



International Criminal Court
Bar Association | Association du Barreau près
la Cour Pénale Internationale

ICCBA NEWSLETTER

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MESSAGE FROM THE PRESIDENT

Dear Members,

I would like to wish you a very happy and prosperous 2019! I am delighted to present the fourth edition of the ICCBA Newsletter which includes updates from the ICCBA committees, updates on the cases currently ongoing at the ICC and two very interesting articles, one on the use of digital and open source evidence at the ICC and another on the psychological effects on child soldiers.

In December 2018, I attended the Assembly of States Parties and gave a [speech](#) at the General Debate outlining the achievements of the ICCBA and the ongoing work of the Association. The ICCBA also hosted a Side-Event with the sponsorship of France and Senegal. The side event was on the topic of 'The Role of the ICCBA in Supporting and Enhancing Positive Complementarity'. The panel discussion included speakers from the Registry and Office of the Prosecutor as well as

ICCBA Executive Council members. It was attended by several ambassadors and representatives of NGO's. This side event laid the foundations for the ICCBA to work with the ICC on complementarity and is something which the Executive Council is actively following up on. Photos from the side event are available [here](#).

On the issue of legal aid reforms, the ICC Registry presented a Draft Legal Aid Policy to the ICCBA for their comments in September. Subsequently the ICCBA organized a meeting for all defence and victim team members and the outcomes of this meeting were used in our response to the Draft Legal Aid Policy. This was followed by a meeting on 3 December 2018, with representatives of the ICCBA, the Registry, States Parties and NGO's. The transcript of this meeting is available on the [ICC website](#). The ICCBA will continue to work on this important issue and keep members updated on the progress.

On 14 November 2018, the ICCBA Working Group on Workplace Harassment issued a [letter](#) outlining the ICCBA position on workplace harassment and the measures which the ICCBA will be implementing to address the issue. It is hoped that the complaints mechanism and confidential hotline will be operational in the coming months.

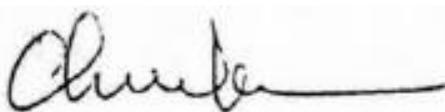
In November 2018, the ICCBA Presidency and the Executive Director held meetings with the ICC President and Registrar and discussed several issues. These meetings continued the dialogue on important issues such as legal aid, taxation, training and mandatory membership of the ICCBA.

In January, the ICCBA was fortunate to have Gillian Higgins provide a presentation on Mindfulness in the Workplace, the event was attended by a number of members and was very insightful and gave an introduction to the ways in which mindfulness can help relieve the pressures of working life.

Earlier this month, I was invited by the President of the ICC to speak at the Opening of the Judicial Year which was attended by several members of defence and victim teams, as well as representatives of the other organs of the Court. I emphasized that the ICCBA is the key representative body of counsel and support staff and that the Association will continue to work alongside the ICC to strengthen international justice. As I said in my [speech](#), we do not know what lies ahead but we need to keep thinking ahead and empower the ICC of tomorrow, this is something which the ICCBA and all members are in a position to do.

If the ICCBA can be of any assistance, please do not hesitate to contact our Executive Director, Dominic Kennedy at: dkennedy@iccba-abcpi.org. Please remember to keep a check on the ICCBA website for updates and news from the ICCBA: www.iccba-abcpi.org

Best wishes,



Chief Charles Taku
President





DEFENCE COMMITTEE

The Defence Committee is holding its meetings on a monthly basis and studying topics and issues, such as : Rule 20 concerning duty counsel, legal aid, sexual harassment, UN Judge Aydin Akay, seminar about terrorist act, independence of jurisdiction, investigations made by counsel, compensation of fees, composition of team work and how the goal of the

Court should be not only to fight impunity but also spread justice. Individual meetings are held by some members and the Chair in conferences and groups for the well-being of ICCBA to have the finest environmental atmosphere to work and produce the best quality.

VICTIMS COMMITTEE

1. The ICCBA Victims Committee has met on 07.09.2018, 12.10.2018, 09.11.2018 and 11.01.2019 at the ICC.

2. On 4 October 2018, the Centre for Criminology at the University of Oxford and the ICCBA hosted a one-day workshop on victim participation. The expert workshop, held at the Bonavero Institute of Human Rights, Mansfield College in Oxford, focused on specific aspects of victim participation, including theoretical and jurisprudential developments on reparation, presentation of evidence, as well as ethical, psychological and practical considerations concerning victim testimony at the ICC. The panelists, including inter alia ICCBA Victims Committee members Paolina Massidda and Luc Walley, offered insightful and thought-provoking views on the future of reparations for victims after the Bemba acquittal and the recent developments of presentation of evidence by victims' legal representatives at the ICC. The presentations and discussions highlighted the calls to untether reparations for victims of gross violations of human rights from conviction of the accused as well as the need for better assessment of victims' trauma in eliciting testimony and evidence. A video recording of the workshop can be accessed [here](#).

In light of the aim of this joint ICCBA- Centre for

Criminology project and with the view to further advance the impact of victim participation at the ICC, the Centre and the ICCBA are currently working on developing a platform for an in-house publication based on the contributions made by all the panelists and papers presented at both events held in The Hague and Oxford. Once finalized, the publication will be made available and accessible on both the Centre for Criminology and the ICCBA websites.

3. On 01.10.2018 and 02.10.2018, ICCBA Victims Committee members Luc Walley and Fidel Nsita Luvengika attended an Expert-Workshop on Reparations, organized by REDRESS, London (UK).

4. During the meeting on 09.11.2018, ICCBA Victims Committee met with a delegate of the ICCBA Counsel Support Staff Committee (CSSC) to discuss recent proposals and projects of CSSC.

5. On 03.12.2018, ICCBA Victims Committee members Paolina Massidda, Luc Walley and Fidel Nsita Luvengika participated in a conference organized by ICC Counsel Support Section on the Reform of the ICC Legal Aid System.

6. On 04.12.2018, ICCBA Victims Committee members Paolina Massidda, Luc Walley and Fidel



Nsita Luvengika participated in a conference organized by ICC VPRS on reparations.

7. On 11 December 2018, the ICCBA held a side event at the Assembly of States Parties. The event was entitled "The Role of the ICCBA in Supporting and Enhancing Positive Complementarity. The list of speakers on the panel included Karim Khan QC, ICCBA Honorary President and elected member of the ICCBA

COUNSEL SUPPORT STAFF COMMITTEE

Since September 2018, CSSC has met three times, and has the following updates:

Legal aid: The Committee has reviewed and submitted comments on the draft Legal Aid Policy created by the ICC Registry. These comments were included by the ICCBA in its overall comments on the policy in December 2018. CSSC's comments focused in particular on requesting that legal services contracts for support staff should guarantee fair working conditions (including receiving sick leave, annual leave, maternity and paternity leave, and notice periods) and protection from harassment and discrimination. In light of issues discussed at the Court's 3 December 2018 consultation meeting on legal aid, CSSC submitted follow-up comments, which were included in the ICCBA's additional observations of 14 January 2019. One of our members, Tom Obhof, is in the process of being assigned to a forthcoming ICC-ICCBA working group on how to further develop the draft policy. We are also currently still formulating a position on minimum wages for support staff under the draft Legal Aid Policy.

