

L E G E L

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## EXECUTIVE SUMMARY

At the time of this writing, just over ten years after the Rome Statute governing the International Criminal Court (ICC) entered into force, the Court has issued warrants of arrest or summonses to appear against twenty-nine individuals. To date, fourteen of these individuals have appeared before the Court for purposes of participating in a hearing before a Pre-Trial Chamber. In these cases, the Pre-Trial Chamber has confirmed charges should be confirmed and the case should be sent to trial. While the Pre-Trial Chamber has confirmed charges against the majority of individuals appearing before them thus far, they have declined to confirm the charges against four suspects, meaning that the Court does not believe there is sufficient evidence to believe that they committed the crimes. Furthermore, even in those cases that do survive the confirmation hearing and proceed to trial, charges have occasionally been dropped by the Pre-Trial Chamber due to an insufficiency of evidence.







Size and Composition of Investigation Teams

Issues Relating to the ~~Size~~ Composition of Investigation Teams

Pursuant to his strategy of carrying out short, focused investigations,  
WKH , & & ¶ V ILUVW 3URVHFXWRU GHOLEHUDWH  
DSSURDFK WR LQYHVWLJDWLRQV 7KXV IRU  
2013 budget the Office requests just for six professional staff

drawbacks to limiting the size of investigative teams. Thus, although the makeup of any given investigation team will depend on the nature and demands of a particular investigation, the OTP may want to reconsider its small team approach and recruit more investigators. Additional investigators could be used to increase the size of each investigative team, and/or to increase the number of teams per situation. Of course, expanding the number of investigators at the ICC will require greater resources from the ASP, particularly if the OTP maintains or expands the number of investigations it conducts in the

## Selection of Suspects and Crimes to Be Investigated

Issues Relating to the Selection of Suspects and Crimes to be Investigated

A fundamental question that must be answered in any investigation is how quickly the invhoQ



charge of sexual violence as genocide, crimes against humanity or war crimes against the type of high

the services of at least one intermediary after serious concerns arose regarding his impartiality; and that the OTP relied on intermediaries not only to contact witnesses on behalf of the Office, but to propose potential witnesses.

**Recommendations Relating to Balancing Security Concerns with the Need to Preserve the Integrity of Investigations**





believes, from the start of the process, will lead to successful convictions. Completing an investigation against a suspect prior to seeking a warrant or arrest or summons to appear will also encourage compliance with Article 54(a) of the Rome Statute, which requires that the Prosecution investigate incriminating and exonerating circumstances equally. Lastly, despite the pressure on the OTP to move expeditiously in addressing the most serious crimes of concern to the international community, the credibility of the Office and the Court will be greatly improved if the Prosecution is seen to be limiting its cases to those supported by the necessary evidence. Of course, the ICC Appeals Chamber has held that the Prosecution need not fully complete its investigation prior to the start of the confirmation proceedings in a case, and we are not suggesting that the Prosecution should be precluded from using evidence obtained after the charges have been confirmed. In fact, we recognize that certain witnesses—particularly insider witnesses—often need to be cultivated and may be more likely to come forward with information that is useful to the Prosecution after perceiving that the case is likely to progress in court. However, as a policy matter, the Prosecution should aim to complete as much of its investigations as possible before bringing a case to the judges.

Another measure that may help to expose potential weaknesses in the 3 U R V H F X W L R Q ¶ V F D V H D C i n v e s t i g a t i v e s t e p s W K D W D O have been undertaken before the OTP seeks an arrest warrant or summons to appear would be to implement a rigorous and formal 3 S H H U U H Y L H Z ´ S U R F H V V Z L W K L Q W K H 2 7 3 V L I Pursuant to this process, lawyers and investigators from throughout the , & 7 < 3 U R V H F X W R U ¶ V R I I L F H D U H L Q Y L W H G W R review of the charges and evidence assembled by a particular team for the purpose of eliminating factually or legally questionable charges before the case is presented to the Chief Prosecutor and before an indictment is sought. While we understand that the ICC O T P s engaged in a consultative process aimed at internally reviewing the sufficiency of evidence in a case, it is not clear that this process occurs routinely or on a mandatory basis, and, in any event, the process does not appear to take place until the confirmation of charges proceedings. Thus, we recommend that the OTP adopt a policy of routinely conducting rigorous reviews with colleagues from other teams much earlier in the process, ideally before an arrest warrant request is made.



entity responsible for reporting the facts itself corroborated or verified the relevant facts. There is also a potential problem with reports, as the ICC OTP is obligated to investigate incriminating and exonerating circumstances equally, but third parties not connected to the Court are obviously under no such obligation. Finally, even if the entity responsible for producing the report is not partial to any particular party or perspective, the fact is that report was produced for purposes other than to support an impartial criminal investigation, and thus is likely not suitable as legal evidence.

### Recommendations Relating to the Reliance on Indirect Evidence

Given the issues discussed above, we recommend that, as a matter of practice, the OTP rely on secondary sources only for purposes of establishing contextual or pattern evidence, and only where the sources are amply corroborated by other evidence. As a practical matter, this will likely mean that the Office needs to devote greater time and resources to its investigations from the outset so that it may gather the necessary witness statements, forensic material, and documentary evidence whose authenticity has been verified by ICC investigators. This likely will require not only an expansion in the number of investigators on a given team, but also investments in specialized units with expertise in forensics or technological innovations that may contribute to evidentiary collection, or at least the cultivation of experts that may be engaged on an ad hoc basis with respect to particularly technical issues to the extent such expertise is not already available in-house. It may also necessitate a departure from the current policy that this policy may be appealing from an efficiency perspective, in the context of successfully secure warrants for arrest or sustain charges in a case. Of course, reports produced by non-governmental and inter-governmental organizations can be critical to the work of the OTP as lead evidence. Importantly, the OTP may be able to increase the value of such reports by providing relevant guidance to organizations active in countries where the Office is investigating, regarding both investigative techniques and the process by which information is shared with the OTP.

