



UGANDA COALITION ON THE
INTERNATIONAL CRIMINAL COURT (UCICC)

AN OVERVIEW OF THE WORKINGS OF THE INTERNATIONAL CRIMINAL COURT

A student's guide to understanding the International Criminal Court

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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.

UNDERSTANDING COURTS IN UGANDA AS A STEP IN APPRECIATING THE INTERNATIONAL CRIMINAL COURT

Qn 1: What is a Court under Ugandan Law?

Ans: A Court is an institution created by the Constitution of the country to assist in the enforcement of Laws passed by parliament as well as arbitration between two conflicting parties.

The Uganda Judiciary Court system as established by the Constitution of the Republic of Uganda, 1995 comprises of courts of Judicature which are divided into Two (2) major groupings namely;

A. Superior Courts of Record

i) The Supreme Court

This is the final court of Appeal. It normally handles cases of dissatisfaction from the decisions of the Court of Appeal and Constitutional Court.

The judges of the Supreme Court are not less than six. At its sittings, the Supreme Court shall consist of an uneven number bench of five or more Judges. When hearing constitutional appeals, it shall consist of a full bench of all members of the Supreme Court.

This Court is headed by the Chief Justice who is also responsible for overseeing all courts in Uganda.

ii) The Court of Appeal

When a person is displeased with the decision of the High Court he/she may present their case on appeal to the Court of appeal.

The judges of the Court of Appeal are not less than seven. At its sittings, the Court of Appeal shall consist of an uneven number bench of three or more Judges.

Note:

The Court of Appeal also doubles as the Constitutional Court of Uganda whose mandate involves interpreting the constitution for any person that is interested in any constitutional matter.

The Deputy Chief Justice is the Head of this Court who also deputizes for the Chief Justice when need arises.

iii) The High Court

It has unlimited original jurisdiction to hear all matters and also has jurisdiction to hear appeals from Magistrate Courts.

This Court is directed by a single Judge in every place it sits.

In assisting the Chief Justice in administration and monitoring, the Principal Judge is the head of the High Court and subordinate Courts.

The High Court in Uganda has been administratively divided into several divisions for ease and effectiveness. These divisions include;

- i) The Family Division;
- ii) The Anti Corruption Division;
- iii) The Land Division;
- iv) The Criminal Division;
- v) The War Crimes Division;
- vi) The Commercial Division; and
- vii) The Civil Division.

Currently, there are High Court circuits in different regions of the country.

B. Subordinate Courts

i) The Magistrates Court

These comprise of Grade 1 Magistrate Courts, Grade 1 Magistrate Courts and Chief Magistrate Court. Each Magisterial level has limited powers it can exercise.

ii) Qadhis Courts

These are Islamic in nature and handle cases of marriage, Divorce, Inheritance of property and guardianship, as prescribed by Parliament.

Worth noting is that, the Uganda Judiciary also has supervisory or other Powers over other judicial and quasi-judicial institutions, they among others include:

- a) The Local Council Courts
- b) Family and Children Courts
- c) Tribunals such as the Tax Appeals Tribunal.

Qn 2: What type of cases can be brought before courts in Uganda?

Ans: The cases are divided into civil and criminal cases.

Qn 3: Who has the right to go before the Court in Uganda?

Ans: Every person in Uganda, whether a complainant, victim, an accused person or in some cases an interested person(s) may go before the Court and present a case.

A person who wants to go to Court may appoint a Lawyer-Advocate of their choice to represent him or her in the case. The person may also choose to conduct the case personally.

Where a person chooses to conduct the case personally without the assistance of a lawyer, he or she will be required to follow the rules that guide the proceedings of the Court and will be expected to respect the Court and the other party.

Qn 4: Why do people who commit offences / crimes have to be taken before Court?

Ans: An offence or a crime is a term that is used to describe an action or omission as prescribed by law whose breach draws punishment an example is a person who robs properties from another or a person who intentionally plans and kills another.

A person who commits an offence or a crime is taken to Court because nations and people of the world agreed through the Universal Declaration of Human Rights that a person cannot be found guilty without trial by any legal body or person, they have to be presumed innocent and given a chance to speak about what happened and thereafter a decision can be taken.

This process is termed as due process and includes some minimum guarantees such as fair trials, rights of the accused, etcetera

Note:

These assumptions about the innocence of a person, and the due process guarantees have been included in our constitution and as such makes it is paramount that a suspect must be brought to Court.

