

Special Report

ICC Review Conference: Taking Stock on the Ground



**INSTITUTE FOR
WAR & PEACE REPORTING**



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Stories by

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March - July 2010

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Foreword

The first-ever review conference of the Rome Statute, the founding treaty of the International Criminal Court, ICC, took place in the Ugandan capital of Kampala between May 31 and June 11.

The landmark event brought together ICC states parties, observer states, international organisations and NGOs to take stock of what the court has achieved so far, and to discuss proposed amendments to the Rome Statute.

The first week focused on stocktaking, centred around four separate themes: the impact of the ICC on victims and affected communities, complementarity, cooperation among member states and promoting peace and justice.

The second week saw delegates grapple with a number of proposed amendments to the Rome Statute. Top of the list was discussions over crimes of aggression, which rather overshadowed everything else, with some member states arguing that the ICC should be able to prosecute political leaders who wage illegal wars and others saying that they shouldn't. Ultimately, it was decided that the ICC's mandate should be extended to cover such crimes - but not for another seven years.

Other discussions, which received markedly less attention, included the question of whether newcomers to the ICC should continue to enjoy a seven year exemption from its rules (the verdict was that they should) and whether to broaden the range of weapons that are prohibited (consensus was reached on this with little difficulty).

But interviews with delegates in the grounds of the Speke Resort Conference Centre on the magnificent shores of Lake Victoria, it was often all too easy to lose sight of what the real purpose of the court is - to bring justice to the victims and to prevent such terrible crimes from happening again.

One of the most interesting events, held on the sidelines of the conference, was a gathering of victims that had suffered at the hands of the Lord's Resistance Army, LRA, Uganda's notorious rebel group.

They were given the opportunity to voice their own concerns about the court, and provide some interesting insights about how the court is perceived by those it has been set up to help.

It was this apparent divide, between what the conference delegates were discussing in Kampala and the situation of affected communities on the ground, that prompted IWPR-Netherlands to produce a series of reports to coincide with the conference.

The reports - written by local Ugandan, Sudanese and Congolese journalists - look at the different aspects of international justice that were discussed during the review

conference through the eyes of those people that the court was set up to serve.

All articles were posted on IWPR's website, where they can be downloaded and reprinted by other local and international media free of charge.

About IWPR

Special Report - ICC Review Conference: Taking Stock on the Ground was produced by IWPR Netherlands' International Justice Programme in The Hague with IWPR journalists from DRC, Uganda and Sudan.

IWPR builds peace and democracy through free and fair media with major reporting, training and institution-building projects in Europe, Asia, Africa and the Middle East, and a key cross-cutting thematic programme on international justice and accountability. Our programmes build the skills and institutional capacity of local media in crisis areas, while extensive media outputs demonstrate the capacity of local journalists to access unique information and make significant contributions to local and international understanding of a broad array of critical issues affecting their countries/regions.

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AU Pushes for Hybrid Courts

African Union explores ways in which local courts could bring justice to Darfur, but critics warn this may be impractical.

By Tajeldin Abdhalla Adam, Assadig Mustafa Zakaria Musa and Katy Glassborow in Hilversum and Blake Evans-Pritchard in The Hague

One of the fundamental concepts of the International Criminal Court, ICC, and one that was discussed at great length during the review conference in Kampala, is the idea that, wherever possible, it should be up to member states – rather than an international body – to handle their own judicial affairs.

This idea, known as ‘complimentarity’, is an untested concept in international justice. But a group of experts from the African Union think that it can be usefully applied in Darfur, despite concerns raised by international legal aspects that the Sudanese legal system is not up to the task of prosecuting war crimes.

An AU report published at the end of last year recommended establishing a new hybrid court system, consisting of both local and foreign judges, in order to prosecute perpetrators of war crimes in Darfur.

This report represented an attempt by the AU to bridge the gap between those who doubt the capability of local Sudanese courts and government officials who remain suspicious of international involvement.

For the past six months, an AU panel has been looking into how these recommendations can be turned into policy, although it has yet to release any findings.

Florence Mumba from Zambia, who helped to draft the original AU report, highlighted the importance of supporting justice at the local level.

“It is better to hold trials inside the country [rather than the Hague], where the crimes are committed, in order to show victims that justice is being done and to educate the people about what the international community is condemning” she said.

But challenges remain. Most significantly, Sudanese president Omar al-Bashir, himself wanted for war crimes by the International Criminal Court, ICC, has repeatedly stressed that he does not want any international involvement in war crimes tribunals. This would also rule out the role that hybrid courts could play.

And many Darfuris remain deeply suspicious of local justice, claiming that the courts are effectively controlled by the government, and therefore favour international engagement in the justice process.

Christopher Hall, a senior legal adviser for Amnesty International, who describes the Sudanese legal system as a sham, is sceptical that a hybrid system of justice would work.

“If you look at the current record of Sudan’s courts, it will be extremely difficult to develop an effective hybrid system,” Hall said. “At the moment, Sudan is not cooperating with the ICC to arrest anyone. What evidence is there that they would cooperate any more with a hybrid court?”

Hall’s remarks point to what many commentators see as one of the main flaws in trying to introduce hybrid courts into Sudan. With the ICC’s indictment of the country’s president, Khartoum has become even more openly hostile towards the court. On July 12, the ICC formally charged al-Bashir with crimes of genocide, on top of his existing seven counts of war crimes and crimes against humanity,

Salih Osman, a lawyer from Darfur, notes that in June 2005, three months after the UN referred Sudan to the ICC, there was some attempt to establish a special court to try those responsible for Darfur crimes.

But, Osman says, the court ultimately proved to be ineffectual and was simply an attempt by the government to show the international community that they were doing something about the atrocities in Darfur in a bid to stave off ICC intervention.

“The mechanisms set up by the government of Sudan failed to deliver justice,” he said. “The court was not independent and international standards were not applied.”

In total, 30 cases were brought before the special court, resulting in ten convictions. Charges mainly included robbery and murder, although there was also one case of rape.

“These charges do not reflect the severity of crimes committed in Darfur,” Osman said. “Nothing was mentioned about the systematic attacks on civilians or their forcible deportation.”

The special court is now no longer in operation, Osman said, adding that “nothing has really changed”.

“For hybrid courts to work, there needs to be a lot more demonstration of willingness on the part of the government of Sudan that they’d be committed to this as a genuine process of accountability,” said Caitlin Reiger, deputy

director of the prosecution department at the International Center for Traditional Justice, ICTJ, an NGO. "The technical details can be worked out a lot more easily."

