

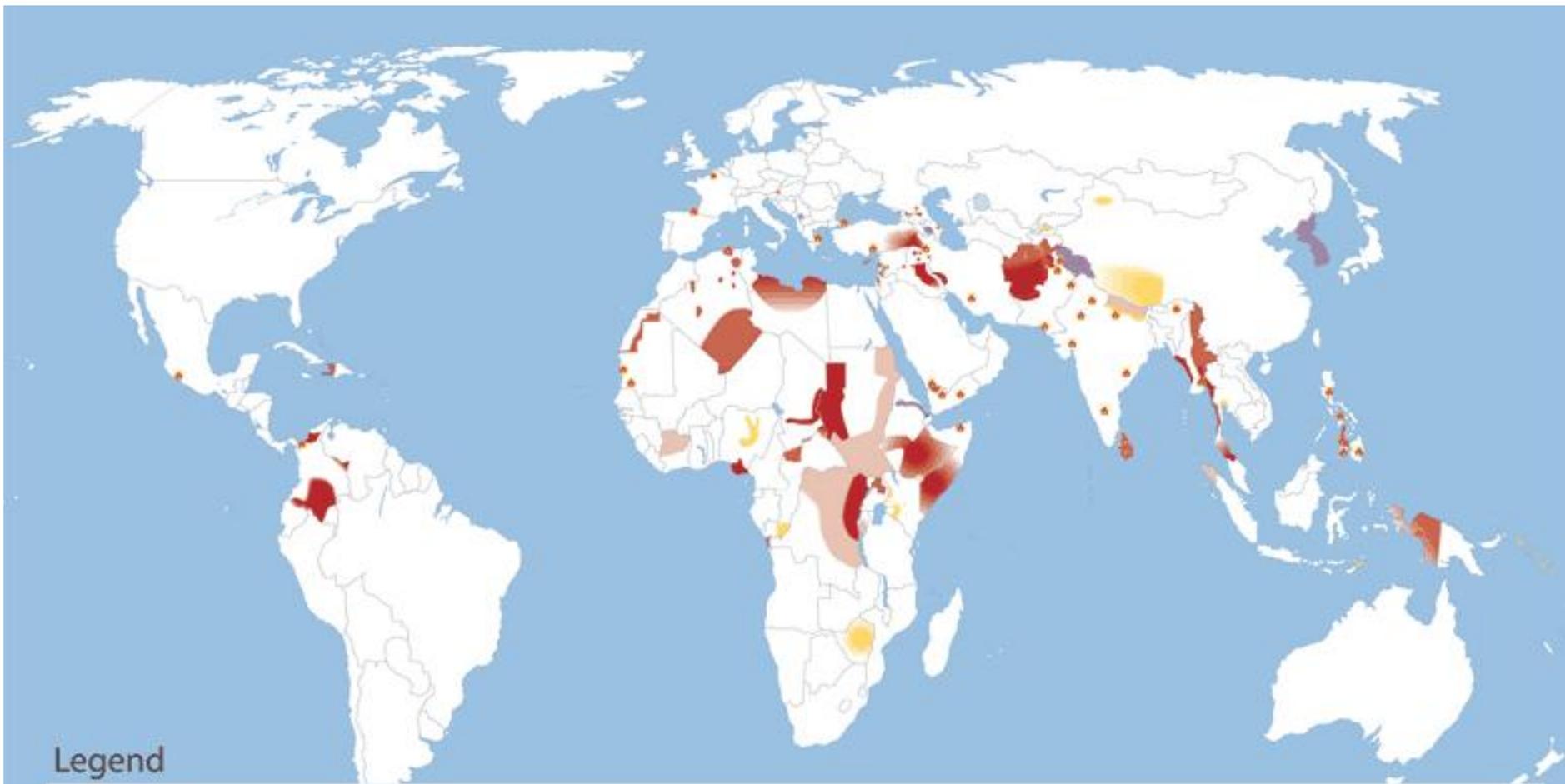
Geoffrey Nice, Gresham Professor of Law
31 October 2012 Barnard's Inn Hall

The permanent International criminal Court –
the ICC – was long in planning

African countries whose citizens have been
brought before the ICC complain of unfairness
and bias and that the ICC has become a court
for Africa, nowhere else. May they be right?

When the ICC becomes involved in
continuing conflicts - as it has done in Africa –
does it inevitably become involved in the
politics of regime change and even in the
conflicts themselves?





Legend

Type of Conflict

International armed conflicts involving governments in armed conflict over sovereignty and territory.

- Active
- Cease-fire/amnesty/dormant
- Peace Accord

Internal armed conflicts taking place either between government forces and organised groups, or amongst organised groups which control sufficient territory to sustain concerted military operations. These conflicts sometimes spill across international borders without being considered international conflicts between state parties

- Active
- Cease-fire/amnesty/dormant
- Peace Accord
- Non-insurgent political unrest

Terrorism involving one or more factions in significant armed opposition to the state. The intensity of such violence varies. Only specific terrorist activity in 2008–2009 is shown

- International terrorism
- Internal terrorism

*Ambassador Tiina Intelmann President of the
'Assembly of State Parties' that oversees the ICC*

“They are forgetting that we are really in the business of trying to bring perpetrators of atrocities to justice. And it just so happens that very often the perpetrators of such crimes are people who have held or are holding high positions [in government]. So, by definition, political support is necessary because these issues, besides being legal, are also political.”

