to report the crimes, we anticipate full and comprehensive charging for gender based crimes this time by the ICC. Full text of press release: http://www.iccwomen.org/news/docs/Press_ReleaseMay07.pdf

The Women's Initiatives is planning to return to the CAR for a workshop with women activists on access to justice and the ICC.

Darfur

On 2 May 2007, the judges of Pre-Trial Chamber I issued arrest warrants for Ahmad Harun, a former State Minister for the Interior and currently the State Minister for Humanitarian Affairs, and Ali Kushayb, an alleged Janjaweed leader, holding that there are reasonable grounds to believe the suspects bear criminal responsibility for war crimes and crimes against humanity. Among the 51 charges included in the Prosecutor's application to the Pre-Trial Chamber are rape as a war crime and crime against humanity. Rape is also charged as other forms of violence including persecution and outrages upon personal dignity.

Since the announcement on 2 May 2007 of the arrest warrants for Ahmad Harun, a former State Minister for the Interior and currently the State Minister for Humanitarian Affairs, and Ali Kushayb, an alleged Janjaweed leader, the Sudanese government has consistently rejected their

legitimacy and the Sudanese Justice Minister has indicated the government would not hand over Harun and Kushayb.

On 7 June 2007, Prosecutor Moreno-Ocampo briefed the United Nations Security Council on the need to arrest the two suspects. In his statement to the Security Council, the Prosecutor pointed out that Ahmad Harun is the Sudanese Minister responsible for providing humanitarian assistance to more than four million people in Darfur, and that the situation in Darfur “remains alarming” in view of allegations of ongoing air strikes by the Sudanese government, continuing reports of women being raped if they venture outside the IDP camps, and allegations of crimes committed by rebel forces, including well-documented attacks against international peacekeepers and aid workers. Between February and May 2007, 11 African Union peacekeepers and police officers were killed and numerous aid workers have been assaulted.

On 22 June 2007, the ICC Presidency ruled that resigning Judge Jorda would be temporarily replaced by Judge Ušacka, who is assigned to the Trial Division, taking effect 25 June 2007, for the purpose of proceedings before Pre-Trial Chamber I. Pre-Trial Chamber I is now comprised of Judge Akua Kuenyehia, Judge Anita Ušacka and Judge Sylvia Steiner.

In March 2007, the UN Human Rights Council convened a group of experts, which includes Radhika Coomaraswamy, Special Representative of the Secretary-General for children and armed conflict and Yakin Ertürk, Special Rapporteur on violence against women, to work with the Sudanese government and the appropriate human rights mechanisms of the African Union to ensure the effective follow-up of the implementation of resolutions and recommendations on Darfur made by the High-Level Mission on the situation of human rights in Darfur, and to contribute to monitoring the human rights situation on the ground. Among the High-Level Mission’s findings was evidence of the widespread and systematic commission of rape and sexual violence in Darfur. At the Fifth Session of the Human Rights Council in June 2007, the group of experts submitted a paper featuring concrete recommendations to the Sudanese government on, among other issues, the protection of women against violence. These recommendations include ensuring women victims/survivors of sexual violence have access to medical care, regardless of whether they choose to report their case to the police, publicly acknowledging and condemning violence against women and reaffirming that there will be zero tolerance for such crimes, and undertaking swift action to investigate, identify and prosecute perpetrators and compensating victims/survivors.

In July 2007, the Women’s Initiatives will be working with women activists from the Sudan for a workshop on *Women’s Human Rights and Gender Justice*.

Democratic Republic of the Congo (DRC)

On 5 June 2007, the Presidency of the Court transmitted to Trial Chamber I the full record of the proceedings concerning Thomas Lubanga Dyilo, founder and president of the Union des Patriotes Congolais (UPC), a militia group in the Ituri region of eastern DRC, including the decision confirming the charges and committing Thomas Lubanga for trial, Lubanga’s application before Pre-Trial Chamber I seeking a review of the Registrar’s decision on his application for additional resources and two *amicus curiae* applications.