Meeting with Victims Committee: CSSC earlier identified that, in order to achieve positive changes to

AMICUS COMMITTEE

The ICCBA Amicus Committee held its second meeting of the ICCBA term on 14 September 2018, attended by all five members. The Committee has also carried out its work by email. The Committee is moving forward with its approved work plan, which includes: monitoring of proceedings before the ICC and other relevant entities to identify situations where the

Victims Committee.

8. ICCBA Victims Committee is currently planning further training activities, a meeting with ICC Principals on the recent developments in the legal representation of victims at the ICC and a further meeting with legal teams representing victims at the ICC.

support staff working conditions, we need the support of counsel. In this light, a CSSC representative met with the members of the Victims Committee in November 2018 and explored agreeable types of contracts for support staff, ways for the Victims Committee to support CSSC objectives, and drawing up ethical guidelines on the relationship between counsel and support staff (a planned future project for CSSC).

Forthcoming meeting with Executive Council: CSSC members have been invited to participate in the Executive Council's February 2019 meeting, which CSSC will use as an opportunity to advocate for support staff issues.

The Committee will continue to meet around the first week of each month to ensure that we can frequently coordinate and discuss advocacy efforts.

As always, as your representatives, we welcome all views and thoughts by support staff, and invite you to send any to our email address on: cssc@iccba-abcpi.org. Messages will be treated in strict confidence.

interests of the ICCBA and its members may be impacted; developing improved outreach to ICC legal teams and the public regarding the Committee's mandate and work; continuing the Committee's project of analysing the practice and impact of amicus curiae intervention before the ICC.



CASE UPDATES



PROSECUTOR V. GBAGBO & BLÉ GOUDÉ (ICC-02/11-01/15)

Overview

The case of Laurent Gbagbo and Charles Blé Goudé commenced on 28 January 2016. Mr Gbagbo and Mr Blé Goudé are charged with four counts of crimes against humanity allegedly committed in Abidjan, Côte d'Ivoire, during the post-electoral crisis between December 2010 and April 2011. The last Prosecution witness testified in January 2018 and on 4 June, the Trial Chamber declared the presentation of the Prosecution's evidence as closed ([ICC-02/11-01/15-1174](#)).

"No case to answer" oral submissions

On 4 June 2018, the Trial Chamber issued the "Second Order on the further conduct of the proceedings", ordering the Defence for Laurent Gbagbo and for



Gbagbo © ICC

Charles Blé Goudé to file submissions addressing the "issues for which, in their view, the evidence presented by the Prosecutor is not sufficient to sustain a conviction". On 23 July 2018, both Defence teams submitted "no case to answer" motions ([ICC-02/11-01/15-1198-Conf](#) and [ICC-02/11-01/15-1199](#)) requesting the full acquittal of Laurent Gbagbo and Charles Blé Goudé respectively on the basis that the Prosecution submitted insufficient evidence to warrant a conviction. The Prosecution and the Legal Representative for victims filed their responses to the defence motions on 10 September 2018, comprising of 1057 and 100 pages respectively.

Oral hearings were held from 1 to 3 October 2018, whereby the Prosecution and the LRV made oral submissions before the Court. Among others, the LRV argued that it did not share the Prosecution's position of no longer pursuing the charges against Mr Blé Goudé relating to incidents 3 and 4, arguing that these "cannot simply be put aside" (T-223, p. 29, Ins. 22-25). The LRV argued that dropping those charges would be prejudicial to the interests of the victims. The LRV called for the continuation of the proceedings on all charges against both accused. The Prosecution presented its arguments supporting the continuation of proceedings by outlining, among others, its evidence relating to the incidents underlying the charges against the accused. The Prosecution argued, among others, that the acts of violence allegedly committed by pro-Gbagbo forces were not random, but rather, committed in the context of a common plan of which Laurent Gbagbo and Charles Blé Goudé formed part.



At the request of the Defence, the hearings were postponed and resumed on 12 November 2018. From 12-14 and 19-22 November, the Defence teams respectively presented their arguments, supporting the termination of proceedings. They raised, among others, the insufficiency and unreliability of the evidence, for instance by arguing that significant portions of the Prosecution's evidence constituted hearsay and anonymous hearsay evidence and pointed out several incoherencies and contradictions in the witness testimonies and documentary evidence.

Mr Blé Goudé's notice of intention to make an oral unsworn statement

On 19 November 2018, the defence team for Mr Charles Blé Goudé filed its Notice of Charles Blé Goudé's intention to exercise his right to make an oral unsworn statement ([ICC-02/11-01/15-1223](#)), on the basis of paragraph 7 of the Amended and Supplemented Directions on the conduct of proceedings ([ICC-02/11-01/15-498](#)). This paragraph provides for the right of the accused person to make an unsworn oral or written statement in his defence under Article 67(1)(h) of the Rome Statute.

On 20 November 2018, the Prosecution opposed the Blé Goudé Defence notice ([ICC-02/11-01/15-1224](#)), arguing that "a no case to answer motion is a purely legal proceeding to be decided on the evidence currently submitted on the record of the case" and that "any unsworn statement of an accused during a no case to answer submission is unwarranted, as it is irrelevant to the decision-making process of the Chamber". It further argued that the Chamber should exercise its discretion for the statement to be made at a later stage.

On the last day of oral submissions for the no case to answer proceedings, on 22 November 2018, the Chamber by Majority – Judge Tarfusser dissenting – rendered an oral decision refusing to grant authorization of Mr Blé Goudé's request to make an unsworn statement before the Court. The Majority found that an unsworn statement made by Mr Blé Goudé at that stage would be at odds with Article 67(1)(h) and would add little to the Chamber's analysis of the evidence.

Judge Tarfusser, dissenting, found that denying Mr Blé

Goudé's right to make to make an unsworn statement at this stage amounted to a violation of one of his minimal guaranteed and fundamental rights. Judge Tarfusser opined that the Chamber's discretion is strictly limited to identifying the appropriate moment and modalities of such a statement; it does not extend to the power to prevent such a statement from being given.

Order convening a hearing on the continued detention of the accused

In an order dated 10 December, the Chamber by Majority convened a hearing for 13 December, inviting oral submissions from the parties, participants and the Registry, "to revisit whether or not the risks that were previously identified as justifying the deprivation of the personal liberty of the accused continue to exist and, if so, to what extent". More specifically, the Chamber invited submissions on the following issues: appropriateness and modalities of interim release; identification of States where the accused would wish to be released on an interim basis, should they be provisionally released; and conditions which, in the parties' and participants' submission, would be necessary, including as appropriate in light of those listed in rule 119(1) of the Rules.

