AFRICAN JURISDICTIONS ON INTERNATIONAL CRIMES OF AFRICAN HEAD OF STATE OFFICIALS, IMMUNITY AND PROSECUTION: A COMPARATIVE ANALYSIS

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ABSTRACT

This Article makes a Comparative analysis, on how prosecution of international crimes and immunity of African Heads of State officials have been treated at various national levels and whether such practice is compatible with International law. State practice is examined at both legal and judicial levels. The examination takes the form of a review of the Constitutional provisions and other specific laws on International crimes, or those which implement the 1998 Rome Statute at domestic level in different selected African States. The Article mainly focuses on Africa. The article anaylzes the single issue of immunity of Africans Heads of State officials as it relates to prosecution of international crimes in Africa. Not all African States have enacted laws that punish international crimes. The article gives a general overview of Immunity and prosecution of African Heads of State defining key terms of the topic. Also addressed in this article is a historical synopsis of prosecution and immunity of Heads of State. The central arguments of this paper evolve around African State practice regarding Immunity and prosecution of African Heads of State. Uganda, Kenya and Rwanda are used s case study.

Keywords: African Jurisdictions, International Crimes, African Heads of State Officials, Immunity, Prosecution.

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INTRODUCTION

General Overview: Immunity and Prosecution of African Heads of State: The Dynamics

African Heads of State officials occupy an important position in their own States. They sometimes hold the positions of Heads of State (or Chiefs of State), Commander-in-Chief of the Armed Forces, and Heads of governments.[i] In Africa, State officials, particularly Heads of State (usually Presidents and Kings alike) are traditionally regarded as a symbol of the nation.[ii] They are a symbol of national unity especially considering the nature of multi-ethnic societies in Africa. Hence, any attempt to prosecute a sitting President might lead to disintegration of the State unity, and may create anarchy and chaos within the State concerned.[iii] Normally, States emerging from armed conflicts would not support an idea to prosecute a sitting President who, in most cases, is regarded as a key player in peace building and post-conflict reconstruction in his Country. It is almost impossible for example, to imagine prosecuting Presidents when they are in office. For instance, how practical is it for the Director of Public Prosecutions (DPP) or the Attorney General (AG) to initiate criminal proceedings against his or her employer, who is in most cases is the President? It would be difficult because such sitting Presidents may influence the judiciary not to pursue cases against them. Also, such leaders are needed for peace processes in their own countries.

The President or the King may not be open to legal proceedings. Consequently, prosecution of the President or the King would seem to be an exception. No State practice exists in Africa where a sitting President or the King has ever been prosecuted whilst in office. However, some have been prosecuted before national Courts in African States, but only after expiry of their terms of office. This trend is observed in Malawi ,Sudan and Zambia where former Presidents were put on trial, but for domestic crimes. So far, no sitting President has ever been prosecuted in Africa for international crimes before national courts of his own country. The only close scenario would be that of former President Hissène Habré who was indicted in Senegal for crimes against humanity, particularly torture, committed in Chad. Another example is that of former President Mengistu Haile-Mariam who was prosecuted in his own country for genocide. These are the only exceptions thus far in Africa. The practice in Africa is that in most States, sitting Presidents or Kings are legally protected from criminal prosecutions and court processes such as service of arrest warrants or summons to appear as witnesses or to produce evidence.

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This is so because in some African States, a President takes precedence over all persons in the country.[iv] In Swaziland, for example, the King is the Head of State according to article 28(1) of that country's Constitution. Under article 35bis of the Constitution of Swaziland, 1968, as amended in 1973, the King is entitled to immunity 'in respect of all things done or omitted to be done by him only in his official capacity and while performing such functions.'[v]

In Lesotho, Article 50(1) of the Constitution of Lesotho provides for functional and personal immunity of the King whilst in office, he is immune from legal processes in respect of all things done or omitted to be done in private capacity, and from criminal proceedings in respects of all acts performed in his official position, or in his private capacity.[vi]

In some civil law African States like Burundi[vii] ,Rwanda[viii] and Benin,[ix] the President is not criminally responsible for acts committed in the exercise of his functions, except in case of high treason. This position provides functional immunity for Head of State officials. It should be noted that what is labelled 'high treason' in such States is different from the same offence in most common law States. High treason is characterised in such States as acts of overstay in power, breach of constitutional principles, violation of national interests, and grave danger to human rights, integrity of the territory, acts contrary to independence and national sovereignty.[x]

In Sudan, the President and First Vice President are immune from any legal proceedings, and are not supposed to be charged in any Court of law during their term in office.[xi] The only exception is that of high treason as per article 60(2) of the Constitution of Northern Sudan. In the Interim Constitution of Southern Sudan, 2005, article 105 (1) provides that 'the President and Vice President of Southern Sudan shall be immune from any legal proceedings, and shall not be charged or sued in any Court of law during their tenure of office.' This covers functional immunity of State officials. It is not clear whether after their office terms; such State officials may be prosecuted. Egypt has a constitution that declares the President Immune from criminal proceedings unless there is impeachment.[xii] This is the same position in Eritrea and Mozambique.[xiii] In the Gambia, the President is immune from criminal proceedings during office term.[xiv] The Namibian Constitution, 1990

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recognises immunity of the President from criminal proceedings whilst holding office or performing the functions of the President. No Court may have jurisdiction to entertain criminal proceedings after a person is no longer a President for omission, commission perpetrated in his personal capacity whilst in office, unless the Parliament impeaches him.[xv]

DEFINITION OF KEY TERMS

Immunity

The term "Immunity" is used to mean different things or it is used in different ways. "Immunity" is defined as an exemption that a person or an individual or corporate body enjoys from the normal operation of the law such as legal duty or liability, either criminal or civil.[xvi] Immunity is also defined as the ability of a State official to escape prosecution for crimes for which he/she would otherwise be held accountable.[xvii] *Black's Law Dictionary* defines the word Immunity as " Any exemption from a duty, liability, or service of process especially, such an exemption is normally granted to a public official.[xviii]

International Crimes

International Crimes are regarded as the most serious crimes which have raised concerns to the community. The core crimes which fall under international crimes are genocide, war-crimes, crimes against humanity and aggression. (they are sometimes referred to as atrocity crimes) International crimes have been prosecuted by a range of international and national Courts including the International Criminal Court, which was established by the Rome Statute in 1998 and based in the Hague, it has the jurisdiction as per Article 5 of the Rome Statute to prosecute them.[xix]

Prosecution

This term is regarded as an act of carrying on a legal action against a person accused of a crime in court. In this scenario the cases which falls under the jurisdiction of the International Criminal Court (ICC) are prosecuted by Fatou Benssouda who is the current prosecutor of this Institution. In Africa, Heads of States who have committed international crimes have been prosecuted before international courts. Not all States have enacted laws that punish international crimes in Africa, hence prosecuting Heads of States who have committed

