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Courting Conflict?

Justice, Peace and the ICC in Africa

Edited by Nicholas Waddell and Phil Clark

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Cover image: militia leader Germain Katanga sits in the courtroom of the International Criminal Court, The Hague.

ROBERT VOS/AFP/Getty Images

7. Global Catalyst for National Prosecutions? The ICC in the Democratic Republic of Congo

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Introduction

Over the past decade, the people of the Democratic Republic of the Congo (DRC) have endured horrific atrocities at the hands of a multitude of armed groups, foreign forces, militias and the national Congolese army. The victims are ordinary citizens who have suffered massacres, torture, widespread sexual violence, forced displacement and property loss.¹ Impunity for grave violations of human rights has long been the norm in the DRC. Only a handful of perpetrators have been arrested and held to account; dozens of others have been promoted to senior positions in the Congolese army or the government. As one Congolese lawyer recently commented, 'In Congo we reward those who kill, we don't punish them.'²

In this gloomy picture, the involvement of the International Criminal Court (ICC) has given some hope that the DRC's culture of impunity might be coming to an end. In June 2004, the ICC Prosecutor, Luis Moreno Ocampo, opened the Court's first ever investigation in the DRC, initially focusing on the district of Ituri in north eastern DRC where some of the worst atrocities have taken place. The investigations to date have led to the arrest and transfer to The Hague of three senior Iturian militia leaders: Thomas Lubanga Dyilo on 17 March 2006, Germain Katanga on 17 October 2007; and Mathieu Ngudjolo on 6 February 2008. Investigations continue and it is likely that further arrests will follow.

Despite these arrests, the DRC's immense accountability needs cannot be addressed by the work of the ICC alone. Realistically, the Court will only be able to try a few senior individuals most responsible for widespread crimes. The ICC's success in the DRC and elsewhere will depend on its ability to encourage national prosecutions, to help build respect for the rule of law, and thus to contribute to deterring future crimes. Such elements are all crucial to the notion of 'positive complementarity.' The principle of complementarity in the Rome Statute determines passively the jurisdictional basis of the ICC, holding that the Court will act only when countries are unwilling or unable to investigate and prosecute serious crimes. In contrast the notion of 'positive complementarity' involves the Court actively catalysing domestic processes. The ICC Prosecutor says that positive complementarity is a key principle guiding his prosecutorial strategy.³ Besides conceptual ambiguities over positive complementarity, what does it mean in practice?

This essay examines some of the practical problems and opportunities surrounding positive complementarity in the DRC. It examines whether the ICC is succeeding in building close links with the national judicial system and other actors to encourage national prosecutions, and how it is contributing to deterring future crimes and building respect for

the rule of law. The essay also provides an overview of the challenges facing the Court in this task. It argues that there are distinct opportunities that the Court must seize if positive complementarity is to go beyond an attractive but vague concept.

Congo: a cry for justice

When the Prosecutor opened the ICC's first investigation in the DRC in 2004, expectations ran high that the Court would bring justice to victims and deter future crimes. Some of these expectations may have been unrealistic. Three years on, the Court's work and impact in the DRC are mixed.

The Court has had notable successes, particularly the arrest of Lubanga, Katanga and Ngudjolo. The trial of Lubanga, arrested on charges of recruitment, enlistment and use of child soldiers, is set to start in June 2008. Human Rights Watch researchers documented important effects of this first arrest. While it is not clear if crimes reduced as a result, one impact was that other suspected war criminals expressed fear of possible future arrest.⁴ The confirmation of charges hearing against Lubanga also increased awareness that the recruitment and use of children as soldiers constitute crimes. For example, some leaders of armed groups in eastern DRC instructed children to lie about their age and to hide when child protection workers arrived. In Ituri, many children were chased away from the militia groups. The link between such cover-up attempts and the Lubanga case at the ICC even prompted UN agencies and NGOs to speak of 'the Lubanga syndrome.'⁵ While this may have created problems for child protection workers and their efforts to demobilise children in the short term, there is general agreement that increased awareness about the seriousness of this crime is positive.