In a dissenting opinion, Judge Herrera Carbuca found that although she agreed with the Majority that the Chamber has the power to review detention proprio motu, in this particular case, the Chamber should first and foremost decide on the two pending Defence requests for judgment of acquittal. Judge Carbuca concluded that the Majority's decision to trigger detention review proprio motu was unreasoned.

Although the hearing was initially scheduled to be held in closed session, it was ultimately held in open session, on 13 December 2018. The parties, participants and representatives of the Registry submitted their views on the legal and practical issues surrounding provisional release.

Updated list of victims and resumption of action for eight victims

On 7 December 2018, the Registry transmitted a third updated consolidated list of participating victims, pursuant to paragraph 17 of the Trial Chamber's



Decision on the resumption of action applications of 11 October 2017 ([ICC-02/11-01/15-1052](#)).

On 15 January 2019, the Trial Chamber, by majority, Judge Herrera Carbuccion dissenting, acquitted both accused as they held that there was insufficient evidence presented by the Prosecutor to prove the case beyond a reasonable doubt.

On 16 January, the Trial Chamber, by majority, Judge Herrera Carbuccion dissenting, found that there were no exceptional circumstances preventing the release of Mr Laurent Gbagbo and Mr Charles Blé Goudé from ICC detention following their acquittal.

Decision on the Prosecutor’s request for suspensive effect of her appeal under article 81(3)(c)(ii) of the Statute and directions on the conduct of the appeal proceedings, 18 January 2019

After the Trial Chamber acquittal of Laurent Gbagbo and Charles Blé Goudé decided on 15 January 2019, and its following Decision to reject the Prosecution request for a suspensive effect of the immediate release of the acquitted persons in order to conduct appeals proceedings, issued on 16 January, the Appeals Chamber decided by majority, that Laurent Gbagbo and Charles Blé Goudé shall remain in ICC custody pending coming decision on the merits of Prosecution Appeal against the Trial Chamber Decision reject the Prosecution request for a suspensive effect of the immediate release of the acquitted persons.



Blé Goudé © ICC

Therefore, the Appeals Chamber decided : “In the circumstances of the present case, there are therefore strong reasons to move the Appeals Chamber to exercise its discretion and grant suspensive effect, so

as to avoid that the implementation of the Impugned Decision pending appeal potentially defeats the appeal’s purpose because Mr Gbagbo and Mr Blé Goudé might no longer be available to be tried before the Court.”

In addition, in order to decide on the pending appeal against the impugned Trial Chamber Decision, the Appeals Chamber scheduled the dates of the submissions due on 23 January 2019 from the parties and participants on the Appeals and also decided to conduct a hearing on 1 February 2019 in order to receive potential additional arguments.

PROSECUTOR V. AL BASHIR (ICC-02/05-01/09)

Since 2009 and 2010, there have been two warrants of arrest against Al-Bashir who is still at large. The ICC cannot try an accused in absentia.

The Appeals Chamber of the International Criminal Court (AC), held a five-day hearing in September 2018 in the appeal of the Hashemite Kingdom of Jordan against the decision of Pre-Trial Chamber II entitled ‘Decision under article 87(7) of the Rome Statute on the non-compliance by Jordan with the request by the Court for the arrest and surrender of Omar Al-Bashir’ of 11 December 2017 ([ICC-02/05-01/09-309](#)) (“Decision”). In its Decision, Pre-trial Chamber II stated that Jordan failed to comply with the Court’s request seeking Al-Bashir’s arrest and surrender and rejected the arguments of Jordan claiming that Al Bashir, as a President of State, possesses immunity, and therefore could not arrest him. Following this Decision, on the request of Jordan, Pre-trial Chamber II granted a request of appeal of the Decision.

In September 2018, the judges of the Appeals Chamber decided to hear not only the arguments of the Prosecution and the State Representative of Jordan, but also invited the Representatives of the African Union, and the Representatives of the League of Arab States, and another eleven *amici curiae* to submit orally and in writing their observations. In addition to the five-day hearing, the parties and participants filed final submissions. The Parties and *amici curie* raised their arguments in order for the Appeals Chamber to



address the grounds of appeal and in doing so, answering the crucial question: do the ICC State parties have the duty to arrest and surrender President Al-Bashir? In other words, can Jordan refuse to arrest and surrender President Al Bashir according to a legal ground (customary international law or treaty-based immunities) to respect immunity to Sudan, a third country to the ICC Statute?

In order to decide on this appeal, the Appeals Chamber sent a series of questions in three groups to the participants and *amici curiae*, namely: (1) the applicable law and its interpretation and the immunity of the heads of state customary international law and treaty law; (2) the Security Council and resolution 1593, including the question of whether the Security Council has the power to lift, displace or neutralize the immunity of a Head of State under customary international law or conventional international law; and (3) Articles 86, 87 (7), 97 and 98 (2) of the Statute, and in particular the types of international agreements covered by Article 98 (2) of the Statute, and whether the 1953 Convention on privileges and immunities of the Arab League fall within its scope?

A decision from the Appeals Chamber is still pending.

PROSECUTOR V. PATRICE-EDOURAD NGAÏSSONA (ICC-02/05-01/09)

On 12 December 2018, Mr Patrice-Edouard Ngaïssona was arrested by French authorities after a warrant was issued by Pre-Trial Chamber II on the 7 December 2018.

Mr Ngaïssona is alleged to be the most senior leader of the “National General Coordinator” of the Anti-Balaka in the Central African Republic (CAR). The crimes against humanity charges against him include: murder and attempted murder, extermination, deportation or forcible transfer of population, imprisonment or other severe deprivation of physical liberty, torture, persecution, enforced disappearance and other inhumane acts. The war crimes charges are murder and attempted murder, torture, cruel treatment, mutilation, intentionally directing an attack against the civilian population, intentionally directing an attack against personnel, installations, material, units or vehicles involved in a humanitarian assistance, intentionally directing an attack against buildings

dedicated to religion, pillaging, enlistment of children under the age of 15 years and their use to participate actively in hostilities, displacement of the civilian population and destroying or seizing the property of an adversary. These crimes were alleged to have been committed in various locations in CAR, including Bangui, Bossangoa, the Lobaye Prefecture, Yaloké, Gaga, Bossemptélé, Boda, Carnot and Berberati, between at least 5 December 2013 and at least December 2014.

On 23 January, Mr Ngaïssona was transferred by the French authorities to the ICC Detention Centre. The initial appearance took place on 25 January 2019 and the confirmation of charges hearing was scheduled for 18 June 2019.

