

August 2007

Dear Friends,

This is the fourth 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

Eye on the ICC 2007:4

ICC

- Central African Republic (CAR)
- Darfur
- Democratic Republic of the Congo (DRC)
- Northern Uganda

Women's Initiatives for Gender Justice

- Women's Team for the Northern Uganda Peace Talks
- Monitoring of ICC Judges' Election
- The Special Court for Sierra Leone
- The *Rights and the Rome Statute* Information Card series is now available in Farsi and on our website <http://www.iccwomen.org/publications/resources/index.php>

International Criminal Court (ICC)

There are currently 4 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 2 Sudanese individuals have yet to be executed and the UN Security Council recently approved the deployment of a joint

United Nations (UN) – African Union (AU) force in Darfur. In the DRC, a hearing for the preparation of the trial against the first accused has been scheduled for September and a second investigation in the situation is at an advanced stage. In Uganda, arrest warrants for 4 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 are due to resume negotiations on mechanisms for the implementation of the agreement on 'Accountability and Reconciliation', the third item on a five-point agenda for the Peace Talks.

Below is a summary of the most recent developments in each of the situations before the Court:

Central African Republic (CAR)

On 22 May 2007, ICC Prosecutor Luis Moreno-Ocampo announced the opening of 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. 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. For the full text of the press release, see: 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 1 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 (as a crime against humanity) and outrage upon personal dignity (as a war crime).

Since the announcement of the arrest warrants for Harun and Kushayb, 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 31 July 2007, the UN Security Council voted unanimously to authorize the deployment of a 26,000 joint UN–AU force in Darfur to be called UNAMID. Resolution No. 1769 calls for UN Member States to make troop contributions within 30 days of its

adoption, and on UNAMID to establish operational capabilities by October 2007. It also calls for the force to take command of the region from the 7,000-strong AU Mission in Sudan by the end of the year. The Security Council further urged the Sudanese Government and all rebel groups to negotiate a permanent political settlement to the dispute in Darfur, demanding that those parties fulfill their international obligations under relevant agreements and Council resolutions.

From 3 to 6 August 2007, representatives from 8 rebel factions from Darfur (the “Darfur Movements”) met with each other and with the AU Special Envoy for Darfur Salim Ahmed Salim and the UN Special Envoy for Darfur Jan Eliasson in Arusha, Tanzania, to define a common position for Darfur’s rebels ahead of peace negotiations with Khartoum. Representatives from Chad, Egypt, Eritrea and Libya also participated in the meeting.

The discussions focused on the need for a common negotiation platform of the different rebel groups for the resumed talks; criteria and level of participation in the final negotiations; agenda and venue for the renewed talks; the inclusion of the concerns of IDPs, refugees, tribal leaders, women and other civil society groups; and security and humanitarian matters.

On 6 August 2007, the Darfur Movements represented in Arusha presented a common platform on power sharing, wealth sharing, security arrangements and land and humanitarian issues for the final negotiations. The groups further committed themselves to confidence-building measures, including ensuring humanitarian access to Darfur, to pave the way for final peace talks which they believe could begin within 2-3 months.

However, 2 key rebel leaders did not attend the talks in Arusha, including Abdel Wahid Mohammed Nur, the “founding father” of the Darfur rebellion, who argued that the invited factions were illegitimate and that such consultations should only take place once a ceasefire is observed. Suleiman Jamous, another veteran rebel seen as a useful mediator should peace talks resume, was confined to a hospital in Sudan by the government despite pleas for his release by mediators, rebels and rights activists. The Darfur Movements, however, decided to maintain the possibility for those who were invited but did not participate in the Arusha Consultations to join their common platform.

On 10 August 2007, thousands of internally displaced persons in Darfur staged a protest upon the arrival of UN envoy for Darfur Jan Eliasson against the outcome of the Arusha Consultations. The protesters affirmed their support for Abdel Wahid Mohammed Nur and declared that Darfur peace would not be realized without the participation of all Darfurians. In a memorandum submitted to Eliasson, the protesters requested the implementation of UN Security Council Resolution No. 1769 related to the deployment of the UN-AU peacekeeping force in Darfur as soon as possible in order to ease the delivery of relief aid and return of the displaced to their villages, and urged the extradition of those responsible for crimes against humanity in Darfur to the ICC.

