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TECMUN Jr.

International Criminal
Court

Outline of the International Criminal Court

The International Criminal Court - hereinafter referred to as ICC - is a permanent institution created to substitute the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda, both created by the Security Council. The ICC was created under the Statute of Rome established in 1998, voted and adopted by 120 states, with the objective of conducting fair trials against individuals accused of committing crimes against humanity, war crimes, the crime of genocide and crimes against the administration of justice. The ICC is not a substitute for National Courts and may only intervene when a State is unable to proceed with the investigation. The ICC may conduct all crimes presented to it under the Statute of Rome committed after the 1st of July, 2002. Date when the Statute of Rome entered into force.

Topic A

The prosecution of Jean-Pierre Bemba Gombo for crimes against humanity and war crimes against the Central African Republic government

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Outline

During Ange-Félix Patassé reelection in 1999, he was confronted by rebel groups with the purpose of fighting the abuse of power and instability he was bringing into the Central African Republic through corruption and wrong doing of his powers as leader of the country. The confrontations for power took place in three different occasions and all presented by former heads of authority inside the government or the army. The rebel forces outnumbered Patassé's forces forcing the necessity to call for external support those by mercenaries and/or the aid from other governments.

Because of the constant fight for power between the rebel group leadered by Army Chief of Staff General Francois Bozize and President Patassé's force, Patssè solicited to The Mouvement de Libération du Congo to help him fight the rebels and reinstate himself as the president of the Central African Republic.

The Mouvement de Libération du Congo as a force of mercenaries under Jean- Pierre Bemba Gombo's command of such force, conducted attacks against civilian population committing crimes against humanity and war crimes such as rape, murder and pillaging. Such crimes are accredited to the commander Jean- Pierre Bemba Gombo by the International Criminal Court.

Mr. Bemba Gombo is under ICC jurisdiction and waiting for a trial after a sentence for the crimes committed by his subordinates acting under his commands.

Central African Republic political and historical background:

Ever since the Central African Republic's independence in 1960, the country has been politically economically unstable. In 1993 Ange-Félix Patassé became president and was reelected in 1999, Patassé faced three coup d'états during his government due to the constant abuse of power, large scale corruption and political murders.

The first coup d'état was in May 2001, organized by the previous president of The Central African Republic (Hereinafter referred to as CAR) André Kolingba, Minister of Defense Jean-Jacques Demafough, and Patassé's former chief of staff General François Bozizé.

The second coup d'état against Patassé's government took place in October 2002 and was lead by the Army Chief of Staff General Francois Bozize. During the conflict, the president Ange-Félix Patassé reached out for help from the Mouvement de Libération du Congo (MLC) lead by Jean-Pierre Bemba and some mercenaries from Chad and Libya. After this event, a period of continuous tension between the government and Bozize followers began, having a third coup d'état as a result.

In March 2003, Bozize invaded the Central African Republic's capital, Bangui and took the airport and presidential residences while the president Patassé wasn't in the country. This process began with the small-arms fire from Bozize's followers (rebels) towards the citizens located in the aforementioned areas.

The Mouvement de Libération du Congo committed crimes against humanity such as murder and rape and crimes of war including rape, murder and pillaging. The attack against the civilian population, in particular, in Bangui and Mongoumba, was carried out on a large scale and targeted a significant number of civilian victims. Even when Jean-Pierre Bemba Gombo President and Commander in Chief of the Mouvement de Libération du Congo was aware of the crimes his troops committed, he did not take all necessary and reasonable measures to prevent or repress their commission and, in some occasions he is recognized as the commander who gave the order for the soldiers to commit the actions aforementioned.

