

# International Refugee Rights Initiative



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## SPOTLIGHT

### ***Kisoro Awake!! The Clarion Call to Duty Beckons Once Again***

*A Reflection by IRRI Intern Azubike Onuora Oguno*

The quiet town of Kisoro in western Uganda is adorned with green vegetation and volcanoes. Situated at the Ugandan border and the Democratic Republic of Congo (DRC), Kisoro provides a thriving centre of gorilla tourism. Recently the tide of events in this small town changed dramatically.

On Friday 31 October, the local Uganda television (UBC) broke the news. A mass exodus of people from the North Kivu province of the DRC, which had been subjected to a rebel advance, marched in looking for safety. Once again, the conflict occasioned a migration of men, women and children from the DRC. Kisoro is called to awaken and be its brothers' keepers once again as the clarion call for duty beckons.

### *The Quiet of Kisoro Disturbed Once Again: The Catalytic Effect of the Current DRC Situation*

It is no news that the DRC is engulfed in conflict and civil war. The current rebel advance in the east of Congo has caused several displacements in the past weeks. In the quest to find hope and safety, the border town of Kisoro is once again haven for helpless civilians.

Uganda has played host to over 250,000 refugees from Sudan, DRC, etc. The question is: how prepared is the town of Kisoro to host its recent visitors? On the last count, the Uganda *New Vision* newspaper reported that no less than 4,000 refugees are already being taken in by Ugandan families in Kisoro. Once again, while keeping their displaced brothers the people of Kisoro will have to cope with a steep increase in food prices. Listening to the WBS early morning edition of 12 November, people lamented the current

hardship they face with demand for food and other amenities surpassing supply and availability.

### *International Law and its Agencies: Any Support in Sight?*

International law places an obligation on states to provide protections for the rights of refugees and displaced persons. These protections ensure that refugees are not forced to return home until it is safe, and give favourable access to work, health care and formal or informal education. Most states, however, are unable to guarantee this.

The government of Uganda has responded with urgency to the Congolese arrivals, ensuring that they get received and initially settled in Kisoro. The United Nations High Commissioner for Refugees (UNHCR) has constructed a small transit centre and put in place a regular system of transportation from Kisoro to Nakivale for any willing refugee. These have been planned in conjunction with the local and central governments in Uganda, World Food Program (WFP), the United Nations Children Fund (UNICEF) and other NGO partners. As a result, refugees will at least have access to clean water, sanitation facilities, shelter and food. UNICEF has agreed to provide polio vaccines to immunize children, and water and sanitation support when needed. WFP also has contingency plans for increasing the food supply if the population increases.

The Uganda Red Cross Society (URCS) is distributing non-food items, and engaging in emergency health and hygiene promotion activities. The URCS is working in collaboration with the International Committee of the Red Cross to help with family tracing needs as well as providing essential household items for 500 families. In addition, UNHCR has planned a mass information campaign with Kisoro district officials to inform refugees about their rights and the kind of assistance offered in the settlements.

Despite these organised and strategic efforts to resettle the refugees away from their arrival location in Kisoro, many of the refugees have refused to move to the transit site that the UNHCR has established in Nyakabanda, 15km from the DRC border.

In 2007, Kisoro hosted no less than 8,000 refugees from Congo alone. Why have these refugees refused to go to the camps? Are they attracted to the generosity of the people of Kisoro? Or are they afraid of the experience they might face in a refugee camp? Surely, however, the willingness of refugees to stay in Kisoro points to the accommodating spirit displayed by the people of Uganda.

### *Challenges and Respite*

The recent resolution by the United Nations Security Council to deploy 3,000 peacekeepers and the willingness of African countries to send in troops to calm the situation in the Congo definitely brings some excitement and hope to the displaced. However, analysts still disagree about both the way forward and the root causes of the violence in Congo.

Laurent Nkunda, the hero of some and a villain to others, is resolved that his war will bring a long lasting peace and solution to the violation of the "human rights" of "his people". He indeed has vowed to kill any black skinned peacekeeper he or his boys comes across. It is likely that many more will flee.

