

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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PRE-TRIAL CHAMBER I

Before: Judge Claude Jorda, Presiding Judge
Judge Akua Kuenyehia
Judge Sylvia Steiner

Registrar: Mr Bruno Cathala

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR
v. THOMAS LUBANGA DYILO**

Public Document

**REQUEST SUBMITTED PURSUANT TO RULE 103(1) OF THE RULES OF
PROCEDURE AND EVIDENCE FOR LEAVE TO PARTICIPATE AS AMICUS
CURIAE IN THE ARTICLE 61 CONFIRMATION PROCEEDINGS
(WITH CONFIDENTIAL ANNEX 2)**

The Office of the Prosecutor

Mr Luis Moreno Ocampo
Ms Fatou Bensouda
Mr Ekkehard Withopf

Counsel for the Defence

Mr Jean Flamme
Other Participants
Women's Initiatives for Gender Justice
Ms. Sureta Chana

Introduction

1. Pursuant to rule 103 of the Rules of Procedure and Evidence, the Women's Initiatives for Gender Justice ("Women's Initiatives") hereby applies for leave to submit observations as *amicus curiae* in the article 61 confirmation proceedings in this case. The article 61 confirmation hearing is presently scheduled to be held on 28 September 2006.¹
2. In accordance with rule 103, the Women's Initiatives applies for leave to submit comments both in writing and orally. If leave to submit written comments is granted, the Women's Initiatives will file its written comments or *amicus curiae* brief within any time-limit fixed by the Pre-Trial Chamber. The Women's Initiatives also remains prepared to submit any further written comments at the request or with the leave of the Pre-Trial Chamber. If leave to submit oral comments is also granted, the Women's Initiatives, through their counsel, Ms Sureta Chana, is prepared to appear at the hearing.
3. The details of the Women's Initiatives and their interest in these proceedings are set out in paragraphs 22-26 below.

Issues on which the Women's Initiatives seeks to make comments as *amicus curiae*

4. The Women's Initiatives seeks leave to make submissions as *amicus curiae* on the powers and duties of the Pre-Trial Chamber in article 61 confirmation hearings. This is an important question, given that article 61 hearings are a standard procedure in all cases before the Court. The article 61 hearing in this case will be the first such hearing ever held before this Court, and the approach that the Pre-Trial Chamber takes in these article 61 proceedings will set a significant precedent for the future. There is currently no case law of the Court on the powers of the Pre-Trial Chamber in article 61 proceedings. Furthermore, the Pre-Trial Chamber will not have the benefit of any relevant case law from other international criminal courts, since this Court's article 61 confirmation procedure is very different to the procedure for the confirmation of an

¹ No. ICC-01/04-01/06-126, "Decision on the Postponement of the Confirmation Hearing and the Adjustment of the Timetable Set in the Decision on the Final System of Disclosure", 24 May 2006, Order 9.

indictment under the Rules of the International Criminal Tribunal for the Former Yugoslavia (“ICTY”), the International Criminal Tribunal for Rwanda (“ICTR”), or the Special Court for Sierra Leone (“SCSL”).

5. Furthermore, for the reasons given below, that the interpretation of article 61 has wider implications for more fundamental questions such as the nature of the independence of the Prosecutor, the relationship between the Prosecutor and the Pre-Trial Chamber, the system of checks and balances in the procedures of the Court, and the role and rights of victims. Given that the Pre-Trial Chamber will be dealing for the first time with questions of such importance, without any precedent to guide it, it is submitted that the participation of *amicus curiae* in the proceedings is justified, to ensure that all possible arguments are put before the Court for its consideration.

6. The particular question that the Women’s Initiatives seeks to address is what role and duties the Pre-Trial Chamber has in the determination of the appropriate charges to be brought against an accused. Article 61 indicates that it is initially for the Prosecutor to determine which charges he or she intends to bring against a person, and it is the responsibility of the Prosecutor to produce sufficient evidence of each of those charges. The role of the Pre-Trial Chamber is then dealt with in paragraph 7 of that article, which states:
 - (7) The Pre-Trial Chamber shall, on the basis of the hearing, determine whether there is sufficient evidence to establish substantial grounds to believe that the person committed each of the crimes charged. Based on its determination, the Pre-Trial Chamber shall:
 - (a) Confirm those charges in relation to which it has determined that there is sufficient evidence, and commit the person to a Trial Chamber for trial on the charges as confirmed;
 - (b) Decline to confirm those charges in relation to which it has determined that there is insufficient evidence;
 - (c) Adjourn the hearing and request the Prosecutor to consider:
 - (i) Providing further evidence or conducting further investigation with respect to a particular charge; or
 - (ii) Amending a charge because the evidence submitted appears to establish a different crime within the jurisdiction of the Court.