Mouvement de Libération du Congo

The Mouvement de Libération du Congo (MLC) was created in 1998 by Jean- Pierre Bemba Gombo in the Democratic Republic of the Congo (DRC). The movement was created with the support of Uganda during the Second Congo War after Rwandan troops denied to leave the DRC. In the aforementioned conflict the MLC controlled the northern areas of the Congo. The movement had to fight against another rebel movement, the Congolese Rally for Democracy (RCD) which arrived to Kinshasa trying to abolish president Laurent-Désiré Kabila's government. The conflict ended after the creation of the Lusaka Accord which asked for a ceasefire and the intervention of a United Nations' peacekeeping operation in 1999.

The MLC officially became a political party in 2003 after the establishment of a 1 + 4 system in the transitional government; the system worked with one president and four vice-presidents, Bemba being one of them. The rebel focus of the movement vanished after most of the members assumed positions in the government.

The Mouvement de Libération du Congo ideology focuses on promoting a democratic government by implementing the "Rule of Law" which consists in following the laws as stated, it also promotes the economic liberalism and encourages any action that helps ending with poverty. It also promotes the development of every individual in any physical and spiritual aspect.

Even after Bemba's arrest, the Mouvement de Libération du Congo considers him as the president of the party even though, the secretary general Thomas LUHAKA is responsible for the decisions taken by the MLC.

The MLC “reign of terror” and Bemba’s responsibility

After Bemba sent 1500 men to help the government of the Central African Republic to control the rebel movements that were taking place at the capital, Bangui in 2002, the local citizens entered into a terrible situation that involving lootings, civilian killings and mass rape of hundreds of women by MLC fighters, which led the ICC to file charges of war crimes and crimes against humanity against Jean.Pierre Bemba Gombo as the group's leader.

It was stated that the MLC members robbed, raped and murdered civilians in Central African Republic. Even when the leader of the movement, Jean Pierre Bemba was aware of the commission of these crimes, he was unable to control his people and was pointed out to be responsible of the crimes his soldiers committed and was also accused by the International Criminal Court of committing acts of sexual violence.

After Congo's civil war, the MLC became a political party. Jean-Pierre Bemba, leader of the Ugandan-backed Movement for the Liberation of Congo came to the capital from his stronghold in the northwest of the country. The leader of the second biggest rebel group in the Democratic Republic of Congo arrived in Kinshasa in July 2003 to be sworn in as part of a new transitional government that was meant to end over four years of war.

In 2006 President Kabila defeated Jean-Pierre Bemba, head of the Movement for the Liberation of Congo in the second round of voting for President. After his 2006 election victory, Mr. Kabila's security forces fought gun battles in Kinshasa with forces of the president's election rival, Jean-Pierre Bemba, and the civilian population was terribly affected. Without participating, a lot of civilians were killed or wounded. From 2006 to 2011, the Movement for the Liberation of Congo was the main opposition party in the Democratic Republic of the Congo.

International Criminal Court on the Case

In 2004 the Highest Central African Republic Court started proceedings against Ange-Félix Patassé and his military commanders. The same court advised the government to transfer the case to the International Criminal Court (hereinafter referred to as ICC), stating that during the conflict the national judicial system was unable to function effectively and conduct a fair trial against the accused, referring the case to the ICC on December 22, 2004. On May 22, 2007 the

International Criminal Court opened an investigation for the crimes committed in the Central African Republic since July 1, 2002.

On 9 May, 2008 the Prosecution issued a warrant of arrest against Bemba, this warrant was published by Pre-Trial Chamber III on 23 May, 2008. The warrant was given to the Republic of Belgium where Bemba was arrested on 24 May, 2008 but the Chamber decided to cancel the warrant of arrest. On 10 June, 2008 the Pre-Trial Chamber III issued a new warrant, which included the charges for murder, the warrant asked for Bemba's arrest and surrender to the ICC. Mr. Bemba appeared in the Court on 4 July, 2008.

During the trial, the Chamber authorized the participation of 5229 victims in the trial.

