

Uganda and the International Criminal Court Review Conference- Some Observations of the Conference's Impact in the 'Situation Country' Uganda

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Abstract

The International Criminal Court Review Conference took place in a ‘situation country’ of the International Criminal Court (ICC), meaning in a Country the ICC is currently investigating. Therefore, the Conference had a dimension, which arose besides the factual conference and its outcomes. This article pictures observations of developments in Uganda due to the Conference and shows how issues of International Criminal Law have been increasingly recognized and discussed within the regional society. The meaning of the Conference’s venue in a ‘situation country’ in the Rome Statute system is to be assessed, whereby reference is made to the ICC’s outreach and (positive) complementarity.

A. Introductory Remarks

In May and June 2010, the international community met to review the past activities of the International Criminal Court (ICC) at the ICC Review Conference. A special venue had been chosen and the conference did not take place on neutral ground – like New York or The Hague might be termed – but in a ‘situation country’ where the ICC is presently investigating. Uganda hosted the Conference in Kampala. Factors behind the decision for the tropical venue might have been the geographical placement in (Eastern) Africa or the historical significance of Uganda in the proceedings of the ICC, after its jurisdiction there has been triggered through the first self-referral in the young Court’s history. With this unusual venue, the Conference contributed to current developments and needs in International Criminal Law besides the usual events that take place at any conference.

In this article, precursors to the situation in Uganda with the related pending cases at the ICC are referred to as well as the reason for choosing Uganda as the venue is reflected upon. Based on this approach, impressions on the impacts of the Review Conference taking place in Uganda will be delineated. This includes a portrayal of some observations and developments within Uganda respectively the Conference and linking them to legal issues of the ICC’s outreach, and (positive) complementarity.

B. Uganda as an ICC ‘Situation Country’

Uganda is one of the five ‘situation countries’ (besides the Democratic Republic of Congo, the Central African Republic, Sudan and Kenya) at the ICC.

I. Background: Civil War in Northern Uganda

Uganda, once named by Winston Churchill the ‘Pearl of Africa’, obtained already unfortunate notoriousness in the context of the dictatorship of Idi Amin and the various human rights abuses going along with it. Shortly after that, in Northern Uganda a civil war between the Lord’s Resistance Army (LRA, led by Joseph Kony) and the Government of Uganda (GoU) was fought whereby a serious humanitarian crisis was caused. The LRA is blamed for having conducted numerous attacks on civilians with killings, mutilations and assaults characterized by an extreme savage violence and furthermore for abductions¹, often followed by using and training the abductees as child soldiers (males) as well as sexual slaves (females, “wives”) for the LRA fighters.² The fear of abductions caused ‘night commuters’, which includes a major part of the young Northern population leaving the remote villages every evening to seek shelter in the next town (sometimes several hours away) or in the bush at nighttime. Moreover, a major part of the civilian population had been displaced when the GoU established camps (so called “Internally Displaced Person” (IDP) – camps) and sent the entire civil population of Northern Uganda to those camps. At the crest around 80 percent of the northern population stayed in the IDP-camps.³

¹ About the abductions, see T. Allen, *Trial Justice. The International Criminal Court and the Lord’s Resistance Army*, 2nd ed. (2008), 60-71.

² See Human Rights Watch, ‘Uprooted and Forgotten, Impunity and Human Rights Abuses in Northern Uganda’ (2005), 15, available at <http://hrw.org/reports/2005/uganda0905/uganda0905.pdf> (last visited 8 August 2010); D. E. Goldstone, ‘Embracing Impasse: Admissibility, Prosecutorial Discretion and the Lessons of Uganda for the International Criminal Court’, 22 *Emory International Law Review* 761 (2008), 770-771.

³ About the IDP-camps, see Allen, *supra* note 1, 53.

II. The ‘Ugandan Case’ at the ICC

After the Rome Statute had come into force and the ICC had been established in 2002, Uganda in 2005 was the first State using the instrument of the self-referral pursuant to Arts 13a and 14 Rome Statute.⁴ Accordingly, the Presidency of the ICC assigned the “situation in Uganda” to Pre-Trial Chamber II.⁵ On 8 July 2005, five warrants of arrest against Joseph Kony and four other leading rebels were unsealed.⁶ The warrants included counts of crimes against humanity and war crimes. Investigations of the Office of the Prosecutor (OTP) continued, while in 2006 under the mediation of South Sudan Vice President Riek Machar in Juba/Sudan peace talks between the LRA and the GoU were achieved.⁷ The Ugandan government and the LRA agreed on a ceasefire in August 2006⁸ and several agreements on the progress of the peace process until February 2008.⁹ *Inter alia*, the agreements included how to deal with crimes committed during the civil war.¹⁰ According to these agreements, those accused of severe crimes would

⁴ ICC Press Release, President of Uganda Refers Situation Concerning the Lord's Resistance Army (LRA) to the ICC, ICC-20040129-44, 29 January 2004.

⁵ *Situation in Uganda*, Decision Assigning the Situation in Uganda to Pre-Trial Chamber II, ICC-02/04-1 (Presidency), 5 July 2004.

