

**KIGALI INDIPENDENT UNIVERSITY ULK**

**SCHOOL OF LAW**

**Department of law**

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**CRITICAL ANALYSIS OF THE EFFECTIVENESS OF  
UNIVERSAL JURISDICTION OF THE INTERNATIONAL  
CRIMINAL COURT: CASE OF BOSCO NTAGANDA**

A Dissertation submitted to the School of Law in  
Partial Fulfillment of the Academic Requirements  
for the Award of a Bachelor's Degree in Law (LLB)

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**Kigali, September 2024**

**DECLARATION**

I , **BOUANGA MATOUMBA BRILORE NADOU** declare that this thesis entitled “**Critical analysis of the effectiveness of universal jurisdiction of the international criminal court: Case of Bosco Ntaganda**” submitted in fulfillment of the requirements for the award of Bachelor in Law at Kigali independent university ULK, is wholly my own work. Where scholars work has been used, references have provided. In this regard, I declare this work as original mine.

The dissertation has not been submitted for qualifications at any other academic institution.

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Signature.....

**Date: ...../...../2024**

**APPROVAL**

This is to certify that the work contained in the thesis entitled “**Critical analysis of the effectiveness of universal jurisdiction of the international criminal court: Case of Bosco Ntaganda**” submitted by **BOUANGA MATOUMBA BRILORE NADOU** for the partial fulfillment award of bachelor’s degree in Law. This project has been submitted with my authority as the university supervisor.

This research has been submitted with my approval as the Kigali independent university ULK Supervisor

Supervisor: **Mr. BAHATI Vedaste**

Sign.....

Date...../...../2024

## **DEDICATION**

I first thank Almighty God, who has supported and helped me over the past three years.

I also want to thank the my father and my mother , who have played a special role despite the distance.

Finally, I want to thank my siblings, near and far, who have also been my support throughout this journey.

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To all the above, named person and others who I could not mention, I am truly grateful for your support!

May God bless you!

**BOUANGA MATOUMBA BRILORE NADOU**

## **LIST OF ABBREVIATIONS AND ACRONYMS**

**AU** African Union

**DRC** : Democratic Republic of Congo

**FARDC** Armed Forces of the Democratic Republic of Congo (Forces Armées de la République Démocratique du Congo)

**-FLPC** Fund for the Liberation of Political Prisoners

**FPLC** : Forces Patriotiques pour la Libération du Congo

**HRW** Human Rights Watch

**ICC** : International Criminal Court

**ICL** : International criminal law

**ICTR** : International Criminal Tribunal for Rwanda

**ICTY** : International Criminal Tribunal for the former Yugoslavia

**IHL** : international humanitarian law

**IMTFE** : International Military Tribunal for the Far East

**MOU.** Memorandum of Understanding

**NGO.** Non-Governmental Organization

**OTP** Office of the Prosecutor

**UDHR** : Universal Declaration of Human Rights)

**ULK** : Université Libre de Kigali

**UN.** United Nations

**UNHCR.** United Nations High Commissioner for Refugees

**UNICEF.** United Nations International Children's Emergency Fund

**UNSC.** United Nations Security Council

**UPC** : Union des Patriotes Congolais

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## GENERAL INTRODUCTION

The term “universal jurisdiction” refers to the idea that a national court <sup>1</sup> may prosecute individuals for serious crimes against international law — such as crimes against humanity, war crimes, genocide, and torture — based on the principle that such crimes harm the international community or international order itself, which individual States may act to protect. Generally, universal jurisdiction is invoked when other, traditional bases of criminal jurisdiction are not available,

Gender-based violence<sup>2</sup>, particularly in the context of armed conflicts, represents a grave violation of human rights and poses significant challenges to achieving justice and accountability. In recent decades, efforts to address conflict-related sexual violence have been bolstered by international legal mechanisms, including universal jurisdiction and the International Criminal Court (ICC). This introduction aims to provide a contextual framework for understanding the effectiveness of these mechanisms in prosecuting individuals accused of such crimes, with a specific focus on the case of Bosco Ntaganda in the Democratic Republic of Congo (DRC).

Conflict-related sexual violence has been pervasive in the DRC, affecting women, men, girls, and boys across various regions. Bosco Ntaganda<sup>3</sup> a former militia leader in the DRC, stands accused of orchestrating and participating in numerous atrocities, including sexual violence, during the country’s protracted conflicts. His case serves as a lens through which to examine the challenges and opportunities in upholding perpetrators of conflict-related sexual violence accountable under international law

### 1. Background of study

The background section will provide an overview of conflict-related sexual violence globally and its impact on victims, with a specific focus on the **situation** in the DRC.

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<sup>1</sup> Schabas, William A. “An Introduction to the International Criminal Court.”,2017

<sup>2</sup> <https://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures>  
Accessed on 11/09/2024

<sup>3</sup> <https://www.icc-cpi.int/drc/ntaganda> Accessed on 11/09/2024

It will also highlight the role of Bosco Ntaganda in the context of sexual violence and other atrocities committed during the DRC's armed conflicts. In this context, the case of Bosco Ntaganda serves as a focal point for examining the effectiveness of accountability mechanisms, such as universal jurisdiction of the ICC, in addressing conflict-related sexual violence in the DRC. As the international community grapples with the legacy of violence in the country, understanding the complexities of prosecuting individuals like Ntaganda is essential for advancing justice and reconciliation efforts.

## **2. Relevance and Significance of the Study**

This study is crucial for understanding the effectiveness of international legal mechanisms in addressing conflict-related sexual violence and holding perpetrators accountable. The findings will have implications for improving accountability mechanisms and ensuring justice for victims of such crimes globally.

## **3 Scope of the study**

As this subject will be delimited in three levels, this is delimited in space in time, and domain.

### **3.1. Delimitation in Space**

The research encompasses a global perspective on conflict-related sexual violence and accountability mechanisms, with a primary focus on the Democratic Republic of Congo (DRC) and the case of Bosco Ntaganda. While the study examines the situation in the DRC in depth, it also considers experiences from other conflict-affected regions worldwide, providing a comparative analysis and broader context.

### **3.2 Delimitation in Time**

The temporal scope of the study extends from the beginning of the armed conflicts in the DRC, particularly at the end of the 20th century and the beginning of the 21st century, until the present day. This timeline analyzes legal frameworks, procedures, and developments related to conflict-related sexual violence and accountability mechanisms, including the prosecution of Bosco

Ntaganda. Additionally, the study examines historical events and precedents that have shaped international responses to conflict-related sexual violence.

### **3.3 Delimitation in Domain**

The study falls within the domain of international humanitarian law (IHL), human rights law, and international criminal law, specifically focusing on conflict-related sexual violence as a violation of these legal frameworks. It explores the application of universal jurisdiction and the jurisdiction of the ICC in prosecuting individuals accused of perpetrating conflict-related sexual violence. Additionally, the study considers the roles of relevant international organizations, national governments, and non-governmental organizations in addressing such crimes and supporting accountability efforts.

### **4. Problem Statement**

The central legal problem in prosecuting Bosco Ntaganda and individuals accused of conflict-related sexual violence in the Democratic Republic of Congo (DRC) lies in the complex interplay between national jurisdictions, international legal frameworks, and practical challenges that impede effective accountability.

The problem statement will address the challenges faced by international legal mechanisms, including universal jurisdiction and the ICC, in effectively prosecuting individuals like Bosco Ntaganda for their involvement in conflict-related sexual violence and other crimes against humanity.

In conflict zones across the world, prosecuting individuals for serious crimes such as war crimes, crimes against humanity, and conflict-related sexual violence presents significant legal challenges. National judicial systems, particularly in conflict-affected regions, often struggle to handle these cases due to limited resources, institutional weaknesses, and political instability. These local judicial failures create a gap in accountability, allowing perpetrators of the gravest international crimes to evade justice.

The International Criminal Court (ICC), through the principle of universal jurisdiction, offers a pathway to hold such individuals accountable. However, this international mechanism faces its own set of challenges, including the need for cooperation from state parties, securing evidence from conflict zones, and overcoming political resistance. These factors complicate the ICC's ability to prosecute crimes effectively, especially when national jurisdictions fail.

A pertinent example of this complexity is the case of Bosco Ntaganda, a former military leader in the Democratic Republic of Congo (DRC), who was convicted by the ICC for war crimes and crimes against humanity, including sexual violence and the recruitment of child soldiers. The prosecution of Ntaganda highlights the interplay between national judicial systems and international legal frameworks, as well as the practical obstacles that impede the realization of justice.

The key legal problem addressed in this thesis focuses on the challenges faced by both national and international legal mechanisms in holding individuals like Bosco Ntaganda accountable for their crimes. It examines the limitations of national courts in conflict zones like the DRC, the reliance on international mechanisms such as the ICC, and the effectiveness of universal jurisdiction in achieving justice for victims of serious international crimes. Through a critical analysis of the Ntaganda case, this study explore the broader effectiveness of international legal mechanisms, with a focus on the ICC's role in delivering justice and ensuring accountability for atrocities.

## **5. Research Questions**

- How effective is universal jurisdiction in ensuring accountability for conflict-related sexual violence at the international level, as demonstrated in the prosecution of Bosco Ntaganda?
- What challenges and limitations did the Bosco Ntaganda case expose in the application of universal jurisdiction, and how do these affect the pursuit of justice for similar international crimes?



## **6. Hypothesis**

1. Since the prosecution of Bosco Ntaganda under the ICC demonstrated that universal jurisdiction, when applied effectively, can enhance accountability for conflict-related sexual violence, it is recommended that international courts and the ICC continue to develop and implement stronger mechanisms for enforcing universal jurisdiction. This includes improving cooperation between states, ensuring timely evidence collection, and providing resources to facilitate the prosecution of similar crimes, thereby promoting justice and deterring future atrocities.

2. Analyzing the proceedings and outcomes of Bosco Ntaganda's trial reveals the potential of international legal frameworks to deliver justice for victims of conflict-related sexual violence, indicating that similar cases can achieve effective accountability through robust international cooperation and evidence collection.

## **7. Objectives of the Study**

The present research has both general and specific objectives

### **7.1 General Objective**

To critically assess the effectiveness of universal jurisdiction and the ICC in prosecuting individuals accused of conflict-related sexual violence, using the case of Bosco Ntaganda as a primary focus.

### **7.2. Specific Objectives**

- To analyze the legal frameworks and procedures used by universal jurisdiction and the ICC in prosecuting cases of conflict-related sexual violence.
  
- To evaluate the outcomes of trials involving Bosco Ntaganda and their impact on accountability for conflict-related atrocities in the DRC.

- To identify challenges and potential areas for improvement in the application of universal jurisdiction and the ICC in addressing conflict-related sexual violence.

## **8. Research methodology**

The term “research methodology” refers to the various methods and techniques employed to conduct and complete any scientific or academic research. This dissertation cannot be realized without the use of appropriate methods and techniques, which guide the collection, analysis, and interpretation of data. In this research, a combination of documentary techniques, exegetic analysis, comparative study, and historical review is employed to examine the issues surrounding universal jurisdiction and the prosecution of Bosco Ntaganda for conflict-related sexual violence under the ICC’s jurisdiction.

### **8.1. Research techniques**

Documentary techniques are central to conducting this research. These techniques involve reviewing various types of documents, including case law, reports produced by different institutions, legal doctrines, and scholarly publications. Electronic resources, such as digital libraries and legal databases, are also utilized for accessing applicable laws, cases, and other relevant materials.

#### **8.1.1 documentary technique**

The documentary technique will help to conducting this research including documents, case laws, interpretation of reports produced by different institutions, doctrines.

### **8.2. Research methods**

Research methodology refers to the systematic and structured approaches used to analyze and interpret the information collected during a study. According to GRAWITIZ, methods can be understood as a series of intellectual procedures, rules, and operations that a researcher applies to achieve accurate results. This research employed various methods to ensure that the gathered data is thoroughly examined and interpreted, providing clear insights into the topic.

