

AMICC

THE ICC AND ALTERNATIVE JUSTICE MECHANISMS IN AFRICA

INTRODUCTION

The Prosecutor of the International Criminal Court (ICC) has formally opened investigations in Northern Uganda, the Democratic Republic of Congo (DRC) and Darfur, Sudan, and is preliminarily looking into situations in the Central African Republic (CAR) and Côte d'Ivoire (Ivory Coast). Given that all these situations are in the African continent, some have argued that the ICC has been designed to impose a Western model of justice on African societies. Others claim that ICC trials are incompatible with African traditional justice mechanisms and fear that they might interfere with reconciliation processes in countries affected by nationwide conflicts. However, four of the five situations currently under investigation by the ICC have been referred to the Court by African governments themselves. Supporters of the Court believe that the ICC will respect the traditions of those who have asked for its assistance, and that its investigations will take into account the need to bring peace to each of the countries involved.

This paper addresses these concerns by explaining the nature and origin of the conflicts that are presently being investigated by the Office of the Prosecutor, as well as the reasons for ICC involvement. It also provides information on past experiences in peace and reconciliation in Africa and assesses the advisability of using alternative justice mechanisms in post-conflict societies.

ICC INVESTIGATIONS IN AFRICA

Northern Uganda

The election of President Yoweri Museveni and the establishment of a “no-party” government in 1986 marked the beginning of the current internal armed conflict in the northern region of Uganda. The Lord’s Resistance Army (LRA), a rebel group that claims to represent the interests of the marginalized Acholi tribes which occupy Uganda’s northern districts, seeks to overthrow the government and install a system based on the Biblical Ten Commandments. In its fight against the government and its army, the Ugandan People’s Defense Forces (UPDF), the LRA has murdered, raped, tortured and displaced civilians. It is also responsible for abducting, indoctrinating and sexually abusing young children. The UPDF has also committed widespread acts of violence against the civilian population, including killing, torture, rape, sexual exploitation, arbitrary detention, forcible relocation and child military recruitment.

Uganda is a party to the Rome Statute and, therefore, genocide, crimes against humanity and war crimes committed on its territory and/or by its nationals since July 1, 2002 are subject to ICC jurisdiction. In December 2003, President Museveni referred the situation in Northern Uganda to the ICC.¹ Even though Uganda’s criminal justice system functions relatively well, it lacks the structures

¹ ICC Press release: *President of Uganda refers situation concerning the Lord’s Resistance Army (LRA) to the ICC*, January 29, 2004, http://www.icc-cpi.int/pressrelease_details?id=16.html.

necessary to arrest the perpetrators and conduct independent and impartial trials for atrocity crimes. Ever since the Prosecutor determined that there was a reasonable basis to proceed with the investigation in July 2004,² his office has been collecting evidence on crimes committed in the northern region of the country. Arrests warrants for five senior LRA leaders were allegedly issued in October 2005, including leader Joseph Kony.

Some community leaders in northern Uganda have been urging the Prosecutor to abandon his investigation and give way to tribal justice processes, which would forgive criminals and attain peace through reconciliation. However, others favor accountability and argue that the Prosecutor should not accept to negotiate with those responsible for such horrendous crimes. They also claim that the LRA's promises of peace should not be trusted, as the length and cruelty of the Ugandan conflict demonstrates that they have no intention of giving up their fight. The Prosecutor, who is aware of the fear that ICC actions might affect the ongoing peace process in Uganda, has publicly declared that he is committed to bring reconciliation to the country through the integration of the dialogue for peace, the ICC and traditional justice processes.³

Democratic Republic of Congo

The present conflict in the DRC dates back to 1997, when Laurent Kabila backed by Rwandan and Ugandan troops, deposed then-President Mobutu and installed himself as president. War broke out in August 1998 when Congolese Tutsi rebels, backed by Rwandan troops, tried to depose Kabila in favor of their own liberation movement. Kabila sought help from Zimbabwe, Angola and other neighbors. In 1999, the states and non-state actors involved in the conflict signed a ceasefire agreement and the UN Security Council deployed a peacekeeping mission in 2000. However, violence continued, fuelled by Congo's mineral wealth. Kabila was assassinated in 2001 and replaced by his son Joseph. Ugandan and Rwandan troops officially withdrew by the end of 2002. The different factions involved in the conflict signed a new accord in 2003. Following this agreement, leaders of the four main rebel groups became the country's new vice-presidents.

