

INTERNATIONAL CRIMINAL COURT IS THE WORLD CRIMINAL JUSTICE

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Abstract

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The International Criminal Court (ICC), is an intergovernmental organization and international tribunal that sits in The Hague in the 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 situations to the Court.

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This article assesses the structure and operation of the International Criminal Court by setting out a case for the defence of the Court, a case for its prosecution and a verdict. Defenders of the Court suggest it has had a positive impact because: it has accelerated moves away from politics and towards ethics in international relations; it goes a long way towards ending impunity; it is a significant improvement on the previous system of ad hoc tribunals; it has positive spill-over effects onto domestic criminal systems; and because the courage of the prosecutor and trial judges has helped to establish the Court as a force to be reckoned with.

1- Introduction

The **International Criminal Court (ICC)**, is an intergovernmental organization and international tribunal that sits in The Hague in the 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 situations to the Court.**

We are celebrating today the twenty years anniversary of the Rome Statute for creation the international criminal court and it has really been the creation of the new universe of international criminal justice or the world criminal justice.

We could say the first permanent global tribunal aimed at prosecuting war crimes, crimes against humanity, genocide, and the crimes of aggression. And we should not forget its efforts to achieve justice for victims of atrocity crimes, especially through its unique victims framework, including reparations

We have seen in many years at the enforcement of international criminal law by various judicial and quasi-judicial mechanisms but that is not sufficient.

The idea for establishing an international tribunal for trying criminals can be traced to 1872 when Mr. Gustav Moynier, one of the founders of the International Committee of Red Cross proposed a permanent court to try individuals who committed war crimes during the Franco – Prussian war.

Proposal was made for establishment of an international tribunal during the Paris Peace Conference in 1919 to try the Kaiser and

German war criminals of World War I.² (1) Later the League of Nations in 1937, at Conference held in Geneva, adopted a convention for establishment of an International Criminal Court to try acts of international terrorism. However, this convention never came into force.

In 1989, the Prime Minister of Trinidad and Tobago proposed for establishment of permanent International Court to deal with the menace of illegal drug trade. But In 1989, The U.N. General Assembly again requested the International Law Commission ILC to address the question of establishing International Criminal Court.

In 1994, the International Law Commission put forth the final draft statute of ICC before the UN Gen Assembly and recommended that a meeting should be called for holding negotiations on treaty and enactment of ICC. A preparatory committee was setup by UN Gen Assembly to prepare the draft for establishment of ICC. A

² Hadi SHALLUF, **L'internationalisation de la répression pénale internationale entre perspectives et critiques**, édition du Panthéon Paris, France, 2016, PP. 33-44. (Le **traité de Versailles** mettait fin à la Première Guerre mondiale. Il fut signé, le 28 juin 1919, dans la galerie des Glaces du château de Versailles, entre l'Allemagne, d'une part, et les Alliés, d'autre part. Le traité avait été préparé par la Conférence de paix (tenue à Paris, du 18 janvier 1919 au 10 août 1920) qui élaborait notamment les quatre traités «secondaires» de Saint-Germain-en-Laye, du Trianon, de Neuilly-sur-Seine et de Sèvres.) See also, Kevin JON HELLER, **The Nuremberg Military Tribunal and the Origins of International Criminal Law**, Oxford Press, 2012, p.5.

conference was convened at Rome by UN Gen Assembly in June 1998 for finalizing the treaty. On 17 July 1998 the Rome Statute of International Criminal Court was adopted by vote of 120 to 7. China, Iraq, Israel, Libya, Qatar, Unites States and Yemen voted against the treaty. The Treaty became binding on 11th April 2002 when 60 nations had ratified it.

The ILC started working on resolution of this question in 1990. In the meanwhile, conflicts in Bosnia-Herzegovina and Croatia as well as in Rwanda, where mass there was mass commission of crimes against humanity, war crimes and genocide, led the UN Security Council to establish ad hoc tribunals to try war crimes in former Yugoslavia and Rwanda. All these events further pressed the case for establishment of a permanent criminal court at international level.

When the Statute of the International Criminal Court was adopted in Rome in 1998, hopes were very high that the complementarily regime with the ICC at its center would be the adequate tool to close the impunity gap.

At present, 123 nations are State parties to the Rome Statute of International criminal Court the latest being Palestine which became state party on April 1, 2015. It must be mentioned that 34 nations have signed but not ratified the Rome Statute which include Russia, Egypt, Iran, Israel, United States. United States and Israel have informed the UN General Secretary that they no longer intend to be

the State parties. India, Pakistan and China have not signed or ratified the Rome Statute.

Twenty years later, despite progress in many regards, states have still not lived up to their primary duty to exercise their criminal jurisdiction over those responsible for international crimes. On international level, the ICC continues to face limitations e.g. in terms of jurisdiction and resources.

The Preamble to the Rome Statute of the International Criminal Court, mention on 17 July 1998, 120 States adopted a statute in Rome - known as the Rome Statute of the International Criminal Court (“the Rome Statute”) - establishing the International Criminal Court. For the first time in the history of humankind, States decided to accept the jurisdiction of a permanent international criminal court for the prosecution of the perpetrators of the most serious crimes committed in their territories or by their nationals after the entry into force of the Rome Statute on 1 July 2002. The International Criminal Court is not a substitute for national courts. According to the Rome Statute, it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes. The International Criminal Court can only intervene where a State is unable or unwilling genuinely to carry out the investigation and prosecute the perpetrators. The primary mission of the International Criminal Court is to help put an end to impunity for the perpetrators

of the most serious crimes of concern to the international community as a whole, and thus to contribute to the prevention of such crimes³.

Significance of ICC Statute In 128 articles, the ICC Statute (also known as Rome Statute) regulates the creation of the International Criminal Court (Part 1), its constitution, administration and financing (Parts 4, 11, 12), procedure before the Court and cooperation with the Court (Parts 5 to 10). The Statute also enumerates the crimes over which the Court has jurisdiction and contains general principles of criminal law (Parts 2 and 3). The ICC Statute is the core document of international criminal law today. The four crimes under international criminal law, the “classic” Nuremberg definitions plus the crime of genocide, are contained in Article 5. While the Statute’s predecessors contained only fragmentary provisions, the ICC Statute for the first time contains comprehensive rules on the “general principles” of international

³ CASSESE, A. CASSESE and P. GAETA, L. BAIG, M.FAN, C.GOSNELL, AND A.WHITING: **Cassese’s International Criminal Law**, third edition, Oxford University Press 2013, p.11. Like every other international body or organization, international criminal courts are set up to perform specific tasks and are therefore governed by the principle of specialty. See also, <https://www.icc-cpi.int/iccdocs/pids/publications/uicceng.pdf>, Alexander ORAKHELASHVILI, **Research Handbook on the Theory and History of International Law**. edition Lypiatts –University of Birmingham, UK PP -48-60- See also. WERLE Gerhard, **Principles of International Criminal Law**, 2005, T.M.C. Asser Press, The Hague, The Netherlands.

criminal law. Werle Gerhard, “Principles of International Criminal Law”, 2005, T.M.C. Asser Press, The Hague, The Netherlands.

The International Criminal Court ICC has been criticized, particularly by the African Union, for its focus on Africa. In the court's twenty-year history, it has only brought charges against black Africans.

Also, the analysis of the latest developments in the situation between the Republic of the Philippines and the International Criminal Court (ICC), the purpose of this essay is to briefly list the results of the debate raised by the Burundi's withdrawal in October, 2017, over the consequences that the jurisdiction of the ICC could face if the Prosecutor has set into motion a “proprio motu” action to investigate alleged crimes committed by a State that has decided to withdraw from the ICC, and maybe we can compare those conclusions with the current case of the Philippines.

But the ICC denies any bias, pointing to the fact that some cases -such as the Democratic Republic of the Congo , Situation in the Democratic Republic of the Congo or Situation in the Democratic Republic of the Congo ICC-01/04 or Uganda Situation in Uganda **ICC-02/04**, were self-referred by the country affected, and some were referred by the UN as Darfur Sudan Situation in Darfur, Sudan **ICC-02/05** .and Libya Situation in Libya **ICC-01/11**, The majority

of ICC investigations were opened at the request of or after consultation with African governments. Other investigations were opened following a referral by the United Nations Security Council, where African governments are also represented.

2- The International Criminal Court and the principle of no one is exempt from prosecution

The International Criminal Court ICC are deferent than any other international specials criminal tribunes like International tribunal for former Yugoslavia (The International Criminal Tribunal for the former Yugoslavia (ICTY) is a United Nations court of law dealing with war crimes that took place during the conflicts in the Balkans in the 1990's. Since its establishment in 1993, it has irreversibly changed the landscape of international humanitarian law and provided victims an opportunity to voice the horrors they witnessed and experienced and the International Criminal **Tribunal for Rwanda** , it was an international criminal **court** established in November 1994 by the United Nations Security Council in Resolution 955 in order to judge people responsible for the **Rwandan** genocide and other serious violations of international criminal law)⁴ (3)

⁴ <http://unictr.unmict.org/fr/accueil> Ouvert en 1995 à Arusha, en Tanzanie, le Tribunal pénal international pour le Rwanda (TPIR), a mis en accusation

The ICC is an independent body or independent jurisdiction whose mission is to try individuals for crimes within its jurisdiction without the need for a special mandate from the United Nations. And only on 4 October 2004, the ICC and the United Nations signed an agreement governing their institutional relationship

By the jurisdiction of the International Criminal Court ICC, no one is exempt from prosecution because of his or her current functions or because of the position he or she held at the time the crimes concerned were committed. The ICC is a judicial institution with an exclusively judicial mandate. It is not subject to political control. As an independent court, its decisions are based on legal criteria and rendered by impartial judges in accordance with the

93 personnes. 85 procès ont été terminés, dont cinq ont été transférés vers d'autres juridictions, au Rwanda et en France, et 61 personnes ont été condamnées, dont une dizaine à la prison à perpétuité en première instance, avant de voir la sanction parfois réduite en appel. In May 1993, the Tribunal was established by the United Nations in response to mass atrocities then taking place in Croatia and Bosnia and Herzegovina. Reports depicting horrendous crimes, in which thousands of civilians were being killed and wounded, tortured and sexually abused in detention camps and hundreds of thousands expelled from their homes, caused outrage across the world and spurred the UN Security Council to act.- The ICTY was the first war crimes court created by the UN and the first international war crimes tribunal since the Nuremberg and Tokyo tribunals. It was established by the Security Council in accordance with Chapter VII of the UN Charter. See, CASSESE/GAETA/BAIG/FAN/GOSNELL/WHITING, **Cassese's International Criminal Law**, third edition, Oxford University Press 2013, op.cit.

provisions of its founding treaty, the Rome Statute, and other legal texts governing the work of the Court.

The International Criminal Court is a permanent international tribunal established to investigate, prosecute and try individuals accused of committing the most serious crimes of concern to the international community as a whole, namely the crime of genocide, crimes against humanity, war crimes and the crime of aggression (not until 2017) in accordance with the Rome Statute of the International Criminal Court. On July 17, 1998, at a diplomatic conference in Rome, the international community adopted the Rome Statute of the International Criminal Court. The Statute of ICC consists of preamble and 128 articles which have been divided into 13 parts. This Conference was attended by 162 nations. The treaty has been hailed by governments, legal experts and civil society as the most significant development in international law since the adoption of the United Nations Charter. The treaty came into force on July 1, 2002. The Court's Official seat is situated at The Hague, Netherlands, although the Rome Statute provides that the Court may sit elsewhere whenever the judges consider it desirable.

