



ESSAY

THE ICC'S ROLE IN AFRICA

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The newly constituted International Criminal Court is an important development in the fight against the most serious crimes of international concern. It will only be possible to look more closely at the role and impact of the court in the world, and Africa in particular, once it is explained how the court and its organs will function. In this regard the court's jurisdiction, the concept of complementarity and the role of the prosecutor are important. It would then be possible to see if the ICC could get involved in Africa, or whether it could be prevented from investigating and prosecuting such crimes. At the moment, it appears that the role of the ICC in Africa will be limited.

Introduction

States can only address the effects of war crimes, crimes against humanity and genocide, by confronting them. They must reflect on the fact that their communities find such crimes totally unacceptable. The International Criminal Court (ICC) is an effort by many of the states in the world to collectively address any occurrences of such crimes, no matter where they are committed.

The main focus of this paper will be to explain the way in which the ICC will function. It is therefore necessary to look at the ICC itself in terms of the jurisdiction of the court, the concept of complementarity and the role and powers of the prosecutor of the court. By setting a

comprehensive foundation in terms of the court itself, it would simplify the analysis of possible role of the court in Africa.

It must also be pointed out that the court has yet to investigate and prosecute any specific cases, even though around 200 "situations" have been referred to the court. In terms of the functioning of the court it is therefore only possible to look at the Statute of the ICC in order to ascertain the methodology of the court in investigating and prosecuting possible cases. The focus of the paper will therefore be more academic in nature, even though the examples from Africa itself are of a more practical nature.

The African context must be examined before looking at the role of the court on the

continent. The example that will be used is that of Rwanda. There is another internationally mandated court functioning in Sierra Leone at the moment that has as its aim the prosecution of war crimes committed in that state. It has in fact recently indicted the President of the Liberia, Charles Taylor, for war crimes committed during the conflict in Sierra Leone.¹ This example will however not be used in this article.

In terms of Rwanda it won't be necessary to look at the conflict that led to the genocide in state, but to look briefly at the consequent developments in regards to the successes and failures of the International Criminal Tribunal for Rwanda (ICTR). These points may provide an indicator as to the possible pitfalls that could await the ICC in Africa.

The role of the ICC in the rest of the continent will require some other relevant examples. One of these examples will be taken from the list of situations before the court, while the others are possibilities that could fall under the jurisdiction of the court at some stage. In this regard the situations in the Democratic Republic of the Congo (DRC) (which is an example of a situation referred to the ICC), Zimbabwe and the possibilities regarding Uganda will be taken as examples. Each will be briefly discussed to see how the ICC might get involved, or excluded, in their specific situations.

Once the court has been placed in an African context, conclusions could be drawn. The conclusions to this paper will summarise the most important points made to ascertain whether the ICC would play any kind of significant role in Africa.

Jurisdiction of the ICC

The jurisdiction of the ICC is based on the stipulations of the ICC Statute. The Statute not only sets the extent and the limits of the jurisdiction, but also follows the rules of international criminal law. Therefore the court will only have jurisdiction once the conditions and pre-conditions in the Statute are met. The ICC in any case will only be able to prosecute people, and not entities (like the International Court of Justice which decides matters between states).

Once jurisdiction has been established, the ICC follows other norms of international criminal law in terms of protecting the accused. One of these is the *ne bis in idem* principle², in terms of which no person may be prosecuted twice for the same crime. In this regard if someone has already been prosecuted for the specific crime, it does not matter what the verdict was, or which court prosecuted the person.

In terms of the *nulla poena sine lege* principle a person prosecuted by the ICC can only be punished in terms of the stipulations of the Statute³. The maximum penalty that the ICC can impose on a person is life imprisonment⁴. Some countries might however find this punishment too lenient for some of the specific crimes. In terms of Rwanda there was some unhappiness that the ICTR did not impose the death penalty. This might be a problem for the ICC as well.

The first important point in regards to jurisdiction is that the ICC will only have jurisdiction in respect of crimes committed after the entry into force of the Statute⁵. The date that the Statute came into force was 1 July 2002. Therefore any relevant crime in terms of the Statute committed before this date will fall outside of the jurisdiction of the court. Without this stipulation the ICC would have been absolutely flooded with cases to investigate and prosecute.

