ABUAD JOURNAL OF PUBLIC AND INTERNATIONAL LAW (AJPIL)

AFE BABALOLA UNIVERSITY

ABUAD

LABOR SERVITIUM ET INTEGRITAS

10

Vol. II, No I August, 2016

This Journal is to be cited as AJPIL, 2016



ABUAD JOUNAL OF PUBLIC AND INTERNATIONAL LAW (AJPIL)

Vol. II, No I August, 2016

This Journal is to be cited as AJPIL, 2016

A Publication of the Department of Public and International Law, College of Law, Afe-Babalola University, Ado-Ekiti, Nigeria.

Published 2016

(C) Department of Public and International Law, College of Law,

Afe Babalola University,

Ado-Ekiti, Nigeria.

All Rights Reserved. No part of this publication may be reproduced in any form or by any means without the publisher's written permission. Any unauthorised reproduction or adaptation of this work will constitute a copyright infringement and will render the doer liable under civil and criminal law.

ISSN: 3851-3068

A Publication of the Department of Public and International Law, College of Law, Afe Babalola University, Ado-Ekiti, Nigeria.

Afe Babalola University Journal of Public and International Law

Department of Public and International Law, College of Law, ABUAD, Nigeria.

Editorial Board

Associate Professor Smaranda E. Olarinde

Chairperson, Editorial Board

Sesan T. Fabamise, Esq.

Editor-in-Chief

Prof Chris C. Ohuruogu

Editorial Consultant

Dr.Ifeolu J.Koni

General Editor

Editors

Nnamdi G.Ikpeze

Ayobami Olaniyan

Olaitan Olusegun (Mrs.)

Ngozi O. Odiaka

Banke Olagbegi-Oloba (Mrs.)

Hilary Okoeguale

Editorial Advisory Committee

Prof Yemi Akinseye-Geoge, SAN

Prof Nsongurua J. Udombana

Prof. Hakeem .A. Olaniyan

Dr. Rufus O.Olaoluwa

Associate Professor Adewole A. Adedeji

From the Editor's Desk

June, 2015 witnessed the launch of the **ABUAD Journal of Public and International Law**, a Publication of the Department of Public and International Law, College of Law, Afe Babalola University, Ado-Ekiti. Nigeria. Between that time and now, our jurisprudence has witnessed phenomenal changes. Some of the new developments include the enactment of the Administration of Criminal Justice (ACJ) Act, which has synchronised the rules of criminal litigation in Nigeria, and the criminalization of internet and other forms of electronic fraud, pursuant to the promulgation of the Cybercrimes (Prohibition, Prevention etc) Act, 2015.

In order to capture as many of these new developments as possible, through incisive and robust scholarly engagements, we have decided to publish two volumes of AJPIL simultaneously. The articles contained in these two editions are designed primarily to provide a veritable source of information for law teachers, legal practitioners, law students and the general public. The Editorial Board of **AJPIL** is deeply concerned about the dearth of literature in Public and International Law and the needs to fill this gap. Accordingly, the Journal covers diverse areas of law such as Criminal Law and Procedure, the Law of Evidence, Alternative Dispute Resolution (ADR) Mechanisms, the Nigerian Law of Contract, Business Law and Corporate Practice, Property Law, ICT Law, to mention but just a few.

Our teeming readers are to note that articles and case reviews in diverse fields of law are received on a rolling basis. Intending contributors should kindly see the "call for papers" contained on the concluding pages of the current edition for details of the approved format.

We are exceedingly grateful to our assessors, members of the Editorial Advisory Committee, the **ABUAD** Press and everyone who contributed to the success of this edition. Thank you all and God bless you.

Ifeolu J. Koni (Ph.D)

TABLE OF CONTENT

Editorial iii

From the Editor's Desk iv

Table of Content v

International Conventions on the Protection of Refugees Against Gender- Based Violence in Africa: A Recipe for Effectiveness 1

Abiola Ruth Admula

The Company Secretary in Corporate Governance: An Officer or a Mere Errand Boy? 16

Eric Chi Nnadozie

Gender Issues in Succession to Family Property Under the Nigerian Customary Law. 33

Maureen Ngozi Agbasi

Examination of the Legal Distribution of Corporate Powers in Corporate Governance in The 21st Century in Nigeria. 48

Ngozi O. Odiaka, Banke Olagbegi Oloba

Uti Possidetis: From Roman Injunctive Relief to Global Frontier Rule. 63

David Igbojohwegba Efevwenhan

Regulation of the Internet Use and Enforcement Mechanisms against Cybercrimes in United States of America and United Kingdom. 83

Greg CHukwudi Nwakoby, Ph.D., Keuneth Uzor' Eze, Ph.D

The Availability and Effectiveness of Legal Aid for the Accused Persons in Nigeria: James Sharon. 107

Tolu, Wadzi Aboki

The worst case scenario then was unwanted pregnancy or a minor infection such as gonorrhea or syphilis. As at then, there was nothing like HIV/AIDS. It is thus not difficult to understand why the law on assaults on females, especially rape, was/is not all that strict.

With the discovery of HIV/AIDS, and now EBOLA Virus Disease (E.V.D) which can be easily transmitted through carnal connections, coupled with the astronomical rise in rape cases all over the country, it has become imperative for the legislature to take another look at our adjectival law on sexual assaults. In this connection, we submit that what is needed is a holistic approach; a separate and distinct enactment that deals with assaults on females and other matters connected therewith.

When official graft and financial crimes became the order of the day in Nigeria, the Federal Government, adopting the social engineering school of jurisprudence, propounded by the legendary Roscoe Pound, came up with the Independent Corrupt Practices and Other Related Offences Commission (ICPC) and the Economic and Financial Crimes Commission (EFCC) respectively to fight the scourge. The time has now come for the adoption of a similar approach to the war against sexual assaults in Nigeria. This can only be done through the enactment by the National Assembly of a substantive law on assaults on females.