1- The jurisdiction and admissibility of ICC and Crimes within the jurisdiction of the ICC

The ICC has jurisdiction only with respect to events which occurred after the entry into force of its Statute on 1 July 2002. If a State becomes a party to the Statute after its entry into force, the Court may exercise its jurisdiction only with respect to crimes committed after the entry into force of the Statute for that State, unless that State has made a declaration accepting the jurisdiction of the ICC retroactively. However, the Court cannot exercise jurisdiction with respect to events which occurred before 1 July 2002. For a new State Party, the Statute enters into force on the first day of the month after the 60th day following the date of the deposit of its instrument of ratification, acceptance, approval or accession.

The ICC prosecutes individuals, not groups or States. Any individual who is alleged to have committed crimes within the jurisdiction of the ICC may be brought before the ICC. In fact, the Office of the Prosecutor's prosecutorial policy is to focus on those who, having regard to the evidence gathered, bear the greatest responsibility for the crimes, and does not take into account any official position that may be held by the alleged perpetrators⁵.

⁵ Le 24 septembre 2012, l'Assemblée générale des Nations Unies a tenu une Réunion de haut niveau sur l'état de droit aux niveaux national et international durant laquelle un nombre important de délégués ont souligné l'importance de la Cour pénale internationale (CPI). Dans la Déclaration adoptée lors de la réunion, les États ont reconnu « le rôle que joue la Cour pénale internationale dans un système multilatéral visant à mettre fin à l'impunité et à instaurer l'état de droit¹ ».

Article 5 of the Rome Statute specifies the crimes in respect of whom the jurisdiction of ICC exists. The jurisdiction of the court is limited to the following crimes which are of serious concern to the international community⁶: (5)

- a) **The crime of genocide** (Article 6)
 - b) **Crimes against humanity** (Article 7)
 - c) **War crimes** (Article 8)
 - d) **Crime of aggression** (Article 8 bis)
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Dans les remarques que j'ai faites à l'Assemblée le 1er novembre 2012, je me suis félicité de cette déclaration où sont reprises de nombreuses caractéristiques du rôle de la Cour. Le rôle essentiel de la CPI est de faire respecter les normes spécifiques du droit international visant à empêcher et à prévenir les violences massives.

Le Rôle de la Cour Pénale Internationale pour Mettre Fin à l'Impunité et Instaurer l'État de droit <https://unchronicle.un.org/fr/article/le-r-le-de-la-cour-p-nale-internationale-pour-mettre-fin-l-impunit-et-instaurer-l-tat-de>

⁶ Robert CRYER, Hakan FRIMAN, Darryl ROBINSON, Elizabeth WILMSHURST; **An Introduction to International Criminal Law and Procedure**, Third Edition, Cambridge 2014 P- 151 (Cimes within the jurisdiction of the ICC- The Court has jurisdiction over the most serious of international concern; genocide, crimes against humanity, war crimes and aggression article 5-1)

The crimes of Genocide

Article 6 of the Statute, includes acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group by killing members of the group or causing serious bodily or mental harm, or deliberate infliction of such conditions of life on the group which brings about its physical destruction, or imposing measures to prevent births within the group or forcibly transferring children of the group to another group.(Article II-d- of Genocide Convention was inspired by Nazi practice of forced sterilization before and during the Second World War. Examples of these measures given by the ICTR trial Chamber in AKAYEU as sexual mutilation sterilization, forced birth control, separation of sexes and prohibition of marriages the Trial Chamber added)⁷

Article 6 - Genocide - For the purpose of this Statute, "genocide" means any of the following acts committed with intent to

⁷ CRYER/FRIMAN/ ROBINSON/ WILMSHURST; op. cit. p. 217. See also the Genocide Convention
https://www.google.com.kw/search?q=international+convention+on+prevention+and+punishment+of+genocide+1948&rlz=1C1CHBD_enKW786KW786&oq=international+genocide+convention&aqs=chrome.3.69i57j0l5.36006j0j8&sourceid=chrome&ie=UTF-8

destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

Crimes against humanity

As per article 7, include the following acts committed as part of widespread or systematic attacks directed against civilian population with the knowledge of attack:

- a) murder
- b) extermination
- c) enslavement
- d) deportation or forcible transfer of population
- e) torture, mental or physical upon any person in custody
- f) rape, sexual slavery, enforced Constitution, forced pregnancy, enforced sterilization or any other form of sexual violence of compatible gravity
- g) Persecution against any identifiable group on political, racial, national, ethnic, cultural, religious, gender or other

grounds which are universally forbidden under international law.

- h) Enforced disappearance of persons by means of arrest, detention or abduction with authority of the State or political organization followed by a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of those persons with intention to remove them from the protection of law for a prolonged period of time.
- i) Crime of apartheid i.e. institutionalized regime of systematic oppression and domination by one racial group over another racial group or groups for maintaining that regime.
- j) Other inhumane acts of similar character intentionally causing great suffering a serious bodily injury or mental injury.

War crimes

Article 8, include grave breaches of Geneva conventions and other serious violations of the laws and customs applicable in international armed conflicts and in conflicts of not an international character listed in the Rome Statute, when they are committed as part of plan or policy or on large-scale. They include:

- a) murder
- b) mutilation, cruel treatment and torture

- c) taking of hostages
- d) intentionally directing attacks against civilian population
- e) intentionally directing attacks against buildings dedicated to religion, education, art, science for charitable purposes, historical monuments or hospitals
- f) pillaging
- g) rape, sexual slavery, forced pregnancy or any other form of sexual violence
- h) conscripting or enlisting children under the age of 15 into Armed Forces or groups are using them to participate actively in hostilities.

Crime of aggression

As adopted by the Assembly of States Parties during the Review Conference of the Rome Statute, held in Kampala (Uganda) between 31 May and 11 June 2010, a “crime of aggression” means the planning, preparation, initiation or execution of an act of using armed force by a State against the sovereignty, territorial integrity or political independence of another State. The act of aggression includes, among other things, invasion, military occupation, and annexation by the use of force, blockade of the ports or coasts, if it is considered being, by its character, gravity and scale, a manifest violation of the Charter of the United Nations. The perpetrator of the act of aggression is a person who is in a position effectively to

exercise control over or to direct the political or military action of a State

The Court may exercise jurisdiction over the crime of aggression, subject to a decision to be taken after 1 January 2017 by a two-thirds majority of States Parties and subject to the ratification of the amendment concerning this crime by at least 30 States Parties.⁸ (7)

The Court will be able to exercise jurisdiction over a crime of aggression, arising from an act of aggression committed by a State Party, unless that State Party has previously declared that it does not accept such jurisdiction. Except when the situation is referred to the Court by the United Nations Security Council, the Court has no jurisdiction over crimes of aggression committed in the territory of a State which is not party to the Rome Statute or by its citizens.

The Court will have jurisdiction only over crimes of aggression committed one year after 30 States Parties ratify or accept the amendments of the Rome Statute in relation with the

⁸ Robert Cryer, Hakan Friman, Darryl Robinson, Elizabeth Wilmshurst; **An Introduction to International Criminal Law and Procedure**, Third Edition, Cambridge 2014 P- 151 op, cite. the Court, cannot however exercise jurisdiction over crime of aggression until the amendments to the Statute adopted in 2010 have come into force-

crime of aggression, which were adopted by the Assembly of States Parties in June 2010⁹.

- 1- For the purpose of this Statute, “crime of aggression” means 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.
- 2- For the purpose of paragraph 1, “act of aggression” means 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. Any of the following acts, regardless of a declaration of war, shall, in accordance with United Nations General Assembly resolution 3314 (XXIX) of 14 December 1974, qualify as an act of aggression: (a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of

⁹ SHALLUF, **L'internationalisation de la répression pénale internationale entre perspectives et critiques**, édition du Panthéon Paris France 2016, op, cite., PP. 30-45.

another State or part thereof; (b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State; (c) The blockade of the ports or coasts of a State by the armed forces of another State; (d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State; (e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement; (f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State; (g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.)

Article 15 bis 5, Exercise of jurisdiction over the crime of aggression (State referral, proprio motu) 1. The Court may exercise jurisdiction over the crime of aggression in accordance with article 13, paragraphs (a) and (c), subject to the provisions of this

article. 2. The Court may exercise jurisdiction only with respect to crimes of aggression committed one year after the ratification or acceptance of the amendments by thirty States Parties. 3. The Court shall exercise jurisdiction over the crime of aggression in accordance with this article, subject to a decision to be taken after 1 January 2017 by the same majority of States Parties as is required for the adoption of an amendment to the Statute. 4. The Court may, in accordance with article 12, exercise jurisdiction over a crime of aggression, arising from an act of aggression committed by a State Party, unless that State Party has previously declared that it does not accept such jurisdiction by lodging a declaration with the Registrar. The withdrawal of such a declaration may be effected at any time and shall be considered by the State Party within three years. 5. In respect of a State that is not a party to this Statute, the Court shall not exercise its jurisdiction over the crime of aggression when committed by that State's nationals or on its territory. 6. Where the Prosecutor concludes that there is a reasonable basis to proceed with an investigation in respect of a crime of aggression, he or she shall first ascertain whether the Security Council has made a determination of an act of aggression committed by the State concerned. The Prosecutor shall notify the Secretary-General of the United Nations of the situation before the Court, including any relevant information and documents. 7. Where the Security Council has made such a determination, the Prosecutor may proceed with the

investigation in respect of a crime of aggression. 8. Where no such determination is made within six months after the date of notification, the Prosecutor may proceed with the investigation in respect of a crime of aggression, provided that the Pre-Trial Division has authorized the commencement of the investigation in respect of a crime of aggression in accordance with the procedure contained in article 15, and the Security Council has not decided otherwise in accordance with article 16. 9. A determination of an act of aggression by an organ outside the Court shall be without prejudice to the Court's own findings under this Statute. 10. This article is without prejudice to the provisions relating to the exercise of jurisdiction with respect to other crimes referred to in article 5.

Article 15 ter⁶ Exercise of jurisdiction over the crime of aggression (Security Council referral) 1. The Court may exercise jurisdiction over the crime of aggression in accordance with article 13, paragraph (b), subject to the provisions of this article. 2. The Court may exercise jurisdiction only with respect to crimes of aggression committed one year after the ratification or acceptance of the amendments by thirty States Parties. 3. The Court shall exercise jurisdiction over the crime of aggression in accordance with this article, subject to a decision to be taken after 1 January 2017 by the same majority of States Parties as is required for the adoption of an amendment to the Statute. 4. A determination of an act of aggression by an organ outside the Court shall be without prejudice to the

Court's own findings under this Statute. 5. This article is without prejudice to the provisions relating to the exercise of jurisdiction with respect to other crimes referred to in article 5.