On 25 May 2007, Thomas Lubanga requested the Pre-Trial Chamber to order the Registrar to take all necessary measures to guarantee that additional resources are granted to his Defence Counsel. According to Lubanga, the Registry pushed him to self-represent due to the lack of adequate resources for his defence. Subsequently, l’Order des Avocats de Paris and the

International Criminal Bar separately requested leave to file an amicus brief on the adequate provision of legal aid for Thomas Lubanga. On 5 June 2007, the Pre-Trial Chamber rejected the requests concluding that it had no jurisdiction to rule on the requests made by Thomas Lubanga and the *amicus curiae* filings, because it is no longer seized of any matter in the Lubanga case.

On 24 May 2007, the Pre-Trial Chamber in the Lubanga case rejected both the Prosecution and Defence Applications for leave to appeal the decision on the confirmation of charges because the matters did not constitute issues that would affect the “fair and expeditious conduct of the proceedings or the outcome of the trial”.

On 29 January 2007, charges of enlisting and conscripting child soldiers and using them to participate actively in hostilities were confirmed against Thomas Lubanga Dyilo. A Trial Chamber was constituted and Catherine Mabilie was confirmed as the replacement for the Lead Defence Counsel Jean Flamme, who withdrew from the case in March.

Despite widespread documentation of gender based crimes, including a confidential report by the Women’s Initiatives for Gender Justice submitted to the Prosecutor in August 2006 documenting over 30 interviews with victims/survivors of gender based crimes committed by the UPC, these crimes were not charged in the Prosecutor’s case against Lubanga. In November 2006, the Women’s Initiatives submitted our second filing to the ICC requesting leave from the Pre-Trial Chamber in the Lubanga case to present arguments regarding judicial oversight of the Prosecutor’s discretion in the selection of charges. Chambers has yet to rule on this request.

A second investigation is well underway in the DRC situation, and charges are expected in the coming few months.

In March and June 2007, the Women’s Initiatives for Gender Justice, in collaboration with Congolese women’s rights and human rights activists (names of organisations omitted for security reasons), conducted consultations and interviews with women victims/survivors from eastern DRC and documented gender based crimes including rape, sexual slavery, and other forms of sexual violence committed by specific militia groups in the region. This information has been submitted to the ICC.

In total we have now conducted four documentation missions since May 2006 and gathered almost 120 interviews with women victims/survivors of gender based crimes. These have been submitted to the ICC as part of our advocacy calling for the effective investigation of these crimes. We are now analyzing information from all of the interviews in relation to the pattern of attacks, crimes and perpetrators. Our initial analysis shows clear patterns of abduction, sexual and other enslavement, rape, often repeated rape and gang rape, and multiple incidents of attacks.

Northern Uganda

Two years have passed since arrest warrants were issued by the ICC against five Lord’s Resistance Army (LRA) commanders and these have yet to be executed. Two of the five commanders are charged with crimes of sexual violence, including inducing rape as a war crime and rape and sexual enslavement as crimes against humanity.

Since July 2006, the Ugandan government and the LRA rebels have been in Peace Talks and the two parties signed an “Agreement on Accountability and Reconciliation between the Government of Uganda and the Lord’s Resistance Army/Movement” on 29 June 2007 for crimes committed during the conflict in northern Uganda, the third item on the Talks’ five-point agenda. The agreement is based on the view that the Ugandan national legal and institutional framework

provides a sufficient basis for ensuring accountability and reconciliation in Uganda with respect to crimes committed during the conflict, while the parties correspondingly agree to utilize “alternative justice mechanisms...in certain instances”. The agreement is further contended to fulfill the complementarity principle enshrined in the ICC Statute, which renders a case inadmissible when it is already being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution. Since the end of 2006, the Ugandan government has been under increasing pressure from the LRA to request the ICC to suspend the arrest warrants against their top leadership.

In order for the agreement on ‘Accountability and Reconciliation’ to be implemented, both parties need to agree on the mechanisms of its implementation. The LRA and the Ugandan government have agreed to return to their constituencies for consultations and will return in August 2007 to resume discussions.