Thus, it may only remain a question of time for the DRC situation to create unprecedented hardship in the town of Kisoro. Kisoro Local Council (LC) must brace up for the recent challenges ahead and educate its people on how to play good hosts once again and be truly their brothers' keepers. The international community must act with urgency to quell the current violence in the DRC. The countries of the Great

Lakes must lend their support. Finally, Uganda must empower their border towns through the provision of useful education and the necessary wherewithal to be able to contend with the current situations.

## **ACTION AND ADVOCACY**

### ***IRRI and the Social Science Research Council (SSRC) Launch New Working Paper Series***

In November 2008, IRRI, in partnership with the Centre for the Study of Forced Migration (CSFM) University of Dar es Salaam, and the Social Science Research Council (SSRC), launched a paper that examines an initiative currently being conducted by UNHCR and the government of Tanzania intended to end displacement for a particular group of Burundian refugees who have lived in Tanzania for over thirty years.

The paper is the first in a new Working Paper series, a collaborative research and advocacy project between IRRI, SSRC, and civil society and academic partners in the Great Lakes region. The intention of the project is to gain a deeper understanding of the linkages between conflicts over citizenship and belonging in the Great Lakes region and forced displacement. The project employs social science research under a human rights framework in order to show how identity affects the experience of the displaced before, during, and after their displacement. It is anticipated that the findings will help facilitate the development of regional policies that more effectively promote social and political re-integration of forced migrants by reconciling differences between socio-cultural identities and national citizenship rights that perpetuate conflict and social exclusion.

### ***Going Home or Staying Home? Ending Displacement for Burundian Refugees in Tanzania***

Working Paper 1, "[\*Going home or staying home? Ending Displacement for Burundian Refugees in Tanzania\*](#)", focuses on issues of belonging and exclusion for refugees who fled Burundi in the early 1970s and sought refuge in Tanzania. More than three decades later, so-called "durable solutions" are finally being sought for this group of refugees. Following a decision by the government of Tanzania to offer citizenship, the refugees are being offered a choice between repatriating to Burundi or applying for naturalisation and becoming Tanzanian citizens. Based on four weeks of field research conducted in Ulyankulu refugee settlement and Kigoma region, the paper explores the factors that are influencing decision-making processes amongst refugees and the multi-faceted ways in which they perceive their identities.

In many respects, the current initiative is positive in as much as refugees see the current process as an opportunity to shed the "refugee" label, a label which has symbolised marginalisation from mainstream Tanzanian society for over three decades. Beyond this, ongoing access to livelihoods was, not surprisingly, central in influencing people's decision-making – for those opting to repatriate, access to land in Burundi was cited as fundamental, while for those opting to stay in Tanzania, socio-economic factors such as access to land, livelihoods and education, were seen as major reasons for staying.

However, the findings also demonstrate that refugees remain ambivalent about the longer-term implications of the choices on offer, with serious concerns expressed about both options. In the case of repatriation, for example, refugees were anxious that the current initiative is moving ahead too fast. Instability continues in

Burundi, and many refugees spoke of the need for more objective and accessible information on conditions in Burundi before deciding whether to return. Consequently the report recommends that independent information on the security, legal and human rights situation in Burundi be made available to refugees in order to enable them to make an informed choice.

### *Repatriation or Naturalisation?*

The research found that the process seemed to encourage, and in some cases place undue pressure on, refugees to return. Of particular concern was that refugees who had initially indicated that they would like to naturalise, are being allowed to repatriate if they change their minds, but those who first decided to return to Burundi are not allowed to change their minds. As a matter of both law and good practice refugees who originally opted for naturalisation and have subsequently changed their mind due to security concerns in Burundi should be allowed to access the naturalisation procedures.

For those opting for naturalisation, there were strong reservations about the process through which their applications were being considered. First, the research indicated that there was a possibility that thousands of the refugees may in fact have been Tanzanian citizens for years, by virtue of their birth in Tanzania—although they have, of course, not been recognised as such by the Tanzanian government. Second, refugees lacked information and independent advice, and there were reports that some were turned down in arbitrary ways or in procedures that appeared compromised. It is clear that independent monitoring of the process would help to increase the confidence of refugees and ensure that refugee rights are respected.

