



ZIMBABWE EZEKIEL GUTI UNIVERSITY

FACULTY OF LAW

DEPARTMENT OF PUBLIC LAW

EXAMINATION PAPER

COURSE CODE : LLB 032
COURSE TITLE : **International Criminal Law**
SPECIAL REQUIREMENTS : Relevant pieces of legislation
DURATION : 3 Hours
LEVEL : 5.1 & 5.2
DATE : 11.8 FEB 2022

INSTRUCTIONS TO CANDIDATES:

1. Answer FOUR questions. Question ONE in section A is compulsory. Answer any THREE questions from section B. Each question carries 25 marks.
2. Students may bring into the exam un-annotated and clean texts of applicable legislation. Copies with notes inside shall not be allowed and may be confiscated. No student is allowed to share his/her copy with another.
3. Students are NOT allowed to carry and use electronic gadgets such as laptops and cellular phones, among other things
4. Write legibly
5. Number your answers accordingly
6. Good luck...and remember...*all is fair in love and war*

Section A: Compulsory question

Question 1

The state of Nyamure is governed by an oppressive regime led by President Matyabadza. In the beginning of January 2016, students at the capital's university began to engage in peaceful demonstrations against the regime. The demonstrations soon prompted others, and within two weeks peaceful demonstrations had spread across the country. On 10 February, in an attempt to retain control over the situation, the President placed security forces in the streets of all major cities, but with no success. Matyabadza then ordered the use of military force including bombs directed against civilians, as well as other measures such as censorship and blocking of communications especially internet and social media platforms like Facebook and WhatsApp. After six years into the conflict, the scale of destruction in Nyamure has reached unprecedented levels; it is estimated that approximately 130,000 people have died as a direct result of the violence, including over 20,000 civilians killed in targeted attacks. More than 19,000 fatalities were reported in 2020 stemming directly from the conflict — a 29% decrease in total reported fatalities from 2019, but still the third deadliest year of the war.

The conflict in Nyamure consists of a variety of interconnected local conflicts involving regional powers competing for influence. The first of these conflicts pits the Ndaus' Chimwenje, a revivalist movement hailing from Nyamure's eastern highlands that seized the Manicaland province in 2014 against the internationally-recognized government led by President Matyabadza. Matyabadza enjoys the support of South Africa which, together with allies like the Botswana, launched a military intervention in support of the government in March 2015 in order to prevent the Ndaus from overtaking the southern port city of Mwangazi.

The second conflict is linked to the secessionist Mtwakazi Transitional Council (MTC), a political organization established in May 2017 that advocates for the creation of an independent state in southern Nyamure. The MTC has extended its influence across Nyamure's southern governorate through a vast network of armed groups, most of which are backed by the SADC.

The third main conflict is an Islamist insurgency launched by Al Rushosha in the Mudzimwa valley and the Nyamure branch of the Islamic State (IS). Both groups currently possess limited operational capacities in the country and have crumbled amidst an extensive campaign of state drone strikes, coalition operations (i.e. the build-up of 'local' counter-terrorism forces), and a heavy phase of infighting.

While 2021 was met with a mixture of hope and scepticism over the prospects for peace in Nyamure, the actual trajectory of the conflict has dashed any hopes for an end to the fighting in 2021. Opposing forces continued advancing on several fronts, especially in Ndau areas

The international community implemented several political measures to stop the horrors in Nyamure, but they all proved unsuccessful. On 15 May 2021, the UN Security Council adopted a resolution under Chapter VII of the UN Charter authorizing states to use "all necessary means" short of foreign occupation to protect civilians in Nyamure. Also, the resolution referred the situation in Nyamure to the International Criminal Court (ICC), according to Article 13 (b) of the Rome Statute which Nyamure had not ratified, covering crimes committed in Nyamure from 1 January 2016.

An international coalition soon established an allied air force which targeted Nyamure ground units in order to prevent attacks against civilians. During one of the missions a fighter jet bombed a military barrack, which was part of a base from where the attacks against civilians were launched. Later it turned out that there had been more than fifty child soldiers in the barrack, and that they had all been killed in the bombing. The children had been forcibly recruited by General Wabantu, who had drugged them in order to make them fight. He had done this on orders from President Matyabadza. By the end of May 2021, the allied forces had defeated President Matyabadza's forces and gained control over the territory.

