



International Criminal Court

Chairs:
Leela Fredlund
William Nolan

Letter from the Chairs

Dear Delegates,

We would like to welcome you to the MIT Model United Nations 2020 Conference and especially to the International Criminal Court. We are glad to introduce to the committee the important issues of the prosecution and defense of Chen Quanguo and Mathieu Ngudjolo Chui. We hope that together we will be able to work productively on these topics of international justice.

We are honored to be the chairs of the ICC Committee for the MITMUNC 2020. William is a freshman at MIT studying Computer Science and Electrical Engineering and is interested in researching quantum computing. Leela is also a freshman at MIT and is planning to double major in Chemistry and Philosophy with focuses in physical chemistry and metaphysics.

We have prepared this guide to give you the basic information about the topics and the direction we have imagined the discussion might go, but this is in no way extensive research. We will expect all of you to submit your Position Papers through this Google Form - <https://forms.gle/uLXRx5VuGjembiXp8>. Please do not hesitate to contact us with any questions you have.

Looking forward to working with all of you,

ICC Chairs

Leela and William

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Topic 1: THE PROSECUTOR V. CHEN QUANGUO

Introduction to the topic:

Chen Quanguo is a Chinese politician and current Communist Party Secretary of Xinjiang Uyghur Autonomous Region (XUAR)¹ and a member of the 19th Politburo of the Communist Party of China. He was previously the Communist Party Secretary of Tibet Autonomous Region.

Chen gradually worked up the ranks in the party in his home province, eventually becoming the deputy provincial party chief. In 2009, he became Governor of Hebei. Then in 2011, he became the party secretary of the Tibet Autonomous Region, attempting to develop the region economically and instituting more policing surveillance in the region.

In August 2016, Chen was promoted to the Communist Party Secretary of Xinjiang. He was considered as the best fit for this position as he had been successful in controlling Tibet in the past. He has since then attracted media attention for overseeing "re-education camps" targeting Turkic minorities in the region. Up to one million Uighurs have been held involuntarily in detention camps meant to 're-educate' and provide 'vocational training' to the large Turkic-Muslim population in the Xinjiang region.

Chen's measures of disciplining the Uighurs include: mass-engineering of the Muslim population through detainment camps, specialized boarding schools for Uighur children, and arbitrary arrests. According to the CCP, his regime has "destroyed 1,588 terrorist groups" and "arrested 12,995 terrorists" since 2014. However, the 2019 United States Commission on International Religious Freedom has alleged that the camp's detainees "faced heightened repression of their religious and other human rights; were subject to arbitrary arrests, torture, and

¹ For the sake of simplicity, this paper will use the usual Chinese term, "Xinjiang" for the Xinjiang Uighur Autonomous Region.

extrajudicial executions; and were imprisoned for their religious belief, association or practice.”[5]

Alleged Crimes Against Humanity/Genocide:

1. East Turkestan (Xinjiang)

The Xinjiang Uyghur Autonomous Region (“XUAR” or just “Xinjiang”) is a region located in China’s northwest region, bordering India, Pakistan, Afghanistan, Tajikistan, Kyrgyzstan, Kazakhstan, and Mongolia[1]. Unlike the majority Han Chinese population, who are primarily Mandarin Chinese speakers, the Uyghur population is predominantly Muslim and has its own language². Uyghurs make up 45.84% of the Xinjiang population, and Xinjiang is the only Chinese province with a majority Muslim population[2].

Some Uyghurs even label the territory “East Turkestan”—a name that hints at the dream of an independent nation. However, the effects of a large migration of Han Chinese on local culture, language, and traditions exacerbated these ethnic tensions. This discontent culminated in a failed uprising in February 1997 in Ghulja, which prompted a massive crackdown involving tens of thousands of arrests and dozens of executions of Uyghurs. Thus Xinjiang’s status as a police state was born, undergirded by the perception that the Uyghurs’ are an ethno-nationalist threat to the Chinese state and the belief that Xinjiang serves as a breeding ground for the “three evil forces” of separatism, terrorism, and extremism.