There was also considerable concern about what might happen to anyone not accepted for naturalisation. Although such individuals should as a matter of principle be able to retain their refugee status in the absence of other procedures ordering the withdrawal of that status, the research revealed that in practice these individuals were placed under tremendous pressure to return to Burundi. The government of Tanzania should consider, and provide information about, how it will ensure that the rights of any residual refugee population are respected.

Furthermore, refugees questioned whether achieving the legal status of citizen in Tanzania would equate to, or indeed facilitate, social integration and acceptance. Those who opted for naturalisation are uncertain about their ability to access land and other resources, and expressed anger at the fact that they were unaware that they might be forced to relocate from the settlement areas where they have been forced to live for decades: in February 2008, four months after refugees had initially been surveyed, they were informed that the government of Tanzania intended to close the settlements and relocate them elsewhere. The group had anticipated that naturalisation would reinforce their claims to currently occupied land, not undermine them. Consequently many who originally opted for naturalisation have changed their minds and now intend to repatriate to Burundi, despite the fact that they also expressed serious misgivings about the security situation there. Although governments can require citizens to relocate, they may do this under narrow circumstances and, at a minimum, they must provide clear information and due process.

### *Next Steps*

In the research carried out among self-settled refugees in and near Kigoma town, there was considerable apprehension about the process. Up to the time of writing, the naturalisation and repatriation programme has been accessible only to refugees in recognised settlements. There was considerable confusion about whether or not self-settled refugees might be able to benefit from this scheme and, if not, what their future might look like. The research revealed an urgent need for clarification in this regard.

CSFM and IRRI are currently working on a follow-up advocacy strategy in order to ensure that the due process and other concerns uncovered by the research are addressed.

Read the full report, "[Going Home or Staying Home? Ending Displacement for Burundian Refugees in Tanzania](#)," November 2008.

## ***Beyond Juba Project Hosts Peace Film Festival***

On 30 and 31 October, the [Beyond Juba](#) Project – a transitional justice project of the Refugee Law Project, the Human Rights and Peace Centre and Makerere University's Faculty of Law – hosted a peace film festival at Kampala's National Theatre titled *Images of Conflict; Imaginings of Peace*. On both days, the theatre was packed with students, members of civil society, representatives of government and international organisations and ordinary citizens anxious to see peace come to Uganda, a country whose post-colonial history has been characterised by multiple conflicts, including the protracted war between the government and the Lord's Resistance Army (LRA) that has plagued northern Uganda for over 20 years.

### *Beyond Juba*

According to the Project's mission statement, *Beyond Juba* seeks to foster sustainable peace in Uganda by generating "support for national reconciliation ... by demonstrating the extent to which conflicts and their legacies are a national problem and by assisting in the development of appropriate transitional justice mechanisms with which to address these legacies." It is important to note that *Beyond Juba* does not focus solely on northern Uganda. Indeed, that conflict has, especially in international media, sometimes overshadowed other obstacles to peace in Uganda. *Beyond Juba* focuses on all regions of the country that have experienced conflict, namely Karamoja, West Nile and the western, west central, central and eastern regions.

The two-day film festival featured documentaries about conflict and peace building in Uganda and other countries (where the experiences of such countries could offer Uganda lessons on the transition from conflict to reconciliation and sustainable peace). Some films were followed by panel discussions, which included question and answer sessions.

### *Northern Uganda and Karamoja*

The first day of the festival began with a screening of *Trapped in Anguish*, an account of the war in northern Uganda, its humanitarian implications and the process of return and reintegration of former combatants, many of whom were abducted as children. This was followed by *Ekisil*, a docu-drama on the culture and values of the Karamojong and their struggle to find a lasting peace.

