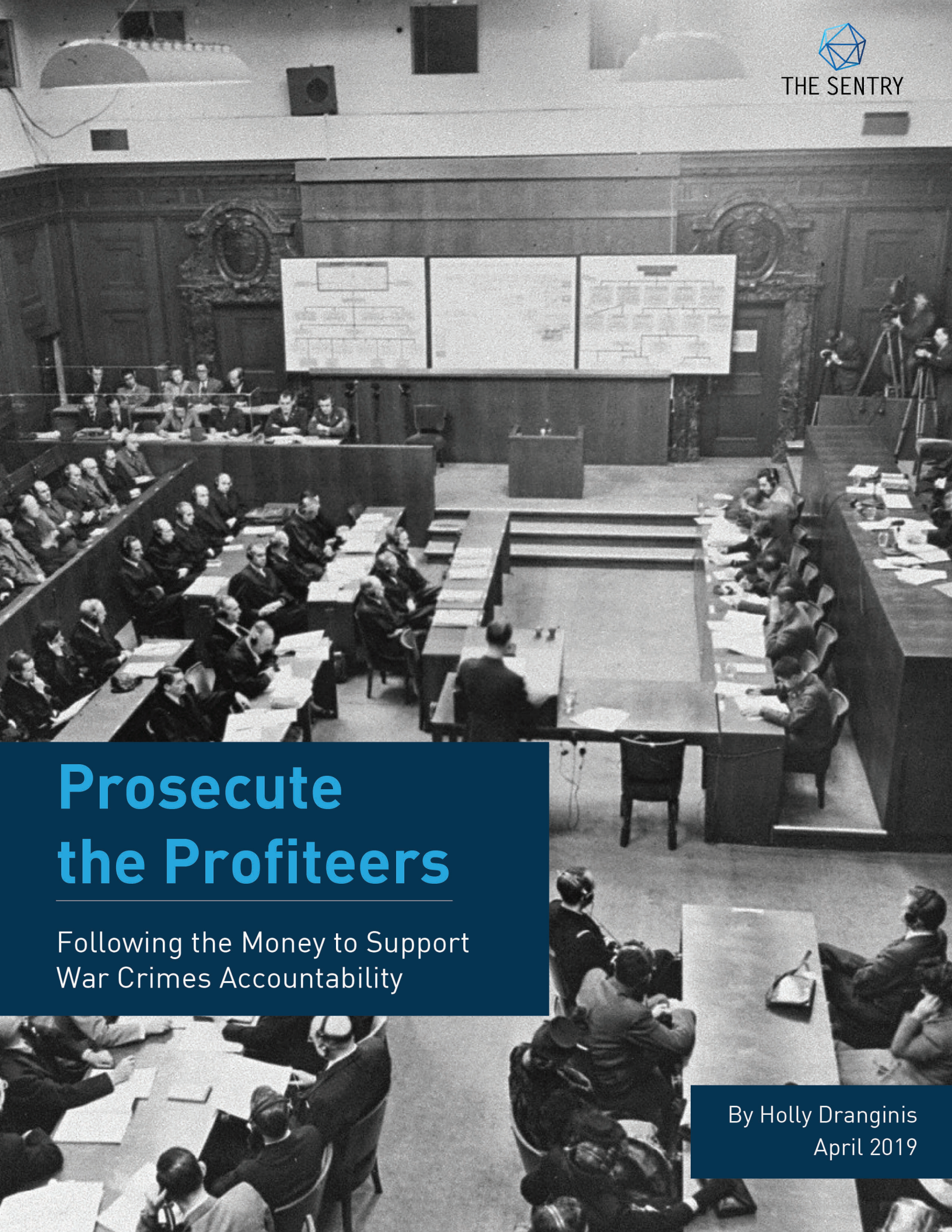




THE SENTRY



# Prosecute the Profiteers

Following the Money to Support  
War Crimes Accountability

By Holly Dranginis  
April 2019



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Cover: Nuremberg courtroom during proceedings for the case, United States v. Alfried Krupp, et al., 1947. As part of the efforts to hold perpetrators of grave crimes accountable after World War II, prosecutors charged executives from three major companies, including the Krupp and IG Farben, the company responsible for manufacturing the Zyklon B gas used in many of the Nazi extermination camps.  
Photo Credit: National Archives and Records Administration, College Park



## Executive Summary

War crimes pay. In East and Central Africa, where armed conflict has created some of the fastest-growing refugee flows in the world, control over lucrative resources is often the *raison d'être* of perpetrators. Economic crimes and grave violence often occur in tandem and generate profits for a range of people and entities involved. They entrench the conditions that made exploitation possible, inevitably leading to more.

That armed conflicts produce far-flung profits is no secret. Yet buyers and other facilitators aware of their involvement continue to make violent operations lucrative, stoking irreversible harm to affected communities and impoverishing otherwise resource-rich nations. Armed groups and war criminals worldwide operate with the complicity of foreign business partners, government officials, transnational financing networks, and international financial institutions. In East and Central Africa, this is as true for the last remaining Lord's Resistance Army fighters poaching elephants in Garamba National Park as it is for government army forces occupying oil-rich areas in South Sudan's northern states. These operations are only possible with money, equipment, and the opportunity to bring goods to market. Foreign business networks aid war criminals in the extraction, transport, and laundering of criminally-derived profits with materials, funding, services, and financial incentives. The value of the materials they steal and trade—among them gold, weapons, ivory, and timber—is only as high as the price foreign buyers are willing to pay.

Despite their crucial role, the commercial actors responsible for facilitating serious international crimes are rarely held accountable in court.<sup>1</sup> This was not always true: during the 1948 Nuremberg trials, 13 executives from the German chemical company IG Farben were convicted of war crimes and crimes against humanity for their role in perpetrating the Holocaust.<sup>2</sup> Farben was responsible for manufacturing the Zyklon B gas used in many of the Nazi extermination camps. Since then, however, even while war crimes prosecutions have advanced in almost every respect, the cases against Farben and other corporate Nazi facilitators have rarely been replicated. Instead, cases against alleged corporate facilitators of war crimes and crimes against humanity are often dropped or settled, if pursued at all.<sup>3</sup>

With widespread impunity, many of the most powerful co-conspirators and facilitators of atrocities continue operating, often quite profitably.

It is little wonder, then, that the financial dimension of the world's worst ongoing crimes remains crucial to their relentless perpetration. With widespread impunity, many of the most powerful co-conspirators and facilitators of atrocities—banks, refiners, offshore trusts, natural resource buyers and traders—continue operating, often quite profitably. Greed-based incentives for atrocities are preserved for all involved. Meanwhile, affected communities are deprived of key rights, such as accountability for economic crimes, a full accounting of the truth, and adequate reparations. Instead, victims are left to contend with acute poverty born of corruption and violence. Add to this the corrosive effects of impunity, which includes protracted conflict,<sup>4</sup> and the observation of one lawyer in eastern



Democratic Republic of Congo ring true: “[The] lack of prosecution in the area of organized financial crime encourages war crimes, and war itself.”<sup>5</sup>

All of this points to a little-discussed truth about war crimes and the international community’s quest to combat them: to hold their perpetrators accountable, governments, the private sector, and the courts must take aim at the financial infrastructure fueling these atrocities. Authorities in national and international courts should improve their approaches to investigating the financing of atrocities, greed motives, and profits derived by war criminals. They can do this using tools already at their disposal, including statutes prohibiting theft, sanctions violations, and atrocity crimes; diverse theories of liability; financial investigation strategies; and the seizure of ill-gotten wealth. If these powers are not brought to bear, key perpetrators, facilitators, and beneficiaries of some of the world’s worst crimes will continue to operate with impunity, and extreme violence will continue.

### Financial actors can be more vulnerable to apprehension than political and military actors.

Courts must also wield more effective ways to punish the financial crimes that often accompany war crimes, crimes against humanity, and genocide. Individuals who have faced war crimes prosecution generally keep their wealth and avoid charges for the economic crimes essential to their violent strategies. Some of the most notoriously business-savvy war criminals, including Charles

Taylor, were never prosecuted for their financial crimes. In these and similar cases, the courts missed opportunities to directly address systematic acts of pillage and identify the profits resulting from crimes, leaving illicit financial networks and illegal assets untouched.

At the same time, financial actors can be more vulnerable to apprehension than political and military actors. They operate all over the world. With business operations occurring outside the immediate geographic theater of crimes, law enforcement in a variety of legal systems can intervene in meaningful ways.

This shift is possible. Take a recent case in the Netherlands, where prosecutors convicted a key source of financing to Charles Taylor. Taylor, of course, was well known for crimes against humanity in diamond-rich Sierra Leone, but his commercial partners operated almost entirely in the shadows. That changed when Dutch authorities investigated businessman Guus Kouwenhoven, convicting him in absentia in 2017 for providing weapons and other support to then-President Taylor during the civil war in Liberia.<sup>6</sup> According to the judgment, Kouwenhoven said he was part of Taylor’s “second inner circle,” comprised of “the major business people” with direct relationships to Taylor. For Taylor’s part, he considered Kouwenhoven’s company his “pepperbush” during the war, using a traditional Liberian moniker meaning something of great personal financial interest.

Kouwenhoven’s conviction was groundbreaking, despite relying on a simple notion: just as financial interests accompany war crimes, financial investigations should accompany war crimes investigations. Given vast evidence showing that despotic army, government, and rebel leaders



prevailing over the world's worst humanitarian crises each have their own "pepperbush" networks, justice authorities should work hard to ensure the Kouwenhoven case does not stand alone for long.

To be clear, there are good reasons for the finance blind spot in war crimes trials. Successfully prosecuting atrocity crimes in even their simplest form is difficult. Practitioners face the daunting tasks of eliciting cooperation with foreign jurisdictions, gathering evidence in multiple countries, protecting witnesses in remote high-risk environments, and gaining custody of suspects in conflict zones. Financial investigations only add to these complexities. Like most innovations, they are also not cheap: new expertise in financing and international criminal law, which has been scarce in practice, is required, meaning multiple public and private-sector institutions must contribute effort and resources.

Complicating matters further, investigating financial crimes or actors linked to atrocities often requires the political will to probe popular and profitable multinational business networks. With formidable legal and public relations resources at their disposal, these multinational corporations can wield influence over political actors in various jurisdictions, deterring them from supporting investigations into complex financial networks.

Despite these challenges, investigating and prosecuting the financial dimensions of atrocity crimes may give war crimes prosecutors easier paths to justice. Documentary evidence, including export and bank records, business disclosures, and social media captures—all of which are useful for demonstrating links to defendants—can be more reliable and accessible than other evidence like victim testimony. And since many of these investigations can be led in jurisdictions in Europe or North America, prosecutors can avail themselves of war crimes units designed to pursue successful criminal cases and asset forfeiture actions.

Recognizing that international financial pressure can play an intervening role in limiting violence and human rights abuses, policymakers in North America and Europe have recently increased their attention to international financing and kleptocracy.<sup>7</sup> This trend suggests growing recognition that civil lawsuits and asset seizures can help combat illicit finance on an individual and corporate level, complementing broader network sanctions and anti-money laundering (AML) measures and, together, helping curb the flow of money from war zones to profiteers.

Still, many of the financial activities that sustain cycles of atrocities are criminal acts that elicit no criminal punishment. That is why prosecutors at international courts and in domestic war crimes units should view financial crimes—including theft, bribery, money-laundering, sanctions violations, and other economic misconduct—as targets of accountability, their perpetrators as crucial to the structures of violence in war zones as the killing of civilians.

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This report proposes a shift in our approach to justice for serious international crimes, targeting the perpetrators of atrocities where they are often most vulnerable: their money.<sup>8</sup> The report describes new approaches that can be integrated throughout the phases of investigation and trial: using financial investigations to more effectively prosecute atrocity crimes, prosecuting the financial crimes that enable or motivate atrocity crimes, and seizing criminally-derived assets as a measure of accountability and to fund reparations. The analysis and recommendations focus on one of the deadliest and most lucrative parts of the world, East and Central Africa, and highlight important contemporary cases from elsewhere in the world.

## Recommendations

The following should guide policymakers, prosecutors, and investigators:

1. **Follow the money in war crimes investigations:** Domestic and international prosecutors and investigators should investigate financial evidence and networks in serious international crimes cases they accept, adopting an integrated strategy from the outset. They should pursue financial evidence related to key crimes and suspect organizations alongside investigations into core war crimes and crimes against humanity. They should assume that financial evidence, motives, crimes, and actors will be relevant until proven otherwise and consider liability theories relevant to financial enablers early on. Prosecutors addressing transnational financial crimes should vigorously enforce anti-money laundering statutes, with particular attention paid to financial institutions that may be aiding money transfers originating at the crime base.
2. **Bring finance experts in from the beginning:** Domestic and international prosecutors charged with prosecuting serious international crimes should prioritize financial crimes expertise as essential to their work. International Criminal Court (ICC) member states should fund investment in financial investigations and expertise, and ICC Chief Prosecutor Fatou Bensouda should appoint a special adviser for atrocities financing. Lead prosecutors in specialized domestic justice units should also provide staff members with training in financial forensics. International and domestic authorities should invest in heightened protective measures for whistleblowers and environmental activists, given their unique ability to contribute financial evidence and the unique threats to their security.
3. **Collaborate across borders and use open-source intelligence:** Domestic officials investigating transnational financial and atrocity crimes should more proactively cooperate with other domestic and international courts, especially through informal information exchange and making better use of open-source intelligence. All relevant state actors should proactively engage with the International Anti-Corruption Coordination Centre in the United Kingdom, which can facilitate information and analysis exchange between a number of countries and international organizations. ICC member states should improve their domestic cooperation policies to ensure effective responses to ICC cooperation requests.