The Sudanese government made no immediate comment on the rebel groups' agreement, but the UN and AU Special Envoys to Darfur indicated they would travel to Khartoum for consultations with the government shortly.

In their final statement, the Darfur Movements "reiterated their readiness to respect a complete cessation of hostilities, provided that all other parties make similar commitments" and "welcomed the adoption of the United Nations Security Council Resolution 1769 on 31 July 2007, which authorised the deployment of the Hybrid Operation and expressed support for the ongoing political process."

Democratic Republic of the Congo (DRC)

On 17 August, Pre-Trial Chamber 1 (PTC) issued a decision in response to the Women's Initiatives' second filing of 10th November 2006 requesting leave from the PTC to present arguments in relation to the DRC situation regarding judicial oversight of prosecutorial discretion and the role and rights of victims under the Rome Statute. The PTC noted that the request from the Women's Initiatives was the first "spontaneous" application for leave to participate as *amicus curiae* before the Court, but rejected the request because they state the "investigations in the Situation in the DRC are ongoing and the Prosecutor has not taken any decision not to investigate or prosecute."

The decision appears to depart from the PTC 1 decision of 26 September 2006 when they invited the Women's Initiatives to re-file our request for leave in relation to the DRC situation (and not the specific case against Thomas Lubanga Dyilo, founder and president of the Union des Patriotes Congolais (UPC), a militia group in the Ituri region of eastern DRC) because "the subject matter of the Request can be dealt with only in relation to the ongoing investigation into the DRC situation".

The PTC decision of 17 August also stated that they declined to invite the Women's Initiatives to present arguments because the Women's Initiatives was not acting as a legal representative of victims admitted to participate in the proceedings. This reasoning amplifies the points made by the Women's Initiatives regarding the limited number of victims recognized to participate due to the narrow charges brought by the Prosecutor and the definition of victim determined by the PTC. The filing by the Women's Initiatives was 'representing' the broader interests and concerns of victims/survivors of the UPC militia group who have not been recognized as victims and therefore unable to participate in proceedings due to the limited charges in the case. To date the ICC has recognized only 4 victims/survivors as victims of the case against Lubanga, and 6 victims/survivors have been recognized as victims of the situation and able to participate in proceedings. None of these victims have been recognized as victims of gender based crimes and no girl soldiers have been included as victims despite the charges of enlistment and conscription of child soldiers against Lubanga.

On 17 August 2007, the PTC of the DRC situation ordered the Registrar to automatically appoint the Office of Public Counsel for Victims (OPCV) as the legal representative of an applicant for victim status who has no legal representation or in the absence of any document signed by that person, in order to provide support and assistance to the

applicant until such time as the applicant has been granted victim status and a legal representative is chosen by him or her or appointed by the Court.

On 18 July 2007, Trial Chamber 1 put forward a non-exhaustive list of matters that require determination before the commencement of the trial of Lubanga. Hearings were scheduled during which the parties and the participants were invited to make submissions on procedural matters, including the role of victims and the manner in which victims may participate in the proceedings leading up to the commencement of the trial. However, on 16 August 2007, the Trial Chamber issued a decision suspending the proposed timetable and indicated it would issue directions following a 4 September hearing as to the agenda and new timetable.

On 14 June 2007, the Registrar granted Lubanga's 3 May 2007 request for additional resources by authorizing the following resources in conjunction with the resources already provided for in the legal aid scheme: (1) one additional legal assistant until the final pleadings; (2) one Co-Counsel allowed to join the team immediately; (3) the former Counsel authorized to assist the Defence team as a consultant for a period of 3 months; and (4) an additional investigation budget of 55,315 Euros.

On 5 June 2007, the Presidency of the Court transmitted to Trial Chamber 1 the full record of the proceedings concerning Thomas Lubanga, including the decision confirming the charges and committing Lubanga for trial, Lubanga's application before PTC 1 seeking a review of the Registrar's decision on his application for additional resources and 2 *amicus curiae* applications. On 25 July 2007, the International Criminal Bar, one of the two *amicus curie* applicants, requested the Trial Chamber to accept the withdrawal of its application since Lubanga had been granted additional resources and was now represented by Counsel of his own choosing.