In this research, the following methods were applied:

### **8.2.1 Exegetic method**

This method is specifically used in the field of law of interpretation of different texts, international instruments related to the questions matter under the analysis

### **8.2.2. Comparative method**

This method consists to seek for differences and similarities existing between two situations. At the same time, one should interpret the meaning of the resemblances and dichotomies. Then, in this research, we will compare the laws even at the national and international level; we will also compare the different cases in relation with our thesis.

### **8.2.3. Analytic method**

This method consists in analyzing and commenting the written data and information collected in the different documents. We will analyze the different national and international texts and other sources.

### **8.2.4. Historic method**

This method interprets the past events or facts in order to better understand current events and foresee the future perspectives or events. For our concern, we will have a look at historical background of humanitarian law, armed conflicts and women's rights.

Those methods I've mentioned above will help to analyses and interpreting the information data I got from legal documents, reports, and scholarly articles related to conflict-related sexual violence, universal jurisdiction, and ICC proceedings.

## **9. Structure of study**

This study will have a general introduction covering the choice and relevance of the study, problem statement, research questions, hypotheses, research methodology, delimitation of the study, significance of the study, objectives, and structure of the study. This study will have the

general introduction which covers the choice and relevancy of study, problem statement, research question hypothesis, research methodology, structure of study. Chapter one will focus on concept and theoretical framework,chapter two critical analysis of effectiveness of universal jurisdictions of the ICC.Chapter three evaluations of the effectiveness of universal jurisdiction

## **CHAPTER 1: CONCEPTUAL AND THEORETICAL FRAMEWORK**

The International Criminal Court (commonly referred to as the ICC) is a permanent tribunal to prosecute individuals for genocide, crimes against humanity, war crimes, and the crime of aggression,' exercise jurisdiction over the crime of aggression) 20 It came into being on 1 July 2002 the date its founding treaty<sup>4</sup>, the Rome Statute of the International Criminal Court, came into force?' and it can prosecute only crimes committed on or after that date?? The Court's official seat is in The Hague, Netherlands, but its proceedings may take place anywhere. <sup>TM</sup>

This section concerns the analysis of some general considerations on the International Criminal Court. Thus, it consists of overflowing on the history of the ICC, and its administrative structure.

For that before delving into the ICC's historical background and administrative structure, it is important to first define key concepts that are essential to understanding the court's function. These concepts include:

### **I.1.1 Definition of key concepts**

#### **1.1.1 Concepts of International Criminal Law**

International criminal law (ICL) is built on several foundational concepts that guide its application and enforcement. These concepts are essential for understanding the ICC's role and jurisdiction:

- Universal Jurisdiction: This principle allows states or international organizations to claim criminal jurisdiction over an accused individual regardless of where the alleged crime was committed and irrespective of the accused's nationality. Universal jurisdiction is crucial for prosecuting serious international crimes that transcend national boundaries.

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<sup>4</sup> - United Nations Department of Public Information, The International Criminal Court, December 2002

- Crimes Against Humanity: This category of international crime encompasses widespread or systematic attacks against civilians, including acts such as murder, enslavement, torture, and rape. Crimes against humanity are among the core offenses prosecuted by the ICC.
- War Crimes: War crimes refer to serious breaches of international humanitarian law committed during armed conflict. These include willful killing, torture, and the taking of hostages, among other egregious acts. The ICC has the authority to prosecute individuals responsible for such crimes.
- Genocide: Genocide involves acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial, or religious group. The ICC is empowered to prosecute individuals accused of committing genocide.
- Command Responsibility: This doctrine holds military and civilian superiors accountable for crimes committed by their subordinates when they knew or should have known about the acts and failed to prevent or punish the perpetrators. Command responsibility is a key principle in international criminal law, ensuring that leaders cannot escape liability for the actions of those under their command.

#### **1.1.1.1 Definition of Key Terms**

- Universal Jurisdiction: The legal ability of a state or international body to prosecute individuals for serious crimes regardless of where the crime was committed or the nationality of the perpetrators or victims.
- Impunity: The failure to bring perpetrators of human rights violations to justice, often resulting in a lack of accountability and continued violations.
- International Justice: The pursuit of legal accountability for serious crimes that affect the international community, typically through mechanisms such as international courts and tribunals.
- Rome Statute: The treaty that established the International Criminal Court, outlining its jurisdiction, functions, and structure.

- ICC: The International Criminal Court, a permanent international tribunal established to prosecute individuals for the most serious offenses of international concern, including genocide, war crimes, and crimes against humanity.

### **1.1.1.2 Historical background, States parties and jurisdictions of the ICC**

In this sub-section, the researcher wants to shortly analyze the history of the ICC, its States parties and the jurisdiction of the ICC. We will first commence by the short history of the international Criminal Court, then after, other points will have also to be detailed.

### **1.1.1.3 Historical Background of the ICC**

The concept of an international tribunal to prosecute political leaders for war crimes was first proposed during the Paris Peace Conference in 1919 by the Commission on Responsibilities. The notion resurfaced at a conference in Geneva under the League of Nations from November 1-16, 1937<sup>5</sup>, which led to the drafting of the first convention aimed at establishing a permanent international court for acts of international terrorism. Although this convention was signed by 13 governments, it was never ratified and thus did not come into effect.<sup>6</sup>

In 1948<sup>7</sup>, the United Nations General Assembly acknowledged the necessity for a permanent international court to address atrocities similar to those committed during World War II, in the wake of the Nuremberg and Tokyo Trials. Following this recognition, the International Law Commission prepared two draft statutes by the early 1950s. However, these drafts were set aside<sup>8</sup> due to the political climate of the Cold War, which rendered the establishment of an international criminal court impractical.

Benjamin B. Ferencz, who investigated Nazi war crimes post-World War II and served as the Chief Prosecutor for the U.S. Army at the Einsatzgruppen Trial in Nuremberg, later emerged as a

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<sup>5</sup> Dempsey, J. "Reasonable Doubt: The Case against the Proposed International Criminal Court", Cato Institute, 1998, p. 16.

<sup>7</sup> United Nations General Assembly. (1948). Universal Declaration of Human Rights.

<sup>8</sup> Ferencz, B. B. (1975). Defining International Aggression: The Search for World Peace.

fervent proponent of an international rule of law and the creation of an International Criminal Court. In his 1975 book, "Defining International Aggression: The Search for World Peace," Ferencz advocated for the establishment of such a court.

The idea gained renewed momentum in 1989 when A. N. R. Robinson,<sup>9</sup> then Prime Minister of Trinidad and Tobago, proposed the creation of a permanent international court to combat the illegal drug trade. While work on a draft statute commenced, the international community also established ad hoc tribunals to address war crimes in the former Yugoslavia and Rwanda, starting in 1994.

#### **1.1.1.4 Conceptual Framework**

##### **1.1.1.4.1 Establishing Conceptual and Theoretical Foundation of Human Rights**

The conceptual foundation of human rights is deeply intertwined with the principles of international criminal law. The atrocities committed during World War II led to a global consensus on the need to protect fundamental human rights, culminating in the creation of the UDHR and subsequent international treaties. These instruments recognize the inherent dignity and equal rights of all members of the human family as the foundation of freedom, justice, and peace in the world. The theoretical foundation is further solidified by the notion that certain crimes are so heinous that they threaten the very fabric of international order, necessitating a legal framework that transcends national boundaries to ensure accountability and justice.

##### **1.1.4.2. Overview of ICC's Universal Jurisdiction**

Universal jurisdiction is a fundamental principle in international law that allows states, and in this case, the International Criminal Court (ICC), to prosecute individuals for certain serious crimes regardless of where they were committed or the nationality of the perpetrators. This principle is central to the ICC's mandate, enabling it to address the most heinous crimes, such as genocide, war crimes, crimes against humanity, and the crime of aggression.

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<sup>9</sup> A. N. R. Robinson's 1989 proposal for an international court to combat the drug trade.



The ICC's authority to exercise universal jurisdiction is enshrined in the Rome Statute, the treaty that established the Court in 2002.<sup>10</sup>

#### **I.1.1.5 Conceptual Foundation of International Criminal Law**

International criminal law (ICL) is founded on the principle that certain crimes are so egregious that they affect the international community as a whole<sup>11</sup>. This foundation is built on the idea that the gravest crimes—such as genocide, war crimes, crimes against humanity, and aggression—cannot go unpunished, irrespective of where they were committed or the nationality of the perpetrators. The concept of universal jurisdiction, which allows states or international bodies to prosecute individuals for these crimes regardless of where they occurred, is central to ICL. This principle aims to prevent impunity and ensure justice is served globally.

#### **I.1.1.6 Universal Declaration of Human Rights**

Adopted in 1948, the Universal Declaration of Human Rights (UDHR) serves as a foundational text for human rights worldwide<sup>12</sup>. Its principles underpin the framework of international criminal law. Articles such as Article 3 (the right to life, liberty, and security of person) and Article 5 (freedom from torture or cruel, inhuman, or degrading treatment or punishment) highlight the universal human rights that international criminal law seeks to protect. The UDHR's emphasis on universal rights supports the concept of universal jurisdiction by affirming that these rights are inherent to all individuals, regardless of their national or cultural context.

#### **I.1.1.7 United Nations Framework on International Criminal Justice**

The UN has played a pivotal role in establishing the foundations of international criminal justice. Key instruments include the Genocide Convention (1948),<sup>13</sup> the Geneva Conventions (1949), and their Additional Protocols, which provide the legal basis for prosecuting war crimes and

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<sup>10</sup> <https://www.icc-cpi.int/resource-library/Documents/RS-Eng.pdf>

<sup>11</sup> Cryer, Robert, et al. *An Introduction to International Criminal Law and Procedure*. Cambridge University Press, 2019.

<sup>12</sup> United Nations General Assembly. *Universal Declaration of Human Rights*, 1948

<sup>13</sup> United Nations. *Convention on the Prevention and Punishment of the Crime of Genocide*, 1948.

crimes against humanity. The creation of ad hoc tribunals, such as the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), as well as the establishment of the International Criminal Court (ICC) through the Rome Statute (1998), reflect the international community's commitment to combating impunity and upholding justice.

## **I.2 Theoretical Framework**

Theoretical frameworks provide the foundational structure that informs and guides legal research and analysis. In the context of international criminal law (ICL), understanding the theoretical underpinnings is crucial to comprehending the rationale behind its principles, its application, and the broader objectives of international justice.

### **I.2.1 Overview of the Main Theories**

International criminal law (ICL) is informed by several theoretical perspectives that guide its principles and application. These theories are essential for understanding the rationale behind international prosecutions and the functioning of institutions like the International Criminal Court (ICC).

#### **1. Retributive Justice**

Retributive justice focuses on punishment as a means of ensuring that perpetrators of serious crimes receive their just desserts. It seeks to provide a moral balance by making wrongdoers suffer consequences proportionate to their crimes.

This theory <sup>14</sup>is central to the prosecution of crimes such as genocide and crimes against humanity. The ICC, for example, aims to deliver justice by ensuring that those responsible for heinous crimes are held accountable.

Critics argue that retributive justice can sometimes prioritize punishment over rehabilitation and societal healing, potentially overlooking the broader needs of victims and communities.

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<sup>14</sup> Duff, R.A., "Punishment, Communication, and Community," Oxford University Press, 2001.

## **2. Restorative Justice**

Restorative justice emphasizes repairing the harm caused by criminal behavior through reconciliation with victims and affected communities. This approach prioritizes healing over punishment.

Restorative justice<sup>15</sup> is evident in practices such as victim participation in trials and truth and reconciliation commissions, which aim to address the wider impact of crimes and foster societal healing. Implementing restorative justice in the context of severe crimes can be challenging due to the scale of harm and the need for extensive reconciliation efforts.