At the same time, the ICC's intervention in the DRC remains disappointing. After three years of investigations, the Court has arrested only three individuals. The charges brought against Lubanga, while serious, do not represent the full extent of the atrocities committed by his forces. People in Ituri question why Lubanga has not been charged with the massacres, killings and torture that his forces perpetrated. Germain Katanga and Mathieu Ngudjolo, for their part, were charged with a more representative set of crimes (including killings, inhumane acts and treatment, pillaging and sexual slavery), suggesting that the Office of the Prosecutor (OTP) has learnt from earlier mistakes. More arrest warrants have been promised, but the Prosecutor's investigation to date is widely perceived as slow and one-sided. No action has yet been taken against high-ranking individuals in the government in Kinshasa or against those in neighbouring Rwanda and Uganda who armed, supported and frequently directed Ituri's armed groups, thereby contributing to the slaughter of an estimated 60,000 people.

It is clear that the ICC, for a variety of reasons, including insufficient resources, cannot comprehensively address the profound accountability void in the DRC. Experience from other international tribunals and field research in the situations under investigation by the ICC suggest that the Court's mandate will not be fulfilled by conducting only a small number of thorough investigations with fair trials in The Hague – however crucial these tasks are. The

success of the ICC will depend on its ability to have a lasting impact on the societies most affected by the crimes. The Court will need to encourage national prosecutions as part of a wider plan to ensure that its operations have a lasting impact at the local level.

Effective national prosecutions in the DRC are all the more important because many grave crimes committed in the country fall outside of the temporal jurisdiction of the ICC, starting on 1 July 2002, when the Rome Statute came into effect. Despite this important limitation, the international community has been unwilling to date to create additional mechanisms to help the DRC address the impunity gap.

The notion of 'positive complementarity'

Some level of cooperation between the ICC and national courts is envisaged by Article 93 of the Rome Statute, which states that the Court may cooperate with and provide assistance to a State Party which is investigating or trying a crime within the jurisdiction of the Court.⁶ Nonetheless, it is contested as to how far the Rome Statute provides the ICC with a mandate to pursue positive complementarity. There is certainly some support for the position that the spirit of the Rome Statute speaks in favour of a proactive interpretation of complementarity as a tool to end impunity. Notably, some of the OTP's public statements show determination to encourage national prosecutions. The ICC Prosecutor initiated discussions on the notion of positive complementarity at a public hearing in June 2003 in the wake of his election.⁷ The OTP continues to refer to positive complementarity as one of the key principles guiding prosecutorial strategy.⁸

What this means in practice is unclear. The OTP has cited examples of positive complementarity activities that seem to reveal a very broad approach.⁹ Considering the ICC's limited resources to encourage national prosecutions, the authors believe that the Court should develop a strategy that would differentiate among countries under ICC investigation, countries under analysis and other states parties. The Court's strategy should focus on increasing its impact on the national courts in the countries where it is conducting investigations.

The situation in the DRC: does positive complementarity work in practice?

Not only are initiatives to foster national judicial capacity sorely needed in the DRC, there are also signs that practical commitment by the ICC in this area would yield results. The Congolese judicial system lacks the capacity to prosecute grave international crimes.¹⁰ Both the military and the civilian judicial systems are starved of resources and competent personnel. Magistrates are badly paid and poorly trained. Political interference and corruption often determine the outcome of cases.¹¹ The UN Special Rapporteur on the Independence of Judges and Lawyers, Leandro Despouy, after a visit to the DRC in April 2007, concluded that interference by the executive and the army in judicial proceedings was 'very common' and that the DRC's judicial system was 'rarely effective... with human rights violations generally going unpunished.'¹² Many

procedures fail to come close to international standards of fair trial. Political authorities have shown little commitment to national prosecutions of international crimes, as demonstrated by the lack of progress in the adoption of the ICC implementing legislation.