In so doing, the Courts serve to promote a state of law and order and ensure that there are no revenge killings or other forms of violence in the society.

Qn 5: Under Ugandan law can a victim of a criminal offence or crime represent himself or herself in prosecuting a case against an accused person?

Ans:

- A) In Uganda, the constitution of the country vests the powers to prosecute criminal offences in the Directorate of Public Prosecutions under the headship of the Director of Public Prosecutions (DPP).

The DPP will commence prosecutions against an accused person not in Directorate's name but in the name of the State for example UGANDA versus BOSCO KAPALE. The reason for this style is because a State (like Uganda) is required under international law or the law governing states to ensure that citizens are protected against violations and where such violations occur, then mechanisms of redress are in place to assist victims get a remedy or justice.

It is therefore understood that an offence or a crime committed against an individual is not just an offence committed against that person but rather it is committed against the Ugandan public or the people of Uganda since in an ideal society it is expected that no violations should be committed against another.

- B) However, in some cases a victim(s) may commence private prosecutions with the consent of the office of the DPP. In such cases the private individual bears the costs associated with the prosecution of an accused person. The case in such an example will appear as, KINGO versus EKANYA.

- C) Victims of a crime or an offence during prosecutions commenced by the state / DPP will only participate in the proceedings or trial of an accused as state witnesses or witnesses of the accused person. In such cases the state prosecutor/state Attorney is believed to represent the best interests of the victim during the trial from the point of investigations to the closure of the trial including an appeal where applicable.

Qn 6: Does a suspect or an accused person have rights under Ugandan law?

Ans: Yes the accused has rights.

An accused person has the following rights under Ugandan law,

- i) The right to be presumed innocent until proven guilty by a competent Court or a Court established by law.
- ii) The right to be tried in person or in his/her presence.
- iii) The right to be represented by a lawyer at the expense of the state or otherwise. In very serious cases such as murder, treason, rape etc (these are termed serious because if found guilty, one may be sentenced to death), an accused person is entitled to get a lawyer of his choosing but the services of the lawyer will be paid for by the state.
- iv) The right to personally conduct his/ her defence
- v) The right to be informed of the allegations (charges brought against him/ her.
- vi) The right to get copies of all documentary evidence intended to be used in his/her trial.
- vii) The right to apply for bail (bail means that the accused person(s) attends trial while out of custody of the state).

Qn 7: Are Ugandan Courts limited in criminal cases as to which cases they can handle?

Ans: Courts in Uganda have the mandate or powers to try any person (save for the person of the president) for any action or omission which constitutes an offence or a crime under Ugandan law at the time of its commission.

Example:

A murder committed 20 to 40 years ago by a person against a Ugandan but who was resident in Uganda at the time may, if arrested, be tried for such an offence or crime.

Qn 8: What sentences may the Courts in Uganda pass against a person who has been convicted for an offence or a crime?

Ans: Sentences are passed by a Court according to the law/s upon which a prosecution was initiated and or a conviction registered against an accused person in accordance to the prescribed law.

Sentences passed by Courts in Uganda include;

- i) Fines
- ii) A term of imprisonment for example simple defilement may attract a sentence of 6-14 years in prison.
- iii) Life in prison for example a person convicted for manslaughter (killing without the necessary intent).
- iv) A death sentence. for example a person convicted for murder (killing with the necessary criminal intent).
- v) In some not so serious offences, a convicted person may be sentenced to community service as for example sweeping roads etc.

Qn 9: What is the process by which a trial is conducted in a Ugandan Court?

Ans: The trial process in a Ugandan Court goes through the following stages:

- i) Opening statements:
These are usually statements relating to both counsel/lawyers being ready to proceed with the trial of an accused person but for the prosecutor or state attorney it includes a statement on the evidence that will be brought against the accused as well as the number of witnesses and documents that will be produced.

ii) Prosecution:

This involves the leading of evidence pointing or aiming to establish the guilt of an accused person. After the closure of the prosecution's evidence for every witness brought, the defence counsel will have an opportunity to cross examine each witness at a time with the aim of establishing the truth of what was earlier stated as well as to discredit such evidence.

iii) Defense:

The defense will only commence her case after the Court has ruled (at the closure of the prosecution evidence) that on the face of the evidence so far produced, there is reason to believe that the defense or accused needs to defend herself or himself against what has been said about his/her involvement in the particular crime being tried.

