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## **The permanent International Criminal Court - the ICC - and Africa Transcript**

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## The Permanent International Criminal Court and Africa

Professor Sir Geoffrey Nice

The permanent International Criminal Court – the ICC – was long in planning and finally came into existence after the *ad hoc* Yugoslavia and Rwanda Tribunals (the ICTY and the ICTR) were seen to have had some success. However, problems facing the permanent court that involves itself in continuing conflicts have been seen to be different from those of the *ad hoc* tribunals that deal with conflicts that had been largely concluded when the tribunals first sat. 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? Has the court dealt evenly with different countries or has it shown itself to be vulnerable to political influences? 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? Does the tension between the universal jurisdiction claimed by international criminal courts and the immunity of heads of state from pursuit in courts help or harm when the tension leads to some heads of state remaining in office simply to maintain their immunity from pursuit? Sir Geoffrey Nice's involvement in the Sudan, Kenya and Libya cases may provide insight and indicate how a venture some think doomed could yet be saved.

Viewpoints matter. A map of the world centred on England does not make it as small compared to Africa as does a map centred on Africa. A map centred on Africa coloured with sites of armed conflicts makes violence on that continent look very serious indeed.

The Permanent International Criminal Court has, after ten years, only tried people from Africa. Is that fair?

Violence in Africa is, of course, disturbingly awful. Machetes 'shortening' arms – as in Sierra Leone conflict, not an ICC case – are hard to contemplate as are the thousands of deaths caused by such primitive effective weapons.

But savagery, to use a risky word, is as – or more – appropriate for what North Europeans did in WWII and Africans were not involved in that.

So we should be careful to exclude from our own approach to African conflicts even the distant hint of the prejudice that some Africans perceive as instrumental in their subjugation to international intervention by a court that imposes modern western values on the planet's most ancient societies.

The fact that conflicts in Afghanistan, Georgia, Iraq, etc have not yet been pursued at the ICC is not today's issues. It may be wrong that those responsible for serious non-African conflicts have been, in a sense, 'let off' – but that does not help with the different question of how it is that this international court has spent a decade only in Africa, never out of Africa.

And for the World citizen, in whom the ICC's very existence has stimulated the notion of legal accountability for war crimes and who is inclining to believe in a world order (however unrealistically), there is this associated issue:

Whether or not the ICC reflects a developing world order, does it raise expectations that internal as well as external legal processes should 'improve' (whatever that may mean) in all countries as a result of the ICC's very existence and that territories we once thought of as totally corrupt – to be contrasted with the UK's unflinching incorruptibility, if it is – may be falling into line?

Many countries may already have fallen into line – as have we and other countries by inclusion in domestic law of the offences otherwise dealt with by international criminal courts.

But would they have been moved – would we – to approach conflicts – their own or others' – through national courts more enthusiastically had the ICC's work in Africa provided model, exemplary trials from which others could learn?

If the reality is otherwise – if the trials of the ICC have been *unsatisfactory* and far from exemplary – not only will there be no positive pressures to improve national and international legal systems but something of a reverse could follow. Unsatisfactory international trials could justify a return to national insularity – with all the potential for leaving crimes in war un-investigated – reinforcing, not destroying, systems that allow for impunity.

In this lecture I will explore the problems the ICC has encountered in its ten years of life by consideration of criticisms made of the seven conflict 'situations', as they are titled, that have given rise to no more than sixteen cases.

You may like to have in mind, as we review the history, how similar shortcomings would be viewed if occurring in domestic courts dealing with national crime.

You may also want to start asking what other things could be done to reduce shortcomings that there have been, bearing in mind that – unlike in national systems – international criminal courts that have been established by politicians are most likely to be pursuing politicians and others whose political experience and access to political power may be deployed to influence or deflect the court's attention.

The issue of the ICC's politicisation is much discussed in this tenth year of its existence as a court. ICC officials have had to confront widespread criticisms of their work and by way of defence Ambassador Tiina Intelmann President of the Assembly of State Parties that oversees the ICC said of the critics:

"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."

If by 'political support' Ms Intelmann sought to justify the involvement of politicians around the world in deciding who to prosecute then what she said should be set beside what you the citizen of the world may judge could have been achieved *without* 'political support', with the court declining to engage in political processes, and simply getting on with the law's job.

Focusing on Africa, the complaint that the ICC has, to date, only pursued African situations and cases is met by the history of at least three of the situations having been the subject of 'self-referral' by the state concerned. How, it is argued, can Africa complain if African countries refer themselves to the court? It may be interesting to see if in such referrals there was self interest of the state concerned or if the Prosecutor was himself behind the apparent 'self referral'.

But finally, as the late Judge May who presided over the trial of Milosevic at the ICTY used to say: 'The judge always blames counsel for what goes wrong and counsel blames the judge – it is always easy to do someone else's job better than s/he can'. A rule to apply to consideration of the extremely difficult work of the ICC Prosecutor and judges, whatever criticism may be made of them.

All we need to know of the international law for the purposes of this lecture is that 'Situations' and 'Cases' can be brought before the ICC in the following ways:

According to Article 13 of the Rome Statute, the Court may exercise jurisdiction if a situation is "referred to the Prosecutor by a State Party in accordance with article 14," "referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations;" or "The Prosecutor has initiated an investigation in accordance with article 15."

Article 14 stipulates that "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." Article 15 allows the Prosecutor to "initiate investigations *proprio motu* on the basis of information on crimes within the jurisdiction of the Court."

### UGANDA – The ICC's FIRST REFERRAL

The Conflict: Alice Lakwena from Northern Uganda created the 'Holy Spirit Movement' with ideologies and beliefs evolved over three decades that embraced certain non-Christian, essentially African traditions and beliefs. Lakwena eventually decided that a change of power was required within Uganda but by the middle of 1987 her ambitions were seen to have failed and Joseph Kony seized this opportunity to merge what was left of the movement with the existing Uganda People's Democratic Army, another rebel force bent on wresting power away from the Ugandan government, to form the Lord's Resistance Army (LRA).