## **3. Deterrence Theory**

Deterrence theory<sup>16</sup> posits that the threat of punishment can prevent individuals from committing crimes. It encompasses general deterrence (discouraging the general population) and specific deterrence (preventing reoffending by the convicted individual).

The ICC aims to deter future atrocities by demonstrating that perpetrators of serious crimes will face prosecution and punishment. High-profile cases serve as a warning to potential offenders.

The effectiveness of deterrence in international crimes is debated, as many perpetrators may not believe they will be apprehended or may be driven by ideologies that diminish the fear of punishment.

## **4. Expressive Theory**

Expressive theory<sup>17</sup> suggests that punishment serves to express societal condemnation of criminal behavior, reinforcing social norms and values. It emphasizes the symbolic function of law in communicating moral standards.

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<sup>15</sup> Braithwaite, John, "Restorative Justice and Responsive Regulation," Oxford University Press, 2002.

<sup>16</sup> Paternoster, Raymond, "How Much Do We Really Know about Criminal Deterrence?" Journal of Criminal Law and Criminology, 2010.

ICC trials and judgments serve to publicly denounce crimes and reaffirm international norms against atrocities, contributing to the global moral order.

While expressive justice highlights the importance of public denunciation, it may sometimes prioritize symbolic actions over practical outcomes for victims and affected communities.

## **5. Transitional Justice**

Transitional justice involves a range of processes and mechanisms designed to help societies address the legacies of large-scale human rights abuses as they move from conflict or authoritarian rule to peace and democracy. This approach is crucial for fostering reconciliation, ensuring accountability, and laying the foundation for a more just and stable society.

At its core, transitional justice combines the concepts of "transition" and "justice," reflecting the need for societies to navigate the difficult shift from periods of intense turmoil or repression towards a more legitimate and peaceful governance structure. The nature of this transition can vary significantly depending on the context. In some instances, crimes may have ceased long before the transition begins, as in the case of Spain after the Franco era. In other cases, like Timor-Leste, atrocities may persist up until the moment of transition. In yet more challenging scenarios, such as Uganda, human rights violations may continue even as the society attempts to stabilize.

To address these varying contexts, transitional justice relies on a comprehensive set of tools aimed at achieving justice in a holistic sense rather than merely through retribution. These tools include:

1. **Legal Proceedings:** These encompass both civil and criminal trials conducted at the national, foreign, international, or hybrid levels. Such trials are essential for holding individuals accountable for serious crimes, thereby upholding the rule of law and providing a formal mechanism for justice.

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<sup>17</sup> Feinberg, Joel, "The Expressive Function of Punishment," *The Monist*, 1965.

2. Truth Commissions: Truth-seeking initiatives, like truth commissions, play a crucial role in uncovering and documenting the full extent of past abuses. They help societies confront their histories, giving victims a voice and creating a collective understanding of the atrocities that were committed.

3. Reparations: Transitional justice also involves providing reparations to victims, which can be either monetary or symbolic. Reparations acknowledge the harm suffered by victims and contribute to the healing and reconciliation process, helping to rebuild trust within society.

4. Institutional Reforms: To prevent the recurrence of abuses, transitional justice advocates for reforms within key institutions, such as the judiciary, security forces, and government agencies. These reforms, including vetting programs, aim to create more accountable and transparent governance structures, essential for sustaining peace and democracy.

While amnesties<sup>18</sup> are not a formal part of transitional justice, they often intersect with its mechanisms. Amnesties, which erase the legal consequences of certain crimes, have been used in various post-conflict contexts to promote national reconciliation. However, their application is complex and context-dependent. In some cases, such as Chile under Pinochet, amnesties were used by outgoing regimes to protect themselves from prosecution. In other situations, like in South Africa after apartheid, amnesties were part of a broader strategy to deal with past atrocities while encouraging societal healing.

One of the key challenges in transitional justice is managing the tension between the need for legal accountability through trials and the goals of truth-seeking and reconciliation. The International Criminal Court (ICC) plays a vital role in this process by providing a formal mechanism for prosecuting serious crimes, thereby supporting the broader aims of transitional justice. However, the pursuit of criminal justice can sometimes conflict with truth-telling initiatives, particularly when trials are perceived as hindering the reconciliation process or disrupting fragile peace efforts.

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<sup>18</sup> Course Dr Kabano Jacque

## **1.2.2 Principles of International Criminal Justice**

The principles of international criminal justice provide foundational guidelines for prosecuting international crimes and ensuring fair and effective legal processes.

### **1. Accountability**

The principle that individuals who commit serious international crimes must be held accountable for their actions. The ICC and other international tribunals<sup>19</sup> aim to end impunity by prosecuting those responsible for genocide, war crimes, and crimes against humanity. Accountability promotes justice, deters future crimes, and ensures that victims receive recognition and redress.

### **2. Impartiality**

Justice must be administered without bias, ensuring fairness for all parties involved, including victims and the accused. The ICC's procedures are designed to be impartial, with judges and prosecutors selected based on their independence and integrity. Impartiality<sup>20</sup> enhances the legitimacy and credibility of the court, fostering trust in its proceedings and outcomes.

### **3. Rule of Law**

The principle that all actions, including those of the state and its agents, are governed by law<sup>21</sup>. The ICC operates within the framework of the Rome Statute, adhering to established legal norms and procedures to ensure consistency and fairness. Upholding the rule of law ensures that justice is predictable and not subject to arbitrary decisions, reinforcing the legal order.

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<sup>19</sup> Cassese, Antonio, "International Criminal Law," Oxford University Press, 2008.

<sup>20</sup> Ambos, Kai, "Treatise on International Criminal Law," Oxford University Press, 2013.

<sup>21</sup> Bassiouni, M. Cherif, "Introduction to International Criminal Law," Martinus Nijhoff Publishers, 2013.

### **I.2.3 Non-Discrimination**

Non-discrimination is a fundamental principle that ensures all individuals, regardless of their nationality, ethnicity, or status, are treated equally under the law.<sup>22</sup>

The ICC's mandate includes prosecuting crimes impartially, without discrimination based on the identity of the accused or victims. Ensuring non-discrimination is crucial for maintaining the legitimacy and fairness of international justice, promoting equality before the law.

Despite the principle of non-discrimination, political and practical realities can sometimes lead to perceptions of bias or selective justice.

### **I.2.4 Rights of the Accused**

The rights of the accused are fundamental to ensuring fair trials and maintaining the integrity of international criminal justice.

#### **1. Right to a Fair Trial**

The accused is entitled to a public trial conducted without undue delay by an impartial tribunal.

The ICC's procedures guarantee the right to a fair trial<sup>23</sup>, including the presumption of innocence and the right to present a defense.

Upholding the right to a fair trial protects against miscarriages of justice and ensures the legitimacy of the court's judgments.

**2. Right to Legal Representation** The accused has the right to legal counsel to assist in their defense<sup>24</sup>. The ICC provides for legal representation and, if necessary, legal aid to ensure that the

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<sup>22</sup> Schabas, William A., "The International Criminal Court: A Commentary on the Rome Statute," Oxford University Press, 2010.

<sup>23</sup> Ambos, Kai, "International Criminal Procedure: The Interface of Civil Law and Common Law Legal Systems," Oxford University Press, 2014.

<sup>24</sup> Dixon, Rodney, and Karim Khan, "Archbold: International Criminal Courts: Practice, Procedure, and Evidence," Sweet & Maxwell, 2003.

accused can mount an effective defense. Access to legal representation is essential for a fair trial and the proper administration of justice.

### **3. Right to be Presumed Innocent**

The accused is presumed innocent until proven guilty beyond a reasonable doubt<sup>25</sup>.

The ICC's legal framework ensures that the burden of proof rests on the prosecution, protecting the accused's presumption of innocence.

This right is fundamental to ensuring that justice is administered fairly and that individuals are not wrongfully convicted.

### **1.3 Historical Context of Universal Jurisdiction**

Universal jurisdiction has evolved significantly, driven by key historical events and developments in international law. This evolution has established the legal and moral foundations for prosecuting serious international crimes, regardless of where they occur or the nationality of the perpetrators or victims.

#### **1.3.1 Post-World War II Tribunals**

Modern international criminal law began to take shape at the end of World War II in 1945 and 1946, with the establishment of the International Military Tribunal for the Trial of German Major War Criminals (IMT or Nuremberg Tribunal) and the International Military Tribunal for the Far East (IMTFE or Tokyo Tribunal), respectively. The victorious Allied forces established these tribunals to prosecute high-level German and Japanese military and civilian authorities for the newly created charges of crimes against peace (violations of *jus ad bellum*), war crimes, and crimes against humanity (violations of *jus in bello* or the laws of war).

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<sup>25</sup> *Idem shabbas p28*



While the Nuremberg and Tokyo Trials have been criticized for legal injustices, such as punishing the accused for actions that were not explicitly legal crimes at the time of their commission, thus violating the prohibition against retroactive criminal prosecutions, they nevertheless established crucial precedents. These tribunals emphasized<sup>26</sup> individual accountability for international crimes, demonstrating the feasibility and importance of prosecuting such crimes and laying the groundwork for future international criminal justice mechanisms. The legacy of these trials significantly contributed to the development of modern universal jurisdiction, reinforcing the notion that individuals can and should be held accountable for gross violations of international law.

### **1.3.2. Ad Hoc Tribunals**

The ICTY and ICTR were created for the purpose of prosecuting persons responsible for serious violations of human rights committed in the former Yugoslavia and Rwanda, respectively<sup>27</sup>. ICTY and ICTR: Established by the UN to address atrocities in the former Yugoslavia and Rwanda, these tribunals reinforced the principle of universal jurisdiction by demonstrating the international community's commitment to prosecuting serious crimes.

These tribunals highlighted the need for permanent international judicial mechanisms, leading to the creation of the ICC.

### **1.3.3. Rome Statute of the ICC**

The Rome Statute, adopted in 1998, established the ICC and codified the principles of universal jurisdiction for the most serious international crimes.

The Rome Statute represents a milestone in international law<sup>28</sup>, providing a permanent framework for prosecuting individuals who commit grave crimes that concern the international community.

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<sup>26</sup> Taylor, Telford, "The Anatomy of the Nuremberg Trials," Knopf, 1992.

<sup>27</sup> Schabas, William A., "The UN International Criminal Tribunals," Cambridge University Press, 2006.

<sup>28</sup> Lee, Roy S. (ed.), "The International Criminal Court: The Making of the Rome Statute," Kluwer Law International, 1999.

## **I.4 Legal Framework of the ICC**

The International Criminal Court (ICC) is governed by a comprehensive legal framework established by the Rome Statute, which outlines its jurisdiction, principles of complementarity, and institutional structure.

### **I.4.1 Jurisdiction of ICC**

The ICC's jurisdiction is multifaceted, covering specific types of crimes, timeframes, and individuals:

#### **1.4.4.2 Subject Matter Jurisdiction:**

##### **1. Genocide**

As defined in Article 6 of the statute,<sup>29</sup> genocide refers to actions committed with the intent to partially or entirely eliminate a national, ethnic, racial, or religious group. These actions include:

- Killing members of the group;
- Inflicting serious physical or mental harm on members of the group;
- Deliberately creating conditions intended to cause the group's physical destruction, either in whole or in part;
- Implementing measures to prevent births within the group;
- Forcibly transferring children from the group to another group.

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<sup>29</sup> ICC statute, supra note 1, Art 6

## 2. Crimes Against Humanity

Crimes against humanity, according article 7 to the statute<sup>30</sup>, encompass acts committed as part of a broad or systematic attack directed at a civilian population, with the perpetrator aware of the attack. These acts include:

- Murder;
- Extermination;
- Enslavement;
- Deportation or forcible transfer of populations;
- Torture;
- Rape, sexual slavery, enforced prostitution, forced pregnancy, or other forms of sexual violence of equal severity;
- The crime of apartheid;
- Persecution against any identifiable group.