Currently accused:

Jean-Pierre Bemba Gombo

Jean-Pierre Bemba Gombo, a Congolese citizen and the Central African Republic Vice-president, President and creator of Mouvement de Libération du Congo and the Commander-in-Chief of the Armée de Libération du Congo is believed to have known the MLC forces under his control and authority commission of crimes during the armed conflict on the Central African Republic and did anything under his control to stop them.

The crimes against humanity of murder and rape, and the war crimes of murder, rape, and pillaging committed by the Mouvement de Libération du Congo forces in the course of the 2002-2003 Central African Republic Operation were a result of Jean-Pierre Bemba Gombo's failure to exercise control properly.

During the period of the charges, the MLC soldiers directed a widespread against civilians. They searched "house-to-house" for rebels but they also pillaged, raped and murdering. According to the Article 28 of the Rome Statute "A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court" (1998) because of this, Bemba was found responsible of the actions (crimes) his soldiers committed.

On 24 May 2008, Mr Bemba was arrested by the Belgian authorities, and the Pre-Trial Chamber decided to unseal the warrant of arrest, and on 3 July, Mr Bemba was transferred and surrendered to the ICC.

Crimes submitted

The accused, Jean-Pierre Bemba Gombo is accused of a total of two counts of crimes against humanity and three counts of crimes of war allegedly committed between 2002 and 2003 in Central African Republic by the rebel group Mouvement de Libération du Congo. All crimes revised on the Elements of Crime^[5]

Crimes against humanity

- Article 7 (1) (a)
- Rape - Article 7 (1) (g)-1

Crimes of war

- Murder Article 8 (2) © (i)
- Rape Article 8 (2) (e) (vi)
- Pillaging Article 8 (2) (e) (v)

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Glossary

A

Ange-Félix Patassé: Ange-Félix Patassé was President of the Central African Republic from 1993 until 2003. He was displaced by the rebel leader François Bozizé.

C

Coup d'état: a sudden and decisive action in politics, especially one resulting in a change of government illegally or by force.

F

Former: what someone or something was in the past.

J

Jurisdiction: the power or right to make judgments about the law, to arrest and punish criminals, etc.

K

Kinshasa: Capital of the Democratic Republic of Congo.

M

Mercenaries: a soldier who is paid by a foreign country to fight in its army.

P

Pillage: the act of taking something by force especially in war.

Prosecution: The institution and conducting of legal proceedings against someone in respect of a criminal charge.

R

Reinstate: to put (someone) back in a job or position that had been taken away.

S

Stronghold: a protected place where the members of a military group stay and can defend themselves against attacks.

W

Widespread: common over a wide area.

Warrant: A document issued by a legal or government official authorizing the police or another body to make an arrest, search premises, or carry out some other action relating to the administration of justice

Topic B

The prosecution of Ahmad Muhammad Harun (“Ahmad Harun”) and Ali Muhammad Ali Abd-Al-Rahman (“Ali Kushayb”) for crimes against humanity and war crimes against the Sudanese government occurred in Darfur

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Background of the topic

In 2003, the rebel groups known as Sudan Liberation Army/Movement (SLA/M) and Justice and Equality Movement (JEM) had an armed conflict with the Sudanese government and members of the Sudan People's Armed Forces (the Sudanese Armed Forces), the Popular Defence Force (PDF) and Janjaweed militia due to the rebel groups' demand of ending the constant mistreatment and a possible power-sharing with the Arab-ruled Sudanese state. The Sudanese government answered with a political and armed threat which later led into multiple attacks, including murder, rape, imprisonment and forcible transfers against the Fur¹, Zaghawa² and Masalit³ populations, residing in Darfur.

Darfur is located in the north-west region of Sudan bordering Chad to the west. This border is divided by three ecological bands: Desert to the north, a central fertile belt with the Marra mountains, which are agriculturally rich, and the south region which is sensitive to drought and rainfall. These conditions make the area a high commerce and trading zone with a fairly high amount of agricultural activity. The communities residing the areas are Arab pastoralists and non-Arab or African Ethnic groups named "Zurga⁴."

