

APPENDIX

A: State Biases – Closed Cases (Convicted and Acquitted)

State	Cases	Cooperation?	Biases / Perceptions
Mali	1 case (Al Mahdi)	<ul style="list-style-type: none"> • Yes, referred case to ICC and has assisted in cooperation and providing evidence (including in other cases) • Niger actually extradited him to the Court • No domestic proceedings for Al Mahdi • Al Mahdi admitted in opening statements that he was guilty 	<ul style="list-style-type: none"> • Pro ICC, ICC party • Self - referral (but seemed to be self referral of the rebel groups that the government was fighting - poss to keep govt in power) • Malian government has calculated using the ICC as a weapon to achieve its political aims, namely to defeat the rebels and regain control of the country. • Mali should be able to handle prosecutions itself. While the government has little to no control over the areas held by rebels, Mali's problem isn't its ability or willingness to prosecute rebels but its inability to arrest them. It appears that the Malian government has come to the conclusion that getting the ICC involved may instigate international pressure and perhaps even a military intervention to restore the government's authority - using ICC to bolster government legitimacy • No issues of criticism towards the ICC • Has extradited other accused persons and cooperated in other investigations from the self referral (1 ongoing case in Pretrial stage - moving towards trial)
DRC	<p>4 cases total</p> <p>1 case (Ngudjolo Chui) acquitted</p> <p>3 cases (Katanga, Lubanga, Ntaganda) convicted</p>	<ul style="list-style-type: none"> • Referred situation to Prosecutor, has been cooperating in their own cases as well as others • Chui was arrested by DRC authorities and extradited to ICC. Had domestic charges but not really for same crimes / was acquitted on those charges. Lawyer tried to get charges dismissed stating was already tried for them but ICC said not same charges. Was acquitted on basis of not getting to beyond a reasonable doubt standard - witnesses could not remember if Ngudjolo was the one in charge and ordering attacks. Acquittal upheld on appeal. • Katanga is now facing domestic charges for war crimes after serving ICC sentence (DRC extradited him to court). • Lubanga extradited by DRC and is now in custody in country serving rest of sentence, unsure of any domestic charges. • Ntaganda went voluntarily following second arrest warrant after showed up at US embassy in Rwanda, may have been infighting in faction / was concerned he would be killed. For years was able to move about eastern DRC with impunity - area is unstable and DRC unable to control it. Unsure of any domestic proceedings (likely not) 	<ul style="list-style-type: none"> • Does like ICC; DRC referred situation to Prosecutor and has been helping out in other cases. • Kabila's self referral seems like it was for getting the rebels and keeping his government in power rather than also charging and trying the government crimes <ul style="list-style-type: none"> ○ The ICC investigation has not yielded charges against government officials and armed forces. The absence of these cases—or clear and public explanations as to why they are not being pursued—has left too many victims without justice and undermined perceptions of the court's independence and impartiality • Recent calls to withdraw but no actions taken yet • Do have one case that was still at large and one case where charges withdrawn / not confirmed. Mudacumura was at large and was supposedly killed in Sept 2019 but was on the run for years / DRC unable to arrest him. Charges withdrawn was extradited to the ICC by France but ICC declined to confirm charges on basis of evidence submitted was insufficient to be convinced of the existence of substantial grounds to believe that such acts were part of a course of conduct amounting to “an attack directed against the civilian population” and Mbarushimana did not provide any contribution to the commission of the alleged crimes, even less a “significant” one.