## 3. War crimes

The distinguishing element of war crimes is that the prohibited acts must be committed during an “**armed conflict**.” The term armed conflict does not include “situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.” For the purpose of this statute, "war crimes" means: grave breaches of the Geneva conventions of 1212 August 1949, namely, any of the following acts against **persons or property protected** under the provisions of the relevant Geneva Convention:<sup>31</sup>

- (i) Wilful killing;

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<sup>30</sup> ICC statute, supra note 1, Art 7

<sup>31</sup> United Nations, "Rome Statute of the International Criminal Court," 1998.

- (ii) Torture or inhuman treatment, including biological experiments;
- (iii) Wilfully causing great suffering, or serious injury to body or health;
- (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
- (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
- (vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
- (vii) Unlawful deportation or transfer or unlawful confinement;
- (viii) Taking of hostages.

#### **4. Aggression**

When the Rome Statute was established in 1998, the State Parties were unable to reach a consensus on defining the crime of aggression. As a result, Article 5(2) of the Rome Statute stipulated that the ICC could not exercise jurisdiction over the crime of aggression until a definition and the conditions for exercising jurisdiction were adopted.

During the First Review Conference of the International Criminal Court, which took place in Kampala on 11 June 2010, the definition of the crime of aggression was agreed upon through Resolution RC/Res.6.<sup>32</sup> Broadly speaking, the definition of the crime of aggression adopted at Kampala involves the unlawful and unjustified use of force by one state against the territory of another state. According to Article 8bis(1), the crime of aggression encompasses:

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<sup>32</sup> Resolution RC/Res.6, adopted at the Review Conference of the Rome Statute, Kampala, 11 June 2010.

“the planning, preparation, initiation or execution...of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.”

Article 8bis(2) outlines the specific acts considered as aggression, regardless of whether a declaration of war is made:

(a) The invasion or attack by a state's armed forces on the territory of another state, including any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of another state's territory or part thereof;

(b) Bombardment by a state's armed forces 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 one 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 receiving state's agreement, in violation of the conditions outlined in the agreement or any extension of their presence in such territory beyond the termination of the agreement;

(f) A state allowing its territory, which it has made available to another state, to be used by that 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, who carry out acts of armed force against another state of such gravity as to amount to the acts listed above, or the state's substantial involvement therein.

#### **1.4.4.3 Jurisdictions Ratione Loci (Territorial Jurisdiction)**

The International Criminal Court (ICC), unlike individual states, does not have universal jurisdiction to prosecute crimes under its *ratione materiae* jurisdiction. Instead, the ICC's

territorial jurisdiction is limited to crimes committed within the borders of a State Party or a state that has accepted the Court's jurisdiction on an ad hoc basis. This principle is clearly articulated in Article <sup>33</sup>12(2)(a) of the Rome Statute, which grants the Court jurisdiction over crimes committed on the territory of States that are parties to the Statute or have otherwise consented to its jurisdiction, including areas designated by the UN Security Council.

The concept of territorial jurisdiction extends beyond the physical land of a State<sup>34</sup>. It also includes crimes committed on vessels or aircraft registered in the State Party, a widely accepted extension in international criminal law. Additionally, territorial jurisdiction logically covers the airspace above a State, its territorial waters, and potentially its exclusive economic zone, though the exact scope of these areas remains to be fully defined.

Historically, there is some precedent for this approach, such as in the 1948 Genocide Convention, where Article VI anticipates the possibility of an international criminal court having jurisdiction over crimes committed within a State Party's territory. However, there are territories beyond the ICC's reach, such as the high seas, Antarctica, and outer space. In such cases, jurisdiction would need to be established based on the nationality of the offender.

In many national legal systems, territorial jurisdiction is also understood to include crimes that have effects within the State's territory, even if the criminal conduct itself occurred outside of it. For instance, the ICC might assert jurisdiction over a conspiracy to commit genocide if the conspiracy has significant impacts within the territory of a State Party, even if the plan was devised elsewhere. Similarly, an order to commit war crimes issued outside a State's territory could fall within the ICC's jurisdiction if its effects are felt within the territory of a State Party.

#### **1.4.4.4 Jurisdiction Based on Nationality**

Beyond territorial jurisdiction, the ICC can exercise jurisdiction if the accused is a national of a State Party.

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<sup>33</sup>Articles 12 & 13 of the Rome Statute

<sup>34</sup>E., WILMSHURST, "Jurisdiction of the Court", *The International Criminal Court: The Making of the Rome Statute*, In Roy S Lee (ed.), The Hague: Kluwer Law International, 1999, p. 136.

#### **1.4.4.5 Jurisdiction Based on a Referral by the Security Council**

The ICC can also assert jurisdiction if the United Nations Security Council, acting under Chapter VII of the UN Charter, refers a case to the Prosecutor.

#### **1.4.4.6 Jurisdiction Based on a State's Acceptance of ICC Jurisdiction Over a Situation**

The ICC may exercise jurisdiction over an international crime if a non-State Party accepts its jurisdiction over a particular situation on an ad hoc basis. Under Article 12(3) of the Rome Statute<sup>35</sup>, the ICC can exercise jurisdiction over crimes committed in a non-State Party's territory if that State voluntarily accepts the Court's jurisdiction on an ad hoc basis. This allows a non-State Party to submit a formal declaration granting the ICC authority to investigate and prosecute specific crimes within a defined situation, even though the State has not ratified the Rome Statute. This provision enables the ICC to pursue justice in cases where serious international crimes occur, and the State involved recognizes the need for international intervention, thereby extending the Court's reach beyond its member States.

#### **1.4.4.7 Jurisdiction Ratione Temporis**

The ICC's jurisdiction is limited not only to the most serious crimes of international concern but also temporally to crimes committed after the Rome Statute came into force on July 1, 2002. Therefore, the ICC<sup>36</sup> is not intended to address historical crimes, which should be managed by national courts or other international or hybrid mechanisms.

For states that join the Rome Statute after July 1, 2002, the ICC's jurisdiction only covers crimes committed after the Statute's entry into force for that specific state. This entry into force date is the first day of the month after the 60th day following the deposit of the state's instrument of ratification, acceptance, approval, or accession. For instance, Colombia ratified the Rome Statute in August 2002, so the Statute entered into force for Colombia on November 1, 2002. Thus, the ICC cannot prosecute crimes in Colombia committed between July 1 and November 1, 2002, based on Colombian ratification.

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<sup>35</sup> Rome Statute, *supra* note 1, Art. 12(3)

<sup>36</sup> Schabas, William A. *An Introduction to the International Criminal Court*. Cambridge University Press, 2017.

#### 1.4.4.8 Jurisdiction Ratione Personae

The International Criminal Court (ICC) exercises *ratione personae* jurisdiction, which allows it to prosecute individuals based on their nationality. Under Article 12(2)(b) of the Rome Statute, the ICC has jurisdiction over nationals of State Parties accused of committing crimes within its jurisdiction. Additionally, the ICC can prosecute nationals of non-party States if those States accept the Court's jurisdiction on an *ad hoc* basis through a declaration or if the Security Council refers the situation to the Court. Establishing jurisdiction based on the nationality of the offender is one of the least contentious forms of jurisdiction and was considered the minimum standard by some States during the Rome<sup>37</sup> Conference. There may be instances where the Court needs to assess the concept of nationality. In line with general principles of public international law, the ICC should examine whether an individual's connection to a State is genuine and substantial, rather than relying solely on formal or potentially fraudulent grants of citizenship.

Furthermore, the Rome Statute, reflecting provisions from the Nuremberg Charter and the 1948 Genocide Convention, establishes that any rules under national or international law that grant immunities or protect individuals from criminal prosecution are ineffective before the ICC. Traditionally, immunities have been granted in two main forms: first, some States provide immunity to their heads of State or other government officials through constitutional or legislative measures; second, under customary international law and international treaties, sitting heads of State, foreign ministers, and diplomats are generally immune from prosecution by the courts of other States.

However, such immunities do not apply before international tribunals like the ICC. This was affirmed in the 2002 ruling of the International Court of Justice in the Arrest Warrant case, which recognized that an incumbent or former foreign minister would not enjoy immunity before the ICC where it has jurisdiction. Moreover, the ICC's jurisdiction is limited to individuals who were at least 18 years old at the time the alleged crime was committed.

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<sup>37</sup> *Ibid*



This restriction is in line with the Court's mandate to prosecute the most serious crimes of concern to the international community, ensuring that only those legally recognized as adults are held accountable under its authority.

#### **1.4.4.9 Jurisdiction Ratione Materiae**

The ICC has jurisdiction over four main categories of crimes: genocide, crimes against humanity, war crimes, and the crime of aggression. Additionally, the ICC covers certain "inchoate offences," such as incitement and attempts to commit these crimes.

### **1.5 Complementarity**

The principle of complementarity ensures that the ICC acts as a court of last resort, intervening only when national jurisdictions are unwilling or unable to prosecute serious international crimes:<sup>38</sup> meaning that its jurisdiction is secondary to that of national criminal jurisdictions. States hold the primary responsibility for prosecuting international crimes, and the ICC steps in only when a State is "unwilling" or "unable" to genuinely investigate or prosecute a case. Consequently, the ICC does not have jurisdiction over a case if it is already being investigated or prosecuted by a State with jurisdiction.

When a State challenges the admissibility of a case, it must present the Court with specific and probative evidence demonstrating that an active investigation is indeed underway. Simply claiming that investigations are ongoing is insufficient. The phrase "is being investigated" in this context refers to concrete actions taken to determine whether the accused is responsible for the alleged criminal conduct. Such actions may include interviewing witnesses or suspects, gathering documentary evidence, or conducting forensic analyses.

- National Primacy: States have the primary responsibility to investigate and prosecute international crimes.

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<sup>38</sup> Pdf' Dr kabano jacque

- ICC Intervention: The ICC steps in only when national legal systems fail to take genuine action against perpetrators, ensuring accountability and justice. This principle respects state sovereignty while ensuring that the most serious crimes do not go unpunished.

## **I. Structure of ICC**

The ICC's organizational structure ensures the effective functioning of its judicial processes:<sup>39</sup>

### **1. Presidency:**

The Presidency is comprised of the President and two Vice-Presidents. The Presidency is responsible for the overall administration of the court and represents the ICC in its external relations. They are elected from among the 18 judges of the ICC. The Presidency is responsible for the proper administration of the Court, except for the Office of the Prosecutor. However, it coordinates with and seeks the agreement of the Prosecutor on all matters of mutual concern. The responsibilities of the Presidency also include judicial functions and external relations.

### **2. The Divisions**

Eighteen judges make up the three Divisions of the Court: Pre-Trial, Trial and Appeals. Recognised for their high moral character and integrity, they are chosen from candidates from throughout the world by the Assembly of States Parties, on the basis of their competence in criminal law and procedure or relevant areas of international law, such as international humanitarian law and human rights. The judges are responsible for ensuring that the trials are fair and that justice is properly administered.

Judicial Divisions:

- Pre-Trial Division: Handles initial judicial proceedings, including issuing arrest warrants and confirming charges.

- Trial Division: Conducts trials and renders judgments.

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<sup>39</sup> <https://www.icc-cpi.int/sites/default/files/iccdocs/PIDS/docs/ICCAAtAGlanceEng.pdf> Accessed on 05/09/2024

- Appeals Division:Handles appeals against decisions made by the Pre-Trial and Trial Divisions.