At the same time, there is commitment on the part of a range of international donors, national judicial officials and NGOs to push judicial reform in the country.¹³ Increasing the DRC's judicial capacity is a huge undertaking and progress will inevitably be slow. Enabling national courts to conduct fair and effective trials for complex international crimes possibly presents even greater challenges. However, the past two years have seen some encouraging developments. The Congolese military courts¹⁴ have conducted a handful of prosecutions of low-level or mid-level offenders for war crimes, crimes against humanity and sexual violence.¹⁵ These prosecutions suggest the possibility of a degree of 'burden sharing' between the ICC, which would prosecute 'the big fish,' untouchable by the national judicial system, and national courts, which would contribute to closing the impunity gap. Congolese authorities and judicial officials have also been reasonably cooperative with the ICC to date, suggesting potential for closer cooperation on domestic war crimes prosecutions

a) A one-way partnership?

When OTP staff first started operating in the DRC they informed local judicial partners in Ituri and Kinshasa that they would collaborate closely with them and assist with their cases.¹⁶ National prosecutors in Ituri and Kinshasa are familiar with the term 'complementarity' and have high expectations of the OTP's assistance in handling complex cases of serious crimes. There is little doubt that OTP staff at the working level genuinely want to implement the concept of 'positive complementarity.' However, a meaningful collaboration has yet to materialise. National judicial officials in Ituri and Kinshasa report that they have not received any assistance from the OTP.¹⁷ Human Rights Watch researchers were told that the interaction between the OTP and national judicial officials in Ituri and Kinshasa has been functional, but only in relation to ICC investigations and cases. OTP staff have requested access to local investigative dossiers¹⁸, and solicited assistance in taking certain judicial acts related to their investigations.¹⁹ National judicial officials expressed disappointment and frustration that cooperation has to date been in only one direction. They have a wide range of ideas about what the OTP could do that would assist them in their work, as discussed below. OTP staff themselves admit that they are at the early stages of their thinking regarding viable means to cooperate with national judicial systems.²⁰

b) Challenges

For the ICC, establishing closer links and cooperating effectively to assist the Congolese national judicial system is a demanding task. The ICC's complementarity mandate, which opens the possibility of an effective collaboration with national courts, also demands caution on the part of the OTP. Indeed, at the early stages of his investigation, the Prosecutor does not know the identity of his targets. Consequently, assisting the national judiciary regarding crimes that are the object of his investigation may jeopardise the admissibility of his cases under the complementarity regime.²¹ Combined with the OTP's scarce resources and the need to commence own cases, this means that the issue of positive complementarity has

been sidelined. So far, the OTP and the Court as a whole have not articulated a clear vision of what a sound positive complementarity policy could encompass.

Yet, even if the Court were to be more proactive in terms of positive complementarity, it would face the current deficiencies in the functioning of the Congolese national judicial system. These deficiencies raise the question of the extent to which the ICC can appropriately cooperate with national courts without compromising its integrity. For example, it is unlikely that the OTP could share with national courts witnesses or confidential information that could expose vulnerable sources. Given the sensitive nature of trials for serious crimes, witnesses in such trials face serious risks. The DRC has no domestic laws that impose sanctions for interfering with witnesses and no comprehensive witness protection programme. Human Rights Watch researchers were told about threats to witnesses in some sensitive cases involving serious crimes.²² Indeed finding witnesses who are willing to testify remains a major hurdle for national prosecutors. In Bunia the human rights section of the UN peacekeeping force, MONUC, has assisted with the protection of witnesses in the past but only in an ad hoc fashion.²³

It would also be problematic for the ICC to contribute to proceedings where the accused is not assured a fair and impartial trial. The Congolese record in that regard raises serious concerns – not least because military rather than civilian courts currently have jurisdiction over serious human rights violations.²⁴ This is problematic for several reasons, including a record of interference by political and military authorities in sensitive cases.²⁵ Finally, the DRC has not yet abolished the death penalty. It would be inappropriate for the ICC to contribute direct evidence against an accused who faces the risk of being sentenced to death.²⁶