B: State Biases – Ongoing Cases

State	Cases	Cooperation?	Biases / Perceptions
Mali	1 case (Abdoul Aziz Ag Mohamed Ag Mahmoud, Al Hassan) - In PreTrial Stage right now; ICC custody On 30 September 2019, ICC judges confirmed the charges against al-Hassan and stated that the trial would proceed	<ul style="list-style-type: none"> • Yes, referred situation and has assisted in cases / cooperated with investigations • Was captured by French in 2017 and once indictment dropped, surrendered by Mali to ICC (extradited him for trial) • Also generally cooperated with other cases from Mali - extradited officials, referred situation, gave witnesses and evidence • Unsure of domestic proceedings but likely not 	<ul style="list-style-type: none"> • Is state party to ICC and pro - ICC; has helped out in other cases and referred situation to ICC • No reports of anything protesting ICC or decisions / no challenging admissibility of cases
Uganda	1 case (Dominic Ongwen)	<ul style="list-style-type: none"> • Uganda ok with ICC, did refer situation but Museveni has lashed out against ICC in recent years (2014 on - president is criticizing ICC and antagonistic to them). • Is state party and has accepted jurisdiction; referred case to ICC. Assisted in other areas but issues with other cases who are still at large / using the instability of neighboring countries to escape prosecution. • Issues with extraditing others who have been indicted • No domestic case for same crime or others. However, Uganda, following the establishment of its International Crimes Division (ICD) in 2008, indicated Ongwen should be tried domestically by the ICD. However, due to inadequate resources and questions surrounding the ICD's jurisdiction over the crimes charged by the ICC, Uganda did not pursue the matter further. Was on the run for a few years then captured by CAR / US forces • Uganda / Museveni made sure Ongwen captured and extradited; LRA as rebel group being tried but not Museveni / using position to stay in power • Really possible success in extradition came from US and CAR over Uganda 	<ul style="list-style-type: none"> • Is state party, referred situation • Issues with other cases who are still at large / using the instability of neighboring countries to escape prosecution. <ul style="list-style-type: none"> ○ i.e. : Bashir visited Uganda numerous times / Uganda should have arrested and extradited but did not • President is criticizing ICC, calling it biased, etc. But likely does not show the perception of all of Uganda • People also want Museveni and allies to be extradited and charged at ICC but Museveni challenging that and trying to stay in power
Sudan	1 case currently at large in country Banda (at large since he has not appeared for trial but charges have been confirmed),	<ul style="list-style-type: none"> • Charges were confirmed as he voluntarily came to the ICC. Sudan did not help out whatsoever. No assistance in extradition or any other requests • ICC prosecutor let him go while awaiting trial, however, he has not come back and is currently at large. The ICC prosecutor has issued an arrest warrant for him to come back and face trial 	<ul style="list-style-type: none"> • Not a state party to ICC, does not like ICC • Case was referred to ICC by UNSC and not by state • The UN Security Council has also consistently failed to provide the necessary support for the ICC investigation and has failed to take action on findings of non-compliance by ICC judges • Seen as ICC biased against African states • Much of it was political decisions in how they decided to go about Darfur investigation / enforce decisions • May use ICC to remove political opponents - need to be cautious here

C: State Biases – Withdrawn and At Large Cases

State	Cases	Cooperation?	Biases / Perceptions
Sudan	<p>3 in custody in Sudan and not extradited to ICC - Al Bashir, Harun, Hussein</p> <p>1 at large in country and not extradited to ICC - Al-Kushayb</p> <p>1 unknown location but charges not confirmed - Abu Gharda</p>	<ul style="list-style-type: none"> • Absolutely not. Sudan refuses to cooperate or extradite. Abu Gharda came to ICC voluntarily. <ul style="list-style-type: none"> ○ Once Bashir deposed, military still refusing to extradite him - probably b/c of allies ○ Similar probably for other officials - they were in government with Bashir / his supporters • Probably also not cooperating with evidence either - but this is uncertain for specific cases, since most have not been extradited in the first place • Abu Gharda was not confirmed - Pre-Trial Chamber in decision said allegedly Prosecution investigative failure when failed to interview witness cannot be sole grounds for declining to confirm charges - but can be considered in part of whole • There are substantial grounds to believe that an attack was directed against the MGS Haskanita on 29 September 2007. • While Meeting 1 occurred, the witnesses were weak and inconsistent about Abu Gharda's responsibility and involvement - unsure if he was actually there. Thus subject matter is unnecessary. Meeting 2 - Witnesses are unclear and unreliable; unsure if Abu Gharda was even there or whether meeting took place on way to attack • "unable to be satisfied that there are substantial grounds to believe that Mr Abu Gharda participated in any meeting in which a common plan to attack the MGS Haskanita was agreed upon." • "existence of an agreement or common plan needs not to be explicit and "can be inferred from the subsequent concerted action of the co-perpetrators". alleges to be the essential contribution provided by Mr Abu Gharda for the common plan to attack the MGS Haskanita, with a view to establishing whether the existence of such common plan can be inferred from his alleged conduct" • lack specific information to enable the Chamber to establish to a satisfactory degree that, at the time of the attack on the MGS Haskanita, Mr Abu Gharda had already split from JEM and had effective control over a new armed group. • Not able to say that Abu Gharda was leader of forces and issued orders for planned attack / existence of a common plan cannot be inferred from the alleged issuance of orders • Also inconsistencies in whether Abu Gharda actually directly participated in and carried out the attack • Thus cannot say for sure Abu Gharda was co-perpetrator • Sudan has 3 in custody domestically for domestic charges (not the same as ICC charges) <ul style="list-style-type: none"> ○ Bashir sentenced to 2 years domestic for corruption. Not same charges as ICC, 	<ul style="list-style-type: none"> • Not a state party to ICC, does not like ICC • Case was referred to ICC by UNSC and not by state • The UN Security Council has also consistently failed to provide the necessary support for the ICC investigation and has failed to take action on findings of non-compliance by ICC judges • Seen as ICC biased against African states • Much of it was political decisions in how they decided to go about Darfur investigation / enforce decisions <ul style="list-style-type: none"> ○ Governments may use ICC to remove political opponents - need to be cautious here