2- The Organs and the Structure of International Criminal ICC

The ICC is composed of four organs:

- a) The Presidency, (Article 38)
- b) The office of the Prosecutor, (Article 42)
- c) the Registry (Article 43)
- d) The Chambers, (Article 39)

(a) The Election of ICC Judges and the role of Presidency:

- The election of judges, there are 18 judges who are elected for a term of 3 years and are eligible for re-election. The Presidency may propose an increase in number of judges. The judges are persons of high moral character, impartiality and integrity who possess the qualifications required in their respective States for appointment to the highest judicial offices. All have extensive experience relevant to the Court's judicial activity. The judges are elected by the Assembly of States Parties on the basis of their established competence in criminal law and procedure and in

relevant areas of international law such as international humanitarian law and the law of human rights. They have extensive expertise on specific issues, such as violence against women or children. The election of the judges takes into account the need for the representation of the principal legal systems of the world, a fair representation of men and women, and equitable geographical distribution. The judges ensure the fairness of proceedings and the proper administration of justice. The judges are independent in performance of their functions (Article 40).

- The Presidency consists of three judges (the President and two Vice-Presidents) elected by an absolute majority of the 18 judges of the Court for a maximum of two, three-year terms. The Presidency has three main areas of responsibility: judicial/legal functions, administration and external relations. In the exercise of its judicial/legal functions, the Presidency constitutes and assigns cases to Chambers, conducts judicial review of certain decisions of the Registrar and concludes Court-wide cooperation agreements with States. With the exception of the Office of the Prosecutor, the Presidency is responsible for the proper administration

of the Court and oversees the work of the Registry. The Presidency will coordinate and seek the concurrence of the Prosecutor on all matters of mutual concern. Among the Presidency's responsibilities in the area of external relations is to maintain relations with States and other entities and to promote public awareness and understanding of the Court. (The general responsibility of the Presidency is the proper administration and efficient management of the ICC, with the exception of the OTP (Art. 38 (3) (a) Rome Statute). In this sense, the Presidency decides on whether or not to require judges to serve on a full-time basis (Art. 35 (3) Rome Statute) and may propose to the States Parties to increase the number of judges if necessary (Art. 36 (2) (a) Rome Statute). It may also waive the privileges and immunities of the registrar (Art. 48 (5) (b) Rome Statute). Besides this general responsibility, the Presidency has several competencies concerning the actual judicial function of the ICC: it assigns cases to the pre-trial and trial chambers (Art. 61 (11) Rome Statute; Reg. 46 ICC Regulations), deals with requests by a judge (Art. 41 (1) Rome Statute) or the prosecutor (Art. 42 (6) Rome Statute) to be excused from a case, and decides which of the ICC's decisions are of fundamental importance and,

thus, to be published in all the official languages of the ICC (Art. 50 (1) Rome Statute).

(b) The Office of Prosecutor:

The Office of the Prosecutor is an independent organ of the Court. Its mandate is to receive and analyze information on situations or alleged crimes within the jurisdiction of the ICC, to analyze situations referred to it in order to determine whether there is a reasonable basis to initiate an investigation into a crime of genocide, crimes against humanity, war crimes or the crime of aggression, and to bring the perpetrators of these crimes before the Court.

In order to fulfill its mandate, the Office of the Prosecutor is composed of three divisions: (i) the Investigation Division, which is responsible for conducting investigations (including gathering and examining evidence, questioning persons under investigation as well as victims and witnesses). In this respect, for the purpose of establishing the truth, the Statute requires the Office of the Prosecutor to investigate incriminating and exonerating circumstances equally. (ii) The Prosecution Division has a role in the investigative process, but its principal responsibility is litigating cases before the various Chambers of the Court. (iii) The

Jurisdiction, Complementarity and Cooperation Division, which, with the support of the Investigation Division, assesses information received and situations referred to the Court, analyses situations and cases to determine their admissibility and helps secure the cooperation required by the Office of the Prosecutor in order to fulfil its mandate.

(c) The Registry:

The Registry helps the Court to conduct fair, impartial and public trials. The core function of the Registry is to provide administrative and operational support to the Chambers and the Office of the Prosecutor. It also supports the Registrar's activities in relation to defense, victims, and communication and security matters. It ensures that the Court is properly serviced and develops effective mechanisms for assisting victims, witnesses and the defense in order to safeguard their rights under the Rome Statute and the Rules of Procedure and Evidence. As the Court's official channel of communication, the Registry also has primary responsibility for the ICC's public information and outreach activities.

(d) The Chambers Divisions:

The chambers of the ICC are organized into three divisions: the Pre-Trial Division; the Trial Division; and the Appeals Division.

- 1- **The Pre-Trial Division-** The Pre-Trial Division composed of seven judges,
- 2- **The Trial Division** Trial Division composed of six judges
- 3- **The Appeals Division** composed of five judges

In general the 18 judges, including the three judges of the Presidency, are assigned to the Court's three judicial divisions:

They are assigned to the following Chambers:

1- The Pre-Trial Division

The Pre-Trial Chambers (each composed of one or three judges), The Pre-Trial Division is composed of not less than six judges who sit in pre-trial chambers made up of three judges. With regard to certain decisions, the function of the pre-trial chambers may be carried out by a single judge elected from among the chamber's members (Art. 39 (2) (a), (b) (iii) Rome Statute). In general, the pre-trial chamber has two main functions. It decides whether, on the basis of the case brought by the prosecutor, there is prima facie evidence warranting a trial, in which case it confirms the charges (Art. 61 Rome Statute). It also decides most questions

relating to jurisdiction and admissibility so that those, in principal, do not burden an eventual subsequent trial. The main responsibility of the pre-trial chamber is to supervise and review the activities of the OTP especially with regard to the exercise of the prosecutor's *proprio motu* powers (Art. 15 (3)–(5) Rome Statute) and decisions not to investigate or prosecute (Art. 53 (3) comparable to that of the *juge d'instruction* in France , for example, the French system nor to the role of courts with regard to investigations in other criminal law systems. This is especially true with regard to its powers vis-à-vis the prosecutor: the Rome Statute generally indicates an active role for the judiciary comparable to civil law systems and not the unlimited freedom of action for the prosecution that exists in most common law systems. In the interests of justice and efficiency, a proper balance between the importance of an independent prosecution and the necessity of judicial supervision needs to be found. Rome Statute and to ensure the proper course of the preliminary proceedings. The role of the Pre-Trial Division must still be shaped by practice and jurisprudence. It is neither directly

It resolves all issues which arise before the trial phase begins. Their role is essentially to supervise how the Office of the Prosecutor carries out its investigatory and

prosecutorial activities, to guarantee the rights of suspects, victims and witnesses during the investigatory phase, and to ensure the integrity of the proceedings. The Pre-Trial Chambers then decide whether or not to issue warrants of arrest or summons to appear at the Office of the Prosecutor's request and whether or not to confirm the charges against a person suspected of a crime. They may also decide on the admissibility of situations and cases and on the participation of victims at the pre-trial stage.

Once an arrest warrant is issued, the alleged perpetrator arrested and the charges confirmed by a Pre- Trial Chamber,

2- The Trial Division

The Presidency constitutes a Trial Chamber composed of three judges to try the case. At least six judges form the Trial Division, which is divided into trial chambers composed of three judges (Art. 39 (1), (2) (b) (ii) Rome Statute). The trial chamber is responsible for the main part of the proceedings, ie the actual trial, culminating in the decision on guilt or innocence (Art. 74 Rome Statute) and on a sentence in case of conviction (Art. 76 Rome Statute). The trial chamber can also sanction misconduct before the ICC and has jurisdiction over offences committed against its

administration of justice, such as giving false testimony, presenting false or forged evidence, intimidating or

retaliating against witnesses and ICC officials, as well as the acceptance of bribes by ICC officials (Arts 70–71 Rome Statute). A Trial Chamber's primary function is to ensure that trials are fair and expeditious and are conducted with full respect for the rights of the accused and due regard for the protection of the victims and the witnesses. It also rules on the participation of victims at the trial stage. The Trial Chamber determines whether an accused is innocent or guilty of the charges and, if he or she is found guilty, may impose a sentence of imprisonment for a specified number of years not exceeding a maximum of thirty years or life imprisonment. Financial penalties may also be imposed. A Trial Chamber may thus order a convicted person to **make reparations for the harm suffered by the victims**, including compensation, restitution or rehabilitation (under Article 85).

3- The Appeals Division

All parties to the trial may appeal (under Article 81) or seek leave to appeal decisions of the Pre-Trial and Trial Chambers

The Appeals Chamber is composed of the President of the Court and four other judges. The president and four other judges are assigned to the Appeals Division, which at the same time constitutes the Appeals Chamber. These judges

are the only ones who are excluded from rotation within the chambers (Art. 39 (1), (2) (a), (4) Rome Statute). The Appeals Chamber decides on appeals against decisions on guilt or innocence or on sentence as well as on interlocutory appeals, which may be brought against certain decisions of the pre-trial or trial chambers while the respective proceedings are still on-going (Arts 81–82 Rome Statute). Finally, the Appeals Chamber also decides on applications for revision of final judgments (Art. 84 Rome Statute) as well as for the disqualification of the prosecutor (Art. 42 (8) Rome Statute). The Appeals Chamber may uphold, reverse or amend the decision appealed from, including judgments and sentencing decisions, and may even order a new trial before a different Trial Chamber. It may also revise (under Article 84) a final judgment of conviction or sentence.

3- The rights of victims before the ICC

The rights of victims before the ICC, victims before the ICC have rights that have never before been granted before an international criminal court. Victims may be involved in the proceedings before the ICC

a- The creation of trust fund for victims

What is the role of the Trust Fund for Victims? The Rome Statute created two independent institutions: The International Criminal Court and the Trust Fund for Victims. While it is impossible to fully undo the harm caused by genocide, war crimes, crimes against humanity and the crime of aggression, it is possible to help survivors, in particular, the most vulnerable among them, rebuild their lives and regain their dignity and status as fully-functioning members of their societies. The Trust Fund for Victims advocates for victims and mobilizes individuals, institutions with resources, and the goodwill of those in power for the benefit of victims and their communities. It funds or sets up innovative projects to meet victims' physical, material, or psychological needs. It may also directly undertake activities as and when

The decision for victims What decisions may the judges take concerning reparations for victims at the end of a trial?¹⁰ (9)

¹⁰ https://www.icc-cpi.int/CourtRecords/CR2017_05117.PDF - REPARATIONS
On 17 August 2017, Trial Chamber VIII issued a Reparations Order concluding that Mr Al Mahdi is liable for 2.7 million euros in expenses for individual and collective reparations for the community of Timbuktu for intentionally directing attacks against religious and historic buildings in that city. Noting that Mr Al Mahdi is indigent, the Chamber encourages the Trust Fund for Victims (TFV) to complement the reparations award and directed the TFV to submit a draft implementation plan for 16 February 2018, including the objectives, outcomes and necessary activities. The LRV and Defence may file any observations on the draft plan within 30 days of its notification. Upon subsequent approval by the Chamber,

At the end of a trial, the Trial Chamber may order a convicted person to pay compensation to the victims of the crimes of which the person was found guilty. Reparations may include monetary compensation, return of property, rehabilitation or symbolic measures such as apologies or memorials. The Court may award reparations on an individual or collective basis, whichever is, in its opinion, the most appropriate for the victims in the particular case. An advantage of collective reparations is that they provide relief to an entire community and help its members to rebuild their lives, such as the building of victim services centers or the taking of symbolic measures. Furthermore, States Parties to the Rome Statute have established a Trust Fund for Victims of crimes within the jurisdiction of the ICC and for their families in order to raise the funds necessary to comply with an order for reparations made by the Court if the convicted person does not have sufficient resources to do so¹¹.

the TFV will then identify projects and discrete implementation partners for the Chamber's final approval.

