



Citizens for
Global Solutions

IN UNCHARTED WATERS: SEEKING JUSTICE BEFORE THE ATROCITIES HAVE STOPPED

*The International Criminal Court in Uganda and
the Democratic Republic of the Congo*

Building Peace, Justice and Freedom in a Democratically Governed World

www.globalsolutions.org

June 2004

Acknowledgements

This report was researched and written by Maggie Gardner, International Law and Justice Program Manager. It was edited by Harpinder Athwal and Heather B. Hamilton. Research assistance was provided by Rebecca Wilkins. This report would not have been possible without the assistance and support of all those consulted or interviewed for it. We would also like to acknowledge with appreciation the Ford Foundation, which supports our work on the International Criminal Court.

About Citizens for Global Solutions

In today's interdependent world, our lives, our jobs and our families are increasingly affected by global problems, such as terrorism, climate change, war and infectious diseases. Because these problems are global in scope, it is vital that countries work together to solve them.

Citizens for Global Solutions, a grassroots membership organization, envisions a future in which nations work together to abolish war, protect our rights and freedoms, and solve the problems facing humanity that no nation can solve alone. This vision requires effective democratic global institutions that will apply the rule of law while respecting the diversity and autonomy of national and local communities.

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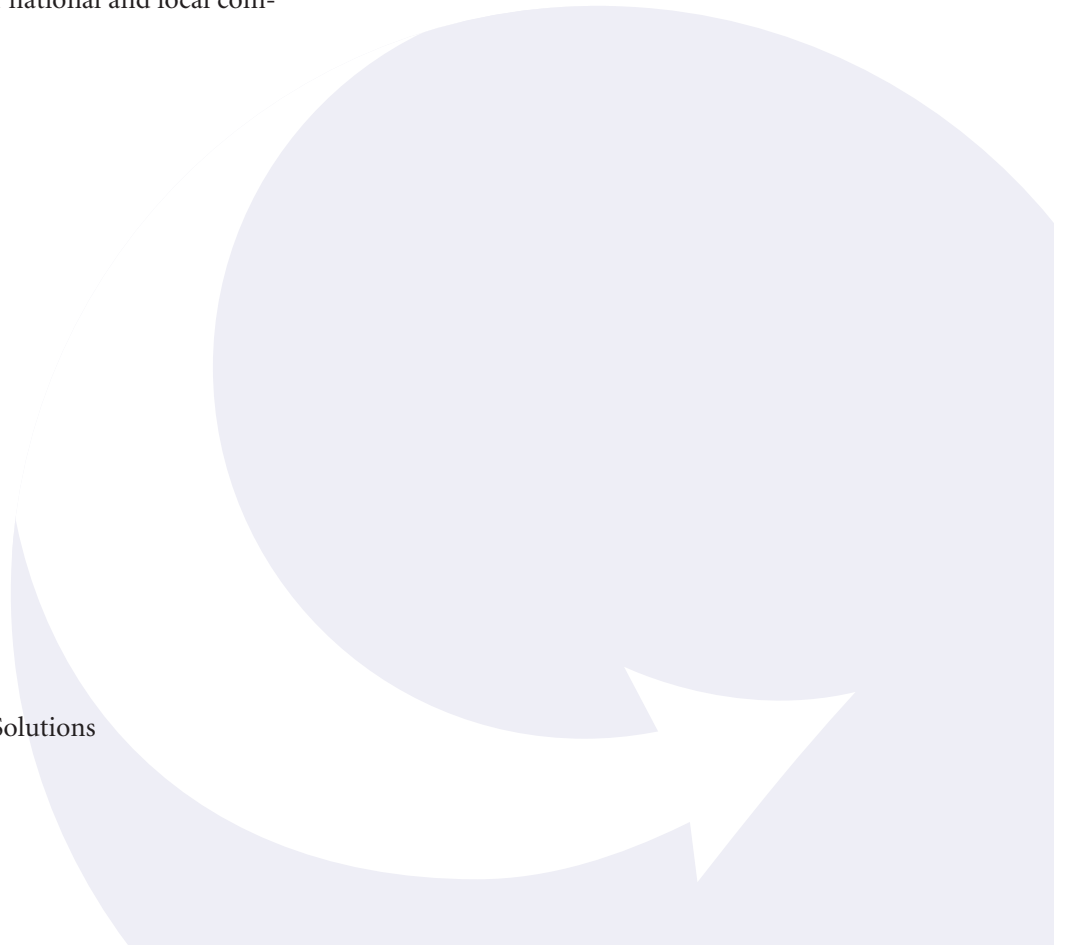


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“During this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity.”

— *Preamble of the Rome Statute of the International Criminal Court*

“We must learn: there is no safe haven for life and freedom if we fail to protect the rights of any person in any country of the world.”

— *ICC Prosecutor
Luis Moreno Ocampo¹*



Executive Summary

Uganda and the Democratic Republic of the Congo (DRC), two countries blessed with vibrant societies and abundant natural wealth, have nevertheless been wracked by long and brutal conflicts. The wars in northern Uganda and the Ituri district of the DRC have primarily targeted civilians through the routine and systematic practice of rape, mass murder, mutilation, forced labor and the use of child soldiers. These conflicts involve atrocities the scale of which the world cannot, and must not, ignore. Not only are these crimes universally unacceptable, but the environment which they help sustain — one of chaos, organized crime, money laundering and arms trading — is a threat to the security of us all.

One possible tool for helping resolve these conflicts and rebuild these societies is the new, permanent International Criminal Court (ICC). The ICC has jurisdiction over war crimes, crimes against humanity and genocide committed in Uganda or the DRC since July 1, 2002, if no national judicial system is willing or able to handle these cases. Building from the lessons of the ad hoc tribunals of the 1990s, the ICC includes extensive protections for victims and witnesses, including the possibility of reparations. Children and victims of sexual violence are assured especially sensitive treatment and assistance by the Court. The ICC's Prosecutor, Luis Moreno Ocampo of Argentina, has emphasized that he will work cooperatively with countries to pursue only those most responsible for the most serious crimes, and only when there is a clear failure of national courts to take up legitimate allegations of atrocities.

Uganda and the DRC, both full members of the ICC, have recently requested that the ICC investigate atrocities being committed on their territory. Prosecutor Moreno Ocampo is expected to announce in summer 2004 whether he will be opening formal investigations into these two situations. These referrals have raised hopes as well as concerns among civil society observers. Ideally, the ICC can help deter ongoing atrocities, end cycles of violence and restore the rule of law. If not pursued carefully and at the appropriate time, however, ICC action could disrupt peace negotiations or spark further violence. Representatives of humanitarian aid organizations, human rights advocates, local civil society members and international legal experts hope that ICC investigations in these countries could:

- Draw attention to oft-forgotten conflicts,
- Deter ongoing crimes,
- Force government and military reform, and
- Satisfy the desire for justice among the civilian population.

If the ICC were to launch full investigations, it would have to tread carefully so as to advance, not harm, the possibilities for peace. Observers expressed concern that the ICC must:

- Avoid any semblance of partiality,
- Ensure investigations yield visible results in a timely fashion,
- Work locally and communicate with the affected population,
- Ensure that justice efforts promote a sustainable peace, and
- Work with local and national civil society to determine the most appropriate mix of justice and reconciliation mechanisms.

The ICC's work will require close cooperation with the international community, which observers stressed must:

- Assist in meeting the practical, on-the-ground needs of successful investigations and prosecutions,
- Supplement the ICC with other justice efforts, and
- Use diplomatic leverage to help further peace and justice in Uganda and the DRC.

With these hopes and concerns in mind, Citizens for Global Solutions believes that, if applied carefully and with the full use of its provisions for victims and witnesses, the ICC could play a positive role in furthering the resolution of these conflicts while laying the groundwork for long-term reconciliation and stability. Both the ICC and individual nations will have to evaluate these situations carefully and cooperate effectively if the application of justice in the DRC and Uganda is to further the prospects of peace. If done correctly, the prosecution of those most responsible for atrocities at the ICC could help deter ongoing crimes while fostering the rule of law and societal reconciliation. Such an outcome would provide the international community with an important new strategy for building global peace and security.

Recommendations

For the International Criminal Court:

- Carefully weigh the potential impact of judicial action on the peace process in these countries, especially if there is a significant breakthrough in negotiations;
- Work locally, involve civil society, and conduct extensive outreach with the affected populations;
- Investigate all sides fairly and transparently;
- Ensure that investigations yield visible results soon, and keep people in these countries informed of the Court's progress;
- Ensure the safety and confidentiality of all witnesses;
- Help all victims and witnesses obtain appropriate medical and psychological support;
- Work with the national governments to divide caseloads, thereby preventing an "impunity gap"; and
- Work with other countries to freeze the assets of those indicted, so that if found guilty, those who profited from these wars will be forced to pay restitution to those they terrorized.

For the international community:

- Cooperate with ICC investigations, especially in helping track the "elite networks" that are fueling and profiting from the war in Ituri;
- Enforce ICC arrest warrants against any wanted person who enters their territory;
- Provide MONUC with adequate support and mandate to provide security for ICC investigators and witnesses and to help apprehend those wanted by the Court;

- Support domestic judicial reform and other justice and reconciliation mechanisms in these two countries to leverage and complement the work of the ICC;
- Pressure President Museveni to reform the Ugandan army and to more actively seek a negotiated settlement to this conflict; and
- Pressure the Khartoum government to cut off all support to the LRA, prosecute those who continue to aid the LRA, and make a good-faith effort to enforce any arrest warrants issued by the ICC.

For the United States:

Even though it currently does not support the ICC, the U.S. should help the Court in cases where doing so will further peace and justice in war-torn regions.

- Once the ICC has announced specific cases, the President should waive the standing prohibition against cooperation with the ICC so the U.S. can help bring these warlords to justice.
- The U.S. should continue to investigate all U.S.-based companies and individuals implicated by the UN Panel of Experts in the illegal exploitation of the DRC's resources.
- The U.S. should also increase its pressure on Uganda to resolve its war peacefully, while encouraging Sudan to stop supporting, once and for all, the rebels that are terrorizing northern Uganda.

Introduction

Uganda and the Democratic Republic of the Congo (DRC) should be prosperous, flourishing countries: both are blessed with an abundance of natural wealth, Uganda with fertile soil and the DRC with vast mineral deposits. In Uganda, President Yoweri Museveni has led the country in recent years to higher levels of education and lower levels of HIV/AIDS infection. Yet both countries have endured cycles of national violence, repression and coups, and both are currently wracked by destructive conflicts that have engulfed entire civilian populations. These lengthy conflicts have been especially gruesome, including the routine and systematic practice of rape, mass murder, mutilation, forced labor, and the use of child soldiers. Villages have been destroyed, local economies ruined, entire generations left unschooled and without employment, the populations traumatized and on the run. In Uganda, children trek nightly to towns to avoid abduction by the rebel forces; in the DRC, residents of entire villages have been systematically slaughtered. With the crops pillaged and no one left to tend the fields, and with the internally displaced populations concentrated in squalid and unprotected camps, these regions also face an ongoing humanitarian crisis of starvation and preventable disease.

The conflicts in northern Uganda and the Ituri district of the DRC involve atrocities the scale of which the world cannot, and must not, ignore. Not only are these crimes universally unacceptable, but the environment which they help sustain — one of chaos, organized crime, money laundering and arms trading — is a threat to the security of us all. The international community has many tools at its disposal to help end this violence, one of which could be the investigation and prosecution of these crimes by the new International Criminal Court (ICC). Many observers have high hopes for what the ICC could achieve in such sit-

uations. By demonstrating that those most responsible for these crimes will indeed be held accountable, ICC investigations could help deter ongoing atrocities. Enabling victimized populations to see their persecutors brought to justice could also help end cycles of violence and retribution. Further, replacing impunity with the rule of law is a fundamental step towards restoring stability and prosperity to these regions. To this end, the governments of Uganda and the DRC — both of which have ratified the ICC's Rome Statute and are full members of the Court — have recently referred their respective conflicts to the ICC for the investigation and potential prosecution of massive atrocities.

These are crimes of the magnitude for which the ICC was designed, and they will likely provide the first cases to come before the Court. The ICC's Prosecutor is currently examining both situations and is expected in the coming months to announce whether he will launch formal investigations. As with all massive atrocities and unstable environments, however, these situations must be handled carefully to ensure the achievement of both justice and peace. Some civil society groups have raised concerns that ICC involvement at the present time could disrupt peace negotiations or spark further violence. Taking these hopes and concerns into account, this report explores the intersection of peace and justice in Uganda and the DRC and considers what role, if any, the ICC should play. The report provides background on the structure and policies of the International Criminal Court, as well as on both conflicts. It then offers an overview of the potential role of the ICC in Uganda and the DRC and outlines the ICC's pre-trial process. The report concludes with a discussion of the possible benefits of ICC action and considerations for ensuring effective ICC involvement in Uganda and the DRC, based on interviews with civil society representatives.

The International Criminal Court

The International Criminal Court (ICC) is the first, and only, permanent international court capable of trying individuals accused of genocide, war crimes, and crimes against humanity when no national jurisdiction is willing or able to do so. These crimes must be widespread and systematic, and the ICC is mandated to pursue those most responsible for their commission. Created by the Rome Statute, the ICC can only try crimes committed after the Statute entered into force on July 1, 2002. In addition, the ICC is limited to crimes committed on the territory of or by the national of a country that accepts the ICC's jurisdiction; currently 94 countries belong to the Court. (The only exception to this limited jurisdiction is through a UN Security Council resolution under Chapter VII of the UN Charter, referring a situation to the Court that is a threat to international peace and security.)

Based in The Hague, the Netherlands, the ICC has 18 judges and a chief prosecutor, Luis Moreno Ocampo of

Argentina, all elected by the member states. These states govern the ICC through the Assembly of States Parties, a representative, democratic forum that meets at least once a year. Member states and the UN Security Council can refer cases to the Court, at which point the Court determines whether the case is admissible and warrants formal investigation. A case is admissible only if no country with jurisdiction is willing or able to investigate and, if necessary, prosecute the crime. This fundamental principle of the ICC's structure is termed "complementarity" because the ICC is meant to "complement" national judiciaries by providing justice when the alternative is no justice, for example when a government is purposefully shielding individuals from accountability or the country's entire court system has been destroyed by recent conflict. The ICC, in this respect, is like a global safety net to catch large-scale criminals who would otherwise fall through the cracks. This concept of complementing national jurisdiction is so central to the creation of the Court that negotiators referenced it three times over in the Rome Statute's preamble,² on top of its explicit inclusion in the Statute's body.³

ICC at a Glance

What: The International Criminal Court (ICC) is the first and only permanent international court that can hold individuals accountable for genocide, war crimes and crimes against humanity when no national court is willing or able to do so. It enforces existing international law, such as the Geneva Conventions, the Genocide Convention, and the Convention against Torture. As of May 24, 2004, 94 countries are full members of the ICC.

When: The ICC can only try crimes that occurred after July 1, 2002, when its Rome Statute took effect.

Where: The ICC is based in The Hague, the Netherlands.

Who: The ICC has 18 judges elected by the member states. The member states also elect the Chief Prosecutor and Deputy Prosecutors.

How: The ICC is fully funded by its member states, which elect the key Court officials, oversee the budget, and must approve any amendments to the ICC's Rome Statute. It relies on its member states to help locate and arrest individuals wanted by the Court. The Netherlands has agreed to host the ICC's jail in The Hague.

Why: Following the Nuremberg Trials and the ad hoc tribunals for Yugoslavia and Rwanda, the international community saw a need for a permanent court that could serve as a deterrent to future atrocities and react more quickly to crimes like genocide as they occur.