For the reasons already stated in this paper, a rapist is a potential murderer; and that is the way the law should treat him. Accordingly, randy men who commit rape against females, especially young girls under 13 years of age, should be visited with capital punishment. Our females, who obviously are the weaker sex, deserve more protection than they currently enjoy under the law. It takes a drastic legislative intervention of the kind being herein proposed to arrest what has now become a culture of impunity with reference to sexual assault in Nigeria.

AN APPRAISAL OF THE PROSECUTION OF OFFENDERS AT THE INTERNATIONAL CRIMINAL COURT

Tolulope A. Adekola[1]

Modupe Ake

&

Solomon Olorukooba

Abstract

The International Criminal Court was founded in 2002, under a treaty negotiated at a global conference in Rome, as an independent judicial body that would challenge impunity for the gravest international crimes—genocide, war crimes, and crimes against humanity. What are we to make of the fact that in its eleven-year history, the International Criminal Court (ICC) has prosecuted only Africans? Should the court be condemned for discrimination—for taking advantage of Africa's weak global position—as some African leaders contend? Or should it be applauded for giving long-overdue attention to atrocities in Africa—a sign that finally someone is concerned about the countless ignored African victims, as many African activists contend? This debate is at the heart of one of the most serious challenges the ICC has ever faced. This paper seeks to show through the methodology of statute, convention and treaty analysis the activities, functions and the modus operandi of the international criminal court. This paper employs the explorative research technique to sightsee the historical background, the jurisdiction, the structure and administration of the Court. The trials and investigations conducted by the court so far were also examined. The controversises and challenges faced by the court ranging from western

[1] LL.B, LL.M (Ife), BL., Lecturer, Department of Business Administration, Ndm University, Dmuravan, Kwara State. Email: adekola.tolulope@lmu.edu.ng, Telephone:

mperialism, rights of the accused persons, checks and balances and African Union's withdrawal proposal were also critically examined. Copious recommendations were profered on how the court can sumount its numerous challenges and win the confidence of world's citizens and most importantly African states

INTRODUCTION

The **International Criminal Court (ICC or ICCt)** [2] is an intergovernmental organization and international tribunal that sits in Hague, Netherlands. The ICC has the jurisdiction to prosecute individuals for the international crimes of genocide, crimes against humanity, and war crimes. The ICC is intended to complement existing national judicial systems and it may therefore only exercise its jurisdiction when certain conditions are met, such as when national courts are unwilling or unable to prosecute criminals or when the United Nations Security Council or individual states refer investigations to the Court. The ICC began functioning on 1 July 2002, the date that the Rome Statute entered into force. The Rome Statute is a multilateral treaty which serves as the ICC's foundational and governing document. States which become party to the Rome Statute automatically becomes member states of the ICC. Currently, there are 123 states which are party to the Rome Statute and therefore members of the ICC.

The ICC has four principal organs: the Presidency, the Judicial Divisions, the Office of the Prosecutor, and the Registry. The President is the most senior judge chosen by his or her peers in the Judicial Division, which hears cases before the Court. The Office of the Prosecutor is headed by the Prosecutor who investigates crimes and initiates proceedings before the Judicial Division. The Registry is headed by the Registrar and is charged with managing all the administrative functions of the ICC, including the headquarters, detention unit, and public defense office.

[2] "The International Criminal Court: An Introduction". Retrieved 25 November 2014.
The official languages of the ICC are Arabic, Chinese, English, French, Russian and Spanish and the working languages are currently English

HISTORICAL BACKGROUND

The establishment of an international tribunal to judge political leaders accused of international crimes was first proposed during the Paris Peace Conference in 1919 following the First World War by the Commission of Responsibilities. The issue was addressed again at a conference held in Geneva under the auspices of the League of Nations in 1937, which resulted in the conclusion of the first convention stipulating the establishment of a permanent international court to try acts of international terrorism. The convention was signed by 13 states, but none ratified it and the convention never entered into force.

Following the Second World War, the allied powers established two *ad hoc* tribunals to prosecute axis power leaders accused of war crimes. The International Military Tribunal, which sat in Nuremberg, prosecuted German leaders while the International Military Tribunal for the Far East in Tokyo prosecuted Japanese leaders. In 1948 the United Nations General Assembly first recognised the need for a permanent international court to deal with atrocities of the kind prosecuted after the Second World War[3]. At the request of the General Assembly, the International Law Commission (ILC) drafted two statutes by the early 1950s but these were shelved during the Cold War, which made the establishment of an international criminal court politically unrealistic[4].

Benjamin B. Ferencz, an investigator of Nazi war crimes after the Second World War, and the Chief Prosecutor for the United States Army at the Einsatzgruppen Trial, became a vocal advocate of the establishment of international rule of law and of an international criminal court. In his first book published in 1975, entitled *Defining*

[3] United Nations Department of Public Information, December 2002.*The International Criminal Court*. Retrieved 5 December 2014
[4] Dempsey, Gary T. (16 July 1998). "Reasonable Doubt: The Case Against the Proposed International Criminal Court". Cato Institute. Retrieved 31 December 2014.

ational Aggression: The Search for World Peace, he advocated for ablishment of such a court[5].

e 1989 Prime Minister of Trinidad and TobagoA. N. R. Robinson d the idea of a permanent international criminal court by ing the creation of such a court to deal with the illegal drug trade. ring Trinidad and Tobago's proposal, the General Assembly the ILC with once again drafting a statute for a permanent court[6]. work began on the draft, the United Nations Security Council shed two *ad hoc* tribunals in early 1990s. The International ial Tribunal for the former Yugoslavia was created in 1993 in se to large-scale atrocities committed by armed forces during lav Wars and the International Criminal Tribunal for Rwanda was l in 1994 following the Rwandan Genocide. The creation of these ils further highlighted the need for a permanent international al court.