The court will have jurisdiction over the crime of genocide, crimes against humanity and war crimes⁶. The court can exercise this jurisdiction in terms of the specified crimes if a state party referred the matter to the court⁷. The court can also exercise this jurisdiction if the United Nations Security Council (UNSC), acting in terms of Chapter VII of the UN Charter, referred the matter to the court⁸. The prosecutor of the court may also initiate an investigation of such a crime in terms of his (in this case) powers under article 15 of the Statute⁹. See the discussion of the role of the prosecutor below.

The jurisdiction of the court is limited by article 12 of the Statute. It limits the ability of state parties to refer cases to the court, and the ability of the prosecutor to initiate investigations. The state, on whose territory the crime

was committed, must be a state party to the ICC Treaty,¹⁰ or the state of nationality of the accused must be a state party to the ICC Treaty.¹¹ If the relevant state involved is not a member, that state may however still accept the jurisdiction of the court.¹² In terms of article 12 (2) of the Statute the ICC is therefore bound to the universally accepted principles of jurisdiction based on territory and on the person.

What this all means is that the ICC will become involved in cases where the specified crimes were committed, if such crimes were committed on the territory of a state party, or by a citizen of a state party, or if the state involved accepts the jurisdiction of the ICC. If the Security Council in terms of Chapter VII of the UN Charter refers the matter to the ICC, there are no such preconditions to exercising jurisdiction.

In order for the Security Council to act under Chapter VII,¹³ the specific situation must be a threat to the international peace, or a breach of that peace, or an act of aggression. If the situation does not comply with these requirements, the Security Council will not be able to refer the matter to the ICC. By making use of Chapter VII however, it would be possible for any one of the permanent members of the Security Council to veto the referral.

The Security Council can also request a deferral of a case before the court. In this way the jurisdiction of the ICC might be limited. The circumstances that would lead to the request for a deferral by the Security Council of a case under investigation of or prosecution by the ICC are set out in Article 16 of the ICC Statute. This Article stipulates that no investigation or prosecution by the ICC may proceed for a period of 12 months after the Security Council has adopted a resolution under Chapter VII of the United Nations Charter in this regard. This period may be extended for another 12 months under the same conditions.¹⁴

So even though the Security Council does not have direct control over the ICC, it is able to exercise some limited control by being able to request such deferrals. However, the same problem in terms of acting under Chapter VII of the United Nations Charter is present here, since a

permanent member of the Security Council can veto such a resolution for a deferral.

Complementarity

Some mention will be made of the ICTR in the discussion on the case of Rwanda below. In terms of the jurisdiction of the ICTR there is one major difference with that of the ICC. The ICTR has primacy over the national courts of Rwanda and the courts of the rest of the world.¹⁵ The ICC on the other hand has to comply with the principle of complementarity in terms of its jurisdiction over a specific event.

This principle stipulates that the ICC must in all circumstances defer to the domestic courts of a state that has jurisdiction over the matter (because the accused is a citizen of that state or the crime was committed in the territory of that state), unless that state is “unwilling or unable to genuinely carry out the investigation or prosecution”.¹⁶

What it means in general is that the ICC will not prosecute anyone unless the state with jurisdiction is unwilling or unable to do so instead. The ICC will respect the verdict of any such court, no matter what the verdict was.¹⁷ The ICC is simply there to complement the domestic courts of a specific state.

If it appears that the country is shielding the accused from criminal responsibility,¹⁸ it might influence the ICC into not accepting the outcome of the trial and proceeding with its original investigation. An example of when the ICC might decide that the state is unwilling to proceed with a particular case is if there is undue delay in prosecuting the accused¹⁹ or if the trial was not independent or impartial.²⁰

The words “unwilling or unable” would indicate that, if the country of origin did not proceed with such an investigation or trial, the ICC prosecutor would continue investigating and prosecuting the accused. It appears that the ICC therefore has the final say in determining whether justice was done.

In relation to the word “unable”, it would seem obvious that the ICC would investigate cases in which the judicial system of a country has broken down to such an extent that it is no longer possible for the system to prosecute

criminals or to enforce the decisions of the court.²¹ It would also be relevant where the judicial system of a state was overwhelmed by the scale of its task (see the example of Rwanda below). This might for example be applicable to a state like Somalia, where government services have largely broken down in some parts of the country or are unable to function properly. Somalia is however not a state party to the ICC. There would however be more examples of being “unable” to prosecute in Africa.

It might be plausible to argue that in Africa the question of “unwilling” might also be fairly relevant. The reason being that some states may feel that they will not tolerate external pressures to investigate and prosecute matters. They may feel that it is an invasion of their sovereignty, and an indictment against their criminal justice systems. The same could be true of their people, who might not like the idea of a foreign court interfering in (perhaps) delicate situations. This point can however only be tested once the ICC starts investigating and prosecuting cases.