Having generated much food for thought, the two films set up a panel discussion featuring David Pulkol of the African Leadership Institute; Giovanni Dall'Oglio, the filmmaker behind *Ekisil*; the Honourable Paul Lomanio, a government official from Kotido district in Karamoja; and Fiona and Andrew, students of peace and conflict studies at Makerere University. Panellists and audience members alike expressed their shock at the images depicted in *Ekisil*. Fiona remarked that she could not believe that Karamoja – a region populated by pastoralists and plagued by drought, extreme poverty and inter-ethnic violence – was a part of Uganda. Discussions centred on what the government and national and international civil society organisations have done to improve conditions in Karamoja, and what remains to be done. Dall'Oglio explained that *Ekisil* was filmed in 2000, and since then, the Ugandan government has undertaken an

extensive disarmament programme that has seen the Karamojong surrender most of the weapons that had fuelled conflict there; he argued that as a result the situation was somewhat better than what was depicted in the film. Of course, others have criticised the process as leading to an increase in government abuses (see, for example, Human Rights Watch's September 2007 report, "[Get the Gun!": Human Rights Violations by Uganda's National Army in Law Enforcement Operations in Karamoja Region](#)").

After the panel discussion was a screening of *Uganda Rising*, a multiple award-winning Canadian film that gives an account of the war in Northern Uganda. The film features interviews with, among others, Betty Bigombe, who spearheaded the failed first round of peace talks with the LRA; Samantha Power of Harvard University; President Museveni; and Mahmood Mamdani of Columbia University, who is an authority on post-colonial theory and African history, politics and international relations.

## *Urban IDPs*

The second day of the festival centred on the much overlooked issue of urban internally displaced people (IDPs) in Uganda. The majority of people displaced by the war in northern Uganda live in IDP camps in the north, ostensibly established by the government to protect civilians. Conditions in the camps, however, are squalid and inhabitants are entirely dependent on aid organisations for basic necessities. A significant number of individuals, seeking to avoid such conditions, fled to the cities of Entebbe, Jinja and Kampala, searching for lives marginally better than what was on offer up north. These urban IDPs have fallen through the cracks in the network of government, United Nations and civil society organisations that assist victims of the war.

Seeking to draw attention to the plight of urban IDPs, *Beyond Juba* produced a documentary on the issue, titled *What About Us?*, which will also air on the Uganda Broadcasting Corporation and at an International Refugee Rights Initiative event in New York in January 2009. Thirty urban IDPs from Entebbe, Jinja and Kampala who assisted in the making of and were featured in the film were at the National Theatre for its premiere. Also on hand to view the film and speak on a panel addressing the issue of urban IDPs were Stephano Severe, the Uganda country director of the United Nations High Commissioner for Refugees – an agency that is mandated to protect IDPs, in addition to refugees – and representatives of the government of Uganda. Reacting to testimony from urban IDPs who joined them on the panel and reflected on their hardships – most urban IDPs do not even have the means for a trip home to assess the possibility of return, let alone to finance the move – the officials said they would consider how to include urban IDPs within their assistance structures for victims of the war in the north.

The second day also featured a screening of *We Didn't Know*, a documentary unravelling the process of truth telling on the Truth and Reconciliation Commission of South Africa. A truth and reconciliation committee has been mooted among the range of options proposed to foster reconciliation in Uganda in the context of the LRA war.

Overall, the *Beyond Juba* Project's peace film festival was a great success. It succeeded in highlighting previously obfuscated issues, in particular the situations of the Karamojong and urban IDPs, and the medium of film engaged a wide range of stakeholders – from students, to activists, to policy makers, to engaged citizens, to affected communities – all of whose views must be taken into account in the process of building sustainable peace in Uganda.

## FEATURES AND ANALYSIS

### ***The Security Council Considers the International Criminal Court's Case in Darfur***

On 3 December, the Prosecutor of the International Criminal Court, Luis Moreno Ocampo, addressed the United Nations Security Council to update them on the progress of his activities in the Darfur case. It was the eighth such report that he has given to the Council as required by Resolution 1593, which referred the Darfur case to the court. It was, however, the first address since the presentation of the case against Sudanese President Omar Al Bashir in July.

Since July, there have been numerous calls on the council to intervene in the Darfur case. The African Union, the Organisation of the Islamic Conference and the Non-Aligned Movement have all called on the Security Council to defer the case for a year as provided for under Article 16 of the Rome Statute. On the other hand, the prosecutor and some civil society organisations have urged the council to take measures to ensure that states comply with the decisions of the court, including through the enforcement of outstanding arrest warrants.

