

Access

Victims' Rights Working Group Bulletin

Promoting the rights and interests of victims before the International Criminal Court

Issue 6: Focus on the Democratic Republic of Congo

ICC Update:

Victims Right to Participate in the DRC Investigation Confirmed by Appeals Chamber



Victims in Eastern DRC: refugees arrive at Kyaka II camp in July, 2003, © UNHCR Photo/K.McKinsey

On 13 July 2006, the ICC Appeals Chamber dismissed the Prosecutor's application for "Extraordinary Review" of the Pre-Trial Chamber's Decision not to grant the Prosecutor leave to Appeal the Pre-Trial Chamber's landmark Ruling of 17 January 2006.

The 17 January Decision granted personally affected victims the right to have "their views and concerns ... presented and considered" in the investigation phase of the DRC case, as a stage of the proceedings considered to

be appropriate by the Court. (See Article by Karine Bonneau, Bulletin Issue 5). On 23 January 2006, the Prosecutor sought leave to Appeal this decision, asserting that Pre-Trial Chamber I's Decision established the existence of a class of "situation victims" as distinct from victims of a crime within a case. It claimed that the participation as defined in the Decision, could therefore include a vast number of victims, and would therefore affect the fair and expeditious conduct of the proceedings or the outcome of the trial, which constituted a basis for appeal of the decision under Article 82(1)(d) of the Rome Statute.

On 31 March 2006, the Pre-Trial Chamber denied the Prosecutor's application to Appeal its Decision under

article 82(1)(d) of the Statute, confirming its earlier Decision. On 24 April, the Prosecutor sought to have this Decision "extraordinarily reviewed" by the Appeals Chamber. The Appeals Chamber, in dismissing the application as inadmissible, emphasised that it had within its powers the mandate to review decisions of the Pre-Trial Chamber, but that no procedure was provided in the Statute or Rules of Procedures for this self styled 'extraordinary step'. It went on to interpret the grounds for appealing decisions under article 82(1)(d), which provides that either party may appeal "a decision that involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the ... Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.

The Appeals Chamber interpreted the provisions of Article 82(1)(d), including amongst others, what might constitute 'an issue that would significantly affect the ... proceedings', and the notion of whether an 'immediate resolution materially advance' the proceedings. It did not find that the elements in Article 82(1)(d) were satisfied in this instance. □

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*"Injustice anywhere is a threat
to justice everywhere".*

Martin Luther King (1929—1968)

Child Soldiers and the ICC: Challenges and Strategies, DRC Case

By Bukeni Beck T. Wazuri (AJEDI-Ka)

Thousands of children joined militias and armed forces in the Democratic Republic of the Congo from 1996 to 2003. An estimated 30,000 boys and girls were trained to kill and commit atrocities, even against their own families. Children were recruited either by force, or joined voluntarily, acting as frontline combatants, bodyguards and spies. They carried out reconnaissance and information gathering missions, as well as support and supply functions related to military activities.

While the recruitment and the use of child soldiers is a war crime under the ICC Statute ², which recognizes child soldiers as victims, local communities in Eastern DRC find this very surprising. To them, child soldiers are also perpetrators; none had any knowledge that the enlistment of children carried criminal responsibility.

The ICC has innovative procedures to allow victims to participate in proceedings, not just as witnesses, but as interested parties. Children also have the right to participate, but this is not well known or understood by DRC local communities. Facilitating this right will be a major challenge for the ICC in the DRC.

Secondly, there is a serious issue of security and protection. These children do not have any experience of criminal justice. They will need to be informed about the trial process and related security risks so that they can make an informed choice about participating. Children formerly associated with armed groups undergo demobilization and reintegration through humanitarian NGOs working with children. The organizations also need to understand the process so as not to be put at risk and jeopardise their staff and programmes. The Court foresees 'protective measures' for victims participating in the proceedings, or for witnesses testifying. These require that very sensitive contacts are made between the Court and the individuals: on the ground nobody should know about their involvement, and in the Court proceedings, their identity is kept secret from the public by the use of pseudonyms, in camera hearings or participation from behind a screen or through video-link.

There is a doubt within local communities about the participation of children and/or their families in the trial process.

"The recruitment of child soldiers is not just a war crime, it has destroyed a generation"

Those called to testify or participate will need to live in safe-houses, which are foreseen by the court. However, will they need to remain hidden for the rest of their lives? The Court has already negotiated permanent relocation agreements



Child Soldier in Eastern DRC, Photo: © WITNESS and AJEDI-Ka

with several countries; in extreme circumstances witnesses and their families can be relocated to different countries. But permanent relocation is a form of victimisation in itself. These families will need to take on a new identity in a foreign place and lose contact with their own communities.