4. **Prosecute economic crimes where atrocities occur:** The Special Criminal Court in the Central African Republic (CAR), hybrid court in South Sudan, and economic crimes units in the Democratic Republic of Congo should develop strategies for investigating the financial networks, widespread theft, and greed-based motives that have fueled atrocity crimes. The U.S. Department of State's Office of Global Criminal Justice (GCJ) should encourage authorities at these courts, including the African Union and lead prosecutors, to make economic crimes a priority. Donor countries should contribute funding for financial investigations training so they can pursue cases against the business actors and profiteers of atrocity crimes. U.N. peacekeeping missions in Congo, South Sudan, and CAR should ensure their specialized prosecution cells investigate economic crimes linked to atrocities, like trafficking and extortion.
5. **Pass and amend key legislation:** U.N. member states should support the proposed treaty prohibiting Crimes Against Humanity to improve ease of legal action against financial enablers of atrocities in domestic courts.<sup>9</sup> The U.S. Congress should reintroduce and pass legislation prohibiting crimes against humanity to give U.S. federal prosecutors broader power to prosecute perpetrators and facilitators of atrocities abroad, especially those availing themselves of the benefits of U.S. financial institutions and networks. Congress should amend the United States war crimes statute to make pillage a predicate offense, given the relevance of theft in East and Central Africa to individuals and companies operating globally.
6. **Seize the proceeds of crimes:** Authorities in domestic justice systems with the power to seize criminally-derived assets should look to East and Central Africa for relevant actors linked to corruption and atrocities that may park assets in their jurisdictions. In the United States, this effort is led by the Department of Justice's Money Laundering and Asset Recovery Section (MLARS). United Kingdom authorities are also particularly well-positioned to do this if they operationalize new authorities granted by the Unexplained Wealth Orders and Magnitsky Amendment in the 2017 Criminal Finance Bill.
7. **Pay affected communities back:** ICC authorities should conduct earlier and more frequent parallel financial investigations and use their authority to seize assets, which could help cover reparations and defense costs. Relevant domestic authorities, including the U.S. Department of Justice's MLARS, in cooperation with the U.S. State Department and others, as well as hybrid courts in CAR and South Sudan should prioritize the investigation of criminally-derived assets linked to corrupt actors in East and Central Africa and build networks with affected communities to design asset return strategies.
8. **Support crucial government agencies:** The U.S. State Department should maintain support for the GCJ and re-appoint a high-level official to head the office. GCJ should develop a stronger focus on targeting the financial facilitators of atrocities to support new avenues for atrocity crimes cases, especially in East and Central Africa, where natural resources and money laundering play a pivotal role in violence. The U.S. Federal Bureau of Investigation should maintain its International Human Rights Investigations Unit, which plays a critical role in cross-border



evidence gathering – including financial records -- for atrocity crimes cases in the United States and abroad.

## War is a moneyed place

The judgment against Dutch businessman Guus Kouwenhoven described burning homes in rural villages and widespread rape against women and children. The timber merchant played a role in these acts, the court held, and some of them “were deliberately solicited...by the defendant,” according to the decision. “Through the intermediary of Charles Taylor,” Kouwenhoven’s companies “received large areas for the exploitation of the logging business in the form of concessions.”<sup>10</sup> In fact, “the political, financial, and private interests of Charles Taylor, then President of Liberia, were strongly intertwined with the interests of (the companies of) the defendant,” the court found. “Charles Taylor named [the defendant’s company] his ‘pepperbush,’ a Liberian expression which according to the defendant means that something is important to you...in the financial context.”<sup>11</sup> Together, they committed atrocities.

In early 2017, an appeals court in the Netherlands sentenced Kouwenhoven in absentia to 19 years in prison for aiding and abetting war crimes and arms trafficking.<sup>12</sup> The Dutch Supreme Court affirmed the judgement in December 2018, and Kouwenhoven is fighting extradition in South Africa.<sup>13</sup>

Business relationships and the money they move facilitate and incentivize violence in armed conflict, exerting a wide and integrated range of influence over atrocity crimes. Strategies for prosecuting atrocity crimes have largely failed to reflect that influence,<sup>14</sup> but Kouwenhoven’s case shows that those failures are not inevitable and that criminal charges can come to bear on the business partners of warlords.

In many ways, though, Kouwenhoven’s case stands alone in modern practice.<sup>15</sup> In a world where arms are traded globally in what James G. Stewart calls “a regulatory vacuum characterized by the almost perfect absence of all forms of accountability,” Stewart notes that “the Kouwenhoven case is the first that holds a nefarious arms vendor responsible for complicity in African atrocities.”<sup>16</sup>

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Nevertheless, modern international war crimes justice traces its roots to Nuremberg, where prosecutors placed profiteers at the center of their strategy. It was there that, in late July 1948, 13 executives from the German chemical company IG Farben were convicted of war crimes and crimes against humanity for their role in perpetrating the Holocaust.<sup>17</sup> Farben was the company responsible for manufacturing the

Zyklon B gas used in many of the Nazi extermination camps. Two other companies accused of providing support to the Nazis were also held accountable. Seventy years after these cases, war





crimes accountability has enjoyed significant progress but fails to honor the full legacy of Nuremberg by largely leaving corporate actors unscrutinized.<sup>18</sup>

Of course, this gap is not the result of money having a diminished role in atrocities since the Holocaust or, more recently, since Liberia's civil war. On the contrary, the past few decades of reporting by media, human rights organizations, and U.N. panels have made plain the power of business activities to fund and exacerbate widespread abuses in East and Central Africa, exacting some of the gravest humanitarian tolls on the planet.<sup>19</sup> In Sudan, for example, Janjaweed militias responsible for untold violence against civilians have profited from ivory trafficking. And in CAR, Séléka militias and other armed groups administer major mining operations, simultaneously recruiting child soldiers and mass murdering civilians. This dynamic also feeds on and encourages corruption. According to the International Peace Information Service, "[u]nder Seleka rule, the Ministry of Mines repeatedly deviated from the established procedures for the payment of signing bonuses, making these funds more susceptible to embezzlement."<sup>20</sup> Congolese rebel commander Bosco Ntaganda, notorious for brutalizing the children he recruited as fighters, also controlled illegal lucrative minerals before his surrender to the ICC.<sup>21</sup>

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Too often, the few individuals who do come under the scrutiny of international law enforcement for atrocity crimes—namely political or rebel leaders—do not face consequences for their economic activities. But for survivors of atrocities, financial crimes are often inextricable from the horrors they endure. "Our dead are buried in mineralized cemeteries," Congolese human rights advocate Prince Kihangi said at a public hearing in Kinshasa in 2016, noting a tendency to ignore the business interests behind violence.<sup>22</sup> Defendants' collaborators abroad, who either assist, motivate, or orchestrate violent operations to profit from the material results of violence, have largely escaped scrutiny. These shortcomings have entrenched impunity and left survivors without access to reparations or truth, rights they are afforded by international law.<sup>23</sup>

Greed, theft, the transport of money and commodities, and sophisticated financing networks are directly relevant to atrocity crimes in East and Central Africa, in particular. Business networks and military structures often overlap, and lines between financial profits and military victories often blur. In a note examining the Democratic Forces for the Liberation of Rwanda (FDLR), a Congo-based rebel group whose leader Sylvestre Muducumura is indicted by the ICC, a U.N. special investigation unit found:

"[The] FDLR have structured a dense and diversified economic web, which in return shapes their military activities. Their military set-up is integrated into the map of resources. [Armed groups headquarters] are embedded in areas of business interest."<sup>24</sup>



These traits are common among state and non-state criminal groups in the region, making it incumbent upon foreign authorities to investigate the tentacles of such business networks—a key step to pursuing justice for victims of the violence that makes conflict lucrative.

Historically, however, international and domestic prosecutors have lacked coordinated strategies for investigating the financial dimensions of war crimes, crimes against humanity, and genocide. Targeted approaches to analyzing the role of natural resources, tracking the movement of money, and mapping the corporate footprints of suspects or insiders have been *ad hoc* at best. Investigations have focused on crimes of direct violence, like the murder of civilians, torture, or recruitment of child soldiers, but left out the analytical frameworks, resources, and expertise needed to tackle the economic dimensions of these crimes.<sup>25</sup> Enslavement, for example, as it was in the antebellum American South, is widely acknowledged as an inherently economic construct. Yet the forms of enslavement used relentlessly against women in Congo and children in South Sudan, for example, have not been adjudicated with economics in mind.

As such, the proceeds of atrocity crimes have largely remained untouched by law enforcement, and foreign accomplices to atrocities committed by East and Central African despots act with impunity.

### Course-correcting in international justice

Adjustment and innovation are essential parts of a goal as ambitious as ending impunity for atrocity crimes. Some gaps in how war crimes prosecutors approach financial considerations in the pursuit of war crimes prosecutions echo problems with how courts have approached gender considerations. In many cases, at the international tribunals for Rwanda and the former Yugoslavia and the ICC, evidence of gender-based violence and gendered impacts of crimes was overlooked, to the detriment of victims' rights and legal precedent. Particularly in early cases, gender analyses were applied late and in silos by experts isolated from core investigations. As a result, many cases lacked due attention to testimony and other evidence of gender-based violence and thus betrayed a limited understanding of how those crimes were perpetrated or how they are integrated into broader systems of repression and violence. These omissions, in turn, resulted in failures of justice: disproportionately few charges of gender-based violence (despite ample statutory authority) and few convictions of gender-based violence (despite ample evidence of it).

Though much more work remains, approaches have improved thanks to effective advocacy on the part of survivors, practitioners, and activists.<sup>26</sup> Several domestic war crimes units and the ICC require gender expertise and considerations of gender-based violence at every stage of an investigation. Trainings and workshops for investigators and prosecutors on the critical particularities of effectively and ethically investigating conflict-related gender-based violence are generally available to practitioners, if not mandated. Leading expert in gender in international criminal law, Patricia Sellers,



serves as the ICC Chief Prosecutor's dedicated advisor on gender-based violence. These hard-won measures have not closed gaps completely, but they are essential to improving the way war crimes are prosecuted. A similar approach should be taken with the financial dimensions of atrocity crimes by adopting dedicated financial experts, early and frequent analysis of financial considerations, and more intentional use of the existing authorities to charge economic crimes and seize assets.

War crimes and crimes against humanity have economic motivations, impacts, and spoils. This should be reflected in the way we prosecute them. To do this, however, the range of financial dimensions characteristic of atrocity crimes demands a more integrated approach by justice authorities, especially if court cases are to change incentives and deliver adequate reparations to victims. A reimagined strategy will require resources and present challenges, but it does not require prosecutors to have jurisdiction over corporate entities or a specific mandate to investigate either financial crimes or the violation of economic rights.

Together with network sanctions and anti-money laundering measures, addressing the financial dimensions in atrocity crimes cases will strengthen interventions into transnational illicit financing. Financial pressure is not always enough. Criminal investigations and trials are a critical part of those interventions, since unlike sanctions and AML measures, they involve witness testimony, victim participation, coercive powers of investigation and punishment, due process, and a public accounting of facts. More severe consequences, consequences more proportionate to the crimes and conduct, are available to levy on financial perpetrators. They are rarely used.

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Prosecutors in domestic and international courts—from war crimes units in Europe, to military courts in Congo, to the Office of the Prosecutor at the ICC—should require parallel financial investigations whenever they investigate atrocity crimes. Investigators and prosecutors should seek financial records and use open-source intelligence to map their targets' corporate footprints, working with finance specialists and other government agencies with jurisdiction over banking and sanctions. Liability assessments should apply to companies and corporate executives just as they do to army commanders and high-level political operatives. In several jurisdictions, including the United States, financial institutions or facilitators who aid and abet or conspire to commit offenses are punishable under the same laws used against direct perpetrators.

International courts and domestic authorities should train investigators and prosecutors on the ways in which financial investigations can strengthen war crimes cases. They should also integrate financial crimes experts into their teams. Many of the cases that mark progress in this arena, including against Kouwenhoven, have been initiated by victims' groups and international civil society





organizations. Some nongovernmental organizations have also helped break new ground by making it a core mission to investigate the financial dimensions of atrocity crimes.<sup>27</sup> Most regularly communicate with prosecutors, but further developing positive working relationships between prosecutors and investigative NGOs will be key for advancing war crimes cases against financial actors. Maximizing complementarity and minimizing misalignment on certain facets like source protection and evidence collection standards are core to that development.<sup>28</sup>

### **Follow the money to every jurisdiction**

War criminals and their enablers are not always found in theaters of war or humanitarian crisis. Some operate in jurisdictions with some of the most progressive legal systems in the world, systems with unique power to hasten or slow the commission of atrocities.

Airlines and other transport companies, gold refiners and minerals smelters, as well as multinational companies involved in banking, commodities trading, mining, agriculture, oil, and shipping facilitate violence in East and Central Africa. They provide a market for resources extracted by armed groups and military forces and services to move large amounts of material into the global supply chain. They also do business with perpetrators, providing key financing for violent operations. “[T]hose ‘most responsible’ for atrocities are not always the ones giving orders to kill or harm,” transitional justice expert Ruben Carranza wrote in a piece on the case against Kouwenhoven.<sup>29</sup> “Business and profit is a motivation to commit crime,” including war crimes and crimes against humanity, he wrote. Indeed, amidst ongoing armed conflicts in Congo, CAR, and South Sudan, a wide range of commercial actors operate in banking, logistics, and natural resources, without attention—or with help—from enforcement. “The SPLA fights and displaces everyone,” a South Sudanese anti-corruption activist who cannot be named for security reasons told The Sentry, “It’s for oil. ...revenge is a cover.”<sup>30</sup>

### **Arresting indicted alleged war criminals is one of the Achilles’ heels of international justice.**

Arresting indicted alleged war criminals is one of the Achilles’ heels of international justice.<sup>31</sup> This is due in large part to the non-enforcement of arrest warrants by host, neighboring, and ally governments. One of the most well-known examples of this pertains to Omar al-Bashir, whose arrest warrant for war crimes and crimes against

humanity was issued in 2008 and who remains at large. He has traveled numerous times since his indictment, including to countries whose governments are signatories to the Rome Statute and thus have a legal obligation to apprehend him but nonetheless kept his impunity intact.<sup>32</sup> Meanwhile, within domestic borders in East and Central Africa, credible war crimes prosecutions for high-level perpetrators are lacking, despite grave ongoing atrocities: In South Sudan, in just four months in 2015, 1,300 rapes were recorded in South Sudan’s Unity State alone, most by state actors, according to a report by the United Nations.<sup>33</sup> There is “no evidence...of any genuine efforts by the Government to investigate, prosecute and punish violations,”<sup>34</sup> the report said, and mass rape in South Sudan continues.<sup>35</sup>



But venues for prosecuting these crimes could exist outside this region, and investigating financial networks is one way to find them. Operating in a wider range of jurisdictions, private-sector perpetrators who assist or profit from atrocities may be easier to apprehend than their rebel commander or head-of-state counterparts. Authorities may also have an easier time gathering evidence given the paper trail inherent to business activities, including corporate registries, import and export records, and leaked banking records. Financial forensic evidence can be easier and cheaper to acquire than witness testimonies, and it can be used to back up victims' observations.

Several national governments, including those of the Netherlands, Canada, the United States, Belgium, and France, have specialized units devoted to prosecuting international crimes and human rights abuses.<sup>36</sup> Prosecutors should work with financial crimes experts and investigators to expand their lens beyond proximity to direct violence for identifying feasibility and responsibility. Together, they should develop investigation and prosecution strategies that probe the financial dimensions of war crimes. This should include searching for criminally-derived assets, greed motives, and economic impacts on victims.

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Another promising example of good work among these units is the case of Michel Desaedeleer, an American-Belgian citizen. Desaedeleer was accused of conspiring with then-Liberian President Taylor and the Sierra Leonean armed group leader Foday Sankoh to traffic weapons into Sierra Leone and enslave civilians in diamond-rich territories, forcing them to mine and face other grave abuses.<sup>37</sup> The arrangement resulted in a profitable diamonds export business for Desaedeleer and his more infamous partners. Desaedeleer's citizenship provided an important nexus to both Belgian and U.S. courts, and ultimately he was arrested in Spain for extradition to Belgium to face charges. He passed away in custody in 2016. Belgian authorities should take advantage of the evidence and prosecution strategies developed in Desaedeleer's case to pursue corporate actors or individuals who might have facilitated crimes against Sierra Leonean civilians for foreign profit.<sup>38</sup>

### The complementarity of financial crime statutes

Bribery, money laundering, and violating sanctions regimes are common practices among those responsible for extreme violence in East and Central Africa. For the facilitators of atrocities, these financial crimes often occur as part of the normal course of business. For example, the illegal gold trade in eastern Congo is one of the most lucrative streams of income for armed groups and violent military units, contributing to serious international crimes like systematic rape and murder. But bribery and money laundering are also at the core of these violent networks.<sup>39</sup> Given the sanctions implemented pursuant to the Global Magnitsky Act, as well as robust sanctions regimes in the United States and Europe toward South Sudan, CAR, and Congo, companies facilitating violence in this region may be liable in the United States for violating the International Emergency Economic Powers Act (IEEPA) as well.