Referrals to the ICC

Article 13

Exercise of jurisdiction

The Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if:

- (a) A situation in which one or more of such crimes appears to have been committed is **referred to the Prosecutor by a State Party in accordance with article 14;**
- (b) A situation in which one or more of such crimes appears to have been committed is **referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations;** or
- (c) The **Prosecutor has initiated an investigation in respect of such a crime in accordance with article 15.**

Referrals to ICC

Article 14

Referral of a situation by a State Party

1. **A State Party** may refer to the Prosecutor a **situation in which one or more crimes within the jurisdiction of the Court appear to have been committed** requesting the Prosecutor to investigate the situation for the purpose of determining whether one or more specific persons should be charged with the commission of such crimes.

2.

Article 15

Prosecutor

1. The Prosecutor may initiate investigations proprio motu on the basis of information on crimes within the **jurisdiction of the Court**.

2. The Prosecutor shall analyse the seriousness of the information received.....

3. If the Prosecutor concludes that there is a reasonable basis to proceed.....

4. If the Pre-Trial Chamber, upon examination of the request and the supporting material, considers that there is a reasonable basis to proceed with an investigation, and that the case appears to fall within the jurisdiction of the Court, it shall authorize the commencement of the investigation, without prejudice to subsequent determinations by the Court with regard to the jurisdiction and admissibility of a case.

5...



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COUNTRIES AFFECTED BY THE LRA



Amnesty International Statement – January 2004 (of Uganda referral)

- "Any Court investigation of war crimes and crimes against humanity in northern Uganda must be part of a comprehensive plan to end impunity for all such crimes, regardless of which side committed them and of the level of the perpetrator"
- "A referral by a party to the Rome Statute may not limit the scope of any investigation by the Prosecutor of a situation"
- "The Prosecutor shall act independently" ... and no member of his office shall "seek or act on instructions from any external source."

Statement of Chief Prosecutor Luis Moreno Ocampo:

- **“The LRA is a rebel group, claiming to fight for the freedom of the Acholi people in Northern Uganda. The LRA has mainly attacked the Acholis they claim to represent. For nineteen years the people of Northern Uganda have been killed, abducted enslaved and raped.”**

Statement of Father Carlos Rodríguez of the Acholi Religious Leaders Peace Initiative (ARLPI) about the Uganda referral:

- **“Obviously, nobody can convince the leaders of a rebel movement to come to the negotiating table and at the same time tell them that they will appear in courts to be prosecuted.”**

Joseph Kony



- **Alleged Commander-in-Chief of the Lord's Resistance Army (LRA).**
- Prosecution application for a warrant of arrest 6 May 2005, allegedly criminally responsible for thirty-three counts murder enslavement sexual enslavement rape
- Inhumane acts of inflicting serious bodily injury and suffering intentionally directing an attack against a civilian population pillaging inducing rape forced enlistment of children -8(2)(e)(vii)).
- At large

Vincent Otti



Alleged Vice-Chairman and Second-in-Command of the Lord's Resistance Army (LRA)

- At large

Okot Odhiambo



- **At large**

Dominic Ongwen



- At large

Raska Lukwiya



- Deceased



Thomas Lubanga Dyilo



- Found guilty, on 14 March 2012, of the war crimes of enlisting and conscripting of children under the age of 15 years and using them to participate actively in hostilities.
- Sentenced, on 10 July 2012, to a total of 14 years of imprisonment

Decision on the Prosecution's Urgent Request for Variation of Time-Limit to Disclose the Identity of Intermediary 143 or Alternatively to Stay Proceedings Pending Further Consultations with the VWU, ICC-01/04-01/06-2517-Red, 8 July 2010

- “The Prosecutor, by his refusal to implement the orders of the Chamber and in the filings set out above, **has revealed that he does not consider that he is bound to comply with judicial decisions that relate to a fundamental aspect of trial proceedings, namely the protection of those who have been affected by their interaction with the Court**” ... and ... “he appears to argue that the prosecution has autonomy to comply with, or disregard, the orders of the Chamber, depending on its interpretation of its responsibilities under the Rome Statute framework.”

Judgment pursuant to Article 74 of the Statute, ICC-01/04-01/06-2842

- “The Chamber is particularly concerned that the prosecution used an individual as an intermediary with such close ties to the government that had originally referred the situation in the DRC to the Court. He not only introduced witnesses to the investigators, but he was also involved in the arrangements for their interviews. Given the likelihood of political tension, or even animosity, between the accused and the government, it was wholly undesirable for witnesses to be identified, introduced and handled by one or more individuals who, on account of their work or position, may not have had, to a sufficient degree or at all, the necessary qualities of independence and impartiality. Whilst it is acceptable for individuals in this category to provide information and intelligence on an independent basis, they should not become members of the prosecution team.”

