

**Seventh session**

The Hague

14 - 22 November 2008

**Report on the activities of the Court**

## **I. Introduction**

1. The present report provides an overview of the activities of the International Criminal Court (the “Court”) from the sixth session of the Assembly of States Parties to the Rome Statute (the “Assembly”) in November – December 2007 until 30 September 2008.

2. The judicial activity of the Court continued to increase in 2008, following the arrest and surrender of two persons. Four persons are currently in the custody of the Court, with their cases at different stages of proceedings.

3. On 7 February 2008, Mr. Mathieu Ngudjolo Chui was surrendered to the Court by the Democratic Republic of the Congo. Pre-Trial Chamber I subsequently joined his case with that of Mr. Germain Katanga. On 26 September, Pre-Trial Chamber I confirmed 10 counts of crimes against humanity or war crimes against each of the two individuals and committed them to trial.

4. On 3 July 2008, Belgium surrendered Mr. Jean-Pierre Bemba to the Court pursuant to a warrant of arrest issued by Pre-Trial Chamber III in relation to the situation in the Central African Republic. Mr. Bemba is suspected of having committed three counts of crimes against humanity and five counts of war crimes. A hearing to confirm the charges against Mr. Bemba is scheduled to begin before Pre-Trial Chamber III on 4 November 2008.

5. In the case of Mr. Thomas Lubanga Dyilo, Trial Chamber I ordered a halt to all proceedings on 13 June 2008 and subsequently ordered the unconditional release of the accused following the withholding by the Prosecutor from the defence and the judges of potentially exculpatory evidence obtained on condition of confidentiality. The Prosecutor appealed both the decision staying proceedings and the decision to release Mr. Lubanga, and Mr. Lubanga remains in custody pending the outcome of the appeals.

6. The Prosecutor continued his investigations into the four situations before the Court: Uganda, Democratic Republic of the Congo, Central African Republic and Darfur, Sudan. As a result of the investigation into the situation in Darfur, Sudan, the Prosecutor applied for a warrant of arrest for H.E. Omar Al-Bashir, President of Sudan. The Prosecutor alleged that Mr. Al-Bashir is criminally responsible for genocide, crimes against humanity and war crimes. The Prosecutor’s application for the warrant of arrest is pending before Pre-Trial Chamber I.

7. In carrying out its activities, the Court continued to engage States Parties, other States, international and regional organizations and civil society, in strict accordance with the Rome Statute and applicable agreements concluded by the Court. The Court issued numerous requests for cooperation to different actors. While cooperation was generally forthcoming, States did not execute seven warrants of arrest, and more support is needed in protecting witnesses.

## **II. Judicial proceedings**

8. A total of 960 victims applied to participate in judicial proceedings in one of the situations or cases, of whom 126 have been authorised to so participate. Proceedings before the Court are, in principle, public. Decisions of the Chambers and filings of parties and participants are published on the Court’s web site (<http://www.icc-cpi.int>). In certain circumstances, proceedings or decisions may be kept confidential for a period of time, for example, to protect the security of victims and witnesses. This report covers only public matters.

## **A. Situation in the Democratic Republic of the Congo**

### **1. The Prosecutor v. Thomas Lubanga Dyilo**

9. Preparations continued for the trial of Mr. Thomas Lubanga Dyilo, alleged leader of the *Union des Patriotes Congolais pour la Reconciliation et la Paix (UPC)* and Commander-in-Chief of its military wing, the *Forces Patriotiques pour la Libération du Congo (FPLC)* until 13 June 2008. Mr. Lubanga is charged with war crimes, specifically, enlisting, conscripting and using children under the age of fifteen years to participate actively in hostilities.

10. On 13 June 2008, Trial Chamber I imposed a stay of proceedings, thereby halting the trial process in all respects. The Chamber found that the Prosecutor had incorrectly used article 54, paragraph 3, subparagraph e, of the Rome Statute (which enables the Prosecutor to agree not to disclose documents or information obtained on condition of confidentiality and solely for the purpose of generating new evidence, unless the provider of the information consents) in such a way that Mr. Lubanga was denied a significant body of potentially exculpatory evidence, thereby improperly inhibiting his opportunities to prepare his defence. The Chamber further found that the judges were prevented from reviewing the evidence at issue and determining whether or not the non-disclosure of this potentially exculpatory evidence constituted a breach of Mr. Lubanga's right to a fair trial. In these circumstances, the Chamber held that it was necessary to stay proceedings. As a consequence of the stay of proceedings, the Chamber ordered the unconditional release of Mr. Lubanga, on 2 July 2008.

11. On 2 July 2008, Trial Chamber I granted the Prosecutor leave to appeal the decision staying proceedings. On that same day, the Prosecutor appealed the decision ordering the release of Mr. Lubanga. On 7 July, the Appeals Chamber suspended the effect of the decision on release while it considered the appeals. At the time of submission of this report, both appeals were pending and Mr. Lubanga remained in custody.

12. On 11 July 2008, the Prosecutor applied to Trial Chamber I to lift the stay of proceedings following agreements with some of the information providers to lift certain confidentiality restrictions. On 30 July, and 8 and 22 August, the Prosecutor submitted further information on agreements with information providers to lift confidentiality restrictions. On 3 September, the Trial Chamber decided that the application by the Prosecutor did not meet the prerequisites it had set for lifting the stay and that the Prosecutor's proposed methods for addressing the disclosure of confidential materials infringed fundamental aspects of Mr. Lubanga's right to a fair trial. Consequently, the Chamber declined to lift the stay of proceedings. On 26 September 2008, the Trial Chamber denied the Prosecutor leave to appeal two issues arising out of this last decision as the issues were formulated by the Prosecutor, but granted the Prosecutor leave to appeal the issues as reformulated by the Trial Chamber.

13. During the preparations for the trial, the Appeals Chamber, on 11 July 2008, issued two judgments in the case, addressing issues related to the participation of victims in proceedings and the disclosure of evidence by the Defence and by the Prosecutor. In each instance, the Trial Chamber had concluded that the underlying issues would significantly affect the fair and expeditious conduct of proceedings or the outcome of the trial and that immediate resolution of the issues by the Appeals Chamber may materially advance the proceedings. In addition to potentially advancing proceedings in the case of Mr. Lubanga, the decisions of the Appeals Chamber should add clarity for future judicial proceedings in that both decisions addressed fundamental aspects of trial preparation or proceedings under the Rome Statute.