Sudan Liberation Army/Movement (SLA/M)

Formed by the alliance between the Fur and Zaghawa in 2001, even though their ideologies were not in complete agreement, as the Fur believed in rebelling against the government and the Zaghawa against the Arabs. They first drew recruits, in 1989, from the Fur self defense militia, and from the Zaghawa after a peace agreement between Arabs and said tribe wasn't enforced by the government.

In the political declaration of SLA/M's Secretary General, Arkou Minnawi, it was stated their main purpose was to create a united Sudan, and accused the government of overlooking Darfur.

With attacks on major towns in Darfur, they called for recognition and support to develop around that region. Instead they triggered a violent response from the government, and the Sudanese Army Forces.

¹ Fur: Largest ethnic group in Darfur, province named after them.

² Zaghawa: Also named Beri, semi-nomadic ethnic group primarily settled down in northern Darfur.

³ Masalit: Ethnic group distributed throughout Sudan, with a majority inhabiting Darfur.

⁴ Zurga: Black or African nomad community residing the Darfur and Chad frontier.

In the present day, they're divided into two main factions. Most of the field fighters are with Minnawi, while the rest are allegiant to Fur ethnic, Abdelwahid Muhamed El Nur.

Justice and Equality Movement (JEM)

Settled in 2003, and made up in its majority by educated Darfurians, from a Zaghawa subgroup named Kobe, that primarily resided in Chad before their exile, and not Sudan. Since their consolidation, they've gained a considerable amount of supporters, but the political and military power still remains within the Kobe.

JEM demanded the reform and change of regime, arguing the atrocities happening in Darfur.

In this conflict, they've not merged with the Sudan Liberation Army/Movement, but seem to have similar agendas, differing more on their focus on politics, rather than military. They've clashed specially against the Janjaweed militia.

Sudan People's Armed Forces (the Sudanese Armed Forces)

Military of the Sudanese government, reportedly made up by over 100,000 men.

They comprise an Air and Navy Force, and the Popular Defence Force, and its leader is Sudanese president, Omar Hassan al-Bashir, with Abdel-Rahim Mohamed Hussein as Minister of Defence.

The SAF's troops have become known for ineffectiveness and unreliableness in combat, yet possess numerical advantage against rebel groups.

Their main role in the Darfur conflict has been to attempt to terminate with rebel forces, in representation of the government.

Popular Defence Force (PDF)

Legal entity in Sudan, decreed as one in 1989, and continues to be one of the mobilizers of militia though Sudan, primarily active in Darfur.

They're heavily based on Islamic ideology, and on the belief authority and resources should be held by parastatal organizations.

The Popular Defence Forces Act states in its Article 6 their main objectives and duties are to ‘assist the People’s Armed Forces and other regular forces whenever needed’, ‘contribute to the defence of the nation and help to deal with crises and public disasters’, and perform ‘any other task entrusted to them by the commander-in-chief himself or pursuant to a recommendation of the Council’.

As a part of the SAF, their purpose remains alike to the government’s position of ending the uprising.

Janjaweed militia

Also spelled ‘Janjawiid’ or ‘Janjawid’, their name means “a man with a gun on a horse” in colloquial Arabic. The members are mostly from nomadic Arab tribes.

Up until 2003, rivalry between Arabic and African tribes was over the difficulty to obtain water or land in Darfur, where they had to share the already scarce resources. However, in that year, after the SLA/M and JEM rose against the government, their conflict has escalated violently. They responded by desecrating villages where Fur, Masalit and Zaghawa groups inhabited.

Allegedly, they receive financial support from the Sudanese government in exchange for helping contain rebel groups. The government strongly denies providing any kind of support to the Janjaweed, but during attacks and raids, several people have recognized them working together with Sudanese soldiers and riding their vehicles instead of the characteristic horse or camel.