## I. INTRODUCTION

At the time of this writing, just over ten years after the Rome Statute governing the International Criminal Court (ICC) entered into force, the Court has issued warrants of arrest or summonses to appear against twenty-nine individuals charged with committing genocide, crimes against humanity and/or war crimes.<sup>3</sup> To date, fourteen of these individuals have appeared before the Court either voluntarily or following apprehension and transfer to ICC custody for purposes of participating in a hearing before a Trial Chamber to determine

ZKH WKHU WKH 3URVHF XWLRQ V FKDUJHV VKR should be sent to trial.<sup>4</sup> Specifically, pursuant to Article 61 of the Rome Statute, the confirmation of charges process requires that the Pre-Trial Chamber determine whether the Prosecution presented<sup>3</sup> V X I I L F L H Q W H Y L G H Q F H W R H V W D E O L V K V X E V the individual is responsible for the charges contained in the warrant of

confirmed charges against the majority of individuals appearing before the Court thus far, they have declined to confirm the charges against four suspects, meaning that the Prosecution has failed to convince the &RXUW WKDW WKHUH DUH <sup>3</sup>VXEVWDQWLDO JUR against nearly one third of the individuals who have appeared before it.<sup>6</sup> Furthermore, even in those cases that do survive the confirmation hearing and proceed to trial, charges have occasionally been dropped by the PreTrial Chamber due to a lack of evidence.<sup>7</sup> Finally, the first case to actually go to trial before the Court involved limited charges that were widely perceived as not fully reflecting the criminal conduct of the accused.<sup>8</sup> and the Trial Chamber, in its judgment, determined that the evidence provided \ <sup>3</sup>>D@ VHULHV' RI 3URVHFXW FRXOG QRW <sup>3</sup>VDIHO\ EH UHOLHG RQ' DV D UH\ WKH 3URVHFXWRU 273 LQDSSURSULDWHO\ G

cultural and linguistic barriers to interviewing witnesses; persistent security concerns; the overwhelming scale of the crimes under investigation; and the fact that those working in international institutions hail from different legal traditions and thus are likely to have different views on appropriate investigative policies and practices.<sup>10</sup> We also appreciate that, despite these challenges, the OTP has achieved substantial successes in a short period of time, as evidenced most strikingly by the recent conviction of its first accused and the issuance of warrants and summonses involving a wide range of charges for war crimes, crimes against humanity, and genocide against multiple suspects across seven situations in fewer than ten years.

Nevertheless, we believe that as the OTP undergoes its first change

RI OH DGHUVKLS ZLWK WKH GHSDUWXUH RI WK

Prosecutor<sup>12</sup> it is worth examining some of the potentially

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<sup>10</sup> See e.g., Hiroto Fujiwara & Stephan Parmentier, *Investigations in INTERNATIONAL PROSECUTOR* 573-75 (Reydams et al. eds. 2012); Morten Bergsmo & Michael J. Keegan, *Case Preparation for the International Criminal Tribunal for the Former Yugoslav* in *MANUAL ON HUMAN RIGHTS MONITORING: AN INTRODUCTION FOR HUMAN RIGHTS FIELD OFFICERS* 6-9 (2008); Michael J. Keegan, *The Preparation of Cases for the ICTY* *Transnational Law & Contemporary Problems* 119, 122-5 (1997); Sergio Brammertz, *International Criminal Tribunals & Conducting International Investigation*, Presentation Delivered at the Max Planck Institute, July 2009, at 7.

<sup>11</sup> , Q WKH FRQWH[W RI WKH , & & WKH & RXUW ¶ V RSHUDWL F DWHJR U W L R Q W L D X G ³ F D V H V 7 U S F O R & J K L P E J H W R , 3 U H L W X D D U H ³ J H Q H U D O O \ G H I L Q H G L Q W H U P V R I W H P S R U D O W I S D U D P H W H U V ´ D Q G ³ H Q W D L O W K H S U R F H H G L Q J V H Q Y L V whether a particular situation should give rise to a criminal investigation as well as WKH L Q Y H V W L S i d u m n o t h e D e m o c r a t i c R e p u b l i c o f C o n g o Decision on the Applications for Participation in the Proceedings of VPRS1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6, 001/04-EN-Corr, ¶ 65 (Pre-Trial Chamber I, - D Q X D U \ , Q R W K H U Z R U G V W K H ³ V L W X D W L R Q ´ designed to determine whether crimes have been committed within a given countr3(s)m4( )F(

SUREOHPDWLF DVSHFWV RI WKH 2IILFH¶V LQY  
 been identified by the judges of the Court and outside observers to  
 date. The aim of this report is to explore some of those issues and  
 offer recommendations that we hope will contribute to improving the  
 273¶V LQYHVWLJDWLYH SUDFWLFHV WKHUHE\  
 Office of tKH 3URVHFWRU DQG HQKDQFLQJ WKH &  
 administer justice more effectively.

In terms of methodology, we wish to highlight from the outset that,  
 although we did conduct interviews with former and current ICC  
 personnel and other experts, we have chosen to limit our analysis  
 primarily to facts and findings that are supported by the public  
 record.<sup>13</sup> We would also like to point out that, while we have included  
 references to the stated policies and practices of the OTP and the  
 2IILFH¶V UHIVSRQVHIGHER in this report to the extent  
 such information is publicly available, the fact is that information  
 UHJDUGLQJ WKH LQYHVWLJDWLYH SURFHVV R  
 understandably sensitive and, thus, public information available from  
 the OTP on this subject is limited.

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undertaking of the ICC Prosecutor, Fatou Bensouda (ICC-CPI-20120615-PR811 (15  
 June 2012) <http://www.icc-cpi.int/menus/icc/press%20and%20media/press%20releases/pr811>

II. O





GLYLVLQRQV ZLWKLQ WKH 273 <sup>3</sup>VKDOO EH IRUF  
with an investigation in a situation, for the purpose of conducting the  
LQYHVWL<sup>25</sup>JDW~~LD~~QWLRQ IXUWKHU VSHFLILHV





responsibility on issues within his or her respective sphere of competence. According to Olivia Swackhamer, Head of the ~~Q W H U Q D W L R Q D O 5 H O D W L R Q Y t h i s D V N ) R U F H R I~~ ~~G H Y H O R S P H a t W e P e a r C h i p~~ of the joint team should be thought of primarily as a coordination process to ensure all relevant expertise from each division is brought to bear on an issue, rather than