14. Throughout the preparations for trial and the appeals proceedings, the Court provided Mr. Lubanga with legal assistance, including full remuneration of his defence team, as is his

right under article 67, paragraph 1, subparagraph d, of the Rome Statute, the Rules of Procedure and Evidence and the Regulations of the Court. The Office of Public Counsel for the defence provided legal research and support to the defence team.

15. The Court provided assistance to all four victims participating in proceedings, in accordance with the Rules of Procedure and Evidence and the Regulations of the Court. The Office of Public Counsel for victims represented 73 victims applying to participate in the case. The Office also provided legal assistance and advice to the three legal representatives of participating victims.

## **2. The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui**

16. Mr. Mathieu Ngudjolo Chui was surrendered to the Court by the Democratic Republic of the Congo on 7 February 2008 pursuant to a sealed warrant of arrest issued by Pre-Trial Chamber I in 2007. On 10 March 2008, Pre-Trial Chamber I joined the case of Mr. Ngudjolo Chui with that of Mr. Germain Katanga, who had been surrendered to the Court by the Democratic Republic of the Congo on 18 October 2007. On 9 June 2008, the Appeals Chamber upheld the joinder of the two cases.

17. Mr. Katanga and Mr. Ngudjolo Chui were each charged with nine counts of war crimes (comprising murder or wilful killing, cruel or inhuman treatment, using children to participate actively in hostilities, sexual slavery, rape, attacking civilians, pillaging, outrages upon personal dignity and destroying the enemy's property) and four counts of crimes against humanity (comprising murder, inhumane acts, sexual slavery and rape), allegedly committed during an attack on the village of Bogoro, Democratic Republic of the Congo, on 23 February 2003.

18. A hearing to confirm the charges against the two suspects took place from 27 June 2008 until 16 July 2008. On 26 September 2008, Pre-Trial Chamber I issued its decision on the confirmation of the charges. The Chamber confirmed seven counts of war crimes (wilful killing, using children to participate actively in hostilities, sexual slavery, rape, attacking civilians, pillaging and destroying the enemy's property) and three charges of crimes against humanity (murder, sexual slavery and rape). The Chamber declined to confirm two counts of war crimes (cruel or inhuman treatment and outrages upon personal dignity) and one count of crimes against humanity (inhumane acts) charged by the Prosecutor. The Chamber committed Mr. Katanga and Mr. Ngudjolo Chui to trial before a Trial Chamber.

19. Throughout the pre-trial phase, the Appeals Chamber decided on several appeals where the Pre-Trial Chamber had concluded that the underlying issues would significantly affect the fair and expeditious conduct of proceedings or the outcome of the trial and that immediate resolution of the issues by the Appeals Chamber may materially advance the proceedings. Fundamental issues of interpretation of the Rome Statute addressed by the Appeals Chamber included the scope of permissible redactions of information from documents to protect victims, witnesses or others, the joinder of cases by the Pre-Trial Chamber and the right of the accused to interpretation in languages other than the working languages of the Court. As with the decisions in the case of Mr. Lubanga, these decisions of the Appeals Chamber may both advance proceedings in this particular case and provide guidance for future Chambers.

20. Throughout the pre-trial and appeals proceedings, the Court provided both Mr. Katanga and Mr. Ngudjolo Chui with legal assistance, including full remuneration of their defence teams, as is their right under article 67, paragraph 1, subparagraph d, of the Rome Statute. The Office of Public Counsel for the defence provided legal research and support to both defence teams and direct legal assistance to the defence team of Mr. Ngudjolo Chui.

21. Fifty-seven victims participated in proceedings through their legal representatives, with the assistance of the Court. Nineteen of these victims were found to be indigent and received financial assistance from the Court. Due to an alleged conflict of interest concerning one of the legal representatives, the Office of Public Counsel for victims represented a group of 10 victims during the confirmation of charges hearing. The Office also provided legal assistance and advice to the representatives of other participating victims.

### **3. The Prosecutor v. Bosco Ntaganda**

22. On 28 April 2008, Pre-Trial Chamber I, following a request from the Prosecutor, unsealed a warrant of arrest issued on 22 August 2006 for Mr. Bosco Ntaganda, alleged Deputy Chief of General Staff for Military Operations of the *Forces patriotiques pour la libération du Congo* (FPLC). In issuing the warrant, the Chamber had found there were reasonable grounds to believe Mr. Ntaganda had committed the war crimes of enlisting and conscripting children under fifteen and using them to participate actively in hostilities.

23. The warrant had initially been issued under seal due to concerns related to, *inter alia*, the protection of victims and witnesses. In unsealing the warrant, the Chamber considered that the circumstances which led to its sealing had changed and that it was no longer necessary for the warrant to remain under seal. It also considered that unsealing the warrant may assist the authorities of the Democratic Republic of the Congo to execute the arrest and may make it more difficult for Mr. Ntaganda to flee or to seek refuge in neighbouring countries. Nevertheless, the warrant has not yet been executed.

24. On 22 September 2008, the Appeals Chamber unsealed a decision it had issued on 13 July 2006. In the underlying decision, the Appeals Chamber had overruled a decision of Pre-Trial Chamber I rejecting the Prosecutor's application for an arrest warrant for Mr. Ntaganda. The Pre-Trial Chamber had held that the case against Mr. Ntaganda was inadmissible in that it did not reach the gravity threshold specified in article 17, paragraph 1, subparagraph d, of the Rome Statute. The Appeals Chamber reversed this holding, concluding that a finding of admissibility is not a substantive prerequisite for the issuing of a warrant of arrest and that the Pre-Trial Chamber had applied an incorrect test in determining the gravity of a case. The Appeals Chamber remanded the case to the Pre-Trial Chamber which subsequently issued the aforementioned arrest warrant.

