

# International Refugee Rights Initiative



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In this issue:

**SPOTLIGHT:**

*How Sudan Lost the AU Presidency for the Third Time*

**ACTION AND  
ADVOCACY:**

*Prestigious Sakharov Prize  
2007 Awarded to Salih  
Mahmoud Osman*

**FEATURES AND  
ANALYSIS:**

*Refugee Protests Derailed  
in Ghana*

*What is in a Name? A  
Reflection on the  
Terminology of Post-  
Election Violence in Kenya*

**LAW AND POLICY  
DEVELOPMENTS:**

*Arrest of Mathieu Ngudjolo  
Chui Marks a Milestone in  
the Fight Against Impunity  
in the Congo*

**PUBLICATIONS**

### **SPOTLIGHT**

#### *How Sudan Lost the AU Presidency for the Third Time*

In January 2008, for the first time ever, Ethiopian civil society organizations organized a pre-Africa Union Summit conference.

The session was held under the auspices of the Centre for Citizens' Participation in the African Union (CCP-AU), an organization which aims to encourage African citizens to engage with, and participate in, activities of the African Union.

Presided over by an interim steering Committee composed of Action Aid – Ethiopia, African Center for Humanitarian Action (ACHA), African Rally for Peace and Development (ARPD), Afroflag Youth Vision (AYV), Christian Relief and Development Association (CRDA), Organization for Social Justice in Ethiopia (OSJE) and Oxfam, the civil society forum brought together close to 30 local and international organization in order to take stock of the development of continental governance and agree on how best to input to the Africa Union summit.

NGO voices were in the lead in bringing ongoing crises on the African continent, in particular the situations of Darfur in Sudan, Kenya and Somalia, to the attention of the gathered leaders.

The highlight of civil society contribution to tackling conflict on the continent was the level panel on the Responsibility to Protect which was co-hosted by the government of Cameroon—then the chair of African Union Peace and Security Council, Oxfam and the

International Refugee Rights Initiative (IRRI) for ambassadors accredited to the Africa Union. The evening included a show by Emmanuel Jal, Sudanese rapper and film star, and a photo exhibition. The session was to impress upon African leaders how the norm of Responsibility to Protect that is enshrined within the constitutive act of the African Union needs to be operationalized in the context of the various conflicts that are ravaging Africa.

In an effort to highlight the ongoing crisis in Darfur, Darfur Consortium member, *Femmes Africa Solidarité* (FAS), brought together over 60 Darfuri women in an African women's conference on Darfur. These women are, more often than not, excluded from the discourse about ending the impunity in that region. Yet, from many accounts they bore the brunt of crimes committed, especially rape and sexual slavery and losses. The majority of them are not consulted on matters relating to the peace process, justice and accountability, and the condition for eventual return of refugees and IDPs. The FAS consultation was designed to develop a Darfuri Women Plan of Action for Peace, which in turn is designed to ensure that women are allowed to take ownership of efforts to resolve the crisis and that the voices of these women are heard and heeded by other actors in the process.

At a press conference held after this meeting, the stories of courage amidst chaos emphasized that nothing much had changed in Darfur since 2003. Forty-five-year old Nawal described the prevalence of rape in Darfur—women as old as 80 years and girls as young as seven have fallen victim. As she told her story, she was forced to choke back her tears. One day she came upon a nine-year old girl, a victim of gang rape, covered in blood and comatose. Attempting to transport her to the nearest clinic, this woman and her companions saw another group of *janjaweed* coming towards them. In the path of the militia, the women feared that they would suffer the same fate as their young charge. But how could they abandon the young girl to her fate?

They decided not to run. As the men approached them, they saw, perhaps for the first time, women who did not fear. The militiamen shot into the air. But the women stood strong. Their commander grew furious. He expected them to have scattered immediately.

One elderly lady in the group stepped forward. Do you have a family, she asked the commander? Or children? Yes, he replied. The old lady turned and pointed to the bleeding girl and asked the militia commander; what if that girl was your daughter, would you not want to get her to a hospital? The commander and his militias did not answer, but took off to the next village.