The Darfur conflict

The conflict between the groups has begun to intensify and become bloodier with each decade and military advance introduced to society. The situation is now a days one of the worst humanitarian crises with casualties that go as far as thousands of Darfurians killed, displaced and/or crossing as refugees to the bordering Chad, and other types of dehumanization.

After all the first consequences, the government denied access to most of the relief agencies that operated around the area, leaving survivors with near to no opportunities of acquiring basic subsistence supplies.

The conflict is known to be formed since the rebel groups SLA/M and JEM rose up against the government arguing that there was a wilful negligence behavior taking place, and the ethnic differences between Africans and Arabs taking the position of one of the main causes.

The attacks usually begin with pro-government movements' air attacks, followed by the Janjaweed militia aids. While these aids are taking place, the remaining people are murdered or forced to abandon the country. Additionally, the members of the Janjaweed militia burn food stages, pillage, enslave and rape women and children.

In 2007, the United Nations Security Council authorized the deployment of 26,000 peacekeepers in an attempt to stop the crisis. The British government endorsed the Sudanese government to cooperate with the International Criminal Court in the prosecution of the president Omar- al Bashir.

Darfur Peace Agreement (DPA)

After two years and seven rounds of peace talks, the Darfur Peace Agreement was signed on May 5, 2006 by the government of Sudan and one faction of the Sudan Liberation Army/Movement along with the witnesses. The second faction of the SLA/M and the Justice and Equality Movement rejected signing the agreement.

The main arrangements included disarming and punishing the Janjaweed militia, restricting the Popular Defence Forces, integrating SLA/M members into the Sudan Armed Forces, giving rebel groups the fourth highest position in the Sudanese government, and creating a fund to reconstruct Darfur, and compensate victims of the conflict.

The lack of commitment from the government of Sudan, and the division of rebel groups have become obstacles toward achieving the objectives the DPA proposed.

The International Criminal Court on the Case

In January 2005, the International Commission of Inquiry on Darfur⁵ reported to the United Nations Security Council the existence of reasons to believe that crimes against humanity and war crimes had been committed during the Darfur situation that started on 1 July 2002 and

⁵ Established in the 12th article of the United Nations Security Council's Resolution 1564 (2004).

following the 13th article of ICC's Rome Statute, the council referred the situation to the International Criminal Court on 31 March 2005 with the Resolution 1564.

The prosecutor, after requesting information, interviewing over 50 specialists, gathering thousands of documents and receiving the report given by the International Commission of Inquiry on Darfur decided to open investigation on 6 June 2005 and requested an arrest warrant for Ahmad Harun and Ali Kushayb. The warrant was issued on 27 April 2010.

Even after the Resolution 1564 established that "Government of Sudan and all other parties to the conflict in Darfur, shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor" (United Nations Security Council, 2004) the Court had to inform the lack of cooperation during the arrest of the two suspects from the Sudanese government, this leaving the suspects still at large.

On 15 March, 2015 the case was assigned to Pre-Trial Chamber II.

Currently Accused

Ahmad Muhammad Harun (Ahmad Harun)

Ahmad Muhammad Harun (Ahmad Harun) is a Sudanese man wanted by the International Criminal Court (ICC) for war crimes and crimes against humanity in Darfur. Harun is accused of twenty counts of crimes against humanity: murder, persecution, forcible transfer of population, rape, inhumane acts, imprisonment or severe deprivation of liberty and torture and twenty-two counts of war crimes: murder, attacks against the civilian population, destruction of property, rape, pillaging and outrage upon personal dignity. The crimes were committed between 2003 and 2004 in Darfur, Sudan.

Harun was the Minister of the State for the Interior Government of Sudan and was in charge of the government's security bodies including the Police, the Armed Forces and the Janjaweed militia, that took part in the conflict. It is supposed that the encouragement of the commission of the crimes against the citizens by the Janjaweed militia was stated in Harun's public speeches, highlighting the acknowledgement of the crimes. Harun is also considered to have helped the Janjaweed militia by recruiting, funding and arming.

