



Luis Moreno-Ocampo
Prosecutor of the International Criminal Court

Fifth Session of the Assembly of State Parties

Opening Remarks

The Hague, 23 November 2006

English Version

Your excellencies, ladies and gentlemen.

Thank you for the opportunity to address you here today to report on the activities of the Office of the Prosecutor.

Democratic Republic of the Congo situation

As President Kirsch mentioned, the confirmation hearing in the case against Thomas Lubanga Dyilo marks a milestone in the building of an international criminal justice system. Regardless of the outcome of this particular case, it will send an indication in the DRC and around the world that using children as soldiers is a very serious war crime that will be prosecuted.

The importance of the case against Thomas Lubanga Dyilo was elaborated upon by the Senior Trial Attorney, Mr Ekkehard Withopf, at the confirmation hearing. Allow me to briefly quote him:

The case against Thomas Lubanga Dyilo is a case about children. It is a case about young children. The Prosecution evidence will show that children as young as seven, eight and nine years old were also victims of these types of crimes.

Many of the children were abducted. Abducted on the road. Abducted from schools. Abducted from their parents' houses. In the presence of their families.

The families did not resist. They did not resist because they were threatened with death. They feared being killed.

Other children joined the FPLC troops voluntarily. They did so for a variety of reasons, such as the desire for revenge of orphans whose families were killed by the militias opposing the FPLC. Such as the wish to gain social status. Such as the need for protection and shelter, and basic survival. Such as having access to food.

The children were instructed to kill the enemies regardless of whether they were combatants or civilians. The commanders forced children, boys and girls, to fight at the frontlines. Forced by threats of execution.

Many child soldiers were killed. Others were seriously wounded.

The Prosecution will present to the Court details of the individual cases of six children who were victims of these crimes. As the Prosecution will show, their experiences reflect those of hundreds of other children.

The first day of the Confirmation Hearing, the 9th of November, was a landmark for international justice in many ways. For the first time in an international criminal tribunal, the views and concerns of the victims could be heard as conveyed by their legal representatives. As prosecutors, we believe their participation adds substance and meaning to the hearings.

If the Judges confirm the charges the first trial of the Court will be conducted during 2007.

While the Lubanga team continues preparation for trial, a second investigation team is pursuing crimes allegedly committed by another Ituri armed group. We expect to request arrest warrants during the first half of 2007. We are selecting a third case to investigate in the DRC. In addition to the situation in Ituri the Office continues to assess the situation in the DRC's other provinces. We continue to assess views and interests of victims, in particular to ensure that the main modes of victimization as assessed by those who suffered are adequately covered in our investigative activities.

The Northern Uganda situation

As you know, five arrest warrants have been issued against LRA commanders. They are charged with crimes against humanity and war crimes, such as rape, inducing rape, murder, enslavement, sexual enslavement, forced enlisting of children, attacking civilian populations, cruel treatment, pillaging and inhumane acts.

We are carefully maintaining the connection with our witnesses and are in a continuous dialogue with the different communities affected by LRA crimes. We are also looking at allegations of serious crimes committed by other actors in Northern Uganda.

One of the militia commanders – Raska Lukwiya – was killed in a confrontation with the Ugandan army. At the request of the Government of Uganda, forensic experts from my Office helped to identify his body. While the four remaining LRA commanders are still at large, the Court has made a significant impact on the ground. This case shows how arrest warrants issued by the Court can contribute to the prevention of atrocious crimes.

The Court's intervention has galvanized the activities of the states concerned. Uganda and the DRC, parties to the Rome Statute and legally bound to execute the arrest warrants, have expressed their willingness to do so. The Sudan, a non-State Party, has voluntarily agreed to enforce the warrants. Thanks to the unity of purpose of these states, the LRA has been forced to flee its safe haven in southern Sudan and has moved its headquarters to the DRC border.

As a consequence, crimes allegedly committed by the LRA in Northern Uganda have drastically decreased. People are leaving the camps for displaced persons and the night commuter shelters which protected tens of thousands of children are now in the process of closing. The loss of their

safe haven led the LRA commanders to engage in negotiations, resulting in a cessation of hostilities agreement in August 2006.

We do not know yet the outcome of these negotiations, but any solution can and must be compatible with the Rome Statute. In October the Government of Uganda wrote to the Registry to provide an update on steps taken to execute the warrants. They noted the challenges that they have faced in tackling the LRA and the importance of international support. They also reiterated their understanding of their obligations under the Rome Statute, and their objective to find a “permanent end to the violence that serves the need for peace and justice, compatible with [their obligations to the Court].”

In the past, Joseph Kony has used negotiations to buy time, regroup and attack again. Securing the arrest of the four remaining LRA commanders would prevent recurrent violence and provide justice to the victims. This is a core challenge facing the Court and you - as States Parties to the Court. You must ensure that the principles of justice and deterrence underlying the Statute are upheld. The victims have a right to peace, security AND justice.

