END OF THE LUBANGA TRIAL: THE ISSUE OF CHILD SOLDIERS REMAINS A CHALLENGE

By Bukéni Waruzi, former director and founder of Ajedi-ka/Projet Enfants Soldats

IN AUGUST 2011, the International Criminal Court (ICC) concluded its first trial—the trial against Thomas Lubanga Dyilo—with the presentation of closing statements by the accused, victims’ legal representatives and the defense. It is now up to the judges of ICC Trial Chamber I to deliberate in order to make a final decision “within a reasonable timeframe.”

Lubanga, a militia leader of the Union of Congolese Patriots (UPC), is accused of allegedly committing war crimes – namely enlisting and conscripting children under the age of 15 and using them to participate actively in hostilities in Ituri in eastern Democratic Republic of Congo (DRC) between September 2002 and 13 August 2003.

The Lubanga trial will make history on several fronts. It is the first ICC trial and thus serves as the first occasion where victims have been given the opportunity to actively participate in international criminal proceedings. Furthermore, the Lubanga trial is the trial that helped to highlight the gravity of the recruitment, enlistment and use of child soldiers in conflicts in the DRC.

In the DRC, especially in the eastern region, many children have been recruited and used as child soldiers by all parties to the armed conflicts that have ravaged the country since 1996. These children who, yesterday, were heroes for having shed their blood and brought Laurent Desire Kabila to power in Kinshasa in 1997, were then seen as criminals for having been forced to commit crimes that for the most part left them and their communities traumatized. Eventually, these children were recognized as victims under the Rome Statute of the ICC and the DRC law on the protection of children which entered into force in January 2009.
LETTER FROM THE COALITION AFRICA COORDINATOR, FRANCIS DAKO

THIS YEAR, numerous developments impacting international criminal justice have unfolded in the region. This year’s most recent highlights include the ICC prosecutor’s request on 23 June to open investigations into crimes committed in the aftermath of the November 2010 presidential election in Côte d’Ivoire. In addition, the ICC issued arrest warrants against Libya’s leader Muammar Gaddafi following a UN Security Council referral. Furthermore, the first Lord’s Resistance Army (LRA) trial started on 11 July before the International Crimes Division of the Ugandan High Court, and the first ICC trial, The Prosecutor vs. Lubanga, concluded with each party giving closing arguments in late August.

Other developments related to international justice also captured the world’s attention. On 8 August, ICC suspect President Omar Al-Bashir defied the Court once more by attending Chadian President Idriss Deby’s inauguration ceremony. This is the second time that Chad has failed to uphold its obligations under the Rome Statute in arresting Al-Bashir; accordingly, the ICC notified the UN Security Council of Chad’s non-compliance. Moreover, at the conclusion of its Summit in Equatorial Guinea in July, the African Union maintained its anti-ICC stance by issuing a resolution calling on its member states to not cooperate with the ICC in arresting and surrendering ICC suspects Al-Bashir and Gaddafi.

The conclusion of 2011 will feature another monumental development: the election of key Court officials, including six judges and the chief prosecutor, will take place during the tenth Assembly of States Parties to the Rome Statute of the International Criminal Court (ICC) to be held in New York from 12-21 December 2011. This assembly will be particularly important not only because new ICC judges and a new chief prosecutor will be elected, but also because major decisions made by states parties will impact the future of the Court and of international criminal justice.

The Coalition for the ICC, for its part, continues to advocate for an end to impunity through universal ratification of the Rome Statute and increased access to justice in national justice systems. In cooperation with its African NGO members, the CICC has maintained its advocacy efforts to ensure that all countries on the continent join the Rome Statute system and fully implement crimes contained in the treaty into their national legislation. In that regard, on 1 July, the Parliament of Cape Verde unanimously approved the ratification of the Rome Statute; it will thus likely be the next African state to join the ICC. This goes to show that challenges can be overcome and that sustained efforts at the regional level are crucial to continue the fight against impunity.

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The gravity of the recruitment and use of child soldiers lies not only in the fact that children have lost the joy of childhood and education in favor of guns and violence committed and/or sustained; it also lies in the fact that the stigma and consequences associated with the reduction of the human value of the child are permanent and will affect even the offspring of these former child soldiers. No compensation of any kind can change that.

