

# Role of International Criminal Court in Reducing Human Rights Violations

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**Abstract:** Crimes against human rights and military conflicts within and between states are forcing the international community to take collective responsibility for peace and prevention of such incidents. An important factor in this direction is the accountability of those who commit crimes against humanity. Apart from representatives of the judicial system of each individual country, this role is assigned to the International Criminal Court (ICC). While its role in the investigation of military conflicts and crimes against human rights has been questioned by a series of setbacks, it is impossible to deny the ICC's impact on peace. To identify the role of the ICC in the establishment and protection of human rights, authors analyse closed and open criminal investigations throughout the history of the Court. Analysis of the criminal cases opened in 4 countries is provided, namely: Uganda, Kenya, Sudan, and Iraq. The obtained data demonstrate that investigations are more effective in countries that are members of the Rome Statute. With more power, the International Criminal Court can work more effectively with the governments of these states and hold those responsible for crimes against humanity to account. Thus, in Sudan, the pre-trial investigation in several cases has been going on for more than 10 years, the trial itself has not yet begun. In the Iraq-UK case, the ICC Attorney's Office also failed to obtain justice for the perpetrators of crimes against Iraqi citizens. The authors recommend addressing this factor and consider an in-depth study of the ICC statute. Changes in international criminal justice require flexibility from relevant organisations and their statutes.

**Keywords:** Military conflicts, international law, crimes against humanity, security, judicial investigation.

## INTRODUCTION

The emergence of military conflicts and the commission of crimes against human rights require investigation and control not only by the internal institutions of states. After a series of historical events, the International Criminal Court was created to respect human rights around the world. After World War II, the Allied Powers established the first international war crimes tribunal, known as the Nuremberg Trials, to prosecute high-ranking Nazi officials. However, it was not until the 1990s that many governments rallied around the idea of a permanent trial to bring those responsible for the world's most serious crimes to justice. Previously, the United Nations (UN) established ad hoc international criminal tribunals to try war crimes in the former Yugoslavia and Rwanda, but many international law experts considered them ineffective and inadequate as a deterrent (Ubah and Nwebo 2015).

Trinidad and Tobago requested the UN commission to consider establishing a permanent court in 1989. In subsequent years, such efforts have gained support, especially in Europe and Africa. African countries make up the largest bloc of ICC members. The founding agreement of the ICC was adopted by the UN General Assembly at a conference in Rome in July 1998. After

ratification by more than sixty countries, the Rome Statute entered into force on 1 July 2002. 123 countries take part in the Rome Statute. The challenge before the international community is to ensure the creation of a justice system that truly enforces the rule of law, linking both strengths and weaknesses in the international system. The International Criminal Court marks a watershed in the historical struggle of the international community to create a permanent court to try and punish war criminals and to fill the gap left by national criminal jurisdiction in this area, researchers believe (Charles 2015). The ICC contributes to the fight against impunity and the establishment of the rule of law by ensuring that the most serious crimes do not go unpunished and by promoting respect for international law. The main mandate of the ICC is to act as a court of last resort, capable of prosecuting individuals for genocide, crimes against humanity and war crimes when national jurisdictions, for whatever reason, are unable or unwilling to do so. As of November 2012, the ICC had handled 14 cases in seven country situations involving a total of 23 suspects or accused.

As then-Secretary-General of the United Nations, Kofi Annan, stated in 2004, the ICC exerts its influence by "warning potential perpetrators not to expect impunity". When tensions arise between or within states, the ICC keeps its finger on the pulse and can become a powerful tool for preventing crimes against a person. There is no doubt that contemporary legal science confirms the rich potential, fundamental role,

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and paramount importance of internationally recognised human rights in the work of the ICC. A broad interpretation of human rights that goes beyond the protections found in the legal science of international human rights courts can complicate the investigation and sentencing procedure. This is why any incoming case law must be well founded and designed to be consistent with the leading role that human rights play in international criminal law.