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 2 filings by the Women's Initiatives to the Court and the widespread documentation of gender based crimes, including a confidential report by the Women's Initiatives submitted to the Prosecutor in August 2006 documenting over 30 interviews with victims/survivors of gender based crimes committed by the UPC, these crimes have not been considered nor charged in the Prosecutor's case against Lubanga.

A second investigation in the DRC situation is advanced and charges are expected in the coming few months. In 2007, the Women's Initiatives in collaboration with local women's rights and human rights activists conducted 2 further documentation missions and submitted more than 50 interviews with victims/survivors of gender based crimes and additional information to the ICC regarding the commission of rape, abduction, sexual enslavement and torture of women by specific militia groups.

Northern Uganda

Two years have passed since arrest warrants were issued by the ICC against 5 Lord's Resistance Army (LRA) commanders and these have yet to be executed. 2 of the 5 commanders are charged with crimes of sexual violence, including inducing rape as a war crime and rape and sexual enslavement as crimes against humanity.

On 10 August 2007, Judge Politi, the Single Judge of PTC 2, granted 6 (2 women and 4 men) out of 49 applicants the right to participate in the case in Uganda. In his view, the 6 applicants were natural persons and the harm they suffered appeared to fall within the jurisdiction of the Court and was included in the arrest warrants issued in the Court's case against the LRA commanders. While Judge Politi indicated that it is not compulsory to appoint a legal representative once victims have been afforded the right to participate, it might nevertheless be appropriate as it would prevent any adverse impact on the expeditiousness of the proceedings. Furthermore, it would be appropriate in this case to appoint a common legal representative, given that the 6 applicants all claim to have experienced the same attack, and the Registrar was requested to assist the 6 applicants in appointing a common legal representative. The 49 victims' applications are comprised of 10 women, 5 girls, 27 men and 7 boys.

Of the 32 applications referring to incidents that are not included in the arrest warrants issued in the case, 2 victims/survivors, both men, were granted the right to participate as victims of the situation. The scope of the situation was defined as encompassing "all crimes committed in Northern Uganda in the context of the ongoing conflict involving the LRA" and the applicants needed to show the harm suffered was the result of a crime having been committed "within the temporal and territorial terms of the relevant situation". The Registrar was requested to assist the 2 applicants in appointing a common legal representative.

Both in the case and in the situation in Uganda, Judge Politi deferred a decision on a number of applicants due to "deficiencies in the proof of their identity". To confirm the identity of an applicant, it was necessary to have a document (i) issued by a recognized public authority; (ii) stating the name and the date of birth of the holder; and (iii) showing a photograph of the holder. In the case of applications from children, Judge Politi requested the Victims Participation and Reparations Section (VPRS) of the ICC to submit a report indicating from what age the Ugandan legal and administrative system allows documents meeting these 3 conditions before he ruled on their applications. Judge Politi further instructed the VPRS to contact concerned applicants in order to inform them of the need to submit proper proof of identity.

Since July 2006, the Ugandan government and the LRA rebels have been in Peace Talks and the 2 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. 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 agreed to return to their constituencies for

consultations before resuming discussions, but the consultative process has been delayed due to lack of funds. In the beginning of August, the Government of Uganda finally secured the funds needed to support consultations in Soroti, Lira, Adjumani and Gulu districts. The delegates are expected to consult with the victims of the LRA insurgency, civil society, legal professionals and other partners on the alternative justice system to try the rebels for the war crimes committed during the 20-year-long conflict.

Women's Initiatives for Gender Justice

Women's Team for the Northern Uganda Peace Talks

From 1-3 August 2007, the Ugandan Women's Coalition for Peace and the Women's Initiatives for Gender Justice held a meeting in Gulu with 40 women leaders from north and north eastern Uganda (who subsequently formed the *Greater North Women's Voices for Peace Network*) to provide information on the Peace Talks, the Agreements signed thus far and to seek their views on the crucial issues of justice, accountability, reconciliation and peace.