Bosco Ntaganda



- Seven counts of war crimes: enlistment of children under the age of 15, conscription of children under the age of 15, using children under the age of 15 to participate actively in hostilities; murder, attacks against the civilian population, rape and sexual slavery, and pillaging; and
- **Three counts of crimes against humanity:** murder, rape and sexual slavery, and persecution.
- **At large**

Germain Katanga, also known as "Simba"

Alleged commander of the Force de résistance patriotique en Ituri (FRPI)
and

Mathieu Ngudjolo Chui

Alleged former leader of the Front des nationalistes et intégrationnistes (FNI)



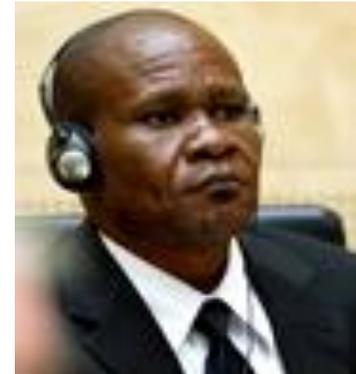
War crimes:

- Using children under the age of fifteen to take active part in the hostilities, under article 8(2)(b)(xxvi) of the Statute;
- Directing an attack against a civilian population as such or against individual civilians not taking direct part in hostilities under article 8(2)(b)(i) of the Statute;
- Willful killings under article 8(2)(a)(i) of the Statute;
- Destruction of property under article 8(2)(b)(xiii) of the Statute;
- Pillaging under article 8(2)(b)(xvi) of the Statute;
- Sexual slavery under article 8(2)(b)(xxii) of the Statute.
- Rape under article 8(2)(b)(xxii) of the Statute

Crimes against humanity:

- Murder under article 7(1)(a) of the Statute;
- Rape under article 7(1)(g) of the Statute.
- Sexual slavery under article 7(1)(g) of the Statute.

- Trial started 2009; judgment awaited



Callixte Mbarushimana



- On 16 December 2011, Pre-Trial Chamber I decided by Majority to decline to confirm the charges against Mr Mbarushimana.
- Mr Mbarushimana was released from the ICC's custody on 23 December 2011,

Sylvestre Mudacumura

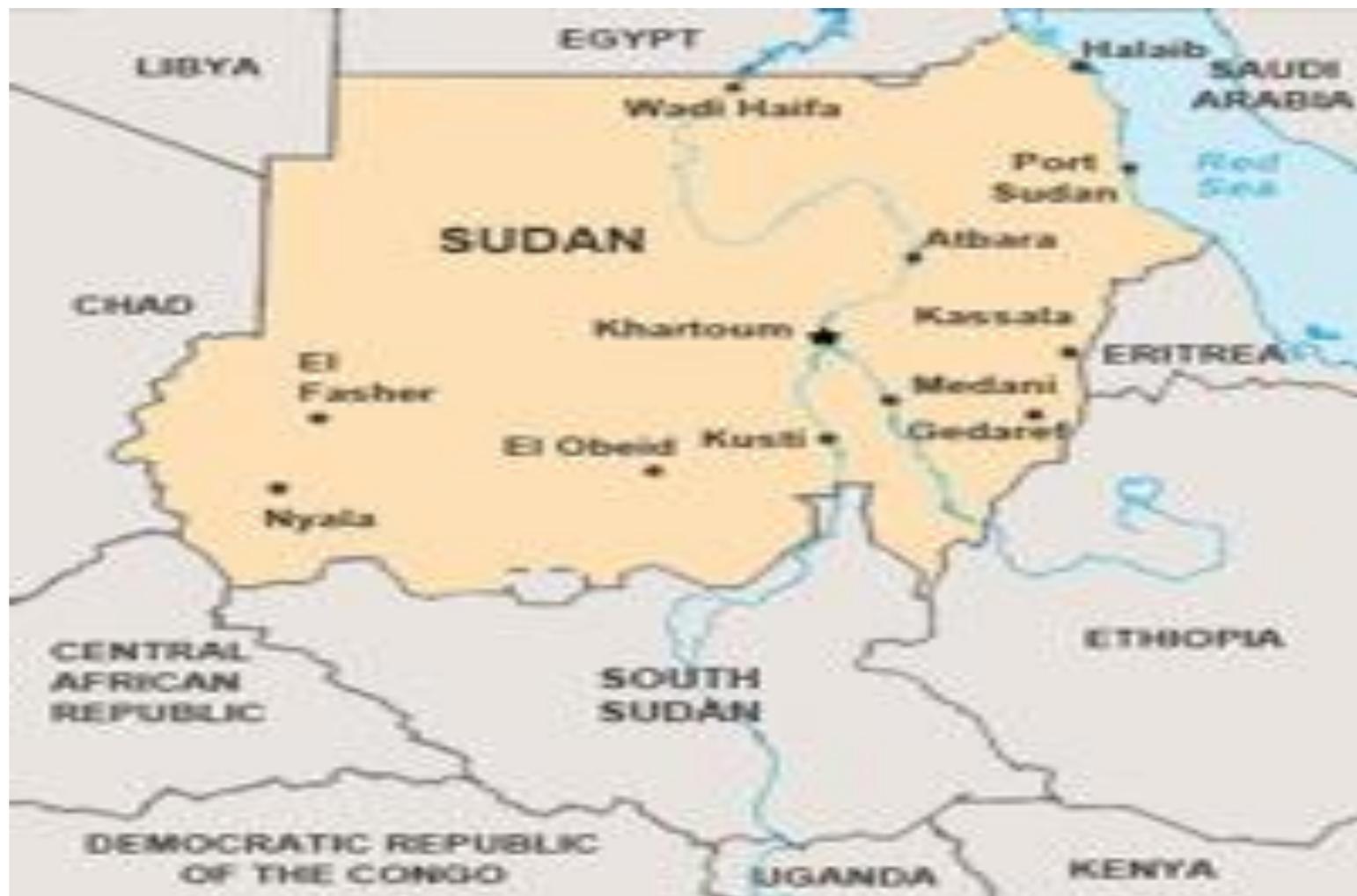
- Allegedly criminally responsible for nine counts of war crimes, including: attacking civilians, murder, mutilation, cruel treatment, rape, torture, destruction of property, pillaging; and outrages against personal dignity.
- At large