Law enforcement authorities should take advantage of the full range of financial criminal statutes that may feature in illegal trades. This approach is especially important in the absence of statutes outlawing more extreme crimes, or where links to those crimes cannot be proven. In cases like these, attorneys and nongovernmental organizations can do some justice to the more serious crimes involved by collecting victim impact statements, drafting amicus briefs, or inviting civil party applications. Those addendums may not affect the seriousness of the charges, but they will put links between financial crimes and violence on the record. That can be valuable as an acknowledgement of truth and for advancing the way we understand the commission of atrocity crimes and their impact.

U.S. prosecutors can make better use of statutes prohibiting money laundering and material support to terrorist organizations, in particular, including Federal statutes 18 U.S.C. 1956 and 1957, and the Bank Secrecy Act.<sup>40</sup> In the course of committing atrocities, the proceeds of crimes like pillage, gold trafficking, and theft of government assets are often moved in U.S. dollars through the U.S. financial system. U.S. law also prohibits financial institutions from violating AML due diligence requirements when managing accounts in the United States, including for non-U.S. persons. Separate provisions apply specifically to financial institutions that provide financial services to “politically exposed

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persons” (e.g. a senior foreign political figure, any immediate family member, or close associate). With respect to private banking accounts of non-U.S. persons, banks must conduct enhanced scrutiny of accounts requested or maintained by or on behalf of a politically exposed person.<sup>41</sup>

The U.S. also prohibits the transportation of stolen goods, the trafficking of certain materials widely traded by violent actors in East and Central Africa, wire fraud, and a range of corruption crimes under the Foreign Corrupt Practices Act (FCPA).<sup>42</sup> Prosecutors turn to the FCPA to hold individuals accountable for offering bribes to foreign officials, for example. Prosecutors can use these laws in efforts to hold facilitators of foreign atrocities accountable in U.S. courts, given common links between corruption and violent regimes there.<sup>43</sup>

Where investigations into FCPA violations reveal evidence or links to atrocity crimes, prosecutors should share information with other agencies or jurisdictions and encourage them to act as appropriate according to prosecutors’ different mandates. A 2016 case against the U.S.-based hedge fund Och-Ziff offered such an opportunity. The company pled guilty to conspiracy to violate the FCPA and to bribing foreign officials, including in Congo.<sup>44</sup> “It is a rare occasion the U.S. government is enforcing the Foreign Corrupt Practices Act for corruption in the DRC,” wrote Congolese development specialist Soraya Aziz Souleymane about the case. “It is also the first time, to my knowledge, that we have a solid paper trail proving that the senior Congolese officials...were direct beneficiaries of over \$100 million in bribes from foreign companies.”<sup>45</sup> In cases like this, prosecutors should investigate or rule out links to theft, sanctions violations, and violent crimes customarily linked to illegal mine concession capture, like forced labor, theft and displacement. Taking the case beyond





initial settlements would reflect a more comprehensive strategy to improve accountability for crimes that are both financial and violent in nature.

### **War crimes, globalized: opportunity in money's broad reach**

The companies and financial institutions on which perpetrators of atrocity crimes in East and Central Africa rely operate largely in the U.S. dollar. As it pertains to sanctions and AML authorities, this fact provides significant opportunity for effective intervention. Put simply, it gives the United States jurisdiction over a broad set of remote transactions because they clear through New York, due to the way that correspondent banking functions. As a result, a number of sanctions and AML tools can be used by a range of actors. Governmental sanctions and AML authorities, including individual compliance units in banks, can cut off illicit financial flows originating in South Sudan or Congo, for example, due to the ubiquity of the U.S. dollar and the borders it crosses, if virtually, in a given transaction.<sup>46</sup>

This dynamic has an analog when it comes to prosecutions. Just as financial transactions can trigger authority by a broad array of authorities in the financial sector, so too can they give rise to jurisdiction for criminal investigations by a wide variety of courts and governments. A single crime pattern involving, for example, the financing by a multinational company of defense forces committing violence in the oil fields of South Sudan, could invoke the jurisdiction of the country where the parent company is incorporated, where individuals involved in the oil deals have citizenship, where law firms assisting with deals are based, where oil refiners are subject to jurisdiction, and so on. Investigating business transactions and operations at play in the commission of war crimes and crimes against humanity can have a multiplier effect on the jurisdictions with the authority to prosecute. The role of buyers, traders, and service providers operating all over the world could be so pivotal as to give rise to criminal liability.

In the United Kingdom, new terms set by the 2017 Criminal Finances Act could be used to hold facilitators of atrocities accountable for money laundering. However, the primary prosecuting authority of money laundering, the Financial Conduct Authority (FCA), hasn't brought a single prosecution since 2007.<sup>47</sup> "Kleptocrats and high risk political exposed persons are 'potentially profitable customers' for UK banks and businesses," Corruption Watch's Director, Susan Hawley, wrote recently in a piece about the FCA's poor record. "Ensuring that the regulatory environment makes sure that banks think twice about taking on this business is crucial."<sup>48</sup> UK prosecutors should carry out investigations in such a way that will reveal any existing links between kleptocrats and violent actors in East and Central Africa.



A renewed focus on sanctions by authorities in Europe and the United States also presents opportunities for prosecuting corporate entities linked to atrocities in East and Central Africa. The use of international financial pressure to disrupt links between kleptocracy and atrocities in the region is gaining ground, with the United States and United Nations creating new avenues for sanctions and expanding sanctions criteria to cover additional abuses.<sup>49</sup> Sanctions designations issued toward individuals and their business networks in East and Central Africa are also increasing. Billionaire Dan Gertler, for example, a close business partner to former Congolese president Joseph Kabila, was sanctioned in 2017 by the United States along with dozens of his companies for corruption under Global Magnitsky.<sup>50</sup> When sanctions regimes are violated, prosecutors have the tools to act swiftly, using statutes like the United States' International Emergency Economic Powers Act (IEEPA), that make it a crime to do business with sanctioned entities. This is especially important since it is possible that individuals and entities operating in the United States and Europe are doing business with actors or entities involved in committing atrocities in East and Central Africa that have been sanctioned, thus potentially violating sanctions enforcement laws.

**Perpetrators rely on financial systems and market places in Europe and North America. Find avenues for justice there.**

For the past few decades, international and hybrid courts have served as stop-gaps for domestic justice systems that could not or would not adequately investigate and prosecute atrocity crimes occurring in their own countries. Indeed, Sudan, South Sudan, and Congo in particular have demonstrated an incapacity and unwillingness to prosecute some of the worst crimes ongoing in their territories. But international and hybrid courts need not bear the entire burden for investigating atrocity crimes in countries where domestic systems have failed to respond. Foreign domestic courts must step in where they have jurisdiction over profiteers and financial facilitators. In fact, the principle of complementarity makes it incumbent on these governments to investigate their own citizens for Rome Statute crimes committed abroad, rather than rely on the ICC to be the sole arbiter of atrocity crimes occurring in countries unwilling or unable to prosecute crimes against their own citizens.

Domestic prosecutors abroad should increase efforts to pursue justice for egregious crimes occurring in Sudan, South Sudan, CAR, and Congo, where criminal courts are under-resourced and politicized. A range of legislation and norms allows for such "third country" prosecutions, including universal jurisdiction and the travel or emigration of indicted individuals. Another way to generate opportunities for these cases is through financial investigations.

International and hybrid courts need not bear the entire burden for investigating atrocity crimes in countries where domestic systems have failed to respond.

Such an approach will benefit from collaboration across diverse government agencies in prosecutors' own countries. For example, prosecutors in the United States can request or share information relevant to the Internal Revenue Service (IRS) as well as the U.S. Departments of the Treasury and Homeland Security. This type of cooperation is critical for gathering evidence, building prosecution



strategies, and cultivating political will for addressing financiers of atrocities in East and Central Africa. Prosecutors can use a range of statutes to pursue financial enablers and remote co-perpetrators in domestic courts. Laws that prohibit war crimes, crimes against humanity, genocide, doing business with sanctioned entities, bribing foreign officials, providing material support to terrorists and human rights abusers, and money-laundering all provide potential avenues for accountability. These avenues have been shown to yield some progress toward accountability. In 2012, for example, HSBC bank signed a deferred prosecution agreement (DPA) based on allegations that it allowed members of the Sinaloa drug cartel to launder cash through HSBC accounts. The bank paid \$1.9 billion in connection with money laundering and due diligence failures,<sup>51</sup> with some key claims based on a U.S. statute making it a crime for a financial institution to violate certain due diligence and reporting requirements related to the accounts of non-U.S. persons.<sup>52</sup> The DPA expired in late 2017 with the bank never facing prosecution, but investigations based on the due diligence statute as well as the DPA itself revealed detailed intersections between organized violent crime and multinational financial activities.

Unfortunately, prosecutors in many domestic systems face legislation vacuums that can make it more difficult for them to pursue cases related to serious crimes abroad. For example, the United States lacks a comprehensive statute criminalizing crimes against humanity.<sup>53</sup> This makes it more difficult for prosecutors to find avenues for pursuing perpetrators of serious international crimes abroad. Testifying before Congress in 2011, then-Director of the U.S.-based nonprofit, Center for Justice and Accountability (CJA), Pamela Merchant stressed the importance of modernized legislation. The defendants in many of CJA's cases "have been found responsible by civil juries for torture, extrajudicial killing and crimes against humanity," according to Merchant. However, as she lamented in her testimony, "The most serious offense most of them can be charged with is immigration fraud because of the limits in the U.S. criminal code."<sup>54</sup>

The United States and other jurisdictions with active war crimes units should ensure their legislation provides clear paths for prosecuting the world's most serious crimes.

The absence of a comprehensive statute prohibiting the wide range of crimes against humanity also inhibits efforts to hold financial facilitators operating in the United States to account. Without such a comprehensive statute, some cases pursued domestically may become much less practical. This legislative gap means that, for

example, the United States federal statute prohibiting war crimes does not include pillage, an offense often facilitated by foreign companies and accompanied by grave violence against civilians. By amending the war crimes statute to include pillage, the United States would improve its ability to pursue facilitators of atrocities and related resource theft abroad. The bottom line is that lawmakers in the United States and other jurisdictions with active war crimes units should ensure their legislation provides clear paths for prosecuting the world's most serious crimes and to do so in cooperation with foreign jurisdictions.

The investigation of the Swiss gold refiner Argor-Heraeus offers an approach worth noting for prosecuting remote war crimes financiers. Swiss authorities initiated an investigation into war crimes





and aggravated money laundering after the Geneva-based organization TRIAL International filed a report together with Open Society Justice Initiative and the Conflict Awareness Project accusing Argor of refining gold stolen from eastern Congo's conflict-affected region of Ituri. Argor denied these charges. Ultimately, the Swiss Attorney General's office closed the case, saying there was insufficient evidence Argor knew the gold was stolen. Before it dismissed the case, however, the Swiss court made some critical findings. In its written decision, the judge explained that the gold received and refined by Argor from Concession 40 "was extracted without any state control" and was "almost certainly mined illegally" in the context of what the court called a "raging" international armed conflict in Congo's northeastern province of Ituri.<sup>55</sup> It also decided that a refiner can bear responsibility for gold pillage even if it never owns the gold based on its crucial role in preparing the gold for sale on the international market.<sup>56</sup> The judge also described a network of businesses operating in various jurisdictions involved in the gold's chain of custody, including air freight companies, banks, and gold buyers,<sup>57</sup> revealing opportunities for other jurisdictions to investigate the same set of crimes.<sup>58</sup> These opportunities can be seized by authorities in the United Kingdom and British Crown Dependencies, including Jersey, to investigate companies in their jurisdictions for money laundering and pillage.

In another case alleging serious criminal conduct by a foreign corporate actor, two French human rights groups have filed criminal complaints against the technology company Amesys for complicity in torture and other abuses committed by the Gaddafi regime in Libya.<sup>59</sup> Amesys has claimed its activities comply with international, European, and French law. French authorities opened a formal investigation, and in May 2017, a French court declared the company an "assisted witness."<sup>60</sup>

Taken together, these cases illustrate the power of prosecutors in foreign domestic courts to pursue justice for serious international crimes by targeting commercial actors.<sup>61</sup> Individual businesspersons as well as extractives companies, refineries, banks, and other commercial actors can be exposed for their crucial roles in the commission of atrocities, and pursuit of their activities by law enforcement can improve.<sup>62</sup>

### Oceans away: a note on liability

To ensure that financial investigations effectively improve international justice, investigators must prove links between commercial actors and crimes. Identifying and proving modes of liability for remote defendants is key and can be more complex than for more common defendants in war crimes cases, like military or rebel commanders. Where financial investigations lead to remote actors like financial institutions, buyers, or refiners, prosecutors must prove clear links between the knowledge and activities of these actors and crimes occurring in conflict areas, sometimes thousands of miles away. In many cases, this will mean showing the defendant provided material or moral support to the direct perpetrator, with knowledge of the crimes and armed conflict. Demonstrating that commercial actors in remote locations had the required intent to commit atrocities crimes is one of the most significant challenges prosecutors have



faced in cases targeting financiers or actors providing support from afar. Financial investigations can help strengthen those efforts by identifying whistleblowers who can testify about communications inside a company, documentary evidence of intentional financial contributions, and paper trails showing business deals and their motivations.

Various liability frameworks should be explored in cases against war crimes financiers and other business actors. Accomplice liability is particularly relevant because it governs responsibility for actors who have helped commit crimes, rather than directly committed or ordered them. A recent judgment in the ICC case Prosecutor v. Bemba et Al. cleared a path for more successful cases against accomplices by creating new rules that could pertain to commercial facilitators. In that ruling, the ICC's Appeals Chamber held that 1) the "contribution" to core crimes does not need to have an effect on the crime; 2) the facilitator need not provide assistance to the primary perpetrator to be responsible for crimes; and 3) individuals who help the perpetrator after the crime is committed can still be held liable. These are critical new rules when it comes to corporate and commercial facilitation of crimes. Defendants or suspects that operate remotely may lack detailed knowledge about the crimes they are facilitating. Some potential financiers or helpers, like banks and refiners, are not involved in crimes until after they occur, moving money earned through criminal activity or buying resources acquired through pillage or forced labor. Many remote operators will work through intermediaries, rather than being in contact with direct perpetrators or their commanders. On the contrary, direct and conspiracy liability modes should not be ruled out, given the direct role traders and other businesspersons and companies may have in planning and ordering certain crimes, and innovative strategies for investigations, including using open source intelligence and whistleblowers should be considered as well. Each of these dynamics makes rigorous, meticulous liability analysis, with attention to new case law, essential to building strong cases.