Reintegration of child soldiers in the DRC, even with financial support, cannot be effective while the problems of infrastructure and development persist in the host communities. Reintegration should therefore encourage the DRC government to include the issue of child soldiers within the framework of national policies for long-term development, and not just as simple aid projects of the most vulnerable, as exemplified by the failure of several projects carried out by large financial institutions, such as the World Bank.

Child soldiers are present in many conflict and post-conflict countries. Both girls and boys are constantly used by parties to a conflict. Some of these same countries are even States Parties to the ICC. While the Lubanga trial has highlighted the gravity of the recruitment and use of child soldiers and the importance of holding the perpetrators of such crimes accountable for their actions, states themselves should do their part by ensuring that their national laws are sufficiently robust in protecting children and that the issue of reintegration is included as part of their national development policy.

The ICC, while pursuing its goal to prevent and punish grave crimes, should establish a new message to the affected communities in the DRC: Child soldiers are neither heroes nor criminals, nor are they just victims. They are survivors.

Bukéni Waruzi is program manager for Africa and the Middle East, WITNESS and former director and founder of AJEDI-Ka Enfants Soldats.
ON 3 OCTOBER 2011, Pre-Trial Chamber III of the International Criminal Court (ICC) decided to open an investigation into war crimes and crimes against humanity allegedly committed in Côte d’Ivoire (CDI) following the presidential election of 28 November 2010. While this has been a welcome and long-awaited development in the fight against impunity in CDI, the restriction of the investigation’s timeframe—covering crimes committed only on or after 28 November 2010—has created a situation whereby the ICC might be perceived to be applying selective justice.

CDI suffered a severe political and military crisis from 19 September 2002 until May 2011. This crisis had an impact on all sectors of Ivorian society.

All parts of the justice system have been undermined in CDI. During the crisis, most police officers and magistrates left the north, an area formerly controlled by the New Forces (former rebels), to seek refuge in the southern region of the country. Thus, there is an urgent need for a rapid redeployment of new officials in affected areas of the country in order to rebuild the justice system there. In addition, senior officials in the administration—army, police and gendarmerie, those who are considered as “big fish”—could escape from national justice for various reasons, including by benefiting from immunity or by the possible “influence” that they could have on the process of restoring peace.

In this context, whereby CDI is emerging from a crisis marked by the weakening of national justice and doubts about the impartiality of the judicial system, international justice through the International Criminal Court (ICC) should play a complementary, but very important, role.

For Ivorian civil society organizations (in particular those engaged in ensuring that the ICC is credible, independent and contributes to an effective fight against impunity), if the judges of the Pre-Trial Chamber authorize the opening of investigations in CDI, the Office of the Prosecutor should investigate the entire period of crisis—from 19 September 2002 until the end of the post-election crisis—for several reasons.

First, CDI, under the government of former President Laurent Gbagbo, had in 2003 submitted to the Court a declaration recognizing the ICC’s jurisdiction since 19 September 2002.

Moreover, since that date, many serious crimes have been committed by various actors on both sides of the conflict in CDI. We will recall the mass grave of Monoko-Zohi allegedly created by pro-Gbagbo forces in December 2002 and the massacres of Duékoué allegedly committed by pro-Ouattara forces in March 2011, two cities in the west.

Finally, taking into account only the alleged crimes related to the post-election crisis from November 2010 onward would give Ivorians the impression that the ICC is applying selective justice, considering the plight of some victims rather than others.

The ruptures between the pro-Ouattara supporters and pro-Gbagbo supporters cannot heal if justice is seen as serving one side or the other.

In view of the failures and issues of impartiality and independence of the judiciary in Côte d’Ivoire to address crimes committed during the civil war as well as those connected to the disputed elections and on both sides, it is necessary and essential that the ICC pursues senior officials most responsible for committing heinous crimes since 2002 in order to render justice to the far too many victims of this conflict.
IN JUNE 2010, the Republic of Uganda enacted the International Criminal Court Act (ICC Act 2010), thereby granting jurisdiction to Ugandan courts to try crimes against humanity, war crimes and genocide, as defined under the Rome Statute of the ICC. This momentous and unprecedented legislation led to the establishment of the International Crimes Division (ICD) of the Ugandan High Court, which commenced proceedings on 11 July 2011 when the first trial opened at the High Court in Gulu.