Kony operated largely within the borders of northern Uganda, Southern Sudan, as well as the Democratic Republic of Congo (DRC) plus the Central African Republic (CAR). Following unsuccessful peace talks, the LRA's activities increased, and into the early 2000's, the Ugandan government mounted a series of coordinated efforts to defeat Kony's armed movement.

This 18 year conflict claimed the lives of thousands of civilians including by arbitrary killings, together with maimings, abductions and forced recruitment all leading to massive displacement of the population. Children who returned, voluntarily or as a consequence of military action, have been the subject of much controversy with allegations that the Ugandan security forces retrained some of them for military purposes in the fight against the LRA.

In the autumn of 2003 the Prosecutor publicly stated his intention to follow the situation in the eastern DRC closely and invited states to refer *this* situation to the Court. At the time, the International Court of Justice (ICJ) was adjudicating on the DRC's claims that Uganda had violated international law in its involvement in the eastern DRC. Some of Uganda's foreign legal advisors suggested to both the Ugandan Government and the ICC's Office of the Prosecutor (OTP) that Uganda had a situation on its own territory that would be ideal for the ICC.[\[1\]](#)

The ICC website describes the procedural history and how the Prosecutor determined that there was a sufficient basis to start planning for the first investigation of the International Criminal Court.

It was understood between President Museveni and the ICC Prosecutor that a key issue would be locating and arresting the LRA leadership and that this would require the active co-operation of states and international institutions in supporting the efforts of the Ugandan authorities. The reintegration of LRA members, who were themselves victims, into Ugandan society was key to the future stability of Northern Uganda and would require the concerted support of the international community – Uganda and the Court could not do this alone.

The Ugandan authorities enacted an amnesty law although President Museveni of Uganda excluded the leadership of the LRA. Was this approach by the ICC neutral in the way we would want of a judicial authority?

It appears that the Ugandan referral was a military strategy and international reputation campaign<sup>[2]</sup> and may have been initiated in the Ministry of Defence, as a research interview with a government minister revealed; the referral could also rally international assistance for the arrest of the government's military opponents.<sup>[3]</sup>

In January 2004, Amnesty International (AI) made a statement observing that "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,"... "a referral by a party to the Rome Statute may not limit the scope of any investigation by the Prosecutor of a situation" .... the Rome Statute requires that "the Prosecutor shall act independently" ... no member of his office shall "seek or act on instructions from any external source".

Many inferred that the Prosecutor endorsed the limited terms of the referral and Uganda's intent to limit was further demonstrated with the revision of the country's amnesty law in 2004 to exclude top LRA leadership from its protection.<sup>[4]</sup> Following the initial referral, Museveni requested Prosecutor Moreno-Ocampo to drop the charges.<sup>[5]</sup>

The referral also portrayed the LRA as a criminal or terrorist group devoid of any political agenda, described by President Museveni as 'criminals', 'bandits' or 'terrorists', saying "I refuse to negotiate with bandits [...] because they are criminals."<sup>[6]</sup> The Ugandan government stated that "in view of its policies and practices, the LRA is an inherently criminal organisation without any legitimate political or military objectives."<sup>[7]</sup>

The statement made by the ICC Chief Prosecutor confirmed a lack of legitimacy of the LRA saying: "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."<sup>[8]</sup>

The ICC referral effectively confirmed that a military solution to the conflict would be necessary as peace negotiations could not now work. The ICC arrest warrants removed the LRA command's incentive to come out for peace talks. Father Carlos Rodríguez of the Acholi Religious Leaders Peace Initiative (ARLPI) is recorded as saying "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." Thus the ICC referral proved a block to peace when at the Juba peace talks in 2006, the LRA leaders insisted during the negotiation that the indictments at the ICC be lifted.<sup>[9]</sup>

In short, "The ICC referral lifted the pressure for President Museveni to continue efforts at a negotiated peace, it also removed the incentive from the side of the LRA commanders."<sup>[10]</sup>

There has been no question of the ICC investigating the activities of the Government of Uganda despite evidence that it could or should have done so. By acting jointly with the ICC President, Museveni may have reduced the prospects of effective peace and prolonged conflict by ensuring the LRA alone is characterised as criminal.

Those suspect who remain at large and with outstanding arrest warrants include:  
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.

Vincent Otti - Alleged Vice-Chairman and Second-in-Command of the Lord's Resistance Army (LRA).  
Okot Odhiambo  
Dominic Ongwen  
(Raska Lukwiya - Deceased)

#### DEMOCRATIC REPUBLIC OF THE CONGO (DRC)

The DRC became Congo Free State in 1908 under Belgian rule after having been colonized in the 1870s. In 1960 there was independence as Zaire, followed by civil war and temporary fragmentation of country until 1965 when Mobutu Sese Seko seized power. He was ousted in 1997 when Laurent Kabila became president; he was assassinated in 2001 and succeeded by his son and current president Joseph Kabila. From 1997/8 to 2003 DRC was involved in civil war involving several neighbouring countries.

It has been the deadliest war since WWII, directly involving eight African nations; by 2008, the war and its aftermath had killed 5.4 million people, mostly from disease and starvation with millions more displaced. The war(s) were largely driven by the trade in conflict minerals.

The Prosecutor announced in July 2003 that the situation would be a priority for his Office. In September 2003 under his *proprio motu* powers he sought authority to start an investigation and stated that a referral and active support from the DRC would facilitate the work of the Office of the Prosecutor.

The ICC recounted the history of the DCR referral explaining that in April 2004 the Prosecutor of the International Criminal Court, Luis Moreno Ocampo, received a letter of referral signed by the President of the DRC for crimes in the DRC since the entry into force of the Rome Statute, on 1 July 2002. By means of this letter, the DRC asked the Prosecutor to investigate in order to determine if one or more persons should be charged with such crimes; the DRC authorities committed to cooperate with the International Criminal Court. The Prosecution noted that the Prosecution would proceed to determine whether there is a reasonable basis to initiate an investigation and took note of and welcomed the affirmation by the DRC of its readiness to cooperate with the Court in all of its efforts pursuant to the referral.<sup>[11]</sup>

Was this self-referral in fact pushed by the Prosecutor? It appears that the Prosecutor had himself requested it and encouraged it by declaring that – absent a referral by the DRC – he was ready to use his *proprio motu* powers.

