

## Original Paper

# Jurisdictions of the Hague Court

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### **Abstract**

*The objectives of the paper are threefold: a) to find out the axiomatic truths, investigating crimes committed in the past; b) to examine the steps of the trial to the perpetrators for accountability and to deliver justice to the victims without prejudice at present; and c) to foster peace, human security and harmony for not repeating crimes in future. This state-of-the-art paper is prepared based on archival literature review, exchanging and sharing, Rome Statute defined functions and a practical observation approach rather than theoretical conception. The Hague Court gathers and scrutinizes testimonies, questioning victims and witnesses and analyzes the shreds of evidence of a suspect's innocent or guilty. The examination and investigation guided by Rome Statute jurisdiction shall initiate on five criteria: (i) State Party, (ii) Declaration of Acceptance, (iii) Situation Referring by the UNSC, (iv) Transnational Crimes and (v) Petition by Victim/Representative. As of December 2019, 123 countries have become the Member States to the Rome Statute, but China, Iraq, Israel, Libya, Qatar, USA and Yemen voted against the treaty. So far, the Office of the Prosecutor (OTP) has opened official investigations for 12 situations and additional nine situations for preliminary examinations. The OTP closed seven situations: Gabon, Honduras, South Korea, Venezuela and Registered Vessels (Comoros, Greece, and Cambodia) from preliminary examinations. Till date, 45 suspected persons have been warranted by The Hague Court including the Presidents of Sudan, Kenya, Ivory and Libya. Out of 45 accused persons, proceedings against 50 per cent (22) have been completed. Four countries including South Africa and The Philippines have withdrawn from the Rome Statute. Burundi who has been the first country to refer the situation to the Court became the first nation to leave Statute. The case of Bangladesh/Myanmar is the newest one. Ukraine has accepted the jurisdiction of Statute but failed to*

*ratify it. The longest length of the preliminary examination is holding by Afghanistan, but the Pre-Trial Chamber dismissed its report over the influence of the USA's power and politics. Reparations against three rebel leaders, i.e., Thomas Lubanga, Germain Katanga and Ahmad Al Mahdi for victims were pronounced by The Hague Court. Warrants of arrest along with red corners notice are issued to four (two each from Libya and Sudan) suspected individuals. The Hague Court's investigations should be evidence-based, not target-based unlike toing and froing of registered vessels of Comoros, Greece and Cambodia. The superior complexity of the Prosecutor Fatou Bensouda and advertisement of her photos in all official statements are to be ended.*

**Keywords**

*ICC, the Hague Court, transitional justice, accountability, jurisdiction, reparation, pre-trial chamber and trial chamber*

**1. Introduction**

Jurisdiction is the capacity of an institution to prescribe and enforce a law (Bowett, November 1, 1983). It refers to a legal parameter of the Court's operation (Aston & Paranjape, February 27, 2013). In this sense, jurisdiction is the authority granted by law (Legal Dictionary, December 13, 2015). It is the authority of a court to hear and determine the cases (Encyclopedia Britannica, October 17, 2019). For this study, jurisdiction is used as a practical authority granted to the International Criminal Court (ICC) "The Hague Court" by the Rome Statute on the course to administer justice to the victims and prosecution to the perpetrators.

Before the formation of the ICC in The Hague, a temporary judicial body called International Criminal Tribunal (ICT) was established. The ICT was recognized as the 'UN Court of Law' that aimed to investigate the crimes of an individual in a specific country (Pathak, July 2019). The ICT or war crimes Tribunals were formed in former Yugoslavia in 1993 (Zupan, 2006) and in Rwanda (Schabas, 2006) in 1994. Against the war crimes and crimes against humanity during the conflicts in the Balkans in the 1990s, the UN Security Council (UNSC) established the International Criminal Tribunal for the former Yugoslavia (ICTY) which continued for 24 years (1993-2017) (<https://www.icty.org/>). The UNSC established International Criminal Tribunal for Rwanda (ICTR) against the genocide (for 100 days of slaughters), where it worked for 21 years (1994-2015) (Leithead, December 14, 2015). And such Tribunals were replaced by The Hague Court.

The Rome Statute is the treaty that aimed at establishing a permanent international court (tribunal) to prosecute individuals accused of international crimes (ICC, 2011). It was adopted/signed by the Representatives of 139 States (United Nations: Treaty Collection, Undated) through the United Nations Diplomatic Conference in Rome (Italy) on July 17, 1998. Of the 139 signatory States of the Rome Statute, 60 States ratified (Arsanjani, January 1999) the Rome Statute that entered into force on July 1,

2002 (ICC, Undated1). However, 31 (Note 1) States have not ratified the treaty yet. As of December 2019, a total of 123 States have ratified the Treaty that comprise 33 from the African States, 18 from the Asia-Pacific States, 18 from Eastern Europe, 28 from Latin American and Caribbean States and 25 from Western Europe ([https://asp.icc-cpi.int/en\\_menus/asp/states%20parties/](https://asp.icc-cpi.int/en_menus/asp/states%20parties/)). Out of the United Nations recognized States with full-treaty making capacities, 42 States (Note 2) have neither signed on nor ratified the Statute. However, seven countries namely China, Iraq, Israel, Libya, Qatar, the United States of America and Yemen voted against the treaty (Scharf, August 11, 1998). The ICC deals with the crimes committed after July 1, 2002, without retroactive jurisdiction.

Among the States those endorsed ratification, Burundi (ICC, December 4, 2017; Ssenyonjo, June 13, 2017; C.N.805.2016, October 27, 2018 & BBC, February 1, 2017), Gambia (C.N.862.2016.Treaties-XVIII.10, (November 11, 2016), The Philippines (C.N.138.2018, March 17, 2019) and South Africa (C.N.121.2017, Treaties-XVIII.10, March 7, 2017 & C.N.786.2016, October 19, 2017) have already withdrawn from the Rome Statute. Pursuant to Article 12(3) of the Rome Statute, Palestine (Abbas, December 31, 2014) and Ukraine (Global Rights Compliance, December 2016) have accepted the jurisdiction of the Rome Statute of the ICC, but in vain for its ratification. The Government of Uganda has been the first country to be the case referred to the ICC in January 2004.

The ICC is a permanent Court that puts on trial to perpetrators of international crimes of genocide, crimes against humanity and war crimes (ICC, Undated2). The second amendment of the Rome Statute included the crimes of aggression in 2010. The principal objective of the Court is to investigate, prosecute and punish the perpetrators or accused person committing the most serious crimes to international concern as a whole (<https://internationalcriminalcourtnashie.weebly.com/aims-and-objectives.html>). The ICC (Note 3) has four main aims: to ensure the worst perpetrators to be held accountable for crimes; to serve as a Court of last resort that can investigate, prosecute and punish the perpetrators of crimes; to assist national judiciaries in the investigation and prosecution of perpetrators and to help promote peace and security by deterring potential perpetrators (<https://www.icc-cpi.int/iccdocs/PIDS/publications/UICCEng.pdf>). It prevents serious crimes from repeating.

## **2. Jurisdiction and Admissibility of the Court**

The OTP conducts preliminary examinations and investigations in 27 countries upon the referrals either by the State Parties, by the UNSC, by its own initiative or by the Judges' approval. The OTP conducted preliminary examinations of seven countries and decided that the alleged crimes did not fall within the jurisdiction of the Court in the lack of testimonies. Those seven countries were: Gabon (September 2016-September 2018) (ICC, September 21, 2018), Honduras (November 2009-October 2015) (ICC, November 12, 2015), Registered Vessels such as Comoros, Greece and Cambodia (May

2013-November 2014) by the decision of the Prosecutor (ICC, September 2, 2019), South Korea (December 2010-June 2014) (ICC, June 23, 2014) and Venezuela I (July 2002-February 2006) (ICC, February 9, 2006).

The OTP continued preliminary examinations in nine countries. Those countries are: Afghanistan (May 2003-) (ICC-02/17, April 12, 2019), Columbia (June 2004-) (Aksenova, 2018), Iraq/UK (February 2006-) (Hansen, 2018), Guinea (October 2009-) (Human Rights Watch, May 3, 2018), Nigeria (November 2010-) (Merwe, November 2014), Ukraine (April 2014-) (ICC, December 5, 2018), The Philippines (February 2018-) (ICC, December 5, 2018), Venezuela II (February 2018-) (Arriaza, May 29, 2019) and Palestine (May 2018-) (Adem, 2019).

The OTP has conducted or been conducting investigations in 11 countries: Uganda (January 2004-) (Plaut, February 6, 2015), DR Congo (April 2004-) (International Court of Justice, 2005), Central African Republic I (December 2004-) (ICC, May 22, 2007), Darfur, Sudan (June 6, 2005-) (Aljazy & Aljaghoub, 2011), Kenya (March 31, 2010-) (Sungi, December 2015), Ivory Coast (February 10, 2011-) (Tawa & Engelsdorfer, 2017), Libya (February 26, 2011-) (ICC, May 8, 2019), Mali (January 16, 2013-) (ICC, January 16, 2013), & Central African Republic II (May 2014-) (ICC, September 24, 2014), Georgia (January 27, 2016-) (ICC-PRES/27-01-19, January 24, 2019), Burundi (October 25, 2017-) (ICC, October 25, 2017) and Bangladesh/Myanmar (June 26, 2019-) (ICC, July 4, 2019).