## Civil litigation

Prosecutors are not the only ones who can tackle the financial dimensions of atrocity crimes in court. With strategic approaches, advocates and victims can use finance analysis in civil litigation to gain redress from the perpetrators of atrocity crimes. In the United States, the Alien Tort Statute (ATS), Torture Victims Protection Act (TVPA), and laws requiring corporate transparency can provide channels for investigation into financial institutions and corporations suspected of facilitating violence abroad. Some of the most important U.S. cases to address atrocities abroad have advanced under the ATS and the TVPA,<sup>63</sup> both of which allow victims to sue for redress in U.S. courts for serious crimes occurring outside the United States. The decisions in some past cases have severely limited the extraterritorial power of the ATS, and the ATS was also recently barred from applying to foreign corporate entities.<sup>64</sup> But ATS litigation has revealed important links between financial actors and atrocity crimes and formed the basis of attempts by civil society to pursue accountability for financial



actors involved in serious international crimes. In 2002, for example, the South African organization Khulumani Support Group sued 20 banks and corporations under the ATS for their alleged roles in apartheid crimes.<sup>65</sup> After winding through the federal courts, the case was ultimately dismissed in part because of inadequate evidence of sufficient proximity between companies' actions and the crimes charged—including torture and rape.<sup>66</sup> “Organized business has yet to account and take responsibility for their role during apartheid,” Khulumani’s National Director Marjorie Jobson said when the case was dropped.<sup>67</sup>

Corporate liability under the ATS has been the subject of much debate and examination. Although the United States Supreme Court struck down foreign corporate liability under the ATS in 2018, it left open the question of liability for U.S. entities.<sup>68</sup> Plaintiffs can also still pursue accountability for individual defendants under ATS and make use of other statutes. The TVPA has maintained a sturdier global reach than the ATS but does not apply to corporations. Still, given the use of torture in East and Central Africa and the role individual financiers and business actors in providing material support to direct perpetrators, that statute affords opportunities to hold financial facilitators of serious international crimes accountable in U.S. courts.

With strategic approaches, advocates and victims can use finance analysis in civil litigation to gain redress from the perpetrators of atrocity crimes.

Advocates can also look to supply chain transparency legislation for channels through which to hold companies and individuals in commercial sectors accountable for their links to grave human rights abuses. One example of this is the California Transparency in Supply Chains Act (CATSCA).<sup>69</sup> CATSCA has recently given rise to suits against corporations accused of maintaining slavery and other serious human rights abuses in their supply chains without disclosing that information to consumers, in violation of transparency requirements. The UK Modern Slavery Act, which was modeled in part after CATSCA, carries criminal penalties, and requires UK companies with a budget allocation of over £36 million to publicly report on how they are identifying and addressing modern slavery in their supply chains. Since it was passed in 2015, the law has triggered dozens of prosecutions.<sup>70</sup> According to Simon Wadsworth, a managing partner at the supply chain consultancy group Ignyte, those cases have leverage. “With this significant increase in prosecutions, businesses are urged to check their supply chain activity to ensure compliance,” he said.<sup>71</sup> As global supply chain legislation improves and proliferates, civil parties and prosecutors should look for opportunities to use them to hold financial facilitators of serious international crimes accountable.

## War crimes financiers at the International Criminal Court

International courts—particularly the *ad hoc* tribunals addressing abuses in Rwanda and the former Yugoslavia, U.N.-backed hybrid tribunals in Cambodia and Sierra Leone, and the ICC—have set critical precedents for prosecuting atrocities crimes. Established in part to develop a mechanism to hold government actors accountable for atrocities committed against their own people, these courts have authority to charge powerful individuals otherwise protected from prosecution by their own state





apparatus. Prosecutors at international courts have largely focused on inherently violent crimes like child soldier recruitment and the murder of civilians without probing the role that natural resources, commercial actors, and profit motives play in those crimes. Despite its power to target commercial actors and charge theft of natural resources and destruction of natural heritage, ICC prosecutors have not pursued these approaches to justice.

To carry out their mandate, prosecutors at the ICC should look beyond the geographic borders within which atrocities are perpetrated. They should investigate remote commercial actors by using open-source intelligence; communication and cooperation with domestic authorities in banking, tax, and shipping; and reports by nongovernmental organizations. Indictments should include economic crimes under the Rome Statute, including the war crime of natural resource pillage and profit-motivated enslavement.<sup>72</sup>

These improvements will not be possible without the financial support of ICC member states and cooperation by all governments committed to accountability for grave crimes. Lack of training and expertise in finance, corruption, and the global economy at the ICC accounts for part of the absence of attention on how these activities impact Rome Statute crimes. But that should not be an adequate excuse for leaving financial and economic crimes out of the international justice equation. ICC members should contribute significant funding for hiring financial crimes experts and providing training for practitioners at the ICC in new investigative strategies, while doing the same in their domestic war crimes units. Members and non-members should provide experts and other in-kind support to ensure the ICC is equipped to investigate profiteers and financial facilitators of atrocity crimes.

Despite resource constraints, the ICC has made some progress in this area recently. According to a 2016 policy paper on case selection, “The Office [of the Prosecutor] (OTP) will give particular consideration to prosecuting Rome Statute crimes that are committed by means of, or that result in...the illegal exploitation of natural resources or [dispossession of land].”<sup>73</sup> The following year, the ICC published an overview of the court’s power and practices related to financial investigations and asset recovery. “Financial investigations may provide significant and valuable information pertaining to cases before the Court,” the report noted, adding that financial investigations are crucial to ensuring that “crime does not pay.”<sup>74</sup>

A current set of cases at the ICC has shown this is more than rhetoric. In what are known as the “CAR II” cases, prosecutors at the ICC have developed models for carrying out financial investigations alongside core crime investigations in the Central African Republic, making the business networks of armed groups and asset tracing an important part of their considerations early on. Their approaches should also inform investigations in other regions. In the ICC’s new investigations of crimes in Afghanistan and the Palestinian territories, for example, financial investigations can be used to identify the equipment and financing networks that allowed crimes to occur. In cases related to Congo and Sudan, gold trafficking, oil exploitation, and deforestation business should be probed for support to networks committing war crimes and crimes against humanity.



ICC Chief Prosecutor Fatou Bensouda should continue to improve the court's approach to the economic aspects of atrocity crimes by hiring finance experts and ensuring more ICC staff are trained in parallel financial investigations. Standing up protocols for integrated approaches to finance and overseeing at least one indictment against a commercial profiteer would add to the legacy she will leave when she passes her baton in 2021. State parties must provide funding and personnel for Prosecutor Bensouda to effectively execute these priorities. States must also improve their responses to ICC cooperation requests as they relate to financial investigations. In particular, the ICC has called on states to "review and adjust domestic cooperation laws, procedures and policies, if necessary, to facilitate...cooperation requests, including in the area of financial investigations."<sup>75</sup> These crucial steps are the responsibility of governments seeking to foster more effective and expansive prosecutions.

### **Pursuing accountability where atrocities occur**

Prosecuting profiteers is not just an agenda for foreign courts. It is crucial that courts in East and Central Africa conducting or preparing to conduct prosecutions for serious international crimes also improve their strategies to target financiers and economic crimes, especially where it is a priority for affected communities and civil society groups. Doing so can help develop the public record, dismantle impunity for violence assisted or perpetrated by commercial actors, and fulfill fundamental rights to truth, reparations, and justice for those most impacted.

Hybrid courts and specialized war crimes chambers are unique institutions that prosecute grave crimes within a discrete period, in a partnership between a national government and the international community. Often located in or adjacent to the country where the crimes at issue took place, one of the goals of these hybrid courts and specialized chambers is to prosecute atrocity crimes in close proximity to victims, survivors, and the general citizenry, with the benefit of international expertise and oversight. The combination of national and international funding, staff, and expertise is meant to safeguard against political interference. Like the ICC, however, these courts and chambers have largely failed to consider the financial dimensions of war crimes and crimes against humanity.

Like the ICC, hybrid courts and specialized war crimes chambers have largely failed to consider the financial dimensions of war crimes and crimes against humanity.

A new hybrid court with the potential to reverse this trend has recently begun its work in CAR, and the commitment to establish one in South Sudan is enshrined in the recently reaffirmed 2015 peace agreement<sup>76</sup> and supported broadly by civil society.<sup>77</sup> Both present opportunities for progress in prosecuting financial facilitators of atrocities, especially given the role of natural resources and corruption in those countries' conflicts.<sup>78</sup>

One example illustrating the need for financial investigations at hybrid courts is the case of Charles Taylor, who was prosecuted by the Special Court for Sierra Leone. By the time he was indicted in



2003, Taylor had been widely reported to run a robust transnational diamond trading network,<sup>79</sup> with then-U.S. Ambassador to the United Nations Richard Holbrooke saying in 2000, “Taylor is the Milosevic in Africa with diamonds.”<sup>80</sup> During his trial years later, at least 25 witnesses gave testimony about Taylor’s links to diamonds. Taylor was ultimately convicted of aiding and abetting war crimes and crimes against humanity from his post in Liberia, but theft was not one of those crimes. “Taylor was not convicted of pillaging diamonds in Sierra Leone,” explained Mohamed Bangura, a senior prosecutor on the prosecution team that brought the case against Taylor. “However, there’s been no dispute that diamonds were at the heart of the conflict.”<sup>81</sup> With the right resources, including experts and training in financial investigation and asset tracing, and stronger emphasis on the importance of examining business networks and profits in prosecution strategies, these gaps can be closed by today’s hybrid and specialized war crimes courts.

Indeed, there is reason for optimism. The Special Criminal Court (SCC) in CAR, for example, could contribute to innovation in this area. The SCC was established in 2015 amidst armed conflict spurred by a growing constellation of criminal networks, including one known as the Séléka rebels. According to its mandate, the SCC is tasked with investigating and prosecuting crimes that have occurred since January 2003,<sup>82</sup> many of which have involved financial and natural resource dimensions. “As soon as the Séléka seized control, the strategic priorities and actions of the rebellion shifted from power to greed-related objectives,” according to a study by the International Peace Information Service (IPIS). IPIS also reported that “[t]he Séléka benefited from artisanal mining by levying parallel taxes, selling parallel mining authorizations, trading and smuggling diamonds, and pre-financing mining activities, especially in the east.” Justice measures taking these dynamics into account are critical. A Central African refugee interviewed by The Sentry explained: “As long as the criminals run free, there will be no peace. Violence is their source of income.”<sup>83</sup>

Significantly, the SCC territorial jurisdiction covers the whole of CAR “as well as joint criminal acts and complicity therein committed in the territory of [foreign States],”<sup>84</sup> leaving open the possibility of investigating facilitators in the gold and diamond supply chains outside of CAR. Moreover, the court’s special prosecutor, Colonel Toussaint Muntazini Mukimapa,<sup>85</sup> is an experienced military prosecutor who has supported initiatives for prosecuting economic crimes linked to armed conflict in Congo.<sup>86</sup>

While the SCC in CAR is taking shape, the ICC is also investigating war crimes in the region.<sup>87</sup> The ICC’s investigations have taken a progressive approach to the financial dimensions of atrocities in CAR, reviewing financial data and business networks. This concurrence between a hybrid court and ICC investigation is the first of its kind and offers an opportunity for cooperation between the two bodies in matters of evidence and prosecutorial strategies. Such cooperation should help embolden the SCC to take the financing of crimes into account, as the ICC’s investigations have so far. The U.N.’s 2017 mapping report, which has the potential to form some of the basis of the SCC’s prosecution strategy, underlines links between corruption, minerals exploitation, and the armed conflict in CAR: “Political leaders, as well as their families and cronies, were involved in embezzlement of public funds, mismanagement of public corporations, and illegal exploitation of precious minerals and other natural resources,” the report states, “while the vast majority of the people lived in abject poverty.”<sup>88</sup>



Given these realities, prosecutors at the SCC should thoroughly investigate natural resource pillage and links between grand corruption and violence, including the liability of business elites for crimes under the courts' respective jurisdictions. "Efforts to end impunity must also include the entire system of economic crimes, which deprives the population of full enjoyment of their basic economic, social and cultural rights," as Alain-Guy Sipowo wrote about CAR.<sup>89</sup> Unique considerations related to the protection of whistleblowers and other witnesses testifying to theft and corruption should also take high priority, with donor countries earmarking funds for these expensive yet crucial measures.

While the SCC represents potential for innovation, it faces significant practical challenges, including security concerns and lack of a long-term funding strategy. These are common challenges for any new international tribunal, but they are made more difficult for the SCC by the ongoing armed conflict in CAR. The population is also divided on the question of amnesty for crimes, according to a recent survey in Bangui by Harvard Humanitarian Initiative and the American Bar Association's Rule of Law Initiative.<sup>90</sup> Still, for those seeking justice, the SCC holds unique value: "In a country where there are systematic weaknesses with the justice system, a deep mistrust of the national courts, and where the suspected perpetrators of crimes from both sides live openly in the community with impunity, this court is the last resort for many," according to Amnesty International.<sup>91</sup>

### **Seize the spoils of war**

If war crimes pay, perpetrators should not be allowed to keep their profits. Assets are rarely seized in war crimes cases, keeping the tainted money in circulation and signaling no cost to criminal syndicates still operating. But for domestic and international authorities, there are channels for improvement.

Civil asset forfeiture is one such channel.<sup>92</sup> Individuals or companies that have assisted in laundering money or buying trafficked minerals, for example, can face an asset forfeiture action by U.S. authorities if purchases were made in U.S. dollars.<sup>93</sup> Such measures can be taken without indictments, arrests, or convictions, offering a simpler strategy for action when criminal cases are not feasible and sending a message about the consequences of handling the proceeds of crime.

U.S. and European authorities should take particular note of the opportunity to intervene in atrocity crimes by initiating asset forfeiture actions. Many financial transactions related to lucrative concessions in East and Central Africa are conducted in U.S. dollars or euros, meaning they take place within the U.S. or European financial systems. In the United States, authorities can seize assets if they derived from a range of crimes conducted in U.S. dollar-denominated transactions, including fraud, bribery, misappropriation, theft, abuse of office, or money laundering.<sup>94</sup> A recent investigation by The Sentry revealed that South Sudanese general Malek Reuben Riak, whose military strategies have contributed to famine and human rights abuses, conducted business

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with international investors, moving millions in U.S. dollars through international banks and amassing private wealth.<sup>95</sup>

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Politically exposed persons who have been linked to corruption and violence in East and Central Africa should face scrutiny when purchasing valuable assets abroad. In Australia, some recent progress signals increased interest in this strategy and the power of civil society to spur action. In late 2017, in part as a result of related Sentry investigations, Australian authorities moved to restrain assets worth approximately \$2 million that were identified as the proceeds of crimes from another South Sudanese general, James Hoth Mai.<sup>96</sup>

U.S. authorities have also prioritized seizing the proceeds of corruption. The United States' Kleptocracy Asset Recovery Initiative, implemented by the Department of Justice's Money Laundering and Asset Recovery Section (MLARS), has seized over \$3.2 billion in assets linked to foreign corruption and has led ambitious anti-corruption work tracing assets all over the world.<sup>97</sup> That initiative should expand its efforts in East and Central Africa, where corruption plays an integral role in some of the deadliest ongoing conflicts in the world.

