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An Assessment of Gravity as the Basis of Prosecutorial Strategy at the International Criminal Court

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ABSTRACT

The question of who should be prosecuted is fundamental for the success of the International Criminal Court. The Prosecutor has announced that to ensure objectivity and increase legitimacy, investigations and prosecutions will be selected on the basis of gravity. This paper investigates the concept of gravity, arguing that its subjective nature make it ill-suited to play the role of an objective standard, while also being insufficient to resolve both policy considerations and pragmatic constraints which must be addressed in prosecutorial selection.

The Prosecutors definition of gravity and his application of the standard in practice are assessed using jurisprudence on gravity from previous courts, in the context of sentencing and Referral Decisions, in an attempt to resolve a number of controversies which have arisen over the Prosecutor's selections. This highlights that gravity is too subjective to ensure legitimacy of decision making, but also demonstrates its inadequacy as a basis for prosecutorial discretion. This inadequacy is further demonstrated with an examination of additional policy considerations that must be addressed to contribute to the Court's aim of ending impunity, and completed with a discussion of pragmatic constraints which would prevent the operation of a gravity standard in practice.

ABBREVIATIONS

CDF	Civil Defence Force
DRC	Democratic Republic of the Congo
ICC	International Criminal Court
IMT	International Military Tribunal
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
LRA	Lord's Resistance Army
NGO	Non-Governmental Organisation
OTP	Office of The Prosecutor (at the International Criminal Court)
RPF	Rwandan Patriotic Front
RPE	Rule of Procedure and Evidence
SCSL	Special Court for Sierra Leone
UN	United Nations

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