As early as 2005, Human Rights Watch documented the “systematic repression of religion (...) in Xinjiang as a matter of considered state policy,” at a “level of punitive control seemingly designed to entirely refashion Uighur religious identity to the state’s purposes,” which seemed to be primarily the “enforcement of loyalty to the Chinese Communist Party and the State”[3]. This repression included the arrests, torture, and executions of peaceful activists for

² The term “Uyghur,” may be written in a variety of other spellings, including Uygur, Uighur, and Weigur.

alleged involvement in “separatist activity,” many restrictions on religious activities, chronic and daily harassment, and restrictions on travel; less substantiable allegations of forced organ harvesting from Uyghur political prisoners also emerged. In the following unrest and protests in 2010, the government began to further intensify pressure on the Uyghur community, allegedly engaging in a plethora of human rights abuses including enforced disappearances, arbitrary arrests and detention, torture and other ill-treatment, mass surveillance, and persecution[4].

In recent years, there has been a dramatic increase of repressive policies against Uyghurs in Xinjiang. In 2016, Chen Quanguo, who had previously overseen Tibet, was appointed the new Xinjiang Communist Party Secretary. In his capacity as the Tibet Communist Party Secretary, Chen gained notoriety and favor in large part due to his hardline approach to ethnic conflict; indeed, many of the tactics that he went on to roll out in Xinjiang—including the hyper-securitization and militarization of the region, implementation of mass surveillance systems, promotion of inter-ethnic marriages, and mass detention—were first tested and perfected in Tibet[5]. However, it is the more recent Uyghur re-education camps and other mass detention camps that will be the focus of this trial.

2. Uigher Camps

While it is difficult to determine when exactly Chinese officials began to plan and implement the mass detention of Uyghurs, Chen Quanguo has been labeled by Chinese media as “the architect of the re-education camps” in Xinjiang. These camps began coming to the attention of international media around April 2017 with the majority of facilities completed in early 2017. Nonetheless, the detention of Uyghurs in extralegal detention centers has been documented since 2016.

Although it is impossible to know exactly how many Uyghurs have been detained in these camps since the crackdown began, one widely accepted estimate suggests that somewhere between several hundred thousand and over one million Uyghurs have been detained in state-run

detention facilities. This estimated number includes many Uyghurs reporting that over half of their family members are currently sequestered in either extra-judicial re-education camps, pre-trial detention, or prison.

The United States' State Department estimates that, in total, as many as two million people have passed through the re-education camps since April 2017. Furthermore, a leaked internal memo by Chinese authorities describes how 15,683 “suspicious persons” were detained and “sent away for re-education” in a single week in June 2017[6]. Chen Quanguo has further encouraged this overreach, exhorting officials to “round up everyone who should be rounded up.” However, most of those detained in the re-education camps are never charged with any crime: indeed, the CCP itself has directed local authorities to acknowledge to relatives of detainees that their loved ones are not criminals, but instead are being held for their own good because they have been “infected by unhealthy thoughts”[9].

Many of the accounts of the treatment of detainees in these re-education camps reveal conduct that amounts to torture and cruel, inhuman or degrading treatment. A former prisoner, Mihrigul Tursun, testifying before the US Congressional-Executive Commission on China, detailed the abuses she suffered. These included being stripped naked and forced to undergo a medical examination; being told she would die in the camp; being interrogated for three days and nights in an electric chair known, as the “tiger chair,” in a room full of belts and whips; and being electrocuted and beaten during this interrogation[7]. Another former detainee similarly recounted how policemen interrogated him by strapping him into a tiger chair and by hanging him to a barred wall by his wrists.

The erasure of Uyghur culture and religion also seems to be a primary goal of the camps; indeed, multiple government media platforms state unambiguously that the purpose of the camps is to “wash brains” and “cleanse hearts”. Furthermore, another leaked internal document instructs officials to deal with detainees who have “a vague understanding, negative attitudes or

even show resistance” through “assault-style transformation through education,” in order to “ensure that results are achieved”[8].

And yet, although the CCP has still claimed that the re-education camps are merely “Vocational Skills Education Training Centers,” policemen have rounded up many Uyghur individuals who plainly do not need such training, including academics, writers, journalists, doctors, and entertainers, as well as the elderly. A leaked internal document adds to these conflicting narratives, repeatedly referring to the detainees as being punished, and Chen Quanguo has been quoted that the centers should “teach like a school, be managed like the military, and be defended like a prison” [10].