4, the ILC presented its final draft statute for the International al Court to the General Assembly and recommended that a ence be convened to negotiate a treaty that would serve as the statute. To consider major substantive issues in the draft statute, eneral Assembly established the Ad Hoc Committee on the shment of an International Criminal Court, which met twice in After considering the Committee's report, the General Assembly l the Preparatory Committee on the Establishment of the ICC to a consolidated draft text. From 1996 to 1998, six sessions of the atory Committee were held at the United Nations headquarters in York City, during which NGOs provided input and attended gs under the umbrella organisation of the Coalition for an ICC). In January 1998, the Bureau and coordinators of the atory Committee convened for an Inter-Sessional meeting in n in the Netherlands to technically consolidate and restructure the ticles into a draft.

Finally the General Assembly convened a conference in Rome in June 1998, with the aim of finalizing the treaty to serve as the Court's statute. On 17 July 1998, the Rome Statute of the International Criminal Court was adopted by a vote of 120 to 7, with 21 countries abstaining. The seven countries that voted against the treaty were China, Iraq, Israel, Libya, Qatar, the United States, and Yemen. Following 60 ratifications, the Rome Statute entered into force on 1 July 2002 and the International Criminal Court was formally established. The first bench of 18 judges was elected by the Assembly of States Parties in February 2003. They were sworn in at the inaugural session of the Court on 11 March 2003[7].

The Court issued its first arrest warrants on 8 July 2005, and the first pre-trial hearings were held in 2006. The Court issued its first judgment in 2012 when it found Congolese rebel leader Thomas LubangaDyilo guilty of war crimes related to using child soldiers[8].

THE ROME CONFERENCE

The nearly century-long effort to establish a permanent court culminated with a 1998 UN diplomatic conference in Rome, Italy, convened for the sole purpose of finalizing a statute on the establishment of an international criminal court. The global event attracted representatives of 160 countries, 17 intergovernmental organizations, 14 specialized agencies of the UN, and some 250 nongovernmental organizations.

The Rome Statute was adopted by a vote of 120 in favor, 7 against, and 21 abstaining. The names of the countries voting were not recorded, but three countries—the United States, Israel, and China—openly stated their reasons for voting against the statute. The United States objected to the court's independent power to initiate prosecutions and sought a greater role for the UN Security Council. For example, U.S. negotiators,

...ency, Biography". 9 January 2008. Archived from the original on 9 ...ieved 1 March 2015.
...C". Retrieved 4 June 2015.
Coalition for the International Criminal Court."Judges and the Presidency".Archived from the original on 9 December 2012.
"ICC finds Congo warlord Thomas Lubanga guilty". BBC News. 2012-03-14. Retrieved 2014-09-29.

that American soldiers and peacekeepers abroad could be before the court on politically motivated charges, had tried to the statute to give the Security Council exclusive power to prosecutions. This would have allowed the United States, as a ent member of the Security Council, to veto any prosecutions it . However, this proposal was defeated by a majority concerned placing prosecutorial decisions in the hands of a political body.

ited States, along with China, also objected to the court's power, in circumstances, to arrest and try citizens of countries that have ned the statute, arguing that prosecutions should require the t of the accused person's government. Israel objected to the 's list of war crimes because it included the act of moving tions into occupied territories. Some abstaining states objected to lure to include terrorism or the use of nuclear weapons as crimes, thers opposed the decision to eliminate the death penalty in cing.

gh the United States voted against the treaty, U.S. officials sed satisfaction with much of the statute. President Bill Clinton tely signed it, although he did not submit it to the United States for approval. In May 2002 President George W. Bush, citing the objections raised by U.S. officials during the Rome conference, ned the UN that the United States would not ratify the agreement, nating the effect of Clinton's signature.

onparticipation of the United States and other major powers could en the court by raising questions about its legitimacy. articipation could also limit the court's financial resources because ng is provided only by countries that are parties to the Rome te. However, if most major powers ratify the Rome Statute, the t of nonparticipation on the ICC may be minimal. In fact, the ests of the United States and other ICC opponents could be hurt by nonparticipation, because their governments will be unable to cipate in the election of judges, selection of prosecutors, and development of the rules of evidence and procedure, all of which will have a major impact on future development of the court and its effectiveness.

JURISDICTION OF THE COURT

The Rome Statute gives the court jurisdiction over the most serious crimes of international concern if they are committed after July 1, 2002, either (1) by a citizen of a nation that accepts the statute, or (2) by a person of any nationality on the territory of a nation that accepts the statute. The latter type of jurisdiction means that citizens of nations that have not accepted the treaty may be arrested and tried for international crimes if their actions take place in the territory of a nation that adheres to the statute. Nations that are not parties to the statute may voluntarily accept the court's jurisdiction on a case-by-case basis. Furthermore, the UN Security Council can grant the court jurisdiction for a specific situation even when the nation in which the crime occurred is not a party to the statute. In any criminal case, the ICC may only exercise its jurisdiction when a national court is unwilling or unable to carry out the investigation or prosecution. For example, the ICC might intervene when a government's judicial system has collapsed or is actively shielding a person from criminal responsibility.

The court may hold accountable any person aged 18 or older at the time of the crime without regard to the individual's official duties or functions. Therefore, heads of state, legislators, and other high-ranking government officials are not exempt from criminal responsibility. Crimes in the court's jurisdiction are not subject to a statute of limitations, meaning there is no time limit on bringing charges.

CRIMES PROSECUTED BY THE COURT

y A. Kissinger, "The Pitfalls of Universal Jurisdiction", *Foreign Affairs*, August 2001, p. 95. Retrieved 31 December 2014

e jurisdictional requirements in the Rome Statute that must
a case may begin against an individual. The requirements
ct-matter jurisdiction (what acts constitute crimes), (2)
personal jurisdiction (where the crimes were committed or
ted them), and (3) temporal jurisdiction (when the crimes
tted).

tter jurisdiction

's subject-matter jurisdiction is the crimes for which
can be prosecuted. Individuals can only be prosecuted for
t are listed in the Statute. The primary crimes are listed in
f the Statute and defined in later articles: genocide (defined in
crimes against humanity (defined in article 7), war crimes
n article 8), and crimes of aggression (defined in article 8)[10]. In
article 70 defines offences against the administration of justice,
e also crimes for which individuals can be prosecuted.

