

# International Refugee Rights Initiative



## *Refugee Rights News*

Volume 5, Issue 2

April 2009

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## SPOTLIGHT

### **New Emergency Transit Centre in Romania Helps Stranded Darfurian Refugees**

The Romanian Government, International Organisation for Migration (IOM), and the UN High Commissioner for Refugees (UNHCR) opened a new emergency transit centre (ETC) in Timisoara, Romania on 12 March 2009. The ETC is the first of its kind, hosting refugees in urgent need of evacuation from their countries of first asylum due to critical life-threatening conditions for a maximum period of six months while they await resettlement. The ETC functions on the basis of a tripartite agreement signed in May 2008 by Romania, UNHCR and IOM and ratified by the Romanian Parliament in November 2008. The Centre is an example of a new solution in responding to refugee needs, and is perhaps a step towards a more comprehensive global response to emergencies. Assistant High Commissioner for Refugees, Erika Feller, hailed the ETC, saying that it is "rapidly becoming not only a key protection tool for UNHCR, but also a very good precedent encouraging other countries in other parts of the world to make a similar humanitarian gesture".

The ETC proved a saving grace for a group of 139 Darfurian refugees who fled to Iraq in 1994 and who were subsequently stranded there. They have recently been relocated to Romania and are awaiting resettlement to the United States. The group fell victim to two separate armed conflicts, first in Darfur and then in Iraq. Following persecution by armed groups in Iraq, the refugees were denied entry to Jordan where they sought asylum in May 2005. As a result, the group was unable to access any durable security or protection.

In their country of first asylum, Iraq, the camp was in the middle of the Al-Anbar Desert, an area described by U.S. Marines as "a hotbed of insurgent activity". The Darfurian refugees were assaulted, abused and harassed by militias following the end of the Hussein regime in 2003. Armed gunmen shot and killed 17 Darfurians between December 2004 and February 2005. The

conditions and circumstances of the camp in Iraq failed to meet even basic humanitarian standards. Two adults and a child died as a result of the harsh conditions in the camp, including desert sandstorms, high temperatures during the day and freezing temperatures at night. The refugees were provided with some aid in the interim by US Marines, who gave cold-weather clothing, tents, meals and bottled water to the camp's residents, and by the Iraq-based non-governmental organisation Mercy Hands, which provided some food and health care on an *ad hoc* basis.

In May 2005, the group attempted to flee Iraq and enter Jordan. Abdelbagi Jibril of the African Society of International and Comparative Law (ASICL) and the Darfur Relief and Documentation Centre (DRDC) made submissions to the Foreign Minister of Jordan, asking that the Darfurians be admitted. However, Jordan, which had previously admitted a number of Darfurian refugees in 2004, ignored the requests and refused them entry. Some suspect that Khartoum exercised influence over Jordan, requesting that Jordan not cooperate with UNHCR's appeals. As a result of the decision, the group was stranded in the K-70 camp for another three and a half years outside Al-Rutbah town, approximately 75 km east of the Jordan-Iraq border.

ASICL, DRDC and Darfur Australia Network spearheaded further advocacy efforts to assist the Darfurians. The three organisations met with UNHCR and IOM officials in Geneva, and the Darfurian refugees were finally relocated to the ETC in Romania between the end of 2008 and the beginning of 2009. The group was evacuated from Iraq to Romania in waves. A group of 97 was evacuated from Iraq to Romania on 16 December 2008 and the remaining 42 on 26 January 2009. A total of 139 refugees are currently in the Centre, including 40 children. They will remain there until their applications for resettlement in the United States are processed.

The Darfurians have been put in touch with a legal aid organisation in Romania. They are being introduced to American culture via a course conducted by the American Press Centre in Russia. Those who have friends and relatives in the United States may be resettled to be close to them, and those who do not will be placed in small groups up to six persons to be sent to various regions of the US by IOM. The refugees will be assisted by American non-governmental organisations once they arrive, and after eight months the refugees will be expected to be independent.

## **ACTION AND ADVOCACY**

### **The Situation for Somali Refugees and Asylum Seekers in Kenya Worsens**

In the last week of March 2009, at least 92 Somalis were deported from Kenya back to war torn Somalia. Although the UNHCR filed a formal complaint, the government of Kenya denied that any of those returned had valid refugee claims. In the context of clashes between Islamist insurgents and Somali government forces in Somalia, the Kenyan government see this influx as a national security issue.

A number of human rights organisations, including the Refugee Consortium of Kenya and Human Rights Watch have remarked that Somali asylum seekers are increasingly subject to human rights abuses, the narrowing of refugee protection and refoulement (for more information on the background to the crisis in Somalia, see "[Somalia: A Humanitarian Crisis Disregarded](#)").

