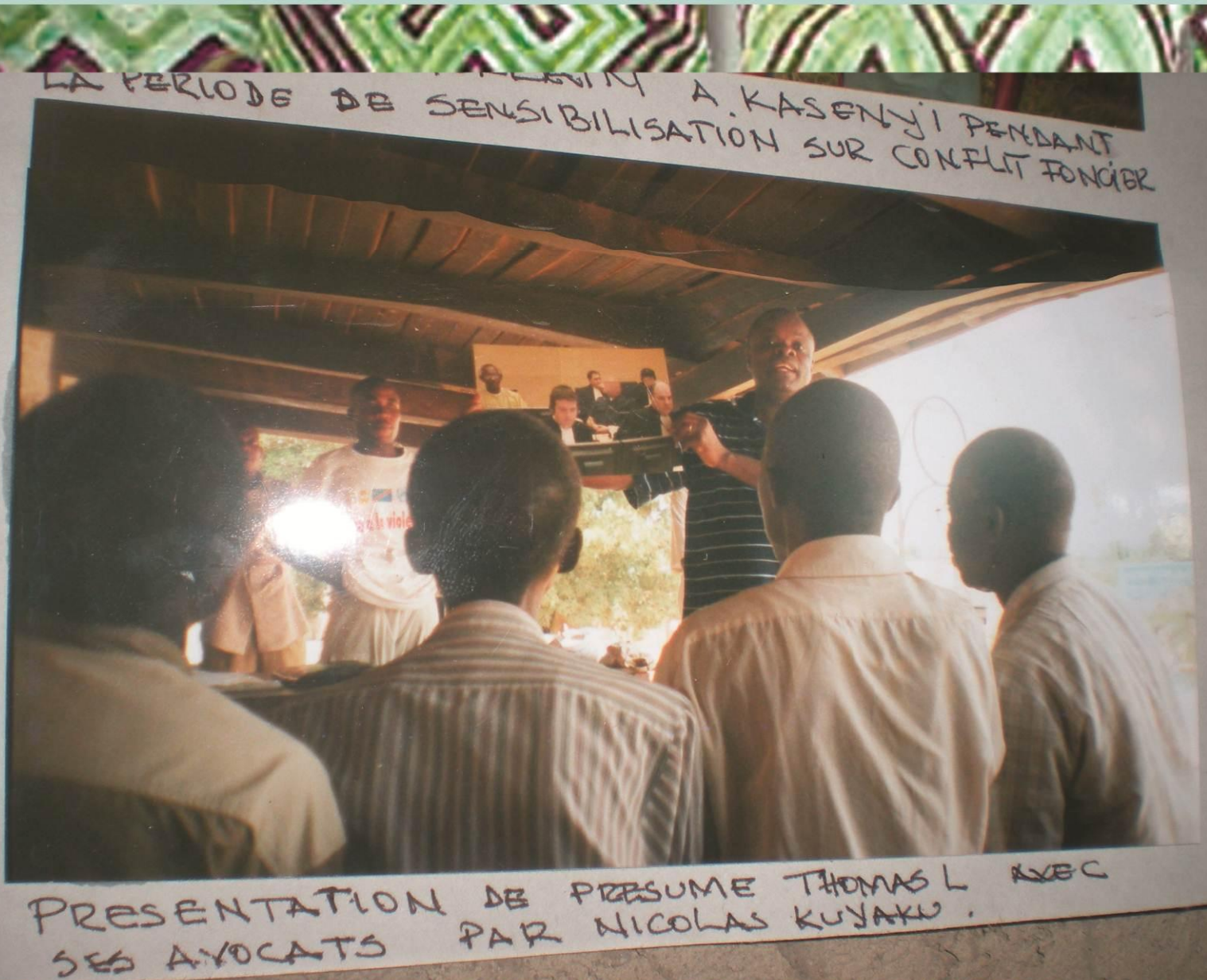


STEPS TOWARDS JUSTICE, FRUSTRATED HOPES: SOME REFLECTIONS ON THE EXPERIENCE OF THE INTERNATIONAL CRIMINAL COURT IN ITURI



Just Justice?
Civil Society, International Justice
and the Search for Accountability in Africa
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Background to the Paper

The paper was drafted by Olivia Bueno, Associate Director at the International Refugee Rights Initiative and Gilbert Angwandi, Coordinator of the *Association pour la promotion et la défense de la dignité des victimes* (APRODIVI) in consultation with other Congolese partners. Deirdre Clancy and Lucy Hovil of IRRRI reviewed and edited the material and provided additional drafting.

Just Justice? Civil Society, International Justice and the Search for Accountability in Africa

This paper is the second of a series of papers developed by the International Refugee Rights Initiative in collaboration with local partners in Africa reflecting local perspectives on experiences with international justice. The series is designed to more fully explore perceptions of international justice and the social, political and legal impact of its mechanisms at the local level. It is aimed at opening up a dialogue about the successes and failures of the international justice experiment in Africa and the development of recommendations for a more productive and effective engagement going forward.

Previous pieces in the series are:

- Just Justice: Civil society, international justice and the search for accountability in Africa (series introduction); and
- A Poisoned Chalice? Local civil society and the International Criminal Court's engagement in Uganda.

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Introduction

The region of Ituri in eastern Democratic Republic of Congo (DRC) has been one of the most heavily conflict-affected regions in the country over the last two decades. Violence in the DRC over this time has revolved around two national wars that have pitted numerous rebel groups and international actors against each other in a vicious struggle for resources, political control and security. In Ituri, these national dynamics have intersected with, and exacerbated, tensions between the Hema and Lendu ethnic groups who live in the region.

As the Rome Statute of the International Criminal Court (Rome Statute) was coming into force in 2002, violence was reaching alarming proportions in Ituri, with hundreds of thousands displaced. The escalating rate and nature of the killings led observers to describe the situation as “ethnic cleansing” and express fears of genocide. Parallels were drawn between the ethnic fabric and political scene in Ituri and the dynamics of pre-genocide Rwanda. Peacekeepers deployed through the United Nations Mission in the DRC (MONUC) were unable to quell the violence. In mid-2003, an emergency mission of 1,800 European Union personnel (Operation Artemis) was sent to protect civilians in danger as preparations were made to reinforce MONUC.

It was against this backdrop that the Office of the Prosecutor (OTP) of the International Criminal Court (ICC) signalled that it was monitoring the situation in Ituri and the DRC and had received information about serious crimes. As indications were given that the Prosecutor might move to start an investigation of his own volition, the government of the DRC formally referred the situation to the ICC in 2004.

For many in the DRC the intervention of the ICC offered significant hope. Impunity had been seen as a major obstacle to peace and democratic governance. Indeed, representatives of Congolese civil society and religious representatives who participated in

the Inter-Congolese Dialogue in 2002 had specifically underlined the need for accountability, advocating for the creation of a Truth and Reconciliation Commission and the exclusion of atrocity crimes from the general amnesty provisions that were being discussed.¹ DRC civil society advocates saw the ICC as a useful tool in the larger battle to end impunity, and their advocacy was reportedly instrumental in ensuring that the situation in eastern DRC was ultimately referred to the ICC.² Civil society on the ground in Ituri, however, was disorganized and knew little about the Court. At the same time, as one activist said, the fact that the situation was so dire made some open to any intervention that promised to ameliorate it, even if there was limited understanding of what this might entail in practice.³

Following the referral, the Court began its investigations in Ituri.⁴ The investigation quickly focused on the leaders of ethnically aligned militias who were both fighting each other and participating in the broader national conflict.

Eight years later, and with the first trials winding to a close, it is an opportune moment to reflect on the Court’s involvement in the region and compare its impact to the aspirations and expectations that were raised by its initial engagement.

The proceedings at the Hague have garnered significant attention, both within Ituri and at the international level, and have generally been welcomed as part of the broader international fight against impunity. But how are these proceedings perceived on the ground in Ituri? Has the promise of an end to impunity and to a peaceful future for those in Ituri been delivered?

As the population in Ituri awaits the first trial judgement in the case of Thomas Lubanga, this paper offers some reflections on these questions, focusing on the views and opinions of those on the ground, those who have been closest to the violence. In so doing, it poses a number of questions:

- What does the ICC mean to Iturians?
- What are the expectations of victims and affected communities in relation to the Court?
- Are the Court and its proceedings seen as credible and reliable? Have they shed light on the “truth” of what happened in Ituri as understood by different communities?
- What has been the perception of the impact of the ICC’s actions on peace and reconciliation? Is the ICC viewed as having had a dissuasive impact on those who might commit further violence?
- What are the next steps in pursuing accountability for the heinous crimes committed in Ituri?

In attempting to answer some of these questions, the paper is part of a broader effort to examine the impact of international justice in Africa and is the second in a paper series entitled *Just Justice? Civil Society, International Justice and the Search for Accountability in Africa*.⁵

The paper demonstrates current divergence in people’s attitudes towards the Court. On the one hand, the ICC is seen in Ituri as having pierced the veil of impunity: there is appreciation of the fact that leaders such as these can be forced to face trial. It was also acknowledged that the security situation has improved significantly since the Court first became involved, attributed in part to the ICC’s engagement.

On the other hand, there was disappointment expressed about the nature and impact of the ICC intervention. Rooted in a perception that there had been a lack of understanding of the context on the ground, concerns were raised about prosecutorial strategy, continuing barriers to full and effective participation of victims and the fairness and objectivity of Court proceedings. More broadly these reflections suggest that some fundamental questions need to be asked about the current capacity of the Court to meet the kind of expectations which are being created in

vulnerable communities where violence is ongoing and the state protections are minimal.

Methodology

This paper is based on data collected by APRODIVI and IIRI during the course of their work.

APRODIVI has worked on the ground in Ituri with and on behalf of victims of serious human rights violations since 2004.⁶ It has focused on documenting and representing the experience of victims, including informing them about the right to participate in ICC proceedings. In March 2010, prior to the Rome Statute review conference, APRODIVI carried out a survey of hundreds of Iturians in order to assess their impressions of the performance of the ICC. Survey documents were distributed to civil society organizations and community leaders, and hundreds of documents were returned. Shortly after this research was carried out, however, key staff of APRODIVI experienced significant security threats and were forced to flee the DRC. As a result, these documents were not available for the writing of this report, although general impressions of the data have informed the writing. Staff of APRODIVI have continued to monitor the situation on the ground consulting with victims and affected individuals.

The paper also draws on work carried out by IIRI over the last four years on and in the DRC, including: documenting reactions on the ground to proceedings in the Hague as they unfold for a series of blog postings for websites devoted to covering the ICC;⁷ research on the situation of intermediaries; and exploration of the possibilities of prosecuting crimes in DRC at the national level. Most recently, in October 2011, in-depth interviews were carried out with 15 key informants, church leaders, NGO activists, community leaders and others, in Ituri. These interviews provided an opportunity to update previous observations of victim perspectives by APRODIVI and IIRI.

The conflict in Ituri

In deciding to investigate in Ituri, the ICC Prosecutor became involved in a complex reality. By the time the Court was in a position to intervene, tens of thousands of lives had been lost: 50,000 people were estimated to have been killed by the conflict between 1999 and December 2002 alone,⁸ and an estimated additional 5,000 civilians are thought to have died as a direct result of violence between July 2002 and March 2003.⁹ Human Rights Watch claims that 500,000¹⁰ had been displaced internally by mid-2003, and the UN reported that 10,000 to 30,000 had crossed into Uganda as refugees.¹¹ The conflict was characterised by high levels of human rights violations, including massacres, sexual violence, and recruitment of child soldiers. Multiple layers of conflict drove this violence, including local tensions (often manifest along ethnic lines), national-level tensions (reflecting the broader context of civil war in DRC) and international hostilities (involving foreign armies). A dizzying number of rebel groups and foreign powers were engaged at various points. Disentangling individual, group—and indeed state—responsibility in this context, therefore, is very complicated and many aspects of the conflict remain highly contested.

One of the dynamics driving the fighting was local level competition between the Hema and Lendu ethnic groups over land and other resources. The origin of the phase of the conflict under investigation by the Court is generally understood to be 1999, when violence between the two groups erupted following an alleged attempt by the Hema to encroach on Lendu land holdings.¹² This initial land dispute then expanded into more widespread inter-communal violence. Reports from the start of the conflict point to both land regimes and historical factors as reasons why the violence spread. A local NGO, for example, argued that the 1973 Land Act made expropriation of land easier by allowing for the purchase of already inhabited land.¹³ A local rebel leader, Wamba dia Wamba, reflecting on policies which had favoured the

Hema and created animosity among the Lendu, referred to “inequalities, which are a colonial legacy ... now being exploited”.¹⁴ Although 1999 marked a significant escalation of the violence, it built on a longer history of tension and conflict that is important to take into account in thinking through what kind of interventions are helpful. One man who had been displaced in 1992 commented that understanding previous round of violence was also important, “it would be good to understand the origin of the conflict”.¹⁵

These local manifestations of conflict occurred within a broader national (and international) war that started in 1998. That war was sparked by a rebellion against President Kabila, led by *Rassemblement Congolais pour la Démocratie* (RCD) and supported by allies in Kampala and Kigali. The rebels, based in the east, accused the Kinshasa government of tribalism and incompetence. By 1999, these had factionalized and Ituri came under the control of the rebel *Rassemblement Congolais pour la Démocratie-Mouvement de Liberation* (RCD-ML). RCD-ML control was itself challenged as two of its leaders, Ernest Wamba dia Wamba and Mbusa Nyamwisi, struggled for supremacy.¹⁶ In this context, there was little or no capacity on the part of those in charge (whether the Kinshasa government or the rebel RCD-ML which exerted *de facto* control) to act as a mediator among different ethnic groups. The absence of state protection for individuals and their property favoured the rise of self-defence and private justice.