If no referral is forthcoming for a given situation of grave concern, the Prosecutor can analyze evidence submitted by individuals and civil society groups and initiate an investigation on his own.⁴ In this case, however, not only would the situation still have to fall within the jurisdiction of the Court and be of significant gravity to warrant ICC involvement, but such an investigation would also require the approval of a three-judge panel. Besides being more complicated, this route poses practical problems, as state cooperation is necessary to provide security for investigators and witnesses, collect evidence on the state's territory, and enforce ICC arrest warrants (the ICC itself has no power to arrest individuals).

Policies of the Office of the Prosecutor

This need for state cooperation has shaped the early policies of the Office of the Prosecutor.⁵ In general, the Prosecutor believes that "national investigations and prosecutions, where they can properly be undertaken, will normally be the most effective and efficient means of bringing offenders to justice"; this view has led to a policy of active outreach to countries to encourage national action on serious allegations.⁶ Because of the Court's limited resources, the Prosecutor has stated he will only pursue situations where there is "a clear case of failure to take national action." Even then, he will take into account the

feasibility of an investigation in a given country — whether the safety of investigators and witnesses can be assured, for example. For this reason, he has prioritized seeking formal state referrals of situations as a means to guarantee national assistance in investigations and the enforcement of arrest warrants.

As the number of cases that the Court can pursue will be limited, the Prosecutor has emphasized that he will focus resources on pursuing only “those who bear the greatest responsibility” for the atrocities. To ensure that there is not an “impunity gap,” where others who hold a lesser degree of responsibility for the crimes escape justice, the Office of the Prosecutor will coordinate with national courts to help bring all responsible to account. This in turn could help further national judicial reform. (Already when countries become ICC members, they are expected to implement the Rome Statute, which for many countries includes updating their legal codes and providing greater protections for the rights of the accused.⁷) Because cooperation with state authorities will be such a significant factor of the Prosecutor’s work, he has created an entire Jurisdiction, Complementarity and Cooperation Division within his office to ensure close communication and collaboration with member countries and other actors, such as local civil society and international NGOs (non-governmental organizations).

Protecting and Empowering Victims and Witnesses

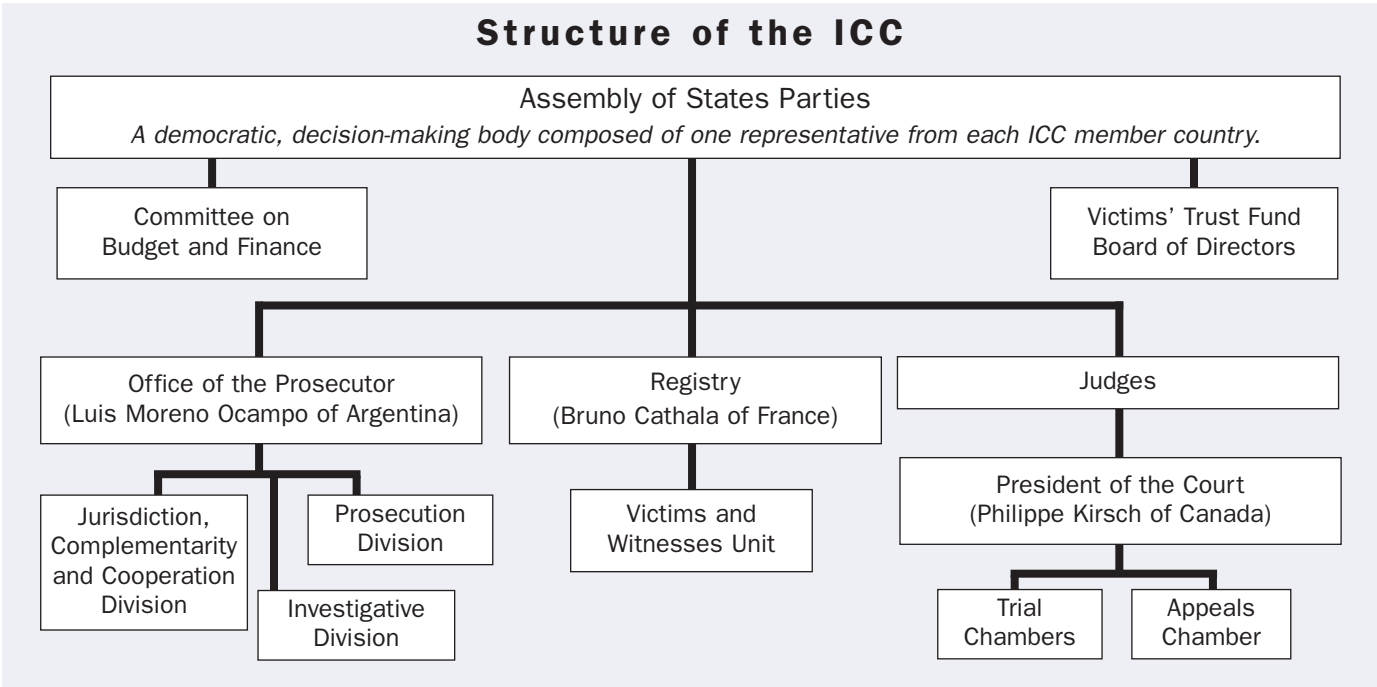
The ICC benefited from the lessons learned by other justice mechanisms during the 1990s, specifically the ad hoc tri-

“As a consequence of complementarity, the number of cases that reach the Court should not be a measure of its efficiency. On the contrary, the absence of trials before this Court, as a consequence of the regular functioning of national institutions, would be a major success.”
— ICC Prosecutor Luis Moreno Ocampo⁸

bunals for the Former Yugoslavia and Rwanda. The ICC, for example, can locate trials in the country affected,⁹ a recognition that communities need to feel connected to the application of justice. Another significant result of this learning curve is the inclusion of a broad spectrum of protections for victims and witnesses in the ICC’s Rome Statute, carefully balanced with guarantees for a fair trial for the accused. Written into the Statute and its supplemental Rules of Procedure and Evidence are revolutionary provisions to protect victims, enable them to participate in the trial process, and provide for reparations.

Protection

The Registry, the administrative branch of the ICC, includes a distinct Victims and Witnesses Unit charged with protecting and counseling those who appear before the Court, as well as providing security for those at risk due to testimony.¹⁰ To protect those who testify, the Court will work with countries to ensure witnesses’ short- and long-term security, including possible relocation.¹¹ The confidentiality of victims and witnesses is protected in general,¹² and in some



cases testimony can be given in closed hearings, through videoconferencing, or through other means to protect the speaker's identity.¹³

The staff of all branches of the Court — the judges, the Office of the Prosecutor, and the Registry — must include experts on trauma, especially the trauma experienced by child victims and victims of sexual violence.¹⁴ The Victims and Witnesses Unit is charged with training Court staff and

Board of Directors of the Victims' Trust Fund

Her Majesty Queen Rania Al-Abdullah of Jordan: Queen Rania chairs Jordan's Royal Commission on Human Rights. Internationally, she serves on the Board of Directors of The Vaccine Fund, The World Economic Forum, The International Youth Foundation and The Foundation for International Community Assistance. In addition, she has established the first center in the Arab world dedicated to combating child abuse and has actively promoted educational reform and IT learning.

His Excellency Dr. Oscar Arias Sánchez of Costa Rica: The former president of Costa Rica, Dr. Arias Sánchez won the Nobel Peace Prize for his efforts to end the cycle of violence in Central America through what is widely known as the "Arias Peace Plan." He is the author of several books about peace and politics, and he founded the Foundation for Peace and Human Progress with the monetary award from the Nobel Prize.

His Excellency Mr. Tadeusz Mazowiecki of Poland: Mr. Mazowiecki was one of the founders of Poland's Solidarity Movement and served as the first Prime Minister of Poland in the post-communist era. He was the founder and the chairperson of the Democratic Union, which later became the Union for Freedom. In the international arena, he served as a UN Special Rapporteur on the Situation of Human Rights for the Former Yugoslavia. At present he is the Chairman of the Polish Robert Schuman Foundation.

Madame Minister Simone Veil of France: Madame Veil was elected as first President of the European Parliament by universal suffrage in 1979. In France, she has held prominent positions with the Ministries of Health and Social Security. As an Auschwitz survivor, she is currently President of the Foundation for the Memory of the Shoah, and she has been a Member of the French Constitutional Council since 1998.

His Eminence Archbishop Emeritus Desmond Tutu of South Africa: Archbishop Tutu gained international prominence in 1984 when he was awarded the Nobel Peace Prize for his work toward a democratic and just society without racial divisions. He continued to facilitate South Africa's transition from Apartheid by serving as Chairperson of South Africa's Truth and Reconciliation Commission.

interested parties (i.e., countries involved in proceedings) in issues of "trauma, sexual violence, security and confidentiality";¹⁵ it also must train its own staff on ensuring "victims' and witnesses' security, integrity and dignity, including matters related to gender and cultural sensitivity."¹⁶

Unlike earlier international tribunals, the ICC enables victims to have their own legal representatives,¹⁷ who can attend hearings and share the victims' concerns at appropriate points in the trial process. In recognition that the prosecution's interests might not always align with those of the victims, these representatives are meant to help advise victims about their rights and advocate for their concerns throughout the proceedings. The Registry is charged with informing victims and witnesses about their rights¹⁸ and helping them obtain legal advice,¹⁹ including through financial assistance when appropriate.²⁰

Participation

To help victims feel connected to the judicial process, the ICC's Rome Statute includes provisions to enable victims to track the proceedings and share their views when appropriate. Victims can submit evidence directly to the Prosecutor;²¹ should the Prosecutor decide not to investigate, he must notify those who submitted information in a manner that protects their privacy and safety.²² Victims or their legal representatives must be notified of hearings, decisions, motions and the like.²³ Where the personal interests of the victims are affected, their views and concerns can be presented and considered when deemed appropriate by the Court.²⁴

Reparations

To help justice extend beyond the courtroom, the ICC's judges, in sentencing convicted persons, can order the payment of reparations to the victims.²⁵ While money cannot fully amend for the suffering of victims, it can help cover their losses, aid their rehabilitation, and help them start to build a new life. Because of the personal nature of such a determination, the Court must publicize the proceedings as much as possible²⁶ to ensure that the views of victims are taken into account.²⁷

To help collect and disperse reparations, the ICC includes an unprecedented Victims' Trust Fund, established under Article 79 of the Rome Statute.²⁸ This fund can also accept voluntary donations from individuals, organizations, and countries to supplement the money collected through fines and forfeitures imposed on those found guilty by the Court. Reparations could be provided directly to "victims of crimes within the jurisdiction of the Court, and of the families of such victims,"²⁹ but collective awards could also be made to aid entire communities that have been affected. Such communal projects could include building memori-

als, funding rehabilitation centers, and providing community reconciliation programs. The Fund is managed by a volunteer Board of Directors, elected by the Assembly of States Parties.

Children and the ICC

Children who have survived conflict are usually traumatized, and participating in legal proceedings can reopen these wounds. In recognition of the special needs of children, the negotiators of the Rome Statute included strong provisions to protect children in conflict, especially those who come into contact with the Court.

First, the ICC cannot try anyone who was under the age of 18 at the time of the alleged crime.³⁰ This would exclude child soldiers from the jurisdiction of the Court. Indeed, rather than treating child soldiers as criminals, the ICC considers them victims, formally outlawing the use of child soldiers.³¹ This crime includes uses of children by armed groups during conflict for non-combat activities, such as forced labor or sexual slavery. Sexual violence and slavery is also considered as a separate war crime and as a crime against humanity by the ICC,³² and enslavement and the trafficking of children are included as crimes against humanity.³³ In addition, the definition of war crimes includes humanitarian crimes, such as the purposeful impeding of relief supplies and intentional attacks on aid workers, which cause preventable child deaths in conflicts.³⁴

In addition to the protections and support afforded all victims and witnesses who come in contact with the ICC, all branches of the Court must also give special consideration to the needs of children. The children who will come in contact with the ICC may have witnessed the killing or harming of family members, endured physical abuse, lived through extreme conditions, or experienced any number of other traumas. It is therefore of the utmost importance that they are not further traumatized when they are asked to retell the horrors they have survived. All witnesses before the Court are provided medical and psychological care;³⁵ in addition, the Victims and Witnesses Unit can provide a “child-support person” to assist and protect a child witness throughout the proceedings.³⁶ If a child testifies, a psychologist, family member, or legal representative can be present to help comfort and support the child,³⁷ and the testimony can be given in a closed hearing or through other special means to ensure that the child is not intimidated by his or her surroundings.³⁸

The ICC judges can order those convicted to pay reparations to the children they have harmed, or to the orphans of those they have killed; these funds could help pay for medical and psychological care, provide school fees for orphans, or in other ways meet the special needs of child survivors. Volunteer donations made to the ICC’s Victims’ Trust Fund can also be used to meet these needs.

Victims of Sexual Violence and the ICC

In conflict, widespread acts of sexual violence not only traumatize the victims, but also have broader social implications, including the spread of STDs and the disintegration of families because of the social stigma often associated with rape. Rape was not considered a war crime until the ad hoc tribunals of the 1990s; the ICC’s Rome Statute strengthens this legal development by including acts of sexual violence as specific crimes and stipulating protections for the victims of such crimes.

While the ICC covers several gender-related crimes, of particular import for the DRC and Uganda is the inclusion of “rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity” as both a crime against humanity and a war crime.³⁹ In recognition of the trauma of such sexual violence, all three branches of the Court are charged with giving special consideration to these victims and taking “gender-sensitive measures” to ensure that their participation and testimony does not become another traumatizing experience.⁴⁰ Among other provisions, this could include testifying in closed hearings or through special means to ensure the victim’s privacy.⁴¹ Also, to protect victims of sexual violence from “being put on trial” by overzealous defense attorneys, their personal sexual conduct cannot be introduced in trial,⁴² they do not have to produce other witnesses to corroborate their testimony,⁴³ and the definition of “consent” (to sexual intercourse) is strictly limited.⁴⁴ Judges must also control the questioning of such witnesses so as to avoid harassment or intimidation.⁴⁵

Finally, the ICC judges can order convicted criminals to pay reparations to those they raped, sexually assaulted, or enslaved. This money could pay for medical and psychological care; provide resources for the victims to restart their lives, educations, or businesses; or meet other special needs that they have. Volunteer donations made to the ICC’s Victims’ Trust Fund could also be used to meet these needs.

DRC in Crisis



The Democratic Republic of the Congo (DRC) has suffered repeatedly at the hands of those seeking to profit from its vast natural resources. In pursuit of the riches of rubber, King Leopold II of Belgium ruled Congo as a personal colony with extreme brutality, leading to the deaths of millions of Congolese.⁴⁶ Even after Leopold was forced to hand over control of the Congo to the Belgian government in 1908, conditions for the Congolese did not significantly improve. In 1965, five years after the Congo gained independence from Belgium, Joseph Mobutu led a military coup and assumed the presidency, renaming the country Zaire and himself Mobutu Sese Seko. Mobutu controlled Zaire for 32 years, during which time he amassed a personal fortune of over \$4 billion while simultaneously dragging Zaire into economic ruin and creating a huge national debt.