As if in a perverse answer to these stories of courage, the Sudanese government at the same time was posting a bid for the Presidency of the African Union. Although Khartoum may have hoped to sneak its bid unnoticed, they faced fierce resistance from civil society organizations.

Reacting to the news that Sudan was standing again, Dismas Nkunda, Co-Chair of the Darfur Consortium, asserted that it was "Impossible. The situation in Sudan is still as bad, or even worse than it was two years ago and it would be a huge blow to the credibility of the AU and its capacity to respond independently to the crisis if Khartoum is elected to chair the continental body."

He was joined by other activists opposing Sudan's Presidency in press releases, interviews and press conferences. Their message was clear—Sudan's candidacy could not be seriously considered alongside continuing violations in Darfur. Ultimately, the issue turned on finding a suitable alternative candidate from the East African block. In the discussions that followed Tanzania stepped forward to offer her candidacy.

Ultimately, Tanzania's candidacy was accepted and its President Jakaya Mrisho Kikwete was named to the Presidency of the Union.

Overall the message from the civil society engagement with the Africa Union seems to be taking root. Similar events are planned for the next AU summit that will take place in Egypt.

## **ACTION AND ADVOCACY**

### ***Prestigious Sakharov Prize 2007 Awarded to Salih Mahmoud Osman***

On January 26, people from as far away as Khartoum and beyond gathered in the town of Wad Madani, south of Khartoum, for a celebration of the work of Salih Mahmoud Osman, Sudanese human rights lawyer, member of the National Assembly, and local resident. During the day, Salih's tireless advocacy efforts on behalf of the Darfuri people were honored by dignitaries, religious leaders, human rights activists and the general public.

The Sultan of Darfur, Governor of West Darfur, Minister of South Darfur, Members of Cabinet, leaders of the Darfur community of Al-Gezira state, and religious leaders gathered for a *fatur*, or breakfast, at Salih's home. Organizers of the event spoke about the two decades of his courageous defense of those who have been arbitrarily detained and tortured by the Sudanese government, despite great personal risk. A Minister attended on behalf of the Wali of Gezira State and delivered a powerful speech, saying that Salih deserved this type of celebration because he had been targeted by the State.

Under tight security, traditional Fur dancers then accompanied the parade to the arena where representatives of European, United States and Canadian missions in Khartoum, lawyers, student associations of El-Gezira state, the local community and people who had traveled from as far as Khartoum had been waiting for the celebrations to begin. More speeches were delivered and a band from Khartoum performed until the crowd dispersed around midnight.



Two months earlier, on December 11, Salih had accepted the award of the European Parliament Sakharov Prize for Freedom of Thought at the European Parliament’s plenary session in Strasbourg. The impressive ceremony took place in the Parliament’s Chamber with its 700+ seats where Salih was presented with the award by the Parliament’s President Hans-Gert Pöttering. He addressed the audience and said that he accepted the award as recognition not just of his work but of the work of thousands of human rights defenders all over Sudan and in Darfur in particular. He took the opportunity to remind the Europeans of their moral and ethical responsibility to show solidarity with the people of Darfur, and to urge their governments to give more financial support for peacekeeping purposes and send troops in addition to humanitarian relief.

Salih also took the opportunity to remind listeners that he was not only accepting the award for himself, but on behalf of the entire community of Darfur activists. This type of international recognition is an important source of support not only for the activists that receive them, but also for other civil society actors who are operating under difficult conditions—subject to insecurity and both surveillance and harassment at the hands of the government. Awards such as the Sakharov prize which was received by Salih, and recognitions that his colleagues have received, such as the Robert F. Kennedy Prize received by Dr. Mohammed Ahmed and the Olof Palme Prize are an important show of solidarity and support.