The subject area of international criminal justice is transforming. Created against the backdrop of a symbolic upsurge around international criminal tribunals in the 1990s and 2000s, the legal framework is currently being restructured to reflect broader geopolitical transformations in the balance of power and the associated shift from building international institutions to more localised action. However, the role of international organisations still remains significant in the establishment of justice (Christensen 2015). The ICC is the court of last resort, intervening only in cases where national authorities are not prosecuting serious international crimes. Governments can avoid ICC interference by showing the ICC prosecutor that they are conducting genuine investigations. This could provide the ICC prosecutor with important leverage over these bodies during preliminary checks, serving as a pressure point to facilitate progress in the administration of justice for domestic crimes. By using all of its unique leverage, the OTP plays a critical role in expanding the fight against impunity by stimulating national justice (Charles 2015). However, the possibility of the International Criminal Court cannot be overestimated. Its powers do not allow for unimpeded investigation of cases. This is especially true for countries that have not adopted the Rome Statute, as numerous resources are spent on investigating crimes against human rights, and the situation is complicated in such states. The purpose of this study is to analyse the results of the work of the International Criminal Court in countries that are parties to the Rome Statute and in countries that have not accepted it. The results obtained allowed the authors to identify the role of the International Criminal Court in the protection of human rights.

## MATERIALS AND METHODS

One of the main materials on which the study was based is the Rome Statute of the International Criminal Court, adopted in 2002. The work is based on the study of criminal cases opened by the International Criminal Court in order to protect human rights. Authors studied

publicly available cases and additional materials on them. The historical component of conflicts in countries where the ICC operates was also studied. Authors consider the level of involvement of these countries in military conflicts, the level of citizens' confidence in the authorities and the justice system, the presence of the necessary competent authorities and persons in each country in order to prevent and investigate crimes that violate human rights at the highest level. The activities of the International Criminal Court are analysed, the main existing instruments, its competence in the countries of the Rome Statute and countries that have not adopted it were identified.

One of the main methods in this study is comparative legal method. Reforming and improving state-political and legal practice is impossible without comparing similar objects of knowledge that exist simultaneously or are separated by a certain period of time. The study subjected to comparison the criteria of the judicial system of each of the states, the presence of these corresponding to the structure of the Rome Statute in their legislative framework. Another of the main research methods is analysis. With its help, the main components of the ICC's activities were identified. It was analysed in countries such as Uganda, Kenya, Sudan, and Iraq. The main stages of the investigation in each of the states are identified. The reasons for the intervention of the International Criminal Court in the judicial processes of these countries are considered, how the investigation was carried out, how long it took and whether the culprit of human rights violations at the highest level was found. The data on criminal cases in the studied countries are derived and the results are compared. The study also analyses measures that the ICC has taken to punish those accused of crimes against humanity. Based on the information received, recommendations were drawn up for further effective interaction of the ICC with state bodies and institutions.

## RESULTS AND DISCUSSION

The main field of activity of the ICC is located in Africa, since the countries of the continent are mostly parties to the Rome Statute. During its existence, the International Criminal Court has opened 27 cases. On the fifth anniversary of its founding, Judge Philippe Kirsch, President of the ICC, issued a statement on the work completed in these early years. In his statement, he referred to the trend in African affairs without directly mentioning it, although he was right when he was optimistic about the initial steps of the Court (Fisher 2018). At that time, the investigation of crimes against

humanity in Uganda was already in progress. In June 2002, Uganda ratified the Rome Statute, and in January 2004 it handed over to the ICC the regulation of the situation on its territory since July 1, 2002. Therefore, the ICC can exercise its jurisdiction over the crimes listed in the Rome Statute committed in the territory of Uganda or by its citizens since July 1, 2002. ICC investigations in Uganda have focused on alleged war crimes and crimes against humanity committed in the context of an armed conflict, predominantly between Lord's Resistance Army (LRA) and national authorities, mainly in Northern Uganda, since 1 July 2002.

The key issue for the ICC was the search and arrest of the LRA leadership. Investigations began in July 2004 and the alleged crimes in this situation included: war crimes, including murder; ill-treatment of civilians; deliberately targeting the civilian population; robbery; inducement to rape; forced recruitment of children; crimes against humanity, including murder; sexual enslavement; rape and inhumane acts of causing serious bodily harm and suffering. This situation prompted the ICC Pre-Trial Chamber judges to issue the first arrest warrant of the Court in 2005 against senior LRA members. All of the suspects remained at liberty for ten years until one of them, Dominique Ongwen, surrendered in January 2015. Other top LRA members, Joseph Kony and Vincent Otti, remain at liberty. However, the investigation is still ongoing.