#### *The Reaction to the Case*

The presentation of evidence against President Bashir by the ICC Prosecutor on 14 July provoked a vigorous debate in Africa and beyond. IRRRI previously documented state and civil society responses in the July issue of this newsletter "[International Justice or Western Conspiracy? The Response to ICC Charges against Bashir in Africa](#)". In Sudan there was also a substantial amount of discussion within Sudan (676 articles in Sudanese media outlets were reviewed by our partners between July and September). The vast majority of writers, columnists and shapers of public opinion from a wide range of political ideologies called for cooperation with the court, advocating opposition to the charges within the terms of the ICC framework, as the most realistic and effective approach. Some have urged the avoidance of confrontation with the international community, arguing that the good of the country should be given more weight than the fortunes of one individual.

There has been some indication that there is willingness to engage with court on the part of the government. Indeed, pictures of the Sudanese Second Vice-President Ali Osman Taha shaking hands with the prosecutor during a brief encounter in September 2005 suggest that there is at least some high level support for a non-confrontational approach. It is clear, however, that there is also a group of hardliners which is forcefully opposing the court. These hardliners insist that the ICC has no jurisdiction over Sudan, and have called Ocampo a criminal. For these hardliners, even invocation of Article 16 might be seen as overly accommodating the Rome Statute system. Among this group there may also be individuals who have been involved in the crisis in Darfur and who may fear future charges.

#### *Developments on the Ground*

Before the Prosecutor announced he was focussing on the responsibility of the president, progress towards resolving the crisis in Darfur had stalled. The peace talks had collapsed the deployment of the United Nations - African Union Mission in Darfur (UNAMID) was facing obstruction and delays, and accountability for the serious crimes committed in Darfur was nowhere in sight. The Comprehensive Peace Agreement, which ended decades of war between the North and the South of the country, was also becoming increasingly fragile due to delays in its implementation.

Since the announcement, IRRI has continued to monitor the situation. It is clear that the government has been under increased pressure to re-consider its policy in Darfur, in part due to the prosecutor's charge. Of course, other factors have also contributed, most notably the 10 May attack by the rebel Justice and Equality Movement on Omdurman, the sister city to Khartoum. In the days following the Prosecutor's announcement, President Bashir travelled to Darfur for the first time. The government has appeared eager to show that it was addressing the crisis, in part in order to convince members of the Security Council that proceedings should be suspended. The government of Sudan has sought to argue that Darfur is safe—in the words of President Bashir, "[t]here are no problems and life is very normal"—and that they are addressing the crisis. On 12 November 2008, a unilateral ceasefire was announced. A new Sudan Peoples' Initiative was also established to prepare for a peace process hosted by Qatar. The government has said that it will facilitate deployment of peacekeepers. A new Special Prosecutor to address impunity and ostensibly deliver effective domestic justice has been appointed.

Civil society organisations have expressed concerns about the genuineness of these moves. The Qatar peace process, for example, has yet to begin. As pointed out by a group of Darfurian civil society leaders in the diaspora, "a comprehensive peace process inclusive of civil society will require time and thorough preparation."

### *Rhetoric and Reality*

In a report issued on 2 December 2008, *Rhetoric vs. Reality—the Situation in Darfur*, a coalition of NGOs, including Human Rights First, Human Rights Watch, the International Refugee Rights Initiative and the Save Darfur Coalition explored some of the other assertions that the government of Sudan has made as justification for its campaign for a deferral.

For example, the government has asserted that it is respecting a ceasefire, but on 14 November, just two days after it was announced, a government attack on Kurbia in North Darfur was reported. Even within the camps where civilians have come to find safety, they have found little. On 25 August, government use of excessive force in an operation to retrieve weapons at the Kalma camp near Nyala claimed 33 lives.

Although the government claims that there are no barriers to humanitarian access, the Ministry of Pharmaceuticals maintains strict bureaucratic procedures for the import of medical drugs, leading to delays in the delivery of some drugs for more than six months. Much of the region's population remains inaccessible, humanitarian agencies can only reach 65% of the affected population.

The Sudanese government has also contended that it will ensure justice for crimes committed in Darfur. However, the Special Prosecutor who was recently appointed to address these crimes has reportedly started only three cases. The Special Court for the Events in Darfur, set up in 2005 to address the same crimes, tried only 13 cases, most dealing with ordinary crimes.