In a recent conversation with IRRI, Salih outlined his continued commitment to issues of accountability for atrocities committed in Darfur, advocacy for full and effective deployment of UNAMID troops capable of bringing civilian protection, assisting in the rehabilitation of communities affected by the ongoing conflict and reconciliation between affected communities. Following his trips to Paris, where he participated in the launch of the Darfur-Darfur exhibit, and Dublin, where he was invited by members of the European Parliament, he is planning to visit IDP camps in the Nyala and Al-Fasher area of Darfur to determine the need for a rehabilitation program that would focus on schooling and medical services to residents. “The Sakharov prize has increased my responsibility...I am determined to

continue with this support. It is not me alone, there are so many people that are working with me like the Darfur Consortium and all the NGOs who supported my efforts.”

As part of the award Salih was presented with a check for €50,000 which he hopes to use to help victims of the conflict in Darfur.

*The European Parliament’s top human rights award is named after [Soviet](#) scientist and dissident [Andrei Sakharov](#) as a means to honor those who had dedicated their lives to the defense of [human rights](#) and freedoms. The first award went to Nelson Mandela and Soviet dissident [Anatoly Marchenko](#) (posthumously) in 1988.*

## **FEATURES AND ANALYSIS:**

### ***Refugee Protests Derailed in Ghana***

On February 19, Liberians in Buduburam refugee camp began a sit in protest. News reports and NGO accounts indicate that the protest was sparked by the introduction of a repatriation program. Refugees felt that the package being proposed by UNHCR was too little—and demanded more.

Specifically, UNHCR’s spokeswomen in Geneva reported that the refugee protesters, primarily women, were demanding either resettlement in the West or a tenfold increase in the repatriation package—from US\$100 to US\$1,000. The refugees expressed their opposition to local integration.

The protest dragged on for nearly a month, and tensions between the government of Ghana, the United Nations High Commissioner for Refugees (UNHCR), and the refugees grew. The refugees were accused of forcing the closure of camp schools, preventing the distribution of rations and stripping naked on the side of the road. The BBC reported that a press release issued by UNHCR in Ghana accused refugee women of intimidation and said that some of the protesters in the camp had been coerced. An aid worker in the camp who was asked to respond dismissed the claims as “laughable.”

On March 17, Ghanaian authorities finally moved to end the protest, arresting more than 600 protesters, primarily women and children. UNHCR was able to negotiate the release of 90 of the most vulnerable refugees on March 21. Authorities, however, returned to the camp the following day and reportedly arrested 70 men. On March 23, 16 Liberians were deported by the Ghanaian government, on the grounds that they were illegally present in the country and posed a national security threat. The next day, the UNHCR condemned the deportations and confirmed that 13 of the 16 were registered refugees.

At least one other refugee was reportedly released after the Legal Resources Centre and the Commonwealth Human Rights Initiative filed a court case challenging her detention for more than 40 hours without resource to the courts as illegal. Most recently, however, the South African Times reported that the Ghanaian High Court has paved the way for the deportation of 23 more ruling that they were not refugees.

The incident has brought some of the debates about refugee policy into focus.

## *Refugees and security*

In reacting to the protests in Buduburam, the Ghanaian Minister of the Interior, Kwamena Bartels said, “Our national security is supreme and shall not be compromised on any account.”

The idea that Liberians are a threat to national security is based on a long standing vision of Liberians as importing the violence of their homeland, and a criminal element, into Ghana. Crime has been a major concern in Buduburam, which has reportedly been the site of rape, petty theft, and armed robbery, as early as 1996. Local press accused refugees of “wreaking havoc in Ghana as the refugees perpetrate various heinous crimes, threatening the host country’s security.” Substantiated or not, reports claimed that many of the residents of Buduburam were not refugees, but rather combatants from Liberia’s civil war. In 2003, the Ghanaian military raided the camp, searching for rebel training facilities and weapons.

In response to these concerns, UNHCR implemented a security package which included funding for a refugee driven neighborhood watch program (See Jennifer Rumbach, “[By the Grace of God: Insecurity and Empowerment in a West African Refugee Camp](#),”). Until the implementation of this program, the settlement was particularly poorly policed, with only 5 police officers covering a population of 40,000 and fewer at night. Although this program reportedly made inroads, refugee protesters complained of insecurity in the camp, and discrimination by Ghanaian authorities, pointing to an incident where a Ghanaian national accused of stabbing refugees was released. The history of insecurity in the camps helps to explain both the dissatisfaction of the refugees and why any sort of disturbance in Buduburam would be seen as threatening to state security. The protest is evidence of the clear need to develop and implement stronger refugee security mechanisms early on – to avoid tensions.