Despite an apparent improvement in the last two years, violence continues to ravage the DRC. Armed groups act with impunity due to the lack of law enforcement. Atrocity crimes are particularly common in the mineral-rich east and northeast of the country, where attacks include civilian killing, forced displacement, unlawful arrest, seizure of property, kidnap, torture, forced prostitution and rape.

When depositing the instrument of ratification of the Rome Statute, the DRC said that it was ashamed of the atrocities occurring on its territory and looked forward to ICC assistance in punishing those responsible. The Congolese judicial system lacks the capability and structure to conduct atrocity crimes trials. Given that courts are fraught with corruption and their officials are implicated in the grave violations committed, trials are incapable of appearing neutral to victims. Hence, in March 2004,

² ICC Press release: *Prosecutor of the International Criminal Court opens an investigation into Uganda*, July 29, 2004, <http://www.icc-cpi.int/press/pressreleases/33.html>.

³ ICC Press release: *Joint Statement by ICC Chief Prosecutor and the visiting delegation of Lango, Achol, Iteso and Madi Community Leaders from Northern Uganda*, April 16, 2005, <http://www.icc-cpi.int/press/pressreleases/102.html>.

the DRC referred its situation to the ICC,⁴ which has jurisdiction over crimes committed in the country since July 1, 2002.

The Prosecutor formally opened an investigation in July 2004.⁵ President Kabila expressed fears that the ICC investigation might hurt the delicate and complex new power-sharing agreement among rival factions. The Prosecutor understands these concerns and has promised to avoid undermining the DRC peace process.

Darfur, Sudan

The Darfur conflict began in February 2003 when two African rebel movements, the Sudan Liberation Movement/Army (SLM/A) and the Justice and Equality Movement (JEM), revolted claiming that the government had been neglecting Darfur and its people. The government, which was not in possession of enough military resources, called upon local tribes to assist in fighting the rebels, thus exploiting existing tribal tensions in Darfur. Arab militias, frequently referred to as “Janjaweed,” a Darfurian term for an armed bandit on a horse or camel, led the government’s counterinsurgency campaign. As a result of the fighting between the rebels on the one hand and the government and the Janjaweed on the other, attacks on civilians, as well as destruction and burning of villages, became widespread. As of August 2005, at least 180,000 people were estimated to have been killed, while over two million others had been displaced.⁶

After a UN commission of inquiry revealed the magnitude of the crimes perpetrated in Darfur,⁷ the UN Security Council referred the situation to the ICC in March 2005.⁸ The US made adoption of the relevant resolution possible by abstaining from the vote. Sudan is not a party to the ICC and therefore a Security Council referral was the only way for the Court to exercise jurisdiction.⁹ The Sudanese legal and judicial system is incapable of addressing the serious abuses that have been committed. Sudanese criminal laws do not adequately proscribe war crimes and crimes against humanity. Furthermore, the judiciary is manipulated and politicized and lacks adequate structure, authority, credibility, and willingness to effectively prosecute and punish the perpetrators of the alleged crimes.¹⁰

The Prosecutor formally opened an investigation on June 1, 2005.¹¹ He declared that his investigation will focus only on those most responsible for the crimes and that these efforts could be complemented by traditional African methods for justice and reconciliation.¹²

⁴ ICC Press release: *Prosecutor receives referral of the situation in the Democratic Republic of Congo*, April 19, 2004, <http://www.icc-cpi.int/press/pressreleases/19.html>.

⁵ ICC Press release: *The Office of the Prosecutor of the International Criminal Court opens its first investigation*, June 23, 2004, <http://www.icc-cpi.int/press/pressreleases/26.html>.

⁶ *Sudan: UN Envoy optimistic about slow, steady improvement in Darfur*, UN Daily News, issue DH/4459, August 17, 2005, <http://www.un.org/news/dh/pdf/english/2005/17082005.pdf>.

