



Women's Initiatives for Gender Justice

Making a Statement

Second Edition
February 2010

A Review of Charges and Prosecutions for Gender-based Crimes
before the International Criminal Court

The Women's Initiatives for Gender Justice is an international women's human rights organisation that advocates for gender justice through the International Criminal Court (ICC) and works with women most affected by the conflict situations under investigation by the ICC.

Currently the Women's Initiatives for Gender Justice has country-based programmes in the four ICC situation countries: Uganda, the Democratic Republic of the Congo, Sudan and the Central African Republic.

The strategic programme areas for the Women's Initiatives include:

- Political and legal advocacy for accountability and prosecution of gender-based crimes
- Capacity and movement building initiatives with women in armed conflicts
- Conflict resolution and integration of gender issues within the negotiations and implementation of Peace Agreements (Uganda, DRC, Darfur)
- Documentation of gender-based crimes in armed conflicts
- Victims' participation before the ICC
- Training of activists, lawyers and judges on the Rome Statute and international jurisprudence regarding gender-based crimes
- Advocacy for reparations for women victims/survivors of armed conflicts

In 2006 the Women's Initiatives for Gender Justice was the first NGO to file before the International Criminal Court and to date is the only women's rights organisation to have been granted *amicus curiae* status.

Women's Initiatives for Gender Justice



Anna Paulownastraat 103
2518 BC The Hague
The Netherlands
Tel +31 (0)70 302 9911
Fax +31 (0)70 392 5270
info@iccwomen.org
www.iccwomen.org

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Making a Statement

A Review of Charges and Prosecutions for Gender-based Crimes
before the International Criminal Court

Author **Brigid Inder**
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Introduction to *Making a Statement*

This publication is a collection of statements and commentaries written by the Women's Initiatives for Gender Justice since 2005 in response to the opening of investigations, the unsealing of warrants of arrest and the announcing of charges brought by the Office of the Prosecutor (OTP) in each of the situations and cases before the International Criminal Court.

Making a Statement Second Edition reviews the record of the OTP until February 2010 in investigating violence against women and charging gender-based crimes. The choice of situations, the identification of crimes, the selection and framing of charges by the Office of the Prosecutor also make a statement about the priorities of the Office and the policy and strategic framework currently guiding its investigations and prosecutions. As such, this compilation is an analysis of the investigations and charges for gender-based crimes brought by the OTP against suspects from the Central African Republic, Northern Uganda, the Democratic Republic of the Congo (DRC), Darfur, Sudan and Kenya.

The Second Edition of ***Making a Statement*** includes an updated chart of all of the charges for gender-based crimes requested by the Prosecutor to date, as well as the charges confirmed and not confirmed by the Pre-Trial Chambers. It includes new statements by the Women's Initiatives in relation to the commencement of the ICC's first trial and the Confirmation Decision in the case against Jean-Pierre Bemba Gombo. In that same case, the Women's Initiatives was the first international women's rights organisation invited to file an *amicus curiae* brief before the ICC.

Since the OTP began its substantive work in 2003, it has opened investigations in four conflict situations and has sought authorisation from the Court to begin an investigation in a fifth. The OTP has provided evidence to support charges for genocide, crimes against humanity and war crimes against 16 suspects. Four accused have been arrested in relation to ICC arrest warrants,

and another suspect has voluntarily appeared before the Court. Seven suspects remain at large – three from Darfur, one from the DRC and three from Uganda (two of the named suspects are now deceased). Eight individuals currently face charges for gender-based crimes.

The OTP is conducting its investigations in some of the most difficult and violent conflicts in the world. In Darfur it is estimated that over 200,000 people have been killed and approximately two million are living in camps for internally displaced people in Darfur and the border area with Chad. In Northern Uganda more than 50,000 children have been abducted and 1.6 million people have been displaced during the 24-year conflict. The brutal and complex conflict in eastern DRC, with more than ten militia groups and three national armed forces operating, has left over three million people dead since 1998. In the Central African Republic thousands of citizens were reportedly tortured and executed during the 2003 coup d'état and the following period of instability. And finally in Kenya, a disputed election resulted in violence and targeted attacks. This violence included hundreds of reported rapes, predominantly of women and girls, with thousands more thought to be unreported, from late 2007 through early 2008.

In each of these situations, gender-based crimes, and in particular sexualised violence, is a significant and common feature. Acts of rape, torture, sexual enslavement, forced marriage and mutilation of women and girls, among other crimes, have been widely committed. From Gulu to Bangui, El Fasher to Bunia, gender-based violence is practised, accepted and considered 'necessary' for carrying out the political and military agendas of heavily armed rebels, militias, mercenaries and national armed forces who have operated beyond the reach of the law. Women in these conflicts and around the world are looking to the ICC to prosecute, with purpose and vision, those most responsible for the commission of gender-based crimes.

It is clear that the task of the OTP in conducting investigations in these environments has been challenging and at times daunting. Nevertheless, ending impunity, providing accountability and justice for communities most affected by genocide, war crimes and crimes against humanity and, ultimately, deterring the commission of such crimes, is the purpose and mandate of the International Criminal Court. The Rome Statute provides the ICC with the most advanced articulation in history of gender-based violence in international criminal law. The Court therefore has both the mandate and opportunity to prosecute these crimes where there is evidence such crimes have been committed.

In the words of Sergio Vieira De Mello, former United Nations High Commissioner for Human Rights, 'Let us not thwart some of the most important advances in gender justice that are embodied in the [Rome] Statute by failing to act in practical ways to implement them.'

Brigid Inder

Executive Director

Women's Initiatives for Gender Justice

10 February 2010

Chronology of Referrals to the International Criminal Court

Uganda

16 December 2003

Referred by the Government of Uganda

President Museveni of Uganda referred the situation concerning the Lord's Resistance Army (LRA) to the Office of the Prosecutor (OTP) on 16 December 2003 (ICC20051410.056.1-E). In response, the OTP sent the Government of Uganda a notification that the referral was regarded as concerning all conflict-related crimes committed in Northern Uganda since 1 July 2002. On 29 July 2004, the Office of the Prosecutor announced the opening of an investigation into the situation in Northern Uganda (ICC-OTP-20040729-65-En).

Democratic Republic of the Congo (DRC)

3 March 2004

Referred by the Government of the DRC

The President of the Democratic Republic of the Congo, President Joseph Kabila, referred the situation in the DRC to the Office of the Prosecutor in a letter dated 3 March 2004 (ICC-01/04-1). Following this referral, the Office of the Prosecutor announced on 23 June 2004 the formal opening of an investigation into crimes committed in the Ituri region (ICC-OTP-20040623-59-En). In September 2008, the Prosecutor stated his intention to investigate crimes committed in North and South Kivu.¹

1 Deputy Prosecutor Fatou Bensouda, 'Update on judicial proceedings: a focus on charging and prosecuting sexual and gender crimes', Speech at Semi-annual Meeting between the ICC and NGOs, The Hague, 30 September 2008, p 3, available at <<http://www.icc-cpi.int/NR/rdonlyres/EF316814-2FF4-44E3-9FC6-8C4CB33CB310/280605/300908TheHagueNGOs2.pdf>>.

Central African Republic (CAR)

21 December 2004

Referred by the Government of CAR

The Office of the Prosecutor received a letter from a representative of President Bozizé of the Central African Republic referring the situation in CAR to the ICC on 21 December 2004 (ICC-01/05-1). The referral is in reference to crimes committed throughout the Central African Republic. The Prosecutor announced his decision to formally investigate the situation in CAR on 22 May 2007 (ICC-OTP-PR-20070522-220-En).

Darfur, Sudan

31 March 2005

Referred by the United Nations Security Council (UNSC)

The UNSC referred the situation in Darfur to the Prosecutor of the ICC in UNSC Resolution 1593 dated 31 March 2005 [S/Res/1593 (31 March 2005)]. The Resolution requires the Government of Sudan and all involved parties to fully cooperate with the ICC. The Office of the Prosecutor decided to commence a formal investigation on 6 June 2005 (ICC-OTP-0606-104-En).

Kenya

26 November 2009

Investigation initiated by the Prosecutor of the ICC proprio motu

The Prosecutor filed a request to the Court on 26 November 2009 to authorise an investigation in Kenya related to the post-election violence of 2007-2008 (ICC-01/09-3). This was the first time since the establishment of the ICC that the Prosecutor exercised his powers to initiate an investigation on his own motion, rather than upon referral from a State or the Security Council.