While the national war provided an opening for violence at the local level, local conflicts also impacted the dynamics and course of the national war. Ituri is one of the richest regions in the DRC, and control of the region was thus a source of financing. Control of territory was also prized as a means of consolidating political positions at the national level, including in peace processes.¹⁷ To retain power, rebel authorities relied on support from various ethnic power blocs. In turn, certain leaders within these blocs used their positions to pursue national political ambitions.

When Thomas Lubanga and other leaders formed the *Union des Patriotes Congolais* (UPC) in 2001 and began to build support, they relied primarily on the Hema and aligned ethnic groups.¹⁸ The RCD, fearful of losing control of Ituri, began to offer its political and military support to the Hema's ethnic rivals, the Lendu, with a view to weakening the UPC. This support was funnelled to the *Front de Nationalistes Intégrationnistes* (FNI) and the *Forces de Resistance Patriotique de l'Ituri* (FRPI), two armed groups associated with the Lendu and whose leaders Germain Katanga and Mathieu Ngudjolo Chui are also on trial in the Hague. The armed forces of Uganda and Rwanda in turn promoted their interests in the region through support for these ethnically-aligned armed groups, providing weapons and military training. These factors played an important role in strengthening the military capacity of these groups, and set the stage for the terrible atrocities that took place in Ituri.

Negotiations at the Inter-Congolese Dialogue in Sun City, South Africa eventually culminated in the signing of a power sharing agreement known as the Global and All Inclusive Agreement, or the Sun City Agreement, in April 2003. However, the main rebel groups active in Ituri did not sign and, as the transitional government was being sworn in, violence continued unabated in Ituri.

Having been left out of the overall national process, Ituri then became the site of a series of initiatives that "progressively led to a return of calm but without properly resolving the problem of insecurity in the region or the inherent causes of the conflict".¹⁹ These initiatives included the Ituri Pacification Commission, which brought together all the ethnic and armed groups. The resolutions of this commission and the work of MONUC helped to facilitate the return of relative stability to Ituri in recent years.

ICC prosecutions

To date, the Court has issued five arrest warrants in the DRC investigation, four of

which have been enforced, paving the way for two trials against three rebel leaders.

The first four arrest warrants and the two trials have focused on Ituri. The trials of Thomas Lubanga, former leader of the UPC and Germain Katanga and Mathieu Ngudjolo Chui, former leaders of the FNI and the FRPI are described below.

In addition, the Court has charged Bosco Ntaganda (alleged to be Lubanga's former Deputy Chief of Staff) with conscripting child soldiers.²⁰ The warrant of arrest against Bosco Ntaganda was made public on 28 April 2008 but he remained at large at the time of writing. He continues to operate in the neighbouring provinces of North and South Kivu, following the signing of a peace deal with the government.

The fifth accused, Callixte Mbarushima, a Rwandan national, was alleged to have been involved with the *Forces Démocratiques pour la Libération du Rwanda* (FDLR) and accused of a series of war crimes and crimes against humanity committed in the Kivu provinces of the DRC in 2009. He was arrested in France in October 2010 and transferred to the Hague in January 2011. Following confirmation of charges hearings the judges ruled that although there was evidence that war crimes had been committed, there was insufficient evidence linking Mbarushimana to the crimes.²¹ He has since been released and returned to France, although the Prosecutor has appealed.

The ICC Prosecutor is no longer actively investigating new cases in Ituri, but new charges in relation to the Kivus are anticipated.²² The conflicts in the two regions are intimately related: Bosco Ntaganda, for example, features as a prominent leader in both conflict cycles which are, in turn, inseparable from the larger national war. The conflicts in each province, however, also have their own unique dynamics around inter-ethnic tensions, the migration, resource allocation and positioning in national politics.

The case against Thomas Lubanga

On 12 January 2006, the Prosecutor applied for a sealed arrest warrant against Thomas Lubanga,²³ alleged leader of the *Forces patriotiques pour la liberation du Congo* (FPLC, the military wing of the UPC). Mr. Lubanga is accused of conscripting and enlisting children under the age of 15 into the FPLC.²⁴

Lubanga was handed over to the Court on 17 March 2006 by the government of DRC, the day the arrest warrant was made public.²⁵ Proceedings have been far from smooth. The case was stalled on 13 June 2008 over concerns that the prosecution had acted improperly in the way in which it had gathered evidence on a confidential basis.²⁶ The trial was suspended and the judges ultimately ordered the release of Lubanga on 2 July 2008. The prosecution then appealed, and on 18 November 2008 the judges lifted the stay of proceedings, ruling that the confidentiality and disclosure issues had been sufficiently addressed.²⁷ The trial started again on 26 January 2009.

Lubanga's defence team has alleged that Lubanga is not guilty of the crimes with which he is charged. They argue that he did not have effective command and control over those who were recruiting child soldiers and, on the contrary, that he had attempted to prevent recruitment where possible. In addition, the defence attacked the prosecution's methods, arguing that false testimony had been presented and that intermediaries employed by the Court to assist the investigation had deliberately manipulated witnesses.²⁸

Controversy over the latter ensued in 2010, leading to an order for the release of Lubanga for a second time on the grounds of the OTPs refusal to disclose information essential to assessing the allegations.²⁹ The judges warned the OTP against disobeying Court orders and threatened to sanction high level officials.³⁰

The trial resumed on 9 October 2010 following the prosecution's disclosure of the necessary information. Further delays occurred in early 2011, when the defence again called into question the methodology of the prosecution. Two witnesses were accused of identity theft, and two prosecution witnesses admitted to fabricating evidence. The defence called for the case to be thrown out for abuse of process.³¹ On 23 February 2011, the Court rejected this request, explaining in a subsequent written decision that the due process issues would be addressed as part of the final judgement.³² Closing statements were given on 25 and 26 August 2011 and a decision is expected in mid-March 2012.³³

The case against Germain Katanga and Mathieu Ngudjolo

On 25 June 2007, the Prosecutor of the ICC asked the Pre-Trial Chamber for an arrest warrant against Germain Katanga (aka Simba), commander of the FRPI, and Mathieu Ngudjolo (aka Chui), commander of the FNI. The arrest warrants were issued under seal on 2 July 2007³⁴ for war crimes and crimes against humanity. Among the acts alleged are the death of 200 civilians, serious assaults on the physical integrity of civilians and the sexual enslavement of women in the course of an attack against the village of Bogoro. The warrant for Katanga was unsealed on 18 October 2007 and Ngudjolo's was unsealed on 7 February 2008.

Germain Katanga had been in Congolese custody since March 2005 when the ICC released its arrest warrant.³⁵ The DRC surrendered Katanga to the Court on 17 October 2007.³⁶ Ngudjolo, who had been integrated into the DRC national military and was receiving training in Kinshasa, was arrested on 6 February 2008 and surrendered to authorities at the Hague the next day.³⁷

The trial of Katanga and Ngudjolo was initially scheduled to begin on 28 February 2008 but was postponed to allow for more time for both the prosecution and defence to prepare their cases. The cases were sent to the Pre-

Trial Chambers for confirmation of charges hearings in September 2008 and all but three counts were confirmed. The trial against the two began on 24 November 2009.³⁸ The prosecution finished presenting its case on 8 December 2010, with the defence beginning its presentation on 21 March 2011.³⁹

The defence teams of Katanga and Ngudjolo do not contest that the attack on Bogoro occurred and that abuses were committed in the course of that attack. They assert, however, that the two accused were not ultimately responsible for planning and coordinating the attack and that government forces, particularly those of Uganda and the central government in Kinshasa, had greater power and more to gain.⁴⁰

This case marked the first time in which defendants took the stand in a trial before the ICC.⁴¹ Katanga testified on 27 September 2011, and Ngudjolo took the stand on 8 November.⁴² After two years of proceedings, the last witness appeared on 11 November 2011. Before deliberating and reaching a judgment, the judges first considered conducting a site visit to Ituri.⁴³ Following statements of support for the visit by all parties except the prosecution, the Trial Chamber decided that the visit would be useful with a view to evaluating evidence before it (for example by increasing appreciation of distances between locations referred to in the testimony.⁴⁴) The site visit was carried out from 16 to 20 January 2012.⁴⁵ Closing arguments are expected to be given in May 2012.⁴⁶

Expectations of the Court

Expectations of the ICC in Ituri are intimately linked with broader aspirations about the promotion of peace and justice in the DRC. One expert has suggested that these expectations are also reflected in the government's motivation in ratifying the Rome Statute and referring the situation in the DRC to the ICC:

the Court could play [a role] in the stabilisation of the country by promoting the rule of law and democracy after many years of armed conflict. The government thus considered the ICC as integral to the post-conflict renewal project.⁴⁷

From a local activist perspective, therefore, the ICC is "an institution from which a lot was expected".⁴⁸ In a society that has been fractured by internal conflict and with such a need for peace and security, it is not surprising that many hopes and aspirations were laid at the feet of the ICC. In the justice sector in particular, expectations were raised that the ICC could begin to address the calls for accountability to which the national system had been unable to respond adequately. The abysmal state of the justice system in the DRC is well-rehearsed: the law on international crimes is not fully consistent with international standards; judges lack capacity; and weaknesses in infrastructure (from transportation for police officers to locks on local jails) are crippling.⁴⁹ It is understandable that many anticipated that the process at the international level would help remedy the problems of bias, manipulation and lack of resources that they observed in the national system. In this context, communities demanded that the Court function as a universal, credible, and independent institution. The Court was called on to deliver "justice as it should be: without prejudice".⁵⁰ High standards of due process and fairness were, therefore, expected to infuse all aspects of the Court's work from the choice of charges to Court operations in the field.

The ICC should clarify things... The truth should be drawn out

Man in Ituri, October 2011

In articulating the aims of the ICC process, Iturians defined them similarly to proponents of international justice internationally. Our findings highlighted three major aspirations: that the ICC process would serve as a **tool of**

prevention; that it would begin to **build a truthful historical record** of the conflict and assist with reconciliation efforts; and that it would allow an opportunity for **victims to be heard**.

Preventing further violations was a key rationale for the Court's involvement: "Impunity encourages human rights violations".⁵¹ Others, while not explicitly articulating this as an expectation, implicitly used it to evaluate the ICC's impact. For example, some suggested that the Court had failed because crimes continued to be committed. People also expressed an expectation that the trials at the ICC would help establish an accurate and truthful historical record of the conflict which might contribute to reconciliation. Many who were interviewed commented, for example, that it was difficult for individuals to accept that members of their own communities had been responsible for crimes. "The ICC should clarify things... The truth should be drawn out".⁵²

Both of these objectives are inter-related and are connected to addressing broader conflict dynamics. Prosecutions are seen as sending a message to individuals who are in a position to commit crimes, warning them that they are not above the law. Communally, the establishment of a historical record and a shared understanding of past faults can play a critical role in healing relations among communities and promoting a broader peace building project.

A third objective was that the process would provide recognition for the suffering of victims and that it would be able to make their voices heard after years of isolation. It is difficult to determine the number of persons meeting the Court's definition of victim⁵³ in Ituri: tens of thousands are estimated to have died during the period of time which the Court is investigating. People have lost children, parents, and other loved ones forever. Others survived direct attacks, including sexual violence, torture, and looting and burning of their homes. In addition, children who were conscripted as soldiers into armed groups are considered victims. These victims sought

formal recognition of their plight, and assistance in coping with the physical and psychological consequences of the violence that they had suffered. The fact that victims were central to the Rome Statute's conception of justice (they are able to participate directly in proceedings and receive reparations) raised the expectation that victims would be heard directly throughout the process.

Another rationale that was advanced in favour of international engagement on accountability is that it might promote national accountability efforts. Although this was not cited as a primary expectation of the Court's engagement by those Iturians interviewed, many emphasised the need to strengthen the national judicial system.

Meeting Expectations?

Only time will tell what impact the ICC has had on the broader conflict dynamics of the region and the ability for people in Ituri, and DRC as a whole, to reconstruct their lives in the aftermath of appalling violence. Consultation with victims, activists and community leaders in Ituri revealed that a number of individuals thought that at least some progress had been made in relation to the three main expectations articulated above. However, many in Ituri also expressed concerns about the nature and impact of the ICC's engagement. These ranged from critiques of the Court's actions and suggestions as to how the Court might be more effective, to outright frustration and disgust with the Court. There was a widespread sense that the ICC is distant and that its leaders and staff do not sufficiently understand the context in Ituri. More specifically, the Court has been criticised for failing to effectively address either the needs of the victims on whose behalf it is seen as purporting to act or those of local collaborators on whom it depended to operate on the ground. Concerns have also been raised about the tactical decisions made by various organs of the Court. Have the charges selected been appropriate? Have the right people been investigated? Were those investigations carried out effectively and

professionally? Has the Court done enough to communicate its work to the community?

The following section attempts to deal thematically with some of these concerns.

Prevention and Deterrence

Against the backdrop of the generalised impunity that prevails in DRC, the fact that trials are actually occurring at the ICC at all and that particular individuals are being taken to task for their actions, is seen as no small feat. This fact alone was viewed by many as having contributed to deterring additional crimes and to creating better security in the region. Although it is difficult to determine causality between decreased crime and the particular efforts of the Court, nearly everyone interviewed noted an improvement in the security situation over the past several years.

