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*Is it appropriate for the Court to be involved while armed conflict is occurring? Or, in the effort to prioritize the peaceful resolution to a conflict first, should the ICC only be involved post-conflict? Please feel free to draw on country-specific examples.*

First and foremost, we recognize that the ICC is a 'court of last instance' – that is, its mandate is to prosecute only where the domestic avenues have been exhausted, and where a State is unable or unwilling to prosecute those individuals responsible for the gravest of crimes.

Due to the nature of the subject-matter that the ICC deals with, and especially with our experiences here in Kenya, it does seem that the most practicable time for ICC intervention is in post-conflict situations. In Kenya, it was not until sometime after the 2007 post-election violence that the Government of Kenya showed its inability/unwillingness to prosecute those individuals most responsible for the grievous harms suffered by Kenyans, at which point the ICC stepped in to intervene. In this circumstance, the ICC probably did not have a role to play while the conflict was occurring.

However, this does not discount the fact that there may be a set of circumstances in the future where direct ICC intervention during an armed conflict is appropriate, or even required. But it is not clear that those circumstances have occurred yet.

*Touching on the situations in Libya and Cote d'Ivoire, has the involvement of the ICC been helpful or detrimental to preventing further atrocities, prosecuting perpetrators and securing peace?*

The two situations have quite a few differences in terms of the backgrounds and outcomes of the particular conflicts associated with both states. However, in both situations, the ICC has intervened appropriately and with justifiable reasons. Both interventions have the immediate effect of publicly championing the battle against impunity and the promotion of the rule of law.

But, the impact of ICC involvement in Libya and Cote d'Ivoire, at this point, is at a fledgling state – assessing how the ICC interventions have affected the prevention of further atrocities and regional stability and peace will require on-going monitoring and evaluation, both during the ICC trial processes, and after the decisions. The



identification and prosecution of perpetrators of the most serious crimes has an immediate impact on would-be human rights violators, in terms of serving them with notice that they will be held accountable for their actions.

However, the societal implications of ICC interventions and decisions is something that will only be shaped and understood over time. The long-term impact of the ICC, especially on African nations, is something that needs to be carefully assessed.

*As a non-governmental organization working on the ICC and RtoP, how can the Court become more effective as a tool within the RtoP framework?*

There are three main areas that could be more effectively situated in the ICC's role within the RtoP framework: (1) Promotion of victim's rights and needs – too often, the focus of the ICC processes are on the individual perpetrators, and victim's voices tend to appear to be relegated to the background; (2) Support for prosecution of mid- and low-level perpetrators – with the ICC focus on prosecuting those most responsible, often attention is drawn away from the 'henchmen' and direct perpetrators of the crimes; (3) Regional support and buy-in – while individual states such as Kenya seem to be more cooperative with the ICC, a more robust regional presence, with organizations such as the East African Community and the African Union, will go a long way towards promoting understanding and support for RtoP initiatives.

*What measures can be taken by states, the Court itself and the United Nations Security Council to ensure this?*

In each case, the most important tool is communication. Opening meaningful lines of dialogue between Victims Groups, Regional Organizations, and other institutions will go a very long way to establishing a systematic awareness of the needs of individual situation states.

Perhaps more importantly, the ICC needs to be involved in ongoing discussions with African nations in general, and work to sway the current perception of the ICC being 'anti-African'. The ICC works in a highly-politicized environment, so both the ICC and the UNSC would do well to use effective media strategies, such that the focus of the ICC processes is on securing justice, and not on diplomatic relations.

As for individual states, it would be important to continue to push for prosecution of the mid- and low-level offenders, so that the ICC processes dealing with the perpetrators most responsible is complemented by the work of the states – granted,



this is not an easy task, since the ICC would only be involved where a state is unable or unwilling to act in the first place.

*What are the common challenges faced by the Court and the norm in the effort to prevent the four RtoP crimes and punish their perpetrators?*

The common challenges are public support, victim's participation, witness protection and effective state cooperation with ICC processes.

*Do you have any other additional thoughts on the relationship between the ICC and the RtoP?*

In Kenya, the relationship between the ICC processes and the Responsibility to Protect is currently coming to a head. Kenya's history shows that elections are a flashpoint for violence and conflict. Therefore, with the upcoming 2012 elections running alongside the ICC case prosecuting the 4 individuals suspected as being the most responsible for the 2007 post-election violence, it will be very interesting to see if the two processes can successfully complement each other, and result in free, fair, open and peaceful elections. The ICC case in Kenya has provided a tangible sense of hope in the battle against impunity, and the results of the upcoming election will show whether Kenyans, especially Kenyan politicians, have learned from the exercise.