### *Narrowing Freedom of Expression*

At the same time, there are worrying indications that in response to its increasingly pressured position the government of Sudan is, reverting to some of the more repressive techniques characteristic of their early years. In particular, censorship has increased, with security officers assigned to every paper, each night reviewing the text and excising any objectionable material. This form of censorship had previously been abandoned after the signing of the CPA. According to a statement made by a number of Sudanese organisations to the African Commission on Human and Peoples' Rights in November:

... the censorship targets are no longer specific events but seem to encompass any opinion or fact reporting which tends to criticize or reflect negatively on the National Congress Party, the senior government partner. This has impacted everything from analysis of the actions of government officials, criticism of the People of Sudan Initiative on Darfur, to discussion of the fight against corruption and writing about higher education policy.

In addition, the government continues to harass human rights activists, showing increasing interest in any activities related to the promotion or even awareness-raising about the Court. According to Amir Suleiman, Director of the Khartoum Centre for Human Rights and Environmental Development "[i]n the previous times, we were interrogated about the human rights situation in Sudan, because we are working closely with the victims of human rights violations. This is the first time we are interrogated about the International Criminal Court and our relationship with the International Criminal Court." In the words of Georgette Gagnon, Africa Director at Human Rights Watch, "[t]his is part of a wider pattern of trying to silence those who support justice and to suppress information about the human rights situation in Sudan."

### *The Prosecutors' Address to the Council*

In his remarks to the Council on 3 December, the Prosecutor called on the Security Council to prepare for the decision of the Pre-Trial Chamber on his application for an arrest warrant. He emphasised the legal responsibility of Sudan to implement the arrest warrants issued by the Court, including, if ordered, the arrest warrant against President Bashir. The prosecutor urged the international community to take "united action" to ensure that the government lived up to this obligation. Referring obliquely to the prospect of an Article 16 resolution the Prosecutor said, "he [President Bashir] will insist on your protection," and urged the Council to ensure that his "criminal actions" not be ignored. He also called on the council to see the issue of justice as an integral pillar of the international community's response to Darfur. Referring to the peace process, the humanitarian efforts, justice and peacekeeping, the prosecutor argued that "none can succeed in isolation. As long as the arsonists are in charge, no matter how many fire fighters you send, they will never be enough."

The prosecutor also clarified that all the requests for arrest warrants have been made public, perhaps reassuring other top level government officials that they are not yet in the dock and may have greater ability to manoeuvre.

### *The Reaction of the Council*

In response to the prosecutor's statement, members of the council expressed varied views on the role that the council should play in relation to the case going forward. Some states called on the council to formally consider invoking Article 16, while others argued against suspending the proceedings and for taking further action to enforce the decisions of the court.

The South African delegate expressed his hope that the council would take the time to debate the possibility of invoking an Article 16 and to make a decision. Referring to the decision of the African Union's Peace and Security Council on this matter, the delegate argued that it would be appropriate to defer the investigation at this time, prior to a decision on an arrest warrant, in order to avoid seriously undermining efforts to end the crisis in Darfur. He argued that this should not be seen as condoning impunity, but rather as appropriately balancing the need for justice with political considerations. This call was echoed by the representative of Libya, who argued that justice could only be pursued effectively in an environment of political and security stability. He asserted that efforts to promote security should be prioritised and

regretted the fact that the Prosecutor's action came at a time when the UNAMID was in the midst of deploying and when efforts were underway to reinvigorate the peace process through the Qatar initiative.

The United Kingdom, on the other hand, noting the Article 16 issue argued that there was "no justification" for it at present. The Costa Rican representative regretted that the council had been put under pressure to invoke Article 16, and noted that instead, the council should have been looking at the "many tools that the council has to push the compliance with the decisions of the court." Several members mentioned the possibility of sanctions, including the United States, which urged the council to consider ways of implementing the recommendations of the Panel of Experts.

On the same day, John Holmes, Under-Secretary-General for Humanitarian Affairs and UN Emergency Relief Coordinator, also addressing the Security Council, reflected that the maintenance of the humanitarian operation, regardless of the decision of the Pre-Trial Chamber, was of primary importance, a matter he said he raised at every opportunity with the government of Sudan.