In the United Kingdom, the 2017 Criminal Finance Act gives law enforcement an additional tool for seizing assets from corruption-related crimes. Known as the "unexplained wealth orders," the law gives authorities the power to compel politically exposed persons to explain how they afforded a property or other asset that appears beyond their declared wealth.<sup>98</sup> This new measure should help UK authorities seize assets related to crimes in East and Central Africa. It can also allow prosecutors to show that high-ranking individuals were involved in perpetrating crimes where no other testimonial or documentary evidence can link them.<sup>99</sup> The United Kingdom's Criminal Finance Act also gives UK authorities civil recovery powers in cases whose predicate crimes constitute or connect to gross human rights abuses, reflecting a growing awareness of civil asset recovery's utility against human rights abusers.<sup>100</sup>

### **Reparations are fundamental—and underfunded**

Reparations have long been a tenet of transitional justice and bear a direct relationship to widespread theft and related violence. Yet reparations for victims of atrocities, either in the form of national programs or associated with specific war crimes cases, have largely relied on funding from donors, lacked essential resources, and failed to maintain adequate gender sensitivity.<sup>101</sup> More attention to the financial dimensions of serious international crimes could help improve them.

Criminal trials for atrocity crimes can help provide reparations as a response to systematic theft. The ICC has improved on previous courts' records for providing redress to victims. It has delivered direct individual and collective reparations through its Trust Fund for Victims (TVF) in East and Central



Africa, including Northern Uganda and Eastern Congo.<sup>102</sup> An independent branch of the court, the TVF carries out the ICC's reparations orders.<sup>103</sup>

Despite the innovative nature of the TVF, it is severely underfunded, and international criminal cases writ large generally fall short of providing adequate reparations for victims. That has serious consequences. As Ambassador David Scheffer argued recently, "If the TVF continues to experience severe underfunding each year, not only will the surviving victims unjustifiably suffer, but the

Handouts from foreign governments, while imperative as a stop-gap to ensure victim compensation, cannot fully meet the goals of reparations.

credibility of the ICC will be undermined, perhaps fatally."<sup>104</sup> This reality is perverse given that war crimes and crimes against humanity are often greed-driven and profitable. When an ICC chamber issued the court's first decision to grant reparations to victims of Germain Katanga for crimes in Ituri, Congo, the ICC's Trust Fund for Victims director was quoted noting the importance of redress to show that "justice doesn't just stop in the courtroom."<sup>105</sup>

Although the ICC ordered roughly \$75,000 in individual symbolic reparations for Katanga's victims,<sup>106</sup> that money came from donors. Handouts from foreign governments, while imperative as a stop-gap to ensure victim compensation, cannot fully meet the goals of reparations. After all, donor funds do not upend the benefits enjoyed by the perpetrators of war crimes. Furthermore, reliant on government donations, most reparations programs lack enough cash to provide adequate redress.<sup>107</sup> In the ICC's first case against former rebel commander Thomas Lubanga Dyilo, Lubanga was convicted of recruiting child soldiers in Congo. The court "welcomed the decision of the [TVF] that allocated one million euros to collective reparations in the Democratic Republic of the Congo,"<sup>108</sup> but the trust fund admitted in February that its budget would be insufficient to fulfill the three-year program.<sup>109</sup>

Instead of relying on donor funds, administrators should aspire to furnish reparations with defendants' own ill-gotten gains. That approach could make far more money available to victims and would constitute a more fitting redress for many.<sup>110</sup> In the ICC's case against Jean-Pierre Bemba, the former Congolese Vice President who was charged with a range of crimes, including mass rape of civilians in CAR, a statement by the counsel for those affected by the crimes charged said, "victims have indicated that Mr. Bemba's contribution to address the harms suffered by them is an essential component of the reparations proceedings," and that the judges "should assess the current financial situation of the convicted person."<sup>111</sup> In its submission to the ICC in the case against Bemba, the International Organization on Migration (IOM) explained regarding reparations: "Indeed, it is the symbolic element, and the message that the remedy is grounded in a right that the victims have, that represents one of the main distinctions between benefits provided as reparations and benefits provided as part of a humanitarian or development program."<sup>112</sup>

Cash deficits in reparations programs are unjustifiable, particularly given the profits reaped from war zones in East and Central Africa. Asset seizures by both domestic and international authorities can help correct this dynamic. In the case of the ICC, asset seizures can also help pay the high costs of



legal defense funds, which are critical to ensure defendants' rights and fair trials.<sup>113</sup> Those assets can be returned to courts for legal fees or returned to victims through proper reparation channels.

Prosecutors have historically underutilized their asset seizure authority, but certain units of the ICC have shown an increased interest in recent years. In the case of Bemba, the Court identified and froze his assets in 2008. In a statement about the seizure, then-Deputy Prosecutor Fatou Bensouda said: "I am thinking about reparations."<sup>114</sup>

Many cases before the ICC and other war crimes prosecuting institutions examine crimes taking place on what human rights advocate Prince Kihangi called "mineralized cemeteries"—places where natural resource exploitation and systematic violence occur in tandem, both resulting in acute poverty for survivors.

But the court's reparations strategy has generally been siloed away from any recognition that theft and exploitation both enabled and prolonged violent crimes under the court's jurisdiction. Several reparations orders by the court remain unenforced for lack of funding.<sup>115</sup> Journalist and writer Ta-Nehisi Coates' work on the importance of reparations in response to systematic plunder of marginalized individuals and communities in the United States is relevant here. "[Reparations] is actually the key," he says. "It's not a part of a bunch of other solutions... in fact it is the thing that cannot be taken out..."<sup>116</sup> While his comments pertain to slavery, Jim Crow, and subsequent persistent racist policies in the U.S., Coates' arguments reveal a core principle relevant to armed conflict and regime change, especially where widespread theft of resources contributed to building and maintaining structures of oppression. Reacting to the reparations order in the ICC's case against Congolese militia leader Germain Katanga, one of the beneficiaries explained, "I lost everything during the war. The houses, schools, hospitals, and water sources that will be built will enable the sustainable development of our region, following the different forms of destruction that we have known."<sup>117</sup>

Cash deficits in reparations programs are unjustifiable, particularly given the profits reaped from war zones in East and Central Africa.

### **Pay the money back to those most affected**

When national or international authorities seize assets, redistribution must take place with inclusivity, transparency, and international human rights frameworks and precedent in mind. Assets seized as a result of civil forfeiture are often either returned to the governments of the countries from which they were stolen or distributed into the resource banks of whichever foreign authority seized them. Where corrupt regimes are considered the "victim"—that is, the owner from which funds were stolen—efforts should be made to ensure redistribution goes directly to the population. In cases where defendants forfeit ill-gotten gains linked to serious international crimes like pillage, forced labor, recruitment of children for labor or fighting, and gender-based violence, authorities—together with civil society groups and affected communities—should consider the possibility of redistributing seized assets as reparations to victims of those crimes.



This kind of redistribution raises complex questions, and answers should come from the communities most affected.<sup>118</sup> Administrators should consult existing resources to design strategies for soliciting input from these communities, including the International Center for Transitional Justice's handbook on reparations and its associated application forms.<sup>119</sup> There are some examples from which to draw lessons, like the BOTA Foundation in Kazakhstan, which redistributed funds to communities identified as corruption victims,<sup>120</sup> and a trust fund recently set up to identify and redistribute the \$150 million stolen by Chadian dictator Hissene Habre from the national treasury.<sup>121</sup>

In all cases, clear, transparent, and case-specific strategies should determine where the money goes. Distribution should be guided by the facts of each case, the rights, needs, and opinions of those affected by crimes, and fees associated with the proceedings. Guidance on reparations provided by the IOM in the ICC's case against Jean-Pierre Bemba emphasized: "It is not an exaggeration to say that, invariably, how the process of getting to a reparations effort is designed is almost as important as what remedies the effort will eventually deliver the eligible victims." In that spirit, reparations distribution programs and strategies resulting from asset seizures should incorporate an immediate, facilitated, and iterative process of obtaining input from diverse civil society groups as well as unaffiliated affected individuals and communities.<sup>122</sup> Strategies should include interviews on the adverse financial impact of crimes in addition to distribution methods. They should account for financial, programmatic, and symbolic reparations as well as the importance of both individual and collective redress. In all cases, these strategies should reflect the gendered, racial, ethnic, and religious complexities of economics in armed conflict.<sup>123</sup>

## Conclusion

Armed conflict and serious international crimes always have financial dimensions. They range from direct acts such as widespread gold theft in eastern Congo to economic impacts like acute food insecurity in South Sudan and the involvement of commercial facilitators, including multinational freight companies, law firms, and banks. Perpetrators of serious international crimes rely on business networks, and their activities often result in substantial profit for numerous players. The world's deadliest conflict zones are lucrative territories where corruption permeates governance. These conflict zones are beset by a common cycle: violence motivated by greed, and theft enabled by violence.

Investigators and prosecutors should approach atrocity crimes with this cruel reality in mind. By taking finance into account, they can expand the scope of accountability, develop stronger evidence for core crimes and liability theories, and better fund reparations programs. For this to be successful, governments and relevant nongovernmental actors must provide training and other resources on the intersections of finance and war crimes, cooperate across jurisdictions, look beyond the direct perpetrators of armed conflict, and listen to affected communities about the economic dynamics of war crimes.

Despite slow progress toward these goals, there is cause for hope. The International Corporate Accountability Roundtable, Amnesty International, the Open Society Foundation, and others have





created initiatives, symposia, and resources for investigators and prosecutors around the world to more effectively hold corporate actors accountable for human rights abuses.<sup>124</sup> Furthermore, the International Consortium of Investigative Journalists' reporting on the "Paradise Papers" and the "Panama Papers" created momentum for governments to insist on corporate accountability linked to corruption and abuses. Organizations like the Platform to Protect Whistleblowers in Africa (PPLAAF) have built strong whistleblower networks, creating safe channels for leaking information to law enforcement and revealing the stark link between violent actors and business in East and Central Africa.<sup>125</sup> Additionally, laws like the U.S. Global Magnitsky Act, and the subsequent sanctions program, have improved protection guarantees for individuals investigating the corrupt acts of state officials and opened new channels for accountability.<sup>126</sup> Prosecutors should take advantage of this growing body of available evidence, law, and political will to undo the links between corporate interests and grave crimes.

By following the money in the atrocity crimes they investigate, national and international courts have the opportunity to hold accountable more perpetrators, profiteers, and facilitators of some of the world's most serious and ongoing crimes. The approach also holds promise for developing a better public understanding of how these crimes occur and better approaches to fulfilling victims' rights to truth and reparations. Those affected by the calamitous dual threat of kleptocracy and violence deserve nothing less.



## Annex I: How to address the financial dimensions of atrocity crimes in the sequence of a case

### Investigations:

- Integrate financial investigation expertise and open-source intelligence gathering into the investigation plan from the beginning. Ensure the financial investigators are briefed on the core investigation of predicate crimes, and the investigators and prosecutors running predicate crime investigations are briefed on key financial considerations.
- Identify sources who can provide information and testimony about the financial dynamics of atrocity crimes, including environmental defenders, corporate insiders, bank officials, procurement agents, export patrol officials, national park rangers, and anti-corruption civil society advocates. Ensure there is gender and ethnic balance in the source pool.
- Obtain access to financial databases that could lead to information about weapons procurement, money laundering, and corporate enablers of crimes, and use open source data to identify potential suspects and financial networks connected to predicate and possible financial crimes.
- Ask sources relevant to predicate crimes about the financial impacts and possible financial motivations of those crimes early and often.
- Provide protective measures specific to the unique threats posed by sharing financial information and faced by corporate whistleblowers and environmental defenders by consulting civil society groups and identifying best practices for witness protection in relevant past cases.
- Make requests for financial information and cooperation from government authorities outside the primary country where atrocities occurred. Follow up on requests and develop informal relationships with authorities in foreign jurisdictions who are in charge of answering official assistance requests.
- Begin investigations into targets' corporate profiles and assets.
- In addition to criminal investigations, explore the separate avenue of seizing criminally-derived assets. In cases where there is not enough evidence for criminal charges, there may be an accessible path to civil asset forfeiture. Seek out experts in financial forensics as well as access to financial databases to help improve the identification of assets.



### **Prosecutions:**

- Initiate formal investigations into the accused's assets to assess whether funds might be available for paying court fees and reparations orders. Initiate communication with various governments that may have jurisdiction over properties, bank accounts, or corporate entities connected to the accused.
- Develop theories of liability that address financiers and facilitators of atrocity crimes, including co-perpetration, command responsibility, aiding and abetting, and conspiracy. Consider whether remote actors provided material and/or moral support to direct perpetrators and how money, weapons, or services may have incentivized predicate crimes.
- Use evidence related to natural resource theft and financial networks to both support liability theories and prove financial crimes.
- Consult and share pertinent information with foreign jurisdictions that may also have evidence of finance networks, authority over criminally-derived assets, or jurisdiction over the movement of money either through companies or banks in their countries.
- Where possible based on evidence and available statutes, charge financial crimes in addition to atrocity crimes, including: the war crime of pillage for natural resource theft, money laundering, natural resource trafficking, forgery, and providing material support to human rights abusers.
- Pursue testimony from witnesses about how crimes were financed and the economic impact of crimes. This could include victim witnesses whose primary purpose is to testify to observations of violence and the impact of violence in addition to witnesses identified for their knowledge of business networks.

### **Sentencing and Reparations:**

- In addition to imprisonment, pursue asset seizures as part of sentencing, highlighting both the human toll of economic crimes and the economic impact of violent crimes.
- Consult early and often with affected communities and civil society groups to develop reparations programs and design distribution strategies.
- Ensure protection measures for vulnerable witnesses who testified to the financial dimensions of crimes and that they continue to be protected during and well after trial and sentencing.



