

May 2007

Dear Friends,

Welcome to **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, 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 also be found on our website, [www.iccwomen.org](http://www.iccwomen.org). If you would like to subscribe to **Eye on the ICC**, please send an e-mail to [grcampaign@iccwomen.org](mailto: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 2007:2**

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### **International Criminal Court (ICC)**

There are currently three situations before the Court at various stages of proceedings (Darfur, the DRC and Northern Uganda). In Darfur, the Pre-Trial Chamber has issued arrest warrants for two individuals. In the DRC, charges against the first accused before the ICC have been confirmed and a second investigation in the situation is well underway. In Uganda, arrest warrants for five commanders of the Lord's Resistance Army (LRA) are still outstanding and peace talks between the LRA and the Ugandan Government have resumed.

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

### *Darfur*

On 27 February 2007, the ICC Prosecutor submitted evidence concerning two suspects, Ahmad Harun, a former State Minister for the Interior and currently the State Minister for Humanitarian Affairs, and Ali Kushayb, an alleged Janjaweed leader, supporting 51 counts of war crimes and crimes against humanity. Among the charges 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. For the first time, the ICC has brought evidence of criminal responsibility against a current government official.

On 2 May 2007, the judges of Pre-Trial Chamber I issued arrest warrants for the two suspects, holding that there are reasonable grounds to believe that Harun and Kushayb bear criminal responsibility for crimes against humanity and war crimes committed in Darfur in 2003 and 2004. In view of the information provided by the Prosecution, the judges decided to request arrest warrants instead of summons to appear, since they considered that the suspects would not appear voluntarily before the Court and that their arrests appeared to be necessary at this stage.

Since the announcement of the arrest warrants, the Sudanese government has rejected their legitimacy and the Sudanese Justice Minister has indicated the government would not hand over the two suspects.

In April, the Government of Sudan agreed to allow 3,000 UN peacekeepers to deploy in Darfur with logistical, communications and aviation equipment, opening the door to the first significant UN presence to reinforce 7,000 beleaguered African Union (AU) soldiers. Nonetheless, observers are remaining cautious until UN peacekeepers are on the ground in Darfur, and UN and AU officials continue to focus on negotiating a third stage of deployment, creating a joint AU - UN force with 17,000 soldiers and 3,000 police officers.

### *Democratic Republic of the Congo (DRC)*

In March 2006, Thomas Lubanga Dyilo, Founder and President of the Union des Patriotes Congolais (UPC), a militia group in the Ituri region of eastern DRC, was the first suspect arrested before the Court and charged with the war crimes of the enlistment and conscription of child soldiers and using them to participate actively in hostilities. 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.

The absence of charges for gender based crimes, the definition of victim stipulated by the Pre-Trial Chamber and the limited outreach undertaken by the Court in the DRC has meant no victims/survivors of gender based crimes have been recognised by the Court and therefore able to participate in the confirmation proceedings, and no girl soldiers

have been recognised by the ICC with the right to participate as victims in the case. This will likely have implications for reparations for women victims/survivors of the UPC militia group.

On 29 January 2007, the Pre-Trial Chamber confirmed the charges against Lubanga and a Trial Chamber was constituted. However, a replacement for the Lead Defence Counsel (who withdrew from the case in March) has yet to be confirmed.

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

In March 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 Ituri and documented more than 40 interviews with victims/survivors of rape, sexual slavery, and other forms of sexual violence committed by militia groups in the region. This information has been submitted to the ICC.

This was our third field mission/consultation in eastern DRC. We are now analyzing the information from the almost 100 interviews with women victims/survivors of gender based crimes and will produce an overview of the pattern of attacks, crimes and perpetrators from this documentation.

#### *Northern Uganda*

On 1 February 2007, the Pre-Trial Chamber in the Ugandan situation requested the Office of the Public Counsel for Victims (OPCV) to provide "support and assistance" to 49 victims/survivors who had applied for victim status in the Uganda situation. Being awarded victim status allows victims/survivors to participate in court proceedings, present their views and concerns in limited circumstances, and will likely facilitate their access to reparations. While the Pre-Trial Chamber did not make a decision concerning the 49 applicants' victim status, it did not rule out the possibility of legal representation "in the interests of justice" prior to such a decision. The Pre-Trial Chamber did not, however, consider legal representation necessary at the current stage of the proceedings.

On 26 March 2007, the OPCV filed its observations on the 49 applications and indicated that the victims/survivors among them included those who had been raped, sexually enslaved and tortured.

To date, the Pre-Trial Chamber has not made a determination on the victim status of the 49 applicants.

In March 2007, Acholi representatives and advocates assembled in Juba, South Sudan to review the Juba peace process to resolve the conflict in Northern Uganda. In response to Lord's Resistance Army (LRA) demands to move the peace talks to another venue and to introduce new mediators, the statement issued by the Acholi Peace Conference recommended the immediate resumption of the peace talks by the Ugandan Government

and the LRA, that Juba remain the venue for the peace talks, that the Vice President of the Government of Southern Sudan remain the Chief Mediator and that the Chief Mediator ensure the equitable participation of women and other interest groups in the peace talks.