The ICC establishment under the Statute shall be complementary to the national criminal (issue-matter, territorial/personal and temporal) jurisdictions. It ensures justice to the victims or survivors and prosecutes (makes accountable) the perpetrators. The Prosecutor may initiate the Preliminary Examinations under five criteria (jurisdictions): (i) if the State becomes a Party to the Rome Statute; (ii) if the State accepts/declares pursuant to article 12.3 of the Statute; (iii) if the UN Security Council refers a situation to the Hague Court; (iv) If a State Party allegedly involves to committing crimes on the territory of the non-State Party (Transnational Crimes); and (v) if the OTP or judge authorizes the prosecut or to open an investigation based on the complaint registered by the victim/representative or NGO.

The OTP investigates gathering and examining testimonies, questioning victims and witnesses and the alleged persons to find out the evidence of a suspect's innocence or guilt. The Office, however, needs to investigate the cases for not having any further risk to the victims and the witnesses.

**(i) State Party**

Among 123 countries that ratified the Rome Statute by the end of 2019, 19 signatories are under the preliminary examinations and investigations in the Court. They are: Afghanistan (February 10, 2003), Burundi (September 21, 2004), Cambodia (April 11, 2002), Central African Republic (October 3, 2001), Columbia (August 5, 2002), Comoros (August 18, 2006), DR Congo (September 8, 2000), Honduras (July 1, 2002), Gabon (September 20, 2000), Georgia (September 5, 2003), Greece (May 15, 2002), Guinea (July 14, 2003), Kenya (March 15, 2005), Republic of Korea (November 13, 2002), Mali (August

16, 2000), Nigeria (September 27, 2001), The Philippines, Uganda (June 14, 2002) and Venezuela (June 7, 2000) ([https://asp.icc-cpi.int/en\\_menus/asp/statesparties/Pages/thestatespartiestothe-romestatute.aspx](https://asp.icc-cpi.int/en_menus/asp/statesparties/Pages/thestatespartiestothe-romestatute.aspx)). The Philippines had ratified the Rome Statute on August 30, 2011, but withdrew from it on March 17, 2018 (Cabato, March 18, 2019). Thus, only 19 signatories and ICC investigations and prosecutions are briefly discussed under this section.

**Afghanistan:** Afghanistan is not a State-party to the Rome Statute, but deposited its instrument of accession on February 10, 2003, in which The Hague Court may exercise its jurisdiction over crimes that committed on the territory of Afghanistan. The OTP initiated the preliminary examination of the situation in Afghanistan on May 1, 2003, and the report of it was made public in 2007. The preliminary examination focuses on war crimes and crimes against humanity committed in the context of the armed conflict between pro-Government forces and anti-Government forces (<https://www.icc-cpi.int/afghanistan>).

On November 20, 2017, the Prosecutor requested the Judges to initiate an investigation into war crimes and crimes against humanity committed in Afghanistan after May 1, 2003 (ICC, December 4, 2017). On September 11, 2018, the National Security Advisor of the United States of America threatened to arrest and sanction judges and other officials of the ICC if it moved to charge against the US citizens who served in Afghanistan (Agency France Presse, September 11, 2018).

Besides, on April 4, 2019, the US Government rejected entry visa for the Court's Prosecutor to investigate into possible war crimes and crimes against humanity committed by the American soldiers and their allies in Afghanistan (BBC, April 5, 2019). On April 4, 2019, the Secretary of State Mike Pompeo said, "If you are responsible for the proposed ICC investigation of the US personnel in connection with the situation in Afghanistan, you should not assume that you will still have or get a visa, or that you will be permitted to enter the United States." He further warned, "We are prepared to take additional steps, including economic sanctions if the ICC does not change its course" (BBC, April 5, 2019). On April 12, 2019, fearing the US Government's threat; the Pre-Trial Chamber unanimously rejected the request of the Prosecutor to proceed with an investigation into alleged war crimes and crimes against humanity committed in Afghanistan (ICC, September 17, 2019).

The US President welcomed the decision as a major international victory, but international human rights groups severely criticized it. The decision came a week after the US annulled entry visa of the Court's Prosecutor (BBC, April 12, 2019). However, the Pre-Trial Chamber authorized the Prosecutor to Appeal decision refusing investigation (ICC, September 27, 2019). On 4-6 December 2019, the Appeals Chamber of the Court held a hearing to receive oral arguments in the appeals of the victims and of the Prosecutor against the Pre-Trial Chamber's decision pursuant to Article 15 of the Rome Statute for the Investigation into the Situation of Afghanistan (ICC, November 29, 2019). It was remarkable that the US

President Bill Clinton signed the Rome Statute of the Court before the end of his term in office on December 31, 2000, but the US Government failed to ratify it (<http://www.iccnw.org/documents/USClintonSigning31Dec00.pdf>).

**Burundi:** Burundi has ratified the Rome Statute on September 21, 2004. The preliminary examinations started on April 25, 2017. On September 5, 2017, the Office requested authorization from the Pre-Trial Chamber to proceed with an investigation into the situation in Burundi from 26 April 2015 onwards (December 4, 2017a). On November 9, 2017, the Pre-Trial Chamber issued a public statement to open an investigation regarding war crimes and crimes against humanity within the ICC jurisdiction allegedly committed both in and outside of Burundi from April 26, 2015 to October 26, 2017 (ICC-PIDS-TCT-01-090/18\_Eng, June 13, 2018). The preliminary investigation of the situation in Burundi was announced on April 25, 2016. More than 430 persons were reportedly killed that resulted in 3,400 people having been arrested and over 230,000 Burundians were forced to seek refuge in neighbouring countries (ICC-PIDS-TCT-01-090/18\_Eng, June 13, 2018). But, Burundi lodged a notification of withdrawal from the Rome Statute with an effect on October 27, 2017 (ICC, December 4, 2017a; Ssenyonjo, June 13, 2017, & BBC, February 1, 2017) and became the first nation to leave the ICC (The Guardian, October 28, 2017). The Pre-Trial Chamber confirmed Burundi's withdrawal from the Statute that had no effect on the jurisdiction of the Court over crimes allegedly committed during the said period when it was a State Party (Human Rights Watch, October 27, 2016, & Associated Press, October 7, 2017). Nor did it affect the continuing obligation of Burundi to cooperate with the Court in relation to the investigation.

**Central African Republic (CAR):** The Central African Republic I (CAR I) ratified the Rome Statute on October 3, 2001. Against, the violence, war crimes and crimes against humanity such as killings, rapes and pillaging in 2002 and 2003, the OTP opened the investigation in May 2007 (<http://www.coalitionfortheicc.org/country/central-african-republic-i-and-ii>). Similarly, the ICC prosecutor opened a second investigation (CAR II) on May 30, 2014, to investigate at alleged war crimes and crimes against humanity committed since August 1, 2012 (ICC-01/14-01/18, September 18, 2019). The CAR II continues.

Former Vice President and militia (turned political party leader later on) leader of DR Congo, Jean-Pierre Bemba was originally charged with war crimes, crimes against humanity and sexual violence including rape on the course of leading militias in neighbouring CAR in October 2002 and March 2003 (BBC News, October 19, 2010). On 23 May 2008, the Pre-Trial Chamber issued a warrant of arrest and he was arrested from Brussels the following day and transferred to the Court on July 3, 2008. On June 21, 2016, the Trial Chamber sentenced him to 18 years of imprisonment, but the Appeals Chamber dismissed (overturned) his ICC Trial Chamber's convictions on June 8, 2018 (Wakabi, October 6, 2016; Sieff, March 21, 2016) and ordered to release him from detention in June 2018

(Dwyer, June 8, 2018, & ICC-PIDS-CIS-CAR-01-020/18\_Eng, June 8, 2018). However, on September 17, 2018, the Trial Chamber sentenced him to one-year imprisonment and fined him EUR 300,000 for offences against the administration of justice. (ICC-01/05-01/13, March 8, 2018).

Aime Kilolo, Jean-Jacques Mangenda, Fidel Babala and Narcisse Arido were found guilty of offences against the administration of justice intentionally (corruptly) in influencing witnesses and soliciting false testimonies of defence witnesses in the case against Bemba at the ICC. Kilolo was sentenced to two and half years' imprisonment and charged EURO 30,000 as fine whereas Magenda was sentenced to two years' imprisonment. Arido was sentenced for 11 months of imprisonment, while Babala was sentenced for 6 months of imprisonment. The time of both spent previously in detention were deducted. They are currently not in Court's custody, under appeal (ICC-01/05-01/13, March 8, 2018 & ICC-PIDS-CIS-CAR-02-012/17\_Eng, March 2017).