### **4. Activities of the Trust Fund for Victims**

25. On 24 January 2008, the Board of Directors of the Trust Fund for Victims notified Pre-Trial Chamber I of its intention to carry out activities in the Democratic Republic of the Congo. In accordance with regulation 50 of the Regulations of the Trust Fund for Victims, the Chamber assessed whether the proposed activities would "pre-determine any issue to be determined by the Court, including jurisdiction and admissibility, or violate the presumption of innocence, or be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial." Finding this not to be the case, the Chamber approved the proposed activities.

### **5. Participation of victims in the situation**

26. Six hundred and twenty-five victims have, to date, applied to participate in judicial proceedings in the situation in the Democratic Republic of the Congo. Including those participating in the particular cases, a total of 168 victims participated in proceedings in the situation in the Democratic Republic of the Congo. During the reporting period, the Office of Public Counsel for victims represented 140 victims applying to so participate and provided legal assistance or advice to fourteen legal representatives. The Office of Public Counsel for the defence served as ad hoc counsel for the defence in relation to many of the decisions on the applications to participate in proceedings.

## **B. Situation in Uganda**

### **1. The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen**

27. During the reporting period, judicial proceedings in the case of *The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen* continued to be limited due to the lack of arrest of any suspects. The Court had previously issued requests for their arrest and surrender to Uganda, the Democratic Republic of the Congo and Sudan. Under article 59, paragraph 1, of the Rome Statute, a State Party which has received such a request shall immediately take steps to arrest the person in question. Pre-Trial Chamber II continued to monitor the efforts undertaken by Uganda and the Democratic Republic of the Congo to fulfill the requests for arrest and surrender. None of the four individuals was surrendered to the Court. The warrants have been outstanding since 2005.

28. A total of 255 victims have applied to participate in judicial proceedings in the situation in Uganda. During the reporting period, Pre-Trial Chamber II granted eight victims the right to participate in the case, bringing the total number of participating victims to fourteen.

### **2. Other judicial proceedings**

29. In addition to monitoring the execution of warrants of arrest and dealing with other issues arising in the case of *The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen*, Pre-Trial Chamber II addressed applications of victims to participate in the situation, granting seven victims the right to participate in the situation, in addition to those participating in the particular case. The Office of Public Counsel for victims represented or assisted 106 victims applying to participate in proceedings in the situation .

30. On 28 January 2008, the Board of Directors of the Trust Fund for Victims notified Pre-Trial Chamber II of its intention to carry out activities in Uganda. In accordance with regulation 50 of the Regulations of the Trust Fund for Victims, the Chamber assessed whether the proposed activities would "pre-determine any issue to be determined by the Court, including jurisdiction and admissibility, or violate the presumption of innocence, or be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial." Finding this not to be the case, the Chamber approved the proposed activities.

## **C. Situation in the Central African Republic**

### **The Prosecutor v. Jean-Pierre Bemba Gombo**

31. On 23 May 2008, Pre-Trial Chamber III issued a warrant of arrest for Mr. Jean-Pierre Bemba Gombo and requested Belgium to provisionally arrest Mr. Bemba. The warrant contained two counts of crimes against humanity (rape and torture) and four counts of war crimes (rape, torture, outrages upon personal dignity, and pillaging). On 10 June, the Chamber issued a new warrant of arrest, supplementing the initial counts with counts of murder as a crime against humanity and as a war crime.

32. In issuing the warrants, the Chamber concluded that there were reasonable grounds to believe that, in the context of a protracted armed conflict in the Central African Republic from around 25 October 2002 to 15 March 2003, *Mouvement de libération du Congo* (MLC) forces led by Mr. Bemba carried out a widespread or systematic attack against a civilian population which involved murder, rape and torture and that such forces, in the context of an armed conflict, committed murder, rape, torture, outrages on personal dignity and pillaging. The

Chamber further concluded that there were reasonable grounds to believe that Mr. Bemba was responsible for these crimes by virtue of being vested with *de facto* and *de jure* authority by the members of the MLC to take all political and military decisions.

33. Mr. Bemba was arrested by Belgian authorities on 24 May 2008. He was surrendered to the Court on 3 July and made an initial appearance before the judges of Pre-Trial Chamber III on 4 July. A hearing on the confirmation of the charges against Mr. Bemba is currently scheduled to begin on 4 November 2008.

34. Twenty seven victims have applied to participate in Central African Republic. The Office of the Public Counsel for victims was appointed to represent the victims who had applied to participate in proceedings. The Office of Public Counsel for the defence provided legal research and support to the defence team.

#### **D. Situation in Darfur, Sudan**

##### **1. The Prosecutor v. Ahmad Muhammad Harun ("Ahmad Harun") and Ali Muhammad Ali Abd-al-Rahman ("Ali Kushayb")**

35. There were no new developments in the case of *The Prosecutor v. Ahmad Muhammad Harun and Ali Muhammad Ali Abd-Al-Rahman* due to the lack of arrest and surrender of the two suspects.

##### **2. The Prosecutor v. Omar Hassan Ahmad Al-Bashir**

36. On 14 July 2008, the Prosecutor submitted an application for a warrant of arrest for H.E. Omar Hassan Ahmad Al-Bashir, President of Sudan. In the application, the Prosecutor alleged that Mr. Al-Bashir was criminally responsible for genocide, crimes against humanity and war crimes. The application is being considered by the judges of Pre-Trial Chamber I.

##### **3. Participation of victims in the situation**

37. As in the other situations and cases, Pre-Trial Chamber I continued to address applications of victims to participate in the situation in Darfur, Sudan. The Office of Public Counsel for victims provided legal assistance and advice to the representatives of these victims. Eleven victims are participating in the situation generally. Of these, 10 have been found indigent and receive financial assistance from the Court. The Office of Public Counsel for victims provided legal assistance and advice to two legal representatives of these victims.

### **III. Analysis, investigations and prosecutorial activities**

#### **A. Situation in the Democratic Republic of the Congo**

38. With the preparations for the trial of Mr. Lubanga ongoing, the preparation and conduct of the confirmation of charges hearing of Mr. Katanga and Mr. Ngudjolo and after the unsealing of the arrest warrant for Mr. Ntaganda, the Office of the Prosecutor ("the Office") announced the completion of a first phase of its investigations in the Democratic Republic of the Congo, focusing on the horrific crimes committed by alleged leaders of armed groups active in Ituri district since July 2002 and targeting two armed groups believed to be the most responsible for the gravest crimes committed in the district.