In 1994, the violence of the Rwandan genocide spilled over the border into the Congo. Ostensibly to protect their bor-

ders from rebel incursions, Rwanda and Uganda helped a Congolese rebel movement headed by Laurent-Désiré Kabila overthrow the Mobutu government in 1997.⁴⁷ (Kabila renamed the country the Democratic Republic of the Congo.) After only a very brief peace, Kabila's relationship with Rwanda and Uganda soured, igniting a second war in 1998 in which Rwanda and Uganda backed rebel movements against their former ally while Namibia, Angola and Zimbabwe sent troops to support Kabila. The Rwandan-backed *Rassemblement Congolais pour la Démocratie* (RCD) and the Ugandan-backed *Mouvement pour la Libération du Congo* (MLC) soon controlled vast swaths of eastern Congo. In 1999, all six countries, as well as the RCD and MLC, signed the Lusaka Peace Accords, which called for a ceasefire and established the Inter-Congolese Dialogue, a framework for future peace negotiations. The UN Security Council established a peacekeeping mission, MONUC,⁴⁸ to monitor the Lusaka Accords, but all sides soon broke the ceasefire, and fighting continued.

Further progress on the peace process was limited until 2001, when Kabila was assassinated by his bodyguards. Upon assuming the presidency, his son Joseph Kabila revived the Inter-Congolese Dialogue and started talks with Uganda and Rwanda to pull their troops out of the DRC. Years of continued negotiations attempted to incorporate the main rebel movements, civil society groups and the political opposition into the final peace settlement. After the DRC signed bilateral accords with Uganda and Rwanda in 2002, a comprehensive power-sharing agreement (the “Global and Inclusive Agreement on the Transition in DRC”) was signed in Pretoria, South Africa, in December 2002. This agreement specifically prohibits amnesties for war crimes, crimes against humanity and genocide, but it also paved the way for the integration of rebel leaders accused of such crimes into the transitional government. The Inter-Congolese Dialogue formally concluded in April 2003 with the adoption of the new constitution establishing the transitional government. This Government of National Unity, in which Kabila continues as president and leaders of four main rebel movements serve as vice-presidents, took over from the existing Kabila government in July 2003; national elections for a permanent government are scheduled for July 2005. In the end, this second war (1998-2003) cost 3.3 million lives and displaced another 3.4 million civilians.

While the war in the Democratic Republic of the Congo might be over on paper, however, it rages on in the country’s northeast. In the Ituri region, home to five million people, fighting continues among government forces, Rwanda, Uganda, and their local armed proxies.⁴⁹ All sides target the civilian population, which suffers from murder and mutilation, economic exploitation, the complete collapse of government services, and the blocking of humanitarian aid. Between July 2002 and March 2003 alone, Human Rights Watch estimates that at least 5,000 civilians died from direct violence in Ituri.⁵⁰

While Uganda and Rwanda have nominally withdrawn most of their troops from the region, they continue to arm and back a web of rebel movements in Ituri. Uganda especially has been singled out by NGOs and UN experts for its role in feeding the instability of the region by arming and training multiple factions. The local armed groups operate with complete impunity and exploit growing ethnic tensions, primarily between the Hema and the Lendu, to further their campaigns. A land dispute between Lendu cultivators and Hema cattle farmers in 1999, which the failing court system in Ituri was unable to adjudicate fairly, helped set off a cycle of ethnically based attacks.⁵¹ Armed factions have manipulated these tensions through propaganda and civilian massacres of opposing ethnic groups. The region’s

many other ethnic groups (especially the Bira, Alur and Nande) have been pulled into the conflict, some being targeted by both Hema-backed and Lendu-backed militias. While ethnic animosity is increasingly used as an excuse for attacks, the conflict is largely fueled once again by the riches of the region: from Ituri’s vast mineral resources to its trade with neighboring Uganda, the region holds great wealth for whomever controls it. Many of the massacres, therefore, occur near gold or diamond mines or in cities important for regional trade.⁵²

Because MONUC was sent to Ituri to monitor a peace that never took root in the northeast, it was unprepared to counter growing attacks against civilians. After the local capital of Bunia descended into violence in May 2003 despite the presence of MONUC peacekeepers, the UN Security Council approved a temporary Interim Emergency Multinational Force (IEMF) headed by France to stabilize the town. In July 2003, the Security Council also gave MONUC a Chapter VII mandate, which authorizes the use of force, and increased its size to 10,800 troops, 4,800 of which are stationed in Ituri.⁵³ While the IEMF and the strengthened MONUC were fairly successful in securing Bunia, massacres and attacks continue throughout the countryside.

Status of the Peace Process

The Government of National Unity remains fragile, and important questions, such as who controls the army, have yet to be settled. Assessment of the interim government is mixed, but there is general consensus that it will at least “lurch on” for now.⁵⁴

In Ituri, however, the fighting continues. An Ituri Peace Commission (*Commission de Pacification de Ituri*, CPI) was established by the Luanda Agreement⁵⁵ to create an interim governing structure for Ituri. After many delays, the CPI finally convened in April 2003, bringing together representatives from armed factions, local civil society groups and other stakeholders to create the Ituri Interim Administration.⁵⁶ Soon after the CPI concluded, however, Uganda pulled its troops rapidly out of Bunia; with MONUC unprepared to stabilize the city, it spiraled into chaos as armed factions fighting for control of the city left hundreds of civilians dead. Continuing violence has prevented the Ituri Interim Administration from functioning in any real sense, undermining its authority and leaving a de facto political vacuum in Ituri.

Because the Ituri Interim Administration was never able to solidify its control of the region, the UN has more recently encouraged the central government to assert more direct

Armed Groups in Ituri

In Ituri, armed factions are constantly emerging, splintering and switching allegiances. The Kinshasa government, Rwanda and especially Uganda have provided arms, training and other support to many of these groups at different times.

UPC: Union des Patriotes Congolais

A primarily Hema and Gegere force, the UPC was originally backed by Uganda, but then turned to Rwanda and the Rwandan-backed RCD-Goma for support. The UPC has fought several times for control of Bunia: in August 2002 with the help of Ugandan troops, in March 2003 against Ugandan troops, and in May 2003 against the Lendu and Ngiti militias left behind by Ugandan troops. The UPC recently split into two factions, one headed by long-time leader Thomas Lubanga (**UPC-L**), the other by his former chief of staff, Floribert Kisembo (**UPC-K**).

MLC: Mouvement pour la Libération du Congo

Backed by Uganda, the MLC has been active since the beginning of the war in 1998. A signatory of the Lusaka Accords in 1999, the MLC is now connected with the Kinshasa government, and its leader, Jean-Pierre Bemba, is one of four vice-presidents of the DRC. The MLC heavily supports the **RCD-N** (*Rassemblement Congolais pour la Démocratie-National*).

RCD-ML: Rassemblement Congolais pour la Démocratie-Mouvement de Libération

Primarily a Lendu and Nande group, the RCD-ML split from RCD-Goma in 1999 and is currently led by Mbusa Nyamwisi. It was involved in the Inter-Congolese Dialogue, and its armed wing, the **APC** (*Armée Populaire Congolaise*) is now being trained and armed by the Kinshasa government.

PUSIC: Parti pour l'Unité, Sécurité et Intégrité Congolais

The PUSIC broke away from the UPC in February 2003 and is also composed predominantly of Hema. Led by Chief Kahwa Mandro, PUSIC has been supported by Uganda and helped Uganda oust the UPC from Bunia in March 2003.

FPDC: Forces Populaires pour la Démocratie au Congo

An Alur and Lugbara political party, the FPDC also includes armed militias. It was created in late 2002 to counter the UPC, and it appears to receive support from the Ugandan army. It also helped Uganda oust the UPC from Bunia in March 2003.

FNI: Front des Nationalistes Intégrationnistes

A Lendu political party, the FNI opposes the UPC and has been backed by Uganda as well as by the RCD-ML. The **FRPI** (*Forces de Résistance Patriotique en Ituri*), a Ngiti force which is supplied by the RCD-ML, is thought to be the armed wing of FNI. The FNI helped Uganda oust the UPC from Bunia in March 2003. In early 2004, however, it apparently formed an alliance with the UPC.

FAPC: Force Armées du Peuple Congolais

Created by Commander Jerome Kakawave Bakonde in March 2003, the FAPC has switched allegiances multiple times, including the RCD-ML, the UPC, and Uganda. It is reported to have formed a recent alliance (February 2004) with the UPC and FNI.

RCD-Goma: Rassemblement Congolais pour la Démocratie-Goma

Backed by Rwanda, the RCD-Goma controls much of North and South Kivu provinces, directly south of Ituri.

control over Ituri, incorporating the region into the broader transitional peace process. In March 2004, the transitional government announced that it would be appointing a provincial governor and a district commissioner for Ituri, though the relationship between the Ituri Interim Administration and the Kinshasa government is still being worked out.⁵⁷ On 14 May 2004, six armed groups in Ituri signed an agreement with the Kinshasa government to disarm, though it is too early to tell whether these groups will follow through with this commitment.⁵⁸

Ongoing Human Rights Atrocities

According to the U.S. State Department's annual human rights report on the DRC, the northeast continues to endure "deliberate large-scale killings, the burning of villages, disappearances, torture, rape, dismemberment, mutilation, looting, extortion, and robbery," with women and children being especially vulnerable to rape and forced labor.⁵⁹

All sides of this conflict have been accused of grave human rights atrocities, and all ethnic groups have been targeted in campaigns aimed primarily at civilians.⁶⁰ Civilian massacres are tragically common; examples of those that have occurred after July 1, 2002 (when the ICC's jurisdiction took effect) include:

- In August 2002, the *Union des Patriotes Congolais* (UPC, a primarily Hema and Gegere force) captured Bunia with the help of Ugandan forces, ousting the *Rassemblement Congolais pour la Démocratie-Mouvement de Libération* (RCD-ML, a primarily Lendu and Nande group). The UPC allegedly murdered more than 100 Lendu, Nande and Bira civilians throughout Bunia.
- The *Armée Populaire Congolaise* (APC, the armed wing of RCD-ML) and Ngiti militia encircled the town of Nyakunde on September 5, 2002, systematically massacring at least 1,200 Hema, Gegere and Bira over the course of ten days, including the patients in Nyakunde's large hospital.⁶¹
- In December 2002, the *Mouvement pour la Libération du Congo* (MLC) and RCD-N forces (*Rassemblement Congolais pour la Démocratie-National*, which relies on the MLC) took the town of Mambasa as part of their "effacer le tableau" ("erasing the blackboard" or "wiping the slate clean") campaign. Besides allegedly raping and looting the town and engaging in public cannibalism, these forces are also thought responsible for the three mass graves near Mambasa discovered by MONUC forces in January 2003. (The leader of the MLC, Jean-Pierre Bemba, is now one of the vice-presidents in the national transitional government.)

- In May 2003, following the withdrawal of Ugandan troops from Bunia, the UPC fought Lendu and Ngiti militias for control of Bunia. As both sides targeted the civilian population and the city degenerated into chaos, tens of thousands of non-Hemas fled the city, only to be attacked at UPC checkpoints; meanwhile, the Lendu and Ngiti militias allegedly perpetrated massacres in the surrounding area while retreating.⁶²

Besides civilian massacres, observers have documented widespread and systematic use of rape as a war tactic⁶³ and prevalent use of child soldiers by all sides. Children make up a large percentage, sometimes even a majority, of soldiers in armed groups;⁶⁴ the UPC force, for example, has been described as “an army of children” and includes boys and girls as young as seven.⁶⁵ Reports of mutilation and ritualistic cannibalism are also growing.⁶⁶ All of these crimes could be prosecuted under the ICC’s Rome Statute.



The ICC and the DRC

In July 2003, a month after he had assumed his duties at the Court, ICC Prosecutor Luis Moreno Ocampo held a press conference in The Hague to describe the nearly 500 “communications” that his office had received pertaining to alleged abuses around the world.⁶⁷ Most of these, he explained, fell outside the jurisdiction of the ICC because they did not involve crimes covered by the Court, occurred before the Court’s statute took effect on July 1, 2002, involved countries that did not belong to the Court, or involved countries that were Court members but had national judicial systems capable of handling the allegations. However, he singled out six communications he had received about the ongoing violence in Ituri, Democratic Republic of the Congo, naming the region “the most urgent situation to be followed.”

Jurisdiction and Admissibility: ICC crimes and the domestic legal system

Because the DRC is an ICC member state, the ICC would have jurisdiction over systematic acts of genocide, crimes against humanity, and war crimes allegedly committed on DRC territory after July 1, 2002, if the DRC judicial system (or those of other countries that could claim jurisdiction) was unwilling or unable to investigate the charges.

Many human rights groups have meticulously documented crimes in the DRC that would fall under the ICC’s subject-matter jurisdiction. Crimes that the ICC could potentially prosecute include:

- The killing of members of specific ethnic groups, when committed “with intent to destroy, in whole or in part,” that ethnic group;⁶⁸
- Widespread and systematic murder of civilians, torture, rape, and other inhumane acts of similar character;⁶⁹
- The mutilation of civilians;⁷⁰
- Intentional attacks on humanitarian aid workers and UN personnel involved in humanitarian or peacekeeping missions;⁷¹ and
- The use of children under age 15 by armed forces in any capacity.⁷²

Acts of cannibalism, while not explicitly listed as a crime in the Rome Statute, might constitute an “outrage upon personal dignity, in particular humiliating and degrading treatment,” a war crime that includes the treatment of the dead.⁷³

There is broad agreement that the court system in north-eastern DRC cannot handle these cases.⁷⁴ The judicial infrastructure in the DRC, weak to begin with, has been absolutely destroyed in the Ituri region. There is a shortage of trained lawyers, judges, magistrates and other legal professionals throughout the country, and the national judiciary continues to lack independence. Ituri, with a population of five million, had only one court based in Bunia, but the judges fled increased ethnic fighting in the city in May 2003. Public salaries have been unpaid for years in Ituri, and the police that remain in the region are corrupt and often abusive. This has led to a crisis of confidence in the justice system among the general population, which in turn leaves civilians with no peaceful means of settling disputes.