Kenya ratified the Rome Statute in 2005 and incorporated the ICC offenses into national legislation through the International Crimes Act 2008. In 2010, the Office of the Prosecutor of the ICC used its *proprio motu* powers for the first time, opening an investigation into alleged crimes against humanity during the violence in Kenya following the 2007–2008 elections. In November 2009, the ICC prosecutor used his *proprio motu* powers for the first time to obtain permission to open an investigation without a referral from an ICC member state or the UN Security Council. By a majority decision in March 2010, the Pre-Trial Chamber found reasonable grounds to investigate the violence in Kenya after the 2007–2008 elections. A preliminary investigation by the prosecutor was launched because Kenya was unable to appoint a competent person inside the country to prosecute the perpetrators of the violence.

In March 2011, subpoenas were issued to six senior Kenyans on both sides of Kenya's 2007 elections, suspected of organising attacks on rival political

supporters. All six persons first appeared before the Court in April 2011. One of the ICC cases involved Orange Democratic Movement (ODM) politicians Henry Kosgey and William Ruto, who later became Deputy President, and radio broadcaster Joshua Sang. Another case concerned the Party of National Unity (PNU) politicians Uhuru Kenyatta – later president – and Francis Muthaura, as well as former Police Commissioner Mohammed Hussein Ali. In January 2012, the Pre-Trial Chamber approved the cases against Ruto and Sang and against Muthaura and Kenyatta for trial, following confirmation of the charges at hearings in September and October 2011, respectively. In May 2012, the Appeals Chamber unanimously rejected the defences against the ICC jurisdiction over the situation in Kenya. Pre-Trial Judges declined to confirm the charges against Kosgey and Ali. All charges were dropped due to the refusal of the witnesses to testify. The prosecutor's office emphasised the possibility of reopening cases in case of new evidence.

Sudan is not a member state to the Rome Statute. However, since the UN Security Council (UNSC) referred the situation in Darfur to the ICC in Resolution 1593 (2005) of March 31, 2005, the ICC can exercise its jurisdiction over Rome Statute crimes committed in Darfur, Sudan or by its citizens since July 1, 2002. ICC investigations into Darfur focus on allegations of genocide, war crimes, and crimes against humanity committed in Darfur, Sudan since 1 July 2002. The UN Secretary General has established a Commission "to investigate reports of violations of international humanitarian and human rights law in Darfur by all parties, to determine whether acts of genocide have occurred, and to identify perpetrators of such violations, to ensure that those responsible are brought to justice". The Commission took two facts as the basis: "Firstly, according to United Nations estimates, there are 1.65 million internally displaced persons in Darfur and more than 200,000 refugees from Darfur in the neighbouring Chad. Secondly, there was widespread destruction of villages in all three states of Darfur".

The ICC investigation, launched in June 2005, has led to several cases with suspects ranging from government officials of the Sudan, police/Janjaweed leaders and leaders of the Resistance Front. The situation in Darfur was the first to be transferred to the ICC by the United Nations Security Council and the first to have the ICC investigate a case in a non-Rome Statute state. This was the first ICC investigation into allegations of the crime of genocide. Former President

**Table 1: Status of ICC Investigations in African Countries**

Case start	Country	Person charged	Status
2005	Uganda	Ongwen	Trial
	Uganda	Kony <i>et al.</i>	Pre-trial
2007	Sudan	Harun	Pre-trial
	Sudan	Abd-Al-Rahman	Pre-trial
2009	Sudan	Banda	Trial
	Sudan	Al-Bashir	Pre-trial
	Sudan	Abu Garda	Charges not confirmed
2011	Kenya	Ruto and Sang	Charges vacated
	Kenya	Kenyatta	Charges withdrawn
2012	Sudan	Hussein	Pre-trial
2013	Kenya	Barasa	Pre-trial
2015	Kenya	Gicheru and Bett	Pre-trial

of Sudan Omar Al-Bashir is the first incumbent president wanted by the ICC and the first person charged with the crime of genocide by the ICC. Neither of the two arrest warrants have been executed and he is not in Court custody. Cases opened in Uganda, Kenya, and Sudan indicate that the perpetrators of human rights violations at the highest level have been identified by the International Criminal Court. Persons holding senior government and military positions in these countries were brought to justice (Table 1).