The Prosecutor would have been likely to receive the required authorization from the Pre-Trial Chamber without great difficulty but may the Prosecutor have had a political motive? At the Rome Conference that established the court, many of these countries strongly opposed giving the Prosecutor power to initiate an investigation *proprio motu*. Pushing for, and gaining, a self-referral brought the advantage of not wielding his *proprio motu* powers in a way to worry other countries, as well as providing some guarantee of cooperation that is required to bring a case to trial with an investigation that may proceed smoothly with the appropriate the necessary level of protection for investigators and witnesses.<sup>[12]</sup> "...knowledge that the ICC was ready to exercise its jurisdiction created the incentive for the then-transitional government of the DRC to invite an investigation into crimes committed in that country which otherwise would have escaped scrutiny."<sup>[13]</sup>

Thus did the Prosecutor get his first trial off the ground, apparently pursuant to a 'self referral'? And then he nearly grounded it by conduct hard to explain that led to proceedings being stayed and the first person to be tried at the court nearly being released on the basis of prosecutorial misconduct. There were two stay of proceedings.

The first Stay of Proceedings was ordered on 13 June 2008 by the Trial Chamber (TC) as a consequence of the failure by the Prosecution to disclose potentially exculpatory evidence covered by certain confidentiality agreements. The Trial Chamber stated: "The overall picture is clear: the prosecution's general approach has been to use Article 54(3)(e) to obtain a wide range of materials under the cloak of confidentiality, in order to identify from those materials evidence to be used at trial (having obtained the information provider's consent). This is the exact opposite of the proper use of the provision, which is, exceptionally, to allow the prosecution to receive information or documents which are not for use at trial but which are instead intended to "lead" to new evidence. The prosecution's approach constitutes a wholesale and serious abuse, and a violation of an important provision which was intended to allow the prosecution to receive evidence confidentially, in very restrictive circumstances."<sup>[14]</sup>

In addition, the Appeals Chamber decision expressed concern that when accepting large amounts of material from the United Nations, the relevance of which for future cases he could not appreciate at that time, the Prosecutor agreed that he would not disclose the material even to the Chambers of the Court without the consent of the information providers. By doing so, the Prosecutor effectively prevented the Chambers from assessing whether a fair trial could be held in spite of the non-disclosure to the defence of certain documents, a role that the Chamber has to fulfil pursuant to the last sentence of article 67 (2) of the Statute.<sup>[15]</sup> This led to the documents finally being made available to the Trial Chamber.<sup>[16]</sup>

The second Stay of Proceedings was issued 8 July 2010, the TC imposed its second stay of proceedings because of the prosecution's non-compliance with an order for the disclosure of the name of an 'intermediary' working for the Prosecution in the DRC. The AC said the Prosecutor's "wilful non-compliance constituted a clear refusal to implement the orders of the Chamber", but it reversed the stay of proceedings. The Trial Chamber had attributed the stay to "the Prosecutor's unequivocal refusal to implement the repeated orders of this Chamber to disclose the identity of 143 (in highly restricted circumstances, determined by the Chamber)" ...and ... "the Chamber is currently hearing evidence on a confined, but significant, issue that includes the allegation that the prosecution has knowingly employed, or made use of, intermediaries who influenced individuals to give false testimony, thereby abusing its powers." The Chamber noted that "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."<sup>[17]</sup>

On this second Stay of Proceedings, the Appeals Chamber found that the Prosecutor's non-compliance was deliberate. The Appeals Chamber stated that it "finds that such wilful non-compliance constituted a clear refusal to implement the orders of the Chamber" and there was "a more profound and enduring concern", namely that the Prosecutor may decide whether or not to implement the Trial Chamber's orders depending on his interpretation of his obligations under the Statute."<sup>[18]</sup>

Other criticism of the Prosecution by the Chamber noted that "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."<sup>[19]</sup>

Another criticism of the Prosecution by the Chamber occurred when on 15 March 2010 Ms Le Fraper du Hellen, the Head of the Jurisdiction, Complementarity and Cooperation Division of the Office of the Prosecutor participated in an interview with Wairagala Wakabi, who works for an organisation called Lubangatrial.org which gave strong support for the credibility of the prosecution intermediaries without evidence to this assertion. The interview suggested that the Prosecutor was to decide if facts were proven in the case. The Chamber's criticism stressed that "as a matter of professional ethics a party to proceedings is expected not to misrepresent the evidence, to misdescribe the functions of the parties or the Chamber, or to suggest or imply without proper foundation that anyone in the case, including the accused, has misbehaved" ... and ... "it was inappropriate for the

prosecution representative to state in unequivocal terms that they are fantastic, committed people, who support international justice, and that they are admired by the prosecution."[\[20\]](#)

Misbehaviour by the Prosecution in court could be merely error by individual counsel. But here – in keeping documents from the court, in arguably allowing witnesses to be corrupted by contact with intermediaries very close to the government of the DRC and in attempting to woo public opinion by improper expressions of opinion – all reflective of a Prosecutor thinking he was not subject to control of the rule of law – is one possible inference that political influence was at work? Governments did not want their documents used and the Prosecutor sought to comply with their wishes? The DRC did want its intermediaries used and the Prosecution was not willing to have the manner of use explored?

It should be noted that the Trial Chamber ordered the release of Lubanga days after their decision on the second Stay of Proceedings decision on 15 July 2010 stating that: "Given, as just set out, the Chamber has imposed an unconditional stay of proceedings, and bearing in mind the wholesale uncertainty of whether this case will restart at some future time, together with the length of time the accused has already been in custody, anything other than unrestricted release will be unfair. The accused, therefore, shall be released unconditionally save for the following. This order shall not be enforced until the five day time limit for an appeal has expired."[\[21\]](#) The Appeals Chamber overturned this order,

In summary, the DRC referral has resulted in the following cases:

Thomas Lubanga Dyllo

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.

