INTERNATIONAL CRIMINAL TRIBUNALS AND LIFE IMPRISONMENT: WHICH THEORY OF PUNISHMENT IS EMPHASISED?

Jamil Ddamulira Mujuzi*

1. Introduction

There are generally four major objectives of punishment: retribution, deterrence, rehabilitation and incapacitation. There are also other theories of punishment such as reconciliation and restorative justice. The above theories of punishment have been a subject of hundreds of books and journal articles and therefore their discussion falls outside the ambit of this paper. The manner in which the international criminal tribunals have applied or dealt with these theories of punishment has been a subject of numerous academic works. However, academics have generally ignored the question to the effect that which theory or theories of punishment have these tribunals emphasised in sentencing offenders to life imprisonment?1 One has to

* Doctoral Researcher, Civil Society Prison Reform Initiative (CSPRI), Community Law Centre (CLC), University of the Western Cape (UWC) and LLD Candidate, Faculty of Law, UWC; LLM (Human Rights and Democratisation in Africa) University of Pretoria; LLM (Human Rights Specialising in Reproductive and Sexual Health Rights) University of the Free State; LLB (Hons) Makerere University; Diploma in International Humanitarian Law, Institute for Human Rights, Åbo Akademi University. I am indebted to Profs. Israel Leeman and Lovell Fernandez of UWC, to the anonymous referees and to the editors of the African Yearbook on International Law for their comments on the earlier drafts of this article. OSF-SA and Ford Foundation’s funding to CSPRI and CLC respectively is acknowledged. The usual caveats apply. Email: <djmujuzi@gmail.com>.

1 See for example, A Cassese, International Criminal Law (2nd ed)(2008); WA Schabas, The UN International Criminal Tribunals: The Former Yugoslavia,
recall that life imprisonment is now one of the severest sentences that can be imposed by international criminal tribunals and therefore the need to analyse the theory of punishment that these tribunals mainstream in imposing such a serious penalty. The purpose of this paper is to analyse which theory or theories of punishment the international criminal tribunals have emphasised in sentencing offenders to life imprisonment. To answer this question, I interrogate in detail the relevant judgements of the Nuremberg and Tokyo Tribunals which were established immediately after World War II; the jurisprudence of the International Criminal Tribunal for the Former Yugoslavia (ICTY); and that of the International Criminal Tribunal for Rwanda (ICTR). Attention is also paid to the founding documents or cases of the Special Court for Sierra Leone (SCSL) and the International Criminal Court (ICC) to establish how they have dealt, or likely to deal, with the three theories of punishment when imposing or likely to impose sentence. Much emphasis is placed on the jurisprudence of the ICTR because the manner in which it has dealt with the question of life imprisonment raises many interesting and challenging issues.

2. The Nuremberg Tribunal: Establishment and punishment

The detailed history of, and circumstances under which, the International Military Tribunal at Nuremberg, the Nuremberg Tribunal (the Tribunal), was established have been a subject of academic discussion for many years and thus fall beyond the scope of this study. The London Agreement of 8 August 1945, to which the Charter of the International Military Tribunal, the Nuremberg Charter (the Charter), was annexed, made it clear in its Preamble that the ‘United Nations have from time to time made declarations of their intention that war