## *No longer refugees?*

On April 1, Minister Bartels indicated that the government of Ghana was planning on invoking the cessation clauses of the 1951 UN and 1969 OAU Refugee Conventions, which allows for the withdrawal of refugee status where the conditions that made it necessary in the first place no longer apply. In this case the government of Ghana’s argument is presumably that the refugees fled Liberia’s civil war and that since the war is now over the refugees should be able to safely return.

Although this is a legal mechanism which the Ghanaian government has the right to invoke, it is important to note that, from a legal perspective this change must be based on a substantive assessment of conditions and circumstances in the home country. It is not intended as a response to conditions in the country of refuge. Although conditions in Liberia have improved greatly, and thousands have returned, some may have legitimate, continuing concerns about return. And Ghana’s 1992 Refugee Law recognizes this, allowing for refugees to remain even where the circumstances which caused their flight have ceased to exist if he “satisfies the Board that he has compelling reasons arising out of previous persecution” for staying. Ghana must honor this recognition that even where generalized conditions may have changed enough to warrant a cessation determination, individuals must have the opportunity to have their cases for continued protection heard.

### *Durable solutions*

From a refugee policy perspective, refugee status is intended to be a temporary state. International protection is intended as a stopgap between protection by national authorities, either in the country of origin (through return), the host country (through integration) or through the intervention of a third state (through resettlement). However, in practice refugees often spend extended periods in exile (up to 18 year in the case of the Liberians at Buduburam) without access to these solutions.

It is interesting to note that the refugees' demands focused on repatriation and resettlement, entirely excluding the possibility of local integration. This omission sparked criticism from Ghanaians, and Interior Minister Bartels presented this as a rationale for invoking cessation, saying that "they do not want to be integrated into the Ghanaian society and that they would resist local integration with all their might." But how accessible is integration in the Ghanaian context?

Individualized UNHCR assistance to the general population in Buduburam was halted in the late 1990's, although UNHCR has continued to provide community assistance. Most refugees (excepting certain people with professional credentials) were unable to work legally in Ghana, and encountered difficulties in finding alternative means of sustaining themselves (although many have been extremely resourceful, for more information see Shelly Dick, [\*Liberians in Ghana: Living Without Humanitarian Assistance\*](#), February 2002, for more information). Activists working in the camps also report that refugees are not allowed to attend Ghanaian schools and that they have faced harassment.

In this context, it is understandable that integration might seem a distant possibility for refugees, and that their focus might be on repatriation and the possibility of resettlement. Resettlement is, however, dependent of third states to offer spaces and not based on a right that refugees can assert. It is similarly understandable that given the length of the refugees have spent in exile and the extent of devastation in Liberia that refugees would see return as daunting.

### ***What is in a Name? A Reflection on the Terminology of Post-Election Violence in Kenya***

At the end of February, Kofi Annan managed to broker a deal between Kenyan President Mwai Kibaki, and Orange Democratic Movement Leader Raila Odinga, offering the latter the position of Prime Minister in exchange for ceding the post of contested Presidency to the former.

March 3, the New York Times ran an opinion piece whose headline asserted "African Genocide Averted." The article argues that the negotiations in lead by Mr. Annan offered salvation for a nation about to descend into chaos. But the killings of 12 in the Mt. Elgon region of Kenya on the same day may serve as a vivid reminder that a solution is not so simply achieved.

But was Kenya really on the brink of genocide? And what does the tangle of descriptions of Kenya's post-election violence mean for its future and its past. Certainly, the cry of alarm—and presumably the ensuing relief at a settlement—has not emanated only from the West.