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International crimes within the domestic perspective it has been hard.[xx]

BRIEF HISTORICAL SYNOPSIS OF PROSECUTION AND IMMUNITY OF HEADS OF STATE

The concept of Immunity in international criminal justice is as old as history itself. This is the area in international criminal justice which raises so many debates and controversies today than any other time before. From the beginning, the concept of immunity was not an issue because; it had no much impact in both national and international criminal justice system. In the early days of the societies, internal rules or regulations bound each citizen, including Kings. Although there were beliefs in some societies that Kings were above the law, in practice it was not always true. There is evidence that most war crimes were punishable offences and Kings were also subject to the rules. For example, Kings in England passed Ordinances to punish war crimes, crimes against humanity and other crimes associated to it. For example during the 13th Century, around 1285, Richard II of Durham issued Ordinances prohibiting robbery and pillage especially from the Church, as well as the killing or capture of unarmed persons and women belonging to the church. In order to avoid impunity, Kings provided penal procedures to effectively punish offenders.[xxi] Despite these strict laws and Ordinances that had been provided, subsequent years were characterized by arrogance amongst Kings and Princes, whereby they began to exclude themselves from the application and interpretation of the law. Tyrannical rulers, governmental officials demonstrated the arrogance by refusing to account for their acts. For centuries, in tyrannical States, government officials were able to act with impunity, despite the increase of democratic practices. Based on the improvement in International law arena and an overall improvement in international law, it has opened the door for the punishment of those Heads of State and officials who continued to commit international crimes by violating fundamental individual rights. Hence the creation of the international institutions like International Criminal Tribunal for Rwanda, International Criminal Tribunal for Yugoslavia, International Criminal Court emerged which through its statutes nullifies the immunity of the Heads of States and other State officials.[xxii]

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STATE PRACTICE REGARDING IMMUNITY AND PROSECUTION OF HEADS OF STATE IN AFRICA

Prosecution of African Heads of State Before Foreign Courts: The Experiences

The Question of protection of Heads of State officials is extended to cover criminal prosecutions before foreign domestic Courts. This area has caused a lot of controversies in the prosecution of international crimes, a good example in 2011, where the International Law Commission (ILC) considered the question of prosecution of Heads of State officials before national Courts in Africa. This reflects that prosecution of Heads of State officials before national courts is still a contentious and new area in international law which should be explored further in the future. Like in other places, many African States have not rejected immunity of visiting foreign State officials. Although this aspect is largely a matter of diplomatic law. It is important to highlight the practice as it obtains in African States today. Normally, under International law States accord immunity to foreign State officials as a matter of comity or reciprocity and in order to maintain harmonious relations with other States. This seems to be the suggestions offered by Chad and Kenya when the two States hosted former President Omar Al Bashir of Sudan in 2010. Immunity is granted to foreign Heads of State officials to enable the State representatives to function externally.[xxiii] States expect that others will treat 'their Heads of State officials' as they treat them in their own territories. Consequently, a substantial number of African States still recognize and uphold immunity of foreign State officials from prosecution, even for international crimes. This is particularly so with regards to those State officials who have been accused of committing international crimes either in their own States or in foreign States. The trend of upholding immunity of Head of State officials is observed at individual State practice. Both Chad and Kenya upheld immunity of former President Bashir of Sudan when he visited such States on official invitations. This is despite the warrant of arrest for Bashir issued by the ICC. Perhaps Kenya ignored its obligations under the 1998 Rome Statute because some of its State officials like President Uhuru Kenyatta were allegedly implicated in the crimes against humanity committed in Kenya during the post-election violence.[xxiv] So, to welcome former President Omar El-Bashir was like expecting the Kenyan officials could as well visit Sudan should the ICC proceed against them. Zimbabwe and Senegal have granted and recognised the *de* facto protection of former State officials

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who have allegedly committed international crimes. These States have granted asylum to former Presidents Mengistu Haile-Mariam and Hissène Habré. This has been done mostly at political level under the guise of comity but not necessarily at the legal level. It must be known that granting political asylum to a person accused of having committed international crimes falls within the sovereignty of a granting State and is at the discretion of that receiving sovereign State. No general law as such requires a State to extradite or surrender such a person without a specific extradition treaty. Ideally, the return of criminals is usually secured by extradition agreements between States.[xxv] However, the Convention against Torture creates the obligation to extradite and exercise universal jurisdiction over persons responsible for international crimes.[xxvi] Nigeria had provided protection to former President of Sierra Leone Charles Taylor by guaranteeing him that he would be free from prosecution whilst in he in their territory. It later changed its position and surrendered him to the Special Court for Sierra Leone. Togo and Morocco had granted protection to the former and deposed President of Zaire (now the Democratic Republic of Congo), Mobutu Sesseseko. Portugal and Belgium had at different times provided protection to Jean-Pierre Bemba, albeit in his individual capacity, before being arrested by the Belgian authorities acting on an international warrant of arrest authorised by the ICC on 24th June 2008. Belgium surrendered him to the Registrar of the ICC on 3rd July 2008. Zimbabwe and Senegal have granted and recognised *the de facto* protection of former Heads of State officials who have allegedly committed international crimes. These States as earlier mentioned granted asylum to Mengistu Haile-Mariam of Ethiopia and Hissène Habré of Chad. Saudi Arabia had provided protection to the former Ugandan Head of State, Iddi Amin Dada until his death in 2003. Having Stated the general practice in Africa, it is necessary that the practice at individual specific selected national jurisdictions be presented and discussed in a comparative analysis mode.

Prosecution of Head of State Officials and Immunity: Kenya's Experience

From the practice point of view (executive or administrative level) one observes that the Kenyan authorities are reluctant to support prosecution of Heads of State officials responsible for international crimes. This fact is based on a few incidents in Kenya: formal invitation of President Omar Al Bashir; non-approval of the Special Tribunal for *Kenya Bill of 2009 and; calls for withdrawal from the 1998 Rome Statute after the Prosecutor of* the ICC filed an application for the issuance of the summonses to the Kenyan Head of State