### **3. Office of the Prosecutor:**

The Office of the Prosecutor is headed by the Prosecutor, who is assisted by a Deputy Prosecutor. Both are elected by the Assembly of States Parties. The mandate of the Office is to receive and

analyse referrals and communications in order to determine whether there is a reasonable basis to investigate, to conduct investigations into genocide, crimes against humanity and war crimes and to prosecute persons responsible for such crimes. This office is responsible for conducting investigations and prosecutions. The Prosecutor operates independently from other organs of the court

### **4. Registry:**

The Registry provides administrative and operational support to the ICC, including managing witness protection, detention, and courtroom logistics. The Registry is a neutral ICC organ headed by the Registrar. Its core functions are to provide administrative and operational support to the judiciary and to the Office of the Prosecutor. It helps to service the Court and to develop effective mechanisms to protect witnesses, assist the defence teams, as well as conducting outreach activities. The Registry is also responsible for general court management, security, public information, court records, translation and interpretation, counsel support, support for victims to participate in proceedings and apply for reparations, and much more.

## **CHAPTER II: CRITICAL ANALYSIS OF THE EFFECTIVENESS OF UNIVERSAL JURISDICTION OF THE ICC: THE CASE OF BOSCO NTAGANDA**

### **II.1 Introduction**

This chapter critically examines the effectiveness of the International Criminal Court (ICC) in delivering justice in the case of Bosco Ntaganda, particularly within the framework of universal jurisdiction. The analysis focuses on the court's ability to uphold justice, fairness, and accountability throughout the proceedings, and whether these processes provided an effective mechanism for victims to obtain justice. Challenges encountered during the trial, such as procedural delays, the complexity of the case, and issues related to international cooperation, will be highlighted, drawing on relevant legislation and case law.

### **II.2 Background of the Bosco Ntaganda Case**

The case of Bosco Ntaganda is emblematic of the complexities involved in prosecuting individuals for serious international crimes under the jurisdiction of the International Criminal Court (ICC). To fully grasp the significance of this case, it is crucial to understand the historical context in which Ntaganda's actions took place, as well as the broader conflict that plagued the northeastern region of the Democratic Republic of Congo (DRC). This section will delve into the background of the conflict in the Ituri region, the rise of Ntaganda as a key military leader, and the atrocities for which he was eventually held accountable.

#### **II.2.1 Historical Context**

The conflict in the Ituri region, located in northeastern DRC, was marked by intense violence and widespread human rights violations. Between 2002 and 2003, ethnic tensions<sup>40</sup> between the Hema and Lendu communities escalated into a brutal war, fueled by both historical grievances and competition for control over the region's abundant natural resources, including gold and diamonds.

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<sup>40</sup> <https://www.hrw.org/reports/2003/ituri0703/> Accessed on 04/09/2024

This period saw the rise of various armed groups, each vying for dominance, often at the expense of the civilian population. Among these groups was the Union des Patriotes Congolais (UPC) and its military wing, the Forces Patriotiques pour la Libération du Congo (FPLC), which played a significant role in the conflict.

Bosco Ntaganda, who later became a key figure in the UPC/FPLC, held the position of Deputy Chief of the General Staff and was responsible for military operations. His leadership was characterized by the perpetration of numerous atrocities, including murder, rape, and the conscription of child soldiers. These actions were part of a broader strategy by the UPC/FPLC to consolidate power in Ituri through the systematic targeting of civilians perceived as supporting rival factions. As a senior commander in the Union of Congolese Patriots (UPC) and later the Patriotic Forces for the Liberation of Congo (FPLC), Ntaganda was implicated in numerous war crimes and crimes against humanity, including murder, rape, sexual slavery, and the recruitment of child soldiers. His actions contributed to widespread atrocities that devastated the civilian population in the region.

## **II.2.2 The Referral of the Situation to the ICC**

On 3 March 2004, in response to the ongoing violence in the DRC, the Congolese government referred the situation in its territory to the International Criminal Court (ICC). This referral, under Article 14 of the Rome Statute,<sup>41</sup> marked the beginning of the ICC's involvement in investigating and prosecuting crimes committed in Ituri since the entry into force of the Rome Statute on 1 July 2002.

Following a preliminary examination, the ICC Prosecutor initiated a formal investigation on 21 June 2004<sup>42</sup>. The investigation focused on the most serious crimes under the court's jurisdiction, including those allegedly committed by Ntaganda and other leaders of armed groups involved in the Ituri conflict. The ICC's intervention aimed to hold accountable those most responsible for the atrocities and to deliver justice to the victims of the conflict.

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<sup>41</sup> Rome Statute of the International Criminal Court, Article 14

<sup>42</sup> United Nations Security Council, Report of the Secretary-General on the Situation in Ituri, Democratic Republic of Congo, S/2004/573.

### **II.2.3 Arrest Warrants and the Surrender of Bosco Ntaganda**

Bosco Ntaganda's involvement in the Ituri conflict led to the issuance of two arrest warrants by the ICC. The first warrant was issued under seal on 22 August 2006, and later unsealed on 28 April 2008.<sup>43</sup> This warrant charged Ntaganda with war crimes and crimes against humanity, including murder, rape, and the conscription of child soldiers. Despite the warrant, Ntaganda remained at large for several years, continuing his involvement in armed activities in the DRC.

On 13 July 2012,<sup>44</sup> the ICC issued a second arrest warrant against Ntaganda, expanding the charges to include additional crimes such as sexual slavery and persecution. In a surprising turn of events, Ntaganda voluntarily surrendered to the ICC on 22 March 2013. His surrender marked a significant moment in international justice, as it allowed the ICC to proceed with prosecuting one of the most notorious figures involved in the Ituri conflict.

### **II.2.4 The Confirmation of Charges and the Commencement of the Trial**

The confirmation of charges hearing for Bosco Ntaganda was held from 10 to 14 February 2014. During this hearing, the ICC presented extensive evidence, totaling approximately 69,000 pages, to support the charges against Ntaganda. On 9 June 2014, the Pre-Trial Chamber confirmed the charges, including 13 counts of war crimes and 5 counts of crimes against humanity. These charges were based on Ntaganda's direct and indirect participation in the crimes committed by the UPC/FPLC in Ituri.

The trial of Bosco Ntaganda began on 2 September 2015. Over the course of 248 hearings, the Trial Chamber heard testimonies from 80 witnesses and experts called by the prosecution, 19 witnesses called by the defense, and three witnesses called by the legal representatives of the victims. Additionally, five victims presented their views and concerns directly to the court. The trial was a complex and lengthy process, involving the submission of 1,791 items of evidence and over 2,300 filings from the parties and participants.

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<sup>43</sup> <https://www.icc-cpi.int/drc/ntaganda> Accessed on 12/09/2024

<sup>44</sup> International Criminal Court Press Release, "ICC issues second warrant of arrest for Bosco Ntaganda," ICC-CPI-20120713-PR828, 13 July 2012.

#### **II.2.4.5 ICC Involvement and Charges Against Ntaganda**

The ICC's involvement in the DRC began after the country ratified the Rome Statute on April 11, 2002. The DRC government referred the situation in its territory to the ICC on March 3, 2004, which led to the Court opening an investigation into crimes committed in the Ituri region. Bosco Ntaganda became one of the prominent figures targeted by this investigation due to his leadership role in the UPC/FPLC.

Ntaganda faced 18 charges at the ICC, consisting of 13 counts of war crimes (murder and attempted murder; attacking civilians; rape; sexual slavery of civilians; pillaging; displacement of civilians; attacking protected objects; destroying the enemy's property; and rape, sexual slavery, enlistment and conscription of child soldiers under the age of fifteen years and using them to participate actively in hostilities) and 5 counts of crimes against humanity (murder and attempted murder; rape; sexual slavery; persecution; forcible transfer of population), committed during the conflict in Ituri between 2002 and 2003. These charges reflect the extensive and systematic nature of the atrocities he allegedly committed or orchestrated.

### **II.3 Legal Framework Governing the Case**

The legal framework governing the prosecution of Bosco Ntaganda is deeply rooted in international criminal law, primarily shaped by the Rome Statute, which established the International Criminal Court (ICC). This section examines the legal instruments and precedents that provided the basis for the ICC's jurisdiction over Ntaganda's case and guided the prosecution throughout the proceedings. Specifically, it will explore the Rome Statute's provisions regarding war crimes, crimes against humanity, and universal jurisdiction, as well as key legal precedents that influenced the handling of Ntaganda's charges.

#### **II.3.1 Rome Statute and ICC Jurisdiction**

The prosecution of Bosco Ntaganda is firmly rooted in the legal framework established by the Rome Statute, the foundational treaty of the International Criminal Court (ICC). The Rome Statute, adopted on July 17, 1998, and entering into force on July 1, 2002, codifies the principles of international criminal justice, providing the ICC with jurisdiction over the gravest crimes of

concern to the international community. These include genocide, war crimes, crimes against humanity, and the crime of aggression.

The principle of universal jurisdiction, as embedded within the Rome Statute, is a crucial element that allows the ICC to pursue individuals like Ntaganda, regardless of where their crimes were committed or their nationality. This principle ensures that perpetrators of international crimes cannot escape justice simply by fleeing to a country that is not directly affected by their actions. In the case of Ntaganda, the ICC's jurisdiction was activated following a referral by the government of the Democratic Republic of Congo (DRC) in 2004,<sup>45</sup> which requested the Court's intervention in investigating and prosecuting crimes committed on its territory.

Under the Rome Statute, the ICC's jurisdiction is complementary to national jurisdictions, meaning<sup>46</sup> that the Court can only prosecute when national systems are unwilling or unable to do so. The DRC's referral, combined with the gravity of the crimes Ntaganda was accused of, provided the necessary legal basis for the ICC to assert its jurisdiction and proceed with the case. This framework allowed the ICC to bring charges against Ntaganda, addressing the atrocities committed during the Ituri conflict and ensuring that those responsible were held accountable.

### **II.3.2 Key Legal Precedents**

The legal strategy and arguments presented in the Ntaganda case were significantly informed by precedents established in earlier ICC cases, particularly the prosecution of Thomas Lubanga Dyilo, another prominent Congolese warlord. Lubanga, who was the first person ever convicted by the ICC, faced charges that were similar in nature to those against Ntaganda, especially concerning the recruitment and use of child soldiers in the DRC.

The Lubanga case set critical legal standards, especially in the interpretation and application of international law concerning the conscription, enlistment, and use of children under the age of 15 in armed conflict. The ICC's judgment in Lubanga established a clear legal precedent that such acts constitute war crimes, regardless of the context or rationale provided by the accused.

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<sup>45</sup> <https://www.icc-cpi.int/drc> Accessed on 04/09/2024



This precedent was directly applicable to Ntaganda's case, as he was charged with similar offenses, including the recruitment and use of child soldiers.

In addition to the Lubanga case, the ICC has developed a body of jurisprudence through other landmark cases that shaped the prosecution's approach in Ntaganda's trial. For example, the principles regarding the responsibility of military commanders for crimes committed by their subordinates, as articulated in the case of Jean-Pierre Bemba, were relevant in establishing Ntaganda's liability as both a direct and indirect perpetrator of the crimes. The Court's findings in these earlier cases provided a robust legal framework, guiding the prosecution in presenting evidence and arguments that would support the charges against Ntaganda.

#### **II.4 Analysis of the ICC's Effectiveness in the Ntaganda Case**

The prosecution of Bosco Ntaganda by the International Criminal Court (ICC) provides a valuable case study for assessing the effectiveness of the Court in addressing crimes of such magnitude. This section delves into key aspects of the ICC's performance in the Ntaganda case, including the conduct of the trial, the protection of the accused's rights, the delivery of justice for the victims, and the challenges encountered throughout the process.

##### **II.4.1 Conduct of the Trial**

The trial of Bosco Ntaganda at the ICC was extensive and meticulously conducted over several years. The trial opened on September 2, 2015, after the confirmation of charges hearing held in February 2014. It included 248 hearings where the court heard testimonies from 80 witnesses and experts called by the Office of the Prosecutor, 19 witnesses by the defense, and three witnesses called by the legal representatives of the victims. Additionally, five victims presented their views and concerns. The court issued a total of 347 written and 257 oral decisions during the trial phase, and 1,791 items were admitted into evidence. Despite the thoroughness of the proceedings, the trial's length, with closing statements heard in August 2018 and the final judgment rendered on July 8, 2019, raised concerns about the efficiency of the ICC's process. The prolonged duration, while necessary to ensure a comprehensive examination of the evidence, delayed justice for the victims and underscored the challenges of managing complex international criminal cases within a reasonable timeframe.