7. If granted *amicus curiae* status, the Women's Initiatives proposes to argue as follows.

- (1) Under the Statute, it is for the Prosecutor to determine, in the exercise of his or her discretion, which charges to bring against a person. However, under article 61(7), the Pre-Trial Chamber has a general supervisory jurisdiction over the Prosecutor's exercise of that discretion. The role of the Chamber is not limited merely to confirming or declining to confirm a particular charge that the Prosecutor has decided to bring. Under article 61(7)(c)(i), the Pre-Trial Chamber has the power to request the Prosecutor to consider conducting further investigation with respect to a particular charge, and under article 61(7)(c)(ii), the Pre-Trial Chamber has the power to request the Prosecutor to consider amending a charge.² The words "a particular charge" in article 61(7)(c)(i) should not be read narrowly as referring only to those charges that were specified by the Prosecutor under article 61(3)(a) prior to the first article 61 hearing. Similarly, the words "the evidence submitted" in article 61(7)(c)(ii) should not be read narrowly as referring only to the evidence that was submitted by the Prosecutor at the first article 61 hearing. The two provisions must be read together, as conferring a general power on the Pre-Trial Chamber to request the Prosecutor to consider undertaking further investigations into other possible charges, and, on the basis of evidence obtained through such investigations, to consider amending the charges to include additional charges. If the Prosecutor does then decide to seek to amend by including such additional charges, the article 61 procedure will apply again to those additional charges (article 61(9)).
- (2) The question of which charges are to be brought against a person is a matter within the discretion of the Prosecutor. However, this is not an untrammelled discretion that is beyond any form of judicial supervision or review. An important part of the role of the Pre-Trial Chamber in article 61 proceedings is

² It is noted that the Single Judge in this case has ordered that "except for exceptional circumstances which might justify subsequent isolated acts of investigation, the investigation must be completed by the time the confirmation hearing starts": No. ICC-01/04-01/06-102, "Decision on the final system of disclosure and the establishment of a timetable", 15 May 2006, para. 131; see also No. ICC-01/04-01/06-108, "Decision Establishing General Principles Governing Applications to Restrict Disclosure pursuant to Rule 81 (2) and (4) of the Statute", 19 May 2006, para. 39. However, this must be subject to the express power of the Pre-Trial Chamber, under article 61(7)(c)(i) of the Statute, to request the Prosecutor to consider conducting further investigation with respect to a particular charge.

to satisfy itself that the Prosecutor has exercised his or her discretion correctly. The Pre-Trial Chamber does have the power under article 61, and indeed the duty, to intervene if the Prosecutor, in exercising his or her discretion, has for instance failed to take into account relevant matters, or has taken into account irrelevant matters, or has reached a conclusion which no sensible person who has properly applied his or her mind to the issue could have reached.³

- (3) Where the Pre-Trial Chamber is not satisfied that the Prosecutor has exercised his or her discretion correctly, the Chamber *shall* under article 61(7) request the Prosecutor to *consider* providing further evidence or conducting further investigations or amending the charges. Concomitantly, this is an important power, since there is no limit to the number of times that the Pre-Trial Chamber can adjourn the hearing under article 61(7)(c). If necessary, it could adjourn the article 61 proceedings a number of times until it is satisfied that the Prosecutor's discretion has been correctly exercised.

8. The Women's Initiatives further proposes to submit that a number of considerations support this interpretation, including the following.