After years of armed conflict in the African state of Nyamure, leaders of the opposing parties to resolve their differences and make an attempt at ceasefire and peace negotiations. The major point of concern in the negotiations relates to post-conflict reconciliation for the purposes of peaceful co-existence of erstwhile political enemies and rival. There are three proposals on the table. The first proposal coming from all armed rebel groups is a blanket amnesty for the war crimes committed during the armed conflict, and the incorporation of their foot soldiers into the national army, as well as sharing of governmental posts in the future administration. This proposal is opposed by government representatives, who argue that outright amnesty is difficult

to propagate and defend to affected population groups. The incumbent government's representatives advocate for some form of transitional justice mechanisms. According to the government, prosecution of a few individuals must be considered, in addition to other mechanisms such as public confession, or a truth and reconciliation commission. International human rights organizations and the United Nations who have brokered these negotiations are in favour of outright prosecution of those accused of committing gross violations of the laws of war and human rights. To that effect, they are in support of an internationalised criminal tribunal, funded by both the government and its international partners in the peace negotiations. However, the United Nation has tasked the African Union to come up with its own proposal, and stated clearly that the UN will respect and assist in the implementation of the AU's proposal, if it is acceptable to all important parties to the negotiations.

The AU has decided to appoint the Southern African Development Community (SADC) to draw up the AU proposal. SADC is an independent, neutral and authoritative regional organisation of states, whose advices and recommendations are respected by all parties to the armed conflict.

(Names, characters, places and incidents used here are fictitious. Any resemblance to actual events or locales or persons, living or dead, is entirely coincidental.)

You have been appointed as a Special Rapporteur to the peace negotiations by SADC to map the way forward.

- a) Evaluate the proposal by the rebel groups and the impact and the implications of the proposal for the international criminal justice in Africa. **(9 marks)**
- b) If SADC is in favour of a internationalized criminal tribunal in Nyamure, discuss with justification, the scope, extent and the nature of the tribunal's *ratione personae* and *ratione materiae*. **(9 marks)**
- c) In the event of the truth and reconciliation frameworks being favoured in the case, discuss possible proposals in relation to, or acceptable to victims of war crimes and other serious violations of the law of war. **(7 marks)**

[Total 25marks]

Section B Answer ANY THREE Questions

Question 2

Identify and analyse the scope, nature and jurisdiction of three major international criminal tribunals established for the prosecution of international crimes since 1990. In your answer be careful to highlight and illustrate their strengths and weaknesses, using case law from each criminal tribunal.

[25 marks]

Question 3

As with philosophical underpinnings and conceptual justifications, the practical rights standards and expectations of the criminal justice process at international level are based on domestic criminal justice systems. Discuss this assertion, giving practical examples from the ad hoc tribunals.

[25 marks]

Question 4

Explore and discuss the role of the United Nations system in the fight against impunity since 1990. To what extent has the UN been able to balance its primary objectives under the UN Charter with the need to pursue and promote international accountability? **[25 marks]**

Question 5

- a) Assess and evaluate the concept of concurrent jurisdiction, and discuss its role and place in international criminal law. **(15 marks)**
- b) Explore the nature, scope and competence of Gacaca courts in Rwanda, and their contribution in international criminal justice in Rwanda. **(10 marks)**

[Total 25 marks]

Question 6

Analyze the major thrusts and themes in the peace vs justice debate, in as far as it is reflected in the 'interests of justice' provisions of the Rome Statute. In your view, how can both the OTP and the ICC balance peace objectives and interests of justice. **[25 marks]**

Question 7

Examine and discuss the state cooperation regime under the law of ad hoc tribunals and that established by the Rome Statute. With specific reference to the case African cases, and other important cases, highlight the major weaknesses of the state cooperation regime and the impact of these weaknesses to the fight against impunity and suggest mechanisms or means to enhance or improve it in the interests of prosecution of international crimes. [25 marks]

Question 8

Discuss the nature and scope of ad hoc criminal tribunals and domestic war crimes chambers, and their role in international accountability. Consider the major strengths of these mechanisms as instruments for enforcing international accountability. [25 marks]

****** End of examination******