Like the prosecution witnesses, the accused' witnesses will be cross examined by the prosecution or state attorney after each has given their evidence (by assistance of the accused lawyers).

iv) Judgment:

At the conclusion of both sides producing evidence, the judge or magistrate will make a finding either that the person who is accused is guilty of the alleged crimes or is not and accordingly the Judge will either sentence such person according to law or make an order of acquittal.

THE WORKINGS OF THE INTERNATIONAL CRIMINAL COURT

Qn 10: What is the International Criminal Court (ICC)?

Ans:

- i) The ICC like its name suggests, is an International Criminal Tribunal established by states who having been confronted by the experiences of many states in which, millions of people including women, children and men have been killed by persons wielding power; resolved to end impunity for the perpetrators of crime by holding individuals accountable at the international level for their role in the commission of crimes.
- ii) The ICC is the first permanent International Criminal Court established to try individuals for the most serious crimes of concern to the international community.
(International Community means the society of independent states that are brought together by the common concerns of their peoples as human beings irrespective of their race, beliefs).

It is the first permanent Court because other criminal Courts /Tribunals that have existed before were established under the auspices of the United Nations and operate within a particular defined period of time upon which each such court tribunal is required to wind up its business.

Examples of such UN adhoc Tribunals include;

- a) The International Criminal Tribunal for the former Yugoslavia (ICTY)
- b) The International Criminal Tribunal for Rwanda (ICTR)
- c) The Special Court for Sierra Leone (SPSL)
- d) The Extra Ordinary Chambers for Cambodia (EOCC)

Other tribunals that have been established before but without the UN sanctions include;

- a) The Nuremberg Tribunals
- b) The Tokyo Tribunals
- c) The Iraqi High Tribunal

Qn 11: What is the difference between the ICC and the International Court of Justice (ICJ)?

Ans: The ICC and the ICJ are both international Courts by reason of the fact that they are established by international statutes and relate to states HOWEVER, the main difference between the two international courts is that the ICC deals with prosecuting individuals suspected of committing serious crimes (ICC Crimes) of concern to the international community by holding the individuals personally accountable for their role in the perpetration of those crimes subject to the Court's mandate and or powers (jurisdiction).

On the other hand, the ICJ deals with arbitrating legal questions that arise between states as a result of alleged violations of aspects of international law governing states.

Example:

The ICJ was asked to arbitrate over a complaint filed by the Government of the Democratic Republic of Congo (DRC) against the Government of Uganda in relation to violation of territorial sovereignty, plunder of the natural resources of the DRC etc. Uganda was found as an occupying state to have violated a number of international law standards and was asked to pay compensation to her neighbor.

The ICJ may also be requested by the UN or any State to give an opinion over a particular international matter.

Example:

The ICJ was requested to make an opinion about the boundary wall that the State of Israel was constructing to prevent Palestinian nationals from accessing the territory claimed by Israel. Israel was found to be in breach of international law.

Qn 12: Who directs and or manages the ICC?

Ans: The ICC is managed by a body known as the Assembly of States Parties (ASP) which sits annually to discuss among others;

- i) The budget of the Court
- ii) The election of new Judges
- iii) The approval of the new positions in the Court
- iv) The report of the activities of the Court carried out during the year.

The ASP is comprised of states that have voluntarily agreed to subject themselves and be bound by the law establishing the International Criminal Court. (The states are said to have ratified the Rome Statute).

Ans: The ASP is headed by a person referred to as the president who is elected by delegates of the various states parties and as such is referred to as the president of the ASP.

Qn 13: How does the ICC work?

Ans:

- a) The ICC is said to be a Court of last resort. This means that it commences its work only where a state party fails (is unwilling or is unable) for a given reason to genuinely undertake investigations and bring to trial persons suspected of committing the most serious crimes of concern to the International community in their own (states) national Courts.