⁶ *Situation in Uganda*, Warrant of Arrest for Joseph Kony issued on 8 July 2005 as amended on 27 September 2005, ICC-02/04-01/05-53 (Pre-Trial Chamber II), 27 September 2005; *Situation in Uganda*, Warrant of Arrest for Vincent Otti, ICC-02/04-01/05-54 (Pre-Trial Chamber II), 8 July 2005; *Situation in Uganda*, Warrant of Arrest for Raska Lukwiya, ICC-02/04-01/05-55 (Pre-Trial Chamber II), 8 July 2005; *Situation in Uganda*, Warrant of Arrest for Okot Odhiambo, ICC-02/04-01/05-56 (Pre-Trial Chamber II), 8 July 2005; *Situation in Uganda*, Warrant of Arrest for Dominic Ongwen, ICC-02/04-01/05-57 (Pre-Trial Chamber II), 8 July 2005.

⁷ For an overview of the Peace Talks, see Allen, *supra* note 1, 78.

⁸ Juba Agenda Item No. 1 Agreement: Agreement on Cessation of Hostilities between the Government of the Republic of Uganda and the Lord's Resistance Army/Movement, Juba, Sudan, 26 August 2006, available at http://www.beyondjuba.org/peace_agreements/Agreement_on_Cessation_Of_hostilities.pdf (last visited 5 August 2010).

⁹ See listing www.beyondjuba.org/peace_agreements.php (last visited 8 August 2010).

¹⁰ Juba Agenda Item No. 3 Agreement: Agreement on Accountability and Reconciliation between the Government of the Republic of Uganda and the Lord's Resistance Army/Movement Juba, Sudan, 29 June 2007, available at http://www.beyondjuba.org/peace_agreements/Agreement_on_Accountability_And_Reconciliation.pdf (last visited 8 August 2010); Annexure to Agreement on Accountability and Reconciliation, available at http://www.iccnw.org/documents/Annexure_to_agreement_on_Accountability_signed_today.pdf (last visited 8 August 2010).

be tried at the High Court of Uganda before a special division that was to be implemented. During and after the Juba Talks, a debate arose about the influence of the ICC's warrants of arrest on the Ugandan peace talks.¹¹ In addition, the debate about justice versus peace became reinvigorated.¹²

III. Current Situation

1. Relative Peace, LRA Still Active in Surrounding Countries

Today the situation in Northern Uganda is generally termed as one of 'relative peace'¹³. Since 2006 no attacks of the LRA occurred in Uganda. The population in the North is enjoying for the first time for decades a years lasting period of absence of atrocities. The LRA left Uganda, but is still active in the region of Southern Sudan, the Central African Republic (CAR) and the Democratic Republic of Congo (DRC),¹⁴ several hundreds of

¹¹ The "door to peace was closed" after ICC indictments were unsealed, P. Eichstaedt, *First Kill Your Family - Child soldiers of Uganda and the Lord's Resistance Army* (2009), 170-180

¹² C. Dolan, 'Peace First, Justice Later: Traditional Justice in Northern Uganda', *Refugee Law Project Working Paper No. 17* (July 2005) available at http://politicalscience.uwo.ca/faculty/quinn/refugee_law_project_workingpaper.pdf (last visited 9 August 2010); A. Traylor, 'Uganda and the ICC: Difficulties in Bringing the Lord's Resistance Army Leadership before the ICC', *6 Eyes on the ICC (2009-2010)* 1, 23, 34.

¹³ A. Iversen, 'Transitional Justice in Northern Uganda – A Report on the Pursuit of Justice in Ongoing Conflict', 30 September 2009, available at <http://hdl.handle.net/1800/4808> (last visited 20 August 2010), 8, 47, 53; see also L. Lenhart, 'Conflict Transformation, Reconciliation and Peace Building in Northern Uganda – Anthropological Perspectives', African Institute for Peace Communication and Development of the Protestant University of Central Africa, Yaounde, Cameroon, Proceedings of the International Colloquium: The Problematic of Peace and Development in Africa: Balance Sheet and New Stakes in the 3rd Millennium', April 2009, 2 (forthcoming).

¹⁴ "Since early 2008, the LRA is reported to have killed more than 1,500, abducted more than 2,250 and displaced well over 300,000 in the DRC alone. In addition, over the past year, more than 80,000 people have been displaced, and close to 250 people killed by the LRA in Southern Sudan and the Central African Republic.", ICC-OTP Weekly Briefing Issue 40, 1-7 June 2010, 2; on attacks in late 2009 and early 2010 see the recent report of Human Rights Watch, 'Trail of Death: LRA Atrocities in Northeastern Congo', 28 March 2010, 1-56432-614-4, available at <http://www.hrw.org/en/reports/2010/03/29/trail-death-0> (last visited 17 August 2010); on further attacks in 2010, see Human Rights Watch News, 'DR Congo: New Round of LRA Killing Campaign' 21 May 2010, available at

kilometers away from Uganda. Until today, the ICC's warrants of arrest are still unenforced.¹⁵ The Ugandan army, which is called Uganda Peoples Defence Force (UPDF), has troops in the DRC to hunt Kony.¹⁶ The UN Security Council recently declared its deep concern about the ongoing threats of the LRA and called upon the States in the region to cooperate and to take measures to protect the civilian population. Moreover, they called on the UN missions in the region to coordinate strategies and information to protect the civilians.¹⁷

In Northern Uganda, the population returned from the IDP camps and most IDP camps have been closed. In some, however, so called "highly vulnerable people" are still remaining, in particular elders, handicapped people and orphans.

2. Measures to Deal With the Past

Several measures to deal with the past have already been taken in Uganda, whereas a comprehensive policy in this regard is still lacking but in progress. The GoU implemented the National Peace, Recovery and Development Plan for Northern Uganda 2007-2010 (PRDP)¹⁸ starting programs to consolidate the State authority, to rebuild and empower the communities, to revitalize the economy and to build peace and reconciliation. As part of the Justice Law and Order Sector (JLOS)¹⁹, a Working Group on Transitional Justice is developing policy

<http://www.hrw.org/en/news/2010/05/20/dr-congo-new-round-lra-killing-campaign> (last visited 9 August 2010).