Furthermore, the camps may also serve as conduits to an immense network of enslavement. Although the evidence is still developing, all of the conditions for forced labor seem to exist, with satellite images showing the recent emergence of new factories, connected to or near the camps, where inmates allegedly provide low-paid or unpaid labor. These factories have purportedly become an extension to the re-education camps: laborers live in dormitories, may be prohibited from returning home on a regular basis, and make nothing for their work until they “complete their training”[9].

The Australian Strategic Policy Institute claims there are 380 suspected facilities in the Xinjiang region - some 40% more than previous estimates. Furthermore, available evidence from the ASPI suggests that many extrajudicial detainees in Xinjiang’s vast “re-education” network are now being formally charged and locked up in higher security facilities, including newly built or expanded prisons, or sent to walled factory compounds for more forced labour assignments.

Formal Charges:

The Office of the Prosecutor will prosecute Chen Quanguo, the Communist Party Secretary of Xinjiang Uyghur Autonomous Region for the Crime of Genocide and Crimes Against Humanity under Article VI and VII of the Rome Statute.

Genocide is defined by Article VI as, “Any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: Killing members of the group; Causing serious bodily or mental harm to members of the group; Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; Imposing measures intended to prevent births within the group; Forcibly transferring children of the group to another group.”

Crimes Against Humanity are defined by Article VII as “any of [but not limited to] the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack; Extermination; Enslavement; Deportation or forcible transfer of population; Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; Torture; Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; Enforced disappearance of persons; The crime of apartheid; Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.”

Conclusion

In this case, the role of the ICC in prosecuting Chen Quanguo is not to place the blame solely on him, but rather to focus and lay out the groundwork of Quanguo’s part in the

oppression of the Uyghurs. Furthermore, delegates must consider not only whether the alleged aforementioned crimes, as described earlier by the Rome Statute, actually took place and meet the burden of proof, but also whether Quanguo himself can be held directly responsible for those crimes.

With these considerations, the central goal of this ICC topic is for delegates to gain a better understanding of the current Uyghur situation in Xinjiang and the problems prosecuting charges of genocide and crimes against humanity on an international stage.

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Additional Readings:

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<https://jamestown.org/program/chen-quanguo-the-strongman-behind-beijings-security-strategy-in-tibet-and-xinjiang/>

Topic 2: THE PROSECUTOR V. MATHIEU CHUI

Introduction to Topic and History:

The area encompassed today by the Democratic Republic of the Congo (DRC) has traditionally been home to various ethnic groups with distinct cultural identities. Upon Belgian colonization and the subsequent establishment of an independent government in the area, conflict arose between ethnic groups which now had increased contact with one another. In the Ituri province in northeast DRC, in particular, the **Lendu**³ and **Hema**⁴ peoples have grown antagonistic, leading to long-lasting violence as both groups vie for control of the area.

While conflict between the two groups has been ongoing since at least the 1970s, at the time largely due to land disputes in the newly independent nation, it came to a head from 1999 to 2003, a period of violence known as the **Ituri Conflict**. The precise reasons behind the conflict are disputed by each group, but it was certainly catalyzed by the Second Congo War. Following the Rwandan and Ugandan occupation of Ituri, and their encouragement and possible funding⁵ of small militias in the area, the province became increasingly militarized. Several rebel groups emerged, including the Union of Congolese Patriots (**UPC**, a Hema group) and, later, the Front Nationalist et Integrationist (**FNI**, a Lendu group), and its more aggressive counterpart, the Force de Résistance Patriotique d'Ituri (**FRPI**, a Ngiti group allied with the Lendu people)⁶.