Jean-Pierre Bemba Gombo



- President and Commander-in-chief of the Movement de Liberation du Congo (MLC)
- Allegedly criminally responsible as military commander
- Two counts of crimes against humanity; including murder and rape
- Three counts of war crimes; including murder, rape and pillaging



Ahmad Muhammad Harun ("Ahmad Harun"),
Former Minister of State for the Interior of the Government of Sudan;
Minister of State for Humanitarian Affairs of Sudan
and

Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb")
Alleged leader of the Militia/Janjaweed



- Twenty counts of crimes against humanity: murder persecution ; forcible transfer of population rape inhumane acts imprisonment or severe deprivation of liberty and torture; and
- Twenty-two counts of war crimes: murder attacks against the civilian population destruction of property; rape; pillaging; and outrage upon personal dignity
- At large

Omar Hassan Ahmad Al Bashir

President of the Republic of Sudan since 16 October 1993



- Five counts of crimes against humanity: murder
extermination forcible transfer torture – and rape;
- Two counts of war crimes: intentionally directing attacks against a
civilian population as such or against individual civilians not taking part
in hostilities; and pillaging.
- Three counts of genocide: genocide by killing (article 6-a), genocide by
causing serious bodily or mental harm (article 6-b) and genocide by
deliberately inflicting on each target group conditions of life calculated to
bring about the group's physical destruction (article 6-c).

Abdallah Banda Abakaer Nourain,

Commander-in-Chief of Justice and Equality Mouvement Collective-Leadership, one of the components of the United Resistance Front;

and

Saleh Mohammed Jerbo Jamus



- Allegedly criminally responsible as co-perpetrators
- Three counts of war crimes for violence to life; intentionally directing attacks against personnel, installations, material, units or vehicles involved in a peacekeeping mission; and pillaging.

Abdel Raheem Muhammad Hussein

Current Minister of National Defence and former Minister of the Interior and former Sudanese President's Special Representative in Darfur



- Seven counts of crimes against humanity: persecution (article 7(1)(h)); murder (article 7(1)(a)); forcible transfer (article 7(1)(d)); rape (article 7(1)(g)); inhumane acts (article 7(1)(k)); imprisonment or severe deprivation of liberty (article 7(1)(e)); and torture (article 7(1)(f)).
- Six counts of war crimes: murder (article 8(2)(c)(i)); attacks against a civilian population (article 8(2)(e)(i)); destruction of property (article 8(2)(e)(xii)); rape (article 8(2)(e)(vi)); pillaging (article 8(2)(e)(v)); and outrage upon personal dignity (article 8(2)(c)(ii)).