		<p>possibly for Sudan to keep him there and not give up jurisdiction to ICC. 2 years domestic prison may be better than 30 years in ICC prison.</p> <ul style="list-style-type: none"> • Sudan is now starting to investigate Bashir for Darfur crimes (same ones as ICC - may run into issue of complementarity or state not being effective) • On October 2019 Sudan’s Attorney General, Taj Al-Sir Ali Al-Habr, met with the delegation of the Darfur Bar Association (DBA) to discuss the extradition of ousted President Omar Al-Bashir to the ICC. Saleh Mahmoud, Deputy Chairman of the DBA, said the two sides agreed that the timing was not right for releasing statements about handing over Al-Bashir to the ICC. • November 2019 - The head of Sudan’s Sovereign Council, Lt Gen Abdelfattah El Burhan, says that the current government does not intend to transfer ousted President Omar Al Bashir to the ICC • In February 2020, Sudanese government indicated that Bashir (and others) would need to go to ICC to be charged and tried. Likely done at cost of getting peace talks between Sudan's government and rebel groups from the Darfur region and ending the conflict. Unsure if this will happen actually, but the words / commitment is the first positive step in a long time. 	
<p>DRC</p>	<p>1 case at large Mudacumura (presumed dead Sept 2019, if actually will withdraw charges. but why did they not get him before that)</p> <p>1 case charges not confirmed (Mbarushimana)</p>	<ul style="list-style-type: none"> • Has been pro-ICC; cooperated in other cases and assisted with extraditions. DRC referred situation to Prosecutor and has been helping out in other cases. Recent calls to withdraw but no actions taken (In a media release on 15 September 2018, the Congolese government stated it “did not exclude” withdrawing from the jurisdiction of the International Criminal Court (ICC).) • All those prosecuted have been in rebel groups / government using ICC to boost their legitimacy and prosecute rebels to keep themselves in power. • Mudacumura - was military leader of FLDR (rebel group to government). Killed in Sept 2019 in DRC by governmental forces. Unsure why they did not get him before but likely due to rebel group and being on the run / using the instability of Rwanda / DRC / Sudan to escape prosecution. Now that he is dead charges will likely be dropped. • Mbarushimana - France extradited him to ICC. Had no domestic charges in DRC or France. On his arrival to France he was placed under judicial supervision. Indeed a judicial inquiry was opened in France against Mbarushimana, following a complaint from the Collective of Civil Parties for Rwanda (CPCR) filed in 2008. ICC declined to confirm charges on basis of evidence submitted was insufficient to be convinced of the existence of substantial grounds to believe that such acts were part of a course of conduct amounting to “an attack directed against the civilian population” and Mbarushimana did not provide any contribution to the commission of the alleged crimes, even less a “significant” one. (Mbarushimana also was cleared from charges by ICTR - similar basis; likely he doesn’t 	<ul style="list-style-type: none"> • Pro - ICC; is a state party and actually referred situation to the Court. • After years of advocacy by civil society, 2015 saw the adoption of a bill incorporating Rome Statute crimes into Congolese criminal law and further facilitating the country’s cooperation with the ICC. The DRC has also concluded ad hoc agreements with the ICC to enforce the ICC sentences imposed upon rebel leaders Thomas Lubanga and Germain Katanga. • Recent calls to withdraw but no actions taken (In a media release on 15 September 2018, the Congolese government stated it “did not exclude” withdrawing from the jurisdiction of the International Criminal Court (ICC).)

		really play a role or as secretary doesn't really have connection to common plan in the evidence presented)	
Uganda	2 cases (1 unknown - Kony, 1 presumed dead - Otti)	<ul style="list-style-type: none"> • Is somewhat cooperating; referred situation to ICC and has helped out a bit. Established International Crimes Division domestically 2008, indicated Ongwen should be tried domestically by the ICD. However, due to inadequate resources surrounding the ICD's jurisdiction over the crimes charged by the ICC, Uganda did not pursue it further. • Museveni has lashed out against ICC in recent years (2014 on - president is criticizing ICC and antagonistic to them). • Cases have so far only been brought against LRA members. Issues with domestic laws hampering ability to prosecute including a pre-existing amnesty law that has been applied to LRA members. • Kony - unsure of where he is. Is likely still on the run and using the surrounding states that are insecure (Sudan, Kenya, CAR, DRC, Rwanda) to evade prosecution. <ul style="list-style-type: none"> ○ Rebel leader; government trying to stop him so that they can stay in power and get rid of rebels. • Otti is presumed dead (Kony said he killed Otti in 2007/08 for disobeying Kony's orders. However, no independent proof of death so charges are still there) 	<ul style="list-style-type: none"> • Ok with ICC; referred situation to the Court and has cooperated as much as they can <ul style="list-style-type: none"> ○ Issues with all cases being LRA (rebel leaders) - probably to keep government in power and remove any political enemies • Also issues with getting Kony and other LRA leaders; they use the insecurity of surrounding states to evade prosecution • Museveni has lashed out against ICC in recent years (2014 on - president is criticizing ICC and antagonistic to them). But still strong civil society support for ICC