**Colombia:** Colombia has been a State-party while it accessed the Rome Statute in August 2002 (ICC, November 2012). The preliminary examination focuses on alleged crimes against humanity and war crimes committed over 50 years of armed conflict between and among government forces, paramilitary armed groups and rebel armed groups after November 2002. Colombia has been under preliminary examinations since June 2004. However, the Court shall exercise its jurisdiction over war crimes committed since November 1, 2009, only due to Colombia's declaration pursuant to Article 124 of the Statute (ICC, December 5, 2018).

The Government and Revolutionary Armed Forces of Colombia (FARC) representatives agreed to conduct an investigation of the past armed conflict (Paterson, January 2016). A peace agreement signed between the Government and the FARC in June 2016. Following the agreement, the Colombian Government formed the TRC for three years to investigate the cases of more than 63,800 people who had officially been reported missing, where 45,154 persons were believed to be buried in mass graves (Soendergaard, December 16, 2013) and 220,000 people were supposed to be killed.

#### **Box I: Situation on the Registered Vessels of Comoros, Greece and Cambodia**

##### **Toing and Froing between the Prosecutor and ICC Judges**

On May 14, 2013, a State Party Comoros referred to the Office of the Prosecutor stating that the Israeli Defense Forces attacked the Humanitarian Aid bound for the Gaza strip on May 31, 2010. On November 6, 2014, the Prosecutor Fatou Bensouda issued her decision not to investigate the attack. On July 16, 2015, despite the Prosecutor's decision, the Pre-Trial Chamber requested to reconsider OTP decision not to investigate the attack. On November 29, 2017, considering the final decision, the Prosecutor filed reaffirming OTP's previous decision not to investigate the attack. On November 15, 2018, the Pre-Trial Chamber directed the Prosecutor to reconsider her decision of November 6, 2014, not to investigate the attack following the Pre-Trial Chamber's July 16, 2015 decision. The Prosecutor then appealed to the Court against the Pre-Trial Chamber's

decision, but on September 2, 2019, the Appeals Chamber confirmed the Pre-Trial Chamber's decision of November 15, 2018, to initiate the investigation by December 2, 2019, rejecting or dismissing the Prosecutor's appeal.

Source: <https://www.icc-cpi.int>.

Only 5,390 remains were found through exhumation. Out of 5,390, only 2,483 (46%) were identified but merely 145 remains were returned to their families (International Commission on Missing Persons, Undated). More than 45,000 cases of complaint of disappeared persons were registered till May 2016, but indirect victims might go up to three times more. The National Institute for Forensic Medicine puts the total number of missing persons at 111,588 including more than 22,000 of these classified as forced disappearances, where men constitute 88 per cent (United States Institute of Peace, July 2016). Colombia is developing the Databank collecting DNA profiles from the families or relatives of the missing persons (Flores, September 3, 2017).

The status and progress of national proceedings carried out by the Colombian authorities under the ordinary justice: the Justice and Peace Law (JPL) and the Special Jurisdiction for Peace (SJP) systems (Bergsmo & Stahn, 2018). Thus, the OTP held consultations with national authorities to gather additional information on the areas of focus of the preliminary examination holding multiple meetings with State authorities, international organizations, international NGOs and Colombian civil society (ICC, December 5, 2018).

It is to be remarkable that where the question of law arises, only Judges of the Court have an authoritative interpretation of the relevant law. The Prosecutor is obliged to implement the directive of the Pre-Trial Chamber to initiate an investigation. Even the Appeals Chamber identified that the Prosecutor failed to pursue the Pre-Trial Chamber's legal interpretation to carry out a new reconsideration of her decision not to investigate and to follow its ratio decidendi.

**Democratic Republic of Congo (DRC):** Despite four months (i.e. April to July 1994) genocide between Hutus and Tutsi, DR Congo ratified the Rome Statute in April 2002. In April 2004, the DRC Government referred the situation to the ICC to investigate and to prosecute war crimes and crimes against humanity committed after July 1, 2002 (<https://www.icc-cpi.int/drc>). Following suit, the ICC opened its investigation for six suspects: Thomas Lubanga,



**Box II****Complete Cycle of Investigation and Prosecution in The Hague Court****Step I: Referral Situation Registration**

Referral situation of the State shall be filed at the Office of the Prosecutor. The OTP which is independent and impartial body is responsible to examine situations where war crimes, crimes against humanity, genocide and aggression were/have been committed. It carries out preliminary examinations -investigations and prosecutions against the persons who were/are allegedly responsible for those crimes.

**Step II: Preliminary Examination**

State, institution, group and individual file a petition or can send information to the OTP regarding alleged crimes happened under the jurisdiction of the Court. As of December 2019, the OTP has received 12,000 of such communications and these information shall be the initial and or reasonable basis to initiate preliminary examinations.

The OTP assesses and verifies a number of legal criteria. They are:

- The crimes were committed after July 1, 2002;
- The crimes committed within/beyond the territory of a State Party;
- The gravity of crimes (war crimes, crimes against humanity, genocide and aggression) needs to specify; and
- The national authorities failed to ensure justice to the victims and prosecution and punishment to the perpetrators.

Preliminary examinations encourage the concerned State authorities to fulfill their national responsibilities carrying out the investigations, prosecutions and punishment themselves. There is no specific timelines mentioned in the Rome Statute to complete the preliminary examinations. The OTP is responsible to gather information and testimonies on crimes and relevant national proceedings.

**Step III: Investigation**

For detailed investigations, the OTP sends mission comprising investigators, cooperation advisers and collects/examines different forms of testimonies from victims and witnesses through questionnaires. The OTP seeks assistance and cooperation from the State Party, international/regional institutions, human rights organizations and civil society. It also gathers both incriminating and exonerating evidences.

**Step III: Pre-Trial Chamber**

While the OTP gathered sufficient testimonies and evidences to file cases before the judges, the Office will request the Pre-Trial Chamber to issue a warrant of arrest or a summons to appear alleged perpetrators. Once the three-member judges determine reasonable grounds to believe that alleged persons have committed crimes within the Court's jurisdiction, the judges will only issue arrest warrant for not further obstruct the investigation or to prevent the alleged persons from continuing to commit the crime. Once the alleged persons arrested, s/he is held in custody at the Court's detention center.

Besides, the judges can issue summonses to appear if there are reasonable grounds to consider that a summons is

Germain Katanga, Mathieu Ngudjolo Chui, Bosco Ntaganda, Callixte Mbarushimana and Sylvestre Mudacumura (ICC-PIDS-TCT-01-090/18\_Eng, June 13, 2018) in June 2004.

Lubanga was a founder and rebel military commander of the Union of Congolese Patriots. On February 10, 2006, the Pre-Trial Chamber issued a warrant of arrest to Lubanga and Congo Government transferred him to The Hague Court on March 17, 2006. And, on January 29, 2007, the judges of the Pre-Trial Chamber confirmed the charges against him. On July 10, 2012, the Trial Chamber delivered a final verdict of sentencing him for a total period of 14 years of imprisonment. On December 19, 2015, Lubanga was transferred to a prison in his own country DR Congo to serve his other (national crimes) sentences of imprisonment (ICC-PIDS-CIS-DRC-01-016/17\_Eng, December 15, 2017). On December 15, 2017, the Trial Chamber set the amount of his liability for collective reparations at USD 10,000,000 (ICC-PIDS-TCT-01-090/18\_Eng, June 13, 2018).

A warrant of arrest was issued to another rebel leader Germain Katanga on July 2, 2007, on the charge of crimes against humanity and Congo Government transferred him to The Hague Detention Center on October 17, 2007 (ICC-PIDS-CIS-DRC-03-014/18\_Eng, March 20, 2018). On March 7, 2014, the Trial Chamber found him guilty and it sentenced him to a total of 12 years' of imprisonment. On March 24, 2017, the Trial Chamber directed him a liability at USD 1,000,000 for reparations to the victims and the Appeals Chamber confirmed the Reparations Order (ICC-PIDS-TCT-01-090/18\_Eng, June 13, 2018).

Despite Army's Colonel Mathieu Ngudjolo Chui's alleged involvement in war crimes enlisting children under the age of 15, killing, sexual slavery, and destruction of property and crimes against humanity committed in February 2003, but Chui was acquitted on December 18, 2012 (Escritt, December 18, 2018) and released three days later. Similarly, the Pre-Trial Chamber declined to confirm the charges against Callixte Mbarushimana on war crimes and crimes against humanity. And the appeal of prosecution against him was dismissed (BBC News, December 16, 2011). Consequently, he was released from the ICC custody on December 23, 2011.

The ICC issued a warrant of arrest against Bosco Ntaganda, the Chief of Staff of Armed Militia Group, the first time on August 22, 2006, and the second time on July 12, 2012 (ICC-PIDS-TCT-01-090/18\_Eng, June 13, 2018). He was transferred to the Detention Center on March 22, 2013 (ICC-PIDS-CIS-DRC-02-011/15\_Eng, January 2017). Ntaganda's trial opened on September 2, 2015 (ICC-PIDS-CIS-DRC-02-011/15\_Eng, January 2017) and on November 7, 2019, he was sentenced to a total of 30 years of imprisonment. The verdict is under subject to appeals. Similarly, a warrant of arrest was issued for Sylvestre Mudacumura on July 13, 2012, but the suspect or alleged perpetrator is still at large 'fugitive' and his case is still in the Pre-Trial stage (ICC-PIDS-CIS-DRC-05-006/18\_Eng, April 2018).