PROSECUTOR V. ALFRED YEKATOM (ICC-01/14-01/18)

On 11 November 2018, the Pre-Trial Chamber issued the “Warrant of Arrest for Alfred Yekatom” for the arrest of Alfred Yekatom for his alleged responsibility pursuant to articles 25(3)(a), (b) and (c) and 28(a) of the Rome Statute (“the Statute”) for: (i) the crimes against humanity of murder (article 7(1)(a) of the Statute), deportation or forcible transfer of population (article 7(1)(d) of the Statute), imprisonment or other severe deprivation of physical liberty (article 7(1)(e) of the Statute), torture (article 7(1)(f) of the Statute), persecution (article 7(1)(h) of the Statute), enforced disappearance (article 7(1)(i) of the Statute) and other inhumane acts (article 7(1)(k) of the Statute); and (ii) the war crimes of murder (article 8(2)(c)(i) of the Statute), torture and cruel treatment (article 8(2)(c)(ii) of the Statute), mutilation (articles 8(2)(c)(i) and/or 8(2)(e)(xi) of the Statute), intentional attack against the civilian population (article 8(2)(e)(i) of the Statute), intentional attack against buildings dedicated to religion (article 8(2)(e)(iv) of the Statute), enlistment of children under the age of 15 years and their use to participate actively in hostilities (article 8(2)(e)(vii) of the Statute), displacement of the civilian population (article 8(2)(e)(viii) of the Statute) and destruction of the adversary’s property (article 8(2)(e)(xii) of the Statute), committed in various locations in the CAR, including Bangui and the Lobaye Prefecture, between 5 December 2013 and August 2014.





Yekatom © ICC

On 18 November 2018, Alfred Yekatom arrived at the ICC Detention Centre.

The initial appearance of the accused took place on 23 November 2018. Yekatom was not required to enter a plea, however the Defence indicated that he had been tortured while he was detained in the Central African Republic.

The confirmation of charges hearing was scheduled for 30 April 2019.

PROSECUTOR V. DOMINIC ONGWEN (ICC-02/04-01/15)

The trial proceedings in the Dominic Ongwen case continues at the ICC with the start of the Defence phase of the trial in September. This follows the Prosecution conclusion of its case in April and the victim's presentation of its case in May 2018.

The Defence for Mr Ongwen made its opening statement on 18 September 2018, arguing that Ongwen could not be held responsible for the crimes charged because he suffered a mental illness or ho, he acted under duress, and, for some of the charges, he has an alibi. Ongwen's lawyers requested the Court to dismiss all the charges against him for crimes he is alleged to have committed as a commander of the Lord's Resistance Army (LRA) in Northern Uganda more than 13 years ago. They asserted that it is the LRA and its leader, Joseph Kony, who should be facing the 70 counts of war crimes and crimes against humanity that Ongwen has been charged with.

Krispus Ayena Odongo, Ongwen's lead lawyer told the court that the LRA abducted him when he was nine or 10 years old in 1988 and he was coerced into joining the group. Ongwen remained with the LRA because "he was gripped by the Stockholm Syndrome", and he felt, "he owed his life to Joseph Kony". At the start of the Defence case, it was clear that the Ongwen lawyers intended to rely on the aspect of spiritualism as a key tenet and strategy in the defense of Ongwen. Many of the Defence witnesses (the Acholi chief, D-150, Harriet Adong, James Okwot Ojwiya), that have so far testified have made reference to the spiritualism within the LRA. The Prosecution did not question any of the witnesses on the topic of spiritualism. The question on whether spiritualism within the LRA was myth or reality is a matter to be decided by the judges presiding over the trial.

Ongwen lawyers indicated that they may call about 66 witnesses to testify, a number slightly less than the 69 witnesses that the Prosecution called in its case. Among the witnesses that the Ongwen Defence intended to call are an expert in audio recordings; one on the formation of IDP camps in northern Uganda; and a political scientist who has studied the LRA and its "cosmological and military space." Other experts the Defense would likely call are an individual who had researched sexual and gender-based crimes; an expert on child-soldiers who is also a former child-soldier; an expert on military structure; and one on direction finding.

Key Filings and Decisions

On 15 October 2018, the Single Judge Bertram Schmitt of Trial Chamber IX issued his decision on the Defence Second Request for Protective Measures, which inter alia, rejected the request for protective measures for D-41 and D-42. The Single Judge found that the risk to the experts' patients was purely speculative, given there was no substantiation that the experts' patients would discontinue treatment or that their communities would harm them for seeking treatment from these experts on account of the fact that the patients received treatment from an individual having testified on behalf of the Defence. The Defence request for leave to appeal this decision was subsequently rejected.

On the same day, the Single Judge granted the Defence



request to add 79 items to its List of Evidence. Pursuant to the Decision on Prosecution Request for Detention Centre Call Data Related to the Accused and D-6 issued on 2 November 2018, the Single Judge of Trial Chamber IX granted the Prosecution request relating to call data communications between witness D-06 and Ongwen namely; the date and time of communications between the two persons since the arrival of the accused to the ICC detention centre until now, the duration of each communication and whether the contacts were initiated by Ongwen or witness D-06. The Single Judge denied the Prosecution request to order the accused not to communicate with D-06 until conclusion of her testimony.



Ongwen © ICC

Testimony of Defence Witnesses

To date, the judges have heard evidence from 14 Defence witnesses over a period of 19 days. The last Defence witness to testify in 2018 concluded his testimony on November 19.

Six of the defense witnesses testified about the role of spirits in Acholi culture or in the LRA and, more generally, about Acholi culture. The witnesses who testified about spirits and Acholi culture were Yusuf Okwonga Adek; Witness D-150; Harriet Adong; Jackson Acama; Witness D-06; and Kristof Titeca of the University of Antwerp.

The first Defence witness who testified on 1 October was one of them. He was a traditional Acholi leader who had worked on peace negotiations with the LRA leader Joseph Kony and had a very close relationship with him even before the peace process began. The witness testified that Kony had told him that he was gifted in receiving visits from spirits and that he had advised Kony to use that gift to make peace. The witness narrated how he reprimanded Kony for killing his deputy Vincent Otti and told Kony to stop killing his

commanders. He also testified that Acholi culture did not allow fighters to kill women or children during war. The fifth Defence witness, a former bodyguard of former Ugandan President Milton Obote narrated to the Court, how he worked with the LRA as a guest commander and in an advisory role as a member of the Uganda People's Army (UPA) for four years, including working as a liaison with the government of Sudan and diplomats based in Khartoum, the capital of Sudan. The witness told the Court that Kony was possessed by spirits and described how Kony used spirits to direct LRA fighters in battle.

A former fighter for the LRA testified on 1 November 2018 that that the group did not kill civilians or damage their homes when the LRA attacked the Abok camp for internally displaced (IDP) people 14 years ago.

A former aide to LRA leader Joseph Kony, Kenneth Oyet testified that about eight years ago in 2010, the Ugandan army ambushed a unit Kony led in north-eastern Congo at Doruma, but Kony evaded capture. His testimony on 5 November 2018 was the first time in the trial of Ongwen that a witness had testified about how close the Ugandan military got to capturing Kony.