Reiger says that the success or failure of hybrid courts in other regions of the world has almost always depended on the support they have from the local administration.

"In Sierra Leone, the request was unambiguous," she said. "The UN came in and assisted and there has been a fairly high level of cooperation throughout. In Cambodia, it's been far more politically fraught, partly because of the ambivalence of the national [government] about whether they really want this court or not."

Reiger adds that a hybrid court for Sudan would "open a whole can of worms" as to whether proceedings in the country would be able to take the place of the ICC. Under the Rome Statute, the ICC should only take on cases where national jurisdictions are unable or unwilling to prosecute.

Claudia Perdomo, an ICC spokeswoman, declined to comment about the feasibility of hybrid courts in Sudan.

"At this stage, Sudan remains under our jurisdiction," she said. "The validity of hybrid courts would be a matter for ICC judges to decide. Any comment about them at this stage would simply be speculation."

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Uganda Set for First War Crimes Trial

Ex-LRA commander to be tried in Kampala court for kidnap and intent to murder, in precedent-setting case.

By **Bill Oketch in Gulu**

As International Criminal Court member states met in the Ugandan capital of Kampala, the host government was showing signs that the start of its first ever war crimes trial might not be far away.

The country's director of public prosecutions, Richard Butera told IWPR that his department is preparing to refer the case of Thomas Kwoyelo - a former Lord's Resistance Army, LRA, commander, presently in custody in Gulu - to the newly-established war crimes division of the High Court.

If Kwoyelo's trial goes ahead, it will represent the first time that an ICC situation country has been in a position to try its own war criminals.

Kwoyelo has been in a Gulu jail since he was captured in March 2009, charged with 12 counts of kidnap with intent to murder. But his case has been unable to proceed to trial because the regional court has no jurisdiction over capital offences.

Kwoyelo has not even been assigned a lawyer yet, although Butera says that this will change as soon as his trial begins at the war crimes court.

Although Butera declined to give a precise indication of when the referral might take place, a source close to him suggested the trial could start before the end of the year.

Since the ICC does not have the resources to try all suspected war criminals, its mandate is to prosecute only those deemed most responsible for atrocities, with the remainder being tried by national courts, provided that the local judiciary is capable of doing this.

The ICC has so far indicted five members of the LRA for war crimes - none of whom have yet been apprehended - and is unlikely to open any more cases in the country.

The war crimes division of the High Court got a green-light to start operating just ahead of the recent ICC review conference in Kampala, when Ugandan president Yoweri Museveni announced that he had put his signature to the controversial ICC bill - which enables the Ugandan judiciary to try war crimes - adopted by parliament on March 10.

Mirjam Blaak, Uganda's ambassador to the ICC, said that she was very happy that Museveni had at last signed the bill, which has been in the pipeline for the past six years.

"It was important to have the bill signed before the review conference took place," she said. "They wouldn't have cancelled the review conference if it hadn't been, but it was an understanding that we would."

However, there has been much confusion over the ICC bill, with many people, even those close to the government, being uncertain about whether the president had actually signed it.

Lindah Nabusay, Museveni's deputy spokeswoman, said that she was not aware that the president had put his pen to the legislation.

Nearly two months after being reportedly signed by Museveni, few people have been able to get hold of a copy of the ICC bill.

David Donat Cattin, director of the international law and human rights programme at Parliamentarians for Global Action, has been unable to obtain a copy of the legislation, despite his best efforts.

"It is a bit surprising that it is not yet available, especially because it was adopted unanimously in parliament," he said.

Blaak explained the delay by claiming that the government needed time to incorporate last-minute changes that were made, and that it would be published "very soon".

But the apparent secrecy surrounding the ICC bill gives some indication of how difficult it has been to push the new legislation through parliament.

The bill was first tabled as far back as 2004, but Blaak says that it was pushed to one side while peace talks between the LRA and the government were taking place.

When it was finally presented to parliament in 2006, two elements of the new law proved particularly divisive: an apparent reference to the death penalty, prohibited by the ICC, and an explicit clause protecting a serving president from prosecution.

"The Ugandan constitution also gives wide immunity to a serving president, but it would have been disgraceful to have put this in black and white within the ICC bill," said Cattin. "It would have sent out quite the wrong message to the international community and we couldn't have lived with that."

Blaak says that, in the latest version signed by the president, both elements have been dropped.

Akiki Keeza, head of the new war crimes division of the High Court, says that now that the ICC bill has been signed, the Hague-based court should get behind Uganda's efforts to try war criminals.

"It is the duty of [ICC] member states to put in place mechanisms to try people who have committed atrocities," said Keeza. "Before the [ICC review] conference, the president of the ICC visited us here and did not express any objections to what we are doing. The ICC have a responsibility to support us."

For those in northern Uganda, who have suffered greatly during the years of the LRA insurgency, the question of whether the war crimes division of the High Court is the best avenue for justice remains open.

Emmanuel Mwaka Lutukumoi, spokesman for the opposition Democratic Party, says rather than trying war crimes suspects in Kampala, traditional justice mechanisms, such as mato oput, should be employed.

This system has been used by Acholi clans for generations to settle disputes, and involves victims sharing a bitter drink made from the mato oput tree in a spirit of reconciliation and forgiveness.

Another point of contention is the question of whether the government will be able to provide reparations for the victims of those tried by the Ugandan justice system.

The ICC's Trust Fund for Victims can issue compensation in connection with trials that are currently ongoing, but no similar provisions have been made under the ICC bill.

Milly Arao is a disabled woman in Lira district, who has sought compensation for injuries she sustained in an LRA raid on the Barlonyo internally displaced people's camp in the north of the country. She says that the rebels massacred more than 300 civilians, including ten of her relatives.

"We are always marginalised and no one helps us. We are looked at as a people that are useless," she said.

According to recent data from the International Bar Association, less than a third of the 111 signatories to the Rome Statute have satisfactorily adopted ICC implementing legislation.

A further 20 per cent of member states have partially-adopted ICC laws, while 50 per cent have not adopted any implementing legislation at all.

Bill Oketch is an IWPR-trained reporter.

Blake Evans-Pritchard, IWPR Africa Editor, contributed to this report.

Ugandans Call for Economic Justice

Amid focus on punishing war criminals, victims say they need help to rebuild their lives.

By Bill Oketch in Gulu, Florence Ogola in Lira and Blake Evans-Pritchard in The Hague

Moses Ogwang's remote village of Te-Yao, in Otwal sub-county, northern Uganda, was destroyed by Lord's Resistance Army, LRA, rebel forces in 2000.

