



Case Studies on Uganda, DRC and Sudan

CHAPTER 6

This chapter presents three case studies dealing with three countries (the Democratic Republic of Congo, Uganda and Sudan) that have been referred to the ICC.¹ This chapter is based on case studies graciously presented by religious leaders from the countries concerned at an experts meeting convened by FENICC in Nairobi, Kenya, June 2005.

6.1 DEMOCRATIC REPUBLIC OF CONGO



In July 2003, the chief Prosecutor of the ICC, Luis Moreno Ocampo, identified the Ituri north-eastern region of the DRC as the area where the first ICC involvement was to take place. Investigations and pre-trial hearings are now well underway and it is expected that the first trials of those responsible for some of the worst crimes committed in north-east DRC will probably be opened early 2006.

Historical background

“Africa’s First World War” started in 1998 in eastern Congo, bordering Rwanda and Uganda when president Laurent-Désiré Kabila decreed that the Rwandan troops who helped him overthrow the former president Mobutu must leave the country. The decision sparked a four-year civil war that involved armies from six different African states fighting each other for control of the rich natural resources of north-east DRC. At the same time, the civilian population in the area found themselves in an extremely insecure situation. Many were killed, tortured, sexually violated or forced to flee. Meanwhile, in Kinshasa, president Kabila was shot dead in an attempted coup in January 2001 and was succeeded by his son Joseph Kabila.

The new president immediately supported peace talks that resulted in an inclusive peace agreement, which was signed on 17 December, 2002. Signatories were all eight parties to

1. The Central African Republic has also made a referral to the ICC but no investigation has started at the time of writing of this Manual.



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the peace talks (government, opposition as well as rebel groups; groups that fought each other in the war). On the 1 July 2003, Joseph Kabila installed a new interim government made up of members of these different parties. This period of transition was supposed to culminate in democratic elections in June 2005. However, the election date has been postponed to probably mid 2006.

The situation in DRC is still precarious and there are almost daily reports of violence. Amnesty International has reported that a minimum of 3.3 million Congolese have been killed in the conflict, and a further 2.3 million have been forced to flee their homes. In eastern DRC, low-intensity conflict has continued to rage in the Kivus, Ituri and parts of Katanga. Serious events took place in May and August 2004. The continuous exposure to serious crimes increases traumatism, stress, unemployment, poverty, illiteracy, homelessness and epidemics, including HIV/AIDS. This situation prolongs the political and democratic transition period. The delivery of elections remains very uncertain. The grave crimes also reduce the Congolese spirit of mercy, safety and hospitality.

ICC involvement

In July 2003 the Chief Prosecutor of the ICC announced that the DRC would constitute the first major case of the Court on the basis of information he had received from various human rights groups on atrocities committed in north-eastern DRC. He started analysing the situation, with a special focus on the Ituri region.

A year later, in June 2004, Mr. Ocampo announced his decision to start a formal investigation into the crimes committed on the territory of the DRC after 1 July 2002 (the date that the Rome Statute establishing the ICC entered into force). The DRC was the first formal investigation in the history of the Court. Mr. Ocampo stated that *“the opening of the first investigation of the ICC is a major step forward for international justice, against impunity and for the protection of victims.”*

One month later the DRC government formally referred the situation in the whole of DRC to the ICC and committed themselves to cooperate with the ICC. A Memorandum of



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Understanding between the ICC and the DRC was signed in October 2004, facilitating independent and safe activities of the ICC on Congolese territory. To date, various organs of the Court have carried out over fifty trips. An ICC field office was opened in Kinshasa and an operational presence was set up in Bunia (Ituri).

The Court's Judges have constituted Pre-Trial Chamber I to deal with the situation in the DRC. Members of this Chamber are Judge Claude Jorda (France), Judge Ms Sylvia Steiner (Brazil) and Judge Ms Akua Kuenyehia (Ghana). Judge Jorda is presiding this Chamber. The first Pre-Trial hearings on the DRC took place in March 2005. The Trial is expected to start after summer 2006. The Court has received several requests from victims to participate in the procedures. On 17 January 2006 Pre-Trial Chamber I decided to grant the right of participation to six applicants.