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and State officials. Regarding Omar Al Bashir, it must be recalled that in August 2010, Kenyan authorities formally invited President Omar Al Bashir to attend a ceremony of the adoption of a new Kenyan Constitution held on 27th August 2010. Former President Omar Al Bashir received formal recognition and official reception in Kenya. The Kenyan authorities did not arrest former President Bashir despite the warrant of arrest over his head issued by the ICC. This was a clear breach of Kenya's obligations under the 1998 Rome Statute, to which Kenya is a State party, and sections 8 and 18 of the International Crimes Act, 2008 (a law implementing the Rome Statute in Kenya) which allows universal jurisdiction over any person found in the territory of Kenya, and who has been indicted by the ICC for crimes within the competence of the ICC. Kenya's act of inviting and receiving President Omar Al Bashir, who is wanted by the ICC, was condemned by the ICC.[xxvii] But, Kenya is not the only African State to have chosen not to arrest President Omar Al Bashir. Before the invitation of President Omar Al Bashir by Kenya, Chad which is also a State party to the Rome Statute, had invited and officially hosted President Omar Al Bashir. So, the Kenyan incident was a continuation of contempt by African States towards the arrest warrant issued by the ICC for Omar Al Bashir. Furthermore, it must be noted that the Kenyan authorities did not heed to a call by Civil Society Organisations (CSO) to prosecute perpetrators of the crimes against humanity committed in Kenya during the post-election violence in 2007 and 2008. The Parliament of Kenya did not approve the Bill which would have resulted into a law to prosecute and punish all individuals, including Heads of State officials responsible for crimes against humanity committed during the post-election violence in Kenya between 27th December 2007 and early 2008.

After the Kenyan government failed to establish the Special Tribunal for Kenya due to non-approval of the Bill calling for the establishment of such tribunal, it was clear that the Kenyan State authorities were simply unwilling to prosecute and punish the perpetrators of crimes against humanity committed in Kenya during the post-elections violence that marred that country. This triggered the Prosecutor of the ICC to file an application for approval by the Pre-Trial Chamber of the ICC to commence investigation. Following the approval of commencement of investigations, the Prosecutor commenced his investigation under article 15 of the 1998 Rome Statute. The Prosecutor then filed an application on 15th December 2010 before Pre-Trial Chamber II of the ICC to issue summonses to appear for six persons from Kenya, including Heads of State officials.[xxviii]

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As a reaction to the request by the Prosecutor of the ICC, the Parliament of Kenya passed a motion seeking to allow Kenya to withdraw from the 1998 Rome Statute of the ICC.[xxix] The motion was introduced by Issac Ruto, a Member of Parliament (MP). The Kenyan authorities argued that they wanted the six suspects to be prosecuted before national Courts in Kenya in respect of crimes against humanity. It is for this reason that Kenya approached the African Union in order to request a deferral of investigations and prosecutions in respect of the six Kenyans suspected of crimes against humanity. However, Kenya did not yet convinced the international community that the investigations and prosecutions of the six Kenyans by the ICC was likely to affect international peace and security. Kenya's act of passing a motion to withdraw from the 1998 Rome Statute was criticised by Civil Society Organisations in East Africa. For example, the East African Law Society condemned the Kenyan authorities as intending to defeat the course of justice for crimes against humanity with the intent to delay or frustrate the investigation. It is argued that Kenya's intention to withdraw from the 1998 Rome Statute under article 127 would have not affect the current investigation or expected prosecutions against Kenyan individuals responsible for international crimes. The Kenyan government was obliged to cooperate with the ICC under article 86 of the Rome Statute and the International Crimes Act, 2008, which implements the Rome Statute into Kenyan domestic law.

The Legal and Judicial Aspect Regarding Punishments of International Crimes in Kenya: The Arguments

With regards to immunity from criminal proceedings, the Head of State is protected from the criminal charges during his term in office. The same extends to civil proceedings during the Presidents tenure of office. Article 143 of the Constitution of Kenya, 2010 recognises immunity of the President from criminal proceedings. However, immunity of the President does not extend to a crime which the President may be prosecuted under any treaty to which Kenya is a State party 'and which prohibits such immunity.'[xxx] Hence, immunity of State officials from prosecution for international crimes is not recognised. Immunity is outlawed for international crimes recognised by Kenya through its international treaty obligations. Kenya is a State party to the Genocide Convention and the 1998 Rome Statute that punish International Crimes. Regarding grave breaches of the Geneva Conventions, these are punishable in Kenya under the Geneva Conventions Act, 1968.[xxxi]

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Kenya has enacted the International Crimes Act, 2008.[xxxii] This Act recognises and punishes all such international crimes under the Rome Statute. It incorporates the whole of the Statute as a schedule to the Act. The Act came into force on 1st January 2009 after the proclamation of the law in the Government Gazette by the Minister of State for Provincial Administration and Internal Security. Such proclamation was made in exercise of the powers conferred on the Minister by section 1 of the Act.[xxxiii] The issue of immunity of Heads of State officials is addressed under section 27 of the International Crimes Act, 2008. Section 27 of the Act provides that:

27.(1) The existence of any immunity or procedural rule attaching to the official capacity of any person shall not constitute a ground for ;

(a) *refusing or postponing the execution of a request for surrender or other assistance by the ICC;*

(b) holding that a person is ineligible for surrender, transfer, or removal to the ICC or another State under this Act; or

(c) holding that a person is not obliged to provide the assistance sought in a request by the ICC.

(2) Subsection (1) shall have effect subject to sections 62 and 115, but notwithstanding any other enactment or rule of law. From the above, the Act does not recognize immunity of Heads of State officials but at least in respect of request for the surrender of any individual or any other assistance to the ICC. Section 27(2) imposes conditions under section 62 of the Act as envisaged under article 98 of the 1998 Rome Statute where it must require State consent or waiver of immunity for the transfer to take place. Nevertheless, it is the ICC which has to make a determination before anything proceeds in terms of article 27 (2) and 62 of the International Crimes Act, 2008. This is meant to avoid unnecessary conflict between articles 27 and 98 of the 1998 Rome Statute as reflected in sections 27 and 62 of the International Crimes Act, 2008. The reference to section 115 as Stated in section 27(2) of the Act is to avoid any possible conflict in terms of competing requests envisaged under article 98(1) of the 1998 Rome Statute. Here again, the Act says that it is the ICC which has to make a determination before anything may proceed regarding transfer. However, section 27 of the Act is not very clear on whether the Kenyan Head of State may be prosecuted before domestic courts in Kenya. One may thus conclude that section 27 of the Act seems incompatible with article 27 of the 1998 Rome Statute insofar as prosecution and punishment are concerned. Section 27 of the

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Act only talks about transfer to the ICC. Nevertheless, the Act is clear that the ICC may sit in Kenya and conduct trials there. Perhaps it is on this way that a Kenyan Head of State may be prosecuted by the ICC in accordance with the Act. In section 27 of the Act, procedural hurdles appear to be recognised because there is a proviso in section 27 which recognises constitutional protection accorded to the Heads of State officials in Kenya. In this regard, it seems that Kenyan Head of State officials may only be transferred and surrendered to be prosecuted by the ICC but not the Kenyan courts even for international crimes.