William Samoei Ruto; and Joshua Arap Sang

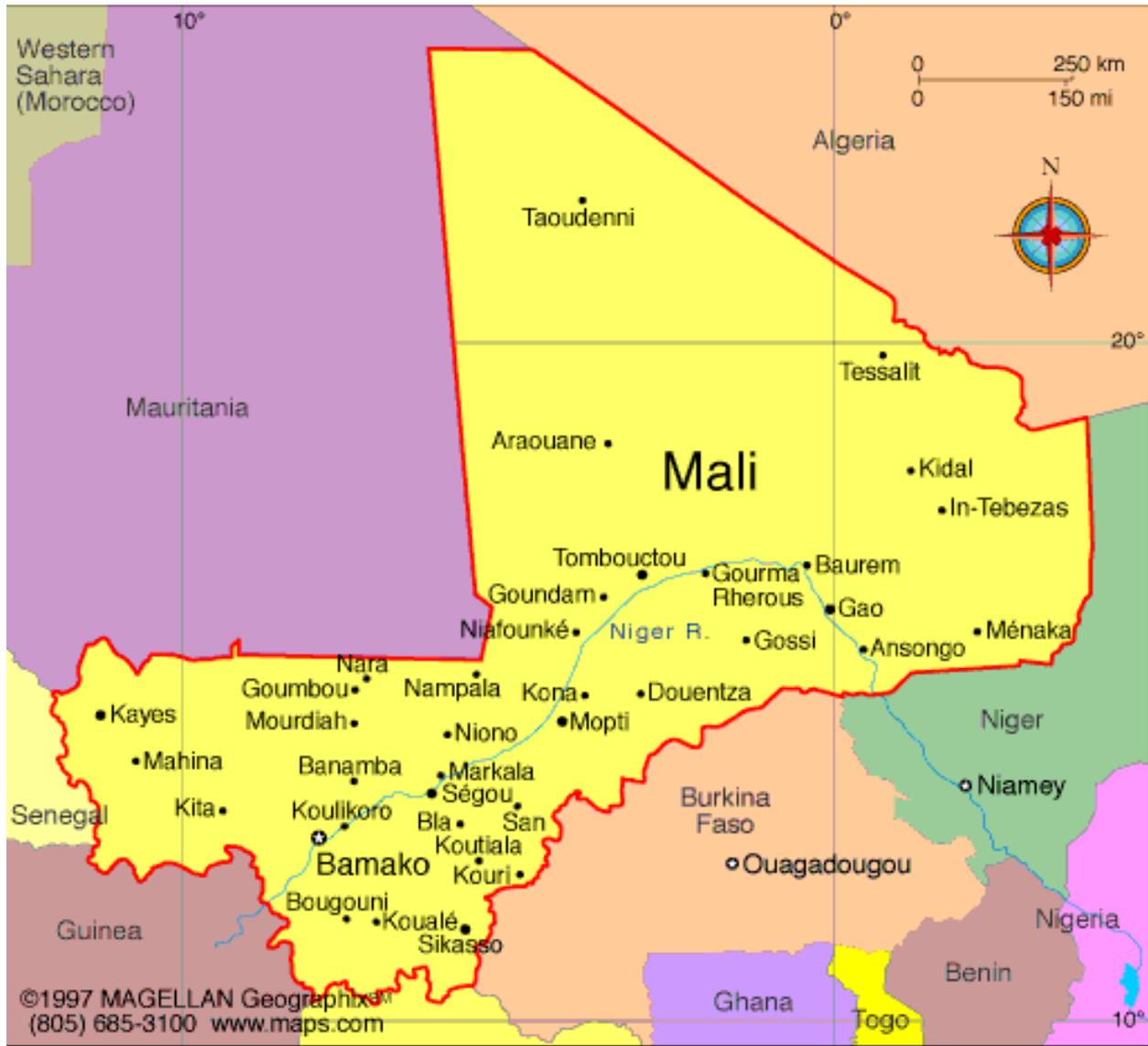
- Murder;
 - Deportation or forcible transfer of population; and persecution.
-
- Henry Kiprono Kosgey Member of the Parliament and Chairman of the ODM
 - Pre-Trial Chamber II declined to confirm the charges against Mr. Kosgey

Francis Kirimi Muthaura and Uhuru Muigai Kenyatta

- Murder;
- Deportation or forcible transfer;
- Rape;
- Persecution; and
- Other inhumane acts

- Mohammed Hussein Ali
- Pre-Trial Chamber II declined to confirm the charges against Mr Ali.





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Situation	Initiating Event	Motivation for Referral and initiation of investigation	Irregularities during proceedings
Uganda	<p><u>Situation Initiating event:</u></p> <ul style="list-style-type: none"> On 16 December 2003, the Government of Uganda referred the situation concerning northern Uganda to the Prosecution. On 29 July, 2004, the Prosecutor determined a reasonable basis to open an investigation. <p><u>Individual case initiating event:</u></p> <p>Kony, Otti, Lukwiga, Odhiambo and Ongwen</p> <ul style="list-style-type: none"> Prosecution warrant application: 6 May 2005 Prosecution warrant application amended and supplemented: 13 May 2005 Prosecution warrant application additionally amended and supplemented: 18 May 2005 	<ul style="list-style-type: none"> <u>Ratification:</u> Uganda ratified the Rome Statute in June 2002 <u>Self Referral as a solution against the LRA:</u> Referral by the Government of Uganda of their political opponents for prosecution; the LRA leaders. After 17 years of Museveni addressing the LRA with a military solution, no military solution was accomplished or any successful peace negotiation; 1.) Referral aimed to rally international assistance to arrest the Government’s political opponents; 2.) The Ugandan gov-ernment used the Court to make the LRA an enemy of mankind; 3.) The Referral aims to intimidate the LRA and send the message that they are sought internationally not just by the Government. <u>The referral lifted the obligation for both sides to negotiate peace:</u> the referral relieved Museveni and the LRA commanders from the obligation of negotiating peace and left open only a military solution. <u>“International reputation Campaign”</u> - The reputation of the Government of Uganda was being tarnished by “The failing military operations and corruption scandals, the rapidly deteriorating humanitarian situation, and the classification of northern Uganda by the UN Under-Secretary General for Humanitarian Affairs as the ‘most forgotten and neglected crisis in the world’” <u>Donors</u> - International donors, funding between 35 and 50 per cent of Uganda’s budget, added their voice to local leaders’ criticism of the govern-ment’s failure to resolve the conflict in the North and to calls to end the government’s human rights violations in combating the LRA. <u>Self Referral as an advantage to the ICC Prosecution</u> – Uganda legal advisors suggested that the Uganda situation would be ideal for referral to the ICC in the midst of ICJ litigation in the suit between the DRC and Uganda. <u>Speculation of Referral for Ethnic Reasons</u> - Referral would lead to continuation of the conflict, which would keep the political influence of the Acholi people minimal, and would result in no investigation against the UPDF which would legitimize Museveni’s strategy concerning the conflict.” 	<p>Case:</p> <p>Kony, Otti, Lukwiga, Odhiambo and Ongwen</p> <ul style="list-style-type: none"> No proceedings – at large, and deceased.