### *The Impact of a Deferral*

In the run up to prosecutor's report a group of Darfuris in the diaspora urged the council to "recognize the great opportunity that the ICC's work presents for Darfur – not only for ensuring justice and accountability but for obtaining a lasting peace for our people. The Security Council must respect the independence of the ICC and allow it to continue its work."

Sudanese activists and others have expressed concerns about the message that an Article 16 resolution would send to the government of Sudan, the militias and others who have committed crimes in Darfur. If President Bashir is let off the hook after being charged with genocide then what other charges or sanction would be accepted? It would be demoralising for these same activists who, sometimes at great risk to themselves, have campaigned for justice.

## **LAW AND POLICY DEVELOPMENTS**

### ***Lubanga Trial Set to Begin in January***

The situation in the Democratic Republic of Congo (DRC) was the ICC's first investigation, opened in May 2004 further to a March 2004 referral from the Congolese government. Thomas Lubanga Dyilo was the first person to be indicted in that investigation. He was charged in February 2006 with the war crime of conscripting and enlisting children under the age of 15 and using them to participate actively in hostilities and was arrested later that same year. Lubanga, therefore, was set to be the first person tried before the ICC, with his trial scheduled to commence on 23 June.

Amid this impressive array of firsts, Lubanga was also the first ICC indictee ordered by ICC judges to be released before his trial even got underway. The stay of the trial was ordered due to a failure to resolve a conflict over the fate of 228 potentially exculpatory documents received by the prosecution from the United Nations and other organisations in DRC on the condition of confidentiality. On 2 July, the Trial Chamber ruled that the prosecution's failure to disclose the evidence to the defence undermined fair trial considerations and, in the absence of the prospect of a fair trial, Lubanga should be released. (The decision to release Lubanga prompted criticism on a number of fronts. For a survey of reactions, please see the International Refugee Rights Initiative, "[ICC Decides to Release Lubanga; Prosecution Appeals](#)," July 2008).

The prosecution appealed both the stay of proceedings and the decision to release Lubanga. On 21 October, the Appeals Chamber rendered judgement on both issues, rejecting the prosecutor's application to revive Lubanga's trial and remanding the matter of his release to the Trial Chamber, concluding that its decision had erred in finding that unconditional release was the sole option. The Trial Chamber was left to decide, in light of the Appeals Chamber judgement upholding the stay of proceedings, whether, further to factual developments regarding the impugned documents, proceedings should resume and whether Lubanga should remain in custody or should be released with or without conditions.

In an oral decision rendered on 18 November, the Trial Chamber lifted the stay in the Lubanga proceedings and decided that he should remain in detention. This ruling followed a filing by the prosecution indicating that as of 13 October, all of the previously confidential documents had been fully disclosed to the Trial Chamber, the information providers having lifted confidentiality restrictions. The Trial Chamber gave the Prosecutor until 20 November at 4pm to disclose all the documents to the defence and the trial is scheduled to begin on 26 January.

Once the trial begins, however, the defence may well request, on the basis of a strong statement by Judge Adrian Fulford, that the charges be dismissed. Judge Fulford, in the Trial Chamber's 13 June ruling, said "the trial process has been ruptured to such a degree that it is now impossible to piece together the constituent elements of a fair trial." The defence may seize upon this statement and argue that due process considerations require the charges to be dropped.

Despite this worrying prospect, which is entirely speculative, the decision to lift the stay on proceedings was welcomed by international and Congolese civil society. "Today's decision offers great hope to the people of the DRC," said Bukeni Waruzi of WITNESS. He added, "this is a huge step forward for justice, but there is still a long way to go until we have peace in the country." Descarte Mponge, focal point for South Kivu for the DRC Coalition for the ICC, said "when the Lubanga trial stay was announced, we surveyed the Congolese population, which was utterly disappointed. Today, we welcome the decision of Trial Chamber I to lift the stay...because with the resumption of the trial, victims can feel some relief. They can hope for reparations — in every meaning of the term — to come at last. This decision sends the strong signal to both future criminals and armed groups in the Kivus that impunity will no longer be tolerated."