An analysis of the International Crimes Act reveals that the Act acknowledges that the 1998 Rome Statute has the force of law in Kenya in several aspects relating to requests by the ICC to Kenya, conduct of investigation, enforcement of sentences in Kenya, bringing and determination of proceedings before the ICC, application of laws governing the ICC, and general principles of Criminal law.[xxxiv] The Act binds the Kenyan government [xxxv]and its purpose is to make provision for the punishment of international crimes, especially genocide, crimes against humanity and war crimes.

The International Crimes Act grants Kenyan Courts with jurisdiction to deal with genocide, crimes against humanity and war crimes. The Act does not define such crimes but simply refers to the definitions contained in the 1998 Rome Statute for[xxxvi] such international crimes.[xxxvii] It applies the general principles of law as contained in the Rome Statute.[xxxviii] The Act confers the Kenyan High Court with universal jurisdiction over international crimes of genocide, crimes against humanity and war crimes and other serious violations of humanitarian law. The preconditions for such exercise of universal jurisdiction as mentioned in the Act are as follows: the crime must have been committed in Kenya; at the time of the commission of the crime, the person was a Kenyan citizen, or a citizen of a State that was engaged in armed conflict against Kenya, the victims must be Kenyan citizens, or citizens of allies to Kenya during an armed conflict; after the commission of the crime, a person must be within the territory of Kenya.[xxxix]

So, the emphasis is largely on the nationality link and territoriality. But, it must be noted that Kenya failed to apply universal jurisdiction over President Bashir of Sudan who had visited Kenya on 30th August 2010 at the official invitation by the Kenyan authorities.

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If indeed Kenya were to respect its obligations arising from sections 8 and 18 above of the International Crimes Act, it should have arrested and prosecuted President Omar Al Bashir because he was on Kenyan territory. Furthermore given the uncontested fact that Kenya has enacted the law which implements the 1998 Rome Statute thereby providing for cooperation with the ICC in respect of arrest and surrender of persons accused of international crimes, it was a testing moment for Kenya to arrest former President Omar Al Bashir. Had the Kenyan authorities arrested Omar Al Bashir, it would have been an act of fulfilling Kenya's obligations arising from article 2(5) of the Constitution of Kenya, 2010; the Rome Statute; Customary international law as well as from the International Crimes Act. Failure to do so, as it did, amounted to breach of Kenya's international law obligations.

In conclusion, one observes that there is no clear and consistent State practice regarding issues of prosecution of Head of State officials and immunity in Kenya. However, Kenyan laws make it clear that immunity does not shield anyone from prosecution for international crimes within the jurisdiction of international Courts as well as Kenyan Courts. This is implied in articles 2(5) and (6) of the Constitution of Kenya, and article 27 of the International Crimes Act, 2008. This position is further echoed and emphasized by the High Court's ruling in Gathungu case decided on 23 November 2010.[xl]

Prosecution of Heads of State Official and Immunity: Uganda's Experience

Uganda has demonstrated that it does not respect the immunity of a foreign serving Heads of State official from arrest and prosecution for international crimes. When an arrest warrant for former President Omar Bashir was unsealed and circulated to all States by the ICC, Uganda was one of the few African States declare publicly that if former President Bashir of Sudan stepped on Uganda, the Ugandan authorities would arrest him. That was a response by Uganda to its International obligations arising from the 1998 Rome Statute to which Uganda is a State party. It remained to be seen whether Uganda would affect its position if President Bashir visited Uganda. Whereas Uganda signalled that it could arrest former President Bashir of Sudan following the warrant of arrest issued by the ICC, President Yoweri Museveni later invited former President Omar Bashir of Sudan to attend the African Union meeting to adopt the Convention on Internally Displaced Persons, which was adopted in Kampala in November 2009 and the former President of Sudan was not

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arrested.. Uganda has a good track record in terms of legal framework and judicial practice on the prosecution of International crimes and rejection of immunity of Heads of State officials. For example, Uganda has established a War Crimes Division of the High Court[xli] housed at the High Court Headquarters in Kampala, to prosecute and punish individuals responsible for international crimes committed in the long protracted armed conflict in Uganda. The Court may sit anywhere under article 138(2) of the Ugandan constitution. There is no statutory instrument creating the War Crimes Division of the High Court, but it is a product of the directive issued by the Principal Judge of the High Court of Uganda. Uganda has also gone a step further by respecting its obligations under the 1998 Rome Statute on this aspect.

The Legal and Judicial Practices Regarding Punishment of Individuals Who Commit International Crimes in Uganda: The Arguments

A few days before the Review Conference on the Rome Statute of the International Criminal Court, the Ugandan Parliament enacted the International Criminal Court Act, 2010 (Act No. 11 of 2010)[xlii] which was assented to by the President Yoweri Museveni on 25th May 2010. This is 'an Act to give effect to the 1998 Rome Statute of the International Criminal Court; to provide for offences under the law of Uganda corresponding to offences within the jurisdiction of that Court, and for connected matters.'[xliii] The Act commenced on 26th June 2010. It incorporates the 1998 Rome Statute as schedule 1 to the Act. Section 1 on the application of the Act States that parts III, IV, V and VI of the Act 'apply to any requests made by the ICC regardless of whether the acts under investigation or subject to prosecution are alleged to have been committed before the coming into force of this Act.' This entails that the Act has a retrospective effect on crimes committed in Uganda even before the enactment of the Act itself. Arguably, this provision, although very useful to holding persons responsible for international crimes committed in Uganda, is nevertheless contrary to the purpose of the 1998 Rome Statute which does not allow retrospective application as to the punishment of crimes and law. The purpose of the International Criminal Court Act[xliv] is to give the Rome Statute a force of law in Uganda, to implement obligations assumed by Uganda under the Rome Statute, to make provision in Uganda's law for the punishment of the international crimes of genocide, crimes against humanity and war crimes. Additionally, the law is intended to enable Uganda to assist and cooperate with the ICC in the performance of its functions

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including investigation arresting and prosecution of persons accused of having committed international crimes under the 1998 Rome Statute. The crimes within the purview of the Act are defined to mean and include genocide, crimes against humanity, war crimes and the crime of aggression.[xlv] These crimes are defined further under sections 7, 8 and 9 of the Act. The Act further defines an international crime to mean, in relation to the ICC, a crime in respect of which the ICC has jurisdiction under article 5 of the 1998 Rome Statute.[xlvi]

Hence, it follows that the Act actually recognises no immunity from prosecution as well as the question of *subpoenas* that may be issued by courts and the ICC over Ugandans, including Heads of State and State officials of Uganda. This flows from the 'assistance' and 'cooperation' provisions of the Act. However, the application of section 25(1) which rejects immunity shall only apply subject to section 24(6) which relates to the responses to be sent to the ICC. Under section 24(6) of the Act, it is clear that 'if the Minister is of the opinion that the circumstances set out in article 98 of the 1998 Rome Statute apply to a request for provisional arrest, arrest and surrender or other assistance, he or she shall consult with the ICC and request a determination as to whether article 98 applies.'