Situation	Initiating Event	Motivation for Referral and initiation of investigation	Irregularities during proceedings
DRC	<p><u>Situation Initiating event:</u></p> <ul style="list-style-type: none"> On 3 March 2004, the Government of the DRC referred to the Court the situation in its territory since the entry into force of the Rome Statute on 1 July 2002. Prosecutor initiated an investigation: 21 June 2004. <p><u>Individual case initiating event:</u></p> <p>Lubanga</p> <ul style="list-style-type: none"> Prosecution Warrant application: 13 January 2006 <p>Katanga and Ngudjolo</p> <ul style="list-style-type: none"> Prosecution warrant application: <p>Ntaganda</p> <ul style="list-style-type: none"> Prosecution warrant application: 12 January 2006 <p>Mbarushimana</p> <ul style="list-style-type: none"> Prosecution warrant application: 20 August 2010 <p>Mudacumura</p> <ul style="list-style-type: none"> Prosecution warrant application: 13 June 2012 	<ul style="list-style-type: none"> <u>Prosecution influenced self referral:</u> The Prosecutor himself requested that the DRC refer itself 1.) for the political reason of reassuring opponents of the Prosecutor's proprio moto powers on investigations that the Prosecutor would not use the power too broadly; and because 2.) Self referral ensures that the State has the political will to cooperate with the Prosecution fully. The Prosecutor had made it clear that the situation was under scrutiny and implied an investigation would follow, which may have pushed the government to refer the case first. 	<p>Case:</p> <p>Lubanga</p> <ul style="list-style-type: none"> List TC/Fulford criticism of Prosecution investigation, intermediaries and failure to comply with Chamber's orders. On 13 June 2008 the TC imposed its first stay of proceedings as a result of the failure by the Prosecution to disclose potentially exculpatory evidence covered by certain confidentiality agreements On 8 July 2010, the TC imposed a second stay of proceedings for the prosecution's non-compliance with an order for the disclosure of the name of an intermediary. On 23 February 2011, the TC rejected an application from the defence which asked that a stay of proceedings is imposed based on allegations that four prosecution intermediaries had prepared false evidence and the Prosecutor was aware that some of the evidence was untrue. The TC decided that this abuse by the Prosecution does not warrant a stay of proceedings but another remedy. On 12 May 2010 the TC admonished Prosecution member Ms Le Fraper du Hellen for speaking to the press about matters that caused prejudice to on-going proceeding in the trial. <p>Katanga and Ngudjolo</p> <ul style="list-style-type: none"> The Defence made allegations that the arbitrary arrest of Katanga and transfer to The Hague created irregular implementation of the request for arrest and surrender, and also unlawful detention. <p>Mudacumura</p> <ul style="list-style-type: none"> One month before Ocampo's exit from the ICC, an arrest warrant application was submitted on 14 May 2012 against Mudacumura but rejected in whole by the PTC on 31 May 2012 under the explanation of being too vague. The warrant application was resubmitted two weeks later on 13 June 2012 and accepted by the PTC on 13 July 2012

Situation	Initiating Event	Motivation for Referral and initiation of investigation	Irregularities during proceedings
CAR	<p><u>Situation Initiating event:</u></p> <ul style="list-style-type: none"> • On 21 December 2004, the Government of the Central African Republic referred to the Court crimes committed in the territory of the CAR after 1 July 2002. • In June 2005, the Government of the Central African Republic provided the Prosecutor with documents concerning the crimes committed in its territory in 2002 - 2003, and the records of judicial proceedings held in Bangui in relation to these crimes. • On 10 May 2007, the Prosecutor announced his decision to open an investigation <p><u>Individual case initiating event:</u></p> <ul style="list-style-type: none"> • Prosecution warrant application: <p>Bemba: 9 May 2008</p>	<ul style="list-style-type: none"> • <u>Referral allowed Kabila's political opponent Bemba to be prosecuted:</u> It is argued that Bemba was singled out for prosecution because he could unseat Kabila in the presidential race and the international community had invested a lot in Kabila's presidency. Bemba's prosecution for events in CAR allowed Bemba to be tried over conflict in a country whose leaders have no reason to fear domestic instability by seeking his trial. • <u>Referral before final decision on CAR's ability to prosecute:</u> Though the CAR Government referred the situation to the ICC Prosecutor in 2004, the Prosecutor waited for the CAR Cour de Cassation to make a decision on whether domestic courts could try the perpetrators. Once the Court of Appeal made its decision in February 2006, the ICC went ahead with the investigation. 	<p>Case:</p> <p>Bemba:</p> <ul style="list-style-type: none"> • Expressing concern about the ICC proceedings defense Nkwebe Richard Liriss stated before the start of trial that "for the first time, and let us hope for the last time, the most unfair trial that international justice has ever seen".