On January 10, famed Kenya novelist Ngugi wa Thiongo, raised the dire specter of genocide when interviewed on the BBC. “[A] single instance of premeditated ethnic cleansing can lead to an unstoppable cycle of vendettas,” he asserted, verbally placing Kenya at the edge of a precipice. And he went on to remind the world what lay at the bottom. “The world does not need another Bosnia; Africa certainly does not need another Rwanda.”

In the pages of the Kenyan media, a vigorous debate was had about the nature of the violence. On January 12, the “g-word” appeared in the pages of Kenya's Saturday Nation, in an article entitled “Has the crime of genocide been committed in Kenya?” Although Peter Mwaura, the author, ultimately came down on the question with a resounding no, he noted that both sides in the conflict had used this terminology, quoting both former Lands Minister Kivutha Kibwana, “it is becoming clear that these well organised acts of genocide were well-planned, financed and rehearsed by ODM leaders,” and Odinga himself accusing Kibaki of “genocide on a grand scale.”

On the 23<sup>rd</sup> of January, ODM representative Professor Anyang' Nyong'o said that the party had complained formally to the International Criminal Court about the “crimes against humanity” and “state-sponsored terrorism.”

In Kenya, the impact of this may have been to push the nation further towards the brink. In the words of Muthoni Wanyeki, the Chair of the Kenya Human Rights Commission, “people are more and more angry, and the ‘genocide’ terminology is only fueling the fire.”

An additional danger of this type of rhetoric has been in affecting international perceptions of the crisis. Thousands of miles away, removed from any lived experience of the crisis, Americans are perhaps only more vulnerable to the war of words.

In January, protesters gathered opposite the United Nations in New York, holding up signs alerting passersby to the ongoing “genocide” in Kenya.

I can picture the unnamed, average American, you know the one that can't find Kenya on a map passing by. “In Kenya?” he asks. “Really? My aunt went there on vacation one time, I am glad that she made it out alive....”

In the newspaper, our American might have read equally dire coverage. If he or she had happened to open the Los Angeles Times on January 13, he or she might have come across a picture of a beleaguered Kenyan man with a long scar across his head. A few lines down they might have read this description:

In Kenya's deadly post-election violence, a terrible spasm that pitted tribe against tribe, he had ambled unknowingly across an invisible border: a Luo man in Kikuyu territory.

Although this characterization was challenged, it may stick with those who look no further. But if they look no further, aren't they bound to be confused? What impact does all of this really have?

Well in Rwanda, the description of the violence as “tribal” is credited with making it appear both inevitable and unstoppable to a population and a government disinclined to act in any case. In the situation in Darfur, application of the genocide terminology seems to have been as far as the Bush Administration was prepared to go in terms of action. At the same time, the debate over whether the violence was, or was not, in fact, a genocide both distracted attention which might more valuably have been applied to actually working towards a resolution to the crisis and exposed fissures in the international community which might have been more effective if it had appeared to stand as one.

It is therefore not by chance that in addressing Americans about what they wanted to see from the US in terms of resolving the crisis in an Op-Ed in the New York Times, Maina Kiai and L. Muthoni Wanyeki, included a request that Washington “refrain from simplistic characterizations of the violence as a matter of ethnic cleansing or tribal conflict, when in fact the roots of the problem are political.”

All violence in Africa must not be mistaken for unbridled ethnic hatred or genocide. Painting it in those terms runs the risk of encouraging a weary West to throw up its arms. Or it might emblazon an image of an irredeemable violence on a generation of investors and vacationers who up to now had no other image of Kenya. Its once bustling tourism hubs are nearly deserted and investors are understandably cautious. Kenya is already projected to lose 3.8 billion US dollars as a result of the crisis—how quickly can it recover if it is haunted by images of unstoppable violence?

At the same time, the urge to paint the crisis as “over” to stack one in the win column for a beleaguered international community often accused of doing too little too late in Africa must also be avoided, because it may encourage foreign governments to return too early to “business as usual,” undermining support for the long term reforms that need to accompany any deal. In the words of Kiai and Wanyeki, “calm must not be mistaken for peace.”