A former member of the high command of the LRA told the Court on 6 November 2018 that in 2012 he used FM radio to appeal to Ongwen to leave the LRA. He testified that most of the time he was with Kony based in Sudan or Congo but had made rare visits to Uganda and on one of such visit was when Kony heard that Ongwen had been injured and he left his base in Sudan and crossed into Uganda to go and visit Ongwen.

A clansman of Ongwen, Joe Kakanyero told the judges on 8 November 2018, that Ongwen's family was not sure whether he was alive or dead for 28 years until Ongwen first appeared in the court in January 2015.

Witness D-06, a former "wife" of Joseph Kony described to the ICC her life with Kony and his power in the group. The witness who testified mostly in private session and with protective measures described to the court the extent of support the Sudanese government gave the LRA when the group was based in Sudan. During her testimony on 9 and 12 November 2018, the witness told the court that when she joined what she called Kony's household he had four "wives" and three



girls. She said the four “wives” were released from the LRA sometime after she joined Kony’s household because they were pregnant.

Witness D-119 testified on 13 November 2018 that she was made the “wife” of a fighter with the LRA at an early age and by the time she escaped the group in 2004 she had been “wife” to three men.

Expert witness Kristof Titeca told the Court after having interviewed 100 to 120 former LRA members that the importance of spirits in the LRA diminished once the group was pushed out of its bases in the southern part of Sudan in the early 2000s.

Witness selection in the ongoing Ongwen trial has been a subject of discussion since the trial started in December 2016. Contrary to the opinions of the community members in northern Uganda expressing mixed feelings about the choice of witnesses and experts who testified in the Prosecution phase of the trial, many community members held the opinion that the 14 witnesses so far called by the Defence as of 14 December 2018, were not being truthful in their testimonies.

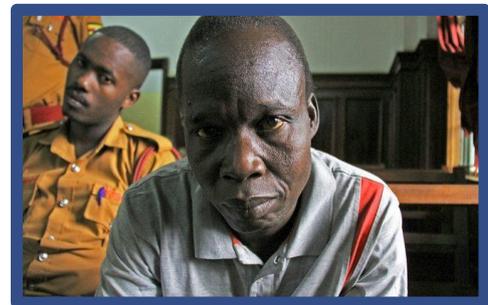
Other developing issues surrounding the Ongwen case

The Trial of Thomas Kwoyelo begins in Uganda’s International Crimes Division

On 24 September 2018, Uganda’s International Crimes Division (ICD) court opened the main trial in the case of Thomas Kwoyelo. This is the first ever case related to the conflict between the Lord’s Resistance Army (LRA)

and the government of Uganda to be tried before an Ugandan court. The trial has faced many challenges, and the issue of victims’ participation in particular reflects the difficulties and the unique nature of the ICD within Ugandan courts.

The African Commission on Human and Peoples’ Rights ruled that Uganda must pay former Lord’s Resistance Army (LRA) commander Thomas Kwoyelo for illegal detention and violation of rights to a fair trial. The ruling came at a critical point in Kwoyelo’s trial when the International Crimes Division (ICD) court in Uganda was set to start hearing testimony in November 2018.



Thomas Kwoyelo



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The International Criminal Court and Digital/Open-Source Evidence: Challenging the Standard of Proof of ICC and the Dilemma of Imperilling the Universal Right to Fair Trial and Personal Dignity of Parties

By Armis Sadri, graduate Law Student at American University, Washington D.C.

INTRODUCTION

As technology develops, new tools are continually being introduced that alter the nature and availability of courtroom evidence. The 20th century has seen a development from international awareness of international crime and human rights violations to the establishment of the International Criminal Court, and an indisputable influence of social media on the international discourse. Considering the especially beneficial nature of the digital/open-source evidence, the so-called open-source investigations are becoming more and more popular in the International Criminal Court (ICC).

Digital/Open-source evidence, which may come in the form of photographs, video and audio recordings, emails, blogs, and social media (e.g. Facebook, Twitter) poses challenges to the ICC's standard of proof, which varies depending on the stages of an investigation or a proceeding. According to the Rome Statute of ICC, the standard of proof for the issuance of an arrest warrant is reasonable grounds to believe, Article 58(1), the standard for initiating an investigation is reasonable basis to believe, Article 53(1)(a), but the situation may be different as regards the higher standards of substantial grounds to believe in case of confirmation of charges, Article 61(5) and beyond reasonable doubt for convictions, Article 66(3).

The right to a full equality to a fair and public hearing by an independent and impartial tribunal is intertwined with human dignity and is fundamental to the operation of rule of law. It is also necessary to evaluate the probative value of the evidence and weigh it against the prejudicial effect that the evidence might cause. Respecting the dignity of the victims, defendants and the witnesses is one of the cornerstones of the Rules of Procedure and Evidence of ICC, and it also has been confirmed in the Rome Statute of ICC, Article 69 (4&7), but the digital/open-source

evidence confronts in several ways the protected right to a fair trial that goes to the heart of human dignity and the nature of reliability, authenticity, credibility and impartiality standards.

Many scholars including Alex Whiting, Emma Irving, Keith Hiatt, and others including academic institutions such as the UC Berkeley's Human Rights Center have weighed in on analyzing the issue of what the ICC actually to accomplish its goals of deterrence and punishment and preserving the parties' right to fair trial and personal dignity, while confronting technology, like the internet, that has the capacity to challenge the ICC's authority.

Emma Irving, an Assistant Professor of Public International Law at the Grotius Centre for International Legal Studies of Leiden University, argues that the open source evidence is notoriously susceptible to problems of verifiability, which naturally affects its reliability in any kind of criminal proceeding and much work remains to be done to carve a way forward with regards to open source/social media evidence. This paper will study the reliability, impartiality and authenticity standards applicable to evidence in the Rules of Procedures and Evidence of ICC under the notions of the right to fair trial and personal dignity to explore whether the approach to open-source evidence should change depending on the stage of proceedings.

Alex Whiting, former Senior Trial Attorney with the International Criminal Tribunal for the Former Yugoslavia, asserts that the ICC remains a new institution that will continue to evolve. At present, it is looking for ways to take advantage of opportunities to succeed within its limited mandate, and as an extraterritorial court, it is increasingly finding ways to rely on extra-territorial evidence. He questions the ICC's effort to escape the constraints placed on it by



states, as it is turning towards technology. Will these efforts be enough for the Court to succeed and yet properly evaluate the probative value of the digital/open-source evidence and weigh them against the prejudicial effect that this evidence might cause, is a concern raised by Alex Whiting. This article's research question, which goes as follows: to ensure the personal dignity of parties in ICC's criminal investigations and prosecutions should it be the case that the higher the burden, the less weight is given to digital/open-source evidence? will try to address the posed concern.