39. While investigative activities continued in relation to these three cases, with several investigation missions being sent to the field as part of the cases against Mr. Lubanga and Mr.

Katanga and Mr. Ngudjolo, efforts were made by the Office to foster support for the arrest of Mr. Ntaganda.

40. In addition, the Office started working on the preparation for its next investigation phase. The Office began moving on to new cases in the Democratic Republic of the Congo with the intention of being in a position to send investigation teams out shortly. The selection process has been completed and the Office began considering moving the focus of its investigative activities towards the Kivu provinces, where it has been following numerous reports of crimes allegedly committed by various armed groups in both the North and South Kivu provinces, including reports of horrendous sexual crimes. Analysis of open source information available and collection of additional information has begun. The Office welcomed any available additional information on allegations of crimes in the Kivus, as well as in Ituri and other parts of eastern Democratic Republic of the Congo.

41. As part of this new phase of investigations, the Office worked on strengthening and increasing its collaboration with local judicial authorities in the Democratic Republic of the Congo and with foreign actors involved in support to the judicial system, with views to providing assistance to national jurisdictions under article 93, paragraph 10, of the Rome Statute and to involving them in the Office's investigations directly, to the extent feasible.

42. As part of its general monitoring of the situation and in view of further future investigations, the Office continuously considered the roles of all those who organised, backed or supported the armed groups active in all the eastern provinces of the country after 1 July 2002.

## **B. Situation in Uganda**

43. The Office of the Prosecutor conducted important investigative activities and continued to receive reports of more defections and attempted defections from the Lord's Resistance Army ("LRA"). The Office continued to stress the importance of enhancing regional cooperation to increase the ability of LRA members to defect safely, as this will further isolate the top leadership of the LRA.

44. In order to cut off the supply and support network of the suspects, the Office pursued several requests for cooperation with a number of States to take specific action against individuals suspected of providing the LRA with material support. In July and August 2008, the Office sent missions to these States to follow up on the requests and to ensure that enforcement of the requests could be done in compliance with the national law of the requested State.

45. The Office also continued to collect and analyze a range of information on new crimes allegedly being committed by the LRA in the Democratic Republic of the Congo, Sudan and the Central African Republic. These crimes increased in the beginning of 2008 as Joseph Kony allegedly issued orders to abduct 1,000 new civilians to bolster LRA numbers and LRA forces were sent to commit attacks between the LRA base in Garamba National Park and the Central African Republic. These alleged crimes primarily included the abduction of civilians, including children, for the purpose of recruitment, forced labour, and sexual enslavement. Although the numbers fluctuate as abductees escape and more abductees are taken, information indicates that the LRA is currently retaining between 200 and 300 new "recruits" whom it is attempting to integrate into the LRA force. According to recent information received by the Prosecutor's office, a quarter of the LRA is now non-Ugandan and this trend is likely to continue as the LRA attempts to transform itself into a regional force. The LRA is also reportedly amassing weapons, primarily from weapons caches in Eastern Equatoria, Sudan, but also through attacks on barracks of the Sudan People's Liberation Army.

46. The remaining outstanding warrants have yet to be executed and the Office considers that the spate of new LRA attacks increases the urgency of arresting the LRA leadership. Representatives of the Office, in their contacts with relevant interlocutors, stressed the importance of increasing regional cooperation to execute the arrest warrants.

47. The Office views the current deployment of the Armed Forces of the Democratic Republic of the Congo (FARDC) in August 2008 to be a positive development and encouraged the United Nations Organization Mission in the Democratic Republic of the Congo ("MONUC") and the States Parties to continue to support this effort. While the Office currently understands that the deployment is mainly to protect civilians and contain the LRA, the Office encouraged States to provide additional support for the arrest of the LRA leaders.

### **C. Situation in the Central African Republic**

48. The Office of the Prosecutor concluded that crimes against the civilian population, namely, rape, torture, outrages upon personal dignity and pillaging, were committed in the Central African Republic between the end of October 2002 and 15 March 2003. In particular, the Office alleged that hundreds of rapes were committed and that sexual crimes would be a characteristic feature of the case against Mr. Bemba.

49. The investigation of the Office in the Central African Republic is ongoing and the Office will continue to gather evidence and establish responsibility for the crimes committed in 2002-2003.

50. In parallel, the Office continued to closely monitor allegations of crimes committed since the end of 2005 and whether any investigation and prosecution had been or was being conducted with respect to crimes potentially falling under the jurisdiction of the Court. A letter, dated 10 June 2008, was sent to President Bozize for the purpose of receiving information concerning possible relevant national proceedings.

51. The Office welcomed the fact that all members of the preparatory committee of the Central African Republic's Inclusive Political Dialogue acknowledged the principle that there can be no amnesty for war crimes and crimes against humanity. Signatories to the comprehensive peace agreement recently signed in Libreville also unanimously and clearly recognized that there will be no amnesty in the Central African Republic for crimes under the jurisdiction of the Court.

### **D. Situation in Darfur, Sudan**

52. During the reporting period, the Office of the Prosecutor conducted 16 missions to 10 countries in connection with the investigation of the situation in Darfur, Sudan. In accordance with United Nations Security Council Resolution 1593 (2005), the Prosecutor presented his sixth and seventh reports to the Security Council on 5 December 2007 and 5 June 2008, respectively, on the status of the investigation into the situation in Darfur. The Prosecutor reported to the Security Council that the Government of Sudan continued to not comply with its legal obligations under Resolution 1593.

53. In his 5 December 2007 briefing to the Security Council, the Prosecutor urged the international community, the Council and all United Nations Member States to send a strong and unanimous message to the Government of Sudan on the execution of the warrants and highlighted the June 2008 Security Council mission to Sudan as a crucial opportunity in this regard.