The legal system in the DRC is not able to bring to justice those individuals most responsible for the crimes committed as the judicial system is no longer functioning due to the war. The ICC's task in DRC, as in other countries, is to bring to justice those individuals who are most responsible for reported crimes. The lesser players in this war will have to be tried by the DRC itself.

Role of religious leaders in civil society

The DRC is a deeply religious society. About 50% of the population is Roman Catholic, 20% is Protestant, 10% Kimbanguist, 10% Muslim and 10% adherents to other (including indigenous) or no religion.

Many faith-based institutions and NGOs work on issues of victims support, human rights and civic education and para-legal activities, as well as on reconciliation on the national and community level. With regard to the ICC, many have become active in encouraging victims to lobby and participate with the Court. Some have also included the ICC into their regular training modules and have lobbied the Congolese Government to smoothly facilitate the ICC activities. This is all done from the conviction that prevention of impunity favours the transition to peace and democracy.



It is difficult to operate given the security and logistical situation in the Ituri region and DRC at large

Challenges of the ICC in the DRC

In July 2003 the Prosecutor of the ICC started looking into the crimes in DRC but the (visible) progress has been very limited. Nobody is accused, no trials have started, little outreach has been done. The crimes continue to take place. Why should the people in DRC take the ICC seriously? What can it and what will it deliver?

- Among those allegedly foremost responsible for the crimes in Ituri are people that are now part of the high political leadership of the country, as outcome of the 2002 peace agreement. This illustrates the sensitive dilemma between peace and justice with which the Prosecutor has to deal with. For example, should he wait with indictments until after the elections in early 2006?
- It is a challenge to protect and gain the trust of the victims and witnesses in an area that has been, and still is, plagued by violence. ICC Chief Prosecutor Ocampo has stated that to ensure the safety of witnesses he will not rely so much on oral accounts of crimes by victims and witnesses as a means of gathering evidence, but on the 'paper trail' of perpetrators.
- It is difficult to operate given the security and logistical situation in the Ituri region and DRC at large. While the ICC is striving to be autonomous, in some areas investigations would simply not be possible without support. The ICC has no police force and is therefore heavily reliant on assistance of the UN peacekeeping presence in the DRC (MONUC) for flight purposes, security, etc. However, several MONUC soldiers have been accused of crimes themselves. Working so intimately with UN troops raises questions as to the independence of the ICC in its operations.
- While the ICC has more popular support in the DRC than it does in northern Uganda, much misunderstanding and exaggerated expectations remain about the ICC's ability to bring perpetrators to justice. The lack of outreach by the Court in DRC, explaining what the Court can do and what it cannot do, is important.



the so-called “protected villages” or camps of displaced people in northern Uganda.

ICC involvement

The ICC is mandated to investigate all sides in a given situation, not just one particular side

In December 2003 the government of Uganda referred the situation concerning northern Uganda to the Prosecutor of the ICC. This was announced in a joint press conference in February 2004 with both ICC Chief Prosecutor Luis Moreno Ocampo and Ugandan President Museveni. This unfortunate meeting raised suspicions that the ICC made a deal to exclude Ugandan forces from investigation. Mr. Ocampo repeatedly denied this and explained that, according to the Rome Statute, the ICC is mandated to investigate all sides in a given situation, not just one particular side.

After thorough analysis of available information, on 28 July 2004 Prosecutor Ocampo opened the investigation into the situation of Uganda. The Office of the Prosecutor then made over fifty missions to investigate in Uganda and also to listen to the concerns of local community leaders, including religious and traditional leaders, government officials and NGOs.

The Court’s Judges have constituted Pre-Trial Chamber II to deal with Uganda (Pre-Trial Chamber I deals with the situation in the Democratic Republic of Congo). Members of this Chamber are Judge Tuiloma Neroni Slade (Samoa), Judge Mauro Politi (Italy) and Judge Fatoumata Dembele Diarra (Mali). Judge Slade is presiding this Chamber.