¹⁵ The proceedings against Raska Lukwiya have been ceased after his confirmed death: *Situation in Uganda, In the Case of the Prosecutor v. Joseph Kony, Vincent Otti, Okot Ochiambo, Raska Lukwiya, Dominic Ongwen*, Decision to Terminate the Proceedings Against Raska Lukwiya, ICC-02/04-01/05-248 (Pre-Trial Chamber II), 11 July 2007.

¹⁶ R. Kasasira, 'Army kills five LRA in CAR', *Daily Monitor*, 1 June 2010, available at <http://www.monitor.co.ug/News/National/-/688334/929798/-/x0abyi/-/index.html> (last visited 9 August 2010); M. Nalugo, 'Army wants Shs25 Billion to hunt down Kony', *Daily Monitor*, 6 May 2010, available at <http://www.monitor.co.ug/News/National/-/688334/913042/-/wyjgjd/-/index.html> (last visited 9 August 2010).

¹⁷ Security Council, 'Press Statement on Lord's Resistance Army', SC/9791-AFR/1908, 17 November 2009.

¹⁸ National Peace, Recovery and Development Plan for Northern Uganda 2007-2010, available at [http://www.internal-displacement.org/8025708F004CE90B/%28httpDocuments%29/F9933A32534907A8C12573B700779C11/\\$file/PRDP+Sep+2007.pdf](http://www.internal-displacement.org/8025708F004CE90B/%28httpDocuments%29/F9933A32534907A8C12573B700779C11/$file/PRDP+Sep+2007.pdf) (last visited 9 August 2010).

¹⁹ The JLOS is a reform process ongoing across the entire justice sector, see <http://www.jlos.go.ug/>.

recommendations for the legislative to include further elements of Transitional Justice. Present challenges in this context are the possibility of truth-telling mechanisms,²⁰ the decision about the extent of the integration of traditional justice mechanisms in the formal justice system and the handling of land and family disputes.²¹

3. Criminal Procedures

a) War Crimes Division at the High Court of Uganda

Regarding criminal procedures, a War Crimes Division has been established at the High Court of Uganda.²² This happened as a way of fulfilling the commitment to the actualization of the Juba Agreement on Accountability and Reconciliation, to deal with the perpetrators of serious crimes and moreover “to fulfill the principle of complementarity as stipulated under the International Criminal Court Statute”.²³ So far, no case has been transferred to the War Crimes Division. The establishment of a War Crimes Unit within the Directorate of Public Prosecutions (DPP) and of a Special Investigative Unit at the Police is also worth mentioning.²⁴

b) Amnesty

Since the year 2000, an amnesty rule has been enforced aiming to break the circle of violence by encouraging members of rebel groups to

²⁰ C. Rose, ‘Looking Beyond Amnesty and Traditional Justice and Reconciliation Mechanisms in Northern Uganda: A Proposal for Truth-Telling and Reparations’, 28 *Boston College Third World Law Journal* (2008) 2, 345, 371-384.

²¹ JLOS, ‘Transitional Justice in Northern Uganda, Eastern Uganda and some Parts of the West Nile Region’, March 2008, 7, available at <http://www.jlos.go.ug/docs/Transitional%20Justice%20Study%20Report%202007.pdf> (last visited 9 August 2010).

²² State of establishment: Several judges have been appointed, also a registrar, available at http://www.judicature.go.ug/index.php?option=com_content&task=view&id=117&Itemid=154 (last visited 20 August 2010).

²³ See the Ugandan position, stated during an ICC site-visit in Uganda previous to the Review Conference: Resumed 6th Session of the Assembly of State Parties, Review Conference: Report on the Uganda site-visit, ICC-ASP/6/WGRC/INF.1, 4 June 2008, 2-3; also internet presentation of the High Court of Uganda, available at http://www.judicature.go.ug/index.php?option=com_content&task=view&id=117&Itemid=154 (last visited 9 August 2010).

²⁴ *Id.*

return without fearing prosecutions.²⁵ Pursuant to the Ugandan Amnesty Act 2000²⁶, Art. 3 (1), amnesty is declared for “any Ugandan who has at any time since 26 January 1986 engaged in a war or armed rebellion against the government of the Republic of Uganda by –

- (a) actual participation in combat;
- (b) collaborating with the perpetrators of the war or armed rebellion;
- (c) committing any other crime in the furtherance of the war or armed rebellion; or
- (d) assisting or aiding the conduct or prosecution of the war or armed rebellion.”

Such a person shall, pursuant to Art. 3(2) Amnesty Act 2000 “not be prosecuted or subjected to any form of punishment for the participation in the war or rebellion for any crime committed in the cause of the war or armed rebellion.” A ruling in such an unconditional form can be seen as a blanket amnesty.²⁷

The amnesty rule is temporarily restricted (initially to 6 months) due to Art. 16 Amnesty Act 2000 but might be extended by a statutory instrument of the Minister of the Interior. Ever since its enforcement the rule has been extended, which happened lately in May 2010 for another two years.²⁸ The Amnesty Amendment Act from 2006 furthermore empowers

²⁵ Preamble of the Amnesty Act 2000 (Ch. 294), available at http://www.ulii.org/ug/legis/consol_act/aa2000294120/ (last visited 10 August 2010); Amnesty Amendment Act 2006, available at http://www.hurinet.or.ug/index.php?option=com_docman&task=doc_download&gid=47&Itemid=60 (last visited 10 August 2010); critical on the achievement of reconciliation purposes: C. Rose, *supra* note 20, 356-359.