Thus, what is understood by 'protection' in local communities is different from the use of pseudonyms on the one hand or permanent relocation on the other. On the ground, the notion of 'protection' is akin to protection work undertaken by peace-keepers or humanitarian agencies and efforts will need to be made to bridge this difference.

Protection issues do not only imply physical security. Children's psychosocial well-being also requires protection,

as the involvement in the process could cause secondary victimisation. Children may find it difficult to participate or act as witnesses given their former military mantra: "to respect the chief in any time and circumstances". Thus, psychosocial counselling may be necessary to support child participants.

In order to address these challenges in the DRC, the ICC might consider the importance of the following points:

1. To emphasize outreach and communication as a two-way process: a) sensitizing local communities and victims about the right to participate and measures foreseen by the Court in view of building confidence in the Court, and b) taking on board perspectives, fears and expectations of Congolese local communities.
2. To implement a comprehensive strategy for the protection of child participants (not just as witnesses) which includes those who care or work with the children. Engaging stakeholders will increase confidence in the process and as a consequence will increase security;
3. To implement a comprehensive strategy to ensure the long-term psychosocial wellbeing of children formerly associated with armed groups, in order to avoid secondary victimisation, stigmatisation and healthy reintegration into their communities.

Bukeni Beck is the Director of AJEDI-Ka (Association des Jeunes pour le Développement Integre-Kalundu), and Director of the Film "A Duty to Protect" featuring the experiences of child soldiers in the DRC, premiered by WITNESS in New York. See: <http://www.witness.org> and <http://www.ajedika.org> □

1. PN-DDR Operational Framework for Children Associated with Armed Groups, adopted 7 May 2004 by the Democratic Republic of Congo, p. 4

2. Art 8 xvii of the Rome Statute.

Interview with Christian Hemedi, President of the Association for the Renewal of Human Rights in Congo¹, and National Coordinator for the Coalition of Congolese NGOs with the ICC.

1. *In the Democratic Republic of Congo, a new law implementing the International Criminal Court's Statute is ready to be discussed in Parliament. As a whole, what does this mean for the victims of the crimes committed in the DRC?*

The ratification of the Rome Statute of the International Criminal Court by the Democratic Republic of Congo has had certain implications on Congolese law, in the sense that its integration into the national legal order implies amendments of specific provisions in existing laws. These amendments will also concern the new constitution that was adopted by referendum on 18 December 2004², which still contains a regime of privileges and immunities from prosecution of serious crimes that may have been committed or that might be committed by certain officials.

Even though the government completed the drafting of the implementing legislation on 25 September 2005³, it was not put on the agenda of the 2005-6 parliamentary session of parliament.⁴ We are currently waiting for the installation of the new parliament following the elections of 31 July 2006. We hope that the debate on this draft law will become a priority for the new parliament.

The draft law contains several revolutionary provisions to be introduced into existing Congolese criminal law. These amendments will affect certain provisions within the Congolese Penal Code, Code of Criminal Procedure, the law governing the organisation and competence of the judiciary, the military criminal code and the code for military courts.

Furthermore, the draft law introduces a new type of crime into Congolese criminal law, namely, 'crimes against peace and the security of humanity'. In this new section of the Penal Code, we can find new crimes such as: genocide, crimes against humanity and war crimes. These crimes were previously ill defined and tolerated by the military jurisdiction and the military penal code of 2002.

One must also emphasise the introduction of crimes of sexual violence and the recruitment and use of children under the age of 18 in the military forces as war crimes. This goes beyond the scope of the Rome Statute, which sets the limit of child recruitment at the age of 15.

In addition, general principles of criminal law have been introduced, like the principle that no individual can be prosecuted, arrested or detained except in accordance

with the law. The most significant principle is contained in article 27 of the Statute, on the irrelevance of official capacity⁵ in which the text reaffirms the notion of *complementarity* between the jurisdictions of the DRC and the ICC, stating that "national jurisdictions have primary responsibility in prosecuting these crimes (genocide, crimes against humanity, and war crimes), and that the ICC will only intervene as a subsidiary authority".⁶

All these provisions advance the end of impunity for those responsible for international crimes and give victims hope for effective justice.

The draft law dedicates a whole chapter to cooperation with the ICC.⁷ This cooperation implies judicial assistance, arrests and transfers of persons, and the execution of sentences and decisions taken by the Court. The Chief Prosecutor of the DRC was designated as a focal point between the ICC and the DRC. It is noted that currently, cooperation between the ICC and the DRC is governed by two agreements signed in October 2004, in view of facilitating the deployment of investigators on the national territory.