ıe

6 defines the crime of genocide as "acts committed with intent to
in whole or in part, a national, ethnical, racial or religious
There are five such acts which constitute crimes of genocide
ırticle 6:[11]

Killing members of a 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
Imposing measures intended to prevent births within the group
Forcibly transferring children of the group to another group.

The definition of these crimes is identical to those contained within the Convention on the Prevention and Punishment of the Crime of Genocide of 1948.

Crimes against humanity

Article 7 defines crimes against humanity as acts "committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack". The article lists 16 such as individual crimes:[12]

1. Murder
2. Extermination
3. Enslavement
4. Deportation or forcible transfer of population
5. Imprisonment or other severe deprivation of physical liberty
6. Torture
7. Rape
8. Sexual slavery
9. Enforced prostitution
10. Forced pregnancy
11. Enforced sterilization
12. Sexual violence
13. Persecution
14. Enforced disappearance of persons
15. Apartheid
16. Other inhumane acts

War crimes

Article 8 defines war crimes depending on whether an armed conflict is either international (which generally means it is fought between states) or non-international (which generally means that it is fought between non-state actors, such as rebel groups, or between a state and such non-state actors). In total there are 74 war crimes listed in article 8. The most

Article 5: ... Court 2000 Building ... C Premises ... Statute Article 8(2)(c) ...

imes, however, are those that constitute either grave breaches neva Conventions of 1949, which only apply to international [13] and serious violations of article 3 common to the Geneva ons of 1949, which apply to non-international conflicts.[62]

e 11 crimes which constitute grave breaches of the Geneva ions and which are applicable only to international armed :

Wilful killing
Torture
nhuman treatment
Biological experiments
Wilfully causing great suffering
Destruction and appropriation of property
Compelling service in hostile forces
Denying a fair trial
Unlawful deportation and transfer
Unlawful confinement
Taking hostages

are seven crimes which constitute serious violations of article 3 on to the Geneva Conventions and which are applicable only to ternational armed conflicts:

Murder
Mutilation
Cruel treatment
Torture
Outrages upon personal dignity
Taking hostages
Sentencing or execution without due process.

Additionally, there are 56 other crimes which apply to international armed conflicts and 21 that apply to non-international armed conflicts.[14] Such crimes include attacking civilians or civilian objects, attacking peacekeepers, causing excessive incidental death or damage, transferring populations into occupied territories, treacherously killing or wounding, denying quarter, pillaging, employing poison, using expanding bullets, rape and other forms of sexual violence, and conscripting or using child soldiers.

Crimes of aggression

Article 8 defines crimes of aggression, however the Court is not yet able to prosecute individuals for these crimes. The Statute originally provided that the Court could not exercise its jurisdiction over the crime of aggression until such time as the states parties agreed on a definition of the crime and set out the conditions under which it could be prosecuted. Such an amendment was adopted at the first review conference of the ICC in Kampala, Uganda, in June 2010. However, this amendment specified that the ICC would not be allowed to exercise jurisdiction of the crime of aggression until two further conditions had been satisfied: (1) the amendment has entered into force for 30 states parties and (2) on or after 1 January 2017, the Assembly of States Parties has voted in favor of allowing the Court to exercise jurisdiction.

The Statute, as amended, defines the crime of aggression as "the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations"[15]. The Statute defines an "act of aggression" as "the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations." The article also contains a list of seven acts of aggression, which are identical to those in United Nations

[14] Rome Statute, Article 8.
[15] Rome Statute, Article 11(1)

l Assembly Resolution 3314 of 1974 and include the following
en committed by one state against another state:

Invasion or attack by armed forces against territory
Military occupation of territory
Annexation of territory
Bombardment against territory
Use of any weapons against territory
Blockade of ports or coasts
Attack on the land, sea, or air forces or marine and air fleets
The use of armed forces which are within the territory of another state by agreement, but in contravention of the conditions of the agreement
Allowing territory to be used by another state to perpetrate an act of aggression against a third state
. Sending armed bands, groups, irregulars, or mercenaries to carry out acts of armed force

ces against the administration of justice

e 70 criminalizes certain intentional acts which interfere with igations and proceedings before the Court, including giving false ony, presenting false evidence, corruptly influencing a witness or al of the Court, retaliating against an official of the Court, and ing or accepting bribes as an official of the Court.[16]

torial or personal jurisdiction

an individual to be prosecuted by the Court either territorial iction or personal jurisdiction must exist. Therefore, an individual nly be prosecuted if he or she has either (1) committed a crime n the territorial jurisdiction of the Court or (2) committed a crime

tatute, Arti

while a national of a state that is within the territorial jurisdiction of the Court.

Territorial jurisdiction

The territorial jurisdiction of the Court includes the territory, registered vessels, and registered aircraft of states which have either (1) become party to the Rome Statute or (2) accepted the Court's jurisdiction by filing a declaration with the Court.

In situations that are referred to the Court by the United Nations Security Council, the territorial jurisdiction is defined by the Security Council, which may be more expansive that the Court's normal territorial jurisdiction for example, if the Security Council refers a situation that took place in the territory of a state that has both not become party to the Rome Statute and not lodged a declaration with the Court, the Court will still be able to prosecute crimes that occurred within that state.

Personal Jurisdiction

The personal jurisdiction of the Court extends to all natural persons who commit crimes, regardless of where they are located or where the crimes were committed, as long as those individuals are nationals of either (1) states that are party to the Rome Statute or (2) states that have accepted the Court's jurisdiction by filing a declaration with the Court.As with territorial jurisdiction, the personal jurisdiction can be expanded by the Security Council if it refers a situation to the Court.