**Gabon:** Gabon ratified the Rome Statute on September 20, 2000. On September 21, 2016, the Government of the Republic of Gabon requested the Prosecutor of the ICC to open an investigation

without delay. One week later, the Prosecutor announced the opening of the preliminary examination over crimes committed in the context of the post-presidential election of August 31 to September 4, 2016 (ICC, 2017). The opposition party and its supporters stated that the Government committed genocide during the 2016 presidential campaign (ICC, December 4, 2017). Following a thorough preliminary examination, the Office concluded that the legal criteria for this Court to investigate the Gabonese Republic have not been met. As there is no reasonable basis to proceed with an investigation, the preliminary examination has been brought to a close (ICC, September 21, 2018)

**Georgia:** Georgia ratified the Rome Statute on September 5, 2003, and has been a State Party of it thereafter. On January 27, 2016, the Pre-Trial Chamber granted the Prosecutor's request to open the war crimes and crimes against humanity investigation that occurred during an international armed conflict in Georgia from July 1 to October 10, 2008 (ICC-PIDS-TCT-01-090/18\_Eng, June 13, 2018). It is to be noted that possible crimes committed during the short but violent war between Russia and Georgia. The OTP stated that between 51 and 113 ethnic Georgian civilians were killed during a course of forceful displacement campaign conducted by Georgian (South Ossetia's de facto) authorities. Forceful displacement conducted with the possible participation of a few Russian Armed Forces in South Ossetia. Between 13,400 to 18,500 ethnic Georgians were forcibly displaced and more than 5,000 houses belonging to ethnic Georgians were reportedly destroyed as part of armed conflict (Agenda.ge, May 8, 2019). On December 4, 2015, the OTP submitted a report on a total of 6,335 victims who were in favour of investigating the serious human rights violations by the ICC (ICC-01/15, March 21, 2018). Georgian Justice Minister presented more than 700 pieces of evidence that Russia started the 2008 war (Agenda.Ge, March 20, 2019). The investigation is still in progress.

**Guinea:** Guinea ratified the Rome Statute on July 14, 2003. The preliminary examination of the situation in Guinea had been announced on October 4, 2009, on **alleged crimes against humanity** committed in events in Conakry stadium, including the crimes against humanity of murder, imprisonment or other severe deprivation of liberty, torture, rape and other forms of sexual violence, persecution and enforced disappearances. **on September 28, 2009 (<https://www.icc-cpi.int/guinea>).** **The preliminary examination receives the most significant progress** (ICC, December 4, 2017). The OTP officials conducted a visit to Conakry from October 28-31, 2019. The delegates held official talks with the Guinean authorities, representatives of the diplomatic community, civil society organizations and victims associations (ICC, November 11, 2019).

**Honduras:** Honduras gained access to the Rome Statute on July 1, 2002. The preliminary examination focused on alleged crimes against humanity committed in the aftermath of the **coup d'état** on June 28, 2009. In November 2013, the Prosecutor concluded that examination did not provide reasonable evidence and testimonies of crimes committed between June 28, 2009, and January 27, 2010 (ICC, October 28, 2015). On October 28, 2015, the ICC finally decided to close the preliminary examination

(ICC, November 12, 2015).

**Ivory Coast:** Ivory Coast had not been a State Party to the Rome Statute when it accepted the jurisdiction of the ICC on April 18, 2003. Ivory Coast ratified the Rome Statute on February 15, 2013. Before being a State-Party, the Pre-Trial Chamber granted to open an investigation *proprio motu* in the situation in Ivory Coast on October 3, 2011. The investigation started based on the acceptance of jurisdiction of the ICC on April 18, 2003, December 14, 2010, & May 3, 2011 (ICC-02/11). The Court has jurisdiction of crimes against humanity allegedly committed between September 19, 2002, to November 28, 2010 (ICC-PIDS-TCT-01-090/18\_Eng, June 13, 2018) and crimes may be committed in future in the context of this situation.

The then-President Laurent Gbagbo was accused of crimes against humanity in the post-electoral violence that happened from December 16, 2010, to April 12, 2011. The warrant of arrest was issued on November 23, 2011, and arrested by international fighters from presidential residence (VOA, April 10, 2011) and was transferred to The Hague on November 30, 2011. And his charges were confirmed on June 12, 2014. He kept into Court's custody (Kouassi, July 24, 2018), as a sitting Head of Nation to stand trial at the Court, The Hague. However, Gbagbo was released by the ICC on January 15, 2019, after being acquitted on charges of crimes against humanity (Aljazeera, February 6, 2019).

In another case, Charles Blé Goudé surrendered on March 22, 2014, and charges were confirmed on December 11, 2014 (ICC-PIDS-CIS-CI-04-03/16\_Eng). On January 28, 2016, the Trial Chamber opened two cases against Laurent Gbagbo and Charles Blé Goudé. A total of 727 persons filed to participate in the proceedings against Gbagbo and Blé Goudé. On January 15, 2019, The Trial Chamber majority acquitted both of them from all charges of crimes committed there. On July 16, 2019, the Trial Chamber filed the written full reasons for their acquittal.

**Kenya:** Kenya has been the ICC State Party depositing its instrument of ratification to the Rome Statute on March 15, 2005 (Human Rights Watch, January 2011). Therefore, The Hague Court may exercise its jurisdiction crimes against humanity recorded in the Rome Statute committed on the land of Kenya by its nationals from June 1, 2005, onwards. The investigation of the Court was focused on alleged crimes committed in the context of post-General Election violence engulfed in six of the eight provinces in Kenya in 2007 and 2008. Two months of bloodshed left over 1,000 people killed and up to 500,000 internally displaced persons (Human Rights Watch, March 16, 2008). There were no records of raped and sexual violence where about 4,000 were injured on the course of the use of excessive force (Cooke, August 6, 2009).

For the detailed investigation, the OTP conducted external expert review and lessons drawn from the Kenya situation (Bensouda, November 26, 2019). A total of six (high-level authorities) suspects namely, Uhuru Kenyatta (President), Francis Muthaura (Head of Civil Service), William Ruto (Deputy President),

Joshua Arap Sang (Head of Operations of Radio in Nairobi), Henry Kosgey (Minister for Industry) and Mohammed Hussein Ali (Military Commander) were charged in the context of Court's investigation.

The OTP conducts investigations by gathering and examining pieces of evidence, questioning concerned persons and questioning victims and witnesses for the purpose to find out shreds of evidence of a suspect's innocence or guilt. In regards of crimes against humanity to Uhuru Kenyatta and Francis Muthaura (ICC-01/09-02/11, March 13, 2015), the charges were confirmed on January 23, 2012, through charges of hearing from September 21 to October 5, 2011 (ICC-PIDS-CIS-KEN-02-014/15\_Eng & ICC - 01/09, November 26, 2009). On December 5, 2014, the Prosecutor filed a notice to withdraw charges against both of them (VOA, December 13, 2016) and the Trial Chamber terminated their case proceedings and vacated the summons to appear from the Court on March 13, 2015 (ICC-PIDS-TCT-01-090/18\_Eng, June 13, 2018).

On April 5, 2016, the Trial Chamber by majority terminated the cases against William Ruto and Joshua Arap Sang on the basis of the evidence presented to the Chamber (ICC-PIDS-TCT-01-090/18\_Eng, June 13, 2018). The case of Henry Kosgey was also dismissed by the Judges on January 23, 2012. Paul Gicheru (a lawyer) and Philip Bett residing in Kenya were suspected of offences against the administration of justice to influence the Prosecution witnesses (ICC-01/09-01/15, March 10, 2015). Similarly, Walter Barasa is also charged with offences against the administration of justice in influencing three ICC witnesses (ICC-01/09-01/13). All three Ruto, Sang and Kosgey suspects were in pre-trial stages owing to absence 'fugitives' in the Court's custody. Two suspects Gicheru and Bett as detaining in the Kenyan custody, they could not attend at the Court. The Court summonsed to appear issued on March 8, 2011, for Mohammed Hussein Ali on the charges of crimes against humanity, however, his case was dismissed in the lack of testimonies and evidence (Pathak, July 29, 2019).

**Nigeria:** Nigeria has ratified the Rome Statute on September 27, 2001. The preliminary examination is going now against war crimes and crimes against humanity that were committed in the Niger Delta, the Middle-Belt States and in the context of armed conflict between Boko Haram and Nigerian security forces in Nigeria on November 18, 2010, onwards (<https://www.icc-cpi.int/nigeria>).

**South Korea:** South Korea has been a State Party to the Rome Statute since November 13, 2002 (<https://www.icc-cpi.int/korea>). On December 6, 2010, the ICC Prosecutor announced the opening of a preliminary examination to assess whether the incidents happened in the Yellow Sea constituted war crimes under the jurisdiction of the Court (ICC, June 2014). On June 23, 2014, the Prosecutor concluded that there was no need of further investigation on the situation of Korea as the ICC did not find any crimes committed based on a thorough legal and factual analysis of the evidence and information collected there (Press Release: June 23, 2014).