## Annex II: Relevant crimes and case law

### I. Crimes commonly at the intersection of violence and finance

- |  |   |
|--|---|
| <ul style="list-style-type: none"><li>• Forced labor</li><li>• Torture</li><li>• Enslavement and Sexual Slavery</li><li>• Bribing foreign officials</li><li>• Money and gold laundering</li><li>• Pillage of natural resources</li></ul> | <ul style="list-style-type: none"><li>• Natural resource trafficking</li><li>• Material support to terrorism and human rights abuses</li><li>• Illegal taxation</li><li>• Theft, forgery, embezzlement, fraud</li><li>• Doing business with sanctioned entities</li><li>• Transporting stolen goods</li></ul> |
|--|---|

### II. Relevant cases and initiatives

#### Financial dimensions of serious international crimes

<i>Case Name or subject of investigation</i>	<i>Jurisdiction // Crime base</i>
Central African Republic II	International Criminal Court // CAR
Argor Heraeus S.A.	Switzerland // DR Congo
Prosecutor v. Charles Ghankay Taylor	Special Court for Sierra Leone // Sierra Leone
Lafarge SA	France // Syria
Lundin Oil executives	Sweden // Sudan

#### Individual commercial facilitation of war crimes

<i>Case Name or defendant</i>	<i>Jurisdiction // Crime base</i>
The Public Prosecutor v. Guus Kouwenhoven	Netherlands // Liberia
Michel Desaedeleer	Belgium // Sierra Leone
Frans Cornelis Adrianus van Anraat	Netherlands // Iraq

#### Corporate liability for international crimes

<i>Case Name or subject of investigation</i>	<i>Jurisdiction // Crime base</i>
Amesys	France // Libya
Argor Heraeus S.A.	Switzerland // DR Congo
HSBC Group and HSBC USA	United States // Mexico
BNP Paribas	France // Rwanda





### Civil Cases

<b>Case Name</b>	<b>Jurisdiction // Crime base</b>
Kiobel v. Shell	United States // Nigeria
Jesner v. Arab Bank, PLC	United States // Israel and the Palestinian Territories
IHRDA v. Democratic Republic of Congo	African Commission on Human and People's Rights // DR Congo
Cardona v. Chiquita	United States // Colombia

### Asset Seizures and Reparations

<b>Case Name or initiative</b>	<b>Jurisdiction // Crime base</b>
The Prosecutor v. Jean-Pierre Bemba	International Criminal Court // CAR
The Prosecutor v. Germain Katanga	International Criminal Court // DR Congo
BOTA Foundation	United States, Switzerland // Kazakhstan
Asset seizures against the property of General James Hoth Mai	Australia // South Sudan
Action <i>in rem</i> to forfeit assets involved in corruption conspiracy under the regime of General Sani Abacha	United States // Nigeria
The Prosecutor v. Ahmad Al Faqi Al Mahdi	International Criminal Court // Mali



## Citations

<sup>1</sup> For purposes of this report, “serious international crimes” and “atrocities crimes” refer to war crimes, crimes against humanity, and genocide.

<sup>2</sup> United States v. Krauch et al. (IG Farben), judgment available at [http://www.worldcourts.com/imt/eng/decisions/1948.07.30\\_United\\_States\\_v\\_Krauch.pdf](http://www.worldcourts.com/imt/eng/decisions/1948.07.30_United_States_v_Krauch.pdf).

<sup>3</sup> Anvil Mining (cases dismissed in Australia and Canada), available at <https://business-humanrights.org/en/anvil-mining-lawsuit-re-dem-rep-of-congo>; Khulumani, available at <https://www.reuters.com/article/us-usa-court-apartheid/u-s-top-court-declines-to-revive-apartheid-claims-against-ibm-ford-idUSKCN0Z61KA>; Argor Heraeus, HSBC bank, and Kiobel v. Royal Dutch Shell, available at <https://www.oyez.org/cases/2011/10-1491>.

<sup>4</sup> This is with the exception of the early years of international criminal law development during the Nuremberg trials, when a considerable number of companies and financiers faced consequences for their roles in the Holocaust. See James G. Stewart, “The Historical Importance of the Kouwenhoven Trial,” May 5, 2017, available at <http://jamesgstewart.com/the-historical-importance-of-the-kouwenhoven-trial/>

<sup>5</sup> Author interview with Congolese lawyer in eastern Congo, 2014 (name and precise location withheld for security reasons).

<sup>6</sup> Kouwenhoven was convicted in absentia in April 2017 by a Dutch court, and his conviction was upheld on appeal by the Dutch Supreme Court in December 2018. For reporting on the 2017 conviction and the Dutch Supreme Court’s 2018 decision to uphold the conviction, see Owen Bowcott, “Dutch arms trafficker to Liberia given war crimes conviction,” *The Guardian*, April 22, 2017, available at

<https://www.theguardian.com/law/2017/apr/22/dutch-arms-trafficker-to-liberia-guus-kouwenhoven-given-war-crimes-conviction>.

<sup>7</sup> Examples include passing the U.S. Global Magnitsky Human Rights Accountability Act, creating avenues for U.S. sanctions designations based on corruption and related abuses, increasingly issuing individual sanctions designations in Congo and CAR, and developing the December 2017 “National Security Strategy (NSS) of the United States of America” highlighting the importance of global graft and corruption as threats to U.S. national security (see Richard Cassin, “White House: Fighting Overseas Graft Still Top U.S. Priority,” *The FCPA Blog*, December 19, 2017, available at <http://www.fcpcablog.com/blog/2017/12/19/white-house-fighting-overseas-graft-still-top-us-priority.html>).

<sup>8</sup> Several legal scholars and organizations have written about and analyzed the importance of advancing corporate liability for serious international crimes, and excellent investigative reporting has, over decades, documented the clear and consistent ties between resources, profit, and atrocity crimes in East and Central Africa. This report makes the case for the importance of investigating financial dimensions of atrocity crimes whether or not the defendant is a corporate entity and seeks to advance the use of a range of tools at the disposal of justice authorities to address the perverse financial motives of atrocity crimes comprehensively while improving efforts to deliver justice for atrocity crimes overall.

<sup>9</sup> See Leila Nadya Sadat and Kate Falconer, “The UN International Law Commission Progresses Towards a New Global Treaty on Crimes Against Humanity,” January 25, 2017, *American Society of International Law*, available at <https://www.asil.org/insights/volume/21/issue/2/un-international-law-commission-progresses-towards-new-global-treaty>.

<sup>10</sup> English translation of the 2018 Kouwenhoven judgment, H.3, available at <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:GHSHE:2017:2650>.

<sup>11</sup> Ibid.

<sup>12</sup> “Dutch ‘blood timber’ businessman gets 19 years for Liberian Crimes,” *Reuters*, April 21, 2017, available at <http://www.reuters.com/article/us-netherlands-liberia-warcrimes-idU.S.KBN17N1IW?il=0>. For the appeals court decision in Dutch, see <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:GHSHE:2017:176>. Global Witness first documented the involvement of Kouwenhoven in illegal logging and arms trafficking in its 2001 report, available at <https://www.globalwitness.org/en/press-releases/dutch-court-makes-legal-history-sentencing-timber-baron-gus-kouwenhoven-19-years-war-crimes-and-arms-smuggling-during-liberian-civil-war/>.

<sup>13</sup> Dutch Supreme Court decision in English: <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:HR:2018:2349&showbutton=true>. For additional coverage, see “Dutch ‘blood timber’ businessman arrested in South Africa,” *Reuters*, December 8, 2017, available at <https://www.reuters.com/article/us-netherlands-safrica-warcrimes/dutch-blood-timber-businessman-arrested-in-south-africa-idUSKBN1E21IV>; and Dan Meyer, “Guus Kouwenhoven not being extradited yet, after breaking his leg,” *Business Day*, April 20,



2018, available at <https://www.businesslive.co.za/bd/national/2018-04-20-dutch-war-criminal-guus-kouwenhoven-not-being-extradited-yet-after-breaking-his-leg/>.

<sup>14</sup> Attention to certain aspects of corporate accountability for serious international crimes, including work to advance opportunities for prosecuting corporate entities for serious human rights abuses (see ICAR's Corporate Crimes Principles and Amnesty's annual corporate crimes retreat) and the use of prohibitions of the war crime of pillage in modern courtrooms have spurred significant progress. But an integrated approach to addressing financial dimensions of atrocity crimes, particularly as they relate to armed conflict, is yet to take hold in the common practice of war crimes courts and domestic war crimes units.

<sup>15</sup> See James G. Stewart, "The Historical Importance of the Kouwenhoven Trial," May 5, 2017, available at <http://jamesgstewart.com/the-historical-importance-of-the-kouwenhoven-trial/>.

<sup>16</sup> Ibid.

<sup>17</sup> "Subsequent Nuremberg Proceedings, Case #6, The IG Farben Case," United States Holocaust Memorial Museum, <https://encyclopedia.ushmm.org/content/en/article/subsequent-nuremberg-proceedings-case-6-the-ig-farben-case>

<sup>18</sup> See James G. Stewart, "The Historical Importance of the Kouwenhoven Trial," May 5, 2017, available at <http://jamesgstewart.com/the-historical-importance-of-the-kouwenhoven-trial/>.

<sup>19</sup> By 2007, armed conflict in Congo had resulted in 5.4 million deaths, according to a January 2008 International Rescue Committee report, "Mortality in the Democratic Republic of Congo: An ongoing crisis," available at [http://www.rescue.org/sites/default/files/resource-file/2006-7\\_congoMortalitySurvey.pdf](http://www.rescue.org/sites/default/files/resource-file/2006-7_congoMortalitySurvey.pdf). In 2016, more people were forced to flee their homes in Congo than anywhere else on the planet, according to a November 2017 report by the Internal Displacement Monitoring Centre, "Raising the Alarm in DRC," available at <http://www.internal-displacement.org/expert-opinion/raising-the-alarm-in-drc>. The Central African Republic, Sudan, and Congo have each been the subject of investigation by the ICC, whose mandate requires the prosecutor to carefully choose only those investigations that reach a certain high level of gravity "relating to the scale, nature, manner of commission and impact of the crimes." According to the Office of the Prosecutor, "[g]ravity is the predominant case selection criteria adopted by the Office." (See "Policy Paper on Case Selection and Prioritisation," Office of the Prosecutor, International Criminal Court, September 15, 2016, p. 12, para. 32.)

<sup>20</sup> Filip Hilger, et Al., "Mapping Conflict Motives: The Central African Republic," International Peace Information Service, November 21, 2014, available at <http://ipisresearch.be/publication/mapping-conflict-motives-central-african-republic-2/>.

<sup>21</sup> Letter dated November 29, 2011 from the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo, addressed to the President of the Security Council, United Nations Security Council, para. 599, available at <https://reliefweb.int/sites/reliefweb.int/files/resources/N1155632.pdf>.

<sup>22</sup> Prince Kihangi in "Closing Speeches and Judgments," The Congo Tribunal, available at <http://www.the-congo-tribunal.com/hearings/case/5.html>.

<sup>23</sup> Ruth Maclean, "After 25 years, a breakthrough for victims of Chad dictator Hissène Habré," *The Guardian*, February 9, 2018, available at <https://www.theguardian.com/global-development/2018/feb/09/trust-fund-established-for-victims-of-former-chad-dictator-hissene-habre>.

<sup>24</sup> United States Organization Stabilization Mission in the Democratic Republic of Congo (MONUSCO), "JMAC NTF: FDLR Incorporated? The movement's business model at a crossroads," July 2014, viewed by the Enough Project.

<sup>25</sup> <https://justiceinconflict.org/2015/06/08/addressing-the-economic-dimensions-of-mass-atrocities-international-criminal-laws-business-or-blind-spot/>

<sup>26</sup> "We have come a long way, but we still have a long way to go: The Struggle for the Recognition of Gender-Based Crimes," INTLAWGRRLS, December 10, 2018, available at [https://ilg2.org/2018/12/10/we-have-come-a-long-way-but-we-still-have-a-long-way-to-go-the-struggle-for-the-recognition-of-gender-based-crimes/#\\_edn1](https://ilg2.org/2018/12/10/we-have-come-a-long-way-but-we-still-have-a-long-way-to-go-the-struggle-for-the-recognition-of-gender-based-crimes/#_edn1).

<sup>27</sup> These include Khulumani and Open Secrets in South Africa, IDPE in Congo, TRIAL in Switzerland, Civitas Maxima in The Netherlands and Switzerland, Sherpa in France, FIDH in France and Switzerland, and The Sentry in the United States.

<sup>28</sup> The International Institute for Criminal Investigations has piloted the first training of its kind on investigating the financial dimensions of war crimes, offering a course for investigators, law enforcement, and prosecutors on the practical skills needed to conduct parallel financial investigations. The United States Institute of Peace has also begun trainings in Congo on investigating economic war crimes, and Finance Uncovered offers courses on investigation techniques related to illicit financing that could help war crimes investigators and prosecutors strengthen their cases. Several of these initiatives have made a point of including NGOs and court prosecutors, noting that collaboration and shared experience between the two are crucial to progress.

<sup>29</sup> Ruben Carranza, "Dutch Court Convicts Arms Dealer for Role in Liberian Atrocities. What does it say about justice for economic crime?" ICTJ, May 4, 2017, available at <https://www.ictj.org/news/dutch-court-arms-dealer-liberia-economic-crimes>.



<sup>30</sup> Author interview with South Sudanese anti-corruption activist in Uganda, May 2018 (identity, precise location, and precise date protected for security reasons).

<sup>31</sup> “Statement to the United Nations Security Council on the Situation in Darfur, pursuant to UNSCR 1593 (2005),” International Criminal Court, December 2017, available at <https://www.icc-cpi.int/Pages/item.aspx?name=171212-otp-stat-UNSC>; Eric Stover, Victor Peskin, and Alexa Koenig, *Hiding in Plain Sight: The Pursuit of War Criminals from Nuremberg to the War on Terror*, University of California Press (2016), pp. 279 - 81.

<sup>32</sup> Stover, Peskin, and Koenig, 281.

<sup>33</sup> Assessment mission by the Office of the United Nations High Commissioner for Human Rights to improve human rights, accountability, reconciliation and capacity in South Sudan: detailed findings (A/HRC/31/CRP.6), United Nations Office of the High Commissioner for Human Rights, March 10, 2016, available at <https://www.ohchr.org/en/hrbodies/hrc/cohsouthsudan/pages/index.aspx>.

<sup>34</sup> Ibid.

<sup>35</sup> Interim report of the Panel of Experts on South Sudan (S/2018/1049), United Nations Security Council, November 26, 2018, available at <http://www.undocs.org/S/2018/1049>.

<sup>36</sup> See Eurojust Genocide Intervention Network, “Members of the Network,” Eurojust, available at <http://www.eurojust.europa.eu/Practitioners/Genocide-Network/Pages/members.aspx>.

<sup>37</sup> “Michel Desaeleleer,” TRIAL International, last modified September 30, 2016, available at <https://trialinternational.org/latest-post/michel-desaeleleer/>.

<sup>38</sup> Ibid.

<sup>39</sup> “The Golden Laundromat: The Conflict Gold Trade from Eastern Congo to the United States and Europe,” The Sentry, October 2018, available at <https://thesentry.org/reports/the-golden-laundromat/>; and Final Report of the Group of Experts on the Democratic Republic of the Congo (S/2018/531), United Nations Security Council, June 4, 2018, available at <https://undocs.org/S/2018/531>.

<sup>40</sup> 18 U.S.C. 1956, 18 U.S.C. 1957, and 31 U.S.C. 5311 et seq.

<sup>41</sup> Regulations issued by the U.S. Department of the Treasury elaborate on this requirement, imposing obligations on financial institutions that provide private banking services for PEPs. Specifically, the regulation requires that for accounts belonging to senior political figures, banks conduct enhanced scrutiny to detect and report transactions that may involve “the proceeds of foreign corruption,” which includes pillage and other theft.

