

Eye on the ICC 2008:1

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International Criminal Court (ICC)

There are currently four situations before the Court at various stages of proceedings [Democratic Republic of the Congo (DRC), Northern Uganda, Darfur and the Central African Republic (CAR)]. In the DRC, the first trial of the International Criminal Court (ICC) against the first accused, Thomas Lubanga Dyilo, was due to commence on 31 March 2008, but was postponed due to delays in the disclosure of evidence to Defence Counsel. The trial is now scheduled to start on 23 June 2008. On 18 January 2008, the Trial Chamber ruled on victims' participation in the Lubanga case, providing the first decision by a Trial Chamber on victims' issues. Both the Prosecution and the Defence sought, and have been granted, leave to appeal this decision. In October 2007, Germain Katanga, former senior commander of the *Force de Résistance Patriotique en Ituri* (FRPI) militia group, was transferred to The Hague after being in custody in Kinshasa. Katanga is accused of nine counts of war crimes and crimes against humanity including sexual slavery. In February 2008, Mathieu Ngudjolo Chui, former commander of the *Front des nationalistes et intégrationnistes* (FNI), was arrested and transferred to the ICC and also faces charges for nine counts of war crimes and crimes against humanity including sexual slavery. On 10 March 2008, Pre-Trial Chamber I (PTC I) decided to join the cases against both Katanga and Ngudjolo as they are charged with alleged co-responsibility for an attack on Bogoro village, Ituri, in February 2003.

In Uganda, arrest warrants for four commanders of the Lord's Resistance Army (LRA) remain outstanding. One of the four, Vincent Otti, Deputy Commander, was allegedly killed in October 2007 on the orders of the leader of the LRA, Joseph Kony. Otti's reported death has not yet been corroborated by DNA evidence and has not been confirmed by the ICC. Otti faced 32 charges of crimes against humanity and war crimes including sexual enslavement and inducing rape. On 29 February 2008, Pre-Trial Chamber II (PTC II) requested information from the Government of Uganda (GoU) regarding the affect on the ICC arrest warrants of the Peace Agreements recently signed between the GoU and the LRA, specifically the Agreement on Accountability and Reconciliation which determines the establishment of a Special Division of the High

Court of Uganda to try individuals alleged to have committed serious crimes during the course of the conflict.

On 10 March 2008, the Negotiation Team for the LRA met with the Registry of the ICC – the first time a meeting between the Court and the LRA has been held. The Women’s Initiatives for Gender Justice acted as the liaison between the LRA and the ICC to establish the meeting for the purposes of the LRA being more informed about the ICC structure and process as an international court, the current status of the arrest warrants and the charges against the four LRA commanders, and the procedures for filing motions before the ICC. The Executive Director of the Women’s Initiatives for Gender Justice and the Coordinator of the Greater North Women’s Voices for Peace Network were also in attendance at this meeting. Our joint positions on the conflict, accountability, justice and reconciliation in Northern Uganda are publicly available on our website. <http://www.iccwomen.org>.

In Darfur, the two arrest warrants issued in April 2006 against Ahmed Haroun and Ali Kushayb continue to be outstanding despite efforts by the Office of the Prosecutor (OTP) to engage neighbouring states and the international community. The OTP has announced new investigations in Darfur with a focus on those most responsible for the planning and instigation of attacks.

In February 2008, the Prosecutor of the ICC visited the Central African Republic (CAR) and met with government officials, members of civil society and United Nations officials. Investigations continue into grave crimes allegedly committed during the peak of violence that occurred in 2002 and 2003, and the ICC is also monitoring the current violence and unrest in the northern parts of the country.

On 28 February 2008, the Judges of the ICC elected a new Registrar of the Court, Ms Silvana Arbia. Ms Arbia comes from Italy and has an extensive background in international criminal law as Senior Trial Attorney and Acting Chief of Prosecutions at the ICTR and as a Judge in Italy. She has published several essays and books on human rights and children’s rights. She replaces outgoing Registrar, Mr Bruno Cathala, who has been Registrar since the commencement of the Court.

