



**Address to the Assembly of States Parties**

**30 November 2007**

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Prosecutor of the International Criminal Court**

Mister President, Excellencies, Ladies and Gentlemen,

I have the honor to report to the Assembly of States Parties on the work of my Office. In January, the charges against Thomas Lubanga Dyilo, our first detainee, were confirmed. In February, in the Darfur situation, we presented our first case to the Judges. In May we opened an investigation into a fourth situation, the Central African Republic. In June we requested an arrest warrant against Germain Katanga, in our second DRC case. Throughout the year we continued to work to achieve the arrest of LRA leaders sought by the Court since 2005

Next year, my Office will open investigations into new cases in the DRC and Darfur. We expect to present our evidence to the Judges concerning our first investigation in CAR. We will proceed with the conduct of analysis activities of crimes on three different continents, including following up on my recent visit to Colombia.

Such monitoring and investigative activities are made possible by our interaction with States and organizations worldwide. The complementarity and cooperation provisions of the Statute have allowed us to start building a truly global system of international justice, a system truly universal in scope.

1 -Let me start by giving you a detailed update of the situations and cases

#### Democratic Republic of the Congo

As the President indicated, we are preparing to go to trial on the 31st of March 2008. My Office will demonstrate that Thomas Lubanga Dyilo, a leader of a militia in Ituri, is criminally responsible for a policy of enlisting and conscripting children under the age of 15 and using them actively in hostilities.

We presented our evidence to the Judges on a second case against Germain Katanga, leader of another armed group, the "Force de résistance patriotique en Ituri" and a sealed arrest warrant was issued. On 17 October 2007, the Congolese authorities surrendered him to the Court. Our evidence shows that Germain Katanga, using child soldiers, led a brutal attack against the village of Bogoro, killing hundreds of civilians, forcing women into sexual slavery. His arrest demonstrated DRC commitment to the Court. I am also grateful for the support of the UN Secretary General and his team, both in New York and Kinshasa, and of the EU Special Representative for the Great Lakes.

In the DRC, we will open an investigation into a third case in 2008. We are in the process of selecting the case in accordance with our judicial standards. Options that are being considered include crimes in the Kivus - acts of sexual violence of shocking brutality, forced displacements, and killings – allegedly committed by regular soldiers, by the FDLR and by Laurent Nkunda's forces. Other options include the case of high officials having financed and organized Militia in DRC.

It will not be the last investigation in the DRC

#### The Situation in the Central African Republic (CAR)

The Office announced the opening of an investigation in the CAR on 22 May 2007. The investigation focusses on the most serious crimes which were mainly committed during a peak of violence in 2002-2003 and with a particularly high number of allegations of rapes and other acts of sexual violence.

We have already started our investigative activities and I will be personally visiting CAR in January.

We are also monitoring acts of violence committed more recently in the northern part of the country.

Let me finally mention that there are preparations for a conciliation process, the National Dialogue, in CAR. It is an opportunity to ensure that such a process is, since the beginning, made fully compatible with the Rome Statute.

#### Northern Uganda

As you know, warrants of arrest for Joseph Kony and senior leaders of the LRA were issued on 8 July 2005. They abducted young children and transformed them into killers and sexual slaves; they slaughtered entire communities and forced the displacement of 1.3 million persons.

As a Prosecutor, I believe that the enforcement of the arrest warrants is a priority. As I have stated in the ASP last year victims have the right to both peace and justice. Those arrest warrants must be executed. There is no excuse.

A lot can be done by all of you to support efforts to arrest. States parties can start with cutting off any support the indictees might receive.

Joseph Kony and the other indicted commanders must not be allowed to gain strength and financial means. There are indications that the assistance the LRA is receiving for strictly humanitarian purpose could be diverted to buy supplies or weapons. We ask States Parties and international actors to monitor with utmost vigilance such possible diversion of aid and funds to the benefit of the sought individuals.

The crimes of Joseph Kony and the other indicted commanders must not be forgotten. UNICEF, the UN Special Representative of the Secretary General on children in armed conflicts and individual States have asked that the LRA release the abductees immediately. No child has been released, no sexual slave has been freed in the last year.

As the LRA is engulfed in internal strifes, as we are continuing to gather convergent information on the reported brutal execution of Otti, as defections are on the rise, we urge you to take action to arrest the indicted individuals. Information is being sought by the Court from Uganda and the DRC on steps taken to implement the warrants. Securing arrests, starting by isolating Joseph Kony, will bring justice and peace to the victims. They deserve both. We had been encouraged by the announcement of MONUC reinforcement in the south of Garamba Park. We urge States to support such steps.

I also inform the Assembly that my Office is seeking information from the Uganda Government on alleged crimes by UPDF

### Darfur

On 27 April 2007, the ICC Judges issued arrest warrants against Ahmad Harun, former Minister of State for the Interior and Ali Kushayb, a Janjaweed/militia leader incorporated to the Popular Defence Forces. The Prosecution demonstrated that Ahmad Harun coordinated a criminal system; he recruited, funded and armed Militia/Janjaweed to supplement the Sudanese Armed Forces, and incited them to commit massive crimes against the civilian population in Darfur. He did it based on the rationale that those civilians could be rebel supporters. Ali Kushayb was personally leading such attacks.