Overview of Charges for Gender-based Crimes brought by the Office of the Prosecutor of the International Criminal Court

31 January 2010

Democratic Republic of the Congo (DRC)

Defendant: **Bosco Ntaganda**

Date of Prosecutor’s application for the arrest warrant: **12 January 2006**

Charges sought by the Office of the Prosecutor

- No charges for gender-based crimes as of 31 January 2010

Defendants: **Germain Katanga** and **Mathieu Ngudjolo Chui**

Date of Prosecutor’s application for the arrest warrant: **25 June 2007**

Date of confirmation of charges: **26 September 2008**

<i>Charges sought by the Office of the Prosecutor</i>	<i>Confirmed/Not confirmed</i>
■ Sexual Slavery constituting a crime against humanity [Article 7(1)(g)]	Confirmed
■ Sexual Slavery constituting a war crime [Article 8(2)(b)(xxii)]	Confirmed
■ Rape constituting a crime against humanity [Article 7(1)(g)]	Confirmed
■ Rape constituting a war crime [Article 8(2)(b)(xxii)]	Confirmed

Defendant: **Thomas Lubanga Dyilo**

Date of Prosecutor’s application for the arrest warrant: **12 January 2006**

Charges sought by the Office of the Prosecutor

- No charges for gender-based crimes as of 31 January 2010

Central African Republic (CAR)

Defendant: **Jean-Pierre Bemba Gombo**

Date of Prosecutor's application for the arrest warrant: **9 May 2008**

<i>Charges sought by the Office of the Prosecutor</i>	<i>Confirmed/Not confirmed</i>
■ Rape constituting a crime against humanity [Article 7(1)(g)]	Confirmed
■ Rape constituting a war crime [Article 8(2)(e)(vi)]	Confirmed
■ Torture constituting a crime against humanity [Article 7(1)(f)]	NOT confirmed
■ Torture constituting a war crime [Article 8(2)(c)(i)]	NOT confirmed
■ Rape and other acts as an outrage upon personal dignity constituting a war crime [Article 8(2)(c)(ii)]	NOT confirmed



Uganda

Defendant: **Joseph Kony**

Date of Prosecutor's application for the arrest warrant: **6 May 2005**

Charges sought by the Office of the Prosecutor

Confirmed/Not confirmed

- | | |
|--|---|
| ■ Sexual Slavery constituting a crime against humanity
[Article 7(1)(g)] | — |
| ■ Rape constituting a crime against humanity
[Article 7(1)(g)] | — |
| ■ Rape constituting a war crime [Article 8(2)(e)(vi)] | — |

Defendant: **Vincent Otti**¹

Date of Prosecutor's application for the arrest warrant: **6 May 2005**

Charges sought by the Office of the Prosecutor

Confirmed/Not confirmed

- | | |
|--|---|
| ■ Sexual Slavery constituting a crime against humanity
[Article 7(1)(g)] | — |
| ■ Rape constituting a war crime [Article 8(2)(e)(vi)] | — |

Defendant: **Okot Odhiambo**

Date of Prosecutor's application for the arrest warrant: **6 May 2005**

Charges sought by the Office of the Prosecutor

- **No charges for gender-based crimes as of 31 January 2010**

Defendant: **Raska Lukwiya**

Date of Prosecutor's application for the arrest warrant: **6 May 2005**

Charges sought by the Office of the Prosecutor

- **No charges as of 11 July 2007 when proceedings were terminated upon confirmation of his death**

Defendant: **Dominic Ongwen**

Date of Prosecutor's application for the arrest warrant: **6 May 2005**

Charges sought by the Office of the Prosecutor

- **No charges for gender-based crimes as of 31 January 2010**

¹ In September 2008, the Office of the Prosecutor confirmed the death of Vincent Otti and indicated it was preparing to terminate proceedings against him, but the Court's public documents continue to treat him as a suspect-at-large.

Darfur, Sudan

Defendant: **Ahmad Muhammad Harun**

Date of Prosecutor's application for the arrest warrant: **27 February 2007**

<i>Charges sought by the Office of the Prosecutor</i>	<i>Confirmed/Not confirmed</i>
■ Rape constituting a crime against humanity (2 counts) [Article 7(1)(g)]	—
■ Rape constituting a war crime (2 counts) [Article 8(2)(e)(vi)]	—
■ Outrages upon personal dignity constituting a war crime [Article 8(2)(c)(ii)]	—
■ Persecution by acts of rape constituting a crime against humanity [Article 7(1)(h)]	—
■ Persecution by acts of rape and outrages upon personal dignity constituting a crime against humanity [Article 7(1)(h)]	—

Defendant: **Ali Muhammad Ali Abd-Al-Rahman ('Ali Kashayb')**

Date of Prosecutor's application for the arrest warrant: **27 February 2007**

<i>Charges sought by the Office of the Prosecutor</i>	<i>Confirmed/Not confirmed</i>
■ Rape constituting a crime against humanity (2 counts) [Article 7(1)(g)]	—
■ Rape constituting a war crime (2 counts) [Article 8(2)(e)(vi)]	—
■ Outrages upon personal dignity constituting a war crime [Article 8(2)(c)(ii)]	—
■ Persecution by acts of rape constituting a crime against humanity [Article 7(1)(h)]	—
■ Persecution by acts of rape and outrages upon personal dignity constituting a crime against humanity [Article 7(1)(h)]	—

Defendant: **Omar Hassan Ahmad Al'Bashir**

Date of Prosecutor's application for the arrest warrant: **14 July 2008**

<i>Charges sought by the Office of the Prosecutor</i>	
■ Rape constituting a crime against humanity [Article 7(1)(g)]	—
■ Genocide based on rape and sexual assault [Article 6(b)] ²	—

Defendant: **Bahar Idriss Abu Garda**

Date of Prosecutor's application for the arrest warrant: **20 November 2008**

<i>Charges sought by the Office of the Prosecutor</i>	
■ No charges for gender-based crimes as of 31 January 2010	

- 2 Pre-Trial Chamber I declined to include this charge in the arrest warrant for Al'Bashir issued on 4 March 2009. On 3 February 2010, pursuant to the Prosecutor's appeal of this decision, the Appeals Chamber reversed this finding of the Pre-Trial Chamber. The Appeals Chamber found that the Pre-Trial Chamber had applied an erroneous standard of proof, and directed the Pre-Trial Chamber to decide anew whether a warrant of arrest should be issued in respect of the crime of genocide. At the time of publication, the decision of the Pre-Trial Chamber on the charge of genocide is still pending.



Statement by the Women's Initiatives for Gender Justice at the Press Conference, International Criminal Court on 23 November 2009

STATEMENT ON

Opening of the ICC Trial of Germain Katanga and Mathieu Ngudjolo Chui

23 November 2009

The case against Germain Katanga and Mathieu Ngudjolo Chui is important, as are all the cases before the ICC, because it provides accountability and proof that militia leaders are not beyond the reach of the law even when they operate in remote locations, far from capital cities.

This trial is important because it shows to those who believe impunity is assured that accountability is inevitable.

In some respects this is a modest case. It is based on one incident – the attack of Bogoro village on 24 February 2003. However, the case at least partially ‘representative’ of the types of attacks, types of crimes, types of violence against women and the types of victims of the FRPI² and FNI³.

As the alleged senior commanders of these two militias, Katanga and Ngudjolo are charged with three counts of crimes against humanity⁴ and seven counts of war crimes⁵ including rape

and sexual enslavement. They are the first two accused from the Democratic Republic of the Congo (DRC) to be charged with gender-based crimes.

Documentation

In 2006 and 2007 the Women's Initiatives carried out extensive documentation of gender-based crimes committed by a range of militias operating primarily in the Ituri region. Our report included 112 interviews mostly with women victims/survivors of sexual violence. Almost 30 interviews related to gender-based crimes committed by the FNI and FRPI.

Women we interviewed described horrific attacks, rapes, gang rapes and enslavement. Many of the women were raped in front of family members, including their children. Several we interviewed reported losing consciousness as a result of rape, and some became pregnant. Women who were pregnant prior to the rape lost their children, and many had severe physical and psychological injuries as a result of the sexual violence. Many women were attacked in their homes. Many were abducted and enslaved particularly in camps run by the FNI. Women we interviewed told us that in addition to domestic work in the camps, women were raped by militiamen and commanding officers and assigned to them as ‘wives’. Those who tried to escape were killed.

2 *Force de résistance patriotique en Ituri* (Patriotic Resistance Force in Ituri).

3 *Force des nationalistes et intégrationnistes* (National Integrationist Front).

4 Murder under article 7(1); sexual slavery and rape under article 7(1)(g).

5 Using children under the age of 15 to take active part in hostilities under Article 8(2)(b)(xxvi); deliberately directing an attack on a civilian population as such or against individual civilians not taking direct part in hostilities under Article 8(2)(b)(i); wilful killing under Article 8(2)(a)(i); destruction of property under Article 8(2)(b)(xiii); pillaging under Article 8(2)(b)(xvi); sexual slavery and rape under Article 8(2)(b)(xxii).

The FNI and FRPI attacked entire villages, where they pillaged, raped, and abducted women.

Although not all these forms of sexual violence are being charged, the case against Katanga and Ngudjolo does include important charges of rape and sexual enslavement as war crimes and crimes against humanity.

However, there are some challenges with this case.

Limitation on Facts and Evidence

On 29 October the Trial Chamber issued a decision regarding the scope of the evidence to be submitted at trial.

The Chamber has taken a position to not consider new facts disclosed over the course of trial as a result of the Prosecution's ongoing investigations, stating that the Prosecution is bound by the 'facts and circumstances' as set forth in the confirmed charges. Consequently, the decision forces the Prosecution to rely on facts presented only during the pre-trial phase. We are concerned about the impact of this decision on the Prosecution's ability to adequately present its case regarding, in particular, gender-based crimes.