VWDWHG VWUDWHJ\ RI FDUU<sup>47</sup> with the aim of <sup>3</sup>VKRUW  
<sup>3</sup>SUHVHQW>LQJ@ H[SHGL<sup>48</sup> This Strategy has been  
 defended on the ground that, as a practical matter, the resources of the  
 OTP are finite and, in the words of the former Director of the JCCD,

expedited investigations with a limited number of investigators has led to certain problems.<sup>51</sup> For instance, according to a 2008 article published by the Institute for War and Peace Reporting, former ICC investigators working in Uganda, the DRC, and Sudan complained WKDW <sup>3</sup>>E@HFDXVH WKH\ DUULYH LQ WKH FR evidence of a particular set of crimes, committed at specific locations DQG RQ VSHFLILF GDWHV« RWKHU<sup>52</sup> DWURFLWL )XUWKHUPRUH <sup>3</sup>>H@YHQ ZKHQ LQYHVWLJDWR RWKHU FULPHV QRW RQ WKHLU LQLWLDO OLV these properly, meaning that the alleged perpetrators are less likely to EH FKDU<sup>53</sup> This. For example, investigators working on the first '5 & LQYHVWLJDWLRQ VWDWHG WKDW <sup>3</sup>JLYHQ investigation, they could have produced evidence to ground war crimes charges against [Thomas] Lubanga for killings and rapes, in DGGLWLRQ WR WKH FKLOG VROGLHUV FKAÇUP`





FRQGXFWLQJ LQ <sup>59</sup> Obviously, it is important for the OTP

humanitarian law requires a multidisciplinary approach, and requires operational teams of specialists working together a range of skills

D Q G F D S D E L O L W L H V ' 64

## B. Recommendations Relating to the Size and Composition of Investigation Teams

\$ V G L V F X V V H G D E R Y H Z K L O H W K H I L U V W 3 U R approach to investigations has its benefits, there are potential drawbacks to minimizing the size of investigative teams. Thus, although the makeup of any given investigation team will depend on the nature and demands of a particular investigation, the OTP may want to reconsider its small team approach and recruit more investigators.

was limited to the territories of the former Yugoslavia<sup>68</sup>.

Of course, expanding the number of investigators at the ICC will require greater resources. Importantly, as demonstrated *by ante* on the following page, which is based on budget estimates submitted by the OTP for the years 2007 through 2013, the number of professional staff<sup>69</sup> PHPEHUV HPSOR\HG LQ WKH<sup>3</sup>, QYHV subdivision of the OTP has decreased since 2007, despite the increase in the number of situations in which the Court is active.

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WKR VH UHVS RQVLEOH IRU YLRODWLRQV RI LQWHUQDWL

<sup>68</sup> See Statute of the International Criminal Tribunal for the Former Yugoslavia, adopted 25 May 1993 as amended - XO\ \$UW<sup>3</sup> 7KH, QWHUQDWL shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia VLQFH LQ DFFRUGDQFH ZLWK WKH SURYLVLRQV RI

<sup>69</sup> 3URIHVVLRQDO VWDII UHIVU WRQIPSEUJHHV FODVVL International Criminal Court Proposed Programm



The chart also demonstrates that the OTP has largely resisted requesting resources

maintains or even expands the number of regions it is





SURVHFXWLRQ<sup>93</sup> IDLOXUH LV KLJK ´

Another option relating to the composition of investigation teams that may improve investigations is to hire nationals of the country being investigated and/or persons willing to be permanently located in the situation country or a neighboring country for the duration of the investigation. Presently, members of the investigation team are all based in The Hague<sup>94</sup>, and thus are required to undertake repeated, short-term missions to the situation country to perform investigations. For instance, in the ten months following the opening of the investigation in Uganda in July 2004, OTP investigators conducted over fifty missions in the field<sup>95</sup>. Similarly, between July 2004 and September 2006, members of the OTP investigating the situation in 6 XGDQ FRQGXFWHG<sup>3</sup> PRUH WKDQ ´ ILIW\ PLVVL countries, including three to Sudan<sup>96</sup>. According to Mr. Lavigne, the lead investigator on the first DRC investigation, investigators working on his team only spent on average ten days in the field, on a rotating basis, which made it difficult to interview witnesses<sup>97</sup>. Research conducted by Human Rights Watch into the investigative practices of the OTP supports this claim. According to the organization:

The opportunities for Hague-based investigators to interact and develop strong contacts with witnesses are limited in number and timeframe. The sometimes precarious security situation in each of the countries under investigation and the resulting restrictions on travel and movement mean that these opportunities may be limited further. Moreover, even when key witnesses agree to a specified time to meet with investigators, circumstances may change, rendering them unavailable by the time that the Hague-based members of the

<sup>93</sup> Id.

<sup>94</sup> Human Rights Watch, *Courting History* supran. 59, at 54.

<sup>95</sup> ICC OTP, *Report on the Activities Performed During the First Three Years (June 2003-June 2006)* supran. 47, at 15.

<sup>96</sup> Id. at 3, 19.

<sup>97</sup> Lubanga

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investigative teams travel to the field. Additional field missions may be required, adding to the already rigorous travel schedule of investigative team members. This can lead to delays in investigations overall.<sup>98</sup>

Again, this state of affairs may be improved if at least a portion of the permanent or semi-permanent basis.<sup>99</sup> Of course, this may not always be possible due to security concerns and will have to be evaluated on a case-by-case basis. In addition, the Office will need to be cautious about potential bias, be it real or perceived, when engaging local actors as part of its investigation team.

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<sup>98</sup> Human Rights Watch, *Courting History* supran. 59, at 5556.

<sup>99</sup> It may also be useful to take this approach during the preliminary examination stage, which is led by the JCC. See *infran.* 119 et seq. and accompanying text.





The lead investigator in the Uganda situation, Martin Witteveen, has also expressed the view that investigative



+DY LQJ D SUHOLPLQDU\ 3URDGPDS´ IRU LQ  
 field can be beneficial, at least initially. However, the  
 assessment of what should be considered the gravest  
 incidents and the main type of victimization may  
 change based on information collected on the ground.  
 This underscores why it is essential to prioritize the  
 input of investigators in deciding which incidents are  
 selected for further investigation and, ultimately,  
 prosecution. Investigating crimes based on their experience in the field means that  
 they can offer important insights in devising the Office  
 strategy for incident selection is appropriately  
 implemented.<sup>118</sup>

The selection as to which suspects and crimes will be the focus of an  
 conducting preliminary examinations into a situation. According to a  
 examination of all situations brought to its attention based on statutory  
 criteria and the information available and these examinations  
 necessarily include an assessment of whether a crime or crimes falling  
 within the jurisdiction of the Court have been committed.<sup>120</sup>  
 Specifically, the preliminary examinations are carried out by JCCD,  
 the Office of the Prosecutor, and the Office of the Registrar.<sup>119</sup>  
 Pursuant to Article 53(1) of the Rome Statute, the other factors  
 considered by the OTP during a preliminary investigation, JCCD prepares

<sup>118</sup> Human Rights Watch, *Courting History* supran. 59, at 4748.