Since Iraq case (2006) is not a member of the ICC, the preliminary examination focused on potential Rome Statute crimes committed in Iraq by nationals of the ICC member states. The ICC has conducted two phases of preliminary investigation in Iraq. In February 2006, the prosecutor closed the first preliminary investigation in Iraq because, based on the information available to him, no crime had been identified within the jurisdiction of the ICC (Iraq case 2006). While evidence of war crimes committed in Iraq between May and March 2003 was found, there was neither evidence of excessive attacks on civilians, nor evidence of the involvement of citizens of ICC states.

The ICC prosecutor reopened the preliminary investigation in May 2014 following new information on war crimes, including the alleged torture and killings of hundreds of detainees, committed by British soldiers between 2003 and 2008 in Iraq. Other alleged crimes committed in UK-controlled detention facilities include denial of a fair trial, rape, and sexual assault. In March 2010, the UK Department of Defence established a specialised authority, the Iraqi Historic Allegations

Team ("IHAT"), to investigate abuses in UK detention facilities. Police investigations took over the remaining IHAT investigations in early July 2017, and national investigations resulted in at least one verdict. However, the ICC prosecutor notes that these proceedings were focused on low- and medium-level offenders and did not involve serious crimes, including murder. Furthermore, the prosecutor's office assesses the severity in accordance with Art. 8(1) of the Rome Statute of the International Criminal Court (UN General Assembly 1998). According to this article, the Court must give particular attention to cases of war crimes committed on a large scale as part of a plan or in accordance with broader policy. It remains unclear whether the scale of the alleged crimes is as large as the one alleged in the communication and whether it meets the admissibility criteria. Prosecutors are currently investigating whether crimes fall within the jurisdiction of the court and are monitoring whether investigations are being conducted by the British authorities. As part of the investigation, the martial court brought charges against the British military (Table 2).

After careful examination of the facts, the prosecutor pointed out that since the jurisdiction of the ICC over the crime of aggression has not yet been activated in Iraq, "the specific question of the legality of the decision to apply force in Iraq in 2003 – or elsewhere – is not within the legal mandate of the Court, and, therefore, does not fall within the scope of its preliminary consideration". Since the stated policy of the ICC is to prosecute those most responsible for the alleged crimes – usually in leadership positions – the

**Table 2: Cases Opened within the Framework of a Martial Court Investigation**

Date	Details	Outcome
2005	<i>R v. Kenyon, Larkin and Cooley</i> (Osnabruck, Germany) Soldiers from the Royal Regiment of Fusiliers accused of abuse of Iraqi civilian detainees at a UK base in May 2003. Photographs came to light of Iraqis being forced to simulate oral and anal sex and a man being tied up and suspended from a forklift truck.	Three soldiers were convicted of conduct to the prejudice of good order and military discipline and disgraceful conduct of a cruel kind, contrary to Sections 69 and 66 of the Army Act, and the criminal law offence of battery or of aiding and abetting such conduct, dismissed from the army and sentenced to between 140 days and 2 years imprisonment. A fourth soldier had earlier pleaded guilty to taking the pictures.
2005	<i>R v. Evans and others</i> (Colchester, UK). Seven soldiers of the 3rd Battalion, Parachute Regiment were charged with a "joint enterprise" of murder and violent disorder in relation to an alleged unprovoked attack on several Iraqi civilians in Al-Ferkah, north of Basra, in May 2003, resulting in the death of one man, 18-year old Nadhem Abdullah.	The Judge Advocate General, Jeff Blackett, stopped the case and ordered the prosecution to drop the charges on grounds of insufficient evidence.
2006	<i>R v. Selman, McCleary and McGing</i> (Colchester, UK). Three soldiers from the Irish Guards and one from the Coldstream Guards accused of manslaughter and aiding and abetting manslaughter in relation to an incident in which an Iraqi civilian, 15-year old Ahmed Jabber Kareem, was allegedly forced into a canal and drowned.	All four were acquitted on all charges. The court determined that the practice of "wetting" constituted minimum force in the circumstances.
2006 –2007	<i>R v. Payne</i> (Bulford, UK). An Iraqi civilian, Baha Mousa, died whilst in the custody of UK forces in Basra. He and eight others suffered varying degrees of abuse. Seven soldiers were charged with inhuman treatment as a war crime under Section 51 of the International Criminal Court Act and assault occasioning actual bodily harm.	The case against six of the accused collapsed and the seventh, Corporal Donald Payne, pleaded guilty to a charge of inhumane treatment and was sentenced to 12-months imprisonment.