⁷ Report of the International Commission of Inquiry on Violations of International Humanitarian Law and Human Rights Law in Darfur [hereinafter Report of the COI on Darfur], http://www.un.org/News/dh/sudan/com_inq_darfur.pdf.

⁸ UN Doc. S/RES/1593 (2005), <http://daccessdds.un.org/doc/UNDOC/GEN/N05/292/73/PDF/N0529273.pdf?OpenElement>.

⁹ Rome Statute, Articles 12 and 13.

¹⁰ Report of the COI on Darfur, *supra* note 7, at 144.

¹¹ ICC Press release: *The Prosecutor of the ICC opens investigation in Darfur*, June 6, 2005, <http://www.icc-cpi.int/press/pressreleases/107.html>.

Central African Republic

Angé-Felix Patassé was elected President of the CAR in 1993 and re-elected in 1999. Having faced several coup attempts by forces commanded by former President General André Kolingba and former Army Chief of Staff General François Bozizé, Patassé turned to Congolese, Chadian and Libyan troops for support and protection. The fight between the government and the rebels, commission of atrocities, and prevalent impunity, provided a background of instability and violence under which the current armed conflict broke out in October 2002. Torture and other cruel, inhuman or degrading treatment have been widely used by the parties to the armed conflict that has been pitting insurgents led by former Army Chief of Staff and current President François Bozizé against forces loyal to former President Patassé. Rape and other forms of sexual violence have also been committed by combatants. Impunity for all international law crimes committed in the CAR is prevalent.¹³

In January 2005, the CAR referred its situation to the ICC.¹⁴ The ICC has jurisdiction over war crimes and crimes against humanity committed in the CAR since July 1, 2002. The Prosecutor has been preliminarily looking into the situation and is yet to determine whether there is a reasonable basis to proceed with this investigation. Courts in the CAR are unable to conduct atrocity crimes trials: they do not function effectively in all parts of the country, nor can they protect victims and witnesses. Moreover, the government has not yet implemented legislation to ensure that crimes in the Rome Statute are crimes under national law.¹⁵

Côte d'Ivoire

Following a decline in the economic and political situation of the country in the early 1990s, ethnic and political tensions resulted in the formation of several militia groups and led to a period of grave crimes and impunity. Exploitation of ethnic hostilities and incitement of xenophobia by those in power exacerbated the violence. It was against this background that the current conflict in Côte d'Ivoire broke out, when the rebel group *Forces Nouvelles* attempted to overthrow President Laurent Gbagbo in September 2002. Both the rebels and the government forces have perpetrated horrific crimes, mass executions, torture, rape and other forms of sexual violence. These are crimes that fall under the ICC's subject-matter jurisdiction when certain conditions are met.

As a result of the conflict, Côte d'Ivoire has split in two: the landlocked north is controlled by the rebels while the government holds the south. Despite the signature of a peace agreement in January 2003, commission of atrocities has not stopped. Violence, insecurity, division and instability continue to plague the country. Prevalent impunity allows perpetrators to operate without fear of prosecution.

¹² Report of the Prosecutor of the International Criminal Court, Luis Moreno Ocampo, to the Security Council Pursuant to UNSCR 1593 (2005), http://www.icc-cpi.int/library/cases/ICC_Darfur_UNSC_Report_29-06-05_EN.pdf, at 7.

¹³ International Federation of Human Rights, *République Centrale Africaine: La FIDH saisit formellement pour la première fois la Cour Pénale Internationale*, February 13, 2004, http://www.fidh.org/article.php3?id_article+34.

¹⁴ ICC Press release: *Prosecutor receives referral concerning the Central African Republic*, January 7, 2005, <http://www.icc-cpi.int/press/pressreleases/87.html>.

¹⁵ Amnesty International Public Statement, *Central African Republic: Referral to the International Criminal Court should be accompanied by judicial reforms to address impunity*, January 12, 2005, <http://web.amnesty.org/library/Index/ENGAFR190012005?pen&of=ENG-CAF8/17/05>.