- (1) One of the principal functions of the Court is to deter the commission of the crimes within its Statute, by prosecuting those who commit them.⁴ However, in reality, prosecutions by the Court will necessarily be selective, since it will not have the resources to try every person over whom it would be capable of exercising jurisdiction for every crime of which there may be evidence. Prosecuting selectively requires choices to be made, and those choices need to be made carefully. If proceedings before the Court are to be fair and just, from the point of view of the accused, of the victims, and the international community in general, it is necessary that the choices be made in a transparent and principled way, not in a way that is *ad hoc* or arbitrary. Furthermore, such choices need to be made carefully if the Court is to be effective in achieving its aim of deterring the commission of such crimes in the future. For instance,

³ Compare, for instance, *Prosecutor v. Kvočka et al.*, Decision on Review of Registrar's Decision to Withdraw Legal Aid from Zoran Žigić, Case No. IT-98-30/1-A, Appeals Chamber, 7 February 2003, para. 13, referring to "standards for judicial review of administrative decisions" based on "general principles of law derived from the principal legal systems".

⁴ See the fifth preambular paragraph of the Statute of the Court: "Determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes".

failure to give sufficient importance to the prosecution of certain types of crimes may obviously weaken or undermine the Court's effectiveness in deterring those particular types of crimes especially those known to have been committed. Indeed, the ICC might in such circumstances send the signal that such crimes can continue to be committed with impunity. The Court is enjoined by article 21(3) to ensure that the law be applied without any adverse distinction founded on *inter alia* gender. Thus, while these choices fall to be made through the exercise of the Prosecutor's discretion, they are choices that ultimately affect the entire international community. As the Prosecutor himself has acknowledged:

Determining the correct model is a legal, financial and strategic question that will require dialogue between many actors. It has a legal dimension, namely the interpretation of Article 53, and therefore involves OTP and ultimately the judges. It has a budgetary dimension and therefore involves the States Parties. It also has a strategic dimension - what is the desired scope and role of the Court? - and therefore involves all stakeholders.⁵

The importance of such decisions by the Prosecutor, and the need for transparency in their making, requires that they be ultimately subject to judicial supervision.

- (2) The ICC Statute provides for a different model of relationship between the Prosecution and Judges to that found in the Statutes of the ICTY, ICTR or SCSL. In those other international criminal courts, confirmation of an indictment is an *ex parte* proceeding, which normally takes place without any involvement by the Defence, and indeed, before the accused is arrested or transferred to the tribunal. In contrast, under the Statute of this Court, article 61 confirmation proceedings are *inter partes*, involving not only the Prosecution and Defence, but also possibly victims. In this Court, even at the investigations stage, the Chambers exercise a degree of supervision of activities of the Prosecutor that is unknown at the ICTY, ICTR or SCSL. For

⁵ Statement by Luis Moreno-Ocampo, Prosecutor of the International Criminal Court, Informal meeting of Legal Advisors of Ministries of Foreign Affairs, New York, 24 October 2005 <http://www.icc-cpi.int/library/organs/otp/speeches/LMO_20051024_English.pdf>.

instance, at the investigations stage, the Pre-Trial Chamber has the authority to be proactive in convening hearings to deal with matters of protection of victims and witnesses and preservation of evidence,⁶ or may order specific proceedings to enable victims to present their views and concerns.⁷ There is no reason why the degree of judicial supervision should diminish once a case ensues from an investigation. There is thus no reason why article 61(7) should be read restrictively.

- (3) Decisions under article 61 have a direct impact on victims. This Pre-Trial Chamber has held that during the stage of investigation of a situation, the status of victim will be accorded to applicants who seem to meet the definition of victims in relation to the *situation* in question, while at the case stage the status of victim will be accorded only to applicants who seem to meet the definition of victims in relation to the relevant *case*.⁸ To meet the definition in relation to a particular *situation*, there must be a causal link between the harm suffered by a victim and a crime falling within the jurisdiction of the Court that was committed in the relevant situation.⁹ To meet the definition in relation to a particular case, there must be a sufficient causal link between the harm suffered by a victim and the crimes for which the Chamber has issued an *arrest warrant*.¹⁰

The potential impact of this ruling on victims can be illustrated by a simple example. Suppose that the Prosecution commences an investigation into the situation in country X, and that two victims are permitted to participate in the investigation stage of the proceeding. Victim A suffered torture, rape, mutilation, and witnessed all of her close family members murdered. Victim B had his house burned down. In the course of the investigation, the Prosecution obtains evidence that suggests that Person Z was individually criminally responsible for all of the crimes against both victims. However, in the exercise of his discretion, the Prosecutor decides to prosecute Person Z only on charges

⁶ No. ICC-01/04-9, "Decision to Convene a Status Conference", 17 February 2005.