DIGITAL AND TECHNOLOGICALLY DERIVED EVIDENCE

International criminal cases rely on a range of types of evidence. The ICC's legal texts, as well as its jurisprudence to date, place evidence in the form of witness testimony at the centre of trial proceedings. At the same time, additional forms of evidence form essential components of ICC cases, and there are multiple rationales for the Court to continue to develop its practices around working with evidence beyond viva voce witness testimony. Such evidence can include documents and records; photographs; aerial and satellite images; audio and video recordings; phone records; and forensic evidence, such as DNA, ballistics and blood tests; as well as a growing universe of digital and open source information from devices such as phones, computers and other digital devices. Digital evidence, created by digital technology and itself the record or trace of an action or event used for the purpose of proceedings, should be distinguished from the digitization of documents and records for the purpose of storing, organizing and presenting evidence, as for example, with the ICC's E-Court protocol.

Open Source Information is publicly available information, which is not defined by its specific source (whether digital or analog) or how that information is disseminated. Instead, it is information that can be accessed without the need to seek a warrant or employ other coercive or illegal measures. Open source information should be distinguished from open source intelligence, the latter of which is a subcategory of open source information, which is used for intelligence purposes. The ethics and legality of the use of open source information has no bearing on the term's definition. Online open source information is information that is publicly available on the inter-net.

Open source information may include (but is not limited to) that which is created, shared, or collated by journalists and news organizations; state agencies; political and military actors; commercial entities; international organizations; nongovernmental and civil society organizations; academics and academic institutions; private individuals; and groups of individuals with military, political, commercial, professional, and personal affiliations. Common types of online open source information include online news articles; expert and NGO reports; social media content; image and sound recordings; geospatial imagery and mapping data; documents, including public administrative records and leaked confidential documents; library holdings, and more.

Online investigation is the process of identifying, collecting, preserving, or analysing information on or from the internet, whether via open or closed sources, as part of an investigative process. The investigative process includes—but is not necessarily limited to—searching, reviewing, and deciding what to collect and what not to collect. This includes developing the initial query; de-fining search parameters; outlining security considerations; conducting the search (whether manual or automated), with an emphasis on locating and preserving the original or earliest posting (although “near duplicates” posted by later actors may provide critical information relevant to a case); recording the process, whether automated (as with Hunchly, WASP, the Internet Archive, Keep, or other tools), or manual (by keeping detailed notes), and preserving the materials. Information derived from an online investigation should be stored in two buckets, a “sandbox” for exploring what has been collected and its potential relevance to investigations and an “evidence vault,” which triggers disclosure obligations.

Online open source investigation is the process of identifying, collecting or analyzing information that is publicly available on or from the internet as part of an investigative process. In addition to the points made about open source investigations, like all investigations, and online investigations above, ethical considerations include the scope of consent provided by the platform or poster, as well as how data is managed and stored. Online open source investigations for international and national criminal investigations, like all investigations, can be conducted for diverse purposes, which may include (but are not



limited to) crime pattern analysis, victimization, leads development, and establishing a conflict's background or context and the identity of witnesses and other persons or organizations of interest; linking individuals with events; analyzing organizational structures (such as military, political, or other networks); to corroborating other evidence; establishing a timeline of relevant facts and; providing linkage evidence that ties high-level suspects to frontline perpetrators; and to tracking fugitives or material objects. In addition to establishing the *actus reus* (the physical act underlying the crime) open source information can help establish the requisite *mens rea* (mental state of the alleged perpetrator), such as the intent or knowledge.

The ICC's recent challenges relating to witness testimony illustrate one rationale for pursuing the collection and introduction of additional forms of evidence to support and as a partial alternative to witness testimony. The amended ICC RPE Rule 68 may further establish prior recorded testimony as an alternative to *viva voce* testimony. However, the circumstances in which such recorded testimony is allowed will remain limited. Moreover, digital and technologically derived evidence allows for information to be introduced in court that captures dimensions of a situation, event or location that may be beyond (contemporaneous) human perception or may provide a counterpoint to a witness's recollection. While an eyewitness account provides that witness's perception and recollection of an event, a video may capture elements that were outside a person's range of vision or that the individual has forgotten; a satellite or aerial image may show an overview of a larger area or an inaccessible location; and data such as phone records or computer records may show communications and patterns of communications relevant to an individual's activities and knowledge of events.

This information, when presented as evidence, has the potential to better enable judges to discharge one of their key functions: to ascertain the truth about crimes charged within the jurisdiction of the ICC. In addition, the increasing prevalence of digital technology, in particular, mobile phones, mobile phone cameras and computers, even in remote locations, makes such technologically derived evidence an inevitable component of the ICC's investigations.

Importantly, as with witness testimony, none of these additional forms of evidence can be considered infallible. A key component of using such evidence in international legal contexts has always been an assessment of its reliability by judges, often assisted by experts who explain the science or technology behind the evidence and the conditions under which it was created. Parties to the proceedings must also have the opportunity to probe the process of its creation, chain of custody and content. Experts may also be required to explain what information the evidence provides and does not provide, especially with unfamiliar and complex technologies, such as call data records (CDR) or satellite images. Presenting, challenging and weighing digital and other 'newer' forms of evidence requires all parties, as well as the bench, to have access to specialist knowledge and additional resources, including time, to complete any necessary investigations and legal arguments related to presenting or challenging this type of evidence.

To date, ICC cases that have gone to trial have remained focused on witness testimony, and in that regard, it is worth noting that the context of the conflict and crimes under investigation may largely dictate the types of evidence available. The first cases to complete trials have addressed crimes allegedly committed by armed groups operating in the eastern Democratic Republic of the Congo (DRC) and the Central African Republic in 2002–2003, when access to technology was more limited. More recent investigations in Kenya, the Ivory Coast and Libya have involved conflicts in contexts where the use of mobile phones, email and social media is widespread. For future investigations and trials, digital and technologically derived evidence creates enormous potential to enhance the truth-telling function of the ICC by providing new sources of relevant information and evidence, but also creates a host of new challenges, including security, verification and authentication.

To read the full article, please click [here](#).



Child soldiers: A severe type of child abuse and its implications for prosecution and restorative justice

By Dr. Alexandra D. Pentaraki PhD, CPsychol, AFBPsS

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I. Introduction

The exploitation of children, from child labor to their use as soldiers in wars, is well known throughout history. In 1914 Napoleon used many teenagers in his armed forces, in World War I 250,000 British underage soldiers fought in battle; Hitler Youth was a well known example of child soldiers while the incidences of child soldiers within the 21st century seem to rise significantly. It is not known how many children are combatants with state and non-state militaries worldwide but the number is considered to be in the tens of thousands and may be more than a hundred thousand. In 1996 it was estimated that more than 300,000 children were fighting as soldiers either with government armed forces or armed opposition groups worldwide (Machel, 1996). Since 2001, the use of child soldiers has been reported in 21 on-going or recent armed conflicts worldwide (Human Rights Watch, 2008). There are about eighty seven war conflicts that take place throughout the world and use children as child soldiers (Child Soldiers International, 2018a). Nearly half a million additional children serve in armies not currently at war. It is estimated that about 80 percent of conflicts that involve child soldiers include children below the age of fifteen with some of them to be seven or eight years old (Coalition to Stop the Use of Child Soldiers, 2004). The most usual practices that children are involved with are to serve as combat troops, spies, laborers, sex slaves, bomb makers, suicide bombers, messengers among others.

