



UGANDA COALITION ON THE  
INTERNATIONAL CRIMINAL COURT (UCICC)

# THE JURISDICTION OF THE INTERNATIONAL CRIMINAL COURT

A student's guide to understanding the International Criminal Court

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The International Criminal Court

*With support from:*

*JOHN D. AND CATHERINE T. MAC ARTHUR FOUNDATION*

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It is our sincere hope that this information booklet provides an insight to students about the working of the ICC and its contributions to international criminal justice.

## ABOUT UCICC

The Ugandan Coalition on the International Criminal Court (UCICC) is a coalition based campaign of the Human Rights Network with a membership of over 265 spread country wide. The UCICC was formed in 2004, at a time when some Ugandans had publicly criticized and threatened to undermine the work of the court in investigating the situation in Northern Uganda. HURINET-U at that time organized a workshop to bring together various key players in civil society, government and the international community to map out as well as endorse a strategy to be used in the campaign for the ICC in Uganda. The UCICC has the following core objectives:

1. To sensitize and clarify the role of the ICC and
2. Create a platform for debate on the ICC.

The Uganda Coalition on the ICC is not a mouthpiece of the ICC; it is part of the Global Independent CICC movement with head quarters in New York, and as such does not take a position for or against the ICC. The UCICC's member organizations have different views on the ICC. The Ugandan Coalition mainly provides information about the ICC responds to basic queries and raises awareness.

The UCICC is coordinated by a steering committee of 7 organizations which also serves as a constitutional body. These are: Human Rights Network - Uganda, Uganda Women's Network, National Union of Disabled Persons of Uganda, and Legal Aid Project of the Uganda Law Society, ISIS-WICCE-Women's International Cross Cultural Exchange, Public Defenders Association of Uganda and the Uganda Human Rights Commission.

UCICC has made several publications in the past in order to achieve goals outlined above. This booklet is part of a planned activity of the coalition in creating awareness amongst students about the workings of the ICC.

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## Introduction

This booklet is developed specifically to enable students have a general and good understanding of the workings of the International Criminal Court (ICC) by virtue of the fact that the ICC is investigating certain serious crimes of concern to the International community committed in the Greater Northern part of Uganda.

The booklet is also expected to assist students have informed discussions on the subject of international criminal justice because some students especially those from the greater northern Uganda may have been victimized during the conflict, or may have relatives or friends that may have suffered victimization and who may not have any information about the ICC.

This booklet is not the Statute establishing the ICC but rather it has simplified and addressed a number of issues provided for in the legal texts for the ICC. Any errors and misrepresentations should not be attributed to the ICC as an institution.

The booklet is developed using mostly open ended questions and answer format which is expected to assist the student have a good impression of the subject matter. It provides a flavor of a general over view of the Ugandan court system before it delves into the ICC dos and don'ts.

The Uganda Coalition on the International Criminal Court will be at service to respond to any queries that may be raised whether directly from this booklet or that require further discussions on the workings of the Court.

NB: The Uganda Coalition on the ICC is not a mouth piece of the ICC but rather a coalition of organizations in Uganda that have interest in creating a mechanisms for providing information about the ICC to general Uganda public as well as creating a platform for debate on the same subject.

# “EXERCISE OF JURISDICTION BY THE INTERNATIONAL CRIMINAL COURT AS PROVIDED FOR UNDER THE ROME STATUTE”

## Qn 1: What is “EXERCISE OF JURISDICTION” in relation to the ICC?

**Ans:** The term EXERCISE OF JURISDICTION is a legal term that means the powers that the ICC uses in investigating, prosecuting and delivering a Judgment over a particular case or an accused person that is brought before the Court.

The exercise of jurisdiction relates to such things as;

- a) When the crimes are alleged to have been committed and whether this time falls within the powers of the Court (i.e. after 1<sup>st</sup> July 2002);
- b) The nature of crimes in issue and whether these fall within those the ICC is supposed to concern itself or not (ICC Crimes).
- c) Where the alleged crimes are said to have been perpetrated and committed from and who is alleged to have been responsible for their commission.
- d) Whether the state is unable or unwilling to genuinely investigate and prosecute persons alleged to have perpetrated such serious crimes.

## Qn 2: When does the ICC exercise its Jurisdiction?

**Ans: A**

- i) The ICC exercises its Jurisdiction only in situations where the crimes of genocide, war crimes, crimes against humanity (and aggression- when it becomes operational), have been committed or alleged to have been committed.

- ii) The ICC will exercise its jurisdiction over the above crimes, where it is shown that any of the said crimes was committed on or after the 1<sup>st</sup> day of July 2002. The said date was arrived at not because of any political process but rather because the drafters of the Rome State agreed that the Court would become operational only after sixty (60) states had accepted the Court to exercise its powers (jurisdiction) over them.