Three of his brothers were abducted during the raid, and his family's possessions were looted. Since then, he has been struggling to rebuild his life.

"We are not saying that taking [LRA leader Joseph] Kony to the International Criminal Court [ICC] is bad, but this will be of no use if our homes are not rebuilt," he said.

Ogwang is one of a group of citizens from the Lango region who are suing the government for damages that they suffered during the years-long struggle between the Ugandan army and the LRA, which continues sporadically.

So far, over 50,000 war victims have joined the Lango War Claimants Association, LAWCAS. According to their lawyer, Makmot Kibwanga, more than 20,000 have already filed their claims at the High Court in the town of Lira.

The claimants are demanding compensation for the harm caused by the LRA, arguing that it was the responsibility of the government to protect them against rebel raids.

They also want Kampala to pay for animals that were slaughtered by government soldiers during the insurgency.

"We don't want to reopen the deep wounds caused by the LRA," Ogwang said. "We just want the government to return the wealth we had in our possession before the war."

Total claims amount to 1.4 trillion Ugandan shillings (650 billion US dollars).

There is some doubt about whether the war claimants will be successful in their pursuit of justice, since claims should have been filed within two years of damages being incurred.

But lawyers for the victims argue that this time constraint could be disputed in cases where victims felt their life would have been threatened if they had come forward sooner.

The government, meanwhile, has been keen to settle the claims out of court.

Richard Todwong, presidential adviser for northern Uganda, says Kampala has so far paid out more than 1.5 billion Ugandan shillings (700,000 dollars) in compensation, but this is just a fraction of what the total damages could amount to.

Besides reparations, the government is also offering support for those who were injured in the fighting.

Todwong says that, so far, his office has registered 5,000 people who were maimed during the LRA insurgency, with more turning up all the time.

"Around 400 or 500 of these needed medical attention, which is provided by the ministry of health in cooperation with Mulago Hospital [in Kampala]," Todwong said. "Doctors assess the needs of the patients to determine who requires treatment."

The government is working together with NGO partners to provide funds to enable these victims to undergo surgery, but Todwong admits that there are still huge gaps to be filled.

"Someone whose limbs have been cut off cannot now live on his own," he said. "He has to be attended to 24 hours a day and, with such a person, the demands are just too much."

Kizito Wamala, a clinical psychologist at the African Centre for the Treatment and Rehabilitation of Torture Victims in Kampala, says that more resources should be made available.

"I think the organisations in the region are doing whatever they can with the resources they have," he said. "But, when you look at the magnitude of the needs, there is a lot that still goes unattended to."

He also points out that, since many victims have now left displacement camps and returned home, offering help has become even more of a challenge.

"In the past, it was very easy to go to the camps and meet 100 people at the same time," he said. "Today, you go to one village and perhaps find three people who need help. Then you move to another village and find three more."

Wamala says that, last year, his clinic attended to 1,402 new patients, as well as reviewing 1,302 who came back for further services.

One of these, Ongwen George, says he suffered horrific injuries when his village was attacked by LRA soldiers in 2001.

"The rebels came in the middle of the night and ordered all of us outside," he said. "When we came out, they ordered us to lie on the ground with our heads facing the ground. They started hacking at us [with machetes]. I felt a sharp pain

on my neck and, when I came to, I found myself in hospital, where I stayed for two months.”

Although George appreciates what the Kampala centre has tried to do for him and other victims of war, he feels that the treatment has often been inadequate. He says he receives regular painkillers, but little else.

The ICC has made some attempts of its own to address the needs of victims.

One of the criticisms of many war crimes tribunals in the past is that the successful prosecution of those who committed atrocities has rarely left the affected communities better off.

A Trust Fund for Victims, TFV, administered by the ICC, was set up in part to counter such criticism.

The TFV has a fairly small budget – just 1.4 million euro (1.8 million dollars) was spent on projects in the Democratic Republic of Congo, DRC, and Uganda in 2008.

But Kristin Kalla, acting executive director of the TFV, says that the fund’s “targeted approach” allows the money to get to those who really need it, and fill some of the gaps that are not being adequately addressed by other organisations in the region.

“We found that there were no organisations focusing on providing support for the victims that were mutilated in northern Uganda,” Kalla said. “For these people, our ability to provide plastic and reconstructive surgery twice a year has been something that has changed their lives and the lives of those living in their communities.”

The TFV also helps to provide psychological support to those who have suffered the traumas of war – another area where Kalla says there has been a lack of local expertise.

“We have been really focusing on building local capacity, to ensure that the TFV rehabilitation support is sustainable and can be carried forward by other donors,” Kalla said. “We’re not there for long-term development, but for shorter-term rehabilitation and possibly administering ... reparations if instructed to do so by the ICC.”

Under the terms of its founding Rome Statute, the ICC can order a convicted war criminal to make reparations to victims, and can select the TFV as the vehicle through which to make these payments.

However, since no case before the ICC has yet run to completion, this function of the TFV has not been put to the test so far.

Kampala remains critical of the TFV, saying that more should be done.

“It is sometimes difficult to see what they are doing,” said Todwong, from the Ugandan government. “They come here and meet victims, but nothing seems to change. The Ugandan government is raising a lot of awareness about war victims, and we would like to know what the TFV is doing.”

Kalla responds by highlighting some of the challenges faced in delivering aid to northern Uganda. In particular, since aid is directly linked to the ICC’s judicial process, the TFV operates under strict parameters laid down by court judges.

The branding of TFV support can sometimes be difficult, too, because NGOs that are delivering the aid do not always want to be associated with the ICC.

One of the central aims of the ICC is to fight against the culture of impunity throughout the world, by sending out a signal to would-be warlords that they will eventually face justice.

But, with only a small group of suspects arrested and no trials yet complete, many accept that it is too early to tell how successful the court has been in this respect.

Some fear, though, that focusing too much on this primary goal of the court could detract from the second aspect of justice – that war-ravaged communities must find some way of moving beyond the shadows of the past.

“In my own profession as a psychologist, I know that different people have different hierarchies of needs,” said Wamala, of the Kampala treatment centre. “There are some who want the perpetrators brought to book, but others whose main desire is to live in peace.”

Bill Oketch and Florence Ogola are IWPR-trained reporters.

Blake Evans-Pritchard is IWPR’s Africa Editor.

Women Push for Gender Justice

Although amongst the most vulnerable in conflict situations, women often find it hard to gain access to justice.