Views on Deterrence

Many of those consulted talked of how the ICC process has been at least partially responsible for an improvement in the security situation: “There has been a change [since the ICC’s engagement]. Before we saw that there were those that wanted to restart the war... now they are afraid”.⁵⁴ The leaders “do not want to be arrested”.⁵⁵ “The fact that perpetrators have been removed reassures the population”.⁵⁶

It was particularly believed by some that the crimes that had been targeted for prosecution by the Court had decreased in frequency more than other violations. “Massacres and recruitment of child soldiers are not so present”.⁵⁷ In the words of one activist, potential perpetrators “now know that there are limits, they are not going to target blue helmets [UN peacekeepers] or recruit children”.⁵⁸ This assertion mirrors conclusions drawn by Human Rights Watch in relation to raising awareness of the crime of child recruitment:

[the ICC prosecution] is particularly important among families who gave their children voluntarily as an act of solidarity to the relevant militia, which they felt represented their interests. In this regard, child protection agencies admitted that the Lubanga case seems to have reached out to families in the region much more effectively than years of their own campaigning.⁵⁹

Before we saw that there were those that wanted to restart the war... now they are afraid

Activist in Ituri, October 2011

One activist pointed out that since the ICC had become active in Ituri, children themselves had been educated about their rights and sensitized to their roles as both victims and perpetrators in a way which may impact their own future behaviour. “Will this result in children refusing to enrol in armed groups and who are willing to denounce their former superiors? Only time will tell”.⁶⁰

At the same time, there were also suggestions that the new stigma associated with using child soldiers may also have had a negative impact: militia leaders may be now less willing to admit to the use of child soldiers and, as a result, refuse to allow them to participate in demobilization efforts.⁶¹

Limitations of Deterrence

Although the ICC was seen to be playing a role in deterring violence, its effectiveness was viewed as limited, particularly in terms of the continued lack of comprehensive demobilisation and the fact that armed groups continue to operate in the province.

One advocate noted that the relatively comfortable conditions of jail in the Hague had undermined the deterrent effect of the Court: “everyone can see Lubanga on TV, and we can see that he is getting fat”.⁶² Compared with the standards of detention in the DRC,

the perception of luxurious confinement in the Hague blunted the severity of the sanction. In addition, the relatively low likelihood that sanctions will be imposed at all also constrains the impact of the Court.⁶³ Some of this is inherent to the structure of the ICC – the Court will only ever be able to try a very small number of cases. In the DRC, this problem is exacerbated by the fact that one outstanding arrest warrant has not been enforced—and for an individual who is prominently incorporated into government military structures and against whom allegations of ongoing abuses continue to be made.⁶⁴

Everyone can see Lubanga on TV, and we can see that he is getting fat...

Activist in Ituri, October 2011

Enforcement

Compared to other situation investigations, the Court has been relatively effective in ensuring arrests in the DRC. One frequently cited concern, however, has been the failure to secure the arrest of Bosco Ntaganda. Not only has he not been arrested, he was integrated into the national army at the rank of general *after* the issuance of the warrant. This kind of promotion not only undermines the credibility of the Court generally, but has also led to speculations about bias. As one Ituri activist put it:

justice is working at two speeds... the fact that Bosco is protected when Lubanga has been handed over shows that political expediency overshadows justice.⁶⁵

Ntaganda is also from outside Ituri and is widely identified as Tutsi and Rwandan,⁶⁶ reinforcing the sense that powerful interests from the outside are protecting him. Some have complained that it is only Iturians (eg., Lubanga, Katanga, Ngudjolo)—because of their relative marginalisation—who are being handed over to the Court.⁶⁷ Others have

suggested that the decision to render suspects is guided by ethnic cross border allegiances, with those groups associated with Rwanda enjoying undue protection.⁶⁸

The primary responsibility for the arrest of Ntaganda lies with the government of the DRC, which is obligated to cooperate with requests from the Court. Initially, however, the government reportedly blamed the UN Mission in Congo, MONUC, for failing to assist with arrest efforts.⁶⁹ Since Ntaganda ousted Laurent Nkunda as the leader of the *Congrès national pour la défense du peuple* (CNDP), a rebel movement active in the Kivu provinces, and began cooperating with the government, DRC officials have openly refused to arrest him. The DRC Minister of Information, Lambert Mende has said:

As soon as he agreed to take part in the disarmament of the rebel group CNDP, the government used him for the operation and continues to do so. Therefore the government did not find it opportune to open the case against him. It is really a question of timing.⁷⁰

Ntaganda is a high profile figure in North Kivu's main city, Goma, openly associating with senior members of the international community. On the ground in Ituri, frustration was expressed both with the government's policy, and with the Court for not being more vocal in insisting on Ntaganda's arrest.⁷¹ The consequence of this deliberate inaction was that Ntaganda was allowed to keep "doing the same thing" in the Kivus, i.e. committing the same type of abuses committed in Ituri. Although this was not widely mentioned in interviews in Ituri, some activists reported that there are rumours that Ntaganda was planning to return to Ituri, a prospect that creates serious concerns about future security.⁷² Previous research in North Kivu makes it clear that Ntaganda continues to control significant territory and that he and his forces are viewed with fear by the population, as a source of violence and atrocities.⁷³

This raises a conundrum: on the one hand allowing Ntaganda to continue to operate is

causing fear, on the other, many are concerned about the possible consequences of an effort to execute the arrest warrant. Some believe, however, that these security concerns could be effectively addressed: if Laurent Nkunda could be neutralised, it is argued, the same could be done with Ntaganda. Only then, in the words of one activist, “will the people believe in justice”.⁷⁴

Complementarity

Given the resource limitations of the ICC, it seems clear that in order for justice to be done, and for a deterrence objective to be achieved, the ICC’s efforts must be supplemented by other prosecutions. There have been significant efforts made by the international community to spur law reform in the DRC generally, and create accountability for international crimes specifically. In Ituri, the importance accorded to these issues was evidenced by the work of international actors in pursuing justice in the early aftermath of the crisis as troops in Operation Artemis, and later MONUC, which investigated and arrested individuals suspected of international crimes. Alongside this a programme of “rapid restoration of the judicial system,” was implemented to allow civilian courts to re-open in early 2004 and military ones later that same year.⁷⁵ These processes helped to facilitate five national prosecutions involving international crimes in the region.⁷⁶

In addition, there have been significant developments in relation to complementarity at the national level; bills relating to the creation of a special chamber within the DRC justice system to hear cases of international crimes and the domestication of the Rome Statute have been discussed in parliament.

These efforts were seen by activists on the ground to be more attributable to international engagement generally than to the Court specifically. For example, early prosecutions by military courts in Ituri were viewed as a response to pressure from MONUC. The publication of the Office of the High Commissioner for Human Rights’

mapping study of international crimes in 2010 (UN mapping report), and the considerable international attention it garnered, was clearly a spur to discussions of the special chamber.⁷⁷ It seems likely that, at a minimum, the engagement of the Court highlighted the importance of accountability and reinforced attention to justice issues.

Recognition of Victims

Through its work with victims, APRODIVI has seen how the mere fact that the ICC is engaged and trials are ongoing offers psychological comfort and reassurance. More concretely, however, and although the details of the ICC’s victim’s participation regime were not widely known, those who heard about the potential to engage the Court directly, to receive reparations and be granted protective measures viewed them as having the potential to create a real impact in victims’ lives. The availability of funds for assistance measures through the Trust Fund for Victims was also welcomed.

While appreciative, however, that mechanisms for victims’ participation and reparations exist within the Rome Statute system, activists and victims expressed serious concerns about their effectiveness in practice. The frustrations of those who have worked directly with victims were palpable. One victim’s advocate in Bunia declared “the Court has not paid attention to the victims”⁷⁸ and advocates argue that there has been little progress in making the benefits felt on the ground. In the context of lengthy procedures, for example, some complain victims are dying without seeing justice done and that what assistance is available as they wait for the outcome is woefully inadequate. Some believe that as the Court proceedings have unfolded, the interests of victims have been subjugated to pragmatism: it was suggested, for example, that the decision of the OTP to focus on militia rather than government crimes was aimed at ensuring continuing state cooperation rather than on an objective assessment of the gravity of the crimes committed and the views of affected communities.

Barriers to victims' recognition

The Rome Statute's victim participation mechanism offers an opportunity to victims of making their voices and concerns heard directly in proceedings. However, those who represent victims complain that few have been able to take advantage of this opportunity. Although several hundred victims have been admitted to participate in the cases relating to the DRC situation,⁷⁹ they represent a small minority of the tens of thousands who could be included in the ICC's definition of victim.

There are a number of obstacles which prevent victims from being fully and representatively included in the process. Lack of knowledge of the existence of the process is perhaps the greatest barrier. There was little sensitisation carried out in the early years of the investigation. Given the infrastructure and human resource limitations in Ituri (poor roads, limited media circulation, illiteracy, etc.), awareness raising programmes progressed slowly and little information was available. The Court began producing outreach reports in 2007: it was only in that year—after Lubanga and Katanga had already been arrested—that the office began to shift its focus to Ituri from Kinshasa. Even then, security concerns prevented the Court from engaging as intensively as it would have liked.⁸⁰ As a result, at the time when applications had to be filed, there was little knowledge of participation procedures.

Even once victims are aware of the mechanisms for participation significant assistance is needed just to fill out the necessary forms. The forms are long and complex and would be difficult even for urban elites to complete without expert assistance. Victims living in rural areas and those who are illiterate face even greater challenges. One lawyer who worked with victims recounted how some victims faced with the application form had never even held a pen before.⁸¹ Those who have applied for participation have generally done so with the support of NGOs,

but staff is only able to reach a limited number of victims.

In addition, the way in which the investigations themselves have proceeded in Ituri has affected the scope of victim participation in the formal process. Because judges have held that there must be a connection between the conduct charged and the participating victim, the choice of charges in a particular investigation necessarily limits who can participate. In the Ituri context, the selection of charges has created some concern about unequal treatment of ethnic groups which has impacted participation.

Some Lendu are unhappy that, even though leaders of militias on both sides of the conflict have been charged by the Court, the Lendu victims of UPC attacks cannot participate as victims in the case against Lubanga: the charges in the case relate to child soldiers (the victims of the crime) who were overwhelmingly from Hema and aligned communities.

It is worth noting that despite this frustration, it is not strictly true that Lendu and Ngiti victims have been totally excluded. Charges have also been brought against Katanga and Ngudjolo for recruitment of child soldiers, opening the door to participation of at least of one category of Lendu/Ngiti victims. A small number of child soldiers were, in fact, admitted to participate as victims in the Katanga and Ngudjolo trial and are likely to be Lendu or Ngiti although their ethnic identification is not a matter of public record.⁸² One activist noted that he had heard of at least two or three that were Lendu.⁸³ Nonetheless, this participation is limited, and does not include the victims of attacks on villages, extrajudicial killings and sexual violence committed allegedly by the UPC which are seen as of primary concern by communities.

In a letter addressed to the ICC Prosecutor in 2009, leaders in the Lendu community expressed their concerns about the scope of charges in the Lubanga case and the narrative of the conflict it is seen to promote. The fact

that enlistment of child soldiers is the sole charge affirmed:

makes the Lendu community believe that there was no interethnic war in Ituri between the Lendu and Hema peoples. This implies that that the children enlisted were Hema subjects, the victims would be the Hema relatives and brothers and the reparations in damages or interests whether individual or collective, would be done in the Hema community. Therefore, these enlisted children were at the side of their Hema brothers and adult relatives to massacre, kill, rape, pillage, burn and destroy in Lendu areas. What does this say about Lendu victims?⁸⁴

Indeed, there are more than twice as many victims currently participating in the Katanga and Ngudjolo case than in the Lubanga case. Although detailed breakdowns of the ethnic profiles of these victims and the crimes that they have suffered are not available, it is assumed that the majority will be from the Hema and related groups. The fact that the Katanga case was pursued later may also explain some of the difference, as outreach efforts would have sensitized a larger percentage of victims to their rights and NGOs had a longer lead time to set up their programs. In addition, social pressures may have made it easier for victims to participate in cases where they did not need to point the finger at “their own”.

Whatever the reasons for the imbalance in community representation, rhetoric about ethnic bias as the root cause has led to concerns that the Lubanga trial may have in fact helped to *increase* tensions between the two groups, as evidenced by problems being experienced around the return of refugees and internally displaced persons (IDPs) in certain areas, such as Fataki and Ktarangadja. One activist commented that there was a perception among some communities that the Court was unfair and trying to “remove the guilt of this group” [the Hema]. He suggested that “reconciliation will not be complete as long the real responsibilities are not exposed”.⁸⁵ Serious attention needs to be paid

to the impact of the ICC and its operations on the dynamics underlying the ethnic conflict in which the crimes occurred – an area that has not yet been sufficiently researched.

At the same time, on the side of the Hema community, suspicion has also abounded about a trial in the Hague of one of their own. As a result, as one local activist noted, many of the victims represented in the Lubanga case are actually not ethnic Hema, but members of a related group, the Alur.⁸⁶ Against the background of insufficient outreach in the early years of the process, it was difficult to engage Hema victims who were also discouraged by their families from participating.⁸⁷ Lubanga continues to enjoy broad support in the Hema community in spite of the charges he is facing at the ICC.