<sup>119</sup> International Criminal Court Office of the Prosecutor, *Report on Preliminary Examination Activities* ¶ 1 (13 December 2011).

<sup>120</sup> *Id.* ¶¶ 34. Pursuant to Article 53(1) of the Rome Statute, the other factors considered by the OTP during a preliminary investigation, JCCD prepares







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politics, history, and other dynamics prior to the launch of a formal investigation by working with local actors and/or hiring country experts as consultants for the period of the preliminary examination.

V.



Lastly, there are the cases in which SGBV charges have been rejected by the Prosecution, but some or all of the relevant allegations have not survived the confirmation process due to the Pre Trial Chamber's finding regarding the sufficiency of the evidence put forward in support of the charges. For instance, in the *Katanga & Ngudjolo* case, while the Pre Trial Chamber confirmed charges of rape and sexual slavery as war crimes and crimes against humanity, it declined to confirm the charge of outrages upon personal dignity as a war crime, which was based in part on the evidence that the militia led by the accused. Specifically, while the Chamber determined that this incident had occurred and that it rose to the level of outrages upon personal dignity as a war crime, the Chamber also found that the evidence showed that the commission of [the crime] was intended by the [accused] as part of the overall plan to commit the crimes against humanity. In the *Muthaura, et al* case, while the Pre Trial Chamber confirmed the charge of rape as a crime against humanity in relation to events occurring in two locales, in its decision issuing a Summons to Appear, the Chamber found that the evidence was insufficient to establish the commission of the crime. In the *Barushman* case, including eight charges for gender-based crimes, after concluding that the Prosecution had not presented sufficient evidence to establish substantial grounds

<sup>139</sup> The Prosecutor v. Germain Katanga and Mathieu Ngudjolo, Decision on the Confirmation of Charges, ICC-01/04-01/07-717, ¶ 366 (Pre Trial Chamber I, 30 September 2008).

<sup>140</sup> Id. ¶¶ 374-77.

<sup>141</sup> Id. ¶ 570 (emphasis added).

<sup>142</sup> Id. ¶¶ 571-72.

<sup>143</sup> : RPHQ ¶ V , Q L W L D W L Y H G e n d e r R e p o r t C o n t a i n s t h e I n t e r n a t i o n a l

to believe either that the alleged crimes were committed or that the accused bore responsibility for the crimes.<sup>144</sup>

B. Recommendations Relating to the Investigation of Sexual Violence and Gender-Based Crimes

2 Q H S R W H Q W L D O H [ S O D Q D W L R Q I R U W K H 2 7 3 ¶  
investigate SGBV in a way that will ensure relevant acts are not only  
charge G E X W D O V R V X U Y L Y H W R W U L D O L V W K D  
short, focused investigations, discussed above.<sup>145</sup> Indeed, Martin  
Witteveen, the former Uganda investigator who complained in 2008  
that the scope of the investigation in that country was limited by  
prosecutors too early,<sup>146</sup> K D V V W D W H G W K D W <sup>3</sup> L Q 8 J D Q G D  
sexual crimes could have been gathered had the investigation been  
E U R D G H ¶  
He explained:

: H L Q W H U Y L H Z H G D Q X P E H U R I <sup>3</sup> Z L Y H V ´ J  
live with senior LRA men) but questions were focused  
on their relationship to commanders, not on rape and  
V H [ X D O H Q V O D Y H P H Q W « : H V K R X O G Q R W  
ourselves to this kind of witness we should have  
widened it out to speak to other victims of sexual  
violence [e., those who we H Q R W / 5 \$ <sup>148</sup> Z L Y H V ´ @

Another explanation may be a lack of adequate resources devoted to

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<sup>144</sup> See e.g., Mbarushimana Decision on the Confirmation of Charges ¶¶ 6, ¶  
G H W H U P L Q L Q J W K D W W K H 3 U R V H F X W L R Q ¶ V H Y L G H C  
information for the Chamber to establish to the required threshold that the war crime  
of rape under article 8(2)(e)(vi) of the Statute was committed by the FDLR during  
W K H D W W D F N L Q 0 L D Q J D R i Q ¶¶ 1 6 4 3 ¶¶ (concluding that LO  
although there was sufficient evidence to establish that acts of rape

VXFK LQYHVWLJDWLRQV )RU LQVWDQFH WKI  
 -XVWLFH KDV FKDUJHG WKDW WKH<sup>3</sup>KLJK UDW  
 charges have been dismissed at confirmation stage of proceedings  
<sup>3</sup>FDQ EH DWWULEXWHG LQ SDU-WUR WKH 3UR  
 LQIRUPDWLRQ DQG IDLOXUH Base on Yes  
 REVHUYDWLRQV LW VHHPV WKDW WKH 273 V  
 gender based violence may improve if the OTP implements two of the  
 general recommendations already made above, namely: provide

OTP continue to ensure that the right staff, including one or more gender crimes experts, is in place on each investigation team, and that this staff reflects an appropriate number of both male and female investigators. Importantly, an absence of female investigators may make gender-based crime victims refrain from coming forward from the beginning, which further narrows the potential witness pool.<sup>155</sup> Furthermore, ensuring an appropriate gender balance in its investigative teams not only increases the likelihood that the OTP will be able to secure witnesses to testify about SGBV, but also could increase legitimacy in the eyes of the public. Such increased legitimacy may, in turn, encourage victims to come forward and assist the investigators in their work. It is also critical that all investigative teams include a gender expert, or, at the very least, consult a gender expert, as this will help investigators understand what evidence is necessary for such prosecutions and how to obtain the evidence. Finally, the OTP must continue to prioritize training to increase all of the skills for Gender Justice has recommended, such trainings should be ongoing and mandatory.<sup>156</sup>

Of course, in some circumstances, it is simply too difficult to gather evidence from SGBV victims to the extent necessary to substantiate a charge of sexual violence as genocide, crimes against humanity, or war crimes against the type of high-level suspects that are the focus of ICC investigations, particularly when the suspects were not the physical perpetrators or even present at the scene of the crime. As an initial matter, locating victims of any form of mass atrocity is difficult in the immediate aftermath of an attack, as populations have been displaced.