⁷ No. ICC-01/04-101, "Decision on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6", 17 January 2006 (the "Victim Participation in Investigations Decision"), para. 75.

⁸ *Ibid.*, para. 66.

⁹ *Ibid.*, paras. 81-94.

¹⁰ No. ICC-01/04-01/06-172, "Decision on the Applications for Participation in the Proceedings Submitted by VPRS 1 to VPRS 6 in the Case the Prosecutor v. Thomas Lubanga Dyilo", 29 June 2006, p. 6.

relating to destruction of property, and obtains an arrest warrant limited to these crimes.

In this example, Victim A may feel legitimately concerned by the decision not to include charges of sexual violence, murder and torture. Yet despite having been permitted to participate as a victim in the investigation stage, she will not be permitted to participate in the article 61 proceedings, as the crimes of which she is alleging to be a victim have not been specified in the arrest warrant.

The Women's Initiatives proposes to submit that one of the main purposes of allowing victims to participate in article 61 proceedings should be to enable this type of concern to be raised by victims. The Women's Initiatives proposes further to submit that to enable this to occur, the Pre-Trial Chamber should reconsider the definition of a victim for the purposes of article 61 proceedings. In relation to article 61 proceedings, victim status should require only a causal link between the harm suffered by a victim and a crime alleged to have been committed by a person named in an arrest warrant, whether or not that particular crime has been included in the arrest warrant.

Relevance of the issues in the present proceedings

9. It is submitted that the issues that the Women's Initiatives intends to address are not hypothetical or abstract issues in the present proceedings. On the contrary, they are very real issues, given the circumstances of this case.
10. The present case ensued from a situation that was referred to the Prosecutor by the Democratic Republic of the Congo ("DRC") pursuant to articles 13(a) and 14 of the Statute. The referral covered *any* crimes within the jurisdiction of the Court allegedly committed anywhere in the territory of the DRC since the entry into force of the Rome Statute, on 1 July 2002.¹¹ The DRC when it referred the situation to the OTP had a reasonable expectation that the full range of the most prolific crimes would be investigated and prosecuted. The Prosecutor subsequently announced his intention to commence an investigation of the situation in the DRC, acknowledging that reports by

¹¹ Press Release ICC-OTP-20040419-50-En, 19 April 2004 < http://www.icc-cpi.int/pressrelease_details&id=19&l=en.html >.

States, international organizations and non-governmental organizations that “allege a pattern of rape, torture, forced displacement and the illegal use of child soldiers”.¹²

11. In a number of subsequent statements made by or attributable to the Prosecutor, it was affirmed that the situation in the DRC involved allegations of a variety of large-scale crimes under the Statute of the Court, including conscription of child soldiers, summary executions, mass murder, torture, rape and other forms of sexual violence and forced displacement.^{13,14,15}
12. On 12 February 2004, the Prosecutor stated that “I will investigate *all* crimes related to the situation in an impartial way. I will continue to receive information from any source on crimes within the jurisdiction of the Court”.¹⁶
13. On 28 November 2005, the Prosecutor said to the Assembly of States Parties that “Our cases will expose the commission of specific crimes which have a devastating impact, such as rape, sexual enslavement and forced enlistment of children”.¹⁷ In relation to the situation in the DRC he added that “We are working in sequence, selecting cases on the basis of gravity”.¹⁸
14. On 17 March 2006, the Prosecutor issued a statement in which he said:

¹² Press Release ICC-OTP-20040623-59-En, 23 June 2004 < http://www.icc-cpi.int/pressrelease_details?id=26&l=en.html >.

¹³ Address by Prosecutor Luis Moreno Ocampo, Third Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 6 September 2004 www.icc-cpi.int/library/asp/LMO_20040906_En.pdf (stating that “available information suggests that rape and other crimes of sexual violence, torture, child conscription, and forced displacement continue to take place” in the DRC).

¹⁴ United Nations General Assembly, Report of the International Criminal Court, UN Doc. A/60/177, 1 August 2005 < http://www.icc-cpi.int/library/organs/presidency/ICC_Report_to_UN.pdf >, at para. 37 (“The Office of the Prosecutor is investigating the situation in the Democratic Republic of the Congo, which involves allegations of thousands of deaths by mass murder and summary execution since 2002, as well as large-scale patterns of rape, torture and use of child soldiers”). (This report was submitted in accordance with the provisions of article 6 of the Relationship Agreement between the United Nations and the International Criminal Court. It must be assumed that the portions of it dealing with the Office of the Prosecutor were approved by the Prosecutor.)