## **II.4.2 Rights of the Accused**

Throughout the trial, Bosco Ntaganda's rights were rigorously upheld, in line with international legal standards. Ntaganda, who voluntarily surrendered to the ICC on March 22, 2013, was provided with legal representation and had a fair and public trial. His defense team, led by Stéphane Bourgon, was actively involved in the proceedings, calling 19 witnesses and engaging in extensive legal arguments. The presumption of innocence was maintained until Ntaganda was found guilty beyond reasonable doubt on 18 counts of war crimes and crimes against humanity. The ICC's adherence to these principles reinforces its commitment to ensuring that even those accused of the most serious crimes are treated with fairness and dignity throughout the judicial process.

## **II.4.3 Justice for Victims**

The trial of Bosco Ntaganda was a significant step toward delivering justice for the victims of the Ituri conflict. A total of 2,129 victims were represented during the trial, with legal counsel ensuring that their voices were heard throughout the proceedings. The ICC's judgment on July 8, 2019, found Ntaganda guilty of multiple serious crimes, including murder, rape, sexual slavery, and the conscription of child soldiers. On November 7, 2019, he was sentenced to 30 years of imprisonment, the longest sentence handed down by the ICC at the time. Additionally, on March 8, 2021, the court issued a reparations order, holding Ntaganda liable for USD 30 million in reparations to the victims. This order underscored the ICC's commitment to recognizing and addressing the harm suffered by the victims. However, implementing these reparations remains challenging,<sup>47</sup> particularly given Ntaganda's indigence and the need for the Trust Fund for Victims to complement the awards through additional fundraising efforts.

## **II.4.4 Challenges in Delivering Justice:**

Despite the successful prosecution, several challenges were evident in the Ntaganda case. The complexity of the charges, involving crimes committed in a conflict zone, required extensive evidence collection and witness protection measures, contributing to the trial's lengthy duration.

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<sup>47</sup> PDF ICC-01/04-02/06-2858-Red 14-07-2023 1/156 SL

Additionally, the ICC faced difficulties in securing full cooperation from national authorities, which is critical for the success of international prosecutions. These challenges highlight the need for procedural reforms within the ICC to enhance the efficiency of trials while ensuring that justice is delivered in a timely manner.

## **II.5 Challenges Encountered in Delivering Justice**

The prosecution of Bosco Ntaganda by the ICC was not without significant obstacles, reflecting broader issues in the administration of international justice. This section explores the key challenges faced during the trial, including the complexity and scope of the case, the reliance on national authorities for cooperation, and the prolonged duration of the proceedings.

### **II.5.1 Complexity and Scope of the Ntaganda Case**

The prosecution of Bosco Ntaganda presented significant challenges due to the multifaceted nature of the charges and the extensive geographical and temporal scope of the alleged crimes. The case involved 18 counts of war crimes and crimes against humanity, necessitating the collection and presentation of a vast array of evidence, including testimonies from witnesses<sup>48</sup> in conflict zones and the review of thousands of documents. These factors not only extended the duration of the trial but also highlighted the intricate legal and logistical challenges the ICC faces when prosecuting high-profile cases. The complexity was further compounded by the need to balance thoroughness in evidence collection with the protection of witnesses, many of whom were at risk due to the volatile environment in the Democratic Republic of the Congo (DRC).

### **II.5.2 Cooperation and Support from National Authorities**

The success of the ICC in prosecuting Ntaganda was heavily dependent on the level of cooperation<sup>49</sup> from national authorities, particularly those in the DRC. While the DRC had previously referred the situation in the country to the ICC, the actual transfer of Ntaganda to The Hague was facilitated by his voluntary surrender rather than direct action by the DRC

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<sup>48</sup> <https://www.ijmonitor.org> Accessed on 05/09/2024

<sup>49</sup> <https://www.icc-cpi.int/about/cooperation> Accessed on 11/09/2024

government. On March 18, 2013, Ntaganda unexpectedly walked into the U.S. Embassy in Kigali, Rwanda, and requested to be transferred to the ICC. His surrender likely resulted from internal military pressures and threats within the region.

Following his surrender, the U.S. government, in coordination with the ICC and relevant authorities, arranged his transfer to The Hague to face charges of war crimes and crimes against humanity. Although the DRC was supportive of his prosecution, the uneven cooperation from national authorities during the trial posed challenges, particularly in securing consistent evidence, ensuring the safety and availability of witnesses, and accessing crime scenes. This reliance on state cooperation not only hindered the efficiency of the proceedings but also underscored the broader issue of the ICC's dependence on state parties to fulfill its mandate. This dependence complicates the court's ability to operate independently and can undermine its effectiveness in delivering justice.

### **II.5.3 Prolonged Duration of Proceedings**

The extended duration of the Ntaganda trial, which spanned several years, raised important concerns regarding the ICC's ability to deliver timely justice. Although the complexity of the case and the need for meticulous legal procedures justified some of the delays, the prolonged proceedings had significant implications. For the victims, many of whom were eager for a resolution, the lengthy trial period was a source of frustration and uncertainty. For the accused, the delay posed questions about the right to a fair and speedy trial, a fundamental principle in international law. The drawn-out process underscored the need for procedural reforms within the ICC to balance the thoroughness required in such cases with the imperative of delivering justice without undue delay. Addressing this challenge is crucial for maintaining the credibility and effectiveness of the ICC in the international justice system.

## **II.6 Case Law Analysis and Legislative Implications**

### **II.6.1 Precedent created by the Ntaganda case**

The prosecution of Bosco Ntaganda by the International Criminal Court (ICC) constitutes an important step in the evolution of international criminal jurisprudence. Ntaganda, a former

Congolese warlord, was convicted of multiple war crimes and crimes against humanity, including murder, rape, sexual slavery, and the conscription and use of child soldiers. The case not only underscored the ICC's commitment to holding perpetrators of the most heinous crimes accountable, but also set critical legal precedents that will shape future prosecutions under international law.

One of the most significant aspects of the Ntaganda affair is its contribution to jurisprudence on sexual violence and the use of child soldiers. The ICC's decision in this case reinforced the recognition of sexual violence as a weapon of war and a crime against humanity. The Court's detailed findings on the systematic nature of these crimes provided a clear legal framework for understanding sexual violence within the broader context of international humanitarian law. This precedent is crucial because it establishes that commanders who exercise effective control over their forces can be held criminally responsible for the actions of their subordinates, even if they did not directly participate in or order those specific crimes.

In addition to advancing the legal understanding of sexual violence, the Ntaganda case also solidified the ICC's position on the recruitment and use of child soldiers. The conviction on these charges reaffirmed the international community's zero-tolerance approach to the exploitation of children in armed conflict. This case demonstrated that the recruitment, conscription and use of children under the age of 15 in hostilities constitute serious violations of international law and that commanders who commit or condone such acts will be held accountable. This aspect of the ruling serves as a powerful deterrent against the use of child soldiers and sets a clear legal precedent for future cases.

The legal standards established in the Ntaganda case are likely to influence prosecutions for similar crimes in the future. As the ICC continues to evolve, the precedents set in this case will serve as essential reference points for the interpretation and application of international criminal law. The Court's rulings on issues such as command responsibility, the scope of sexual violence as a war crime, and the protection of children in conflict zones will inform both prosecutorial and defense strategies in the cases. future, ensuring that the principles of justice and accountability remain respected. at the forefront of international criminal procedures.

## **II.6.2 Legislative implications for future cases**

While the Ntaganda case was a significant victory for international justice, it also revealed several challenges that the ICC must address to improve its effectiveness in future cases. One of the most pressing issues highlighted by this case is the length of the proceedings. The Ntaganda trial spanned several years, from the issuance of the arrest warrant in 2006 until the final judgment in 2019. This prolonged delay raises concerns about the effectiveness of the ICC's judicial processes and the capacity of the Court to provide timely justice to victims. The protracted nature of the Ntaganda trial highlights the need for procedural reforms within the ICC. To address this issue, the court should consider streamlining its processes to reduce delays while ensuring thorough and fair trials. This could involve implementing stricter deadlines for different stages of the trial, improving case management practices and strengthening coordination between the prosecution, defense and judiciary. Additionally, the ICC could explore the use of technology to speed up certain aspects of the trial process, such as the review of evidence and testimony. These reforms would help ensure that justice is delivered more quickly, thereby increasing the credibility and effectiveness of the Court.

Another important challenge revealed by the Ntaganda affair is the question of international cooperation. The ICC relies heavily on the cooperation of states to carry out its mandate, particularly in areas such as the arrest and surrender of suspects, the provision of evidence and the protection of witnesses. In the Ntaganda case, the court struggled to obtain cooperation from various states, which contributed to delays in the proceedings. This issue highlights the need for stronger mechanisms to ensure that states fulfill their obligations to cooperate with the ICC.

To address this challenge, the ICC should consider pursuing legislative reforms that would strengthen cooperation between states. This could include developing stronger legal frameworks for cooperation, establishing clear guidelines and procedures that states should follow when assisting the ICC, and creating incentives for states to comply with their obligations. . Additionally, the ICC could work to strengthen its relationships with regional organizations, such as the African Union and the European Union, to improve cooperation and coordination at the regional level. These measures would help ensure that the ICC can effectively fulfill its mandate and bring perpetrators of international crimes to justice.

Furthermore, the Ntaganda affair revealed the importance of improving the efficiency of evidence collection and preservation. The complexity of collecting evidence in conflict zones, combined with the passage of time, can make it difficult to obtain the evidence needed to support prosecutions. In the Ntaganda trial, gathering evidence was particularly difficult due to the ongoing conflict in the Democratic Republic of Congo and the remoteness of many witnesses. To improve the efficiency of evidence collection in future cases, the ICC should consider implementing measures such as the use of modern technologies, the creation of rapid response teams for evidence collection and the development of partnerships with local organizations and NGOs. These initiatives would help ensure that the ICC has access to the evidence it needs to build strong cases and secure convictions.

### **Partial conclusion**

In conclusion, while the ICC's prosecution of Bosco Ntaganda resulted in a significant judgment, the case highlights several critical areas for improvement to enhance the court's effectiveness. The complexity of the charges, the need for consistent international cooperation, and the extended duration of proceedings demonstrate challenges that hinder the efficient delivery of justice. Addressing these issues is essential for ensuring that the ICC can uphold its mandate to prosecute the gravest international crimes effectively. This chapter has examined these challenges by drawing on relevant legislation and case law, offering a thorough analysis of both the ICC's strengths and its limitations in delivering justice through the framework of universal jurisdiction. Future reforms should focus on streamlining legal processes, enhancing cooperation from national authorities, and reducing trial duration to better meet the demands of international justice.

## **CHAPTER III: LEGAL AND INSTITUTIONAL MECHANISMS FOR ADDRESSING LEGAL ISSUES IDENTIFIED IN THE NTAGANDA CASE**

### **III.1 Introduction**

Chapter Three of this study examines the legal and institutional mechanisms that underpin the exercise of universal jurisdiction by the International Criminal Court (ICC), with a particular focus on addressing the legal issues identified in the previous chapter. Chapter Two highlighted several challenges encountered in delivering justice in the case of Bosco Ntaganda, a former Congolese warlord prosecuted by the ICC for war crimes and crimes against humanity. These challenges include the complexity of the case, the need for state cooperation, and the extended duration of proceedings, all of which raise important questions about the effectiveness of the ICC's current framework.

The present chapter seeks to evaluate whether the legal and institutional mechanisms currently in place are sufficient to address these challenges and ensure the ICC can effectively fulfill its mandate. The discussion will begin with an overview of the ICC's universal jurisdiction, providing the necessary legal context for understanding the court's authority to prosecute individuals for serious international crimes. This will be followed by an analysis of the institutional mechanisms that support the ICC's operations, including cooperation from state parties, the role of the United Nations, and the contributions of non-governmental organizations (NGOs) and civil society.