On 7 June, I briefed the Security Council of the United Nations on the situation in Darfur. I described how Ahmad Harun, responsible for the forced displacement of millions into camps, was now controlling his victims, in his new position as Minister for Humanitarian affairs. I emphasized that the territorial State, the Sudan, had the legal obligation and the ability to arrest Ahmad Harun and Ali Kushayb and surrender them to the Court.

I urged key partners—the African Union, the League of Arab States, the United Nations and the European Union—to call on the Sudan to arrest and surrender the sought individuals. However, the Sudanese failure to comply with their legal obligation to arrest was not included in the agenda of relevant international meetings

To raise awareness of the need for execution of the arrest warrant, I have met with senior officials, including Mr Ban Ki Moon prior to his visit to Khartoum. I explained to all my interlocutors the need to implement Security Council Resolution 1593, to express clear resolve on the enforcement of the arrest warrants, to ask the Sudan to comply with its obligations and to seek justice in Darfur. I informed them on the different ways in which the criminal strategy coordinated by Harun was affecting the delivery of humanitarian assistance and could threaten directly the peacekeepers and international personnel.

The arrest warrants and the obligation to enforce them will not go away. On 5th December 2007 I will inform the UN Security Council, that the Sudan is not cooperating with the Court. The Sudan is not complying with Security Council Resolution 1593.

I will also report on ongoing crimes, in particular against the 2.5 million people displaced. Present acts of violence are not chaotic occurrence. They represent a pattern. In Darfur in 2003- 2004, we witnessed the first phase of the criminal plan coordinated by Ahmad Harun. Millions of people were forced out of their villages and into camps. In the second phase – happening right now in front of our eyes –Ahmad Harun is controlling the victims inside the camps, controlling their access to food, humanitarian aid, and security; attacks against the civilians and the displaced in particular take upon multiple forms; women are raped; emerging local leaders are targeted ; displaced are surrounded by hostile forces. It could be the second phase of the same strategy to target civilians based on the rationale that they could be rebel supporters. Ahmad Harun is a key actor. But he is not alone.

We are also monitoring with concern allegations of threats and attacks by the rebels against peacekeepers and humanitarian personnel.

My Office will start investigations into a second and a third case in Darfur in 2008. We will seek to identify which individuals bear the greatest responsibility for the ongoing crimes committed against the persons displaced; we will also seek to identify which individuals bear the greatest

responsibility for attacks against peacekeepers – such as happened in Haskanita – and humanitarian personnel.

Mister President,

2 - Let me now turn to our analysis activities.

Among the characteristics that make our Court so distinctive, the proprio motu power of the Prosecutor to select situations to investigate, subject to judicial review as established by art. 15 of the Statute is a defining provision. Based on Article 15, my Office proactively collects information about alleged crimes falling under the Court jurisdiction.

Currently we are analyzing situations on three continents. Let me mention two.

In Colombia, upon the invitation of the Government, I led a mission from 17 to 24 October. We met with victims, with the General Prosecutor, with the Supreme Court and Judges in charge of cases against the paramilitary. We met the President, Vice-President, Ministers of Interior and Justice, Foreign Affairs and Defence. We received extensive information on crimes uncovered in particular by confessions. We perceived the impact of the Statute and the Court. We explained that the Court would look into whether there were genuine investigations and prosecutions against the most serious perpetrators of crimes within the jurisdiction of the Court.

The situation in Côte D'Ivoire remains under analysis. A planned mission to Cote d'Ivoire for the purposes of preliminary examination has not yet been made possible. We count on the strong support of the new UN representative in Cote d'Ivoire and of all relevant States to convey to the national authorities the importance of a positive response to our request.

Mister President,

3. In Rome you created more than a Court. You created a global criminal justice system. A system where States and the Court interact together based on two principles: complementarity and cooperation.

Since I took office I emphasized that complementarity is more than respect for genuine national proceedings. It also includes helping territorial states to fulfil their responsibility to investigate and prosecute crimes under the Statute. For instance the Office could provide national judiciary with information collected in the course of our investigations. The legal tools electronic

platform is part of this concept of sharing information. I thank those States which have supported the project.

States and NGOs have expressed an interest on what we call a positive approach to complementarity. My Office will shortly disseminate a concept paper, based on our first years of experience. Already, we have worked on a two track approach:

- first, developing exchanges of information with national judiciary ; security of the witnesses is a limit. We should not provide information about the identity of our witnesses to national authorities if they cannot protect them.
- second, brokering international support for the judiciary and law enforcement agencies of our situation countries; to this effect we have approached the UN, including the Rule of law Unit within DPKO and the Peace Building commission, the World Bank, the EU and others to ensure that the Court's interventions galvanize others into supporting capacity building; we have good feedback especially on the establishment of witness protection systems in our situation countries.