The sixty states deposited their instruments of ratification (agreement to be bound) and sixty days following thereafter fell on the 1<sup>st</sup> day of July 2002 hence the date upon which the court become operational.

**NB:** *The practice of calculating dates for treaties and international instruments to come into force is an international one which, has not started with the ICC.*

**Ans: B)**

The ICC will also exercise jurisdiction over the above mentioned crimes where it is shown that;

- i) One of the ICC crimes was committed by an individual on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft of one of the state parties (member states that have agreed to be subject to the ICC).
- ii) One of the ICC crimes was committed by a person being a national of a state party to the Rome Statute on the territory of the state that is not a state party.

**Example:**

Individual "J" being a national of Country "X", a state party to the ICC commits ICC crimes in country "Y" that is not a state party to the ICC can be indicted for such alleged crimes

- iii) One of the ICC crimes was committed on the territory of a state that is not party to the Rome Statute but the parties to the conflict have agreed to let the ICC independently conduct investigations and carry out prosecutions.

### Qn 3: How does the ICC receive cases in order to commence its work?

**Ans:** There are three distinct ways in which the ICC receives its cases and these are;

- 1) Referral from the United Nations Security Council under chapter VII of the Charter of the United Nations:

Under this mode the UN Security Council which is charged with maintaining peace and security within member states will upon making a determination of crimes being committed, pass a resolution referring a particular situation to the ICC for investigations and prosecution of the suspected perpetrators of crimes.

**Example:**

In the situation in the Sudan, the ICC prosecutor commenced investigations in respect of certain crimes committed on the people from Darfur-this followed the UN Security Council Resolution, which resolved to refer the matter to the ICC.

- 2) A State party referral:

Under this mode, any state that is a member of the ICC Rome Statute (state party) may determine that any of the ICC crimes are being committed on the territory of another state party and thus will refer such a situation to the ICC prosecutor for further action.

**Example:**

Country "X" may make a determination based on events happening in country "Y" a neighbor that one or all of the ICC crimes are being perpetrated and no action is being taken to apprehend and bring to account the perpetrators. In such a case, country "X" will ask that the ICC intervenes.

(3) Alternatively, a state party may make a self referral to the ICC. For example Uganda and the Democratic Republic of Congo made self referrals to the ICC and asked for the Court's intervention in bringing to book the suspected perpetrators of ICC crimes on their respective territories as opposed to other states making referrals on their behalf.

The situation in Uganda and DRC relate to suspected ICC crimes being perpetrated after 1<sup>st</sup> July 2002 by armed rebel groups whose respective top leaders have been indicted by the Court. In the Ugandan situation, non of the LRA leaders have been apprehended.

#### Qn 4: What instigated the states to criminalize the actions that constitute the ICC crimes?

**Ans:** The preamble of the Rome Statute highlights a number of reasons that informed the decision to set up an ICC and these reasons include;

- I. That as people of the entire world we are united by common bonds, our cultures are pieced together in a shared heritage and there is fear that this delicate strand may be shattered at any time;
- II. That being mindful of the fact that during the last century, millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity;
- III. That it must be recognized that such grave crimes threaten the peace, security and well being of the world;
- IV. That it is international resolve that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation;
- V. That there is international determination to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes;
- VI. That it must be recalled that it is the duty of every state to execute its criminal jurisdiction over those responsible for international crimes;

## Qn 5: How can one know that an ICC crime has been committed in a particular place?

**Ans:** An ICC crime as stated earlier is either one of the following;

- A) Genocide;
- B) War crimes;
- C) Crimes against humanity.

One can know that either crime has been committed by looking out for the characteristics of the individual ICC crimes as follows;

### A. GENOCIDE

For a violation to amount to the crime of genocide, it must as matter of fact and evidence be shown that;

- (i) the accused person had intention to destroy a group in whole or in part;
- (ii) the group that was intended to be destroyed in whole or in part was a national, ethnical, racial or religious group;

By committing one or all of the following acts;

- (i) Killing members of the national group or ethnical group or racial group or religious group

#### **Example:**

In Rwanda, in 1994 members of the Hutu ethnical group instigated violence in which they targeted and indiscriminately killed members of the Tutsi ethnic group with the intention of destroying the group.

- (ii) Causing serious bodily or mental harm to members of the group;

#### **Example:**

Serious bodily harm could include using blunt or sharp objects to inflict blows to the bodies of the members of a group in whole or in part. In the International Criminal Tribunal for Rwanda ICTR case against Jean Paul Akayesu, it was shown in the testimony of one of the witnesses that women victims of rape had suffered bodily harm by the use of blunt objects being forced into their private parts and later the accused persons shot and killed their victims.