**Mali:** Mali ratified the Rome Statute on August 16, 2000. Ahmad Al Mahdi (civil servant of Malian Government), an alleged member of the Ansar Eddine (associated with Al Qaeda) was charged with

war crimes responsible for intentionally directing attacks against historic monuments and religious buildings: nine mausoleums and one mosque in Mali committed within 11 days (June 30, 2012, and July 10, 2012) (Trial International, January 17, 2018). The situation was referred to the ICC by the Government of Mali on July 18, 2012 (ICC, February 16, 2013). On January 16, 2013, the ICC opened an investigation on crimes committed on the territory of Mali (ICC-PIDS-TCT-01-090/18\_Eng, June 13, 2018). The warrant of arrest was issued against him on September 18, 2015 (<https://www.icc-cpi.int/mali/al-mahdi/pages/alleged-crimes.aspx>). On September 27, 2016, Al Mahdi was found guilty by the Trial Chamber and sentenced for 9 years of imprisonment. He was arrested and transferred to The Hague on September 26, 2015. The ICC directed him to pay Euro 2,700,000 in expenses for individual and collective reparations as compensation to the victims on August 17, 2017 (UNESCO, 2017).

Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud (Al-Hassan), an alleged member of the Ansar Eddine was allegedly charged with war crimes and crimes against humanity. On March 27, 2018, warrant of arrest was issued against him and he was surrendered to the ICC on March 31, 2018, and presently he is in Court's custody. On September 30, 2019, Pre-Trial Chamber confirmed the charges of war crimes and crimes against humanity and sent to Trial Chamber for the final verdict (ICC, September 30, 2019).

**The Philippines:** The Philippines has been a State Party to the Rome Statute since November 1, 2011. The ICC announced to open the preliminary examination of the situation in The Philippines on February 8, 2018, over the crimes of war against drugs (use or dealing) campaign committed by the Government of The Philippines since July 1, 2016 (Rappler, March 14, 2018). Over 12,000 persons have been killed owing to their alleged involvement in drug use or dealing in the name of encounters, anti-drug operations and clashes between or within gangs (ICC, December 5, 2018). On March 13, 2018, The Philippines notified the United Nations Secretary-General of its decision to withdraw from the Rome Statute but has assured the UN of its commitment to the rule of law (Reuters, March 16, 2018). The Office will continue to investigate allegations of crimes committed in The Philippines in which The Philippines may fall within the jurisdiction of the Court (ICC, December 5, 2018).

**Uganda:** Uganda is a State Party to the Rome Statute on June 14, 2002. While Lord Assistance Army or LRA (an armed group) initiated an armed insurgency against the Government of Uganda and its army, the Government referred the situation in its territory in January 2004 to the ICC. On May 6, 2005, amended and supplemented on May 13, 2005, and additionally on May 18, 2005, the Prosecutor submitted for the action and the Pre-Trial Chamber issued warrants of arrest for crimes against humanity and war crimes to Joseph Kony, Vincent Otti, Raska Lukwiya, Okot Odhiambo and Dominic Ongwen on July 8, 2005. On September 27, 2005, Pre-Trial Chamber requested DR Cong to search for, arrest, detain and surrender to the Court to all five suspects (ICC-PIDS-CIS-UGA-001-006/18\_Eng,

April 2018).

On January 21, 2015, Ongwen was surrendered to the ICC. On March 23, 2016, the Pre-Trial Chamber confirmed his charges. The trial resumed on September 18, 2018, and defense started on September 27, 2018 (Pathak, July 29, 2019 and ICC-PIDS-TCT-01-090/18\_Eng, June 13, 2018). His case continues. But, Kony and Otti have remained at large, 'fugitives' even more than 10 years issuance of the warrants of arrest. Raska Lukwiya (killed by the state security forces on August 12, 2006) (ICC-02/04-01/05-270, February 29, 2008) and Okot Odhiambo (killed on October 27, 2013) proceedings were terminated following the forensic confirmation of their death (ICC-02/04-01/05, February 29, 2008).

**Venezuela:** Venezuela is a State Party to the Rome Statute. On February 8, 2018, the OTP initiates the preliminary examination situation of the crimes that crimes allegedly committed in April 2017 during the context of demonstrations and political unrest (OAS, May 31, 2018). However, on September 27, 2018, the Court received a referral request to the OTP from a group of States Parties comprising Argentine Republic, Canada, the Republic of Colombia, the Republic of Chile, the Republic of Paraguay and the Republic of Peru to initiate an investigation on crimes against humanity allegedly committed in the territory of Venezuela after February 12, 2014 (ICC, September 27, 2018). The preliminary examination continues (ICC, December 5, 2019).

*(ii) Declaration of Acceptance*

Declaration of acceptance is a formal/legal statement made by the concerned State agreeing to accept jurisdiction as valid, adequate and suitable without attempting to change it and protest it. It is a self-acceptance announcement that is being appreciated, validated and satisfied by the self-act despite reservation, amendment and further consideration. In this context, acceptance declaration means the State accepts or declares in pursuant to Article 12.3 of the Rome Statute under Precondition to the Exercise of Jurisdiction. Article 12 of the Rome Statute says, "If the acceptance of a State which is not a Party to this Statute ... accept the exercise of jurisdiction by the Court with respect to the crime in question. The accepting State shall cooperate with the Court without any delay or exception...." Among the 27 Countries refers to the ICC for the crimes judgments, only one State Ukraine is discussed under this theme.

**Ukraine:** Ukraine is not a Member of the Rome Statute. On April 17, 2014, Ukraine lodged a declaration under Article 12(3) of the Statute accepting the exercise of jurisdiction of the Court over alleged crimes committed on its territory from November 21, 2013, to February 22, 2014 (Coynash, September 10, 2015). On September 8, 2015, Minister for Foreign Affairs in Ukraine lodged a second declaration under article 12(3) of the Statute accepting the jurisdiction of The Hague Court in relation to alleged crimes committed on its territory from February 20, 2014, onwards (with no end date) adopting the Resolution from the Parliament of Ukraine (Klimkin, September 8, 2015).

On **April 25, 2014**, the OTP opened a preliminary examination into the situation in Ukraine, focusing

to the **Maidan events or protests** including Crimea and eastern Ukraine over the alleged crimes committed since November 21, 2013 (ICC, December 4, 2017). The Maidan protests were organized against the former President of Ukraine Viktor Yanukovich. Violent clashes occurred at several places in the context of the demonstrations which resulted in injuries both to protesters and officials of security forces and deaths of some protesters. February 22, 2014, the Ukrainian Parliament voted against President Yanukovich. Finally, he deposed from the position and departed to the Russian Federation (ICC, December 5, 2018).

The Crimean Peninsula was annexed by the Russian Federation between February and March 2014 and has been administered as two subjects of the Russian Federation, i.e., the Republic of Crimea and Federal City of Sevastopol (TACC, March 21, 2014). The annexation from Ukraine pursued a Russian military intervention in Crimea that took place the Ukrainian Revolution, resulting in wider unrest across southern and eastern Ukraine. Russia formally assimilated Crimea into the Russian Federation with effect from March 18, 2014 (Government.ne, March 14, 2018) that led to use excessive force causing extrajudicial killings, enforced disappearances, torture and other cruel inhumane degrading and ill-treatment among others.

Under the preliminary examination, the Office has received a total of 86 communications pursuant to article 15 of the Rome Statute. Neither Ukraine has ratified the Rome Statute nor does the Court initiate investigation taking approval from the Pre-trial Chamber.

**(iii) Situation Referring by the UNSC**

For restoring international peace and security and maintaining the international humanitarian law, Chapter VII of the United Nations Charter sets out the certain power to the Security Council. The UN Charter prohibits Member States of the UN attacking by the UN Member States and waging a war against the territorial integrity and assists political independence and sovereignty of a state and compliance to international treaties or agreements. The Security Council adopts the Resolution taking note of the report of the International Commission of Inquiry on violations of international humanitarian law and human rights law. The Security Council refers to the situation of two Darfur (Sudan) and the Libya States to the ICC to initiate an investigation of crimes committed on their territories.

**Libya:** While Libya had not been a State Party to the Rome Statute, the United Nations Security Council (UNSC) asked the Court for the investigation of war crimes after the fall of Muammar Gaddafi in February 2011 (Wintour, November 4, 2017). The UNSC referred the situation condemning the violence and use of force against civilians that happened under the regime of Muammar Gaddafi (ICC-01/11-01/11-670, June 11, 2019). The investigation was opened in March 2011 on the charges of murder and persecution.