After decades of a minimal, corrupt judicial system and years of a collapsed judiciary in Ituri, the region now suffers from rampant impunity, as everyone from thieves to rapists to rebel commanders commit crimes with no fear of ever being held accountable. Judicial reform must be a priority for the transitional government; to this end, the European Union and the UN Department of Peacekeeping Operations are already conducting an assessment of the Congolese system as a first step in proposing specific projects for reform.⁷⁵ Already they have refurbished the Bunia courthouse, prison and police headquarters and helped judges and other personnel return to the city. MONUC has also trained more than 80 police officers in Bunia. These beginning steps towards local law and order are fragile, however, as the transitional government in Kinshasa has not yet released the funds for salaries or supplies.⁷⁶

Even with new infrastructure and training, Congolese law must also be updated, as relevant crimes, such as rape, are not currently adequately defined and incorporated in the national legal code.⁷⁷ While the DRC is an ICC member state, it has not yet implemented the ICC’s Rome Statute, which would incorporate a more complete and thorough definition of genocide, war crimes and crimes against humanity into the Congolese legal code. Adopting the implementation law will be an important step for rehabilitating the Congolese judicial system.⁷⁸

While judicial reform and reconstruction are vital for ending impunity in Ituri and reestablishing local confidence in the rule of law, this process will be lengthy. In the meantime, as international crimes reportedly continue in the northeast and the national courts are unable to prosecute them effectively, the ICC is currently the only option for

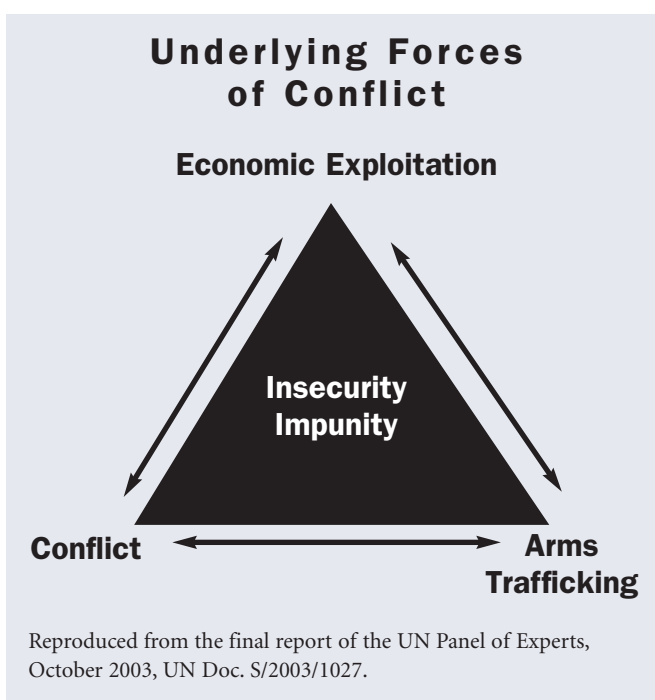
providing accountability for these grave atrocities. The ICC has proposed a division of labor with the Congolese government: the ICC will prepare investigations for those most responsible for the atrocities, thereby helping deter ongoing crimes by making real the threat of accountability, while the DRC with the aid of the international community will bring to justice over time lesser perpetrators through a reformed judicial system.⁷⁹

“Stop the Money, Stop the Crime”

The conflict in Ituri is largely fueled, ironically, through the region’s great potential wealth. Ituri is home to significant deposits of diamonds, copper, cobalt, uranium and timber, as well as the world’s largest gold reserves and 80% of the world’s coltan (a rare mineral required for lap tops, cell phones, and other electronic devices). Because the economic exploitation of this natural wealth is fundamentally interlinked with the ongoing atrocities and instability in the region, Prosecutor Moreno Ocampo has drawn attention to the role of corrupt businesses and organized crime in perpetuating the conflict. This is not so much a prosecutorial strategy as a fact-finding collaboration with national authorities. The ICC cannot try legal persons (such as corporations), but only individuals. To prosecute an individual associated with a corporation, the ICC would have to prove that the company official committed, ordered or facilitated a crime (such as a massacre) or contributed with the aim of furthering a crime, a high threshold to meet.⁸⁰ Instead, the Prosecutor intends to use documentation of financial transactions as evidence against those most responsible for the atrocities, while forwarding information about lesser financial crimes and involvement to national authorities for domestic investigations and, when appropriate, prosecutions.⁸¹

A special UN Panel of Experts, convened to investigate the criminal exploitation of the DRC’s natural resources, concluded in their penultimate report that the armed groups involved “will not disband voluntarily even as the foreign military forces continue their withdrawals [as] they have built up a self-financing war economy centered on mineral exploitation.”⁸² According to their report, “elite networks” of army leaders, rebel commanders, and private businessmen have institutionalized moneymaking schemes netting billions of dollars for personal gain. The Rwandan, Congolese and Ugandan armies all reap large profits from Ituri’s mines and trade, enabling them to continue funding their own military campaigns in the region, as well as arming and funding their many local proxies to protect their economic interests. The recent discovery of oil straddling Ituri and Uganda will provide further incentives for continued instability and corruption.

The broader economic and security implications of this exploitation are significant. Besides fueling the conflict to enable continued profiteering, the elite networks defraud the Congolese government of assets, launder money, trade arms with rebel movements, support human rights abuses and massacres to maintain control over mines, use forced labor in the mines, appropriate public funds for private uses (leading to the complete collapse of public services), demand extortionist taxes and fees (which have destroyed local industry), and trade diamonds, gold and potentially uranium on the black market. The networks are allegedly involved with organized crime outfits from Eastern Europe, and groups involved in illegal diamond trading have been connected to Hezbollah; the networks also engage in counterfeiting U.S. currency.⁸³



Amnesty International has compiled reports of human rights abuses directly linked to economic exploitation by these elite networks, including forced child labor, destruction of villages, and mass killing of civilians living near contested mines.⁸⁴ Massacres have been perpetrated at Mabanga and Mongwalu, both gold mining towns,⁸⁵ and the U.S. State Department reports forced labor camps around Fataki, Shabunda and Mwenga. In drawing attention to the illegal economic exploitation of Ituri, Prosecutor Moreno Ocampo’s purpose is two-fold: to stop crimes by stopping the financial support and motivation for them, and to use the paper trail created by these elite networks to help prove criminal intent and knowledge of those most responsible for atrocities (thereby avoiding putting witnesses at risk of retaliation). As he put it, “investigation of the

financial aspects of the alleged atrocities will be crucial to prevent future crimes and for the prosecution of crimes already committed. If the alleged business practices continue to fuel atrocities, these would not be stopped even if current perpetrators were arrested and prosecuted.”⁸⁶

Cooperation with the Transitional Government

Because the atrocities in Ituri are so grave, the Prosecutor had made clear his intention of seeking an investigation on his own initiative for these atrocities if no state referral

were forthcoming.⁸⁷ However, as described above, the policy of the Prosecutor was to seek a cooperative arrangement with the Congolese government to enable investigations on the ground and to establish a division of labor over the many potential cases. In April 2004, President Kabila submitted a formal referral to the Prosecutor for “crimes within the jurisdiction of the Court allegedly committed anywhere in the territory of the DRC” since July 1, 2002, including a commitment from Congolese authorities to cooperate with the ICC.⁸⁸ The Prosecutor must now determine whether there is a reasonable basis to proceed with a formal investigation into the alleged atrocities.



Uganda in Crisis



The war in northern Uganda between the national government and the Lord's Resistance Army (LRA) has lasted eighteen years, but many of its causes have even deeper roots.⁸⁹ The British, as colonial rulers of Uganda, leveraged ethnic differences between the north and the south in a “divide-and-rule” policy: it fostered development and education in the south while furthering the perception of the north as inhospitable and militaristic. After independence in 1962, Uganda's south was more prosperous while its military was composed largely of

northerners, especially members of the Acholi and Langi ethnic groups. Subsequent political movements reinforced these divisions by retaliating against other ethnic groups while rewarding their own, creating a cycle of violent rebellions, mass retribution, and perceived or actual marginalization of groups not currently in power. This cycle was aggravated by the lack of judicial accountability for the extreme measures taken by both government and rebel leaders, enabling subsequent leaders to carry out further atrocities in the name of settling scores and with the safety

of impunity. When Idi Amin took power in 1971, he ordered all the Acholi and Langi military officers into barracks, where he had them massacred. When Milton Obote controlled the country in the early 1980s, his mainly Acholi and Langi troops massacred thousands of southern civilians in the Luwero Triangle area while trying to put down a rebellion. That rebellion, the National Resistance Movement/Army, successfully replaced the government in 1986, with Yoweri Museveni at the helm. Museveni, a southerner, was elected president in 1996 through Uganda's first direct presidential elections, and he was reelected in 2001 by a strong majority (though the elections were marred by accusations of intimidation and violence against supporters of opposition candidates). Currently, Museveni's supporters are attempting to amend the constitution to allow Museveni to run for a third term in 2006.

Following the National Resistance Movement's (NRM) takeover, many Acholi and Langi members of the ousted military fled to the north in fear of retaliation for the Luwero Triangle massacres. They formed the Ugandan People's Defense Army and launched a rebellion against the NRM government; the government responded with force against both the rebels and the Acholi civilians (largely through the destruction of their livestock, which destroyed the local economy), leaving the north embittered against the new government. The rebels signed a peace agreement with the government in 1988, but the army tracked down and killed many rebel leaders who refused to lay down arms willingly.

Acholi fear of the NRM government also found voice in the Holy Spirit Movement, led by Alice Lakwena. Lakwena claimed to have spiritual powers, and her movement gained popularity among the Acholi because it promoted Acholi identity while representing Acholi grievances against the government (such as the fear of economic and political marginalization). However, the Ugandan government defeated the Holy Spirit Movement in 1987, and Lakwena fled to Kenya.

Lakwena's nephew, Joseph Kony, tried to revive this movement as the Lord's Salvation Army (which became the Lord's Resistance Army, or LRA), claiming that he, too, had mystical powers.⁹⁰ Kony originally claimed a biblical mission to retake the Ugandan government and rule it according to the Ten Commandments. However, his rebellion soon began targeting the Acholi people, and as his local support disappeared, he moved the LRA's bases to southern Sudan. There the Khartoum government has reportedly provided the LRA with arms, uniforms, and other supplies in retaliation for Uganda's reported support of the Sudanese Peoples Liberation Army (SPLA); as a result, the LRA at times appears to be better armed than the Ugandan

military. One NGO observer noted that the LRA "has weapons they don't even know how to use yet."⁹¹

The LRA survives by terrorizing the civilian population of northern Uganda. It abducts children, estimated at more than 20,000, to serve as soldiers, porters, slaves, and "wives" of commanders; eighty percent of the LRA's estimated 3,000 current combatants are children. In addition, the LRA largely depends on looted food and goods from villages, and it uses mutilations and murders to frighten the population from cooperating with the government forces. The northern population (including the Acholi, Langi and Teso) is terrified of the LRA, and the LRA tends to increase attacks on civilians whenever it feels required to demonstrate that it is still a force to be reckoned with.⁹² At the same time, the LRA's agenda has become even murkier, causing much debate about whether it still has an agenda beyond a vague desire to overthrow Museveni. The LRA commanders have built up a self-sustaining system in which they have more power and privilege than they ever would if they were to reenter Ugandan society, leading some observers to worry that the LRA leaders have no incentive to negotiate or resolve the conflict.

"We have lost a whole generation... The kind of children growing up today have a very limited idea of how decent people should live."
— *Local Acholi leader*⁹³

Museveni has relied almost solely on the military to resolve the conflict, aided in part by the U.S. designation of the LRA as a terrorist organization in late 2001. After Sudan announced it had stopped supplying the LRA in an attempt to placate the U.S., it reached an agreement with Uganda to allow the Ugandan army to pursue the LRA within the borders of Sudan. In March 2002, Museveni launched "Operation Iron Fist," during which the Ugandan army attempted to wipe out the LRA bases in southern Sudan. This effort backfired, however, as the LRA evaded the Ugandan army in Sudan and instead increased attacks on civilians in Uganda, including in areas as yet unaffected by the war. The violence and instability in the north reached a new extreme as a result; the UN Children's Fund (UNICEF) estimates that 8,500 children were abducted between June 2002 and May 2003 alone.

Because children are forced into the LRA's front lines, the Ugandan army cannot obliterate the rebel movement without killing thousands of the very children it is trying to protect. The conflict is further complicated by the reported incompetence and corruption of many elements of the

Ugandan army,⁹⁴ as well as by alleged abuses of soldiers against the northern civilian population. In addition, there are new allegations that Sudan has recommenced supplying the rebels. Despite these obstacles, however, the Ugandan government has remained focused on defeating the LRA militarily.

The duration and severity of this conflict, especially its recent escalation, have completely disrupted life in northern Uganda. Over 80% of the population in the Acholi region have had to flee their homes, with more than 1.5 million Ugandans displaced in total from the conflict. Much of the displacement resulted from an October 2002 order from the Ugandan government that civilians in certain areas relocate to IDP (internally displaced persons) camps. These camps lack basic services, including adequate education, medicine and sanitation. Crime and assault is rife within the camps, while the army often fails to protect the IDPs from repeated attacks by the LRA. In addition, the displacement has halted almost all agriculture in the region, making this entire population dependent on food aid (largely supplied through the United Nation's World Food Program). Because security is so poor in the north, and because of a shortfall in funds for the World Food Program, it has proven nearly impossible to provide adequate assistance to these camps. Chronic malnutrition rates for children under five in some of the IDP camps has reached as high as 41.4%.⁹⁵

The conflict in northern Uganda has continued for so long, and its effects have been so devastating, that an entire generation has grown up in fear and without education, family stability, health care, or economic opportunity. Aid groups have started reporting that the civilian population has lost hope, as well as the ability to imagine a life after the war. Human Rights Watch quotes a sixteen-year-old Acholi boy as worrying, "What disappoints me most is the future. Some seem to have things to do here, and a place to go, but for me the future is blank."⁹⁶

Status of the Peace Process

While military efforts to defeat the LRA have not yielded success, there is currently little momentum behind a negotiated settlement. The greatest hope came with Betty Bigombe in 1994, who was then the Minister for the Pacification of the North. Under her guidance, negotiations were progressing when a number of factors derailed the process, including a strict deadline imposed by Museveni and the LRA's turn to Sudan for arms; since then, no attempts at negotiations have been as successful. Indeed, there have been reports in the past of Kony executing those who claim to negotiate on his behalf.

More recently, religious leaders in the north formed the Acholi Religious Leaders Peace Initiative (ARLPI) to push for a peaceful resolution. After concerted effort, they achieved the passage of an Amnesty Act in 2000 meant to entice LRA combatants out of the bush by promising reintegration into Ugandan society without prosecution. A Presidential Peace Team was also established to initiate dialogue with the LRA, but both the amnesty offer and the peace team suffered from lack of strong government support; indeed, comments from government leaders, including Museveni, often ran contrary to the spirit of these efforts.

The U.S. government has also recently attempted to prompt new negotiations with its Northern Ugandan Peace Initiative (NUPI), meant to build off the success of the ongoing Sudanese peace talks. It is hoped that once the Sudanese government and the SPLA have resolved their conflict, Sudan will no longer have an interest in helping or harboring the LRA, which could significantly weaken the rebels' base of support. Under NUPI, the U.S. would serve as an interlocutor between Museveni's government and the LRA, but the response from both sides so far has been rather weak. Museveni extended a new offer in April to negotiate with the LRA, but paired his announcement with promises of "Day and night operations to wipe out the rebels...until every terrorist leader is accounted for, or until rebel remnants come out of their crime-laden way of existence."⁹⁷ Meanwhile, the LRA's only responses to NUPI have been tentative and have come through intermediaries, making it impossible to determine whether they originated with Kony himself.⁹⁸

Ongoing Human Rights Atrocities

The children of northern Uganda are the greatest victims of the war.⁹⁹ The Lord's Resistance Army abducts children en masse, beats them and forces them to kill fellow captives or members of their own community in order to traumatize the children and break their connections with their past. Children are forced to abduct other children and pillage villages, and they are put on the front lines when the LRA confronts the Ugandan military. All are also required to transport heavy loads of arms and loot over long distances and endure other forms of forced labor under threat of beatings or death. Further, when girl captives reach puberty, they are given to the commanders as "wives" and are subjected to sexual slavery and further physical abuse. Human Rights Watch reports that the LRA targets younger children because they are easier to control and because pre-pubescent girls are less likely to have STDs. The LRA also terrorizes the civilian population by mutilating and murdering individuals in villages, looting crops and goods, and destroying houses and other property. The U.S. Department of State estimates that the LRA attacks resulted in the direct deaths of 3,000 people in 2003.

Children are also the most affected by displacement, with high rates of malnutrition, deaths by easily preventable diseases like diarrhea, and no access to basic education. For those families who have not been displaced to IDP camps, the fear of nighttime abductions of their children by the LRA has given rise to the phenomenon of “night commuters.” Every evening, an estimated 20,000 children walk for miles to cities thought to be more secure from LRA attacks than their home villages. There they sleep outdoors and in public spaces, leaving them vulnerable to other forms of abuse, especially sexual assault.