What would be the position of article 98 of the 1995 Constitution of Uganda which grants immunity to the President vis-à-vis the provision of section 25(1) of the Act which rejects immunity of any person charged with international crimes? Although the 1995 Constitution is the supreme law of Uganda, it cannot supersede international treaties to which Uganda is a State party and has gone a step further by enacting a domestic law that recognises and incorporates international treaties, such as the 1998 Rome Statute. It is imperative that, there is no question of immunity if the President of Uganda is indicted by the ICC or a domestic Court in Uganda on the basis of section 25(1) of the International Criminal Court Act, 2010 as well as article 27 of the 1998 Rome Statute, provided the person is charged with international crimes. The Act has given more power and discretion to the Minister responsible for Justice and the Director of Public Prosecutions. A question would arise as to whether the Director of Public Prosecutions (DPP) may give consent for the President to be tried under this Act for international crimes, or whether the Minister may issue a certificate for the arrest and surrender of the President to the ICC to be tried for international crimes. Uganda has gone a milestone in

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enacting a good law that will in the future be applicable to prosecution and punishment of persons responsible for international crimes committed in Uganda or outside the territory of Uganda. This is a commendable effort by Uganda. It is also a good gesture by referring the situation in Uganda to the ICC. However, there could be concerns that those referred to the ICC are only rebel leaders, but not Ugandan members of the armed forces or government officials or Head of States who might as well be responsible for the same international crimes as those committed by the rebels in northern Uganda.

Prosecution of Heads of State Officials and Immunity in Rwanda: Rwanda's Experience

The practice in Rwanda on the question of immunity is divided in three aspects: political or executive level; legal and judicial levels. In terms of political practices, it must be recalled that Rwanda does not accept that its serving Head of States be prosecuted outside Rwanda even for international crimes. The justification for this assertion is based on the way Rwanda responded in 2008 to the indictment of Rose Kabuye, a senior State official in the Government of Rwanda by the French authorities on charges of genocide.[xlvii] Kabuye had been allegedly involved in the planning of the genocide in Rwanda in 1994. It will be recalled that Rose Kabuye is a senior State official close to President Paul Kagame. Whilst in a private visit to Germany, Kabuye was arrested by the German authorities acting on an arrest warrant issued by a court in Paris, France. Immediately after her arrest, Kabuye was extradited to France to face charges there. The German authorities failed to prosecute her because of the provisions of sections 18,19 and 20 of the German Judiciary Act which grant immunity to diplomatic missions and Head of State officials on official invitation in Germany.[xlviii]Criminal proceedings in France were terminated by a court in Paris, and the Rwandan official was fortunately released. The prosecution of this Rwandan State official in France resulted in a diplomatic row between Rwanda and France. Rwanda terminated diplomatic ties with France, even though it later restored the same in 2009. This protest reflected that Rwanda did not want its State official to be prosecuted for genocide before a Court in Paris. In 2010, a French team of investigators visited Rwanda with a view to investigate the crime of genocide. One must also recall that in September 2010, a team of the United Nations investigators released a report that accused Rwandan *Tutsi* State officials and military commanders of committing genocide against the *Hutus* in the Democratic Republic of the Congo (DRC). Rwanda has opposed the report on genocide in DRC. Such opposition could be just a bare denial without any substantiation or

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justification by the Rwandan authorities.[xlix] The State practice on upholding immunity of Head of State and State officials before foreign national courts is further observed in Rwanda. When a French judge, Jean-Louise Bruguiere indicted nine Rwandan State and military officials in 2007 in connection with their alleged roles in the 1994 genocide in Rwanda, Rwanda reacted by conducting an inquiry and suggesting that former French senior State officials had also played roles in the genocide. The Rwandan authorities commissioned an Independent Commission to investigate on the role played by France and its senior officials in the 1994 genocide in Rwanda. On 5th August 2008 the Government of Rwanda released a report which accused France for its role in the genocide in Rwanda. The report concluded that the French authorities were aware of the preparations of the genocide and assisted the ethnic Hutu militia perpetrators. It accused French troops of direct involvement in the killings and listed thirty three senior French Military and political leaders to be prosecuted. Such leaders include the late former President of France, Francois Mitterrand and the former Prime Minister, Edouard Balladur. Others were Allain Juppe, the foreign minister at that time, and Dominique de Villepin. After releasing the report, Rwanda urged the authorities to prosecute the accused French political leaders and military officials.[l] In an attempt to restore diplomatic relations, the former French President, Nicolas Sakorzy visited Rwanda in 2010. Yet, another aspect which shows unwillingness to heed to the calls for non-recognition of immunity of Head of State officials in Rwanda is the way President Paul Kagame refused to testify before the International Criminal Tribunal for Rwanda (ICTR) for his role in the 1994 genocide in Rwanda. This is reflected in the case law of the ICTR. In Prosecutor v *Karemera, Ngirumpatse and Nzirorera, the Rwandan authorities did not cooperate* [li]with the defence for Mr Nzirorera regarding the issue of *sub-poena* to testify before the ICTR and President Paul Kagame's involvement in the genocide. It would seem that the authorities in Rwanda did not bother with such requests for cooperation on the ground of immunity of serving State President Kagame. Furthermore, Rwanda's President Paul Kagame has been supportive of non-cooperation with the ICC over the arrest warrant issued against the former President of Sudan Omar Al Bashir, Uhuru Kenyatta and the former President of Ivory Coast Laurent Gbagbo who was acquitted on 2018 based on prosecutorial failures to make a case due to lack of evidence. President Kagame has been claiming that the court represents the western influence on Africa.[lii] The three examples given above indicate the way Rwanda has not accepted the prosecution or subpoena to its serving Head of State

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officials before foreign courts and even international courts respectively.

The Legal and Judicial Aspects Regarding Punishment of International Crimes in Rwanda: The Arguments

The Constitution of Rwanda recognises Immunity of the President for acts committed whilst in office. Article 115 of the Constitution of Rwanda provides that 'an Organic law determines the benefits accorded to the President of the Republic of Rwanda and to former Heads of State.' However, the President is not entitled to immunity when he commits high treason or violates the constitution. As such, the President may not benefit from the legal protection because, once he commits such acts, he ceases to exercise his functions. That is what the Constitution provides in article 115. Due to the genocide in Rwanda, the Preamble to the Constitution of Rwanda condemns genocide.[liii] Article 9 of the Constitution of Rwanda specifies fundamental principles.