It appears clear Kenya has been engaging in refoulement with respect to this population. Human Rights Watch and UNHCR argue that while known cases put the number of Somalis deported back to their country in the hundreds, there are undoubtedly far more unreported cases that could bring the number into the thousands. According to UNHCR, government officials in Kenya have confirmed that the police and military

are under instruction to return Somali asylum seekers to their country. One example of such refoulement was the subject of a public complaint by UNHCR:

... one woman and two men – were among several Somalis whose vehicle was intercepted by the border police as it entered Kenyan territory on 16 January. According to border officials, the driver refused instructions to stop and the police opened fire, wounding three passengers. The injured were taken from Liboi to Dadaab, some 90 km away, to receive medical attention . . . on 21 January, according to hospital officials, six policemen turned up at the Dadaab Health Centre, where the three asylum seekers were undergoing medical treatment for their bullet wounds, ordered them into a police van and drove them to the border. Later in the day, the authorities confirmed that they had been returned to Somalia.

The Refugee Consortium of Kenya pointed out, in its response to the incident, that the government of Kenya is obligated to uphold the principle of non-refoulement, not only as a signatory to the 1951 UN Refugee Convention, but also under Section 18 of its own Refugees Act 2006. They further pointed out that the Act provides for registration of new arrivals, and that Somalis benefit, moreover, from “prima facie status as per section 3 (2) of the Refugees Act of Kenya.”

Kenya closed its border with Somalia on 3 January 2007, maintaining this was necessary for national security reasons. The government of Kenya clearly has a right to be concerned about its own security in the context of the violence in Somalia. The Islamist character of the insurgency and the identification of some Somali armed groups as targets in the “war on terror” further intensify the pressures on the government of Kenya to show that it is controlling population flows. The Refugee Consortium of Kenya has argued that this measure, however, is counter-productive. They argue that reopening the border will increase the government’s capacity to ensure security by giving them the opportunity to monitor and control access.

The Kenyan government also closed the UNHCR transit office on the border in Liboi, where Somali refugees were prior to this able to register and attain refugee status immediately upon entering the country. With the closure of the office, asylum seekers cannot have their protection needs assessed, nor can they be issued with documents attesting to their status as refugees or asylum seekers. Without such documentation, asylum seekers are more vulnerable to police abuse, harassment or deportation. Human Rights Watch (HRW) has urged Kenya to allow all Somali asylum seekers passage into Kenya and recommended that the UNHCR transit office in Liboi be re-opened.

The border closure has exacerbated the already precarious situation for Somali asylum seekers as they now are forced to attempt to sneak into Kenya and reach the Dadaab refugee camp complex – the principle reception area for Somalis in the country’s remote northeast clandestinely. Many are forced to rely on “people smugglers”. Along the journey to Dadaab, Somali asylum seekers are vulnerable to extortion in the form of bribery, detention, violence, and even refoulement.

In a HRW interview at the Hagadera camp, the largest of the three refugee settlements that make up the Dadaab camp complex, a 17 year-old girl recounted her story. She was travelling to the Hagadera camp with 20 other Somali asylum seekers when Kenyan police detained them at Gadudey for 10 days. Members of her clan in Somalia living in the Hagadera camp had to pay the police a bribe of 300 dollars for them to be released. The young Somali girl recounts to HRW what the Kenyan police did to her on the eighth day of her detention:

I left the cell to go to the toilet but two policemen stopped me and told me to go into a room and lie down. One of the men held down my arms and the other raped me. I was so scared that I couldn't even shout but then the second man wanted to rape me and I started to scream. The first one tried to choke me but I struggled and they let me go. They left the room, locked the door and left me alone for one hour. Then they took me back to the cell. The others asked me where I had been but I could not tell them. I was too ashamed. This is the first time I have talked about it.

In a recent report *"From Horror to Hopelessness,"* HRW called for the Kenyan government to put an end to police brutalities and hold those policemen committing human rights abuses against Somali asylum seekers accountable for their actions. HRW has recommended police and military be trained in the rights of Somali asylum seekers and refugees.

Despite the Kenyan government's efforts to keep Somalis out of their country through both the border closure and refoulement, 80,000 Somalis entered during 2007 and 2008.

Should the Somali asylum seekers be so lucky as to make their way into Dadaab, the situation is bleak. Although UNHCR has continued to register as many Somalis as possible, granting them refugee status, the process is slow, and resources are limited. Only those registered are given rations, so many families go without food and water for weeks.

According to UNHCR spokesperson Ron Redmond, since the beginning of 2009 over 20,000 Somali refugees have registered in Dadaab. The camp complex was built to accommodate 90,000 people, but now is home to an estimated 261,000, "making the Dadaab complex one of the world's oldest, biggest and most congested refugee sites" according to Redmond. The increased influx of refugees has placed strains upon already limited resources. Basic necessities such as food and water are scarce; most are receiving well below the internationally agreed standards of water and the level of malnutrition has reached 13 percent, severely affecting children under five. Even though the World Food Programme contends that each registered refugee is given an adequate amount of food daily, HRW estimates that in actuality most people have much less, as registered refugees often share their food with unregistered arrivals. In addition, refugees may trade food rations to acquire other basic items to use as fuel and shelter. HRW provided the following account of the selflessness of one woman who was registered along with her seven children living in the camp and who shared her plot with two other unregistered women and their six children:

I have one small hut with one room, where the nine younger children sleep. There is not enough room for the rest of us. So the older four children and the three of us, the mothers, we sleep under [the] sky at night. Because they are not registered, they cannot get food and the other refugees don't want them to take water. So I share everything I have with them, including food and water.