The Ugandan national army has also been accused of human rights abuses. The army reportedly employs children, including rescued LRA combatants. Other allegations include rape, arbitrary detention in inhumane conditions, and torture.¹⁰⁰ The Ugandan army is supposed to protect the 1.5 million Ugandans displaced by the conflict now living in IDP camps in the north, but security for the camps is minimal, and the soldiers themselves are often the ones accused of abuse (especially in cases of rape). On February 21, 2004, for example, the Ugandan army failed to protect the Barlonya camp from an LRA attack, resulting in the murder by the LRA of more than 200 civilians.¹⁰¹

The ICC and Uganda

In December 2003, Uganda became the first ICC member state to refer a case to the Court when President Yoweri Museveni sent the “situation concerning the Lord’s Resistance Army” to the ICC.¹⁰² While it appears that Museveni attempted to limit the scope of the referral to the LRA, this is not permitted by the Rome Statute, and the Prosecutor has since emphasized that he will investigate all crimes impartially, regardless of which side of the conflict might have committed them.¹⁰³ As with the DRC referral, the Prosecutor must now determine whether there are sufficient grounds to launch a formal investigation. Soon after the public announcement of the referral, the Office of the Prosecutor hired Christine Chung, a former federal prosecutor from New York, as head prosecutor for the Ugandan situation.

Jurisdiction and Admissibility: ICC crimes and the domestic legal system

Since Uganda is an ICC member state, the ICC has jurisdiction over widespread and systematic acts of genocide, crimes against humanity and war crimes committed by Ugandan nationals or on Ugandan soil after July 1, 2002, if no domestic court investigates or prosecutes these crimes with a genuine intent to provide justice.

The atrocities reportedly perpetrated during this war clearly fall within the subject-matter jurisdiction of the ICC. LRA attacks on civilians could potentially be prosecuted as:

- Widespread and systematic murder of civilians;¹⁰⁴
- Murder and mutilation of civilians during war;¹⁰⁵
- Pillaging of towns and villages during war;¹⁰⁶ and
- Intentionally directing attacks against civilians not taking part in hostilities.¹⁰⁷

The LRA’s abduction and abuse of children encompasses a range of crimes covered by the ICC’s Rome Statute, potentially including:

- The use of children under age 15 in any capacity during a conflict by an armed force;¹⁰⁸
- “Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and any other form of sexual violence of comparable gravity,” which is included as both a war crime and a crime against humanity;¹⁰⁹
- “Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture,” a war crime;¹¹⁰

- Widespread and systematic torture and murder, which constitute crimes against humanity;¹¹¹ and
- Enslavement, which includes the trafficking of children.¹¹²

The Ugandan army’s alleged use of torture, if systematic or part of an official plan or policy, could be prosecuted as a crime against humanity or as a war crime.¹¹³ Similarly, if the army’s alleged use of children under fifteen proves to be part of a government plan or policy, it could be considered a war crime.¹¹⁴

Some human rights groups also argue that the Ugandan government’s policy of ordering large segments of the Acholi population into IDP camps for years could constitute a war crime if neither their security nor military necessity require it.¹¹⁵ The mass displacement of the Acholi (currently about 80% of the population) has had severe humanitarian consequences, as all agriculture and industry has been disrupted, making the Acholi dependent on outside aid. In addition, the World Food Program, because of insecurity and fear of attack by the LRA, refuses to operate in many areas without military escort, making operations in some areas difficult and infrequent. Those responsible for preventing delivery of humanitarian aid could be prosecuted for purposefully attacking UN personnel on a humanitarian mission or their convoys and supplies (a war crime),¹¹⁶ and for intentionally depriving the displaced population of food and medicine in order to destroy part of the population (which could be considered an act of “extermination,” a crime against humanity).¹¹⁷

Uganda’s judicial infrastructure is more intact than that of the DRC¹¹⁸ and could potentially handle these cases if it wished to, though some problems remain. Uganda has not yet finished implementing the ICC’s Rome Statute, so not all crimes covered by the ICC are thoroughly incorporated into Uganda’s legal code. In addition, the U.S. State Department reports that Uganda’s lower courts are “understaffed, weak, and inefficient,” and that President Museveni’s significant control over judicial appointment has damaged the impartiality of the court system. Ugandan security forces have been accused of torture and mistreatment of prisoners, and the lower courts are sometimes afraid to press criminal charges against the army for abuses against civilians (leading some Ugandans to pursue civil suits against soldiers for cases of rape and torture¹¹⁹).

A growing distrust of the formal judicial system has led in part to a rise in vigilante justice and mob violence.

Since a domestic trial might be construed as biased (the Museveni government persecuting the Acholi, for example), using the ICC as an impartial forum to investigate and prosecute these crimes could add credence to the final results, diffuse ethnic mistrust, and help end the cycles of violence and retribution that have plagued Ugandan politics. The Ugandan referral, combined with the current lack of national proceedings, paves the way for the ICC to take up this situation.

Amnesties and Child Soldiers

Many of those perpetrating crimes in northern Uganda are themselves victims of abduction, abuse and terror. In recognition of this, the Acholi Religious Leaders Peace Initiative (ARLPI) successfully lobbied for an Amnesty Act in 2000, which has since been extended repeatedly and only recently expired in mid-April 2004. By taking away the threat of prosecution, including the possibility of execution as terrorists, the Amnesty Act was intended to draw LRA combatants, especially children, out of the bush so they could be reintegrated peacefully into society. However, there appears to be limited knowledge about the amnesty provisions within the LRA, in which most members are largely cut off from outside communication.¹²⁰ Additionally, since past promises of amnesties under former governments have resulted in the mass murder of those soldiers who turned themselves in, LRA combatants must take a leap of faith to trust the Museveni government to keep its word. This leap is made even harder by Kony's insistence that the Ugandan army will kill any LRA combatant who surrenders and by government officials'

comments that seem contrary to the spirit of the amnesty offer.¹²¹ The government has also been accused by human rights organizations of not approving amnesty requests from prisoners in a timely fashion, with detainees sometimes waiting years for their applications to be processed.¹²²

Around the time he made his referral to the ICC, Museveni also announced his intention to revise Uganda's Amnesty Act to exclude Kony and other top LRA commanders (he also shortened the time frame of the amnesty, which set it to expire in April 2004). Civil society response to this announcement has been mixed. Many, including ARLPI, worry that this revision further undermines the credibility of the amnesty offer while taking away any incentive for Kony to lay down arms. Others argue that the amnesty should exclude only Kony so as to encourage his top commanders to turn against him.¹²³

The ICC does not automatically rule out amnesties. The ICC is limited by its resources and its mandate to pursue only those most responsible for atrocities; the Prosecutor has reaffirmed this narrow focus as a policy priority.¹²⁴ To avoid an "impunity gap," any ICC prosecution would have to be supplemented by additional domestic remedies, which could potentially include a combination of Truth and Reconciliation Commissions, national trials, traditional reconciliation processes, and limited amnesties. In addition, the ICC cannot prosecute those who were under the age of 18 at the time the crime was allegedly committed, which effectively removes child soldiers from its jurisdiction. The sum effect is that the vast majority of LRA combatants — especially the children and those forced by others to carry out crimes — will not be prosecuted by the ICC.

ICC Pre-Trial Process

While the Ugandan and Congolese referrals of these situations to the ICC enables the Prosecutor to open official investigations more easily, the road to trial is still a lengthy one. Built into the ICC's Rome Statute are many safeguards to ensure a fair and impartial judicial process, as well as to provide opportunities for national jurisdictions to investigate and, if necessary, prosecute the cases domestically. These provisions are important, but they could also significantly extend the pre-trial period.¹²⁵

Once an ICC member state refers a situation, the pretrial process includes the following steps:

1. **Initiation of Investigation (Article 53):** When an ICC member state refers a case, the Prosecutor must initiate an investigation unless he determines that there is not a reasonable basis to proceed.¹²⁶ This determination is based on three tests:¹²⁷
 - a. *Factual/Legal:* There is a “reasonable basis” to believe that a crime within the jurisdiction of the Court has been or is being committed.
 - b. *Admissibility:* No country with jurisdiction is investigating and, if necessary, prosecuting these allegations in a genuine manner, and no country has already done so. In addition, the crime is of sufficient gravity to warrant ICC action.¹²⁸
 - c. *Interests of Justice:* There is no reason to believe that an investigation would “not serve the interests of justice.” (For example, the Prosecutor could decide not to initiate an investigation if he thought it would undermine a peace process that might create a better environment for pursuing justice later.)
 - d. The Prosecutor will also take into account the feasibility of conducting an effective investigation in the countries concerned (i.e., whether sufficient security could be provided for investigators and witnesses).¹²⁹
2. **Deferral by Security Council (Article 16):** At any time during an investigation or prosecution, the Security Council can suspend the Court's proceedings for renewable 12-month periods. The Council could take this action, under Chapter VII of the UN Charter, if the Court's proceedings would jeopardize international peace and security (if, for instance, peace negotiations might be derailed by the opening of an ICC investigation).
3. **Deferral by Complementarity (Article 18):** Any country that has jurisdiction over the case can invoke complementarity by investigating and, if necessary, prosecuting the case domestically. Under Article 18, the Prosecutor must alert all countries with jurisdiction and allow them one month to notify the ICC that they have investigated or will investigate those concerned. The Prosecutor must defer to these national proceedings as long as they are not used to shield individuals from accountability or are otherwise “inconsistent with the intent to bring the person concerned to justice.” This determination is made by the Pre-Trial Chamber (a panel of three judges), and its ruling can be further appealed.
4. **Challenges to Jurisdiction or Admissibility (Article 19):** Challenges to the jurisdiction of the Court and the admissibility of the case must usually be made during this pre-trial period. Challenges could include matters such as whether the crime was actually committed on the territory of or by the national of an ICC member state, or whether a country is already conducting a legitimate investigation or prosecution. Challenges can be brought by the accused, a country that is investigating or prosecuting the case (or has already done so), the country where the crime was committed, or the country of the nationality of the accused. Each person or country concerned can raise such challenges only once during the course of the proceedings unless there has been a significant change in circumstances. The Pre-Trial Chamber's rulings on these matters can be further appealed.
5. **Decision to Prosecute (Article 53):** The Prosecutor must consider the same criteria he used to initiate a formal investigation (Step 1 above) to determine whether there is a “sufficient” basis for a prosecution. Again, this includes whether it is in the “interests of justice” to launch a prosecution at that time.¹³⁰
6. **Issuing Arrest Warrants or Summons (Article 58):** At any time after initiating an investigation, the Prosecutor can apply to the Pre-Trial Chamber for arrest warrants or summons. For this step, there must be “reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court.”

7. **Arrest (Article 59):** ICC member states are obligated to take immediate steps to arrest those in question and turn them over to the Court; the ICC has no power itself to arrest individuals. Once arrested, the person must be brought promptly before a local court to ensure that the right person is in custody, that the proper process was followed in the arrest, and that the person's rights have been respected. The ICC then requests the transfer of the suspect to the Court in The Hague. (The ICC's statute does include exceptions for when a country receives competing requests for extradition,¹³¹ and it allows certain international legal commitments — such as diplomatic immunity — to take precedence.¹³²)
8. **Pending Trial (Article 60):** Once the person in custody has been transferred to the Court, the Pre-Trial Chamber must ensure that the person is aware of the crimes charged and also of his or her rights under the ICC's Rome Statute. The person can apply for an interim release pending trial and is protected against being detained for an unreasonable length of time before the trial commences.
9. **Confirmation of Charges Hearing (Article 61):** This hearing requires the Prosecutor to establish "substantial grounds" that the person committed each of the crimes charged. The person charged should be present with counsel, but can waive this right. In situations where an arrest has proven difficult, this confirmation of charges hearing can be conducted with a court-appointed lawyer representing the accused.
10. **Trial/Documenting of Evidence:** Once the accused is in custody, a trial can commence; the ICC cannot try an individual in their absence (Article 63). One option for cases in which the accused has been difficult to locate and arrest is the Article 56 "unique investigative opportunity" clause. Under Article 56, if there is testimony or evidence that might not be available later for trial (e.g., when the trial has been indefinitely delayed because the defendant is not in custody or if evidence might be destroyed), the Prosecutor or the Pre-Trial Chamber can work to collect and preserve the evidence, including the recording of testimony. The Pre-Trial Chamber can appoint a lawyer to represent the accused in these proceedings, and the evidence preserved must also include any evidence essential for the defense.

Benefits and Considerations: Responses from Civil Society

Because the International Criminal Court is brand new, and because the conflicts in question are still raging in Uganda and the DRC, it is uncertain what impact the ICC will have on these two situations. A careful balance will be required to build justice and peace concurrently. To start sketching out what this balance might look like, we consulted humanitarian aid providers and human rights advocates active in the region, as well as international justice experts, to combine the perspectives and best practices of their different fields. While not all these observers agreed on all points, many themes were repeated across sectors. The following is a summary of the hopes and concerns raised by some or all of these civil society members, as a preliminary roadmap for achieving both justice and peace in Uganda and the DRC.

Benefits of the ICC referrals

• Drawing attention to oft-forgotten conflicts

As the ICC moves forward with investigations and trials, it could help increase focus on these two long, brutal, but often overlooked conflicts, which in turn could create greater international political will to help resolve them more quickly. With Uganda especially, most international donors had been brushing the 18-year-old conflict aside and focusing on Museveni's other domestic successes; the referral to the ICC, besides forcing Museveni to admit that the conflict was more than could be handled domestically, also ratcheted up international attention on the war. In addition, bringing more attention and pressure to bear on LRA leader Joseph Kony could have a positive benefit (he is reportedly "shaken" by news of the ICC referral¹³³), though there is great uncertainty over what his actual reaction will be to a full investigation.

• Deterring ongoing crimes

Following Prosecutor Moreno Ocampo's announcement of interest in Ituri last July, observers in the DRC reported that rebel commanders had started asking peacekeepers and other officials about what exactly constituted war crimes, and that there was a corresponding — if temporary — decrease in attacks. Expectations for the deterrent effect on the LRA is mixed, however: there are reports that Kony pays attention to national and international politics and gets nervous whenever "rhetoric," such as the threat of ICC prosecution, picks up, but at least one observer maintained that

Kony would not be troubled by the threat of investigation as long as he remains safely ensconced in the bush. If the ICC does succeed in bringing Kony to justice (taking a "world-class bad guy" out of circulation, as one civil society member put it¹³⁴), it could be the knockout blow to the LRA.

• Forcing government and military reform

Because the Prosecutor will investigate all sides involved in a conflict, he could shed more light on the systematic abuses and shortcomings of the national militaries involved. Some observers expressed hope that ICC attention to the Ugandan forces could strengthen Uganda's democracy by exposing military corruption, encouraging transparency, and even "clipping Museveni's wings" a bit.¹³⁵ In the DRC, ICC involvement is seen as the first step towards judicial reform. Additionally, the opportunity to further investigate the "elite networks" profiting from the war could help fight the corruption that is already plaguing elements of the transitional government.

• Satisfying the desire for justice among the civilian population

There is a strong consensus that in Ituri, the Congolese are outraged by the rampant impunity for ongoing crimes and want to see justice: "You can't ask people just to forget the past," as one NGO representative put it.¹³⁶ Some observers were insistent that the only people not prioritizing justice in the DRC are Western diplomats. (There was less consensus, however, about when justice should be pursued.) Because of the limitations of both governments, the ICC might be the only avenue for pursuing justice for these atrocities in the near future.

Considerations for Effective ICC Involvement

To help achieve these benefits, and to avoid potential pitfalls, civil society members outlined many considerations for the ICC to ensure that, if the Court does move ahead with investigations in these two situations, the result is a furthering of peace through the application of justice.