The government has demonstrated very little will to hold those responsible to account. The Ivorian judiciary is corrupted and finds itself under pressure from the government. In the rebel-controlled north, not even legally constituted courts exist.

Côte d'Ivoire signed the Rome Statute but has not ratified it, mainly due to complications involved in amending the country's constitution. Non-party states may accept the jurisdiction of the ICC by lodging a declaration with the Registrar.¹⁶ In January 2005, Côte d'Ivoire became the first state to accept the Court's jurisdiction under these circumstances.¹⁷ The jurisdiction is limited to crimes committed after September 2002. The Office of the Prosecutor is presently looking into the situation in order to determine whether a formal investigation in Côte d'Ivoire should be launched.

ALTERNATIVE JUSTICE MECHANISMS

Historically, conflicts of the magnitude and dimension as the ones described above have not only affected the political structure of governments but have also distressed national identities and societies as a whole. Thus, states emerging from repressive rule or civil wars normally need to undergo a transition process through which they can come to terms with recent past events, rebuild their values and settle old disputes. This process inevitably involves some sort of justice mechanism that at least provides for an acknowledgement of the massive crimes perpetrated through a fact-finding mission and moral redress for the victims.

Alternative justice or non-prosecutorial mechanisms are procedures that have been used primarily by societies in transition to address these concerns. Such methods are different from the Western model of justice, which promotes accountability and punishment of perpetrators, in that they do not result in the traditional punishment of those responsible for atrocity crimes. These mechanisms are said to embody the concept of "restorative justice" as opposed to the Western idea of "retributive justice." The main non-prosecutorial alternatives include truth commissions, amnesties and community-based trials, or a combination of any of these methods.

The purpose of alternative justice mechanisms is to ensure reconciliation so that victims can live side by side with the perpetrators of the most heinous crimes. Traditionally, many African societies view crimes and justice in a special way. Some believe that a crime against one or several persons offends the society collectively and creates an imbalance between the perpetrator and the community as a whole. In this understanding, it is up to the community to decide how the wrongdoer can make up for his actions. Confession and repayment are viewed as appropriate means to repair the damage. Once the balance is restored, all is forgiven.¹⁸ The experiences included below are prominent examples of the implementation of such justice in African societies torn by conflict.

¹⁶ Rome Statute, Article 12(3).

¹⁷ ICC Press release: *Registrar confirms that the Republic of Côte d'Ivoire has accepted the jurisdiction of the Court*, February 15, 2005, <http://www.icc-cpi.int/press/pressreleases/93.html>.

¹⁸ A. McLaughlin, "Africa to world: We can handle war justice ourselves," *CHRISTIAN SCIENCE MONITOR*, March 18, 2005, www.csmonitor.com/2005/0318/p07s02-woaf.htm.

South Africa

South Africa's Truth and Reconciliation Commission (TRC) was set up in 1995 to look into the atrocities committed between 1960 and 1994 under the apartheid regime. The aim of the Commission was to promote reconciliation in South Africa's divided society through truth about the nature, causes and extent of the gross violations that had taken place. It was not meant to punish the perpetrators but to expose their role in the crimes. The Commission completed its work in 1998 with the publication of a 3,500-page report on its findings.

The TRC was established in the belief that exposure to the truth was the only way to bring reconciliation, reunification and trust to the society.¹⁹ It received the testimony of victims and perpetrators alike. By testifying publicly about their suffering, victims were heard and acknowledged with respect and empathy. This experience had a healing effect on them. The Commission granted amnesty to perpetrators who disclosed all relevant facts relating to the criminal acts they had committed during apartheid rule. The TRC's stress on pardon, rather than punishment, was supported by two features of South Africa's religious culture: Christian forgiveness and African traditional values of *ubuntu*— the concept of humanism which emphasizes community over the individual.²⁰ The Commission ran parallel to the justice system and made recommendations to the courts toward reconciliation.²¹