In the Katanga/Ngudjolo case, evidence of gender-based crimes was not fully presented at the Confirmation Hearing, and one of the Judges issued a partly dissenting opinion⁶ casting doubt on the sufficiency of the evidence presented with respect to gender-based crimes at the pre-trial stage. In our view, it is critical that the Chamber allows the Prosecution to present all the evidence of gender-based crimes it has collected as a result of ongoing

investigations, regardless of whether it was introduced during the Confirmation Hearing.

Accountability

Accountability for gender-based crimes is important for the Bogoro community, for communities in Ituri, in eastern DRC, throughout the Democratic Republic of the Congo, the Great Lakes region and beyond, because it shows the ICC takes these crimes seriously, will prosecute sexual violence with purpose and vigour, and that the ICC will recognise the human and legal rights that women in the DRC are denied at the domestic level.

The DRC has the highest rate of sexual violence in the world, it has the fourth lowest ranking of countries on the Ibrahim Index of Good Governance and Democracy⁷ and is in the top ten percent of most corrupt countries around the globe according to a recent report by Transparency International.⁸

Therefore, the likelihood of the sexual violence crimes – the acts committed in the Bogoro attack – being addressed domestically is almost zero. In such situations, the role and responsibility of the ICC to prosecute these crimes is paramount, as it represents for women the greatest hope and perhaps their only chance for justice and accountability.

6 *Partly Dissenting Opinion of Judge Ušacka*, ICC-01/04-01/07-717, available at <<http://www.icc-cpi.int/iccdocs/doc/doc571253.pdf>>.

7 See <<http://www.moibrahimfoundation.org/en/section/the-ibrahim-index/scores-and-ranking>>.

8 *Corruption Perceptions Index 2009*, available at <http://www.transparency.org/policy_research/surveys_indices/cpi/2009>.

Edited excerpt from 'Eye on the ICC 2008:2', an electronic newsletter produced by the Women's Initiatives for Gender Justice

NEWS EXTRACT

Arrest Warrant for Bosco Ntaganda

Union des Patriotes Congolais militia (UPC), Ituri

June 2008

On 28 April 2008, Pre-Trial Chamber I (PTC I) of the International Criminal Court (ICC) unsealed the warrant of arrest for Mr Bosco Ntaganda, formerly third in command of the *Union des Patriotes Congolais* (UPC) militia.⁹ Ntaganda is charged with three counts of war crimes of enlistment and conscription of children under the age of 15 years and of using them to participate actively in hostilities in Ituri, from July 2002 until December 2003. These are the same charges for the same period as the original arrest warrant for Thomas Lubanga Dyilo, alleged President of the UPC and Commander-in-Chief of its military wing, the *Forces Patriotiques pour la Libération du Congo* (FPLC).

Lubanga's charges were later amended as a result of the Confirmation of Charges Hearing. On 29 January 2007, Pre-Trial Chamber I concluded that Thomas Lubanga is to be charged with six counts of war crimes of enlisting and conscripting children under the age of 15 years into the FPLC

and using them to participate actively in hostilities in both an international armed conflict from early September 2002 to 2 June 2003 and in an armed conflict not of an international character, from 2 June to 13 August 2003.

There are no charges against Bosco Ntaganda for gender-based crimes despite the availability of reports by the United Nations and some human rights organisations including the Women's Initiatives for Gender Justice, documenting sexualised violence committed by the UPC in Ituri.

Ntaganda has not yet been arrested and is believed to have moved to North Kivu where he is thought to be second-in-command to Laurent Nkunda of the National Congress for the Defence of the People (CNDP). The CNDP signed the Goma Peace Agreement and entered into a ceasefire with the Congolese Army in January 2008 but has refused to disarm and integrate with the national armed forces until the disarming of the *Forces Démocratique de Libération du Rwanda* militia (FDLR).

Mr Ntaganda is the fourth person from the DRC to face charges before the ICC. To date all those charged are from two primary militia groups and alliances (FRPI/FNI and UPC) operating in the Ituri region of eastern DRC. The ICC is considering further investigations in other regions, specifically north and south Kivu where militia groups are still active.

⁹ According to the International Criminal Court, the UPC was formed in 2000 with the *Forces Patriotiques pour la Libération du Congo* (FPLC), the military wing of the UPC established in 2002. The UPC/FPLC emerged as a militia group during what is commonly referred to as the 'Second Congo War' in Ituri. Many reports from the United Nations and human rights organisations have documented several attacks allegedly committed by the UPC/FPLC. These reports indicate that the UPC/FPLC, a militia group of predominantly Hema ethnicity, committed large scale attacks on civilians, especially of the Lendu ethnic community.

Edited excerpt from 'Eye on the ICC 2008:2', an electronic newsletter produced by the Women's Initiatives for Gender Justice

NEWS EXTRACT

Confirmation of Charges Hearing – Germain Katanga & Mathieu Ngudjolo Chui

*Force de Résistance Patriotique en Ituri (FRPI) and
Front des nationalistes et intégrationnistes (FNI), Ituri*

June 2008

In October 2007 and February 2008, Germain Katanga, former senior commander of the *Force de Résistance Patriotique en Ituri* (FRPI) militia group and Mathieu Ngudjolo Chui, former commander of the *Front des nationalistes et intégrationnistes* (FNI) were handed over to the International Criminal Court charged with eight counts of war crimes and crimes against humanity including sexual enslavement. On 10 March 2008, Pre-Trial Chamber I (PTC I) joined the cases against the two suspects as they face the same charges for their alleged joint co-perpetration of an attack in Bogoro, Ituri, in February 2003.

The Confirmation of Charges Hearing for Katanga and Ngudjolo is scheduled to take place on 27 June 2008. The Hearing was delayed from 21 May to give the Defence Team for Ngudjolo, taken into custody in February, more time to prepare.

In the lead-up to the Confirmation Hearing, on 18 April, PTC I ordered the prosecution not to use two witnesses of sexual violence because of concerns regarding their security and also ordered the Registrar to take steps to ensure the protection of these witnesses. On 24 April 2008, the Prosecutor announced eight charges

against both Katanga and Ngudjolo and explained that they will not be proceeding with the charges of sexual enslavement as a war crime or as a crime against humanity since the evidence of the two witnesses had been withheld.

On 28 May, PTC I permitted the use of the evidence of the two witnesses after reviewing a report from the Registrar on protective measures made available for them and a request from the prosecution for admission of their evidence. The new charges filed on 12 June reinstated sexual enslavement and added charges of rape and outrages upon personal dignity against both suspects.





As a result, Katanga and Ngudjolo are the first two suspects from the DRC to be charged with gender-based crimes. In total they are charged with 13 counts of war crimes and crimes against humanity.

In the document announcing the charges on 24 April, the Prosecution summarised the sexual violence:

Women, who were captured at Bogoro and spared because they hid their ethnicity, were raped and forcibly taken to military camps. Once there, they were sometimes given as a 'wife' to their captors or kept in the camp's prison, which was a hole dug in the ground. The women detained in these prisons were repeatedly raped by soldiers and commanders alike and also by soldiers who were punished and sent to prison. The fate reserved to captured women was widely known.¹⁰

At the time the arrest warrant for Katanga was unsealed (18 October 2007), the Women's Initiatives welcomed the inclusion of the charge of sexual enslavement as a crime against humanity and a war crime but called for an expansion of these charges in the coming months. The widespread commission of rape and other forms of sexual violence in Eastern DRC has been widely documented and received considerable international attention.

Despite this, impunity for these crimes continues with few domestic prosecutions for sexual violence and until 12 June 2008 the ICC had not brought charges of rape or other gender-based crimes against anyone in the DRC. The Women's Initiatives has documented 112 cases of rape, sexual enslavement, forced marriage and torture, among other crimes, committed primarily by the FRPI, FNI and UPC militia groups in the Ituri region. Our documentation, along with reports by the United Nations and other international and intergovernmental bodies, reveals the systemic nature of sexual violence committed in eastern DRC as a consequence of the conflict.

10 ICC-01/04-01/07-584-Anx1A, para 89.

STATEMENT ON

The Arrest of Germain Katanga

Force de Résistance Patriotique en Ituri militia (FRPI), Ituri

November 2007

On 18 October 2007, the International Criminal Court (ICC) took into custody Germain Katanga, former senior commander of the *Force de Résistance Patriotique en Ituri* (FRPI) militia, active in the Ituri region of the Democratic Republic of the Congo (DRC). Katanga is charged with nine counts of war crimes and crimes against humanity including sexual slavery. The full set of charges are: murder, inhumane acts, and sexual slavery as crimes against humanity; willful killing, using child soldiers, attacks on civilian population, inhuman treatment, sexual slavery, and pillaging as war crimes.

The Women's Initiatives has been directly involved in the DRC situation since March 2006 when the ICC failed to charge Thomas Lubanga Dyilo with gender-based crimes. Mr Lubanga, the Founder and President of the UPC militia, was the first suspect taken into custody by the ICC. The lack of charges for sexual violence against Lubanga was seen by many local DRC NGOs and ourselves to be a significant omission given the availability of information, witnesses and documentation from multiple sources including the United Nations and various human rights organisations showing the widespread commission of rape and other forms of sexualised violence by the UPC militia group.