Another issue that has limited the willingness of victims to take advantage of the victim participation process was insecurity. Although the majority of individuals interviewed noted that the security situation has improved in recent years, there was strong emphasis on the fact that the initial investigations had taken place in a very precarious context. A number noted that they had been fearful of suggesting any association with the Court: one woman said that at the time she would have refused to talk to any white person as the inference would be that she was talking to the Court.⁸⁸

Furthermore, although it seemed that people were aware that witnesses for the prosecution had been relocated for their safety, there was very little knowledge of the right of victims to seek protection from the Court or the scope of the protection that might be available. For example, one activist indicated that he believed that there were no protection mechanisms available from the Court on the ground.⁸⁹ Indeed, although the protection of victims is provided for in the Rome Statute, its operationalization remains an area where litigation is ongoing and practice continues to evolve. Key issues such as when an obligation to provide such protection to victims might first arise in the course of proceedings were only clarified in 2008.⁹⁰ A range of procedural

protection measures, such as withholding of the victim's identity and facilitation of protective measures during testimony, have in fact been ordered in the DRC cases—but it may be that victims are not even aware of the protective measures from which they have benefitted.⁹¹ It is not clear, however, whether and under what circumstances other types of protection might be offered.

Exacerbating the problem of insecurity was a lack of understanding of the respective roles of victims and witnesses, an issue complicated by the frequent use of dual status victim/witnesses by the OTP in the DRC investigations. According to one activist working with the Court at the time, the situation was confused, contributing to a sense among the communities that, quite simply, anyone who collaborated with the Court was a traitor.⁹² It would seem to be important that the policies of the Court be designed, as much as possible, to explain the differences and minimize the risk to victims by avoiding their conflation with witnesses. The OTP practice of recruiting victims to testify as witnesses, creating dual status persons, has not helped in clarifying this issue.

Obstacles to effective participation

Even after they gain recognition formally by the Court, victims may have difficulty in participating effectively. One obstacle to effective participation is access to legal assistance, which limits not only the ability to apply for recognition, but also the possibilities of staying informed and being able to make best use of the opportunity to contribute to proceedings. Although recognised victims have a right to representation, there are numerous barriers to the effective exercise of this right, from simple difficulties of communication to being in an informed position to provide instructions to counsel. Do they wish to put questions to particular witnesses or even the accused, for example? Do they object to a defence or prosecution request?

Among the issues raised by victims who have been recognised as participants in the trials is

the new Court practice of insisting on common (rather than individual) legal representation for groups of victims. The engagement of organs of the Court in instituting this controversial process has undermined victims' sense of agency: some victims have speculated that there might be a conflict of interest at play and that NGOs and staff of the ICC might be in a position to act without their consent. Some wonder whether availability of funds, rather than the interests of victims, is becoming the driving force for decision-making. Victims requested greater transparency in the process, with priority given to the exclusive interest of victims. They did not want to be exploited or seen solely as sources of income whether by lawyers or NGOs: victims were aware that while legal counsel received fees for providing representation from the Court, victims themselves received nothing.⁹³

Related to this issue was the "overselling" of victim participation that occurred at one point: there were periods in which there was a definite "scramble for victims" whether by local or international NGOs or lawyers and some suggestions that victims were "traded" between those who had knowledge and access to the process and some communities.⁹⁴ In addition, at least one activist complained that visiting lawyers and NGOs seeking to engage victims had fostered unrealistic expectations. Later, when the majority of these NGOs and lawyers had gone, local activists were left shouldering the frustration of those who found themselves with little information on the progress of their applications.

Assistance to victims

The need to assist victims was articulated by Iturians as a critical concern. Advocates complained that their pleas for specialised health care and other assistance were falling on deaf ears. In the words of one advocate: "there are those [victims] who are not even remembered: at least in Rwanda there are memorials. But that hasn't happened in Congo".⁹⁵

Although a range of national and international institutions play a role in providing for victims, the need to support victim communities beyond the confines of the victim participation and reparations process itself is a vital part of the Rome Statute's conception of justice. The Trust Fund for Victims (TFV), an independent organ created by the Statute, is mandated to both oversee the distribution of any reparations which may be ordered by the Court, and provide general assistance "for the benefit of victims".⁹⁶

Although these mechanisms are appreciated, advocates for victims in Ituri were critical of the lack of resources made available to the Fund. Others complained more broadly about the lack of assistance generally available to victims and pointed to the ineffectiveness of the TFV in filling the gap. (In this regard it is important to note that during the research when discussing the lack of "assistance", activists and victims rarely distinguished between assistance coming from the TFV and/or other institutions).

Most tellingly, our research showed that the majority of victims were not even aware of the existence of the TFV, which was created for their benefit. The paucity of direct interaction by the TFV with the community was cited as one reason for this. For instance, one activist claimed that victims were always contacted through intermediaries, a process while helpful – and even necessary, in many instances – was also cumbersome. The lack of direct engagement was viewed as preventing meaningful consultation with victims about how scarce resources might be best targeted. In the words of one activist, "people weren't consulted about what they wanted".⁹⁷

In addition, some victims accused NGOs of having misused funds. One activist, for example, noted that funds were received from the TFV by an NGO to assist victims in an area where he claimed there were "no victims": a difficult claim to verify but indicative of the perceptions that exist about prioritisation.⁹⁸ In the words of another, by the time the aid gets to victims "it is either eaten or distorted".⁹⁹ Others questioned the timing and targeting of

the aid provided by the TFV: one activist claimed that by the time the TFV became operational in Ituri, most of the child soldiers had already been assisted by Save the Children and other NGOs, raising questions about the appropriateness of TFV assistance.¹⁰⁰

In order to counter such claims, some activists have suggested that a commission of victims should be convened to decide on prioritisation of projects on behalf of victims in order to avoid conflicts of interest and clientelism. Others stated that, at a minimum, the TFV be more transparent with regard to the criteria for selection of projects in order to ensure that these funds are used appropriately.

These criticisms are made in spite of the fact that there is information on the TFV website, clearly intended to address the need for transparency. The TFV states on its website that in the DRC its direct assistance "is primarily reaching three categories of victims of crimes under the ICC's jurisdiction: former *child soldiers*, *victims of sexual and/or gender-based violence*, and *youth made vulnerable by conflict*".¹⁰¹ The TFV publishes information about the specific projects they fund and the number of victims reached. It also posts clear information about how groups can apply for funding under the TFV. It would seem, however, that the TFV's efforts at transparency have not prevented a breakdown of communications between the TFV and activists/victim communities, and the TFV may need to reassess its communications strategies.

the majority of victims still feel that they are in the shadows, faceless, voiceless ... forgotten

Congolese activist, May 2010

Fundamentally, however, there remains a significant gap between the needs of victims and available resources at the TFV. In this context, creative approaches need to be found to enhancing the impact of existing programming and finding new resources.

Reassuring victims that they are not forgotten?

The frustrations of victims are palpable on the ground. In the words of one activist, victims “hoped that [the impact] would be good... but years have gone by with no verdict”.¹⁰² Another activist reflected:

the majority of victims still feel that they are in the shadows, faceless, voiceless ... forgotten in Ituri. They ask when the truth of these tragedies will become known, implicating, directly or indirectly, those responsible and when reparations and compensation might be paid or holistic assistance be made available.¹⁰³

While formal reparations payments will only be possible when the trials have been completed, this seems far away: “we need to feel reparations”¹⁰⁴; “we are asking who is being repaired and for what damages”.¹⁰⁵

Victims are losing faith, feeling abandoned both at the international level and by a national system in which it is nearly impossible to pursue perpetrators. As expressed by one women’s rights activist, many female victims feel that “amiable solutions” (local reconciliation efforts) are the only option: windows for accessing formal justice systems seem to be firmly shut.

Victims in Ituri also reported feeling alienated by communities in other regions of DRC who they see as unsympathetic, having failed to speak out in their defence and abandoning them. There is a sense that many of Ituri’s difficulties stem from marginalisation by the national government – and that this marginalisation is replicating itself in civil society fragmentation. Civil society leaders in Ituri expressed concern that activists in Kinshasa are more often in a position to ensure that their voices are heard, whether in international policy dialogues generally or in direct dialogue with the Court, but tend to be unaware of, or insensitive to, the dynamics at play in Ituri.

Despite some positive elements of the Hague process, therefore, the relatively small number of crimes that have been pursued (whether at the ICC or nationally); the long delays in achieving a verdict; and the failure to provide for the needs of “victims” whether officially recognised by the Court or not, has caused many to lose hope. Some activists expressed concern that this loss of hope could turn to frustration and, in turn, impede progress towards reconciliation between communities in the region.

The Process and Practice of the ICC

In addition to critiquing the effectiveness of the Court in delivering on its objectives, Iturians offered up a number of process-oriented critiques. These have focused on how the court engaged intermediaries, how outreach and communications were conducted and the quality and professionalism of the process itself. For some, these critiques were presented as course corrections to improve the process. For others, these critiques cut to the core of faith in the Court.

Intermediaries

The situation of intermediaries has gained particular prominence in the context of the Lubanga case. Although the term “intermediary” is not defined in the Rome Statute, IIRI and its partner the Open Society Justice Initiative have proposed the following definition to the Court for adoption as part of the new guidelines on intermediaries which it is in the process of developing:

An intermediary is an individual or an organization engaged in a mutually accepted relationship, that can be established with reference to the nature of the interaction with the ICC, providing assistance in furtherance of, or complementary to, the objectives of ICC, such as by providing an active link between the ICC and affected communities.¹⁰⁶

On the ground in Ituri, many people expressed opinions on the role of these individuals. First, as noted above, local intermediaries were recognized as frequently providing a useful and vital service, facilitating the participation of victims or assisting in outreach efforts. It was also noted that intermediaries were important in orienting investigators from the OTP unfamiliar with the terrain. In terms of maintaining the security of those with whom the Court engaged, it was also recognized that Congolese intermediaries could move around more freely than internationals, and, not surprisingly, attracted less attention than Court staff or other outsiders.

At the same time, there was criticism that the Court was not selective enough about with whom it chose to work. It was also suggested that it took insufficient measures to ensure tasks delegated to intermediaries were conducted appropriately (see further discussion in the section on investigations below). Some informants accused intermediaries of distorting or misrepresenting victims' needs or diverting assistance for their benefit. The question of how intermediaries themselves could be held accountable for their work was also raised.¹⁰⁷

Activists, in turn, questioned the commitment of the Court to these individuals. It was noted that people had been threatened due to their perceived affiliation with the Court, although it is clear that the full extent of the attacks which had been suffered intermediaries was not known. Some questioned the Court's capacity to address the needs of these individuals: "has the Court thought about the intermediaries?"¹⁰⁸ "The Court has not protected those who assisted".¹⁰⁹

Communications and Outreach

There was appreciation of the efforts made to increase awareness on the ground about the functioning of the Court. One activist noted that sensitisation had helped the Court to carry out its activities more effectively.¹¹⁰ Critically, another noted that "education and sensitization helped to rebuild ties" among communities,¹¹¹ although other engaged

individuals disagreed, stating that they could not see how this could have been the outcome.¹¹²

At a very basic level, international engagement was a sign to victims that their situation was not forgotten or ignored. The very presence of an ICC outreach office in Bunia, for example, was welcomed. Visits carried out by high level officials of the Court to Ituri, notably the Prosecutor, the Registrar and the President of the Assembly of States Parties, for example, were cited as positive, symbols of solidarity. Although the primary research for this paper was conducted prior to the visit of the ICC judges to the region, activists with contacts on the ground reported that Lendu leaders were pleased with the session. Others asked why similar visits were not carried out in the Lubanga case.¹¹³

The failure of the Court to communicate effectively about its work, however, lies at the heart of much of victim concerns. The ability of the Court to communicate with affected populations about its activities is critical to ensuring its effectiveness: if justice is not seen to be done prosecutions will not meet the objective of raising awareness about the history of violations; potential perpetrators are unlikely to be dissuaded; and victims will be unable to draw comfort from the recognition of their situation.

The Court's last outreach report, covering September 2009 to September 2010, shows an impressive array of activities in the DRC. According to the report the unit participated in 190 events reaching 16,990 people. Additional activities targeting print, radio, and television journalists exposed an even wider range of individuals to information about the Court.¹¹⁴ Nonetheless, those interviewed in Ituri pointed to a number of failings in the Outreach Unit's communications strategy which clearly limited its effectiveness.

Several people talked of how the intensity of sensitisation programmes had not been consistent. Although there had been more concentrated outreach early on in the trial process, the level of engagement had

diminished as the trials progressed. There was concern expressed that unless this trend was reversed opinion on the upcoming verdicts could be more easily manipulated.

Some of the Court's public information programmes were characterised as "timid, normative and monotonous"¹¹⁵ They were viewed as tending not to engage the core concerns of the Ituri population, but preferring to recite general information about the Court. Activists asserted that there was no real engagement with the tough questions being posed by the population such as: why are allies and supporters of Lubanga, Katanga, and Ndugjolo not called to the Hague? Why have the actions of the government not been the subject of investigations and prosecutions? Of course dealing with these questions robustly would create difficulties for the Outreach Section, which must remain non-partisan and not infringe on the spheres of action of the other Court organs, but would not be impossible. NGOs of course would be able to play a particularly helpful role here.

Another criticism levelled by Ituri activists was the relatively narrow geographical scope of the Court's outreach activities, which tended to be limited to Bunia town and only took place in French. Even in urban centres, informants complained that only intellectuals, students, and the heads of neighbourhoods had been involved.¹¹⁶ "Outreach should be wider, and should be conducted in local languages".¹¹⁷

The Court, for its part, seems to be attempting to address these critiques, noting in its Outreach Report for 2010 that it is holding sessions in rural areas and in local languages, specifically Lingala and Swahili. A close reading of the report, however, reveals that a majority of action focus on Bunia town: of all the sessions held in Ituri during that reporting period, 88 were held in Bunia town (involving 5,379 people), whereas only 33 sessions (involving 1,555 people) took place outside of Bunia.¹¹⁸

Strategies for reaching out to rural communities are therefore still in need of

improvement. Yet reaching out to victims and affected communities in remote areas presents a significant challenge. Few have access to the Internet, newspapers or TV. The Court is trying to address this by using community radio, ensuring that programs are disseminated on Canal Revelation, an Ituri based radio.¹¹⁹ Although radio is the widest reaching news service, it nonetheless does not reach throughout the territory.