²⁶ Amnesty Act 2000 (Ch. 294), available at http://www.ulii.org/ug/legis/consol_act/aa2000294120/ (last visited 10 August 2010); Amnesty Amendment Act 2006, *supra* note 25; also Allen, *supra* note 1, 74; welcoming the amnesty rules: L. Hovil & Z. Lomo, ‘Whose Justice? Perceptions of Uganda’s Amnesty Act 2000: The Potential for Conflict Resolution and Long-Term Reconciliation’, *Refugee Law Project Working Paper, No. 15* (February 2005) available at <http://unddr.org/docs/Who%5C%27s%20Justice.pdf> (last visited 10 August 2010).

²⁷ On inadmissibility of blanket amnesties, see K. Ambos, ‘The Legal Framework of Transitional Justice’, in K. Ambos, J. Large & M. Wierda (eds), *Building a Future on Peace and Justice* (2009), 54 *et seq.*

²⁸ The Amnesty Act (Extension of Expiry Period) (No. 2), Instrument 2003; The Amnesty Act (Extension of Expiry Period), Instrument, 2010.

the Minister of Justice to exclude persons from the amnesty rule.²⁹ So far this instrument has not been used. Since the inception of the Amnesty Commission more than 12,000 amnesties have been granted to former LRA rebels.³⁰ Just recently during the ICC Review Conference, a prominent former LRA spokesman was granted amnesty.³¹ At this stage and on a national level, the existing blanket amnesty rule seems to contradict the effective work of the War Crimes Division at the High Court.³² It remains to be seen in how far this challenge will be approached by the Ugandan legislative, judicative and/or executive in the future.³³

c) Applicable Ugandan Law in Potential Criminal Cases

Recently, the International Criminal Court Bill passed the legislative process at the Parliament of Uganda.³⁴ This act intends, *inter alia*, to domesticate the Rome Statute into national law. A final version of the ICC Act 2010 has not been published until finalization of this paper.

As long as an ICC Act is not enforced, the Geneva Conventions Act of 1964³⁵, which domesticated the Geneva Conventions, is applicable. According to Art. 2 Geneva Conventions Act 1964 grave breaches of the conventions are to be punished.³⁶ Moreover, the Penal Code Act of 1950³⁷ is

²⁹ Para. 2A of the Amnesty (Amendment) Act, 2006 (Ch. 294), *supra* note 26.

³⁰ Information from the Amnesty Commission at 8 February 2010.

³¹ Former LRA spokesman David Nyekorach-Matsanga obtained amnesty on 4 June 2010 in Kenya: R. Olita, B. Among, C. Kiwawulo, 'Amnesty Pardons Matsanga', *Saturday Vision*, 4 June 2010, 4; critical notion hereto: S. Oola, 'Matsanga Should not Have Been Given Amnesty', *The New Vision*, 10 June 2010, 10.

³² Oola even speaks of a "transitional justice dilemma" between amnesty and accountability and reconciliation signed at the Juba Peace Talks, *supra* note 31, 10.

³³ Giving recommendations: R. Murphy, 'Establishing a Precedent in Uganda: The Legitimacy of National Amnesties under the ICC', *3 Eyes on the ICC 2006* 1, 33, 52.

³⁴ International Criminal Court Bill 2006, published in the Uganda Gazette No 67 Volume XCVIX, 17 November 2006; for the record of the parliament passing the bill, see Hansard of the Parliament of Uganda, Wednesday 10 March 2010, para. 256, available at http://www.parliament.go.ug/hansard/hans_view_date.jsp?dateYYYY=2010&dateMM=03&dateDD=10 (last visited 9 August 2010); the final ICC Act 2010 has not been published until this paper's completion.

³⁵ Uganda Geneva Conventions Act 1964 (Ch. 363), available at http://www.ulii.org/ug/legis/consol_act/gca1964208/ (last visited 9 August 2010).

³⁶ Pursuant to Art. 2 Uganda Geneva Conventions Act 1964, the maximum penalty is life imprisonment.

³⁷ Uganda Penal Code Act 1950 (Ch. 120), available at http://www.ulii.org/ug/legis/consol_act/pca195087/ (last visited 9 August 2010).

applicable. In particular, the offences of treason (Art. 23), murder (Art. 188 *et seq.*), assaults (Art. 235 *et seq.*), kidnapping and abduction (Art. 239 *et seq.*), rape (Art. 123 *et seq.*) and arson (Art. 327) might be considerable.

d) Complementarity

The ICC is a court of last resort. Due to the principle of complementarity, codified in Art. 17 Rome Statute, a case is only admissible at the ICC, when the State in question is unwilling or unable of own prosecutions. The ICC started investigating the situation in Uganda after a self-referral of the Ugandan government³⁸ which made the decision about complementarity easy in those days.

Today, many eyes are watching Uganda due to an upcoming challenge in the ICC's decision about complementarity.³⁹ The implementation of the War Crimes Division at the High Court⁴⁰ and the domestication of the Rome Statute in the ICC Act 2010 are officially directing to fulfill the requirements of the principle of complementarity. Ugandan officials seem to feel that the requirements of complementarity have already been met and officials have stated that they will bring some of the suspects to trial before the ICC.⁴¹ However, it is in question which minimal requirements domestic

³⁸ ICC Press Release, *supra* note 4.