As Human Rights Watch pointed out in its report, *Ballots to Bullets: Organized Political Violence and Kenya's Crisis of Governance*, international intervention, particularly by the African Union and the United Nations, was lauded for effectively supporting efforts to stem the violence and reach a settlement. They commented that this early intervention could be seen as an effective mechanism for putting the responsibility to protect (which recognizes that the international community has a responsibility to act where governments are not protecting their citizens from mass atrocities). However, as Human Rights Watch points out, this laudable intervention risks obscuring years of neglect of corruption and impunity. Just as more consistent engagement on these issues might have averted the crisis, a long-term approach to future engagement will be critical in maintaining stability. Constitutional, police and justice reforms and truth and accountability will be needed to build a truly stable and prosperous Kenya.

## LAW AND POLICY DEVELOPMENTS

### *Arrest of Mathieu Ngudjolo Chui Marks a Milestone in the Fight against Impunity in the Congo*

On February 6, 2008, Mathieu Ngudjolo Chui became the third war crimes suspect to be transferred to the International Criminal Court in the Hague. His transfer marks another milestone in ongoing efforts to address the impunity which facilitated widespread atrocities that occurred during the war in Congo.

Since 1998, the conflict is estimated to have claimed the lives of 3.8 million people, including 60,000 civilians in the Ituri region in northeastern DRC, where Ngudjolo was active. 3.4 million civilians are estimated to have been displaced--with more than half a million in the Ituri region alone.

Ngudjolo was the former leader of the National Integrationist Front militia (also known by its French acronym FNI), affiliated with the Lendu ethnic group. He is charged with nine counts of war crimes and crimes against humanity, including murder, inhumane acts, sexual enslavement and using child soldiers in the Bogoro village attack in which 200 civilians died and women and young girls were abducted and turned into sex-slaves.

In 2002/3, over 8,000 civilians died and more than half a million people were displaced in Ituri as a consequence of the armed conflict between the FNI and other armed militias in the region.

#### *The ongoing march of justice*

While a positive development, the fact that Ngudjolo is only the third war crimes suspect which has been announced by the Hague must be understood against the backdrop of the enormity of the human suffering of the Congo. If impunity for the range of human rights abuses is to be addressed, a wide range of additional measures will need to build on the efforts of the International Criminal Court.

#### **Facts on the International Criminal Court (ICC) and Democratic Republic of Congo (DRC):**

- Africa holds the largest representation in the court with 29 countries as States Parties to the Rome Statute (*data as of October 2007*).
- DRC ratified the Rome Statute on April 11, 2002.
- The Rome Statute explicitly recognizes rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization and sexual violence as war crimes and crimes against humanity. Women in the DRC continue to be subjected to sexual violence.
- The ICC has jurisdiction only over crimes committed after July 1, 2002 enumerated in the Statute committed on the territory of a state party, regardless of the perpetrator's nationality. In the case of DRC this is relevant in light of the involvement and complicity of neighboring countries in the conflict. Of DRC's neighbors only Uganda and Namibia have ratified the Statute.
- ICC jurisdiction is limited to natural persons and therefore does not include corporations. Many of the crimes in the DRC have involved corporations as the conflict is largely about the exploitation of natural resources.
- In July 2003, the ICC Prosecutor identified the DRC as "the most urgent situation to be followed," but did not launch an investigation until the DRC made an express referral to the ICC, following international pressure, in March 2004. The DRC became the ICC's first case.
- In July 2004, the Prosecutor determined that there was reasonable basis to initiate an investigation and the DRC was assigned to Pre-Trial Chamber I.

DRC, in its statement upon ratification of the Rome Statute of the ICC on April 11, 2002, noted “it was ashamed of the atrocities occurring on its territory and looked forward to ICC assistance in punishing those responsible.” Since the referral of the DRC situation by the government to the ICC in March 2004, the ICC has brought two other suspects to the Court, Thomas Lubanga Dyilo, former warlord and leader of the Union of Congolese Patriots (UPC), and Germain Katanga. The UPC and Lubanga are accused of massacring civilians in various towns in the Ituri region and recruiting child soldiers as young as 10 and supplying them with Kalashnikovs since 2002. Between 2002 and 2003, more than 800 civilians were reported to have been killed by the UPC in the mining town of Mongbwalu and adjacent villages.