Child soldiers have been defined as *"any child—boy or girl—under eighteen years of age, who is part of any kind of regular or irregular armed force or armed group in any capacity"* (UNICEF, 2018). It is important to note that this age limit was established in 2002 by the Optional Protocol to the Convention on the Rights of the Child while prior to 2002 the age limit was set as fifteen years of age as being the minimum age for participating in armed conflict according to the 1949 Geneva Conventions and the 1977 Additional Protocols.

II. Potential causes of the increase in child soldiers throughout the world

Although the causes for the increased rates of child soldiers throughout the world have not been studied extensively, there are some causes that have been identified and seem to contribute to the increase of child soldiers worldwide. Children in modern conflict zones such as certain parts in Africa may be more easily recruited as the AIDS epidemic leads to the deterioration of family units and thus children often seem to volunteer to become child soldiers in order to survive. Another reason is that children are abducted in many countries and are used by their capturers as cheap and effective fighters. Additionally, some children may volunteer to become soldiers in order to take revenge about their families' abuse or murder. Nevertheless, there might be one more reason that may be related to the increased phenomenon of child soldiers such as the allowance of children in the military service of many countries worldwide and the cultural issues that relate to maturity. For instance, the UK armed forces enlist individuals from age 16 and accept applications from children aged 15 years and 7 months (British Army, 2018). Although the UK does not send child recruits to war zones until children turn 18 there are cases whereas the UK sent 22 personnel aged under 18 to Iraq and Afghanistan between 2003 and 2010 (Child Soldiers International, 2018b). In the United States, 17-year-olds are allowed to join the armed forces with the written consent of their parents. It is interesting to note that both the UK and USA strongly opposed a global minimum enlistment age of 18 during the negotiations on the Optional Protocol on the Involvement of Children in Armed Conflict (OPAC) (United Nations 2000a; United Nations, 2000b), a treaty that took place in the 1990s and the result of the negotiations specified a minimum age of 16.

Except of the children that are forcefully becoming soldiers there are also children that volunteer to become soldiers in their countries. Brett and Specht (2004) studied children in military organizations that



volunteered to become soldiers and found out that the most important factors that contributed to a child's decision to join an armed force were a) poverty including a lack of civilian education or employment, b) seeking new friends, c) revenge after seeing friends and relatives killed), d) expectations that a 'warrior' role provides a 'rite of passage' to maturity, e) the cultural normalization of war. Additionally, children may be more willing than adults to fight for non-monetary incentives such as revenge, duty, honor and prestige (Rosenblatt, 1983). Also, children may be more 'attractive' to war leaders than adults as long as they are more obedient, easier to control, deceive and indoctrinate (Beber and Blattman, 2013).

III. International law and child soldiers

The Convention on the Rights of the Children (UNICEF, 1989) defines a child as any person under the age of 18 while the Paris Principles define a child associated with an armed group or force as:

'...any person below 18 years of age who is or who has been recruited or used by an armed force or armed group in any capacity, including but not limited to children, boys and girls, used as fighters, cooks, porters, messengers, spies or for sexual purposes. It does not only refer to a child who is taking or has taken a direct part in hostilities' (UNICEF, 2007).

Article 77.2 which is an Additional Protocol to the 1949 Geneva Conventions (International Committee of the Red Cross, 1977), the Convention on the Rights of the Child (UNICEF, 1989), and the Rome Statute of the International Criminal Court (1998) prohibit state armed forces and non-state armed groups to use children under the age of 15 directly in armed conflict, known technically as 'hostilities' while such actions are now constitute as a war crime (Rome Statute of the International Criminal Court, A/CONF.183/9, Article 8, 2b xxvi). Specifically, the Rome Statute of the International Criminal Court (1998) defines as a war crime *'Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities'*(p. 8).

Most states with armed forces are bound by the standards set by the Optional Protocol on the Involvement of Children in Armed Forces (OPAC) (United Nations, 2000a; United Nations 2000b) that is a multilateral treaty that a) prohibits the recruitment of children under the age of 18 in the military, b) ensures that children no younger than 16 are recruited

in the military, c) prevents children aged 16 or 17 to take a part in hostilities, d) prohibits non-state armed groups to recruit anyone under the age of 18 for any purpose. However, States that are not bound to OPAC are reflecting the lower standards set by Protocol I of the Geneva Conventions that allows armed forces to use children over the age of fifteen in hostilities.

IV. Child soldiers as a severe type of child abuse and its implications for prosecution and restorative justice

A. Child soldiers and severe child abuse

Psychological abuse refers to a continuous failure of a carer to provide to the child an environment that is supportive and appropriate for the child's developmental needs. When a carer abuses emotionally and psychologically a child he uses strategies that result in children feeling as worthless, flawed, unloved, unwanted, endangered or only of value in meeting another's needs. In psychological maltreatment there is a lack of empathy and inability to tolerate the child's needs and perceptions, there is also rejection and physical forms of rejections and even sexual and non-sexual exploitation (Kairys, Johnson, and Committee on Child Abuse & Neglect, 2002; Pentaraki, in press). Psychological abuse also involves emotional abuse and neglect that involves actions that violate repeatedly the children's basic emotional needs and involve even actions that are damaging to the child as they do not take into consideration the child's developmental stage (Barnett, Manly, & Cicchetti, 1993). Overall, psychological abuse involves a lack of emotional care and emotional responsiveness (emotional neglect), actions of verbal and emotional abuse that lead to the damage of the child, a reduced psychological safety of the child and the creation of obstacles to the normal development of basic skills such as emotional regulation, self-acceptance and self-worth, autonomy and self-sufficiency. Psychological abuse underlies all other types of abuse such as physical abuse, sexual abuse, neglect and emotional abuse (Wolfe & Mclsaac, 2011; Pentaraki, in press).