A study conducted to assess the effectiveness of the TRC in South Africa as perceived by different ethnic groups in the country revealed that many considered it had been an effective method to bring out the truth. However, most participants in the study did not perceive the TRC as an effective means to bring about reconciliation nor as an instrument having a positive effect on South Africa's society.²² Some "voiced concern that the TRC opened up old wounds and [...] brought out anger."²³

Rwanda

Following the Rwandan genocide of 1994, the UN established an international tribunal to try the organizers of the massacre.²⁴ The Rwandan government complemented international efforts at accountability by setting up domestic trials to deal with lower-level suspects. However, due to the widespread implication of ordinary people in the violence, while by 1999 about 5,000 people had been tried and sentenced by Rwandan national courts, over 100,000 still remained in prison awaiting trial. The Rwandan judiciary was clearly unable to handle the large amount of cases. Therefore, to manage the backlog and also help promote national reconciliation, the Rwandan government reinstated so-called "*gacaca*" courts to hear lower-level cases. *Gacacas* had traditionally been used in Rwanda to

¹⁹ J. Vora & E. Vora, *The Effectiveness of South Africa's Truth and Reconciliation Commission – Perceptions of the Xhosa, Afrikaner, and English South Africans*, 34 J. BLACK STUDIES, 301, at 306.

²⁰ L. Graybill & K. Lanegran, *Truth, Justice and Reconciliation in Africa: Issues and Cases*, 8 AFRICAN STUDIES QUARTERLY, 1, at 6.

²¹ Vora & Vora, *supra* note 19, at 305.

²² *Id.* at 305.

²³ *Id.* at 314.

²⁴ International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighboring States, between 1 January 1994 and 31 December 1994, commonly referred to as the "International Criminal Tribunal for Rwanda."

settle family disputes or minor offenses between neighbors, while murder and other serious crimes were referred to Western-style courts. However, given the great number of suspects and the inability of the judiciary to handle so many cases, the *gacaca* system was transformed to deal with crimes more serious than those for which it was originally intended.²⁵

Gacaca, a Kinyarwandan word meaning “justice on the grass,” is a traditional practice in which the trial occurs in a community gathering and focuses on the reconciliation of the community. *Gacacas* are based on face-to-face encounters between the victim and the alleged perpetrator. The system’s three pillars are confession, apology and reparation.²⁶ Criminals come out with the truth, accept their responsibility by confessing the enormity of what they did, and beg for forgiveness, while victims see them stand accountable. Supporters view the *gacaca* as a powerful means of social reconciliation and a way to restore harmony in the community. Those found guilty have to compensate the victim or perform some kind of community work. Punishment is not intended to be severe because the ultimate goal of *gacaca* courts is to hold lesser offenders accountable but not necessarily punish them for their actions.²⁷ However, as legally established judicial bodies, *gacaca* tribunals are also able to impose lengthy jail terms, including life imprisonment, if they find that the accused has committed serious offenses.

For the most serious cases, *gacacas* simply conduct pre-trial proceedings and then transfer the accused to tribunals of first instance for trial. From December 1996 to December 2003, Rwandan national courts tried over 9,000 persons.²⁸ As of June 2004, Rwandan prisons still housed approximately 83,800 prisoners who still awaited trial either by *gacaca* courts or by both *gacaca* and national tribunals.²⁹ In order to ease the burden on the prison system, the government launched a policy of provisional release of those who confess their crimes. This decision has brought about a loss of faith in the justice system on the part of the victims, who are often traumatized and frightened by encounters with their attackers.³⁰

As far as the effectiveness of *gacaca* courts is concerned, while some victims have spoken positively about testifying before a community which desires accountability for the abuses they suffered, others felt that public disclosure of their experiences exposes them to stigma, blame, or public ridicule.³¹

Sierra Leone

In an attempt to deal with the atrocities committed over its ten-year civil war, Sierra Leone embarked on a two-track process: a UN-funded Special Court was established to deal with the persons who bore the greatest responsibility for the most serious crimes perpetrated, while lower-level offenders and victims were heard in a South African-styled Truth and Reconciliation Commission. The two

²⁵ Graybill & Lanegran, *supra* note 20, at 8.

²⁶ *Id.* at 9.