• Avoid any semblance of partiality

Because President Museveni specifically referred "the situation concerning the Lord's Resistance Army," and because

Prosecutor Moreno Ocampo made the referral public at a press conference with Museveni by his side, the referral at first appeared to be one-sided. A common interpretation is that Museveni did refer the situation as a calculated political move to increase his international support and further marginalize the LRA. Regardless of Museveni's intentions, the ICC must not allow its acts to be influenced by Museveni or be perceived as political. Otherwise, the Acholi, with their deeper grievances with the central government, could feel that successful prosecutions of LRA leaders by the ICC constitute a Museveni and NRM (National Resistance Movement) "victory" over the north, which would increase their sense of marginalization and persecution. Additionally, too narrow of a focus on the LRA could push the rebels deeper into the bush and cause them to become more violent. The Prosecutor was later careful to clarify that he "will investigate all crimes related to the situation in an impartial way,"¹³⁷ in accordance with the Rome Statute. So far, word of a potential ICC investigation has not spread quickly in northern Uganda, providing an opportunity for the Office of the Prosecutor to correct the misperception that its actions would be political. At the very least, the ICC must publicly investigate all sides, including alleged abuses by the Ugandan army, to avoid accusations of bias in favor of the government.

In the DRC, with its myriad factions and escalating ethnic tensions, it is also vital that the ICC carefully balance its attention. "If any of them is prosecuted," one observer stressed, "all sides must be prosecuted."¹³⁸

- **Ensure investigations yield visible results in a timely fashion**

With its first cases, the ICC will have to balance carefully the need for establishing good legal precedent on pre-trial motions on the one hand, and moving investigations forward towards trial in a timely fashion on the other. If up to two years go by without progress visible to the local communities, the ICC risks looking like it cannot do anything to help. Another risk is the destruction of evidence, which one observer warned had occurred in Ituri last summer after the Prosecutor announced his interest in the region. Already some observers in the DRC worry that "We're losing time": if ICC investigators were visible on the ground in the DRC today, their presence might be deterring some of the ongoing massacres in the region.¹³⁹

- **Work locally and communicate with the affected population**

The only other example of an international justice mechanism established before a conflict was fully resolved is the

International Criminal Tribunal for the Former Yugoslavia (ICTY), which also has jurisdiction over a similar range of crimes. The lessons learned by the ICTY, therefore, should be incorporated into the work of the ICC. The most important lesson that observers stressed was the need to involve the affected population as much as possible. This includes deeply involving local civil society in the entire process, prioritizing the needs and security of witnesses, holding any trials in the country affected if possible, avoiding building up unrealistic expectations, and educating the public about the work of the Court and the progress of the cases. Both Uganda and the DRC have very active and vocal civil society that could be a great resource for the ICC.

Much of this can be accomplished through thorough outreach and communications efforts. The Office of the Prosecutor and the Registry have plans to hire several staff members charged specifically with outreach, especially to affected communities and local civil society. The Office of the Prosecutor has also established as a policy that investigation teams will include nationals of the country where investigations are being conducted, as long as the background or connections of a given individual will not compromise the objectivity of the investigation.¹⁴⁰ The safety of witnesses and others who come into contact with the Court is of primary concern to the Office of the Prosecutor; the inability to ensure adequate protection for witnesses could prevent the ICC from launching a formal, on-the-ground investigation.¹⁴¹ The ICC has the option of locating a trial in the affected country,¹⁴² though it is too early to know whether the Court will avail itself of this option in these two situations.

- **Ensure that justice efforts promote a sustainable peace**

The pursuit of long-term peace is aided by the careful application of justice; the desire to restore stability and the desire to heal social rifts must be balanced against each other with care. The ICC's search for justice in Uganda and the DRC must take place within a conflict setting, where the interests of peace could affect the interests of justice. In recognition that sometimes justice is best served by allowing a peace process to move forward unimpeded, the Prosecutor can choose not to initiate an investigation or a prosecution if the timing is sensitive; the UN Security Council can also defer a case for renewable one-year periods for similar reasons.¹⁴³

However, justice is more than a principle: it provides the basis for sustainable peace after conflict. Without justice, one observer noted, attitudes about how to achieve and maintain power through violence stay entrenched, and leaders with no respect for human rights remain active

players in the region's future. Impunity for human rights abuses creates an environment of fear, which in turn limits the development of a free and open society. It also fosters cycles of retribution and retaliation, as in Uganda, because there are no other means of "settling scores". Ensuring justice for leaders who commit atrocities, on the other hand, can open space to allow a new generation to come to power, and it makes it difficult for future leaders to marginalize justice and the rule of law later.

Peace and Justice in the DRC

The pursuit of justice in the DRC is complicated by the inclusion in the transitional government of rebel leaders accused of human rights abuses. (However, since the ICC cannot prosecute crimes that occurred before July 1, 2002, many of those currently in positions of power are already beyond the ICC's reach). There is general consensus among observers that justice should be a priority in the DRC, though disagreement about how much it should be prioritized, as well as who should be brought to justice and when. One side holds that accusing leaders in the transitional government now would cause what peace there is to collapse. A "split the baby" solution would be to investigate and document crimes now, pursue trials for lesser leaders and those still committing atrocities, and wait until after the elections in 2005 to consider trials for the current leaders.

Others, however, worry that delaying justice will prevent justice. Observers pointed out that elections often legitimize leaders who should be held accountable for human rights abuses. (One example provided was that of Liberia, where Charles Taylor's "election" in 1997 allowed the international community to claim that peace had been established and turn its attention to other conflicts, allowing Taylor to terrorize his own citizens and his neighbors, Sierra Leone and Guinea, for another six years.) These observers argue that accusing some leaders of human rights abuses now will not necessarily cause the transitional government to collapse. Waiting to pursue trials, however, would allow the DRC to end up on "the global back burner," with no international political will to help the Congolese ensure accountability and justice for these atrocities.

The Prosecutor is aware of the fragility of the peace process in the DRC¹⁴⁴ and will have to determine how best to complement this process with his work. Whatever the timing of the trials, and whoever is held to account, publicly investigating the ongoing atrocities in Ituri could continue to serve as an immediate deterrent effect, helping ease the suffering of the Congolese people.

Peace and Justice in Uganda

Because both military efforts and attempts at negotiation have so far failed to end the conflict with the LRA, observers are unsure what effect an ICC investigation might have on Kony or other top LRA commanders. Some see ICC action as closing down the possibility of further negotiations with Kony and removing any incentives for the LRA to lay down arms. Others recognize the risk of exacerbating the conflict, but worry that the only other option is to allow the status quo to continue. [The difference in opinion is in part based on whether the observer believes a negotiated settlement is still possible (the former view) or not (the latter).] As for the efficacy of ICC involvement, some predict that ICC action could anger Kony, drive the LRA deeper into the bush and cause it to lash out more at the civilian population. On the other hand, ostracizing Kony in particular could encourage Sudan to end its support and potentially provide incentive for Kony's commanders to turn against him.

The ICC will have to tread carefully in Uganda to avoid aggravating the situation. The Prosecutor is aware of "local initiatives to find negotiated solutions" to the northern war, and has asked for information from those involved in order "to ensure that international justice plays a proper role in these efforts."¹⁴⁵

• Work with local and national civil society to determine the most appropriate mix of justice and reconciliation mechanisms

The ICC cannot provide complete justice and reconciliation on its own; if the ICC takes action in Uganda or the DRC, it must still be supplemented by other appropriate forms of accountability. This could include limited use of amnesties or the adaptation of traditional justice mechanisms.

For most observers, amnesties in certain instances could be appropriate, for example when a lack of resources or an inability to hold trials for all those involved means that efforts must be concentrated on only those most responsible for atrocities.¹⁴⁶ In general, however, most observers stressed that crimes of a certain magnitude cannot be excused, and amnesty should not be the first thing on the table when negotiating peace agreements. In Uganda, the Amnesty Act of 2000 could be used to pardon and reintegrate former child soldiers and others in the LRA who do not bear the greatest responsibility for the atrocities. However, the mixed messages that the Ugandan government sends about its amnesty offer might be undermining any positive benefit these amnesties could provide; one observer was emphatic that the government needed to stop undercutting the amnesty commission and actually support

it by extending its time limit, funding it sufficiently, and ensuring that citizens who use it are adequately protected.¹⁴⁷

Local justice mechanisms and reconciliation efforts can supplement formal trials when a large portion of the population are involved in the abuses. Observers raised the examples of Rwanda and South Africa as possible models. Both countries sought trials for the greatest offenders while adapting local justice mechanisms (the *gacaca* in Rwanda) or offering amnesties in return for truth-telling (through the Truth and Reconciliation Commission in South Africa) to provide accountability for the great number of citizens involved in crimes but not the most responsible for the policies or plans behind them. In Uganda, the Acholi have their own dispute reconciliation mechanism, *mato oput*, which could provide an appropriate forum for dealing with lesser offenders.¹⁴⁸ However, some groups have pointed out that traditional justice mechanisms often lack due process protections and can be insensitive to victims of sexual violence.¹⁴⁹

Many observers stressed that the ICC must work with local civil society, as well as the national governments, to determine the best approach for providing appropriate forms of accountability for all levels of perpetrators, and for ensuring communal reconciliation that will help lay the foundation for stable and peaceful societies.

Considerations for the U.S. and the International Community

These conflicts are of such a magnitude that the U.S. and the world cannot ignore them, morally or strategically. The ICC is dependent on the help of individual nations to arrest suspects, share information, and cooperate in other ways, so the international community has a significant role to play in ensuring effective ICC investigations and prosecutions.

- **Assist in meeting the practical, on-the-ground needs of successful investigations and prosecutions**

Because the ICC does not have an enforcement arm, it depends on state cooperation to ensure security for investigators and witnesses and enforce arrest warrants. In the DRC, where the transitional government does not exercise control over the northeast, MONUC's assistance in providing security and apprehending suspects will be pivotal. This will require political will on the part of the West, especially the European Union, to ensure that MONUC has the capability and the mandate to assist the ICC in Ituri. The U.S. must not block MONUC's cooperation with the ICC through behind-the-scenes politicking at the UN.

In Uganda, the biggest obstacle for the ICC will be arresting Kony — as observers were quick to note, “If anyone could arrest Kony, they would have already.”¹⁵⁰ Although it claims to have cut off ties with the LRA, the Khartoum government in Sudan reportedly still has access to Kony¹⁵¹ and might be susceptible to international pressure to help apprehend him. Otherwise, arresting Kony might require the international community to “pony up some muscle,” which could present a political challenge.¹⁵² Without Kony in custody, the ICC cannot move forward with a trial, though it can continue to collect and preserve evidence, including the recording of testimony.¹⁵³

It is also vital that countries coordinate with the ICC to share intelligence on crimes, trace the “elite networks” operating in the DRC through their financial dealings, and help enforce any other arrest warrants issued by the Court.

- **Supplement the ICC with other justice efforts**

The ICC will not be able to bring all accused to account, due to both resource limitation and its temporal jurisdiction (i.e., its jurisdiction only over crimes committed after July 1, 2002). A multi-level approach will be required in both countries.

Democratic Republic of the Congo

In the DRC, the transitional constitution calls for a National Human Rights Observatory (ONDH) to investigate human rights abuses in the DRC, but this institution is still being established.¹⁵⁴ It also creates a Truth and Reconciliation Commission, but the laws establishing it have not yet been passed; in addition, it already suffers from a lack of credibility because of its exclusion of input from Congolese civil society and because its leadership is accused of ties to rebel movements, which might discourage witnesses from coming forward.¹⁵⁵ However, an effective Truth and Reconciliation Commission could be useful, especially regarding lower level and less serious crimes, and could help dispel ethnic stereotypes and misinformation spread during the current violence.

To try serious crimes committed before the ICC's Rome Statute entered into effect, many groups, including President Kabila himself,¹⁵⁶ have called for a UN Panel of Experts to determine the feasibility of a special tribunal to cover atrocities committed since the beginning of the DRC's first war in 1996. However, securing funding for another tribunal, or even for the Truth and Reconciliation Commission, could prove difficult, as donor governments are suffering from what many have termed “tribunal fatigue.”

There is also a general consensus that rebuilding the DRC's domestic justice system must be a priority. The European Union and UN Department of Peace-Keeping Operations' report on rehabilitating the DRC's judicial system is due out this summer and will provide a good starting point for determining which projects to fund and what reforms to prioritize. Focusing on rebuilding the domestic judiciary, however, cannot replace providing accountability for past atrocities; it would be "a great injustice," noted one observer, to build a system for tomorrow's minor crimes while leaving war criminals beyond the reach of justice.¹⁵⁷ Such an imbalance would further erode public confidence in the DRC's legal system.

Uganda

In Uganda, the national courts could try lesser offenders, but concerns about the independence of the judiciary and corruption of police and court officials must first be addressed. Security sector reform is also a priority, as the criminal courts in Uganda are often afraid to take cases against the army. The United Kingdom has recently helped the Ugandan government complete a thorough defense review of unprecedented scope for an African country; if implemented, the report's recommendations could significantly reform and improve the Ugandan army.¹⁵⁸

Even resolving the current conflict with the LRA would not build a lasting peace. Larger grievances of the northern population regarding political and economic marginalization would still need to be addressed. An entire generation in the north has grown up in dire poverty, with no education, basic health care or economic opportunities. Without a broader effort at building accountability, reconciliation, and national unity, divisions along ethnic lines could ossify and potentially lead to a full-out civil war, especially with the current surplus of arms in the country. Possible options for addressing these concerns in Uganda include encouraging the Museveni government to fund more

development projects in the north, involve more northerners in the central government, and create some form of a national reconciliation mechanism to address long-held grievances and ethnic tensions.

- **Use diplomatic leverage to help further peace and justice in Uganda and the DRC**

More political will is needed from the international community to keep pressuring the leaders of the DRC and Uganda to resolve these conflicts as soon as possible. For the DRC, adequate support for MONUC — indeed, increasing the troop size of MONUC — will be pivotal for helping stabilize Ituri sufficiently to enable a political transition. Further, moving to shut down the transnational "elite networks" that profit from the DRC's continued violence will require international cooperation and the political will of countries to investigate the banks and businesses based on their territory that are connected with these networks.

Donor governments have especially strong leverage over Uganda, as foreign aid makes up about 48% of the Ugandan government's budget.¹⁵⁹ The U.S. has a strong bilateral relationship with Uganda, based in part on Uganda's cooperation with the war on terrorism and support for the war in Iraq. The U.S. can use this relationship to help pressure Museveni to resolve this conflict more quickly. The U.S. has had a tendency to view the Ugandan conflict in black-and-white terms, providing Museveni with military support to combat the LRA, which has complex ramifications for the Acholi people, as discussed above. Instead of supporting a purely military solution, observers suggested that the U.S. could encourage Museveni to adequately protect civilians in the IDP camps, fully fund and support the presidential peace team tasked with initiating negotiations with the LRA, and address the deeper grievances of the Acholi over economic development and political marginalization.

Conclusion

The wars in Uganda and the Ituri district of the DRC are horrific in their targeting of civilians and dangerous for international security in their enabling of black markets and arms trading. The status quo that has developed in both regions is unacceptable and has continued for far too long. The international community has a moral and political obligation to do more on all counts to resolve these conflicts. The ICC is one potential element of a solution, but its involvement raises a significant question: Will ICC action help ameliorate these situations, or only aggravate the conflicts? Taking all concerns into account, it is the opinion of Citizens for Global Solutions that, if applied carefully and with the full use of its provisions for victims and witnesses, the ICC could play a positive role in furthering the resolution of these conflicts while laying the groundwork for long-term reconciliation and stability.