¹⁵ Assembly of States Parties, Fourth session, 28 November to 3 December 2005, Report on the activities of the Court, ICC-ASP/4/16, 16 September 2005 < http://www.icc-cpi.int/library/asp/ICC-ASP-4-16_English.pdf >, at para. 53 (“The Office of the Prosecutor is investigating the situation in the Democratic Republic of the Congo, which involves allegations of thousands of deaths by mass murder and summary execution since 2002, as well as large-scale patterns of rape, torture and use of child soldiers.”) (It must be assumed that the portions of this report dealing with the Office of the Prosecutor were approved by the Prosecutor.)

¹⁶ Statement of the Prosecutor Luis Moreno Ocampo to Diplomatic Corps, www.icc-cpi.int/library/organs/otp/LOM_20040212_En.pdf.

¹⁷ Assembly of States Parties, Fourth session, 28 November to 3 December 2005, Statement by Luis Moreno Ocampo, Prosecutor of the International Criminal Court, 28 November 2005 < http://www.icc-cpi.int/library/organs/otp/speeches/LMO_20051128_English.pdf >, at p. 5

¹⁸ *Ibid.*, at p. 2.

At the outset of the investigation [into the situation in the DRC], Ituri was singled out as being one of the most violent regions in the DRC. The investigation made it possible to identify several groups responsible for the violence. The Forces patriotiques pour la libération du Congo (FPLC) emerged as one of the militias which had committed the worst atrocities. The FPLC is the military wing of the Union des patriotes congolais (UPC).¹⁹

15. On 17 January 2006, the Pre-Trial Chamber permitted six victims to participate in the investigation stage of the proceedings.²⁰ The crimes reported by these victims which formed the basis of their recognition as victims included murder,²¹ looting and destruction of property,²² abduction and enslavement,²³ torture,²⁴ and unlawful detention.²⁵
16. On 10 February 2006, Pre-Trial Chamber I issued the warrant of arrest against Mr. Thomas Lubanga Dyilo in this case (the "Arrest Warrant").²⁶ The only crimes specified in the Arrest Warrant were crimes relating to the enlistment and conscription and use of child soldiers under the age of fifteen, and the use of such child soldiers in active hostilities (Statute, articles 8(2)(b)(xxvi) or 8(2)(e)(vii)).
17. The Arrest Warrant contained a finding by the Pre-Trial Chamber that there are reasonable grounds for believing that Mr Lubanga has been the President of the UPC since its foundation on 15 September 2000, that he was the founder and Commander-in-Chief of the FPLC from September 2002 until the end of 2003 at least, that he exercised *de facto* authority which corresponded to his positions as President of the UPC and Commander-in-Chief of the FPLC and had ultimate control over the adoption and implementation of the policies/practices of the UPC/FPLC.

¹⁹ Press Release ICC-OTP-20060302-126-En, 17 March 2006 < <http://www.icc-cpi.int/press/pressreleases/133.html> >.

²⁰ Decision on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6.

²¹ *Ibid.*, paras. 123, 134, 166, 185.

²² *Ibid.*, paras. 123, 134, 166, 175, 185.

²³ *Ibid.*, para. 151.

²⁴ *Ibid.*, paras. 175, 185.

²⁵ *Ibid.*, para. 175.

²⁶ No. ICC-01/04-01/06-2, "Warrant of Arrest", 10 February 2006.

