The International Criminal Court: 
A Pipe Dream to End Impunity?

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Abstract
The prospects of the emerging international criminal justice system, namely the International Criminal Court, serving as a catalyst to end impunity of those most responsible for crimes against humanity, war crimes, genocide, and massive violations of human rights, remains bleak given four underlying factors: the ideology of deterrence that undergirds the system, jurisdictional limitations, the backlash of its involvement in and issuance of arrest warrants during highly contentious conflicts. This article offers some insight into these issues and the obstacles they present to the success of the International Criminal Court in ending impunity and future cases of such criminality. We begin by discussing the International Criminal Court followed by the ideology of deterrence and issues associated with the Court’s jurisdiction. We then draw on two case examples, namely Uganda and Columbia, to discuss the challenges to involvement in ongoing conflicts and post-conflict situations.

Keywords
state crime; international criminal justice; social control; International Criminal Court (ICC); deterrence

If [the twentieth century trend of wars, war crimes, misery and hardship] is not to continue into the twenty-first century, then the international community will have to take positive steps to arrest it. One effective deterrent would be an international criminal justice system, sufficiently empowered to cause would-be war criminals to reconsider their ambitions, knowing that they might otherwise be hunted for the rest of their days and eventually be brought to justice.1

1. Introduction

As of 1 June 2002 the Rome Statute of the International Criminal Court went into effect, creating a court whose purpose is the prosecution of those most responsible for the commission of war crimes, genocide and crimes against humanity. As

established, the Court is a complementary court designed to investigate and prosecute cases when states are unwilling or unable to do so themselves. It can only try cases dealing with crimes that have occurred since the Rome Statute's entry into force on 1 July 2002 and after a state's ratification of said statute. Further, in order for a case to fall under its jurisdiction, one of three conditions must be met in terms of location of the crimes. The first geographic criterion is that the crimes in question must have occurred within the territory (or territory controlled by), vessel, or aircraft of a State Party, or have been committed by nationals of a State Party (i.e., uniformed military). Secondly, a state may agree to accept the jurisdiction of the Court, without being a state party. Thirdly, the United Nations Security Council can recommend a case to the Court and authorize the Court's jurisdiction in the matter if neither of the above conditions are met (e.g., the situation in the Sudan-Darfur case).

Once a case or situation comes to the Prosecutorial branch's attention, an investigation is carried out to see the viability of the situation as a crime covered under the jurisdiction of the Court and subsequent successful prosecution. The Office of the Prosecutor is currently conducting investigations on crimes committed in seven states: Sudan (for the situation in Darfur), the Democratic Republic of the Congo, Uganda, the Central African Republic, Kenya, Libya and Côte d'Ivoire. The case *The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen* is currently being heard before Pre-Trial Chamber II. In this case, five warrants of arrest have been issued (with the death of Lukwiya, the proceedings against him were terminated) and four suspects remain at large. In the Democratic Republic of Congo situation four cases have been brought before the relevant Chambers: *The Prosecutor v. Thomas Lubanga Dyilo*; *The Prosecutor v. Bosco Ntaganda*; *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*; and *The Prosecutor v. Callixte Mbarushimana*. Dyilo, Katanga, and Ngudjolo Chui are in the custody of the ICC while Ntaganda remains at large. There are four cases in

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5) The International Criminal Court: *Prosecutor v. Thomas Lubanga Dyilo*, Case No. ICC-01/04-01/06.