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<sup>155</sup> See Hilmi Mohammad Ahmad Zawati, *Symbolic Judgments or Judging Symbols: Fair Labeling and the Dilemma of Prosecuting Gender-Based Crimes under the Statutes of the International Criminal Tribunal* 183 (June 2010) (unpublished Ph.D dissertation, McGill University). See also Luping, *Investigation and Prosecution of Sexual and Gender-Based Crimes before the International Criminal Court*, *supra* n. 152, at 152-153; Q. R. W. L. Q. J. W. K. D. W. 3. D. Q. X. P. E. H. U. R. I. Z. L. W. Q. H. & L. Q. 8. J. D. Q. G. D. 3. H. [S. U. H. V. V. H. G. R. D. S. U. H. Q. Y. U. H. V. O. V. L. H. J. D. R. W. Y. H. P. V. D. H. O. D. H. 156 : R. P. H. Q. 1. V. , Q. L. W. L. D. W. L. Y. H. 2011 Gender Report Card of the International Criminal Court, *supra* n. 143, at 73.



Furthermore, former ICC investigators have said that SGBV victims

DUH <sup>3</sup>RI W M D Q U H O X R W H V W L I \ ' J L Y H Q W K D W W K  
 WKHLU FRPPXQLWLHV DV D UHVXOW RI WKHLU  
 retributive violence from the militias or government troops against

ZKLFK WKH\ JLY <sup>157</sup> H H L E Y, L a C b r O n g I t t o t h e l e a d

investigator in the Katanga & Ngudjolo F D V H L W Z D V <sup>3</sup> H Q R U P R X

FKDOOHQJLQJ WR ILQG YLFWLPV >RI VH[XDO Y

SURVHFXWRULDO RIILFH ' DV WKHVH YLFWLPV

branded in their own societies, but they also fear retaliation from their

SHUSHWUDWRUV RU <sup>158</sup> J E R X S h e V i c t i m s a n d t h e W R W K H P

willing to testify, they may not be able to provide the evidence

necessary to sustain the relevant charges. For instance, victims may be

unable to identify their perpetrator, which would not be surprising in a

FRQIOLFW LQYROYLQJ PXOWLSOH DUPHG IRUP

commanders to the rapes and enslavement that happened at the times

DQG SODFHV WKDW DUH WKH <sup>159</sup> A n d t h e E X V R I W K H L C

challenge is that victims may not be able to provide evidence that

would link the violence committed against them to a broader conflict

or attack on a civilian population, making it difficult to establish that

the violence falls within the jurisdiction of the Court. Lastly, even if a

particular victim is willing to testify, victims whose mental well-being

could be compromised during a trial may not be pursued by the OTP

based on the results of a psychological evaluation. <sup>160</sup> I m p o r t a n t l y,

however, even in instances where direct evidence regarding

SGBV is simply unavailable, it may still be possible to investigate and

prosecute SGBV without using crime-based witnesses. For instance,

the Prosecution may attempt to establish -9(e)4un.3 1 72.024 254.45 Tm [3>1

witnesses, international observers, and eyewitnesses to the sexual violence. As Kelly Askin has observed:

In cases where the prosecution must rely exclusively on non-victim testimony for the rape crimes, gender experts, medical personnel, and innovations like rape databases containing witness statements, can provide useful testimony or documentation to the court, including to establish the widespread or systematic sexual violence. Reports by NGOs, [United Nations (UN)] bodies, experts, and humanitarian organizations, media, researchers, and others, including members of armed groups and insiders, can also provide compelling evidence of the crimes and who is responsible for them.<sup>161</sup> When appropriate, mid and lower level suspects could be offered immunity from prosecution by the ICC in order to secure their testimony against higher level accused.<sup>162</sup>

<sup>161</sup> As discussed in detail below, indirect evidence such as reports compiled by NGOs or UN agencies should only be used as contextual or pattern evidence, and only when corroborated by other sources. See *infra*. 264 et seq and accompanying text.

<sup>162</sup> See Kelly Dawn Askin, Can the ICC Sustain a Conviction for the Underlying Crime of Mass Rape without Testimony from Victims? Human Rights & International Criminal Law Online Forum (June 2012) <http://uclalawforum.com/massrape>. See also Anne-Marie de Brouwer, Cases of Mass Sexual Violence Can Be Proven Without Direct Victim Testimony? Human Rights & International Criminal Law Online Forum (June 2012) <http://uclalawforum.com/massrape>.

<sup>37</sup> KHUH KDV QRW EHHQ D FDVH EHIRUH DQ LQWHUQDW stated that without the direct testimony of the victim the crime was unable to be proven or that the rights of the accused were violated. Evidence in cases of sexual violence other than direct victim testimony has commonly included eyewitnesses, hearsay witnesses, and expert witnesses (for instance, from an NGO, medical or psychology background) who testified about an actual incidence of sexual violence. DQG RU VH[XDO YLROHQFH LQ JHQHUDO , QGHHG W ICC, Thomas Lubanga Dyilo, was convicted despite the fact that the Trial Chamber excluded all testimony provided by direct victim witnesses from its deliberations on the guilt of the accused. See *infra*. 171 et seq and accompanying text. While Mr. Lubanga was not charged with SGBV crimes, his conviction generally demonstrates



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Finally, absent alternatives where investigating and/or prosecuting SGBV is not practical due to security concerns and/or the unavailability of necessary evidence, the OTP must strive to communicate these factors to the public.

VI. BALANCING SECURITY CONCERNS WITH THE NEED TO PRESERVE THE INTEGRITY OF INVESTIGATIONS

A. Issues Relating to Balancing Security Concerns with the Need to Preserve the Integrity of Investigations

During the course of the Lubanga trial, evidence emerged regarding WKH 3URVHFXWLRQ ¶<sup>168</sup> that cast serious doubt on the UHOLDELQW\ RI PXFK RI WKH 3URVHFXWLRQ ¶ & KDPEHU GHWHUPLQH WKDW<sup>3</sup> >D@ VHULHV R this trial whose evidence, as a result of the essentially unsupervised actions of three of the principal [Prosecution] intermediaries, cannot VDIHO\ EH<sup>169</sup> relied upon. Although the Trial Chamber ultimately denied a Defense motion seeking a permanent stay of the proceedings for abuse of process based on the evidence that several OTP intermediaries had suborned witness testimony,<sup>170</sup> it determined that the testimony of each of the nine witnesses claimed by the Prosecution WR KDYH VHUYHG DV FKLOG VROGLHUV LQ OUN unreliable and excluded the testimony from its deliberations<sup>171</sup> on the guilt of the accused.