In January 2008, three new Judges (Bruno Cotte (France), Fumiko Saiga (Japan) and Daniel David Ntanda Nserko (Uganda)) were sworn in at the seat of the International Criminal Court in The Hague. The Judges were elected by States at the Sixth Session of the Assembly of States Parties to the Rome Statute of the ICC in New York on 30 November and 3 December 2007. They replace three judges who resigned last year. In preparation for the election, the Women’s Initiatives for Gender Justice prepared a dossier on the qualifications, experience and attributes of the five candidates, which is available at this link: <http://www.iccwomen.org/news/docs/Judgesdossier2007.pdf>

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

Democratic Republic of the Congo

On 24 December 2007, Judge Sylvia Steiner handed down a decision in PTC I on the situation in the DRC. In this judgment, Judge Steiner recognised 67 victims of the situation in the DRC and set out criteria to be met by a victim, both a live individual victim and an organisation victim, to be recognised as a victim of the situation or case. Some applications were rejected because of a lack of documentation, but Judge Steiner has ordered that these applicants can refile their applications with complete details for reconsideration by the PTC at a later date.

On 18 January 2008, in the case of the *Prosecutor v Thomas Lubanga Dyilo* the Trial Chamber ruled on victims' participation. The decision provides guidance on when victims will be recognised in cases as opposed to situations which are being investigated, and how they can participate. The Trial Chamber held that once a person has established that they are a natural person for the purposes of the Rome Statute, the Court will consider whether the applicant suffered any harm as a result of the commission of a crime within the jurisdiction of the Court. The Chamber described harm as 'physical or mental injury, emotional suffering, economic loss or substantial impairment of his or her fundamental rights'. The Chamber also held that whilst victims have multiple and varied interests, to participate in a trial, the interests must relate to the evidence and the issues the Chamber will be considering in its investigation of the charges brought against the accused.

Appeal in victims' participation decision

On 28 January 2008, the Defence and the Prosecution filed applications for leave to appeal the Trial Chamber decision on victims' participation in the *Prosecutor v Thomas Lubanga Dyilo*. The Trial Chamber granted leave to appeal on 26 February 2008 on the following issues:

- a) Whether the idea of a "victim" implies that that person has had "personal and direct harm";
- b) Whether the harm alleged by a victim and the "personal interests" of the victim must be linked with the charges against the defendant;
- c) Whether victims participating in the trial are allowed to lead evidence as to the guilt or innocence of the defendant and whether they can challenge the admissibility or relevance of evidence.

The Appeals Chamber is expected to hand down its decision on victims' participation before the commencement of the Trial.

United Nations Special Representative of the Secretary General on Children and Armed Conflict (UNSRSG)

On 18 February 2008, the Trial Chamber in the case of the *Prosecutor v Thomas Lubanga Dyilo* invited the United Nations Special Representative of the Secretary General on Children and Armed Conflict (UNSRSG) to file written observations on the definition of conscription and enlistment of children and how the distinction between these two concepts should be approached, and the interpretation of the term 'using

children to actively participate in hostilities' with a special emphasis on the role of girls in armed forces.

The UNSRSG filed her *amicus curiae* brief on 18 March 2008 and stressed that the distinction between the terms conscription and enlistment, are both 'legally irrelevant' and 'practically superficial in the context of children and armed conflict'. The SRSRSG proposed that the Trial Chamber take a case-by-case approach as to which kind of recruitment (conscription or enlistment) will be relevant in a particular case depending upon the acts children are required to perform, the circumstances of how the child was enrolled and the circumstances surrounding the child's separation from family and community.

The SRSRSG observed that the specific acts identified as 'using children to participate actively' by the Pre-Trial Chamber in its Confirmation of Charges decision (29 January 2007), could exclude large numbers of child soldiers particularly girls. The acts identified by the PTC fail to recognise the range of combat and non-combat related tasks/acts that children, girls in particular, are forced to perform or to which they are subjected, including sexual acts perpetrated against girl soldiers in the context of armed conflict. The SRSRSG proposes that the Trial Chamber 'should deliberately include any sexual acts perpetrated in particular against girls, within its understanding of the 'using' crime'.