In the same way, there is an immense potential for cooperation in the system established by the Statute. The work initiated last year by the Assembly on cooperation, and facilitated by Denmark and the Netherlands has allowed us all to better structure our interaction. Together, we can drive the cooperation further. We need your support but I also acknowledge that my Office in particular has a responsibility in developing the potential of the system, including in the critical area of arrest. My Office has a responsibility to adopt a proactive approach to arrests in order to assist you. We are trying to do so. I have travelled to a number of countries, including non States parties, in an effort to develop such an approach. With Spain, Australia, Jordania, Denmark, Ghana, Tanzania and the UK among others, we discussed best practices to support arrest efforts. I am grateful for their contribution.

I am aware that it is not easy to arrest individuals sought by the Court; they are often enjoying the protection of armies or militias; some of them are members of Governments. This cannot lead us to change the content of the law. Those difficulties should be addressed. One lesson learned from the other Tribunals is that there is not a single approach to all scenarios. While cooperation in arrests is requested primarily from territorial States, the support of other States and organizations is essential. There are different dimensions to further explore in order to facilitate apprehension of indictees.



First, consistent support to the enforcement of the Court decisions. Once the judges have issued an arrest warrant there is no space for States parties to help the indictees abscond from the Court in any way. In any bilateral or multilateral activity, in any assistance program, we ask States Parties to mention systematically the need to implement ICC decisions. Diplomatic pressure, as you know, was a strong tool of persuasion in the former Yugoslavia. I can tell you, based on my experience as Prosecutor of this Court, that your support, or lack of support, makes a huge difference.

Second, marginalization of the individuals sought by the Court. No supplies, no financial aid should reach individuals subject of an arrest warrant. They have to be isolated within their own communities. As an example, in the case of Northern Uganda, the efforts of some States parties to monitor assistance from Diaspora communities to the LRA has been very helpful

Third, tracing of whereabouts of the individuals sought by the Court. Within the Office, our goal is to identify at all times the specific whereabouts of the indictees. We are further building our tracking capabilities and I am grateful to those States which have helped us with such activities this year.

Finally, facilitating arrests operations. You can support those States on whose territory suspects are located through for example logistics or specialised training. Where feasible, provisions can be included in the mandate of peacekeeping missions. The MONUC role in support of DRC authorities is an example.

Mister President,

4 – Before concluding, let me brief you on institutional development

As reported to you previously, I attach particular attention to the consolidation of policies, processes and practices within my Office and in relation to other stakeholders. We can thus capitalize on lessons learned from our first years of operation.

Policy papers supporting our Prosecutorial strategy have been or are about to be disseminated.

On interests of justice, we issued recently a policy paper which emphasizes that the exercise of discretion under article 53 (1)(c) and 53 (2)(c) is exceptional, that there is on the part of my Office a presumption in favour of prosecution, guided by the purpose of the Statute; and that interests of justice



are different from interests of peace, the latter falling within the mandate of institutions other than the OTP.

On the selection of situations and cases, we had disseminated a first version of a policy paper in 2006. Based on comments received, we will issue shortly a finalized version addressing factors considered relevant to an overall assessment of gravity such as the scale of the crimes; their nature; the manner of commission; and the impact of the crimes.

I have also asked my Office, in consultation with NGOs, to contribute proactively to the Court wide strategy for victims. One of the objectives of the Prosecutorial strategy is to continuously improve the way in which the Office interacts with victims truly reflecting the ambitious and novel scheme established in Rome. The interests of victims, whether their protection, their participation, outreach to them and reparations in their favour is a structuring feature of our activity.

Concerning my administration duties, as I announced last year in this Assembly, my Office has drafted its regulations. In accordance with the Statute and the Rules, they will govern the functioning of the Office. We have finalized consultations with the Registry on the document. The text was transmitted to the Judges. All States parties, and also NGOs, have received the draft. I am grateful to those who have commented, allowing us to further refine the text. As I promised, these regulations will be issued before the end of the year.

In parallel, we are refining our internal protocols and standard operating procedures, thus ensuring a consistent approach by all our investigative teams. With the Registry, we are finalizing our service level agreements to further improve Court efficiency especially in the critical area of witness protection. Let me mention in this context that the achievements of the Office would not be possible without the indispensable services provided by the Registry.

On the budget I would like to emphasise the efforts of my Office to remain cost effective. We are achieving results with a lean and flexible structure. But I count on your constant support in the future to ensure that at all times the OTP is provided with adequate flexibility and resources to open new situations in accordance with our mandate.

Mister President, Excellencies, Ladies and Gentlemen,

5 - Let me conclude

In Rome, States created a new system of justice where the worst criminals would not be allowed in the sharing of power any longer; where the use of massive violence against civilians would neither be rewarded nor forgotten.

The Rome system was built upon the lessons learned from the last century when the international community failed, failed to protect entire populations.

The Rome system was meant to address the conflicts of the 21<sup>th</sup> century, where no State has sufficient power or legitimacy to protect their own citizens if the international community does not uphold the rule of law.

As the President said, the lack of arrest can affect the credibility and long term deterrent impact of the Court.

The opportunity to use the law to prevent crimes is now. Now is the time to arrest Joseph Kony and the other indicted commanders of the LRA, now is the time to arrest Ahmad Harun and Ali Kushayb.

For millions of victims, it can make a difference between life and death.

Thank you