In evaluating these mechanisms, the chapter will assess how well they address the specific challenges identified in the Ntaganda case and other similar cases. By examining the strengths and weaknesses of the current framework, this chapter aims to provide a critical analysis of the ICC's effectiveness in delivering justice and propose recommendations for enhancing its ability to prosecute international crimes, particularly in complex and challenging environments.



### **III.3.1 legal mechanisms**

The legal mechanisms used in the Bosco Ntaganda case involve a combination of international laws, treaties, and principles that facilitated the ICC's ability to prosecute him for war crimes and crimes against humanity. These mechanisms include:

#### **3.1.1 Rome statute**

The Rome Statute provides the legal framework for the ICC's operation, defining the crimes under its jurisdiction and the conditions under which it can exercise universal jurisdiction. According to the Statute, the ICC has jurisdiction over the most serious crimes of international concern, specifically genocide, war crimes, crimes against humanity, and the crime of aggression. These crimes are considered so egregious that they threaten the peace, security, and well-being of the world, justifying the need for universal jurisdiction.

Article 12 of the Rome Statute <sup>50</sup> outlines the preconditions to the exercise of jurisdiction, specifying that the ICC may exercise its jurisdiction if the alleged crime occurred on the territory of a state party or if the accused is a national of a state party. However, the Statute also allows the ICC to exercise jurisdiction in cases referred to it by the United Nations Security Council, regardless of whether the state involved is a party to the Rome Statute. This provision significantly expands the Court's reach, enabling it to address crimes committed in non-member states when authorized by the Security Council.

The Rome Statute is the founding treaty of the International Criminal Court (ICC). Ntaganda's prosecution was grounded in this statute, which outlines the ICC's jurisdiction over genocide, crimes against humanity, war crimes, and the crime of aggression. Ntaganda was charged with multiple counts under these categories, particularly for his involvement in the conflict in the Ituri region of the Democratic Republic of Congo (DRC).

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<sup>50</sup> Article 12 Rome statute

- Articles Used: Specific articles of the Rome Statute, such as Article 8 (war crimes) and Article 7 (crimes against humanity), were directly applied to Ntaganda's actions, including murder, rape, sexual slavery, and the conscription of child soldiers.

### **3.1.2 complementary principle**

The concept of universal jurisdiction has evolved over time, with its roots in the prosecution of piracy, which was considered a crime against all nations. This principle was later expanded to include other serious crimes, such as genocide and war crimes, following the atrocities committed during World War II. The Nuremberg and Tokyo Trials marked a significant development in the application of universal jurisdiction, establishing that individuals could be held accountable for crimes against humanity regardless of their nationality or the location of their crimes. The adoption of the Rome Statute in 1998 and the subsequent establishment of the ICC represented a major advancement in the enforcement of universal jurisdiction. The Statute codified the principle, providing a legal framework for the prosecution of the most serious international crimes. The ICC, as a permanent international court, embodies the commitment of the international community to hold individuals accountable for these crimes, ensuring that perpetrators cannot escape justice by crossing borders or hiding behind the sovereignty of their state.

Universal jurisdiction is particularly significant<sup>51</sup> in cases involving crimes that transcend national boundaries or where national judicial systems are unable or unwilling to prosecute. In the case of Bosco Ntaganda, the ICC's ability to exercise universal jurisdiction was crucial in bringing him to justice. Despite the challenges associated with prosecuting a high-profile warlord in a volatile region, the ICC's mandate and the principle of universal jurisdiction allowed it to pursue the case and hold Ntaganda accountable for his actions.

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<sup>51</sup> Aust, A. (2010). Handbook of International Law (2nd ed.). Cambridge University

### **III.3.2. Institutional Mechanisms**

The effective exercise of universal jurisdiction by the International Criminal Court (ICC) is not solely dependent on its legal framework, but also on the robust institutional mechanisms that support its operations. These mechanisms include the cooperation of state parties, the role of the United Nations, the contributions of non-governmental organizations (NGOs)<sup>52</sup> and civil society, and the engagement of regional and international institutions. This section examines these institutional mechanisms in detail, assessing their effectiveness in addressing the challenges encountered in the case of Bosco Ntaganda and similar cases.

#### **III.3.2.1.State Parties and Cooperation Mechanisms**

The cooperation of state parties is essential for the ICC's ability to exercise universal jurisdiction effectively. Under the Rome Statute, member states are legally obligated to fully cooperate with the ICC's investigations and prosecutions. This cooperation<sup>53</sup> includes crucial tasks such as arresting and surrendering suspects, protecting witnesses, gathering evidence, and enforcing sentences. Without the active support of state parties, the ICC would be significantly limited in its capacity to execute its mandate.

In the case of Bosco Ntaganda, the Democratic Republic of Congo (DRC) faced initial difficulties in arresting and transferring him to The Hague. Ntaganda was integrated into the Congolese army (FARDC) after peace agreements in the region, serving as a general. His high-ranking position in the national army made it politically sensitive for the government to arrest him, as it would have risked destabilizing the military and reigniting tensions in an already volatile region. Despite these challenges, the DRC eventually complied with its obligations under the Rome Statute, ensuring Ntaganda's transfer to the ICC. This underscores the critical role of state cooperation in the successful prosecution of international crimes. The case also revealed the limitations of depending on state parties, especially in regions facing political instability, conflict, or resource constraints, where cooperation may be difficult to secure.

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<sup>52</sup> Cryer, R., Friman, H., Robinson, D., & Wilmschurst, E. (2019). *An Introduction to International Criminal Law and Procedure* (4th ed.).

<sup>53</sup> International Criminal Court - Rome Statute

The effectiveness of state cooperation is often influenced by the political will of national governments. In some instances, governments may hesitate or refuse to cooperate with the ICC due to political reasons, such as concerns over national sovereignty, fear of backlash from influential allies, or conflicts of interest within the state. This reluctance can result in delays or outright non-compliance, thereby undermining the ICC's ability to deliver timely justice. As seen in the Ntaganda case, securing cooperation from state parties is vital, but it is often fraught with obstacles that can hinder the process.

Strengthening mechanisms to ensure more consistent and reliable cooperation from state parties is essential to enhancing the ICC's effectiveness. Such improvements could involve diplomatic efforts, increased engagement with regional bodies, and establishing more robust frameworks for enforcing cooperation obligations among member states.

### **III.3.2 Role of the United Nations**

The United Nations (UN)<sup>54</sup> plays a pivotal role in supporting the ICC's universal jurisdiction, particularly through the Security Council's authority to refer cases to the Court. The UN's involvement is crucial, especially in situations where the ICC's jurisdiction might otherwise be limited, such as cases involving non-state parties or where national governments are unwilling or unable to prosecute serious international crimes.

In the context of the Ntaganda case, the UN's engagement was instrumental in facilitating international cooperation. The Security Council's involvement through resolutions helped create the environment in which the ICC could operate. Moreover, the UN's peacekeeping mission in the DRC, known as MONUSCO (United Nations Organization Stabilization Mission in the Democratic Republic of the Congo), was essential in creating conditions that allowed the ICC to operate in the region. MONUSCO worked to stabilize areas affected by conflict, providing security and protection to civilians in zones where Ntaganda and other warlords had operated. This peacekeeping presence helped restore some level of order, which was crucial for facilitating

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<sup>54</sup> <https://www.un.org/icc/> Accessed on 11/09/2024

the investigation of crimes, the collection of evidence, and the protection of witnesses—tasks that would have been extremely difficult without such support.

Additionally, MONUSCO's efforts in coordinating with local authorities and ensuring that civilians were safeguarded from retaliatory attacks indirectly supported the ICC's work. By helping to secure the region, the peacekeepers made it safer for the ICC's investigators and legal teams to gather evidence, interview witnesses, and build a case against Ntaganda. Without this stabilization effort, it would have been nearly impossible for the ICC to proceed with the trial in a conflict-ridden environment like eastern DRC.

However, the UN's role is not without its challenges. The Security Council's selective referral powers and the use of vetoes by powerful member states can introduce political considerations that undermine the impartiality and consistency of the ICC's jurisdiction. This dynamic has raised concerns about double standards, where political influence from powerful states could affect the Court's ability to prosecute certain cases. As such, reforms are necessary to minimize political interference and ensure the ICC can exercise its mandate fairly and effectively across all situations.

### **III.3.2.2. Non-Governmental Organizations (NGOs) and Civil Society**

Non-governmental organizations (NGOs) and civil society groups play a crucial role in supporting the International Criminal Court (ICC), particularly in high-profile cases such as that of Bosco Ntaganda. These organizations provide valuable expertise, resources, and advocacy that significantly aid the ICC's work. Their contributions include conducting independent investigations, gathering evidence, supporting victims and witnesses, and raising awareness about international crimes.

In the Ntaganda case, NGOs were instrumental in documenting human rights abuses and supporting victims. They provided critical evidence that was used in the prosecution against Ntaganda, helping to build a strong case and ensuring that the suffering of victims was not overlooked. Their advocacy efforts also highlighted the need for justice and accountability, playing a vital role in the broader goals of transitional justice.

However, the reliance on NGOs and civil society also presents challenges. These organizations often work in dangerous and unstable environments, which can limit their ability to gather information and protect those who cooperate with the ICC. Additionally, variations in funding and resources can affect the consistency and quality of their contributions.

For the Ntaganda case, this reliance underscored the importance of strengthening partnerships between the ICC and NGOs. Ensuring these organizations receive adequate support and protection is essential for maintaining their effectiveness and ensuring that the ICC can successfully prosecute international crimes. Addressing these challenges is crucial for enhancing the ICC's overall effectiveness and its ability to deliver justice in complex cases such as that of Bosco Ntaganda.

### **III.3.3.3.Engagement of Regional and International Institutions**

Regional and international institutions, such as the African Union (AU), the European Union (EU), and various regional human rights bodies, also play a significant role in supporting the ICC's universal jurisdiction.<sup>55</sup> These institutions can provide political support, facilitate cooperation among member states, and contribute to the development of international legal standards that complement the ICC's work.

The engagement of regional institutions is particularly important in addressing the political and logistical challenges associated with prosecuting international crimes. For example, the African Union's<sup>56</sup> position on the ICC has been complex, with some member states expressing concerns about the Court's focus on African cases. However, regional institutions can also serve as important allies in promoting justice and accountability, particularly when they align their efforts with the ICC's mandate.

The effectiveness of these institutions in supporting the ICC depends on their willingness to cooperate and the consistency of their engagement. Building stronger relationships between the

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<sup>55</sup> <https://www.icc-cpi.int/about/cooperation> Accessed on 11/09/2024

<sup>56</sup> <https://au.int/> Accessed on 12/09/2024

ICC and regional institutions, based on mutual respect and shared goals, is crucial for overcoming challenges and enhancing the ICC's ability to exercise universal jurisdiction effectively.

### **III.3.3.Evaluating the Effectiveness of the ICC's Universal Jurisdiction**

Having examined the legal and institutional mechanisms that support the International Criminal Court's (ICC) universal jurisdiction, it is essential to evaluate how effectively these mechanisms address the challenges identified in Chapter Two. This evaluation focuses on the practical application of universal jurisdiction in the case of Bosco Ntaganda, assessing the extent to which the ICC was able to deliver justice and the broader implications for the Court's effectiveness in similar cases.

#### **III.3.3.1 Effectiveness in Delivering Justice in the Ntaganda Case**

The prosecution of Bosco Ntaganda represents one of the most significant tests of the ICC's universal jurisdiction. Despite the numerous challenges encountered, including the complexity of the case, the need for extensive cooperation from state parties, and the prolonged duration of proceedings, the ICC ultimately succeeded in securing a conviction<sup>57</sup>. This outcome demonstrates the Court's ability to hold individuals accountable for serious international crimes, even in the face of significant obstacles.