The trial in the case Uganda vs. Thomas Kwoyelo (the accused), is presided over by high profile Ugandan judges and has garnered much attention. Thomas Kwoyelo, a former combatant of the Lord’s Resistance Army (LRA), has been indicted with 53 counts of crimes under the Geneva Conventions Act 1964 and the Penal Code Cap 120 of the Laws of Uganda. The counts that constitute grave breaches of the Geneva Conventions include, but are not limited to, willful killing, extensive destruction of property, taking of hostage, and kidnap with intent to murder. Under the Penal Code Act, Kwoyelo is being accused of murder, robbery with aggravation, inhumane treatment, attempted murder and causing injury to body, among others.

While the trial of Kwoyelo before the ICD has been largely welcomed, many among the public, victims and affected communities raised several concerns.

First, Kwoyelo is generally seen as a low-level perpetrator or “small fish”—especially given that he was a junior officer—while LRA leader Joseph Kony and his top commanders are still at large. On the other hand, some northern Ugandans do not understand why Kwoyelo was not granted amnesty whereas some senior officers of the LRA benefited from it.

Second, the trial is taking place in Gulu but the LRA and Kwoyelo operated in other areas of Uganda and devastated the lives of people primarily in Acholi, Lango and Teso.

In addition, the charges brought against him do not seem complete since no charges have been brought for crimes perpetrated in the Lango and Teso sub-regions. For many victims, it would therefore be most appropriate to try several perpetrators in different parts of the country, including Kampala, Lira and Soroti, among others. The victims whose interests have not been taken into consideration in the case feel that the Court is addressing the problems in parts and that it may become partial and not serve the purpose of its establishment.

Third, the trial of Thomas Kwoyelo before the ICD is perceived to be one-sided since the Ugandan ICD is designed to apply exclusively to members of anti-government factions.

Despite those concerns, this development is an important step forward as Uganda is taking action to try international crimes domestically, in line with the Rome Statute principle of complementarity which highlights the primary responsibility of states to try perpetrators of crimes contained in the Statute. The domestic trial of Kwoyelo in Uganda will therefore set a precedent on the eventual success of domestic prosecutions for international crimes. This is a positive outcome as well for thousands of victims in northern Uganda since they have been waiting for redress for the crimes committed against them. Finally, the trial will also be a test for the existing legal framework and capacity of the judicial system established in Uganda.

UPDATE

At press time, the ICD ruled that Thomas Kwoyelo should have been granted amnesty and ordered his release.

The domestic trial of Kwoyelo in Uganda will set a precedent on the eventual success of domestic prosecutions for international crimes. This is a positive outcome for thousands of victims in northern Uganda.
FOLLOWING DECADES OF conflict with the north of Sudan and a January 2011 referendum on independence which was favored by more than 99% of voters, the Republic of South Sudan gained independence on 9 July 2011 becoming the world’s newest state. South Sudan has since become the 54th member state of the African Union (AU) and the 193rd member state of the United Nations (UN). Its independence was largely embraced and welcomed by the international community, including the League of Arab States, which has invited South Sudan to become a member.

There is much speculation on whether South Sudan will join the ICC. The current political climate in which South Sudan has to maneuver will play an important role in that decision.

In July 2011, during its summit held in Malabo, Equatorial Guinea, the AU issued a decision condemning the ICC arrest warrants against Sudanese President Omar Al-Bashir and Libyan leader Muammar Gaddafi and calling on its member states not to cooperate with the Court in relation to their arrest and transfer to The Hague.

When becoming a party to the Rome Statute, a state accepts obligations to execute arrest warrants issued by the prosecutor of the Court should the suspect decide to visit the country—at the risk of creating tensions with competing obligations. In Africa, 32 AU member states that are also ICC states parties have had to balance competing obligations between decisions of the ICC and the AU. Two of these states have used this tension as an excuse to allow Al-Bashir on their territory without arresting him, while others have restated their commitment to arrest and surrender all ICC suspects.

South Sudanese NGOs on the ground have indicated that they will embark on campaigns to urge the government to ratify most, if not all, international human rights treaties and the Rome Statute of the ICC. The Coalition would welcome the decision by South Sudan to do so.