, PSRUWDQWO\ WKH 273 ¶ V KHDY\ UHOLDQFH R Lubanga case was explained with reference to security concerns in the DRC. In particular, the OTP explained that members of the small villages where investigations were taking place would immediately be

<sup>168</sup> In its Draft Guidelines Governing the Relations Between the Court and Intermediaries WKH , & GHILQH V DQ<sup>3</sup> LQWHUPHGLDU\ DV<sup>3</sup> VR one person and another; who facilitates contact or provides a link between one of the organs or units of the Court or Counsel on the one hand, and victims, witnesses, beneficiaries of reparations, ¶ LRQV DQG RU DIIHFWHG FRPPXQLHV PR International Criminal Court Draft Guidelines Governing the Relations Between the Court and Intermediaries at 5 (April 2012).

<sup>169</sup> Lubanga Trial Chamber Judgment, ¶ 482.

<sup>170</sup> See *The Prosecutor v. Thomas Lubanga Dyilo*, DRC, ICC-01-06-02-07-01/08, ¶ 1000 (2012).

aware of outsiders asking questions and potential witnesses would be put at risk or otherwise compromised.<sup>172</sup> As Trial Chamber I summarized in the Lubanga judgment:

Because of their long-term presence, it was considered that [human rights] activists [who had already been in the country] were better placed than the investigators, and particularly it did not cause any surprise when the activists spoke with representatives of [the United Nations Mission in the DRC] and had discussions with villagers. The investigators could not move about freely without being threatened and witnesses were endangered if the investigators spoke directly with them. As a result, the investigating team or some of the activists suggested that they should act as intermediaries.<sup>173</sup>

In particular, the investigative team began relying on individuals who provide information to the Court.<sup>174</sup> Unfortunately, it does not appear that the OTP exercised much discretion with respect to which individuals it relied upon in the first DRC investigation, some of whom were later revealed to have worked for the DRC government in intelligence.<sup>175</sup> Indeed, according to the

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<sup>172</sup> See, e.g., The Prosecutor v. Thomas Lubanga Dyilo, ICC-01/04/01/06-2678-Red, ¶ 14 (Office of the Prosecutor, 31 January 2011) 051>4<00460048

Lubanga<sup>177</sup> ULDO & KDPEHU<sup>37</sup> KHUH ZDV QR IRUPDO  
 for selecting intermediaries. An intermediary was simply someone  
 who could perform this role; there was no process of due diligence or  
 DSSOLFDWLRQ DQG LQVWHDG<sup>177</sup> WZDV D PDWW  
 importantly, testimony in the Lubanga case suggested that, at least at  
 the time of the first DRC investigation, there was no formal process  
 within the OTP for checking the background of individuals who  
 presented themselves as willing to serve as intermediaries, although  
 WKH & KDPEHU QRWHG WKDW WKH WHDP<sup>3</sup> FDUU  
 LQWHUPHGLDULHV EDVHG RQ WKH<sup>178</sup> LQIRUPDW  
 Furthermore, the OTP continued to engage the services of the one  
 intermediary who had a relationship with the DRC intelligence  
 services even after concerns arose about his credibility and  
 reliability.<sup>179</sup> Finally, evidence revealed that the OTP relied on the  
 intermediaries not only to contact

emerged during the subangtrial are not repeated. First, in terms of selecting intermediaries, the OTP should reach out to individuals who already have established relationships with governmental or



the Court and Counsel shall carry out, as early as possible, an

DVVHVVP HQW RI WKH FDSDFLW\ RI D SRWHQW  
VSHFLILHG IXQFWLRQV ' DQG QRWH WKDW <sup>3</sup>>

the Court or Counsel shall gather ~~data~~ information and develop a

SURILOH DERXW WKH <sup>186</sup> ~~The Draft Guidelines~~ ~~to~~ WHUPHG

SURYLGH D OLVW RI <sup>3</sup> VWDQGDUGL]HG VHOHFW

DVVHVVLQJ LI D SRWHQWLDO LQWHUPHGLDU\

criteria falOLQJ XQGHU WKH FDWHJRULHV RI <sup>3</sup>>D@K

DQG UHVSHFW IRU GLJQLW\ ' <sup>3</sup>>F@UHGLELOLW

NQRZOHGJH <sup>187</sup> ~~Further, the Draft Guidelines~~

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case O D Z R I W K<sup>190</sup> the Operational Manual is not public. Thus, we recommend that the O T publicize this portion of its Operational Manual and/odevelop its own policy paper regarding the implementation of the Couwide guidelines, in line with the recognition in the Draft Guidelines that certain organs or units of the & R X U W P D \ 3 D G R S W V S H F L D O L J H G S R O L F L H V ' not necessarily addressed or settled by the Couwide document.<sup>191</sup>

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<sup>190</sup> Email between the authors of the report and Olivia Svoboda, Head of the

<sup>191</sup> Id. at 3.

## VII. EVALUATING THE SUFFICIENCY OF EVIDENCE

### A. Issues Relating to Evaluating the Sufficiency of Evidence

As set forth in the Introduction to this Report, the ~~Trial~~ Trial Chambers of the ICC have



GRXEW´ IRU WULDO 7KLV DSSURDFK WR has had the benefit of saving resources in the face of increased budgetary cuts. Additionally, there is the benefit of not delaying proceedings as a result of matters which can encumber an international court based outside the country where the alleged crimes took place, where violent conflict often continues and investigations.<sup>198</sup>

Furthermore, once a suspect is in custody, moving forward with the confirmation proceedings before the investigation is complete may be a reasonable alternative to the ZLWKLQ SHUVRQ¶V VXUUHQGHU RU YROXQ and U\ DSSHD ZLWK WKH DFFXVHG ULJKW WR<sup>2003</sup> EH WULHG ZL addition, as discussed above, there is considerable pressure on the OTP from within the Court, from situation countries, and from the broader international community to produce results quickly.<sup>199</sup> Finally, the Office may impose a level of pressure on itself to move forward UDSLGO\ LQ OLQH ZLWK LWV VWDWHG SULQFL the DFWLYLWLHV RI WKH 2IILFH´ LQ D ZD\ WKDW ending impunity and preventing future crimes<sup>202</sup> particularly in situations of ongoing conflict.