By Evelyn Kiapi in Kampala

Grace Lagulu was only 15 years old when she was abducted by the Lords Resistance Army, LRA, in 1987. She was forced to become a sex slave and bore two sons by a rebel commander who is now dead.

“I was an orphan,” she said. “I was abducted along with my brother, who was later killed in captivity. I was severely beaten.”

Lagulu explains that not only is she now struggling to bring up her two children, while facing stigmatisation from the local community for her past, but that she has also been diagnosed as being HIV positive.

“I don’t see a future ahead of me. I don’t know what will happen to my children when I die,” she said.

Lagulu laments that, despite the trauma she has been through, she is receiving no support to help her recover.

“I have heard that a lot of survivors have been assisted, but I have never had the opportunity to receive any help,” she said.

Lagulu’s sense of isolation has been compounded by the thought that those men who abducted and abused her have never been apprehended.

“I am now calling for justice,” she said. “I feel the perpetrators should be punished.”

It is this apparent failure to adequately address the needs of these victims of sexual violence that prompted Women’s Initiative for Gender Justice, an NGO, to issue a list of demands at the review conference of the International Criminal Court, ICC, which was held in Kampala between May 31 and June 11.

“Women want prosecutions, implementation, prevention and a voice,” said Brigid Inder, executive director of the organisation. “Women want national and international prosecutions for gender-based crimes. [They want] implementation of the Rome Statute by governments and also the ICC.”

In a recent paper, *Advancing Gender Justice: A Call to Action*, Inder outlined some of the most pressing issues facing women, and suggested how the ICC, the court’s member countries and the United Nations might work together to resolve them.

The paper recommends the strengthening of institutions and claims that many international judicial bodies, including the ICC, significantly lack the capacity to deal with gender issues.

The paper also calls on ICC member states to fully incorporate the gender provisions of the Rome Statute, the treaty that established the ICC, into national law and highlights the need for more international funding to support women’s rights and legal advocacy.

“Victims should have genuine and meaningful opportunities to participate in the justice processes locally, nationally and internationally,” said the paper.

It also made a special reference to the Democratic Republic of Congo, DRC, calling for effective prosecution of sexual crimes in the country and proper enforcement of the 2006 Sexual Violence Act.

Women’s rights groups have expressed disappointment that Congolese warlord Thomas Lubanga, the first alleged war criminal to stand trial before the ICC, was never charged with sexual violence crimes, despite witnesses testifying that such abuse did take place.

Last year, victims’ lawyers tried to introduce the charge of sexual slavery to Lubanga’s existing charges of conscripting child soldiers, but judges ruled that this would prejudice the defendant’s right to a fair trial.

The failure to include sexual violence crimes to Lubanga’s initial confirmation of charges has been particularly distressing for women in the DRC, where rape has been widely deployed as a weapon of war.

On the island of Idjwi, which is located in the centre of Lake Kivu in eastern DRC, one victim of rape, who did not want to be identified, told IWPR that no steps have been taken to bring her attackers to justice.

“In Idjwi, there are only customary courts, which have no jurisdiction over rape,” she said. “To get access to justice, I would have to do move to the city of Bukavu, but I do not have the [financial] means to do so.”

Inder, from Women’s Initiative for Gender Justice, noted that the work of the ICC in each of the five countries where it has opened investigations is vital for the well-being of women.

“For many women, [the ICC] is their greatest hope, for some perhaps their only chance for justice, for someone to be held accountable for what happened to them, with the hope that this should not happen to others,” said Inder.

Gladys Oyat Ayot, a member of the Greater North Women’s Voices for Peace, an NGO in northern Uganda, says that being able to access justice mechanisms is an important part of the recovery process for women who have suffered gender-based crimes.

“Women in armed conflicts suffer physical, psychological and emotional pain, which they live with for many years, long after the conflict has ended,” she said. “In most cases, such suffering is increased when the women fail to get redress.”

A colleague of hers, Jane Akwero, added, “The wars in the world today have shifted their battlefields to women’s bodies. Every warring party has turned its guns on women because, when women are raped and abducted, the warring party feels victorious. In the context of northern Uganda, the women have lost everything.”

One rape victim in western Kenya, who did not wish her name to be used, told IWPR that she was placing all her hope for justice on the investigation that Luis Moreno-Ocampo, ICC chief prosecutor, had recently begun in the country.

The woman claims that she was assaulted by a group of men on January 27, 2008, as she tried to flee the violence that tore through her home town of Navasha. She says that the rape was so violent, her womb was irreparably damaged and had to be removed.

More than two years after the rape, the woman still lives in a state of fear. Distrustful of the authorities and worried that her attackers, who left her for dead, could return, she moves from house to house, never remaining longer than a few days under one roof.

She says that she has no faith in justice ever being done by the Kenyan legal system, because she claims that those in power are from the same tribe as the men that raped her.

“I hope that the ICC will intervene in our situation,” she said. “The government here doesn’t reach all people equally. Moreno-Ocampo should quicken his investigation so that we can have certainty for the future.”

But she says her hope is tempered by the fear that the investigation could be thwarted by the Kenyan government.

“Moreno-Ocampo should not listen to the words of high-profile people in the government because they will only cheat him,” she said. “He should come and talk to us, in Navasha. If Moreno-Ocampo came here, I would meet him and give evidence.”

Moreno-Ocampo visited Kenya in May, but did not travel outside of the nation’s capital. He met victims who were brought to Nairobi by human rights organisations in the city.

To date, the ICC has opened investigations in the Central African Republic, Sudan, Uganda, DRC and Kenya.

Although the majority of cases before the ICC include some form of gender-based component, Inder complains that many such charges have been watered down and that

the underlying ICC strategy for gender crimes is not robust enough.

None of the ICC’s LRA indictees has yet been arrested and two have died whilst on the run.

“So long as the perpetrators are out there, these women sleep with one eye open and the other one closed,” said Jane Adong, legal officer for Women’s Initiative for Gender Justice. “They know that any time these perpetrators can come back.”

Evelyn Kiapi is an IWPR-trained reporter.

Blake Evans-Pritchard, IWPR Africa Editor, contributed to this report.

IWPR Comment

Shaky Deal on Crimes of Aggression

World powers secure concessions that allow them to evade prosecution for such crimes.

By **Blake Evans-Pritchard** in Kampala

The news that the International Criminal Court, ICC, will not be able to prosecute crimes of aggression until 2017 at the earliest should be welcomed. The loopholes that allow powerful member states to escape the ICC's jurisdiction should not.