54. The Prosecutor informed the Security Council that the Office was proceeding with its second and third investigations in the situation in Darfur, Sudan. The mobilization of the State apparatus to plan, commit and cover up crimes against civilians, in particular, the Fur, Masalit and Zaghawa, is the focus of the Office's second investigation. The Prosecutor reported that the failure to punish Ahmad Harun, a Minister who commits crimes under guise of humanitarian affairs, is one telling indicia of the involvement of high officials.

55. In his 5 June 2008 report to the Council, the Prosecutor specified that present crimes in Darfur included the targeting of civilians in villages, including recent aerial bombardments; looting and destruction of means of livelihood leading to displacement; protracted presence of Government of Sudan forces and Militia/Janjaweed in areas attacked, preventing returns; resettlements resulting in the usurpation of the land of internally displaced persons ("IDPs"); organised insecurity and destitution within and around IDP camps; rapes; attacks against local leadership including detention, torture and killing; lack of Government assistance, hindering of humanitarian assistance and imposing harsh conditions of life within the camps; impunity of the perpetrators and official denial of crimes adding to the mental anguish of victims. The Prosecutor explained that all of these acts taken together lead to the actual destruction of entire groups.

56. Following his 5 June briefing to the Security Council, the Prosecutor announced publicly, on 14 July, that he had filed an application in the second case, naming H.E. Omar Hassan Ahmad Al-Bashir, President of Sudan, as allegedly responsible for 10 counts of genocide, crimes against humanity and war crimes. The application described the mobilization of the State apparatus to plan, commit and cover up crimes against civilians, in particular, the Fur, Masalit and Zaghawa. The alleged crimes include targeting of civilians in villages, including recent aerial bombardments; looting and destruction of means of livelihood leading to displacement; protracted presence of Government of Sudan forces and Militia/Janjaweed in areas attacked, preventing returns; resettlements resulting in the usurpation of IDPs' land; organized insecurity and destitution within and around IDP camps; rapes; attacks against local leadership including detention, torture and killing; lack of Government assistance, hindering of humanitarian assistance and imposing harsh conditions of life within the camps; impunity of the perpetrators and official denial of crimes adding to the mental anguish of victims. The Prosecutor alleged that all this leads to the actual destruction of entire groups.

57. A redacted version of the application, available to the public, was subsequently filed with the Pre-Trial Chamber and made available on the web site of the Court.

58. Following the Prosecutor's report to the Security Council regarding the Office's third investigation, the Office proceeded with this investigation into allegations of rebel crimes, focusing on the 29 September 2007 attack against African Union peacekeepers at Haskanita. The Office intends to proceed to the judges with an application in the third investigation before the end of 2008.

59. The Office continued to engage with key partners to seek their assistance in encouraging Sudan to cooperate. These efforts are described below.

60. During the period 28 to 29 January 2008, the Prosecutor visited Doha, Qatar, and met the Prime Minister and Foreign Minister of Qatar, Sheikh Hamad Bin Jassim Bin Jabr Al-Thani. During the period 7 to 9 March 2008, the Prosecutor visited Amman, Jordan, and met with the Foreign Minister of Jordan, Mr. Salaheddin Al-Bashir. On 10 March 2008, the Prosecutor travelled to Cairo, Egypt and met with the Secretary-General of the League of Arab States, Mr. Amr Musa. During the period 27 April to 1 May 2008, the Prosecutor visited Jakarta, Indonesia, and met with the Indonesian Foreign Minister, Dr. N. Hassan Wirajuda, with Defence Minister, Prof. Dr. Juwono Sudarsono, and with members of civil

society. On 9 and 10 May 2008, the Prosecutor travelled to Cairo, Egypt and met with the Egyptian Foreign Minister, Mr. Aboul Gheit and local civil society organizations. From 13 to 14 May 2008, the Prosecutor visited Riyadh, Saudi Arabia and met the Foreign Minister of Saudi Arabia, Prince Saud Al-Faisal. During the period 27 June to 1 July 2008, the Deputy Prosecutor, Mrs. Fatou Bensouda, attended the African Union Summit in Sharm - el - Sheik, Egypt, and met with the President of the Libyan Arab Jamahiriya, Colonel Muammar Al-Qadhafi.

61. Deputy Prosecutor Fatou Bensouda met with the Chairman of the African Union Commission, Mr. Jean Ping, on 11 July 2008 in Addis Ababa while she was in Ethiopia to brief the African Union Peace and Security Council (PSC). From 9 to 10 August 2008, the Deputy Prosecutor was in Botswana where she met with the President of Botswana, H.E. Festus Mogae, and the Attorney-General, Ms. Athalia Molokomme, as well as the ministers responsible for justice, defence and security. On 10 and 11 August 2008, the Prosecutor conducted an official visit to Dakar, Senegal, where he met, the President of the Republic of Senegal, H.E. Abdoulaye Wade.

62. During the period 22 to 26 September 2008, the Prosecutor visited New York and met with Mr. Jean Ping as well as with the Prime Minister and Foreign Minister of Qatar, Sheikh Al-Thani, the Foreign Minister of the United Republic of Tanzania, Mr. Bernard Bembe and, at the invitation of the Qatari Prime Minister and Foreign Minister, the Prosecutor briefed the Arab Ministerial Committee Established to Arrange Peace Talks between the Government of Sudan and the Armed Movements in Darfur. The Committee, co-chaired by the Qatari Prime Minister and Foreign Minister, Sheikh Al-Thani, the Secretary-General of the League of Arab States, Mr. Amr Musa and the Chairperson of the African Union, Mr. Jean Ping, also comprises the Foreign Ministers of Algeria, Egypt, the Libyan Arab Jamahiriya, Morocco, Saudi Arabia and the Syrian Arab Republic.

## **E. Analysis activities**

63. The Office of the Prosecutor analyses all information on crimes within its jurisdiction.

64. The Office of the Prosecutor received and analysed 1677 new article 15 communications relating to purported crimes during the reporting period, of which 1458 referred to Georgia and 210 were dismissed as manifestly outside the jurisdiction of the Court. In parallel, the Office continued the proactive examination of open sources.

65. The Office continued its analysis of various situations in the preliminary examination phase. As part of its ongoing analysis of the situation in Colombia, the Prosecutor led a mission to Colombia from 25 to 27 August 2008. On 18 June 2008, the Office wrote to the Government of Colombia seeking further information on the decision to extradite senior former paramilitary leaders to the United States of America in order to evaluate the degree to which they will face criminal justice for the commission of alleged crimes against humanity. The Office awaits an official reply.