¹¹<https://unchronicle.un.org/fr/article/le-r-le-de-la-cour-p-nale-internationale-pour-mettre-fin-l-impunit-et-instaurer-l-tat-de> - La CPI réduit l'impunité non seulement en punissant les auteurs de violations mais aussi en permettant aux victimes de participer aux procédures judiciaires et de demander réparation⁹. Ces nouvelles caractéristiques des procédures pénales internationales renforcent les moyens d'action des victimes et associent plus étroitement la justice punitive et la justice réparatrice. En novembre 2012, la CPI a reçu plus de 12 000 demandes de

Though the Trust Fund for Victims (TFV) is separate from the Court, it was created in 2004 by the Assembly of States Parties, in accordance with article 79 of the Rome Statute. The Fund's mission is to support and implement programmes that address harms resulting from genocide, crimes of humanity, war crimes and aggression. To achieve this mission, the TFV has a two-fold mandate: (i) to implement Court-Ordered reparations and (ii) to provide physical, psychological, and material support to victims and their families. By assisting victims to return to a dignified and contributory life within their communities, the TFV contributes to realizing sustainable and long-lasting peace by promoting restorative justice and reconciliation.

b- The protective measures available to witnesses testifying before the Court?

participation aux procédures, dont la majorité ont été acceptée. Sa première décision concernant la réparation pour les victimes a été rendue le 7 août 2012.

Un aspect innovant lié au **système du Statut de Rome a été la création du Fonds au profit des victimes qui a deux mandats, à savoir mettre en oeuvre les décisions de réparation prises par la Cour et apporter une assistance aux victimes et à leur famille indépendamment des décisions judiciaires.** Actuellement, plus de 80 000 bénéficiaires reçoivent une assistance du Fonds et de ses partenaires locaux et internationaux. En répondant aux besoins particuliers des victimes en les aidant à retrouver leur place dans leur communauté et à rétablir leurs moyens de subsistance, le Fonds devient un élément de plus en plus visible de la passerelle entre justice et développement.

The Court has a number of protective measures that can be granted to witnesses who appear before the Court and other persons at risk on account of testimony given by a witness. The foundation of the Court's protection system is good practices which are aimed at concealing a witness' interaction with the Court from their community and from the general public. These are employed by all people coming into contact with witnesses. Operational protective measures can be implemented where witnesses reside; for example the Initial Response System is a 24/7 emergency response system that enables the Court, where feasible, to extract witnesses to a safe location should they be targeted or in fear of being targeted. Other operational protective measures include educating witnesses on the importance of confidentiality and cover stories or agreeing on an emergency backup plan. The Court can also apply procedural protective measures. Such measures may consist of face/voice distortion or the use of a pseudonym. Separate special measures can be ordered by the Court for traumatized witnesses, a child, an elderly person or a victim of sexual violence. These can include facilitating the testimony of witnesses by allowing a psychologist or family member to be present while the witness gives testimony or the use of a curtain to shield the witness from direct eye contact with the accused. A last resort protective measure is entry into the Court's Protection Programme (ICC- PP) through which the witness and his or her close relatives are relocated away from the source of the

threat. This is an effective method of protection, but due to the immense burden on the relocated persons, relocation remains a measure of last resort and absolute necessity. Protective measures do not affect the fairness of a trial. They are used to make witnesses safe and comfortable. They apply for both referring parties, the Prosecution and the Defence equally. All parties are bound by confidentiality and respect to protective measure, yet even when protective measures are applied, witness can still be questioned.

4- Cases and Situations before ICC (ICC Working)

Democratic Republic of the Congo Situation in the Democratic Republic of the Congo ICC-01/04¹²

Democratic Republic of the Congo Situation in the Democratic Republic of the Congo ICC-01/04 ,Lubanga Case - Found guilty, on 14 March 2012, of the war crimes of enlisting and conscripting children under the age of 15 years and using them to participate actively in hostilities (child soldiers). Sentenced, on 10 July 2012, to a total of 14 years of imprisonment. Verdict and sentence confirmed by Appeals Chamber on 1 December 2014. On 19 December 2015,

¹² <https://www.icc-cpi.int/uganda?ln=fr> Democratic Republic of the Congo Situation in the Democratic Republic of the Congo ICC-01/04
<https://unchronicle.un.org/fr/article/le-r-le-de-la-cour-p-nale-internationale-pour-mettre-fin-l-impunit-et-instaurer-l-tat-de>

Mr Lubanga was transferred to a prison facility in the DRC to serve his sentence of imprisonment. The reparations proceedings started on 7 August 2012 - Le premier verdict de la CPI a été prononcé le 14 mars 2012 et la première condamnation le 10 juillet 2012 dans l'affaire Lubanga⁶, ce dernier ayant été accusé du recrutement, de l'enrôlement et de l'utilisation d'enfants soldats de moins de 15 ans pour participer activement à des hostilités en RDC. Les chefs d'accusation concernant l'utilisation d'enfants soldats figurent également dans d'autres affaires jugées par la CPI, et la Représentante spéciale du Secrétaire général des Nations Unies pour les enfants et les conflits armés a indiqué que « ces condamnations avaient un effet dissuasif sur le recrutement des enfants dans des situations de conflits armés⁷ ». Comme l'a déclaré Kofi Annan, le Secrétaire général des Nations Unies alors en poste en 2004, la CPI a un effet important en « faisant savoir aux auteurs de violations potentiels que l'impunité n'est pas garantie [...]»⁸. Lorsque des tensions surviennent, le fait d'annoncer au public que la CPI suit la situation peut être un moyen important pour faire savoir à tous les violateurs potentiels qu'ils pourraient être tenus responsables de leurs actes. En outre, cela peut attirer l'attention locale et internationale et inciter d'autres parties prenantes à prendre les mesures nécessaires pour déminer la crise. Récemment, un ministre des États parties au Statut de Rome m'a dit que la possibilité d'une intervention de la CPI était un facteur majeur qui permettait de

prévenir les violences de grande ampleur dans le contexte des élections nationales. Même lorsqu'elle est nécessaire, l'intervention de la CPI ne donne pas nécessairement lieu à des procédures légales engagées devant cette Cour. Une enquête de la CPI peut inciter les autorités nationales appropriées à enquêter sur les crimes allégués sans délai et juger les auteurs présumés dans les tribunaux nationaux.

<https://www.icc-cpi.int/Pages/ReparationCompensation.aspx> - Democratic Republic of the Congo Situation in the Democratic Republic of the Congo ICC-01/04 Katanga Case Found guilty, on 7 March 2014, as an accessory to one count of a crime against humanity (murder) and four counts of war crimes (murder, attacking a civilian population, destruction of property and pillaging) committed on 24 February 2003 during the attack on the village of Bogoro, in the Ituri district of the DRC. The judgment is final, as both the Defence and Prosecution withdrew their appeals on 25 June 2014. Sentenced to a total of 12 years' imprisonment; time spent in detention at the ICC – between 18 September 2007 and 23 May 2014 – was deducted from the sentence.

<https://www.icc-cpi.int/drc-> Situation referred to the ICC by the DRC Government: April 2004- ICC investigations opened: June 2004 - Current focus: Alleged war crimes and crimes against humanity committed in the context of armed conflict in the DRC

since 1 July 2002 (when the Rome Statute entered into force)-
Current regional focus: Eastern DRC, in the Ituri region and the North and South Kivu Provinces . In April 2002, the DRC ratified the Rome Statute, and in April 2004, referred the situation in its territory since 1 July 2002 to the ICC. The ICC therefore may exercise its jurisdiction over crimes listed in the Rome Statute committed on the territory of the DRC or by its nationals from 1 July 2002 onwards.

Context and alleged crimes

The ICC investigations in the DRC have focused on alleged war crimes and crimes against humanity committed mainly in eastern DRC, in the Ituri region and the North and South Kivu Provinces, since 1 July 2002.

In opening the investigation in June 2004, the ICC's Office of the Prosecutor issued a press release acknowledging that alleged crimes were reported since the 1990's, but that the Court's jurisdiction started on 1 July 2002, and stating: "States, international organizations and non-governmental organizations have reported thousands of deaths by mass murder and summary execution in the DRC since 2002. The reports allege a pattern of rape, torture, forced displacement and the illegal use of child soldiers."

The investigation led to a number of cases, which have involved charges that include the following crimes:

- **war crimes:** enlisting and conscripting child soldiers under the age of fifteen years and using them to participate actively in hostilities; murder and attempted murder; wilful killing; attacking civilians; rape; sexual slavery of civilians; pillaging; displacing civilians; attacking protected objects; destroying property; rape; sexual slavery; mutilation; cruel treatment; torture; destruction of property; pillaging and outrages against personal dignity; and
- **crimes against humanity:** murder and attempted murder; torture; rape; sexual slavery; inhuman acts; persecution; forcible transfer of population, This was the Office of the Prosecutor's first investigation, and led to its two first convictions, in the case *The Prosecutor v. Thomas Lubanga Dyilo* and *The Prosecutor v. Germain Katanga*, and to the acquittal of Mr Ngudjolo Chui. A trial is ongoing for Mr Ntaganda. attacking a civilian population; destroying property; and pillaging.
- <https://www.icc-cpi.int/drc> **On 21 August 2014**, the Presidency of the International Criminal Court (ICC) re-assigned the situation in the Democratic Republic of Congo (DRC) to Pre-Trial Chamber I, in view of the respective workload of the two ICC Pre-Trial Chambers and the need to

ensure the proper administration of the Court. On 17 March 2015, the ICC Presidency had issued a decision constituting Pre-Trial Chambers in which, *inter alia*, the situations concerning Côte d'Ivoire, Libya, Mali and Registered Vessels were assigned to Pre-Trial Chamber I and the two situations in the Central African Republic, together with the situations in Darfur, Kenya and Uganda were assigned to Pre-Trial Chamber II. Pre-Trial Chamber I is composed of Judge Joyce Aluoch, Presiding Judge, Judge Cuno Tarfusser and Judge Péter Kovács. The situation in DRC was referred to the Court by the DRC government in April 2004. The Prosecutor opened an investigation in June 2004. In the context of this situation, six cases have been brought before the ICC Judges who have issued 7 arrest warrants. One case is currently at the pre-trial stage; the case concerning Sylvestre Mudacumura. The ICC Prosecutor continues its investigations regarding this situation. <https://www.icc-cpi.int/drc> Twenty-Seventh Periodic Report of the Registry on the Activities of the Victims Participation and Reparations Section in the Situation in the Democratic Republic of the Congo - ICC-01/04-743- 11 January 2018 | Registrar | Report- Case: Situation: Situation in the Democratic Republic of the Congo - Filed during the **Pre-trial** phase

- <https://unchronicle.un.org/fr/article/le-r-le-de-la-cour-p-nale-internationale-pour-mettre-fin-l-impunit-et-instaurer-l-tat-de>
-La CPI réduit l'impunité non seulement en punissant les auteurs de violations mais aussi en permettant aux victimes de participer aux procédures judiciaires et de demander réparation⁹. Ces nouvelles caractéristiques des procédures pénales internationales renforcent les moyens d'action des victimes et associent plus étroitement la justice punitive et la justice réparatrice. En novembre 2012, la CPI a reçu plus de 12 000 demandes de participation aux procédures, dont la majorité ont été acceptée. Sa première décision concernant la réparation pour les victimes a été rendue le 7 août 2012.