Darfur situation

In relation to our work in Darfur, I would like to inform you that my Office is completing the investigation necessary to support the first application naming individuals and alleged crimes. We selected the incidents during the period in which the gravest crimes occurred. Based on the evidence collected we identified those most responsible for these crimes.

The complexity of the conflict in Darfur makes our work very difficult: the conflict involves multiple parties, which are not easily distinguished by uniform or insignia, and whose involvement varies over time throughout the different states and localities.

In addition, because of the security situation, we had to investigate crimes committed in Darfur without going to Darfur. The Office reached this decision after a careful consideration of the duties to protect victims and witnesses established under article 68(1) of the Statute.

In spite of these challenges, my Office has succeeded in collecting the evidence required to impartially investigate the crimes committed in Darfur, investigating exonerating and incriminating circumstances equally.

We have gathered a wide range of evidence, including statements from victims as well as statements from members of the Sudanese Government; materials provided by the Sudanese Government upon request of my Office; thousands of documents collected by the International Commission of Inquiry and information provided by the National Commission of Inquiry on

Darfur. Our evidence includes documents generated by states and international organisations, including the United Nations Security Council and the Secretary General of the United Nations.

Reaching the victims was a priority for my Office. We conducted 70 missions in 17 countries, screening hundreds of potential witnesses and conducting more than 100 formal witness interviews, many of which were with victims. We collected thousands of documents from various sources.

Concerning information provided by the Government of the Sudan, let me recall that the National Commission on Inquiry was established by the President of the Sudan in May 2004 to investigate human rights violations by armed groups in Darfur.

This Commission reported to the President of the Sudan in January 2005 and its report was made available to my Office by the Sudanese Government. The National Commission found, *inter alia*, that from 2003 to 2004 grave human rights breaches were committed by all parties to the conflict and that in Darfur murder and crimes against humanity had been committed by all parties to the conflict. The National Commission also established that many allegations concerning incidents of murder have been attributed to Arab militias generically called "Janjaweed," either acting alone or together with elements of the Sudanese security forces.

In addition, in May 2006 the Government of the Sudan provided a written report responding to questions submitted by my Office. This report provides information on the various phases of the conflict from the Government's perspective, on matters relating to the military and security structures operating in Darfur, the activities of other parties to the conflict and the legal system governing the conduct of military operations. The written report was supplemented by a meeting between representatives of my Office and military officers in Khartoum in June 2006.

In August 2006 the Government of the Sudan facilitated an investigative mission to Khartoum. A senior trial attorney and a group of investigators from my Office interviewed two high-ranking civilian and military Sudanese officials. By virtue of their positions, they had knowledge and information relating to the activities of the Government of the Sudan and the other parties to the conflict in Darfur.

Based on a careful and thorough source evaluation of all the evidence collected, we were able to identify the gravest incidents and some of those who could be considered to be the most criminally responsible. We reached the level of reasonable grounds required by the Statute to prove different types of crimes against humanity (persecution, murder, wilful killing, rape or sexual violence, inhumane acts, beating, deprivation of liberty, torture, imprisonment or severe deprivation of liberty, destruction of property and forcible transfer of civilians) and war crimes (wilful killings, extra-judicial killings, rapes, intentionally attacking civilians, inhumane acts, cruel treatment, outrages upon personal dignity and pillaging).

Before submitting our evidence to the judges, my Office is assessing the admissibility of the case. I have consistently highlighted the fact that the admissibility assessment is case specific

and not a judgment on the Sudanese justice system as a whole. My Office has to assess whether the Government of the Sudan is conducting or has conducted genuine national proceedings on the same incidents and the same persons. I requested information from the Government of the Sudan and other sources in order to assess admissibility of the case before proceeding further in accordance with our duties under the Statute. I plan to have collected this information by the beginning of December.

Ladies and Gentlemen, I have just given you an overview of our ongoing investigations in DRC, Uganda and Darfur.

As you also know, my Office is continuing to assess the opening of an investigation into a fourth situation.

Analysis

Let me briefly mention our work in the analysis of possible situations to be selected. We are developing clear selection criteria in accordance with the Rome Statute. After extensive consultations, in June of this year, we issued a document describing the standards to select situations and cases. We further discussed our criteria with the prosecutors of ICTY, ICTR, Special Court of Sierra Leone and the Extraordinary Chambers for the Courts of Cambodia during the 3rd Colloquium of international prosecutors, held from 6-7 October in The Hague.