On June 27, 2011, the Pre-Trial Chamber issued three warrants of arrest, namely Muammar Gaddafi, Saif Al-Islam Gaddafi (unspoken successor of Muammar Gaddafi) and Abdullah Al-Senussi for their alleged criminal responsibility as crimes against humanity from February to August 2011. However, the arrest warrant against Muammar Mohammed Gaddafi was withdrawn on November 22, 2011, as he was extra-judicially killed by the agitators. Proceedings against Al-Senussi in the Court ended on July 24, 2014, when the Pre-Trial Chamber declared his case inadmissible before the ICC (Pathak, July 29, 2019). In July 2015, he was sentenced to death by the Libyan Court, but the verdict was under appeal (BBC News, October 16, 2015). The Libyan authority failed to comply with the requests of the Court to surrender Saif Al-Islam Gaddafi to the Court (ICC-PIDS-TCT-01-090/18\_Eng, June 13, 2018) and he remains at large, 'fugitive'. The matter was reported to the UN Security Council. Saif was arrested on November 19, 2011, and since then he has been in custody of the Libyan authorities.

Similarly, Al-Tuhamy Mohamed Khaled and Mahmoud Mustafa Al-Werfalli were charged with crimes against humanity and war crimes respectively allegedly committed in February through August 2011. The warrant of arrest of Khaled was issued in April 2017 (ICC-PIDS-CIS-LIB-02-002/18\_Eng, April 2018). The arrest warrant against Mahmoud Al-Werfalli was issued on August 15, 2017, by the Pre-Trial Chamber (ICC-PIOS-CIS-LIB-03-003/18). Their cases are in Pre-Trial Stage and both are not in the Court's custody, recognize as a fugitive.

**Darfur (Sudan):** From March 2003 to July 2008, non-international character a protracted armed conflict existed in Darfur between the Government security forces and the armed insurgents. The United Nations estimated that there were 1.65 million internally displaced persons in Darfur, and more than 200,000 refugees fled to neighbouring Chad and large-scale of the destruction of villages happened throughout the three States of Darfur (S/2005/60, February 1, 2005). It was estimated that 300,000 people were extrajudicially killed during the conflict (BBC, March 4, 2009).

While Sudan had not been a State Party to the Rome Statute, Darfur situation was referred to the ICC by the UN Security Council (UNSC) first of its kind under its VII Chapter of the International Peace and Security Charter on March 31, 2005. The UNSC referred the situation of Darfur with the Resolution 1593 over alleged genocide, war crimes and crimes against humanity (Library of Congress, June 20, 2017) committed in Darfur, Sudan since July 1, 2002. The UN Security Council established a Court for investigation in June 2005 following the recommendation of the report of the International Commission of Inquiry on violations of international humanitarian law and human rights law in Darfur (S/2005/60, February 1, 2005). The UN Secretary-General established the Commission "to investigate reports of violations of international humanitarian law and human rights law in Darfur by all parties, to determine also whether or not acts of genocide have occurred, and to identify the perpetrators of such violations with a view to ensuring that those responsible are held accountable" (S/2005/60, February 1, 2005).

The UN Resolution was passed by a vote of 11 (Argentina, Benin, Denmark, France, Greece, Japan, The Philippines, Romania, Russia, Tanzania, and the UK) in favour with none against, but four (Algeria, Brazil, China, and the USA) were absent (SC/8351, March 31, 2005).

Following the directive by the UNSC, the Court opened the investigation in June 2005 in which suspects ranging from Sudanese Government officials, Janjaweed Militia and leaders of the Resistance Front. The concerned authorities involved charges of war crimes, crimes against humanity and genocide (ICC-02/05, Undated).

On May 2, 2007, the Pre-Trial Chamber of the Court issued (the first warrant of arrest on the charge of war crimes and crimes against humanity) against Minister Ahmad Muhammad Harun and Government-sponsored Janjaweed militia leader Ali Kushayb (UN News, May 2, 2007). But, they remained at large or fugitives (ICC-PIDS-CIS-SUD-001-005/18\_Eng, April 2018).

On March 4, 2009, the Pre-Trial Chamber issued a warrant of arrest to another sitting State-Head President Omar al-Bashir for war crimes, crimes against humanity and genocide for the first time ([www.icc-cpi.int/darfur/albashir](http://www.icc-cpi.int/darfur/albashir)). He remains at large, 'fugitive' (ICC-PIDS-CIS-SUD-001-005/18\_Eng, April 2018). The ICC issued a warrant of arrest to the former Defense and Interior Minister and Governor of Khartoum State Abdel Hussein on March 1, 2012. Hussein was recognized as the closest ally of the al-Bashir who suspected for recruiting, arming and funding police forces and the Janjaweed militia against rebel force in Darfur (ICC-02/05-01/09, May 6, 2019). He is still a fugitive. In April 2019, President Omar al-Bashir ousted from his position through the Army coup (BBC, April 11, 2019).

On May 18, 2009, rebel leader Abu Garda voluntarily appeared before the Court in The Hague without issuing a warrant of arrest (BBC, May 18, 2009). On the charge of war crimes committed in an attack against the African Union Peacekeeping Mission, rebel commanders Abdallah Banda and Saleh Jerbo voluntarily appeared in the Court on June 17, 2010. Charges against both rebel leaders were confirmed on March 7, 2011. As a result, warrants of arrest were issued against them on September 11, 2014 (ICC-PIDS-CIS-SUD-04-008/18\_Eng, July 2018).

The Pre-Trial Chamber informed the UN Security Council that the State authority did not cooperate in the cases of war crimes and crimes against humanity. It is to be noted that State senior position holders namely Ahmed Harun, Ali Kushayb, Omar al-Bashir and Abdel Hussein are termed as fugitives (Tladi, 2015). The Pre-Trial Chamber hearing to confirm the charges against Abu Garda took place starting from October 19 to 20, 2009 but refused the charges against him on February 8, 2010 (ICC-02/05-02/09, February 9, 2010). The Chamber rejected the Prosecutor's application for Abu Garda to appeal the decision and charges were dismissed on February 8, 2010.

On March 3, 2015, the Appeals Chamber rejected Abdallah Banda's appeal against the decision of the Trial Chamber replacing the summons to appear by warrant of arrest (ICC-PIDS-CIS-SUD-04-008/18\_Eng, July 2018), but he remains at large, fugitive

(ICC-PIDS-CIS-SUD-04-006/15\_Eng, March 23, 2015). Jerbo's case was terminated in October 2013 as he was killed in a battle with the same splinter group on April 19, 2013 (Dabanga, October 4, 2013, and ICC-PIDS-CIS-SUD-04-006/15\_Eng, March 23, 2015). None of the leaders attended before the Court following its warrants of arrest, on the one hand. On the other, these criminal cases have been remaining in the Pre-Trial stage until the suspects are presented to the courtroom.

The Office welcomes the Council's strong appeal in UNSCR 2340 for justice in Sudan ensuring accountability on human rights violations and violations of international humanitarian law by whomsoever perpetrated (S/RES/2340, February 8, 2017). The Office of the Prosecutor regrets having the Security Council not taking any action against finding non-compliance of al-Bashir and other fugitives arrested and surrendered to the Court in the Darfur situation. International and non-governmental organizations express difficulties assisting the Court fearing that their cooperation may leave a great impact on their activities of the project on the ground in Sudan.

*(iv) Transnational Crimes*

The Transnational (cross-border) crimes doctrine is used for the international criminal justice system in this subheading. It is a part of International and Transnational Criminal Law. Transnational crime is extensively used as a generic concept covering a multiplicity of different kinds of criminal activity which describes as an actual or potential effect across national borders or international concern (Boister, November 2003) and crimes shall be interstate and that influence the justice system of the international community. Transitional crimes leave impacts in certain war crimes, crimes against humanity and genocide situations. Transnational crimes happened across State boundaries. Transnational crimes committed on the territory of the non-State Party, but its magnitudes significantly affect another State Party, in some cases, transits State may also be influenced: Bangladesh/Myanmar, Iraq/UK and Palestine/Israel.

**Bangladesh/Myanmar:** It is estimated that 1.1 million Rohingya, one of the many ethnic minorities but the largest percentage of Muslims in Myanmar were targeted by the State security forces (BBC, April 24, 2018). In 2012, as all Rohingya made illegal immigrants from Bangladesh, the tensions between Rohingya and majority Rakhine (predominantly Buddhist) population erupted where tens of thousands Rohingya compelled to leave homes and into squalid displacement camps. Those living in the camps were confined and segregated from other communities (Amnesty International, September 7, 2017). In October 2016, Rohingya lethal attacks on police outposts in northern Rakhine State, the Myanmar army launched a military crackdown targeting the community as a whole. Soldiers and police extrajudicially killed thousands of Rohingya, no counts of raped women and girls, dozens of thousands torched whole villages and no records of arbitrarily arrested Rohingya men without any information about their whereabouts or charges. Those actions have been crimes against humanity (Amnesty International,

December 19, 2016) and ethnic cleansing. About 750,000 Rohingya fled from non-State Party Myanmar to the territory of State Party Bangladesh.

On July 4, 2019, pursuant to article 15 of the Rome Statute, the Prosecutor requested to have an authorization from Pre-Trial Chamber to initiate an investigation into crimes within the jurisdiction of the ICC. On November 14, 2019, the Pre-Trial Chamber granted permission and the Prosecutor initiated an investigation of atrocities against Rohingya Muslim minority in the Situation in Bangladesh/Myanmar for the alleged crimes within the ICC jurisdiction (ICC, November 14, 2019). On December 11, 2019, Aung San Suu Kyi defends Myanmar from accusations of genocide in her opening statement in front of judges in the ICC (UN News, December 11, 2019). Following day, she pleaded with its 17 ICC judges to dismiss allegations that Myanmar has committed genocide and urged them instead to allow the country's court-martial system to deal with any human rights abuses (Bowcott, December 12, 2019).