However, as evidenced by the decisions of the Court refusing to confirm either all or some of the charges against a number of suspects, the judges of various Trial Chambers are not satisfied with the sufficiency of the evidence being put forward by the Prosecution at the confirmation stage. In fact, in a number of cases, judges have not only declined to confirm the charges set forth by the Prosecution, but have RSHQO\ H[SUHVVHG GLVVDWLVIDFWLRQ ZLWK

<sup>198</sup> SOLVRQ & ROHFDFPBRVQRQG RI 7HUP 5HSRUW IURP , && 'R %HWGardian, 6 June 2012 <http://www.guardian.co.uk/law/2012/jun/06/morenoocampeicc-judgescritical>.

<sup>199</sup> Rome Statute, *supra* n. 2, Art. 61(1).

<sup>200</sup> *Id.*

gathering of evidence in the case. For instance, in the *Albin Gardac* case, in which the Pre-Trial Chamber unanimously declined to confirm any of the charges based on the lack of evidence,<sup>203</sup> Judge Cuno Tarfusser found it necessary to include a Separate Opinion in which he wrote

W K D W W K H <sup>3</sup> O D F X Q D H D Q G V K R U W F R P L Q J V H [ :  
D V V H V V P H Q W R I U M K H Q W H G H E Q F M K S 3 U R V H F X W  
E D V L F D Q G I X Q G D P H Q W D O ' W K D W W K H & K D P E  
U H I U D L Q H G I U R P D Q D O \ ] L Q J W K H <sup>3</sup> O H J D O L V V )  
W K H <sup>204</sup> On a more general level, in the two cases brought to date arising from the Kenya situation, Judge Hans Peter Kaul, who dissented from the decision of the majority in each case confirming the charges against two of the three suspects, dedicated a portion of his

GL V V H Q W W R <sup>3</sup> F O D U L I \ > L Q J @ D Q G V O N S P D U L V >  
Z L W K U H J D U G W R ' W K H 2 7 3 ¶ <sup>205</sup> Specifically D F K W R L  
Judge Kaul highlighted the fact that Article 54(1) of the Rome Statute

U H T X L U H V W K D W W K H 3 U R V H F X W R U <sup>3</sup> > L @ Q R U  
investigate incriminating and exonerating U F X P V W D Q F H V H T X D O C  
D Q G V X J J H V W H G W K D W D e D a t a i s h a i n g , i n a w i t n e s s D W L R Q  
S K D V H R Q O \ D W J D W K H U L Q J H Q R X J K H Y L G H  
V W D Q G D U G ¶ ' U H T X L U H G <sup>207</sup> Would it be possible L U P D W L

Article 54(1) requi









B.



progressing in court. However, as a policy matter, the Prosecution should aim to complete as much of its investigations as possible before bringing a case before the Court. Interestingly, this is the stated policy of the OTP, as expressed in its 2006 and 2009 reports on prosecutorial strategy.<sup>227</sup> 1HYHUWKHOHV V WKH 3URVHF XWLRQ ¶¶ V the charges against four of the fourteen suspects appearing before Court to date suggests that this policy is not being implemented as a practical matter.

Another measure that may help to expose potential weaknesses in the 3URVHF XWLRQ ¶¶ V FDVH DQG HQVXUH WKDW DO have been undertaken before the OTP seeks an arrest warrant or summons to appear would be to implement a rigorous and formal 3SHHU UHYLHZ ´ SURFHVV ZLWKLQ WKH 273 VLI 6SHFLILFDOO\ DW OHDVW LQ WKH HDUO\ \HDU OTP had a practice of internally reviewing draft indictments, before the case was ever presented to a judge, and even before the indictment was shared with the Chief and Deputy Chief Prosecutors.<sup>228</sup> SXUSR VH RI 3HOLPLQDWLQJ IDFWX´D O\ RU OH staff members working in the OTP.<sup>229</sup> Including lawyers, investigators, and analysts<sup>230</sup> would be invited to participate in the review, which

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<sup>227</sup> See CC OTP, Prosecutorial Strategy: 2009-2012, *supra* n. 47, ¶ 21 (explaining WKDW WKH SROLF\ RI WKH 2IILFH LV WR 3VXEPLW WR W warrant or summons to appear, based on the evidence collected, when the Office is nearly trial- UHDG\ WKXV FRQWULEXWLQJ WR HIILFLHQW & RX

<sup>228</sup> Email between the authors of the report and Richard Goldstone, former Chief Prosecutor of the ICTY, 5 September 2012.

<sup>229</sup> Bergsmo & Keegan,

looked at the draft indictment and any supporting material.<sup>231</sup>

According to one description of the process<sup>232</sup> by two former

OHJDO DGYLVRUV WR WKH -25 lawyers who<sup>233</sup> ha[d] been provided with and reviewed the relevant material, [could] participate in such reviews, which tend[ed] to be very thorough and

[could] sometimes last several days<sup>232</sup> Following the assessment, those participating in the review would draft a full report of their

conclusions, which sometimes included both a majority and a minority opinion.<sup>233</sup>

[were] made in the<sup>234</sup> suggesting that the review process was critical to uncovering important weaknesses in the majority of instances before the case was filed.

Furthermore, according to Richard Goldstone, the first Chief Prosecutor of the ICTY, the fact that this review was carried out before the indictment was presented to the Chief and Deputy Chief Prosecutor

PHDQW WKDW WKH KHDGV RI WKH RIILFH FRXC indictment with fresh minds and without having become involved duULQJ WKH HDU<sup>235</sup> We understand that the HCC OTAs,

VLQFH LW Instituted a practice of internal peer review that involves colleagues from other teams as well as the Legal Advisory

Section in critically evaluating the evidence<sup>236</sup> and/or the presentation of arguments at critical phases of the proceedings, such as before the confirmation of charges proceeding or the opening of trial<sup>236</sup>

rigorous reviews with colleagues from other teams much earlier in the process, ideally before an arrest warrant request is made

) L Q D O O \ W K H 2 7 3 ¶ V H Y D O X D W L R Q R I W K H V X  
 given case may be strengthened if, where possible, investigators were to interview the suspect(s) in the case during the investigation. While nothing in the Rome Statute or Rules of Procedure and Evidence requires the Prosecution to interview suspects, the Rome Statute does contemplate the possibility of such questioning and provides a number of rights to the suspect in the event he or she is interviewed by the OTP.<sup>237</sup> Of course, neither the Prosecution nor the Chambers has the power to compel any individual, including the target of a case, to speak with the Prosecutor, so this will only be an option where the suspect voluntarily agrees to submit to questioning by the OTP. Furthermore, there may be instances where the OTP simply cannot access the suspect or where other strategic considerations render such an investigation undesirable.