- <https://www.icc-cpi.int/Pages/ReparationCompensation.aspx>
Democratic Republic of the Congo Situation in the Democratic Republic of the Congo ICC-01/04
Lubanga Case - Found guilty, on 14 March 2012, of the war crimes of enlisting and conscripting children under the age of 15 years and using them to participate actively in hostilities (child soldiers). Sentenced, on 10 July 2012, to a total of 14 years of imprisonment. Verdict and sentence confirmed by Appeals Chamber on 1 December 2014. On 19 December 2015, Mr Lubanga was transferred to a prison facility in the DRC to serve his sentence of imprisonment. The reparations

proceedings started on 7 August 2012 - Democratic Republic of the Congo Situation in the Democratic Republic of the Congo

- -<https://www.icccpi.int/Pages/ReparationCompensation.aspx>
ICC-01/04 Katanga Case Found guilty, on 7 March 2014, as an accessory to one count of a crime against humanity (murder) and four counts of war crimes (murder, attacking a civilian population, destruction of property and pillaging) committed on 24 February 2003 during the attack on the village of Bogoro, in the Ituri district of the DRC. The judgment is final, as both the Defence and Prosecution withdrew their appeals on 25 June 2014. Sentenced to a total of 12 years' imprisonment; time spent in detention at the ICC – between 18 September 2007 and 23 May 2014 – was deducted from the sentence.

1- Situation referred to the ICC by the Government of Uganda¹³

ICC investigations opened: July 2004 - **Current focus:** Alleged war crimes and crimes against humanity committed

¹³ <https://www.icc-cpi.int/uganda> - **Situation referred to the ICC by the Government of Uganda:** January 2004 ICC-02/04-221 - 11 January 2018

in the context of a conflict between the Lord's Resistance Army (LRA) and the national authorities in Uganda since 1 July 2002 (when the Rome Statute entered into force) **Current regional focus:** Northern Uganda

Jurisdiction in the general situation In June 2002, Uganda ratified the Rome Statute, and in January 2004, it referred the situation in its territory since 1 July 2002 to the ICC. The ICC therefore may exercise its jurisdiction over crimes listed in the Rome Statute committed on the territory of Uganda or by its nationals from 1 July 2002 onwards.

Context and alleged crimes - The ICC investigations in Uganda have focussed on alleged war crimes and crimes against humanity committed in the context of an armed conflict predominantly between the Lord's Resistance Army (LRA) and the national authorities, mainly in Northern Uganda, since 1 July 2002.

Upon receiving the referral from the Ugandan Government, the Office of the Prosecutor issued a press release stating: "A key issue will be locating and arresting the LRA leadership. This will require the active cooperation of states and international institutions in

supporting the efforts of the Ugandan authorities. Many of the members of the LRA are themselves victims, having been abducted and brutalised by the LRA leadership. The reintegration of these individuals into Ugandan society is key to the future stability of Northern Uganda. This will require the concerted support of the international community – Uganda and the Court cannot do this alone.”

Investigations opened in July 2004, and alleged crimes in this situation include:

- **war crimes**, including murder; cruel treatment of civilians; intentionally directing an attack against a civilian population; pillaging; inducing rape; and forced enlistment of children; and
- **crimes against humanity**, including murder; enslavement; sexual enslavement; rape; and inhumane acts of inflicting serious bodily injury and suffering.

This situation led the ICC’s Pre-Trial Chamber judges to issue the Court’s first warrant of arrest in 2005, against top members of the LRA. All suspects remained at large for a decade, until one LRA member, Dominic Ongwen,

surrendered himself in January 2015. Other top members of the LRA, Joseph Kony and Vincent Otti remain at large.

2- Situation in Darfur, Sudan ICC-02/05

<https://www.icc-cpi.int/Pages/ReparationCompensation.aspx>

Situation referred to the ICC by the United Nations Security Council: **March 2005**

ICC investigations opened: **June 2005 Darfur, Sudan- Situation in Darfur, Sudan ICC-02/05**

Current focus: **Alleged genocide, war crimes and crimes against humanity committed in in Darfur, Sudan, since 1 July 2002 (when the Rome Statute entered into force)**

Current regional focus: **Darfur (Sudan), with Outreach to refugees in Eastern Chad and those in exile throughout Europe.**

Jurisdiction in the general situation

Sudan is not a State Party to the Rome Statute. However, since the United Nations Security Council (UNSC) referred the situation in Darfur to the ICC in Resolution 1593 (2005) on 31 March 2005, the ICC may exercise its jurisdiction over crimes listed in the Rome Statute committed on the territory of Darfur, Sudan, or by its nationals from 1 July 2002 onwards.

Context and alleged crimes

The ICC investigations regarding Darfur focus on allegations of genocide, war crimes and crimes against humanity committed in Darfur, Sudan, since 1 July 2002.

The UNSC determined that "the situation in Sudan continues to constitute a threat to international peace and security", and referred this situation to the ICC in March 2005, taking note of the report of the International Commission of Inquiry on violations of international humanitarian law and human rights law in Darfur (S/2005/60). The UN Secretary-General established the Commission "to investigate reports of violations of international humanitarian law and human rights law in Darfur by all parties, to determine also whether or not acts of genocide have occurred, and to identify the perpetrators of such violations with a view to ensuring that those responsible are held accountable." The Commission took as a starting point two facts: "First, according to United Nations estimates there are 1.65 million internally displaced persons in Darfur, and more than 200,000 refugees from Darfur in neighbouring Chad. Secondly, there has been large-scale destruction of villages throughout the three States of Darfur."

The ICC investigation, which opened in June 2005, has produced several cases with suspects ranging from Sudanese

Government officials, Militia/Janjaweed leaders, and leaders of the Resistance Front, and has involved charges that include the following crimes:

- genocide: genocide by killing; genocide by causing serious bodily or mental harm; and genocide by deliberately inflicting on each target group conditions of life calculated to bring about the group's physical destruction;
- war crimes: murder; attacks against the civilian population; destruction of property; rape; pillaging; and outrage upon personal dignity; violence to life and person; intentionally directing attacks against personnel, installations, material, units or vehicles involved in a peacekeeping mission; and
- crimes against humanity: murder; persecution; forcible transfer of population; rape; inhumane acts; imprisonment or severe deprivation of liberty; torture; extermination; and torture.

The situation in Darfur was the first to be referred to the ICC by the United Nations Security Council, and the first ICC investigation on the territory of a non-State Party to the Rome Statute. It was the first ICC investigation dealing with allegations of the crime of genocide.

Sudan's President Omar Al Bashir is the first sitting President to be wanted by the ICC, and the first person to be charged by the ICC for the crime of genocide. Neither of the two warrants of arrest against him have been enforced, and he is not in the Court's custody.

4- Central African Republic- Situation in the Central African Republic

<https://www.icc-cpi.int/car?ln=fr> Central African Republic- Situation in the Central African Republic

ICC-01/05 Situation referred to the ICC by the CAR Government: December 2004

ICC investigations opened: May 2007

Current focus: Alleged war crimes and crimes against humanity committed in the context of a conflict in CAR since 1 July 2002, with the peak of violence in 2002 and 2003. (See CAR II for the situation in CAR from 2012 onward.)

Current regional focus: Throughout CAR

Jurisdiction in the general situation

CAR ratified the Rome Statute on 3 October 2001 and referred the situation in its territory since 1 July 2002 to the ICC. The ICC therefore may exercise its jurisdiction over crimes listed in the Rome Statute committed on the territory of CAR or by its nationals from 1 July 2002 onwards.

Context and alleged crimes

The ICC's investigation in CAR I focussed on alleged war crimes and crimes against humanity committed in the context of a conflict in CAR since 1 July 2002, with the peak of violence in 2002 and 2003. (See CAR II for the situation in CAR from 2012 onward.)

In opening the investigation in May 2007, the Office of the Prosecutor issued a press release stating: "Based on a preliminary analysis of alleged crimes, the peak of violence and criminality occurred in 2002 and 2003. Civilians were killed and raped; and homes and stores were looted. The alleged crimes occurred in the context of an armed conflict between the government and rebel forces. This is the first time the Prosecutor is opening an investigation in which allegations of sexual crimes far outnumber alleged killings. (...) Hundreds of rape victims have come forward to tell

their stories, recounting crimes acted out with particular cruelty. Reports detailing their accounts were ultimately provided to the Prosecutor's Office. Victims described being raped in public; being attacked by multiple perpetrators; being raped in the presence of family members; and being abused in other ways if they resisted their attackers. Many of the victims were subsequently shunned by their families and communities."

The investigation has produced one main case, *The Prosecutor v. Jean-Pierre Bemba Gombo*, involving charges of the following crimes:

- **war crimes:** murder, rape and pillaging; and
- **crimes against humanity:** murder and rape

Proceedings began in another case involving charges against five suspects for offences against the administration of justice allegedly committed in connection with the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*.

4- Kenya Situation in the Republic of Kenya ICC-01/09

**<https://www.icc-cpi.int/kenya?ln=fr> Kenya
Situation in the Republic of Kenya ICC-01/09**

ICC Prosecutor opens *proprio motu* investigation: March 2010

Current focus: Alleged crimes against humanity committed in the context of post-election violence in Kenya in 2007/2008.

Current regional focus: Six of the eight Kenyan Provinces: Nairobi, North Rift Valley, Central Rift Valley, South Rift Valley, Nyanza Province and Western Province

Jurisdiction in the general situation

Kenya ratified the Rome Statute on 15 March 2005. The ICC therefore may exercise its jurisdiction over crimes listed in the Rome Statute committed on the territory of Kenya or by its nationals from 1 June 2005 onwards. On 31 March 2010, Pre-Trial Chamber II granted the Prosecutor's request to open an investigation *proprio motu* in the situation in Kenya, in relation to crimes against humanity within the jurisdiction of the Court committed between 1 June 2005 and 26 November 2009.

Context and alleged crimes

ICC investigations have focused on alleged crimes against humanity committed in the context of post-election violence in Kenya in 2007/2008, in six of the eight Kenyan Provinces: Nairobi, North Rift Valley, Central Rift Valley, South Rift Valley, Nyanza Province and Western Province.

In granting the Prosecutor's request to open an investigation, the ICC Pre-Trial Chamber noted the gravity and scale of the violence. The Prosecutor contended that over 1,000 people were killed, there were over 900 acts of documented rape and sexual violence, approximately 350,000 people were displaced, and over 3,500 were seriously injured. The Chamber noted from the Prosecutor's submission "...elements of brutality, for example burning victims alive, attacking places sheltering IDPs, beheadings, and using pangas and machetes to hack people to death", and that perpetrators, among other acts, allegedly "terrorized communities by installing checkpoints where they would select their victims based on ethnicity, and hack them to death, commonly committed gang rape, genital mutilation and forced circumcision, and often forced family members to watch."

The Pre-Trial Chamber also observed victims' representations concerning the individual impact of the violence on the victims: "Complaints of harm suffered concern the inability of victims' children to continue their education, poor living conditions and health concerns in IDP camps, psychological damage such as trauma, stress, and depression, loss of income due to loss of jobs or an inability to re-establish their business, the contraction of sexually transmitted diseases after rape, abandonment after rape, and the separation of families."