The Women's Initiatives has advocated for the ICC to investigate gender-based crimes committed by a range of militia groups and armed forces in eastern DRC. Our advocacy, legal filings and documentation of crimes committed

in relation to the Lubanga case put the spotlight on the absence of charges for violence committed against women by the UPC.

For the second DRC investigation the ICC appears to have taken a more strategic and focused approach and as such found evidence of gender-based crimes committed by the FRPI militia.

We are pleased to see charges for sexual slavery as both a war crime and crime against humanity have been included in the indictments against Katanga and call for an expansion of these charges over the coming months.

Much work remains to be done in both DRC cases and more broadly for accountability for grave crimes, including gender-based crimes, committed by militia groups, armed forces and security personnel in eastern DRC. The work of the ICC towards ending impunity for these crimes is a significant contribution towards addressing violence against women in the DRC and in armed conflicts elsewhere.

We are pleased, with this arrest and charges in other cases, that the ICC is beginning to address its obligations under the Rome Statute to prosecute gender-based crimes. Such prosecutions are essential towards ultimately preventing sexualised violence against women in armed conflict.

DECLARATION

Beni Declaration

By women's rights and human rights NGOs from the Democratic Republic of the Congo on the Prosecutions by the International Criminal Court

September 2006

Obtaining further charges in the case against Mr Thomas Lubanga

We, the participants in the Seminar on capacity building for human rights organisations, members of the *Coalition Congolaise pour la Justice Transitionnelle* and of women's organisations of Essaim, addressing the fight against impunity in the Democratic Republic of The Congo, from the provinces of South Kivu, North Kivu, Maniema, Eastern Kasai, Western Kasai, Katanga, Ecuador, of the Eastern Province and of the city of Kinshasa, at the Seminar held in Beni in the province of North Kivu from September 14 to 16, 2006, in the assembly room of the *Centre d'Accueil Protestant* with the support of Women's Initiatives for Gender Justice, celebrate the formal accusation on August 28, 2006, of Mr Thomas Lubanga, leader of the *Union des Patriotes Congolais* (UPC), one of the operational militias in Ituri, in the North-East of the Democratic Republic of Congo, by the International Criminal Court.

However, we deeply regret that the only charges brought pertain to the enlistment and conscription of child soldiers.

Without minimising these charges, as human rights organisations we stress that the UPC has committed several other crimes falling under the jurisdiction of the International Criminal Court, for which the details have been submitted to the Office of the Prosecutor by national and international NGOs. In particular we draw attention to the widespread commission of rape and other forms of sexual violence by the UPC and the responsibility of the ICC to address impunity for gender-based crimes.

Between September 28, 2006, the date of the Confirmation of Charges Hearing, and the opening of the Trial before the Trial Chamber, the Prosecutor should conduct further investigations to add additional charges in light of the reality of the crimes committed in the field.

The participants of this seminar are surprised by the limited charges brought and feel that, if no improvements are made, these charges risk offending the victims and strengthening the growing mistrust in the work of the International Criminal Court in the DRC and in the work of the Prosecutor specifically.

Beni, 16 September 2006

Signatories to the Beni Declaration

<i>N°</i>	<i>Organisation / location</i>	<i>Province</i>
01	ASADHO / Katanga / CCJT	Katanga
02	OCDH / Equateur / CCJT	Equateur
03	Réseau de Kisangani	Province Orientale
04	FESA / Uvira	South Kivu
05	CFDE / Goma	North Kivu
06	GADHOP/Butembo	North Kivu
07	ASPD / Goma	North Kivu
08	SAFDE / Butembo	North Kivu
09	CERDF / ESSAIM / Kisangani	Province Orientale
10	RADHOSKI / CPDH / Bukavu	South Kivu
11	MALI / Kindu / CCJT	Maniema
12	ADIF / Maniema	Maniema
13	ONE / Mbuji Mayi / CCJT	Kasaï Oriental
14	ACIDH / Katanga / CCJT	Katanga
15	LOFEPAKO / Nord Kivu	North Kivu
16	Justice Plus / Ituri / CCJT	Province Orientale
17	OCDH / Kinshasa / CCJT	Kinshasa
18	Ligue des Electeurs / Kinshasa / CCJT	Kinshasa
19	LIZADEEL / Kananga / CCJT	Kasaï occidentale
20	Justice et Libération / Kisangani CCJT	Province Orientale
21	ESSAIM / CCJT	North Kivu
22	Groupe LOTUS / Kisangani / CCJT	Province Orientale
23	CEFEC / Beni	North Kivu
24	SOFEPADI / Ituri	Province Orientale
25	ICJP / Bukavu / CCJT	South Kivu



The following excerpt is the introduction to an unpublished report produced by the Women's Initiatives for Gender Justice and submitted to the Office of the Prosecutor (OTP) of the International Criminal Court following the arrest of Thomas Lubanga Dyilo, alleged President of the Union des Patriotes Congolais (UPC) and Commander-in-Chief of its military wing the Forces Patriotiques pour la Liberation du Congo (FPLC). Despite many reports from the United Nations and human rights organisations on the commission of gender-based crimes by the UPC/FPLC, no charges for these crimes were brought by the OTP. This excerpt has been edited for publication.

REPORT EXTRACT

Rape and Sexual Violence Committed in Ituri

August 2006

This report is based on two field missions conducted in 2006 by the Women's Initiatives for Gender Justice in collaboration with local women's rights and human rights activists in the eastern provinces of the Democratic Republic of the Congo.

The focus of the field missions was to interview women victims/survivors of gender-based crimes committed in Ituri, specifically women victims/survivors of crimes committed by the UPC. The report includes a total of 55 interviews with women victims/survivors of gender-based crimes, 31 of which relate specifically to the UPC.

During the first mission the team interviewed 41 women victims/survivors of gender-based crimes committed by a range of militia groups and armed forces, including the UPC, FNI¹¹, FARDC¹², UPDF¹³ and perpetrators from unidentified militias and forces. The first mission was conducted over a 10-day period and included interviews with a relatively large number of victims in order to gather information on:

- the range of crimes, the type of attacks, and modes of commission

- the range of perpetrators
- the availability and willingness of women victims/survivors to be interviewed, and the related security issues for both the interviewees and the team conducting the field missions

Of the 41 interviews conducted on this mission, 17 women were victims/survivors of rape and other forms of sexualised violence committed by the UPC.

For the second field mission we focused solely on interviewing victims of UPC crimes, given the arrest of Thomas Lubanga Dyilo and the absence of charges against him for gender-based crimes. We selected from the original 17 UPC-related interviews those which required more detail. Subsequently the team followed up with these women and re-interviewed them for additional information relating to the specifics of the attacks, the identification of the perpetrators and other relevant and substantial information.

In addition the team interviewed another 15 women victims/survivors of gender-based crimes committed by the UPC. Because of the focus on the UPC in these missions, particularly the second mission, information provided

11 *Front des nationalistes et intégrationnistes*

12 *Forces Armées de la République Démocratique du Congo*

13 *Uganda People's Defence Force*



on incidents relating to the UPC is more thorough and detailed than the interviews on crimes committed by other militia groups and armed forces. This does not suggest such detail is not possible to gather, nor that it is only the UPC who have committed gender-based crimes. It simply reflects the focus of the missions in interviewing women in relation to gender-based crimes committed by the UPC.

Interviews provided in the report in relation to other militia groups including the FNI should be the focus of follow-up missions and further interviews. There are 17 interviews with victims/survivors (14 women, 3 men) of rape and other forms of sexual violence committed by the FNI.

We urge the Office of the Prosecutor (OTP) as a matter of priority in their investigations of the FNI to pursue investigations into such crimes.

For both missions the team found women willing and prepared to be interviewed and provide information about the incidents they have survived and witnessed. There are obvious security concerns and challenges in undertaking interviews in the situation of an ongoing conflict. However we believe we demonstrate with this report that such interviews are warranted, urgently needed, feasible and ultimately the responsibility of the OTP.

Recommendations

There are at least three key strategies the ICC needs to implement in order to effectively investigate gender-based crimes and access women victims/survivors and witnesses.

Firstly, the OTP's work must be undertaken with the gender competence necessary to be able to direct, plan and conduct investigations into gender-based crimes. We note in this respect that the OTP has to date not demonstrated sufficient competence in relation to the DRC situation. In addition we note that the position of Gender Legal Advisor, mandated by the Statute, has not been appointed – a position unquestionably needed by the OTP as a matter of urgency.

Secondly, the OTP should establish contacts and collaborations with credible local women's and other community organisations through whom they could access discrete networks to reach women victims/survivors. Genuine collaboration with local activists would enhance the Court's access to community knowledge, facilitate access to witnesses, and support their ability to follow up with victims/witnesses. We note the OTP's failure to develop the necessary community relationships for their investigations.

Finally, investigations into gender-based crimes are founded on the underlying commitment to identify, recognise and pursue leads and information in relation to gender-based crimes. Such commitment has not been demonstrated by the OTP in their investigations to date in the DRC, specifically in relation to the case against Mr Thomas Lubanga Dyilo.