Rwanda established the National Commission for the fight against genocide, which is founded on article 179 of the Constitution of Rwanda. Rwanda is not a State party to the 1998 Rome Statute. As such, Rwanda may not support the ICC with regards to prosecution of international crimes because it has no express treaty obligations to do so. This does not mean that Rwanda is not under international law obligation to prosecute persons responsible for international crimes recognised even in the Rome Statute. Customary international law duty to prosecute and punish perpetrators of international crimes is clear on this point. This emanates also from the Genocide Convention itself. However, Rwanda is a State party to the Great Lakes Protocol on the Prosecution and Punishment of the Genocide, Crimes against Humanity, War Crimes and All forms of Discrimination of 2006. This Protocol does not recognize immunity of Heads of State and State officials as a defence or a mitigating factor in the punishment of persons who commit international crimes. The Protocol is enforceable in Rwanda because it does not require a separate enforcement mechanism from the Great Lakes Region's Pact on Peace and Security of 2006. Despite the call under this Protocol requiring member States to ratify the 1998 Rome Statute, Rwanda is not yet a State party to the 1998 Rome Statute. However, Rwanda is a State party to the Genocide Convention, and has enacted a law to punish genocide and other international crimes. Two different laws apply to different judicial systems in Rwanda. One system of justice in Rwanda is that which is addressed by the former local

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courts called Gacaca courts,[liv] and the other one is a normal or conventional judicial system. *Gacaca* courts were established by a specific law[lv] and they dealt with international crimes. Articles 151 and 152 of the Constitution of Rwanda established the *Gacaca* Courts. These courts were 'charged with the trial and judgment of cases against persons accused of the crime of genocide and crimes against humanity which were committed between 1st October 1990 and 31st December 1994, with the exception of cases whose competence is vested in other courts.'[lvi] In Rwanda, Law No.33 Bis/2003 Repressing the Crime of Genocide, Crimes against Humanity and war crimes provides that 'the official status of an accused at the time of committing a crime shall not exempt him or her criminal liability and shall not be a reason to benefit from mitigating circumstances' and that 'the fact that the accused has acted upon the order of the Government or of his or her superior authority shall not exempt him or her from his or her criminal liability where, the order could lead to perpetration of one of the crimes punishable under this law.'[lvii] Law No.33Bis/2003 Repressing the crime of genocide, crimes against humanity and war crimes was promulgated on 6th September 2003, *and published on 1 November 2003* in the Official Gazette of the Republic of Rwanda.[lviii] This is the law in Rwanda regarding the prosecution and punishment of international crimes before courts in Rwanda. The specific crimes covered by this law are genocide, crimes against humanity, and war crimes.[lix] The law also punishes other serious international humanitarian law breaches, such as attacks on humanitarian organisations.[lx] Article 20 of this law provides that legal proceedings as well as penalties pronounced for the crime of genocide, crimes against humanity and war crimes are imprescriptible (meaning that they cannot be limited by any statute of limitation).

Hence, immunity may not be claimed in Rwanda insofar as the prosecution and punishment of international crimes is concerned. It is noted that Organic Law No 04/2012/OL of 15/06/2012 which terminated the *Gacaca Courts* and determining mechanisms for solving issues which were under their jurisdiction do not recognize immunity of Heads of State officials before Courts in Rwanda. It seems though that immunity of Head of State officials before foreign Courts is still recognised at least though in Rwanda's State practice to date.

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CONCLUSION

This Article has examined the practices and law on immunity of Heads of State officials, in relation to the prosecution of international crimes in Africa. The practice is reflected in judicial and legal aspects. The trend in Africa has changed positively and it is moving towards prosecuting and punishing persons responsible for international crimes including Heads of States. The Article on the selected African jurisdictions verifies that, immunity of Heads of State officials is no longer an accepted defence from prosecution and punishment of individuals who commit international crimes even under International laws. This gives a clear picture that a person cannot benefit from immunity if such person or Heads of State has been *subpoenaed* by the ICC to testify or submit documents to be used as evidence. For example apart from prosecution, the Ugandan law goes as far as to deny immunity for anyone who is supposed to assist the ICC in terms of testifying and adducing documents to be used as evidence in Court during trial. From 2010 onwards it is expected that any person who commits international crimes will be prosecuted regardless of the official status as Heads of States. Conclusively it's that some African States have begun, to assert universal jurisdiction over international crimes through the laws implementing the Rome Statute. States in Africa like Uganda, Kenya, represents the positive progressive on the application of the principle of universal jurisdiction in Africa and rejection of immunity of Heads of State. This should be emulated by other African States because the laws in such States have the effect of closing impunity gaps. However, the absolute universal jurisdiction would create problems in the application of the law. It is generally observed that in most of the jurisdictions studied in this part, universal jurisdiction for international crimes is allowed. However, the only concern on incompatibility with international standards, especially the 1998 Rome Statute is that some of the laws, particularly in Uganda still provides for retroactive application of the law and punishment for international crimes, contrary to what the Rome Statute provides. It seems that such laws violate the principle of *nulla poena sine lege* as prohibited under the Rome Statute. However, it is equally argued that such laws are progressive in that they provide more than what the 1998 Rome Statute requires. This is a good indication that no person can escape from criminal responsibility for international crimes regardless of the period of commission of crimes. The Article indicates clearly that in Rwanda immunity may not be claimed insofar as the prosecution and punishment of international crimes is concerned. It is noted that Organic Law No 04/2012/OL of 15/06/2012 which terminated the *Gacaca Courts* and determining mechanisms which may be used to solve

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issues which are under their jurisdiction do not recognize immunity of Heads of State officials before Courts in Rwanda. It seems though that immunity of Head of State officials before foreign courts is still recognised at least though in Rwanda's State practice to date. It is appropriate to recommend that for those African States that have not yet enacted laws on international crimes, they should do so in line with the 1998 Rome Statute, so that they can be able to use the positive complementarity principle enshrined under the Statute.

BIBLIOGRAPHY

Books

- Jennings R & Watts A (Eds.), *Oppenheim's International law* 9th Edition, Maxwell Publishers 1992.
- JD Van der Vyver '*Universal jurisdiction in international criminal law'* 1st Edition 1999MC Bassiouni; *International Criminal Law*: Procedural and Enforcement Mechanisms, 2nd Edition 1999.
- Ratner R, S, & Abraham J.S *Accountability For human rights Atrocities in International Law; Beyond the Nuremberg legacy 1st Edition,* Maxwell Publishers 2001

Journals

- Pierson C, 'Pinochet and the end of Immunity: England's House of Lords held that a former Head of State is not immune for torture' (2000) 14 Temple International law and Comparative Law Journal pg 263,
- *P Clark and ZD* Kaufman (eds.,), (2008) After genocide: Transitional justice, post-conflict reconstruction and *reconstruction in Rwanda an d beyond, Ch 15, 297-320. International Law Journal.*

Reports

- Amnesty International, Germany: End impunity through Universal Jurisdiction, (Amnesty International Publications Report, No Safe Haven Series, No.3, 2008).