At a meeting of the Comité Mixte de Justice (Mixed Justice Committee)²⁷ in Kinshasa in 2007, the OTP argued that certain benchmarks would need to be met before it could respond to cooperation requests by national courts.²⁸ The Congolese authorities and judicial system must demonstrate their good faith by endeavouring to meet such benchmarks as a condition for a deeper form of positive complementarity (whereby the OTP would directly assist in specific cases) than presently exists. The OTP, however, has not yet clearly spelt out what such benchmarks would entail.

c) Opportunities for positive synergies and lasting impact

Notwithstanding the ICC's limited mandate and resources, and the challenges of cooperation in cases involving specific accused persons, there are other measures the Court could take to facilitate positive complementarity. Such measures, at relatively small cost, would go a long way towards increasing the ICC's impact on the national judicial system in the DRC.

The impact of the ICC in the DRC to date (even in the absence of a proactive complementarity plan) underscores this potential. In recent war crimes cases before military courts, judges made explicit references to the Rome Statute in their decisions.²⁹ For example, in April 2006, a military tribunal in Songo Mboyo directly cited the Rome Statute in sentencing seven members of the Congolese army to life in prison for collective rape. For the first time a court in the DRC qualified collective rape as a crime against

humanity. In another case in June 2006, the military tribunal of Mbandaka cited the Rome Statute in sentencing 42 soldiers after convictions on counts of crimes against humanity. In August 2006, the military tribunal in Bunia found the rebel leader Chief Kahwa Mandro guilty of six charges, two of which (war crimes and crimes against humanity) resulted from the direct implementation of the Rome Statute in Congolese law.

Even if the use of jurisprudence and legal concepts in such cases is not perfect, these instances show an interest in incorporating concepts of international criminal law into domestic jurisprudence. Local judicial officials in Ituri displayed an impressive degree of enthusiasm and courage for undertaking prosecution of international crimes.³⁰ The ICC would do well to build on these instances of local willingness.

Proposals for positive complementarity in the DRC

The Court has unique expertise in one particular field of judicial activity: prosecuting cases of serious crimes. As such, it can usefully complement efforts by other actors³¹ involved in broader judicial reform in the DRC.

First, the Court should push for harmonisation of domestic legislation with the Rome Statute through the adoption of implementing legislation into domestic law. As mentioned above, one important aspect of the draft implementing legislation is that it proposes to shift jurisdiction for ICC crimes from military to civilian courts. Senior ICC officials, including the Registrar, judges and the President of the Court, could regularly and publicly stress the importance of implementing legislation and call for the prompt adoption of the draft law. Advocacy should be directed toward both the government and parliament, and such public calls would be a strong basis for action by civil society. Second, OTP staff could share expertise and provide training in issues related to prosecution of mass crimes. This could apply to specific international legal issues such as modes of liability, elements of crimes, or defences. For instance, a local prosecutor in Ituri stated that he would like to discuss with ICC prosecutors how to prosecute the recruitment of child soldiers as a war crime.³² This would enable him to prosecute a widespread practice that is not penalised as such in Congolese law. The OTP could also advise local prosecutors on investigative techniques and thus help build domestic capacity. Local prosecutors in Bunia expressed a thirst to learn, mentioning in particular forensic techniques, handling of traumatised victims, and investigation of mass graves.³³ It is not unreasonable to expect OTP investigators and prosecutors to spare a small amount of time during investigative trips to share their knowledge with their local counterparts in areas where the OTP is conducting investigations.

In light of its limited resources and the Court's policy of prosecuting those bearing greatest responsibility for the most serious crimes, the OTP could also share information stemming from its own investigations that it does not intend to use. For example, the Court could encourage Congolese authorities to initiate proceedings against individuals whom it will not prosecute but against whom it has found evidence during its investigations, or regarding specific incidents it has documented but will not prosecute. Adopting such

policies may help address some of the criticisms of the limited charges brought in the Lubanga case, despite the OTP's having information on many other crimes.