³⁹ W. Burke-White & S. Kaplan, 'Shaping the Contours of Domestic Justice: The International Criminal Court and an Admissibility Challenge in the Uganda Situation', *University of Pennsylvania Law School Paper* (2008), available at http://lsr.nellco.org/cgi/viewcontent.cgi?article=1220&context=upenn_wps (last visited 10 August 2010); K.-P. Apuuli, 'The ICC's Possible Deferral of the LRA Case to Uganda', 6 *Journal of International Criminal Justice* (2008) 4, 801; A. Greenawalt, 'Complementarity in Crisis: Uganda, Alternative Justice, and the International Criminal Court', 50 *Virginia Journal of International Law* (2009) 1, 107.

⁴⁰ As stated on the War Crimes Division's website, it is "intended to fulfill the principle of complementarity as stipulated under the International Criminal Court Statute", see http://www.judicature.go.ug/index.php?option=com_content&task=view&id=117&Itemid=154 (last visited 9 August 2010).

⁴¹ Judge Kiiza, High Court of Uganda, Head of the Special War Crimes Division, stated at the ICC Review Conference that the "national courts were ready and willing to try anyone" and due to the recently passed ICC bill, they will be capable "to prosecute persons at the domestic level accused of the crimes within the jurisdiction of the Court", Review Conference of the Rome Statute, Stocktaking of International Criminal Justice, Taking Stock of the Principle of Complementarity: Bridging the Impunity Gap, (Draft) Informal Summary by the Focal Points, ICC-RC/ST/CM/1, 22 June 2010, paras 25, 26; see also argumentation of the Ministry of Justice and Constitutional Affairs of Uganda in its reply to the 'Request for Information from the

prosecutions have to meet to challenge the ICC's decision about complementarity.⁴² Anyway, the existing amnesty rule questions the ability of the Ugandan legislative to conduct trial proceedings, as it is currently applicable to any Ugandan and therefore also applicable to the ICC's accused.⁴³

4. Conceptions and Opinions of the ICC Within Uganda

There is no united opinion about the ICC and its investigation in Uganda. When the peace versus justice debate increased during the Juba peace talks, a considerable part of the population lacked appreciation and the ICC has been criticized as hindering the peace process, exacerbating violence⁴⁴ and coming at the wrong time⁴⁵. This argument has been used less often nowadays.

Meanwhile, the conception of the ICC is improving. Partly, the ICC is criticized as not recognizing properly traditional justice approaches⁴⁶, which are still practiced, especially in the more remote areas in Africa.⁴⁷ Furthermore, some do not understand why the ICC is only investigating against the LRA, but not against the opposing side (UPDF and the government),⁴⁸ and consequently the ICC is perceived as biased.⁴⁹

Republic of Uganda on the Status of Execution of the Warrants of Arrest', ICC-02/04-01/05-286-Anx2, 28 March 2008, 3.

⁴² E.g. Apuuli is asking for some appropriately instituted proceedings, *supra* note 39, 813; therefore critical on low threshold to ICC's admissibility: N. Jurdi, 'Some Lessons on Complementarity for the International Criminal Court Review Conference: Africa and the International Criminal Court', 34 *South African Yearbook of International Law* (2009), 28, 49-50.

⁴³ Similar Burke-White & Kaplan, *supra* note 39, 31-32 (calling for a reform of the Amnesty Act).

⁴⁴ Allen, *supra* note 1, 102-127.

⁴⁵ 5th Session of the Assembly of State Parties, Strategic Plan for Outreach of the International Criminal Court, ICC/ASP/5/12, 29 September 2006, Part II, paras 105-119.

⁴⁶ About traditional justice mechanisms in Uganda, see the Report of Liu Institute for Global Issues, Gulu District NGO Forum in cooperation with Ker Kwaro Acholi, *Roco Wat I Acoli. Restoring Relationships in Acholi-land: Traditional Approaches to Justice and Reconciliation* (September 2005).

⁴⁷ See R. Todwong, 'African Justice Systems Promote Reconciliation', *The New Vision*, 9 June 2010, 13.

⁴⁸ In this regard, the population often refers to the Ugandan saying: "Where two elephants are fighting, only the grass is suffering"; concerning alleged human rights abuses from governmental side: Report 'Between Two Fires – The Human Rights

Some other opponents of the ICC are criticizing the ICC in general as targeting mainly African Countries. Therefore, the ICC's actions are partly perceived as a new form of legal colonialism.⁵⁰

C. Reasons for the Venue in Uganda

Uganda applied to host the Conference⁵¹ and won the bid.⁵² Some issues concerning the decision about this venue are to be emphasized.

During the process of finding an appropriate venue, the Assembly showed interest in implementing the legislation at a national level.⁵³ In fact, Uganda advertised *inter alia* with the (then recently passed) ICC bill in the legislative process⁵⁴ and hereby showed a growing commitment to the ICC in its application to host the Conference.

Located in Eastern Africa, a venue has been chosen in a region where the ICC is mainly active at present (investigations in DRC, CAR, Southern Sudan, Kenya and Uganda). Despite the recent civil war, Uganda is fairly peaceful and stable and has a relatively low criminality rate in comparison to the countries surrounding it.⁵⁵

As the Assembly of State Parties to the ICC noted in their 6th session, Uganda hosting the Conference could help to reach out to the region and could have a positive impact on the relationship between the Court and the civil society and victims.⁵⁶ Portrayed from the other side, the Review Conference offered an opportunity for Uganda and the region to appreciate

Situation in "Protected Camps" in Gulu-District', *Human Rights Focus (HURIFO)*, 26 February 2002, 43.