Delaying the introduction of crimes of aggression for seven years affords the court some much needed breathing space, allowing it to concentrate all its efforts on what it was initially set up to do: end impunity for the very worst human rights abuses.

The problem is that, even after 2017, member states will be able to opt-out of the new rules agreed on at Kampala Review Conference on the future of the court, which ended last week.

The foundations of the ICC remain shaky. Out of fourteen arrest warrants issued, only four men are currently in custody. The charges against Darfur rebel leader Bahr Idriss Abu Garda were thrown out earlier this year.

The court is yet to secure a conviction. Judges will probably rule on the Thomas Lubanga case later this year, but it is by no means certain that the charges against him will stick. The final stages of his trial have seen a concerted effort by defence lawyers to discredit the way that the prosecution team gathered its evidence.

Combine this with a woeful lack of funding and the fact that many of the world's most powerful nations – including China, Russia, India and the United States – have yet to sign up to the court and one starts to wonder how secure the future of the ICC really is.

Now is the time for the ICC to really prove its worth – not to take on new responsibilities, which it is ill-equipped to deal with.

Defining the Crime

The agreement that was reached by ICC member states on June 11 at the Kampala conference takes the whole concept of international justice into uncharted waters.

Member states eventually agreed to define a crime of aggression as “a manifest violation of the Charter of the United Nations”.

But exactly what constitutes a manifest violation of the UN Charter remains open to interpretation. The agreement suggests that it could include a bombardment or a blockade of a sovereign state. But one amendment to the resolution, which crept in at the last minute, explicitly states that the term “manifest” is an objective term.

The fact that no one seems quite sure what crimes of aggression mean has unsettled countries such as the US, which worries that the imprecision of the definition could leave it open to political misuse.

The US and others have argued that there is sometimes justification for using force such as in the 2003 invasion of Iraq. But the definition of crimes of aggression could lead to criminal prosecutions for any similar action in the future, which has not been sanctioned by the UN.

Benjamin Ferencz, 91, is the last surviving prosecutor from the Nuremberg war crimes trials, and has dedicated his life to finding a way to stop wars from occurring in the first place.

He told IWPR at the Kampala event that what he saw in the concentration camps of post-war Germany, as he was gathering evidence for what he describes as “the largest murder trial in human history”, persuaded him about the need to end war for good.

“I still have flashbacks,” he said. “What I saw is incomprehensible to the human mind. I cannot describe the scenes in terms that anyone who was not there can understand. The smell, the sickness, the disease, the people dying. I’ve stepped over people I was sure were dead and then I’d see the movement of an arm. These are scenes that I have difficulty describing. This was not a Hollywood scene. This was real life.”

For him, it was the illegal war waged by Nazi Germany that created the situation that allowed such terrible atrocities to occur.

“My whole reason for being in Kampala is to deter war,” he said. “My hope is that one day we’ll be able to look back at this crazy time when we used to kill our neighbours and everyone around us, and thought that was just. Soldiers go home and we make them heroes. This is crazy. It’s stark raving mad.”

A Valuable Time Window

But Ferencz will have to wait some time longer for his lifetime ambition to be realised.

At the Kampala conference, delegates agreed that the ICC could have jurisdiction over the crime of aggression, but only after seven years had elapsed, in order to give member states time to prepare for it.

France, the UK and the US (currently not a member of the ICC), who were particularly worried about including crimes of aggression in the court's mandate, had initially hoped that the authority to begin proceedings for such crimes would rest solely with the UN Security Council, where they have a veto.

However, after protracted negotiations at the Kampala conference, delegates eventually decided that, in the absence of action from the Security Council, the ICC could initiate proceedings on its own.

More worrying is the opt-out that these world powers managed to secure.

If member states do not accept the ICC's jurisdiction over crimes of aggression, they can signal to the court registrar that they wish to opt-out of the new rules, effectively shielding them from any investigation.

This sends the wrong signal to the international community about the role of the ICC in the world, and strengthens those critics who have insisted that the court has been set up to mete out justice to the world's weaker nations.

If there is one overriding message that advocates of the ICC have tried to get across during the review conference, it is that the ICC is a court set up to serve Africa and not to fight against it.

All the main dignitaries present in Kampala – UN Secretary General Ban Ki-moon, his predecessor Kofi Annan, ICC prosecutor Luis Moreno Ocampo and Ugandan president Yoweri Museveni – said as much in the speeches that they gave at the start of the gathering.

But as Ferencz points out: having crimes of aggression on the statute, but not giving the ICC adequate powers to deal with it is disappointing in the extreme.

Blake Evans-Pritchard is IWPR's Africa Editor.

The views expressed in this article are not necessarily the views of IWPR.

Uganda Victims Question ICC's Balance

Victims of Uganda's civil war have criticised international justice for being too one-sided.

By Florence Ogola in Gulu

Victims of the two-decades-long conflict in the north of Uganda have been calling for justice to be applied fairly to all parties who allegedly carried out atrocities.

The calls were aired as the president of the International Criminal Court, ICC, Sang-Hyun Song, toured the north just ahead of the review conference in an attempt to raise the court's profile and connect with local people.

Song, whose trip took place just ahead of the Kampala Review Conference on the future of the ICC that ended last Friday, spoke to groups of people that couldn't understand why the international community was so intent on bringing members of the Lord's Resistance Army, LRA, to justice, but appeared to overlook crimes that had been allegedly committed by the other side in the twenty-year conflict.

"Why is it that the LRA are the only ones wanted by the ICC?" Christopher Okidi, a former guild president at Gulu University, demanded. "Does it mean that the UPDF (Ugandan People's Defence Force) did not commit any atrocities in northern Uganda?"

Komakech Robin, a resident of Koro Abili, some seven kilometres from Gulu town, put things even more strongly.

"If the ICC is for us, the people of northern Uganda, then why have they issued arrest warrants for the LRA only?" he asked. "The UPDF committed the worst atrocities in northern Uganda and always blamed it on the LRA. Both the LRA and the UPDF must be held accountable. This is the only way for us to feel at peace again."

Following an investigation into alleged abuses in northern Uganda, the ICC indicted five members of the rebel group: Joseph Kony, its leader, Vincent Otti, Raska Lukwiya, Okot Odiambo and Dominic Ongwen. Arrest warrants for the men were issued in 2005, but no arrests have so far been made. Two suspects – Otti and Lukwiya – have died while on the run.