The ICC issued an arrest warrant for Lubanga on February 10, 2006 and he was transferred to the Hague on March 17, 2006. Lubanga’s trial, the first for the ICC, was scheduled to start on March 31. However, his trial has been delayed to June 23 due partly to failure by prosecutors to disclose to the defense all its evidence and the identities of witnesses testifying, and the extent and circumstances of victim participation. Other crucial evidence was provided only in redacted or summary form, according to British Judge Adrian Fulford. A spokesperson for the Office of the Prosecutor stated that “the disclosure delays related to witness protection and the difficulties of conducting a trial during an ongoing conflict when violent militias are still active and influential in Ituri.”

Having been in custody in Kinshasa since March 2005, the second war crimes suspect Germain Katanga was transferred to the Hague on October 17, 2007. Katanga was the former chief of staff of the Patriotic Force of Resistance in Ituri (FRPI), the military wing of the Front for National Integration (FNI) militia. He is charged with three counts of crimes against humanity and six counts of war crimes for his involvement in killings, pillaging, using child soldiers and sexual enslavement during an attack on the town of Bogoro alongside Ngudjolo. Katanga also played a part in the mass murder at the hospital of Nyakunde in September 2002. Over a 10-day period 1,200 Hema and other civilians were murdered.

A hearing to determine whether the charges against him are strong enough to merit trial was scheduled for February 28, but was also postponed by the Chamber as the Defense hadn’t been given access to the evidence which the Prosecution intends to rely on 30 days before the initiation of a confirmation hearing. A status conference on April 1 dealt with a variety of procedural issues.

Although the ICC cases are proceeding it is clear that a comprehensive justice will not end with the few high profile cases that will be prosecuted in the Hague. In order to promote a broader restoration of the justice system in Ituri, the European Union has provided the DRC with funding to support justice and rule of law since 2004. This program has focused on the Ituri region with the objective to end the de-facto impunity for serious civil offenses in Bunia through the establishment of courts, training of prosecutors and legal defense and the building of a prison. On February 17, 2004, the civilian Tribunal de Grande Instance in Bunia was established and by July some 50 cases had reached a verdict of the roughly 300 cases that had been initiated. However, the national judiciary remains beset with problems, including obstruction from the authorities, problems with security and a lack of protection for witnesses. In addition, the program has been more targeted at addressing ordinary crimes than war crimes and

crimes against humanity. Indeed, the government gave the Prosecutor no particular mandate for prosecuting war crimes. Instead, militia leaders have been prosecuted for minor offences or have been, like Ngudjolo, acquitted, leading the local population to doubt the seriousness of new judicial authorities.

In October 2007, Katanga told a Human Rights Watch researcher during an interview on the complicity of other groups that “his militia group regularly received financial and military support from high-ranking officials in Kinshasa and Uganda and that he had personally been involved in meetings where such support was discussed.”

### *Double jeopardy*

In 2003, Ngudjolo escaped from prison while in custody on charges of murdering a Hema businessman linked to a rival armed group. He was acquitted in June 2004. The decision was appealed, but was eventually released due to a lack of evidence by the Bunia court.

Ngudjolo has raised the fact that he has already been tried and acquitted for similar charges in the DRC as a possible defense. Indeed, if national prosecution takes place the ICC would not normally be in a position to continue the case due to the operation of two legal principles incorporated into the Court’s statute. The first is the “non bis in idem principle” which indicates that the same person cannot be prosecuted twice for the same crimes and the principle of complementarity, which is intended to limit international interventions to cases where the national authorities are either unwilling or unable to intervene.

ICC advocate Christian Hemedi argues that the case never received a final judgment and is therefore exempt from this principle. In an interview with *Le Potentiel* he pointed out that the case had been moved to Kinshasa for reasons of public safety and eventually freed before the judgment was made. This, alongside the fact that the ICC indictments (for war crimes and crimes against humanity) differ from the common law crimes for which Ngudjolo was arrested in DRC, he argues, obviate the need to apply either principle.