In Uganda, despite the hard work and commitment of civil society and local leaders, there does not seem to be much new hope for a negotiated settlement, and the government's military efforts are arguably causing more harm than good. If the ICC investigates and indicts Joseph Kony, it could make him more intransigent and unwilling to lay down arms. However, there is not much incentive now for him to negotiate a resolution to this conflict, as he would have to leave behind power and wealth in exchange for an uncertain future at the hands of Museveni. Regardless, an ICC investigation and indictment could potentially have a deterrent effect by signaling to Kony and other top LRA commanders that their tactics are being documented and that they therefore cannot count on impunity for their future actions.

If the ICC decides to focus almost exclusively on Kony, it could further isolate him and perhaps encourage some of his own commanders to turn against him or distance themselves from him by reaching separate agreements with the government. An ICC investigation and indictment of Joseph Kony could increase pressure on Sudan to end its support for the LRA. This will require the international community, especially Europe, to make clear to Sudan that its cooperation with the ICC on this matter is a prerequisite to improved relations with the rest of the world. Such pressure, if applied correctly, could even encourage Sudan to help locate and make a good faith effort at arresting Kony.

Because the Prosecutor has made clear that, if there is an investigation in Uganda, he will be looking at both sides, ICC involvement could shed further light on shortcomings within the national military, which in turn could have pos-

itive ramifications for security and military-civilian relations in the North. Full resolution of this conflict will require a degree of reconciliation between the Acholi and the Museveni government. While the ICC alone will not be sufficient for this task, it could help lay the ground work for reconciliation by ending the cycles of impunity, offering a fair critique of both sides, and establishing a judicial standard of impartiality that could help re-build confidence in Uganda's justice system.

In the DRC, there does not have to be a choice between the stability of the transitional government and ending impunity for the atrocities that are currently plaguing the people of Ituri. At the very least, more must be done to end the rampant violence in the northeast, and an ICC investigation could have an immediate deterrent effect. ICC attention would change the cost-benefit analysis of many actors in the region: no longer could they count on not paying a price for the crimes they are committing. Indeed, early rumblings from the Court reportedly had some deterrent effect in Ituri, and a thorough, on-the-ground investigation could amplify these preliminary results.

ICC investigations and trials could also signal the return of the rule of law to Ituri; by creating a new environment of law and order, it could be the first step in reigning in lesser crimes, such as individual looting, theft and assault. Reestablishing the rule of law is a necessary condition for stabilizing the region and beginning the reconstruction process, especially economic recovery. These benefits could be realized even if the ICC decides not to pursue allegations against members of the transitional government, though the long-term stability and unity of the DRC will likely depend on full accountability for the atrocities of the last eight years. This, however, will have to be — at least in part — the work of other justice and reconciliation mechanisms.

To achieve these benefits without further aggravating the conflicts, the International Criminal Court must continue to:

- Carefully weigh the potential impact of judicial action on the peace process in these countries, especially if there is a significant breakthrough in negotiations;
- Work locally, involve civil society, and conduct extensive outreach with the affected populations;
- Investigate all sides fairly and transparently;
- Ensure that investigations yield visible results soon, and keep people in these countries informed of the Court's progress;

- Ensure the safety and confidentiality of all witnesses;
- Help all victims and witnesses obtain appropriate medical and psychological support;
- Work with the national governments to divide caseloads, thereby preventing an “impunity gap”; and
- Work with other countries to freeze the assets of those indicted, so that if found guilty, those who profited from these wars will be forced to pay restitution to those they terrorized.

The ICC can only be successful in these endeavors if individual countries provide adequate support and cooperation. To this end, members of the international community must:

- Cooperate with ICC investigations, especially in helping track the “elite networks” that are fueling and profiting from the war in Ituri;
- Enforce ICC arrest warrants against any wanted person who enters their territory;
- Provide MONUC with adequate support and mandate to provide security for ICC investigators and witnesses and to help apprehend those wanted by the Court;
- Support domestic judicial reform and other justice and reconciliation mechanisms in these two countries to leverage and complement the work of the ICC;
- Pressure President Museveni to reform the Ugandan army and to more actively seek a negotiated settlement to this conflict; and
- Pressure the Khartoum government to cut off all support to the LRA, prosecute those who continue to aid the LRA, and make a good-faith effort to enforce any arrest warrants issued by the ICC.

The U.S. could be a great asset to these investigations and any resulting prosecutions. Because of the U.S. role in building up international law and establishing the tribunals for the Balkans, Rwanda and Sierra Leone, the U.S. has institu-

tional knowledge and experience in prosecuting war crimes that could help the ICC in its work. Additionally, U.S. intelligence information would greatly supplement the collection of evidence in these situations. U.S. law, however, prevents all U.S. cooperation with the International Criminal Court without specific waivers from the President.¹⁶⁰ These waivers must be on a “case-by-case basis” for “specific matters” or in regards to a specific foreign national accused by the Court; it cannot be a blanket waiver for an entire situation that the Court might be investigating, unless Congress amends or overturns the relevant legislation, the American Servicemembers’ Protection Act of 2002.

As soon as the ICC has clarified its intent to investigate or prosecute certain individuals accused of atrocities in Uganda or the DRC, the President should waive the prohibition against cooperation and help the ICC bring these war lords to justice. The U.S. can also support these efforts towards justice and peace by encouraging Museveni to make a more sincere effort at negotiations, pressuring Sudan to help isolate and even arrest Kony, and helping investigate the elite networks profiting from and fueling the violence in eastern DRC. Even if the U.S. decides not to support the ICC’s efforts in Uganda and the DRC, it must not purposefully hamper the work of the Court: the current administration might choose not to be part of the solution, but it cannot allow the U.S. to be part of the problem.

The ICC is entering uncharted waters: never before has a fully established court, with fully established laws, started investigating atrocities while they were still being committed. Both the ICC and individual nations will have to evaluate these situations carefully and cooperate effectively if the application of justice in the DRC and Uganda is to further the prospects of peace. If done correctly, the ICC could help deter ongoing crimes while fostering the rule of law and societal reconciliation. Such an outcome would provide the international community with an important new strategy for building global peace and security.

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The views expressed by those interviewed were their own and not indicative of the views of the organizations they represent.

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List of Acronyms Used

ARLPI:	Acholi Religious Leaders Peace Initiative, a civil society effort to resolve Uganda's war
CPI:	<i>Commission de Pacification de Ituri</i> , the Ituri Peace Commission
DRC:	Democratic Republic of the Congo
IDP:	Internally Displaced Persons
ICC:	International Criminal Court
LRA:	Lord's Resistance Army, Ugandan rebel group headed by Joseph Kony
MLC:	<i>Mouvement pour la Libération du Congo</i> , a major rebel group in eastern DRC
MONUC:	<i>Mission de l'Organisation des Nations Unies en République Démocratique du Congo</i> , UN peace-keeping mission in the DRC.
NGO:	Non-governmental organization
NRM:	National Resistance Movement, the party of Yoweri Museveni currently in power in Uganda
NUPI:	Northern Uganda Peace Initiative, the U.S.-backed negotiation plan for Uganda
RCD-ML:	<i>Rassemblement Congolais pour la Démocratie-Mouvement de Libération</i> , Ituri rebel group
UPC:	<i>Union des Patriotes Congolais</i> , a major rebel group in Ituri

Endnotes

- ¹ “Statement made by Mr. Luis Moreno-Ocampo, Chief Prosecutor, at the Ceremony for the solemn undertaking of the Chief Prosecutor of the International Criminal Court,” Office of the Prosecutor, 16 June 2003.
- ² The Preamble to the Rome Statute includes: “Affirming that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation...Recalling that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes...Emphasizing that the International Criminal Court established under this Statute shall be complementary to national criminal jurisdictions...”
- ³ For example, in Article 17 and 18, Rome Statute. See also “ICC Pre-Trial Process” below.
- ⁴ See Article 15, Rome Statute, for more information on this process.
- ⁵ This summary is based “Paper on some policy issues before the Office of the Prosecutor,” Office of the Prosecutor, 2003; and “Annex to the ‘Paper on some policy issues before the Office of the Prosecutor’: Referrals and Communications,” Office of the Prosecutor, 2003.
- ⁶ The Prosecutor has emphasized to member countries that “Rather than competing with national systems for jurisdiction, we will encourage national proceedings wherever possible.” “Statement of the Prosecutor Luis Moreno Ocampo to Diplomatic Corps,” Office of the Prosecutor, 12 February 2004.
- ⁷ Neither Uganda nor the DRC have yet passed implementing legislation, although both are considering draft bills, and Uganda is expected to complete its process in the near future.
- ⁸ “Statement made by Mr. Luis Moreno-Ocampo, Chief Prosecutor, at the Ceremony for the solemn undertaking.”
- ⁹ Rule 100, Rules of Procedure and Evidence.
- ¹⁰ The Unit is established by Article 43 of the Rome Statute; its functions, responsibilities, and required expertise are defined by Rules 17-19 in the Rules of Procedure and Evidence.
- ¹¹ Rule 17(1)(a) and Rule 16(4), Rules of Procedure and Evidence.
- ¹² Rule 18(a) and Rule 43 (regarding publication of court documents), Rules of Procedure and Evidence.
- ¹³ Rule 68 and Rule 87(2), Rules of Procedure and Evidence.
- ¹⁴ Article 36(8)(b) (Judges), Article 42(9) (Office of the Prosecutor), and Article 43(6) (Victims and Witnesses Unit), Rome Statute. Rule 19 (Rules of Procedure and Evidence) lays out further areas of expertise that the Unit could include, including “psychology in criminal proceedings; gender and cultural diversity; ... elderly persons, in particular in connection with armed conflict and exile trauma; persons with disabilities; social work and counseling” and other areas.
- ¹⁵ Rule 17(a)(iv), Rules of Procedure and Evidence.
- ¹⁶ Rule 18(d), Rules of Procedure and Evidence.
- ¹⁷ Rule 90, Rules of Procedure and Evidence. When a case involves numerous victims, the judges can request that victims seek common legal representation to ensure the efficiency of proceedings.
- ¹⁸ Rule 16(2)(a), Rules of Procedure and Evidence.
- ¹⁹ Rule 16(1)(b) and Rule 17(2)(b)(i), Rules of Procedure and Evidence.
- ²⁰ Rule 90(5), Rules of Procedure and Evidence.
- ²¹ Article 15, Rome Statute.
- ²² Article 15, Rome Statute, and Rule 49(1), Rules of Procedure and Evidence.
- ²³ Rule 92(3), Rules of Procedure and Evidence.
- ²⁴ Article 68(3), Rome Statute. Under Rule 89 of the Rules of Procedure and Evidence, the victims or their legal representatives must submit a written application to the Registrar in order to avail themselves of this option. Some particular phases when victims can present their concerns include the Pre-Trial Chamber’s consideration of authorizing an investigation (Article 15(3), Rome Statute) and challenges to jurisdiction or admissibility (Article 19(3), Rome Statute). The judges can also seek out the views of victims regarding other conditions of the trial, such as amending charges or holding a joint trial (see Rule 93, Rules of Procedure and Evidence).
- ²⁵ Article 75, Rome Statute.
- ²⁶ Rule 95(1) and Rule 96, Rules of Procedure and Evidence.
- ²⁷ Article 75(3), Rome Statute, and Rule 97, Rules of Procedure and Evidence.
- ²⁸ See also Rule 98, Rules of Procedure and Evidence.
- ²⁹ Article 79(1), Rome Statute.
- ³⁰ Article 26, Rome Statute.
- ³¹ The “conscripting or enlisting [of] children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities” is a war crime under Article 8, Rome Statute. The same prohibition exists for the use of children by “armed forces or groups” in non-international conflicts. See also Elements of Crimes, Article 8(2)(b)(xxvi) and Article 8(2)(e)(vii).
- ³² Article 7(1)(g), Article 8(2)(b)(xxii) and Article 8(2)(e)(vi), Rome Statute. See also Elements of Crimes, Article 7(1)(g)-1 through 6, Article 8(2)(b)(xxii)-1 through 6, and Article 8(2)(e)(vi)-1 through 6.
- ³³ Article 7(1)(c) and 7(2)(c), Rome Statute. See also Elements of Crimes, Article 7(1)(c).
- ³⁴ See Article 8 of the Rome Statute and the accompanying Elements of Crimes.
- ³⁵ Article 43(6) of the Rome Statute and Rule 2(a)(iii) of the Rules of Procedure and Evidence.
- ³⁶ Rule 17(3), Rules of Procedure and Evidence.

- ³⁷ Rule 88(2), Rules of Procedure and Evidence.
- ³⁸ Article 68(2), Rome Statute.
- ³⁹ Article 7(1)(g), Article 8(2)(b)(xxii) and Article 8(2)(e)(vi), Rome Statute. See also Elements of Crimes, Article 7(1)(g)-1 through 6, Article 8(2)(b)(xxii)-1 through 6, and Article 8(2)(e)(vi)-1 through 6. “Forced pregnancy” means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy.” Article 7(2)(f), Rome Statute.
- ⁴⁰ See, for example, Rule 16(1)(d) and Rule 17(2)(b)(iii), Rules of Procedure and Evidence.
- ⁴¹ Article 68, Rome Statute.
- ⁴² Rule 71, Rules of Procedure and Evidence.
- ⁴³ Rule 63(4), Rules of Procedure and Evidence.
- ⁴⁴ Rule 70, Rules of Procedure and Evidence.
- ⁴⁵ Rule 99, Rules of Procedure and Evidence.
- ⁴⁶ See Adam Hochschild, *King Leopold’s Ghost: A Story of Greed, Terror, and Heroism in Colonial Africa* (Boston: Houghton Mifflin Co., 1998).
- ⁴⁷ The following summary is based in part on Amnesty International, “On the precipice: The deepening human rights and humanitarian crisis in Ituri,” March 2003; Human Rights First, “The Democratic Republic of the Congo: Ravaged by conflict, human rights atrocities and impunity,” 2003; Human Rights Watch, “Ituri: ‘Covered in Blood’: Ethnically Targeted Violence in Northeastern DR Congo,” July 2003; International Crisis Group, “Congo Crisis: Military Intervention in Ituri,” 13 June 2003; and United Nations, “Interim report of the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo,” UN Doc. A/58/534, 24 October 2003.
- ⁴⁸ *Mission de l’Organisation des Nations Unies en République Démocratique du Congo*, United Nations Mission in the Democratic Republic of the Congo.
- ⁴⁹ Related fighting and human rights abuses also continue in North and South Kivu provinces, to the south of Ituri.
- ⁵⁰ Human Rights Watch, “Ituri: ‘Covered in Blood,’” 1.
- ⁵¹ For more information, see Amnesty International, “Ituri: A need for protection, a thirst for justice,” 21 October 2003; and Human Rights Watch, “Democratic Republic of the Congo: Confronting Impunity,” January 2004.
- ⁵² See “Stop the Money, Stop the Crime” below.
- ⁵³ These 4,800 troops are meant to stabilize a region of five million people, a daunting task.
- ⁵⁴ Based on interviews and reports; see bibliography.
- ⁵⁵ The Luanda Agreement was signed in September 2002 by Uganda and the DRC. It included an agreement by Uganda to withdraw its troops from Ituri.
- ⁵⁶ For more information on the first meeting of the CPI, see Amnesty International, “Ituri: A need for protection,” 18-20; and International Crisis Group, “Congo Crisis,” 10-11.
- ⁵⁷ United Nations, “Fifteenth report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo,” UN doc. S/2004/251, 25 March 2004, paragraphs 26-27.
- ⁵⁸ IRIN, “DRC: Ituri militia leaders commit themselves to peace, transition,” 17 May 2004. The six groups are the UPC-L and UPC-K, PUSIC, FNI, FAPC, FRPI, and the FPDC (see “Armed Groups in Ituri”).
- ⁵⁹ U.S. Department of State, “Democratic Republic of the Congo,” *Country Reports on Human Rights Practices*, 25 February 2004.
- ⁶⁰ The following examples are summarized from Amnesty International, “On the precipice”; Amnesty International, “Ituri: A need for protection”; Human Rights Watch, “Ituri: ‘Covered in Blood’”; International Crisis Group, “Congo Crisis”; and United Nations, “Interim report of the Special Rapporteur.”
- ⁶¹ The Nyakunde massacre is one of the most egregious and well documented. For more information, see specifically Human Rights Watch, “Ituri: ‘Covered in Blood,’” 30-35.
- ⁶² For more on fighting in Bunia in May 2003, see Médecins Sans Frontières, “Ituri: Unkept Promises? A Pretense of Protection and Inadequate Assistance,” 25 July 2003; and Amnesty International, “A Need for Protection.”
- ⁶³ On sexual violence as a weapon of war in the DRC, see “The war within the war: Sexual violence against women and girls in Eastern Congo,” Human Rights Watch, June 2002; and Médecins Sans Frontières, “‘I Have No Joy, No Peace of Mind’: Medical, Psychosocial, and Socio-Economic Consequences of Sexual Violence in Eastern DRC,” 2004. For additional examples specific to Ituri, see Amnesty International, “Ituri: A need for protection,” 14-17; and Human Rights Watch, “Ituri: ‘Covered in Blood,’” 44-46.
- ⁶⁴ See United Nations, “Interim report of the Special Rapporteur,” paragraph 90; and U.S. Department of State, “Democratic Republic of the Congo.”
- ⁶⁵ Human Rights Watch, “Ituri: ‘Covered in Blood,’” 46-47.
- ⁶⁶ See, for example, United Nations, “Interim report of the Special Rapporteur,” paragraph 43.
- ⁶⁷ “Communications Received by the Office of the Prosecutor of the ICC,” Press Release, 16 July 2003. The Office of the Prosecutor refers to evidence, testimony, and any other correspondence submitted by individuals or civil society as “communications.”
- ⁶⁸ This would constitute an act of genocide. Article 6, Rome Statute. See also Elements of Crimes, Article 6.
- ⁶⁹ These would constitute crimes against humanity, when committed repeatedly, with knowledge of the attack, and “pursuant to or in furtherance of a State or organizational policy to commit such attack.” Article 7, Rome Statute. They also constitute war crimes “in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.” Article 8, Rome Statute.
- ⁷⁰ Included as a war crime in Article 8(2)(c)(i), Rome Statute. See also Elements of Crimes, Article 8(2)(c)(i).
- ⁷¹ As war crimes, these attacks would have to be “part of a plan or policy or as part of a large-scale commission of such crimes.” Article 8, Rome Statute.