In addition to these improvements, the draft law under review, should be subject to the following additional revisions:

- The abolition of the death penalty, which is considered to be inhumane, cruel and degrading punishment, and should be replaced with a life sentence.
- The devolution of subject matter jurisdiction for these crimes to the High Court from the Court of Appeal, whose seat is at a considerable distance from victim populations.
- The creation of a Congolese Trust Fund for Victims to guarantee reparations for victims for the crimes they have suffered. In this respect, the draft law does not address either the collection of funds or the disbursement of compensation awards, even though its objectives state that an essential principle to be respected is that "effective reparations for the victims are guaranteed".
- The recognition and respect for victims' rights, which include participation, representation, protection and reparation, in all stages of the proceedings from pre-trial hearings to judgments and appeals.

However, certain crimes are criminalised only as war crimes or crimes against humanity. When they are committed outside armed conflicts or generalised attacks, they are not criminalised. This is the case for torture, the enlisting and use of children under the age of 18 in hostilities and certain crimes of sexual violence.

Moreover, the definition of rape in Congolese law (which is defined as the coming together of sexual organs, and only foresees women as possible victims) is very restrictive when compared to rape in international crimes. This requires a harmonisation of laws that must go further than the implementation of the Rome Statute.

2. *Within the framework of genocide, crimes against humanity and war crimes, what provisions will the new laws provide for the participation of victims in national procedures?*

Article 15 of the draft law introduces a new article (55 bis) in the Code of Criminal Procedure, which states that, "the Court of Appeal is seized in accordance with the procedure provided by the Criminal Procedure Code". In this case, the victim is entitled to sue either before the Chief Prosecutor or by 'constitution de partie civile' a procedure allowing a victim to join criminal proceedings as a civil claimant before the relevant judges. Victims can also act through a procedure of 'citation direct' or 'direct motion', directly calling upon the criminal judge.

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1. Association pour la Renaissance des droits humains au Congo (ARC).

2. Which entered into force the 19th of February 2006.

3. The draft Law is available on the Amnesty International website.

4. See letter from Amnesty to the Deputy, 14th February 2006. <http://web.amnesty.org/library/Index/ENGAFR620042006?open&of=ENG-COD>.

5. This provision is reflected in draft article 23(1), modifying the Penal Code "With respect to prosecutions for crimes enumerated in articles 221 to 224 of the present code, the law shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or government, a member of a Government or parliament, elected representative or a government official shall in no case exempt a person from criminal responsibility under this code, nor shall it, in and of itself constitute a ground for reduction of sentence". Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar national jurisdictions from exercising their power over such persons, in respect of crimes not listed in articles 221 to 224.

6. Article 16 of the Law Project – article 121-7 new codes for penal procedures.

7. Chapter VII (bis) new Criminal Procedure Code.

Interview with Christian Hemedi

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With regard to participation in national jurisdictions, the victim can be present in hearings of fact and has the right to obtain reparation for damages suffered, and appeal any decisions taken. It is not clear whether victims can participate in pre-trial or preliminary hearings before the Chief Prosecutor.

The biggest criticism of the Congolese judicial system is the imbalance between the rights of the accused and the victim. This disequilibrium manifests itself through the criminal mechanisms that protect the rights of the accused whilst endangering the interests of the victim.

The draft law does not provide a special procedure to indemnify victims. It does not therefore bring about any changes to the situation of victim, particularly with regard to reparations.

In fact, victims generally find themselves before convicts who are insolvent. In practice, victims do not have sufficient guarantees to obtain reparations for the crimes they have suffered, even though judges often grant them damages either in kind (restitution) or financially (compensation).

The absence of a Trust Fund impedes justice for victims. This is why we have proposed to create a special Trust Fund that would exist solely for victims in cases resolved by national jurisdictions.

3. Insecurity continues to be a major issue for human rights activists, especially for those who work on issues related to the ICC. Do these new laws provide special protection for victims who wish to participate in the ICC process?

The security situation continues to be a matter of concern, particularly in the East of the DRC. Human Rights activists and other leaders with opinions have been assassinated, arbitrarily arrested, assaulted, or have been threatened with arrest or death.

One must point out that the draft law does not provide effective mechanisms to allow victims to safely participate in the justice process. In article 14 of the draft law article 11(1) of the new Codes of Criminal Procedures simply enumerates measures in favour of victims that should be taken by a jurisdiction seized with genocide and crimes against humanity, or war crimes. The terms of this provision are deficient and do contain guarantees for the effective

protection of the victims' safety, physical or psychological well being, dignity or respect for their private life. The measures that do exist only apply to the trial phase. These are different to the mechanisms put in place by the Rome Statute, which are set out in articles 43(6), 54(1)(b), 68(1), 5 and 2, and 57(3).