Germain Katanga - 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 and crimes against humanity. Trial started in 2009, and judgment is awaited.

Bosco Ntaganda

accused of seven counts of war crimes and three counts of crimes against humanity. At large.

Callixte Mbarushimana -

The PTC declined to confirm the charges and released from custody December 2011.

Sylvestre Mudacumura - accused of nine counts of war crimes. At large.

#### CENTRAL AFRICA REPUBLIC

From the 16th to 19th century, slave traders occupied the region. The French occupied the region in 1894. As Ubangi-Shari, now the Central African Republic, was united with Chad in 1905 and in 1910 it was joined with Gabon and the Middle Congo to become French Equatorial Africa. After World War II a rebellion in 1946 forced the French to grant self-government. In 1958 the territory voted to become an autonomous republic within the French Community, and on 13 August 1960, President David Dacko proclaimed the republic's independence from France. Dacko moved the country politically into Beijing's orbit, but he was overthrown in a coup on December 31, 1965, by Col. Jean-Bédél Bokassa, army chief of staff.

On Dec. 4, 1976, the Central African Republic became the Central African Empire. Marshal Jean-Bédél Bokassa was declared Emperor Bokassa I and brutality and excess characterized his regime until he was overthrown in a coup on 20 September 1979. Former president David Dacko returned to power and changed the country's name back to the Central African Republic, but on 1 September 1981 he was deposed by President Dacko again.

In 1991, President André Kolingba, under pressure, announced a move toward parliamentary democracy and in August 1993, Prime Minister Ange-Félix Patassé defeated Kolingba in election. Part of Patassé's popularity rested on his pledge to pay the back salaries of the military and civil servants.

Patassé was unable to pay the salaries due to government workers, and after the military revolted in 1996, Patassé requested French troops assist in suppressing the uprising. In 1998 the UN sent an all-African peacekeeping force to the country and in September 1999 Patassé easily defeated Kolingba in election. Patassé survived a coup attempt in May 2001, but in March 2003, he was overthrown by Gen. François Bozizé. In 2005, Bozizé was elected in what international monitors called a free and fair election.

In November 2010, the trial of Jean-Pierre Bemba, a former vice-president of the DRC began for war crimes and crimes against humanity during civil unrest that followed the attempted coup against Patassé in the CAR.

In late 2004 or early 2005 the Prosecutor received a referral concerning the CAR and an ICC Press Release noted: "The Prosecutor of the International Criminal Court, Luis Moreno-Ocampo, has received a letter sent on behalf of the government of the Central African Republic. The letter refers the situation of crimes within the jurisdiction of the Court committed anywhere on the territory of the Central African Republic since 1 July 2002, the date of entry into force of the Rome Statute."[\[22\]](#)

Scholarly writing on the referral has noted that though the Government of the CAR referred the situation in 2004 "the CAR Appeals Court in February 2006 stated that it was unable successfully to conduct an investigation of former President Patasse or of former MLC leader Bemba," and referred the cases to the ICC on charges of crimes against humanity. Patasse currently resides in Togo while Bemba is in exile in Portugal."[\[23\]](#) The ICC investigation came almost two and half years after the referral by the CAR with the Prosecutor, in April 2006, announcing "that he would wait for CAR's highest criminal court, the *Cour de Cassation*, to finish consideration of whether domestic courts could try the alleged crimes. Later that month, the *Cour de Cassation* announced that it was unable to carry out the necessary criminal proceedings and stated that the ICC was better suited to find and punish the perpetrators."[\[24\]](#)

In the 2006 Presidential election in the DRC Kabila won but was strongly challenged by Bemba. The Supreme Court of the DRC dismissed Bemba's election challenge in November 2006.[\[25\]](#) On 22 May 2007 the Prosecutor announced the opening of an investigation in the CAR. The Prosecution looked into serious crimes perpetrated in CAR, in particular the worst allegations relating to killing, looting and rape, occurred during intense fighting in October–November 2002 and in February–March 2003 where there was a pattern of massive rapes and other acts of sexual violence perpetrated by armed individuals. Sexual violence appears to have been a central feature of the conflict.

The Prosecutor has also noted the position of the Cour de Cassation of CAR in April 2006 indicating that in relation to the alleged crimes the national authorities were unable to carry out the necessary criminal proceedings, in particular to collect evidence and obtain the accused and concluded that cases arising from the OTP investigation would be admissible.

A mission to Bangui took place in November 2005 where the OTP received clear confirmation that many of the victims in the Central African Republic were awaiting the involvement of the ICC in order to see justice done and to recover their dignity.

The Prosecutor will conduct a thorough investigation into serious crimes committed after the 1st of July 2002. At this stage, the investigation is not directed at any particular suspect.

The Office will continue gathering information and monitoring allegations of crimes being committed on the territory of the CAR, including in the north of the country (areas of Birao and Paoua in particular), where violence has erupted again since the end of 2005.

The referral allowed DRC Kabila's presidential opponent Bemba to be indicted in the CAR Situation.

Criticisms of what happened reflect the political consequences of what should have been a neutral judicial act. "The dilemma for international justice lies in his role in the war and politics of DRC. Bemba is a key figure in political opposition: an elected senator, leader of the largest opposition party and, until these charges, perhaps the most serious challenger to incumbent President Kabila in this year's elections. Bemba's supporters claim the process is political, and that Bemba was singled out for prosecution because he could unseat Kabila, in whom the international community have invested considerable faith and resources."

"...a leaked UN Report in October 2010 described in detail the systematic human rights abuses and even possible acts of genocide committed by Kabila's rebel group, supported by neighbouring Rwanda. It is clear not all perpetrators who could be indicted are facing international justice. But it is important to note that this case was referred to the ICC by the government of the CAR, and Bemba is being tried for crimes committed not in DRC, but in CAR."