The investigation has produced two main cases, originally with six suspects, involving charges which include the following crimes:

- **crimes against humanity:** murder, deportation or forcible transfer of population, persecution, rape, and other inhumane acts

However, charges were not confirmed or were withdrawn concerning these six suspects.

Proceedings in two cases involving charges against three suspects for **offences against the administration of justice** consisting in corruptly or attempting to corruptly influencing ICC witnesses.

This was the first situation in which the Prosecutor opened an investigation *proprio motu*, rather than by receiving a referral.

6- **Libya Situation** <https://www.icc-cpi.int/>
<https://www.icc-cpi.int/libya?ln=fr> **Situation referred to the ICC by the United Nations Security Council: February 2011** **Libya Situation in Libya iCC-01/11 ICC investigations opened: March 2011**

Current focus: Alleged crimes against humanity committed in the context of the situation in Libya since 15 February 2011

Current regional focus: Throughout Libya in, *inter alia*, Tripoli, Benghazi, and Misrata

Jurisdiction in the general situation

Libya is not a State Party to the Rome Statute. However, on 26 February 2011, the United Nations Security Council unanimously referred the situation in Libya since 15 February 2011 to the ICC in Resolution 1970 (2011). ICC may therefore exercise its jurisdiction over crimes listed in

the Rome Statute committed on the territory of Libya or by its nationals from 15 February 2011 onwards.

Context and alleged crimes

The UNSC referred this situation to the ICC, “condemning the violence and use of force against civilians, deploring the gross and systematic violation of human rights, including the repression of peaceful demonstrators, expressing deep concern at the deaths of civilians, and rejecting unequivocally the incitement to hostility and violence against the civilian population made from the highest level of the Libyan government”, then under Muammar Mohammed Abu Minyar Gaddafi.

The referral noted that the widespread and systematic attacks against the civilian population may amount to crimes against humanity, and expressed concern at the plight of refugees forced to flee the violence and at the reports of shortages of medical supplies to treat the wounded. It underlined “the need to respect the freedoms of peaceful assembly and of expression, including freedom of the media” and stressed “the need to hold to account those responsible for attacks, including by forces under their control, on civilians”.

The investigation, which opened in March 2011, thus far produced one case, originally against three suspects, and has involved charges which include the following crimes:

- **crimes against humanity:** murder and persecution.

The arrest warrant against Muammar Mohammed Abu Minyar Gaddafi was withdrawn, on 22 November 2011, due to his death.

Proceedings against Abdullah Al-Senussi before the ICC came to an end on 24 July 2014 when the Appeals Chamber confirmed a decision of Pre-Trial Chamber I declaring the case inadmissible before the ICC.

The situation in Libya was the second to be referred to the ICC by the United Nations Security Council and the second ICC investigation on the territory of a non-State Party to the Rome Statute (Darfur was the first). See the ICC Prosecutor's reports to the UNSC on the investigation.

- 5- Côte d'Ivoire Situation** <https://www.icc-cpi.int/> Côte d'Ivoire accepts ICC's jurisdiction: April 2003 – Rome Statute ratification: 15 February 2013

ICC Prosecutor opens *proprio motu* investigations after authorisation of Pre-trial Chamber: 3 October 2011

Current focus: Alleged crimes within the jurisdiction of the Court committed in the context of post-election violence in Côte d'Ivoire in 2010/2011, but also since 19 September 2002 to the present

Current regional focus: Throughout Côte d'Ivoire, including, the capital of Abidjan and western Côte d'Ivoire

Jurisdiction in the general situation

Côte d'Ivoire, was not party to the Rome Statute at the time, had accepted the jurisdiction of the ICC on 18 April 2003; and on both 14 December 2010 and 3 May 2011, the Presidency of Côte d'Ivoire reconfirmed the country's acceptance of this jurisdiction. On 15 February 2013, Côte d'Ivoire ratified the Rome Statute. On 3 October 2011, Pre-Trial Chamber III granted the Prosecutor's request to open an investigation *proprio motu* in the situation in Côte d'Ivoire, with respect to alleged crimes within the

jurisdiction of the Court, committed since 28 November 2010, as well as with regard to crimes that may be committed in the future in the context of this situation. On 22 February 2012, Pre-Trial Chamber III decided to expand its authorisation for the investigation in Côte d'Ivoire to include crimes within the jurisdiction of the Court allegedly committed between 19 September 2002 and 28 November 2010. The ICC may therefore exercise its jurisdiction over crimes listed in the Rome Statute committed on the territory of Côte d'Ivoire or by its nationals from 19 September 2002 onwards.

Context and alleged crimes

The investigation has focused on alleged crimes against humanity committed during the 2010/2011 post-electoral violence in Côte d'Ivoire. According to reports, the post-election violence erupted after Presidential election results between opponents Mr Laurent Gbagbo and Mr Alassane Ouattara were disputed.

In granting the Prosecutor's request to open an investigation, the ICC Pre-Trial Chamber noted the Prosecutor's intention to investigate the actions of both pro-Gbagbo and pro-Ouattara forces. The Prosecutor submitted that attacks

directed against the civilian population in Côte d'Ivoire were widespread and systematic, and included, for example, raids conducted against headquarters of the opposing party, excessive force used in heavily populated areas in order to disperse protesters, and military roadblocks and checkpoints set up, at which killings allegedly occurred. The Prosecutor submitted that the acts were on a large scale, and that approximately 1 million people were displaced. The Prosecutor's supporting material also indicated the existence of several mass graves in Abidjan, and documentation relating to widespread arbitrary arrests, "disappearances" and incidents of rape.

The investigation has involved charges which include the following crimes:

- **crimes against humanity:** murder, rape, other inhumane acts, attempted murder, and persecution

This was the first investigation opened while a country had accepted the Court's jurisdiction (under article 12(3) of the Rome Statute) but was not yet a State Party.

6- Mali Situation https://www.icc-cpi.int/CourtRecords/CR2016_07246.PDF **Mali Situation**

referred to the ICC by the Government of Mali: July 2012

ICC investigations opened: January 2013

Current focus: Alleged war crimes committed in Mali since January 2012

Current regional focus: Mainly in three northern regions, Gao, Kidal and Timbuktu, with certain incidents in Bamako and Sévaré, in the south

Jurisdiction in the general situation

Mali ratified the Rome Statute on 16 August 2000 and referred the situation in its territory since January 2012 to the ICC. The ICC may exercise its jurisdiction over crimes listed in the Rome Statute committed on the territory of Mali or by its nationals from 1 July 2002 onwards.

Context and alleged crimes

The investigations in Mali have focussed on alleged war crimes committed since January 2012, mainly in three northern regions of Gao, Kidal and Timbuktu, with incidents also occurring in the south in Bamako and Sévaré.

In opening the investigation in January 2013, the Office of the Prosecutor issued an Article 53(1) Report, which states: “In 2012, the Situation in Mali was marked by two main events: first, the emergence of a rebellion in the North on or around 17 January, which resulted in Northern Mali being seized by armed groups; and second a coup d’état by a military junta on 22 March, which led to the ousting of President TOURE shortly before Presidential elections could take place, originally scheduled for 29 April 2012.”

The report indicates that the rebellion in the north involved deliberate damaging of shrines of Muslim saints in the city of Timbuktu, attacks on a military bases in Gao, Kidal and Timbuktu, alleged execution of between 70 and 153 detainees at Aguelhok, and incidents of looting and rape. Separately, incidents of torture and enforced disappearances were reported in the context of the military coup.

The Prosecutor alleges that there is a reasonable basis to believe that the following crimes have been committed in Mali:

- war crimes, including murder; mutilation, cruel treatment and torture; intentionally directing attacks against protected objects; the passing of sentences and the carrying out of

executions without previous judgement pronounced by a regularly constituted court; pillaging; and rape

- 7- Situation referred to the ICC by the CAR Government n 2 : <https://www.icc-cpi.int/carII> Situation referred to the ICC by the CAR Government: May 2014**

ICC investigations opened: September 2014

Current focus: Alleged war crimes and crimes against humanity committed in the context of renewed violence starting in 2012 in CAR. (See CAR I regarding the 2002/2003 conflict in CAR.)

Current regional focus: Throughout CAR

Jurisdiction in the general situation

On 3 October 2001, CAR ratified the Rome Statute and on 30 May 2014, it referred the situation in its territory since 1 August 2012 to the ICC. The ICC may exercise its jurisdiction over crimes listed in the Rome Statute committed on the territory of CAR or by its nationals from 1 July 2002 onwards, and in this specific situation is focussing on alleged crimes committed since 1 August 2012.

Context and alleged crimes

The ICC's investigation in CAR II focussed on alleged war crimes and crimes against humanity committed in the context of a conflict in CAR since 1 August 2012. The 2012 conflict reportedly involved alleged crimes by both Muslim Séléka and Christian anti-balaka groups; the violence allegedly led to thousands of deaths and left hundreds of thousands displaced. The UN has also issued warnings of the high risk of genocide in CAR.

In opening the investigation in September 2014, the Office of the Prosecutor issued a press release stating: "The information available provides a reasonable basis to believe that both the Séléka and the anti-balaka groups have committed crimes against humanity and war crimes including murder, rape, forced displacement, persecution, pillaging, attacks against humanitarian missions and the use of children under fifteen in combat. The list of atrocities is endless. I cannot ignore these alleged crimes."

The Prosecutor alleges that there is a reasonable basis to believe that the following crimes have been committed in CAR since 2012:

- war crimes: murder, rape, pillaging, attacks against humanitarian missions, and the use of children under fifteen in combat; and
- crimes against humanity: murder, rape, forced displacement, and persecution

8- Georgia Situation <https://www.icc-cpi.int/Georgia> **ICC**
Prosecutor authorized to open *proprio*
***motu* investigation: 27 January 2016**

Current focus: Alleged crimes against humanity and war crimes committed in the context of an international armed conflict between 1 July and 10 October 2008

Current regional focus: According to the Prosecution's request for authorization to investigate: in and around South Ossetia

Jurisdiction in the general situation

Georgia ratified the Rome Statute on 5 September 2003. The ICC therefore may exercise its jurisdiction over crimes listed in the Rome Statute committed on the territory of Georgia or by its nationals from 1 December 2003 onwards. On 27 January 2016, Pre-Trial Chamber I granted the Prosecutor's

request to open an investigation proprio motu in the situation in Georgia, in relation to crimes against humanity and war crimes within the jurisdiction of the Court in the context of an international armed conflict between 1 July and 10 October 2008.

Context and alleged crimes

The ICC investigations focus on alleged crimes committed in the context of an international armed conflict between 1 July and 10 October 2008 in and around South Ossetia, including:

- **crimes against humanity:** murder, forcible transfer of population and persecution; and
- **war crimes:** attacks against the civilian population, wilful killing, intentionally directing attacks against peacekeepers, destruction of property and pillaging.

In its preliminary examination, the Office of the Prosecutor "gathered information on alleged crimes attributed to the three parties involved in the armed conflict – the Georgian armed forces, the South Ossetian forces, and the Russian armed forces."