⁴⁹ Allen, *supra* note 1, 96-102.

⁵⁰ D. Hoile, 'International Criminal Court has Double Standards', *The New Vision*, 8 June 2010, 15.

⁵¹ Uganda's bid to host the conference available at http://www.iccnw.org/documents/ASP6_UgandaBidReviewConference_07Dec07.pdf (last visited 9 August 2010).

⁵² Resolution on the Venue of the Review Conference, ICC-ASP/7/Res.2, 21 November 2008; Argentina also applied for hosting the conference: 7th Session of the Assembly of State Parties, Interim Report of the Focal Points on the Review of the Rome Statute, ICC-ASP/7/WGRC/INF.1, 11 November 2008, 1.

⁵³ Report on the Uganda site-visit, *supra* note 23, 5.

⁵⁴ Uganda's bid to host the conference, *supra* note 51, 2-6.

⁵⁵ Similarly stated in Report on the Uganda site-visit, *supra* note 23, 4.

⁵⁶ 6th Session of the Assembly of State Parties, Review Conference: Scenarios and Options, ICC-ASP/6/INF.3, 4 December 2007, 6.

the ICC and identify with it⁵⁷ and for the victims and the affected communities to make their voices heard,⁵⁸ which is best possible in a 'situation country'.

D. Impressions on the Impact of the Review Conference in Uganda

Apart from the core Conference meetings on the international level, the Conference had a meaning on the national and/or regional level as well. The latter dimension has not been achieved in recorded plenary meetings, but in the circumstances entailed by the setting of the Conference in a 'situation country'. Therefore, some observations of actual developments and activities are to be portrayed briefly. Based on this information, the meaning for the ICC's outreach and the issue of (positive) complementarity will be raised.

I. Some Observations of Developments and Activities due to the Conference

Already prior to the Conference, a number of conference-related events took place. Some months in advance, several members of the ICC and the Assembly of States Parties came to Uganda to meet stakeholders in leading positions as well as to meet victims and affected communities in Northern Uganda.⁵⁹ Roundtable discussions and university lectures took place⁶⁰ and NGOs discussed their positions on their interest and opinions on the ICC and the Review Conference.⁶¹

⁵⁷ Stated by Ugandan representatives previous to the ICC Review Conference, Report on the Uganda site-visit, *supra* note 23, 4.

⁵⁸ Sang-Hyun Song, 'ICC Kampala Conference to Open new Frontiers', *The Observer*, 26 May 2010, available at http://www.observer.ug/index.php?option=com_content&task=view&id=8662&Itemid=66 (last visited 10 August 2010)

⁵⁹ See *e.g.* ICC Newsletter, 'The Visit of the President of the Assembly and Delegates to Uganda', ICC-ASP-NL-04/10, May 2010, 12; A. Mugisa & T. Bwambale 'ICC President Visits Uganda', *Daily Monitor*, 25 January 2010; 'Civil Society Initiatives in Uganda Ahead of the Review Conference' available at <http://www.iccuganda2010.ug/index.php?page=civil-society-initiatives> (last visited 9 August 2010).

⁶⁰ See ICC Newsletter, 'Interview with Ms. Elisabeth Rehn', ICC-ASP-NL-04/10, May 2010, 13; Newsletter for January till March 2010 of APILU (Advocates for Public in

During the Conference, the awareness of the ICC amongst the general public increased. This was illustrated in the coverage by the two leading daily newspapers of Uganda.⁶² During the period of the Conference, the media coverage of issues of the ICC and its Review Conference increased evidently. Just to mention a few examples of the Conference's vivid media coverage, prominent stakeholders from the international community published guest articles⁶³ or were interviewed.⁶⁴ Several Ugandan stakeholders took position on the ICC.⁶⁵ Moreover, a debate between Ugandan stakeholders arose about the possibility of prosecution against Museveni, the President of Uganda, and the UPDF by the ICC.⁶⁶ Furthermore, voices have been heard about the criticism against the ICC that it is targeting African countries.⁶⁷

Moreover, apart from this Conference, stakeholders from the international community met with regional community members and affected communities.⁶⁸ A well-attended public side-event, a 'Victims

International Law in Uganda), 2-4, available at <http://www.apilu.org/Newsletters/Jan-March%20Newsletter2010.pdf> (last visited 9 August 2010).

⁶¹ E.g. a workshop for representatives of several victims' related NGOs took place in February in Gulu (Northern Uganda) to come to a common position during the conference, mentioned in: Resumed 8th Session of the Assembly of State Parties, Report of the Bureau on Stocktaking: The Impact of the Rome Statute system on Victims and Affected Communities, ICC-ASP/8/49, 18 March 2010, 11.

⁶² 'The New Vision' and 'Daily Monitor'.

⁶³ B. Ki-Moon, 'ICC, a Growing System of Global Justice, Peace', *The New Vision*, 30 May 2010, 17.

⁶⁴ Interview with Luis Moreno-Ocampo 'Kony not Interested in Peace', *Sunday Vision*, 6 June 2010, 17; I. Musa Ladu, 'Ocampo's Plan to Hunt Kony', *Daily Monitor*, 30 May 2010, available at <http://www.monitor.co.ug/News/National/-/688334/928750/-/x09mjk/-/index.html> (last visited 20 August 2010).