The specific state may however also be “unwilling” to prosecute a person for other reasons than those named in the previous paragraph. The unwillingness of the state might be connected to the effects that the specific trial may have in the state itself. It may happen that such a trial may lead to civil unrest, or other forms of insurrection in the state. Furthermore the trial could perhaps be compromised in terms of its objectivity, which might move the state to be reluctant to proceed. In such instances the possibility of moving the trial to a neutral venue with an objective court, could be the answer.

The ICC Statute does provide for the situation where a state may however bypass the concept of complementarity in terms of specific international obligations that a state may have. Article 98 of the Statute stipulates that the court may not proceed with a request for the surrender or assistance if such a request will force the requested state to act in contravention with obligations it has with a third state.²²

A state may for example have an agreement with another state that its citizens may not be

delivered to the ICC unless that state gives explicit permission for it to do so. Therefore, the requested state may not hand such a person over to the ICC, regardless of whether it is unwilling or unable to do so.

The United States has concluded a few such article 98 agreements with different states in terms of handing Americans over to the ICC.²³ Agreements such as these are usually connected with other areas of cooperation, such as the granting of aid for example. In terms of Africa the United States has recently signed a few such agreements. It signed with Uganda (which is connected with the granting of military aid),²⁴ Senegal²⁵ and Egypt.²⁶ South Africa is however facing the threat of a cut in military aid from the United States since it hasn't signed such an agreement with the United States.²⁷ This situation will be discussed in more detail below.

The role of the prosecutor

The Chief Prosecutor of the ICC is Moreno Ocampo from Argentina. He was unanimously elected to this post on 21 April 2003, and took office on 16 June 2003. He will be the person in charge of the investigations of the ICC, and will also be the one prosecuting any relevant cases before the court. When he took office, about 200 situations had been referred to the court by various parties as possible cases for him to investigate and (possibly) prosecute. No official record of such cases was available at the time of writing.

His powers are set out in articles 15, 42 and 54 of the Statute. These articles are designed not only to set the boundaries of what the prosecutor is allowed to do, but also to provide guarantees in terms of both the independence and impartiality of the office of the prosecutor. Many of these points will be relevant to Africa, as will be emphasised in the following paragraphs.

The prosecutor himself is appointed in terms of article 42 of the Statute, which sets very strict criteria for the prosecutor to comply with. This article requires the prosecutor to be of high moral character, to have extensive knowledge of criminal law, not to engage in other activities that might interfere with

their duties or act in cases where his objectivity might be questioned. It would not be possible in terms of these stipulations to question either the competency or the independence of the prosecutor.

In terms of article 15 of the Statute the prosecutor may initiate investigations in terms of information received on crimes within the jurisdiction of the court. A very important part of this article is sub-article 15 (2) that allows the prosecutor to seek additional information from sources including states, the UN, intergovernmental and non-governmental organisations or any other reliable sources.

The prosecutor may even receive information of crimes within the jurisdiction of the court from sources other than states, such as individuals and NGO's. If the prosecutor is seen as actively seeking the help from sources within a state, or act upon such information received from within the state, it could lead to a better chance of acceptability on the part of a state and its civil society of the prosecutor.

This becomes especially important where the state and its people may not be very enthusiastic about accepting the possibility of an international body investigating and prosecuting occurrences should that the state be unwilling or unable to do so. In Africa, where many states could feel that the ICC might invade their sovereignty with such investigations, they may find that a prosecutor that actively seeks their assistance will make the whole process more acceptable.

The impartiality of the prosecutor is emphasised by article 54 that stipulates that the prosecutor must investigate both incriminating and exonerating evidence for each investigation. This article furthermore emphasises the fact that the prosecutor can seek the cooperation of any state or organisation in compiling the evidence in any investigation.

Once the prosecutor has sufficient information in terms of a specific case, and there is a sound basis to proceed with the investigation, he must request the pre-trial chamber of the ICC for authorisation to proceed with the investigation.²⁸ Should the pre-trial chamber agree with the prosecutor that there is a reasonable basis to proceed with the investigation, he will be authorised to do so.²⁹

This is an important method of oversight within the ICC that is aimed at ensuring that the court will not investigate any cases that do not have a reasonable basis for such an investigation, or eventual prosecution. This would go some way in addressing the fear that some states have that the prosecutor of the ICC will investigate frivolous cases aimed at embarrassing those states.