Despite this positive decision for seekers of justice in DRC, the Lubanga case has been plagued by confusion among victims in DRC. Anne Althaus of REDRESS noted, "it's extremely difficult for victims to understand what's going on. These decisions are very technical...it's not easy to understand what the practical consequences are."

Confusion and misunderstanding among victims is perhaps evidence of the need for increased ICC outreach in DRC, especially in respect of the Lubanga case now that there is an important, positive development to be communicated. The ICC, however, maintains that its outreach there is adequate. The ICC's head of public information and documentation, Sonia Robla, told the Institute of War and Peace Reporting that after the Appeals Chamber rendered its decision to maintain the stay of proceedings, one of the court's three permanent outreach staff members in DRC gave eight television and radio interviews to outlets that broadcast in Kinshasa and the Ituri region, where Lubanga's alleged crimes occurred. In addition, she said that all ICC press releases are delivered in person to media outlets and NGOs in the capital and Bunia, a major town in the Ituri region. Now, however, there is a crucial test of these outreach efforts, as the ICC has to respond to this most recent development and the court's first trial.

## ANNOUNCEMENTS

### ***Justice Initiative Fellows Program at Central European University***

The Open Society Justice Initiative, an operational program of the Open Society Institute (OSI), joins with Central European University (CEU) to announce the Justice Initiative Fellows Program for 2009–2011. The aim of the program is to support and further develop a network of lawyers and activists working internationally on human rights-related issues. Since its start in 1996, 165 fellows have graduated from the Justice Initiative's Fellowship program.

The Justice Initiative Fellows Program is a two-year program of study and practical work experience. Up to ten applicants will be selected to participate in the 2009 program. Applicants from the following regions and countries are eligible: Central and Eastern Europe, the former Soviet Union, Africa, East, South and Southeast Asia, the Middle East, and Central and South America.

Applicants must be nominated by a non-governmental organization concerned with human rights. The first year is spent at Central European University, the second in the applicant's home country, working with the nominating NGO.

Read the announcement [here](#).

<p><b>Publications</b></p> <p>African Centre for Technology Studies. "<a href="#">Land Tenure and Violent Conflict in Kenya</a>," October 2008</p> <p>Amnesty International. "<a href="#">Left to their own devices: the continued suffering of victims of the conflict in Northern Uganda and the need for reparations</a>," November 2008.</p> <p>Human Rights Watch. "<a href="#">Sinai Perils: Risks to Migrants, Refugees, and Asylum Seekers in Egypt and Israel</a>," November 2008.</p> <p>Human Rights Watch. "<a href="#">Our Hand Are Tied: Erosion of the Rule of Law in Zimbabwe</a>," November 2008.</p> <p>IDMC. "<a href="#">Focus on North Kivu Province: IDPs on the move face grave human rights violations</a>," November 2008.</p> <p>Internal Displacement Monitoring Center. "<a href="#">Uganda: Focus shifts to securing durable solutions for IDPs</a>," November 2008.</p> <p>International Crisis Group. "<a href="#">Sudan's Southern Kordofan Problem: The Next Darfur?</a>" October 2008.</p> <p>International Federation of Red Cross and Red Crescent Societies. "<a href="#">Chad: Plan 2009-2010</a>," November 2008.</p>	<p>International Federation of Red Cross and Red Crescent Societies. "<a href="#">Uganda: DRC population movement</a>," November 2008.</p> <p>International Refugee Rights Initiative, "<a href="#">In the Interests of Justice? Prospects and Challenges for International Justice in Africa</a>," November 2008.</p> <p>International Refugee Rights Initiative, "<a href="#">Going Home or Staying Home? Ending Displacement for Burundian Refugees in Tanzania</a>," November 2008.</p> <p>OCHA. "<a href="#">Ugandan Humanitarian Situation Report: 1-31 October 2008</a>," November 2008.</p> <p>Refugee Law Project. "<a href="#">Special Bulletin on Urban IDPs</a>," October 2008.</p> <p>The South African Red Cross Society, "<a href="#">Urban Violence Relief Operation, 2008 Report</a>," November 2008.</p> <p>Save Darfur Coalition, Human Rights Watch, Human Rights First, IRRRI and others, "<a href="#">Rhetoric vs. Reality—the Situation in Darfur</a>," December 2008.</p>
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