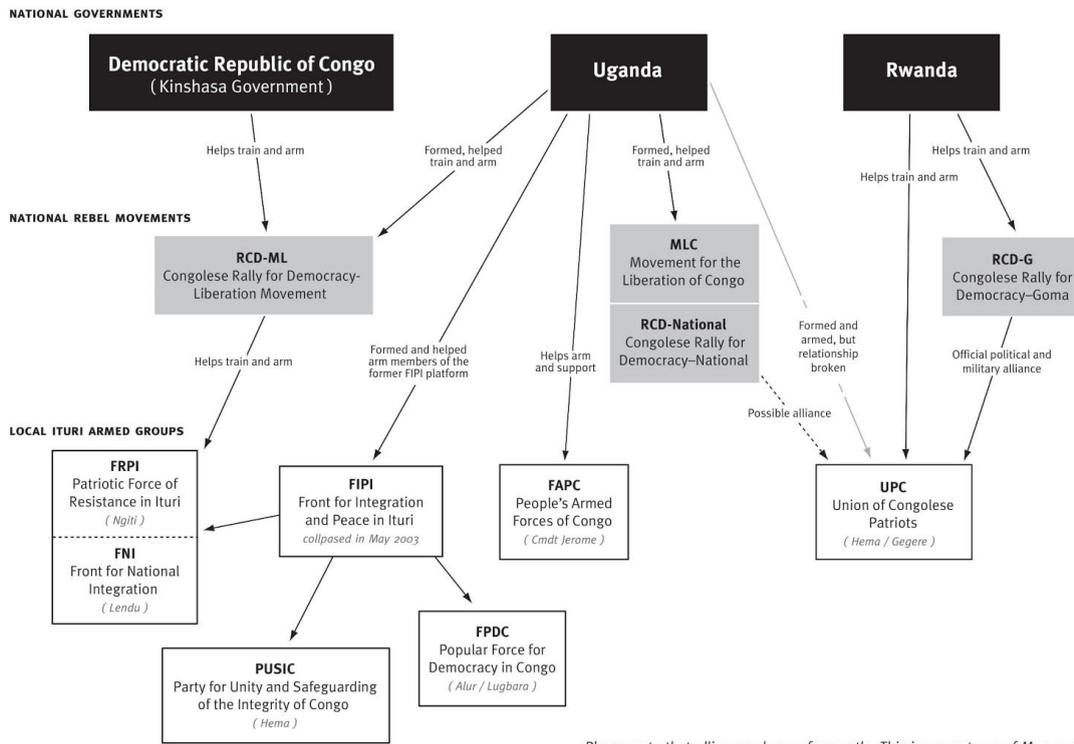
³ Also known as the Balendru, though “Lendu” is the more common international identifier.

⁴ Also known as the Bahema, though “Hema” is the more common international identifier.

⁵ Whether or not the militia groups were funded by external governments is a continuing topic of debate, with the UN chastising Uganda and both nations denying any wrongdoing.

⁶ The relationship between the two groups has been dynamic in the past, contributing to the difficulty of assigning blame to any single individual; the HRW states “FRPI is often seen as the military arm of the FNI,” though this is a bit simplistic.

Web of Alliances in Ituri



A chart depicting the relationships between several parties involved in the Ituri conflict as of 2003.

The period of prolonged fighting consisted of each group attempting to seize land, with frequent retaliatory attacks on civilians by the opposing group. This fighting continued for several years with little effective interference from the Congolese government, leading to over 50,000 deaths and half a million displaced Ituri civilians, many of whom suffered from lasting psychological, financial, and physical trauma. Both groups have been criticized for their military tactics during this period, which included devastating attacks on local villages, mutilation of civilians, use of child soldiers, and widespread sexual assault, among other atrocities. A 2003 Human Rights Watch investigation brought international attention to the conflict and its associated human rights violations, which resulted in peacekeeping attempts by both the UN (a mission labeled “MONUC) and several independent entities and nations (most notably the EU,

which led “Operation Artemis”). These attempts were semi-successful; over a dozen peacekeeping officers were killed by the FNI, FRPI, and UPC in the early 2000s, but following the split of the UPC in 2003, violence decreased significantly. Nevertheless, sporadic outbreaks of violence in the Ituri area remain common, including recent spikes in 2017 and 2019.

Matheu Chui⁷ is a Lendu citizen of the Democratic Republic of the Congo. Born in 1970, Chui grew up in Ituri, surrounded by the first waves of violence between the Lendu and Hema people. He joined the Democratic Republic of Congo’s national armed forces as a corporal, but deserted in 1996 at the start of the First Congo War. Instead of fighting, Chui trained to become a nurse and worked with the Red Cross in Bunia, the capital of Ituri, providing medical aid to those affected by the First and Second Congo Wars. Chui did not return to the conflict until 2002, when Bunia was seized by the UPC. Wanting to fight for the Lendu people, Chui quickly became the leader of the FNI, determining their strategy and ordering attacks which would leave tens of thousands dead and many more injured and displaced.