Peace Conference in Kivu

From 6 – 23 January 2008, a Peace Conference was held in Goma on the situation in North Kivu, DRC, and on 23 January 2008, a peace agreement was signed between the Government and militia rebel group, the National Congress for the Defence of the Congolese People (CNDP), lead by Laurent Nkunda. The Goma Peace Agreement put in place an immediate ceasefire between and militia groups and the armed forces of the DRC (FARDC), introduced the phased withdrawal of military forces, and called for the strict respect for international humanitarian law, the demobilization of soldiers and safe return home of internally displaced persons. It is expected that the Agreement will lead to the establishment of a Peace and Reconciliation Commission and envisages amnesty for people involved in the armed conflict, except for those who have committed international crimes, such as crimes against humanity and genocide. This leaves open the possibility that Nkunda and other participants in the conflict, both Government and militia, could be charged by the ICC with crimes under the Rome Statute, including gender based crimes.

At the end of 2007, the United Nations Security Council extended the mandate of the Democratic Republic of Congo Mission (MONUC) until 31 December 2008. The Security Council demanded that all groups still fighting in Eastern DRC lay down their weapons and engage in demobilisation, repatriation and rehabilitation of their members.

Northern Uganda and Peace Talks

In October 2005, the ICC announced the issuing of arrest warrants against five Lord's Resistance Army (LRA) commanders: Joseph Kony, Vincent Otti, Okot Odhiambo, Dominic Ongwen and Raska Lukwiya – charging them with 41 counts of crimes against

humanity and war crimes, including murder, rape, sexual enslavement, directing an attack against a civilian population and destruction of property. In November 2006, the Court confirmed that Raska Lukwiya had died without being arrested. Since October 2007, there have been unconfirmed rumors of the death of Vincent Otti, Deputy Commander of the LRA, reportedly killed on the instructions of the leader of the LRA, Joseph Kony. To date Otti's death has not been confirmed by the ICC and no arrests have been made.

Since July 2006, there has been a ceasefire in Northern Uganda while the Government of Uganda and the LRA have been engaged in formal Peace Talks. Three major peace agreements were signed in 2007 and since the resumption of the Peace Talks on 30 January 2008, four further agreements have been signed including the *Annexure to the Agreement on Accountability and Reconciliation*, which outlines the establishment of a Special Division of the High Court of Uganda to try individuals alleged to have committed serious crimes during the conflict. The Cessation of Hostilities Agreement was extended until 28 March 2008 to allow the LRA to meet with the ICC to obtain information regarding the charges against the four suspects. The final and permanent ceasefire agreement is expected to be signed by President Museveni of Uganda and General Kony of the LRA on 5 April, bringing to an end the 22-year conflict in Northern Uganda.

On 29 February 2008, Pre Trial Chamber II (PTC II) requested the Government of Uganda to provide them with information regarding the proposed Special Division of the High Court of Uganda, its competence, the crimes within its jurisdiction, the inter-relationship between the proposed Special Court, alternative and traditional justice mechanisms in relation to the arrest warrants issued by the ICC and the charges against the LRA suspects. PTC II has requested a response from the Government of Uganda preferably before 28 March 2008.

On 10 March 2008, the LRA Negotiation Team met with the Registry of the ICC to be informed of the structure of the Court, the responsibilities of different organs, the charges against the LRA, relevant decisions from the Pre Trial Chamber regarding the alleged crimes committed during the conflict, and the criteria and procedure for the filing of motions. This is the first meeting between the LRA and the ICC.

Darfur, Sudan

On 2 May 2007, the PTC 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 PTC are rape as a war crime and crime against humanity. Ali Kushayb had been in custody in Sudan, but was released in November 2007 by the Sudanese Government who said there was insufficient evidence to charge him.