18. It is not clear from the public records of the Court whether the six victims participating in the investigation stage were able to participate in the proceedings relating to the issuing of the Arrest Warrant. However, the Arrest Warrant itself makes no reference to the victims being heard in relation to the Prosecutor's application for the Arrest Warrant, and the fact that the Arrest Warrant was originally issued under seal would have made victim participation unlikely. It is therefore presumed that the participating victims did not have an opportunity at that time to express any concerns they may have had that the crimes specified in the Arrest Warrant were narrowly limited to crimes relating to the recruitment and use of child soldiers. All of those victims will now also be deprived of any opportunity to raise such concerns at the article 61 hearing, since the Pre-Trial Chamber has determined that no sufficient causal link has been established between the harm that any of them has suffered and the crimes specified in the warrant of Arrest Warrant.²⁷
- 19 The Prosecutor's document containing the charges under rule 121(3) was filed on 28 August 2006 with three counts relating to child soldiers contrary to article 8 8(2)(e)(vii) and article 25(3)(a)²⁸ of the Rome Statute and charges consistent with the Arrest Warrant. A document filed by the Prosecution on 28 June 2006²⁹ indicates that at the time that the arrest warrant in this case was issued, further investigations in the case were in progress, and the addition of further charges was considered a possibility. However, according to this document, investigations into other possible charges have now been suspended, and the current charges will not be amended "during the present proceedings". This document indicates that the further investigations that were previously being undertaken by OTP in this case related to allegations of attacks against the civilian population, murder, pillage, and ordering the displacement of the civilian population. There is no reference in the document to any investigation being undertaken in this case into gender-based crimes.
- 20 If the Women's Initiatives is given leave to make *amicus curiae* submissions, it will submit that whether or not the Prosecutor seeks to present additional charges, the Pre-Trial Chamber has the power, and the duty, to satisfy itself that the Prosecutor's decision on the charges is an appropriate exercise of the Prosecutor's discretion in all

²⁷ No. ICC-01/04-01/06-172, "Decision on the Applications for Participation in the Proceedings Submitted by VPRS 1 to VPRS 6 in the Case the Prosecutor v. Thomas Lubanga Dyilo", 29 June 2006.

²⁸ 28.08.2006 - Submission of the Document Containing the Charges pursuant to Article 61(3)(a) and of the List of Evidence pursuant to Rule 121(3) ICC-01/04-01/06-356 Annexe 2

²⁹ No. ICC-01/04-01/06-170, "Prosecutor's Information on Further Investigation", 28 June 2006.

of the circumstances. The relevant circumstances include the following:

- (1) the fact that the Prosecutor has publicly stated that large-scale crimes committed in the DRC included many atrocities in addition to the recruitment and use of child soldiers, summary executions, mass murder, torture, rape and other forms of sexual violence and forced displacement;
- (2) the fact that the Prosecutor has publicly stated that the UPC/FPLC emerged as “one of the militias which had committed the worst atrocities”;³⁰
- (3) the fact that the Pre-Trial Chamber has already found that there are reasonable grounds for believing that the Detainee has been the President of the UPC since September 2000 and was Commander-in-Chief of the FPLC from September 2002 until the end of 2003 at least, and that he had effective authority and ultimate control over the policies/practices of these organisations;³¹
- (4) the fact that there is information publicly available to the effect that other crimes such as murder and sexual violence were committed specifically by the UPC/FPLC; such information includes a letter from the Secretary-General of the United Nations to the President of the Security Council dated 16 July 2004,³² United States Department of State country reports for the DRC for the years 2003³³ and 2004;³⁴ and reports by Amnesty International,³⁵ Human Rights Watch³⁶ and the Women’s Initiatives for Gender Justice.³⁷

³⁰ Press Release ICC-OTP-20060302-126-En, 17 March 2006 < <http://www.icc-cpi.int/press/pressreleases/133.html> >.

³¹ Arrest Warrant, pp. 3-4.

³² United Nations Security Council, Letter dated 16 July 2004 from the Secretary-General addressed to the President of the Security Council, covering a “Special report on the events in Ituri, January 2002-December 2003”, UN Doc. S/2004/573, 16 July 2004, <http://documents-dds-ny.un.org/doc/UNDOC/GEN/N04/430/63/img/N0443063.pdf?OpenElement>:

The team received reports of 18 cases of rape, some of the victims being as young as 11, committed by UPC soldiers, after the ceasefire was signed [on 17 May 2003]. Most of the victims were abducted while they were out to look for food or water, and were taken to military places or private houses for sexual abuse. (at para. 80.)

UPC soldiers also committed large-scale rape in the 15 different areas of the town, sometimes abusing girls as young as 12. (At para. 37.)

After Mambasa, similar abuses were also systematically carried out in the villages south of the town and between Komanda and Eringeti, with the involvement of UPC. The number of rape cases - mainly young girls or women between 12 and 25 years old - also rose to an alarming level. (At para. 108.)