On 8 July 2005 Pre-Trial Chamber II (PTII) issued arrest warrants against five senior commanders of the LRA. The warrants are against Joseph Kony, leader of the LRA, Vincent Otti, second in command, Raska Lukwiya, Okot Odhiambo and Dominic Ongwen. The latter was reportedly killed in combat early October 2005. At first, these warrants were kept under seal, for reasons of security of victims and witnesses. On 13 October 2005, PTII unsealed the arrest warrants and they became publicly known. At the time of writing it is up to the States Parties of the ICC and the international community at large to arrest these suspects.



Role of religious leaders in civil society

The announcement of the chief Prosecutor to investigate and prosecute the top leadership of the LRA has received mixed responses. Generally, nobody in northern Uganda objects to the intervention of the ICC. They all say “yes” to the ICC work because the war has taken too long and serious crimes have been committed by the LRA. However, concerns have been raised about the effects of the timing of ICC prosecutions on the ongoing peace process, the fate of abducted children still in the control of the LRA as well as the security situation in the northern areas.

There are different views on the effect that ICC prosecutions may have on the motivation of LRA fighters to accept the offer of amnesty

There are different views on the effect that ICC prosecutions may have on the motivation of LRA fighters to accept the offer of amnesty under the Amnesty Act 2000. It is hoped that the arrest of senior leadership will encourage other LRA soldiers to accept amnesty. Others believe it will have the opposite effect. According to findings of the Ugandan Refugee Law Project (February 2005), “the ICC’s involvement is deeply unpopular because it jeopardises the concept of amnesty and, therefore reduces hope for a peaceful resolution to the conflict”. This view was shared by a senior ex-LRA combatant: “There is amnesty under the Amnesty Act. Why is the ICC investigating?” Uganda’s Amnesty Act 2000 grants amnesty to anyone who quits the LRA, thus having an objective, i.e. reconciliation, other than that of the ICC, i.e. prosecution/justice. But findings of the Acholi Religious Leaders Peace Initiative (ARLPI) also indicate that “some people want the war to end and they see the ICC as the hand of the international intervention coming to end the prolonged war. They therefore support the ICC intervention and they wish the Chief Prosecutor to issue a warrant of arrest without any further delay”.

Many cultural and religious leaders see the ICC as part of the international community responding to their constant appeal for help

Many cultural and religious leaders see the ICC as part of the international community responding to their constant appeal for the world to help in ending the violence in northern Uganda. As much as this help is appreciated, the leaders clearly state that the ICC should be mindful of the ongoing peace process, the peace dialogue headed by former Minister Betty Bigombe and supported by the government of Uganda and President Museveni. The international community is also giving firm backing to the peace talk process. There is great



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need for community healing and reconciliation to bring about lasting peace. When the Acholi leaders (cultural, political and religious) met the Chief Prosecutor in The Hague (March 2005) the latter said: *“I am mindful of the traditional justice and reconciliation processes and sensitive to the leaders’ efforts to promote dialogue between different actors in order to achieve peace. The Office of the Prosecutor has the clear policy to focus on those who bear the greatest responsibility of atrocities committed. I also recognize the vital role to be played by the national and local leaders to achieve peace, justice and reconciliation.”*

The dialogue process had a setback on 31 December 2004. It was further hit hard when the chief spokesperson for the LRA came out of the bush early 2005, and especially when the arrest warrants were issued and unsealed. The cultural and religious leaders will again have to redirect their strategy for peace, justice and reconciliation.

Learning experience

The encounter between the Acholi leaders and the Chief Prosecutor provided a good learning opportunity for almost all the invited people, be it religious, cultural or political. The leaders are convinced that, one way or the other, peace will be achieved. But much patience is needed, especially from the affected people. Faith leaders in a conflict situation (i.e. in northern Uganda) have become the conscience of the people so they have an important role to play.

The activities of the ICC served to increase awareness of Uganda’s war internationally, giving the people of northern Uganda hope for peace. The ICC intervention may have come at the right time after all. However, many leaders still wish the options of amnesty and dialogue be intensified to bring an end to the 19-year-old northern war. A learning experience of this conflict is that prolonged war is very complex to resolve. The peace process seems most effective when it has combined efforts; that is, amnesty plus dialogue plus the ICC

Clearly the ICC needs to urgently intensify its outreach in order to clarify its mandate and work to the people of Uganda.