prosecutor stated that the ICC does not have jurisdiction to take action (Opinion: Why the ICC... 2017). According to some researchers (Kerr 2018), it seems unlikely that a preliminary examination by the ICC will help with the issue of prosecution for war crimes against Iraqi citizens, and in the current conditions this can only aggravate the situation. This subject is very politically sensitive for the ICC as well. The prosecutor must take care not to get involved in a public quarrel.

Apart from military conflicts, according to many researchers, the ICC should pay attention to other crimes. In particular, this concerns the slave trade, which can be called a common occurrence in the countries under the study. There is a perception that human trafficking and similar crimes against humanity should be included in the list of crimes covered by the ICC (Ashoura 2019). In other words, the ICC must work on its statute to be more effective in combating crimes against humanity. Despite its many different challenges, the ICC must be prepared to face the dilemma of peace and justice (Krzan 2016). Ending conflicts and establishing human rights is impossible without bringing perpetrators to justice. The court can use a variety of different means to establish justice. It is the International Criminal Court, owing to its growing

jurisdiction, and the competence of the Office of the Prosecutor, that must first of all redefine the issue of peace and justice. This will immensely improve the work on establishing rule of law and peace, and the role of the ICC in this matter will increase. It is needless to say that the impact of the prosecution on the world is difficult to gauge. International criminal justice can, of course, have destabilising implications for the consolidation of post-conflict peace. The accusation may have the perceived effect of exacerbating intercommunal divisions and impeding reconciliation, according to researcher Rodman (2014). However, the authors of the study are confident that much depends on the individual strategy adopted in a particular situation, not only by the Prosecutor, but also, more importantly, by the ICC itself. But it should be borne in mind that states should aim to create an independent judiciary designed to prosecute the perpetrators of atrocities, thereby making the ICC the court of last resort – as stipulated in the Rome Statute (Cannon, Pkalya and Maragia 2017).

## CONCLUSION

Expectations of what the ICC Prosecutor Office can achieve to stimulate national justice must remain realistic. Cumbersome obstacles to committing the

most serious crimes in national courts mean that many of the preliminary examinations will lead to the need for ICC investigations. Nevertheless, positive steps can be noted in each investigation, which were partly related to the work of the prosecutor's office of the International Criminal Court. This division should strive to maximise its leverage to advance national efforts. It is important to remember that the authenticity of domestic proceedings refers to the ability and willingness of the national authorities to investigate potential cases that might otherwise be handled by the ICC, and not to an overall assessment of the legal system. Lack of political will to support independent investigations and prosecutions is often a key barrier to internal affairs.

Based on the analysis of case data in Kenya, Uganda, Sudan, and Iraq, it can be found that the capacity of the International Criminal Court is limited in countries that are not party to the Rome Statute. Due to a lack of authority, members of the ICC cannot always find the necessary evidence, conduct a thorough investigation, or request information about certain suspects. To improve the effectiveness of investigations and identify the perpetrators of human rights violations, it is necessary to join the member states of the Rome Statute. It can be noted that the role of the International Criminal Court in the investigation of international crimes against human rights is influential. Some states are unable to independently conduct judicial investigations to establish internal order and punish criminals.

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