After being turned over to the Congolese government in 2003 by UN peacekeepers, Chui was released and returned to the conflict, where, in 2005, he co-founded the Mouvement Révolutionnaire Congolais (MRC), an armed rebel group which unified several Lendu militias. Following his role in the MRC, he decided in 2006 to cooperate with the Congolese government, and joined the Congolese military as a colonel in return for amnesty. The ICC issued a warrant for his arrest in 2007, and in 2008 he was brought into custody, where he awaited trial.

Alleged Crimes of M. Chui:

Preceding the Bogoro Massacre

⁷ Mr. Chui is also referred to as Mathieu Ngudjolo Chui and Mathieu Ngudjolo Tchui in many sources.

While the ICC focused on the Bogoro attack when pressing charges against M. Chui, his history of alleged human rights abuses is extensive. The FNI, before the Bogoro conflict, had been accused of encouraging soldiers to sexually assault civilians⁸, attack humanitarian workers, mutilate corpses and prisoners, recruit children under the age of 18 as soldiers, and use cannibalism as a tactic to scare and dehumanize enemies⁹. It is unclear how involved FNI leadership is with individual decisions, as while the FNI has formally denied encouraging child enlistment and unnecessary torture, these practices have continued, suggesting that at best there is no real accountability for war crimes, and at worst that leadership is actively promoting such practices.

The Bogoro Massacre

ICC charges have focused on an attack on the village of Bogoro on February 24, 2003, carried out jointly by the FNI and FRPI. The village of Bogoro lies on a major road connecting Bunia, the capital of Ituri, and Uganda. As of early February 2003, the village was under UPC control, and inhabited by mostly Hema civilians. However, the FNI and FRPI saw it as a strategic area to control, as holding the village would allow them to stop the flow of weapons from Uganda to Hema militias in the capital. As a result, they launched an attack to capture the village, which consisted of violence against both civilians and soldiers within the area.

During the attack, which lasted approximately two days, over 200 civilians were killed, and many others were captured or missing. Thomas Lubanga, at the time the leader of the UPC,

⁸ Besides the obvious moral depravity of sexual violence, genital mutilation, and sexual slavery, it is important to consider the greater implications of strategic sexual violence and slavery in an ethnic conflict. Many of the Hema women raped or enslaved by Lendu soldiers became pregnant (see the HRW testimonial), thus contributing to the elimination of the Hema as a group. Furthermore, many victims of sexual violence are left unable to give birth, also preventing pregnancies within the ethnic group and leading to its elimination. While Chui is not being accused of genocide, the greater purpose of these sexual crimes as intended to eliminate an ethnic group is worth consideration.

⁹ Reports state that in one case, a mob of Lendu soldiers associated with the FNI and FRPI killed a prisoner, cut out his heart, roasted him, and “ate the body” while the prisoner’s comrades watched, apparently a common practice. Complicating analysis of such events is the traditional belief that eating enemies grants the consumer their strength, making it difficult to determine whether the cannibalism is meant as a scare tactic or merely a traditional practice.

alleged 400 Hema dead and 500 missing, though UN workers were unable to confirm the exact number due to the instability of the region. Lubanga also asserted that 47 women and girls, many of them in their early teens, were sexually assaulted, and that many civilian buildings were set on fire and destroyed unnecessarily. Other reports put the numbers affected slightly lower, but general consensus was that most of the victims of violence were not associated with the UPC or other Hema militias. Several witnesses have further stated that many of the soldiers attacking Bogoro appeared to be much younger than 18.

Chui's personal involvement in this attack has been hotly debated. As the leader of the FNI, he, along with FRPI leadership, would have ordered the attack, making it likely that he anticipated widespread civilian deaths. According to a 2006 independent interview with Chui, the accused stated "that when there is fighting, of course civilians die and are displaced from their homes" and did not deny accusations that his soldiers raped Hema prisoners. On the other hand, Chui also alleged that "he simply defended his people" and "denied having child soldiers," despite eyewitness statements to the contrary.