Otherwise people may have to rely on rumours and inaccurate information in the media.

Acholi religious leaders in northern Uganda have discussed opportunities for peace and the role of the ICC. They make the following appeals and recommendations:

- The people of northern Uganda have suffered long enough. Enough is enough. The suffering through violence should end.
- The faith leaders need to put the northern Uganda situation on their agenda and also to carry out coordinated simple action that demonstrates solidarity and love for the suffering people.
- The faith leaders are to get involved in the dark and broken world and make faith views influence the worldviews for peace and justice.
- The issue of peace and justice should be of a common effort and aim in relation to the ICC.

6.3 SUDAN

The ICC's involvement in Sudan is more recent than that in DRC and Uganda. The Prosecutor has been investigating the situation in the region Darfur since 6 June, 2005, following the UN Security Council referral on 31 March, 2005.

Historical background

Sudan has been a large boiling pot. The boiling has gone on for a long time in what became Africa's longest war. Time for cooling off has just started with the peace agreement signed in January 2005 that ended the war between north and south Sudan. The reasons for this prolonged period of violence are multifaceted, but are mainly political, economic and religious. The Cold War, border issues, oil interests, and a religious division into an Islamic north and a Christian south all played a role. The world expectation is to cross the bridge as fast as possible from a destructive and divided past to a

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shared and just future. The Sudanese also need that, if expectations and resources can be matched adequately and in good time.

However, apart from the north-south conflict, for almost two years, a campaign of ethnic cleansing in Sudan's western region Darfur has killed nearly 400,000 civilians. Origins of the conflict in Darfur relate to a divide between nomadic people and farmers. In 2002 at least two organized armed groups of rebels, the Sudan Liberation Movement/Army (SLM/A) and the Justice and Equality Movement (JEM), took up arms in Darfur to fight Sudanese central authorities. In February 2003 the scale of rebel attacks increased noticeably. The rebels exercise *de facto* control over some areas of Darfur. In response, the government of the Sudan mounted a campaign of ethnic cleansing against the non-Arab native population of Darfur. The government, as part of its "divide and rule" politics, armed the nomadic Arabic tribes (known as *Janjaweed*) and the military launched aerial bombardment campaigns.

The conflict in Darfur is nowhere near ending. Credible information discloses the commission of grave crimes within the jurisdiction of the ICC having taken place in Darfur: killing of at least 180,000 civilians, widespread destruction and looting of villages, displacement of approximately 1.9 million civilians. Information highlights a pervasive pattern of rape and sexual violence.

ICC involvement

On 25 January 2005, a UN commission of inquiry revealed the magnitude of the crimes perpetrated in Darfur. The Commission concluded that most of the atrocities in Darfur were the responsibility of the government and allied Janjaweed militias. In March 2005 the Security Council of the UN referred the situation of Darfur to the ICC. The Security Council did so because Sudan is not a member of the ICC and therefore only the Security Council had the power to refer the case to the ICC. Upon this decision the commission of inquiry handed over a list of 51 potential responsible people to the ICC as well as more than 2,500 items (documentation, video footage and interview transcripts).

In addition to this information the ICC has collected more than 3,000 documents and has carried out a series of interviews. On 1 June 2005, Prosecutor Ocampo announced the decision to initiate an investigation of the crimes committed in Darfur since 1 July 2002 (the date that the ICC Rome Statute entered into force). Since then the Prosecutor has recruited and trained the new investigation team. At the time of writing this team has conducted twelve missions to third countries in order to interview victims and witnesses, among others in Chad (Sudan's neighbouring country where many Darfurians have found refuge). A joint ICC field office will probably be established in Chad. It is expected that ICC will start trials on Darfur in 2007.

The Court has also established channels for communication and cooperation with the government of Sudan, the African Union (AU), the Arab League etc. A court-wide Cooperation Agreement with the AU is being negotiated and remains to be signed. An AU peacekeeping mission, called African Union Mission in Sudan (AMIS), is present in Darfur with military and civilian personnel. It has positively contributed to local security; however, shortcomings do exist (constraints by the limits of its staff, operational capabilities and scope of its mandate; as well as allegations of sexual misbehaviour).