Ali Muhammad Ali Abd-Al-Rahman (Ali Kushayb)

Ali Muhammad Ali Abd–Al-Rahman (Ali Kushayb) is a senior Janjaweed commander supporting the Sudanese government against Darfur rebel groups, and currently is sought under an arrest warrant by the International Criminal Court (ICC). Ali Kushayb served as Minister of the State in Sudan and was in charge of the “Darfur Security Desk”, this meaning he was able to control all the governmental forces including the Janjaweed, PDF, Ali Kushayb is accused of twenty two counts of crimes against humanity: murder, deportation or forcible transfer of population, imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of the international law, torture, persecution, inhumane acts of inflicting serious bodily injury and suffering, and twenty eight counts of war crimes: violence to life and person, outrage upon personal dignity in particular humiliating and degrading treatment, intentionally directing an attack against a civilian population, pillaging, rape, destroying or seizing the property. The crimes were committed between 2003 and 2004 in Darfur, Sudan.

Crimes submitted

The accused, Ahmad Muhammad Harun ("Ahmad Harun") is charged with a count of twenty-two crimes against humanity and twenty-two war crimes and Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb") is charged with a count of twenty-two crimes against humanity and twenty-eight war crimes. All crimes revised on the Elements of Crime.

Crimes against humanity:

- Murder - articles 7(1)(a) and 25(3)(d)
- Persecution - articles 7(1)(h) and 25(3)(d)
- Forcible transfer of population - articles 7(1)(d) and 25(3)(d)
- Rape - articles 7(1)(g) and 25(3)(d)
- Inhumane acts - articles 7(1)(k) and 25(3)(d))
- Imprisonment or severe deprivation of liberty - articles 7(1)(e) and 25(3)(d)
- Torture - articles 7(1)(f)) and 25(3)(d)

War crimes:

- Murder - articles 8(2)(c)(i) and 25(3)(d)
- Attacks against the civilian population - articles 8(2)(e)(i) and 25(3)(d)
- Destruction of property - articles 8(2)(e)(xii) and 25(3)(d)
- Rape - articles 8(2)(e)(vi) and 25(3)(d)
- Pillaging (articles 8(2)(e)(v) and 25(3)(d)

- Outrage upon personal dignity - articles 8(2)(c)(ii) and 25(3)(d).
- Violence to life and person - article 8(2)(c)(i)

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Glossary

A

Allegiant: That owes or gives allegiance (to someone or something); loyal, faithful.

Atrocity: An extremely wicked or cruel act, typically one involving physical violence or injury.

C

Clash: A violent confrontation.

Comprise: Consist of; be made up of.

D

Dehumanization: The process of depriving a person or group of positive human qualities.

E

Endorse: Declare one's public approval or support of.

Exile: Living away from native country, either from choice or compulsion.

F

Former: what someone or something was in the past.

M

Merge: to become joined or united

Militia: A military force that is raised from the civil population to supplement a regular army in an emergency.

Mistreatment: to treat (someone or something) badly.

Mouvement de Libération du Congo: rebel group operating in the Democratic Republic of Congo

O

Overlook: Fail to notice.

P

Parastatal: (Of an organization or industry, especially in some African countries) having some political authority and serving the state indirectly.

Pillage: the act of taking something by force especially in war.

Prosecution: The institution and conducting of legal proceedings against someone in respect of a criminal charge.

R

Recruit: A person newly enlisted in the armed forces and not yet fully trained.

Regime: A government, especially an authoritarian one.

T

Trigger: Cause (an event or situation) to happen or exist.

U

Uprise: to rise to a higher position

W

Warrant: A document issued by a legal or government official authorizing the police or another body to make an arrest, search premises, or carry out some other action relating to the administration of justice