66. The Office also wrote to various parties in Kenya seeking further information in relation to alleged crimes committed on that territory, including to the two parties which now constitute the Government. The Office received a reply from the Kenyan National Commission on Human Rights but still awaits a reply from either of the two political parties concerned.

67. The Office continued to await a reply to a request sent to the Government of Afghanistan seeking further information in relation to alleged crimes committed on that territory.

68. In relation to Côte d'Ivoire, despite the Office's outstanding request to carry out a mission to that territory and several discussions, no progress had been made in this regard. The Office called upon the Government of Côte d'Ivoire to facilitate a mission as a matter of urgency.

69. As confirmed by the Prosecutor on 20 August 2008, the Office is analysing the situation of the Russian Federation and Georgia. The Office formally invited information regarding the situation from the Governments of Georgia and the Russian Federation and began analysing reports from Georgia and over 3000 documents received from the Russian Government as well as other sources. The Office continued to gather more information in order to determine whether there is a reasonable basis to proceed with an investigation.

#### **IV. Outreach**

70. In 2008, the Court achieved tangible progress in the implementation of the Strategic Plan for Outreach in relation to three situations: the Democratic Republic of the Congo, Uganda and Darfur, Sudan. The Court increased the number of activities, enhanced its operational capacity to engage affected communities, and tested and consolidated the evaluation system assessing the impact of its work against pre-established quantitative and qualitative indicators. In the Central African Republic, where outreach is still at an early stage, the Court's activities will commence by the end of 2008, following the recruitment of a small team.

71. In the Democratic Republic of the Congo, the Court continued to prioritize its outreach efforts in Ituri and also initiated operations in North and South Kivu, targeting primarily women and youth groups, while strengthening existing networks. Sixty-four events were organised, including sixteen town-hall style meetings, a substantial increase from the two such meetings which were carried out in 2007. The Court estimates that through these efforts 14,000 individuals were directly informed about the Court and 1,500 key leaders were engaged and informed.

72. Particular emphasis was placed on making judicial proceedings accessible and understandable to local populations. Audio and video summaries of significant hearings were prepared by the Court and played during outreach events. These materials facilitated discussions on judicial developments in the four cases in that situation. In addition, a video and audio summary was prepared on the occasion of the first appearance of Mr. Jean-Pierre Bemba in the situation of Central African Republic, a case which is also of interest in the Democratic Republic of the Congo. These summaries were all broadcast through national radio and television.

73. In the Democratic Republic of the Congo, the Court continued to use radio and television as effective means to enhance the impact of its outreach and to target the general public. In collaboration with seven radio stations in Ituri, the interactive radio programme "*Connaître la Cour Pénale Internationale*" was broadcast, reaching an estimated audience of 1.5 million people, over 50 per cent of the district's total population. To date, eighteen "listening clubs" have been established by the Court in Ituri. Each club has between 50 and 100 members who meet on a daily basis, listen to the programmes and participate in discussions. Two new radio programmes were created by the Court in partnership with Radio Okapi: "*Droits et devoirs*" and "*Institutions, c'est facile à comprendre.*" These programmes, produced in French and local languages, explain the rules governing the functioning of the

Court and the rights of parties and participants in the proceedings and reached an estimated audience of twenty-five million people.

74. In Uganda, the Court continued engaging the general population in the north and north-eastern parts of the country focusing on strengthening existing programmes and partnerships and creating new ones, especially reaching out to youth and women. One hundred interactive meetings were conducted in towns, villages, schools and Internally Displaced Persons' (IDP) camps with 28,000 people targeted directly, compared to 6,000 participants in events organised in 2007. The Court also focused on interactive radio talk shows in local languages prepared in partnership with four radio stations. A total of 45 one-hour weekly radio programmes were conducted by the Court's outreach partners in the Acholi, Lango, Teso and Madi sub-regions, reaching an estimated audience of 9.5 million. Evaluations indicated that people directly informed and engaged significantly increased their understanding of the work of the Court.

75. In relation to the situation in Darfur, the Court continued engaging Sudanese refugees in the camps in Eastern Chad and members of the diaspora outside Sudan. In eastern Chad, 600 individuals were directly informed about the Court and 300 key leaders were directly informed and engaged. To enhance its impact in the refugee camps, the Court also broadcast radio drama series explaining its work. Through an established informal network, the Court continued to specifically exchange information in Arabic with local populations. Thirty journalists of international and regional Arabic and Sudanese media are regularly informed about the judicial developments and the Court's work.

76. In the Central African Republic, eight interactive workshops were organised for local journalists and representatives of civil society, including women and youth groups, unions, victims' organisations and religious leaders, to explain the mandate and work of the Court. Representatives of these groups also participated in the process of formulating the first strategic plan for outreach in the country. Overall, 25 key leaders were directly informed and engaged, 52 individuals were directly informed, 10 journalists were informed on a regular basis and 1 million people were estimated to have been informed through the media. The first appearance of Mr. Bemba was broadcast via the Court's website and a group of journalists, key leaders, and representatives of civil society was invited to follow the hearing at the Court's field office.

## **V. Cooperation with the Court**

77. The Rome Statute imposes both a general obligation on States Parties to cooperate fully with the Court in its investigation and prosecution of alleged crimes and specific obligations to comply with particular requests of the Court, such as requests for arrest and surrender. The Court made numerous requests to States Parties on diverse issues. In accordance with article 87 of the Rome Statute, such requests were often made on a confidential basis.

78. As noted above, the Democratic Republic of the Congo and Belgium each fulfilled a request for arrest and surrender during the reporting period. However, seven warrants of arrest remained outstanding.

79. The Court sought and received increased cooperation from States Parties in protecting witnesses and others at risk on account of witnesses testifying before the Court. The Court is able to protect witnesses only with the effective assistance of States Parties. The Court maintained and enhanced local protection and response measures in its areas of operation in the Democratic Republic of the Congo, Uganda, Chad (in relation to the situation in Darfur,

Sudan) and the Central African Republic in collaboration with national and local authorities and other partners.