³³ ... between January and March [2003], during military operations, the Hema UPC killed at least 250 persons and abducted 30 women from the Lendu village of Lipr, near Bunia. The victims were either shot during the attacks or executed with machetes over a period of days following the attacks. In addition, the UPC burnt several villages and over the course of several attacks on the town of Bambu, looted the offices of Kilo Moto, the largest gold-mining company in the region, the hospital, schools, an orphanage, and religious structures. ...

- (5) the fact that the Prosecutor has publicly acknowledged the importance of prosecuting gender crimes, stating that:

I fully agree that this is one of the gravest crimes, raping women was a tool to destroy communities. Rape as it was perpetrated in Congo does not constitute only sexual abuse but it is used as a weapon of war. Because women form the basis of any community, women bring people together, and raping them is like raping the whole community. We totally agree with you on the gravity of this crime.³⁸

Fierce fighting occurred between May 6 [2003], when the UPDF left Bunia, and May 17 [2003] ... This fighting resulted in numerous civilian deaths ... MONUC confirmed 438 cases of arbitrary killing, 150 by the UPC, 291 by Lendu and Ngiti combatants, and the remaining by unidentified perpetrators. ...

On May 16 [2003], Hema UPC soldiers in Bunia killed 12 civilians, mostly women and children, at the Lembabo Health Center. ...

Between June 8 and 15 [2003], the Hema UPC committed numerous human rights violations in and around Bunia. Reports indicated that approximately 40 persons were kidnapped. An undetermined number were subsequently killed at a former Ugandan military camp at Simbiliabo and at the former UPC Governor's residence. In addition, on June 11, Hema UPC killed 14 IDPs from Medu at the former governor's residence and their bodies were disposed of in a latrine. ...

United States of America, Department of State, Bureau of Democracy, Human Rights, and Labor, Country Reports on Human Rights Practices, 2003, Democratic Republic of the Congo, dated 25 February 2004 < <http://www.state.gov/g/drl/rls/hrrpt/2003/27721.htm> >.

³⁴ In areas under marginal government control, there were credible reports that between July 2003 and March [2004], the local head of the national police and the local UPC commander in Boga, Ituri District killed nine persons, some by summary execution and some by torture. ...

In many cases, armed groups did not make a distinction between military and civilian targets. For example, the MONUC Ituri report found that UPC forces shelled "Lendu villages without making any distinction between armed combatants and civilians." ...

United States of America, Department of State, Bureau of Democracy, Human Rights, and Labor, Country Reports on Human Rights Practices, 2004, Democratic Republic of the Congo, dated 28 February 2005 < <http://www.state.gov/g/drl/rls/hrrpt/2004/41597.htm> >.

³⁵ Amnesty International, "Democratic Republic of Congo-Mass Rape-Time for Remedies", AI Index: AFR 62/018/2004, 26 October 2004 <<http://web.amnesty.org/library/Index/ENGAFR620182004>> ("most allegations of sexual violence centre on the host of less well-controlled and disciplined armed groups in DRC. These include notably, but not exclusively, the Congolese *mayi-mayi*, RCD-Goma, MLC, RCD-ML, UPC, FNI and FAPC armed groups, and the Rwandan FDLR and Burundian FDD or FNL armed groups"). Also Amnesty International, "Democratic Republic of Congo: Ituri - How many more have to die?", AI Index: AFR 62/030/2003 <[http://web.amnesty.org/library/pdf/AFR620302003ENGLISH/\\$File/AFR6203003.pdf](http://web.amnesty.org/library/pdf/AFR620302003ENGLISH/$File/AFR6203003.pdf)>, at p. 3 (describing the brutal rape of a mother and daughter side-by-side by UPC militiamen in the Saio district of Bunia).

³⁶ Human Rights Watch, "Seeking Justice: The Prosecution of Sexual Violence in the Congo War", March 2005 < <http://hrw.org/reports/2005/drc0305/drc0305text.pdf> >, at pp. 19-20 (documenting examples of rapes by UPC combatants).

³⁷ Confidential Annex 2 attached to this filing

³⁸ Interactive Radio for Justice, "Special Thomas Lubanga Program, Transcript, 5 April 2006 < http://www.irfj.org/Programs/Program11/IRFJ_prg11_english.doc >.