"Where key individual leaders are singled out, as has happened in Bemba's case, any commitment their supporters had to the existing political settlement is endangered. Bemba was indicted not as part of a biased 'Western' political agenda, but because his operations crossed into CAR, a country whose leaders have no reason to fear domestic instability by seeking his trial."[\[26\]](#)

Jean-Pierre Bemba Gombo Alleged President and Commander-in-chief of the Mouvement de libération du Congo (Movement for the Liberation of Congo) (MLC).

Two counts of crimes against humanity: murder and rape

Three counts of war crime: murder; rape and pillaging

Trial Started November 2010

#### SUDAN - DARFUR

The Darfur Conflict began in February 2003 when the Sudan Liberation Movement/Army (SLM/A) and Justice and Equality Movement (JEM) groups in Darfur took up arms, accusing the Sudanese government of oppressing non-Arab Sudanese in favor of Sudanese Arabs.

One side of the conflict was composed mainly of the official Sudanese military and police, and the Janjaweed, a Sudanese militia group recruited mostly from the Arabized indigenous Africans and few Arab Bedouin of the northern Rizeigat; the majority of other Arab groups in Darfur remain uninvolved in the conflict.[\[15\]](#) The other combatants are made up of rebel groups, notably the SLM/A and the JEM, recruited primarily from the non-Arab Muslim Fur, Zaghawa, and Masalit ethnic groups. Although the Sudanese government publicly denies that it supports the Janjaweed, it has been providing financial assistance and weapons to the militia and has been organizing joint attacks targeting

civilians. [\[16\]\[17\]](#)

There are various estimates on the number of human casualties which range from around less than 10,000 [\[18\]](#) to several hundred thousand dead, from either direct combat or starvation and disease inflicted by the conflict. There have also been mass displacements and coercive migrations, forcing millions into refugee camps or over the border and creating a large humanitarian crisis and is regarded by many as a genocide.

South Sudan separated from Sudan in July 2011.

The referral by the Security Council in March 2005 was limited and focused. First, the resolution is geographically limited in an obvious way: it refers to the situation in Darfur only, not elsewhere. Second, it shields from prosecution nationals of states not party to the ICC Statute who are engaged in [peacekeeping] 'operations,' of the UN or the African Union, arguably to prevent a veto of the resolution by the United States, which objects to the Court having jurisdiction over any non-state party nationals. [\[27\]](#)

The US representative spoke of the Security Council's 'firm political oversight' of ICC proceedings and announced a request for Bashir's arrest warrant. This confirmed for the Sudanese government that 'international criminal justice' is just another instrument in the toolbox of the US and its allies to topple an Islamic regime which they do not approve of. It points to the double standards in the application of 'international criminal justice' to argue that the Court is not a neutral legal terrain but a political battlefield where certain western states fight their non-western enemies, while the US and UN peacekeepers are almost always exempted from the Court's jurisdiction and situations in which the aggressors are westerners, for instance Iraq, Afghanistan, and Israel, are not subjected to international criminal justice. [\[28\]](#)

"Government officials have argued that this political character of the referral is evinced by the fact that it came in the midst of the Security Council's other punitive decisions against the Sudanese government. Moreover, it came only two months after the Sudanese government had made, in its view, far-reaching concessions in internationally mediated peace negotiations with the SPLM, an armed movement which fought for the right to self-determination for Southern Sudan. The Sudanese government was 'rewarded for putting an end to the longest conflict in Africa with further sanctions and procedures', according to the Sudanese representative to the UN."

Pg. 956 - "Moreover, the Prosecutor's charges, while based on the notion of individual criminal responsibility, essentially render the entire Sudanese state criminal by arguing that the Sudanese President committed crimes 'by using the state apparatus' or where they claim that 'AL BASHIR ensured that *all components of the Sudanese government*, the Armed Forces and the Militia / Janjaweed worked together in carrying out his plan'. [\[29\]](#)

Rebel movements support the ICC referral to gain legitimacy and immunity / impunity for themselves - "When seeing international justice operate to weaken their opponent more than themselves, leaders of Darfuri rebel movements have calculated that they should put negotiations on hold until international criminal justice has weakened the opponent to such an extent that they can obtain a peace agreement on their terms. Meanwhile, they have extolled 'justice' and emphasized that they, unlike the Sudanese government, are willing to cooperate with the ICC. Rather than looking to the Court for accountability, these leaders' interest in the ICC lies in the fact that it brands their opponents as international criminals while they, by paying lip-service to fashionable international concepts, can gain international legitimacy." [\[30\]](#)

Mahmoud Mamdani explains the ICC referral as a tactic for the rebels - The article says that the terms 'war criminal' and '*génocidaire*' were words used by the Sudanese Rebels as labels "to be stuck on your worst enemy, a perverse version of the Nobel Prize, part of a rhetorical arsenal that helps you vilify your adversaries while ensuring impunity for your allies." [\[31\]](#)

Sudan - genocide, widely accepted not supported - and general theory of all crimes being directed by the President doubted by even those who oppose Bashir. Timing of charges, allegations against Prosecutor personally highlighted by Joshua Rosenberg highlighted this I think. David's example of Bashir money in UK London - this is the kind investigative flaws.

Clear investigative weaknesses exist on rebel side - Abu Garda not confirmed and only 2 others charged for deaths of AU peacekeepers - no charges for any rebel crimes against Sudanese citizens.

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; and  
Twenty-two counts of war crimes  
At large

Omar Hassan Ahmad Al Bashir President of the Republic of Sudan since 16 October 1993  
Five counts of crimes against humanity  
Two counts of war crimes  
Three counts of genocide

Abu Gada  
On 8 February 2010, Pre-Trial Chamber I refused to confirm the charges against Abu Garda. On 23 April, 2010, Pre-Trial Chamber I issued a decision rejecting the Prosecutor's application to appeal the decision declining to confirm the charges.

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  
Violence to life;  
Intentionally directing attacks against personnel, installations etc  
Pillaging within the meaning of article.

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; murder; forcible transfer; rape; inhumane acts; imprisonment or severe deprivation of liberty; and torture.

Six counts of war crimes: murder; attacks against a civilian population; destruction of property; rape; pillaging; and outrage upon personal dignity.