- (iii) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (iv) Imposing measures intended to prevent births within the group;
- (v) Forcibly transferring children of the group to another group;

## B. WAR CRIMES

War crimes traditionally must arise within the context of an armed conflict whether it is an international armed conflict or a non international armed conflict.

For violations to amount to war crimes, it must be shown as a matter of fact and evidence that an individual committed;

- a) Grave breaches of the Geneva Conventions of 12<sup>th</sup> August 1949. The Geneva Conventions are laws that address the conduct of war by persons entitled to carry out war and also address the protected categories of persons during war and which categories should never at any one time be targeted or attacked by parties to a war. These grave breaches include;
  - i) Willful killing
  - ii) Torture or inhuman treatment, including biological experiments;
  - iii) Willfully causing great suffering, or serious injury to body or health;
  - iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully or wantonly;
  - v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile power;
  - vi) Willfully depriving person of war or protected person of the rights of fair and regular trial
  - vii) Unlawful deportation or transfer or unlawful confinement;
  - viii) Taking of hostages;
- b) Other serious violations of the laws and customs applicable in international armed conflict as provided for by international law and these include;

- l) Intentionally directing attacks against the personnel, installations, material, units or vehicles involved in humanitarian assistance or peace keeping in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict.

**Example:**

In the Sudan situation one of the accused persons who has appeared before the ICC on his own following summons issued for him to appear, one ABU GARDA, was indicted for his role in directing attacks in which UN personnel on peace keeping mission in Darfur were killed by alleged members of the militia under his stewardship.

- ll) Conscripting or enlisting children under the age of fifteen into the national armed forces or using them to participate actively in hostilities.

**Example:**

In the situation in the Democratic Republic of Congo, one of the accused persons, THOMAS LUBANGA DYILO was indicted for committing war crimes conscripting children under the age of fifteen and actively using them to participate in hostilities.

- C) In cases of conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12<sup>th</sup> August 1949, wherein the acts below are committed against persons not taking any active role in the hostilities, including members of armed forces who have laid down their arms and those who are rendered sick, wounded or in detention.

The acts include;

- i) Causing violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment

**Example:**

In the Ugandan situation, the LRA commander Joseph Kony is indicted among others under this provision-the conflict having been one not of an international character and where he is responsible for the perpetration of the crimes in one and two above.

III) Taking hostages

IV) The passing of sentences and carrying out executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

It MUST be noted that any of the said crimes has to be shown to be committed as part of a plan or policy or as part of a large scale commission of such crimes.

**Example:**

To demonstrate a case of a plan or policy we look at the LRA in Northern Uganda where they would direct their attacks on non military targets such as unarmed civilians in every place they attacked and would kill, maim, mutilate, torture and commit other outrages to the personal dignity of individuals. The plan involved causing terror in the community.

**C. CRIMES AGAINST HUMANITY**

Crimes against humanity need not only be committed during war; they can be committed also in peaceful times.

For a violation to amount to a crime against humanity, it must be shown as a matter of fact and evidence that certain prohibited acts were committed by the individual as part of a wide spread or systematic attack which is directed at a civilian population with knowledge of the attack.

The acts that are prohibited include;

- i) Murder
- ii) Extermination
- iii) Enslavement
- iv) Deportation or forcible transfer of a population
- v) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law
- vi) Torture
- vii) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity
- viii) Persecution against an identifiable group or collectivity on prohibited grounds such as race, ethnicity etc
- ix) Enforced disappearance of persons
- x) The crime of apartheid
- xi) Other inhumane acts of similar character.

***NB: These crimes may be committed irrespective of whether the conflict is of an international or non international character.***

### **Example:**

The LRA commanders are all indicted for one or more of the acts listed above because they were committed against civilians in several places on a wide spread and systematic nature. This means that whenever the LRA attacked one village they committed these above crimes and repeated them in the same fashion in another place and the fashion was exported to various other places of northern Uganda which made it wide spread in character and hence fitting within the purview of the crimes against humanity.

## Qn 6: If the ICC decides to exercise its jurisdiction can it investigate and prosecute every perpetrator of crime in a country?

### **Example:**

The ICC, is a Court of last resort and therefore encourages states to conduct investigations and prosecute perpetrators themselves however in situations where the Court intervenes, it will only concentrate on the most senior and as well as serious perpetrators of crime in a given situation. So far the ICC has not gone beyond the number of five suspects being indicted. This number may increase or may not dependent on the investigations carried out.

It should be noted also that the ICC does not have as many resources as those available in a state and therefore owing to this limitation in sufficient resources, the number of suspects that the Court can prosecute is limited. Individual states are thus left with the task of ensuring that the other suspected perpetrators are handled through domestic prosecutions and other mechanisms that do not promote impunity.



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