While sharing confidential documents, witnesses, or direct evidence may raise difficulties, as discussed above, some of these challenges could be addressed by sharing only information that would not compromise the confidentiality and security of sources. Lessons may be learnt in this regard from other international tribunals. For example, once trials are underway, the ICC could make its database of non-confidential material used in proceedings accessible to local prosecutors and defence counsels, as the International Criminal Tribunal for the former Yugoslavia (ICTY) has done with its Evidence Disclosure Suite. In the geographical areas under ICC investigation, the OTP may also help local prosecutors regarding specific patterns of criminal activity. In Ituri for example, the OTP has expertise and specific knowledge of the situation acquired through its investigations that it could discuss in broad terms with national judicial officials.

As mentioned above, the OTP has taken the lead at the ICC in terms of promoting the issue of positive complementarity. There is, however, a role for all of the Court's organs in this endeavour, and the Court as a whole should view positive complementarity as a crucial part of its broad strategy for delivering justice. The Court should look at using its outreach programme as a means to a lasting impact on national judiciaries, through events directed specifically at national judicial staff and lawyers. For example, ICC staff working on victims and defence issues have participated in the training of judicial officials in the DRC organised by international NGOs.³⁴ This practice should be maintained and further developed in eastern DRC, where judicial officials are more directly confronted with international crimes. This may help guarantee minimum standards of international law. Judicial officials in Ituri have also stated that they would like to have access to ICC documents such as transcripts and decisions, to use as models for local courtroom proceedings.³⁵ This practice was developed by the outreach programme of the Special Court for Sierra Leone, which prepared bound versions and CDs of the Court's jurisprudence that were distributed to local judges and law faculties.³⁶

The Victims and Witnesses Unit of the ICC could also usefully provide information and training to local authorities on how to conduct witness protection programmes. This would contribute greatly to the integrity of the local system, while addressing a key concern of the OTP in sharing information and being involved in domestic procedures. Finally, the ICC has important experience in dealing with traumatised and vulnerable victims, such as victims of sexual violence, women, children and the elderly. This experience would be invaluable in conflict countries where such challenges are endemic and domestic capacity is severely limited.

The role of States Parties

The Assembly of States Parties should support and encourage the ICC to conduct the activities just discussed. Moreover, donors involved in judicial reform in the DRC should also cooperate with the ICC to help increase the Court's impact on national judiciaries,

and encourage the national system to address international crimes. As mentioned above, the Court's action in the field of positive complementarity is central but necessarily limited. The Court's supporters must therefore engage strongly in encouraging national prosecutions. While States Parties and ICC supporters are generally interested in the impact of the ICC³⁷, they often fail to connect this with their own efforts to implement judicial reform. This is certainly true in the DRC. Such actors should encourage justice for grave crimes and contribute to building local capacity. For example, the European Commission and other donors are currently implementing a project called REJUSCO, focusing on rebuilding the justice system in eastern DRC. Previous European support in Ituri has been pivotal in enabling prosecution of serious crimes. On paper REJUSCO includes a component on transitional justice. However, early implementation of the project does not demonstrate a commitment to strengthening local capacity to prosecute serious international crimes. This risks missing an important opportunity.

Conclusion

There are inherent difficulties and contradictions in the ICC pursuing of a strategy of positive complementarity. Cooperating closely with national Congolese courts raises questions about strict adherence to international legal standards in a deeply flawed national justice system. Nonetheless, exciting prospects exist for strengthening links between the ICC and the national Congolese judicial authorities to encourage national war crimes prosecutions.

The Congolese context points toward a broader need for the ICC to determine whenever possible how to promote credible investigations and fair trials for serious crimes in the national courts of countries where it is active. The Court could act as a catalyst for change. This does not imply that the ICC should operate as a development agency. Rather, the Court should focus on what it does best – the prosecution of international crimes. The ICC is well placed to push for broader accountability and to complement the efforts of other actors, including international donors and national judicial authorities.

In practical terms, the ICC should, as a matter of priority, begin to work on guiding principles for supporting national prosecutions. As far as possible, this process should be public, to allow stakeholders' input. Failure to translate the international community's investment in the ICC into tangible strengthening of national judicial systems would represent a major lost opportunity. Local courts matter most in bringing to justice the scores of perpetrators who committed and continue to commit atrocities in the DRC. To tackle the DRC's culture of impunity, the ICC and the international community must encourage and, wherever possible, actively assist local prosecutions.