Conclusion

We believe, based on the interviews included in this report that:

- gender-based crimes have been committed by the UPC
- the use of rape and other forms of sexualised violence are widespread and systematic
- these acts were part of the commission of attacks against the civilian population
- there was a pattern of rape, abduction, sexual slavery, torture and inhuman treatment
- these acts were known to the military hierarchy including Thomas Lubanga Dyilo, President of the UPC and Commander-in-Chief of the FPLC

We therefore urge the Office of the Prosecutor to immediately open investigations into gender-based crimes committed by the UPC and remind the OTP of its positive obligation under the Rome Statute to ensure such crimes are effectively investigated and prosecuted as an essential component of universal justice.

Postscript

As of 20 June 2008, the Office of the Prosecutor had not opened investigations into gender-based crimes committed by the UPC. The charges against Thomas Lubanga Dyilo were not expanded to include a broader range of crimes including gender-based violence.

In a written decision of 13 June 2008, the Trial Chamber stayed the proceedings in the trial of Thomas Lubanga Dyilo and ordered that unless the stay is lifted, the Chamber will convene a hearing on 24 June to consider the release of the Accused¹⁴. According to the Chamber, the Accused's right to a fair trial was seriously

undermined by the prosecution not disclosing material, obtained under Article 54(3)(e)¹⁵ of the Rome Statute, that was potentially exculpatory in nature.

The Prosecution believes that Article 54(3)(e) guarantees confidentiality unless the information-providers authorise otherwise and that the Court should be accepting of the 'realities' of the United Nations and NGOs on the ground who, in some instances, require absolute confidentiality in the provision of information to the Office of the Prosecutor (OTP). The Prosecution believe their interpretation of Article 54(3)(e) is supported by the Relationship Agreement between the ICC and the United Nations which prohibits the OTP from 'disclosing confidential materials to any organ of the Court without consent of the information providers'. The Prosecution argue that in endorsing the Relationship Agreement, the Assembly of States Parties, 'the Court's legislative body', gives authority to the prosecution's interpretation of Article 54(3)(e).

The Chamber stated in their 13 June decision that '... the trial process has been ruptured to such a degree that it is now impossible to piece together the constituent elements of a fair trial'. At the time of printing this publication (23 June, 2008) the Office of the Prosecutor had requested leave to appeal the decision.

15 Article 54(3)(e) states, 'The Prosecutor shall agree not to disclose, at any stage of the proceedings, documents or information that the Prosecutor obtains on the condition of confidentiality and solely for the purpose of generating new evidence, unless the provider of the information consents.'

14 ICC-01-04-01-06-1401

STATEMENT

Failed DRC Investigations by the ICC Claim NGOs

August 2006

On Monday August 28, the International Criminal Court announced its charges against Thomas Lubanga Dyilo, President of the *Union des Patriotes Congolais* (UPC) in Eastern DRC.

'The Congolese Coalition for Transitional Justice and the Women's Initiatives for Gender Justice are disappointed, but not surprised, by the announcement in The Hague during Monday's press briefing by the ICC,' said Raphael Wakenge, Coordinator for the Coalition and Brigid Inder, Executive Director of the Women's Initiatives for Gender Justice.

'The ICC has built its case on narrow charges against one of the most brutal militia groups in the Eastern DRC therefore excluding many victims and survivors from participating in the justice process,' said Mr Wakenge.

'Crimes committed by the UPC include widespread rape and sexual slavery,

crimes ignored by the Court in their investigations and consequently in the case against Mr Lubanga, the first indictee to stand trial at the ICC,' Mr Wakenge said.

Earlier this month the Women's Initiatives for Gender Justice submitted information to the Prosecutor detailing examples of gender-based crimes committed by the UPC. 'There is substantial evidence available to show that rape and other forms of sexual violence have been a defining characteristic of the conflict in Ituri and that the UPC, among other groups, has committed these crimes,' said Ms Inder.

'Although the ICC is focusing on child soldiers solely in the first case, it doesn't appear to have been willing to undertake investigations into the rape of girls abducted by the UPC for the purposes of conscription into the militia,' Ms Inder added.



STATEMENT ON

ICC Decision to Omit Charges for Gender-based Crimes Against Jean-Pierre Bemba Gombo

Mouvement de Libération du Congo (MLC)

September 2009

The Women's Initiatives for Gender Justice is disappointed by the 18 September decision of Pre-Trial Chamber II to reject the Prosecutor's application to appeal the decision on the confirmation of charges against Jean-Pierre Bemba Gombo. While this decision sends Mr Bemba to trial facing charges of rape, it declines to have Mr Bemba tried on the full range of sexual violence charges sought by the Prosecutor, which included torture and outrages upon personal dignity.

Mr Bemba, alleged President and Commander-in-Chief of the *Mouvement de libération du Congo (MLC)*, was originally charged with eight counts of war crimes and crimes against humanity committed by the MLC in the Central African Republic between 25 October 2002 and 15 March 2003.

In the 18 September decision, the Pre-Trial Chamber confirms its reasoning in its 15 June confirmation of charges decision, explaining that the 'essence' of the charges of torture and outrages upon personal dignity are fully subsumed by the charge of rape. The Chamber had decided not to confirm the two charges because, it reasoned, these counts did not possess a distinct legal element to the crime of rape, and because the Prosecutor relied on the same evidence pertaining to acts of rape to support all of the charges. The Chamber saw these charges as therefore 'cumulative' to the charge of rape, and prejudicial to the rights of the accused.

The Pre-Trial Chamber's interpretation of the Rome Statute appears to ignore the distinct crimes articulated in the Statute under which an accused can be charged for sexual violence, and also appears to contradict the Elements of Crimes, which states in its general introduction that 'a particular conduct may constitute one or more crimes'.

As the Women's Initiatives for Gender Justice argued in an *amicus curiae* brief on 31 July, by excluding the full range of charges for sexual violence in the Bemba case, the Chamber has failed to address the extent of the harm suffered by those raped and those forced to watch family members being raped. The combined charges of rape, torture and outrages upon personal dignity as originally charged by the Prosecutor more accurately reflect the intention of the acts of rape and the harm suffered by the victims.

'The Chamber's decision to only confirm charges of rape does not sufficiently address the range of sexual violence crimes committed and excludes the suffering experienced by these victims,' said Brigid Inder, Executive Director of the Women's Initiatives for Gender Justice. 'This decision minimises the harm, impact and purpose of the acts of rape,' said Ms. Inder.

According to Women's Initiatives' Legal Counsel for the Bemba case, Patricia Viseur Sellers, 'Other international tribunals such as the International Criminal Tribunal for Yugoslavia and the International Criminal Tribunal for Rwanda, as well as many national jurisdictions, accept that cumulative charging is appropriate – and necessary – to capture the different and multiple harms experienced by victims/survivors, in particular those who have suffered from sexual violence.'

'The Pre-Trial Chamber construed the cumulative charging test too narrowly, and thereby excluded evidence of sexual violence, including sexual torture inflicted upon relatives constrained to watch family members being raped,' said Ms Viseur Sellers.

With this decision, the extent of the crimes committed against these victims, specifically crimes of torture and outrages upon personal dignity, as charged by the Prosecutor, will now not be included in the charges against Jean-Pierre Bemba Gombo. The decision creates no binding precedent on other

pre-trial chambers but represents a worrying development in the ICC's jurisprudence on gender-based crimes.

'Despite this decision, witnesses must be given the opportunity to testify in court about the full range of harm they have suffered. Whether this is done through an amendment to the charges requested by the Office of the Prosecutor, or through testimony substantiating the existing charge of rape, victims/survivors should be allowed to testify to the humiliation, torment and torture they endured,' said Ms Inder.

The Pre-Trial Chamber's decision to deny the Prosecutor's request for appeal can be found here: <<http://www.icc-cpi.int/iccdocs/doc/doc745391.pdf>>.

For more information about the case and the *amicus curiae* filing by the Women's Initiatives for Gender Justice: <http://www.iccwomen.org/news/docs/LegalEye_Aug09/index.html>.



STATEMENT ON

The Arrest of Jean-Pierre Bemba Gombo

*Mouvement de Libération du Congo (MLC)***June 2008**

'The Women's Initiatives for Gender Justice welcomes the arrest of Jean-Pierre Bemba Gombo by Belgian authorities on 24 May 2008, in response to a warrant of arrest issued by the International Criminal Court (ICC),' said Executive Director Brigid Inder.

Mr Bemba, President and Commander in Chief of the *Mouvement de Libération du Congo* (MLC), is charged with eight counts of war crimes and crimes against humanity committed by the MLC in the Central African Republic (CAR) between 25 October 2002 to 15 March 2003. Originally from the Democratic Republic of the Congo (DRC), Jean-Pierre Bemba has been a public figure in domestic politics. He was one of four Vice-Presidents in the transitional government between 2003-2006 and ran unsuccessfully as a candidate in the DRC Presidential Elections in 2006. He was elected to the national Senate in 2007.

According to the Prosecutor of the International Criminal Court, the MLC has terrorised civilians in both the DRC and the Central African Republic.

'The arrest of Mr Bemba is important because he is the most high-profile political and public figure to be apprehended in relation to charges brought by the ICC. This arrest demonstrates that with State cooperation, senior political figures can be arrested to face charges by the Court. It puts on notice seven other ICC suspects still at large regarding what is possible when the international

community focuses its resources to end impunity for war crimes, crimes against humanity and genocide,' said Inder.