<sup>42</sup> 18 U.S.C. § 2314, 16 U.S.C. §§ 3371–3378, and 15 U.S.C. § 78dd-1, et seq.

<sup>43</sup> 18 U.S.C. Section 2441. With any of the above prohibitions, financial institutions or other facilitators that assist or conspire to violate them are punishable under the same laws.

<sup>44</sup> “Och-Ziff Capital Management Admits to Role in Africa Bribery Conspiracies and Agrees to Pay \$213 Million Criminal Fine,” U.S. Department of the Treasury, September 29, 2016, available at <https://www.justice.gov/opa/pr/och-ziff-capital-management-admits-role-africa-bribery-conspiracies-and-agrees-pay-213>.

<sup>45</sup> Soraya Aziz Souleymane, “The OCH-ZIFF Files: Who Are the Congolese Who Benefitted?” October 3, 2016, available at <https://www.linkedin.com/pulse/och-ziff-files-who-congolese-benefitted-soraya-aziz-souleymane/>.

<sup>46</sup> See Brad Brooks-Rubin, “Yes, We have Leverage: A Playbook for Immediate and Long-Term Financial Pressures to Address Violent Kleptocracies in East and Central Africa,” July 15, 2017, available at <https://enoughproject.org/policy-briefs/yes-we-have-leverage>.

<sup>47</sup> “The UK Doesn’t Prosecute Money Laundering (and that should change),” FCPA Blog, March 20, 2018, available at <http://www.fcpcablog.com/blog/2018/3/20/susan-hawley-the-uk-doesnt-prosecute-money-laundering-and-th.html>.

<sup>48</sup> Ibid.

<sup>49</sup> In January 2017, “[t]he Security Council extended the arms embargo and other sanctions imposed on the Central African Republic...also renewing the mandate of the Panel of Experts assisting the relevant Sanctions Committee, adding new provisions, and for the first time, distinguishing sexual violence as a separate asset-freeze listing criterion.” (See “Unanimously Adopting Resolution 2339 (2017), Security Council Extends Arms Embargo, Other Sanctions on Central African Republic,” United Nations Meetings Coverage and Press Releases, January 27, 2017, <https://www.un.org/press/en/2017/sc12697.doc.htm>.) In December, a first tranche of sanctions designations under the Global Magnitsky Act targeted individuals and several of their companies for human rights abuses. (See “Unanimously Adopting Resolution 2339 (2017), Security Council Extends Arms Embargo, Other Sanctions on Central African Republic,” United Nations Meetings Coverage and Press Releases, January 27, 2017, available at <https://www.un.org/press/en/2017/sc12697.doc.htm>.)



<sup>50</sup> “United States Sanctions Human Rights Abusers and Corrupt Actors Across the Globe,” U.S. Department of the Treasury, December 21, 2017, available at <https://home.treasury.gov/news/press-releases/sm0243>.

<sup>51</sup> <https://www.justice.gov/opa/pr/hsbc-holdings-plc-and-hsbc-bank-usa-na-admit-anti-money-laundering-and-sanctions-violations> and see, <https://www.reuters.com/article/us-hsbc-probe-idUSBRE8BA05M20121211>

<sup>52</sup> 31 U.S.C. Section 5322(d) makes it a crime for a financial institution to violate, among other things, 31 U.S.C. Section 5318(i). Section 5318(i)(1) provides that each financial institution that establishes, maintains, administers, or manages a private banking account or a correspondent account in the United States for a non-U.S. person must establish appropriate due diligence policies and procedures to detect and report instances of money laundering through those accounts.

<sup>53</sup> A bill was proposed in 2009 (Crimes Against Humanity Act of 2009) to criminalize widespread and systematic attacks against civilians anywhere in the world as long as they were committed or facilitated by a U.S. citizen or a person in the United States (see <https://www.hrw.org/news/2009/06/24/us-support-law-crimes-against-humanity>). Efforts are underway to develop new bipartisan legislation, led by organizations like the American Bar Association and the Center for Justice and Accountability.

<sup>54</sup> Pamela Merchant, “No Safe Haven: Law Enforcement Operations Against Foreign Human Rights Violators in the United States,” Testimony of Pamela Merchant, Executive Director, Center for Justice and Accountability before the Tom Lantos Human Rights Commission, United States House of Representatives, October 13, 2011, available at: <https://cja.org/what-we-do/policy/prior-congressional-testimony/>.

<sup>55</sup> Dismissal of proceedings, Art. 319 et seq. StPO (Swiss Code of Criminal Procedure), March 10, 2015 (sent to The Sentry by TRIAL as a Word doc).

<sup>56</sup> Ibid.

<sup>57</sup> Ibid.

<sup>58</sup> The case showed the importance of gathering strong evidence to prove all *mens rea* elements required for a charge of pillage as a war crime when investigating remote business actors and created a basis on which refiners – in gold, but also other minerals and oil -- can be liable for the war crime of pillage even where they are not legal owners but merely “tolling” the gold, whereby the refiner receives the stolen material, refines it, and passes it on to the next owner without taking legal title.

<sup>59</sup> “Amesys lawsuit (re Libya),” Business and Human Rights Resource Centre, available at <https://business-humanrights.org/en/amesys-lawsuit-re-libya-0>.

<sup>60</sup> Ibid.

<sup>61</sup> A more comprehensive list of relevant cases is included in Annex II.

<sup>62</sup> In so doing, they should account for the clear links between the need for arms, the perpetration of some of the most brutal atrocities, the significant profits inherent to the arms trade, and the documentary evidence available related to these networks as they pursue atrocity crimes cases. See James G. Stewart’s comments in “Loot, Pillage, and Plunder: Prosecuting War Crimes in the 21<sup>st</sup> Century,” public event hosted by Johns Hopkins School of Advanced International Studies in September 2014, available at <https://www.youtube.com/watch?v=xA40Lx18ryo>.

<sup>63</sup> TVPA; Pub.L. 102–256, H.R. 2092, 106 Stat. 73, enacted March 12, 1992.

<sup>64</sup> The U.S. Supreme Court limited extraterritorial application of the Alien Tort Claims Act in the case *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108 (2013).

<sup>65</sup> *Khulumani et al. v. Barclay National Bank Ltd.*, “Original Complaint,” United States District Court, Eastern District of New York, November 11, 2002, available at <http://www.cmht.com/pdfs/apartheid-cmpl.PDF> (accessed November 15, 2008).

<sup>66</sup> “Apartheid reparations lawsuits (re So. Africa),” Business and Human Rights Resource Centre, available at <https://www.business-humanrights.org/en/apartheid-reparations-lawsuits-re-so-africa>.

<sup>67</sup> “U.S. Circuit Court Dismisses Apartheid Litigation,” Khulumani Support Group, press release, August 22, 2013, available at <http://pressoffice.mg.co.za/KhulumaniSupportGroup/PressRelease.php?StoryID=242251>.

<sup>68</sup> William S. Dodge, “Jesner v. Arab Bank: The Supreme Court Preserves the Possibility of Human Rights Suits Against U.S. Corporations,” Just Security, April 26, 2018, available at <https://www.justsecurity.org/55404/jesner-v-arab-bank-supreme-court-preserves-possibility-human-rights-suits-u-s-corporations/>.

<sup>69</sup> California Transparency in Supply Chains Act (S.B. 657).

<sup>70</sup> Francis Churchill, “Modern Slavery Act prosecutions more than quadruple,” June 5, 2017, available at <https://www.cips.org/supply-management/news/2017/june/prosecutions-under-the-modern-slavery-act-more-that-quadruple/>.

<sup>71</sup> Simon Wadsworth, quoted in “Modern Slavery Act prosecutions more than quadruple,” posted by Francis Churchill, June 5, 2017, available at <https://www.cips.org/supply-management/news/2017/june/prosecutions-under-the-modern-slavery-act-more-that-quadruple/>.

<sup>72</sup> See Rome Statute art. 8(2)(b)(xvi), art. 7(1)(c), and art. 8(2)(b)(iv).





<sup>73</sup> “Policy Paper on Case Selection and Prioritisation,” Office of the Prosecutor, International Criminal Court, September 15, 2016, p.14, para 41, available at [https://www.icc-cpi.int/.../20160915\\_OTP-Policy\\_Case-Selection\\_Eng.pdf](https://www.icc-cpi.int/.../20160915_OTP-Policy_Case-Selection_Eng.pdf).

<sup>74</sup> “Financial Investigations and Recovery of Assets,” International Criminal Court, available at [https://www.icc-cpi.int/iccdocs/other/Freezing\\_Assets\\_Eng\\_Web.pdf](https://www.icc-cpi.int/iccdocs/other/Freezing_Assets_Eng_Web.pdf).

<sup>75</sup> Ibid.

<sup>76</sup> Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan, September 12, 2018, available at <https://www.jmecsouthsudan.com/index.php/arcss-2015/igad-hlrf-agreement>. See also Agreement on the Resolution of the Conflict in the Republic of South Sudan, August 17, 2015, available at:

[https://unmiss.unmissions.org/sites/default/files/final\\_proposed\\_compromise\\_agreement\\_for\\_south\\_sudan\\_conflict.pdf](https://unmiss.unmissions.org/sites/default/files/final_proposed_compromise_agreement_for_south_sudan_conflict.pdf)

<sup>77</sup> “Revitalizing Peace in South Sudan: Citizen Perceptions of the Peace Process,” South Sudan Civil Society Forum, November 2018, available at <http://www.isprss.org/data/attachments/Revitalizing%20Peace%20in%20South%20Sudan.pdf>; and “Joint letter: A Way Forward for the Hybrid Court for South Sudan,” Human Rights Watch, November 1, 2016, available at <https://www.hrw.org/news/2016/11/01/joint-letter-way-forward-hybrid-court-south-sudan-0>. See also Dimo Silva, “South Sudan Government Objects to War Crimes Court,” VOA South Sudan in Focus, October 3, 2018; and Aly Verjee, “In South Sudan, the Trust Deficit Could Doom a New Peace Deal,” United States Institute of Peace, September 20, 2018, available at <https://www.usip.org/publications/2018/09/south-sudan-trust-deficit-could-doom-new-peace-deal>.

<sup>78</sup> See “Fear, Inc.: War Profiteering in the Central African Republic and the Bloody Rise of Abdoulaye Hissène,” The Sentry, available at <https://thesentry.org/reports/fear-inc/>; and “Fueling Atrocities: Oil and War in South Sudan,” The Sentry, available at <https://thesentry.org/reports/fueling-atrocities/>.

<sup>79</sup> See <https://www.nytimes.com/2000/12/20/world/un-confirms-liberia-s-role-in-smuggling-of-diamonds.html>; <https://www.nytimes.com/2000/08/01/world/2-african-nations-said-to-break-un-diamond-embargo.html>; Human Rights Watch, “World Report 2001: Liberia,” available at <https://www.hrw.org/legacy/wr2k1/africa/liberia3.html>; Report of the Panel of Experts Appointed Pursuant to UN Security Council Resolution 1306 (2000), para. 19, in relation to Sierra Leone, available at <https://mondediplo.com/IMG/pdf/un-report.pdf>.

<sup>80</sup> Blaine Harden, “2 African Nations Said to Break U.N. Diamond Embargo,” *New York Times*, August 1, 2000, available at <https://www.nytimes.com/2000/08/01/world/2-african-nations-said-to-break-un-diamond-embargo.html>.

<sup>81</sup> Mohamed Bangura in “Loot, Pillage, and Plunder: Prosecuting War Crimes in the 21<sup>st</sup> Century,” public event hosted by Johns Hopkins School of Advanced International Studies in September 2014, available at <https://www.youtube.com/watch?v=xA40Lx18ryo>.

<sup>82</sup> Central African Republic, Law 15/003 (June 3, 2015), Establishing the Organization and Functioning of the Special Criminal Court, Art. 3, available in French at [https://www.fidh.org/IMG/pdf/loi\\_organique\\_portant\\_creation\\_organisation\\_et\\_fonctionnement\\_de\\_la\\_cps.pdf](https://www.fidh.org/IMG/pdf/loi_organique_portant_creation_organisation_et_fonctionnement_de_la_cps.pdf).

<sup>83</sup> Quoted in “Fear, Inc.: War Profiteering in the Central African Republic and the Bloody Rise of Abdoulaye Hissène,” The Sentry, November 2018, available at <https://thesentry.org/reports/fear-inc/>.

<sup>84</sup> Central African Republic, Law 15/003 (June 3, 2015), Establishing the Organization and Functioning of the Special Criminal Court, Art. 4, available in French at [https://www.fidh.org/IMG/pdf/loi\\_organique\\_portant\\_creation\\_organisation\\_et\\_fonctionnement\\_de\\_la\\_cps.pdf](https://www.fidh.org/IMG/pdf/loi_organique_portant_creation_organisation_et_fonctionnement_de_la_cps.pdf).

<sup>85</sup> Erica Bussey, “Progress and challenges in establishing the Special Criminal Court in the Central African Republic,” Amnesty International, October 2, 2017, available at <https://www.amnesty.org/en/latest/campaigns/2017/10/progress-and-challenges-in-establishing-the-special-criminal-court-in-the-central-african-republic/>.

<sup>86</sup> Elsa Buchanan, “Who is Toussaint Muntazini Mukimapa, new prosecutor for CAR’s Special Criminal Court?” *International Business Times*, February 17, 2017, available at <https://www.ibtimes.co.uk/who-toussaint-muntazini-mukimapa-new-prosecutor-cars-special-criminal-court-1606991> and Enough Project interviews in the Democratic Republic of Congo.

<sup>87</sup> “Situation in the Central African Republic II Article 53(1) Report Executive Summary,” The Office of the Prosecutor, International Criminal Court, September 24, 2014, available at <https://www.icc-cpi.int/iccdocs/otp/SAS-CARII-Art53-1-Executive-Summary-24Sept2014-Eng.pdf>

<sup>88</sup> “Report of the Mapping Project documenting serious violations of international human rights law and international humanitarian law committed within the territory of Central African Republic between January 2003 and December 2015,” Office of the High Commissioner for Human Rights, May 2017, p. 9, available at [http://www.ohchr.org/Documents/Countries/CF/Mapping2003-2015/2017CAR\\_Mapping\\_Report\\_EN.pdf](http://www.ohchr.org/Documents/Countries/CF/Mapping2003-2015/2017CAR_Mapping_Report_EN.pdf)



<sup>89</sup> Alain-Guy Sipowo, “The Price of War – Economic Crimes and Justice in the Central African Republic,” Justice in Conflict, October 16, 2015, available at <https://justiceinconflict.org/2015/10/16/the-price-of-war-economic-crimes-and-justice-in-central-african-republic/>.

<sup>90</sup> Patrick Vinck, et al., “Justice and Security Diagnostic: Bangui, Central African Republic,” American Bar Association Rule of Law Initiative and Harvard Humanitarian Initiative, 2017, available at <https://www.americanbar.org/content/dam/aba/directories/roli/misc/aba-rol-car-bangui-diagnostic-report-0917.authcheckdam.pdf>.