80. The number of witnesses in need of protection continued to increase, however, while the lack of arrest of suspects necessitated maintaining protection measures in the pending cases. As at 30 September 2008, 300 individuals had benefited from the Court's Witness Protection Programme. To address the need for further cooperation, the Court sought out additional agreements with States on the protection and relocation of witnesses. Ten agreements on the relocation of witnesses have been concluded to date.

81. The Court also sought the support of States not party to the Rome Statute, international and regional organizations and civil society organizations on an *ad hoc* basis or pursuant to cooperation agreements concluded by the Court. In particular, the Court relied on extensive cooperation from the United Nations within the framework of the relationship agreement concluded pursuant to article 2 of the Rome Statute. In accordance with a memorandum of understanding concluded between the Court and MONUC, the Court agreed to meet the costs of the United Nations in providing cooperation and assistance to the Court in relation to the case of *The Prosecutor v. Thomas Lubanga Dyilo*.

82. In light of the extensive cooperation between the Court and the United Nations and the need to address specific issues of cooperation directly with staff at United Nations Headquarters, the New York Liaison Office played an increasingly critical role in accomplishing the Court's objectives. The Liaison Office continued to facilitate and enhance contacts and the exchange of information between the Court and the United Nations and its Organs, Funds, Programmes and Agencies, as well as between the Court and Permanent and Observer Missions to the United Nations. The sustained contacts have promoted better understanding for the work of the Court and its judicial procedures, thereby also contributing to enhanced support for and cooperation with the Court.

83. The Court exchanged letters with the European Union with a view to establishing cooperation with the European Union-led peacekeeping force (European Union military operations in eastern Chad and north-eastern Central African Republic).

84. The Headquarters Agreement between the Court and the host State<sup>1</sup> entered into force on 3 March 2008. This has further enhanced cooperation between the Court and the host State and has facilitated the Court's smooth operations in The Hague. The Headquarters Agreement has provided much needed clarity and certainty on issues which were not adequately covered by the interim arrangements.

## **VI. Organization and administration of the Court**

### **A. Composition of the Court**

85. Upon their election at the sixth session of the Assembly, Judges Daniel Nsereko, Fumiko Saiga and Bruno Cotte commenced their terms of office. On 17 January 2008, the judges of the Court, meeting in plenary session, assigned Judges Nsereko and Cotte to the Trial Division and Judge Saiga to the Pre-Trial Division. In accordance with article 35 of the Rome Statute and in light of the anticipated workload of the Court, the Presidency called the three judges to serve on a full-time basis, effective 1 June 2008.

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<sup>1</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Fifth session, The Hague, 23 November to 1 December 2006* (International Criminal Court publication, ICC-ASP/5/32), part III, resolution ICC-ASP/5/Res.3, annex II.

86. On 29 July 2008, Judge Navanethem Pillay submitted her resignation, effective 31 August 2008, following approval by the United Nations General Assembly of her appointment by the United Nations Secretary-General to the position of United Nations High Commissioner for Human Rights. The Presidency replaced Judge Pillay in the Appeals Division with Judge Daniel Nsereko with effect from 1 September 2008.

87. Judge Sang-Hyun Song was elected President of the Appeals Division effective 6 February 2008, succeeding Judge Pillay. On 9 July 2008, the judges of the Pre-Trial Division re-elected Judge Hans-Peter Kaul as President of the Division.

88. On 13 February 2008, Mr. Bruno Cathala, the first Registrar of the Court, submitted his resignation from the Court in order to take up a position as President of the *Tribunal de Grande Instance d'Evry* in the French judicial system. On 28 February 2008, the judges of the Court, meeting in plenary session, elected Ms. Silvana Arbia to succeed him. Ms. Arbia took up her duties on 17 April 2008. On 9 September 2008, the judges elected Mr. Didier Preira as the first Deputy Registrar of the Court.

89. At the submission of this report, the Court comprised 571 staff members representing eighty-three different nationalities.

## **B. Strategic Planning**

90. The Court continued to implement its Strategic Plan in 2008, focusing in particular on the implementation of the outreach strategy and the development of strategies related to victims and human resources. The Court developed a draft strategy in relation to victims in consultation with States Parties and civil society. The Court submitted a comprehensive strategy on human resources to the Committee on Budget and Finance at its tenth session in April 2008. The human resources strategy focuses on:

- a) Career development for well-performing staff, including measures to improve performance management, learning and development and career management services;
- b) The establishment of a caring environment, including conditions of service, staff well-being and internal justice systems; and
- c) The continued strengthening of staff recruitment and selection mechanisms and processes.

Particularly in the area of career development, the Court put in place a number of new processes and systems in 2008.

91. During 2008, the Court reviewed its Strategic Plan in light of its experience. Discussions were held within and across the different organs to evaluate progress made in implementing the Strategic Plan and to identify areas of strategic priority for the future. The Court also consulted with The Hague Working Group of the Bureau of the Assembly and with civil society organizations and solicited their input. On 28 August 2008, the Coordination Council adopted a revised set of strategic objectives covering the years 2009-2018. The Court's strategic goals and revised strategic objectives are contained in the annex.

92. The Court launched an organization-wide risk management exercise to further identify and to prioritize the risks facing the Court. The exercise should increase the Court's ability to ensure that all risks relevant to the achievement of its strategic objectives are appropriately identified, prioritised and managed. An external consultant interviewed elected officials and staff throughout the Court and identified and assessed the likelihood and impact of different operational and reputational risks. The findings of the consultant will be presented

to and discussed with the Court's senior management before the seventh session of the Assembly. After validation of the assessment of the risks by the Court, the Court will move to the second phase of reviewing existing strategies and developing new strategies to manage the risks.

### **C. Support to proceedings**

93. The Court took measures both to ensure the efficient support to specific judicial proceedings and to more generally facilitate the conduct of fair and expeditious proceedings.