'It is also significant because at the time of Mr Bemba's arrest he was the only person to be apprehended based on an ICC arrest warrant, to face charges of rape,' said Brigid Inder.

Four other ICC suspects face rape charges in the arrest warrants against them, however none have been apprehended.

'When the Women's Initiatives for Gender Justice went to CAR in 2006, we met with many women's rights organisations who described the brutality of the violence committed in the 2002-2003 period. Many of these organisations were formed in response to the large numbers of women who were raped during the attempted coup d'état and the following period of instability and violence.'

'We interviewed women victims/survivors of rape and other forms of sexual violence committed by "Bemba's men" and the repercussions they, and others, faced. Many were rejected by their families, ostracised by their communities, contracted HIV, gave birth to children as a result of rape and continue to experience medical complications and high levels of violence-related trauma,' said Inder.

Rape and other forms of sexual violence committed in CAR are not uncommon in armed conflicts, they are a familiar occurrence in each of

the conflict situations where the ICC is currently conducting investigations. 'What is unusual about the CAR situation is the quantity of material available documenting these crimes. Local women's rights organisations and victims/survivor groups have documented more than 1000 incidents of rape. This provided the ICC with a significant volume of information to consider and follow up on during their investigations,' Brigid Inder said.

At the time of launching the investigation in May 2007, the Office of the Prosecutor stated that there was a pattern of massive rapes and other acts of sexual violence. They had information indicating there were at least 600 rapes in a 5-month period and that sexual violence seemed to be a central feature of the conflict. On May 22, 2007 the Prosecutor announced the intention of his office to explicitly investigate allegations of rape as a priority in the formal investigation in CAR.

'Given this announcement, the focus of the investigations, the available documentation, the relative stability within the country and the readiness of witnesses to testify, we are very

disappointed by the limited charges for gender-based crimes. Rape is the starting point. We had expected the ICC to bring comprehensive charges for sexual violence in the CAR situation. Rape can be charged as a crime in and of itself, but it can also be charged as other types of violence, for example, as torture or as mutilation. In addition to rape there were other forms of sexual violence and gender-based crimes committed for which no charges have been brought. The lack of understanding of gender-based violence at the policy level is limiting the effectiveness of the ICC to prosecute these crimes,' said Brigid Inder.

The legal rights of women in CAR are limited and convictions for rape are few. 'While we hope the decision by the ICC to prosecute rape may assist in the future prosecution of non-conflict related rape by the national judiciary, as an international institution with significant resources at its disposal, we expected a wider range of charging by the ICC to reflect the purpose and impact of sexualised violence including, but not limited to, rape.'

'Although the charge of rape exists, we do not consider the Bemba charges to signal any real progress in the field of international criminal law and gender justice,' Brigid Inder said. 'We hope more will be done in this respect, prior to the Confirmation of Charges Hearing.'

The Women's Initiatives for Gender Justice is supportive of the Prosecutor's intention to continue investigations in CAR and to monitor the situation in the northern parts of the country where local women's organisations report the occurrence of human rights violations committed by the Presidential Guard and the Army.



STATEMENT ON

The Investigation of Rape and Sexual Violence in the Central African Republic

May 2007

'The Women's Initiatives for Gender Justice welcomes the decision by the Prosecutor of the International Criminal Court to formally open an investigation into crimes committed in the Central African Republic (CAR) during 2002 and 2003,' said Executive Director Brigid Inder.

'In May 2006 we held consultations in CAR with women's organisations, victims/survivors groups and women lawyers who were adamant the ICC should open an investigation and prosecute those responsible for rape and other forms of sexual violence,' she said.

'Today's announcement on CAR 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,' said Brigid Inder.

The widespread commission of rape and sexual violence in CAR is a feature common to each of the conflict situations where the Court is conducting or has conducted its investigations. 'What is unusual about the CAR situation is the quantity of material available documenting these crimes. Local women's organisations and victims/survivor groups have documented more than 1000 incidents of rape. This has made it hard to ignore these crimes and provides the Court with a strong resource of information and potential evidence to consider during their investigations,' Brigid Inder said.

'Given the evidence and information already gathered by local NGOs and the willingness of victims/survivors and witnesses to report the crimes, we expect full and comprehensive charging for gender-based crimes this time by the ICC,' said Inder.

'We call on the Court to establish an information and outreach presence and office in the CAR as quickly as possible and to hold specific meetings and consultations with women and women's groups. Despite the court operating in three conflict situations over the past four years, there has not yet been a single consultation with women in any of the conflict situations. It's time for the Court to address this and given the intention to investigate allegations of rape, what better place to hold their first workshop with women than in CAR,' Brigid Inder said.

'We support the Prosecutor's intention to also monitor the current hostilities in the northern parts of the country where women's organisations have said human rights violations continue to be committed especially by the Presidential Guard and the Army,' the Women's Initiatives for Gender Justice said.

The legal rights of women in CAR are very limited – marital rape is not illegal, the law does not afford women the right to inherit, there are very few convictions for rape and women do not have confidence in the police nor the judicial system regarding gender-based crimes, domestic violence is considered acceptable and female genital mutilation is still widely practised especially in northern CAR.

'Women victims/survivors of rape during the coup period of 2002-2003 have been rejected by their husbands, partners and families, many have contracted sexually transmitted diseases including HIV/AIDS as a result of rape, violence-related trauma is very high and women who had children as a result of rape during the coup period have been ostracised by the community,' the Women's Initiatives for Gender Justice said.

'Given there are few convictions for rape in CAR, despite it being common, an eventual decision by the court to prosecute sexual violence will demonstrate that these crimes are serious and will assist in the prosecution of non-conflict related rape and other forms of sexual violence by the national judiciary.'

'Prosecution of rape and other forms of sexual violence will demonstrate that the ICC recognises the human and legal rights of women in CAR even when these are denied by the laws and practices of the country,' said Brigid Inder.



This statement, prepared by the Greater North Women's Voices for Peace Network and the Women's Initiatives for Gender Justice, was presented at the opening of the resumed Peace Talks in Juba, 30 January 2008.

STATEMENT

By Women from the Greater North of Uganda to the Parties at the Peace Talks

January 2008

Mr Mediator His Excellency Lt General Riek Machar Teny, Honourable Dr Ruhakana Rugunda and the Government Negotiation Party, Dr David Nyekorach Matsanga and the LRA/M¹⁶ Negotiation Party, members of the Mediation Team, thank you for the opportunity to address you all at the opening of this meeting.

We are women from Northern Uganda, we represent each sub-region in the Greater North, we are women from Acholi, Lango, Teso and West Nile. We speak as one voice and we speak on behalf of our sisters and communities who are not able to be here. We speak as the Greater North Women's Voices for Peace Network.

We would like to congratulate you for the progress made thus far in the Peace Talks. We have been following the stages very closely. As you may know the Greater North Women's Voices for Peace Network has been very active in relation to Agenda Item 3 on Accountability and Reconciliation. As women's rights and peace activists, as mothers, as women who have lost family members in this conflict and who have been harmed ourselves, we have participated in the Government Consultations and the Consultations held by the LRA/M in 2007 to put forward our views, demands and desires regarding peace, accountability and reconciliation.

As you gather here, our message to you as women from the Greater North is this:

Firstly, we want peace – peace with reconciliation, peace with truth-telling, peace with justice, peace to harmonise and restore communities.

Secondly, we want those with the LRA, the women and children non-combatants, to be returned to us as quickly as possible, and for them to be fully assisted to reintegrate with medical and psychological support and other practical assistance. At your important deliberations over the next few days we urge you to find a realistic timeframe for concluding the Peace Talks and for both Parties to renew your commitment to the principles and the spirit of the Agreements signed to date.

We are concerned by recent developments. We are disturbed by the use of the media to spread rumours and propaganda about each Party perpetuated by the other. We do not see these as helpful developments in succeeding towards our shared goal of peace.

We are deeply concerned by rumours that the LRA may have resumed their recruitment program. We call for this practice, should it be occurring, to stop immediately. These activities contravene the principle of the

agreements and the people of the Greater North want peace. We have said that loud and clear. But we do not want that to be misunderstood as being willing to return to the kind of suffering, conflict, violence, and insecurity we in the Greater North have experienced for more than two decades.

We were alarmed by the statements made by the US State Department in September 2007 which we found unnecessarily provocative given the peace process was ongoing and that the LRA/M was continuing to demonstrate its commitment to the Talks and following through on the process outlined by the Mediator for Agenda Item 3. We do not consider these sorts of statements and threats by the United States Government or other Governments to be welcome, timely, necessary, nor appropriate given the importance of these Talks.

We are also concerned by the Agreement signed between the Government of Uganda and the Government of the Democratic Republic of the Congo (DRC) which we consider to be outside the principles of the Agreements already signed. We request both the Government of Uganda and the DRC to restrain from issuing further threats to the LRA/M during the peace

process and specifically that the DRC does not act to remove the LRA from Garamba. The peace process must be allowed to finish its course and we urge this meeting to produce a timetable for the successful completion of the talks which is both realistic and speedy.