At the 'Gulu Gathering' women articulated our vision, demands and proposals for accountability, reconciliation and peace for the Greater North of Uganda. To read a copy of the position paper on the views of women from north and north eastern Uganda on accountability, reconciliation and peace go to: <http://www.iccwomen.org/>

As a result of the 'Gulu Gathering', a network was formed of women's groups and peace activists from northern Uganda called the Greater North Women's Voices for Peace Network. The Network along with the Ugandan Women's Coalition for Peace and the Women's Initiatives for Gender Justice has met with members of the negotiation teams for both the Government of Uganda and the LRA and held a press conference in Kampala on 10 August to present the views of women regarding justice and reconciliation mechanisms.

The Women's Initiatives is co-coordinating the participation of women at each of the Government consultations throughout Uganda and supporting 25 women to participate in the LRA consultation on the Peace Talks to be held in the first week of September.

At the 'Gulu Gathering' we launched a 'Women's Team' for the Peace Talks comprised mostly of women from the Greater North to attend the Peace Talks when they resume in October. The Women's Initiatives is co-coordinating the Women's Team and providing strategy, legal advice and logistical support.

Monitoring ICC Judges' Election

In the past 9 months, Judge Maureen Harding-Clark, Judge Karl Hudson-Phillips and Judge Claude Jorda resigned from their positions in the ICC Pre-Trial and Trial Chambers.

Judges Clark and Hudson-Phillips were elected to 9-year terms in 2003 and replacements are being sought to sit until 2012 without re-election. Judge Jorda was elected to a 6-year

term in 2003 ending in 2009 with the possibility for re-election. The nomination period for all judges ran from 1 June – 24 August 2007 and the election for these vacancies will take place at the Assembly of States Parties in New York, December 2007.

The Rome Statute outlines the criteria which States Parties are required to consider in electing judges to the ICC including the fair representation of female and male judges, equitable geographical representation, representation of the principal legal systems of the world, and the need for judges with legal expertise on specific issues including violence against women. Moreover, States Parties must elect at least one “List A” judge according to the ICC voting requirements. List A judges have “established competence in criminal law and procedures, and the necessary relevant experience, whether as judge, prosecutor, advocate, or in other similar capacity in criminal proceedings” while List B judges have “established competence in relevant areas of international law, such as international humanitarian law and the law of human rights, and extensive experience in a professional legal capacity which is of relevance to the judicial work of the Court.”

6 candidates have been nominated for the elections in December: Daniel David Ntanda Nsereko of Uganda (Male/List A), Jean Permanand of Trinidad and Tobago (Female/List A), Fumiko Saiga of Japan (Female/List B), Bruno Cotte of France (Male/List A), Sunday Akinola Akintan of Nigeria (Male/List not yet identified) and Graciela Dixon of Panama (Female/List A and B).

In 2006 at the time of the last judicial election, the Women’s Initiatives campaigned for the election of gender competent judges with legal expertise and experience in relation to violence against women, as well as the fair representation of female and male judges on the bench of the ICC. Prior to the resignations of Judges Harding-Clark, Hudson-Phillips and Jorda, 8 out of 18 judges of the ICC were women (44%).

We are preparing an overview on the profile of candidates assessing their judicial and gender experience and expertise. We hope this overview will encourage States Parties to elect candidates with the most all-round competence for the bench of the ICC. The profile will soon be available on our website.

The Special Court for Sierra Leone

To date, 11 defendants have been indicted at the Special Court for Sierra Leone, 8 of which are indicted for crimes of sexual violence. Of the 5 indictments, 4 include charges for crimes of sexual violence. On 20 June 2007, the “AFRC Accused” were convicted of 11 counts of war crimes and crimes against humanity, including the first convictions at the Special Court for rape and outrages upon personal dignity (sexual slavery). On 19 July 2007, the three accused were sentenced to between 45 – 50 years in prison and began serving their sentences immediately.

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.

Taylor's trial was scheduled to resume on 20 August 2007, after the recesses of the Special Court and the ICC and various delays concerning the adequacy of Taylor's defence. The Special Court subsequently indicated that the hearing on August 20 would be a Status Conference and that the resumption of the Prosecution case was postponed to allow Taylor's new Defence team time to prepare. The trial date has been set for 7 January 2008.

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 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.