Even then, as one man said, "the local media and the ICC do not have a useful relationship".¹²⁰ Despite indications from the Court that it has conducted trainings with Ituri based journalists and radio stations,¹²¹ local journalists and civil society actors complained that too often the Court looked first to build partnerships in Kinshasa. More broadly there was resentment expressed that NGOs in Kinshasa were frequently approached by both the Court and other international actors as experts when, in the view of Iturians, these actors are neither familiar with the local dynamics nor necessarily sympathetic. Although there are good reasons for reaching out to constituencies in Kinshasa, staff of the Court must be sensitive to pre-existing tensions and the possibility of feeding into or exacerbating these dynamics.

Against the scale of the outreach challenge, it was felt that insufficient resources had been allocated to the process, with one activist lamenting the fact that the ICC outreach coordinator was "alone here in town".¹²² Overall the view was that the Court's outreach campaigns were ineffective in providing the level of information and creating the confidence that would prevent manipulation of populations against the Court. This was viewed as particularly vital in the context of the upcoming verdicts.

Civil society actors were credited with taking steps to address the information gap. The activities of Interactive Radio for Justice were particularly singled out as providing critical information on the Court in remote areas.¹²³ Although the actions of civil society actors were welcomed, it was noted that this could itself create new challenges. Outreach

intermediaries, it was noted, often operated with inadequate funding and/or training. Many were neither paid nor recognised by the Court for their work in dangerous and hostile areas that the Court's personnel could not access.

One point particularly emphasised was the need to better manage expectations. There was concern that the lack of effective and meaningful communication by the Court could allow false hope or misunderstandings to be fostered on the part of victim communities. Disappointment and frustration could then be funnelled into further extremism by the unscrupulous.

The quality of investigations

The way in which prosecutions and investigations are handled and the perceived quality and professionalism of the Court, play a role in how the Court and its credibility as a mechanism for delivering justice is viewed. In the Lubanga trial, the defence has attacked the prosecution's methods and ethics in a number of areas, including the use of confidential information. Of particular concern to the defence has been the use of intermediaries by the OTP including where they acted as go-betweens between the Court and potential witnesses.

They trusted anyone who called themselves civil society

Congolese man, October 2011

These issues will receive a judicial reply in the expected verdict, but they are already having an impact on public opinion in Ituri. Many of those interviewed expressed a lack of confidence in the OTP. One individual noted for example that in his view it was problematic that the prosecution had "no Congolese on staff".¹²⁴ Other experts on the process noted that although this was not entirely true, those Congolese who were engaged had been in

exile so long that they were unfamiliar with the terrain.¹²⁵ Although inaccurate, this criticism the fact that Court staff was still dominated by internationals did little to diminish the sense that the Court could have done more to understand the local context. The lack of expertise in the Hague was viewed as reducing the capacity of the office to navigate the complex local politics and resulting in the office relying blindly on some actors. "They trusted anyone who called themselves civil society".¹²⁶ Although some partnerships were recognised as useful, it was the lack of capacity to exercise independent judgement with respect to potential collaborators which had led to the problem of "false witnesses".¹²⁷ Others alleged that when outsiders came looking for NGOs they were "duped by malicious people".¹²⁸ Although sympathies were expressed for Court officials trying to operate in a foreign and sometimes hostile land, there was also concern that the Court "they did not do enough to verify the information that they got".¹²⁹ Failure to do so, and to engage the "real community leaders", left the ICC "looking ridiculous a large percentage of the time".¹³⁰

Concerns about the prosecutorial process were raised most vociferously by members of Lubanga's political party, the UPC, and other Hema leaders who might be expected to have an interest in defending him. However, it is important to note that expressions of concern were far from limited to these groups. Members of other ethnic groups, as well as a wide spectrum of human rights advocates, echoed their concerns. For example, Lendu leaders posed questions about the legitimacy of prosecutions, accusing investigators of having failed to enter Lendu villages. They have criticised the Court's engagement with NGOs dominated by Hema or their allies. They also questioned technical decisions such as how the number of inhabitants of Bogoro was calculated and what methods were used in Bogoro to identify cadavers.¹³¹

At the same time, the fact that the Court allows for a vigorous defence seems to have gone some way to preserving the credibility of the Court as a whole, even as that of the OTP

has been damaged. Although some questioned whether the defence had equitable access to resources, a number of people who could be expected to align with Lubanga were positive about the work of the defence teams. A representative of the UPC, Lubanga's party, said, "we were really touched by the work of our President's defence team".¹³² Another Hema leader said, "what is good [about the ICC] is that at least there is freedom of expression and a chance for the defence".¹³³

At the same time, the idea that Lubanga is a test case for the Court was frequently cited as a factor that might ultimately undermine the fairness of the trial. The argument was made that a failure to convict Lubanga would be viewed as a severe blow to a Court already facing a number of outside challenges. "I don't think that it is fair, he was condemned before the process began".¹³⁴ "Lubanga was a guinea pig".¹³⁵

Lubanga was a guinea pig.

Congolese man, October 2011

The majority of the criticisms of the trial process heard by the researchers focused on the Lubanga trial: the Katanga/Ngudjolo process was generally seen as more credible. Experts speculated that this was due to the fact that it was subject to fewer procedural delays.¹³⁶

Length of the process

A key concern on the part of victims and others in the community has been the length of the trial process. Victims, in particular, have expressed frustration with the length of the proceedings and the lack of concrete developments on the part of the Court. As one activist reflected, for victims "it is discouraging, do they still have confidence in the Court?"¹³⁷ The proceedings at the ICC relating to the DRC have certainly taken a long time, but this needs to be placed in context.

As one commentator has noted, "the complexity of international trials and the further delays they may occasion have to be explained to impatient victims and the public".¹³⁸

Ultimately, however, outreach may not be sufficient to assuage concerns about the length of the process. Some activists, for example, have suggested that a properly supported Congolese legal process would have been much quicker and more efficient.¹³⁹ Other victims expressed frustration with the fact that investigations in Ituri were conducted sequentially, looking first at UPC crimes and focusing on FNI/FRPI crimes only once the initial investigation was completed, an approach that added to the delay. A number of victims who were formally admitted to participate have died since the procedure got underway and others ask how many more will succumb before they see justice done. Fears were expressed that even the accused may pass away before judgment is rendered.

Protection of witnesses

The treatment of witnesses was also a matter of concern. The situation of several defence witnesses in the Katanga/Ngudjolo trial who asked not to be returned back to DRC where they had been previously detained after they had given their testimony has garnered significant attention in intellectual circles in Ituri. Initially the Court ruled that the security risks emanating from the testimony could be adequately addressed through a series of protection measures that the DRC government had agreed to put in place, including allowing Court staff to privately visit the detainees. The Court did not, however, take a position on the question of whether the witnesses might face persecution or human rights violations more generally. It determined that this should be decided by Dutch asylum law and that the witnesses could not be returned until their claims were processed.¹⁴⁰ Although there were a variety of views expressed about the case, there was general consensus that the witnesses would, in fact, be in danger if returned to custody in the DRC.

In the words of one activist, “[o]n the basis of what indicators can the ICC be basing its evaluations of the risk, understanding well the constant insecurity in the DRC?”¹⁴¹ Attacks on high profile figures who had become critical of the government – including Colonel Beiza, who was reportedly abducted in Kampala, and General Kisémbó, who was killed in the DRC – were cited as evidence that the fears of these witnesses were well founded. Kisémbó and Beiza were both formerly integrated in to the national army, but later fell out of favour. Drawing out the lessons of these experiences for the witnesses in the Hague, one man concluded, the witnesses “are justified in asking for asylum”.¹⁴²

Additional concern related to whether these particular witnesses had been treated differently due to the fact that they had testified for the defence rather than the prosecution. There was an awareness, for example, that prosecution witnesses had been relocated, but less knowledge of how defence witnesses had been treated. An investigative journalist commenting in the bimonthly *Journal Le Millénaire*, which has covered the conflict since 2000, echoed this sentiment: “These defense witnesses should benefit from the same security accorded to prosecution. To act differently would be an injustice”.¹⁴³

The insufficiency of prosecutions

As noted above, although it is considered to be a significant accomplishment that trials are ongoing at all, the contention that prosecutions have “not gone far enough” was a frequent refrain. This criticism essentially covers two areas: the selection of charges against those that stand accused and the choice of who to investigate.

Selection of charges

With regard to the selection of charges, the process against Thomas Lubanga has been of particular cause for concern. The range of charges against Lubanga is narrow, focusing only on recruitment of child soldiers. Although

this focus has assisted in raising awareness about the fact that recruitment of children is a violation of international law, some questioned whether the charge captures the gravity of the range of abuses which were committed in the conflict. The UPC, for example, was associated with serious violence against civilians during the period under scrutiny by the Court. These include killings of people of Lendu and Ngiti ethnicity in association with its August 2002 attack on Bunia and subsequent targeting of civilians perceived to be in opposition to UPC authority in addition to massacres at Songolo and Mongbwalu in August and November 2002.¹⁴⁴ Although public association of the UPC with these incidents is in no way sufficient to consider that Thomas Lubanga might have incurred individual criminal responsibility for them, it does raise questions in the community about why these incidents have not been investigated. This reflection resonates with the finding of a population based survey carried out in 2008, which found that only 16.5% of those interviewed in Ituri identified recruitment of child soldiers as a priority for prosecutions. By way of contrast, 93.4% identified killings and 68.8% referred to rape and sexual violence.¹⁴⁵

Frustration with the scope of charges has led some to become disinterested in the proceedings. In particular, the selection of charges has created a sense of exclusion among Lendu and Ngiti victims who are not allowed to participate as victims because they were not targets of the crime of child recruitment which has been charged.

There is much speculation, and little clarity, about the reasons for the focus on child soldiers in the Lubanga case. Some attribute the narrowness of the charges to simple laziness on the part of the Court, speculating that they wanted to start with the “easier” charges to prove. In the words of one activist, the local population sees the argument that there is not enough evidence of other crimes as a joke.¹⁴⁶ Some speculate that the OTP did not spend enough time investigating. Others point to partiality on the part of the prosecution, speculating that those who

armed and supported Lubanga may have protected him from exposure to censure for more serious crimes. In this, there was speculation about the work of government agents, discussed in more detail below.

The issue of the insufficiency of the charges was also raised in relation to the Bemba case. Jean Pierre Bemba Gombo is a former vice-president and leading opposition figure in the DRC who is currently on trial in the Hague for crimes related to the Central African Republic (CAR) situation which is also before the ICC. There has been serious criticism of the failure of the Prosecutor to pursue those crimes that were allegedly committed by Bemba in the DRC—and especially in Ituri: “people in the region want Bemba tried for crimes committed here”.¹⁴⁷

There are people who should also have been arrested, but we sacrificed certain people...

Female activist in Ituri, October 2011

At its heart, the issue is a differential understanding of the term, “the most serious crimes”. Although the recruitment of child soldiers is seen as a problem and a crime in Ituri, it was not seen as a *priority* in terms of pursuing accountability. In this context, the choice to pursue only this issue in the Lubanga case enhances the feeling that the OTP either does not understand, or is insensitive to, views on the ground. The disparity in views also impacts the value of the trial process in creating an overall historical narrative that reflects local understandings. At the same time, it can also be argued that community perceptions may need to be challenged.

Selection of cases

Many of those interviewed expressed the desire to move past the discussion of what the ICC had done so far and onto a discussion of whether those prosecuted represented those bearing the greatest responsibility for the most serious crimes committed in Ituri.

Article 27 of the Rome Statute provides for the application of the statute to all persons responsible, regardless of their official position, creating expectations that high level perpetrators will be pursued. However, some in Ituri complain that the investigations and charges so far have been limited to the “small fish”. Although Lubanga, Katanga and Ngudjolo were acknowledged to be leaders in Ituri, they were also often viewed by those interviewed as pawns for outside actors. These external actors were seen to be more influential than the local leaders, raising questions as to why they were not targeted. In the words of one interviewee, “I would have been happy if the Court had laid its hands on the ‘real commanders’”.¹⁴⁸ One activist, for example, referred to Floribert Njabu, who has in fact testified at the ICC that he was the president of the FNI, the rebel group associated with Mathieu Ngudjolo who is facing prosecution.

Of particular concern was the failure of the Court to go after individuals in the Kinshasa government: “the Court is also politicised”.¹⁴⁹ One example given was that similar crimes committed by government forces were not equally pursued. As one man said: “there were *kadogo* [child soldiers] in Kabila’s forces as well”.¹⁵⁰ Another example given was the failure to prosecute Floribert Kisembo, another prominent leader in the UPC who had, by the start of the investigation phase, been integrated into the Congolese army at the rank of general.¹⁵¹

Against the background of concerns about who has been left off the list of the accused by the Court, the decision to target Jean-Pierre Bemba has also fed the impression that the Court process is politicised. Bemba is being prosecuted for crimes committed by his troops in CAR, but the case is followed with interest in his native DRC. Bemba was the leading opposition candidate in the 2006 elections, and many Congolese see his arrest as evidence that the Court is being used as an instrument by the Congolese government to undermine its rivals. Whether or not this is the case, the action by the Court removed a major

political player from the scene ahead of the recent 2011 presidential elections substantially weakening the challenge to President Kabila.