Poor sanitation and lack of healthcare resources have caused many to declare the situation in Dadaab a national health emergency. Earlier this year UNHCR reported a cholera outbreak in Hagadera. There were 14 known cases, as of 19 February 2009. This is undoubtedly attributed to overcrowding and poor sanitation.

According to the recent HRW report, the 35,144 new refugees who came to Dadaab between 20 August 2008 and 28 February 2009 have had to join settled refugees on their allocated plots of land, as no new land is available to distribute. There is a serious lack of shelter in the Dadaab camp complex. As the violence in Somalia continues with no sign of stopping in the near future, HRW estimates the number of people in the Dadaab camps to reach 300,000 by the end of the year, while UNHCR estimates the number to be 360,000. Additional land for Somali refugees is crucial in order to relieve congestion already problematic in Dadaab, as well as make room for the expected new arrivals.

According to the Dadaab District Officer Evans Kyule, quoted in Kenya's *Daily Nation* newspaper:

There are now makeshift camps built by refugees themselves who have no place to settle. These people have been forced to go out of the camps in order to survive. And this raises the question of security. We are looking at the possibility of a fourth camp. But locals have to agree (to cede the land).

UNHCR has proposed a plan to deal with the current situation entitled Emergency Assistance Programme for Somali Refugees in Dadaab Kenya. The plan entails bridging operational gaps and meeting the needs of the Somali refugee population in the Dadaab camps, the construction of two new camps designed to accommodate between 40,000 and 60,000 people each, and the preparation of emergency assistance for the predicted 120,000 Somali asylum seekers expected over the course of this year.

UNHCR has already begun working with the Kenyan government to create a new refugee camp in north eastern Kenya. Deputy High Commissioner Craig Johnstone met with Kenyan Prime Minister Raila Odinga in early February, to negotiate a solution. Kenya is also considering allocating land in Fafi, in the south of Dadaab, estimated to provide refuge for approximately 50,000. However, UNHCR has been encountering difficulties negotiating the terms with the existing local community, delaying the creation of the new refugee camp. In order to implement UNHCR's plan, it is working with the Kenyan government's Department of Refugee Affairs, as well as several non-governmental organizations including CARE Kenya, the National Council of Churches in Kenya, the Norwegian Refugee Council, and Save the Children. With 120,000 additional refugees expected in 2009, it is urgent that these logistical and protection problems be addressed.

## **FEATURES AND ANALYSIS**

### **Toil and Trouble: Accusations of Witchcraft as a Protection Issue**

In January 2009, UNHCR published a paper on witchcraft accusations as a part of the New Issues in Refugee Research series, authored by Jill Schnoebelen. The piece, "Witchcraft allegations, refugee protection and human rights: a review of the evidence," represents a recognition by UNHCR that accusations of witchcraft can constitute a serious protection problem. The paper outlines conditions under which individuals are susceptible to allegations, historical examples of persecution throughout the world and risk groups (see Jill Schnoebelen, "*Witchcraft allegations, refugee protection and human rights: a review of the evidence*," New Issues in Refugee Research No. 169, January 2009).

#### *Witchcraft accusations as a protection problem in refugee settings*

While anecdotes of instances of accused witches being harmed in camps exist, few studies have been conducted that directly address the issue. Data is scarce as aid organisations, UNHCR in northern Uganda for example, do not fully compile information regarding accusations of witchcraft. Although certain events, including witchcraft, are considered "supernatural events" and acknowledged to have protection implications for the IDP community, none had been reported at the time of the first UNHCR review on the topic. However, as a UNHCR program officer notes: "if a woman is beaten up because she is believed to be a witch, it is a direct protection problem that is not recorded as a supernatural event, but rather as physical violence against a woman." Instances of violence against supposed witches have been documented in refugee camps in Tanzania, DRC, the Sudan and elsewhere. While the acts of violence are being recorded by UNHCR, the underlying causes of violence are not necessarily tracked or analysed.

As a result of their displacement, refugees and IDPs are naturally seen as “the other” and are easy targets for accusations of witchcraft. In Jake Phelen and Graham Wood’s study on returns in southern Sudan, one returning Sudanese refugee “accused the Congolese of practicing witchcraft against Sudanese refugees and killing them. Such things did not happen in Sudan he said, ‘but in Congo we were not always accepted and so were easier to kill.’” Even upon return, the displaced may face additional risk. Schnoebelen documents instances of refugees and returnees facing witchcraft related problems: “Sudanese refugees returning from Uganda...are prone to witchcraft allegations because ‘while in exile, it is believed that they adopted [a] new type of witchcraft.’”