On 5 December 2007, the Prosecutor announced to the Security Council that he is broadening the scope of the work on the situation in Darfur to include two new

investigations. One will focus solely on the attacks on African Union forces in Haskanitsa on 17 October 2007. The second will attempt to identify those people who systematically plan and instigate attacks on civilians in Darfur.

There have been some important developments concerning applications of victims to the Court of the situation in Darfur. On 6 December 2007 (with a correction issued on 14 December 2007) PTC I granted procedural status of victim to 11 Applicants. This will allow those victims to participate in the proceedings at the investigation stage of the Situation of Darfur. On 6 February 2008, PTC I granted the Office of the Public Counsel for Defence and the OTP leave to appeal this decision. On 23 January 2008, PTC I granted the Office of the Public Counsel for Defence and the OTP leave to appeal a previous decision dated 3 December 2007 in relation the issue of whether Article 68(3) of the Rome Statute can be interpreted as providing for a 'procedural status of victim' at the investigation stage of a situation and the pre-trial stage of a case. More guidance on the role of victims participating in the situation stage of a case can be expected from the Appeals Chamber soon.

Meanwhile, on 31 December 2007, the United Nations African Union Mission in Darfur (UNAMID) took over from the African Union Mission in Darfur. On 5 February 2008, the Secretary General of the UN appealed for more troops and support from the international community. Ban Ki-Moon pointed to the continuing crisis in the region and stated that, 'more than 200,000 people have been killed and 2.2 million others forced to flee their homes since fighting began in 2003 among Government forces, rebel groups and allied militia groups known as the Janjaweed'. In January 2008, it was reported that a UN unit of peacekeepers had been attacked by the Government of the Sudan who claimed they thought they were a militia group.

Central African Republic (CAR)

In May 2007, ICC Prosecutor Luis Moreno-Ocampo announced the opening of an investigation in the Central African Republic (CAR). The investigation is ongoing. In his report to the Assembly of States Parties (ASP) in 2007, the Prosecutor indicated that the focus of investigation remains the period 2002-2003 where there were a particularly high number of allegations of rapes and other sexual violence. The OTP is also monitoring acts of violence committed since 2005 in the northern part of the country.

On 7 February 2008, the Prosecutor went to Bangui, CAR to meet with victims, civil society, local communities and senior government officials. His visit had previously been postponed because of the unrest in CAR following events in December 2007 when Prime Minister Celestin Le Roi Gaoumbale formed a new transitional government to replace the one of Abel Goumba who was dismissed. During the week before the dismissal of Goumba's government, Bangui residents had staged demonstrations and blocked streets to protest against the recent killing of three self-defence volunteers and an army officer by security forces and Chadians described as mercenaries.

Trust Fund for Victims

On 24 January 2008, for the first time, the Board of Directors of the Trust Fund notified PTC I in the Situation in the DRC of its intention to use funds for “other resources” (other than reparations) for the benefit of victims in the DRC. On 25 January 2008, the Board gave similar notice to PTC II in the Situation in Uganda about the intended use of “other resources” for the benefit of victims in Uganda. In accordance with Regulation 50 of the *Regulations of the Trust Fund for Victims*, the Trust Fund is required to inform Chambers before undertaking activities which will use resources for victims support and assistance outside of reparations for victims ordered by the Court upon conviction of an accused. The Trust Fund is developing plans to work with organisations in each country where the Court is conducting investigations, to assist victims with rehabilitation and recovery programmes. The Trust Fund's powers extend to providing support to victims *and their families*.

On 19 March 2008, PTC II in the situation in Uganda approved the projects that the Trust Fund had submitted, saying ‘The proposed activities [in Uganda] are defined in general and nondiscriminatory terms, without reference to any identified alleged perpetrator, specific crime or location or individually identified victim and thus they are not incompatible with the criteria laid down in regulation 50 (a)(ii) of the TFV Regulations.’ PTC I in the situation in the DRC has not yet handed down a decision on whether the Trust Fund can use the resources as they proposed in that situation.