KENYA  
Post Election Violence (PEV) 2008-9  
History thereafter  
August 15, 2008: Commission of inquiry in Post-Election Violence chaired by Justice Philip Waki releases its report.  
October 17, 2008: Kofi Annan receives sealed envelope bearing names of key suspects from Justice Philip Waki.  
November 11, 2008: ICC Prosecutor Luis Moreno Ocampo warns that he will take over Kenyan case if the Waki Commission deadline for local Tribunal is not met.  
July 2, 2009: Justice Minister Mutula Kilonzo of PNU, Lands Minister James Orendo of ODM and AG Amos Wako visit Moreno Ocampo and Kofi Annan to plead for more time to establish a local tribunal.  
July 8, 2009: Kofi Annan hands over secret envelope bearing names of suspects to Moreno Ocampo.  
July 14, 2009: Cabinet again rejects Justice Minister Mutula's bills on Local Tribunal.  
July 30, 2009: Cabinet again rejects Mutula's bills on local tribunal, says ICC will try suspects.  
November 26, 2009: Moreno-Ocampo applied to ICC Pre-trial chamber seeking authority to commence investigations on Kenya.

The ICC was intent on taking the Kenya case quickly

The timeline shows that, though many academic articles say that Kenya was given the chance to prosecute and the ICC lost patience, it was less than a year from time Waki Commission release report to time Annan hands Ocampo Waki "envelope" to take case to the ICC. And Ocampo expressed his intent to take the case only two months after the Waki Commission released its report, and began a preliminary investigation only month after the PEV. [\[32\]](#)

The International Criminal Court and Post-Election Violence in Kenya, Internews Media Briefing Note

"An ICC team originally conducted a preliminary investigation in Kenya *just months after* the deadly post-election violence of 2007/8. As allegations began to surface of the involvement of high profile politicians and business leaders in orchestrating the post-election violence, the prospect of a full ICC investigation and trials moved closer. For nearly 18 months, a debate raged over the best arena in which to try suspected masterminds of the violence: a dedicated 'Special Tribunal' in Kenya or international justice at The Hague. [\[33\]](#)  
Referral for Prosecutor's self promotion and political.

"The AG accused Ocampo of using the Kenyan case before the ICC for self-promotional reasons; "I was on many occasions shocked by what appeared to be the prosecutor's self promotion using the Kenyan case... a case that was and is now extremely delicate arising out of complicated circumstances and where I would have expected a professional prosecutor to exercise the greatest possible caution," he said. [\[34\]](#)

Common acceptance that there is little reliable evidence. Bensouda was publicly challenged on her visit to Kenya last week that she has got wrong people.

No evidence put forward to show shielding by Kenya in complementarity findings - but ICC determined to keep these cases as if it would have no other work for next few years.

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.

#### LIBYA

The timing of the Referral - 26 February 2011 - suggests the UNSC used the Court to effect regime change. The referral "is surely the earliest the Court has ever become involved in a situation: just over a week since it started. This creates the potential for the Court to act as deterrent for future atrocities, and alter the conflict dynamics in a game-changing manner."[\[35\]](#)

On 22 March President Museveni of Uganda made his views on the issue clear: 'I am totally allergic to foreign, political and military involvement in sovereign countries, especially African countries'. He also accused the West of double standards by imposing a no-fly zone on Libya but taking no action against other Arab nations facing popular upheavals. ... The AU (along with countries like Turkey, Venezuela and Russia, and regional bodies such as the Arab League) is now strongly opposed to the form that foreign military intervention has taken, as mandated by Resolution 1973."[\[36\]](#)

The UNSC Referral's temporal limitation suggests shielding the West's relations with Gaddafi during investigations. The "restriction placed on the temporal jurisdiction of the ICC. Article 11 of the Rome Statute provides the ICC with jurisdiction for crimes allegedly perpetrated after July 1 2002, the date the Court came into existence. Operative Paragraph 4 of the Resolution, however, reads:"*[The Security Council] Decides to refer the situation in the Libyan Arab Jamahiriya since 15 February 2011 to the Prosecutor of the International Criminal Court.*" (emphasis added) To date there has been no official explanation as to why the ICC's jurisdiction was restricted to events post-February 15, nor has the Court commented on the subject. Presumably a temporal limitation on the Court's jurisdiction pre-meditated and negotiated by Security Council members. In this context, it would appear that the restriction to events after February 15, 2011 was included in order to shield key Western states from having their affairs and relations with Libya investigated. It is evident that in the years preceding the intervention, many of the same Western states that intervened in Libya had close economic, political and intelligence connections with the Gaddafi regime - and that these connections helped legitimize and sustain Gaddafi's regime."[\[37\]](#)

Resolution 1970 excluded states which are not members of the ICC from the Court's jurisdiction. Operative paragraph 6 of the Resolution reads: *[The Security Council]...Decides that nationals, current or former officials or personnel from a State outside the Libyan Arab Jamahiriya which is not a party to the Rome Statute of the International Criminal Court shall be subject to the exclusive jurisdiction of that State for all alleged acts or omissions arising out of or related to operations in the Libyan Arab Jamahiriya established or authorized by the Council, unless such exclusive jurisdiction has been expressly waived by the State.* The exclusion of non-states parties in Resolution 1970 exposes a disturbing paradox, if not plain hypocrisy, in the treatment of the ICC by powerful states."[\[38\]](#)

"The shift in position by the United States on the ICC merits further discussion. After abstaining on the Darfur referral, United States Ambassador Patterson reminded the world that 'we have not dropped, and indeed continue to maintain, our long-standing and firm objections and concerns regarding the ICC' (United Nations Security Council 2005). On Libya the United States not only voted in favour of the referral of Libya to the ICC it went as far as to co-sponsor the resolution. Here we have a somewhat unlikely situation of the United States putting forward a resolution to the Security Council in support of a referral to a court that it had insisted its military personnel and political elite are immune from."[\[39\]](#)