### *The scope of the problem*

Accusations of witchcraft are not, however, limited to refugee settings, they are common throughout Africa. For example, a process of “witch-naming” to identify people responsible for the killing of albinos for use in ritual practices reportedly got underway in Tanzania in March. According to the BBC, the process instituted by President Jakaya Kikwete allows for “people to fill in forms anonymously, naming those they suspect of involvement” in the murder of 45 albinos which had occurred in the previous 18 months. Indicative of the problems surrounding the issue of witchcraft in Africa, the process is being met with mixed reviews. Fears of retribution against those making accusations and the possibility of that accusations will be made to further personal vendettas are being weighed against the prospects for success in ending the killings.

It would appear that the violence associated with accusations of witchcraft may be increasing. As Gerrie ter Haar of the Institute of Social Studies in the Netherlands notes, “[d]ocumentary evidence exists from a large number of African countries indicating that witchcraft accusations are rampant and, in recent years, have led to the unlawful killing, exiling, or imprisonment of many people.”

Such accusations are often targeted at marginalised groups, including women, the elderly, and refugees and internally displaced persons (IDPs). During displacement as well as upon return, people from the Sudan, Congo, Central African Republic, and other countries have faced persecution as alleged witches. With thousands of accused witches killed in Tanzania since the 1970s and roughly 5,000 women in “witch camps” in search of protection from such accusations in Ghana, the issue is emerging as a continent-wide problem. While the presence of witchcraft allegations is not new to Africa, the recognition of the issue as a threat to protection has received little attention.

Many scholars have attempted to place witchcraft allegations in societal contexts and have theorised that accusations tend to arise during moments of upheaval or difficulty as a result of social, political, or economic factors. In case studies focusing on North America, Europe and Africa, researchers have concluded that links exist between weather, especially heavy rainfall and low temperatures, economic growth, and the prevalence of witchcraft allegations.

Regardless of the cause, those accused of witchcraft face persecution and marginalisation. Police reaction to violence against accused witches is generally insufficient and people who kill supposed witches often enjoy impunity. Since many communities believe that the extermination of witches will increase overall well being, there are often perceived incentives against naming perpetrators of violence against accused witches. Often, if the state or aid organisations attempt to protect witches, they can alienate local populations. As a result, Schnoebelen notes, “[a]ny action taken by governments or aid agencies in an attempt to legislate a solution, must keep the potential consequences – including forcing the action underground – in mind.” For example, the US Department of State has acknowledged, for example, that in Central African Republic extrajudicial violence has been perpetrated against accused witches when local authorities refuse to prosecute or imprison them.

### *Risk groups*

As with many issues in refugee studies and development, women, children, and the elderly are disproportionately affected by accusations of witchcraft. Although boys are often targeted, grown men are typically not victims of witchcraft accusations, although this is not unheard of. Mike Brogden of Lancaster University has theorised that in times of economic hardships, those who are least able to provide economically are marginalised and witchcraft is one method of marginalisation: "Many societies, from the Arctic to the tropics, when they perceive a resource threat to the common good...kill expendable persons, thereby stabilising their conditions. The expendable persons were the very young or the very old." Witchcraft accusations, therefore, may be societal attempts to decrease burdens on a society as a whole.

In order to combat the murder or expulsion of the elderly in South Africa, the government has established a pension program to "transform them [the elderly] from a net household economic liability into an asset," and the program has been relatively successful in decreasing the accusations of witchcraft against the elderly. Unfortunately, the prospects of replicating the program in other countries are hampered by the potentially prohibitive costs.

### *Witchcraft accusations and refugee status*

Accused witches are not a well-recognised vulnerable group, and they do not accrue specially recognised rights as such. They do, however, benefit from human rights protections which are available to all people. Their rights to life may be threatened by mob violence, or their due process rights can be violated where witchcraft is criminalised. For example, in the Central African Republic the law criminalises, but does not define, witchcraft, making it very difficult to mount an appropriate defence.

Those who face persecution in this way may flee and seek protection in other countries, but their situation is precarious even in exile. First, there is the problem of showing the link between the violations of their rights and a protected category recognised by the 1951 Refugee Convention. In order to address this, those making claims in some countries of asylum have relied on the categories of "particular social group" and "religion". In both cases, a critical element of making a successful argument requires shifting the question from the reality of the person's identity to the perceptions of their attackers. UNHCR Guidelines recognise the constitutive impact of perception, noting that "[a]n individual (or group) may be persecuted on the basis of religion, even if the individual or other members of the group adamantly deny that their belief, identity and/or way of life constitute a 'religion.'" Even though many accused of witchcraft do not profess to be witches, they may be entitled to protection under international law because the persecution feared is linked to a perception that they adhere to a particular religious or spiritual practice.