Situation	Initiating Event	Motivation for Referral and initiation of investigation	Irregularities during proceedings
Sudan	<p><u>Situation Initiating event:</u></p> <ul style="list-style-type: none"> Following the International Commission of Inquiry on Darfur's Report in January 2005, the UN SC using its authority under the Rome Statute referred the situation in Darfur since 1 July 2002 to the Prosecutor of the International Criminal Court in resolution 1593 on 31 March 2005. Decision to open an investigation: 6 June 2005 <p><u>Individual case initiating event:</u></p> <p>Harun and Kushayb</p> <ul style="list-style-type: none"> Prosecution warrant application: 27 February 2007 <p>Bashir</p> <ul style="list-style-type: none"> Prosecution warrant application: 14 July 2008 Prosecution appeal on genocide charge: 6 July 2009 PTC decides anew to issue charge of genocide: 12 July 2010 <p>Abu Garda</p> <ul style="list-style-type: none"> Prosecution warrant application: 20 November 2008 <p>Hussein</p> <ul style="list-style-type: none"> Prosecution warrant application: 2 December 2011 <p>Banda and Jerbo</p> <ul style="list-style-type: none"> Prosecution warrant application: 20 November 2008 	<ul style="list-style-type: none"> <u>The referral is limited in scope and focused:</u> the referral by the UNSC is limited in geographical location to only crimes in Darfur and focuses only on Sudanese nationals with foreign nations and peacekeepers not falling under the ICC's jurisdiction. <u>Political referral for regime change:</u> The Prosecutor's request for an arrest warrant which does not focus on the criminality only of the Suspect but criminalises the entire state of Sudan has reinforced the perception of a Court pursuing regime change. <u>Legitimacy for the rebels:</u> The rebels support of the ICC and the referral was tactical for the rebels to gain legitimacy and weaken their opponent. 	<p>Case:</p> <p>Harun and Kushayb</p> <ul style="list-style-type: none"> <u>Prosecutor's approach to the warrant or summons application:</u> When bringing his first case in the Darfur situation, he requested the judges to consider issuing summonses to appear as an alternative to arrest warrants, since summonses would not corner the Sudanese government: the Sudanese government might sacrifice Ahmed Harun and Ali Kushayb to the ICC in the expectation that it would prevent the OTP going higher up the chain of command. <p>Bashir</p> <ul style="list-style-type: none"> <u>Prosecutor's decision to indict Bashir:</u> Ocampo told a high-level AU official that "If Sudan had handed over these two guys [Harun and Kashuyb], it would not have had the problem of the President." This came after Bashir had stated "thrice in the name of Almighty God . . . never [to] hand any Sudanese national to a foreign court." <p>Banda and Jerbo</p> <ul style="list-style-type: none"> On 26 October 2012, the Trial Chamber rejected the defense application to Stay the Proceedings due to non-cooperation with investigations by States and international organisations, and no access to Sudan. The TC rejected the application saying that whether the fair trial of the accused is affected, is a question that can be better answered once the trial has commenced.

Situation	Initiating Event	Motivation for Referral and initiation of investigation	Irregularities during proceedings
Kenya	<p><u>Situation Initiating event:</u></p> <ul style="list-style-type: none"> Prosecution notification of intention to initiate investigation under art 15(3): 5 November 2009 PTC grants request to open investigation: 31 March 2010 <p><u>Individual case initiating event:</u></p> <p>Ruto and Sang (Kosgey)</p> <ul style="list-style-type: none"> Prosecution Summons Application: 15 December 2010 <p>Muthaura and Kenyatta (Ali)</p> <ul style="list-style-type: none"> Prosecution Summons Application: 15 December 2010 	<ul style="list-style-type: none"> <u>The Prosecutor initiated the investigation for reasons of self-promotion:</u> Accusations have been made by such individuals as the AG of Kenya that Prosecutor Ocampo's initiation of the situation in Kenya was for his own personal reasons for self-promotion. <u>The ICC was intent on taking the Kenya case quickly:</u> Examination of the timeline of events that lead to the ICC initiating the Kenya situation show that Kenya was given very little time to domestically address judicial options. For example, only a few months after the PEV the ICC initiated preliminary investigations in Kenya 	<p>Case:</p> <p>Ruto and Sang, and Muthaura and Kenyatta</p> <ul style="list-style-type: none"> The ICC PTC refused a request from the Government of Kenya for assistance in the Kenya national investigations into PEV. The PTC denied the Government access to evidence which would assist in investigations of all accused citing to witness and victim intimidation, and mistrust of the Government.