The Ntaganda case also reinforced the importance of universal jurisdiction as a tool for addressing impunity. By exercising its authority to prosecute Ntaganda, the ICC sent a powerful message that perpetrators of war crimes and crimes against humanity cannot escape justice, regardless of their position or the location of their crimes. This case thus serves as a critical precedent for the ICC's role in delivering justice and upholding the principles of international law.

However, the effectiveness of the ICC in the Ntaganda case was not without limitations. The length of the proceedings, which spanned several years, raised concerns about the ability of the

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<sup>57</sup> Akhavan, P. (2016). "The Rise, and Fall, and Rise, of International Criminal Justice." *Journal of International Criminal Justice*, 14(3), 527-538:

Court to deliver timely justice. The delays placed a significant burden on victims, who had to wait for years for a verdict, and on the accused, whose right to a speedy trial is a fundamental legal principle. This challenge suggests a need for procedural reforms within the ICC to streamline trials while maintaining the thoroughness required for cases of this magnitude.

### **III.3.3.2 Broader Implications for the ICC's Ability to Address Similar Cases**

The Ntaganda case provides valuable insights into the broader effectiveness of the ICC's universal jurisdiction<sup>58</sup> in addressing similar crimes. While the case demonstrated the potential of the ICC to deliver justice, it also highlighted the challenges the Court faces in complex and high-profile cases. These challenges include securing cooperation from state parties, protecting witnesses, gathering evidence in conflict zones, and managing the lengthy and resource-intensive nature of international prosecutions.

To enhance the ICC's ability to address similar cases in the future, it is essential to build on the lessons learned from the Ntaganda case. This includes strengthening the legal and institutional mechanisms that support the Court's work, improving state cooperation, streamlining procedural processes, and ensuring that the ICC has the resources and political backing needed to fulfill its mandate effectively.

Moreover, the Ntaganda case underscores the importance of continued international support for the ICC. The Court's ability to exercise universal jurisdiction depends not only on its legal framework but also on the willingness of the international community to uphold the principles of international justice. Ensuring that the ICC can continue to address serious international crimes requires ongoing commitment from states, regional and international institutions, NGOs, and civil society.

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<sup>58</sup> Robinson, D. (2015). "In the Shadow of the ICC: Colombia and International Criminal Justice." *Harvard International Law Journal*, 56(1), 156-218:



### **III.3.3.3. Recommendations for Enhancing the Effectiveness of Universal Jurisdiction**

Based on the evaluation of the Ntaganda case and the broader implications for the ICC's universal jurisdiction, several recommendations can be made to enhance the effectiveness of the Court's operations:

- **Strengthening State Cooperation:** The ICC should work to develop more robust mechanisms for securing cooperation from state parties, including legal and diplomatic tools to encourage compliance with the Court's requests. This could involve strengthening the enforcement of arrest warrants, enhancing witness protection programs, and improving the collection of evidence.
- **Streamlining Procedural Processes:** The ICC should consider reforms to streamline its procedural processes, reducing the length of trials while maintaining the thoroughness and fairness required for international prosecutions. This could include measures to expedite pre-trial proceedings, improve case management, and ensure that trials are conducted more efficiently.
- **Enhancing Regional and International Collaboration:** Building stronger partnerships with regional and international institutions is essential for supporting the ICC's work. The Court should work to foster closer collaboration with organizations like the African Union, the European Union, and other regional bodies to promote accountability and address the challenges associated with prosecuting international crimes.
- **Increasing Resources and Political Support:** The ICC's effectiveness depends on adequate resources and political backing from the international community. States should ensure that the Court has the financial and logistical support needed to carry out its mandate and that it is protected from political interference that could undermine its independence and impartiality.
- **Promoting Victim Participation and Reparation:** Ensuring that victims are able to participate in the ICC's proceedings and receive appropriate reparations is crucial for delivering justice. The Court should continue to prioritize victim participation, providing them with the support and resources they need to engage with the process and obtain redress for the harm they have suffered.

### **III.3.4.Successes and limits of the ICC approach**

Success :

The ICC's ability to prosecute individuals like Bosco Ntaganda for war crimes and crimes against humanity testifies to the effectiveness of the Court in exercising its universal jurisdiction. Ntaganda's conviction for crimes including sexual violence, the use of child soldiers and other serious violations of international law sets a powerful precedent in international criminal jurisprudence. The Ntaganda case reaffirmed the ICC's role in providing justice to victims when domestic courts are unwilling or unable to do so, reinforcing the principle of complementarity that underpins the ICC's operations.

In addition, the Ntaganda affair contributed to the development of international criminal law, particularly with regard to the prosecution of sexual violence and gender-based crimes. By securing convictions on these charges, the ICC has established important legal standards that will influence future prosecutions. The recognition of sexual violence as a war crime and crime against humanity has paved the way for stronger legal frameworks to address these issues globally, sending a strong message that such crimes will not be tolerated.

This case also demonstrated the ICC's ability to mobilize international support and cooperation to achieve its goals. Despite the initial difficulties associated with Ntaganda's arrest, the persistence of the ICC, combined with diplomatic efforts and pressure from international organizations, ultimately led to his surrender. This success illustrates the potential of the ICC's universal jurisdiction to bring even the most high-profile perpetrators to justice, underscoring the importance of sustained international collaboration.

#### **Boundaries:**

However, the Ntaganda case also highlights the significant limitations of the ICC's approach to universal jurisdiction. One of the most critical problems is the dependence on state cooperation. The ICC does not have its own enforcement mechanisms and relies on member states to execute arrest warrants, gather evidence and provide witness protection. In the Ntaganda case, the long period between the issuance of the arrest warrant in 2006 and its surrender in 2013 illustrates the

challenges posed by non-cooperation. Ntaganda evaded justice for years, in part due to a lack of consistent international support and political complexities in the Democratic Republic of Congo (DRC), where he operated.

Furthermore, the length of proceedings highlights the inefficiencies of the ICC's procedural framework. The trial, which lasted several years, raised concerns about the ICC's ability to deliver justice in a timely manner. Long delays not only undermine the credibility of the court, but also affect the morale and well-being of victims and witnesses, who must endure prolonged uncertainty and fear. The Ntaganda case is not an isolated case; Other ICC cases, such as those involving Kenyan leaders, have also been marred by delays, raising broader questions about the ICC's ability to effectively manage complex international trials. Another important limitation is the difficulty of collecting reliable evidence in conflict zones. The Ntaganda case concerned crimes committed in the volatile Ituri regions of the DRC, where access to witnesses and evidence was severely limited by the ongoing conflict and insecurity. The ICC's reliance on third-party intermediaries, such as NGOs and local civil society organizations, to gather evidence can lead to credibility and reliability issues, further complicating prosecutorial efforts. Additionally, witness protection remains a major concern, as threats and intimidation are pervasive in such environments, potentially compromising the integrity of the judicial process.

### **Additional case study: The case of Omar al-Bashir in Sudan**

To further illustrate the limits of the ICC's universal jurisdiction, the case of former Sudanese President Omar al-Bashir provides<sup>59</sup> a relevant example. Although he was indicted by the ICC in 2009 for genocide, war crimes and crimes against humanity in Darfur, al-Bashir remained at large for years, traveling to several countries without being apprehended. The refusal of several states, including ICC member states, to arrest Al-Bashir demonstrates the difficulties of respecting universal jurisdiction when political considerations and state sovereignty come into play. This case highlights the limits the ICC's authority in the absence of strong international cooperation and highlights the need for stronger mechanisms to compel states to comply with ICC mandates.

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<sup>59</sup> Akande, Dapo. (2009). "The Legal Nature of Security Council Referrals to the ICC and Its Impact on Al-Bashir's Immunities." *Journal of International Criminal Justice*, 7(2), 333-352.

## **GENERAL CONCLUSION**

Critical analysis of the effectiveness of universal jurisdiction under the International Criminal Court (ICC) reveals both significant achievements and persistent challenges. The case of Bosco Ntaganda constitutes a crucial example of how universal jurisdiction can be used to prosecute individuals responsible for the most serious international crimes, such as war crimes and crimes against humanity. Ntaganda's conviction not only highlighted the ICC's ability to bring perpetrators to justice, but also contributed to the development of international criminal jurisprudence, particularly in the areas of sexual violence and the recruitment of child soldiers.

Despite these successes, the Ntaganda case also highlights several limitations in the ICC's approach to universal jurisdiction. The length of proceedings, the reliance on state cooperation, and the complexity of gathering evidence in conflict zones indicate areas where the ICC's mechanisms could be strengthened. These challenges raise important questions about the ICC's ability to deliver rapid and effective justice, particularly in regions where political and logistical obstacles hamper its work.

In summary, although the ICC has made significant progress in applying universal jurisdiction to hold perpetrators accountable, there is a clear need for continued reform and support to improve its effectiveness. The ICC's success in delivering justice globally depends not only on its legal framework, but also on the international community's commitment to respecting and strengthening the principles of international criminal law. Through sustained efforts to address the identified challenges, the ICC can better fulfill its mission of fighting impunity and contributing to global peace and security.

## **Recommendation**

In light of the challenges identified, several recommendations can be made to strengthen the exercise of universal jurisdiction of the ICC and improve its overall effectiveness.

### **Legal reforms:**

One of the most urgent needs concerns legal reforms aimed at streamlining the ICC's procedural framework. Reducing the length of trials and pre-trial proceedings is essential to ensure speedy justice. This could involve the introduction of stricter deadlines for each stage of the procedure, as well as increased judicial oversight to avoid unnecessary delays. Furthermore, the ICC should consider adopting more flexible standards of proof that take into account the complexities of gathering evidence in conflict zones, without compromising the rights of the accused.

Furthermore, establishing clearer guidelines for state cooperation is crucial. Although the Rome Statute requires member states to cooperate with the ICC, the lack of specific enforcement mechanisms weakens this obligation. The ICC could work to negotiate additional treaties or agreements that provide concrete measures to compel states to comply, such as sanctions for non-cooperation or incentives for cooperation.

### **Strengthening institutional capacities:**

Strengthening the institutional capacity of the ICC is essential to address the operational challenges it faces. This involves strengthening the Court's resources, both in terms of funding and personnel, in order to improve its capacity to manage complex cases. Increasing the number of judges and legal staff could help speed up the judicial process, while specialized training for investigators and prosecutors in handling evidence from conflict zones could improve the quality of prosecutions.

### **Strengthening international cooperation:**

The success of the ICC's universal jurisdiction depends on the willingness of states to cooperate with its mandates. To this end, the ICC should intensify its diplomatic efforts to gain broader international support. Engaging with regional organizations, such as the African Union or the

European Union, could help foster a more unified approach to international justice and encourage member states to fulfill their obligations.

Additionally, the role of the United Nations, particularly the Security Council, is essential in supporting the ICC. Security Council referral powers, as seen in the cases of Darfur and Libya, are essential to extending the reach of the ICC to non-member states. However, inconsistent support from the Security Council, often influenced by the political interests of its permanent members, can undermine the effectiveness of the ICC. The ICC should advocate for more consistent and depoliticized support from the Security Council, potentially through reforms limiting the use of the veto in cases of serious international crimes.

Public awareness and advocacy:

Public awareness and advocacy are essential elements of strengthening the universal jurisdiction of the ICC. Greater public understanding of the ICC's role in global justice can motivate governments to support the Court's efforts. NGOs and civil society organizations play a central role in this regard by raising awareness, advocating for justice and mobilizing public opinion in support of ICC initiatives.

To maximize the impact of these efforts, the ICC could engage in more proactive communications strategies, including public awareness programs, educational campaigns, and collaboration with the media to disseminate information about its work. By increasing transparency and public engagement, the ICC can build a stronger base of support, both domestically within member states and internationally.

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