Some national authorities have adopted this approach, recognising that individuals need not *actually be* members of a protected group, if they are *perceived* as such by their persecutors. Indeed, in a policy paper submitted by the government of Australia to the UNHCR's global consultations process in 2001, Judge McHugh argued that it was not "necessary that the group should possess the attributes that they are perceived to have." Referring back to the situation of accused witches in Medieval Europe, he argues, "[w]itches were a particular social group in the society of their day, notwithstanding that the attributes that identified them as a group were often based on the fantasies of others and a general community belief in witchcraft."

Difficulties may arise, however, with making a successful asylum claim with regard to the fact that the persecution feared is often perpetrated by the community, or even within families; persecution by non-state actors is not recognised as a valid basis for a refugee claim in some states. Even where it is, it is usually necessary to show that the person cannot expect protection from the state, which can be difficult to

demonstrate. In addition, some adjudicators have considered the issue of internal flight alternatives – whether the individual could find safety in another part of their own country.

Given the prevalence of accusations of witchcraft and its potential to harm already vulnerable groups, it is important that human rights groups and refugee advocates expand their capacity to understand this phenomenon and monitor its implications for protection.

## **LAW AND POLICY DEVELOPMENTS**

### **The Outreach Challenge of the Lubanga Trial: Another First for the International Criminal Court**

On 26 January, the trial of Thomas Lubanga Dyilo, former President of the *Union des Patriotes Congolais* (UPC) and the first person ever to be arrested by the International Criminal Court (ICC), commenced in the Hague. Lubanga has been charged with individual criminal responsibility for enlisting and conscripting children under the age of 15 as soldiers and using them to actively participate in hostilities in the Ituri region, in the northeast of the Democratic Republic of Congo (DRC), in 2002-2003.

Following his arrest in the DRC, Lubanga has been in ICC custody in the Hague since March 2006. On 29 January 2007, the charges against him were confirmed. Although the trial was suspended in 2008 due to issues related to the prosecutor's evidence, the trial finally got underway in January (For more information on the conflict and tribulations of the legal processes, see *"ICC Decides to Release Lubanga; Prosecution Appeals."*)

Now that the trial has actually begun, it brings a sense of hope to those Congolese awaiting justice, peace and security. For the ICC, it is its first trial, marking an important, and long-awaited, step towards trying large-scale human rights violations and ending impunity for perpetrators of crimes against humanity.

Also a first is its outreach campaign around an unfolding trial. The trial is being accompanied by an extensive campaign through which the Court is attempting to make its proceedings accessible to Congolese civilians thousands of miles away in areas with limited access to the media. The ICC's Public Information and Documentation Section (PIDS) has prepared a Strategic Plan for Outreach which provides a rationale and framework for the activities. As indicated in the Plan, "independence, impartiality and fairness are defining attributes of justice; therefore making the judicial proceedings public is a central element of a fair trial and necessary to ensuring the quality of justice."

Information and outreach activities in the DRC started in July 2004. A preliminary needs assessment and creation of local partner networks was followed by the formation of a team that conducted outreach activities in the Kinshasa area in 2006. Its goal was to explain the ICC and its investigation into Lubanga to local authorities, grassroots organizations and the media in communities most affected by the crimes being investigated. In 2007, outreach activities continued in Kinshasa and intensified in eastern DRC and particularly Ituri, the region where the Court's first investigations focussed. Communities in Bunia, Aru, Mahagi, Kasenyi, Goma and Mambassa were encouraged to monitor and understand the ongoing judicial proceedings.

Since early 2009, the outreach strategy has had two focussed phases. Between 16-24 January the intention was to signal the beginning of the trial and explain the stages and key elements of a fair trial. The primary goal during this period was to create awareness and understanding of the crimes that Lubanga allegedly committed through an intensive media campaign. With radio and television networks as its main distribution channels PIDS produced three types of programmes in French: "an introductory programme

about the trial of Lubanga, a programme entitled *Ask the Court*, answering questions raised by participants during outreach activities, and a third programme entitled *ICC at a Glance*, containing summaries of the hearings." Phase two of the outreach efforts are ongoing, and focus on people's participation in the judicial processes of the Court by encouraging dialogue and discussion about the Court's judicial developments, the role of the ICC, the role of the national government and courts, as well as the role of the community as part of the organized public events throughout the trial. The secondary goal is to inspire a reaction amongst citizens through a media campaign that explains these crimes and creates a sense of identification with fellow citizens against whom these crimes were committed so that each citizen will be able to identify with the victims.

Despite all its efforts, the ICC is struggling with many challenges that seem to be deep-rooted and likely insurmountable in the time span given for this particular outreach campaign. The most difficult is the vested interest of some in the DRC in preventing the population from following the proceedings. Second, the communications capacity in the DRC is limited and poses a major challenge to guaranteeing widespread access to the trial's proceedings. PIDS is collaborating with important radio and TV networks in distributing information.