### *Political implications*

Throughout discussion about accountability in Congo, the question of how prosecutions may impact political negotiations has been a major problem. Indeed, fears that an investigation would stand in the way of a new power-sharing agreement that placed leaders of military and political groups in government positions were cited as arguments against the Court’s intervention.

The fact that Ngudjolo was in military training in Kinshasa at the time of his arrest following his appointment as a colonel in the Congolese national army in October 2006 only highlights the powerful positions that some human rights abusers in DRC occupy, and the political sensitivity of prosecuting them. Human Rights Watch’s International Justice Program Counsel, Param-Preet Singh, points this out by saying “instead of rewarding abusive warlords like Cobra Matata and Peter Karim with plum military posts, the Congolese authorities should follow the ICC’s lead and try them for war crimes in fair and effective trials.”

In addition, the Prosecution’s announcement that it will not pursue further prosecutions in Ituri has sparked diverse reactions. REDRESS has expressed concerns that the Court has “unfinished business” in Ituri. They have also documented the discrimination felt by some in the Lendu community (from which two of the three indictees come) due to what they see as unbalanced prosecutions. They link this to the prosecutions of the affiliated Hutu prosecutions by the ICTR. “The Hema, affiliated to the Tutsi get away lightly,” says Eloi Uwodhi of LIPADHO, *Ligue Pour la Paix et les Droits de l’Homme*.

The Congolese Coalition for Transitional Justice, however, sees the Court’s intention to move to other areas as positive. They pointed out that the focus on Ituri caused those committing crimes elsewhere not to be worried—perhaps minimizing the Court’s deterrent effect. The CCJT therefore invited the Court “to spread its activities to crimes committed in the other provinces of the DRC in order to meet the expectations expressed during the Conference on Peace, Security and the Development of North and South Kivu.”

*The hearing on the confirmation of the charges in the case of the Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui will start on 21 May. The start of Lubanga’s trial is scheduled for 23 June.*

<p><b>Publications</b></p> <p>All Africa Conferences of Churches. <a href="#">“Periodical Report of the African Union.”</a> January 2008.</p> <p>Amnesty International. “Sudan: <a href="#">Fear for Safety.</a>” January 2008.</p> <p>Amnesty International. “<a href="#">Sudan: Displaced in Darfur: A generation of Anger.</a>” January 2008.</p> <p>Berry, Leah. <a href="#">“The impact of environmental degradation on refugee-host relations: a case study from Tanzania.”</a> New Issues in Refugee Research, January 2008</p> <p>Clover, Jeanette Lee. <a href="#">“Framing Issues of Environmental Security in Angola &amp; Mozambique- The Nexus of Land, Conflicts and Sustainable Livelihoods in Post-Conflict Situations.”</a> November 2007.</p> <p>Fédération internationale des ligues des droits de l’Homme report, <a href="#">“Surplus People? Undocumented and Other Vulnerable Migrants in South Africa.”</a> February 2008.</p>	<p>Kaun, Alexandra. <a href="#">“When the displaced return: challenges to ‘reintegration’ in Angola.”</a> New Issues in Refugee Research, January 2008.</p> <p>Refugees International. <a href="#">“Ending Sexual Violence in Darfur: An Advocacy Agenda.”</a> December 2007.</p> <p>Refugee Law Project. <a href="#">“Uganda’s Urban IDPs Risk Being Left Out Of Government’s Return Plans.”</a> March 2008.</p> <p>United Nations Office for the Coordination of Humanitarian Affairs. <a href="#">“Sudan-Chad: Bombing blocks access to new refugees.”</a> February 2008.</p> <p>United Nations High Commissioner for Refugees. <a href="#">“Through the Eyes of a Child: Refugee Children Speak about Violence - A Report on Participatory Assessments Carried out with Refugee and Returnee Children in Southern Africa”</a> March 2008.</p>
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