- 1 For more information, see Human Rights Watch's work on the Democratic Republic of the Congo, www.hrw.org/doc?t=africa&c=congo.
- 2 Human Rights Watch interview with Congolese lawyer (name withheld), Kinshasa, 9 November 2006.
- 3 Office of the Prosecutor, "The Office of the Prosecutor Report on Prosecutorial Strategy", The Hague: ICC, 14 September 2006, www.icc-cpi.int/library/organs/otp/OTP_Prosecutorial-Strategy-20060914_English.pdf.
- 4 In the wake of Lubanga's transfer to The Hague, one military leader in the southern province of Katanga told Human Rights Watch that he would investigate crimes committed by his troops because he did not want to 'end up like Lubanga.' see A. van Woudenberg, *A New Era for Congo?*, Human Rights Watch, October 2006, <http://hrw.org/english/docs/2006/10/19/congo14495.htm>.
- 5 Human Rights Watch interviews with MONUC child protection unit, Bunia, 2 May 2007; Human Rights Watch interview with UNICEF representative, Bunia, 3 May 2007; Human Rights Watch interview with Save the Children representative, Bunia, 3 May 2007.
- 6 Rome Statute, Article 93(10).
- 7 Office of the Prosecutor, "Paper on some policy issues before the Office of the Prosecutor", The Hague: ICC, September 2003, www.icc-cpi.int/library/organs/otp/030905_Policy_Paper.pdf.
- 8 Office of the Prosecutor, "Report on Prosecutorial Strategy", op. cit. "[...] The Office has adopted a positive approach to complementarity, meaning that it encourages genuine national proceedings where possible, relies on national and international networks; and participates in a system of international cooperation."
- 9 For example, the Office of the Prosecutor created a "Legal tools" database, accessible to all states, which is mentioned in Office of the Prosecutor, "The Office of the Prosecutor Report on the activities performed during the first three years (June 2003-June 2006)", 12 September 2006, www.icc-cpi.int/library/organs/otp/OTP_3-year-report-20060914_English.pdf; During a seminar at the London School of Economics (March 2007), M. Brubacher of the jurisdiction, Complementarity on Cooperative Division of the OTP, reserved to training at, and meetings with, national prosecutors of states partners, notably those that have war crimes units.
- 10 Human Rights Watch, "Democratic Republic of the Congo: Confronting Impunity", Human Rights Watch briefing paper, January 2004, <http://hrw.org/english/docs/2004/02/02/congo7230.htm>.
- 11 Human Rights Watch interview with MONUC human rights official, Goma, 10 May 2007.
- 12 UN General Assembly, "Report of the Special Rapporteur on the independence of judges and lawyers: Addendum – Preliminary note on the mission to the Democratic Republic of Congo," Doc. A/HRC/4/25/Add.3, 24 May 2007.
- 13 See, for example, Human Rights Watch, "Making Justice Work: Restoration of the Legal System in Ituri, DRC", Human Rights Watch briefing paper, September 2004, <http://hrw.org/backgrounder/africa/drc0904/index.htm>.
- 14 In the DRC, ICC crimes fall under the jurisdiction of the military judicial system.
- 15 Trials involving grave violations of international humanitarian law have been conducted before the following courts: military tribunal of Bunia, military tribunal of Songo Mboyo, military tribunal of Mbandaka, military tribunal of Gbadolite, military tribunal of Beni, and the military tribunal of Katanga.
- 16 Human Rights Watch interviews with military prosecutor, Bunia, 30 April 2007 and with military judicial official, Kinshasa, 20 July 2007.
- 17 Human Rights Watch interview with military prosecutor, Bunia, 30 April 2007; Human Rights Watch interview with military judge, Bunia, 1 May 2007; Human Rights Watch interview with military judicial official, Kinshasa, 20 July 2007; Human Rights Watch interview with MONUC representative, Kinshasa, 18 July 2007.
- 18 Human Rights Watch interview with military prosecutor, Bunia, 30 April 2007.
- 19 Human Rights Watch interview with civilian prosecutor, Bunia, 7 May 2007.
- 20 OTP-NGOs semi-annual meeting at the ICC, The Hague, September 25-26, 2007.
- 21 Article 17 of the Rome Statute provides that cases are admissible before the ICC if the state is "unable or unwilling" to act.