Temporal jurisdiction

Temporal jurisdiction is the time period over which the Court can exercise its powers. No statute of limitations applies to any of the crimes defined in the Statute.[17] However, the Court's jurisdiction is not completely retroactive. Individuals can only be prosecuted for crimes that took place on or after 1 July 2002, which is the date that the Rome

ne St Arti (1).

entered into force. However, if a state became party to the and therefore a member of the Court, after 1 July 2002, then the annot exercise jurisdiction prior to that date for certain cases. For ², if the Statute entered into force for a state on 1 January 2003, rt could only exercise temporal jurisdiction over crimes that took that state or were committed by a national of that state on or anuary 2003.

ibility

ıte an investigation, the Prosecutor must (1) have a "reasonable believe that a crime within the jurisdiction of the Court has been ing committed", (2) the investigation would be consistent with ciple of complementarity, and (3) the investigation serves the of justice.

mentarity

nciple of complementarity means that the Court will only e an individual if states are unwilling or unable to prosecute. e, if legitimate national investigations or proceedings into ıave taken place or are ongoing, the Court will not initiate ngs. This principle applies regardless of the outcome of national ngs. Even if an investigation is closed without any criminal being filed or if an accused person is acquitted by a national ıe Court will not prosecute an individual for the crime in so long as it is satisfied that the national proceedings were e.

ırt will only initiate proceedings if a crime is of "sufficient) justify further action by the Court".

; of justice

The Prosecutor will initiate an investigation unless there are "substantial reasons to believe that an investigation would not serve the interests of justice" when "taking into account the gravity of the crime and the interests of victims". Furthermore, even if an investigation has been initiated and there are substantial facts to warrant a prosecution and no other admissibility issues, the Prosecutor must determine whether a prosecution would serve the interests of justice "taking into account all the circumstances, including the gravity of the crime, the interests of victims and the age or infirmity of the alleged perpetrator, and his or her role in the alleged crime"[18].

STRUCTURE AND ADMINISTRATION

There are 18 judges in the ICC. The Presidency is comprised of three judges, who are elected from within the 18 judges in the ICC and who each serve 3-year terms. The Presidency is comprised of The President of the Court, a First Vice-President, and a Second Vice-President. Once elected, in accordance with the Statute, these judges oversee the overall management of the ICC, including "judicial/legal functions, administration and external relations'

The Judicial Divisions are the Appeals Division, the Trial Division, and the Pre-Trial Division. The President sits on the Appeals Division, along with four other judges. The Trial and Pre-Trial Divisions consist of no less than 6 judges each, though their proceedings consist of three judges. A single Judge may carry out many of the functions of the Pre-Trial Chamber. The judges are placed in the Divisions based on their qualifications and expertise for a 3-year term, which may be extended for trials they preside over that continue beyond their term[19].

[18] Rome Statute, Article 53(1)(c).

[19] The Prosecutor of the International Criminal Court, FatouBensouda, re[illegible] judg[illegible] for authorization t[illegible] an i[illegible]gatio[illegible] the Situation in Georgia, ICC-[illegible]

Office of the Prosecutor receives referrals for cases and information crimes within the Court's jurisdiction from States, UN Security ncil (UNSC), or based on their own initiatives. It then examines t it receives, potentially conducts investigations, and potentially ecutes cases before the Court. The Office consists of the Deputy ;ecutor, the Investigations Division, and the Jurisdiction, nplementarity and Cooperation Division.

: Registry, headed by the Registrar, is responsible for judicial and ıinistrative support of all divisions of the ICC, specifically in matters lefense, victims and witnesses, outreach, and detention. The Office of)lic Counsel for Victims and the Office of Public Counsel for fence also technically fall under the Registry, but they essentially ıction independently and are semi-autonomous.

ODUS OPERANDI OF ICC

ıere are three ways for the ICC to receive a situation to investigate. ıe first way is that a State Party of the Rome Statute refers a situation the Prosecutor. The second way is for the UN Security Council to quest an investigation of a situation in any State that is a member of e UN. Even if the State to be investigated has not ratified the Rome atute, they may still be investigated because all member states of the N are bound by UN resolutions. The third way is on the Office of the rosecutor's own initiative. Under this course of action, the Prosecutor ıust request authorization to proceed with an investigation from a Pre-rial Chamber.[20]

ollowing the initiation of the investigation, a situation is assigned to a re-Trial Chamber. The Prosecutor may decide before or after the nitiation of an investigation that there is no basis to proceed. However, f a State or the UNSC has referred the situation to the Prosecutor, the re-Trial Chamber may request that the Prosecutor reconsider their decision to end the investigation. Additionally, if the Prosecutor decides not to move forward based on a determination that it would not be in the interest of justice, the Pre-Trial Chamber could choose to review this determination. If the Pre-Trial Chamber chooses to conduct a review, it has to affirm the determination in order for it to stand.

However, if an investigation proves fruitful, the Prosecutor may apply to the Pre-Trial Chamber for a warrant of arrest or a summons to appear for the person suspected of commiting a crime or crimes that fall under the scope and jurisdiction of the ICC. If the Pre-Trial Chamber issues the warrant or summons, it is the hope that the wanted person will be surrendered to the Court or appear voluntarily, at which point a hearing to confirm the charges is held. Of the ICC's suspects which there have been warrants issued, three were arrested by their governments and transferred to The Hauge, while two were arrested by foreign authorities and also transferred to The Hague. Ten of the ICC's suspects appeared before the Court voluntarily[21].

Once the charges are confirmed, the case is then assigned to a Trial Chamber. During the trial, the Prosecutor must prove the defendant guilty beyond a reasonable doubt. The accused can act as his or her own defense or be represented by counsel. Decisions made by Chambers can be appealed throughout the Pre-Trial and Trial phases, which are reviewed by the Appeals Chamber.Victims can also participate in the proceedings either directly or through legal representation. When the proceedings have concluded, the Trial Chamber decides if the accused is to be acquitted or convicted. If convicted, there will be a sentencing, which can include imprisonment and even reparations to victims[22].

[20] *International Humanitarian Law* available at <http://www.en.wikipedia.org/wiki/International_humanitarian_law> accessed 10

[21] Anoushirvani, S. 2010. The Future of the International Criminal Court: The Long Road to Legitimacy Begins with the Trial of Thomas LubangaDyilo. Pace International Law Review 22(1): 213-237

[22] Fitchelberg A. 2006. Conspiracy and International Criminal Justice.*Criminal Law Forum* (17):149-176.