Regarding national proceedings and complementarity, the Prosecutor stated: "Under the complementarity principle in

the Rome Statute, the ICC cannot proceed if national authorities are already undertaking (or have undertaken) genuine domestic proceedings into the same cases. Until recently, the competent national authorities of both Georgia and Russia were engaged in conducting investigations against those who appeared to be most responsible for some of the identified crimes. These investigative measures, despite some attendant challenges and delays, appeared to be progressing. However, in March of last year, relevant national proceedings in Georgia were indefinitely suspended. The Office continues to monitor relevant proceedings in Russia, which, according to the Office's information, are still on-going."

Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, following judicial authorisation to commence an investigation into the Situation in Georgia

In granting the Prosecutor's request to open an investigation, the Chamber noted that the representations by or on behalf of 6,335 victims on this matter, which it received on 4 December 2015, "overwhelmingly speak in favour of the opening of an investigation".

Background/Preliminary examination

On 8 October 2015, the ICC Presidency assigned the Situation in Georgia to Pre-Trial Chamber I, following a notification by the Prosecutor of her intention to submit a request to a Pre-Trial Chamber for authorisation to open an investigation into the situation in Georgia. The ICC Prosecutor announced the preliminary examination of the Situation in Georgia on 14 August 2008. On the basis of the information available, the Prosecutor concluded that there is a reasonable basis to believe that crimes within the jurisdiction of the Court have been committed in Georgia in the context of the armed conflict of August 2008. Pursuant to article 15(3) of the Rome Statute, the Prosecutor submitted a request to the Pre-Trial Chamber for authorisation to open an investigation into this Situation on 13 October 2015.

9- Burundi Situation <https://www.icc-cpi.int/burundi>

Burundi ICC Prosecutor authorised to

open *proprio motu* investigation: 25 October 2017

Current focus: Alleged crimes against humanity committed in Burundi or by nationals of Burundi outside Burundi since 26 April 2015 until 26 October 2017

Current regional focus: Both in and outside of Burundi

Burundi deposited its instrument of ratification to the Rome Statute on 21 September 2004. Burundi withdrew from the Rome Statute, and the withdrawal took effect on 27 October 2017. The ICC may therefore exercise its jurisdiction over crimes listed in the Rome Statute committed on the territory of Burundi or by its nationals from 1 December 2004 to 26 October 2017.

In its decision authorising an investigation, the Chamber found a reasonable basis to believe that State agents and groups implementing State policies, together with members of the "Imbonerakure" launched a widespread and systematic attack against the Burundian civilian population.

The attack targeted those who opposed or were perceived to oppose the ruling party after the announcement, in April 2015, that President Pierre Nkurunziza was going to run for a third term in office.

The following crimes against humanity were allegedly committed both in and outside of Burundi by Burundian nationals, between 26 April 2015 and 26 October 2017:

- **murder and attempted murder**
- **imprisonment or severe deprivation of liberty**

- **torture**
- **rape**
- **enforced disappearance**
- **persecution**

If evidence suggests other continuous or related crimes in the Court's jurisdiction occurred, the ICC Prosecutor's investigation can expand to include those crimes.

The preliminary examination of the situation in Burundi was announced on 25 April 2016. At the time more than 430 persons had reportedly been killed, at least 3,400 people arrested and over 230,000 Burundians forced to seek refuge in neighbouring countries. The preliminary examination focusses on acts of killing, imprisonment, torture, rape and other forms of sexual violence, as well as cases of enforced disappearances that have been allegedly committed since April 2015 in Burundi.

A preliminary examination

<https://usa.inquirer.net/10092/icc-duterte-crimes-humanity> On February 8, 2018, ICC Chief Prosecutor Fatou Bensouda, after “careful, independent and impartial” review of the two cases, has made an official decision to conduct a “preliminary examination.”

“A preliminary examination is not an investigation but a process of examining the information available in order to reach a fully informed determination on whether there is a reasonable basis to proceed with an investigation pursuant to the criteria established by the Rome Statute,” Bensouda said in her official statement (www.icc-cpi.int/).

In a preliminary examination, the Prosecutor will consider three things, namely: jurisdiction; admissibility (complementarity and gravity); and the interests of justice.

10- <https://www.theguardian.com/commentisfree/2018/feb/16/icc-us-accountable-for-crimes-afghanistan>

Preliminary examination Afghanistan

Focus: Alleged crimes against humanity and war crimes committed in Afghanistan since 1 May 2003

On 20 November 2017, the Prosecutor of the International Criminal Court ("ICC"), Fatou Bensouda, requested authorisation from Pre-Trial Chamber III to initiate an investigation into alleged war crimes and crimes against humanity in relation to the armed conflict in the Islamic Republic of Afghanistan since 1 May 2003, as well as regarding similar crimes that have a nexus to the armed conflict in

Afghanistan and are sufficiently linked to the Situation and were committed on the territory of other States Parties to the Rome Statute since 1 July 2002 ("Situation in Afghanistan").

As per the ICC's legal framework, victims of alleged Rome Statute crimes committed in the Situation in Afghanistan have the right to submit "representations", i.e. to provide their views, concerns and expectations, to the ICC Judges that are considering the Prosecutor's request. This process commenced pursuant to Regulation 50 of the Regulations of the Court on 20 November 2017 and ended on 31 January 2018, the deadline set by the ICC Judges for victims to submit representations. To help facilitate this process, the Victims Participation and Reparations Section ("VPRS") of the ICC Registry prepared a template representation form which was available on the ICC website during the process, in a number of languages, until 31 January 2018.

The process of collection of representations of victims has now ended.

Between 7 December 2017 and 9 February 2018, the VPRS transmitted to Pre-Trial Chamber III a total number of 699 victims representations. On 20 February 2018, the VPRS transmitted to the Judges a final consolidated report on victims' representations, containing an overview of the victim representations process, as well as details and statistics of the transmitted representations.

Pre-Trial Chamber III will now assess all representations received from victims, and in due course it will issue its decision on the Prosecutor's request.

Jurisdiction – General status

Afghanistan deposited its instrument of accession to the Rome Statute on 10 February 2003. The ICC may therefore exercise its jurisdiction over crimes listed in the Rome Statute committed on the territory of Afghanistan or by its nationals from 1 May 2003 onwards.

Procedural history and focus of the preliminary examination

The preliminary examination of the situation in Afghanistan was made public in 2007. The OTP has received numerous communications under article 15 of the Rome Statute related to this situation. The preliminary examination focusses on crimes listed in the Rome Statute allegedly committed in the context of the armed conflict between pro-Government forces and anti-Government forces, including the **crimes against humanity** of murder, and imprisonment or other severe deprivation of physical liberty; and the **war crimes** of murder; cruel treatment; outrages upon personal dignity; the

passing of sentences and carrying out of executions without proper judicial authority; intentional attacks against civilians, civilian objects and humanitarian assistance missions; and treacherously killing or wounding an enemy combatant. The preliminary examination also focusses on the existence and genuineness of national proceedings in relation to these crimes.

11- Colombia Preliminary examination Colombia

Focus: Alleged war crimes committed since 1 November 2009 and alleged crimes against humanity committed since 1 November 2002 in Colombia

Phase 3: Admissibility

Jurisdiction – General status

Colombia deposited its instrument of accession to the Rome Statute on 5 August 2002 together with a declaration pursuant to article 124 excluding war crimes from the jurisdiction of the ICC for a seven-year period. The ICC may therefore exercise its jurisdiction over war crimes committed in the territory or by the nationals of Colombia since 1 November 2009 and over other crimes listed in the Rome Statute committed since 1 November 2002.

Procedural history and focus of the preliminary examination

The situation in Colombia has been under preliminary examination since June 2004. The OTP has received numerous communications under article 15 of the Rome Statute in relation to the situation in Colombia. The preliminary examination focusses on alleged crimes against humanity and war crimes committed in the context of the armed conflict between and among government forces, paramilitary armed groups and rebel armed groups, including the **crimes against humanity** of murder; forcible transfer of population; imprisonment or other severe deprivation of physical liberty; torture; and rape and other forms of sexual violence; and the **war crimes** of murder; intentional attacks against civilians; torture; other cruel treatment; outrages on personal dignity; taking of hostages; rape and other forms of sexual violence; and using children to participate actively in hostilities. The preliminary examination also focusses on the existence and genuineness of national proceedings in relation to these crimes.

12- Gabon Preliminary examination Gabon

Focus: Alleged crimes under the ICC's jurisdiction committed in Gabon since May 2016

Phase 2: Subject-matter jurisdiction

Jurisdiction – General status

Gabon deposited its instrument of ratification to the Rome Statute on 20 September 2000. The ICC may therefore exercise its jurisdiction over crimes listed in the Rome Statute committed on the territory of Gabon or by its nationals from 1 July 2002 onwards.

Procedural history and focus of the preliminary examination

On 21 September 2016 the Government of the Gabonese Republic transmitted to the OTP a referral regarding the situation in Gabon since May 2016 with no end-date. Pursuant to article 14 of the Rome Statute, Rule 45 of the Rules of Procedure and Evidence and Regulation 25(1)(b) of the Regulations of the OTP, the Government of the Gabonese Republic requested the Prosecutor of the International Criminal Court "to open an investigation without delay".

On 29 September 2016, the Prosecutor announced the opening of a preliminary examination on the referred situation, as is done as a matter of policy in instances of referrals from States parties. The OTP also received Article 15 communications in relation to the situation in Gabon. The preliminary examination focusses on alleged crimes potentially falling within the ICC's jurisdiction committed in Gabon since May 2016 including those allegedly committed in the context of the presidential elections held on 27 August 2016.

13- Guinea Preliminary examination Guinea Focus:
Alleged crimes against humanity committed in the context of
the 28 September 2009 events in Conakry, Guinea

Phase 3: Admissibility

Jurisdiction – General status

Guinea deposited its instrument of accession to the Rome Statute on 14 July 2003. The ICC may therefore exercise its jurisdiction over Rome Statute crimes committed on the territory of Guinea or by its nationals from 1 October 2003 onwards.

Procedural history and focus of the preliminary examination

The preliminary examination of the situation in Guinea was announced on 14 October 2009. The OTP has received numerous communications under article 15 of the Rome Statute in relation to the situation in Guinea. The preliminary examination focusses on alleged Rome Statute crimes committed in the context of the 28 September 2009 events at the Conakry stadium, including the **crimes against humanity** of murder; imprisonment or other severe deprivation of liberty; torture; rape and other forms of sexual violence; persecution; and enforced disappearances. The preliminary examination also focusses on the existence and genuineness of national proceedings in relation to these crimes.

14- Iraq/UK Preliminary examination Iraq/UK

Focus: Alleged war crimes committed by United Kingdom nationals in the context of the Iraq conflict and occupation from 2003 to 2008

Phase 3: Admissibility

Jurisdiction – General status

The United Kingdom deposited its instrument of ratification of the Rome Statute on 4 October 2001. The ICC may therefore exercise its jurisdiction over Rome Statute crimes committed on the territory or by nationals of the United Kingdom as of 1 July 2002.

Procedural history and focus of the preliminary examination

The preliminary examination of the situation in Iraq, initially terminated on 9 February 2006, was re-opened on 13 May 2014 upon receipt of new information. The preliminary examination focuses on alleged crimes committed by United Kingdom nationals in the context of the Iraq conflict and occupation from 2003 to 2008, including murder, torture, and other forms of ill-treatment.