Though the ICC claims that the LRA committed the worst atrocities during the country's conflict, there remains a widespread belief in the region that the UPDF was also guilty of crimes that should be looked at by the international court.

Suspensions were heightened by a 2007 report from the United Nations, which suggested that the Ugandan government should share some of the blame for the war.

Alleged abuses by UPDF soldiers include burying 15 youths

alive in the northern village of Bur Coro and imprisoning hundreds of people for alleged treason. Such allegations also extend beyond the war that was fought in northern Uganda; in Amakura, not far from the Teso region in eastern Uganda, the UPDF allegedly forced dozens of people on to a crowded train, where they suffocated

Most of these reported crimes took place in the 1980s and early 1990s, during a particularly bloody phase of the war, as President Yoweri Museveni sought to consolidate his grip on power.

This creates a problem when trying to get the ICC to take action against alleged UPDF crimes, since the court can only investigate incidents that occurred after 2002, when it was established - and those who have been pushing for steps to be taken against the military have failed to come up with concrete evidence pertaining to more recent reported violations.

Army spokesman Lieutenant-Colonel Felix Kulayigye insists there were only isolated cases of military abuses and the perpetrators have since been punished.

Moreover, he maintains that during its investigation into events in northern Uganda, the international court probed the army and came up with little.

"The ICC has investigated the UPDF, but only found isolated cases that do not measure up to the atrocities that the LRA committed in the country," he said. "I find that these allegations [against the army] are nothing more than politicking"

But Dennis Martins, the programme coordinator for Empowering Hands, a community support group for former child soldiers, warned that the concerns raised in the north reflect a problem that the ICC has not yet adequately addressed: that there are those it is trying to serve who question its integrity.

He says there's a feeling amongst some in the region that Museveni has used the court as a political tool, in order to help defeat the LRA.

"Justice must not only be done; it must also be seen to be done," he said. "If the government had committed atrocities within the mandate of the ICC, would they have invited the ICC here? Unless care is taken, the ICC risks becoming a tool in the hands of repressive regimes."

Alex Odong, a resident of Gulu district, urges Luis Moreno-Ocampo, chief prosecutor of the ICC, to come to northern Uganda and talk to victims for himself.

“People have now returned to the villages and can freely express themselves, not like before, when they were still in camps and were afraid of government forces,” he said.

When the ICC began its investigation into the atrocities committed by the LRA in northern Uganda, in 2005, victims hoped that justice would be swift.

But five years later, with no arrests, such hope has given way to frustration.

Kony and the other surviving LRA indictees appear to have abandoned northern Uganda – where peace is slowly returning – for the Democratic Republic of Congo and the Central African Republic, where they are alleged to have inflicted civilian casualties. These reported abuses, however, do not form part of the ICC’s investigation.

Okello Simon, from Gulu district, welcomes the efforts that the ICC is making, but is disappointed that justice has been so slow in coming.

“I know the ICC is working hard, but the problem is we are not seeing any results,” he said. “I cannot go back to my village knowing that the LRA leader is still roaming free. What if he comes back?”

Song’s visit to northern Uganda was organised by the outreach unit of the ICC, in order to allow those communities that were affected by Uganda’s war to find out more about the workings of the court.

Song insisted that the ICC is an independent institution set up to fight impunity and to prosecute those who commit the worst crimes, regardless of which side they stand on.

“Even though it is the government of Uganda that invited the ICC to investigate the case in northern Uganda, the government has no influence on the activities of the court,” he said.

On June 3, Olara Otunnu, the president of the Uganda’s People Congress, an opposition party, asked the ICC to begin an investigation into abuses allegedly committed by the UPDF.

Meeting with Moreno-Ocampo on the fringes of the review conference, he handed the ICC prosecutor what he claimed to be evidence of genocide carried out by government forces in northern Uganda.

It included police reports that were reportedly never followed up and letters from politicians in the region providing details of crimes that are said to have been committed.

Song pointed out, however, that the ICC was supposed to be a court of last resort and that it should be up to national courts to try lower-level perpetrators.

“I realise others, too, have committed crimes and all who commit crimes should be held responsible,” he said. “But the ICC is only one piece of the puzzle. It is an important part, but by no means a full answer to your search for peace and justice.”

Following Otunnu’s petitioning of the ICC, Museveni has charged the former UN special representative with sedition and promoting sectarianism – charges which Otunnu says he will fight in the Ugandan courts.

Recently, Kampala tasked a division of the High Court to try alleged war criminals that the ICC is unlikely to deal with.

Justice Akiki Kiiza, who presides over the division, says that war crimes trials held in the country will function in a similar fashion to those in The Hague, with three judges officiating each case.

The court currently has four judges capable of overseeing war crimes trials, and is searching for a fifth, which Kiiza hopes could come from the international community, in order to bring some outside expertise.

Kiiza says that the court is ready to try war crimes suspects as soon as the department of the public prosecutor refers a case to them.

“Unlike the ICC, we can try all war crimes cases, and not just those that happened after 2002,” he told IWPR. “We are simply a division of the High Court, and we can try any crime that was committed since the creation of the High Court and the High Court has been in existence for a very long time.”

Florence Ogola is an IWPR-trained reporter.

Blake Evans-Pritchard, IWPR Africa Editor, contributed to this report.

Ugandans Edgy Over US Move Against LRA

Fears that America may inflame violence as it seeks to put an end to rebel group.

By Moses Odokonyero in Gulu

As Washington prepares to unveil a strategy aimed at neutralising the Lord's Resistance Army, LRA, many in northern Uganda are mindful of how past attempts to deal a knock-out blow to the rebel movement have succeeded only in increasing instability in the region.

While welcoming greater support in apprehending Joseph Kony, the leader of the LRA, and his henchmen, they are concerned about the consequences of a military campaign against the rebels who've terrorised civilians across eastern and central Africa over the past three decades.

Although Washington's plans have yet to be announced, one of the principal fears in northern Uganda is that, rather than defeat the LRA, the United States might simply succeed in pushing them further afield, to commit atrocities elsewhere, or even prompting their return to Uganda.

Previous international initiatives have not been immediately successful. Five years after the International Criminal Court, ICC, issued arrest warrants for senior LRA commanders, none have been caught and two have died while on the run.

And while the rebel movement has now been forced out of northern Uganda, humanitarian groups report that it continues to rape, maim and kill in parts of the Democratic Republic of Congo, DRC, Central African Republic, CAR, and south-west Sudan.

A recent report by Human Rights Watch claims that, over the past 18 months, the LRA has murdered 255 people and abducted more than 600 others in the DRC and CAR.