In the framework of cooperation and judicial assistance, the ICC can request, on behalf of victims and witnesses, that the Chief Prosecutor of the DRC ensure their protection (article 16 of the draft law or article 121(10) and (11) of the new the Criminal Procedure Code).

4. How does this new law deal with the question of reparations orders that the ICC could issue?

In section 4 of the Criminal Procedure Code, which deals with the enforcement of sentences and enforcement of other measures taken by the ICC, article 121 (28) foresees that the enforcement of the ICC's reparations awards are given effect in Congolese law. Article 121(29) foresees that fines' forfeiture are transferred to the ICC or the Trust Fund for Victims.

Finally, the draft law foresees that disputes arising from reparations awards will be managed by the ICC. □

VRWG Strategy Meeting

London, May 2-4, 2006

Supported by the John D. and Catherine T. MacArthur Foundation

The Victims' Rights Working Group (VRWG) held a strategy meeting from 2-4 May 2006, at Amnesty International UK's London office, to discuss victim issues as they are developing at the International Criminal Court (ICC). The meeting allowed members to discuss individual and collective strategies to give effect to victims' rights to information, protection, support, assistance participation, legal representation and reparations from the ICC.

Members present included Amnesty International, Avocats Sans Frontiers, the Coalition for the International Criminal Court, Federation International des Droits de L'homme, Human Rights Watch, Justice Plus (Bunia, DRC), International Centre for Transitional Justice, Parliamentarians for Global Action, Redress, Sudanese Organization Against Torture, Trial Watch, Ugandan Coalition for the ICC, and the Women's Initiative for Gen-



VRWG strategy meeting, May 2-4, Amnesty International UK's Offices, London

der Justice.

Below are the meeting's main discussion points and plans of action:

1.) Incorporating gender into VRWG's work:

The Women's Initiative for Gender Justice facilitated a two hour session focusing on gender issues. The VRWG decided that a gender sensitive approach should be incorporated in all aspects of the VRWG's work: to consider gender justice from the perspective of access, treatment and outcomes.

2.) Overall Strategy

It was agreed that victims rights to information, protection, support, assistance, participation, legal representation and reparation are intrinsically linked. For example, the adequacy of the measures for protection and support will impact upon the extent to which victims will feel confident and sufficiently comfortable to participate.

The adequacy of outreach will play an important role in giving effect to nearly all the rights of victims listed. Therefore, a general strategy to accomplish the above-mentioned goals was discussed. Specifically it was agreed that the VRWG should contribute to the ICC's consultation on the Strategic Plan of the Court, to ensure that the rights of victims are adequately reflected in the Court's objectives.

3.) Victim Protection, Support and Assistance

Members of the VRWG, agreed that the scope of protection to be afforded to victims and witnesses was not entirely clear, with questions being raised as to whether it was only victims and witnesses appearing before the Court in The Hague that would benefit, or whether this encompassed a larger group, including victims granted a right to participate. The difficulty of monitoring the efficacy of protective measure, support and assistance was voiced, due to the sensitive nature of the information.

However, it was agreed that dialogue regarding monitoring strategies might be advanced. In this respect, a much broader approach to victim support within the ICC might be developed to include continual

assessment of long-term impact of interventions with victims, rather than focusing purely on logistical support and practical assistance.

4.) Victim Participation and Legal Representation

The participation of the victims and their legal representation was also identified as a key concern. Only six victims had applied to participate in the Court's proceedings at the time of the meeting, while the Court is entering its fourth year of operation. In order for the victims to participate they need to know about, understand and trust the Court. While the Victims Participation and Reparation Section have undertaken some outreach activities. Now these must be sustained by local staff and field offices

5.) Interest of Victims

VRWG members recommended the following Action Points on the 'interests of victims':

- VRWG should write a paper incorporating the views of local groups from situation countries;
- VRWG should assist local groups in submitting their views on the 'interest of victims' to the ICC.

6.) Reparation

Various views and perceptions on the process of reparations at the ICC were discussed. It was highlighted that the Court had as yet not embarked on establishing principles relating to reparations in accordance with Article 75. Considerable discussion addressed the challenges which the Court will have in identifying individual or

communal reparations and the difficulties victims might have in responding to timeframes set by the Court. Contributions from members from the situation countries (DRC, Sudan and Uganda) were particularly pertinent on these points, with suggestions that individual reparations should be avoided in favour of collective reparations. The participants from the situation countries explained that resource disputes often underlie the ongoing conflicts in their regions. If the Court were to award individual reparations or discriminate in favour of some victims, this would cause resentment, possibly fueling disharmony.