Example:

- 1) *The ICC investigated the situation in the DRC and issued arrest warrants for some accused persons because the Court received a referral from the country itself in which it was said that the state was unable to carry out investigations and prosecute persons owing to the total breakdown in the Judicial infrastructure in the DRC because of the war.*
- 2) *In the Uganda situation the ICC got involved because government required assistance since it was unable to apprehend the LRA leaders.*

Ans:

b) The ICC unlike Ugandan Courts is set up as follows;

i) The pre-trial chamber (Pre-trial Court);

This chamber of the ICC is constituted by three Judges. The Judges of this section are responsible for among others;

- The determination of whether a case can be brought to the ICC.
- The issuance of arrest warrants
- The request by an accused person to be released on bail or not
- The confirmation of charges brought by the prosecutor against an accused person.
- The approval of the prosecutor's request to carry out investigations in particular country where the crimes of genocide, war crimes, crime against humanity are suspected to have been committed.

ii) The Trial Chamber

This chamber of the ICC is also composed of three Judges who are separate from those in the Pre-trial chamber and their role as a trial chamber and as the name suggests, is to preside over the trial of an accused person by;

- Receiving and recording the evidence produced by the prosecutor and that of accused person;
- Facilitate the victims to be involved in the trial

- Protect the rights of all persons in the trial to ensure that justice is done.
- Deliver judgment holding a person guilty of the crimes or acquitting the person of any charge.

iii) The Appeals Chamber:

This chamber of the ICC is constituted by seven Judges with a high experience in the field of International Law and International criminal justice.

The chamber entertains claims of dissatisfaction (appeal) with a decision passed by either the Pre-trial or trial chambers from either the office of the prosecutor or the accused person, and other parties that may be involved in the proceedings of the Court such as the office of Public Council for victims or Counsel for victims as the case may be.

Example:

In the case of the Prosecutor versus Thomas Lubanga the OTP appealed the decision the trial chamber, which had ruled that owing to the failure by the OTP to disclose to the Accused / Defence potentially exonerating evidence (Exculpatory evidence in the accused' favor) it was not able to ensure a fair trial against Thomas Lubanga and would order for the release of the said accused person.

Appeals to this Chamber must be based on one of the following grounds.

- i) an error of law
- ii) an error of fact
- iii) an error of mixed law and fact
- iv) sentence

Qn 14: What is the role of the Office of The prosecutor (OTP) in the ICC?

Ans: The OTP is established by law under the Rome Statute, which creates the ICC. It is headed by the chief Prosecutor and two deputies. Its role involves the following;

- a) Investigating and collection of evidence in relation to the crimes of genocide, war crimes, crimes against humanity (and aggression when it comes into effect).
- b) Be independent in its work but accountable to the Judges, Assembly of States Parties (ASP), and Security Council (UNSC).
- c) Seek authorization from the pre-trial chamber of the Court to undertake investigations.
- d) Seek the issuance of arrest warrants against persons who on the face of available information are believed to be criminally responsible for the crimes that fall under the mandate (jurisdiction) of the Court.
- e) Cause the effective prosecution of suspected accused person before the trial chamber.
- f) Commence and argue appeals as the case may be.
- g) Disclose to the accused and his/her lawyers all information (evidence) in the prosecutor's that will be used during trial both incriminating and exonerating.

Qn 15: Whose interest does the OTP represent?

Ans: The OTP represents the interests of the International Community at large. This is so since the ICC was created by states that had an interest in ending impunity for perpetrators of serious crimes of concern to the international community-and provided for an office of the prosecutor which would be charged with the responsibility of bringing suspected persons before the Court.

Qn 16: What is the Registry and what are its roles?

Ans: The ICC Registry is one of the other organs of the Court (the others being; The Chambers and the Office of the Prosecutor. The Registry is concerned with the non judicial aspects of the ICC which involves facilitating the activities of the Court as a whole such as;

- 1) Recruitment of staff of the Court
- 2) Language and translation activities
- 3) Communication and IT services
- 4) Assistance to counsel participating in the proceedings of the court
- 5) Internships and visiting professional recruitment
- 6) Outreach/information exchange about the court
- 7) Travel for staff on mission

The Registry is headed by a Registrar and is assisted by Deputy Registrar both of whom are required to have substantial experience in International Law.

Ans: The Registry manages its functions effectively by working through divisions and sections which are headed by Chiefs or Heads of the sections. The Divisions and sections are derived from the functions each performs for example such divisions and sections include;

- i) Division of victims and Counsel under which the Victims Participation and Reparations Sections (VPRS) is created.
The VPRS is created to assist victims interested in participating in the proceedings of the Court to be able to receive information about participation and the entire process involved.

N.B More details about the crimes are found in the booklet on the "Exercise of Jurisdiction".

Example:

The VPRS, in the situation in Uganda and other situations under investigation by the Court visits victims' communities through intermediary organizations and makes available application forms after providing information about its role as an office dealing with victims.

- ii) Other offices such as the Office of Public Counsel for Victims (OPCV) exist under the above division. The mandate of this office is to provide legal Aid to victims participating in the proceedings-where no legal counsel/representative have been appointed.