The Prosecutor has studied Sudanese institutions, laws and procedures

In light of the complementarity of the ICC in relation to national Sudanese criminal proceedings, the Prosecutor has studied Sudanese institutions, laws and procedures. He has sought information on any national proceedings that may have been or are being undertaken by the Sudanese authorities, especially the new ad-hoc courts on Darfur. He has concluded that there are cases that would be admissible to the ICC, as a result of the absence of criminal proceedings on crimes within the mandate of the ICC. The new Sudanese courts do not (yet) deal with such cases.

Role of religious leaders in civil society

About 60% of the Sudanese people is Islamic and from Arabic origin, mainly in the northern part of the country, including Darfur. Furthermore, people adhere to Christian and indigenous beliefs (mainly in the south). Many Christian structures have been divided into a northern and southern chapter but are now in the process of uniting. The wars have



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brought division and all forms of political and social fragmentation, the challenges of transition are daunting. This carries a multiplicity of tasks, needs and interests, which must be approached with tact, understanding, and in a reflective and participatory manner.

Religious leaders and faith-based organisations (whether Muslim or Christian), are active in reporting those crimes and supporting the victims. Until now they know little about the ICC and its role in transitional justice. Initial contacts have indicated that several faith-based actors are interested in being informed and active on these issues.

Religious leaders realise that the ICC process can be long and tedious. It is a very complicated and difficult procedure. It cannot therefore be a prerequisite to reconciliation. However, the ICC will convey an important message to the effect that UN and the international community, by taking the Sudanese case to the ICC, are stating that a culture of impunity (where there was no dividing line between wrong and right) will no longer be tolerated. Even if only one person is tried, the message will still be clear. There is an African saying, which can be loosely interpreted to mean “only the outlawed run away from the law”. As such, those who resist the process of law, cause us to raise eyebrows. So indeed, the Darfur situation has become a test case and a challenge to the AU and the Sudanese themselves.

Leaders of faith-based institutions have major tasks ahead. First of all a common understanding of the notion of justice, peace and reconciliation should be reached. While punitive justice (such as delivered by the ICC) has its place, transformative justice is what leads to forgiveness and reconciliation.

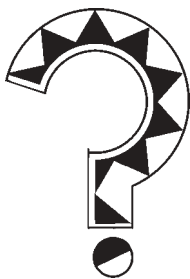
As leaders of faith-based organisations, people must candidly articulate their perceptions, reflections and strategies for reconciliation and peacebuilding. Interfaith relations should be based on a common agenda for the common good. Diverse issues surrounding the relationship of justice and reconciliation need to be explored, including the traditional and community systems.

Challenges for the ICC in Sudan



- The conflict in Darfur is still ongoing and a general climate of impunity continues to persist. Working on human rights and ICC-related issues is faced with insecurity (harassments, assaults and killings, e.g. against Sudanese human rights activists and foreign humanitarian aid workers), difficult access to parts of country, limited right of free speech and organisation.
- In Sudan one of the key challenges for the ICC is to remain fully independent. The Sudanese government does not (yet) cooperate with the Court. Every effort should be made to permit the ICC to enter, move freely and operate in Sudan. At present any international intervention needs to go through the capital Khartoum and is therefore seen as coming from the government. For logistical and security purposes the ICC will largely depend on the AU mission in Darfur which should be equipped to fulfil such a role.
- Due to cultural tradition and faith, a specialised approach to reach women that have suffered sexual violence during the conflict is required. This needs to be developed carefully.
- The question arises: what is the use of having the ICC try criminals responsible for the Darfur crisis, but not bringing to justice those responsible for conflicts in the south and east of the country. What role will the prosecutions on Darfur play in providing justice and reconciliation to the whole of Sudan?

6.4 Key questions



1. How do people in the affected communities view the ICC?
2. What challenges does the ICC face in the three countries: differences, commonalities?
3. How can ICC time its procedures best, while at the same time remain independent?
4. What different roles do you see for religious leaders and communities?