The case of Rwanda³⁰

Rwanda is the most obvious example in Africa at the moment where a body such as the ICC could have had a role to play. Forget for a moment the fact that there is already an international body in place to deal with the situation (ICTR), or that the ICC would not be able to prosecute anything that occurred before 1 July 2002. What is clear from the Rwandan example is that it shows some of the advantages and disadvantages of the involvement of an international tribunal in prosecuting persons for war crimes and other crimes.

The following points illustrate the usefulness of an international tribunal. All of these points have to do with Rwanda being unable to prosecute the crimes itself. In some of the other states in Africa, this would also be the case. In Rwanda though, the sheer scale of what happened contributed to the inability of the state to prosecute the crimes.

In the first place fear placed pressure on the Rwandan domestic judicial system. Judicial officers and other participants in the prosecution process in terms of the genocide in Rwanda were fearful that their lives might be in danger if they proceeded to prosecute certain individuals. In fact, quite a few witnesses were actually murdered before prosecutions began, which placed a great strain on the process. This problem could be quite significant in terms of many parts of Africa. This might also be an example where of unwillingness to prosecute since a state may be aware of these dangers, which would make it reluctant to proceed with the prosecutions.

In the second place there was a great shortage of competent personnel to prosecute the crimes in Rwanda itself. The reason for this is twofold. Many of these personnel were victims

of the genocide to begin with. Furthermore the sheer scale of the atrocities in Rwanda led to many thousands of people being arrested for these crimes. This problem however may not be relevant to other states in Africa, but it would in any event, depend on each specific case.

In the third place Rwanda experienced many other administrative problems that greatly affected the effectiveness of their judicial system. These included the lack of office supplies, no transportation and no clerical support for the judicial officers. Even though this problem might be common to many African states, it is debatable as to whether it is really relevant in general in the African context.

The ICTR however had some disadvantages that could be an indicator of similar problems when the ICC might become involved in Africa. These problems were focused on the abilities of the tribunal itself, and the unwillingness of Rwanda to cooperate with the tribunal. The unwillingness however had nothing to do with the fact that Rwanda did not want to prosecute the accused, but rather on their criticisms of the tribunal itself. It must however be borne in mind that the ICTR has primacy over the domestic courts of Rwanda, while the ICC is merely complementary to domestic courts.

In the first place the ICTR itself experienced operational difficulties. It was not able to handle its caseload efficiently. The Tribunal is supposed to abide by the strict standards that the UN sets for itself. In this regard the Tribunal was for example not able to prosecute some of the accused within a reasonable time, and it wasn't able to offer effective witness protection. It has also been hampered by bad administration.

The Rwandan government had a strained relationship with the tribunal from the start. It requested the establishment of the tribunal from the UNSC, but in the end it voted against the tribunal in the Security Council. Some of the criticisms of the Rwandan government against the tribunal are that it should have its own prosecutor, that the tribunal should be based in Rwanda itself and that all the links it had with the International

Criminal Tribunal for the former Yugoslavia (ICTY) should be severed.

The government also felt that the fact that the tribunal could only mete out imprisonment and not the death penalty (as can be in the Rwandan courts) is a serious shortcoming, and that the jurisdiction of the tribunal should be extended from the year of 1994 to periods before then. This last point may be relevant to the ICC as well, since it also has life imprisonment as its most severe punishment.

There was also the danger that some of the judges would be biased. This, together with the other points of criticism, would make it impossible for the tribunal to meet the expectations of the Rwandan people. The aim of the court would rather appear to be to appease the guilty conscience of the international community who did nothing to prevent the genocide in Rwanda, rather than simply facilitating the quest for justice after the Rwandan genocide.

The ICTR does however appear to be able to have some important influences in Africa. If anything, it was hoped that the presence of the court would raise the awareness of the importance and value of human rights and human life, and to serve as deterrence to dictators who might be moving towards committing such atrocities. The ICTR is also a move away from the principle of non-interference in the domestic affairs of states.

The role of the ICC in Africa

At the time of writing 41 states in Africa have signed the ICC Treaty. Of these, only 21 states have gone on to ratify the treaty and become state parties of the ICC. In terms of regional representation SADC for example has nine members who are state parties to the ICC. Only Swaziland has yet to even sign the ICC Treaty, while Angola, Mozambique, Seychelles and Zimbabwe have signed, but have not yet ratified the Treaty.³¹

There can be no question as to the commitment of the ICC to involve Africa as an equal partner in the pursuit of international justice, since Africa is well represented in the ICC itself. Three of the 18 judges are from

Africa. They are Judge Diarra from Mali, Judge Kuenyehia from Ghana and Judge Pillay from South Africa.³² It is interesting to note that all of the judges from Africa are women. Judge Kuenyehia is also the First Vice-President of the Court, who heads its pre-trial division.