<sup>91</sup> “Progress and challenges in establishing the Special Criminal Court in the Central African Republic,” Amnesty International, October 2, 2017, available at <https://www.amnesty.org/en/latest/campaigns/2017/10/progress-and-challenges-in-establishing-the-special-criminal-court-in-the-central-african-republic/>.

<sup>92</sup> These actions may be more easily accomplished because the standard of proof is different from that in criminal prosecutions. To seize assets in many jurisdictions, law enforcement must show that assets are the proceeds of an enumerated crime or crimes, without a requirement to identify the individual or corporate perpetrator of the crimes.

<sup>93</sup> The DOJ can file a forfeiture action for a bank account in another country if money in the account is traceable to an act criminalized in that country and the money passed through the United States financial system in U.S. dollars. If the bank account is in a country with which the United States has a treaty, the other country will honor the DOJ’s seizure warrant. In cases where there is no treaty, the Patriot Act gives authority for a seizure. The threshold standards to asset forfeiture here are easier to meet than criminal indictments or asset seizure as a penalty for convictions because prosecutors must only show that the money constitutes proceeds of a crime and has links to the United States system, rather than determining any measure of guilt attached to any person.

<sup>94</sup> See 18 U.S.C. §§ 981(a)(1)(A) and 981(a)(1)(C), and Rules C and E of the Supplemental Rules for Certain Admiralty and Maritime Claims.

<sup>95</sup> “Making a Fortune While Making a Famine: The Illustrative Case of a South Sudanese General,” The Sentry, May 2017, available at <https://thesentry.org/reports/making-a-fortune-while-making-a-famine/>.

<sup>96</sup> Ibid.; “Children of Sudanese general James Hoth Mai lose million-dollar assets suspected to be proceeds of crime,” *Herald Sun*, available at <https://www.heraldsun.com.au/news/law-order/sudanese-peoples-liberation-army-former-chief-of-staff-of-james-hoth-mais-kids-lose-million-dollar-assets-suspected-to-be-proceeds-of-crime/news-story/c160f189367247c9a85eff7ecb1f8fc3>; and “Police Move to Seize South Sudanese General’s Australian Mansion Exposed in The Sentry’s ‘War Crimes’ Report,” The Sentry, February 13, 2018, available at <https://thesentry.org/2018/02/13/1830/police-move-seize-south-sudanese-generals-australian-mansion-exposed-sentrys-war-crimes-report/>.

<sup>97</sup> Leslie Wayne, “Shielding Seized Assets From Corruption’s Clutches,” *New York Times*, December 30, 2016, available at [https://www.nytimes.com/2016/12/30/business/justice-department-tries-to-shield-repatriations-from-kleptocrats.html?\\_r=0](https://www.nytimes.com/2016/12/30/business/justice-department-tries-to-shield-repatriations-from-kleptocrats.html?_r=0); and “International Corruption: U.S. Seeks to Recover \$1 Billion in Largest Kleptocracy Case to Date,” Federal Bureau of Investigations, July 20, 2016, available at <https://www.fbi.gov/news/stories/us-seeks-to-recover-1-billion-in-largest-kleptocracy-case-to-date>.

<sup>98</sup> United Kingdom, Criminal Finances Act 2017 § 362A, available at <http://www.legislation.gov.uk/ukpga/2017/22/enacted>.

<sup>99</sup> Mara Lemos Stein, “The Morning Risk Report: U.K. Crime Agency Readies for Asset Recovery Powers,” *Wall Street Journal*, July 5, 2017, available at <https://blogs.wsj.com/riskandcompliance/2017/07/05/the-morning-risk-report-u-k-crime-agency-readies-for-asset-recovery-powers/>.

<sup>100</sup> United Kingdom, Criminal Finances Act 2017 §13, available at <http://www.legislation.gov.uk/ukpga/2017/22/section/13/enacted>. See also “The Criminal Finances Act: A guide for the financial services sector,” available at [http://www.allenoverly.com/SiteCollectionDocuments/Allen\\_Overy\\_The\\_Criminal\\_Finances\\_Act\\_Guide.pdf](http://www.allenoverly.com/SiteCollectionDocuments/Allen_Overy_The_Criminal_Finances_Act_Guide.pdf).

<sup>101</sup> Ruth Rubio Marin, *What Happened to the Women? Gender and Reparations for Human Rights Violations*, The Social Science Research Council, 2006.

<sup>102</sup> See The Trust Fund for Victims, available at <http://www.trustfundforvictims.org/>. In March, the International Criminal Court awarded 297 of the victims of crimes for which Germain Katanga was convicted \$250 dollars each as symbolic reparations. In *The Prosecutor v. Germain Katanga* (Trial Chamber II, March 24, 2017), the court issued an order for reparations against Mr Katanga in the amount of \$1,000,000 for the benefit of 297 victims. The Trial Chamber awarded individual reparations in the amount of \$250 per victim, totaling \$74,250, and four collective awards with a combined total of \$925,750 in the form of housing assistance, education assistance, income-generating activities, and psychological health services.

<sup>103</sup> See The Trust Fund for Victims, available at <https://www.trustfundforvictims.org/en>.



- <sup>104</sup> David Scheffer, “The Rising Challenge of Funding Victims’ Needs at the International Criminal Court,” Just Security, December 18, 2018, available at <https://www.justsecurity.org/61701/rising-challenge-funding-victims-international-criminal-court/>.
- <sup>105</sup> “ICC orders first monetary awards to war crime victims,” Al Jazeera, March 24, 2017, available at <https://www.aljazeera.com/news/2017/03/icc-set-monetary-awards-war-crime-victims-170324054137638.html>.
- <sup>106</sup> International Criminal Court, “Katanga case: ICC Trial Chamber II awards victims individual and collective reparations,” available at <https://www.icc-cpi.int/Pages/item.aspx?name=pr1288>. Excerpt: “The judges awarded 297 victims with a symbolic compensation of USD 250 per victim as well as collective reparations in the form of support for housing, support for income-generating activities, education aid and psychological support. Because of Mr Katanga’s indigence, the Trust Fund for Victims was invited to consider using its resources for the reparations and to present an implementation plan by 27 June 2017.”
- <sup>107</sup> This includes the ICC’s Trust Fund for Victims as well as national budgets as in the case of Peru, Guatemala, and South Africa, where the presiding regime funded reparations as codified by national reparations legislation. (See <http://www.nytimes.com/2003/04/16/world/south-africa-to-pay-3900-to-each-family-of-apartheid-victims.html>.)
- <sup>108</sup> “Reactions of Congolese Victims to the Prospect of Reparations in the Lubanga Case,” Radio Canal Révélation, International Justice Monitor, March 23, 2017, available at <https://www.ijmonitor.org/2017/03/reactions-of-congolese-victims-to-the-prospect-of-reparations-in-the-lubanga-case/>.
- <sup>109</sup> Wairagala Wakabi, “How the Trust Fund for Victims Will Spend €1 Million on Collective Reparations in Congo,” International Justice Monitor, February 15, 2017, available at <https://www.ijmonitor.org/2017/02/how-the-trust-fund-for-victims-will-spend-e1-million-on-collective-reparations-in-congo/>.
- <sup>110</sup> This concept merits further research to determine how different sources of reparations impact their effectiveness and credibility with diverse beneficiaries in diverse countries and situations.
- <sup>111</sup> The Prosecutor v. Jean-Pierre Bemba Gombo (ICC-01/05-01/08), “Submissions relevant to reparations,” October 31, 2016, available at [https://www.icc-cpi.int/CourtRecords/CR2016\\_24741.PDF](https://www.icc-cpi.int/CourtRecords/CR2016_24741.PDF), p. 4, para. 5.
- <sup>112</sup> The Prosecutor v. Jean-Pierre Bemba Gombo (ICC-01/05-01/08), “Submission by the International Organization for Migration to the International Criminal Court pursuant to article 75(3) of the statute: on the issues proposed by Trial Chamber III on the 12th August 2016,” October 17, 2016, available at [https://www.iom.int/sites/default/files/our\\_work/DOE/LPR/IOM-Submission-pursuant-to-article....pdf](https://www.iom.int/sites/default/files/our_work/DOE/LPR/IOM-Submission-pursuant-to-article....pdf); The Prosecutor v. Jean-Pierre Bemba Gombo (ICC-01/05-01/08), “Submission by QUB Human Rights Centre on reparations issues pursuant to Article 75 of the Statute,” October 17, 2016, available at [https://www.icc-cpi.int/CourtRecords/CR2016\\_17743.PDF](https://www.icc-cpi.int/CourtRecords/CR2016_17743.PDF); The Prosecutor v. Jean-Pierre Bemba Gombo (ICC-01/05-01/08), “Application by the Redress Trust for leave to submit observations pursuant to Article 75(3) of the Statute and Rule 103 of the Rules,” August 10, 2016, available at [https://www.icc-cpi.int/CourtRecords/CR2016\\_05577.PDF](https://www.icc-cpi.int/CourtRecords/CR2016_05577.PDF).
- <sup>113</sup> Article 77 of the Rome Statute gives prosecutors at the ICC the authority to seize assets as a penalty in addition to imprisonment if a defendant is convicted. UN General Assembly, *Rome Statute of the International Criminal Court* (last amended 2010), July 17, 1998, Art. 77, available at [https://www.icc-cpi.int/nr/rdonlyres/ea9aef7-5752-4f84-be94-0a655eb30e16/0/rome\\_statute\\_english.pdf](https://www.icc-cpi.int/nr/rdonlyres/ea9aef7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf).
- <sup>114</sup> “Q&A With ICC Deputy Prosecutor Fatou Bensouda: Part I,” International Justice Monitor, July 4, 2011, available at <https://www.ijmonitor.org/2011/07/qa-with-icc-deputy-prosecutor-fatou-bensouda-part-i/>.
- <sup>115</sup> Scheffer.
- <sup>116</sup> Tracy O’Neill, “Ta-Nehisi Coates on Theft, Atheism, and History,” New York Public Library podcast, October 20, 2015, 12:00, available at <https://www.nypl.org/blog/2015/10/20/podcast-ta-nehisi-coates?gclid=Cl4gJnt8tQCFU.S.SfgodkkkDTA>.
- <sup>117</sup> “Reactions from the Local Population to Collective Reparations in the Katanga Case,” Radio Canal Révélation and International Justice Monitor, July 10, 2017, available at: <https://www.ijmonitor.org/2017/07/reactions-from-the-local-population-to-collective-reparations-in-the-katanga-case/>.
- <sup>118</sup> See “Reparations,” International Center for Transitional Justice, available at <https://www.ictj.org/our-work/transitional-justice-issues/reparations> and Louise Arbour, “Economic and Social Justice for Societies in Transition,” *Int. Law and Politics*, Vol. 40:1 2007, p. 3 fn. 4, <http://nyujilp.org/wp-content/uploads/2013/02/40.1-Arbour.pdf>.
- <sup>119</sup> “Forms of Justice: A Guide to Designing Reparations Application Forms and Registration Processes for Victims of Human Rights Violations,” International Center on Transitional Justice, available at <https://www.ictj.org/publication/forms-justice-designing-reparations-forms-and-processes>).
- <sup>120</sup> BOTA Foundation Final Report, available at <https://www.irex.org/resource/bota-foundation-final-report>; and Ignasio Jjimu, “Managing Proceeds of Asset Recovery: The Case of Nigeria, Peru, the Philippines and Kazakhstan,” working paper series, Basel Institute on Governance, available at [https://www.baselgovernance.org/sites/collective.localhost/files/publications/biog\\_working\\_paper\\_06.pdf](https://www.baselgovernance.org/sites/collective.localhost/files/publications/biog_working_paper_06.pdf).



<sup>121</sup> Statute of the Trust Fund for Victims of Hissène Habré's Crimes, African Union, posted by Human Rights Watch, available at [https://www.hrw.org/sites/default/files/supporting\\_resources/statute\\_trust\\_fund\\_victims\\_english.pdf](https://www.hrw.org/sites/default/files/supporting_resources/statute_trust_fund_victims_english.pdf); "Hissène Habré Case: Trust Fund for Victims," Human Rights Watch, February 7, 2018, available at <https://www.hrw.org/news/2018/02/07/hissene-habre-case-trust-fund-victims>;

Ruth Maclean, "After 25 years, a breakthrough for victims of Chad dictator Hissène Habré," *The Guardian*, February 9, 2018, available at <https://www.theguardian.com/global-development/2018/feb/09/trust-fund-established-for-victims-of-former-chad-dictator-hissene-habre>.

<sup>122</sup> One recent case resulting in a large settlement has triggered some exchange with victims on how settlement money might be distributed to repay debt among those affected by corruption and violence. For more on the record-breaking \$9 billion BNP Paribas criminal settlement, which led to an open call for input on reparations strategies from affected individuals and groups in Sudan, Cuba, and Iran, see <http://www.fcpablog.com/blog/2015/5/5/we-support-using-bnp-penalties-for-victim-restitution.html>.

<sup>123</sup> These consultations should be driven by more than the pursuit of practical information about harm and distribution. Discussing his disappointment with his seminal article, "The Case for Reparations," Ta-Nehisi Coates said he thought it "did not explain how it felt to live your daily life under a system of plunder, under a system of theft. How does it individually feel, to live that way?" (see minute 12:00 in <https://www.nypl.org/blog/2015/10/20/podcast-ta-nehisi-coates?gclid=Cl4gJnt8tQCFU.S.SfgodkkkDTA>). International, national, and local authorities investigating the financial dimensions of atrocities in East and Central Africa would do well to ask this question of affected communities and individuals early and often for a heightened understanding by all about the complex impact of greed-driven violence in our societies. In Jean Pierre Bemba's case, some such consultations took place, with input on the distribution of reparations submitted into the court record for review (see [https://www.iom.int/sites/default/files/our\\_work/DOE/LPR/IOM-Submission-pursuant-to-article....pdf](https://www.iom.int/sites/default/files/our_work/DOE/LPR/IOM-Submission-pursuant-to-article....pdf); [https://www.icc-cpi.int/CourtRecords/CR2016\\_17743.PDF](https://www.icc-cpi.int/CourtRecords/CR2016_17743.PDF); [https://www.icc-cpi.int/CourtRecords/CR2016\\_05577.PDF](https://www.icc-cpi.int/CourtRecords/CR2016_05577.PDF)).

<sup>124</sup> "The Corporate Crimes Principles," ICAR and Amnesty International, available at <https://www.icar.ngo/publications/2017/4/3/the-corporate-crimes-principles>; and *Corporate War Crimes*, Open Society Foundation, available at <https://www.opensocietyfoundations.org/sites/default/files/pillage-manual-2nd-edition-2011.pdf>.

<sup>125</sup> "Lumumba papers," PLAAFF, available at <http://lumumbapapers.info/>.

<sup>126</sup> Rob Berschinski, "Trump Administration Notches a Serious Human Rights Win. No, really." *Just Security*, January 10, 2018, available at <https://www.justsecurity.org/50846/trump-administration-notches-human-rights-win-no-really/>.