Women's Initiatives for Gender Justice

Women's Team for the Uganda Peace Talks

Since June 2007 the Women's Initiatives has been working closely on the peace process and Peace Talks in Northern Uganda. In recent months, we have supported women from the Greater North of Uganda to participate in the Government consultations and the LRA's consultations regarding the Peace Agreement on Accountability and Reconciliation. In January, we worked with the Greater North Women's Voices for Peace Network to ensure a team of women attended the opening of the resumed Peace Talks in Juba on 30 January 2008. The Greater North Women's Voices for Peace Network and the Women's Initiatives for Gender Justice issued a joint statement at the beginning of the Talks highlighting their concerns to the Government and the LRA, including a call for the release of women and children from the LRA. In January 2008, two permanent observer seats were allocated to women for the remainder of the Talks. The Statement can be read on our website: <http://www.iccwomen.org>.

In February 2008, the Women's Initiatives, with the support of the Chief Mediator of the Peace Talks and in collaboration with the United Nations, organized training for the Parties on Demobilization, Disarmament, Reintegration and Resettlement (DDRR). The purpose of the training, provided by staff of the United Nations Mission in Southern Sudan, was to assist the Parties in preparation for their negotiations on DDRR issues. Representatives from both the Government and the LRA participated in the training, along with nine women from the Greater North. The DDRR agreement was signed at the end of February.

Women Talking Peace – Northern Uganda Video

In December 2007, the Women's Initiatives launched a five-minute film - "*Women Talking Peace*" on the views and hopes of women from Northern Uganda on the Peace Talks. The film features a workshop held in Northern Uganda in August 2007 organized by the Women's Initiatives for Gender Justice and the Ugandan Women's Coalition for Peace to discuss the Peace Talks and to consult with women most affected by the conflict about their expectations and demands regarding accountability, justice and reconciliation to end the conflict. The film includes brief interviews with women's rights and peace activists and young women formerly abducted by the LRA during the conflict between the Government and the rebel group.

Gender Report Card 2007

On 30 November 2007, the Women's Initiatives for Gender Justice launched the Gender Report Card on the International Criminal Court for 2007 at the start of the Sixth Session of the Assembly of States Parties in New York. This is the third year the Women's Initiatives for Gender Justice has produced the Gender Report Card, which provides an overview and assessment of each of the situations where the ICC is conducting its investigations, the charges, major judicial decisions during the year, the developments in jurisprudence regarding victims' participation, and the institutional developments at the ICC regarding appointments and policies. The Gender Report Card 2007 and the speech given at the launch by the Executive Director, Brigid Inder, are available on our website: <http://www.iccwomen.org>.

DRC

Women's Initiatives for Gender Justice continues to work with local women's rights and human rights activists, advocating for a more comprehensive approach to charges against accused in the DRC situation before the Court. There are now three defendants before the Court facing a number of charges, two are charged with sexual slavery. We completed our documentation work in the DRC in 2007 and have reviewed the 112 interviews with women victims/survivors of gender based crimes committed by the three militia groups currently charged by the ICC with war crimes and crimes against humanity. Later this year, we will publish our analysis of this documentation. We also continue to work with women victims/survivors who are interested in being recognized formally as victims by the ICC with the right to have access to the judicial proceedings.

Charles Taylor

The Women's Initiatives for Gender Justice continues to monitor the trial of Charles Taylor, former President of Liberia, which commenced in The Hague on 4 June 2007. The Special Court for Sierra Leone resumed its trial of Mr Taylor in The Hague on Monday, 7 January 2008. The Prosecution case is still on-going; they are currently examining witnesses either in open or in closed sessions depending on the level of protection that has been granted to the witness. No important decisions have been handed down since the trial recommenced. The Court is in recess from 17 March to 28 March 2008. The charges against Charles Taylor's include rape and sexual slavery as

crimes against humanity committed within Sierra Leone after 30 November 1996. Mr Taylor has pleaded not guilty to all charges against him.