By joining the Court, South Sudan would demonstrate that it is committed to fight impunity and seek justice for victims.
SCHEDULE OF EVENTS 2011

OCTOBER

• September-October: The Club des Amis du Droit du Congo will present its study entitled “The establishment of a specialized court in the DRC: Lessons from Cambodia, East Timor, Kosovo and Bosnia and Herzegovina” at the Université Protestante du Congo in Kinshasa, DRC on 20 September and at Columbia Law School in New York on 5 October 2011. This study was conducted with the assistance of researchers of Rights Links of Columbia Law School. Contact: eugene_bakama@yahoo.com

• August-October: The Lira NGO Forum will increase community awareness on the establishment and the functions of the International Criminal Division of the High Court in Uganda, conducted its first trial against former Lord’s Resistance Army (LRA) commander Thomas Kwoyelo. The Lira NGO Forum will conduct advocacy activities in the most affected sub-regions of Northern Uganda in order to build awareness among victims and affected communities on their rights in proceedings before national courts. Contact: dan.okello@yahoo.com

ON 12 MAY 2010, the International Criminal Court (ICC) and the International Bar Association (IBA) jointly launched a six-month campaign entitled “Calling African Female Lawyers” (Campaign) in an effort to increase the number of African women available to practice before the Court.

Female lawyers are currently underrepresented at the Court. In 2010 they accounted for 19% of the ICC list of counsel, with African women representing only 4% of that list despite the fact that most situations under investigation are in Africa. Defendants and victims are entitled to choose who represents them and this choice should include the opportunity to be represented by women, which is particularly important for victims of sexual violence and gender crimes.

As part of the Campaign, over 1,000 lawyers were engaged in various information sessions about the Court and requirements to join the ICC list of counsel as well as roundtable discussions, all of which were held in Africa, North America and Europe. After 17 events organized in 16 countries, including in the Central African Republic, the Democratic Republic of Congo, Kenya, Nigeria and Uganda, 20 African women were added to the list of ICC counsel. The list now includes a total of 32 African women, representing 8% of the ICC list of counsel in early 2011.

To further build on the success of the Campaign, the ICC announced at the occasion of the 100th anniversary of the International Women’s Day the extension of “Calling African Female Lawyers” in 2011 with new target countries including Chad, Rwanda and Cameroon, among others.

For more information on this campaign and how to become an ICC counsel, please visit: http://femalecounsel.icc-cpi.info/
ON 17 JULY 2011, International Justice Day was celebrated around the world, helping raise awareness and generate support for global justice and the fight against impunity. In Africa, a number of NGO members held several events in commemoration of this special day. Among them, the Côte d’Ivoire Coalition for the ICC hosted a radio debate on international justice and organized a screening of “Lady ICC” on national television; the Club des Amis du droit du Congo was invited by Congo Mikili, a Congolese diaspora media agency, to explain the role of the ICC in the DRC; the Benin Coalition for the ICC gave a televised interview discussing relations between the ICC and the African Union; and the Uganda Coalition for the ICC co-held a press briefing which highlighted current issues in international criminal justice, attended the opening of the Kwoyelo trial, and participated in a march through the main streets of Gulu, northern Uganda.

For more information on CICC members’ activities on International Justice Day, visit our website: http://iccnow.org/?mod=rome&lang=en

COALITION MISSION IN CAPE VERDE

FRANCIS DAKO, CICC AFRICA REGIONAL COORDINATOR, conducted an advocacy mission to Cape Verde from 16-20 May 2011 to meet with various key stakeholders in an effort to facilitate and advance Cape Verde’s ratification process, and to ensure that ratification of the Rome Statute (RS) remains a priority for all stakeholders. Mr. Dako had very fruitful discussions with many different government officials, including the minister of Justice, minister of Foreign Affairs, chair of the National Assembly and the attorney general, among others. All officials committed themselves to ensuring Cape Verde’s prompt ratification of the RS and further informed Mr. Dako that the process had been delayed due to several reasons, including the desire to achieve consensus on such important legal issues.