THE FIRST VERDICT DELIVERED BY THE COURT

After nearly two years of analysis and investigation, followed by six years of proceedings, the ICC's first case verdict was handed down on 14 March 2012. Thomas LubangaDyilo of the Democratic Republic of Congo was found guilty of enlisting children under the age of 15, conscripting children under the age of 15, and using children under the age of 15 to participate actively in hostilities. On 17 March 2006, there was a public announcement of the issuance of the arrest warrant for Lubanga. In this case, the authorities of the State cooperated and transferred Lubanga to The Hague. Defense counsel was provided to Lubanga because he could not afford to pay for it himself. When there was an issue of evidence favorable to Lubanga being withheld from the Defense and the Trial Chamber because of confidentiality issues, the Court followed judicial procedure. The Court then conducted the appeal process during the Trial phase, ensuring that the trial would not move forward until this issue was resolved. Though these appeals extended the length of the trial, it ensured that Lubanga's human rights and due process were respected, while still successfully achieving some kind of justice for Lubanga's victims[23].

Lubanga was sentenced to 14 years, which would only be eight more years after the conclusion of the trial since Lubanga was detained in The Hague since 2006. After the proceedings ended, the Trial Chamber issued its first decision on victims' reparations for harm caused by Lubanga.This decision did not outline what reparations should be made to the victims, but rather requested reparations proposals from victims to be submitted to the Trust Fund for Victims, which would then be reviewed by the Chamber. This decision has created some controversy among victims because they are not sure what to expect or that they will even receive anything for their suffering, particularly since Lubanga was found to be indigent.

[23] Barnes, G. P. 2015. The International Criminal Court's Ineffective Enforcement Mechanisms:
The Indictment of President Omar Al Bashir. Fordham International Law Journal (6): 1585-1613.

TRIALS TILL DATE

To date, the Prosecutor has opened investigations into nine situations: the Democratic Republic of the Congo; Uganda; Central African Republic I and II; Darfur, Sudan; Kenya; Libya; Côte d'Ivoire; and Mali.The Office of the Prosecutor is also conducting preliminary examinations in nine matters in Afghanistan, Colombia, Georgia, Guinea, Honduras, Iraq, Nigeria, Palestine and Ukraine.

The Court's Pre-Trial Chambers have publicly indicted 36 people. The ICC has issued arrest warrants for 28 individuals and summonses to eight others. Seven persons are in detention. Proceedings against 25 are ongoing: ten are at large as fugitives, two are under arrest but not in the Court's custody, nine are in the pre-trial phase, another three are at trial, and the prosecution is appealing one individual's acquittal. Proceedings against eleven have been completed: two have been convicted, four have had the charges against them dismissed, two have had the charges against them withdrawn, one has had his case declared inadmissible, and three have died before trial.

As of January 2015, the *Lubanga* and *Katanga-Chui* trials in the situation of the DR Congo were concluded with MrLubanga and Mr Katanga convicted and sentenced to 14 and 12 years imprisonment, respectively. Mr Chui was acquitted and released. The Prosecutor has appealed the acquittal. The *Bemba* trial regarding the Central African Republic has been closed with the decision pending. A fourth trial, in the *Ruto-Sang* case regarding the situation in Kenya, began in September 2013. The *Banda* trial in the situation of Darfur, Sudan, was scheduled to begin in 2014 but the start date was vacated. In the *Ntaganda* case in the DR Congo situation and in the *Laurent Gbagbo* case in the Côte d'Ivoire situation, trials are to begin in June and July 2015, respectively. The charges in the *BléGoudé* case were confirmed in December 2014 with the trial to be held before the same Trial Chamber as the *Gbagbo* case. The charges against five suspects in the *Bemba*

OAJ case were confirmed in November 2014; a Trial Chamber is established. One suspect, Dominic Ongwen, in the *Kony et al.* case Uganda situation is to have his initial appearance before the Court nuary 2015.

ıtion	Referred by	Referred on	Investigation announced on	Status[A]	File no.
ocratic ıblic of Congo	Democratic Republic of the Congo	16 April 2004	23 June 2004	Case(s) begun	ICC-01/04
ıda	Uganda	16 December 2003	29 July 2004	Case(s) begun	ICC-02/04
ur. an	United Nations Security Council	31 March 2005	6 June 2005	Case(s) begun	ICC-02/05
ombia	—	—	*2006*	*Preliminary (phase 3)*	—
[B]	—	—	*2006*	*Preliminary (phase 2)*	—
ezuela	—	—	2006	Concluded	—
tral ican ublic I	Central African Republic	7 January 2005	22 May 2007	Case(s) begun	ICC-01/05
hanistan	—	—	*2007*	*Preliminary (phase 3)*	—
orgia	—	—	*14 August 2008*	*Preliminary (phase 3)*	—
estine I	—	—	22 January 2009	Concluded	—
ine	—	—	*14 October*	*Preliminary*	—

Situation	Referred by	Referred on	Investigation announced on	Status[A]	File no.
			2009	*(phase 3)*	
Honduras	—	—	*18 November 2009*	*Preliminary (phase 2)*	—
Nigeria	—	—	*18 November 2009*	*Preliminary (phase 3)*	—
Kenya	*Propriomotu*	—	31 March 2010	Case(s) begun	ICC-01/09
Republic of Korea		—	6 December 2010	Concluded	—
Libya	United Nations Security Council	26 February 2011	3 March 2011	Case(s) begun	ICC-01/11
Côte d'Ivoire	*Propriomotu*	—	3 October 2011	Case(s) begun	ICC-02/11
Mali	Mali	13 July 2012	16 January 2013	Cases(s) possible	ICC-01/12
Registered vessels[C]	Comoros	14 May 2013	14 May 2013	Concluded	ICC-01/13
Ukraine	—	—	*25 April 2014*	*Preliminary (phase 2)*	—
Central African Republic II	Central African Republic	12 June 2014	24 September 2014	Cases(s) possible	ICC-01/14
Palestine II	—	—	*16 January 2015*	*Preliminary (phase 1)*	—

Source Wikipedia Retrieved October 2015

'ROVERSY AND CHALLENGES OF THE ICC

'C has been a controversial issue since people began talking about ;sible existence. Now that it has been an international judicial for 10 years, the consequences seem to be becoming real and countries continue to avoid ratifying the Rome Statute. For le, though the United States signed the Statute, they have not l it because it is viewed as giving up an important piece of state ignty.