On 26 April 2007, peace talks officially resumed between the Ugandan Government and the LRA in Juba after a four-month hiatus. In response to LRA demands for more African States on the mediation team, government representatives from Kenya, Tanzania, South Africa and Mozambique joined the team which continues to be convened by South Sudan's Vice President Riek Machar. On 2 May, both sides signed a preliminary agreement to address the root causes of the conflict (the "Agreement on Comprehensive Solutions"), including the requirement that the composition of Government is broadly representative of the national character, reflecting gender and social diversity; committing the Government to take affirmative action in favor of groups marginalized on the basis of gender, age or disability; and ensuring appropriate provision for vulnerable groups such as widows and female-headed households. Moreover, the Agreement reaffirms the new Equal Opportunities Law, which aims to eliminate gender-based discrimination and ensure the equal treatment of all groups within Uganda.

One issue still contested is the ICC's warrants of arrest issued against 5 LRA commanders. The LRA leader Joseph Kony and Deputy Vincent Otti have been charged with gender based crimes, including inducing rape as a war crime and rape and sexual enslavement as crimes against humanity. The LRA have requested that the arrest warrants against their top leadership be suspended.

The Women's Initiatives continues our work with women's rights and peace activists in Uganda, monitoring the peace talks, supporting their calls for peace and accountability, and advocating for gender-inclusive forms of justice in every system and model proposed for accountability, reconciliation and peace. We are currently preparing Phase III of our work in north and north eastern Uganda on access to justice for women victims/survivors and supporting activism for women's rights in conflict-ravaged communities.

#### *Election of Judges*

Over the past 6 months, 3 ICC judges have resigned from their positions. On 10 December 2006, Judge Maureen Harding-Clark resigned effective immediately from her position as a judge of the Trial Chamber to serve on the High Court of Ireland. On 14 March 2007, Judge Karl Hudson-Phillips resigned effective 30 September 2007 from his position as a judge of the Trial Chamber for personal reasons. This month, Judge Claude Jorda, presiding judge in the DRC situation and DRC case against Lubanga, resigned effective 12 August 2007 from his position as a Pre-Trial Chamber judge because of ill health.

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. The nomination period for both judges runs from 1 June – 24 August 2007. The election for these vacancies will take place at the Assembly of States Parties in New York, December 2007.

Judge Jorda was elected to a 6-year term in 2003 ending in 2009. The nomination period for his replacement has not yet been announced.

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.

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 resignation of Judge Maureen Harding-Clark, 8 out of 18 judges of the ICC were women (44%). We will again be involved in promoting women and gender competent candidates for election in December.

## **Women's Initiatives for Gender Justice**

### *Outreach*

In the last few months, Women's Initiatives has participated in various workshops and conferences giving 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:

- Africa Legal Aid Round Table: African Perspectives on International Criminal Justice, hosted by the ICC, the Hague, February 2007
- Ratification and Implementation of the Rome Statute and the creation of the ICC, Forum for Latin America Parliamentarians, Santiago, March 2007, organized by Humanas Chile
- Symposium on Sexual Violence in International Law - Bridging the Implementation Gap, Dutch Parliament, hosted by the Dutch section of the International Commission of Jurists, March 2007

### *Complementarity Project*

In September 2005, the Women's Initiatives launched the Complementarity Project in collaboration with the University of Sydney, Australia to review States Parties' implementing legislation from a gender perspective and to monitor the use of the Rome Statute and implementing legislation by the judiciary, governments, lawyers and activists to promote women's human rights domestically. This is a long term project as we undertake to monitor use of the Rome Statute to promote women's human rights. In the current phase of this research we have focused on reviewing States' Implementing Legislation regarding: (1) the number of States Parties to the Rome Statute; (2) the number of States Parties with *enacted* crimes legislation and to what extent they have

incorporated gender provisions in their legislation; and (3) the number of States Parties with *draft* crimes legislation and to what extent they have incorporated gender provisions in their legislation.

Some preliminary analysis reveals the total number of States Parties to the Rome Statute as of February 2007 is 104 and the total number of States Parties with *enacted* crimes legislation with gender-specific provisions is 32 (31% of the total of States Parties). Of these 32 States Parties, only 18 States Parties have implementing legislation in conformity with ICC Statute standards regarding gender based crimes and 10 States Parties have enacted implementing legislation which is partly in conformity with the ICC Statute standards regarding gender based crimes. In many cases, the implementing crimes legislation simply excludes certain sexual violence crimes.

*Update on the List of Legal Counsel*

On 14 May 2007, the Court updated its List of Legal Counsel. The List now includes 205 persons, of which 38 or 18.5% are women. This is a disappointing increase from October 2006, when only 27 or 16% of the 168 individuals on the list were women. In the coming months the Women's Initiatives will be launching a global campaign to increase the number of women and gender competence on the List of Counsel to ensure women victims/survivors of gender based crimes have the opportunity to select women lawyers to represent them at the ICC.