7.) The Trust Fund

Discussions focused on what type of support the VRWG *could* provide in assisting that the Trust Fund to become fully operational:

- The VRWG should work with the Secretariat of the Trust Fund to promote fundraising for the Trust Fund;
- The VRWG should provide input to the Board of Directors and the Secretariat on implementation of the Regulations of the Trust Fund.

8.) The Way Forward

The meeting closed on the consensus that there was a continued need for the promotion of greater involvement of individuals and organizations from situation countries. Namely, participant NGOs from the DRC indicated an interest in forming a DRC-VRWG, a suggestion which was uniformly supported. □

Interview with Michaela Bauer, Support Officer at the International Criminal Court, Victims and Witnesses Unit

Q1. Michaela Bauer, what is the role of the Victims and Witness Unit (VWU) within the Registry of the International Criminal Court?

The Victims and Witnesses Unit (VWU) is a service provider to all participants at the Court, including the Victims Participation and Reparation Section (VPRS) and of-course victims and witnesses testifying on behalf of the Prosecution, the Defence or appearing of their own right. Our function is to facilitate the judicial process by making it possible for victims and witnesses to testify and/or to participate in the proceedings. When required, we provide appropriate practical assistance, psycho-social support and protection within our mandate and resources. In addition, the Unit will provide advice, training and other assistance to the organs of the Court in matters falling under the mandate of the unit.

We together with all of our colleagues at the Court, we endeavour to ensure respect for the dignity of victims and witnesses appearing before the Court and aim to guard

them against further harm.

Q2. With regard to the issue of trauma, what is the specificity of the situation of victims and witnesses who wish to participate to ICC proceedings, with regard to the situation in the Democratic Republic of Congo?

The Court is dealing with the worst atrocities imaginable and as a result we will be supporting victims and witnesses of such crimes. The witnesses that will testify will often have gone through and survived life threatening situations themselves.

Remembering and talking about their stories may provoke experiences in which they relive their traumas. Physical, emotional and cognitive trauma-related symptoms may occur. To minimize the risk of further harm, suffering, re-victimisation and/or re-traumatization as a result of testifying, the VWU supports the physical and psycho-social well-being of the witnesses. We aim to promote a setting in which stress levels will be kept to a minimum and we will endeavour – as far as possible - to make the experience of testifying an empowering one. Nevertheless,

possible delayed symptoms of trauma have to be taken into consideration.

We are very interested in co-operating and networking with local health care providers, IGOs, NGOs, and other experienced institutions to take care and provide follow up.

The specific problems working with witnesses from the DRC are certainly the enormous distances to and within the country, the fact that the conflict is still ongoing, the insufficient infrastructure and means of transportation.

Moreover the possibility of threats and harm to the witnesses and their families and all other civilians is permanent, specifically in the conflict areas.

Q3. What are specifically, the actions of the VWU with regards to these challenges?

The Support Assistance Program provides practical and psycho-social assistance to victims and witnesses appearing at the Court. Our role is to facilitate interaction with the Court. We provide practical assistance by organizing transportation, accommodation and by preparing the witnesses for the travel.

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Interview with Michaela Bauer

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When a victim or witness and his/her family travel to The Hague to testify in a hearing they need to learn about the new environment and culture. They will have to work with interpreters, eat new food and adjust to physical hardships such as the colder climate. These changes can be very challenging and the outcome depends to a certain extent on the individual person's own coping skills. When one is homesick, frustrated, stressed and lonely, it can lead to poor adjustment and emotional distress. Furthermore, victims and witnesses have often lived through traumatic and critical situations where personal, professional and interpersonal dimensions of their lives have been severely strained.

To prevent victims and witnesses and their families from suffering during the time of their appearance at the Court and to help in their adjustment process, the Support Officer and Assistants offer their help by

- Listening to the needs and helping to find satisfying solutions;
- Listening to eventual concerns regarding the testimony and provide the information necessary;
- Helping with cross cultural adjustment issues;
- Listening to and helping with personal, interpersonal and family problems;
- Supporting daily stress, hardships and traumatization;

- Resolving practical issues (i.e.: buy appropriate clothing, shopping);
- Assisting to get medical treatment (consulting a GP, dentist etc.);
- Assisting before, during and after the testimony at the Court.



Victims of crimes within the ICC's mandate: United Nations Mission doctors in the Democratic Republic of the Congo (MONUC) treat refugees following brutal militia fighting and massacres in Che, Ituri province, DRC. February 2005.

The Support team is prepared to assist the victims/witnesses during their stay in The Hague, at the Court before and after the testimony or statement. Special care will be given to children, elderly and handicapped persons as well as adults who are victims of mutilation,

torture, abduction, forced labour and victims of sexual violence.