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Articles

- L Tweyanze, Registrar, War Crimes Division, High Court of Uganda in his article, 'The War Crimes Division of the High Court of Uganda'.

ENDNOTES

[i] In most Constitutions of the civil law African States, one observes the use of 'Chief of State.' See for example, art 41 of the Constitution of Benin, 1990; art 29, Constitution of Mali, 1991; art 34, Constitution of Ivory Coast, 2000; art 58, Constitution of Togo; art 73, Constitution of Sao Tome and Principe, 1990; art 49, Constitution of Senegal, 2001 as amended in 2008; art 2 3, Constitution of Mauritania, 1991; arts 2 1-22, Constitution of the Central African Republic, 2004. However, in States like Libya, it is the Revolutionary Command Council which is the supreme authority. It appoints the President and Council of Ministers; see generally, arts 19 and 22 of the Constitution of Libya.
[ii] See for example, art 19 of the Constitution of Morocco, 1996 which says that 'the King is the Head of State and Supreme Representative of the Nation.' Art 23 thereof says that 'the King's person is inviolable and sacred.'
[iii] Chacha Bhoke; Immunity of State officials and prosecution of International Crimes in Africa.PhD report,Pretoria University pg 230.
[iv] Art 98(2), Constitution of Uganda, 1995 provides: 'The President shall take precedence over all persons in Uganda, and in descending order, the Vice President, the Speaker and the Chief Justice
[v] See, art 35(1), Constitution of Swaziland, 1968, as amended in 1973.
[vi] Sec 50(1), Constitution o f Lesotho
[vii] Art 117, Constitution of Burundi, 2004
[viii] The constitution of Rwanda,2003 as amended 2015
[ix]Art 73, Constitution of Benin, 1990.
[x] Art 87, Constitution of Congo, 2002.
[xi] Art 60(1), Interim National Constitution of Sudan, 2005.
[xii] Art 85, Constitution of Egypt, 1971
[xiii] Art 43, Constitution of Eritrea, 1997; art 132, Constitution of Mozambique
[xiv] Sec 69, Constitution of the Gambia
[xv] Art 31(2)-(3), Constitution of Namibia, 1990 as amended in 1998.
[xvi] Ratner R, S, & Abraham J.S *Accountability For human rights Atrocities in International Law; Beyond the Nuremberg legacy* (2001) p g 4-6
[xvii] *R v Bow Street Metropolitan Stipendry Magistrate and Others , ex parte Pinochet Ugarte* {1998} 3 WLR 1465. Judge Philips defined Immunity as the ability of a State official to escape prosecution for crimes for which e would otherwise be held accountable.
[xviii] Blacks law dictionary (1999) (7th,edi) pg 752
[xix] The Rome Statute of 1998
[xx] JL Mallory 'Resolving the confusion over Head of State immunity: The defined rights of Kings' (1986) 86 *Columbia Law Review* 169-170
[xxi] Pierson C, 'Pinochet and the end of immunity: England's House of Lords held that a former Head of State is not immune for torture' (2000) 14 Temple International law and Comparative Law Journal pg 263,
[xxii] Jennings R & Watts A (Eds.) (1992) Oppenheim's International law (9th Ed) Maxwell Publishers pg 27
[xxiii] MC Bassiouni (1999) International criminal law: Procedural and enforcement mechanisms, 2nd edn, 17-18; JD Van der Vyver 'Universal jurisdiction in international criminal law' (1999) 24 South *African Yea rbook o f International Law, 111.*
[xxiv] The Kenyan Commission for Human Rights apparently published names of suspects of crimes against humanity in Kenya. It listed Raila Odinga and Uhuru Kenyatta, amongst other suspects.

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[xxv] MC Bassiouni (1999) International criminal law: Procedural and enforcement mechanisms, 2nd edn, 17-18; JD Van der Vyver 'Universal jurisdiction in international criminal law' (1999) 24 South *African Yea rbook o f International Law, 117.*
[xxvi]Arts 5 and 7, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ad opted by the General Assembly of the United Nations on 10 December 1984, UNTS, Vol 1465, No. I-24841, entered into force on 26th June 1987.
[xxvii] 'Court worry at Omar al-Bashir's Kenya trip ' available at <http://www.bbc.co.uk/news/world-africa-11117662> (accessed on 27 February 2020).

[xxviii] Situation in the Republic of Kenya, Public Reducted Version of Document ICC-01/09-30-Conf-Exp, Prosecutor's Application Pursuant to Article 58 as to William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang, Case No. ICC-01/09, 15 December 2010, 1-79; Situation in the Republic of Kenya, Public Reducted Version of Document ICC-01/09-31-Conf-Exp, Prosecutor's Application Pursuant to Article 58 as to Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali, Case No. ICC-01/09, 15 December 2019, 1-80.
[xxix] 'Kenyan parliament passes motion to withdraw country from ICC', 29 September 2019, available at <http://www.afriqueavenir.org/kenyan-parliament-passes-motion-to-withdraw-country-from-icc> (accessed on 26 February 2019).
[xxx] Art 143(4), Constitution of Kenya, 2010. Note that in the 2009 draft constitution, immunity was addressed under article 68(4).
[xxxi] The Geneva Conventions Act, 1968. International crimes particularly war crimes attract universal jurisdiction in Kenya under this Act, see sec 3(1) of the Act.
[xxxii] The International Crimes Act, (No.16 of 2008).
[xxxiii] The commencement of the Act was on 1 January 2009, but the proclamation was published on 22 May 2009, by late Prof George Saitoti, the Minister in the Internal Security Ministry.