Example:

- a. *In the Ugandan situation, the victims who have so far applied to participate in the proceedings of the Court have been assigned to OPCV to receive legal assistance until when a private legal representative is appointed.*
- b. *In the DRC situation, the Court appointed Legal Representatives who are not employed in the OPCV to represent the interests of the victims in the case of the Prosecutor versus Thomas Lubanga.*

- iii) Office of Public Counsel for the Defence (OPCD)-This is the equivalent of the OPCV. The creation of the OPCD is pursuant to the Regulations of the Court. Its mandate is to represent and protect the rights of the defence in order to enable a fair trial within the meaning of the Rome Statute. This office falls under the registry for administrative purposes; otherwise it functions as a wholly independent office.

Qn 17: What crime does the ICC Prosecute?

Ans: The ICC investigates only the following crimes;

- 1) Genocide;
- 2) War Crimes;
- 3) Crimes against Humanity; and
- 4) The crime of aggression. The crime of aggression was recently adopted amongst the crimes following the Review conference of the Rome Statute held in Kampala. The Review Conference was specifically provided for to take place following the expiry of seven (7) years after the Court has come into force (July 01 2002).

Qn 18: What is the procedure for the trial before the ICC?

Ans: The trial before the ICC unlike the process in Ugandan Courts goes through the following phases;

Pre Trial: At this pre trial stage, the Court (Pre Trial Chamber) made up of three judges will look at the evidence intended to be relied upon by the OTP and if satisfied that it relates to either genocide, war crimes and crimes against humanity, will confirm the charges against an accused person and thereafter send the accused for trial before another panel of three judges in the Trial Chamber.

The pre trial chamber is also responsible for addressing challenges that may be brought by an accused person against his arrest and detention before the Court as well as applications for release on bail etc.

Trial: At the trial phase the Court (Trial Chamber) is concerned with establishing the guilt or innocence of the accused person through examining the whole evidence brought and the defense of the accused person. Where guilt is established the punishment is registered accordingly. If no guilt is established by the OTP then the accused person is ordered to be released and where necessary compensation may be made to an acquitted person.

Qn 19: Can the Court stop its investigations and prosecutions against an accused person?

Ans: The ICC can stop investigations and prosecutions in any one of the following circumstances.

- 1) Where the United Nations Security Council passes a resolution asking the ICC to defer the investigations and prosecutions for a period of 12 months. This period can further be renewed.
- 2) Where the Prosecutor presents a case to the Court showing that in the interests of security and peace it is not helpful to continue with a trial against an accused person/s.

- 3) Where there is evidence to show that an accused person has already been tried and punished accordingly through a free and fair trial process.
- 4) Where the OTP conducts the case in such a way that an accused person will not be guaranteed a fair trial or in a manner that violates the due process rights of an accused.

Example:

An accused must be afforded information about the evidence to be brought, the list of witnesses and documents; sufficient time to prepare a defence including calling witnesses; a lawyer/ legal representative of his or her own choice etc.

Where this is not likely to be done or is violated the Court may order for the termination of the proceedings against an accused.

Qn 20: Can a country like Uganda which already has cases before the ICC withdraw from the treaty as a state party?

Ans: The Rome Statute which creates the ICC allows states to withdraw from the treaty ONLY after such a state provides a twelve (12) months notice to the president of the ASP of the intention to withdraw from the Statute. The withdrawal takes place after the expiration of such period.

However, in a situation where the ICC has commenced such investigations and issued arrest warrants, no withdrawal can be effective until after the conclusion of the cases.

It is possible however that the ICC may withdraw if the state is able to apprehend the accused persons and commit them to trial in an effective manner which is not meant to shield the accused persons from genuine trial.

Qn 21: Are Presidents / Ministers and Army commanders liable to investigations and prosecution before the ICC?

Ans: Yes. The Rome Statute which establishes the ICC does not allow any immunity for any person whether it is a president, Minister, army commander or private citizen-when such person is alleged to have been involved in perpetrating one or more of the ICC crimes of genocide, war crimes and crimes against humanity.

Example:

The ICC issued an arrest warrant against the President of Sudan, Mr. Omar Al Bashir over crimes committed in Darfur by members of the Sudanese Army and government supported militias. Presidents or ministers may not be involved in the direct commission of the crimes but because they are usually in a position of power, able to demand the prevention of commission of crimes or bring to account persons under them who are involved in the commission of crimes, international law imposes obligations upon them and when they fail, they are held responsible by virtue of their position under command responsibility or superiority.