There was some speculation that the lack of focus by the Court on crimes committed by the government was the price being paid by the ICC for continued cooperation from the Congolese authorities: the ICC took jurisdiction further to a state referral after all. Others perceived the Court to be less tactical than manipulated, claiming that the Congolese government had suggested a particular path for the investigation in Ituri and the Court simply followed. The fact that former militia leaders have now testified in the Katanga and Ngudjolo trial in the Hague and have highlighted the role of the government of the DRC in the attack on Bogoro which is the centrepiece of that case, has intensified frustration. Many see this testimony as a vivid reminder of the evidence that is available of government participation in crimes in Ituri. They questioned why this evidence has not been translated into investigations or prosecutions of government officials. Others wondered why the Court has been willing to go after to government authorities in other country situations such as Sudan and Kenya but not in Congo. Frustration around this issue appears to be linked to the desire to address ongoing governance problems.

Another core issue has been the lack of prosecutions of foreign actors in the Ituri conflict, in particular those from Uganda and Rwanda. Many individuals in Ituri assert that forces from these countries were driving forces in the conflict and that this element must be explored and punished by the Court. The Office of the High Commissioner for Human Rights has also urged that the ICC pay particular attention to crimes committed by state actors outside DRC due to the particular difficulties that the national system would face in attempting to prosecute them.¹⁵² As one advocate pointed out, despite widespread allegations of involvement in the commission of serious crimes the DRC has never authorised complaints against Rwandan

nationals in connection with their prominent role in the conflict. Others wonder whether the need of the Court to secure cooperation from the Ugandan authorities for its cases in northern Uganda has undermined the willingness of the Court to pursue Ugandan crimes in the DRC.

Clearly the ICC, as an international organ, would have a better chance of successfully investigating and prosecuting across international borders. The desire to see international actors brought to book, however, is also linked to understandings of the root causes of conflict. A number of those consulted in Ituri pointed to external intervention as the primary cause of the war, arguing that the Hema and Lendu had lived before in harmony.

Interestingly, parties to the proceedings have taken various positions on the issue of international engagement in Ituri during the course of the trials. Although in the initial application for the Lubanga arrest warrant the OTP characterized the conflict as “non-international”, Chambers in fact ruled that the framework for the international crimes analysis should be that of an international conflict.¹⁵³ Since then the Prosecution has referred to the engagement of international actors in its arguments. Indeed, at the conclusion of the first phase of investigations (against Luganda, Ntaganda, Katanga and Ngudjolo) the Prosecutor announced in 2008 that ongoing violence in the Kivus and “the situation of those individuals who may have played a role in supporting and backing DRC armed groups, are among the principal options upon which the OTP is focusing for this third investigation”.¹⁵⁴ In the end the third investigation in the Kivus resulted in the charging of Callixte Mbarushimana, a Rwandan national. Although those charges were not confirmed by Chambers, this did reflect an effort to go after backers of militia movements with international ties to some extent. Although not supported by the DRC or a neighbouring state, Mbarushimana had lived in exile in Europe and allegedly directed operations from there.

Unfortunately, however, “this did not satisfy anyone in eastern DRC”¹⁵⁵ as the charges related to a group (the FDLR) which did not have support from either the DRC or other governments. It did little to appease the desire for government accountability. Indeed, it may even have exacerbated views about the partiality of the Court. The prosecution of a prominent FDLR leader created expectations that the group’s primary rivals, the CNDP (who have benefited from support from the Rwandan and, following a 2009 peace deal, Congolese government support) would also be targeted. The fact that such charges have not been forthcoming is viewed by some as evidence that bias is in play to protect those with ties to the Rwandan and Congolese governments.

Although the Prosecutor has, for now, turned his focus away from Ituri, international and governmental backers of Ituri militias could still be pursued. It is not clear how the new ICC Prosecutor will address these questions, considering the fragility of the political climate for the Court in Africa.

Gender crimes

As elsewhere in the DRC, the conflict in Ituri was characterised by high levels of rape and sexual and gender based violence (SGBV). These crimes were frequently committed at the moment when individuals were taken hostage and in detention. Some were released after ransom was paid; others were enlisted as child soldiers or held as sexual slaves. Numerous incidents of rape were documented by human rights organisations.¹⁵⁶ To give a sense of the scale of the violations, a population based survey in Ituri revealed that 17.2% of those interviewed had witnessed sexual violence and 11.6% had themselves been victims.¹⁵⁷ Although these rates are somewhat lower than those found elsewhere in eastern DRC,¹⁵⁸ they represent a horrific scale of violence. The needs of victims of sexual violence are numerous and varied and include the need for medical treatment and psychological counselling.

The Rome Statute clearly and explicitly includes SGBV crimes as among the most serious international crimes. In addition, there has been significant international attention to the question of sexual and gender-based violence in the eastern DRC. Documentaries have been filmed, US Secretary of State Hilary Clinton has denounced the violence and the issue has been the target of generous aid schemes. Despite all of this engagement women’s organizations on the ground in Ituri speak despairingly of lack of recognition and lack of services.

Therefore, while better security coupled with improved outreach by NGOs and the UN concerned has helped the situation to some extent, women continue to face serious protection concerns. The need for accountability is critical to halting the overwhelmingly prevalent incidence of rape in the DRC.

There was certainly a lag time for the Court in integrating a gender perspective, and this delay has been lamented by, among others, the Women’s Initiatives for Gender Justice (WIGJ).¹⁵⁹ SGBV crimes were not among those with which Thomas Lubanga was charged, despite efforts by WIJG to push the Prosecutor to do so.¹⁶⁰ Nonetheless, the OTP did later describe the sexualized nature of the violence in its closing statements. And some early critiques on seem to have been taken on board by the Court, for example, as pointed out by Brigid Inder of the WIGJ, SGBV crimes have now been charged in every situation investigation except Libya, and in eight out of 15 cases.¹⁶¹ In other cases, the lessons “are yet to be fully absorbed and some appear bound for unfortunate repetition”.¹⁶²

Reflecting on this lack of early focus on SGBV crimes, Deputy Prosecutor Bensouda has acknowledged that the gender dimension was something of an afterthought:

The initial thought [...] was to make sure [...] enlisting children [wa]s brought to the fore... as we presented our case, we realized that there are other aspects of this crime that really needs to be also

highlighted and that is the gender aspect ... it evolved.¹⁶³

Sexual crimes did, however, appear in the charges filed against Katanga/Ngudjolo. Later applications by the Prosecutor for arrest warrants outside Ituri in the Central African Republic and the Callixte Mbarushimana case, have also included charges relating to SGBV. Although the OTP appears to be making an effort to more fully address SGBV crimes, its early emphasis may be influencing TFV and other international interventions. Despite the fact that it lists victims of SGBV as one of its core interest groups, the TFV's portfolio of active projects in Ituri in mid-2011 included only one project related to sexual violence in, assisting only 288 of the TFV's estimated 42,891 assisted victims in the sub-region.¹⁶⁴ On the other hand, programmes to assist and reintegrate child soldiers, reflective of the charges in the Lubanga case, feature much more prominently.¹⁶⁵

The TFV does assist a large number of sexual violence victims in DRC, predominantly in North and South Kivu. Indeed, assistance to women and survivors in the Kivus seems to be more readily available than in Ituri. There may be a number of reasons for this. One is that the problem of sexual violence is particularly acute there.¹⁶⁶ Another is that by the time sufficient advocacy momentum had built to ensure an appropriate focus on SGBV, the security situation in the Kivus had become significantly more acute and a more urgent site for programming on the issue. Additional reflection is needed in order to ensure regional balance and the effectiveness of SGBV interventions.

Next steps

Despite a degree of appreciation for the Court's work to date, Iturians are clear that much remains to be done to both promote both real and effective accountability and to reinforce the underlying goals that accountability is supposed to promote: respect for human rights, reconciliation and recovery from conflict. Although there was

less consensus on what precisely should be done, there was recognition that criminal prosecutions, in whatever form, needed to be part of a broader strategy to promote human rights and reconciliation. Other issues that needed to be resolved included the need for political processes for integrating rebel groups, creating alternative dispute resolution mechanisms and ensuring space for human rights defenders to carry out their advocacy.

Crimes still to be addressed

The prosecution of additional crimes was a key concern for many interlocutors. One particularly problematic question is the demand for justice for crimes committed before 2002, over which the ICC does not have jurisdiction. One mechanism which has been suggested for pursuing these cases has been an expanded temporal jurisdiction for a new Special Chambers dedicated to international crimes embedded within the Congolese national justice system. Another has been the reinforcement of the regular national system.

Even within the ICC's temporal jurisdiction, however, there are a number of other crimes for which victims and activists are demanding justice. The attack on Bogoro which is at issue in the Katanga and Ngudjolo case was similar to many other attacks targeting Hema, Lendu and other ethnic groups elsewhere. The case most frequently cited as one where the ICC should have engaged was the attack on Nyakunde, in September 2002. Human Rights Watch has claimed that over a ten day period forces attacking Nyakunde "systematically massacred at least 1,200 Hema, Gegere and Bira civilians".¹⁶⁷ These included women, children and invalids on their hospital beds. Houses were burned and destroyed and the hospital and livestock were pillaged. Other incidents cited by local activists as in need of international attention include:

- The attack on Songolo (an Ngiti village) in August 2002: Local activists say that more than 100 civilians were killed.¹⁶⁸ The majority of those killed were Ngiti or Lendu, including women and children. The

village was burned and livestock was pillaged.

- The UPC attack on Mongbwalu, December 2002: Local activists say that the surrounding villages were destroyed, pillaged and burned and that more than 200 were killed.¹⁶⁹
- The attack on Drodro, April 2003: The UN Mapping Report documents FNI elements killing and mutilating several hundred people: local NGOs say more than 300. At least 27 people were killed in an attack on Drodro hospital. The village was burned, pillaged and destroyed and numerous women were kidnapped and used as sexual slaves.¹⁷⁰
- The battle of the FNI and FRPI vs. the UPC for Bunia, May 2003: As the two sides fought for control of Bunia town, each reportedly attacked civilians belonging to the camp of the other ethnic group. It is estimated that more than 120 Hema civilians were killed including Catholic priests and that more than 200 members of the Lendu and related tribes were killed and homes, schools and stores were pillaged and destroyed.
- The attack on Tchomia and Kasenyi, June 2003: More than 150 Hema civilians were estimated to have been killed by local activists. The hospital was destroyed and homes were burned.

Additional prosecutions

In seeking justice for the crimes identified above and others, Iturians cited the ICC, a specialised chamber, and local courts as possible venues.

The ICC is still pursuing investigations in the DRC, but it appears that the focus is likely to stay on the Kivus or, as more recently expressed by the Prosecutor, on election related violence, rather than return to Ituri.

For many years there has been discussion of the creation of a special internationalised chamber within the DRC national justice system. Discussions particularly gained momentum following the release of the UN

mapping report, which gave an overview of international crimes committed in DRC and recommended the creation of a specialised mechanism. The release of the report generated significant political pressure on the DRC government and a draft law on the special court was prepared. However, it has not yet been passed through parliament and prospects for the bill are not clear.

Finally, some prosecutions have been carried out by regular or military courts at the national level, usually with some type of international assistance. Reinforcement of these efforts could be undertaken. Although there are serious weaknesses that would have to be addressed, this approach would have the advantage of increasing national capacity, with greater impact on the justice system as a whole.

Among those interviewed for this research, there were a variety of views on which mechanism would be preferable. Some supported continued ICC engagement, saying that, despite its flaws, the ICC still maintains greater confidence on the part of Congolese than the national justice system. It was also argued that the improved security conditions in Ituri would facilitate a new phase of investigations. Others called for the creation of the specialised chamber, saying that this mechanism had the best chance of promoting accountability but one that would only work if the government seriously engages with the task. Others suggested that the creation of such a mechanism was unlikely, citing the failure to pass the bill and the fact that the implementing legislation for the Rome Statute has not been passed nine years after the latter's ratification.

Others have pointed to the need to focus on national systems of justice. In the words of one activist, "the ideal would be local justice... there would be fewer excuses".¹⁷¹ Another activist pointed out that "the military justice system can do a good job, but they need to be supported by internationals".¹⁷² Of course, these individuals were also realistic about the challenges. Widespread corruption, lack of infrastructure and insufficient resources were acknowledged as serious problems which

needed to be addressed. However, it was noted that the engagement of the ICC had already promoted positive developments in terms of the standards of military and civilian justice. It has served as a rallying point for information sharing and sensitisation and some judges have applied Rome Statute standards in domestic proceedings.

Another national level mechanism that was suggested was vetting. In the words of one man, the “people can have peace when people [who commit international crimes] are punished, not promoted”.¹⁷³ An impartial process of vetting would have a salutary effect on the political climate in the DRC and reinforce faith in the policy of “zero tolerance” of impunity referred to by President Kabila in 2006. Unfortunately no such process has been undertaken.

Of course, none of these strategies need be mutually exclusive. Additional ICC prosecutions, specialised chambers, reinforced local level prosecutions and vetting could be pursued in parallel.

Conclusion and Recommendations

As this paper demonstrates, strong opinions are being expressed by individuals and activists in Ituri regarding the Court’s engagement and the future of advocacy for accountability in the DRC. It is important that the implications of these views are integrated into the Court’s continuing work in DRC and, where there are comparative lessons to be learned, its work elsewhere. Other international actors concerned with the question of justice in DRC must also take them on board.