The VWU has no influence in deciding who will appear at the Court as a witness or participate as a victim, but will try to tailor the programme to the needs of the individual witness/victim. But please note again: the services will be provided given our possibilities and resources, which are limited.

The major challenge for us will be, as mentioned above already, to smoothen the huge distance between DRC, the conflict areas and the ICC. This "distance" is not only to be considered as miles, but also in culture, climate, tradition, language, food, and, of course, in the level of traumatic experiences.

Our aim is to help make the experience of testifying a positive one. At least everything should be done to protect the victim/witness from harm, additional traumatisation or significant inconvenience. This might sound strange, but I see so many pitfalls on the way, that to meet at least this goal will be an achievement. Some hopes might be quite high and the reality might not meet these hopes (for justice, a better life, getting his or her old life back, eventual benefits or rewards and many more).

The VWU will not be able to change lives for the better, but we can strive to facilitate people's appearance at the ICC so that their stories can be heard. This will hopefully be an important step forwards for witnesses in their longing for recognition and justice. □

Interview with Paolina Massidda, Principal Counsel, Office of Public Counsel for Victims

Q1. Paolina Massidda, you are the Principal Counsel within the Office of Public Counsel for Victims. How will your Office work to ensure legal representation of victims? Is there a strategy in place to facilitate representation of victims?

The creation and role of the Office of Public Counsel for Victims derives from the revolutionary possibility for victims to make representations, submit observations and have their views and concerns heard at all phases of the proceedings "when [their] personal interests [...] are affected", as provided for in the Rome Statute.

A victim is free to choose his or her legal representative, however, given the potentially high number of victims who might request to participate, and in order to assist victims to exercise the rights, the Regulations of the Court provide for the establishment of an Office of Public Counsel for victims. The Office was established on 19 September 2005.

The first concern of the Office has been to give

complete meaning to the wording of the Regulations of the Court, which provide that the Office is fully independent when performing its functions. For this reason the Office undertook to explain the extent of its functions and the ways through which such independence can be preserved within the Court. Furthermore, the Office is engaged in a constant dialogue with NGOs and legal and bar associations in order to evaluate possible forms of cooperation, as well as to create a trusting relationship, indispensable to perform its task.

We have engaged in a two-fold development of the Office, maintaining a flexible approach to allow for constant improvements. First, the Office is able to provide support and assistance to legal representatives who might require assistance at any phase of the proceedings. Second, the Office is ready to undertake legal representation of a victim or a group of victims as appointed by a Chamber or the Registrar.

The fulfilment of these functions is made possible by the current finalisation of recruitment of

the members of the Office and by the fact that the Office has constituted a legal database of books and materials of particular relevance to victims' issues.

Q2. Given that victims might be represented individually or in groups, or might already have a lawyer of their own, could you set out for us various scenarios of how victims might be represented in the proceedings and the role that your office might play in each scenario ?

When victims have not yet been allowed by a Chamber to participate in the proceedings, the Office, as a general principle, has undertaken to ensure respect of their interests through attempting to raise the general awareness on victims' issues. Moreover, the Office is able to offer its legal expertise to potential victims or to potential legal representatives of victims when evaluating the possibility to ask for participation.

Several scenarios can be envisaged with regard to victims who have been granted the right to participate in the proceedings by a Chamber.

The first concerns victims who are already represented. The Office can provide the victims' legal representative, upon request, with factual background on the situations before the Court, research papers and advices on selected aspects of international criminal law, in particular on law relevant to victims' participation and reparations.

The legal representative could also ask the members of the Office to act as *ad hoc* counsel for specific hearings or issues.

The second scenario concerns victims for whom a member of the Office has been directly appointed as legal representative. The Office member will then act as counsel taking into account the interests of victims and the imperatives attached to the proceedings.

Another scenario could cover the case of a victim represented by a counsel not fulfilling the criteria of 10 years of experience required to appear before the Court. In this case, a member of the Office could act as counsel forming a team with the victim's counsel, in the best interests of the victim.

In performing its functions within the framework of these scenarios, the Office will always take into account concerns relating to the security and safety of victims, and will always endeavour to respect the will of victims, as well as the language spoken by victims and the specificities related to gender and children issues.

A major challenge for the Office will be to evaluate how its members might effectively represent victims who will be unable to stay in the Netherlands for the length of proceedings. This very important issue is currently being examined, taking into account that implementation of possible solutions could require the assistance of other sections/divisions within the Court.

Q3. Congolese victims have been granted the right to participate in the investigative phase. How might your office assist such groups?