Some of the shortcomings in the ICC Statute could be very relevant to Africa. In this regard the Statute does not consider the stipulations of peace agreements, which would include the granting of amnesties and other forms of suspension of prosecutions and investigations into possible ICC crimes. Such compromises are sometimes necessary to facilitate the peaceful transition from one regime to another.

It therefore means that the court could interpret such agreements as an unwillingness to prosecute on the part of the specific state. The classic example in Africa in this regard is the Truth and Reconciliation Commission of South Africa that granted amnesty to some human rights violators and murderers in exchange for their testimony before the Commission. This process was necessary in terms of some of the agreements made to facilitate the peaceful transition to democracy in South Africa.

The same type of situation might arise in other African nations that are struggling with different forms of internal strife. In this regard Zimbabwe and the DRC are just two examples where the move towards a transition, or the move towards peaceful resolution of their troubles might include some form of compromise or guarantees in terms of the prosecution of certain individuals. It does not mean that either of these two countries will follow the South African example, but they could still reach a similar solution.

If the ICC were to interfere in such a situation, it could have a very negative effect on the whole process. It could even restart the conflict. It would be interesting to see how the ICC itself will interpret such a question of justice versus peace. The prosecutor can for example decide not pursue a matter if such a prosecution is not in the interest of justice after all the circumstances are taken into consideration.³³ The decision however lies with the prosecutor, and not with the state

involved. It does however only look at justice, and not peace.

The problem with Zimbabwe is that even though it has signed the ICC Treaty, it has yet to ratify it. Therefore the ICC would be prohibited from investigating any alleged cases of the ICC crimes in the state, unless Zimbabwe gives the court permission to do so, or if the UNSC refers the case to the ICC, or if the perpetrator is a citizen of a member state. The UNSC will however only refer the case if the situation surrounding the case is such that it is a threat to peace and security.³⁴ If the situation in the state however deteriorates further than it has up to this point by becoming a threat to neighbouring states, it is quite plausible that the UNSC would be able to refer the matter to the ICC in terms of these requirements.

The DRC itself is one of the state parties to the ICC. Recent reports from the DRC suggest that different parties to the civil war have committed several atrocities that would be cases of crimes against humanity and war crimes. In fact, it appears as though the government of the DRC, together with the International Federation of Human Rights (FIDH) has referred one such case to the ICC. The case involves the Movement for the Liberation of Congo (and its leader Jeanne-Pierre Bemba), whose members allegedly massacred and ate civilians in the North of the country.³⁵

If the example of Rwanda were taken in this regard, the ICC would be able to become involved in the DRC in terms of the inability of the judicial system of the state to investigate and prosecute the accused in these matters. That is perhaps one of the reasons why it requested the ICC to investigate the specific matter. If the DRC had a better-functioning judicial system, it would have no need for the ICC to become involved.

Uganda and Senegal were named before as countries that signed article 98 agreements with the United States. Even though both are member states of the ICC, they would not be able to hand Americans over to the court without the express permission of the United States. This limits the jurisdiction of the ICC to some extent. This limitation is however

only reserved for Americans, which means that the court could get involved in all other examples within its jurisdiction in Uganda and Senegal.

The example of Uganda and Senegal illustrates the financial dilemmas facing many African countries. They are caught between full cooperation with the court on the one hand, and their financial necessities on the other hand. Sometimes they would simply not be able to afford justice if there is such a choice to be made.

Conclusion

The ICC does have an important role to play in Africa, and in the rest of the world. If that role at the very least were to act as a watchdog in terms of forcing some states to respect the rule of law, and allowing their criminal justice systems to function effectively, it would be a very positive development.

The ICC Statute is very specific as to how and where it could become involved. It would complement domestic legal systems, and will only investigate and prosecute where the specific state is unwilling or unable to do so. The fact that the prosecutor of the court may involve civil society in its investigations of specific crimes is an important addition to the way in which it functions. That could contribute to a large extent on the acceptability of the involvement of the court in a specific situation.

There are however some points that might be of concern in terms of the jurisdiction and legal process of the ICC. This includes the fact that member states can very explicitly exclude the jurisdiction of the court by making agreements with non-member states to that effect. It is also unclear as to whether the ICC will take the validity of peace deals and compromises into consideration when deciding whether justice was in fact done.