The research and views on the ground have highlighted a number of areas in which the Court, the Congolese government and other international justice actors can take action to improve the operation of accountability in the short and medium term. In addition, the research has raised questions about the

fundamentals of the system itself that need further reflection and exploration.

Recommendations

To the Congolese government:

- Take urgent measures to ensure that actions to promote justice and end impunity are taken at the national level including by:
 - adopting legislation on the implementation of the Rome Statute and setting up a special judicial mechanism that can address cases complementary to those at the ICC;
 - reinforcing the regular justice system in order to better protect citizens; and
 - ensuring more effective mechanisms for prosecuting SGBV crimes. Such mechanisms might include the continuation and expansion of mobile courts that have been set up to hear SGBV cases elsewhere in the DRC.
- Continue to cooperate with the ICC, including by:
 - executing the arrest warrant against Bosco Ntaganda; and
 - facilitating future investigations.

To the ICC:

The Registry

- Make participation of victims more accessible, including by:
 - Revising and simplifying forms and procedures relating to victims applications for recognition to facilitate easier access;
 - Reinforcing outreach in rural areas to ease communication with applicants to participate about the status of their requests and cases;
 - Improving the mechanisms for representation of victims, ensuring legal representatives are truly accountable to victims.
- Reinforce the capacity of its outreach and information section, especially by making information available in local languages and designing interventions which are

more visible and adapted to local conditions.

The Office of the Prosecutor

- Take steps to more effectively engage victims and affected communities: Although the Office of the Prosecutor has identified consultation with victim communities as a priority in its 2009-2012 prosecution strategy, victims and their representatives expressed frustration with prosecution strategy. Reinforced efforts to engage victim communities prior to decision making, and to clearly explain prosecutorial decision making may assist in addressing these frustrations. Consultations and discussions might also be carried out with local civil society and opinion leaders in order to develop lessons learned for the development of the next three year strategy.
 - Conduct a detailed assessment of, and draw appropriate lessons from, procedural and case selection decisions in Ituri.
- Consider undertaking additional prosecutions in relation to crimes committed in Ituri: As outlined above, a number of crimes remain to be addressed and there are strong calls for accountability for governmental and international actors.

The Court as a whole

- Recognise and address the vulnerable position of intermediaries before the Court, including by:
 - Supporting the adoption of the draft ICC Guidelines on intermediaries;
 - conducting appropriate outreach to the Assembly of States Parties to ensure that there is sufficient structural support for their implementation and priority.

Trust Fund for Victims

- Increase outreach about priorities, and decision making. Good outreach and transparency will help to address mistrust.
- Create mechanisms for soliciting victim input in decision making including

considering the creation of a victims' commission.

To international and national NGOs:

- Develop an NGO code of conduct for dealing with the Court.
- Design and conduct research on the impact of the ICC and its operations on the dynamics underlying the ethnic conflict in which the crimes occurred.

To the international community of states:

- Support the ICC in its investigations and prosecutions by exploring alternative sanctions against those suspected of international, including travel bans and asset freezes. In particular, attention must be paid to those who provide arms and financing for armed groups that abuse human rights.
- Exert pressure in favour of execution of Court decisions (including arrest warrants).
- Support the efforts of the Court in relation to the protection of victims, witnesses, and intermediaries ensuring appropriate resources and cooperation to the Court to follow effective guidelines.
- Support the development of national accountability mechanisms that can operate in parallel to the Court.

Future research and reflection

The recommendations above reflect areas where concrete steps could be taken to address lacunae raised by the research.

However, the research also raises broader questions about the international justice project that need to be addressed. The "international justice community" (states, international institutions, INGOs and local NGOS) need to ask some fundamental, indeed painful, questions.

- *Understanding of the local context:* How can the Court improve its capacity to gather information on, and increase

understanding of, local dynamics and needs without undermining the independence of its mandate?

- *Victim participation*: How can victim participation be made effective? To what extent are current modalities for participation delivering on and meaningful for both victims and the central objectives of the Rome Statute in the context of diminishing resources? Are there other mechanisms that could also contribute to ensuring that the needs of communities are respected in the context of an essentially circumscribed international criminal process?
- *Ensuring dialogue*: How can the realities of the limitations of the Court be appropriately communicated to populations on the ground without undermining the hope created by an ICC referral (hope often essential to a

population's capacity to struggle and survive in the midst of mass atrocity)?

- *Engagement with the Court*: How can both local and international NGOs engage more responsibly and ethically – and indeed respectfully – in Court operations and with local communities? Is there a particular role for international NGOs in ensuring information sharing in this regard?
- *Selection of cases*: What can be done to ensure that the selection of cases is more meaningful to the local population without undermining the independence of the OTP and the proper functioning of the Court?

With the publication of this paper, IRRI and APROVODI will begin a series of consultations to reflect further on the fundamental questions raised by this initial reflection.

¹ Suliman Baldo, "The Impact of the ICC in the Sudan and DR Congo," Expert paper "Workshop 7 – The Impact of the International Criminal Court (ICC), June 2007.

² Ibid.

³ Communication with Congolese activist, February 2012.

⁴ Investigations have since expanded to focus on the neighboring provinces of North and South Kivu.

⁵ For a fuller discussion of the aims of the series, see the series introduction paper, entitled "Just Justice? Civil Society, International Justice and the Search for Accountability in Africa", International Refugee Rights Initiative, November 2011.

⁶ The organisation was officially registered in 2006, but had been functioning with provisional authorization since 2004.

⁷ Reflections by IRRI staff have been published on websites run by the Open Society Institute covering the Lubanga, Katanga and Bemba trials, www.lubangatrial.org, www.katangatrial.org, and www.bembatrial.org.

⁸ Integrated Regional Information Network (IRIN), "DRC: Special Report on Ituri District, northeastern DRC," 18 December 2011.

⁹ Human Rights Watch, "Ituri: Covered in Blood," July 2003, p.1.

¹⁰ Ibid.

¹¹ Integrated Regional Information Network (IRIN), "DRC: Special Report on Ituri District, northeastern DRC," 18 December 2011.

¹² Integrated Regional Information Network (IRIN), "IRIN Focus on Hema-Lendu conflict," 15 November 1999.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Interview with local man, Bunia, October 2011.

¹⁶ Human Rights Watch, "Ituri: Covered in Blood," July 2003, p.5.

¹⁷ Ibid, p.2.

¹⁸ IRIN, "Who's who in Ituri - militia organisations, leaders," 20 April 2005.

¹⁹ International Crisis Group, "Four Priorities for Sustainable Peace in Ituri," Africa Report No. 140, 13 May 2008.

²⁰ "Situation in Democratic Republic of the Congo," Democratic Republic of the Congo, International Criminal Court website, accessed 28 November 2011.

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- ²¹ International Criminal Court, "Pre-Trial Chamber I declines to confirm the charges against Callixte Mbarushimana and orders his release," Press Release ICC-CPI-20111216-PR757, 16 December 2011.
- ²² International Criminal Court, "Presentation to the New York Working Group," April 2011.
- ²³ International Criminal Court, "The Office of the Prosecutor of the International Criminal Court Opens Its First Investigation," 23 January 2006.
- ²⁴ Warrant of Arrest, The Prosecutor v. Thomas Lubanga Dyilo, International Criminal Court, 10 February 2006.
- ²⁵ International Criminal Court, "Press Conference in Relation with the Surrender to the Court of Mr Thomas Lubanga Dyilo," 18 March 2006.
- ²⁶ Wakabi, Wairagala, "Timeline: Lubanga's War Crimes Trial At The ICC," Trial Reports, The Lubanga Trial at the International Criminal Court, 14 September 2010.
- ²⁷ "Democratic Republic of Congo," Cases and Situations, Coalition for the International Criminal Court, website, accessed 28 November 2011.
- ²⁸ Women's Initiatives for Gender Justice, "Summary of the Closing Statements in the Prosecutor v. Thomas Lubanga Dyilo," LubangaTrial.org, 3 November 2011.
- ²⁹ Wakabi, Wairagala, "Judges Stay Proceedings In Lubanga's ICC Trial," *Daily Report*, The Lubanga Trial at the International Criminal Court, 8 July 2010.
- ³⁰ Wakabi, Wairagala, "Judges Issue Warning To Prosecutors As Lubanga's ICC Trial Is Halted," *Daily Report*, The Lubanga Trial at the International Criminal Court, 10 July 2010.
- ³¹ Cole, Alison, "The ICC's First Trial: Milestones Mixed with Near-Disasters," *Commentary Daily Report*, The Lubanga Trial at the International Criminal Court, 19 August 2011; ICC Trial Chamber I, "Redacted Decision on the 'Defence Application Seeking a Permanent Stay of the Proceedings,'" ICC Doc No. ICC-01/04-01/06, 7 March 2011.
- ³² "Democratic Republic of Congo," *Cases and Situations*, Coalition for the International Criminal Court, website accessed 28 November 2011.
- ³³ ICC Media Advisory, "The decision on the innocence or guilt of Thomas Lubanga Dyilo will be delivered on 14 March by ICC Judges," 29 February 2012.
- ³⁴ Warrant of Arrest, The Case of the Prosecutor v. Germain Katanga, International Criminal Court, 2 July 2007; and "Situation in Democratic Republic of the Congo," *Democratic Republic of the Congo*. International Criminal Court, website, accessed 28 November 2011.
- ³⁵ "Trial Background," The Trial of Germain Katanga and Mathieu Ngudjolo Chui, website accessed 28 November 2011.
- ³⁶ "Democratic Republic of Congo," *Cases and Situations*, Coalition for the International Criminal Court, website accessed 28 November 2011.
- ³⁷ "Trial Background," The Trial of Germain Katanga and Mathieu Ngudjolo Chui, website accessed 28 November 2011.
- ³⁸ Democratic Republic of Congo," *Cases and Situations*, Coalition for the International Criminal Court, website accessed 28 November 2011.
- ³⁹ Ibid.
- ⁴⁰ ICC-01/04-01/07, Case the Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui, Public Court Records, Trial Chamber II, 24 November 2009, Doc no. ICC-01/04-01/07-T-80-ENG ET WT 24-11-2009 1-73 NB T.
- ⁴¹ Easterday, Jennifer, "Ngudjolo Concludes His Testimony, Trial Ending," *Summaries*. The Trial of Germain Katanga and Mathieu Ngudjolo Chui, 16 November 2011.
- ⁴² Democratic Republic of Congo," *Cases and Situations*, Coalition for the International Criminal Court, website accessed 28 November 2011.
- ⁴³ Easterday, Jennifer, "Ngudjolo Concludes His Testimony, Trial Ending," *Summaries*. The Trial of Germain Katanga and Mathieu Ngudjolo Chui, 16 November 2011.
- ⁴⁴ ICC Trial Chamber II, "Decision on the judicial site visit to the Democratic Republic of the Congo," No: ICC-01/04-01/07, 1 December 2011.
- ⁴⁵ ICC Press Release, "ICC judges in case against Katanga and Ngudjolo Chui visit Ituri," ICC-CPI-20120127-PR765, 27 January 2012.
- ⁴⁶ ICC Media Advisory, "Closing statements in the trial against Germain Katanga and Mathieu Ngudjolo Chui scheduled to start on 15 May 2012," 5 January 2012.
- ⁴⁷ Godfrey Musila, "Between Rhetoric and Action: The politics, processes and practice of the ICC's work in the DRC," ISS Monograph 164, July 2009.
- ⁴⁸ Interview with a woman in Bunia, October 2011.

⁴⁹ See, for example, Open Society Foundations, "Putting Complementarity into Practice: Domestic Justice for International Crimes in DRC, Uganda and Kenya," 2011.

⁵⁰ Interview with man in Bunia, October 2011.

⁵¹ Interview with man in Bunia, October 2011.

⁵² Interview with man in Bunia, October 2011.

⁵³ Rule 85 of the Rules of Procedure and Evidence defines victims as:

natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court; [or ...] organisations or institutions that have sustained direct harm to any of their property which is dedicated to religion, education, art or science or charitable purposes, and to their historic monuments, hospitals and other places and objects for humanitarian purposes.⁵³

For the purposes of the definition, the term harm is generally understood to include any physical or psychological attack, mental distress, material loss or substantial attack on fundamental rights.

⁵⁴ Interview with man in Bunia, October 2011.

⁵⁵ Interview with woman in Bunia, October 2011.

⁵⁶ Interview with man in Bunia, October 2011.

⁵⁷ Interview with man in Bunia, October 2011.

⁵⁸ Interview with man in Bunia, October 2011.

⁵⁹ Human Rights Watch, *Courting History: The Landmark International Criminal Court's First Years*, 11 July 2008, p.68.

⁶⁰ Communication with Congolese human rights activist, October 2011.

⁶¹ Human Rights Watch, "Courting History: The Landmark International Criminal Court's First Years," 2008, p.68-69.

⁶² Interview with man in Bunia, 18 October 2011.

⁶³ Literature on criminology tends to indicate that the likelihood of the sanction has a stronger impact on deterrence than the severity of sanctions. See, for example, Valerie Wright, PhD., "Deterrence in Criminal Justice: Evaluating Certainty vs. Severity of Punishment," The Sentencing Project, November 2010.

⁶⁴ See, for example, Human Rights Watch, "DR Congo: Q&A on the First Verdict at the International Criminal Court: The Case of the Prosecutor vs. Thomas Lubanga Dyilo," 29 February 2012.