15- Palestine Preliminary examination Palestine

Focus: Alleged crimes committed in the occupied Palestinian territory, including East Jerusalem, since 13 June 2014

Phase 2: Subject-matter jurisdiction

Jurisdiction – General status

On 1 January 2015, the Government of Palestine lodged a declaration under article 12(3) of the Rome Statute accepting the jurisdiction of the International Criminal Court (ICC) over alleged crimes committed "in the occupied Palestinian territory, including East Jerusalem, since June 13, 2014". On 2 January 2015, the Government of Palestine acceded to the Rome Statute by depositing its instrument of accession with the UN Secretary-General. The Rome Statute entered into force on 1 April 2015.

Procedural history and focus of the preliminary examination

Upon receipt of a referral or a valid declaration made pursuant to article 12(3) of the Rome Statute, the Prosecutor, in accordance with Regulation 25(1)(c) of the Regulations of the Office of the Prosecutor, and as a matter of policy and practice, opens a preliminary examination of the situation at hand. Accordingly, on 16 January 2015, the Prosecutor announced the opening of a preliminary examination into the situation in Palestine in order to establish whether the Rome Statute criteria for opening an investigation are met. Specifically, under article 53(1) of the Rome Statute, the Prosecutor shall consider issues of jurisdiction, admissibility and the interests of justice in making this determination.

For further information, see the OTP Policy Paper on Preliminary Examinations (2013).

16- Nigeria Preliminary examination Nigeria

Focus: Alleged crimes against humanity or war crimes committed in the Niger Delta, the Middle-Belt States and in the context of armed conflict between Boko Haram and Nigerian security forces in Nigeria.

Phase 3: Admissibility

Jurisdiction – General status

Nigeria deposited its instrument of ratification of the Rome Statute on 27 September 2001. The ICC may therefore exercise its jurisdiction over Rome Statute crimes committed on the territory of Nigeria or by its nationals from 1 July 2002 onwards.

Procedural history and focus of the preliminary examination

The preliminary examination of the situation in Nigeria was made public on 18 November 2010. The OTP has received numerous communications under article 15 of the Rome Statute in relation to the

situation in Nigeria. The preliminary examination focusses on alleged Rome Statute crimes committed in the Niger Delta, the Middle-Belt States and in the context of armed conflict between Boko Haram and Nigerian security forces, including the **crimes against humanity** of murder and persecution, and multiple **war crimes**. The preliminary examination also focusses on the existence and genuineness of national proceedings in relation to these crimes.

17- The Philippines Preliminary examination The Philippines

<https://usa.inquirer.net/10092/icc-duterte-crimes-humanity>

Focus: Alleged crimes committed since at least 1 July 2016, in the context of the "war on drugs" campaign.

Jurisdiction – General status

The Philippines deposited its instrument of ratification of the Rome Statute on 30 August 2011. The ICC may therefore exercise its jurisdiction over Rome Statute crimes committed on the territory of the Philippines or by its nationals from 1 November 2011 onwards.

Procedural history and focus of the preliminary examination

The preliminary examination of the situation in the Philippines was announced on 8 February 2018. It will analyse crimes allegedly committed in this State Party since at least 1 July 2016, in the context of the "war on drugs" campaign launched by the Government of the Philippines.

Specifically, it has been alleged that since 1 July 2016, thousands of persons have been killed for reasons related to their alleged involvement in illegal drug use or dealing. While some of such killings have reportedly occurred in the context of clashes between or within gangs, it is alleged that many of the reported incidents involved extra-judicial killings in the course of police anti-drug operations.

News 8 February 2018 Statement of the Prosecutor of the International Criminal Court, Mrs Fatou Bensouda, on opening Preliminary Examinations into the situations in the Philippines and in Venezuela 13 October 2016 Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda concerning the situation in the Republic of the Philippines 1 November 2013 Policy Paper on Preliminary Examinations

18- Ukraine Preliminary examination Ukraine

**Focus: Alleged crimes committed in the context of the
"Maidan" protests since 21 November and other events
in Ukraine since 20 February 2014**

Phase 2: Subject-matter jurisdiction

Jurisdiction – General status

Ukraine is not a party to the Rome Statute. However, on 17 April 2014, the Government of Ukraine lodged a declaration under article 12(3) of the Rome Statute accepting the ICC's jurisdiction over alleged crimes committed on its territory from 21 November 2013 to 22 February 2014. Further, on 8 September 2015, the Government of Ukraine lodged a second declaration under article 12(3) of the Statute accepting the exercise of jurisdiction by the ICC in relation to alleged crimes committed on its territory from 20 February 2014 onwards, with no end date. The Court may therefore exercise its jurisdiction over Rome Statute crimes committed on the territory of Ukraine since 21 November 2013.

Procedural history and focus of the preliminary examination

The preliminary examination of the situation in Ukraine was announced on 25 April 2014. On 29 September, the Prosecutor announced, based on Ukraine's second declaration under article 12(3), the extension of the preliminary examination of the situation in Ukraine to include alleged crimes occurring after 20 February 2014. The OTP has received several communications under article 15 of the Rome Statute in relation to the "Maidan protests" as well as to events in Crimea and eastern Ukraine.

The preliminary examination initially focussed on alleged **crimes against humanity** committed in the context of the "Maidan" protests which took place in Kyiv and other regions of Ukraine between 21 November 2013 and 22 February 2014, including murder; torture and/or other inhumane acts. Following the lodging of a new article 12(3) declaration by Ukraine on 8 September 2015, the Office decided to extend the temporal scope of the existing preliminary examination to include any alleged crimes committed on the territory of Ukraine from 20 February 2014 onwards.

19- Venezuela Preliminary examination - Venezuela

Focus: Alleged crimes committed since at least April 2017, in the context of demonstrations and related political unrest.

Jurisdiction – General status

Venezuela deposited its instrument of ratification of the Rome Statute on 7 June 2000. The ICC may therefore exercise its jurisdiction over Rome Statute crimes committed on the territory of Venezuela or by its nationals from 1 July 2002 onwards.

Procedural history and focus of the preliminary examination

The preliminary examination of the situation in Venezuela was announced on 8 February 2018. It will analyse crimes allegedly committed in this State Party since at least April 2017, in the context of demonstrations and related political unrest.

In particular, it has been alleged that State security forces frequently used excessive force to disperse and put down demonstrations, and arrested and detained thousands of actual or perceived members of the opposition, a number of

whom would have been allegedly subjected to serious abuse and ill-treatment in detention. It has also been reported that some groups of protestors resorted to violent means, resulting in some members of security forces being injured or killed. 8 February 2018 Statement of the Prosecutor of the International Criminal Court, Mrs Fatou Bensouda, on opening Preliminary Examinations into the situations in the Philippines and in Venezuela 1 November 2013 Policy Paper on Preliminary Examinations

Conclusions

The international Criminal Court ICC which deal with perpetrators of atrocities is established part of the effort to bring and end to impunity for international crimes

The crimes that dealt with International Criminal Court, the procedures that govern the investigations and the prosecutions of those crimes under the Rome Statute

At the first level is constituted by States and their national criminal law systems. As confirmed by the principle of complementarity as the primary basis of the Rome Statute, States continue to have the primary duty to exercise their criminal jurisdiction over those responsible for international crimes.

And at the second level is constituted by the ICC. According to the principle of complementarity, the ICC can only act as a last resort in cases in which national criminal law systems are unwilling or unable genuinely to carry out the investigation or prosecution.

This research focusing on the role of the ICC to end with impunity through the cooperation of the States members or not of the Rome Statute.

At this research we seen that the international criminal law has developed at an unprecedented rate since the early 1990s and is now an established part of international scene.

The creation of ad hoc Tribunals by Security Council of United Nations in the early to mid 1990s, at same time the project for an international criminal court had received some increased attention since its re-inclusion on the creation General Assembly's agenda 1989 , this was not seen as likely to bear fruit. However, the creation of the ad hoc Tribunals showed that such tribunal could be established in a reasonably short time, and the focus to debate shifted from the question whether such tribunal were a realistic possibility to how they could be improved.

If it is to be said that the Hague tribunal has been useful in practice, then its utility has been first as a record keeper, compiling the evidence and telling the story of atrocities in the former Yugoslavia and making international humanitarian law better

known. Second, it may be that the International Criminal Tribunal for the Former Yugoslavia has been and will be useful in its development of international law. It has already contributed to the development of the substantive and procedural rules of international humanitarian law. Moreover, like other international criminal courts, its precedents may be recognized and followed by regional international courts and domestic courts, such as those in Strasbourg and the United States. And, most significantly, the greatest reward of the effort made at the Hague may be the establishment of a permanent international criminal court.

The ICC need to the *International Co-operation and Judicial Assistance*.

In fact, according to the Rome Statute, the ICC generally has no executive powers and no police force of its own or other executive units. Consequently, international co-operation with States and judicial assistance are vital prerequisites for the functioning of the ICC. The ICC is totally dependent on the full, effective, and timely co-operation in particular of States Parties. This is especially true with regard to the crucial question of the effective execution of arrest warrants and → *surrender* of suspects to The Hague. As foreseen and planned by the founders of the ICC, the court is characterized by the structural weakness that it does not have the competencies and means to enforce its own decisions. As already

shown with regard to the principle of complementarity, it was also the wish of the ICC's creators that States' sovereignty prevails in this respect.

The ICC need also the Co-operation of the Civil Society

In fact, the role of civil society is not formalized or institutionalized in the Rome Statute. Nevertheless, private individuals and NGOs can be relevant to the activities of the ICC as sources of important information, especially in the field, given their often close contacts with victims and local networks of human rights defenders. Information coming from NGOs and other private sources will be taken into account by the OTP at a very early stage when deciding on whether to begin an investigation. The prosecutor must analyze information provided and must inform those who have given information on the decision not to open an investigation (Art. 15 (2), (6) Rome Statute). The prosecutor may also, in beginning an investigation, seek additional information from NGOs and other reliable sources pursuant to Art. 15 (2) Rome Statute and Rule 104 (2).

In the end we could say that the International Criminal Court ICC, has been criticized, particularly by the African Union, for its focus on Africa. In the court's twenty-year history, it has only brought charges against black Africans.

Also, the analysis of the latest developments in the situation between the Republic of the Philippines and the International Criminal Court (ICC), the purpose of this essay is to briefly list the results of the debate raised by the Burundi's withdrawal in October, 2017, over the consequences that the jurisdiction of the ICC could face if the Prosecutor has set into motion a "proprio motu" action to investigate alleged crimes committed by a State that has decided to withdraw from the ICC, and maybe we can compare those conclusions with the current case of the Philippines.

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Abbreviations

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|---------|---|
| - ICC | International Criminal Court |
| - ICL | International Criminal Law |
| - ICTY | International Criminal Tribunal for the former Yugoslavia |
| - ICTR | International Criminal Tribunal for Rwanda |
| - ILC | International Law Commission |
| - RPE | Rules of Procedure and Evidence |
| - UNSC | United Nations Security Council |
| - WCC | War Crimes Chamber |
| - STL | Special Tribunal for Lebanon |
| - NSDAP | German National Socialist (nazi) Party |
| - PTC | Pre-Trial Chamber |
| - RDMDG | Revue de droit militaire et de droit de la guerre |
| - OTP | Office of the Prosecutor |