A Note on Previous ICC Involvement

In 2008, Chui was brought into ICC custody, to be tried alongside Germain Katanga, who had been the leader of the FRPI at the time of the Bogoro massacre. Eventually, Chui was tried separately, and in December 2012 was acquitted of all charges. Almost immediately, the prosecution submitted an appeal, which was investigated and, in 2015, denied, declaring once again that Chui was not guilty of the crimes of which he was accused.

However, this decision has been widely criticized by international human rights groups, UN statements, and (expectedly) Hema groups within the DRC. There have been accusations that the ICC mishandled the case's presentation, as well as concerns that many victims were

unrepresented due to the impossibility of coming forward, leaving the trial very much still a topic of debate.

This committee is intended as an opportunity to present and argue the case entirely anew. While the previous ICC trial information and fact sheets are excellent resources for gathering information on the case, the intent of this committee is not to rehash the same arguments and evidence as the previous trial. Instead, the Chairs will look favorably upon evidence being presented in a new light and novel arguments as to whether or not Chui's actions constitute war crimes and crimes against humanity. Essentially, this committee seeks to redo the 2009-2012 trial with the added benefit of information which has emerged since, with an aim of removing the uncertainties present in the 2012 decision.

Formal Charges

According to the ICC:

“Mathieu Ngudjolo Chui is accused of committing, through other persons, within the meaning of article 25(3)(a) of the Rome Statute¹⁰:

- a) Crimes against humanity:
 - i) Murder under article 7(1)(a) of the Statute;
 - ii) sexual slavery and rape under article 7(1)(g) of the Statute.
- b) War crimes:
 - i) Using children under the age of 15 to take active part in hostilities under article 8 (2)(b)(xxvi) of the Statute;

¹⁰ The formal charges under investigation in this committee are the same as those tried by the ICC in the 2009-2012 trial, and as a result are taken directly from the ICC. The Rome Statute referenced here is linked under additional resources.

- ii) deliberately directing an attack on a civilian population [...] or against individual civilians not taking direct part in hostilities under article 8(2)(b)(i);
- iii) willful killing under article 8(2)(a)(i) of the Statute;
- iv) destruction of property under article 8(2)(b)(xiii) of the Statute;
- v) pillaging under article 8(2)(b)(xvi) of the Statute;
- vi) sexual slavery and rape under article 8(2)(b)(xxii) of the Statute.”

Conclusion

The ICC’s function and format necessarily distinguishes it from the rest of the United Nations. Rather than focusing on the Ituri conflict itself, it is the ICC’s role to focus solely upon the conflict as it pertains to M. Chui. Therefore, the considerations involved in the decision are twofold: delegates must consider not only whether the alleged crimes, as described by the Rome Statute, occurred during the Bogoro Massacre, but also whether M. Chui himself was responsible for these crimes. There are several questions to consider when making this decision: Could Chui reasonably expect these atrocities to be carried out, based upon his orders? To what extent was the FNI (as opposed to the FRPI) at fault for the crimes? Could the actions taken by the FNI, as suggested by Chui in interviews, be perceived as a form of self defense? What distinguishes normal acts of violence in war from intentional war crimes?

With these questions in mind, it is the Chairs’ hope that delegates will gain a more nuanced understanding of the conflict in the DRC and the difficulties and intricacies of classifying war crimes and crimes against humanity. Best of luck, and don’t hesitate to reach out with any questions.

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Additional Resources:

- a) https://news.vice.com/en_us/article/7xq45a/a-slaughter-in-silence-democratic-republic-of-the-congo

While focused on the USA's role in the conflict and slightly prone to dramatization, the article provides an easy-to-read image and background of the conflict.

- b) <https://www.hrw.org/reports/2003/ituri0703/>

A very thorough explanation of the Ituri conflict and atrocities by the HRW, with background. The given interviews and testimonials of physical and sexual violence are graphic, so be aware that that is a potentially triggering topic.

- c) <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>

The Rome Statute upon which the formal charges are based, and a vital resource for the ICC.

- d) <https://www.coalitionfortheicc.org/cases/mathieu-ngudjolo-chui>

A concise description of the case and charges.

Many of the resources on the Ituri Conflict and Bogoro Massacre are in French, the official language of the DRC. If you are experiencing any difficulties in finding English resources or translating existing French resources, please do not hesitate to reach out to the Chairs for translations or additional resources.