- ⁷² Article 8(2)(e)(vii), Rome Statute. See also Elements of Crimes, Article 8(2)(e)(vii).
- ⁷³ Article 8(2)(c)(ii), Rome Statute. See also Elements of Crimes, Article 8(2)(c)(ii) and the clarification in the accompanying footnote 49.
- ⁷⁴ This summary is based on Amnesty International, “Democratic Republic of the Congo: Addressing the present and building the future,” 27 November 2003; Amnesty International, “Ituri: A need for protection”; Human Rights Watch, “Confronting Impunity”; International Human Rights Law Group, “Ending Congo’s Nightmare: What the U.S. Can Do to Promote Peace in Central Africa,” October 2003; United Nations, “Interim report of the Special Rapporteur”; U.S. Department of State, “Democratic Republic of the Congo”; and Woodrow Wilson School of Public and International Affairs, “Balancing Peace, Justice and Stability: A Great Lakes Regional Justice Commission and a Special Tribunal for the Democratic Republic of the Congo,” January 2004.
- ⁷⁵ This report is currently expected to be completed in summer 2004.
- ⁷⁶ United Nations, “Fifteenth report of the Secretary-General,” paragraphs 29 and 30.
- ⁷⁷ Human Rights Watch, “Confronting Impunity,” 8.
- ⁷⁸ See Amnesty International, “Democratic Republic of the Congo: Memorandum concerning the draft implementing legislation for the Rome Statute,” 29 September 2003.
- ⁷⁹ “Statement of the Prosecutor Luis Moreno Ocampo to Diplomatic Corps.”
- ⁸⁰ Article 25, Rome Statute. Article 28(b), covering superior-subordinate relationships, could also apply, but such a connection would be very difficult to prove except in the most egregious cases. Article 28(b) states: “A superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where: (i) The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes; (ii) The crimes concerned activities that were within the effective responsibility and control of the superior; and (iii) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.”
- ⁸¹ “Report of the Prosecutor of the ICC, Mr. Luis Moreno-Ocampo, to the Second Assembly of States Parties to the Rome Statute of the International Criminal Court,” Office of the Prosecutor, 8 September 2003.
- ⁸² United Nations, “Final report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo,” UN Doc. S/2002/1146, 16 October 2002, paragraph 12. The following section is based largely off of this report. The Panel issued an additional report in October 2003, but it introduced little new research, as its focus was on resolving concerns about specific corporations.
- ⁸³ Ibid, paragraphs 32-34.
- ⁸⁴ See Amnesty International, “‘Our brothers who help kill us’: Economic exploitation and human rights abuses in the east,” April 2003.
- ⁸⁵ Human Rights Watch, “Ituri: ‘Covered in Blood,’” 22-27.
- ⁸⁶ “Communications received by the Office of the Prosecutor of the ICC.”
- ⁸⁷ “Report of the Prosecutor...to the Second Assembly of States Parties.”
- ⁸⁸ “Prosecutor receives referral of the situation in the Democratic Republic of the Congo,” Press Release, 19 April 2004.
- ⁸⁹ The following summary is based largely on Human Rights Watch et al., “Abducted and Abused: Renewed Conflict in Northern Uganda,” July 2003; International Crisis Group, “Northern Uganda: Understanding and Solving the Conflict,” 14 April 2004; and the Refugee Law Project, “Behind the Violence: Causes, Consequences and the Search for Solutions in the War in Northern Uganda,” February 2004.
- ⁹⁰ The International Crisis Group sees the LRA as the fusion of the Ugandan People’s Defense Army’s military tactics and objectives (“Acholi restoration and defeat of the NRM”) and the spiritualism of the Holy Spirit Movement. See “Northern Uganda,” 4.
- ⁹¹ Interview, 18 March 2004.
- ⁹² Ibid.
- ⁹³ Quoted in IRIN, “IRIN Web Special on the crisis in Northern Uganda,” September 2003.
- ⁹⁴ For a thorough analysis of Uganda’s army, see International Crisis Group, “Northern Uganda.” The Ugandan government has expressed strong disagreement with this report; see IRIN, “Official rejects ICG report on northern crisis,” 21 April 2004.
- ⁹⁵ Human Rights Watch et al., “Abducted and Abused,” 38, citing an Action Against Hunger-USA survey from April and May 2003.
- ⁹⁶ Ibid, 35.
- ⁹⁷ AFP, “Ugandan president offers ceasefire if LRA rebels agree to talks,” 16 April 2004.
- ⁹⁸ See International Crisis Group, “Northern Uganda,” 26, for a more extensive critique of NUPF’s potential.
- ⁹⁹ This summary based on Human Rights Watch et al., “Abducted and Abused”; Refugee Law Project, “Behind the Violence”; and U.S. Department of State, “Uganda,” *Country Reports on Human Rights Practices* 2003, 25 February 2004.
- ¹⁰⁰ For more information on allegations of torture, see Human Rights Watch, “State of Pain: Torture in Uganda,” March 2004.
- ¹⁰¹ The ICC’s Prosecutor has vowed to investigate this massacre. “Statement by the Prosecutor related to crimes committed in Barlonya Camp in Uganda,” Press Release, 23 February 2004.

- ¹⁰² The referral was made public in January 2004. “President of Uganda refers situation concerning Lord’s Resistance Army (LRA) to the ICC,” Press Release, 29 January 2004.
- ¹⁰³ “Statement of Prosecutor Luis Moreno Ocampo to Diplomatic Corps.”
- ¹⁰⁴ Article 7(1)(a), Rome Statute. See also Elements of Crimes, Article 7(1)(a).
- ¹⁰⁵ Article 8(2)(c)(i), Rome Statute. See also Elements of Crimes, Article 8(2)(c)(i).
- ¹⁰⁶ Article 8(2)(e)(v), Rome Statute. See also Elements of Crimes, Article 8(2)(e)(v).
- ¹⁰⁷ Article 8(2)(e)(i), Rome Statute. See also Elements of Crimes, Article 8(2)(e)(i).
- ¹⁰⁸ Article 8(2)(e)(vii), Rome Statute. See also Elements of Crimes, Article 8(2)(e)(vii).
- ¹⁰⁹ Article 7(1)(g), Article 8(2)(b)(xxii) and Article 8(2)(e)(vi), Rome Statute. See also Elements of Crimes, Article 7(1)(g)-1 through 6, Article 8(2)(b)(xxii)-1 through 6, and Article 8(2)(e)(vi)-1 through 6.
- ¹¹⁰ Article 8(2)(c)(i), Rome Statute. See also Elements of Crimes, Article 8(2)(c)(i).
- ¹¹¹ Article 7(1)(a) and Article 7(1)(f), Rome Statute. See also Elements of Crimes, Article 7(1)(a) and Article 7(1)(f).
- ¹¹² Article 7(1)(c) and Article 7(2)(c), Rome Statute. See also Elements of Crimes, Article 7(1)(c).
- ¹¹³ Article 7(1)(f) and Article 8(1)(c)(i), Rome Statute. See also Elements of Crimes, Article 7(1)(f) and Article 8(1)(c)(i).
- ¹¹⁴ Article 8(2)(e)(vii), Rome Statute. See also Elements of Crimes, Article 8(2)(e)(vii).
- ¹¹⁵ Article 8(2)(e)(viii), Rome Statute, outlaws “Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand.” See also Elements of Crimes, Article 8(2)(e)(viii). For further discussion, see Human Rights Watch et al, “Abducted and Abused,” 60-63.
- ¹¹⁶ Article 8(2)(e)(iii), Rome Statute. See also Elements of Crimes, Article 8(2)(e)(iii).
- ¹¹⁷ Article 7(1)(b) and Article 7(2)(b), Rome Statute. See also Elements of Crimes, Article 7(1)(b).
- ¹¹⁸ This summary is based on Freedom House, “Uganda,” Freedom in the World 2003, July 2003; Human Rights Watch, “State of Pain”; U.S. Department of State, “Uganda.”
- ¹¹⁹ Interview, 12 February 2004.
- ¹²⁰ Refugee Law Project, “Behind the Violence,” 45.
- ¹²¹ Ibid.
- ¹²² Human Rights Watch, “State of Pain,” 18-19.
- ¹²³ As recommended in International Crisis Group, “Northern Uganda.”
- ¹²⁴ See “Policies of the Office of the Prosecutor” above.
- ¹²⁵ For a more thorough discussion, see David Stoelting, “ICC Pretrial Proceedings: Avoiding Gridlock,” *ILSA Journal of International and Comparative Law*, 9:1 (2003), 1-11.
- ¹²⁶ If the Prosecutor decides there is not a reasonable basis to proceed, the country that sent the referral can request reconsideration via the Pre-Trial Chamber (a panel of three ICC judges). When the Prosecutor decides not to proceed solely on the basis that it “would not serve the interests of justice,” the Pre-Trial Chamber can review the decision on its own initiative; if it does not confirm the decision, the Prosecutor must initiate the investigation. Article 53, Rome Statute.
- ¹²⁷ As summarized in “Annex to the ‘Paper on some policy issues.’”
- ¹²⁸ The Office of the Prosecutor has determined that “The concept of gravity should not be exclusively attached to the act that constituted the crime but also to the degree of participation in its commission.” That is, the Prosecutor could choose not to initiate an investigation if those in question were not primarily responsible for the crime committed. “Paper on some policy issues before the Office of the Prosecutor.”
- ¹²⁹ Ibid.
- ¹³⁰ As before, the referring state can request reconsideration via the Pre-Trial Chamber if the Prosecutor decides not to prosecute; if the Prosecutor’s decision was based solely on “the interests of justice,” the Pre-Trial Chamber can review the decision on its own initiative.
- ¹³¹ Article 90, Rome Statute.
- ¹³² Article 98 reads: “(1) The Court may not proceed with a request for surrender or assistance which would require the requested State to act inconsistently with its obligations under international law with respect to the State or diplomatic immunity of a person or property of a third State, unless the Court can first obtain the cooperation of that third State for the waiver of the immunity. (2) The Court may not proceed with a request for surrender which would require the requested State to act inconsistently with its obligations under international agreements pursuant to which the consent of a sending State is required to surrender a person of that State to the Court, unless the Court can first obtain the cooperation of the sending State for the giving of consent for the surrender.”
- ¹³³ Interview, 10 February 2004.
- ¹³⁴ Interview, 2 April 2004.
- ¹³⁵ Interviews, 10 February 2004 and 18 March 2004.
- ¹³⁶ Interviews, 12 March 2004 and 29 March 2004.
- ¹³⁷ “Statement of the Prosecutor Luis Moreno Ocampo to Diplomatic Corps.”
- ¹³⁸ Interview, 16 March 2004.
- ¹³⁹ Interview, 29 March 2004.
- ¹⁴⁰ “Paper on some policy issues before the Office of the Prosecutor.”
- ¹⁴¹ See “Policies of the Office of the Prosecutor” above.
- ¹⁴² Rule 100, Rules of Procedure and Evidence.
- ¹⁴³ See “The ICC Pre-Trial Process” above.
- ¹⁴⁴ See, for instance, “Report of the Prosecutor...to the Second Assembly of States Parties.”

¹⁴⁵ “Statement of the Prosecutor Luis Moreno Ocampo to Diplomatic Corps.”

¹⁴⁶ See “Amnesties and Child Soldiers” above.

¹⁴⁷ Interview, 18 March 2004.

¹⁴⁸ Refugee Law Project, “Behind the Violence,” 45.

¹⁴⁹ The Woodrow Wilson School’s report on the DRC points out that women are not even allowed to address the local councils in the Kivus. See Woodrow Wilson School, “Balancing Peace, Justice and Stability,” 20-21.

¹⁵⁰ Interview, 18 March 2004.

¹⁵¹ Interview, 18 March 2004.

¹⁵² Interview, 2 April 2004.

¹⁵³ See “ICC Pre-Trial Process” above.

¹⁵⁴ See Amnesty International, “Addressing the present,” 13.

¹⁵⁵ A point raised by several observers. Concerns with the Commission are also discussed in Amnesty International,

“Democratic Republic of the Congo: Addressing the present,” 13-14; and Woodrow Wilson School, “Balancing Peace, Justice and Stability,” 19-20.

¹⁵⁶ In a speech before the UN General Assembly in September 2003; quoted in Human Rights First, “Ravaged by conflict.” See also Amnesty International, “Democratic Republic of the Congo: Addressing the Present”; International Human Rights Law Group, “Ending Congo’s Nightmare”; UN, “Interim report of the Special Rapporteur”; and Woodrow Wilson School, “Balancing Peace, Justice and Stability,” among others.

¹⁵⁷ Interview, 29 March 2004.

¹⁵⁸ See discussion in International Crisis Group, “Northern Uganda,” 21-22.

¹⁵⁹ U.S. Department of State, “Uganda.”

¹⁶⁰ See American Servicemembers’ Protection Act of 2002, PL 107-206, Title II, Section 2011 and 2015.





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