/er, it may be the states that have ratified the Statute that should most worried about their sovereignty, as people are beginning to r if the investigations are biased, looking at only some parties to a :t rather than all of them. Another controversy involves the fact ost of the investigations being conducted are in Africa and the : East. Some people suggest that this implies a bias or unfair focus se regions and/or the Court taking advantage of weak states.

/ith only one conviction in the 10 years of the ICC's existence, :onsequences may seem unreal or unlikely to many still. With the onviction coming down, and Lubanga only serving eight more from when the trial finished, the consequences for committing :rimes do not seem to be as harsh as some might think they should ld be for those who are found guilty. Additionally, the amount of iat the investigations and trials take, can allow the suspects to find o remain at large, even after a warrant is issued for their arrest[24].

er controversial issue regarding the ICC is the role of the UNSC. vo have signed an agreement that lays out how the two bodies will rate with one another, largely through administrative procedures nformation sharing. However, the UNSC's ability to delay indefinitely any case (as described above) is controversial. Particularly the permanent members of the UNSC have a great power because they can use their veto power to deny the progression of a referral to the ICC, even if other members of the UNSC want to pass such a resolution. With the UNSC's two referrals to the ICC so far, regarding Darfur and Libya, was the Council's motivation pure in achieving justice for the people of those states or did they have other motivations in seeing these situations investigated and potentially prosecuted by the ICC?

These issues also raise questions about the Court achieving what organizations like Human Rights Watch (HRW) believe its mission to be, which they describe as bringing "to trial those most responsible for the gravest crimes representative of underlying patterns of ICC crimes. "HRW criticizes the ICC for not conducting thorough enough investigations to go up the chain of command to reach the true leaders who are committing heinous crimes against humanity. There are also criticisms on the way the Court is treating gender, because they are not including rape and sexual violence in the charges against the accused.

The receptiveness and cooperation of the local populations can be important to the work of the ICC in achieving justice. However, if the ICC cannot provide appropriate protections for the physical and economic safety of victims, they may be reluctant to come forward with evidence or to participate in the trial. Victims may therefore never have the opportunity to see justice happen or to reclaim their lives after the traumas they or their families experienced.

These issues are important and their neglect by the Court has rendered it less successful than many had hoped. However, its task is highly complex and political, and it would have been unreasonable to expect it to achieve all its aims without difficulty or controversy. It will be interesting to see how the court addresses these issues in the future, and if it can be made more effective, more broadly accepted, and more cost-effective.

Prosecutor of the International Criminal Court, FatouBensouda, opens a inary examination of the situation in Palestine". ICC. 2015-01-16.

ITICISMS

estern Imperialism accusations

e ICC has been accused of disproportionately targeting Africans, such Kenyan President Uhuru Kenyatta. The ICC has been accused of bias l as being a tool of Western imperialism, only punishing leaders from all, weak states while ignoring crimes committed by richer and more verful states. This sentiment has been expressed particularly by ican leaders due to an alleged disproportionate focus of the Court on ica, while it claims to have a global mandate; to date, all eight iations which the ICC has investigated are in African countries[25].

e prosecution of Kenyan Deputy President William Ruto and sident Uhuru Kenyatta (charged before becoming president) led to Kenyan parliament passing a motion calling for Kenya's withdrawal n the ICC, and the country has called on the other 34 African states ty to the ICC to withdraw their support, an issue which was discussed special African Union summit in October 2013.

ough the ICC has denied the charge of disproportionately targeting ican leaders, and claims to stand up for victims wherever they may Kenya was not alone in criticising the ICC. Sudanese President ar al-Bashir visited Kenya despite an outstanding ICC warrant for arrest but was not arrested; he said that the charges against him are aggerated" and that the ICC was a part of a "western plot" against . Ivory Coast's government opted not to transfer former first lady ione Gbagbo to the court but to instead try her at home. Rwanda's passador to the African Union, Joseph Nsengimana, argued that "It is only the case of Kenya. We have seen international justice become e and more a political matter." Ugandan President Yoweri Museveni accused the ICC of "mishandling complex African issues." Ethiopian Prime Minister Hailemariam Desalegn, the AU chairman, told the UN General Assembly at the General debate of the sixty-eighth session of the United Nations General Assembly: "The manner in which the ICC has been operating has left a very bad impression in Africa. It is totally unacceptable.[26]"

AU withdrawal proposal

South African President Jacob Zuma said the perceptions of the ICC as "unreasonable" led to the calling of the special AU summit on 13 October. Botswana is a notable supporter of the ICC in Africa.At the summit, the AU did not endorse the proposal for a mass withdrawal from the ICC due to lack of support for the idea. However, the summit did conclude that serving heads of state should not be put on trial and that the Kenyan cases should be deferred. Ethiopian Foreign Minister TedrosAdhanom said: "We have rejected the double standard that the ICC is applying in dispensing international justice."Despite these calls, the ICC went ahead with requiring William Ruto to attend his trial.The UNSC was then asked to consider deferring the trials of Kenyatta and Ruto for a year,but this was rejected. In November, the ICC's Assembly of State Parties responded to Kenya's calls for an exemption for sitting heads of stateby agreeing to consider amendments to the Rome Statute to address the concerns.

Checks and balances

Critics of the Court argue that there are "insufficient checks and balances on the authority of the ICC prosecutor and judges" and "insufficient protection against politicized prosecutions or other abuses".