Cape Verde has been the focus of the CICC Universal Ratification Campaign over the past years. Actions have included important media and advocacy outreach to state officials as well as a series of EU demarches. In 2010, Cape Verde achieved broad consensus among government officials to ratify the RS and adopted a constitutional amendment to remove obstacles previously blocking ratification. After the Council of Ministers approved ratification, Parliament concurred on 1 July 2011. The only remaining step to complete the process is for Cape Verde to deposit its instrument of ratification with the United Nations Secretary-General.

COALITION MISSION IN DRC

FROM 26 MAY-10 JUNE 2011, CICC Francophone Africa Situations Liaison Byamungu Armel Luhiriri conducted an advocacy mission to Kinshasa, DRC in order to monitor the DRC’s legislative process in drafting the Rome Statute (RS) implementation bill, and to advance the process of implementation by mobilizing key national members and other stakeholders. Mr. Luhiriri met with various stakeholders and participated in the session of the Justice and Human Rights Sub-committee, tasked with drafting the implementation bill, as an expert invited by the DRC Coalition for the ICC. During the session, it was clear that many members of parliament were still unfamiliar with some of the terms of the RS and certain obstacles remain, due in part to misinformation and misperceptions. The controversy over whether to include the death penalty in the bill continues.

The mission provided an opportunity to advance the implementation process in the DRC and to understand and address misperceptions about the RS. The DRC national coalition for the ICC has pushed for the draft law to be discussed during the ordinary session of the National Assembly, which was set to begin on 15 September 2011.
The Coalition is deeply appreciative of the generous support provided by all of our many partners and donors from around the globe. Major funding is provided by the European Union, the Ford Foundation, Humanity United, the John D. and Catherine T. MacArthur Foundation, the Open Society Institute and the Sigrid Rausing Trust, as well as by the governments of Australia, Austria, Belgium, Denmark, Finland, Ireland, Liechtenstein, Luxembourg, the Netherlands, New Zealand, Norway, Sweden and Switzerland, and a number of individual donors. Such support is essential to the Coalition’s effort to secure a future in which justice is accessible to all. If you would like more information about how you can support our work, please visit our website at www.coalitionfortheicc.org or contact the Coalition by phone at +1.646.465.8527 or via email at development@coalitionfortheicc.org.

The Coalition for the International Criminal Court includes over 2,500 civil society organizations in 150 different countries working in partnership to strengthen international cooperation with the International Criminal Court; ensure that the Court is fair, effective and independent; make justice both visible and universal; and advance stronger national laws that deliver justice to victims of war crimes, crimes against humanity and genocide.

CICC SECRETARIAT CONTACTS

New York Office
Senior Communications Officer-Francophone Africa
Linda Gueye, gueye@coalitionfortheicc.org
Africa Outreach Liaison/Situations Advisor
Stephen Lamony, lamony@coalitionfortheicc.org
Regional Programs Assistant
Tania Deigni, deigni@coalitionfortheicc.org
Director of Regional Programs
Brigitte Suhr, suhr@coalitionfortheicc.org
Design Manager
Peony Trinh, trinh@coalitionfortheicc.org
The Hague Office
Head of Communications
Oriane Maillet, maillet@coalitionfortheicc.org
Regional Office - Cotonou, Benin
Africa Coordinator
Francis Dako, dako@coalitionfortheicc.org
Francophone Africa Situations Liaison
Byamungu Armel Luhiriri, luhiriri@coalitionfortheicc.org

The Coalition welcomes its new Francophone Africa Situations Liaison

The Coalition is pleased to introduce Byamungu Armel Luhiriri as its new Francophone Africa situations liaison. Originally from Bukavu, South Kivu, Democratic Republic of Congo (DRC), Mr. Luhiriri has had experience as a human rights activist in the DRC, having worked for Héritiers de la Justice for five years. He has advocated for perpetrators (both rebels and state agents) of the DRC civil war to be held accountable for their actions. Furthermore, he has been involved in collecting information and evidence on human rights violations (e.g. detention, execution, rape, etc.) from victims and witnesses in Bukavu. He has monitored detention facilities on a weekly basis and represented victims before the DRC military court in cases involving extrajudicial executions, forced disappearances, physical assault and other forms of violence by security forces. He has also worked as a human rights officer for the United Nations in post-conflict countries (Nepal, Burundi). The Coalition welcomes this new addition to its Africa Regional team and will without a doubt benefit from his experience in criminal justice and advocacy.