In terms of access to visual media, many Congolese have no access to the internet or television to follow the proceedings, and hence are dependent on publicly organized screenings that show the progress of the trial. But these screenings themselves have proven to be problematic. On the first day of the trial, the ICC organised a public screening of the trial proceedings in Bunia, in Ituri. The screening was attended by about 400 people but had to be suspended because of security concerns after some of Lubanga's supporters, who appeared to be the majority of attendants, voiced their disagreement with the Court. Many victims and survivors felt too threatened to attend and did not want to be recognised by members and supporters of Lubanga's UPC. When the public screening did not take place on the following day, the day when the defence opening statement was scheduled, the defence counsel made a complaint in Court. The public explanation provided was that the screening had not been possible due to a technical problem with the satellite feed.

Congolese lawyer with the Lubumbashi Bar and member of the African Association of Human Rights (ASADHO), Freddy Kitoko, stated a few weeks into the trial that Lubanga still wields great influence in Ituri where supporters continue to almost blindly obey him and often refer to him as "the liberator." With a majority of Congolese citizens dependent on word-of-mouth information on the trial's proceedings it has proven easy for those seeking to misinform and twist information to spread false rumours. Descartes Mponge Malasi, south-Kivu focal point for the Congolese Coalition for the ICC, recently reported that in Goma and Bukavu, for instance, that there are stories circulating that the Office of the Prosecutor does not have access to additional witnesses and that Lubanga will be released in the near future.

The ICC is dependent on the Congolese press to inform citizens about the Lubanga trial's daily events, procedures, motions and rebuttals, but often finds that this is done with mixed results. Though the interest in the Lubanga case has been high amongst journalists, in general Congolese reporters tend to be insufficiently trained and unfamiliar with the legal specifics of the ICC. "Sometimes they write inaccuracies or spread rumors," said Pau Madidi, then spokesman of the ICC in the Congo, in early 2008. "Fortunately, not everyone has this vice, but it [the ICC efforts of working with and educating journalists about the ICC since 2006] may have been insufficient to overcome some pervasive misconceptions."

The coverage of the trial has also brought to the fore other criticisms. For instance, journalists wonder why the ICC is not prosecuting others whom they say are really behind the conflicts in the Ituri region. In particular, some have called on the ICC to investigate Lubanga's alleged backers in Uganda. For example, journalist Wairagala Wakabi, has suggested that "[p]erhaps the Office of The Prosecutor at the ICC should

take a keener interest in Uganda's past activities in Ituri. According to testimony, Ugandan commanders helped Lubanga establish his group, train his fighters, and obtain arms."

Things can change fast prompting Freddy Kitoko to conclude that after an initial keen interest in the trial by the media a diminished interest amongst Congolese observers was readily detected.

It is widely known that the majority of crimes in the Congo go uninvestigated and unpunished, and the judicial system is chaotic and is shielding many corrupt judges, which in turn has created a widespread distrust of the legal system by ordinary citizens. In January 2008, Madidi said that an additional issue is the fact that the ICC does not have jurisdiction over crimes committed before July 2002, when the Rome Statute creating the Court entered into force. This leaves many Congolese citizens, who have experienced war crimes dating back decades, with little hope for justice.

The ICC is trying to address these questions through its outreach. Yvette Alberdingk Thijm, Executive Director of WITNESS, a New York-based human rights organization that uses video and online technologies to raise awareness of human rights violations, said recently that "the ICC is a modern Court using the tools of modern age." In addition to live satellite transmission of the trial, which faces many challenges as indicated earlier, the ICC's PIDS provides journalists with a rough cut edit of weekly summaries of the proceedings. This edit is available in audio and video format on the ICC website for downloading. The court's proceedings may also be followed, with a 30-minute delay, on the ICC website via the following link <http://www.icc-cpi.int/Menus/ICC/Press+and+Media/Audiovisual+Gallery/>.

In a February blog entry on the Coalition for the International Criminal Court (CICC) website, Mponge Malasi writes that "while the ICC field office in Kinshasa is experiencing some success with the distribution of its audio visual summaries, much work remains in terms of improving and expanding access to public information. And yet the ICC alone cannot satisfy the demand for information day to day. Robust outreach must be regarded as a high priority by all actors fighting against impunity."

Others in the human rights field are also trying to address the need for information. The Open Society Justice Initiative, working in partnership with WITNESS and the Institute for War and Peace Reporting launched an online resource that provides up-to-date information on the progress of the Lubanga trial and creates a forum for reader commentary. The website can be found at <http://www.lubangatrial.org>.

WITNESS, on their website, is posing the question whether video can bring a warlord to justice. Their answer is that Lubanga's trial is a "good sign that it can help." Valuable information on weekly trial round-ups, daily blogs and video interviews can be accessed, in addition to video advocacy work on child soldiers, via the following link: <http://hub.witness.org/Lubanga-Trial>.

The CICC has launched a blog initiative called "in situ" facilitating a direct dialogue between its members on the ground, international justice experts and interested members of the broader public. The blog features posts by some of its 2,500 members in 150 countries around the world and can be found via the following link <http://iccnow.org/blog/>.