Concerning the independent Office of Public Counsel for the Defence (OPCD), Thomas Lubanga'sdefence team say they were given a smaller

N rejects trial deferral for Kenyan leaders". Al Jazeera. 16 November 2013.
ieved 25 January 2014.

Maffei, Stefano (2006). The European Right ... nfro... in C... al P... ngs: ... t, Anonymous ...

get than the Prosecutor and that evidence and witness statements e slow to arrive.

hts of the accused

ıong those who argue that the protections offered by the ICC are ufficient is the Heritage Foundation, an American conservative think k based in Washington DC which stated in 2001 that "Americans o appear before the court would be denied such basic U.S. ıstitutional rights as trial by a jury of one's peers, protection from uble jeopardy, and the right to confront one's accusers." It should be ted, however, that US citizens do not always have a right to a jury ıl. In common with the practice of most nation states, American vice personnel, for example, tried by courts martial do not have a ght to a jury trial in the usual sense nor are the panel members cessarily their peers. By contrast Human Rights Watch writes "the C has one of the most extensive lists of due process guarantees ever ritten", including "presumption of innocence; right to counsel; right to esent evidence and to confront witnesses; right to remain silent; right be present at trial; right to have charges proved beyond a reasonable ɔubt; and protection against double jeopardy". Although the United tates actually voted against adoption of the Rome treaty, David cheffer, who led the US delegation to the Rome Conference maintained when we were negotiating the Rome treaty, we always kept very close ıbs on, 'Does this meet U.S. constitutional tests, the formation of this ourt and the due process rights that are accorded defendants?' And we vere very confident at the end of Rome that those due process rights, in act, are protected, and that this treaty does meet a constitutional test."

n some common law systems, such as the United States, the right to confront one's accusers is traditionally seen as negatively affected by the ack of an ability to compel witnesses and the admission of hearsay evidence,which along with other indirect evidence is not generally ɔrohibited.

Limitations

Limitations exist for the ICC. The Human Rights Watch (HRW) reported that the ICC's prosecutor team takes no account of the roles played by the government in the conflict of Uganda, Rwanda or Congo. This led to a flawed investigation, because the ICC did not reach the conclusion of its verdict after considering the governments' position and actions in the conflict

CONCLUSION AND RECOMMENDATION

Restoring trust in the ICC among Africans is a monumental task that will require the type of robust dialogue, which is currently not taking place between the ICC and African countries. Supporters of the ICC believe that the appointment of former Gambian justice minister, Fatou Bensouda, as chief prosecutor of the ICC should provide an opportunity for the latter to amend its relationship with Africa. Regardless of how the conflict between African countries and the ICC is eventually resolved, each country must develop the capacity to effectively investigate and prosecute international crimes committed within its borders[27].

Where necessary, the AU can help such prosecutions, especially in the case where accused individuals have left the country where the crime was committed to avoid prosecution. It is important for the administration of justice that accused persons be prosecuted in the communities where the crimes were committed. Allowing each African country to retain a significant level of sovereignty on criminal jurisdiction, instead of ceding it to the ICC, would ensure that "justice would be administered and delivered at the national level" and that "victims would be closer to the legal proceedings" (IGC 2011)[28]. For example, while the successful prosecution of Charles Taylor by the

[27] International Criminal Court. *Assembly of States Parties* at the Wayback Machine (archived January 18, 2008). Retrieved 2 January 2015.

[28] *Carlan, Philip E.; Norel, Lisa S.; Downey, Ragan A. (2011). An Introduction to Criminal Law. p. 24. ISBN 978-1-4496-4721-6.*

era Leone Special Court in The Hague for aiding and abetting war imes augurs well for justice in Africa, it is important to note that it also veals the fact that even after so many years of independence, African ountries have still not developed domestic legal and judicial systems apable of effectively administering justice and safeguarding the ndamental rights of their citizens. The Taylor affair as well as the tuations in Sudan and Kenya reveal serious deficiencies with the dministration of justice in Africa. The fact that the ICC has to be called pon to deal with legal issues that ought to be handled effectively by frican governments is a sign of African states' collective failure to roperly govern themselves and administer justice fairly and timely[29]. hus, the AU should help its members undertake necessary institutional eforms to create locally focused and culturally relevant legal and udicial systems that can effectively prosecute those accused of impunity nd hence minimize the need to call upon the ICC to intervene. Of ourse, domestic legal systems are better able to deal with critical issues, uch as peace and reconciliation; safeguarding the rights and meeting the eeds of victims of crime; and making adequate and effective use of raditional mechanisms for conflict resolution. Unfortunately, the AU as had very limited success imposing its will on its members.

[29]Dempsey, Gary T. (16 July 1998). "Reasonable Doubt: The Case Against the Proposed International Criminal Court". Cato Institute. Retrieved 31 December 2006

KIDNAPPING AND ITS VICTIMS IN NIGERIA: A CRIMINOLOGICAL ASSESSMENT OF THE ONDO STATE CRIMINAL JUSTICE SYSTEM

Adedoyin Akinsulore*

Abstract

The frequency of kidnapping for ransom in Nigeria has angered the people so much so that many states in the country have made new crime specific laws punishing offenders with the death penalty when convicted. The victims of this crime are accorded no right within the criminal justice system other than as evidence for prosecution. The Ondo State Anti-Kidnapping and Anti-Abduction Law 2010 recognises the victim but only to the extent to which he precipitates the crime. This paper, applying victimological theory argues that it is high time the Administration of Criminal Justice Laws in Ondo State gave legislative prominence to the rights of victims of crime.

Introduction

The contemporary narrative of kidnapping in Nigeria tells the story of a migratory bird. It has moved from the Niger-Delta creek where it served political cum environmental pollution right causes to the eastern region where it became a commodity to pay huge amount on and straight up to the northern region of the country to be used as a religious and terrorist weapon of choice before heading back to the south western part of the country where it has become a daily news for the poor to hear on the newsstand while the high and powerful shrivel in their fortressed home afraid to step out for fear being kidnapped. The Nigerian state, along with its security apparatus look on despondently and clueless as to how to respond or solve this menace