[xxxiv] Sec 4, International Crimes Act, 2008.
[xxxv] Ibid Sec 3.
[xxxvi] See, long title of the Act (Rome Statute 1998).
[xxxvii] Ibid Sec 6.
[xxxviii]Ibid Sec 7.
[xxxix] Ibid Sec 8 &18
[xl] Joseph Kimani Gathungu (Applicant) v The Attorney General, the International Criminal Court, *Kituo cha Sheria, Centre for Justice for Victims of Crimes against Humanity, International Commission of Jurists(Respondents), The High Court Ruling of Kenya in 2010,*
[xli] L Tweyanze, Registrar, War Crimes Division, High Court of Uganda in his article, 'The War Crimes Division of the High Court of Uganda'.
[xlii] The International Criminal Court Act, 2010 (Act No 11 of 2010), Acts Supplement No.6 to the Ugandan Gazette No.39, 25 June 2010
[xliii] Ibid The International Criminal Court Act, 2010, long title.
[xliv] Ibid Sec 2, International Criminal Court Act, 2010.
[xlv] Ibid Sec 3(1), (interpretation clause).
[xlvi] Article 4of the Rome Statute Act 1998.
[xlvii] CB Murungu '*Towards a Criminal Chamber in the African Court of Justice and Human Rights'* (2011) Journal of International Criminal Justice (forthcoming).
[xlviii] Amnesty International, Germany: End impunity through universal jurisdiction, (Amnesty International Publications, No Safe Haven Series, No.3, 2008).
[xlix] After the UN released an official report incriminating the Rwandan government with genocide in DRC, Rwanda commenced a campaign of denial of genocide in DRC by holding public conferences. For example, on 5 October 2010, the Embassy of Rwanda in Pretoria, South Africa responded to the UN Report by holding a public conference at University of Pretoria to officially dismiss the findings of the report. His HE Ignatius Kamali Karegesa and Dr Charles Mironko aired their oppositions to the UN report on genocide. I participated in the conference and observed the proceedings, which of course, were marred by the Congolese nationals opposing the Rwandan denial of genocide in the DRC.
[l] Prosecutor v Edouard Karemera, Mathieu Ngirumpatse and Joseph Nzirorera, Case No. ICTR-98-44-T
[li] Ibid Prosecutor v Edouard Karemera, Mathieu Ngirumpatse and Joseph Nzirorera, Case No. ICTR-98-44-T
[lii] Prosecutor v Edouard Karemera, Ma thieu Ngirumpatse and Joseph Nzirorera, Case No. ICTR-98-44-T, *Decision on Joseph Nzirorera's Motions for Subpoena to Leon Mugesera and President Paul Kagame,* Trial Chamber III, 19 February 2008

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[liii] Paras 1 and 2, Preamble to the Constitution of Rwanda, 2003.

[liv] On the Gacaca courts in Rwanda, see generally, P Clark 'The rules (and p olitics) o f engagement: The *Gacaca courts and post-genocide justice, healing and reconciliation in Rwand a' in P Clark and ZD* Kaufman (eds.,), (2008) After genocide: Transitional justice, post-conflict reconstruction and *reconstruction in Rwanda an d beyond, Ch 15, 297-320.*

[lv] Art 152, Constitution of Rwanda, 2003.

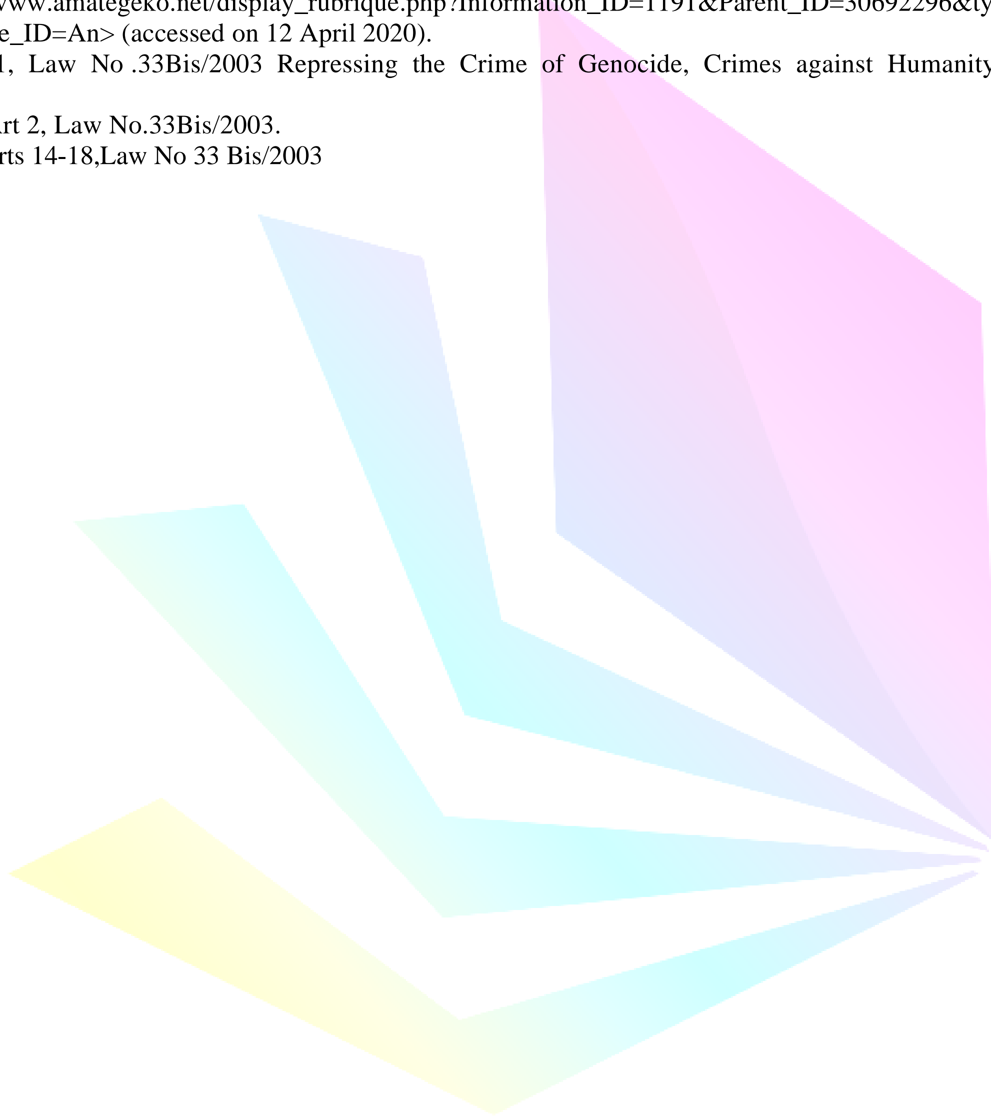
[lvi] Art18 of the Law No.33 Bis/2003 Repressing the Crime of Genocide, Crimes against Humanity and War *Crimes.*

[lvii] Law No.33Bis/2003 can be accessed on the web site link to the Laws and Codes of Rwanda, at <http://www.amategeko.net/display_rubrique.php?Information_ID=1191&Parent_ID=30692296&type=public&Langue_ID=An> (accessed on 12 April 2020).

[lviii] Art 1, Law No .33Bis/2003 Repressing the Crime of Genocide, Crimes against Humanity and War Crimes.

[lix] Ibid Art 2, Law No.33Bis/2003.

[lx] Ibid Arts 14-18,Law No 33 Bis/2003



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