At the end of July, Women’s Initiatives will be returning for Phase III of our work in north and north eastern Uganda on access to justice for women victims/survivors. We are currently working with local partners to advocate for women from northern Uganda to have access to the Peace Talks between the Government of Uganda and the LRA and we are preparing to attend the Talks with a small team of women from the conflict-affected communities. Currently there are no representatives of women’s organizations participating in the Peace Talks, no gender advisors for either of the negotiating parties and no gender technical team for the process itself. We are writing to the UN Secretary General Ban Ki-Moon, Chairperson of the African Union John Kufuor and the mediator of the Peace Talks Vice-President of South Sudan Dr. Riek Machar, urging them to enable women’s participation in the Peace Talks and to establish specific mechanisms to ensure sufficient gender expertise to advise the remaining stages of the peace negotiations.

Women’s Initiatives for Gender Justice

Special Court for Sierra Leone

To date, 11 defendants have been indicted at the Special Court for Sierra Leone, eight of which are indicted for crimes of sexual violence. Of the five indictments, four include charges for crimes of sexual violence. The “AFRC Accused” is the only completed case at the Special Court, and it involves convictions for rape and outrages upon personal dignity (sexual slavery) against the three accused.

Charles Taylor

Since the beginning of Charles Taylor’s trial in the Hague on 4 June 2007, the Women’s Initiatives for Gender Justice has been monitoring the case.

While Taylor’s trial was scheduled to begin on 4 June 2007, it was delayed because of issues concerning the adequacy of Taylor’s defence, particularly the facilities and resources allocated to it and how these have impacted upon Taylor’s fair trial rights. The Trial Chamber subsequently ordered the Registry to provide sufficient funds for Taylor to assemble a defence team comprised of one lead counsel, two co-counsel, and one senior investigator. On 3 July 2007, Taylor made his first appearance at his trial and entered a plea of “not guilty” to an amended charge of sexual slavery, which was originally indicted as “sexual slavery and any other form of sexual violence.” The Trial Chamber also confirmed Taylor’s trial shall resume on 20 August 2007 after the recesses of the Special Court and the ICC.

On 20 June 2006, Charles Taylor, indicted of 11 counts of violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II, crimes against humanity, and other serious violations of international humanitarian law, was transferred to the Hague following a resolution by the UN Security Council which determined Taylor's presence in the West African sub-region constituted "a threat ... to international peace and security in the region".

The charges in Charles Taylor's indictment include rape and sexual slavery as crimes against humanity and outrages upon personal dignity as a violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II. All charges alleged in the indictment were committed within the territory of Sierra Leone after 30 November 1996. Taylor has pleaded "not guilty" to all charges against him.

The AFRC Accused

The "AFRC Accused", comprised of Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu, were charged with 14 counts of violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II, crimes against humanity, and other serious violations of international humanitarian law, including four counts of sexual violence: (1) rape as a crime against humanity, (2) sexual slavery and other forms of sexual violence as a crime against humanity, (3) other inhumane act (forced marriage) as a crime against humanity and (4) outrages upon personal dignity as a violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II.

On 20 June 2007, Trial Chamber II of the Special Court for Sierra Leone convicted the three accused of 11 counts, including rape as a crime against humanity and outrages upon personal dignity (sexual slavery) as a violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II.

The Trial Chamber did not convict the accused of "sexual slavery and other forms of sexual violence" because it felt the Prosecution was required to charge each crime under a *separate* count and that the count as pled was "duplicious", since two different crimes (sexual slavery and other forms of sexual violence) were included in one count. The Trial Chamber also did not convict "other inhumane act" because it found no evidence of sexual violence constituting an "other inhumane act" (forced marriage) not already subsumed under rape or outrages upon personal dignity (sexual slavery). In their view, the evidence of forced marriage amounted to proof of sexual slavery and not a separate crime against humanity of "forced marriage". Moreover, they interpreted "other inhumane act" restrictively as applying only to acts of a non-sexual nature amounting to an affront to human dignity, in light of the exhaustive category of sexual crimes particularized in the Statute of the Special Court.