In February 2006 my Office dismissed the communications related to crimes allegedly committed in Venezuela and crimes allegedly committed by nationals of 25 States Parties in Iraq. With regard to Venezuela, we concluded that there was not a reasonable basis to believe that the alleged crimes fell within the jurisdiction of the Court. With regard to Iraq we concluded that the alleged crimes did not reach the threshold required by the Rome Statute. In addition, national proceedings had been initiated by relevant states.

The Office continues with its preliminary examination of the situation in the Central African Republic. The analysis of this situation is legally and factually complex. This time last year the Office carried out a mission for the purpose of preliminary analysis, seeking further information in relation to such allegations. Since then we have continued to receive significant information from official and civil society sources, including court decisions on national proceedings and further important information on allegations of crimes committed not only in and around the capital but also in other parts of the country. There are serious reports of crimes in relation to hundreds of rapes, killing and looting. We are still receiving relevant information and we will make a determination in a near future.

The situation in Côte d'Ivoire remains under analysis. My Office has endeavoured to carry out a mission in Cote d'Ivoire during 2006 for the purpose of preliminary examination. The Côte d'Ivoire government has agreed in principle that a visit can take place but postponed a planned

mission earlier this year. We continue to believe that such a mission would be of considerable importance. We will contact the Government of Côte d'Ivoire and renew our request.

In addition to the two situations I just mentioned, analysis work is continuing concerning three additional situations but this work remains confidential at this stage.

To finalize my report let me brief you on institutional developments.

The Court's unprecedented jurisdictional scope and mandate has led my Office to pursue institution-building and policy and protocol development with the same rigour that it has pursued its investigative and prosecutorial activities. In 2007, my Office aims to present a new set of regulations based on the lessons learnt and to further refine our internal protocols and standard operating procedures.

As President Kirsch said, during 2006 the Court has adopted a "One-Court" approach in Strategic Planning while nevertheless respecting the independence of the individual organs. The Court has consolidated its administrative functions enabling my Office to maintain and pursue an independent strategy while preserving the neutrality of the Registry. The achievements of the Office would not have been possible without the services provided by the Registry, whose staff has played an indispensable role in the successes of my Office. Such cooperation between my Office and the Registry will be further enhanced with the implementation of service level agreements.

In addition, since January 2006 my Office has worked extensively, including meetings with all OTP staff and relevant members of the other organs, to develop a prosecutorial strategy for the next three years focused on five strategic objectives:

- 1) to further improve the quality of the prosecution, aiming to complete two expeditious trials.
- 2) to conduct four to six new investigations¹ of those who bear the greatest responsibility in the Office's current or new situations.
- 3) to gain the necessary forms of cooperation for all situations to allow for effective investigations and to mobilize and facilitate successful arrest operations.
- 4) to continuously improve the way in which the Office interacts with victims and addresses their interests. And
- 5) to establish forms of cooperation with states and organisations to maximize the Office's contribution to the fight against impunity and the prevention of crimes.

My Office organized a second set of Public Hearings with interested states and civil society, held in The Hague and in New York, as well as with Court staff, to present those objectives and receive their comments.

¹ Investigations to be initiated after June 2006

My Office is encouraged by the support it has received as it allows it to move forward with the knowledge that there is broad understanding between the Office and its stakeholders regarding the actions it has taken and its plans for the future.

In terms of budget, my Office is confident that it can carry out its tasks with the current level of resources. This is possible as a result of the rotational model employed by the Office, whereby joint teams move to different situations or cases. In order to maximize cost efficiency it is necessary to maintain flexibility in the management of the budget. If an unforeseen situation or case needs to be opened, the Office can resort to the contingency fund. If this is not sufficient, we will ask the Assembly of States Parties if it is willing to provide additional funds at its next meeting.

Measuring the performance of the Office is a complex task. My Office will begin to prepare a short list of indicators to evaluate its performance based on the Rome system.

The planning and the development of performance indicators will allow a more strategic discussion on efficiency and resource allocation with the CBF and the ASP.

The Registrar will inform you about the Court's views on the current budget. However, as the Prosecutor I would like to emphasise the need for resources for cooperation for the Presidency and my Office and the need for resources for outreach and witness protection in the Registry.

In Conclusion

The Lubanga hearings, the impact of the warrants in Northern Uganda, and the advance in the Darfur investigation illustrate the development of a permanent system of international criminal justice.

The Court is becoming a more complex and multifaceted organisation in which judges issue rulings, victims participate in proceedings and, in due course may receive compensation, and States Parties' support is needed in all areas, notably in securing persons against whom arrest warrants have been issued.

In Rome the drafters created a new system of international criminal justice. Now we are moving to its implementation in practice. This is our common challenge. As the Prosecutor I will focus on the proper selection of situations and cases, on an impartial and independent investigation taking into account the interests of victims and on a high quality prosecution. This will be our contribution to ending impunity for the most serious crimes of concern to the international community.

Thank you very much.