In May, the US president Barack Obama signed a bill requiring policymakers to come up with a strategy for dealing with the LRA by the end of November.

Two weeks later, the Acholi Religious Leaders Peace Initiative, an influential group that has been at the forefront of a peaceful resolution of the conflict in northern Uganda, wrote an open letter to the US president, urging caution.

"Military action has time and time again not only failed to end the conflict but caused it to spread into regions once immune to LRA violence resulting in further suffering of civilians," the letter read.

It continued by urging Obama to explore "non-violent actions" that would help to resolve the violence afflicting countries in the region.

The Acholi religious leaders claim that military efforts

by the Ugandan government have in the past failed to comprehensively defeat the LRA.

In fact, in many instances, they have led to retaliatory attacks by the LRA on civilian populations in not only Uganda but now also Sudan, the DRC and CAR.

In 2001, the Ugandan army launched an operation to flush the LRA out of its hideouts in southern Sudan. The rebels retaliated by sneaking back into northern Uganda and carrying out numerous atrocities.

In December 2008, the Ugandan army, along with its regional allies, struck LRA hideouts in Garamba in eastern Congo. Again, the LRA retaliated by killing civilians, this time in the DRC and CAR.

"If [the US] wants to fight Kony then this is bad because it will spoil our peace," said Margaret Ajok, 28, a resident of Rackoko village in Pader district, a view shared by many local people.

Elizabeth Acan, a 53-year-old widow from Paicho in Gulu, once at the epicentre of the conflict, said, "Although I want Kony tried by the ICC for the killings that he is [responsible for], I don't support anything that proposes war to solve a problem because war spoils our future and the future of our children."

Some, however, say the region has little to fear from an American intervention.

"The [US initiative] will help consolidate the existing peace and reconstruction efforts taking place in northern Uganda," said Milton Odongo, deputy resident district commissioner of Gulu. "It will also help the government of Uganda to hunt for the LRA terrorists."

Odongo does not think that there is any danger that military action against the LRA will bring a resumption of hostilities. "The peace in northern Uganda is irreversible," he said.

At Unyama Trading Centre, not far from Gulu, Nelson Labeja, 65, summed up the anger many people feel towards the LRA.

"If possible, I want Kony shot dead because you cannot arrest an armed man like him," he said.

The Shape of US Strategy

At the moment, it remains unclear what the US strategy for apprehending LRA commanders will look like. The bill

suggests that it will have two components – one to respond to humanitarian needs and the other to provide military, economic and intelligence support for disarming the LRA.

Ledio Cakaj, a field researcher in Uganda for the Enough Project, which campaigns against human rights abuses, thinks that the greatest contribution the US will be able to make will be in terms of better equipment and intelligence.

“In a perfect world, if we really wanted to see the end of the LRA immediately, then we should send specially-trained elite forces, be they American, British or any other western force to finish the job,” said Cakaj. “Practically speaking, given how the US army is stretched in Afghanistan and Iraq, US soldiers on the ground are not going to be an option.”

There have been numerous attempts to apprehend LRA commanders, but, according to Cakaj, these have been hampered by a lack of resources, particularly helicopters.

Most recently, at the start of July, the Ugandan army reportedly shot and killed one of Kony's bodyguards in Djemah, a town in CAR. Kony, however, managed to escape.

Simon Oyet, a member of parliament for Nwoya County in Amuru district, welcomes US support for apprehending members of the LRA, but thinks that it should go beyond just providing equipment and money to the Ugandan military.

“Uganda does not have the capacity to arrest Kony,” he said. “This can only happen with US support to reinforce the Ugandan army militarily by having men on the ground. If [this doesn't happen] the arrest of Kony will remain a dream. I also have worries that, if the Americans give money to the Ugandan army, it will be grossly abused and we will have the same old story.”

But he does think that the US initiative sends out a positive message.

“The [US] bill will restore confidence in people of northern Uganda that the LRA conflict will one day come to an end,” he said. “And, to the LRA, the bill has sent out the message that they are now a world problem being confronted globally.”

For their part, the Ugandan government welcomes US support.

“The critical economic assistance that will come with it will improve the life of the common man in northern Uganda, which is not in a conflict situation anymore,” said Ugandan army spokesman Felix Kulayigye. “US support will also come with technological assistance for Uganda in the fight against the LRA. Everything has an end. Kony will also have his end.”

ICC Cooperation

Out of 13 arrest warrants that have been issued by the ICC, only four have so far been executed.

As a judicial body, the ICC does not have a way of enforcing indictments itself, and therefore has to rely on the cooperation of countries – not only member states, but increasingly those that remain outside the signatories to the international court.

Some of the most influential countries in the world have still not signed up to the Rome Statute. These include the US, Russia, China and India.

During the recent ICC review conference in Kampala, ICC president Sang-Hyun Song described the cooperation, both of member states and of non-member states, as “the weakest link in the Rome Statute system”.

“Four of 13 arrest warrants have been executed... What makes cooperation the weak link in this system is that the ICC lacks the means to enforce it,” said Song.

ICC prosecutor Luis Moreno-Ocampo says that the initiative taken by Washington shows how those countries, which for the time being remain outside the ICC, can nonetheless contribute towards the successful functioning of the court.

“Joseph Kony is still committing crimes and he must be arrested,” he told IWPR. “We appreciate the US and other countries in supporting the territorial states to bring about his capture. This is of the utmost importance. Humanity has to help the victims by stopping these crimes.”

Moreno-Ocampo added that there have been positive signs that non-member state parties are increasingly willing to cooperate with the court.

He highlighted the example of Russia, which he claims has been freely providing “substantial information” to the ICC's investigation team about what happened in the conflict in Georgia in August 2008.

One ICC source also suggested that US cooperation will be crucial for the probe into violence in Kenya, since many of those likely to be indicted have links to the US.

“We're starting to see great cooperation from state and non-state parties alike, and this is a very positive development,” said Moreno-Ocampo.

Moses Odokonyero is an IWPR-trained reporter.

Blake Evans-Pritchard, IWPR Africa Editor, contributed to this report.

US Takes Cautious Steps Towards ICC

Obama administration seems keen to move closer, but domestic critics of the court urge restraint.

By Blake Evans-Pritchard and Simon Jennings in The Hague

A month before the review conference of the International Criminal Court, ICC, was due to open in Kampala, Doug Lamborn, a Republican congressman, introduced a bill to the House of Representatives that, had it passed, would have prevented the US from attending the landmark event.