This proviso, which would apply to any members of an international peacekeeping operation authorised by the Security Council, was included at the insistence of the United States, as a pre-condition to allowing the resolution to pass. It does not however, contrary to media reports, place the alleged mercenaries in Libya outside the Court's jurisdiction - since they are obviously not acting with the authority of the Council. Further, even though the resolution refers to attacks "against civilians", suggesting it is only the conduct of the State and its proxies that will be investigated, there is nothing stopping the Court from investigating atrocities committed by anti-government forces."[\[40\]](#)

The UNSC was mindful of political change against Gaddafi when issuing the referral/Res. 1970. "Included in that reality is that even for the AU, supporting the Libyan leader in the same manner as they have al-Bashir might be a bridge too far."[\[41\]](#)

The statement of the Organisation of Islamic Cooperation stated that the OIC "The General Secretariat of the Organization of the Islamic Conference (OIC) voiced its strong condemnation of the excessive use of force against civilians in the Arab Libyan Jamahiriya, resulting in the death and injury of a large number of people."[\[42\]](#)

Contrast Sudan, Libya and Kenya - OTP position on Libya is that as there is no shielding, human rights/fair trial not determinative of complementarity. Illustrates how SC referral counts for little if SC powers not interested in cases any longer, but is relied on to strip Bashir of immunity usually applicable to all Head of States. For Kenya, a functioning state, easily accused without evidence or chance to reply of not to be trusted with evidence that it might not have but that could allow it prosecute the accused.

Saif Ghadaffi Honorary chairman of the Gaddafi International Charity and Development Foundation and acting as the Libyan *de facto* Prime Minister.

Two counts of crimes against humanity:  
Murder and Persecution  
Abdullah Al-Senussi Colonel in the Libyan Armed Forces and current head of the Military Intelligence

Muammar Mohammed Abu Minyar Gaddafi (Muammar Gaddafi) - deceased

#### CÔTE D'IVOIRE

Referral: May 2011

The ICC case Removed Gbagbo from power. The referral caused a perception of one sided prosecution and it has been noted that "... the ICC's credibility in the eyes of many Ivorians hinges on its ability, or willingness, to indict some of the president's allies. The current situation, with Gbagbo the only named suspect, has left many of his supporters convinced that the sole objective of the ICC has been to remove Ouattara's rival from the country. "It's difficult to know exactly what the plan of the government is," says an official with the UN mission in Ivory Coast, who requests anonymity. "Was it just that they wanted Gbagbo taken away? If they stop at Gbagbo, they will have no credibility, and it will be a failure."[\[43\]](#)

Arguments for the one sided referral which was to remove Gbagbo from power points to the fact that "... other high-profile suspects on the Gbagbo side, including his wife, Simone, remain in Ivorian custody, no visible effort has been made by the ICC to arrest them, sparking speculation that Ouattara's administration is privately resisting additional cases."[\[44\]](#)

The ICC Prosecutor Bensouda has not been able to answer why prosecution so far has been one sided, which commentary stating "Despite being asked a very direct question, she failed to address the issue of whether the ICC is distributing one-sided victor's justice in Cote D'Ivoire. Former president Laurent Gbagbo has been arrested, but so far no one connected with current leader Alassane Ouattara has faced charges, despite Ouattara-aligned forces being implicated by human rights organisations in the worst atrocities."[\[45\]](#)

Victor's Justice keeps Ouattara in power. It is suggested that Ouattara might be hesitant to prosecute both sides because "Any resistance to the indictment of pro-forces seems to be restricted to the political and military elite. Ordinary Ivorians, even those who hold Gbagbo and his loyalists responsible for the crisis, generally recognise that members of the FRCI and other elements of Ouattara's military coalition committed crimes and deserve to be prosecuted. There is an obvious reason why Ouattara would be reluctant to allow charges to be brought against members of the FRCI. The army is made up in large part of former *Forces Nouvelles* rebels, and if made unhappy they could potentially turn against Ouattara."[\[46\]](#)

It is noted that "Ouattara's former prime minister and the current head of Côte d'Ivoire's National Assembly, said this when asked about the lack of justice for crimes committed by his side's forces: "It was precisely in order not to be accused of victor's justice that we brought in the International Criminal Court ... [which] people cannot claim to be complaisant or to pick sides.... Up until now the ICC has been invited to come investigate in Côte d'Ivoire. Yet, the ICC, to my knowledge, has only issued four arrest warrants, [all against the Gbagbo side]. You will agree that the ICC has decided on the basis of its investigations."[\[47\]](#)

#### MALI

Referral: 13 July 2012 The referral happened with a letter dated 13 July 2012 from Mali Justice Minister, transmitted by a Malian Delegation in The Hague, which refers the situation in Mali since January 2012 to the ICC.[\[48\]](#)

ICC investigation/monitoring pre-referral suggests that ICC requested Self-Referral. It is noted that "... statements by Bensouda hint at the fact that the investigation is much further along than many realize. Bensouda has already declared that she considers the destruction of cultural sites in Timbuktu to constitute a war crime and, in a statement yesterday, she indicated that the OTP has been monitoring the situation closely since violence broke out earlier this year. It would not surprise me if the OTP discretely requested Mali to give the Court jurisdiction through a self-referral."[\[49\]](#)

The article says that on 18 July, just five days after Mali referred the situation, Bensouda announced that she had instructed the immediate start of a preliminary investigation into crimes committed by Islamists in the north following the March coupes. The article quotes Bensouda as saying "The government of Mali ... refers the situation in Mali since January 2012 to my office and requests an investigation to determine whether one or more persons should be charged with the crimes committed," and the government declared itself "unable to prosecute or try the perpetrators."[\[50\]](#)

It is noted that the most criticism has been with cases referred by the UNSC and not with self-referrals and that "... it is important to remember that African states have most vociferously condemned the Court when it intervened as a result of Security Council referrals in Sudan and Libya (and to some extent in the Kenyan case where the ICC intervened on its own volition). Critically, the African Union has never significantly criticized the ICC following a self-referral by an African state, as was the case with Uganda, the Democratic Republic of Congo and the Central African Republic."[\[51\]](#)