The use of children in war can be considered as a severe type of child abuse and neglect as it is clear to the reader that the practices of using children as soldiers reflect the established criteria of child abuse and neglect. Specifically, by enforcing a child to become a soldier a capturer abuses a child as a) meets his own needs without taking into consideration the



child's needs, b) provides an unhealthy environment that it is not appropriate for the child while it contributes to the development of mental illness both in childhood and adulthood. It promotes violence, hate, and puts the child into danger as it cultivates to children to become psychopaths and anti-social personalities that have damaging consequences for themselves and society. Moreover, there are studies that showed that more than half of former child soldiers in Palestine and Uganda showed symptoms of Post-Traumatic-Stress Disorder while nine in ten children in Uganda showed depressive symptoms. Additionally, children exposed in extreme violence in armed conflict in Palestine were more likely to exhibit anti-social and aggressive behavior (Klasen et al., 2010; Boothby and Bronwyn, 2010). In Nepal, one study showed that there were gender differences in the experience of trauma and the manifestation of mental illness with former male child soldiers who experienced PTSD symptoms in comparison to former female child soldiers that experienced a combination of depressive and PTSD symptoms (PTSD symptoms especially among girls) (Kohrt et al., 2008), c) promotes gender based violence and child pregnancy as girls are also used as child soldiers as well as being sexually exploited by army leaders. Machel (1996) on the basis of 24 case-studies on the use of children as soldiers worldwide reported that gender-based violence was used as a weapon of war and it was practiced in order to promote ethnic cleansing through deliberate impregnation, d) promotes the use of drugs in children in order to fight in battle-a common practice that it is used today (Verhey, 2001). There are also reports that suggest that children are detained without any medical care, they are captured with or without their families while lawyers and relatives are banned from court hearings (Human Rights Watch, 2016).

Today, more than ever before, on the basis of psychological science, we know the damaging consequences of negative experiences and abuse that take place in childhood and how these affect negatively the child's psychological function, his development and the respective biochemistry of the developing brain that makes the child vulnerable to the development of psychopathology in childhood as well as in adult life. For instance, the emotional and sexual abuse that takes place in childhood has been associated with more severe depressive symptoms in adulthood (Negele et al., 2015; Pentaraki, 2012). Additionally,

individuals who had been abused in childhood had more chances to manifest anti-social behavior during their adulthood (Sousa et al., 2011). Among the few studies that have investigated the effect of child soldiering on childhood development and learning ability Boothby and Bronwyn (2010)'s meta-analysis reported that former child soldiers including those that were involved in fighting and others that had been associated with fighting forces had experienced learning difficulties due to the effects of their traumatic experiences. Fear, abuse, substance abuse, torture and exposure to violence were associated with the greatest damage related to their learning/cognitive difficulty and with increased chances to the manifestation of anti-social behavior, poor physical and mental health.

B. Implications for prosecution and restorative justice

The most effective way to stop the use of child soldiers is to stop the wars and conflicts in which they fight or at least try to prevent the outbreak of armed conflicts. Machel (1996) in the first report that was commissioned by the UN General Assembly about the impact of armed conflict on children suggested that conflict prevention is a way to avoid recruiting children in wars while the national governments, the international community and civil society (religion, scholars, community leaders, women's societies) are responsible for preventing the outbreak of armed conflict. Additionally, the establishment of early warning systems and contingency planning by the international community and its organizations can also help while education for peace in schools and universities can promote peace building, communication and negotiation among individuals and societies (Verhey, 2002; Machel, 1996).

Another important way to prevent and stop the use of child soldiers is prosecution. The International Criminal Court issues arrest warrants for leaders in certain parts of the world such as leaders of the LRA in Uganda among others. Nevertheless, even for prosecution to take place the inclusion of victims/witnesses in the judicial process is an important part both for the prosecution mechanism to be activated as well as for the future trial. It is of utmost importance to be able to assess victims/witnesses as soon as possible in order to assess the severity of psychological abuse and other types of abuse and neglect that they experience in order to estimate the damage inflicted upon them and



document the evidence. As children are more sensitive in their memories of their experiences due to their continuous development it is important to be assessed and interviewed as soon as possible after the last incidence of their experience as child soldiers. The sooner the assessment and the interview of the child the greatest the chances for the child to recall more memories (Gilbert & Fisher, 2006; La Rooy, Pipe & Murray, 2005). This finding is important in terms of interviewing children as witnesses (especially young children) as they show a reduced recall of memories when there are delays in their assessment and re-assessment. The delay of the interview or interviews of children that may take place from few months to years increases the chances for forgetting and leads to the reduction of the exact recall of memories up to 50% (La Rooy et al., 2010; Peterson, Moores & White, 2001; Salmon & Pipe, 2000). The findings suggest that the assessment of children that had been used as child soldiers and constitute witnesses in court proceedings can help prosecution significantly as far as their assessment takes place quickly in order to recall and record accurate and adequate information about the abusive experiences of children during their use as child soldiers.

Restorative justice procedures that are reflected on the International Criminal Court's work (e.g. the development and work of The Trust Fund for Victims) and within the local communities can also be another approach to prevent the use and further abuse of child soldiers even if some of them may have been alleged to be perpetrators of abuse. During restorative justice procedures the offender takes responsibility for his actions while a communication space is created that empowers the victim and brings healing. Restorative justice procedures within the local communities have also been reported to be effective in promoting peace building, forgiving, reconciliation and integration of former child soldiers (Kiyala, 2016). The victim's active participation in the criminal proceedings is important for tackling the fear towards the offender and increasing the assertiveness of the victim. The implementation of International Law and The Convention on the Rights of the Child can also protect child soldiers from further abuse while restorative justice procedures within prosecution of former child soldiers who have been alleged to be perpetrators of abuse may need to focus on the child's rehabilitation (physical, psychological and social) and not on

sentencing (UNICEF, 2016). However, it is important to note that the decision to either rehabilitate or sentence a child soldier depends on many factors that need to be assessed by a clinical psychologist-expert witness such as the age, the intellectual capacity, the manifestation of psychopathology, the psychological development and moral development/maturity of the child soldier. For instance, teenagers run a different stage in their maturation process in terms of moral development and cognitive ability in comparison to younger children (Pentaraki, 2017; Moshman, 2005).

V. Conclusion

The issue of child soldiers is of utmost importance and it needs to be addressed by the international community. Governments, courts and international and civic societies need to take into consideration the harmful psychological and physical effects of child soldiering on children's development and on society. The vulnerability of children due to their young age, poverty, the enlistment of children younger than 18 years old in the army, among others contribute to the increased phenomenon of child soldiering worldwide. The harmful effects of child soldiering reflect a severe type of child abuse that leads to the manifestation of psychopathology, sexual and drug abuse, gender based violence, cognitive impairment and trauma. The implications of child soldiering are enormous for both prosecution mechanisms and restorative justice. However, in order prosecution and restorative justice to be activated the psychological assessment of child soldiers/victims is essential for calculating the degree of damage inflicted on the child and to record evidence for court proceedings. The psychological assessment of child soldiers/victims needs to be made as soon as possible in order to collect a good amount of information that would be valid and reliable. Prosecution mechanisms and restorative justice procedures within the court and the local communities can prevent child soldiering and stop the further abuse of child soldiers worldwide. Efforts that draw the public attention against the practice of using children as soldiers in wars and armed conflicts and increase awareness worldwide such as the establishment of the *Red Hand Day* also known as the *International Day Against the Use of Child Soldiers* that takes place on the 12th February can also help.





EVENTS

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