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<sup>237</sup> See Rome Statute, *supra* n. 2 § U W 3 : K H U H W K H U H D U H J U R X G  
 a person has committed a crime within the jurisdiction of the Court and that person is about to be questioned e



held that such reports are admissible,<sup>248</sup>



<sup>247</sup> Nevertheless, in the Mbarushimana case, the Prosecution relied heavily on indirect evidence to support a number of its factual allegations, the result being that a large number of allegations were dismissed by the Pre Trial Chamber on the ground that the only evidence submitted by the Prosecution in support of the charge was a single, uncorroborated report from either the United Nations or NGO.<sup>248</sup> For instance, although the Prosecution alleged that the accused bore responsibility for war crimes committed in, inter alia, the villages of Malembe and Busheke in late January 2009,<sup>249</sup> in the W KH & K D P E H U Q R W H G W K D W cases the Prosecution relied only on a single UN or Human Rights : D W F K 5 H S R U W ' W R V X S S R U W W K H D O O H J D W L evidence in order for the Chamber to ascertain the truthfulness and/or D X W K H Q W L F L W \ R I <sup>250</sup> Similarly, in support of the charge that Mbarushimana bore responsibility for war crimes committed in the village of Mutakato on <sup>251</sup> 32 December 2009,<sup>1</sup>

allegations that rape and torture were committed as war crimes in the village of Manje, which the Chamber dismissed after noting that the evidence was not corroborated.<sup>253</sup> Again, a number of additional allegations were dismissed by the Trial Chamber on similar grounds.<sup>254</sup>

As a general matter, reliance on indirect evidence to support the case is problematic for several reasons. First, as stated above, such reports are often based on anonymous hearsay evidence, meaning it is impossible for the Defense to challenge the reliability of the evidence. Second, even where sources are provided for the information contained in the report, there is no guarantee that the person responsible for reporting the facts itself corroborated or verified the relevant facts. Indeed, as William Pace, the Convenor of the Coalition for the International Criminal Court, has noted, the Lubanga case largely agreed, explaining that while he would not go so far as to say that the entire investigation was flawed, he did find it difficult to corroborate information provided by human rights groups.<sup>255</sup> The Trial Chamber found that the evidence was not corroborated and dismissed the charges.<sup>256</sup> The Trial Chamber also found that the evidence was not corroborated and dismissed the charges.<sup>257</sup>

<sup>253</sup> Id. ¶ 194.

<sup>254</sup> See generally id. ¶¶ 113239.

<sup>255</sup> Lubanga Trial Chamber Judgment, ¶ 9, ¶ 130. See also Human Rights Watch, *The Role of Human Rights NGOs in Relation to ICC Investigations* (2008), ¶ 1(a)-5( ) T3(n)-5( )-2(J ET

Another potential problem with reliance on secondary sources relates to partiality. As noted above, the ICC OTP is obligated to investigate incriminating and exonerating circumstances equally,<sup>258</sup> but third parties not connected to the Court are obviously under no such obligation. The Office rarely directs its efforts at producing compelling exculpatory evidence, as it has done in the past.<sup>259</sup> In fact, NGOs are often not impartial; for instance in any given conflict, an NGO may be closely allied with one party to the conflict or have a particular agenda.<sup>260</sup> In fact, NGOs are often not impartial; for instance in any given conflict, an NGO may be closely allied with one party to the conflict or have a particular agenda.<sup>260</sup> NGOs promoting particular ideals and are not constrained by ethical obligations. Finally, even when the entity responsible for producing the report is not partial to any particular party or perspective, the fact is the report was produced for purposes other than to support an impartial criminal investigation, such as drawing attention to massive human rights abuses or influencing the policies of international or domestic decision makers. Thus, as a former Trial Attorney with the ICTY observed in relation to reports prepared by the UN, governments, and NGOs relating to the conflict in the former Yugoslavia, the reports are not prepared according to the standards of the Rome Statute.<sup>262</sup> The reasons may explain why.

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2011) (in which the Defense complained that NGOs sensationalize reporting and do not necessarily report verifiable figures, citing to a HRW on Remeka, DRC that first stated in a report that dozens and dozens of people were killed but subsequent report stated 7 were killed in the same incident).

<sup>258</sup> Rome Statute, art. 17, para. 2, AdeCID 4>> BDC 1324oBET BT 145382 [(258)] TJ ET Q BT 1 C



matter of practice, the OTP rely on secondary sources only for purposes of establishing contextual or pattern evidence<sup>264</sup> and only where the sources are amply corroborated by other evidence. As a practical matter, this will likely mean that the Office needs to devote greater time and resources to its investigations from the outset so that it may gather the necessary witness statements, forensic material, and documentary evidence whose authenticity has been verified<sup>265</sup> by investigators. This likely will require an expansion in the number of investigators on a given team, but also investments in specialized units with expertise in forensics or technological innovations that may contribute to evidentiary collection, at least the cultivation of experts that may be engaged on an ad hoc basis with respect to particularly technical issues to the extent such expertise is not already available in the Office. The Office's current policy of prioritizing expeditious investigations<sup>265</sup> Although the current strategy may be appealing from an efficiency perspective, in some cases, the Office may not be able to successfully secure warrants of arrest or sustain charges in a case.

Of course, reports produced by non-governmental and inter-governmental organizations can be critical to the work of the OTP as well. The role most NGOs may be able to play is to alert the Office to certain areas of concern. For example, the Office has received reports from NGOs such as Human Rights First, Human Rights Watch, and Amnesty International. Importantly, the OTP may be able to increase the value of such reports by providing relevant guidance to organizations active in countries where the Office is investigating. In 2004, Human Rights First provided the Office with a report on the situation in the Democratic Republic of the Congo. The report identified several areas of concern, including the use of child soldiers, the recruitment of child soldiers, and the use of child soldiers. The Office has since conducted investigations into these areas and has issued indictments against several individuals. The Office has also provided guidance to Human Rights First on how to conduct investigations in the Democratic Republic of the Congo. The Office has also provided guidance to Human Rights First on how to conduct investigations in the Democratic Republic of the Congo.

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<sup>264</sup> See e.g., Human Rights First, *The Role of Human Rights NGOs in Relation to ICC Investigations*, [supran.](#)