**Iraq/UK:** The United Kingdom is a State-party to the Rome Statute on October 4, 2001, but Iraq is a non-State Party. Therefore, the ICC may exercise its jurisdiction over the Rome Statute crimes that are either committed on the territory or by nationals of the United Kingdom as of July 1, 2002 (<https://www.icc-cpi.int/iraq>). It is reported that the alleged war crimes committed by the United Kingdom nationals in Iraq conflict and occupation from March 2003 to July 2009 included murder, torture and other forms of ill-treatment (A/72/349, September 29, 2017). The preliminary examination of the situation in Iraq was initially terminated on February 9, 2006, but was re-opened on May 13, 2014, when the European Center for Constitutional and Human Rights and Public Interest Lawyers provided new information on January 10, 2014, against war crimes committed by the United Kingdom nationals in Iraq (ICC, December 4, 2017). The OTP is continued to receive communications pursuant to article 15 of the Statute in relation to the situation in Iraq/UK (ICC, December 5, 2019) as there are reasonable bases in which British troops had committed war crimes against Iraqi detainees (Robbins, December 31, 2017). Thus, the preliminary examination continues.

**Palestine/Israel:** On January 1, 2015, Palestine lodged a declaration under Article 12(3) of the Rome Statute which accepted the jurisdiction of The Hague Court over alleged crimes committed in the occupied Palestinian territory and East Jerusalem from June 13, 2014, onwards. On the mid of January 2015, the OTP its own initiative opened a preliminary examination into the situation in Palestine (ICC, December 4, 2017). On May 22, 2018, extending the geographical areas, Palestine referred the situation for an investigation to the Prosecutor to investigate following the temporal jurisdiction of the Court, past, ongoing and future crimes committed in all parts of the territory in Palestine.

There is a reasonable basis to proceed with an investigation into the situation in Palestine following the article 53(1) of the Rome Statute. The Prosecutor said, "(i) war crimes have been or are being committed in the West Bank, including East Jerusalem and the Gaza Strip ... (ii) potential cases arising from the situation would be admissible; and (iii) there are no substantial reasons to believe that an

investigation would not serve the interests of justice” (ICC, December 20, 2019). The OTP would launch a full investigation into alleged war crimes in the Palestinian Territories as soon as the court’s jurisdiction had been established.

The Palestinian Authority said, “Palestine welcomes this step as a long-overdue step to move the process forward towards an investigation, after nearly five long and difficult years of the preliminary examination. The Court decision was a dark day in the history of Israel” (Reuters, December 20, 2019). Commenting on the decision of the OTP, Israel stated, “The ICC only has jurisdiction over petitions submitted by the Sovereign States. But there has never been a Palestinian State”. Supporting to Israel, U.S. Secretary of State Mike Pompeo added, “We firmly oppose this and any other action that seeks to target Israel unfairly” (Reuters, December 20, 2019). However, no decision of investigation is taken by the Pre-Trial Chamber until the end of 2019.

*(v) Petition by Victim/Representative*

**Nepal:** The jurisdiction (criteria) numbers 1 to 4 have already been practised by The Hague Court. The jurisdiction number 5 may, first time, be used in the case of Nepal where former Child Soldier (Discharged People’s Liberation Army of the Maoist People’s War) put forward their demand of livelihood supports in fore-front-line and are succeeded to attract parties, civil society and media. Their voices of former child soldiers are heard beyond the national border while a former child soldier was invited by Europe and shared his past pains, grievances, sufferings and present-day injustice with the officials of The Hague Court and among other pertinent institutions and actors. To file a case against the former Maoist leader in The Hague Court has been a much-debated issue nowadays in Nepal and beyond. It means the issue of former child soldiers has been an international concern. The issue-matter of The Hague Court progressively intensifies each day in Nepal by the Maoist recruited children and UNMIN verified child soldier in Nepal.

Nepal may attract The Hague Court by the following reasons. First, the Comprehensive Peace Accord was signed between the Government of Nepal and the CPN (Maoist) on November 21, 2006, that finally concluded a decade-old civil war, named People’s War. Nepal requests for assistance to the UN Security Council and Security Council deployed the United Nations Mission in Nepal (UNMIN), a political mission. The UNMIN served in Nepal from January 23, 2007, to January 15, 2011 (for 3 years, 11 months and 3 weeks). It had initially registered 32,250 MA combatants but only 19,602 (61%) were verified, comprising 4,008 minors-late recruits, stationed in 7 main and 21 satellite cantonments (Pathak, December 12, 2012).

Second, 18-years old a former child soldier (Manju Gurung) who was escaped from Shaktikhor cantonment in Chitwan was invited to the 6341 meetings of the UN Security Council as a special guest on the initiative of the UN Special Rapporteur on Children in Armed Conflict on June 16, 2010. She gave testimony at the UN Security Council recounting her past life story and detailing how she was enforced

and joined into the People's War at the age of 11. After her presentation, about 60 countries' delegates suggested the Security Council take strong measures to bring the recruiters of child soldiers to justice (Pathak, September 30, 2019). The UNMIN expressed that it is a success story for its organization.

Third, the UNMIN verified minors-late recruits discharged from temporary cantonments in Nepal on the witness of Special Representative of the Secretary-General for Children and Armed Conflict Radhika Coomaraswamy. Each minor and late recruits received the US \$ 100 by UN and US \$ 120 from the Maoist Party as transportation and transition allowances (Pathak, October 2019). About one-third of the total numbers of those child soldiers were female. Almost all discharged were above 18 years and many of them have long experiences of war and scars of the wound of battles around the body. A few of them were handicapped for their involvement in the past wars. As all discharged felt injustice by the concerned authorities, they had thrown their garlands in front of Maoist supremo Prachanda, UN representatives and other diplomats.

Fourth, the UNMIN never try to seek financial assistance to provide to former child soldiers either from the international community or Government of Nepal before their discharge. However, it exasperated hard to internationalize the issue of doing politics rather ensure justice (providing relief and reparation) to them and work towards humanitarian backgrounds for them. It happened as most of the international officials of UNMIN were anti-communist ideologue and ethnic identity-based activists were recruited as local officials. Some of the officials' aim was provoking the issue of former child soldiers. The situation of the former child soldiers further aggravated while own-party Maoists and civil society could not do much work on them, on the one hand. On the other, they could not be rehabilitated even in their own poor-families and societies resulting one dozen have already committed suicide. Therefore, Nepal suffers for a long from the wrong decision of the UNMIN on child soldiers.

Fifth, the United Nations Office of the High Commissioner for Human Rights (OHCHR), residing in Nepal sharply criticized the State security forces for use of excessive force on the course of interrogation with suspected persons. The OHCHR report (May 2006) stated that Nepal Army's Bhairabnath and Yuddha Bhairab battalions arrested and detained hundreds of suspected individuals in Maharajgunj, but their detentions were never formally acknowledged and at least 49 people were enforcedly disappeared by the Bhairabnath battalion in 2003. The OHCHR alleged that members of the Bhairabnath battalion severely tortured to detainees in custody and cremated them into the Shivapuri National Park near Kathmandu by burning tyres (UNOHCHR, May 6, 2006, & Human Rights Watch, December 28, 2007). The OHCHR has numbers of reports on crimes committed to submit at The Hague Court if the case files there against the then insurgents and State responsible authorities.

Sixth, the mushrooming of western donors-driven NGOs who crushed the communist ideology of the former CPN (UML) from Nepal are now against the former CPN (Maoist) as retaliation. Therefore, NGOs and anti-Maoist civil society are trying hard to defame the Maoist insurgents and pressuring the

concerned actors to take them into The Hague Court. They are very much biased. For instance, the then Nepal Government who mostly led by the Nepali Congress and the former monarch who extrajudicially killed two-thirds of about 20,000 Nepali and forcefully 80 per cent of 2,500 people were disappeared, but they never talk to bring them into The Hague. A large amount of money flooding in the name of transitional justice, but has never reached in the greatest majority of countryside victims or survivors. The UNMIN and OHCHR might have an honest interest to resolve Nepal's crises genuinely, but their bi-multi-lateral donor officials have had a vested interest to stay a longer period in strategic important place Nepal so as to watch out to India and encircle China seceding Tibet for not becoming a superpower in the World. There is no doubt that many intelligence informers seek to be an unstable (transitional) Nepal for their fulfilment of sole purpose. Therefore, such informers pray on for not to end transitional justice in Nepal.

Seventh, as both the UNMIN on January 15, 2011, and the OHCHR on March 31, 2012, were terminated without completing their works, they severely frustrated and humiliated. Consequently, on February 16, 2016, the OHCHR denied to support the Commission on Investigation of Disappeared Persons and the Truth and Reconciliation Commission (OHCHR, February 16, 2016); but adopted the policies to support the civil society members and institutions (NGOs) for those who refute or criticize to both Commissions and their works for accountability and justice initiatives.