ICC investigation referred by Mali to combat opposition/rebels in north. It is noted that "the investigation is about rebels. The ICC investigates situations, not rebels, so it could certainly pursue charges against any government officials or soldiers responsible for international crimes. But let's not kid ourselves - the point of an investigation in Mali would be to bring charges against the rebels in control of the north. The title of a recent Reuters article says it all: "Mali Asks Court to Investigate Rebel Crimes." [52]

It is noted that "Mali has referred 'the situation in Mali since January 2012' to the International Criminal Court, in accordance with article 14 of the Rome Statute. It is the fourth such 'self-referral' by a State. Like the tree other 'self-referrals', the States in question were asking the Court to prosecute rebel groups rather than themselves." [53]

Erwin van der Borght, Amnesty International's Africa Programme Director, urges investigations on all sides saying "The fact that the ICC is examining the situation in Mali sends an important message to those planning and committing these crimes that they cannot act with impunity and may be brought to justice. However, it's crucial that the Court looks at the full scope of alleged crimes across the country, including those carried out by Malian security forces." [54]

#### CONCLUSIONS:

Table of results shows small return despite very great financial cost.

ICC can improve its functioning and with Assembly of States Parties meeting in November a rigorous assessment can be undertaken.

Lack of well-investigated cases is what stands out in Sudan, Kenya and Libya; and indeed in Lubanga - much OTP evidence was rejected and Judges had to convict on what they could piece together with what was left but unable to convict on sexual crimes of which there was evidence, but for which there were no charges!

There is strong argument that all current cases should be reviewed under new Prosecutor.

It has to be asked whether the standards revealed in the court so far would be applied to western country or would ever encourage US or UK to have their nationals tried before the international court on questionable evidence, with inadequate investigations.

What to do? First, stand back and measure the problem in realistic terms.

The citizen is to an extent let down by the society and international society of which s/he is a part. What remedy does s/he really want? A world order legal system as good internationally as is the best national system? Not necessarily.

The Court systems in place suggest that the citizen - in Africa, Cambodia the Balkans - wants the law in its full panoply of importance and self importance: grand buildings, robes, excessive deference. Has anyone checked? I periodically but informally suggested to the ICTY judges that it might be a good idea to abandon the comfortable life of The Hague and spend time in a succession of village halls taking evidence in respectable suits from 0800 to 2000 day after day in a way that would give the judges the feel of the people as well as a better understanding of the precise evidence they gave. The only apparently insoluble difficulty of the defendant not being present is capable of being dealt with in a number of technologically advance ways, eg Skype. Do we really think that the Africans affected by these awful conflicts will feel better by the matter being dealt with remotely by foreign lawyers? I doubt it and it has never been tested. In much the same way as they might be more content with - and more contented by - their own local courts and forms of justice they well favour informality and the speed of resolution together with the savings in costs for all that that could achieve.

Would the citizen be content with something nearer to the journalism of the day that for most conflicts gets it pretty well right by the evening news deadlines for newspapers and television? Why is it necessary to have every word exposed to testing, often artificial and forensic, without underlying merit, if a more modest level of decision making would serve many purposes more quickly?

And what of informal tribunals and truth commissions?

The natural inclination to think that creating a world system is a good idea and could work - much like the tendency to have thought that combining European countries could work a proposition still being tested! - may prove wrong and for good reason. It is one thing to stand back from conflicts between countries on the globe and say they may benefit from a world court to settle arguments about territorial borders or the law of the sea. Where else could you go? But conflicts that that kill and maim are not necessarily demanding of inter-state resolution, even where they arise from inter-state conflicts. It may be much more appropriate and beneficial for them to be dealt with locally or more locally and without the elaborate structures that international institutional structures will inevitably demand.

If an all-African international court with criminal jurisdiction is developed may that point the way ahead? And if informal tribunals that establish a public record of events and that can be set up by citizens meet one of the main demands of people affected by conflict then can they - in themselves and in what they stimulate in the better performance of established courts - have a significant part to play in the way ahead.

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[1] Doing Justice to the Political: The International Criminal Court in Uganda and Sudan Sarah Nouwen and Wouter Werner <http://ejil.oxfordjournals.org/content/21/4/941>.

[2] "For Uganda, the referral was an attempt to engage an otherwise aloof international community," whereas. For the ICC, the voluntary referral of a compelling case by a state party represented both an early expression of confidence in the nascent institution's mandate and a welcome opportunity to demonstrate its viability." Payam Akhavan, "The Lord's Resistance Army Case: Uganda's Submission of the First State Referral to the International Criminal Court," American Journal of International Law 99, no. 2 (2005), Pg. 404

[3] 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' were beginning to tarnish the government's reputation. Doing Justice to the Political: The International Criminal Court in Uganda and Sudan Sarah Nouwen and Wouter Werner <http://ejil.oxfordjournals.org/content/21/4/941>.full

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[11] Source: Office of the Prosecutor

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[14] Decision on the consequences of non-disclosure of exculpatory materials covered by Article 54(3)(e) agreements and the application to stay the prosecution of the accused, together with certain other issues raised at the Status Conference on 10 June 2008, ICC-01/04-01/06-140, 13 June 2008. <http://www.icc-cpi.int/iccdocs/doc/doc511249.PDF>

[15] Judgment on the appeal of the Prosecutor against the decision of Trial Chamber I entitled "Decision on the consequences of non-disclosure of exculpatory materials covered by Article 54(3)(e) agreements and the application to stay the prosecution of the accused, together with certain other issues raised at the Status Conference on 10 June 2008", ICC-01/04-01/06-1486, 21 October 2008 <http://www.icc-cpi.int/iccdocs/doc/doc578371.pdf>

[16] Transcript, T-98-ENG, page 2, line 23 to page 4, line 1. <http://www.icc-cpi.int/iccdocs/doc/doc586028.pdf>

[17] 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 <http://www.icc-cpi.int/iccdocs/doc/doc906146.pdf>. See also, Public Redacted Version of Decision on Intermediaries, 12 May 2010, ICC-01/04-01/06-2434-Red2, 31 May 2010 <http://www.icc-cpi.int/iccdocs/doc/doc881407.pdf>

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