Since there was significant evidence of sexual slavery introduced during trial, the Trial Chamber decided it was in the "interests of justice" to consider this evidence under "outrages upon personal dignity", held that sexual slavery meets the definition of an outrage upon personal dignity and found that crimes of outrages upon personal dignity (sexual slavery) were committed.

The Trial Chamber's restrictive interpretation of "other inhumane act" as applying only to acts of a non-sexual nature, and its equating of forced marriage with sexual slavery are problematic. In the Trial Chamber's view, the evidence revealed "not one of the victims of sexual slavery gave evidence that the mere fact that a rebel had declared her to be his wife had caused her any particular trauma". However, in her dissenting opinion Justice Doherty observed a "wife" was obliged to work and care for her "husband" and his property, fulfill his sexual needs, remain faithful and loyal to him and bear his children in exchange for protection from rape by other men,

provision of food and the status of “wife”. This resulted in “serious psychological and moral injury...which had lasting and serious impacts on the victims”, including stigmatization and difficulty in reintegrating into their communities. In contrast, victims/survivors of sexual slavery were sexually available to any rebel, but were not stigmatized as “rebel wives” or “bush wives”. Although the overlapping injuries experienced by victims/survivors of forced marriage and sexual slavery should be recognized, where there is evidence distinguishing forced marriage from sexual slavery, a corresponding legal distinction between the different experiences of harm should be applied.

Crime of Aggression

From 11 - 14 June 2007, the Women’s Initiatives attended the fourth intersessional meeting of the Special Working Group on the Crime of Aggression in Princeton. The meeting was the last scheduled intersessional in Princeton before the Review Conference in 2009 or 2010, which shall consider the adoption of the crime of aggression in the ICC Statute.

A crucial issue for States Parties during the meeting continued to be the conditions for the exercise of jurisdiction over the crime of aggression, pertaining to whether an outside body such as the UN Security Council must determine if the State concerned has committed an act of aggression before the Court can proceed with an investigation. A minority of States have argued that a “prior determination” of the State act of aggression is necessary in order to preclude the politicization of the Court. Proposals provide that the Court’s exercise of jurisdiction would depend on a prior determination by the Security Council (which some delegations feel has primary competence over a determination of an act of aggression), the General Assembly, or the International Court of Justice. Another proposal would allow an expanded Pre-Trial Chamber to determine whether the Court may proceed. The most contentious issue relates to the relationship between the Security Council and the Court, in particular in situations where the Security Council has not yet determined that the State concerned has carried out an act of aggression.

Most delegations, especially those from African and Central and South American States, expressed the view that the conditions for the exercise of jurisdiction must reflect the independence of the Court as a judicial body, which should not be undermined by the political role of the Security Council in maintaining peace and security under the UN Charter.

Outreach

Recently, the Women’s Initiatives has hosted and participated in various roundtables and conferences providing lectures and presentations on the importance of justice for women, the gender provisions in the Rome Statute, developments at the ICC in relation to gender justice and the promotion and advancement of women’s human rights and gender equality. Some of these meetings have included:

- *Women Redefining Peace in The Middle East & Beyond*, organized by Nobel Women’s Initiative, Galway, Ireland, 29-31 May 2007
- Women’s Initiatives for Gender Justice *Roundtable Discussion with Dr. Shirin Ebadi*, Nobel Peace Laureate, The Hague, 4 June 2007
- *Gender and Transitional Justice Regional Conference*, organized by Sisters’ Arab Forum for Human Rights and the International Center for Transitional Justice, Sana’a, Yemen, 12-13 June 2007
- Africa Legal Aid Colloquium: *Interface between Peace and International Justice in Africa*, Accra, Ghana, 22-23 June 2007

New Publication

In June 2007, we launched our Gender Report Card 2006 in Arabic at the *Gender and Transitional Justice Regional Conference* in Sana'a, Yemen. The Arabic version of our Report Card will soon be available on our website at www.iccwomen.org