The bill, which had the backing of a number of other congressmen, was ultimately defeated. But the fact that it was drawn up at all points to a growing sense of discomfort within America that the country is being dragged down the ICC route.

In April, one of the country's most influential foreign policy think-tanks, the Council of Foreign Relations, published a report in which it recommended the US not seek to join the ICC in the foreseeable future.

With the mid-term elections due to take place in November, the White House will find it hard to ignore such lobbying.

Uneasy Relationship

The US has had an uneasy relationship with the ICC from its inception. Although it initially supported the idea of an international mechanism to prosecute war crimes, Washington ultimately withdrew support when it became clear it would not be able to wield its United Nations Security Council veto over possible cases.

Nonetheless, at the end of 2000, Bill Clinton, then US president, signed the Rome Statute, the founding treaty of the ICC, believing that this would allow the country to have a greater degree of influence on the development of the court.

But Clinton's successor, George Bush, took a more hostile position towards the court. Not only did the Bush administration suspend Clinton's signature, but it also negotiated agreements with more than 100 countries, aimed at preventing the surrender of US personnel to the ICC.

Since assuming the US presidency at the start of 2008, Barack Obama has fostered a policy of cautious engagement with the court.

Last November, the US participated for the first time in the annual meeting of ICC member states, the Assembly of States Parties, ASP. It also announced that it would send a delegation to the ICC review conference in Kampala, which seemed to signal a departure from the policy of previous administrations.

Although the ICC has welcomed the thawing of relations with the US, it remains to be seen the extent to which such engagement will turn into active cooperation with the court.

The ICC has made it clear that it would like the US to cooperate with future investigations, by sharing information and surrendering suspects that may be living within its borders.

This may signal a new era of cooperation. Although Washington remains unwilling to sign up to the ICC for the time being, the conviction that its goals are broadly in line with those of the ICC could lead to greater collaboration in future cases.

Crimes of Aggression

But one of the main obstacles to closer cooperation is the controversy around crimes of aggression, which was one of the main items discussed at the Kampala conference.

At issue is whether the ICC should prosecute such offences. Under the terms of the agreement reached in Kampala, political leaders could be held accountable for directing the use of armed force against another state in contravention of the UN charter – although these provisions will not come into force until 2017 at the earliest.

When it was drawn up in 1998, the Rome Statute indicated that the ICC should have jurisdiction over crimes of aggression. But, since member states have not been able to agree on a definition, the ICC's mandate does not extend to prosecuting the crime for the time being.

At the review conference, delegates agreed that the ICC would be able to initiate an investigation into crimes of aggression on its own, without waiting for a referral from the UN Security Council. This has upset the US, who had hoped that it would be able to wield its UN veto over any such investigation.

Many people in Washington are worried at the way things are going, not least because certain action recently undertaken by the US – including the 2003 invasion of Iraq – could come under the new definition.

Brett Schaefer, a former Pentagon official who worked on ICC policy at between 2003 and 2004, explained, "Here you have a fundamental disagreement over the legality of the war in Iraq. In the US, the war was deemed lawful and the officers fulfilled their responsibility in line with this law. But there is

a very real danger that the ICC would take the opposite view and proceed with indictments against US citizens.”

John Bolton, former under-secretary of state in the Bush administration, and one of the most vocal opponents of the ICC, said, “Fundamentally, the Rome Statute takes an enormously important executive power and puts it into an international institution that is outside the control of any democratic process.”

Bolton is unconvinced that the caveats the ICC has in place to ensure impartiality of the court are adequate – namely the oversight of ICC member states and the principle of complementarity, whereby the court only acts when the judiciary of a member state is unable or unwilling to prosecute suspects.

“I would argue that any body controlled by a hundred-odd countries isn’t controlled by anybody,” Bolton said.

Faced with such negativity towards the court, the White House knows that it must proceed with measured caution in any future cooperation with the court.

Although the US only had observer status at the review conference, and was therefore unable to vote during discussions, Stephen Rapp, the US ambassador for war crimes who led the delegation, told IWPR that engaging with the court would prove more fruitful than remaining outside the discussions.

“As an observer, it is not up to us to impose our views on other delegates,” he said. “Instead, we will be getting people to reflect on the consequences of introducing crimes of aggression, and urging caution.”

Rapp’s main concern is that the ICC should show that it can successfully deal with the cases that it currently has on its plate, before being given additional powers.

“It is very challenging to try war criminals, and many of those indicted by the ICC have not even been arrested yet,” he said. “The ICC must get this right first, and demonstrate effectiveness in dealing with atrocities, before walking into an area that is even more political and controversial.”

Rapp therefore welcomes the decision taken at the review conference to delay the introduction of crimes of aggression into the court’s mandate for seven years.

Going Forwards

Before the conference, Beatrice Le Frapper, who at the time was head of the ICC’s Complementarity and Cooperation Division (she has since left the ICC), told IWPR that she welcomed the spirit of US re-engagement with the court.

“For us it’s very important to have the US in Kampala because the US has been a very strong advocate [of international courts],” she said.

She referred to recent comments made by Johnny Carson, the Africa Director of the US State Department, which called on Sudan’s president, Omar al-Bashir, to appear in The Hague to answer charges before him.

Le Frapper noted that US cooperation could be particularly useful when it comes to making arrests of

indictees.

“We know they could assist countries on a bilateral basis – for instance, to provide logistical and other forms of assistance in the DRC and Uganda,” she said. “Obviously those countries need support to assist in the arrest of Joseph Kony and Bosco Ntaganda.”

Le Frapper also said that the US could help by allowing the ICC to interview victims of alleged atrocities who now reside – often as refugees – within its borders. The ICC prosecutor’s office has been invited by the US to present such requests.

While the US has signalled its willingness to work with the ICC in helping to bring war crimes suspects to justice, some suggest that this does not represent a sea-change in policy towards the court.

“The United States has provided strong and steadfast support for ad-hoc tribunals since the 1990s, and we hope that our experience could be of some value to the ICC, particularly in identifying ways to enhance effective cooperation when it comes to ensuring those who are now the subject of an arrest warrant are brought before the bar of justice,” Rapp, the US ambassador for war crimes, recently told a meeting of Assembly of State Parties in New York.

But John Bellinger, who was a legal adviser to Bush when he held office, said it would be wrong to read too much into the positive noises being made by the Obama administration.

“It is a small step forward, following on from the engagement that began in the second term of the Bush administration,” he said. “What has changed is that State Parties are now more comfortable with bilateral cooperation than they were with the Bush administration.”

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