Eight, the TRIAL international has already submitted an individual communication to the UN Human Rights Committee regarding the enforced disappearance of Rajendra Prasad Dhakal in January 1999 (TRIAL International (February 12)). This is just an example, but not the last. A number of complaints of extrajudicial killings, enforced disappearances, tortures and rapes and among others, human rights violations and abuses have already been submitted in many UN concerned agencies which shall be submitted as pieces of evidence and testimonies in The Hague once the case submitted at the OTP.

Nine, Nepal Government has never tried to compliance the Supreme Court order to make accountable to the perpetrators and ensure justice to the victims in relations of grave human rights violations and abuses that happened during the decade of the People's War. International human rights organizations and UN authorities have written official letters to the Government of Nepal to progress on truth, justice and reparations including compensations. As Nepal's authorities turned deaf ears to them, they have already collected relevant evidence and documents which may submit in The Hague Court when they needed. Nepal Government-established National Human Rights Commission frequently stated that only 12 per cent of their recommendations to punish the perpetrators have been implemented. It means Nepal fails to obey the enforcement of international commitments in regards to human rights and humanitarian law.

Last, the Truth and Reconciliation Commission failed to register the cases of former child soldiers owing to authorities' connection with high-ups of political parties. The decision was against the spirit of the definition of CIEDP/TRC Act 2071 (2014). The article 2.j.9 of Act says, "Any types of inhuman act

committed against international human rights or humanitarian law or other crimes against humanity". Thus, the issue of child soldiers has been neglected even by the concerned institution in Nepal.

If any former child soldier/representative or NGO representative files a case at The Hague Court, the case shall be dysfunctional till transitional justice bodies, namely the Commission of Investigation on Enforced Disappeared Persons, and the Truth and Reconciliation Commission, function in Nepal. Besides, there is political stability (three tiers elected Governments) maintaining law and order situation in the country. Despite the stagnant economy, socio-cultural harmony exists. It is thus likely that the Pre-Trial Court of The Hague may reject the Prosecutor's request to open an investigation to Nepal similar to Afghanistan of April 12, 2019 (Behles, April 12, 2019). It is not to be forgotten that Nepal is in between two super-powers, i.e., China and India.

Nevertheless, the former child soldiers shall need to seek domestic resolution or transformation rather than talking of The Hague, arrest and detention. Moreover, the Government of Nepal must also listen to the voices of the former child soldiers as a guardian of ALL. Therefore, the indirect/direct informal (mediation-facilitation) and indirect/direct formal dialogues are the only ways left to resolve or transform the present impasse of the former child soldiers.

### 3. Conclusion

Contrary to 360,000 people killed and millions displaced, human rights lawyers first-time filed the case against (non-State Party) Syrian President Bashar al-Assad at the ICC on behalf of 28 Syrian refugees residing in Jordan (State Party) in March 2019 (Aljazeera, September 20, 2019). Lawyers have given a precedent set by the Court ruling on Rohingya refugees in Bangladesh. Russia used its 13th-time veto powers and seventh in the case of China till the end of 2019 at the UN Security Council for not to have Court's referral to its non-State Party Syrian ally (Aljazeera, September 20, 2019).

So far, a total of 45 suspected individuals were/are issued warrants of arrest by the Court as of December 2019. Out of 45 persons, proceedings against 50 per cent (22) have been completed: the charges of six were dismissed; two are serving; four finished their sentences; two are acquitted; the charges of two were withdrawn; two have declared inadmissible, and four have died before trial.

Among the 45 suspected persons, **six** presently are in The Hague Detention Center: Al Hassan and Ahmad Al Mahdi from Mali, Patrice Ngũgĩ and Alfred Yekatom from CAR, Bosco Ntaganda from DR Congo, and Dominic Ongwen from Uganda. **Four** suspected persons are not into the custody. They are three Charles Blé Goudé, Simone Gbagbo and Laurent Gbagbo from Cote d'Ivoire and one Saif Al-Islam Gaddafi from Libya. On January 15, 2019, Trial Chamber by a majority, acquitted Gbagbo and Blé Goudé from all charges of crimes against humanity.

**Eight** were convicted by The Hague Court. Seven were from DR Congo: Jean-Pierre Bemba, Narcisse Arido, Fidèle Babala Wandu, Germain Katanga, Aimé Kilolo Musamba, Thomas Lubanga and



Jean-Jacques and Mangenda Kabongo and one Ahmad Al Mahdi from Mali. **Nine** suspected individuals did not appear into the Court even after the issuance of warrants of arrest, recognize as at large 'fugitive'. Among them: **three** (Walter Barasa, Philip Bett and Paul Gicheru) are from Kenya; **three** (Omar Al Bashir, Ahmad Harun and Abdel Hussein) from Darfur, Sudan; two (Joseph Kony and Vincent Otti) from Uganda; and **one** Sylvestre Mudacumura from Rwanda. However, **four** suspected individuals were issued red corner notice along with warrants of arrest. They are: **two** Mahmoud Al-Werfalli and Al-Tuhamy Khaled from Libya, **two** Ali Kushayb (Sudan) and Ali Abdallah Banda from Darfur (Sudan).

The cases of 15 suspected persons including **two** acquitted ones were closed by the end of 2019. They are: **six** such as Henry Kosgey, Mohamed Hussein Ali, Uhuru Kenyatta, Kiriimi Muthaura, William Ruto and Joshua Sang are from Kenya; **two** Abu Garda and Saleh Mohammed were from Sudan; **two** Mohammed Gaddafi and Abdullah Al-Senussi from Libya; **two** were from Okot Odhiambo and Raska Lukwiya from Uganda and **one** Callixte Mbarushimana was Rwanda. **Two** acquitted Jean-Pierre Bemba and Mathieu Ngudjolo Chui were from DR Congo.

The Trial Chamber of the Court ordered 2.7 million euros (3.2 million dollars) to rebel leader Ahmad Al Mahdi (Mali) as reparation for three categories of harm: damage to the attacked historic and religious buildings (estimated at € 97,000 euros), consequential economic losses (estimated at € 2.12 million) and moral harm (estimated at € 483,000) (UNSECO, August 18, 2017). The Court ordered to \$1m (£800,000) to villagers to Germain Katanga an ex-militia leader in DR Congo as reparation and compensation (BBC, March 24, 2017). The Trial Chamber issued a decision to pay the amount to another rebel leader of the DR Congo Thomas Lubanga as liability for collective reparations at the US \$ 10,000,000 conscripting and enlisting children under the age of 15 into an armed group (Diplomat Magazine, June 30, 2019).

The function of The Hague Court is very much slow, monotonous and tedious compared to expenditures and officials working there. Besides, the Prosecutor Fatou Bensouda suffers from a superior complexity. On the one hand, she denied initiating an investigation on the situation in the Registered Vessels of Comoros, Greece and Cambodia despite repeated order of the Pre-Trial Chambers and Appeals Chamber. It seems that she has a fear with the authorities of the USA and Israel. On the other, she uploaded her photos in all official statements similar to advertisements casting by television. It is to be remarkable that her job is to gather evidence and testimonies and need to submit the report at the Pre-Trial Chamber for the final decision or approval. She is neither the supreme boss nor she can do what she desires to in The Hague Court.

On the whole, the ICC has highly influenced by global politics. It is an irony that the United States of America, Russia and China are not State Party to the Statute (ICC members), but they can use their veto

powers for their favours, not for justice and accountability. No one is above the International Human Rights Law and Humanitarian Law, i.e., beyond the reach of Justice and Accountability.

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## Notes

Note 1. Algeria, Angola, Armenia, (The) Bahamas, Bahrain, Cameroon, Egypt, Eritria, Guinea-Bissau, Haiti, Iran, Israel, Jamaica, Kuwait, Kyrgyzstan, Monaco, Morocco, Mozambique, Oman, Russia, São Tomé and Príncipe, Solomon Islands, Sudan, Syria, Thailand, Ukraine, United Arab Emirates, United States of America, Uzbekistan, Yemen and Zimbabwe (United Nations Treaty Collection, [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtds\\_g\\_no=XVIII-10&chapter=18&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtds_g_no=XVIII-10&chapter=18&lang=en)).

Note 2. Azerbaijan, Belarus, Bhutan, Brunei, China, Cuba, Equatorial Guinea, Ethiopia, India, Indonesia, Iraq, Kazakhstan, Kiribati, North Korea, Laos, Lebanon, Libya, Malaysia, Mauritania, Micronesia, Myanmar, Nepal, Nicaragua, Niue, Pakistan, Palau, Papua New Guinea, Qatar, Rwanda, Saudi Arabia, Singapore, South Sudan, Sri Lanka, Swaziland, Tonga, Turkey, Turkmenistan, Tuvalu, Vatican City and Vietnam.

Note 3. The ICC comprises four organs: the Presidency, the Chambers (Pre-Trial, Trial and Appeals Divisions), the Office of the Prosecutor and the Registry.