²⁷ *Keeping an Eye on War Crimes and Criminals – Ambassador Prosper*, allAfrica.com, August 27, 2002, <http://allafrica.com/stories/200208270632.html>8/8/05.

²⁸ Human Rights Watch Report, *Struggling to Survive: Barriers to Justice for Rape Victims in Rwanda*, September 2004, <http://hrw.org/reports/2004/rwanda0904/rwanda0904.pdf>, at 18.

²⁹ *Id.* at 17.

³⁰ *Id.* at 17.

³¹ *Id.* at 26.

institutions have very different objectives. While the Special Court was meant to punish the senior leaders, the Commission worked to promote lasting national reconciliation through truth telling, apology and pardon.³²

Established in 2002, the mandate of the Sierra Leone Truth and Reconciliation Commission (SLTRC) was to create an impartial record of human rights violations committed during the 1991-1999 civil war and to address the conflict's root causes. The SLTRC differed from the South African model in that it did not have the power to grant amnesty to those who confessed their crimes. Despite this lack of incentive, some perpetrators did acknowledge their responsibility at the Commission's hearings. Those who testified were ritually reintegrated into the community through a cleansing ceremony. Reconciliation ceremonies that brought together perpetrators and victims were also organized regularly. The SLTRC could make recommendations regarding reparations to victims, which then had to be implemented by the government. To conclude its work, the SLTRC wrote and published a five-volume report that came out in 2004. Despite its efforts, the SLTRC has been criticized for failing to engage the public and achieve maximum participation of victims and perpetrators.³³

ASSESSMENT

First, it should be noted that four of the five African conflicts the ICC is looking into were referred by the respective countries' own governments, indicating widespread African approval of prosecutorial justice and the governments' will to receive help from the international community in the settlement of their internal armed conflicts. Such requests for assistance and acceptance of the ICC in Africa render any argument suggesting that the Court seeks to impose a Western model of justice upon African societies untenable.

As explained above, while the Western model of retributive justice emphasizes that those who commit crimes should be prosecuted, convicted and imprisoned, alternative justice mechanisms seek to foster a spirit of national unity and reconciliation through forgiveness and pardon. One of the advantages of punishment seems to be its deterrent effect. The crimes the ICC has jurisdiction over involve large-scale atrocities the world cannot ignore. Criminal trials convey the message that those crimes will no longer be tolerated.³⁴ If criminals are allowed to commit gross abuses with absolute impunity, they are more likely to commit grave violations again in the future. In the case of ongoing conflicts, investigation and punishment demonstrate that those who perpetrate crimes will be held accountable, thereby deterring further commission of atrocities.³⁵ Prosecutions strengthen the rule of law by demonstrating that nobody is above the law.

On the other hand, some argue that prosecutions might destabilize post-conflict societies' young democracies and ongoing peace processes. However, it should be noted that rather than harming the transitional period, investigations might well contribute to both stability and peace. Indeed, prosecutions might help isolate disruptive actors from the political scene and strengthen political

³² Graybill & Lanegran, *supra* note 20, at 10.

³³ *Id.* at 11.

³⁴ McLaughlin, *supra* note 18.

³⁵ Citizens for Global Solutions, *In Uncharted Waters: Seeking Justice Before the Atrocities Have Stopped*, June 2004, at 7.

stability.³⁶ When it comes to the ICC, its investigations have helped draw greater international and regional attention to the conflicts that gave rise to the atrocities it is investigating, thereby putting pressure on the parties to resolve them.³⁷ Peace and justice should not be seen as mutually exclusive; these two concepts should always go hand in hand. Pursuing peace at the expense of justice does not seem to be a viable long-term option.