Women and children have suffered in this conflict. Over 1 million of us in the North have been displaced from our homes, much violence and brutality has occurred, we have not been able to farm our land, grow our crops, we have not been able to educate our children, we have not seen development and progress in the Greater North because of this conflict. There has been much violence committed against women by both Parties, and many others, as our communities have disintegrated. It is time for this to stop, not just for now but forever.

The Greater North Women's Voices for Peace Network is in solidarity with you in this process, we will continue to speak for women, we will continue to advocate for the success of the Peace Talks. We wish you well in these deliberations, and call again for a renewal of your commitment to the peace process and the Agreements already signed.

The women and the people of the Greater North are ready for peace.



POSITION PAPER

Views of Women from North & North Eastern Uganda on the Peace Talks – Mechanisms for Accountability and Reconciliation

Greater North Women's Voices for Peace Network
 Ugandan Women's Coalition for Peace
 Women's Initiatives for Gender Justice

August 2007

Between 26-31 July 2007, the Ugandan Women's Coalition for Peace and the Women's Initiatives for Gender Justice in collaboration with women's groups from north and north eastern Uganda conducted consultations in Amuria, Pader and Lira, on the issues of accountability and reconciliation, as outlined in the Agreement signed by the Government of Uganda and the LRA/M on 29 June 2007. During these preliminary consultations the team met with more than 750 women. In addition, local women's peace activists have also been consulting their communities.

From 1-3 August 2007, the Coalition 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.

During the 'Gathering' women identified a wide range of perpetrators of violence including:

- the LRA/M
- the Government of Uganda and the UPDF¹⁷
- Karamajong and other cattle rustlers
- local Defence Units
- individual perpetrators who have taken advantage of the chaos created by the conflict to commit crimes, particularly violence against women and girls

17 The Uganda People's Defence Force



It is recognised that some of these perpetrators are beyond the scope of the Peace Talks and the Agreement on Accountability and Reconciliation. However we are aware that violence against women will not stop with the completion of the Peace Talks and the signing of the Comprehensive Peace Agreement. We therefore see this as the beginning of a process which will address all forms of violence and ultimately prevent violence against women and girls and end the culture of impunity for such crimes.

Accountability and Justice

Women from north and north eastern Uganda require multiple and complementary forms of accountability all of which must involve women, especially those most affected by the conflict, in the development of the mechanisms and as participants in the justice process.

All forms of accountability should guarantee the following principles:

- Gender-inclusive justice and the involvement of women in the development of accountability mechanisms
- Meaningful participation of victims including women and girls
- The rights of the accused and security of victims are satisfied
- Truth-telling
- Compensation
- Reparations
- Appropriate forms of 'punishment' for the crimes committed bearing in mind the level of the responsibility held by the perpetrators. We do not support use of the death penalty under any circumstances.

Different crimes and different levels of perpetrators should be dealt with by different courts and processes including the formal judicial system, alternative justice mechanisms and traditional justice mechanisms.



Formal Mechanisms

We support a role for the ICC in addressing the most serious crimes, including gender-based crimes, committed by the top commanders of the LRA and the UPDF, should the ICC bring charges against any army commanders or other state actors.

We support a role for the ICC in this process because:

- the ICC provides an opportunity for victims to participate in proceedings
- it is a form of 'truth-telling'
- there are better provisions for the rights of the accused and role of Defence Counsel under the Rome Statute of the ICC than currently available under domestic law in Uganda
- there is a more rigorous and transparent process of justice under international law than within Uganda
- sentencing provisions under the ICC do not include the death penalty

We continue to be dissatisfied with the one-sided investigations conducted by the ICC and, since 2004, women from the Greater North and allies have been calling for investigations into all crimes and parties to the conflict, rather than an uneven focus on one party.

Special Court¹⁸

- We support establishment of a Special Court for more senior level commanders of either party (UPDF and LRA) and for serious crimes such as crimes against humanity and war crimes, including gender-based crimes. This would supplement the role of the ICC.
- The Special Court should be situated in Uganda and established according to the highest standards of international law, specifically the principles and provisions of the Rome Statute and related documents – Elements of Crimes; and Rules of Procedure and Evidence.
- The Special Court should be comprised of a mixture of international and Ugandan Judges and other officials including the Prosecutor and Registrar. Trial teams should be comprised of both international and Ugandan lawyers. This is to ensure impartiality and sufficient expertise in international law for a fair judicial process.
- Some of the trials of the Special Court could be held in the north, with consideration given to the security of the accused, witnesses and victims.

Overall the women of North and North Eastern Uganda require:

- The Special Court to be independent, effective and impartial in prosecuting perpetrators of crimes against humanity and war crimes, whether they are from the LRA or state actors.
- The Government of Uganda to consult with women particularly at the drafting stage of the 'Special Court Bill' so our voices are heard, our needs can be addressed, and gender-inclusive justice can be provided for reconciliation and sustainable peace.
- The Special Court to guarantee women's rights by the full inclusion of the provisions within the Rome Statute, including those that safeguard the rights of women and victims/survivors of sexual violence.
- Equal justice including respect for the rights of victims, the rights of the accused, and rejection of the death penalty as a form of punishment.
- A review of the current ICC Bill to ensure it fully complies with the Rome Statute and its related documents. The Bill should not be adopted until it satisfies the standards of the Rome Statute.

18 The Greater North Women's Voices for Peace Network, the Ugandan Women's Coalition for Peace and the Women's Initiatives for Gender Justice have also developed a detailed description of proposals regarding the substance and jurisdiction, procedures, and structure of the Special Court.



Truth and Reconciliation/ Justice Commission

- We support the establishment of a Truth and Reconciliation/Justice Commission to facilitate and decide on less serious crimes and lower-level perpetrators. The Commission could hear testimonies of all levels of crimes and perpetrators but should have a mechanism to refer the most grave and serious crimes to the formal judicial processes (such as the ICC or Special Court).
- The Commission should have a strong emphasis on victims participation and truth-telling.
- The Commission should establish a Victims Support Team and district-based Victims Support and Outreach Offices to inform communities about the commission, the process and how to participate.
- The Commission should appoint personnel with expertise in sexual and gender violence.
- The Commission should hold public hearings and make their findings publicly available.
- Compensation and reparations should be part of the work of the Commission.



Traditional Justice

In addition to the other accountability mechanisms perpetrators may face, all perpetrators should also be reconciled through use of traditional justice mechanisms adapted to respond to the suffering of the communities and the crimes committed, particularly against women, during the conflict.

For less serious crimes and lower level perpetrators, traditional justice mechanisms could be the primary form of accountability.

The traditional mechanisms and practices require modernising to ensure that such practices recognise women's rights, are in conformity with the Ugandan Constitution and the legal rights of women including those outlined in the international agreements to which Uganda is a party (eg CEDAW¹⁹, CRC²⁰, Rome Statute).

Women should be involved as decision-makers and recognised as clan leaders in the transformation of traditional justice mechanisms. Victims must have the opportunity to choose the form the traditional process should take in order to bring about reconciliation between individuals, among clans and between sub-regions.

19 Convention on the Elimination of All Forms of Discrimination Against Women

20 Convention on the Rights of the Child

Women and Children Non-Combatants

We are concerned for the women and children non-combatants currently with the LRA and seek to work with the leadership of the LRA/M to develop mechanisms to support their safe return and re-integration into the community. We would like to see the early release of these non-combatants to enable them to begin reintegration and recovery as soon as possible, while the Government and international community begins in earnest to establish a comprehensive re-integration program for both combatants and non-combatants.

The Greater North Women's Voices for Peace Network, the Ugandan Women's Coalition for Peace and the Women's Initiatives for Gender Justice call on the LRA and the Government of Uganda to stay committed to the Peace Talks and to find lasting and truthful solutions for peace, justice and reconciliation.



The Greater North Women's Voices for Peace Network was formed in August 2007 and is a network of women's rights and peace groups, community-based organisations and activists from the conflict affected areas in north and north eastern Uganda. The Network was formed for the purpose of enabling women most affected by the conflict to contribute to the Peace Talks and to raise the issues and priorities of women from the Greater North regarding accountability, reconciliation and peace.

The Ugandan Women's Coalition for Peace is comprised of national women's organisations based in Kampala and was formed in July 2006 to promote visibility and participation of women in the Peace Talks.

The Women's Initiatives for Gender Justice is an international women's human rights organisation which advocates for justice for women in armed conflict and war through the International Criminal Court and has been working with women from north and north eastern Uganda since 2004.

Analysis by the Women's Initiatives for Gender Justice on gender-based crimes and related charges by the International Criminal Court in relation to Darfur, Sudan

STATEMENT

ICC Brings Evidence of War Crimes and Crimes Against Humanity in Darfur

March 2007

On 27 February 2007 the International Criminal Court (ICC) submitted evidence to the Pre-Trial Chamber supporting charges against two suspects in relation to crimes committed in the Darfur conflict. The Prosecutor of the ICC is seeking summonses for the former Minister of State for the Interior, Mr Ahmed Muhammad Harun (currently the Minister of State for Humanitarian Affairs) and Mr Ali Abd-Al-Rahman, (also known as Ali Kushayb), one of the Janjaweed militia leaders.