⁶⁵ D. Pachuto, 'Why the ICC is Important for You and Me', *Daily Monitor*, 19 January 2010, 12; M. Sserwanga, 'ICC Conference Offers Opportunity to Commit to Justice', *Saturday Monitor*, 28 May 2010; Todwong, *supra* note 47, 13.

⁶⁶ J. Eriku, 'ICC Told to Probe Army for War Crimes', *Daily Monitor*, 2 June 2010, 8; O. Opondo, 'Otunnu's Outbursts are Driven by Fear', *The New Vision*, 7 June 2010, 13.

⁶⁷ Hoile, *supra* note 50, 15 (speaking of a new 'legal' colonialism); Vision Reporter, 'Africa Should Embrace ICC, says Museveni', *The New Vision*, 1 June 2010, 3; C. Bekunda & M. Tabajjukira, 'We are not Targeting African Leaders, says ICC Prosecutor', *Saturday Vision*, 28 May 2010, 4.

⁶⁸ P. Aber, 'ICC President Meets Kony War Victims', *The New Vision*, 30 May 2010, 2.

Football Day’ where victims met with representatives from the ICC and from NGOs is also worth emphasizing.⁶⁹

Finally, the Conference has been accompanied by a ‘Peoples Space’, a parallel forum, aimed at providing an opportunity for the civil society (especially: victims’ and affected communities’ representatives) to participate at the Conference. Located on the Conference’s premises, regional NGOs, research institutions and other civil stakeholders represented their interests at informational events, lectures and discussions, where documentaries were shown and victims were interviewed. Further, it was possible for visitors of the Peoples Space to follow the Conference’s activities via a video transmission. On a “Wall of Freedom”, visitors in the Peoples Space could comment on the impact of the ICC.⁷⁰

Unfortunately, the People’s Space – due to the strong restrictions on entry to the Conference’s premises out of security reasons and the need to pass through an accreditation process – might not have been as open to the civil society and to the public as it might have intended to be. Visitors of the Peoples Space were members of regional NGOs and other institutions or delegates from the Conference, but rarely individuals from the Ugandan public. In the end, the People’s Space functioned as a (still valuable) platform for regional stakeholders and intermediaries to approach the delegates of the Conference.

II. ICC Outreach for Uganda and the Region

The ICC established an outreach program to bring information to the affected communities to ensure an understanding of the investigations and proceedings in all phases of its activities. Regarding to the ICC’s outreach strategy, serving justice needs to be seen and therefore “making judicial proceedings public is a central element of a fair trial and therefore necessary to ensuring the quality of justice.”⁷¹ This task is seen as imperative to fulfill

⁶⁹ http://www.victimsfotballday.org/ICC_football/Home.html (last visited 9 August 2010).

⁷⁰ Some inscriptions were: “Let us work together to realize a world where peace, development and freedom and human rights are ensured through strengthening the international justice system” (by H. E. Ban Ki Moon), “Justice for victims”, “Peace and Justice has no substitute”, “Complementarity is the way to go”, “The ICC which Africa created in 1998 is clearly very strong in Uganda today and shows Africa’s resolve to end impunity”.

⁷¹ Strategic Plan for Outreach of the ICC, *supra* note 45, para. 2.

the Court's mandate.⁷² The outreach shall be conducted through a "two-way communication", whereby the Court conveys its role to the population to enable it to better know, understand and reach the Court's work, and in return learns from the communities about their views and needs.⁷³ At the ICC Review Conference, the need of a robust outreach program was highlighted.⁷⁴

The ICC outreach activities are crucial for the success of justice and for the still emerging field of international criminal law. Justice served on the international level comes along with the danger of not being perceived by the victims and the affected communities. For this reason, especially those who have been affected most need to be involved. If the processes on the international level have not been transparent and understandable, justice will not have been there for them. This can, in turn, eventually endanger the peace and stabilization processes. Finally, the still emerging field of International Criminal Law is depending on the commitment of the citizens of its supporting member States.

While it has been agreed on the purpose and need of the outreach, the way and extent in which the outreach shall be conducted in and performed remains a challenge. The outreach activities are still in need to be further optimized and adapted to the needs of victims, whereby creative ways to strengthen the outreach are in quest.⁷⁵ As it has been concluded in the stocktaking process of the ICC Review Conference, difficult tasks are (among others) to fill information gaps within the affected population. Due to lack of sufficient information, many victims have unrealistic expectations about the process and reparations.⁷⁶ This applies especially for people living in remote areas and for women and children.⁷⁷

In Uganda, the ICC is following a specific outreach strategy that is recognizing the contextual factors⁷⁸ and conducts its activities from the ICC

⁷² *Id.*, para. 3.

⁷³ *Id.*; Review Conference of the Rome Statute, Stocktaking of International Criminal Justice: Impact of the Rome Statute System on Victims and Affected Communities, Draft Informal Summary by the Focal Points, RC/ST/V/1, 10 June 2010, para. 26.

⁷⁴ *Id.*, paras 25, 28.

⁷⁵ *Id.*, paras 54, 55.

⁷⁶ *Id.*, paras 48, 50.

⁷⁷ *Id.*, para. 49.