Additionally, truth commissions might impede healing or make suffering worse. Consolidation and maintenance of peace cannot be achieved unless victims can obtain redress for the violations they suffered.³⁸ In this regard, according to the Rome Statute, the ICC may order individuals to pay compensation to victims.³⁹ Compensation can also be awarded through the Victims Trust Fund.⁴⁰ Furthermore, the benefits of truth commissions or similar bodies can be limited by other factors, including a weak civil society, political instability, victim and witness fears about testifying,⁴¹ a frail or corrupt justice system, insufficient time to carry out investigations, lack of public support, inadequate funding, or formation through a politicized process.⁴²

However, although prosecutorial justice presents undeniable advantages, a global approach to the rule of law and transitional justice requires a comprehensive strategy. While truth commissions should **not replace** prosecutorial mechanisms, they can very well **complement** criminal tribunals.⁴³ Due to the complexities involved in prosecuting international crimes, such trials are lengthy and require extensive resources.⁴⁴ The ICC is indeed an organization with limited resources that can only concentrate on those who bear the greatest responsibility for crimes perpetrated. These efforts need to be complemented by domestic prosecutions and/or alternative justice mechanisms. In particular, non-prosecutorial methods may need to be put in place in order to overcome the inherent limitations of criminal processes, especially to meet the need for a full comprehensive record of the events and causes of the conflict, to promote national reconciliation and to ensure that those who may have contributed to commission of crimes are removed from the justice and security sectors of the government.⁴⁵

All the alternative mechanisms described above addressed crimes committed by lower-level perpetrators. This reaffirms the idea that such methods are inadequate for dealing with leaders and

³⁶ “We have seen this, for example, in both Liberia and the Balkans. The indictments of former Liberian President Charles Taylor by the Sierra Leone Special Court, and the indictments of Radovan Karadzic and Ratko Mladic by the International Criminal Tribunal for the former Yugoslavia have undermined the political weight of those individuals and marginalized them from a political life in their former countries. This marginalization of such figures has in turn contributed to strengthening peace and stability.” Human Rights Watch Policy Paper, *The Meaning of “The Interest of Justice” in Article 53 of the Rome Statute*, June 2005, at 15.

³⁷ *Victims of the LRA Speak Out on Treatment of Rebels*, The Monitor (Kampala), August 10, 2005, <http://allafrica.com/stories/200508100302.html>.

³⁸ Report of the Secretary-General: *The rule of law and transitional justice in conflict and post-conflict societies* [hereinafter Report of the Secretary-General], UN Doc. S/2004/616, at 3.

³⁹ Rome Statute, Article 75.

⁴⁰ Set up by the Assembly of States Parties in September 2002.

⁴¹ The Statute includes numerous provisions on the protection of victims and witnesses. Articles 54(1)(b), 57(3)(c), 64(2), 68(1). See also ICC Rules of Procedure and Evidence, Chapter 4, Section III.

⁴² Report of the Secretary General, *supra* note 38, at 17.

⁴³ *Id.* at 9.

⁴⁴ *Id.* at 11.

⁴⁵ *Id.* at 16.

should only be used as a complementary tool. The idea of balancing ICC efforts with traditional justice mechanisms was expressed by the Security Council when it referred the Darfur situation to the ICC. While recognizing that there was an urgent need to advance accountability and punish the organizers of the mass crimes that have been perpetrated, it “also emphasize[d] the need to promote healing and encourage[d] in this respect the creation of institutions [...] such as truth and/or reconciliation commissions, in order to complement judicial processes and thereby reinforce the efforts to restore long-lasting peace [...]”⁴⁶

Asserting that the ICC seeks to impose the Western model of justice on African countries is certainly false. These countries have judicial systems that, like American or European ones, promote prosecution and punishment. Unfortunately, their judiciaries are often corrupted and lack sufficient resources, expertise and credibility. This is the reason why many post-conflict African nations have resorted to alternative justice mechanisms as a way to deal with atrocities and start rebuilding their national identity. It should be noted, however, that this is not an exclusively African concept. Truth commissions were set up in several other countries, including Argentina, Bolivia, Chile, Ecuador, El Salvador, East Timor, Haiti, Germany, Guatemala, Panama, Philippines, Peru, Sri Lanka and Uruguay.⁴⁷

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⁴⁶ UN Doc. S/RES/1593 (2005), *supra* note 8, paragraph 5

⁴⁷ See Baan Brokhorst, *Truth Commissions and Transitional Justice: A Short Guide*, September 2003, www.amnesty.nl/downloads/truthcommission_guide.doc.