94. In relation to specific proceedings, the Court undertook substantial preparations for the anticipated trial of Mr. Lubanga. In particular, the Court intensified and finalized its preparations for daily trial proceedings, sustained outreach during the trial and the appearance of witnesses in court. The Court also conducted a feasibility study on the possibility of proceedings taking place outside the seat of the Court in the event of a decision of the judges under Rule 100 of the Rules of Procedure and Evidence. While the trial did not commence as anticipated, such preparations have provided valuable lessons for future trials.

95. More generally, the Court took measures to provide general support to defence counsel and to the legal representatives of victims. To date, 254 persons from 49 States have been inscribed on the list of counsel to appear before the Court. In 2008, the Court held a seminar for counsel that was attended by over 200 persons, as well as a three-day training course for counsel. In addition, the Office of Public Counsel for the defence developed a practice manual for counsel and a guide for suspects.

### **D. Field operations**

96. The Court continued to adapt its field presences in light of its experience. Field offices in or near the situations under investigation provide bases for the Court's field operations and serve as its public faces in the field. The Court moved its field office in Abeche, Chad to meet operational requirements and to cater for increased activity, in particular the addition of staff to support outreach activities. The Field Office in Bangui, Central African Republic, which opened in October 2007, was further consolidated. The Court carried out feasibility studies for possible forward field office locations to support more outreach missions and increased activities of the Trust Fund for Victims.

97. Security continued to remain a serious concern in the different situations. An outbreak of violence in N'Djamena, Chad in early February 2008 resulted in the ransacking of the Court's field office there. The Court continued to regularly assess the security circumstances in each situation, ensuring that all field office locations comply with recommended field security standards (MOSS and MORSS). The Court also implemented a paramedical support service contract to provide emergency assistance to staff in the field.

### **E. Cooperation with the Special Court for Sierra Leone**

98. In accordance with the Memorandum of Understanding between the Court and the Special Court for Sierra Leone, the Special Court continued to conduct the trial of Charles Taylor at the seat of the Court. Cooperation between the two institutions has been exemplary. Through an exchange of letters in September 2008, the Court and the Special Court agreed to extend the MoU until November 2010 so as to enable the Special Court to conclude the trial and appeals proceedings.

## **VII. Conclusion**

99. On 17 July 2008, the Court and the States Parties celebrated the tenth anniversary of the adoption of the Rome Statute. Considerable progress has been achieved since that time in building up the Court and in carrying out investigations, prosecutions and judicial activities. The Court has continued to live up to its mandate as a purely judicial institution, acting in full accordance with the Rome Statute. At the same time, the past year has once again confirmed the necessity of States Parties and others fulfilling their obligations to cooperate with the Court. In particular, support continues to be needed in arresting and surrendering persons, in protecting witnesses and in ensuring global respect for the judicial mandate of the Court in accordance with the international rule of law.

100. Throughout the reporting period, the Court continued to work on improving the effectiveness and efficiency of all of its activities. The first judicial proceedings, in particular, those before the Appeals Chamber, shed light on the meaning of heretofore unclear provisions of the Rome Statute and provided guidance to parties and participants on procedures before the Court. Through revising its strategic objectives and initiating a risk-management exercise, the Court took steps to further consolidate and rationalize its administration. The actions taken by the Court in these areas form a basis for future improvements in the coming year and beyond, as the Court continues to strive towards ensuring the most efficient and expeditious fair proceedings and administration.

**Annex**

**Revised strategic goals and objectives of the International Criminal Court 2009 - 2018**

	<b><u>GOAL 1: A MODEL OF INTERNATIONAL CRIMINAL JUSTICE</u></b>	<b><u>GOAL 2: A WELL-RECOGNIZED AND ADEQUATELY SUPPORTED INSTITUTION</u></b>	<b><u>GOAL 3: A MODEL OF PUBLIC ADMINISTRATION</u></b>
	Conduct fair, effective and expeditious public proceedings in accordance with the Rome Statute and high legal standards, ensuring full exercise of the rights of all participants.	Further enhance awareness of, effect a correct understanding of and increase support for the Court.	Excel in achieving desired results with minimal resources through streamlined structures and processes while maintaining flexibility, guaranteeing accountability and drawing upon sufficient qualified and motivated staff within a caring environment and a non-bureaucratic culture.
<b>Objectives 2009 - 2011</b>	1. Conduct 4 to 5 new investigations into cases, within existing or new situations, and at least 4 trials, subject to external cooperation received.	4. Further cultivate a level of awareness and understanding of the Court appropriate to the stage of the Court's activities in affected communities.	8. Become a non-bureaucratic administration focused on results rather than processes, relying on rules where necessary to guarantee rights or minimize risks.
	2. Maintain and further develop the system to address all security risks, striving for maximum security of all participants and staff consistent with the Rome Statute.	5. Develop mechanisms to provide for all necessary cooperation, in particular the arrest and surrender of persons, witness protection and the enforcement of sentences.	9. Submit sound, accurate and transparent budget proposals necessitating only minor adjustments to the proposed amount and distribution of resources by the Assembly of States Parties.
	3. Develop policies for implementing the quality standards specified in the Statute and the Rules of Procedure and Evidence with respect to all participants in proceedings and persons otherwise affected by the Court's activities, in a manner that is respectful of diversity.	6. Constantly increase support for the Court through enhancing communication and mutual understanding with stakeholders, stressing the Court's role and its independence.	10. Attract, care for, and offer career development and advancement opportunities to a diverse staff of the highest quality.

		7. Ensure publicity of all proceedings for local and global audiences.	11. Continue the development of a common ICC culture.
	<b>Actions to be realized in years 4-10</b>		
<b>Objectives 2011 - 2018</b>	12. Revise the Court Capacity Model based on the experience gained from the first 2-3 full cycles of judicial activity and, in consultation with the Assembly of States Parties, align the Court's planned resource needs with the number of cases and investigations to be pursued each year.	14. Carry out a full review of the organizational identity of the Court.	16. Revisit the design of business processes and complete a re-engineering exercise for the whole organization, including a definition of the desired quality levels.
	13. Revisit the alignment of the Court's geographical distribution of resources and activities with its mission in light of the experience gained from the first 2-3 full cycles of judicial activity.	15. Constantly increase global awareness of the Court.	17. Be within target ranges for representation of gender, geography and legal systems among staff.
			18. Enable the Court to perform all activities in either working language.