- 21 Human Rights Watch interview with military prosecutor, Bunia, 30 April 2007; Human Rights Watch interview with civilian prosecutor, Bunia, 7 May 2007. For specific cases, see Human Rights Watch, "Making Justice Work", op. cit.
- 22 Human Rights Watch interview with MONUC human rights section, Bunia, 2 May 2007.
- 23 This situation would be corrected if the draft ICC implementing legislation was adopted, since it gives jurisdiction over ICC crimes to the civilian courts.
- 24 Since the 1970s, the Congolese military judicial system has had a record of inaction toward war crimes over which they have jurisdiction. It is also not appropriate for the military court to hear cases against civilians or for victims to have to recount their stories in front of a uniformed bench which they may associate with their abusers.
- 25 The ICC could perhaps explore the possibility of seeking assurances from the Congolese authorities that the death penalty would not be applied in cases involving ICC cooperation.
- 26 The Mixed Justice Committee was created as a result of an audit of the Congolese judicial system conducted in 2004 by the European Union and several other foreign donors. The Committee is a platform for Congolese government officials, judicial officials and donors to meet and discuss priorities, specific projects and developments in the field of judicial reform. The Committee meets monthly in Kinshasa.
- 27 As reported by a donor participant to the committee meeting, Human Rights Watch interview, Kinshasa, 16 July 2007.
- 28 As mentioned above, the draft implementing legislation of the Rome Statute into Congolese law has yet to be adopted. However, Congo being a monist country, international law is directly applicable and superior to national law and therefore can be applied directly in the absence of implementing legislation.
- 29 Human Rights Watch interview with military prosecutor, Bunia, 30 April 2007; Human Rights Watch interview with military judge, Bunia, 1 May 2007.
- 30 Donors involved in judicial reform in the DRC include: the European Commission, France, Belgium, Germany, the United Kingdom, The Netherlands, the United States, UNDP, MONUC.
- 31 Human Rights Watch interview with local military prosecutor, Bunia, 30 April 2007.
- 32 Human Rights Watch interview with military prosecutor, Bunia, 30 April 2007; Human Rights Watch interview with military judge, Bunia, 1 May 2007.
- 33 For example, Avocats sans Frontières, "Workshop on the psychology of victims of international crimes and the problems associated with their protection", seminar for Congolese judges, Kisangani, July 2007; Avocats sans Frontières, "Workshop analysing the decisions rendered by the ICC that allow better understanding of the Statute", seminar for Congolese lawyers, Kinshasa, July 2007; International Criminal Bar, Training Seminar, "National and international justice in the fight against impunity", seminar for Congolese judges and counsels, Kinshasa, June 2007.
- 34 Human Rights Watch interview with military prosecutor, Bunia, 30 April 2007; Human Rights Watch interview with military judge, Bunia, 1 May 2007.
- 35 Human Rights Watch, "Justice in Motion: The trial phase of the Special Court for Sierra Leone", Human Rights Watch report, November 2005, <http://hrw.org/reports/2005/sierraleone1105/>.
- 36 For example, the Assembly of States Parties' Working Group in The Hague discussed the impact of the court on national judicial systems as part of discussions on the ICC's Strategic Plan. States parties requested that the court provide more information on its thinking regarding positive complementarity.



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Established to prosecute those responsible for war crimes, crimes against humanity and genocide, the International Criminal Court has a global mandate. However, its activities have concentrated on African countries marked by ongoing violent conflict. Key recent developments have seen the work of the ICC take more concrete shape. In the process, the critical challenges and dilemmas raised by the ICC have also come to the fore. During what is a defining period for the ICC, this collection investigates the politics of the Court's interventions in Africa.

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