In the DRC situation, six victims have already been granted the right to participate in the proceedings. They have a legal representative and therefore, the Office has offered its support and assistance as previously mentioned. The Office is also participating in the outreach campaigns led by the Victims Participation and Reparation Section when involving potential legal representatives of victims.

Q4. The conflicts in DRC and Uganda have involved the recruitment of child soldiers, do you foresee particular challenges

in representing child victims before the Court?

Representing child soldiers will require particular care of their vulnerability, particularly because they could be seen as victims and, at the same time, as having participated in the hostilities. The Office will rely upon the assistance and expertise of the Victims and Witnesses Unit in order to prevent these children from being re-traumatised as a result of their participation in the proceedings before the Court. As a general principle, everything will be done to reduce the stress and trauma associated with participating in the proceedings through the use of the right to ask for various measures designated to protect their interests such as the provision of support persons or to proceed *in camera*, etc.

The Office attaches great importance to the constant training of its staff, in particular on the way to handle proper representation of children. □

The Songo Mboyo Trial and other Recent Military Trials in the DRC

On 7 June 2006, the appeals Chamber of the military Tribunal of the Garrison of Mbandaka confirmed the 12 April conviction of five soldiers of the 9th Battalion of FARDC for rape and crimes against humanity, handing down sentences for life imprisonment. It overturned one conviction, ordering the release of one previously convicted soldier. The soldiers had committed mass rape against women and girls in Songo Mboyo (600 km Northeast of Mbandaka in Equateur Province) in December 2003, pillaging their belongings during a mutiny

The military tribunal of Mbandaka made a direct reference to the Rome Statute of the International Criminal Court, citing that the rape, when committed in a general and systematic way against a civilian population, constitutes a crime against humanity. While crimes against humanity have not yet incorporated into DRC positive law, courts may apply the Rome statute directly as the DRC follows the monist tradition of international law, whereby treaty obligations automatically become part of the national legal system upon ratification.

The justice system of the DRC seems to have almost completely broken down, with the trial of Colonel Ademar (FARDC) on standby since 10 July 2005, with respect to a massacre of 30 people at Kilwa. Arrests of other perpetrators known to the military justice hierarchy have been put on hold. In Ituri, the prosecution of military and militia leaders has stalled. The most compelling cases are of two ranking Generals living in Kinshasa under political protection, and against



Conviction for mass rape at the "Songo Mboyo Trial", Mbandaka Military Court, 12 April 2006

whom ample evidence is available, namely Jerome Kakwawu, former chief of the FAPC and Flauribert Kisembo, former force commander of the UPC. Furthermore, progress on the case of 8 Iturian warlords held in Kinshasa for war crimes and crimes against humanity, in which hearings were carried out on 5 and 9 May 2006 (monitored by MONUC), is also apparently blocked for political reasons. ¹

However, in the midst of this almost hopeless situation, there have nonetheless been several convictions by military tribunals addressing impunity of soldiers such as the Songo Mboyo Trial.

There have been several other convictions of a similar nature by other Military Tribunals.

Other such trials include the trial of Commander Jean-Pierre Biyoyo (and others) by the military tribunal of Bukavu and the trial of the military tribunal of Kindu.

On 17 March 2006, the Military Tribunal of the Bukavu garrison convicted Jean Pierre Biyoyo and two others under article 67 of the Penal Code for the abduction of children. After a two week trial in Bukavu, with the assistance of the MONUC Child Protection Section, Biyoyo was sentenced to 5 years imprisonment for the abduction of children, and received the death penalty for crimes of insurrection and desertion. Similarly, on 26 October 2005 two soldiers, as well as their associates, were convicted by the Military Tribunal of Kindu for deportation, forced displacement of people, rape, sexual enslavement, forced prostitution, forced pregnancy, forced sterilisation and other forms of sexual violence.

Reports on these trials, particularly the Biyoyo trial indicate that victims' protection and support in the region is virtually non-existent. As a result of the acute fears of the victims involved, no witnesses testified at the Biyoyo trial. □

1. See: <http://www.monuc.org>

Interview with Pascal Turlan, DRC Situation Analyst at the International Criminal Court

1. Mr. Turlan, as a Situation Analyst for the DRC, what exactly is your role, and how does it relate to the rights of victims?

The Situation Analysis Unit is part of the "Jurisdiction, Complementarity and Cooperation Division" (JCCD), of the Office of the Prosecutor. In addition to handling cooperation issues, the JCCD analyses communications, assesses the admissibility of situations and cases, and analyses other relevant criteria providing the basis of decisions to open investigations or to launch prosecutions.