With all the available technologies enabling us to document, preserve and share information the question remains whether all these outreach efforts by our colleagues in the human rights arena and the ICC itself not only brings public attention to the phenomenon of child soldiers but reaches the Congolese people who are in urgent need of unbiased information. On 27 March the ICC announced that its second trial in the

case *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* is set to commence on 24 September 2009 (for more information on this case, see "[Chui Arrest a Milestone in the Fight Against Impunity in DRC](#)," *Refugee Rights News*, Volume 4, Issue 4, April 2008 (updated July 2008)). It will be the ICC's second chance to contour its continuing outreach campaign in the DRC.

## **The Reaction to the Arrest Warrant against Sudanese President Al-Bashir**

On 4 March 2009, the International Criminal Court announced that the Prosecutor's request for an arrest warrant against Sudanese President Omar Al Bashir would be granted. Since then there has been much debate over how the international community should respond. A particular focus of discussions about possible responses has centred on the Security Council. The council referred the Darfur situation in 2005, and therefore has a particular stake in this investigation. The council has the right to intervene in any situation before the Court by asking that proceedings be delayed for one year.

Council members have largely laid out their views. African members have called for a deferral, arguing that this will give the government time to continue to move forward the implementation of the peace agreement with the South, and to negotiate peace in Darfur. Western members, particularly France, the United Kingdom and the United States have made it clear that they will not consider a deal on deferral until they see some positive change from the government of Sudan. So far, that has not been forthcoming, and the impasse seems to have been decided in favour of doing nothing, allowing the process to proceed.

The consequences of the decision are being felt and discussed in Sudan and across the continent.

### *Closing the space for activism*

Immediately following the news of the Court's decision, there was a crackdown on civil society within Sudan. The government expelled 13 international humanitarian NGOs and suspended the registration of three national ones. The response was clearly linked to the suspicion on the part of the government of Sudan that these organisations had passed information to the International Criminal Court in order to assist in its investigations. Although the prosecutor has stated unequivocally that he did not use any information from humanitarian organisations, the Sudanese Ambassador to the United Nations, Abdalmahmood Abdalhaleem Mohamad, claimed to have concrete evidence that the organisations violated their humanitarian mandate by, among other things, cooperating with the ICC.

The inability of these organisations to function has had serious consequences. The humanitarian organisations that were expelled were estimated to provide more than 50% of the total aid in Darfur. The United Nations and its agencies have warned that millions of Darfurians could be left without assistance. A joint assessment carried out by the UN Office for the Coordination of Humanitarian Affairs has estimated that the UN and national authorities can only fill about 20-30% of the gap.

The domestic organisations which were shut down played a critical role in monitoring and responding to human rights and protection issues in Darfur and Sudan as a whole. For example, the Khartoum Centre carried out monitoring and advocated for legislative change. The Amal Centre provided legal aid and counselling to victims in Darfur.

A number of human rights activists have reported that they are subject to increased scrutiny and government harassment. Activists have been followed, had their offices besieged, and seen their accounts frozen. There have been a series of detentions and interrogations of human rights defenders, particularly former staff of the expelled and deregistered NGOs. Students protesting in support of the ICC were

similarly arrested. In addition, clear public threats have been levelled against human rights defenders. National Security and Intelligence Services Director Salah Gosh warned publicly that those working in support of the ICC would be beheaded and have their limbs cut off. Some have felt forced from the country.

### *Political parties' reactions*

Although the National Congress Party (NCP)'s reaction has been dominated by the crackdown, there have been some moves to at least appear to tackle the accountability question. Since the announcement of the arrest warrant, the Sudanese Justice Minister has said that the passage of pending war crimes legislation will be expedited in order to facilitate national accountability for Darfur crimes. Around the same time, the new Sudanese Special Prosecutor for Darfur has indicated that he has a list of 176 suspects and that two have been arrested – including Ali Kushyab, who is also wanted by the ICC.

Opposition politicians have taken a careful stance in responding to the ICC's decision. Several months ago, prominent Sudanese opposition politician Hassan Al-Turabi had called on Bashir to surrender himself to the ICC saying that it would improve Sudan's international relations and was promptly imprisoned.

Pagan Amum of the Sudan Peoples' Liberation Movement (SPLM), former rebels and now partners in the Government of National Unity, has called for the President to respond to the matter through formal legal channels, "even at the Hague." The SPLM advised the President to "deal with the issue of the indictment with restraint and wisdom and avoid any escalation of the situation."

Umma party politician and former Prime Minister, Sadiq al-Mahdi, has called for the creation of a hybrid tribunal to try Darfur crimes. Although he criticised the President's reaction for pushing the country into confrontation with the international community, he also indicated that handing Bashir over would not fit with "national dignity."

The former Darfur rebel leader, Minni Minawi, who signed a peace deal with the government in 2006, referred to national justice as the "ideal solution." However, Darfurians in the camps and in exile have expressed satisfaction, reflecting that the mere recognition of Bashir's responsibility is a victory.