The evidence against both suspects relate to crimes committed in West Darfur between August 2003 and March 2004, specifically attacks on the villages of Kodoom, and the towns of Bindisi, Mukjar and Arawala. The suspects face 51 counts of war crimes and crimes against humanity including rape, murder, attacks against the civilian population, destruction of property, forcible transfer, persecution, inhumane acts, torture, imprisonment or severe deprivation of liberty, pillaging, and outrage upon personal dignity.

Although several sources have characterised the conflict in Darfur as genocide, the ICC has not submitted evidence supporting this crime. However the ICC does include charges of persecution of the primarily Fur population by acts of murder, rape, attacking the civilian population, inhuman acts, pillaging, destruction of property, imprisonment or severe deprivation of liberty, torture, and forcible transfer of the population.



Gender-based Crimes

The Prosecutor has submitted evidence of the commission of rape as a war crime and a crime against humanity. Rape is also charged as other forms of violence including persecution and outrages upon personal dignity. Although the charging of gender-based crimes in Darfur could be considered relatively narrow as there were a wider range of gender-based crimes committed for which there are no charges, nevertheless the charging of rape as a crime in itself and as other forms of violence reflects the multi-faceted character of the sexual violence committed against women in Darfur. It also reflects the context in which some of the incidents of rape occurred, the widespread and systematic nature of the commission of sexual violence, and is broadly representative of the types of crimes and types of victims in the Darfur conflict.

With the application for crimes in Darfur, the Prosecutor has for the first time brought evidence of criminal responsibility against a Government Official/Minister (charges in the Democratic Republic of the Congo and Uganda relate to militia leaders and senior rebel commanders). Also for the first time the Prosecution had to investigate alleged crimes in a conflict without having direct access to the site of the conflict. The Prosecution has been unable to conduct investigations directly within Darfur due to lack of access to the region granted to the ICC by the Government of the Sudan. For the DRC and Uganda situations, the ICC was able to conduct missions directly in the Ituri region and northern Uganda as part of their investigations.

Background

On 31 March 2005, the United Nations Security Council referred the conflict in Darfur to the ICC for investigation.

After conducting its own fact-finding activities, the Prosecutor decided in June 2005 to open an investigation given there was reason to believe crimes within the jurisdiction of the Court had been committed, that there were no national proceedings underway into these crimes and that an investigation by the ICC would 'serve the interests of victims'.

The Prosecution has conducted 70 missions in 17 countries to interview victims and witnesses regarding the conflict and violence committed in Darfur. Since the referral the Prosecutor has provided regular 6-monthly reports to the Security Council on the progress of the investigations, the alleged crimes and the cooperation by the Government of Sudan.

The Women's Initiatives for Gender Justice has monitored and reviewed each of the Prosecutor's reports to the Security Council since June 2005 to assess the identification by the ICC of gender-based crimes within their investigations on Darfur.

In September 2005 the Women's Initiatives conducted a review of 20 reports on Darfur specifically assessing the documentation of rape and other forms of sexual violence committed against women in this conflict. The reports reviewed included the Report of the United Nations International Commission of Inquiry on Darfur and a number of other reports by United Nations agencies including UNIFEM, the UN High Commission for Human Rights and the UN Secretary General's reports, as well as reports by international human rights and humanitarian organisations and academic institutions

including Medecins Sans Frontier, Human Rights Watch, Amnesty International, Physicians for Human Rights and Harvard University.

Some of the key issues we observed in the review were:

- There is extensive reporting of rape and sexual violence as widespread and systematic, and the use of rape as a strategy in the conflict.
- Raids on villages are most often accompanied by rape and other forms of sexual violence; public rapes and gang rapes are common. Women are regularly abducted during raids and around camps and sites for internally displaced people, and after capture women report having their arms and legs broken to prevent them escaping.
- Overwhelmingly the majority of crimes are committed by the Janjaweed militia and Sudanese military who are working in close collaboration.
- Although rape and sexual violence are noted in each of the 20 reports we reviewed, the extent and range of gender-based violations, inclusive of and beyond rape and sexual violence, were not sufficiently addressed.
- The recognition and conceptualisation of gender-based crimes in the reports overall is narrow and does not adequately reflect the multiple crimes committed against women nor their impact on victims.
- There are aspects of the Commission of Inquiry and Report that are to be commended. The inclusion in the investigation team of investigators with gender expertise, the acknowledgement that rape is used strategically in war, and the length of the section regarding findings of violations of international law in relation to rape and other forms of sexual violence, indicate a serious attempt by the Commission to address these crimes. In addition, the characterisations of the abduction of women as enforced disappearance, and the impact of the threat of rape and sexual violence for women in IDP camps as deprivation of liberty, are creditable.



STATEMENT

ICC Must Demonstrate that it takes Gender Crimes Seriously

June 2005

'The International Criminal Court must demonstrate it understands gender-based crimes are among the most serious crimes it is mandated to prosecute and show its determination to hold accountable those responsible for the commission of these crimes in Darfur,' the Women's Initiatives for Gender Justice said today following the report on Darfur by the Prosecutor of the ICC to the UN Security Council.

'We are very concerned at the oversight by the Prosecutor in his report to the Security Council, of the overwhelming impact of the conflict on women in Darfur and the cursory mention of rape and sexual violence,' said Brigid Inder, Executive Director of the Women's Initiatives for Gender Justice.

'In several refugee camps women make up 90% of the adult population, thousands of women have been killed, and there are almost one thousand reported cases of women being either abducted, raped, tortured or mutilated, and these cases are just the tip of the iceberg,' said Inder.

'Everyone from the United Nations Secretary-General and UN agencies to human rights organisations and several media networks, have all reported rape and sexual violence in Darfur as widespread, systematic and used as a deliberate strategy in the conflict. So we are disturbed it received so little attention in the Prosecutor's presentation and worried this may be a sign these crimes are not considered important enough,' said Inder.

'If this is the recognition given to sexual violence against women in a conflict where it has been given a high profile by international agencies and the press, it doesn't bode well for the Court's work in other conflict situations where sexual violence is also widespread but has not received this sort of publicity,' Inder said.

'Expectations are high within Darfur, as well as among women's groups on the African continent and internationally, that gender-based crimes will be one of the top priorities for the ICC,' said Inder.



Publications by the Women's Initiatives for Gender Justice

- *Gender Report Card on the International Criminal Court 2009*
- *Gender Report Card on the International Criminal Court 2008*
- *Rapport Genre sur la Cour Pénale Internationale 2008 (Gender Report Card on the International Criminal Court 2008, French Edition)*
- *Advance Preliminary Report: Structures and Institutional Development of the International Criminal Court*, October 2008
- *Making a Statement*, Second Edition, February 2010
- *Making a Statement*, June 2008
- *Prendre Position (Making a Statement, French Edition)*, June 2008
- *Legal Filings Submitted by the Women's Initiatives for Gender Justice to the International Criminal Court: The Prosecutor v. Jean-Pierre Bemba Gombo and The Prosecutor v. Thomas Lubanga Dyilo*, February 2010
- *Women's Voices/Dwan Mon/Eporoto Lo Angor/Dwon Mon: A Call for Peace, Accountability and Reconciliation for the Greater North of Uganda*, Second Edition, June 2009
- *Profile of Judicial Candidates*, Election November 2009
- *Gender in Practice: Guidelines and Methods to Address Gender-based Crime in Armed Conflict*, October 2005
- *Information Card Series: Rights and the Rome Statute*, English, French, Arabic, Spanish, Swahili, Farsi Editions, September 2005
- *Sexual Violence and International Criminal Law: An Analysis of the Ad Hoc Tribunals' Jurisprudence and The International Criminal Court's Elements of Crimes*, September 2005

Visit our website www.iccwomen.org to subscribe to the Women's Initiatives' two regular e-letters, *Women's Voices* and *Legal Eye on the ICC*.

Abbreviations

CAR	Central African Republic
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CNDP	National Congress for the Defence of the People
CRC	Convention on the Rights of the Child
DRC	Democratic Republic of the Congo
FARDC	<i>Forces Armées de la République Démocratique du Congo</i>
FDLR	<i>Forces Démocratique de Libération du Rwanda</i>
FNI	<i>Front des nationalistes et intégrationnistes</i>
FPLC	<i>Forces Patriotiques pour la Libération du Congo</i>
FRPI	<i>Force de Résistance Patriotique en Ituri</i>
ICC	International Criminal Court
LRA/M	Lord's Resistance Army/Movement
MLC	<i>Mouvement de Libération du Congo</i>
NGO	Non-government organisation
OTP	Office of the Prosecutor
PTC	Pre-Trial Chamber (I or II)
UNSC	United Nations Security Council
UPC	<i>Union des Patriotes Congolais</i>
UPDF	Uganda People's Defence Force

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Inside photos

Brigid Inder, Women's Initiatives for Gender Justice – photos on pages 2, 18, 19, 22, 24, 26, 34, 35, 36, 37, 38, 39

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Women's Initiatives for Gender Justice



Anna Paulownastraat 103
2518 BC The Hague
The Netherlands

Tel +31 (0)70 302 9911
Fax +31 (0)70 392 5270

info@iccwomen.org
www.iccwomen.org

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