In the course of this decision-making process, the Situation Analysts assess whether crimes with the ICC's jurisdiction have been or are being committed, whether there is a functioning judiciary and a willingness to prosecute, whether national proceedings are or have been taking place and whether these are genuine. Situation Analysts also analyze the gravity of the crimes, the interests of victims, and the interests of justice. In the DRC, since the investigation has opened, my role has been to maintain an understanding of the local, national, regional and international contexts in order to facilitate investigations and to maintain the necessary cooperation and acceptance of our work.

As the Situation Analyst for the DRC, my work relates to the rights of victims, insofar as I monitor the situation of alleged victims to inform our impact, security assessment (ongoing investigation), and our next-case selection process. For instance, proactive consultations with civil society representatives and close relations with victims groups have been developed during the analysis phase, in particular in Kinshasa and Ituri, but also with groups based elsewhere in the DRC. Such consultations are aimed at contextualizing the Prosecutor's intervention, evaluating the needs, expectations and concerns of local populations in order to inform understanding of the interest of justice and interest of victims.

2. The Lubanga indictment was received with much enthusiasm from human rights activists in DRC, why is this case impor-

tant to the Prosecutor and what are the next steps in the case?

The warrant issued against Thomas Lubanga Dyilo led to the ICC's first surrender – a landmark in the fight against impunity. Lubanga is a leader of the UPC, and is charged with crimes of enlisting, conscripting and using children under the age of 15 years to participate actively in hostilities. The UPC was one of the principal militia groups operating in Ituri from 2002 to 2004. Its members still represent a threat to stability in the district and the Province Orientale. We believe that prosecuting its leaders is an important step in bringing accountability for the people of the DRC.

Lubanga appeared before the Court for the first time on 20 March 2006. On 24 May 2006, Pre-Trial Chamber 1 postponed the Confirmation Hearing until 28 September. The Prosecutor requested the postponement in view of the time needed to implement additional protection measures for witnesses by the end of July 2006.

3. Few people know that Lubanga has only been charged with 'conscripting, enlisting and using children', what can the court do to help people understand these charges, and will Lubanga be charged with killings, pillage and rape also?

Crimes of child recruitment are some of the gravest crimes committed in the DRC and prosecuting them is of particular importance for the Congolese population. As the Prosecutor has stated: "Forcing children to be killers jeopardises the future of mankind. We are committed to putting an end to these crimes – it's our special duty pursuant to the Rome Statute. ... The alleged crimes are extremely serious. Throughout the world, children are being trained to become machines of war."

UNICEF estimates that 30,000 children are or have been associated with armed groups in the DRC. Available information indicates that armed groups may still be forcing thousands of children – some no older than ten – to fight and to commit

atrocities. The charges in this first case are focussed exclusively on crimes against children because the gravity of these crimes requires that they do not go unpunished.

Furthermore, the Rome Statute and the Prosecutor's strategy are having a catalytic effect on domestic prosecutions. On 17 March 2006, the day Lubanga was surrendered to the Court, the Military Court of Bukavu, sentenced Jean-Pierre Biyoyo to five years imprisonment on charges of arbitrary arrest and of illegal detention of children, representing a landmark as important as the surrender of Thomas Lubanga to the ICC.

Regarding further charges against Lubanga, on 28 June 2006 the Prosecutor filed an "Information on further Investigation", noting his decision to "temporarily suspend the further investigation" because of current limited capacity and resources and the need for adequate protection of victims and witnesses.

4. Mr. Turlan, as you know, there are a number of other leading commanders who are already in custody within DRC, like Thomas Lubanga was, does the Prosecutor plan to arrest them also?

The investigation in the DRC situation is still ongoing and the Prosecution operates according to a sequential process. The Arrest Warrant released is only the first in a long-term investigation, and the Prosecutor will apply for others as soon as possible.

Other armed groups operating in the DRC are also under investigation. We have already collected information on other groups, and will continue to do so in order to determine whether the required thresholds of gravity and responsibility are met. Arrest warrants against UPC-FPLC members will be followed by arrest warrants against other groups whose members also bear the greatest responsibility for the crimes committed in the district, if and when the evidence necessary to support the warrants is obtained. □

Organisations that have affiliated themselves to the VRWG include:

Amnesty International • Avocats Sans Frontières • Centre for Justice and Reconciliation • Coalition for the International Criminal Court • European Law Student Association • Fédération Internationale des Droits de l'Homme • Human Rights First • Human Rights Watch • International Centre for Transitional Justice • International Society for Traumatic Stress Studies • Justitia et Pax • Medical Foundation for the Care of Victims of Torture • Parliamentarians for Global Action • REDRESS • Women's Initiatives for Gender Justice

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