21. The exercise of the Pre-Trial Chamber's supervisory jurisdiction under article 61 could take the form of calling on the Prosecutor to explain the nature of any material that has been submitted to the Office of the Prosecutor from external sources, the nature of the investigations undertaken by the Office of the Prosecutor, the nature of the evidence obtained from such investigations, and the reasons for the decisions taken by the Prosecution with respect to the charges to the brought. The Pre-Trial Chamber further has the power to request the Prosecutor to consider conducting further investigations with respect to a particular charge.

Details of the Women's Initiatives for Gender Justice

22. The contact details of the Women's Initiatives are as follows:

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23. The Women's Initiatives is a "Stichting" established under the law of the Netherlands in January 2004.³⁹ The Executive Director of the Women's Initiatives is Ms Brigid Inder.
24. For the purposes of this application, and in its capacity as *amicus curiae* if the application is granted, the Women's Initiatives is represented by Ms Sureta Chana as counsel, whose address for service is:

Ms Sureta Chana
 c/o Women's Initiatives for Gender Justice
 Anna Paulownastraat 103

³⁹ The Corporate name is Stichting Women's Initiatives for Gender Justice, file reference number; 27264260.

2518 BC The Hague
The Netherlands

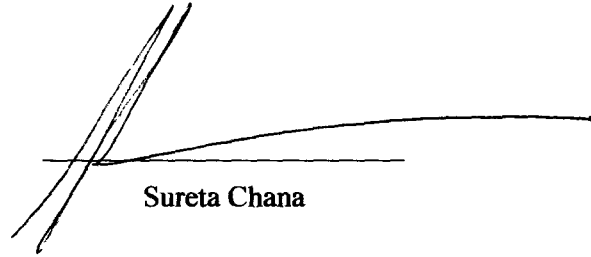
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Statement of Interest

25. The Women's Initiatives was established in January 2004 in The Hague, and became operational in February of that year. The organisation's mandate is to work globally to ensure justice for women and an independent and effective International Criminal Court.
26. The Women's Initiatives is an international women's human rights organization committed to:
- advocating for gender justice through the International Criminal Court (ICC);
 - monitoring the ICC to ensure implementation of the Rome Statute, including the gender-inclusive provisions;
 - ensuring sexualized violence and gender based crimes are a priority in the investigations and prosecutions of the ICC;
 - advocating for women victims/survivors to benefit from the reparations mechanisms and processes of the Court;
 - enhancing the capacity among women, particularly women's NGOs in countries where the ICC is conducting investigations, in the use of international law specifically the Rome Statute;
 - consulting with women, women's groups and NGOs most affected by conflict in situations brought before the ICC, to ensure their concerns and issues are incorporated into the investigations and prosecutions, and the Court's work with victims and witnesses;
 - strengthening advocacy in women's human rights and gender equality;
 - promoting the international gender standards of the Rome Statute and supporting national law reform to advance women's human rights through use of the Statute and implementing legislation;

- influencing and strengthening the gender competence of the ICC through training and the recruitment and appointment of women, including experts on gender and sexual violence amongst the personnel of the Court;
 - facilitating and maintaining a pool of experts on sexual and gender violence, victims and witnesses and institutional aspects of gender mainstreaming to shape the mechanisms developed by the ICC.
 - to do all that is connected to the above or can be useful to achieve the above which includes interventions in proceedings including filing *amicus briefs*.
27. The Women's Initiatives has had two meetings with senior officials of the Office of the Prosecutor ("OTP") in which it raised concerns that gender-based crimes were not being effectively investigated in the DRC.⁴⁰ On 15 August 2006, the Women's Initiatives sent a letter to the Prosecutor (ANNEX 1) under cover of which it submitted a report to the Prosecutor detailing gender-based crimes committed in eastern DRC. (CONFIDENTIAL ANNEX 2). This report which is additionally redacted is filed confidentially to protect the identities of victims and witnesses, includes over fifty-five (55) individual interviews with women victims/survivors of rape and other forms of sexualized violence since 1 July 2002. Of these, thirty-one (31) interviewees are victims/survivors specifically of acts of rape and sexual slavery committed by the UPC. This report is the result of two field missions conducted in May and July 2006 by the Women's Initiatives in collaboration with local activists in eastern DRC.

⁴⁰ On 29 March 2006 and 12 April 2006.



Sureta Chana

Dated this 7th day of September 2006

At The Hague, the Netherlands