⁶⁵ Interview with man in Bunia, 18 October 2011.

⁶⁶ The ICC arrest warrant lists Ntaganda as a "presumed Rwandan national". Congolese interviewees sometimes asserted that Ntaganda was from Rwanda, whereas others believed that he was a member of the Kinyarwanda-speaking population of the Kivu provinces. In popular understanding, however, these groups are very much aligned with Rwanda and so implications of Rwandan protection would be seen as very much relevant in either case.

⁶⁷ For example, interview with man in Bunia, 18 October 2011.

⁶⁸ Interview with Congolese man, Kinshasa, November 2010.

⁶⁹ Godfrey Musila, "Between Rhetoric and Action: The Politics, Processes and Practice of the ICC's Work in the DRC," Institute for Security Studies Monograph No. 164, July 2009, p.31-32.

⁷⁰ Interview with Contact FM, posted online as "DRC Rejects Calls to Arrest Bosco Ntaganda," 15 October 2010.

⁷¹ Interview with a man in Bunia, 20 October 2011.

⁷² Communication with Congolese activist, February 2012.

⁷³ Communication with Congolese activist, February 2012.

⁷⁴ Communication with Congolese activist, February 2012.

⁷⁵ UN High Commissioner for Human Rights, "Report of the Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003," 2010, p. 403.

⁷⁶ This included two high-profile cases in the regular courts in 2003, and three in the military courts between 2005 and 2007. For more details, see the UN High Commissioner for Human Rights, "Report of the Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003," 2010, p. 404-408.

⁷⁷ Human Rights Watch, "Tackling Impunity in Congo - Meaningful follow up to the UN Mapping Report: A mixed chamber and other accountability measures," October 2010.

⁷⁸ Interview with woman in Bunia, 18 October 2011.

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- ⁷⁹ As of March 2011, 118 persons had been granted the status of victims in the Lubanga case, 366 had been admitted in the Katanga and Ngudjolo case and 196 had been admitted at the situation phase (see International Criminal Court, “Registry and Trust Fund for Victims Factsheet,” March 2011).
- ⁸⁰ ICC Public Information and Documentation Section, Outreach Report 2007.
- ⁸¹ Interview with activist from Ituri, May 2010.
- ⁸² The Chambers authorized this sub-group of victims to be granted separate legal representation, noting that they “may thus have perpetrated some of the crimes that victimised the other applicants. Moreover, these applicants have a different ethnic background to that of the other applicants,” ICC Trial Chamber II, “Order on the organisation of common legal representation of victims,” No. ICC-01/04-01/07, 22 July 2009.
- ⁸³ Communication with Congolese activist, February 2012.
- ⁸⁴ “Mot de la communauté Lendu à l’occasion de la visite du procureur de la cour penale internationale en Ituri du 08 au 11 juillet 2009,” On file with the authors.
- ⁸⁵ Communication with Congolese activist, February 2012.
- ⁸⁶ Interview with Congolese activist, Kampala, May 2010.
- ⁸⁷ Interview with Congolese activist, Kampala, May 2010.
- ⁸⁸ Interview with woman in Bunia, 18 October 2011.
- ⁸⁹ Communication with Congolese activist, February 2012.
- ⁹⁰ See Anne Althaus, “Victims and participants: what protection before the ICC?”, *Access: Victims’ rights before the International Criminal Court*, Issue 13, Winter 2008.
- ⁹¹ Fédération International des Ligues de Droit de l’Homme, “Victims’ Rights before the ICC : A Guide for Victims, their Legal Representatives and NGOs,” May 2010.
- ⁹² Communication with Congolese activist, February 2012.
- ⁹³ These observations are based on the experiences of APRODIVI in facilitating the participation of victims in the DRC cases.
- ⁹⁴ Communication with Congolese activist, February 2012.
- ⁹⁵ Interview with woman in Bunia, 18 October 2011.
- ⁹⁶ “The Two Roles of the TFV,” Trust Fund for Victims website, accessed November 29, 2011.
- ⁹⁷ Interview with man in Bunia, 21 October 2011.
- ⁹⁸ Interview with man in Bunia, 21 October 2011.
- ⁹⁹ Interview with woman in Bunia, 19 October 2011.
- ¹⁰⁰ Communication with Congolese activist, February 2012.
- ¹⁰¹ Italics in the original. The Trust Fund for Victims, “Reviewing Rehabilitation Assistance and Preparing for Delivering Reparations,” Programme Progress Report, Summer 2011.
- ¹⁰² Interview with woman in Bunia, 18 October 2011.
- ¹⁰³ Communication with Congolese activist, May 2010.
- ¹⁰⁴ Interview with woman in Bunia, 19 October 2011.
- ¹⁰⁵ Interview with woman in Bunia, 18 October 2011.
- ¹⁰⁶ The International Refugee Rights Initiative and the Open Society Justice Initiative, “Commentary on the ICC Draft Guidelines on Intermediaries,” August 2011, p.8
- ¹⁰⁷ Communication with Congolese activist, October 2011.
- ¹⁰⁸ Interview with woman in Bunia, 18 October 2011.
- ¹⁰⁹ Interview with man in Bunia, 18 October 2011.
- ¹¹⁰ Interview with man in Bunia, October 2011.
- ¹¹¹ Interview with man in Bunia, October 2011.
- ¹¹² Communication with Congolese activist, February 2012.
- ¹¹³ Communication with Congolese activist, February 2012.
- ¹¹⁴ ICC Public Information and Documentation Section, Outreach Report 2010.
- ¹¹⁵ Communication with Congolese activist, May 2010.
- ¹¹⁶ This assertion is based on APRODIVI’s observation of outreach processes in Ituri over several years.
- ¹¹⁷ Interview with man in Bunia, 19 October 2011.
- ¹¹⁸ ICC Public Information and Documentation Section, Outreach Report 2010.
- ¹¹⁹ ICC Public Information and Documentation Section, Outreach Report 2010.
- ¹²⁰ Interview with man in Bunia, 18 October 2011.
- ¹²¹ ICC Public Information and Documentation Section, Outreach Report 2010.
- ¹²² Interview with man in Bunia, 19 October 2011.
- ¹²³ Interview with man in Bunia, 18 October 2011.

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- ¹²⁴ Interview with man in Bunia, 18 October 2011.
- ¹²⁵ Interview with Congolese man in Kampala, 12 December 2011.
- ¹²⁶ Interview with man in Bunia, 18 October 2011.
- ¹²⁷ Interview with man in Bunia, 18 October 2011.
- ¹²⁸ Interview with man in Bunia, 20 October 2011.
- ¹²⁹ Interview with Congolese man in Kampala, 12 December 2011.
- ¹³⁰ Interview with man in Bunia, 20 October 2011.
- ¹³¹ « Mot de la communauté lendu à l’occasion de la visite du procureur de la cour penale international en Ituri du 08 au 11 juillet 2009, » on file with IRRI.
- ¹³² Interview with man in Bunia, 20 October 2011.
- ¹³³ Interview with man in Bunia, 20 October 2011.
- ¹³⁴ Interview with man in Bunia, 18 October 2011.
- ¹³⁵ Interview with man in Bunia, 18 October 2011.
- ¹³⁶ This is based on APRODIVI’s observations in the course of its work with victims.
- ¹³⁷ Interview with woman in Bunia, 19 October 2011.
- ¹³⁸ Godfrey Musila, “Between Rhetoric and Action: The politics, processes and practice of the ICC’s work in the DRC,” ISS Monograph No. 164, July 2009.
- ¹³⁹ Interview with woman in Bunia, 18 October 2011.
- ¹⁴⁰ ICC Trial Chamber II, “Decision on the Security Situation of Witnesses, DRC-D02-P-0236 and DRC-D02-P-0350,” No. ICC-01/04-01/07, 24 August 2011.
- ¹⁴¹ Olivia Bueno, “Activists Question ICC’s decision on witness protection,” KatangaTrial.org, 23 September 2011.
- ¹⁴² Interview with man in Bunia, 18 October 2011.
- ¹⁴³ Olivia Bueno, “Activists Question ICC’s decision on witness protection,” KatangaTrial.org, 23 September 2011.
- ¹⁴⁴ These abuses were chronicled by Human Rights Watch in “Ituri: Covered in Blood,” July 2003.
- ¹⁴⁵ Patrick Vinck, Phuong Pham, Suliman Baldo, Rachel Shigekane, “Living with Fear: A Population-Based Survey on Attitudes about Peace, Justice and Social Reconstruction in eastern Democratic Republic of Congo,” The Human Rights Center, University of California, Berkeley;; the Payson Center for International Development; The International Centre for Transitional Justice, August 2008.
- ¹⁴⁶ Communication with Congolese activist, February 2012.
- ¹⁴⁷ Interview with a man in Bunia, 18 October 2011.
- ¹⁴⁸ Interview with man in Ituri, 19 October 2011.
- ¹⁴⁹ Interview with man in Ituri, 19 October 2011.
- ¹⁵⁰ Interview with man in Ituri, 19 October 2011.
- ¹⁵¹ Interview with Congolese man in Kampala, 12 December 2011.
- ¹⁵² Office of the High Commissioner for Human Rights, “Democratic Republic of the Congo, 1993-2003: Report of the Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003,” August 2010, para 1025.
- ¹⁵³ See Katy Glassborow, “ICC Deems Congo Conflict ‘International’”, Institute for War and Peace Reporting, 8 February 2007.
- ¹⁵⁴ OTP Press Release, “Statement by the Office of the Prosecutor following the transfer to the Hague of Mathieu Ngudjolo Chui,” 7 February 2008.
- ¹⁵⁵ Communication with Congolese activist, February 2012.
- ¹⁵⁶ See, for example, Human Rights Watch, “Ituri: Covered in Blood,” July 2003, p. 45.
- ¹⁵⁷ Patrick Vinck, Phuong Pham, Suliman Baldo, Rachel Shigekane, “Living with Fear: A Population-Based Survey on Attitudes about Peace, Justice and Social Reconstruction in eastern Democratic Republic of Congo,” The Human Rights Center, University of California, Berkeley; the Payson Center for International Development; The International Centre for Transitional Justice, August 2008.
- ¹⁵⁸ Kirsten Johnson, MD, MPH; Jennifer Scott, MD; Bigy Rughita, MSc; Michael Kisielewski, MA; Jana Asher, MSc; Ricardo Ong, MD; Lynn Lawry, MD, MSPH, MSc, “Association of Sexual Violence and Human Rights Violations With Physical and Mental Health in Territories of the Eastern Democratic Republic of the Congo,” *Journal of the American Medical Association*, 2010; 304 (5): 553-562; Patrick Vinck, Phuong Pham, Suliman Baldo, Rachel Shigekane, “Living with Fear: A Population-Based Survey on Attitudes about Peace, Justice and Social Reconstruction in eastern Democratic Republic of Congo,” The Human Rights Center, University of

California, Berkeley; the Payson Center for International Development; The International Centre for Transitional Justice, August 2008.

¹⁵⁹ For an in-depth reflection on the implications of the Lubanga trial for the prosecution of gender crimes, please see Brigid Inder, "Reflection: Gender Issues and Child Soldiers the case of Prosecutor v. Thomas Lubanga Dyilo," 25 August 2011.

¹⁶⁰ The Women's Initiatives for Gender Justice also attempted to engage the Pre-Trial Chamber in a review of the non-inclusion of gender crimes in the charges by appealing to the judges to submit an *amicus curiae* brief. The request to submit the brief was denied. Women's Initiatives for Gender Justice, "Legal Filings submitted by the Women's Initiatives for Gender Justice to the International Criminal Court," February 2010.

¹⁶¹ Brigid Inder, Presentation to *Justice for All? The International Criminal Court – Ten Year Review* conference organised by the University of New South Wales and the Australian Human Rights Centre, February 14, 2012.

¹⁶² Brigid Inder, "Reflection: Gender Issues and Child Soldiers the case of Prosecutor v. Thomas Lubanga Dyilo," 25 August 2011.

¹⁶³ Fatou Bensouda, Presentation to *Justice for All? The International Criminal Court – Ten Year Review* conference organised by the University of New South Wales and the Australian Human Rights Centre, February 14, 2012.

¹⁶⁴ The Trust Fund for Victims, "Reviewing Rehabilitation Assistance and Preparing for Delivering Reparations," Programme Progress Report, Summer 2011.

¹⁶⁵ Ibid.

¹⁶⁶ For example, in a population based survey, researchers found that 22% of respondents in South Kivu, as opposed to 11% of respondents in Ituri, were subjected to sexual violence. Patrick Vinck, Phuong Pham, Suliman Baldo, Rachel Shigekane, "Living with Fear: A Population-Based Survey on Attitudes about Peace, Justice and Social Reconstruction in eastern Democratic Republic of Congo," The Human Rights Center, University of California, Berkeley,; the Payson Center for International Development; The International Centre for Transitional Justice, August 2008.

¹⁶⁷ Human Rights Watch, "Ituri: Covered in Blood," July 2003, p.30.

¹⁶⁸ Ibid, p.23.

¹⁶⁹ This incident was also documented in Human Rights Watch, "Ituri: Covered in Blood," July 2003, p. 26. However, HRW did not estimate casualties of that incident. The numbers are drawn from local NGOs.

¹⁷⁰ Office of the High Commissioner for Human Rights, "Democratic Republic of the Congo, 1993-2003: Report of the Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003," August 2010, para 422.

¹⁷¹ Interview with a man in Bunia, 18 October 2011.

¹⁷² Interview with woman in Bunia, 18 October 2011.

¹⁷³ Interview with man in Bunia, 20 October 2011.