### *Media offensive*

The government of Sudan has launched a media offensive aimed at showing a fearless Bashir supported by his people against the ICC. In the days following the announcement, he appeared at rallies in Sudan, dancing and waving his cane in defiance. These rallies were large and broadcast at every opportunity on government controlled TV.

To demonstrate that the Court will not intimidate him, Bashir has taken himself on a whirlwind tour of the region. In the past weeks the President has visited Ethiopia, Eritrea, Egypt, Libya, Qatar and Saudi Arabia.

While the African Union and the Arab League have called for a delay of proceedings using Article 16 of the Rome Statute, which allows the Security Council to suspend proceedings for a year, Sudan has said that this is not enough, arguing that they see opposition in the framework of the ICC indictment as insufficient. State Minister for Foreign Affairs, Ali Karti, said that the delay is "a trap that we will not accept and we reject any decision. Voiding and rejecting [ICC decision] is what is required and anything less is unacceptable."

## *The debate in Africa*

Outside Sudan, a debate over the appropriateness of the ICC as a vehicle for accountability, and the appropriate balance of national, regional and international actors in responding goes on.

A Sudanese diplomat living in Uganda accused the prosecutor of deliberately undermining the peace process in Uganda's *New Vision*. On the legal side, the role of the Security Council in referring cases was challenged as both subject to political manipulation and in contravention of the international law principle that states should only be held to standards which they have accepted through treaties. The issues of immunity for heads of state and complementarity (requiring the ICC to investigate only in circumstances where local authorities are unable or unwilling) were also raised.

Others argued that the ICC is being turned inappropriately on Africans. This was taken up in Rwanda's *New Times*, where Patrick Hatari argued "Ocampo's sword is yet to strike hard on all the powerful Africans [...] His sword is meant to cripple African authorities so that we may succumb to the white man's ideology."

Others noted that the ICC's focus on Africa simply needed to expand to the rest of the world. Henry Owuor argued in Kenya's *The Daily Nation* that Bashir *should* stand trial, but that Bush should be next. *The Daily Trust Nigeria* argued that, "All men anywhere suspected to have a hand in illegal wars, war crimes and crimes against humanity should be brought to book [...] Al-Bashir should one day have his opportunity in court to prove his innocence, but so should other men such as Ehud Olmert and George Bush."

South African Archbishop Desmond Tutu argued that to "imply that the prosecution is a plot by the West is demeaning to Africans and understates the commitment to justice we have seen across the continent". A Nigerian journalist, Azibuke Ishiekwene, argued that Africa needed to expand this commitment: "Gadaffi will have to find a place for this home truth in his journey towards a United States of Africa."

On a diplomatic level, the African Union has appointed a high level panel headed by former South African President Thabo Mbeki to explore ways of approaching the Darfur conflict that will address both the need for reconciliation and for accountability. They will also convene a Special Summit in June in Addis Ababa intended to discuss the ICC more broadly. These fora will likely contribute significantly to the developing regional conversation on this issue. They need to be watched attentively.

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<p><b>Publications</b></p> <p>Active Learning Network for Accountability and Performance in Humanitarian Action (ALNAP) and ODI Humanitarian Policy Group (ODI-HPG). <a href="#">“Where to Now? Agency Expulsions in Sudan: Consequences and Next Steps,”</a> 26 March 2009.</p> <p>Feinstein International Center. <a href="#">“Livelihoods, Migration and Conflict: Discussion of Findings from Two Studies in West and North Darfur, 2006-2007,”</a> April 2009.</p> <p>Human Rights Watch. <a href="#">“From Horror to Hopelessness: Kenya’s Forgotten Somali Refugee Crisis,”</a> 30 March 2009.</p> <p>International Crisis Group. <a href="#">“Guinea: The Transition Has Only Just Begun,”</a> 5 March 2009.</p> <p>Oxfam International. <a href="#">“Addressing the Humanitarian Crisis on the Kenya/Somalia Border,”</a> March 2009.</p> <p>Refugees International. <a href="#">“Somalia: Political Progress, Humanitarian Stalemate,”</a> 3 April 2009.</p>	<p>Refugees International. <a href="#">“Nationality Rights For All: A Progress Report and Global Survey on Statelessness,”</a> March 2009.</p> <p>Refugees International. <a href="#">“South Sudan: Urgent Action Needed to Avert Collapse,”</a> 26 March 2009.</p> <p>United Nations General Assembly and United Nations Human Rights Council. <a href="#">“Mission to the Republic of Chad: Representative of the Secretary-General on the human rights of internally displaced persons, Mr. Walter Kalin,”</a> 12 March 2009.</p> <p>World Food Programme Sudan. <a href="#">“Monthly Situation Report,”</a> February 2009.</p> <p><u>Book:</u></p> <p>Vilmer, Jean-Baptiste Jeangène, <a href="#">Repairing the Irreparable: Reparations to Victims before the International Criminal Court.</a> Paris: Presses Universitaires de France (PUF) [in French], March 2009</p>
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*Refugee Rights News* is a publication of the International Refugee Rights Initiative (IRRI).

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