Example:

In Rwanda, Jean Kambanda who was the Prime Minister was found guilty for genocide because in his position as Prime Minister he knew or ought to have known that certain persons under his oversight were being killed because of their ethnic group but in spite of this knowledge he did nothing to stop the killing or cause the apprehension of those involved.

Qn 22: Can children suspected of perpetrating crimes be investigated and prosecuted before the ICC.

Ans: The ICC is guided by principles of international law in carrying out its activities and therefore in relation to children involved in perpetrating crimes, which constitute genocide war crimes and crimes against humanity, the Court will not as a matter of principle prosecute any person below the age of eighteen (18). This principle is further guided by the practice of states in their domestic jurisdiction not to prosecute children.

Example:

In Uganda, although the constitution recognizes a child as a person under the age of 18, the law further provides that the age of criminal responsibility for children is 12 years.

In such cases, a child who is involved in the commission of crimes is liable to be prosecuted, (Under Ugandan law) but will not be sentenced if found guilty-except after he becomes of age.

Qn 23: When the ICC finds a person guilty of genocide or war crimes or crimes against humanity, what punishment is administered?

Ans: The Rome Statute which creates the ICC provides that a person found guilty may be sentenced to;

- 1) Thirty (30) years in prison; and
- 2) In very serious cases, the person may be sentenced to life in prison.

In other words, the ICC does not administer a death sentence because such a sentence is not provided for unlike under Ugandan law. The reason for this is that, the death penalty has been outlawed by a number of states that are party to the Rome Statute and also the fact that it is regarded as inconsistent with the right to life.

Qn 24: Does the ICC recognize persons that have suffered during the conflict?

One of the great innovations of the Statute of the International Criminal Court and its Rules of Procedure and Evidence is the Series of rights granted to victims.

Ans: Yes. The ICC recognizes persons who have suffered during the war/conflict at the hands of government forces or rebel groups as victim/victims.

The Rome Statute which creates the ICC also defines a victim as an individual who has suffered harm and that such harm must arise from any of the crimes that constitute genocide, war crimes and crimes against humanity.

These crimes must be shown to have been perpetrated by a particular accused person.

Example:

The ICC will consider person to be a victim if the person shows that the harm he/she has suffered is a result of a crime an accused person is being charged with and that the harm was occasioned to the person after 1st July 2002.

Ans: A victim may also include other persons not being individuals such as an organization whose property when dedicated to charitable purpose is destroyed in the same circumstances as above.

The ICC recognizes victims as important players in the search for justice and ending impunity by allowing any person (who after applying to participate in the proceedings is confirmed and granted status as a victim) to communicate his/her views and concerns to the Court as and when the Court allows such participation through a lawyer / legal representative.

Victims can also participate by applying for reparations from the Court and making representations on the said issue of reparations.

Qn 25: What are reparations and when does the ICC make orders for reparations?

Ans: Reparation is an inclusive word that refers to among others; compensation, Rehabilitation, Guarantees of non repetition, etc, Under the Rome Statute reparation is defined to include specially;

- 1) Compensation;
- 2) Rehabilitation; and
- 3) Restitution.

The Court is expected to draw principles upon which the three forms of reparations can be applied for the interests of victims.

Reparations are ordered by the ICC ONLY when an accused person has been found guilty and is convicted for the crimes committed. Reparations are drawn from the voluntary contributions that are made to the ICC Trust Fund for Victims (TFV) by individuals, States, and private bodies such as companies.

The ICC also has powers to order the sale of the properties of a convict where it is established that the convict has some properties and the proceeds collected from such sale are applied in the provision of whatever form of reparation is ordered.

Qn 26: Does the ICC TFV supported projects also constitute reparations?

Ans: The ICC TFV supported projects are not and do not amount to reparations since they are projects implemented before the conviction of an accused person.
The ICC TFV supported projects are sanctioned by the Court as life saving projects.

Example:

In Uganda, the TFV is implementing several projects in the districts affected by the LRA/UPDF war such as plastic and reconstruction surgery for maimed and disfigured victims; victims with bullets and fragments lodged in their bodies etc.

The TFV is also providing life support projects such as supplying among others chicken for households greatly affected by the conflict.

The TFV is also active in other countries where the ICC is involved like the DRC.



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