Situation	Initiating Event	Motivation for Referral and initiation of investigation	Irregularities during proceedings
Libya	<p><u>Situation Initiating event:</u></p> <ul style="list-style-type: none"> UN SC decision to refer Libya situation since 15 Feb 2011 to ICC Prosecutor: 26 February 2011 Prosecution decision to open investigation: 3 March 2011 <p><u>Individual case initiating event:</u></p> <p>Saif Gaddaafi and Al-Senussi (Muammar Gaddafi)</p> <ul style="list-style-type: none"> Prosecution warrant application: 16 May 2011 	<ul style="list-style-type: none"> <u>The timing of the Referral suggests the UNSC used the Court to have an effect with regime change:</u> The ICC became involved in the situation just over a week after the conflict started. Following Resolution 1973, African nations such as South Africa and Uganda backtracked their support with accusations that the intervention constituted military and political involvement in a sovereign country. The intervention was labeled as interventionist and a Western double standard where only Libyan oil is sought. <u>The UNSC Referral’s temporal limitation suggests shielding the West’s relations with Gaddafi during investigations:</u> There was no explanation given for why only crimes after 15 February 2011 were pursued. It is suggested in criticism that the years preceding the revolution involved close economic, political and intelligence connections with the Gaddafi regime by Western nations. <u>The UNSC Referral limits who can be prosecuted, and suggests only Government actors and their proxies can be prosecuted by the ICC:</u> A provision was included in Resolution 1973 at the insistence of the US in order to allow the Resolution to pass which excluded “nationals, current or former officials or personnel” of states other than Libya from the Court’s jurisdiction. <u>The UNSC was mindful of political change against Gaddafi when issuing the referral/Res. 1970:</u> Gaddafi’s decreasing influence and importance in Africa contributed to the AU’s neutral position to the UNSC Resolution. 	<p>Case:</p> <p>Saif Gaddafi and Al-Senussi</p> <ul style="list-style-type: none"> Saif Gaddafi has been held in incommunicado detention for over 11 months with no access to family, friends or counsel while the admissibility of his case is decided before the ICC and without meaningful contribution from the defence on Gaddafi’s wishes or conditions. Al-Senussi has been held in incommunicado detention for 8 weeks since his transfer from Mauritania to Libya, and has been denied access to family, friends and counsel. The Libyan authorities have stated that he has been interrogated without a lawyer, and the ICC has not ruled on an application by the Office of the Public Counsel for Defence to represent Senussi’s interest before the ICC proceedings.

Situation	Initiating Event	Motivation for Referral and initiation of investigation	Irregularities during proceedings
Côte d'Ivoire	<p><u>Situation Initiating event:</u></p> <ul style="list-style-type: none"> • Côte d'Ivoire, not a party to the Rome Statute, accepted ICC jurisdiction by a declaration under art 12(3): 18 April 2003 • ICC jurisdiction reconfirmed by the Côte d'Ivoire Presidency: 14 December 2010 and 3 May 2011 • Prosecution request to open an investigation: 23 June 2011 • PTC grants request to open investigation: 3 October 2011 <p><u>Individual case initiating event:</u></p> <p>Gbagbo</p> <ul style="list-style-type: none"> • Prosecution warrant application: 25 October 2011 	<ul style="list-style-type: none"> • <u>The ICC case removed Gbagbo from power:</u> The one-sided prosecution of Ouattara's rival and the prosecution proceedings only against Gbagbo have caused many in Côte d'Ivoire to be convinced that the sole objective of the ICC has been to remove Ouattara's rival from the country. When asked directly, Prosecutor Bensouda has not been able to answer why only one side of the conflict has been subjected to prosecution. • <u>Victor's Justice keeps Ouattara in power:</u> Ouattara would be reluctant to allow charges to be brought against his supporters, the members of the FRCI, because the army is largely made up of former Forces Nouvelles, and the army could potentially turn against him. Ouattara's government answers that no prosecutions against Ouattara supporters have been undertaken because "It was precisely in order not to be accused of victor's justice that we brought in the International Criminal Court. 	<p>Case:</p> <p>Gbagbo</p> <ul style="list-style-type: none"> • The detention and transfer of Gbagbo to the ICC have been questioned as irregularly conducted against international procedure for transfer. • In October 2012 the ICC PTC denied an application for Gbagbo to receive medical abroad saying that he must remain in detention until a decision on his trial date is made.

Situation	Initiating Event	Motivation for Referral and initiation of investigation	Irregularities during proceedings
Mali	<p data-bbox="233 201 562 289"><u>Situation Initiating event:</u></p> <ul data-bbox="233 354 633 689" style="list-style-type: none"> <li data-bbox="233 354 633 689">• The Minister of Justice delivered a letter referring the situation in Northern Mali to the ICC on 13 July 2012 	<ul data-bbox="681 201 1454 1096" style="list-style-type: none"> <li data-bbox="681 201 1454 689">• <u>ICC investigation/monitoring pre-referral suggests that ICC requested Self-Referral:</u> The referral may have been requested because self-referrals are the least criticised method of referring a situation to the Court. It is suggested that the Prosecution was far along in their preliminary investigation by the time Mali self-Referred the situation. <li data-bbox="681 758 1454 1096">• <u>ICC investigation referred by Mali to combat opposition/rebels in north:</u> It is questioned whether the self-referral was given in order to bring charges against the rebel group controlling the north but to ensure there are no charges for crimes committed by the Malian forces. 	<ul data-bbox="1474 201 1860 332" style="list-style-type: none"> <li data-bbox="1474 201 1860 332">• No Proceedings or cases initiated to date