These problems may be very relevant in Africa. Not only in terms of the financial concerns of states on the continent, but also their efforts to put an end to the many conflicts raging in many of the African countries.

The challenge that the ICC will face will be to maintain, at least, a position as a watchdog.

In this regard it is hampered to some extent by the limitations set by its Statute. This is further connected with the political will in the specific state to actually prosecute individuals for the crimes described in the ICC Statute.

In the context of Africa it is important to have a body such as the ICC to serve as a complementary judicial body to watch over the judicial practices of the states, as well as to become involved the moment that state is unwilling or unable to do so itself. It would appear though that, for the time being, its role is limited.

Note:

Much of the information in this paper was taken from the Master's Thesis of the Author, entitled: *Going it alone? An evaluation of the American arguments against the International Criminal Court*. Any additional information is expressly acknowledged.

Notes

1. The Associated Press, Liberian Denounces War Crimes Indictment in *The New York Times*, <<http://www.nytimes.com/2003/06/06/international/africa/06LIBE.html?ex=1058500800&en=c9669192a1fde01c&ei=5070>>.
2. Article 20 of the Statute
3. Article 23 of the Statute
4. Article 77 (1)(b) of the Statute
5. Article 11 (1) of the Statute
6. Article 5 of the Statute
7. Article 13 (a) of the Statute
8. Article 13 (b) of the Statute
9. Article 13 (c) of the Statute
10. Article 12 (2)(a) of the Statute
11. Article 12 (2)(b) of the Statute
12. Article 12 (3) of the Statute
13. Articles 39 to 51 of the United Nations Charter
14. Article 16 of the ICC Statute
15. Coalition for International Justice, *Frequently asked Questions-ICTR* <<http://www.cij.org/index.cfm?fuseaction=faqs&tribunalID=2>>, 2003.
16. Article 17 (1)(a) of the Statute
17. Article 20 (3) of the Statute
18. Article 17 (2)(a) of the Statute
19. Article 17 (2)(b) of the Statute
20. Article 17 (2)(c) of the Statute
21. Article 17 (3) of the Statute
22. It is very important to note that this article does not mean that the accused will not be prosecuted at all for the crimes allegedly committed. It just means that the specific country will have jurisdiction to prosecute that person, to the exclusion of

- the country that has custody over the person, and the ICC.
23. The United States already has similar agreements with its allies, called Status of Forces Agreements (SOFA). These agreements stipulate that the United States will in all cases have jurisdiction to prosecute members of their armed forces, should such members commit crimes in the course of their duties. The country where such forces are stationed will therefore have to hand such persons over to the United States, should they have them in custody. Such persons will then be prosecuted before a military court-marshal.
 24. Editorial, Country joins list of shame, *The Monitor* (Kampala), 18 June 2003; J Etyang, US to give Sh400m Military Aid in *New Vision* (Kampala), 19 June 2003. Uganda is a full member state of the ICC.
 25. News24.com. *Senegal signs US deal*. <http://www.news24.com/News24/Africa/News/0,,2-11-1447_1382948,00.html>, 2003. Senegal is a full member state of the ICC.
 26. Arabic News, *US, Egypt and others undermine the International Criminal Court agreement*. <<http://www.arabicnews.com/ansub/Daily/Day/030705/2003070504.html>>, 2003.
- It is important to note that Egypt has signed the ICC Treaty, but has yet to ratify it.
27. SA to lose R56m in military aid – official. <<http://iafrica.com/news/sa/250362.html>>, 2003.
- South Africa is a full member state of the ICC.
28. Article 15 (3) of the Statute.
 29. Article 15 (4) of the Statute.
 30. Taken from the following: Amnesty International, *ICTR: Achievements and Shortcomings: Trials and Tribulations*. <<http://www.amnesty.org>>, 2003.
- C Maina Peter, *The ICTR: Bringing the Killers to Book*. <<http://www.icrc.org>>, 1997; J Widner, Courts and Democracy in Post-conflict Transitions: A Social Scientist's Perspective on the African Case in *The American Journal of International Law*, 2001, 95, p 64.
31. Official website of the ICC at <<http://www.icc-cpi.int>>.
 32. Ibid.
 33. Article 53 (2)(c) of the Statute.
 34. In terms of Chapter VII of the UN Charter.
 35. J Astill, Congo cannibalism claim provides first challenge, *The Guardian* (London), 11 March 2003.