⁷⁸ Strategic Plan for Outreach of the ICC, *supra* note 45, paras 105-107.

field office in Kampala with various activities in Northern Uganda.⁷⁹ During the Review Conference, the outreach team from the ICC Kampala field provided support for the Conference activities, for example by providing information materials, briefing journalists and supporting the organization of the Court's side events.⁸⁰

To reach victims and affected communities in an outreach process, intermediaries are holding an important role. They practice a leading position (religions, political, economical etc.), often being members of the affected population. The role of intermediaries has been discussed at the ICC Review Conference as part of the stocktaking process about the impact of the Rome Statute on victims and affected communities. The role of intermediaries has been concluded as remaining an unclear challenge.⁸¹ The dialogue with intermediaries seems to be potentially extraordinarily fruitful. Often, intermediaries present an umbrella of interest and might be able to communicate the needs of the population to the Court. After the dialogue, they can function as a speaking tube towards the population. Interestingly, a big number of intermediaries – especially from Uganda, but also from other countries in the region and worldwide – has been involved in the Conference's activities, *e.g.* those at the People's Space and in the surrounding events. Therefore, the Conference served as an exchange platform between stakeholders representing international interests and local intermediaries.

From this point of view, the ICC Review Conference in Uganda has been the biggest outreach event ever to take place in international law.

III. (Positive) Complementarity

Regarding the endeavours in Uganda to implement an effective body for prosecution of crimes of international relevance, the Conference offered a unique opportunity and forum for capacity building and knowledge transfer and for assessing the needs of prospective actions in this respect.

⁷⁹ As an example, ICC Press Release, ICC Conducts Outreach Workshop with People with Disabilities in Teso Sub-Region, North Eastern Uganda, ICC-CPI-20090204-PR388, 4 February 2009.

⁸⁰ Calendar of activities of the ICC Outreach Unit within the Kampala field office for June 2010, available at http://www.icc-cpi.int/menus/icc/structure%20of%20the%20court/outreach/uganda/calendar%20of%20activities/calendar%20of%20activities_%20june%202010 (last visited 9 August 2010).

⁸¹ Review Conference of the Rome Statute, *supra* note 40, para. 52.

According to the concept of positive (or proactive)⁸² complementarity, the ICC is called to motivate and assist national legal bodies in their activities to prosecute crimes of an international dimension on the national level.⁸³ All State parties of the Rome Statute are obliged to prosecute international crimes⁸⁴ by themselves, but the complex nature of those crimes brings difficulties for some countries to meet this responsibility.⁸⁵ Here, the Court should strive to facilitate national entities with the necessary tools to conduct prosecutions. Possible activities towards positive complementarity are closely connected to the Office of the Prosecutor's (OTP) mission and the OTP's duties in the several investigative stages,⁸⁶ whereby a comprehensive policy on positive complementarity could help to enhance the effectiveness of fulfilling its mandate.⁸⁷ In the current prosecutorial strategy of the OTP, a positive approach to complementarity is incorporated as a fundamental principle⁸⁸ and defined as encouraging genuine national proceedings where possible, but without a direct involvement in capacity building and technical or financial assistance.⁸⁹

Apart from the important position of the OTP in these tasks – namely positive complementarity – the concept involves other ICC institutions⁹⁰ as well. The underlying principles concern the ICC as a whole, which comes especially to importance where the ICC conducts an outreach as it did while holding its first Review Conference in a 'situation country'.

During the Review Conference, State parties expressed their views, interests and needs in the current development in a vivid exchange. Coming

⁸² W. Burke-White, 'Proactive complementarity: The International Criminal Court and National Courts in the Rome System of International Justice' 49 *Harvard International Law Journal* (2008) 1, 53-54.

⁸³ *Id.*

⁸⁴ Preamble of the Rome Statute.

⁸⁵ ICC Newsletter, 'Interview with Ambassador Kirsten Biering on Positive Complementarity', ICC-ASP-NL-03/10, January 2010, 18-19.

⁸⁶ On the legal mandate for a policy of positive complementarity: Burke-White, *supra* note 82, 76-82.

⁸⁷ *Id.*, 73 calls for a policy of proactive complementarity; similar in W. Burke-White, 'Implementing a Policy on Positive Complementarity in the Rome Statute Justice System', 19 *Criminal Law Forum* (2008) 1, 59-85

⁸⁸ The Office of the Prosecutor, 'Prosecutorial Strategy 2009-2012', 1 February 2010, paras 15-17.

⁸⁹ *Id.*, paras 16-17.

⁹⁰ *E.g.* on a possible role of the Assembly of States Parties, N. Jurdi, *supra* note 42, 53-54.

to terms with positive complementarity, this has been an important assessment forum. Interestingly, the Head of the implemented War Crimes Division at the High Court of Uganda explicitly called for assistance in capacity building⁹¹ and simultaneously expressed the readiness and willingness to handle cases with crimes of an international character at the High Court.⁹² Here, the need and importance of measures within the concept of positive complementarity became evidently apparent. A prospective sphere of activity of the ICC is to be seen here.

E. Conclusions

Bringing the ICC Review Conference to the 'situation country' Uganda offered a wide range of possibilities to the ICC and to the regional society besides the actual conference proceedings.

The Conference functioned as a big outreach event for the population in Uganda and the region. The ICC showed its presence and interest and thereby enhanced the identification with its work in an environment of a diverse spectrum of opinions about it. This might lead to a further understanding of and commitment to the ICC not only by State actors but also by the affected communities.

The Conference's delegates highly recognized regional interests of the area, where the ICC so far has been most active. This consideration took place in the stocktaking process prior and during the Conference as well as in a part of the two-way-communication that characterizes the ICC's outreach. The perception, which was gained, might influence future developments. For example, an approach to measures of positive complementarity could be expected, where capacity building have been or will be demanded.

⁹¹ Judge Kiiza, *supra* note 41, para. 24 (with special regard to needed capacity building for the prosecution).

⁹² *Id.*, para. 25.